

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2021-412-000089

IN THE MATTER of application under the Declaratory Judgments Act
1908

BETWEEN **OTAGO REGIONAL COUNCIL**, a regional council
under Schedule 2 of the Local Government Act
2002

Plaintiff

AND **ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**,
an incorporated society having its registered office
at 205 Victoria St, Wellington

Defendant

STATEMENT OF CLAIM FOR DECLARATORY JUDGMENT

Dated: 3 September 2021

Next Event date:
Judicial officer:

ROSS DOWLING MARQUET GRIFFIN
Solicitors
Dunedin

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Solicitor Acting: A J Logan

STATEMENT OF CLAIM FOR DECLARATORY JUDGMENT

The Plaintiffs by their solicitor say:

Parties

1. The Plaintiff is the Otago Regional District (“Council”), a regional council under Schedule 2 of the Local Government Act 2002, with responsibilities pursuant to the Resource Management Act 1991 (“RMA”).
2. The Defendant is a duly incorporated society having its registered office at 205 Victoria Street, Wellington. The Plaintiff is New Zealand’s largest independent conservation organisation.

Facts upon which the application is based

3. The Plaintiff is a Regional Council:
 - a. with functions set out in s 30 of the RMA;
 - b. with responsibilities relating to the preparation of the Otago Regional Policy Statement under ss 59 – 63 of the RMA.
4. The plaintiff’s functions under s30 of the RMA include the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region.
5. Section 59 of the RMA provides that the purpose of regional policy statements is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.
6. Section 60 of the RMA provides that at all times for every region there will be a regional policy statement prepared by the regional council in the manner set out in Schedule 1.
7. Section 80A of the RMA provides for the freshwater planning process and requires that all freshwater planning instruments undergo the freshwater

planning process. A freshwater planning instrument includes a proposed regional policy statement that gives effect to any national policy statement for freshwater management or that relates to freshwater (other than for the purpose of giving effect to any national policy statement for freshwater management) ¹.

8. Section 80A(3) provides:
 - a. freshwater planning instruments are to be prepared in accordance with Subpart 4 of Part 5 and Part 4 of Schedule 1;
 - b. where the regional council is satisfied only part of a freshwater planning instrument relates to freshwater, the part that
 - i. relates to freshwater must be prepared Subpart 4 of Part 5 and Part 4 of Schedule 1;
 - ii. does not relate to freshwater must be prepared in accordance with Part 1 of Schedule 1 or, if applicable, subpart 5 of the RMA².

The Proposed Otago Regional Policy Statement 2021

9. On 26 June 2021 the Plaintiff notified the Proposed Otago Regional Policy Statement 2021 (the PORPS).
10. The PORPS has 5 parts:
 - a. Part 1 – Introduction and General Provisions;
 - b. Part 2 – Resource Management Overview;
 - c. Part 3 – Domains and Topics;
 - d. Part 4 – Evaluation and Monitoring; and
 - e. Part 5 – Appendices and Maps.
11. Part 3 includes 3 domains:
 - a. AIR – Air;

¹ S 80A(2)(b)

² S 80A(3)

- b. CE - Coastal Environment; and
 - c. LF - Land and Freshwater.
12. Part 3 includes 6 topics:
- a. ECO – Ecosystems and indigenous biodiversity;
 - b. EIT – Energy, infrastructure and transport;
 - c. HAZ – Hazards and risks;
 - d. HCV – Historical and cultural values;
 - e. NFL – Natural features and landscapes; and
 - f. UFD – Urban form and development.

Decision to subject whole of PORPS to freshwater planning process

13. The Plaintiff considered the PORPS at its meeting on 16 June 2021, when it considered a report titled “RPS Notification” (the RPS notification report). This report noted that section 80A(3) of the RMA requires Council to be satisfied that the relevant planning instrument, in this case the PORPS 2021, is a freshwater planning instrument. Staff considered it was a freshwater planning instrument in its entirety³.
14. The RPS notification report explained in summary that for some parts of the PORPS, this was straightforward but not for others. The report went on to provide staff advice that the PORPS 2021 as a whole should be considered a freshwater planning instrument for the following reasons:
- a. The underpinning philosophy of the RMA demands an integrated approach to the management of natural and physical resources.
 - b. Ki uta ki tai – from the mountains to the sea - is a progressive natural management planning approach which also reflects Te Ao Maori.
 - c. It is best planning practice to draft plans and policy statements in this way to properly recognise and plan for interdependencies, co-dependencies, and interconnectedness.

³ [15]

- d. The integrated management chapter of PORPS 2021 has been drafted to ensure that conflicts between competing demands for resources can be resolved and has adopted an approach of interconnectedness.

At the hearing the plaintiff will rely on the RPS notification report in its entirety.

