

Council Meeting Agenda, 22 January 2020

Meeting is held in the Council Chamber, Level 2, Philip Laing House
144 Rattray Street, Dunedin



Members:

Hon Marian Hobbs, Chairperson	Cr Gary Kelliher
Cr Michael Laws, Deputy Chairperson	Cr Kevin Malcolm
Cr Hilary Calvert	Cr Andrew Noone
Cr Michael Deaker	Cr Gretchen Robertson
Cr Alexa Forbes	Cr Bryan Scott
Cr Carmen Hope	Cr Kate Wilson

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

22 January 2020 03:00 PM

Agenda Topic

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1. APOLOGIES

No apologies were received prior to publication of the agenda. Cr Bryan Scott will attend the meeting via remote connection.

2. ATTENDANCE

Staff in attendance will be noted in the minutes.

3. CONFIRMATION OF AGENDA

Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

4. CONFLICT OF INTEREST

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

5. PUBLIC FORUM

Requests to speak should be made to the Committee Secretary on 0800 474 082 or liz.spector@orc.govt.nz at least 24 hours before the meeting; however, this requirement may be waived by the Chairperson.

6. RESOLUTION TO EXCLUDE THE PUBLIC

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That the public be excluded from the following items:

Item 7.1 Short-Term Water Permits Plan Change: Overview of Options

6.1 Public Excluded Reason and Grounds

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7. MATTERS FOR COUNCIL DECISION

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7.1 Short-Term Water Permits Plan: Overview of Options

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To consider options for a plan change to manage applications for replacement water permits and deemed permits until a fit for purpose planning framework is developed through the Land and Water Regional Plan.

7.1.1 Attachment 1: Water Permits Plan Change - Architecture Options	10
This document will be considered in public-excluded session.	
7.1.2 Attachment 2: redacted pursuant to section 7(2)(g) of the Local Government Official Information and Meetings Act 1987 (LGOIMA).	13
This document will be considered in public-excluded session.	

8. CLOSURE

That the public be excluded from the following parts of the proceedings of this meeting, namely:

Item 7.1 Short-Term Water Permits Plan Change: Overview of Options

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Item 7.1 Short-Term Water Permits Plan Change: Overview of Options	To maintain legal professional privilege	Sec 7(2)(g)

This resolution is made in reliance on [section 48\(1\)\(a\) of the Local Government Official Information and Meetings Act 1987](#) and the particular interest or interests protected by [section 6](#) or [section 7](#) of that Act or [section 6](#) or [section 7](#) or [section 9](#) of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

7.1. Short Term Water Permits Plan Change : Overview of Options

Prepared for: Council
Report No. P&S1813
Activity: Governance Report
Author: Anita Dawe and Peter Constantine
Endorsed by: Gwyneth Elsum, General Manager Strategy, Policy and Science
Date: 22 January 2020

PURPOSE

- [1] To consider options for a plan change to manage applications for replacement water permits and deemed permits until a fit for purpose planning framework is developed through the Land and Water Regional Plan.

EXECUTIVE SUMMARY

- [2] Findings of a Ministerial investigation into ORC's ability to adequately perform its function under RMA section 30(1) included a recommendation to notify a plan change that will provide an adequate interim planning and consenting framework to manage freshwater up until the ORC's new LWRP becomes operative.
- [3] The Plan Change is to allow for the processing of short-term consents, at relatively low cost, to enable the issue of new consents, replacing deemed permits, while a new planning framework to appropriately provide for flows and allocation is developed.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Approves Option A**, to be developed as the Deemed Permit Plan Change (DPPC), with associated Section 32 Report developed; or
- 3) **Approves Option B**, to be developed as the Deemed Permit Plan Change (DPPC), with associated Section 32 Report developed; or
- 4) **Approves Option C**, to be developed as the Deemed Permit Plan Change (DPPC), with associated Section 32 Report developed.

BACKGROUND

- [4] As a result of the Ministerial investigation into ORC, the Council committed, by letter dated 16 December 2019, to undertake several actions, including a revised Regional Policy Statement, a new Land and Water Regional Plan (LWRP), a short-term plan change to address deemed permits (DPPC), and to continue with Plan Change 6AA and the Omnibus Plan Change.

