

**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**

---

**MEMORANDUM OF COUNSEL FOR THE OTAGO REGIONAL COUNCIL IN  
RELATION TO SCOPE FOR RELIEF SOUGHT BY TERRITORIAL  
AUTHORITIES  
9 June 2021**

---

Judicial Officer: Judge Borthwick

---

Applicant's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
DX WX11179  
Tel +64 3 379 7622  
Fax +64 379 2467

**WYNNWILLIAMS**

Solicitor: P A C Maw / M A Mehlhopt  
(philip.maw@wynnwilliams.co.nz /  
michelle.mehlhopt@wynnwilliams.co.nz)

**MAY IT PLEASE THE COURT:**

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council** or **ORC**) in response to the Court's direction that the Council file a memorandum identifying any relief that it contends are outside the scope of Plan Change 7 (**PC7**) to the Regional Plan: Water for Otago (**RPW**), noting the principles relied on.<sup>1</sup>
- 2 The legal principles for the Environment Court to consider when determining whether it has scope to make amendments to PC7 is set out in full in the Council's legal submissions on scope and are not repeated here.<sup>2</sup> This Memorandum cross-refers to those submissions where appropriate.
- 3 The Council considers that the proposed addition of new<sup>3</sup> takes for community water supplies (**CWS**) sought by the Territorial Authorities<sup>4</sup> in the supplementary evidence of Mr Twose is out of scope because it is not "on" / "about" PC7. The Council's reasons for contending that the proposed inclusion of new takes for CWS in PC7 is out of scope are set out below.
- 4 For completeness, Counsel notes that the burden rests with the Territorial Authorities to establish that the relief sought is within the Court's jurisdiction to grant.

**Out of scope relief sought by Mr Twose**

- 5 In the supplementary evidence of Mr Twose, the Territorial Authorities seek the addition of New Rule 10A.3.1A.2. This rule proposes to make all applications for consent to take water for the CWS a restricted discretionary activity. This includes new takes for CWS.<sup>5</sup>
- 6 Counsel is concerned that this new rule is not "on" / "about" PC7 to the extent that it applies to new takes for CWS. As notified, PC7 only

---

<sup>1</sup> Minute of Environment Court dated 31 May 2021 at [13].

<sup>2</sup> Legal submissions of Counsel for the Otago Regional Council in relation to scope dated 7 April 2021 at [4]-[28].

<sup>3</sup> Applications for the take and/or use of freshwater where this activity was not previously authorised by a deemed permit or water permit.

<sup>4</sup> Clutha District Council, Waitaki District Council, Queenstown Lakes District Council, Dunedin City Council and Central Otago District Council.

<sup>5</sup> New Rule 10A.3.1A.2.a.

contained rules relating to the replacement of deemed permits and expiring water permits.

**Relief sought not “on” / “about” PC7**

- 7 The Council maintains the position in its earlier legal submissions that PC7 is intended to be limited in its scope and, with the exception of the policy guidance on duration provided under Policy 10A.2.2, does not seek to otherwise regulate applications for new water takes.<sup>6</sup> Instead, as notified, PC7 intended applications for new water to continue to be assessed in accordance with the relevant provisions of the RPW, except that the duration of any water permit will be determined in accordance with the policies in PC7.
- 8 The effect of New Rule 10A.3.1A.2. is that new takes for CWS would fall to be assessed under that rule as a restricted discretionary activity, rather than as a discretionary activity pursuant to Rules 12.1.5.1<sup>7</sup> and 12.2.4.1<sup>8</sup> of the RPW. The matters of discretion in New Rule 10A.3.1A.2 are primarily directed towards applications for replacement takes for CWS, with the ORC’s ability to consider the environmental effects of new takes for CWS relatively constrained when compared to the full range of effects that can be considered for new takes under the RPW.
- 9 Given that PC7 as notified did not intend to manage new takes for CWS, the Council considers that New Rule 10A.3.1A.2 is seeking to manage a resource that was unaltered by PC7 and therefore does not represent a change to the status quo advanced by PC7.
- 10 Further, the Council does not accept that, as the take of water for CWS is a relatively discrete topic, no other submitters or persons would be affected by the addition New Rule 10A.3.1A.2.<sup>9</sup> Counsel submits that the restrictions on the Council’s ability to consider the potential effects of new takes for CWS takes on both the environment and other water users means that there is a real possibility that other persons could be affected by the relief proposed in Mr Twose’s supplementary evidence.

---

<sup>6</sup> See legal submissions of Counsel for the Otago Regional Council in relation to scope dated 7 April 2021 at [32]-[38].

<sup>7</sup> For surface water takes.

<sup>8</sup> For groundwater takes.

<sup>9</sup> Supplementary Brief of Evidence of Matthew William Twose dated 12 May 2021 at [5].

- 11 The Council considers that the direct regulation of new takes for CWS is not something that could reasonably have been foreseen by potentially affected persons at the time PC7 was notified. Accordingly, there is a risk that the relief proposed would amend PC7 without real opportunity for participation by those potentially affected.

Dated this 9<sup>th</sup> day of June 2021



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

Counsel for Otago Regional Council