Proposed Plan Change 7
(Water Permits)

Regional Plan:
Water for Otago

Operative

Otago Regional Council

5 March 2022

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This is a true and correct copy of Plan Change 7 to the Regional Plan: Water for Otago.

Plan Change 7 to the Regional Plan: Water is deemed to be operative on Saturday, 5 March 2022

The Common Seal of the Otago Regional Council was hereto affixed in the presence of:

Cr Andrew Noone
Chairperson

CR HILARY CALVERT

OTAGO REGIONAL COUNCIL
Common Seal

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* Regional Plan: Water for Otago operative as at 1 June 2021.

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

[1] 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.

[2] Applications for water permits that are not replacing either a Deemed Permit or an existing water permit that expires before 31 December 2025, 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.

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

10A

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

10A.1 Objective

10A.1.1 Facilitate an efficient and effective transition from the operative freshwater planning framework toward a new integrated regional planning framework, by managing:

(a) The take and use of freshwater; and

(b) The replacement of Deemed Permits, and

(c) The replacement of water permits for takes and uses of freshwater where those water permits expire prior to 31 December 2025.

10A.2 Policies

Replacement consents

10A.2.1 Irrespective of any other policies in this Plan, avoid granting resource consents that replace Deemed Permits, or water permits for takes and uses of 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, except where any additional area to be irrigated is only for orchard or viticulture land uses and all mainline irrigation pipes servicing that additional area were installed before 18 March 2020; and

(c) Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and

(d) For takes other than community water supplies there is no increase in:

(i) The historical instantaneous rate of abstraction; and

(ii) Any historical volume of water taken.

Duration

10A.2.2 Irrespective of any other policies in this Plan concerning consent duration, only grant resource consents for takes and uses of freshwater, where this activity was not previously authorised by a Deemed Permit or by a water permit expiring prior to 31 December 2025, for a duration of no more than six years.

10A.2.3 Irrespective of any other policies in this Plan concerning consent duration, avoid granting 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 more than six years, except

(a) where the take and use of water replaces a Deemed Permit associated with hydro-electricity generation infrastructure listed in Schedule 10A.5.1 and the applicant takes practicable steps to remedy or mitigate any adverse effects on the environment arising from the activity.

Deemed Permits

10A.2.4 Where the flow at the point of take of a Downstream Permit with a Higher Right of Priority is insufficient to supply that permit, the holder of an Upstream Replacement Water Permit may be required to cease taking water.

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 by a water permit expiring before 31 December 2025, refer to the rules in Chapter 12 of this Plan.

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

Note 3: The matters of control in Rule 10.3.1.1 and matters of discretion in Rule 10A.3.1A.1 refer to 'existing water permit conditions'. The phrase 'existing water permit conditions' is to be interpreted as applying to both Deemed Permits and existing water permits referred to in the entry conditions to the rules.

10A.3.1 Controlled activity: Resource consent required

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

(a) Any activity that is currently authorised under a Deemed Permit; or

(b) The take and use of surface water (including groundwater considered as surface water under Policy 6.4.1A (a), (b) and (c) of this Plan) that is currently authorised by an existing water permit where that water permit expires prior to 31 December 2025;

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

(i) The consent duration sought is no more than six years; and

(ii) The Deemed Permit or water permit that is being replaced is a valid permit; and

(iii) The application demonstrates that the total land area under irrigation does not exceed the maximum area irrigated in the period 1 September 2017 to 18 March 2020, if the abstracted water is used for irrigation except where:

(a) Any additional area to be irrigated is only for orchard or viticulture land uses and all mainline irrigation pipes servicing that additional area were installed before 18 March 2020; and

(iv) Except where (vii) applies, the rate of take shall be no more than the rate of take limit recorded during the water years (1 July to 30 June) for which water meter data is available up until 30 June 2020, as calculated in accordance with the methodology in Schedule 10A.4; and

(v) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) on the

expiring Deemed Permit or water permit is included in the application for resource consent; and

