

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2020-CHC-127

In the Matter

of the Resource
Management Act 1991

And

a notice of motion under
section 149T(2) to decide
proposed Plan Change 7 to
the Regional Plan: Water
for Otago.

Between

**OTAGO REGIONAL
COUNCIL**

Applicant

And

**Clutha District Council,
Waitaki District Council,
Queenstown Lakes
District Council, Dunedin
City Council, and Central
Otago District Council**

Section 274 Parties

**JOINT MEMORANDUM OF COUNSEL IDENTIFYING ISSUES RELEVANT
TO COMMUNITY WATER SUPPLIES**

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**JOINT MEMORANDUM OF COUNSEL IDENTIFYING ISSUES
RELEVANT TO COMMUNITY WATER SUPPLIES**

May it please the Court:

1. This Joint Memorandum of Counsel is filed in response to the direction in the Minute dated 3 May 2021 that the Territorial Authorities (**TA's**) and the Regional Council, having conferred, are to file (preferably) a Joint Statement of Issues for determination by Friday 7 May 2021.
2. The issues to be determined by the Court are listed below under the following headings:
 - (a) Issues of fact to be addressed in evidence;
 - (b) Issues for planning witnesses; and
 - (c) Legal issues to be addressed

noting that there is some overlap between issues for planning witnesses and the legal issues.

Matters of fact to be addressed in evidence

3. With reference to applications for new and replacement permits, will the TA's be seeking permits that authorise both the taking and use of water?
4. 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?
5. Is development capacity for housing and business land identified by the TA's infrastructure ready in terms of cl 3.2, 3.3 and 3.4 of the National Policy Statement on Urban Development (**NPSUD**)?
 - (a) If so, is infrastructure readiness provided in the short, medium or long term (NPSUD, cl 3.4 and definitions)?

6. Have the five TA's completed their first Future Development Strategy (NPSUD cl 3.12-3.18)?
 - (a) If not, when do they project this work will be completed?
7. Have the five TA's notified the Minister for the Environment that there is insufficient development capacity (NPSUD, cl3.7)?
8. Has the ORC notified the Minister for the Environment that there is insufficient development capacity (NPSUD, cl3.7)?
9. Has DCC, QLDC and/or ORC completed a housing and business development capacity assessment under the National Policy Statement on Urban Development Capacity (**NPSUDC**) as required by 31 December 2017¹?
10. Has DCC, QLDC and/or ORC completed their first housing and business development capacity assessment under the NPSUD (Policy 2, cl 3.19 and cl 4.1)?
 - (a) If not, when will this be completed?
11. List proposals for new or replacement permits that are also documented in the current Annual and secondly Long-Term Plans?
 - (a) Have the proposals been present in previous iterations of those Plans?
12. What 'urban environments' have been identified within the five Districts?

Issues for Planning Witnesses

13. When assessing an application by a territorial authority for a new or replacement permit to take and use water are the environmental effects of the end-use a relevant consideration under the provisions of the Regional Plan: Water?

¹ Under the NPSUDC Housing and Business Development Capacity Assessments were required on a triennial basis. As such a further assessment would have been required as at 31 December 2020, but this was overtaken by the NPSUD coming into force.

14. In the opinion of the planners is the Regional Plan: Water 'fit for purpose' in terms of assessing the new or replacement permits for TA's with reference to water quantity and effects on water quality consequential upon the taking and use (including land uses)?
 - (a) If so, why?
 - (b) If not, why not?
15. Are the provisions of the NPSUD and the NPSFM inconsistent in some way?
16. If there is an apparent inconsistency, can the NPSUD and NPSFM be constructed in a way that reconciles their provisions and allows their different provisions to stand together?
17. Does the RPS or RPW allocate water for TA's?
18. Are there other 'urban environments' within the Otago Region not yet formally identified?

Legal issues to be addressed

19. When assessing an application by a territorial authority for a new or replacement permit to take and use water are the environmental effects of the end-use a relevant consideration under the provisions of the Regional Plan: Water?
20. Do the TA's have a statutory duty to supply drinking water; or water, including safe and wholesome drinking water to a range of uses?
21. Are the provisions of the NPSUD and the NPSFM inconsistent in some way?
22. If there is an apparent inconsistency, can the NPSUD and NPSFM be constructed in a way that reconciles their provisions and allows their different provisions to stand together?

23. Are the TA's statutory duties to take and supply water and the ORC's functions under RMA s30(1)(a), (ba), (c), (e) and (f) reconcilable under the NPSUD and NPSFM?
 - (a) If so, how?
 - (b) If not, why not?
24. Are the provisions of the NPSUD applicable to all TA's permits to take and use water, or only those within or supplying an urban environment?
25. What is required for 'development capacity' to be 'infrastructure ready'?
26. Does the requirement for 'development capacity' to be 'infrastructure ready' require a water permit to be held?
27. Does the RPS or RPW allocate water for TA's?

Date: 7 May 2021



B Irving

Counsel for the Territorial Authorities



P A C Maw / M A Mehlhopt

Counsel for the Otago Regional Council