

**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 8: Water for Otago (referred to
the Environment Court by the Minister
for the Environment under s 142(2)(b)
of the Act)
BETWEEN Otago Regional Council
(ENV-2020-CHC-128)
Applicant

Before: Environment Commissioner K A Edmonds
Held: at Dunedin on 14 July 2021 at 10 am
Appearances: See Attachment A

**RECORD OF PRE-HEARING CONFERENCE
PLAN CHANGE 8
TIMETABLE DIRECTIONS
(23 July 2021)**

Introduction

[1] Proposed Plan Change 8 (PC8) was set down for a pre-hearing conference (‘PHC’) in Dunedin. This Minute sets out a record of directions given at the conference.

[2] Otago Regional Council and the parties present at the PHC agreed with the



court's proposed approach to progress PC8 to a hearing.¹

[3] The plan change will be set down for a hearing in November 2021. Parties who have reached an agreement with ORC to amend the proposed plan may jointly present their case to the court. The presentation of a joint case is likely to entail ORC calling planning evidence (policy and consents and regulatory) together with technical evidence from experts engaged by other parties.

Matters not covered at the PHC

[4] Following the PHC it occurred to me that the court may need to make better provision for the following:

- (a) parties who did not attend mediation and whose position on the agreements reached at mediation is **not** known;² and
- (b) parties who made general submissions on the plan change, the subject matter of which was **not** addressed at mediation.³

[5] Judge Borthwick and I spoke with counsel for ORC who confirmed that there were parties in the above camps.⁴ To ensure the process is fair to them and that they have an opportunity to be heard, I will make additional directions that:

- (a) any person who did not attend mediation and whose position on the mediated agreement is not known, is to advise if they **do not** accept agreement and if they wish to be heard in support of their submission;
- (b) any person who has made a general submission on the plan change, is to say if they want to be heard on the same;
- (c) if in doubt, file a memorandum advising of your position. An email

¹ Per the court's Minute dated 9 July 2021.

² A list of attendances at mediation is attached and labelled Annexure B.

³ A list of parties making general submissions is attached and labelled 'Annexure C'. A general submission means a submission on the plan change as a whole, rather than a submission on a specific provision.

⁴ Telephone conference on 22 July 2021.

will also suffice and can be sent to ORC@justice.govt.nz.

Speaking to submissions

[6] Appearing in court can be a daunting prospect, especially if you are unfamiliar with our processes.

[7] Any party may speak to their submission personally or have a representative do so on their behalf. Your representative may be a lawyer, but does not have to be.

[8] As the court will have read your submission, it is not necessary for you to read it out loud to the court. Rather, speaking to your submission typically means highlighting and expanding upon key points that you wish the court to consider.

[9] You can of course call evidence, which is to be in writing filed in advance.

Scope issue

[10] An issue has arisen as to whether nitrogen input controls proposed by Wise Response Society Inc ('Wise Response') in its submission on PC8 is within the ambit of the plan change. A similar issue may arise in relation to relief sought by Mr W Thompson, although ORC advised it will talk to Mr Thompson and clarify what it is that he is seeking.

[11] An agreed timetable was put in place to resolve these matters prior to the hearing. I urge Wise Response and Mr Thompson, to consider taking legal advice prior to responding. The question of whether or not there is scope to consider a submission is complex.

Site visit

[12] It was agreed that the site visit itinerary will be proposed after the technical

evidence is filed, and that will give the parties the opportunity to put forward any suggestions in the light of the issues before the court. I will make a direction to suit.

Evidence exchange timetable and hearing dates

[13] The evidence timetable allows for the challenges on scope to be dealt with prior to the filing of evidence. However, because of that, and to allow more time for the coordination of the evidence, the proposed hearing date has been pushed out to the first week of November 2021.

[14] Furthermore, to accommodate matters covered after the PHC, amendments have been made to the evidence exchange timetable. Any party concerned about the same, has leave to seek further direction from the court.

Officer recommendations

[15] The Environment Court must give a decision on the provisions and matters raised in submissions. The decision must include the reasons for accepting or rejecting the submissions (RMA, First Schedule, cl 10).

[16] While not addressed at the conference, I will also direct ORC to file a table setting out the officer recommendations on all submissions. The officer is to adopt the table template used in PC7 and the document is to be filed in PDF and Microsoft Word format.

