

**BEFORE THE ENVIRONMENT  
COURT  
AT CHRISTCHURCH**

**ENV-2012-CHC-**

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

**AND**

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

**BETWEEN** **ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED**

**Appellant**

**AND**

**OTAGO REGIONAL COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

**4 June 2013**

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Environmental Defence Society  
PO Box 91 736  
Victoria St West  
Auckland 1142  
Attention: Kate Mulcahy  
[kate@eds.org.nz](mailto:kate@eds.org.nz)

TO: The Registrar  
Environment Court  
CHRISTCHURCH

## **1. NAME OF APPELLANT**

- 1.1. The Environmental Defence Society Incorporated (“**the Appellant**”), appeals part of the decision of Otago Regional Council (“**the Council**”) on Plan Change 6A to the Regional Plan: Water for Otago (“**PC6A**”).
- 1.2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
- 1.3. The Appellant made a submission and further submission on PC6A and presented submissions to the Hearing Committee.
- 1.4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”).

## **2. DATE OF RECEIPT OF DECISION**

- 2.1. The Appellant received notice of the decision on 26 April 2013.

## **3. NAME OF RESPONDENT**

- 3.1. The decision was made by the Council.

#### **4. SPECIFIC PARTS OF THE DECISION BEING APPEALED**

##### *Objective 7.A.2*

- 4.1. The failure to meet the requirements of Objective A1 of the National Policy Statement on Freshwater Management 2011 (“NPSFM”).  
Whilst Objective 7.A.2 refers to “support[ing] natural and human use values” this does not encompass the full range of values to be protected under the NPSFM.

##### *Policy 7.B.2*

- 4.2. The failure to provide for the avoidance of activities which degrade the full range of values to be protected under the NPSFM.
- 4.3. The failure, by using the undefined and uncertain qualifier ‘objectionable’ to make it clear which activities are to be avoided.

##### *Policy 7.B.3*

- 4.4. The failure to provide for the management of cumulative effects of multiple discharges, to ensure that cumulatively they do not:
  - a. give rise to effects outlined in section 70 RMA, or
  - b. allow over-allocation.

##### *Policy 7.B.4*

- 4.5. The failure to give effect to Objective A1 of the NPSFM by not requiring that the decision maker has regard to the need to safeguard the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater in sustainably managing the discharge of contaminants.

##### *Policy 7.D.3*

4.6. The failure to refer to the full range of values that are required to be protected under Objective A1 of the NPSFM.

4.7. The use of the undefined and uncertain term ‘objectionable’.

*Policy 7.D.4*

4.8. The failure to include a requirement that land users undertake changes to their land management practices in order to obtain consent, and the failure to provide for a specified time limit within which land users carrying on activities which breach the standards set out in schedule 16 must obtain consent.

*Policy 7.D.5*

4.9. The failure to give effect to Objective A1 of the NPSFM by not requiring that the decision maker have regard to the need to safeguard the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater in sustainably managing the discharge of contaminants.

*Policy 7.D.6*

4.10. The failure to give effect to Objective A1 of the NPSFM by not requiring that the decision maker have regard to the need to safeguard the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater in sustainably managing the discharge of contaminants.

*Permitted activity rule 12.C.1.1*

4.11. The failure to include reference to all of the matters set out in section 70 RMA, and in particular:

- a. The rendering of freshwater unsuitable for consumption by farm animals (section 70(1)(f));
- b. Any significant adverse effects on aquatic life (section 70(1)(g)).

4.12. The failure to provide for the management of cumulative effects of multiple discharges, to ensure that cumulatively they do not give rise to effects outlined in section 70 RMA.

*Restricted discretionary activity rule 12.C.2.1*

4.13. The inappropriate use of ‘restricted discretionary’ activity status for activities which are not specified as permitted or prohibited activities.

4.14. The failure to establish a deadline beyond which consents for activities which breach the limits specified in schedule 16 will not be granted.

4.15. The inappropriate reference to activities which have previously been authorised by a resource consent granted under this rule.

4.16. The inappropriate preclusion from giving public notification of an application for a resource consent for a discharge. Attainment of good quality water is a matter of wide public interest.

*Rule 12.C.2.3*

4.17. The inappropriate reference to activities which have previously been authorised by a resource consent granted under this rule.

*Rule 12.C.2.4*

4.18. The failure to include in the matters to which the decision maker must have regard when considering an application to undertake a restricted discretionary activity the following matters set out in part 2 RMA:

- a. Actual or potential effects on aquatic ecosystems
- b. Indigenous species
- c. Recreational activities

4.19. The failure to include in the matters to which the decision maker must have regard when considering an application to undertake a restricted discretionary activity the following matters set out in the NPSFM:

- a. the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater.

*General*

4.20. The failure to include in the definition of ‘natural and human use values’ the full range of values to be protected under the NPSFM.

4.21. The failure to identify and protect outstanding freshwater bodies and significant values of wetlands in accordance with the NPSFM.

4.22. The failure to give effect to the New Zealand Coastal Policy Statement through the inclusion of appropriate objectives, policies and rules which identify the relationship between discharges into freshwater and coastal water quality, and provide for measures to improve water quality where required.

