

**BEFORE INDEPENDANT HEARING COMMISSIONERS
APPOINTED BY THE CANTERBURY REGIONAL COUNCIL**

UNDER: the Resource Management Act 1991

IN THE MATTER OF: Proposed Plan Change 7 to the
Canterbury Land and Water Regional
Plan – Section 14: Orari-Temuka-
Ophi-Pareora

**JOINT MEMORANDUM OF COUNSEL IN RELATION TO EXPERT
WITNESS CAUCUSING**

31 JULY 2020

GRESSON DORMAN & CO
Solicitors
PO Box 244, Timaru 7940
Telephone 03 687 8004
Facsimile 03 684 4584
Solicitor acting: G C Hamilton
georgina@gressons.co.nz

MAY IT PLEASE THE HEARING COMMISSIONERS

1. This Joint Memorandum is filed on behalf of the Canterbury Regional Council (**Council**), the Adaptive Management Working Group (**AMWG**), the Opihi Flow and Allocation Working Party (**OFAWP**) and Opuha Water Limited (**OWL**) (collectively **the Parties**). It follows the Joint Memorandum filed on behalf of Council, the AMWG and the OFAWP on 26 June 2020 in relation to expert witness caucusing, and outlines:
 - (a) Topics for expert witness caucusing agreed by the Parties;
 - (b) The possible scope of additional caucusing topics; and
 - (c) Proposed caucusing arrangements.

Agreed caucusing topics and participants

2. In accordance with the Commissioners' directions in Minute 5, following receipt of the evidence in chief filed by submitters on 17 July 2020, Counsel have conferred and identified appropriate topics for expert witness caucusing. A list of the agreed caucusing topics and expert witnesses are set out in **Annexure A**.
3. In respect of the proposed ecological caucusing relating to the topic of environmental flow limits in Tables 14(v) and (w) for the Opuha/Opihi Mainstem, the Council has identified Dr Philip Jellyman as a participant in the expert witness caucusing. Although not an author of the Section 42A Report, Dr Jellyman's report 'Opihi catchment ecological flow assessment'¹ was relied on and referenced by the authors of the Section 42A Report. The Council considers there are efficiencies for the caucusing process if Dr Jellyman participates in the expert witness caucusing on this topic. The AMWG and OFAWP are agreeable to this approach.
4. Accordingly, the Council respectfully seeks leave from the Commissioners for Dr Jellyman to attend expert witness caucusing. Should the Hearing

¹ Jellyman, P. 2018: Opihi catchment ecological flow assessment. For Environment Canterbury. NIWA Client Report No: 201858CH.

Commissioners have questions for Dr Jellyman, the Council will ensure that he is made available to respond to those questions.

5. It is noted that the Commissioners' directions in Minute 5 anticipated that the scope of caucusing be limited to topics arising from the expert evidence filed in support of the primary submissions of the AMWG and OFAWP, with submitters who lodged further submissions on the relevant topics being invited to participate. However, during the course of identifying potential caucusing topics and the relevant further submitters, Counsel have identified several primary submissions of other submitters that relate to the proposed caucusing topics.
6. Counsel consider that it would be appropriate for the expert witnesses of those submitters (and related further submitters) to be invited to participate in caucusing, which includes expert witnesses of the following submitters (who are also identified in Annexure A):
 - (a) Te Rūnanga o Ngāi Tahu and Te Rūnanga o Arowhenua (**Ngā Rūnanga**);
 - (b) Department of Conservation (**DOC**); and
 - (c) Central South Island Fish and Game Council (**CSIFGC**).
7. The Council also considers that it would be appropriate for Ngā Rūnanga's cultural witnesses to be invited to participate in the ecological caucusing sessions to the extent that their evidence addresses matters related to the agreed caucusing sub-topics set out in Annexure A. The AMWG and OFAWP are agreeable to that approach.
8. Counsel also consider that the following two additional topics relating to the primary submissions and expert evidence filed on behalf of OWL be included in caucusing:
 - (a) Opihi FMU allocations (Table 14(ua)); and
 - (b) Lake Opuha freshwater outcomes/limits (Tables 14(b), (e) and (f)).

Potential scope of additional caucusing

Economics

9. In addition to the topics noted in Annexure A, the OFAWP has suggested there may be value in an economics caucusing session involving the OFAWP's economics witnesses (Mr Grant Porter and Dr Caroline Saunders) and the author of the economics report included as a supporting document for PC7 and referred to in the Section 32 Report (Mr Simon Harris).² The Council sees limited utility in caucusing on economic matters, and does not consider that caucusing is required given the evidence before the Hearing Commissioners.
10. Despite the Council's position stated above, if the Hearing Commissioners would be assisted by economic caucusing, the Council would of course enquire as to Mr Harris' availability.

