

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

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

**ENV-2020-CHC-128**

**UNDER** the Resource Management Act 1991 (RMA)

**IN THE MATTER** of the Omnibus Plan Change - Plan Change 8 and Plan Change 1, 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

**OTAGO REGIONAL COUNCIL**

**Applicant**

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**MEMORANDUM OF COUNSEL ON BEHALF OF THE OTAGO REGIONAL  
COUNCIL  
1 March 2021**

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## MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council**) in respect of proposed Plan Change 8 to the Regional Plan: Water for Otago (**PC8**) and proposed Plan Change 1 to the Regional Plan: Waste for Otago (**PC1**) in response to the directions in the Environment Court's Minute dated 15 February 2021 at:
- (a) Paragraph [11] that any party having a different view on the matters to be referred to mediation/expert conferencing is to advise the court in writing, stating reasons; and
  - (b) Paragraph [12] that the Council is to:
    - (i) address whether any potential amendments may be required to PC8 in response to the National Policy Statement for Freshwater Management 2020 (**NPS-FM 2020**), Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) and Resource Management (Stock Exclusion) Regulations 2020 (**Stock Exclusion Regulations**); and
    - (ii) propose a date for filing a set of amendments (if contemplated) in response to the NPS-FM 2020, NES-F and the Stock Exclusion Regulations.

### Potential amendments to PC8

- 2 PC8 introduces new provisions to manage stock access to water and intensive grazing. The provisions were introduced in response to what was signalled in the Action for Healthy Waterways (**AHW**) package released by the government in September 2019 and were intended to fill a gap in the Regional Plan: Water (**Water Plan**) in relation to managing discharges from these rural land use activities.
- 3 Following the notification of PC8, the NES-F came into force on 3 September 2020, with provisions controlling intensive winter grazing coming into force on 1 May 2021. These rules will control intensive winter grazing from 1 May 2021 and will fill the current gap in the Water Plan that the intensive grazing provisions in PC8 were intended to fill.
- 4 The Stock Exclusion Regulations also came into force on 3 September 2020 and require the exclusion of stock from wetlands, lakes and rivers

more than 1 metre wide. These regulations will fill the current gap in the Water Plan that the stock access to water provisions in PC8 were intended to fill.

- 5 As a result of the gazettal of the NES-F and the Stock Exclusion Regulations, the Council lodged a submission on PC8, seeking the deletion of provisions relating to stock access to water<sup>1</sup> and intensive grazing<sup>2</sup> and the inclusion of the following advice notes:

For regulations on stock exclusion from waterways refer to the Resource Management (Stock Exclusion) Regulations 2020

For rules applying to the use of land on a farm for intensive winter grazing refer to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 Subpart 3.

- 6 The Council wishes to avoid duplication of controls on intensive grazing and stock access to water and considers that as these activities are now regulated by higher order documents, it is no longer necessary, or desirable, to control these activities in PC8 prior to the notification of a new land and water regional plan for Otago.

- 7 Therefore, the Council proposes the following amendments:

- (a) Deletion of Part D: Intensive Grazing including:
  - (i) New Rule 14.6.1.1 (land use – permitted);
  - (ii) New Rule 14.6.2.1 (land use – discretionary); and
  - (iii) New definition of intensive grazing.
- (b) Deletion of Part E: Stock access to water including:
  - (i) The amendments proposed to Rule 13.5.1.8A; and
  - (ii) The new definition of dairy cattle.
- (c) Deletion of new Policy 7.D.9(b) to (e) in Part C: Good farming practices;
- (d) Deletion of the new definition of critical source area in Part C: Good farming practices; and

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<sup>1</sup> Rule 13.5.1.8A(b).

<sup>2</sup> Rule 14.6.1.1, Rule 14.6.1.2 and definition of Intensive Grazing.

- (e) Deletion of the existing definitions of feed pad, sacrifice paddock and stand off pad in the Regional Plan: Water as set out in Part C: Good farming practices.<sup>3</sup>
- 8 The Council will provide a track change set of PC8 provisions incorporating these proposed amendments by 3pm, Friday 5 March 2021.
- 9 The Council is also considering whether the Rules 13.5.1.8A and 13.5.1.8B of the Water Plan also need to be deleted in light of the Stock Exclusion Regulations, as well as a consequential amendment to Rule 13.5.3.2. The Council will confirm its position on these rules when it provides a track change set of PC8 provisions on Friday.
- 10 The Council does not consider that any potential amendments are required following the gazettal of the NPS-FM 2020.

### **Matters to be referred to mediation/expert conferencing**

#### ***PC1***

- 11 The Court considers at paragraph [2] of its minute that all PC1 is amendable to mediation, there being a reasonable prospect of settling or narrowing the differences between the parties. The Council agrees with this position.

