

**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 to the Regional
Plan: Water for Otago (referred to
the Environment Court by the
Minister for the Environment under
section 142(2)(b) of the Act)**

OTAGO REGIONAL COUNCIL

Applicant

Hearing Commenced: 12 April 2021 held in Cromwell

Court: Environment Judge J E Borthwick
Commissioner Bunting
Commissioner Edmonds

Appearances: P Maw and M Mehlhopt for Otago Regional Council
D van Mierlo for Aotearoa New Zealand Fine Wine
Estates Limited Partnership
L Phillips for Beef + Lamb New Zealand Limited
P Williams for the Director-General of Conservation
K Reilly for Federated Farmers of New Zealand Inc.
H Atkins and L Ford for Horticulture New Zealand Limited
C R Perkins for Landpro
H Atkins and L Ford for Horticulture New Zealand Limited
K Reid for McArthur Ridge Vineyard Limited, Mount
Dunstan Estates Limited, Strath Clyde Water Limited
R Dixon for Minister for the Environment
M Baker-Galloway for Otago Fish & Game Council and
Central South Island Fish & Game Council
P Page and B Irving for Otago Water Resource Users
Group

P Anderson of Royal Forest and Bird Protection Society of New Zealand Inc
 J Winchester and S Lennon for Te Rūnanga o Moeraki, Kati Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Otakou, Hokonui Rūnanga (Kai Tahu Ki Otago) and Waihopai Rūnaka, Te Rūnanga Oraka o Aparima, Te Rūnanga o Awarua (Ngai Tahu Ki Murihiku) and Te Rūnanga o Ngai Tahu (collectively Nga Rūnanga)
 P Page and B Irving for Clutha District Council, Waitaki District Council, Queenstown Lakes District Council, Dunedin City Council and Central Otago District Council (the Territorial Authorities)
 J Welsh for Trustpower Limited
 H Rennie for WISE Response Society Inc

NOTES OF EVIDENCE TAKEN BEFORE THE ENVIRONMENT COURT

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COURT RESUMES ON MONDAY 12 APRIL 2021 AT 9.33 AM

THE COURT: JUDGE BORTHWICK

Good Morning everybody. I'll just do a brief call through just to see who is in the room and then a couple of matters that we need to discuss, first being the joint witness statements and secondly the minute that I released regarding (inaudible 09:33:45) priorities, so Mr Maw and Ms Melhopt for Regional Council, good morning to you, Ms Baker-Galloway, good morning, Ms Irving. Any party who is here who wishes to be introduced? Like Landpro, I'm sure you're here, you should be, so Ms Perkins is it? All right, anybody else?

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MS BRIGHT:

Good Morning (inaudible 09:34:10) from Landpro.

THE COURT: JUDGE BORTHWICK

Good Morning to you. Very good. So two things, we've got four joint witness statements and which represents (inaudible 09:34:22) of work and I understand both from reading the technical joint witness statements and also the last planning statement, but that work's not complete, so we need to talk about what directions do we put in place to ensure that it is completed, that people give over the time required to get the job done and done well. We had done a brief audit ourselves of the joint witness statement, the technical briefs and noted a number of things that needed to be finished, not sure that they are all finished in the planning statement, didn't have the time to do the equivalent task, so how do you see this working? We can again offer the services of now Deputy Commissioner Ross Dunlop so he's formally joined the ranks, re-joined the ranks, or so we can offer his services or is it the case that people ought to be making best efforts to sort those matters out themselves and fall back is Commissioner Dunlop?

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MR MAW:

(Inaudible 09:35:34) the experts to do some work without troubling Mr Dunlop, Deputy Commissioner Dunlop, without troubling him for the next probably week or so to see whether some of the loose ends can be tidied up, and if not then

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scheduling some further conferencing for the period of time between the end of this tranche of hearing and the next Cromwell week. I think there's a two week gap between those two tranches and we'll know probably later this week as to whether we need to get some formal directions in place to further facilitate that conferencing.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. So you're not seeking a direction now for people to pull finger and continue with the work that they've done or are you satisfied that they will do so?

10 A. I need to engage again with the Council's plan a bit more particularly the Council's technical team because there has been some further discussion as I understand it, directly between parties and/or their experts to say, well I understand there has been and I just don't know whether that has concluded yet.

15 Q. So how about his? We'll let the technical team and planners confirm it over the next week, but if progress is not made or if one party considers progress is not being made such that a further joint witness statement can be lodged in three weeks hence so that's two weeks in Cromwell plus another week, if there's any doubt about that, parties are to ask for direction and all witnesses will be referred into direct conferencing at short order which means the witnesses are to be available. I want to know what progress is being made by the time we rise next Wednesday. I think by then, next Wednesday, you will know or you will not know, you'll have a good idea whether people are actually committing themselves to the process and if they can't, I will direct them to, yes, okay?

25 A. Very good.

THE COURT: COMMISSIONER BUNTING

Q. Is that both the technical people and the planners?

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MR MAW:

A. Yes I think it is both. There's, yes. Yes and it looked like significant progress had been made but each of the statements concluded with some texts saying that not – that they ran out of time to do almost the concluding piece of work and I think both groups would benefit from a little more time.

THE COURT: JUDGE BORTHWICK

Good. So report by next Wednesday. Actually, I'll ask you to report to the Court because you're going to be here next Wednesday.

MR MAW:

Yes.

0940

THE COURT: JUDGE BORTHWICK

And I will probably issue a short minute to say that if the report is that insufficient progress has been made by next Wednesday, Court will refer technical and planning witnesses, to expert conferencing in the adjournment between the Cromwell sitting weeks. So priorities. So we issue the minute about priorities because still at this point in time we do not have a sense as to the significance, if any remaining significance of priorities and so we'll be asking questions of farming witnesses and also the experts to come on behalf of farming interests which are not generalised questions where the answer is, tossed off, yes they're important or yes there will be chaos or whatever, but we are really trying to dig into what is known if anything about the exercise of those priorities. It seems to us that the government had a transitional provision for deemed permits for a period of 30 years, which is to finally expire on 1 October 2021 – that is obviously a matter of submission – but that the government had assumed that, when it did expire, that there would be a fit-for-purpose water plan, which would take over those priorities in the form of minimum flows, allocation limits, and so forth. Well, that is not the case, and so there is a potential gap, but is that significant or not? Do we even know whether these priorities are being

exercised or not? Are these priorities taken over by water-share agreements or by some other methods that we are just simply not aware of? Because what this plan change is seeking to do, as I understand it, is to ensure that there is an orderly transition from the (inaudible 09:41:08) water plan to something else, which is the (inaudible 09:41:11) water plan, compliant with the MPS for freshwater management 2020, so we are bridging a gap, and so the focus of the Court's particular interest is on are there any missing elements within that gap, accepting, as we must, that there is no new plan in place or fit for purpose plan in place that necessarily enables the determination of minimum flows and allocation limits. So we are not best assisted by generalised statements. We are looking to or testing the witnesses to see what it is that they can provide the courts so that the Court can factor that into our thinking in terms of are there any elements which can and should be brought forward which have not been brought forward today. So that is our particular interest in it. Now, it may well be that permit priorities survive 1 October 2021, and that is fine, but should they just simply be brought into the plan by citing the name priorities as if that meant anything to any decision-maker in the future? Suspect not. Suspect that that would have been insufficient in and of itself, so we need to talk to people about that. What other? If it is to be brought forward because they have survived, then what should we be doing to recognise those? If priorities don't survive 1 October 2021 but are important, then what other methods are available to us to recognise the work being done by priorities as between abstractors, and should our interests be as between abstractors only, which is what we think priorities are about, or should it have an environmental focus, which is a particular interest in dock, Director General, Conservation. So we will be, again, looking to our alternatives, if priorities don't survive, but there's a gap, how can the gap be bridged, how should it be bridged? So that has our interest in this, and I cannot emphasise enough that the Court is simply not assisted by generalised statements about priorities or about water permits. There is way too much at stake to continue to give evidence like that, so it is a terse word, a terse note, but there is far too much at stake for the farming communities to be continuing on in that vein. All right? So we think we've got the right people in the room, particularly also when we start to hear from farmers, because they

should know. Anything arising? Good. Okay, so we are back with Ms Dicey for the Court's questions.

MS IRVING RECALLS**SALLY DICEY (AFFIRMED)****THE COURT: JUDGE BORTHWICK**

Q. Thank you, good morning, Ms Dicey.

5 A. good morning.

Q. Good to see you back again. We are going to hand you over to Commissioner Edmonds for her questions.

QUESTIONS FROM THE COURT: COMMISSIONER EDMONDS

10 Q. Good morning. I've had the benefit of the transcript, so I'm going to take the opportunity to ask you some follow-up questions on a number of matters that I am unclear about, and I will be looking for more than just a restatement of what you said in the transcripts.

A. Sure.

15 Q. I'll be looking to get some more information out of you. So I'd just like to start by exploring your experience with preparing resource consent applications. So would you be able to just briefly explain to me, in terms of your experience, what is your experience with that in recent times, particularly as it relates to deemed permits?

20 A. Sure, so in recent times, a lot of the applications that we've been working on, actually, we started work a number of years ago. Often the applicants, the permit holders will contact us and say, you know, we need to replace our application and it was a number of years out from 2021, from this year, and our work, particularly, has centred on group applications, and that started with the (inaudible 09:46:34) and then the Lindis were the two
25 main group applications initially, but a lot of smaller submission-catchments as well, so the Pig Burn is an example, a group of private permit holders in the Poolburn, and then, more recently, the Manuherikia are some of the main ones that I've been involved in, and so the early days is establishing who wants to be part of that group and establishing
30 principles for the group, and the evidence of Ms McKeague goes into that in some details, kind of the principled approach, because it is a huge shift for a lot of these permit holders to go from often individual competitive

approach, potentially within the water space, to actually shifting to a group approach, and the group approach was something that was promoted quite strongly from the regional council. There was a plan change, and I forget the number of the plan change, I'm sorry, a number of years ago now to facilitate the shift from deemed permits to resource consents, with expiry in 2021, and that was seen as a helpful approach, both in terms of managing the effects effectively, but also transitioning from priorities and an individualistic approach to a shared approach to water management, both for the users and for the environment, and so we start with the principles, and I could refer to those in Ms McKeague's evidence, if that's helpful, but it's generally along the lines of understanding what the environmental needs are and then nobody gains to the detriment of another water user, and then working through what that means, and so very much starting with the science and understanding the ecology, the hydrology, the stream. In the past, it also involved a lot of engagement with stakeholders, so in particular, DOC, Aukaha, and Fish & Game, and often, it was requesting input from those parties as to their values in relation to the particular waterways, and sometimes running field days with those parties as well. More recently, that has become challenge, because we have had a strong indication from both Aukaha and Fish & Game that they would not give written approvals for more than a six-year consent, and so it became more difficult to actually engage on the particular effects of a waterway, or else we had trouble, particularly with Aukaha, getting the representatives, except for a science represent, to come on-site and actually view the stream, and then it was about just preparing the application, working through how water had been used on the property, and for a lot of these applicants, it was the first time ever sometimes that a really comprehensive understanding of their system of water use have actually been kind of documented, some of them have already replaced deemed permits or mining rights into the deemed permits or water permits, so they still had the status under the regional plan as primary allocation because they were originally granted prior to '98. Sorry, I just lost my train of thought there, so yeah it was the first time that a lot of them had been comprehensively documented, so for the

large irrigation schemes, Ida Valley Irrigation Company is an example of that, the Manuherikia and their Irrigation Co-operative Society as well is another good example, very large complex systems of moving water around, a lot of permits covering activities, sometimes, discharge, retake, retakes and actual takes covering the same locations, so there's a whole lot of detail to kind of shake out and try and put into a clear kind of story if you like.

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10 Q. And so how many of those have there been developed through with the application stage?

A. To application? Ooh I'd have to do a count up.

Q. Well just a rough estimate?

A. Twenty or more.

15 Q. So are those individual applications or sub-catchments or catchments you're talking about when you give me that number of just individual applications?

20 A. Some of them are individuals and some of them are sub-catchments, the Manuherikia is an example where one application or one applicant can represent, so that with the Manuherikia Care Irrigation Co-operative Society, that represents in excess of 300 water users I think.

Q. So you've worked on that one and got it to the Resource Consent Application stage?

A. Yes so in the Man-

Q. And it's now been lodged I understand?

25 A. It's been lodged and so Manuherikia's a really interesting example actually, I don't think, I'm not aware of anything quite like it in the country. We've worked co-operatively with my company and two other companies, Landpro and Opius or WSP have worked co-operatively as consultants with clients throughout the Manuherikia to develop a joint process for the
30 Manuherikia and that was really because of the vacuum in terms of limit setting –

Q. Oh well that was going to be my next question. These examples that you've been involved with, how many of them are in catchments in

Schedule 2A that actually have allocation limits and minimum flows, or, well most of them do, how many in that situation?

A. So the Manuherikia, it's a bit of an odd one because there is a Schedule 2A limit but it - and that bites in terms of allocation, so the allocation cap exists where the sum of consented is greater than the Schedule 2A limit and that applies to the whole catchment. There is a minimum flow set at Ophir but that has never I think been reached, the minimum flow and I think that's because of augmentation from Falls Dam partly, so it's a very complex catchment from a hydrological level, perspective sorry, and it's recognised that new flow limits have been worked on and we had requested repeatedly to the Regional Council to develop an MPS compliant framework for the Manuherikia head of the deemed permit expiry. At one stage the Regional Council was only going to set a minimum flow and we asked specifically of the Council, did that include an allocation limit, because it had to be a fully MPS compliant framework. Because that framework was not being developed, the catchment (inaudible 09:54:41) that – and this is before PC7 was even on the radar, had been thought about, that the applicants would basically have to fill that gap themselves and so the catchment came together and this is a big catchment where the water users don't all know each other, and come up with a cohesive approach that was s MPS compliant as an applicant could possibly do and I know there are always going to be shortfalls with that coming from an applicant, but it was an attempt to fill that gap as much as possible. In other catchments, the Pig Burn is a tributary of the Taieri and so there is a minimum flow and a allocation in the Taieri and so that one was about setting residual flows, the same with the Kyeburn, so that had a minimum flow and an allocation limit and then several tributaries to the Clutha and now they're a bit funny because they also have an allocation limit, they're not the sum or the consented max, but they're the other default in the primary allocation policy.

Q. Oh the policy –

A. The 50% -

Q. The policy which, I think there's been some criticism of the policy?

- A. In terms of – yes, well it's the how you determine what the primary allocation is. So all the trips going into the Clutha are also subject to an allocation limit, and no more water is available to be granted in those tributaries either, so that's, you know, that's an awful lot of waterways with an awful lot of deemed permits sprinkled along them, although the majority are not in those tribs, I would say, the majority of deemed permits, the Manuherikia, the Taieri, Arrow, Cardrona, I think, are the biggest concentration, but these other tribs are subject to an allocation limit, but no scheduled minimum flow, and so there, it was about residual flows, and on some of those tribs, there may only be one water user or there could be several.
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- Q. So have they all got, the ones you've worked on, do they all have residual flows proposed where there's no allocation limit?
- A. So there's an allocation limit in almost all of those.
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- Q. Sorry, with or without an allocation limit, do they all have residual flows, or only those ones with the allocation limit?
- A. So in terms of our applications, every application we've worked on, we assess the need for a residual flow. In some cases where the waterway dries up naturally below the take and the hydrology supports that, we haven't always proposed a residual flow, because leaving a residual flow, and then it's going to drop to ground anyways, the river naturally, or the stream, wouldn't naturally support values downstream of the take anyway, so sometimes, that's a consideration or a factor, but in every case, we assess the need for a residual flow, and so that's one of the considerations that's critical in the development of those applications. That's one of the key mechanisms to manage the effects of takes.
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- 25
- Q. So you're also doing applications outside of the schedule 2A water bodies, are you?
- A. Yeah, so those are the tributaries that feed into the Clutha River, and so Long Gully is an example there. We've done the Bannockburn, which is an incredibly complicated system of using waterways and retakes and then private rights being taken at the some location as company water, and so that's a very complicated, probably the most complicated one I've seen, and again, that's being done at a group scale, and a range of
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residual flows proposed as part of that application, and so that's not a two-way catchment.

Q. Not a two-way catchment.

A. Yeah.

5 Q. I suppose I was just trying to understand whether there was a difference in approach, given that you've got the allocation limits and the minimum flows in the schedule 2A ones, but you haven't in the ones outside that. So you've mentioned residual flows, but what about other mechanisms?

10 A. Other mechanisms is the flow-sharing agreement, and that is, as Mr Hickey said, that's one of the mechanisms used to help transition away from the priorities. In the Manuherikia, we've proposed a minimum flow for the main stem of the Manuherikia, and a system of integrated residual flows, so not only take-specific residual flows, but residual flows at the downstream end of key tributaries feeding into the main stem, and so
15 there's a whole system of kind of integrated water management that's proposed with the Manuherikia catchment, and that's focused on where critical values are, understanding, say, fish passage, understanding, you know, where the particular habitat values are for particular species, and also considered water quality effect, so all of those reports have all got
20 kind of detailed analysis of water quality and trying to link those back to land uses and what may need to shift in the future to address that. I think Mr Hickey talked in detail about the hotspot, identifying hotspots within the catchment, with the Thomsons Creek wetland project, and so they're probably some of the key. Other facts are the drive to improve efficiency in terms of water use, and that's been a response to both the operative
25 plan and the national policy statements, and so on farm commitments to on farm changes, particularly in the past, we've seen a slowdown of that recently with PC7 where it's much more just about holding steady because of the uncertainty.

30 Q. I guess that was a question I had, I mean, you've talked about the bigger process that you're working on, and then PC7 comes along.

A. Yeah.

Q. So is it capable, then, of being addressed in terms of controlled activity in terms of PC7?

A. All of those wider matters?

Q. Well, I'm not sure all of those wider matters are. That's the purpose of my question. I mean, what could be achieved, I suppose I'm asking you, through the controlled activity status that's now being proposed?

5 A. I think, in my opinion, it has to be a controlled activity, and I guess this reflects the evolution of my thinking from the permitted activity, now a simple controlled activity pathway, is a very process-orientated pathway. Because all of those other considerations, they're complex, they're not necessarily agreed with by other stakeholders, you know, the first
10 proposal is not something necessarily that all stakeholders will agree with, so that's a complex process of assessment by the regional council, input from other stakeholders, and they require, often, as soon as there is a change, a loss of reliability of supply, which comes with residual flows, adherence to a minimum flow, then that requires changes on farm, and
15 that can be putting in storage to address loss of reliability of supply from the river source, or changing your infrastructure on farm, and as soon as you trigger any kind of change like that, then a short term of consent, there's just a complete mismatch there between the two. I think this process is incredibly hard on the permit holders, and so I think the
20 simplest approach possible to allow them to get through this stage and for everybody in Otago, all stakeholders, to actually focus on the limit-setting, would actually, you know, be the most helpful in terms of, you know, we're talking about the controlled activity rule.

25 Q. So can you just run that past me again? I lost the thread of what you were saying at the end. So I've asked you a question about the controlled activity pathway and what that may be capable of achieving over the short term, and I wasn't clear about your answer.

30 A. I don't think it can achieve anything environmentally or from an efficiency perspective. I think it can only be a simple process, or it should only be a simple process rollover, because if you require anything else, that can require on farm changes, which requires investment financing, which won't be possible to obtain because there's only a six-year permit and a lot of uncertainty about the future, so I think there's really, through the

controlled activity pathway, I think it's process orientated rather than process plus. Is that a more helpful answer?

Q. Yes, I think that is, thank you.

A. Sorry.

5 Q. So the next area I wanted to understand a bit better, from looking at the transcript, is this whole question of priorities. We haven't had anything very definite about priorities, we've had a lot of –

A. General?

10 Q. Yeah, well, also quite a lot of speculation as to what may or may not be happening. We've had no actual examples provided of where priorities have been exercised, and reasons for their exercise, and even the methods for the exercise. You had talked about dial-up and that in a general sense, but in terms of some concrete examples of priorities, presumably, when you're working towards these applications and on these applications, the discussions that you're having are surely going to have the word "priority" mentioned more than a little, and people coming to the table probably take it that, well, I've got these priorities, that actually puts me in a better position. Would that be right?

15 A. Yes, absolutely, and that, again, goes back to those principles and the fact that, with a lot of these groups in particular, we've been working with them for years now, and partly the reason for them coming together as a group is because there are priorities and they understand that priorities are going to finish and what then? And so an example where priorities have been used is the Kyeburn, and that was one of the earlier applications that went through, and I can give you a little bit more about that one. The other one is the Pig Burn, and that is actually one of the examples I included in my supplementary evidence was from the Pig Burn, and in that one, it's quite an unusual system of the order, because I think some of the lower priorities are downstream, and the highest priority is the second most upstream water take, of the kind of downstream reach, there's one way up in the hills that doesn't really affect anybody else, and so their priorities were used, particularly between priority one in a lower priority who was situated higher in the catchment, so between those two water-users, and then further down between

another two water users, and so working with the group, many of the early meetings were about things such as priorities and access to water, and they were critical. You know, throughout Otago, I think where priorities have been used and where people have held higher priorities, it's affected land values. That's how critical they were, and so with the Pig Burn example, as part of that proposal – and this is something else that we've done with applications – another way to address environmental effects from water takes, not just residual flows, but also reconfiguration of takes, and so the Lindis is probably the, you know, the largest-scale example of that, closing the three races and having a dispersed system of small takes. With the Pig Burn, three of the water users were actually going to move their points of take and put them to one point of take. Because of that that particular location we'd identified, it was identified it was a gaining reach, they would have less impact on the values in the river, and so that's a big reconfiguration, because two of those water users had exercised – my understanding – had exercised priority, one against the other, and so moving forward, they were letting go of that and actually having a shared piece of infrastructure going forward. Two of the other water users which have used their priorities in that example and it's actually written in the application that they had had the priority 1 had exercised priority over priority over priority 5 and that they were going to enter into a side agreement to acknowledge that they have those priorities, that those priorities had been utilised by priority 1 and that they were entering into a legal side agreement outside of the consent process to try and address that to protect that priority holders, you know, priority 1's access to water and so and that, that was the example in that case.

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Q. So sorry, I've lost – was that the Pig Burn you've just been talking about?

A. Yes that was the Pig Burn.

30 Q. And then you mentioned the Kyeburn?

A. Yep, so the Kyeburn was another example, in that case again we had a system of residuals throughout the whole catchment with the key kind of residual at the bottom of the catchment before it enters the Taiera River. There was also a water supply agreement. They formed a company, was

it a company or a – some kind of legal entity and that had with it, not just its constitution, but a water supply agreement or water sharing agreement as to how those water users within that catchment and from memory, it was a few years ago now, but there might have been 16, 18 different water users were going to manage the flow sharing within that catchment down to the residual at the bottom of the catchment so the-

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Q. So that flow sharing agreement was that a formal agreement and part of the consenting process or was that outside of all that, a side agreement?

A. It was a side agreement, yes, so I'm not, from memory I don't think it was mentioned in any of the conditions of consent, I'd have to go back and check, but from memory I don't think it was and so Ms McKay is more involved in the detail of developing those supply agreements with clients than I am, so she will be very well placed to talk you through the details of that.

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15 Q. Sure. So just going back to that principle that you said drove a lot of the work which is that, I think it was nobody gains to the detriment of another water user and I was just trying to understand that a little bit better, is that water user in the sense of an abstractor of water?

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A. Yes, yes. So that's very much - so the first principle is about, well the environment, looking at what the environment needs and that means, the assumption there, is that everybody, all the abstractors will be losing something, they will be losing reliability, a supply or access to the water to some degree because you start with how much the environment will need and so when you're then looking at people's loss of access, its trying to do it in a fair way that takes into account historic access including priorities, but it might also not be a priority, it might be that one person was just lucky enough to have their take in a gaining reach or was upstream and there wasn't a priority, so could get access to water, but it's very much about, yes, just trying to be as fair as possible so that everybody's going to lose a bit, but not to the detriment, or, yes, nobody's going to gain at the detriment to somebody else as well.

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Q. So it's a negotiation process is it? So you might –

A. Very much so.

Q. – might think of it –

A. Very much so.

Q. – that way. So I guess trying to understand the extent to which there are priorities in all of these areas, is there a sort of go to source for that, that you've used when you've been doing your work or does that just have to be done on an individual basis going through the historic permits and things?

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A. So it's very much conversation with the permit holders themselves. So some permits will have a priority on them, but they have never been used, so you can start with the permit but that will only tell you so much, that one, that illegal right exists, but so of the two examples that I put in my supplementary evidence, the first, the priorities is the Pig Burn and priorities have been utilised there, the second I think was in Lauder and those particular priorities between those two permit holders, my understanding is that they haven't been exercised so it completely depends on the permit holders what –

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Q. And you have to ask the permit holders –

A. Yes.

Q. – whether they've been exercised and if they –

A. Yes.

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Q. – haven't owned the land particularly long, they may not actually know?

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A. They will, not so much about the length of land ownership because often that's part of the due diligence in buying a property is not just the face value of your permit but also actually your access to water under that permit and that's very much informed by the priority on the permit and whether – so if you're a lower order, if you're 2 or lower, whether the higher priorities have exercised their right and whether that restricts access, so, you know, and we, our company has done due diligence in terms of purchasing properties and that's very much a factor in understanding that access to water is whether the priority has been utilised.

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Q. But, I am just a little unclear about that, if it hasn't been exercised, that doesn't necessarily mean that it couldn't be exercised in the future?

A. That's right, that's true.

Q. Yes.

A. Yes.

Q. So it might be a red flag sort of issue?

A. Yes, yes absolutely.

Q. Yes.

5 A. And so if some of it, so if there's a property with a higher priority than you, you and your neighbour have a very stable relationship for years, your neighbour hasn't exercised their higher priority, they sell their property, the new owner is entitled to start exercising it and I'm sure there are examples of where that's happened. I'm not actually aware of where
10 that's happened, but I'm sure there are examples.

Q. So if you're working with a group as the example that you have given of some other group –

A. Yes.

15 Q. – and so they all agree that, okay, well if there are issues about priorities, we're either not going to worry about that or we're going to do something on the side agreement that isn't going to damage the overall basis that we're proceeding on –

A. Yes.

20 Q. – if you're doing applications, do you mention the word "priorities" at all? Do you set out – is there anything in your AE that talks about priorities?

A. There might be passing reference but I mean we do a section on in our AEs in terms of affects on other water users. Often because we do them as group applications in the sub-catchment basis, so that is within a tributary, a contained kind of system of priorities, then that's already been
25 addressed in the proposal internally, so it won't always be explicitly recognised in say that section of AE. In the Pig Burn we did mention it very briefly and pretty much to say that the – the other priorities have been set aside, but the priorities between, I think it was priority 1 and 5, were being addressed in a side agreement, I can't actually remember if we
30 specifically mentioned it in the Kyeburn, so a lot of the time it forms part of the background work within the group and it's about the group coming to an agreed position after the kind of the environmental aspects, the other, all the other environment aspects looking after the waterway being addressed.

THE COURT: JUDGE BORTHWICK

Q. Can you say that again? I'm sorry I lost the thread of what you were saying?

5 A. So it's very – so it's often contained within the proposal, but it won't be explicit so it's part of – it very much forms part of the development of the proposal in terms of the management between themselves, whether it's the water supply agreement, but it's probably, I don't think we often mention it explicitly in the application in detail, how it's being dealt with, often if there is a water supply agreement we'll mention that there's a water supply agreement. That may reference back to the priorities, or it may just be “this is how this group proposes to flow share down to these limits and manage to the limits,” and perhaps that reflects the fact that it's very much been something between water users, historically, and that the council hasn't been involved in managing, so quite possibly, that's a, you know, reflection of that.

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Q. So I have noted, your evidence is: “Often, albeit that the applicants for resource consent will have proposed a new take and use of water, taking into consideration existing priorities, how those priorities are managed as between water users is often not mentioned in a resource consent.”

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A. Application.

Q. Yes, application, and secondly, you may or may not mention the existence of a water share agreement in an application for resource consent.

25 A. No, sorry, I'd reframe that to say we do mention that there will be a water supply agreement, but that might not reference back specifically to how it replaces priorities, so we do note where there's going to be a water supply agreement or a water-sharing agreement.

Q. So what's the difference between a water-supply agreement and a water-sharing agreement? You're using different terminology.

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A. Sorry, sorry, I should just use one. I'm just using them interchangeably there. I suppose, more technically correct approach, water-supply agreement is more about an irrigation scheme and its supply agreement to its shareholders, and a water-sharing agreement is an agreement

between abstractors to how they are going to manage their access to the water body.

Q. So you have been referring to water-sharing agreements?

A. Yes.

5 Q. Yes.

A. Sorry.

Q. So some of these applications that you're involved with, presumably, it may not be possible to get everyone in the tent, some people may have got new water consents already, for example?

10 A. So in the Manuherikia, yes, there are some outside of the tent. Some went through earlier, although one of the main ones to go through earlier in that example was the Hawkdun Idaburn scheme, which reconsented in 2001 and were granted long-term permits, but they are still formally part of the Manuherikia catchment group and have been active members of
15 that group. There are a few, or maybe three, five, permit holders, I think, that I can think of off the top of my head that aren't formally part of Manuherikia catchment group approach, which I think is quite remarkable, considering just how many permit holders there are and the geographic spread of them.

20 Q. So how do you deal with that, the fact that not everybody's in the tent?

A. So we anticipate that whatever minimum flow limit will be imposed, they will also have that imposed on their permits.

Q. You mean that the regional council will review their permits and do that, even though you're not the council setting the minimum flow and the allocation limit that you've got your group working to?
25

A. Yeah, so I was actually referring then to people who had current applications who were replacing their permit, so if, you know, there's a minimum flow proposed for that catchment, we'd anticipate that it would be, you know, a condition of their consent as well.

30 Q. But you're relying on the regional council –

A. Oh, absolutely.

Q. – to review those –

A. Oh, well, if they're a current application –

Q. – other permits if they're not current applications.

A. Yes, yes. We have no control over that, yeah.

Q. As a matter of interest, how many permit holders are there in the Manuherikia who have consents which are still running and are not going to be expiring before 2025?

5 A. I couldn't tell you that number off the top of my head, I'm sorry. I know the Hawkdun Idaburn company takes water above Falls Dam is the key one. I'd say I think there are very few.

Q. When you say Hawkdun Idaburn?

A. Hawkdun Idaburn.

10 Q. Hawkdun. They are the key one in what respect, what do you mean by that? Because they have got a long-term consent which is still running beyond 2025?

A. Yeah, they're the only one I'm aware of, and because they're an irrigation company, rather than a single-permit, you know, a single landowner, so they're supplying water, and they transport it all the way from the top of the Manuherikia Valley over into the Taieri catchment, but they're the only one I actually know of in terms of surface water abstraction. That's not to say that there might not be a few others, but if there are others, I imagine that they'd be, you know, small individual landowners. There were some, there was the Jopps, I can't remember the name of their station, that were replaced maybe four years ago, but not ones that I've dealt with myself.

20 Q. And is your assumption that if Manuherikia is processed according to the application and granted, that the Hawkdun Idaburn Irrigation Company will be reviewed in line with whatever is set on the application or applications which are now before the regional council for Manuherikia?

25 A. I wouldn't say it's my assumption.

Q. Does that need to take place or not?

A. I think a separate assessment of their impacts would be helpful.

30 Q. Does it need to take place in the sense that it is important to review that existing water permit to enable whatever has been proposed for the wider Manuherikia catchment to take place?

A. I don't think it's critical for the health of the water body in the Manuherikia itself.

Q. No, I am talking about abstractor interests only.

A. I think it would be useful to review it, definitely. I think it would be a good thing to do, to bring things into line, yes.

Q. Is the exercise of the new proposal for the Manuherikia, contingent upon a review of the Hawkdun Idaburn?

5 A. No.

Q. That is all I was getting at.

QUESTIONS FROM THE COURT CONTINUES: COMMISSIONER EDMONDS

10 Q. So the work you've been doing, you've just factored that consent that's outside the tent in as a given?

A. That's right, yeah.

Q. So having done that, that would have effected everyone else in terms of the work that you're doing?

15 A. Not hugely, because they're above Falls Dam, and so because it is such a complex catchment with, you know, storage of water at the top of the catchment that then can augment flows downstream in summer, and that take's above the dam, so it has a lesser impact in terms of what – yeah.

Q. Sure, but there must be other examples where –

A. They've already been granted?

20 Q. Yes.

A. Yeah.

Q. That could have quite a major impact in terms of the principle that you've been working too if they were in the tent as well and being reviewed.

25 A. I can't think of another example in terms of a permit that would either undermine the proposal, or they would be scattered amongst tributaries, and I know, so I'm thinking of one example, the other one I mentioned, and I'm sorry, I can't remember the station name or the actual applicant's name because it wasn't one I dealt with, they've still been part of the discussion about the future of water management within that tributary, so
30 they have still been brought into discussions about flow-sharing within that particular at the bottom of that, you know, meaning the residual flow that we've proposed for that trib.

Q. So they've been brought into the discussions, but with what outcome?

A. I'm not actually familiar with that specific, I haven't worked on that tributary, sorry.

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5 Q. So most of the applications that you've been involved with and are aware of, do you have an expectation in terms of review clauses?

A. Yes and we've got much more specific detailed review clauses on recent consents granted for water abstraction in Otago and I think most permit holders now with this process are aware that if they got granted a permit now, that, I say if they were in the Taieri, that the minimum flow could possibly change as a result of the limit setting process under the MPS, as part of the FMU process and that that could very well result in a review of their permit, so I think that's now much more an accepted part of it.

10

Q. So is that, there was explicit review clauses that signal that future re- well the MPS FM review and the likely change to the plan and those sort of things –

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A. Yes.

Q. – triggering a review?

A. Yes.

Q. But it still requires the Council to –

20 A. It does.

Q. – undertake the review?

A. Yes. And that has been something that's been –

Q. Or trigger the review, yes –

A. – that's - yes that's right and that has been foreshadowed in Otago, that was the approach that was going to be taken under the current, the operative plan in terms of those 2A, the schedule 2A catchment where there was a minimum flow set in the Taieri as an example of that we were getting new permits issued but no – the minimum flow isn't a condition of consent on those permits but people know that - or anticipated because the plan said it would happen, that once all deemed permit applications were in or at 2021 the minimum flow for the Taieri would be applied to their permits, so we've actually had some permit holders who have been voluntarily flow sharing in anticipation of that to meet the minimum flow even though it's not actually a current condition of their consent.

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Q. Sorry, I just need to switch horses, I've just got a few other things that
so the – you may or may not be able to help me with this, tell me if you
can't, but where you might have an irrigation that's supplying a variety of
purposes, so you might be providing stock water, drinking water for
5 people, and then you've got your standard sort of irrigation to support your
pastoral activity or your particular horticultural activities, are all of those
things broken down in the different activities and the different allocations
that are being sought?

A. In the applications?

10 Q. Are all of those separately broken down in an application that you're
involved with?

A. So for those large schemes, what we do, is we undertake a mapping
exercise and identify and we utilise Aqualinc as a bit of a template here
because everything has been assessed against those efficiency
15 requirements and Aqualinc uses at a kind of a broad level using water for
pasture, viticulture and then I think it's cherries but we apply – so the
cherries one is applied to horticulture in general and then market
gardening which is really a North Otago thing in terms of how Aqualinc
have developed it, so those are the kind of the high level categories in
20 terms of land use, the pasture, the viticulture and the horticulture and then
on top of that we identify where it's required, stock water and the needs
of stock water, frost fighting and there are either requirements based on
kind of a his- you know, frost fighting requirements in an area and some
allowance for distribution losses. A domestic – a lot of schemes don't
25 actually supply water as potable water, so there may be some users who
utilised water for domestic supply but that's not actually part of their water
supply agreement, so we haven't factored that in for the larger schemes,
for an – on an individual farm level, or a much smaller focused application,
again it's identifying whether they're using their water for pasture,
30 horticulture, viticulture and so sometimes it's quite complex, depending
on the application and their water use where people also have some
amenity areas that they might water or lifestyle blocks and so we try to
acknowledge that and group it in to say pasture or horticulture, or one of
those two. So try to acknowledge the use and then the application itself

will detail, if it's a smaller application specific to private permit holders, it goes through and outlines what they do on their farm and the breakdown of what they're doing with the water, in terms of area what infrastructure they're using, so we do try to give that specific information as possible in terms of what's happening on the properties.

THE COURT: JUDGE BORTHWICK

Q. So we've heard either cross-examination suggesting to the contrary and we have, and evidence of a highly generalised nature also suggesting to the contrary that it's not possible to understand what is the area under irrigation, is it your evidence that that is wrong because that information is being supplied now by applicants for water permits?

A. So I think just trying to understand what – in terms of your reference, so we do know the irrigated area at the moment, absolutely, and property owners can identify that, I think the concern was about the providing proof based on a certain date of particularly retrospectively of an irrigation area, so being able to prove categorically one way or another that an irrigation area was in by a certain date, so it was that more the date reference that was the issue, but...

Q. Why's that an issue?

A. Again that was within the context of the controlled activity rule and keeping the process very simple.

Q. Why's that an issue? In the context of a controlled activity rule –

A. Yes.

Q. – why is it an issue for any irrigation company with a water supply- any irrigation company supplying water or alternatively any farmer taking water and using water to establish what area of land is under irrigation?

A. At a particular date?

Q. At a particular date?

A. Yes.

Q. I don't understand what the issue is?

A. And I was thinking particularly about the Manuherikia there where they have 300 shareholders, over 2000 hectares and land being subdivided, sold, irrigation is not static in terms of –

Q. Just pause a second, if we're taking Manuherikia as the example –

A. Yes.

Q. – the 300 shareholders to – what's the name of the entity, the company there?

5 A. Manuherikia Irrigation Co-operative Society.

Q. The Co-operative Society, 300 shareholders to that, those shareholders are party to a flow sharing agreement?

A. A water supply agreement.

Q. A water supply agreement?

10 A. Yes.

Q. That water supply agreement doesn't note or it is agnostic, it doesn't note at all, what the area of land is to be irrigated?

A. It does but that's based on a very outdated Ministry of Works calculation which isn't actually accurate in terms of what's happening on the ground?

15 1040

Q. Okay, so the water-share agreement for Manuherikia co-operative society is inaccurate in terms of what is actually happening on the ground, that is your evidence?

20 A. Yes, in terms of there is a mismatch there between how the supply agreement works in terms of what they've signed up for, in terms of their shareholding and then the water that they received from the company, compared to what they might actually do on the ground. On the ground, they might irrigate less, and they might not take their full allocation from the company. The water supply agreement just speaks to their
25 entitlement, so they might only irrigate half of that, or some of them may be able to spread that water further, because, as I understand it, the calculations, the old Ministry of Works calculations, probably wouldn't be something that – well, might be amended, in today's terms. So that's really about that legal entitlement in terms of the supply that the
30 landowner can ask for and then the payment that they give to the company as well, or to the society.

Q. If the regional council is interested in understanding what the area of land is under irrigation, what information should it be supplied as part of a controlled activity?

A. It starts with a number, but I always numbers have to be supported by something, so then it would be mapping to support that number as well.

5 Q. And that mapping applies to, obviously, an area of land which may or may not be the whole parcel of land under irrigation in any one year. And that would be very normal, some blocks are irrigated, other blocks are rested, and that changes year in, year out.

A. Yeah.

Q. And it depends on what crop rotation is happening, and it also depends on what stock has been put to the land. Is that not so?

10 A. Yes, or if you're in the process of changing your setup, and I think the date and the rule – was it 2018, 2019? So my concern was more centred about going back to a particular date and just going through that process, and, you know, targeting a specific date retrospectively and saying, okay, on this date, what was your irrigated area, and give us proof that it was that on that date or in that season.

15 Q. And you are saying that farmers would not have a record available from 2018?

A. Or some kind of proof specific to that date. It's not insurmountable.

20 Q. No, it is not insurmountable, and that is the point, is it not? It is presented as insurmountable in this case, but I do not think it is, and so I am trying to draw out of you what, if this is an important control, should the regional council be looking at?

A. So I definitely do not see it as insurmountable. My concern around that was more focused on keeping the controlled activity pathway as simple as possible, and so –

25 Q. Understood, but now we are driving into the detail.

A. Yeah.

Q. So what is the detail that the regional council would look for in order to establish what is the area under irrigation?

30 A. Yeah, and so I think, again, it's a number supported by maps and, you know, whether that's current irrigation area at the date that it's lodged is the line in the sand, or, within, you know, a span of a particular number of seasons may be helpful, one of those options.

Q. Presumably, that area under irrigation, there is a date line in the sand somewhere, would reflect the setup or the irrigation systems as of that date?

A. Yeah.

5 QUESTIONS FROM THE COURT CONTINUES: COMMISSIONER EDMONDS

Q. So I just wanted to understand, you talked about a water-sharing agreement, so how does that relate to a low-flow management regime – I've forgotten the actual terminology at the moment – or a rationing agreement?

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A. A rationing, low-flow sharing agreement, a sharing agreement, all pretty similar things. So all of them require as a starting point a limit, and so setting the limit is the critical thing, because all the background work goes into that, actually what is the limit? What does the limit need to be? What are the values? What is required to protect those values? What is appropriate?

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Q. So when you say "limit," what do you mean?

A. So a minimum flow limit or a residual flow limit. So what are we managing the abstraction down to? And so –

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Q. Sorry, finish your answer.

A. And it's in an abstractor's best interest not to hit the limit and then be turned off, so what they try to do is to reduce their take as they approach a limit so that they've still got some access to water. Some small access to water is better than complete turn-off once you reach a limit, so the limit is an incentive, so that flow-sharing begins as flows drop down towards the limit, so that's, you know, people reducing their take down to that limit, and in a kind of co-operative sense, and I'm not the one within our kind of team that has, you know, actively developed these. Mr Hickey and Ms McKeague are more involved in this than I am, but it may be proportional reductions, you know, across the different abstractors as flows start to drop, so everybody drops back to 80% of their take, or, you know, and then down to 60% and down like that, or it can be turnabout, you have water one day, I have water the next day, again, at a reduced

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limit, and then, yeah, with the aim of keeping some abstraction available while not, you know, hitting that limit, whatever that limit may be.

5 Q. So you've given me the minimum flows and residual flows, but you haven't mentioned primary and supplementary allocation, so how does that mesh with this?

10 A. Okay, so supplementary allocation is not even in the picture at that stage, so we've got the two bands of water, the supplementary allocation are when flows are higher in the river, so by the time you're even really getting down to any kind of flow sharing as flows are dropping, we've only taking about the primary allocation, so sharing within that primary allocation block, down to the residual and minimum flow limit. So there are flow limits set for supplementary, but the supplementary allocation is allocated in bands, and the access to water is not so critical, it's not at a time when, you know, you've got your crop going, dry conditions, flows are dropping, 15 it's about accessing water when it's available to full storage, so it's a whole different scenario. So, really, these flow-sharing agreements are within primary allocation only.

20 Q. And to go back to my question, you talked about limits, but you didn't talk about primary allocation limits, so how does that fit into what you're talking about?

25 A. So these water users or abstractors, all these permits are within the primary allocation block, and so they have the ability to apply for their permit because they qualify as being within that primary allocation block. The policies that are, you know, talked about as the sinking lid policies apply and are a factor in terms of when we're developing the application. Water that they haven't had a history of accessing, they know they're not going to be able to apply for it under those policies, and so it's that lesser of their history of use and the Aqualinc calculation of what's efficient that they will be able to consent as or seek replacement allocation for under 30 the operative plan. That's a very long-winded answer.

Q. I'm just not sure whether the environmental purpose of these allocation limits is coming into it. You've mentioned efficiency.

A. The key factor, and, you know, we're working within the framework of the current plan in terms of these current applications. In my opinion, the key

mechanism at the moment to look after instream values and other values that, you know, aren't abstractor values is through the minimum flow limits and through the residual flows, because those sinking lid policies do reduce down the allocation, but at the moment, they only, in terms of environmentally, they speak to efficiency, only being able to take the water that, you know, is efficient or reasonable for your purpose of use and that you've historically been able to access, so that's how the current plan is set up. So we have seen, in some of the applications that have been granted, we have seen some quite significant drops in allocation across a sub-catchment or a catchment, and that's beyond just a reduction in paper water, but actually a reduction, even, to their actual abstraction as well, so below their history of use, and then that's further affected as well in terms of their reliability of supply, with the setting of minimum flow limits. So setting the minimum flow or the residual flow, that essentially keeps the most reliable water for the water body, and other values that have been identified.

Q. So I think we did have some evidence about how allocation limits can have environmental benefits. You weren't here for that, presumably, or you don't agree with that, or because you're working within what you see as the current framework of the plan, you don't see that allocation limits have an environmental benefit other than in the efficiency of use sense?

A. I think they can. I think the key, in my opinion, the key mechanism for that, though, is the setting of a flow limit, so not an allocation limit but a flow limit, whether that be called a residual, a minimum, or, you know, it's called other things in different regions, so I think that if you get that right, then you've set aside that most reliable flow in the waterway for values. Once that's done, the allocation is still relevant, but it has a lesser impact if you get the flow limit right.

Q. Yes, I think the evidence related to fluctuation of flows are not necessarily driving things down to the minimum flow, so you don't get that variability.

A. That's right, and so that is something that we look at with our applications. We do look at things like flushing flows and the variability. I think there's some strong information in the Manuherikia that there was a very limited effect on holding flows down in terms of abstraction had a very small

effect on that variability. I think it was, in terms of flushing flows on periphyton it was a change for three months' duration by an additional three weeks, so that is something that we look at in terms of the applications, and it's important as well that the flow sharing agreements, because there's an incentive for water users not to hit the minimum flow, so then they all have to turn off to try and keep it above and so what tends to happen, it's I think very difficult from what I understand to keep it at a static level and so they'll drop their rate of abstraction and then it's really about sharing amongst themselves their access, the more, abstractors you've got, it's really about them having to share that as they drop it down and try to keep above that minimum flow and so the flow will drop – will bounce around a bit because there's so many variables.

1055

Q. Well –

15 A. Yes.

Q. – sure understand, but that's within quite a confined band if your aiming for the –

A. Yes.

Q. – minimum flow or to be above the minimum flow, anyway I don't feel I need to explore that anymore, so I guess my last line of questioning relates to this vexed issue of duration of consent and the situation where people claim that they need to be doing X and Y and Z and this is going to be very costly and so they need a long duration to their consent and I think you did have a number of questions relating to your drafting proposition for that, but I really wanted more to know about your experience with the durations that are being given with one of the reasons being advanced, the work that needs to be put in and the cost of it and those sort of things, so are you able to briefly explain your experience with –

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30 A. Sure.

Q. - durations and that work that needed to be done, and argument for a -

A. Yes.

Q. - lengthy period of time is part of the decision making in the end?

A. Sure, so because we're developing the application, because it's in the round with all the different factors and because we have still some historical, these are kind of long-held permits rather than say in other parts of the country where they're new schemes, long held permits used for many, many years on these properties and we're setting for the first time, flow limits in terms of residual flows particularly as well as minimum flows, then often as soon as you change that access, that and effectively reliability and supply, then it does result in requirements to change what you're doing on the farm very frequently and so people have been investing in storage in the past years and also the very strong messaging about needing to be efficient have been investing in efficient infrastructure but there's also a large group of people, it all depends on your appetite for risk, your financial status, there's – it's huge variation, other people haven't done that yet and have been waiting for the outcome of their permits before they do that and been wanting to know what those limits were going to be in terms of just how much access they might lose, how much reliability and supply was going to change and so it's very much about the on farm changes that they were anticipating having to make and then getting financing for that and I have been to hearings recently where there's been evidence from the permit holders banker saying that they need 15 to 20 years in terms of – that's what the bankers are looking for in terms of security for their investment.

Q. So you have a group of people who've gone ahead –

A. Yes.

Q. – been more proactive, been getting things underway –

A. Yes.

Q. – and you've described another group of people who have been sitting back and now saying, oh I need a much longer period of time in order to be able to do these things and then you've got the potential for the NPS process for the fresh water that's the payout that's going to put quite a different complexion possibly, potentially, less than some places –

A. Yes.

Q. – on the regime that they will be working within, so I mean there's a lot of factors at play here isn't there?

A. Oh it is, it's hugely complex, it really is and, yes I think it's incredibly stressful on people, both those who have invested already and had the expectation based on what they could see happening around them in terms of long term permits being granted and so had gone ahead with investments on that basis and then other people who yes, had for whatever reason wanted to wait and see, so it – it's a very complex situation from that respect.

Q. And then you've also got to look at the paradigm shift –

A. Yes.

10 Q. - and the need to make sure that you're not going to compromise that, so –

A. Yes and I think one of the most complex kind of examples in the mix potentially are some of the large dams, where I think they do need to have work done on them and probably that's important from a health and safety perspective and from a risk perspective and I'm not sure how they're going to manage that with the six year permit, those large dams, whether that work just goes on hold and those, I don't know the legalities of that in terms of the potential exposure of the often volunteer kind of directors that sit and are responsible for those large dams.

20 Q. So in terms of duration and setting some better guidance or parameters around that, have you given that any thought, because it's very easy just to talk about future investment –

A. Yes.

25 Q. – and the work that's going to be required, I mean that would be pretty universal I'd imagine across the deemed permit areas, have you given some other thought to how duration might be better directed other than an absolute figure like six years or –

A. Yes.

Q. – 10 years or whatever?

30 A. I think in my evidence-in-chief I made some amendments to the current policy on term in the operative plan and I'm just trying to recall what I put in my supplementary about that, can I just have a look?

Q. Sure.

A. Yes.

Q. Whether there's scope for such thing is another question but we won't go there at this stage.

A. So I didn't address that specifically in terms of – I had the no more than 20 years but also discussed in the section 32 evaluation about where the fifth, it's hard to land on a number but that 15 years might be appropriate as well and so I guess where I was trying to go with that rule was to try and do exactly that, to try and indicate where it might be acceptable or appropriate or the things that you might try and think about in terms of justifying longer than six years at the moment with all the complications that we've just discussed and so that was really about, are there factors where there are critical environment effects that could or should be addressed now and that was the threatened species, a clearly degrading waterway and linking that in to requirements to try and ensure that was done in a manner that was as consistent as possible with the MPS requirements and that those kind of circumstances tied in with the investment, the need for investment, so really it – trying to build into that where the considerations might be that you might consider a longer term than six years.

Q. Okay, thank you.

20 THE COURT: JUDGE BORTHWICK

Right, we'll take the morning adjournment and then come back to the rest of the questions from the Court.

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. Before we do, Ms Irving, Court's asked you to provide details as to the – either the District Court rules or section that you're relying on, you haven't responded, you are to respond?

A. Yes. We're working on that, I've got a dictation with my secretary, so it shouldn't be too far away.

Q. Well even if it's an email, it's just that it requires a decision from the Court.

A. Sure.

Q. And I don't see why I should be chasing through the District Court rules to figure out which provision you're relying on –

A. Yes.

Q. -it's just good Court craft, okay?

A. Yes.

Q. Thank you.

5 COURT ADJOURNS: 11.06 AM

COURT RESUMES: 11.23 AM**QUESTIONS FROM THE COURT: JUDGE BORTHWICK**

- 5 Q. I've got some questions and at least initially these questions are directed at the controlled activity rule or the controlled activity pathway and I understand your counsel, Mr Page to say that (inaudible) is accepting that they might be a controlled activity pathway and I think the thrust of your evidence is that there should also be a controlled activity pathway. And you're nodding?
- A. Yes.
- 10 Q. So nodding means yes. Okay, very good for the record.
- A. Sorry.
- Q. All right and I know that in your evidence you've also proposed a discretionary pathway and there is also a non-complying pathway and are you continuing to pursue the discretionary pathway? I just want to check that off?
- 15 A. Yes, although, as I stated in my supplementary evidence, in that section 32 Evaluation and Appendix C I do acknowledge that could equally be framed as a non-complying activity so –
- Q. Your discretionary pathway could be non-complying?
- 20 A. That's right. So I stated there and I think in the body of my evidence, talked about whether there was value having something like my discretionary activity rule as I proposed it, as a non-complying activity, and then I guess why I went back to a discretionary, I didn't actually know when I started drafting it, whether I was drafting a discretionary or a non-complying activity rule, and I landed on the discretionary activity in my
- 25 evidence because of the utility, whether there's that much utility, I guess I was questioning whether there was that much utility in terms of the gateway test because the no more the minor is unlikely to be available accept for a very limited number of takes which may be a very small take out of a lake. With that Ngatirunga test in the mix and cumulative affects
- 30 in the mix, so that gateway is shut pretty much for most applications ,so then it's the policy gateway and if we're writing a policy specifically, then

actually maybe it's – what is the actual merits of having it as a gateway because here is the one policy that's providing that pathway.

Q. Okay. Now I'm going to ask you to put all of that to one side and let's just focus on the controlled activity pathway?

5 A. Yes.

Q. Okay. So we have Mr de Pelsemaeker in his 14th of March document making suggested revisions to that pathway and I think that those revisions are picked up in the joint witness statement filed by planners on Friday and there may or may not have been because I haven't done the comparison, some additional changes to that pathway, correct?

10

A. Yes I think that most of our changes in the joint witness statement were actually to the restricted to discretionary role.

Q. Yes, okay. So I am interested in what are the gaps for the – if any, there may not be any, for the controlled activity pathway. Should applicants elect to go down a pathway where they are guaranteed to get a water permit and Mr de Pelsemaeker has noted various conditions being rolled over. What is he missing, and this has I suspect, everything or something at least to do with priorities or water share agreements and you can't ignore it.

15

20 A. No.

Q. If there's something missing there, you cannot, because you are favouring a full discretionary pathway, and you know that is where your clients wish to go, you cannot ignore the controlled activity, not if you're an expert planner giving independent evidence, so I need to close out the controlled activity rule.

25

A. Yeah, and I actually think that a lot of people might pivot, potentially, depending on the outcome of PC7, we might see a lot of applications actually pivot towards the controlled activity pathway, depending on how it lands, if it lands, as a controlled activity pathway, if it's a process-orientated and simple one, so I do think it's critical.

30

Q. So process-orientated and simple, you said, take out the environmental drivers or imperatives and take out efficiencies. That is where you started. Okay, so I have taken them out, they are not there. So what now is missing in that pathway?

A. So, yes, I agree, the kind of glaring one is the priorities and how we deal with the priorities.

Q. I do not know that it is clearing. Why do you say that?

5 A. That's the first one that springs to mind with me. If we're trying to make a simple process orientator, then I can't think that there are other gaps. My concern with the priorities, I think that the lawmakers did anticipate that when priorities expired, there would be a full – I don't know if they thought that far ahead, in terms of 30 years – but we've certainly anticipated that there would be a full assessment of the activity that
10 allowed for an understanding, as I described this morning, of how, in any given set of circumstances, those priorities have or haven't been exercised, and how the exercise of that both affects other water users and their access, but also the water body and the values in the water body, because as we've stepped through applications over the last few
15 years, it has become clear that, in some cases, it can have an impact on the in-stream values as well, and so to do that is a comprehensive assessment of all the factors, and they're so interlinking in terms of the behaviours and the interactions and the placement in the catchment, and to what degree they've been used, and then, if you're going to replace them with something, what do you replace them with? What's the limit going to be? What infrastructure changes? There's a whole lot of interconnected, complex factors, and so that's what we've been working with and working towards to date, and if we simply roll over without that
20 opportunity to undertake that full assessment, then to simply just stop priorities overnight, there is a risk, I think it's a very real risk, it's both a risk to –

25 Q. I do not know how you come to that statement that there is a risk and a real risk, and we are in the business of looking at risks, so you now need to help me understand, either catchment by catchment, based on your
30 own experience, whether those priorities are being exercised, if they are, by whom and in what circumstance, or is it the case that the exercise is ad hoc and therefore can't be, I suppose, communicated in a series of principles.

A. So, yes, I was going to say a risk is twofold, it's in terms of – so I'll come back to how I, you know, say that there's a risk. Twofold, I guess it's a risk of – chaos is a bit of a strong word.

5 Q. But it has been used, and it was unhelpful, so how do we get to chaos, whatever that means? Firstly, define what chaos is, or, if that is not your term, you should just disabuse the term and move on to something which is more helpful.

10 A. Yeah, I'll try to think of an alternative term while I'm talking about it, but if you have – so this is between water users, initially, I'm talking now, and then there's the environmental stuff as well. So between water users, if you have priority one, who has actively used his – his or her, excuse me – priority, and over a lower-order priority, and they've actively used it, they bought the property or developed their property on the basis of that access to water, and those priorities just disappear overnight. Will
15 someone with a lower priority than them, situated higher upstream, just suddenly start taking more water because the priority no longer exists?

Q. Okay, so that is the first proposition, so an upstream lower-order priority user takes more water than what they have done historically.

A. Yeah, and so when flows are dropping –

20 Q. Yeah.

A. Yeah.

Q. Okay.

A. Yeah.

25 Q. How could an upstream lower-order user take more water than what they have done historically under the method which is proposed in this plan for regulating on the basis of historical use of water?

A. So it's the timing.

Q. Right, go on.

30 A. I guess it's the timing of the abstraction. So they've got that history of use cap, yes, but the critical factor in terms of the first priority holder is about being able to tell the lower order priority order to turn off or to reduce their take as flows start to drop. So number one says: "Hey, you know, you've got to turn down because I'm exercising my priority," at the hottest, driest month, say it's a hot, dry, January, so it's about the timing of that access.

So in the past, the lower-priority holder upstream might have taken significant amounts in spring and flood irrigated and there was plenty of water, so they might still have a history of use to justify that taking, but now, they switch, if their priorities disappoint overnight, they could still be within their history of use, but they're accessing water and they're not turning off for the person further downstream when flows are critical, so they let go of some of their water in the spring.

5

Q. And is this where you've gotten to or where the technical experts have gotten to in their joint witness statement, but now history of use is one thing, but the use now becomes quite – the use in different months is no longer reflected in terms of what the pattern of usage might have been.

10

A. I don't know if we got to the – we certainly didn't get into the specifics of that in the –

Q. You see, I need to flag it because I need to close out the controlled activity rule, because it seems most people are wanting to go (inaudible 11:35:53) in that place, unless, of course, we reject the whole thing. So what are you recommending be done next by the technical people? Firstly, how do we know – and when you have that recommendation, you have also got to keep in mind, do we know anything about who is actually exercising priorities, and I have got to move away from the anecdotal and generalisation.

15

20

A. So I guess the problem with priorities and why they are so vexing is because we don't know until we start working in a comprehensive fashion with a particular set of applicants how they've been using them, so the face value of the permit only tells you about the entitlement, not how they've been used and to what degree they've been used. In terms of the technical experts, sorry to put a question back to you, but are you meaning in terms of some kind of methodology that looks at history of use across months, so you can't shift your –

25

30

Q. I do not know. You are the planner and you are not opposing, in principle, a controlled activity pathway, and I am asking you are there gaps, and you are saying potentially, and now I would need to know how to bridge those gaps, because otherwise you've supported a controlled activity rule

which you have loosely said that could be chaotic. Is the Court likely to go there?

A. And my proposal had been that priority simply got carried over, and I understand that you have got concerns with that from a legal position.

5 Q. Well, that is twofold. If you can carry them over, how do we carry them over? Just assuming you can carry them over, what does that look like in this plan? I suspect it does not look like just saying the word “priority” and everything follows, I think much more is required. You know, this drafting, that can be done. If you cannot carry them over, and so there is
10 a policy gap now, then what do you fill the gap with?

A. So for the first part of that, in terms of if they can be carried over, I had anticipated that it would simply be a mirror of what was in the existing permits, bringing notes up into the conditions if they exist in notes, and then they are something that simply sits there and are available to be
15 utilised between the consent holders and, you know, with the regional council as the backstop to that.

Q. So what I imagined, if they can be carried over, is that you would need to have a definition or deemed permits so that we would know what was being caught, which is deemed permits which continue exist, I guess,
20 31 August.

