

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV:2020-CHC-127

In the Matter

of the Resource
Management Act 1991

And

a notice of motion under
section 149T(2) to decide
proposed Plan Change 7 to
the Regional Plan: Water
for Otago.

Between

**OTAGO REGIONAL
COUNCIL**

Applicant

And

**OTAGO WATER
RESOURCES USER
GROUP**

Section 274 Party

**JOINT MEMORANDUM OF COUNSEL FOR OWRUG AND OTAGO
REGIONAL COUNCIL AS TO SUPPLEMENTARY EVIDENCE FOR THE
OTAGO REGIONAL COUNCIL**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: Phil Page
PO Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: SELFE2EMAIL
Email: phil.page@gallowaycookallan.co.nz

JOINT MEMORANDUM

May it please the Court:

1. OWRUG received the Regional Council's evidence on 7 December.
2. OWRUG's expert witnesses anticipated that the Regional Council's evidence would, "as a minimum", include the content set out in the Environment Court's direction at paragraph 33 dated 28 October 2020. In OWRUG's view, it did not.
3. Prior to Christmas, counsel for OWRUG made contact with counsel for the Otago Regional Council seeking that further evidence be produced by the Otago Regional Council to comply with paragraph 33, in particular, paragraphs 33(a) and (b). The information requested is set out in the table at paragraph 6 below. OWRUG considers that the Regional Council's evidence does not produce evidence about the state of the environment, nor produces data about what the resource management issue is that arises from the way in which the current operative Regional Plan Water is being administered.
4. A draft application for directions was prepared by OWRUG. Counsel were conscious that the Environment Court was under extreme work pressure before Christmas and sought to resolve matters between themselves rather than proceed then to seek orders.
5. The Otago Regional Council considers that its evidence does describe the state of the environment in such detail as is appropriate to understand the plan change and does identify the significant resource management issues that the plan change seeks to address as set out in paragraph 33(a) and (b) of the Court's directions. However, the Council has reviewed the evidence requested and has indicated what further evidence it can produce and by when, if the Court and parties would be assisted by this.
6. For these reasons, Otago Regional Council and OWRUG have agreed that the Council could produce supplementary evidence as follows:

Evidence sought by OWRUG	Evidence that ORC can provide	Timeframe for providing evidence
<p>Production of the Otago Regional Council's State of the Environment 2015-2020 series reports on a catchment and/or sub catchment level.</p>	<p>State of the Environment Surface Water Quality in Otago 2006 to 2017: https://www.orc.govt.nz/media/6957/final_orc_soe_report_2006_to_2017.pdf</p> <p>2019 – 2020 Water quality report card documenting ORC water-quality monitoring undertaken between July 2015 and June 2020 and NIWA monitoring undertaken between January 2015 and December 2019: https://www.orc.govt.nz/media/9226/water-quality-soe-15-20-final-report.pdf</p> <p>Water quality report cards for individual areas July 2015 to June 2020: https://www.orc.govt.nz/plans-policies-reports/reports-and-publications/water-quality/state-of-the-environment-water-quality-reports</p>	<p>26 January 2021</p>
<p>A comparison of the State of the Environment 2015-2020 report data against the NPS FM 2020 Appendix 2A attributes, on a catchment and/or sub catchment level.</p>	<p>This work has not been completed by ORC.</p> <p>ORC has some estimates from the accounting system. However, the system is still in development, not yet peer reviewed and is incomplete (eg. not all attributes, doesn't exclude sites with insufficient samples, doesn't exclude sites where attributes don't apply, doesn't correct for certain factors etc).</p> <p>This work will be completed to inform the new land and water regional plan.</p>	<p>ORC is not in a position to produce the evidence sought as the work has not yet been completed by ORC but will be completed to inform the new land and water regional plan.</p>

