

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
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

**MINUTE OF THE ENVIRONMENT COURT
PLAN CHANGE 7
General Case Management
(2 March 2021)**

[1] This Minute is released for the purpose of case management.

The bench

[2] Environment Commissioner Kathryn Edmonds will now be sitting and deciding the plan change together with Environment Commissioner David Bunting and myself. Mr Ross Dunlop will facilitate expert conferencing.

[3] Newly sworn Environment Judge Steven will be observing the proceeding in the first week.



Mihi

[4] Kāi Tahu ki Otago has asked that Edward Ellison open the hearing with a mihi.

[5] The process will be that, after the bench arrives in court, all people present are to remain standing for his mihi.

Hearing schedule

[6] The appointment of Commissioner Edmonds has necessitated changes to the hearing schedule in week 5. I regret the inconvenience, but the changes are unavoidable. The latest draft hearing schedule has been uploaded to the court's website.

Attendance

[7] The court does not expect parties to attend the whole hearing. Parties are required to attend on the days they are scheduled to appear or cross-examine,¹ and may attend on any other day.²

COVID-19 response

[8] In response to the regional lockdown of Auckland, and possible future lockdowns, the court will provide both audio and visual files of the hearing.

[9] The audio files will be available on the court's website here: <https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc7/hearings/#audio-hearings>.

¹ There is no need to seek leave of the court to not attend on days parties are not scheduled.

² Should the size of the venue, social distancing requirements or COVID alert level restrictions on numbers mean that all those wishing to attend in person cannot do so, priority will always be given to those scheduled to appear or cross-examine.

[10] Details of the visual files will be available here:

<https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc7/hearings/#Video>.

[11] At this stage, it is unlikely that the court will live-stream the proceeding. Instead, it will upload the visual files at regular intervals each day.

[12] For counsel and parties unable to attend the hearing in person, a Zoom link to the proceeding will be provided and the protocols attached to this Minute will apply.³

Expert conferencing

[13] No party has raised any difficulty around expert conferencing and I confirm conferencing will now take place in the weeks commencing Tuesday 27 April and Monday 3 May 2021.

[14] As noted, Mr Ross Dunlop (Special Advisor) will facilitate the expert conferencing. I have previously directed that the facilitator is to make directions whether the planners are to be present. The parties are to ensure that their planning witnesses are available during these weeks.

[15] The proposed agenda for expert conferencing, set out in ORC's memorandum dated 1 March 2021, is noted. We take it that what is intended to be conveyed in the introductory words to the agenda at paragraph [11] of the ORC memorandum is something like "Whether, and if so how, Schedule 10A.4 is to address the following key issues raised in evidence...?" As previously directed,⁴ it is important counsel work closely with the experts on the agenda and it is not clear to the court that this was done. Thus far the agenda is a series of broad topics revealing little about the matters in issue. Parties can expect Mr Dunlop will satisfy

³ To preserve functionality for the court, the Zoom facility is only for those who are directly participating in the hearing.

⁴ Notice of Expert Conferencing dated 12 February 2021.

himself on these matters.

[16] No directions are made at this time in relation to whether the quantitative measures proposed by Dr Hayes for Fish & Game are to be included.⁵ This topic is a good illustration of why the court proposes conferencing of planning witnesses as it is concerned to have clarity around the significant resource management issue(s) that inform the plan change and therefore the type and range of methods required to implement its intended outcomes.⁶ Put another way, what needs to be settled is the problem that is being worked on by the plan change.

[17] The proposal to re-order the proposed conference agenda so that hydroelectricity and community water supplies are dealt with earlier than currently shown is noted and supported.

Jane S.

J E Borthwick
Environment Judge



Issued: 2 March 2021

⁵ ORC – Expert Conferencing, memorandum dated 1 March 2021.

⁶ See Minute – Expert Conferencing dated 23 February 2021.

