

**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
DRAFT POLICY AND RULES (PRIORITIES) AND PROPOSED RPS
(30 June 2021)**

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

Draft Policy and Rules (Priorities)

[2] On Monday 28 June 2021 the court heard the evidence on new provisions to stand in the stead of expiring rights of priority that apply to many deemed permits. It is not unfair to say that there are difficulties with the conceptualisation and drafting of those provisions.

[3] On Tuesday 29 June 2021, the court proposed a new policy and rules for the parties' consideration (**attached**) making clear that we are not wedded to the same.



[4] There is to be further conferencing of the planning witnesses on this topic. A joint witness statement is to be filed by **Monday 5 July 2021** along with ORC's advice as to the scheduling of the planning witnesses for hearing. In addition to the court's draft provisions, the planners may propose other solutions.

[5] The court does not regard its draft as being in a final form. The court simply has not had time overnight to work up drafting to this standard. That said, the parties and counsel are to take note of four matters:

- (a) first, key terms will need to be defined and, as discussed with counsel, there may be more appropriate words and phrases than the ones used in the provisions;
- (b) second, while the draft deliberately uses the term 'residual flow' to reflect the downstream user's concern that a flow remain in a waterbody to be taken, the court does not intend that each permit holder is to propose a residual flow at their point of take;
- (c) third, the planners are to draft a condition of consent that would respond to the rights set out in the rule; and
- (d) finally, Ms King's (ORC consents planner) views on the workability of the drafted provisions are sought.

Proposed Regional Policy Statement (proposed RPS)

[6] ORC notified a proposed RPS on Friday 25 June 2021. While parties want an opportunity to file evidence and further submissions, I have made it clear that they are to confer first on the issues that arise for the court's consideration and determination.

[7] I direct:

- (a) by **Friday 9 July 2021**, ORC, having conferred with all interested

parties,¹ will file a memorandum setting out the issues for consideration and determination;

- (b) by **Wednesday 14 July 2021**, Mr de Pelsemaecker will file supplementary evidence;
- (c) by **Wednesday 21 July 2021**, interested parties will file supplementary evidence;
- (d) by **Friday 23 July 2021**, ORC will file further legal submissions;
- (e) by **Wednesday 28 July 2021**, interested parties will file further legal submissions;
- (f) by **Friday 30 July 2021**, ORC will file legal submissions in reply;
- (g) Submissions and evidence are not to exceed 6 pages including all attachments.

[8] Leave is reserved for the parties to seek further (or other) directions.



J E Borthwick
Environment Judge

Issued: 30 June 2021



¹ This includes parties not present in the court this week.

Deemed Water Permit – New Policy

Where the application is to replace a deemed water permit that, as of 18 March 2020, was subject to a right of priority, the residual flow at or below the point of take will be sufficient to supply a downstream permit holder.

Entry condition

Where policy [x] applies, the applicant proposes a condition to cease taking water when notice in writing is given by a downstream permit holder.

Reservation control/discretion

Any condition to cease taking water when notice in writing is given by a downstream permit holder.

Define

Deemed permit – as per s 413 RMA

Right of priority – as per s 413 RMA

Downstream permit holder

Notice – 72 hours

