

IN THE ENVIRONMENT COURT  
CHRISTCHURCH REGISTRY

ENV

IN THE MATTER OF

An appeal to the Environment  
Court under clause 14 of the First  
Schedule to the Resource  
Management Act 1991

AND IN THE MATTER OF

Proposed Plan Change 6A  
(Water Quality) to the Regional  
Plan: Water for Otago

BETWEEN

**THE ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INC**

*Appellant*

AND

**OTAGO REGIONAL COUNCIL**

*Respondent*

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST**

**DECISIONS ON PROPOSED PLAN CHANGE 6A**

**(WATER QUALITY) TO THE REGIONAL PLAN: WATER FOR OTAGO**

*Clause 14(1) of First Schedule To The Resource Management Act 1991*

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Solicitor acting: Peter Anderson  
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To: The Registrar  
Environment Court  
PO Box 2069  
Christchurch

**Appellant**

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (*Forest and Bird*) appeals decisions of the Otago Regional Council on the Proposed Plan Change 6A (Water Quality) to the Regional Plan: Water for Otago (*Council decisions*).

**Submission**

2. Forest and Bird made a submission on the Proposed Plan Change 6A (Water Quality) to the Regional Plan: Water for Otago (*the Proposed Plan*).

**Date of receipt of the decision**

3. Forest and Bird received notice of the Council decisions on or about 22 April 2013.

**Respondent**

4. The Council decisions were made by the Otago Regional Council (*Council*).

**Trade competition**

5. Forest and Bird is not a trade competitor for the purposes of section 309D of the Resource Management Act 1991.

**Decisions being appealed**

6. The Council decisions that Forest and Bird is appealing relate to:
  - (a) Chapter 2: Objectives and Policies for Water Quality; and
  - (b) Chapter 3 – Water and Contaminant Discharges

*Chapter 2: Objectives and Policies for Water Quality*

7. Forest and Bird is appealing the following objectives and policies :

- (a) Proposed Plan Change 6A Objective 7.A.1, and 7.A.2 as amended by Decisions of Council 2.1 Recommendations 2.1.1
- (b) Proposed Plan Change 6A Policy 7.B.3 as amended by Decisions of Council 2.3 Recommendations 2.3.1
- (c) New Policy 7.B.4: as amended by above Decisions of Council

*Chapter 3 – Water and Contaminant Discharges*

8. Forest and Bird is appealing the following prohibited rules, permitted rules and provisions relating to the discretions in restricted discretionary activities.

Prohibited Activities

9. Forest and Bird appeals the following prohibited activity rules:
- (a) Proposed Plan Change 6A Rules 12.C.0.1, 12.C.0.2, 12.C.0.3, 12.C.0.4 and 12.C.0.5 as amended by Decisions of Council; 3.2, 3.3; and
  - (b) New Rules, 12.C.0.1, 12.C.0.2, 12.C.0.3 as amended by the above Decisions of Council.

Permitted Activities

10. Forest and Bird appeals the following permitted activity rules:
- (a) Proposed Plan Change 6A Rules 12.C.1.1, 12.C.1.2, 12.C.1.4, and New Rule 12.C.1.1 as amended by Decisions of Council, 3.2 3.4, Recommendations 3.4.1, Decision 3.5, Recommendation 3.5.1, and Decision 3.6, Recommendations 3.6.1.
  - (b) New Rule 12.C.1.1 as amended by the above Decisions of Council

Restricted Discretionary Activity Discretions

11. Forest and Bird appeal the following restricted discretionary rules:

(a) Proposed Plan Change 6 A Rules 12.C.2.1 and 12.C.2.2 as amended by Decisions of Council 3.10, Recommendations 3.10.1

(b) New Rule 12.C.2.4 as amended by the above Decisions of Council

**Reasons for appeal**

12. The Council decisions are unreasonable, impractical and inconsistent with the purposes and principles of the Resource Management Act 1991.

