

Regional Plan: Water for Otago

Proposed Plan Change 7 (Water Permits)

**RECOMMENDED AMENDMENTS
MARKED IN**

NOTE FOR THE READER

How the proposed amendments are shown and the scope for them is referenced

This version of proposed Plan Change 7 comprises a consolidation of the amendments to the provisions proposed by Tom de Pelsemaeker in his evidence-in-chief.

All proposed new text is shown underlined.

All text to be omitted is shown in ~~striketrough~~.

All proposed amendments are footnoted with a reference to either a submission in general or the particular part of a submission that gives the scope for the proposal. The coding used is that contained in the Summary of Decisions table prepared for the Environmental Protection Authority (EPA) and published on the EPA website.

Where “consequential amendment” is noted, the amendment is a necessary consequence of a submission-based recommended amendment so that the overall integrity of the plan change is maintained and/or to ensure the language and grammar is correct.

Where “minor amendment” is noted, the amendment is made pursuant to Clause 16 of the First Schedule to the Resource Management Act 1991 to improve the clarity of expression or the consistency of language used but where the substance of the provision is not altered.

Introduction

The Otago Regional Council has prepared Proposed Plan Change 7 to the Regional Plan: Water for Otago.

Proposed Plan Change 7 (Water Permits) is intended to provide an interim regulatory framework for the assessment of applications to renew:

- deemed permits expiring in 2021
- any other water permits expiring prior to 31 December 2025, the date by which the new Regional Land and Water Plan (LWRP) is expected to be operative.

The Plan Change also establishes a requirement for short duration consents for all new water permits granted under the operative Water Plan rules.

The provisions will enable the assessment of applications and issuing of resource consents subject to conditions for a short duration during which time a new LWRP will be prepared.

Insert the following text as two new paragraphs at the end of the section entitled 'How to Use the Regional Plan: Water'

Applications for water permits to replace deemed permits or to replace water permits that expire before 31 December 2025 will be assessed in accordance with the objective, policies and rules set out in Chapter 10A of this Regional Plan: Water.

Applications for ~~new~~¹ water permits that are not replacing either a deemed permit or an existing water permit will be assessed in accordance with the provisions in Chapters 5, 6, 12 and 20, except that the duration of any water permit will be determined in accordance with the policies in Chapter 10A.

¹ Consequential amendment Pisa Holdings Limited & Others 71129.01; Otago Fish & Game Council & Another 70045.07.

Insert the following new Chapter in the Water Plan immediately following Chapter 10

10A

Objective, Policies & Rules for Replacement Water Take & Use Permits



10A.1 Objective

- 10A.1.1 Transition toward the long-term sustainable management of surface freshwater² resources in the Otago region by establishing an interim planning framework to manage
- (a) ~~new water permits for takes and uses of freshwater not previously authorised by a water permit, and~~³
 - (b) the replacement of deemed permits, and
 - (c) ~~water permits for takes and uses of surface of freshwater (including groundwater considered as surface water)~~ where those water permits expire prior to 31 December 2025⁴, until the a new Land and Water Regional Plan⁵ is made operative.

10A.2 Policies

- 10A.2.1 Irrespective of any other policies in this Plan, avoid granting resource consents that replace deemed permits, or water permits ~~to for takes and uses of~~⁶ 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 actual⁷ 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~~ no increase in the any actual volume of water taken allocated for abstraction.⁸

² Otago Fish & Game Council & Another 70045.06; Federated Farmers of New Zealand Otago and North Otago Provinces 71177.02.

³ Ibid.

⁴ Ibid.

⁵ RFBPS 71149.02.

⁶ Clause 16 First Schedule, minor amendments for clarity.

⁷ RFBPS 71149.13.

⁸ Clutha District Council & Another 71173.05; Central Otago District Council 71178.10.

10A.2.2 Irrespective of any other policies in this Plan concerning consent duration, only grant new⁹ resource consents for ~~the~~ takes and/or uses of freshwater, where this activity was not previously authorised by a deemed permit or water permit¹⁰, for a duration of no more than six years.

10A.2.3 Irrespective of any other policies in this Plan concerning consent duration, only grant new¹¹ resource consents that replace deemed permits, or resource consents that replace water permits to take and/or¹² 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.**

⁹ Otago Fish & Game Council & Another 70045.08.