A. Yeah.

Q. So it is not all deemed permits because some of those have been replaced already, so it is just that bunch which are currently in effect now, and you may or may not also require a schedule of those deemed permits,
25 and we may or may not also require for this plan change a notation for that schedule as to what were the orders of priorities. I would hope that’s not too difficult, because region should have that information to hand, but it is not just a case of saying the magic word, priorities, and it all happening, I wouldn’t have thought, in terms of plan drafting. Do you want to comment on that?
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A. So I’m trying to think through, that transition and scheduling that, and I’m trying to recall off the top of my head, whether there is a definition in the Act around priorities, so beyond the wording within the sections, I don’t

think there is, so I think that would be, workable with some kind of – and I don't know if you would actually need to even define or link it specifically to deemed permits because many of them – they're not necessarily have a deemed permit title at the top of them now, as you say, some of them

5 have been replaced with priorities, so whether it's actually just a schedule of specific consents with priorities, whether as part of the controlled activity rule, part of that process is to look at sets of priorities and specifically require the applicants to identify whether they utilise their priorities within that subset and whether they want them to carry over as

10 part of the application process and so that would allow some kind of reconciliation and sifting out of areas where they're not being used, so only those where they're being used and the applicants want them to carry over, then they would be carried over. Does that make sense?

Q. Mmm.

15 A. And so that's almost part of that controlled activity process is, the onus is on the applicant then to identify the use of the priority and whether they want them to carry on going forward and it may be that we need to have groupings of those controlled activity applications by those priority subsets.

20 Q. I understand and I set this out in the minute and I am assuming that you have seen the minute –

A. Mhm.

Q. – dated the 7th of April –

A. Yes.

25 Q. – dealing with priorities – oh deemed permits, okay and I say at paragraph 8 that the exercise of priority to water is limited to cases where water is flowing in water course, mean a water body, is insufficient to supply fully to races that are connected to the same, so that's coming straight out of the legislation in terms of drawing and definitions I think from the Water and Soil Conservation Act. Is that – and then a race is defined also under

30 the same Act as meaning any artificial channel, ditch for the conveyance of water or into or in which water may be diverted, conveyed or for any authorised purpose, so that's what it's about, it's about supplying water to races. Is your understanding that – or in your experience, for those

persons exercising priorities, that they are indeed exercising priorities to unders- to ensure that water is available to the higher priority user to put into a water race and not for any other circumstance?

A. I did read that –

5 Q. Yes.

A. – and think, ooh I wonder about pipes. Are pipes covered in that?

Q. I don't know. That's what I'm asking you, I don't know.

A. Yes and I'm just trying to think of specific examples where it's been pumped or piped instead of into a race.

10 Q. And by piped do you mean a gallery?

A. Sometimes there's a pipe sitting in a submerged pipe is actually the intake in a waterway and then it might stay in a pipe or it might – the pipe might feed into an open race, galleries, yes, submerged shallow bore and some system of piping involved with that.

15 Q. So that's interesting which is why I reflected this back, this is a definition coming out of the Act, so RMA referencing now into the Water and Soil Conservation Act, very specific definition about priorities and what they mean in terms of ensuring access to water –

A. Yes.

20 Q. – to supply a race, and is it your evidence that you don't know that priorities are being exercised for the purpose of supplying a water race?

A. I don't know if they're only being exercised to supply –

Q. That's the question –

A. Yes.

25 Q. – you don't know?

A. No I can't tell you that categoric- and I, in dealing with priorities had not act- something we just work with day-to-day hadn't actually seen that definition before your minute.

Q. Well you can check it out.

30 A. Mmm.

Q. I mean it's a matter for the lawyers as well but you can check it out, I just grabbed that out of the RMA.

A. And is it – it does reflect what Otago would have looked like at the time RMA came into being.

Q. Yes, yes.

A. Yes.

Q. So you don't know whether or not priorities are only being exercised for the purpose of supplying a superior water supply race?

5 A. No.

Q. Race, yes. Is it your experience that it has gone beyond that?

A. (No audible answer 11:46:20).

Q. Or other circumstances have been applied?

A. I actually just don't know.

10 Q. Don't know.

A. The ones that I can think of off the top of my head are water races but I can't assure you that they're only water races.

Q. So you don't know that and you don't know in relation to the rights of priority which are there, how many of those rights are currently being exercised or in what circumstances?

15

A. I'm sorry but I can't give you a specific number.

Q. But all you know is that some of your clients have?

A. Yes definitely, yes.

Q. And I have described this as being a non-regulatory sort of method because it's not really a method that involved the Regional Council and it's not a method reflected in resource consent terms or permit terms, would that be correct other than reflecting the fact that there's a right of priority?

20

A. Yes.

Q. So it's non-regulatory, it's as between permit holders, correct?

25

A. Yes.

Q. And I also said that that's what a water share agreement was as well, well at least I put it out there because actually I don't know. Water share agreement's a non-regulatory method that's – it's an agreement entered into by two or more permit holders on the same water body and it sounded like, in response to Commissioner Edmond's questions, whilst you will tell the Regional Council about that, in an application for resource consent, you don't invite the Regional Council to impose conditions that mirror or reflect that water share agreement, is that correct?

30

A. That's correct to date, I would note that the Lindis there was a specific condition which referenced that a water sharing agreement was required but it did not go into the detail of what that should look like.

Q. Was that an initiative of the Court or of Lindis as an applicant?

5 A. It was the applicant and that evolved out of negotiations right before going to Court and then it got refined through the process as to what the wording was.

Q. So why is that not reflected? The existence of a water share agreement, why is that not reflected in consent conditions?

10 A. The specifics of it?

Q. Yes?

A. Because it can, with the example of the Lindis, it was because it hadn't been trialled yet, so the abstractors wanted to retain some flexibility about how they might carry out that flow sharing, so whether it would be – what exactly would be the trigger flow, the amount that they might drop down on, the percentage that they might drop on, so just to allow for some flexibility and some adaptiveness and learning along the way and also that every season is slightly different, so that was the basis for that.

15

Q. So asides from the example of Lindis, has any other resource consent decision that you're aware and that reflected in the conditions of consent, the existence of a flow sharing agreement in the terms of that agreement?

20

A. Not the terms of the agreement, no, not that I'm aware of, I know that there's a water allocation committee in the Kakanui, but I'm not at all familiar with that, so I can't speak to that. Ms McKeague or Mr Hickey would be able to speak to that. Consents, and we propose a condition of consents with application which refer to the applicant agrees to be party or a member of a water management group for this catchment, and that is about as much as usually gets in the consent, so the Lin-

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30 Q. Why is that?

A. Again, for the reason of allowing - the rationale has been for allowing the abstractors to come up with an adaptive approach that they can kind of work through and adjust if necessary. It's kind of a learn-as-you-go process, I guess.

Q. Okay, so your evidence is that of those water share agreements, the fact of their existence may be noted in the consent conditions, either as a fact they exist, or be a requirement to be a part of a water-sharing group, but that the terms of those water-sharing agreements are not recorded in consent conditions, and the reason for that is that that is a method, again, a non-regulatory method as between abstractors, where controlling a matter is to enable abstractors to retain flexibility over water use.

A. To retain flexibility about how they reduce their takes as it approaches a flow limit, yes.

10 Q. Water-sharing agreements, are they contingent on a minimum flow, however that is calculated?

A. So not just a minimum flow, sometimes, they can be on a residual flow. So in the residual flow, the trigger residual flow may be at the bottom of the catchment, and so that's what we've proposed for the Manuherikia, within those applications, that there are trigger residual flows, but because those are just proposed, you know, they are not an actual flow limit at the moment, and we don't know if that's what would actually eventuate at the other side of a process.

20 Q. All right, well, getting back into the controlled activity route, is there any utility recognising either priorities or recognising water-share agreements? Start with priorities.

A. I think there is utility in recognising priorities, and –

Q. What is the utility?

A. The utility is twofold, both in terms of retaining existing access between water users, so managing effects between water users, and the second one being the potential retention of flows over a longer length of a waterway, resulting from a higher priority being further downstream and exercising priority over a lower order priority, so they have to turn off, and so the potential for environmental benefits there. Sorry, there was a second part to that question, wasn't there?

30 Q. Water-sharing agreements, we will get to it. You have not addressed, other than the naming of priorities, you know, because of the fact they are named in the plan somewhere, you have not discussed that I can recall – but then we have got about 10,000 pages' worth of evidence, so you will

forgive me – you have not discussed whether or not the policies in particular need to talk to the dual purposes of priorities, whether they are retained, you know, because you can retain them after 1 October, or whether that is a new tool created to speak to that gap.

5 A. So the policies in PC7?

Q. Yes, and should you have?

A. Yes, I should have, yes.

Q. Okay, so I am not asking you to draft on the hoof, but what should have been reflected in the policies of PC7, such that the priorities, or a new tool reflecting mimicking priorities, were brought forward?

10

A. So, yes, I think I'd simply added the words –

Q. Priorities?

A. Yes, into, yeah, yeah.

Q. If it helps, the Court trying to problem-solve in this place talks about possible ways forward from para 24, and in particular para 24(a), allowing some recognition in this plan of allowing other permit-holders to continue to take water, so there, we were thinking that is either a new tool, or it is the old tool, priorities. Either way, that is the space you are working in, but, in saying that, something much more may be required, so I am really wanting you to reflect on that and tell me what your thoughts so.

15

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A. So that's right, I was just checking back on where it had been mentioned in the policies, and so it was very much just an add-on, you know, an extra comma, so potentially, it's separating that out into a separate subparagraph of 10A.2.1, because that's really the controlled activity policy, and having it as – it's difficult to simply insert that, because that policy is very focused in terms of where it's acceptable to just grant, so something along the lines of where a priority has been exercised, either to protect access to water or may retain in-stream flows, but the difficulty with that is then that requires an actual substantive assessment.

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30 Q. It requires evidence, does it not?

A. Yeah.

Q. And if you think irrigation areas are difficult, frankly, I struggle with that, but anyway, if you think irrigation areas are difficult, how do you think they are going to come up with proof of that?

A. In terms of retaining in-stream flows for –

Q. Well, in terms of evidence as to exercise.

5 A. Mmm, and so again, it would have to form part of the application, and in terms of evidence, if it was brought in and it was a whole subset and you did have, say, you know, number one saying: “I exercise my priority,” and number two saying: “Yes, this has been done,” again, it’s reliance, really, on the applicants’ statement, and when we develop applications, that’s exactly what we’re doing, is we’re, you know, we’re talking to those consent holders.

10 1200

Q. What would the control look like if a new method or a new tool is required because in fact you just can’t bring down priorities because they are a creature of statute and because they will cease on the 31st of August so you need a new tool, so what does that tool look like?

15 A. So if we can’t simply carry priorities over?

Q. Yes? Or if you have to recreate priorities in some way, because I, yes?

A. At best, I think a take cessation condition again or a take reduction and cessation because it’s not always simply about turning off, it’s about turning down -

20 Q. Down, yes.

A. – condition, linked to other permits and so if priority 1 is above four other permits, so if you’ve got five priorities, priority 1 would have a take cessation and a reduction condition that is linked to four others. Priority 2 would have one that’s linked to three other permits, etc until you get down to number 4 that’s only linked to number 5. That would be about the only other way I could see it and again that would require information from the applicants. I do not see and this gets to the other part of your question that you posed earlier, with the flow sharing, I don’t see –

25 Q. No I don’t want to go there, just part that up?

30 A. Okay, so –

Q. I’ll go there next, all right. I’m trying to problem solve.

A. Yes.

Q. On priorities.

A. Yes.

Q. And I suspect you need to problem solve on priorities even if they survive after 1 October or can survive after 1 October, I think it's quite probably the same issue will need to be addressed other than the recital of the word "priorities", what does that actually mean?

5 A. Mmm.

Q. Yes. So again you see that as a non-regatory method or do you see it as a method where Region gets involved and starts to enforce the cessation or reduction on behalf of the superior permit holders?

A. I think that's the ultimate back stop when it's a condition of the consent.
10 As with a lot of conditions of consent, self-regulating, we expect them to be self-regulating, and that's what I think would have to happen in this case and that's the history of deemed permit operation in Otago, that it has been a self-regulated with going to an enforcement agency, Regional Council as a very last backstop and the Regional Council had given strong messaging throughout the years is my understanding that
15 they were interested in getting involved between the parties and I think that's consistent with the evidence of Mr de Pelsemaeker, that it hadn't been something that the Regional Council wanted to get involved in but I think if they're brought in as modern conditions, then I think that would
20 have to be part of it. I don't think it would be utilised very much because priority holders are very used to dealing with it between themselves.

Q. So can you have policy support for a non-regatory method in a plan, regional plan?

A. We currently do, we currently have policy support for water management
25 groups, a shared approach to water management, so it would be around supporting the retention of historic systems of priorities, maybe not the word, "priority" if that's going to be moved on from, although that word is very well understood amongst Otago water users.

Q. And in your view, I mean I know you talk about, well that's your ultimate,
30 not sure actually whether permit holders would think it was its ultimate, their ultimate goal to have the Regional Council enforcing priorities, but anyway, should it be something that is enforceable or should it be something where there is policy support for the recognition of priorities

but priorities remain a non-regulatory method, exercise of priorities remaining a non-regulatory method?

5 A. That's an interesting question because I think potentially having a legal back stop over the years has given them weight and so if you take that away altogether, is there a risk of undermining them, but yes I acknowledge they are essentially a non-regulatory matter between, so I think it would be useful to keep that regulatory back stop there if possible, just as there has existed in the past.

10 Q. All right. The purpose of priorities are what, going forward? If they are recognised going forward, is that ensuring that water remain available for permit holders with a superior priority or is it environmental?

15 A. I think it's both. I think yes definitely to the first one because that's the clear and obvious in terms of the history of priorities and development on farms and the value of the water, the permit that they hold, but we do know that in cases particularly in the tributaries, that they have resulted in water staying in stream.

Q. But are they being exercised for that purpose?

A. No.

20 Q. No and so that's again, what we're driving at, you say this is process only, it's not process plus, it's not environmental and it's not efficiency, okay, I've taken that on board. Why then are we defaulting to there's an environmental benefit that needs to be recognised in the priority? To me that's a side wind for what has only been a tool which is available to meet abstractor demands?

25 A. You're absolutely right, I think in the plan it will have to be about retaining that access because this isn't a full assessment under the controlled activity, not even a part assessment of the environmental factors and if you only look at one aspect, then all those interconnected parts won't work or won't be properly assessed, so I think that's a potential benefit of recognising priorities with regard to abstractors' access, maybe that we
30 retain the status quo as much as it is a status quo, over those six years and potentially reduce some environmental risk, but it can't, you're right, it can't be the purpose in the controlled activity pathway because that

suddenly brings in a whole lot of assessment that we just can't do through that pathway.

1210

5 Q. And does that reflect also that the exercise of priority may have had an incidental environmental benefit, but that those benefits might also, themselves, be an expression of wider things happening within the water body?

A. Yes, very much.

Q. Not solely attributable to the exercise of a priority?

10 A. The environmental benefits?

Q. Yes.

A. No.

Q. No.

A. No.

15 Q. Okay, all right, flow-sharing agreements. Anyway, you have clarified something which is very helpful for me is that while there are policy recognise flow-sharing agreements, and I talk about that in the minute, this is a non-regulatory method, so it does not get picked up and expressed in conditions of consent.

20 A. Yes, that's correct.

Q. I understand from evidence which is to come that those flow-sharing agreements, where they have been entered into, replace, if you like, the exercise of priorities.

25 A. Yes, and sorry, I'll just say again, I think the Kakanui might be an example of a flow-sharing agreement which is actually recorded on consents, but I'm not familiar, so, yeah. So the ones I'm familiar with, I haven't seen any flow-sharing agreements specifically set out in consents, and sorry, what was the –

30 Q. The flow-sharing agreement, the evidence to come, farmer interest evidence, is that on some occasion, these flow-sharing agreements replace deemed permits.

A. Yes.

Q. Is that the case always that flow-sharing agreements replace deemed permits?

A. No, it entirely depends on the situation, so if in some cases, we have deemed permits which are a single permit on a tributary going into the Clutha, so there is essentially no one else to flow-share with in terms of, you know, downstream users on the Clutha, it's not linked in terms of those hydrological conditions experienced on that one trib.

5

Q. There is a flow-sharing agreement in that case?

A. No, there's not.

Q. There is not? Right, okay, sorry.

A. Sorry, sorry, I'm saying we've got examples where there are deemed permits that are replaced without a flow-sharing agreement.

10

Q. Without a flow-sharing agreement because there is no one there to get into a group with.

A. That's right, and in other cases, they can be replaced simply by a system of residual flows and a flow-sharing agreement hasn't been developed, and I can think of a group of applicants on the Poolburn mainstem, where, actually, it wasn't seen to be necessary to have a flow-sharing agreement, it was just a series of residuals, and that was actually seen as sufficient.

15

A flow-sharing agreement didn't add anything, so it's about the hydrological connections and conditions between those users, and again, the Pig Burn, the bulk of the applicants have gone forward with just their residual flows, complete, you know, restructure of take infrastructure for three of them, and it's only between two of them that a flow-sharing side agreement would be developed, and that's just for the priorities between those two. So it can vary even at a sub-catchment level, and again, they're always predicated on that full assessment of, okay, what is the flow limit that we are sharing to, and at the tributary scale, where a lot of these priorities are kind of critical between each other, it's about developing that flow limit first, to then get an understanding of how that affects people's access to the water.

20

25

30 Q. So again, we have heard lines of questions in cross-examination that there are flow-sharing agreements everywhere and that they always have an environmental benefit, I mean, that is really the driver for them. Do you want to comment on that? Every catchment you were led to believe would have a flow-sharing agreement and that every flow-sharing

agreement, the outcome, principally, is one that benefits the environment. That is what is driving it.

5 A. I think there are a lot that will have flow-sharing agreements. I think particularly in the Manuherikia, there will be, for the main tributaries where there are permits being replaced. There will be internal kind of flow-sharing and there will be a broader flow-sharing agreement across the catchment. There are pockets of either tributaries or areas on a mainstem, where, as I said, either residual flows or minimum flows mean that they might not have a flow-sharing agreement, or they might become
10 party to one further down the track. It will, anticipating, be a little bit iterative like that. More people might join, or other people outside of the tent may get a condition on their consent requiring them to be part of a catchment flow-sharing agreement. In terms of there being environmental benefit, the key environmental benefit is, first and
15 foremost, the setting of the flow limit and adherence to that, and then also the motivation of the abstractors not to reach that flow limit and be cut off altogether, and so again, it's about fairness and equity between those abstractors as they move down towards that flow limit, and that creates, in itself, an environmental benefit, because it keeps flows above whatever
20 the flow limit is.

Q. You mean the minimum flow?

A. Minimum flow or residual flow, and so it will reduce the flatlining effect by its very nature.

Q. Question for you: many catchments have them, their principal purpose is
25 to ensure equity and fairness as between abstractors where the flows in the river are now moving towards a minimum flow, however that's being calculated. The minimum flow itself, and recession flows, are there to benefit the instream environment. So, with that in mind –

A. There's just one part of that questions that's not quite right. Many
30 catchments have them. Quite a few catchments, we're anticipating, and have a draft based on a draft-proposed flow limit, say, in the Manuherikia, but they don't actually exist yet. Some of those details haven't been fleshed out, they were anticipating potentially trialling them, refining them, so if we'd gone right through the consent process under the operative

plan, yes, I think we would have ended up with a lot of flow-sharing agreements, a lot of which the detail might have been developed alongside that application process once there was greater clarity around where the flow limit would actually land, because we've only just proposed them, but whether or not that's what gets through is something else entirely. So there was a lot of water under the bridge still with a lot of those, to use the –

5

Q. Right, so talking about the first case, many catchments will have them. Is it your evidence that for any catchment that does have a flow-sharing agreement, that that agreement will reflect minimum flows, at least, which are consistent with policy, I think it's 6.4.2, of the operative plan, you know, the one of three ways of calculating the limit.

10

A. That's the allocation limit?

Q. Yeah, yeah, no, that is the allocation limit, so that is not quite right, the minimum flows.

15

A. So schedule 2A minimum flows?

Q. Yeah, so outside schedule 2A what's the method in the operative plan to calculate minimum flows?

A. I don't know, I'd have to go back and have a look.

20 **THE COURT: COMMISSIONER EDMONDS**

Q. Policy about that? Minimum flows hidden somewhere, some useful matters that you might consider when setting a minimum flow, and maybe that doesn't only relate to schedule 2A, that might relate to something you want to put forward in an application. I'm sorry, it's sort of coming back to me.

25

A. Yeah, I'd need to have a look at the plan.

Q. I think it seemed an odd place to have it in the plan because it had a lot of quite useful things in it.

A. Yeah.

30

Q. Probably can't find it in five minutes.

THE COURT: JUDGE BORTHWICK

Q. We will do that over lunch, we will direct you to have a look at it over lunch, and I know we have gone beyond 45 minutes, but if we do not close this out, we are going to have a lot of problems

5 1220

A. Yes sure.

Q. And I know we've gone beyond 45 minutes but if we don't close this out we are going to have a lot of problems with this plan change should the plan change be confirmed? So many catchments have them and they're
10 working towards a minimum flow and the question for you is that minimum flow set as between irrigators or is that minimum flow something which comes out of a policy or a methodology in the water plan? The (inaudible 12:20:30) –

A. So where there is no two way minimum flow –

15 Q. Yes where there's no two way, yes?

A. – then it – there's not, from memory and I will check this, there's not actually a kind of a default minimum flow that applies, there is a default process called a supplementary flow setting, it's more an indication in those policies that if one is set, then that will be inserted into two way and
20 applied by review and so other than that if there is no two way, so in all the tribs coming into the Clutha which are dealt with as their own kind of primary, little mini primary allocation block and are all fully allocated, pretty much, then it's about setting, we try and develop a residual flow as part of that application process. If there -

25 Q. Again I need to bring you right back to your water share agreements which is the only thing I'm interested in.

A. Yes.

Q. Your water sharing agreements, for the catchments that have them, are going to be matters of fairness and equity between the abstractors will
30 have come up with a minimum flow or alternatively perhaps a recession, residual flow depending on the water body that you're in or both, but what the – whatever's in those agreements are, if they're outside of Schedule 2A then these are matters which the abstractors have come up with themselves as opposed to any consent process or plan change process?

A. Yes very much so, so until it's been through the whole consent process –

Q. For Schedule 2A?

5 A. No, if it's a residual flow, then if it's been right through the consent process and we're out the other side, we get agreement decision, it's, we've proposed 100 litre, a second residual flow and everybody agrees, then that's the flow limit or 150 if that's what comes out of the other side and if you're not in a Schedule 2A minimum flow catchment, then it will again be something that we've proposed and it has to work through the system to actually know if that's what ends up landing on the other side.

10 Q. So those minimum – those flow sharing agreements outside of Schedule 2A, any, are there any flow sharing agreements which exist in any water body or in any catchment which are not – the flow sharing – where the minimum flows or residual flows are not yet part of any condition of consent. In other words, farmers have got together and have said, "Look to make this work, this is what we've got to do with minimum flows and residual flows. To make this work, ie, to ensure that I have water, I can continue to abstract, this is how we need to be managing ourselves.

15 A. So flow sharing without a limit, no.

20 Q. No. So flow sharing agreements have only come into being where there is a general need I guess within a catchment or on a water body to go through a consenting process?

A. Yes.

25 Q. Then there's a flow sharing agreement, in terms of the flow sharing agreement, the fact of their existence is noted in the consent conditions if that it is, if there's a minimum flow or if there's a residual flow, that is tested and to that extent only those two provisions come down into a resource consent?

A. Yes.

Q. So ...

30 A. So they're very much a child of the full consent process.

Q. That's what we're getting at.

A. Yes.

Q. So that's like, that's new and important. Flow sharing agreements are a child of a consenting process?

A. A full assessment, yes.

Q. A full assessment, yes because you're getting your minimum flows and you're getting your –

A. Yes.

5 Q. Yes. So that's not this?

A. No.

Q. So is there any utility –

A. No.

Q. – to be recognising flow share agreements?

10 A. No -

Q. No.

A. – not in a controlled activity pathway.

1225

15 Q. All right, that is helpful, because we have been talking about outside of schedule 2A. Inside of schedule 2A, again, outside of a full merits-based assessment of water permits, is there any utility on recognising flow-sharing agreements?

A. No.

20 Q. No, and is that simply because you are not going to have folk put up minimum flows and residual flows without a full assessment?

A. Full assessment, that's right.

Q. Okay, that is helpful.

A. And then also understanding the drop in reliability, what that means for on-farm changes, et cetera. There's the whole big complex.

25 Q. Yeah, and so when the regional council says, look, if you have got a residual flow and minimum flow already as a condition of consent, if you bring that forward, that is actually all that really needs to be done, you do not need to be noting the existence or otherwise of a flow-sharing agreement. From the regional council's perspective, you have got the
30 two drivers of environmental outcomes.

A. Yes, that's right, unless there are, you know, the Kakanui, unless that does have it actually in the consents, unless that is an outlier, and again, I'm not familiar with that one.

- Q. Okay. Checking my other questions from some responses that you have given. So it seems to me, from what you have said, particularly in answers to Commissioner Edmonds, what is critical under a controlled activity pathway is that you are not changing the reliability of supply, and you are nodding, so that is correct.
- 5 A. Yes.
- Q. Because to change the reliability of supply such as that, that is less reliable. Farmers will need to start to take measures to respond to that, including on-farm storage or changing irrigation systems to become more efficient, correct?
- 10 A. Yes.
- Q. Okay.
- A. Well, to offset that loss of reliability.
- Q. To offset the loss of reliability.
- 15 A. Yeah, yeah.
- Q. So aside from recognition of priorities, either as they exist or some other new tool that does the job, what other tools are needed to ensure that there is not a change in reliability under the controlled activity pathway?
- A. So it's really what you don't do, it's really that you don't introduce new flow limits, you don't reduce actual access to water, and again, I think where the schedule has now landed, with maximums rather than the average of maximums, addresses that. So, yeah, I think it's just really what you don't do.
- 20 Q. Okay, so the gap, if you like, is the gap which we've been talking about in terms of priorities.
- 25 A. Yeah.
- Q. That needs further discussion and further thinking. Flow-sharing agreements doesn't sound like it's going to result in any benefit here.
- A. No, no.
- 30 Q. Otherwise, where the regional council has come to, especially, I guess, through also expert conferencing, we're meeting your concerns about what it is that you don't do in terms of impacting that reliability?
- 1230 A. Yes.

Q. Okay. I was interested, and I took the time to read over parts of the Lindis decision – both the plan changes and also the resource consents – and quite decision.

A. Yes.

5 Q. But as I understand it, there was a proposal there for the Lindis catchment to move away from races to a series of galleries and boards. Is that right?

A. Mhm, that's right.

Q. That is right?

A. Dispersed infrastructure.

10

COMMISSIONER EDMONDS:

Not entirely.

THE COURT: JUDGE BORTHWICK

Not entirely.

15

COMMISSIONER EDMONDS:

Some races remained.

THE COURT: JUDGE BORTHWICK

20 Q. Some races remained as well, okay, but that for the first five years, in recognition that there was a change to infrastructure, am I right in thinking that the rates of take, or volume, expressed on a deemed permit remained for the first five years, to ensure that the race systems which were being replaced could continue to take sufficient water and distribute it. Am I right in thinking that?

25 A. Yes, that's right. So for the first five years, they could continue accessing what they've historically accessed because they were still utilising the races.

Q. Using the races.

A. Yeah.

30 Q. Yeah.

A. And then within that five-year period, they had basically five years to transition away from the use of the races, acknowledge that it's going

from a company supply to dispersed private takes and that they each needed to obtain, you know, to actually put in the infrastructure to deal with that.

5 Q. From those applications that you have been involved personally, how many of those applicants are seeking something similar in terms of at least for an initial period of years where new infrastructure is being proposed, the higher rate of take of volume on a deemed permit continues until the infrastructure is in place?

10 A. I don't think any. I think for some applications, we may request, say, a five-to-10-year period for new infrastructure to be put into place, but I think in all cases, it's not the full deemed permit, definitely not in terms of volumes that is replaced. It is brought down to that history of use cap, or the lesser of the history of use or the Aqualinc responsible use assessment, and that was really in the Lindis in recognition, and I would
15 have to go back and check to whether we applied for the full – I think we still only applied for, in the first five years, the history of use cap and then, potentially, bringing that – I'd need to check the details. So it wouldn't have been the full deemed permit extrapolated volume, which is, you know, just –

20 Q. Huge.

A. Huge, that's right, and it hadn't been accessed, so there's no point in replacing that, but, yeah, the focus in other applications is really about requesting some time to transition for structure.

COMMISSIONER EDMONDS:

25 I think there was a another element, which was after the five years, it was pivoted activity to continue using those three major races as a sort of belt and braces, as the only lever you could pull to make sure that somebody didn't apply to continue on using those. That's my memory of it.

JUDGE BORTHWICK:

30 All right, those are my questions, and that has been really helpful to our thinking.

COMMISSIONER EDMONDS:

So I don't think looking at the business about the policy on minimum flow is needed, I don't think it's any help.

JUDGE BORTHWICK:

5 Anybody got any questions arising?

1235

QUESTIONS ARISING: MR MAW

10 Q. I want to stay with the vexed topic of priorities and I use that word carefully, when you're having your discussions with current permit holders and you're working through the process of preparing applications and I have in mind these group applications, is it the understanding of the current permit holders that their priority will expire on 1 October 2021 or is the expectation that though priority will continue on reconstenting?

15 A. No they're very much aware that they will expire and that's part of the motivator to come together as a group and work through the process together as a group I think.

20 Q. So staying with the priorities now and let's say they roll over for the next six years and that the Plan Change 7 can be crafted in a way to bring the existing priorities down, the fact of whether or not the priorities are actually implemented or not, isn't particularly relevant, would you accept that if they simply come down it leaves the ability open for them to be exercised?

A. Yes.

25 Q. And so an assessment wouldn't need to be made as to whether or not the priorities have been exercised because permit holders are not required to exercise a priority are they?

A. Yes, potentially that would be okay.

30 Q. Now there's been quite some discussion around irrigable areas and we had some questions about that a couple of weeks ago and I just wanted to understand in terms of the applications that you have been involved in with respect to the Manuherikia, have you specified or do those applications specify the current irrigable area?

A. Yes they do and I have no issue with an irrigation area as such. My concern really rests on proof at a certain date retrospectively and what proof may or may not be accepted, so it was really around clarity around that.

5 Q. So with respect to those applications, how have you specified the existing irrigable area?

A. As hectares, total hectares and that's based on mapping.

Q. Thank you, no further questions.

QUESTIONS ARISING – NIL

10 **WITNESS EXCUSED**

COURT ADJOURNS: 12.38 PM

COURT RESUMES: 1.48 PM

THE COURT: JUDGE BORTHWICK

15 Q. Now I want to hear from, not from you, but from your technical witness first, okay? Because your technical witness is giving the inputs into your evidence. So is that Dr Chrystal?

MS BRIGHT

(Inaudible 13:49:15).

20

MS PERKINS

Let's just do the opening first.

THE COURT: JUDGE BORTHWICK TO MS PERKINS

25 Q. Your, so firstly, sorry, Ms Perkins did you want to make an opening address which was not evidence, is that what you are doing?

A. Yes –

Q. Or did you want to give your evidence, which is what we heard from Madam Registrar?

A. No, so what my intention was that there is an opening, kind of summary of who we're representing, so just summarising who Landpro is and who the parties are that are being represented by us, so I have that drafted, but my thinking was that potentially questions you may have for me that may come from that and the planning evidence might kind of be sort of one and the same, so it might be easier if I just did both together.

5

Q. Yes.

A. But happy for Ms Bright to be up first and then I can kind of do the opening and technical stuff together because they probably do merge a bit.

10

Q. I think, that's right. Yes. I think we should go with Ms Bright, not Dr Bright, or Ms Bright?

MS BRIGHT:

Ms Bright.

15

THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. Ms Bright. I think we'll go with Ms Bright.

A. Sure.

Q. Because she's providing foundational evidence for your brief.

A. Sure, yes.

20

MS IRVING

(Inaudible 13:50:19) the witness confirm her evidence your Honour.

THE COURT: JUDGE BORTHWICK

Q. That would be good and if Ms Bright is a signatory, and I should have done this with Ms Dicey, but I forgot. If Ms Bright is a signatory to any joint witness statement, she is to confirm that as well.

25

MS IRVING

Certainly.

30

MS IRVING CALLS

CHRISTINE ELYSE BRIGHT (AFFIRMED)

THE COURT: JUDGE BORTHWICK TO MS BRIGHT

Just bear with me and I'll find the correct folder of evidence.

5

MS BRIGHT:

That's okay. If it's okay as well your Honour, I was anticipating Clare providing her summary, so I just need a moment to find my papers too.

THE COURT: JUDGE BORTHWICK TO MS BRIGHT

10 Find her evidence, very good.

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. So we'll review, Ms Irving, have you got everything you need?

A. Yes I think so. I am traveling a little lighter this week so I'm just having to bring some of the things up on my computer.

15 Q. That's all right.

EXAMINATION: MS IRVING

Q. Ms Bright, so is your full name Christina Elyse Bright?

A. Yes.

Q. And you are employed as an Environmental Scientist at Landpro Limited?

20 A. Yes.

Q. And you have prepared a brief of evidence dated 5 February 2021?

A. Yes.

Q. And you also participated in two joint witness conferences or expert conferences?

25 A. Yes that's correct.

Q. And were a signatory to the planners joint witness statement dated variously, the 8th or the 9th of April?

A. I believe I was only a signatory to the primary sector –

Q. Right, sorry.

A. – JWS, but assisted in the capacity of a technical advisor on the – what we’re referring to as the planners conferencing.

Q. Thank you. And you were a signatory to the joint witness statement in relation to the primary sector Schedule 10A.4?

5 A. Yes.

Q. And that is dated the 25th of March 2021?

A. Yes.

Q. So can you please confirm for the Court that to the best of your knowledge and belief those documents are true and correct?

10 A. Yes, although in the summary of my evidence that I’ve prepared I do have a paragraph in relation to some corrections.

Q. Right, can I perhaps get you to take the Court through those please?

A. Certainly. In relation to my summary of evidence at paragraph 2, I have made comment that I have updated the tables that were originally included in my evidence-in-chief, dated the 5th of February. This is in response to some editorial or typo related issues that were identified in Mr Leslie’s evidence, so I thought that – I saw it relevant to update those tables and append them to my summary for consistency if they were going to be referred back to.

20 **THE COURT: JUDGE BORTHWICK TO MS BRIGHT**

Q. Do you want to just read that, because I haven’t read this, so ...

A. Yes, yes. Of course. I wasn’t sure if – I can start at paragraph 2 and then when I come to the summary we can just go through other –

Q. And we’ll just make sure we’re all on board, it’s a new – it’s a supplementary evidence (inaudible 13:55:44). Why were you filing supplementary?

A. Ooh, if the word “supplementary” has been used, that would be incorrect. That would be an error.

Q. Okay, oh “summary”, “summary” it is, yes, no it is.

30 A. “Summary.

Q. Okay, good. Good. This is your summary –

A. Correct.

Q. – of your evidence, including a correction?

A. Correct.

Q. Okay, got it.

A. And just because the correction is technical in nature I wanted to write it down –

5 Q. Yes, than -

A. – rather than just verbally –

Q. I think that's the best way, yes, okay.

A. So paragraph 2, under the heading "Corrections", reads: "In reference to errors identified in Mr Leslie's evidence in reply, dated 19th of February, I have reproduced Tables 1 to 5 from my evidence-in-chief with corrections made. Those corrections pertain to paragraph 45 and 61 of Mr Leslie's evidence in reply. Tables 1 to 5 are contained in Appendix A to this summary of evidence. Consequential changes to the text of my evidence-in-chief may be required due to corrections to Table 1 to 5. Given the technical nature of these changes and the fact that Plan Change 7 and Schedule 10A.4 has moved on, I have not updated the text of my evidence-in-chief."

10

15

Q. Okay. Do we know what paragraphs may have needed changing or consequentially or not?

20

A. I could provide that.

Q. Or at - you could provide that. Maybe you should, but I think you're saying that things have moved on quite considerably?

A. In terms of the time that it may have taken me to fine tooth comb check?

Q. Yes.

25

A. I think things have moved on sufficiently enough that it wouldn't be valuable time spent.

Q. Okay, all right, thank you. Paragraph number 3.

A. Is it okay if I start at paragraph 1 or would you like to just take that?

Q. Oh we'll take that as read.

30

A. As read, okay, thank you. "Summary of Evidence, starting at paragraph 3. My evidence-in-chief sought changes to Schedule 10A.4. I note that conferencing on Schedule 10A.4 has occurred since my evidence-in-chief was prepared and both Plan Change 7 and Schedule 10A.4 have moved on from the notified version. My evidence-in-chief

presented a series of data analyses completed using both the proposed Landpro method for calculating historic water use and the Plan Change 7 Schedule 10A.4 method. These analyses highlighted that there were risks to using the Schedule 10A.4 method and could mean that water users may not be allocated water at a rate and volume that reflects their historical use and could leave water users not able to run their irrigation systems reliably. Subsequently, my evidence-in-chief sought changes to the notifiers schedule 10A.4. Schedule 10A.4 should only be used to determine historic water use and be supported by an assessment of the efficient water volumes needed for the intended use. For example, for irrigation, a model like the Aqualinc guidelines for reasonable irrigation water requirements in the Otago region should be used for informing replacement water allocation. All available water use data of suitable quality should be used. Data auditing steps are needed to assess data gas, exceedances and whether these can be accounted for in water use records. The instantaneous rate, daily, monthly and annual volumes should be based on the historic maximum, not the average maximum. Schedule 10A.4 should include provision for the volumes determined as reasonable for replacement allocation, be the lesser of the historic maximum volumes or the volumes determined by an assessment of the Aqualinc reasonable water requirements. Recent proposed amendments to Schedule 10A.4. In light of the planners conferencing, and I'll refer to that the planner's JWS, on Schedule 10A.4 and the subsequent joint witness statement, and attachment 1 to that joint witness statement, I provide the following additional comments on points (a) to (f) that I just read earlier. I still support the use of an assessment of the efficient water volumes needed for the intended use of water, so that water is allocated on the basis that water meets demand. This is reflected in para 426 and 54 to 57 of the primary sector JWS that I participated in. The amendments in attachment 1 of the planner's JWS somewhat address this via the proposed amendments to the restricted discretionary activity rule in attachment 1 of the planner's JWS. I wish to acknowledge the comments at paras 4 to 5 – sorry – 4 to 9 of the primary sector JWS, and that allocating water based on efficient use may encourage or promote

the upgrade of less-efficient systems. In my opinion, this cannot be achieved under a short six-year consent term, therefore, I now believe that assessments of efficient water use are relevant only where schedule 10(a)(iv) does not represent historical water use. Aqualinc is an appropriate assessment tool to demonstrate efficient water volumes for irrigation, and I agree with the position reached in the primary sector JWS and paras 7, 25 to 26, and 54 through to 57, that tools like Aqualinc have a place in plan change 7, but not in schedule 10(a)(iv). I also acknowledge there are other methods available to demonstrate efficient water use, and historical water use where there is a need for additional data. Refer to para 5 of the primary sector JWS and para 7 of the planner's JWS. The amendments made in attachment 1 of the planner's JWS with regards to the restricted discretionary activity rule allow for other methods to be used where the entry conditions to the controlled activity rule in relation to schedule 10(a)(iv) cannot be met. I support this. I still support that every full year, 1 July to 30 June the following year, of available water data should be used. With regards to data auditing steps to assess data gaps and exceedances, I support the primary sector JWS at para 28. Data gaps do not need to be filled if using historical maxima. I support the proposed amendments to schedule 10(a)(iv) with regards to data exceedances as included in attachment 1 of the planner's JWS but acknowledge there is some remaining drafting work to ensure this meets the intended outcomes of schedule 10(a)(iv). I support the use of maxima for the rate of take limit, daily, monthly, and annual volume limits, as included in attachment one of the planner's JWS. As schedule 10(a)(iv) is intended to provide for a simple to apply, objective, certain, and low-cost process, I no longer consider that schedule 10(a)(iv) needs to include the proposed schedule 10(a)(iv)(5), included as appendix A of Claire Perkins' evidence-in-chief. I support the proposed amendments to the RDA rule in attachment 1 of the planner's JWS that allows for other methods or data to be used where water use records may not be representative of historical water use.

1400

CROSS-EXAMINATION: MR MAW

Q. Good afternoon.

A. Good afternoon.

5 Q. Ms Bright, for the next month or so, and then you'll have your PhD confirmed.

A. Yes, that was an additional correction. Unfortunately, I'm still not allowed to be referred to as Dr Bright, but I will be very shortly.

Q. Right. I wonder whether you could help me understand what daily volume limits might seek to achieve.

10 A. In the context of whether there should be one or not?

Q. Just put to one side whether there should be one or shouldn't be one. I'm interested to understand what a daily limit, what it does, what's its purpose, as you understand it?

15 A. Its purpose would be to limit how much water you can take daily within a 24-hour period.

Q. So when you think about patterns of water use in the Otago region, you accept that applicants or consent holders or deemed permit holders, as the case may be, don't necessarily take their instantaneous rate of take for a full 24-hour period?

20 A. That's correct in some cases.

Q. And so when we think about replicating the current patterns of usage, a daily volume limit would, to a certain extent, pick up those patterns of usage.

A. Yes, in theory.

25 Q. I want to understand now monthly volume limits. Can you explain what the monthly volume limit is and what it reflects?

A. It is how much water you are authorised to take during a month. Depending on how the monthly volume limit has been determined will define whether it is based on historical use or something else.

30 Q. So if the monthly volume limit is reflecting historical use, it may well be that the monthly volume doesn't reflect precisely the number of days in any given month times the daily volume?

A. That's correct in practice, yes.

Q. So it may be less?

A. That the daily volume multiplied by 30.4 could be less or more than the actual monthly use? Yes.

5 Q. So, like the daily volumes, if what we're trying to do is to reflect existing or historical patterns of use, then the monthly volume limit is one mechanism by which the pattern of use at a monthly level is reflected.

A. That's correct.

Q. I want to look at the annual volume now, and again, what's your understanding of the annual volume?

10 A. Much the same as the monthly, that it is the amount of water you are authorised to take during a certain defined period. It could be a calendar year, 12 months, or a predefined period of time reflecting the irrigation season, and its determination would be based on, to my understanding, historical use or some other reasonable method.

15 Q. So where the annual volume is reflecting historical use, again, it, in a sense, might be a limiting factor in terms of the volume of water that might be taken under a consent?

A. Yes.

20 Q. So looking at each of those, and I'll call them limits for present purposes, they are all, in the context of plan change 7, seeking to reflect existing patterns of usage.

A. That's correct.

25 Q. Now, there's been some debate as to precisely how those volumetric limits might be calculated, and I understand that has been considered in the expert witness caucusing that has taken place, and that the agreed outcome, if I understand the joint witness statements correctly, is that, with respect to the daily volume, monthly volume, and annual volume, those should reflect the maxima in terms of historic data, as opposed to averages of maxima, which was a previous position or previous articulation in the schedule.

30 A. That's correct in relation to schedule 10(a)(iv) being applicable to the controlled activity pathway.

Q. Yes. Now, I haven't yet mentioned the calculation of instantaneous rates of take, but in relation to the instantaneous rates of take, my understanding, again, is that the experts jointly recommend that it should

be the maximum rate of take expressed in terms of historic use, as opposed to an averaging of maxima.

A. That's correct, with the specific caveats that the experts discussed in relation to data auditing steps.

5 Q. Yes, that's a convenient segue. So the agreement in relation to the use of maxima was conditional upon there being a satisfactory way by which to remove what is described as atypical data?

1410

A. Yes.

10 Q. So perhaps if I can put that in terms that I sometimes can understand, if I look at a picture, the spikes on a graph that might just look well out of place in terms of a hydrograph showing typical usage?

A. Correct.

15 Q. And in terms of dealing with what is described as atypical data, my understanding is that a step, and I recall it's step 4, has been introduced to deal with the atypical data.

A. Yes, step 4 is currently in a proposed format.

Q. And just so that we're all looking at the same thing, have you got the –

A. The 1st April version?

20 Q. I'm looking at the joint witness statement from the planners which has the planning appendix attached to it.

A. Oh, sorry, yes, it has the date, 8th of April, on the coversheet.

Q. It's attachment 1 to the planning JWS.

A. Yes. I believe I'm looking at the right thing.

25 Q. Very good. So when we look at schedule 10(a)(iv) and the methodology set out, in relation to the rate of take limit, step 4 has been introduced into the methodology.

A. Yes.

30 Q. And that's the process by which atypical data is to be managed when calculating the limits.

A. It's an option that, at this point in time, I believe is a good option, but it has only been heard by both Mr Wilson, myself, and the planners involved in that planner's conferencing, not any of the – sorry, correction – and any other witnesses at the planner's conferencing that was involved in the

hydro and community, but there are experts who have only received this via the Court communications process and have not necessarily provided commentary on it.

5 Q. Now, you were in court this morning, I recall, when I was tasking with reporting back to the Court the matters on which the experts might need to do some further work.

A. Yes.

10 Q. Now, my understanding is that step 4 in the methodology is a step that the technical experts might usefully consider in terms of whether that appropriately addresses the concerns addressed in the technical joint witness statements in relation to atypical data.

A. Yes, and if applicable, I would also like to stress, that is summarised in my evidence in relation to meeting the objectives of 10(a)(iv).

Q. What do you mean by that?

15 A. The three key outcomes that ORC stipulate as being the intended outcomes of schedule 10(a)(iv).

Q. I understand. Have you had an opportunity yet to test the step 4 with some actual data?

20 A. Not any of my own data, sorry, data that's available to me via my clients, other than what Mr Wilson and I had the opportunity to look at during conferencing.

Q. So in terms of further testing this step, my understanding is that the scenarios that have been used in the conferencing might be a useful set of scenarios.

25 A. It would be where I would start.

Q. And at a principal level, assuming that step 4 does appropriately address the way atypical data is managed, you are not comfortable that schedule 10(a)(iv) is reflecting those three outcomes.

30 A. As currently drafted, we have amendments to 10(a)(iv)(1). As long as those same matters are repeated in the additional parts of the schedule, then, yes, we are at a place where I believe this is going to reflect better the outcomes that schedule 10(a)(iv) was intended to achieve.

Q. Yes, and just to be clear on that, my understanding is that the planners had time to make the changes to the rate of take limit, but not the other calculations of limits in the planning conferring.

A. That's correct.

5 Q. And so that's a task that the planners need to invest a little more time in to track those changes into the balance of the schedule.

A. And/or direct the technical experts to make those changes, and then plan is reviewed. I believe that is where we landed, that Mr Wilson and I had a high-level conversation about whether we had capacity within the 48
10 hours following the conferencing to achieve that. We both had to be here today, myself, in this capacity, not as an expert with time to make those amendments, so I believe that it is in progress already.

Q. Very good. I want to talk to you now about the date range for data to be used when conducting calculations using the schedule. Now, as I
15 understand it, your evidence is that all available data should be used for that purpose.

A. Yes, that's correct.

Q. And that would include future data, or data beyond the June 2020 date that was recorded in the earlier version of the plan.

20 A. For permits due to expire prior to 2025, as per defined in plan change 7 as being the permit that it applies to, all available data should be used.

Q. Now, not all planners agree with that change. Is that your understanding?

A. From the joint witness statement and being in the room, there are some potential reservations.

25 Q. And those reservations relate to, amongst other things, concerns that the data, colloquially, could be gamed in terms of higher usage being adopted for a short period of time just prior to a consent being renewed.

A. I appreciated that those were concerns about those people's reservations, but I didn't see that as a potential problem, with some other
30 caveats around that, I didn't see that as a potential true risk.

Q. So when you think about this issue from a risk perspective, and I want you to think about it using two scenarios. One is that the data range stops – I'll get the date right – on 30 June 2020, and the second scenario, there is no fixed end date, so any data available up until reconsenting. So when

you think about the risks of either providing a fixed date versus not, the risk could be conceptualised as in relation to that first scenario, where there's a fixed date, so a past date. It's the risk on the abstractor, the abstractor bears the risk that they might have wanted to take a greater
 5 either instantaneous rate or volume of water after that date, but before consent renewal.

A. It's possible there are very legitimate reasons for that being the case.

Q. And if you think about the risk of extending that date out, that risk is one borne by the environment in the sense of further water being abstracted.

10 A. Not necessarily, because abstraction is controlled by reliability of supply, which doesn't change that dramatically. The current reliability of supply is the current reliability of supply. If the water's not there, it wouldn't be taken beyond the current litres per second limit.

Q. I mean, you think about the changes that have been made to the schedule
 15 in relation to using maxima as opposed to averages, doesn't that heighten the risk of greater volumes being taken for short or temporary periods of time artificially changing the historic use pattern?

A. The historic use pattern may differ between 2020 and some other date into the future, yes.

20 1420

Q. But that risk is heightened with the shift to maxima as opposed to the use of average values?

A. Oh sorry yes, sorry, misunderstood your question. Yes by using the maxima, the maximum that has occurred in that period of time could in
 25 theory be applied for as a replacement allocation.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Was that your question?

A. Sorry?

Q. Was that your question?

30 A. Yes it gave the answer –

Q. You were looking for?

A. Yes.

Q. Oh okay, right, all right.

MS BRIGHT:

I can - would you like me to rephrase or?

MR MAW:

5 No, no.

CROSS-EXAMINATION CONTINUES: MR MAW

10 Q. So let's just make sure I've understood this, the opportunity to – or the risk of – it's not a risk, the opportunity to increase the maximum amounts taken is higher with a single use maxima used as opposed to the average of maxima over a longer period?

A. Yes but there are those very legitimate reasons when that may occur.

15 Q. So if we hypothetically track forward into the future, assuming that there was water available, an abstractor of water could take at a much higher rate on a one off occasion and that would have the effect of influencing the maximum then historic rate of take on consenting?

A. Yes with the caveat that they would not be exceeding their currently authorised consent limit.

20 Q. Yes and when you look at the range of existing permits, there's a broad range of usage in terms of existing permits, not all applicants are taking up to their maximum amounts?

A. Correct.

25 Q. I want to talk to you now about the restricted discretionary activity pathway and you mentioned in your supplementary evidence that there might be other methods that could be used in relation to the restrictive discretionary activity pathway. Putting the drafting to one side, is it your understanding that the restricted discretionary activity pathway is a pathway to apply when there is no technical information or water metering data available to run the calculation in the schedule or something different?

30 A. Not just no data, but there might be data available that is not representative of the historical use.

Q. Can you give an example of where you think that risk might eventuate?

A. There are many examples we – would you like something in particular?

Q. You give me one that best represents or best reflects where the data doesn't reflect the historic use?

A. The most obvious and commonly referred to example in our conferencing was due to limiting factors in getting water meters installed across Otago.

5 Some people have very short water use records or the good sections of their water use records beyond when they maybe had a manual record initially and then turned to telemetry or a logger could be short and only capture water use characteristic to incredibly dry years where reliability of supply was so low they couldn't access the water they would need or
10 could be incredibly wet years when access to the water wasn't necessarily needed as farmers only typically apply water when their soils and crops require it.

Q. So when you read the wording that's put forward for the restricted discretionary activity and on the staying in the Appendix 1 to the joint
15 witness statement, you'll see matter of discretion A under the restricted discretionary activity?

A. Yes.

Q. Refers to – through consideration of water meter data and other relevant methods and data. What do you understand those other relevant
20 methods to be?

A. Sorry, could you please point me to the –

Q. Yes, sure.

A. I'm not sure if... (inaudible 14:24:51).

Q. Have you got "Restricted Discretionary Activity Rule 10A3.1A?"

25 A. Yes.

Q. And then if you track down there, you'll see that the Council will restrict its discretion to the following matters?

A. Yes.

Q. And then matter of discretion A? You'll see some new text has been
30 recommended for insertion?

A. Yes but I'm – this is now where I'm wondering if I'm not looking at the same version, because I'm aware of the text you're referring to, but it's not in the version I am currently looking at.

Q. What precisely are you looking at?

A. I'm looking at "Matter of discretion A being within the limits of historical use."

Q. Yes, keep reading?

5 A. "The existing water permit conditions, the volume and rate water taken, dammed, discharged or diverted."

Q. No, we're looking at two different versions. Do you have the planning joint witness statement with you?

THE COURT: JUDGE BORTHWICK TO MS BRIGHT

Q. That's dated 8th of April 2021?

10 A. Yes I believe I printed the right copy but it's now apparent I potentially haven't printed the right copy.

Q. No, it's okay, we've got a copy.

A. I'm sorry, I do have it. I was looking at the wrong version, my apologies.

CROSS-EXAMINATION CONTINUES: MR MAW

15 A. Yes, "Matter A".

Q. Right, we're on the same page?

A. Yes.

Q. So there, this is picking up on the reference to other relevant methods and data?

20 A. Yes.

Q. Now just so I'm really clear, this matter of discretion is still in your opinion, seeking to reflect historic use?

A. Yes.

25 Q. So when these other relevant methods are used there, what are the methods that immediately spring to mind, so if you were asked to do a calculation where there was an issue with the underlying record, what are some of the other methods you might use?

30 A. We would employ a range of and in combination, but this is on the assumption also that a water meter does exist, so what available data there is, in comparison if for irrigation we would look at Aqualinc potentially. There are frost biting regulations, stock drinking water regulations, the ability to create synthetic hydrological flow records and/or

take records, we could assess physically, site visit and complete gauging of a system during irrigation to understand the capacity of a race network to know whether under average conditions over Summer, when things are dry, how much water is physically going through a race.

5 Q. So I want to stick in the first instance with the Aqualinc guidelines, so the Aqualinc guidelines, those guidelines don't reflect historic use at all do they?

A. They reflect historic climatic conditions.

Q. The Aqualinc guidelines though don't reflect historic actual use?

10 A. Not water use, no. It represents the demand that would have occurred.

Q. So some care would need to be shown when looking at models such as or methods such as Aqualinc in the context of this RDA and because Aqualinc simply doesn't reflect historic use?

A. No but in combination with a water use record, we can line things up fairly
15 accurately with anecdotal evidence from a potential irrigator and land on a replacement allocation that would be reasonable.

Q. Reasonable or reflective of historic?

A. Reasonable and reflective.

Q. When you read "Matter of Discretion A" as a hydrologist, do you read that
20 as applying or referring to historic use? Is it really clear in that drafting?

A. It is to be me because of line 1.

Q. So within the limits of historical use, you're reading that as saying the methods that are adopted here are to reflect historic use or within the realms of historic use?

25 A. Correct. This was a topic that was discussed at length and the planners sought advice from both Mr Wilson and myself being in the room and that was my assumption based on the drafting. I felt comfortable with that knowing that within historical use, you could use those methods.

Q. Right and so in terms of if there are any improvements that might usefully
30 ensure that that outcome is achieved, you'd be comfortable with that, the overarching principle being that it's within historic use, that's what this matter of discretion's driving at?

A. I believe, yes, there – in light of Plan Change 7 being simple, cost effective, I believe that that wording is appropriate. In a perfect world, you

might have an additional schedule that describes how stock water regulations, frost fighting regulations, Aqualinc, hydroelectricity, community water supplies, all other possible uses, would be defined based on responsible need and/or could address both historical use patterns, but in the context of keeping this simple and putting as least words as possible, and you're not having another schedule, the direction from within limits of historical use satisfies that for me, and counsel obviously has discretion.

1430

10 Q. Yes, I think that's helpful in terms of the understanding about what that manner of discretion is driving at. The wording's probably going to be an issue for the planners to make sure that that is accurately coming through in terms of the wording.

15 A. There may be additional drafting, yes, although, not being a planner, I wouldn't want to put that back on them right now.

JUDGE BORTHWICK TO MR COOPER

20 Q. Forest and Bird representative is not here. Mr Cooper put a (inaudible 14.32.00). Go back to Forest and Bird and ask them to confirm their interest going forward for cross-examination because we are according for them in the schedule, aren't we?

A. Yes, your Honour.

Q. Right.

25 A. We did have an email from them last night saying that they wouldn't make it for the next week and a half in Cromwell due to other environment court mediation commitments.

Q. Right, okay.

A. So we aren't anticipating that they'll be here this week or next week.

CROSS-EXAMINATION: MS IRVING

30 Q. I just have a couple of questions, Ms Bright, for you to assist the Court in relation to the matter of priorities, and her Honour, this morning, expressed an interest in some more detailed examples of how priorities may have been exercised or not within the region. Do you have any

examples that you could usefully talk through, perhaps, to assist the Court with that?

A. Yes.

Q. Could you do that, please?

5 A. Yes, of course. I have read the latest minute from the Court and familiarised myself with the questions related to priorities, and there are some in there that I think an example could provide context to, primarily, the one where priorities are being exercised but there are not necessarily conditions on a consent to that effect in a new water permit where a
10 deemed permit has been replaced. This particular example, a water user has the highest priority take in a small catchment with other water users in a tributary that flows to the Clutha River, so it's a very small, short-order catchment, and they exercise their priority over downstream users. They have recently gone through a replacement process where the intent was
15 for them to continue exercising their priority access to water, and they are doing so under the authorisation of their new water permit, but there is no condition or water-sharing agreement condition on the consent to cover that. The council has not imposed a condition that reflects that a priority is being exercised. The exercise of that priority means that other water
20 users in the catchment have altered their water-use behaviour in terms of the sources of water they are accessing, but also the infrastructure to ensure they have reliability of supply, for example, storage, for when that water user is exercising their priority, so I think that is an example where a priority on a gentlemen's handshake is continuing to occur.

25 **THE COURT: JUDGE BORTHWICK**

Q. What is the name of the permit-holder?

A. Smallburn Limited.

Q. All right, we will direct that we obtain a copy of that consent. Was the regional council – are you familiar with the application for a water permit?

30 A. I was the hydrologist who was involved in the hearings process.

Q. And do you know whether or not in the application for resource consent the applicant stated, you know, we have this existing priority, which we

intend to continue to exercise as between ourselves and everybody else on the small tributary, or was the applicant silent?

A. To the best of my knowledge, the council were aware that the priority was being exercised and would continue to be.

5 Q. And how would have they been aware?

A. There was an affected party approval letter provided by a downstream water user.

Q. And the affected party approval said what?

A. To the best of my knowledge, along the lines of: "I'm aware that so and so is using all of the water upstream, and I support their application."
10

Q. So you are inferring from that statement what? That there was a continuing exercise of priority notwithstanding the replacement consent?

A. In essence, yes.

Q. All right, so I will not only get a copy of that resource consent, but together
15 with the application and a statement, I think, from your planner, one of your planners, as to whether or not there was disclosure as to an assumed continuing exercise of a priority, and this is a non-regulatory method, though, isn't it?

A. Correct. The way I understand it, they have on their new water permit a
20 scheme management plan.

Q. What does that mean?

A. Another term, yeah. So a scheme management plan, to the best of my
25 knowledge, is a condition that is being imposed on many new water permits that relates to the management of the system and any efficiency upgrades that are required by council as a condition of granting the permit, for example, conversion of flood irrigation to spray, and there might be some time constraints that go with that. I have not seen, in a quick search of a few recent ones, anything under these scheme
30 management plans that relates to water sharing. They are primarily about the infrastructure and the irrigation area.

THE COURT: COMMISSIONER EDMONDS

Q. And are they also about if you don't use the water within a certain therefore, or basically upgrade the infrastructure, you forgo some of the water that you might have had access to otherwise?

5 A. I'm not sure of the answer to that.

Q. Yes.

A. No, I wouldn't, I'm not – yeah.

Q. I may have seen something of that nature.

THE COURT: JUDGE BORTHWICK

10 Q. So anyway, here, the permit holder has presumed that a priority could survive, if you like, after the application and grant of a replacement consent. Your evidence is the regional council was informed of that in the application, and is it your evidence also that – what is your evidence in terms of any minimum flow or residual flow as a consequence of this understanding?