(vi) Except where (vii) applies, the volume of water taken shall be no more than the daily volume limit, and monthly volume limit, and annual volume limit (whichever one or more are applicable) recorded during the water years (1 July to 30 June) for which water meter data is available up until 30 June 2020, as calculated in accordance with the methodology in Schedule 10A.4; and

(vii) For takes authorised by a Deemed Permit or water permit where metering is not required by condition of resource consent or by the Resource Management (Measurement 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; and

(viii) Where the application is to replace an Upstream Deemed Permit that was subject to a Downstream Permit with a Higher Right of Priority, the applicant proposes a condition:

(a) To cease taking water when:

(1) There is insufficient flow at the point of take of the Downstream Permit with a Higher Right of Priority; and

(2) Notice has been given by the holder of the Downstream Permit with a Higher Right of Priority; and

(b) Requiring the provision of a Contact Management Plan to the Consent Authority.

The Council reserves control over the following matters:

(a) In accordance with historical use and existing water permit conditions, the volume and rate of water taken, dammed, discharged or diverted; and

(aa) Where (iii)(a) applies, the maximum size of the additional area to be irrigated, and use of good management practices on the additional area; and

(b) Any existing consent conditions concerning operating procedures administered through a water allocation committee that exists for the catchment; and

(c) Any other conditions on the expiring permit to be replaced, where those matters are not otherwise addressed by the entry conditions of this rule or matters of control; and

(d) A condition may be imposed requiring the holder of an Upstream Replacement Water Permit:

(i) to cease taking water when:

(1) There is insufficient flow at the point of take authorised by a Downstream Permit with a Higher Right of Priority; and

(2) Notice has been given by the holder of the Downstream Permit with a Higher Right of Priority; and

(ii) Requiring the provision of a Contact Management Plan to the Consent Authority; and

(e) Review conditions; and

(f) Compliance monitoring; and

(g) 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.

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

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 (viii) of Rule 10A.3.1.1 but does not meet conditions (iv) and (vi); and

(ii) Where the activity does not meet (iv) and (vi) of Rule 10A.3.1.1 a water meter for the take has been installed, or an exemption under the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 from water metering has been granted.

The Council will restrict its discretion to the following matters:

(a)

(i) Whether the water meter data in combination with other relevant methods and data accurately represents historical use; and

(ii) Whether the volume and rate taken, dammed, discharged or diverted is in accordance with the

historical rate of take and volume and within existing water permit conditions; and

(1) For community water supplies, within existing water permit volume and rate limits, the extent to which there is a need to provide for population growth within the term of the consent; and

(2) Where 10A.3.1.1 (iii)(a) applies, the maximum size of the additional area to be irrigated and use of good management practices on the additional area; and

(b) Any existing consent conditions concerning operating procedures administered through a water allocation committee that exists for the catchment; and

(c) Any other conditions on the expiring permit to be replaced, where those matters are not otherwise addressed by the entry conditions of this rule or matters of discretion; and

(d) A condition may be imposed requiring the holder of an Upstream Replacement Water Permit:

(i) To cease taking water when:

(1) There is insufficient flow at the point of take authorised by a Downstream Permit with a Higher Right of Priority; and

(2) Notice has been given by the holder of the Downstream Permit with a Higher Right of Priority; and

(ii) Requiring the provision of a Contact Management Plan to the Consent Authority; and

(e) Review conditions; and

(f) Compliance monitoring; and

(g) 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.

10A.3.1B Restricted discretionary activity (hydro-electricity generation activities): Resource consent required

10A.3.1B.1 Despite any other rule or rules in this Plan, any activity that is currently authorised under a Deemed Permit where the take and use of water is for hydro-electricity generation infrastructure listed in Schedule 10A.5.1, is a restricted discretionary activity providing the following conditions are met:

(i) The consent duration sought expires no later than 2035; and

(ii) The Deemed Permit that is being replaced is a valid permit; and

(iii) For takes authorised by a Deemed Permit where metering is not required by a condition of resource consent or by the Resource Management (Measurement 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; and

(iv) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) on the expiring Deemed Permit is included in the application for resource consent.

