

Frequently Asked Questions for processing consents to take and use water under Chapter 10A (PC7) of the Regional Plan: Water

What rules apply to my activity?

Groundwater Takes

Advice on groundwater takes, which rules apply and how consent duration will be determined can be found in the [practice note on groundwater](#).

New Applications

*What rules apply to **new ‘replacement’ surface water permits** or groundwater permits that are allocated as surface water?*

Plan Change 7 introduces Chapter 10A to the Regional Plan: Water (RPW). Chapter 10A of the RPW contains the relevant rules for new ‘replacement’ surface water permit applications. Also see Table 2 below.

*What rules apply to a **new surface water take** if the permitted activity rules cannot be met for the take and use?*

If you are seeking a new surface water take this might be a new primary allocation take¹, a new supplementary take², a new augmented take³ and/or a new take from a watercourse that does not have any allocation regime (e.g. the Clutha River/Mata-Au). In all of these instances, the rules in Chapter 12 of the RPW need to be looked at. A quick summary guide is below:

Table 1: Relevant rules in Chapter 12 of the RPW for new surface takes

Activity	Chapter 12 rule(s)	Activity Status
Taking of augmented ³ water	12.1.4.1	Restricted discretionary (RDA)
New primary allocation ⁴	Depends on the catchment. Schedule 2A catchments: 12.1.4.2 Other catchments: 12.1.4.6	Restricted discretionary (RDA)
Catchments where there is no allocation regime (e.g. Clutha River/Mata-Au, Lakes Roxburgh, Dunstan, Hawea, Wanaka, Wakatipu)	12.1.5.1	Discretionary

¹ Primary allocation is defined by Policy 6.4.2 of the RPW.

² Supplementary allocation is defined by Policy 6.4.9 and 6.4.10 of the RPW

³ Augmented water is surface water from any lake or river which has already been delivered to that lake or river for the purpose of the subsequent taking e.g. water taken from a river that is conveyed by a race then is discharged into a second river and the same quantity discharged taken downstream on the second river i.e. where the second river is used as part of the conveyance network.

⁴ New primary allocation can only be applied for if there is primary allocation available. Council can advise you of this or you can check on the Consent in Otago GIS [LocalMaps \(orc.govt.nz\)](https://orc.govt.nz/LocalMaps) under the Water Allocation layer.

Non-consumptive takes	12.1.5.1	Discretionary
New supplementary allocation	Schedule 2B catchments: 12.1.4.3 Other catchments where Policy 6.4.9 (a) or 6.4.10 applies: 12.1.4.7	Restricted discretionary (RDA)
	Other catchments where Policy 6.4.9 (b) applies	Discretionary
New taking and use of surface water in the Waitaki catchment or from Welcome Creek	12.1.1A.2, 12.1.1A.3, 12.1.4.2, 12.1.4.3, 12.1.4.6, 12.1.4.7	Non-complying or restricted discretionary
New taking and use of surface water within a Regionally Significant Wetland	12.1.1A.1	Non-complying

*What about new takes adjacent to or within **natural inland wetlands**? Are there different rules that I need to be aware of?*

The NES-FW has rules that relate to natural inland wetlands. If these rules are more stringent than rules in a Council plan, then they apply to your activity. This includes where the activity is permitted in the regional plan (i.e. the RPW). However, the NES-FW does not override section 14(3) of the RMA. This means that water can be taken for an individual's reasonable domestic needs and the reasonable needs of a person's animals for drinking water, provided there are no adverse effects on the environment.

Guidance on the natural inland wetland rules and the NES can be found here: [Wetlands and NES-FW](#)

If Council has any doubts around whether your take is near a wetland or not, we may require you to have the wetland assessed by a suitably qualified person in accordance with the wetland delineation protocols: [Defining-natural-wetlands-and-natural-inland-wetlands.pdf \(environment.govt.nz\)](#).