15 A. So as part of the hearing process, residual flows were proposed on some points of take in the larger complexity of the scheme. The particular permit that exercises priority has, I believe, a visual residual flow condition, meaning there is no numerical limit on how much flow is to be left so long as visually, there is water at a defined point some distance downstream, so that is the current residual flow condition. I may have that wrong, apologies if I do, it may be numerical. It's a complex system.

20

Q. So anyway, the new take has residual flows at different parts on the water body is what your evidence is?

25 A. A single point some distance downstream.

1440

Q. A single point, so residual flows at a single point some distance down? No minimum flow presumably?

A. No minimum flow being a tributary to the Clutha that naturally has drying reaches.

30

Q. And the residual flow, what was the purpose of it?

A. I cannot recall. Often a visual residual flow is to provide for some value that is immediately downstream of a point or take or is simply to ensure that not all water is taken.

5 Q. Now you may have already said so, but so forgive me if I ask this again, your, the permit holder, did they find themselves upstream or downstream in terms of the tributary (inaudible 14:40:43) yes?

A. The effected party?

Q. No, the person with priority?

A. They're the highest in the catchment.

10 Q. They were the highest person in the catchment?

A. In that particular catchment yes.

Q. Oh and the affected party being somewhat down or the lowest person –

A. Yes.

Q. – and said, “That’s all right if they take all the water”?

15 A. Yes.

Q. Yes. And you don’t know whether they said that’s okay because of the priorities or for some other reason?

20 A. No I have not, I cannot recall the specific wording of it, but my understanding of the situation going into that process was that a downstream user had given approval for the upstream user to continue their status quo. I think it’s recall- I’ve just recalled that their visual residual flow may be based on a 50/50 flow share between the point of take and the creek that they must leave visually half of the flow in the creek which is another complex version of a visual residual flow.

25 **THE COURT: JUDGE BORTHWICK TO MS IRVING**

Q. Were you going to ask other examples?

A. Can I just flesh out this one?

Q. Yes that’s fine, yes, go further.

CROSS-EXAMINATION CONTINUES: MS IRVING

30 Q. You referred to Small Burn Limited as being the applicant that exercises the priority, as part of the replacement of the permits and I think it was on

the Park Burn, were there other water users seeking consent at the same time?

A. Yes.

Q. And were they downstream of Small Burn?

5 A. Not necessarily. There were some users in an adjacent catchment that had to some extent were affected by the activities in the neighbouring catchment due to bywashers, race networks, re-takes, discharge permits.

Q. So in essence, was there a bundle of consents in that instance that were considered together?

10 A. Yes there were multiple water users.

Q. Can you recall what the other permit applications were referred to?

A. Commonly there were three that were bundled and held together as a joint hearing. Smallburn Limited was one, Pisa Holdings Limited was a second and the third was Rockburn Wines Limited and they weren't necessarily the sole applicant, but that was the common naming. I believe the Pisa Holdings Limited application covered more than five.

15 Q. Yes and I think your Honour might recall, but there's an appeal on foot I think in relation to Pisa Holdings and Rockburn?

THE COURT: JUDGE BORTHWICK

20 Yes there's, sorry, Rockburn and Pisa both under appeal.

MS IRVING:

And Pisa Holdings, yes.

25 **MS BRIGHT:**

Sorry, I should have made that clearer.

THE COURT: JUDGE BORTHWICK

That's okay, no that's all right.

30 **MS IRVING TO THE COURT: JUDGE BORTHWICK**

If I may, it would probably be helpful for the Court I think if it received the bundle of documents rather than just the Smallburn.

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. Why would that help the Court?

A. Because it was a comprehensive bundle.

Q. But why would it help the Court? The Court is really trying to understand
 5 and I thought it was important for (inaudible 14:44:16) that we do
 understand whether or not priorities continue to be recognised on a
 replacement consent, now we have heard evidence in Dunedin, they're
 not. Now we're hearing evidence they are, so we know for Smallburn
 something may have been recognised. Now whether that was lawful or
 10 not is an even more interesting question, but it's interesting. It's about all
 I can say really, it's interesting at this stage, what on earth's going on?

A. Yes, no I suppose I'd suggest –

Q. But Pisa, why would am I interested in Pisa?

A. Well what I'm saying –

15 **MS IRVING TO MS BRIGHT:**

Q. Well would you like to answer that question?

MS BRIGHT:

A. Yes I could add, yes apologies, to understand how Smallburn Limited
 20 operate their system including their priority, the context that surrounds
 that is linked to the Pisa Holding and Rockburn Wine's Limited
 applications.

THE COURT: JUDGE BORTHWICK

Q. Well if you give me that paperwork, how many pages are you likely to give
 25 me and ask me to then analyse and understand what the relationship is?
 1445

A. Many.

Q. Many.

A. It's possible that –

30 Q. And is that going to be helpful in terms of the Court speedily
 understanding what's happening with priorities? I accept your evidence
 at this point that priorities are Regional Council is continuing to recognise

priorities on replacement consents and does so after 1 October 2021 would be your evidence, is that right?

A. (No audible answer 14:45:51).

Q. Yes, Smallburn?

5 A. Oh sorry yes I thought you might have been directing a question over that way.

Q. Yes looking, yes, I'm –

A. I think what I understood from –

Q. That's right?

10 A. – one of your comments was that we could, if we could provide you with the detail of that and an accompanying comment from the planner involved and that might just be able to give you enough high level understanding of the total scheme without giving you hundreds of pages worth –

15 Q. That's right –

A. – of application and/or decisions and appeals, so.

Q. – I don't want to hear hundreds of pages. Yes, no that would be – I think that would be helpful because I think I really don't want to receive hundreds of pages and then leave it up to the Court to do its own analysis but question for you, is this just like a one off or not?

20

A. I'm not aware of another specific example –

Q. So it could be a one off?

A. It could be but I don't think it is. I think there would still be people planning onto continue exercising their priorities and it may be more relevant in smaller headwater catchments –

25

Q. Yes.

A. – where there is only three or four users and not 300 water users that have come together as a larger catchment group and/or entity.

Q. I mean, as we've reflected back to Ms Dicey, it may be that the mechanism does extend longer than 1 October 2021. It may be that it doesn't and it may be that this is a gap – a policy gap that needs to be filled, particularly for the an effective controlled activity route. I don't know, but –

30

A. I think there would –

Q. I, but –

A. Sorry.

Q. – what I’m wondering is whether this is an arrangement that the Regional Council is (a) acting inconsistently about or (b) actually hasn’t understood because it hasn’t been properly advised what are the informal -, oh what are the non-regatory measures or methods relating water use, which is happening on the tribs and I guess bigger body of water than the tribs?

A. Yes.

Q. Have you got any impression about that? Because it wouldn’t be the first case that I’ve come across where I thought, “No, Regional Council has not been told, why should it know?”

A. I think it might be a little bit of a mixture. I think there is a lack of understanding from Council about the current exercise of priorities that maybe then leads to fewer questions asked of those users exercising them.

THE COURT: COMMISSIONER EDMONDS

Q. So did this one come up largely because of the effected party approval situation?

A. That was one component that in this particular case the downstream user provided some approval for the status quo to continue. In this case that would be some of the evidence other than mentioned in the application that a priority was being exercised.

Q. So it may be that people are signing these affected party approvals, but they may have side arrangements in addition that the –

A. Yes.

Q. – the Council may have no idea about?

A. Because a part of this broader replacement process that occurred in these catchments, the particular downstream user in question recognised they weren’t getting water at that location in that catchment, so sought to fulfil their reliability of supply issues from other water sources and I believe they have been able to access water via an alternative.

THE COURT: JUDGE BORTHWICK

Q. Out of catchment source?

A. Is it within the same – it's across catchment.

Q. Well different, cross catchment's in a different water body or –

5 A. Correct, yes.

Q. Yes, okay.

A. A tributary of the water body in question.

Q. Yes. But a different one from Smallburn?

A. It's in the Park Burn catchment.

10 Q. In the Park Burn, yes.

A. I think –

THE COURT: COMMISSIONER EDMONDS

Q. I was just going to say I see that the new controlled activity proposes that these things be non-notified. It basically says there won't be public or limited notifications, so what do you think that might have an effect on the need for affected party approval on some of these things coming to the surface? You might be the wrong person to ask that question of.

15

1450

A. I can appreciate the challenge you've just identified because I work in the planning space, but I'm not within scope where I am right now to make comment on that.

20

THE COURT: JUDGE BORTHWICK

Q. Because of our lack of understanding of priorities by concrete examples of where they are currently being exercised, a concern that we have is (inaudible 14:50:52) recognised, so were they required to be recognised because they are a policy gap and they cease having effect on 1 October? What needs to be written around that for there not to be unexpected or unattended consequences, particularly if you have got non-notification, because I think it is reasonably unusual that you have users driving outcomes for water plan as between themselves without region having effective control, or more effective control. Do you want to comment on that?

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A. Yes, I think the contrasting point to that is that there are more examples, I would say, where priorities are not being exercised, or are, that would have those unintended consequences if they weren't carried over.

Q. And why do you say that?

5 A. I'm aware of priorities in the Manuherikia where they are not being exercised, for a number of reasons, but if the priority was to exercised, they would have the ability to take whatever they wanted, as they are the highest priority user, and they are voluntarily working with the wider catchment to flow share as per other agreements in place and the wider
10 scope of the catchment. They have not been doing that, so bearing in mind there are other agreements in the catchment, but should that priority be rolled over and allowed to be exercised without the flow-sharing agreement that goes with this catchment, that user could increase their water use and abstract up to their consented limits without consulting with
15 their other water users in the catchment, or there are cases where often, there might be some unintended environmental benefits between priority 1 and priority 2 in a catchment that, should priorities disappoint altogether and water users start taking whatever they want, whenever they want, that flows further decrease and those values are lost.

20 Q. So now we are getting back into the high-level general, and whereas I'm concerned as to the likelihood of that event – say it is species extinction for galaxiids, because that's been the evidence – what is the likelihood of that actually occurring, should priorities A) not be recognised, or B) be recognised, but without any policy around that or without anything else
25 like a water-share agreement around that. What is the likelihood of that? So we deal with risk, how likely is it that that species extinction could occur, or how likely is it that you would have the high priority abstractor de-watering the environment for their neighbours? I do not have a sense of that.

30 A. I can appreciate that.

Q. Well, if I do not have a sense of it, I am not going to carrying it over. That is what people risk in not bringing to the Court good evidence and dealing in generalities. We can only act on the evidence before us, but you have given us an example about Smallburn, you have given us an example

about someone in Manuherikia, and there, you said it is not just a case that the Manuherikia example not rely on existing priorities, but now involved in a flow-share agreement which ensures something. I do not know, we heard a lot of cross-examination that the flows in the river from Manuherikia are effectively set by resource consent conditions. I have not seen that in evidence, it has just come through in examination. Can you expand on that particular catchment?

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A. With regards to the client that I represent through their current payment replacement process, or Landpro represents, and their current priority status, they have the highest priority permit in the catchment, they are a dairy operation and have spent vast amount on infrastructure to upgrade that system and run a profitable dairy operation. They do not exercise their priority due to voluntarily flow-sharing agreements in the catchment to maintain. They are upstream of Ophir, so they voluntarily work with the catchment to maintain the current 860 litre per second flow at Ophir.

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Q. What set that flow at Ophir?

A. That's a 2(a) flow.

Q. It is a 2(a) flow. It is not on any consent condition anyway?

A. No.

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Q. No.

A. So this is part of what some other experts have referred to, I guess, as what is actually occurring in the catchment and what the observed flows are aren't necessarily the status quo without those flow sharing agreements in place, example. If the flow-sharing agreements weren't in place currently, the observed flow could be significantly different to what it is currently.

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Q. Mmm, so I understand from the last witness that there is no utility in recognising flow-sharing agreements because flow-sharing agreements only have impact where work through minimum flows, residual flows, et cetera.

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A. Yes.

Q. But that is not your evidence? You can have flow-sharing agreements which exist as between water users.

A. Well, this is on the assumption that the group have decided that they are going to work to some flow-sharing.

Q. My question for you is what is happening now in the Manuherikia, not what they are proposing for their long-term consents. What is observed in the river? I was told through Mr Page, through questions, and, I think, responses to the Court it is achieved through consent conditions now, or is that wrong? Is it more like flow-sharing agreements?

MS IRVING:

10 I think you might have got confused with the Taieri.

JUDGE BORTHWICK:

I do not know what I have got confused with because we simply do not have good evidence on this.

15 **MS IRVING:**

The Taieri consents have minimum flow conditions. The Manuherikia consents largely don't.

THE COURT: JUDGE BORTHWICK

Q. Okay, so what drives the flow in the Manuherikia catchment?

20 A. The catchment water users wanting to both have access to water to irrigate and meet their obligations to not inefficiently take water when values need to be protected.

Q. Are you talking about the application which has been filed by the regional council, or the regime, if you like, that they are currently working to now?

25 A. My understanding is that the regime they are currently working to is the same as what is being proposed going forward in those replacement applications.

Q. And so where would I find the detail of that? Do I take it that that is not in any resource consent or deemed permit which currently exists, but it is in a voluntarily flow-sharing agreement, is that what you are saying?

30 A. It's in a flow-sharing agreement between those catchment users that's in the process of being drafted into a formal –

Q. Okay, so more formal record?

A. Correct.

Q. But it exists? Okay.

5 A. Yes, it is included within, I believe an overview report that accompanied all of the Manuherikia catchment applications that were lodged a similar time. There is an overview report that accompanies those applications that explains, at an overview, higher level, how that all works.

Q. And how long has that been working for?

A. For as long as I've been working at Landpro, which is 2017.

10 Q. So for three years?

A. Yes.

Q. Three or four years.

15 A. And, at various times, other sub-catchments within the Manuherikia might have also decided for a period to voluntarily work in sub-catchment groups on particular flow-sharing agreements to test how they would work in practice should limits be set, and I think Mr Hickey provided some evidence to that, that the observed flows currently in the Manuherikia, as an example, reflect a lot of that voluntarily flow-sharing and collaborative approach that is going on.

20 Q. Right, okay.

A. But I – yeah.

Q. Did you have any other you want to give us of priorities?

25 A. I'm aware of another example that Ms Perkins might be able to talk to a bit more specifically, she was involved, but the water users in the Luggate catchment have new water permits granted recently that have both low-flow rationing conditions and/or scheme management plans, and some of that reflects the previous exercise of the priorities, where they have now been replaced with a flow-rationing system, but I wasn't involved in that process closely enough to comment.

30 1500

Q. But that is, as you would expect, though, the replacement of priorities with something else?

A. Correct, unlike –

Q. And that is what has happened in Luggate.

A. Correct, unlike Smallburn, where they are carrying on as water users on the assumption that those priorities are exercised and there are no conditions on the permits in relation to water-sharing agreements.

Q. But Smallburn is the only example you can give us?

5 A. Correct. There may be others, but to my knowledge.

Q. Okay, anything else? Any other permits that you are familiar with?

A. Nothing that I can bring from the top of my head.

QUESTIONS FROM THE COURT: JUDGE BORTHWICK

10 Q. Court has already asked quite a few questions, how about we just finish asking our questions? How do you imagine going forward is the scenario is – which is the regional council's scenario – you have got a controlled activity or a non-complying activity? So a non-complying activity, generally speaking, we will not have policy support for something being proposed, but nevertheless, on the merits, that ought to be considered.

15 So that is what non-complying means, generally. In the controlled activity law, are there any gaps? That was the question for Ms Dicey, and now a question for you. Are there gaps, and if so, what are they?

A. I would be of a similar opinion that priorities is a clear gap.

20 Q. Can priorities be exercised in some shape or form absent recognition of water-flow or water-sharing agreements?

A. Sorry, was the question can they be exercised?

25 Q. Yeah, can you, if you bring them down, just say you can, the Court should and the Court has got to reach a view on that, but the Court should and does somehow bring them down into this plan change, can they exist independently or any other flow-sharing agreement which may, on a formal or informal basis, exist as between water permit users?

A. In a procedural-only sense, the controlled activity rule does not contain any other environmental considerations.

Q. Yeah, take environment off it.

30 A. Then you could just roll the priority over.

Q. Yes, but can they be usefully exercised?

A. Between water users?

- Q. Yeah, without actually recognising that there is also flow-sharing agreements present, because I thought you said they could not.
- A. Well, where there is no flow-sharing agreement –
- Q. Then that is all you have got.
- 5 A. – then the priority is all you’ve got between water users to ensure that whoever had priority had got first access.
- Q. Yeah, yeah.
- A. But there are many more cases where flow-sharing agreements are being proposed as a replacement of priorities, so I’m not sure what pathway forward we have if flow-sharing agreements are not to be a part of plan change 7, because we do not have limits, or ecological or hydrological or all other values, to define those, then no, a flow-sharing agreement can’t come first, in a sense.
- 10 Q. Meaning that – meaning what, sorry? You lost me.
- 15 A. That you need all of the other information in relation to all values to set a limit, which then defines what flow you have available to share.
- Q. So you could not have a flow-sharing agreement which is dealing with abstractor access to water, if you like, regulating as between abstractors only?
- 20 A. Oh, sorry, no, yes, you could.
- Q. You could? Okay.
- A. Yes, well, a priority could just become a flow-sharing agreement between user A and user B that user A gets first access.
- Q. Yeah, something like that.
- 25 A. Yeah, yeah.
- Q. Okay, that is a useful way of looking at it.
- A. But more often than not, a flow-share agreement is developed quite tediously with users on the basis that we have well-informed science, so it would be a shift in the use of that term to define it that way.
- 30 Q. Yes, no, understood, okay, I understand the language difficult. So in your example of in the Manuherikia with the permit holder – and can you tell me who it is, the one who has got first priority?
- A. Barley Station,
- Q. Where is that?

A. Barley Station.

Q. Barley Station.

A. Commonly known as.

5 Q. Yeah. So Barley station was to apply for a permit that, under a controlled activity rule, granted – because it must be granted – recognising its priority, then what? Then recognising its priority must also be a drive to, as part of that recognition, because the word priority does not mean a heck of a lot, it needs, I suspect, to be flashed out.

A. Yes.

10 Q. That would be in the form of an abstractor-only water-sharing agreement, so not talking about environmental stuff at all, we are talking about regulating the take of water as between abstractors. There would need to be some mechanism setting that out, what that meant.

A. Yes, there would be.

15 Q. Otherwise, if Barley was taking on the basis of historical use –

A. They would essentially get the use that reflects their exercise of the priority.

Q. Yeah, and what is the downside?

A. Not, sorry, not exercising of their priority.

20 Q. And the downside to that is what, if anything? So they are just taking historically, but now, they could apply that out of season, or they could apply that in –

A. They would not be able to, due to agreements with Falls Dam Company. There are other agreements in that particular catchment that would limit the exercise of them going back to square 1, full mining privilege, taking whatever water they want would not occur, but in their particular case, if we consider, hypothetically, that they could exercise their priority, their historical use figures calculated under schedule 10(a)(iv) would never allow them to exercise the priority, because they have been restricted, voluntarily doing so, wanting to work with the catchment, but that use figure would restrict them from being able to fully exercise their priority, I suspect. The timing of their pattern of taking might change, but they also have submersible river pumps that are on pipes, so they are also

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restricted based on their infrastructure. It's not an open channel where the take is less controlled, to a certain extent.

THE COURT: COMMISSIONER EDMONDS

5 Q. One of the maximums, meaning if you're going on the maximums, how would that be limiting?

A. So currently, during summer, lower flow conditions in the Manuherikia. If the river is approaching minimum flow, and the water users, along with the irrigation companies in Falls Dam, are working to manage a water level that hovers above that minimum flow so that we can all continue to take a little bit without hitting the minimum flow, Barley Station voluntarily reduced their rate of take also, so their historical use does not necessarily reflect what they could actually be authorised to take during those periods, because they do not, in theory, have to voluntarily not exercise their priority. So their use is somewhat lower than what it would be had they exercised their priority, because they had been asked to reduce their rate of take, or not take on certain days.

15 Q. So how does that get picked up in the controlled activity? How does it?

A. I'm not entirely sure right in this minute, but I could think about that from a technical hydrology perspective, other than some sort of agreement that is the same as a priority but worded differently to make sure it covers the appropriate circumstances.

20 Q. Well, wouldn't the regional council just simply say that that pattern of usage is going to be reflected in the water data for many, not necessarily all, because, you know, some people allude to (inaudible 15:09:37) and so forth, but for those that have a good record, it is going to be reflected in that, in daily and monthly use patterns?

25 A. Yes, sorry, yes.

30 Q. Yeah, and those daily and monthly use patterns, is that what is being brought forward, once we figure out what the maximum was, does that reflect the agreement with Falls Dam or whoever it is that is driving the voluntarily restrictions?

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A. Yes.

Q. So that's, yes?

A. Essentially yes. Their historic use demonstrates compliance with voluntary –

Q. Measures?

5 A. – measures to regulate flow.

Q. And so if you're looking at your schedule and what comes out of a schedule, what's the product, is it a – I'm not sure what it is, is it a single highest day or a single highest month or are you going to see a pattern of usage over an irrigation season for example?

10 A. A pattern of usage that will have instances of high end use within limits that reflect that there was supply available and there was demand for that water so it was taken.

Q. So over what sort of a time frame are we talking for some of these voluntary arrangements kicked in?

15 A. Do we see instances where we have increasing and decreasing use?

Q. Yes?

A. That could be daily, weekly, monthly, season to season.

Q. But going back how many years were some of these things starting from –

20 A. Yes I would have to –

Q. I'm just wondering about this -

A. Yes.

Q. - all available data -

A. Correct, yes sorry.

25 Q. – provisions, so that –

A. I would –

Q. – you know, lately that might all be reflected in the data that the earlier ones it was a completely different sort of arrangement, so I'm just struggling with that concept?

30 A. And I think this is why having the RDA pathway open to where water use is not representative, is appropriate in terms of being able to demonstrate why use record, however, long it is, is not necessarily representative of use, but it is possible under that controlled pathway using the schedule, if you use all available data, it will show periods of time when priorities are

potentially more or less relevant along with any current voluntary flow sharing agreement because every season is different. So the use pattern will show spikes where water use is higher because water is available and all users might be taking water because it's available or that user might have been allowed to take water because it was available.

QUESTIONS FROM THE COURT CONTINUES: JUDGE BORTHWICK

Q. And if it's not available, what does maximum usage tell us about how flows are being managed through non-regatory means?

A. It shows the maximum water that was available to be taken by that user.

10 Q. So the maximum water available to be taken is it saying anything about when in this case, Ida Station was required to dial it back?

A. It's incredibly difficult to see the pinpoint moments when that's occurring, but largely the pattern reflects if lower use is occurring, it is possible if that coincides with what would otherwise be a dry month and flow levels are dropping, that might be the consequence of them voluntarily reducing their rate of take.

15 Q. So how does the maximum reflect priorities if it all, the exercise of priorities, if at all?

A. It would be incredible difficult to see that in a record.

20 Q. So (inaudible 15:13:27) okay. So if priorities are something that – somehow they must be brought down, how would you do that and for what purpose and how would you reflect these (inaudible 15:13:45) agreements that you say are there?

A. Well I think the flow sharing agreements may not be relevant under the simple roll over controlled activity six year term pathway.

25 Q. Why not?

A. Because those flow sharing agreements often are accompanied by infrastructure upgrades to ensure that a flow can be maintained between users if reliability of supply is going to be affected, then storage is often installed or conversion from flood installed or converging from flood or border dyke to more efficient spray methods would be required to give effect to a flow share agreement, so one under a procedural only approach, a priority is the best way to reflect any incidental environmental

gains being provided for by current priority water users sharing on that basis.

Q. How would you apply a controlled activity rule to Manuherikia? Assuming that that's your only pathway, just say it is your only pathway, how does it get applied?

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A. Assuming that we have a schedule that prescribes the use of historical maxima?

Q. Yes?

A. And you can take into account existing conditions of consent, where those are obviously relevant and the existing priorities if they are being exercised, you could roll that over.

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Q. You could?

A. I believe so although I –

Q. And there's no gap there? Like if it was Barley and you do that for Barley Station?

15

A. Mhm.

Q. There's not a gap represented by some other formal or informal arrangement for Falls Dam?

A. Well they might as a catchment continue working to their voluntary, their voluntary flow sharing, I'm not sure what would happen in the Manuherikia if we went to a situation where applications were to be considered under the controlled activity pathway as drafted.

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Q. Well that's what I'm asking you.

A. Yes I don't –

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Q. Yes.

A. – we would have to revert I suspect away from the proposed mitigations that are currently on the table.

Q. But their proposed mitigations on the table because there's infrastructure change and change in reliability, is that not so?

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A. Yes, because we're applying under both the Regional Plan and Plan Change 7.

Q. So if you're not proposing irrigation upgrade and if you're not proposing to change intentionally reliability of supply, how would the control activity apply to, like, within that catchment?

5 A. You would get the historic maxima, as calculated in accordance with 10A4, maintaining the existing relevant conditions and I suspect be rolled over with a new permit.

Q. And that would be effective without anything more. That's really what I'm driving at.

A. Yeah.

10 Q. Except what I am I missing?

A. In the Manuherikia currently, I'm not aware of how other priorities are being exercised and whether the current on-the-table proposed flow sharing reflects all priorities or not and whether all priorities have to be rolled over but I think the simplest way forward is just to roll priorities over and let water users, admittedly under a non-regulatory method, continue to manage water like that, if we are to maintain the status quo.

15 Q. Well, that's the proposition by the Regional Council, maintain the status quo.

A. It's entirely possible that if Otago-wide priorities were not carried over, that there could be increased water use by some users, not beyond their historical use or limits but rather the timing of that water take, that if a downstream user who otherwise had priority is also taking, that there either isn't water available or a reach of river that has otherwise always been wet or intermittently wet is now permanently dry.

25 Q. Okay.

THE COURT: COMMISSIONER BUNTING

Q. I just had one or two questions if I may. In your joint witness statement, for the primary allocation, there was a statement about the outcome was to provide a methodology that's simple to apply and so on, which you've talked about. It was prefaced with schedule 10A4. Does this also apply to the RD route?

30 A. Yes, but it would be on the applicant's own back to what extent they wanted a, presumed to invest in providing alternative data via other

methods that Council would then have discretion over whether to accept or seek further information on but the intent would be that it would also be simple but it would be on the applicant if they choose to spend a little more resourcing on preparing an application under that pathway.

5 Q. So how would that relate to the process under the existing water plan? Do you have lots of meaningful discussions on these sorts of matters?

A. Every application. The current RDA as the proposed amendments sit, forgive me if I haven't quite got the wording right in my head, I haven't delved deeply into it because I haven't been preparing planning evidence
10 but the RDA feels very similar to the current process where we present other data that accompanies water use data, whereas the RDA is assuming that you are also applying for a six-year permit, whereas that's not the case obviously under the Regional Water Plan but the process to provide that data, have a discussion with Council, potentially provides
15 some additional information to support your water use records because the RDA requires you to have a water metre installed, would be similar but still more straightforward than the current process under the Regional Water Plan.

Q. Okay, because this use of this term "other relevant methods" which has
20 been put into the draft of that provision, but if you go back to your own joint witness statement, the technical one, it talked about frost-fighting guidelines, stock water guidelines or guidance documents.

1520

A. Yeah.

25 Q. And then there's another sort of an umbrella guidance document, that I think it referred to also in the joint witness statement that would need to be updated.

A. Yes.

Q. Can you just speak a little bit to those three guidance documents and how
30 they work?

A. Could you refer me to a paragraph number, just so I can speak specifically?

Q. Okay, para 25 of the primary sector. Have you got that one there?

A. I should do, hopefully no printer issue this time. 25.

Q. If I've got that correct.

A. Oh, yes, it's the second bullet point.

Q. The second bullet point, yeah, yeah.

A. So how that would work in practice?

5 Q. Yes, and what these guidelines are, who's prepared them and so on.

A. So the Aqualinc guidelines, I think, have been discussed.

Q. I think we understand that one.

A. Yes, enough.

Q. Yes, okay.

10 A. Fantastic. So the frost-fighting guidelines are not necessarily formal guidelines, specifically, in terms of the Otago region. There are other guidelines under other regional planning frameworks that I believe the regional council here in Otago looks to as for how we would apply frost-fighting water use allocations in the Otago context, and there is some
15 guidance around a millimetre-per-hectare water requirement to fight a frost of X duration, and you then apply some known information about how likely a frost is in Otago based on your location and multiply that to get a reasonable volume of water that would be applicable to fighting frosts on that property.

20 Q. And do you have agreements or disagreements?

A. I'm not aware of where we've had disagreements.

Q. Okay, so frost fighting is reasonably understood and agreed.

A. I think it's relevantly black and white, the water requirement to fight a frost. I think more issues arise when it is mixed with other water use and how
25 you might be fighting a frost during the irrigation season, quite early on in the irrigation season, and is that indirectly irrigation water for the day, or is it only frost-fighting water? If you've fought a frost in the morning, you are not necessarily then going to go straight into a rostered irrigation day if you were planning on irrigating anyway, because you've just applied
30 water. So it gets more complicated when there are other uses in the mix, but just to determine a reasonable amount of water for frost-fighting purposes, there are some quite specific guidelines that are relatively black and white.

Q. And the next one is stock water guidelines.

- 5 A. Yes, so my understanding in using some of these guidelines is that there are a few documents prepared, also by other regional councils using external consultancy services, for example, that the regional council looks to in terms of defining what an appropriate litres per head is for a dairy cow, beef cow, sheep, deer, vice versa, including dairy shed wash water. So those guidelines inform what is reasonable use for those purposes.
- Q. So if you're assisting an applicant, do you have a fairly clear understanding of what?
- 10 A. Yeah, the Otago Regional Council in their resource consent form number four outline very clearly what the expectation is around stock drinking water and frost fighting. Both have numerical guidance included in the consent form about what you can apply for. There are circumstances, depending on where you might be and the breed of animal. You know, dairy cows is quite general, there are larger dairy cows that require more drinking water, so I presume there is the ability to discuss with council and use an alternative guideline, which often comes from Dairy New Zealand in that situation, on what is a reasonable water requirement for a large Friesian cow, for example, particularly if they're also winter milking, you know, the milking season then strongly affects
- 15 how much water would be recommended or is also reasonable use.
- Q. Okay, and the overall guidance document? I think in the joint witness statement, it said it would need to be modified.
- 20 A. Yes, so the Otago Regional Council, not long after notifying plan change 7, produced a guidance document for users of schedule 10(a)(iv) that sets out some step by step, almost a recipe of how to use the schedule, so that needs to be updated with the consequential changes that have occurred to the schedule through this process, but that guidance document exists in terms of helping or facilitating those who want to use
- 25 schedule 10(a)(iv).
- 30 Q. So it's only 10(a)(iv), not the interpretation of the regional water plan?
- A. No, it is only –
- Q. Only 10(a)(iv).
- A. Only 10(a)(iv), and has no relationship to the water plan, operative water plan.

Q. Okay, thank you. Just a couple of other small details, in terms of the water meter data, I think, in the joint witness statement, Mr Leslie suggested that it should be connected to logger or telemetry, but is would that be a requirement to accept that data?

5 A. Well, it is a requirement to a certain extent under the water meter registrations unless an exemption is provided, so in all avoidance of doubt, people who have existing water meters will need to have a logger of telemetry, but there are cases out there where manual records are still collected.

10 Q. And would they form part of your historic record?

A. Yes, in my opinion, they should meet the criteria to enter the controlled activity and apply schedule 10(a)(iv), otherwise, you walk down a pathway, again, where it is not easy to access the controlled activity rule, and people are left to use a different pathway, and that becomes the non-cost effective simple process.

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Q. And so do you have any idea what proportion would fall into that category across the –

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A. Not a proportion. Unfortunately it would be far less than there is loggers in telemetry available but I'm very aware that there is examples across Otago where access and, sorry, access to use that technology where you can have a logger and/or telemetry installed is just not possible right now and a lot of those water users, I know, when the, as part of the freshwater package, the regulations were updated, have been working through what that process would mean for them and how they can best comply with those regulations, obviously with the change in requirement around that, so there are manual records out there that would exist or records that don't meet the current regulations for those purposes but I suspect that in future there will have to be some way of doing that or those exemptions will still apply.

25

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Q. But the manual records can still form part of the historical record that you take?

A. They could do if it was needed to demonstrate your use. The manual records tend to not reflect your historic maxima, so they would possibly

actually disadvantage an applicant if using the average maximum, because those manual records don't capture necessarily how peaky or variable taking actually can be but by using the maxima, if it is appropriate to include older manual records, it still contributes to your description of what you've been doing for the last 10 years and it would seem unreasonable just to exclude it.

5

Q. So when you say it would be appropriate, is that a matter of contention perhaps?

A. I think there has been, there was discussion around the table around whether manual records mattered or not and at the end of the day, when you're using maxima, I suspect they don't but a water user may still feel that part of that manual record, whether it's, there are various types of manual records, is relevant for them demonstrating what their historical use has been under a 10A4 scenario. It might be more applicable under the proposed amendments to the RDA activity where there is a need to use those records that otherwise not necessarily fully compliant with having some sort of logger or telemetry.

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Q. Okay. Thank you. Community water supplies, community water, the take is obviously sometimes shared with other things.

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A. Yes.

Q. Have you discussed, you know, at your conference how you may take out the drinking water component or how is that dealt with? Is it still just dealt with as an all-in?

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A. I think during the primary sector conferencing, perhaps unknowingly to the experts in the room, we were referring to it, in a lot of our discussion, about exclusively primary sector examples. There are, where the primary purpose is for irrigation, there are permits that have a primary purpose as being for irrigation that also some water may go for domestic supply but that in a sense, as far as an understanding from the planning conferencing, wouldn't necessarily be defined as a community supply in essence. So I think not being involved in the community supply conferencing beyond what I got from the planning conferencing and reading the JWS, the amendments to plan change 7 reflect the needs for

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community water supplies where the primary purpose is for supplying community drinking water.

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Q. But you weren't at that conference?

5 A. No.

Q. No. Sorry, I didn't realise that.

A. Sorry.

Q. Okay. Okay. I think that's all I had. Just one last comment I noticed. It's a general comment. I would have found it helpful if the pages of the plan change had numbers on them to – when I open them out sometimes I thought when I put them back together it might be the wrong way or something. So that's just a general comment but that's the questions I have. Thank you, your Honour.

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THE COURT: JUDGE BORTHWICK

15 Q. So ordinarily this would be the time for re-examination. Do you want to take that on or do you want – or not. I mean it is kind of weird asking you actually.

A. I didn't really have anything that I was –

Q. Okay.

20 A. – thinking I'd cover off but –

Q. No, all right. But I guess the question for you, Ms Bright, is, you know, there's been a lot of discussion and obviously the matter is wide open, that controlled activity rule and is there any gaps, how the gaps are going to be filled but there's been questions from Mr Maw and questions from Ms Irving, questions from the Court. Is there anything you want to add or where you felt my answer was incomplete or, yeah, any, reflecting on where you want to be clear that we have understood what your evidence is where perhaps in the discussion you think that we might not have or the questions have been too narrow for you to, you know, have a complete answer?

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A. I would potentially, given the opportunity now, provide some additional context to some of the questions from Mr Maw that I think it's really important to consider in relation to the data that is used in schedule 10A4,

that statistically speaking, all data or more data is always more appropriate and more data between 2020 and beyond for a permit that doesn't expire up until 2025, may be incredibly relevant for them being able to demonstrate their historical use. We don't know what climatic conditions may occur between now and then but we may get use records that help a user demonstrate what the historical use is, in a scenario where there has been no ramping-up, is that common word used, I think it'll be incredibly clear to the Council where a water user has gone out of their way for that to occur and there are provisions that is not under the controlled activity and they may be encouraged to the RDA. The Council then has full discretion as to whether to consider that data or not. If it is justified water use, it should be considered, particularly where investments are being made now and I'm talking about through the ordering of cherry trees and setting down deposits for cherries that are not intended to be planted for two years but there is water available within authorised limits, that investment has been made now and that water user may choose to stay within their authorised limits for the next however long and use that water that they're entitled to take to feed the trees that they've paid for now and plan on planting. So that's an example where justified increased water use in the period extending beyond June 2020 and up to whenever could be incredibly relevant and cutting that water off could be at a detriment to substantial investment. There are other many examples where, I think I said there's lots of examples and we could, you could talk at an arms-length about, you know, storage is a classic example. It takes time for a storage, for a system with storage to adjust and get used to working with storage and using their authorised primary allocation to fill that storage and that may occur, may have been planned for or be occurring across seasons, across that 2020 date and it is important to consider that ramping-up as reasonable use. So that is their historic use because it is justified. So I think it may be that in those cases, applicants are encouraged to use the RDA pathway if that became part of plan change 7 based on the proposed amendments, so that they have the opportunity through other use, sorry, through the use of other methods or other data, to demonstrate why that water use is justified but

I think we can't just assume that all water use between now and 2025, if a consent is not due to expire and is not currently, you know, in the system, that all that water users misbehaviour. So I think there's some important distinctions to consider when assuming the implications or the risk. It's a can of worms.

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Q. No, no, I appreciate what you're saying. It's just something else to think about. How do you sift between misbehaviour and actually, your storage example is a good example, so storage is sunk infrastructure. It's in the ground. We can see it and the bedding-in of storage systems, a good example but that's an easy example. It's where it's actually, because you've got the infrastructure in the ground.

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QUESTIONS ARISING: MR MAW

Q. A follow-up question if I may. In light of that, no, it's interesting. So as part of your further explanation, in terms of legitimate reasons to increase taking water in relation to say a permit that doesn't expire until 2025. You said it would be obvious to the Council where there'd been ramping-up versus legitimate increases because of your example, purchase of cherry trees et cetera. When you look at the planning framework as it's currently put forward, the controlled activity wouldn't give the Council any such discretion in that instance, would it, because it would simply be the maxima used up until the date of expiry. So thinking about what you've put forward, if the controlled activity pathway retained its fixed date, the 20th of, the June 2020 date, but the restricted discretionary pathway didn't have that limit, would that perhaps provide the flexibility for consideration of the increased use where Council does have the discretion to consider the appropriateness of it?

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A. That might be a better way of looking at it but I'm not sure if the amendments have since reflected that or whether I've misunderstood what the planners were intending but that would be a more appropriate way potentially to deal with it, but it is again the controlled activity rule is intended to be cost-effective, simple, capture as many water users as possible considering why in this process. If that is the intended purpose of the controlled activity rule, that component of it could just be removed

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but I appreciate there are other planning-related things that go with that but I'm not a planner.

Q. That was all. Thank you.

A. The only other thing I would just say is, the question of priorities, I can appreciate how complexing and confusing they can be, particularly where they are being used or not and then what's happened when a permit's been replaced or, you know, what's the assumption from water users about priorities. I suspect that specific farmers might be able to provide those examples that you're looking for.

10 THE COURT: JUDGE BORTHWICK

Q. It's not necessarily that they're confusing. It is the case that there's not a lot of evidence about this –

A. Sorry.

Q. – although there are farmers to come.

15 A. Yes.

Q. But even still, there's no analysis about this, other than they exist and some folk exercise them and some folk don't exercise them and evidently they're important if there's no other regime in place to bridge a gap, okay, so that's fine, so then what is their import? Is it abstractive, regulating abstractive, environment, something else. It's like if people want it, they've got to give the evidence about it and so that we can start to think, well, is the policy there, is the policy framework there, is the rule framework there. But I expect we'll see more of you. Okay. So thank you very much. The next time we see you, will you be a doctor? When's the conferment? You don't know?

A. 9th of May.

Q. You might be, yeah.

A. Yeah. I shall let you know.

Q. Enjoy that day if we see you later.

30 WITNESS EXCUSED

COURT ADJOURNS: 3.40 PM

COURT RESUMES: 4.08 PM

THE COURT: JUDGE BORTHWICK

Sorry about the delay. Be seated, I understand the delay is occasioned by parties wishing to swap witnesses around. I've generally no problem provided
 5 that we are given a good reason by the witnesses not available and generally speaking provided also we don't cut across another party's case, though sometimes that's not possible. So when asking to change the schedule it's really important that you give us the reason. The reason is not that the witness is unavailable, why? Why? Are they just prioritising a haircut or something
 10 more important, like they, in this case they've got teaching commitments in Christchurch. So that's reasonable. So provide more information please.

THE COURT: COMMISSIONER EDMONDS

And notice would be good because I like to re-read the evidence before the witness comes on.

15 **THE COURT: JUDGE BORTHWICK**

It's reading as it goes.

THE COURT: COMMISSIONER EDMONDS

Q. So to get a witness for two days or something suddenly in the box I don't think that's very helpful.

20 **THE COURT: JUDGE BORTHWICK TO MS PERKINS**

Q. So, you are in the box Ms Perkins, so we need to swear you in. I know you want to produce a summary, is that best considered as evidence given that we don't want to confuse you with being an advocate?

A. I think in this situation if you just take it as evidence but –

25 Q. It's safest?

A. - I'm trying to talk about it more in summary, it's just that it's safest I think and that's why I thought putting them together was probably the best option.

Q. Yes, no that sounds like a sensible plan. So we will swear you in.

CLAIRE ROSE PERKINS (AFFIRMED)**THE COURT: JUDGE BORTHWICK TO MS IRVING**

Q. Do you want to do your bit? Thank you.

5 A. I'll just bring up Ms Perkins' evidence.

EXAMINATION: MS IRVING

Q. Ms Perkins, your full name is Claire Rose Perkins?

A. Yes.

10 Q. And you are employed as a Senior Planner and the Planning Team Lead at Landpro Limited?

A. Yes.

Q. You have prepared a brief of evidence in these proceedings dated 5 February 2021?

A. Yes.

15 Q. And you have also prepared some supplementary planning evidence dated 23 March 2021?

A. Yes.

Q. Are there any amendments that you wish to make to either of those briefs of evidence?

20 A. No there's no corrections.

Q. And I also believe that you are a signatory to the joint witness statement in relation to planning dated the 8th of April 2021?

A. Yes.

25 Q. So can you please confirm for the Court that those three documents are true and correct to the best of your knowledge and belief?

A. Yes they are.

Q. Thank you, I'll leave you for questions.

THE COURT: JUDGE BORTHWICK

30 Q. I think you want to do two things, you've got an opening and you've also got a summary of evidence, so which way do you want to go first?

A. If I just take you through the opening that just sets the scene for the clients that we are sort of representing here as well. So I'll just read through that and you just let me know if there's anything as you go. "I present this opening summary as a representative of Landpro Ltd, not as a planning expert. This summary is made on behalf of Landpro and other parties. Landpro is a consultancy firm headquartered in Cromwell, Central Otago. We support a significant number of rural landowners and their resource management needs, including preparing applications to replace deemed permits for water take, use and storage, as well as applications for new permits. We have been working with our clients for many years drafting their applications and assessment of environmental effects and coordinating science investigations of hydrological flows and instream ecological values to support these applications. Many of these replacement applications have already been lodged with ORC (to balance the timing and spread of their lodgement as preferred by the Council) , prior to Plan Change 7 (PC7) being notified, and several have been granted. Since making our original submission a number of replacement applications have been lodged. So the expert evidence of myself (Planning) and Ms Christina Bright (Hydrology) who you've heard, is being presented on behalf of the following additional s274 parties: a. Ross Naylor, farmer in the Manuherikia catchment, b. Hortinvest Limited, who manage Deep Creek Fruits Ltd Partnership and develop and operate cherry orchards in Central Otago, c. Knapdale Farms Ltd, farm located in the Manuherikia catchment, d. Lindis Peaks Farming Ltd and Terrace Irrigation Ltd, farm and irrigation company located in the Lindis catchment, e. Earl and Bernadine Attfield, on behalf of the Waikerikeri Water Users Group, farmers located in the Clutha/Mata-au catchment, and Mount Earnslaw Station, farmers in the Earnslaw Burn catchment who run a small hydroelectric scheme. So further details on the parties is identified in paras [20] to [69] below. So why did Landpro submit on PC7? Landpro have invested time and money into submitting on PC7 as we feel strongly about helping shape the outcomes and future of our rural communities, particularly in Central

Otago. Landpro have three key company values – Be Honest, Be Your Best, Be Collaborative. It is these values that helped drive this decision. We concluded that given our strong views on the suitability, or lack thereof, of PC7 as notified, if we did not choose to submit and seek a better outcome for the transition period to a new land and water regional plan, then it would be very difficult to be able to provide the best possible advice to our clients on the best pathway forward now, and over the next 5 - 6 years. In addition, as this plan change has been directed straight to the Environment Court rather than initially proceeding through an RMA Schedule 1 process, and as there is no outside funding being provided by clients (including those which we have offered to represent), Landpro (as a small business) do not have the financial backing to have instructed legal counsel. The time of our experts myself and Christina Bright has been provided at a significant lost opportunity cost to the business. As a result of this funding constraint, we have not been able to be present in Court throughout the hearing, however we have been keeping close and track of proceedings via the audio and visual recordings remotely and participating in expert witness conferencing as required. We consider that through our participation to date we have made a tangible contribution to the process. Although it is disappointing that we and other parties have spent substantial time and money to now be back at the point where the 14 March 2021 version of PC7 has become the much simpler procedural plan change as originally recommended by the Minister. Through our participation in the focus group workshop in January 2020 we raised the cost and time issues relating to the ORC's suggested inclusion of environmental considerations, and advised that if PC7 was required at all then it should be a very simple and straight forward roll over, not the detailed version that ended up being notified and we are now having to apply for consents and be processed under. The issues raised by Ms Gilroy and Ms King in their evidence, in relation to the substantial amount of information that is required in an application in order to pass the s88 test and then further request under s92, are

being faced by our team on nearly every application, even where those are for terms of not more than 6 years and which are intended to be a simple rollover. The application process is requiring a substantial amount of information for what is supposed to be a short term 6 year transition period. ORC Consents Officers have recently advised that they were considering whether two of the applications we have recently filed for 6 year terms should be rejected under s88 due to their view that because there was no substantial hydrology science work undertaken in the subject waterbodies, the applications could be considered incomplete. This is contrary to the argument ORC have been putting forward through this hearing to date that this transition time is needed so that ORC themselves can undertake the science work to be included in the land and water regional plan before a second round of replacement applications can then be submitted. This is supposed to provide for a simple, cost - effective rollover process which PC7 as notified is not achieving in practice. So Landpro's position, in reference to page 2 of the original submission, but further updated as the Court has progressed, the key outcomes that Landpro seek are: a. To introduce a simple rule that enables current permits to be effectively exercised as they are currently until a new land and water regional plan is operative. This requires re-issued consents to be on the same terms and conditions (aside from historical use limits being used as new limits, rather than paper limits), including statutory entitlements, and requires removing the restriction on increases in irrigable areas. b. Remove from PC7 deemed permits relating to the damming and discharge of water so that these permits can continue to have applications assessed under their current RPW framework. c. Allow those permit holders willing and able to lodge their replacement applications before October 2021 to seek the long-term consents that they need, as many have done already, and have duration considered on their merits."

THE COURT: JUDGE BORTHWICK

Q. Just pause there a second, I need to re-read (b) I didn't quite hear it. Oh okay, I see what (inaudible 16:17:35) it.

A. Paragraph 18?

5 A. Yes, slow the pace down?

A. Sure. "In reference to point (c) above, I attended the recent community meetings for the Cardrona catchment (and my colleagues similarly for the Arrow catchment where the flow and allocation regimes that will be included in the future land and water regional plan were presented. At this meeting, ORC's General Manager, Strategy, Policy and Science advised the attendees that this regime takes into account the community's values and vision for the catchment including those of Nga Runanga. She also confirmed that no further work, science or otherwise would be undertaken on this proposed regime prior to the land and water plan being notified. This confirms Landpro's view that where there has been substantial work at a catchment scale, longer term consents may be considered. So I then move onto other parties represented and the reason for their submission. Ross Naylor. Mr Naylor's family own two properties in the Manuherikia Valley that are farmed together. Irrigation occurs on both blocks and is delivered from various sources including private water takes in the Chatto Creek and Thomsons Creek catchments, as well as irrigation company water delivered from the Omakau Area Irrigation Company (OAIC). The irrigation water is currently provided under consents due to expire on 10 15 20 25 30 1 October 2021 through a mixture of deemed and water permits. Significant investment has been made in the last decade on the properties to upgrade the irrigation infrastructure, water storage and water use efficiency. Mr Naylor has engaged Irritech Otago Limited to design pivot plans for the whole property, with water guns in the corners that are set to replace flood irrigation that has been occurring across some parts of the property. Further development of storage on the property has occurred with new storage installed in the 2020/21 irrigation season to increase the storage capacity and therefore increase irrigation reliability on the property, and reduce reliance on instantaneous

creek flows. These additional operational efficiencies (in particular conversions from flood to spray irrigation) will achieve greater water use efficiency but developing storage requires significant and long-term capital investment. Mr Naylor has acted in good faith and has been preparing for these renewals for some years, being mindful of the previously well signalled process and efficiencies that would be required to comply with the existing Aqualinc models and undertaking science work to understand of the effects of his abstraction activities on the instream ecology and hydrology of the Black Bush, Chandler and Devonshire Creeks and as part of the wider Manuherikia Catchment process. Efficiency has been his prerogative with his entire financial outlay. He has planned intensively and invested significantly in all his water development. Mr Naylor was advised by the ORC that he had to have everything in place by 2021 and has invested to do that, the upgrades will be completed this year. A significant investment has been made into freshwater fish and habitat value investigations in these waterways. These investigations commenced several years ago on the understanding that applications to replace his permits would be made under the current RPW planning framework and demonstrating the level of effect on instream aquatic values is necessary when seeking a long-term permit to replace them. Subsequently significant investment has already been made in consultancy, planning and infrastructure. Mr Naylor has recently completed his application in a timely manner and it is through no fault on his part that the goal posts have now shifted due to resourcing limitations at the ORC that have led to an inability to handle the process despite having known about this looming expiry date for Deemed Permits for the last 30 years. Mr Naylor requests that a longer-term pathway remains available for those applicant's applying to replace consents on a whole of sub-catchment or catchment basis (such as the Manuherekia, Chatto and Thomsons catchments) and where appropriate mitigation is proposed based on specific science work. Hortinvest Ltd. Hortinvest Limited (Hortinvest) are a

Deep Creek Fruits Ltd Partnership. They are involved in the purchase, establishment and operation of cherry orchards and packhouses, and the marketing of cherries for exports. Water for these orchards is sourced from a variety of sources (including groundwater and surface water) and irrigation schemes, some of which are currently authorised as deemed permits, some have recently replaced deemed permits or obtained new water permits. An application has recently been made for the replacement of the final deemed permits that were yet to be replaced. Hortinvest and other irrigation scheme shareholders have been actively developing consent applications. This has involved significant time and input from consultants and considerable science work. These applications were very well advanced at the time PC7 was notified in preparation for a lodgement date in late 2020. Water is integral to the operation and development of horticultural businesses, and without water it would not be possible to produce high value export crops. As part of the development of new orchards, long term and secure sources of water are required to give confidence to investors, especially given that it takes approximately 4 years to reach first production of fruit and a further 3 - 4 years to reach full production capacity of the tree(s). Significant capital investment has been made in the establishment and operation of these horticultural developments. Typical costs for development until point of first production range from \$150,000/ha to \$200,000/ha depending on the planting method, level of irrigation infrastructure, and whether or not the orchard is to be netted. Significant economic benefits arise from these developments, including employment of between 3 to 4 full time staff per orchard, and up to 100 full-time equivalents during pruning and harvest. These developments also rely on local supply businesses for the provision of services, irrigation infrastructure, and other orchard related products such as fertiliser and spray. Where possible Hortinvest endeavour to source locally, which means there is a significant economic flow on effect to local communities from these horticultural developments. Hortinvest are currently looking at further horticultural

development opportunities within Central Otago, although there is a significant risk that such developments may not occur if PC7 limits access to long term secure water supplies. Hortinvest have significant reservations around whether the ORC has fully considered the economic and social impacts of PC7, and whether they have provided due consideration to alternative options other than PC7. Hortinvest request that a longer-term pathway remains available for those applicant's applying to replace consents on a whole of sub-catchment basis." I won't repeat the rest of that, it's the same as what Mr Nayland summarised. Knapdale Farms farm 687 hectares in the Omakau/Matakanui are of the Manuherekia valley as a dairy farm with 750 cows. Irrigation water is provided to the property through private deemed permits from Black Bush Creek and Russell Creek in the Thomsons Creek catchment and through shares in the OAIC. Significant investment has been made to maintain the water take, conveyance, storage and irrigation infrastructure in good working order. Knapdale Farms has already invested heavily in water storage to reduce instantaneous reliance on surface water, with 6 reservoirs/dams constructed in the past 6 years in addition to the existing 2 reservoirs present at the time the property was purchased in 2014. Ongoing expenditure will also be required to ensure all of the water infrastructure (especially the reservoirs) are in good working order and water is used as efficiently as possible. The provision of on farm storage has enabled efficient use of water, so that when restrictions on scheme water arise, private water rights can be used to top up storage and enable irrigation to continue during dry periods. Knapdale Farms has also spent considerable capital making the farm in general more efficient, productive, and environmentally friendly. This has included construction of a state-of-the -art milking shed and effluent management system. Fencing of waterways has occurred, and riparian planting is ongoing. In December 2018 Knapdale Farms applied to the ORC to replace the existing permits to take water. This application is seeking a consent duration of 35 years for both replacement permits. At the time, ORC had actively encouraged applicants to lodge their application well-prior to the

expiry of their permits, in order to ensure the application was processed in a timely fashion. Considerable expenditure has since been made in attempts to achieve resolution with ORC and affected parties, with no real progress made some 18 months later. Knapdale Farms consider it unfair, then, to force applicants to spend additional time and cost to participate in PC7 to ensure the voice of farmers and irrigators is heard, and is financially challenging, when this plan change would see that Knapdale Farms do it all again in 6 years. Like Mr Naylor, Knapdale Farms has been preparing for their replacements for some time, being mindful of the efficiency expectations of ORC and the need to undertake robust science work to feed into the sub-catchment and catchment wide approach. Subsequently significant investment has already been made in consultancy, planning and infrastructure on the farm. Knapdale Farms also request that a longer-term pathway remains available. Lindis Peaks and Terraces Irrigation. Lindis Peaks is an approximately 3,500 hectare extensive sheep and beef operation with irrigated finishing country, that has recently expanded to include a small area of horticulture. Lindis Peaks has approximately 300 hectares of irrigation which equates to around 8% of the total land area in irrigation. Whilst proportionally the area of irrigation on Lindis Peaks is very small, it is integral to the success of the farming operations, without which it would not be possible to finish the stock. This irrigation ensures certainty of production in a climatically challenging location, which would otherwise impact on-farm profitability and production capability. Lindis Peaks secures all of its water from the Terraces Irrigation Scheme and since the scheme starting providing water in 2014, Lindis Peaks has been able to improve efficiency and profitability, as well as now being in a position to explore greater on-farm diversification opportunities. Since the establishment of that scheme, Lindis Peaks have progressed with the installation of a series of centre pivot irrigators, to now enable the full irrigation of around 300 hectares. In addition to the capital costs associated with pipes, pivots and pumps, there have also been extensive costs associated with installing new stock lanes, new fencing, and pasture renewal. On the back of a secure long-term consent for irrigation, Lindis Peaks have taken the opportunity to

commit to the development of approximately 80 hectares into cherry orchard. In 2019, approximately 11 hectares of land was planted in trees, a further 20 hectares is planned and was planted in winter 2020, and a final 50 hectares is to be planted in 2021. Terraces Irrigation Limited currently hold permits to abstract groundwater and connected surface water. Both permits authorise the taking of water from the Clutha/Mata-Au River. Water from both sources is used for irrigation, communal domestic, stock water, firefighting, frost fighting, and industrial use. A transfer application was recently granted to Lindis Peaks to transfer their shares from APL to the TIL that's from one location to another basically on the Clutha River, but because of the PC7 process, the term of consent was reduced by 19 years to only a 15 year term. Lindis Peaks and Terraces Irrigation share the view that this application should have fallen outside of PC7 and should not be subject to the matters of control set out within PC7, especially where no "new" water allocation was involved and the abstraction site was on the same water body. Or primary concern to Lindis Peaks with regards to PC7 is the lack of clarity on how PC7 is intended to apply to applications for new water takes, including the proposed transfer of water from one point of take to another. The transfer that has occurred did not propose any change to allocation, rather it was only to take the same water from a different location. However, the current way in which PC7 is written and the contradictions between objectives, rules, and policies make it unclear how such applications will be processed. Lindis Peaks and Terraces Irrigation consider the PC7 should not apply to transfers of water where there is no new allocation at the proposed transfer site and the proposed transfer site is on the same waterbody." Sorry, that "at" should be "and".

Q. So what considerations should apply?

30 A. I think just the same considerations that you'd use under the RPW rather than the change in duration. I think it's the duration consideration that was their concern here.

Q. Yes, so what considerations do apply under the operative water plan?

- A. Whether there is any change in effects in your location compared to the current location and whether, probably that key consideration in terms of in stream ecology and also whether there's any other users that may be effected in the breach between one water take and the other are probably the two key considerations.
- 5 Q. And so on that transfer, their longer term consent was knocked back?
- A. So they had 34 years left and they got dropped back to only having 15 year term, so instead of the 34 year term, transferring over with a new location, they got knocked back down to a 15 year duration.
- 10 Q. Are they going to go with it?
- A. Well they didn't want to go through another whole hearing process to argue that.
- Q. Did they have the option of continuing with their existing consent?
- A. They couldn't access the water for their particular property from that other location.
- 15 Q. Oh okay.
- A. So they had to move it to be able to actually access the water properly.
- Q. To get, yes, okay. Is that a relevant consideration?
- A. I think it is a relevant consideration, it is something that a few applicants are looking at, we've had – talked with a few other current water permit holders that want to make changes, transfer locations in the save aqua for a water body where this duration argument is coming into play.
- 20 Q. And so is that picked up in your – was it picked up in the original submission?
- A. It was picked up in the original submission yes.
- 25 Q. And what was the relief they were looking for?
- A. That – I would have to double check to be honest exactly how the relief was worded.
- Q. And have you picked that relief up in your planning evidence or did you – weren't you required to?
- 30 A. I hadn't at the time, no.
- Q. Okay, but you were acting for them?
- A. Yes to an extent.
- Q. But you haven't proposed relief?

A. No not on that specifically.

Q. Should you have?

5 A. Potentially yes, as I was going through this more over the weekend. It's something that came back to the front of mind, going well potentially that is something that we should consider a bit further.

Q. All right and then at paragraph 54, you talk about new water. What's your problem with new water? I understand the transfer issue?

10 A. Yes, so that was – this is Lindis Peaks' request in their submission, so some of this information is taken directly in terms of representing their view on that. My view as a planning expert is that new water probably should be captured under PC7 in terms of the reflection of duration because it is falling into that transition period. But a transfer is a different scenario.

