

# SUBMISSION ON PC7 to the Regional Plan: Water for Otago

4<sup>th</sup> May, 2020

**TO:** Otago Regional Council

**NAME OF SUBMITTER:** Horticulture New Zealand



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## Introduction

Horticulture New Zealand (HortNZ) welcomes any opportunity to work with Otago Regional Council and to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

This submission is supported by the following HortNZ Product Groups and local associations: Summerfruit New Zealand, Vegetables New Zealand, Potatoes New Zealand, Processed Vegetables New Zealand and the Central Otago Fruitgrowers Association.

The details of HortNZ's submission and decisions we are seeking from Council are set out below.

## Submission structure

1. Background to HortNZ
2. HortNZ's RMA involvement
3. Horticulture in the Otago Region
4. HortNZ's overall submission and high-level relief sought

Attachment A: HortNZ's specific submissions on PC7, including reasons and detailed relief sought.

### 1. Background to HortNZ

HortNZ was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

HortNZ advocates for and represents the interests of 5000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers. Land under horticultural crop cultivation in New Zealand is calculated to be approximately 120,000 hectares.

The horticulture industry value is \$5.7 billion and is broken down as follows:

<b>Industry value</b>	<b>\$5.7bn</b>
Fruit exports	\$2.82bn
Vegetable exports	\$0.62bn
<b>Total exports</b>	<b>\$3.44bn</b>
Fruit domestic	\$0.97bn
Vegetable domestic	\$1.27bn
<b>Total domestic</b>	<b>\$2.24bn</b>

For the first time New Zealand's total horticultural produce exports in 2017 exceeded \$3.44bn Free On Board value, 83% higher than a decade before.

It should also be acknowledged that it is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security. The essential service that horticulture provides has been further highlighted through the Covid-19 response

HortNZ's mission is to create an enduring environment where growers thrive. This is done through enabling, promoting and advocating for growers in New Zealand.

## 2. HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

The principles that HortNZ considers in assessing the implementation of the RMA include:

- The effects-based purpose of the RMA;
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
- Early consultation of land users in plan preparation;
- Ensuring that RMA plans work in the grower's interests both in an environmental and sustainable economic production sense.

## 3. Horticulture in the Otago Region

There are approximately 191 commercial growing operations in the Otago Region. These include a wide variety of both fruit and vegetable crops. Currently the highest concentrations of growers are in the Central Otago and Waitaki Districts. There are growers located outside these areas however. The region is nationally recognised for its unique productive capacity and place in the national food supply network.

The combination of soil and climate means that Central Otago is especially suited to growing high quality crops. Stone fruit such as; cherry, apricots, peaches and nectarines, and pipfruits (predominantly apples) are the dominant crops.

Whereas, in the Waitaki District area, a wide variety of fruit and vegetable crops are grown. These include: yams, carrots, courgettes, leeks, cabbage, pumpkin, potatoes, lettuce, broccoli, cauliflower, silverbeet, spring onions, celery, leafy greens, salad greens, brussel sprouts, tomatoes, asparagus, cucumber, apples, pears, nectarines, peaches, plums, blackcurrants, raspberries, strawberries and cherries.

Central Otago is one of the main commercial growing areas in New Zealand for stonefruit and accounts for 59% of the planted stonefruit orchards. Other stonefruit regions include Hawkes Bay (31%), north of Auckland, Marlborough, and Canterbury (10% combined)<sup>1</sup>. Importantly, Summerfruit New Zealand have advised that 85% of cherry orchards are in the

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<sup>1</sup> <https://www.summerfruitnz.co.nz/industry/regions/>

Central Otago District. Cherries are a high value crop and Central Otago is a critical cherry growing area.

Cherries are a significant export crop for New Zealand, being the fourth highest horticultural earner (behind Kiwifruit, Apples and Avocados)<sup>2</sup>. Viticulture is also a significant earner and strong contributor to the Otago economy.

The New Zealand (NZ) cherry industry is currently undergoing significant expansion with production more than doubling since 2013. One of the key features of the Central Otago region is the high diurnal range (DRT). This is the difference between daytime and night-time temperatures. Due to the continental type climate in Central Otago, the DRT is large and is thought to positively contribute to increasing the sweetness of Central Otago cherries. This also assists with the firmness and crunch of the fruit which enhances the flavour, taste and general appeal to the consumer, particularly in the Asian markets.

NZ cherries are able to hold a consistent price of 50% or more over cherries from key competitors (i.e. Chile). In order to retain this market, it is of critical importance to the industry that the focus remains on a premium high value cherry. In order to do this, cherry growers rely on a reliable water supply to ensure a consistent quality and yield.

#### 4. HortNZ's overall submission and high-level relief sought

HortNZ understands that PC7 proposes an objective, policies and rules as an interim regulatory framework to manage:

- the replacement of deemed permits with water permits,
- the replacement of expiring surface water takes and use permits, and
- consent duration on all water permits to take and use water.

The interim framework proposed by PC7 is to remain until a new comprehensive plan review of the Regional Land and Water Plan replaced it.

