

**BEFORE THE ENVIRONMENT COURT
AT CHIRSTCHURCH**

ENV-2016-CHC-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First
Schedule of the Act in relation to the Proposed
Otago Regional Policy Statement

BETWEEN

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

Appellant

AND

OTAGO REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

9 December 2016

Royal Forest and Bird Protection Society of New Zealand Inc.
PO Box 2516
Christchurch 8140
Ph 03 9405524
Solicitor acting: Peter Anderson/Sally Gepp

TO: The Registrar
Environment Court
CHRISTCHURCH

INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird') appeals against part of the decisions of Otago Regional Council ('Respondent') on the Proposed Otago Regional Policy Statement ('PRPS').
2. Forest & Bird made a submission and further submission on the PRPS.
3. Forest & Bird is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 ('RMA').
4. Forest & Bird received notice of the decision on 3 October 2016.¹ The Environment Court gave a waiver that allowed appeals to be lodged by 9 December 2016.
5. The decision was made by the Respondent.
6. Forest & Bird appeals part of the Respondent's decision.
7. Forest & Bird is willing to participate in mediation.

PARTS OF THE DECISION BEING APPEALED

8. The parts of the decision being appealed are those relating to:
 - a. Part B Chapters 1, 3, 4 and 5²;
 - b. Part C Implementation Method 4;
 - c. Part D Schedules and Schedule 4; and

¹ Received 3 October 2016, Letter dated 29 September 2016. Letter reference number: A490091.

² Specifically: Objective 1.1, Policies 3.1.5, 3.1.9, 3.2.2, 4.3.3, 5.3.2, 5.4.6 and failure to include other policies necessary to give effect to the NZCPS and NPSFM.

- d. Glossary.

REASONS FOR THE APPEAL

General reasons

9. Forest & Bird says the PRPS:
 - a. Does not promote the sustainable management of natural and physical resources under s5 RMA;
 - b. Does not adequately recognise and provide for matters of national importance under s6 RMA, in particular s6(a), s6(b) and s6(c);
 - c. Does not have adequate regard to the matters in s7 RMA, in particular s7(b), s7(c), s7(d), and s7(f);
 - d. Represents a failure of the Respondent to fulfil its functions under s30 RMA;
 - e. Does not achieve integrated management of the natural and physical resources of the Otago region as required under s59 RMA;
 - f. Does not give effect to the National Policy Statement for Fresh Water Management 2014 ('NPSFM') or the New Zealand Coastal Policy Statement 2010 ('NZCPS') as required under s62(3) RMA; and
 - g. Does not provide for policies which are the most appropriate way to achieve the PRPS's objectives in terms of their efficiency and effectiveness and therefore is not appropriate in terms of s32 RMA.

Specific reasons

10. Without detracting from the generality of the above the following, specific reasons are advanced:

Part B Chapter 1 Resource management in Otago is integrated

11. The new objective 1.1 which appears to have been taken from Objective 2.3 does not capture the necessity for integrated management to avoid adverse effects on the natural environment. This creates an inconsistency with the sustainable management purpose under Part 2 of the RMA.
12. Forest & Bird seeks that the objective is amended to include recognition of the natural environment.

Part B Chapter 3 Otago has high quality natural resources and ecosystems

Fresh water

13. Policy 3.1.1 requires fresh water to be managed to achieve a list of outcomes. Forest & Bird in our original submission sought that a number of further policies that address the issues relating to the degradation and over allocation of freshwater resources, be included in the plan. However none of these policies have been accepted in the decisions version of the PRPS. The omission to include policies and provisions in the plan that safeguard the life supporting capacity of freshwater creates an inconsistency with s5 RMA and means that the plan does not give effect to Objectives A1 and B1 of the NPSFM.

Coastal water

14. Policy 3.1.5 b) requires maintenance and enhancement of the range of habitats provided by the coastal marine area and includes specific reference to the habitat of trout and salmon. This specific reference promotes habitat for trout and salmon above indigenous fish species. Expanding trout and salmon habitat is not compatible with enhancement of habitat for indigenous fish species. Section 7 (h) of the RMA requires the protection but not the expansion of the habitat

of trout and salmon. Trout are a significant threat to indigenous fish thus their habitat should not be expanded.

Ecosystems and indigenous biological diversity

15. The old policy 2.1.6 was relocated and incorporated into new policy 3.1.9. The new policy which is to “manage ecosystems and indigenous biological diversity in terrestrial freshwater and marine environments to achieve all of the following” has less weight than the old policy as it no longer includes what was c) “buffer or link existing ecosystems”, which has been relocated to policy 3.1.12. Policy 3.1.12 is to “encourage, facilitate and support activities which contribute to enhancing the natural environment by one of the following”. Ecosystem buffering and linking existing habitats of indigenous species where opportunities exist, needs to be provided for in managing ecosystems and biological diversity as part of a policy which provides direction to rules and consent processes, which Policy 12 does not.