It is important to note that not all-natural inland wetlands are Regionally Significant Wetlands and vice versa. You will need to carefully step through identifying whether the take is within a Regionally Significant Wetland and which rules apply in that instance. Also, whether the take and use is within or within 100 m of any natural inland wetlands. The location of Regionally Significant Wetlands can be found here: [Regionally Significant Wetlands \(orc.govt.nz\)](#)

REPLACEMENT APPLICATIONS

When does Plan Change 7/Chapter 10A apply to my replacement application?

Depending on whether the water take/damming is for a new activity or to replace an existing permit/deemed permit, is for groundwater or surface water then different parts of Plan Change 7/Chapter 10A (rules, objective and policies) may or may not apply. The following table can help you identify when Chapter 10A needs to be considered for your activity.

	What rule?	What Objectives and Policies of Chapter 10A?	Policy direction on term in Chapter 10A
"Replacement"⁵ Surface Water Take	Controlled (10A.3.1.1)	10A.1.1, 10A.2.1, 10A.2.3, 10A.2.4 (deemed permits only)	Duration of no more than six years (excl Transpower hydro)
	RDA (10A.3.1A.1)		
	RDA Hydro (10A.3.1B.1)		
	Non- Complying (10A.3.2.1)		
New Surface Water Take	Chapter 12	10A.1.1,10A.2.2	Duration of no more than six years
"Replacement" Groundwater Take - hydraulically connected⁶ to surface water	Controlled (10A.3.1.1)	10A.1.1,10A.2.1, 10A.2.3	Duration of no more than six years (excl Transpower hydro)
	RDA (10A.3.1A.1)		
	RDA Hydro (10A.3.1B.1)		
	Non- Complying (10A.3.2.1)		
New Groundwater Take - hydraulically connected⁶ to surface water	Chapter 12	10A.1.1, 10A.2.2	Duration of no more than six years
"Replacement" Groundwater Take - <u>not</u> hydraulically connected⁶ to surface water	Chapter 12	No objectives or policies apply in Chapter 10A. Refer to Chapters 4, 5, 6 and 9 for relevant objectives and policies.	No policy direction in Chapter 10A. Refer to Policy 6.4.19 and case law direction on duration.
New Groundwater take - <u>not</u> hydraulically connected⁶ to surface water	Chapter 12	10A.1.1,10A.2.2	Duration of no more than six years ⁷
"Deemed Permit" Damming of water	Controlled (10A.3.1.1)	10A.1.1, 10A.2.1, 10A.2.3	Duration of no more than six years (excl Transpower hydro)
	RDA (10A.3.1A.1)		
	RDA Hydro (10A.3.1B.1)		

⁵ The term replacement applies to those consent applications seek to replace water/deemed permits that have an expiry date prior to 31 December 2025.

⁶ A hydraulically connected groundwater take is one where groundwater is considered to be surface water under Policy 6.4.1A. Either a groundwater take:

- (a) Located in Schedule 2C of the RPW,
- (b) Located within 100 m of any connected perennial surface water body; or
- (c) 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

⁷ Refer to wording of Policy 10A.2.2 of the RPW. Policy relates to all freshwater permits.

refers to a dam previously authorised by a deemed permit rather than an “RMA” permit.	Non- Complying (10A.3.2.1)		
Damming of water⁸ Previously authorised by a water permit or a new activity	Chapter 12	No objectives or policies apply in Chapter 10A. Refer to Chapters 4, 5, 6, 7, 8 and 10 for relevant objectives and policies.	No policy direction in Chapter 10A.
“Deemed permit” Diversion, Discharge, (including by-wash discharge) and Augmented take refers to an activity previously authorised by a deemed permit rather than an “RMA” permit.	Controlled (10A.3.1.1)	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)		
Diversion, discharges and augmented takes Previously authorised by a water permit, a new activity or a previously unconsented activity	Chapter 12	No objectives or policies apply in Chapter 10A. Refer to Chapters 4 -10 for relevant objectives and policies.	No policy direction in Chapter 10A. For discharges take into consideration Policy 7.C.4 and 7.D.5 ⁹ and case law direction.
Non-consumptive takes, supplementary takes, augmented takes, takes from a Regionally Significant Wetland¹⁰	See above. If depends on if the take is for a new activity or the replacement of a permit that is due to expire.		
Transfers of site (s136 of the RMA)	As these are not a replacement application or a new application, they are continued to be considered under s136 of the RMA and assessed taking into consideration Policy 6.4.17 of the RPW.		

