

**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
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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:  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')

Landpro 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:

- Introduce a much simpler rule that enables current permits to be effectively exercised as they are currently issued until the new Land and Water Plan is operative. This requires re-issued consents to be on the same terms and conditions, including statutory entitlements, and requires removing the restriction on irrigable areas, deleting Schedule 10A.4 and removing the stipulation for allocation for controlled activities to be derived from abstraction records from 1 July 2012 to 30 June 2017; and
- Remove from PC7 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; and
- Remove from PC7 those permits that take or seek to take surface water (and connected groundwater) from the Clutha/Mata-Au River, as the Clutha/Mata-Au is not fully allocated.
- Allow those permit holders willing and able to lodge their replacement applications before October 2021 to seek the long-term consents that they need, as many have done already, and have duration considered on their merits; and
- Not apply PC7 objectives and policies to applications lodged before PC7 was notified.

Landpro 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 Landpro are set out on the following pages.

Abbreviations

Landpro – Landpro Limited

LWRP – Land and Water Regional Plan

NPSFM – National Policy Statement Freshwater Management

ORC – Otago Regional Council

RMA – Resource Management Act

RPW – Regional Plan: Water for Otago

Summary of Submission on PC7

1. This submission relates to Plan Change 7 in its entirety.
2. Landpro Limited (Landpro) 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, in a way which ensures long term sustainable management of natural resources.
 - b. PC7 does not provide a coherent or complete framework for managing the taking, damming, diverting and re-taking of water in Otago.
 - c. The existing RPW framework provides for significantly greater environmental outcomes in terms of managing potential adverse effects on the environment, compared with PC7.
 - d. The objectives and policies of PC7 do not give effect to Part 2 Resource Management Act (RMA).
 - e. PC7 does not promote sustainable management.
 - 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, the settled provisions of the Proposed Regional Policy Statement (2016) and the Partially Operative Otago Regional Policy Statement (2019).
- h. The Section 32 evaluation is incomplete and has failed to adequately assess the effects of the proposed plan change on permit holders and associated infrastructure. It cannot be relied upon to support the plan change.

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

Introduction

1. Landpro is a consultancy firm headquartered in Cromwell, Central Otago. We support a significant number of rural landowners with their resource management needs, including preparing applications to replace deemed permits for water take, use and storage, as well as applications for new permits.
2. We have been working with our clients for many years drafting their applications and assessment of environment effects and coordinating science investigations of hydrological flows and instream ecological values to support these applications.
3. Many of these replacement applications have already been lodged with ORC, prior to PC7 being notified, and several have been granted.

Application of PC7 versus consideration under RPW

4. Our clients have spent considerable money on our services and other experts in preparing their applications to be made under the planning framework of the RPW. Many of these applications are very well advanced in preparation for a lodgement date in late 2020 (to ensure s124 rights under the Resource Management Act are available).
5. A number of applications for the replacement of deemed permits have been granted already. These applications have been granted on the basis of previous use records, and not paper allocation, and have been granted typically for terms ranging between 35 years and 25 years. Where appropriate they have included conditions relating to the provision of residual and or minimum flows, flow sharing obligations, and Sec.128 (1)(b) RMA review conditions amongst other matters.
6. Our clients have acted in good faith and have been preparing for these renewals for some years, being mindful of the previously well signalled process and efficiencies that would be required to comply with the existing Aqualinc models and undertaking science work to

understand of the effects of their abstraction activities on the instream ecology and hydrology, so as to support the renewal of their consents and permits.

7. Often the need for this work and expense associated with it has been questioned by our clients, however at our insistence that it is necessary to undertake detailed technical assessment of the effects of their proposed takes, all have been prepared to progress on that basis. We note that in some instances a water resource has been void of any existing or recent technical work, including fish surveys and hydrological modelling of water bodies. An applicant has usually had to 'start from scratch' when making an application to ORC that includes the assessments as prescribed in the RPW.
8. PC 7 should not apply to permit holders who lodged applications for water permits before PC7 was notified. The applications were prepared in accordance with the preceding planning framework and to apply the objective and policies of PC7 to those applications. Goes against the principles of natural justice.
9. The introduction of PC7 creates inequities between permit holders who have already obtained new, replacement long-term permits (including some since PC7 was notified) and other holders. In addition, the way PC7 provisions have been drafted, any person who is seeking a consent to take new water (i.e. not a replacing an existing permit) would be considered as a *discretionary activity* under the existing RPW, which makes it an unjust playing field and disadvantages existing permit holders compared with new applicants.
10. PC7 undermines the collective and collaborative approach undertaken by Manuherikia water users so far in the development of an NPSFM compliant plan change that is focused on providing a catchment wide solution to water management, including allocation and minimum flows and which is underpinned by technically robust science.
11. PC7 also fails to consider the significant investment made by applicants to date in hydrology and ecology science work to support their applications from the many other smaller waterbodies in the Otago region. This work has provided them with sound understanding of the degree of effect their activities are having on the receiving environment and has allowed recommendation of suitable residual and/or minimum flows for those waterbodies all within the framework of the RPW. For example, many of those waterbodies that Landpro are dealing with sit within the Clutha River catchment and are of such a small scale as to be unlikely to be considered in terms of any specific flow or allocation regimes in the future LWRP.

