

**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)

Form 5

Submission on publicly notified proposal for policy statement or plan
Clause 6 of First Schedule, Resource Management Act 1991

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

Name of submitter: **Manuherikia Catchment Group**

Contact person: Anna Gillespie, Chairperson

Address for service: [REDACTED]

This is a submission on the following proposed plan change:

Proposed Water Permits Plan Change (Plan Change 7) to the Regional Plan: Water for Otago.

We could not gain an advantage in trade competition through this submission.


I am 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.

The specific provisions of the proposal that our submission relates to and the decisions we seek from Council are as detailed on the following pages.

We wish to be heard in support of our submission.

If others made a similar submission, I will consider presenting a joint case with them at a hearing.

Signature of submitter:  Date:4 May 2020.....

Submission in Opposition and Decision Sought:

1. Our submission relates to PC7 in its entirety.
2. We oppose PC7 in its entirety.
3. Relief Sought:
 - a. We seek that PC7 is declined in its entirety.
 - b. We seek the urgent but robust completion of the limit setting plan change for the Manuherikia catchment, including both a minimum flow and allocation limit, based on robust hydrology, ecology information, analysis of reliability of supply, and completed cultural, economic and social impact assessments. This is a continuation of the existing work in the catchment prior to notification of PC7.
4. We support and adopt the submission of the Otago Water Resource Users Group submission on Proposed Plan Change 7, including the reasons for that submission and the relief sought in that submission.

Reasons for this Submission

5. The Manuherikia Catchment Group (MCG) is made up of water users from within the Manuherikia Catchment, including 6 irrigation schemes. MCG formed out of the Otago Water Users Group to specifically address the needs of the Manuherikia catchment, and the proposed plan change by the Otago Regional Council for the catchment. The Group is in the process of becoming an incorporated society.
6. The Manuherikia Catchment has the largest proportion of allocation to be replaced by October 2021 (the date of deemed permit expiry), including both water permits and deemed permits. It also has several large dams which are owned by irrigation companies and which are authorised by deemed permits (and so included within the ambit of PC7).
7. Many of the so-called problems identified in the report by Professor Peter Skelton (*Investigation of Freshwater Management and Allocation Functions at Otago Regional Council, Report to the Minister for the Environment, 1 October 2019*, referred to here as the 'Skelton Report') related to the Manuherikia.
8. That report made several inaccurate statements and took subjective statements by stakeholders at face value. This resulted in a recommendation to the Minister that was based on an inaccurate definition of the problem.
9. PC7 penalises water users for the Otago Regional Council's (ORC's) lack of capability in preparing a minimum flow and allocation limit for the Manuherikia catchment because of a lack of investment in science, planning and hydrological modelling by ORC.¹
10. Water users in the Manuherikia have been preparing for the replacement of deemed permits and water permits for many years, and have been active in seeking a comprehensive, appropriate limit setting plan change for the Manuherikia that is compliant with the National Policy Statement for Freshwater Management (NPSFM). This work includes:

¹ Skelton Report, 1st bullet point of the section titled Findings - catchment planning, science and deemed permits.

- a. The formation of Manuherikia Strategy Group:
 - i. This group was formed in 2011 to investigate the best way to use the Manuherikia Valley's available water, to jointly benefit landowners who need water and the environment.
 - ii. The impetus for the group included:
 - the expiry of deemed permits, and the potential impact of a revised minimum flow and allocation limit for the catchment
 - options relating to Falls Dam, a large irrigation storage dam in the upper catchment.
 - iii. This group comprised local landowners, the local irrigation companies, environmental and conservation groups, including Forest and Bird, Fish and Game, the Central Otago Environmental Society and the Department of Conservation, iwi, district and regional councils, and local business-people.
 - iv. A large body of studies and assessments were commissioned by this group including the development of GoldSim hydrology model for the catchment.
 - v. See <https://www.mcwater.co.nz/> for the very significant body of work commissioned and collated by this group.
- b. On farm efficiency improvements, including:
 - i. significant investment in spray irrigation
 - ii. development of on-farm dams
- c. The formation of an OWRUG sub-committee focused on the Manuherikia, and more recently the formation of the Manuherikia Catchment Group Incorporated Society.
- d. Presentations to Council meetings
- e. GIS mapping work
- f. Commissioning of further technical assessments specifically focused on supporting scheme consent applications.

