

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

ENV-2020-CHC-128

IN THE MATTER

of the Resource Management Act 1991, and
of a direct referral of proposed Plan Change 8 to the
Regional Plan: Water for Otago under s142(2)(b) of
the Act by the Minister for the Environment

AND

Otago Regional Council

Legal Submission for Director-General of Conservation *Tumuaki Ahurei*

Re Plan Change 8 – Primary Sector Provisions

3 November 2021

Department of Conservation *Te Papa Atawhai*

RMA Shared Services

Operations Group

Private Bag 4715

Christchurch 8140

Counsel Roia: Pene Williams

Email: pwilliams@doc.govt.nz

May it please the Court:

The following matters are respectfully submitted on behalf of the Director-General of Conservation Tumuaki Ahurei (Director-General):

Introduction – the Director-General supports the intent of PC8

1. The Director-General is a section 274 party to these Court proceedings on proposed Plan Change 8 to the Regional Plan: Water for Otago (PC8). The Director-General submitted and further submitted on PC8.¹
2. The Director-General's submission supported the intent of PC8 to provide an interim planning regime:

“... to improve the management of specific activities likely to be adversely affecting water quality in Otago while a new land and water management regime is prepared that gives full effect to the [National Policy Statement for Freshwater Management 2020] NPSFM 2020.”²
3. The Director-General continues to support this intended purpose of PC8. Her submission sought amendments intended to ensure that once the plan change is operative it will achieve this purpose and be able to be applied and implemented by Otago Regional Council (ORC, Council) consent and compliance staff.
4. The Director-General is aware of the interim nature of PC8, and she supports the Council taking steps to improve management of these activities to hopefully halt further decline in water quality in the region, while the new Land and Water Regional Plan (LWRP) is developed, and the proposed Otago Regional Policy Statement 2021 (proposed RPS) completes its processes to become operative.

NPSFM 2020 – Te Mana o te Wai – PC8 gives partial effect

5. The NPSFM 2020 was notified and became operative after PC8 was notified.³ Te Mana o te Wai is the fundamental concept underlying the NPSFM 2020. I respectfully adopt the Court's analysis of Te Mana o te Wai as set out in its Plan Change 7 decision.⁴
6. The sole objective of the NPSFM states:

¹ Submitter 80055, submission dated 17 August 2020 and further submission dated 2 October 2020.

² Statement of Evidence of Felicity Boyd for ORC – Plan Architecture – 3 September 2021, paragraph 62

³ Gazetted August 2020 and in force from 3 September 2020

⁴ *Re Otago Regional Council (Plan Change 7)* [2021] NZEnvC 164, at [28] – [31], this also refers to the Court's consideration of an earlier iteration of Te Mana o te Wai in the NPSFM 2014, as amended 2017, in *Aratiatia Livestock Ltd v Southland Regional Council* [2020] NZEnvC 93.

(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future*

7. PC8 has a limited scope and focus to address management of specific activities to improve water quality in the Otago Region. This intention goes directly to support the first priority of the objective of the NPSFM 2020.
8. I submit this plan change is a further step along the road to the Council, not merely complying with the words of the NPSFM, but also, giving effect to the fundamental objective of Te Mana o te Wai. The Regional Plan: Water will have better provisions and tools to manage water quality issues arising from some activities and, to at least begin, to give effect to the NPSFM 2020 and Te Mana o te Wai once PC8 is approved and operative.
9. I acknowledge PC8 does not give full effect to the NPSFM 2020, nor was it ever intended to. Nevertheless, I submit PC8 is consistent with the NPSFM 2020 and the fundamental concept of Te Mana o te Wai.

PC8 also gives partial effect to the New Zealand Coastal Policy Statement 2010

10. Water quality in Otago is poor in parts, especially towards the bottom end of catchments which includes the coastal environment.
11. The New Zealand Coastal Policy Statement 2010 (NZCPS) Objective 1 relevantly states:

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, dunes and land, by:

...

 - *maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.*
12. Policy 4 of the NZCPS provides for integrated management of natural and physical resources in the coastal environment, and importantly, activities that affect the coastal environment. PC8 looks to manage landuse activities that affect or are likely to affect water quality in the coastal environment, thereby giving effect to Policy 4.