Planning

11. There are mixed views between the Parties as to the utility of planning caucusing (due to proceed during the fortnight beginning 24 August if needed). However, the Parties agree this should properly be assessed once the outcome of the technical experts' caucusing is known.
12. Further directions from the Commissioners will be sought by the Parties in the event of any disagreement in that regard, prior to 24 August 2020.

Caucusing arrangements

13. The Parties are presently making arrangements for the technical expert witness caucusing sessions to occur in Christchurch (hydrology) and either Christchurch or Timaru (ecology) between 31 July and 21 August 2020 in accordance with the timetabling directions set out in Minute 6, based on expert witness availability. As part of this process, Counsel will liaise with Counsel for Ngā Rūnanga, DOC and CSIFGC regarding those submitters' expert witnesses' participation in caucusing on the topics identified in Annexure A.

² "Economic Assessment of the Healthy Catchments Project Proposed Zone Implementation Programme Addendum (ZIPA)" Harris, S. (2019). Land and Water People, Christchurch, New Zealand.

14. For the ecology caucusing, the Council is arranging for an independent facilitator to be present.
15. Counsel are also working with the expert witnesses for the Parties to confirm the scope of disputed technical issues/errors within the agreed caucusing topics/sub-topic set out in Annexure A, and intend to seek feedback on the same from Ngā Rūnanga, DOC and CSIFGC. This will form the basis of proposed agendas for each caucusing session, which the Parties will provide to the Hearing Commissioners ahead of expert witness caucusing.



G C Hamilton
Counsel for the Adaptive Management Working Group, Opihi Flow and Allocation
Working Party and Opuha Water Limited



P A C Maw / I F Edwards
Counsel for the Canterbury Regional Council

ANNEXURE A – AGREED EXPERT WITNESS CAUCUSING TOPICS

Topic	Sub-Topic	Party	Witness Name
Hydrology	Environmental Flow, Allocation and Partial Restriction Regimes:	Environment Canterbury (ECan)	Dan Clark
	Table 14(m) (North Opuha) Table 14(n) and (o) (South Opuha) Tables 14(p) and (q) (Upper Opihi) Tables 14(r) and (s) (Te Ana Wai) Definition of “pro-rata partial restriction”	Opihi Flow and Allocation Working Party (OFAWP)	Keri Johnston
	Opihi FMU Allocation Limits: Table 14(ua)	ECan	Dan Clark
		Opuha Water Limited (OWL)	Keri Johnston
	Environmental Flow, Allocation and Partial	ECan	Dan Clark
	Restriction Regimes; Alternative Management Regime Thresholds: Tables 14(v) and (w) (Opuha/Opihi Mainstem) Table 14(x) (Alternative Management Thresholds)	Adaptive Management Working Group (AMWG)	Dr Tim Kerr

Topic	Sub-Topic	Party	Witness Name
	Artificial freshes: Policy 14.4.35(e)	ECan	Dan Clark
		AMWG	Richard Measures Dr Tim Kerr
Freshwater ecology/quality	Environmental Flow, Allocation and Partial Restriction regimes: Table 14(m) (North Opuha) Tables 14(n) and (o) (South Opuha) Tables 14(p) and (q) (Upper Opihi)	ECan	Shirley Hayward
		OFAWP	Dr Greg Ryder Mark Webb
		Central South Island Fish & Game Council (CSIFGC)	Mark Webb
	Environmental Flow, Allocation and Partial Restriction regimes: Tables 14(r) and (s) (Te Ana Wai)	ECan	Shirley Hayward
		OFAWP	Dr Greg Ryder Mark Webb
		Te Rūnanga o Arowhenua/Te Rūnanga o Ngāi Tahu (Ngā Rūnanga)	John Henry
		CSIFGC	Mark Webb

Topic	Sub-Topic	Party	Witness Name	
	Environmental Flow Limits: Tables 14(v) and (w) (Opuha/Opihi Mainstem)	ECan	Shirley Hayward / Dr Philip Jellyman	
		AMWG	Dr Greg Ryder Mark Webb	
		Ngā Rūnanga	John Henry	
		CSIFGC	Mark Webb	
		Department of Conservation (DOC)	Dr Thomas Drinan	
	Artificial Freshes: Policy 14.4.35(e)	ECan	Shirley Hayward	
		AMWG	Dr Greg Ryder Mark Webb Richard Measures	
		CSIFGC	Mark Webb	
		DOC	Dr Thomas Drinan	
	Freshwater Outcomes/Limits for Lake Opuha: Tables 14(b), 14(e) and 14(f)	ECan	Shirley Hayward	
		OWL	Dr Greg Ryder Richard Measures	
			DOC	Kathryn McArthur