Directions

[17] Accordingly, I direct:

Timetable regarding Wise Response and (possibly) Mr W Thompson

- (a) by **Friday 23 July 2021**, ORC is to file submissions identifying any

- relief it contends is out of scope giving reasons;
- (b) by **Friday 30 July 2021**, Wise Response and Mr Thompson are to file their response;
 - (c) by **Friday 6 August 2021**, ORC and any other party with an interest in the relevant provision(s) may reply;
 - (d) a decision will then be made on the papers.

Timetable regarding lodging of amended provisions agreed between parties to the mediation

- (e) by **Friday 30 July 2021**, ORC is to file and serve a set of amended provisions agreed between the parties to the mediation providing a brief explanation of them;
- (f) further to paragraph [5(a)] above, any party who did **not** attend mediation and who does **not** accept the set of amended provisions filed is to:
 - (i) advise the court noting if they wish to speak to their submission or call evidence
 – by **Friday 6 August 2021**.

Timetable regarding general submissions

- (g) further to paragraph [5(b)] above, any party who made a general submission on the plan change is to:
 - (i) advise whether they wish to speak to their submission or call evidence
 – by **Friday 6 August 2021**.

Timetable for evidence exchange

- (h) by **Friday 3 September 2021**, ORC is to file evidence relating to the plan architecture;
- (i) by **Friday 17 September 2021**:
 - (i) ORC and other parties in support of the mediated agreement

- are to file technical evidence;
- (ii) parties who do not support the mediated agreement are to file evidence;
 - (iii) parties who wish to call evidence in support of a general submission are to file that evidence.
- (j) by **Friday 1 October 2021**, any party in support of the mediated agreement may file planning evidence;
 - (k) by **Friday 15 October 2021**, ORC is to file their section 32 AA report, planning and regulatory evidence as set out at paragraph [6(e)] of the Minute dated 9 July 2021 and the table of officer recommendations.

Site visit

- (l) by **Wednesday 20 October 2021**, ORC is to file a proposed site visit itinerary after consulting with the parties.

Hearing date

- (m) the hearing is tentatively set down in Dunedin for the week of **Monday 1 November 2021**. Parties are to advise of any insurmountable issues with this week by **Friday 23 July 2021**.

[18] Leave is reserved for any party to apply for further (or other) directions.



K A Edmonds
Environment Commissioner

Issued: 23 July 2021



ATTACHMENT A**Appearances at PHC**

L de Latour and M Mehlhopt for the applicant

C Ross for DairyNZ

C Thomsen for Beef + Lamb NZ and NZ Deer Farmers Association

D MacTavish for Wise Response Society Incorporated

D McLachlan for Lower Waitaki Irrigation Company

K Reilly for Federated Farmers New Zealand, Horticulture New Zealand, NZ Pork, Toko Farms, L Wallace, Lauder Creek, Two Farmers Farming, E Crutchley, A and B Groundwater, Puketoi Farming Company Ltd and Stonehenge Station

N Paragreen for Otago Fish and Game Council and the Central South Island Fish and Game Council

P Williams for the Director General of Conservation

R Zwaan for Royal Forest and Bird Society Incorporated

S Christensen and C Taylor for Ravensdown Limited

S McIntyre for Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Kāi Tahu ki Otago) and Ngāi Tahu ki Murihiku

W Thompson for himself

ANNEXURE B: ATTENDANCES AT MEDIATIONS ON PRIMARY SECTOR PROVISIONS

PC8 Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised court
Part A Discharge Policies	Amended Policy 7.C.5	Minimise adverse effects of discharges from stormwater systems	Balquhidder Farming Ltd Beef + Lamb New Zealand Blackstone Hill Ltd Dairy Holdings Limited	Balquhidder Farming Ltd Springwater AG Limited	No No
	Amended Policy 7.C.6	Reduce adverse effects of discharges from stormwater systems	Dairy NZ Director General of Conservation Dunedin City Council	William Thompson	No
	New Policy 7.C.12	Reduce adverse effects of discharges of human sewage	Elizabeth Clarkson Federated Farmers of New Zealand - Otago and North Otago Provinces	Te Runanga o Ngai Tahu	No
	Amended Policy 7.D.5	Improve policy direction for decision making on resource consents for rural discharges	Fonterra Co-operative Group Friends of Lake Hayes Horticulture New Zealand Landpro Limited Lower Waitaki Irrigation Company	Dairy Holdings Limited	Yes – agree to abide by position reached at mediation
	New Policy 7.D.6	Improve policy direction for decision making on resource	Matthew Sole/COES MF and DA Dowling		

