

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

Decision No. [2022] NZEnvC 67

IN THE MATTER of the Resource Management Act 1991

AND of a notice of motion under s149T(2) to decide proposed Plan Change 8 to the Regional Plan: Water for Otago (referred to the Environment Court by the Minister for the Environment under s142(2)(b) of the Act)

BETWEEN OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-128)

Applicant

Court: Environment Judge P A Steven
Environment Commissioner K A Edmonds
Environment Commissioner J A Hodges

Hearing: In Chambers on the papers

Last case event: 31 January 2022

Date of Decision: 21 April 2022

Date of Issue: 21 April 2022

FURTHER DECISION OF THE ENVIRONMENT COURT

A: Pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court makes the decisions shown in the record of decisions attached as ‘Annexure 1: Plan Change 8 decisions on submissions’.



REASONS

Introduction

[1] The Minister for the Environment directed that PC8 to the Regional Plan: Water for Otago ('Water Plan') be referred to the Environment Court under s142(2)(b) of the Resource Management Act 1991 ('RMA' or 'the Act') to give a decision on the provisions and matters raised in submissions. PC8 was notified on 6 July 2020 and introduces a range of new provisions and amendments to existing provisions to strengthen the Water Plan's management of certain rural discharges.

[2] The court's decision *Re Otago Regional Council* [2022] NZEnvC 6 deals with the rural discharge aspects of PC8. The relevant provisions are divided into six parts:

Part A: Discharge policies;

Part B: Animal waste storage and application;

Part C: Good farming practices;

Part D: Intensive grazing;

Part E: Stock access to water; and

Part F: Sediment traps.

[3] Following court-directed expert conferencing and mediation, by July 2021 the parties had settled their differences in relation to PC8. A process was put in place whereby the parties would assist the court in the presentation of the agreed amendments to the plan change.¹

[4] The court held a hearing in Dunedin on 8 and 9 November 2021.² The court agreed with the majority of the changes proposed by PC8. Clarification was

¹ *Re Otago Regional Council* [2022] NZEnvC 6 at [7].

² *Re Otago Regional Council* [2022] NZEnvC 6 at [8].

sought on a number of matters arising from the evidence, which was provided to our satisfaction, except in relation to the individual matters addressed in the decision.³

[5] The court approved, pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, an amended version of PC8 as set out in ‘Annexure: Final Plan Change 8 Provisions’ attached to that decision.

A record of decisions on submissions

[6] Following issuance of our decision, the court received a memorandum from the Regional Council on 15 February 2022, drawing the court’s attention to an omission in its decision, namely, that the court did not include a record of decisions on submissions. The Regional Council acknowledged that a decision on submissions does not require the court to give a decision that addresses each submission individually,⁴ and that decisions on submissions and reasons may address the submissions by grouping them according to provisions or matters to which they relate.⁵ It considered a decision on submissions including the reasons for accepting and rejecting the submissions should be given, in order to fulfil the court’s decision-making obligations as part of the call-in process.

[7] We agree.

[8] Ms Felicity Ann Boyd’s evidence of 15 October 2021 attached, as Appendix 7, her recommended decisions on submissions (for Primary Sector Provisions, Parts A – C of PC8) and as Appendix 8, her recommended decisions on general submissions on PC8. Ms Dolina Lily Lee’s evidence of 15 October 2021 attached, as Appendix 7, her recommended decisions on submissions for

³ *Re Otago Regional Council* [2022] NZEnvC 6 at [13].

⁴ RMA, Schedule 1, cl10(3).

⁵ RMA, Schedule 1, cl10(2)(a).

Primary Sector Provisions, Parts D – F of PC8.

[9] The court has considered Ms Boyd’s and Ms Lee’s recommended decisions, and generally concurs with them, although their reasons reflect the provisions agreed by the parties as an outcome to the mediation, some of which were amended by the court. Accordingly, the reasons in Ms Boyd’s and Ms Lee’s annexures⁶ have not been carried over to the record of decisions on submissions attached to this decision.

[10] It is sufficient to note that the court agreed with the evidence presented at the hearing, and notably that of Ms Boyd and Ms Lee in respect of the amendments that were agreed. Otherwise, our decision on the further amended provisions adequately encapsulates the reasons for decisions on submissions to those provisions that were addressed.

Error

[11] The court noted in its decision that other aspects of PC8, relating to urban discharges, will be determined later. The court incorrectly identified that the other matters will be addressed “as part of PC1”.⁷ 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. Given PC1 relates to changes to the Regional Plan: Waste for Otago and PC8, including the urban discharge provisions relates to the Water Plan, 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.

⁶ The “reasons” column in each of those tables has been deleted from ‘Annexure 1: Plan Change 8 decisions on submissions’.

⁷ *Re Otago Regional Council* [2022] NZEnvC 6 at [3], 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.

[12] Under s278 and Rule 11.10 of the District Court Rules 2014 the court amends paragraph [3] of *Re Otago Regional Council* [2022] NZEnvC 6 to read as follows:

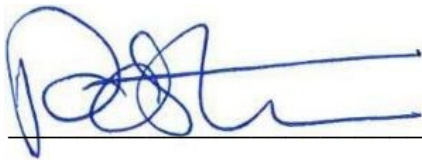
[3] PC8 and PC1 were developed together and notified at the same time. They were intended to be progressed in combination to ensure an efficient Schedule 1 process. The scope of the two plan changes changed over time, with the scope of PC8 on which our decision is based, now being limited to rural discharges.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

(footnotes omitted)

Decision on submissions

[13] Pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court makes the decisions shown in the record of decisions attached as ‘Annexure 1: Plan Change 8 decisions on submissions’.

For the court



P A Steven
Environment Judge