<p>A map identifying the Otago Regional Council's existing and closed hydrological and rainfall monitoring sites together with the period of data record available for each site.</p>	<p>A map identifying the ORC's existing and closed hydrological and rainfall monitoring sites and the period of data record available for each site can be provided. Whilst the map of existing sites can easily be generated, the map of closed sites will take more time. Staff have advised that this could be provided by 22 January 2021.</p>	<p>26 January 2021</p>
<p>Any other research, report, or data that the ORC is seeking to rely on to draw a connection between renewal of the permits subject to Plan Change 7 and the water quality attribute status for each catchment.</p>	<p>ORC has no other research, report or data that it is seeking to rely on to draw a connection between the renewal of the permits subject to Plan Change 7 and the water quality attribute status for each catchment.</p>	<p>ORC is not seeking to rely on any other research, report or data and therefore is not in a position to produce the evidence sought.</p>
<p>A table identifying the existing permits to which Plan Change 7 applies, together with the cumulative rate and volume allocation that they relate to, grouped by catchment. That table should also identify:</p> <p>(1) The permits for which replacement permits have yet to be applied for, grouped by catchment, and the cumulative rates and volumes those permits relate to.</p> <p>(2) The permits that are currently the subject of a replacement application lodged with the Council, grouped by catchment and the cumulative rates and</p>	<p>ORC provides weekly Deemed Permit Status reports to MfE that set out:</p> <ul style="list-style-type: none"> • All current applications being processes, the date new consents were issued, the catchment the permit is in and the term being sought; • The number of Deemed Permits outstanding in each catchment. <p>Reports that identified what catchments the permits were in have been provided to MfE since 7 July. More detailed reports that have current applications in progress have been prepared since 1 September.</p> <p>The ORC will provide the 15 December 2020 reports as these include all of the information from</p>	<p>The reports provided to MfE can be provided to the Court and parties in the first instance.</p> <p>An additional table identifying matters sought can be provided by 1 February 2021.</p>

<p>volumes those permits relate to.</p> <p>(3) The permits that have already been replaced by decision, but have not yet commenced, grouped by catchment (for example, in the Luggate and Lindis catchments) and the cumulative rates and volumes those permits relate to.</p>	<p>when the Council started preparing the reports and are up to date as of Tuesday 15 December.</p> <p>ORC could prepare a table identifying the matters sought. However, this will take time to complete. Staff have estimated that this could be provided from 1 February. If completed earlier, it would be provided earlier.</p>	
<p>For each catchment in which there are permits to which Plan Change 7 applies, a table identifying the water take permits that expire after 31 December 2025 (i.e. after the period to which Plan Change 7 applies) together with the cumulative rate and volume allocation that they relate to, grouped by catchment.</p>	<p>This can be done.</p>	<p>1 February 2021.</p>
<p>A table summary of the deemed permits that have already been replaced, grouped by catchment, that identifies:</p> <p>(1) Changes in allocation rates and volumes compared with the permit that was replaced.</p> <p>(2) The term of the permit.</p>	<p>(1) & (2) - A table summary of the changes in allocation rates and volumes compared with the permit that was replaced is challenging as one deemed permit isn't necessarily replaced by one permit, so a like for like comparison is difficult. Further some deemed permits have been replaced by permits which themselves are not being replaced.</p> <p>ORC could provide a table including all deemed permits that</p>	<p>A table summary identifying matters sought by 1 February 2021, except for item (3).</p>

<p>(3) Features of the replacement permit that enable comparison of the outcome of the replacement decision with the provisions of the National Policy Statement Freshwater Management 2020.</p>	<p>have been replaced by a resource consent or resource consents that are still current. This does not include consents with a status of 'cancelled', 'surrendered', 'expired', 'withdrawn' or 'rejected'. ORC's current database went live in August 2020, Deemed Permits replaced before that date may not be linked to their replacement consent.</p> <p>Given the challenges with preparing this summary, this work will take time to complete. Staff have estimated that this could be provided by 1 February 2021.</p> <p>[Note: that the term of the permit for Deemed Permits is set out in the weekly Deemed Permit Status Reports provided to MfE.]</p> <p>(3) This summary does not exist and on the face of it we consider that it would take considerable time to complete.</p>	
<p>The cumulative total and average cost per permit of the Council's charges and additional charges for processing the replacement permits to date.</p>	<p>The way this information is held by the Council at the application level does not make it useful for comparison, particularly given the consents of varying types and that applications are currently being processed under an operative and proposed plan.</p>	<p>ORC is not in a position to produce the evidence sought.</p>

7. Counsel acknowledge that the information is likely to be of interest to parties other than the ORC and OWRUG. Counsel therefore are not proceeding on the assumption the Court will necessarily accept that the supplementary evidence should be produced because other parties may need time to consider their position.

8. It is unlikely that a question of whether other parties consent to, or object to supplementary evidence being produced by the Otago Regional Council can be resolved in a timely way that does not interfere with the rest of the Court's timetable. It is therefore suggested that the proposed supplementary evidence be received on a provisional basis subject to any subsequent objections that may be made by other parties as to whether the supplementary evidence should be received and considered by the Court.
9. The Court is asked to make a direction that the supplementary evidence be received as agreed between ORC and OWRUG, but that any party shall have a reasonable period of time to indicate to the Court whether it objects to the supplementary evidence being received by the Court.

Date: 25 January 2021

A handwritten signature in blue ink, appearing to be 'P J Page', with a stylized, cursive script.

P J Page

Counsel for OWRUG

A handwritten signature in blue ink, appearing to be 'P Maw / M Mehlhopt', with a stylized, cursive script.

P Maw / M Mehlhopt

Counsel for Otago Regional Council