

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

IN THE MATTER of the Resource Management Act 1991

AND of a notice of motion under section 149T(2) to decide proposed Plan Change 8: Water for Otago (referred to the Environment Court by the Minister for the Environment under section 142(2)(b) of the Act)

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-128)

Applicant

**MINUTE OF THE ENVIRONMENT COURT
TIMETABLE DIRECTIONS, MEDIATION AND EXPERT
CONFERENCING PLAN CHANGE 8**

(21 April 2021)

Introduction

[1] This Minute addresses the referral to mediation and expert conferencing of Plan Change 8 (PC8) and then proposes a timetable to bring the matter to hearing.

[2] The directions are in addition to the general directions made in the Minute dated 28 October 2020.

Parties to PC8

[3] Attached to this Minute and labelled **Annexure 1** is a list of parties with an



interest in PC8.

Expert conferencing

[4] There being no opposition to the same, I will refer the following topics to expert conferencing:

- (a) Schedule 18 – storage pond drop test requirements and criteria;
- (b) Schedule 19 – storage calculation; and
- (c) Rule 14.7.1 and related definitions.¹

[5] Commissioner Ross Dunlop, who has re-joined the Environment Court as a Deputy Commissioner, will be facilitating expert conferencing and will issue directions on the same. Participating witnesses should anticipate those directions will be in accordance with the Environment Court's Practice Note 2014: Appendix 3 – Protocol for expert witness conferences. It is likely also that the conference(s) will be multi-disciplinary.

[6] Expert conferencing is to be concluded by **Monday 14 June 2021** with the joint witness statement(s) to be filed by the same date or at the date directed by Commissioner Dunlop. The procedure for filing an agenda for expert conferencing is set out in **Annexure 2**.

Mediation

[7] Commissioner Dunlop will also be facilitating mediation.

[8] In consultation with Commissioner Dunlop, the procedure for mediation is set out in **Annexure 2** to this Minute. Commissioner Dunlop may amend the procedure by issuing a Minute(s).

¹ See Landpro memorandum dated 22 February 2021 at [4].

[9] Mediation on PC8 is to be concluded by **Friday 9 July 2021**. Thereafter the timetable for evidence will apply. Even if the parties resolve their dispute in relation to PC8 a hearing will be required albeit the matters in issue will have narrowed or settled.

Pre-hearing conference

[10] I will set down PC8 for a pre-hearing conference to be convened in Dunedin at **10 am on Wednesday 14 July 2021**.

[11] Parties may seek leave to change or amend the evidence timetable at the pre-hearing conference. However, it is unlikely the date for mediation/expert conferencing will be extended.

[12] Likewise, it is the court's expectation that the hearing commence no later than Monday 20 September 2021. That said, agreements reached in mediation may abridge the time required for evidence exchange, in which case the court will consider setting down PC8 for hearing on an earlier date.

[13] All parties to PC8 are required to attend the pre-hearing conference unless you arrange for a representative to attend on your behalf. However, you may choose not to attend. If you choose not to attend, you are agreeing to abide by the directions made by the court at the pre-hearing conference (a record of which will issue shortly after).

[14] If there are matters which you wish to raise at the pre-hearing conference you will need to file a memorandum with the court setting the issues out. Those parties who are legally represented, are reminded to set out any draft directions sought.

Evidence timetable and hearing dates

[15] The evidence shall be filed in accordance with the timetable set out in

Annexure 3 to this Minute. The hearing dates are also set out in **Annexure 3**. Preparing this timetable, I have assumed:

- (a) all parties calling expert witnesses will be heard in Dunedin. If more time is required for expert evidence, the court will return to Dunedin to hear the evidence;
- (b) the court will hear from parties not calling expert evidence either in Dunedin or Cromwell;² and
- (c) having heard from all parties, ORC may present final evidence-in-reply and closing submissions in Dunedin.

Supplementary evidence

[16] Supplementary evidence may only be filed with the prior leave of the court.

Hearing schedule

[17] Nearer the hearing a separate Minute will be issued requesting parties to confirm their availability during one of the proposed hearing weeks (see **Annexure 3**). You will be asked to advise:

- (a) how much time you want allocated to speak to your submission and/or for presenting evidence;
- (b) except for those parties calling expert evidence, the venue where you wish to be heard;
- (c) any resources you require (the court will provide a projector for maps and large boards to attach plans, etc and will endeavour to provide any other reasonable resources, subject to availability);
- (d) whether you intend to call expert evidence (including any planning witness);
- (e) whether you wish to address the court in Māori; and

² The likely hearing venue will be Cromwell, but this is to be confirmed.