Q. Okay.

15 A. So briefly moving to Earl and Bernadine Attfield, in paragraph 57, they, "along with two other users, share in two permits to take and use water from Waikerikeri Creek which is a tributary of the Clutha which expire in October. Water under these permits is used for irrigation of pasture using a mix of borderdyke and flood irrigation methods. Significant investment
20 has been made to maintain the water take, conveyance, storage and irrigation infrastructure in good working order including the construction of a new storage dam and plans for a pipeline that will allow for spray irrigation conversion. An application to replace the deemed and water permits was lodged in 2018 but has stalled and as a result of the
25 challenge progressing consultation with iwi to a meaningful resolution. Having prepared and lodged their application some years ago and spent considerable time and money on science work within the catchment, they are now having to spend additional time and cost to participate in PC7 to ensure their voices are heard which adds additional time and cost. It is
30 incredibly frustrating considering the time and money spent over the last 3 to 4 years preparing and lodging their application that they may have to do it all again in 6 years'. The Attfield's request that longer-term pathway remains available. And lastly is Mount Earnslaw Station. Geoffrey Thomson holds a deemed permit to take and discharge water

from Earnslaw Burn for the purpose of hydropower generation, located in the Glenorchy-Paradise area. This water services the small hydropower scheme built and constructed in the 1950s to power the surrounding farms. The race delivering water to the hydropower station also provides stock drinking water, and domestic water for one dwelling. In February 2020, Mount Earnslaw Trust applied to the ORC to replace the existing water permit. Prior to PC7 being notified. Water is sourced from the Earnslaw Burn, an alpine glacial fed river feeding Diamond Lake. The abstraction point is low in the catchment due to the steep alpine topography and is the only water permit on that water body. Water is then conveyed through a well-maintained race to the applicant's reservoir where the hydropower station is located. The power plant has been operational since 1958 and was registered in 1962. The powerhouse holds a 20kW generator but provides approximately 10-11kW of power when generating. Power generation historically provided electricity for the farms within the area and has since continued running for personal use on Mount Earnslaw Station. The powerplant is currently independent of the main grid. Mr Thomson has discussed with an electrician who supported the original development of the powerplant regarding sending surplus power to the local grid of which is possible, and this is being investigated as an option. This is a significant positive of the scheme and of the investment made into the powerhouse in this remote area of Otago that frequently has disruption to the main grid due to severe winters and remoteness. No irrigation is provided by this permit. The primary use is therefore hydropower, stock water and domestic needs. The scheme infrastructure is all in good condition including the diversion that is well looked after by the applicant when all water not required for stock or domestic use returning to the same catchment will be a little further downstream than where it would naturally flow. Significant investment has been made by Mr Thomson into understanding the potential impacts of the scheme on the values of the wider Diamond Lake Reserve. Being an alpine catchment, the abstraction is a minor proportion of mean annual low flows. Written approval has been provided to the application by Department of Conservation and approval from Aukaha, Te Ao Marama

Fish and Game, and Forest and Bird has been discussed in some detail for a possible 10-15 year amended consent term prior to being withdrawn as a result of the current PC7 Court process. Geoffrey Thomson of Mount Earnslaw request that water use for hydroelectric generation be considered separately to those permits where irrigation is the primary use, and a simpler process should be in place for this activity. Geoffrey Thomson believes that the current s 32A report and PC7 lacks a high-country perspective. Although PC7 is worded to be relevant to all Deemed Permits, PC7 does not adequately address the unique situation in this case where the water is used for hydro electricity generation.”

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Q. Did you propose relief in your evidence dealing with hydro?

A. No I didn't at the time originally.

Q. Should you have?

A. Yes much likely (inaudible 16:37:53) is going to come back to those.

15

Q. You may not have a chance, but that's, you know –

A. No it's more when I came back to them, the purpose of summarising this.

Q. How do you understand the term “primary” just as a matter of interest like, you say it's 66, there's no irrigation provided by the permit, so the primary use, therefore, is every other use that they've got, whereas I would have thought “primary” would have a different meaning. It's at least at the primary use is hydro and then the permit holder takes water off for stock water and domestic needs which, you know, depending on reasonable use and effects on environment is permitted anyway under the Act. So how do you understand the term “primary”?

20

25 A. I would interpret the term “primary” to be what it is the main purpose of it, the majority of the water is used for. (Inaudible 16:38:40).

Q. Yes and so here, what is the majority of the water use-

A. Hydroelectric generation.

Q. Hydro. I just wish to be clear because I'm going to be asking the same thing about community water use as well. Okay, thank you. Right, and you've got a second statement?

30

A. Yes that's much shorter. Shall we zoom through to start at paragraph 3?

Q. Yes.

5 A. So this is about timing and approach. “I accept that PC7 in my opinion in some form is needed to provide direction towards the transition to longer term sustainable management of fresh water via a new land and water regional plan that fully gives effect to the MPSFM as discussed in paragraph 17 of my supplementary evidence. I consider that the changes to the controlled activity pathway in the 14th of March version better reflect the position I put forward in the original focus group session in January 2020.” I probably don’t need to repeat that because that’s actually in the summary I’ve just gone through.

10 Q. Mhm.

A. If we move to paragraph 5, “In addition, being able to implement many of the changes required through an environmental approach and not simply a procedural approach, are unlikely to be able to be achieved with only a 6 year term of consent as many will require infrastructure and system upgrades on farm. The timing of PC7 compared to the timing of the applications for the majority of the deemed permit replacement applications means that a simple low cost process cannot be followed, as applications have had to be made under both the RPW and PC7 in order to meet the time frames under s 124 and are, therefore, complex and costly. Many of the recent applications outside the larger catchment groups, I or one of my colleagues have lodged for a 6 year term albeit as a non-complying activity as the notified provisions of PC7 cannot be met, have had substantial section 92 requests from ORC consents officers in relation to providing more information on the hydrology and ecology of the subject water bodies and indicating that they will be recommending residual and/or minimum flows. This clearly indicates why the PC7 controlled activity pathway needs to be procedural only in order to achieve a simple low cost and appealing pathway. PC7 also undermines the collective and collaborative approach undertaken by many catchment groups and water users across Otago that have been progressing the development of, as far as possible, MPSFM compliant river flow management regimes for some time. The placeholder consents encouraged by PC7 will prevent any benefits being realised in those catchments for the next at least six years. And just briefly on Scope. In

consideration of the legal submissions of ORC dated 7th of April and the recommendation in my supplementary evidence to include a discretionary activity pathway that allows for some permits to seek a longer term, I have reviewed Landpro's submission which clearly sets out the scope of decisions sought including in particular allowing those permit holders willing and able to lodge their replacement applications before 2021 October 2021 to seek the long term consents that they need as many have done already and have duration considered on their merits. I consider that this clearly indicates to any interested parties the relief that is being sought and that the discretionary activity or longer term approach is a logical consequence of this relief that could be foreseen. The Court, therefore, have jurisdiction to consider this in my opinion."

Q. It may be that counsel is getting at something slightly different than whether you made a submission about it. It's whether it's in the scope of the plan changes notified. So you've got both orders for the purpose of this plan change as an instrument as well as what are folk picking up in terms of their submissions, are you within scope of both? And it could be counsel is saying, well look, this plan change isn't a plan change about supplanting the water plan, chapter 6, chapter 12 regime with something in this plan change, it's not about that, so, therefore, you're outside of scope. So it's a serious question and you might need to come back to it.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Mr Maw is that where you're coming from?
 A. In fairness to the witness, the submissions were not about the Landpro submission, they were about the OWRUG submission, so.
 Q. Yes well I think that's right actually, yes.
 A. So insofar as there may be scope within the Landpro –
 Q. Mmm, within a submission –
 A. – submission for this relief, that may well be the case, we didn't look at scope in relation to parties that hadn't yet appeared but we were to do so before the –

Q. No you didn't, and you weren't asked to, so is there scope in terms of the plan change itself, the notified plan change to be looking at a policy regime for long-term consents or have you not turned your mind to that?

A. I haven't really turned my mind to that.

5 Q. Okay.

A. Although my preliminary view would be yes that would be a submission on plan change evidence, a plan change seeking to constrain the duration of permits, so a submission seeking not to have that constraint would still be a submission on Plan Change 7.

10 Q. You could look at? Okay.

A. I'd need to go back and look at this particular submission and see whether there's a logical connection between the passage set out at paragraph 10 and the precise relief which is now being pursued which I'm not actually clear about yet either, so.

15 Q. Yes, but you will get to in your next question.

A. Indeed.

Q. Okay, all right, thank you. Continue.

MS PERKINS:

20 A. Sure. So then I finally note that further amendments that I recommend in addition to those that have already been proposed through the 14th of March version and changes made through attachment 1 to the Planners JWS. So (a), there is the limitation on irrigation area from policy 10(a)(2)(1) and rule 10(a)3.1.1 being removed, (b) is allowing those
25 permits as I've sort of mentioned a few times to be able to continue with a longer-term pathway where there has been significant work undertaken and see that the application of PC7 for deemed permits related to the damming and discharge of water should be removed.

1645

30 Q. Okay, thank you. I am going to hand you over to Mr Maw now.

CROSS-EXAMINATION: MR MAW

Q. I want to start by understanding what I am to do with your opening representation on behalf of a range of submitters in the context of the

question which I am going to ask you about your planning evidence. Now, just so I am clear, in terms of your opening presentation, are you professionally engaged by the parties listed at your para 5 to provide planning evidence for them?

5 A. Yes, so we prepared the submissions for those parties and then have had discussions with them about whether they wanted to present any evidence themselves, whether they were happy for us, who are providing evidence already, to be effectively presenting that on their behalf as well, so we have had conversations and emails with those parties to say that
10 they are happy for us to take the lead on that for them. They did not want to present anything themselves, so that opening representation is merely a summary, like you would get from any other farming witness, lay witness, turning up to say this is just basically a summary of their key points from their submission and setting out a perspective for the Court
15 as to why it's important for them.

Q. And so each of those submitters has not given evidence?

A. No.

Q. And insofar as you have put forward in your representation information pertaining to those submitters, are you putting that forward as evidence
20 or something else?

A. It's not specifically evidence, it's more re-highlighting their submission points, effectively. None of that is new. That is all just taken from their submissions directly.

Q. Is it fair to say that what you are doing is you are highlighting their position
25 in terms of the position that they have put forward in their submission?

A. Yes.

Q. So in a sense, you're advocating their position for them?

A. Yes, effectively, that was, effectively, a bit more of an advocacy statement, which is why I did try to be quite careful with what went into
30 that versus what I considered to be my planning evidence or summaries of what I have stated to date, as I pointed out to the Judge that I hadn't fully taken into consideration some of those points in those submissions in my original planning evidence.

Q. And so when you sit down and you prepare your planning evidence, you say you've complied with the code of conduct for expert witnesses?

A. Yes.

Q. And you reread that code again?

5 A. Yes.

Q. And you understand that, as an independent expert witness before this court, you are not to advocate for a client?

A. Correct.

10 Q. And yet what you've set out in your opening representation is, essentially, a set of advocacy statements in relation to parties that your company represents.

A. Effectively, and that's why this didn't necessarily need to be presented as an expert witness, but it made more sense for questions that may arise in the Court that were of a planning nature to be here at the same time
15 for both.

1649

Q. Well, I understand the line you're trying to tread but it's not as simple as it is simply taking off one hat and putting on another hat as you transition from being an advocate to being an expert planner.

20 A. Sure. I appreciate it may be a blurred line there. It may have come across as a blurred line today for that.

Q. So in relation to the evidence that you've given in your opening representation, are you familiar with the information that you've put forward in this summary? Can you answer questions about that which
25 you have put forward in terms of the factual assumptions underpinning these submissions?

A. For some of them, yes, because I am familiar with them as a client, as a separate part of the process but for some of them, I am not any more familiar with them than the information they have provided me with.

30 Q. So insofar as, well, perhaps let's look at your paragraph 5 of that opening presentation.

WITNESS REFERRED TO OPENING PRESENTATION – PARAGRAPH 5

Q. Which of the entities are you familiar with and which are the ones have you just summarised what's in the submission?

A. I'm particularly familiar with Mr Naylor. I prepared his application for the Chatto Creek catchment. For Knapdale Farms, Earl and Bernadine Attfield and Mt Earnslaw Station –

Q. Just slow down for a moment –

5 A. Sorry.

Q. – please.

A. So B, sorry, C, is –

Q. So let's do it in order. B, Hortinvest.

A. No, I'm not specifically familiar with them.

10 Q. Yes, Knapdale.

A. Insofar as I, in my role as team leader, have worked with others in the team who are responsible for it, so, no.

Q. So not really?

A. Not as good. It's like tier 2 effectively of knowledge.

15 Q. Lindis Peaks.

A. Not that familiar, no.

Q. Attfield.

A. Similar to Knapdale Farms. I have some knowledge through others in the team working on that process, their processes.

20 Q. And Mt Earnslaw.

A. The same. I am familiar with the application but I have not been involved in the details of their particular consent.

Q. So when we look down that list there, it's only really the Naylor application that you would be able to answer any further questions on in relation to the information that's in this representation?

25

A. I could answer some further questions on Knapdale, the Attfields and Mt Earnslaw but not on Hortinvest or Lindis Peaks.

MR MAW ADDRESSES THE COURT (16:52:18)

Your Honour, we're getting close to the end of the day and I want to have a more careful read of some of this information that's been put forward to see whether or not I want to take any further questions in relation to the information in the representation statement. Otherwise I'm going to transition away from that into some other material and I may have to circle back to this in the morning.

30

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Yeah, I don't have a problem with that. Ms (inaudible 16:52:47) suggested that we need to sit a little bit later in order to get through who we need to get through for tomorrow.

5 A. Right.

Q. Only going to suggest half an hour more if that's what parties wanted to do.

A. I would suggest we won't, this was the, your economist was it?

10 **MS IRVING:**

Well, it's changed slightly. Mr Patterson –

THE COURT: JUDGE BORTHWICK

Q. Is teaching tomorrow.

A. Yeah. So he will be called later. We've just, we've got Mr Lanam here, who is making a submission on behalf of Central Otago District. I'm just conscious of how much we've got to get through tomorrow and I have likewise witnesses that have some availability constraints that I'm just trying to manage. So I'm wanting to try and avoid, I suppose, to the extent we can, carrying too much over into tomorrow. So perhaps if Mr Maw wants to carry on with his cross of Ms Perkins' evidence, that would reduce what we needed to cover off tomorrow or alternatively, we perhaps deal with Mr Lanam this evening, so that's done.

15

20

Q. No. Look, parties have got to be realistic with the sort of hearing that this is and that is that there may be slippage in time and parties saying I'm, you know, witnesses not parties, saying I'm only available on this date and sorry if you don't make it, I've got to teaching appointment, you know, tomorrow, it's really not helpful. It's, you know, you're not at fault or to blame in any way for that but it's just not helpful. So there has to be some ability to move within a reasonable timeframe, which I would have thought if we can't reach today then we can reach tomorrow for most people. We haven't gone more than a half day over, I don't think. So I don't want to interpose another case. This is Landpro's case, Landpro's only opportunity or primary opportunity, it may not be the only one yet, but

25

30

primary opportunity to nail its case. So I don't want to interpose another witness and your witness can come tomorrow.

A. Yes, that's fine. I think in that case if we could carry on a little bit this evening so we get through as much of Landpro's case today would be

5 certainly very much appreciated from my point of view.

Q. All right. Thank you.

MR MAW:

I'm happy to continue, subject to the caveat I'd like to read that carefully overnight.

10 **THE COURT: JUDGE BORTHWICK TO MR MAW**

Q. Yes, absolutely. No, I understand that. So we're back with Ms Perkins with you anyway tomorrow morning.

A. Yes, thank you.

Q. You had other questions though?

15 A. I do have other questions.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. I'm going to be heading to your supplementary evidence, which I think was dated the 23rd of March.

A. Yes.

20 Q. Now, I just need to find my copy of that, so bear with me. It's not where I was anticipating it to be hiding.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Do you want us to give you a copy?

A. No, I do, I have – I do have it somewhere because I've highlighted parts

25 of it.

Q. Okay.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Here we go. Right. I want to take you to paragraph 17 of that supplementary statement.

**WITNESS REFERRED TO SUPPLEMENTARY STATEMENT –
PARAGRAPH 17**

Q. And in this part of your evidence, you are dealing with the non-complying activity pathway and this paragraph is about providing an extended consent duration for some types of activities and in particular, you have
5 referenced community water supply or hydroelectricity schemes and noted that the duration of 15, 20 or 25 years is perhaps more appropriate but you're not sure which of those numbers might be appropriate. I want to start with the hydroelectricity schemes and I want to stay with the
10 context provided in relation to the schemes that you have described in your paragraph 16.

WITNESS REFERRED TO PARAGRAPH 16

Q. So those are all existing schemes?

A. Yes.

15 Q. So in terms of the need for a long duration permit for an existing scheme, what is it, in your mind, why is a longer term permit required to ensure the viability of one of these activities?

A. I guess when thinking about it, it just gives them some more security that operation can continue for a longer period. We don't know what's going
20 to come out of the Land and Water Plan and whether that particular activity will be able to continue in the same vein that it has been consented and I think there's potentially more drivers in the, a shorter term for something like the primary sector uses where water is being removed from a catchment entirely and used for irrigation rather than
25 being a, I'm not going to say non, it's like vaguely non-consumptive but maybe technically in terms of the interpretation of word actually out of the water body for too long to be officially non-consumptive but those sorts of takes are a lower risk to the environment of continuing for a slightly longer term to give them security that they can continue while other activities
30 may be dealt with in the shorter timeframe.

Q. So it's not about the viability of the activity itself. Well, the infrastructure's already there, isn't it?

A. The infrastructure is already there. I have not discussed with those parties specifically the viability of six years versus longer to understand exactly how the companies or systems operate.

5 Q. So why is it that those activities should be given security of supply in the long-term then?

A. I'm not suggesting it be a 35-year, as has often been granted in Otago in the past. It's more in consideration of the situation we have found ourselves in as planners at the moment of having all of these applications all at once, and that will be the situation we are in again with a six-year term, but if there are some of those activities that might warrant, potentially, a long-term security supply and that might have a lower risk on the environment, then potentially, they could have a slightly longer term as part of that transition process.

1700

15 Q. So in terms of the risk to the environment associated with these types of activities, aren't those the very risks that the new land and water plan is going to be considering?

A. Yes.

20 Q. And so isn't it appropriate to allow that plan to come to fruition, to set out the allocation framework such that all activities are then consented under it?

A. Yes, but I don't think that that prevents reviews or further consideration of these to be able to occur within that timeframe of a consent, that duration that may be granted on it.

25 Q. If you think about security of long-term supply, and if your answer to the land and water plan is to say, well, the council can just review the permit and impose the new regime, the security of supply risk is precisely the same, is it not?

A. Yes, effectively, it is.

30 Q. Except the one point of difference is that it puts the onus on the council to undertake a review, doesn't it?

A. Yes.

Q. And the council may not be resourced to do that.

A. Quite possibly not. I'm not sure what the resourcing levels are.

Q. When you're working with consent applicants and you're putting together these applications for fairly significant durations is my understanding, let's unpack that. You've put together some applications that have been lodged?

5 A. I have, yes.

Q. And how would you describe the consent terms sought in those applications?

A. They varied from six years to 35 years.

10 Q. And if you were to weight the range in terms of where the majority of those applications are in terms of durations, where would you say?

A. I think I need to be clear here, the time with which I've been with Landpro, so I haven't been responsible for preparing as many as other colleagues at Landpro. So, for example, I prepared the last chance applications and I've prepared a couple of the Manuherikia ones, but only insofar as to assist with getting them completed, and then assisted with a couple of other shorter term more recent ones, so, to be honest, it's probably only – the last chance covered 21 deemed permits, but it there was one application, so I would say I've prepared four applications myself.

15

Q. So remind me, last chance, what was the term sought?

20 A. 24 years to tie in with the dams that had already been re-consented.

Q. Thank you. I want to move now to the joint witness statement for planning. Now, you have a copy of that?

WITNESS REFERRED TO JOINT WITNESS STATEMENT FOR PLANNING

A. I do.

25 Q. Very good.

A. The right one, I think, too.

Q. I'll just take you to para 6 to start with. Now, just so that we're clear, your initials there in para 6 are CP?

A. Yes, that's correct.

30 Q. And you support the amendments shown in attachment 1?

A. Yes.

Q. And then at para 13, in relation to whether the data period to be used should extend post June 2020, you support the use of all available water metering data.

A. Yes.

Q. So you're not concerned about applicants ramping up their takes to achieve a single maximum on which to base an application for a controlled activity?

5 A. In my opinion, that is a possibility, that some applicants could do that. I don't consider that that would be the majority that would do that. Part of my view with this as well is the choice of June 2020. I understand it's sort of somewhat linked to the timing of notification, but some of my thinking in that is that I have some clients who have recently purchased properties.
10 They actually got their irrigation system properly underway only this last season. As it turns out, their history of use from a rate of take point of view and a daily volume point of view won't be any different, but this year, they have actually used it across the season far more than the previous owners have, so in that situation, they would be adversely impacted when
15 it was not bad behaviour of trying to ramp up just to secure water as such.

Q. Sure. So, in that example, there is a reasonable and logical explanation for the change in the pattern?

A. Yes.

Q. So wouldn't it be better for that situation to be considered through the
20 restricted discretionary activity rule rather than the controlled activity?

A. I guess it could be done under both. I think it's just more the security to the applicant of a guaranteed replacement for a short term. In this situation, that applicant has applied for a six-year term but had to seek a non-complying pathway because of the schedule that was notified.

25 Q. So staying with that example, and using the schedule as recommended by the technical experts and also (inaudible 17:06:32) the planning statement. How would that application be treated now?

A. It would probably, the way the wording has been included, that does not have 2020 as a limit, it would be under a control pathway. It would fall
30 under that pathway, yeah.

Q. Do you see that there could be a risk of some applicants ramping up their takes to achieve a single maximum spike in, say, an instantaneous rate?

A. It is possible, but I think, when you look at the numbers of permits that have already had to lodge replacements as part of the deemed permit

process, the numbers you're looking at that are water permits, it's probably – I'm sort of just guessing here in a way, but I wouldn't think it would be as much of a risk because a lot of those permits would have been granted more recently. They're not historic deemed permits where people haven't used their water. I would imagine that they're more likely to be in the last sort of 20 years where people had to put a proper application together to explain what they wanted and how much and why, albeit it's not as comprehensive as they are today, but I can't imagine it would be a significant risk, but yes, you may get a few that are still able to do that.

5
10
Q. So when you think about who should bear that risk, is it a choice between the environment versus the abstractor?

A. I guess if that happens, then, yes, it would be putting the abstractor above the environment potentially in that situation.

15 Q. And when you think about the paradigm change brought about in the national policy statement for freshwater management around putting the needs of the water body first, how should that risk be dealt with in the planning framework?

A. I think, at the end of the day, they still would be under a six-year permit, so they're still in a transition phase, it would still then get captured under the NPSFM framework following that short-term kind of rollover of the permit, and so further investigation of the application, their efficiency, and all of the other aspects in the environment under the new plan could be dealt with at the end of that six-year term. This is not people going for a 20-year permit through that process.

20
25
Q. So the risk, precisely, that I'm asking you about is the risk of applicants ramping up their take ahead of the point in time that their application is processed so as to achieve a higher maximum rate of take to justify a higher grant of consent on renewal, and whether that risk should be borne by the environment or by the abstractor?

30
A. I just don't see that there's a huge risk that it could occur under that. I would need to see the numbers that are – probably the only way to see it would be to look at the water use records of those permits that are due to

expire up to 2025 and their consented rates and look at what the differences are to actually determine what the real level of risk is.

Q. And just so I understand that, are you saying there simply aren't that many permits out there that have the headroom available within them within which to take at a higher maximum rate, say, on a one-off occasion?

A. I couldn't tell you exactly the number, no.

Q. I want to understand next your opinion in relation to the restricted discretionary activity pathway that's been recommended by some of the planners and I should caveat that. It's not all planners that have recommended that that pathway change in the way that the joint witness statement has changed it. So when you think about the restricted discretionary activity that had been put forward by Mr De Pelsemaeker in his 14 March rendition of plan change 7, the restricted discretionary pathway applied only to the situation where there was a technical reason as to why data wasn't available. Is that your understanding?

1710

A. Yes, I'm just going to just quickly have a look at it again but from my memory, that is the reason that basically there was an issue with the water metering data. There was a technical issue or missing data.

Q. Yes. Now, the version of the RDA that you and some of the other planners recommend has broadened out its application. Is that right?

A. Yes, that's correct.

Q. And can you explain to me how it's been broadened out to pick up what types of situation?

A. So I think Ms Bright mentioned a couple of the types of situations that were sort of discussed as who it might apply to, those parties that haven't had water meters in for as long enough period to actually represent their historical use, so they might have only had a really accurately operating meter for the last two or three years. They might have had one in place but I am well aware that there has been a number of issues across Otago with water meters and their accuracy, learning to cope with the climate that we have in terms of, you know, freezing and thaws and the flood flows and flushing flows that come down from the high country takes. So they have had meters in place maybe since they were required to but they

haven't been working very well. So in that situation, you've had a meter in place and it might not be that there's any data missing or that there was necessarily a technical issue. It's just it might not have been the right setup. They wouldn't be captured or ones that just had manual records and didn't have a meter until the last couple of years, that's not a technical issue as such. So there was quite a number of potential applicants that might then fall outside, go straight to non-complying and we thought that there needed to be a pathway for those. We did, however, note that we didn't want to allow for just those people that went, oh, water meter regulations, can't be bothered putting in a water meter, not going to do it. Those people that have clearly flouted the rules, we catered for the fact that there needed to have been a water meter put in place so that they had to have actually committed to some metering and regulation of their take and not just the ones that just didn't want to put something in. So they wouldn't be able to be captured by this.

Q. And when you think about the restricted discretionary activity, do you still consider that that, only to enable volumes and rates of take that reflect historical use?

A. Yes, it just to reflect historical use.

Q. And so the other relevant methods referred to within a matter of discretion A shouldn't be used in a manner that seeks to elevate or increase above historical use?

A. No.

Q. And insofar as there might be a risk of that occurring, that risk should be dealt with in the drafting?

A. Yes. If other interpretations of the way that's been drafted view it such that, you know, with a legal interpretation that that's not the way it could be interpreted, then that's not the intention. The intention was always that it reflects historical use but that there might need to be other information be able to be put forward to further explain what was historically taken if those water meter records don't give you enough picture.

Q. And when you look at the wording then that's been recommended and the phrase that I've highlighted as: "and other relevant methods and data", do you accept that's a very broad phrase?

A. It is and we spent a number of hours going over this and I don't think we ever managed to reach – we could, we just didn't have time to take it any further. The intention there is that it is relatively broad so we didn't think you could effectively go through and list every single possible type of data that could be used off the top of our heads potentially with more time and more investigation that could happen, but in that timeframe, there was no way of us getting an exhaustive list that could capture everything.

5

Q. Do you see that there could be a risk with the way that this matter of discretion is currently worded, that an applicant might choose to apply under the RDA and point to, for example, the Aqualinc Guidelines as another method and say well, that's another method shows what my historical use could be? Is the wording here tight enough?

10

A. The wording allows for something like Aqualinc to be used as part but I don't think you could just – I think it's tight enough that it couldn't be just Aqualinc because it does still have to be within the limits of historical use as established through these methods, so within the limits of historical use is still set aside as the initial part of that matter.

15

Q. And this is perhaps where the challenge arises in terms of using the likes of an Aqualinc model to demonstrate what historical use is because that's not what Aqualinc does, does it?

20

A. No, it tells you what is needed for your property at any, you know, for nine out of 10 years. So, no, I recognise that and I don't think that just having Aqualinc would be sufficient and I think because we did discuss this and considered that it was still a full matter of discretion, it's not a matter of control and you have to grant consent. The Council still have full discretion here that they can, it can be probably evaluated. We're still talking about a six-year term, recognising we don't want people to increase beyond their historic use but there's substantial matter of additional work if an applicant wants to go down this pathway as opposed to controlled activity when really the only difference is that their water meter and records don't accurately reflect historic use because that's the only real difference in this RDA rule as opposed to the controlled activity rule.

25

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Q. I have some questions now for you about the recommendations that you have made in terms of changes to plan change 7 and the version that I am reading from is the version that you've attached to your supplementary statement of evidence.

5 **WITNESS REFERRED TO SUPPLEMENTARY STATEMENT OF EVIDENCE**

A. Yes.

Q. Now, I'm a little unclear as to precisely what your opinion actually is in terms of the provisions of the plan change and that's perhaps a reflection of the fact that this thing has moved iteratively along the way and you've also participated in some conferencing. So it may well be that some of the drafting you'd put forward in your appendix, you've moved on from as a result of the conferencing. So –

A. Sure.

Q. – you might need to tell me where that has actually occurred and in fact I'll start with that. That might be a more efficient way to do it. In terms of that which you have recommended and attached to your supplementary evidence, what have – what changes would you now be recommending in light of the conferencing that's occurred?

A. So I would recommend that Policy 10A21 have the, retain the points (c) and (e) in their amended form.

Q. Just pause with me. 10A21, retain?

A. (c) and (e) in their amended form from the planners JWS. So that's the, reflecting the historic rate of take.

THE COURT: JUDGE BORTHWICK

Q. Sorry, are you now wanting to – I can't see a (c). Is there a (c) there?

A. It may look like an (e) –

Q. Can you read out –

A. – because it's –

Q. Is it: "there is no increase in natural instantaneous"?

A. Yes.

Q. Okay. So that's the (c). So you recommend that that be retained?

A. Retained in its amended form from the planners' JWS. So, which is that there is no increase in historical instantaneous rate, I think.

Q. But what you're wanting to do is to put in words from the planners?

A. Yeah, I think it's probably going to get really confusing if we're just going through point by point now, changing, keeping. Points, I mean, I've kind of made a couple of notes on, to that effect for that. That's mainly to that policy to be fair but, and I would remove my added in (b), that's in highlights.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Where do you want to go with this? I mean I understand why you're asking because like I'm not – I was a little surprised that planners got into the objectives policies and rules but, you know, there they go and I thought that we're just dealing with the schedule –

A. As I had –

THE COURT: JUDGE BORTHWICK

Q. But they didn't, they got into the objectives and policies and rules and so I'm a bit like you, I don't know. This is the conundrum. I know that you and the previous witness liked the discretionary activity rule but that doesn't appear in the JWDS for planners. If you were still thinking about – if you were getting into those provisions you would have gone, "Yeah let's have a discretionary activity rule", or you would have – you know what I mean to be comprehensive. So what the JWDS looks like is that you've actually retreated from your March supplementary. But that might not be correct.

1720

A. No, so that's not correct so we – whilst there was movement into those policies and objectives in that planners' conferencing at the time we all felt that the changes made to the schedule needed to have those reflected changes in those parts of the policies and so we did only limit the changes that anyone would suggest or recommend as they related back to the questions that arose out of the technical conferencing and then the changes that were subsequently required to the schedule. So I appreciate that it then looks really confusing 'cos there's yet another version of this – of the plan change sitting out there and it doesn't

incorporate the other changes that someone like myself of Ms Dicey might also still want to see. We did note, I know with Mr Twose that things like the community water supply, they may still seek for that to be completely not included within PC7 and we did note that in the conferencing –

5

Q. Mm.

A. – but that we proceeded on the basis that if it was included this would be the types of changes that would be required and agreed upon or something like community water supply. So it was difficult to try and separate things out and – but we did try and keep to, as related to the schedule –

10

Q. Yeah I know.

A. – but some things came backwards.

15 **MR MAW:**

I'm struggling to figure out which version of Plan Change 7 the witness is now pursuing is -

THE COURT: JUDGE BORTHWICK TO MS PERKINS

20 Q. Well I think it would be the JWS version plus a discretionary activity rule. Is that right?

A. Effectively yes.

MR MAW:

25 I think that's right.

THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. And have you tackled -

A. – some sort of long-term pathway rule.

30 Q. Some sort of long-term pathway rule and I mean I don't know in that – I have view about this that non-complying activities are not an odd, you know the non-complying activity rule is not your ordinate to a discretionary activity it's just not – it's not conceptually how I view the two forms of activity. So you've got, you want (inaudible 17:22:20) discretionary –

pathway and I don't know whether or not you were going to add any changes to the non-complying policy provision. Assuming that it stands on its legs.

5 A. Yes I think I would need to do some more work on this because – from the changes and just the change in thinking that's happened through the planners' JWS and the changes to the RDA pathway I don't and to be fair I didn't try and re-draft another discretionary version, I took what Ms Dicey has said and put that and said something, you know something like this without trying to confuse matters with yet more versions. If it's helpful I
10 can like pare back or pare that back to more what I might word it as.

Q. Well I don't know it should be in your evidence, eh?

A. Yeah, I mean I did note that this was taken as hers and generally the intention of that – I supported the intention of that without re-wording further and further but I can go – I can do that for you if you like overnight.

15 Q. I think it should be in your evidence actually. Why would it not be in your evidence already? You've adopted – I thought you adopted what Ms Dicey...

A. I effectively have adopted what Ms Dicey suggests.

Q. Yes. So in a sense it is in your evidence.

20 A. Yes.

Q. And it stands and falls with the cross-examination?

A. Yes.

Q. Yes.

25 **THE COURT: COMMISSIONER EDMONDS**

I guess my suggestion only related to taking the things out of the JWS planning that had gone on after the various groups had looked at the scheduling and they'd taken it a step further. That if we could have a version that made that clear in terms of this witness, only those things that came out of the planning
30 conference and where this witness is sitting. It more be a better use of the back end of the afternoon than struggling through each line. That was my only suggestion.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Yes. I mean – this – I guess what you don't what (inaudible 17:24:31) are to go in, if you liked that JWS, if that's now the template that we're working from. Ms Dicey's policy and maybe something to do with non-complying activities?

5

A. Yes and what I have in front of me is the version attached to the supplementary evidence of 23 March which has the, I'll call it the Ms Dicey discretionary policy plus the Ms Dicey discretionary rule. And I was not super clear as whether this witness was still pursuing on the same terms this framework or not, and I think the witness is. She hasn't

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–

1725

MS PERKINS:

15 Yes, I would still like to see that. I still recommend there be a pathway like that in there.

MR MAW:

And I have some questions about that which I will pursue that.

20 **THE COURT: JUDGE BORTHWICK TO MR MAW**

Q. Yeah, no, you should acknowledges those, and then I think there's this big question about non-complying activity, policy and rule, and what's the go there.

A. Yes, and in terms of looking at what's changed, and, yeah, I'm unclear as to where this witness is now going with that.

25

Q. Okay.

THE COURT: COMMISSIONER EDMONDS TO MR MAW

Q. So that's all a lot of elements, then. There's the first one, to do with the (inaudible 17:25:50) conferencing we had and the planning one, which is where you started, so I just wondered if there was some cut-through we could get on that so that you didn't have to lead out? Do you agree with

30

this one, do you agree with that? I mean, it may be clear reading the JWS, but it's quite hard to deal with provisions on that basis, isn't it?

A. What would make my job a whole lot easier would be an amended version of the plan change 7 attached to the supplementary evidence that has this witness's current position in terms of the changes which she's recommending be made to plan change 7, and then I can cross her on that. Now, that may be a reasonably straightforward exercise in terms of tracking into this version the differences, and they may not be significant, I just don't know, and whether that could be done overnight and circulated, that might speed things up in the morning.

MS PERKINS:

I can effectively, 'cos I know what's critically missing from the supplementary evidence version is an RDA pathway, and I do recommend that that be in there as we agreed, the planner's JWS, so that's obviously not in the supplementary because that was part, you know, so that's something that's come post the supplementary, through the planner's joint witness, so, yes, what is in one or the other alone don't accurately reflect my exact position, so I can see the difficulties you're having.

20 CROSS-EXAMINATION CONTINUES: MR MAW

Q. Well, I wonder whether, could that be prepared overnight –

A. I could do that overnight, yeah.

Q. – with relative ease, and have that circulated, and I'd use that as the basis for then stepping through the provisions, which I think I still need to do.

25 THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. You do. Mhm, okay, well, I know it is homework, but it sounds like it is relevantly straightforward. If you continue to support what Ms Dicey said or continue to have a view on the non-complying pathway and what that looks like, and I accept do not remember what the original supplementary said in relation to that, that can be brought forward into the JWS document. Have you got that in Word format? You should do. I thought somewhat there was an email floating around about that.

A. Yes, I think it was circulated. I will double check, otherwise I think it was sent through to Michelle, so.

1728

THE COURT: JUDGE BORTHWICK TO MR MAW

5 Q. Do you want to call it quits now?

A. Yes I think we should sensibly do so.

Q. Very good. All right, so that means, you remain in your oath so you can't talk about this case to anyone and if you could that homework and perhaps email Frieda the documents so we can get it printed off.

10

THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. When do you think you'll have that done by?

A. Well if I do it tonight then it should be able to be circulated before I turn the lights off tonight rather than trying to do in the morning.

15 Q. Yes that will be good. It's just that counsel needs to prepare his questions but he's got something to go –

A. It wil–

Q. – you mean – you're following the Ms Dicey for direction.

A. Ms Dicey plus the – some of planners' JW stuff pulled in so it –

20 Q. Yes.

A. – it will expand out a little bit because of that. Yes.

Q. Okay. Very good. So as soon as we get that if you could yes, you know who to circulate it to. So if you circulate to the Court so it can be printed as well as all the other parties. All right. Thank you. That's us. Do we need to start at nine to get a push on? Yes, okay good. We'll start at 25 nine o'clock. You would have heard all of our questions to Ms Dicey and with her two – Ms Bright. You might want to cut through to the chase and think about concrete examples of deemed permits. And think about the Court's minutes. The question of, is there a missing – is there a policy gap, how might it be filled. If it is not just simply to repeat as a mantra and deemed permits because I bet you that's not going to mean much in 30 five years' time, though it's just to me it's – you know so we're assuming that there is a pathway either because we can create a pathway under

the RMA or because there is pa- you know the statutory (inaudible 17:29:57) can somehow survive. Do we need to do it? Why do we need it? No more anecdotal evidence from anybody. We need good concrete examples. Can they operate by themselves? Do they need to operate in tandem with water share agreements. Now we listened to this evidence and we wonder whether there's just simply a marketplace for water out there and that's what we're grappling with is that farmers seem to have the market, is a crude way of putting it. Or maybe there's some social licensing that goes on out there but if there is and that is important, how do we reflect it. Yes. And Ms Baker-Galloway is nodding, Mr Maw looks quite quizzical if that's a sickening thought but you know – might it be one that you need to grapple with. What's the reality out there? And what are the – what is the likelihood of any adverse impact on other abstractors I think first and foremost but also the environment, secondly if these things aren't brought forward.

THE COURT: COMMISSIONER EDMONDS

Well perhaps that (Inaudible 17:31:08)

20 THE COURT: JUDGE BORTHWICK TO MR MAW

A. Yes that differently to ensure that those things are not precluded. They seem to be happening anyway without.

Q. I know because there's a market and the people are regulating themselves now I know I should never use that word in the context of water but there's a lot of regulation already happening. So do we need to step into the frame?

A. Mm. Maybe or maybe not that's –

Q. Yes.

A. – yes, it's a good question.

30

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. Yes, so difficult question also for you Ms Irving. Do we need to step up or do we go, "I bet you the value will do something this when it comes to exercise of consents".

A. Yes, it's like catching a cloud in a way I think because every catchment –

Q. Is doing its own...

A. – is doing something different.

Q. Pardon? Yes.

5 A. So, there's no one answer about whether people are exercising priorities or not. Even within a single catchment –

Q. Yes.

A. – some maybe, some maybe not and so to try and encapsulate that in a matter of discretion on a rule or is really hard and –

10 Q. So how does that echo...

A. Yes.

Q. Does it need to be echoed in this plan and how is it echoed?

A. Yes.

15 Q. Such that the direction to this marketplace is set by the regional plan and I know that's really poor choice of language, there being a market as to water but it seems to be that there is a lot of non-regulatory – it's not so much control but non-regulatory determine a flow sharing mechanisms afoot. So, how is that echoed in a way that that can be carried over, if there isn't a full-term consent because that's the risk you know we take if there isn't one and you haven't actually, you got good case in place. How are we – what is the signal to that marketplace? Is that a problem or not a problem that the signal is – there's an absence for signalling in the plan. I don't know. What I do know is that I'm not sure how to – yet that we've got a clear idea as to what our potential tools are.

20

25 A. Yes I'm – in some ways, I feel that the existing regional plan water has had quite a few signals in it.

Q. Mm.

A. About its expectations of water users and certainly they have heeded those signals and begun moving. So it's I think a question of the extent to which they can be re-tooled for a transitional regime but I think the ease of that isn't going to be universally applicable because as I think has been described by a number of the witnesses and in some ways the re-tooling has been done in anticipation of the renewals with its associated limits and so in those contexts, you know the water sharing anticipates an extra

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piece of the puzzle which we're not adding in through the controlled activity pathway and other examples and I think the Falls Dam agreement, you know that's a more concrete example that is been working and that there's some structure around. So, it's a -- it's horses for courses in different catchments, different sub-catchments which makes it really hard to draft –

5

Q. Yes.

A. – a rule that...

Q. And it may not be a rule that may be a matter of consideration.

10

A. Yes.

Q. Either on our control – presumably on a control, that's the easiest pathway if people want to avail themselves of that or IDA I think in the minute but you may have policy – yes, it could well be re-tooling or re-purposing policy signals which are already there. They're already signals if you like to the community, then being picked up again in non-regulatory methods –

15

A. Mm.

Q. – after all that's how people are organising themselves anyway and that's without any consents – the potential for you know, that's with the current situation. They are living there or organising their lives that way. So that's what the controlled activity rules (inaudible 17:35:49) pick up an echo back.

20

A. Mmm. I think one of the challenges perhaps from the council side is traditionally they've taken a very hands-off approach to that water sharing regime and it's a question of whether that continues to be a sustainable way of dealing with that you know...

25

Q. It might be.

A. Yes.

Q. In the absence – well it might be – or, yes I don't know. It might be for six years and then thereafter not. Yes. Okay. Still a lot of thinking I think and be looking forward to your responses. You know do you send policy signals as the councillor has done under the operative plan and you know can you pick those signals up – should you pick those signals up and matters of control and matters of discretion, should not even do that, just

30

you're sending a policy signal and let the community organise itself because it has organised itself for the last 30 years in fact the last hundred years. Yes.

5 MS PERKINS:

I have been giving it some thought and I can give you some hope – some help tomorrow but I will signal that I haven't personally dealt with priorities on any permits that I have looked at.

10 THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. Okay.

A. So I can't give you anything more helpful on that and I don't think it would be helpful if I'm just taking you through generic answers –

Q. No.

15 A. So I personally haven't dealt with priorities.

Q. But that's helpful to know. Yes.

A. So, yes I have given some thought as to one way you might be able to include them which I can talk you through tomorrow but I haven't yes, pers– can't put an exact example in place for you. Because I just haven't – haven't had that experience.

20

Q. Good. All right, no, it's good to know, you're off the hook to that extent.

THE COURT: JUDGE BORTHWICK

All right, thank you so we'll adjourn through to nine o'clock tomorrow.

25 COURT ADJOURNS: 5.37 PM

30

COURT RESUMES ON TUESDAY 13 APRIL 2021 AT 9.01 AM**THE COURT: JUDGE BORTHWICK**

Nothing arising from us overnight. Anything arising from anybody else? Okay, very good. You remain on your oath, and Mr Maw has got some more questions
5 for you.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Good morning.

A. Good morning.

10 Q. Thank you for sending through your updated appendix. That will hopefully make this exercise a little easier, at least for me.

A. Yes, and just on that, I didn't make any changes to what had already been presented 'cos I didn't think that was the time to be doing that. This is just purely an amalgamation of the joint witness statement plus what was in my supplementary evidence originally.

15 Q. Very good, thank you. Right, I do have some questions for you about the drafting that you've put forward. So using this appendix, and for the record, it's updated appendix A to the supplementary evidence of Claire Perkins, dated 12 April 2021, and I want to start with the objective or the objectives on page 14 of the document.

20 A. Sure.

Q. And I see that you have recommended the insertion of a second objective, and my first question to you is was this additional objective sought in the submission of Landpro.

A. Not explicitly as an objective, no.

25 Q. Was it sought as a policy or something else?

A. No, not explicitly, but it comes back to the intention in that submission to have some form of longer pathway available, and there obviously then needs to be supporting objective and policies and rules around that pathway, but the actual wording or need for words saying we need a new
30 objective or a new policy were not mentioned, no.

Q. Can you describe what you see as the purpose of this new objective that you recommend for insertion.

- 5 A. So this objective is there to support the discretionary activity policy and rule that's behind that. There needs to be something that then, you know, you follow up the chain from having that discretionary pathway, so that's really the intended purpose of it there, to enable those environmental gains that we could achieve, that otherwise, we could end up in a position where they are lost completely in the next six years, as has been, you know, put forward in the case of a number of scientists as hearing to date.
- Q. So when we look at this objective, do you accept that it only covers some of the values that the new NPSFM requires a council to address?
- 10 A. Yes.
- Q. And when you look at this objective, can you tell me which of the values it excludes?
- A. It's primarily focused around those threatened species within the freshwater ecosystem, so it's effectively excluded most other things in terms of specific reference.
- 15 Q. So it excludes consideration of cultural values?
- A. As far as the wording itself goes, yes.
- Q. Well, the wording's important, isn't it?
- A. Yes, it is.
- 20 Q. And it excludes consideration of recreational values?
- A. Yes.
- Q. And it excludes consideration of amenity values?
- A. Yes.
- 25 Q. And when you think about the paradigm shift – or let's go back a step, do you accept that the transition in the national policy statement 2020 confirms the paradigm shift towards a new way of thinking about water management?
- A. Absolutely.
- Q. And it approaches the management of water in a water-centric manner?
- 30 A. Yes.
- Q. And what do you understand that to mean?
- A. Where the health of the water body and everything around it comes first.
- Q. And when you say "everything around it," what do you mean?

A. So everyone that has interest in the water in terms of the values it provides, so for ecosystem health, for cultural interest in the waterway, for the mana and the Māori that it represents as well.

5 Q. So when you think about the breadth of those matters and you read this objective, do you accept that this objective is not furthering the concept of “te mana o te wai” or capturing the essence of that water-centric approach.

A. Not in a whole sense, no, but it is going some way towards some of the direction that is going to be needed.

10 Q. And when you think about the discretionary activity that hangs off this objective, what’s the duration that might be sought?

A. So this is something I have given more thought to since it was put forward in the supplementary evidence. My view now is that probably a 15-year duration is probably more appropriate than 20. I think that’s reflected in it still comes within a transition time as far as water and water use is within Otago. There is always a transition period intended within the NPS itself as well, not that it’s specifically stated in terms of durations, but there is the acceptance that there will be some transition time, and I think 15 years also then picks up on the reflection of part of that duration of a slightly long-term that was picked up in the notified version of PC7.

20 Q. So when you think about this 15-year time period, you’re of the opinion that it’s acceptable to exclude consideration of cultural values for the next 15 years?

A. I think because it’s a discretionary pathway, you wouldn’t be excluding all of those values. I accept that there isn’t any words at the moment in the objectives or policies specifically mentioning cultural values, but in any application, the full range of values can be considered for a discretionary pathway.

30 Q. Well, that’s where it gets a little bit difficult, when you’re assessing an application against, in this instance, only two objectives. When you sit down and write an application, you’d look carefully at these two objectives as providing information or the outcomes that you’d be seeking?

A. Yes, but we’d also consider the wider information available and wider documents that we need to consider under s 104 as well.

Q. So how would you go about assessing cultural values in the context of your discretionary activity application?

A. It's challenge because we're not cultural experts. You know, the only way that they can be assessed is with that, you know, close input from iwi.

5 Q. And you've listened to or you've at least read the evidence from the witnesses from Ngāi Tahu?

A. Yes, it was a while ago, but yes.

Q. And what did you understand that evidence to be saying?

10 A. That at the moment, there isn't a clear picture of what those values are and that they need to participate in the development of the regimes and what needs to go into the land and water plan.

Q. In fact, it went further than that, didn't it, to the evidence, and I'm thinking of the evidence of Mr Ellison, where cultural considerations had been cut out of the process to date.

15 A. In my experience, I don't think they have been cut out, but I'm not a cultural expert to know exactly the feeling that they have in terms of how that's been dealt with. The applications that I have been involved in, particularly the last chance one, there was a lot of consultation to try and pull out from iwi what those values were. I think we made some headway
20 in that, but I don't think we were able to get to a sound conclusion as to exactly what those values are for those water bodies of concern.

Q. And when you think about that last chance decision, do you recall what the decision-maker said in relation to the consideration of cultural values?

25 A. The restricted discretionary pathway put a significant limiting factor on that.

Q. In fact, the decision-maker found that they couldn't be considered, is that right?

30 A. Not as a broad statement as cultural values, no. It was only insofar as part of their concerns could be addressed within part of the matters for discretion.

Q. And so the evidence from Te Rūnanga was iwi was placing significant weight on the new land and water regional plan and the process to properly articulate "te mana o te wai" in a regional plan as providing it the

opportunity to ensure that cultural values are not put to one side. Do you accept that that's a fair reading of that evidence?

A. I accept that broadly, that is, yes.

5 Q. And so putting in place a flow regime for the next, you say, now 15 years in terms of discretionary activities would push out the consideration of those values through a new flow regime for at least 15 years, wouldn't it?

10 A. Yes, for those specific values, but I think it comes back to the significant concerns about do we have six years to wait completely and do nothing for six years on some of these critical water bodies in terms of threatened species?

0910

Q. So you essentially say it's more important to do something about the potential risks to threatened species than it is to ensure that a flow regime is put in place that properly expresses "te mana o te wai"?

15 A. No more important, no, not at all, more that that's something that we could do now to take a step in the right direction, and that after that, if you're talking about a six-year term and then 15-year term, within that next period of seven to eight years, you can make those additional, either through reviews or there's another short window of time to bring those consents that manage to go through that pathway, if any, into line with that, with the cultural values as well.

20 Q. When you think about the review of a consent, so let's say you have some discretionary activities that have been granted under your recommended rule and policy, would it be your expectation that those consents are reviewed after six years and brought into line with the new flow regime and the new land and water plan?

25 A. It will depend, in part, on what flow regime is then put in place in the land and water plan and how close or not that is to what may have been put in place for those discretionary permits. It would then depend on which catchments are considered more of a priority by ORC, the resourcing, timing, there'll be a lot of factors at play. I don't think there's one anyone could say it will happen right on that day.

30

THE COURT: JUDGE BORTHWICK

Q. Sorry to interrupt, could you just slow the pace of your responses? I really am having trouble following what you are saying and understanding at the same time.

5 A. Sure.

Q. I know it is nerve-wracking and all the rest of it, I do not pretend this is easy, it's the last thing I would want to do, but you just need to take it down a notch.

A. Sure, I can do that.

10 **MR MAW:**

Now, where was I?

THE COURT: JUDGE BORTHWICK

Sorry, sorry, sorry. You could be anywhere, you are going so fast I am not actually tracking what has actually been said and making sure I understand it.

15 **CROSS-EXAMINATION CONTINUES: MR MAW**

Q. Consent reviews and the likelihood of them occurring. The reality is consent reviews are challenge for a council?

A. Yes, I would accept that.

Q. And resource-intensive?

20 A. Yes.

Q. And, if you think about it, it's highly unlikely the council's going to be able to review all consents as soon as the new land and water regional plan, say, is made operative.

A. No, they won't.

25 Q. And so, again, the risk of long-term consents is a risk borne by the environment in terms of the time it might take to put in place an NPS-compliant flow regime.

A. Yes, in effect.

30 Q. We can move on to the policies now. My first question relates to your deletion of what was the text in policy 10(a) 2.3, so you'll see there that

you've replaced that policy with what I describe as your discretionary activity policy.

A. Yes.

5 Q. When you think about the controlled activity framework, and you're retaining a controlled activity framework here, what is the consent duration that applies in relation to the controlled activity framework?

A. Six years.

Q. And where would I find in the policies that you now recommend the policy support for that six-year timeframe.

10 A. Yes, I appreciated this last night, as I was going through it again in a bit more detail, that there is a gap, that there does need to be a policy reinserted directing that, unless otherwise able to follow pathway provided by 10(a) 2.3, that discretionary pathway, there does need to be a policy alluding to six years as being the preferred duration for anyone else in terms of the controlled and restricted discretionary activity pathways.

15

Q. Does that then also leave a gap in relation to the way you've framed your noncomplying activity rule?

20 A. Yes, I also recognised that last night, that there would need to be something, and on further reflection last night, my view is actually that the non-complying pathway should actually come back to six years as well. I don't think there should be the ability, as was currently drafted in the rule, for a duration longer than that 15 years that I would indicate.

THE COURT: JUDGE BORTHWICK

25 Q. So how does it work?

A. I mean, at the moment, what was drafted in there was a controlled rule for six years.

Q. Yeah.

A. An RDA rule for six years.

30 Q. Yeah.

A. A discretionary rule for what was drafted as up to 20, but I would suggest that be up to 15, and then there is currently a non-complying rule for durations longer than that 20 or 15 years, but on reflection last night, I

think that should actually restrict it to six years as well, because I don't think there should be a pathway for longer than the 15.

0915

5 Q. And so in order to achieve that drafting outcome, what changes would you now be recommending be made to the policies?

10 A. There would need to be a new policy or, you know, re-hash of what was previously included by Mr De Pelsemaeker indicating that a duration of six years was what should be granted outside of those applications or catchments that might fall within the discretionary pathway. So effectively it would have to be a 10A 2.4 inserted and it would need an exclusion that said except where Rule 10A 3.2 didn't apply.

Q. Sorry, 10A 3.?

15 A. 3.2, which is the discretionary rule. So if the discretionary rule didn't apply, then the duration would be six years. It's similar to the way it was drafted where it originally said except where Rule 10A 3.2 applies, so a similar type of drafting.

Q. All right. I have some questions for you now about Policy 10A 2.1.

A. Sure

20 Q. And I see there that you have changed the emphasis of the policy in terms of making it perhaps a more positive looking policy by removing the reference "to avoid".

A. That was to pick up the similar way it's phrased in the other policies.

Q. So what – so it's a change for consistency as opposed to a change for another reason?

25 A. Effectively I view it as consistency. It makes easier reading when it's referred to in the same way across all the policies.

Q. Right. Tracking down through to your next change, subparagraph (b), you've recommended that the increase in irrigation or irrigable land criteria be deleted?

30 A. Yes. So this is more in reference to where there has been a time limit restricted on it but also accept, I think as Ms Bright mentioned your evidence, there are some cases where there are horticulture owners who have purchased trees and have set up areas ready for irrigation that will still be within their historical limits of use because the water is being

spread more efficiently, say from pasture to horticulture, there is a reduction in how much you actually need across the whole property, so you could use what was used on one paddock for grass for two paddocks for trees.

5 Q. So I want to be really careful at understanding what your reason is for removing the restriction on increase in irrigable area and you've given a couple of answers there.

A. Sure.

Q. So I wonder whether you just might give them to me one at a time –

10 A. Separately.

Q. – so we can explore them.

A. Sure.

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And slowly.

15 CROSS-EXAMINATION CONTINUES: MR MAW

A. So two parts. One being, as Ms Dicey alluded to yesterday, and in my views and knowledge of property owners within Otago, that it's really difficult to go back to a date and know exactly what was being irrigated and when. So –

20 Q. Right, so – keep going.

A. Typically a lot of the farmers I have been working with have a command area, a block, an area on their property which could be irrigated but at any one time in any one season, some of those blocks might be irrigated and not others and so the challenge then is that if you say a certain date, that
25 that might not account for some of those paddocks that were being irrigated at that time and how do we have a, where the farmers actually have a record back in time, or whether it should just be the area of irrigation at the time of application of consent.

0920

30 Q. Right. We're now reading multiple reasons. So I want to look at the first explanation you've given first and I just want to make sure I've understood

this. So the first explanation for the deletion is that it might not be possible for a farmer to know what area of land was irrigated at a particular date.

A. Correct.

5 Q. So when we look at the reference to particular date, are you referring to the period of time within which the controlled activity rule referred to in terms of the maximum area of irrigated land?

A. Yes.

Q. And what do you understand Mr De Pelsemaecker to be recommending for that period of time?

10 A. That there be a limit on the area tied to those dates.

Q. And what are those dates?

A. 1 September 2017 to 18th of March 2020.

Q. So we're dealing with a three-year period?

A. Correct.

15 Q. And are you telling me that if I asked each farmer who appears before this court whether they can tell me what area of land was irrigated on their property, or the maximum area of land irrigated between those dates, they couldn't tell me?

20 A. They could broadly tell you a command area. I don't know if they could tell you exact.

Q. And when you say they could broadly tell me the command area, if I gave them a map and asked them to highlight the areas over which they irrigated during that period, do you think they'd be able to do that for me?

25 A. I think they could give you an outline on the map of where they have irrigated. Whether they're exactly within those dates or not, I don't know.

Q. And then having that map highlighted, it would be relatively straightforward for you to apply that handwritten highlighting onto a GIS programme to convert that into an area of irrigable land?

A. Yes, we can do a command area map quite simply.

30 Q. And so it's not an insurmountable hurdle, is it, in terms of trying to understand the maximum area of land between those two dates?

A. I think the dates are still quite specific. I don't know why there needs to be specific dates, why there couldn't just be a command area, this is the area that we have irrigated up to the point of lodgement.

Q. Let's stay with the first thread, which is, is it possible to articulate the area irrigated between those dates?

A. Possibly.

Q. Possibly?

5 A. I, without being a farmer, and talk to enough of them exactly about that, those dates, I couldn't tell you how easy or not.

Q. Well, you've been – how long have you been planning for?

A. Planning for 15 years but in Otago for two-and-a-half.

10 Q. And in those two-and-a-half years, you've had discussions with the rural community?

A. Yes.

Q. Is it fair to say that farmers have a pretty good idea about what's happening on their farms?

15 A. Yes, but I don't know exactly how well their records are kept for exact years.

Q. Right. So that's the first reason why you say this criterion should be deleted, because you say it's simply not possible for farmers to explain or to articulate the area of land? So we've explored –

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20 Q. She didn't say that. She said she didn't know. I mean I'd be surprised, if I just go to why we've got problems in Otago farmers can't articulate what they're doing on their land but that's your evidence. It's not necessarily farmers' evidence. So we'll leave it there.

25 A. Well, I think they can articulate. I just don't know exactly how well they can articulate to specific dates.

Q. You need to be careful with this because the impression being, you risk the impression that farmers have little or no management over their farming activities.

A. Yeah, I'm not trying to say that at all, no.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Right. Let's move on now. You have a range of or a number of reasons as to why this should be, this criterion should be crossed out. So let's move on to the second one.

5 A. So the second one there is to allow for those properties or farmers or companies that have already invested in some relatively minor expansions of irrigation areas within their historical use. Particularly I'm referring to here sort of horticultural businesses. Really it's, and potentially this then needs to come into the RDA process so it could be
10 evaluated rather than in a controlled activity pathway, to be fair, so that where there are some minor increases as a result of already sunk investment, that that could be accounted for.

Q. Right. So that you'd be recommending a change to the policy framework and the rule framework to pick up that type of a change?

15 A. There would be a change required, yes.

Q. And when you think about those that expand during the life of a permit, so let's pick up say a horticultural example where there's been some investment. That investment would have been made through the lens of understanding the terms of the current permit?

20 A. Yes.

Q. And is there any expectation as to whether you can renew a permit on the same terms in the future?

A. Yes, there is. There is indication within the Plan that you're not going to be granted, within the current Regional Plan, that you will be granted or
25 that it'll be looked at, what you've actually used from a water use perspective, not so much an irrigation area perspective.

Q. But plans change, don't they?

A. They do.

Q. And in terms of water permits, there can be no expectation that a permit
30 will be granted again when a fresh application is lodged?

A. No.

Q. And so investment decisions ought to be made taking into account that risk?

A. Yes.

- Q. And again, thinking about this from the perspective of risk, this is a question of who should bear that risk?
- A. Yes.
- 5 Q. Should the environment bear the risk or should the abstractor bear the risk?
- A. Probably the abstractor that should bear more of the risk but I also come back to the duration with which these permits would sit and this would still be the six-year timeframe.
- 10 Q. But we're talking about the new, the next round of permits, aren't we? So investment that's been made historically will have been made based on the existing terms of the existing permit?
- A. Yes.
- Q. Right. Was there a third reason as to why you say this restriction should be deleted?
- 15 A. I don't think so.
- Q. Do you accept that increasing the irrigable area of land has the potential to increase adverse effects on the environment associated with additional nutrient loss?
- A. There is that potential, yes, depending on the land use and depending on the historic water use method.
- 20 Q. And plan change 7 does not contain any provisions to manage those types of effects?
- A. No, it does not.
- Q. And the current regional planning framework, does that contain any provisions which manage those effects?
- 25 A. No, it does not.
- Q. And so if ongoing increases in irrigable area continue to occur without any restrictions in place, the environment bears the risk of those effects, doesn't it?
- 30 A. Yes, although I do also make reference to the National Environmental Standards for Fresh Water, which put a limit only relating to increases of irrigation area for dairy land uses of 10 hectares.
- Q. Yes.

