

11

Taking, Use, Damming Or Diversion



11.1 Introduction

Section 14 of the Act provides a two tier system of dealing with the taking, use, damming or diversion of coastal water, and the removal of any heat or energy from that water:

- (a) The taking, use, damming or diversion of open coastal water (coastal water that is remote from estuaries, fiords, inlets, harbours, and embayments), and the removal of any heat or energy from that water can occur unless this Plan requires that a resource consent be held, or unless an authorisation is already held pursuant to Section 20 of the Act.
- (b) The taking, use, damming or diversion of coastal water, other than open coastal water, and the removal of any heat or energy from that water, requires a resource consent unless this Plan allows for that activity, or unless the water, heat or energy is required for an individual's reasonable domestic or recreational needs and the taking, use, or diversion does not, or is not likely to, have an adverse effect on the environment, or the water is for fire-fighting purposes.

A distinction is made between the taking of coastal water and the use of that water. "Taking" is the process of extracting the coastal water for any purpose and for any period of time. "Use" is the passive use of coastal water that does not involve any extraction.

The discharge of any coastal water that is taken or used is considered in the discharges chapter of this Plan.

11.2 Issues

11.2.1 The taking, use, damming or diversion of coastal water can cause cultural concern.

Explanation

An activity involving the taking, use, damming, or diversion of Otago's coastal waters can be injurious to the cultural and spiritual values of Kai Tahu.

Objective 11.3.1

Policies 11.4.1, 11.4.3

11.2.2 Ships need to take and use coastal water from Otago's coastal marine area.

Explanation

The ability of ships to be able to take and use water must be recognised in the Regional Plan: Coast for Otago. Such needs include the taking of water for engine cooling purposes, for general ship cleaning purposes and for desalination purposes.

Objective 11.3.1

Policies 11.4.2, 11.4.3

- 11.2.3 The taking of coastal water from estuaries, inlets, harbours, and embayments may adversely affect the existing biota and community uses and values.**

Explanation

Large scale abstractions from enclosed or semi-enclosed coastal water bodies may affect the natural hydrological processes, and may alter the natural salinity of an area. Any adverse effect will depend on the size of the abstractions, the nature and extent of any natural inflows, and the degree of tidal flushing with the open coast.

Objective 11.3.1

Policy 11.4.3

- 11.2.4 Damming or diversion of coastal water within river mouths and estuaries in the coastal marine area may adversely affect community uses and values, and natural values associated with those areas.**

Explanation

The damming or diversion of coastal water is only likely to occur within active river systems which may require some management in order to reduce the risk of flooding, or to retain water for specific purposes. Such activities may alter water flows, salinity patterns, and water depth, which may in turn adversely affect existing values, such as native fish migration, and uses made of those areas.

Objective 11.3.1

Policy 11.4.4

11.3 Objective

- 11.3.1 To enable the taking, use, damming and diversion of Otago's coastal water while protecting values associated with the region's estuaries, inlets, harbours, and embayments.**

Principal reasons for adopting

The taking, use, damming or diversion of coastal water in open coastal areas is unlikely to have any adverse effect on the coastal marine area unless it involves very large volumes. Within any estuary, inlet, harbour or embayments, the taking, use, damming or diversion may have an adverse effect on values associated with those areas depending on the proposed volume. This objective recognises that there is no need to restrict the taking, use, damming or diversion of coastal water where there are no adverse effects.

Policies 11.4.1, 11.4.2, 11.4.3, 11.4.4

Other Objectives 5.3.1, 7.3.1, 7.3.2, 8.3.1, 8.3.2, 9.3.1, 9.3.2, 9.3.4, 10.3.1

11.4 Policies

11.4.1 In order that any proposed taking, use, damming or diversion of Otago’s coastal waters that will, or is likely to, have an adverse effect on cultural values, can be identified by kaitiaki runanga, Kai Tahu will be:

- (a) Treated as an affected party for non-notified resource consent applications to take, use, dam or divert Otago’s coastal waters from areas identified in Schedules 2 and 3 of this Plan as having cultural or spiritual values to Kai Tahu; and be**
- (b) Notified about notified resource consent applications to take, use, dam or divert Otago’s coastal waters.**

Explanation

Notifying Kai Tahu of notified resource consent applications allows the runanga to assess the implications of each application in respect of their coastal domain and recognises the kaitiaki role that runanga have over the tai whenua (coastal area). Where resource consent applications are received for areas within, or adjacent to any area identified in Schedules 2 and 3 of this Plan as having Kai Tahu spiritual or cultural values, the kaitiaki runanga will be treated as an affected party and their written approval will be required, in accordance with Section 94 of the Act.

Principal reasons for adopting

The use of consultation to address Kai Tahu values that were not identified within the coastal protection area of this Plan is seen by them as being the most appropriate way to recognise and protect the cultural relationship that Kai Tahu hold with the tai whenua (coastal domain). Waahi tapu or waahi taoka values applicable to any site or area can be established through consultation. Such sites underpin the cultural relationship and identity to the coastal resource of a particular runanga. Section 8 of the Act requires that the Otago Regional Council take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Rule 11.5.3

Other Method 11.6.1

Other Policies 5.4.1, 5.4.2, 5.4.9, 6.4.2, 9.4.1

11.4.2 To allow the use of coastal water without restrictions.

Explanation

The use of coastal water, in which the water is not extracted for any period of time, will be allowed without restrictions. This recognises that the “use” of water, as opposed to the “taking, damming or diversion” of water will only have minor effects. The use of coastal water is usually associated with passive uses of the water such as the use of waves for energy production. While a consent may be required for any associated structure, a consent for the “use” of the water should not be required because of the minor effects.