11. The Skelton Report failed to acknowledge this work and the years of preparation for the transition from deemed permits.

12. The ORC has failed to develop a limit setting plan change for the Manuherikia catchment in a timely and effective manner. This has resulted in the Ministerial investigation and recommendation, to the detriment of water users across Otago.

13. Formal ORC consultation on limit setting for the Manuherikia catchment began in August 2016 (identifying values, issues, concerns), with options consultation taking place in March 2017, including options for how to divide the catchment up by minimum flow sites. As with all limit setting plan changes undertaken by the ORC up until this date, the scope of the plan change included a minimum flow and an allocation limit to be included in Schedule 2A of the RPW.

14. In 2017 an ORC Report stated that the ORC RPW objectives gave effect to the NPSFM 2014.² In March 2018 Council papers still reported progress on NPSFM implementation work in line

² Otago Regional Council, Report to Policy Committee 8 February 2017 Report Number 2017/0580, 20/01/2017, Dale Meredith (Manager Policy) and Dean Olsen (Manager Resource Science).

with the 2017 Report. However, by mid-2018 ORC staff, including the new Chief Executive, said the RPW did not give effect to the NPSFM (refer for example p119 of Council Meeting 27 June 2018, Public Agenda).

15. In 25 June 2018, the ORC released 3 options for draft minimum flows, even though hydrology work was incomplete and social, economic, cultural and reliability work had either not commenced at all or was at a very early stage. The ORC also indicated that notification would occur in August of that year. Manuherikia water users reacted strongly to this, noting it was inappropriate to publish draft minimum flows when a huge proportion of the work required was incomplete or had not yet been undertaken at all. OWRUG asked Council not to notify a plan change until all necessary work was complete and appropriate (refer to Attachment 1).
16. However, in July 2018 the Chief Executive informed irrigators in the Manuherikia catchment:
 - a. They would be given 10-year permits
 - b. Allocation would not be included in the plan change for the Manuherikia.
 - c. Allocation would be reduced, but in a future plan change.³
17. This change was based on a new approach taken by Council that the RPW does not give effect to the NPSFM 2014 (as amended in 2017). No report had been received by Council on this revised position. To our knowledge, no report assessing the RPW against the NPSFM or carrying out a clear gap and issue analysis of the RPW (within the context of the NPSFM as amended in 2017) has been received by Council since the 2017 report. Once again, this has resulted in an inaccurate, unclear definition of the problem in Otago.
18. A number of Manuherikia water users and their consultants made presentations to the Council committee meeting on 12 September 2018 stating that any plan change for the Manuherikia must be fully NPSFM compliant, must include an allocation limit, and must be completed prior to 2021 to enable a clear transition from deemed permits and water permits expiring in October 2021. This was further supported by another delegation and presentation to a full Council meeting on 26 September. These presentations resulted in the motion to proceed without an allocation limit failing.
19. Manuherikia water users remained concerned about the lack of progress by ORC in progressing the plan change, including a continued failure to identify values and issues in the Manuherikia in a focused accurate manner. To address this, OWRUG organised and hosted two Manuherikia catchment tours for key stakeholders including the Department of Conservation, Fish and Game Otago Councillors and staff, ORC Councillors and staff, Central Otago Environment Society and iwi representatives to facilitate a shared understanding of the catchment. The first of these was held on 4 December 2018, with a subsequent tour

³ Minutes p3-4 Minutes of a meeting of the Policy Committee held in the ORC Council Chambers at Philip Laing House, Dunedin on Wednesday 1 August 2018, commencing at 11:03 am (attached to Policy Committee – 13 September 2018 Attachments). See also Policy Committee Agenda - 12 September 2018, *Agenda Item 10.2. Minimum Flows for priority catchment - scope and process and overview of Regional Plan Water Review Report* No. PPRM1827, Lisa Hawkins, Senior Policy Analyst, 6 September 2018

held on 14 February 2019. These were well attended and were positively received by attendees.

