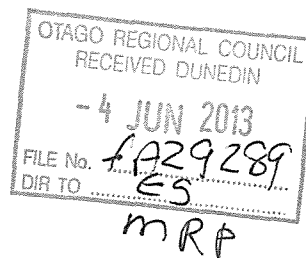


31 May 2013

The Registrar
Environment Court
99-101 Cambridge Terrace
CHRISTCHURCH



By Courier

Dear Registrar

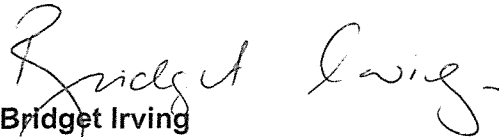
**DUNEDIN CITY COUNCIL v OTAGO REGIONAL COUNCIL
CENTRAL OTAGO DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL
CLUTHA DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL
DUNEDIN INTERNATIONAL AIRPORT LIMITED v OTAGO REGIONAL COUNCIL
R BORST v OTAGO REGIONAL COUNCIL
MCHOLLAND FARMING LIMITED v OTAGO REGIONAL COUNCIL
LAKES LANDCARE GROUP v OTAGO REGIONAL COUNCIL
CARDRONA LAND CARE GROUP v OTAGO REGIONAL COUNCIL**

We enclose for filing:

1. Notice of Appeal (in duplicate) for Dunedin City Council;
2. Notice of Appeal (in duplicate) for Central Otago District Council;
3. Notice of Appeal (in duplicate) for Clutha District Council;
4. Notice of Appeal (in duplicate) for Dunedin International Airport Limited;
5. Notice of Appeal (in duplicate) for Robert Borst;
6. Notice of Appeal (in duplicate) for MCHolland Farming Limited;
7. Notice of Appeal (in duplicate) for Lakes Landcare Group;
8. Notice of Appeal (in duplicate) for Cardrona Land Care Group;
9. Each appeal is filed with duplicates of Submission and Further Submission (where relevant) of the Appellant. Duplicate copies of the relevant Decision and Proposed Plan Change 6A incorporating the Council's Decisions are included;
10. List of submitters who have been served;
11. Eight cheques for \$511.11 each for the filing fees.

If you have any questions please do not hesitate to contact us.

Yours faithfully
GALLOWAY COOK ALLAN


Bridget Irving
Associate (Dunedin)

BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV -2013-CHC-

UNDER the Resource Management Act 1991
IN THE MATTER of an appeal under clause 14 of the
First Schedule
BETWEEN **DUNEDIN CITY COUNCIL**
Appellant
AND **OTAGO REGIONAL COUNCIL**
Respondent

NOTICE OF APPEAL

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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TO: The Registrar
Environment Court
Christchurch

1. The Dunedin City Council ("DCC") appeals against a decision of the Otago Regional Council ("the Decision") on the following regional plan:

The decision of the Otago Regional Council in relation to Proposed Plan Change 6A (water quality) ("PC6A")

2. The DCC made a submission on PC6A (submission number 211 and further submission 1025).
3. The DCC received notice of the Decision on 20 April 2013
4. The Decision was made by the Otago Regional Council
5. The decision that the DCC is appealing is:

The entire decision of the Otago Regional Council in relation to Plan Change 6A. Points of appeal raised in relation to specific provisions, reasons for the appeal, and relief sought in relation to those provisions are set out below.

I know this is a standard format, but is there any scope for a bit of an introduction – e.g. we support the intent of the plan change of achieving good water quality, however we disagree with the mechanisms and controls the ORC have used to achieve it? If not, I understand! Maybe it belongs in the media release instead?

6. **General points of appeal against the whole plan change:**

As a general comment the DCC is supportive of the intent of the plan change and the purpose of achieving good water quality. However, the DCC disagrees with the methods and controls the ORC have employed to achieve the goal.

- (a) The decision of the Otago Regional Council fails to implement the National Policy Statement – Freshwater ("NPSFW"). In particular:
 - (i) it fails to recognise all the relevant national values of water identified in the NPSFW.
 - (ii) PC6A fails to take a catchment approach to managing water quality. The Decision assumes that each catchment in the Otago region has the same natural and human use values. This assumption is wrong. As a

result PC6A fails to recognise the range of different values associated with different catchments, and the variety of land-uses and land management techniques within the Region.

