

**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)

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-127)

Applicant

**MINUTE OF THE ENVIRONMENT COURT
PLAN CHANGE 7
Expert Conferencing, Recall of Witnesses, Further Evidence, Scope and
Closing Submissions
(28 April 2021)**

Introduction

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

Expert Conferencing

[2] As requested, I will refer all participating experts on the Schedule 10A.4 conference to a second facilitated expert conference to be held 4-6 May 2021.

[3] The Joint Witness Statement ('JWS') will be signed at the completion of the expert conference or at the date directed by the facilitator Commissioner Dunlop,

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being a date no later than Monday 10 May 2021. The JWS will be filed with the court on the same day by the Regional Council.

[4] The attendance of Mr Farrell is excused for the reasons given in Ms Mehlhopt's memorandum for the Regional Council dated 23 April 2021. Mr Brass is also excused attendance on 5 and 6 May 2021 subject to the direction that Mr Brass reviews and signs the JWS (tracking amendments if required) by **Friday 7 May 2021**.

[5] However, the court does not agree with the proposal that the filing of the JWS waits on Mr Farrell's review of the same. Instead, Mr Farrell may file supplementary evidence noting any areas of agreement and disagreement, giving reasons for the same. This may be done by appending an annotated copy of the JWS to supplementary evidence. The supplementary evidence is to be filed **three working days** prior to the resumption of Fish & Game's case in Dunedin.

Recall of witnesses

[6] Given the present uncertainty as to which witnesses may be recalled, I direct all planning and technical experts engaged in expert conferences are to be available to attend court in the week commencing Monday 24 May 2021. The court understands that the Regional Council has conferred with parties as to the recall of witnesses, and that the above direction is to be made by consent.¹ If that is not the case, parties are to immediately advise the court.

[7] The court also notes the discussion in the Regional Council's memorandum regarding possible arrangements for witness recall.²

[8] Upon receipt of the JWS, within **two working days** the Regional Council

¹ See Memorandum of counsel in relation to further expert conferencing dated 23 April 2021 at [12(f)].

² See Memorandum of counsel in relation to further expert conferencing dated 23 April 2021 at [8]-[11].

will confer with the parties and file a memorandum confirming:

- (a) the witnesses who will present the JWS at the hearing;³
- (b) the witnesses who will provide supplementary evidence addressing the matters at paragraph [19] of the Minute dated 21 April 2021; and
- (c) the arrangements for cross-examination.

[9] The filing date for this supplementary evidence is **Friday 14 May 2021** (or earlier if possible).

Leave to cross-examine lay witnesses

[10] The Regional Council has sought leave to cross-examine lay witnesses.⁴ While the Regional Council had not anticipated asking farmers questions, they seek leave to do so as it will assist the court to better understand:

- (a) the exercise of existing deemed permits and water permits;
- (b) whether the information required to meet the entry condition to the controlled activity rule, Rule 10A3.1.1, is readily obtainable from farmers as is intended; and
- (c) investment decisions that have or are proposed to increase the area of irrigation that existed prior to 18 March 2020.

[11] As we agree this information would assist the court to understand whether the provisions are the most appropriate way to achieve PC7's objective, leave is granted.

Scope

[12] The Regional Council is to file a memorandum by **Friday 30 April 2021**,

³ Note: a comprehensive JWS may serve as a written brief of evidence.

⁴ Memorandum of counsel for ORC regarding notice to cross-examine lay witnesses and provision of Smallburn water permit examples dated 19 April 2021.

identifying any relief presented during weeks 4 and 5 of the hearing⁵ that it contends is out of scope together with principle(s) relied upon. Secondly, any relief it submits may only be considered by the court under s 293 of the Act.

[13] All parties are directed to respond in a closing submission if they dispute the Regional Council's position on scope.⁶

Are any other directions required?

Community Water Supplies

[14] The directions sought by counsel for the Territorial Authorities will be addressed in a separate Minute.⁷

Deemed permits

[15] The court proposes to appoint an amicus (a lawyer appointed to assist the court). The amicus' appointment and dates for expert conferencing on deemed permits will be addressed in a separate Minute.

Witnesses

[16] The court is anticipating Mr de Pelsemaeker will file evidence-in-reply proposing amendments to PC7 in response to the parties' evidence. This would include an updated s 32/s 32AA Report and attached table of Recommended Decisions on Submissions. The Regional Council is to confirm what is intended by filing a memorandum on **Monday 3 May 2021**.

⁵ Weeks commencing 12 and 19 April 2021.

⁶ See Minute: Case Management Directions dated 31 March 2021 at [10]-[13].

⁷ Memorandum of counsel seeking directions for filing supplementary evidence dated 23 April 2021.

J M Crystal Correction to Evidence

[17] Leave was granted for Beef and Lamb's witness Ms J M Crystal to file a correction to her evidence.⁸

Closing submissions

[18] The court had anticipated only the Regional Council giving closing submissions. However, more than one counsel/party has indicated that they wish to do the same and this is in order given the recall of witnesses and timing of expert conferences.

[19] It is the court's preference that closing submissions are presented in court, with the Regional Council submitting last. Except for the Regional Council, closing submissions are not to exceed 30 minutes except with the leave of the court.

[20] The court anticipates closing submissions on the topics of deemed permits and rights of priorities and secondly directs submissions from parties who are seeking relief, the scope of which, has been challenged by the Regional Council.

[21] Those topics aside, any party seeking to give a closing submission is to advise the court no later than **Monday 3 May 2021**.

Extra hearing time

[22] Parties should note the court has set aside in the roster an extra hearing week in Dunedin commencing **Monday 28 June 2021**, in the event that counsel seek to address the court orally on the yet-to-be-notified proposed Regional Policy Statement. Alternatively, it may be used to hear closing submissions if the hearing

⁸ Correction to evidence given at hearing in Cromwell on 14 May 2021 by Dr Jane Crystal on behalf of beef and Lamb New Zealand.

runs overtime in week 8.

Leave

[23] Leave is reserved for any party to apply for further directions.

Jane S.

J E Borthwick
Environment Judge



Issued: 28 April 2021