

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

ENV-2020-CHC-128

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of the Omnibus Plan Change - Plan Change 8 and Plan Change 1, being part of a proposal of national significance directed by the Minister for the Environment to be referred to the Environment Court under s 142(2)(b) of the RMA

AND

IN THE MATTER of an application under section 149T of the RMA

BETWEEN **OTAGO REGIONAL COUNCIL**
Applicant

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

**PLAN CHANGE 8 - PRIMARY SECTOR PROVISIONS AND PLAN CHANGE 1
- CHAPTER 6 DUST SUPPRESSANTS**

15 February 2022

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MAY IT PLEASE THE COURT

Introduction

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council**) in relation to the Environment Court's decision dated 31 January 2022 on the primary provisions of Plan Change 8 (**PC8**) to the Regional Plan: Waste for Otago (**RPW**) and the decision dated 30 November 2021 on Chapter 6 of Plan Change 1 (**PC1**) to the Regional Plan: Waste for Otago (**RP Waste**).
- 2 The purpose of this memorandum is to bring to the Court's attention an omission and potential correction in relation to the Environment Court's decision on the primary sector provisions of PC8 to the RPW and an omission in relation to the Environment Court's decision on PC1 in relation to Chapter 6 of the RP Waste.

Omission regarding the record of decisions on submissions

- 3 The Council respectfully wishes to bring to the Court's attention that a record of decisions on submissions is not included in the Court's decisions in relation to the primary sector provisions of PC8 or Chapter 6 of PC1.
- 4 The Court when considering a matter referred to it under section 149T of the Resource Management Act 1991 (**RMA**), must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority.¹ The Council acknowledges that the decisions, at paragraph [47] of the PC8 primary decision and paragraph [35] of the PC1 Chapter 6 decision, state that the Court's decisions were made pursuant to section 149U(6) and cl 10(1) to (3) of Schedule 1 RMA.
- 5 Counsel respectfully notes that when giving a decision on the provisions and matters raised in submissions,² clause 10(2)(a) of Schedule 1 states that:

The decision—

(a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—

¹ RMA, s 149U(1)(c) and (6).

² RMA, sch 1, cl 10(1).

- (i) the provisions of the proposed statement or plan to which they relate; or
 - (ii) the matters to which they relate;
- 6 The Environment Court hearing on the primary provisions of PC8 and the PC1 Chapter 6 provisions were first instance hearings and are the first time a decision on the provisions and matters raised in submissions is being made. Given the first instance nature of the proceedings and the requirements under clause 10(2)(a) of Schedule 1 of the RMA that apply when considering a matter referred to the environment Court under section 149T of the RMA, the Council considers that a decision on submissions including the reasons for accepting and rejecting the submissions is needed in order to fulfil the Court's decision-making obligations as part of the call-in process.³
- 7 Counsel notes that a decision on submissions does not require the Court to give a decision that addresses each submission individually.⁴ The decision on submissions and reasons may address the submissions by grouping them according to provisions or matters to which they relate.⁵
- 8 In relation to the PC8 primary proceeding, Ms Lee and Ms Boyd in their evidence included a table of recommended decisions on submissions to assist to the Court in making decisions on submissions.⁶ A table of recommended decisions on submissions was also included in the affidavit of Dolina Lee in relation to PC1 Chapter 6.⁷ The Council also notes that the Court, in its interim decision of Proposed Plan Change 7 (**PC7**) to the RPW, included in Annexure 7 a table of decisions on submissions.⁸

Correction regarding reference to remainder of PC8 being addressed as part of PC1

- 9 As a matter of completeness, Counsel also notes that paragraph [3] of the decision relating to the PC8 primary provisions implies that the

³ As outlined in the Legal Submissions of Counsel for the Otago Regional Council dated 3 November 2021 at paragraph 14(a) and Joint Memorandum dated 5 November 2021 at paragraph 11(a).

⁴ RMA, sch 1, cl 10(3).

⁵ RMA, sch 1, cl 10(2)(a)(i) and (ii).

⁶ Statement of Evidence of Dolina Lee dated 15 October 2021 at Appendix 7; Statement of Evidence of Felicity Boyd dated 15 October 2021 at Appendix 7 and 8.

⁷ Affidavit of Dolina Lee dated 5 November 2021 at Annexure 4.

⁸ *Re Otago Regional Council Plan Change 7 [2021] NZEnvC 164.*

remainder of PC8 relating to urban discharges is being managed with PC1.

10 Paragraph [3] of the decision states:⁹

[3] PC8 and PC1 were developed together and notified at the same time. They were intended to be progressed in combination to ensure an efficient Schedule 1 process. The scope of the two plan changes changed over time, with the scope of PC8 on which our decision is based, now being limited to rural discharges. Other matters originally included in PC8 relating to urban discharges will be addressed as part of PC1.

[citations omitted]

11 The Council notes that provisions of PC8 relating to urban discharges are still part of PC8 and are proceeding to a formal proof hearing irrespective of Proposed Plan Change 1 (**PC1**) to the Regional Plan: Waste for Otago (**RP Waste**). Given PC1 relates to changes to the RP Waste and PC8, including the urban discharge provisions, relates to the RPW, the Council wishes to clarify that the PC8 provisions relating to the urban discharges are still part of PC8 and will not be addressed as part of PC1, but as part of the remainder of PC8.

Conclusion

12 If the Court agrees that it would be prudent to include a table summarising the decisions on submissions, then this could be achieved by making a correction to the decisions.

13 Pursuant to section 278 of the RMA, the Environment Court has the powers of the District Court. Rule 11.10 of the District Court Rules 2014 provide the Court with the power to make a correction to a judgement of the Court, including whether it contains a clerical mistake or error arising from an accidental slip or omission.¹⁰ The Court may amend the error on their own initiative, or an interlocutory application can be made.¹¹

14 Counsel notes that there is no timeframe for a correction to be made within, and so there is no impediment to this matter being corrected in relation to the PC1 Chapter 6 decision, nor the PC8 primary sector decision. Further, the PC1 Chapter 6 provisions, and the PC8

⁹ *Re Otago Regional Council Plan Change 1* [2021] NZEnvC 185 at [3].

¹⁰ District Court Rules 2014, Rule 11.10(1).

¹¹ District Court Rules 2014, Rule 11.10(2).

provisions are yet to approved by the Council under clause 17 of Schedule 1 of the RMA.

- 15 An interlocutory application can be made by the Council if required, however in the first instance Counsel wanted to bring to the Court's attention these three matters and in particular the potential omissions regarding the decision on the submissions in relation to both plan changes.

Dated this 15th day of February 2022



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L F de Latour

Counsel for Otago Regional Council