

**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 7 to the Regional Plan: 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-127)

Applicant

---

**MINUTE OF THE ENVIRONMENT COURT  
PLAN CHANGE 7  
Territorial Authorities: Community Water Supplies  
(3 May 2021)**

---

**Introduction**

[1] The Territorial Authorities have filed a memorandum seeking leave to file supplementary evidence.<sup>1</sup> The Regional Council opposes, in part, the directions sought.<sup>2</sup>

[2] This Minute addresses the application for leave, sets out matters the court

---

<sup>1</sup> Territorial Authorities, memorandum of counsel seeking directions for filing supplementary evidence dated 23 April 2021.

<sup>2</sup> ORC, memorandum of counsel in response to directions sought by the Territorial Authorities for filing supplementary evidence dated 29 April 2021.



would see Territorial Authorities address in evidence and directs counsel to confer and identify the issues for determination.

### **Territorial Authorities – relief**

[3] The preferred relief of the Territorial Authorities is that their applications for new and replacement permits continue to be considered and determined under the operative Regional Plan: Water.<sup>3</sup>

[4] Alternatively, the Territorial Authorities seek bespoke provisions to apply to the replacement of permits including duration exceeding six years. In saying that, the Territorial Authorities have not proffered wording for the same.<sup>4</sup>

### **ORC – opposition**

[5] We understand ORC does not oppose the filing of supplementary briefs from Mrs McGirr, Mrs Muir or Mr Essenburg. However, the ORC does oppose the direction sought for Mr Twose to file supplementary planning evidence setting out alternative relief. As counsel for ORC points out, the court has declined similar applications made by other parties to do likewise, preferring first to consider the merits of their case.<sup>5</sup>

[6] While that is generally correct, we will allow Mr Twose the opportunity to address further the proposed RDA rule and associated definition of ‘community water supply’ as that approach had the general support of planners at the expert conference including Mr de Pelsemaeker.

[7] We suggest more attention needs to be given to the matters of discretion,<sup>6</sup>

---

<sup>3</sup> Territorial Authorities, opening submissions dated 12 April 2021 at [9].

<sup>4</sup> Territorial Authorities, opening submissions dated 12 April 2021 at [10]. Cromwell transcript (Twose) at pp 337-339.

<sup>5</sup> ORC, memorandum of counsel in response to directions sought by the Territorial Authorities for filing supplementary evidence dated 29 April 2021 at [9].

<sup>6</sup> In particular see Cromwell transcript (Twose) at pp 393-409.

that would include allowing consideration of:

- water conservation measures to reduce the demand for the taking of water such as leak detection and repair, metering and consumer education;
- alternative methods of water supply for uses such as irrigating gardens, reserves and parks through rainwater harvesting and greywater recycling;
- water storage at periods of high water availability through the collection and storage of rainwater and the use of reservoirs;
- the end use and the purposes of the use of water;
- the water needs of an ‘urban environment’ for growth identified through the processes and assessments required by the National Policy Statement for Urban Development 2020 (NPS-UD).

### **Issues for determination**

[8] As matters currently stand the court must decide whether or not PC7 should apply to water permits and deemed permits held by the Territorial Authorities. If PC7 does apply, should provision be made for Territorial Authorities to take more water to accommodate population growth and if so, what are the matters about which the Regional Council is to have discretion?<sup>7</sup>

[9] When deciding whether PC7 should apply, the court would likely work through the issues listed below. These issues are ones of mixed law and fact that could be addressed in focused submissions and by further evidence from the Territorial Authorities and ORC.

[10] The issues are as follows:

---

<sup>7</sup> For the purpose of this exercise we limit our discussion of relief to that supported by all planners in the 8 April 2021 JWS.

- (a)
- (i) with reference to applications for new and replacement permits, will the Territorial Authorities be seeking permits that authorise both the taking and use water?
  - (ii) in this context, what is meant by ‘use’? Is it (a) the supply of water to another person, or (b) the use of water by another person or something else?
  - (iii) when assessing an application for a new or replacement permit, are the environmental effects from end-use of water<sup>8</sup> a relevant consideration under provisions the Regional Plan: Water?
- (b) does the partially operative Regional Policy Statement or operative Regional Plan: Water allocate water to Territorial Authorities?<sup>9</sup>
- (c) do the Territorial Authorities have a statutory duty to *supply*<sup>10</sup>:
- (i) drinking water; or alternatively
  - (ii) water, including safe and wholesome drinking water;<sup>11</sup> to a range of uses?
- (d)
- (i) are the provisions of the NPS-UD and secondly, the National Policy Statement for Freshwater Management 2020 (NPS-FM) inconsistent in some way?
  - (ii) if there is an apparent inconsistency, can the two planning instruments be constructed in a way that reconciles their provisions and allows their different provisions to stand together?<sup>12</sup>
- (e)

---

<sup>8</sup> For example, by households, by retail, commercial or industrial activities, irrigation of farm land, dairy shed washdown etc.

