
Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under Clause 14(1), First Schedule of the RMA in relation to the proposed Otago Regional Policy Statement (pORPS)
Between	Darby Planning LP Appellant
And	Otago Regional Council Respondent

Notice of appeal

09th December 2016

Appellant's solicitors:

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To: The Registrar
Environment Court
Christchurch

- 1 Darby Planning LP (**DPL**) appeals part of the decisions of the Otago Regional Council (**ORC**) on the proposed Otago Regional Policy Statement (**pORPS**).
- 2 DPL made a submission¹ (**Submission**) and further submission² on the pORPS.
- 3 DPL is not a trade competitor for the purposes of section 308D of the RMA.
- 4 DPL received notice of the decisions on 1 October 2016.
- 5 The decisions were made by the ORC.

Decisions appealed

- 6 The following parts of the pORPS are references to the ORC 'Decision Version,' unless otherwise stated. Footnotes are included where references in the Decision Version have changed from the pORPS as notified.
- 7 The parts of the decisions being appealed, reasons for the appeal and relief sought are grouped together by topic where possible.

Provisions appealed, reasons, and relief

- 8 **Fresh water (Policies 3.1.1, 3.1.2, and 3.2.14³)**
 - (a) The pORPS applies too high a test for protection of the migratory patterns of freshwater species and important recreation values. The requirement to 'recognise and provide for' may be seen as more of an onerous requirement than 'maintain'; and
 - (b) The pORPS applies too high a test for protection of outstanding water bodies and wetlands. DPL considers that limiting protection to the 'significant' values of outstanding water bodies and wetlands is the correct interpretation of Objective A2 and Objective B4 of the National Policy Statement for Freshwater Management 2014.

¹ Dated 24 July 2015 (submission 0081)

² Dated 25 September 2015 (submission 1020)

³ Previously Policies 2.1.1, 2.1.2 and 2.2.13

Relief

- (c) DPL seeks that Policies 3.1.1, 3.1.2, and 3.2.14 be amended to read as follows:

Policy 3.1.1 - Managing for freshwater values

Recognise regionally significant freshwater values, and manage freshwater, to:

- (a) *Support healthy ecosystems in all Otago aquifers, and rivers, lakes, wetlands, and their margins; and*
- (b) *Retain the range and extent of habitats provided by freshwater; and*
- (c) *Protect outstanding water bodies and wetlands from inappropriate subdivision, use and development; and*
- (d) *Protect migratory patterns of freshwater species from inappropriate subdivision, use and development, unless detrimental to indigenous biodiversity; and*
- (e) *Avoid aquifer compaction, and seawater intrusion in aquifers; and*
- (f) *Maintain good water quality, including in the coastal marine area, or enhance it where it has been degraded; and*
- (g) *Maintain or enhance coastal values supported by freshwater values; and*
- (h) *Maintain or enhance the natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers; and*
- (i) *Retain the quality and reliability of existing drinking water supplies; and*
- (j) *Protect Kāi Tahu values from inappropriate subdivision, use and development; and*
- (k) *Provide for other cultural values, as identified in Schedule 1A; and*
- (l) *Protect important recreation values from inappropriate subdivision, use and development; and*
- (m) *Maintain the aesthetic and landscape values of rivers, lakes, and wetlands; and*
- (n) *Avoid the adverse effects of pest species, prevent their introduction and reduce their spread; and*
- (o) *Mitigate the adverse effects of natural hazards, including flooding and erosion; and*
- (p) *Maintain the ability of existing infrastructure to operate within their design parameters.*

Policy 3.1.2 - Managing for the values of beds of rivers and lakes, wetlands, and their margins

Recognise the values of beds of rivers and lakes, wetlands, and their margins, and manage them to:

- (a) Protect or restore their natural functioning; and
- (b) Protect outstanding water bodies and wetlands from inappropriate subdivision, use and development; and
- (c) Maintain good water quality, or enhance it where it has been degraded; and
- (d) Maintain ecosystem health and indigenous biodiversity; and
- (e) Retain the range and extent of habitats supported; and
- (f) Maintain or enhance natural character; and
- (g) Protect Kāi Tahu values from inappropriate subdivision, use and development; and
- (h) Provide for other cultural values, as identified in Schedule 1A; and
- (i) Maintain their aesthetic and amenity values; and
- (j) Avoid the adverse effects of pest species, prevent their introduction and reduce their spread; and
- (k) Mitigate the adverse effects of natural hazards, including flooding and erosion; and
- (l) Maintain bank stability.

