

**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**

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**MEMORANDUM OF COUNSEL FOR OWRUG REGARDING DEEMED  
PERMITS AS PRIVATE PROPERTY INTERESTS**

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**GALLAWAY COOK ALLAN  
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DUNEDIN**

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## MEMORANDUM OF COUNSEL

May it please the Court:

1. At paragraph 68 of Opening Submissions Counsel for OWRUG discussed the notion that the deemed permit priority regime has its genesis in the private property nature of the permits. The Court requested clarification as to the source of this position.
2. Filed with this memorandum is the case of the *Minister of Conservation v. Otago Regional Council* Decision No. 29/2002 which provides at paragraphs [4] – [13] a succinct summary of the history of the deemed permit regime through time. Paragraph [5](9) records that mining privileges were a chattel interest in land pursuant to the Mining Act 1926. The relevant provision of the Mining Act 1926 is set out below.

*As to the Transfer and Registration of Mining Privileges.*

178. Every mining privilege shall be deemed to be a chattel interest, and may be sold, encumbered, transmitted, seized under writ of execution or warrant, or otherwise disposed of as fully as a chattel interest in land, subject nevertheless to the provisions of this Act.

Mining privilege to be deemed a chattel interest. 1908, No. 120, sec. 171

3. Counsel also notes that this position appears to have been preserved by section 413(5) of the Resource Management Act 1991 as follows:
  - (5) Notwithstanding section 122, every deemed permit shall be deemed to be a chattel interest in land and—
    - (a) *subject to sections 136 and 137, may be sold, encumbered, transmitted, seized under writ of execution or warrant, or otherwise disposed of, as fully as a chattel interest in land; but*
    - (b) *no dealing or disposition of a kind referred to in paragraph (a) shall have effect until written notice of the dealing or disposition is received by the appropriate regional council.*
4. Counsel trusts that this provides sufficient background to the position expressed in opening submissions. If the Court wishes for further information to be provided regarding the status of mining privileges/deemed permits under the various iterations of legislation this can be provided.

Date: 24 March 2021.

A handwritten signature in blue ink, appearing to read "Bridget Irving". The signature is written in a cursive style with a large initial 'B'.

Phil Page / Bridget Irving

Counsel for Otago Water Resource User Group