		consents for rural discharges	<p>Ngāi Tahu Ki Murihiku</p> <p>North Otago Irrigation Company</p> <p>NZ Deer Farmers Assoc.</p> <p>NZ Pork Industry Board</p> <p>Otago Fish and Game Council and the Central South Island Fish and Game Council</p> <p>Ravensdown Ltd</p> <p>Royal Forest and Bird Protection Society of New Zealand Inc</p> <p>Spring Ag Limited</p> <p>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga</p> <p>Te Runanga o Ngai Tahu</p> <p>Toko Farms</p> <p>Two Farmers Farming Ltd</p> <p>W Thompson</p> <p>WAI Wanaka - Upper Clutha Lakes Trust</p> <p>Wise Response Society Inc</p>	<p>North Otago Irrigation</p> <p>Friends of Lake Hayes</p> <p>Dunedin City Council</p> <p>Wai Wanaka</p>	<p>Yes - agree to abide by position reached at mediation</p> <p>Yes - No interest</p> <p>Yes - No interest</p> <p>Yes – agree to abide by position reached at mediation</p>
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PC8 Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised court
Part B Animal Waste Storage and Application	New Policy 7.D.7	Ensure the appropriate management and operation of animal waste systems	Beef + Lamb New Zealand Dairy Holdings Limited DairyNZ Director General of Conservation	Springwater AG Limited William Thompson	No No
	New Policy 7.D.8	Provide for the upgrading of existing animal waste systems	Elizabeth Clarkson Federated Farmers of New Zealand - Otago and North Otago Provinces	Te Runanga o Ngai Tahu	No
	Amended rule 12.C.0.2	Consequential amendment	Fonterra Co-operative Group Ltd Landpro Limited	Dairy Holdings	Yes – agree to abide by position reached at mediation
	New rule 12.C.0.4	Prohibited activity rule - Discharge of animal waste from an animal waste system	Lower Waitaki Irrigation Company Ltd MF and DA Dowling Mt Aspiring Station Ltd New Zealand Pork Industry Board	North Otago Irrigation	Yes - agree to abide by position reached at mediation
	New rule 12.C.1.4	Short term permitted activity rule - Discharge of animal waste, or water containing animal waste, from an animal waste system	Ngāi Tahu Ki Murihiku North Otago Irrigation Company Limited NZ Deer Farmers Assoc. Otago Fish and Game Council and the Central South Island Fish and Game Council Pomahaka Water Care Group	Mt Aspiring Wai Wanaka	Yes - No interest Yes – agree to abide by position reached at mediation
	New rule 12.C.2.5	Restricted discretionary activity			

		rule - Discharge of animal waste, or water containing animal waste, from an animal waste system	Ravensdown Ltd Royal Forest and Bird Protection Society of New Zealand Inc Springwater Ag Limited		
	New rule 14.7.1.1	Permitted activity rule - Use of land for the use and maintenance of an animal waste system	Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga Te Runanga o Ngai Tahu Two Farmers Farming Ltd		
	New rule 14.7.1.2	Short term permitted activity rule for the use of land for the use and maintenance of an animal waste system	W Thompson WAI Wanaka - Upper Clutha Lakes Trust Wise Response Society Inc		
	New rule 14.7.2.1	Controlled activity rule for the use of land for the construction, use and maintenance of an animal waste system			
	New rule 14.7.3.1	Discretionary activity rule for the use of land for the construction, upgrade, use or			

		maintenance of an animal waste system			
	Amended definition: Animal waste system				
	New definition: Dairy Effluent Storage Calculator				
	New definition: Suitably Qualified Person				
	Deleted definitions	Agricultural waste			

