

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

ENV-2020-CHC-127

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of the Water Permits Plan Change - Plan Change 7, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under section 142(2)(b) of the RMA

AND

IN THE MATTER of an application under section 149T of the RMA

OTAGO REGIONAL COUNCIL

Applicant

**STATEMENT OF EVIDENCE OF TOM DE PELSEMAEKER ON BEHALF OF
THE OTAGO REGIONAL COUNCIL
7 December 2020**

Applicant's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 379 2467

WYNNWILLIAMS

Solicitor: P A C Maw / M A Mehlhopt
(philip.maw@wynnwilliams.co.nz /
michelle.mehlhopt@wynnwilliams.co.nz)

Table of Contents

Introduction	3
Code of Conduct	4
Scope.....	4
Summary of Key Points	7
Background	8
Overview of water taking and water use in the Otago region.....	11
Significant resource management issues that PC7 is seeking to address.....	14
<i>Lack of understanding about the state of the region’s freshwater resources, and the effect of water taking on these resources</i>	<i>14</i>
<i>Uncertainty around the environmental outcomes, limits and environmental flows that need to be established in accordance with the NPS-FM 2020</i>	<i>17</i>
<i>Allocation that may not prioritise first the health and well-being of freshwater bodies and ecosystems</i>	<i>22</i>
<i>Inadequacy of the current planning framework in terms of giving effect to the objectives and policies of the NPS-FM 2020</i>	<i>24</i>
<i>Pending expiry of water permits and growing demand for water.....</i>	<i>28</i>
The intent of PC7	32
Relationship between PC7 and existing Water Plan provisions	33
Overview of PC7 provisions.....	34
How the principles of the Treaty of Waitangi have been taken into account in the development of PC7 (section 8).....	40
Review of Objective 10A.1.1 against higher order planning instruments	44
<i>The Resource Management Act 1991</i>	<i>44</i>
<i>National Policy Statements</i>	<i>48</i>
<i>National Policy Statement for Renewable Energy Generation</i>	<i>53</i>
<i>New Zealand Coastal Policy Statement (NZCPS)</i>	<i>54</i>
<i>National Environmental Standards.....</i>	<i>55</i>
<i>National Planning Standards.....</i>	<i>55</i>
<i>Water Conservation Orders.....</i>	<i>56</i>
<i>Lake Wanaka Preservation Act 1973.....</i>	<i>57</i>
<i>Regional Policy Statements</i>	<i>58</i>
Overview of submitter responses and amendments requested	61
<i>Overview of key issues raised in submissions</i>	<i>63</i>
Using robust data and science in developing the plan change	63
Providing for longer consent durations.....	65

Financial and economic impacts on businesses and communities	70
Social impacts on communities (inequitable outcomes).....	76
Providing for catchment approaches.....	78
Using the existing framework of the Regional Plan: Water for Otago.....	82
Implications for water takes for non-irrigation uses	85
<i>Damming</i>	<i>86</i>
<i>Diversion.....</i>	<i>90</i>
<i>Takes of augmented flows</i>	<i>90</i>
<i>Retakes</i>	<i>92</i>
<i>Non-consumptive and unmetered takes</i>	<i>93</i>
<i>Consumptive takes other than irrigation (including water harvesting, snowmaking commercial, community and domestic water supplies).....</i>	<i>97</i>
<i>Hydro-electricity generation.....</i>	<i>104</i>
<i>Instream works associated with water takes.....</i>	<i>105</i>
Implications for group management of water use.....	106
Restricting the size of irrigated area	107
Calculating water allocation and actual water usage.....	113
PC7 does not give effect to higher order planning documents and is inconsistent with the Water Plan	131
PC7 does not achieve good environmental outcomes	133
Lack of clarity	140
Matters raised on specific provisions.....	146
<i>Objective 10A.1.1</i>	<i>146</i>
<i>Policy 10A.2.1</i>	<i>148</i>
<i>Policy 10A.2.3</i>	<i>150</i>
<i>Rule 10A.3.1.1.....</i>	<i>152</i>
<i>Rule 10A.3.2.1.....</i>	<i>156</i>
<i>Schedule 10A.4.....</i>	<i>160</i>
Other Matters	160

Introduction

- 1 My full name is Tom Willy De Pelsemaeker.
- 2 I am Team Leader Freshwater and Land at Otago Regional Council (**Council** or **ORC**).
- 3 I hold a Master of Planning from Otago University. From 2010 I have worked as a Policy Analyst for the Council.
- 4 While working for the Council I have been involved in both leading and supporting planning roles in various plan changes to the Regional Plan: Water, including Plan Change 2: Regionally Significant Wetlands (notified 2011), Plan Change 6A: Water Quality (notified 2012), Plan Change 4C: Groundwater management - Cromwell Terrace Aquifer (notified 2014), Plan Change 5A: Lindis Integrated Water Management (notified 2015), Plan Change 6AA (notified 2019) and Plan Change 8: Discharge Management (notified 2020).
- 5 My role in these plan change processes involved the preparation of plan change proposals, preparation of s32 evaluation reports and s42A reports, consultation with stakeholders, assisting hearing panels during the hearing and deliberations process and participation in Environment Court mediation processes.
- 6 In 2019 I took up the position of Team Leader Freshwater and Land, a sub-unit within the Council's wider Policy Team responsible for undertaking any plan changes to the operative Regional Plan: Water for Otago (**Water Plan**) and the development of a new Otago Land and Water Regional Plan (**LWRP**), to be notified by 31 December 2023.
- 7 I was involved in the review of the draft of proposed Plan Change 7 to the Water Plan (**PC7**) that was prepared for the purpose of undertaking pre-notification consultation under clause 3 of Schedule 1 of the Resource Management Act 1991 (**RMA**). I provided input into the preparation of the Section 32 Evaluation Report that was prepared for PC7.
- 8 I have been asked by the Council to prepare planning evidence for these proceedings.

Code of Conduct

- 9 I confirm that I have read the Code of Conduct for expert witnesses as contained in the Environment Court Practice Note 2014. I have complied with the Code of Conduct when preparing my written statement of evidence and will do so when I give oral evidence.
- 10 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. The reasons for the opinions expressed are also set out in my evidence.
- 11 Other than where I state I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope

- 12 I have been asked to provide evidence in relation to PC7. My evidence addresses:
- (a) An overview of the development of PC7;
 - (b) The significant resource management issues that PC7 seeks to address;
 - (c) An overview of the provisions of PC7;
 - (d) How the principles of the Treaty of Waitangi have been taken into account in the development of PC7;
 - (e) Higher order planning instruments, including the National Policy Statement for Freshwater Management 2020 (**NPS-FM 2020**);
 - (f) Amendments sought by parties, by key themes and by provision as raised in submissions; and
 - (g) Recommended changes to provisions based on submissions.
- 13 A copy of the provisions from planning documents referred to in this evidence (excluding PC7) is attached to my evidence as **Appendix A**. A copy of the PC7 provisions incorporating the amendments I recommend is attached to my evidence as **Appendix B**.

- 14 In preparing this evidence, I have read and considered the following documents:
- (a) Regional Plan: Water for Otago (**Water Plan**);
 - (b) PC7 (notification version);
 - (c) Section 32 Report for PC7;
 - (d) Submissions and further submissions;
 - (e) Section 274 notices;
 - (f) The Key Issues Report – Plan Change 7 to the Regional Plan: Water for Otago (**KIR**);
 - (g) The evidence prepared for the Council by:
 - (i) Dr Julie Everett-Hincks, ORC Manager Science
 - (ii) Dr Richard Allibone, Freshwater Ecologist
 - (iii) Roddy Henderson, Hydrologist
 - (iv) Simon Wilson, ORC Manager Consent Systems and Administration
 - (v) Sean Leslie, ORC Senior Resource Management Analyst
 - (h) The National Policy Statement for Freshwater Management 2014 (amended 2017) (**NPS-FM 2014**) and the NPS-FM 2020;
 - (i) The National Policy Statement for Renewable Electricity Generation (**NPSREG**);
 - (j) The New Zealand Coastal Policy Statement (**NZCPS**);
 - (k) The Regional Policy Statement for Otago (**RPS 1998**) and the Proposed Otago Regional Policy Statement 2016 (**PRPS 2016**);
 - (l) Kāi Tahu ki Otago Natural Resources Management Plan 2005;
 - (m) Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008;
 - (n) Water Conservation (Kawarau) Order 1997;
 - (o) Water Conservation (Mataura) Order 1997;

- (p) Lake Wanaka Preservation Act 1973;
- (q) Otago Sports Fish and Game Management Plan 2015-2025;
- (r) Progressive Implementation Programme 2018 (**PIP**);
- (s) Professor Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment;
- (t) Letter from Hon. David Parker to the Otago Regional Council regarding the s24 investigation, dated 19 November 2019;
- (u) Ministry for the Environment, Our land 2018 - New Zealand's Environmental Reporting Series;
- (v) Ministry for the Environment (2008) Draft guidelines for the selection of methods to determine ecological flows and water levels;
- (w) Hayes, J.; Hay, J.; Gabrielsson, R.; Goodwin, E.; Jellyman, P.; Booker, D.; Wilding, T.; Thompson, M., (2019) Review of Rationale for assessing fish flow requirements and setting ecological flow and allocation limits for them in New Zealand;
- (x) Ministry for the Environment. 2018. Wellington (NZ): Climate change projections for the Otago region; and
- (y) *Aqualinc Guidelines for Reasonable Irrigation Water Requirements in the Otago Region* (2017).

Summary of Key Points

- 15 The purpose of PC7 is to allow for an efficient and timely transition to a new land and freshwater management regime that gives full effect to the NPS-FM 2020 by establishing an interim planning framework for the cost-effective and efficient assessment of resource consent applications for the replacement of deemed permits and for the take and use of freshwater.
- 16 PC7 intends to achieve this purpose by providing:
 - (1) strong policy direction for limiting the consent duration for resource consents to take and use water;
 - (2) a consenting pathway by which applicants can apply for a resource consent to replace an existing deemed permit or water permit to take and use surface water and connected groundwater that expires before 31 December 2025 either as a controlled activity or, where they cannot meet the controlled activity conditions, as a non-complying activity.
- 17 PC7 also provides other practical mechanisms that seek to further enable the transition to the long-term sustainable management of Otago's freshwater resources. These are, in summary:
 - (1) Reducing allocation and avoiding the re-allocation of unused water by limiting the instantaneous rate of take and the volume of water allocated in resource consents for the replacement of existing water permits to the quantity of water that has been used in the past;
 - (2) Requiring minimum flow, residual flow or take cessation conditions on existing consents to be carried over as consent conditions on any consents that replace existing water permits; and
 - (3) Reducing the risk of further environmental degradation and unforeseen economic hardship for water users, by discouraging further investment in irrigation expansion or land use intensification until a new NPS-FM 2020 compliant planning framework has been introduced (that will provide water users with clarity around future availability of water allocation and the environmental conditions under which water can be taken and used).

- 18 PC7 was notified by the ORC on 18 March 2020. After being “called in” by the Minister for the Environment on 8 April 2020 PC7 was referred to the Environment Court for decision under section 142(2) of the RMA. The plan change was re-notified by the Environmental Protection Authority (**EPA**) on 6 July 2020.
- 19 A total of 290 submissions and 16 further submissions were made on PC7.
- 20 I have assessed the objective of the plan change against relevant higher order planning instruments.
- 21 In my opinion, the objective of PC7 achieves the purpose of the RMA. While the objective does not give full effect to the NPS-FM 2020, I consider the plan change to be an appropriate response to the need for an interim planning regime that allows ORC to promulgate its new NPS-FM 2020 compliant planning framework.
- 22 I have read all submissions and further submissions on PC7 and following consideration of the relief requested by submitters and further submitters I recommend amendments to PC7 that will:
- (a) Provide more clarity for plan users;
 - (b) Provide better opportunities for holders of an existing deemed permit or other water permit to take and use water to apply for a new resource consent to carry out that activity under the controlled activity rule; and
 - (c) Reduce the risk of an unintentional clawback on actual water use, while still ensuring the allocation granted in consents for water takes authorised by an existing permit is based on historic water taking, and not paper allocation.

Background

- 23 Following an internal review of the Water Plan in 2018 it was acknowledged by ORC that the operative Water Plan did not give effect

to the NPS-FM 2014 (amended 2017), which was the relevant NPS-FM at the time.¹

- 24 On 31 October 2018, ORC adopted a Progressive Implementation Programme (**PIP**), which outlined the staged implementation of actions that ORC would undertake to implement the NPS-FM 2014.² As part of this implementation process ORC committed to undertake a full review of its operative Water Plan under s79 of the RMA and develop a new LWRP to be notified by 31 December 2025.
- 25 In May 2019 the Minister for the Environment, the Honourable David Parker, engaged Honorary Professor Peter Skelton to undertake a review of ORC's functions and planning framework under s24A of the RMA.³ The focus of this review was to investigate whether ORC:
- (a) is on track to adequately perform its functions under the RMA, in relation to freshwater management and allocation of freshwater; and
 - (b) has an appropriate planning framework in place that gives effect to the relevant NPS-FM in time to consider all applications for new water permits before deemed permits expire.
- 26 Professor Skelton's Report is attached to my evidence as **Appendix C**.
- 27 The Minister concluded from the Skelton Report that ORC's current framework for managing freshwater resources within the Otago region was not fit for purpose and not in line with the then-current national directions, including the NPS-FM 2014. Consequently, the Minister recommended that ORC:
- (a) *take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits;*

¹ <https://www.orc.govt.nz/media/6263/council-agenda-31-october-2018.pdf>

² Ibid.

³ Prof. Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment. p21.

- (b) *develop and adopt a programme of work to achieve the following:*
- (i) *by November 2020, a complete review of the current Regional Policy Statement that is publicly notified, with the intention that it be made operative before the review of its Land and Water Regional Plan [LWRP] is notified.*
 - (ii) *by 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater Management Units [FMUs], covering all the catchments within the region.*
 - (iii) *prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the relevant NPS-FM at that time.*

28 In his recommendation the Minister also stated:

“It is important that these interim measures manage the processing of resource consents (including those to replace deemed permits). I would encourage you to consider a narrow plan change that provides for the relatively low cost, and fast issuing of new consents on a short-term basis, as an interim measure until sustainable allocation rules are in place. These consents could, for example, be for a maximum term of five years, or until the new LWRP becomes operative, whichever comes first. It may be beneficial to include these provisions in a stand-alone plan change.”

29 Minister Parker’s letter to ORC regarding the s24A investigation is attached to my evidence as **Appendix D**.

30 To give effect to the Minister’s recommendations, ORC has developed and commenced a work programme, attached to my evidence as **Appendix E**, that includes:

- (a) The development of three water quality plan changes aimed at improving the efficiency and effectiveness of the existing planning framework for managing discharges: Plan Change 6AA and Proposed Plan Change 8 to the Water Plan, and Plan Change 1 to

the Regional Plan: Waste (the latter two collectively referred to as the Omnibus Plan Change);

- (b) The development of a new RPS, to be notified in June 2021;
 - (c) The development of a new LWRP for Otago that gives effect to the relevant NPS-FM at that time to be notified by 31 December 2023 and made operative by 31 December 2025; and
 - (d) The development of PC7 that proposes to establish an interim regulatory framework for assessing resource consent applications and would enable the transition towards the planning framework that will be established under the new LWRP.
- 31 PC7 was notified by the ORC on 18 March 2020. After being “called in” by the Minister for the Environment on 8 April 2020 PC7 was referred to the Environment Court for decision under section 142(2) of the RMA. A copy of the Minister’s direction to refer the plan change to the Environment Court is attached as **Appendix F**. The plan change was re-notified by the Environmental Protection Authority (**EPA**) on 6 July 2020.
- 32 A total of 290 submissions and 16 further submissions were made on PC7.

Overview of water taking and water use in the Otago region

- 33 The Otago region contains approximately 140 catchments.⁴ Some of these catchments are characterised by a longstanding tradition of high levels of water use. At the same time, the demand for water for taking is currently still increasing across the region due to population growth and agricultural development.
- 34 On 7 December 2020, there were approximately 1,670 water permits that authorised the take of freshwater in Otago.⁵

⁴ This figure includes catchments that are tributary catchments of Lakes Hawea, Wakatipu, Wanaka, Dunstan and Roxburgh and the main stems of the Clutha River/Mata-Au and Kawarau River.

⁵ Most of Otago’s current water permits (1076) are permits that provide for the take of surface water. Of the remaining 594 water permits, 504 are resource consents to take groundwater not hydraulically connected to surface water and 90 are groundwater take consents for the take of groundwater connected to surface water.

- 35 The vast majority of the current water permits (1,186) provide for the take of water to supply Otago's irrigated land, which was estimated to be 93,080 hectares in 2018.⁶
- 36 Large parts of inland Otago are supplied with surface water takes, many of which were initially authorised by mining privileges. These water takes were often located higher up in the catchments, where water would be taken into a gravity-fed distribution system of water races.
- 37 While initially used for sluicing, the mining privileges became increasingly important for agricultural irrigation as the gold rush came to an end at the end of the 19th century. Nowadays, mining privileges are supporting irrigation as well as a variety of other uses, including stock drinking water, domestic water supplies and hydro-electricity generation.
- 38 Mining privileges were licences issued under the Mining Act 1926, subsequent amendments, and previous Acts for water races, dry races, branch races, tail races, main tail races, drainage races, by-washes, drainage areas, dams and special sites.^{7,8} The most important of them are the water race licences. Under the Mining Act 1926, a water race licence entitled the holder to cut, construct and maintain a race, or to use a natural channel as a race, on the land specified in the licence. The licence also entitled the holder to take a specified quantity of water from a watercourse for the purpose of mining, domestic and irrigation supplies. In effect, the licence granted:
- (a) an easement over land for the construction and maintenance of the race;
 - (b) permission to run a specified quantity of water in the race; and

⁶ Ministry for the Environment, Our land 2018 - New Zealand's Environmental Reporting Series. p55.

⁷ Statutes include the Gold Fields Act 1862, Gold Fields Act 1866, Public Works Act 1876, Mining Act 1891, Mining Act 1926.

⁸ The term by-wash is not defined in the RMA or the Water Plan. However, by-wash is generally understood to be the excess water that is taken at the point of take, normally to enable the point of take and conveyance infrastructure (such as a race) to operate. By-wash is typically discharged back into a water body downstream of the point of take. By-wash may also be discharged to other water bodies to manage high flows/relieve pressure on the race system and prevent race blowout.

- (c) a right to take a specified quantity of natural water from a particular source.
- 39 Initially, mining privileges were issued to take water for the purpose of gold mining. As gold mining in Otago started to decline towards the end of the 19th century, mining privileges were increasingly being exercised to take water for irrigation purposes and stock water supply. Many of the higher priority mining privileges that were exercised for irrigation schemes were initially acquired by the Crown, and then disposed of to community irrigation groups.⁹
- 40 With the enactment of the RMA, all mining privileges were deemed, under s413 of the Act, to be a water permit (for the take or damming of water), or a discharge permit (for the discharge of water or contaminants) on the same terms and conditions as the original mining privilege. Furthermore, s415 and s416 of the RMA also stipulated that compensation must be paid for the acquisition of any such deemed permit, or any restriction on its ability to be exercised.
- 41 As provided by s413(3) of the RMA, deemed permits will expire on 1 October 2021, the thirtieth anniversary of the date of commencement of the RMA, and there shall no longer be any liability for compensation as a result of loss or restriction of the rights.
- 42 On 7 December, there were 334 deemed permits remaining in Otago, 317 of which authorise the take and use of water.¹⁰ Those 317 deemed permits that authorise the take and use of water, represent a total primary allocation of approximately 43,198 l/s.¹¹

⁹ Mining privileges are subject to a priority system. The date upon which the licence was initially granted determined its order of priority in relation to other licences, unless the Warden decreed otherwise. This priority was maintained through renewal of the licence. The holder of the earliest-dated, or highest priority licence could require the holders of any or all other licences, or other rights (in the case of the Water and Soil Conservation Act 1967 and the Resource Management Act 1991), to reduce or cease their taking of water until his licence was satisfied. Similarly, the holder of the second-priority licence could require everyone, except the holder of the first priority licence, to reduce or cease their taking of water until his licence was satisfied. And so on down through the priority ranking. It should also be noted that no licence gave any right to take water that another person might reasonably require for his own domestic use or for his stock.

¹⁰ The remaining 17 deemed permits are permits to dam water. No deemed permits currently remain that authorise the discharge of water.

¹¹ The term "primary allocation" is further explained in paragraphs 59 to 65 and paragraphs 81 to 83 of my evidence.

- 43 After 1 October 2021, resource consent to take water is required in place of a deemed permit.

Significant resource management issues that PC7 is seeking to address

- 44 There are five significant resource management issues that PC7 seeks to address, all of which are strongly interlinked. These resource management issues are:

- (a) Lack of understanding about the state of the region's freshwater resources, and the effect of water takes on these resources;
- (b) Uncertainty around the environmental outcomes, limits and environmental flows that need to be established in accordance with the NPS-FM 2020;
- (c) Allocation that may not prioritise first the health and well-being of water bodies and freshwater ecosystems;
- (d) Inadequacy of the current planning framework in terms of giving effect to the objectives and policies of the NPS-FM 2020; and
- (e) The pending expiry of a large number of water permits and growing demand for water (amidst uncertainty around future environmental outcomes and inadequacy of the current planning framework in terms of giving effect to the NPS-FM 2020).

I briefly elaborate on each of these in the following paragraphs.

Lack of understanding about the state of the region's freshwater resources, and the effect of water taking on these resources

- 45 A sound understanding of the region's freshwater bodies and their values is needed to:
- (a) develop a freshwater planning regime that sustainably manages the region's natural and physical resources; and
 - (b) ensure that decisions around the use of the region's freshwater resources do not, individually or cumulatively, have a detrimental impact on the health of these resources or the diverse values supported by them.
- 46 There is currently a lack of reliable data and insufficient knowledge about:

- (a) the ecology of Otago's lakes, rivers and wetlands (i.e. the distribution, diversity and abundance of aquatic species and ecosystems);
- (b) the distribution of other values supported by groundwater and surface water; and
- (c) the hydrology of many of the region's freshwater bodies (i.e. natural state of the water body, flow variation and duration, interaction with groundwater or connectedness with other water bodies).

47 *Schedule 1A: Natural Values* of the Water Plan lists specific ecosystem and natural character values for catchments in Otago, while Water Plan *Schedule 1AA: Otago resident Native Freshwater Fish – Threat Status* provides an overview of the threat status of resident native fish species in the region.¹² Both Schedules are considered to be outdated and incomplete.¹³ Further research is required to better understand the current and historic distribution of these values and how these values can be impacted by various stressors, including the direct and indirect effects of taking water.

48 A similar situation presents itself with regard to the current state of knowledge around the cultural values that are supported by the region's freshwater bodies. The NPS-FM 2020 provides for the protection of freshwater taonga and Māori values and recognises mahika kai as a compulsory value.¹⁴ The Water Plan currently includes a schedule, *Schedule 1D: Schedule of spiritual and cultural beliefs, values and uses of significance to Kai Tahu*, that provides an overview of cultural values associated with the region's freshwater bodies. However, this schedule is also outdated and further engagement with tākata whenua, as the

¹² *Schedule 1A: Natural Values* of the Water Plan identifies the following values for specified catchments:

- ecosystem values,
- outstanding natural features or landscapes,
- areas of significant indigenous vegetation and habitat of indigenous fauna, and
- areas with a high degree of naturalness.

¹³ Prof. Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment, p29.

¹⁴ Under Clause 3.9 of the NPS-FM compulsory values are values that apply to every FMU and for which the regional council must identify environmental outcomes. The outcomes must be included as an objective, or multiple objectives with its plan(s).

expert knowledge holders for cultural values, is needed to identify all relevant Māori freshwater values in the region.

- 49 While ORC currently manages a network that permanently monitors flows and levels in many of the region's larger catchments and aquifers, this network has large gaps with many of the region's ephemeral water bodies not being monitored and various aquifers having no groundwater level monitoring bore. In addition, permanent monitoring sites often tend to be concentrated at the mouth of the catchment's main stem, but often little or no flow data is available for smaller tributary streams.
- 50 Most catchments and aquifers that are included in ORC's flow or groundwater monitoring network record flows or levels that have been modified to varying degrees by water takes, while others have been altered by damming activities and/or flow augmentation (e.g. Teviot River, Taieri River, Earnsclough/Fraser River, Manuherekia River, Roaring Meg, Hawea River, Clutha River, Bannockburn). For many of these water bodies a reliable, long term flow or groundwater level data record or a naturalised flow record is currently not available.¹⁵
- 51 Actual water taking and demand for water is also currently poorly understood for various reasons:
- (a) In various Central Otago catchments (e.g. Bannockburn, Arrow, Cardrona, Manuherekia, Taieri) large quantities of water are still being taken and diverted from streams and rivers into water races. While most of these water races are currently being metered, the take records do not always reflect actual water taking due to by-washes or irrigation run-off into tributaries.
 - (b) Despite the growing number of consented water takes that are being metered, the length of the water take records and quality of the metered data vary, making it more difficult to establish a comprehensive picture of water takes and use under different climate conditions.

¹⁵ The naturalisation of river flows is the process of 'adding back' the surface water takes and hydraulically connected groundwater takes to, and removing any discharges from, a flow record. Naturalisation is a process to recreate the flow record as if the upstream water takes or discharges did not take place.

- (c) There is no legal requirement to meter permitted takes and smaller consented water takes (less than 5 l/s).¹⁶ This lack of take data or a reliable model that estimates aggregated water take rates makes it difficult to estimate the cumulative impacts of these smaller takes on water flows/levels and their contribution to the total quantity of water that is being taken from water bodies.
- (d) Water metering records do not always reflect actual water use or water needs. In Central Otago large quantities of the water taken are still distributed using an extensive network of open races, where a proportion of the water taken is likely to be lost through race leakage, evapotranspiration and by-wash.
- (e) ORC currently does not hold a complete and up-to-date data set on land use and size of irrigated areas. This makes it difficult to estimate actual water needs (using efficient distribution and application infrastructure) for different land uses.

Uncertainty around the environmental outcomes, limits and environmental flows that need to be established in accordance with the NPS-FM 2020

52 Under the NPS-FM 2020 a regional councils is required to:

- (a) Identify Freshwater Management Units (FMUs) for its region;¹⁷
- (b) Identify long-term visions for each FMU, to be included as objectives in its RPS; and¹⁸
- (c) Develop:
 - (i) plan objectives that describe the environmental outcomes sought for all compulsory values and any other values identified as applying to an FMU; and¹⁹
 - (ii) limits on resource use, environmental flows and levels and take limits for each FMU;

all of which are to be included in its regional plan(s).²⁰

¹⁶ Regulation 4, Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.

¹⁷ Clause 3.8, NPS-FM 2020.

¹⁸ Clause 3.3, NPS-FM 2020.

¹⁹ Environmental outcomes stated as objectives must also be developed for each of the five individual components of ecosystem health.

²⁰ Clauses 3.9 - 3.17, NPS-FM 2020.

- 53 An FMU is a water body or multiple water bodies that ORC determines is the appropriate scale for managing water, including the setting of freshwater objectives and limits. This can be a river catchment, part of a catchment, or a group of catchments.
- 54 The Water Plan currently does not identify FMUs. However, in April 2019, ORC adopted the following FMUs:
- (a) Five freshwater management units for the Otago region:
- the Clutha/Mata-Au FMU,
 - Taieri FMU,
 - North Otago FMU,
 - Dunedin Coastal FMU;
 - Catlins FMU; and
- (b) A further delineation of the Clutha/Mata-Au FMU into five sub-units, called rohe, being Upper Lakes, Dunstan, Manuherekia, Roxburgh and Lower Clutha rohe.^{21,22}
- 55 Over the months of October and November 2020, ORC has engaged with communities within each FMU and tākata whenua to:
- (a) Consult on the FMU boundaries;
- (b) Develop long-term visions that will be included as objectives in the new RPS for Otago, now scheduled to be notified by June 2021.²³
- 56 For environmental outcomes, limits on resource use, environmental flows and levels and take limits for each FMU to be set in accordance with the NPS-FM 2020 regional councils must follow a prescribed process, the various steps of which are outlined in the National Objectives Framework (**NOF**) of the NPS-FM 2020.²⁴ The NPS-FM 2020

²¹ A map showing the FMUs and Rohe for the Otago Region is attached to my evidence as **Attachment G**.

²² <https://www.orc.govt.nz/media/6677/council-mtg-agenda-20190403.pdf>.

²³ The review of the RPS was commenced in November 2019 and was on track for a notification decision in November 2020 in compliance with the Minister for the Environment's recommendation. The requirements of the NPS-FM 2020 (which came into force on 3 September 2020) stipulate that an RPS must include long-term visions at FMU, part FMU, or catchment level. With the agreement of the Minister the timeframe for notification of the RPS has now been delayed to June 2021 to allow for these long-term visions to be developed in accordance with the relevant NPS-FM 2020 requirements.

²⁴ Subpart 2, NPS-FM 2020.

further requires that for each of these process steps the regional council must engage with communities and tākata whenua and apply a hierarchy of obligations within the fundamental concept of Te Mana o te Wai, whereby freshwater resources are managed in a way that prioritises:

- (a) first, the health and wellbeing of water bodies and freshwater ecosystems; and
- (b) second, the health needs of people (such as drinking water); and
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being.²⁵

- 57 The Water Plan is the primary document that seeks to manage water within the Otago region's boundaries. The Water Plan was notified in 1998 and became operative on 1 January 2004. Since then there have been a number of changes introduced which, in broad terms, have established flow and allocation regimes for some surface water catchments, groundwater allocation regimes for some aquifers, provisions to manage water quality issues, and most recently provisions to delay the commencement of some unworkable water quality rules.
- 58 The Water Plan includes seven chapters that are concerned with the management of freshwater bodies in the Otago region.²⁶ Each of these chapters sets out issues, objectives and policies and, in some instances, anticipated environmental results for managing freshwater.²⁷
- 59 The policies in Chapter 6 provide for the setting of:
- (a) allocation limits for surface water and connected groundwater (as defined under Policy 6.4.1A(a), (b) and (c));
 - (b) minimum flows and residual flows for surface water and connected groundwater; and

²⁵ Clause 3.7, NPS-FM 2020.

²⁶ These chapters are Chapter 4 - Kai Tahu ki Otago Water Perspective, Chapter 5: Natural and Human Use Values of Lakes and Rivers, Chapter 6: Water Quantity, Chapter 7: Water Quality, Chapter 8: The Beds and Margins of Lakes and Rivers, Chapter 9: Groundwater and Chapter 10: Wetlands.