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.

1. Landpro oppose this objective.
2. This objective is unclear. It fails to respond to a clearly identified and defined resource management issue. This objective only seeks to establish an interim planning framework and does not identify which part of the operative framework is no longer capable of providing planning outcomes.
3. The proposed plan change is favouring short term bureaucratic relief over environmental protection, and may extend negative impacts on the environment by a further 6 years rather than resolving negative impacts imminently through the existing RPW framework.
4. Objective 5.3.6 of the RPW already provides for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers.
5. This objective recognises that traditionally people have made extensive use of the region's 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, particularly in respect to dams and dam infrastructure.
6. Dams and water storage will continue to form part of the long-term sustainable management of surface water resources within Otago as they provide for the most efficient use of water, yet the granting of 'placeholder' 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.
7. Short term, placeholder consents will ultimately mean that work on upgrades of existing infrastructure, or investment in new infrastructure that is more efficient will not occur, as short-term consents for large capital investment projects are considered un-bankable from a funding perspective. This leads to continuation of the effects of inefficient use for a further 6 years.

8. One of the reasons given by the ORC for the need for PC7 is that the current RPW does not give effect to the NPSFM¹. Landpro do not consider this to be a valid reason for PC7. All applicants must, in preparing their application(s) for the replacement of their permits, give effect to the planning framework and all higher order planning documents, including the NPSFM, as required by Sec 104 (1) (b) RMA, irrespective of whether a regional plan meets the NPSFM. This is an assessment we complete for all applications irrespective of whether a regional plan does or does not include reference to the NPSFM.
9. PC7 is inconsistent with Objective 6.3.1, to retain flows in rivers sufficient to maintain their life-supporting capacity for aquatic ecosystems, and their natural character. This interim framework requires no consideration of instream values which are required to be considered under the RPW framework. If there are any issues apparent that could be resolved through, for example, the introduction of a new residual or minimum flow, or change in abstraction patterns, they will be left to continue on a status quo basis for the next 6 years under PC7.
10. For those applications currently in progress, but not yet lodged, this would represent a significant change of direction, given many permit holders have been working for a number of years to understand the impacts of their activities on waterways with the understanding this would be a necessary part of renewing their consents.
11. PC7 is also inconsistent with Objective 6.3.2 of the 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 irrigation required for feed growth for the primary industry or hydrogeneration from several dams in the region.
12. Proposed Objective 10A.1.1 does not provide a coherent planning framework when read with the other provisions of the existing RPW. Furthermore, it 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 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 ORC².

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

² ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 6.

13. If permits were to be granted with a 6 year term now, as is being recommended by ORC consents officers for all permits, including unconnected groundwater, then a replacement application would need to be lodged before the end of 2025 to enable s124 continuation rights. This would mean consideration of both the RPW and PC7 would still be required. This is not an efficient use of time or resources and is unlikely to provide greater resolution compared to continuing to operate under the current RPW until that time.
14. We have experienced, that from an operational level, the PC7 policies and rules are already being broadly applied to all applications, despite the plan not directing this to be the case. This creates inefficiencies in the management of water resources and goes beyond the scope of what PC7 is intending to address.

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.*

15. Landpro oppose this policy.
16. 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.³ Effectively this policy is directing that the replacement of permits is to be avoided, except where the listed exceptions can be met.
17. The policy does not provide certainty around the outcome sought and creates far greater uncertainty than the current RPW framework. Especially for dams authorised by deemed permits, and for most of our clients who are currently irrigating more land than in 2017/18, or whose records are incomplete or inaccurate in the 2012-17 years, which would fall to be considered as non-complying activities. These matters for control would be unlikely to be

³ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38

met by any of our clients, as such we are looking at a large number of applications having to progress as non-complying activities.