20. At the second of these tours OWRUG representatives requested that the ORC establish a technical advisory group to guide development of the Manuherikia plan change, with a planning/policy group to be established later. This request was taken up by the ORC, with the establishment of the Manuherikia Technical Advisory Group and the Manuherikia Reference Group, the latter of which was made up by representatives from the Manuherikia community and stakeholder groups.
21. Manuherikia water users have had technical expert representation on the TAG group, and several water users have attended the MRG group. These meetings have taken considerable time, and have involved considerable input from two technical representatives for Manuherikia water users: Matt Hickey and Roger Williams. TAG meetings commenced in May 2019 and these have occurred every 4 to 6 weeks since. In April 2020 ORC decided to pursue the development of the GoldSim hydrology model originally commissioned by the Manuherikia Strategy Group.⁴
22. At the same time, OWRUG and then more recently MCG have commissioned a range of scientific programs and assessments on hydrology and ecology, including flow assessments, habitat surveys, drone surveys, temperature modelling and fish passage surveys. The MCG have facilitated access for the Department of Conservation to complete non-migratory galaxiid surveys, for Fish and Game, iwi and ORC to conduct invertebrate drift surveys, the university of Otago to carry out invertebrate studies and for ORC to access sites for longitudinal flow gaugings. MCG has installed via NIWA two continuous flow sites on the Manuherikia which have subsequently been taken over by ORC because of their importance in the limit setting process.
23. MCG's technical experts have invited affected parties to identify values of significance within the catchment and have had detailed input from Department of Conservation staff and Aukaha on the specific values in the catchment. A number of site visits with staff from these organisations has occurred.
24. OWRUG and MCG have progressed this work by drafting a comprehensive river management plan. While this plan sets out a framework for managing flow and allocation in the Manuherikia catchment, it also recognises and seeks to address a range of non-flow related issues raised by stakeholders including habitat management, the effects of instream structures, water quality (including natural sediment inputs), riparian management issues, and issues created by access to the riverbed. This framework was presented to the TAG and MCG groups on 19 November 2019 and was met with a positive response.
25. Since at least 2017 members of MCG have been actively developing consent applications. As with the limit setting plan change process, this has involved significant time and input from consultants and considerable science work. Many of these applications are very well advanced in preparation for a lodgement date in late 2020 (to ensure s124 rights under the

⁴ Note this is in contrast to the Skelton Report which stated that the NIWA CHES model was going to be used for modelling the Manuherikia hydrology.

Resource Management Act are available, taking into account a risk that an application may be rejected under s88 of the RMA, and delays that may occur due to the Council Christmas shut-down period).

26. Preparation of these applications cannot stop, regardless of the notification of PC7, as there is a risk that PC7 may not become operative by late 2020, which means that the applications still need to address both the operative RPW and PC7. It is far too close to the 2021 deadline (which for all practical purposes necessitates lodgement by late 2020) for the stop-gap solution that PC7 attempts to be.
27. It is unfortunate that the failure of ORC to invest in science, planning and hydrology⁵ has led to the ORC not being in a position to provide for the smooth transition from water allocation based on mining privileges to allocation based on RMA consents which are subject to appropriate flow and allocation limits before 1 October 2021⁶.
28. The Skelton Report, the Ministerial recommendation and the ORC's wholesale acceptance of the Skelton Report and notification of PC7 have completely undermined and derailed the progress towards limit setting in the Manuherikia catchment.
29. From MCG's perspective, the ORC's NPSFM limit setting plan change for the Manuherikia was finally gaining momentum, focus and technical accuracy.
30. Unfortunately, PC7 undermines the NPSFM process underway for the Manuherikia Rohe (a subset of a Fresh Water Management Unit in Otago). PC7 attempts to reduce allocation, before over-allocation has been defined for this catchment, and before objectives and limits for the catchment have been set. Water users have been told the focus must remain on the bigger picture – the Water Plan review⁷. However, because PC7 is so ill considered it has left water users with no choice but to focus on the implications of PC7.
31. The goal of MCG with an NPSFM compliant plan change was to ensure environmental protection while retaining sufficient surety of supply and certainty so that efficiency of use could be maximised, and to provide a clear context within which all permits expiring in October 2021 could be replaced.
32. PC7 does not achieve any of these things. Proper consideration of in-stream ecological values will not occur for at least 6 years. Water demand needs are not considered at all in the methodologies contained in Schedule 10A.4, and while the word 'efficiency' appears in Rule 10A.3.1.1, the remainder of the Rule stops permit holders from making efficiency improvements (for example due to the 6 year term and the reduction in annual allocation via average maximums).