¹⁰ Hortinvest Limited 71134.04.

¹¹ RFBPS 71149.18.

¹² Clause 16 First Schedule, minor amendment for clarification.

10A.3 Rules

*Note 1: If the application is for a resource consent for the taking and use of water and the activity was not previously authorised by an existing deemed permit or expiring water permit, refer to the rules in Chapter 12 of this Plan*¹³.

*Note 2: Where, under Rule 10A.3.1.1, any of entry conditions (iii), (iv) and (vi) do not apply to an activity for which resource consent is sought, that condition is deemed to be met.*¹⁴

10A.3.1 Controlled activity: Resource consent required

10A.3.1.1 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~~ the maximum area irrigated in the 2017–2018 irrigation season period 1 September 2017 to 18 March 2020¹⁵, if the abstracted water is used for irrigation; and
- (iv) Except where (vii) applies, The rate of take shall be no more than the ~~average maximum~~ rate of take limit recorded during the period 1 July ~~2012~~2015 – 30 June ~~2017~~2020¹⁶ and calculated in accordance with the method in Schedule 10A.4; and

¹³ Relocated and minor amendments for clarity; Otago Fish & Game Council & Another 70045.12.

¹⁴ Paydirt 71205.03; Glen Shaw 71210.02; Malcolm Cameron 71223.03.

¹⁵ Beef and Lamb NZ & Another 71168.05; Federated Farmers of New Zealand Otago and North Otago Provinces 71177.06; John Patrick and Christine Eleanor Symons 71010.05.

¹⁶ Robert Bruce Allan, Hamiltons Dairy Limited 71022.07; Cherri Global Limited 71029.05; Balance Agri-Nutrients Limited 71172.03.

- (v) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) on the expiring deemed permit or water permit¹⁷ is included in the application for resource consent; and
- (vi) ~~Except where (vii) applies, The~~the volume of water taken shall be no more than ~~the average maximum~~ of the daily volume limit, ~~or~~ and monthly volume limit, ~~or~~ and annual volume limit (whichever one or more are applicable) recorded during the period 1 July ~~2012~~2015 – 30 June ~~2017~~2020, and calculated in accordance with the method in Schedule 10A.4.¹⁸
- (vii) For deemed permits or water permits where metering is not required by condition of resource consent or by the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010, the rate of take and the volume of water sought is no more than the existing consented instantaneous rate of take and volumes.¹⁹

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) Flooding, erosion, land instability, sedimentation or property damage resulting from the operation of the dam; and²⁰
- ~~(g)~~(h) Review conditions; and
- ~~(h)~~(i) Compliance monitoring; and
- ~~(i)~~(j) 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

¹⁷ RFBPS 71149.09.

¹⁸ Cherri Global Limited 71029.06; CP and DE Mulholland 71089.06.

¹⁹ Consequential upon RFBPS 71149.12; Billee Patricia Marsh 71167.08.

²⁰ Pioneer Energy Limited 71119; Falls Dam Company Limited 71133.

affected order holders in terms of section 95F of the RMA will be necessary, where relevant, under Section 95B(3) of the RMA.

~~**Advice Note: If the application is for a new water permit (and not the replacement of a deemed permit or replacement of an expiring water permit) refer to the rules in Chapter 12 of this Plan.**~~

10A.3.1A Restricted discretionary activity: Resource consent required²¹

10A.3.1A.1 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 **restricted discretionary** activity providing the following conditions are met:

- (i) The activity meets conditions (i), (ii), (iii), (v) and (vii) of Rule 10A.3.1.1; and
- (ii) The activity has been carried out in accordance with any requirements under the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 and any conditions of the current water permit with respect to water metering (whichever one applies); and
- (iii) A complete set of water metering data needed to carry out the assessment under Schedule 10A.4 is not available and it is demonstrated in the application that the missing data is the result of a technical issue and that all reasonably practicable steps have been taken to resolve the technical issue.

The Council will restrict its discretion to 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) The efficacy of the information provided to demonstrate the existence of any technical issue with water metering, the

²¹ RFBPS 71149.12; Mt Barker Trust 71031.08; Banarach Farm Limited 71073.06; Billee Patricia Marsh 71167.08.

