

**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 section 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
REGIONALCOUNCIL**

PC1 - CHAPTER 7 AND PC8 - PART H

2 December 2021

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MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council**) in relation to Plan Change 1 to the Regional Plan: Waste for Otago (**PC1**) and Plan Change 8 to the Regional Plan: Water for Otago (**PC8**).
- 2 The purpose of this memorandum is to update the Court and parties on the outcomes of mediation for the PC1 Landfills (**Chapter 7**) and PC8 Part H Nationally or regionally important infrastructure (**Part H**) topics and to seek directions in relation to an evidence exchange timetable (as necessary).

Background

- 3 Environment Court facilitated mediation occurred in relation to the Chapter 7 provisions of PC1 and Part H of PC8 on Monday 29 November 2021.
- 4 As a result of the mediation, agreement has been reached between the parties in attendance at mediation in relation to all of the Chapter 7 and Part H topics and relevant provisions referred to mediation.¹
- 5 The provisions of Chapter 7 as agreed at mediation are included in **Appendix 1**. In summary:
 - (a) Further amendments to the notified provisions are proposed to:
 - (i) New Policy 7.4.11;
 - (ii) 7.6.1.1 Information requirements; and
 - (iii) 7.6.1.2 Assessment matters.
 - (b) A new policy, New Policy 7.4.11A, is proposed.
 - (c) Further consequential amendments to notified provisions are proposed to:
 - (i) Issue 7.2.2;

¹ Chapter 7: New Policy 7.4.11, Amended 7.6.1.1 Information requirements, Amended 7.6.1.2 Assessment matters, Amended Appendix 2: Matters to be included in a Management Plan, and Consequential amendments: Issues 7.2.2 and 7.2.3, Objectives 7.3.1 and 7.3.2, Method 7.5.7, 7.6.6.1 and 7.6.7.1 Information requirements; and Part H: Amended Policy 10.4.2.

- (ii) Issue 7.2.3;
 - (iii) Objective 7.3.1; and
 - (iv) Objective 7.3.2.
- (d) The parties have agreed that all other changes to Chapter 7 proposed by PC1 should be the wording as notified.
- 6 Part H, as agreed at mediation, is included in **Appendix 1**. The parties have agreed that the one provision in Part H, Amended Policy 10.4.2, proposed by PC8 should be worded as notified.
- 7 Outlined below are further details in relation to the provisions of Chapter 7 and Part H that were referred to mediation including the changes agreed at mediation.

Explanation as to the position reached by parties – PC1 - Chapter 7 - Landfills

Changes agreed to New Policy 7.4.11

- 8 The Parties reached agreement on New Policy 7.4.11 which relates to the discharges from new and operating landfills. As a result of mediation, the parties agreed to amendments to the policy as notified as follows:
- (a) Changing the policy direction to “avoid significant adverse effects of discharges” and then otherwise “minimise” the adverse effects of the discharges from new and operating landfills.
 - (b) The discharges to be avoided and then otherwise minimised relate to those effects “outside a landfill footprint” with reference to “Figure 5-1 of the Waste Management Institute New Zealand’s *Technical Guidelines for Disposal to Land* August 2018”. This change was included to clarify that it is the effects that occur outside of the landfill footprint (i.e. where the waste is deposited) that this policy is concerned with, and not the discharges within this area of the landfill.
 - (c) A minor change to subclause (a) of Policy 7.4.11 to distinguish between new landfills and operating and closed landfills when assessing what measures are applicable.

- (d) A correction to the cross-reference to the Waste “Management” (not “Minimisation”) Institute New Zealand’s *Technical Guidelines for Disposal to Land* (August 2018).

New Policy 7.4.11A

- 9 As a result of mediation, the parties reached agreement on new Policy 7.4.11A. This policy provides that the discharges at and from new and operating landfills within 13km of airports defined as Nationally Significant Infrastructure are to be assessed with regard to siting, class of landfill and preparation and implementation of management plans, in order to prevent the landfill increasing the existing risk of bird strike. This policy addresses the impact that discharges at and from landfills can have on increasing the existing risk of bird strike. Additionally, an advice note is included to clarify the reference to “airports defined as Nationally Significant Infrastructure”.

Changes agreed to 7.6.1.1 Information requirements

- 10 The parties also agreed on a minor change to correct a reference to the Waste “Management” (not “Minimisation”) Institute New Zealand’s *Technical Guidelines for Disposal to Land* (August 2018).

Changes agreed to 7.6.1.2 Assessment matters

- 11 The parties reached agreement on ‘7.6.1.2 Assessment matters’ which decision makers must have regard to when considering any application made under Rule 7.6.1.
- 12 As a result of mediation, the parties agreed to amendments to the assessment matters as notified. The changes agreed are the inclusion of references to residential activities in two assessment matters. The changes clarify that residential activities are part of the environment when assessing the characteristics of the receiving environment, and that mitigation measures, safeguards, and contingency plans are to be undertaken to reduce actual and potential adverse environmental effects, including on residential activities.

