

**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
RESOURCE USER
GROUP**

Section 274 Party

**MEMORANDUM OF COUNSEL FOR OWRUG AS TO RELIEF SOUGHT
DATED 17 MARCH 2021**

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MEMORANDUM OF COUNSEL

May it please the Court:

1. On Monday the 15th of March 2020 the Court directed that by 9am 17 March 2021, Counsel for OWRUG file a statement of amended position on the relief sought through its submission. This memorandum serves that purpose.
2. As signalled to the Court, OWRUG's members are numerous and diverse. In the time available it has not been possible to canvas and accommodate all views in a single position. There are members who take the view that some form of interim planning regime is likely and therefore wish to focus on making that as cheap and workable for permit holders as possible, so that further investment is not required at this stage. There are others, some of whom have committed already to substantial investment to achieve environmental gains in order to support their renewal applications, who regard 6 year permits as untenable.
3. OWRUG's case has not yet been presented nor has its evidence been heard, so some members consider that it is premature to be making formal decisions in relation to relief.
4. For this reason, OWRUG wishes to signal a willingness to explore changes to Plan Change 7 that may result in a version of the Plan Change that addresses both points of view, whilst not being yet in a position to authorise counsel to formally withdraw the primary relief that Plan Change 7 be declined.
5. At page 46 of OWRUG's submission (paragraph [194]) OWRUG set out three options for relief:
 - (a) Option One, decline Plan Change 7;
 - (b) Option Two, decline Plan Change 7 and amend Regional Plan Water provisions;
 - (c) Option Three, decline Plan Change 7 and replace it with a permitted activity rule and amended policies and methods.

6. OWRUG abandons relief that seeks changes to the Operative Regional Plan Water. This is intended to address the jurisdictional issue that the Court has signalled to counsel about whether such relief is “on the plan change”.
7. OWRUG does not withdraw its relief that Plan Change 7 should be declined. Aside from the question of obtaining the necessary authority, that relief also provides wide scope for changes to be made within PC7. OWRUG reserves its right to submit that PC7 fails to comply with section 67(3)(a) and so is beyond the Environment Court’s jurisdiction to approve. The relief is the logical consequence of the submission.
8. Nevertheless, OWRUG recognises, in the alternative, that rejecting Plan Change 7 in its entirety may not be acceptable to the Court, and OWRUG should recognise that and consider how Plan Change 7 might be rectified to resolve its many difficulties.
9. For the reasons explained in the supplementary evidence of Alex King for the Otago Regional Council, OWRUG’s members consider that Plan Change 7 as it was notified simply does not provide a feasible pathway through the (then) proposed controlled activity rule. It is for that pragmatic reason that non-complying activity resource consents have been sought by OWRUG’s members. Added to that, many of OWRUG’s members have, through the resource consent applications lodged, proposed limits and controls that will require substantial investment in new infrastructure to achieve compliance. Such infrastructure upgrades cannot be implemented on the limited security of a six-year permit term.
10. OWRUG will therefore be seeking two consenting pathways in Plan Change 7:
 - (a) A low-cost status quo pathway through the controlled activity rule. This is a strictly procedural roll-over of consents. The controlled activity pathway set out in the evidence of Mr Tim Ensor for the Minister for the Environment is an acceptable model for the “procedural route”. If Mr Ensor’s proposed

controlled activity policy and rule is adopted, then OWRUG will not pursue a permitted activity rule.

- (b) In addition, OWRUG members consider that there should be a substantive consenting pathway where reasonably practicable opportunities exist to improve degraded freshwater indigenous fish habitat within the next six years. OWRUG proposes that this pathway is available for catchments or sub-catchments where improvements can be made sooner than the expiry of Plan Change 7 but where for feasibility reasons, the terms of permits required to deliver habitat enhancement need to be longer than six years. OWRUG seeks a fully discretionary resource consent pathway for permit terms expiring not after 31 December 2040.
11. OWRUG is currently working with its planning expert, Ms Dicey, on what such a discretionary pathway might look like (policy and method drafting) and proposes to file a supplementary brief for Ms Dicey setting out sample provisions by 3pm on Friday 19 March, in accordance with the Court's direction.

Date: 17 March 2021.



Phil Page / Bridget Irving

Counsel for Otago Water Resource User Group