

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 (the Act)

Between **Otago Regional Council**

Plaintiff

And **Royal Forest and Bird Protection Society of New Zealand Incorporated**

Defendant

And **Central Otago District Council**

Third Party

Affidavit of Ann Rodgers for Central Otago District Council

3 December 2021

Central Otago District Council solicitors:

Jayne Macdonald
Mactodd Lawyers
Level 3, 11-17 Church Street, Queenstown 9300
P O Box 653, Queenstown 9348
p + 64 3 4410127
jmacdonald@mactodd.co.nz

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I, **ANN RODGERS**, Principal Policy Planner, of Alexandra **swear**:

Introduction and background

- 1 I am currently employed as Principal Policy Planner at Central Otago District Council (**CODC**).
- 2 I hold a Master of Regional and Resource Planning (MRRP) from Otago University. I am a Member of the New Zealand Planning Institute.
- 3 I have worked in New Zealand as a planner, planning manager and policy professional for central government agency, private consultancy and local authorities, 26 for years, in all aspects of Resource Management Act (**RMA**) planning, growth planning, community engagement and spatial planning processes.
- 4 My planning experience includes both resource management policy development and implementation. I have developed and drafted district plans, led spatial planning processes, prepared national and regional planning and policy submissions and processed resource consent applications.
- 5 I have been employed by CODC since December 2020 in my current position but have been employed by CODC managing the planning team for a total of sixteen years since 2003. I have also worked for Mackenzie District Council as planning manager and Dunedin City Council as policy planner working on the proposed Dunedin City District Plan (2GP). Prior to this, I worked as a planner for Transit New Zealand (now Waka Kotahi) and as a resource management consultant for MWH and Works Consultancy.
- 6 I led the preparation of CODC's submission on the Proposed Otago Regional Policy Statement (**PORPS**).
- 7 I have read the High Court Code of Conduct for Expert Witnesses. My evidence complies with the Code in all respects and the opinions herein are within my area of expertise.
- 8 In this affidavit I:
 - (a) Discuss the purpose of regional policy statements;
 - (b) Discuss the freshwater planning provisions in the Resource Management Act (RMA);
 - (c) Provide an overview of the key issues covered in CODC's submission on the PORPS;
 - (d) Discuss the impact on CODC of treating the entire PORPS as a freshwater planning instrument; and
 - (e) Identify those chapters of the PORPS that I consider should be treated as freshwater planning instruments and those that should not.



Regional Policy Statements & Freshwater Planning Process

- 9 In preparing my affidavit, I have had the benefit of reading the affidavits filed by Ms van der Spek for Waitaki District Council and Dr Johnson for Dunedin City Council.
- 10 I agree with their respective discussions of the place of Regional Policy Statements in the hierarchy of RMA planning instruments and the mechanics of the Freshwater planning process.
- 11 The establishment of a separate streamlined pathway for freshwater planning instruments indicates a clear intention that planning instruments that do not relate to freshwater should be processed according to the existing provisions in the RMA.

CODC's submission on the PORPS

- 12 I have summarised below the key issues covered in CODC's submission on the PORPS.

Mana whenua

- 13 CODC supports partnering with Kāi Tahu as anticipated in the provisions of the PORPS.
- 14 CODC raised concerns regarding the timeframes and level of resourcing required to facilitate the partnership with Kāi Tahu involvement given the current pressures associated with responding to resource management and water reforms and the uncertainty around those reforms.

Cross boundary management

- 15 CODC Supports the management of natural and physical resources in a cross jurisdictional way where possible reflecting that natural and physical resources are not confined to a regional or district boundary.

Climate change

- 16 CODC Supports communities understanding and considering climate change effects to enable sustainable future planning for growth and development.
- 17 CODC supports the principle of communities having established responses for adapting to the impacts of climate change but have some concerns that the timeframes may not be achievable for some communities who may not have the resources to understand make the changes necessary. Concerns raised regarding the financial implications on communities.
- 18 CODC considers the aspirational net-zero carbon emissions by 2050 to be appropriate but is concerned it may not be achievable as there will likely be

financial implications associated with responses necessary to achieve the timeframes that may not be able to be met by communities.