4.23. The extension of the timeframe for achieving good water quality to 2025.

**5. REASONS FOR THE APPEAL**

5.1. The Appellant says:

- a. The decision does not establish and implement objectives, policies, and rules which give effect to the NPSFM.
- b. The decision does not give effect to Objective A1 of the NPSFM because it does not provide adequately for the safeguarding of the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater.
- c. The decision does not give effect to Objective A2 of the NPSFM because it does not provide for the protection of the quality of

outstanding freshwater bodies and the significant values of wetlands.

- d. The decision does not give effect to Policy A1 of the NPSFM because it does not recognise the full range of values that are required to be protected.
- e. The decision does not give effect to Policy A2 of the National Policy Statement on Freshwater Management 2011 because it does not set clear methods to enable freshwater quality targets to be achieved within a defined time frame.
- f. The decision does not give effect to Policy A3 of the NPSFM because it does not provide for conditions on discharge permits that will ensure that the limits and targets specified pursuant to Policy A1 and Policy A2 can be met.
- g. The decision does not promote the sustainable management of natural and physical resources under section 5 of the RMA.
- h. The decision does not recognise and provide for matters of national importance under section 6 of the RMA including; the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development (section 6(a)), and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (section 6(c)).
- i. The decision does not have particular regard to the maintenance and enhancement of amenity values (section 7(c)), the intrinsic values of ecosystems (section 7(d)), maintenance and enhancement of the quality of the environment (section 7(f)), and the protection of the habitat of trout and salmon (section 7(h)).
- j. The decision does not comply with the requirement in section 70 RMA that a regional council must be satisfied that none of the

following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar or other contaminants):

- 1) The rendering of freshwater unsuitable for consumption by farm animals (section 70(1)(f)) and
  - 2) Any significant adverse effects on aquatic life (section 70(1)(g)).
- k. The decision does not give effect to the New Zealand Coastal Policy Statement 2010.

## 6. RELIEF SOUGHT

6.1. The Appellant seeks:

- a. Objective 7.A.2 be amended to read “To enable the discharge of water or contaminants to water or land in a way that maintains water quality, ~~and~~ supports their natural and human use values and supports the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater.”
- b. Policy 7.B.2 be amended to read “Avoid ~~objectionable~~ discharges of water or contaminants that degrade the natural and human use values and the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of Otago lakes, rivers, wetlands and groundwater.”
- c. Policy 7.B.3 be amended to read “Allow discharges of water or contaminants to Otago lakes, rivers, wetlands and groundwater that have minor effects or are short term to the extent that the cumulative effect of all discharges does not exceed the water quality limits set out in schedule 15.”
- d. Subparagraph (d) of Policy 7.B.4 be amended to read “Any potential adverse effects on water quality including the potential



adverse effects on the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater.”

- e. Policy 7.D.3 be amended to read: “Prohibit ~~objectionable~~ discharges of water or contaminants that degrade the natural and human use values and the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of Otago lakes, rivers, wetlands and groundwater.”
- f. Policy 7.D.4 be amended to read “Provide for the consenting of ~~any~~ discharges under section 12C that first occurred prior to 31 March 2012 for a limited time period beyond the timeframe specified in Schedule 16, where: (a) Changes to land management practices or infrastructure to minimise the discharges have been implemented; (b) Additional changes to land management practices are needed to achieve the limits; and (c) an expeditious path to compliance with Schedule 16 is identified.”
- g. Policy 7.D.5 be amended by adding new paragraph (aa) “Any adverse effects of the discharge on the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems in freshwater.”
- h. Policy 7.D.6 be amended by adding new paragraph (aa) “Any adverse effects of the discharge on the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems in freshwater.”
- i. Rule 12.C.1.1(d)(2) be amended by adding new subparagraph (aa) “the discharge does not result in the rendering of freshwater unsuitable for consumption by farm animals” new subparagraph (ad) “the discharge does not have any significant effects on aquatic life” and new subparagraph (ae) “the discharge does not,

cumulatively with existing discharges, result in the exceeding of the water quality limits set out in Schedule 15.”

- j. Rule 12.C.2.1 be amended to read “The discharge of water or any contaminant...is a discretionary activity...”
- k. Rule 12.C.2.1 be amended to delete the provision “the Consent Authority is precluded from giving public notification of an application for a resource consent under this rule.”
- l. Rule 12.C.2.1 be amended to delete subparagraph (f).
- m. Rule 12.C.2.3 be amended to delete subparagraph (c).
- n. Rule 12.C.2.4 be amended by inserting new subparagraph (ha) “Any actual or potential effects on aquatic ecosystems including their life supporting capacity and ecosystem processes”; new subparagraph (hb) “Any actual or potential effects on indigenous species”; new subparagraph (hc) “Any adverse effects on recreational activities.”
- o. Such consequential or further relief as may be necessary to fully give effect to the relief sought above.
- p. Costs.

## **7. ANNEXURES**

7.1. The following documents are attached to this notice:

- a. a copy of the Appellant’s submission;
- b. a copy of the Appellant’s further submission
- c. a copy of the Appellants submissions presented at hearing
- d. a copy of the Respondent’s decision; and

- e. a list of names and addresses of persons to be served with a copy of this notice.

**DATED** at Auckland this 4th day of June 2013

Signed for and on behalf of the  
**ENVIRONMENTAL DEFENCE  
SOCIETY INCORPORATED** by its  
duly authorised agent



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**Kate Mulcahy**

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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 or service 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 and 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 in Christchurch.