- (iii) PC6A purports to address only 'rural' discharges (i.e. any discharge other than human sewage, hazardous substances, hazardous wastes, stormwater and other specified contaminants and discharges from industrial and trade premises). In purporting to have that effect PC6A fails to adopt an integrated and catchment based approach to water quality management.
 - (iv) Notwithstanding (iii) above, the proposed general objectives and policies (Sections 7.A and 7.B) and Schedule 15 amended by PC6A apply to 'non-rural' discharges (Section 7.C) as well, but are not supported by methods. The absence of methods that will implement the objectives and policies changed by PC6A means that the way in which those objectives and policies applying to non-rural discharges will be achieved cannot be understood or assessed.
- (b) The Decision fails to implement, and is inconsistent with, the provisions of the Regional Policy Statement (RPS). It is understood that a change to the RPS is now proposed. Proceeding with PC6A without first changing the RPS is inconsistent with the Act.
 - (c) The Decision does not include the required evaluation under section 32 as required by section 32(2)(a) assessment.
 - (d) The section 32(1)(c) assessment prepared in respect of the notified plan change:
 - (i) did not adequately examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
 - (ii) did not examine whether the policies and rules within PC6A are the most efficient and effective way to achieve the objectives; and
 - (iii) did not consider the benefits and costs of the policies and rules.
 - (e) The achievement of the objectives of PC6A is reliant upon compliance with standards that are not readily capable of measurement. If compliance is not readily capable of being determined then the rules are uncertain and therefore ultra vires.
 - (f) Compliance with standards is required to establish the permitted activity status of land use activities on a day to day basis. In principle the use of permitted activity status for rural land use activities is supported, but the adopted standards are

not readily capable of measurement. Compliance uncertainty is an untenable basis for investment in rural land uses.

- (g) The Decision indicates that compliance difficulties will be addressed by taking 'a pragmatic approach to enforcement'. In so far as that indicates that the rules introduced by PC6A will not be enforced, then this indicates a wilful failure to comply with section 84 of the Act, and cannot be relied upon as a reason to support PC6A.

Relief Sought

Cancel PC6A entirely.

7. Specific points of appeal:

- (a) **The removal of issues and explanations to objectives and policies (Chapter 7).**

Reasons for the appeal

With the current drafting of PC6A, removal of issues and explanations to objectives and policies has resulted in the plan being difficult to follow.

Relief sought

Redrafting of PC6A so it is evident from objectives what issues are being addressed, clear follow through between objectives, policies and rules.

- (b) **General objectives and policies (7.A. and 7.B.) informing policies under 7.C and rules under 12.A and 12.B of PC6A those being discharges of human sewage, hazardous substances, hazardous wastes, specified contaminants, and stormwater, and discharges from industrial trade premises and consented dams.**

Reasons for the appeal

As discussed in paragraph 6(a)(iv) above PC6A purports to be a 'rural' plan change. However, the general objectives and policy framework set out in section 7.A and 7.B of PC6A (and by inference Schedules 15 and 16A and 16B) will apply to non-rural discharges, despite PC6A not including any new methods of implementation for such discharges. No section 32 assessment has been undertaken in relation to the relevant rules and their ability to implement the new objectives. It is impossible to understand the implications of the new objectives and policies in the absence of the methods that will be used to achieve them.

In its Decision the Council view section 7.C, 12.A and 12.B as beyond the scope of the plan change. This approach fails to manage water quality in an integrated way and is flawed.

Relief sought

PC6A be redrafted in such a way that section 7.A and 7.B do not apply to section 7.C, 12.A and 12.B.

(c) Objectives 7.A.1-7.A.3

Reasons for the appeal

The objectives in PC6A do not recognise the full range of national values held by water and identified in the NPSFW. In particular, the objectives do not recognise the productive and assimilative capacity of water which results in the objectives being inconsistent with the Act, the NPSFW and RPS.

The objectives do not facilitate an integrated approach to water quality management and a catchment based approach.