PCS Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised Court
Part C Good Farming Practices	New Policy 7.D.9	Reduce adverse environmental effects of farming activities	Balquhiddier Farming Limited Beef + Lamb New Zealand Closeburn Station	Balquhiddier Farming Ltd	No
	New definition: Critical Source Area		Dairy Holdings Limited DairyNZ Director General of Conservation Elizabeth Clarkson	Closeburn Station SEE Enterprises Springwater AG Limited	No No No
	Deleted definitions: Feed Pad/ Stand off pad		Emma Crutchley Federated Farmers of New Zealand - Otago and North Otago Provinces Fonterra Co-operative Group Ltd	William Thompson Te Runanga o Ngai Tahu Phil Murray RM Ltd	No No No
	Deleted definition: Sacrifice Paddock		Horticulture New Zealand K Gillespie L Wallace Lambhill Station Landpro Limited Lauder Creek Ltd Lower Waitaki Irrigation Company Ltd Matthew Sole	Dairy Holdings Mt Aspiring	Yes – agree to abide by position reached at mediation Yes - No interest

		<p>MF and DA Dowling</p> <p>Mt Aspiring Station Ltd</p> <p>Ngāi Tahu Ki Murihiku</p> <p>Otago Fish and Game Council and the Central South Island Fish and Game Council</p> <p>Phil Murray Resource Management Ltd</p> <p>Pomahaka Water Care Group</p> <p>Puketoi Farming Company</p> <p>Ravensdown Ltd</p> <p>Royal Forest and Bird Protection Society of New Zealand Inc</p> <p>SEE Enterprises</p> <p>Springwater Ag Limited</p> <p>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga</p> <p>Te Runanga o Ngai Tahu</p> <p>Toko Farms</p> <p>Two Farmers Farming Ltd</p> <p>W Thompson</p> <p>WAI Wanaka - Upper Clutha Lakes Trust</p> <p>Wise Response Society Inc</p>	<p>Wai Wanaka</p> <p>Emma Crutchley</p>	<p>Yes – agree to abide by position reached at mediation</p> <p>Represented by Feds</p>
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PC8 Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised court	
Part D Intensive Grazing	New rule 14.6.1.1	Permitted activity rule for the use of land for intensive grazing	Alistair and Barbara Groundwater Balquhidder Farming Limited	Balquhidder Farming Ltd	No	
	New rule 14.6.2.1	Discretionary activity rule for the use of land for intensive grazing	Beef + Lamb New Zealand Blackstone Hill Ltd Closeburn Station	Closeburn Station SEE enterprises	No No	
	New definition: Intensive Grazing			Dairy Holdings Limited DairyNZ Director General of Conservation Elizabeth Clarkson Emma Crutchley Federated Farmers of New Zealand - Otago and North Otago Provinces Fonterra Co-operative Group Ltd G F Dowling Ltd L Wallace Lambhill Station Landpro Limited Lauder Creek Ltd Lower Waitaki Irrigation Company Ltd Matthew Sole	Springwater AG Limited William Thompson Te Runanga o Ngai Tahu Phil Murray RM Ltd Dairy Holdings Mt Aspiring	No No No No No Yes – agree to abide by position reached at mediation Yes - No interest

		<p>MF and DA Dowling</p> <p>Mt Aspiring Station Ltd</p> <p>New Zealand Deer Farmers Association - Otago Branch</p> <p>Ngāi Tahu Ki Murihiku</p> <p>Nicola McGrouther</p> <p>North Otago Irrigation Company Limited</p> <p>Otago Fish and Game Council and the Central South Island Fish and Game Council</p> <p>Otago Regional Council</p> <p>Phil Murray Resource Management Ltd</p> <p>Pomahaka Water Care Group</p> <p>Puketoi Farming Company</p> <p>Ravensdown Ltd</p> <p>Royal Forest and Bird Protection Society of New Zealand Inc</p> <p>SEE Enterprises</p> <p>Springwater Ag Limited</p> <p>Stonehenge Station</p> <p>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga</p> <p>Te Runanga o Ngai Tahu</p>	<p>Wai Wanaka</p> <p>A and B Groundwater</p> <p>North Otago Irrigation</p> <p>Emma Crutchley</p> <p>Stonehenge Station</p>	<p>Yes – agree to abide by position reached at mediation</p> <p>Yes – Advises their interest aligns with Fed Farmers and Beef and Lamb</p> <p>Yes- agree to abide by position reached at mediation</p> <p>Represented by Feds</p> <p>Represented by Feds</p>
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			Toko Farms Two Farmers Farming Ltd W Thompson WAI Wanaka - Upper Clutha Lakes Trust Wise Response Society Inc		
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PC8 Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised court
Part E Stock Access to Water	Amended Rule 13.5.1.8A	Exclusion of dairy cattle and pigs from waterbodies from 2022, setback of 5 metres	Balquhiddier Farming Limited Beef + Lamb New Zealand Closeburn Station	Balquhiddier Farming Ltd Closeburn Station	No No
	Note 1		Dairy Holdings Limited	SEE Enterprises	No
	Note 2		DairyNZ	Springwater AG Limited	No
	New definitions proposed		Director General of Conservation Elizabeth Clarkson Emma Crutchley	William Thompson	No
	Headings		Federated Farmers of New Zealand - Otago and North Otago Provinces Fonterra Co-operative Group Ltd L Wallace	Te Runanga o Ngai Tahu	No