A. And so that, in my view, has been accepted that there isn't as significant a risk for other land uses with increases and in Otago, the majority of those increases have been generally as a result of conversions from flood irrigation to spray, which would generally reduce the amount of runoff in nutrients you would then resulting in receiving, waterbodies receiving.

5

Q. And were you here when or have you heard, I think it was Dr Olsen's evidence in relation to the potential adverse effects associated with the conversion from boarder diking to spray irrigation?

A. No, his was one that I have not yet managed to listen to.

10

Q. And right, I recall his evidence was that whilst there might be a reduction in the types of contaminants associated with runoff, the likes of E. coli sediment phosphorus et cetera, that there is potentially an increase in nitrogen leaching as a result of the conversion to spray.

A. I'm not a water quality scientist so I couldn't make any comment on that.

15

Q. And I want to move down to the next change, which occurs in your policy. Now, so the changes recommended to 10A 2.1(d) and this is, as I understand it, these are changes that have come through following the joint planning conferencing?

A. Yes.

20

Q. And I want to move on now to what I'll just refer to as your discretionary activity policy.

A. Yes.

0930

25

Q. And I have some questions in relation to that policy, the first of which relates to the duration expressed in the policy and here in the written version in the, I'll describe it as the third paragraph, where it notes for a duration of no more than 20 years. Now, this morning you said that you've been thinking about this overnight and you now recommend that the 20 years should be moved or reduced to 15 years?

30

A. Yes.

Q. So I should cross out the 20 and write 15 in there for the purposes of understanding your current opinion?

A. Yes.

- Q. And now I want to work through each of the matters referred to in this policy, so starting with the first one, where the application relates to a waterbody that contains threatened species likely to be affected by the activity. The application poses measures to enhance or protect the habitat of the species. So the first part of that I want to ask you about is the reference to containing threatened species likely to be affected by the activity.
- 5
- A. Yes.
- Q. Now, just so I'm clear, when you refer to the activity, which activity are you referring to?
- 10
- A. The water taken use.
- Q. So this is the proposed activity, the activity for which consent is proposed and then threatened species likely to be affected by the activity. How does – how is that worked out?
- 15
- A. That is an assessment required depending on what species are in the waterbody, where they are located, whether there are other barriers in place, fish screens, the fish passage component, there's a number of factors that would be required and require scientific input.
- Q. So this is a question of science in your mind?
- 20
- A. Yes.
- Q. And then you go on to say that the application proposes measures to enhance or protect the habitat of the species. So when we look at that drafting, an applicant has a choice as to whether to enhance or protect. It's an either/either?
- 25
- A. Yes.
- Q. And when you think about measures to enhance, when you've used the word enhance, that might amount to any small amount of improvement would be considered enhancement, wouldn't it?
- A. That's correct, yes.
- 30
- Q. And so what this first part of the policy is requiring of an applicant is that they might do just a little bit of enhancement in relation to threatened species?
- A. Yes, recognising that this, the intention of this is to stop the decline that may occur within the next six years if we do nothing. So it is effectively

to draw a line and make improvements beyond that if possible, not to allow things to degrade further as could happen without something like this approach.

5 Q. When you used the word enhance in this context, what's the environment against which you are assessing a degree of enhancement?

A. The current state.

Q. Does the current state include consents which have expired, in your mind?

10 A. No, we don't have consents that are expired at the moment, generally speaking.

Q. How do you conceptualise the environment for the purposes of this policy with reference to the expiring permit? Are the effects of the expiring permit considered to be part of the environment against which you are assessing some enhancement?

15 A. I think the complexity of some of the catchments we're dealing with is that that is the case, yes, because in effect what has happened, from my knowledge of some of the science and some of the catchments, is that these abstractions have then potentially in some cases an abstraction is below a population of threatened galaxiids and has lowered the waterflows in that lower reach and therefore prevented competitive species like trout from reaching those habitats. So in some respects, yes, the actually the exercise of those permits that may be expiring has led to the benefit to those populations.

20 Q. When you think about the concept of the existing environment, does that include the exercise of permits that are the subject of an application to replace them?

A. Technically it shouldn't, no, from an assessment point of view.

25 Q. So when you think about that, and then you think about what might be required in terms of enhancement, does that change the position or the level of enhancement that you have in mind here?

30 A. I think really when I'm thinking of enhancement, it's thinking of improvements to those populations of threatened species, whether that be by enhancing the level of protection that they can receive through the

flow patterns or fish barriers or whether that be by increasing flows that are in that waterbody to protect them and enhance their habitat.

Q. Perhaps I put my question this way. Improvement compared to what?

5 A. There's improvement compared to the number and spread of their population that is occurring now.

Q. Which is an environment inclusive of the permits that are expiring?

10 A. Yes, and I think the challenge here is trying to be able to remove the effect of those permits and understand then what that population might be without them occurring and I don't know that there's an easy answer for that.

Q. In fact do you accept it would be particularly complex and difficult to undertake that assessment?

A. Yes.

15 Q. I want to move on to number 2, roman ii now. So this is picking up a situation where a waterbody or fresh water ecosystem is likely to be degraded or degrading as a result of the activity authorised by the permit that is expiring. Now, when you have used degraded or degrading in this context, are you referring to the state of the environment as it is with the existing permits in place?

20 A. I think in a way you have to because as I mentioned before, it's very difficult to remove them completely but understand that from a technical point of view, you can't consider the environment as if that was part of it, so it's, you have to look at both I think in the situation.

25 Q. And where you've used degraded or degrading, what do you mean by those terms?

30 A. They are, do have a definition included in here, as they come through from the MPS. Effectively, so it's either below the national bottom lines or, and understand that we don't have objectives set for these catchments, so you would have to refer to the national bottom lines and the current level of water quality or habitat that is present and make an evaluative call from a scientist as to where that may sit and then for degrading look at whether there is any trend of decline for any of those matters and attributes.

Q. So when I read your recommended definition, it doesn't tell me to do those things does it?

A. No, not explicitly, no.

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5 Q. So do you understand degraded in the MPS means you're below a national bottom line? Is that your evidence?

A. Or a level that's been set by a Regional Council, which we obviously don't have at the moment.

CROSS-EXAMINATION CONTINUES: MR MAW

10 Q. So that's quite a different thing to the definition that you've recorded or recommended in this version of the plan change.

A. Yes, I think there that we obviously don't have a target attribute state set for these waterbodies yet.

15 Q. And so when it comes to applying this policy in the absence of that information, what is a decision-maker to do in light of your definition, which is pointing in a different direction?

A. I think that definition then potentially needs some tweaks to it for this period of transition before those target attributes are set.

20 Q. And then you move on in this matter, roman ii, that the application proposes enhancement to the waterway or instream ecology. So we have had a discussion about what enhancement means. Are you using that in the same way as we've discussed in terms of the first matter?

A. Yes, I would be.

25 Q. Now, you've introduced here the concept of enhancement to the waterway or instream ecology. What do you mean by enhancement to the waterway in this context?

A. That could be flows or other values for the waterway but except that we're primarily focusing this around threatened species or it could be an enhancement to water quality. It's not limited in this.

30 Q. Well, this matter doesn't say anything about water quality or threatened species, does it?

A. No.

Q. Do you accept that the way that you have worded this, in terms of referring to waterway, is particularly broad?

A. Yes, accept that.

0940

5 Q. And so, again, when it comes to a decision-maker trying to apply this policy, it would be particularly difficult for them to understand what it was that was meant by this policy or this part of the policy.

A. Yes, I accept there probably needs to be further consideration of the way it's drafted and what it's referring to, but effectively, you'd be looking at those attributes in the NPS as part of your degraded or degrading assessment, and so it would be whether there's any enhancement to those attributes for the waterway.

10 Q. Do you see that, let's say, in five years' time, somebody's trying to interpret this policy. Connecting between what's written here and that which you've just said, the dots really don't connect, do they?

A. Not clearly at the moment, but one matter I did note when considering this overnight is that one, I'd need to be more clear on what permits and what catchments are in play that will be expiring between October of this year and 2025, but from my broad understanding is that the majority of those catchment-based or sub-catchment-based groups that could apply under this rule are primarily in the deemed permit camp and have actually already been lodged. We're probably not looking at the large number that would be able to fix under this rule in the next four years, it's probably mostly just those that have already applied at that catchment group level.

20 Q. So that's an assumption that you've been relying on, rather than knowledge of the factual situation?

A. Correct. I don't know exactly, but that would be my assumption from my current level of knowledge.

Q. All right, staying with (ii), the alternative to enhancement of the waterway is enhancement to the instream ecology. So what do you mean there? What do you mean in terms of enhancement to instream ecology?

30 A. It would be on the lines of improvement to the habitat breadth or numbers of species present. I would need a scientist's input here to actually make those sorts of assessments.

Q. And again, the policy doesn't really explain precisely what you have in mind in terms of that enhancement.

A. No, it probably doesn't.

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5 Q. Probably does not, or does not?

A. No, it doesn't.

Q. No, okay, because what Mr Maw is getting at is that there is no outcome stated.

10 A. No, and I accept that there are significant improvements to the drafting that would be required.

Q. And your evidence is not informed, aside from Ms Bright, beyond that, you have got no evidence of a technical nature informing the words that you put up here –

A. No.

15 Q. – and what they mean and where they may go, even if you were to express an outcome?

A. No, I accept that, and it has been somewhat informed by the experts of other parties present, and I think the only way this could probably be drafted in a really robust fashion is with a group of planners represented
20 by different parties.

Q. You see, I beg to differ. I think you need technical input to this.

A. Yeah, fair point.

CROSS-EXAMINATION CONTINUES: MR MAW

25 Q. To move on to (iii), so where measures to achieve protection or enhancement. Now, we haven't talked about protection, have we, in relations to (i) and (ii). Do you see that protection sets the bar higher than a little bit of enhancement?

A. It can be or it cannot be. It could be protecting the current level or it could be protecting an ideal level.

30 Q. So when you say "protecting the current level," what do you mean?

A. Protecting the habitat or species that are present now.

Q. With or without the exercise of permits expiring?

A. I think both matters have to come into consideration.

Q. Again, your drafting doesn't make that clear, does it?

A. No.

5 Q. So staying with (iii), where these measures, you say, are necessary. If you're adding another layer of decision-making required in terms of decision-maker having to determine that it's necessary for enhancement or protection. What do you mean by having used the word necessary in this context?

10 A. No, I think that's potentially a drafting issue, and it's more saying where one or two, where you've sort of met the thresholds of one or two, and the only way to enter this rule is where one or two apply, so it's more that where one or two apply, not that they are necessary.

15 Q. Well, when you say that they're necessary to enter the rule, let me just have a look at the rule. So I'm looking at rule 10.A.3.2. Where does it say that those are entry conditions into the rule?

A. No, so it doesn't, and that's something that needs a bit of further consideration if they should be, actually, entry conditions, but recognising that it's complex to write something like that as an entry condition.

20 Q. So in your mind, the entry conditions into the discretionary activity rule require that the application is in an area where it contains threatened species likely to be affected by the proposed activity.

A. Yes.

25 Q. And, or is it "or," that the freshwater ecosystems are likely to be degraded, putting aside the complexities we've discussed about that? Is it both of those things, one or other of those things?

A. I think, actually, it could be one or other. I don't, I mean, yeah, probably one or other. It could be an "or" there.

Q. It could be, but –

A. It should be an "or" there.

30 Q. You envisage an environment that has species likely to be affected by an activity that isn't also degraded?

A. I would need a scientist's input to confirm that.

Q. All right, let's get back to (iii). So we've talked about necessary, and I'm still a little uncertain about what you mean there, other than you say there

should be an entry condition on the discretionary activity rule. That's what you mean by necessary?

A. Well, it's more meaning that if one and two are triggered, then three follows on from that.

5 Q. Right, staying with three, these should include consideration of fish passage. I want to focus on the phrase "include consideration." So consideration doesn't require any action?

A. No.

10 Q. So an applicant just needs to say I've considered all of these things but I'm not going to do them?

A. I think those words potentially could be changed to something like "should assess" so that they have to actually assess the effects, not just say I thought about them, I'm not thinking about them any further, and that's not the intent, that it's just a passing thought, it's that there actually needs to be an assessment.

15 Q. Right, so you assess them and then say: "Well, here's my assessment." Then what?

A. Well, it depends on what the assessment concludes as to whether fish passage is required or needs to be protected, for example, and that's where you need the science input on what's actually going on in that water body.

20 Q. So where does this policy say that?

A. Reading it as it's written, it doesn't, specifically. It's more identifying matters that you do need to assess and consider as part of the application process, and the outcomes from that are informed by the scientists, and then the discretion that is there from the consent authority to make a decision as to what may be then required as flows or limits or consent conditions.

25 Q. There's a lot of assumption required to get to an outcome that's not clearly expressed.

30 A. I accept that. It's somewhat similar to the position we currently have been taking under the RPW as to assess all those matters, and they're not necessarily explicitly laid out any more than we're sort of seeing here.

Q. Which perhaps highlights the current predicament the council's in in terms of its existing water plan.

A. Yes.

5 Q. Right, (iv), the application enables and is part of an integrated management approach, including as a minimum. So when you say "the application enables," what do you have in mind when you've used those words?

10 A. That they're basically part of a group that are looking at an integrated management approach, and by putting those parties together, you're enabling that to occur. If you didn't bring parties together, you could all well and good to have an approach set, but if the parties aren't on board with it and all in there together, you can't enable that approach.

0950

15 Q. So when you think about that, do you require then multiple consent applications or this one joint-consent application, what do you have in mind when you have used these words in this policy?

20 A. It could be either but you'd be looking at whether they were individual applications coming in together as a group that have then considered similar science or management approaches. That are similar across both applications and that is similar to way the likes that the (inaudible 09:50:48 Manuherikia???) has been approached to-date in its applications.

Q. What happens for an individual consent holder say on a tributary, this pathway's not available?

A. I wouldn't think so, no.

25 Q. And in so far as there might be these risks you've highlighted and on a tributary and your recommendation in terms of the discretionary activity doesn't deal with that situation?

A. Not this won't capture everyone or every population of threatened species.

30 Q. How many people within a catchment will be required to fit within this policy in your mind, is it all, consent holders in a catchment is it some of them, is it two of them?

A. I think the preference would be the majority.

Q. And where does it say that in your policy?

A. It doesn't specifically say that in there or the definitions, no.

Q. When you think about taking a coordinated catchment-wide approach, would a simple majority actually achieve the environmental outcomes that might be sought and let's start by examining that in the context of a minimum flow.

5

A. It will be challenging if there is a number of consents with large quantities of water being taken that are not part of that group, then you're not likely to achieve that, no. But it is dependant on how many permits the water body flows, the levels – it's very case specific I think.

10

Q. So isn't it more appropriate to step back and assess at a catchment-wide level what the appropriate flows and minimum flows and allocation blocks are through the new water and land plan, rather than doing it through consent by consent?

A. Yes I accept that but the risk is if you don't do anything on some of these catchments you're going to end up in a far worse state in six years' time, from my understanding of some of the science evidence that we've heard than we would be waiting six years for a rollover and then undertaking that work then.

15

Q. Now you've broken your Roman IV into three sub-paragraphs as well?

20

A. Yes.

Q. And there you refer to *Surface Water* including through flow-sharing membership in a water management group and imposition of flow limits?

A. Yes.

Q. Is there any policy guidance as to what those terms mean in the context of plan change 7?

25

A. Not in PC7, no.

Q. And so a decision-maker seeking to implement this policy would be – may be left in a position of uncertainty about what those terms mean?

A. The way it's drafted now, yes. There may need to be some reference back to those aspects in the current plan.

30

Q. Well when you think about how plan change 7 is drafted, do you understand that it operates as a code or do you understand it acts together with the existing water plan?

A. It's mostly sitting on its own. Apart from the reference, the policies to new water permits.

Q. So that's the only one which would apply and so further changes would need to be made to the text of plan change 7 to bring in other policy considerations?

5

A. Yes they would.

Q. And that would be a significant change?

A. Yes.

Q. And a change not signalled in the Landpro submission?

10

A. Not explicitly, no.

Q. And to move on to sub-paragraph (b), *Consideration of the Impact of Land Use*. So, we've had a discussion about consideration and what that means, so would your evidence in relation to the use of consideration under Roman III equally apply here?

15

A. Yes I think that could easily be – should be changed to *assessment*.

0955

Q. But again let's, well assessment doesn't require action does it?

A. No.

Q. Assessment's in fact no more than consideration?

20

A. No, you could interpret that word both the same way.

Q. So is it your evidence that that is all that is required?

A. I don't think that's necessarily the case, I think it's saying you need to assess the impacts and if your assessment concluded that there was significant impacts, I don't think any decision maker would then be able to grant a consent under section 104 for a discretionary pathway, well they may be able to, they may decide to, but that would be a significant consideration if there was to be significant adverse effects on water quality as a result of this.

25

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30

Q. Is that what you're after, significant adverse effects in water quality?

A. No I haven't used the word "significant".

Q. No.

A. No.

Q. So again what's your outcome?

A. So I was saying that if an assessment concluded that there was adverse effects that needed to be addressed, that could be dealt with through the consent process and through the decision maker's recommendation.

5 CROSS-EXAMINATION CONTINUES: MR MAW

Q. And when you then are assessing against that outcome, now that outcome is not captured in the policy as currently drafted is it?

A. No.

10 Q. So hold that thought, if that's what you're seeking to achieve, what mechanism does Plan Change 7 have in it to properly assess the effects of land use on water quality? How would you do that?

A. Would be purely a scientific assessment rather than referenced back to a specific policy.

15 Q. And what does it do? So in practice, have you been involved in any applications that assess the affect of irrigation on and land use activities on water quality?

A. Not substantial amount recently, no. Not Otago.

Q. So when you have recommended these changes, what technical input have you relied upon given you haven't had the experience?

20 A. That is technical input from other colleagues at Landpro who have -

Q. So -

A. - but it's not referred to in any evidence, I accept that.

25 Q. I want to move onto subparagraph (c) and here you say that the minimum flow limit set in Schedule 2A should be imposed on the replacement consent?

A. Yes.

Q. And you say any minimum flow set out in Schedule 2A, which minimum flow are you referring to?

30 A. Well there is a minimum flow separate to an allocation limit in Schedule 2A for specific water bodies.

Q. Right. So it doesn't say that does it?

A. No you could any to the minimum flow.

Q. And do you understand how those minimum flows in Schedule 2A were set?

A. I am not specifically up to speed on exactly how they were set, no.

5 Q. Have you assessed the appropriateness of those minimum flows for a 15 year period?

A. I haven't taken that step, no.

Q. And so you've just recommended this change because you feel that's the sensible thing to do?

10 A. Well they exist in the plan at present. There was obviously some basis for setting them, so that is better than not having something in place in terms of any minimum flow on some of these catchments.

Q. The effect of bringing through these minimum flows would lock in place a pre MPSFM 2020 flow and allocation regime?

A. For the term of that consent that's granted, yes.

15 Q. So we're talking about this 15 year term that you're now recommended?

A. Yes if it wasn't reviewed to change that minimum flow during that term.

Q. And we've covered the complexities –

A. Yes.

20 Q. – associated with reviews? Onto Roman v. I've read the regional policy statement and I can't see any reference to time frames to meet Te Mana o te Wai objectives relevant to the activity?

25 A. No that is in reference to the upcoming RPS which I understand will include time frames for that. It's more the intention that we know that there are time frames coming and I accept that if a decision was to be made on this tomorrow, that wouldn't work because that's not in that, it's more of – what's in the proposed RPS as opposed to the current RPS.

Q. So your drafting's a long way away from reflecting what you've just said is the intention of this part of the policy?

A. Yes it is, I accept that. That would need work.

30 Q. As a planner, is it appropriate to refer to a draft regional policy statement that's not before the decision-maker and that parties haven't seen?

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A. No, generally, you wouldn't take that approach, no. It is just really trying to come up with something relatively quickly that captured the intent of

the direction that I thought an interim kind of 15-year longer-term pathway should achieve.

Q. How do you assess the efficiency and effectiveness of incorporating a document that's unknown?

5 A. I don't think you can.

Q. Right. We move on now to (xi), the allocation proposed is the lesser of the rate, using the methodology in 10.A.5, or efficient volume as set out in schedule 10.A.5.

10 A. Yes, I accept there's an error with B and that I haven't actually included that schedule in here.

Q. Right, so what schedule are you referring to? Are you still recommending that an assessment occur in relation to efficient volume?

15 A. Yes, I think for a longer term, efficient volume should definitely come into play. I know this is particularly the case where, in this situation, in order to achieve the protection or enhancement required, a lot of water-users will be required to upgrade their systems that might currently be flood, and if you just included a historical rate limit and allocation from what's now schedule 10.A.5 in my documents, but actually, if we refer to it as schedule 10.A.4 for how we've generally been referring to it, that wouldn't necessarily be an appropriate number for a longer-term permit.

20 Q. So where do I look at to consider the appropriateness of your wording for a schedule 10.A.5 for the reasonable use?

25 A. There isn't that volume there, but effectively, that's referring to the Aqualinc guidelines, so that could be changed to an efficient volume as assessed using the Aqualinc guidelines rather than schedule 10.A.5 and B.

Q. And have you assessed the appropriateness of using those guidelines to inform reasonable use.

A. I've used those to inform reasonable use applications, yes.

30 Q. Have you assessed the appropriateness of using those guidelines for this reasonable use assessment? What technical input have you had as to the appropriateness of the use of the Aqualinc guidelines?

A. I have not had specific technical input into this, but I have had discussions with Ms Bright, who had mentioned the appropriateness of Aqualinc and

mentioned that in the primary sector joint witness statement. It was an outcome from that joint witness statement that Aqualinc has a place in plan change 7, and this, I think, would be the place for it as well.

5 Q. My reading of the joint witness statements from the technical witnesses was that the reference to Aqualinc guidelines might be used to inform historical use when water-metering data didn't accurately reflect water-metering data. Have I misread the joint witness statement?

A. No, that was part of that as well.

10 Q. So where do you say that the joint witness statement says Aqualinc can be used to do a reasonable use assessment in the context of a discretionary activity rule?

A. It may not be specifically mentioned in that. I could be getting confused with the conversations I've had with my technical expert, Ms Bright, with regards to the use of Aqualinc for efficiency assessments for all applications.

15 Q. Right, onto the matter number (vii). To exercise the replacement water permit on the terms proposed in the application would require substantial investment in new infrastructure. What is substantial investment?

20 A. I accept substantial is not defined. It is going to be applicant specific, substantial to one farm will be not substantial to another, so I accept that there is not clarity in that at the moment, but the intention behind that is that there will be upgrades, for example, as I mentioned before, from a flood irrigation system to a spray irrigation system, which is a substantial investment, and the level of investment will change depending on what type of spray system, for example, the farmer was to use.

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THE COURT: JUDGE BORTHWICK

Q. So is your evidence that this only applies where changing irrigation systems to improve efficiency, or something else?

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30 A. No, it's not just that. It's that's one level of investment in infrastructure that may be required. Another one may be the way the water is conveyed around the property or the intake point, so an open race system could be upgraded to a pipe system for example, which would increase its

efficiency and may potentially reduce the amount of water that may be required. I think there's a whole lot of different infrastructure upgrades that could occur.

Q. I'll return to you, Mr Maw. I'm interested in what does substantial mean.

5 CROSS-EXAMINATION CONTINUES: MR MAW

Q. So when you think about your discretionary activity rule, there's no restriction on the irrigable area?

A. No, there's not in there.

Q. And so simply increasing the irrigable area by extending out an irrigation system might be substantial investment?

A. Yes, I accept that potentially there should be a limit, much like there would be in terms of what you've historically irrigated, accounting for any existing investment that's already been accounted for.

THE COURT: JUDGE BORTHWICK

15 I'm not quite sure whether that was what Mr Maw was asking. Do you want to put your question again?

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Yeah, I'll try again. So we'll do it in bite-sizes.

A. Mmm.

20 Q. Your discretionary activity has no restriction on the irrigable area?

A. No, it doesn't at present.

Q. And so if the irrigable area is to be increased, and infrastructure is required to facilitate that increase in area?

A. I don't, what I was then saying was that I think now, looking at it, potentially there should be a limit like there is on the other –

Q. No, that's –

A. – like there could be.

Q. – that's – let's not get to what needs to happen. I'm just trying to understand the effect of the drafting that you have put forward to understand whether it means what you think it means or means something else. So looking at this drafting, so we're increasing the

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irrigable area, an applicant could say” “I require, oh, that’s required substantial investment because I’ve had to increase my irrigation infrastructure to increase my area”. That would tick the box under 7?

A. The way that’s drafted, yes, that would but that’s not the intention.

5 Q. Right. So tell me what your intention was in relation to this matter?

A. The intention behind this is that the changes that may be required to achieve the enhancement or protection outcomes talked about earlier, that may require significant, that may result in significant changes in the reliability of supply or the quantity of water with which an applicant might be able to take. Therefore, they may need to make substantial changes on farm or to their intake infrastructure to actually action those changes or to buffer the changes in reliability, such as storage dams, changes to spray.

10 Q. There’d be nothing stopping an applicant saying: “well, I need to increase my efficiency on this part of my farm and the only way to do that is if I increase my productivity by expanding my irrigable area and that’s my substantial investment”.

A. I accept the way this is worded that that could cover that, yes.

15 Q. So your wording is a long, long way away from what your intention is here. It doesn’t really pick up what you’re describing to me as your thinking behind this?

20 A. No, and I accept that this is drafted in a short period of time and having questions like this actually makes you think a bit more about some aspects of it and the way someone else could read it. So I accept that there’s a lot of benefit in that.

25 Q. You need to be very careful when you’re recommending these sorts of provisions as part of a planning framework. It requires really careful thought, doesn’t it?

A. I accept that, yes.

30 Q. And so to wrap up the discussion on substantial investment, you’d accept that as drafted this provision is ambiguous?

A. Yes.

Q. And it doesn’t clearly articulate the outcome that you had in mind when you drafted it?

A. No, it doesn't.

Q. Right. I want to move onto the controlled activity now. You've deleted the restriction on the irrigation area?

A. Yes.

5 Q. And I'm assuming, and correct me if I'm wrong, that's for the same reasons we discussed when we discussed the policy?

A. Yes, they're linked together.

Q. You've recommended a change to roman (iv), so a matter of control (iv).

A. Yes.

10 Q. And this relates to the rate of take?

A. Yes, it's consistent, this is from the planners joint witness statement, attachment 1.

Q. Now, not all planners agree with this change?

A. No, that's correct.

15 Q. And the Council's planner, Mr De Pelsemaeker, doesn't agree with this change?

A. That's correct.

Q. And he's expressed a view that allowing for any data or any water years after effectively the notification date of plan change 7, gives rise to a risk that consent holders could ramp up their takes for a small period of time in order to justify a higher grant on renewal?

20

A. Yes, and I think we discussed this yesterday in similar questions that I think the risk is relatively low that that will happen but it is a risk there it could happen.

25 Q. And so when you think about a plan through the lens of Te Mana o te Wai, who should bear that risk, the environment or the abstractor?

A. I think the abstractor should bear that risk but I don't think there is a significant risk for six years.

Q. Well, if there's not a significant risk, let's not take the risk and leave the date of June 2020 in there. Isn't that the right thing to do, vis-à-vis Te Mana o te Wai?

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A. I mean you could do that and it would mean that effectively I would imagine that most applicants after this point in time would not be able to take a control pathway. Basically –

Q. Well, you just told me there's –

A. – anyone that's up to 2025 would want to use their most recent data to explain what their historical use has been.

5 Q. But you've just said to the Court that there's not a substantial risk of rates of take ramping up but you're now saying all applicants who don't have a permit expiring through to 2025 would want to use their most recent data. That presumably would only be because that data gives them a higher allocation of water under the schedule. So there is a substantial risk.

10 A. Not necessarily. It's potentially, I mean the schedule, as we've talked about, there is a risk that if you – well, there's a, there's some applicants that might only have two or three years of data prior to this point and their use of data beyond 2020 may give them a clearer picture as to what their use has actually been and I don't think there is any real risk of including that versus not. I think it would be preferential based on the expert
15 evidence from Ms Bright to include that data.

Q. Well, Ms Bright's evidence was that there was a risk associated with an increase over that period.

A. And I have said that yes there is a risk as well.

Q. And you've said that the environment should not bear that risk.

20 A. No.

Q. So why is it that you maintain your position that the date range should be extended out?

A. I just, I think there is clear examples that I have where that would mean that people can't take the controlled activity pathway when there hasn't
25 been a ramp up of use for any adverse reason but I accept that if this is a point that we can't get agreement on between parties, potentially that that then call fall into the RDA pathway but I'm making assumptions that all users would take that pathway but there is a potential that there might be users that had justified reasons for reflecting historic use beyond
30 June 2020 that then are unable to use that in the controlled activity pathway.

Q. I'm struggling to understand what your evidence is on this point. You accept that there is a risk that allowing water use or water years beyond June 2020 may result in increases of water take?

A. Yes, there is a small risk, yes.

Q. And you'd say that that's a small risk?

5 A. I couldn't quantify it but I don't think it would be a large risk but without looking, I think as I said yesterday, without looking at the data, and the consent limits for all the permits between now and 2025, I don't think you could quantify it explicitly.

Q. And then you say that when it comes to allocating that risk, the risk should be borne by abstractors and not the environment?

A. I don't think the environment should bear that risk, no.

10 Q. So then the logical conclusion, isn't it, that the controlled activity date is June 2020?

A. It could fall from that but I just, I would need to see the level of risk in more detail to say for certain that that should be the case that has to follow from that.

15 Q. But you've just told me that the environment shouldn't bear the risk.

A. But if there is not really any risk, then why shouldn't an applicant be able to use that data?

1015

20 Q. We'll move on. The same applies to Roman VI. Roman VI relates to the volumes as opposed to the instantaneous rates?

A. Yes.

Q. And presumably the same discussion we've just had on the instantaneous rate would apply in terms of your recommendations for change to Roman VI?

25 A. Yes.

Q. Again when it comes to volumes of water, the environment shouldn't take the risk of increases?

A. No.

30 Q. Right, when we look at the matters of control, I think yesterday we did talk about *Matter A*?

A. Yes we did.

Q. Well we need not traverse that territory again. Well I have no questions for you in relation to the restricted discretionary activity rule. And we've talked briefly about your recommended discretionary activity –

A. Yes.

Q. – and you mentioned that there would need to be drafting changes made to your discretionary activity to properly reflect the entry conditions that you had in mind that are currently included in the policy, have I understood that correctly?

5

A. Yes, I think the way – reading that discretionary rule, it doesn't effectively limit who should be taking that path and I think there does need to be some way of reflecting that not anyone could just take that path in terms of a rule entry.

10 Q. And so the wording that you've put forward is flawed in that regard?

A. Yes.

Q. I want to move on to the non-complying activity. Now we did have some discussion about what your evidence now is in relation to the non-complying activity. Now when I read these provisions last night, as they are drafted in this document, I was left with the impression that there might be a gap in the planning framework that you've recommended in relation to activities or applications which don't meet the conditions of either the controlled activity where the RDA doesn't apply or the RDA or potentially even your discretionary activity consent. So, when we think about these rules operating as a drop-down, I don't understand what the activity status should be for activities that don't meet some of those conditions. So can you help me understand what your thinking is, if particular conditions are not able to be or not complied with, what is the drop-down and I should say the drop down in circumstances where – well, actually no, if you could just help me understand your thinking?

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A. Yeah, so actually I just noticed that it's repeated twice, that non-complying activity rule is this version.

Q. I did wonder about that.

A. So just strike out the first version of it because the second version actually has the numbering convention corrections.

30

Q. Okay.

A. That was a copy and paste error last night.

THE COURT: JUDGE BORTHWICK

So delete, for the record delete the first version of 10A3.3, a non-complying activity rule.

CROSS-EXAMINATION CONTINUES: MR MAW

5 A. And so you're asking Mr Maw then if something didn't comply with the controlled activity condition and it didn't then fit within a RDA condition then effectively unless it could meet the thresholds for entry that I think would be required for discretionary, that would be non-compliant.

Q. What if it was a permit expiring on 1 October 2035?

10 A. So this rule should be changed to, as I think I mentioned earlier, only a six-year term. I don't think there should be the ability for an application to be lodged for greater than the 15-year term allowed for by the discretionary rule as part of this transition.

Q. So what would you recommend we change to achieve that?

15 1020

A. You would need to take out the words: "where the terms sought would result in a permit expiring after 1 October 2041", just strike that out and make a change to (b). I can't give you, can't come up with the exact words but effectively saying unless it's provided for under Rule 10A 3.2.1 for six
20 years.

THE COURT: JUDGE BORTHWICK

Q. Just pause there for a second. Did that make sense? So unless provided for under the controlled activity rule, the term is six years?

A. Yes.

25 Q. But the controlled activity rule, the term is six years.

A. Yeah, so the controlled activity rule is already covered by the rule and that's six years. The RDA is six years. The discretionary is 15 and so this rule would then basically say that that has to be the term.

Q. What has to be the term?

30 A. The six years has to be the term. I can't on the hoof come up with the wording for you.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. So is that conceptually an entry condition into the non-complying rule?

A. No, so I'm just looking at that actually now. No, that needs to be the policy and this rule just really needs to be that unless, that anything that's not provided for under the other three rules is a non-complying and then the policy then needs to be there that says that that should be for six years. I was just confusing myself between the rule and the policy there.

THE COURT: JUDGE BORTHWICK

Q. So amend, so I've just noted it should say: "anything not provided for under" –

A. The other three rules.

Q. Under the other three rules is non-complying but then you would also need to amend the policies to make clear the terms for each of those policies and controlled in RDA being six years and discretionary being 15.

A. Yes, and I think I mentioned that earlier that that is something that's missing at the moment in terms of those policies. It didn't get pulled through a policy still relating to the duration with the change to the discretionary rule, or the discretionary policy.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Do you accept that you'd need to be very careful with the wording of how the non-complying activity rule is drafted to ensure that there wasn't a gap in the framework?

A. Yes, I accept that. I don't think it would be any really different from what was drafted in the 14th of March version where it previously said it does not meet any one or more of the conditions of those two rules listed there and you would simply be adding a third rule in there with the note that you'd have to amend the discretionary activity rule as we've just discussed.

Q. And the reason we need to be careful about this is because an activity that might otherwise fall through a gap would be an innominate activity and processed as a discretionary activity?

A. Yes.

Q. I'll turn over to the definitions now. Now, we've explored the definition of degraded or degrading so we don't need to traverse the challenges there.

A. Yes.

Q. Now, I see that there's a definition of community water supply?

5 A. Yes.

Q. And my understanding is that that's come about through the conferencing in relation to how community supplies are to be treated?

A. Yes, that's correct.

Q. Did you participate in that conferencing?

10 A. I wasn't part of the community supply conferencing but the planners conferencing where we came up with the definition of that, yes, I was part of that.

Q. I have some questions about the definition and I wonder whether I might be better placed to put those questions to the planning witness for the territorial authorities.

15

A. Probably best place. He did start the drafting and we spent a bit of time on it and it is tricky but we also acknowledge that this was for the short-term, that was for PC7's definition only. It's not a wider definition that would necessarily be carried through into the land or water plan.

20 Q. I'll pick that up with Mr Twose later today. Now, the final set of changes are changes recommended to be made to the schedule. My understanding is you've just pulled through the changes recommended from the planning conferencing?

25 A. Yes, and you'll note that I, instead of keeping the other changes in my previous version, attached to my supplementary evidence, which was slightly different from those that came out of conferencing. I then just put the yellow highlight saying that there would be further changes required to those schedules for the record there.

Q. I understand. Thank you. No further questions.

30 **THE COURT: JUDGE BORTHWICK**

Thank you. We can take the morning adjournment. I think because we're going to be hearing from you, Ms Baker-Galloway, next.

COURT ADJOURNS: 10.27 AM

COURT RESUMES: 10.45 AM**CROSS-EXAMINATION: MS BAKER-GALLOWAY**

Q. Good morning.

A. Morning.

5 Q. So I just want to start, first, by looking at your objectives, and the new objective in particular, 10.A.1.2.

A. Yes.

10 Q. In sort of a more high-level point of view, what I'm taking from that objective is that you see a place in this plan change for an environmental objective to be expressed, not just a process-related object?

A. Yes, as it relates to that slightly longer term pathway for some catchments.

15 Q. The reference in your objective, in the second-last line, you do refer to halting of reversing degradation of an FMU. Do you agree that that part of the objective would apply to any decision made under the PC7 framework, so even the controlled activity pathway should have the objective of halting or reversing degradation?

20 A. My interpretation of the pathway for the control is to put a line in the sand now, effectively and just roll over for six years, but I think from the evidence we've heard that that may not halt degradation, because there is a risk for some of those threatened species that just stopping now may result in further degradation in that six years.

Q. Yeah, okay. Have you had a chance to read Mr Farrell's supplementary evidence for Fish & Game?

25 A. I realise that that's the – I don't think I have read his supplementary. I've read his full one, but –

Q. Okay, if I could get madam registrar to find that for you. So it's dated 24 March.

THE COURT: COMMISSIONER BUNTING

30 Can you check the date?

CROSS-EXAMINATION CONTINUES: MS BAKER-GALLOWAY

Q. Oh, yes, it's got 23 March on the cover, yeah, that's right. Have we got success?

A. Not, yet, no.

5 Q. Oh, sorry. Apologies, ma'am, I should have prearranged this.

A. Cool, yes, I have a copy now.

Q. Thank you, so in the appendix, you'll find Mr Farrell's redrafted objective 10.A.1.1.

WITNESS REFERRED TO OBJECTIVE 10.A.1.1

10 A. Yes.

Q. I'll just let you read that.

A. Yes.

Q. So as you'll see, rather than, if you like, picking and choosing particular values that Mr Maw took you through, and – excluding other values if you like, you'll see that Mr Farrell's objective tries to stay at the level of the MPS objective 2.1A, the top priority for Te Mana o te Wai? So, if and it focuses on protecting the health and well-being of water bodies from further adverse effects from water abstraction activities, so it's a holding of the line objective. Do you agree with that interpretation?

20 1050

A. Yes, though the only point I note on that is that we may yet see in the next year or so some further change for some applicants particularly where there has been perversion to spray. I know of one applicant in particular, in just the last season so from the time that was decided there still may be further decline on the odd one. I accept that probably that's not all of them.

25 Q. But if you were to draft a more generic environmental objective, this expresses it at that general level doesn't it?

A. Yes it is at t--

30 Q. The aim of this plan change is to stop further degradation at the very least, isn't it?

A. Yes.

Q. Yes. Now with Mr Maw you agreed that when assessing effects of new consents one of the points of comparison is the water body in the absence of consented abstractions and –

A. Yes.

5 Q. – consent of activities? And do you agree that that assessment is relevant, not just for a section 104 assessment for a consent? It would also be relevant when assessing how to give effect to the national policy statement?

A. Yes.

10 Q. And in particular you'd agree that to assess the first priority of Te Mana o te Wai, how to protect the health and well-being of water bodies and freshwater ecosystems, we need to have that understanding of what that water body would have supported or could support if it was restored to an abstraction-free state?

15 A. Yes I think there is some discussion around that baseline still needing to account for, if we were looking at an individual consent, the other consents such as for example the impact, like the Clyde dam has on the you know, it's the consented take, if we're looking just at takes say in the Manuherikia, there is an impact of that authorised consent on the actual
20 baseline environment.

Q. Of the structures of the Clyde dam?

A. Yes.

Q. But they also have a finite term?

A. They do, yes.

25 Q. Yes. Now you referred to the set of consents that you have applied for recently, that you helped people apply for recently were any of those considered under the non-complying pathway?

A. Every single one has been.

Q. Every single one has been.

30 A. Even for six years.

WITNESS REFERRED TO NEW POLICY, 10A.2.4

Q. Right, so still in Mr Farrell's evidence if you go down to *New Policy*, 10A.2.4?

A. Yes.

Q. I'll let you read that and the table that follows it.

A. Yes.

Q. So just to give you the context, in, originally the table was proposed in reliance on Dr Hays' evidence –

5 A. Yes.

Q. – aimed to set a presumptive set of thresholds in relation to naturalised MALF that would help interpret the words no more than minor, that were originally in the policy –

A. Mm.

10 Q. – so you're familiar with that?

A. Yes.

Q. And then with the suggested re-drafting from Mr de Pelsemaeker and the removal of that word which Fish and Game and Mr Farrell support, the suggestion is now that you could use those presumptive thresholds for when the, "no more than minor" test is used either for notification or the alternative limb for non-complying activity. So in your experience, having an objective signpost to when – it's presumed that effects are no more than minor unless comprehensive assessments otherwise establish it. Is that of any assistance in your role, based on your experience with applicants?

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A. No. And particularly – well for those ones that may be seeking a longer term, then yes but for those that are still seeking a six-year term then no because it – at this point in time the key – one of the key drivers for why they (inaudible 10:55:06) considered non-complying under the notify plan relates to the schedule and the assessments under that schedule and I don't think that an assessment such as this could be undertaken without significant science and hydrological work as is been pointed out in that objective and that requires a lot of time and money invested for what is ultimately a six-year term still being sought which is intended to still be reflecting the intent of PC7, of rolling over, putting a line in the sand but there was – purely been issues with the notified version that meant that they were non-complying. And I think for the six-year terms that we have recently applied for, under the version of the controlled activity that is now being put forward, the majority of those would be controlled.

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Q. Right so let's assume then that the majority of those that by accident, previously fell into the non-complying category that they now have the controlled route for an application that was substantively non-complying, do you see assistance in certainty and not having to have a debate with the Regional Council about whether or not an application should be notified for starters?

5

A. Yes although I come back to it only probably being beneficial for those that are seeking that longer term under that non-complying, not the shorter term. And in a sense, this sort of assess– this would form part of any scientist assessment of what a recommended minimum flow would be but not being a scientist, I couldn't tell you the exact details around this and whether that's appropriate or not.

10

Q. No, that's okay. I don't want you to comment on that.

15

A. Yes.

CROSS-EXAMINATION: MS IRVING

Q. I just have a couple of brief questions your Honour. Ms Perkins do you have a copy of the schedule 10A4 – Technical Conference Statement available to you?

20

A. I've got the planners one but I don't have the primary sector one, is that what you're meaning?

WITNESS REFERRED TO PRIMARY SECTOR – JOINT WITNESS STATEMENT

Q. Primary sector one. I'm just wanting to clarify I suppose the source of the changes that Mr Maw discussed with you regarding the period of time or dates for the monitoring data that would be assessed to calculate the take rates and volumes.

25

A. Yes.

Q. Now can you please have a look at paragraph 19 of the primary sector, joint witness statement.

30

A. Yes.

Q. Can you read that please?

A. “All witnesses consider every full year, 1st of July to 30th of June the following of available verified water meter data should be used.”

Q. And if we look at the updated set of provisions that were attached to the planning conference statement –

5 A. Yes?

Q. – particular the control activity rule 10A3 1.1, Romans IV and VI.

A. Yes.

Q. Is it your understanding that the changes in those two provisions reflect the agreement reached in the technical joint witness statement?

10 A. Yes that was the intention behind those changes.

Q. And if we go to the planners’ statement –

A. Yes.

Q. I’m just trying to find the...

15 **MR MAW:**

(Inaudible 11:00:00) accurate.

1100

20 **MS IRVING:**

Well, no if you let me finish Philip, I think I’ll round out the questioning, just as a point of clarification.

MR MAW:

25 Well you’ve put a question to the witness which indicated that all witnesses had agreed with that, whereas that’s not what the joint witness statement says.

MS IRVING:

The technical one?

30

MR MAW:

Yes.

MS IRVING:

I think paragraph 19 says that.

MR MAW:

5 Well look at paragraph 22.

THE COURT: JUDGE BORTHWICK

I'll just read it.

THE COURT: COMMISSIONER EDMONDS TO MS IRVING

Q. Sorry, which one am I looking at, which ...?

10 A. The technical conference, paragraph 22.

Q. Sure, but there were three technical conferences?

A. Oh sorry, the primary sector one, yes.

Q. Well in that case there were four technical conferences because the planners also have a conferencing –

15 A. Well yes.

Q. As a planner, I think planners are technical too –

A. Well yes.

Q. - but in a different kind of way perhaps.

A. Yes so paragraph 22, would you like me to read that for the Court's
20 record?

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. No I just want to read it to myself and I'll read all four paragraphs, 19 to
25 22. Yes, so I think what Mr Maw's objection is, is that, I think it's Mr Wilson is saying, all witnesses are considering every full year but Mr Wilson's got doubt as to whether or not including the records, post June 2020 could influence behaviour of water users.

A. Yes.

Q. So it's more nuanced than just simply saying, all users?

A. Yes, yes and my next question was going to be that that is effectively
30 what's picked up in the planners' conference where there's set out in paragraphs 13 to 19, the differences on that particular issue.

Q. You can ask the question.

CROSS-EXAMINATION CONTINUES: MS IRVING

Q. So is it your - I suppose we go to paragraphs 13 through 19 of the planners' conference -

5 A. Yes.

Q. - there were differences that are recorded there about whether or not that agreement at paragraph 19 should be pulled across from a planning perspective?

A. Yes there was different views on that.

10 Q. Thank you. I have no further questions.

THE COURT: JUDGE BORTHWICK TO MS PERKINS

Q. Before we get to the Court's questions, (inaudible 11:03:38) chance to ask yourself whether there's any need to - just picking up on any questions asked by any of the three lawyers, by the three lawyers, whether there's any matter that you feel ought to be clarified because, yes, any matter that you think ought to be clarified or where perhaps you weren't given a full opportunity to give a full response and so this is your chance now and then the Court will ask you some questions.

A. I think I'm okay with where I got to with those.

20 Q. Okay, that's good. Right, I'm going to hand you over to Commissioner Edmonds.

A. Sure.

QUESTIONS FROM THE COURT: COMMISSIONER EDMONDS

Q. Morning. So I've just got a couple of matters I want to explore, that's all?

25 A. Sure.

Q. And so I'd like you to turn to the controlled activity rule?

A. In the version that was sent through last night?

Q. Yes -

A. Yes.

30 Q. - in the version that you sent through and I'm looking at Roman iv -

A. Yes.

- Q. – and really Roman vi which say the same thing, but one's in relation to volume and the other's in relation to the rate of take, but there's a similar principle applying, so my understanding is that in terms of the metering regulations, they came in in 2010?
- 5 A. I can't recall the exact date but yes it sounds about right.
- Q. Yes I think that's stated in one of these -
- A. It is stated in –
- Q. – entry conditions somewhere isn't it? Yes.
- A. Oh yes it is, yes in the (inaudible 11:05:28) RDA one, yes.
- 10 Q. It's actually in Roman vii so it talks about –
- A. Yes it is.
- Q. - the regulations there. So if you think then that you may be able to go back to the 2010 situation, and then you think about what this looked like, this iv and vi, the little Roman ones?
- 15 A. Mhm.
- Q. There was previously a period, 1 July 2015 through to 30 June 2020?
- A. Yes.
- Q. And that's been struck out and it just says, for which water litre data is available.
- 20 A. Yes.
- Q. So my question to you is, if so you had 2015 that was a very particular date, we've had quite a lot of evidence about the amount of more efficient irrigation that's been going on, some of that presumably would date 2015, would it?
- 25 A. I would be guessing but I think that's probably true, yes.
- Q. True. So quite a lot of that flood irrigation and the borderdyking irrigation, still some around, we've heard that –
- A. Yes.
- Q. – but quite a lot of it has gone now and you had more efficient, the K-Lines
- 30 and then the Pivot irrigation systems –
- A. Yes.
- Q. – now and other efficient methods of doing things -
- A. Yes.

Q. - including storage. So I guess my question to you is, why wouldn't you stick with the 2015 date? Why do you need to open it up to earlier periods?

5 A. Sure I think, this was addressed by Ms Bright as well but from my understanding from discussions with her and from her evidence is that the water meter data that's available prior to 2015 is still valuable data as well. It won't always be the case that it was just relating to flood irrigation at that time, so I think it still needs to be considered because part of my understanding from the hydrologist concerns is that the 2015 to 2020 limit
10 may not capture all climatological years that might apply in terms of dry or wet seasons, so that might be adversely unfairly impacting on an applicant who might have completely valid data from 2014 that might better reflect say a year in which they irrigated more but it was not necessarily because of flood irrigation that it's higher volumes. I don't
15 think you could say clearly one way or the other but it's only because if the data from those years before 2015 was higher in volume or rate, than the data from 2015 to 2020, I don't think you could categorically say that that was just because it was flood irrigation happening. That may be the case, for some applicants potentially, but it may not be the case for
20 everyone. Does that answer your question?

Q. Well it does in one way but it doesn't in another, because if you've got a completely different pattern of use that's been going on post making all those improvements in the efficiency of your irrigation, why would you be going right back to get the highest figure, the maximum figure that you can work to right back to the period that predates all those improvements?
25

A. Well I think the risk is that even though you've made those changes with irrigation, the 2015 to 2020 years may still not have accurately reflected the most that you may need under that system or may have historically taken even if you'd put the spray in a different season, I just don't think
30 you can clearly work out what the climate – you'd have to go back and look at individual climate data in each year and compare it to what you've used to work out if even under spray you might have taken more historically, prior to 2015.

Q. So is there anything in the matter that control is reserved to that's going to allow the decision-maker to look into the kinds of issues that you're just talking about now?

5 A. Not explicitly, no. There is still a matter within the limits of historical use, so there is still some interrogation of the data required and provided for within that matter, so it is still a matter of control with regards to the actual volume and rate that gets placed on the consent.

THE COURT: JUDGE BORTHWICK

10 Q. Say that again? So the proposition is your period of data includes a time at which inefficient or less efficient irrigation systems were being employed on farm, and consequently, higher volumes and rates of take. So that's the data that you have captured.

A. Mhm.

15 Q. How does that then get filtered out, if I could put it that way, because it no longer represents the current irrigation system?

A. It doesn't explicitly get filtered out.

Q. Should it be?

A. No, I don't think it should necessarily be.

Q. Why not?

20 A. Because the evidence that I've heard from the hydrologists are that that period of time, of 2015 to 2020, still might not accurately reflect the historical use that is required and has been used.

25 Q. I'm not bothered by any particular therefore or years. Our interest is in the shift in efficiencies is irrigation systems. How is that captured or thought about in the controlled activity?

A. It's not.

Q. Should it be?

30 A. Then you have to look at efficiency of use calculations, that then, you couldn't apply it to every situation, because there will be some that are still flood irrigating, and it wouldn't be fair to impose an efficiency of use upgrade requirement for a six-year controlled activity pathway.

Q. Yes, I understand that, but just say they were flood irrigating, to use the totally out there example of an inefficient system, and have now moved

to a lateral, more efficient. What do you do? Do you allow them to say, well, my historical use is based on flood irrigation?

A. I absolutely see the point. I don't know how many this would apply to. I'd have to talk to the hydrologist about which situations have shown that data prior to 2015 is a lot higher than post that time, so I think it is a situational examination required as to whether that actually is a real risk in this situation.

Q. I do not know. I mean, most of your evidence, or a lot of the evidence that we have received is that there has been substantial investment to improve the efficiencies of irrigation systems, so on your own evidence, that would apply to most people that you've got knowledge of.

A. Yes, there has been investment by, I think, most clients that I have knowledge of to some extent, whether it's their full property or some of their property, there has been investment to improve things, yes, in light of knowing that their renewal process was coming up.

Q. With that in mind, how do you capture their historic use is really what we're interested in.

A. Yeah.

THE COURT: COMMISSIONER EDMONDS

Q. Yes, well, perhaps answer that question, then I'll have another question.

A. Sure. The only way you can include it would be if there was an additional requirement to outline details of your system and –

THE COURT: JUDGE BORTHWICK

Q. Your current irrigation system?

A. Yeah, current irrigation system.

Q. And any change? Okay.

A. And any changes they've made, but then you'd also have to reflect on, well, that maybe only happened in 2017, and so it would have to more fall, I think, under the RDA pathway rather than the – but then, at the same time, that maximum through the schedule is for this control, so there would have to be another matter of control to address that if that needed to be addressed, and I don't know how much of a concern that is to know

whether I think it should be included, and the effort goes into adding an additional matter, but I think, in the essence of keeping this as simple as possible for a six-year rollover, knowing that at the end of six years, the full efficiency and what water is needed scenario will be addressed through the new land and water plan permits, so I think I still come back to the intent of the plan change to be as simple as possible, and the moment you start adding in, then, you need to look at when systems changed, what changed, what years, have they been wet years, have they been dry years, adds another layer of complexity.

10 THE COURT: COMMISSIONER EDMONDS

Q. So a follow up question is you have struck out three, which was the total land area under irrigation and the maximum area irrigated period, the 1st of September 2017 to 18 March 2020. Now, that, perhaps was a bit more of a safeguard that, in fact, any efficiency measures that had been undertaken might, in some way, be locked in because it's an entry condition.

A. Yes.

Q. Or would be locked in.

A. Yes, I accept that.

20 Q. So if you were to put that back in, would that deal with some of the matters that we've just been talking about in terms of –

A. Yes, yes, it probably would, because you couldn't, even with a spray system, if that's in place, you couldn't – no farmer's going to go and flood their property with their spray system. The irrigation is designed to be purposeful for the pasture or crop that you're growing. You're not going to put far more water on than is needed, particularly if you're earlier in a season, you don't want to use your annual volume up too early and then have nothing left if autumn becomes dry, much like it has been, so that would provide another backstop to not using that historic that may be a flood irrigation volume over any more area.

30 Q. Okay, thank you. So I guess that's the controlled activity rule, but if we could just go back to the policy A.2.1, and you've got D, and so now we've

got this word “historical” that’s come in here. So that’s not defined in any way, is it?

A. No, there is no specific definition of it, no. It came through the planner’s joint witness statement. It’s not meaning anything different than actual, it’s just a reflection of the fact that in the RDA pathway, it may not be solely water meter records that you have the actual point in time, day, timestamp of that water taken on that day, and if there are other methods used, one that comes to mind that we discussed quite a bit at that conferencing was the use of something like synthetic records for hydroelectricity generation, so that effectively does go back and show what water was going past the intakes on those dates, but it’s not an actual record for a water meter, so the use of historical instead of actual reflected that, that it is reflecting the historical use, but it’s not through an actual water meter record that you could hold up.

15 Q. So that term, “historical use,” that’s come over, for example, in the matters of control, hasn’t it?

A. Yes.

Q. So do you think there might be a lack of clarity with that term, could that –

A. No.

20 Q. – potentially arise, result in arguments subsequently? Do you think that it’s clear?

A. I think all the planners were fairly clear on the use of historical and what it meant, in the sense that it was reflecting what has actually been taken, you know, whatever method is used to demonstrate that. It wasn’t purporting to suggest that it would be future or demand-based assessments of what you might need. It was – I don’t think historical would cover that.

Q. So you don’t think there’s a need to define it?

A. No, I don’t.

30 Q. So I just want to make sure that I’m clear about the restricted discretionary activity. So we’ve had this discussion about the controlled activity conditions, 1B and B1, but I’m just having a look at the RD, the A one that you’ve got here.

A. Yes.

Q. So you haven't suggested that (inaudible 11:20:00) 3, which was the one about the area under irrigation over a certain time period, you haven't suggested that that be struck out of the RD, that's still there in A, is it pre-entry – is the entry condition...

5 1120

A. That is and it's probably just an issue last night as I pulled over the RD rule from the planners' joint witness statement which we didn't address the likes of whether three should stay in or out as part of that conferencing because that wasn't related to the schedule.

10 Q. But in the light of the discussion that we had on the controlled activity, wouldn't it be logical if you were following that that line of direction –

A. That it would, yes.

Q. – that the three should stay?

A. Yes in the line if irrigation areas, yes.

15 Q. As an entry condition. Yes. So what kinds of activities would you envisage coming in terms of this RD rule?

A. The intention behind that was really the – originally as it was drafted it was only capturing those that had an issue with their data, like a technical issue or missing data and a lot of our discussion was around the fact that that may not capture everyone. So, it may not capture someone who's got a very good data record for three years. There's no missing data, there's no technical issues with that data but it only captures the three years and that's not reflective of historic use. They might have manual records and other information reflecting what they took prior to that point in time and so this would allow for those people or those that might only have one year of record to actually include additional data with their application to demonstrate what their historical use was – has been, so that actually is representative of the historical use and not just one or two years of water matter.

25
30 Q. So what's been the limitation on any activity coming under the RD category?

A. Well I think the incentive is still there to follow a controlled path with a guaranteed grant. The RD path doesn't have that same certainty for an applicant and if they're just going, oh I can just try and use something else

for an extra one or two litres a second, that's not enough incentive I don't think in the RD path, when you're still having to provide a lot more information at more cost and you're still got a six-year term. The incentive is still there for the controlled activity pathway where their data is representative that you have.

5

Q. Is this pathway though, this would be attractive to someone who thinks they can make a case for a greater historical use that would be available to them?

A. That potentially – that is available to them but there is still the discretion for the council to look at that data and assess it and they don't have to grant a consent on that basis. There is still the discretion for the council officers to disagree with what has been put forward by an applicant.

10

Q. But when you look at the matters that the discretion is restricted to, they are quite narrow, they're just about that really aren't they?

15

A. They are. And that's the only exception.

Q. Water metered data and other relevant methods and data and I think there has been other evidence and questions about what that might mean –

A. Yes.

20

Q. – I think you – were you asked about that, I'm sorry I can't recall.

A. I think it might have been Ms Bright that was asked about that.

Q. Ms Bright, that's right. So, I think that was quite thoroughly explored so the council officers are going to have a fairly, well I don't know, what sort of discretion do you think they're going to have in terms of A?

25

A. I think it will still come down to their audit of the data and other relevant methods or data that's put forward. At the current point in time where there still is robust debate between applicants and consultants and the council with regards to analysis of automated data and there always has been, even before PC7 was introduced so I think that will still come down to the same method and if there is a significant disagreement it may be that things progress to a hearing between the council and the applicant if agreement can't be reached on that and an applicant doesn't agree with proposed draft conditions that may come from council. So they still have

30

full discretion over an audit and review of that data. Much like any consent application, there's a full audit of the information provided.

1125

Q. Sure, but they won't be able to get into efficiency, presumably.

5 A. No, this isn't intended to cover what is an efficient use.

Q. And so what sort of time period could this data go back to? Just going back to those discussions we were having about an efficient borderdyking and flood irrigation. What would be your understanding on that?

10 A. There is no limit where it would go back to, but it would come down to an applicant having to have a reasonable record of their historic use in some form that they can talk to what has been historically taken. I think from discussions at the planner's conferencing, the likes of hydroelectricity that has the tools and systems to generate synthetic flow records, for example, they might be able to go back further than an applicant who has
15 been irrigating could in terms of having a reasonable record of historic use.

Q. So the AA, the community water supplies, so that one –

A. Mhm.

20 Q. – that talks about existing water permit volume and rate limits, so what do you understand by that term “existing water permit volume and rate limits”?

25 A. So the intention here was that A still applies to community water supplies, so it still has to be historic use, but we recognise that the schedule only looks at historic use, and in order to provide for some population growth requirements, but that an additional volume, potentially on top of what has historically been taken, could be provided for here, but that it still had to be no more than the existing water permit limits. So, for example, say your consent limit is 50 litres a second, historically, you've taken 40, but
30 as a community supply, you know your projected growth might mean you need to take 44, so you're still within your consent limits, but there is ability to allow for some growth, but potentially Mr Twose's, or in the TAs, are more suited to answer that, but from a planning perspective, that's where we came to with the drafting of that.

Q. Yes, I was asking from that perspective, but I'll leave exploring that a little further (inaudible 11:27:48) we'll see him soon. Thank you.

