

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

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

ENV-2020-CHC-127

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of the Water Permits Plan Change - Plan Change 7, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under section 142(2)(b) of the RMA

AND

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

BETWEEN **OTAGO REGIONAL COUNCIL**
Applicant

**STATEMENT OF SUPPLEMENTARY EVIDENCE OF
TOM DE PELSEMAEKER ON BEHALF OF
THE OTAGO REGIONAL COUNCIL
14 July 2021**

Judicial Officer: Judge Borthwick

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Introduction

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

Scope of Supplementary Evidence

- 4 The scope of my supplementary evidence is limited to the issues outlined in the Memorandum of Counsel for the Otago Regional Council in relation to Issues for the Court's Determination in respect to the Proposed Otago Regional Policy Statement dated 9 July 2021

ISSUE 1: Does the pORPS reconcile the NPSFM, the NPSUD and the NPSREG? If so, how?

- 5 The Proposed Otago Regional Policy Statement (**pORPS**) does reconcile the National Policy Statement for Freshwater Management 2020 (**NPSFM**), the National Policy Statement for Urban Development (**NPSUD**) and the National Policy Statement for Renewable Electricity (**NPSREG**).
- 6 The pORPS achieves this by requiring that any decision-making or the development of regional plan provisions with respect to the management of activities that support renewable energy generation or urban development:
 - (a) takes into consideration the pORPS provisions that address fresh water management and seek to give effect to the NPSFM; and
 - (b) is carried out in accordance with the fundamental concept of Te Mana o te Wai and the hierarchy of obligations as set out in clauses 1.3(5) and 3.2 of the NPSFM.
- 7 Key pORPS provisions that articulate this policy direction are included in chapters *IM – Integrated Management*, *LF – Land and Freshwater* and *EIT – Energy, infrastructure and transport*. These provisions ensure that:

- (a) Activities are carried out within the environmental constraints of the pORPS and in a manner that preserves environmental integrity, form, function and resilience (*IM-03; IM-P1*);
- (b) All decision-making and resource management plans developed under the pORPS:
 - (i) achieve healthy, resilient and safeguarded natural systems (*IM-01*) and secure the long-term life-supporting capacity and mauri of the natural environment (*IM- P2*);
 - (ii) where affecting the health of fresh water, give effect to Te Mana o te Wai (*LF-WAI-01, LF-WAI-P1; LF-WAI-P2; LF-WAI-P3 and LF-WAI-P4*);
- (c) The development of urban areas and maintenance and maximisation of generation capacity of REG results in sustainable management of freshwater (*EIT-EN-03 and UFD – 02*); and
- (d) Where multiple pORPS provisions are relevant, these are considered together (*IM-P1*).

ISSUE 2: What is the relevance of the timeframes for the achievement of freshwater visions in the pORPS to PC7?

- 8 The objectives in Section *LF-VM* of the pORPS set out the long-term fresh water visions for FMUs and Rohe across the region and the timeframes for achieving these.
- 9 The timeframes in section *LF-VM* of the pORPS are of relevance to PC7 because they support the need for an interim planning framework that provides strong policy direction for limiting the consent duration for resource consents that replace deemed permits and other water permits that expire prior to 31 December 2025.
- 10 While the timeframes for achieving these visions vary depending on the individual FMU and Rohe, none of the timeframes go beyond 2050. In addition, the objectives and policies in the operative Regional Plan: Water for Otago (**Water Plan**) do not give effect to the objectives and policies set out in the pORPS (particularly those in sections *LF-WAI – Te Mana o te Wai, LF-VM – Visions and Management* and *LF-FW - Fresh water*). Therefore, continuing granting long term consents under the current planning framework of the Water Plan is likely to compromise achieving the fresh water visions within the timeframes set in pORPS.

- 11 The timeframes in Section LF-VM of the pORPS should not guide decision-making on consent durations during the transition toward a new integrated land and freshwater management framework. This is because Section LF-VM of the pORPS does not specify:
- (a) The environmental outcomes for specific values within Otago's FMUs and Rohe (clause 3.9 of the NPSFM);
 - (b) The environmental flows and levels and take limits to achieve the environmental outcomes (clauses 3.16 and 3.17 of the NPSFM);
 - (c) The target attribute states for every attribute identified for a value and the timeframes for achieving these target attribute states (including interim target attribute states where these timeframes are long) (Clauses 3.11 and 3.13 of the NPSFM); and
 - (d) The resource use limits and other criteria or measures to achieve target attribute states (clauses 3.12, 3.14 and 3.15 of the NPSFM).
- 12 The matters set out in paragraph 11(a) to (d) are currently unknown and will be articulated in a new Land and Water Regional Plan (**LWRP**), to be notified by 31 December 2023 (or in action plans).
- 13 The technical work currently underway to inform the development of the new LWRP or any action plans to be published by ORC could also point at the following:
- (a) Achieving the long-term freshwater visions by the dates specified in Section LF-VM of the pORPS, may require environmental outcomes and target attribute states for (at least) some values to be achieved well before those dates. (For example, where environments are degraded action may be needed earlier to allow time for recovery of restoration of ecosystems).
 - (b) For various reasons (economic, social or ecological), it may be appropriate or necessary to apply a phased approach to achieving the environmental outcomes set in a new LWRP.
- 14 Therefore, in my opinion, the 6 year consent term proposed under PC7 is an appropriate measure to ensure that long-term visions for fresh water for Otago's FMU and Rohe can be achieved within the timeframes set out in Section LF-VM of the pORPS.

ISSUE 3: To what extent is PC7 consistent with the policy direction in the pORPS?