- [5] To shape the DPPC, and ensure consistency with the recommendations from Minster Parker, Council has agreed to some key principles that will underpin the plan change. These include:
- a. *The focus must remain on the bigger picture, being the Water Plan review. The Water Permit plan change should be as concise as required to achieve a fit for purpose management regime.*
 - b. *Water allocation should be based on existing water use not paper allocation.*
 - c. *Consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.*
 - d. *Efficiency of time and cost for Council, applicants and other parties.*
 - e. *Opportunities for data gathering that will inform the Water Plan review should be pursued.*
- [6] Due to the time constraints imposed through the recommendations, pre-notification consultation has been limited and confined to a small number of avenues. In addition to an online survey conducted in December 2019, a public forum was held on 7 January 2020, and a Focus Group meeting was held at Lawrence on Thursday, 16 January 2020.
- [7] The responses received through the online survey indicated that general support exists in relation to the following:
- a. Reducing duration of consents between now and the completion of the full Water Plan review;
 - b. Allowing existing water takes to continue as a permitted activity until the freshwater management regime established under the new LWRP has taken form;
 - c. Reducing the quantity of water allocated under any new consents to the quantity needed to efficiently irrigate land;
 - d. Allowing landholders to expand their irrigated land in the future, provided they use efficient irrigation techniques;
 - e. Setting minimum flows and/or residual flows as conditions to new consents.
- [8] These messages were reinforced during the public forum and some additional key messages were provided to Councillors, including:
- a. Efforts need to stay focussed on full Water Plan review, while work on completing draft management plans for the MAC catchments is progressing.
 - b. ORC needs to apply consistency in decision-making and provide transparency and certainty for stakeholders.
 - c. The scope of the plan change should be kept narrow
 - d. An interim management consenting framework should:
 - i. Recognise past and current efforts in establishing community/catchment groups and undertaking community-based environmental mitigation initiatives;
 - ii. Recognise specific or local circumstances (not a one-size-fits-all approach);
 - iii. Prioritise environmental health; and
 - iv. Ensure no further loss of biodiversity values.

- e. Provide an alternative pathway where longer-term consents may be granted subject to specific conditions.
 - f. The consent terms for any future consents should recognise time required for preparation and processing of consent applications in accordance with the new LWRP.
 - g. The plan change proposal poses a challenge for existing current consent holders as short-term consents limit potential for future investment and generate extra costs associated with repeated consent renewal processes.
- [9] The Focus Group meeting invited two irrigators, two environmental groups, and one consultant and was also attended by policy and consent staff from ORC. The purpose of the Focus Group was to test concepts and ideas with this targeted group, building on the Council workshop held on 7 January 2020.
- [10] The Focus Group discussed issues such as keeping consents processing simple versus providing for some variation in processes, term and the different understanding of what is a short-term consent versus what is a long-term consent, and efficiency, allocation, residual flows, and minimum flows.
- [11] There was general agreement that a one-size-fits-all approach would be preferable if it resulted in a simpler and therefore more cost-effective consent process, and that this option also had an alternative pathway available for consenting (i.e. it was not a single consent pathway only available).

ISSUE

- [1] Developing a plan change that adequately provides for the requirements of Minister Parker's recommendation while recognising the input from consultation undertaken.

DISCUSSION

- [12] Having considered the consultation undertaken, staff have developed three options for the plan change, to be considered by Council today. The principle concepts and intentions of these options are attached as Appendix 1.
- [13] After considering Councillors' and focus group's feedback, none of the options explicitly requires an efficiency lens however, efficiency gains will be achieved by requiring the instantaneous rate of take to be an average of the maximum take over a 5-year period, being 2012 – 2017. This period deliberately excluded 2018 which was a wet season and could distort the take information.
- [14] **Option A** provides for short-term consents and applications to be processed as a controlled activity. As a controlled activity, consent must be granted. The proposed rule will include a number of targeted 'entry conditions' to ensure management of the resource at the very least 'holds the line' and in terms of take volume, provides for some environmental benefit. The benefits of Option A are in general, a more straightforward consent process with the ability to standardise consent documentation as much as

possible, reduce complexity, address affected party approvals in most cases, and will still allow some exceptional or out-of-the-ordinary consent requests to have an alternative path available.

- [15] Option A also can be argued to be consistent with the NPSFM, and is considered to address in part, Objectives B2 (over-allocation), and B5 (economic well-being, productive economic opportunities and managing quantity). It also addresses most of the Minister's recommendations, including being relatively low-cost, simple, short-term, and NPSFM-compliant.
- [16] **Option B**, in addition to the controlled activity route, provides for a second pathway to a slightly longer-term consent if the applicant provides sufficient evidence to demonstrate less than minor short- and long-term effects as part of the application. This option has more variation to allow for movement away from the 'one size fits all' approach. It also addresses the concern that some of the abstractors raised with respect to the investment they have already made in getting ready for their consent renewals by enabling a pathway to utilise that work.
- [17] The benefits of Option B are that it moves away from one-size-fits-all and considers regional variation. It meets many of the Minister's recommendations, including being short-term and NPSFM-compliant. Some drawbacks of Option B are that it will be more complex than Option A, which is likely to result in greater consenting costs and greater costs in preparation and is likely to result in some catchments having more favourable consent terms than others.
- [18] **Option C** provides a straight discretionary activity, that provides for each application to be considered on a case by case basis, and very little guidance from Council. While this responds to the case by case element requested, this would be the most expensive and time-consuming option and reduces simplicity and certainty.
- [19] **THIS PARAGRAPH REDACTED PURSUANT TO SECTION 7(2)(G) OF THE LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 (LGOIMA).**