QUESTIONS FROM THE COURT: JUDGE BORTHWICK

5 Q. I have not got many questions. As you indicated yesterday, you have got no experience with rights priority and deemed permits, that is okay. Just turning to your proposed policy, 10.A.2.3, and matter noted at (vi), and here, we have got an allocation that is the lesser of the rate and volume assessed using the methodology in the schedule, or alternatively, inefficient use of water, and you said that could be amended to say "using 10 the Aqualinc guidelines, inefficient volume of water." I thought that the Aqualinc guidelines could also be used to determine what is a reasonable volume of demand, excluding or setting to one side whether the system is efficient or not. So, for example, if I was (inaudible 11:28:55) and I had poor records, if I was using (inaudible 11:28:58) poor records, I could go 15 to that Aqualinc guideline and that would tell me what would be a reasonable demand for my farm, and you're agreeing with that?

A. Yes, I'm agreeing with that.

20 Q. Okay, and so the issue here, is it one of efficiency or is it one of – I thought the issue here is what to do if you have not got good records for your data. The issue with Aqualinc is not efficiency of use, but it is actually demand, is it not? Or is that what you are meant to be covering off in the RDA?

25 A. So where it is talked about here, for this discretionary pathway, Aqualinc gives you an estimate of demand, but it is on the assumption that it is an efficient irrigation system.

Q. So it cannot produce demand –

A. For flood irrigation.

Q. – for flood irrigation?

A. No, it could not.

30 Q. Or for borderdyking?

A. No.

Q. What about K-line?

A. It's for a spray system.

Q. It is for a spray system only? Wow.

A. For a spray system only for Aqualinc, or, potentially, it was like a dripper process for trees.

Q. Yes.

5 1130

A. I'm not entirely sure on that but I know it's on the demand on the assumption that the system is efficient and there is a specific percentage efficiency included in those guidelines. I can't recall what that is.

Q. Okay, so many irrigation systems in fact would be excluded?

10 A. Yes, but the inefficient ones that we would typically refer to as inefficient, anything that's got that sort of surface application via flood or contour or borderdyke –

Q. Yes?

A. – they would not be accounted for within a Aqualinc demand.

15 Q. Okay, oh that's good to know. Now the second question I had relating to your same draft policy and in particular Roman numeral vii and Mr Maw's already asked you about what is required for a substantial investment –

A. Yes.

20 Q. – and you said, "Case by case", and I think he reflected back but there were these, the individual's tolerance for investment or for accruing of debt might vary and I think you acknowledge that that –

A. Yes.

25 Q. – would also be true? My question is more to do with the phrase, "require substantial investment and I understand from that phrase, "require", that this is investment in the future, so it's not already investment which has been made?

A. Yes.

Q. And your proposing that this – or are you proposing that this future investment be for securing items 1 and 2 of the same policy?

30 A. Yes.

Q. So it's not –

A. It's not sitting on its own –

Q. Yes.

A. – in the sense of someone just wanting to have investment that means they could come under this policy, it's all tied back to 1 and 2.

5 Q. – to securing those two. And so with that in mind, I read over your additional statement which you made yesterday, on behalf of several farmers, I couldn't see how they would themselves avail themselves of this discretionary policy because each of those farmers by and large have made substantial investment or I think in the case of a hydro wasn't proposing substantial investment, was proposing just a roll over of the consent, is that correct?

10 A. That is correct, yes.

Q. And so for all those farmers that you note in your opening representation on behalf of Landpro and others, they're all going to be six year consents?

15 A. The majority of those probably wouldn't fall within that discretionary pathway. I think Mr Naylor is only one that might do but potentially actually on the reading of that, possibly not.

Q. Okay.

A. More that it falls within the wider catchment and there's other pe- yes, it is...

Q. It's not your clients? Yes.

20 A. No, Mr Naylor is my client -

Q. No, no, no –

A. – but –

Q. – none of these people take advantage of what you propose here?

A. No they haven't, not directly.

25 Q. No, okay. All right. So who does?

1133

30 A. There is a, I would imagine that the majority of the applicants that can take advantage of this would be those that have had deemed permits because there's a big number all together in specific catchments. It would be those falling within the Manuherekia, the Cardrona and the Arrow primarily and probably some of the Taieri bit. I don't know the Taieri well enough to be able to –

Q. But you do know Manuherekia and you do know Cardrona and you do know Arrow and, correct?

A. Not the Arrow so much but Cardrona and Manuherekia.

Q. Okay, you know them sufficiently to know that they could bring themselves under your drafted policy?

5 A. Not to the level of detail that every single one in that group would and I guess that's part of the drafting is that if changes are required to 80% that fall within that sub-catchment of the applicants and maybe 20% are part of the whole group, but they have already made infrastructure upgrades, on reading that now, there is concern about whether they could then still be part of that. Yes, I accept that now, thinking about that. There is some
10 difficulty with that.

Q. There is some difficulty and that's with Manuherekia and Cardrona or just one or other or you can't say?

A. Probably both but I –

Q. Probably both.

15 A. Probably both.

Q. Because you have, within those groups, you have a population, if you like, who have already made that substantial investment.

A. Yes.

Q. So therefore, policy wouldn't apply to them?

20 A. 7 wouldn't but the rest probably still would.

Q. Yeah, you see I don't understand that because I look at the words "and"
–

A. Yes.

Q. – it's a conjunctive.

25 A. Yeah.

Q. You actually have to qualify?

A. Yes, and that isn't –

Q. Yeah, it's future investment. They've already made it. They're out.

A. Yes.

30 Q. And so for them just the six-year consent?

A. But then you wouldn't, the difficulty is that you wouldn't achieve the benefits that could be achieved through some of these sub-catchments with all of those parties being on board because they, yeah, there is difficulty where they couldn't necessarily all be on board with that,

although they have made the investment. Whether that's sufficient, depending on what the outcome is of this, and whether they have to make more, I couldn't say.

5 Q. And so was this policy drafted with those two catchments in mind, Cardrona and Manuherekia?

A. Yeah, those were two of the priority catchments that were in mind that, that – experiencing those concerns with regards to threatened species and degradation.

10 Q. And I think it may have been in relation to hydro. Unfortunately I can't locate my pad, my, you know, notepad but in relation to hydro, and in response to a question from Mr Maw, the greater risk, I thought it was hydro but it might not have been, the greater risk for companies seeking replacement consents where they are involved in hydro, was not PC7, but was a future plan to come, the future Land and Water Plan. Do you recall saying something to that effect?

15

A. I can't recall it.

Q. But is that correct? The greater level of uncertainty and therefore risk going forward is not this plan but it's actually a future plan?

20 A. Yes, potentially and I think the other part of the risk that comes with some of those hydro is if they are linked to large dams that then are requiring a lot of investment on that six-year term. So I think sometimes it comes with those two aspects combined rather than just sitting on their own.

Q. And if that was true for hydro, is it also true for primary sector?

A. Yes.

25 Q. And is that risk to do with what the future Regional Plan, Land and Water Plan, might say about overallocation?

A. Yes.

Q. Yes. And so in seeking a 15-year consent, which is what you now propose, is that to in some way future-proof the taking use of water?

30 A. No, I don't think it is in any way. I think the Land and Water Plan will still come in and will still set its limits and consents will either be a short-term now and apply within six years under that or within 15 years, either get to the end of that 15 and apply under that new plan or be reviewed in respect of allocation of flow limits, for example in that timeframe, so, no, I don't

think it's a future-proofing that. It's more providing for the duration needed to be able to secure investment to make those changes and upgrades that are required to protect those critical ecosystems with threatened species and degradation occurring and I think that's where the term comes in, is that six years doesn't allow for that level of investment to undertake those changes to the systems and to reflect those minimum flows that may be required there.

5

Q. I thought you'd agreed with Mr Maw that it was unlikely that the Regional Council would review every permit.

10

A. Yeah, I don't, I don't think that they will review every permit and it may just depend on which catchments and which concerns.

Q. And is that because of the sheer volume of permits to be reviewed and the depth and capacity of the consents officers that would be required to be engaged, or external consultancies required to be engaged, to undertake that task throughout Otago?

15

A. Probably both and I think it's important to point out here as well that it wouldn't be only consents granted under PC7 but a part of that review process I think is the Council has pointed out there is a large number of consents across Otago for water that don't expire in this timeframe and they also would form part of the need to whether or not they need to be reviewed and I think Ms Dicey mentioned the Taieri, which has a large number, large percentage of its allocation, 20, 35-year consents, so that obviously is not part of the PC7 process but are also consents that may then need to be reviewed.

20

25

Q. And I understand, with that in mind, your answer is unlikely that the Regional Council would engage in a review exercise across the region.

A. I don't think there would be one across the region. There may be catchment-specific ones where it's more critical but I couldn't say what, without knowing what the Land and Water Plan outcome is and which catchments there would need to be substantial change in, and the level of time required, I couldn't say on behalf of the Council what that would be.

30

Q. And so what do you think would inform what catchments there may be the need for substantial change?

A. I think it would depend on what the limits are that come through the new Land and Water Plan compared to what is on existing permits and what is occurring in the environment at the time as to, just putting a number out there, say the minimum flow that comes through the Land and Water Plan is 500 litres a second, but all the current consents are bringing everything down to a 100, that might signal a significant need to make some change straightaway but, yeah.

5

1140

Q. And moving in the opposite direction of that review would be considerations of viability, wouldn't it, as a matter that the Council would have to consider on a review?

10

A. Yes.

Q. That viability is linked, is it not, to efficiency of use?

A. Yes, but I don't think it limits the ability to remove some allocation or limit on that consent in terms of their rate of take or volume of take.

15

Q. So my proposition to you is if I am a farmer with substantial new investment in irrigation systems which are efficient, how could that be reviewed backwards and not impact the viability of the farming system, both in relation to land and the efficient application of water to land? Presumably the two are geared or correlated considerations is the first question?

20

A. Yes, they are correlated.

Q. They are correlated, and so if I am efficiently using or applying water to the requisite area of land, how could you take water, how could you diminish either the rate of take or the volume without excluding land under irrigation? One would follow from the other, wouldn't it?

25

A. I think there would have – the only way you could do it would be to exclude land or to reduce the amount of time each area of land was being irrigated if you were to claw-back volume or rate.

30

Q. Right. And then you'd get into questions of viability where the irrigation system is, where investment has been made in an irrigation system, assuming certain parameters as to efficiency and, yeah, efficiency relative to the total area to be irrigated. Is that not so?

- 5 A. Yes, there may be in part. It probably depends on the system set up on each property, for example one large pivot on the property and that was it. There would be significantly more impacted by that than in a property that had a K-Line systems where it's just as easy not to run a K-Line out over one area than not. So it's more those bigger systems and whether they'd, whether a property just has one or has multiple or, I mean I'm not an irrigation specialist to know how you'd change it really, so.
- 10 Q. So for relatively inefficient systems, such as guns and K-Line and putting, you agree that guns and K-Lines are not as efficient as laterals and other spray irrigation systems?
- A. I couldn't, I couldn't recall the exact figures but they're still far more efficient than flood, you know, flood and border dyke systems, yeah, on the spray.
- 15 Q. Well, I'm only focusing on I know I can shift it, a K-Line, and in theory you could shift a gun relatively easy as well?
- A. Yeah.
- 20 Q. Yeah. So for those systems where there's no fixed infrastructure, if I could put it that way, related to the land, you could remove the systems, not irrigate the land, don't know whether a farmer would think that's viable or not. Depends on whether they've planted cherries I guess.
- A. Yeah, I think it's very dependent on what the system is that they've got and how much of an area it would change. I don't think it's easier saying it's not going to make a property viable or it will always still allow it to be.
- 25 Q. No.
- A. It is a case-by-case.
- 30 Q. So there's a huge, quite a degree of uncertainty if you have to go to a case-by-case assessment of the impacts of a future Land and Water Plan and how those might be rolled through, if you like, in terms of the consents that, replacement consents that are under consideration today. Would you agree with that?
- A. Yes.
- Q. Okay. All right. Deemed permits. I know you're not involved but you said you had a thought yesterday. So what was your thought?
- A. My thought was –

Q. All thoughts welcome.

A. – was just with regards to how that one item of priorities might be covered and the only thoughts I had is that it probably just has to fall into the matter of discretion or matter of control whereby it's effectively an existing aspect of existing conditions on some of those deemed permits but an evaluation in the application phase would be required whereby maybe it's just set out in the application form. I don't know exactly but, you know, an applicant would have to just identify firstly if there is any priorities attached to their deemed permit. Secondly, do they exercise them? And thirdly, the only time it really matters, I think, is if the lower priority is higher in the catchment. So it doesn't really matter if the person at the top of the catchment has highest priority.

Q. No.

A. It doesn't make any difference.

Q. No, it's going to get the –

A. So there's three components.

Q. – water. Yeah.

A. And so I don't think you'd get every priority that exists rolling over and I think, I was looking through Ms Dicey's supplementary and she'd put, you know, inserted a couple of the tables that are, they way they're currently worded and I think obviously there's a legal component that then comes from that but I think the need for that is so that there is effectively something in writing that holds the line for those priorities in terms of particularly between applicants knowing that that exists because obviously those sections of the Act state that, you know, they don't continue beyond 1 October. So those sections of the Act don't apply then and so it's just having some formal record of those for the future conversations for water sharing regimes as they might apply under the Land and Water Plan. That's my only thought.

Q. Yeah, no, that's all right. I had a similar thought, you know, could it be a matter of control or a matter of discretion under an RDA. Wasn't sure. I mean, and this is assuming that you can –

A. Yes.

- Q. – bring it down that there's some good reason for doing it. So I wasn't sure and then I think I was asking Ms Dicey that maybe there needed to be a policy signal and I think she said maybe and Ms Irving put quite well, you know, re-tooling existing policies. So I thought, you know, that maybe we should look at that, could we look at that, do we need to even and of course that might be a 293 matter, unless there's scope. Certainly scope in some, there may be some scope in some submissions.
- 5
- A. I think there's potentially scope because it's kind of like an existing condition and we've always talked about existing conditions coming through, so it's just a legal matter of whether that's a condition or not.
- 10
- Q. Yeah. It's a creature.
- A. Yeah, which I couldn't help on.
- Q. I think it's probably a creature statute but I have to talk to all of the lawyers about that. You said, you know, subject to whether they've ever exercised them, how would you even know? And the fact that I might need to do it this year but not need to do it for another decade, that actually might be the case?
- 15
- A. Yes.
- Q. But it's important.
- 20
- A. I think really my view of it is that if they haven't exercised it historically, it goes because everyone was assuming it would go under a new full replacement anyway. So it, but it is relying on the word of the applicant in the application. So, yeah, that, that – I couldn't give you any more help because I don't think any historic use records can demonstrate, because the flows vary timing-wise whether you're taking it or the natural flows are lower. So there's nothing to tell you in a water use record if they've been exercised as a proof kind of component.
- 25
- Q. Is there any value in this, in the record of priorities, either all of the priorities or just, you know, the ones that you want to capture, priorities which are not at head of catchment but I guess in mid-catchment, lower-catchment, not quite sure where you draw the line there, but is there any use in that as a method sitting outside of a plan, as in, you know, this is the record that parties might have reference to going forward in terms
- 30

of forming water management groups, and saying that I suspect they all no darn well who's got what.

5 A. Yeah. The only way you can do it is to go look at every single deemed permit and pull out the priorities that are listed on them. I mean they're all there. It just would require someone to spend a few days doing an administrative task.

10 Q. Not me. So, now some easy questions hopefully, and if you don't know, just say so, because you've only been working in Otago two to three years. For those catchments, so this is the questions that I asked in the minute, broader questions, for those catchments which are outside your Schedule 2A areas, and deemed permits have already been replaced under the RMA, I asked: "is the new water permit subject to right of priority". Do you know?

A. The ones that I have dealt with, no.

15 Q. Okay, no. Allocation limit in minimum flow.

A. Yes. Oh, not an allocation limit, sorry. Well, the allocation hasn't changed from the current allocation limit under the RPW, which is anything prior to 1998 is the primary allocation limit.

Q. So that's Policy 642?

20 A. Yeah, so that hasn't changed, but there is minimum or residual flows on the ones I've dealt with.

Q. So there's minimum and residual flows. Cessation conditions?

A. Well, they are effectively from a residual flow, your cut-off, yeah.

25 Q. For those replacement permits, are there any other type of conditions that we should know about that are regulating availability of waterflow within a waterbody as between abstractors? So here we're talking about abstractors, not the environment.

A. Yes.

Q. What are –

30 A. I wasn't the planner preparing the Luggate catchment ones but I have just recently been helping the Luggate group prepare their low-flow rationing agreement, which is a condition of their consents, and that effectively the five matters identified that form that agreement are a communications protocol amongst themselves, how they will give priority to domestic

users, what are the triggers levels for when they will start reductions, what is their agreed abstraction reduction methodology, so whether they go one-to-one with each other alternate days and then the process they will use to notify ORC when they start those reductions.

5 1150

THE COURT: COMMISSIONER EDMONDS

Q. So are (inaudible 11:50:25) in addition that consent that relate to that?

A. So that's a low, yeah, the consent condition requires a low-flow rationing agreement, and those are the five components of that agreement and all
10 of the consents have a minimum flow for the irrigation season and outside the irrigation season for primary takes and then they also have two supplementary limits, a first supplementary band and a second supplementary band and residual flows below their individual points of take.

15 Q. So that's a 2019 decision is it?

A. Yes, or possibly 2020. Can't remember exactly when it was. I've just been helping with the, trying to start drafting that agreement for them, or with them.

THE COURT: JUDGE BORTHWICK

20 Q. Okay. For catchments inside of Schedule 2A, have the minimum allocation limits been applied to existing permit holders on review? So there's a review now done.

A. Not that I have been involved in or aware of.

Q. Okay.

25 A. The only one is that Luggate hearing. There was a, I wasn't involved in it but looking at it now, there was a 2A limit and that was part of the conversations at the hearing but I couldn't give you any more detail on that.

Q. Was Luggate a replacement or a review?

30 A. Replacement.

Q. Okay. Again for catchments inside 2A, where deemed permits have been now replaced under the RMA, are those permits subject to a right of priority?

A. I haven't been involved with any.

5 Q. You haven't been involved with any –

A. With any 2A catchment ones.

Q. – replacement 2As?

A. No.

Q. Okay. All right.

10 A. Not that have got to the point of replacement.

Q. So there's no sort of singles?

A. No, I mean the last chance one that was dealt with –

Q. You know, the odd, the odd permit out there.

A. – is the tributaries of the, of the, of Lake Roxburgh and the Clutha and
15 then other ones that I've been involved with are all applications in process. That's the only one granted so far.

Q. Okay. So they're my questions.

QUESTIONS FROM THE COURT: COMMISSIONER BUNTING – NIL

THE COURT: JUDGE BORTHWICK

20 Your opportunity, do you want to add anything to any questions that the Court has asked? Anything arising, counsel, from the Court's questions?

QUESTIONS ARISING – NIL

THE COURT: JUDGE BORTHWICK

Q. No, nothing. And do you want to add anything?

25 A. No.

Q. In terms of anything we've just put to you?

A. I think I've covered any little note that I'd made.

Q. Very good. All right. Sounds like we might see you back again, though, by the time we finish the JWS exercise, so thank you very much. Again,
30 it's been very helpful.

WITNESS EXCUSED

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. All right. Where to?

A. So I'll start with opening.

Q. Yes.

5 A. Feels kind of momentous to be moving on.

Q. I need a new copy of that.

A. Yes, I've got copies here.

Q. Thank you.

A. Just before I start on the submissions, just as a flag for you, I'm just
 10 tweaking the order of the witnesses slightly just to accommodate some
 availability now that we're a bit later in the day than planned on the
 schedule. So I'll call Mr Heller, followed by Mr Twose and then Ms Muir
 and Ms McGirr. The order of those two might just depend on the
 afternoon and whether we think it's just easier to bring Ms Muir back
 15 tomorrow. So we'll just keep that in mind during the rest of the day.

Q. Okay. Thank you.

A. All right.

MS IRVING MAKES OPENING SUBMISSIONS

20 So, as I think we've heard a number of times now, plan change 7 has been
 described as a process or interim framework devised to address the gap
 between the replacement of deemed permits and other water permits expiring
 prior to 2025 and the notification of the Otago Regional Council's new NPS
 compliant land and freshwater management regime. The primary mechanism
 25 for achieving this is a consent duration of six years for all new and replacement
 water permits regardless of the purpose for which the water is intended to be
 used. Unfortunately, this term limitation creates a significant issue for the
 territorial authorities that are required to maintain and develop community water
 supplies. In addition to being a second-tier priority within Te Mana o te Wai,
 30 provision of safe and secure supplies of drinking water is legislatively mandated
 through the Local Government Act 2002 and the Territorial Authorities also
 have obligations regarding water supplies pursuant to the Health Act 1956 and
 the Civil Defence Emergency Act 2002. As set out in the evidence on behalf of
 the TAs provision of these services necessitates long-term planning both from

a financial point of view and due to the nature of the infrastructure. As such, it is not amenable to short-term water permits. Requiring Council's to develop infrastructure without the certainty of long-term access to water puts them in an unenviable position with respect to their obligations to ensure prudent stewardship, efficient and effective use of resources including planning effectively for the future management of resources. Plan change 7 captures a small number of existing community supplies and will also impact on planned developments for new or upgraded supplies. It is the position of the TAs that in doing so, Plan change 7 fails to address the mandatory obligations of both the TAs themselves and of the Otago Regional Council. Including community water supply within the ambit of Plan change 7 prevents both the TAs and the ORC from satisfying their obligations under the Partially Operative Regional Policy Statement, the National Policy Statement for Fresh Water Management and the National Policy Statement for Urban Development and the Resource Management Act itself. In addition, the six-year term for all new and replacement permits will inhibit the TAs from fulfilling their community water supply obligations under the Local Government Act and to the Health Act 1956 by jeopardising the TAs ability to manage and provide efficient and effective community supplies now and in the future. It remains the position of the TAs that Plan change 7 should not apply to community supplies. Alternatively, if it is to apply, a number of key issues need to be addressed. Firstly, the amendment of the Schedule IOA so that it is more appropriately calculating historic use for community supplies, provision made for replacement permits for community supply to include increased rates and volumes to account for projected growth, and provision made for new permits to be sought where greater rates and volumes are required than under existing permits or where new community supplies are being developed. And finally, that consents for community supplies are able to be obtained for longer than six years. Now, in these submissions I am not traversing the statutory analysis law because you've heard that from a number of my counsel, other counsel, and I don't have a quarrel with their submissions in that regard. So I'm focusing on what we consider to be the key issues for the Territorial Authorities and I set those out there at paragraph (a) to (g) and will work through those one by one. Firstly looking at community supplies in the context of Regional Plan Water. I think it's

important to understand how these community supplies have been have been treated under the Regional Plan Water. Community water supply has not been a defined term within the Regional Plan. The term 'Town and Community Water Supply' is defined, although it is only utilised in the context of the
 5 Waitaki Catchment. Town and Community Water Supply means reticulated water supplies servicing urban areas, rural-residential and residential subdivisions, including all commercial and industrial premises and schools and other educational facilities located within the reticulated area.

THE COURT: JUDGE BORTHWICK

- 10 Q. Can you pause there a second. So you've got town and community water supply but it's only a term that applies to the Waitaki catchment?
- A. It does.
- Q. Nowhere else?
- A. No, not so far as I could tell.
- 15 Q. Are they special for a reason?
- A. I think it was linked – pardon.

THE COURT: COMMISSIONER EDMONDS

- Q. If it was a special plan.
- A. Yeah. It's linked to the fact the Waitaki, I think, allocation issues are dealt
 20 with essentially by Environment Canterbury under the Waitaki Water Allocation Plan, so it does have its own sort of set of special character in that sense.

THE COURT: JUDGE BORTHWICK

- Q. Okay.
- 25 A. There are, there's a few definitions that we work through. It's, yeah –
- Q. Okay. So that's Waitaki.
- A. – interesting in that respect. Yes.
- Q. And I'll just re-read that.
- A. Mhm.
- 30 Q. Okay. So that's fine.

MS IRVING CONTINUES OPENING SUBMISSIONS

So we also got a definition for registered community drinking water supply, which is a drinking water supply which is registered under section 69J of the Health Act and serves a community of more than 25 people for more than 60
 5 days a year. Registered community drinking water supplies are afforded special status within the Regional Plan Water in recognition of their importance. For example, under Policy 6.4.2A such supplies may obtain more water than previously to account for growth.

THE COURT: JUDGE BORTHWICK

10 Q. Now, I'm not sure that that's correct. I know that, I think it is correct that there's no definition of community drinking water supply. Your planner certainly doesn't. Are you going to take us through to the, what in fact is regarded as being of importance under the Regional Plan because it's the, under Chapter 5 is dealing with drink water.

15 A. Well, Chapter 5, I think, talks about the water supply values, which is the defined term and references water supplies for the existence of takes for human consumption, which have come to be relied on by the community, and it would be fair to say, as you work your way through the provisions, or the various chapters, that there are a variety of terms that are used.

20 Q. Yeah, that's true.

A. And where I get to is although that's a bit disjointed, that a lot of those terms are essentially used in a synonymous fashion.

Q. Well, you're going to have get me over the line. You certainly didn't get me over the line for the Clutha decision, which you've appealed, and I
 25 don't know whether you've appealed that aspect of it but I certainly wasn't over the line. So you're going to have to now take me over the line. Are your submissions dealing with Chapter 5?

A. No, they're not.

Q. And that's, is that problematic in terms of not bringing forward all relevant
 30 provisions to the Court's attention?

A. Well, I think we've got to look at that, I suppose, in the context of this is a case about plan change 7 and whether or not community supplies need to be incorporated into that plan change. So –

Q. What's the purpose of your submission on community water supply?

A. In terms of what it means?

Q. Yes.

5 A. I'm just trying to set out for you what I think is the context under the Regional Plan Water about how that term is used.

Q. But you're not going to take me to Chapter 5?

A. No.

10 Q. No, and I know your planner doesn't as well, and we had questions for your planner, why would you exclude something which appears to be relevant? That's problematic or potentially problematic.

A. So, you mean why would we exclude community water supplies from plan change 7?

Q. No, I mean –

A. Or why has Chapter 5 not been referred to?

15 Q. Yes. That's right. If it is relevant, and it appears to be relevant because it's looking at the values associated, particularly pertaining to drinking water supply, why would you not put that relevant consideration before the Court or why would you not say it is there but we're excluding it for this reason? Why would you, and you know I know because I've issued
20 a decision on it, so now I'm expecting you to take me through that decision or at least take me through to the parts that we've referenced in that decision as being relevant to this next question of community water supply, because you know I know that they're there and I was of the view then, still of the view now, they're relevant to an interpretation argument?
25 Also, if you're arguing interpretation, how does one normally go about arguing interpretation? You set out what?

A. Sorry?

30 Q. In any interpretation argument, it's good practice to set out the statutory interpretation principles that you would rely on or that you consider relevant. Then having done so, apply those principles to the words and phrases which you say support, you know, wherever you're going, you know, your interpretation but you haven't done that and I will be looking at this with a view to what do the words say and what was the purpose and meaning? What's the meaning of the words if they're not clear but

what was the purpose in this subordinate piece of legislation. That is what we're meant to do, isn't it?

A. Yes.

Q. Yes. So if that's what we're meant to do, why haven't you done it?

5 A. Well, I have to say I don't, didn't think that there was a question about the, I suppose, importance of community water supplies.

Q. There is a question, is there not, there's no question about drinking water supplies and the Regional Plan says they're important. That's to paraphrase Chapter 5.

10 A. Mhm.

Q. The question in this whole proceeding is whether supply for a dairy shed washdown, irrigation permit, purposes or any other primary sector potentially, potentially also maybe other urban uses but certain primary uses. That's what's in question, isn't it?

15 A. Yes, and I think in part, and I get to the question of drinking water and what that means further in the submissions because I think that on first blush, it's very easy to say well, drinking water is drinking water. It's the stuff we put in our mouths and swallow and but when we work our way through the definition of that, and the way that I suppose the evidence
20 from the TAs on that issue, I don't think it is quite that simple.

Q. No, because it could also be flushing toilets –

A. Absolutely.

Q. – down at the local warehouse or it could be, you know, any other number of uses, and so in supporting an interpretation of community water supply,
25 and the range of uses, both for drinking water for community consumption, as well as to be consumed before other residential and other purposes, you know, is it any range of uses for water which community water supply is to capture or is it less than that? That's always been the matter in issue in this plan for community, for the TAs. Is that
30 not so?

A. Well, I think that the TAs, I suppose, they know a community water supply when they see one in some ways and so, you know, these are often systems that they have provided and had in place for very long periods of time. The question of, I suppose, divvying that up and deciding well how

much of that is really community supply versus something else is perhaps not a level of enquiry that they undertake and I think that also dovetails in part with their other statutory obligations and the scope they have for turning the tap off and on and I do get into that in a reasonable level of detail in the submissions because there are opportunities or risks of those things butting up against one another and other methods, I suppose, through the likes of the Local Government Act and so on that helps manage, I think, the dynamic you're interested in, which is how much of the supply is not drinking water or community. It's these particularly rural uses that –

5 Q. Which have a commercial end point.

A. Yes.

Q. But then again, you could say so does the toilet at the local warehouse. So –

15 A. Yeah, and I think –

Q. – it's problematic. It's problematic –

A. Agreed.

Q. – and to be fair to you, any interpretation argument should be founded on statutory interpretation principles, which should be set out in your submissions because all you'll have the Court do is, for the Court to do the work for you but then to decide what interpretation principles apply, then apply them and if you don't like the answer, you'll appeal. It's actually your responsibility to, you know, to set it out and then for us to pick up the argument in those, were those principles being applied. I'll give you a chance to come back to this overnight. It is not just a matter of telling us, look, it's these principles but it's these principles, how are they applied, but the issue, there are infrastructural issues for, you know, I get, I suspect, for the TAs, but there are also issues to do with the take and use of water for a wide range of purposes which this Regional Council says needs to be held for a period of six years until it puts into effect a plan which is compliant with the MPS.

25 A. Mmm.

1210

30 Q. Why is it wrong to do so.

A. Mmm.

Q. So this is, I don't doubt that you've got a hard – you've actually got a really hard case, yeah, in terms of, and it doesn't mean to say you're not going to succeed. You've actually got a hard case in terms of trying to both
5 meet, if you like, the needs of the TA and the Regional Council. They're both important.

A. Yes.

Q. They both have their statutory drivers and they both do, is really the key message.

10 A. Yes.

Q. Now, do you want to continue with your submissions or do you want to reflect on the law?

A. I think I would like to, I think, continue with the submissions. I can come back to you on, I suppose, a more detailed analysis of the interpretation
15 issue around community supplies if that's necessary but I think that –

Q. It will be necessary if you haven't given me the statutory principles that you rely on.

A. Certainly.

Q. Yeah.

20 A. Certainly, but I think the questions around the inter-relationship between the other statutory obligations, the functions that both territorial authorities, and the Regional Council have, I think we can carry on with that because I think, yeah.

Q. Okay. All right. Thank you.

25

MS IRVING CONTINUES OPENING SUBMISSIONS

So, what I might – yeah, so we're back at paragraph 15. Well, I've read through paragraph 15, so we'll start with 16. So in schedule 1B and 3B, the Regional Plan identifies existing water takes that are used for public water supply
30 purposes and the schedule identifies that the communities supplied by these takes have come to rely on them for their social and economic and cultural wellbeing and that links to the definition in the Regional Plan around water supply values, which is a term used in Chapter 5, as your Honour has referred to.

THE COURT: JUDGE BORTHWICK

- Q. And what is that? Let's now go into the plan because I think it would be helpful to actually track what you are saying through the plan itself.
- A. Do you want to start with the definition of water supply values?
- 5 Q. Yeah, and the policy that (inaudible 12:13:35).
- A. So volume 1 of the common bundle and the definition of water supply values is at the common bundle, page 447. It's tab 2.
- Q. Is this in the definition section somewhere?
- A. In the glossary, yes, which is actually perversely at the back.
- 10 Q. From memory it was the very last page.
- A. In the schedules.
- Q. Of a very long plan. Water supply values. Okay.
- A. So the existence of a take for human consumption which people and communities have come to depend on.
- 15 Q. Okay. So pause there a second. I just want to annotate your submissions. So water, sorry, I've lost the thread. Water supply values, do you mention that at paragraph 16 or are your –
- A. No, I don't.
- Q. Okay. So water supply values.
- 20 A. Yes.
- Q. As defined. And it means the existence of a take?
- A. For human consumption.
- Q. For human consumption.
- A. Which people and communities have come to depend on.
- 25 Q. Just pause there a second. And you've referenced that because you know I know about it or you've referenced that because it fits into an argument?
- A. No, I was actually, I picked up on that when I was looking back at the glossary for another issue actually and noticed water supply value sitting
- 30 there with a definition which I thought was odd and I hadn't picked it up when I was working my way through the plan in relation to the terms around community supply and so the term water supply value is the one that is used in Chapter 5 and the use and developments, if we're looking at Chapter 5, it's picked up in 5.2.1 as, in issues.

Q. 5. what?

A. 5.2.1, which is the issues that the use and development of water resources may have the potential to have adverse effects on water supply values and then in Policy 5.4, which is to identify the following natural and human use values supported by lakes and rivers, which is the policy that gives rise to the schedules, so in this case Schedule 1B and 3B, which identifies the supplies for public water supply purposes.

Q. So Schedule 1 and 3B say?

A. Yes.

10 Q. But even 5.3 or –

A. 3B is the groundwater takes.

Q. But only Schedule 1 is actually referred to here.

A. Yes, that's correct.

15 Q. That's probably a fact that a groundwater is being – is groundwater being utilised to supply drinking water, water for human consumption or don't you know?

A. I don't know the answer to that off the top of my head.

Q. Okay. So at least Schedule 1 because Schedule 1 is actually all that's referred to?

20 A. Yes.

Q. Okay. So anyway, so identify human use values in Schedule 1 and that includes human use values, including water supply values, which are the values which for human consumption. That is to come in Schedule 1?

A. Yes.

25 Q. Right.

A. And so Schedule 1B includes that list of existing, what are referred to in the schedule as public water supplies are primarily the water supplies operated by the territorial authorities.

30 Q. Just pause there a second. So Schedule 1B is a schedule of water supply values which water supply values is defined as being a take for human consumption.

A. Yeah, so if you look at Schedule 1B, which is common bundle page 352, we've got schedule of water supply values and this schedule identifies the existing water takes from lakes and rivers where water is taken and used

for public water supply purposes and the communities identified in the schedule have come to rely upon these water supplies to provide for their social, economic and cultural wellbeing.

1220

5 Q. And so the interpretational question for you is whether water supply values, which are defined to, and it means human consumption, is used differently in this schedule.

A. Yes.

10 Q. And I didn't think necessarily that that was the case, although it may well have been implemented by District Councils that way but the water supply values are those which are there for human consumption?

A. That's correct and then when we look at the provisions around, in Chapter 6, that's where we start to see a different, different terms used around the likes of the registered community drinking supply, community supplies and so on. So there is a bit of a disconnect between Chapter 5 and the provisions in Chapter 6.

15 Q. And this is where the legal statutory interpretation, the principles established by case law become really important. Is there a gap between the two chapters, any inconsistency between the two chapters, or can they actually be reconciled according to their purpose. That's all statutory interpretation stuff and that's where the law becomes really important. All right. Any other policies in Chapter 5 because I know that they are?

20 A. (No audible answer 12:22:00)

25 Q. I'll give you a hint. It's Policy 5.4.2. It's not in your planning evidence but it's there.

A. Yes.

30 Q. So the management of any activity involving surface water, groundwater, dead or margin of any lake or river, to give priority to avoiding in preference to remedying or mitigating water supply values in Schedule 1B?

A. Yeah, adverse effects on the water supply values in 1B. So I interpret that to mean that other activities need to be managed to avoid effects on the water supply values rather than remedy or mitigate those effects.

- Q. Yeah, avoid in preference, it's quite a clear statutory direction but again, water supply values, is that for the purpose of the defined term, which is for human consumption, or something else? And this is where you start to get tension with TAs taking water for a whole host of activities, which in combination with land use –
- 5 A. Yes.
- Q. – have the potential to impact drinking water?
- A. Yes.
- Q. And so then how is – and that's the perversity, if you like, in terms of a take for a range of uses and then how we're managing that or reconciling that under this plan?
- 10 A. Yes, and I think perhaps the issue that came up, I think, in the Clutha case that you are familiar with, was the use of the water for the dairy shed washdown and so on and whether or not the effects of that use would then effect the consumption or the human consumption values and I think the question then is, is that an effective use of water or is that an effective discharge following the use of that water?
- 15 Q. Or is it an effect of associated land uses but –
- A. Yes.
- 20 Q. – and how does the plan in any integrated sense deal with that.
- A. Yeah.
- Q. Who knows.
- A. Yeah. I mean I think the Clutha example is, like we so often find in this case, you know, that's a, certainly based on the evidence, a bit of an outlier in terms of the proportion of water that is utilised for other uses.
- 25 Q. The planner needed to be saying this. I think your planner needed to have been dealing head-on with Chapter 5, particularly in light of an adverse court decision only late last year and needed to be saying Clutha in that one take is an outlier. Actually everybody is pretty much primarily for human consumption, which I don't assume it means just drinking water. It could be any flushing of a warehouse, you know, but needed to be dealing with that as opposed to present uncertainty, but we can follow-up or you can follow-up in questions with that.
- 30 A. Yes.

Q. But your task is what are the water supply values which are there in that schedule? Is it for human consumption or is it, and what does that mean or is it a range of other uses, including the ones noted in, which really the Court was quite troubled about in Clutha?

5 A. Yeah. I can give more detailed thought to that particular issue.

Q. Because I think it's all statutory interpretation to be fair.

A. Yes.

Q. Yeah.

A. Yeah. Shall we carry on?

10 Q. Okay.

A. So the question of community supplies also comes up in Chapter 15, which is the chapter identifying the non-regulatory methods that may apply and that is common bundle 262 and so the relevant provision is 15.2.1, which relates to the restrictions on taking water. So it seems to me that that is anticipating that the uses that aren't human consumption, or at least hosing restrictions –

15

Q. So watering your garden?

A. Yes.

Q. So here you're using human consumption – I had wondered whether human consumption means more than just drinking it but, and again, looking forward to hearing from your planner on that, and also your submissions on that but anyway, community supplies, how does that help us? Yeah, hosing restriction. I wasn't aware of that but I mean, you know, you kind of expect it but so ORC to talk to TAs –

20

25 A. Yes.

Q. – when the consumption of water in a community supply, okay, which is not a defined term.

A. No.

Q. Okay.

30 A. So basically, when, as a catchment comes under pressure and water users generally are beginning to experience shortages, the expectation will be that community supplies will also sort of do their bit by dealing with, what they're referring to is hosing restrictions, and this, I think, dovetails, as I say, with the other statutory frameworks that the TAs work with in

relation to this around water conservation management plans and so on and I think is a acknowledgement perhaps of the practical circumstances we're dealing with with this infrastructure where there are a range of activities and uses that water is put to within a single system and that within that there will be some levers to pull to reduce consumption if that's necessary at particular points in time but –

5

Q. Is that limitation just one of watering, hosing?

A. Well, I think –

Q. I mean I'm assuming hosing means watering parks and gardens?

10

A. Yes, and I think that's right of this liaison provision.

Q. Of this particular provision.

A. Correct.

1230

Q. It's just hosing.

15

A. Yeah, but there are other, as I say, mechanisms that the TAs work with that covers a broader range of issues, which I talk through later in the submissions.

MS IRVING CONTINUES OPENING SUBMISSIONS

20

So I was just, the purpose of that was to really try and pick up on the various terms that are used in the plan and I think, as you work through the plan, it is a little bit, probably generous, but disjointed but that's what we're working with.

25

So I think then I want to turn to what the TAs view is of what community water supplies encompass, which is discussed in the evidence of Mr Greenwood (now Ms Muir), Mr Heller and Ms McGirr and they talk about the existing community water supplies, providing potable water for a range of purposes, including human consumption, commercial and industrial activities and a small proportion of rural uses. The water is distributed via schemes that generally don't distinguish between uses and the TAs regulate the delivery of water within their

30

community supply network according to other legislation. In particular the Local Government Act and the Health Act and under the Local Government Act, it is common for the TAs to establish bylaws for this purpose. Now, other parties, particularly the Ministry for the, or the Minister for the Environment, have suggested that it may be appropriate to provide a carve out from Plan Change 7

for drinking water and it appears from that evidence that drinking water is intended to be a narrower subset of water provided by community water supplies managed by the territorial authorities. Now, drinking water is a defined term under the National Planning Standards, meaning water intended to be used for human consumption and includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene. As Mr Twose sets out in his supplementary evidence, drinking water has been consistently defined in the Planning Standards 2019, the Resource Management Environmental Standards for Sources of Drinking Water and the Drinking Water Standards for New Zealand 2005. Under section 69G of the Health Act, drinking water is defined slightly differently. It is water that is potable but excludes stock water or irrigation water that does not enter a home or building for drinking, food preparation or domestic use. Now, to understand the provision of drinking water by territorial authorities, it is useful to consider what they actually do. They abstract water from a source, convey it through infrastructure to a treatment plant and treat it so that it may be made available for human consumption. TAs then distribute drinking water from that treatment plant through their networks to a point of supply on a connected property. All of that water is treated to a level intended for human consumption. It is submitted that whether the drinking water is actually consumed by people or used for sanitary purposes is not the determinative feature of drinking water. Concerns about other uses of potable water after it enters the distribution network misapprehends the intention and effect of treating water to a potable standard. The reason water is taken by TAs and treated is to make it fit for human consumption, food preparation and sanitation purposes. The definition reflects this by referring to water intended to be used for human consumption. Water taken for community supply becomes drinking water when it is treated and made potable and able to be safely consumed. It is submitted that this interpretation of the definition aligns with the reality of operating these schemes. It would simply not be practical to separate the provision of water that is actually consumed by humans from water delivered by the same system and used for other purposes. In fact, TAs are not empowered to turn the tap off completely and that was brought in by virtue of an amendment to the Health Act where the territorial authorities power to stop providing drinking water services was

completely repealed. The Local Government Act 2002 provides a limited range of circumstances where water supply can be restricted, and those powers are subject to the TAs obligations pursuant to the Health Act. . Under the Health Act TAs are required to take all practicable steps to ensure that an adequate supply of water is provided to every point of supply.

THE COURT: JUDGE BORTHWICK

Q. Just pause there for a second.

A. And what I –

Q. No, can I just, sorry, I just need to read and absorb it and I'll come back to you with any amplification. Yeah, and what do you want to say?

A. I just wanted to, just missed a footnote there. The adequate supply is a defined term in the Health Act, meaning in relation to drinking water supplied to a property, means either the minimum quantity of drinking water that is required by the occupants of that property on an ongoing basis for their ordinary domestic food preparation use and sanitary needs or if there are regulations made the prescribes the quantity of drinking water, or a formula for it, then whatever that quantity is.

Q. Pause there a second.

20 MS IRVING CONTINUES OPENING SUBMISSIONS

So, the quid pro quo of being provided with water for water users is set out in Local Government Act, section 192, which obliges them to avoid wasting water. TAs seek to manage this through the implementation of Water Conservation Management Plans that set out the methods to be adopted to ensure that water is used efficiently and the steps that will be taken if water supply shortages are experienced. And again, Councils may also establish bylaws for this purpose. In my submission, this means there's a degree of overlap between the TAs Local Government Act obligations and their obligations under the Resource Management Act. In section 14(1)(h) territorial, and this is under the Local Government Act, territorial authorities must act in accordance with the the principle of sustainable development including taking into account the social, economic and cultural wellbeing of people and communities, the need to maintain and enhance the quality of the environment and the reasonably

foreseeable needs of future generations. So their obligations and the purpose under the Local Government Act directly reflects the purpose under the Resource Management Act. The two things need to mesh together in order to allow territorial authorities to carry out all of their functions. And I just there the proposed definition of community water supply that was included in the outcome of the planners joint witness statement. The proposed definition I think picks up the key aspects of water supply, including the TAs obligations under the Health and Local Government Acts, and the fact that the schemes provide drinking water for a range of uses, not just human consumption.

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10 1240

THE COURT: JUDGE BORTHWICK

Q. Yes, and that's the thing that you're going to have to grapple with. I mean I understand the infrastructure, at least from the Clutha case. I just I had that in mind and you reflect that back in your submissions, that the TAs are treating all water to a human consumption standard and that's fine. The fact that you deliver it to mechanical workshop is neither here nor there. It's treated to that standard but that's not, that is not the issue that we're dealing with here. The fact that they have to treat it to a certain standard does not mean therefore, is that to confuse, and I'm sorry, I'm not sure where you're, I haven't quite pinned where you're going with the statutory interpretation. Are you interpreting the, something, either the Regional Plan or PC7 you want to now come on PC7, by making the equivalent the treatment standard of water to the purpose for which water is supplied or the value of the water in terms of the Operative Plan definition. Now you're losing me because the treatment standard is not equivalent.

15

20

25

A. So this is, I think, I mean I keep saying this is all very hard but –

Q. It is to be fair. You've actually got one of the harder cases because it is hard because your clients are actually supplying for a full range of uses, which this Regional Council says may be drink water, human consumption excluded but hey, why are you continuing to supply, and the good example is dairy shed, when we've got PC7 sitting there.

30

A. I think –

Q. PC8 sitting there.

A. Yes. I think that the key, I suppose, feature for me was in the definition of drinking water and what is drinking water and it's not just water that is consumed. It is the water intended for consumption. So when I look at
5 the way that councils operate their water supply infrastructure, it is drinking water when it has been treated and it's ready for that purpose. Whether it actually goes out into the network and is used for that purpose I don't think matters in terms of whether or not the whole take, I suppose, should be captured by Plan Change 7, I think that there are the other
10 mechanisms that the territorial authorities use through the Local Government Act and the Health Act and so on that manages the, I suppose the demand side when there are restrictions or issues around the availability of that supply but that the significance of water supply being available to the community is such that we shouldn't be, I suppose,
15 shutting the gate on those wider range of uses prior to, I suppose, the treatment plant.

Q. So again that's a statutory interpretation approach, both statute as well as the Regional Plan. It has to be founded on statutory interpretation principles which apply to the argument that you're running, including
20 potentially provisions within legislation and provisions within PC7 and the Operative Plan, which in some way are inconsistent, would require a finding of inconsistency or not and trying and always with a view to interpreting or smoothing out any inconsistencies such that the purpose of the provisions that you are relying on can stand according to their
25 purpose. It's all statutory interpretation. You're not there. Well, your proposition is, as I understand it, that if a TA treats water to a standard which is fit for human consumption, the purpose of its use is irrelevant and completely irrelevant. Is that correct?

A. Yes, I think that's right.

30 Q. With that in mind, you need to go back and now, with that principle in mind, the use of the water which has been treated for to a standard for human consumption is irrelevant. You now need to land that potentially both in your TA-type, you know, LGA, Health Act, blah, blah, blah, you know, that and the Resource Management Act itself, just to iron out or

see whether or not there's any inconsistencies in provisions and then you also need to do that, I think, within the Regional Plan itself and PC7 but is that your key proposition provided that the TAs treat water to a standard which is fit for human consumption, it's use is irrelevant?

5 A. Yes.

Q. All right. Now, I understand the key proposition. You've got some work.

A. Linking that through.

Q. You've got some work, yeah, and do you appreciate why I'm saying there's some work here?

10 A. Yes. Yeah, no, I understand the issue.

Q. Okay, good. All right.

MS IRVING CONTINUES OPENING SUBMISSIONS

So turning to the territorial authorities obligations to provide water infrastructure.

15 So under the Local Government Act and the Health Act, the TAs are tasked with providing safe drinking water, maintaining that existing water supply infrastructure, protecting water supply as a lifeline utility, anticipating future demand for water supply and planning for future growth and capacity. The TAs must develop long-term plans to satisfy these statutory objectives. Under the

20 Local Government Act 2002, section 93 requires the territorial authorities to have a long-term plan which identifies the work they will do over at least 10 years and the funding required for that work. In the LTP, the TAs set out how they will achieve identified community outcomes and at what cost. Generally, 25 to 35% of a TAs LTP expenditure relates to three waters infrastructure. So

25 that's stormwater, water supply and sewerage infrastructure. A TA must ensure prudent stewardship and efficient and effective use of resources in the interests of its district and planning effectively for future management of assets is specifically recognised as part of this duty. It is not one the TAs cannot abrogate responsibility for. The TAs must also, as part of the LTP process,

30 prepare an infrastructure strategy identifying how community water supply infrastructure will be managed for at least 30 years. The strategy must include indicative estimates of expenditure for the first 10 years of the strategy and for each subsequent five-year period following that. To provide projections like this, TAs must canvas scenarios about the levels of service, life cycle of assets

and the level of certainty in the assumptions underpinning the canvassed scenarios. It is submitted that the six-year term in Plan Change 7 is at considerable odds with the long-term planning horizons that territorial authorities must operate to under the Local Government Act. Turning to the

5 Health Act. Drinking water is governed by Part 2A of the Health Act and the purpose of this is to protect the health and safety of people and communities by promoting adequate supplies for the safe and wholesome drinking water from all drinking water supplies. The public health obligations on TAs with respect to water supply are significant. As drinking water suppliers, TAs must

10 take all reasonable steps to protect the source of their water supply and that in all aspects the drinking water supply system is free from contamination. They must have a water safety plan which is reviewed every five years with respect of their network. In addition, they must monitor the supply and ensure it complies with Drinking Water Standards. The Standards divide the drinking

15 water supply system into source, the treatment plant, and the distribution zone. This encourages management and planning to be structured across these three areas. Compliance with these obligations is supported by the territorial authorities work programmes through their infrastructure strategy and long-term plan. Turning to the Regional Council and the TAs respective functions under

20 the RMA. Those are obviously set out under section 30 and 31 and the ORC and TAs have some shared obligations with respect to integrated management and to ensure sufficient development capacity. Starting with development capacity, in response to current housing shortages, an obligation to ensure sufficient development capacity has been placed upon both the Otago Regional

25 Council and the territorial authorities. Development capacity, in sections 30 and 31, has the same meaning as in the NPS for urban development and therefore includes network infrastructure for water supply. It is submitted that limiting community water supply permits to six years and not enabling the provision for growth is likely to compromise the ability for sufficient development capacity to

30 be provided, particularly in the medium term, being three to 10 years as it will inhibit investment, long-term planning and development.

THE COURT: JUDGE BORTHWICK

Q. Just pause there. So what is the meaning of development capacity in that you've got at paragraph 48? Is that a defined term somewhere?

5 A. Yes, it is. It's in the National Policy Statement for urban development, which is in the common bundle at tab 6, at page CB787.

Q. And I'll just read that to myself.

A. Certainly.

10 Q. So development capacity in the NPS Urban Development 2020 has two components. It's the capacity of land to be developed for housing or business use and it's based on zoning and adequate development of infrastructure to support the development of housing and business use and my question for you is, housing – no. All about business use or business the meaning of business use referable from the definition of business land?

15 A. No, there's no definition of business use.

Q. And what about business, yeah, but can that be, is the meaning to be ascertained from business land, business use or business land?

A. Yes, I think that would be right.

Q. Yeah, okay.

20 A. So land zoned for those purposes.

Q. And it's in an urban environment?

A. Correct.

25 Q. And so this submission, and again bearing in mind we're dealing with rural TAs as well as urban TAs, or I suppose they will have an element of urban, is this submission focused on urban environments or is it focused on rural and urban environments?

A. I think it has to cover both because in –

Q. Now, that's statutory interpretation, so why are we now looking at the rural environment?

30 A. Well, I think there's the Council's obligation to provide the infrastructure applies to not just it's urban environments. This submission is in relation to the Council's functions in relation to development capacity, so to that extent, it will apply where we are dealing with an urban environment as it's defined. So that is limited but I'm, the point is that the TAs will provide

water infrastructure to communities that may not qualify as urban environments under the NPSUD. This is part of the equation, not the complete equation.

5 Q. This is statutory, this is again statutory because I read this, and I think you are correct insofar as TAs have to provide water for housing.

A. Yes.

Q. And that could be urban or rural, it doesn't really matter where its location is but business starts to bite in terms of where it's location is or do you say that's wrong?

10 A. Well, I think that we've got to go back to 1.3 of the NPS, around the application of the policy statement, which is to apply to urban environments.

Q. I haven't got it printed. Okay.

A. So have you got common bundle 786?

15 Q. No, and I seem to be missing – 786, maybe we do. Okay, 1.3.

A. Yes.

THE COURT: COMMISSIONER EDMONDS

Q. And there's a definition of urban environment?

A. Yes, that's right.

20 THE COURT: JUDGE BORTHWICK

Q. Yes.

A. So I think in terms of the application of the NPSUD, that is going to apply to those urban environments as defined.

Q. Yeah.

25 A. And so the submission in relation to the functions, the development capacity, are linked to that. So it doesn't extend to the communities that the Council may provide drinking water or water supply to that are outside an urban environment.

30 Q. So I've annotated your submission adjacent to the subtitle development capacity at page 9 to say this submission is limited to urban environment.

A. Yes.

Q. Okay.

A. So I think, and I think that the issue of providing infrastructure, development infrastructure, will be to housing and business land within urban environments.

Q. Right.

5

MS IRVING CONTINUES OPENING SUBMISSIONS

So the submission is that impeding the planning and development for network infrastructure for water supply by truncating the term and scale of community supply permits is contrary to the Regional Council's obligations under section 10 30(1)(ba) and potentially places the territorial authorities in the position of being unable to satisfy their development capacity obligations pursuant under section 31(l)(aa).

THE COURT: JUDGE BORTHWICK

Q. Where are you reading from?

15 A. This is my submissions.

Q. Sorry. Did you read paragraph 49? I might have had my nose stuck in an NPS.

A. Yes, I did.

Q. Okay. Why did you say three to 10 years?

20 A. Well, it was – so that's the medium-term time horizon within the NPS and the six-year term under Plan Change 7 sort of fits in the timeframe that the territorial authorities will be planning their infrastructure or implementing infrastructure, infrastructure upgrades to provide development infrastructure in that particularly three to 10 year medium-term window. So because of the way that the NPS for urban demeanour 25 anticipates that Councils will try and get ahead of housing demand, business land and have the infrastructure ready, the reality is they need to be moving say now to put in place water supply infrastructure to provide that development capacity in that three to 10 year window.

30 Q. So I found that there is a definition of medium-term and it is as you say three to 10 years in the NPS for urban development.

A. Yes.

Q. And six is sort of half way there and you're – so what is your submission in that regard? Are you saying that if it were 10 years at least, that that would dovetail with the medium-term or the, you know, the full extent of the medium-term?

5 A. So what you'll hear and probably read in the evidence from the territorial authorities is that, and particularly within Central Otago, there are works planned like in the next year to two years to improve water supply infrastructure and to anticipate the growth that they have seen or are seeing and their evidence is that because of their other obligations around
10 prudently managing their infrastructure and so on, a six-year renewal for those permits is going to present some significant challenges for them in terms of whether to push ahead with that work and run the gauntlet on whether or not those consents get renewed in six years' time or whether they have to push pause on those projects to await the outcome of the
15 subsequent renewal.

Q. And so again –

A. And then that puts them in a position where they are behind on providing their development infrastructure under the NPSUD.

Q. So the uncertainty again is not so much Plan Change 7 but it's the plan
20 to come and any changes in the plan to come which is, you know, the plan which is fully compliant with the NPS for fresh water?

A. In some respects, yes.

Q. In all respects. Is that not where your uncertainty goes?

A. Well, I think, I think the, one of the primary reasons that
25 Mr De Pelsemaeker gave for preferring a six-year term rather than longer terms and then relying on review, was his view that the Council needed to be able to essentially refuse consent. So the territorial authorities have to operate on a basis where at the end of that six-year period, they may not get a consent back.

30 Q. Now, if the consent is for water which use is human consumption, how likely do you think that is, given what the RMA also has to say about human consumption.

A. Yeah. Yeah, and I think that's a, you know, that's a good question. You would assume or you could assume that it's really unlikely that the

Regional Council would want to refuse a consent for community supplies of drinking water.

5 Q. Well, I'm actually being very specific here. I'm here actually saying whether taking is actually for human consumption. So that's my proposition.

10 A. So I think that, I think it's right. So it's unlikely. So my question, in relation to this, if it is that unlikely, why not grant a longer term consent and if there needs to be a review in order to implement a minimum flow, then that could be done. We know that with the territorial authorities we're dealing with a relatively small number of permits and the infrastructure is of such importance to these communities that I don't think, or my submission is that the term of the consent should be shortened because as you say, why would or how – why would the Regional Council want to refuse a renewal of that application but if the term is critical, and that's what the 15 TAs are telling you, to their ability to invest in the infrastructure in the interim and to deliver on their long-term planning obligations, then let's give them the time to do that.

20 Q. Well, probably two responses to that. Firstly, it does rather depend on the use for which water is put to and your submission is the use is irrelevant provided TAs treat to a drink water standard, that is all that is relevant. So maybe the Regional Council is rightly concerned as to the use in an integrated sense because that's what's coming, land and water. It is concerned about the use to which water may be put. So that might be room for movement for your client if it is – if the take and use is for 25 human consumption, then maybe there's less of a concern but it may be that it is quite considerable concern if the use to which the TAs may put the water is irrelevant, none of the Regional Councils concern. That's quite a different proposition.

A. Yeah.

30 Q. And I'm going to leave it there. You think about it over lunch. You think about it over lunch but I think you've just confirmed yes, your problem is not with this plan. Your problem is that the consenting environment might change under the Land and Water Plan and so what you're doing is trying to manage your risk by obtaining long-term consents.

A. Yes.

Q. Where use is taken away, effectively removed from the Regional Council under your argument.

A. I'm sorry, can you repeat that?

5 Q. Where the use of water is effectively removed from the purview of this Regional Council, its oversight. Its regulatory oversight and its obligations.

A. Yeah. I'm not quite sure.

10 Q. Well, you've said to me that the use of water is irrelevant and I would have thought, yeah, that's a statutory interpretation matter because I think this Regional Council's got statutory obligations there.

A. Yes. Yeah. Yeah, there's a few parts to that question.

15 Q. Yeah, there is a few parts, but there's also, if you're going to grasp the medal, surely it is actually agreeing to recognise that both take and use are matters in relation to which the Regional Council itself has statutory obligations. Both are relevant, treating to a drink water standard and use for human consumption means whatever it means, might be a way through this but it's, it just seems, yeah, anyway. Okay. All right. Time for lunch. Back at 2 o'clock.

20 **COURT ADJOURNS: 1.07 PM**

COURT RESUMES: 2.02 PM

THE COURT: JUDGE BORTHWICK

Over to you, Ms Irving.

5 MS IRVING CONTINUES OPENING SUBMISSIONS

So we were up to paragraph 51 on page 10. So turning to integrated management. Now, the Regional Council is required to manage natural and physical resources in an integrated way and it is submitted that integrated management in this context is a systemic obligation requiring integration across
 10 RMA documents, agencies, legislation, and time. Therefore, the ORC must ensure that Plan Change 7 achieves consistency with superior RMA documents, co-ordination with other territorial authorities and agencies so provisions work together, co-ordination with TAs so that various functions can be achieved, and that the decision-making is forward-looking. It is submitted
 15 that Plan Change 7 conflicts with the ORC's integrated management obligations under the RMA due to its inconsistency with higher order planning documents, including the NP-FM second priority in Te Mana o te Wai; the National Policy Statement for Urban Development and the Partially Operative Regional Policy Statement and the adverse impact that this has on the territorial authorities
 20 long-term planning imperatives both in the RMA context and under other legislation. So turning first to the National Policy Statement for Fresh Water Management. In the NPSFM 2020, the hierarchy of obligations in Te Mana o te Wai prioritises the health needs of people above everything except for the health and wellbeing of water bodies and freshwater ecosystems. It is
 25 submitted that the role of community water supply is to provide for the health needs of people placing it in tier 2 of Te Mana o te Wai. Plan Change 7 as notified

THE COURT: JUDGE BORTHWICK

Q. Is that right? Well, it may be right in some instances but is it right in every
 30 instance, as far as the distribution of water goes across the TAs network?