18. There is no agreed definition of a valid permit.
19. Water use efficiencies are expected under various regional and national planning frameworks however a freeze on irrigation areas does not encourage conversion to more efficient irrigation i.e. a shift from flood irrigation to spray. Increase in irrigation areas most typically come from on farm efficiency gains and not new application, i.e. by using the water they have more efficiently they can make that water go further. Restricting the area of irrigation will likely result in unproductive land being left idle for at least 6 years, at considerable cost to landowners/businesses and the economy due to lost opportunity, and does not appear to be underpinned by any sound reasoning as to what this is a matter which should be controlled.
20. In the supporting papers to PC7⁴ it notes in relation to the proposal to reduce the area under irrigation, that the ongoing expansion of areas of irrigation ignores the potential effects on water quality arising from a greater land area under irrigation.
21. 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. In practice a shift from flood irrigation to spray irrigation is having positive effects in terms of reducing leaching of nutrients through the profile to groundwater, and reducing overland flow to surface water bodies.
22. There is no explanation as to why the 2017-2018 season would achieve this more than another year.
23. 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.
24. 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

⁴ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 31.

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)⁵.

25. 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.
26. There are no principles set out within PC7 for reducing allocations for either controlled or non-complying takes.
27. A blanket reduction in allocation volume as a requirement is not founded on science. For those permit holders who are using water efficiently and who have been shown to need (and use) the current/proposed volume allocation this requirement is especially challenging. This is also the case where the effects of the abstraction on the environment have been shown to be no more than minor through thorough science work as part of the replacement applications, or in fact where the activities can be shown to be appropriately avoided, remedied or mitigated, as required by the effects based planning regime that is the RMA.
28. The section 32 report states that one key outcome of PC7 and Policy 10A.2.1 is "to hold the line"⁶. The existing objectives, policies and rules in the RWP and the relevant provisions of the NPSFM are already achieving reductions in "over-allocation" and efficiencies in water allocation and use as permits are replaced, effectively holding the line in accordance with the NPSFM (although not using the direct terms defined in the NPSFM). PC7 does not address those issues at all, and arguably will result in worse outcomes than the RPW, as PC7 does not provide for consideration of these matters, it simply seeks to apply a short duration consent. PC 7 in our view is completely unnecessary.
29. Correspondingly where environmental benefits are able to be achieved, they can be achieved through the NPSFM and existing RPW provisions, yet PC7 would seek to limit this from occurring.
30. PC7 is not an effects-based approach and does not account for the adverse effects on aquatic values that may arise from not implementing a residual flow sooner, or adverse effects on economic and social-wellbeing that would arise in the event that the permits were not replaced.

⁵ AgResearch, Nutrient Losses within the Manuherikia Catchment, June 2015, Page 3.

⁶ PC7 Section 32 Evaluation Report, page 15

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.

31. Landpro oppose this policy.
32. This policy places unreasonable demand on applicants seeking a new consent, as those applicants are still forced to prepare a full resource consent application but cannot attain a new permit with a duration greater than 6 years. Thus a high cost is placed on the applicant with limited ability to undertake full utilisation because of the corresponding short duration of consents.
33. This is especially true where an application for new water is likely to be from a catchment not deemed fully allocated, because within the RPW, Rule 12.0.1.1, 12.0.1.2 and 12.0.1.2 set out that applications to take water greater than the primary allocation are prohibited activities, i.e. you cannot apply for a consent to take new water from a fully allocated catchment.
34. The proposed term of consent set out in Policy 10A.2.2 is untenable for most permit holders, especially those with large scale infrastructure such as Falls Dam or planned water use efficiency upgrades such as new pivot infrastructure or new water storage facilities. It is also a difficult situation for our horticultural clients, many of whom have been expanding plantings, which in the case of cherries, can take between 6-7 years before trees reach full maturity. The associated cost with establishment of horticultural or vinicultural land use relies on longer terms of consent than 6 years.
35. Water permits with a maximum duration of 6 years do not provide sufficient security to lenders, meaning borrowed capital for on-property upgrades or infrastructure improvements will not be possible in most cases. This may negatively impact the economy and restrict development that has the potential to have a positive effect on the environment, including positive economic, social and environmental outcomes.
36. This policy effectively rules out any upgrade or replacement of the irrigation infrastructure or any expansion of irrigation or change in land use until such time as the LWRP is operative, which will have a significant 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 those facilities and more efficient

irrigation. This becomes increasingly more critical following predicted Covid-19 induced recession, where the agri, food and fibre sector will be essential to a recovery.

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.*

37. Landpro oppose this policy.

38. 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.

