

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND of a notice of motion under section 149T(2) to decide proposed Plan Change 1 to the Regional Plan: Waste for Otago and proposed Plan Change 8: Water for Otago (referred to the Environment Court by the Minister for the Environment under section 142(2)(b) of the Act)

OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-128)

Applicant

**MINUTE OF THE ENVIRONMENT COURT
GENERAL DIRECTIONS ON PLAN CHANGES 1 & 8**

(28 October 2020)

Introduction

[1] The following Minute is released for the purpose of case management and gives general directions on the Plan Changes 1 and 8 (the Omnibus Plan Change) which have been referred to the Environment Court.

[2] The court is intending hearing Plan Change 7 before Plan Changes 1 & 8. It is our view that many of the issues raised by submitters in relation to Plan Changes 1 & 8 are capable of settlement or, at least being narrowed. Therefore, the court is considering referring Plan Changes 1 and 8 to mediation and/or expert conferencing. The court will release further directions on the plan changes later this year or in the New Year.

[3] What follows next are general directions that will apply when the plan changes are set down for hearing.



The website

[4] The Environment Court has established webpages for information relevant to the hearing of the plan changes which can be accessed from:

<https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/>.

Communications with the court

[5] All correspondence to the court is to be sent:

Email (if available): ORC@justice.govt.nz

Or

Mail: Environment Court, PO Box 2069, Christchurch 8140

Friend of Submitter

[6] The court has appointed a Friend of Submitter, Jane Whyte. Ms Whyte is a resource management consultant (a planner).

[7] Many people find court hearings complex. The Friend of Submitter role is to assist parties, particularly those who do not already have professional assistance, on matters of process and procedure. Where appropriate, Ms Whyte may also assist submitters with common interests to combine the presentation of their cases. She may give helpful guidance as to the difference between speaking to your submission (or making representations) and giving evidence.

[8] That said, it is not the role of the Friend of Submitter to provide advice on the merits of submissions or on the evidence. Nor is Ms Whyte able to give legal advice.

[9] The court will release a Minute setting out dates and times parties may meet with Ms Whyte. Ms Whyte may contact you directly but, in the meantime, Ms Whyte's contact details are on the court's website (<https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/friend-of-submitters/>).



Service of documents

[10] The court has released a Minute regarding service of documents. Copies of the Minute may be found here:

- <https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc8/court-communications/>; or
- <https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc1/court-communications/>

[11] Unless a party has notified the court that they wish to receive documentation by post (or by some other method), service of documents will be effected by the court uploading documents to the court's website.

[12] Typically, the documents to be uploaded onto the court's website will be:

- (a) the evidence and any joint witness statements;
- (b) legal submissions and any written representation made by an unrepresented party;
- (c) correspondence from parties seeking general directions from the court (i.e. directions affecting more than one party); and
- (d) any applications for decision by the court.

[13] The court will notify parties by email when a document has been uploaded to its website. Even so, I strongly encourage all parties to regularly check the website.

Hearing venues

[14] Planning for a hearing during a pandemic presents its own challenges, not least the need to put in place measures that will allow a hearing to continue should a regional lockdown occur.

[15] Adequately sized courtrooms are not available for the length of time likely to be required for these proceedings. Therefore, the hearing will take place at external venues.



[16] To reduce the potential impact of a regional lockdown on the smooth and efficient running of the hearing, it is the view of the court that the hearing shall commence in Dunedin where the court will hear from all parties calling expert evidence.

[17] The court is looking to sit in central Otago (Cromwell or Alexandra) to hear from parties who wish to speak to their submission (only) or – if calling evidence – do not intend calling an expert witness.

[18] Audio visual systems will be available should any party or witness be unable to travel to the hearing because of a lockdown or illness.¹

Role of submitters

[19] Every person who has made a submission or further submission on the proposed plan change, and who has given notice that they wish to become a party to these proceedings, may speak to their submission and, if they wish, call evidence.