⁵ Skelton Report, First bullet point of the section titled "Findings - catchment planning, science and deemed permits".

⁶ Last bullet point of the section titled "Findings - catchment planning, science and deemed permits" in Skelton, Peter (2019) Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment. Wellington: Ministry for the Environment.

⁷ First bullet point of Pg.15 of PC7's Section 32 Evaluation Report.

33. PC7 undermines the collective, collaborative approach undertaken by water users so far, and will essentially pit water users against each other through the absence of levers such as minimum flows, residual flows and recognition of priorities, which all act to ensure water users work together.
34. It was with disappointment that MCG read from Chairwoman Marian Hobbs that ORC had washed its hands of PC7 and that she was happy with the ministers decision to call in PC7 as it frees ORC from its last commitment in its work program on water expecting that now they can focus on working with the community⁸. This statement clearly demonstrates that Ms Hobbs doesn't comprehend what these decisions mean. The community she talks of working with are now saddled with preparing submissions, then further submissions, evidence, expert caucusing and environment court hearings. Overall, the community will be burdened with a cost of over one million dollars because of ORC failures.
35. E-mail Correspondence between MCG's chairwoman and Ms Hobbs exposes the lack of understanding of these processes and the consequences of her decisions (refer to Attachment 2). MCG are of the view it highlights a predisposition of simply wanting the minister to rescue ORC from itself without fully understanding what that meant for water users or other stakeholders.
36. The advice of Hobbs to MCG to put in 1-page summary submissions to the Environment Court on PC7 (refer to Attachment 2) is an example of ORC's lack of appreciation of the legal expectations of the process she has forced on the Manuherikia and wider Otago, and how much is at stake with PC7.
37. PC7 will cause very considerable cost for MCG members. MCG members are supporting and funding this submission and the submission of OWRUG on this plan change. They will be funding further submissions, evidence preparation by experts, expert contributions to caucusing and time to appear at the environment court hearing. This is an entirely superfluous plan change that is in addition to the substantive review of the RPW that will result in the new LWRP.
38. Meanwhile MCG while funding and working on PC7 in preparation for an environment court hearing will be expected to participate in ORC's Manuherikia Reference Group and Technical Advisory Group while also preparing full and complete consent applications in advance of the October 2021 deadline. Applications will need to be reworked and refocused to also address PC7 controlled activity rules, or even more significantly developed to comply with PC7 non-complying activity rules. Application material would have to be added to and significantly updated for another replacement application under a new LWRP.
39. The ORC has continued to fail in its statutory responsibility under section 30 of the Resource Management Act, and the consequences of this failure have repeatedly fallen on water users in the Manuherikia, yet water users have continuously been identified as the 'source' of the problem to be fixed. It is essential and urgent that the focus of work needs to be on continuing to work with the Manuherikia catchment to develop and finalise the limit setting

⁸ Last para. of the media release found here <https://www.orc.govt.nz/news-and-events/news-and-media-releases/2020/april/minister-for-the-environment-calls-in-proposed-orc-plan-changes>

plan change for this catchment, to allow a transition from deemed permits in an NPSFM compliant manner.

Attachment 1: Letter from OWRUG to Otago Regional Council

Otago Water Resource User Group
Ken Gillespie, Chairperson
Oturehua

Executive and Councillors
Otago Regional Council
Dunedin

13 June 2018

Dear ORC Executive and Councillors,

Re: Manuherikia Plan Change meeting 11 June 2018

As there were many participants providing feedback at the session held in Cromwell we have followed up with our concerns in writing.