- steps taken to resolve the issue and the implications for the assessment under Schedule 10A.4; and
- (d) Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit; and
 - (e) Provision of fish passage; and
 - (f) The rules or operating procedures of any relevant water allocation committee that exists for the catchment; and
 - (g) Minimum flow, residual flow or take cessation conditions; and
 - (h) Flooding, erosion, land instability, sedimentation or property damage resulting from the operation of the dam; and
 - (h) Review conditions; and
 - (i) Compliance monitoring; and
 - (j) 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.

10A.3.2 Non-complying activity: Resource consent required

10A.3.2.1 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/or 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/or use authorised by an existing water permit where that water permit expires prior to 31 December 2025;²²

that does not meet any one or more of the conditions of

- (i) Rule 10A.3.1.1; or
- (ii) Rule 10A.3.1A.1²³

is a *non - complying* activity.

²² Clause 16 First Schedule, minor amendments for clarity.

²³ Consequential upon RFBPS 71149.12.

10.3A. Definition²⁴

Valid permit In the context of Chapter 10A, means a resource consent or deemed permit that

- 1) has not expired; or
- 2) has expired but where the consent holder can still exercise the permit under s124 of the RMA; or
- 3) has not been surrendered under s138 of the RMA; or
- 4) has not been cancelled under s126 of the RMA; or
- 5) has not lapsed under s125 of the RMA.

²⁴ RFBPS 71149.07

10A.4 Schedule: Methodology for calculating assessed actual usage for surface-water and connected groundwater²⁵ takes for irrigation purposes

10A.4.1 Methodology for calculating ‘Rate of Take Limit’

The ‘Rate of Take Limit’ (litres per second – L/s)²⁶ shall be determined by calculating the Average Maximum of the actual rate taken. In order to achieve this, the actual rate taken across the hydrological water²⁷ year (1 July to 30 June) will be analysed to determine the maximum instantaneous rate at which water was²⁸ taken at any time during that year. The maximum instantaneous rate at which water was²⁹ taken in each hydrological water³⁰ year will then be summed and divided by the number of years analysed.

Methodology

- (1) Where a water meter records the volume of water taken over a fixed period of time, the rate of take will be calculated by converting the volume taken in litres by the interval recorded by the meter. For example, 10 m³ taken over a 15-minute period will equate to a rate of take of 11.11 l/s.
- (2) Any measurement that is at or below 0 l/s will be removed.
- (3) Any measurement that exceeds the authorised (consented) rate by less than the margin of error of the water meter is rounded down to the authorised rate.
- (4) Any measurement that exceeds the authorised rate of take by more than the margin of error of the water meter will be removed from the data and not considered further. This ensures that the following are excluded from any calculations:
 - a) ~~Abstracting~~ above the consented rate of take by more than the margin of error,³¹ and
 - b) errors caused by faulty equipment, and
 - c) abstraction rates that are high due to natural events such as floods.
- (5) The margin of error to be applied to any calculation will be either 5% for piped takes or 10% for water taken by any other method, including by any open channel or a partially full pipe.³² ~~depending on:~~

²⁵ Clause 16 First Schedule, minor amendment for clarity.

²⁶ Clause 16 First Schedule, minor amendment for consistency.

²⁷ Director General of Conservation 71180.01.

²⁸ Pisa Holdings and Others 71129.09.

²⁹ Ibid.

³⁰ Director General of Conservation 71180.01.

³¹ Wise Response Society Inc 70052.03.

³² Landpro Limited 71159.08.

- a) ~~the margin of error specified in any consent or permit being replaced,~~
~~or~~
 - b) ~~the results of the last verification presented to the Otago Regional Council, or~~
 - c) ~~the margin of error specified by the meter's manufacturer.~~³³
- (6) The maximum instantaneous rate at which water was³⁴ taken in each water year will be summed across the hydrological water³⁵ years analysed and divided by the number of hydrological water³⁶ years analysed.

10A.4.2 Methodology for calculating Daily Volume Limit (m³)

The 'Daily Volume Limit' shall be determined by calculating the Average Maximum of the actual 'Daily Volume' taken. In order to achieve this, the maximum 'Daily Volume' taken on any day in each water year (1 July to 30 June) will be calculated. The maximum 'Daily Volume' in each water year will then be summed across the hydrological water³⁷ years analysed and divided by the number of hydrological water³⁸ years analysed.