⁸ Damming activities often require additional consents in addition to a water permit for the damming of water. Refer to Form 2 for guidance on other consent requirements.

⁹ Proposed PC8 seeks to remove the reference to duration in this policy

¹⁰ Takes from within or within 100 m of a natural inland wetland that are not permitted by s37-51 of the NES-FW are non-complying or prohibited if they result, or are likely to result in the complete or partial drainage of all or part of the wetland. This trumps a rule under Chapter 10A of the RPW.

Notification

Will an application be publicly or limited notified?

If you make an application under the controlled or RDA¹¹ rules of Chapter 10A or you amend your existing application to meet these rules and you have no other activities that require consent, then Council is precluded from publicly or limited notifying your application. This means we are unable to notify the application to any parties. Refer to 'other activities' below for what will be considered in those circumstances.

If an application is for a non-complying activity under Chapter 10A (e.g. the application is for a duration of greater than 6 years or the controlled/RDA entry criteria are unable to be met) or if you apply for a new consent for a water take or for a groundwater take that is processed under the Chapter 12 rules, then Council will still need to consider the application under the steps of s95 of the RMA. More details on s95 can be found here: [The Notification Process | Otago Regional Council \(orc.govt.nz\)](#). For some restricted discretionary activities under Chapter 12, there will be a preclusion (inability) for Council to publicly notify the application. More details can be found in [Rule 12.1.4.8](#).

When assessing the adverse effects on the environment for s95, the Council will take into consideration the duration applied for as this will impact the extent of any adverse effects.

What if a decision has already been made to limited notify or publicly notify my application?

If we have notified parties of your application, then the options for your application will be slightly different. Once a notification decision has been made by the Council the duty of the decision-maker has been discharged and the ability to vary the decision is lost. While there are some statutory exceptions, these are generally restricted to the correction of errors.

This means that persons notified of a resource consent application are unable to be "unnotified". The above applies despite any notification preclusions that could apply if the activity is amended to fall under a different rule / activity status, as the right to participation has already been granted and cannot be taken away by the Council.

Amendments to Applications

How do I make an amendment to my application?

Advice on amendments and the amendment form can be found here: [amendment-form-4d-changes-to-water-permit-application.pdf \(orc.govt.nz\)](#)

Your job manager can also answer specific questions that you may have.

Can I change the point of take location from that applied for?

There may be various reasons as to why the take point needs to be changed from the location lodged with the application. For the amendment to be accepted, the change needs to be within the scope of the application lodged.

¹¹ Restricted Discretionary Activity

If the take point is proposed to be shifted back to the location of the consent that is being replaced, we are likely to consider that this change is within the scope of the original application as it is reflected in the current activity and the amendment could be accepted.

If the change in location is to a new location (not currently authorised or applied for) this could potentially be out of scope. Our advice in those situations is that we process the application at the location applied for and that a s136 (transfer of site) application is lodged after the replacement consent is granted. We can then consider the change in location under s136.

Can I increase the rates and volumes applied for so that they are equal to the Schedule 10A.4 analysis?

If the increase in rates and annual volume is not significantly different from that applied for and is less than or equal to the historic use calculated under Schedule 10A.4 then with an 'in the round' assessment (taking into consideration reductions in consent term) we may be able to consider this increase to be within scope of the application lodged.

Do I need to consider the proposed Otago Regional Policy Statement 2021 in my amendment?

If an application is solely to be processed under PC 7 (Chapter 10A) of the RPW we are satisfied that an assessment in respect of the Chapter 10A policies and objective will be adequate. This is because the proposed Otago Regional Policy Statement 2021 was taken into consideration when the decision was made on PC 7.