- 15 PC7 does not seek to advance the policy direction set in the pORPS, as this will be given effect to by a new LWRP. The key purpose of PC7 is to facilitate an efficient and effective transition towards the new integrated planning framework, that will be promulgated in the new RPS and LWRP. PC7 does this by limiting the durations of new consents to take and use water. This will allow takes for these activities to be reconsidered within the lifespan of the new RPS and LWRP.
- 16 Despite PC7 not giving (full) effect to the pORPS, I consider that PC7 is consistent with some key principles outlined in the pORPS. Specifically, PC7's approach to limit consent durations and avoid further environmental degradation through limiting water takes and irrigation expansion to historical levels of water taking and irrigation practice is consistent with the following policy direction in the pORPS:
- (a) The need for a planning framework that recognises changing environments and can quickly respond to changes in activities, pressures and trends (*IM – P4*);
 - (b) The intent to preserve opportunities for future generations by regularly assessing the limits and thresholds for activities in light of actual and potential environmental effects (*IM – P14*);
 - (c) The precautionary approach with respect to the management of activities whose environmental impacts are uncertain (*IM – P15*);
 - (d) The need to recognise the connection between land and fresh water and the effect of land use on the health of fresh water (*LF-WAI-01; LF-WAI-P3; LF-LS-012; LF-LS-P16 and LF-LS-P21*); and
 - (e) The requirement to ensure that the health and well-being of water bodies is maintained, future allocation is avoided, and existing over-allocation is phased out (*LF-LS-P7*).

ISSUE 4: How does the pORPS provide for hydro-electricity generation activities and climate change?

- 17 Key pORPS objectives and policies that provide for the management of hydro-electricity generation (**HEG**) activities are set out in the sections *EIT-EN-Energy and EIT-INF-Infrastructure*. The pORPS framework seeks to maintain and where practicable maximise renewable energy generation (**REG**) capacity within environmental limits (*EIT-EN-O2 and EIT-INF-04*). This is achieved by ensuring that the adverse effects of the

operation and maintenance of existing activities are minimised (*EIT-EN-P1 and EIT-INF-P11*) and by prioritising the development of new REG activities in locations where adverse effects on highly valued natural and physical resources and mana whenua values are either avoided or, at the very least, minimised (*EIT-EN-P5 and EIT-EN-P6*).

- 18 The pORPS framework for managing climate change is set out in Chapter *IM – Integrated Management*. This framework is aimed at enhancing environmental and community resilience by identifying and recognising climate change impacts, providing for activities that reduce human impacts on the environment and reduce the risk and impacts of climate change, and facilitating planning responses that allow communities to adapt to and mitigate the effects of climate change (*IM – P8 to P12*).

ISSUE 5: To what extent is PC7 consistent with policy direction in the pORPS for HEG activities and climate change?

- 19 In my view, PC7 is consistent with the policy direction in the pORPS for REG because it allows for maintaining the REG capacity of existing HEG infrastructure and does not prevent upgrade or development of new HEG infrastructure. PC7 achieves this by:
- (a) Ensuring that the rate of take and volumes allocated in any short-term ‘replacement’ consents reflect historical usage;
 - (b) Maintaining historical reliability of supply by not setting any conditions on short term consents that restrict access to water (unless these conditions exist on the permit to be replaced); and
 - (c) Allowing for applications for new water takes to be considered under the framework of the Water Plan.
- 20 PC7’s intent to avoid further increases in water use and reliance on water availability in the period preceding the promulgation of a new LWRP is an appropriate response in the face of an incomplete understanding around the impacts of climate change and uncertainty around future water availability. The strong policy guidance to limit the duration of new water permits issued under PC7 will further assist with the facilitation and implementation of climate change adaptation and mitigation measures in a timely fashion. For these reasons I consider that PC7 is consistent with the direction set in the pORPS with respect to climate change.

ISSUE 6: How does the pORPS provide for community water supplies?

- 21 Key pORPS objectives and policies that provide for the management of community water supplies (**CWS**) are set out in the sections *EIT-INF-Infrastructure* and *UFD – Urban form and development*. The pORPS framework provides for the development of infrastructure, including CWS, to service existing, planned and expected urban growth in short, medium or long term (*EIT-INF-P17 and UFD-P10*), including by recognising the resource requirements of CWS and ensuring that these are taken into account when making decisions on the allocation or use of natural resources (*EIT-INF-P10*). However, the pORPS also seeks to ensure that adverse effects of the operation and maintenance of existing and development of new CWS infrastructure is avoided, or where avoidance is not practical, managed (*EIT-INF-P11 to EIT-INF-P14*).

ISSUE 7: To what extent is PC7 consistent with the policy direction in the pORPS for community water supplies?

- 22 In my view, PC7 is consistent with the policy direction in the pORPS for CWS because it protects the operation of existing CWS and does not prevent the upgrade or development of new CWS infrastructure. PC7 achieves this by:
- (a) Allocating water in any short-term ‘replacement’ consents in accordance historical usage;
 - (b) Maintaining historical reliability of supply by not setting any conditions on short term consents that restrict access to water (unless these conditions exist on the permit to be replaced); and
 - (c) Allowing for applications for new water takes for CWS to be considered under the framework of the operative plan.
- 23 PC7’s intent to limit the duration of new water permits will ensure that the needs of CWS can be taken into account when making decisions on the allocation and use of fresh water. For these reasons I consider that PC7 is consistent with the direction set in the pORPS with respect to the management of CWS.

Dated this 14th day of July 2021

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Tom De Pelsemaeker