Protocol to apply when appearing remotely via Audio-Visual Link (AVL)

These protocols apply to counsel, party representatives and witnesses scheduled to appear in relation to the Plan Change 7 hearing and who are unable to attend in person on that day due to a change in alert levels to Alert Level 3.¹

The links for all other persons (including members of the public and the media) who wish to listen to or watch the court proceeding are found here:

- <https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc7/hearings/#audio-hearings> ;
- <https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc7/hearings/#Video> .

Pre-hearing requirements

Counsel, parties and witnesses who are appearing remotely should make themselves familiar with the audio-visual platform and its document sharing facility being used to host the virtual hearing. At this stage the platform is Zoom.

Anyone who has obtained permission to appear remotely will need to contact the Registry (ORC@justice.govt.nz) to obtain the link and password to join. When responding, the Registry will make arrangements for a suitable time to test that the participant is able to join remotely. The court expects all persons to follow the Registry's requests for testing remote participation.

When connecting to the hearing, when prompted to enter their name, persons will need to identify the party they are appearing for and their name. For example, "ORC – Phillip Maw".

The host will turn off the microphone and visual link for persons who are waiting to be heard. If you are waiting to be heard, and you wish to communicate with the court during the hearing, you are to do so by sending a text message to 027 213 1652;

¹ Or who have obtained the permission of the court to attend via AVL for other reasons.



General requirements

Counsel and witnesses appearing remotely are to dress in formal attire, as if they were appearing in person.

Counsel should remain seated for the virtual hearing.

The dates and times for the hearing are set out in the hearing schedule which will be regularly updated throughout the course of the hearing. In the first instance, it is your responsibility to check on any changes to the hearing schedule. The latest hearing schedule can be found here:

<https://environmentcourt.govt.nz/cases-online/orc-pcs-1-7-8/pc7/hearings/#hearing-schedule>.

The ORC Hearing Administrators (Glen Cooper and Rebecca Jackson) will contact parties affected by any substantive changes to the hearing schedule during that hearing day. All enquiries about the hearing schedule are to be directed to the ORC Hearing Administrators as follows:

- PlanChange@orc.govt.nz; or
- 027 213 1652.

Counsel and witnesses must connect at least **10 minutes** before the commencement of the hearing on the morning or afternoon when they have been scheduled to appear.²

Normal courtroom procedure still applies. This means, unless you have the prior permission of the judge, there is to be no recording of the proceedings (video and/or audio) and no live-posting to any social media site regarding anything that is discussed in Court.

When counsel or witnesses are appearing remotely, they should:

² Since it is not possible to guarantee an exact appearance time, the court requires parties to be available from the start of the morning or afternoon session they are scheduled to. This applies to those attending remotely as well as those attending in person.

- make sure they have a reliable internet connection;³
- use a headset with a microphone;
- speak directly into the microphone when addressing the court or giving evidence;
- reduce body movements as much as possible to avoid distractions;
- speak more slowly than they would when appearing in court;
- use a room that is as free from background noise and interruptions as possible;
- be mindful of camera angles, glare from windows, and the background when positioning the camera on your device, and maintain at least one metre distance between yourself and the camera; and
- ensure mobile phones are on silent mode and that notifications are turned off.

Specific requirements for witnesses giving evidence remotely by AVL

When a party is calling a witness, who will be giving evidence remotely, ensure in advance that the witness has access to **all** documents likely to be required, including in cross-examination – either in electronic format or in hard copy. If the witness wishes to be sworn in via oath on the bible, they will also need to have their own bible to hand.

If a witness is to be cross-examined, liaise with counsel for the other party and confirm that all documents relevant to cross-examination are found in the evidence or in the common bundle and secondly, ensure that the witness has the documents available.

Documents not already in the evidence or in the common bundle of documents before the court that are to be relied upon/produced in court should be provided to counsel/parties and the witness **before** the hearing day commences. The Registrar should be provided with an electronic copy and six (6) hard copies of any such documents.

³ If possible, use a LAN line rather than WIFI. You should also ensure that other users connected to the same network will not affect their connection.

Reminder: counsel and witnesses who are appearing remotely should make themselves familiar with the document sharing facility on the platform being used to host the AVL hearing.

At the commencement of the hearing the presiding judge will give further directions as may be sought in relation to AVL hearing.