13. In general terms the grounds of appeal are set out below:

(a) Section 5 – the Council decisions do not promote the sustainable management of natural and physical resources.

(b) Section 6 – the Council decisions do not recognise and provide for the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins and the protection of them from inappropriate subdivision, use, and development; or the protection of significant areas of indigenous vegetation and significant habitats of indigenous fauna.

(c) Section 7 – the Council decisions do not have particular regard to the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment or the finite characteristics of natural and physical resources.

(d) Section 67 (3) (b) the Council decisions are inconsistent with and do not give effect to the NZ Coastal Policy Statement.

(e) Section 67 (3) (c) the Council decisions do not give effect to the Otago Regional Policy Statement.

(f) The provisions of the Proposed Plan for managing land use activities affecting water bodies that flow to coastal waters and coastal waters generally are inadequate to maintain or enhance water quality or maintain indigenous biological diversity in terms of section 30 of the RMA.

14. The particular reasons for appeal are:

- (a) The Policies in Chapter 2 concerning management of discharges<sup>1</sup> to maintain and enhance water quality are inadequate to manage the effects of discharges emanating from land that affect the coastal marine area and are inconsistent with Part II and Part V.
- (b) Maintaining the quality of coastal waters and enhancing them where degraded is required under the objectives and policies of the NZ Coastal Policy Statement 2010 and the Regional Policy Statement for Otago 1998 (Objective 8.4.4) and the Otago Regional Plan: Coast (Objective 10.3.1 and Policy 10.4.7. Otago communities have an expectation through the Regional Policy Otago and the Otago Regional Plan: Coast , that coastal waters will have a water quality suitable for contact recreation and shellfish gathering, (in the case of the Coastal Plan by 2019).
- (c) In relation to Rules 12.C.0.1, 12.C.0.2, 12.C.0.3, The proposed plan as notified contained rules that effectively prohibited objectional discharges of contaminants to open drains, or water races flowing to the coastal marine area or where such discharges are about to enter coastal water, as the prohibited rules contained the term 'water' which includes coastal water under the Resource Management Act 1991. The proposed plan as amended by Councils decisions does not prohibit these as the term water has been replaced by "lake, river, wetland or open drain or water race that flows to a lake, river or wetland, inadvertently giving rise to the above problem.
- (d) The new rule for permitted activities (12.C.1.1) as amended by Council Decisions is inadequate to maintain or enhance water quality in water bodies and coastal waters, because it is a permitted activity to discharge contaminants to land in

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<sup>1</sup> Including Proposed Plan Change 6A Objective 7.A.1, and 7.A.2 , Policy 7.B.3 as amended by Decisions of Council 2.3 Recommendations 2.3.1 and New Policy 7.B.4: as amended by above Decisions of Council

circumstances where it may enter the coastal marine area, and to drains and water races that flow to the coastal marine area.

- (e) Rules 12.C.2.1 and 12.C.2.2 use the term “water” and thus include discharges to land in circumstances which may result in that contaminant reaching coastal waters. The new rule setting out matters for which Council will restrict the exercise of its discretion, needs to draw decision makers attention to giving consideration to the effects of discharges on the coastal marine area, and thus give effect to the Objectives.

#### 9.1.1 Relief Sought

#### *Chapter 2: Objectives and Policies for Water Quality*

- 15. Forest and Bird seeks that New Policy 7.B.4 (as amended by Council Decisions) is amended to recognise the potential adverse effects of discharges of water or contaminants to land on the water quality of the coastal marine area as set out below, (addition identified by double underlining) or provisions to like effect.

