

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

**A N D**

**IN THE MATTER** of an appeal pursuant to clause 14  
of the First Schedule to the Act

**BETWEEN** **TRUSTPOWER LIMITED**

Appellant

**A N D** **OTAGO REGIONAL COUNCIL**

Respondent

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**NOTICE OF APPEAL**

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**TO:** The Registrar  
Environment Court  
**CHRISTCHURCH**

1. **TRUSTPOWER LIMITED (Appellant)** appeals against decisions of the Otago Regional Council (**Respondent**) on Proposed Plan Change 6A (Regionally Significant Wetlands) to the Regional Plan: Water for Otago (**Plan Change 6A**).
2. The Appellant made submissions and further submissions on Plan Change 6A.
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. The Appellant received notice of the decisions on 20 April 2013.
5. The decisions were made by the Respondent.

6. The decisions appealed, reasons for appeal and relief sought are generally grouped together by topic and are set out below generally in the order in which the relevant provisions appear in Plan Change 6A.

7. **7.B Policies general**

***Policies 7.B.2 and 7.B.3***

7.1 The decisions appealed are as follows:

- (a) The decision to introduce a new Policy 7.B.2 which seeks to avoid objectionable discharges of water or contaminants that degrade the natural and human use values of water bodies.
- (b) The decision to introduce a new Policy 7.B.3 which seeks to allow discharges that have minor effects or are short-term.

7.2 The reasons for the appeal are as follows:

- (a) The policies contained within 7.B of the plan apply to all discharges, including those associated with electricity generation activities and structures.
- (b) In relation to new Policy 7.B.2, the term "*objectionable*" is ambiguous and is more commonly associated with odour effects as is evident from the related rules contained within 12.B and 12.C of the plan.
- (c) In relation to new Policy 7.B.3, while the intent of the policy is supported, further changes are appropriate to better describe short-term discharges and to recognise and provide for discharges associated with maintenance work consistent with section 107 of the Act.

7.3 The Appellant seeks that new Policies 7.B.2 and 7.B.3 be amended as follows:

*7.B.2 ~~Where appropriate a~~Avoid objectionable discharges of water or contaminants that degrade the natural and human use values of Otago lakes, rivers, wetlands, and groundwater*

*7.B.3 Allow discharges of water or contaminants in Otago lakes, rivers, wetlands and groundwater that have minor effects on resulting water quality or are ~~short term~~ of temporary duration, or where the discharge is associated with necessary maintenance work*

8. **7.C Policies**

**7.C Policies  
Glossary**

8.1 The decision appealed is as follows:

- (a) The decision to amend the heading to the polices contained within 7.C of the plan which generally apply to industrial and urban discharges.

8.2 The reasons for the appeal are as follows:

- (a) Expert planning evidence provided to the Respondent considered that it was unclear which part(s) of Plan Change 6A continued to apply to discharges associated with electricity generation activities and structures.
- (b) Although the reasons for the Respondent's decision address some of the concerns the Appellant raised in its submissions, the nature and scope of amendments to the 7.C Policies are inadequate and inappropriate. In addition, there remains uncertainty as to the interpretation and application of the 7.C Policies in relation to discharges associated with electricity generation activities and structures.
- (c) Without limiting the generality of the above, the Appellant understands the Respondent's position to be that the Appellant's activities would be considered an industrial and trade premise and/or process. The result

of this is that only the 7.B (which apply to all discharges) and 7.C Policies and the 12.B Rules apply and are relevant. The Appellant is concerned to ensure that this intent is clearly reflected in the Plan Change 6A provisions.

8.3 The Appellant seeks the following relief:

(a) Amend the heading to the 7.C Policies as follows:

*7.C Policies Policies for discharges of human sewage, hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial and trade premises including discharges associated with electricity generation activities and structures and consented dams.*

(b) Add a new Policy that specifically addresses discharges from industrial and trade premises, discharges associated with electricity generation activities and structures and / or consented dams.

