

**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

**MINUTE OF THE ENVIRONMENT COURT
CONFERENCE OF COUNSEL (PRIORITIES)
(2 June 2021)**

[1] This Minute is released for the purpose of case management and directs counsel to meet and confer on the topic of deemed permits and rights of priority.

[2] The topic has already been the subject matter of expert conferencing. The court invited the planners to conference on options for inclusion in PC7. In their joint witness statement, the planners stated that the conference proceeded in the absence of any express legal advice.¹

[3] With hindsight, the planners would have benefitted from legal advice on the legal nature of deemed permits and deemed conditions and secondly, the range

¹Planning joint witness statement dated 3 & 17 May 2021 at second paragraph.



of options and vires (lawfulness) of any proposed provision for inclusion in PC7.²

[4] I am told further expert conferencing has been scheduled for Friday 4 June 2021. Subject to what I say next, that conference may need to be rescheduled.

[5] It is the court's understanding that all interested parties agree in principle that further amendments to the plan change are required. Ahead of the expert conference I have asked Dr Somerville QC to facilitate a meeting of counsel to discuss the alternative solutions (options) that respond to the expiry of deemed permits. Specific attention is to be given to the lawfulness of all options identified for the planners' consideration.

[6] The output of the meeting is to be agreed at its conclusion.³

[7] The conference is to be held without prejudice to the parties' views on the matters of law addressed in Dr Somerville's opinion⁴ and counsel are directed to attend.

[8] That said, it is not Dr Somerville's role to identify any options, but rather to support counsel in their endeavours. In doing this, Dr Somerville does not represent the views of the court in relation to any matter for determination.

[9] While it is a matter for the parties and Dr Somerville, I suggest that the meeting could take place by AVL (Zoom or MS Teams for example).

² For example, it has been suggested by counsel and witnesses that priorities can be directly recognised in the provisions of the plan change. Vires aside, is this with a view that a condition of a replacement consent could effectively bind a third party e.g. the permit holder with the superior right may require another permit holder to reduce or to cease taking? If it is, is that a valid condition?

³ This may be an agreed report and agenda for the planning witnesses ahead of their conference.

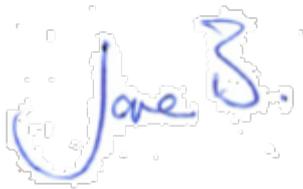
⁴ Memorandum of Amicus Curiae dated 19 May 2021.

Directions

[10] I direct the Regional Council:

- (a) to confer with counsel and Dr Somerville as to a suitable date and time for the meeting; and
- (b) to confer with Commissioner Dunlop and planning witnesses as to rescheduling of the further expert conference (if required).

[11] Leave is granted for the parties to seek amended or further directions as a consequence of this Minute.



J E Borthwick
Environment Judge

Issued: 2 June 2021