

Submission Form 16 to the Otago Regional Council on consent applications

This is a Submission on (a) limited notified/publicly notified resource consent application/s pursuant to the Resource Management Act 1991.

Submitter Details:
(please print clearly)

Full Name/s: The Otago Fish & Game Council

Postal Address: _____

Post Code: _____

Phone number: Business: _____ Private: _____
Mobile: _____

Email address: _____

Please see attached submission.

I/ we wish to **SUPPORT** **OPPOSE** submit a **NEUTRAL** submission on (circle one) the application of:

Applicant's Name: _____

And/or Organisation: Bendigo Station Ltd.

Application Number: RM20.079.01, .02 & .03

Location: Bendigo Creek, reservoir near Bendigo Creek

Purpose: to take & use surface water as primary and supplementary allocation to dam, take & use water from and within the reservoir.

The specific parts of the application/s that my submission relates to are: (Give details)

Please see attached submission

My/Our submission is (include: whether you support or oppose the application or specific parts of it, whether you are neutral regarding the application or specific parts of it and the reasons for your views).

Please see attached submission

I/We seek the following decision from the consent authority (give precise details, including the general nature of any conditions sought)

Please see attached submission

I/we:

- Wish to be heard in support of our/my submission
- Not wish to be heard in support of our/my submission

If others make a similar submission, I/we will consider presenting a joint case with them at a hearing.

- Yes
- No *NA.*

I, ~~am~~ am not (choose one) a trade competitor* of the applicant (for the purposes of Section 308B of the Resource Management Act 1991).

**If trade competitor chosen, please complete the next statement, otherwise leave blank.*

I, ~~am~~ am not (choose one) directly affected by an effect as a result of the proposed activity in the application that:

- a) adversely affects the environment; and
- b) does not relate to trade competition or the effects of trade competition.

I, ~~do~~ do not (choose one) wish to be involved in any pre-hearing meeting that may be held for this application.

I ~~do~~ do not request* that the local authority delegates its functions, powers, and duties to hear and decide the application to 1 or more hearings commissioners who are not members of the local authority.

I ~~have~~ have not served a copy of my submission on the applicant.

N. Pungu
Signature/s of submitter/s
(or person authorised to sign on behalf of submitter/s)

8 Sept. 2020.
(Date)



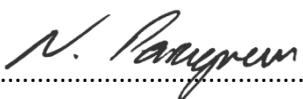
8 September 2020
Otago Regional Council
Private Bag 1954
Dunedin, 9054
submissions@orc.govt.nz

Submission on Application No. RM20.079.01 – RM20.079.03

This submission is provided on behalf of the Otago Fish and Game Council (Fish and Game). For additional information please contact Nigel Paragreen using the details below.

Submitter Details

Submitter: The Otago Fish and Game Council
Contact person: Nigel Paragreen, Environmental Officer
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Office phone: 03 477 9076
Postal address: PO Box 76, Dunedin 9016


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8 September 2020
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Introduction

- [1]** Fish and Game is the statutory manager of sports fish and game resources within Otago. It holds functions and responsibilities set out in the Conservation Act 1987. The organisation's functions include managing, maintaining and enhancing the sports fish and game resources of Otago in the recreational interests of anglers and hunters; representing the interests and aspirations of anglers and hunters in the statutory planning process; and advocating the interests of the Council, including its interests in habitats. This submission has been developed in line with these functions.
- [2]** Due to the popularity of angling in New Zealand, the demographic Fish and Game represents when carrying out its statutory functions is significant; however, this is not always obvious. The 2013/2014 Active NZ Survey conducted by Sport and Recreation New Zealand reported that 19.5% of respondents had been fishing (including both marine and freshwater angling) in the past 12 months¹. The survey found fishing had a higher rate of participation than rugby, tramping, football, cricket and basketball for men; and that fishing had a higher participation rate than netball, tennis, snow sports and tramping for women. Within Otago, license sales have exceeded 10,000 licenses in the past two decades and in the last decade has increased to over 20,000 licenses across all categories. Participation rates estimated from the National

¹ Sport and Recreation New Zealand. 2015. *Sport and Active Recreation in the Lives of New Zealand Adults: 2013/14 Active New Zealand Survey Results*. Wellington: Sport New Zealand.

