

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV:2020-CHC-127

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

Between

**OTAGO REGIONAL
COUNCIL**

Applicant

And

**CENTRAL OTAGO
DISTRICT COUNCIL,
CLUTHA DISTRICT
COUNCIL,
QUEENSTOWN LAKES
DISTRICT COUNCIL,
WAITAKI DISTRICT
COUNCIL, AND DUNEDIN
CITY COUNCIL
(TERRITORIAL
AUTHORITIES)**

274 Parties

SUBMISSIONS OF COUNSEL FOR TERRITORIAL AUTHORITIES

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May it please the Court:

PRINCIPLES OF STATUTORY INTERPRETATION

Purposive Approach

1. Statutory interpretation in New Zealand requires first and foremost a purposive approach. Section 5 of the Interpretation Act 1999 directs:

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.
2. A purposive approach entails interpreting the natural grammatical meaning of the text in a way that is consistent with the purpose of the legislation. Where the meaning of the text is unclear, ambiguous or internally inconsistent this approach is particularly useful.
3. Drafting often anticipates testing against purpose by including express purpose provisions for the Act, section, or part to clarify the legislative purpose.
4. In addition to express purpose provisions, an interpreter also has recourse to the internal context of the term or provision including the concepts, heading and terms accompanying the words and the external context of related legislation, regulations, policies and standards.
5. Where the text and purpose do not align and the purpose is clear, any faults in drafting must not be allowed to obstruct that purpose. Some elaboration is permitted to fill gaps provided that it is consistent with the legislative scheme.¹ However, where the text is clear it cannot be given a meaning it is incapable of bearing.²

¹ *Central Plains Water Trust v Ngai Tahu Properties* [2008] NZRMA 200 at [56]-[57].

² *R v Watson* [1999] 3 NZLR 257 at [13].

6. Issues can arise where the stated purpose and the scheme of an Act conflict or where there is conflict between the ends the statute was enacted to achieve.
7. A similar purposive approach applies to planning documents but must also reflect the additional constraint of the hierarchy of the RMA planning framework such that lower order documents are not inconsistent with superior ones.

Contextual Tools

8. In addition to the overarching principle of purposiveness there are guiding principles about how to construct meaning from internal context:
 - (a) *Noscitur a sociis* (associated words rule)—this captures the idea that a word is coloured by the words around it.³
 - (b) *Ejusdem generis* (limited class rule) – Where specific words are followed by a catch all word the catch all is constrained by the class of the words that precede it.⁴
9. The scheme of the section, part or whole of a document is also a useful intrinsic contextual tool. *Statute Law in New Zealand* identifies 5 benefits to schematic contextualisation:
 - (a) The document may disclose an overarching theme which can colour the meaning of a provision, policy or term.
 - (b) Ambiguity can be resolved when the surrounding sections or parts are considered.
 - (c) The meaning of a provision policy or term in isolation can be quite far from its meaning in light of the surrounding sections or the document as a whole.

³ JF Burrows and RI Carter *Statute Law in New Zealand* (4ed LexisNexis, Wellington, 2009) at 232.

⁴ *Ibid*, 231.

- (d) Words are presumed to be used consistently throughout the document and conversely different terms used differently.
 - (e) Such an approach is essential where there is no express provision for the question at hand within the document.⁵
10. Modern drafting routinely includes an interpretation section which sets out what is meant in the document by certain terms.
 11. Certain words of widespread application, like those relating to time, are defined in the Interpretation Act. Others have widely accepted meanings arrived at through case law, for example 'means' is generally exhaustive while 'includes' is open to a wider construction.⁶
 12. Words in regulations carry the meaning of the same term in their empowering enactment.⁷ Yet meaning does not necessarily travel between statutes, not least because the circumstances that a statute addresses may materially affect the context.⁸ Using definitions across statutes is likely to be most appropriate where the statutes relate to the same subject.
 13. The purposive approach and the contextual tools that support it can all be applied to the meaning of 'drinking water' included in the National Planning Standards (**Planning Standards**) and the effect of that meaning on the meanings of 'community water supply' and 'water supply values' in the Otago Regional Plan—Water (**RPW**).

ANALYSIS OF DRINKING WATER

14. The evidence of Mr Twose sets out the genesis of the definition of 'drinking water'. As he discusses the definition adopted in the Planning

⁵ JF Burrows and RI Carter *Statute Law in New Zealand* (4ed LexisNexis, Wellington, 2009) at 239-241.