PC7 specifically seeks new Objective 10.A.1.1; New Policies, 10.A.2.1, 10.A.2.2, and 10.A.2.3; new Rules 10A.3.2.1- Controlled Activity and 10A.3.2.1- Non-Complying Activity; new Schedule 10A.4 and consequential amendments.

The changes sought in proposed PC7 took immediate legal effect from the date of notification (18 March 2020), pursuant to section 86B(1)(a) and (3) of the Resource Management Act 1991.

As per the Ministerial Direction, a new regional plan for land and water resources is to be notified by December 2023 in accordance with the requirements of the NPS-FM and it is intended that that plan be operative by 31 December 2025.

Therefore, it is anticipated that the interim framework proposed by PC7 will be in place for no longer than 5 years.

Underlying the urgency of this plan change and proposed interim regulatory framework is the expiration of 340 deemed permits that will expire on 1 October 2021. A further 400 surface water and ground water permits expire between 31 December 2019 and 31 December 2025.

The ORC are of the view that the current planning framework is relatively permissive of long-term resource consents and there are no rules or directive policy guidance to limit consent terms, and the assessment of applications under the operative plan policy framework may

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<sup>2</sup> <https://www.freshfacts.co.nz/files/freshfacts-2018.pdf>

not allow for adequate consideration of environmental effects or drive efficient resource use. It appears to be ORC's fear, that this may result in inhibiting ORC's ability to effectively implement the outcomes of its reviewed Regional Policy Statement and Regional Land and Water Plan that is to be notified in 2023. Essentially, ORC do not want water permits with a 30-year timeframe being issued prior to a new regulatory framework that gives effect to the NPS-FM being in place, as in their view, this would undermine their ability to fully give effect to the NPS-FM.

HortNZ agree the current framework is deficient, but we do not consider that all alternatives have been considered in the s32 assessment. Short term consents are not the only option. Replacement consents with review conditions is an alternative to the proposed short-term consents that would provide greater certainty for water users, not compromise future claw-back and limit setting processes and achieve the Ministerial Direction.

While HortNZ generally supports the intention of PC7 to provide an interim regulatory framework for expiring deemed permits, it believes that the framework developed by Council and included in PC7 is an unjustified extension of the ministerial direction that recommended ORC consider a narrow plan change that provided for the relatively low cost, and fast issuing of new consents on a short-term basis, as an interim measure until sustainable allocation rules are in place. PC7 is fundamentally flawed and HortNZ has a number of concerns about the Plan Change as follows:

- The Plan Change is an unjustified extension of the scope recommended by the Minister's Direction for providing a consenting framework for the expiring deemed permits. PC7 seeks to reduce allocation, not 'hold the line'. Further, it prevents any further irrigation of land, regardless of whether such irrigation would result in a more efficient use of water.
- The Minister's recommendations should be implemented with the context provided by Professor Skelton's report in mind. This means a framework which does not unfairly impact on permit and consent holders.
- The Plan Change unfairly impacts permit and consent holders as it reduces a consent holders water allocation without the backing or evaluation of robust science or hydrological modelling. The two-tier activity status provides no flexibility at all.
- The dates 2017-2018 (for irrigated land area and 2012-2017 (rate of take for the volume of water taken) will prejudice those who have expanded their operations post 2017/2018.
- The level of detail within the s32 analysis does not correspond with the scale and significance of the environmental, economic and social effects that are anticipated from the implementation of the Plan Change. In particular, the Plan Change is not supported by any technical assessments to validate the environmental, economic and social impact assumptions that are made.
  - There is an absence of policy assessment. The assessment simply lists the relevant provisions and then defers assessment to future plan review processes.
  - The environmental, economic and social benefits and costs have been inadequately identified and assessed.
- The Plan Change will result in recent horticultural expansion in Otago not being able to be consented and it will halt any future expansion.
- The assessment fails to consider the impact of the proposal on food security.

- The Plan Change will prevent land use changes that could be made to farming systems in the next ten years that will be critical in achieving the long-term climate and water quality outcomes. Farmers need options so they can respond to the challenges now.
- The Plan Change will impact the ability of Otago to manage, and then recover from, the Covid-19 recession.

#### 4.1 ORC Consultation

HortNZ were disappointed in the lack of community engagement prior to the notification of PC7 and the reluctance by Council to put the process on hold during the Covid-19 pandemic. New Zealand faced unprecedented times and growers were, and are still, coming to terms with the new challenges presented by the Covid-19 pandemic. Covid-19 and the Government Level 4 restrictions hit New Zealand during peak harvest of many crops.

As Council will be aware, the horticulture industry relies heavily on seasonal labour—generally backpackers from overseas and Regional Seasonal Employer (RSE) workers from the Pacific Islands. With the exception of a limited number of RSE workers were already in New Zealand when the boarder restrictions were announced, both of these labour sources were not available during Level 4 restrictions, and are unlikely to be available for many months.

Therefore, not only were growers coming to terms with finding new and safe ways to harvest, process, pack, distribute and sell their produce, they also faced significant labour challenges. All while keeping themselves and their families safe.