A. In terms of the, is this a question about the various uses that –

Q. Yeah, it's again it's a use question.

A. Yeah. I think that there will be some shades of grey in individual circumstances where the, and I think, you know, if we take the Clutha example, that the extent of water used for those rural productive purposes wouldn't fit within the tier 2 category but I think, looking more broadly and

5 at the other schemes that we're talking about here, then yes, I think that those community supplies are for the health needs of people.

Q. Can I ask, is your planner or perhaps your representatives from the TA or in fact both, are going to be addressing the schemes and the purpose, yeah, and what uses of water those schemes have? Has there been any

10 considered analysis of that, to substantiate your submission that –

A. Yes.

Q. – the Clutha scheme, now in appeal, is an outlier?

A. I think they will certainly be able to answer questions about that issue if you're after more detail on that.

15 Q. Well, to have any confidence in your statement that they are in fact an outlier, you will need to lead evidence.

A. Certainly.

MS IRVING CONTINUES OPENING SUBMISSIONS

20 So paragraph 57, Plan Change 7 as notified, and the 14 March version, treats all water uses equally and in my submission, this fails to recognise the priority accorded to water uses that support the health needs of people. Counsel believes it is agreed by all parties that Plan Change 7 needs to give effect to the NPSFM to the extent that it can and the blanket approach to all water uses

25 taken under Plan Change 7 doesn't do that. A more nuanced approach to community water supplies is required, in my submission and this now appears to be addressed to a degree in the amendments set out in the Planning Joint Witness Statement, although, it is submitted that more is required, particularly with respect to the provisions that will apply to new water permits. Turning to

30 the Partially Operative Regional Policy Statement, so this was developed with reference to the National Policy Statement for Freshwater Management 2014, and Plan Change 7 must give effect to the provisions of that document. Community water supply supports the outcome identified in Part B of Chapter 4 of the Partially Operative Regional Policy Statement that communities in

Otago are resilient, safe and healthy. Objective 4.3 requires that infrastructure is managed and developed in a sustainable way and the Proposed Regional Policy Statement affords protection to community water supply as a regionally significant infrastructure where it qualifies as a municipal infrastructure and/or
 5 as a lifeline utility.

THE COURT: JUDGE BORTHWICK

Q. Just pause there a second.

A. And I have included in the footnotes there the references to the definition of municipal infrastructure. Do you want to go to that or would you be
 10 happy to look at that later?

Q. Well, my question for you is does the RPS, proposed RPS, does it have a definition of community water supply or does that have a definition of a regionally significant infrastructure?

A. Yes, it does.

15 Q. So it does have community water supply as defined term?

A. No, it has a definition of regionally significant infrastructure.

Q. And you're saying that community water supply, where there is no purpose attached to the same, is regionally significant infrastructure?

A. In part.

20 1410

Q. In part. What do you mean by that?

A. Well, it again, I think it will come down – so if we, perhaps if we go to the definition of municipal infrastructure, which is at page CB651, so it's tab 3 of the common bundle.

25 Q. Just pause there a sec.

A. Tab 3, CB651.

Q. Right. Haven't got that one. Have I got that with me? No, I haven't got that with me. CB?

A. 651.

30 Q. Just pause there a second. I've got that and what are we looking at?

A. The definition of municipal infrastructure.

Q. And I'll just read that to myself. So I've read that. The definition dealing with aspects of Three Waters.

A. Yes.

Q. And limited to urban environments, which means Dunedin, Queenstown and Oamaru and any other urban area within Otago.

A. Yes, or –

5 Q. Which qualifies under the NPS for urban development capacity, on urban development capacity.

A. Yes, and (b) an area of land containing et cetera, et cetera.

Q. Et cetera, et cetera. So and again to understand, and this important because you've got various TAs which don't look like each other.

10 A. Mhm.

Q. Dunedin does not look like Clutha District for example.

A. Yes.

Q. I don't know. This submission is made as if it's to read or applies equally to all territorial authorities and maybe it does because there's urban areas which qualify under this definition but again, because I don't have evidence before me as to the area that the TAs are reticulating water to, I don't understand how your submission would apply to all areas of reticulation.

15

A. Mhm. I think, if I can perhaps assist in part on that, there are, in the evidence there's a discussion of which territorial authorities have permits that come up for renewal in the life of Plan Change 7 and that is Queenstown and Central Otago.

20

Q. It's your submission on the prior page, at 59 say, there is a problem for those who are going to apply for new water permits. So it's not just replacement consents and we can have a look at them, but it's also new water too.

25

A. It is and I think each of the territorial authorities have assessed what, because of their long-term planning processes, what may or may not need to be applied for within the period and we, I think in the evidence, Mr Heller, Ms McGirr and Mr Greenwood identifies the projects that will fall within the life of this plan change. So I think there is or can be drawn from that evidence the extent to which there are areas of municipal infrastructure or urban environments that are affected by Plan Change 7.

30

Q. So it's going to be important, for me personally, having gone through the Clutha District Council appeal, to understand the four corners of the relief sought by territorial authorities and as I said before, whether Clutha District Council is simply an outlier or whether that actually applies generally across all territorial authorities. It's your responsibility, I think, to lead that from your witnesses and again I just, I'm struggling to understand the ambit of the submission. You know, is it just about municipal authorities and urban development or is it actually any person to whom that TA may choose or contract to supply water? Certainly your planner's evidence brings in everybody. So I don't know where you, you know, you need to be clear what your ambit is. If you haven't satisfied as to ambit, you're almost certainly going to luck-out on this process. So you need to be, your witnesses need to be clearer. So this submission, is this to do with your urban authorities and specifically urban authorities and their interest in your municipal infrastructure in urban environments as defined in this document?

A. Well, that, I mean that's the extent to which the provisions of the RPS will guide what needs to be in Plan Change 7, so where we are dealing with municipal infrastructure within an urban environment, then the objective and policies that apply to that infrastructure in the RPS need to be given effect to. Now, I think Mr Twose will be able to speak to this further but there are urban environments within Central Otago and Queenstown that are being provided water supply with permits that will need to be renewed, replaced or sought during the life of Plan Change 7. So to that extent, these definitions are relevant to Plan Change 7. The next part of the submission –

THE COURT: COMMISSIONER EDMONDS

Q. The area of land containing or intended to contain a concentrated settlement of 10,000 people or more, I mean how many locations are we talking about in that category, rather than being so general about it that I haven't got a picture. I mean Central Otago hasn't got a huge population for example.

A. No, it doesn't. I mean Cromwell, and this is discussed in Mr Greenwood's evidence, has been through its spatial planning exercise and identified its urban environment as being one captured by the NPSUD and I think Queenstown have done, Queenstown Lakes have done the same and from recollection, they have essentially identified two urban environments that encapsulate urban environments within the Wakatipu Basin and urban environments within the Upper Clutha.

Q. So that's all you're –

A. Those are the ones that are relevant in terms of the –

10 Q. The argument you're advancing now?

A. – Council's, yeah, that have permits that need to be renewed or replaced within the life of Plan Change 7.

THE COURT: JUDGE BORTHWICK

Q. Replaced. When you say renewed, you mean replaced, don't you?

15 A. Well –

Q. Technically, because you never renew anything do you? You replace it.

A. Well, that, yes, that's right.

Q. Yeah. Okay. And so I'm not sure why you need to draw a link between community water supply and regionally significant infrastructure. I'm not sure where you're going there but what you're saying is that the RPS has policies about municipal infrastructure.

A. Mhm.

Q. And we'll look at that. Don't, you know, don't make it more difficult for the TAs by saying oh, that's community water, if your definition of community water is just simply treating all water which is treated to the drink water standard which is a water regardless of its purpose because here now there is a purpose, which is, you know, municipal water supply within urban environments.

A. Mmm.

30 1420

Q. And it's defined. Well, that's a purpose.

A. Yes. The other component of the provisions in the RPS is around lifeline utilities, which –

Q. What does that mean?

A. Lifeline utilities has its own definition in the Civil Defence Emergency legislation and relevantly includes an entity that supplies or distributes water to the inhabitants of a city, district or other place. So there are – so that's probably slightly broader than the definition of municipal infrastructure but –

Q. Yes, but what does it mean for this case? Does it mean you can start irrigating land with it?

A. Beg your pardon?

Q. Does that mean then you can irrigate farm land?

A. No, I don't think it does mean that.

Q. Okay. All right. And again, don't make it harder for the TAs. You know, there's, you're going to have to overcome the doubt in my mind created by evidence which is yes, you can have all of these other non-urban activities and non-residential activities and it's perfectly, and you don't have to look at use, just supply for whatever, just supply. The region's only got an interest in the supply side of, in the fact that you are taking, not in the use of it because that's your case, isn't it, regions not interested, has no, should not be encroaching –

A. Well, I think, I mean the applications, if we work through I think what would occur, is the territorial authorities will make an application to replace their community water supply permits and I appreciate that in the Clutha example, there was not a whole lot of enquiry or information provided in the application around the use and that, that was one of the issues that I think exercised your Honour in that case was –

Q. Well, to be fair, that's right, because it wasn't disclosed by Clutha District Council that there were a number of rural uses.

A. Yes.

Q. Goodness only knows why you think you can use the water for that seeing as there was a taking use application but anyway, regions not taking any issue with that. So the fundamental problem with the application going forward.

A. Yeah, and I acknowledge that that was a particular, that created an issue in that case. I don't think that that means that every application for

community water is going to suffer from the same issues and I think if we

–

5 Q. And that's for your witnesses to actually satisfy me about that because they haven't, because those range of uses are clearly envisaged in the planning evidence and I'm not sure what you are saying. I'm not sure where you're going with it.

A. Yeah.

Q. And I need to know the four corners of your case.

A. Understood.

10 Q. So what is the submission. This submission is about, it's about it's a limited submission and it's dealing with municipal infrastructure and urban environments. That's all it's doing.

A. Yeah, so I think, I mean like, I mean as you know, this plan change needs to give effect to the provisions of the Regional Policy Statement. So to 15 the extent that community supplies that also qualify as municipal infrastructure, are captured by Plan Change 7, then the objectives and policies associated with that infrastructure need to be given effect to.

Q. Mhm.

A. So at 65, I talk about Policy 4.3.1 and 4.3.3, where the ORC is required 20 to provide for the functional needs of the infrastructure captured by those provisions and in my submission, the treatment of lifeline utilities and municipal infrastructure within the RPS protects and provides for community supplies at a higher level of priority than other water takes and this is consistent with its status as a tier 2 priority under the NPSFM. So 25 I take your point that we need to establish the extent to which community supplies are health needs or providing for the health needs of people and that that's a question we need to flesh out the answer to.

Q. Yeah. So, where there was a definition of lifeline?

A. Yes, that's in the Civil Defence Emergency Management Act.

30 Q. Okay. Not in the RPS?

A. No.

Q. Right. So –

A. Well, it is in the RPS but it refers back to the Civil Defence Emergency Act, so I've set out –

Q. Civil Defence?

A. – at footnote 27, the relevant part of the definition of lifeline utility.

Q. I see, here it is. Okay.

5 A. So the blanket six-year term in Plan Change 7 treats community supplies in the same way as other takes, which is inconsistent with the priority given to municipal infrastructure and lifeline utilities in the RPS and means that the functional needs of those uses has not been adequately provided for. It impairs the ability of the territorial authorities to fund upgrades and maintenance of community supplies, develop medium and long-term
10 plans for the efficient and effective management of those supplies, and to make infrastructure provision for growth as required by the section 30, 31 and the NPSUD.

Q. Okay, and that again is a submission which is strictly limited to municipal infrastructure and an urban environments.

15 A. Yes.

Q. Okay.

A. And to the extent that crosses over with whatever we decide community water supply is. So turning to the obligations under the NPSUD, so this requires local authorities, including both the Regional Council and the
20 territorial authorities to provide sufficient development capacity to meet expected demand over the short, medium and long-term. As we've talked about, the definition for development capacity is defined and includes the network infrastructure for water supply. Local authorities are separated into three tiers and within the Otago Region, Queenstown and Dunedin are both tier 2 and the other centres and districts served by the TAs are
25 in tier 3.

Q. No, I'm sorry, I'd like to go back to that definition again so we're tracking you.

A. This is urban development capacity.

30 Q. Which volume is that?

A. So that is, I think it's volume 2. Sorry, volume 3. It's tab 6.

Q. And again, is your submission that development capacity is a term which is limited to an urban environment or is it something else?

A. I think it is limited to providing that capacity within an urban environment. So for the purposes of giving effect to the NPSUD, I don't think we could argue that this would apply to the provision of development infrastructure outside of an urban environment.

5 Q. Okay.

A. So Mr Greenwood, I think, sets out some of the significant growth that has occurred within Central Otago. So whilst it's not a tier 2 authority, it is experiencing some of the same issues as the authorities that are captured by the tier 2 requirements in the NPS. Now, local authorities in
10 all tiers are required to work together to implement the NPS and in particular the Regional Council is required to work with the territorial authorities in relation to water supply to achieve integrated infrastructure planning.

Q. Just pause there a second. So your citing in your footnote initial policy
15 development statement urban development, Policy 10A. What page is that on?

A. That's CB793. It's at the bottom of CB793.

Q. Okay.

A. For water supply to be sufficient, both the Regional Councils and TAs
20 must ensure that in the short-term, so that's within three years, there's adequate existing water supply to support the development of land, but in the medium-term, the three to 10 years, there is either adequate existing water supply or funding for adequate water supply identified in a long-term plan, and in the long-term, the next 10 to 30 years, either the
25 short or medium-term conditions are satisfied, or the necessary support is identified in the local authority infrastructure strategy. And so that, I think shows you how the obligations under the various pieces of legislation are to be meshed together. And in my submission, these obligations are rolling obligations that requires Councils to proactively
30 plan to provide development infrastructure and the evidence of Ms McGirr and Mr Greenwood (now Mrs Muir) identify a number of projects that are in the pipeline in accordance with those territorial authorities obligations. The reality is that community water supply infrastructure does not materialise overnight and planning for it needs to begin ahead of the

actual need, otherwise it acts as a bottleneck which would undermine the objectives of the NPS urban development. Now, the approach taken to the NPSUD by Mr de Pelsemaeker results in a triumph of form over function, in my submission. It effectively places the territorial authorities in a holding pattern, unable to take active steps to ensure that they continue to meet their rolling obligations to provide infrastructure-ready development capacity. The costs associated with water supply investment are often in the millions and tens of millions of dollars. To be affordable and equitable for the community, the cost of this needs to be spread over many years, not dissimilar to the life span of the infrastructure itself. Plan Change 7 short-term sinking lid focus singularly fails to reconcile the range of obligations placed on territorial authorities with respect to community supplies. How can a Council set a rate that spreads the cost of the infrastructure over its expected economic life when the water itself may only be available after six years? I thought I should mention drinking water reforms, although we've got obviously a review of the drinking water supply by the Government as part of its Three Waters Review, which was in response to the Havelock North Drinking Water Enquiry. Currently before the house, the Water Services Bill proposes to replace Part 2A of the Health Act and although we can't speculate on the outcome of that, the obligations that exist in relation to the provision of water will require long-term certainty, in my submission, regardless of which organisation those obligations fall upon. So in conclusion, it is submitted that Plan Change 7 was devised as a narrow method to pause time so that the new Land and Water Plan can become operative. Yet the scope of activities captured by it is not commensurately narrow. This has given rise to unexpected complexities. The ORC's approach fails to give due consideration and weight to the full range of obligations on local authorities. As a result, the plan change does not implement the superior planning documents as they relate to community water supplies or nor does it integrate the water supply obligations on the ORC and territorial authorities across statutes. By treating community supplies in the same fashion as all other water uses in Plan Change 7 brings the ORC into conflict with its resource management obligations

and the TAs into conflict with their resource management and other statutory obligations. As set out in the evidence for the TAs, the exercise of their water supply functions cannot sit idle for six years. Works are planned and need to be carried out within the life of Plan Change 7 to ensure that they meet their obligations. Replacement consents that fail to provide for growth will compromise the ability for the TAs to ensure adequate supplies are available in the short, medium and potentially the long-term. Consents of only six years duration will also place TAs in an untenable position with respect to their obligations to be prudent and ensure efficient and effective infrastructure management and planning. Provision of safe and resilient community supplies are a fundamental service of such importance to our communities that it simply should not be subject to the Plan Change 7 regime. Community supplies are completely ill-suited to short-term planning.

15 **THE COURT: JUDGE BORTHWICK**

Q. Oki doki. I have made a note, and just correct me if I'm wrong here, but your key proposition is that water treated to the standard which is safe for human consumption, is community water supply regardless of the use to which that water is put. So it's the treatment which drives the definition community water supply.

A. Yes.

Q. And you'll have to come back overnight.

A. Yes.

Q. Fairly significant areas there of statutory interpretation and planning interpretation.

A. Yes.

Q. So that's the one note that I have made. The second note is from paragraph 47 to 50, that is a submission which is set specifically in the context of the NPS for urban development and is a submission limited to urban environments as defined by that NPS, correct?

A. Mhm. Yes.

Q. Likewise, your submissions from paragraph 60 to 68 is a submission set in the context of the proposed RPS and the proposed RPS and is a

submission set in the context of an urban environment as defined by that instrument, I think.

A. Yes, in relation to the provisions that apply to municipal infrastructure.

Q. And municipal infrastructure.

5 A. Yeah.

Q. Yep. I made a note that your submission in relation to paragraph 69 through to 75 are again as set in the context of the NPS for Urban Development 2020 and is confined to development capacity within an urban environment.

10 A. Yes.

Q. Okay. All right. Your first witness. No.

1440

THE COURT: COMMISSIONER EDMONDS TO MS IRVING

15 Q. Well somewhere in her you suggested that while the planning witnesses might have gone so far with things that more was required, so I was left scratching my head as to actually what it was that you were seeking now.

A. Yes, so in the evidence from Ms McGuirr and Mr Greenwood they talk about the projects that are on foot now that will require resources – resource consents to be sought within the life of plan change 7. And in 20 both cases there are projects that will require new resource consents to be sought as opposed to replacements of existing resource consents and so policy 10, what it 10A 2.2 or 10 2.2, whatever the numbers are. Is the policy that will bite in relation to those new applications and that is obviously a policy that requires that consents only be granted for six years 25 and because those permits are not replacement permits they couldn't avail themselves of the third policy in the notified version that gave a pathway to at least a 15-year term and so what we – that's an issue I think that needs further consideration. If community supplies are to be subject to plan change 7 then do we need a framework that enables somewhat longer term consents for new applications as well as replacement 30 applications. And there's sort of two, I suppose two parts to that in a way as well because and this was something that was discussed a bit during the community supply conference in terms of the need to provide for

growth. So if there is headroom, as we're calling it within the existing rates and volumes on the consent then a replacement consent could be sought within that headroom but providing for some growth. However if the community supply is already tapping out that existing consent and to provide for growth needs to take more water, over and above that existing consent, then that again would be a new application that the policy 10 2.2 would apply to rather than the policy –2.3 policy would apply to.

5

Q. And the other thing you mentioned, you did mention the definition that had come out of the expert conferencing in terms of the, was it community water supply?

10

A. Yes.

Q. And I just wondered with the second part of that, I suppose there's just a couple of things that occurred to me. The first thing was in terms of this discussion that we've been having about the use dimensions, how that might fit in with that definition because the second part of it, I don't think I've ever seen a definition that uses the words "enabling". That part of it seemed quite broad in terms of the responsibilities. Then we've got the next part which talks about, "for the supply of drinking water". So I thought that might be something –

15

20 A. Yes.

Q. – that you might need to consider in terms of the additional work that you were going to get under way.

25

A. Yes and that, the use of the term "drinking water" in that definition, yes, didn't escape my attention and I tended to think that it lent, in some way support to my view or the submission I've made around the definition of "drinking water" in the planning standards and its referenced to intending to be consumed or whatever the words are. So it is less about whether it is actually used for human consumption and more about whether it is intended for that purpose and that would be consistent I think with what's been captured in that definition of "community water supply" where there is reference to the likes of the industrial and business uses. Now some of the water that would get delivered to those activities would obviously be consumed or it may be used for other sanitary purposes that are captured within a definition of "drinking water" and other things may not

30

but the water that is delivered to those people is all intended to be able to be consumed. So I thought in that sense those definitions did mesh together. I think that obviously they've narrowed the scope of uses that could be, for within a community water supply and so I think in this definition, wouldn't capture the Clutha district example that your Honour is familiar with because I think in that case, from memory there was about 20% of that water that was being used for going to domestic uses and the balance was rural supply and so I think in that instance based on that information you would have to say that that was not the primary purpose. So it creates a slightly interesting dynamic given that that particular Clutha supply is identified in schedule 1B.

Q. Oh you see there – there you got the interpretation argument, what is identified in 1B?

THE COURT: JUDGE BORTHWICK TO MS IRVING

15 Q. It's a bit of a beast that document.

A. Yes.

Q. But I would have thought 1B under the sub-title, *Community* – or is it – *the values...*

A. Well it's *Water Supply Values*, yes.

20 Q. Yes that's right, it's the *Water Supply Values* which is define, which is consumption.

A. Yes. There's a dis-

Q. You know, so it's like, so that's my drinking water, it's – so where the purposes where, yes the purpose of the supply, is drinking water whether it's used for that or not, I guess but whether – that's what it is. It's not irrigation supply or maybe it's being co-opted or these schemes have been co-opted or have morphed out of, you know from their original purpose to serve or meet the needs of community, whatever they may look like. I don't know how the Clutha got itself to the position that it's in but anyway that's what Region's trying to manage.

30

A. Yes, I mean I think if we were to take, so we would imagine for a moment, this definition of "community water supply" went into plan change 7 –

Q. Mm.

A. – then I think in that situation, if Clutha came along and said, “look we’d like to replace our permit”, then it couldn’t be considered as it is now as a community water supply. It would come in under the other provisions. So in that sense dif–

5 Q. Come under what other provisions?

A. Well into the standard plan change 7 provisions because it wouldn’t qualify –

Q. No, yes.

A. – as being for the primary purposes. So in that sense this definition would
10 act as a bit of a drafting gate for that *use* issue.

Q. And no doubt counsel and the Court will test the definition but is that your,
you know if your instructions are now. You know, so you’ve got new
instructions, that it’s, you know that community water supply is primarily
for this definition, you should tell us that because I’m – when I read your
15 submissions I’m going, “nah, they’re trying to get the gate open to
everything else”.

A. Mm.

Q. You now the entire rural primary sector uses and so I’m, you know this is
where you’re creating doubt in my mind and where I’m saying, “no, you
20 have got to put the four corners before me and don’t in the next, you know
lest it be said in the future well that was before the Court surely they knew.
I really want to pin you to what are the four corners which isn’t to constrain
what your case is, but to understand yes that is your case or no,
something else is your case.

25 1450

A. Yes well I mean I don’t, the changes have been discussed and
recommended in the conferencing were on the basis that if it was decided
that Plan Change 7 would apply to community supplies, then this was a
solution that could work. So I don’t at this stage, have instructions to walk
30 away from just a (inaudible 14:50:47) just take community supplies out of
Plan Change 7 which was the relief set out in Mr Twose’s
evidence-in-chief.

Q. Okay, no well that’s very clear and so then Mr Twose is going to have to
establish for the Court what the four corners are at this moment –

A. Yes.

Q. – they're quite unclear?

A. Yes.

THE COURT: COMMISSIONER EDMONDS

5 Q. So how does that last statement relate to what you were outlining before in terms of a pathway to a 15 year term that was as was in the notified version?

A. Yes, well I think it's I suppose goes to the same point doesn't it, that if Plan Change 7 is to apply, then we're saying it needs to be amended to provide that longer term pathway for community water supplies.

10

Q. And what do you mean by longer term? Is that the 15 years or is it something else?

A. I don't have a instruction -

Q. Oh are you still thinking about it and –

15

A. – yes I don't have instructions on - for that –

Q. Okay, all right.

A. – to be honest.

Q. (Inaudible 14:52:00) clarifying that –

THE COURT: JUDGE BORTHWICK

20 Q. And the planners didn't deal with that?

A. No they haven't.

Q. They got to the definition part, but they didn't –

A. Yes.

Q. – deal with duration part?

25

A. No.

Q. As per that definition, so that remains at large?

A. Yes.

Q. Okay.

A. Yes so I think what's in the joint witness statement is a partial solution to the issues if community supplies are to be captured within Plan Change 7.

30

QUESTIONS FROM THE COURT: COMMISSIONER EDMONDS

- 5 Q. I didn't have any more I don't think, oh I suppose just the one area that I was left a little confused about, there's quite a lot said about the Municipal Water Supply and Urban Environments and things like that but when you drive around the Otago region and you look at all these houses in the rural environment and you think, well, they probably don't actually relate to the urban environment definition –
- A. Yes.
- Q. – in terms of the MPS?
- 10 A. Correct.
- Q. So you haven't taken us specifically to any document provisions that specifically speak to that question –
- A. To the urban environment question or...?
- Q. No, to the non-urban environment?
- 15 A. Yes.
- Q. And in terms of, I guess even in the rural environment, you think like the urban environment, there ought to be some integrated planning going on in terms of any zoning or resource consents and all those sort of things, so the water isn't – supply issue isn't being driven in one direction and the pattern of development being allowed to go in another direction, so I just wondered whether, how your case might be addressing that issue?
- 20 A. Yes, I don't think I quite follow your question. Are you – can I perhaps pose what I think –
- Q. Well you can, I suppose I was partly thinking about well we've got a land and water plan that's surely going to have to look at making sure you get a sort of integrated pattern of future possibility in terms of land use as well as the water resource use, so how is that being factored into the work that might be being done by the Councils on future –
- 25 A. Yes.
- 30 Q. – development, future demand, future supply –
- A. Yes I mean –
- Q. – all those things, a bit like what's attempting to be done with the MPS on urban development capacity –
- A. Well it –

Q. How's that being done for the rural area, and you did mention somebody doing spatial planning along the way –

A. Yes.

Q. – I notice, but I mean, to me, that left a bit of a question mark?

5 A. I don't, I mean the short answer is I don't know the extent to which the Regional Council's land and water plan is going to I suppose look at how rural land use might be changing which may place demand for water infrastructure, that, I don't know the answer to that. I, from the TA's point of view, they have perhaps unsurprisingly focused on the areas where
10 they are responsible for the provision of that infrastructure and so the extent to which water supplies that they don't manage, may be effected by land use change, hasn't been something that we've been thinking about in the course of this process.

Q. That may be enough of an answer -

15 A. Yes.

Q. – and I've – if I think of anything I can ask some of the individual witnesses –

A. Yes, I mean I –

Q. – but it's not something that you've been factoring into your case, so that's
20 what you're saying?

A. No, no.

Q. Okay, thank you.

QUESTIONS FROM THE COURT: COMMISSIONER BUNTING

Q. I just had one question to do with the definition from the planners where
25 they've got an exclusion. It says 25 or more people on at least 60 days a year, how's the balance addressed? Is this covered under the various Local Government Act or something like that?

A. Yes, so that there I think is pulled from the definition of registered
30 community water supply which is currently in the regional plan water and is also from the Health Act, so that's sort of the smallest type of community supply that is referred to in the Health Act and so I think that's been brought across to essentially capture any supply, I suppose bigger than that, so serving at more than 25 people or for more than 60 days,

anything smaller than that wouldn't qualify as a community suppliers is my understanding of how that definition is to work.

Q. So could someone want drinking water for a community, a small community –

5 A. Mmm –

Q. – of 25 or less people etc?

A. Well I suspect that, I mean they could, there could be people that are applying for water for domestic –

Q. Yes.

10 A. – that are smaller than that, absolutely.

Q. But not captured by the –

A. But not captured by the –

Q. No.

A. – community supply definition.

15 Q. And could it be that the quantities of water are so small they don't warrant?

A. Yes, yes I mean, I think that's right, I suppose the current sort of Health Act framework is I think focused on I suppose risk in some respects, how many people are served by these suppliers that may be at risk and there are of course permitted activity rules in the regional plan water for taking water for domestic purposes.

20

Q. Okay.

A. That would cover some of those smaller uses –

Q. Okay.

25 A. – perhaps not up to 25 people, but there is certainly some provision there for smaller takes.

Q. Okay. Thank you your Honour.

THE COURT: JUDGE BORTHWICK TO MS IRVING

All right, your first witness.

30

MS IRVING CALLS**THOMAS BRENDAN HELLER (SWORN)**

Q. In your full name Thomas Brendan Heller?

A. Yes.

5 Q. And you are a director of Environmental Associates –

A. Yes.

Q. – Limited in Dunedin?

1500

A. Yes.

10 Q. And you have prepared a brief of evidence in these proceedings dated the 3rd of February 2021?

A. Yes that's correct.

Q. And you are also a signatory to the joint witness statement for Community Water Supplies dated 31 March 2021?

15 A. Yes and I don't have a copy of that with me.

Q. Do you have any amendments that you wish to make to your evidence?

A. Not specifically although I'd like to talk to the Court about general positions that I have with respect to what has occurred with (inaudible 15:03:04) and so forth.

20 Q. Okay. I'll perhaps get you to confirm your evidence-in-chief and then I think you've got a summary that you wish to use and you could perhaps elaborate on those matters during that?

A. Okay, yes.

25 Q. So do you confirm that your evidence is true and correct to the best of your knowledge and belief?

A. Yes I do.

Q. Thank you, so if you'd like to go through your summary and then answer any questions.

30 A. It may be helpful to the Court if I were to just firstly provide my position on the focus of my evidence and then run through this amended summary and then I can get to what is – and this should really help the Court, my position on where we've got to with the plan change 7 schedule 10A 4 – Water Allocation for Community Water Supplies.

THE COURT: JUDGE BORTHWICK TO MR HELLER

Q. I thought the focus of your evidence was the (inaudible 15:04:04) was the schedule.

A. Yes.

5 Q. Yes. That doesn't step beyond that in terms of dealing with duration –

A. No.

Q. – or does it?

A. No.

Q. So it's just the schedule and the methodology in the schedule?

10 A. Yes, just the water allocation outcomes of plan change 7 for the Community Water Supplies.

Q. Well outcomes are quite a different proposition.

A. This schedule.

Q. The schedule, okay, right.

15 A. Yes.

Q. All right, no, I understand that's what your evidence was.

A. Okay thank you. So just moving to the amended summary.

Q. Mm.

A. And would you like these read out in full your Honour?

20 Q. Yes.

1505

A. Okay. Point 1, Community Water Supplies and that's including – that's inclusive of those in schedules 1B and 3B of the regional plan water operates on a peak water supply requirement with an acceptably sized storage facility to buffer water use on a daily basis and to provide continuity and reliability of supply. Schemes configured in this way are considered to be the most efficient method for delivering community water. Water-metering data shows that daily, monthly, and annual water abstraction for community water schemes is not fixed and can vary significantly according to seasonal water requirement, and where required, growth of a scheme over the consent period. Large storage facilities to enable reductions in peak abstraction over short-to-medium periods are expensive and are effectively not utilised during the balance of the seasonal scheme operating period. The PC7 schedule 10.A.4

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allocation method, as notified and as amended, did not provide for the efficient and reasonable allocation of water for water supply takes and their associated scheme, planning, and operation. The issues with the notified method were set out in my evidence-in-chief. Expert conferencing regarding schedule 10.A.4 has taken place, and this is assuming that the community water supplies would be subject to plan change 7. The outcome of that caucusing enables the full array of water metering data to be used, and applying legitimate maximums of rate, daily, monthly, and annual volumes of take to community water supplies. If those amendments are accepted, it is my opinion that schedule 10.A.4 is able to accurately reallocate water to enable a community water supply to continue to operate up to previously taken rates. However, that doesn't enable any future growth and demand. The method to enable increased water allocation to support growth and demand for community water supplies was to the planning caucusing. It is my professional opinion that six-year terms for community water supplies is too restrictive on that basis for territorial authorities to operate and plan infrastructure facilities in order to meet future water supply needs. In my experience, territorial authorities carry out infrastructure and water-supply planning for at least, or up to, a 30-year timeframe. This is to ensure that water-supply provision is anticipated and that mechanisms are in place to provide that water when needed. Mr Twose, in his evidence-in-chief, explains the planning regulations that direct territorial authorities in matters of water supply, infrastructure, and provision. The facility to encapsulate projected community growth out to a 30-year timeframe within a water permit, enabling the abstraction of water, is fundamental to territorial authority, water supply, infrastructure planning, and execution." Your Honour, if I can perhaps just then identify where my position is now with respect to water allocations for the community water supplies under plan change 7? And this is specifically in respect of schedule 10.A.4. As identified in my amended summary of evidence, I agree with the other technical experts, including the regional council experts, in relation that schedule 10.A.4 can be modified to account for water supplies to community water schemes, and this is with the incorporation of the water-metering data that we

discussed and confirmed, and taking the maximum rates and volumes as was confirmed in the caucusing document. That is all, I agree with all of that and that's my position. Secondly, the provision for growth that was undertaken at the planning caucusing. I agree with that position and with the planning experts that growth can be incorporated into the community water supplies upon reapplication or application, and that I also agree that where it's within the headroom of a consent, that will be dealt with under the existing replacement as opposed to any water that was required over and above the headroom of the existing consent would be a new application, so I'm agreed with that, which came out of the planning conferencing. The only point that I have concerns with is that the term of consents, whether it be replacement or new consent under plan change 7 of six years is insufficient in itself to provide for water supply projection and planning out to a 30-year timeframe for the territorial authorities."

15 **THE COURT: JUDGE BORTHWICK**

Q. Sorry, to provide for growth, is it?

A. To provide for the growth, it's just for the growth, your Honour.

Q. Out to 30 years?

A. Yes.

20 Q. Why is that?

A. And that is my only concern.

Q. Yeah, so why is that? So, first off, why 30 years, and why is that remaining concern?

A. Yes, the reason being is that I think we have heard that there is an onus on territorial authorities, and I am not going to get into the relative legislation and so forth because it's not part of my evidence, but territorial authorities have a planning requirement up to a 30-year timeframe for water supply to try and keep ahead of their water supply requirements. That would be in excess of a six-year period for growth which has been agreed to at the planning caucusing, so the terms of consent of six years obviously only incorporate a six-year projection for growth. That will be difficult where there is significant growth, because that doesn't provide the confidence to the territorial authorities to be able to then go ahead

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and install infrastructure and to make the necessary upgrades on the basis of a 30-year projected population increase and water-use increase, with the thought in mind that, you know, in six years' time, they may not get that extra tranche of water. So it's a technical and it's an application, it's a logistics problem for the territorial authorities.

5

Q. Thinking about the Clutha case, and this is not the application before the Court, but there was some evidence from a Clutha engineer that we heard that at least part of his thinking was that the Clutha District Council take, which is now in appeal to the High Court, that that take could be used maybe as a replacement take or instead of or, I guess, as an alternative take to at least one or two other community water schemes in the area, which schemes were unreliable because the flow in the water body was unreliable or the flow in the water body from time to time got heavily silted up, for example. Would it make any sense for those other two supplies, on whatever water bodies they were on – so this is quite different from the permit before us, but we heard evidence about it – well, firstly, do you recall evidence about that?

10

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A. Yes, I do, I think, yes.

Q. That part of the strategy for the engineer was to think can we also use the permit before the Court to supplement or to replace these other two unreliable takes?

20

A. Sort of branch across schemes.

Q. Yeah, that's right.

A. Yeah, yeah.

25

Q. That's what they were thinking, and I'm not quite sure whether that required new infrastructure or not. Would it make any sense to renew those other two permits for 30 years, given reliability issues and water quality issues?

1515

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A. Dare I say it your Honour, that will be on a case-by-case basis. No two – you know, no application will be the same and no schemes will be the same. They can be vastly different. I think if we take one example that is in my evidence-in-chief of the – well I think it's in my evidence-in-chief, for Clutha District Council to develop what is a, a sort of mega scheme at

Clydevale. That's one of its current community water supplies, sourced from wells they're riparian wells to the Clutha river at Clydevale. They would like to take other schemes which are reliant on tributaries which have you know, flow problems –

5 Q. Mm.

A. – and silt problems, water quality problems and bring them all to Clydevale. Have this one big mega scheme supplying the lot. Now that is in the pipeline, so to speak for Clutha district in – within the next six years. And that would be captured by plan change 7 but the intent there is to surrender the existing permits from the tributaries and take it all from the Clutha.

10

Q. Assuming that there's – that's a lot of assumptions around Clutha ability to provide.

A. Yes.

15 Q. Yes.

A. The tributaries are tributary of the Clutha –

Q. Mm.

A. – upstream of the take. One's upstream, one's downstream.

Q. Mm.

20 A. Yes.

Q. So any way. Your evidence is – yes, okay. You seem to be wanting at least 30 years on the basis of the council's long-term planning under the MPS urban development. Yes?

A. Yes but that. I'm not addressing this as a – from a planning perspective your Honour.

25

Q. Mm.

A. I'm – this is a technical and sort of – infrastructure installation-type perspective that it's – it would be very difficult for a TA, territorial authority sorry, to go ahead and increase pipe sizes for a water scheme projected to have growth out to the next 30 years where they only have water for that projected growth for six of those 30 years.

30

Q. And I think we heard the same for the primary sector as well.

A. Is – okay.

Q. So, you're all in that category.

A. Okay.

Q. How then are we to distinguish you, I think is the key issue for TAs. Are TAs are continuing to look for water supply, for primary sector and non-urban uses?

5 A. There are few very primary sector water cons– there are very few primary sector water consumptions from Community Water Supplies that I know of your Honour. I know of one commercial irrigation take form the Tapanui water supply in Clutha district and that is for a nursery.

Q. Mm.

10 A. And that is only able to take water because the rate and volumes it uses are relatively low and they can be obtained from the pipe sizing network that the council operates. Essentially any large irrigation take will not be able to take water from within a municipal – a community water supply because the pipes are just too small.

15 Q. Okay.

A. And if they go and take water then somebody else misses out.

Q. Thing is, counsel have left this all in play, creating uncertainty at least in my mind.

A. Right.

20 Q. I don't, yes – and you know, a permit before the Court now on appeal to the High Court is described as an outlier were 80% of the water was destined for the primary sector. I don't know that because there's been no analysis by anyone to say, "yes it is a true outlier and all other permits held by territorial authorities are to provide water for urban development in an urban setting".

25 A. Yes.

Q. Yes. I simply don't know. I've not seen the analysis so – and would need to hear it from each territorial authority. And you're representing who here? Clutha?

30 A. Waitaki district and Clutha district.

1520

Q. Yes, and so have you gone through each and every permit held by both those district councils to ascertain what percentage of use is for purposes other than human consumption and associated with industrial business use within an urban setting?

5 A. No I haven't your Honour and that is not focus of my evidence.

Q. Whose evidence is dealing with that?

A. I am unsure.

Q. Okay. All right.

10 A. I think that there are a couple of territorial authority officers presenting information that may be able to elaborate. Certainly with regard to their own councils.

Q. Mm.

15 A. I mean I could try to elaborate on behalf of Waitaki and Clutha but it would be just off the top of my head but again that is not the focus of my evidence. It is really about how a water allocation model would look under plan change 7 for those community water supplies. And the community water supplies that I'm talking about your Honour are those ones that are scheduled in 1B and 3B.

Q. Okay.

20 A. But that was my primary focus.

Q. Yes, no understood. Anyone else giving evidence specifically for the Waitaki and Clutha or council or no?

A. No.

Q. Thank you.

25 **CROSS-EXAMINATION: MR MAW**

30 Q. Good afternoon. I want to start by just understand the scope of your evidence because you gave some further explanations when you added some further opinion to the end of your summary in relation to some outstanding areas that you perhaps expressed some concern about. One of which was in relation to the onus on territorial authorities and the planning requirement out to a 30-year timeframe, now you said when you commenced the giving of your evidence that you were focused on the schedule. It strikes me that you are now straying beyond the schedule,

into the planning realm and I want to be really clear that I understand that whether you are entering the planning realm in terms of the obligations on territorial authorities over, you say a 30-year period or not. Because that's either within your area of expertise and I can ask you some questions on it or it's straying beyond, so can you clarify that for me please.

5

A. I can confirm counsel that I am not entering the planning realm and that the statement I made to the Court which is within my amended summary is mostly based – or it's entirely based on the technical and provision aspect of infrastructure. Typically when a district council or city council re-applies for water with their consent, that they look 30 years ahead and say, "well do we need any extra water?" and at that time they will ask for water for growth. And this is really just a technical and an infrastructure provision requirement that if they don't get that water then they probably wouldn't install that infrastructure.

10

15

Q. So, in relation ...

A. So it can be dealt with by the planners, in answer to your question sir.

Q. Well at – it did seem to stray beyond your written material where you had stayed focussed on the schedule. So I understand you to be saying to me that your clients say to you that, they'd like a permit for 30 years but you can't tell me what the planning rationale or the planning basis is for that, in a technical sense, a planning technical sense, RMA planning documents etc.

20

A. Counsel I'm not saying that there should be a permit there for 30 years. what I am saying is that, "yes we've identified that the schedule 10A 4 can work", there are aspects of it that can be changed and I'm all absolutely fine with that and we left the growth part to the planners. And I'm absolutely fine where the planners got to. I was just pointing out my concerns from that operational perspective that it is a 30-year growth which is envisaged by the territorial authorities not a six year and look the assessment of that and the provision for that rests entirely with the planning group.

25

30

Q. I shall direct my questions then about that to the planner for the territorial authorities. So just rounding back on to the joint witness statement and

you've just summarised again for me where your thinking's now at and am I correct to understand that you're comfortable that the schedule and the modifications that have been made to the schedule, so schedule 10A 4 to enable the calculation of takes for community water supplies now addresses the concerns that you'd expressed in your evidence-in-chief?

A. Yes, that's correct.

WITNESS REFERRED TO PARAGRAPH 19 OF EVIDENCE-IN-CHIEF

Q. Now I had some questions for you about the particular water takes within the two districts for whom you are giving your evidence and you've traversed some of this information and questions from the bench a moment ago but I want to explore a little more further if I may, this question of the uses to which community water supplies are put. Now you touch on this in your evidence-in-chief at your paragraph 19. And there you set out some of the additional uses but I'd be interested to know, in your opinion are you able to list the types of uses to which community water scheme water is put in terms of the two districts for whom you are giving evidence?

A. There are many uses counsel. Yes, I have listed some. I can't go any further than that but just to re-affirm that there uses of that water.

Q. Can you describe some of those uses for the Court?

A. I think that's in paragraph 19.

Q. Right, so let's look at paragraph 19, *Household and property water needs*, so when you say household and property water needs?

A. Yes, I also think that it is identified in other paragraphs of the evidence, counsel just to help. We can rely on paragraph 19 and we can also rely on additional paragraphs where I describe each of the schemes that I have made as examples in relation to assessing water allocation from schedule 10A 4. So I provide an explanation of the uses of water in those schemes and that is the Waihemo, Palmerston water supply. The Milton water supply and the Balclutha water supply. So just to reiterate, the Waihemo supply supplies the town of Palmerston. It also supplies some rural stock water. It supplies one dairy shed – one dairy farm of which

the discharge from that dairy farm is permitted activity. The Milton water supply supplies...

Q. Let's just press pause on the Waihemo –

A. Okay.

5 WITNESS REFERRED TO PARAGRAPH 36 OF EVIDENCE-IN-CHIEF

Q. – for a moment. As I read your paragraph 36 of your evidence, it also refers to stock water being supplied to the balance of the rural command area.

A. Yes.

10 Q. So what size command area are we talking about here?

A. I'm not sure.

1530

Q. No understanding of knowledge of the number of connections or the volumes of water?

15 A. Not specifically. The predominant use of that water is for Palmerston township, though, I do know that.

Q. Right, tell me about the Nelson –

A. But there certainly are other uses in various schemes. I mean, that seems to have been discussed earlier as well with counsel.

20 Q. I wonder whether I might put a list for you from a memo put together by Ms East, and you can confirm whether it perhaps accurately covers the range of uses to which community water scheme water is put.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Who's Ms East? Given me so many folk.

25 A. Now, Ms East has prepared a memorandum, which is attached to the evidence of Mr Twose. Ms East is not before the Court, but he confirmed the contents of it.

Q. So it's an attachment to Mr Twose?

A. Yes.

30 Q. Okay, all right.

CROSS-EXAMINATION CONTINUES: MR MAW

- Q. And there, she described the wide range of uses, aside from human consumption, as including bathing and toileting, rural and stock purposes, irrigation, watering of the garden, washing the car, firefighting, watering sports fields and parks, water-intensive commercial and water-intensive industrial processes, like commercial vehicle-washing, water-blasting, commercial laundries and manufacturing. So does that list sound, or does that accord with your understanding as to the wide range of uses to which water is put from these schemes?
- 5
- A. I'm unsure about the term "irrigation" that you use. I mean, you've used the context of the watering of lawns and then sports fields, and then you have irrigation separately. Are you talking about, like, commercial farm type irrigation?
- 10
- Q. Well, you tell me, what is the water used for? Or is it simply you don't know the range of uses?
- 15
- A. There's a lot of range of uses, and we can distil down to, you know, the filling of duck ponds and, you know, various other things that are – I mean, imagine how many different water uses there would be in Dunedin City, for example, for water, just within the city itself. Quite a lot, so, look, the main uses that I consider are for, essentially, household supply, from the scheme that I have had experience with, household supply, community supply – so that's businesses and so forth, that's supplying the regional council with their cup of tea water – and also when you extend out to beyond the urban and you get into the rural, some of those schemes also incorporate stock water, and a few schemes even supply water to dairy sheds, but I'm not aware of any other commercial irrigation supplied by these schemes apart from the one that I –
- 20
- Q. So apart from the nursery in Tapanui.
- A. – apart from the Blueskin Nursery at Tapanui.
- Q. So it's a fairly broad range of uses, you'd accept?
- 30
- A. It's use that I would expect from a municipal community water supply.
- Q. Now, when you think about the community water supply and the range of uses, and then you think about the proportion of water that's used for human consumption, do you have, or are you able to give an opinion on

what percentage of the water that is taken might actually be consumed or would fit into the category of “for human consumption”?

A. My evidence doesn't extend to that, counsel.

5 Q. Have you considered any of the schemes within the Clutha or Waitaki Districts and carried out any analyses of the breakdown of water use?

A. Only insofar as previous resource consent applications.

Q. And in relation to those previous applications, you have been able to conduct that exercise?

10 A. Yes.

Q. Yes.

A. To various extents.

15 Q. And recently, you've provided evidence to the Environment Court in relation to an application by the Clutha District Council with the respect to, I think it was the community take at Stirling? Do you remember that evidence?

A. I do remember. I don't seem to recall it in my evidence here, though, counsel.

20 Q. No, there's no reference to that evidence or the analysis that he had carried out with respect to that water supply, but as luck would have it, I have some copies of your evidence and I can provide a copy to you to refresh your memory if that would assist.

25 A. I'm unsure if I'm able to comment because it could be outside the scope of my evidence. I'm definitely comfortable in terms of, you know, there are ranges of uses within a community supply for, you know, the provision of water.

THE COURT: JUDGE BORTHWICK

Q. I don't think counsel is confined to what you decide your scope of evidence is. He can cross-examine on what he likes.

30 A. Yeah, okay.

Q. And the obvious line of questioning, it is obvious to the Court that the region is going to get into what are the range are the range of uses, and at the moment, this is quite opaque, where we are going. So how about

you refresh the witness's memory with his own evidence, and we will take a cup of tea and allow time for reading. How does that sound?

MR MAW:

5 A. Very good.

COURT ADJOURNS: 3.36 PM

COURT RESUMES: 3.52 PM

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Now Mr Heller do you recognise this document?

A. Yes thank you counsel, that jogs my memory very well thank you.

5 Q. And the document is a brief of evidence of Thomas Brendan Heller dated 13 May 2020 and the document was produced as evidence in the case of Clutha District Council and the Otago Regional Council?

THE COURT: JUDGE BORTHWICK TO MR HELLER

Q. If you could just say "Yes" for the record?

10 A. Yes.

Q. Thank you.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. Do you now produce this as exhibit, and I'm going to say Territorial Authorities One or?

15 **THE COURT: JUDGE BORTHWICK**

Q. Yes I think that's exhibit Territorial Authorities One, it's the first exhibit for the Territorial Authorities? That will be right? Yes, okay.

EXHIBIT 1 PRODUCED – TERRITORIAL AUTHORITIES ONE – BRIEF OF EVIDENCE OF THOMAS BRENDAN HELLER (MAY 2020)

20 **THE COURT:**

So, I'll just for the record, exhibit Territorial Authorities One is a brief of evidence of Thomas Brendan Heller dated 13 May 2020 and it pertains to proceedings Clutha District Council and Otago Regional Council.

CROSS-EXAMINATION CONTINUES: MR MAW

25 Q. Now in relation to this evidence, it was given in the context of an application to replace a community water take at Stirling?

A. Yes.

- Q. And you carried out some analysis as to the uses to which water was being put in relation to that community take, is that correct?
- A. That's correct.
- Q. And in relation to those uses, you prepared a table in your evidence and set out the range of uses?
- 5 A. Yes, Table 1.
- Q. And where would I find Table 1?
- A. Page 11.
- Q. And if you can step me through that table, so the total annual average scheme water use was what in terms of cubic metres per day?
- 10 A. 1353.
- Q. And of that what proportion related to properties and household water within the scheme?
- A. 208.
- 15 Q. And as a percentage?
- A. Well probably about 20% roughly.
- Q. Suggest it be maybe closer to 15%?
- A. 15, 20, yeah, stock water.
- Q. Yes, what was the majority use in that context?
- 20 A. Stock water and dairy shed and there was 1077 metres cube per day and I make the statement in paragraph 35 that that comprised approximately 80% of the water taken.
- Q. And then there's a comment that you've provided in relation to each of the uses, but before we get to that, let's finish the exercise, there was some unaccounted for water referred to?
- 25 A. Yes, 68 cubic metres per day.
- Q. And approximately 5% according to your comments?
- A. But that was by my calculations.
- Q. So when we look at the stock water and dairy shed uses in this context, you've provided some comments in relation to those uses?
- 30 A. In what way counsel?
- Q. Well you've added some comments in the box to the right of the 1,077?
- A. Oh yes, yes, sorry, comments in the table, yes.
- Q. And here you describe, my words, a command area for that use?

- A. Yes, yes.
- Q. And what's that for the record?
- A. That's 4 - 4594 hectares.
- Q. And then a range of animals supplied by that water?
- 5 A. Yes that's correct. And it also includes 28 dairy farms.
- Q. And the water used on those dairy farms for what purpose?
- A. That is for both stock water and dairy shed use.
- Q. So dairy shed wash down?
- A. Yes. Well there's also milk cooling and so forth so it's a – it's not just the
- 10 wash down.
- Q. How would you describe those uses? Would you consider them to be primary industry uses?
- A. I would consider them to be stock water and dairy shed uses and that's what the scheme supplies.
- 15 Q. Now in relation to this particular scheme, and this is the only scheme that you have a working knowledge of within the Waitaki and Clutha District in terms of these types of uses?
- A. Please repeat that? That doesn't sound correct.
- Q. Right, the breakdown of uses of water within community schemes and this will be the only scheme that you have numbers to hand showing the
- 20 breakdown of water and the different uses to which it is put?
- A. When you say, "numbers to hand", are you also including knowledge of the schemes and their specific uses?
- Q. Yes, well you told me before the afternoon tea break that you didn't have an understanding of matters like the command area or the volumes of
- 25 (inaudible 15:58:20) to particular uses?
- A. No, no, no, not to that detail, you're quite correct, counsel.
- Q. Now you describe the water take, well in fact I put to you, how did you describe this water take?
- 30 A. It's a community water scheme in Schedule 1B.
- Q. Your paragraph 36 you've described it as well?
- A. Yes, yes.
- Q. And there you say, "The water take is primarily used for human consumption and stock water and also supplies water for dairy shed use"?

A. Yes.

Q. Now reference to the word “primarily” caught my eye in relation to this brief of evidence because that word is also used in the joint witness statement for planning when describing community supplies and I wanted
5 to ask you some questions about what your understanding of that word is?

A. But, was that the planning conference counsel?

Q. Yes it was. Let me get that document.

A. I was not in attendance in the planning conference.

10 Q. Have you read that planning -

A. I have, I have briefly read that.

Q. Did you have a – you’re about to be given a copy hopefully.

A. Thank you. All right, page – which paragraph?

Q. Page 8 under, “Definitions” and it’s to the Appendix.

15 A. Which paragraph is it?

Q. Right, so let’s make sure you’re looking at the right document. You’re in the Joint Witness Statement For Planners?

A. Yes.

Q. And attached to that is a marked up version of the plan? Page numbers
20 on the plan?

A. Okay.

Q. One of which hopefully is an 8?

A. Not particularly, 6, 8. “Definition”.

Q. And you’ll see there a recommended definition for community water
25 supply?

A. Yes.

Q. Starts with, “Means a water supply for the primary purpose of supplying drinking water to communities. It may also be used for industrial and business uses and is for the purpose of enabling territorial authorities to meet their responsibilities”, etc. When you read that definition, would you
30 include or would the Stirling scheme described in your evidence-in-chief from the previous case fit within that definition?

A. I'm not a planner and so I can't under- I don't try to understand exactly where the planning (inaudible 16:01:59) was coming from when they're talking about primary purpose. There is a, there -

5 Q. Well you've used that phrase in your evidence-in-chief, so what do you understand it to mean?

A. Yes, and I specifically used that as being one of the primary purposes of that scheme and I have said that it is for consumption and stock water and also supplies water for dairy shed, that they are the three primary purposes for which that scheme operates and when I read the definition, 10 it says the primary purpose of supplying drinking water so one of the primary purposes in my paragraph 36 is drinking water. There I, I can only, therefore, assume that it fits with the definition.

Q. Do you consider that each of the uses in the Stirling scheme is a primary use?

15 A. I just said it was primarily used in my 36, "primarily used".

Q. I'm just trying to understand when you use that word, what you mean, so what do you understand "primarily" to mean?

A. Is that the three major uses or the three primary uses are for the drinking water and the stock and the dairy shed.

20 **THE COURT: JUDGE BORTHWICK**

Q. Just pause there a second.

THE COURT: COMMISSIONER EDMONDS

Q. Sorry, I've lost track of your paragraph, in 36, thank you.

THE COURT: JUDGE BORTHWICK

25 Q. So all three major uses which from recollection, human consumption was between 15 and 16% stock water and dairy shed cumulatively be 80% primarily supplying drinking water to communities?

MR MAW:

30 That appears to be the evidence, so...

THE COURT: JUDGE BORTHWICK

Q. Yes, you might want to – break – just press into this, just a little, and just for the record you were there, you did actually write the application for the Stirling water permit?

5 A. That's correct.

Q. You did?

A. Yes.

Q. And you also appeared at the Regional Council in support of that application, at the Regional Council hearing, you know, one below the
10 Court?

A. The Court hearing I did.

Q. At the Court hearing –

A. At the Court hearing.

Q. – did you appear at the Regional Council level hearing or not or was it –

15 A. I don't think there was a –

Q. Don't think there was a hearing –

THE COURT: COMMISSIONER EDMONDS

There was no hearing.

THE COURT: JUDGE BORTHWICK

20 Q. So you prepared the application?

A. Yes, yes.

Q. So you are somebody who is familiar with reading –

A. Yes, yes.

Q. – plans and applying plans because this is all Council wants to press into
25 is how would you approach this definition which is actually a reasonable question –

A. Yes.

Q. - given that you work in this area, correct?

A. Yes, yes, yes and –

30 Q. And you do work in this area don't you because you prepare –

1605

A. There's I think there's two factors there your Honour that are in play. One is the – is about the primary purpose and the other we're talking is a measure of volume.

5 Q. Yes, well counsel is going to ask you, because you confirm that as a resource management consultant, I think that's how you describe yourself at the Stirling hearing in front of me that you prepare applications for water permits, correct?

A. Yes.

10 Q. And I think counsel is just interested to see how you would apply that definition which is being proposed in the joint witness statement for planners which is, I think a reasonable approach.

A. Yes, I think – I was actually a hydrologist.

Q. You were a hydrologist on there.

A. Hydrologist in that and I'm a hydrologist at this hearing.

15 Q. Okay but anyway you did prepare that application –

A. Yes, most definitely.

Q. And you prepare other applications too, is that correct?

A. Yes I have.

Q. Okay.

20 A. And that is really just in terms of an efficiency function for the client.

Q. But you are somebody who prepares resource consent applications and therefore somebody who –

A. Yes.

Q. – deals with regional planning and district planning documents?

25 A. Yes.

CROSS-EXAMINATION CONTINUES: MR MAW

30 Q. So, I want to understand whether the Stirling scheme would fit within the definition of community water supply as has been recommended by the planners in their joint witness statement and I understood the answer that you gave me was, "yes it would for a number of reasons". And I just want to make sure I've clearly understood that. So is that your evidence?

A. My evidence is that the – in the definition, it's got a primary purpose of supplying drinking water to communities. The definition makes no – has

got no indication of volume or percentage of that use so, I'm taking it as being read as for a primary purpose of supplying drinking water and the Stirling scheme, one of its primary purposes is for human consumption, drinking water. So without having any greater context of that definition counsel, I think it could fit – it could fit.

5

Q. It's useful to understand how you read that –

A. Yes, from a technical...

Q. – particularly through the lens of having put an application together for a territorial authority to replace a community water supply permit. So just on following your logic, you say that one of the primary uses of the Stirling community water scheme water was properties / household water within the scheme –

10

A. Yes.

Q. – and therefore the definition in proposed to plan change 7 for community water supply, as meaning a water supply for the primary purpose of supplying drinking water to communities, you say that that use fits within that part of the definition?

15

A. Yes. The scheme supplies that water to that use.

Q. In your mind do you draw a distinction between the phrase “drinking water” is used in the proposed definition and the range of uses which might fit within your category of property / household water within the scheme? Is that all drinking water?

20

A. Yes. My consideration of a drinking water supply for households, yes.

Q. Where is – so in looking back at this scheme again, is any of the water used for other domestic purposes? How's the garden watering accounted for here.

25

A. That is also part of household water use.

Q. Right, so drinking water is a component of the 208 cubic metres of water. Understood that correctly?

30

A. Correct.

Q. Any idea what proportion?

A. No idea.

Q. None the less you're satisfied that it's one of the primary purposes and thus fits within the proposed definition?

1610

A. Yes the water supplied to those 208 properties is true to drinking water standard and is supplied for the primary purpose of drinking water to those properties.

5 THE COURT: JUDGE BORTHWICK

Q. Just point of clarification, is the primary purpose the purpose delivering water treated to a drinking water standard or, which means that you can deliver, you know, it's a standard of water which is delivered to cows to drink or is the primary purpose dairy shed wash down? I don't understand where your evidence goes?

A. In my evidence your Honour I state the dairy shed wash down is one of the primary purposes.

Q. And frankly, aren't we only interested in the primary purpose because that's the language of the definition, means water supply for the primary purpose. Line up them, which one's your primary purpose in the Stirling case?

A. On a – that may be evident in terms of the planning fraternity your honour, but to a technical person, I see no indication of volume or percentage. Therefore, if I see a community water supply that is supplying water to the requisite number of households that enables it to be a community water supply, and that is drinking water, then I see that broadly, that fits within this definition. It may be just that the definition is not tight enough.

Q. Or it may be that you're ignoring the word "the primary purpose" singular?

A. Yes. It's a primary purpose.

Q. Yes which in Stirling's case it would be –

A. I can't make that judgement call your Honour –

Q. No.

A. – on whether or not different community water supplies fit with that.

Q. No, but your evidence –

A. That's not my –

Q. And this is critical, because again, if, and it may be the Territorial Authorities' case that any use goes provided all you – provided

you're delivering water to a certain standard, which is a drink- which is the drink water standard –

A. Yes.

5 Q. – it doesn't matter what use and maybe that evidence fits with that. It doesn't matter the use, what's been supplied is water which has been treated to a certain standard which is counsel's submission?