#### **7. B Policies general**

7. B.4 [*Moved from 7.7.2*] When considering the any discharge of water or any contaminants to land, to have regard to:

- (a) The ability of the land to assimilate the water or contaminants;  
and
- (b) Any potential for soil contamination; and
- (c) Any potential for land instability; and
- (d) Any potential adverse effects on water quality; and
- (e) Any potential adverse effects on use of the coastal marine area for contact recreation and shellfish gathering

Prohibited Activities

16. This appeal relates to

- (a) Proposed Plan Change 6A Rules 12.C.0.1, 12.C.0.2, 12.C.0.3, 12.C.0.4 and 12.C.0.5 as amended by Decisions of Council; 3.2, 3.3
- (b) New Rules, 12.C.0.1, 12.C.0.2, 12.C.0.3 as amended by the above Decisions of Council.

17. Forest and Bird seeks the following relief

- (a) Amend Rule 12.C.0.1, to prohibit discharges to drains and water races that drain to the coastal marine area in the same manner as for those that flow to lakes, rivers or Regionally Significant Wetlands, as set out below or provisions to like effect.

*12.C.0.1 The discharge of any contaminant to water, that produces an objectionable odour, or a conspicuous oil or grease film, scum, or foam in any:*

*(i) Lake, river or Regionally Significant Wetland; or*

*(ii) Drain or water race that flows to a lake, river or Regionally Significant Wetland, or coastal marine area; or*

*(iii) Bore or sump,*

*is a **prohibited** activity.*

- (b) Amend Rule 12.C.0.2 to; prohibit discharges of contaminants from an animal waste system, silage storage or a composting process to drains and water races that connect to the coastal marine area in the same manner as for those that connect to lakes, rivers or Regionally Significant Wetlands; and to prohibit the same discharges to land within 50m of the coastal marine area, in the same manner as for land within 50m of any lake or

river or Regionally Significant Wetland, as set out below or provisions to like effect.

*12.C.0.2 The discharge of any contaminant from an animal waste system, silage storage or a composting process:*

- (i) To any lake, river or Regionally Significant Wetland; or*
- (ii) To any drain or water race that connects to a lake, river, ~~or~~ Regionally Significant Wetland, or coastal marine area; or*
- (iii) To the bed of any lake, river or Regionally Significant Wetland; or*
- (iv) To any bore or sump; or*
- (v) To land within 50 metres of:*
  - (a) Any lake, river, ~~or~~ Regionally Significant Wetland, or coastal marine area; or*
  - (b) Any bore or sump; or*
- (vi) To saturated land; or*
- (vii) That results in ponding,*

*is a prohibited activity.*

- (c) Amend Rule 12.C.0.3 to; prohibit discharges of sediment to drains or water races that flow to the coastal marine area in the same manner as for those that flow to lakes, rivers or Regionally Significant Wetlands; as set out below or provisions to like effect.

*12.C.0.3 Any discharge of sediment from disturbed land to water in any:*



(i) Lake, river or Regionally Significant Wetland; or

(ii) Drain or water race that flows to a lake, river, or Regionally Significant Wetland, or coastal marine area.

Permitted activities

18. The Forest and Bird appeal relates to

(a) Proposed Plan Change 6A Rules 12.C.1.1, 12.C.1.2, 12.C.1.4, and New Rule 12.C.1.1 as amended by Decisions of Council, 3,2 3.4, Recommendations 3.4.1, Decision 3.5, Recommendation 3.5.1, and Decision 3.6, Recommendations 3.6.1.

(b) New Rule 12.C.1.1 as amended by the above Decisions of Council

19. Forest and Bird seeks the following relief:

(a) Amend Rule 12 C.1.1 to ensure that discharges that are about to enter the coastal marine area or to water bodies that flow to the coastal marine area can be managed, and will like all discharges to water bodies that flow to a lake, river or wetland be required to meet the limits prescribed in Schedule 16A, and Rule 12.C.1.1, as set out below or provisions to like effect.