Policy 3.2.14- Managing outstanding water bodies and wetlands

~~Protect~~ Manage subdivision, use and development that affects the values of outstanding water bodies and wetlands by:

- (a) Avoiding significant adverse effects from inappropriate subdivision, use and development, including cumulative effects, on those values which contribute to the water body or wetland being outstanding; and
- (b) Avoiding, remedying or mitigating other adverse effects on the water body or wetland's values; and
- ~~(c) Assessing the significance of adverse effects on values, as detailed in Schedule 3; and~~
- (c) Controlling the adverse effects of pest species, preventing their introduction and reducing their spread; and
- (d) Encouraging enhancement of outstanding water bodies and wetlands.

9 **Significant Indigenous Biodiversity (Policies 3.1.9, 3.2.1, 3.2.2⁴)**

- (a) Section 6(c) of the RMA requires the protection of areas of 'significant' indigenous vegetation, and 'significant' habitats of indigenous fauna; the pORPS should therefore provide for 'maintenance' of those section 6(c) values which enables both protection, and better recognises the value of existing activities affecting ecosystem and indigenous biodiversity values.

Relief

- (b) DPL seeks that Policies 3.1.9, 3.2.1, 3.2.2 be amended to read as follows:

Policy 3.1.9 - Managing for ecosystem and indigenous biodiversity values

Recognise the values of ecosystems and indigenous biodiversity, and manage ecosystems and indigenous biodiversity, to:

- (a) *Maintain or enhance ecosystem health and indigenous biodiversity; and*
- (b) *Maintain or enhance areas of predominantly indigenous vegetation; and*
- (c) *Buffer or link existing ecosystems; and*
- (d) *Protect important hydrological services, including the services provided by tussock grassland; and*
- (e) *Protect natural resources and processes that support indigenous biodiversity from inappropriate subdivision, use and development; and*
- (f) *Maintain habitats of indigenous species that are important for recreational, commercial, cultural or customary purposes; and*
- (g) *Protect biodiversity significant to Kāi Tahu from inappropriate subdivision, use and development; and*
- (h) *Avoid the adverse effects of pest species, prevent their introduction and reduce their spread.*

Policy 3.2.1 - Identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna

Identify areas and values of significant indigenous vegetation and significant habitats of indigenous fauna, using the attributes detailed in Schedule 4.

Policy 3.2.2 - Managing significant indigenous vegetation and significant habitats of indigenous fauna

⁴ Previously policies 2.1.6, 2.2.1 and 2.2.2

~~Protect and enhance~~ *Manage subdivision, use and development that affects the values of areas of significant indigenous vegetation and significant habitats of indigenous fauna, by:*

- (i) ~~Avoiding adverse effects on those values which contribute to which will result in the area or habitat losing its being significant status;~~
and
- (j) ~~Avoiding significant adverse effects from in appropriate subdivision, use and development on other values of the area or habitat;~~ and
- ~~(k) c) Assessing the significance of adverse effects on those values, as detailed in~~
- ~~(l) Schedule 3;~~ and
- (m) ~~Remediating, when adverse effects cannot be avoided;~~ and
- (n) ~~Mitigating where adverse effects cannot be avoided or remediated;~~
and
- (o) ~~Encouraging enhancement of those areas and values.~~

10 **Landscapes, Seascapes and Natural Character (Policies 3.1.10, 3.2.4, 3.2.6 and Schedule 3⁵)**

- (a) The attributes for determining the relative values of landscapes, seascapes and natural character listed in Schedule 3 are not consistent with contemporary landscape planning practices and case law;
- (b) The pORPS applies the same attributes to identify highly valued and outstanding natural features, landscapes and seascapes and does not provide any further guidance on how these attributes are applied to these different areas.
- (c) The pORPS requires the protection of highly valued natural features, landscapes and seascapes; effectively treating them the same as outstanding natural features, landscapes and seascapes;
- (d) The pORPS does not differentiate between natural features, landscapes and seascapes within and outside the coastal environment. This does not give effect to the requirements of the New Zealand Coastal Policy Statement 2010, and does not give effect to sections 6 and 7 of the Act.