²⁷ An overview of the key planning mechanisms for managing water in Otago is included in paragraphs 3.12 to 3.40 of the Key Issues Report for Plan Change 7 to the Regional Plan Water for Otago, which has been provided to the Court by the EPA.

- (c) allocation limits and restriction levels for aquifers.
- 60 Tailored primary allocation limits and minimum flows for specified catchments in Otago are set in Schedules 2A and 2B of the Water Plan, while tailored allocation limits (known as maximum allocation volumes) and take restrictions for specified aquifers in the region are set in Schedules 4A and 4B of the Water Plan.
- 61 Schedule 2A, 2B, 4A and 4B limits and flows/levels have been developed in consultation with tākata whenua and the community and in accordance with the plan development process outlined in Schedule 1 of the RMA. However, these limits and flows/levels were included in the Water Plan prior to the introduction of the NOF process and hence have not been developed in accordance with this process. Therefore, it is currently not clear whether the 2A, 2B, 4A and 4B limits and flows/levels would achieve the environmental outcomes that would be determined through a NOF process in accordance with the hierarchy of obligations set out in clause 1.3(5) and required by clause 3.2(2)(c) of the NPS-FM 2020.
- 62 Further, the Water Plan objectives that currently guide the setting of allocation limits and minimum flows apply across the entire region and are not catchment specific. Like the minimum flows and allocation limits, discussed in paragraphs 59 to 61 above, these objectives have not been determined in accordance with the NOF process and it is unclear whether they give effect to the overarching principle of Te Mana o te Wai, as some objectives are seemingly discordant.²⁸
- 63 For catchments and aquifers not listed in the Water Plan's Schedules, the Water Plan sets a "default" allocation limit under Policies 6.4.2(a) and 6.4.10A2 respectively. This limit is determined as follows:
- (a) For surface water bodies (and connected groundwater): 50% of the catchment's 7-day Mean Annual Low Flow (**MALF**)²⁹; and

²⁸ For example, Objective 6.3.1, seeks to retain flows that protect the life-supporting capacity of aquatic ecosystems and the natural character of Otago's rivers, while Objective 6.3.2 seeks to provide for the water needs of Otago's primary and secondary industries, and community domestic water supplies.

²⁹ The Glossary of the Water Plan defines the seven-day ("7-day") mean annual recharge as follows: *The seven-day low flow in any year is determined by calculating the average flow over*

- (b) For groundwater (as defined under Policy 6.4.A1(d)): 50% of the aquifer's mean annual recharge (**MAR**)³⁰.
- 64 There is no robust scientific justification that supports the default allocation limits set under the Water Plan.
- 65 The "default" primary allocation limit of 50% MALF was determined through an Environment Court process and included in the Water Plan through a consent order issued by the Environment Court in 2003.³¹ The Environment Court's decision does not set out the reasoning for applying a 50% of MALF principle. There is currently no technical guidance available that supports the setting of a regionwide default primary allocation limit, although some guidance around the suitability of the 50% of MALF default limit can be taken from the *Draft guidelines for the selection of methods to determine ecological flows and water levels* (MfE, 2008). The guidelines state that "*abstraction of more than 40% of MALF, or any flow alteration using impoundments, would be considered a high degree of hydrological alteration, irrespective of region or source of flow*".³² More recent studies however seem to suggest a lower allocation limit appears to be more appropriate.³³
- 66 A similar situation presents itself with regard to the management of groundwater (as defined under Policy 6.4.A1(d)), as there is little or no evidence to support the use of 50% of MAR as an appropriate default maximum allocation limit for the management of groundwater resources.
- 67 In summary, the current limits and environmental flows/level and the objectives and policies that guide their setting need to be reviewed and, where appropriate, amended, as part of:

seven consecutive days for every seven consecutive day period in the year, and choosing the lowest.

³⁰ The Glossary of the Water Plan defines the mean annual recharge as follows: *The quantity of groundwater recharge as calculated by Schedule 4D.*

³¹ *Otago Water Resource Users Group v Otago Regional Council* EnvC Christchurch C88/2003, 1 July 2003.

³² Ministry for the Environment (2008) *Draft guidelines for the selection of methods to determine ecological flows and water levels*. Section 2.2.1 Components of hydrological alteration and flow variability.

³³ Hayes, J.; Hay, J.; Gabrielson, R.; Goodwin, E.; Jellyman, P.; Booker, D.; Wilding, T.; Thompson, M., (2019) *Review of Rationale for assessing fish flow requirements and setting ecological flow and allocation limits for them in New Zealand.*

- (a) the full review of the operative Regional Plan: Water for Otago under s79 of the RMA;
 - (b) the development of a new regionwide framework for managing land and freshwater including regionwide objectives, policies and methods; and
 - (c) the staged development of separate FMU and Rohe chapters with FMU- or Rohe-specific limits on resource use, environmental flows and levels and take limits and other area-based provisions.
- 68 The new region-wide objectives, strategic policies, region-wide activity policies, and individual FMU and Rohe chapters will form part of an integrated land and freshwater management regime for Otago which is to be publicly notified by 31 December 2023.

Allocation that may not prioritise first the health and well-being of freshwater bodies and ecosystems

- 69 Fourteen of Otago's estimated 140 catchments have "tailored" primary allocation limits set in Water Plan Schedule 2A. As stated above in paragraphs 61 and 62 of my evidence, these limits have not been developed in accordance with the NOF process outlined in the NPS-FM 2020 and it is not certain whether they meet the requirements of the NPS-FM 2020.
- 70 Table 1 below shows the primary allocation limits set for individual catchments in Schedule 2A of the Water Plan, as well as the consented primary allocation for these catchments as at 7 December 2020.

Table 1: primary allocation limits and consented primary allocation in Schedule 2A catchments.

Catchment Name	Schedule 2A Primary Allocation Limit (l/s)	Consented Primary Allocation (l/s)
Lake Hayes Catchment	260	130.89
Luggate Catchment	500	1,100.39
Lake Tuakitoto Catchment	30	0
Pomahaka River	1,000	1,359.93
Waitahuna Catchment	650	270.80
Waiwera River	150	128.20
Manuherekia Catchment	3,200	28,986.271
Water of Leith Catchment	140	303.50
Kakanui Catchment	750	926.04
Shag Catchment	280	269.30
Trotters Catchment	15	15
Waianakarua Catchment	190	183.60
Welcome Creek Catchment	600	521.00
Taieri Catchment	4,860	24,748.78

- 71 While in many catchments in Otago the consented allocation is known to exceed actual water taking, and while the current Schedule 2A limits may not necessarily correspond with any take limits that would be set if this limit was set in accordance with the NOF process, Table 1 illustrates that the levels of allocation from some freshwater bodies, and particularly some in the Central Otago subregion, are high in comparison to the current primary allocation limits that have been set in the Water Plan.
- 72 It is not possible to determine whether there is over-allocation as defined by the NPS-FM 2020. This is because over-allocation, in relation to both the quantity and quality of freshwater is defined as the situation where:

- (a) resource use exceeds a limit; or
- (b) if limits have not been set, an FMU or part of an FMU is degraded or degrading.

73 A limit on resource use means the maximum amount of a resource that is able to be used while still achieving a relevant target attribute state (see clauses 3.12 and 3.14) and a take limit means a limit on the amount of water that can be taken from an FMU or part of an FMU, as set under clause 3.17.³⁴ The Council has not undertaken the implementation steps in the NPS-FM 2020 to set these limits, including active engagement with tākata whenua and communities, and the technical work needed to support the limit setting process under the NPS-FM 2020.

74 However, the figures in Table 1 show that in parts of Otago there is a risk that the current levels of allocation do not first prioritise the health and well-being of water bodies and freshwater ecosystems. This warrants a precautionary approach with regard to the renewal of existing consents for surface water takes.

Inadequacy of the current planning framework in terms of giving effect to the objectives and policies of the NPS-FM 2020

75 In paragraphs 59 to 67 above I have already outlined some of the issues with the allocation limits, minimum flows and objectives for managing freshwater in the region currently stated in the Water Plan. However, there are other aspects of the Water Plan that are problematic, such as:

- (a) The Water Plan does not provide for the setting of allocation limits and minimum flows for the Clutha River/Mata-Au main stem and source lakes;
- (b) The Water Plan does not set minimum flows and restriction levels for many of the region's freshwater resources;
- (c) The planning framework in the Water Plan does not allow for catchments to be identified as "over-allocated" (as defined by the NPS-FM 2020);

³⁴ NPS-FM 2020, Clause 1.4.

- (d) The current planning framework would be inadequate to ensure the phasing out of over-allocation; and
- (e) The current planning framework has created an expectation of granting consents with long-term durations, thereby inhibiting the timely achievement of the outcomes that will be established in a new planning framework

- 76 These issues are briefly discussed in the paragraphs below.
- 77 Policy 6.4.1 of the Water Plan stipulates that the policy framework for setting allocation limits and minimum flows in Chapter 6 does not apply to surface water takes (and connected groundwater takes) from Lakes Dunstan, Hawea, Roxburgh, Wanaka or Wakatipu, or the main stems of the Clutha River/Mata-Au or Kawarau River, which together constitute the region's largest freshwater resource. As a result, the Water Plan currently does not set a limit on the allocation of water from any of these water bodies and does not provide any policy guidance for the setting of environmental flows or levels for any of these water bodies.
- 78 At present minimum flows have been included in Water Plan Schedule 2A for only 14 of the approximately 140 catchments in Otago, while restriction levels have been set in Water Plan Schedule 4B for only 5 aquifers in the region. For water bodies outside these schedules, no minimum flows or restriction levels have been determined.
- 79 The NPS-FM 2020 requires that *"freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation avoided."*
- 80 The allocation framework within the operative Water Plan only identifies catchments to be either *"under allocated"* or *"fully allocated"*.
- 81 Policy 6.4.2 determines the relevant primary allocation limit for a catchment to be the greater of the following:
- (a) The limit specified in Schedule 2A, or where no limit is identified in Schedule 2A, 50% of MALF; or
 - (b) The sum of the consented primary allocation takes from that catchment.

- 82 Where the sum of the consented primary allocation takes from a catchment is still less than the Schedule 2A limit or 50% of MALF (whichever one applies) more water can be applied for as primary allocation from the catchment (as a restricted discretionary activity under Rules 12.1.4.2 and 12.1.4.4). In catchments where the amount of water that has been allocated as primary allocation has either reached or exceeded the Schedule 2A limit or 50% of MALF, no new consents for the taking of water as primary allocation can be granted, unless the application is made by a person holding an existing consent to take that water.³⁵
- 83 As the status of catchments where the sum of the consented primary allocation takes exceeds the default limit of 50% of MALF or the limit defined in Schedule 2A (whichever one applies) is always deemed to be fully allocated under the provisions of the Water Plan, the Water Plan does not formally identify the concept of “over-allocation³⁶”.
- 84 The Water Plan currently includes a suite of policies, commonly referred to as “sinking-lid” policies, aiming to gradually reduce the quantity of water that:
- (a) has been allocated under primary allocation consents in catchments where Policy 6.4.2(b) applies; and
 - (b) has been allocated under consents from aquifers where the assessed maximum annual take from all consented takes from that aquifer exceeds the default limit of 50 % MAR or the Schedule 4A limit.
- 85 The “sinking-lid” policies provide ORC with a range of instruments to reduce the consented allocation and water use. However, their effectiveness varies and even collectively these policies do not ensure

³⁵ Prohibited Activity Rule 12.0.1.1 prohibits an application to take water within primary allocation in catchments where the sum of consented takes exceeds the default primary allocation limit of 50% of MALF or the primary allocation limit included in Schedule 2A, unless the application is made by a person who holds an existing consent to take that water. Prohibited Activity Rule 12.0.1.2 prohibits an application to take water within primary allocation if the take applied for would cause the sum of the consented water takes to exceed the relevant limit established under Policy 6.4.2.

³⁶ Clause 1.4 of the NPS-FM 2020 defines over-allocation as follows:

Over-allocation, in relation to both the quantity and quality of freshwater, is the situation where:

(a) resource use exceeds a limit; or

(b) if limits have not been set, an FMU or part of an FMU is degraded or degrading.

that over time the allocation from that source water body will be reduced to tailored allocation limits and flows/levels set in the Schedules 2A, 2B, 4A and 4B of the Water Plan and “default” allocation limits determined under the Plan’s policies. The key reason for this is that the sinking-lid policies primarily rely on voluntary actions of existing consent holders or the removal of any unused or “paper” allocation held in existing water permits.

- 86 While Policy 6.4.2(b)(ii)(4)-(6) seeks to avoid the reallocation of primary allocation from expired, lapsed or surrendered consents, Policies 6.4.2A, 6.4.10A4 and 6.4.18 intend to ensure that unused allocation is not being re-allocated in consents for new or existing takes. Although, policies 6.4.2A, 6.4.10A4 and 6.4.18 may assist with reducing the consented allocation from the source water body to a level that better reflects actual water taking, the reduction in allocation thus achieved does not readily translate to an improvement in the health of the source water body. In fact, as recognised by Professor Skelton’s report, these policies incentivise a “use it or lose it” behaviour, encouraging water users to ramp up their actual water taking in order to be able to demonstrate higher take records when applying for replacement consents.³⁷
- 87 Other sinking lid policies, such as Policies 6.4.0A, 6.4.0C and 6.4.2AA intend to achieve a reduction in the quantity of water actually taken under consents (as opposed to reducing “paper” allocation). However, the effectiveness of these policies is also uncertain as they fail to set clear standards and are “non-directive”.³⁸
- 88 Policy 6.4.19 addresses consent durations for the take and use of water. The policy does not provide strong direction on the duration for which new consents should be granted. Instead Policy 6.4.19 sets out a number of matters to consider. The explanation to the policy states that *“the duration of each resource consent to take and use water should*

³⁷ Prof. Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment. p29.

³⁸ For example, Policy 6.4.0A requires that the quantity of water allocated in any new consent does not exceed what is required for the purpose of use, but the Water Plan does not provide clear guidance or set a clear standard for determining what constitutes efficient water use for diverse land uses. Policies 6.4.0C and 6.4.2AA provide for the use of alternative water sources or the reallocation of primary allocation consents as supplementary allocation, but as currently worded these policies promote these measures, rather than requiring this to occur where such opportunities would exist.

have regard to the particular circumstances of the activity and its likely environmental effects, but there needs to be good reason for Council to reduce the duration of consents from that required for the purpose of the use". This has led to an expectation of long-term consent durations as the explanation to the policy has been interpreted by applicants as providing for a 35-year duration as a starting point and that the Council needs good reason to reduce the duration.

- 89 Section 128(1)(a) of the RMA specifies that a consent authority may review the conditions of consent where there is provision for review in the consent, while s128(1)(b) allows for a review to occur to align the levels, flows, rates or standards set by a regional rule with consent conditions. Although s128 provides for the use of consent condition review processes to ensure existing consented water takes are made subject to minimum flow provisions and may go some way to addressing over-allocation, the use of review processes may not be able to phase out over-allocation in its entirety or in all circumstances, as the Council does not have the power to cancel a consent upon review, and would only be able to reduce the amount taken by a certain extent.
- 90 The requirement to consider the financial viability of the activity under s131 of the RMA further constrains the ability of the Council to consider a consent review and impose environmental conditions to safeguard the health of the source water body.
- 91 The tendency to grant long term resource consents under the current planning framework, often authorising unsustainable consented take rates and volumes that may be higher than necessary for actual water needs based on efficient use, is likely to frustrate the efficient and timely transition towards an NPS-FM 2020 compliant freshwater management regime.

Pending expiry of water permits and growing demand for water

- 92 Amidst uncertainty around the future environmental outcomes that will need to be established in accordance with the requirements of the NPS-FM 2020 and concerns about the inadequacy of the current planning framework in terms of giving effect to the NPS-FM 2020, a substantial number of resource consent applications are likely to be lodged by

31 December 2025, the date by which a new LWRP is expected to be operative. There are two reasons for this:

- (a) The expiry of remaining deemed permits and other water permits; and
- (b) The growing demand for water.

93 As discussed earlier in paragraph 42 of my evidence, on 7 December 2020 there were 334 deemed permits remaining in Otago all of which will expire on 1 October 2021 under s413(3) of the RMA. After 1 October 2021, resource consent to take water is required in place of a deemed permit.

94 With a further 218 consumptive surface water takes (with combined allocation of 15,417 l/s) and 17 non-consumptive surface water takes (combined non-consumptive allocation of 18,319 l/s) expiring by 31 December 2025, an estimated total of 552 surface water permits are expected to expire before 1 January 2026.^{39,40}

95 In addition, the demand for water is increasing in Otago due to rural development and population growth.

96 Many of Otago's catchments, especially those located in semi-arid and drought-prone parts of the Upper Clutha, Central Otago and North Otago sub-regions, are characterised as "water short". This means that the water yield within these catchments is often insufficient to meet the demand for either instream values or out of stream uses.

97 Often these catchments no longer have any further surface water available as primary allocation; the type of allocation that has the highest

³⁹ Of the 317 deemed permits that authorise the take and use of water, 17 have already been replaced by resource consents that have been granted, but not yet exercised. A further 83 of those 317 deemed permits have applications which are currently being considered by the regional council.

⁴⁰ The actual number of applications for new water permits between now and 31 December 2025, is difficult to predict for various reasons:

- Some permit holders may choose not to renew their current permit;
- Some water permit holders whose permit expires after 1 January 2026 may still want to apply for a new consent to accommodate one or more changes to their operation (e.g. change of point of take, change in use); and
- In parts of the region more water can be allocated through resource consents to take and use water.

reliability of supply.⁴¹ In these areas further agricultural intensification and irrigation expansion is being supported by a shift from traditional irrigation methods (such as from border dyke and wild flooding to more efficient spray irrigation), as well as the increasing use of stored water, groundwater and water from the Clutha River/Mata-Au.⁴² As a result, recent years have seen an increase of:

- (a) Resource consent applications to take groundwater;
- (b) Resource consent applications to take surface water (and connected groundwater) from the region's largest surface waterbody, the Clutha River/Mata-Au; and
- (c) Water harvesting, often authorised under supplementary allocation takes, allowing for water to be taken for storage at flow levels higher than those that allow for water to be taken as primary allocation.⁴³

⁴¹ Primary allocation has the highest reliability of supply because primary allocation takes are typically subject to the lowest minimum flow.

⁴² In North Otago much of the agricultural intensification and irrigation expansion in recent years has been enabled by the supply of water from the Waitaki River.

⁴³ In catchments where no more primary allocation is available, more surface water can be allocated as supplementary allocation. Supplementary allocation consents authorise the take of water subject to a higher minimum flow than primary allocation takes. Supplementary allocation consents are usually granted for water harvesting in winter and spring when river flows are much higher.

Policy 6.4.9 of the Water Plan sets up the policy framework for allocating supplementary allocation. There are three methods for determining supplementary allocation minimum flows

1. Policy 6.4.9(c) introduces Schedule 2B, which sets out minimum flows for supplementary allocation (which may be in blocks) for specified catchments. These supplementary allocation blocks and supplementary minimum flows in Schedule 2B have been developed through a process of community consultation in accordance with the First Schedule of the RMA.
2. Policy 6.4.9(a) provides guidance for catchments not included in Schedule 2B and determines supplementary allocation based on the formula included in the Explanation to Policy 6.4.9:

$$\text{Supplementary minimum flow} = \text{Assessed actual take} + \text{Supplementary allocation(s)}$$

which achieves 50:50 flow sharing between supplementary taking and what is left in the catchment

If the "assessed actual take" cannot be determined (e.g. due to a lack of metering data), the supplementary minimum flow can be determined using an alternative formula in Method 15.8.1A.2:

$$\text{Supplementary minimum flow} = \text{Primary allocation} + \text{Supplementary allocation(s)}$$

3. In some circumstances it may be appropriate to provide for supplementary allocation on an alternative basis, as an exception to Policy 6.4.9(a). Policy 6.4.9(b) provides for these exceptional situations and allows for the granting of consents for supplementary allocation provided the take has:
 - (i) no measurable effect on the flow at any Schedule 2 monitoring site at flows at or below any minimum flow applying to primary allocation; and
 - (ii) no more than minor adverse effect on any aquatic ecosystem value or natural character of the source water body; and
 - (iii) no adverse effect on any lawful existing take of water.

- 98 Population data also indicates that Otago's population is increasing, with a 2.4% growth recorded across the region between June 2019 and June 2020, compared to an average of 2.1% population growth for the entire nation over the same period. Population data collected over the same period further shows that the biggest growth took place in Queenstown Lakes (up 5.8%/year) and Central Otago districts (up 3.5%/year).⁴⁴ The population growth is likely to result in increased water demand in various parts of the region.
- 99 Further to this, climate change is likely to have an impact on both water demand and water availability due to increased temperatures and changes in precipitation patterns. Otago temperatures are projected to increase, compared to 1995, by 0.6°C to 0.9°C in 2040 and by 0.6°C to 2.8°C by 2090, and the number of days with temperatures over 25°C will increase (i.e., by 4 - 25 days per year) by 2090. Snowfall is expected to significantly decrease, with shorter snow cover period (especially at lower elevations) and earlier spring melt could result in a change in seasonal river flow patterns.⁴⁵
- 100 While population growth and land-use intensification in urban and rural environments have increased demand for water for drinking water, irrigation and other economic uses, they can also have an impact on the quality of the region's freshwater resources, through increased risk of urban and rural contaminant discharges (e.g. discharges of human sewage, stormwater, nutrients and sediments), and harm freshwater ecosystems.⁴⁶
- 101 With approximately a quarter of all water permits expiring before 31 December 2025, and in the absence of PC7, a large number of new resource consents to take water are likely to be granted under the planning framework of the current Water Plan. The issues outlined above illustrate that the current planning framework allows for long term resource consents to be granted authorising unsustainable consented

⁴⁴ Statistics NZ. <https://www.stats.govt.nz/information-releases/subnational-population-estimates-at-30-june-2020>

⁴⁵ Ministry for the Environment. 2018. Wellington (NZ): Climate change projections for the Otago region. <https://www.mfe.govt.nz/climate-change/likely-impacts-of-climate-change/how-could-climate-change-affect-my-region/otago>

⁴⁶ Urban discharges include stormwater discharges, treated wastewater

take rates and volumes that may be higher than necessary for actual water needs based on efficient use, and thereby can frustrate the efficient and timely transition towards an NPS-FM compliant freshwater management regime.

The intent of PC7

102 The intent of PC7 is to allow for an efficient and timely transition to a new land and freshwater management regime that gives full effect to the NPS-FM 2020 by:

- (a) establishing a new regulatory framework for the cost-effective and efficient assessment of resource consent applications to renew:
 - (1) deemed permits that are currently authorising the take, diversion, damming or discharge of water in Otago and that are about to expire on 1 October 2021 under s413(3) of the RMA; and
 - (2) other water permits for surface water and connected groundwater takes expiring prior to 31 December 2025, the date by which a new Otago Land and Water Regional Plan (LWRP) is expected to be made operative; and
- (b) providing stronger policy direction for limiting the consent duration for resource consents for:
 - (1) the replacement of any existing deemed permits and any other water permits for the take and use of surface water, groundwater and connected groundwater expiring prior to 31 December 2025; and
 - (2) any new surface water, groundwater, and connected groundwater takes (not authorised by a current water permit).

103 In addition to providing policy direction for limiting the consent duration, PC7 also provides other practical mechanisms that seek to further enable the transition to long-term sustainable management of Otago's freshwater resources. These are, in summary:

- (1) Reducing allocation and avoiding the re-allocation of unused ("paper") water by limiting the instantaneous rate of take and the volume of water allocated in resource consents for the

replacement of existing water permits to the quantity of water that has been used in the past;

- (2) Requiring minimum flow, residual flow or take cessation conditions on existing consents to be carried over as consent conditions on any replacement consents, and
 - (3) Reducing the risk of further environmental degradation and unforeseen economic hardship for water users, by discouraging further investment in irrigation expansion or land use intensification until a new NPS-FM 2020 compliant planning framework has been introduced (that will provide water users with clarity around future availability of water allocation and the environmental conditions under which water can be taken and used).
- 104 PC7 recognises that in light of the current knowledge gaps around the state of the environment and the distribution of ecosystem values and the uncertainty around the environmental outcomes that will need to be achieved under the NPS-FM 2020, it is appropriate to adopt a precautionary approach towards the management of freshwater, by curtailing the potential for further increases in water use and further investment in land uses that rely on the consumptive use of water, until a fit for purpose freshwater management framework has been set under the new LWRP.

Relationship between PC7 and existing Water Plan provisions

- 105 PC7 proposes to insert in the current Water Plan a discrete set of provisions in a new chapter 10A.
- 106 The proposed PC7 provisions require applications for water permits to replace deemed permits or to replace water permits that expire before 31 December 2025 to be assessed in accordance with the objective, policies and rules set out in Chapter 10A.
- 107 As stated above in paragraph 102(b)(2), PC7 also seeks to provide policy direction on the consent duration for resource consents for new surface water, connected groundwater and groundwater takes that are not authorised by an existing deemed permit or other water permit. Applications for these takes will continue to be assessed in accordance

with the provisions in Chapters 5, 6, 12 and 20 of the Water Plan, except that the duration of any water permit will be determined in accordance with the policies in Chapter 10A (irrespective of Policy 6.4.19).

Overview of PC7 provisions

- 108 Proposed Objective 10A.1.1 articulates the key outcome that PC7 is seeking to achieve, which is to facilitate, at least in part, the transition towards a new long term sustainable freshwater management framework, by introducing an interim planning framework for the management of water permits for:
- (a) takes of surface water, connected groundwater and groundwater that are not currently authorised by an existing water permit; and
 - (b) the replacement of deemed permits, including deemed permits for the damming of water, and water permits to take and use surface or groundwater connected to surface water, where those water permits expire prior to 31 December 2025.
- 109 As notified, Objective 10A.1.1 reads:
- 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.*
- 110 Proposed Policy 10A.2.1 provides policy direction for the assessment of resource consent applications for the replacement of deemed permits and any other permits for the take and use of surface water (including connected groundwater) expiring prior to 31 December 2025 and sets out under what conditions the consent authority can grant replacement resource consents for existing deemed permits or other permits for the take and use of surface water (including connected groundwater) expiring prior to 31 December 2025.

- 111 This policy as notified directs decision-makers to avoid granting replacement consents, except where all of the following five conditions are being met:
- (a) The deemed permit or water permit being replaced is a valid permit; and
 - (b) There is no increase in the size of the area under irrigation (where the take is being used for irrigation purposes); and
 - (c) There is no increase in the instantaneous rate of abstraction, and
 - (d) Any existing residual flow, minimum flow or take cessation conditions is being applied to the new permit; and
 - (e) There is a reduction in the overall volume allocated for abstraction in the new permit.
- 112 As notified, Policy 10A.2.1 reads:
- 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.*
- 113 The remaining two policies proposed in the new section 10A.2 provide policy direction for consent duration.
- 114 Proposed Policy 10A.2.2 applies to any resource consent application for:

- (a) the replacement of an existing deemed permit and any other water permits for the take and use of surface water, connected groundwater (as defined under Policy 6.4.A1(a), (b) and (c)) and groundwater (as defined under Policy 6.4.1A(d)); and
 - (b) any new (i.e. not previously authorised) take and use of surface water, connected groundwater and groundwater.
- 115 Proposed Policy 10A.2.3 applies to resource consent applications to replace existing deemed permits and surface water takes (including takes of connected groundwater) that expire prior to 31 December 2025.
- 116 Both policies direct decision-makers to only grant resource consents for the take and use of water for a consent duration of no more than 6 years. However, proposed Policy 10A.2.3 allows for an exception whereby new resource consents to replace existing deemed permits and surface water permits expiring before 31 December 2025 can be granted for a term up to 31 December 2035 provided the activity will have no more than minor adverse effects (including no 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.
- 117 As notified, Policy 10A.2.2 reads:
- 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.*
- 118 As notified, Policy 10A.2.3 reads:
- 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.

- 119 PC7 also proposes to insert two new rules to implement these policies.
- 120 Proposed Rule 10A.3.1.1 will provide deemed permit holders and other water permit holders whose existing water permit is expiring before 31 December 2025 with an efficient and cost-effective pathway to apply for a short-term consent to take and use surface water (including connected groundwater). Under this rule water permit holders can apply for a replacement consent, to be processed as a controlled activity on a non-notified basis, provided they meet all the following conditions:⁴⁷
- (a) The consent duration sought in the resource consent application does not exceed six years; and
 - (b) The deemed permit or water permit that is being replaced is a valid permit; and
 - (c) Where the resource consent application to replace an existing deemed permit or water permit seeks to continue to take and use water for irrigation purposes, the area that will be irrigated under any replacement consent will not exceed the area that was historically being irrigated; and
 - (d) The quantities of water applied for (rate of take and daily, monthly or annual volume) will not exceed the actual water take; and
 - (e) The application proposes to carry over any existing residual flow, minimum flow or take cessation condition on the existing water permit onto the replacement consent.
- 121 As notified, Rule 10A.3.1.1 reads:

⁴⁷ As consent authority, ORC must grant consents applied for under Controlled Activity Rule 10A.3.1.1, unless the activity is likely to have adverse effects that are more than minor on the exercise of a protected customary right and no exception applies. ORC can impose conditions on the consent, but only for those matters over which it has reserved control or over which control is reserved in national environmental standards. The activity must also comply with any requirements, conditions and permissions specified in Rule 10A.3.1.1, the RMA or relevant regulations.

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.

122 Where applicants cannot, or choose not to, comply with Rule 10A.3.1.1 including where applicants seek to apply for a longer consent term, an increase of their irrigated area or a water take that exceeds historically recorded water taken, the replacement of a deemed permit, or water permit to take and use surface water expiring prior to 31 December 2025, is to be considered as a Non-Complying Activity under Rule 10A.3.2.

123 As notified, Rule 10A.3.2.1 read:

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.*

- 124 As stated in paragraph 103(a), PC7 seeks to ensure that the instantaneous rate of take and volume granted in new resource consents to replace existing deemed permits and those water permits expiring prior to 31 December 2025 aligns with actual historically recorded water use.
- 125 To ascertain what constitutes actual water use, the plan change proposes to introduce a new Schedule, Schedule 10A.4, which sets out methodologies for calculating assessed actual usage for surface water takes. Schedule 10A.4 comprises separate methodologies for calculating 'Rate of Take Limit' and daily, monthly and annual volume limits.
- 126 The methodologies in Schedule 10A.4 are described in more detail in the evidence of Mr Wilson and Mr Leslie.