Growers continued to operate, even with these obstacles, because they know how important their produce is to New Zealand food security and the local economy.

It is the view of HortNZ that Council has had little regard for the wellbeing of their community, nor the significance of the challenges that Covid-19 presents us all.

Otago will face a recession in the months and years to come due to the impacts of Covid-19. The Otago economy has been strongly reliant on international tourism in recent years. Horticulture is an industry that has been successfully contributing to the Otago economy and social fabric for generations, and can continue to do so. We appreciate that Council considered that they were under pressure from a Ministerial Direction to deliver PC7. However, this is no not an excuse to exclude the community from any planning process.

HortNZ and local growers are strongly of the view that Council must work in good faith and collaboratively with us, particularly on the Regional Water Plan review and review of the Regional Policy Statement.

HortNZ and growers anticipated that PC7 would align with the Ministerial Direction for a *narrow plan change that provided for the relatively low cost, and fast issuing of new consents on a shot-term basis, as an interim measure until sustainable allocation rules are in place*. PC7 extends much further than this direction and has done so without adequate consultation of all relevant affected parties and without a full assessment justifying the extension.

#### 4.2 The importance of water for horticulture

Water is essential for the production of food. Horticultural production in all regions of New Zealand, including Otago, is reliant on reliable supplies of fresh water that are suitable for sustained crop production and post-harvest washing and processing.

The values of food production land are inseparable from connected freshwater. Freshwater is a necessary component of food production land because:

- Freshwater processes formed our most productive land through erosion and deposition creating plains of arable soil in the lowlands. These make up the 5% of New Zealand that is available for high value horticultural production (versatile soils).
- Without clean freshwater to cultivate crops and to wash and prepare food for market the value of this finite and precious resource is compromised.
- Food cannot be grown without water and food cannot be grown without causing discharges.

In summary, the values of land and water are interlinked.

### 4.3 Horticulture and the need for irrigation in Otago

#### 4.3.1 Orcharding

On average orchards use a third of the water of irrigated pasture and have lower leaching concentrations (Gentile, et al., 2014), produce less greenhouse gas emissions (BERG, 2018), and have the highest revenue on per ha basis compared to any primary production land use (Ministry of Primary Industry, September 2019).

Capturing the expansion of fruit and low impact horticultural production by the proposed irrigation conditions of Rule 10A.3.1.1 and 10A.3.2 is unlikely to result in improvements in water quality, and will not enhance the productive capacity of land or enable farmers and growers to transition to lower emission productive uses.

#### 4.3.2 Commercial Vegetable Production

The footprint of vegetable growing is very small, and its effects localised. We support all vegetable growers operating at audited Good Management Practice (GMP), or Best Management Practice (BMP) in catchments identified as a regional priority catchment for improvement. Any water quality improvements achieved by driving land use change away from vegetable growing are likely to be negligible, and often counter-productive when assessed across multiple contaminants and accounting for adverse modifications to hydrological regimes.

#### 4.3.3 Expansion post 2017/18 Irrigation Season and Planned Expansion

Many hectares of horticultural irrigation have been installed since the 2017/2018 irrigation season in Otago. It is understood that growers undertook expansion on the advice of ORC staff. A non-complying activity status for all irrigation that has been installed beyond the 2017/2018 irrigation season does not provide the certainty necessary to secure the required ongoing finance and combined with a 6-year expiry term, will put horticultural operations in financial peril. No rationale has been provided for the back dating to the 2017/18 irrigation season.

Furthermore, expansion is expected in cherries, pipfruit and other stonefruit which thrive in the regions unique growing conditions and are nationally recognised crops. Any new horticulture will be irrigated and therefore will be adversely impacted by PC7 as proposed. Increased regulatory costs, lack of certainty and inability to obtain finance are all hurdles created by PC7 that will prevent expansion.

The potential economic and social impact of this aspect of PC7 has not been appropriately considered by the s32 assessment.

#### 4.4 Efficient use

As well as having lesser or negligible water quality effects compared with other land uses, low impact horticulture crops use much less water, on average one third<sup>3</sup> of the water of irrigated pasture, this is because of the efficient irrigation systems that can be used for static crops and the water demands of fruit<sup>4</sup>. This means, that water can be transferred from pastoral irrigators to horticultural uses and irrigate a much larger area, producing much more food for the same amount of water use. Low impact horticulture crops produce much more food than pastoral land uses on a per hectare basis, e.g.; 50t/ha of kiwifruit or citrus, 80t/ha of apples<sup>5</sup>, and 500t/ha of glasshouse tomatoes<sup>6</sup>. PC7 moves to make decision on efficient use and allocation outside of a community involved limit setting process under the NPSFM.

