

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

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

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

Name of submitter: **Pioneer Energy Limited**

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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: 4/5/2020
(on behalf of Pioneer Energy Ltd)

(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')

Pioneer Energy Limited (PEL) opposes PC7 in its entirety, as detailed in the following pages.

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

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

Reject PC7 entirely or:

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

Give reasons for the decision you want made:

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

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

Summary of Submission on PC7

1. PEL opposes Plan Change 7 in its entirety.
2. The key reasons for our submission are;
 - a. Plan Change 7 is not necessary. The operative *Regional Plan: Water for Otago (RPW)* already provides a mechanism for the replacement of deemed permits, (including deemed permits which authorise dams) in a way that ensures long-term sustainable management of natural resources.
 - b. PC7 fails to address the issue of dams which are also controlled by deemed permits, which will result in a worse outcome for the environment, as there are no provisions for assessing the replacement of dam consents in a manner which provides for their safe operation.
 - c. The existing RPW framework provides for significantly better environmental outcomes in terms of managing potential adverse effects on the environment, compared with PC7 - especially with respect to dams.

- d. PC7 does not provide a coherent or complete framework for managing the damming and associated taking of water in Otago.
- e. The objectives and policies of PC7 do not give effect to Part 2 of the Resource Management Act (RMA).
- f. PC7 fails to give effect to the National Policy Statement Freshwater Management 2017 (NPSFW).
- g. PC7 also fails to give effect to the partially operative Regional Policy Statement, which provides for water harvesting and storage (Policy 3.1.4).
- h. The Section 32 evaluation is incomplete and has failed to adequately assess the effects of the proposed plan change on existing and proposed new infrastructure, including irrigation storage dams.

The reasons for the decisions sought that are outlined below are in addition to the reasons summarised above.

Introduction

1. The Fraser Dam is located on the upper Fraser River, to the southwest of Clyde. Dam construction began in 1935 and was completed in 1937, originally for the purpose of providing irrigation water, potable water and water in support of mining activities. Licence to Dam No. 1298CI was issued in the same year.
2. That License has since been replaced with Deemed Permit DAM1298CL, which authorises the damming of the Fraser River for the storage of Earnsclough Irrigation Scheme water. DAM1298CL is due to expire on 1 October 2021.
3. The Fraser Dam is owned by the Fraser Dam Company, which is made up of several irrigation companies. PEL operates the dam on that company's behalf.
4. The Fraser Dam is approximately 36 m high ,137 m in length, and is capable of holding back approximately 5 million m³ of water. The dam provides important seasonal storage for irrigation on the Earnsclough flats, with water released from the dam into the Fraser River for subsequent abstraction downstream.

5. PEL also owns and operates two power generation schemes upstream and downstream of the dam on the Fraser River. The Lower Fraser scheme generates approximately 20 GWh/year electricity, while the newly constructed Upper Fraser scheme will produce an estimated 31.1 GWh electricity per year. While the permits associated with these schemes would not be subject to PC7, there is a possibility of indirect effects on these schemes as a result of potential PC7 impacts on the dam.
6. During periods of low flows, water stored by the Fraser Dam becomes a critical source of irrigation for the multitude of orchards, vineyards and farms on the Earnsclough flats.
7. The water impounded by the Fraser Dam contributes approximately 9 GWh of electricity generation annually, with any changes or impacts to the dam having direct effects on the downstream Lower Fraser hydroelectricity scheme.
8. In addition to its regulatory obligations under the RMA, PEL is also required to meet other regulatory obligations which oversee the management, operation and safety of dams.
9. In June 2019, the Ministry for Business, Innovation and Employment (MBIE) commenced consultation on a Proposed Regulatory Framework for Dam Safety, which if enacted could require comprehensive investigations into or remedial works on the Fraser Dam.

