

**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 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
(ENV-2020-CHC-127)
Applicant

Before: Environment Judge J E Borthwick
Environment Commissioner D J Bunting

Held: in Dunedin on 27 November 2020 at 10 am

Appearances: See Attachment A

**RECORD OF PRE-HEARING CONFERENCE
TIMETABLE DIRECTIONS AND EXPERT CONFERENCING
PLAN CHANGE 7**

(27 November 2020)

Introduction

[1] Proposed Plan Change 7 (PC7) was set down for a pre-hearing conference in Dunedin. This Minute sets out a record of directions given at the conference. The directions are in addition to the general directions made in the Minute dated 28 October 2020.

Parties in attendance

[2] A list of parties attending the pre-hearing conference may be found at **Attachment A**.

ORC – PC7 - PHC 27 NOVEMBER 2020 - FINAL TIMETABLE AND EXPERT CONFERENCING DIRECTIONS



Mediation

[3] Given the level of opposition to PC7 there is little prospect of mediation either resolving or narrowing the matters in issue. I will not refer parties to court-facilitated mediation. If parties are of a mind, they can engage in private mediation or discussion.

Expert Conferencing

[4] As previously noted, Schedule 10A.4 is key to the implementation of the proposed new objective and policies as it sets out the methodology for calculating actual usage of surface-water takes for irrigation purposes.¹

[5] Conferencing of expert witnesses in relation to Schedule 10A.4 will take place **during the hearing**. Having conferred with the other parties calling witnesses to give expert evidence in relation to the Schedule, ORC is to propose further directions including:

- (a) the filing date for the joint witness statement (if different from Attachment B);
- (b) a list of witnesses (including areas of expertise) attending the conference;
- (c) whether witnesses are required to attend court to lodge and confirm the contents of the joint witness statement;
- (d) if witnesses are required, whether counsel/parties agree on nominating particular witnesses who may represent their collective views and answer any questions by counsel or from the court.

Evidence timetable and hearing dates

[6] The timetable has been enlarged to allow ORC and parties more time to file evidence-in-chief. As a consequence, the dates for hearing have also changed.

[7] Those parties who do not intend to call evidence, but will simply speak to their submission, are to file a memorandum setting out the changes (if any) they propose to PC7's provisions by 5 February 2021.

[8] The final timetable is set out in **Attachment B**.

¹ Minute – Timetable Directions and Expert Conferencing for PC7 dated 2 November 2020.



Structure of the Hearing

[9] The hearing will proceed party-by-party commencing with ORC.

[10] In the New Year, the court will request ORC's hearing administrator, Mr Glen Cooper, canvass parties over the hearing schedule,² including the order of parties and their witnesses.

Partially Operative Regional Policy Statement

[11] While ORC has not formally resolved to make operative Chapter 3 of the RPS,³ as the provisions are the subject matter of a court order, it considers them as being beyond challenge.⁴

National Policy Statement for Freshwater Management 2020 and Te Mana o te Wai

[12] ORC must give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) as soon as reasonably practicable.⁵ While PC7 was notified before the NPS-FM 2020 came into force, in ORC's view the fundamental concept of Te Mana o te Wai is relevant (as it was under the former NPS-FM). The ORC intends addressing in evidence Te Mana o te Wai together with the NPS-FM's single objective. ORC may also address certain policies, the detail about which Mr Maw was unable to assist the court with at the pre-hearing conference.⁶

[13] It is ORC's view that Te Mana o te Wai (at least) will have a bearing on submissions seeking to amend or delete Objective 10A.1.1 and Policies 10A.2.2 and 10A.2.3 particularly insofar as these provisions are dealing with the duration of water permits. Parties will need to bear this in mind.

Cross-examination

[14] The proposed directions as to cross-examination are confirmed.

² See Minute - Timetable Directions and Expert Conferencing for PC 7 dated 2 November 2020 at [15]-[17].

³ ORC advises that it cannot formally resolve to make Chapter 3 operative as its provisions interface with other provisions that have been appealed by Port Otago to the Court of Appeal.

⁴ *Alliance Group Ltd v Otago Regional Council* [2019] NZEnvC 42 dated 15 March 2019.

⁵ National Policy Statement for Freshwater Management 2020, cl 4.1.

⁶ National Policy Statement for Freshwater Management 2020, cl 2.1.




[15] After evidence has been served, any party wishing to cross-examine is to file a notice with the court identifying the witness to be cross-examined. You are required to give notice by the time indicated in **Attachment B**.

[16] Unless leave is granted by the court, cross-examination of witnesses by each party is not to exceed 30 minutes. Any application for leave to exceed this limit is to be filed 10 working days before the hearing commences, giving reasons.

