

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

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

ENV-2020-CHC-127

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of the Water Permits Plan Change - Plan Change 7, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under section 142(2)(b) of the RMA

AND

IN THE MATTER of an application under section 149T of the RMA

BETWEEN **OTAGO REGIONAL COUNCIL**
Applicant

**MEMORANDUM OF COUNSEL FOR OTAGO REGIONAL COUNCIL IN
RELATION TO EXPERT CONFERENCING
19 February 2021**

Judicial Officer: Judge Borthwick

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MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council** or **ORC**) in respect of the directions in:
 - (a) Paragraph [5] of the Environment Court's Minute dated 27 November 2020 regarding the conferencing of expert witnesses in relation to Schedule 10A.4;
 - (b) The Notice of Expert Witness Conference dated 12 February 2021; and
 - (c) Paragraph [3] of the Court's minute dated 17 February 2021.

Draft agenda for Expert Witness Conferencing in relation to Schedule 10A.4.

- 2 The Notice of Expert Witness Conference directed Counsel to prepare a draft agenda and timetable.
- 3 Counsel consider that an appropriate starting point for a draft agenda is as follows:
 - (a) How, or should, Schedule 10A.4 address the following key issues raised in evidence:
 - (i) Reliability of supply;
 - (ii) System Efficiency;
 - (iii) Data Quality;
 - (iv) Consideration of legitimate overtaking;
 - (v) The use of additional water metering data;
 - (vi) The complexity of Schedule 10A.4; and
 - (vii) Hydroelectricity.
- 4 Counsel do not consider it to be an efficient use of time for planning witnesses to observe the conferencing of technical experts. Rather planning witness conferencing should occur following the release of the Joint Witness Statement of technical experts.
- 5 Counsel will circulate this draft agenda to parties for feedback on:

- (a) Additional agenda items or the refinement of the items set out above;
- (b) Which experts will attend, and on what topic; and
- (c) The time required for each topic.

Filing of joint witness statement

- 6 In its Minute dated 27 November 2020, the Court directed that having conferred with the other parties calling witnesses to give expert evidence in relation to the schedule, ORC is to propose further directions including:
- (a) The filing date for the joint witness statement (if different from 9 April 2021);
 - (b) A list of witnesses (including areas of expertise) attending the conference;
 - (c) If witnesses are required, whether counsel/parties agree on nominating particular witnesses who may represent their collective views and answer any questions by counsel or from the court.
- 7 Counsel will liaise with parties regarding these matters when circulating the draft agenda for feedback. This will enable Counsel to provide a complete list of witnesses attending the conferencing.

Additional topics for expert conferencing

- 8 In its Minute dated 17 February 2021, the Court directed that if any party considers that expert conferencing is warranted on discrete topics (in addition to that already directed by the court) they are to raise the matter with counsel for the for the ORC so that it can be dealt with in this Memorandum.
- 9 Some counsel have identified additional discrete topics that might usefully be the subject of expert conferencing. However, further topics might be identified following the filing of the Council's reply evidence.
- 10 Counsel acknowledge that the court's commissioner resources are finite and unevenly distributed around the country. Counsel will confer with parties on this matter to:
- (a) Refine a list of topics that warrant expert conferencing;

- (b) Confirm whether an Environment Court Commissioner is required to facilitate that conferencing; and
- (c) If an Environment Court Commissioner is required, whether the conferencing can be accommodated in the time already scheduled for expert conferencing on Schedule 10A.4 or whether additional time is required.

Directions sought

- 11 The Notice of Expert Conference dated 12 February 2021 directs that the refined agenda and timetable for expert conferencing on Schedule 10A.4 together with the names, expertise and contact details of the experts attending the various sessions will be circulated to all counsel, attendees and the facilitator by **Monday 1 March 2021**.
- 12 In addition to that direction, Counsel for the ORC respectfully seeks a direction that having conferred with parties regarding the matters in paragraph 11 above, Counsel lodge a Memorandum of Counsel with the Court addressing the following matters:
 - (a) The filing date for the joint witness statement (if different from 9 April 2021);
 - (b) A list of witnesses (including areas of expertise) attending the expert conference on Schedule 10A.4;
 - (c) If witnesses are required, whether counsel/parties agree on nominating particular witnesses who may represent their collective views and answer any questions by counsel or from the court;
 - (d) A refined list of topics in addition to Schedule 10A.4 that warrant expert conferencing;
 - (e) Whether an Environment Court Commissioner is required to facilitate that conferencing; and
 - (f) If an Environment Court Commissioner is required, whether the conferencing can be accommodated in the time already scheduled for expert conferencing on Schedule 10A.4 or whether additional time is required.

Dated this 19th day of February 2021

A handwritten signature in blue ink, appearing to read 'PAC Maw / MA Mehlhopt', positioned above a horizontal dotted line.

P A C Maw / M A Mehlhopt

Counsel for Otago Regional Council