

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

Under the Resource Management Act 1991

In the matter of a notice of motion under section 149T(2) to decide proposed
Plan Change 7 to the Regional Plan: Water for Otago (referred
to the Environment Court by the Minister for the Environment
under section 142(2)(b) of the Act)

Between **Otago Regional Council**

Applicant

**Memorandum of Counsel for the Otago Fish and Game Council and the Central
South Island Fish and Game Council**

23 November 2020

Section 274 party's solicitors:

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May it please the Court

- 1 This memorandum is filed on behalf of the Otago Fish and Game Council and the Central South Island Fish and Game Council (**Fish and Game**), in accordance with the Court's Minute dated 2 November 2020.
- 2 Fish and Game have joined the Plan Change 7 proceedings as an interested party in accordance with s 274 of the Act.

Attendance at pre-hearing conference

- 3 Fish and Game will be represented at the pre-hearing conference by legal counsel Ms Baker-Galloway and Ms Giles. Counsel will attend in person.
- 4 The matters set out in this memorandum are raised as matters to be raised with the Court and potentially discussed between the parties at the pre-hearing conference.

Timetabling

Evidence exchange

- 5 Fish and Game respectfully request a one week extension to the deadline for the parties to file evidence in chief, being to **5 February 2021**. In the interest of fairness Fish and Game would support a corresponding extension for the Regional Council to file its reply evidence.
- 6 The December to January period is a busy period for Fish and Game's counsel and experts, with existing deadlines and mediations scheduled, as well as school holidays and the office shut down period. While the deadline will be possible to meet, a deadline in the first week of February will be far more manageable. It is anticipated many parties will be in this position.
- 7 Respectfully, counsel consider the requested extension (and corresponding extension for the Regional Council) could be accommodated without the need to amend the proposed hearing timetable.

Hearing and expert conferencing

- 8 As per paragraph 12(a) of the Court's Minute Fish and Game understands the Court's intention is that parties calling witnesses will appear in Dunedin in the first three weeks of hearing.
- 9 Fish and Game wishes to confirm its counsel and experts are available to present its case in this first hearing block, and its experts are generally available for expert conferencing in the week of 22 March 2021.

- 10 Fish and Game's planning expert Mr Farrell is unavailable from the last week of April to the first two weeks of May 2021. If there is any slippage in the hearing timetable Mr Farrell will be unavailable to attend a hearing or expert conferencing in these weeks.
- 11 Fish and Game's ecology expert Mr Trotter is unavailable from March 25 to April 9 and in early May 2021. If expert conferencing proceeds as proposed in the week of 22 March 2021 Mr Trotter will not be available for conferencing, however Fish and Game understands conferencing is focused on Schedule 10A.4 which may not involve ecology expertise.

Structure of hearing

- 12 Fish and Game respectfully suggests confirmation on the form of the hearing will be of assistance. Its expectation is that the Regional Council will first present its case then each party will be designated a timeslot to give opening submissions and present evidence, with its experts being cross examined in this same timeslot. On initial consideration this is Fish and Game's preference.
- 13 However, depending on the number of parties involved and the number of experts being called, particularly for planning and hydrology, it may be more efficient to have separate hearing days scheduled to address the various areas of expertise.

Scope of Plan Change 7 and application of National Policy Statement for Freshwater Management

- 14 Fish and Game understands the scope of Plan Change 7 is narrow, focused on establishing an interim regime for short term consenting until the Land and Water Regional Plan is notified.
- 15 In terms of the extent to which Plan Change 7 can give effect to the National Policy Statement for Freshwater Management (**NPS-FM**) Fish and Game is of the understanding that this will be limited, particularly if Plan Change 7 continues in a form that provides only for short term consents. However, if this is amended to longer terms consents, the requirement to give effect to a wider scope of the NPS-FM is arguably increased.
- 16 It is submitted that the extent to which the NPS-FM provisions are relevant, including the principle of Te Mana o te Wai, may be usefully confirmed by the Court as a preliminary issue, as the extent the NPS-FM applies will affect the scope of evidence and matters to be considered.

17 A formal direction on this point is not sought, as counsel submits this is best addressed first at the Pre Hearing Conference as there are likely to be a range of views discussed.

Status of Partially Operative Regional Policy Statement

18 The Otago partially operative Regional Policy Statement (**poRPS**) includes changes to the provisions of the poRPS confirmed by the Court prior to 14 January 2019.

19 Further changes to the poRPS, in particular to Chapter 3, have been confirmed by the Court by decision [2019] NZEnvC 42 dated 15 March 2019 and Consent Order dated 6 March 2020. It is not apparent that these changes have been made operative by the Regional Council.

20 It is important for the parties to understand the status of these amended Chapter 3 provisions, to understand what provisions of the poRPS Plan Change 7 must give effect to.

21 Fish and Game requests that the Court direct the Regional Council to file a memorandum confirming the status of these Chapter 3 provisions, i.e. whether they are part of the poRPS, and if not, why.

Directions sought

22 Fish and Game respectfully seeks directions that:

- (a) the evidence exchange timetable be amended as set out in **Appendix A**; and
- (b) the Regional Council file a memorandum confirming the status of the Chapter 3 provisions of the poRPS as confirmed by the Environment Court by decision in March 2019 and Consent Order in March 2020.

Dated this 23rd day of November 2020



Maree Baker-Galloway/Roisin Giles
Counsel for the Otago Fish and Game Council

Appendix A – Amended evidence exchange timetable sought

Timetable evidence exchange		
Event	Venue	Date
ORC evidence-in chief		1 December 2020
Parties evidence-in chief		29 January 2021 <u>5 February 2021</u>
ORC reply		12 February 2021 <u>19 February 2021</u>

Notice of cross-examination		
Event	Venue	Date
ORC evidence-in chief		18 December 2020
Parties evidence-in chief		12 February 2021 <u>19 February 2021</u>
ORC reply		19 February 2021 <u>26 February 2021</u>