39. Many deemed permit holders have spent considerable time and resources preparing robust applications for replacement permits with the understanding that gathering information over and above what would normally be required for a resource consent would support applying for a suitably long consent term. Limiting a replacement permit to 6 years does not do justice to the work these applicants have put in, nor does it reflect the wealth of information that has been made available to ORC and other stakeholders such as iwi, Fish and Game and DoC.

40. Where applications for replacement permits are expected to have less than minor effects, there is no logic in subjecting those applications to the far more onerous requirements of a non-complying activity status. This same logic implies that there is no incentive for an applicant to prove that the effects of their activity is no more than minor, and inversely that there are no repercussions for reducing or mitigating effects on the environment as a 6 year consent will be granted regardless.

41. Policy 10A.2.3 does not provide any direction on why applications for non-complying activities that can pass the Sec 104D RMA Gateway Test should be limited to a term not exceeding 15 years.

42. There is no justification set out by the ORC as to why a term of 15 years is acceptable, yet 16 years is not. A blanket 15 year term does not accurately reflect the intricacies of applications or the environment, nor does it have any relevancy in terms of sustainable development/management. This is an inefficient way to give effect to the RMA.
43. Neither is there any no guidance provided within this policy or PC7 in general regarding those applications that seek a consent term exceeding 15 years. How are such applications to be treated, given that the RMA starts with a terms of up to 35 years?
44. If implemented, Policy 10A.2.3 is likely to serve as a moratorium on capital investment. That cannot serve the purpose of the Act, particularly in post Covid-19 economic environment. PC7 needs to be fundamentally reconsidered in the light of overwhelmingly changed social and economic circumstances caused by Covid-19, and the vital role that agriculture and infrastructure investment will play in Otago's economic recovery. This should not however come at the expense of the environment, and the existing provisions of the RPW would ensure that this does not occur, as it provides a suitably wider ambit than proposed PC7.

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.

45. Landpro oppose this rule.

46. The proposed rule is neither simple or cost effective. Much like the obligations for replacement permits under the RPW, it 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.

47. 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 activity⁷. The matters for control that attach to Rule 10A.3.1.1 mean that a large number of deemed permit holders, would be unable to meet these provisions, and automatically fall as a non-complying activity, which is neither simple or cost effective.

Conditions of proposed Rule 10A.3.1.1 – (i), (ii), (iii), (v)

⁷ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 6.

48. As discussed above, a 6 year consent term does not provide enough water security for permit holders to obtain financing for infrastructure maintenance or upgrades. This means that any scheduled or proposed efficiency improvements to water take, conveyance, storage or use infrastructure will not proceed for at least another 6 years, to the detriment of both the environment and the economy.
49. Efficiency upgrades mean less water is wasted, surface water demands are potentially reduced, and/or the same volume of water can be used over a larger area, increasing land productivity and value. The resultant cancellation or postponement of those upgrades due to a 6 year duration contravenes Policy B4 of the NPSFM, which requires regional plans to encourage the efficient use of water, and Policy B8, which requires regional councils to give consideration to enabling the economic well-being of communities.
50. The timeframes proposed in this rule appear to be arbitrary particularly in relation to the restriction of irrigable areas to the 2017-2018 season (two years ago) and reducing allocations to those for the 2012 to 2017 seasons (three years ago). Complicating matters, these timeframes do not coincide, so the water used in the 2016/17 season may not be what is required for irrigation undertaken over land in the 2017/18 season.
51. Restricting irrigation area to that during the 2017-18 season for no scientifically justified reason penalises those permit holders who, as they are entitled to and could freely expect to do under their current permits, invest in irrigation area expansion during the 2018-19 season. Where these expansions have made legitimate and efficient use of water, they should not contravene this rule. We are advised that upwards of 30-40 properties have installed new irrigation infrastructure such as pivots in Otago since 2017.
52. Irrigation area does not necessarily correlate to pressure on the environment, particularly where an irrigator has invested in fit-for-purpose infrastructure to ensure that water is used efficiently and sustainably. In many cases, upgrades in water infrastructure has meant that a larger area could be irrigated but with no additional water abstracted, usually on the back of a change from flood to spray, which also has corresponding benefits in terms of water quality as it reduces overland flow. This restriction prevents economic development while providing no environmental benefit.
53. Many permit holders, especially those with deemed permits, have been withholding irrigation developments until their permit has been replaced, due to the need for water security for lending as discussed above. This rule now penalises those permit holders for taking a cautious approach, and in some cases may force permit holders to sell their land or pursue other, less productive, uses for their land.