CONSIDERATIONS

Policy Considerations

- [20] The plan change is part of a transition towards a new freshwater management framework to be set in the new LWRP. The current work programme is intending to have an operative LWRP by 31 December 2025 and the LWRP will achieve full compliance with the relevant regulations, statutes and higher order planning documents.
- [21] The purpose of this plan change is to give effect to Minister Parker's recommendations, which require a short-term, simple, and relatively low-cost consent process that is consistent with the NPSFM 2014 (amended 2017) to enable deemed permits and soon to be expiring water permits to be re-consented, while a new plan framework is developed.

- [22] Each option gives varying degrees of effect to the Minister's recommendations, varying effect to the NPSFM 2014, and has different time, cost and complexity implications for abstractors and Council.

Financial Considerations

- [23] The plan changes will be funded from existing Water Plan budgets. The costs to-date have largely been staff time, with some consultant support. Going forward, there will be costs associated with notification, hearing costs and costs of managing any appeals that may result.
- [24] The immediate cost is expected to be short-term. In the longer-term there are likely to be financial, social, cultural and environmental benefits to both ORC and landholders that will outweigh the costs of the plan change.
- [25] Finally, it should be noted that the interim consenting framework introduced by the plan change seeks to introduce a consenting process that reduces the cost associated with the preparation and processing of resource consent applications. This benefits all parties when dealing with short-term provisions.

Significance and Engagement

- [26] Notifying a plan change that will provide an adequate interim planning and consenting framework to manage freshwater until the time that new discharge and allocation limits are set in ORC's planning framework will trigger ORC's Significance and Engagement Policy (SEP) as this project is likely to have potentially significant impacts on many water permit and consent holders across the region.
- [27] The development of the plan change in its pre-notification stage and notification of the Plan Change proposal will be undertaken in accordance with the formal process prescribed by Schedule 1 of the Resource Management Act 1991 (RMA), through which our Iwi partners, other key stakeholders and affected or interested parties can partake in the pre-notification consultation, and then formally engage through submissions, hearing and appeal process. The First Schedule process satisfies the requirements of the Significance and Engagement Process.

Legislative Considerations

- [28] Many of the policies upon which the framework for managing freshwater and replacing water permits in Otago is based were introduced into the Water Plan through Plan Change 1C, which became operative in 2012.
- [29] Since 2012, there have been several changes to the legislative planning context, including amendments to the NPSFM in 2014 and 2017. Further changes to the legislative context have been announced recently, which includes a proposed new NPSFM and a new National Environmental Standard for Freshwater.
- [30] As a result of these legislative changes, the current Water Plan no longer gives effect to Central Government direction.

- [31] The proposed plan change will provide an interim consenting framework to manage freshwater up until the time that a new planning framework is introduced through the LWRP. The LWRP will give full effect to the requirements of the relevant higher-level planning documents, regulations and statutes. The proposed plan change will allow a more efficient and effective transition towards the future regime

Risk Considerations

- [32] The plan change process has several risks associated with it. The first risk to be addressed is achieving a plan change that is consistent with the Minister's recommendations, and timeframes. This can be mitigated by reinforcing, to all parties involved, that the focus needs to be on the long-term planning framework that will sit in the LWRP, rather than unduly focusing resources into the DPPC.
- [33] There is a significant risk of the plan change being appealed. There are limited opportunities to mitigate this, however the messaging as for the above point is that resources are best focused on the long-term plan framework and genuinely engaging in the development of the LWRP rather than litigating to achieve outcomes that are inconsistent with the Minister's recommendations.

NEXT STEPS

- [34] The next steps are to proceed with the preferred option which will enable the plan change to be fully drafted, and the Section 32 Report to be prepared. Once the plan change and Section 32 Report is drafted, Council approval to notify will be sought.
- [35] At this stage, notification is scheduled for Saturday 18 March, consistent with the Minister's timeframes.

ATTACHMENTS

1. Attachment 1: Water Permits Plan Change - Architecture Options [7.1.1 - 3 pages]
2. Attachment 2: REDACTED PURSUANT TO SEC 7(2)(g) OF THE LOCAL GOVERNMENT OFFICIAL MEETINGS AND INFORMATION ACT 1987 (LGOIMA).

