

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

ENV-2020-CHC-128

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of the Omnibus Plan Change - Plan Change 8, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under s 142(2)(b) of the RMA

AND

IN THE MATTER of an application under section 149T of the RMA

BETWEEN **THE OTAGO REGIONAL COUNCIL**

Applicant

JOINT WITNESS STATEMENT OF REGULATORY PLANNING EXPERTS

10 March 2022

JOINT WITNESS STATEMENT OF REGULATORY PLANNING EXPERTS – PROPOSED PLAN CHANGE 8 TO THE REGIONAL PLAN: WATER FOR OTAGO: PART G - EARTHWORKS

Topic: Regulatory planning – Consents Planning and Compliance and Monitoring

Date: 9.30am -11.30am, 10 March 2022

Location: AVL

Scribe: Shay McDonald

INTRODUCTION

1. The following witnesses attended conferencing:
 - a. Kerstin Strauss (**KS**) (on behalf of the Otago Regional Council)
 - b. Melanie Heather (**MH**) (on behalf of the Otago Regional Council)
 - c. Quinn McIntyre (**QM**) (on behalf of Willowridge Developments Limited and Remarkables Park Limited)
2. This Joint Witness Statement relates to regulatory planning issues relating to Part G: Earthworks of proposed Plan Change 8 (**PC8**) to the Regional Plan: Water for Otago (**RPW**), and in particular the alleged duplication between resource consents issued under the PC8 provisions and the earthworks provisions in the Queenstown Lakes District Council (**QLDC**) proposed District Plan (**PDP**), Chapter 25 and practical implications for consenting and compliance and monitoring.
3. The expert witnesses have prepared the following briefs of evidence:
 - a. Ms Kerstin Strauss, evidence-in-chief dated 11 February 2022;
 - b. Ms Melanie Heather, evidence-in-chief dated 11 February 2022; and
 - c. Mr Quinn McIntyre, evidence-in-chief dated 25 February 2022.
4. Evidence in reply is due to be filed on 11 March 2022.
5. The experts' qualifications, experience, assumptions, methods, facts, material and papers relied on are set out in their respective briefs of evidence. KS, MH and QM acknowledge they each have different expertise. KS's expertise is consents planning, MH's expertise is in compliance and monitoring and QM's expertise is in construction environmental management and consents planning.
6. The experts confirm that they have read the Environment Court Code of Conduct for expert witnesses in the Environment Court Consolidated Practice Note 2014 and Appendix 3 – Protocol for Expert Witness Conferences and agree to abide by it.
7. KS and MH acknowledge that they are employed by Otago Regional Council. Notwithstanding that, KS and MH both confirm that they have prepared and will present evidence as an independent expert and in compliance with the Code of Conduct.

TOPICS FOR DISCUSSION

Comparison between resource consents (and associated conditions) issued for earthworks by ORC and QLDC

Nature of the resource consents issued by ORC and QLDC

8. Matters agreed

KS, QM & MH agree that ORC issues land use (s9) and discharge consents (s15) whereas QLDC only issues land use consents (s9).

9. Matters disagreed

There are no matters of disagreement.

Overlap between conditions on resource consents granted by each local authority and appropriateness of that overlap including relevance to PC8 rules

10. Matters agreed

KS, MH & QM agree that there is partial duplication in conditions especially in terms of wording and timeframes for submitting certain documents to the consent authorities after consent is granted. This is intentional, as ORC developed their conditions while considering the QLDC conditions in order to prevent confusion and allow for greater consistency.

KS, MH & QM generally agree that conditions in relation to water quality are enforceable by ORC. QM thinks that where QLDC cannot enforce discharges, there is merit in having water quality conditions on QLDC consents where conditions require an EMP is prepared that stipulates water quality requirements; however, QM notes that in lieu of a discharge consent, these conditions are predominantly a monitoring tool to determine the ongoing performance of onsite controls.

11. Matters disagreed

There are no matters of disagreement.

Use of EMPs and ESCPs and comparison of EMP requirements

12. Matters agreed

KS, MH & QM agree that ORC specifies within conditions what is to be included in the EMP (limited to erosion and sediment controls as they pertain to effects on water quality) whereas QLDC conditions reference the QLDC Guidelines for Environmental Management Plans (Guidelines). The Guidelines extend beyond the scope of what ORC EMPs require as QLDC has to manage all effects associated with the earthworks, including noise, vibrations, vegetation, i.e. all environmental elements and amenity effects.

KS, MH & QM agree that there are benefits to having specific guidance for customers.

