

Practice Note for Applicants: How PC7 applies to your application

How PC7 applies to your application depends on:

- the nature of the application lodged;
- PC 7 rules that applied at lodgement; and
- whether other activities have been applied for in addition to a consent to take and use water.

The objective, policies and rules of PC 7 can be found here: [Decision No \(environmentcourt.govt.nz\)](https://www.environmentcourt.govt.nz).

If you are applying for a new take PC7 rules do not apply. You will need to look at the rules in Chapter 12 of the Regional Plan: Water for Otago.

Options for consents to take and use water under PC7

If you are replacing a deemed permit or a water permit that expires before 31 December 2025, PC7 (Chapter 10A) rules apply.

There are generally three pathways for consenting under PC 7: controlled activity (must be granted), restricted discretionary activity and non-complying activity¹.

1. A **controlled activity** must be granted, but conditions may be applied. This is available if:
 - you are not seeking consent for more than 6 years AND
 - you have good water metering data AND
 - you are not seeking more water than the rate or volume of take recorded by the water meter before 30 June 2020 AND
 - any existing limitations on the take (i.e. residual flow, minimum flow, or take cessation conditions, or rights of priority on a deemed permit) are to be carried into the replacement consent AND
 - you are not increasing the area of irrigation beyond the maximum area irrigated between 1 September 2017 and 18 March 2020.

If the take is for an orchard or vineyard, an additional area of irrigation can be included if the mainline irrigation pipes for that area were installed before 18 March 2020.

If your lodged application does not meet these entry criteria you can seek to amend your application to gain the benefits of being considered under this rule.

Note, if you are replacing a deemed permit for damming some of the entry criteria (irrigated land area, rates and volumes recorded by a meter) will not apply and those entry criteria are deemed to be met.

2. The **restricted discretionary activity** rule (historic use) provides for those applications that generally meet the controlled activity requirements but cannot meet the requirements about recorded rate and volume of take because of limited water

¹ There is a fourth pathway (restricted discretionary) but this only relates to specific Trustpower applications associated with the Waipori Hydro-electricity Scheme.

measuring data, and for community water supplies where there is a need to increase the take (within the limits of the existing permit) to provide for population growth within a six year consent term.

Note: The controlled activity and restricted discretionary activity rule (historic use) both have a preclusion on limited notification and public notification. This means that once the rules are beyond challenge there will be no affected parties to your take and use application².

3. If you choose not to amend your application to meet the requirements for either of the controlled activity or restricted discretionary options above, your application will be considered under the non-complying pathway.³

However, the direction of the PC7 decision is that this is for exceptional circumstances. We can advise that this processing pathway is likely to be time consuming and costly with no certainty on a decision to grant. If you are seeking to proceed with a non-complying activity we advise that you speak with us.

Things to think about when deciding whether to amend your application

In deciding whether to amend your application and what to amend within your application, the amendment form can be used as guidance. In addition, you will need to think about the following:

- The controlled and restricted discretionary rules are for consent terms of no greater than 6 years. Did you apply for a consent term greater than 6 years?
- What was the maximum area of land irrigated between 1 September 2017 and 18 March 2020 that the water permit you have sought to replace irrigated? What evidence do you have to support this? Did you apply for an increase in the area of land to be irrigated?
- If you are seeking to provide for new areas of irrigation for viticulture or orchards, and mainline irrigation pipes for these areas were installed prior to 18 March 2020, what evidence do you have of this? What size is this additional area? What are the best management practices you follow/propose to follow to minimise water quality effects?
- What is the rate of take and monthly and seasonal volumes you have applied for? Is this less than or more than water meter records show you have taken prior to 30 June 2020? (The controlled activity rule requires the rates and volumes to be equal to or less than that calculated using the Schedule 10A.4 methodology. We will send you a copy of your Schedule 10A.4 data results as they become available from our Data Team.
- If your take is for less than 5 litres per second or is a non-consumptive take, are the rates and volumes sought no more than the current consented rates and volumes?
- If you wish to use water measuring data beyond 30 June 2020 or have insufficient water metering data, what other methods and data have you included or do you need to accurately represent historic water use? Are the rates and volumes sought no more than existing permit conditions?

² If your application includes consents for other activities, then we may still need to consider if there are any affected parties for those parts.

- Does the permit you are replacing have any residual flow conditions, minimum flow conditions or any other conditions that restrict when and how much water can be taken? Does your application seek to include these on the new consent?
- Are you replacing a deemed permit? If yes, does your current deemed permit have any priorities listed on it? If yes, are you the first priority or a lesser priority? What deemed permits have priority over your take?
- Are you a community water supply? Is there a need to provide for population growth? How will population growth for the term of the consent be determined? How will water requirements for the population growth be determined?
- Have you proposed environmental mitigation measures in your application (e.g. new residual flows, fish screens, flow sharing)? Do you propose to remove any of these mitigation measures from the application? How much will that change the application as lodged?
- Does the application include activities other than taking and use water (e.g. damming, discharges, diversions, instream works)? If yes, do you seek to amend any part of those applications (e.g. reduce the consent term)?

What if I have 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.