Methodology

- (1) Where a consent being replaced does not include a 'Daily Volume Limit', the ~~a~~ Authorized Daily ~~v~~ Volume³⁹ will be calculated based on the following formula:

$$\text{Authorized}^{40} \text{ Daily Volume m}^3 = ((\text{Consented Rate of Take l/s}) \times 86,400) / 1,000$$
- (2) Any measurement that is at, or below, 0 m³ will be removed.
- (3) Any day that exceeds the ~~a~~ Authorized ~~(consented) or calculated~~ ~~d~~ Daily ~~v~~ Volume⁴¹ by less than the margin of error on the water meter is rounded down to the consented volume.
- (4) Any day where the volume taken exceeds the ~~a~~ Authorized ~~(consented) or~~ ~~e~~ calculated Daily ~~v~~ Volume⁴² by more than the margin of error of the water

³³ Consequential amendment following 71159.08.

³⁴ Pisa Holdings and Others 71129.09.

³⁵ Director General of Conservation 71180.01.

³⁶ Director General of Conservation 71180.01.

³⁷ Director General of Conservation 71180.01.

³⁸ Director General of Conservation 71180.01.

³⁹ Clause 16 First Schedule, minor amendment for consistency.

⁴⁰ Clause 16 First Schedule, minor amendment for consistency.

⁴¹ Clause 16 First Schedule, minor amendment for consistency.

⁴² Clause 16 First Schedule, minor amendment for consistency.

meter will be removed from the data and not considered further. This ensures that the following are excluded from any calculations:

- a) ~~overtaking outside of existing abstraction above the authorised limits, and~~
 - b) ~~errors caused by faulty equipment, and~~
 - c) ~~overtaking caused by natural events such as floods.~~⁴³
- (5) The margin of error to be applied to any calculation will be ~~treated as being~~ either 5% for piped takes or 10% for water taken by any other method, including by any open channel or a partially full pipe.⁴⁴ ~~depending on:~~
- a) ~~the margin of error specified in any consent or permit being replaced, or~~
 - b) ~~the results of the last verification presented to the Otago Regional Council, or~~
 - c) ~~the margin of error specified by the meter's manufacturer.~~⁴⁵

~~(#)(6)~~ The maximum 'Daily Volume' taken in each water year will be summed across the hydrological water⁴⁶ years analysed and divided by the number of hydrological water⁴⁷ years analysed.

10A.4.3 Methodology for calculating Monthly Volume Limit (m3)

The 'Monthly Volume Limit' shall be determined by calculating the Average Maximum of the actual 'Monthly Volume' taken. In order to achieve this, the maximum 'Monthly Volume' taken in any month in each water year (1 July to 30 June) will be calculated. The maximum 'Monthly Volume' in each water year will then be summed across the hydrological water⁴⁸ years analysed and divided by the number of hydrological water⁴⁹ years analysed.

Methodology

- (1) Where a consent being replaced does not include a 'Monthly Volume Limit' the authorised volume will be calculated based on the following formula;

$$\text{Monthly Volume}^{50} \text{ Limit} = (\text{Consent Daily Volume or Calculated Daily Volume}) \times 30.4$$

⁴³ Pisa Holdings Limited & Others 71129.09.

⁴⁴ Landpro Limited 71159.08.

⁴⁵ Consequential to Landpro Limited 71159.08.

⁴⁶ Director General of Conservation 71180.01.

⁴⁷ Director General of Conservation 71180.01.

⁴⁸ Director General of Conservation 71180.01.

⁴⁹ Director General of Conservation 71180.01.

⁵⁰ Clause 16 First Schedule, minor amendment for consistency of language.