Objective 10A.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. PEL opposes this objective.
2. There is no consideration of deemed permits to dam in this objective, and therefore no indication of what the goal of PC7 is in relation to dams.
3. Dams are a critical element of water use in Otago, and by necessity have long lifespans – with the Fraser Dam itself over 80 years old. Restricting replacement permits to short durations to align with the new Land and Water Regional Plan being made operative does not recognise that dams span such long timeframes, meaning long-term sustainable management of dams and related infrastructure is not provided for.

4. The implication of short-term consents is that repairs, maintenance and upgrades of existing infrastructure will not occur, as short-term consents for large capital investment projects are typically unable to secure funding. This ultimately leads to potentially significant effects in terms of meeting ongoing health and safety obligations associated with the operation of the dam, along with potential adverse environmental outcomes.
5. The primary reason given by the ORC for the need for PC7 is that the current RPW does not give effect to the NPSFM¹. Of itself this is not a reason to set up an interim planning framework to deal with the replacement of deemed permits. PEL must, in preparing their application for the replacement of their deemed permit to dam, give effect to the planning framework and all higher-order planning documents, including the NPSFM, as required by Sec 104 (1) (b) of the RMA, irrespective of whether a regional plan implements the NPSFM.

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.*

6. PEL opposes this policy.
7. This policy fails to take into account the fact that many dams in Otago are authorised by deemed permits. The matters of exception do not address matters relating to dams, and would be unable to be met by holders of deemed permits for dams, which based on the directive nature of the proposed wording would indicate that these dams should not therefore be granted replacement consents.

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

8. The policy does not provide certainty around the outcome sought, and in the case of Fraser Dam creates far greater uncertainty than the current RPW framework, as Fraser Dam and other large dams authorised by deemed permits would be considered non-complying activities. As discussed later, obtaining a replacement permit as a non-complying activity under PC7 would be a very difficult process.

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.

1. PEL opposes this policy.
2. This policy effectively rules out any required upgrades or significant maintenance of the dam until such time as the LWRP is operative, which will have an adverse effect on people and their communities, including economic and social impacts (e.g. through reduced irrigation water and potential impacts on hydrogeneration), as well as potentially limiting environmental benefits or mitigation that could arise from the upgrade or maintenance. It may also create an untenable position in terms of the obligations of PEL to operate and maintain a safe dam structure.

Policy 10A.2.3

Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents that replace deemed permits, or resource consents that replace water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, for a duration of no more than six years, except where Rule 10A.3.2.1 applies and:

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

1. PEL opposes this policy.
2. The use of the word “irrespective” is intended to provide priority to this policy over all others in the plan, yet this policy fails to account for the significant economic costs associated with operating and maintaining a large dam in a safe and efficient manner. The existing policy provisions of the RPW would be considered to have less weight than this provision, despite

the existing policies being far more relevant to dams. This includes Policy 6.5.4, and 6.6.0 RPW.

3. Given the expenditure required to maintain a large dam, even a 15 year consent term would be an insufficient duration to ensure a return on investment (or securing funding) for larger maintenance or upgrade works.
4. 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.
5. The matters for exception under Policy 10A.2.3 would not be able to be met by large dam owners/operators such as PEL as the effects of the dam could not be argued to be no more than minor (albeit they may be able to be mitigated or managed). As such, any term of consent under this policy would be constrained to 6 years and not a maximum of 15 years as proposed by this policy.
6. Policy 10A.2.3 does not provide any direction on why applications for non-complying activities (Fraser Dam activity classification under PC7) that can pass the Sec 104D RMA Gateway Test should be limited to a term not exceeding 15 years. PC7 is unclear as to why a 15 year term is considered to be the maximum term when the RMA provides for consents for a maximum duration of 35 years. This is an inefficient way to give effect to the RMA.
7. Policy 10A.2.3 effectively ceases all capital investment in the possible upgrade or significant maintenance of Fraser Dam within the next 6 years.

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.

