

**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 IN RELATION TO FURTHER EXPERT
CONFERENCING
23 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 Court's directions of 16 April and 21 April 2021 by:
- (a) Setting out witness availability for further conferencing on Plan Change 7 (**PC7**) to take place for 3 days between 27 April and 7 May 2021 in Dunedin; and
 - (b) Proposing directions for the filing of the Joint Witness Statement (**JWS**) and any further evidence in relation to the Schedule and associated provisions.

Witnesses attending and availability

- 2 The table below sets out the expert witnesses to attend further expert conferencing and the dates they are available for conferencing.

Witness	Party	Available dates	Reason for unavailability
Tom De Pelsemaeker	Otago Regional Council	27 – 30 April 3 - 7 May	
Roddy Henderson	Otago Regional Council	27 – 30 April 3 - 7 May	
Simon Wilson	Otago Regional Council	27 – 30 April 3 - 7 May	
Sean Leslie	Otago Regional Council	27 – 30 April 3 - 7 May	
Alexandra King	Otago Regional Council	29 – 30 April 3 – 7 May	Reporting officer at consent hearing on 28 and 29 April
Sandra McIntyre	Ngā Runanga	27 – 30 April 3 – 7 May	Aukaha-rūnaka relationship hui on 3 May ECan-rūnaka- entity hui on 7 May
Ben Farrell	Fish and Game	Not available.	Cultural harvest Tītī until 16 May.

Tim Ensor	Minister for the Environment	3 – 7 May	School holidays 27-30 April
Murray Brass	Department of Conservation	27-30 April 3-4, 7 May	Environment Court mediation on 5-6 May
Matthew Twose	Territorial authorities	4 – 7 May	
Tom Heller	Territorial authorities	Not available	Recovering from surgery
Sally Dicey	Otago Water Resource Users Group	27 – 30 April 3 – 6 May	Leave 7 May
Ian McIndoe	Otago Water Resource Users Group	27 – 30 April 3 – 7 May	
Matthew Hickey	Otago Water Resource Users Group	27 – 30 April 3 - 7 May	
Claire Perkins	Landpro Ltd McArthur Ridge, Vineyard Ltd, Mt Dunstan Estates Ltd and Strathclyde Water Ltd ¹	27 – 30 April 3 – 7 May	
Christina Bright	Landpro Ltd	27, 29 - 30 April 3 – 6 May	Hearing on 28 April PhD award ceremony on 7 May
Lionel Hume	Federated Farmers	3 May, 5 – 7 May	Leave 27-30 April, Meeting 4 May
Vance Hodgson	Horticulture NZ	3 – 7 May	Wishes to avoid school holidays 27 – 30 April
Helen Marr	Beef + Lamb	Not available. Ms Phillips has filed a Memorandum with	School holidays 27 - 30 April.

¹ Mr Reid has advised that McArthur Ridge Vineyard Ltd, Mt Dunstan Estates Ltd and Strathclyde Water Ltd will be represented at the expert conferencing by Ms Perkins.

		the Court advising that Beef + Lamb and Deer Industry New Zealand will reply on Ms Dicey's attendance.	Environment Court hearing week of 3 May.
Stephanie Styles	Trustpower	3 – 7 May	School holidays 27 - 30 April
Paul Mitchell	Trustpower	27 – 30 April 3 – 7 May	
Dugald MacTavish	WISE Response	27 – 30 April 3 – 7 May	
Anthony Davoren	McArthur Ridge Vineyard Ltd, Mount Dunstan Estates Ltd, Strath Clyde Water Ltd	3 – 7 May	Preparation of evidence for another council level plan change hearing 27-30 April

- 3 Based on the above, there are no dates when all experts are available. Notwithstanding the unavailability of Mr Brass, Mr Farrell and Ms Marr, given the availability of other witnesses it would appear that conferencing can be set down for 4 to 6 May 2021.
- 4 As the Director-General for Conservation (**D-G**) does not have an interest in Schedule 10A.4, Counsel will liaise with parties regarding the agenda and seek to structure it in a way that matters of interest to the Director-General of Conservation, including the Objective, are dealt with as early as possible on the agenda.
- 5 Counsel for Fish and Game has requested that Mr Farrell be provided an opportunity to provide comment on the JWS three working days before Fish and Game is scheduled to appear when the hearing resumes in Dunedin.

Filing of JWS and further evidence in relation to the Schedule

- 6 Counsel proposes that the JWS from the conferencing be completed, signed and dated on completion of the conference or by such other date

directed by Deputy Commissioner Dunlop. Counsel will file and serve the finalised JWS on receipt from the Conference.

- 7 The steps to be taken in relation to further evidence will depend on the outcome of the conferencing and the level of agreement between experts.
- 8 In general, Counsel would anticipate supplementary evidence in support of the position(s) set out in the JWS, together with the further evidence referred to in paragraph [19] of the Court's minute dated 21 April 2021 to be filed with the Court by Friday, 14 May 2021.
- 9 If agreement is reached on all matters in the JWS, Counsel would anticipate that the experts involved in the conferencing nominate two representatives to present the JWS at the hearing in the week of 24 May 2021.
- 10 If agreement is not reached on all matters, Counsel would anticipate that the experts nominate two representatives for each position represented in the JWS to present the JWS at the hearing in the week of 24 May 2021. Depending on the level of agreement/disagreement it may be of benefit for the representative experts to be 'hot tubbed' and questions asked as a panel.
- 11 Counsel will be in a better position to provide further detail on a proposed approach once the outcome of the conferencing is known and respectfully proposes directions in this regard below.

Proposed directions sought

- 12 Counsel respectfully seeks the following directions:
 - (a) Expert conferencing be set down for 4 to 6 May;
 - (b) The Joint Witness Statement be completed, signed and dated on completion of the conference or by such other date directed by Deputy Commissioner Dunlop, being no later than Monday 10 May 2021.
 - (c) Counsel for the Otago Regional Council file and serve the finalised Joint Witness Statement on receipt from the Conference;

- (d) Mr Farrell be provided with an opportunity to provide comment on the Joint Witness Statement 3 working days prior to Fish and Game's appearance at the reconvened hearing in Dunedin²;
- (e) Having conferred with parties following receipt of the finalised Joint Witness Statement, Counsel for the Otago Regional Council will within 2 working days, file a Memorandum of Counsel confirming:
 - (i) The representatives to present the Joint Witness Statement at the hearing;
 - (ii) The experts who will provide supplementary evidence in support of the position(s) reached in the Joint Witness Statement and addressing the matters set out in paragraph [19] of the Court's minute dated 21 April 2021;
 - (iii) The filing date for that supplementary evidence, being no later than Friday, 14 May 2021; and
 - (iv) The arrangements for cross examination of experts providing supplementary evidence.
- (f) Parties shall ensure that all witnesses involved in expert conferencing will be available in the week of 24 May 2021 should they be required to present the Joint Witness Statement and Supplementary Evidence.

Dated this 23rd day of April 2021



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P A C Maw / M A Mehlhopt

Counsel for Otago Regional Council

² Parties have not had an opportunity to provide comment on the inclusion of this proposed direction. However, it has been included on request of Counsel for Fish and Game and with agreement of Counsel for Otago Regional Council.