The Council will restrict its discretion to the following matters:

(a)

(i) Whether the water meter data in combination with other relevant methods and data accurately represents historical use; and

(ii) Whether the volume and rate of take is in accordance with the historical volume and rate of take, and within the conditions of the expiring Deemed Permit; and

(b) Any other conditions on the expiring Deemed Permit to be replaced where those matters are not otherwise addressed by the entry conditions of this rule or matters of discretion; and

(c) Review conditions; and

(d) Compliance monitoring; and

(e) The point and method of measurement and the method for transmitting recorded data to the Council; and

(f) The methods available to remedy or mitigate any adverse effects on the environment arising from the activity.

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

10A.3.2.1 Despite any other rule or rules in this Plan:

(a) Any activity that is the replacement of an activity authorised under a Deemed Permit; or

(b) The take and 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

(i) Rule 10A.3.1.1 (excluding conditions (iv) and (vi));

(ii) Rule 10A.3.1A.1;

(iii) Rule 10A.3.1B.1

is a ***non - complying*** activity.

10A.3A Definitions

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.

Mainline irrigation pipes

The primary permanently installed pipelines delivering water to the irrigated area including the connections to the headworks at the pumping location.

Take cessation condition

A condition that limits or restricts the taking of water under specified circumstances, including:

(a) during certain times or periods across the year;

(b) when other water permits within the catchment or from the same water body are being exercised;

(c) when water is being abstracted under the same water permit at an alternative point of take;

(d) when recharge, water yield or inflows into the catchment or water body from which water is being taken is below a specified flow or water level.

Deemed Permit

Has the same meaning as s413 of the RMA and includes any deemed condition conferring a right of priority.

Downstream Permit with a Higher Right of Priority

A Deemed Permit that had not been replaced by a resource consent commencing before 2 October 2021, that was subject to a right entitling the permit holder to require the holder of an Upstream Deemed Permit to cease taking water.

Upstream Deemed Permit

A Deemed Permit that has not been replaced by a resource consent commencing before 2 October 2021, that was subject to a right of priority entitling a Downstream Permit with a

Higher Right of Priority to require the holder of an Upstream Deemed Permit to cease taking water.

Upstream Replacement Water Permit

A resource consent granted under the RMA to replace an Upstream Deemed Permit.

Contact Management Plan

A plan that records up-to-date contact details for the consent holder to be served written notice (which may be an email address) and an acknowledgement that the contact details can be provided to a permit holder with a higher right of priority by the Otago Regional Council.

Insufficient flow

Where the flow is below the level at which the holder of a Downstream Permit with a Higher Right of Priority is able to abstract water at their authorised rate of take.

Notice

A communication in writing sent to the contact details recorded in the Contact Management Plan and copied to the Consent Authority that contains the following detail:

(a) the name and consent number of the Consent Holder giving notice;

(b) the name and consent number of the Consent Holder required to cease taking water;

(c) date and time of notice issue;

(d) an instruction to cease taking water; and

(e) a start date and time and end date and time for the cessation; the cessation period must not be longer than 72 hours from when the cessation commences.

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

The methodologies in Schedules 10A.4.1 to 10A.4.4 outline the different steps that need to be taken to calculate the assessed actual usage for surface-water and connected groundwater takes.

Each of these steps apply to any activity authorised by a water permit for the take and use water, except for steps 4(a) to (g) in Schedule 10A.4.1 and steps 4(a) to (h) in Schedule 10A.4.2, which do not apply to applications for:

- The take and use of water for community water supplies; or
- The take and use of water where the only purpose is for hydro-electricity generation.

Note 1: Where 'consent' or' permit' is used in Schedule 10A.4 this means the Deemed Permits and existing water permits in the entry conditions to Rule 10A.3.1.1.

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 the maximum rate of take taken in all water years (1 July to 30 June) up until 30 June 2020 for which water meter data is available, using the following methodology.

Methodology

(1) Water meters record rate of take over different time intervals.

a. Where a water meter records a volume of water taken over a fixed time interval which is less than or equal to an hour, the rate of take will be determined by first calculating the hourly volume and then converting this to a l/s rate. For example, 40 m^3 taken over one hour will equate to a rate of take of 11.11 l/s.

b. Where a water meter records the volume of water taken over an interval of time greater than an hour, the hourly rate of take will be calculated and used as the base data set.