Conditions of proposed Rule 10A.3.1.1 – (iv), (vi)

54. These two subclauses make no consideration of those permit holders who have been unable to develop a consistent and reliable abstraction record between 2012 and 2017 for legitimate reasons. Many deemed permit take points in particular are located in remote, difficult to access locations that create unique challenges for data collection. Other permit holders may have been unable to afford the costly equipment needed to satisfy water metering regulations. Yet more may have been significantly impacted by extreme climatic variations. The abstraction record used to calculate allocation under PC7 may then be overly prohibitive and non-representative.
55. No flexibility is provided for incomplete abstraction records and this also penalises permit holders who may have been undertaking infrastructure upgrades in that time and therefore full abstraction may not have occurred in all of those seasons.
56. This is the case for most of our clients.
57. The most recent data for the 2017-18 and 2018-19 irrigation seasons is completely ignored by this rule, with no reason given for this. This removes a critical band of abstraction data for applicants, and in some cases may be the only season(s) that applicants have on record (due to reasons explained above). Under Policy 6.4.2A of the operative RPW an assessment of at least the last 5 years is used as a contributor to future allocation, which is a more practical approach in that it promotes use of the most recent data but also does not limit the assessment to just 5 years.
58. Using the average maximum across a five year period to calculate replacement allocation is a crude and one-sided approach to determining how much water applicants actually need, and will likely result in adverse environmental outcomes.
59. Under the operative RPW, Policies 6.4.0A and 6.4.2A respectively require an applicant to prove efficiency of water use and seek the same or less water than has been taken over the past 5 or more years. This two-pronged approach means that only water which is needed, rather than that water which has been historically taken, is allocated in a replacement permit.
60. PC7 takes away the need for robust water use efficiency calculations, meaning many applicants will continue taking more water than they need in order to build a strong abstraction record for the future LWRP consenting framework. Thus, PC7 only serves to prolong the degradation of many waterways in the region by a further 6 years.

Schedule 10A.4 and water metering requirements

61. From a technical perspective, our hydrologists have undertaken a full review of these rules in terms of how they relate to water metering and the associated Schedule 10A.4 methodology.
62. The Schedule 10A.4 methodology is an overly simplified approach and it appears to be based on an assumption that water meter data is available for the period 1 July 2012 to 30 June 2017 and that this data is complete and of suitable quality. In many cases, due to the challenges of metering takes in remote and harsh environments, these data records may actually not be fit for purpose. Historically there has been little, or in some cases no, thorough compliance assessment by ORC of submitted water meter data to ensure it is complete and of a quality that enables robust analysis which has resulted in a database that contains many poor quality records that are not able to be improved retrospectively.
63. Methods are given for dealing with potentially bad data outside of consented limits but there is no method for dealing with bad data that falls within consented limits. There is also no guidance on how to deal with hydrological years that have incomplete records which may in some cases severely skew the results away from what would be considered normal.
64. It would be better to be able to use the best available data across the whole record and allow for expert interpretation for this analysis rather than arbitrarily limiting the time range and not accounting for the quality of data that can be used.
65. It would be useful going forwards to be more specific in both the policy regarding water use and the consent conditions on permits regarding how water meters should be managed. Historically there has generally been minimal effort both by water users and by ORC compliance regarding water metering.
66. PC7 and the future LWRP need to be more specific that good management and quality assurance of water metering data is critical to collecting good data on which to base good decisions in future. The current situation of trying to base future water use decisions on poor historic data records is unacceptable.
67. Schedule 10A.4 states it is for assessing actual usage for "irrigation purposes" but does not specify how to account for water used for other purposes, such as stock drinking water or frost fighting, that may pass through the same meter.

68. The methodology set out in Schedule 10A.4 displays a complete lack of knowledge of hydrological methods, and how irrigation actually works.

69. Schedule 10A.4.1 (3), (4) & (5)

- a. There needs to be better definition of "margin of error", how to choose one of the three options under (5) and then how to apply it. There is no adequate further explanation of this in the document *Guidance on using schedule 10A4 of proposed water permits plan change – Plan Change 7*) other than the statement that the error is "specified on your consent or on your latest verification".

It is not clear in this case if the measured accuracy found during verification is to be used or if the errors of 5% (pipe meters) or 10% (open channel meters) allowable under the RMA Water Metering Regulations are to be used. If it is intended to be the "latest verification" error then it is simply not good practice to apply a verification error assessed recently to data that is up to 8 years old. Especially as there may have been significant changes to the meter over time that has affected accuracy over time. If the verification accuracy was to be used then all verifications done during the recorded data period need to be used as they apply to individual sections of the record.

