

Recent case law of interest to consent processing

Clutha District Council v Otago Regional Council [2022] NZHC 510 (Decision).

On 18 March 2022, the High Court issued its decision for *Clutha District Council v Otago Regional Council* [2022] NZHC 510 (**Decision**). The High Court dismissed the appeal all grounds and found there were no errors of law. The appeal related to a consent to take water from the Clutha/Mata-Au River for a community water scheme. A copy of the decision can be found here:

<https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZHC-510.pdf>

The Court considered that the end use of water for dairy shed wash and its subsequent discharge to the environment had a sufficient nexus to the take and were not so remote as to be matters which the Environment Court could not consider when fixing the duration for the water take consent for the scheme. The key reasons for the Court's finding was that:

1. The use of the water for dairy shed wash was more than foreseeable to the ORC and the Court; the use was known and already occurring.
2. In a physical sense, through the scheme the applicant, was providing water directly to the properties on which water was being used for dairy shed wash. As such, they were supplying the water for dairy shed wash.
3. It is the consent holder who determines to whom water would be allocated as part of the scheme. Accordingly, the consent holder, to a certain extent, is thus able to control to a significant extent how water from the scheme is used.

The key findings of the case and the preceding Environment Court case are:

- The High Court held that the Environment Court was correct to

consider the end-use of water when considering the environmental effects of a proposed water-take for a community water scheme under section 104 of the Resource Management Act 1991, and the appropriate term of consent.

- Where an applicant for consent has a high degree of control over the end use of water, the assessment of effects of a proposed water take needs to consider the end use of that water. Where there is not a sufficient nexus between the water take and the end use, or where the effects of the end use are too remote, the end use will not be relevant.
- in determining the appropriate duration for a water permit, the Environment Court and Council is required to consider the matters contained in section 104 of the Resource Management Act 1991 (**RMA**) to the extent these matters were relevant to the duration of the activity.
- The Court agreed with ORC's submission that taking a holistic view of the activity and its effects is consistent with the principles of Te Mana o te Wai and ki uta ki tai contained in the National Policy Statement for Freshwater 2020 (**NPSFM**).