#### 4.5 Food security

Prior to Covid-19, projections around New Zealand's expected population increase and annual food volumes available for consumption in New Zealand show that domestic vegetable supply will not be able to sustain our future population consumption needs<sup>7</sup>. Already many New Zealanders, are struggling to meet the recommended daily intake of 3 plus vegetables and 2 plus fruit a day. In 2016/2017, only 38.8 percent of New Zealand adults and 49.8 percent of children met the recommended daily fruit and vegetable intake<sup>8</sup>. Those living in the most deprived neighbourhoods were less likely to meet the recommended intakes and were more likely to be obese<sup>9</sup>. 1 in 5 children are living in food insecurity<sup>10</sup>.

Abstractions and discharges are needed to grow the food New Zealanders need to eat. Reasonably priced, healthy food, is essential for human health. The Otago Region plays a critical role in the national food production system the loss of which is not easily picked up elsewhere in New Zealand given the unique production capability of the region.

#### 4.6 Climate change

The Eat-Lancet Commission found that food is the single strongest lever to optimize human health and environmental sustainability and without action, the world risks failing to meet the United Nations Sustainable Development Goals and the Paris Agreement.

The Report recommended a transformation to healthy diets by 2050 requiring substantial dietary shifts, with global consumption of fruits, vegetables, nuts and legumes having to double, and consumption of foods such as red meat and sugar being reduced by more than 50%. "*The food we eat and how we produce it will determine the health of people and planet,*

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<sup>3</sup> (Gentile, et al., 2014) <http://www.hortnz.co.nz/assets/Uploads/Plant-and-Food-Land-management-practices-and-nutrient-losses-from-farm-.pdf>

<sup>4</sup> (Ford S. , Memorandum to HortNZ NESFW, 2019)

<sup>5</sup> (Gentile, et al., 2014) <http://www.hortnz.co.nz/assets/Uploads/Plant-and-Food-Land-management-practices-and-nutrient-losses-from-farm-.pdf>

<sup>6</sup> Barnes, H 2019, Pers comms 29 October

<sup>7</sup> <http://www.hortnz.co.nz/assets/Media-Release-Photos/HortNZ-Report-Final-A4-Single-Pages.pdf>

<sup>8</sup> [https://minhealthnz.shinyapps.io/nz-health-survey-2016-17-annual-data-explorer/ w\\_e9a07e83/ w\\_aa03fb73/ w\\_320818d4/ w\\_26fa6ce8/ w\\_f50ad45f/ w\\_dbba0f02/#!/explore-indicators](https://minhealthnz.shinyapps.io/nz-health-survey-2016-17-annual-data-explorer/ w_e9a07e83/ w_aa03fb73/ w_320818d4/ w_26fa6ce8/ w_f50ad45f/ w_dbba0f02/#!/explore-indicators).

<sup>10</sup> <https://www.health.govt.nz/system/files/documents/publications/household-food-insecurity-among-children-new-zealand-health-survey-jun19.pdf>

*and major changes must be made to avoid both reduced life expectancy and continued environmental degradation."* (Eat-Lancet, 2019).

The measure of New Zealand's success in adapting our food production system in a way that contributes to global efforts to reduce global warming, will be to reduce the overall carbon intensity of New Zealand's food production, by changing, but not reducing our production.

Horticulture, and in particular fruit for export, presents an opportunity for current and future generations to produce more food in New Zealand with much lower emissions than animal agriculture.

As we transition to a low emissions economy, farmers need options to reduce their emissions. For some farms in some locations converting part of their farm to a low impact irrigated horticulture production, provides an opportunity to reduce emissions in a manner that supports the economic viability of the farm.

The greenhouse gas and water quality targets are challenging for existing farmers. However, the changes we make to farming systems in the next ten years will be critical in achieving the long-term climate and water quality outcomes. Farmers need options so they can respond to the challenges now.

Where land use change is unlikely to result in adverse cumulative water quality and quantity effects and produces lesser greenhouse gas emissions, it should be encouraged, not constrained.

#### **4.7 Ministerial Direction**

The Minister's recommendation letter set out three recommendations for ORC to follow. The recommendations are that ORC:

1. Take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent application, including those that are to replace any deemed permits.
2. Develop and adopt a programme of work to achieve the following:
  - a. by November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of its LWRP is notified;
  - b. by 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater management Units, covering all the catchments within the region.
3. Prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that the new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management.

##### *4.7.1 Analysis of the Minister's direction regarding scope*

The Ministers recommendations, set out above, are directive in what the ORC is required to do. We consider that the ORC has gone too far in its response to the Minister's

recommendations, through PC7 and has overstepped its requirements.

*Requirements of recommendation 1:*

- Give effect to relevant national instruments
- Establishes a coherent framework for assessing water consent applications

*Requirements of recommendation 2:*

- Develop and adopt a programme of work to complete a review of the RPS and the LWRP.

