

**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: Water for Otago (referred to the Environment Court by the Minister for the Environment under s 142(2)(b) of the Act)

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-127)

Applicant

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**MINUTE OF THE ENVIRONMENT COURT  
PLAN CHANGE 7 FINAL DIRECTIONS  
(31 May 2021)**

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**Introduction**

[1] This Minute addresses the final hearing week(s), making directions as to the filing of submissions, and Joint Witness Statements ('JWS').

**Final weeks**

[2] To be heard is the following:

- (a) the evidence of Southern Lakes Holdings Ltd;
- (b) submissions in reply to Dr Royden Somerville QC on the topic of deemed permits and rights of priority;
- (c) if Otago Regional Council ('ORC') has challenged a party's scope of



submission or relief, submissions in support of scope. Note, submissions in reply may be addressed separately or as part of the closing submission;

- (d) amendments responding to the expiry of the rights of priority that attach to deemed permits;
- (e) any further amendments to PC7's provisions that have been the subject-matter of expert conferencing;
- (f) submissions and evidence in response to the proposed Regional Policy Statement (to be notified in June);
- (g) Mr de Pelsemaeker's evidence-in-reply; and
- (h) closing submissions.

### **Further hearing time**

[3] ORC's counsel, Mr Maw, advised further hearing time may be required. Three additional days have been rostered for Monday 5 July – Wednesday 7 July 2021 at the Otago Museum.

### **Hearing Schedule**

[4] Mr Cooper, having conferred with the parties, will prepare an updated Hearing Schedule.

### **Deemed permits and rights of priority**

#### *Dr Somerville QC*

[5] As anticipated several counsel have indicated that they wish to respond to Dr Somerville. Sufficient time has been allowed in the Hearing Schedule to accommodate this.

[6] Counsel, however, are asked to consider whether a joint submission may be made on behalf of all parties taking a contrary position. In any event, full

submissions in reply are to be filed in advance as directed.

### ***Planning response***

[7] Participating planning witnesses<sup>1</sup> are to confer and propose amendments to the plan change responding to the expiry of the deemed permits. The amendments are to be supported by reasons for their adoption and a s 32 evaluation report. Their response may be by way of a JWS. Amongst other matters, the planners will need to be mindful of s 32(1)(b) Resource Management Act 1991 ('RMA') for any amending proposal that is to directly incorporate into the plan change the existing rights of priority. If that is the planners' intention they will also need to address under the above section whether the rights are intended to be directly enforceable or are they to provide the impetus for permit holders to enter into flow sharing arrangements.

[8] ORC's consenting and regulatory officers are to review and report on the efficacy of those amendments having tested their application with reference to (at least) two waterbodies.

[9] Counsel with an interest will address scope to amend the plan change and address the vires of the proposed amendments under the RMA.

### **Stranded assets**

[10] Participating planning witnesses<sup>2</sup> are to confer on whether the plan change should respond on the topic of stranded assets and if so, how. The amendments are to be supported by reasons for their adoption and a s 32 evaluation report. Their response may be by way of a JWS.

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<sup>1</sup> Namely those planners who participated in the expert conferencing on the topic of Deemed Permits and Rights of Priority.

<sup>2</sup> Namely those planners who participated in the expert conference on the topic of Objective 10A1.1, Schedule 10A and related provisions.

### **Objective 10A1.1, Schedule 10A and related provisions**

[11] Participating planning witnesses are to confer and advise whether any further amendment is required in relation to PC7's objective 10A1.1 and secondly to formally document their position on amendments to other provisions<sup>3</sup> as discussed during the empanelment.<sup>4</sup>

[12] Again, the amendments are to be supported by reasons for their adoption and a s 32 evaluation, being mindful of the requirement (among other things) to examine whether the provisions in the proposal that then cascade are the most appropriate way to achieve objective (s 32(1)(b)). Their response may be by way of a JWS.

### **Scope**

[13] If it has not already done so, ORC is to notify parties and the court as to any further scope challenges.

### **Regional Policy Statement**

[14] ORC anticipates notifying in June a proposed Regional Policy Statement. Leave is granted for the parties to confer and seek directions for the filing of evidence and submissions in response. Directions are to be sought **within five (5) working days** of notification.

[15] The court will endeavour to hear the same in the final sitting weeks.

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<sup>3</sup> These involved minor changes to improve the clarity and consistency of the plan change provisions.

<sup>4</sup> I refer here to the empanelling of witnesses on Wednesday 26 May 2021.

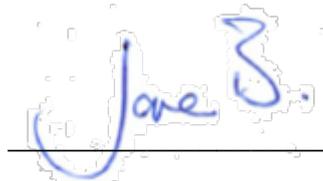
## Directions

[16] By **Friday 11 June 2021**, I direct:

- (a) in relation to the matters set out in paragraphs [6]–[13], submissions and further evidence are to be filed;
- (b) ORC, having conferred with the parties, is to propose directions for the filing of submissions and supplementary evidence, by **five (5) working days** of the proposed Regional Policy Statement's notification;
- (c) any party unable to attend court in the week commencing **5 July 2021** is to advise the court, seeking direction.

## Leave

[17] Leave is reserved to amend or to seek new directions.



**J E Borthwick**  
**Environment Judge**

Issued: 31 May 2021