- (2) Actual Monthly volumes will be calculated based on the sum of the assessed Daily Volumes taken⁵¹ in each calendar month. For the purposes of this calculation Daily Volumes will be filtered using the same steps used when calculating the Maximum Daily Volume.
- (3) Any measurement that is at, or below, 0 m³ will be removed.
- (4) Any month where the volume taken exceeds the authorised or calculated volume by less than the margin of error on the water meter is rounded down to the consented volume.
- (5) Any month where the volume taken exceeds the authorised or calculated volume by more than the margin of error of the water meter will be removed from the data and not considered further. ~~This ensures that the following are excluded from any calculations:~~
 - ~~a) overtaking outside of existing authorised limits, and~~
 - ~~b) errors caused by faulty equipment, and~~
 - ~~c) overtaking caused by natural events such as floods.⁵²~~
- (6) The margin of error to be applied to any calculation will be either 5% for piped takes or 10% for water taken by any other method, including by any open channel or a partially full pipe.⁵³ ~~depending on:~~
 - ~~d) the margin of error specified in any consent or permit being replaced, or~~
 - ~~e) the results of the last verification presented to the Otago Regional Council, or~~
 - ~~f) the margin of error specified by the meter's manufacturer.⁵⁴~~
- (6) The maximum 'Monthly Volume' taken in each water year will be summed across the hydrological water⁵⁵ years analysed and divided by the number of hydrological water⁵⁶ years analysed.

⁵¹ Pisa Holdings Limited & Others 71129.09.

⁵² Pisa Holdings Limited & Others 71129.09.

⁵³ Landpro Limited 71159.08.

⁵⁴ Consequential to Landpro Limited 71159.08.

⁵⁵ Director General of Conservation 71180.01.

⁵⁶ Director General of Conservation 71180.01.

10A.4.4 Methodology for calculating Annual Volume Limit (m3)

The 'Annual Volume Limit' shall be determined by calculating the ~~average of the actual volumes taken each year~~ maximum volume taken in any water year analysed.⁵⁷

Methodology

- (1) Where a consent or permit being replaced does not include an 'Annual Volume Limit' the authorised volume will be calculated based one of the following formulae. The formula used will be whichever one⁵⁸ produces the lower calculated Annual Volume⁵⁹ Limit;

Annual Volume⁶⁰ Limit = (Consent Daily Volume or Calculated Daily Volume) x 365.25

Annual Volume⁶¹ Limit = (Consented Monthly Volume) x (Months where water can be taken)

Where the consent or permit being replaced specifies the months during which water can be taken, a count of those months will be used. Where the consent or permit being replaced does not specify the months during which water can be used the number used will be 12.

- (2) Actual Annual volumes will be calculated based on the sum of the ~~assessed~~ Daily Volumes taken⁶² in each water year. For the purposes of this calculation Daily Volumes will be filtered using the same steps used when calculating the Maximum Daily Volume.
- (3) Any measurement that is at or below 0 m³ will be removed.
- (4) Any year that exceeds the authorised or calculated volume is rounded down to the authorised volume.
- (5) ~~The 'Annual Volume' taken in each water year will then be summed across the hydrological years analysed and divided by the number of hydrological years analysed~~ The actual highest volume taken in any water year analysed will be the Annual Volume Limit.⁶³

⁵⁷ Southern Lakes Holdings Limited 71251.01; Hawkdun Idaburn Irrigation Co 71060.08.

⁵⁸ Clause 16 First Schedule, minor amendment for clarity.

⁵⁹ Clause 16 First Schedule, minor amendment for consistency of language.

⁶⁰ Clause 16 First Schedule, minor amendment for consistency of language.

⁶¹ Clause 16 First Schedule, minor amendment for consistency of language.

⁶² Pisa Holdings Limited & Others 71129.09.

⁶³ Hawkdun Idaburn Irrigation Co 71060.08.

Table of minor and consequential changes

Plan Provision	Detail of proposed change			
Page numbers	Update page numbers.			
Footers	Change footer to read “Regional Plan: Water for Otago (Updated to <date to be inserted>)”.			
Title page	Change the date to read “Updated to <date to be inserted>”.			
ISBN number	Obtain new ISBN numbers for Regional Plan: Water for Otago.			
Chronicle of key events	Add the following to the end of table:			
	Key event	Date notified	Date decisions released	Date operative
	Plan Change 7 (Water Permits) to the Regional Plan: Water	<Date to be inserted>	<Date to be inserted>	<Date to be inserted>
Section 1.4	Proposed Plan Change 7 (Water Permits) provides an interim regulatory framework for the assessment of applications to replace deemed permits expiring in 2021 and other water permits expiring prior to 31 December 2025, the date by which the new Land and water Regional Plan is expected to be operative. It was notified on ..., and a total of ... submissions and ... further submissions were received. Following the hearing, decisions on submissions received were released on Plan Change 7 was made operative on			