15. The RPS notification report also indicated that links can be made between the freshwater chapter of the PORPS and other specific resource management chapters in PORPS namely management of air, the management of infrastructure and transport resources, and parts of the historical and cultural values, natural features and landscapes and urban form and development chapters.
16. The RPS notification report recommended, so far as relevant, that the Council:
 - a. Receives the report.
 - b. Affirms that the Proposed Otago Regional Policy Statement 2021 is a freshwater planning instrument as defined in Section 80A (2) of the Resource Management Act 1991.
17. The plaintiff accepted this recommendation (the decision) and resolved as far as relevant that the Council:
 - a. Receives this report.
 - b. Affirms that the Proposed Otago Regional Policy Statement 2021 is a freshwater planning instrument as defined in Section 80A (2) of the Resource Management Act 1991.
18. On 26 June 2021 the PORPS was notified by way of a “Public Notice of Proposed Otago Regional Policy Statement Using Freshwater Planning Process” (the public notice). The public notice recorded that the whole of the PORPS would be subject to the freshwater planning process.

***“Public Notice of Proposed Otago Regional Policy Statement
Using Freshwater Planning Process***

The Otago Regional Council has prepared the Proposed Otago Regional Policy Statement (PORPS 2021). The PORPS 2021 sets out how Council will achieve integrated management of Otago's natural and physical resources.

Freshwater Planning Instrument

The Otago Regional Council is satisfied that the whole of the PORPS 2021 is a freshwater planning instrument and therefore will be subject to the freshwater planning process set out in Section 80A of the Resource Management Act 1991.

The PORPS is considered to meet the requirements of Section 80(2)(a) and 80(2)(b) of the Resource Management Act 1991 because the Chapters of the PORPS are either giving effect to any national policy for freshwater management or relate to freshwater.

The single purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. That purpose can only be achieved through an integrated approach to the task of managing those resources. The PORPS 2021 has been prepared to achieve that outcome. To not have it considered a freshwater planning instrument would be to defeat that purpose.

...”

19. Submissions close at 3pm on 3 September 2021.
20. The plaintiff must prepare and notify a summary of decisions requested.
21. Further submissions may be made.
22. Section 80A(4) directs the plaintiff to submit the documents required by clause 37(1) of Schedule 1 of the RMA to the Chief Freshwater Commissioner no later than 6 months after it has publicly notified the freshwater planning instrument, that is by 26 December 2021.
23. Once the documents are submitted to the Chief Freshwater Commissioner, the rest of the freshwater planning process comprises in brief:

- a. the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:
- b. the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in Part 4 of Schedule 1:
- c. after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument, and:
 - i. the regional council may accept or reject any recommendation. However, —
 - ii. the regional council must provide reasons for rejecting a recommendation; and
 - iii. a person who made a submission on the freshwater planning instrument may make an appeal to the Environment Court in accordance with subpart 2 of Part 4 of Schedule 1.

DECLARATION SOUGHT

24. The Plaintiff seeks the following declarations:
 1. The Proposed Otago Regional Policy Statement 2021 is a freshwater planning instrument under section 80A(1)-(3) of the Resource Management Act 1991.
 2. The Otago Regional Council may continue to prepare the Proposed Otago Regional Policy Statement 2021 in its entirety under the freshwater planning process in Subpart 4 of Part 5 and Part 4 of Schedule 1 of the Resource Management Act 1991.
 3. In the alternative to (1) and (2), if the Court finds that Otago Regional Council may not continue to prepare part of the Proposed Otago Regional Policy Statement 2021 under the freshwater planning process in Subpart 4 of Part 5 and Part 4 of Schedule 1 of the Resource Management Act 1991, then:

- (a) That part must be prepared in accordance with Part 1 of Schedule 1 of the Resource Management Act 1991; and
- (b) That part must be removed from the freshwater planning process in Subpart 4 of Part 5 and Part 4 of Schedule 1 of the Resource Management Act 1991 and further prepared in accordance with Part 1 of Schedule 1 of the Resource Management Act 1991; and
- (c) That part need not be re-notified under Schedule 1 of the Resource Management Act 1991; and
- (d) The remainder of the Proposed Otago Regional Policy Statement 2021 must continue to be prepared, and need not be re-notified under the freshwater planning process in Subpart 4 of Part 5 and Part 4 of Schedule 1 of the Resource Management Act 1991.

4. Such or further order as the Court thinks fit.

This statement of claim is filed by **ALASTAIR JOHN LOGAN**, solicitor for the abovenamed Plaintiff, of the firm of Ross Dowling Marquet Griffin. The address for service of the abovenamed Plaintiff is the offices of Ross Dowling Marquet Griffin, Solicitors, Second Floor, Savoy Building, 50 Princes Street, Dunedin.

Documents for service on the abovenamed Plaintiff may be left at that address for service or may be -

- (a) Posted to the solicitor at PO Box 1144; or
- (b) Left for the solicitor at a document exchange for direction to DX YP80015; or
- (c) Transmitted to the solicitor by facsimile to (03) 477 6998; or
- (d) Emailed to the solicitor at alastair.logan@rossdowling.co.nz.