If the application includes activities that require consent under other chapters of the RPW then an assessment in respect of the proposed RPS 2021 will be required. The focus should be on the relevant objectives and policies as they relate to the activity. We have recently updated Form 2 (damming) which identifies some of the potentially relevant objectives and policies for damming: [Form 2: To dam water](#)

Data and Schedule 10A.4

Will Council analyse my data under Schedule 10A.4? What is the process for this?

Council will undertake a Schedule 10A.4 data analysis for all replacement permits under Chapter 10A. Council is currently working through this data analysis for all the applications lodged before 1 October 2021. Given the number of applications, the Council is undertaking this data analysis on a catchment-by-catchment basis. When your data analysis has been completed your job manager will send a copy to assist you with preparing any changes to your application.

A script has been prepared to streamline this process but there is also a manual check, so it does take time to prepare each data report. This is complicated if there are deficient data records or meters that are being used by multiple consent holders.

If you are lodging a new replacement permit application, you can request a data review via public.enquiries@orc.govt.nz. If the review takes longer than 30 minutes, then we will need to set up a pre-application code for your application.

Once we have completed data reviews for the currently lodged applications, Council will start to prepare data reviews for consents that will expire before 31 December 2025 and these will be available with Compliance audits.

What if I have gaps in my data record from meter malfunction?

The RDA Rule 10A.3.1.A.1 enables additional data to be considered to assess historic use. The application will need to be supported by other means of determining what the historical use is likely to have been for the gap in the data.

This may include, but is not limited to, extrapolation of electricity records use of Aqualinc ([aqualinc-irrigation-guidelines-2015.pdf \(orc.govt.nz\)](#)) or other models/evidence of use. It is likely that a combination of methods will be required to support an application. The application will need to clearly outline how the data and methods reflect historic use.

What if my water measuring device only has 2-3 years of good data and I would like to use data from the 2020/2021 seasons?

The RDA rule 10A.3.1.A.1 enables data from additional seasons to be considered. If you are seeking to have data from additional years considered, this will need to be stated. The application will need to provide justification and reasoning for any additional season of data being included.

What if I have no water meter data?

A measuring device may not have been installed for various reasons. In some cases, this could be because a take was assumed to be non-consumptive. Under the Water Measuring and Reporting of Water Takes Regulations 2010 non-consumptive takes are not required to be measured. However, there is a definition for a non-consumptive take and it is not based on how the water is used i.e. all hydroelectric takes are not non-consumptive. For more details on non-consumptive takes refer to the linked [practice note](#).

To be able to be considered under RDA rule 10A.3.1A.1, there is a requirement for a water meter for the take to have been installed. There is no requirement for a minimum time period of installation or minimum time period for recording data. There is an option for those takes that do not have a meter and that are not exempted from metering under the Regulations (i.e. all consumptive takes of 5 L/s or more) to install a meter before any amendment is lodged if one has not been installed already. The application/amendment will need to provide as much detailed data as possible to prove historic use of the take so that historical use can be determined. There is no guarantee that the applied for rates and volumes will be granted. It is noted that no greater than existing water permit rates and volumes can be granted under the RDA rule. The costs for processing such an application are likely to be higher than average.

If the RDA rule cannot be met, then the activity would become non-complying under Rule 10.A.3.2.1.

What happens to the WEX (water measuring exemption) I have for the location of my measuring device?

A water measuring exemption (WEX) is required if your measuring device is located greater than 100 metres from your consented point of take. If this applies to you and you do not have a WEX you can complete [Form 24](#).

If you have an existing WEX it will reference the water permit you are seeking to replace and have an expiry date that is the same as the expiry date of the consent being replaced (e.g. if your deemed permit expired on 1 October 2021 then your WEX would have 1 October 2021 as the expiry date). If you are continuing to operate under your expired permit because you have continuation rights, then Council's Compliance Team will refer to the WEX that relates to it.

When we are assessing your application, we will check if there is an existing WEX. If you have an existing WEX we will seek advice from Compliance on whether the WEX can be reissued with no changes (except for the expiry date and consent referenced) or whether we need to reassess the appropriateness of the measuring location.