This then makes the process of preparing the data a much more complicated exercise which will likely require specialist hydrological data management skills and software.

In our opinion if an error margin is to be applied to the data it should be consistent across all meters and align with the RMA Metering of Water Takes Regulations and therefore be 5% for piped meters and 10% for open channel meters. This is a fairer approach compared to using verification results as it will not penalise those water users that have invested in collecting good data by giving them a lesser allowable margin of error in these calculations.

These records would subsequently have more over-consent values removed completely and therefore not included in averaging than the latter case where more higher flows would be rounded down to the consent take and still be included in the averaging. This would have a skewing effect when calculating the volume of water used.

70. Schedule 10A.4.1 (4)

- a. This methodology for removing potentially false data does not account for bad data that lies between 0 and the consented limit. There needs to be a method for dealing with this type of bad data or a threshold at which is it accepted or rejected.

71. Schedule 10A.4.2, Schedule 10A.4.3 and Schedule 10A.4.4

- a. The same comments as made above apply here.
- b. For Schedule 10A.4.4 (4) it is noted that this step in the methodology is inconsistent with the document *Guidance on using schedule 10A4 of proposed water permits plan change – Plan Change 7. “Calculating Annual Volume Limit (Schedule 10A4.4) - Step 3”* directs removal of “any year where water used exceeded your consented annual volume or your calculated annual volume”. This is in contradiction to 10A.4.4 (4) which states that “any year that exceeds the authorised or calculated volume is rounded down to the authorised volume”. It is critical that there is consistency between the Methods and the accompanying guidance documents and a lack of such is unacceptable

72. Several assessments using this methodology have been completed for permits across Central Otago, and the Lakes area’s of Otago. These assessments were carried out to ascertain the likely effects of Schedule 10A.4 methodology on water abstractions. The assessments were carried out by two different hydrologists, following both the PC7 Schedule 10A.4 methodology and the subsequently released guidance document from the ORC. One hydrologist completed the assessment following the excel method suggested by the guidance document, the other prepared assessments using Hilltop software and exporting the necessary data by attempting to create a more simplified workflow than that suggested by the guidance document.

73. Summary data from 60 plus different permits show that there will be reductions in instantaneous takes for many, based on our preliminary assessments this is primarily the result of infrastructure upgrades and metering issues. Furthermore, there is a substantial reduction in monthly and annual allocations, in comparison to the actual volumes abstracted by these permit holders, or the proposed volumes based on actual and Aqualinc determined water requirements for irrigation.

74. ‘Actual’ in this sense has been determined in line with the Regional Water Plan policy as has been carried out for many already lodged consent replacements. The proposed PC7 method

is fundamentally different to the process carried out under the Regional Water Plan for determining allocation. So that, as seen in the table below, monthly and annual volume may halve for some permit holders. This table shows the likely reductions as an average across all our assessments for larger and smaller takes across Central Otago and the Lakes region. Also shown is the maximum change identified through our assessments, and the minimum identified change.

Table 1: Percentage change for actual/proposed abstraction and that determined under Schedule 10A.4. for permits ranging in size of consented abstraction.

> 100 L/s	Rate of Take l/s	Daily m3	Monthly m3	Annual m3
Average %Change	-16%	-10%	-23%	-19%
Maximum %Change	-62%	-26%	-92%	-74%
Minimum %Change	0%	0%	-4%	-1%
50 - 100 L/s	Rate of Take l/s	Daily m3	Monthly m3	Annual m3
Average %Change	-11%	-17%	-30%	-66%
Maximum %Change	-38%	-54%	-75%	-89%
Minimum %Change	0%	0%	0%	-27%
< 50 L/s	Rate of Take l/s	Daily m3	Monthly m3	Annual m3
Average %Change	-4%	-13%	-39%	-43%
Maximum %Change	-9%	-30%	-58%	-62%
Minimum %Change	0%	0%	0%	-12%

Matters over which Council reserves control

75. Matter for control (a) *Intake method and flow rate controls to avoid or mitigate fish entrainment.*

Determination of whether a fish screen is necessary and what the design of fish screen should be if required can only be resolved through detailed fish surveys. These surveys plus installation and monitoring of a fish screen are all timely and expensive undertakings. This is not consistent with the low-cost, fast issuing of consents recommended by the Minister. Furthermore, the investment uncertainty created by a 6 year term would prove prohibitive to undertaking any of these screening considerations.

