

Practice Note: Applications to take and use groundwater

This practice note outlines what rules apply to different types of groundwater takes and what is taken into consideration when consent duration is determined. For other guidance on what is required to be lodged with different groundwater take applications please refer to [Form 5](#).

1 How does PC7 apply to groundwater applications?

The policies and rules in PC7 will apply to some groundwater applications and not to others. The below table shows what applies to what type of activity:

	What rule?	What Objectives and policies?	Policy direction on term
“Replacement” Groundwater take hydraulically connected¹	Controlled (10A.3.1.1)	10A.1.1,10A.2.1, 10A.2.3	Duration of no more than six years (excl hydro)
	RDA (10A.3.1A.1)		
	RDA Hydro (10A.3.1B.1)		
	Non-Complying (10A.3.2.1)		
<u>New</u> Groundwater take hydraulically connected¹	Chapter 12	10A.1.1,10A.2.2	Duration of no more than six years
<u>New</u> Groundwater take <u>not</u> hydraulically connected	Chapter 12	10A.1.1, 10A.2.2	Duration of no more than six years
“Replacement” Groundwater Take <u>not</u> hydraulically connected	Chapter 12	-	-

2 General principles of setting consent duration

Sections 123 and 123A of the Act set out the duration period (expiry dates) of resource consents. The decision maker needs to give genuine thought and attention to all relevant factors and give them weight as appropriate. This will of course depend on the nature and context of each application.

¹ A hydraulically connected groundwater take is one where groundwater is considered to be surface water under Policy 6.4.1A. Either a groundwater take:

- Located in Schedule 2C of the oRPW,
- Located within 100 m of any connected perennial surface water body; or
- Located greater than 100 m or more from any connected perennial surface water body and depletes that water body most affected by at least 5 litres per second as determined by Schedule 5A of the RPW

When determining consent duration Council decides what term is appropriate by looking at the policies in the relevant plans and considers factors from case law. Reasons for the recommended term will be in writing and relate to the specifics of the application. It is not a one size fits all approach, but there may be similarities between applications that mean similar durations are appropriate.

When considering duration Council looks at:

1. Matters set out in any relevant policies about duration
2. Other matters relevant to the duration of the consent:
 - Does the duration of the consent meet the RMA's purpose of sustainable management?
 - Policy direction listed in the relevant Iwi Management Plans. These policies and plans are considered as an 'other matter' under section 104(1)(c).
3. Factors from case law, such as:
 - The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
 - Whether adverse effects would be likely to increase or vary during the term of the consent;
 - Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
 - Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
 - That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
 - Whether review conditions are able to control adverse effects;
 - Whether the relevant plan addresses the question of the duration of a consent;
 - The life expectancy of the asset for which consents are sought;
 - Whether there was significant capital investment in the activity/asset; and
 - Whether a particular period of duration would better achieve administrative efficiency.

3 What policies are considered when making a recommendation on duration for a groundwater take?

3.1 New and hydraulically connected 'replacement' takes

The policies that are relevant for making a recommendation on consent duration differ for groundwater applications depending on the type of application and activity. Some may be considered under the policy introduced through PC7 and guidance from case law and others may be considered under the existing policy in the operative Water Plan and guidance from case law.

Plan Change 7 includes policies about consent duration, which apply to:

- Applications to take new groundwater i.e. not currently authorised by a consent (Policy 10A.2.2); and
- Applications to ‘replace’ an existing groundwater take that is considered to be surface water or that has a portion of the take that is considered to be surface water i.e. hydraulically connected (Policy 10A.2.1).

These policies do not apply to applications to ‘replace’ existing groundwater takes where there is no hydraulic connection or that hydraulic connection is less than 5 L/s.

The wording of the duration policies in Chapter 10 are very directive and clear in their intent. As these are the relevant policies for the above types of groundwater takes they must be considered and not Policy 6.4.19 of the Water Plan. This is emphasised by the use of the words at the start of the policy in Chapter 10 which state that ‘irrespective of any other policies in this Plan concerning consent duration’ this policy applies.

3.2 ‘Replacement’ takes that are not hydraulically connected

Policy 6.4.19 in the Water Plan is the relevant duration policy for ‘replacement’ groundwater takes where the take is not considered to be allocated as surface water. This policy states that when considering the duration of a resource consent to take and use water the following are considered:

- The duration of the purpose of use;
- The presence of a catchment minimum flow or aquifer restriction level;
- Climatic variability and consequent changes in local demand for water;
- The extent to which the risk of potentially significant adverse effects arising from the activity may be adequately managed through review conditions;
- Conditions that allow for the adaptive management of the take and use of water;
- The value of the investment in infrastructure; and
- Use of industry best practice.

Where there is a higher degree of certainty about water allocation and effects permits to take and use groundwater that are ‘replacement’ permits will likely be approved for durations longer than six years. Typically, these durations are for a period of up to 15 years. Where there is a higher degree of uncertainty then shorter terms will be considered.

The durations for these permits are being set in the context of the new National Policy Statement for Freshwater (NPS-FW) and the preparation of the new Land and Water Plan for Otago. Any decision on consent duration is still made based on the merits of the individual application.

4 Testing requirements for groundwater takes

For applications where one of the following applies then a step test will be acceptable with calculation of transmissivity and a reasonable assessment of other parameters including an assessment on the impacts on surrounding bores and surface water:

- Small rates and volumes; or

- No increase in volumes or rates from that currently consented; or
- A 6 year term with no hydraulic connection.

Where the application is not for any of the above then a full series of testing will be required.

5 What if I have other questions?

If you would like clarification on the above or have any additional questions, please get in touch with us via public.enquiries@orc.govt.nz