		<p>Landpro Limited</p> <p>Lower Waitaki Irrigation Company Ltd</p> <p>Matthew Sole</p> <p>MF and DA Dowling</p> <p>Mt Aspiring Station Ltd</p> <p>New Zealand Pork Industry Board</p> <p>Ngāi Tahu Ki Murihiku</p> <p>North Otago Irrigation Company Limited</p> <p>Otago Fish and Game Council and the Central South Island Fish and Game Council</p> <p>Otago Regional Council</p> <p>Pine Terrace Limited</p> <p>Pomahaka Water Care Group</p> <p>Puketoi Farming Company</p> <p>Ravensdown Ltd</p> <p>Royal Forest and Bird Protection Society of New Zealand Inc</p> <p>SEE Enterprises</p> <p>Springwater Ag Limited</p> <p>Stonehenge Station</p> <p>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui</p>	<p>Dairy Holdings</p> <p>North Otago Irrigation</p> <p>Mt Aspiring</p> <p>Wai Wanaka</p> <p>Emma Crutchley</p> <p>Stonehenge Station</p>	<p>Yes – agree to abide by position reached at mediation</p> <p>Yes - agree to abide by position reached at mediation</p> <p>Yes - No interest</p> <p>Yes – agree to abide by position reached at mediation</p> <p>Represented by Feds</p> <p>Represented by Feds</p>
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			Rūnanga Te Runanga o Ngai Tahu Toko Farms Two Farmers Farming Ltd W Thompson WAI Wanaka - Upper Clutha Lakes Trust Wise Response Society Inc		
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PC8 Introduction	Provision	Provision Detail	Parties who submitted	Parties who did not attend mediation	Advised court
Part F Sediment Traps	New rule 13.5.1.10	Permitted activity rule for the purpose of constructing or maintaining a sediment trap	Beef + Lamb New Zealand Director General of Conservation Elizabeth Clarkson Federated Farmers of New Zealand - Otago and North Otago Provinces Horticulture New Zealand L Wallace Landpro Limited Lauder Creek Ltd Matthew Sole	Springwater AG Limited W Thompson Te Runanga o Ngai Tahu	No No No
	Definition: Sediment trap			Mt Aspiring	Yes - No interest

			<p>MF and DA Dowling</p> <p>Mt Aspiring Station Ltd</p> <p>New Zealand Deer Farmers Association - Otago Branch</p> <p>Ngāi Tahu Ki Murihiku</p> <p>Otago Fish and Game Council and the Central South Island Fish and Game Council</p> <p>Pomahaka Water Care Group</p> <p>Ravensdown Ltd</p> <p>Royal Forest and Bird Protection Society of New Zealand Inc</p> <p>Springwater Ag Limited</p> <p>Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga</p> <p>Te Runanga o Ngai Tahu</p> <p>Two Farmers Farming Ltd</p> <p>W Thompson</p> <p>WAI Wanaka - Upper Clutha Lakes Trust</p> <p>Wise Response Society Inc</p>		
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ANNEXURE C:

Parties making general submissions on Plan Change 8

- G F Dowling Ltd
- Federated Farmers of New Zealand - Otago and North Otago Provinces
- Te Runanga o Ngai Tahu
- MF and DA Dowling
- Elizabeth Clarkson
- Nicola McGrouther
- Wise Response Society Inc
- Director General of Conservation
- Two Farmers Farming Ltd
- Landpro Limited
- WAI Wanaka - Upper Clutha Lakes Trust
- William Thompson
- Springwater Ag Limited
- Beef + Lamb New Zealand
- Otago Fish and Game Council and the Central South Island Fish and Game Council
- Dunedin City Council