Consequential changes to notified provisions

- 13 As a result of the amendment to include New Policy 7.4.11A, further consequential amendments were made to include reference to Policy

7.4.11A in the list of policies relevant to Issue 7.2.2, Issue 7.2.3, and also in Objective 7.3.1 and Objective 7.3.2.

- 14 Except for these consequential changes, the parties have agreed that the notified version of these provisions did not require any additional amendment and should be amended as notified (subject to consideration by the Court).

No changes to notified provisions

- 15 In relation to the remaining amendments to Chapter 7 proposed by PC1 the parties have agreed that the notified version of these provisions did not require any additional amendment. In particular, the parties have agreed that the following provisions should be amended as notified (subject to consideration by the Court):

- (a) *Method 7.5.7*: No submissions sought changes to Method 7.5.7 and accordingly it has been agreed that no further amendments to the notified version are required. The notified change to Method 7.5.7 is a consequential amendment to ensure consistency with the reference to managements plans under Appendix 2, which as a result of PC1, only applies offal pits.
- (b) *Information Requirements 7.6.6.1 and 7.6.7.1*: There were no submissions on these information requirements and they were not the subject of mediation (but the provisions are shown in **Appendix 1**).
- (c) *Appendix 2*: Appendix 2 relates to matters to be included in a Management Plan. No submissions sought changes to Appendix 2 and it has been agreed that no further amendments to the notified version are required. The changes to Appendix 2, as notified, result in Appendix 2 only applying to offal pits because its content currently contains matters for inclusion in a landfill development and management plan that are not consistent with current best practice for landfill management.

- 16 The parties also discussed the submissions and further submissions which had been classified as “general submissions” on PC1. Those that relate to PC1, to the extent those submissions relate to Chapter 7 provisions, are submissions made by:

- (a) Big Stone Forests Limited;

- (b) Director-General of Conservation;
 - (c) Dunedin City Council;
 - (d) Kāi Tahu ki Otago; and
 - (e) Otago Fish and Game Council and the Central South Island Fish and Game Council.
- 17 No further changes to Chapter 7 were required as a result of these general submission points.

Explanation as to the position reached by parties – PC8 Part H Nationally or regionally important infrastructure

- 18 The parties reached agreement on Amended Policy 10.4.2 that the notified version of Policy 10.4.2 did not require any additional amendment. Policy 10.4.2 relates to adverse effects of activities on Regionally Significant Wetlands and directs that adverse effects are to be avoided but remediation or mitigation of adverse effects are allowed when they result from specified activities. One of those specified activities includes nationally or regionally important infrastructure. The notified change to Policy 10.4.2 amends the reference to “regionally significant infrastructure”, rather than “regionally important infrastructure”.

Directions sought

- 19 The Council anticipates that evidence will be required in order for the Court to consider the provisions of PC1 Chapter 7 – Landfills and PC8 Part H as agreed at mediation. However, at this stage it is unclear whether or not the Court considers that hearing time will be required, or whether it might be sufficient for affidavit evidence to be filed, alongside any necessary consent documentation. It is anticipated that the affidavit evidence would comprise of planning evidence, a s32AA analysis of the further changes agreed at mediation, and a table of officer recommendations on the Chapter 7, PC1 and Part H, PC8 provisions.
- 20 Counsel is conscious that the Court may wish to convene a hearing, given that this matter, as a call-in, is a first instance decision and the Court will need to make decision on the submissions. However, given the relatively narrow nature of the amendments to Chapter 7 proposed

by PC1 and by Part H of PC8, it seems that it may be appropriate to proceed directly with affidavit evidence.

- 21 Depending on the Court's preferences it is respectfully suggested that a teleconference to discuss the next steps may be an efficient way to proceed.
- 22 Counsel notes that a teleconference is scheduled in relation to Part A and Part G of PC8 Urban Provisions on Wednesday 8 December 2021 and respectfully requests that the next steps in relation to Chapter 7 and Part H are also discussed at that teleconference. This would allow any evidence timetable for Part H of PC8 (to the extent required) to be aligned with the timetable for the other PC8 urban provisions.
- 23 For completeness, it is noted that the other parties to the mediation agreement have not been specifically canvassed regarding the contents of this memorandum.
- 24 In light of the above explanation, the Council respectfully seeks the following direction:
- (a) A teleconference to be convened on **Wednesday 8 December 2021** as part of the PC8 Part A and Part G teleconference, to discuss evidence preparation and whether a hearing is needed in relation to Chapter 7 of PC1 and Part H of PC8.

Dated this 2nd day of December 2021



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L F de Latour

Counsel for Otago Regional Council