

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

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

**ENV-2020-CHC-127**

**IN THE MATTER** of the Resource Management Act  
1991 (the 'Act')

**AND**

**IN THE MATTER** of a notice of motion under s149T(2)  
to decide proposed Plan Change 7  
to the Regional Plan: Water for  
Otago (referred to the Environment  
Court by the Minister for the  
Environment under section  
142(2)(b) of the Act)

**BETWEEN** Otago Regional Council  
**Applicant**

**AND** Trustpower Limited  
**Party**

---

**MEMORANDUM OF COUNSEL FOR TRUSTPOWER LIMITED REGARDING  
CLARIFICATION AS TO AMENDMENT PROPOSED IN ANNEXURE 8: PLAN  
CHANGE 7 PROVISIONS**

**27 October 2021**

---

**MAY IT PLEASE THE COURT:**

1. By way of its Interim Decision dated 22 October 2021 the Court at [442] directed that any party may file a memorandum seeking clarification as to an amendment proposed in Annexure 8: Plan Change 7 Provisions. This memorandum is filed in respect of Schedule 10A.5.1 Hydro-electricity generation infrastructure and in particular the inclusion of Deep Stream in Schedule 10A.5.1 and the omission of Black Rock Race.
2. Clarification is sought as it appears to counsel that the Court may have inadvertently treated Black Rock Race as an activity not previously authorised by way of a deemed permit and Deep Stream as an activity authorised by a deemed permit. If so, this is not correct.
3. At [329] the Court noted *“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 ‘Black Rock Race’ application for resource consents”*.
4. Black Rock Race is an existing water race authorised by way of a deemed permit that was granted in 1868.<sup>1</sup> It is one of four water races operated by Trustpower (the others being Beaumont, Crystals and Shepherds Races).
5. Deep Stream is authorised by existing resource consents that are due to expire in 2038. Trustpower has applications currently before the Otago Regional Council seeking an enhancement to that scheme, which was the subject of evidence before the Court.<sup>2</sup> It may be that the Deep Stream enhancement resource consent application is what the Court had in mind at [329].
6. Respectfully it seems to counsel that Schedule 10A.5.1 Hydro-electricity generation infrastructure should be amended to delete reference to Deep Stream and its associated co-ordinates. This should be substituted with “Black Rock Race” “NZTM 2000 E1358613 N4926962” given it is one of four existing water races operated by Trustpower pursuant to a deemed permit.

---

<sup>1</sup> See for example Mitchell EIC at [15], [25]; Foran EIC at [5.6], Appendix A and B; and Legal Submissions on behalf of Trustpower dated 17 May 2021 at 2.2.

<sup>2</sup> See Foran EIC at [6.13] – [6.14].

7. Paragraph [329] may also require correction to avoid confusion in the future processing of the Black Rock Race application for replacement consents.

Dated 27 October 2021



.....  
**J R Welsh**

Counsel for Trustpower Limited