(c) Amend the definitions of "*industrial and trade premises*" and "*industrial and trade processes*" and / or make any other changes to the provisions (including rules) necessary to ensure that the intent of the Respondent with respect to the Appellant's activities is clearly and satisfactorily reflected.

## 9. **12.B Rules**

9.1 The decisions appealed are as follows:

(a) The decision to amend the heading to the rules contained within 12.B of the plan which generally apply to industrial and urban discharges.

(b) The decision to generally re-instate within 12.B of the plan the permitted rules relevant to a consented dam (formerly Rule 12.12.1.1, now Rule 12.B.1.10) and discharges of minute amounts of contaminants from within hydro-electric facilities (formerly Rule 12.12.1.2, now Rule 12.B.1.11).

- (c) The decision not to make any further amendments to the rules contained within 12.B of the plan to cover discharges associated with electricity generation activities and structures.

9.2 The reasons for the appeal are as follows:

- (a) Expert planning evidence provided to the Respondent considered that it was unclear which part(s) of Plan Change 6A continued to apply to discharges associated with electricity generation activities and structures.
- (b) Although the reasons for the Respondent's decision address some of the concerns the Appellant raised in its submissions, the nature and scope of amendments to the rules contained within 12.B of the plan are inadequate and inappropriate.
- (c) In addition, there remains uncertainty as to the interpretation and application of the rules contained within 12.B of the plan to discharges associated with electricity generation activities and structures, in particular:
  - (i) Short-term activities and discharges, including those associated with necessary maintenance work; and
  - (ii) The activity status of discharges associated with electricity generation activities and structures which are not covered in section 12.B.1 of the plan (for example, settled sediment and discharges with more than minute contaminants originating from hydro-electric facilities).

9.3 The Appellant seeks the following relief:

- (a) Amend the heading to the 12.B Rules as follows:

*12.B Discharge of hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial or trade premises including discharges from, over or*

through any structure used to generate electricity and consented dams.

- (b) Consequential changes to 12.A.A.2 and 12.B.A.2 to reflect the above.
- (c) Add and / or amend the rules contained within 12.B of the plan to provide for all discharges associated with electricity generation activities and structures, including:
  - (i) Short-term activities, including those associated with necessary maintenance work generally consistent with Rule 12.C.2.2; and
  - (ii) Settled sediment and discharges with more than minute contaminants originating from hydro-electric facilities.

## 10. **Further Reasons for the Appeal**

- 10.1 In addition to the matters set out in paragraphs 7 and 9 above, the further reasons for the appeal are that the Respondent's decision:
  - (a) Will not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the Act;
  - (b) Is not necessary to avoid, remedy or mitigate adverse effects on the environment;
  - (c) Does not fulfil the requirement to "give effect" to the National Policy Statement on Renewable Electricity Generation 2011; and
  - (d) Does not represent the most appropriate means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other available means and therefore is inappropriate in terms of section 32 and other provisions of the Act.

11. **Further relief sought**

11.1 In addition to the matters set out in paragraphs 7 and 9 above, the Appellant seeks the following relief:

- (a) Any similar relief with like effect;
- (b) Any consequential amendments to Plan Change 6A which arise from the reasons for the appeal or the relief sought, including particularly the rules that seek to implement the policies subject to this appeal;
- (c) In the event that all contaminant discharges associated with the Appellant's electricity generation activities and structures are not covered by the 7.C Policies and the 12.B Rules, then the Appellant seeks to amend the 7.D Policies and the 12.C Rules to the extent necessary to address the concerns raised by the Appellants in its submissions and this appeal; and
- (d) Such other relief as the Court considers appropriate.

12. **Attachments**

12.1 Copies of the following documents are attached to this appeal:

- (a) The Appellant's submissions and further submissions (**Annexure A**);
- (b) The Respondent's decision (**Annexure B**); and
- (c) A list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure C**).

**Signature:**

**TRUSTPOWER LIMITED** by its duly authorised agent:

  
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**Lara Burkhardt**  
Counsel for the Appellant

Date: 4 June 2013

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**Advice to recipients of copy of notice of appeal**

*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

*\*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.