⁶ *Caldow Properties Limited and Another v H J G Low and Associates Limited* [1971] NZLR 311 at 319 line 49.

⁷ Interpretation Act 1999, section 34.

⁸ *Inland Revenue Commissioners v McDonald* [1991] 1 NZLR 419 at 422 and 423 an example where 'incurred' was held to mean the same in Income Tax Act 1976 and Corporations (Investigation and Management) Act 1989. *Credit Services Investments Limited v Carroll* [1973] 1 NZLR 246 at 232 per McCarthy J cautioning against reasoning too closely where the purpose of the statutes differed.

Standards was developed to be consistent with other existing resource management regulations and the Drinking Water Standards.

15. For completeness the three definitions are set out below.

Drinking Water Standards for New Zealand 2005 (revised 2018) (Drinking Water Standards)	Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES)	National Planning Standards (Planning Standards)
<i>Drinking water – water intended to be used for human consumption, food preparation, utensil washing, oral hygiene or personal hygiene.</i>	<i>Drinking water -</i> <i>(a) means water intended to be used for human consumption; and</i> <i>(b) includes water intended to be used for food preparation, utensil washing and oral or other personal hygiene</i>	<i>Drinking water - means water intended to be used for human consumption;</i> <i>and includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene.</i>

16. Whilst the three definitions are not exactly the same, the differences are largely in construction rather than content. They all contain the same key elements:

- (a) It applies to 'water' that is 'intended' to be used for human consumption and includes food preparation, utensil washing, and oral or other personal hygiene.

17. Given the genesis of the definition in the Drinking Water Standards and then the NES it is important to traverse those documents in order to understand the context of the definition. It is generally preferred that

common terms will be interpreted in the same way across legislative instruments, unless context requires otherwise⁹.

Drinking Water Standards

18. The first document in time is the Drinking Water Standards. The purpose of the Drinking Water Standards is identified at Clause 1.1.1 – Minimum standards for drinking water. It states:

Potable drinking-water, available for everyone, is a fundamental requirement for public health. The Drinking Water Standards for New Zealand define the minimum quality standards for drinking water in New Zealand.

19. The Drinking Water Standards also define the term ‘potable water’ and ‘wholesome water’ as follows:

potable water - *Drinking-water that does not contain or exhibit any determinand to any extent that exceeds the MAVs. See also wholesome drinking water.*

wholesome drinking water - *Potable water that does not contain or exhibit any determinands that exceed the guideline values for aesthetic determinands included in the DWSNZ.*

determinand *A constituent or property of a sample of water that is determined or estimated.*

20. At clause 1.2 the scope of the Drinking Water Standards is set out, including that they apply to ‘networked drinking water supplies’, and that they do not set the quality standards for industrial or agricultural purposes.¹⁰ This section identifies that public health safety of drinking water is best protected if multiple barriers to contamination are in place including:

- (a) Minimising the extent of contaminants in the source water;
- (b) Removing undesirable soluble and particulate matter;
- (c) Disinfecting to inactivate any pathogenic organisms that may be present;

⁹ See discussion above at 12.

¹⁰ Ministry of Health. 2018. *Drinking-water Standards for New Zealand 2005 (revised 2018)* Wellington: Ministry of Health, clause 1.2, page 1.

(d) Protecting the treated water from subsequent contamination¹¹.

21. At clause 1.7 the Standards identify the 'components of drinking water supply'. Drinking water supply is defined as:

"A reticulated publicly or privately owned drinking-water supply connecting at least two buildings on separate titles and serving at least 1500 person-days a year (eg, 25 people at least 60 days per year)."

22. A schematic and its explanatory text from the Standards is set out below:¹²

1.7 Components of drinking-water supply

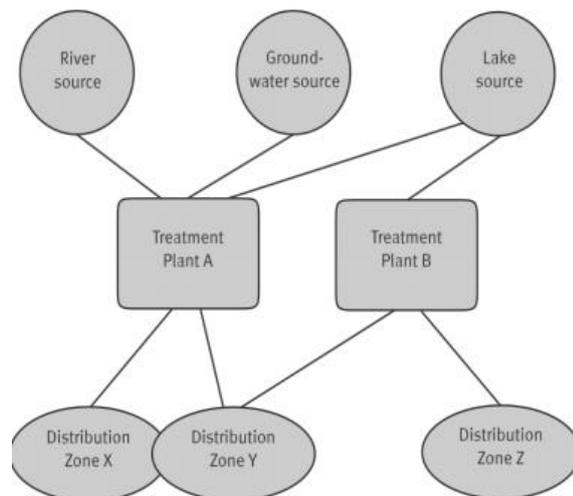
A drinking-water supply comprises one or more of each of the following (Figure 1.1):

- source of raw water¹
- water treatment plant
- distribution system.