*Requirements for recommendation 3:*

- Provide adequate framework to manage freshwater up to when new discharge and allocation limits are set.
- Framework to be in line with the NPSFM

To give effect to the Minister's recommendations, ORC must develop a planning and consenting framework in line with the NPSFM. The Minister's recommendations are made in light of the context and recommendations provided by Professor Skelton in his report to the Minister for the Environment (Skelton Report).<sup>11</sup>

The Skelton Report notes that the recent changes brought about by Essential Freshwater require the consideration of any applications for replacements of the deemed permits to take place within the context of a more accelerated and intensive programme of NPSFM driven plan changes.<sup>12</sup> Prof Skelton's understanding of PC7 was that it would address some of the deficiencies of PC6A and will provide interim policy guidance for the issuing of freshwater resource consents.<sup>13</sup>

Prof. Skelton recommends that any replacement consents are processed on the basis of a more adequate and robust planning framework, and that the planning framework will, amongst other things, "*establish minimum flows and limit setting based on robust science and hydrological modelling, including fair allocation within ecological limits*".<sup>14</sup> Prof Skelton recommended to the Minister that the expiry date of deemed permits is extended and that this is justifiable because it would provide better certainty for consent holders and would give ORC time to undertake the science that is needed to properly inform the plan rules, so that all replacement consents are subject to robust considerations.<sup>15</sup> This recommendation was declined by the Minister – see the note below on the Minister's view of extending the date. With regard to long term renewals being given now, the Skelton Report noted that the Otago region had likely over-allocated its water resources and providing long term renewals of deemed permits under the current planning framework would not be consistent with the sustainable management purpose of the RMA.<sup>16</sup>

HortNZ consider that the Minister's recommendations should be implemented with the context provided by Professor Skelton's report in mind. This means a framework which does not unfairly impact on permit and consent holders. The framework included in PC7 unfairly

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<sup>11</sup> Professor Peter Skelton *Investigation of Freshwater Management and Allocation Functions at Otago Regional Council* dated 1 October 2019 (**Skelton Report**).

<sup>12</sup> Skelton Report, pg 12.

<sup>13</sup> Skelton Report, pg 13.

<sup>14</sup> Skelton Report, pg 35 – 36.

<sup>15</sup> Skelton Report, pg 37.

<sup>16</sup> Skelton Report, pg 12.

impacts on permit and consent holders because it will reduce consent holders' water allocations without the backing or evaluation of robust science or hydrological modelling. It also makes an allocation decision that all users should equally have access to water in the absence of a community exercise in determining the allocation regime. HortNZ say this because the two-tier activity status from controlled to non-complying provides no flexibility whatsoever. At the very least it ought to be controlled, discretionary and non-complying. In addition, the dates of 2017-2018 (for irrigated land area), of 2012 – 2017 (for rate of take and for the volume of water taken) will prejudice those who have expanded their operations post 2017/2018.

HortNZ agree that in general shorter-term consents are appropriate until such time that robust science and hydrological modelling has been undertaken in the region to enable appropriate limits and minimum flows to be set. However, whether a 6-year term is appropriate is highly questionable (see section 4.8 below). The interim nature of PC7 should not enable ORC to base its decisions on sub-par scientific evidence. While HortNZ acknowledge there is likely to be over-allocation of the water resource in the Otago Region, the Council has overstepped the requirements of the Direction in its strict limiting of the water resource in PC7. We consider that the deemed permits and water consents affected by PC7 should not be unfairly limited without robust scientific evidence and modelling to back up the limiting nature of the plan change.

Neither the Minister, nor Professor Skelton considered that the Council unfairly restrict the water resource without first investing in the science that underpins the planning process so that the plan rules and assessment of future consents are properly informed.<sup>17</sup>

#### 4.8 6-year expiry term

PC7 provides that all replacement consents will expire in 6 years after being granted. As noted above, the Minister's directions do not include any reference to the expiry of the deemed permits or other consents affected by PC7. The Minister was not in favour of extending the date for expiry of the deemed permits through legislative means, as a 30-year transition period was already provided.<sup>18</sup> This was in direct response to Professor Skelton's recommendation about providing for an extension. The issue therefore is whether the 6-year term is appropriate or not.

The 6-year expiry in PC7 is directly related to the timeframes for the new regulatory framework coming into force. While this is a valid consideration it does come with significant investment uncertainty for consent holders.

At the end of the 6 years the consent holders will need to apply for a renewal of the consent under s124, or for a new consent altogether under Part 6 of the RMA.

An alternative to the 6 year expiry date is to have a longer term – 15 or 20 years, and to provide a framework in the proposed rule for the controlled activity, and in related policy regarding a condition of consent, that states that once the new regulatory framework is in place, this triggers an immediate review of the conditions under s128 of the RMA. The reality is that s128 applies in any event, as subsection (b) provides as follows:

*(b) in the case of a coastal, water, or discharge permit, when a regional plan has been made operative which sets rules relating to maximum or minimum levels or*

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<sup>17</sup> Skelton Report, pg 37.

<sup>18</sup> Minister's letter to Council, pg 2.

*flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water, and in the regional council's opinion it is appropriate to review the conditions of the permit in order to enable the levels, flows, rates, or standards set by the rule to be met;*

The benefit of including a review condition framework in PC7 is that:

- It provides an alternative to the 6-year expiry;
- It provides certainty to the both the Council and the consent holder about the review process and outcomes.

