

**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 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**

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**MEMORANDUM OF COUNSEL ON BEHALF OF OTAGO REGIONAL  
COUNCIL IN RELATION TO THE RECALL OF WITNESSES FOLLOWING  
EXPERT CONFERENCING  
12 May 2021**

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Judicial Officer: Judge Borthwick

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Applicant's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
DX WX11179  
Tel +64 3 379 7622  
Fax +64 379 2467

**WYNNWILLIAMS**

Solicitor: P A C Maw / M A Mehlhopt  
(philip.maw@wynnwilliams.co.nz /  
michelle.mehlhopt@wynnwilliams.co.nz)

**MAY IT PLEASE THE COURT:**

- 1 The purpose of this Memorandum is to respond to the directions at paragraph [8] of the Minute dated 28 April 2021<sup>1</sup> that, upon receipt of the Joint Witness Statement (**JWS**) from the expert conferencing on Schedule 10A.4 and other provisions, the Regional Council will confer with the parties and file a memorandum confirming:
  - (a) The witnesses who will present the JWS at the hearing;
  - (b) The witnesses who will provide supplementary evidence addressing the matters at paragraph [19] of the Minute dated 21 April 2021; and
  - (c) The arrangements for cross-examination.
- 2 The JWS was filed with the Court on 7 May 2021.
- 3 This Memorandum also addresses the additional sensitivity testing of Step 4 to take place by experts as set out in paragraph 68 of the JWS.

**Witnesses who will present the JWS at the hearing**

- 4 The experts involved in the expert conferencing nominated the following representatives to present the JWS to the Court in the week of 24 May 2021:
  - (a) Simon Wilson (Otago Regional Council)
  - (b) Paul Mitchell (Trustpower)
  - (c) Matthew Hickey (OWRUG)
  - (d) Christina Bright (Landpro)
  - (e) Tom De Pelsemaeker (Otago Regional Council)
  - (f) Sally Dicey (OWRUG)
- 5 It is proposed that Mr Wilson, Mr Mitchell, Mr Hickey and Ms Bright appear together to present a summary of the position reached by the technical experts in the JWS, followed by Mr De Pelsemaeker and Ms Dicey to present a summary of the position reached by the planning

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<sup>1</sup> Minute of the Environment Court, Plan Change 7, Expert Conferencing, Recall of Witnesses, Further Evidence, Scope and Closing Submissions dated 28 April 2021.

experts. Where the positions of the experts differ, the experts will be able to speak to their respective positions.

- 6 Parties would be assisted by the Court indicating in advance of the presentation of the JWS if there are any particular examples that the Court would like the experts to work through as part of their presentation.

### **Arrangements for cross examination**

- 7 Counsel considers that there would be efficiencies in the cross examination of the technical expert group<sup>2</sup> and planning expert group<sup>3</sup> as two panels, with the planning expert panel following the technical expert panel. Counsel may then direct their questions to the panel on matters of agreement and then to individuals where that expert has expressed a different opinion in the JWS. Likewise, counsel considers that this would be of assistance in respect of any questions of experts from the Court.
- 8 Counsel will confer further with parties and Mr Cooper as to scheduling arrangements, noting that a JWS from the priorities conferencing will also be presented in the week of 24 May.
- 9 The parties seek directions that:
- (a) any party seeking to cross examine shall file a notice with the Court by **Monday, 17 May 2021**; and
  - (b) Counsel confer and advise Mr Cooper as to scheduling arrangements for the presentation of the JWS and cross examination by **Tuesday, 18 May 2021**;<sup>4</sup>
  - (c) The experts nominated to present the JWS be available in the week of **24 May 2021**.

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<sup>2</sup> Mr Wilson, Mr Mitchell, Mr Hickey and Ms Bright.

<sup>3</sup> Mr De Pelsemaecker and Ms Dicey.

<sup>4</sup> This will enable parties to also consider the scheduling of the presentation of the priorities JWS following conferencing on 17 May 2021.

**Supplementary evidence**

- 10 Further evidence referred to in paragraph [19] of the Minute dated 21 April has been provided in the JWS by way of responses to the Court's questions together with worked examples.
- 11 A section 32AA analysis prepared by all planning witnesses has been included in Appendix 4 in relation to the changes to the data period in controlled activity rule 10A.3.1(iv) and (v) and Appendix 5 in relation to the adoption of maximum rate of take and volumes.
- 12 Accordingly, the parties consider that there would be limited utility in converting the matters in the JWS into briefs of supplementary evidence ahead of the presentation of the JWS in the week of 24 May. However, if there are matters on which the Court would benefit from further assistance, this can be provided by way of supplementary evidence prior to the week of 24 May.
- 13 The Council notes that Mr De Pelsemaeker's evidence-in-reply will contain a section 32AA analysis of the changes recommended to proposed Plan Change 7.

**Additional sensitivity testing of Step 4**

- 14 At paragraphs [67] and [68] of the JWS the experts note that:
- Further testing of Step 4 may result in the need for amendments to Step 4. This further testing is needed to assess what the implications of the threshold used in Step 4 are. A key question for this testing is, do the implications of removing atypical data change if the threshold is changed?
- In order to resolve this matter SW and SL commit to complete sensitivity testing of Step 4 by the 12th May with feedback from other primary sector experts on the 13th May and Counsel for the ORC reporting to the court on the 14th May. The parameters for testing have been agreed by all primary sector experts.
- 15 Counsel has discussed with Mr Leslie and Mr Wilson that it would be of assistance if an addendum to the JWS could be produced recording the outcome of that testing and feedback from the other primary sector experts.

- 16 Counsel will report to the Court on 14 May 2021 as to progress of this testing and feedback together with the production of an addendum to the JWS.

Dated this 12<sup>th</sup> day of May 2021



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**P A C Maw / M A Mehlhopt**

Counsel for Otago Regional Council