[17] Note: the court will ask its questions of the witnesses prior to cross-examination.

Jane S



J E Borthwick
Environment Judge

Issued: 2 December 2020

Attachment A

Appearances

- P Maw and M Mehlhopt for the applicant
- A Gillespie for Two Farmers Farming Ltd, Manuherikia Catchment Group
- B Irving for Last Chance Irrigation Limited, Falls Dam Limited, Otago Water Rights Users Group, Strath Clyde Water Limited, Mount Dunstan Estates Limited, McArthur Ridge Vineyard Limited, MFS Ventures Limited, Loganbrae Limited, Patearoa Station Limited, Dairy Farms Partnership, Cardrona Water Users Incorporated, Maniototo Irrigation Limited, Grape Vision Limited, Hamilton Runs Limited, Ian Bathgate, Hawkdun Idaburn Irrigation Company, Arrow Irrigation Company Limited
- C Perkins for Landpro Limited, Earl and Bernadine Attfield, Hortinvest Ltd, Tarras Cherry Corp Ltd, CCHD1 Ltd and CCHD2 Ltd, Ross Naylor, Omakau Area Irrigation Co Ltd, Knapdale Farms Ltd
- C Tamblyn for Caroline Tamblyn and Coal Creek Water Users Group
- D MacTavish for Wise Response Society Inc
- D Young for Donald Young
- E Crutchley for Maniototo West Side Irrigation Company, Puketoi Farming Ltd
- E Parcell for Carrick Irrigation Co Ltd, Carrick Peonies, Carrick Station and Carrickburn Ltd, MD and DG Jones Family Trust, Harold Kruse Davidson, Jacqueline and Kerry Chittock, Duncan and Rae Henderson, Gavin Hogg, William and Jennifer Scott, Jane Preston, Nathan Roberts, Maurice and Shirley Turner, C and G De Jong, Peter and Glenda McGrath, Kingsmill Wines, Richard Clark, Bannockburn Water Race Society, Hawksburn Station
- G Crutchley for Geoff Crutchley
- G Eckhoff for Gerrard Eckhoff
- G Martin for Graeme Martin, Kye Farming Limited, Cairnhill Farm Limited,
- H Walker for Pisa Irrigation Co Limited
- J. Welsh for Trustpower Limited
- K Heckler for David and Susan Hill, Lauder Water Users Group, Lauder Creek Limited
- K Reilly for Federated Farmers
- M Baker-Galloway for Otago Fish and Game Council and the Central South Island Fish and Game Council
- M Bartlett for Awarua Rūnanga, Waihopai Rūnanga and Ōrāka-Aparima Rūnanga (Ngāi Tahu ki Murihiku)
- M Hore for Glenshee Station Ltd
- N Lanham for Central Otago District Council
- P Walker for Dunedin City Council
- P Williams for the Director General of Conservation
- R Dixon for the Minister for the Environment
- S McIntyre for Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga
- T Heller and G Essenberg for Clutha District Council and Waitaki District Council
- T Gray for Horticulture New Zealand



Attachment B

Timetable evidence exchange	
Event	Date
ORC evidence-in chief	7 December 2020
Parties evidence-in-chief and memorandum listing proposed changes (if any) to PC7	5 February 2021
ORC reply	19 February 2021

Notice of cross-examination	
Event	Date
ORC evidence-in chief	5 February 2021
Parties evidence-in-chief	19 February 2021
ORC evidence-in-reply ⁷	26 February 2021

Further Directions in relation to Expert Conferencing	
Event	Date
ORC reporting memorandum	19 February 2021

Expert Conferencing		
Event	Venue	Event week
Conference date	Dunedin	29 March 2021
Release of joint witness statement		9 April 2021 (date for filing)

⁷ If, having received the Regional Council's evidence-in-chief, you have given notice that you wish to cross-examine their witnesses, there is no need to give notice again when the Regional Council files its evidence in reply.



Event	Venue	Event week
Hearing	Dunedin	8 March 2021
Hearing	Dunedin	15 March 2021
Hearing	Dunedin	23 March 2021 ⁸
Hearing	Cromwell	12 April 2021
Hearing	Cromwell	19 April 2021
Hearing	Cromwell (if required)	10 May 2021
Hearing Completion of expert evidence if required, presentation of Joint Witness Statements and ORC evidence-in-reply and closing submission.	Dunedin	17 May 2021
Hearing	Dunedin (if required)	24 May 2021



⁸ Otago Anniversary Day is Monday 22 March 2021. The hearing will not proceed on Anniversary Day, but recommence Tuesday 23 March 2021.