Identifying significant vegetation and habitats

16. Policy 3.2.1 requires that significant and highly valued natural resources are identified using criteria out in Schedule 4, which has been amended with the addition of a note stating that this schedule also applies to indigenous vegetation and habitat of indigenous fauna in coastal and marine environments. The criteria in schedule 4 have been developed for terrestrial ecosystems and are not applicable for coastal and marine environments which extend out to the outer limits of the territorial sea.

Managing significant vegetation and habitats

17. The old policy 2.2.2 was relocated and incorporated into new policy 3.2.2. New policy 3.2.2 a) needs to include reference to the values of vulnerability and irreplaceability as these may not be values attributed

to the significance of a site. New policy 3.2.2 under f) includes reference to pests however the language is too general and needs to be more directive, merely 'controlling' the adverse effects of pest species is not enough. The adverse effects of pests species need to be avoided which includes preventing their introduction and their spread.

Relief sought

18. Forest & Bird seeks that:

a. Policy 3.1.1 be amended as follows:

b) ~~Maintain or enhance the range and extent of habitats provided by fresh water;,,including the habitat of trout and salmon~~

b. Policy 3.1.1 have the following added:

n) Ensure all water bodies are safe for human health and contact recreation;

o) Halt the decline of indigenous species;

p) Phase out the over allocation of freshwater that adversely affects water quality and in stream flows by 2035;

q) Set limits and targets to achieve ecological health for all water bodies.

c. Policy 3.1.5 be amended as follows:

b) ~~Maintain or enhance~~ Retain the full range of habitats and indigenous species in provided by the coastal marine area; and, including the habitat of trout and salmon;

d. Policy 3.1.9 have the following added:

h) Buffer or link existing ecosystems.

e. Policy 3.2.1 be amended as follows:

Identify areas and values of significant and indigenous vegetation and significant habitats of indigenous fauna, using the attributes detailed in Schedule 4 for terrestrial areas and Schedule 4a for coastal marine areas.

- f. Policy 3.2.2 be amended as follows:
 - a) Avoiding adverse effects on significant biodiversity that is vulnerable or irreplaceable and those values which contribute to the area or habitat being significant; and
 - f) ~~Controlling~~ Avoiding the adverse effects of pest species, preventing their introduction and reducing their spread.

Part B Chapter 5 People are able to use and enjoy Otago's natural and built environment

Plantation forestry in dry catchments

19. Old policy 4.3.2 has been amended and relocated into new policy 5.3.2. The new policy no longer contains the requirement to manage land use change in dry catchments. Forest & Bird submitted in support of the original wording in the old policy 4.3.2 which recognised the need to manage land to protect water yield. Maintaining the health of these ecosystems is important for maintaining and enhancing water yields. Forest & Bird considers it necessary for the PRPS to specifically refer to the management of these areas.

Relief sought

20. Forest & Bird seeks that Policy 5.3.2 be amended to its original form and wording as it was under old policy 4.3.2, as follows:

Policy 5.3.2 ~~Plantation forestry in dry catchments~~ Managing land use change in dry catchments

~~In dry catchments avoid plantation forestry activities that would result in significant, including cumulative, reductions in water yield.~~

~~Method 2: Regional, City and District Council Relationships~~

~~Method 2.1, Method 2.2~~

~~Method 3: Regional Plans~~

~~Method 3.1.15~~

~~Method 5: Research, Monitoring and Reporting~~

~~Method 5.1.3 b~~

Manage land use change in dry catchments, to avoid any significant reduction in water yield, by:

a) Restricting any extension of forestry activities within those catchments that would result in a significant reduction in water yield, including cumulative reductions; and

b) Minimising the conversion of tussock grasslands to species which are less able to capture and hold precipitation.

Method 2: Regional, City and District Council Relationships

Method 4: City and District Plans

Method 6: Research, Monitoring and Reporting

Offsetting for indigenous biological diversity

21. Policy 5.4.6 provides for the use of biodiversity offsetting to address residual adverse effects. It sets out 5 specific criteria³ to which an offset must adhere and aligning in part with best practise. However the criteria are minimal and do not capture the full scope of best practice developed by the Department of Conservation. Biodiversity maintenance is not achieved if biodiversity that is lost is not appropriately replaced by enhancement measures under a biodiversity offset. Offsetting seeks to counter balance loss of biodiversity in one location with gains elsewhere.

³ Policy 5.4.6.b – f.

This needs to include consideration of the types of biodiversity and the specific values being affected. It is important that all the elements of best practice biodiversity offsetting are fulfilled to prevent perverse outcomes and ensure biodiversity is protected and maintained.

Relief sought

22. Forest & Bird seeks **Appendix A** to this appeal be included as an appendix to the RPS and that the following be added to Policy 5.4.6 by adding a new clause as follows:

(g) by following the principles set out in Appendix A

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Part C: Implementation

Methods

23. Old Method 4.1.4 provided direction for district plans to implement policy 5.3.2 land use in dry catchments which included a policy of minimising the conversion of tussock grasslands to species which are less able to capture and hold precipitation. We sought the retention of this policy and its implementation method however the policy has been amended to replace 'land use' with 'plantation forestry' and relocated to Method 3.1.15 Regional Plans. The new policy which only relates to forestry will only be covered in regional plans and the importance of minimising the conversion of tussock grasslands to species which are less able to capture and hold precipitation is no longer considered, to be either a Regional or District Plan matter.