KS, MH & QM also agree that it is beneficial for customers in particular to have flexibility in the final implementation and revision of measures, after consent has been granted, that can help to drive efficiencies. QLDC's approach currently provides this flexibility by referencing the Guidelines when specifying EMP requirements whilst ORC is explicit in their conditions of what

is required, thereby potentially necessitating a Section 127 application to allow for changes to the EMP and ESCP.

KS, MH & QM agree that while ORC compliance staff have some discretion, they are limited by explicit conditions. QLDC's approach relies on SQEPs to formulate alternative solutions during implementation of the consent without the necessity for a s127 variation. For robustness, these solutions are usually peer-reviewed by another SQEP on the QLDC Supplier Panel.

KS, MH & QM agree that there is merit to the QLDC approach, and a similar approach may be considered by ORC during the PC8 implementation.

13. Matters disagreed

There are no matters of disagreement.

Conditions requiring environmental induction

14. Matters agreed

KS, MH & QM agree that defining details to be included in an environmental induction as part of the consent condition is beneficial. QLDC currently achieves this by referring to their Guidelines. For higher risk sites, a SQEP is expected to carry out the induction for key staff. ORC currently does not provide any significant guidance, but this could be part of a future work program for implementation of PC8 provisions.

15. Matters disagreed

There are no matters of disagreement.

The effectiveness and requirements of as-built confirmation conditions

16. Matters agreed

KS, MH & QM agree that:

- Both QLDC and ORC have as-built-type conditions for erosion and sediment controls, but QLDC require a SQEP to check and confirm correct installation of controls on high-risk sites as determined by the Guidelines.
- ORC has conditions for medium to high-risk sites requiring that installation of erosion and sediment controls is certified by a SQEP. For smaller/lower-risk sites ORC Compliance staff rely on contractors/Consent Holders to install the controls and submit photographs.
- KS notes that an ORC as-built condition that referred to a one-month timeline for providing evidence of correct installation of control measures is no longer in use. KS, MH & QM agree that such a condition would be unsuitable.

17. Matters disagreed

There are no matters of disagreement.

Reliance on Suitably Qualified and Experienced Practitioner (SQEP) including whether SQEP needs to be defined in the conditions of consent

18. Matters agreed

QLDC has a definition of what a SQEP is whereas ORC does not have a definition. KS, MH & QM agree that a definition that specifies the type of qualification and experience required is useful to increase the quality of the EMP and ESCPs as well as the implementation of control measures to ensure ongoing environmental performance.

19. Matters disagreed

There are no matters of disagreement.

Water quality conditions, including:

- i. The use of water quality performance criteria (including use of discharge quality limits and monitoring requirements)*
- ii. Chemical Treatment Management Plans*
- iii. Enforceability of QLDC discharge guidance limits*

20. Matters agreed

KS, MH & QM agree that ORC's water quality performance criteria and chemical treatment management plans are suitable and required. In terms of discharges, QLDC do not have powers under s15 to enforce discharges from a site to a receiving environment. Therefore, QLDC conditions relating to water quality via the Guidelines are used primarily as a monitoring tool, rather than a specific enforcement tool (under s15), to inform whether onsite controls are continuing to deliver appropriate environmental performance.

QM notes that QLDC can still monitor water quality and use this information to enforce consents under s9 as it relates to use of land and onsite controls.

21. Matters disagreed

There are no matters of disagreement.

Environmental incidents conditions

22. Matters agreed

KS, MH & QM agree that both ORC and QLDC have these conditions and that these conditions are comprehensive, with the QLDC conditions considering a wider range of factors as per point 12 above.

23. Matters disagreed

There are no matters of disagreement.

Managing earthworks activities under two different consents

Practical implications and relevance of those

24. Matters discussed

KS, MH & QM agree that having two consents from different authorities with two different sets of conditions can be confusing for contractors and persons associated with implementing these consents. An example of this is the different discharge limits imposed on QLDC consents and ORC consents.

KS notes that technically only ORC can impose discharge limits in relation to s15 consents. QM notes that QLDC can still impose, monitor and enforce discharge limits as they relate to s9 and the use of the land.

QM notes that any complexity/confusion is usually off-set by having a dedicated environmental manager (usually the SQEP or a capable project manager), but this doesn't always happen in practice depending on the specific roles required or nominated on each project.

KS, MH & QM agree that where two overlapping consents are required, this places responsibility on regulators to work together to achieve the best customer outcomes. QLDC and ORC compliance officers are already liaising to find efficiencies in the process.

25. Matters disagreed

There are no matters of disagreement.