Air Quality

- 19 CODC has towns that are identified as having poor ambient air quality. Central Otago experiences some of the coldest temperatures in the country during winter months requiring significant heating to maintain a healthy home environment. Electricity is expensive and subject to outages.
- 20 CODC is concerned that the timing for phasing out of non-complying solid fuel wood-burners has the potential to adversely affect the health of communities who may not be able to replace their heating or have an ability to fund the on-going costs of any replacements.
- 21 CODC is concerned that residents not having access to affordable heating options during winter months has the potential to have a significant impact on the health and wellbeing of the community.
- 22 CODC is seeking clarity that a switch to low emission, compliant heating appliances (wood burners), will have the desired impact on the ambient air quality and welcomes the opportunity to understand whether the use of low emission wood-burners and/or electricity will have the necessary effect on the ambient air quality.
- 23 CODC supports in principle a review of the airshed areas considering development areas and weather patterns, provided the review is undertaken in consultation with territorial authorities and other stakeholders.
- 24 CODC has concerns regarding the timeframes set for the review and the potential for more properties being included, the prospect of residents not having access to affordable heating options during winter months will have a significant impact on the health and wellbeing of the community.
- 25 CODC supports the use of a variety of mechanisms to improve ambient air quality through education; raising awareness; supporting the upgrade of existing housing stock; lobbying of energy providers to ensure reliability of supply and providing financial support through subsidies available for any necessary upgrades that may result in a move away from solid fuel burners.

Land and Soil

- 26 CODC indicated its support for a number of objectives in the PORPS relating to land and soil including: safeguarding the life-supporting capacity of Otago's soil, and productive capacity of highly productive land for primary production; maintaining soil quality; integrated land management and maintaining soil values.
- 27 CODC submission notes that in Central Otago there is little land categorised as being Highly Productive in the context of LUC 1-3. Despite this the land is very productive (i.e., vineyards, horticulture, and pastoral farming).

- 28 CODC noted in its submission that productivity varies depending on the land use activity, focusing on productive capacity rather than LUC 1-3.
- 29 CODC request that mapping of highly productive land should be done at a regional level.
- 30 CODC supports support policy that provides for and enables public access to lakes and rivers.

Ecosystems and Indigenous Biodiversity

- 31 CODC indicated its support of an integrated and co-ordinated approach to managing ecosystems and indigenous biodiversity and the use of statutory and non-statutory approaches to their management.
- 32 CODC supports the identification of natural wetlands for protection is supported and restoration of natural wetlands, but raised concerns around the availability of suitably qualified and experienced persons financial resources to undertake the work and the timeframes may not be achievable in terms of available resources.

Transport

- 33 CODC indicated its support in principle to less reliance of fossil fuels for transport but the viability of alternative forms of transport may be challenging for some communities.
- 34 CODC supports in principle providing for walking and cycling connectivity and active transport options in the District Plan, reducing dependence on motor vehicles, however for smaller communities' public transport is not currently a viable option.
- 35 CODC supported providing for increased opportunities for passive transport including requiring new developments to specifically provide for connectivity and opportunities for walking and cycling within new developments.
- 36 CODC supports provision of safe alternatives for Support in principal but not sure how a viable a public transport system might be or how it might work in parts of Central Otago, given the population base. Also supports ensuring safe active transport routes.
- 37 CODC supports in principle District Plans requiring integration of the transport system and including performance standards that minimise vehicle use and provide for accessibility needs of communities.
- 38 CODC notes in its submission that there is currently no public transport in the Central Otago District, and in the short to medium term it is unlikely that an effective and efficient system will be in place. The requirement that high trip generating activities integrate with public transport services that don't exist cannot be met.

Hazards and Risks

- 39 CODC seeks clarity regarding what a 'tolerable level' means in the context of hazards? How will that be measured and what are the criteria for determining what might be tolerable?
- 40 CODC supports in principle mapping on area subject to natural hazard risks noting that this should be undertaken regionally with hazard identification being at a land use activity level, reflecting actual risks to communities.
- 41 CODC supports in principle the identification of hazards in district plans, noting that the information should be produced by the Otago Regional Council and adjoining regional authorities and made available to District Councils for inclusion in District Plans.