24. Forest & Bird sought in our original submission that a new method be included in the PRPS that includes provisions for vegetation clearance. This has not been adopted in the decisions version of the PRPS. As it is unlikely that all areas of significant indigenous vegetation and significant habitats

of indigenous fauna will be identified at one time, and many may be missed, due to difficulty of gaining access, lack of resourcing, or simply being overlooked, and as schedules inevitably go out of date, it is important that there are mechanisms to identify sites that meet the criteria at the time of resource consents that involve adverse effects on vegetation and habitats.

25. Forest & Bird seeks that:

a. Method 3.1.15 concerning Regional Plans be amended as follows:

Policy 5.3.2 by including provisions managing ~~plantation forestry~~ land use in dry catchments where this will impact on water yield.

b. Add a new method to Method 4 City and District Plans to reinsert old method 4.1.4 to implement policy 5.3.2,(as amended to reinstate old policy 4.3.2), as follows:

District Plans will implement Policy 5.3.2 (as amended by F&B above) by including provisions managing land use in dry catchments where this will impact on water yield.

c. Methods be added to the PRPS that specify that City and District plans will set objectives, policies and methods to implement policies 3.1.9 – ecosystems and indigenous biological diversity and 3.2.2 – managing significant vegetation and habitats, by including provisions to:

a) Manage indigenous vegetation clearance using case by case assessments to determine whether an area of indigenous vegetation or habitat is significant and warrants protection

b) Include appropriate regulatory methods that control the clearance or modification of, indigenous vegetation and habitats of indigenous fauna.

- c) Require ecological assessments to accompany a resource management proposal or plan for an activity or development that may affect areas of indigenous vegetation and habitats of indigenous fauna.

Part D Schedules & Appendices

Schedule 4 Criteria for the identification of areas significant indigenous vegetation and habitat of indigenous fauna

26. Schedule 4 of the decisions version of the PRPS lists the criteria for the identification of areas of significant indigenous vegetation and habitat of indigenous fauna. The criteria include recognition of degraded habitats. This we support. However under number 3 – Diversity, Forest & Bird sought in our original submission that indigenous taxa be included in the wording of diversity, which has not been included in the decisions version of the PRPS. Including the word taxa would provide a more adequate description of the representativeness of indigenous fauna.

27. Forest and Bird seeks that:

- a. Schedule 4 be amended as follows:

5. Diversity

~~An area that supports a high diversity of indigenous vegetation and habitats of indigenous fauna or consists of a diverse range or sequence of interrelated vegetation and habitat types ecosystem types, indigenous taxa or has changes in species composition reflecting the existence of diverse natural features or gradients. The degree of diversity should be referenced to specific communities i.e. levels of diversity varying significantly between communities and habitat types.~~

- b. A new schedule 4a for marine criteria be included in the plan for the identification of significant ecological areas in the coastal marine area as set out in **Appendix B**.

Glossary

28. Forest & Bird sought in our original submission that a definition for Biodiversity Offsets be provided for in the PRPS. Biodiversity Offsets is a specific terminology that requires definition.
29. Forest & Bird seeks that the definition of Biodiversity Offsets be included in the PRPS as follows:

Biodiversity Offsets

Measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from project development after appropriate avoidance, minimisation, remediation and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground.

No net loss

Means no net loss with respect to:

- Species abundance, population structure, and composition (e.g. individual species or species groups)
- Habitat structure (e.g. vegetation tiers, vegetation pattern)
- Ecosystem function (e.g. nutrient cycling rates)
- People's use of and cultural values associated with biodiversity e.g. particularly valued habitats or species).

No net loss, in essence, refers to the point at which biodiversity gains from targeted biodiversity management activities match the

losses of biodiversity due to the impacts of a specific development project, so that there is no net reduction in the type, amount and condition (quality) of biodiversity. A net gain means that biodiversity gains exceed a specific set of losses associated with a development.

RELIEF

30. Forest & Bird seeks:
- a. The relief or alternative relief set out in this notice of appeal.
 - b. Such consequential or further relief as may be necessary to fully address the reasons for appeal and give effect to the relief sought; and
 - c. Costs.

APPENDIX

31. The following documents are **attached** to this notice:
- a. Biodiversity offsetting criteria (**Appendix A**);
 - b. Marine significance criteria (**Appendix B**);
 - c. Copy of Forest & Bird's submission (**Appendix C**);
 - d. Copy of Forest & Bird's further submission (**Appendix D**);
 - e. Copy of the relevant parts of the Respondent's decision: text and report (**Appendix E**); and
 - f. List of names and addresses of persons to be served with a copy of this notice (**Appendix F**).

Dated 9 December 2016

A handwritten signature in black ink, appearing to read "P Anderson", is centered on a light-colored rectangular background.

Peter Anderson
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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.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 or) the decision (or part of 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 Auckland, Wellington, or Christchurch.