How the principles of the Treaty of Waitangi have been taken into account in the development of PC7 (section 8)

- 127 Section 8 of the RMA requires the Council to "take into account" the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) when exercising functions and powers under the RMA in relation to managing the use, development and protection of natural and physical resources.
- 128 While as a policy analyst I am cognisant of the requirement for ORC to "take into account" the principles of the Treaty of Waitangi when making any decisions pertaining to the management of our natural and physical resources under the RMA, I am not an expert on the interpretation of Treaty of Waitangi obligations.
- 129 I have been provided with a memorandum prepared by Mr Maw, counsel for the Council, that sets out the principles of the Treaty of Waitangi and

the Council's obligations in terms of s8 of the RMA. This memorandum is attached to my evidence as **Appendix H**. I have relied on this memorandum to describe these obligations, and then set out my own opinion as to how this has been taken into account in the development of PC7.

130 The memorandum (**Appendix H**) sets out that the Courts have identified the following principles of the Treaty:

- (a) The two parties to the Treaty entered into a partnership, and therefore must act reasonably and honourably towards each other and in utmost good faith.
- (b) The Crown must make informed decisions (which will often require consultation).
- (c) The Crown must not unreasonably impede its capacity to provide redress for proven grievances.
- (d) The Crown must actively protect Maori interests.

131 I also understand from the memorandum (**Appendix H**) that the obligation to "take into account" is a requirement to weigh the principles of the Treaty with all other matters being considered and, in coming to a decision, effect a balance between the principles and all other matters. In other words, s8 requires the Council to turn its mind to the principles of the Treaty when exercising its functions and powers. However, the principles do not necessarily prevail over the other principles that local authorities must "recognise and provide for" or "have regard to" under the RMA.

132 I understand from the memorandum (**Appendix H**) that although the application of s8 is fact-specific, caselaw suggests that local authorities should do the following:

- (a) Enable active participation by Maori in resource management decision-making;
- (b) Engage with tākata whenua in good faith;
- (c) Seek reciprocity and mutual benefit;
- (d) Endeavour to protect resources of importance to Maori from adverse effects; and

- (e) Take positive action to protect tākata whenua interests.
- 133 Kāi Tahu are tākata whenua of the Otago region. Te Rūnanga o Ngāi Tahu (the iwi authority) is made up of 18 papatipu rūnaka, of which four are in the Otago region. The four Otago rūnaka are Te Rūnanga o Moeraki, Kati Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Otakou, and Hokonui Rūnanga. The Southland papatipu rūnaka also have an interest in South Otago and the inland lakes and mountains.
- 134 The papatipu rūnaka consultancy services, Aukaha, representing the Otago rūnaka, and Te Ao Marama Inc, representing the Southland rūnaka, provide ORC with a first point of contact and facilitate Kāi Tahu engagement in resource management processes.
- 135 Active participation of tākata whenua was encouraged and has occurred throughout the development phase of PC7. Representatives of Aukaha attended a public forum on PC7 on 7th January 2020 and attended a focus group discussion later that month on 16th January 2020 to discuss and seek feedback on the general approach of the plan change.
- 136 Consultation with Te Rūnanga o Ōtākou (via Aukaha); Kati Huirapa Rūnaka ki Puketeraki (via Aukaha); Te Rūnanga o Moeraki (via Aukaha); Hokonui Rūnanga (via Aukaha and Te Ao Marama); and Te Rūnanga o Kāi Tahu was also undertaken under Clause 3(1) and 4B of Schedule 1 to the RMA. In accordance with these requirements a formal draft copy of PC7 was provided to these parties for comment. Following clause 3 and clause 4 consultation, amendments were made to the plan change proposal to address matters raised by Aukaha.
- 137 This engagement has been in good faith and is ongoing within other aspects of the ORC's work programme, including the development of the new RPS (to be notified in June 2021) and the new LWRP (to be notified by December 2023).
- 138 Reciprocity and mutual benefit are reflected in the close working relationship of the Council and local rūnaka. Since May 2019 two iwi appointees representing Kāi Tahu's four Otago rūnaka sit on ORC's Strategy and Planning Committee, and a 'Memorandum of

Understanding and Protocol' is in place between ORC and local iwi - Kāi Tahu and Aukaha.⁴⁸

- 139 The provisions of PC7 do not include explicit references to the protection of resources important to tākata whenua and the processes by which this can be achieved. However, PC7 is an important first step to:
- (a) Manage the adverse effects of water take or water use on tākata whenua values, customs and beliefs associated with freshwater, so that these adverse effects are not exacerbated by increased water takes and land use development or intensification authorised by resource consents with long durations, and
 - (b) Pave the way for a new freshwater management regime that will better provide for the protection of tākata whenua resources in accordance with Te Mana o te Wai and the requirements of the NPS-FM 2020.
- 140 Active protection of interests is guaranteed to Māori under Article 2 of the Treaty and can be provided for in a regional plan through the management of natural and physical resources. Although PC7 aims to ensure that ORC's ability to (re)consider the impacts of water use on tākata whenua resources is not impeded by the granting of new long term consents, I do acknowledge that the plan change, in and of itself, does not expressly provide for the protection of Iwi interests. Rather, it is seeking to ensure that through short term consents the timely protection of those values pursuant to the new LWRP is not undermined.
- 141 Te Rūnanga o Ngāi Tahu (the iwi authority) Aukaha (representing the Otago rūnaka), and Te Ao Marama Inc (representing the Southland rūnaka) have expressed a level of satisfaction and comfort with PC7.⁴⁹

⁴⁸ Two iwi representatives currently sit on the Strategy and Planning Committee and can vote with the other council members. However, the Committee's decisions still need to be ratified by elected members at Council Meetings, where Iwi have no voting rights.

⁴⁹ See the following submissions:
 submission 71151 and further submission FS714: Aukaha on behalf of Te Rūnanga o Ōtākou , Kati Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Moeraki and Hokonui Rūnanga;
 submission 71171: Te Rūnanga o Ngāi Tahu;
 submission 71174 and further submission FS709: Ngai Tahu ki Murihiku/Te Ao Marama Incorporated on behalf of Te Rūnanga o Awarua, Waihopai Rūnaka and Te Rūnanga o Ōraka-Aparima.

142 In light of the above, I am satisfied that the principles of the Treaty, as set out above, have been appropriately taken into account in the development of PC7 and acknowledge that the obligations in respect of Treaty principles are ongoing, particularly with respect to the new LWRP.

Review of Objective 10A.1.1 against higher order planning instruments

143 PC7 seeks to introduce one new objective, Objective 10A.1.1, to the Water Plan.

144 This proposed Objective as notified states: *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.*

145 PC7 has been prepared by ORC under the RMA, which creates a hierarchy of planning instruments and directs how the provisions of these instruments must be considered when preparing a plan change. There are also a number of other statutes that are relevant to the plan change.

The Resource Management Act 1991

146 Sections 65 and 66 set out technical and procedural matters to be followed in the preparation of a regional plan and/or plan change. A regional council must prepare and change any regional plan in accordance with:

- (a) the provisions of Part 2 (being sections 5, 6, 7 and 8) of the RMA;
- (b) its functions under s30;
- (c) its obligation to prepare and have particular regard to a report in accordance with s32;

- (d) a national policy statement, a New Zealand Coastal Policy Statement, a national planning standard; and any regulations (which includes national environmental standards).⁵⁰
- 147 Section 5 sets out the single purpose of the RMA being the promotion of the sustainable management of natural and physical resources. This is defined as:
- “...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*
- 148 The principles set out in s6, s7 and s8 of the RMA further elaborate on the purpose of the RMA by stating particular obligations for those exercising functions and powers under the RMA.
- 149 Section 6 lists the matters of national importance that must be recognised and provided for by persons exercising functions and powers under the RMA. Matters in section 6 that are of particular relevance to PC7 include s6(a), (c), (e) and (g).
- 150 Section 7 outlines matters to which all persons exercising functions and powers under the RMA are directed to have particular regard. Matters most relevant to PC7 are in s7(a), (aa), (b), (c), (d), (f), (g), (h) and (i).
- 151 Section 8 requires that persons exercising functions and powers under the RMA shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). In paragraphs 127 to 142 of my evidence I have

⁵⁰ Section 66(1), RMA

previously discussed how the principles of the Treaty of Waitangi have been taken into account in the development of PC7.

152 In my opinion Objective 10A.1.1 achieves the overriding purpose of the RMA by facilitating the transition towards a new long-term management regime for the region's freshwater resources that will be contained in the new LWRP (to be notified by 31 December 2023).

153 The purpose of a regional plan is to assist a regional council to carry out its functions in order to achieve the purpose of the RMA.⁵¹ Section 30 sets out the functions of regional councils, including those that relate to the management of freshwater.⁵² The parts of s30 that are most relevant to PC7 include:

- (a) s30(1)(a): the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region;
- (b) s30(1)(e): the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
 - (i) the setting of any maximum or minimum levels or flows of water;
- (c) s30(1)(fa): if appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) the taking or use of water (other than open coastal water).

154 I consider Objective 10A.1.1 to be appropriate and crucial as it will enable Council to carry out its functions under the RMA relating to the management of freshwater. It does this by establishing a transitional planning framework that:

- (a) Enables the replacement of water permits that are going to expire before the new integrated management regime comes into being on 1 January 2026, while at the same time managing these takes so that any adverse effects on the environment from those takes are not exacerbated;

⁵¹ Section 63(1), RMA

⁵² Section 30, RMA.

- (b) Allows for a new management regime to be established and for it to become effective within the life of the new LWRP and not frustrated by incompatible long-term consents for water abstraction and use; and
 - (c) Provides an opportunity for Council to review flow and allocation regimes in light of newly introduced national direction.
- 155 Section 65(5) requires any change to a regional plan to be carried out in the manner set out in Schedule 1.⁵³ Section 66 directs ORC, when changing a regional plan, to have regard to any proposed regional policy statement, and management plans and strategies prepared under other acts, and take into account any relevant planning document recognised by an iwi authority, to the extent that their content has a bearing on the resource management issues of the region.⁵⁴
- 156 I consider that Objective 10A.1.1 and other provisions proposed under PC7, have been prepared in accordance with the process steps set out in Schedule 1 of the RMA, including the requirements for prenotification consultation under Clauses 3 and 4A of this Schedule. I can also confirm that in the development of the plan change ORC has had regard to its PRPS 2016 and the Otago Sports Fish and Game Management Plan 2015-2025, while also taking into account the relevant provisions of the Kāi Tahu ki Otago Natural Resources Management Plan 2005 and the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008. An overview of relevant provisions of the OSF&G Management Plan 2015-2025 and of these two Iwi management plans is included in paragraphs 6.61 to 6.74 of the Key Issues Report for Plan Change 7 to the Regional Plan Water for Otago, which has been provided to the Court by the EPA. The degree to which PC7 gives effect to ORC's PRPS 2016 is further discussed in paragraphs 201 to 207 of my evidence.
- 157 Section 67 sets out the content of regional plans and the relationship between regional plans and other planning instruments. A regional plan

⁵³ Section 65(5), RMA.

⁵⁴ Sections 66(2)(c)(i) and (2A)(a), RMA.

must state objectives, policies and rules (if any).⁵⁵ It also must give effect to any national policy statement, national planning standard, New Zealand Coastal Policy Statement and regional policy statement and must not be inconsistent with a water conservation order, or another regional plan for the region.⁵⁶ The degree to which PC7 gives effect to these planning instruments is discussed in paragraphs 159-207 of my evidence.

- 158 Section 80A of the RMA, introduced under the Resource Management Amendment Act 2020 (RMAA), sets out a freshwater planning process (**FPP**). Section 80A of the RMA came into force on 1 July 2020. The FPP is a new plan-making process that regional councils must use for proposed regional plans or plan changes that give effect to the NPS-FM 2020 or otherwise relate to freshwater.⁵⁷ The FPP was introduced to enable regional councils to make changes to their freshwater plans in a robust but more efficient way than the current RMA Schedule 1 process. As PC7 has been referred to the Environment Court for decision under s142(2) of the RMA, the FPP is not relevant to PC7.

National Policy Statements

- 159 National Policy Statements (**NPS**) are prepared pursuant to s45 to s55 of the RMA. The purpose of an NPS is to state the objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA.⁵⁸ They provide direction to local authorities about how to carry out their responsibilities under the RMA when it comes to matters of national significance. There are currently four NPSs and an NZCPS in force.⁵⁹

⁵⁵ Section 67(1), RMA.

⁵⁶ Sections 67(3) and 67(4), RMA.

⁵⁷ Freshwater plans notified after the Resource Management Amendment Act 2020 was enacted will be captured by the new freshwater planning process.

⁵⁸ Section 45(1), RMA

⁵⁹ National Policy Statement for Freshwater Management 2020, National Policy Statement on Electricity Transmission, National Policy Statement on Urban Development, National Policy Statement for Renewable Electricity Generation.

160 The NZCPS is prepared pursuant to s56 to s58 of the RMA and its purpose is to state the objectives and policies in order to achieve the purpose of the RMA in relation to the coastal environment.⁶⁰

161 Only the NPS-FM 2020, the NPSREG and the NZCPS are relevant to PC7.

National Policy Statement for Freshwater Management 2020

162 PC7 was notified by the ORC on 18 March 2020. After being “called in” by the Minister for the Environment on 8 April 2020 and referred to the Environment Court for decision under section 142(2) of the RMA, the plan change was re-notified by the EPA on 6 July 2020.⁶¹ At the time of notification by the EPA, the relevant NPS-FM that was into force was the NPS-FM 2014 (amended 2017). However, on 3 September 2020 the NPS-FM 2020 came into force. It is the NPS-FM 2020 that PC7 is required to give effect to. The NPS-FM 2014 (amended 2017) is no longer a relevant consideration.

163 The actions required of regional councils to implement the NPS-FM 2020 are set out in several clauses of its Part 3, rather than through specific policy direction.

164 Clause 4.1 of the NPS-FM 2020 provides that “*every local authority must give effect to this National Policy Statement as soon as reasonably practicable*”. In accordance with section 80A of the RMA, ORC must notify a freshwater planning instrument, where that instrument has the purpose of giving effect to the NPS-FM 2020, by 31 December 2024.

165 PC7 does not need to immediately give full effect to the NPS-FM 2020 and the extent to which it is reasonably practicable for the provisions of PC7 to now give effect to the NPS-FM 2020 is confined by the scope within submissions to make amendments to the plan change.

166 Te Mana o te Wai remains the fundamental concept of the NPS-FM 2020. The NPS-FM 2020 strengthens and clarifies Te Mana o te Wai by providing stronger direction on how it should be applied when managing

⁶⁰ Section 56, RMA

⁶¹ It should be noted that the version of PC7 that was notified by EPA is identical to the version notified by ORC.

freshwater. Te Mana o te Wai has the meaning set out in clause 1.3 and is described as a fundamental concept, encompassing six principles:

- (a) Mana whakahaere;
- (b) Kaitiakitanga;
- (c) Manaakitanga;
- (d) Governance;
- (e) Stewardship; and
- (f) Care and respect.

167 The hierarchy of obligations that Te Mana o te Wai prioritises is enshrined in the one objective of the NPS-FM 2020, which states:

The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) *first, the health and well-being of water bodies and freshwater ecosystems*
- (b) *second, the health needs of people (such as drinking water)*
- (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

168 Clause 2.2 of Part 2 of the NPS-FM 2020 lists 15 policies to implement this objective. Relevant to this consideration of PC7 are the following policies:

Policy 1 *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*⁶²

⁶² Under Clause 3.2 of the NPS-FM 2020 ORC must engage with communities and tākata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems. Further, in giving effect to Te Mana o te Wai, ORC must:

- (a) actively involve tākata whenua in freshwater management (including decision-making processes);
- (b) engage with communities and tākata whenua to identify long-term visions, environmental outcomes, and other elements of the NOF;
- (c) apply the hierarchy of obligations when:
 - (i) developing long-term visions;
 - (ii) implementing the NOF; and
 - (iii) developing objectives, policies, methods, and criteria relating to natural inland wetlands, rivers, fish passage, primary contact sites, and water allocation;

- Policy 2** *Tangata whenua are actively involved in freshwater and Māori freshwater values are identified and provided for.*⁶³
- Policy 3** *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
- Policy 4** *Freshwater is managed as part of New Zealand's integrated response to climate change.*
- Policy 6** *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*
- Policy 7** *The loss of river extent and values is avoided to the extent practicable.*
- Policy 8** *The significant values of outstanding water bodies are protected.*
- Policy 9:** *The habitats of indigenous freshwater species are protected.*
- Policy 10** *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*
- Policy 11** *Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*
- Policy 15** *Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.*

169 I consider Policies 13 and 14 to be less relevant because these policies address monitoring and reporting requirements. I also consider Policies

-
- (d) enable the application of a diversity of systems of values and knowledge to the management of freshwater (such as mātauranga Māori); and
 - (e) adopt an integrated approach to the management of freshwater (ki uta ki tai).

⁶³ Tākata whenua involvement is promoted and required by the NPS-FM 2020, with clause 3.4 requiring ORC to actively involve tākata whenua when:

- (a) identifying the local approach to giving effect to Te Mana o te Wai,
- (b) making or changing an RPS or regional plan relating to freshwater,
- (c) implementing the NOF, and
- (d) developing and implementing matauranga Māori and other monitoring.

5 and 12 to be of limited relevance, as this plan change will enable the Council to achieve these policies in the future.

170 Proposed Objective 10A.1.1 does not give full effect to the NPS-FM 2020 Objective and all relevant NPS-FM 2020 Policies, although certain aspects of PC7 go some way to giving effect to specific NPS-FM 2020 policies. For example, proposed Policy 10A.2.1 goes some way to give effect to:

- (a) NPS-FM 2020 Policies 7 and 11 by requiring the replacement water permits to be issued with consented rate and volumes based on actual use data (thereby reducing the consented allocation; avoiding any further over-allocation; reducing the risk of any further loss of river extent and values and reducing the risk of inefficient allocation and use); and
- (b) NPS-FM 2020 Policies 9 and 10 by requiring that any residual, minimum flow or take cessation conditions on existing permits are to be carried over to new permits.

171 As discussed earlier in my evidence, the relevant NPS-FM 2020 provisions will be given full effect to through the new LWRP, scheduled to be notified by 31 December 2023.

172 The outcome sought by proposed Objective 10A.1.1 is the establishment of an interim planning framework that will:

- (a) enable the replacement of water permits that are going to expire before the new integrated management regime comes into being on 1 January 2026, while ensuring that the effects of these water takes on the environment are not exacerbated;
- (b) allow Council to:
 - (i) review current environmental flows, allocation limits, and its wider approach to managing freshwater in the current Water Plan in light of newly introduced national direction; and
 - (ii) develop a new integrated management regime for managing water and land in the LWRP that gives full effect to the NPS-FM 2020; and;

- (c) allow for this new management regime to become effective within the life of this plan (by avoiding the risk that the achievement of the environmental outcomes set in the new LWRP is frustrated by incompatible long-term consents for water abstraction and use).

173 In my opinion Proposed Objective 10A.1.1 is an appropriate response to the need for an interim planning regime that allows ORC to promulgate its new NPS-FM 2020 compliant freshwater planning framework.

National Policy Statement for Renewable Energy Generation

174 The NPSREG came into effect on 12 May 2011 and its purpose is to recognise renewable electricity generation activities and the benefits of renewable electricity generation as matters of national significance under the RMA. The NPSREG, sets out one objective and 12 policies that direct how renewable energy generation activities are to be recognised.

175 As of 7 December 2020, there are twenty-three resource consents related to power generation will expire before 31 December 2025. The proposed PC7 provisions set out the framework against which any resource consent applications for new and existing hydro-electricity generation operations will be assessed.

176 The NPSREG sets out one objective, which states:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

The NPSREG Policies relevant to PC7 are Policies A, B, C1, C2, F and G.

177 As set out in the preamble, the NPSREG:

"... does not apply to the allocation and prioritisation of freshwater as these are matters for regional councils to address in a catchment or

regional context and may be subject to the development of national guidance in the future.”

- 178 The existing provisions of the Water Plan do not consider renewable electricity generation in significant detail other than some specific provisions related to hydro-electricity generation in the Waitaki River catchment.
- 179 Proposed Objective 10A.1.1 does not specifically provide for renewable energy generation and does not expressly give effect to the NPSREG. However, the objective establishes an interim planning framework for the renewal of those expiring water permits used for hydro-electricity generation.
- 180 Overall, I consider Objective 10A.1.1 to be appropriate in light of the requirement to give effect to the NPSREG, as it establishes an interim framework for:
- (a) allowing existing hydro generation activities to continue, while a new planning instrument (LWRP) that sets out an integrated management regime that gives effect to the NPSREG is being developed; and
 - (b) ensuring this management regime will become effective within the life of this new planning instrument.

New Zealand Coastal Policy Statement (NZCPS)

- 181 The NZCPS came into force in 2010 and guides local authorities in their day to day management of the coastal environment. Although the NZCPS applies to the coastal environment, the preamble notes that activities inland can have a major impact on coastal water quality. The NZCPS requires a strategic and integrated approach to managing cumulative adverse effects on the coastal environment.
- 182 This approach is evident in Policy 4 which requires local authorities to provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment.

183 I consider Proposed Objective 10A.1.1, to be an appropriate planning response, as the proposed outcome is an interim planning framework that allows:

- (a) existing activities to continue while ensuring that the effects of these water takes on the environment are not exacerbated;
- (b) ORC to develop a new planning instrument (LWRP) that sets out a management regime that gives effect to the NZCPS; and
- (c) ensures this management regime will become effective within the life of this new planning instrument.

National Environmental Standards

184 In accordance with s43B(3) of the RMA, a rule in a regional plan is unable to be more lenient than a national environmental standard (**NES**), unless the NES expressly states that a rule can be more lenient. A rule may be more stringent than a national environmental standard, if the standard expressly says that a rule can be more stringent.⁶⁴ There are currently seven NESs in force, none of which are relevant to PC7.⁶⁵

National Planning Standards

185 Under s67(3)(ba) of the RMA, a regional plan must give effect to a national planning standard. National planning standards have been introduced to improve the consistency of RMA plans and policy statements to make them more efficient and easier to prepare and use. The first set of national planning standards came into effect on 3 May 2019.

186 PC7 does not give effect to the national planning standards, as regional councils are not required to adopt them until 10 years after they came into effect (unless a regional plan, but not a plan change or variation, is

⁶⁴ Section 43B(1) and (3), RMA.

⁶⁵ National Environmental Standards for Freshwater 2020; National Environmental Standards for Air Quality 2004; National Environmental Standard for Sources of Human Drinking Water 2007; National Environmental Standards for Telecommunication Facilities 2008; National Environmental Standard for Electricity Transmission Activities 2009; National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011; and National Environmental Standards for Plantation Forestry.

notified earlier). ORC will give effect to the national planning standards through the development of the new LWRP.

Water Conservation Orders

- 187 Under s67(4)(a) of the RMA, a regional plan must not be inconsistent with a Water Conservation Order (**WCO**). WCOs are made by Order in Council by the Governor-General, upon the recommendation of the Minister for the Environment to recognise and sustain outstanding amenity or intrinsic values afforded by waters in their natural state and where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.
- 188 In Otago, there are two WCOs in force, one on the Kawarau River and a second one on the Mataura River.
- 189 The Water Conservation (Kawarau) Order 1997 recognises that the Kawarau River and its tributaries have outstanding amenity and intrinsic values.⁶⁶ Under the Kawarau WCO the protected waters considered to be in their natural state, must be preserved as far as possible in that state. For waters not in their natural state, the Kawarau WCO recognises that they still have outstanding characteristics and requires these waters to be protected.⁶⁷
- 190 The Water Conservation (Mataura River) Order 1997 recognises that the Mataura River and the Waikaia River and various other rivers, streams, and tributaries include outstanding fisheries and angling amenity features. The protected waters named in the WCO include the Mokoreta River, part of which flows through Otago. The order includes various provisions to preserve and protect these features, including placing limits on the rates of flow in the Mataura River and Waikaia River.
- 191 Both WCOs place restrictions on activities (e.g. damming, diversions, discharges) that affect water quantity and water quality in the protected

⁶⁶ Clause 3(1), Water Conservation (Kawarau) Order 1997.

⁶⁷ Clause 4(3), Water Conservation (Kawarau) Order 1997.

waters. This affects ORC's ability to grant resource consents for these activities.

- 192 There are currently water permits in the Mokoreta River catchment and various catchments where the Kawarau WCO applies. PC7 sets out a framework against which any resource consent applications for new water takes (not previously authorised by a deemed permit) and for the replacement of expiring deemed permits and water permits expiring prior to 31 December 2015 will be assessed. The WCOs will apply to consent processes as necessary.
- 193 In my opinion, Objective 10A.1.1 is appropriate as it establishes an interim planning framework against which any resource consent applications for new water takes (not previously authorised by a deemed permit) and for the replacement of expiring deemed permits and water permits expiring prior to 31 December 2015 will be assessed, while allowing ORC to develop a new integrated management regime for water and land in the LWRP that is consistent with the Kawarau and the Mataura WCOs and will become effective within the life of the LWRP.

Lake Wanaka Preservation Act 1973

- 194 When exercising functions under the RMA, including the development of changes to its regional plans, ORC is required to have regard to the purposes of the Lake Wanaka Preservation Act 1973 (**LWPA**)⁶⁸.
- 195 The Act makes provision for the protection of the natural state of the lake, and for the appointment of the Guardians of Lake Wanaka to advise the Minister of Conservation over:
- (a) Preventing the lake from being impounded, controlled or obstructed;
 - (b) Preventing the natural rate of flow from the lake from being varied or controlled;
 - (c) Preserving the lake level and shoreline in their natural states;
 - (d) Maintaining and improving (where possible) the quality of water in the lake.

⁶⁸ Section 8, Lake Wanaka Preservation Act 1973.

- 196 The Guardians of Lake Wanaka have a responsibility to liaise with ORC over matters which may affect the lake, and ORC is required to consult with the Guardians when considering resource consent applications which may affect the lake.
- 197 There are expiring water permits that authorise the taking of water that are located in the water bodies protected by the LWPA. The proposed provisions of PC7 set out the framework against which any resource consent applications for replacing these water permits will be assessed.
- 198 Proposed Objective 10A.1.1 does not amend the current planning framework in the Water Plan in a manner that affects the consistency of this framework with the LWPA. However, it establishes an interim planning framework against which any resource consent applications for new water takes (not previously authorised by a deemed permit) and for the replacement of expiring deemed permits and water permits expiring prior to 31 December 2015 will be assessed, while allowing ORC to:
- (a) assess the freshwater planning framework in the Water Plan against the purpose of the LWPA; and
 - (b) develop a new freshwater planning framework by 31 December 2025 that is well aligned with this legislation; and
 - (c) avoid the risk that the achievement of the environmental outcomes set by this framework is frustrated by incompatible long-term consents for water abstraction.

Regional Policy Statements

- 199 Under s67(3) of the RMA, a regional plan must give effect to any RPS, while under s66(2)(a) of the RMA, a regional council must also have regard to any proposed RPS when preparing or changing any regional plan.
- 200 In Otago, there are currently two relevant RPSs:
- (a) The Regional Policy Statement for Otago 1998 (RPS 1998), which is partially operative; and
 - (b) Proposed Otago Regional Policy Statement 2016 (PRPS 2016), which was made partially operative on 14 January 2019.

201 ORC resolved to make those provisions of the PRPS 2016 that were beyond challenge operative on 12 December 2018. As some provisions of the PRPS 2016 were still subject to appeal at that time, those provisions were not made operative. I understand that all provisions are now beyond challenge, except those relating to the Port Otago High Court decision⁶⁹ as leave has been sought to appeal this decision to the Court of Appeal. I understand that all those provisions of the PRPS 2016 that are relevant to PC7 are now beyond challenge. On that basis, I do not consider it necessary to consider the RPS 1998 any further and for the purposes of this evidence I have only considered those relevant provisions in the PRPS 2016.

202 The relevant Objectives and Policies of Chapter 3 of the PRPS 2016 are:

Objective 3.1 *The values of ecosystems and natural resources are recognised and maintained or enhanced where degraded.*

Policy 3.1.1 *Safeguard the life-supporting capacity of fresh water*

Policy 3.1.3 *Ensure the efficient allocation and use of water*

Policy 3.1.4 *Manage for water shortage*

203 There are four operative chapters of the PRPS 2016 that are relevant for PC7 and which must be given effect to.

204 Relevant Objectives and Policies of each of these four operative chapters are:

Chapter 1: *Resource Management in Otago is integrated.*

Objective 1.1 *Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities.*

Policy 1.1.1 *Provide for economic wellbeing by enabling the resilient and sustainable use and development of natural and physical resources.*

⁶⁹ [2019] NZHC 2278.

Policy 1.1.2 *Provide for social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources*

Objective 1.2 *Recognise and provide for the integrated management of natural and physical resources to support wellbeing*

Policy 1.2.1 *Achieve integrated management of Otago's natural and physical resources*

Chapter 2: ***Kāi Tahu values and interests are recognised and kaitiakitaka is expressed***

Objective 2.2 *Kāi Tahu values, interests and customary resources are recognised and provided for.*

Policy 2.2.1 *Manage the natural environment to support Kāi Tahu wellbeing*

Chapter 4: ***Communities in Otago are resilient, safe and healthy***

Objective 4.3 *Infrastructure is managed and developed in a sustainable way.*

Policy 4.3.2 *Recognise national and regional significant infrastructure.*

Policy 4.3.3 *Provide for the functional needs of infrastructure that has regional or national significance.*

Chapter 5: ***People are able to use and enjoy Otago's natural and built environment.***

Objective 5.4 *Adverse effects of using and enjoying Otago's natural and physical resources are minimised.*

Policy 5.4.3 *Precautionary approach to adverse effects*

Policy 5.4.10 *Managing land use change in dry catchments*

205 As previously stated in paragraph 27 of my evidence, one of the outcomes of a review of Otago's planning framework under section 24A of the RMA led by Professor Skelton, was the finding that a substantial update to the PRPS 2016 is required in order to give full effect to the

relevant NPS-FM.⁷⁰ I concur with Professor Skelton's finding and consider that neither the Regional Policy Statement 1998 nor the Proposed Regional Policy Statement 2016 give full effect to the NPS-FM 2020.

- 206 In response to Professor Skelton's findings with regard to the PRPS 2016, the Minister for the Environment recommended that ORC prepares and notifies a new RPS (to be in place in time to inform and direct the preparation of the forthcoming LWRP). ORC is currently developing this new RPS and is on track to notify this document in June 2021.
- 207 In so far as there is any conflict between the RPS 1998 and the PRPS 2016 and the NPS-FM 2020, I consider that the objective of PC7 better gives effect to the NPS-FM 2020. A key purpose of the Objective is to establish an interim planning framework that enables the replacement of water permits that are going to expire prior to 31 December 2025, while:
- (a) ensuring that the effects of these water takes on the environment are not exacerbated;
 - (b) providing ORC with the opportunity to establish a new integrated management regime through the development of a new RPS and new LWRP that gives full effect to all relevant higher order planning instruments; and
 - (c) avoiding the risk that the achievement of the environmental outcomes set in the new RPS and LWRP is frustrated by incompatible long-term consents for water abstraction and use.