In some instances, there will be changes to infrastructure, and water movement that means that the measuring device location does not enable the water taken to be accurately measured. If we need to reassess the WEX we will discuss this with you and have you complete a new Form 24. It is important that the data collected on water taken from water bodies over the next 6 years reflects what is actually taken from the waterbodies.

Irrigation area

What level of evidence is required to prove that an area has been irrigated?

We are anticipating that this may include a combination of dated aerial photographs, infrastructure plans etc.

Can the area irrigated under the consent, once granted, be different to the maximum area used to assess the consent?

The maximum irrigation area (ha) will be stated on the replacement permit and the legal descriptions of the land parcels where water can be used will be on the water permit granted. Providing the maximum irrigation area is not exceeded and the water is used on the land parcels within the legal descriptions on the consent, there will not be a restriction to using the water only on the land that was irrigated previously.

Allocation

Will there be any changes to my existing allocation?

Under Chapter 10A Council is unable to specifically assess and consider whether a water permit is for primary or supplementary allocation. However, if the allocation status is stated on the permit being replaced this will be carried over to the new consent. If not, there will be no reference to allocation type on the replacement permit.

Priorities

How do I determine if there are priorities that relate to my permit?

Priorities will only be relevant if you are replacing a deemed permit. If not, these do not need to be considered for your amendment or application.

If you are replacing a deemed permit, the deemed permit should have the priorities listed. This will state if you have priority over any other water permit or if another water permit has priority over you. In some cases, both will apply. This might look like the following:

Conditions

- The following priorities attach to this permit:

Permits which can exercise priority over this permit:

License/Right number	Priority Date	Water Source	Abstraction Rate	Holder
WR1744N (97210)	16.12.1879	Pig Burn	200,000 l/h	Hamilton Runs Limited

Permits over which this permit can exercise priority:

License/Right number	Priority Date	Water Source	Abstraction Rate	Holder
WR2298N (97128)	13.04.1886	Pig Burn	200,000 l/h	G & K Kirkwood Farms Limited and Kirkwood Concept Limited
WR976N (96254)	28.09.1897	Pig Burn	600,000 l/h	G & K Kirkwood Farms Limited and Kirkwood Concept Limited
2000.136	No priority	Pig Burn	200,000 l/h	David Malcolm MacDonald and William Andrew MacDonald, Edenbank Farm Limited and Janine Ruth Smith

If another permit has priority over your permit, then you will need to agree to entry condition (viii) to be able to be considered under the controlled activity rule.

When do I have to provide details of the Contact Management Plan to Council?

Your replacement permit will have a condition that requires you to provide a Contact Management Plan to Council within a specified timeframe after granting of the consent. This will be provided to a downstream permit holder with a higher priority if they request it.

I have existing legal agreements that have managed the deemed permit priorities to date between water users in my catchment. Do I have to meet (viii) of controlled activity 10A.3.1.1?

The entry condition (viii) relating to Upstream Deemed Permits where there are Downstream Permits with a Higher Right of Priority requires a specific condition to be included as part of the application. In order to be considered a controlled activity, the application needs to include this condition and it will be imposed on the replacement consent. There is no requirement for a Downstream Permit Holder with a Higher Right of Priority to require the ceasing of water once the replacement consents have been granted. Existing legal agreements may need to be modified to reflect the changed wording on the granted consents to ensure that water taking behaviours at low flows continue as currently.

Other Activities that Require Consent

Why do I need a consent to retake water from races and my reservoir? How will this be processed?

Water in dams and water races is water under the RMA and consent is required for the take and use of water if there are no permitted activity rules (or NES rules) that provide for this. We have outlined this requirement in the attached practice note ([technical-guidance-note-1-deemed-water-permit-replacement-applications.pdf \(orc.govt.nz\)](#))

To ensure that your activity has all the consents required, we will include the retakes on your water permit for taking and using water from a river. We will consider the retakes under the primary water take rule (ie. the take from the river) where this is being replaced. We will need to know the location of the off-takes from the water races and reservoirs. For schemes and where there are multiple takes and off-takes, we can accept a current race plan that we can append to the consent.

Do I need a consent for diverting and damming water where that enables my take?