Angling Survey² between 1994 and 2015 show that total freshwater fishing effort in the Otago Fish and Game region ranged from 180,860 to 215,430 angler-days over the fishing season.

- [3] As required by the Conservation Act 1987, Fish and Game has prepared a Sports Fish and Game Management Plan for Otago³, which has guided the development of this submission. This document describes the sports fish and game bird resources in the region and outlines issues, objectives and policies for management over the period. The document may be useful for decision makers when considering this application.
- [4] Fish and Game submits in respect to the whole of RM20.079.01 and RM20.079.02, which it **opposes** in their current form. Fish and Game seeks that consents only be issued in a form which is consistent with the provisions of Plan Change 7 (**PC7**), with a term not longer than 15 years.
- [5] Fish and Game submits in respect to the whole of RM20.079.03, to which it is **neutral**.
- [6] Fish and Game **does not** wish to be heard in support of its submission. As a result, it is not relevant whether Fish and Game would consider presenting a joint case at a hearing
- [7] Fish and Game **would not** wish to be involved in a pre-hearing meeting, if given the opportunity.
- [8] Fish and Game is **not** a trade competitor of the applicant.
- [9] Fish and Game **does not** request one or more independent commissioners be appointed to decide the application.
- [10] Fish and Game **has** served a copy of its submission on the applicant.

Bendigo Creek

- [11] Bendigo Creek is a tributary on the true left of the Clutha River. The application describes the creek as rarely having water in it past Loop Road⁴. This generally fits with understanding of the creek by Fish and Game Staff, in that the lower reaches are typically only wetted during heavy rain.
- [12] A brown trout (*Salmo Trutta*) population has been identified in the creek and it is unlikely that this population is directly fished. The adverse effects of the abstraction are described by Dr Allibone⁵:

There is a loss of habitat for the brown trout population that resides between the ephemeral reach and the steep stream section downstream of the water intake. The natural upstream limit of the ephemeral reach is unknown, but it will be downstream of the steep gorge section where the bedrock will prevent loss of water to ground. Site 5 of our fish survey was in an alluvial outwash zone and I expect water loss to ground water occurs at or above this site and the upper limit of the drying reach can be upstream of Site 5 in dry summer (or all summers). The water abstraction will increase the duration of the drying and may increase the extent. However, the presence of adult (albeit stunted) brown trout at Site 5 indicates the stream retains permanent wetted

² Unwin, M. J. 2016. *Angler Usage of New Zealand Lake and River Fisheries*. Christchurch: National Institute of Water and Atmospheric Research.

³ Otago Fish and Game Council. 2015. *Sports Fish and Game Management Plan for Otago Fish and Game Region 2015 - 2025*. Dunedin: Otago Fish and Game Council.

⁴ Application pg 16

⁵ s92 Response, Appendix A pg 2

habitat capable of supporting brown trout. It is expected that the water abstraction is presenting an additional limitation on the brown trout population aside from the natural limitation of the ephemeral reach and a limit on the upstream penetration in the lower gorge above Site 5. However, this additional limitation is not considered significant as the population has no sports fishing value and is one of many populations of stunted brown trout that occupy streams in Otago and such populations are not rare or of sports fish value.

Fish and Game agrees that the additional limitation of the abstraction upon trout habitat or impacts to the wider fishery is not significant. However, Fish and Game disagrees with several assertions and inferences in the passage. At times, advice in these aspects of sports fishery management can be inconsistent with the approach of Fish and Game, as the statutory manager. Fish and Game's general position on those points are listed below, for clarity sake:

- a. A population of sports fish may have fishing value even if it is not fished itself, as juveniles can out migrate to fishable waters, grow and be caught.
- b. Stunted populations are often a result of limited resources where they reside but a stunted population's progeny can grow to fishable sizes if they out migrate to larger waters.
- c. Fisheries are typically supported by many recruitment streams and the number of those streams may affect the resilience of fishery stocks. The existence of other recruitment streams should not detract from the value of one particular recruitment stream, as they should be seen as part of a wider system. The cumulative contribution from many recruitment sources is part of the nature of a resilient fishery.

[13] Unlike other intermittent streams in the area which host brown trout populations, it appears likely that opportunities for migration of the Bendigo Creek brown trout population to and from the Clutha would be very rare throughout the year. It is therefore likely the recruitment potential of this population to fishable waters is limited.