Overview of submitter responses and amendments requested

- 208 A total of 290 submissions and 16 further submissions were made on PC7. The Plan Change was opposed by 208 submitters and supported by approximately 20 submitters. Sixty-two submitters did not state their position.⁷¹

⁷⁰ Prof. Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment, pp.15-17.

⁷¹ Summary of submissions on the Water Permits Plan Change – Plan Change 7 Regional Plan: Water for Otago. Prepared for the Environmental Protection Authority. September 2020.

- 209 Submitters in support of proposed PC7 or in support of the intent of the plan change generally express support for the establishment of an interim planning framework that provides for the transitioning toward a sustainable regime for managing freshwater in a manner that gives effect to national direction and will look after the mauri of freshwater resources.⁷² In particular, the conditions of proposed Policy 10A.2.1 are supported, as is the short-term duration of resource consents in proposed Policy 10A.2.2. Other aspects of the plan change that were supported include the matters which Council reserves control over in controlled activity Rule 10A.3.1.1.
- 210 Nine submitters support PC7 in part.⁷³ Most of these submitters support the overall intent of the proposed plan change to establish an interim planning framework, the direction set by the policies for granting consents for a short duration and the conditions in proposed Policy 10A.2.1. However, these submitters all request that the plan change is approved with amendments.
- 211 There are various issues that are recurrent in submissions on PC7 and that either apply to the general approach promoted by PC7 or are consistently raised in response to different provisions proposed under PC7. In my evidence I will first discuss each of these key issues, and then discuss specific comments made with respect to individual plan change provisions. I will do this by:
- (a) outlining (where applicable) the relief sought by submitters on each of these key issues and the reasons cited for seeking this relief; and
 - (b) giving reasons for supporting or not supporting the amendments to PC7 requested by submitters (with or without further change); and
 - (c) where I recommend any change to the proposed PC7 provisions as notified, undertake an evaluation in accordance with the requirements under s32AA of the RMA.

⁷² Submitters 71123, 70043, 71194, 70020, 71204, 71167, 71256, 71171, 71151, 71174, 70027, 70030, 70029 and 70033.

⁷³ Submitters 71251, 70045, 70051, 70052, 71149, 71172, 71180, 70026 and 70048.

212 Where I discuss the matters raised or relief sought by submitters, I will refer via a footnote to relevant submissions. However, it should be noted that the list of submitters referenced within these footnotes may not be exhaustive and that there may be additional submitters that have commented on this matter or have asked for similar relief.

Overview of key issues raised in submissions

213 Key issues that are recurrent in submissions on PC7 are:

- (a) Using robust data and science in developing the plan change;
- (b) Providing for longer consent durations;
- (c) Financial and economic impacts on businesses and communities;
- (d) Social impacts;
- (e) Providing for catchment approaches
- (f) Using the existing framework of the Water Plan
- (g) Implications for water takes for non-irrigation uses
- (h) Implications for group management of water use
- (i) Restricting the size of the irrigated area
- (j) Calculating water allocation and actual water usage
- (k) PC7 does not give effect to higher order planning documents and is inconsistent with the Water Plan
- (l) PC7 does not achieve good environmental outcomes
- (m) Lack of clarity

Using robust data and science in developing the plan change

214 Several submitters consider that the PC7 proposal has not been developed using robust scientific analysis and often relies on unsubstantiated or questionable assumptions around the adverse impacts of intensive land use and (historically) high levels of allocation on the health of the region's freshwater resources.⁷⁴ Other submitters

⁷⁴ Submitters 70031, 71006, 71011, 71012, 71064, 71070, 71131, 71184, 71185, 71216 and 71253.

are more concerned with the need for robust technical information when implementing the plan change and consider that short-term consents should only be granted using the best available information.⁷⁵

215 As discussed earlier in paragraphs 102 to 104 of my evidence, PC7 is an interim planning response to the lack of a fit-for-purpose framework for managing freshwater in Otago. The current planning framework does not provide resource consent applicants and decision-makers with clarity around the environmental outcomes that are required to be achieved under the NPS-FM 2020, as these are yet to be determined through engagement with tākata whenua and local community in accordance with the NOF process prescribed in the NPS-FM 2020. PC7 seeks to amend the current framework within the operative Water Plan, in order to better provide for the issuing of resource consents for a short duration, while the scientific investigations and data analysis are being carried out that will underpin the limits on resource use and environmental flows/levels set in the new LWRP scheduled for notification by 31 December 2023.

216 In my opinion, PC7 is an interim planning response to the significant resource management issues identified in paragraph 44 above and seeks to avert the risk of further long-term environmental degradation by:

- (a) restricting the duration of resource consents for the take and use of water;
 - (b) avoiding any further increase in water use; and
 - (c) pausing the intensification and expansion of land uses that are reliant on consumptive uses of fresh water or may have an impact on receiving freshwater bodies through contaminant discharges,
- until the new freshwater planning framework is developed and included in the new LWRP.

217 I consider that the present state of knowledge around the effectiveness (or lack thereof) of Otago's current freshwater management framework,

⁷⁵ Submitters 70067 and 70083.

and the lack of a robust and comprehensive knowledge about the various environmental issues and detailed information around the impacts of resource use on specific freshwater bodies has driven the need for an interim framework.

Providing for longer consent durations

- 218 One of the most contentious aspects of PC7 based on the submissions, is the short consent duration proposed for:
- (a) any resource consents replacing deemed permits, or water permits expiring prior to 31 December 2025; and
 - (b) any resource consents authorising new takes and uses of water.
- 219 Many submitters have opposed the 6-year consent term and requested amendments to Policy 10A.2.2 and Rule 10A.3.1.1 to allow for consent terms longer than 6 years. A few other submitters also opposed the 15-year consent duration provided for under Rule 10A.3.2.1 if the requirements of Policy 10A.2.3 are met.
- 220 The reasons most often cited by submitters for opposing short consent durations are:
- (a) Short term consents will stop investment in infrastructure upgrades, including investment in efficient irrigation, water storage and other infrastructure or technologies that allow businesses to continue to grow, and also can have an overall positive impact on the environment or may assist with the mitigation of climate change impacts.⁷⁶
 - (b) Short term consents create uncertainty around the long-term availability of water or environmental conditions on water abstraction and use that may be imposed post 2025.⁷⁷

⁷⁶ Submitters 70013-70035, 71008, 71013-71017, 71022-71027, 71037, 71041, 71053, 71057, 71059, 71061, 71064, 71070, 71071, 71076, 71085, 71094, 71099, 71110, 71114, 71122, 71126, 71129, 71131, 71132, 71134, 71135, 71139, 71141, 71143, 71145, 71146, 71147, 71150, 71157, 71161, 71163, 71166, 71176, 71177, 71179, 71181, 71187, 71188, 71189, 71203, 71208, 71216, 71240, 71242, 71243, 71247 and 71253.

⁷⁷ Submitters 70040, 71020, 71039, 71059, 71079, 71089, 71099, 71100, 71115, 71163, 71165, 71208 and 71215.

- (c) The proposed 6-year consent term for new water takes may not be enough if the new LWRP is not made operative by 1 January 2026.⁷⁸
 - (d) Short term consents have negative economic and financial impacts on individuals, businesses and communities by creating an impediment on the expansion of businesses and through an increase in consent processing costs.⁷⁹ (This last point is further discussed in paragraphs 234 to 247 of my evidence).
 - (e) There is no need for short term consents as the condition of long-term consents can be reviewed under s128 of the RMA.⁸⁰
 - (f) Short term consents are not appropriate where a freshwater body is not considered to be fully allocated.⁸¹
- 221 Several submitters asked for an extension beyond the 6-year consent duration stated in proposed Policy 10A.2.2 and Rule 10A.3.1.1, or the extended consent terms provided for under proposed Policy 10A.2.3.
- 222 Proposed amendments to the consent durations proposed under PC7 include:
- (a) Limiting the duration of a resource consent to a period not exceeding six years past the expected notification date of new water quantity provisions.⁸²
 - (b) Allowing for a small extension until 2030.
 - (c) Allowing for the consent term to be extended to 10 to 15 years.⁸³
 - (d) Allowing 20 to 25-year consent terms.⁸⁴

⁷⁸ Submitter 71161.

⁷⁹ Submitters 70012, 71031, 71032, 71033, 71074, 71089, 71092, 71105, 71118, 71119, 71133, 71136, 71137, 71138, 71142, 71140, 71145, 71147, 71159, 71163, 71196, 71199 and 71230.

⁸⁰ Submitters 70040, 71008, 71015, 71031, 71032, 71052, 71053, 71055, 71062, 71069, 71070, 71072, 71074, 71099, 71105, 71107, 71109, 71111, 71118, 71122, 71129, 71132, 71138, 71142, 71140, 71145, 71147, 71146, 71150, 71156, 71159, 71185, 71189, 71199, 71206 and 71207.

⁸¹ Submitters 71071, 71085 and 71159.

⁸² Submitters 71074, 71105 and 71118.

⁸³ Submitters 70040 and 71089.

⁸⁴ Submitters 70031, 71010, 71057, 71185, 71187, 71201, 71221 and 71255.

- (e) Allowing 30 to 35-year consent term.⁸⁵
- (f) Removing proposed wording that restricts the consent duration to no more than 6 years.⁸⁶
- (g) Allowing for long-term consents to be granted for water permit holders that are seeking to lodge a consent application before October 2021.⁸⁷
- (h) Rewarding water users that are using water efficiently and apply best management practices with long-term consents.⁸⁸

- 223 I have considered the decisions requested in submissions and supporting reasoning in relation to the consent durations proposed in Policies 10A.2.2 and 10A.2.3 and in Rule 10A.3.1.1. While I acknowledge submitter concerns regarding the drawbacks of short-term consents (i.e. uncertainty around the long-term water availability, impediment on investment in business growth, potential for increased consent processing costs), I do not support extending the consent durations for resource consents to take and use water proposed under PC7. My reasons are outlined below.
- 224 As discussed previously in paragraph 89 of my evidence, s128 of the RMA allows consent authorities to review the conditions of consent where there is provision for review in a consent or where there is a need to align consent conditions with the levels, flows, rates or standards set by a regional rule.
- 225 While s128 of the RMA may go some way to addressing over-allocation, the use of review processes may not be able to phase out over-allocation altogether, as it does not provide ORC with the authority to cancel consents. Also, ORC's ability to impose conditions to safeguard the health of freshwater bodies is constrained by the requirement to consider the financial viability of the activity under s131 of the RMA.

⁸⁵ Submitters 71009, 71011, 71028, 71030, 71033, 71035, 71037, 71057, 71060, 71081, 71087, 71092, 71112, 71115, 71136, 71169, 71217, 71235, 71239 and 71240.

⁸⁶ Submitter 71034.

⁸⁷ Submitters 71015, 71094, 71122, 71129, 71132, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71150, 71156 and 71159.

⁸⁸ Submitter 71082.

- 226 Because the reliance on consent condition review processes does not ensure an efficient transition towards the freshwater management regime that will be established under the new LWRP, the issuing of short-term or interim consents becomes a key tool for ensuring the environmental outcomes that must be stated in the LWRP are achieved in a timely manner.
- 227 As discussed in paragraph 88 of my evidence, granting short-term or interim consents is problematic under the current provisions of the Water Plan because Policy 6.4.19 has created an expectation for long-term consent durations. Ongoing reliance on the current policies in the Water Plan that address durations for consents to take and use water is likely to inhibit the ability to effectively implement the freshwater planning framework in the new LWRP and give effect to the new NPS-FM 2020 in a timely manner.
- 228 Without the proposed amendments to the Water Plan to limit the duration of resource consents to take and use water, there is a high probability that under the current planning framework resource consents will continue to be granted with long durations and with allocated take rates and volumes that are unsustainable in terms of their effects on ecological, social and cultural values supported by freshwater and that are greater than necessary for actual water need based on efficient use.
- 229 The proposal under PC7 to limit consent durations for new resource consents to take and use surface water (and connected groundwater) to 6 years was initially based on the timeframe for NPS-FM compliant freshwater planning instruments proposed in the Resource Management Amendment Bill (**the Bill**), which was introduced in September 2019:
- (a) Clause 13 of the Bill, initially set a 31 December 2023 deadline for publicly notifying new freshwater planning instruments that give effect to the NPS-FM 2020.
 - (b) Clause 72 of the Bill required a decision report from the freshwater hearings panel on the proposed freshwater planning instrument within 2 years after the date on which this instrument was publicly notified.

- 230 These timeframes were subsequently altered by the Resource Management Amendment Act 2020 (**RMAA**), which came into force on 1 July 2020. The RMAA introduced a new s80A to the RMA, which now requires regional councils to notify a freshwater planning instrument, where that instrument has the purpose of giving effect to the NPS-FM 2020, by 31 December 2024.
- 231 However, the 31 December 2024 deadline for notifying a freshwater planning instrument imposed by s80A of the RMA is of limited relevance given that:
- (a) the Minister for the Environment recommended that ORC develops and notifies by 31 December 2023 a new LWRP that includes region-wide objectives and policies, and provisions for each of the FMUs, covering all the catchments within the region; and
 - (b) ORC adopted a work programme that reflects the Minister's recommendations by committing to the notification of a new NPS-FM 2020 compliant LWRP by 31 December 2023.⁸⁹
- 232 In my opinion the proposal to only grant resource consents to take and use water with a maximum consent duration of six years or with a consent duration that ends before 31 December 2035 where an application meets the requirements of Policy 10A.2.3 is appropriate given that:
- (a) ORC has not yet:
 - (i) identified all the values across the region's FMUs; and
 - (ii) determined the environmental outcomes that need to be achieved within these FMUs; and
 - (iii) established the flow and allocation regimes of catchments within these FMUs,
- in a manner that is consistent with the requirements of the NPS-FM 2020; and

⁸⁹ The Minister's recommendations and ORC's work programme that reflect these recommendations are discussed in paragraphs 27 to 30 of my evidence.

(b) regional councils are required to make final decisions on freshwater planning instruments notified under the new FPP introduced by the RMAA within two years of notification. (This timeframe is considered feasible as the FPP is likely to provide for a speedier hearing and decision process with more limited access to appeals).

233 Finally, it should be noted that the proposal to only grant consents to take and use water for a short term is consistent with the Minister for the Environment's recommendation to "... consider a narrow plan change that provides for the ... issuing of new consents on a short-term basis, as an interim measure until sustainable allocation rules are in place. These consents could, for example, be for a maximum term of five years, or until the new LWRP becomes operative, whichever comes first."⁹⁰

Financial and economic impacts on businesses and communities

234 Many submitters consider that the approach promoted in PC7 will have severe financial and economic impacts on individuals and communities and is unworkable, from a financial perspective, as it disincentivises future business planning or capital investment by creating uncertainty around long-term water viability.⁹¹ Some of these submitters have asked for the PC7 provisions to be amended to better provide for economic wellbeing and the ongoing viability of businesses.⁹² Other submitters have asked for PC7 to be withdrawn and, instead, for ORC to focus on the development of the new LWRP.⁹³

235 I acknowledge that, at least until a freshwater management framework has been established through the new LWRP, PC7 is likely to impact on

⁹⁰ Letter from Hon. David Parker to the Otago Regional Council regarding the S24 investigation, dated 19 November 2019.

⁹¹ Submitters 70012-70019, 70024, 70025, 70035, 70040, 71006, 71012, 71014-71018, 71021-71027, 71029-71032, 71034-71036, 71040-71044, 71047, 71048, 71050, 71051, 71054, 71056, 71057, 71060, 71062, 71064, 71065, 71067, 71069-71072, 71074, 71077, 71079, 71081-71083, 71085, 71088-71092, 71094, 71096, 71099-71102, 71107, 71109, 71110, 71112, 71115-71117, 71122, 71128-71132, 71134-71136, 71138-71142, 71145-71148, 71150, 71155-71157, 71159-71161, 71163, 71165, 71166, 71169, 71173, 71175-71177, 71179, 71181, 71184, 71185, 71187-71189, 71191, 71192, 71196, 71203, 71208, 71211-71213, 71215, 71217, 71230, 71232, 71235, 71238, 71239, 71242, 71244, 71250 and 71254.

⁹² Submitters 71168 and 71178.

⁹³ Submitter 71097.

business planning and may put infrastructure investment temporarily on hold in water-dependent industries and sectors.

236 However, in my opinion, the proposed consent terms are appropriate in light of these drawbacks for the following reasons:

- (a) Any further investment in the development or expansion of productive activities or economic sectors that rely on water is risky, as ORC cannot provide any certainty or clarity around:
 - (i) the allocation regime (i.e. future availability of water) for specific catchments, and
 - (ii) the degree of degradation of the region's freshwater resources and the actions that will be required to reverse degradation,

until the new LWRP has been notified, and the technical information underpinning this plan has been completed. Allowing for further investment in the development or expansion of activities that rely upon water abstraction could, in the interim, result in increased financial and economic risk for water users, especially in catchments where the need to reduce allocation or water use or to improve water quality cannot be ruled out. Where appropriate, and in accordance with the hierarchy of obligations under Te Mana o te Wai, the new LWRP will, once made operative, enable resource users and communities to grow their businesses in a sustainable manner or pursue new economic opportunities.

- (b) The intent of PC7 to caution against any further investment in irrigation expansion and land use intensification until new NPS-FM 2020 compliant freshwater planning instruments are in place by regional councils is consistent with the broader approach taken by the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESFW**), which came into force in September 2020.
- (c) The new NESFW sets controls on 'high risk' farming practices and imposes restrictions on further intensification of land use, that have the potential to impact on fresh water. Under the NESFW resource consent will now be required for irrigation expansion or changes

towards more intensive land uses (above a certain threshold).⁹⁴

These restrictions will apply until regional councils have set freshwater planning instruments in place that are compliant with the new NPS-FM 2020.⁹⁵

- 237 A very large number of submitters also consider that the issuing of short-term consents is likely to generate an overall increase in consent processing costs.⁹⁶ These submitters often point out that in many cases water permit holders with a deemed permit or a consent that is about to expire have already commenced the process of preparing comprehensive resource consent applications that seek to replace current water permits with a long-term resource consent. The issuing of short-term consents will make this investment partly redundant, while requiring applicants to prepare a more comprehensive resource consent application again closer to the expiry date of their short-term replacement consent.
- 238 The plan change as notified sets out a two-tiered consenting pathway, intending to provide applicants seeking a six year consent term with a simple and cost-effective application process under proposed controlled activity Rule 10A.3.1.1. Those who cannot meet, or do not wish to meet, the entry conditions for the proposed controlled activity rule (i.e. applicants seeking a consent term up to 31 December 2035) can apply for a consent under the proposed non-complying activity Rule 10A.3.2.1. It is intended that consent will only be granted for a term up to 31 December 2023, if limited exceptions are met. Several submitters consider, however, that the plan change fails to provide resource

⁹⁴ Under Subpart 2 of Part 2 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 temporary standards have been set requiring resource consent for any of the following activities:

- increase the area under irrigation on an existing dairy farm by more than 10 hectares
- change land use (above 10 hectares) from any other use to dairy
- change land use (above 10 hectares) from forestry or woody vegetation to pastoral farming
- increase forage cropping above the highest annual amount in the previous 5 farm years
- increase dairy support activities above the highest annual amount in the previous 5 farm years.

⁹⁵ Regulation 15, Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

⁹⁶ Submitters 71008, 71010, 71011, 71013, 71015, 71028, 71031-71034, 71044, 71045, 71049, 71052, 71057, 71061, 71065, 71071, 71075, 71077, 71079, 71080, 71082, 71085, 71086, 71098, 71087, 71088, 71092, 71094, 71107, 7109, 71110, 71113, 71114, 71116, 71126, 71136, 71155, 71156, 71163, 71175, 71189, 71208, 71216, 71221 and 71242.

consent applicants with a simple and cost-effective process.⁹⁷

According to these submitters, the entry conditions for the proposed controlled activity rule are too stringent and force many applicants down the more expensive and “risky” pathway of applying for a consent under the proposed non-complying activity rule.

- 239 I acknowledge that short term consents will require consent applicants to be involved in repeated consenting processes, generating a risk for increased resource consent costs.
- 240 I have carefully considered alternative approaches proposed by submitters seeking to ensure that the transition of deemed permits and other water permits expiring before 31 December 2025 towards the freshwater management regime established by the new LWRP can occur at the lowest cost possible, including:
- (a) Rolling over existing water permits until such time as the review of the current Water Plan has been completed and the new LWRP has become operative.⁹⁸
 - (b) Amending PC7 to introduce a simple permitted activity rule for allowing existing water users to continue until the new LWRP has become operative.⁹⁹
 - (c) Rolling over all water permits as a controlled activity until such time the review of the current Water Plan has been completed and the new LWRP has become operative.¹⁰⁰
 - (d) Amending PC7 to provide for the issuing of short-term consents at the lowest cost and lowest risk possible, or at full cost to ORC.¹⁰¹

⁹⁷ Submitters 71053, 71071, 71085, 71094, 71138, 71140, 71142, 71145, 71147, 71156, 71161, 71240, 71242, 70013-70019, 70031 and 70041.

⁹⁸ Submitters 71034, 71040, 71047 and 71049.

⁹⁹ Submitters 70045, 71015, 71043, 71046, 71053, 71065, 71066, 71068, 71069, 71080, 71112, 71116, 71120, 71127, 71161, 71178, 71185 and 71230.

¹⁰⁰ Submitter 71178.

¹⁰¹ Submitters 71067, 71071, 71083, 71085, 71122, 71129, 71132, 71134, 71135, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71150, 71156 and 71189.

- 241 The approach proposed under PC7 is in line with the recommendations made by Minister Parker, following Professor Skelton’s review of ORC’s functions and planning framework under s24A of the RMA.
- 242 In his report to Minister Parker, Professor Skelton recommended to defer the expiry date for deemed permits in Otago to a period when it can reasonably be expected that the new LWRP will be in place.¹⁰² However, Minister Parker, in his letter to ORC, dated 18 November 2019, expressed the view that he was not in favour of changing the RMA to extend the date for expiry of the deemed permits (as a 30-year transition period had already been provided to manage this issue), and that instead he preferred ORC taking steps to resolve this issue by developing a plan change by 31 March 2020 that will provide an interim planning and consenting framework to manage freshwater up until new discharge and allocation limits are set in line with the NPS-FM 2020.¹⁰³ In his recommendation the Minister also stated:
- “It is important that these interim measures manage the processing of resource consents (including those to replace deemed permits). I would encourage you to consider a narrow plan change that provides for the relatively low cost, and fast issuing of new consents on a short-term basis, These consents could, for example, be for a maximum term of five years, or until the new LWRP becomes operative, whichever comes first. ...”*
- 243 While developing PC7 ORC staff considered the option of providing for existing water takes authorised by deemed permits and other water permits expiring before 31 December 2025 to continue as a permitted activity. However, staff considered at the time that a permitted activity framework for the short-term continuation of activities currently authorised under deemed permits or expiring water permits is not appropriate or desirable for several reasons, including:

¹⁰² Prof. Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment. P37.

¹⁰³ Letter from Hon. David Parker to the Otago Regional Council regarding the S24 investigation, dated 19 November 2019.

- (a) The cost of permitted activity monitoring is typically borne by the community, not the user of the resource;
- (b) It is unclear whether all water takes exercised under a permitted activity rule will achieve the purpose of the RMA, as the effects of these takes would be more difficult to control under a permitted activity regime;
- (c) It is uncertain whether all existing conditions on resource consents to take and use water can be provided for through permitted activity conditions; and
- (d) Holders of a current water permit would lose the priority provided under section 124C of the RMA over persons who are not existing holders of resource consents, when applying for a new consent under the framework of the LWRP.¹⁰⁴

244 Overall, I concur with the overall assessment that a permitted activity rule may not be sufficiently certain and achieve the legal requirements to be a lawful provision. Furthermore, I also note that allowing existing water takes to continue under a permitted activity rule is inconsistent with the recommendation from the Minister.

245 I also do not support the suggestion that short-term consents should be issued at full cost of ORC. In my opinion, such an arrangement would also result in the wider community carrying the cost of resource consent processes that seek to authorise the use of resources by individual persons.

246 I agree with a number of submitters that the entry conditions for proposed controlled activity rule 10A.3.1.1 may not be workable for all applicants and unintentionally prevent access to the simple and relatively low-cost controlled activity pathway. Later on, in my evidence I will therefore recommend several amendments to the rule framework that are intended to:

¹⁰⁴ The meaning of the 'priority' used in paragraph 243 is different from the meaning given to the term priority in footnote 9 of my evidence and should be read within the context of s124C of the RMA.

- (a) increase clarity around the various activities to which proposed PC7 will apply;
- (b) provide resource consent applicants with improved opportunities to apply for a new resource consent to take and use water under the proposed controlled activity Rule 10A.3.1.1; and
- (c) assist with limiting the direct (consent processing fees) and indirect costs (long-term economic costs) for consent holders.

247 Finally, I consider that the lack of direction in the policy framework of the current Water Plan and the absence of environmental flows and tailored allocation limits could be a contributing factor in the cost of resource consent processing. While short term consents are likely to generate consent processing costs at shorter intervals, it is not inconceivable that a new LWRP that provides applicants with greater certainty around the availability of the region's freshwater resources and the parameters within which these resources can be used is likely to reduce the complexity and cost associated with the preparation and processing of resource consent applications.

Social impacts on communities (inequitable outcomes)

- 248 Some submitters have raised concerns about the social impacts of the plan change, and in particular the risk of PC7 resulting in inequitable outcomes between resource users. Key concerns raised in submissions include:
- (a) In some catchments most of the deemed permits have already been replaced with long term consents. This creates an inequitable outcome as those who are applying for a new permit to replace an existing water permit now are being issued with a short term consent while others are likely to be able to continue operating under their replacement consent for a much longer term.¹⁰⁵
 - (b) Condition (d) of proposed provision 10A.2.1 and entry condition (v) for controlled activity Rule 10A.3.1.1 imply that new resource consents will be given a residual flow or minimum flow or take

¹⁰⁵ Submitters 71014, 71068, 71070, 71100, 71114, 71120, 71127, 71156, 71159, 71187 and 71201.

cessation condition, provided the activity is currently authorised by an existing permit with a residual flow or minimum flow or take cessation condition. This means that consent applicants that seek to replace an existing water permit with a residual flow, minimum flow or take cessation condition will be required to continue to be subject to such conditions, whereas applicants seeking to replace an existing consent with no such conditions attached to it are unlikely to be issued a new consent with a residual flow, minimum flow or take cessation condition.¹⁰⁶

- 249 These submitters have requested that ORC addresses these inequity issues by undertaking a review of the consent conditions of any remaining long-term consents, once the new integrated planning framework in the new LWRP has been made operative.¹⁰⁷
- 250 I acknowledge that in many catchments, including the Taieri catchment, a number of deemed permits and other resource consents to take and use water have recently been replaced with long-term consents. I also acknowledge that in situations where not all consents within a catchment are bound by the same management controls on water takes (i.e. a minimum flow restriction), the effectiveness of these controls in safeguarding the life-supporting capacity of the source water body can be undermined by the ability of some permit holders to continue taking water at the point where the recorded flows at the minimum flow monitoring site are at or below the minimum flow level.
- 251 As previously discussed in paragraphs 89 and 90 of my evidence, Council has the discretion under s 128 of the RMA to review the conditions on any remaining long-term consents. However, a review of consent conditions is considered to be a costly process and there are constraints on ORC's ability to utilise the powers under s 128.
- 252 In my opinion, using the section 128 review process might assist with reducing issues around equity described in paragraph 248 and improving the effectiveness of the management tools promulgated in the new freshwater planning framework. However, by establishing an interim

¹⁰⁶ Submitters 71138, 71142, 71142, 71145, 71147 and 71161.

¹⁰⁷ Submitters 71068, 71120 and 71127.

planning framework under PC7 and granting any new consents between now and 31 December 2025 for a limited duration, ORC reduces the need to rely on the more costly and less effective section 128 review process to achieve the environmental outcomes set in the new LWRP.

Providing for catchment approaches

- 253 The provisions of PC7 apply uniformly across the region. The pros and cons of applying a “one size fits all” approach were discussed during a focus group discussion, held during the drafting phase of the plan change in January 2020 and attended by water users, rūnaka and environmental group representatives, a resource management consultant and ORC staff. While I did not attend this discussion, it is my understanding that the focus group generally agreed that a “one size fits all” approach would be preferable if it resulted in a simpler and therefore more cost-effective consent process.¹⁰⁸
- 254 Various submitters have commented that this “one size fits all” approach does not recognise the differences between water bodies and catchments, and fails to provide decision-makers with sufficient flexibility to consider local circumstances or the use of measures that mitigate potential environmental impacts of water takes or water use, such as investment in efficient irrigation (thereby often exacerbating inequitable outcomes across communities and ecosystems).¹⁰⁹
- 255 A number of these submitters have proposed alternative approaches that better provide for the consideration of local circumstances. These suggested alternative approaches include:
- (a) Amending PC7 to allow for more flexibility when assessing resource consent applications for the take and use of water in different catchments.¹¹⁰
 - (b) Considering consent applications on a case by case basis.¹¹¹

¹⁰⁸ Section 32 Evaluation Report for PC7, p9.

¹⁰⁹ Submitters 70042, 71006, 71014, 71015, 71041, 71043, 71049, 71054, 71056, 71064, 71070, 71082, 71097, 71102, 71104, 71112, 71116, 71117, 71121, 71124, 71126, 71157, 71160, 71168, 71179, 71182, 71185 and 71216.

¹¹⁰ Submitter 71233.

¹¹¹ Submitter 71082.

- (c) Creating a river management authority.¹¹²
 - (d) Developing new policy or targeted plan change that addresses specific issues in individual catchments.¹¹³ (This includes completing a minimum flow and allocation limit setting plan change process for the Manuherekia Rohe).¹¹⁴
 - (e) Developing a targeted plan change to address specific issues in catchments where the operative Water Plan does not give clear direction.¹¹⁵
- 256 I have considered the amendments requested and supporting reasons but am of the opinion that the development of new policy or targeted plan changes to address catchment specific issues is not a feasible option.
- 257 There is currently a lack of knowledge about catchment specific issues. The identification of these localised issues and development of robust technical information to support policy responses to these issues, as well as the identification of catchment specific environmental outcomes in accordance with the NPS-FM 2020's NOF process through engagement with tākata whenua and local communities, will take time.
- 258 In my opinion, any further delays to changing the current Water Plan in order to develop an alternative plan change proposal that provides for the transition of deemed permits (and other water permits), while also providing for 'bespoke' solutions to local issues, or to explore alternative management or governance structures (e.g. creation of river management authority) is not achievable given:
- (a) the time needed to collect robust information and/or develop such a proposal; and
 - (b) the pending expiry of remaining deemed permits (and other water permits).