Compliance criteria are given for water leaving the treatment plant and in the distribution system. Water safety plans cover source water quality issues.

¹ The Ministry for the Environment's National Environmental Standard for Sources of Human Drinking-water requires regional councils to ensure that decisions on resource consents and regional plans consider effects on drinking-water sources.

Figure 1.1: Schematic diagram of drinking-water supply system



¹¹ Ministry of Health. 2018. *Drinking-water Standards for New Zealand 2005 (revised 2018)* Wellington: Ministry of Health, clause 1.2, page 2, para 2 and following 4 bullet points.

¹² Ibid, page 3 and figure 1.1.

23. The components of such a supply include the source of the raw water, the water treatment plant and the distribution system. The Drinking Water Standards set compliance criteria for water leaving the treatment plant and in the distribution system.
24. The Standards also note that the NES requires regional councils to ensure that their decisions consider effects on drinking water sources¹³.

Analysis

25. In light of this context and the purpose of the Drinking Water Standards it is submitted that the definition of 'drinking water' is a broad one. It recognises that providing safe drinking water requires management across all components of the drinking water supply – from source water to point of supply. It is submitted that use of the term 'intended to be used for human consumption' is designed capture water in all components of drinking water supply, both prior to and following treatment to potable standards and delivery. This is further supported by the definitions of 'potable' and 'wholesome water' which is 'drinking water' that meets the required standards. Applying *noscitur a sociis* those definitions are not necessary if the definition of 'drinking water' only applies after water has been treated to the necessary standard.
26. There is nothing in the Drinking Water Standards to indicate that water supplied through a delivery network that is not in fact consumed by humans should not be classed as 'drinking water'. The Drinking Water Standards apply to the whole drinking water supply system.

NES

27. The scope of the NES is apparent from its title. It is applicable to the sources of drinking water. This is supported by the commentary that accompanies the NES. The Ministry for the Environment identifies the need for the NES as follows:

¹³ Ministry of Health. 2018. *Drinking-water Standards for New Zealand 2005 (revised 2018)* Wellington: Ministry of Health, clause 1.7 page 3, bullet point 1, footnote 1.

*“Contaminants such as microorganisms can pose a risk to human health when they enter drinking water supplies and that water is consumed. Taking steps to prevent such contaminants from entering drinking water sources is part of a multiple barrier approach to reduce this risk to people. The National Environmental Standard for Sources of Human Drinking Water (NES) complements Ministry of Health legislation for improving drinking water supply and delivery. This ensures a comprehensive approach to managing drinking water from source to tap”.*¹⁴

28. The scheme of the NES is designed to manage activities that may affect the quality of the source of human drinking water to ensure that drinking water can continue to ‘meet the health quality criteria’¹⁵ after treatment and within the distribution system.

Analysis

29. It is submitted that the purpose of the NES means that the definition of ‘drinking water’ is a broad term. It applies to the water within a source water body, not just to water after it has been taken for human consumptive purposes. Therefore the use of the word ‘intended’ is focussed on the purpose for which the water may be used for, not whether it is ultimately used for that purpose.
30. That approach reflects the practical reality for TAs as the owners and operators of infrastructure. TAs have no control over whether drinking water is consumed by humans or not, once drinking water is within its delivery network. The TA is obliged to assume that all water delivered may be consumed and is safe to do so.

Planning Standards

31. The purpose of the National Planning Standards is to make council plans and policy statements easier to prepare, understand and comply with. Mr Twose discusses in his Supplementary Evidence the use of the NES definition in the Planning Standards. The recommending report on the Planning Standards Definitions also stated:

¹⁴ <https://environment.govt.nz/acts-and-regulations/regulations/national-environmental-standard-for-sources-of-human-drinking-water/> ‘Why is it needed’.

¹⁵ ‘meets the health quality criteria’ is defined at clause 4 of the NES, effectively it requires compliance with the Drinking Water Standards from the point of treatment and within the distribution network.