Deemed Permits Plan Change

Plan Architecture Options

General

All options will cover the replacement of existing deemed permits and any activity authorised under s413 of the Resource Management Act 1991 AND any water permit that expires between now and December 2025.

All options require amendment to existing policies – particularly 6.4.19 (consent duration) and there may be others to establish primacy of the new policies outlined below.

Option A – One size fits all, with an alternative pathway still available

Policy

A single new policy focussed on the long-term sustainability of Otago’s surface water resources and directing:

- The avoidance of transfers of water between sites (but not the ownership where ownership of the land changes)
- Avoidance of granting:
 - Long-term consents until reviewed land and water plan is operative
 - Any increase in the area under irrigation
 - Any expansion in the volume of take or rate of take
- Requirement to reduce volume and rate of take from paper allocation to actual use (based on average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017)
- The carrying over of any minimum or residual flow conditions where they exist on previously held permits.

Rule

A single rule with the following features:

- Controlled activity where the following entry conditions apply:
 - The applicant holds a deemed water permit or a water permit
 - The consent duration does not exceed 7 years
 - Area under irrigation does not exceed that irrigated during the 2018-2019 irrigation season
 - The rate of take does not exceed the average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017
- Matters of control (and hence matters that can be subject to consent conditions) include:
 - Compliance monitoring
 - Consent duration
 - The point of measurement and the method and frequency of data transmittal to Council
 - A review condition

- Imposition of maximum volumes on a daily, monthly, seasonal basis

Applications under this rule will not require written approvals or notification.

A non-complying activity 'drop-out' rule where an applicant does not meet/wish to meet the entry conditions

Option B – Flexibility in specified circumstances

All of Option A PLUS:

Policy

A new policy setting out an alternative pathway where the application includes sufficient science (hydrology and ecology of the surface water body) to demonstrate no more than minor adverse effects on the water body (including cumulative effects) from which the abstraction is to occur and allowing consideration of a longer consent duration but not beyond an expiry date of 31 December 2035.

Rule

A new rule with the following features:

- Restricted discretionary activity where the following entry conditions apply:
 - Area under irrigation does not exceed that irrigated during the 2018-2019 irrigation season
 - The rate of take does not exceed the average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017
 - The applicant holds a deemed water permit or a water permit
- Matters over which Council reserves its discretion
 - Compliance monitoring
 - Consent duration
 - The point of measurement and the method and frequency of data transmittal to Council
 - A review condition
 - Imposition of maximum volumes on a daily, monthly, seasonal basis
 - Rates of instantaneous rate of take
 - Implications for freshwater ecology, particularly any threatened species
 - Implications for wetlands and any other regionally significant geographical features
 - Cumulative effects on surface water body from which take is to occur and any attached downstream water bodies
 - Any alternative sources of water for the application property
 - Any adverse effects on cultural values

A non-complying activity 'drop-out' rule where an applicant does not meet/wish to meet the entry conditions

Option C – fully flexible (except duration)

Policy

New policy focussed on the long-term sustainability of Otago’s surface water resources and directing:

- All applications for consent to replace existing water permits or deemed permits are to be considered on a case by case basis
- The duration of any replacement water permit shall not extend not beyond an expiry date of 31 December 2035.
- A requirement to reduce volume and rate of take from paper allocation to actual use (based on average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017)
- The following matters are considered:
 - Cumulative effects on surface water body from which take is to occur and any attached downstream water bodies
 - Any alternative sources of water for the application property
 - Any adverse effects on cultural values
 - Compliance monitoring
 - The point of measurement and the method and frequency of data transmittal to Council
 - A review condition
 - Implications for freshwater ecology, particularly any threatened species
 - Implications for wetlands and any other regionally significant geographical features
 - Any effects on other lawfully established users of the surface water body
 - Effects on aquatic ecosystems, areas of significant indigenous vegetation and significant habitats of indigenous fauna
 - Effects on amenity values and existing or desirable public access to and along margins of rivers and lakes
 - The proposed use of the water, including whether the use is as efficient as practicable
 - Any flow and allocation regime set out in the Water Plan
 - Provisions for preventing or allowing fish passage

Rule

A single rule with the following features:

- Discretionary activity where the following entry conditions are met:
 - The applicant holds a deemed water permit or a water permit
 - Area under irrigation does not exceed that irrigated during the 2018-2019 irrigation season
 - The rate of take does not exceed the average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017

A non-complying activity ‘drop-out’ rule where an applicant does not meet/wish to meet the entry conditions