Heritage and Cultural Values

- 42 CODC supports inclusions of methods to manage adverse effects on wāhi tupuna and accidental discovery protocols in District Plans and collaboration with Kāi Tahu in all decision making concerning the protection of wāhi tupuna.
- 43 CODC supports in its submission the recognition and preservation of historic heritage for future generations through regulatory and non-regulatory methods.

Natural Features

- 44 CODC supports in principle the identification of outstanding natural features and landscapes and the assessment of the carrying capacity in terms of use or development.

Urban form and development

- 45 CODC supports the use of strategic planning processes to plan for future growth and the objective of providing for development of urban areas that provides for growth, improves housing choice and availability, allows for businesses to meet the needs of communities, delivers good urban design outcomes, minimises conflict between incompatible activities and manages risks associated with natural hazards.
- 46 CODC supports managing spatial growth by consolidation of towns and urban development that will assist by making active transport options a more attractive option.

Treating the entire PORPS as a Freshwater Planning Instrument

- 47 The majority of CODC's areas of interest on the PORPS focused on issues other than freshwater management. These included submission points on the following chapters as outlined in the previous section of this affidavit:



- Mana whenua
- Air Quality
- Land and soil
- Ecosystems and indigenous biodiversity
- Transport
- Historical and cultural values
- Natural features and landscapes
- Natural Hazards
- Urban Form and Development

- 48 I share the concerns of my colleagues, Ms van der Spek and Dr Johnson that the impact of treating the entire PORPS as a freshwater planning instrument for CODC is that the PORPS would be heard, and decisions be made by commissioners with freshwater expertise and there are risks that the final RPS may continue to give inadequate attention to the NPS-UD and issues related to growth.
- 49 Given that many of the matters raised by CODC do not relate to freshwater, or only relate to freshwater very indirectly, I consider that having these matters considered by a freshwater hearing panel would not be a fair process for CODC and would be unlikely to deliver the quality of decision-making that CODC expects on non-freshwater matters.
- 50 Further, CODC's appeal rights would be severely limited. Under the freshwater planning instrument process, rather than following the more typical RMA process having decisions on submissions, and then rights of appeal to the Environment Court on their merits, CODC could only appeal to the High Court on questions of law.

Appropriate treatment of the PORPS

- 51 I consider that the following treatment of the PORPS is in keeping with the intention of section 80A of the RMA:
- (a) The freshwater provisions of the PORPS listed below should continue to be prepared under the freshwater planning process, and need not be re-notified:
 - (i) Integrated management
 - (ii) Land and freshwater - Te Mana o te Wai, visions and management, freshwater; and
 - (b) The following non-freshwater provisions be removed from the freshwater planning process and, be further prepared in accordance with Part 1 of Schedule 1 of the RMA, and need not be re-notified:
 - (i) Mana whenua
 - (ii) Significant resource management issues for the region
 - (iii) Resource management issues of significance to iwi authorities in the region




- (iv) Air
- (v) Coastal environment
- (vi) Land and freshwater – land and soil
- (vii) Ecosystems and indigenous biodiversity
- (viii) Energy, infrastructure and transport
- (ix) Hazards and risks
- (x) Transport
- (xi) Historical and Cultural values
- (xii) Natural features and landscapes
- (xiii) Urban form and development

Conclusion

- 52 I consider that the topic areas highlighted in paragraph 52 (b) do not relate to or engage with freshwater or freshwater management. The non-freshwater topic areas cover the majority of CODC's submission points to the PORPS.
- 53 I consider that the freshwater planning commissioners may not have the expertise required to consider and make informed decisions on the non-freshwater related matters raised by CODC (and other submitters) in its submission to the PORPS.
- 54 In my opinion, treating the entire PORPS as a freshwater planning instrument would not deliver a fair process or the quality of decision-making for a Regional Policy Statement that CODC would expect.

Sworn at Alexandra
this 3 day of December 2021
before me:



Kirstie Ward
Deputy Registrar
District Court

A Solicitor of the High Court of New Zealand