The Manuherikia irrigators either through the irrigation companies, race managers, their consultants the former Manuherikia Water Catchment Strategy Group and Manuherikia River Ltd (MRL) have been working co-operatively with the ORC in preparing for this plan change. With that in mind it was alarming to hear on Monday that the ORC was willing to proceed to notification without the material required to prepare a balanced and accurate Section 32 Report. The irrigators have repeatedly offered to assist with the hydrology as the base required to build the subsequent reports.

Irrigator representatives and hydrologists met with Gavin Palmer and Tanya Winter in November 2017, Dr Palmer told us that he was on a fact-finding mission, we have not heard or had an update from him since! Dr Palmer also gave an undertaking that the ORC would run our groups preferred option in the different assessments when determining an appropriate minimum flow (refer to our letter from the 10th of November 2017), again we've had no contact about this until ORC presented only one option in Cromwell. In our discussion we were told that there would be a meeting to discuss data gaps and ways to collect that data in December 2017, we are still waiting for ORC to arrange this meeting. We expected that our collective resource would have been utilised well before now.

In January this year a technical meeting was hosted by ORC in Dunedin, of which the water users funded technical representation at. This meeting identified the key elements that any hydrological model for the catchment should cover as a minimum. More recently access to the MRL model was requested again by ORC and the response from MRL remained consistent, the model was available if it was peer reviewed against the criteria agreed at the expert meeting in January 2018 and shown to be fit for purpose. It is now June 2018, the ORC hydrology is inaccurate, other reports are not complete and the community will be penalised as the ORC relegates the economic and social aspects of the RMA to second place. Stating that an "economic lens" has been cast over the flow numbers gives no sense of comfort that effects are being appropriately assessed.

The general catchment values have been identified but specifics about the current assessment of those values and sites requiring enhancement were not known or shared, such as:

- Where are the best locations for fishing?
- Are those sites compromised by abstraction?
- Where are people kayaking? Are the flows for kayaking impacted by abstraction?
- What level of enhancement in what sections of the river is experienced with the release of Falls Dam water over summer?

The flow sharing in the Manuherikia Catchment has been a key to the river being managed over the last 70 years. The ORC have limited understanding of the hydrology and how the minimum flow sites would work collectively to manage the river and flow sharing. Before notifying, the intended and unintended consequences should be well understood by all parties especially the ORC.

This proposal will see water users go through two plan changes (one for a minimum flow and then within 5 years an allocation block plan change) and further, two sets of permit replacements (one to replace deemed permits without the allocation block and a second following the allocation block decision) in the next 8 years. ORC's consistent internal failure to deliver a minimum flow at Campground and an allocation block should not now become an extremely expensive and complex problem that lasts for years with no certainty for the water users of the Manuherikia. The objective of ORC, should be to drive and deliver, one Plan Change which includes a minimum flow and an allocation block based on quality information should be the efficient outcome that the ORC is pursuing for the good of Otago's people.

Again, we ask that ORC does not notify a minimum flow plan change for the Manuherikia catchment until it has a robust, hydrological model capable of surety of supply analysis that can then be used to underpin the ecological, social, cultural and economic assessments so that our community has a full understanding of the consequences of any proposed plan change.

Finally, can you please confirm the undertakings provided by Dr Palmer and Ms Winter in November 2017 will be honoured?

Yours sincerely,

Ken Gillespie
Chairman OWRUG

Attachment 2. Email Correspondence Between ORC Chair and Chair of MCG

----- Forwarded message -----

From: "**Marian Hobbs**" <marian.hobbs@gmail.com>

Date: Tue, Mar 31, 2020 at 9:54 PM +1300

Subject: Re: Response to Chair

To: <anna@twoff.co.nz>

Dear Anna,

This is really brief. And I will reply in more depth tomorrow. What I was referring to was the detailed argument that will have to go up to the Environment Court. I did not understand the step before and that is why I was puzzled.

That can be a one page, dot point exercise, and that is what I will explain in more detail tomorrow.