- (f) whether, when addressing the court, you require a sign language (or other language) interpreter.

[18] The ORC hearing administrators (Glen Cooper and Rebecca Jackson) will email a hearing schedule to parties showing the location, date, sequence and time allocated to each party. The time allocated to each party will reflect your estimate given and will take into account the limit on the length of cross-examination. We will upload the hearing schedule to the court's website.

[19] Leave will be required from the court to exceed the time allocated.

Cross-examination

[20] Subject to the directions of the court, parties may cross-examine witnesses. The court may also have questions for witnesses.

[21] Cross-examination (questioning) of witnesses is expected in relation to significant relevant matters that are in issue. It would be unusual, however, to cross-examine a witness who is not an expert, save in relation to a disputed fact or other circumstance, including matters of credibility.

[22] In a multi-party case, such as this, the court will require parties to agree on the general order in which they cross-examine witnesses and will limit the cross-examination of witnesses by parties having the same interest.

[23] The court will not permit unduly protracted cross-examination of witnesses. The party seeking to cross-examine is to abide by any directions the court has made on cross-examination. Cross-examination is also a topic that the Friend of Submitter may be able to give guidance on.

[24] After evidence has been served, any party wishing to cross-examine is to file a notice with the court identifying the witness to be cross-examined and the order in which parties are to cross-examine. You are required to give notice by

the time indicated in **Annexure 3**.

[25] Unless leave is granted by the court, cross-examination of witnesses by each party is not to exceed 30 minutes. Any application for leave to exceed this limit is to be filed 10 working days before the hearing commences, giving reasons.

Directions

[26] I further direct:

- (a) PC8 is to be set down for a pre-hearing conference in Dunedin at **10 am on Wednesday 14 July 2021**. A pre-hearing conference notice will issue shortly;
- (b) any party proposing amendments to the timetable and/or seeking other directions are to do so in a memorandum to be filed by **3 pm on Friday 9 July 2021**;
- (c) any party planning to attend the pre-hearing conference is to file a memorandum advising their attendance by **3 pm on Friday 9 July 2021**. If you do not attend, the court will assume that you agree to abide by the directions made by the court at (or following on from) the conference.

Jane S.

J E Borthwick
Environment Judge



Issued: 21 April 2021

Annexure 1

List of parties

Otago Regional Council
Balquhiddar Farming Ltd
Beef and Lamb NZ and Deer Industry NZ
Blackstone Hill Ltd
Clarkson, Elizabeth
Closeburn Station
Crutchley, Emma
Dairy Holdings Limited (DHL)
Dairy NZ Limited
Director-General of Conservation
Dowling, Nicole
Dunedin City Council
Federated Farmers of New Zealand
Fitzpatrick, Brian
Fonterra Co-operative Group Limited
G. F. Dowling Ltd.
Groundwater, Alistair and Barbara
Groundwater, Barbara
Ken Gillespie
Lambhill Station
Landpro Limited
Lauder Creek Limited
Lower Waitaki Irrigation Company Limited
McGrouther, Nicola
Mt Aspiring Station Limited
New Zealand Deer Farmers Association - Otago Branch
New Zealand Pork Industry Board
Ngāi Tahu Ki Murihiku
North Otago Irrigation Company
Otago Fish and Game Council and the Central South Island Fish and Game Council
Phil Murray Resource Management Ltd
Pine Terrace Ltd
Puketoī Farming Company Ltd
Queenstown Lakes District Council

Ravensdown Limited (Ravensdown)

RCL Henley Downs Limited

Remarkables Park Ltd

Royal Forest and Bird Protection Society of New Zealand Incorporated

Sole, Matthew

Southern District Health Board

Springwater Ag Limited

Stonehenge Station

Te Rūnanga o Ngāi Tahu

Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga

The Minister for the Environment

Thompson, William

Toko Farms

Two Farmers Farming Ltd

Vivian and Espie Limited

WAI Wanaka – Upper Clutha Lakes Trust

Wallace, Logan

Waterfall Parks Development Ltd

Wise Response Society

Annexure 2

Mediation and Expert Conferencing Procedure

Mediation

[1] Pre-mediation consultation is essential given the time constraints and the constraints on the Environment Court's commissioner resources.