Objective 7.A.3 suggests an individual will be responsible for managing cumulative effects of discharges. How this objective will be achieved is not described through policy or through any methods of implementation.

Relief sought

Objectives 7.A.1-7.A.3 be amended to recognise the full range of national values held by water and identified in the NPSFW, in particular the productive capacity of water and assimilative capacity.

Objectives 7.A.1-7.A.3 be amended to establish a fully integrated approach to water quality management using a catchment based approach.

Objective 7.A.3 be amended to remove the suggestion that individuals will be responsible for managing cumulative effects of discharges. Alternatively, that a policy (or other method) be drafted to describe how this will be achieved.

(d) The Policy Framework (Sections 7.B and 7.D)

Reasons for the appeal

As described in (6)(a)(iii) and (iv) above, the policies in Section 7.B apply to discharges beyond the stated 'rural' scope of the plan change.

The policy framework does not provide support for 'urban' discharges, as these are provided in Section 7.C. Section 7.C. is largely unchanged, although not entirely. Section 7.C. should not be changed at all if it is the case that PC6A is not intended to effect non-rural discharges.

Further, the policy framework does not clearly describe how Objectives 7.A.1 – 7.A.3 will be met, and results in uncertainty.

Relief sought

Section 7.B should be deleted, or alternatively, merged with Section 7.D ('rural' policies). Notwithstanding this, the following specific relief is sought:

- (i) Add further policies that provide clear and complete guidance for how the objectives will be met.
- (ii) Describe the role of Schedule 15, how the standards will be met, and what the consequences will be if they are not.
- (iii) Provide guidance for discharges that may affect groundwater quality.
- (iv) Provide guidance for how discharges will be managed when the Schedule 16 limits are not met, particularly when the best practicable option has been implemented.

(e) Policy 7.B.1-7.B.4

Reasons for the appeal

Policies do not recognise the variety of values of water identified in the NPSFW. The policies fail to recognise the full suite of options available to address adverse environmental effects including avoid, remedy and mitigate.

The policies appear only to address short term discharges or discharges with minor effects. It is possible for short term discharges to have significant effects or for long term discharges to have very minor effects.

The policies do not recognise the concept of reasonable mixing which is inconsistent with the Act, the NPSFW and RPS.

Relief sought

Policy 7.B.1-7.B.3 be amended to recognise the full range of values held by water and identified within the NPSFW.

Policy 7.B.2 be amended to better define what is meant by "objectionable", and include remedy and mitigate as options to address adverse effects. Should Section 7.B and 7.D not be merged as requested above, clarification in respect of the relationship between policies 7.B.2 and 7.D.3 is required.

Policy 7.B.3 be amended to recognise effects occurring after reasonable mixing. This would recognise the assimilative capacity of water, and would be more consistent with the NPSFW and also policy 7.B.4 in relation to discharges to land.

Policy 7.B.3 be amended, or a new policy drafted, to provide for long term discharges.

(f) Policy 7.B.6

Reasons for appeal

Provision for review conditions is outlined in the Act. It is not necessary to include a policy to achieve this outcome.

Relief sought

Policy be deleted.

(g) Policy 7.B.7-7.B.8

Reasons for appeal

It is agreed that these policies are useful however further guidance within the policies and/or PC6A more broadly regarding what methods will constitute 'encouragement' is needed. Currently methods of encouragement are used only in the negative sense, ie. resource consent will be withheld if an applicant does not achieve the policies.

Relief sought

Delete policies 7.B.7 and 7.B.8 unless they are supported by methods that actually serve the purpose. In particular, delete those policies as they apply to section 7.C discharges as the application of those policies to section 7.C discharges is uncertain unless and until methods in relation to those discharges are introduced.

(h) Deletion of Policy 7.7.5 in section 7.C

Reasons for appeal

Policy 7.7.5 specifically identified the assimilative capacity of water and has been deleted from the policies applying to human sewage, hazardous substances, hazardous wastes, stormwater and other specified contaminants and discharges from industrial and trade premises. This is a significant change in the policy framework applicable to those discharges. The Council has advised submitters that it proposes to introduce Plan Change 6B in relation to section 7.C discharges, which will include the relevant rules. Deleting policy 7.7.5 as part of PC6A is disingenuous.