Of note these review sections (sections 128 to 133) of the RMA do not apply to the deemed permits and so a review of the conditions cannot be undertaken under s128 of the RMA now.<sup>19</sup> However, once a deemed permit is replaced with a resource consent then the entirety of Part 6 of the Act will apply (including sections 128 to 133).

It is important to note that the benefit of a review over a renewal is that the consent cannot be revoked. However, the amount of water taken (rates, volumes etc) can be clawed back via a review if the regulatory framework supports such an approach. In short, a longer-term consent with a review conditions are more secure than a short-term expiry consent.

The proposed 6-year expiry term is extremely problematic for horticulture activities. Finance will not be available to growers, as banks will not lend on the basis of the insecurity of a 6-year permit expiry term. The banks are very aware of the PC7 situation and are very wary of short-term permits. At some stage in the near future, banks will be considering this in their security valuations. The attitude of the banks will impact on the robustness of a business being able to grow and develop and there will be no incentive to invest further.

For example, orchard crops in particular require heavy financial investment in year 1 - land purchase, development costs, irrigation, infrastructure, buildings, trees, machinery, harvesting equipment, labour, etc. However, the first financial returns are not seen until the trees begin to fruit in years 3 to 4. The years in which debt is repayed and profit can be made is dependent on the growing system and crop type. In a conventional cherry orchard, the returns in years 4 to 15 are not 'profit', but debt repayment. Profit is not made until after year 15 at the earliest.

Therefore, without the security of a reliable water supply for the duration of debt repayment, investment and finance will not be secured. This will also impact the ability of a business to fund environmental improvement projects.

PC7 as proposed will have a significant negative impact on horticulture in Otago, the regional economy and employment in Otago. The suggested alternative longer-term consent with review conditions is a more effective, efficient and fairer alternative than the option proposed by PC7.

#### **4.9 Overallocation - reasonable and efficient use of water**

HortNZ supports the phase out of overallocation and a collaborative process that is informed by science to achieve this. However, HortNZ does not support the date specified in the plan

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<sup>19</sup> RMA, s413(1).

change, nor the proposed method of assessing the reduced water allocation for replacement permits based on historic actual use.

HortNZ supports the test of reasonable and efficient use to address how to fairly phase out overallocation where it is found to be an issue. Reasonable and efficient use is required to take into account: a) the specified growth requirements of a business, and b) the requirements of a crop through all phases of the life cycle.

In the context of the interim regulatory framework of PC7, the specified growth requirements of a business should demonstrate planned growth where financial commitments have been made prior to notification. This could include; taking out a business loan, land purchase, investment in irrigation, ordering trees / plants, machinery, orchard development, hiring of staff etc.

Calculations for water allocation need to consider land use, crop water use requirements, on site physical factors (such as soil water holding capacity), climatic factors (such as rainfall variability and potential evapo-transpiration), and water for washing and processing. Water for frost fighting in winter, and root stock survival during times of drought, should also be taken into account.

The model must reliably predict annual irrigation volume within a high degree of accuracy for horticulture crops, as growers have no ability to relocate crops when water runs short (crops cannot be relocated like animals can be).

Therefore, *reasonable and efficient use* of water is a fairer, more effective method for PC7.

#### 4.10 Adequacy of the s32 evaluation

*Long Bay-Okura Great Park Soc Inv v North Shore* sets out the tests for s32 evaluations:<sup>20</sup>

- *Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.*
- *The policies are to implement the objectives, and the rules (if any) are to implement the policies;*
- *Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:*
  - o *The benefits and costs of the proposed policies and methods (including rules); and*
  - o *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

Case law considers that ‘most appropriate’ means “*suitable, but not necessarily superior*”.<sup>21</sup> This means that the most appropriate option in a proposal does not necessarily need to be the best or most optimal option, but it must demonstrate that it will meet the objectives in an efficient and effective way.<sup>22</sup>

<sup>20</sup> *Long Bay-Okura Great Park Soc Inv v North Shore* EnvC A078/08, at [34] which extended the test provided by *Eldamos Investments Ltd v Gisborne DC* EnvC W047/05 at [128].

<sup>21</sup> *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC).

<sup>22</sup> See the MfE guidance <https://www.mfe.govt.nz/sites/default/files/media/RMA/guide-to-section-32-of-resource-management-amendment-act-1991.pdf>

The case of *Briggs v Christchurch City Council* adopted a number of principles of general application and relevant to the implementation of s32:<sup>23</sup>

- a) *The Court does not start with any particular presumption as to the appropriate zone, rule, policy or objective;*
- b) *The Court seeks to obtain the optimum planning solution within the scope of the appeal it has before it, based on an evaluation of the totality of the evidence given in the hearing without imposing a burden of proof on any party;*
- c) *A policy, rule or method can be considered against the purpose found in the objectives and policies in the plan. Where the objectives and policies are challenged, these will need to be judged against superior documents including any relevant regional plan, policy statements, national standards or policy statements. Nevertheless, the provisions in all plans do not always fit neatly together and regard should be had with the policies and objectives of a plan through the filter of Part 2 of the RMA when necessary.*

In applying the test from Long Bay and the principles from Briggs, it can be seen that ORC has not undertaken an adequate s32 evaluation of the options available to it for PC7. This is most apparent when considering the effectiveness and efficiency of the PC7 provisions in light of the objective of PC7.