Principal reasons for adopting

The use of coastal water (other than open coastal water) can only occur if a resource consent is held, unless this Plan provides for that use (Section 14(3)(a), (d) and (e) of the Act). The use of open coastal water requires a consent only if this Plan requires it. The use of coastal water will have little or no adverse effects on the coastal marine area and should be allowed. Using water within the coastal marine area without taking it applies to activities such as water wheels and wave machines used to generate energy.

Rules 11.5.1, 11.5.2

11.4.3 To allow the taking of coastal water while taking into account community values and needs, and natural values associated with Otago's estuaries, inlets, harbours, and embayments.

Explanation

The taking of coastal water will be allowed where the community values and needs, and natural values associated with Otago's estuaries, inlets, harbours, and embayments are taken into account.

Principal reasons for adopting

The taking of coastal water (other than open coastal water) can only occur if a resource consent is held, unless this Plan provides for that use (Section 14(3)(a) of the Act). The taking of open coastal water requires a consent only if this Plan requires it. Because of the exceedingly large volumes of coastal water available in the coastal marine area, any take of coastal water is unlikely to create adverse effects except within estuaries, inlets, harbours, and embayments. Schedules 2 and 3 identify the important community and natural values which must be taken into account when considering an application for a consent to take water.

Rules 11.5.1, 11.5.3

Other Policies 5.4.5, 5.4.6, 5.4.9, 6.4.2

11.4.4 To restrict the damming and diversion of coastal water that would adversely affect community values and needs, and natural values within coastal protection areas, river mouths and harbours.

Explanation

The damming or diversion of coastal water will only be restricted where that damming or diversion would create an adverse effect on community values and needs, and on any natural values associated with those areas.

Principal reasons for adopting

The damming or diversion of coastal water (other than open coastal water) can only occur if a resource consent is held, unless this Plan provides for that use (Section 14(3)(a) of the Act). The damming or diversion of open coastal water requires a consent only if this Plan requires it. The damming or diversion of coastal water has the potential to adversely affect certain values associated with identified parts of the coast. Schedules 2 and 3 in particular identify those important community and natural values which must be taken

into account when considering an application for a consent to dam or divert water. In addition to those specific values there may be other values that should be taken into account when considering activities in the coastal marine area. An example might be the effect of the damming or diversion of water on the movement of migratory fish species.

Rule 11.5.3

Other Policies 5.4.1, 5.4.2, 5.4.5, 5.4.9, 6.4.2, 9.4.2

11.5 Rules

Any activity specified in this section as a discretionary activity requires a resource consent. Chapter 15 of this Plan specifies the information that must be submitted to the Otago Regional Council with a resource consent application.

Note: The rules in this Section provide only for the taking, use, damming and diversion of coastal water. A consent may also be required under other parts of the Plan for:

- An activity involving a restriction on public access to the coast (see Chapter 7); or
- An activity involving a structure (see Chapter 8); or
- An activity involving an alteration of the foreshore or seabed (see Chapter 9); or
- An activity involving a discharge (see Chapter 10).

11.5.1 Ships' needs for taking and using seawater

11.5.1.1 The taking or use of coastal water by ships is a *permitted* activity.

Principal reasons for adopting

The taking or use of coastal water (other than open coastal water) requires a consent unless this Plan allows for that taking or use (Section 14 of the Act). The taking or use of coastal water for a ship's normal operational purposes, and other purposes, needs to be permitted because the water is necessary for the operation of the ship.

11.5.2 Using coastal water

11.5.2.1 The use of coastal water is a *permitted* activity.

Principal reasons for adopting

The use of coastal water (other than open coastal water) requires a consent unless this Plan allows for that use (Section 14 of the Act). The use of coastal water, in which the water is not extracted for any period of time, is unlikely to result in any adverse effect on the coastal marine area.

11.5.3 Taking, damming or diverting coastal water

11.5.3.1 The taking, damming or diversion of coastal water within the coastal marine area is a *permitted* activity provided:

- (a) The taking is for any fire fighting purposes; or
- (b) The taking, damming or diversion is for an individual's reasonable domestic or recreational needs; or
- (c) The taking, damming or diversion occurs outside of:
 - (i) Any coastal protection area;
 - (ii) Any river mouth;
 - (iii) Oamaru Harbour; or
 - (iv) Otago Harbour.

11.5.3.2 Except as provided for by Rule 11.5.3.1, the taking, damming, or diversion of coastal water is a *discretionary* activity.

Principal reasons for adopting

Consideration of any adverse effects associated with the taking, damming or diversion of coastal water within the areas identified is necessary because of the values that may be associated with those areas. The taking, damming or diversion of coastal water from areas outside those identified is unlikely to create any adverse effect.

11.6 Other methods

11.6.1 Consultation

11.6.1.1 Recognise and take account of Iwi Management Plans as a basis for consultation with Kai Tahu.

11.6.1.2 Consult with Territorial Local Authorities responsible for land areas adjacent to any proposed damming or diversion.

Principal reasons for adopting

The use of consultation is seen by Kai Tahu as being the most appropriate way to recognise and protect the cultural relationship that they hold with the tai whenua (coastal domain). Iwi Management Plans would provide a basis for consultation with Kai Tahu. Consultation with adjacent Territorial Local Authorities is required in order to deal with any cross boundary issues resulting from the damming or diversion.

11.7 Anticipated environmental results

11.7.1 The taking, use, damming and diversion of Otago's coastal water does not adversely affect community values and needs, and natural values associated with Otago's coastal marine area.

1 1 T A K I N G , U S E , D A M M I N G O R D I V E R S I O N