

**BEFORE THE FRESHWATER HEARINGS PANEL CONVENED BY THE CHIEF  
FRESHWATER COMMISSIONER**

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**IN THE MATTER**

of the Proposed Otago Regional Policy Statement  
2021

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**MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL**

Dated 13 April 2022

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## MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL

### May it please the Commissioners:

- 1 This memorandum is in response to Minute 2 of the Panel, as clarified 24 March 2022.

### Introduction

- 2 In that Minute the Panel sought input concerning the impact of High Court declaratory judgment proceedings concerning the status of the pORPS as a freshwater instrument. A judgment in those proceedings is not expected before the end of June 2022.
- 3 One possible judgment is that part of the pORPS does not relate to freshwater and may not be prepared in accordance with the freshwater planning process.
- 4 That raises the prospect of time and money being wasted.
- 5 Against that there are time factors (outlined in Minute 2) which make delay problematic.

### Discussion

- 6 Part of the relief sought by the ORC in the High Court proceedings is that if part of the pOPRS may not be prepared in accordance with the freshwater planning process, then it be prepared under Part 1 of Schedule 1 without need for re-notification.
- 7 If it is held that part of the pORPS does not relate to freshwater and may not be prepared in accordance with the freshwater planning process, and re-notification is not required, then the ORC proposes<sup>1</sup> to delegate to the members of this Panel the power to conduct hearings of that part as Commissioners under Part 1 of Schedule 1.
- 8 The ORC expects that hearings under the two processes would be administered together and take place as separate processes within one overarching timetable. Because of the integrated nature of the pORPS this is the only way the separate processes could sensibly be run.

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<sup>1</sup> Subject to all usual consultation and approvals

- 9 Pending the High Court's judgment, ORC proposes to delegate to the members of this Panel the power to conduct hearings under Part 1 of Schedule 1 in connection with all parts of the pORPS.
- 10 The ORC proposes also that the order in which topics are heard begins with the more obviously freshwater topics<sup>2</sup>.
- 11 In terms of the timetable below these topics would take the process to a point in time when the High Court judgment may have been issued.
- 12 This reduces, but does not eliminate, the risk that any hearings conducted prior to the High Court judgment fail for want of jurisdiction.
- 13 Another consideration is that the main substantive consequences of whether a part of the pORPS relates to freshwater are that under the freshwater process Panel recommendations may be made beyond the scope of submissions and if the ORC rejects a recommendation, it is to decide an alternative solution. Appeal rights also differ between the processes.
- 14 These consequences become relevant only when recommendations are made by this Panel.
- 15 It seems unlikely that this stage would be reached before the High Court judgment is available.
- 16 The ORC proposes that before that point there is a re-assessment of how hearings proceed.
- 17 The ORC has considered the impact of this on publication of its report under section 42A of the RMA. The ORC considers that the s42A report can be published in its entirety as a single document, regardless of whether parts are held not to relate to freshwater.
- 18 ORC submits that under its proposed approach:
- 18.1 there is no prejudice to submitters on the pORPS or parties to the High Court proceedings;

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<sup>2</sup> It should be noted that not all parties agree with this view. For example, OceanaGold submitted on LF-LS-011 and LF-LS-P19 in the Land and Soils topic and submitted to the High Court that these do not relate to freshwater.

18.2 the risk of submitters wasting time and money in connection with the pORPS hearing process is minimised; and

18.3 undue delay for submitters on the pORPS is avoided.

### Proposed timetable

19 ORC proposes the following timetable:

27 April 2022 – publish s42A report on the hearings webpage

16 May 2022 – evidence in chief

24 May 2022 – all evidence in chief on the webpage

30 May 2022 - submitters advise if they consider expert conferencing is required on the topics listed below.

13 June 2022 – rebuttal evidence

20 June 2022 – all rebuttal evidence posted on the webpage

4 July 2022 – hearings commence

20 The Council proposes that hearings commence 4 July on the following topics:

| Topic  | Relevant reports | Report size (pages) |
|--|------------------|---------------------|
| Introduction and general themes (including whole of PORPS submissions)   | Report-1         | 59                  |
| Part 1: Introduction and general provisions (excluding Definitions and MW)   | Report-2         | 105                 |
| Part 2: Resource management overview   | Report-3         | 74                  |
| MW – Mana-whenua   |                  |                     |
| IM – Integrated management   | Report-4         | 120                 |
| LF – Land and freshwater <ul style="list-style-type: none"> <li>→ LF-WAI – Te Mana o te Wai</li> <li>→ LF-VM – Visions and management</li> <li>→ LF-FW – Freshwater</li> <li>→ LF-LS – Land and soils</li> </ul> | Report-7         | 292                 |

21 While ORC does not hold this view, noting that OceanaGold submitted in the High Court that LF-LS-011 and LF-LS-P19 in the Land and Soils topic do not relate to freshwater, a more cautious approach would be to leave LF-LS off this list.

22 Hearing time for the submitters' evidence is estimated to be three weeks.

- 23 Sitting every second week that takes the timetable through until 5 August.
- 24 Before that date the subsequent process should be re-assessed in light of the High Court judgment, or the fact it has not been issued.
- 25 ORC will notify the Panel immediately when the High Court judgment has issued and provide a copy to the Panel.
- 26 As a courtesy, a draft of this memorandum was shared with the parties to the High Court proceedings, and other submitters who made an interest known to the ORC.



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Simon Anderson  
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13 April 2022