

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA  
ŌTAUTAHI ROHE**

**ENV-2020-CHC-127**

**UNDER** the Resource Management Act 1991 (RMA)

**IN THE MATTER** of the Water Permits Plan Change - Plan Change 7, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under section 142(2)(b) of the RMA

**AND**

**IN THE MATTER** of an application under section 149T of the RMA

**BETWEEN** **OTAGO REGIONAL COUNCIL**  
**Applicant**

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**MEMORANDUM OF COUNSEL ON BEHALF OF OTAGO REGIONAL  
COUNCIL REGARDING EVIDENCE IN REPLY OF MR DE PELSEMAEKER  
AND RELATED MATTERS  
3 May 2021**

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Judicial Officer: Judge Borthwick

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**MAY IT PLEASE THE COURT:**

1 In its Minute dated 28 April 2021, the Court directed that the Otago Regional Council (**Council**) confirm its intentions regarding Mr De Pelsemaeker's evidence-in-reply. The purpose of this Memorandum is to:

- (a) Propose a timetable and directions for:
  - (i) the presentation of the joint witness statements from expert conferencing (**JWS's**) and cross-examination of recalled witnesses;
  - (ii) the filing and presentation of Mr De Pelsemaeker's evidence-in-reply;
  - (iii) questions for and/ or cross-examination of Mr De Pelsemaeker in relation to his evidence-in-reply; and
  - (iv) parties' closing submissions.
- (b) Set out the matters to be addressed in Mr De Pelsemaeker's evidence-in-reply.

**Proposed timetable**

2 The Court indicated in its Minute dated 28 April that it has set aside an extra hearing week commencing 28 June 2021, in the event that counsel seek to address the court orally on the yet-to-be-notified proposed Regional Policy Statement (**new proposed RPS**). Alternatively, the Court noted that it may be used to hear closing submissions if the hearing runs overtime in week 8.

3 After reflecting on the hearing schedule and matters that remain to be addressed, Counsel considers that additional hearing time is likely to be required.

4 Accordingly, the Council proposes the following timetable in relation to the presentation of the JWS's from the expert conferencing, filing and presentation of Mr De Pelsemaeker's evidence-in-reply, and closing submissions:

- (a) Presentation of the JWS's and cross-examination of any expert witnesses recalled to take place in the week of 24 May 2021,

noting the indication in the hearing schedule dated 12 April 2021 that the Court is not sitting on Monday 24 May 2021.<sup>1</sup>

- (b) Mr De Pelsemaeker to file evidence-in-reply by Friday 18 June 2021.
  - (c) Any party seeking to cross-examination Mr De Pelsemaeker on his evidence-in-reply to give notice by Wednesday 23 June 2021.
  - (d) Mr De Pelsemaeker to present evidence-in-reply in Court on Monday 28 June 2021, to be followed by cross-examination by parties who have given notice and questions from the Court.
  - (e) Presentation of closing submissions to follow questioning/ cross-examination of Mr De Pelsemaeker, with the Council presenting closing submissions last.
- 5 The Council considers that, if any parties wish to be heard on the new proposed RPS, this can also be accommodated in the week of 28 June 2021.
- 6 The Council considers that the timetable proposed above will:
- (a) allow Mr De Pelsemaeker time to properly consider answers to questions on the JWS and cross-examination of any witnesses recalled, and address matters raised in his evidence-in-reply; and
  - (b) provide the Court and parties with sufficient time to review and consider Mr De Pelsemaeker's evidence-in-reply before questioning and cross-examination of Mr De Pelsemaeker and parties' closing submissions.

#### **Mr De Pelsemaeker's evidence-in-reply**

- 7 Mr De Pelsemaeker's evidence-in-reply will address the following matters:
- (a) Proposed amendments to PC7 in response to evidence of parties, including the JWS;

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<sup>1</sup> As set out in the Minute dated 28 April 2020 Counsel, having conferred with parties, will within 2 working days of receipt of the JWS's, file a Memorandum of Counsel confirming the arrangements for presentation of the JWS's, the provisions of supplementary evidence addressing the matters at paragraph [19] of the Minute dated 21 April 2021 and arrangements for cross-examination.

- (b) an updated section 32/ 32AA Report; and
- (c) an updated table of Recommended Decisions on Submissions.

**High Court hearing fixture**

- 8 Counsel notes that they have a hearing fixture in the High Court on 30 June 2021,<sup>2</sup> and respectfully requests that the Environment Court does not sit on this day. Counsel understands that Mr Page and/or Ms Irving are also likely to be involved in this High Court fixture.
- 9 Counsel considers that four sitting days is sufficient to conclude the hearing in the week of the 28<sup>th</sup> of June.

Dated this 3<sup>rd</sup> day of May 2021



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**P A C Maw / M A Mehlhopt**

Counsel for Otago Regional Council

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<sup>2</sup> *Clutha District Council v Otago Regional Council* CIV-2020-412-113.