¹¹² Submitter 70053.

¹¹³ Submitters 71015, 71059, 71091 and 71117.

¹¹⁴ Submitters 71075, 71086, 71098, 71099, 71128, 71130, 71153, 71164, 71175, 71176, 71187, 71231, 71235 and 71242.

¹¹⁵ Submitter 71014.

259 With respect to the submitter requests for completing a minimum flow and allocation limit setting plan change process for the Manuherekia Rohe, I agree that it is appropriate to continue the current process of engaging with tākata whenua and the community to determine environmental outcomes and collecting technical information to support the limit and environmental flow setting. However, in my opinion a plan change to the current Water Plan to introduce into the current Water Plan minimum flows and allocation limits for the Manuherekia Rohe does not provide consent holders with long-term certainty, does not negate the need for short-term consents and would be an inefficient use of resources for both ORC and stakeholders because:

- (a) the environmental flow(s) and allocation limit(s) for the Manuherekia Rohe would need to be reviewed to ensure consistency with:
 - (i) the FMU visions that are currently being developed and will be included in the new RPS for Otago, planned to be notified in June 2021; and
 - (ii) the region-wide and Clutha Mata-Au wide provisions that will be included in the new LWRP for Otago, planned to be notified by 31 December 2023;
- (b) the notification of the new LWRP would likely open up any environmental flow(s) and allocation limit(s) for the Manuherekia Rohe to challenge via the submission and hearing process; and
- (c) consent holders would be required to be involved in both processes.

260 A large number of submitters also requested to exempt resource consent applications to:

- (a) take water from freshwater bodies that are currently not fully allocated under the provisions of the Water Plan, such as the Clutha River/Mata-Au or its source lakes; or
- (b) exempt transfers of water takes from freshwater bodies that are currently “highly impacted” by water takes, to freshwater bodies

that are less impacted by water takes or still have available allocation (i.e. including the use of an alternative source).¹¹⁶

- 261 As discussed previously in paragraph 77 of my evidence, the Water Plan currently does not set allocation limits for Lakes Dunstan, Hawea, Roxburgh, Wanaka or Wakatipu, or the main stems of the Clutha River/Mata-Au or Kawarau River and does not provide any policy guidance for the setting of environmental flows or levels for any of these water bodies.¹¹⁷
- 262 Furthermore, while in some catchments and aquifers in Otago the total allocation is still less than the “tailored” allocation limits set in the Schedules of the Water Plan or the “default” allocation limits set under Policies 6.4.2(a) and 6.4.10A2 and further water can be allocated, it is currently uncertain whether these “tailored” or “default” allocation limits are adequate to achieve the environmental outcomes that will be determined under an NPS-FM 2020 compliant plan development process.¹¹⁸
- 263 Finally, while some freshwater bodies appear to be currently relatively mildly impacted by water takes, there could be various reasons why any further taking from these freshwater bodies is not desirable, including:
- (a) The water body may be protected by existing regulations or statutes (i.e. a WCO or the LWPA);
 - (b) The water body may be identified in the new LWRP as an outstanding water body, whose significant values are to be protected under the NPS-FM 2020; or
 - (c) There is currently no clarity around the future environmental outcomes for these water bodies that need to be determined in

¹¹⁶ Submitters 70026, 71069, 71134, 71135, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71155, 71159 and 161.

¹¹⁷ Policy 6.4.1 of the Regional Plan: Water for Otago stipulates that the policy framework for setting allocation limits and minimum flows in Chapter 6 does not apply to surface water takes (and connected groundwater takes) from Lakes Dunstan, Hawea, Roxburgh, Wanaka or Wakatipu, or the main stems of the Clutha River/Mata-Au or Kawarau River.

¹¹⁸ For catchments outside Schedule 2A (except for Lakes Dunstan, Hawea, Roxburgh, Wanaka or Wakatipu, or the main stems of the Clutha River/Mata-Au or Kawarau River) a “default” primary allocation limit of 50% MALF is set through Policy 6.4.2(a). Policies 6.4.10A2(b) provides for the setting of default maximum allocation limits for aquifers not included in Schedule 4A. The “default” limit is determined as 50% of the mean annual recharge (MAR) of the aquifer.

accordance with the NPS-FM 2020's NOF process through engagement with tākata whenua and local communities.

- 264 For these reasons I do not support exempting consent applications to take water from freshwater bodies that are currently not fully allocated or applications for the transfer of water takes from highly impacted water bodies to alternative water sources from the provisions of PC7.

Using the existing framework of the Regional Plan: Water for Otago

- 265 Various submitters have expressed the view that the policy and rule framework within the operative Water Plan already provides for the transition of deemed permits to resource consents issued under the RMA and that PC7 removes the ability for decision-makers to consider existing Water Plan policies for deemed permit renewal or other provisions within this plan.¹¹⁹ Other submitters have pointed out that the current planning framework in the Water Plan is effective in avoiding and, where needed, phasing out over-allocation and improving efficiency of water use (both being key outcomes sought by Policy 11 of the NPS-FM-2020).¹²⁰

- 266 In line with these views, many submitters have asked for:

- (a) PC7 to be amended so any application for a change to or variation to the conditions of existing water permits, including a change to consent duration, will be considered against the provisions of the current Water Plan and not against the proposed provisions of PC7.¹²¹
- (b) Any applications lodged prior to the notification of PC7 to be considered under the current Water Plan provisions only.¹²²
- (c) Any new applications to take and use water to be considered under the current Water Plan provisions only.¹²³

¹¹⁹ Submitters 71008, 71119, 71133, 71137, 71149, 71187, 71161, 71175 and 71242.

¹²⁰ Submitters 71070, 71122, 71129, 71132, 71134, 71135, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71150, 71153, 71156 and 71163.

¹²¹ Submitters 71135, 71139, 71145, 71146 and 71147.

¹²² Submitters 71111 and 71159.

¹²³ Submitters 70024, 70025, 71009, 71011, 71013, 71015, 71018, 71029, 71030, 71036, 71038, 71039, 71041, 71042, 71044, 71046-71050, 71052, 71057, 71059-71062, 71070-71072, 71075,

- (d) Any new applications to take water from catchments where minimum flows have been set in Water Plan Schedule 2 to be considered under the current Water Plan provisions only, and for non-notified interim consents to be granted under the same planning framework from catchments where no minimum flows have been set in Schedule 2 of the Water Plan.¹²⁴
 - (e) Any new resource consent applications to be considered under an updated planning framework in the Water Plan, with amendments made to strengthen the policy framework.¹²⁵
 - (f) Short-term resource consents to be issued under the current framework of the Water Plan.¹²⁶
- 267 Water permit holders can request a change or cancellation of a consent condition under s127 of the RMA. An application to change or cancel conditions of consent is treated in the same way as a resource consent application for a discretionary activity.¹²⁷
- 268 The effects which are to be considered are the effects of the change of conditions, not the effects of the consent already granted. Where the variation to the conditions of an existing permit to take and use water would result in a fundamentally different activity or one having materially different adverse effects or would expand or extend the original activity it should be treated as an application for a new consent.¹²⁸
- 269 Furthermore, section 127(1)(b) of the RMA states no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent. Consequently, any water permit holders that want to change the duration of the activity authorised by the permit will need to apply for a new resource consent.

71078, 71081, 71085, 71086, 71092, 71094, 71098, 71100, 71107, 71109, 71113, 71114, 71116, 71125, 71128, 71136, 71158, 71163, 71236 and 71244.

¹²⁴ Submitters 70035, 70049, 71006, 71012, 71053, 71065-71068, 71083-71084, 71120 and 71127.

¹²⁵ Submitters 71008, 71043, 71087, 71161, 71185 and 71230.

¹²⁶ Submitter 71178.

¹²⁷ Section 127(3)(a) of the RMA.

¹²⁸ *Body Corporate 970101 v Auckland City Council [2000] NZRMA 202 upheld in Body Corporate 97010 v Auckland City Council [2000] 3 NZLR 513.*

- 270 Considering new applications or applications lodged prior to the notification of PC7 against the current Water Plan provisions only contravenes the requirements under the RMA.
- 271 Under s86(B)(3) of the RMA a rule has immediate legal effect on notification if the rule protects or relates to water, air or soil (for soil conservation).¹²⁹ Therefore, the rules proposed under PC7 apply to any new resource consent application lodged after the notification of PC7.
- 272 Under section 104(1)(b)(vi) of the RMA a consent authority must, subject to Part 2, have regard to a plan or proposed plan when considering an application for a resource consent.
- 273 As previously discussed in paragraph 23 of my evidence, ORC acknowledged in October 2018, following an internal review, that the operative Water Plan fails to give effect to the relevant NPS-FM at the time. A review of ORC's functions and planning framework under section 24A of the RMA carried out the following year led to Professor Skelton and the Minister for the Environment arriving at the same conclusion. The key reasons why the Water Plan does not give effect to the NPS-FM 2020 are discussed in paragraphs 55 to 87 of my evidence.
- 274 The current plan provisions, including the current limits and minimum flows set in the Plan's schedules or the allocation limits set under set under Policies 6.4.2 and 6.4.10A2, are out of date and need to be reviewed. Continuing to process resource consent applications for new water takes or for the replacement of existing water permits for long consent durations under a freshwater planning framework that is out of date is in my opinion inappropriate. New limits and objectives that give effect to FMU-specific environmental outcomes cannot be determined until an NPS-FM 2020 compliant process and supporting technical work has been undertaken.
- 275 For all of the above reasons, I consider that continuing to issue new resource consents to replace current deemed permits and expiring water permits under the current planning framework of the Water Plan or

¹²⁹ S86B(5) states: *For the purposes of clause (3), immediate legal effect means legal effect on and from the date on which the proposed plan containing the rule is publicly notified under clause 5 of Schedule 1.*

amending the plan change so its provisions do not apply to pending applications for new water permits is inconsistent with the recommendation from the Minister for the Environment, discussed in paragraphs 27 and 28 of my evidence, does not achieve the purpose of the sustainable management of the region's natural resources and does not ensure freshwater is managed in a way that gives effect to Te Mana o te Wai.

Implications for water takes for non-irrigation uses

276 Many submitters have expressed concern about the implications of PC7 on activities other than water takes for irrigation, including:

- (a) Damming, diversions, retakes and takes of augmented flows;
- (b) Non-consumptive and unmetered takes;
- (c) Consumptive takes other than irrigation, including water harvesting, commercial, community and domestic water supplies and snowmaking;
- (d) Hydro-electricity generation; and
- (e) Instream works associated with water takes.

277 Other submitters have asked for more clarity around how these provisions apply to the above activities.

278 In considering these submissions I have taken guidance from:

- (a) the direction set in higher order planning documents; and
- (b) the effects of these activities on instream and other values associated with the affected freshwater bodies.

Damming, diversions, retakes and takes of augmented flows

279 Several submitters have stated that PC7 does not provide a coherent framework for managing diversions, damming or discharges of water and gives no consideration to the need to provide for the safe operation of damming activities.¹³⁰ Some of these submitters have requested for

¹³⁰ Submitters 70041, 70042, 71052, 71053, 71065, 71066, 71068-71070, 71119, 71120, 71126, 71127, 71133, 71137, 71148, 711061, 71163, 71176, 71177, 71182 and 71185.

PC7 to be amended to allow applications to replace deemed permits relating to dams and associated infrastructure to be assessed under the current Water Plan, because a 6 year, or even 15 year, consent term:

- (a) fails to recognise that water storage dams have a long-term lifespan;
- (b) is insufficient to ensure a return on investment; and
- (c) rules out any capital expenditure to provide for infrastructure upgrades, repairs or maintenance at least until the new LWRP has been made operative.¹³¹

280 A number of submitters also consider that any application to replace a deemed permit that provides for damming would default to the non-complying activity rule, as some of the entry conditions for the controlled activity rule do not apply to dams. These submitters have expressed concerns around the likelihood of applications for the replacement of a deemed permit for damming activities to be granted under either rule.¹³²

Damming

281 Neither the RMA, nor the Water Plan define the term “damming”. However, damming is generally understood as the activity of impounding water in storage/detention ponds and reservoirs and other structures - both within and outside freshwater bodies.

282 PC7 only seeks to manage damming activities authorised by a current deemed permit and does not apply to new (i.e. proposed) damming activities or damming activities that were lawfully established by resource consent granted under the RMA. Hence, any resource consent applications to dam water, where this activity is currently not authorised by a current deemed permit continue to be assessed under the provisions of the operative Water Plan, specifically the policies in Section 6.5 and Rules in Section 12.3 of the Water Plan.

283 Where an application is made for the damming of a water body, where that activity is authorised by a current deemed permit, proposed PC7

¹³¹ Submitters 71001, 71119, 71133, 71137, 71159, 71163 and 71230.

¹³² Submitters 71119, 71133 and 71137.

applies and the existing framework in the Water Plan, including the provisions in Sections 6.5 and 12.3, does not apply.

284 Section 104D of the RMA requires that in order for a non-complying activity to be eligible to be granted resource consent the proposed activity must pass a 'gateway test' requiring that, either:

- (a) The adverse effects of the activity on the environment will be minor; or
- (b) The application is for an activity that will not be contrary to the objectives and policies of the relevant plan and any relevant proposed plan (including Policy 10A.2.3).

285 According to these submitters, the section 104D 'gateway test' for non-complying activities is difficult to pass as it can be argued that dams often have a more than minor effect on the environment.

286 I have considered the concerns around:

- (a) the need to be able to consider dam safety concerns,
- (b) the requirement to apply for a new damming consent under the non-complying rule 10A.3.2.1 because not all of the controlled activity conditions can be met by the holders of an existing deemed permit for damming; and
- (c) the high thresholds set by Policy 10A.2.3 for passing the 'gateway test' for existing dams.

287 I consider the concerns around the need to be able to consider dam safety concerns valid.

288 In my opinion, applicants with an existing deemed permit to dam water can apply for a new consent under the controlled activity Rule 10A.3.1.1 and are not required to apply for a new consent under the non-complying activity Rule 10A.3.2.1, because where an entry condition for controlled activity Rule 10A.3.1.1 does not apply to the proposed activity, the condition is deemed to be met. I consider there to be no need to amend the rule to make the controlled activity pathway more accessible for applicants seeking a new consent for an existing damming activity to dam water. However, in my opinion the insertion of an advice note and minor amendments to the proposed plan change provisions will assist

with providing more certainty and clarity around which of the proposed PC7 provisions apply to damming activities and will ensure consistency in the interpretation of these provisions by plan users.

- 289 I acknowledge that Policy 10A.2.3(a) sets a difficult test for damming activities. However, as the overall objective of the plan change is to establish an interim consenting framework to manage freshwater up until a new NPS-FM 2020-compliant regional plan for the integrated management of land and freshwater resources is made operative by 31 December 2025, it is appropriate to grant short term consents for activities that have or may have more than minor adverse effects on the ecology and the hydrology of a freshwater body. Amending the non-complying activity Rule 10A.3.2.1 to make it easier for activities that are likely to have more than minor adverse environmental effects to obtain a consent for longer duration (up to 15 years) will make it more difficult to achieve this objective.
- 290 Furthermore, granting a short term consent for the damming of water for a duration of 6 years, after which a new resource consent application for this activity can be considered in light of the freshwater management regime set in the new LWRP is likely to be more efficient and effective than having to review the conditions of consent under s128 of the RMA (as discussed earlier in paragraphs 224 to 226 of my evidence).
- 291 For these reasons and based on the information provided to me in the submissions and further submissions, I consider that no further amendments are needed at this time to address the concerns that were expressed by submitters in relation to damming activities. However, I would like to consider any further relevant information provided by the parties in relation to this issue during the evidence exchange and hearing process.
- 292 In summary I recommend the insertion of the following advice note to provide more clarity around situations where PC7 applies to damming activities:

10A.3 Rules

Note 2: Where, under Rule 10A.3.1.1, any of the 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.

293 I also recommend the insertion of a new matter of control (g) to Rule 10A.3.1.1 to address dam safety:

10A.3.1. Controlled Activity: Resource consent required

10A.3.1.1 *Despite any other rule or rules in this Plan;*

(a)

*is a **controlled** activity*

(i)

The Council reserves control over the following matters:

(a)

...

(g) *Flooding, erosion, land instability, sedimentation or property damage resulting from the operation of the dam; and*

~~(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.*

294 In accordance with the requirements under s32AA I have evaluated the costs and benefits of alternative options for managing damming activities currently authorised by deemed permits, including:

- (a) Exempting these activities from the PC7 framework and continue to manage these under the current Water Plan;
- (b) Managing these activities within the PC7 framework as notified,
- (c) Amending PC7 to provide for longer consent durations; and
- (d) Amending PC7 to allow these activities to pass the 'gateway test' for non-complying activities.

295 In my opinion amending the PC7 provisions to improve the ability of the consent authority to consider aspects around dam safety, while keeping

the overarching PC7 framework intact in terms of how it applies to damming activities achieves the highest net benefit over the long term for the environment. It is also the most efficient and effective approach for achieving proposed Objective 10A.1.1, which is to enable the transition to a freshwater planning framework that gives full effect to the NPS-FM 2020, including managing freshwater in accordance with the overarching principle of Te Mana o te Wai.

- 296 I consider that amendments to provide more clarity and ensure consistency in plan interpretation will further contribute to the effectiveness of PC7's objective.

Diversion

- 297 The Water Plan defines the term "divert" as "*the process of redirecting the flow of water from its existing course to another*".

- 298 There are currently no deemed permits that specifically provide for the diversion of water, and PC7 does not seek to manage resource consent applications for new or existing diversions of water. Therefore, applications to divert water will not be considered under the framework of PC7 and resource consent applications to divert water will continue to be assessed under the provisions of the operative Water Plan, including the policies in Section 6.5 and rules in Section 12.3.

Takes of augmented flows

- 299 Augmented takes are takes from a surface waterbody (e.g. river or lake) where:

- (a) water has been delivered to that surface waterbody for the purpose of subsequent takes (i.e. water is released from a dam for subsequent takes): or
- (b) water is delivered to a river as part of the conveyance network. This is where a river, most commonly, is used as part of the conveyance system.

- 300 The Water Plan defines the term "augmentation" as "*Increasing the supply of available water through the active management of resources*". The explanations to Policies 6.4.14 and 6.5.5 provide further clarification. The explanation to Policy 6.4.14 states: "*Net flow*

augmentation is that water added to a water body through an augmentation scheme, for a subsequent take, which is estimated to still be present in the water body at the point of take. Quantities provided through augmentation may be reduced by leakage, or evaporation losses. Such losses will be deducted when determining the net flow augmentation that has been provided". The explanation to Water Plan Policy 6.5.5 further states that "*Augmentation of surface water flows ... occurs where water is brought into a catchment for subsequent release.*"

- 301 Flow augmentation can occur in a wide variety of circumstances. In some cases, where the take of the augmented water is supported by a "parent" take, it is possible to classify augmented takes as re-take. In other cases, the augmented water may be supplied by a discharge from a dam. In some situations, the take and supply of augmented water can be from a single water body, in other circumstances the take and supply of the augmented water and the supply of the augmented water can be from different water bodies that may or may not share the same catchment.
- 302 Finally, it should be noted that takes that take from augmented water bodies often take augmented flow, as well as run of the river water at the same time and the water take data collected from these takes does not distinguish between the two.
- 303 Augmented takes are provided for by Rule 12.1.4.1 of the Water Plan as a restricted discretionary activity. These are separate to takes from races or reservoirs, which are not specifically provided for by this rule.
- 304 Under Policy 6.4.2 augmented takes are not considered as part of primary allocation of a catchment and are currently under Policy 6.4.14 exempt from minimum flow restrictions.
- 305 In my opinion, it is plausible, as some submitters have stated, that where surface flows are augmented the take of augmented water has little effect on the water body. I also consider that the augmentation of the water body itself may have a positive impact on the surface flow and

habitat availability on the affected river reaches, especially at times when inflows in the catchment are low.¹³³

- 306 However, as stated above in paragraph 301, flow augmentation can occur in a wide variety of circumstances and often there is no consistency or clarity in terms of the legal relationship between the water permit that authorises the augmented take and the permit that provides for the parent take or supply of the augmented water. For these reasons and because it is currently very difficult to assess whether a water take solely relies on the taking augmented water or only in part, I consider that the submissions do not provide me with sufficient information to exempt augmented takes from the PC7 framework.

Retakes

- 307 The term “retake” is not defined by the RMA or the Water Plan. However, re-takes are generally understood to be takes of irrigation runoff water.
- 308 Retakes are usually considered as part of the take and use application for the ‘parent take(s)’ (unless the activity is permitted by Rule 12.1.2.3 - takes from artificial lakes) and will be considered within the envelope of the rule(s) that apply to the ‘parent’ take(s). Any retakes will therefore be included on the same consent as the ‘parent’ take(s).¹³⁴ In my opinion this approach is appropriate as it will allow for the simultaneous consideration of all aspects of two or more (proposed) activities that are strongly interconnected.
- 309 In any instances where the parent take(s) would be subject to the provisions of PC7 (the parent take is authorised by a deemed permit), it would be most appropriate to consider the associated retake within the same envelope of the provisions that apply to the ‘parent’ take(s). This will continue to allow retakes to be included on the same consent as the ‘parent’ take(s), thus ensuring consistency in terms of consent conditions and a shared consent duration.

¹³³ Submitters 71120 and 71127.

¹³⁴ Applications will need to include and assess the ‘parent’ take from the water body (e.g. river), and any subsequent takes from a water race, reservoir, or dam in the one application.

310 Overall, I consider that it is appropriate for the PC7 framework to apply to retakes where the retake constitutes the take of irrigation runoff water. Irrigation runoff is generally the result of inefficient irrigation practices. Granting long-term consents for these types of retakes could be interpreted as ORC approving of an inefficient use of water, and creates the expectation with the person holding the retake permit that the water source will remain available well into the future (which ORC in many cases has little or no control over). Granting consents authorising such retakes for a short duration, on the other hand, sends a clear signal that this water is unlikely to be available in the future

Non-consumptive and unmetered takes

311 The operative Water Plan defines the term non-consumptive take as follows:

A take is non-consumptive when:

(1) The same amount of water is returned to the same water body at or near the location from which it was taken; and

(2) There is no significant delay between the taking and the returning of the water.

312 This definition is consistent with the description of “non consumptive takes in Regulation 4 of the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010.

313 Policy 6.4.2 (b)(ii)(2) further recognises that non-consumptive takes of water should not be included within the allocation of a water body.

314 Under the operative Water Plan non-consumptive takes are a discretionary activity under Rule 12.1.5.1 (for surface water and connected groundwater) and Rule 12.2.4.1 (for groundwater).¹³⁵

315 PC7 seeks to limit the consent term for resource consents for new non-consumptive takes and for the replacement of existing water permits expiring before 25 December 2025, to no more than 6 years, except where consent holders apply for consents for non-consumptive surface

¹³⁵ Suction dredge mining activities are also subject to the rules in Section 13.5 of the Water Plan relating to the alteration of the bed of a lake or river, or of a Regionally Significant Wetland.

water takes as a non-complying activity under Rule 10A3.2.1, which allows for a consent term that does not extend beyond 31 December 2035 if certain requirements are met.

- 316 Various submitters have requested for amendments to proposed Policies 10A2.1, 10A2.2 and Rule 10A.3.1.1 requesting longer consent durations for consented non-consumptive water takes, such as takes for suction gold dredging.¹³⁶
- 317 A number of submitters also consider that any application for an existing non-consumptive water take would default to the non-complying activity Rule 10A3.2.1, as the entry conditions (iv) and (vi) for controlled activity Rule 10A.3.1.1 often would not be able to be met by the holders of a water permit for a non-consumptive take. These submitters are requesting for (some of) these activities to be provided for as a controlled activity or permitted activity.¹³⁷
- 318 The entry conditions (iv) and (vi) for controlled activity Rule 10A.3.1.1 as notified require that the rate of take and the volume of water applied for is no more than the average maximum rate of take and average maximum volume calculated using water metering data collected during the period 1 July 2012-30 June 2017. Existing holders of a permit for a non-consumptive take and use are often not able to provide the water metering data required to establish the take limits required under controlled activity conditions (iv) and (vi), as they are exempt from the requirement to meter their take under Regulation 4(2) of the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010.
- 319 I have considered the submissions, including the submissions requesting suction dredge mining to be classified as a controlled activity or permitted activity. No detailed evidence has been provided in these submissions around the potential or likely effects of these activities on instream habitats.

¹³⁶ Submitters 71002, 71003, 71004, 71057, 71143, 71 183, 71193, 71195, 71197, 71198, 71205, 71210, 71220, 71223, 71227, 71248, 71252, 71245 and 70046.

¹³⁷ Submitters 71002, 71003, 71004, 71005, 71007, 71183, 71193, 71195, 71197, 71198, 71205, 71210, 71220, 71223, 71227, 71248, 71252 and 71245.

- 320 Based on my experience in freshwater planning I am mindful that the water permits that are currently classified as non-consumptive takes include a wide variety of different types of water takes, such as dewatering takes for mining or construction pits, takes for hydro-electricity generation and takes for amenity enhancement. While some permits for non-consumptive takes are providing for long-term or ongoing activities, other non-consumptive takes are likely to be more permanent in nature. Furthermore, the size of these takes can range from very small (few litres per second) to very large (hundreds of litres per second).
- 321 Based on the information provided in submissions I consider it appropriate for the provisions of PC7 to be amended to provide holders of a water permit with a non-consumptive take with better opportunities to use the more simple and cost-effective pathway offered by controlled activity Rule 10A.3.1.1.
- 322 With regard to the need for any additional amendments to the PC7 framework to further accommodate submitter requests relating to the management of non-consumptive takes, I would like to consider any further relevant information on this matter that may be provided by the parties through the evidence exchange and hearing process.
- 323 One submitter has also requested more clarity about the manner in which the PC7 framework applies to unmetered consumptive takes.¹³⁸
- 324 Regulation 4(2) of the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 exempts holders of a consent to take less than 5 litres/second from the requirement to measure their water use.
- 325 Like permit holders with a water permit for a non-consumptive take, consent holders with a consumptive water take that is not required to be metered are unlikely to comply with entry conditions (iv) and (iv) of proposed controlled activity Rule 10A.3.1.1. Hence, they are required to apply for resource consent to take and use water under non-complying activity Rule 10A.3.2.

¹³⁸ Submitter 71229.

326 Considering all of the above, and the evidence of Mr Wilson, I recommend the following amendments to proposed controlled activity Rule 10A.3.1.1 including the inclusion of a new condition (vii) and consequential amendments to (iv) and (vi). This will provide water permit holders with a small unmetered take or a non-consumptive take with better opportunities to apply for a new resource consent under proposed controlled activity Rule 10A.3.1.1.

10A.3. Rules

10A.3.1. Controlled Activity: Consent required

10A.3.1.1 *Despite any other rule or rules in this Plan;*

a) *...; or*

b) *...;*

*is a **controlled** activity provided the following conditions are met:*

(i) *...*

(ii) *...*

(iii) *...*

(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 – 30 June 2017 and calculated in accordance with the method in Schedule 10A.4; and*

(v) *.....*

(vi) *Except where (vii) applies, 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.*

(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.

.....

- 327 In accordance with the requirements under s32AA I have evaluated the costs and benefits of alternative options for managing non-consumptive water takes and other unmetered takes, including:
- (a) Exempting these activities from the PC7 framework and continuing to manage these under the current Water Plan;
 - (b) Managing these activities within the PC7 framework as notified; and
 - (c) Amending proposed Schedule 10A.4 in PC7 to provide better opportunities for these takes to be considered under the proposed controlled activity rule.
- 328 In my opinion amending the proposed controlled activity Rule 10A.3.1.1 will provide water permit holders of small unmetered takes and non-consumptive takes with better opportunities to apply for a new resource consent under controlled activity Rule 10A.3.1.1. In doing so the proposed amendment is both efficient and effective in achieving proposed Objective 10A.1.1, which is to enable the transition to a freshwater planning framework that gives full effect to the NPS-FM 2020 by establishing an interim planning framework that provides a simple and low-cost process for obtaining a short term consent.

Consumptive takes other than irrigation (including water harvesting, snowmaking commercial, community and domestic water supplies)

- 329 One submitter has requested that PC7 be amended to better provide for water takes for snowmaking and to provide greater clarity around whether the requirement under proposed Policy 10A.2.1 to reduce the volume of water allocated for abstraction applies to these takes.¹³⁹
- 330 Other submitters have asked for the plan change provisions to be amended to better provide for water takes for the purpose of water

¹³⁹ Submitter 70046.

harvesting, either through a permitted activity rule or the granting of consents as supplementary allocation.¹⁴⁰

- 331 Water takes for the purpose of snowmaking are often authorised under supplementary allocation resource consents. Supplementary allocation consents are typically subject to a higher minimum flow than primary allocation takes.¹⁴¹ In addition, snowmaking typically occurs from early June to late October, when river flows tend to be higher and are usually only mildly impacted by irrigation takes. Also, it is possible that snowmaking at times has a positive effect on surface flows by increasing the snowpack and providing for additional recharge of spring surface flows caused by snowmelt, thereby reducing the duration of the low flow period.
- 332 Like snowmaking, water takes for storage are often authorised by supplementary allocation consents or further supplementary allocation consents.¹⁴² These takes also have a potential environmental benefit by decreasing reliance on run of the river water abstraction during low flow events. Applying the requirement to only grant replacement consents where there is a reduction in the volume of water allocated for abstraction as required under proposed Policy 10A.2.1(e) could have the unanticipated outcome that the amount of water that can be taken at higher flows to fill existing storage dams is reduced, hence increasing the need for water users to continue taking water at lower flows.
- 333 In the absence of robust scientific evidence to inform the setting of appropriate supplementary allocation limits for a variety of uses (including snowmaking and water harvesting), caution should be applied when it comes to enabling further investment in water storage or snowmaking, because the conditions under which water can be taken for these purposes may need to be reconsidered as part of the development of a new LWRP.

¹⁴⁰ Submitter 71077, 71103 and 71161.

¹⁴¹ The framework for establishing supplementary allocation and setting associated minimum flows is explained in more detail in Footnote 43 under paragraph 97 of my evidence.

¹⁴² Policy 6.4.10 provides for the granting of consents within further supplementary allocation when flows are above the natural mean flow.