I have also asked Sarah, the CE to see if we can shift the date back 4 to 6 weeks for those one pagers to be in.

I am working with the Minister's office to manage the timing.

Marian

On Tue, 31 Mar 2020 at 14:25, <anna@twoff.co.nz> wrote:

Dear Marian,

Thank you for your reply. For the record I wish your family well and hope all is well at the end of this Covid19 response. I also have to acknowledge some of your points as having merit which we can hopefully discuss at a later date.

However, your opening paragraph raises significant concern hence why I have decided to include the wider council. For completeness it is reproduced below:

".....I am genuinely puzzled. There is no request to the community to respond to Plan Change 7 (the deemed permits). They have been notified and we are waiting for a response from the Minister as to whether he sends this straight to the Environment Court. There are not enough commissioners available to hear this plan first in the normal way. Normally it would be heard and then after decision in all likelihood there would be an appeal to the Environment Court. From previous experience this does not mean engaging lawyers in making your case. The Chief Judge of the Environment Court has committed to making this as relaxed as possible, if the Minister does send it to the Environment Court."

Firstly there is a request for the community to respond to Plan Change 7 (PC7) via submissions. Furthermore PC7 is wider reaching than just deemed permits (it includes RMA permits

expiring before 2025 and any new water permits). Your council has asked for a community response via submissions by April 17th and whether we wish to be heard. The following is from ORC's website

Notification and submissions

Update: we're still accepting submissions on this plan change throughout the COVID-19 lockdown period by post, email or online up until the closing date of 5pm Friday 17 April, 2020, but please note that our offices are currently all closed.

Proposed Water Permits Plan Change (Plan Change 7) was notified by ORC on 18 March 2020, and the period for submissions closes **5pm Friday 17 April 2020**.

You can submit online or in writing to the ORC. Your submission must be in the prescribed form (below) and must state whether you wish to be heard in support of your submission.

You on a number of occasions have said that ORC is on a tight timeline of consultation, and that the community will get the opportunity to respond to PC7 through submissions. You as chair must have expected a plan change affecting all water take renewals and new take applications between now and 2025, to be submitted on by many water users – particularly because if they don't they will not be able to participate in front of the board of enquiry or the environment court. Perhaps this is what you want by continuing to run this process in lockdown? Fewer submissions would make it easier for Minister Parker to call in I guess.

As chair you must understand that for most water users trying to decipher the planning speak and what it means for our businesses can be complex, and in the current circumstances where we are expected to carry on working and look after our children finding the time and the right advice is not possible for many.

With the water use schedules in PC7 you need to be able to run the data and see if the water you'll be allocated will run your infrastructure. Most water users would rely on experts to do this which of course at the present time is extremely difficult.

Whether the banks will accept a term of 6yrs under PC7 with our current financial setup can't be easily determined without understanding the planning and water volume constraints – getting advice on the implications from the banking sector will be unlikely between now and April 17.

Finally to be involved in the process you outline above either in front of a board of enquiry or environment court **I have** to write a submission. But because of the situation we are all in it will not be as informed as it should and because I may not understand the full implications of PC7 my submission may not cover the scope of issues it should that may or may not influence the debate further along the process. You must realise that whether we are at a council hearing, board of enquiry or environment court, numerous lawyers will be engaged particularly with the concerns I've outlined above? I'm sure other stakeholders will have their own concerns.

Effectively every water user in Otago is in the same boat with PC7. As water users in a scheme we can't meet to discuss the implications, we can't have meetings with planning, legal and water use experts (broadband is not reliable in rural Otago for skype etc).

Marian we all have fears for our families at the present time (and I wish your family well) however, your PC7 is adding considerable stress to my family and the families of our community that is disproportionately focused on water users at this time who's businesses rely on water. You have the

authority to withdraw PC7 and remove this stress and show some compassion for a large proportion of your community allowing the debate and discussion to occur at a future date when everyone can participate fairly.

Regards

Anna Gillespie
B Com Ag, M Appl Sci.
Ph 0274 799 401
(Chair of Manuherikia Catchment Group)