*Rule 12.C.1.1 The discharge of water or any contaminant to water, or onto or into land in circumstances which may result in that contaminant entering water, is a permitted activity, providing:*

*(a)The discharge does not result in flooding, erosion, land instability or property damage; and*

*(b)There is no discharge of water from one catchment to water in another catchment; and*

*(c)The discharge does not change the water level range or hydrological function of any Regionally Significant Wetland; and*

*(d) Where the discharge first enters: water in any lake, river, wetland, or about to enter the coastal marine area or any open drain or water race that flows to a lake, river or wetland or coastal marine area, the discharge:*

*(1) From 01 April 2020, does not exceed the relevant limits given in Schedule 16A, when, at the representative flow monitoring site, the water flow is at or below the reference flow indicated in Schedule 16B; and*

*(2) Does not contain sediment that results in:*

*a. A visual change in colour or clarity; or*

*b. Noticeable local sedimentation,*

*in the receiving water; and*

*(3) Does not have an odour, oil or grease film, scum or foam; and*

*(4) Does not have floatable or suspended materials, other than inorganic sediment; and*

*(e) Any discharge of nitrogen also complies with Rule 12.C.1.3.*

### **Restricted Discretionary Activity Discretions**

20. The Forest and Bird appeal relates to:

*(a) Proposed Plan Change 6 A Rules 12.C.2.1 and 12.C.2.2 as amended by Decisions of Council 3.10, Recommendations 3.10.1; and*

*(b) New Rule 12.C.2.4 as amended by the above Decisions of Council.*

21. Forest and Bird seeks the following relief:

- (a) Amend Rule 12 C.2.4 to ensure that that in considering restricted discretionary consents Council decision makers will consider any potential adverse effects on the use of the coastal marine area for contact reaction and shellfish gathering, as set out below, or provisions to like effect.

*12.C.2.4 Restricted discretionary activity discretions*

*In considering any resource consent in terms of Rules 12.C.2.1 to 12.C.2.3, the Council will restrict the exercise of its discretion to:*

- (a) The nature, type, volume, frequency of the discharge; and*
- (b) The concentration and loading of contaminants in the discharge; and*
- (c) In the case of an application under Rules 12.C.2.1 and 12.C.2.3, the staged timeframe for achieving the permitted activity conditions in Rules 12.C.1.1 or 12.C.1.3; and*
- (d) In the case of an application under 12.C.2.2, the staged timeframe to address adverse effects on water quality; and*
- (e) In the case of an application previously consented under Rule 12.C.2.2, compliance with conditions of the previous resource consent; and*
- (f) Any changes to infrastructure and the staging of implementation of those changes; and*
- (g) Any adverse effects on water quality, including cumulative effects; and*

- (h) *Any adverse effect of the discharge on any natural or human use values; and*
- (i) *The extent to which the contaminant results from the activities of the applicant; and*
- (j) *Any effect on any Regionally Significant Wetland or on any regionally significant wetland value; and*
- (k) *Any erosion, land instability, sedimentation or property damage resulting from the discharge; and*
- (l) *Any financial contribution for any Regionally Significant Wetland or on any regionally significant wetland value; and*
- (m) *The information and monitoring requirements; and*
- (n) *The duration of the resource consent; and*
- (o) *The review of conditions of the resource consent; and*
- (p) *Any potential adverse effects on use of the coastal marine area for contact recreation and shellfish gathering.*

22. Forest and Bird also seeks any other relief

- (a) consequential on the above relief sought; and/or
- (b) as is necessary to give effect to the relief sought seeks the relief identified above; and/or
- (c) such other relief as may be considered appropriate by the Court and/or the parties in agreement.

**Attachments**

23. Forest and Bird attach the following documents to this notice:

- (a) Copy of Forest and Bird's submission;
- (b) Copy of relevant Council Decisions on submissions;
- (c) Copy of relevant rules as amended by Council decisions; and
- (d) Schedule of names and addresses of persons to be served.

Dated 4 June 2013



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Peter Anderson

Counsel for Royal Forest and Bird Protection Society NZ Inc

**Address for service:**

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