Relief

⁵ Previously policies 2.1.7, 2.2.4 and 2.2.6 and Schedule 4

- (e) DPL seeks that Policies 3.1.10, 3.2.4, 3.2.6 and Schedule 3 be amended to read as follows:

Policy 3.1.10 - Recognising the values of natural features, landscapes, and seascapes

Recognise the values of natural features, landscapes, seascapes and the coastal environment are derived from the following attributes, as detailed in Schedule 4:

- (f) *Biophysical attributes, including:*
- (i) *Natural science factors;*
 - (ii) *The presence of water;*
 - (iii) *Vegetation (indigenous and introduced);*
 - (iv) *The natural darkness of the night sky;*
- (g) *Sensory attributes, including:*
- (i) *Legibility or expressiveness;*
 - (ii) *Aesthetic values;*
 - (iii) *Transient values, including nature's sounds;*
 - (iv) *Wild or scenic values;*
- (h) *Associative attributes, including:*
- (i) *Whether the values are shared and recognised;*
 - (ii) *Cultural and spiritual values for Kāi Tahu;*
 - (iii) *Historical ~~and heritage~~ associations.*

Policy 3.2.4 - Managing outstanding natural features, landscapes, and seascapes

~~Protect, enhance and restore~~ Manage subdivision, use and development that affects the values of outstanding natural features, landscapes and seascapes, by:

- ~~a) Avoiding adverse effects on those values which contribute to which will result in the loss of the significance of the natural feature, landscape or seascape; and~~
- b) *Avoiding, remedying or mitigating other adverse effects on other values; and*
- ~~c) Assessing the significance of adverse effects from inappropriate use and development on values, as detailed in Schedule 3; and~~
- d) *Recognising and providing for positive contributions of existing introduced species to those values; and*

e) *Controlling the adverse effects of pest species, preventing their introduction and reducing their spread; and*

f) *Encouraging enhancement of those areas and values.*

g) *Recognising that appropriately designed and managed recreational activities in such locations can be appropriate, and can entail community benefits such as the enjoyment of landscape values*

h) *Recognising that when activities have a functional need to locate within such places and emphasis on mitigating or remedying adverse effects rather than avoiding them may be appropriate.*

Policy 3.2.6 - *Managing special amenity landscapes and highly valued natural features*

~~Protect or enhance the values of~~ Manage special amenity landscapes and highly valued natural features, by:

a) ~~Avoiding, remedying or mitigating significant~~ Avoiding, remedying or mitigating adverse effects on those values which contribute to the special amenity of the landscape or high value of the natural feature; and

~~b) Avoiding, remedying or mitigating other adverse effects on other values; and~~

~~c) Assessing the significance of adverse effects on those values, as detailed in Schedule 3; and~~

d) *Recognising and providing for positive contributions of existing introduced species to those values; and*

e) *Controlling the adverse effects of pest species, preventing their introduction and reducing their spread; and*

f) *Encouraging enhancement of those values.*

g) *Recognising and providing for the use of such resources including as places where productive activities, tourism, recreation, infrastructure, education facilities, homes and work places are located.*

h) *Allowing values to be modified over time as communities and economies change*

Schedule 3

Delete Schedule 3

11 **Urban Design and Growth (Policies 4.5.1 and 4.5.2⁶)**

- (a) The pORPS refers to the minimising of adverse effects on rural activities and loss of significant soils under Policy 4.5.1; DPL considers the strong

⁶ Previously Policies 3.8.1 and 3.8.2

emphasis in this policy on rural productivity and loss of significant soils is inappropriate as this does not take into account the ability and value in diversifying rural land to provide for efficient and appropriate development;

- (b) The pORPS seeks to manage the release of land under Policies 4.5.1 and 4.5.2. These policies provide for management of future growth and development with reference to 'future growth areas' and 'future urban development areas'. It is unclear how these terms are intended to overlap. These matters are more appropriately dealt with by territorial authorities than at a regional policy level; and
- (c) The proposed controls over where and how growth is managed within growth boundaries does not achieve any relevant resource management purpose, including relating to the management of any adverse effects on the environment.
- (d) The urban growth policies are inconsistent with the recently confirmed National Policy Statement Urban Development Capacity.

Relief

- (e) DPL seeks that Policies 4.5.1 and 4.5.2 be amended to read as follows:

Policy 4.5.1- ~~Managing~~ Providing for urban growth

~~Manage~~ Provide for urban growth and creation of new urban land in a strategic and co-ordinated way, by:

- (a) *~~Understanding demand and supply of~~ ~~Managing land use to~~ ~~Ensuring there is sufficient~~ residential, commercial and industrial zoned land capacity, to and catering for that demand for such land, projected over at least the next 10 years; and*
- (b) *Co-ordinating urban growth and extension of urban areas with relevant infrastructure development programmes, to;*
 - (i) *Provide infrastructure in an efficient and effective way; and*
 - (ii) *~~Avoid~~ Discouraging additional costs on the public that arise from unplanned infrastructure expansion; and*
- (c) *Identifying future growth areas that;*
 - (i) *Minimise significant adverse effects on rural the productivity of the rural and tourism sectors, including loss of highly valued soils or creating competing urban demand for water and other resources; and*
 - (ii) *Can be developed without resulting in significant adverse effects on Maintain or enhance any matter of national importance or national significance significant biodiversity, landscape or natural character values; and*