- 334 I also acknowledge that the result of the increased reliability offered by water storage brings a risk of intensification, which in turn may have an impact on water quality and increased nutrient inputs.
- 335 For these reasons, I do not consider it appropriate to exempt supplementary allocation takes from the framework of PC7.
- 336 A small number of submitters have also requested for PC7 to be amended to better provide for commercial potable water supplies and domestic and community water supplies. Suggested amendments to achieve this include:
- (a) Exempting water takes associated with community water supplies listed in Water Plan Schedules 1B (surface water takes) and 3A (groundwater takes) or any existing take for community water supply for drinking water from the provisions of PC7.¹⁴³
 - (b) Better providing for commercial, domestic and community drinking water supplies, including community water supplies listed in Schedules 1B and 3A.¹⁴⁴
 - (c) Allow for consideration on population growth when determining allocation for community drinking water supplies.¹⁴⁵
 - (d) Provide for water supplies for potable water and irrigation in rural residential areas as a controlled activity.¹⁴⁶
 - (e) Update Schedules 1B and 3A to include all existing community water supplies.¹⁴⁷
- 337 Water Plan Schedule 1B identifies existing water takes from lakes and rivers, where the water taken is used for public water supply purposes. Rule 12.1.3.1 of the Water Plan provides for replacement consents for these takes as a controlled activity.
- 338 Schedule 3A of the Water Plan identifies the uses of groundwater from particular aquifers in Otago for the purpose of community water supply.

¹⁴³ Submitter 71173 (joint submission) and 70026.

¹⁴⁴ Submitter 71143, 71178, 70026 and 70048.

¹⁴⁵ Submitter 70048.

¹⁴⁶ Submitter 71020.

¹⁴⁷ Submitter 71026.

Rule 12.2.2A.1 of the Water Plan provides for replacement consents for these groundwater takes as a controlled activity.

- 339 Within the hierarchy of obligations under Te Mana o te Wai, required under the NPS-FM 2020, the health and well-being of water bodies and freshwater ecosystems is the highest priority, while the health needs of people (such as drinking water) can only be provided for as long as the environmental health of freshwater and its associated ecosystems is safeguarded.
- 340 Under Policy 6.4.8 of the Water Plan community water supply takes identified in Schedule 1B or 3A are currently exempt from any minimum flow restriction set under this plan. I consider that, in light of the direction set by the NPS-FM 2020 and the planned development of the new LWRP, it is appropriate to review the current regime in the Water Plan for managing community water supplies.
- 341 Furthermore, in the absence of robust scientific evidence around future availability of water for any extractive uses, including domestic and community water supplies, I consider caution should be applied when granting consents for new and existing domestic and community water supplies, especially where an increase in allocation is sought to provide for future population growth or where there is potential for residential land use intensification (i.e. from low density residential to high density residential development).¹⁴⁸
- 342 Finally, I recognise that the NPS-FM 2020 accords a higher priority to the health needs of people (such as drinking water) than to the ability of people and communities to provide for their social, economic, and cultural well-being (second priority within the hierarchy of obligations under Te Mana o te Wai as opposed to third priority). In any event, I note that section 14(3)(b) permits the take of water for an individual's reasonable domestic needs or for the reasonable needs of a person's animals for drinking water (provided the take or use does not, or is not likely to, have an adverse effect on the environment).

¹⁴⁸ Residential land use intensification.

- 343 However, often consented community water schemes do not solely provide drinking water, but also support a range of other activities such as irrigation, commercial or industrial uses, stock drinking water and dairy shed supplies. Therefore, I am not in support of exempting domestic and community water supply takes from the framework of PC7.
- 344 I do recognise that the averaging of the recorded annual take volumes for calculating the assessed actual usage required under the methodology in Method 10A.4.4 creates a risk that the annual volume limit included in any new consent will be less than some of the annual water volumes taken in the past. In my opinion, the proposed amendment to Schedule 10A.4.4 as recommended by Mr Wilson is an appropriate measure to better ensure that these consented water domestic and community water supplies as well as takes for water storage will continue to be able to take the volume of water they have been taking in the past.
- 345 To accommodate the proposed amendment to Schedule 10A.4.4 as recommended by Mr Wilson, I propose an amendment to Policy 10A.2.1(e). The amendment to Policy 10A.2.1(e) will ensure that:
- (a) in cases where the actual annual volume of water taken, calculated in accordance with the amended Schedule 10A.4.4 as recommended by Mr Wilson, equals the consented annual volume of abstraction Policy 10A.2.1(e) is met; and
 - (b) Policy 10A.2.1(e) better aligns with one of the key aspects of what PC7 is seeking to achieve, which is to limit the volume of water allocated in resource consents for the replacement of existing water permits to the quantity of water that has been used in the past.
- 346 In light of all of the above I recommend the following changes to PC7, together with some additional consequential amendments for clarity in Schedule 10A.4.4:

10A.2 Policies

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~~ no increase in the any actual volume of water taken ~~allocated for abstraction~~.*

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.

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 one produces the lower calculated Annual Volume Limit;*

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

Annual Volume 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 taken 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) ...

(4) ...

(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.~~*

347 In accordance with the requirements under s32AA I have evaluated the costs and benefits of alternative options for managing consumptive water takes for uses other than irrigation (e.g. community and domestic supplies, water storage and snowmaking), including:

- (a) Exempting these activities from the PC7 framework and continue to manage these water permits under the current Water Plan;
- (b) Managing these activities within the PC7 framework as notified, and
- (c) Amending PC7 to provide better opportunities for these takes.

348 In my opinion the recommended amendments to proposed Policy 10A.2.1 and the methodology in Schedule 10A.4.4 for calculating annual volume limit have an overall net benefit. I acknowledge that the proposed amendments may result in more water being allocated on an annual basis in new consents compared to the annual volumes allocated under

Methodology 10A.4.4 as notified. However, I do consider that the proposed amendment will still ensure that the effects of existing water takes will not be exacerbated under the new short-term consents and will assist with further promoting controlled activity Rule 10.3.1.1 as a viable consenting pathway. By ensuring that water permits for uses other than irrigation are still within the framework of PC7, the proposed amendments are effective in achieving proposed Objective 10A.1.1, which is to enable the timely transition to a freshwater planning framework that gives full effect to the NPS-FM 2020.

Hydro-electricity generation

349 One submitter has raised concerns about the lack of consideration in the provisions proposed under PC7 of the needs of existing hydro-electricity generation schemes in Otago and regionally significant infrastructure.¹⁴⁹ More specifically, this submitter has asked for the PC7 provisions to be amended to recognise the importance of this activity for the Otago region.

350 There are various hydro-electricity generation schemes in Otago of varying scale. While some of these schemes, such as the scheme on the main stem of the Clutha River/Mata-Au operate under resource consents issued under the RMA, other schemes, such as those operated by Trustpower and Pioneer, rely on deemed permit authorisations for either damming activities or water takes. Hydro-electricity generation schemes that rely on water takes or damming activities currently authorised by deemed permit are likely to be subject to the proposed PC7 provisions.

351 Policy A of the NPSREG states:

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities.

352 However, as shown in paragraph 177 of my evidence, the preamble of the NPSREG states

¹⁴⁹ Submitter 71143.

“this national policy statement does not apply to the allocation and prioritisation of freshwater as these are matters for regional councils to address in a catchment or regional context and may be subject to the development of national guidance in the future.”

- 353 I consider that earlier amendments intended to clarify how the provisions apply to damming activities and to ensure that non-consumptive takes and uses are not unintentionally excepted from the ability to apply for consent under the controlled activity rule will go some way to addressing the concerns from the hydro-electricity generation sector.
- 354 However, as is the case with damming activities, I remain convinced that it is both appropriate (in light of the potential effects of hydro-electricity) and effective (in terms of bringing these activities in line with the new freshwater management regime set out in the new LWRP) to grant new resource consents for the damming, take and use of water for water hydro-electricity generation purposes for short duration.
- 355 Therefore, based on the above considerations and the information provided to me through the submissions and further submissions process I do not consider there to be a need to recommend any further amendment to PC7 to give greater recognition to hydro-electricity generation or to exempt these activities from specific aspects of the proposed PC7 framework.
- 356 I accept however, that there may be other reasons than those set out in the submissions that justify further amending the provisions of PC7 to better accommodate the needs of hydro-electricity generation, but I would like to hear from the relevant submitters on this before making any further recommendations.

Instream works associated with water takes

- 357 One submitter has raised a concern about the lack of clarity around how resource consent applications for instream works associated with water takes will be assessed (e.g. works on beds of rivers or streams to maintain, repair or install intake structures).¹⁵⁰

¹⁵⁰ Submitter 71176.

- 358 PC7 seeks to amend the planning framework for the take and use of water, but does not address the management of alteration or disturbances of the beds of lakes and rivers, or activities on the beds of lakes and rivers, such as the establishment, removal, repair, maintenance, alteration or replacement of instream structures. Until such time as the new LWRP is notified these activities will continue to be managed under the policy framework of Chapters 5 (Natural and Human Use Values of Lakes and Rivers) and 8 (The Beds and Margins of Lakes and Rivers) and the rules in Chapter 13 (Land use on Lake or River Beds or Regionally Significant Wetlands).
- 359 I do not consider there is a need to amend PC7 to clarify the status of resource consent applications for instream works associated with water takes and to elucidate that the proposed PC7 provisions will not be considered when assessing resource consent applications for instream works associated with water takes. PC7 already proposes to insert two sentences shown on page iv of the notified plan change document as two new paragraphs at the end of the section in the Water Plan entitled '*How to Use the Regional Plan: Water*' on page iv in the Water Plan. In my opinion these statements make it clear that PC7 provisions will not be considered when assessing resource consent applications for instream works associated with water takes.

Implications for group management of water use

- 360 A large number of submitters have raised concerns that PC7 puts any initiatives of consent holders to move towards group management of water takes and water use on hold, with some requesting the proposed policies and rules to be amended to better support (sub)catchment management groups.¹⁵¹
- 361 Other submitters have raised the more specific concern that condition (e) of proposed Policy 10A.2.1 and controlled activity condition 10A.3.1.1(v) imply that new resource consents will be given a residual flow or minimum flow or take cessation condition if the activity is currently authorised by an existing permit with residual flow or minimum

¹⁵¹ Submitters 70035, 71065, 71066, 71082, 71120, 71127, 71130, 71134, 71135, 71137, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71156, 71159, 71161, 71164, 71168, 71178, 71182 and 71185.

flow or take cessation condition. According to some submitters the practice of only setting residual flow or minimum flow conditions on consents if the activity is currently authorised by an existing permit with residual flow or minimum flow or take cessation condition is likely to undermine voluntary flow sharing or group management regimes.¹⁵²

362 I acknowledge that the issuing of short-term consents and the uncertainty around long term water availability is likely to disincentivise group management water use or voluntary flow sharing arrangements between consent holders in the short-term.

363 However, I consider that:

- (a) there are currently risks associated with activating group management arrangements that commit participants financially or over the longer term, given the uncertainty around long term water availability and the environmental outcomes that need to be achieved under an NPS-FM 2020 compliant planning instrument.
- (b) the staged approach for identifying environmental outcomes and developing FMU/Rohe specific plan provisions of the LWRP in accordance with the NOF process (and through engagement with tākata whenua and communities), will provide opportunities to local water users to discuss potential group management approaches with ORC. These and other potential options can then be considered during the development of FMU/Rohe specific plan provisions and flow and allocation regimes and, where appropriate, better provided for in the LWRP.

364 Given the above, I do not consider there to be a need to amend PC7 to better provide for the group management of water.

Restricting the size of irrigated area

365 As stated in paragraphs 17, 103 and 236 of my evidence, the PC7 provisions seek reduce the risk of further degradation of freshwater bodies and financial risk for current consent holders (in the absence of certainty around future water availability) by discouraging any further

¹⁵² Submitters 71138, 71142, 71142, 71145, 71147 and 71161.

investment in irrigation expansion until a new NPS-FM 2020 compliant planning framework has been introduced by the LWRP.

- 366 Proposed Policy 10A.2.1 states that resource consents that replace deemed permits, or water permits to take and use surface water (or connected groundwater) that expire prior to 31 December 2025, can only be granted if there is no increase in the area under irrigation. Further to this, controlled activity Rule 10A.3.1.1 has an entry condition to ensure that any proposal to replace a deemed permit, or water permit to take and use surface water (and connected groundwater) that expires prior to 31 December 2025, can only be considered as a controlled activity if the application demonstrates that the total land area under irrigation does not exceed that irrigated in the 2017-2018 irrigation season.
- 367 The implications of this are two-fold:
- (a) Where an application to replace a deemed permit, or water permit to take and use surface water (or connected groundwater) expiring prior to 31 December 2025, shows that the size of the total land area proposed to be irrigated exceeds the size of the area irrigated in the 2017-2018 irrigation season, the applicant either needs to:
 - (i) reduce the area currently under irrigation to the size of the area irrigated in the 2017-2018 irrigation season in order to be eligible to apply for consent under the proposed controlled activity Rule 10A.3.1.1; or
 - (ii) apply for a consent under the proposed non-complying activity Rule 10A.3.2.1; and
 - (b) Where an application to replace a deemed permit, or water permit to take and use surface water (or connected groundwater) expiring prior to 31 December 2025, shows that the size of the total land area proposed to be irrigated exceeds the size of the area currently irrigated, consent cannot be granted.
- 368 A very large number of submitters have opposed or expressed concerns regarding this aspect of PC7. Concerns most often raised with respect to the proposed restriction on increasing the size of the area under irrigation are:

- (a) The restriction discourages further development and investment in management practices or technologies that promote innovation, efficiency in water use.¹⁵³
- (b) The restriction is not supported by robust evidence that demonstrates a clear relationship between the size of the area under irrigation and the effects on the environment.¹⁵⁴
- (c) Expanding the irrigated area through transitioning from inefficient to more efficient irrigation methods may have positive ecological outcomes.¹⁵⁵
- (d) The restriction is likely to have economic and/ financial impacts for water users, especially for those that have invested in irrigation expansion since 2017/2018 irrigation season, and could result in loss of production, as some areas that have been irrigated up until now can no longer be irrigated.¹⁵⁶
- (e) Establishing the size of the area irrigated in 2017/2018 as the baseline for determining the maximum size of the irrigated area that can be irrigated under the new consent does not take into account that the size of the irrigated area often varies across irrigation seasons due to a variety of reasons, including:
 - (i) Environmental conditions (i.e. climate, soil moisture and water availability);
 - (ii) Changes in farm management (i.e. change in ownership);
 - (iii) Changes in stocking rate and crop type; and

¹⁵³ Submitters 71006, 71010, 71012, 71028, 71036, 71040, 71057, 71059, 71067, 71074, 71083, 712084, 71091, 71092, 71095, 71096, 71105, 71115, 71118, 71122, 71129, 71131, 71132, 71136, 71146, 71150, 71155, 71159, 71161, 71163, 71173, 71182, 71189, 71196, 71199, 71240, 71242, 71253, 70013-70019 and 70031.

¹⁵⁴ Submitters 71060, 71065, 71122, 71129, 71132, 71146, 71150 and 71232.

¹⁵⁵ Submitters 71013, 71028, 71074, 71092, 71105, 71110, 71118, 71131, 71136 and 71161.

¹⁵⁶ Submitters 71008, 71013, 71018, 71028, 71032, 71031, 71033, 71043, 71052, 71069, 71070, 71071, 71077, 71085, 71094, 71107, 71109, 71114, 71121, 71124, 71131, 71138, 71142, 71140, 71145, 71147, 71148, 71159, 71161, 71165, 71172, 71175, 71176, 71177, 71179, 71185, 71186, 71187, 71189, 71192, 71199, 71207, 71216, 71236, 71238, 71242, 70013-70019, 70040 and 70044.

- (iv) Operational issues (i.e. mechanical failure, infrastructure upgrades).¹⁵⁷
 - (f) There is no clear justification for why the size of the area irrigated in 2017/2018 was selected as the baseline for determining the maximum size of the irrigated area that can be irrigated under the new consent.¹⁵⁸
- 369 The following amendments have been requested by submitters with respect to the provisions that propose a restriction on increasing the size of the area:
- (a) Remove the restriction on increasing the size of the area under irrigation in Policy 10A.2.1;¹⁵⁹
 - (b) Remove the restriction on the size of the irrigated area in Rule 10A.3.1.1;¹⁶⁰
 - (c) Where any reduction in irrigated area is sought, assess the application for new resource consent on a case-by-case basis;¹⁶¹
 - (d) Allow for further expansion of the area under irrigation under any new consents to take and use water;¹⁶²
 - (e) Allow for further expansion of the area under irrigation under any new consents to take and use water where there are no impacts on the environment;¹⁶³
 - (f) Allow for a longer timeframe to determine the maximum allowable size of the area under irrigation;¹⁶⁴

¹⁵⁷ Submitters 71011, 71041, 71052, 71053, 71057, 71059, 71060, 71061, 71065, 71066, 71070, 71071, 71072, 71077, 71085, 71092, 71094, 71099, 71100, 71136, 71144, 71161, 71186, 71187, 71207, 71233, 71240 and 70040.

¹⁵⁸ Submitters 71013, 71028, 71052, 71053, 71061, 71065, 71070, 71071, 71085, 71107, 71109, 71114, 71134, 71135, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71155, 71156, 71159, 71161, 71163, 71165, 71169, 71179, 71186, 71187, 71192 and 70040.

¹⁵⁹ Submitters 71067, 71083, 71084, 71095, 70035 and 70055.

¹⁶⁰ Submitters 71016, 71017, 71022-71027, 71028, 71032, 71031, 71082, 71084, 71115, 70012, 70035, 70040 and 70055.

¹⁶¹ Submitter 70028.

¹⁶² Submitters 71010 and 71233.

¹⁶³ Submitter 71089.

¹⁶⁴ Submitters 71049, 71100 and 71114.

- (g) Base planning decisions on more recent information;¹⁶⁵
- (h) Determine the maximum allowable size of the area under irrigation based on the allocation;¹⁶⁶
- (i) Amend Rule 10A.3.1.1 to recognise that efficiency of use is more important than the size of the area under irrigation.¹⁶⁷

370 I have considered the amendments requested by submitters with respect to the proposed restrictions on increasing the size of the area under irrigation, as well as the reasons provided by them in support of these requests.

371 I do not support removing the restrictions on increasing the size of the area under irrigation in Policy 10A.2.1 and controlled activity Rule 10A.3.1.1. As discussed previously in my evidence, the current uncertainty around the environmental outcomes that will need to be achieved under an NPS-FM 2020 compliant freshwater planning regime, warrant a precautionary approach in terms of the management of water use and land development. Until more clarity is provided on these outcomes and the take and use limits and environmental flows that need to provide for these, PC7 seeks to discourage any further investment in irrigation expansion as any further capital expenditure in irrigation development is likely to increase the financial and economic risk for water users, especially in catchments where the need to reduce allocation or water use or to improve water quality cannot be ruled out.

372 I note that this approach, as previously stated in paragraph 236 of my evidence, is consistent with the approach taken by the NESFW, which also imposes temporary restrictions on irrigation expansion until new NPS-FM 2020 compliant freshwater instruments are in place.

373 However, I do acknowledge that by establishing the size of the area irrigated in 2017/2018 as the baseline for determining the maximum size of the irrigated area it is plausible that at least some water users who have expanded their irrigated area since the end of the 2017/2018

¹⁶⁵ Submitters 71060, 71069, 71161 and 71178.

¹⁶⁶ Submitter 71037.

¹⁶⁷ Submitters 71072, 71092, 71136, 71186 and 71207.

irrigation season will be faced with financial cost, as it makes past capital investment in infrastructure redundant and can result in a loss of productivity. While I am not an expert in agricultural science, I also consider it very plausible that the total size of the irrigated area often varies across years as variables, such as stocking rate, climate conditions and crop type, have an impact on water demand and consequently the size of the area under irrigation.

- 374 In the absence of robust technical information that demonstrates the need to convert currently irrigated land to dryland or an alternative land-use and recognising the need to provide for some flexibility to allow current land management practices to occur under varying seasonal conditions, I recommend that proposed Rule 13.1.1 be amended as follows:

10A.3 Rules

10A.3.1 Controlled activity: Resource consent required

10A.3.1.1 Despite any other rule or rules in this Plan;

a) ...; or

b) ...;

is a controlled activity provided the following conditions are met:

(i) ...; 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 2020, if the abstracted water is used for irrigation; and

...

- 375 In accordance with the requirements under s32AA I have evaluated the costs and benefits of alternative options for addressing concerns around

the proposed restriction on the size of the area under irrigation, including:

- (a) Removing the restriction on the size of the area under irrigation;
- (b) Managing these activities within the PC7 framework as notified; and
- (c) Amend the timeframe to determine the maximum allowable size of the area under irrigation.

376 In my opinion the recommended amendment to proposed Rule 10A.3.1.1 has an overall net benefit as it will provide water users with more flexibility and will assist with further promoting controlled activity Rule 10A.3.1.1 as a viable consenting pathway, while still being effective in achieving two key outcomes envisaged by PC7:

- (a) discouraging further investment in irrigation expansion; and
- (b) reducing the risk in any further increase in adverse environmental effects stemming from irrigation.

Calculating water allocation and actual water usage

377 PC7 also seeks to better align the quantity of water allocated in new consents to replace existing water permits from the quantity of water that has been taken in the past by:

- (a) Ensuring there is no increase in the instantaneous rate of take of abstraction (in accordance with proposed Policy 10A.2.1 (c)); and
- (b) Reducing the volume of water allocated for abstraction (in accordance with proposed Policy 10A.2.1 (e)).

378 The key mechanisms for ensuring that the rate of take in resource consents that replace existing water permits better reflect historically recorded water use and for reducing the volume of take allocated in these consents are conditions (iv) and (vi) to controlled activity Rule 10A.3.1.1. These in turn, direct the use of 4 specific methodologies for calculating the actual usage for surface water takes in proposed Schedule 10A.4:

- (a) 10A.4.1 Methodology for calculating 'Rate of Take Limit'.
- (b) 10A.4.2 Methodology for calculating 'Daily Volume Limit'.

- (c) 10A.4.3 Methodology for calculating 'Monthly Volume Limit'.
- (d) 10A.4.4 Methodology for calculating 'Yearly Volume Limit'.

379 A large number of submitters have expressed concern about:

- (a) The requirement to reduce volumes allocated for abstraction under Policy 10A.2.1.1;
- (b) The entry conditions (iv) and (vi) and matter of control (b) of proposed controlled activity Rule 10A.3.1.1,
- (c) The use of the methodologies in proposed Schedule 10A.4.

380 I will first discuss submissions that comment on the requirement in Policy 10A.2.1(e) to avoid granting consents to replace existing water permits where there is no reduction in the volume of water allocated for abstraction. These submitters have raised the following concerns:

- (a) It is not appropriate to reduce the volume of water that has been taken in the past as it restricts growth and could result in productivity loss.¹⁶⁸
- (b) A reduction in the volume of water taken is not needed if the source waterbody is currently not fully allocated under the provisions of the operative Water Plan.¹⁶⁹
- (c) It is not appropriate to reduce the volume of water that has been taken in the past as ORC has not yet identified where over-allocation occurs in accordance with the NPS-FM 2020.¹⁷⁰
- (d) PC7 does not provide any guidance around how much reduction in abstracted volumes is sought.¹⁷¹

381 Amendments to proposed Policy 10A.2.1(e) requested by submitters to address these concerns include:

¹⁶⁸ Submitters 71036, 71043, 71048, 71094, 71103, 71106, 71172, 71173, 71175, 71185 and 71230.

¹⁶⁹ Submitters 71074, 71105 and 71118.

¹⁷⁰ Submitter 71161.

¹⁷¹ Submitter 71149.

- (a) Remove the requirement to reduce the volume of water allocated in new consents.¹⁷²
- (b) Where any reduction in consented allocation is sought, determine the allocated volume on a case-by case basis.¹⁷³
- (c) Amend PC7 to specify the minimum reduction in abstracted volume that is required under Policy 10A.2.2(e).¹⁷⁴
- (d) Amend PC7 to specify that the requirement to reduce the abstracted volume is only applied in circumstances where a minimum flow has been set.¹⁷⁵

382 I have considered these submitter requests and concerns relating to Policy 10A.2.1(e). In forming my opinion, I have also considered the submissions that comment on the methodologies 10A.4.2, 10A.4.3 and 10A.4.4, as they are instrumental in achieving the reduction.

383 Many submitters state that the methodologies in Schedule 10A.4 as notified are likely to result in reduction in the allocated rate of take and volumes, as well as reduction in actual water usage, but that the “clawback” on actual use is likely to have the greatest impact on monthly and annual volumes.¹⁷⁶ Based on the information provided by submitters as well as the evidence of Mr Wilson, I do not rule this out as a potential outcome of applying some of the methodologies in Schedule 10A.4.

384 I also consider that it is currently not known if and where a “clawback” on actual abstracted volumes will be needed and by how much these actual usage volumes will need to be reduced to meet the future environmental outcomes for water bodies affected by water takes.

385 Under the Water Plan the three most important tools for managing the effects of consented water permits on surface water bodies are:

¹⁷² Submitters 70055, 71084, 71106 and 71178.

¹⁷³ Submitter 71028.

¹⁷⁴ Submitter 71149.

¹⁷⁵ Submitters 71067 and 71083.

¹⁷⁶ Submitters 71030, 71038, 71043, 71044, 71052, 71054, 71055, 71056, 71060, 71061, 71065, 71066, 71068, 71069, 71071, 71074, 71077, 71085, 71091, 71104, 71105, 71110, 71117, 71118, 71120, 71121, 71124, 71127, 71144, 71159, 71161, 71164, 71173, 71176, 71177, 71185, 71187, 71207, 71236, 71240, and 71242.

- (a) The minimum flow set for the catchment.¹⁷⁷
 - (b) The residual flow set at or below the point of take.¹⁷⁸
 - (c) The consented allocation, expressed in l/s as the consented instantaneous rate of take from the source water body.¹⁷⁹
- 386 The minimum flow restriction, which restricts water taking during low flow events, generally ensures that sufficient flow and habitat is maintained throughout the catchment's surface water bodies to look after identified freshwater values (although the ceasing of water taking when the river flow drops down to its minimum flow level does not prevent the river flow to naturally drop below this level). A residual flow condition, on the other hand, will ensure that sufficient flow is maintained at or below the point of water take. Finally, the consented instantaneous rate of take is primarily aimed to avoid flatlining of the river by ensuring that the river maintains a degree of flow variability.
- 387 These three management tools, while different, work in a complementary fashion and, based on my experience, each of these have a direct impact on the flow level and available habitat in a river at a given point in time.
- 388 Through my experience in freshwater planning in Otago I am aware that, at least in some cases, allocated take volumes can restrict water taking and contribute to the overall health of a water body by preventing consent holders taking their maximum consented instantaneous water take rates at all times throughout the irrigation season. In that regard reducing allocated volumes of water taken may have benefits to the health and life-supporting capacity of water bodies.

¹⁷⁷ Minimum flows are set on a catchment by catchment basis. A minimum flow is usually set at the "bottom of the catchment" and applies to all consented water takes (except community water supplies identified in Schedules 1B or 3B of the Water Plan) and some categories of permitted water takes (takes permitted under Rules 12.1.2.4 and 12.1.2.5 of the Water Plan) upstream of the minimum flow monitoring site. When the flow level in a river approaches the minimum flow level, these water takes need to reduce their rate of take. They will eventually cease all water taking at the point where the recorded flow as measured at the minimum flow monitoring site drops down to or below the minimum flow level.

¹⁷⁸ A residual flow is typically determined on a case by case basis (i.e. it is unique and specific to individual resource consents) and imposed, where appropriate, as a condition on individual resource consents. Residual flow conditions require water permit holders to maintain a minimum ('residual') flow level at or below the point of take at all times to provide for the instream values at or below the point of take.

¹⁷⁹ The consented instantaneous rate of take is the maximum amount of water that can be taken from a catchment.

389 However, acknowledging that I am not an expert in freshwater ecology or hydrology, I also consider that allocated volumes, when compared to other management tools, such as the minimum flow, residual flow or the limit on the instantaneous rate of take, are less likely to have a direct impact on the flows and available habitat within the river and that reducing allocated monthly or yearly volumes, in isolation from any other management tools (i.e. the minimum flow, residual flow or the limit on the instantaneous rate of take), may not be effective to fully protect instream values at any given point in time.¹⁸⁰

390 Overall, I do not support submitter requests to remove restrictions on the volume of water allocated in new consents to replace existing water permits under Policy 10A.2.1. However, I do consider that the above considerations further support the change to the Methodology 10A.4.4 recommended by Mr Wilson and Mr Leslie (to determine the 'Annual Volume Limit' by calculating the maximum volume taken in any water year analysed over the relevant data period) and the amendment recommended to Policy 10A.2.1 in paragraphs 345 and 346 of my evidence that there be no increase in any actual volume of water taken.

391 Specific concerns that have been raised with respect to the conditions (iv) and (vi) of controlled activity Rule 10A.3.1.1 and methodologies in proposed Schedule 10A.4 include:

- (a) The methodologies in proposed Schedule 10A.4 incentivise "use it or lose it" behaviours.¹⁸¹
- (b) The methodologies in proposed Schedule 10A.4 will reduce allocation and actual water use.^{182,183}

¹⁸⁰ Submitter 71240.

¹⁸¹ Submitters 71082, 71074, 71105, 71118, 71159, 71236 and 70035.

¹⁸² Submitter 71004, 71008, 71023, 71065, 71068, 71069, 71104, 71107, 71109, 71212, 71144, 71158, 70035.

¹⁸³ Various submitters consider that the methodologies in proposed Schedule 10A.4

- reduce the ability to take storage water when the water is available;
- reduce the ability to operate existing irrigation infrastructure; or
- result in less water being available than what would be recommended for efficient use under the Aqualinc *Guidelines for Reasonable Irrigation Water Requirements in the Otago Region* (2017).

<https://www.orc.govt.nz/media/4499/aqualinc-irrigation-guidelines-2015.pdf>

- (c) The methodologies in proposed Schedule 10A.4 disadvantage people who have previously invested in efficient irrigation.¹⁸⁴
- (d) The methodologies in proposed Schedule 10A.4 do not allow the following to be taken into consideration:
- (i) the impacts of climate factors (climate variability and climate change).^{185,186}
 - (ii) high variability of flows in small streams across seasons or years.¹⁸⁷
 - (iii) restrictions on water takes (to provide for minimum flows or residual flows) that may have applied during the period for which water take data is used to calculate rate of take and volume limits.¹⁸⁸
 - (iv) environmental effects of water takes on the source water body.¹⁸⁹
 - (v) efficiency of water use or industry best practice regarding efficient water use.¹⁹⁰
 - (vi) the effects on or needs of water users (which can depend on crop type, geographical location of the property, any future planned or unplanned changes in farm management, land use, or investment in irrigation expansion or efficient irrigation).¹⁹¹

¹⁸⁴ Submitters 71094, 71104, 71131, 71 218, 71 236 and 71172.