“The draft planning standards definition was intended to apply in the same circumstances in plans as the NES definition applies, and as a result, must continue to be consistent with that NES Definition¹⁶”.

Analysis

32. What is apparent from the Planning Standards is that they are to be applied in a uniform manner. Just as the Interpretation Act defines terms across statutes to simplify interpretation, the Planning Standards respond to the same definitional mischief in the context of RMA documents. The express purpose of the Planning Standards is to improve the efficiency and effectiveness of the planning system by providing, amongst other things, nationally consistent definitions.¹⁷
33. If a term is defined in the Definitions List of the Definitions Standard and used in the same context as the definition, then local authorities must use the definition as defined so long as it does not alter the effect or outcomes of policies or plans.¹⁸
34. It is therefore submitted that the interpretation of the drinking water definition in the Planning Standards is informed by its interpretation in other existing statutory documents as set out above. That same interpretation must be applied to other RMA documents, unless the context requires otherwise.

National Policy Statement Freshwater Management 2020 (NPS-FM)

35. The term ‘drinking water’ has become relevant to these proceedings by virtue of the NPS-FM which identifies ‘drinking water’ as health need of people and specifically identified as a tier two priority within the NPS-FM Objective. This has raised the question about the extent of overlap between the term ‘drinking water’ and terms used in the RPW.

¹⁶ Ministry for the Environment. 2019. 21 Definitions Standard – Recommendations on Submissions Report for the first set of National Planning Standards, pages 78-80.

¹⁷ Ministry for the Environment. November 2019. *National Planning Standards*. Wellington: Ministry for the Environment, clause 1 Foundation Standard.

¹⁸ *Ibid*, clause 14 Definition Standard.

36. It is noted that:
- (a) The NPS-FM does not include a definition of 'drinking water'
 - (b) Under RMA section 58B national planning standards must:
 - (i) Give effect to national policy statements; and
 - (ii) Be consistent with (relevantly) national environmental standards.
37. Therefore, it is not mandatory for an NPS to use the definitions in the Planning Standards and it would appear that an NPS can define a term that would have to be given effect to by the Planning Standards.

Analysis

38. In this current circumstance it is submitted that the use of the term 'drinking water' in the NPS-FM is intended to be the term as defined in the Planning Standards/NES because those documents were in effect when the NPS-FM was developed and the NPS-FM does not include a different definition that would need to be given effect to by the Planning Standards.
39. There does not appear to be any purposive reason on the face of the NPS-FM to depart from the definition of drinking water in the Planning Standards.

Construction of 'Drinking Water' definition

40. The definition of drinking water imports the definition of water which is likewise a defined term under the Act. Counsel does not consider that anything turns on this issue, so does not discuss it further. It is the other components of the 'drinking water' definition that create more room for contention.

'Intended to be used'

41. 'Intent' rests at the core of jurisprudence. Intent is necessary to settle a trust¹⁹, give a gift²⁰ or enter a contract²¹. It also often forms the *mens rea* element of an offence²². In each of these circumstances, intent rests on the objective that is sought to be achieved. However, without action the intention cannot be established.
42. Intention may be express or it may be reasonably inferred from the action. The definition does not identify who 'intended' but the intention is tied to the action of abstraction. With reference to the Drinking Water Standards this must be the operator of the Drinking Water Supply as discussed at paragraph 22 above.
43. Thus the question before the Court is how best to pinpoint the intention of the drinking water supply operator at the point of abstraction.
44. Under the RPW there are several relevant express uses for taking water including community water supply, registered community drinking water supply, and water supply values. These terms and the relationships between them are discussed separately below.
45. However, it is submitted that manner in which the water is dealt with provides the greatest clarity with respect to the supplier's intention. TA's abstract water from source and treat it so it is safe for human consumption, sanitation and hygiene uses. That action speaks to their intention.
46. Any of the various ancillary uses (which may or may not require water of a potable standard) that occur after it is delivered to the point of supply are unknown at the point where intention is to be assessed under the definition in Counsel's submission.
47. The object of abstraction is treatment to a drinkable standard. Neatly, this is also the result. It is submitted that the action of treating water

¹⁹ *Clayton v Clayton [Vaughan Road Property Trust]* [2016] NZSC 29.

²⁰ *Harvey v Beveridge* (2014) 15 NZCPR 205.

²¹ *Electricity Corporation of New Zealand Ltd v Fletcher Challenge Energy Ltd* [2002] 2 NZLR 433.