(2) Any measurement that is at or below 0 l/s will be removed.

(3) Any measurement that exceeds the Authorised (Consented) Rate of Take is adjusted down to the Authorised Rate of Take.

(4) If any measurement (including those from step 3) deviates from the general pattern of taking, it shall be adjusted down to the maximum of the typical data record across the full data record. The methodology for undertaking this step is set out below:

(a) Order the rate of take data by size (descending order).

(b) Determine D, where D is the number of complete water years covered by the record being considered.

(c) Calculate N (where N is the number of measurements) = 18+(3×D).

(d) Find the highest value.

(e) Calculate the number of other data values which are within the margin of error of that value.

(f) Repeat steps (d) and (e) until the first value which has N data values within the margin of error (+ and -) of that value is found.

(g) This number is the maximum typical rate of take.

The margin of error to be applied to any calculation in steps (4)(e) and (4)(f) 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.

Steps 4 (a) to (g) above do not apply to applications for community water supplies or where the only purpose is for hydroelectricity generation.

(5) 'Rate of Take Limit' (litres per second – l/s) will be determined as the maximum value after steps (1) to (4) have been completed.

10A.4.2 Methodology for calculating Daily Volume Limit (m^3)

The 'Daily Volume Limit' shall be determined by calculating the maximum daily volume taken in all water years (1 July to 30 June) up until 30 June 2020 for which water meter data is available, using the following methodology.

Methodology

(1) Where a consent or permit being replaced does not include a 'Daily Volume Limit', the Authorised Daily Volume will be calculated based on the following formula:

Authorised Daily Volume m^3 = ((Consented Rate of Take l/s) x 86,400)/1,000

Where a consent or permit does not specify a rate of take in l/s the Consented Rate of take will be determined by dividing the volume specified on the permit over the shortest duration by the timeframe over which that volume can be taken.

(2) Any measurement that is at, or below, 0 m^3 will be removed.

(3) On any day where the Actual Daily Volume exceeds the Authorised Daily Volume, the Actual Daily Volume is adjusted down to the Authorised Daily Volume.

(4) If any measurement (including those from step 3) deviates from the general pattern of taking, it shall be adjusted down to the maximum of the typical data record across the full data record. The methodology is set out below:

(a) Order the daily volume data by size (descending order).

(b) Determine D, where D is the number of complete water years covered by the record being considered.

(c) Calculate N (where N is the number of measurements) = 1+(2xD).

(d) Find the highest value.

(e) Calculate the number of other data values which are within the margin of error of that value.

(f) Repeat steps (d) and (e) until the first data value which has N data values within the margin of error (+ and -) of that point is found.

(g) This number is the maximum typical daily volume.

(h) Adjust any daily volumes above the maximum typical daily volume, down to the maximum typical daily volume.

The margin of error to be applied to any calculation in steps (4)(e) and (4)(f) 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.

Steps 4(a) to 4(h) above do not apply to applications for community water supplies or where the only purpose is for hydroelectricity generation.

(5) The 'Daily Volume Limit' will be determined as the maximum value after steps (1) to (4) above have been completed.

10A.4.3 Methodology for calculating Monthly Volume Limit (m^3)

The 'Monthly Volume Limit' shall be determined by calculating the maximum monthly volume taken in all water years (1 July to 30 June) up until 30 June 2020 for which water meter data is available, using the following methodology

Methodology

(1) Where a consent or permit being replaced does not include a 'Monthly Volume Limit' the Authorised Monthly Volume will be calculated based on the following formula:

Authorised Monthly Volume m^3 = Authorised Daily Volume (as determined under Step (1) in the methodology in Schedule 10A.4.2) x 30.4

(2) Actual Monthly Volumes will be calculated based on the sum of the daily volumes taken in each calendar month. For the purposes of this calculation daily volumes will be determined using the steps (2) – (4) in the methodology set out in 10A.4.2 for calculating the Daily Volume Limit.