¹⁸⁵ Submitters 71008, 71011, 71039, 71055, 71060, 71072, 71089, 71092, 71096, 71074, 71105, 71118, 71136, 71143, 71155, 71159, 71185, 71186, 71238, 71253 and 70040.

¹⁸⁶ According to submitters expressing these concerns, the period of water use data that can be taken into consideration for calculating assessed actual water usage (1 July 2012 – 30 June 2017) is too short to account for these climate or seasonal variances. Others have pointed out that irrigation requirements are likely to change from what they were during this 5-year period due to the impacts of climate change.

¹⁸⁷ Submitters 71008 and 71036.

¹⁸⁸ Submitters 71013, 71066 and 71186.

¹⁸⁹ Submitters 71028, 71065, 71071, 71074, 71085, 71105 and 71118.

¹⁹⁰ Submitters 71053, 71064, 71067, 71074, 71078, 71079, 71102, 71105, 71118, 71121, 71124, 71148, 71159 and 71160.

¹⁹¹ Submitters 71028, 71041, 71043, 71051, 71054, 71059, 71065, 71071, 71074, 71077, 71085, 71102, 71104, 71105, 71118, 71121, 71124, 71115, 71157, 71160, 71179, 71185 and 71236.

- (e) Water metering records for the period 1 July 2012 – 30 June 2017 (particularly during the early years within this period) are often incomplete or of poor quality. A number of submitters have criticised the general approach of relying on older information when more recent data is available.¹⁹² Others have pointed out that data gaps exist because of issues with the availability of suitably qualified water metering service providers and installers during the initial years following the phasing in of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.¹⁹³
- (f) The period of water use data that can be taken into consideration when calculating the rate of take and volume of water (1 July 2012 – 30 June 2017) does not align with the time period referred for assessing the total land area under irrigation in condition (iii) of the controlled activity Rule 10A.3.1.1.¹⁹⁴
- (g) Using the 1 July 2012 – 30 June 2017 period for calculating the rate of take limit and volume limits for new consents disadvantages water users that have increased their water use in the period since 30 June 2017 (due to irrigation expansion, changes in land management practice, change in ownership) or have temporarily reduced water takes during the 2012 – 2017 period in order to carry out infrastructure upgrades.¹⁹⁵
- 392 Specific amendments requested by submitters with respect to entry conditions (iv) and (vi) of proposed controlled activity Rule 10A.3.1.1 (and relevant aspects of the Methodologies in proposed Schedule 10A.4) include:
- (a) Remove the ability of Council to control the volume and rate of take under controlled activity Rule 10A.3.1.1 (b)¹⁹⁶

¹⁹² Submitters 71013, 71053, 71055, 71061, 71065, 71066, 71068, 71072, 71092, 71136, 71114, 71159, 71185, 71233, 71239 and 71253.

¹⁹³ Submitters 71011, 71013, 71052, 71114 and 71179.

¹⁹⁴ Submitter 71177.

¹⁹⁵ Submitters 71001, 70040, 71056, 71102, 71122, 71129, 71132, 71146, 71148, 71150, 71159, 71160, 71176, 71179, 71203, 71216 and 71239.

¹⁹⁶ Submitter 71185.

- (b) Amend the entry conditions (iv) and (vi) of controlled activity Rule 10A.3.1.1.¹⁹⁷
- (c) Remove Schedule 10A.4 and/or the references to Schedule 10A.4 in controlled activity Rule 10A.3.1.1.¹⁹⁸
- (d) Limit conditions (iv) and (vi) of controlled activity Rule 10A.3.1.1 to takes for irrigation only.¹⁹⁹²⁰⁰
- (e) Determine rate of take and volume limits as follows:
 - (i) Apply a more flexible approach for calculating the rate of take limit.²⁰¹
 - (ii) Use established methods for calculating efficient water use for calculating the rate of take and volume limits, i.e. *Aqualinc Guidelines for Reasonable Irrigation Water Requirements in the Otago Region (2017), Schedule 10: Reasonable use test* in the Canterbury Land and Water Regional Plan.²⁰²
 - (iii) Take the lesser value of the quantities of water derived using historic water take data and the *Aqualinc Guidelines for Reasonable Irrigation Water Requirements in the Otago Region* (applying the recommended volume to meet demand for 9 out of 10 seasons).²⁰³
 - (iv) Set rate of take and volume limits based on the irrigation requirements for current irrigation infrastructure.²⁰⁴
 - (v) Set rate of take and volume limits based on water availability.²⁰⁵

¹⁹⁷ Submitters 71016, 71017, 71022-71027 and 71214.

¹⁹⁸ Submitters 70035, 70055, 71067 and 71083.

¹⁹⁹ Submitter 71143.

²⁰⁰ Submitters 71074, 71105 and 71118.

²⁰¹ Submitters 71031 and 71032.

²⁰² Submitters 71008, 71014, 71016, 71017, 71018, 71022-71027, 71066, 71069, 71074, 71105, 71118, 71165 and 71231.

²⁰³ Submitter 71161.

²⁰⁴ Submitter 71077.

²⁰⁵ Submitter 71089.

- (vi) Set rate of take and volume limits based on specific irrigation requirements for the property concerned.²⁰⁶
 - (vii) Set rate of take and volume limits based on a method that considers the purpose of use, the application method and historic water use.²⁰⁷
 - (viii) Set rate of take and volume limits based on a method that considers the irrigation requirements for different crops and environmental requirements.²⁰⁸
 - (ix) Set rate of take and volume limits based on a method that considers the irrigation requirements for different crops and growth requirements of the business.²⁰⁹
- (f) Amend Schedule 10A.4 as follows:
- (i) Use maximum recorded actual rate of take and volumes of water taken to determine rate of take and volume limits (remove the averaging method) .²¹⁰
 - (ii) Apply the methodologies proposed in 10A.4.1 to 10A.4.4 plus 20% extra allocation.²¹¹
 - (iii) Reduce the risk of allocation loss by excluding data where the margin of error of the water meter has been exceeded.²¹²
- (g) Amend the time period for calculating the rate of take and volume of water taken in entry conditions (iv) and (vi) to allow for consideration of:
- (i) All available data;²¹³

²⁰⁶ Submitter 71059.

²⁰⁷ Submitter 71082.

²⁰⁸ Submitters 71056, 71102, 71131, 71160 and 71179.

²⁰⁹ Submitter 71131.

²¹⁰ Submitter 71060, 71178, 71203.

²¹¹ Submitter 70012.

²¹² Submitters 71028, 71071, 71077, 71085, 71100, 71110 and 71161.

²¹³ Submitter 70040, 71028, 71034, 71069, 71072, 71110, 71114, 71159, 71161, 71178 and 71232.

(ii) Two most recent years.²¹⁴

393 Three key outcomes that PC7 is seeking to achieve are:

- (a) Ensuring that the effects of existing water takes on the environment are not exacerbated;
- (b) Avoiding any further financial risk for water users in light of the current uncertainty around future water availability; and
- (c) Discouraging further investment in water dependent economic sectors, while a new freshwater and land management regime is being developed.

394 If the methodologies were to be amended to allocate water solely based on the irrigation needs (using the Aqualinc guidelines or a reasonable use test similar to the one set out in Schedule 10 of the Canterbury Land and Water Plan) or on growth plans for businesses, there are likely to be instances where the rate of take and volumes allocated under a new consent might exceed the rate of take and volumes of water taken in the past. This would be contrary to the outcomes described above in paragraph 393.

395 Therefore, I do not support submitter requests to remove the methodologies in Schedule 10A.4 for calculating consented rate of take and volume limits or allow for the setting of rate of take and volume limits based on water demand.

396 I do agree with the submitter comments that there may be gaps in the water metering data available for the period 1 July 2012 - 30 June 2017. In my opinion these are, at least in part, caused by the fact that the water metering regulations imposed by the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 were gradually phased in for different categories of takes between November 2010 and November 2016.²¹⁵

²¹⁴ Submitters 71008, 71052, 71054, 71056, 71069, 71102, 71160, 71179, 71224, 71233, 71239 and 71242.

²¹⁵ Regulation 13 of the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 stipulated

- 397 For this reason I support the evidence of Mr Wilson that it is appropriate to amend the proposed provisions to allow for analysis of data from 1 July 2015 - 30 June 2020 and to better provide for water takes where metering is not required for part of the time period analysed and no metering records are available.
- 398 Together with the recommended amendment to entry condition (iii) of the controlled activity Rule 10A.3.1.1 (discussed in paragraph 374 of my evidence), an amendment to conditions (iv) and (vi) to allow for analysis of data from 1 July 2015- 30 June 2020 will also ensure better alignment between the dates/periods referred to in entry conditions (iii), (iv) and (vi).
- 399 I also recommend amending the PC7 proposal to include a new restricted discretionary activity rule under which existing water permit holders that seek to apply for a new resource consent to take and use water can apply in circumstances where:
- (a) these consent holders have complied with the formal requirements under the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 or under the conditions of their current water permit, and
 - (b) part of the water metering data needed to carry out the assessment under Schedule 10A.4 is missing; and
 - (c) it is demonstrated that this data gap is the result of a technical issue.

(1) *These regulations do not apply immediately to a water permit held at the commencement of the regulations.*

(2) *Instead,—*

- (a) *the regulations apply to the permit only on and from 10 November 2012 if the permit allows water to be taken at a rate of 20 litres/second or more:*
- (b) *the regulations apply to the permit only on and from 10 November 2014 if the permit allows water to be taken at a rate of 10 litres/second or more, but less than 20 litres/second:*
- (c) *the regulations apply to the permit only on and from 10 November 2016 if the permit allows water to be taken at a rate of 5 litres/second or more, but less than 10 litres/second.*

- 400 This will ensure that current permit holders that have been metering their water take in accordance with the requirements under the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 or in accordance with the conditions of their current water permit, but that are unable to produce a full and useable data record, are provided with an easier pathway to apply for a consent to replace their current water permit than the one offered by the non-complying activity Rule 10A.3.2.1.
- 401 Finally, I also support the recommendation made by Mr Wilson in his evidence to amend to wording of the provisions under Schedules 10A.4.1(5), 10A.4.2(5) and 10A.4.3(5) that set out the margin of error that is to be applied to any calculation carried under these schedules. I consider that these provisions in the notified version of PC7 are complex and that better alignment of the wording of these provisions with the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 will reduce the risk of the misinterpretation.
- 402 In my opinion these amendments will assist with alleviating submitter concerns relating to the quality and completeness of the water metering records used to calculate the rate of take and volume limits and the lack of data during initial years after the phasing in the water metering requirements of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010, while also better providing for water users who, in recent years, have invested in their business, increased their water take or introduced changes in land use or management practice.
- 403 In light of the above I recommend the following changes to PC7:
- (a) Amend Rule 10A.3.1.1 as follows:
- 10A.3. Rules**
- 10A.3.1. Controlled Activity: Consent required**
- 10A.3.1.1 Despite any other rule or rules in this Plan;*
- a) ...; or
- b) ...;

is a controlled activity provided the following conditions are met:

- (i) ...
 - (ii) ...
 - (iii) ...
 - (iv) *Except where (vii) applies, ~~The~~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~~ 2020 and calculated in accordance with the method in Schedule 10A.4; and*
 - (v)
 - (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.~~*
 - (vii) ...
- (b) Include new restricted discretionary activity Rule 10A.3A.1.1 and make a consequential change to non-complying activity Rule 10A.3.2.1:

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 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

(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.

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;

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

(i) Rule 10A.3.1.1; or

(ii) Rule 10A.3.1A.1

is a **non - complying** activity.

- (c) Amend Schedules 10A.4.1(5), 10A.4.2(5) and 10A.4.3(5) as follows:

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

10A.4.1 Methodology for calculating 'Rate of Take Limit'

...

Methodology

...

~~(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, 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.~~

...

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

...

Methodology

...

~~(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, 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.~~

...

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

...

~~(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, 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.~~

...

- 404 In accordance with the requirements under s32AA I have evaluated the costs and benefits of alternative options for addressing concerns around determining the rate of take and volume limits and the methodologies for calculating assessed actual usage, including:
- (a) Removing the methodologies from PC7;
 - (b) Amend PC7 to allow for calculation of the consented allocation based on efficiency of use; and
 - (c) Amend PC7 to allow for calculation of the consented allocation based on actual water demand; and
 - (d) Amend the methodologies to better address concerns around the management of data gaps and issues around data quality.
- 405 The approach promoted by PC7 for determining the rate of take and volume limits and calculating assessed actual usage, even with the recommended amendments to controlled activity Rule 10A.3.1.1 and the methodologies in Schedule 10A.4 is not perfect. There are more bespoke methodologies or approaches available that are more accurate in estimating historic use. For example, comparison between the proposed methodologies in Schedule 10A.4 that use 'averaging' and the percentile based approach that has been applied by ORC staff in the past indicates that compared to the latter, the Schedule 10A.4 methodologies at times allocate more water on an instantaneous rate of

take basis (benefitting water users), but usually result in less water being allocated in terms of volume (benefitting the environment).²¹⁶

- 406 In my opinion, some of the suggested alternative approaches proposed by submitters also have merit as they could assist with addressing the concerns that the PC7 provisions do not require efficient use. An example of this is the suggested approach to determine the rate of take and volume limits as the lesser of the following two:
- (a) the quantity of water determined through analysis of historic water metering data; or
 - (b) the quantity of water recommended using the *Aqualinc Guidelines for Reasonable Irrigation Water Requirements in the Otago Region*.²¹⁷
- 407 Applying this approach would reduce the risk that, where water is still being used inefficiently, the rate of take and volumes of water allocated in any new consent would exceed the quantities of water that would be needed to irrigate this property in an efficient manner.
- 408 It is important to note that the methodologies included within Schedule 10A.4 have been developed by ORC staff to calculate the actual usage for surface water takes in a manner that seeks to provide existing deemed permit holders or water permit holders with a permit that is due to expiry prior to 31 December 25 with a simple and cost-effective pathway to obtain a new resource consent.
- 409 Applying alternative approaches such as the two approaches described above in paragraphs 405 to 407 could compromise the ability of PC7 to achieve this outcome.
- 410 In light of the above I consider that the PC7 approach, subject to the recommended amendment to Rule 10A.3.1.1 and the inclusion of a new

²¹⁶ Percentiles are not a percentage of the maximum rate, but rather the rate that is exceeded some percent of the time. A percentile is calculated by ranking the available data from highest to lowest and then asking 'What number is 95% of the data less than'.

- The 80th percentile is the take/pump rate that is exceeded 20% of the time.
- The 90th percentile is the take/pump rate that is exceeded 10% of the time.
- The 95th Percentile is the take/pump rate that exceeded 5% of the time.

Past practice of ORC has at times relied on the 95% percentile approach as a basis for calculating actual usage.

²¹⁷ Submitter 71161.

restricted discretionary activity rule (to provide for the take and use of water where the existing water permit holders have met their water metering requirements but have been unable to produce a complete set of reliable water metering data), still remains the most effective and efficient way of achieving the overarching PC7 objective, Objective 10A.1.1.

- 411 I would support further discussion between the parties to improve the method provided the outcomes set out in paragraph 408 above are still achieved, over the course of this hearing process, to further refine the proposed method or explore alternative approaches for calculating actual water usage.

PC7 does not give effect to higher order planning documents and is inconsistent with the Water Plan

- 412 Various submitters have stated that PC7 does not give effect to higher order planning documents and is inconsistent with the objectives of the operative Water Plan.
- 413 Submitters have raised concerns that the plan change does not achieve the purpose of the RMA.²¹⁸ The reasons put forward by submitters for why PC7 is failing to achieve RMA's purpose include:
- (a) PC7 does not provide for the life-supporting capacity of water and ecosystems;
 - (b) PC7 does not allow for mitigation of environmental effects; or
 - (c) PC7 does not provide for social and economic well-being.
- 414 Other submitters consider that PC7 does not give effect to relevant NPSs, including the NPS-FM 2020 and NPSREG.²¹⁹ Reasons for why PC7 is failing to give effect to the NPS-FM 2020 stated by these submitters include:

²¹⁸ Submitters 70041, 71020, 71038, 71052, 71053, 71065, 71066, 71068, 71069, 71070, 71071, 71075, 71085, 71086, 71098, 71119, 71120, 71126, 71127, 71128, 71133, 71137, 71148, 71161, 71163, 71175, 71177, 71181 and 71182.

²¹⁹ Submitters 70041, 71038, 71052, 71053, 71056, 71065, 71066, 71068, 71069, 71070, 71071, 71075, 71085, 71086, 71092, 71098, 71102, 71116, 71119, 71120, 71126, 71127, 71128, 71130, 71133, 71136, 71137, 71143, 71148, 71149, 71160, 71161, 71163, 71175, 71177, 71179 and 182.

- (a) PC7 does not manage freshwater on a local (i.e. FMU) basis;
- (b) PC7 reduces allocation before limits and objectives have been set under the NPS-FM 2020;
- (c) PC7 does not avoid over-allocation or phase out over-allocation; or
- (d) PC7 does not give effect to Objectives B1 - B5 of the NPSFM 2014 (amended 2017).²²⁰

415 Finally, according to some submitters PC7 is contrary to the objectives of the RPS 1998 and PRPS 2016 and is inconsistent with the objectives and policies of the operative Water Plan.²²¹

416 Previously, in paragraphs 143 to 207 of my evidence, I have evaluated the objective of PC7 against the requirements and provisions of higher order planning documents. Overall, based on this assessment I consider that PC7 achieves the purpose of the RMA and, while not giving full effect to the NPS-FM 2020, it will ensure that the NPS-FM 2020 is able to be given effect to in the future in a timely manner.

417 I do acknowledge that PC7 is not always consistent with the objectives of the Water Plan. However, I consider this to be appropriate given that:

- (a) The objectives in the Current Water Plan are internally inconsistent, have not been established in accordance with the NOF process and do not reflect the hierarchy of obligations introduced by the NPS-FM 2020; and
- (b) The 2019 s24 review of ORC's planning functions led to the finding that:
 - (i) The freshwater planning framework in the operative Water Plan is not fit for purpose; and
 - (ii) a substantial update to the PRPS 2016 is required in order to give full effect to the relevant NPS-FM.

²²⁰ The NPS-FM 2014 (amended 2017) was the relevant NPSFM during the submission period on PC7.

²²¹ Submitter 71038, 71052, 71053, 71065, 71066, 71068, 71069, 71070, 71071, 71075, 71085, 71086, 71098, 71119, 71120, 71126, 71127, 71128, 71133, 71137, 71143, 71148, 71161, 71163 and 71175.

PC7 does not achieve good environmental outcomes

418 Various submitters consider that PC7 does not achieve good environmental outcomes. Some of the more specific concerns that have been raised in that regard include:

- (a) PC7 does not set a clear policy direction to safeguard life-supporting capacity and gives insufficient consideration to the needs of freshwater values, such as native freshwater fauna and flora, and recreational and natural character values.²²²
- (b) PC7 will result in further environmental degradation as the framework in the operative Water Plan manages the effects of activities more effectively.²²³
- (c) PC7 will result in further environmental degradation because the plan change does not require residual flow, minimum flow or take cessation conditions to be applied to consents for new takes (not authorised by an existing consent) or takes authorised by an existing consent that does not have a residual flow, minimum flow or take cessation condition.²²⁴
- (d) PC7 makes no provision for involvement of the Department of Conservation in resource consent processes.²²⁵
- (e) PC7 does not encourage efficiency in resource use.²²⁶
- (f) The growing uncertainty around future water availability is likely to boost water taking as a permitted activity under the Water Plan or under s14(3)(b) and RMA.²²⁷
- (g) The reduction in consented allocation aimed for by PC7 is likely to cause increased fire threats.²²⁸

²²² Submitters 71047, 71070, 71085, 71126, 71143, 71148, 71149, 71159, 71161, 71162 and 71182.

²²³ Submitters 71159 and 71187.

²²⁴ Submitters 71008, 71053, 71065, 71070, 71077, 71092, 71116, 71126, 71136, 71138, 71140, 71142, 71145, 71147, 71148, 71156, 71161, 71175, 71177, 71182, 71188 and 71189.

²²⁵ Submitter 71182.

²²⁶ Submitters 71064, 71082, 71130, 71138, 71140, 71142, 71145, 71147 and 71189.

²²⁷ Submitter 70012.

²²⁸ Submitter 71182.

- 419 Amendments requested by submitters to strengthen the effectiveness of PC7 in providing for ecosystem values include:
- (a) Amend PC7 to allow for the setting of residual flow conditions consistent with the ecological requirements of the source water body.²²⁹
 - (b) Amend PC7 to enable the setting of residual flow, minimum flow or take cessation conditions, including relevant Schedule 2A minimum flow conditions, on resource consents for both existing and new takes.²³⁰
 - (c) Amend PC7 to better provide for the protection of indigenous biodiversity or instream values (e.g. by providing for protection of non-migratory galaxiids as a matter of control to Rule 10.3.1.1).²³¹
- 420 Proposed Policy 10.2.1.1 and condition (v) of controlled activity Rule 10A.3.1.1 require existing minimum flow, residual flow and take cessation conditions to be applied to any new consents granted under the PC7 framework. These conditions typically are intended to provide for the life-supporting capacity of freshwater and natural character values of water and, in doing so, may also provide for other values, including recreational and natural character values.
- 421 In some catchments in Otago where a minimum flow has been set in Schedule 2A of the Water Plan, such as the Pomahaka and Waiwera catchments, a review process under s128 of the RMA has been carried out (in accordance with Policy 6.4.5(b) of the Water Plan) to set a minimum flow condition on all water permits in this catchment. In those catchments, condition (v) of proposed controlled activity Rule 10A.3.1.1 will ensure that the Schedule 2A minimum flow that currently applies to all water permits will be applied to any new consent that will replace an existing water permit.
- 422 Where a minimum flow has been set in Schedule 2A for catchments “dominated” by deemed permits, such as the Taieri and Manuherekia

²²⁹ Submitter 71077.

²³⁰ Submitter 71143, 70027, 70029, 70045, 70149 and 70180.

²³¹ Submitters 71178 and 71180.

catchments, a different process applies under Water Plan Policy 6.4.5(c). In these catchments the relevant Schedule 2A minimum flows will not apply to water permits until after a collective review of the consents in the catchment, which can either occur before 2021 if there is agreement by the deemed permit holders to adhere to the minimum flows, or on the expiry of the mining privileges on 2 October 2021. In these catchments many current water permits do not have the relevant Schedule 2A minimum flow applied to them. Where this is the case, controlled activity Rule 10A.2.1.1 does not provide for the setting of a Schedule 2A minimum flow condition on a new resource consent that replaces an existing one.

423 While I generally concur with the principle that minimum flow conditions on consents are likely to provide for better environmental outcomes, I hold some reservations against setting Schedule 2A minimum flow conditions on short term consents issued under the PC7 framework in catchments where these minimum flows have not been set as conditions on existing resource consents. The reasons are:

- (a) The Schedule 2A minimum flows need to be reviewed in light of new technical information that is currently being collected and the environmental outcomes that will be established through the development of a new planning instrument.
- (b) There is no clarity around the technical basis for and effectiveness of some of the minimum flows set in Schedule 2A.
- (c) The effectiveness of minimum flows in safeguarding the life-supporting capacity of a freshwater body is reliant on all permit holders upstream of the minimum flow site being subject to the minimum flow restriction. In catchments where not all water permits are subject to a minimum flow condition, the minimum flow may not be observed until such time that new consents have been granted for all water permits expiring prior to 31 December 2025 and/or all remaining long-term permits without a minimum flow condition have been reviewed under s128 of the RMA.

424 In light of the above and considering that reviewed minimum flows are expected to be in place by 31 December 2025 I consider that the benefits of applying Schedule 2A minimum flows to all resource

consents that replace an existing water permit in catchments for which minimum flows have been set in Schedule 2A are limited.

425 While PC7 does not require minimum flow, residual flow and take cessation conditions to be set on resource consents for new takes and uses of water, the plan change does promote the avoidance of any further environmental degradation through a number of other mechanisms:

- (a) Allowing for resource consent conditions that provide for the life-supporting capacity of freshwater to be set to be under Rule 10A.3.2.1 based on the policy requirements in Policy 10A.2.3(a);
- (b) Avoiding the risk of increased water abstraction under any newly granted short term replacement permits by ensuring the allocation is based on historic water taking, and not paper allocation;
- (c) Reducing the risk of land intensification by only granting consents where there is no increase in the area under irrigation;

426 Overall, I also consider that further amending the PC7 provisions to ensure the freshwater ecosystem, recreational, and natural character values are provided may not be desirable for two reasons.

- (a) As discussed earlier in my evidence, ORC currently does not have a comprehensive understanding of the location and distribution of the diverse ecosystem, cultural, natural character and recreational values supported by the region's freshwater bodies, or the specific flow requirements that are needed to provide for these values. A work programme to identify these values, establish the environmental outcomes that need to be achieved and determine the take and use limits, environmental flows and other management controls is currently underway.
- (b) Secondly, a requirement to set environmental flow conditions on each new consent based on the ecological requirements of the source water body or to give greater consideration to the impacts of existing takes on indigenous biodiversity values supported by freshwater, will in many cases, especially where there is no good knowledge of the values and their requirements, undermine the intent of PC7 to provide for a low cost and fast process for issuing

of new consents on a short-term basis. Identifying these values and determining their habitat needs is likely to increase the complexity and cost of resource consent application processes.

- 427 While I consider that further amending PC7 to better protect freshwater ecosystem values may be inconsistent with key principles of the plan change (i.e. providing applications with a simple and cost-effective consenting pathway), I am also mindful of the requirement under the NPS-FM 2020 to protect the habitats of indigenous freshwater species (Policy 9) and provide for threatened species as one of the NPS-FM 2020's compulsory values.
- 428 Therefore, I would like to consider any further relevant information provided by the parties during the evidence exchange and hearing process in relation to the potential implications of such amendment on the cost and complexity of resource consent applications, relative to the environmental benefits.
- 429 PC7 proposes a clause at the end of controlled activity Rule 10A.3.1.1 which states that "*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.*" This clause effectively precludes involvement of third parties in the consent process. The rationale for including this clause is, again, to provide for a simple and cost-effective consent process.²³²
- 430 The entry conditions for controlled activity Rule 10A.3.1.1 serve to ensure that minimum flow, residual flow and take cessation conditions on the existing consent are carried over onto the new consent, thereby reducing to some degree the need for third party involvement in resource consent processes under controlled activity Rule 10A.3.1.1.
- 431 I also consider that the matters of control under this rule provide the consent authority with scope to consider instream values that are of

²³² I consider that it is also appropriate for this clause to be added to the end of the restricted discretionary activity rule, which I have recommended in paragraphs 399, 400 and 403 of my evidence.

interest to third parties such as the Department of Conservation or Fish and Game, and set conditions on resource consents to safeguard these values.

432 Finally, it should be noted that PC7 does not preclude limited or public notification where consent is applied for under the non-complying activity Rule 10A.3.2.1.

433 Various submitters have expressed concern that PC7 does not encourage efficiency in resource use. I acknowledge that the proposed provisions do not make the granting of resource consents conditional on efficiency of water use or do not consider efficient use when calculating the rate of take and volume limits for new consents applied for under controlled activity Rule 10A.3.1.1. In considering whether this is appropriate I have come to the following conclusions:

- (a) The planning framework established by PC7 is an interim one that will be superseded by a new integrated framework for managing water and land by 31 December 2025.
- (b) This new integrated planning framework will give full effect to the NPS-FM 2020. For this framework to give effect to the NPS-FM 2020, ORC will review the current allocation and efficiency framework. This means setting sustainable environmental flows, take limits and limits on resources and developing clear policy and standards to assess and apply efficiency requirements.
- (c) In the absence of certainty around the efficiency requirements and the restrictions of water availability set by the new framework, the interim framework established by PC7 seeks to discourage any further investment in irrigation infrastructure, including the conversion to more efficient application methods, while also making sure that the adverse environmental effects of water take and use are not intensified.
- (d) Where resource consent is applied for under the non-complying activity Rule 10A.3.2.1 the consent authority can consider efficiency of use when determining rates of take and take volumes allocated under the new consent.

- 434 I have considered the submitter concerns around the risk that the PC7 framework will result in increased fire risk and/or increased take of water under the permitted activity rules of the Water Plan or under s14(3)(b) for the RMA.
- 435 I acknowledge submitter concerns relating to an increased fire risk if people loose (part of) their consented allocation as a result of PC7. However, it should be noted that under RMA s14(3)(e) a person is allowed to take water at any time if the water is required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017.²³³
- 436 Under RMA Section 14(3)(b) the taking of water for reasonable domestic needs or the reasonable needs of a person's animals for drinking water without a resource consent is permitted.²³⁴ However, the statutory authorisation under RMA s14(3)(b) is not unlimited, as s14(3)(b) states that the taking is allowed provided the take or use does not, or is not likely to, have an adverse effect on the environment.²³⁵

²³³ S48 of the Fire and Emergency New Zealand Act 2017 states the following:

- (1) *All FENZ personnel may, free of charge,—*
 - (a) *use all hydrants and control valves installed in any water mains and any water in the water mains for—*
 - (i) *the purposes of performing or exercising FENZ's functions, duties, or powers; or*
 - (ii) *training for the purposes of performing or exercising FENZ's functions, duties, or powers; and*
 - (b) *use water from any water supply or any source of water for—*
 - (i) *the purposes of performing or exercising FENZ's functions, duties, or powers; or*
 - (ii) *training for the purposes of performing or exercising FENZ's functions, duties, or powers.*
- (2) *The provisions of this section apply in relation to defence fire brigades and industry brigades with all necessary modifications.*
- (3) *The exercise of powers under this section is subject to the overall requirements of the National Controller under the Civil Defence Emergency Management Act 2002 if a state of emergency exists under that Act.*

²³⁴ S14(3)(b) of the RMA states:

- (3) *A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if—*
 - (b) *in the case of fresh water, the water, heat, or energy is required to be taken or used for—*
 - (i) *an individual's reasonable domestic needs; or*
 - (ii) *the reasonable needs of a person's animals for drinking water,—*
and the taking or use does not, or is not likely to, have an adverse effect on the environment; or

²³⁵ The Court has stated in *Carter Holt Harvey v Waikato RC* [2011] NZ EnvC 380 that "The right to take is not absolute. The take or use must be required; the needs must be reasonable; and the taking or use does not, or is not likely to have an adverse effect on the environment. "and that "...any effect which is greater than de minimis would be sufficient to terminate the statutory authorisation."