Relief sought

Policy 7.7.5 be reinstated in section 7.C.

(i) Policy 7.D.1

Reasons for appeal

This policy is a method of implementation. It is not a policy.

Policy 7.D.1(b) in so far as it purports to impose information provision requirements on landowners has no legal mandate and is unlawful.

Relief sought

Deletion of Policy 7.D.1, or alternatively, deletion of 7.D.1(b) and instead include it as a method in Chapter 15.

(j) **Policy 7.D.2**

Reasons for appeal

This policy is better placed as a rule and is in essence already included in Schedule 16 and associated rules. However, it is also inconsistent as it describes when the rules apply, but not where (which is then described in Schedule 16).

Relief sought

Delete policy 7.D.2.

(k) **Policy 7.D.3**

Reasons for appeal

In using the word "prohibit" Policy 7.D.3 does not implement any objective. The use of prohibited activities in this plan creates significant practical and legal difficulties. In addition, there is no general objective or policy support for the use of prohibited activities.

The term "objectionable" is uncertain.

Relief sought

Remove reference to prohibited activities.

Define what is meant by "objectionable" so it is certain what the policy refers to.

The policy also needs to specifically refer to degradation after reasonable mixing.

(l) **Policy 7.D.4**

Reasons for appeal

The policy does not anticipate granting consent for long term activities with long term effects, no matter how small they may be. That is not consistent with the scheme of the Act. The reason for excluding long term consents is not clear. Policy 7.D.4 is also inconsistent with the use of the word "or" in policy 7.B.3.

Short term consents provide no secure basis for investment and so the policy is self defeating.

Relief sought

Amend the policy to provide for long term discharges with minor effects to be consented and where best practicable options are being employed to reduce discharge volumes or contaminant levels.

(m) Policy 7.D.5- 7.D.6Reasons for appeal

These policies are more properly assessment matters for resource consents.

The policies have the effect of limiting the consideration of resource consents to only those where an applicant can show that they can comply with the permitted activity standards. Where compliance cannot be demonstrated, then a de facto prohibited activity status is achieved, regardless of the social and economic effects on people and communities. This is an inappropriate fetter on the consent authority's discretion to grant resource consents under the rules, and diminishes the utility of the consenting pathway provided for in PC6A.

Relief sought

Delete 7.D.5 (b) and (d), and delete 7.D.6 (a).

Policy 7.D.7Reasons for appeal

As above, this policy prefaces the consideration of every resource consent on ultimate compliance with the permitted activity rules. Specifying consent duration in a policy undermines the ability of each application to be assessed on its own merits.

The policy unnecessarily fetters the discretion of the decision maker when assessing an application.

Relief sought

Delete policy 7.D.7 or remove reference to specific timeframes within the policy.

(n) Rule 12.A.A.2Reasons for appeal

Currently, the discharge of stormwater containing human sewage is a restricted discretionary activity. With this rule, the rules in Section 12.A also apply, and the activity becomes full discretionary. This change is beyond the scope of the 'rural' focus of the plan change, and hence not consulted on.

Relief sought

That the discharge of stormwater containing human sewage remain a discretionary activity under Rule 12.4.2.1.

(o) **Rule 12.C.0.1- 12.C.0.2**Reasons for appeal

The use of prohibited activity status is not supported by the Objectives and Policies within the Plan, within the NPSFW or the RPS. Neither has there been any section 32 analysis justifying that status compared to any other activity status.

The rule has been clarified further since the original notified version, but there remain significant difficulties with implementation, for example discharges that occur during emergencies. It will not be possible to seek retrospective consent for a prohibited discharge that took place in an emergency. This prevents compliance with section 330A of the Act.

There are also some inconsistencies with wording when considered against the Act.

There is a lack of clarity about where the discharge point will be for the purpose of the prohibited activity rules. There is no recognition of reasonable mixing.

The Decision has introduced reference to a "bore or sump". Sump has not been defined and as a result there are potentially significant implications depending on the interpretation of this term.

Relief sought

Removal of prohibited activity status in favour of unrestricted discretionary activity status.

Definition of the point of compliance to apply after reasonable mixing.

