

**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: 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 – RECALL OF WITNESSES & UPDATED
TIMETABLE
(19 May 2021)**

Introduction

[1] The witnesses have now completed expert conferencing and two joint witness statements ('JWS') have been filed. This Minute addresses the recall of witnesses to the hearing and other incidental matters.

Expert Conference Topic – Objective 10A.1.1, Schedule 10A.4 and related provisions¹

[2] Having conferred with the other parties, the Regional Council has filed a

¹ JWS – Schedule 10A.4 controlled activity and restricted discretionary activity rules and Objective 10A1.1, dated 7 May 2021.



memorandum proposing directions for the recall of witnesses participating in expert conferencing on the topic of Objective 10A.1.1, Schedule 10A.4 and related provisions.²

[3] As signalled in court last week, the court has questions on the drafting of the provisions. While the planners have nominated witnesses to present the JWS, all planners with an interest in the objectives, policies and methods are given leave to appear. As requested, the witnesses will be empanelled together.

[4] That said, and as requested, the following witnesses will be recalled during the week commencing **Monday 24 May 2021**:

Panel of Technical Experts

- (a) Simon Wilson (ORC);
- (b) Paul Mitchell (Trustpower);
- (c) Mathew Hickey (OWRUG);
- (d) Christina Bright (Landpro).

Panel of Planning Experts

- (a) Tom de Pelsemaeker (ORC);
- (b) Sally Dicey (OWRUG).

[5] The court will endeavour to signal ahead if it requires supplementary evidence to be filed in addition to the statements.

Schedule 10A.4 sensitivity testing

[6] The experts have filed a new attachment (Attachment 10) to the JWS. That attachment addresses the sensitivity testing of ‘Step 4’ and the methodology to be

² Regional Council memorandum ‘Recall of Witnesses Following Expert Conferencing’ dated 12 May 2021.

adopted in the schedule.

[7] While the attachment proposes amendments to the schedule, there is no accompanying explanation. The Regional Council reports that more time is required for the participating witnesses to document the reasons for the changes proposed and the methodology used. This is to be done by amending the JWS dated 7 May (tracking changes) and attaching the sensitivity analysis.³

[8] The amended JWS is to be signed by all participating witnesses and filed two working days in advance of the empanelment of witnesses. If further direction is sought, the Regional Council – having conferred with the parties – is to file a memorandum no later than **3 pm Friday 21 May 2021**.

Expert Conference Topic: Deemed Permits & Rights of Priority⁴

[9] I will make the directions proposed in the JWS. The following witnesses are to be recalled in the week commencing **Monday 24 May 2021** and jointly empanelled:

- (a) Tom de Pelsemaeker (ORC);
- (b) Sally Dicey (OWRUG); and
- (c) Murray Brass (Director-General of Conservation).

Irrigation Dams

[10] The Regional Council has signalled its interest in the topic of reconstituting large irrigation dams such as Fraser Dam, Poolburn, Upper and Lower Manorburn Falls and Loganburn.

³ Attachment 10 to the JWS filed 14 May 2021 will be removed from the court website as it is incomplete.

⁴ JWS – Planners Expert Conferencing on Deemed Permits and Associated Rights of Priorities, dated 17 May 2021.

[11] Save in relation to Fraser Dam, OWRUG represents permit holders with an interest in the above dams.

[12] The Regional Council is uncertain as to how this topic may be progressed as the permits associated with the dams are not yet in evidence and, I am told, the permits are not easily discoverable in the Council's database. Aside from a concern over dam integrity being signalled in evidence, the factual evidence underpinning those concerns is not well described.

[13] For a limited exception or other plan approach for irrigation dams is to be advanced,⁵ it is imperative that counsel for the Regional Council and OWRUG confer on the issues for determination and secondly, to establish an adequate factual foundation for response (this includes the identification and description of irrigation dams to be caught). Counsel are to file a memorandum setting out the issues by **9.00am Friday 21 May 2021**.⁶

Water Quality

[14] Catchment/sub-catchment water quality arises generally in relation to the purpose(s) of Plan Change 7 and the operative Regional Plan's provision on the same. The consideration of water quality is also likely to arise in relation to the issue of reconsenting irrigation dams for a period longer than six years under the National Policy Statement for Freshwater Management 2020 ('NPS-FM').⁷

⁵ Acknowledging OWRUG's relief is much broader than dams alone.

⁶ We include the legal, factual and planning issues that arise in relation to the supplementary brief of evidence filed by Mr Curran (dated 14 May 2021). Leave was granted in court on 18 May 2021 for the supplementary evidence to be filed.

⁷ We refer here to the NPS-FM 2020's ki uta ki tai approach.

[15] I confirm the direction given in court that the Regional Council is to file a supplementary brief of evidence from Dr Snelder by **5 pm Thursday 20 May 2021**.⁸ Parties have leave to seek directions in response.⁹

Amicus

[16] Dr R Somerville QC will be provided a copy of the JWS (Deemed Permits & Rights of Priority) and I will confer with him over the date of his appearance.

Proposed timetable directions

[17] No party has opposed the proposed timetable directions made in relation to the filing of evidence-in-reply by Mr de Pelsemaecker.¹⁰ Those directions are now confirmed and are set out in the updated Table of Directions.

Updated Table of Directions

[18] For the parties' convenience we have set out in a table attached to this Minute and labelled 'A' the directions made (the directions are tracked changed).

Notes to attached Table

[19] Note 1: the timetable is incomplete insofar as directions for the filing of further evidence and submissions in response to the forthcoming proposed Regional Policy Statement have not yet been made.¹¹

[20] Note 2: the Hearing Schedule allows for the recall of all witnesses who have given evidence on Schedule 10A.4 and secondly, the topic of deemed permits and priorities. It is a matter for each party to decide whether their witness(es) is to be

⁸ The direction was given on 18 May 2021.