Relevance of context in relation to other resource consents held for other activities

26. Matters agreed

KS, MH & QM agree that there is more risk of confusion when looking at multiple documents rather than 'one source of truth'. MH noted that sites will often have multiple consents for multiple activities from multiple regulators, so having two earthworks consents is not the only matter of complexity that Consent Holders have to deal with. QM reiterated that where complexity of consents increases, overlapping consent authorities should work together to make internal processes as efficient and cost effective as they can.

27. Matters disagreed

There are no matters of disagreement.

Practical compliance and monitoring implications

Setting of water quality limits

28. Matters agreed

KS, MH & QM agree that limits are necessary and that the same limits for discharges in all receiving environments is not always the best approach.

KS, MH & QM agree that that discharge limits are required, and that a nuanced approach is required on each individual project.

ORC requires setting of limits during the consents process to ascertain the level of effects and the appropriateness of granting the consent. QLDC relies on setting limits in coordination with the SQEP after consent is granted during the preparation of the EMP. In the case of QLDC conditions/EMPs, these limits are primarily utilised to gauge the performance of onsite controls and to monitor flow-on effects of discharges to water (such as associated amenity values) rather than the instream effects of the discharge itself.

29. Matters disagreed

There are no matters of disagreement.

Coordination between ORC and QLDC officers in relation to compliance monitoring

30. Matters agreed

Refer to point 24.

31. Matters disagreed

There are no matters of disagreement.

TSS and turbidity limits and bench testing

32. Matters agreed

Refer to point 28.

33. Matters disagreed

There are no matters of disagreement.

Definition of reasonable mixing

34. Matters agreed

KS, MH & QM agree that a definition is necessary; however, site-specifics and receiving environment-specifics need to be taken into account.

35. Matters disagreed

There are no matters of disagreement.

Use of GD05

36. Matters agreed

KS, MH & QM agree that GD05 is the best available guidance document at this time, but that flexibility for its use in the Otago context is required.

37. Matters disagreed

There are no matters of disagreement.

Any issues with locating the discharge points on earthwork sites where only a QLDC consent is held

38. Matters agreed

MH and QM recognise that there can be issues in certain situations, such as during hours of darkness, in locating the point of discharge, but that these could be alleviated by having necessary contact details recorded on EMP or ESCPs.

MH notes that for sites operating under ORC permitted activity rules the above would still require a lot of coordination and effort for ORC Compliance Officers.

39. Matters disagreed

There are no matters of disagreement.

Effectiveness of PC8 provisions in terms of managing discharges from a compliance perspective and benefits of having a consent from ORC

40. Matters disagreed

QM considers the duplication of land use consents (s9) does not appear to be necessary in the Queenstown Lakes District if appropriate water quality limits and a monitoring strategy have been nominated within an EMP prepared by a SQEP. He notes however in certain circumstances a discharge consent from ORC is necessary to manage effects on receiving environments.

MH & KS consider that the current permitted activity rules (under RPW 12.C) are not fit for purpose as it relates to s15 discharges in particular when it comes to enforcement. Management of discharges is much easier with an ORC discharge consent in place and has benefits for both consent authority, Consent Holder and environmental outcomes.

Monitoring and cost implications of Ms Hunter's proposed rule

41. Matters discussed

KS, MH & QM agree that the ORC RPW 12.C permitted activity rules are not suitable in achieving suitable environmental outcomes in terms of water quality.

MH considers that Ms Hunter's proposal will result in the ORC compliance team having to default to monitoring under permitted activity rules in section 12.C of the RPW which has already proven to be problematic.

QM notes that this may be alleviated by requiring that part b of Ms Hunter's proposed rule, includes the requirement for an overarching EMP that includes nominated water quality limits and monitoring requirements. KS questions the ability for ORC to enforce these EMP discharge limits as they are not part of a s15 consent and QLDC does not have jurisdiction to impose these limits either.

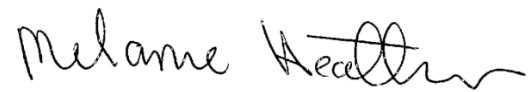
KS and MH agree that it is likely to be cheaper for the customer because they won't need a consent and ORC can't charge for compliance monitoring and enforcement.

QM considers that part b provides a more streamlined process where ORC has an opportunity to be involved in the process, particularly in terms of identifying the need for discharge consents required but acknowledges there may be cost implications for ORC.

Dated this 10th day of March 2022



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Ms Kerstin Strauss



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Ms Melanie Heather



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Mr Quinn McIntyre