

ORC Water Permits Plan Change

Submission Reference no: 34

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Submitter Type: Not specified

Source: Web Form

Overall Notes:

Clause

Are you a trade competitor?

Position

I am a person who would not gain an advantage in trade competition through this submission

Notes

Clause

What are you submitting on? You can submit on specific parts of the plan change or the whole plan change.

Position

I am submitting on specific parts of the plan change (please detail below).

Notes

Clause

The specific part(s) of the matter that my submission relates to are:

Notes

Rule 10A.3.2.1 (non-complying activity) Policy 10A.2.3

Clause

What is your view on the matter or the specific parts listed above? Please select one, if you have multiple views state clearly in the notes box below.

Position

Multiple views

Notes

Clause

The reasons for my views are:

Notes

These reasons are attached

Clause

What decision would you like the Environment Court to make?

Position

Approve the plan change with amendments

Notes

Clause

The reason(s) for my view and/or any amendment(s) I am seeking are:

Notes

These reasons are attached

Clause

Do you wish to be heard in support of your submission? All submissions will be considered by the Environment Court. Please indicate if you wish to be heard in support of your submission.

Position

I wish to be heard in support of my submission

Notes

Clause

Please indicate your choice(s) below. If you do not indicate your intention to call experts, you can change your mind later and decide to call experts to give evidence in relation to your submission, provided you do so in time to meet any procedural direction the Environment Court might make.

Position

If others make a similar submission I/we would consider presenting a joint case with them at a hearing

Notes

Clause

Authority to act:

Position

I confirm I have the authority to sign this submission on behalf of the submitter

Notes

The submitter have elected to withhold their personal details from publication.

Submission on Proposed Water Permits Plan Change (Plan Change 7)

What we are submitting on:

1. The Ministry for the Environment is submitting on Proposed Water Permits Plan Change (Plan Change 7) under section 149E of the Resource Management Act.
2. Specifically we seek:
 - a. the removal of Rule 10A.3.2.1 (non-complying activity)
 - b. the inclusion of a new prohibited activity rule stating that any activity which does not meet any one or more of the conditions of Rule 10A.3.1.1 is a prohibited activity
 - c. the amendment of Policy 10A.2.3 to remove all text after the words “for a duration of no more than six years.”
3. We oppose the plan change, in the absence of these amendments, because of its potential to lock-in adverse environmental outcomes before a planning framework is in place to adequately manage the environmental effects of long-term consents.
4. That planning framework will be in place after an interim 6-year period while the new Land and Water Regional Plan (LWRP) is being developed.
5. The entry criteria for non-complying activity permits in Rule 10A.3.2.1 may not be able, in all cases, to reliably identify activities that “will have no more than minor adverse effects”, and may be even less able to ensure that cumulative effects are adequately managed (as required by proposed Policy 10A.2.3).
6. The removal of this rule (10A.3.2.1) avoids the potential for error and ensures consistency of permit durations for all applicants.
7. Rule 10A.3.2.1 does not provide an appropriate interim consenting framework, as consents are being granted under it for terms well beyond six years and therefore failing to give appropriate effect to the National Policy Statement for Freshwater management (NPS-FM).
8. Policy 10A.2.3 should be amended to remove the non-complying activity exemption.

What decision we want the Environment Court to make:

9. Approve the plan change with the following amendments:
 - *Remove Rule 10A.3.2.1 (non-complying activity) in Proposed Water Permits Plan Change (Plan Change 7).*
 - *Amend Policy 10A.2.3 (b) to read: (deletions shown in ~~strike through~~ and additions in underlined text)*

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 no more than minor cumulative effects) on the ecology and the 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.~~

- *Include a new rule in Plan Change 7 stating that any activity that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a prohibited activity.*

10. If the Court decides the Rule should be retained, we consider that the entry criteria and permit duration should be amended to ensure that the objectives of the Plan Change 7 can be achieved.

Our views on the matter/ specific parts listed above:

11. Background

This plan change is an important interim measure to help the Otago Regional Council (ORC) give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM) by minimising adverse environmental outcomes while ORC develops a new Land and Water Regional Plan (LWRP).

When the NPS-FM comes into force on 3 September 2020, freshwater will be required to be managed in a way that gives effect to Te Mana o te Wai, through prioritising the health and wellbeing of water bodies. All regional plans are required to give effect to national policy statements, including the NPS-FM (section 67(3) of the RMA).

The Minister for the Environment is concerned about water management in the Otago region. In 2019 he commissioned a section 24A investigation by Professor Peter Skelton which found that hundreds of water permits will be granted in Otago to replace expiring deemed and RMA permits and that many of these could be for long terms that will make them immune to the provisions of the LWRP for a decade or more.

The Minister duly recommended to Otago Regional Council (ORC) that it prepare a plan change by 31 March 2020 to provide an adequate interim planning and consenting framework for the period leading up to the LWRP. ORC undertook to do this through Proposed Plan Change 7 (PC7).

When Plan Change 7 was first notified, ORC's section 42A report persuaded us that the Non-Complying Activity route would be the path less travelled because of its uncertainty and entry tests.

However, five months on, only one application has been received for a Controlled Activity permit. ORC now expects a large number of Non-Complying Activity applications to seek long-term permit durations. Applicants do not appear to see the entry criteria as a significant obstacle.

This raises questions about the adequacy of the entry criteria for Rule 10A.3.2.1 which are based on the provisions of the currently operative water plan, a plan which the Skelton investigation found to be not fit for purpose.

If Plan Change 7 becomes operative in its current form, it would not provide an adequate consenting framework because it could allow significant numbers of consents to be granted which will shield permit holders until December 2035 from the provisions of the LWRP (to be notified in 2024). The prime objective of Plan Change 7 is to constrain the duration and extent of water takes until the LWRP takes effect. The exemption in the notified non-complying rule 10A.3.2.1 will circumvent that objective.

Combined with the hundreds of long-term water permits already extending past 2035, this could mean that a significant proportion of the region's water usage would be shielded from the forthcoming LWRP for at least another decade.

Our analysis of the 1224 water permits (deemed and standard) in the ORC database, indicates that over 400 of these are shielded from the new LWRP for at least a decade because they expire after 2035 - with some expiring as late as 2054.

Approximately 550 permits will expire before 2026 and will be replaced under Plan Change 7 (proposed and operative). If most of these replacements are Non-complying Activity permits, it will mean that over 75 per cent of Otago's water takes are unaffected by the LWRP for at least a decade.

Based on evidence to date, most applicants will seek Non-complying Activity permits rather than 6-year Controlled Activity permits. Of the 81 applications now being processed by ORC, only one is for a 6-year permit. Furthermore, ORC expects all of the applications that it will soon receive to replace some 230 Manuherehia deemed permits to be for Non-complying Activity permits.

If these applications can meet the Non-complying Activity entry criteria in Proposed Plan Change 7, three quarters of Otago's consented water use will remain outside the reach of the LWRP for at least a decade.

12. The NPS/NES for Freshwater Management

Given that the LWRP is the primary vehicle for giving effect to the NPS-FM, we are concerned that the Non-complying Activity Rule and Policy are likely to delay its application to a large number of Otago water users. This outcome would be inconsistent with the core intentions of both the NPS-FM and the National Environmental Standards for Freshwater Management and could further delay progress toward sustainable water management in Otago.

Approved by:

Date: 14/08/2020



Lorena Stephen
Acting Deputy Secretary, Sustainable Land Use Delivery