⁹ This includes cross-examination and filing evidence in reply.

¹⁰ Minute 'Timetable Directions Plan Change 7' dated 5 May 2021 at [3].

¹¹ See ORC, Legal Submissions 'the new proposed Regional Policy Statement' dated 26 March 2021.

recalled or whether their interests in these topics can be covered by another witness.¹²

Directions

[21] By consent, I direct that by **Friday 21 May 2021**:

- (a) any party seeking to cross-examine the panels of experts or seeking leave to put questions to the court's Special Advisor, Mark St Clair, is to file a notice with the court; and
- (b) parties are to confer with and advise Mr Glen Cooper as to the scheduling of expert panels.¹³

Leave

[22] Leave is reserved to amend or to seek new directions. Again, as this hearing is drawing to an end, now is the time to be seeking leave if required.

Jane S.

The seal of the Environment Court of New Zealand is circular, featuring a central coat of arms with a crown on top. The text "THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND" is written around the perimeter of the seal.

J E Borthwick

Environment Judge

Issued: 19 May 2021

¹² See Minute 'Expert Conferencing, Recall of Witnesses, Further Evidence, Scope and Closing Submissions' dated 28 April 2021 at [8] and Minute 'Deemed Permits, Amicus and Expert Conferencing' also dated 28 April 2021 at [15].

¹³ NB: at this time parties are also to propose directions for the recall of witnesses participating in the conference on deemed permits and rights of priorities, giving notice, if time permits, of cross-examination or seeking any appropriate directions.

Annexure A PC7 timetable

Joint Witness Statements	
Event	Date
Schedule 10A.4 and related provisions	<u>7 May 2021</u>
Deemed permits & rights of priority	<u>17 May 2021 or the date directed by Commissioner Dunlop.</u>

Statement of Issues	
Event	Date
Territorial Authorities: Community Water Supply	7 May 2021

Evidence Timetable	
Event	Date
Territorial Authorities' supplementary evidence	12 May 2021
Filing of supplementary in response to paragraph [19] Minute dated 21 April 2021	14 May 2021
Mr Farrell's supplementary evidence in response to Joint Witness Statements ¹⁴	Three (3) working days prior to the resumption of Fish & Game's case <u>or as directed.</u> ¹⁵
ORC evidence-in-reply to Territorial Authorities	<u>20 May 2021</u> ¹⁶
ORC evidence-in-reply ¹⁷	18 June 2021

Amicus	
Event	Date
Report of Dr Royden Somerville QC	19 May 2021
Presentation of report in court	TBA

¹⁴ Minute 'Expert Conferencing, Recall of Witnesses, Further Evidence, Scope and Closing Submissions' dated 28 April 2021 at [8] and Minute 'Deemed Permits, Amicus and Expert Conferencing' at [13].

¹⁵ Registry email granting leave to Fish & Game on terms sought 12 May 2021 responding to Fish & Game's memorandum of counsel dated 12 May 2021.

¹⁶ Direction given in court on 18 May 2021.

¹⁷ Mr T de Pelsemaecker is to file and present the evidence-in-reply including updated s 32/s 32AA report and updated table of Recommended Decisions on Submissions.

Notice of cross-examination	
Event	Date
Witnesses presenting in relation to expert conferences (<u>Objective 10A.1.1, Schedule 10A & related provisions</u>) ¹⁸	<u>21 May 2021</u>
Witnesses presenting in relation to expert conference (<u>deemed permits & rights of priority</u>)	<u>21 May 2021</u>
Note: leave to direct questions to Special Advisor, Mr M St Clair ¹⁹	<u>21 May 2021</u>
ORC evidence-in-reply	23 June 2021

Hearing Dates		
Event	Venue	Event week
Hearing	Cromwell	11-13 May 2021 ²⁰
Hearing	Dunedin	17-20 May 2021 ²¹
Hearing	Dunedin	25-28 May 2021
Hearing on: <ul style="list-style-type: none"> • Supplementary evidence and submissions in response to a forthcoming proposed RPS • ORC evidence-in reply • Legal submissions on the topic of deemed permits and priorities²² • Legal submissions in support of scope²³ • Closing submissions²⁴ 	Dunedin	28 June (excluding 30 June 2021) ²⁵

¹⁸ Minute 'Expert Conferencing, Recall of Witnesses, Further Evidence, Scope and Closing Submissions' dated 28 April 2021 at [8] and Minute 'Deemed Permits, Amicus and Expert Conferencing' at [15].

¹⁹ Minute 'Deemed Permits: Expert Conferencing' dated 23 April 2021.

²⁰ The court will be undertaking a site visit on Monday 10 May 2021 and Friday 14 May 2021.

²¹ The court is not sitting on Friday 21 May 2021 due to other court commitments.

²² ORC, Director-General of Conservation, Otago Water Resource User Group and Fish & Game. The court has invited the Minister for the Environment to present legal submissions.

²³ ORC has challenged scope for relief sought by the following parties Otago Fish and Game Council & Central South Island Fish and Game Council; Otago Water Resource User Group and Minister for the Environment. See ORC, Legal Submission in Relation to Scope' dated 7 April 2021. NB: other scope challenges may be made as the hearing continues.

²⁴ In addition to the topic of deemed permits and rights of priority and secondly, the topic of scope, three parties have given notice of their intention to file closing submissions. They are Ngā Rūnanga, Aotearoa New Zealand Fine Wine Estates Limited Partnership and Strath Clyde Water Limited & ors.

²⁵ The court is not sitting on 30 June 2021 as some counsel have a fixture in the High Court.