

**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 8 to the Regional Plan: 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-128)
Applicant

**MINUTE OF THE ENVIRONMENT COURT
OTAGO REGIONAL COUNCIL: PLAN CHANGE 8
MEDIATION OF PART G and H TOPICS
(16 August 2021)**

Introduction

[1] The purpose of this Minute is to put in place arrangements for conducting mediations on Proposed Plan Change 8 topics Part G (Sediment from Earthworks for Residential Development) and Part H (National or Regional Infrastructure).

Timetable and attendance

[2] Counsel for ORC, having consulted with the parties, filed a memorandum dated 12 August 2021 identifying suitable dates for conducting the mediations. The dates that best align with the courts' availability and suit the majority of parties are 4 – 5 October 2021. Accordingly, mediation for the PC 8 Part G and H topics has



been set down for 4 -5 October 2021.

[3] Every endeavour has been made to avoid dates that would otherwise have conflicted with known, existing Senior Court, Environment Court and ORC fixtures. The date, venue and commencement time for each topic will be notified in a subsequent court Notice of Mediation. It is intended that all mediations be conducted in person in Dunedin. All parties to the PC8 Part G and H provisions must participate in mediation (RMA, s.268A) ¹. However, a party may be excused from attending in person if, prior to the mediation and **no later than 13 September 2021**, they provide the court with written advice that:

- (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 who is attending, where that party shares your interest in PC8; or
- (c) they have no interest in the matters to be mediated.

[4] If for any reason a party wishes to request a change to the programme for a specific topic they must first obtain agreement from all other parties to that topic and advise ORC accordingly. No change to the timetable will be considered without such supporting documentation and even then, the court, for resource reasons, may not be able to accommodate a change.

[5] The court's Notice of Mediation will advise the sequence that the topics will be mediated in and the time allocated for each topic. Parties will appreciate that the mediation of individual topics may proceed either more quickly or more slowly than allowed for and they should be prepared to be flexible with attendance arrangements in response to communications from the Regional Council regarding

¹ Noting that PC8 Part H Policy 10.4.2 for nationally or regionally important infrastructure is to be mediated with PC1 Policy 7.4.11 for landfills on 6-7 September '21 as advised in the court's 13 August '21 Notice of Mediation.

progress.

Mediation logistics

[6] ORC will provide a support person at all mediations to assist with the drafting of mediation agreements, accessing documents and communicating with parties during the mediation about progress and timing.

Preparation for mediation

[7] Parties are to attend, having considered potential ways of settling the matters in dispute, and be prepared to engage meaningfully in the discussion of the same. Advisors are to participate with a clear understanding of the outcome(s) sought by their clients and be prepared to articulate such.

[8] ORC will circulate a Position paper on A3 size paper formatted as a table not less than **five (5) working days** prior to each mediation setting out submission details and the relief sought for each topic and subtopic by party, together with a summary of ORC's preliminary position. The latter may be elaborated on in an accompanying options paper, which sets out more fully ORC's reasons for supporting an identified outcome with an updated s 32 analysis. As provided for in the court's Minute dated 21 April 2021,² ORC is to also circulate any new technical material pertinent to the topic that it may propose to rely on, that was not available when PC8 was notified. ORC may also wish to circulate any other potentially relevant background technical material(s) that it considers may assist the mediation.³

² Environment Court Minute 'Timetable directions, mediation and expert conferencing' dated 21 April 2021, Annexure 2 at [5].

³ If a party takes issue with the matters addressed in any pre-circulated ORC technical paper, they are to file and serve an annotated copy of the paper succinctly indicating the matter in issue **two (2) working days** prior to the mediation.

[9] Having reviewed ORC's preceding materials, parties are invited to circulate indicative Position papers in response – including to the mediator – not less than **two (2) working days** prior to mediation where they consider this would assist the mediation. This will be especially useful, and is expressly sought, where a party proposes to seek alternative plan provisions or relief, within scope, but not included in the party's submission.

[10] ORC will provide its Position paper in Microsoft Word format, and parties may elect to use ORC's table as a base for their responses by adding a column. Responses that do not utilise ORC's table should generally be limited to two pages of text, excluding drawings and the like.

[11] ORC's Position paper in most instances will form the agenda for the mediation. Unless otherwise agreed, individual points of relief will be mediated (and any relevant matters will be addressed) in the order set out in ORC's Position paper.

Planning towards a hearing

[12] Parties are reminded that even if disputed aspects of the PC8 topics are resolved between the parties at mediation, a hearing may still be required, albeit the matters in issue will have narrowed or settled. It is anticipated that Judge Steven, who has assumed case management responsibility for Parts G and H of PC8, will issue a Minute with directions on this and related aspects in due course.



R M Dunlop
Deputy Environment Commissioner

Issued: 16 August 2021

