

Make good obligations

What are make good obligations?

Make good obligations are established to ensure petroleum tenure holders manage the impact of their operations on bore owners in the area.

Make good obligations include:

- undertaking a bore assessment
- entering into a make good agreement with the bore owner
- complying with the make good agreement
- varying the make good agreement if requested .

What is a make good agreement?

A make good agreement is an arrangement between a petroleum tenure holder and water bore owner. The purpose of a make good agreement is to ensure that water bore owners impacted by tenure operations are able to maintain access to a reasonable supply of water for the authorised use and purpose of their bore.

The agreement is required for water bores that are predicted to experience a decline in water quantity, or decline in quality resulting from a water level decline. This impact is due to the extraction of underground water by a petroleum tenure holder.

When is a make good agreement required?

A make good agreement must be prepared in one of four circumstances:

- If an underground water impact report (UWIR) has not taken effect, but the tenure holder believes the water bore has an 'impaired capacity'.
- If a UWIR has taken effect, for water bores identified in an 'immediately affected area'.
- If a final report has taken effect (when the tenure is about to cease) for water bores identified in a 'long term affected area'
- If the chief executive believes urgent action is necessary to restore water supply to a water bore or prevent a bore having an impaired capacity

When does a water bore have an impaired capacity?

A water bore is considered to have an 'impaired capacity' where:

- there is a decline in an aquifer's water level at the location of the bore because of extraction of water by the petroleum tenure holder
- the bore can no longer provide a reasonable quantity or quality of water for its authorised use or purpose.

For water bores constructed after the first UWIR for the area takes effect, a bore is considered to have an 'impaired capacity' if the decline is greater than that predicted in the UWIR.

What are 'immediately affected areas' and 'long term affected areas'?

An 'immediately affected area' is an area where the water level in an aquifer is predicted to decline by more than the 'bore trigger threshold', within three years of the underground water impact report being released for consultation. The decline in aquifer water level is a decline due to the extraction of water associated with petroleum activities.

A 'long term affected area' is an area where the water level in an aquifer is predicted to decline by more than the trigger threshold at any time (beyond three years), due to the extraction of water associated with petroleum activities.

Maps of an 'immediately affected area' and a 'long term affected area' are included in an UWIR.

Once approved, UWIR's will be made publicly available through the Department of Environment and Resource Management's (DERM's) website.

What is the role of baseline assessments in the make good agreement process?

Petroleum tenure holders are required to undertake baseline assessments of all authorised water bores within the area of the tenure.

Baseline assessments are to be conducted before any water is taken for testing or production. This means that the baseline assessments are undertaken prior to approval of an underground water impact report for the tenure.

The baseline assessments will be the reference point when subsequent bore assessments are conducted.

The key difference between baseline and bore assessments is that baseline assessments will establish benchmark data about the condition and capacity of water bores, prior to any impact of the petroleum tenure holder exercising underground water rights.

The information gathered through baseline and bore assessments is important for informing the negotiations of a make good agreement.

What must be included in a make good agreement?

The make good agreement between a petroleum tenure holder and a water bore owner must provide for:

- the outcomes of water bore assessments undertaken by the petroleum tenure holder
- whether the water bore has, or is likely to, experience an impaired capacity
- the measures that the petroleum tenure holder will take if the bore has an impaired capacity.

What are make good measures?

Make good measures are measures that:

- ensure the bore owner has access to a reasonable quantity and quality of water for the water bore's authorised purpose for example:
 - bore enhancement by deepening the bore or improving its pumping capacity
 - constructing a new water bore
 - providing a supply of an equivalent amount of water of a suitable quality by piping it from an alternative source
- carry out a plan to monitor the water bore, for example, by undertaking periodic bore assessments
- provide the water bore owner compensation (monetary or otherwise) for the bore's impaired capacity.

Can the terms of a make good agreement be changed?

The tenure holder or bore owner can negotiate to change the terms of a make good agreement when either of the parties discovers that:

- there is a material change in the circumstances
- one or more of the make good measures agreed upon are not effective
- another effective and more efficient make good measure is available.

Examples of where the make good agreement may need to be varied include:

- when the impacts on a water bore (because of the exercise of underground water rights) are much greater than those predicted in the underground water impact report
- when there is a change in the authorised activities conducted in the area (by the tenure holder) and the change in the activity is causing a substantial change to the aquifer's water levels.

Who is bound by the make good agreement?

The make good agreement will bind the petroleum tenure holder and the water bore owner. The agreement will also be binding on anyone who inherits title of the petroleum tenure and the water bore and any person to whom title of the water bore/tenure is transferred.

Petroleum tenure holders must make their best effort to enter into a make good agreement. The tenure holder must also reimburse the bore owner for any reasonable legal or valuation costs in negotiating the agreement.

What if the parties of a make good agreement do not agree?

If the parties do not agree on the terms or one party fails to comply with the agreement, a request can be made to the chief executive of DERM to negotiate a resolution.

Either party may also request agreement via the Alternative Dispute Resolution (ADR) process.

If the arranged negotiation or ADR is unsuccessful, either of the parties may apply to the Land Court to decide on the matter that is in dispute.

For general enquiries contact the Queensland Government call centre 13 74 68 (13 QGOV) or visit <www.derm.qld.gov.au>