

BEFORE THE FRESHWATER COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991
(**the Act**)

AND

IN THE MATTER

of the Proposed Otago Regional Policy
Statement

**MEMORANDUM ON BEHALF OF HORTICULTURE NZ, OTAGO WATER
RESOURCE USERS GROUP, BEEF + LAMB NEW ZEALAND LIMITED,
FEDERATED FARMERS OF NEW ZEALAND AND DAIRY NZ LIMITED**

MAY IT PLEASE THE COMMISSIONERS:**INTRODUCTION**

1. This memorandum is filed on behalf of Horticulture NZ, Otago Water Resource Users Group (OWRUG), Beef+Lamb New Zealand Ltd, Federated Farmers of New Zealand and Dairy NZ Ltd, (**parties**) in response to the Commissioners second minute dated 18 March 2022 (**Second Minute**). The Second Minute sought feedback from the parties on the timetable that had been set out in the First Minute dated 22 February 2022.
2. The parties agree with the Commissioners that the proceedings cannot be delayed indefinitely. However, the parties consider that a short delay to accommodate the decision of the High Court, which is expected mid-year, is desirable. The parties' proposed timetable would provide for this.
3. The parties also agree with the Commissioners that if the same panel were appointed by the Otago Regional Council (**ORC**), to be Commissioners for the traditional Schedule 1 process. this would also future proof any outcome in the High Court if it finds that there are provisions in the proposed Otago Regional Policy Statement (**pORPS**) that are not freshwater provisions. Having said that, the parties find it difficult to envisage how a delegation might be made from the ORC to the Commissioners prior to the High Court's decision being available. This is because, it is submitted that, any delegation would need to identify the submission points that are not on a freshwater planning instrument and would need to be decided under the Schedule 1 process. For that reason, the timetable below allows for a period of time between the expected receipt of the High Court's decision and the commencement of hearings to enable a delegation to be made, should the ORC choose to follow that course. The

proposed timetable also enables evidence exchange to commence so that hearings may start as expeditiously as possible.

4. The parties consider that the hearings should proceed on a topic-by-topic basis starting with the higher order provisions being heard first. Although it might be legally possible to commence hearing submissions on uncontentious freshwater matters prior to the High Court decision, following that course would require a departure from the logical structure of the pORPS, which the parties do not support.
5. To summarise, in terms of the timetable as already noted the parties consider that time should be provided to allow for the High Court decision to be made and the outcome of that addressed in these proceedings.
6. In addition, the other change proposed to the timetable from that set out in the First Minute is to allow a longer time between the section 42A Report and the evidence in chief. This is because the parties anticipate that the section 42A Report will be an extensive document and, it is submitted that, it is unreasonable not to allow sufficient time for submitters to consider it in setting the time for evidence in chief to be filed.
7. The following timetable is therefore respectfully proposed:
 - (a) The section 42A Report to be posted on the website by 23 June 2022;
 - (b) All parties evidence in chief by 5pm on 29 July 2022 (5 weeks after section 42A Report);
 - (c) All evidence in chief to be posted on the website by 5 August 2022;
 - (d) All rebuttal evidence by 5pm 26 August 2022 (4 weeks after evidence in chief);

- (e) All rebuttal evidence to be posted on the website by 2 September 2022;
 - (f) Hearings to commence on 12 September 2022 and are likely to be concluded within 5 months (2 weeks after rebuttal evidence).
8. The parties consider that the proposed delay is reasonable and appropriate for the following reasons:
- (a) It will (more likely than not) allow for the High Court decision to be released and the outcome accommodated. In particular:
 - i. for the ORC to identify the provisions that fall to be considered as 'freshwater provisions' versus 'Schedule 1 provisions' prior to the commencement of the hearing.
 - ii. For the ORC to put in place the necessary delegations appointing the Panel to hear the Schedule 1 provisions.
 - (b) It maintains the Panel's preferred approach (based on the First Minute) of receiving all the evidence upfront, rather than on a rolling basis.
 - (c) It recognises the concern raised by the Panel, and shared by the parties, that if the outcome in the High Court is that the pORPS is not holistically a freshwater instrument, the ORC, the Panel and the submitters might incur cost that is likely to be wasted, at least in part.
 - (d) The delay is not extensive and still provides sufficient time for the Freshwater Hearing process to proceed and run its course and be done prior to any subsequent planning process.

- (e) It can be accommodated by the parties – noting that most parties are participating in numerous other Council Plan making processes. These include, the Dunedin District Plan variations, the Central Otago Plan review, the Environment Court processes in the Queenstown Proposed District Plan Appeals, the Dunedin Second Generation District Plan Appeals, the Southland Regional Plan Appeals, all of which are happening at the same time as this process. Whilst the parties accept that this may not be a compelling reason for delay on its own, we respectfully submit that it is one of the broader considerations for the Panel to note. It is submitted that these multiple and overlapping process lends weight to the argument that particular consideration should be given to the periods between the filing dates given the volume of material that will need to be reviewed by witnesses.
9. Counsel for ORC helpfully shared a draft of its memorandum that is to be filed in response to the Second Minute. In its draft memorandum, ORC proposed timetabling these proceedings much sooner than the parties have in this memorandum. If the Court is minded to accept ORC's timetabling, then the parties respectfully request that the timetable starts on the date suggested in the ORC memorandum, but with the timeframes between each step suggested in this memorandum. Given the length of the section 42A document foreshadowed in the ORC memorandum it will be extremely difficult for parties to review the reports, convene with clients and prepare evidence to address matters raised in the section 42A, . There is a serious risk that the proposed timetable will diminish the quality and, therefore, the value of the evidence to the Panel.
10. Whilst the parties understand the wish for urgency, it is respectfully suggested that the timetable proposed by the

ORC places the robustness of the process in jeopardy. Given that this pORPS is one of the 'first cabs off the rank' under the NPSFM 2020 this is of particular concern to the parties filing this memorandum.

DATE: 13 April 2022



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