By restricting the ability for permit holders to apply for increased irrigation, PC7 severely limits and restricts possible growth in the region in the next 6 years and does not work towards achieving the long-term sustainable management of water resources in the Otago Region. The interim planning framework that is implemented by PC7 will lead to a long-term detrimental effect's due to the inability of farmers and growers to be able to secure finance or other essential business services because of the uncertainty and restrictions imposed by PC7.

ORC has not sufficiently taken into account the risks and benefits to the Region imposed by the PC7 provisions, nor has ORC taken into account the risk of acting or not acting based on the insufficient information available to it regarding the risks and benefits of the PC7 provisions.

#### 4.11 Summary of the decisions sought by HortNZ

HortNZ is seeking for PC7 is as follows:

- An efficient, effective and fair regulatory framework that provides for greater security for the Otago Region and horticulture.
- An Objective, Policies and methods for an interim framework that provides for longer term (20 year) replacement of permits with review conditions; without 'clawing back' allocation or preventing irrigation of land uses prior to a new Land and Water Plan framework that gives effect to the NPSFM.

<sup>23</sup>

*Briggs v Chirsitchurhc City Council* EnvC 045/08, at [26].

Without limiting the generality of the foregoing, HortNZ's specific concerns together with a summary of the decisions it seeks from the Council are set out in **Attachment A**.

HortNZ seeks the following decisions from the Council:

1. That the decisions sought in **Attachment A** of this submission be accepted; and/or
2. Alternative amendments to the provisions of PC7 to address the substance of the concerns raised in the submission; and
3. All consequential amendments required to address the concerns raised in this submission and ensure a coherent, robust and fair plan.

## Attachment A: HortNZ's Specific Submissions on proposed PC7, including reasons and detailed relief sought

Sub pt	Plan provision	Support/Oppose	Reason	Decision Sought
1	S32 evaluation	Oppose	<p>For the reasons outlined in the body of the submission, the evaluation does not meet the requirements of s32 of the RMA, in particular s32(1), s32(2), s32(3) and s32(4).</p> <p>Not all viable alternatives have been considered. Namely, an option for longer term replacement consents (20 years) with a review condition.</p>	Complete the required s32 evaluation and renotify the plan change.
2	Objective 10A.1.1	Support	The Objective is sufficient.	Retain as notified.
3	Policy 10A.2.1	Oppose in Part	<p>The rewording proposed by HortNZ more appropriately reflects the recommendations of the Ministerial Direction in that this is an effective and effective framework to manage freshwater when new discharge and allocation limits are set by the new Otago Land and Water Regional Plan 2025. Noting that the new plan will establish minimum flows and limit setting based on robust science and hydrological modelling; including fair allocation within ecological limits.</p>	<p>Amend as follows:</p> <p><u>10A.2.1 Irrespective of any other policies in this Plan, avoid granting resource consents that replace deemed permits, or water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, except where:</u></p> <p><u>(a) The deemed permit or water permit that is being replaced is a valid permit; and</u></p> <p><u>(b) A review condition imposed on the replacement permit. There is no increase in the</u></p>

			<p>The decisions sought provide a coherent framework for assessing water consents that gives effect to national instruments.</p> <p>The decisions sought provide certainty to the Council, the consent holder and the Community about the review process and outcomes.</p> <p>In providing certainty, investment and financial security will not be adversely impacted to the same extent as the proposed PC7. Economic and social impacts will be lessened.</p>	<p><del>area under irrigation, if the abstracted water is used for irrigation; and</del></p> <p><del>(c) The rate of take and volume shall be no more than the demonstrated reasonable and efficient use with a 9 in 10 year reliability. There is no increase in the instantaneous rate of abstraction; and</del></p> <p><del>(d) Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and</del></p> <p><del>(e) There is a reduction in the volume of water allocated for abstraction.</del></p>
4	Policy 10A.2.2	Oppose in Part	For the reasons outlined in the body of the submission and as above.	<p>Amend as follows:</p> <p><u>10A.2.2 Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents for the take and use of water if a review condition is imposed to ensure the consent is reviewed once the Otago Land and Water Plan 2025 is operative.</u></p>
5	Policy 10A.2.3	Oppose in Part	For the reasons outlined in the body of the submission and as above.	<p>Amend as follows:</p> <p><u>10A.2.3 Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents that replace deemed permits, or resource consents that replace water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits that expire prior to 31 December 2025, for a duration of no more than</u></p>

