

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2021] NZEnvC 179

IN THE MATTER of the Resource Management Act 1991

AND of a notice of motion under section 149T(2) to decide proposed Plan Change 7: Water for Otago (referred to the Environment Court by the Minister for the Environment under s 142(2)(b) of the Act)

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-127)

Applicant

Court: Environment Judge J E Borthwick
Environment Commissioner K A Edmonds
Environment Commissioner D J Bunting

Hearing: In Chambers at Christchurch

Last case event: Memoranda of Otago Regional Council and Trustpower Ltd received 27 October 2021

Date of Decision: 17 November 2021

Date of Issue: 17 November 2021

FINAL DECISION OF THE ENVIRONMENT COURT



OTAGO REGIONAL COUNCIL – PLAN CHANGE 7 – FINAL DECISION

Introduction

[1] Having released an Interim Decision on Plan Change 7,¹ the Environment Court invited parties to correspond if they had any concerns in relation to amendments to provisions proposed by the court and the reasons for those amendments.

[2] Parties did not need to take any steps if they agreed with the court's reasons and wording of the provisions.

[3] Aside from amendments of an editorial nature only, no correspondence was received.

[4] That being said, the court will amend the provisions in response to the Regional Council's memorandum seeking clarification,² including a consequential amendment to Rule 10A.3.2.1 to clarify that some activities not meeting conditions (iv) and (vi) of Rule 10A.3.1.1 are restricted discretionary activities under Rule 10A.3.1A.1. Tracked changed³ amendments to the version of the provisions attached to the Interim Decision are contained in the Annexure **attached** to this decision (Annexure: Final Plan Change 7 Provisions).

[5] In response to the memorandum filed by Trustpower Ltd,⁴ we will amend the schedule of hydro-electricity infrastructure, Schedule 10A.5.1, to delete Deep Stream and include Black Rock Race. Secondly, to correct the error in paragraph [329] of the Interim Decision which identifies Black Rock Race as infrastructure in relation to which Policy 10A.2.2 applies whereas the correct infrastructure is that in relation to Deep Stream.

¹ *Re Otago Regional Council* [2021] NZEnvC 164.

² ORC Memorandum 'Seeking clarification as to amendments proposed in Annexure 8: Plan Change 7 Provisions' dated 27 October 2021.

³ Double underlining is used where further amendments have been made.

⁴ Trustpower Ltd Memorandum 'Regarding clarification as to amendment proposed in Annexure 8: Plan Change 7 Provisions' dated 27 October 2021.

[6] The error identified in para [329] of the Interim Decision is an accidental slip or omission that is able to be corrected using the court's powers under s 278 of the Act and Rule 11.10 District Court Rules 2014. Paragraph [329] is amended to read:

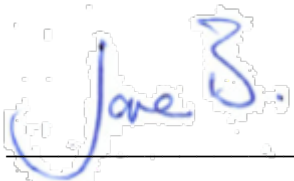
Given the paucity of policy in the regional plan we will not amend Policy 10A.2.2 to allow Trustpower to seek longer-term consents for activities that have not been previously authorised. This means, Policy 10A.2.2 applies without amendment to its 'Deep Stream' application for resource consent.

Decision

[7] With those changes made, pursuant to s 149U(6) and cl 10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court's decision on Plan Change 7 is to amend it as set out in 'Annexure: Final Plan Change 7 Provisions' attached to and forming part of this decision.

[8] Costs are reserved, but not encouraged. Any application must be filed by **Friday 3 December 2021**. In the event no application for costs is made, the court's order will be (without further decision of the court issuing) that there is no order as to costs.

For the court:



J E Borthwick
Environment Judge

