

**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

**APPLICATION FOR LEAVE TO CROSS EXAMINE A WITNESS FOR
LONGER THAN 30 MINUTES**

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APPLICATION FOR LEAVE

1. Otago Water Resources User Group seeks leave to cross examine the following witnesses for more than 30 minutes:
 - (a) Mr Tom de Pelsemaeker (Otago Regional Council);
 - (b) Dr John Hayes (Otago Fish and Game Council);
 - (c) Mr Ben Farrell (Otago Fish and Game Council);

2. The reasons why more than 30 minutes may be required are these:

Evidence of Mr Tom de Pelsemaeker

3. Mr de Pelsemaeker's evidence is the substantive planning evidence in favour of Plan Change 7 for the Otago Regional Council. The brief is long. One aspect relied upon by Mr de Pelsemaeker for his opinion is that the Otago Regional Council lacks sufficient information to make long term decisions about the sustainability of water allocation. That proposition is not accepted by Otago Water Resources User Group.
4. In its minute dated 28 October 2020, the Environment Court directed at paragraph [33] that as a minimum, the Otago Regional Council's evidence will assist the Court and the parties to have a proper understanding of:
 - (a) *“describe the state of the environment at a catchment and/or sub-catchment level in such detail as is appropriate to understand the proposed plan change.”*
5. Neither Mr de Pelsemaeker's evidence nor any other witness for the ORC describes the state of the environment at a catchment and/or sub-catchment level. The Council's evidence does not enable the Court and the parties to understand the extent of the information that the Otago Regional Council has as to the state of the environment, whether there is a current deficiency, and how that deficiency might be remedied. Counsel proposed to explore that with the witness, which may take some time.

Evidence of Dr John Hayes

6. Dr Hayes provides extensive evidence on establishment of default minimum flows and allocation limits which is relied upon by other Fish and Game witnesses to establish quantitative limits that would apply to applications assessed against policy 10A.2.3. This would have significant implications for permit applicants and therefore the basis for default limits being applied requires testing. Dr Hayes also discusses key issues relating to the interaction of indigenous fish and trout which are at variance to other evidence and requires testing. For that reason, Dr Hayes' evidence in relation to those thresholds requires careful examination that may exceed 30 minutes.

Evidence of Mr Ben Farrell

7. Mr Farrell gives the planning evidence for Otago Fish and Game Council. Much of Mr Farrells evidence is premised on his understanding of the existing Otago Regional Plan: Water. The accuracy of Mr Farrell's understanding requires careful testing.
8. In addition, Mr Farrell's evidence addresses the thresholds suggested in Dr Hayes' evidence. The planning implications and the feasibility/utility of the non-complying activity pathway for applicants requires exploration with this witness.

Duration

9. In respect of all three witnesses, it is expected that cross examination will not extend beyond 1 hour. It is of course entirely possible that extensive cross examination is not required on account of Court's questions going before OWRUG's cross examination. This application is therefore made out of an abundance of caution.

Date: 19 February 2021

A handwritten signature in blue ink, appearing to be 'P J Page / B Irving', located in the upper left quadrant of the page.

P J Page / B Irving

Counsel for Otago Water Resources User Group