

**IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
ŌTEPOTI ROHE**

**CIV-2021-412-000089**

**UNDER** the Declaratory Judgments Act 1908

**IN THE MATTER** of an application under the Declaratory  
Judgment Act 1908

**BETWEEN** OTAGO REGIONAL COUNCIL  
**Plaintiff**

**AND** ROYAL FOREST AND BIRD PROTECTION  
SOCIETY OF NEW ZEALAND INCORPORATED  
**Defendant**

**Minute:** 21 September 2021

**Counsel:** A J Logan and T M Sefton for Plaintiff  
P Anderson for Defendant

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**MINUTE OF ASSOCIATE JUDGE PAULSEN  
of Telephone Conference on 21 September 2021**

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[1] This proceeding is brought by the Otago Regional Council (ORC) under the Declaratory Judgments Act 1908. The proceeding is subject to pt 18 of the High Court Rules 2016.

[2] The background to the proceeding and the issues arising are set out in counsels' joint memorandum of 3 September 2021. This minute should be read in conjunction with that memorandum.

[3] The file came before me to make directions as to service as well as urgent case management directions setting the case down for hearing. I heard from counsel in relation to these matters on 17 September 2021 and again today.

[4] The directions that I make are as follows:

- a) Service of this proceeding is to be effected on the defendant and all primary submitters on the proposed Otago Regional Policy Statement 2021 (PORPS) by:
  - i) sending to each person who gave an email address for service in a submission on the PORPS an email containing a link to a Microsoft OneDrive folder containing the statement of claim, notice of proceedings, affidavit of Anita Jayne Dawe and Court directions; or
  - ii) sending by courier to each person who did not provide an email address for service but did provide a postal or physical address for service in a submission on the PORPS to the postal or physical address provided by the submitter copies of the statement of claim, notice of proceeding and Court directions (but not affidavit of Anita Jayne Dawe) together with written advice that the affidavit of Anita Jayne Dawe is available on the plaintiff's website at which Ms Dawe's affidavit may be viewed and that a hard copy can be obtained from the plaintiff on request; the written advice must give the link to the website and an email address by which a hard copy of the affidavit of Ms Dawe can be requested.
- b) Public notice of the proceedings, and substituted service on all further submitters and primary submitters who have not provided an address for service in their submission, shall be effected as follows:
  - i) the plaintiff publishing immediately the public notice approved by the Court (**as attached**), statement of claim, Ms Dawe's affidavit and the Court's directions, on the PORPS page of its website;

- ii) the plaintiff publishing the public notice approved by the Court in the Otago Daily Times on two occasions, at least one week apart.
- c) The notice of proceeding is to be in a form reflecting these directions and approved by the Registrar.
- d) The Registrar is to set this proceeding down for hearing in the High Court at Dunedin on *8 and 9 February 2022*.
- e) The time for filing a statement of defence or notice of appearance and any affidavit in support is abridged for persons served in accordance with [4](a) and (b) above to 20 working days after service and otherwise to 10 working days after the second publication of the public notice in the Otago Daily Times.
- f) The hearing shall, subject to any further direction of the Court, be conducted on a submission only basis.
- g) Submissions, list of authorities and a chronology on behalf of the plaintiff and any person supporting the plaintiff shall be filed and served no later than 15 clear working days before the hearing.
- h) Submissions, list of authorities and chronology on behalf of the defendant and any person supporting the defendant shall be filed and served no later than 10 clear working days before the hearing.
- i) The plaintiff shall prepare, file and serve a common bundle and casebook at least two clear working days before the hearing.
- j) The Registrar is to set this case down for a pre-trial conference preferably before the trial Judge at least five working days prior to the hearing. The purpose of the pre-trial conference is to monitor compliance with the Court's directions and the readiness of the case

for hearing and make any special arrangements for the conduct of the hearing.

- k) Counsel shall file a preferably joint memorandum at least three working days prior to the pre-trial conference addressing the matters in j) above.
- l) Leave is reserved for any party to apply on notice for other or further directions.

[5] If these directions do not reflect Counsels' understanding of what was discussed at the teleconference, they should advise the Registrar immediately so that any necessary changes to the directions may be made forthwith.



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O G Paulsen  
Associate Judge

**Solicitors:**

Ross Dowling Marquet Griffin, Dunedin.

Royal Forest and Bird Protection Society of New Zealand Incorporated (P Anderson)

**NOTICE REQUIREMENT**

The solicitors on the record for the parties are promptly to provide a copy of this Minute to their clients (r 5.43).

## **Public Notice**

### **Proposed Otago Regional Policy Statement**

1. On 26 June 2021, the Otago Regional Council (ORC) publicly notified the proposed Otago Regional Policy Statement 2021 (PORPS).
2. In that public notice, ORC stated that it was satisfied that the whole of the PORPS 2021 is a freshwater planning instrument and therefore would be subject to the freshwater planning process set out in s 80A of the Resource Management Act 1991 (RMA).
3. Questions have been raised whether the PORPS is a freshwater planning instrument in terms of s 80A of the RMA.
4. ORC has brought proceedings in the High Court at Dunedin under the Declaratory Judgments Act 1908 to determine that issue.
5. The Court file number is CIV-2021-412-89.
6. The High Court has directed the public notice of the proceedings be given.
7. You can view the statement of claim, notice of proceeding, the Court's directions and affidavit of Anita Jayne Dawe in support on the ORC website [www.orc.govt.nz/rps](http://www.orc.govt.nz/rps).
8. Hard copies of the statement of claim, notice of proceeding, supporting affidavit and Court directions can be obtained on request by emailing [rps@orc.govt.nz](mailto:rps@orc.govt.nz).
9. The Court has directed that this notice is to be published on two occasions in the Otago Daily Times.
10. The second publication of this notice is on [insert date] 2021.

11. If you have not been personally served with the statement of claim and you wish to participate in this proceeding you must file in Court and serve on the ORC at the address given at the foot of this notice a statement of defence or notice of appearance and any affidavit on which you wish to rely, on or before [insert date] 2021 (that is five working days after the second publication of this notice) or obtain the leave of the Court to do so later. You must also serve those documents on any other person who has filed in the Court an address for service.
  
12. If a hearing of the proceeding is necessary, it will be held in this Court at Dunedin on **8 and 9 February 2022**.
  
13. Documents for service on ORC in relation to this matter may be –
  - a) posted to its solicitor at Savoy Building, 50 Princess Street, Dunedin;
  
  - b) posted to its solicitor at PO Box 1144; or
  
  - c) left for the solicitor at a document exchange for direction to DX YP80015;
  
  - d) transmitted to the solicitor by facsimile to (03) 477 6998; or
  
  - e) emailed to the solicitor at [alistair.logan@rossdowling.co.nz](mailto:alistair.logan@rossdowling.co.nz).