

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

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

**ENV-CHC-2020-CHC**

**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 to be referred to the Environment Court 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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**STATEMENT OF SUPPLEMENTARY EVIDENCE OF  
TOM DE PELSEMAEKER ON BEHALF OF  
THE OTAGO REGIONAL COUNCIL  
14 March 2021**

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Judicial Officer: Judge Borthwick

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## Introduction

- 1 My full name is Tom Willy De Pelsemaeker.
- 2 My qualifications and experience are set out in my Statement of Evidence in Chief dated 7 December 2020.
- 3 As with my Evidence in Chief, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## Scope of Supplementary Evidence

- 4 The Court has invited the Otago Regional Council (**ORC** or **Council**) to confirm the purpose of Plan Change 7 (PC7) and whether it is a 'process' plan change or a process plus an 'environmental' plan change as this is not yet clear to the Court.
- 5 At an extraordinary meeting on 27 November 2019, the Council resolved to approve the development of a water permits plan change in accordance with the principles outlined as follows:
  - (a) The focus must remain on the bigger picture – the Water Plan review – the Water Permit plan change should be as concise as required to achieve a fit for purpose management regime.
  - (b) Water allocation should be based on water use, not paper allocation.
  - (c) Consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.
  - (d) Efficiency of time and cost for both Council applicants and other parties.
  - (e) Opportunities for data gathering that will inform the Water Plan review should be pursued.
- 6 This was the mandate for the development of PC7 which Council confirms is intended to be a 'process' plan change only. Through first schedule consultation and in response to submissions, amendments have been proposed to PC7 to address environmental effects.

However, it has become apparent through questions from the Court and parties to the proceedings that the inclusion of certain environmental elements in the plan change could dilute the effectiveness of the plan change achieving its purpose as a process plan change. Further, there are difficulties with the inclusion of certain environmental elements in the rules in the absence of policy support for these matters.

- 7 The Council has reviewed the 4 March 2021 version of PC7 and proposes further refinement to ensure that the purpose of PC7 can be achieved.
- 8 The proposed refinements to PC7 are set out in the following appendices as follows:
  - (a) Appendix 1 – Track change amendments to the 4 March 2021 version of PC7. This version of PC7 consolidates all of the recommended amendments in my Evidence in Chief and Evidence in Reply. The new amendments proposed are shown in red.
  - (b) Appendix 2 – Track change amendments to PC7 as notified. This version is included for ease of reference and shows the proposed amendments to the notified version of PC7 in red. It does not include all of the amendments recommended in my Evidence in Chief and Evidence in Reply. It only includes those amendments that continue to be sought by the Council.
- 9 I address the key amendments to the 4 March 2021 version of PC7 below.

#### **Objective 10A.1.1**

- 10 The Council proposes to delete the word ‘resources’ from Objective 10A.1.1 so that it refers to the ‘*Transition toward the long-term sustainable management of freshwater in the Otago region...*’. This amendment is recommended by Mr Farrell for Fish & Game. The key reason for this amendment is that it reflects the paradigm shift in relation to the management of freshwater; recognising a ‘water centric’ approach rather than an approach that treats water as a commodity.

**Policy 10A.2.1 and Restricted Discretionary Activity Rule 10A.3.1A.1 in relation to irrigation expansion**

- 11 The Council proposes to delete the exception provided for in Policy 10A.2.1 for irrigation expansion where it is demonstrated that a financial investment in the infrastructure to irrigate the increased area was made prior to 18 March 2020. It also proposes to remove the restricted discretionary activity pathway for this expansion.<sup>1</sup>
- 12 In my Evidence in Reply I considered it appropriate to provide an exception for those persons who had already invested in infrastructure in circumstances where the environmental effects from the irrigation activity are reduced, allowing these persons to apply for a 6-year permit under a restricted discretionary activity rule.
- 13 In absence of the proposed restricted discretionary pathway, the outcome of an application to replace an existing deemed permit (or other water permit) where the landholder has already made a financial investment in irrigation expansion but has not been able to establish the infrastructure on the ground is likely to be one of the following:
- (a) Granting of a longer-term resource consent (15 years) under proposed non-complying activity Rule 10A.3.2.1, allowing the landholder to expand the irrigated area; or
  - (b) Granting of a short-term resource consent under proposed controlled activity Rule 10A.3.1.1, but resulting in financial loss for landholders by not allowing these landholders to complete projects financially committed to prior to the notification of the plan change.
- 14 Reflecting on the questions from the Court and parties to the proceedings I now acknowledge that:
- (a) The amendments as recommended in paragraph 171 of my Evidence in Reply do not provide sufficient clarity around the scope of the environmental effects caused by the irrigation expansion that can be considered when considering applications;

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<sup>1</sup> This includes matters of discretion (k) and (l).

- (b) The proposed plan change as notified does not provide sufficient policy support for assessing these effects and determining what effects are to be reduced and by how much;
- (c) There may be inherent difficulties in drafting provisions with sufficient certainty as to what financial investment is required; and
- (d) It is not clear whether the matter I have tried to address through this recommended amendment is widespread or rather theoretical.

15 In light of the above, I do not have sufficient evidence at this time to recommend the inclusion of an exception for irrigation expansion in circumstances where investment in infrastructure has already occurred. It will be up to the parties to demonstrate whether this is an issue and if so, provide specific amendments to the PC7 provisions to address this issue.