(3) In any month where the Actual Monthly Volume taken exceeds the Authorised Monthly Volume, the Actual Monthly Volume is adjusted down to the Authorised Monthly Volume.

(4) The 'Monthly Volume Limit' will be determined as the maximum value after steps (1) to (3) above have been completed.

10A.4.4 Methodology for calculating Annual Volume Limit (m^3)

The 'Annual Volume Limit' shall be determined by calculating the maximum annual volume taken in all water years (1 July to 30 June) up until 30 June 2020 for which water meter data is available, using the following methodology.

Methodology

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

Authorised Annual Volume m^3 = Authorised Daily Volume (as determined under Step (1) in the methodology in Schedule 10A.4.2) x 365.25;

Authorised Annual Volume m^3 = (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 daily volumes taken in each water year. For the purposes of this calculation daily volumes will be determined using the steps (2) – (4) in the methodology set out in 10A.4.2 for calculating the Daily Volume Limit.

(3) In any year where the Actual Annual Volume taken exceeds the Authorised Annual Volume, the Actual Annual Volume is adjusted down to the Authorised Annual Volume.

(4) The 'Annual Volume Limit' will be determined as the maximum value after steps (1) to (3) above have been completed.

Schedule 10A.5.1 Hydro-electricity generation infrastructure

Beaumont Race	*Beaumont* NZTM 2000 E:1340136 N:4930132 *Little Beaumont River* NZTM 2000 E:1339935 N:4929937
Shepherds Race	NZTM 2000 E:1362725 N:4911571
Crystals Race	*Crystals* NZTM 2000 E:1367994 N:4913862 *Little Crystals* NZTM 2000 E:1367902 N:4913442
Black Rock Race	NZTM 2000 E:1358613 N:4926962

Table of minor and consequential changes

<table>
<tr><th>Plan Provision</th><th>Detail of proposed change</th></tr>
<tr><td>Page numbers</td><td>Update page numbers.</td></tr>
<tr><td>Footers</td><td>Change footer to read “Regional Plan: Water for Otago (Updated to 5 March 2022)”.</td></tr>
<tr><td>Title page</td><td>Change the date to read “Updated to 5 March 2022 “.</td></tr>
<tr><td>ISBN number</td><td>Obtain new ISBN numbers for Regional Plan: Water for Otago.</td></tr>
<tr><td>Chronicle of key events</td><td>Add the following to the end of table:
<table>
<tr><th>Key event</th><th>Date notified</th><th>Date decisions released</th><th>Date operative</th></tr>
<tr><td>Plan Change 7 (Water Permits) to the Regional Plan: Water</td><td>18 March 2020</td><td>17 Novembe r 2021</td><td>5 March 2022</td></tr>
</table></td></tr>
<tr><td>Section 1.4</td><td>Add the following paragraph:
“Proposed Plan Change 7 (Water Permits) provides an interim regulatory framework for the assessment of applications to replace Deemed Permits expiring in 2021 and other water permits expiring prior to 31 December 2025, the date by which the new land and water Regional Plan is expected to be operative. It also has a new policy on duration that applies to all other permits to take and use water.

Proposed Plan Change 7 was notified on 18 March 2020, after which the plan change was “called in” by the Minister for the Environment. The Environmental Protection Agency (EPA) re-notified the plan change by issuing a Notice of Direction and submissions closed on 17 August 2020. A total of 289 submissions and 16 further submissions were received. Environment Court, decisions were released on 22 October 2021 and 17 November 2021. Plan Change 7 was made operative on 5 March 2022.”</td></tr>
<tr><td>Chapter 10A</td><td>Minor corrections and editorial changes to the provisions of Chapter 10A (from the version of the provisions stated in Environment Court Decisions Otago Regional Council [2021] NZEnvC 164 (22 October 2021) and Otago Regional Council [2021] NZEnvC 179 (17 November 2021), including:
• Use of colons when referring to NZTM coordinates, and
• Capitalisation, punctuation, indentation and other style changes to improve consistency with other Chapters in the Regional Plan: Water for Otago.</td></tr>
</table>