A. Yes and that is definitely the case that all of the water is provided as a drinking water quality water.

10 Q. And then it doesn't matter what you use it for, you can use it for 100% dairy shed wash down if you wish, you could use it for 100%, I don't know, irrigation, K-lines, for example, if you wish, it doesn't really matter?

A. Yes that is not the intention of these water supplies and that is not the model for these community water supplies. They do not supply irrigation water.

15 Q. Okay – so we're trying to – the uncertainty that's been created is the Territorial Authorities' own uncertainty with the manner that they're approaching this definition, so we're just trying to clear up in our mind how would an experienced resource management consultant go about applying this definition, but I think you're saying while that definition does want for clarity because if its purpose was to identify one purpose which is the primary purpose, yes the primary purpose can involve a multiplicity of purposes, is your approach. Now that might be your approach and, you know, your planner might say well that's certainly not the way that it's intended –

20

25 A. Yes, yes.

Q. – but if it is your approach –

A. Yes.

Q. – being a well-qualified by experience –

A. Technical person.

30 Q. - resource management consultant then, the definition wants for clarity doesn't it?

A. I believe that it -

Q. Unless of course it is your case that any use goes –

A. Yes.

Q. – so then in that case it probably is fine?

A. I believe it doesn't, it's, it may not be tight enough your Honour, there is scope there for, such as the Stirling scheme which – and I've been very open to the Court about what the uses of water are in the breakdown.

5 Q. But you weren't – anyway let's not get into the Stirling scheme –

A. Yes, yes.

Q. – and what was in the application and what was not, so –

A. This is just one scheme and –

Q. Yes it is one scheme.

10 A. – not all of the schemes are like this.

Q. And my expectation was that the Territorial Authorities would have done an audit to see whether there were other outlier schemes as it's been called, but at the moment we haven't got that evidence?

A. Yes, I'm not aware of any that –

15 Q. Yes.

A. – that are captured by Plan Change 7 that are like this?

Q. Yes and I – frankly I'd have to go very cautiously with this because of –

A. Yes.

1615

20 Q. - of what is now in play with the definitions and legal submissions in the absence of a proper audit, full audit of all permits.

A. Would that occur at the time of an application?

Q. That would occur in this hearing.

A. Okay. I don't have that information on me, your Honour.

25 Q. No, I know you do not.

A. And, in fact, that really wasn't the focus of my evidence.

Q. I know, I know, it was not.

A. My evidence was about water allocation irrespective of what the schemes supply their water for, and I have no control over that, but certainly, getting plan change 7 and the schedule 10.A.4 in a good way that is useful for that water allocation has been my focus.

30

Q. Yes, and I do not think – anyway, that is a matter for us.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. Where do you want to take this? I mean, I look at like it does not mean any and all purposes. It does not say that, but, wow, if that is how a consultant would apply it, then maybe we do need to be looking at this further. It may want for other issues.

5

A. I can't advance it much further with this witness, I don't think, you know. It's certainly highlighted some of the challenges with its application, but also the fundamental issue as to use of water within these schemes on which we have very little evidence. In fact, the only evidence is now this evidence here in terms of a breakdown and a little bit of evidence in terms of the Dunedin City Council, which I'll ask some questions about as well.

10

Q. Well, yes. This witness is only concerned with Waitaki and Clutha, though, as opposed to Dunedin.

A. Oh, yeah, no, I was going to put those questions to the witness who has appended to his evidence some of that information, but otherwise, there is simply no other evidence in terms of the breakdown, and hence the council's concern in light of what it observed to unfold in the context of the Stirling case.

15

20 MR HELLER:

Your Honour, sorry, if I may speak. In my evidence-in-chief for this hearing, your Honour, I have provided a breakdown, as such, for the Waihemo – that's the Waihemo Palmerston – the Milton, and the Balclutha water supplies insofar as I discuss the uses of the water for those water supplies, and I provide the rate and volumes of water that are taken, and I think they would be three good examples to the Court of what a typical community water supply would look like because I think the Stirling example is a bit skewed towards what was probably inheritance by the District Court of a rural stock water scheme into their community supply scheme, so it's ended up being morphed into a community water supply scheme. They're supplying the Benhar and Stirling community, and some of the Balclutha, but they also ended up supplying, you know, the stock water and dairy shed uses to that rural area, and I think there are quite a few community water supplies around the country that have ended up that way, basically inherited from old stock water supplies, and in that, they've ended up

25

30

having to treat to drinking water standard, because the stock water supplies that supply the properties also supply the households.

THE COURT: JUDGE BORTHWICK

5 Q. And I understand all that, and the question that I think the Court is grappling with is whether, when you have schemes that are treating water to a drinking water standard but supplying for non-human-consumptive uses, they should all get a 30-year consent, particularly where, in the short term, you have got a registered six years' time, hopefully before then will have a comprehensive land and water plan that then looks at
10 integrated management of uses, and that is the council's dilemma that it is faced with, because it has got a water plan, as I understand it, that does not effectively manage the discharge of contaminant to ground or to – onto land or to land in circumstances which may enter water and doesn't have other methods to integrate land use discharge and air contaminants
15 which might be associated with the water take in use permits. There's no integration and it's wanting to get there and you're saying, well it doesn't matter, so do you consent?

1620

A. I'm not saying it doesn't matter your Honour.

20 Q. What are you saying then?

A. All of the uses matter, my response to the Court then was about the proposition that counsel provides the Court that you could only rely – the Court could only rely on, on this breakdown for the Stirling as an indication of community water supply make-up, that is incorrect in my view.

25 Q. Because -

A. I disagree with that your Honour, I –

Q. Yes, well that's good to know –

A. Yes.

Q. – and that's because you've addressed three schemes –

30 A. I've addressed –

Q. – one in Palmerston –

A. Yes.

Q. – one in –

A. Milton.

Q. Milton?

A. And Balclutha.

Q. And so you do the percentage breakdown of uses?

5 A. I state what the uses are and –

Q. In a narrative sense?

A. – the analysis is that for the Milton and the Balclutha –

Q. Yes.

10 A. – takes, there is no water used for dairy shed or rural stock water whatsoever. It is purely for those townships.

Q. Okay, and then for the other one, Palmerston?

A. The Waihemo, Palmerston? There is water supplied to one dairy shed. I think I mentioned this a little bit before and it's also supplied –

CROSS-EXAMINATION CONTINUES: MR MAW

15 Q. Well let's press pause on Waihemo, we did go over that, paragraph 36.

A. It is supplied to one dairy shed and it also supplies stock water.

Q. Also supplied to the balance of the rural command area?

A. Yes, yes.

20 **THE COURT: JUDGE BORTHWICK TO MR HELLER**

Q. What for?

A. For stock water.

CROSS-EXAMINATION CONTINUES: MR MAW

Q. But you just said it wasn't provided for stock water?

25 A. No I don't think I did, I, I've been always –

Q. All right, might have been the -

THE COURT: JUDGE BORTHWICK

No, he d- yes it's stock water.

CROSS-EXAMINATION CONTINUES: MR MAW

A. In my evidence it says quite clearly that it provided for Palmerston township, for stock water for the balance of the rural supply area or command area and also to one dairy shed.

5 Q. But the difficulty we have here is we don't know what the proportion of use is and when you read the narrative it could be anything and the best breakdown that I've seen is the one from your earlier evidence which had 80% of the water going to that type of use?

10 A. That is a misconception counsel, that is biased towards a scheme which is predominantly sending water to rural by volume, as I said – my knowledge of the Waihemo scheme is that the majority of the water is supplied to Palmerston township. Secondly, for the Milton and Balclutha schemes, all of the water is supplied to the townships, there is no water supplied to dairy sheds or rural stock water uses whatsoever.

15 Q. Well, let's just press pause so you said the Milton scheme then?

A. Milton?

WITNESS REFERRED TO PARAGRAPH 37 OF WRITTEN EVIDENCE

20 Q. Yes in your evidence, your written evidence says, paragraph 37, "the Milton water supply serves the Milton township and some adjacent stock water requirements and industrial uses".

A. Okay let's get to that. 37 was it?

Q. Yes.

25 A. That is incorrect. As far as I'm aware it provides the Milton township and some adjacent industrial premises. As far as I'm aware it's not supplying stock water because the stock water for that area is served by another scheme which takes water from the Taierei catchment and it goes all around Milton. The Milton supply currently just supplies the Milton township.

Q. So tell me about the other supply.

30 A. The other supply, the Balclutha supply. The same applies counsel, it is solely supplying water to the township of Balclutha. The other schemes that are sort of the you know, it's got the rural component, they are supplying water to all of the farms you know around the outskirts of

Balclutha. In the same way that the scheme supplied Milton rural properties.

Q. So would those schemes be captured by community water supply schemes?

5 A. In terms of the definition, those schemes do also have a primary purpose of supplying drinking water. So...

THE COURT: JUDGE BORTHWICK TO MR HELLER

10 Q. Who owns that scheme? The one that does Milton which isn't the Milton – who...

A. That's the North Bruce that's supplied out of the (inaudible 16:25:40) elevation above Lake Wai– over the hill from Lake Mahinerangi.

Q. Who runs that one? Whose scheme is that?

A. Clutha District Council.

15 Q. So, Stirling is in fact not the only example of a scheme run by Clutha.

A. Oh, no.

Q. Which primary purpose is not household use, as in people drinking.

A. Well, there are quite a few schemes in the Clutha district –

Q. Yes.

20 A. – that supply water to rural areas. I can think of the South Richardson scheme also supplies to rural areas that also picks up the town of Kaka Point and I think it provides water to around the Finegand area. So again it's sort of what the district councils inherited from the old stock water supply schemes where they've picked them up and they basically had to
25 treat them to drinking water standard to supply the – supply drinking water.

CROSS-EXAMINATION CONTINUES: MR MAW

30 Q. How many others like that and let's stay with Clutha for now, that you're aware of?

A. That I'm aware of? There's also the Waitahuna scheme, Laurence supplies Laurence –

Q. So where does that supply?

- A. – there’s a Tuapeka scheme, there’s also the Clydevale scheme, I’m just trying to think of other schemes, there’s one at around the Clinton area. I know that the Clinton township is supplied separately, that may even come out of the Clydevale scheme now. I think there’s a (inaudible 16:27:21) scheme which also supplies rural. Now I’m not sure all of these schemes are actually in schedule 1B or 3B in the current ORC water plan.

THE COURT: JUDGE BORTHWICK TO MR HELLER

- Q. But they’re district council schemes?
- A. They are district council schemes. Quite right.
- 10 Q. There would – quite a number of them –
- A. There are...
- Q. – have deemed permits, the old mining privileges?
- A. No, I’m not aware that there’s any...
- Q. No they’re all – after that I think. In terms of when they started.
- 15 A. From my knowledge they are all resource consents.
- Q. Okay.
- A. Yes.
- Q. And do all of those permits have a range of uses? One of which will be supply potable drinking water for human consumption?
- 20 A. Yes your Honour and again that necessitates the treatment of *all* of the water.
- Q. Yes I know, I understand that you treat it to a drinking water standard but...
- A. Yes and there’s a considerable cost to that.
- 25 Q. But your evidence, the Court must not be left with the impression that Milton and Balclutha solely supply for township – potable drinking water for human consumption because that it incorrect in relation to Milton and Balclutha.
- A. Yes my apologies at – adjacent industrial premises.
- 30 Q. Mm, yes what do you mean by that? Is that the prison or something else?
- A. The prison is earmarked to be supplied. It’s partially supplied at the moment.
- Q. Yes, what’s industry to you?

A. It is partially supplied –

Q. Yes.

5 A. – by Milton at the moment and it's earmarked to be fully supplied. And there are also other industries in that area which have their own ground water supply but the ground water has proved to be insufficient.

Q. Mm. Anyway, Balclutha is solely township supply for potable drinking water for human consumption or –

A. Supplied to –

Q. – sanitary?

10 A. – supplied to the township your Honour.

Q. Okay.

A. You know as I said, even in Dunedin city there are a mix of uses.

15 Q. Okay but a range of other – but a number of schemes also run by Clutha, of which there are a range of uses and those uses can be both rural and urban and are not limited, where in the rural area, not limited for human consumption?

A. Yes but they are for human consumption and also other uses that's qui-

Q. And also other uses, yes okay. And so, that's interesting.

1630

20 A. I don't think that those sorts of rural schemes are reserved just for the Clutha District Council, your Honour.

Q. No, no, no. I expect if we press into the other councils, that is also the case, but the question is there are issues, very significant issues in play here in terms of the management of the water resource.

25 A. Yeah, I think, certainly, that will be a function for the new land and water plan. I don't think any of those other rural schemes would come up or come into play for plan change 7 for the duration of PC7, you know, very limited, but the one that would come into play would be when I talk about the Tuapeka and the Waitahuna schemes. They've got problems there
30 in terms of flow and water quality and, as I said before, your Honour, like to combine those into a mega-scheme at Clydevale, adjacent to the Clutha River, effectively surrendering and making good on the tributaries with sort of an equivalent take, albeit indexed to growth, so that the new

infrastructure can be appropriately designed and installed, giving the territorial authority confidence moving forward.

CROSS-EXAMINATION CONTINUES: MR MAW

5 Q. And again, in relation to the range of uses in play on those consents, broad range, including the rural?

A. Yes, yes, broad range, counsel, that's correct.

Q. We haven't spent much time on the Waitaki, but what's your understanding in terms of schemes across the Waitaki?

10 A. Now, a lot of the Waitaki District schemes are now covered by ECan, and that's because the Oamaru water supply, which comes out of a race from in the lower Waitaki, and it's sourced from Black Point in the Waitaki River, that's an ECan consent, and now Waitaki have effectively distributed that water so far south that there are very few water supplies remaining that are to be consented by the Otago Regional Council, and
15 obviously, Waihemo Palmerston is one of those. So very few, counsel.

Q. I want to pick your hydrology brain next. When you think about a flow-on allocation regime on a river, when you think about a minimum flow imposed on a river, for that minimum flow to be effective, do you accept that all takes need to have that minimum flow limit accorded on them?

20 A. That is not in my evidence, counsel. I am not at this court, I have not provided any evidence on that. That would go to other scientists who were toying about effects on rivers and so forth, don't you believe?

THE COURT: JUDGE BORTHWICK

Q. It is beyond your area of expertise, is that what you are saying?

25 A. Yes, and that's beyond my expertise as it relates to the –

Q. No, no, is it beyond your area of expertise as a hydrologist? You cannot comment on that?

A. You're sort of putting me into a corner here. Okay, what was the question again?

30 **CROSS-EXAMINATION CONTINUES: MR MAW**

Q. You've regularly given evidence and held yourself out as a hydrologist.

A. Correct, sorry, correct.

Q. So you understand what a minimum flow on a river is?

A. Yes.

5 Q. And you understand that where you have a range of water permits abstracting water from a water body, a river –

A. Yes.

Q. – in order for a minimum flow to be effective on that river, all takes would need to be so limited.

A. That is not absolutely necessary.

10 Q. Why?

A. If the river is large enough to sustain all takes whilst also sustaining the minimum flow.

Q. Right, so in that situation, provided the minimum flows were set well above the minimum natural flow in the river, then the issue wouldn't arise?

15 Perhaps I'll put my question a little differently. Is there a risk in terms of achieving a minimum flow on a river if not all water permits have a minimum flow restriction that is the same?

A. That's not necessary either, because there are other examples of stepped minimum flow restrictions or stepped environmental flows to preserve an instream allocation, and I would look to the Mata-Au River water conservation order as an example of that.

20 Q. Well, we don't need to get into a discussion about the Mata-Au water conservation order now.

A. Okay. You just said I was a hydrologist.

25 Q. Well, yes, as much as I'd like to go there, I won't go there in the context of this.

A. But you do understand that that's about, you know, preserving the proportional flow within the river. It's just another way of providing for a minimum of an environmental flow stepped regime.

30 Q. Yes, a series of bands to ensure that no more than 5% of the flow is taken above the (inaudible 16:36:36) Gore.

A. Gore, or above the Wyndham. Wyndham? Yeah.

Q. Well, let's stay there. So for that flow regime to be effective, all consents need to subscribe to that same regime, don't they? Otherwise it wouldn't work.

5 A. It wouldn't work insofar as it would be about timing and duration. I'm not necessarily saying it wouldn't work, per se, but there would be a potential for a duration of time where possibly minimum flow thresholds were breached.

10 Q. When you are establishing a flow and allocation regime to protect values in a river, do you accept that in order to ensure that flow and allocation is properly implemented, consistent conditions need to be applied to various consents, or all consents abstracting water from that resource? You can't have permits with different minimum flows.

15 A. Yeah, yeah, yeah, yeah. Also, just into the mix there is things like primary minimum and supplementary minimum, and there is a distinction, so not all permits may have the same minimum flow. You sort of understand where I'm coming from?

20 Q. Let's make it really basic so I can understand it. You've got five takes on one river, the minimum flow in the plan says that the river shall not drop below a flow of one cumec. You would expect to see that limit, then on each of the five resource consents.

A. If they were party to that particular minimum flow regime, yes.

Q. That's as far as I shall pursue that line of questioning.

A. Great.

Q. Right. Thank you, no further questions.

25 **CROSS-EXAMINATION: MS BAKER-GALLOWAY – NIL**

RE-EXAMINATION: MS IRVING

Q. Mr Heller, if I could just refer you please to appendix B of your evidence-in-chief.

WITNESS REFERRED TO APPENDIX B OF EVIDENCE-IN-CHIEF

30 A. Yes, yes.

Q. Can you just tell us what is included in appendix B, please?

A. This is a list of all water take consents held by the Clutha District Council and the Waitaki District Council and the Dunedin City Council, and this is in relation to each specific territorial authority community water supply.

5 1640

THE COURT: JUDGE BORTHWICK TO MS IRVING

Not sure I've got that. Maybe I do.

THE COURT: COMMISSIONER EDMONDS

(Inaudible 16:40:20) impossible to read (inaudible 16:40:22).

10 **THE COURT: JUDGE BORTHWICK**

The Clutha one is quite small, I would agree. So I've got -

THE COURT: COMMISSIONER EDMONDS

Perhaps we could have a size we could read.

THE COURT: JUDGE BORTHWICK

15 Font which is plus one, so I've got Clutha, Waitkai, Dunedin, is that it? Just the three?

MS IRVING:

A. Yes that's right.

20 **THE COURT: JUDGE BORTHWICK**

Okay, so perhaps you can go -

THE COURT: COMMISSIONER EDMONDS

It's just the Clutha one that's got the font problem.

25 **MS IRVING:**

Yes. Yes I'm sorry about that, I suspect it was intended to be printed on A3 but.

RE-EXAMINATION CONTINUES: MS IRVING

Q. So perhaps Mr Heller if we can start with the Clutha one and if we look at the columns, the fourth column from the right-hand side of the page?

A. Yes. Yes.

5 Q. Is that the column that identifies the expiry date for the permits?

THE COURT: JUDGE BORTHWICK

Fourth column from the right.

RE-EXAMINATION CONTINUES: MS IRVING

10 A. I can't see it. Yes I'll agree there is an – I think there is one there for expiry date, fourth. It's not fourth –

THE COURT: JUDGE BORTHWICK

Fourth from the right I think.

RE-EXAMINATION CONTINUES: MS IRVING

Q. Are we look- so perhaps if –

15 A. Yes that, yes that is expiry date and I can just make it out.

THE COURT: JUDGE BORTHWICK

It's going to make re-examination difficult.

RE-EXAMINATION CONTINUES: MS IRVING

Q. So you've found where that is and –

20 A. Yes.

Q. – you can read it?

A. Just.

Q. Just, all right, okay, that will do. If you move down that column, how many of the permits held by Clutha District Council expire prior to December
25 2025?

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. And that includes the dates they've gone. You know, because quite a few dates have gone previous years?

A. Yes.

5 Q. Yes, okay.

RE-EXAMINATION CONTINUES: MS IRVING

A. Yes. One that I can make out if I'm reading it correct.

Q. And is that for 25 litres a second from the Clutha River for the Kaitangata town water supply and Wangaloa rural water supply?

10 A. And that expires in 2024, is that what you're reading?

Q. Yes.

A. That's the only date I can see that's prior to, you know, including 2025, I can't make out the rest of it, I'm sorry.

15 Q. Probably without the witness actually being able to read the document it's not overly helpful?

THE COURT: JUDGE BORTHWICK

Right, because I can make out a heap, so.

MS IRVING:

20 Yes, yes.

THE COURT: JUDGE BORTHWICK

Just. What do you want to do?

MR HELLER:

25 That, okay, Wangaloa, Kaitangata.

THE COURT: JUDGE BORTHWICK

No, don't do eye strain, this is like – this should not have been presented this way, so don't worry about it, I just really want to know from Ms Irving, where does she want to go? Because we'll have to call him over tomorrow if, and
30 hopefully produce an A3 size document.

MS IRVING:

Yes, yes.

THE COURT: JUDGE BORTHWICK TO MS IRVING

5 Q. But I can count a fair few number that are due to expire before that date that you've just given?

A. Yes I think –

Q. Including the dates which are past.

10 **MR HELLER:**

Your Honour, I'm scheduled for surgery very shortly and I have –

THE COURT: JUDGE BORTHWICK TO MR HELLER

Q. Oh, as in tomorrow?

A. – consultant tomorrow. I've been holding off surgery for this –

15 Q. No, no, that, this stuff's, (inaudible 16:44:32) probably more important.

A. – and just for your information, I was in hospital the night before the caucusing –

Q. Yes, okay.

A. - but I managed to get out in time.

20 Q. Okay, all right.

A. So it's a bit of a knife edge so to speak.

Q. Well just talk to Ms – it will be unfortunately. Just talk to Ms Irving about the importance of it because –

THE COURT: JUDGE BORTHWICK TO MS IRVING

25 Q. Where do you want to go with this line of questioning?

A. Well the purpose of this line of questioning was to provide context around the number of applications for community supply that are going to be subject to the plan change 7 framework.

1645

30 Q. Well, my rough count, and it's really rough, is about 13, plus applications for new water, so we've got those two.

A. Yeah.

Q. So if you agree with 13, I do not know.

A. Well, it struck me when I was looking at this, there's obviously some there, that it extensively expired a couple of years ago.

5 Q. Yeah, that is right.

A. So I'm not sure what's happened with those.

Q. No, so that is why I said including the dates that have expired. So, including the dates that have expired, I think I got up to about 13, but that is pretty rough.

10 A. Yes. If those have been renewed already, which is possible, then they may have different dates. Because you have, perhaps in the questions earlier, and in some of the discussion with Mr Heller, I think you mentioned needing a full audit of the permits, and I suppose it is a question of how you would like us to death with this moving forward, whether you want to continue with the territorial authority case tomorrow, where we carry on in this mildly excruciating fashion, or whether you would like us to –

15

Q. Why is it excruciating?

A. Well, just that we have obviously got Mr Maw asking questions based on potentially limited evidence about this issue, and the impression I've got from your Honour's questions is that you are interested in more detail.

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Q. I am interested to know what are the four corners of your case. I would be interested in everybody, in every party, on the same issue, what are the four corners, and there is work to be done overnight on the legal submissions. I think we have a definition which might (inaudible 16:47:12) in some respects, but I did not think (inaudible 16:47:15) in terms of your witness now opening it up, I would interpret the primary purpose as meaning a purpose. Well, that is a bit surprising, and the same issue came up with Claire Perkins yesterday, when she used "primarily included," and I queried her: "What do you mean, 'primarily'?" because she had grabbed all water uses when she was talking about "primarily the uses," and in fact, it was all types of uses, it was not the main use, and she came back and said, no, primarily is the main use, so there seems to be, you know, maybe the definition once, but the four corners of the

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council case is not clear. How do you handle it? I do not know. I mean, it is your submission, but you do not have evidence – in fact, probably now contradicted by this witness – that Stirling is an outlier. I do not know what you mean by outlier, but this witness is clearly saying the community water supplies, the supply of water by district councils to its rural and urban communities includes a large range of uses, he is clearly saying that. I do not know that Stirling is such an outlier on that basis. Now, you know, if you agree, yeah, it is not an outlier, there are other cases, and the proportions might differ, but there are other cases, then it seems to me, then we move, perhaps, to the planner case, and then that is the real rub, is it not? Why should district councils supply water for undocumented uses when there are wider issues in play, and those issues are the integration of natural and physical resources, which regional council is tasked with. That is more the planning case, though.

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15 A. I mean, I suppose what I am slightly concerned about is that we spend a whole lot of time trying or concerned about or trying to bottom out the extent to which Stirling may be an outlier or not, and in that we might –

Q. You said it. That is the problem, when council offer, from the bar, something which is not substantiated in evidence.

20 A. Well, that was my understanding on the basis of the evidence that I had, so the conversation where this has gone –

Q. Has taken you beyond what your understanding was?

A. Yes, it was, and that was why I was wanting to come back to, well, what are the permits that are actually going to be subject to this regime?

25 Because if it isn't all in sundry and there aren't a whole lot of rural schemes that come up within plan change 7, then maybe the issue is not as acute, so I think –

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Q. Meaning the District Council can perhaps compromise its case?

30 A. Well, either that or where we are at the moment, which is the community supplies that we understand will be subject to plan change 7 don't suffer from the Stirling issue, and so we can carry on with those, and I have to confess, I don't know the answer, which way that would go.

Q. So it is an evidential problem, I think, for you.

A. Yes, agreed.

Q. And it may be that Stirling is the true exception, but I don't think that this is the evidence from Mr Heller, but if it was, then why would the environment bear the risk, which is Mr Maw's line of questions for other witnesses. Why would that be visited upon the environment when there is a land and water plan to come? If it was truly an outlier, all of the other TAs would say for goodness' sake, get on with it, it is all about urban use, or water for human consumption, that is what it is about, get on with that, let us focus on that. That is how I imagine the TAs would go if it as truly an outlier, but you do not know that, and now there is actually doubt that that is true.

A. Yes, yes, and so, I mean, we can carry on tomorrow and try and draw that out, or it may be more efficient for us to have an opportunity to go away and actually resolve that, prepare.

Q. I do not know about that.

THE COURT: COMMISSIONER EDMONDS TO MS IRVING

We still have questions remaining to the schedule, quite important ones, following on from what we were asking in relation to the Landpro witness and what now seems to be in the joint witness statement, that perhaps is specifically targeted at the TA activity, and there are two of asking questions on that, maybe three.

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. No, I was not going to ask any questions, but the thing is, you could take some time out to ascertain from your clients the facts, or you could take instructions in terms of the water supplies that they wish some latitude for. Is it urban growth in urban areas, is that what it was, and does this definition apply to uses within urban areas, and secondly, drink water for human consumption, rural, or is it everything? So I think that is actually a question for client instructions overnight. That is my sense of it. Where do you want to take this? And if you want to take it wide, then, if there is not a good evidential basis, you know, that we are missing some facts and we are going on the fly, then perhaps we do have to come back.

A. Yeah, I'm just slightly conscious of how we just keep blowing out the schedule and that there's other parties coming in, and if we may more efficiently deal with this if I have the chance to work through these issues with the territorial authorities, reach a position where we can clearly articulate to you the four corners of the case in a way that may avoid a lot of toing and froing with witnesses in the witness box that, you know, at short order may not actually advance matters, and everyone just gets more confused.

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Q. I do not think I am confused, but what we want is an evidential foundation to say that Stirling is an outlier. That has now been contradicted. I do not think the cross-examination has been confusing, it has been helpful.

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A. Yes.

Q. It was almost inevitable that counsel would press into Stirling.

A. Yes. What's not clear, what I don't know the answer to is the extent to which there are other cases like Stirling that will be caught by plan change 7 or not, and I don't know whether I'm going to be able to resolve that overnight.

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Q. So we will finish the Court's questions because the Court does actually have some important questions which are only about the scheduling. That has been off-topic as it is, but thoughts about perhaps adjourning the TA case in its entirety?

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MR MAW:

25 This matter has been at issue and signalled pretty clearly by the regional council as to the reason as to why it hasn't been making an exception for community water schemes. That has flowed right through – excuse the pun – in Mr de Pelsemaeker's evidence, so the TAs have been on notice that there is an issue here, and it is up to the TAs to rebut that from an evidential perspective.

30 The TAs have sought to put forward some evidence in relation to a range of uses, and for example, Ms East's memo, which I've put to Mr Heller today, refers to the range of uses. Mr Twose attaches to his evidence a report from the Dunedin City Council that provides a breakdown for the uses within that scheme, so there is evidence before the Court which I would describe as

inconvenient to the case which counsel for the TAs is or has been pursuing today, and in terms of seeking to backfill that evidential gap, which may or may not now exist, my concern is delay at this process, and the time that we may lose, noting how much has been pushed into our last two weeks of the hearing.

5 THE COURT: JUDGE BORTHWICK TO MS BAKER-GALLOWAY

Q. Which is a fair amount. Well, I shall talk about it with my colleagues and let you know. I do not want to make a decision off the hoof. You have not got an interest in this, have you, Ms Baker-Galloway, would you?

A. No, ma'am, no, I defer to Mr Maw on that.

10 Q. Okay, so you agree with?

A. Yeah, agree with him, yes.

MS IRVING

Can I just add, on the scheduling issue, I mean, I appreciate the timing issue
 15 and all of those things, and, you know, I am as reluctant as anybody to push things out, but because I think we could consume a whole lot of extra time tomorrow trying to work through this that it actually might be a worse outcome in terms of getting this dealt with as efficiently as possible, and also have other implications for the cases of the parties to follow, who I understand have other
 20 timing issues and constraints with other cases and mediations and everything, and that if the TA case pushes on into tomorrow and takes a whole lot of that time, that we then have, you know, follow-on effects that arise from that. Mr Cooper might be able to share with you some of those scheduling challenges. So, you know, I appreciate it might appear like I'm playing for time,
 25 but I'm really trying to find a way of dealing with this as efficiently as possible so that we minimise the timetable blowout to the extent that we can.

THE COURT: JUDGE BORTHWICK TO MR MAW

Q. All right. I am wondering, thinking about it, is it worth hearing from Mr Twose to understand what his understanding was?

30 A. I've been thinking about that through the lens of whether my cost should follow hearing the facts from the underlying representatives from the councils before he can give a useful planning opinion.

Q. Strangely, he is on next.

A. Yes, which struck me as odd.

1700

Q. Yes.

5 A. In terms of the order.

Q. Mmm.

A. I would have thought he would follow those others.

Q. Yes the evidential basis having been established.

10 A. Yes. I mean I'm ready to cross him and the foundation in a sense the evidence today has given me enough, what I need to cross him on.

Q. Yes.

15 A. And I was ready to go, had we reached him today. So, yes I me– and just in terms of what it is the TAs might do if they are given an opportunity to file further supplementary evidence for that to be of assistance I would have thought it would need to look like a breakdown by category of use for each of the schemes for which a replacement permit is going to be required under the PC7 regime.

Q. Mm.

20 A. And also a breakdown in relation to the range of uses for which new schemes might be put. Now it strikes me that that information, well no to be fair I don't know how easy it will be to obtain that information. It's either there or it's not.

Q. And then in terms of its long-term planning or five-yearly cycle (inaudible 17:01:16).

25 A. No in terms of the breakdown of the uses for water within schemes –

Q. This is for – yes for new permits though. They – that information should be there. In the medium to long?

A. It ought to be there when for example, applications are lodged –

Q. Ah yes.

30 A. – but when one looks at previous applications in the light touch in terms of the explanation of uses, I'm not sure whether the TAs have really turned their minds to this question.

Q. Yes I know and that was also a matter of interest from us to hear from Mr Twose on – what sort of, what goes into an application for a resource

consent and yes. Was the evidential foundation to establish for example what is growth? And what are the – on a new permit, what uses? Yes, what information is it? Yes. We had an interesting conflict in Sterling where the engineer disagreed with the planner on that and I appreciated his candour and I could certainly understand where it wanted to take the scheme but it wasn't for the reasons of growth or that wasn't the primary motivating reason. I think, we'll talk about it amongst ourselves, the bench. There may be some value in seeing what – hearing from Mr Twose initially and perhaps recalling him when we can try and establish through him what he sees the four corners as being, which might differ from you and that's okay because you got client instructions and he's, you know a witness. Okay, so once we hear from him, maybe adjourn at that point, but we need to talk that through ourselves, lift and shift the TAs to somewhere else, might actually be to shift them into a JWS environment, where we can start to push around the corners of this matter.

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A. Yeah, that may well assist, particularly the understanding of the case and where it's at, and I appreciate my friend will take some instructions overnight. The more clarity around what is being pursued by the territorial authorities, the more efficient this process is going to be. At the moment, I'm a little unclear as to what's being pursued, which necessitates broader cross-examination.

THE COURT: JUDGE BORTHWICK TO MS IRVING

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Q. – finish our questions from Mr Heller and any re-examination that you may have, and we will hear from Mr Twose as the independent expert for the territorial authorities. We expect him to be able to provide assistance to the Court in terms of the ambit of the territorial authority's case, and then, at that point, probably consider an adjournment for directions as to supplementary evidence, if, in fact, it is needed as to new takes, and those takes which are to be reconvented, and may yet direct into a JWS environment. That might prove more useful, may direct into planning JWS where the issues can be debated there. Would it be useful to get

your client's instructions? I do not think there are going to be too many dairy sheds in Dunedin.

A. Not in the city.

5 Q. I might be wrong, though, it is a big city and it does include a lot of rural area.

A. Yes, yeah.

THE COURT: COMMISSIONER BUNTING TO MS IRVING

Q. Did you have to go to each of the councils separately?

A. Yes, in short.

10 Q. Yeah, okay.

THE COURT: JUDGE BORTHWICK TO MS IRVING

15 Q. Each of the councils, because of their demographics, may have different interests in the outcome here. It could just be Clutha which is holding up the others, if you like, if they actually do have an urban and potable water focus – potable water, which is actually consumed by people, focus, but maybe that is not right, maybe they want a supply for all uses. It would be good to know what your client's instructs are, and it may differ from territorial authority to territorial authority.

20 A. Yes. Well, I do know that there are some differences between the territorial authorities about the extent to which they are exposed to plan change 7, and so some of them may say, well, we're not worried because we're not having to renew any permits, irrespective of where things land. Others, it's an issue that is of particular concern to them because of the level of consenting that's going to be required, and the proportion of their urban communities that that impacts on.

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30 Q. Yes, but that is their urban community, and they may not be interested in stoush over how many dairy sheds get supplied by the Clutha District Council. So that is what I mean by the differing interests, they may not be commensurate interests in terms of an outcome here, and you can try for client instructions or we can just see how we go with Mr Twose and his evidence and how that reflects the different character of each of the district councils and then take instructions.

A. Yes, well, I'll see what I can do overnight.

Q. And what about legal submissions? I mean, I know the time it would take me to work up these statutory principles and then apply them, so it not just a case of giving me them, because I probably know them, but actually applying them, and that's actually a big job.

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A. Yes, and I know from the time I have spent in trying to unpack all the various definitions that it is not a straightforward task.

Q. No, no, it is not.

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A. So I was not looking forward to the lack of sleep, although I am well used to it at the moment, I have an 18-month daughter, so maybe I have been training for this for the last 18 months.

Q. But again, it might be an unreasonable ask, so it may be that you should not be doing that overnight, because I know for the time it would take me to research the relevant principles that I thought applied, then apply them, having established what the facts are, it would not be a job I would do overnight, so you need to think about that, but you do need to come back to it, and it may well be that your issue is not competing definitions as between competing pieces of legislation and competing planning documents, it may well be that the issue is focused squarely on what is a community water supply so that is just an issue in chapters 5 and 6, 15 and possibly 12, I don't know, of the water plan or maybe it's not that, maybe it's something that you're introducing to this PC7, but yes.

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A. Yes.

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Q. Yes but we need to have a clear idea where you wish to go, we don't want to create the argument only to get it wrong?

A. Well and that's I think, I mean in some ways, that question may well be further informed by what instructions –

Q. Yes it's client interest.

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A. Where we sort of land in terms of the extent to which community water supplies might be affected by this and the ambit of that, so –

Q. And also -

A. - in getting to the bottom of that issue is probably going to inform that question.

Q. In terms of your litigation risk, if, for example, you've got a municipal water supply for urban use, and it's squarely forming, falling within the MPS4, what is it called, Urban Development?

THE COURT: COMMISSIONER EDMONDS

5 A. UDC Urban Development (inaudible 17:11:23).

THE COURT: JUDGE BORTHWICK

Q. Whatever it is, it's squarely in that category, plus you've got 20% dairy shed wash down. Then the question then becomes, well if that's actually what it looks like, should you get a 30 year consent with that? Should the component dealing with, should it be a 30 year consent for what is falling within the urban capacity, should it be 30 years at all? Should it only be six if there's no land and water plan in play, in other words, no integrated plan and play, I don't know, you see the – maybe part of your problem is that there's just a water plan, there's not an integrated plan, that's to come, so why is it that TA's are putting up their hand wanting 30 year consents when the land part of the plan is to come?

A. Yes, well and I think their answer to you in relation to that would be because we have other functions, particularly making sure we're providing adequate water supply infrastructure in that instance.

20 Q. But the thing is you can't supply infrastructure until you've got the land park there?

A. Into a vacuum.

Q. So yes I mean that's part of the problem as I understand with this current plan, is that you're planning to an evidential vacuum. You want a 30 year consent for Stirling for urban growth, putting aside the difficulty with that, how is that scaled up? Is that in strategic planning? Is it in its long term plan? Did they have sewers on tap and with plans to put sewers in for whatever urban growth was meant to be coming to Cherry Lane in Balclutha (inaudible 17:13:10) –

30 **THE COURT: COMMISSIONER EDMONDS**

Q. And was the land re-zoned, as well, you know, because -

THE COURT: JUDGE BORTHWICK

Q. And was the land (inaudible 17:13:12) for that? Don't know, so you know on, so that whole integration, how is that known under this regional plan or is that to come?

5 A. I don't, I think, I would, yes I think –

Q. That's for planning, yes?

A. – in terms of the regional plan, no. The regional plan is, has -

Q. And in even in terms of the district plan?

A. Well the district plans are at various stages.

10 Q. Yes.

A. And some of the counsellors have done their spatial planning and that's talked about in some of the evidence, we've got Queenstown, what would you say, half way, two thirds of the way through their district plan review, so they're certainly are, they're down a pathway towards identifying where
15 their growth is and Dunedin of course, as your Honour knows, is – and its review in variation 2 has been notified which identifies more land for zoning, so they are on, at different stages in that process, there is very little I think communication across the district planning documents and the regional planning documents currently, but I don't think that the TAs I think
20 would say well they can't sit and wait for the regional planning documents to pick up new areas of zoning and so on, they have obligations themselves under the MPSUD if you we take an urban environment example to have that infrastructure available and they need to be doing that now and not waiting six years. So it's –

25 Q. So, yes.

A. – the process is in some ways tripping over one another but practically the Territorial Authorities need to be able to continue to progress their infrastructure planning and so it's a question of how we best reconcile those different challenges.

30 Q. And yes it is a question of how do we best reconcile it and is it just as simple as saying, well just give us a deeded permit?

A. Yes.

Q. Don't know.

A. Yes.

Q. Yes. Thirty year permit for what?

A. Mmm.

Q. Mmm.

A. Yes I understand that's a question you're exercised by.

5 Q. Oh very exercised by it. So anyway that's the plan going forward, we'll finish with questions for Mr Heller so he can get off. We'll have Mr Twose so we can have a look at his evidence, may refer it to our expert conferencing or we just may allow you opportunity to take client instructions to attend to the statutory interpretation matter and bring back
10 your client's – witnesses with or without – it may or may not include directions around the evidence about the need to establish a firm factual foundation in relation to new permits and also replacement consents?

A. Mmm.

Q. How does that sound?

15 A. Yes.

Q. Probably want to get that transcribed Freda for the record, so I can remember what I've just said. So questions, and you had, you might have actually, it may be that you can't pursue the minute –

A. Yes I won't pursue the teeny tiny writing –

20 Q. Yes.

A. – so I'll leave that issue I think, because I think it'll –

Q. Okay we can come back to that if we need to?

A. Yes.

THE COURT: JUDGE BORTHWICK

25 Q. Right, so questions from the Court Mr Heller and I'm going to hand you over to Commissioner Bunting.

QUESTIONS FROM THE COURT: COMMISSIONER BUNTING TO MR HELLER

30 Q. Yes it's going to be very brief which you'll be relieved to hear. Can I ask you to pull out from your evidence-in-chief, there's page 6, page 7 and page 19 which have got information about the Milton permit?

WITNESS REFERRED TO PAGES 6, 7 AND 19 FROM EVIDENCE-IN-CHIEF

Q. So I think in your early part of your evidence you were concerned about using the average maximum and the effect that that would have, is that a pretty brief summary of what it's about, yes?

A. Correct.

5 Q. And then the second part you said if you could use the actual maximum, that would solve your concerns, is that a fairly simple way of describing it?

A. Yes and that's in relation to the previous use or the past use up to current, present day.

10 Q. And that's what has been agreed in the - by the -

A. Yes as I understand it, yes.

Q. - your hydrology?

A. Yes.

15 Q. Yes. Can we just, I was just looking at those three plots in figures 1, 2 and 3 and one of them is daily take and then that one at the top of the next page, I think the heading's at the bottom of the previous page but anyway, that's monthly, is that correct?

A. Yes that's right, that's correct.

20 Q. And then you've got annual. You seem to have one particular record there which is substantially above the rest and when it's around about 2018 or thereabouts is that - would that be -

A. That's, yes, t-

Q. Can you read it, it's pretty small writing, but -\

A. 2018, '19?

25 Q. Yes somewhere about there.

A. 2018, '19, yes.

30 Q. Given, and there's one other spike further back in 2011 or something like that, I suppose the question is, when you come to look at that, would that, is there, would there be some reason that you need to investigate to say why is that one so much higher?

A. Yes definitely Commissioner. Most definitely.

Q. And how would that be captured for within the schedule? I mean you've got a method for capturing, exceedances, for margins or error and all this?

A. Yes.

Q. But is this an outlier or?

A. I'm, to the best of my ability –

Q. Yes.

5 A. – in reviewing that data, I don't believe it is an outlier. No just to give you
some context to this, the data that I received for this from the Regional
Council had already gone through the process of them pushing the button
for a PC7 outcome, so this data should be good. They've already gone
through and assessed that data. Now there was some – there's an
10 appendix A in my evidence which talks about some concerns that the
council had with the data but it was with the later 2021 data which I
haven't used in this evidence Sir. I reviewed that data, I found spikes,
gaps, outliers still contained within the data that the Regional Council had
supposedly pushed the button for PC7 and said, "this was all good". So
I've further gone through and checked that data and with removal of all of
15 the errors that I still found in that data, Sir, this is what I've ended up with
in terms of the record for that water supply.

1720

Q. So you haven't gone back and tried to gain some sort of understanding
as to why and make particular (inaudible 17:21:06)?

20 A. I haven't gone back to the District Council to get their breakdown if you
like in terms of whether or not that was, you know due to an unusual
circumstance –

Q. Yes.

25 A. – but I – the period that we're talking about is actually not a one-off period.
It's quite a reasonable duration of time and that again is a – that's a filter
in terms of looking at data and trying to establish where you've got
outliers, spikes and so forth. So, there's no indication that that isn't
correct. And it's certainly within the consented regime for the take, so it's
not exceeding the...

30 Q. The current consenting?

A. The current consent regime, yes.

Q. Okay.

A. And that's really just, you know in terms of being able to analyse data, it's
not just as simple as pushing a button.

Q. (inaudible 17:22:09).

A. I mean, you know, you need expert people to be able to go through this data and analyse it. It took me a day, per data set to go through and analyse it because we're looking at different types of data. We're looking at the instantaneous, the daily, the monthly and the annual data sets to actually look and see where there were errors and in some cases where the Regional Council had provided the summaries of the data, it didn't add up, some of the monthly volumes were inconsistent with the annual volumes and so on and so forth. So I've had to through and correct that. But, I'm not saying that that's a fault with the Regional Council that is just data and the point I'm trying to make her Sir is that there is no simple push of the button.

Q. Sure.

A. That's going to do that.

Q. I just wondered because it is – as it stands out rather that whether you might have gone and talked to the council, discussed with them, you know as there something in the system that caused that happen was it...

A. I've taken the audited data at face value Sir but I must admit, I did remove more errors and gaps that were presented to me in the data by the Regional Council.

Q. So in terms of the schedule as it's now agreed with your technical colleagues, that would represent then the maximum which would be the agreed figure under schedule 10A 4, a replacement permit?

A. Yes and that's for legitimate data.

Q. Okay well...

A. Yes, so as far as I can determine this data is legitimate for the purposes of the schedule 10A 4 assessment.

THE COURT: COMMISSIONER EDMONDS TO MR HELLER

Q. When you say *legitimate* do you mean that all the steps that have to be followed have been followed under the methodology at the beginning of – well throughout schedule 4A, under the heading *Methodology*?

A. Yes well, you know it's pointless having data that you're analysing that still contains errors. So all of those errors have to be removed or treated

to a standard where you are making a reasonable analysis. However in saying that, with this move with my caucusing colleagues that the taking of the maximums over the – for the periods in terms of the rates and the volumes, it does make it far simpler to analyse the data.

5 Q. So I'm just puzzled why you're referring to *legitimate* when you mean legitimate are you saying, provided you are following the methodology then the end result is what is legitimate?

A. I haven't – I think I made some comment about the methodology in my evidence. I can't remember what comments I made but what I'm saying
10 here is that if the methodology provides the sorts of data files that I ended up with from the Regional Council in respect of these water supplies, then I'm not confident that the methodology works. However in saying that, through caucusing, the methodology is sort of changed away from the averaging to the maximums and that does make it far easier to pinpoint
15 those particular items from a data set.

Q. So I had a question in relation to the methodology for calculating the rate of take and so we have a series of steps to go through, things to be calculated and removing --

A. Yes.

20 Q. – something and then rounding something else down and then we have four – a step which it seems that isn't to apply to applications for community water supplies. Now I am unclear as to the reason for that so, I wanted you to explain to me why it was felt to be necessary to make that step four not apply to applications for community water supplies. You
25 probably need to have this marked up version of what schedule A4 looks like, we provided with an order to answer this question. To you have that there?

A. No I don't. I'm a bit confused by that. The schedule should look, like along the lines of, for the rate it takes essentially the maximum of the
30 prevailing data set once it has been assessed for validity. And this is why I talk about data that is applicable to deriving those items. It's just a matter of removing all of the errors and what you're left with is the real data.

Q. So I'm sorry but I very confused as to what it is –

A. Okay.

Q. – that you're accepting of here or not accepting and what the reason is so, perhaps I'll just park that for the moment and go to another question that I have and that is the – in the *controlled activity rule* which is where this schedule comes into the play, if the community water supplies are going to go down the controlled activity rule path at all, there used to be a limitation on the water years for the data that could be considered and that was the period 1 July 2015 to 30 June 2020.

A. Yes.

Q. And so I was wanting to understand or, one whether that was something that you had seen as particularly important in terms of community water supplies and whether that was a reason for the striking out of the limited time period.

1730

A. In the technical expert caucusing, we all agreed that the, as large a length of dataset would be applicable to or for analysis of community water supply takes under the schedule and that is, I believe, included the water metering dataset right up to present day.

Q. Okay, but going back the other way.

A. Yes.

Q. So going backwards, how –

A. Going right back.

Q. – far back were you thinking you might be going?

A. Well, I think, you know, water metering regs around about 2010, then that certainly is a, is a point to go back to, some territorial authorities will have water metering prior to 2010 that they're collecting through these data systems and all their, their evaluation systems in house and that data is still good data.

Q. So you're suggesting just any data, not limited by the 2010 metering regulations or anything, just any data?

A. I believe that we agreed that a, that there wasn't a limit on, on that data period.

Q. So I guess my question is what might have happened between, at the stage at which you were initially exercising these consents and things that might have happened since that that in fact might have meant that you

were perhaps more efficient in terms of what you were taking under the approval. There may have been things that had been done to in fact reduce the, perhaps even the demand for water in terms of leak tracking down and fixing and those kinds of things.

5 A. Yes, that, that certainly can be –

Q. Yes.

A. – the –

Q. So –

A. – you know, part of that dataset. The, probably the largest variability is,
10 and I won't refer to it as seasonality because that's more akin to the primary sector. It is just the, I suppose the demand seasonality in the community water supply and then couple that with, with a growth factor over a period. That's where the major differences lie.

Q. So what you're suggesting is that you might have got efficiencies but
15 you've also got a growth in demand, whether it's a whole lot of people coming on holiday and requiring more water for –

A. That, that's certainly a seasonality.

Q. – example. Is that one thing?

A. That is a seasonality effect and there's also a compounding growth effect
20 on that as well.

Q. Of people servicing that?

A. Yes. I mean more people choosing to stay in Kaitangata for their holidays
but I mean it's a –

Q. Not a place I've ever thought of going but anyway. Sorry.

A. But it's, it's the example. The reality is that the larger the dataset gives
25 us more of an appreciation of where the water supply has come from and where it is going to. I would expect that the community water supplies that are experiencing growth would be, we'd be seeing the larger numbers in terms of the volumes, if they haven't yet reached a peak yield under
30 the consent, they would be hit later in the period of record but it's not necessarily so because this example that –

Q. The Milton example?

A. Yes. This example shows that it is not necessarily the, well, it's certainly
later in the piece. It's around 2020, 2019, 2018, 2019, but certainly not in

the latest annual period. So there's, whilst there's that growth component, there's also that variability year on year.

Q. So we're looking at what looks like a bit of a spike back in, is it 2010 or 2011 or something as well. Is that what we're looking at?

5 1735

A. Yes.

Q. And what do you think might be the reason for that?

A. I think that was just a very short period where a lot of water could have been used, or was used, and that may well have been, you know, where
10 storage reservoirs had been drawn down within the scheme.

Q. So refilling.

A. And you've got to refill.

Q. Refilling storage reservoirs.

A. And that is, you know, part of a scheme operation as well.

15 **THE COURT: COMMISSIONER BUNTING**

Q. (inaudible 17:35:35) seems to me that the later one (inaudible 17:35:40). If that was on my workload, I'd want to try and get behind the numbers. You know, you crunched the numbers okay, but wouldn't you want to go down to the council and say, look, this seems not typical of what's
20 happened over the last few years, and try and get some understanding of that, rather than just accepting the numbers at face value after you're done your sifting out and all that sort of stuff?

A. Yes, I agree, that would be an approach, perhaps, that the regional council would take as part of a reapplication process, I agree. However,
25 I've got no information to hand that suggests otherwise.

Q. So you've just taken the data and analysed it and checked it and so on without going to that step?

A. No, I haven't been back to the district council for them to validate, and I doubt that the district council will have another set of records to be able
30 to validate, sir, unless they had record of a specific event that may have caused that, but this is, as I said before, it's quite a long period of time, and it doesn't to me look like it would be a one-off event. It looks to me like it's a seasonal event.

Q. So you don't do a seasonal comparison to try – you know, that's another check, if you like.

A. I just have to take the data at face value. If I'm comfortable that all of the errors have been removed.

5 Q. Okay, all right, well, thank you.

A. And that's what the schedule –

Q. Provides for, yes, I know.

A. – 10.A.4.

10 Q. But this just sort of stuck out there and thought is there anything else that needs to be included?

A. Yeah, no, that is a valid point, you know, if you get things like that, you could possibly resolve that by going back to the applicant.

Q. Yes. Okay, thank you, thank you, your Honour.

THE COURT: JUDGE BORTHWICK

15 Q. It is late in the day, and so I think I have missed what your answer was to Commissioner Edmonds as to, I think, the reason why the community water supplies are excluded from step 4, which has been introduced into the schedule methodology. Could you just go over that again?

A. I'm actually surprised, what was step 4 again?

20 Q. Have you got the JWS in front of you?

A. Yes, I have the –

Q. It is incapable of being summarised.

A. That was 4?

Q. So you have got to look at it.

25 THE COURT: COMMISSIONER EDMONDS

This was the version that was attached to the planner's JWS, and then they had a set of provisions, and they'd changed the schedule 10.A.4.

THE COURT: JUDGE BORTHWICK

Q. So have you got the planner's JWS?

30 A. I've got the planner's, yes.

Q. Okay, and you've got their edits to the plan change?

A. Which page is that?

THE COURT: COMMISSIONER EDMONDS

It doesn't look like you do, it looks too skinny for that. Oh, well, maybe not.

THE COURT: JUDGE BORTHWICK

5 Q. Yours is too skinny. (inaudible 17:38:57), could you just have a check to see what the witness has got?

A. This is the joint witness statement planner's schedule 10.A.4.

Q. So you were wanting this. This is the attachment to the –

A. Ah.

10 **THE COURT: COMMISSIONER EDMONDS**

Q. Might be stapled on the back, might not.

A. I don't think so. Oh, what's that? Yeah, that looks like it's marked up.

THE COURT: JUDGE BORTHWICK

Q. That looks like it, okay, so just have a –

15 A. That's it?

Q. Yeah. So we are under the, again, it is not page numbered, but we are looking at schedule 10.A.4, methodology for calculating assessed actual usage for surface water and connected groundwater takes methodology. So it's clause 10.A.4.1, have you got that?

20 A. Yes.

Q. Yeah, last line: "Except that step 4 does not apply to community water supplies." What was your reason for that? Or what do you understand the reason to be for that?

A. Yeah. I was not aware of this, your Honour.

25

1740

THE COURT: COMMISSIONER EDMONDS

Q. This might just be the planner's take on what they thought had come out of your community water suppliers JWS, so if you have a different take

on it, perhaps you should explain to us what that is, what you think should be there.

- A. I'm actually uncertain as to why step 4 does not apply. I mean, there's obviously somewhere in step 4, which is not useful for community water supplies, or where we've got hydroelectricity generation.

THE COURT: JUDGE BORTHWICK

Q. Yeah, but the person they would have got that from is you, isn't it?

A. It is not.

Q. It is not?

- 10 A. Correct. I'm not sure what's going on here.

THE COURT: COMMISSIONER EDMONDS

Q. So would there, in other words, in your opinion, there, would there not be a problem having four applying to that step 4, applying to community water suppliers?

- 15 A. I would have to analyse what step 4 is.

Q. I guess I do appreciate that there were two of the technical witnesses that might have been involved in your community water suppliers JWS that were present at the planners conferencing, so they may have had an influence on this, I don't know.

20

MS IRVING:

I think 4 might have been a response to the issue in the primary sector conference around legitimate overtaking, and so that perhaps because Mr Wilson and Ms Bright were part of the planners' conference, they've sort of put in a solution to deal with the primary sector and just left out the community and hydro because that legitimate overtaking issue, I don't think kind of came up.

25

THE COURT: JUDGE BORTHWICK TO MS IRVING

Q. Because they always legitimately overtake?

- 30 A. Yeah.

Q. Oh, no.

A. I mean, the legitimate overtaking thing –

Q. No, I think you could well be right.

A. And so I just –

Q. Okay.

5 THE COURT: COMMISSIONER EDMONDS

Q. Well, perhaps we won't trouble you any more.

A. I can explain now.

Q. All right, would you please explain?

A. I think where this is coming –

10 Q. Yes, do that, thank you.

A. – where this is coming from, it's looking at general patterns of taking, and so I think that at the planner's conference, there's been a recognition that there's a different pattern of taking that emerges from community water supplies. It's not the same as the primary sector pattern of taking, so
15 whilst you can apply 4 to the primary sector, I'm not making a statement about that, but that appears what it's been applied for. It's not necessarily applicable to community water supply or hydrogeneration because there isn't that set pattern, there is a variability.

THE COURT: JUDGE BORTHWICK

20 Okay, Mr Twose can confirm that tomorrow, though.

THE COURT: COMMISSIONER EDMONDS

Q. All right, well, thank you for helping me get to the bottom of that.

A. Thank you for pointing it out.

THE COURT: COMMISSIONER BUNTING

25 I think we were going to (inaudible 17:44:30).

THE COURT: JUDGE BORTHWICK

Q. Well, maybe. I think what had to happen was that it had to be taken back to the technical group, and for their confirmation, and it may be just a primary sector matter, as Ms Irving has said, of no (inaudible 17:44:52) to

community and hydro, but Mr Twose can confirm his own understanding about tomorrow.

QUESTIONS ARISING – NIL

THE COURT: JUDGE BORTHWICK

- 5 Q. Well, sorry to let you go in circumstances that you have got tomorrow, you know, with the consultancy, and I hope all that goes really well, yeah.
- A. I won't be available until mid/end of May, your Honour, from here, so that's the recovery time.
- Q. Yeah, well, that is important information.
- 10 A. Mid-May.
- Q. No, I have forgotten what the schedule looks like, it is just a blur at this stage. What is another week? Where are we running to? Second to last week of May? Okay, all right.
- A. The community water supplies and their proposals for schemes, we could
- 15 get that quite quickly in terms of which ones, but it's just that breakdown of the uses will take some time.
- Q. And I think it is the consideration from a planning perspective, whether all uses are, notwithstanding the plan to come, have long-term consents, or whether what is important to the territorial authorities is that the long-term
- 20 is secured for potable drinking water for human consumption and other urban uses, and shorter term consents, if that is possible. I do not know.
- A. It is all the same pipe, though. That's the issue.
- Q. Oh, I know, and I have reads Mr Twose's evidence, it is all the same pipes, so, sorry, we cannot do anything about that, and there is a risk in
- 25 maintaining that approach.
- A. I mean, be great if we could separate it out, different pipes, but –
- Q. Yeah, and it may well be the answer in six years, unless you can get creative.
- A. – really expensive, I wouldn't like to say.
- 30 Q. It is not about new infrastructure, it is about the ability of this council to go in and review permits in line with its new plan, and that is not really a

matter for you. It is now a matter that we have got quite conflicting evidence about, even for the primary sector.

A. I've only told you exactly what I know, your Honour. I mean, it is what it is in terms of those community schemes, but they're all quite different.

5 Q. Okay, all right, well, anyway, best of luck, and we will probably see you again, late May.

A. Thank you.

WITNESS EXCUSED

DISCUSSION - TIMING (17:47:50)

COURT ADJOURNS: 5.49 PM

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Notes of Evidence Legend

National Transcription Service

Indicator	Explanation
Long dash –	<p>Indicates interruption:</p> <p>Q. I think you were – (<i>Interrupted by A.</i>)</p> <p>A. I was – (<i>Interrupted by Q.</i>)</p> <p>Q. – just saying that – (<i>First dash indicates continuation of counsel's question.</i>)</p> <p>A. – about to say (<i>First dash indicates continuation of witness' answer.</i>)</p> <p>This format could also indicate talking over by one or both parties.</p>
Long dash (within text)	<p>Long dash within text indicates a change of direction, either in Q or A:</p> <p>Q. Did you use the same tools – well first, did you see him in the car?</p> <p>A. I saw him through – I went over to the window and noticed him.</p>
Long dash (part spoken word)	<p>Long dash can indicate a part spoken word by witness:</p> <p>A. Yes I definitely saw a blu – red car go past.</p>
Ellipses ... (in evidence)	<p>Indicates speaker has trailed off:</p> <p>A. I suppose I was just... (<i>Generally witness has trailed off during the sentence and does not finish.</i>)</p> <p>Q. Okay well let's go back to the 11th.</p>
Ellipses ... (in reading of briefs)	<p>Indicates the witness has been asked to pause in the reading of the brief:</p> <p>A. "...went back home."</p> <p>The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted.</p> <p>A. "At the time...called me over."</p>
Bold text (in evidence)	<p>If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking, with the <i>first</i> instance only of the interpreter speaking headed up with the word "Interpreter":</p> <p>Q. How many were in the car?</p> <p>A. Interpreter: There were six.</p> <p>Q. So six altogether?</p> <p>A. Yes six – no only five – sorry, only five. (<i>Interpreter speaking – witness speaking – interpreter speaking.</i>)</p>
Bold text in square brackets (in evidence)	<p>If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets:</p> <p>Q. So you say you were having an argument?</p> <p>A. Not argue, I think it is negotiation, ah, re – sorry. Negotiation, bartering. [I think that's what he meant] Yeah not argue.</p>