

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

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

**ENV-2020-CHC-128**

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

**IN THE MATTER** of the Omnibus Plan Change - Plan Change 8 being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under s 142(2)(b) of the RMA

**AND**

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

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

---

**MEMORANDUM OF COUNSEL ON BEHALF OF THE OTAGO REGIONAL  
COUNCIL IN RELATION TO THE PRE-HEARING CONFERENCE  
9 July 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 The Environment Court has directed that a pre-hearing conference on proposed Plan Change 8 (**PC8**) to the Regional Plan: Water for Otago be convened on Wednesday 14 July 2021 at 10am.
- 2 The notice for the pre-hearing conference identifies the provisions to be addressed in the pre-hearing conference. The identified provisions comprise all of the primary sector provisions of PC8.
- 3 In paragraph [26](b) of Court's directions dated 21 April 2021, any party proposing amendments to the timetable and/or seeking other directions, is to file a memorandum by 3pm on Friday 9 July.
- 4 The purpose of this memorandum is to update the Court and parties on the outcomes of mediation; and to seek alternative directions in relation to the evidence exchange timetable in advance of the pre-hearing conference.

**Outcome of mediation**

- 5 Expert conferencing for the primary sector provisions has taken place. Mediation on the primary sector provisions concluded yesterday, 8 July 2021.
- 6 As a result of conferencing and the subsequent mediations, agreement has been reached between the parties in attendance at mediation on the topics and provisions referred to mediation. The only party that attended mediation but has not agreed to sign the mediation agreement in relation to Policy 7.D.9 (Topic C) is Wise Response Society Inc. The Council considers that Wise Response's submission is not on Policy 7.D.9, but its submission will need to be dealt with as a general submission on PC8.
- 7 Some other final administrative steps for the signing of the mediation agreements by all parties in attendance are in the process of being completed.
- 8 There are also several parties who have filed section s274 notices on the primary sector provisions, but who did not respond to the Court's direction dated 24 June 2021 that all parties must participate in mediation and that a party may only be excused from attending in person if:

- (a) They agree to abide by any agreement reached; or
  - (b) Their interests will be represented by a representative (who has authority to settle on their behalf). This includes the representative of another party that is attending, where that party shares your interest in PC8; or
  - (c) They have advised the registry that they have no interest in the matters to be mediated.
- 9 The Council is following up with those parties who did not respond to the Court's direction and did not attend mediation to confirm that they do not intend to pursue their submission points on the primary sector provisions. Counsel anticipates being able to update the Court further regarding this at the pre-hearing conference or in its proposed report on the outcome of mediation.
- 10 Once the Council has received all of the necessary responses, it anticipates providing a more fulsome report to the Court in relation to the outcome of mediation, followed by the preparation of associated draft consent documentation and accompanying evidence for the Court's consideration.
- 11 Given the first instance nature of the call-in process for PC8, the Council also anticipates providing a summary of submissions table on all submissions on the primary sector provisions of PC8. This table would address those submissions of parties who are not s274 parties in this proceeding, along with reference to the mediated outcome on those submissions of parties that have participated in mediation. The table would also need to address general submissions on PC8 that were not directly on the mediated provisions but which have a bearing on the primary sector topics (including the submission of Wise Response Society Inc).

#### **Alternative directions**

- 12 Annexure 3 of the Court's Minute dated 21 April 2021 has set an evidence exchange timetable that requires the Council to file evidence in chief on 20 August 2021, followed by parties' evidence in chief 3 September 2021 and any reply evidence by 10 September 2021.
- 13 Given the agreement reached by the parties on the farming sector provisions (whilst acknowledging the first instance nature of the call-in

process) the Council respectfully suggests that an alternative timetable for the filing of evidence may now be appropriate.

- 14 It suggests that it would first be appropriate to provide a report on the outcome of mediation by 23 July 2021.
- 15 This would be followed by preparation of associated draft consent documentation and accompanying evidence for the Court's consideration. The Council suggests that 30 August 2021 would be an appropriate timeframe.
- 16 As set out above, given the first instance nature of the call-in process for PC8, the Council anticipates providing planning evidence supporting the draft consent documentation, providing section 32 analysis of the changes to the notified provisions and providing a summary of submissions table as described in paragraph 9 above.
- 17 At this stage it is unclear to what extent the Court anticipates receiving other evidence (either other technical evidence of the Council, or other evidence from the parties).
- 18 It is respectfully suggested that further directions regarding this could be provided once the Council's initial evidence has been filed.

#### **Pre-hearing conference**

- 19 Given that all parties that attended mediation reached agreement on all of the primary sector provisions referred to mediation, it is unclear whether a pre-hearing conference is still required.
- 20 The Council apprehends that parties to the mediation agreements may prefer to abide any directions of the Court, rather than attend the pre-hearing conference (the Court's Minute of 21 April 2021 provides for parties to choose not to attend if they agree to abide by the directions made by the Court).
- 21 Having said that, Counsel, anticipates that the Court may still have some questions regarding the case management of the primary sector provisions, and the process it has proposed in this memorandum.
- 22 To the extent that the Court does have questions it wishes to discuss with the Council (and assuming that there are no other interested parties wish to attend the pre-hearing conference), Counsel respectfully suggests that those questions could be able to be dealt with in

Chambers, rather than by requiring all parties to attend a pre-hearing conference.

**Directions sought**

- 23 In light of the above explanation, the Council respectfully seeks the following directions:
- (a) The pre-hearing conference scheduled to occur on Wednesday 14 July 2021 be vacated and replaced by a meeting in Chambers to discuss the proposed case management of this matter (unless there are other parties that wish to attend the pre-hearing conference);
  - (b) The Council to provide a fulsome report on the outcome of mediation by 23 July 2021;
  - (c) The Council to file draft consent documentation, accompanied by planning evidence in relation to provisions as agreed at mediation, section 32 analysis of the changes to the notified provisions, and providing a summary of submissions table by 30 August 2021;
  - (d) Further directions to be issued in relation to evidence preparation following receipt of the Council's planning evidence on 30 August 2021 (or upon receipt of the report on the outcome of mediation if the Court considers it desirable).

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



.....  
**L F de Latour / M A Mehlhopt**

Counsel for Otago Regional Council