
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	Ayrburn Farm Developments Limited and Bridesdale Farm Developments Limited Appellants
And	Otago Regional Council Respondent

Notice of appeal

09th December 2016

Appellants' solicitors:

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To: The Registrar
Environment Court
Christchurch

- 1 Ayrburn Farm Developments Limited and Bridesdale Farm Developments Limited ("**Appellants**") appeal part of the decisions of the Otago Regional Council (**ORC**) on the proposed Otago Regional Policy Statement (**pORPS**).
- 2 The Appellants made submissions¹ (**Submissions**) on the pORPS.
- 3 The Appellants are not trade competitors for the purposes of section 308D of the RMA.
- 4 The Appellants 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 **Economic Wellbeing (New Policy 1.1.2)**
 - (a) New Policy 1.1.2 provides for the economic wellbeing of the Otago Region within the constraints imposed by the pORPS objectives and policies.
 - (b) Provision for economic wellbeing is generally supported, however should be worded in a more enabling manner so as to ensure that desirable economic wellbeing is not unnecessarily restricted.

Relief

- (c) The Appellants seek that Policy 1.1.2 Economic wellbeing be amended to read:

Policy 1.1.2

¹ Dated 24 July 2015 (submission 0132 and 0133)

Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement.

9 **Landscapes, Seascapes and Natural Character (Policies 3.2.3, 3.2.4, 3.2.5, 3.2.6 and Schedule 3²)**

- (a) Otago's significant and highly valued natural resources should be recognised and managed to a standard which is consistent with section 6 and 7 of the Act.
- (b) 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. It is not appropriate that policies 3.2.3 and 3.2.5 require that all outstanding natural features, landscapes and seascapes be identified using the attributes listed in Schedule 3, alongside highly valued natural features, landscapes and seascapes. This is unnecessarily restrictive and does not allow district specific analysis.
- (c) The pORPS applies the same attributes to identify highly valued and outstanding natural features, landscapes and seascapes and does not provide any further guidance for how they apply the attributes.
- (d) 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.
- (e) 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

- (f) The Appellants seek that Policies 3.2.3, 3.2.4, 3.2.5, 3.2.6 and Schedule 3 be amended as follows:

Policy 3.2.3 - Identifying outstanding natural features, landscapes and seascapes

Identify areas and values of outstanding natural features, landscapes and seascapes, ~~using the attributes as detailed in Schedule 4.~~

Policy 3.2.4 - Managing outstanding natural features, landscapes, and

² Previously Policies 2.2.3, 2.2.4, 2.2.5, 2.2.6, and Schedule 4

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 3.2.5 - Identifying special amenity landscapes and highly valued natural features

~~Identify areas and values of special amenity landscape or natural features which are highly valued for their contribution to the amenity or quality of the environment, but which are not outstanding, using the attributes detailed in Schedule 4.~~

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~~ 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 adapt over time as communities and economies change*

Schedule 3

Delete Schedule 3

10 **Urban Growth (Policies 4.5.1 and 4.5.2³)**

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

Relief

- (d) The Appellants seek that Policies 4.5.1 and 4.5.2 be amended 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~~*

³ Previously Policies 3.8.1 and 3.8.2

- (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*~~
 - (iv) ~~*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:*~~

- (a) ~~*Staging development, using identified triggers to release new stages for development; or*~~

- (b) ~~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~~
- (c) ~~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)~~

11 **Activities in rural areas (Policy 5.3.1)⁴:**

- (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 protection of rural land which is an outdated understanding of the diverse values of rural land and which 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) The Appellants seek that Policy 5.3.1 be amended as follows:

Policy 5.3.1 - ~~Managing~~ Providing for ~~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:

- (a) ~~Enabling regionally significant industry activities, farming and other rural activities that support the rural economy; and~~
- (b) ~~Minimising the loss of regionally significant soils ~~highly valued for their versatility for primary production; and~~~~
- (c) ~~Restricting the establishment of activities ~~in rural areas~~ that may lead to reverse sensitivity effects on regionally significant industry activities; and~~

⁴ Previously Policy 4.3.1

- (d) ~~Minimising Restricting~~ the subdivision of productive rural land into smaller lots that may result in inappropriate rural residential activities; and
- (e) ~~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.~~

Glossary terms

- 12 To reduce ambiguity and enable more efficient implementation of the pRPS, the following new definitions are requested in the Submissions: Significant Infrastructure, Significant Community Facility, Urban, Regionally Significant Soil Resources, Regionally Significant Industry Activity, Hard mitigation measures.
- 13 The definition of these terms will assist the interpretation and clarification of future application of the pRPS and will reduce the possibility of unnecessary litigation.

Relief

- 14 The Appellants seek the following relief for defined terms:

Glossary- define Significant Infrastructure- include lifeline utilities and any infrastructure to be considered of regional or national significance

Glossary- define Significant Community Facility – include facilities that provide essential community services

Glossary- define Urban

Glossary – define or identify Regionally Significant Soil Resource- include all soil resources intended to be managed by the pRPS

Glossary- define Regionally Significant Industry Activity- include any activity associated with tourism, education, or primary production

Glossary – define hard Mitigation Measures

Further reasons for appeal

- 15 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

- 16 In addition to the specific relief set out above, the Appellants seek the following relief:
- (a) To amend the pORPS in accordance with the original Submissions of the Appellants, 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

- 17 The following documents are attached to this notice:
- (a) A copy of the Submissions made by Ayrburn Farm Developments Limited and Bridesdale Farm Developments Limited; **(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- Appellants' Submissions

Schedule B- copy of the Respondent's decision

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