[2] In advance of mediation, Environment Commissioner Ross Dunlop will work with the parties to:

- (a) lead a robust distillation of the issues in dispute to provide the basis for the parties' agenda at mediation; and
- (b) facilitate the identification of contested facts and opinions, the resolution of which may or will be important for the parties to agree as a basis for subsequently settling the matter(s) in dispute.

Pre-mediation actions

[3] The Regional Council is to use its best endeavours to confer with each of the parties on their interest(s) in the relevant topic and reasons for seeking change and:

- (a) prepare an Options Paper in A3 table word format which sets out the issue(s) to be mediated under each topic, the provisions submitted on and the relief sought by each party; and
- (b) indicate, without prejudice, as to whether the Regional Council will:
 - consider adopting with or without amendment the relief sought by another party or propose an alternative relief;
 - or
 - support the notified version of the plan change.

[4] **Five days prior to mediation** the Options Paper is to be circulated by the Regional Council to the parties and mediator. Should the Regional Council's preliminary position on an issue differ from that preferred in the PC 8 s 32 report, the Options Paper is to be accompanied by a further s 32 analysis of the Regional Council's position.

[5] The Options Paper is to be accompanied by any new technical material(s) pertinent to the issue that the Regional Council may propose to rely on, which was not available when PC 8 was notified. The Regional Council may also wish to circulate any other potentially relevant background technical material(s) that it considers may assist the mediation. If any party or their expert advisor takes issue with the matters addressed in any pre-circulated technical paper, they must file and serve an annotated copy of the technical paper(s)³ succinctly indicating the matter in issue **two working days prior to the mediation**.

Mediation Agenda

[6] To ensure that the mediation can be properly planned and runs efficiently, it is important for the parties and mediator to have a prior indication of potential agenda items, the agenda order and likely time requirements. It is anticipated the draft agenda will reflect and build on the issues contained in the Options Paper and their sequence, as appropriate.

[7] The parties are to co-operate in preparing the draft agenda which is to be filed by the Regional Council **two working days prior to mediation**, and separately provide to the Christchurch Registry with the information requested in the court's standard mediation Attendance Form on persons attending and their roles.

³ Tracking the change.

Expert conferencing

Expert Conferencing Agenda

[8] To ensure that the expert conference can be properly planned and that it runs smoothly, it is important for the court to have an early indication of potential agenda items, agenda order and likely time requirements.

[9] Working closely with their respective experts, the parties are to co-operate in refining the agenda and will propose a timetable for the sequencing of topics and issues for expert conferencing and again to provide the names and contact details of experts attending.⁴

[10] The refined agenda and timetable and the names, expertise and contact details of the experts attending the various sessions are to be circulated to all counsel, attendees and the facilitator **five working days before the expert conference**. As indicated at [5] in the Court's Minute, some expert conferences may be multi-disciplinary.

⁴ Note: any amendments proposed by expert witnesses must be within scope of the plan change and party submissions on the plan change.

Annexure 3

PC 8 timetable

Events prior to hearing		
Event	Venue	Event (week commencing)
Expert Conference(s)	Dunedin	7 June 2021 ⁵
Release of joint witness statement		14 June 2021 or as directed.
Event	Venue	Event (week commencing)
Mediation	Dunedin	21 and 28 June, 5 July 2021 ⁶
Event	Venue	Date
Pre-hearing conference	Dunedin	14 July 2021

Timetable evidence exchange		
Event		Date
ORC evidence-in-chief		30 July 2021
Parties' evidence-in-chief		20 August 2021
ORC evidence-in-reply		3 September 2021

Notice of cross-examination		
Event	Venue	Date
ORC evidence-in-chief		20 August 2021
Parties' evidence-in-chief		3 September 2021
ORC evidence-in-reply ⁷		10 September 2021

⁵ The actual dates for expert conferencing to be held in the week commencing 7 June 2021 will be confirmed in a direction from Commissioner Dunlop.

⁶ There are potentially a large number of topics for mediation during the weeks indicated. Mediation will be scheduled at Commissioner Dunlop's direction.

⁷ If, having received the Regional Council's evidence-in-chief, you have given notice that you wish to cross-examine their witnesses, there is no need to give notice again when the Regional Council files its evidence-in-reply.

Hearing Dates		
Event	Venue	Event week
Hearing	Dunedin	20 September 2021
Hearing	Dunedin	27 September 2021
Hearing	Dunedin or Cromwell	4 October 2021
Hearing	Dunedin	26 October 2021
Completion of expert evidence if required, presentation of joint witness statements and ORC evidence-in-reply and closing submission.		