[14] Overall, it is likely that the combined adverse effects of abstraction from Bendigo Creek to brown trout habitat and recruitment to downstream fisheries are minor.

[15] It is worthwhile noting also that other environmental factors, such as ecosystem health, the well-being of the water body or the intrinsic value of the water body may need to be considered when assessing this application. Fish and Game and the anglers it represents generally want to see ecosystems retained in a functioning state or restored where degraded.

Application of the NPS-FM and PC 7

[16] The fundamental concept of the NPS-FM is Te Mana o te Wai and it lists only one objective, relating to the hierarchy of obligations in Te Mana o te Wai. This affords the concept significant weight within the document. It is well recognised that the Regional Plan: Water for Otago (**RPW**) is not consistent with the NPS-FM and the Otago Regional Council (**ORC**) has a work plan in place to have operational a new Land and Water Regional Plan (**LWRP**) by 2025 to rectify the issue. In this context, Fish and Game believes the NPS-FM should be afforded considerable weight when making a decision on this application.

[17] This is difficult, as the RPW contains glaring gaps which are do not yet give effect to the NPS-FM:

- a. it does not provide regional guidance on how to apply Te Mana o te Wai;

Statutory managers of freshwater sports fish, game birds and their habitat

Otago Fish & Game Council

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- b. it does not have in place mechanisms to identify or effectively phase out over-allocation;
- c. many catchments do not have allocation limits and minimum flow regimes; and
- d. the ORC has only just begun freshwater management unit processes.

[18] Implementing the NPS-FM directly, without regional guidance from the LWRP will result in planning by consent, with potentially inconsistent outcomes. This was noted as a concern by Professor Skelton⁶ when he investigated the assessment of deemed permits under the RPW. Based off of the findings of the Skelton report, the Minister for the environment made recommendations to the ORC to develop a fit for purpose planning framework and an interim consenting framework to limit the term of consents so they can be re-assessed again under the fit for purpose LWRP. This interim plan change became PC7. When providing the recommendation, the Minister commented⁷:

“While the comprehensive overhaul of the ORC planning framework is underway, there is an urgent need to ensure that an interim framework is in place between now and 31 December 2025. This is necessary to manage approximately 400 to 600 future consent applications in over allocated catchments.

The possibility of up to 600 consents being granted under the current planning and consenting framework is problematic.

I understand that around 70 per cent of ORC’s currently issued water permits are for durations of 25-35 years, with various expiry dates. This includes over 50 permits that expire in 2050 or later, eight of which are 35 year permits issued this year. I am advised that there is a strong expectation from deemed and RMA water permit holders that their new consent will be for similarly long terms, and that the Council is likely to come under strong pressure to meet these expectations.

In my view, long terms for these new consents would be unwise, as they would lock in unsustainable water use, inhibiting the council from effectively implementing the outcomes of its intended new RPS and LWRP.”

[19] The obvious alternative to PC7 is to rely on review conditions. If issued for the long term, a consent arising from this application will likely need to be reviewed soon after it is issued once the LWRP is operational. However, Fish and Game is not confident that all of the above gaps can be rectified via reviewed in future without frustrating the consent. For example, if the allocation were needed to be reduced to phase out over-allocation and/or prioritise the health and well-being of the water body. Such reviews may need to be fundamental in nature.

[20] In this context, issuing a consent without the ability for a full review prior to 2045 (25 year term) does not prioritise the health and well-being of the water body and freshwater ecosystems, in Fish and Game’s view. Limiting the term of consent may help to make the consent more consistent with the NPS-FM.

[21] PC7 has been designed to achieve this result and Fish and Game submits that it should be given weight in the consideration of this application. Fish and Game seeks that any consent granted be consistent with the provisions of PC7.

⁶ Professor Skelton, Peter. 2019. *Investigation of Freshwater Management and Allocation Functions at Otago Regional Council: Report to the Minister for the Environment*. Wellington: Ministry for the Environment.

⁷ Parker, David. 2019. Section 24A Report: Investigation of Freshwater Management and Allocation Functions and Otago Regional Council under section 24A of the Resource Management Act 1991. Office of Hon David Parker