

**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 LEGAL ISSUES TO BE DETERMINED REGARDING
DEEMED PERMIT PRIORITIES
26 March 2021**

Judicial Officer: Judge Borthwick

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MAY IT PLEASE THE COURT:

- 1 The Court has directed Counsel to confer and provide a list of legal issues for the Court's determination relating to carrying over existing deemed permit priorities into a condition on a replacement resource consent.
- 2 Counsel has conferred with Counsel for Otago Water Resource Users Group (**OWRUG**) and the Director-General of Conservation (**D-G**) being those legally represented parties seeking relief in relation to priorities. Counsel agree that the issues for the Court's determination are as set out below.
- 3 What status do priorities on deemed permits have under the Resource Management Act 1991 (**RMA**)?
 - (a) What is the effect of section 413(2) of the RMA and sections 11 and 13 of the Water and Soil Conservation Amendment Act 1971?
 - (b) Does section 108AA affect the application of section 413(2) of the RMA?
 - (c) If the deemed permit resulting from a mining privilege is deemed to include, as a condition of the permit, the right of priority, what is the status of this condition under the RMA? Is the condition deemed to be included on the permit with priority or the subservient permit, or both?
- 4 Are deemed permit priorities capable of being valid conditions on a resource consent issued under the RMA?
 - (a) Would a condition carrying over an existing priority meet the requirements of section 108AA?
 - (i) Would the condition be directly connected to an adverse effect on the environment (section 108AA(1)(b)(i))?
 - (ii) If the condition would not be directly connected to an adverse effect on the environment, could a valid rule be included in PC7 that the condition would be directly connected to (section 108AA(1)(b)(ii))?

- (iii) Is the current exercise (or not) of the existing priority relevant to clauses (i) and (ii) above? If so, how?

Dated this 26th day of March 2021



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P A C Maw / M A Mehlhopt

Counsel for Otago Regional Council