13. Policy 22 sedimentation and Policy 23 discharge of contaminants are also relevant to PC8, although more so to the Urban topic. To the extent they are relevant to the Primary Sector provisions, I submit that PC8 is consistent with these policies and gives effect to them.

PC8 is also consistent with the Lake Wanaka Preservation Act 1974

14. The Lake Wanaka Preservation Act 1974 (LWPA)⁵ is to provide for the preservation of the normal water levels and shoreline of the lake, and the maintenance and improvement of its water quality.⁶ The LWPA also establishes the Guardians of Lake Wānaka whose functions include advising the Minister of Conservation and consultation with the Council on its functions as they relate to the lake.⁷
15. The purpose of the LWPA relevant to this proceeding is: *“to maintain and, as far as possible, to improve the quality of water in the lake.”*⁸
16. I submit the purpose of PC8 to better manage activities to improve water quality is consistent with this purpose of the LWPA, and this should result in maintenance or improvement of water quality in Lake Wānaka.

Collaborative processes – expert conferencing and mediation – have improved PC8

17. As was acknowledged by Ms Boyd⁹, PC8 was prepared and notified in a relatively short timeframe and with limited and targeted consultation. The plan change was then called in by the Minister for the Environment at the point the country went into lockdown in March 2020. This somewhat delayed notification with submissions being due in August 2020.
18. The truncated process to draft and publicly notify PC8 means that, inevitably, there were parts of the plan change where it could be improved upon.
19. I would like to express thanks, on behalf of the Director-General, to the parties' experts who participated in the primary sector technical expert conferencing in

⁵ The Act is administered in the Department of Conservation Te Papa Atawhai

⁶ Long title to LWPA

⁷ Section 5 LWPA

⁸ Section 4(d) LWPA

⁹ supra note 2, SoE Felicity Boyd, dated 3.09.21, paras 20 – 32 set out development of PC8 occurred from August 2019 through to March 2020

June 2021. The Director-General does not hold that expertise, and gratefully accepts the resulting Joint Witness Statement and its recommendations.¹⁰

20. The JWS then informed the mediation which occurred in late June-July 2021. While the mediation process is confidential, it did allow the opportunity for robust discussion between parties.
21. Mediation can be a gruelling process, especially for lay persons. All parties participated in mediation with a genuine spirit of collaboration to make changes to achieve the intended purpose to improve water quality in the region while improving the workability of the plan change.
22. Parties also did not lose sight of the interim and limited nature of the plan change, and the further planning processes already underway (proposed RPS 2021) and to come (LWRP). These processes are likely to require further changes to give effect to the NPSFM 2020 to improve water quality consistent with the visions and values for FMUs and rohe in the Otago region.
23. Again, it is to the credit of all the parties involved, and particularly the Council's counsel and staff, that agreement was reached on the PC8 primary sector provisions.

Workability of mediated version of PC8 primary sector provisions

24. The Director-General adopts the conclusion of Ms Strauss¹¹ that the primary sector provisions of PC8 as mediated: "... *provide additional guidance to consents officers and decision makers ... that is beneficial and will assist in more efficient decision-making*".¹²

Conclusion – the Director-General supports the PC8 primary sector mediated outcomes

25. While the Director-General supported notified versions of provisions, she now supports the versions as amended in mediation. This has resulted in many of the Director-General's original submission points being recommended to be 'rejected'.¹³

¹⁰ JWS 1 – Primary Sector Part B – Animal Waste Storage 8-9 June 2021

¹¹ Statement of Evidence of Kerstin Strauss for ORC, dated 15 October 2021

¹² Supra, paragraph 87

¹³ Statement of Evidence of Felicity Boyd for ORC dated 15 October 2021 – appendix 7, Statement of Evidence of Dolina Lee for ORC dated 15 October 2021 – appendix 7.

26. The Director-General accepts these recommendations as appropriate and supports the mediated versions of the PC8 primary sector provisions. In my submission these provide the best short term measures for specific activities, which are workable and will give partial effect to the NPSFM 2020, to hopefully begin to improve water quality in Otago.

Dated 3 November 2021



Pene Williams

Counsel *Roia*

for the Director-General of Conservation *Tumuaki Ahurei*