437 Rules 12.1.2.1, 12.1.2.2, 12.1.2.4 and 12.1.2.5 in Section 12.1.2 of the Water Plan also allow for run-of-the river water takes to occur as a permitted activity subject to specific conditions. Under Rule 12.1.2.1 the take and use of water can only occur as long as the activity does not or is not likely to have an adverse effect on the environment. Further, when water is taken under rules 12.1.2.4 and 12.1.2.5, ORC may, by public notice, suspend this take if the consented takes have had to cease in accordance with relevant minimum flow restrictions.

Lack of clarity

- 438 A small number of submitters have raised concerns about the lack of clarity around some of the proposed PC7 provisions, including:
- (a) PC7 provides plan users with no clarity around the activity status for the take and use of water post 2035 and how resource consent applications for these activities will be considered by the consent authority.²³⁶
 - (b) The meaning of the word “irrespective” in proposed Policies 10A.2.1, 10A.2.2 and 10A.2.3 is not clear, and its use invalidates other policies.²³⁷
 - (c) The terms “resource consent” and “new resource consent” are used interchangeably in proposed Policies 10A.2.1, 10A.2.2 and 10A.2.3 and it is not clear whether PC7 only applies to resource consent applications to replace existing water permits expiring before 31 December 2025, or also to resource consent applications for new takes and uses of water (i.e. previously unauthorised takes and uses).²³⁸
- 439 Some submitters have asked for the plan change to be amended to provide more clarity. Amendments requested include the following:
- (a) Amend PC7 to make it clear that the current Water Plan provisions no longer apply;²³⁹

²³⁶ Submitter 71161.

²³⁷ Submitters 71161 and 71180.

²³⁸ Submitters 71074, 71115, 71118, 71134, 71135, 71139, 71145, 71146, 71147 and 71149.

²³⁹ Submitter 70054.

- (b) Amend PC7 to make sure the proposed policies allow for full consideration of all other policy considerations in the Water Plan.
 - (c) Clarify, amend or remove the word “new.”²⁴⁰
 - (d) Amend PC7 to provide more clarity around whether the plan change only applies to resource consent applications to renew existing deemed permits and water permits expiring before 31 December 2025 or to resource consent applications for takes and uses of water not previously authorised by a water permit.²⁴¹
- 440 It is currently not possible to provide plan users with certainty around the activity status for applications for water takes post 2035 or against which policies these applications will be considered by the consent authority under the relevant regional plan at the time. Appropriate activity statuses for different activities, matters of control (for controlled activities) or discretion (for restricted discretionary activities), and the objectives and policies that will guide the decision-making process for evaluating any consent applications will be determined through a plan making process in accordance with legislative requirements.
- 441 In my opinion the terms “new resource consents” and “resource consent” have the same meaning, however, there is merit in amending the policies and the objective to further clarify where the resource consents applies to a new take that hasn’t been authorised previously by a deemed permit or water permit and when it applies to an existing take that has been authorised by a previous deemed permit or water permit.
- 442 As stated previously in paragraphs 102 to 107 of my evidence, PC7 proposes to insert a new Chapter 10A with a small and discrete set of provisions in the current Water Plan in order to establish an interim planning framework for enabling the transition to a new NPS-FM 2020 compliant land and freshwater management regime in an efficient and timely manner. Under this framework applications for resource consents to take and use water that are replacing either a deemed permit, or a water permit to take and use surface water and connected groundwater

²⁴⁰ Submitter 70045.

²⁴¹ Submitters 71134, 71135, 71139, 71145, 71146 and 71147.

that expire before 31 December 2025, will be assessed in accordance with the objective, policies and rules set out in Chapter 10A.

- 443 Applications for resource consent for the take and use of water that has not been previously authorised by an existing deemed permit or other water permit will be assessed in accordance with the provisions in Chapters 5, 6, 12 and 20 of the Water Plan, except that the duration of any water permit will be determined in accordance with the policies in Chapter 10A (irrespective of Policy 6.4.19).
- 444 The notified version of PC7 proposes to insert in the Water Plan explanatory provisions that will assist plan users with clarifying the relationship between the provisions in proposed Chapter 10A and the provisions in other chapters of the Water Plan and with helping to understanding how the proposed PC7 provisions will apply to different types of resource consents.
- 445 Specifically, PC7 proposes to insert two sentences shown on page iv of the notified plan change document as two new paragraphs at the end of the section in the Water Plan entitled '*How to Use the Regional Plan: Water*' on page iv in the Water Plan.
- 446 I consider that these paragraphs and their proposed location at the beginning of the Water Plan are useful and adequate, although I recommend one minor amendment to clarify that Chapter 5 continues to be relevant:
- 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~~ 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.*
- 447 PC7 also proposes to insert an advice note at the end of proposed controlled activity Rule 10A.3.1.1. I consider this advice note to be

helpful but recommend it to be moved to the top of the Rules Section in new Chapter 10A.3 for better visibility.

- 448 In light of all of the above and to provide additional clarity I recommend a number of changes to PC7:

(New paragraphs to be inserted in the section in the Water Plan 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~~ 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.

10A.1 Objective

10A.1.1 *Transition toward the long-term sustainable management of ~~surface~~ freshwater 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

(b) the replacement of deemed permits, and

(c) water permits for ~~takes~~ and uses ~~surface of freshwater~~ (including groundwater considered as surface water) where those water permits expire prior to 31 December 2025,

until ~~the~~ a new Land and Water Regional Plan 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 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 actual 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.*

10A.2.2 *Irrespective of any other policies in this Plan concerning consent duration, only grant ~~new~~ resource consents for ~~the~~ takes and/or uses of freshwater, where this activity was not previously authorised by a deemed permit or water permit, 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 ~~new~~ resource consents that replace deemed permits, or resource consents that replace water permits to take and/or 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) *.....*

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.

Note 2: ...

10A.3.1. Controlled Activity: Consent required

10A.3.1.1 Despite any other rule or rules in this Plan

...

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.

~~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.4 Schedule: Methodology for calculating assessed actual usage for surface-water and connected groundwater takes for irrigation purposes

10A.4.1 Methodology for calculating 'Rate of Take Limit'

The 'Rate of Take Limit' (litres per second – L/s) shall be determined by calculating

449 I have also recommended a number of amendments to Schedule 10A.4 for the purposes of consistency and clarity which are set out in **Appendix B** to my evidence. These amendments are:

- (a) Applying consistency in the use of terminology:
 - (i) Use l/s (instead of L/s).

- (ii) Use “water year” (instead of “hydrological year”).
 - (iii) In Schedule 10A.4.2 - use the term “Authorised Daily Volume” (instead of “authorised volume”, “Daily Volume” or “authorised (consented) or calculated daily volume”).
 - (iv) In Schedule 10A.4.3 - use the term “Monthly Volume Limit” (instead of “Monthly Limit”).
- (b) Removing explanatory text in 10A.4.2(4) and 10A.4.3(6).
- (c) Making it clear that:
- (i) In Schedule 10A.4.1 - Abstractions above the consented rate of take by more than the margin of error are excluded from any calculations.
 - (ii) In Schedule 10A.4.1 - The term “maximum rate” refers to the “maximum instantaneous rate at which water is taken”.

450 In accordance with the requirements under s32AA I have evaluated the costs and benefits of the suggested amendments.

451 While the suggested amendments do not materially alter the impacts of the proposal on resource users or the environment, they will have a net benefit, by creating more clarity for plan users. Therefore, I consider that the suggested amendments will increase the efficiency and effectiveness of the proposed provisions in achieving the Objective of the plan change.

Matters raised on specific provisions

452 The following paragraphs discuss matters that have been raised by submitters that relate to specific provisions proposed by PC7.

Objective 10A.1.1

453 Several submitters have expressed concerns that specifically relate to proposed Objective 10A.1.1. Key issues raised in submissions in relation to this proposed provision include:

- (a) It is not appropriate for this proposed objective to apply to any water take irrespective of use;²⁴²
- (b) The use of the word long-term suggests that sustainable management is not a concern in the short-term;²⁴³
- (c) The proposed objective does not relate to a clearly stated resource management issue and does not articulate an environmental outcome; and²⁴⁴
- (d) The proposed objective is worded as a method.²⁴⁵

Amendments to the objective requested by submitters include:

- (a) Simplify or refine the wording;²⁴⁶
- (b) Amend to clearly state an environmental outcome; and²⁴⁷
- (c) Delete the word “long-term”²⁴⁸

454 Objective 10A.1.1 seeks to respond to a management issue that stems from the ineffectiveness of the current policy framework in the Water Plan to:

- (a) address potential conflicts between resource users arising from the demand or need for water for competing values; and
- (b) enable a timely and efficient transition towards a new freshwater management framework that gives effect to the NPS-FM 2020 and other relevant higher order planning instruments and is expected to be in place by 31 December 2025.

455 The Quality Planning website states: *An objective is a statement of what is to be achieved through the resolution of a particular issue. An issue is an existing or potential problem that must be resolved to promote the purpose of the RMA or an opportunity to assist in promoting the purpose of the RMA. Environmental issues usually concern conflicts between*

²⁴² Submitter 71143.

²⁴³ Submitters 70045 and 71149.

²⁴⁴ Submitters 71143, 71159 and 71161.

²⁴⁵ Submitter 71180.

²⁴⁶ Submitters 70045, 71043, 71143 and 71177.

²⁴⁷ Submitters 71143 and 71161.

²⁴⁸ Submitters 70045 and 71149.

*users of resources, allocation of resources, or effects on the environment. An issue could also relate to the need to take positive action to correct the absence of policy or policy failures,*²⁴⁹

- 456 In response to submitters commenting that it is not appropriate for PC7 to apply to any water take irrespective of use, I want to reiterate that I have, as outlined in paragraphs 279 to 356 of my evidence, considered the appropriateness of applying the proposed planning framework against a variety of uses. Following this assessment, I concluded that, based on the information that has been provided to me in submissions, no takes or uses should be exempted from the PC7 framework. However, I would like to consider any relevant information provided by the parties in relation to this issue through the evidence exchange and hearing process.
- 457 I do not support the removal of the word “long-term”, as it assists with distinguishing the interim planning framework that PC7 proposes to introduce from the integrated planning framework of the new LWRP that is expected to be operative by 31 December 2025 and will give effect to the NPS-FM 2020 and other relevant higher order planning instruments.

Policy 10A.2.1

- 458 Various issues have been raised in submissions in relation to proposed Policy 10A.2.1. A large number of these have already been discussed in previous parts of my evidence. However, two issues that have been raised in submissions specifically in relation to Policy 10A.2.1 are:
- (a) The use of the word “avoid” is inappropriate in the context of a policy that supports a controlled activity rule.²⁵⁰
 - (b) The meaning of the word “valid” is unclear²⁵¹
- 459 The Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 has ruled that the word

²⁴⁹ Plan Steps – Writing provisions for Regional and District Plans. Quality Planning Website. <https://www.qualityplanning.org.nz/>.

²⁵⁰ Submitters 71060, 71143, 71159 and 71161.

²⁵¹ Submitters 71074, 70105, 71118, 71143 and 71161.

“avoid” in section 5(2)(c) of the RMA has its ordinary meaning of “not allowing” or “preventing the occurrence of”.

460 The use of the term “avoid” causes Policy 10A.2.1 to be directive. The Supreme Court’s decision in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 further suggests that *directive* policies carry greater weight than *policies* expressed in less directive terms.

461 Policy 10A.2.1 provides policy support for proposed controlled activity Rule 10A.3.1.1 and proposed non-complying activity rule 10A.3.2.1. I consider the use of the term “avoid” in Policy 10A.2.1 appropriate because it is clearly articulating the outcomes sought.

462 The word “valid” in the context of a water permit or deemed permit is not defined or explained in the plan change proposal or in any of the provisions of the operative Water Plan. To avoid any confusion in plan interpretation I recommend that PC7 is amended to include the following definition in a new 10.3A. Definition section in Chapter 10A:

10.3A. Definition

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.*

463 For completeness I note that both the terms “deemed permit” and “resource consent” are already defined in the Water Plan

464 In accordance with the requirements under s32AA I have evaluated the costs and benefits of the suggested amendments.

465 The suggested amendments do not alter the plan change proposal, they only serve to create more clarity, thereby increasing the efficiency and

effectiveness of the proposal in achieving the Objective of the plan change.

Policy 10A.2.3

466 Various submitters have commented on this policy with specific comments relating to the following matters:

- (a) There is no justification for only granting resource consents with a consent term that does not extend beyond 31 December 2035.²⁵²
- (b) Policy 10A.2.3 unnecessarily repeats the thresholds for non-complying activities in s104D in the RMA.²⁵³
- (c) The reference to “no more than minor adverse effects” is uncertain (There is no clarity around the types of values that are considered under this Policy and whether these are only localised effects).²⁵⁴
- (d) Subjecting activities with no more than minor adverse effects to a non-complying activity rule is too onerous.²⁵⁵
- (e) The term “only grant” is typically used for a discretionary activity status.²⁵⁶

467 Some submitters also asked for Policy 10A.2.3 to be removed as the policy is inconsistent with the intended outcome of PC7.²⁵⁷

468 PC7 provides an alternative pathway under the non-complying activity rule for activities that fail to meet or choose not to meet the controlled activity’s entry conditions and allows for these activities, if granted consent, to be carried out up until to 31 December 2035.

469 The 31 December 2035 date has been included in Policy 10A.2.3 because it refers to the likely timeframe for undertaking a review of the new LWRP under s79(1) of the RMA and will ensure that any future consent renewals for water takes will be able to be assessed under a planning regime that is consistent with the NPS-FM 2020. Avoiding

²⁵² Submitters 71119, 71133, 71137, 71143, 71159 and 71161.

²⁵³ Submitter 71143.

²⁵⁴ Submitters 70027 and 71149.

²⁵⁵ Submitters 71159 and 71161.

²⁵⁶ Submitter 71143.

²⁵⁷ Submitters 70030, 70033 and 71027.

setting consent terms beyond 31 December 2035, will ensure that any activities authorised by future consents granted past that date are managed in accordance with the hierarchy of obligations in Te Mana o te Wai and contribute to achieving the environmental outcomes set under the NOF process.

470 Policy 10A.2.3(a) states

“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”.

471 S104(d)(1) of the RMA states

Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

472 Policy 10A.2.3 is intended to allow for true exceptions to be granted as non-complying activities. The wording of Policy 10A.2.3 (a) is similar, but not identical to that of s104D(1)(a) of the RMA, and both set different thresholds. This is intentional as Policy 10A.2.3(a) sets the threshold required to be met under Policy 10A.2.3(b).

473 Under Policy 10A.2.3 the words *“more than minor adverse effects (including no more than minor cumulative effects)”* must be considered in the context of the ecology and the hydrology of the surface water body

(and any connected water body). The policy does not limit the consideration of effects to only localised values, but allows ORC to retain its discretion to consider the effects of activities in a wider geographical context, but still within the surface water body or connected water body from which the abstraction is to occur. In my opinion this is appropriate as activities can have adverse downstream effects and ecological values are often dynamic and mobile in nature.

- 474 I concur with submitters that Policy 10A.2.3(a) sets a high threshold. However, in my opinion this threshold is appropriate in the context of Rule 10A.3.2.1 for two reasons:
- (a) Policy 10A.2.3 acts as an incentive for permit holders to apply for a new consent under the simpler and more cost-effective pathway offered by the controlled activity Rule 10A.3.1.1; and
 - (b) Where the objective is to establish a new, sustainable resource management regime, it makes more sense to grant consents for a longer duration (than the 6-year term) only in those cases where the effects on ecology and hydrology are no more than minor.
- 475 I consider the use of the term "only grant" in Policy 10A.3.1 to be appropriate as it provides plan users with clarity around the conditions that need to be met in order to obtain resource consent under the non-complying activity Rule 10A.3.2.1.

Rule 10A.3.1.1

- 476 Various submitters have commented on Rule 10A.3.1.1 with specific submitter comments relating to the following matters:
- (a) The controlled activity Rule does not provide Council with discretion to decline resource consent applications.²⁵⁸
 - (b) The entry conditions for this rule are likely to be too difficult to comply with for many water permit holders. This will mean that

²⁵⁸ Submitter 71149.

many water permit holders will be required to apply for a resource consent under the non-complying activity Rule 10A.3.2.1.²⁵⁹

- (c) The rule does not provide for a simple and cost-effective process. For applicants to prepare an application for a resource consent under Rule 10A.3.1.1 requires the same level of information and technical assessments as an application under the current Water Plan provisions.²⁶⁰

477 Several submitters have also commented on the some of the matters of control that allow the consent authority to exert control over intake method and flow rate to avoid fish entrainment (a), efficiency of water use (c), minimum flow, residual flow and take cessation conditions (f) and the provision of fish passage (d). Concerns most often expressed in respect of these provisions are:

- (a) The provisions do not provide clarity around the information that needs to be provided by applicants with respect to fish passage and how the consent authority will assess this matter.²⁶¹
- (b) The requirement to provide fish passage is likely to create issues for dam operators.²⁶²
- (c) Ensuring fish passage could create issues for native fish (predation by salmonids).²⁶³
- (d) Consideration of the matters by the consent authority is likely to require fish surveys or ecological assessments, which in turn is likely to increase the costs associated with the preparation and processing of resource consent applications.²⁶⁴
- (e) The provisions do not provide clarity around how efficiency of use will be determined.²⁶⁵

²⁵⁹ Submitters 71052, 71053, 71094, 71128, 71134, 71135, 71138, 71139, 71140, 71142, 71145, 71146, 71147, 71156, 71182 and 71242.

²⁶⁰ Submitters 71074, 71105, 71118, 71119, 71122, 71129, 71132, 71133, 71137, 71146 and 71150.

²⁶¹ Submitters 71071, 71077, 7185, 71159 and 71161.

²⁶² Submitters 71159 and 71161.

²⁶³ Submitters 71126 and 71155.

²⁶⁴ Submitters 71053, 71071, 71085, 71155, 71159 and 71161.

²⁶⁵ Submitters 71043, 71053, 71065, 71077, 71159, 71161 and 71185.

- (f) It is unclear in what circumstances a minimum flow, residual flow or take cessation condition will be set on a resource consent (new and/or existing takes).²⁶⁶
- 478 Amendments to Rule 10A.3.1.1 requested by submitters (in addition to those discussed earlier in my evidence) include:
- (a) Amend the rule so it only applies to water takes for irrigation;²⁶⁷
- (b) Amend the matters of control relating to the provision of fish passage so that this requirement is linked to a lack of instream flow where no residual flow or minimum flow restriction is in place.²⁶⁸
- 479 An application for a controlled activity cannot be declined (except if s106 applies), although the activity must comply with the entry conditions specified in the controlled activity rule. The Council can impose conditions on the consent, but only for those matters over which the council has reserved control. In my opinion the use of the controlled activity status for activities that comply with the conditions specified in Rule 10A.3.1.1 (i) to (vi) is appropriate as it achieves Objective 10A.1.1, which is to establish an interim planning framework that allows:
- (a) existing activities to continue while ensuring that the effects of these water takes on the environment are not exacerbated;
- (b) ORC to develop a new planning instrument (LWRP) that sets out a management regime that gives effect to relevant higher order planning instruments; and
- (c) ensures this management regime will become effective within the life of this new planning instrument.
- 480 I consider that the entry conditions that apply to controlled activity Rule 10A.3.1.1, subject to the amendments that I have recommended earlier in my evidence, suffice to provide most water permit holders with an existing deemed permit or water permit expiring before 31 December 2025 with a practical and simple pathway for consent renewal, provided

²⁶⁶ Submitters 71043, 71161 and 71185.

²⁶⁷ Submitter 71143.

²⁶⁸ Submitter 71053.

they do not seek to expand the scale or impacts of their current operation.

- 481 Guidance around the information requirements for the applicants applying for resource consent to take and use water, including applications that are to be considered under the PC7 framework, is provided in the application forms that are available on the ORC website.²⁶⁹
- 482 Providing for fish passage, implementing measures to prevent fish entrainment and maximising the efficient use of the resource is not a standard requirement for any activity authorised by a consent granted under controlled activity Rule 10A.3.1.1. Instead, Policy 10.A.1.1 gives direction as to when consent conditions that provide for ecosystem values are required, while guidance will be taken from the methods in Schedule 10A.4 to calculate the consented take or volume limits.
- 483 However, PC7 proposes that ORC, as consent authority, retains its discretion to impose conditions relating to the efficiency of use, the provision of fish passage and the intake method and flow rate (in order to avoid fish entrainment). The need for these conditions will be determined on a case by case basis considering the purpose and method of use, the habitat and/or flow requirements of instreams values supported by the source water body and the (potential) impact of the activity on these values.
- 484 Overall, based on the above considerations and the information provided to me through the submissions and further submissions process I do not consider there to be any need to amend the provisions of Rule 10A.3.1.1 to address the matters outlined above.
- 485 Controlled activity Rule 10A.3.1.1 applies to all types of uses of water. As any type of use, even non-consumptive uses or uses enabled by the taking of water at higher flows, can have an environmental impact, I do not consider it appropriate to exempt non-irrigation uses from Rule 10A.3.1.1. and the *Methodology for calculating assessed actual usage for surface-water takes for irrigation purposes*. In my opinion this creates

²⁶⁹ <https://www.orc.govt.nz/consents/ready-to-apply-for-a-consent>

a potential for misunderstanding. I therefore recommend the following amendment to the heading of Schedule 10A.4:

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

Rule 10A.3.2.1

486 Various submitters have commented on Rule 10A.3.2.1 with specific submitter comments relating to the following matters:

- (a) Rule 10A.3.2.1 (in combination with the PC7 objective and policies) provides for a complex pathway and sets an unnecessary high threshold for an intermediary step.²⁷⁰
- (b) Rule 10A.3.2.1 creates inequity as applications for new takes can be assessed as a restricted discretionary or discretionary activity.²⁷¹
- (c) Rule 10A.3.2.1 does not provide for a simple and inexpensive consent replacement process.²⁷²
- (d) The implications of applying under Rule 10A.3.2.1 in terms of process steps, cost and information needs are not clear.²⁷³

487 Amendments to Rule 10A.3.2.1 requested by submitters (in addition to these discussed earlier in my evidence) include:

- (a) Remove the rule and replace with a prohibited activity rule.²⁷⁴
- (b) Remove the rule and replace with a discretionary activity rule.²⁷⁵
- (c) Remove the rule and replace with a restricted discretionary activity rule.²⁷⁶

²⁷⁰ Submitters 71031, 71032, 71053, 71064, 71071, 71074, 71085, 71105, 71118, 71138, 71140, 71142, 71145, 71147 and 71163.

²⁷¹ Submitter 71161.

²⁷² Submitters 71119, 71133 and 71137.

²⁷³ Submitter 71172.

²⁷⁴ Submitter 70034.

²⁷⁵ Submitters 71131 and 71173.

²⁷⁶ Submitters 71031 and 71032.

- (d) Remove the rule and replace with restricted discretionary and restricted discretionary activity rules.²⁷⁷

488 I consider the use of the controlled and non-complying pathways appropriate. My reasons for arriving at this conclusion are:

- (a) The controlled activity Rule 10A.3.1.1 provides applicants seeking to apply for a short term (maximum of 6 years) consent to replace a deemed permit, or an existing water permit to take and use surface water or connected groundwater that expires before 31 December 2025, with a simple and cost-effective application process.
- (b) For those holders of a deemed permit holders or other expiring water permit who cannot meet, or do not wish to meet, the entry conditions of controlled activity Rule 10A.3.2.1 (i.e. applicants seeking a consent term up to 31 December 2035), an alternative but more complex and expensive consenting pathway remains available under non-complying activity Rule 10A.3.2.1.
- (c) The granting of new consents for only a short term (maximum of 6 years) or medium term (no consents with a term beyond 31 December 2035) will allow Council to develop a new integrated management regime for managing water and land in the LWRP that gives full effect to the NPS-FM 2020, while also better ensuring this regime will become effective within the life of this plan (by avoiding the risk that the achievement of the environmental outcomes set in the new LWRP is frustrated by incompatible long-term consents for water abstraction and use).
- (d) The non-complying activity status is intended to apply to true exceptions only (applicants who cannot meet the entry conditions for good reason but for whom it may be appropriate to grant a new consent because the activity has no more than minor adverse or even positive environmental effects). The high threshold set by Policy 10A.2.3 for passing the 'gateway test' under s104D acts as an incentive for holders of a current deemed permit or other

²⁷⁷ Submitters 71074, 71105 and 71118.

expiring water permit to apply for consent under Rule 10A.3.1.1, thereby increasing the effectiveness of the PC7 framework in achieving an efficient and timely transition to a new land and freshwater management regime.

- 489 As discussed earlier in my evidence, I acknowledge that there are likely to be circumstances where applicants cannot meet the entry conditions (iv) and (vi) of controlled activity Rule 10A.3.1.1 for reasons outside their control. To make sure that these applicants are not required to apply for consent under the non-complying activity Rule, I have recommended to add a new restricted discretionary activity rule.
- 490 I have also recommended further amendments to the entry conditions of controlled activity Rule 10A.3.1.1 to provide better opportunities for deemed permit or consent holders to make use of the controlled activity Rule 10A.3.1.1.
- 491 I do not support submitter requests to replace the non-complying activity Rule 10A.3.2.1 altogether with a discretionary activity or restricted discretionary activity rule. This would likely result in more water users with a current deemed permit or water permit that is going to expire before 31 December 2035 applying for a new resource consent for a duration over 6 years, hence lengthening the time period needed to achieve the environmental outcomes set in the new LWRP.
- 492 I have also considered the request to replace the non-complying activity Rule 10A.3.2.1 with a prohibited activity rule. In considering the circumstances in which it is proper for a local authority to classify an activity as a "prohibited activity" when formulating its plan in accordance with the RMA, the Environment Court previously held that prohibited activity status should not be used unless an activity is actually forbidden. In the words of the Environment Court, prohibited activity status "should be used only when the activity in question should not be contemplated in the relevant place, under any circumstances."²⁷⁸
- 493 The Court of Appeal in *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473

²⁷⁸ EC W50/2004 30 July 2004.

confirmed that local authorities do not need to consider that an activity should be forbidden outright, with no contemplation of any change or exception, before prohibited activity status is appropriate. The Court of Appeal has outlined examples of situations where prohibited activity status might be appropriate:

- (a) Where the council takes a precautionary approach;
- (b) Where the council takes a purposively staged approach;
- (c) Where the council is ensuring comprehensive development;
- (d) Where it is necessary to allow an expression of social or cultural outcomes or expectations;
- (e) Where it is intended to restrict the allocation of resources, for example where a regional council wishes to restrict aquaculture to a designated area; and
- (f) Where the council wishes to establish priorities otherwise than on a “first in first served” basis, which is the basis on which resource consent applications are considered.

494 While PC7 is a clear example of a planning response where Council takes a precautionary approach to the management of the region’s freshwater resources and a staged approach to ensuring that these resources in time will be managed in accordance with the requirements and principles of the NPS-FM 2020, including Te Mana o te Wai, I do not consider the replacement of the non-complying activity Rule 10A.3.2.1 with a prohibited activity rule an appropriate planning response for the following reasons:

- (a) The proposed rules in PC7 only apply to activities that are already lawfully established by an existing water permit or damming permit. Where applicants seek to apply for resource consent to take, use or dam water and this activity has not been previously authorised by an existing water or damming permit, the rules of the Water Plan apply, which prohibit any resource consents for new takes of water where the resource is fully allocated under the allocation framework of the Water Plan.

- (b) Policy 10A.1.3, which provides policy direction when considering a resource consent application for an activity under non-complying activity Rule 10A.3.2.1, requires a comprehensive assessment of effects to establish that 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.
- (c) Failure to comply with the entry conditions of the controlled activity Rule 10A.3.1.1 (or the restricted discretionary activity rule recommended in paragraphs 399 and 400 of my evidence) may not necessarily be linked to the environmental effect of the activity. For example, a prohibited rule could result in established activities with a minor effect on the environment no longer being able to continue.

495 Overall, when considering the costs and benefits of a non-complying activity status versus prohibited activity status for activities that fail to meet the entry conditions of the controlled activity Rule 10A.3.1.1 (or the restricted discretionary activity rule recommended in paragraphs 399 and 400 of my evidence), I consider that non-complying is the most appropriate activity status.

Schedule 10A.4

496 All matters raised by submitters in relation to Schedule 10A.4 have been discussed in earlier paragraphs of my evidence.

Other Matters

497 Other matters raised in submissions include:

- (a) Amend PC7 to ensure that the existing system of priorities is being retained.²⁷⁹
- (b) PC7 provides no guidance for applicants seeking to apply for consent for a consent term beyond 15 years.²⁸⁰

²⁷⁹ Submitter 71180.

²⁸⁰ Submitter 71233.

(c) Amend Policy 10A.2.3 and Rule 10A.3.2 to provide direction and clarity as to when a longer-term consent term may be considered above and beyond the normal test under S104D of the RMA.²⁸¹

498 I acknowledge the current priority system that has been established through mining privileges can have a big effect on flow regimes in rivers, especially in situations where the takes with the highest priority are located at the bottom end of a catchment, and that any departure from the priority system could alter the flows in different reaches of the catchment. However, it is unclear to me at this point to what extent the current priority system is being applied or whether in many cases it has been superseded by other arrangements between water users in catchment such as flow sharing agreements or rationing agreements. For this reason, I would like to reserve my position on this matter and invite the parties to provide more information around the need for or the costs and benefits of an amendment to PC7 to that effect.

499 PC7 proposes to amend the Water Plan so no new consent can be granted for the take and use of water (or for damming activities currently authorised by a deemed permit) with a consent duration beyond 31 December 2035.²⁸²

500 Proposed Policy 10A.2.3 provides policy direction where consents are applied for under non-complying Rule 10A.3.2.1. Together with

²⁸¹ Submitter 71180.

²⁸² Submitter 71233.

s104D(1)(a) of the RMA this policy provides guidance on the matters that need to be addressed in applications.

Dated this 7th day of December 2020

A handwritten signature in blue ink, appearing to read 'Tom De Pelsemaeker', written over a dotted line.

Tom De Pelsemaeker

INDEX OF APPENDICES

Appendix A: Planning provisions referred to in evidence

Appendix B: Recommended amendments to PC7 provisions

Appendix C: Professor Peter Skelton (2019) Investigation of Freshwater management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment

Appendix D: Letter from Hon. David Parker to the Otago Regional Council regarding the S24 investigation, dated 19 November 2019

Appendix E: ORC work programme

Appendix F: Minister for the Environment's direction to refer PC7 to Environment Court

Appendix G: Map of Freshwater Management Units

Appendix H: Memorandum from Wynn Williams regarding principles of Treaty of Waitangi