Clarification of the drafting relating to objectionable and conspicuous discharges so they are certain.

Deletion of the term "sump" or a clear definition of what it encompasses.

(p) **Rule 12.C.0.3**Reasons for appeal

The reasons for appeal in relation to rules 12.C.0.1 and 12.C.0.2 above are adopted here.

The drafting of the rule prevents the use of in-stream sediment mitigation because it requires mitigation of "runoff". In some instances it is not possible to mitigate sediment discharge so as to avoid sediment entering water (such as works within or adjacent to a riverbed). In those cases in-stream mitigation is the only option.

Relief Sought

Remove prohibited activity status and replace with unrestricted discretionary activity status.

Redrafting of the rule to recognise in-stream sediment mitigation methods to address the effects of sediment runoff.

(q) Rule 12.C.1.1

Reasons for appeal

Rule 12.C.1.1 now incorporates a number of rules previously separated in the notified plan change. The rule now refers to "open drains", it is unclear whether this is something different from "drain" which is defined within the Plan.

The term "where the discharge first enters water" in rule 12.C.1.1(d) is uncertain and incapable of measurement for any point source discharge, but especially for diffuse discharges. The rule is void for uncertainty. Accordingly the Schedule 16 values become meaningless and incapable of enforcement.

Reference to odour, oil or grease film, scum or foam does not incorporate the qualifiers included within the Act (offensive/objectionable/conspicuous). This is not consistent with other rules such as rule 12.C.1.2.

Rule 12.C.1.1(d)(1) is not supported by any section 32 assessment. Nor is it apparent that this rule was requested by any submission or supported by any evidence that the hearing commissioners received. It is unclear what rule applies when this rule does not (i.e. prior to April 2020 or when the flows referred to in Schedule 16B are above median).

Relief sought

The appellant is unable to suggest drafting changes at this time that remedy the problems with the rule. Any valid rule must be certain, account for the diffuse nature of discharges, make provision for reasonable mixing of the discharge with receiving waters, and be readily capable of measurement by land users so that they may know whether they comply with the Act or may suffer criminal consequences.

The Plan Change must be cancelled.

(r) Rule 12.C.1.2

Reasons for appeal

12.C.1.2 (d) does not provide for reasonable mixing.

Relief sought

12.C.1.2 (d) is redrafted to provide for reasonable mixing.

(s) Rule 12.C.1.3

Reasons for appeal

OVERSEER is not an appropriate regulatory and enforcement tool. Its use is not supported by any section 32 analysis.

The N values in 12.C.1.3 are not supported by any testing of OVERSEER to demonstrate the model's efficacy in the areas shown as Nitrogen Sensitive Zones; nor any analysis that shows that meeting the specified leaching limits is required to maintain Schedule 15 values in any of the Nitrogen Sensitive Zones.

Rule 12.C.1.3 has been advanced for the purpose of collecting state of the environment monitoring information, rather than responding to such information. That is an improper use of a rule and is an abrogation of the Council's monitoring obligations.

Rule 12.C.1.3(b) is ultra vires in requiring landholders to provide information prior to 12.C.1.3(c) coming into effect. Further the rule requires information to be provided (or the rule would fail to be complied with), this is inconsistent with the relevant policies (see policy 7.D.1(b)(ii) that simply encourage information sharing.

Relief sought

Rule 12.C.1.3 should be deleted. OVERSEER should not be used as a regulatory tool. OVERSEER has value as a method of policy implementation that does not have criminal consequences and is incorporated in a plan framework that takes an integrated catchment based approach to water quality.

(t) **Rule 12.C.2.1 – 12.C.2.4**

Reasons for appeal

All of the rules providing for a restricted discretionary activity consent to be sought assume ultimate compliance with the permitted activity rules within a specified timeframe. Given the policy framework included within PC6A, resource consent for any activity that cannot comply with the permitted activity standards and within a 2-5 year timeframe is going to be unsupportable, regardless of the actual environment impact.

Rule 12.C.2.2(ii) provides for consenting of a "short term activity with a short term effect". This is inconsistent with policy 7.B.3.

PC6A provides no clarity on what will be considered short term either in terms of activity or effects. This rule is void for uncertainty.