²² *Police v Bannin* [1991] 2 NZLR 237.

provides a clear indication of the TA's intention for abstracting the water, that does not require subjective judgement.

'For Human Consumption...'

48. 'Human consumption' is defined inclusively with "*food preparation, utensil washing, and oral or other personal hygiene*". This indicates that the meaning of 'human consumption' is wider than just water humans drink.
49. The list of uses forms a limited class that includes uses of water that endanger human health if undertaken with contaminated water.
50. In this way, 'human consumption' recognises the fluidity of human consumptive uses and accepts that there are a range of uses which while not strictly imbibing water still pose a risk to human health.
51. A wider definition of 'human consumption' is consistent with the second-tier priority of human health needs in Te Mana o te Wai.
52. The TAs purpose in abstracting water and treating it to a potable standard is to make that water available for human consumption, in a broad sense – i.e. it is drinking water.
53. On this basis Counsel maintains the view advanced in opening submissions.

Would applying this definition affect the outcomes and/or policies of the RPW?

54. The Planning Standards state that the definitions do not apply to affect the outcomes or policies of the plan.
55. In the RPW 'drinking water' occurs in two contexts which illustrate this constraint on applying the Planning Standards definition.
56. The first of these is 'stock drinking water.' Applying a human consumption definition of drinking water to this term would not be consistent with the clear textual meaning.

57. 'Stock drinking water' is invariably found in a list of the limited class uses of water and for this reason the clear ordinary meaning of water consumed by stock is to be preferred.
58. Conversely, 'drinking water' occurs in the term 'registered community drinking water supply' which is defined for the purposes of policy 6.4.2A of the RPW to mean:
- a drinking water supply serving a community of more than 25 people for more than 60 days a year.*
59. It is noted that these thresholds are consistent with those set out in the definition of 'drinking water supply' in the Drinking Water Standards. This suggests a degree of consistency has been sought to be achieved between the documents.
60. In this instance, the Planning Standard definition of 'drinking water' does not alter the effect of the provisions in the RPW and as a result must be applied²³.

Community Water Supply and Water Supply Values

61. This Court in *Clutha District Council v Otago Regional Council* differentiated between the meaning of water supply values and community water supply in the RPW.²⁴ The Court's decision was informed by a schematic approach to interpretation of the RPW.
62. However, it is submitted the Court did not take this schematic approach to its conclusion.
63. The Court held that although water supply values had primacy over other uses of water, the community water supply did not in the circumstances before the Court because it was for human and stock consumption/dairy shed washdown.²⁵

²³ Ministry for the Environment. November 2019. *National Planning Standards*. Wellington: Ministry for the Environment, Clause 14 Definition Standard, Mandatory Direction 1.

²⁴ *Clutha District Council v Otago Regional Council* [2020] NZEnvC 194 at [50].

²⁵ At [52].

64. We submit that while the Court was correct to differentiate between the meaning of the terms, it did not fully address how the terms engaged with each other in the RPW.
65. It is submitted that provision for community water supplies protects and provides for water supply values identified in the RPW. For example, in the explanation to Policy 6.4.4 the plan states:
- “Schedule 1B community water supply takes within the primary allocation are exempt from these minimum flow requirements as provided for by Policy 6.4.8.*
66. It is submitted that this indicates that community water supplies are one of the methods by which water supply values are provided for. The question of the rate and volume required to provide for the water supply values served by a particular community water supply is a secondary consideration.
67. Domestic and community water supply are coupled together in the introduction to chapter 6. Community supplies are exempted from minimum flow to protect community water supply and water supply values.²⁶ The principal reason for adopting policy 6.4.8 links the unrestricted operation of community water supplies with human health and safety.
68. It is submitted that the scheme of the RPW focuses on water supply to the community in recognition of the elevated value or importance of water provision for human consumption.
69. Further it is inconsistent with the scheme of the RPW to diminish community water supply because of other water uses where this will fail to protect and provide for the water supply values supported by the particular community water supply.
70. We submit that applying a purposive approach to the interpretation of water supply values and community water supply recognises the link between the two concepts in the RPW.

²⁶ RPW, Explanation to policy 6.4.4. Common Bundle Tab 1 page 89.