76. Matter for control (c) *Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit.*

There is no policy providing guidance on how water use efficiency will be assessed. However, currently applicants and ORC staff use the Aqualinc

methodology⁸ with suitable success and agreement. However, given the restrictions on infrastructure investment created by a 6 year consent duration, many applicants will have great difficulty improving or rectifying inefficient water infrastructure.

77. Matter for control (d) *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. For regular water permit holders too it is unclear what this might mean for them. Is flow expected to be maintained for fish passage past the intake? What if the current flow regime provides a natural barrier to trout movement upstream to native fish habitat, and requiring fish passage puts those native fish at risk? These issues cannot be answer without a detailed fish survey which is untenable for a short term 6 year consent.

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.*

78. Landpro oppose this rule.

79. 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.

80. 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.

81. Any application which does not meet the controlled activity thresholds is a non-complying activity. Despite the possibility that consent maybe granted, the reality is it is very unlikely any consent could be issued which did not conform to the policies in PC7, especially Policy 10A.2.1.

⁸ McIndoe I, Brown P, Rajanayaka C, KC. B, 2017. Guidelines for Reasonable Irrigation Water Requirements in the Otago Region. Otago Regional Council, Aqualinc Research Limited

82. Many permit holders will not comply with Policy 10A.2.1 and the conditions of Rule 10A.3.1.1 if they have incomplete records or if they have expanded their irrigation area in the last two years, and therefore they fall to be considered non-complying. Under PC7 their inability to comply with Policy 10A.2.1 would mean they have no option to proceed down a more cost-effective path with a 6 year term, but instead are forced to head down a costly non-complying activity path, requiring substantial investigations to determine compliance with Policy 10A.2.3 with no ability to counter the investment with duration. Whilst undertaking substantial hydrology and ecology investigations is expected as part of the current RPW framework, this allows applicants to seek a longer term of consent to support the degree of investment in the process. Such a short duration does not justify the expense of those investigations nor does it promote efficient irrigation development and the development of further water storage infrastructure. Environmental issues may develop as a result.
83. A non-complying activity status 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 the activity on the environment must be no more than minor, or the application must be consistent with the policy framework. It is unlikely that many applicants will be able to do so, especially for applications for the replacement of large dams which leaves a real risk that they will be unable to be re-consented.
84. 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.

Submission on Section 32 Evaluation Report

1. The Section 32 Evaluation Report is a requirement of the RMA to ensure that plans are properly evaluated for their costs and benefits, and risks to the community, economy and environment are clearly identified and assessed. The rationale for the proposed provisions must be clear and supported by evidence, or quantification of costs and benefits, where possible.
2. The consultation undertaken as part of the preparation of PC7 is woefully inadequate. The fast-tracked nature of this plan change has meant that insufficient consultation has been undertaken with Otago stakeholders.
3. The online feedback survey contained leading questions and very little ability to include detailed opinions and two-way discussion on the proposed approach.

4. The public forum on the 7th January 2020 was only advised very close before the Christmas break and only allowed 5 minutes per presenter with no option for questions of presenters by the Councillors to tease out the issues being raised.
5. One Landpro representative was invited to the focus group workshop on 16th January 2020. The options included in PC7 were not disclosed or discussed in full with attendees, and attendees were asked to keep anything discussed confidential, which is not in the spirit of collaborative consultation. The attendees generally agreed that a simple cost-effective approach would be the best option of the options presented to us. However, what has been proposed in PC7 in no way reflects a simple or cost-effective process, and includes matters that were specifically raised as likely to lead to increased cost and complexity such as efficient use assessments.
6. The method proposed for evaluating historic use and the dates of this (as proposed in Rule 10A.3.1.1) and the limit on irrigation area were not discussed at all.
7. The concerns highlighted in consultation with DoC⁹ are not adequately addressed through PC7. Their concerns are however addressed on an individual basis through the replacement of current permits under the RPW. We have been working alongside DoC for a number of years now to develop an understanding with our clients of instream ecological values and where there are more significant values in Otago that can be better protected through the permit replacement process. PC7 would give rise to increased environmental costs than the status quo that have not been identified.
8. The plan change is effectively a holding pattern to enable the ORC to complete its progressive implementation plan to give effect to the NPSFM. It does not purport to give effect to the NPSFM itself nor to achieve any other higher order statutory instrument.
9. Whereas, in preparing applications for the replacement of our clients permits, we must give effect to the planning framework and all higher order planning documents, including the NPSFM, as required by Sec 104 (1) (b) RMA, irrespective of whether a regional plan implements the NPSFM. Current applications, whilst being made under the RPW framework, therefore fully address the policies of the NPSFM and better implement them than PC7 does.