1. PEL opposes this rule.
2. The proposed rule is neither simple nor cost effective, and would result in a range of detailed supporting and technical documents being required, which for the same or similar cost an applicant would be better to progress down the alternative non-complying path, where the opportunity to obtain a consent term greater than 6 years exists - albeit not in the case of dams, given that the effects would not meet the exception specified in Policy 10A.2.3

3. The matters for control fail to provide any direction on the matter of dam safety, or the effects of failure of the dam - matters which would normally be considered essential in re-consenting dams.
4. The current rule framework of the RPW provides far greater scope for assessing the actual and potential effects of dams, including provisions relating to the safe and efficient operation of the dam, and as such PC7 should be rejected, or if it is to be made operative dams authorised by deemed permits should be excluded from PC7.

Rule 10A.3.2.1 [Non-Complying Activity]

Despite any other rule or rules in this Plan:

- (a) Any activity that is the replacement of an activity authorised under a Deemed Permit: or*
- (b) The take and use of surface water (including groundwater considered as surface water under Policy 6.4.1A (a), (b), and (c) of this Plan) that is the replacement of a take and use authorised by an existing water permit where that water permit expires prior to 31 December 2025;*

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

1. PEL opposes this rule.
2. Given that so many consent replacements, including those for large dams, are likely to be classified as non-complying activities, this rule does not provide for a simple, inexpensive consent replacement process. The level of scientific assessment and information gathering needed to support applications for non-complying activities portend a high cost and slow process for both the applicant and council.
3. An application by PEL for the Fraser Dam (and most likely other dam owners) to replace its deemed permit would automatically fall as a non-complying activity under Rule 10A3.2.1 as the matters of control for a controlled activity are irrelevant to dams. This creates a high cost for a maximum duration that is not particularly long for a dam permit (up to 15 years, albeit based on policy direction 6 years would be more likely).
4. Section 104D sets out the circumstances in which a council must grant or refuse consent for non-complying activities. Before granting, a council must be satisfied that either the adverse effects of the activity on the environment are no more than minor, or the proposed activity will not be contrary to the objectives and policies of a plan or proposed plan. The effects of most in-stream dams would not be minor or less (regardless of proposed mitigation), nor would such an activity be in line with the policies of PC7 (as discussed earlier). This implies that replacement consent would not be granted – a situation which

has not been addressed in any of the documents supporting PC7, despite the potential ramifications.

5. The current RWP provides for dams as a Restricted Discretionary activity under Rule 12.3.3.1. The matters for discretion are extensive, and far more wide ranging and specific to dams than those set out in PC7.

Section 32 Evaluation Report

1. There is no detailed identification of the social, cultural, economic and environmental costs and benefits associated with PC7 in the s32 evaluation report. No attempt has been made to quantify costs and benefits to enable an informed assessment of these factors.
2. PEL is concerned that there is no identification of the significant transactional costs that would be incurred by applicants, council and stakeholders for both the controlled activity and non-complying activity consent processes in the s32 report. Additionally, intangible costs, such as stress and anxiety, are ignored by the report.

Conclusions

1. PC7 is an attempt by ORC to provide an interim planning solution that addresses deficiencies (particularly with regards to the NPSFM) with the operative RPW as they relate to deemed permits and water permits.
2. PC7 does not address those deficiencies, and instead creates more issues to overcome for both applicants and council. PC7 does not provide a fast, inexpensive route for processing replacement permits or granting new permits, and creates uncertainty for water users in Otago. This is particularly the case for those who hold deemed permits to dam.
3. There is insufficient assessment of the social, cultural, economic and environmental cost of PC7, which is likely to be substantial. Based on the arguments provided above, it is also likely that PC7 will create worse environmental outcomes than would the status quo under the operative RPW.

SUBMISSIONS MUST BE RECEIVED BY 5.00 PM ON Friday 17 April 2020

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Deliver to Otago Regional Council offices at:

- 70 Stafford Street, Dunedin
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Online at www.orc.govt.nz/WPPC

Please note:

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:
- it discloses no reasonable or relevant case:
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:
- it contains offensive language:
- it is supported only by material that purports to be independent expert evidence but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.