

MEMORANDUM

Date: 23 August 2021
To: Alexandra King, Section 42A Officer
From: Wynn Williams

ADVICE IN RELATION TO RM20.309 - RELEVANT VERSION OF PROPOSED PLAN CHANGE 7

Introduction

1. A number of parties have made an application to the Otago Regional Council (**Council**) for new water permits to replace deemed permits to allow, amongst other things, the take and use of water from Pig Burn and Harpers Creek (**RM20.309**).
2. You have asked for our advice on:
 - a. The relevant version of proposed Plan Change 7 (Water Permits) of the RPW (**PPC7**) to be considered when making a decision on RM20.309 under s 104 of the Resource Management Act 1991 (**RMA**); and
 - b. Whether the Council's recommended amendments to the notified version of PPC7 affect the weight that should be placed on PPC7 under s 104(1)(b) of the RMA.
3. We understand that a copy of this advice will be attached to the section 42A report in relation to RM20.309.
4. Our advice follows.

Relevant version of PPC7 for decision-making

5. Section 104(1)(b) requires consent authorities to have regard to any relevant provisions of a plan or proposed plan when considering an application for resource consent. "Proposed plan" is defined in section 43AAC of the RMA as follows:¹
 - (1) In this Act, unless the context otherwise requires, **proposed plan**—
 - (a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 ... but has not become operative in terms of clause 20 of that schedule; ...
 - (2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.
6. As set out in the Section 42A Report, PPC7 was notified by the Council on 18 March 2020 and accordingly must be had regard to by the decision-maker under s 104(1)(b). The weight to place on PPC7 is addressed in section 8.10 of the section 42A report.
7. Environment Court hearings on the submissions on PPC7 took place from March to July 2021. Through the hearing process, the Council has recommended a number of amendments to PPC7. However, the Council's recommended amendments to PPC7, along with amendments recommended by other parties, do not carry legal

¹ RMA, s 43AAC(1)(a).

force under the RMA and do not alter the provisions of PPC7 that the Hearing Commissioners are required to consider.

8. Until a decision is issued by the Environment Court, it is the notified version of PPC7 that is the version to be considered under section 104(1)(b)(vi), as this is the version that falls within the definition of “proposed plan”.
9. However, when the Environment Court issues a decision on PPC7, if that decision confirms a version of PPC7, the decisions version will become the relevant version of the “proposed plan” to consider under section 104(1)(b)(iv). This is because clause 10(5) of Schedule 1 provides that a local authority’s (or in the case of PPC7, the Environment Court’s) decisions on the proposed plan are deemed to amend the notified version from the date the decision is publicly notified.
10. In accordance with section 43AAC(2), once publicly notified the decisions version will become the “proposed plan”, and the notified version will no longer have legal status under the RMA. Accordingly, from that date the provisions of PPC7 must be considered and applied in their amended form, rather than the form in which they were originally notified.
11. If the Environment Court’s decision on PPC7 is issued before the close of the hearing on this consent application, we can provide advice on any implications of the decision for this application.

Impact of Council’s recommended amendments on the weight to be given to PPC7

12. Through the hearing process, the Council has recommended amendments to PPC7 so that it is a more “process focused” plan change. This has involved recommending that certain environmental elements included in the notified version of PPC7 be removed.
13. As noted in paragraph 7 above, the Council’s recommended amendments do not carry legal force under the RMA. In addition, these recommended amendments do not affect the weight that should be given to PPC7, which should be determined in accordance with the principles set out in section 8.10 of the Section 42A Report.

Wynn Williams