### **Policy 10A.2.3**

16 The Council proposes to amend 'only grant' to 'avoid granting' in Policy 10A.2.3 and remove the text from 'except where....' so that the policy avoids the grant of a resource consent for a duration of more than six years. It has become clear through questions that there are difficulties associated with the application of clause (a) of Policy 10A.2.3 and that it acts as a barrier for an applicant seeking to get through either of the gateways of section 104D. Other parties also consider that the non-complying activity pathway requires strengthening. The proposed amendments to Policy 10A.2.3 seek to achieve that.

### ***Rule 10A.3.1.1 matters of control and Rule 10A.3.1A.1 matters of discretion***

#### *Intake method and flow rate controls to avoid or mitigate fish entrainment*

17 The Council proposes to remove this as a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1, as it is an environmental matter not a process matter. It may trigger the need for applicants to provide ecological and hydrological assessments which are beyond the intent of the controlled and restricted discretionary activity rules in PC7.

*The volume and rate of water taken, dammed, discharged or diverted, and the timing and frequency of the take or damming or diversion or discharge.*

- 18 The Council proposes to amend this matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 so that it only relates to historic use and existing water permit conditions.

*Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit*

- 19 The Council proposes to remove this as a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 as it is an environmental matter not a process matter and there is no policy guidance as to how the Council's control or discretion may be exercised.

*Provision of fish passage*

- 20 The Council proposes to remove this a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 as it is an environmental matter not a process matter and there is no policy guidance as to how the Council's control or discretion may be exercised. It may trigger the need for applicants to provide ecological and environmental assessments which is beyond the intent of the controlled and restricted discretionary activity rules in PC7.
- 21 Clause 3.26(1) of the National Policy Statement for Freshwater Management 2020 (NPSFM) every regional council must include the stated fish passage objective (or words to the same effect) in its operative regional plan(s). The Council will include this Objective in the new land and water regional plan.

*The rules or operating procedures of any relevant water allocation committee that exists for the catchment*

- 22 The Council proposes to amend this matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 so that it is clear that it relates to any consent conditions concerning operating procedures administered through a water allocation committee that exists for the catchment that are on the existing permit to be replaced.

*Minimum flow, residual flow or take cessation conditions*

- 23 The Council proposes to remove this a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 as the imposition

of new minimum flows, residual flows or take cessation conditions is an environmental matter not a process matter and there is no policy guidance as to how the Council's control or discretion may be exercised. Any existing residual flow, minimum flow, or take cessation condition on the expiring deemed permit or water permit will be imposed as this must be included in the application for resource consent to meet entry condition (v) of the rule.

- 24 The Council does not propose to include existing priorities as a matter of control or discretion. There are difficulties in including express reference to existing priorities in new permits as they are not currently a condition of consent and are not enforceable by the Council. The enforceability of priorities is a civil matter as between permit holders. To the extent that existing priorities have been exercised in the last 5 years, this will be reflected in the actual use calculated in accordance with Schedule 10A.4, so in practice, the status quo will continue.

*Flooding, erosion, land instability, sedimentation or property damage resulting from the operation of the dam*

- 25 The Council proposes to remove this as a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 as it is an environmental matter not a process matter and there is no policy guidance as to how the Council's control or discretion may be exercised. It may trigger the need for applicants to provide comprehensive assessments on these matters which is beyond the intent of the controlled and restricted discretionary activity rules in PC7.

*Effects of any discharge authorised under a Deemed Permit*

- 26 The Council proposes to remove this as a matter of control in Rule 10A.3.1.1 and matter of discretion in Rule 10A.3.1A.1 as it is an environmental matter not a process matter and there is no policy guidance as to how the Council's control or discretion may be exercised. It may trigger the need to provide environmental and ecological assessments on these matters which is beyond the intent of the controlled and restricted discretionary activity rules in PC7.

*The efficacy of the information provided to demonstrate the existence of any technical issues with water metering, the steps taken to resolve the issue and the implications for the assessment under Schedule 10A.4*

- 27 The Council proposes to remove this as a matter of discretion in Rule 10A.3.1A.1 as it is not considered necessary as the entry condition to the Rule requires the applicant to demonstrate in the application that the missing data is the result of a technical issue and that all reasonable practicable steps have been taken to resolve the technical issue. If the applicant has not demonstrated this then the application will not be considered as a controlled activity.

*New matter of control and discretion providing Council with ability to 'roll over' existing conditions*

- 28 The intention of PC7 is expiring permits be rolled over subject to actual use. It is appropriate to ensure that when existing permits are rolled over, existing conditions can come through on the new permit. The Council proposes to include a new matter of control in Rule 10A.3.1.1 and matter of discretion 10A.3.1A.1 as follows:

Any other conditions on the expiring permit to be replaced, where those matters are not otherwise addressed by the entry conditions of this rule or matters of control [discretion].

- 29 This will not impose any additional information requirements on applicants, unless an applicant does not wish to roll over relevant remaining conditions from the existing permit.

*Restriction on notification*

30 The Council proposes to remove reference to 'Limited notification to affected order holders in terms of section 95F...' as this has been included in error.

**Dated** this 14th day of March 2021



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**Tom de Pelsemaeker**