# Agenda Item 6: Guidance on consent duration

## Purpose

1. The purpose of this paper is to seek guidance from councillors on a revised approach to managing consent duration in the LWRP.

## Background

1. Resource consents are granted for a set period of time (known as their duration) after which time they expire. The RMA sets different maximum durations for different types of consents:
   1. Land use consents and subdivision consents: unlimited.
   2. Discharge and water permits, and coastal permits for aquaculture: 35 years.
   3. All other coastal permits: unlimited.
2. Although consents can be granted for the maximum allowed by the RMA, this has not always been standard practice in consenting. Over the past decade or so in particular, there has been a trend in practice towards shorter durations than the RMA maximums. This has come about partly due to increased demand for resources, as well as regulatory uncertainty (for example, in advance of changes to legislation or national policy statements). It has also been used by some councils in areas where there are environmental issues to address, for example degraded water quality, that require improvements over time.
3. The Water Plan did not contain any specific direction on consent duration until Plan Changes 7 and 8 were introduced. Both included maximum durations for specific types of consents in order to enable a transition from the current planning framework to the new LWRP:
   1. Water permits are limited to a duration of six years, and
   2. Discharge permits for animal effluent are limited to a duration of ten years.
4. For all other activities, there is policy direction on the types of matters to be taken into account when considering applications, but no specific direction on the duration of consents.

## Draft provisions

1. In 2023, the RMA was amended by the previous government to restrict the duration of certain types of resource consents, including water and discharge permits, in order to facilitate implementation of the NPSFM and the Natural and Built Environment Act. This direction was reflected in the draft LWRP. Those amendments were repealed by the current government in early 2024.
2. The policy included in the draft LWRP for clause 3 consultation is included in the tablebelow. In summary, it limited consents to a duration that aligned with the introduction of a new Natural and Built Environment Plan (expected to be less than 10 years) unless the consent is for a specific, listed activity (generally related to the provision of infrastructure).

## Feedback

1. In 2022, councillors provided direction to assist with shaping the content of the draft LWRP. In relation to consent duration, the direction provided was:
   1. Different timeframes for new and existing systems,
   2. Long-term consents are an impediment to change,
   3. Need to make sure that consent duration does not prevent council from achieving outcomes (which might change over time),
   4. Review clauses including consents, and
   5. Balancing duration with investment needs.[[1]](#footnote-2)
2. Before any drafting was prepared to implement this, the RMA was amended as described above.
3. Feedback on the consent duration policy included in the draft LWRP was received from internal staff as well as from parties involved in clause 3 consultation. Internal feedback was that without clear direction on time periods, the RMA ‘backstop’ of 35 years leaves consents officers having to justify any reduction from that. There was concern that long durations would affect the ability for activities to evolve over time in line with the timeframes set for achieving long-term visions and target attribute states. For example, as a result of the historical practice of granting consent for long durations, approximately 20% of the water permits in the Taiari FMU do not expire until between 2045 and 2050 which was a significant factor in setting the vision timeframe (2050). As achievement of environmental outcomes and long-term visions is intended to be staged over time, it will be important that there is the opportunity to revisit some management approaches in the future and amend them as required, which can be difficult to do when consents are commonly granted for long periods.
4. External feedback from clause 3 feedback was mixed:
   1. Some parties supported the approach in the draft LWRP and sought to retain the core principles of the policy (with amendments to remove the references to the Natural and Built Environment Act), highlighting the difficulty with implementing change when activities are ‘locked in’ for long periods.
   2. Some parties opposed the direction and sought its deletion, highlighting the importance of long-term certainty for investment.
5. This feedback was discussed at a workshop with councillors on 27 March. There was general support for providing longer durations for some activities, including infrastructure and activities that will contribute to achieving the environmental outcomes sought by the plan, alongside a ‘backstop’ for other activities.

## Suggested changes

1. Staff have reconsidered the policy and now propose a complete revision that provides greater flexibility for longer durations to be granted while still maintaining a backstop. It is similar to the policy in the clause 3 version of the draft LWRP in that it does provide for longer duration consents to be granted for specific activities and activities that are achieving particular outcomes. The revised policy will provide support for the Consents team to grant consents that are shorter than 35 years.
2. We are seeking your feedback on:
   1. Whether the policy appropriately responds to the direction provided in March, and
   2. Whether the backstop should be 10 or 15 years.
3. The proposed policy is set out in the table below.

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| **Clause 3 version** | **Revised version (specific wording subject to change)** |
| When determining the duration of a resource consent, decision-makers must:  (1) for affected resource consents, ensure the maximum duration is the shorter of either five years after the relevant rules in Otago’s first Natural and Built Environment Plan prepared under the Natural and Built Environment Act 2022 take legal effect, or ten years, unless the application is for one of the following activities:  (a) the construction, operation, upgrading, or maintenance of local authority or community reticulated water supply networks; or  (b) the construction, operation, upgrading, and maintenance of infrastructure that forms part of a public wastewater or stormwater network; or  (c) the operation, upgrading, or maintenance of any hydro-electricity generation scheme that existed at 23 August 2023; or  (d) the construction, operation, upgrading, or maintenance of any of the following activities:  (i) State highways; or  (ii) the national grid electricity transmission network or local distribution network; or  (iii) the New Zealand rail network (including light rail); or  (iv) renewable electricity generation facilities, excluding any hydro-electricity generation facility, that connect directly to the national grid electricity transmission network or that connect to a local distribution network; or  (v) any airport used for regular air transport services by aeroplanes capable of carrying more than 30 passengers; or  (vi) port facilities of each port company referred to in item 6 of Part A of Schedule 1 of the Civil Defence Emergency Management Act 2002; or  (vii) infrastructure that forms part of a public telecommunications network; or  (e) replacement, repair, or removal activities for the purpose of an activity described in clauses (a) to (d); and  (2) take into account:  (a) any relevant timeframes for achieving interim target attribute states or target attribute states or implementing environmental flows and levels; and  (b) any other methods or timeframes for phasing out or avoiding over-allocation. | When determining the duration of a resource consent, decision-makers must ensure that:  (1) the duration of any consent:  (a) will support the achievement of the relevant environmental outcomes in FMU1 to FMU5 and the long-term visions, including by implementing environmental flows and levels; and  (b) is consistent with any other relevant methods or timeframes for phasing out or avoiding over-allocation; and  (2) the duration is no longer than 10/15 years unless:  (a) the application is for:  (i) the construction, operation, maintenance, repair, replacement, upgrading, or removal of nationally significant infrastructure or regionally significant infrastructure; or  (ii) the construction, replacement, or upgrade of any structures, pipes, or artificial watercourses used for conveying water for irrigation, stock water, community water supply, or hydro-electricity generation that will improve compliance with the relevant environmental flows and levels and take limits; or  (b) the application demonstrates that the activity will:  (i) implement staged improvements over the duration of the consent to reduce contaminant losses or actual water use in a way and at a rate that is consistent with achieving the relevant environmental outcomes in FMU1 to FMU5 and the long-term visions; or  (ii) result in environmental flows and levels and take limits being met by the timeframes specified in the relevant long-term vision; or  (iii) positively contribute towards achieving the relevant environmental outcomes in FMU1 to FMU5, including by implementing activities identified in an action plan or a catchment action plan. |

1. Council workshop, 13 April 2022 [↑](#footnote-ref-2)