



Report 05.134
Date 18 March 2005
File X/10/07/11

Committee Environment Committee
Author Murray McLea Section Leader, Policy Development

Review of Rule 7 – the permitted activity rule to take water

1. Purpose

To update the Committee on a review of the permitted activity rule in the Regional Freshwater Plan for taking water.

2. Background

Rule 7 of the operative Regional Freshwater Plan allows the taking of 20 cubic metres (20,000 litres) of water per day as a permitted activity, subject to conditions. The Lower Hutt groundwater zone is the only water body excluded from Rule 7. Any person taking water not permitted by Rule 7 needs a resource consent.

Rule 7 was based on a general authorisation that operated in the Wellington part of the region prior to 1991 when the Resource Management Act (“RMA”) came into force. In the Wairarapa, there were general authorisations that allowed water to be taken for various purposes, such as for agriculture, but no fixed amount was given.

3. Discussion

Rule 7 has now been in force for over 5 years. The feedback we have received is that the rule works well in most situations but not all. It works well when there is plenty of water in streams and groundwater, and the number of users is small. The rule is relatively simple and easy to understand and people find it straight forward to apply.

The following specific situations have been brought to the Council’s attention where the rule has not worked well:

- Each permitted water take is linked to a legal title and the water taken from a water body can significantly increase as a result of subdivision because the amount is multiplied by the number of lots created by subdivision; and

- Upstream users get first use of water that is not available to downstream users.

In addition, because there is no requirement to provide us with information, we don't know:

- where permitted takes occur, how many there are, or how much water is taken – this is overcome to some extent by the requirement to obtain a resource consent to construct a bore;
- where there may be adverse effects as a result of several takes; and
- where streams or wetlands may dry up as a result of permitted water takes.

Rule 7 uses an arbitrary amount to limit water takes. In keeping with the RMA, it is desirable for our rules to be “effects based”. By “effects based”, we mean that the quantities of water permitted to be taken should be arrived at after a consideration of environmental effects. In anticipation that Rule 7 would come under scrutiny when our regional plans are reviewed, we initiated a review last year.

4. The review, so far

One of the reasons why a review of the permitted water take rule was given a priority ahead of reviewing other parts of the Regional Freshwater Plan was the perception that increased numbers of groundwater bores on the Kapiti Coast were placing pressure on the groundwater resource. To help address this situation, we notified a change to the Regional Freshwater Plan in February 2002 which meant that the construction of a shallow groundwater bore requires a resource consent. Prior to this change, constructing a shallow groundwater bore on the Kapiti Coast was a permitted activity.

At the same time that the bore construction rule was being changed, Greater Wellington was also making progress with groundwater investigations on the Kapiti Coast. The results of these investigations were reported to the last Environment Committee meeting. One of the conclusions was that “at a regional scale, twice the current groundwater use for garden irrigation can be supported by the resource without any adverse environmental effects”.

Our present knowledge of Kapiti's shallow groundwater and its uses has reduced the need for any urgent changes to our permitted water take rule but a small working group of staff from the Wairarapa and Wellington offices have been making progress on reviewing the rule. We have considered how an “effects based” rule might be developed. Using information that the Council holds, we looked at whether the following elements might be included:

- Locations of small takes associated with housing where there is no community water supply;
- Locations of small streams that would be affected by permitted activity water takes;

- Identification of values associated with small streams; and
- Identification of wetlands that would be affected by groundwater takes.

Our initial investigations suggest that including this information could result in geographically complex rules that might lack accuracy. An exception is the last bullet point. Wetlands in most parts of the region have now been accurately mapped. At the last Committee meeting, the Committee received a report (05.32) which said that placing restrictions on water takes within buffer zones around identified wetlands was justified.

5. Some legal considerations

Since beginning the review, the Council has obtained a legal opinion that clarifies the relationship between a permitted activity water take rule and the taking of water for stock and domestic use. The legal opinion says that taking water for stock or domestic use is permitted by the RMA, subject to there being no adverse environmental effects, and should be treated separately from our permitted activity rule. This view is reinforced by current amendments to the RMA, which the Council recently made submissions on. Until now, the RMA has been open to interpretation about whether a permitted water take rule covers stock and domestic use or whether these uses are permitted separately by the RMA.

6. The next steps

We will continue to look at some other options that are available for use in future water take rules. These options include:

- Altering conditions on our present water take rule;
- More stringent rules for water bodies that are already fully allocated; and
- The use of controlled, restricted discretionary or discretionary activity rules that could allow water to be taken, subject to monitoring and restrictions when water shortages are occurring.

The RMA requires us to review the efficiency and effectiveness of rules in our regional plans and make the results publicly available. A review of the Regional Freshwater Plan is scheduled to be completed this year and it will be reported to you. We propose to channel the review of the permitted water take rule into that process.

7. Communication

At this stage the review of our permitted water take rule is not complete and no communication outside the Council is necessary.

8. Strategic context

Greater Wellington's LTCCP recognises that we have a statutory role to regulate water use. The revision of our permitted water take rule will contribute to the review of our Regional Freshwater Plan.

9. Recommendation

It is recommended that the Committee:

1. *receive the report; and*
2. *note its contents.*

Report prepared by:

Report approved by:

Report approved by:

Murray McLea
Section Leader, Policy
Development

John Holmes
Acting Manager, Resource
Policy

Jane Bradbury
Divisional Manager,
Environment