

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV: 2020-CHC-127

In the Matter

of the Resource
Management Act 1991

And

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)

**OTAGO REGIONAL
COUNCIL**

Applicant

MEMORANDUM OF COUNSEL

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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MEMORANDUM OF COUNSEL

1. This memorandum responds to:
 - (a) the Notice of Pre Hearing Conference dated 17 November 2020;
and
 - (b) Memorandum of Counsel for ORC dated 20 November 2020

Parties to be represented at PHC

2. Bridget Irving will be attendance for the following parties at the Pre Hearing Conference on Friday 27 November:
 - (a) Last Chance Irrigation Limited
 - (b) Falls Dam Limited
 - (c) Otago Water Rights Users Group (OWRUG)
 - (d) MFS Ventures Limited
 - (e) Loganbrae Limited
 - (f) Patearoa Station Limited
 - (g) Dairy Farms Partnership
 - (h) Cardrona Water Users Incorporated
 - (i) Maniototo Irrigation Limited
 - (j) James Dicey
 - (k) Hamilton Runs Limited
 - (l) Ian Bathgate

Amendments to proposed timetable

3. The parties above oppose the proposed amendments to the timetable requested by the Counsel on behalf of the Otago Regional Council. The requested changes will significantly prejudice the section 274 parties and their ability to respond to the evidence produced by the ORC. The reasons for this are:

- (a) It has been 3 weeks since the Court made its evidence exchange directions. No explanation is given by the ORC for the delay in seeking amendments to the timetable.
- (b) The likely expert witnesses for the s274 parties have reorganised their schedules to accommodate the Court's directions. Many of these witnesses are also involved in the preparation of resource consent applications to renew deemed permits which are due to be filed during the evidence exchange timetable to meet the requirements of section 124(1)(d) of the Act¹ (and affected by PPC7). The two weeks between 1 December and 14 December are critical for the witnesses and their clients to have adequate time to review the ORC's evidence and begin preparation of their own. The original timetable set down by the Court was a challenging timetable for the parties, but given the importance of PPC7 and urgency with which the Court wishes to deal with this matter, they had reorganised their December workload to meet the Court's directions..
- (c) The ORC claim there is no prejudice from the proposed amendments. The ORC cannot possibly know that because the Council had not consulted with section 274 parties. The planning, hydrology, and ecology experts to be called by the section 274 parties this counsel acts for are not available in the first two weeks of January. The proposed amendment would see the ORC's evidence filed only 4 statutory working days prior to the Christmas shut down. There are effectively only 19 statutory working days between when the ORC propose to file their evidence and the date that the section 274 parties would be required to file theirs. Given the significance of PPC7 to the section 274 parties this creates significant prejudice.
- (d) The section 274 parties have been unable to advance evidence preparation prior to the ORC filing their evidence as there are

¹ Replacement permit applications must be lodged not less than six months prior to the expiry of the permits being replaced to enable the exercise of those permits to continue whilst the replacement applications are processed.

currently no ORC reports in the public domain that provide the resource science basis for PPC7, or address the topics that the Court has directed be addressed in the ORC's evidence. The section 32 report does not illuminate matters.

- (e) Given that PPC7 is the ORC's plan change it is unclear how it can find itself so pressed for time in preparation of evidence. Counsel would have expected that the evidential support for the Plan Change would have been gathered in the course of preparing PPC7 and available prior to its preparation and to support the section 32 report.
- 4. It is submitted that the fairest and most efficient and transparent course of action is for the ORC to simply produce the evidence that it already has, and which PPC7 was founded upon when it was adopted by the ORC and publicly notified. It is submitted that there is now insufficient time for retrospective evidence gathering, if that is what the ORC is seeking time to do.
- 5. If the ORC is to be granted the extension requested, it would only be fair for the section 274 parties to be given a similar extension and for the balance of the proposed timetable to be pushed out by the same timeframe. The unfortunate consequence of this is that it would likely require the first week of the hearing to be vacated.

Date: 23 November 2020



B Irving