

**IN THE MATTER** of the Resource Management Act 1991 ('the Act')  
**AND**  
**IN THE MATTER** of an appeal under Clause 14(1) of First Schedule to the Act

**BETWEEN** **RAYONIER NEW ZEALAND LTD**  
Appellant

**AND** **OTAGO REGIONAL COUNCIL**  
Respondent

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**NOTICE OF APPEAL**  
**ON DECISION ON PROPOSED POLICY STATEMENT**

Date: 8 December 2016

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**CSF-121599-21-6-V4**

**Adderley Head**  
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**TO:** The Registrar  
Environment Court  
DX: WX11113  
Christchurch

**Name of Appellant and details of decision**

- 1 Rayonier New Zealand Ltd (Rayonier).
- 2 This appeal is against a decision of the Otago Regional Council on the Proposed Otago Regional Policy Statement (the PRPS).
- 3 The Appellant is a person who made a submission on the PRPS.

**Trade Competition**

- 4 The Appellant is not a trade competitor for the purposes of section 308D of the Resource management Act.

**Date of receipt of decision**

- 5 The Appellant received notice of the decision on or about 1 October 2016.

**Name of decision maker**

- 6 The decision was made by the Otago Regional Council (the Council)

**Decision (or part) being appealed**

- 7 Rayonier is appealing against that part of the decision relating to Policy 5.3.2. entitled "*Plantation forestry in dry catchments*".
- 8 The notified version of Policy 5.3.2 was entitled "*Managing land use change in dry catchments*". Rayonier lodged a submission opposing this policy entirely as well as seeking amendment to the wording of the policy by removing its focus on plantation forestry.
- 9 The decision refused Rayonier's submission and instead substantially reworded Policy 5.3.2 so that it is even more focussed on the plantation forestry as follows (decision version of policy underlined and notified version deleted using strike through, as shown in Appendix 2 of the Council's decision)-

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

~~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."~~

### Reasons for the appeal

- 10 The reasons for the appeal are as follows-
- 10.1 The wording of key terms referred to in Policy 5.3.2 is unduly vague and uncertain. This create ambiguity and uncertainty for users of the PRPS regarding the correct meaning and interpretation of the document, and consequently makes it difficult for the Appellant to understand the scope and effect of this policy. In particular, the policy refers to "dry catchments", "plantation forestry activities" and "water yield" however none of these terms are defined in the glossary of the PRPS. Further, the section 32 report states that the policy does not impact on existing forestry plantations<sup>1</sup> however this distinction is not apparent from the words used in the policy or elsewhere in the PRPS
- 10.2 The decision to replace the words "*To manage land use change*" in the notified version of the policy with "*avoid*" in the decision version represents a major change to the stringency of the policy which is unnecessary and unjustified. This amendment goes further than anticipated by the Section 32AA Report attached as Appendix 1 to the decision, which refers to adding the term "avoid" to provisions which require adverse effects to be remedied or mitigated,<sup>2</sup> because the word avoid has been inserted without the inclusion of the words "remedy or mitigate". Further, the effect of this change in combination with the ambiguity in meaning of the above mentioned key terms creates uncertainty about the potential impact and cost of the policy on the Appellant's forestry investment.
- 10.3 The singular focus on plantation forestry activities is unwarranted and unjustified. Land use activities such as regenerating native vegetation, wilding pines, woody regrowth such as broom and gorse, and willows planted alongside lakes, rivers and streams can affect flows in surface water bodies.
- 10.4 The changes made by the decision are outside scope of the submissions filed on Policy 5.3.2.
- 10.5 The changes made by the decision are not supported by a robust cost/benefit analysis. When properly considered, the costs substantially outweigh the benefits of the decision.

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<sup>1</sup> Section 32 Report at page 59

<sup>2</sup> Section 32AA Report at pages 9 and 10

- 10.6 The policy is incorrectly located under Objective 5.3 – “Sufficient land is managed and protected for economic production” – when it should properly be located under Objective 5.4 – “Adverse effects of using and enjoying Otago’s natural and physical resources are minimised” because the primary effect of woody vegetation plantings on the most sensitive parts of flow sensitive catchments is reduced flow of water in surface water bodies during the driest parts of the summer.
- 10.7 Overall, the amendments made to Policy 5.3.2 are contrary to the Appellant’s submission. The decision version of the policy is substantially more stringent than the notified version and now focuses exclusively on plantation forestry. The wording of key terms in the policy are so vague and uncertain that it is difficult for the Appellant to understand the potential scope and effect of the policy on its current and future plantation forestry activities. Other foresters and landowners with an interest in plantation forestry as a potential land use activity will be similarly affected. The decision fails to have regard to the significant environmental, economic and social benefits of the plantation forestry sector and will potentially have a chilling effect on future investment in plantation forestry in the hill country of the Otago region.

### **Relief sought**

- 11 The Appellant seeks the following relief:
- 11.1 That the decision of the Council is set aside and policy 5.3.2 is deleted from the PRPS;
- 11.2 In the alternative to the above, that policy 5.3.2 is relocated under Objective 5.4 and amended to read as follows-
- Manage the new planting or spread of exotic vegetation species in catchments where, either singularly or cumulatively, those species are likely to have significant adverse effects on the flow of water in surface water bodies.*
- 11.3 The Appellant seeks such additional or consequential amendment to the policy 5.3.2 and any related provisions as may be required to give effect to the intent of this appeal.

### **Mediation**

- 12 Pursuant to section 268 of the Act the Appellant considers that the topics of this appeal are amendable to mediation and seeks the assistance of an Environment Court appointed Commissioner in that regard.

**Attached documents**

- 13 The following documents are attached to this notice of appeal:
- 13.1 A copy of the *submission* made by the Appellant.
- 13.2 A copy of the relevant *part of the decision*.
- 13.3 A list of names and addresses of persons to be served with a copy of this notice.
- 14 Recipients of this notice may obtain a copy of the above documents, on request, from the Appellant.

**DATED** at Christchurch this 8<sup>th</sup> day of December 2016



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Chris Fowler  
Counsel for the Appellant

**ADDRESS FOR SERVICE OF THE APPELLANTS:**

This Notice of Appeal is issued by Chris Fowler, Solicitor for the abovenamed Appellant of the firm of Adderley Head. The address for service of the abovenamed Appellant is at the offices of Adderley Head, 15 Worcester Boulevard, Christchurch 8013.

Documents for service on the abovenamed Appellant may be left at the address for service or may be:

- (a) Posted to the Solicitor at PO Box 16, Christchurch 8140; or
- (b) Faxed to (03) 353 1340.

## ADVICE TO RECIPIENTS OF NOTICE

### How to become party to proceedings

You may be a party to the appeal if you made a submission or further 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 15 working days after the period for lodging a notice of appeal ends.

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 or inquiry

The copy of this notice served on you does not attach a copy of the Appellant's submission or the part of the decision. These documents may be obtained, on request, from the Appellants.

### Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department of 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:

Environment Court  
DX:WX11113  
Christchurch

[Please note: You can use a normal post office box and stamped envelopes to send to a DX address]

Telephone: (03) 365 0905 or (03) 353 8546  
Fax: (03) 365 1740