- ~~(iii) — Maintain important cultural or heritage values; and~~
- ~~(iii) Avoids land with significant risk from natural hazards which cannot be remedied or mitigated; and~~
- ~~(d) Considering the need for urban growth boundaries to control potentially inappropriate urban expansion; and~~
- ~~(e) Ensuring efficient use of land; and~~
- ~~(f) Requiring the use of low or no-emission heating systems in buildings, ~~when~~ where ambient air quality ~~in or near the growth area~~ is;

 - ~~(i) Below standards for human health; or~~
 - ~~(ii) Vulnerable to degradation given the local climatic and geographical context; and~~~~
- ~~(g) Giving effect to the principles of good urban design, ~~as detailed in Schedule 6~~; and~~
- ~~(h) Giving effect to the principles of crime prevention through environmental design.~~
- ~~(i) Ensure sufficient land is supplied for residential uses to assist with housing affordability.~~

~~Policy 4.5.2 – Controlling urban growth where there are identified urban growth boundaries or future urban development areas~~

~~Where urban growth boundaries, as detailed in Schedule 8, or future urban development areas, are needed to control urban expansion, control the release of land within those boundaries or areas, by:~~

- ~~(j) — Staging development, using identified triggers to release new stages for development; or~~
- ~~(k) — Releasing land in a way that ensures a logical spatial development, and efficient use of existing land and infrastructure before new land is released; and~~
- ~~(l) — Avoiding urban development beyond the urban growth boundary or future urban development area, unless there is a shortage of land available for urban development.~~

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

~~Method 4: City and District Plans~~

~~Method 5: Regional Policy Statement~~

~~Method 7: Strategies and Plans (non-RMA)~~

12 **Activities in rural areas (Policy 5.3.1⁷):**

⁷ Previously policy 4.3.1

- (a) The pORPS does not recognise and provide for the benefits of tourism, employment and recreation development within rural areas that contribute to the economy of the Region under Policy 5.3.1. This has the potential to significantly limit appropriate development and efficient use of rural land; and
- (b) Policy 5.3.1 is disproportionately weighted towards to the preservation of existing rural land use activities which is an outdated understanding of the diverse values of rural land and the various sustainable uses it can be employed for. This is not supported by the purpose and principles of the Act. The protection of land for primary production is not a matter of national importance under section 6 or a matter to which particular regard is to be had in terms of section 7 of the Act.

Relief

- (c) DPL seeks that Policy 5.3.1 be amended to read as follows:

Policy 5.3.1 - ~~Managing~~ Providing for rural regionally significant industry activities while protecting them from inappropriate subdivision, use and development

Manage activities in rural areas, to support the region's economy and communities, by:

- (d) *Enabling regionally significant industry activities, farming and other rural activities that support the rural economy; and*
- (e) *Minimising the loss of regionally significant soils highly valued for their versatility for primary production; and*
- (f) *Restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects on regionally significant industry activities; and*
- (g) *~~Minimising~~ Restricting the subdivision of productive rural land into smaller lots that may result in inappropriate rural residential activities; and*
- (h) *Providing for other activities that have a functional need to locate in rural areas, ~~including tourism and recreational activities that are of a nature and scale compatible with rural activities.~~*

Further reasons for appeal

13 In addition to the matters set out above, the further reasons for the appeal are that the Decision of the ORC:

- (a) Will not promote the sustainable management of resources and is contrary to Part 2 of the Act;

- (b) Is not necessary to avoid, remedy or mitigate adverse effects on the environment;
- (c) Does not represent the most appropriate means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other available means and therefore is inappropriate in terms of section 32 and other provisions of the Act.

Further relief sought

- 14 In addition to the specific relief set out above, DPL seeks the following relief:
- (a) To amend the pORPS in accordance with the original Submission of DPL, in respect of the provisions appealed;
 - (b) Any other consequential, necessary, or alternative relief as the Court thinks fit in order to address the matters raised in this appeal.

Attached documents

- 15 The following documents are attached to this notice:
- (a) A copy of the Submission and further submission made by DPL; **(Schedule A)**
 - (b) A copy of the decisions of the ORC on the pORPS; **(Schedule B)** and
 - (c) A list of names and addresses of persons to be served with a copy of this notice. **(Schedule C)**

Dated this 09th day of December 2016



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Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you 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
- (b) within 20 working days after the period for lodging a notice of appeal ends, you 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 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 further submission or the decisions 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 Christchurch.

Schedule A- Appellant's Submission

Schedule B- copy of the Respondent's decision

Schedule C- List of names of persons to be served with