

Otago Regional Council

Proposed Otago Policy Statement 2021 (Freshwater parts)

Minute 8

Hearing Schedule and extension of time & cross examination requests

1. This Minute responds to two Memoranda on timing and cross-examination requests which the Hearings Panel has received, and continues then to fix a hearing timetable which is contained in the attached Appendix. The two Memoranda were:
 - (i) 25 July 2023 by counsel for Royal Forest & Bird Protection Society of NZ Inc (RFB) regarding the timetable set in Minute 7 as to the intended process for responses on the NPS IB.
 - (ii) 26 July 2023 by counsel for Otago Regional Council seeking leave to cross examine 23 witnesses.

RFB Memorandum

2. This Memorandum described other hearing commitments which their counsel were heavily involved in which clashed with the dates set by the Hearing Panel for responses to the NPS IB in Minute 7. It concluded by seeking leave to address the NPS IB point as part of its legal submissions at the hearing.
3. The Panel has only received one such request and acknowledges the particular difficulties faced by RFB counsel. As only one such request has been made we do not consider that will unduly affect ORC counsel in being able to respond at its delayed closing presentation. Leave is accordingly granted to the request made.

ORC cross examination request

4. ORC counsel have sought leave to cross-examine 23 expert planning witnesses. The indicative hearing time provided is a total of 8 hours. The topics proposed are described by reference to particular provisions in the PORPS.
5. Clause 48 (1) of Part 4 of Schedule 1 of the RMA provides:

48 Procedures of freshwater hearings panel

 - (1) *Every freshwater hearings panel must—*
 - (a) *regulate its own proceedings in a manner that is appropriate and fair in the circumstances; and*
 - (b) *keep a full record of proceedings.*
 - (2) *At a hearing, a freshwater hearings panel may—*
 - (a) *permit a party to question another party or witness:*
 - (b) *prohibit cross-examination:*
 - (c) *permit cross-examination at the request of a party but only if the panel is satisfied that it is in the interests of justice:*
 - (d) *regulate the conduct of any cross-examination.*

6. The grounds advanced to satisfy the Panel that it is in the interests of justice to permit the cross-examination are listed at paragraph 4 of the Memorandum.
7. The Panel has closely considered those grounds and considers that each of them can best be described as general grounds in support of a proposition that general cross-examination of expert planning witnesses should be permitted. They are possibly best summarised by quoting paragraph 4.2 asserting that "*the interests of justice are served by allowing cross-examination of the expert planning witnesses*". None of the grounds advanced assert a particular issue of disputed fact which needs clarification or correction.
8. In making open the opportunity to seek leave to cross-examine, rather than merely prohibiting cross-examination as is envisaged by sub-clause 48 (2) (b), the Hearings Panel had stressed that differences of opinion between experts do not normally raise issues of justice as between parties.
9. In the setting of this PORPS, however, the opportunity was left open to seek leave to cross-examine because the Hearings Panel was unaware at that stage as to whether any submitter or the Council asserted some significant issue of disputed fact existed underlying the freshwater provisions - which may have been for example as to matters such as available flow rates or allocation effects. No such issue has been raised.
10. It is inevitable that planning witnesses in a regional policy statement process will have differing views, and even potentially widely differing views. Such differences are well able to be addressed by the process the Hearings Panel has in place of requiring submitter evidence to be lodged well before the hearings which enables the s.42A witnesses and ORC counsel to respond to that evidence in their openings. That in turn allows opportunity for further submitter response in their presentations at the hearing. ORC will then have opportunity to finally respond in closing presentations through s.42A reporters and counsel.
11. Through the Hearings Administration ORC have sought a short delay in hearing their final closing to be able to address any such submitter responses.
12. We are satisfied that process allows full understanding by ORC counsel and s.42A witnesses and by the Hearing Panel of any position advanced on any provision of the PORPS. We do not consider cross-examination would assist any further – indeed in our view all that would be likely to achieve is an extended debate between two opposing views. That debate can be explored as fully as is required by the hearing process just outlined. (In passing we also observe that we have real doubts that the time sought of 8 hours was realistic, given the large number of provisions involved for each witness. Up to 17 for some.)
13. The request by ORC for leave to cross-examine is accordingly not permitted, and instead ORC's request for a short extra period to respond in closings is granted.

Hearing Timetable

14. The hearing timetable set is therefore as contained in the Appendix attached.

Dated 27 July, 2023

Ron Crosby

Chair Freshwater Hearings Panel

APPENDIX

Proposed Otago Regional Policy Statement – Freshwater Hearing Schedule

Monday 28 August – Start 9:30a.m.