<sup>9</sup> Cromwell transcript (Twose) at pp 354-356.

<sup>10</sup> We use the term ‘*supply*’ not in any technical sense but because we are unclear whether this is a ‘use’ activity of the Territorial Authorities.

<sup>11</sup> Health Act 1956. Ss 69A, 69A(1) & 69W.

<sup>12</sup> See Cromwell transcript (Twose) at pp 407-409.

- (i) are the Territorial Authorities' statutory duties<sup>13</sup> to take and *supply* water, and the Regional Council's duties in relation to land and water (RMA s 30(1)(c), (e) &(f)) reconcilable under the two National Policy Statements?
- (ii) if so, how?
- (iii) if not, why not?
- (f)
- (g) is the development capacity for housing and business land identified by the Territorial Authorities' witnesses, infrastructure-ready in terms of cl 3.2, 3.3 and 3.4 of the NPS-UD?
  - (i) If so, confirm whether infrastructure-readiness is in the short or medium or long-term (NPS-UD, cl 3.4 and definitions).
- (h) have the five Territorial Authorities completed their first Future Development Strategy (NPS-UD, cl 3.12-3.18)? If not, when do they project this work will be completed?
- (i) have the five Territorial Authorities notified the Minister for the Environment that there is insufficient development capacity (NPS-UD, cl3.7)?
- (j)
  - (i) has Dunedin City Council or Queenstown Lakes District Council completed their first Housing and Business Development Capacity Assessment (NPS-UD, Policy 2, cl 3.19 and cl 4.1)?
  - (ii) if not, when is this likely to be completed?
- (k) list proposals for new or replacement permits that are also documented in the current Annual and secondly Long-Term Plans?<sup>14</sup> Have the proposals been present in previous iterations of those Plans?

---

<sup>13</sup> Under the Local Government Act 2002 and Health Act 1956.

<sup>14</sup> In P R Greenwood's evidence-in-chief dated 4 February 2021, Long Term Plan projects are listed in Appendix 3. Noting that this evidence is now to be given by J M Muir.

- (1)
- (i) the Territorial Authorities preference is for applications for replacement permits and new permits to be determined under the operative Regional Plan: Water. With reference to water quantity and effects on water quality consequential upon the taking and use of water (including land uses) the planners, having evaluated its provisions, will say whether in their opinion the Regional Plan: Water is ‘fit for purpose’?<sup>15</sup>
  - (ii) If so, why?<sup>16</sup>
  - (iii) If not, why not?<sup>17</sup>

[11] There may be an issue as to scope of the NPS-UD and the construction of ‘urban environment’.<sup>18</sup> As we do not yet understand why the submission is made,<sup>19</sup> I have not attempted to articulate the issue. That said, the Territorial Authorities will need to address the application of the NPS-UD and PC7 in environments that are not urban.

### Supplementary evidence

[12] As noted, the above matters concern a mix of law and fact. In saying that several issues noted can be addressed succinctly. For example, for issues (f) – (i) the Territorial Authorities will or will not have commenced or completed planning in-line with NPS-UD. These issues, together with (b) and (j), should readily be able to be addressed.

---

<sup>15</sup> See Prof. Peter Skelton *Investigation of Freshwater management and Allocation Functions at Otago Regional Council* (2019) Report to the Minister for the Environment. See also, letter from Hon. David Parker (Minister for the Environment) to the Otago Regional Council regarding the s 24A investigation (19 November 2019).

<sup>16</sup> Planners should cross reference evidence if the issue is comprehensively addressed.

<sup>17</sup> Again, cross reference evidence if issue already addressed.

<sup>18</sup> Territorial Authorities, memorandum of counsel seeking directions for filing supplementary evidence dated 23 April 2021 at [3(b)].

<sup>19</sup> Territorial Authorities, submissions of counsel dated 23 April 2021 at [83]-[93].

[13] Issues (a), (c), (d), (e), (d) and(k) would require a more considered response.

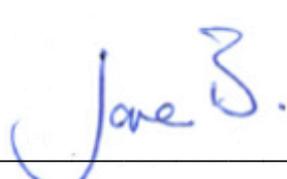
[14] With that said, we consider better progress will be made if the Territorial Authorities and the Regional Council confer over the issues to be determined by the court. In doing so, parties are free to depart from the issues identified by the court.

### Directions

[15] I direct:

- (a) the Territorial Authorities and the Regional Council, having conferred, are to file (preferably) a joint Statement of Issues for determination by **Friday 7 May 2021**;
- (b) the Territorial Authorities are to file supplementary evidence (not exceeding 10 pages per brief) by **Wednesday 12 May 2021**; and
- (c) the Otago Regional Council may file evidence-in-reply (not exceeding 10 pages per brief) by **Wednesday 19 May 2021**.

[16] Leave is reserved for any party to apply for further directions.

  
\_\_\_\_\_  
**J E Borthwick**  
**Environment Judge**



Issued: 3 May 2021