

Otago Plan Change 7 Decision Summary

Regional Water Plan - Water Permits

Otago region | November 2021

The Plan Change 7 (PC7) decision was publicly notified by the Environment Court on 17 November 2021.

The intent of the plan change was to provide an interim regulatory framework for the assessment of applications to renew deemed permits expiring in 2021 and any other water permits expiring prior to 31 December 2025 (the date by which the new Regional Land and Water Plan is expected to be operative). Otago Regional Council has committed to having a new NPSFM compliant framework notified by 31 Dec 2023.

The decision report (setting out the decision of the Hearing Panel and their reasons) can be accessed on the Environment Courts website [here](#).

PC7 was notified by Otago Regional Council in March 2020, and then again by the Environment Protection Agency (EPA) in July 2020 when it was 'called in' by Minister Parker. The EPA then handed over PC7 to the Environment Court for the hearing of submissions and decision making. The hearing was held in several locations across Otago through June and July 2021. HortNZ presented at the hearing in Cromwell in July 2021.

Previous summaries of the process can be found on HortNZ's website [here](#).

Summary of the PC7 decision

Changes to Objective 10A.1.1 and policies 10A2.1, 10A2.2, 10A2.3 and 10A2.4	Alterations to the objective and policies that provide decision makers with direction for replacement consents (no increase in historic water abstraction or take), duration of water permits (no longer than 6 years, except hydro-electricity generation infrastructure) and deemed permits (consideration of higher order priority takes).
Rule 10A.3.1 Controlled activity (Note - under the RMA an application for a controlled activity can not be declined)	<p>This rule allows an application for a replacement consent for a deemed permit or an expiring water permit. There are several conditions that are to be met including:</p> <ul style="list-style-type: none">• Consent duration sought no longer than 6 years.• Permit being replaced is valid.• The total area under irrigation does not exceed the maximum areas irrigated in the period 1 Sept 2017 - 18 March 2020, except where any additional area to be irrigated is only for orchard or viticulture land uses and all mainline irrigation pipes servicing the additional area were installed before 18 March 2020.

	<ul style="list-style-type: none"> • Rate of take no more than recorded rate of take (methodology in Schedule 10A.4). • Any existing residual flow, minimum flow or take cessation condition is included in the consent application. • Volume of water to be taken will be no more than historic take (methodology in Schedule 10A.4). • Where metering was not required by a condition of Deemed Permit / Water Permit – rate of take and volume of water sought is no more than the existing consented instantaneous rate of take and volumes. • For replacement of deemed permits – conditions proposed to ensure protection of a Higher Right of Priority. <p>There are several matters of control that the Council will consider also. Refer to the rule in its entirety for greater detail.</p>
Rule 10A.3.1A Restricted discretionary activity	The decision recognised the need for a tailored approach where water take monitoring of an expiring deemed permit or water take does not meet the methodology in Schedule 10A.4. This consent pathway enables consideration of whether the water meter data in combination with other relevant methods and data could accurately represent the historical use, among other matters.
Rule 10A.3.1B.1 Restricted discretionary activity	This rule specifically provides for replacing Deemed Permits that relate to hydro-electricity generation activities.
Rule 10A.3.2 Non-complying activity	Where an application for a replacement deemed permit or water permit does not meet the conditions of Rule 10A.3.1 Controlled activity, Rule 10A.3.1A Restricted discretionary activity or Rule 10A.3.1B.1 Restricted discretionary activity it would be a non-complying activity. A consent application can be applied for, but this is a very difficult and uncertain pathway.
Schedule 10A.4 – Methodology for calculating assessed actual usage for surface-water and connected groundwater takes.	This schedule outlines the different steps that need to be taken to calculate the assessed actual usage for surface-water and connected groundwater takes.
Definitions have been added for the following terms:	<ul style="list-style-type: none"> • Valid permit • Mainline irrigation pipes • Take cessation condition • Deemed Permit • Downstream Permit with Higher Right of Priority

- Upstream Deemed Permit
- Upstream Replacement Permit
- Contact Management Plan
- Insufficient Flow
- Notice

What next?

Parties have a period of 15 working days (Wednesday 8th December) to lodge an appeal on points of law with the High Court. If the decision is not appealed by any party, the provisions will become 'operative' within the Otago Regional Water Plan.

WHERE TO GO FOR MORE INFORMATION

- The PC7 page on The Environment Court's website [here](#)
- Keep an eye on HortNZ's website [here](#)
- Or you can contact Rachel McClung who is leading HortNZ's involvement in PC7 (rachel.mcclung@hortnz.co.nz)