71. The definitions and wider statutory context indicate it is more important to protect drinking water than it is to separate drinking water from other uses where doing this poses a risk to the safe provision of drinking water. Put another way, in order to protect the supply of drinking water that is actually consumed by humans (i.e. provide for the water supply values), protection of the whole community water supply network is required.
72. To that end it is submitted that this special importance needs to be reflected in PC7, either by carving out community supplies entirely, or establishing a framework for their inclusion in PC7 that better recognises their status.
73. Counsel acknowledges that there are a number of interpretive challenges that arise under the RPW provisions applicable to water supply values and community supplies such that a PC7 solution may hold more attraction to achieve greater consistency with the NPS-FM and the Planning Standards. Mr Twose is giving more thought to this option.

RELEVANCE OF NATIONAL POLICY STATEMENT URBAN DEVELOPMENT 2020 (NPSUD) PROVISIONS

74. As discussed during opening submissions it is submitted that the NPSUD is a relevant document to these proceedings.
75. Clause 1.3(1) states:
- “this National Policy Statement applies to:*
- (a) All local authorities that have all or part of an urban environment within their district or region (i.e. tier 1, 2 and 3 local authorities);
and
 - (b) Planning decisions by any local authority that affect an urban environment.
76. ‘Planning decisions’ is also defined by the NPSUD as follows:

“planning decision means a decision on any of the following:

- (a) *A regional policy statement or proposed regional policy statement*
- (b) *A regional plan or proposed regional plan*
- (c) *A district plan or proposed district plan*
- (d) *A resource consent*
- (e) *A designation*
- (f) *A heritage order*
- (g) *A water conservation order.*

77. The following questions arise from these provisions:

- (a) Is Plan Change 7 a 'planning decision'?
- (b) Does Plan Change 7 affect an 'urban environment'?

Is Plan Change 7 a planning decision?

78. For Plan Change 7 to qualify as a planning decision it needs to fall into clause (b) of the definition. Section 43AA of the RMA defines regional plan:

Regional Plan

- (a) *Means an operative plan approved by a regional council under schedule 1 (including all operative changes to the plan (whether arising from a review or otherwise)); and*
- (b) *Includes a regional coastal plan.*

79. As Plan Change 7 is not operative, it cannot be said to be a Regional Plan. Section 43AA of the RMA does not include a definition of proposed regional plan. However, section 43AAC of the Act establishes the meaning of proposed plan as follows:

“(a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been

*notified under clause 5 of schedule 1 but has not become operative in terms of clause 20 of that schedule.*²⁷

(b)...

80. Plan Change 7 has been notified pursuant to Clause 5 of Schedule 1.²⁸
81. Finally, 'plan' is defined in section 43AA of the RMA to mean a regional plan or a district plan.

Analysis

82. Based on this is it submitted that Plan Change 7 is a planning decision. As set out above the NPSUD applies to all local authorities of which ORC is one.

Does Plan Change 7 affect an 'urban environment'?

83. 'Urban environment' is a defined term within the NPSUD. As follows:

"urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) *Is, or is intended to be predominantly urban in character; and*
- (b) *Is, or is intended to be, part of a housing and labour market of at least 10,000 people."*

84. The NPSUD replaced the National Policy Statement on Urban Development Capacity 2016 (**NPSUDC**) which defined 'urban environment' as follows:

"Urban environment means an area of land containing, or intended to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries."

85. The government's initial discussion document *Planning for Successful Cities* proposed to retain the NPSUDC definition of 'urban environment'. However, throughout the development of the NPSUD

²⁷ Resource Management Act 1991, section 43AA includes a definition for 'change' (of which PC7 is one), and section 2 defines Local Authority (of which ORC is one).

²⁸ This is recorded in the public notice of Proposed Plan Change 7 <https://www.orc.govt.nz/media/8339/plan-change-7-public-notice.pdf>

subsequent changes from 6 Major Urban Centres to a 3-tiered system led to a new 'urban environment' definition.