				<p><u>six years, except where Rule 10A.3.2.1 applies and:</u></p> <p><u>(a) The activity will have no more than minor adverse effects (including no more than minor cumulative effects) on the ecology and the hydrology of the surface water body (and any connected water body) from which the abstraction is to occur; and</u></p> <p><u>(b) The resource consent granted will expire before 31 December 2035. A review condition be imposed to ensure the consent is reviewed once the new Otago Land and Water Regional Plan 2025 has been made operative.</u></p>
6	Rule 10A.3.1.1	Oppose in Part	For the reasons outlined in the body of the submission and as above.	<p>Amend as follows:</p> <p><u>10A.3.1.1 Despite any other rule or rules in this Plan;</u></p> <p><u>a) any activity that is currently authorised under a Deemed Permit; or</u></p> <p><u>b) the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is currently authorised by an existing water permit where that water permit expires prior to 31 December 2025;</u></p> <p><u>is a controlled activity provided the following conditions are met:</u></p> <p><u>(i) The consent duration sought is no more than six years; and</u></p> <p><u>(ii) The deemed permit or water permit that is being replaced is a valid permit; and</u></p> <p><u>(ii) A review condition be imposed to ensure the consent is reviewed once the new Otago Land</u></p>

				<p><u>and Water Regional Plan 2025 has been made operative. The application demonstrates that the total land area under irrigation does not exceed that irrigated in the 2017-2018 irrigation season, if the abstracted water is used for irrigation; and</u></p> <p><u>(iv) The rate of take and volume shall be no more than the demonstrated reasonable and efficient use with a 9 in 10 year reliability average maximum rate of take limit recorded during the period 1 July 2012 – 30 June 2017 and calculated in accordance with the method in Schedule 10A.4; and</u></p> <p><u>(v) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and</u></p> <p><u>(vi) The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly volume limit, or annual volume limit (whichever one or more are applicable) recorded during the period 1 July 2012 – 30 June 2017, and calculated in accordance with the method in Schedule 10A.4.</u></p> <p><u>The Council reserves control over the following matters:</u></p> <p><u>(a) Intake method and flow rate controls to avoid or mitigate fish entrainment; and</u></p> <p><u>(b) The volume and rate of water taken, dammed, discharged or diverted, and the timing and frequency of the take or damming or diversion or discharge; and</u></p> <p><u>(c) Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit; and</u></p>
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				<p><u>(d) Provision of fish passage; and</u>  <u>(e) The rules or operating procedures of any relevant water allocation committee that exists for the catchment; and</u>  <u>(f) Minimum flow, residual flow or take cessation conditions; and</u>  <u>(g) Review conditions; and</u>  <u>(h) Compliance monitoring; and</u>  <u>(i) The point and method of measurement and the method for transmitting recorded data to Council.</u>  <u>Pursuant to sections 95A and 95B of the RMA, an application for resource consent under this rule will be processed and considered without public or limited notification. Limited notification to affected order holders in terms of section 95F of the RMA will be necessary, where relevant, under Section 95B(3) of the RMA.</u></p> <p><i>Advice Note: If the application is for a new water permit (and not the replacement of a deemed permit or replacement of an expiring water permit) refer to the rules in Chapter 12 of this Plan.</i></p>
7	Rule 10A.3.2	Oppose in Part	For the reasons outlined in the body of the submission and as above.	<p>Amend as follows:</p> <p><u>10A.3.2.1 Despite any other rule or rules in this Plan:</u>  <u>a) any activity that is the replacement of an activity authorised under a Deemed Permit; or</u>  <u>b) the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is the replacement of a take and use authorised by an existing water permit where that water permit expires prior to 31 December 2025;</u></p>

				that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a <i>non-complying discretionary activity</i> .
8	Insert new definition of <i>Reasonable and efficient use</i>		To provide clarity for changes sought	<p>Insert new definition as follows:</p> <p><u>When applied to the taking or using of water for irrigation, reasonable and efficient use means an assessment of water use in the particular circumstances of the activity, including consideration of the water requirements for the land use activity; whether there are already existing resource consents for the use of water for the same area of land, the specified growth requirements of a business and the requirements of a crop through all phases of the life cycle.</u></p> <p><u>To avoid 'water banking', an implementation plan will be in place to demonstrate how full irrigation of their consented irrigation area will occur.</u></p>
<b>Schedule 10A.4 – Methodology for calculating assessed actual usage for surface-water takes for irrigation purposes.</b>				
9	Clause 10A.4.1 – Methodology for calculating 'Rate of Take Limit'	Oppose in Part	For the reasons outlined in the body of the submission and as above.	Amend to include recognition of reasonable and efficient use with 9 in 10 years reliability.
10	Clause 10A.4.2 – Methodology for calculating Daily Volume Limit (m <sup>3</sup> )	Oppose in Part	For the reasons outlined in the body of the submission and as above.	Amend to include recognition of reasonable and efficient use with 9 in 10 years reliability.

11	Clause 10A.4.3 – Methodology for calculating Monthly Volume Limits (m <sup>3</sup> )	Oppose in Part	For the reasons outlined in the body of the submission and as above.	Amend to include recognition of reasonable and efficient use with 9 in 10 years reliability.
12	10A.4.4 – Methodology for calculating Annual volume Limit (m <sup>3</sup> )	Oppose in Part	For the reasons outlined in the body of the submission and as above.	Amend to include recognition of reasonable and efficient use with 9 in 10 years reliability.