If the diverting of water or damming cannot meet the permitted activity rules in the Chapter 12 of the RPW then consents will be required.

The PC 7 decision recognises that PC 7 does not seek to manage applications for resource consents for new or existing diversions and these will be considered under Chapter 12 of the RPW and the relevant objectives and policies. Deemed Permit damming is captured by PC 7; otherwise, the RPW rules, objectives and policies apply for damming too.

Our approach to date has been to ensure that on replacement we consider all the activities that require consents (i.e. where there is an RMA breach and there are no permitted activity rules that provides for that activity). This ensures moving forward that the overall activity is legal, and it will enable an assessment of effects for the different parts of the activity to be considered at the same time.

How will you process my other activities with my replacement water permit?

If the application is for a water permit under Chapter 10A, but also for other consents under Chapter 12 there is a hybrid activity status approach we may be able to take. This means that we:

- can separate out our consideration of the water take including notification from the other activities.
- would complete an assessment under the relevant parts of s95 regarding if you need written approvals for the damming/diversion/discharge components of the application o.
- consider the relevant objectives and policies of the RPW and other documents (e.g. proposed RPS, operative RPS, national policy statements...) for the damming/diversion/discharge activities.
- consider the activity within the bounds of the activity status of the rule (i.e. most damming and diverting will be restricted discretionary or discretionary).

We will let you know if we take this approach and the detail needed for these types of applications. The level of detail required for these applications will depend on their scale/size, age of infrastructure, location, activity type and consent term.

We are aiming to process these additional consents required as simply as we can within the bounds of our requirements under the Act. As noted above, the level of assessment will be dependent on a number of factors, but short consent terms will assist this assessment and reduce the overall processing costs. If the consents have the same term, we can also seek to issue one consent, where appropriate, for taking, using, retaking, diverting and damming.

A damming and diversion matrix providing some guidance on expectations for different damming and diversion activities [can be found here](#).

Please speak with your job manager if you have any questions about the processing of these applications.

Costs of Processing

How are consent fees set?

Consent processing costs are a function of the time taken to process and the application applied for. This will be contingent when the application was lodged (planning environment), complexity, duration sought and whether a notification decision has been made.

Cost to date will reflect the processing that has occurred on the consent application since lodgement. The Council's Revenue and Financing Policy 2020 provides that the processing of resource consents is funded entirely by fees and charges.

The Annual Plan contains a Schedule of Fees and Charges. The fees and charges policy makes it clear that that actual and reasonable charges for the processing of resource consent applications may be incurred at the rate shown in the scale of charges. There is currently no budget to provide any reduction in costs to consent applicants who now can only get 6-year terms for their permits to take and use water.

When will I be invoiced?

You may have already received an interim invoice if your consent has been with Council for some time. If not, you will receive an invoice once processing has been completed. All invoicing is handled by Council's Finance Team and not the Consents Team. In the meantime, we will keep you up to date with processing costs at key stages during processing. You can contact your job manager at any time to see what the current costs are.

How much more will I have to pay?

When your amendment application is lodged, we will give you an indication of likely future processing costs. This will be dependent on the scale of your application, whether there are additional activities that require consent and/or whether there are complexities such as challenging data to untangle or priorities that need to be considered. The job managers have templates they can use to draft their reports and consent documents, which will minimise future processing costs

Information on how we set our fees and how we charge for our time can be found at the below link. If at any time you are concerned about our processing costs, please get in touch with the processing officer.

<https://www.orc.govt.nz/consents-and-compliance/ready-to-apply-for-a-consent/fees-and-charges/fees-and-charges-faqs>

What conditions will be on my replacement water permit?

Examples of conditions that may be imposed on your replacement water permit [can be found here](#). Conditions are limited by the matters of control and discretion in the rules of Chapter 10A.

What if I have other questions?

If you are unsure about the next steps available to you, would like clarification on the above or have any additional questions please get in touch with your processing officer and/or submit questions to deemed.permits@orc.govt.nz.

More information on PC 7 can be found here: [Proposed Water Permits Plan Change \(Plan Change 7\) \(orc.govt.nz\)](#)