Relief sought

Remove the assessment matters that refer to achieving the permitted activity conditions and instead refer to the utilisation of best practicable options and where necessary staging to ensure such techniques are being employed.

Remove the assessment matters that relate to prior resource consent being obtained under rules 12.C.2.1-12.C.2.4.

(u) Rule 13.2.1.7 – 13.2.1.7B

Reasons for appeal

The rules do not refer to culverts or pipe bridges. It is not clear why these measures have not been included as requested within the rule as they are in some cases they most efficient and effective option to cross a waterway and do not adversely affect water quality.

Relief sought

Pipe bridges and culverts be specifically provided for in rule 13.2.1.7 and 13.2.1.7B.

(v) Schedule 15

Reasons for appeal

The Decision resulted in a number of changes to Schedule 15. In the absence of an appropriate section 32 analysis it is not possible to determine whether the changes are appropriate.

Compliance with the targets will now be assessed at the 80th percentile which is more stringent than the median measure included within the notified PC6A. The jurisdiction and evidential basis for this change is not clear.

The Decision includes a number of changes to standards within Schedule 15 and to the dates by which compliance must be achieved. The evidential basis for these changes has not been referred to within the Decision and so it is impossible for the community to assess whether the targets are achievable or what methods might need to be employed to achieve them.

Relief Sought

Cancel Plan Change 6A

(w) Schedule 16

Reasons for Appeal

The application of Schedule 16 at or below median flow is an improvement. However, there is no evidence presented to confirm that the representative flow sites selected for the various "catchments" are appropriate in each case. It is not clear what submission sought, or what evidence was relied upon for Schedule 16B.

Schedule 16 discharge limits are to apply at the point "where the discharge first enters water" (see rule 12.C.1.1(d)). That term is uncertain, especially with regard to diffuse discharges.

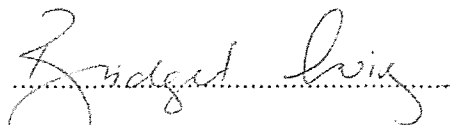
This term fails to provide for reasonable mixing or recognise the assimilative capacity of water. How discharges will be measured "at the point where the discharge first enters water" is unclear. Nor is it clear what submission sought that change or what evidence is relied upon for that compliance point.

The Decision has made some changes to the discharge limits within Schedule 16. The evidential basis for these changes is not described and so the effect of those changes is not known.

Relief sought

Cancel Plan Change 6A

8. Overall the Appellant seeks the following relief:
- (a) That PC6A be cancelled; and
 - (b) Cost of and incidental to this appeal; or
 - (c) Amendments to the Decision as set out in this appeal, or other such relief as may be necessary to address the Appellant's concerns; and
 - (d) Such further and consequential relief (including amendments of any provisions) as may be necessary to give effect to the relief sought in this appeal; and
 - (e) Cost of and incidental to this appeal;
9. I attach the following documents to this notice:
- (a) a copy of my submission (and further submission where relevant);
 - (b) a copy of the relevant decision;
 - (c) any other documents necessary for an adequate understanding of the appeal; and
 - (d) a list of names and addresses of persons to be served with a copy of this notice.



R-J Page / B Irving

Solicitor for the Appellant

31 May 2013

Date

Address for service

Of Appellant: Gallaway Cook Allan
Lawyers
Cnr High and Princes Streets
P O Box 143
Dunedin 9054

Telephone: (03) 477 7312

Fax: (03) 477 5564

Contact Person: Phil Page / Bridget Irving

Advice to Recipients of Copy of Notice of Appeal

1. How to become party to proceedings

You may be a party to the appeal if you made a 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 30 working days after this notice was lodged with the Environment Court. 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).

2. 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 (or part of the decision) appealed. These documents may be obtained, on request, from the Appellant.

3. Advice

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

Contact Details of Environment Court for Lodging Documents:

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Christchurch address of the Environment Court is:

99-101 Cambridge Terrace

Christchurch 8013

Its postal address is:

P O Box 2069

Christchurch 8140

And its telephone and fax numbers are:

Telephone: (03) 962 4170

Fax: (03) 962 4171