[20] If you do not wish to become a party to this proceeding, your submission will still be read and considered by the court. However, from **16 November 2020** you will receive no further communication from the court, apart from notification of the final decision, and you will not be able to participate in the hearing or other court processes.

[21] Any party may speak to their submission personally or have a representative do so on their behalf. A representative may be a lawyer, but does not have to be. If you choose to have a lawyer, he or she may make legal submissions on matters that arise from your submission.

[22] As the court will have read your submission, it is not necessary for you to read it out loud to the court. Rather, speaking to your submission typically means highlighting and expanding upon key points that you wish the court to consider.

[23] If you are seeking to make a change to the wording of any provision of the plan changes, this should be set out in writing giving reasons for the change. You will need to be careful not to go beyond what your submission originally covered or asked for. If

¹ Evidence may be given by audio-visual link for other reasons, and where this is proposed leave of the court will be required.



you made a further submission, any change you seek cannot be greater than the original submission that you support or oppose.

[24] The court will issue directions on procedures that are to be followed when speaking to your submissions in court, particularly when seeking to change any provision. It is important that you follow the court's directions. A Friend of Submitter has been appointed to assist parties in this regard.

Who may present evidence?

[25] Every person who makes a submission or further submission on a proposed plan change, and who has given notice that they wish to become a party to these proceedings, may call evidence.

[26] A person giving evidence is called a witness, and this person will formally swear (or affirm) to tell the truth before they give their evidence. Unless otherwise directed, evidence is to be presented in court.

[27] The court will issue directions on procedures to be followed for parties calling evidence and it is important these are followed. The Friend of Submitter is also available to assist parties here, including in understanding the difference between giving sworn (or affirmed) evidence and speaking to your submission in court.

Pre-circulation of evidence

[28] If you intend to call a witness or give evidence yourself then you are to provide a written statement of the evidence. The court will issue a Minute directing when evidence is to be filed.

[29] As the court will pre-read the evidence before the hearing commences, you should expect the court to direct that all evidence will have been filed no later than **two weeks** prior to the commencement of the hearing.



[30] The order for filing evidence will be:

- (a) the evidence-in-chief of the Otago Regional Council;
- (b) the evidence of the parties; and
- (c) the evidence-in-reply of the Otago Regional Council.

[31] The court will upload the evidence on its website as soon as practicable after filing and you will be notified by email when that has occurred.²

[32] Supplementary evidence may only be filed with the prior leave of the court.

Otago Regional Council may call evidence

[33] The Otago Regional Council may call evidence in support of the proposed plan changes and respond to the submissions and to the evidence given on behalf of the parties. The court may also direct the Otago Regional Council to prepare evidence on certain topics or issues, as they arise.

[34] Unless directed otherwise, as a minimum, the Regional Council's evidence will assist the court and parties to have a proper understanding of the context for the plan changes and, amongst other matters:

- (a) describe the state of the environment at a catchment and/or sub-catchment level in such detail as is appropriate to understand the proposed plan changes;
- (b) identify the significant resource management issues that the plan changes seek to address;
- (c) explain how the principles of the Treaty of Waitangi have been taken into account (s 8 RMA);
- (d) review the plan change objectives against the higher order planning instruments, taking care to identify to what extent the plan changes are to give effect to the same;³

² The court will not upload evidence where it has made confidentiality orders or orders prohibiting or restricting publication.

³ These are any relevant National Policy Statement and Regional Policy Statements.



- (e) in line with s 44A RMA, review the plan changes against any applicable National Environmental Standards;
- (f) address any linkages between the plan change provisions and the provisions of the operative Regional Plans; and
- (g) consider any amendment proposed by the parties and, giving reasons, either:
 - (i) support the amendment, with or without further change, and evaluate it in line with ss 32 & 32AA;⁴ or
 - (ii) support the plan change as notified (i.e. without amendment); and
 - (iii) attach to the evidence a complete set of tracked changed provisions.