⁹ ORC Sec 32 Evaluation Report, 18 March 2020, Page 10.

10. In our view, the s32 report fails to undertake a detailed social, cultural, economic or environmental cost benefit analysis and fails to adequately assess the alternative options.
11. The summary provided of some alternative options contains no detailed analysis or discussion.
12. The s32 report¹⁰ emphasises the inadequacies of the current planning framework stating that it may not allow for consideration of environmental effects or drive efficient resource use, however there is no environmental or other scientific foundation for PC7 in the s32 report.
13. The current RPW provisions will provide for significantly better environmental outcomes and sustainable management of water resources than PC7. Applicants already provide an assessment of their historic use in accordance with Policy 6.4.2A and use the available Aqualinc efficient use calculations to determine their efficiency. This is an expectation all applicants are aware of.
14. The s32 report concludes¹¹ that without PC7, adverse ecological, social and cultural effects will be prolonged through the issuing of consents for long durations. However, applicants must adequately assess the effects of their activity on the ecological, social and cultural values through the replacement process under the RPW. In most cases this has required undertaking substantial science investigations to support their applications. If there is not robust evidence to support a conclusion that effects are minor then they would not likely be granted a long term consent under the current framework. PC7 is not necessary to ensure these effects are avoided, remedied or mitigated.
15. The s32 report also fails to recognise the suitability of provisions in sections 128 to 133 of the RMA in being able to implement minimum flow and allocation regimes through a review of the consents once developed. Recent decisions (Luggate and Glenayr) have concluded that the review provisions to implement minimum flow and allocation regimes can be used effectively and without leading to the activity becoming unviable (section 131(1)(a) RMA).
16. The s32 report fails to account for the existing expenditure in preparing current applications (many of which are already lodged or nearly complete) when completing the basic cost/benefit analysis of the proposed rule framework. That cost cannot be 'recouped' by granting of short-term consents.

¹⁰ ORC Sec 32 Evaluation Report, 18 March 2020, Page 6.

¹¹ ORC Sec 32 Evaluation Report, 18 March 2020, Page 14.

17. PC7 creates investment uncertainties and the s32 evaluation and fails to acknowledge the resulting opportunity costs. It also fails to acknowledge the environmental costs from not allowing for efficiency gains through changes from flood to spray irrigation over a larger area, or from not providing long enough terms so that the consent is 'bankable' and infrastructure upgrades can be undertaken. Instead of just being delayed, these may in fact not go ahead at all.
18. The s32 report fails to acknowledge the significant economic cost and ability for PC7 to provide an "adequate interim planning and consenting framework" given the large number of applications that will be pushed into non-complying consent categories. It also fails to recognised the economic costs that may arise from applicants having to reduce their irrigation and overall farm productivity to drop back to irrigation areas from 2 years ago.
19. The cost benefit analysis on page 21 of the s32 report states that one environmental benefit is to prevent the ramping up of actual water takes ahead of the LWRP development. In reality there is very little time left before expiry of these permits (only one irrigation season from the present time) so permit holders do not have the ability to ramp up any further. However, limiting rates, volumes and areas to seasons 2 or 3 years in the past, disregards the fact that permit holders have been legally entitled to make changes or further develop their irrigation infrastructure that may have seen more water abstracted than 2017, but is still within the limits of their current valid permit.
20. The ability to collect water use and abstraction data is stated as an opportunity and environmental benefit that PC7 provides. This is irrelevant as water abstraction and use data is already collected by most permit holders, and where this hasn't been up to standard or is awaiting installation, that would be provided for through the current RPW framework. Nothing new or additional is being achieved through PC7.
21. The evaluation report concludes that there are no social costs compared to the status quo.¹² There is no evidence to support this conclusion, and in the case of permit holders who might have to delay or cancel their planned development, there is likely to be considerable social costs.
22. The social benefits identified in the s32 report identify the long-term benefits in terms of more recreational use through allowing development of flow and allocation limits through the LWRP and time to adapt to any national directions. As already mentioned, local limits

¹² ORC Sec 32 Evaluation Report, 18 March 2020, Page 21.

along with any national directions can be adopted through the s128 review process, and in reality, many of the waterways subject to deemed permits within the Clutha catchment are of such a small size and in inaccessible locations so as to not be suitable for any recreational uses.

Conclusion

85. For the reasons outlined above, we request that PC7 be rejected entirely.