Otago Regional Council	Legal submissions 1.5 hours
	S42A report 1.5 hours
Lunch Break	
Kāi Tahu	Legal submissions 30 minutes
	Sandra McIntyre 30 minutes
	Maria Barlett 30 minutes
	Edward Ellison 15 minutes
	Justin Tipa 15 minutes
	Brendan Flack 15 minutes
	Evelyn Cook 15 minutes
	Steph or Stevie-Rae Blair 15 minutes
	Gail Thompson 15 minutes

Tuesday 29 August – Start 9:00a.m.

Fuel Companies	Gavin McCullagh 30 minutes
Otago Water Resource User Group	Kate Scott 30 minutes Emma Crutchley 30 minutes Jo Hay 20 minutes Kelly Heckler 20 minutes Logan Wallace 20 minutes Luke Lane 20 minutes Randall Aspinall 20 minutes Jenny McGimpsey 10 minutes
Lunch break	
Otago Water Resource User Group continued	Benje Patterson Mario Fernandez Simon Glennie Ian Lloyd Brendan Sheehan Susie McKeague Miranda Hunter Jeremy Anderson Jeff Winmill Richard Plunket Tim O’Sullivan Mike Lord Bruce Jolly Mike Freeman

Wednesday 30 August – Start 9:00a.m.

Queenstown Lakes District Council	Legal submissions 25 minutes
	Simon Mason 25 minutes Kathryn Russell 25 minutes
Waka Kotahi	Aileen Crow 45 minutes
Silver Fern Farms	John Kyle 30 minutes
Central Otago Winegrowers Association	Legal submissions 30 minutes
	James Dicey 30 minutes
Lunch break	
Otago and Central South Island Fish and Game Council	Legal submissions 45 minutes
	Ben Farrell 30 minutes
	Jayde Couper 30 minutes
	Ami Coughlan 30 minutes Nigel Paragreen 30 minutes

Thursday 31 August – Start 9:00a.m.

Oceana Gold New Zealand	Legal submissions 1 hour
	Environmental scientist 30 minutes Shamubeel Equb 30 minutes Claire Hunter 1 hour
Lunch break	
Real Group Limited	Legal submissions 45 minutes
	Ben Farrell 30 minutes Fiona Black 30 minutes Paul Norris 30 minutes
Manawa Energy Limited	Legal submissions 45 minutes
	Stephanie Styles 30 minutes Nicola Foran 15 minutes

Monday 4 September – Start 9:30a.m.

Dunedin City Council	Legal submissions 20 minutes
	Planning Consultant 30 minutes Zoe Moffat 20 minutes Paul Freeland 20 minutes Technical expert 20 minutes
City Forests	Peter Oliver 15 minutes
Ernslaw One and the Otago Forestry Companies	Lynette Baish 15 minutes
Lunch break	
Wise Response	Dr Jim Salinger 10 minutes Nathan Surendran 10 minutes Dr Hamish Rennie 10 minutes Dr Stephen Knight- Lenihan 10 minutes Dr Helen Beattie 10 minutes Dr Craig Anderson 10 minutes Dr Mike Joy 10 minutes

Monday 4 September – CONTINUED

Beef + Lamb New Zealand	Legal submissions 1.5 hours
And Deer Industry New Zealand	Expert witness 30 minutes Expert witness 30 minutes

Tuesday 5 September – Start 9:00a.m.

Fonterra Limited	Legal submissions 30 minutes
	Katherine McCusker 30 minutes Susannah Tait 30 minutes Company Representative 15 minutes Company Representative 15 minutes
Transpower New Zealand Limited	Ainsley McLeod 40 minutes
	Roy Noble 40 minutes
Lunch break	
Fulton Hogan	Tim Ensor 45 minutes
Department of Conservation	Nicholas Dunn Marine Richardson Bruce McKinlay Murray Brass 2.5 hours

Wednesday 6 September – Start 9:00a.m.

McArthur Ridge Vineyards Limited And Strath Clyde Water Limited And McArthur Ridge Investment Group Limited And Mount Dunstan Estates Limited	Legal submissions 30 minutes Richard Jonstone 30 minutes David Jordon 30 minutes
Horticulture New Zealand	Legal submissions 30 minutes Leanne Roberts 30 minutes Stuart Ford 30 minutes Vance Hodgson 30 minutes Simon Webb 30 minutes Kris Robb 30 minutes Earnscy Weaver 30 minutes

Thursday 7 September – Start 9:00a.m.

Forest & Bird	Legal submissions 30 minutes
	Maggie Burns 30 minutes

Monday 18 September – Start 8:30a.m.

Otago Regional Council S42A witness/es and
Counsel closings

All day until 3p.m. (*with
shortened lunch break if
required*)