Planning evidence of other parties

[35] Planning witnesses called by the other parties will, as a minimum:

- (a) identify and address the significant resource management issues that the plan change seeks to address;
- (b) if proposing to amend a plan change provision, evaluate the proposed change in line with s 32 giving reasons for their support; and
- (c) attach to their evidence a complete set of tracked changed provisions.

Form of evidence

[36] Evidence to be presented at a hearing shall be a written statement which is to:

- (a) include a one-page summary of the key points;
- (b) number all pages and paragraphs;
- (c) be in Arial typeface, 11 font and line spacing not less than 1.5;
- (d) ensure evidence exceeding 20 pages includes a table of contents;
- (e) ensure plans, maps and photographs include the North point, a scale and Key;
- (f) propose changes to any provision by specifying the change sought with amendments or deletions underlined or struck through, as appropriate; and
- (g) attach a complete set of tracked changes to the provisions at the end of the evidence.

⁴ As applicable.



[37] The court will receive evidence written or spoken in Māori when requested to do so by a party. To ensure an interpreter is present, the court requires no less than 10 working days' notice⁵ that you will speak to your submission or present evidence in Māori. Any written evidence is to be filed with an English translation.

[38] The court will consider any request to open the hearing with a karakia.

[39] The court will also receive evidence presented in sign language or another language other than English or Māori. Again, to ensure an interpreter is present the court requires no less than 10 working days' notice⁶ of the need to provide an interpreter.

Exhibits

[40] If not attached to a brief of evidence, all exhibits, including photographs and other visual presentations, are to be presented in a practical and manageable form, and should be of a scale so as to be clearly legible. Individual documents or photographs should be separately identified and also show the North point, a scale together with an accurate Key.

[41] Unless directed otherwise, any party proposing to produce an exhibit at the hearing is to bring 10 copies of the document to the hearing.

Hearing Administrators

[42] The Otago Regional Council has appointed two Hearing Administrators, they are Glen Cooper and his assistant Rebecca Jackson.

[43] It is their role to assist the court with the implementation of its directions. Aside from an initial meeting to define roles and responsibilities, the Hearing Administrators are not in direct communication with the members of the bench.⁷

⁵ This is notice prior to the commencement of the hearing.

⁶ This is notice prior to the commencement of the hearing.

⁷ That is, the presiding Judge and Environment Commissioners hearing the case.



[44] Their key roles are to:

- (a) facilitate meetings with the Friend of Submitter;
- (b) organise the parties and witnesses to hearings and to other court events⁸ and preparing and keeping updated the Hearing Schedules;⁹
- (c) where parties are unrepresented, respond to party enquiries,
- (d) during a hearing and other court events:
 - provide hard copies of documents requested by the parties and their witnesses;
 - assist parties and members of the public with general enquiries;
 - direct media enquiries to the court, and
- (e) assist the court, as directed by Mark St Clair (Special Advisor to the court) or Cathy Harlow (Environment Court Hearing Manager).

Special Advisor to the Environment Court

[45] Resource management consultant, Mark St Clair, has also been appointed a Special Advisor to the court. Mr St Clair's role is to assist the court. He will not be sitting as a member of the court deciding the proceeding.

[46] Presently he is:

- advising the court in relation to first instance hearing procedures and the likely resource requirements at pre-hearing and hearing stages;
- providing advice as to the interface between the three proposed plan changes and timing and sequencing of those plan changes to a hearing;
- acting in the capacity of liaison between the Regional Council's Hearing Administrators and the court; and
- reporting, as directed, to the court on any matter raised in evidence.

⁸ Mediation and Expert Witness Conferencing may be directed by the court.

⁹ The Hearing Schedule will advise the location, date, sequence and time allocated to each party to present their case.



Transcript

[47] Finally, the hearing will be recorded and transcribed. An audio record will be uploaded to the court's website at the end of each day.¹⁰ The written transcript will be uploaded to the court's website as soon as it is available.

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J E Borthwick
Environment Judge

Issued: 28 October 2020

¹⁰ Or as soon as available if the recording is not available at the end of the day.