

**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 ON BEHALF OF OTAGO REGIONAL
COUNCIL IN RESPONSE TO DIRECTIONS SOUGHT BY THE TERRITORIAL
AUTHORITIES FOR FILING SUPPLEMENTARY EVIDENCE
29 April 2021**

Judicial Officer: Judge Borthwick

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MAY IT PLEASE THE COURT:

- 1 The purpose of this Memorandum is to respond to the Memorandum of Counsel filed on behalf of the Territorial Authorities dated 23 April 2021 seeking directions for filing supplementary evidence and in particular to:
 - (a) Seek clarification of the details of the community water supply schemes that will be provided; and
 - (b) Oppose the directions sought regarding further supplementary evidence from Mr Twose setting out an alternative pathway for community water supplies within Plan Change 7 (**PC7**).

Details regarding community water supply schemes that will be affected by PC7

- 2 The Territorial Authorities wish to call supplementary evidence regarding the following:¹
 - (a) Details regarding the community water supply schemes that will be affected by Plan Change 7 including both expiring permits and new permits to accommodate growth. This will include information regarding the nature of the activities that are served by those supplies and projected growth requirements of them. This evidence will be produced by Mrs McGirr, Mrs Muir and possibly Mr Essenburg on behalf of the territorial authorities that have consents that will require replacement or new consents to be applied for within the life of PC7; and
 - (b) Identification of urban environments relevant to the above.
- 3 The purpose of this evidence is to:²
 - (a) Clearly identify the nature of the schemes affected by Plan Change 7 and how water provided by them is used.
 - (b) Set out the anticipated impacts on the specific schemes that will be affected by the plan change; ...

¹ Memorandum of Counsel seeking directions for filing supplementary evidence dated 23 April 2021 at [3(a)-(b)].

² Memorandum of Counsel seeking directions for filing supplementary evidence dated 23 April 2021 at [4(a)-(b)].

- 4 Counsel understood that the purpose of the supplementary evidence to be filed by the Territorial authorities was so that the Court could understand the four corners of the relief sought by the Territorial Authorities, and whether the Clutha District Council Stirling example addressed in evidence by Mr Heller is simply an outlier regarding the uses to which the water is put or whether that actually applies generally across all territorial authorities.³ The expectation from the Court was that the Territorial Authorities would have done an audit to see whether there were any other outlier schemes, but at the moment the Court does not have this evidence.⁴ Counsel understood the Court to be seeking an evidential foundation to say that the Stirling example is an outlier.⁵
- 5 On that basis, it is submitted that the supplementary evidence provided should necessarily address each of the schemes likely to be impacted by PC7 and provide a breakdown of the use to which the water is put, including the proportionate shares. It is not clear from the directions sought by the Territorial Authorities that this level of detail is intended to be addressed in the evidence.

Supplementary Evidence from Mr Twose

- 6 As set out at paragraph [3(c)] of the Memorandum:

The TA's are also considering whether further supplementary evidence from Mr Twose would be useful to set out an alternative pathway for community water supplies within Plan Change 7.

- 7 It is stated at paragraph [4(c)] of the Memorandum that:

If evidence from Mr Twose is provided its purpose is to set out an alternative option for the Court to consider to address the issues identified in the TA's submissions. However, this may not be of assistance to the Court if it is intended that further expert planning conferencing is anticipated for Community Water Supplies and Hydro-electricity generation¹.

3 Transcript p 252 at lines 2 to 4, p 233 at lines 23 – 25, p 308, line 2.

4 Transcript p 292 at lines 11 – 13.

5 Transcript p 308, line 9.

[¹ Counsel notes that in the Minute 21 April 2021 the Court did not seek to have the planners conference on bespoke provisions for CWS and Hydroelectricity, although it is not apparent whether this is because it is not to occur at all, or would be likely to occur later between a narrower group of interested parties.]

- 8 The Otago Regional Council opposes the provision of further supplementary evidence from Mr Twose. Mr Twose had an opportunity to provide the drafting of an alternative pathway following the Supplementary Evidence of Mr de Pelsemaeker dated 14 March 2021 and the Joint Witness Statement of Planners dated 8 April 2021 before presenting evidence at the hearing on 14 April 2021. Other parties have taken this opportunity and it has been able to be tested through cross examination.
- 9 Some parties who have not provided specific plan provisions in planning evidence have requested to file further supplementary planning evidence following cross examination of their planning witnesses. Rather than granting these requests, the Court has indicated that if the Court thinks that there is something of merit to be explored or a gap that needs to be filled, it is likely to issue an interim decision and then call for evidence.⁶ It is submitted that this is a more appropriate approach. If the Court determines that there should be an alternative pathway provided for community water supplies in PC7 it may make an interim decision and seek further supplementary evidence in a structured way regarding the issues that the Court seeks to address.
- 10 If Mr Twose is given the opportunity to provide supplementary evidence following cross examination this would be inconsistent with the Court's previous approach to parties at this late stage of the hearing.

⁶ Transcript, p 697 at line 15 to 27.

- 11 Counsel is also concerned that if the directions are granted as sought, then other parties may seek similar directions resulting in a continuous circle of evidence exchange.

Dated this 29th day of April 2021



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P A C Maw / M A Mehlhopt

Counsel for Otago Regional Council