86. *The Recommendations and Decisions report on the NPSUD* states that the NPSUD “*builds on many of the existing requirements for greater development capacity but has a wider focus and adds significant new and directive content.*” [Emphasis added].
87. This wider focus aligns with the broadening of the definition of 'urban environment' from the NPSUDC to the NPSUD. The change in title is also significant as the NPSUDC focused on providing capacity to develop whereas the NPSUD seeks to achieve development itself.
88. In *Functional Urban Areas- methodology and classification* Statistics NZ Tauranga Aotearoa identifies administrative, form, and functional aspects as measures of what is 'urban'. These concepts of 'urban' are useful in understanding the evolution of the definition of 'urban environment' from the NPSUDC to the NPSUD.
89. A focus on the administrative elements of 'urban environments' inevitably leads to a focus on local authority control and territorial boundaries. Both the NPSUDC and the NPSUD seek to discourage this approach by including the language '*irrespective of local authority or statistical boundaries*'.
90. A focus on urban 'form' is concerned with spatial characteristics. The NPSUDC definition reflected this through the term 'concentrated settlement.' This spatial concept of 'urban' is absent from the NPSUD definition of 'urban environment'.
91. A focus on the functional aspects of 'urban' leads to consideration of the facilities that urban environments require and/or provide giving rise to housing and labour markets.
92. The NPSUD definition moves from the form focused 'concentrated settlement' to a functional approach that applies to areas of any size with mixed urban character where they form part of a 'housing and

labour market' defined by having (or intended to have) 10,000 or more participants.

93. Being part of a 'labour and housing market' implies that the areas of land within the 'urban environment' do not need to be all classically 'urban' to be incorporated into an urban catchment. The key drivers are a predominance²⁹ of urban character and the connection to an appropriately sized labour and housing market.
94. It is submitted that the purpose of this change in focus reflects the often interrelated and inter-dependent relationship of urban centres with their less 'urban' hinterlands or nearby satellite townships/villages.
95. It is submitted that whether areas are part of the same housing and labour market will be evidenced by people's behaviour. Are people 'coming to town' for work and/or other functions and facilities that drive employment/housing demand.
96. Whether a particular environment meets the numerical threshold will be clear based on existing populations or will need to be assessed in a prospective fashion at the various timescales within the NPSUD. Where the line is between the urban environment and the 'non-urban environment' will be a question of fact and degree that needs to be determined on a case-by case.
97. The objectives in the NPSUD seek to achieve well-functioning urban environments and that planning decisions improve housing affordability (through support for competitive land and development markets).³⁰
98. Part 3 of the NPSUD then sets out a list of things that local authorities must do to give effects to the objectives. These mandatory obligations include provision of sufficient development capacity for housing and business land³¹.

²⁹ Predominance means 'a state or condition of being in greater number or amount', synonyms include dominance, majority.

³⁰ NPSUD 2020 – Objective 1 and 2 Common Bundle Tab 6 page 791.

³¹ NPSUD 2020 – Clause 3.1 - 3.3 Common Bundle Tab 6 page 795.

99. The provisions also identify what makes for 'sufficient' development capacity for housing and business land. This requires the capacity to be *inter alia* 'infrastructure ready'.
100. Development capacity is 'infrastructure ready' if:
- (a) *In relation to the short term, there is adequate existing development infrastructure to support the development of land.*
 - (b) *In relation to the medium term, either paragraph (a) applies or funding for adequate infrastructure to support development of the land is identified in a long term plan.*
 - (c) *In relation to the long term, either paragraph (b) applies the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan)³²*
101. 'Development infrastructure' includes network infrastructure for water supply³³.

Analysis

102. The purpose of the NPSUD is to facilitate well-functioning urban environments. A theme that permeates the document is the need for integrated management and development of infrastructure required to support the achievement of the objectives in the NPSUD³⁴.
103. As discussed with Mr Twose, it is an essential functional need of water supply infrastructure to have water available for delivery by that infrastructure³⁵. Being unable to deliver water through water supply infrastructure undermines its ability to support development and would have the effect of thwarting the purpose of the infrastructure and the development capacity of the land it is designed to serve. As such the development capacity would not be 'infrastructure ready' as required.

³² NPSUD 2020 – Clause 3.4(3) at Common Bundle Tab 6 page 796.

³³ NPSUD 2020 – 'development infrastructure' Common Bundle Tab 6 page 787.

³⁴ NPSUD 2020 – Objective 6, Policy 2, Policy 10

³⁵ Transcript, Cromwell Hearing page 390 at Line 1- page 391 line 4.

104. On that basis it is submitted that PC7 is a planning decision that affects urban environments because it impacts on the potential to deliver sufficient development infrastructure to urban environments within the Otago Region. The supplementary evidence of Ms McGirr and Ms Muir will discuss in more detail the identification of urban environments within QLDC and CODC that will be affected by PC7.

Date: 23 April 2021

A handwritten signature in blue ink, appearing to read "Bridget Irving". The signature is written in a cursive style with a large initial 'B'.

Bridget Irving

Counsel for the Territorial Authorities