#### ***PC8***

- 12 The Court has identified specific provisions of PC8 that are also amenable to mediation and topics that may benefit from expert conferencing.
- 13 The Council respectfully considers that all provisions of PC8 are amenable to mediation as there is a reasonable prospect that even if a matter is not settled, the differences between the parties can be narrowed. Counsel notes that this position is consistent with that of Federated Farmers in its Memorandum of Counsel dated 25 February 2020. However, Counsel notes that there are topics that could be progressed as between the parties without the need for facilitated mediation. These topics are identified in paragraph 15 below.

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<sup>3</sup> These definitions were proposed to be deleted in the notified version of PC8.

14 Given the relationship between some of the provisions and the parties involved, the Council considers that there would be value in court-assisted mediation on the following topics:

(a) ***Reticulated systems discharge policies (Part A):***

- (i) Amended Policy 7.C.5;
- (ii) Amended Policy 7.C.6; and
- (iii) New Policy 7.C.12.

(b) ***Policies managing rural discharges (Part A), good farming practices (Part C) and sediment traps (Part F):***

- (i) Amended Policy 7.D.5;
- (ii) New Policy 7.D.6;
- (iii) Policy 7.D.9(a);
- (iv) New Rule 13.5.1.10; and
- (v) New Definition – Sediment trap.

(c) ***Animal waste storage and application (Part B):***

- (i) New Policy 7.D.7;
- (ii) New Policy 7.D.8;
- (iii) Amended Rule 12.C.0.2;
- (iv) New Rule 12.C.0.4 (discharge – prohibited);
- (v) New Rule 12.C.1.4 (discharge – short term permitted);
- (vi) New Rule 12.C.2.5 (discharge – restricted discretionary);
- (vii) New Rule 14.7.1.1 (land use – permitted);
- (viii) New Rule 14.7.1.2 (land use – short term permitted);
- (ix) New Rule 14.7.2.1 (land use – controlled);
- (x) New Rule 14.7.3.1 (land use – discretionary)
- (xi) New Schedule 18;
- (xii) New Schedule 19;

- (xiii) New Definitions – Dairy Effluent Storage Calculator, Suitably Qualified Person;
  - (xiv) Amended Definition – animal waste system; and
  - (xv) Deleted Definition – agricultural waste.
- (d) ***Sediment from earthworks for residential development (Part G):***
- (i) New Policy 7.D.10;
  - (ii) New Rule 14.5.1.1 (land use and discharge – permitted);
  - (iii) New Rule 14.5.2.1 (land use and discharge – restricted discretionary); and
  - (iv) New Definition – earthworks.
- 15 Counsel suggests that the mediation on animal waste storage and application (Part B) and sediment traps (Part F) take place following the release of the joint witness statement from the expert conferencing detailed in paragraphs 18 below.
- 16 Counsel considers that the following topics could be progressed as between the parties without the Court's assistance:
- (a) Part H: Nationally or regionally important infrastructure (given the discrete issues and small number of submitters); and
  - (b) The deletion of provisions relating to intensive grazing and stock access to water (given the level of support for their removal following the gazettal of the NES-F and Stock Exclusion Regulations).
- 17 There may also be minor issues within the identified topics above that may be easily resolved prior to mediation.

### **Expert Conferencing**

- 18 The Court identified in its Minute that the following topics may benefit from expert conferencing:
- (a) Schedule 18 – storage pond drop test requirements and criteria; and
  - (b) Schedule 19 – storage calculation.

19 The Council agrees with the position in the Memorandum of Landpro dated 22 February 2021 that given the links between the rule conditions, the definitions and schedules, it would be beneficial to extend the expert conferencing on Schedules 18 and 19 to include new Rule 14.7 and the relevant new and amended definitions. This would include the following provisions:

- (i) New Rule 14.7.1.1 (land use – permitted);
- (ii) New Rule 14.7.1.2 (land use – short term permitted);
- (iii) New Rule 14.7.2.1 (land use – controlled);
- (iv) New Rule 14.7.3.1 (land use – discretionary)
- (v) New Schedule 18;
- (vi) New Schedule 19;
- (vii) New Definitions – Dairy Effluent Storage Calculator, Suitably Qualified Person;
- (viii) Amended Definition – animal waste system; and
- (ix) Deleted Definition – agricultural waste.

20 As set out above, Counsel suggests that the mediation on animal waste storage and application (Part B) and sediment traps (Part F) take place following the release of the joint witness statement from the expert conferencing.

Dated this 1<sup>st</sup> day of March 2021



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**P A C Maw / M A Mehlhopt**

Counsel for Otago Regional Council