

**BEFORE THE CANTERBURY REGIONAL COUNCIL
HEARING COMMISSIONERS**

IN THE MATTER

of the Environment Canterbury
(Transitional Governance Arrangements)
Act 2016

AND

IN THE MATTER

of submissions on Proposed Plan Change
7 to the Land and Water Regional Plan and
Proposed Plan Change 2 to the
Waimakariri River Regional Plan

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

Dated 20 August 2020

MAY IT PLEASE THE HEARING COMMISSIONERS

1. The purpose of this memorandum of counsel for the Christchurch City Council is twofold: first, to seek directions of the Panel in relation to the implications of the National Environmental Standard (NES) and the National Policy Statement for Freshwater Management (NPS-FM) that was gazetted on 6 August; and secondly, to seek a timetabled allowance for the groundwater experts to complete their caucusing in a professional manner.

NES and NPS-FM

2. The memorandum for the Christchurch City Council dated 7 August 2020 recorded:

9. The NPS-FM (2020) was gazetted yesterday and will be in legal effect from 3 September 2020. Counsel expects that the Canterbury Regional Council will be making a suggestion to the Commissioners as to any changes to process that may be necessary to address the relevance of the NPS-FM and NES FM.

3. Those documents make fundamental changes to the higher order objectives, policies and rules within which the Panel's decision making will occur. In particular, a new national bottom line for nitrate toxicity in rivers, a new objective which sets out freshwater priorities and the requirement to give effect to Te Mana o te Wai.
4. Counsel respectfully requests that the Panel seek memoranda from the parties in relation to the implications of the NES and the NPS-FM for this plan change process. Procedural options for addressing those issues could include:
 - Withdrawal of the plan changes, or parts of the plan changes, and reassessment of policies and rules associated with water quality targets, limits and timeframes (in particular nutrient management) in light of the new framework;
 - Adjourning the hearing to allow time for the Regional Council to reassess the proposed provisions in light of the new framework, with timetabled steps for a production of new officers' reports, Variation of the plan changes, possible re-notification, and further evidence exchange;

- Timetabled steps for a supplementary s42A report, followed by further supplementary evidence in chief and rebuttal evidence. There is not sufficient time for this with the current hearing timetable.
5. It is submitted that leaving the matter to be addressed at the hearing with the current timetable is not a reasonably feasible option. The changes are significant. Fairness of process warrants the parties knowing what the Canterbury Regional Council position is before they produce their evidence. The Panel will be assisted by having supplementary Canterbury Regional Council reports and evidence that addresses these changes.
 6. Counsel requests that the Panel issue directions requiring a memorandum from the Canterbury Regional Council setting out its position on these matters and providing an opportunity for the parties to respond to that memorandum.

Groundwater expert caucusing

7. Counsel here refers to the caucusing sought in the memorandum of counsel dated 7 August 2020 and authorised by the Panel's Minute 11.
8. The Christchurch City Council did not seek that caucusing until after it had seen the evidence of chief of groundwater experts.
9. The caucusing commenced yesterday, addressing the topics set out in a joint memorandum of counsel for the Canterbury Regional Council and the Christchurch City Council dated 18 August 2020.
10. The Canterbury Regional Council made a facilitator available for one day. That is appreciated.
11. The groundwater expert who attended for the Christchurch City Council is Mr Mike Thorley. Mr Thorley has informed counsel of the *progress* of the caucusing. Mr Thorley advises:

As discussed, the caucusing of groundwater experts occurred yesterday and made significant progress on the discussion topics. However, several discussion points were not able to be discussed due to the limited time and

large number of discussion points. There are also a few points which the experts are following up about to provide additional information and comment. The following discussion points which were agreed by ECan and CCC were not covered in caucusing:

- **Rate of nitrate transport to Christchurch**
 - How would the assessment of timing of interzone nitrate transfer change if the minimum age determinations and most vulnerable pathways were used? What are the implications of uncertainty over transport rates for the proposed plan rules?
 - Does the presence of nitrate in deeper bores indicate shorter travel times than 200 years?

- **Remediation, adaptive management and monitoring**
 - How can remediation options such as MAR and TSA contribute to achieving the nitrate targets?

- **Groundwater catchment areas**
 - Do piezometric gradients support flow across the Waimakariri River?

The experts agreed that a further half day would likely be required to complete caucusing of the above outstanding discussion points.

Furthermore, there is limited to prepare and finalise the joint witness statement, particularly if further caucusing is to occur. I consider 5 working days from the end of caucusing to be a reasonable timeframe for the experts to finalise and circulate changes and amendments across the parties.

ECan have indicated that only 1 day of caucusing is possible and that the joint witness statement must be submitted tomorrow (21 August 2020). Can you please advise if any further time could be made available to complete the caucusing and/or the joint witness statement.

12. Minute 11 directed that this caucusing be completed in the timeframe that had been proposed by the Canterbury Regional Council and directed by the Panel for unrelated caucusing. That requires completion of a joint expert statement this week.
13. At the time of preparing this memorandum, counsel understands that the groundwater experts are investigating whether they can reconvene the caucusing for some time this afternoon. There is no certainty at this time as to whether that will happen and whether it will be sufficient time for the caucusing to be completed; and even if the caucusing is finished today, there is very little time for the experts to work on a joint statement.
14. Counsel respectfully requests that the Panel allow more time for these neutral independent experts to complete their discussions in a manner that they consider is warranted by the issues and which is not unduly rushed.
15. Rebuttal evidence is currently (subject to any changes that may arise from the NPS-FM process issues described above) timetabled for 18 September. Counsel respectfully requests that the Panel directs that the groundwater experts to file their joint statement by 4 September 2020. That will have no impact on the timetable for rebuttal evidence and allows time for them to complete their teleconference meeting and then finalise a joint statement.

Dated 20 August 2020



BK Pizzey
Counsel for the Christchurch City Council