

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**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**

**ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED**

**Appellant**

**AND**

**OTAGO REGIONAL COUNCIL**

**Respondent**

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**NOTICE OF APPEAL BY ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED**

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**TO:** The Registrar  
Environment Court  
CHRISTCHURCH

## **INTRODUCTION**

1. The Environmental Defence Society Incorporated (**Appellant**) appeals against part of the decision of Otago Regional Council (**Respondent**) on the Proposed Otago Regional Policy Statement (**PRPS**).
2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
3. The Appellant made a submission and further submission on the PRPS.
4. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 (**RMA**).
5. The Appellant received notice of the decision on 3 October 2016 2016<sup>1</sup>.
6. The decision was made by the Respondent.

## **PARTS OF THE DECISION BEING APPEALED**

7. The parts of the decision being appealed are those relating to:
  - a. Part B Chapters 1, 3, 4 and 5<sup>2</sup>;
  - b. Part C Implementation Methods 2 and 3; and
  - c. Part D Schedules and Appendices Schedule 4.

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<sup>1</sup> Received 3 October 2016, Letter dated 29 September 2016. Letter reference number: A490091.

<sup>2</sup> Specifically: Policies 1.1.1, 3.1.1, 3.1.2, 3.1.3, 3.2.4, 3.2.14, 3.2.16, 4.5.1, 5.4.1, 5.4.6, 5.4.8, and failure to include other policies necessary to give effect to the New Zealand Coastal Policy Statement 2010 and National Policy Statement Fresh Water Management 2014.

## **REASONS FOR THE APPEAL**

### **General reasons**

8. The Appellant 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**

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

## **Part B Chapter 1 Resource management in Otago is integrated**

10. Policy 1.1.1 provides high level direction on how integrated management is to be achieved across the region. The notified RPS included policies on integrated management of fresh water and the coast. Those provisions have been deleted from the PRPS<sup>3</sup>. Fresh water and coastal environments are highly sensitive, and subject to pressures from land and water based activities. The need for integrated management is acute. As a result the PRPS:
- a. Fails to give sufficient direction to ensure fresh water and the coast are managed in an integrated and sustainable way<sup>4</sup>; and
  - b. Fails to give effect to Part C NPSFM and Policy 4 NZCPS.
11. EDS seeks that the following subparagraph be inserted into Method 2.1<sup>5</sup>:

2.1 Regional, city and district councils together will:

...

2.1.3 Work together to apply an integrated management approach to activities in fresh water catchments and in the coast including through plan provisions:

- a. Recognising and addressing the relationship between the natural characteristics of and activities on land, and effects on fresh and coastal water; and
- b. Coordinating the management of rural and urban land use and development, and fresh and coastal water.

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

### ***Fresh water***

12. Policies 3.1.1 and 3.1.2 require fresh water and the beds and margins of rivers, lakes, and wetlands to be managed to achieve a list of outcomes. As worded the policies do not clearly establish the

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<sup>3</sup> Recommendations 47 & 48 Proposed Otago Regional Policy Statement Decisions Report of Council, 1 October 2016 (**Decisions Report**).

<sup>4</sup> Contrary to the conclusion at pg 30 Decisions Report.

<sup>5</sup> Or a policy providing equivalent direction.

environmental bottom line<sup>6</sup>, and ultimate point of the provisions, of safeguarding the life supporting capacity of fresh water. This is inconsistent with s5 RMA and does not give effect to Objectives A1 and B1 NPSFM. Fresh water must be managed and used in a way that safeguards its life supporting capacity.

13. Policy 3.1.2.d requires maintenance and enhancement of natural character of the beds and margins of rivers, lakes, and wetlands consistent with s6(a) RMA. This is not carried through to Method 3.1.3.a which refers to 'beds' only. Land use (such as earthworks) and vegetation removal can and do have significant adverse effects on lake, river, and wetland margins and riparian areas. It is appropriate that the method also specifically refer to management of these areas.
14. Policy 3.1.3<sup>7</sup> addresses efficient allocation and use of fresh water. The Decisions Report states that *"It is not necessary for the PRPS to identify all values, limits and targets to achieve the NPSFM, as the Water Plan does this"*<sup>8</sup>. EDS agrees. However it is necessary for the PRPS to provide the overarching framework for water management including quantity and quality allocation, to give effect to the NPSFM. It is unlawful for the PRPS to provide for allocation efficiency and water use without setting the parameters of allocation. Amendments to the relevant methods are also required.
15. Policies 3.2.14 and 3.2.16 provide for management of outstanding fresh water bodies and the significant values of wetlands<sup>9</sup>. Both policies require the avoidance of significant adverse effects on the outstanding/significant values of those areas. The NPSFM requires that outstanding fresh water bodies and wetlands are protected, and s6(a) RMA that natural character is preserved. The PRPS requires

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<sup>6</sup> It is clear from the Decisions Report that the intention is to establish environmental bottom lines and provide for use and development above these. See for example pg. 21 Decisions Report.

<sup>7</sup> Relevant recommendations at 7.1.3 Decisions Report.

<sup>8</sup> Pg 46 and recommendation 84 Decisions Report.

<sup>9</sup> Relevant section of the Decisions Report is 7.4.

avoidance of all adverse effects on outstanding/significant values in the other areas subject to a protection/preservation directive either in s6 RMA or national policy instruments<sup>10</sup>. There is no reason to treat outstanding fresh water bodies or wetlands differently. The same standard of protection should apply.

16. EDS seeks that:

a. Policy 3.1.1 be amended as follows:

Manage fresh water to safeguard its life supporting capacity and to achieve all of the following: ...

b. Policy 3.1.2 be amended as follows:

Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to safeguard the life supporting capacity of fresh water and to achieve all of the following: ...

c. Method 3.1.3.a be amended as follows:

Manage land use and vegetation removal with the beds, riparian areas, and margins of lakes and rivers, wetlands, and in the coastal environment.

d. Policy 3.1.3 be amended as follows:

The allocation and use of fresh water is managed to achieve fresh water objectives established in regional plans by:

- a. Avoiding new and further over allocation, and phasing out existing over allocation, of ground and surface water takes;
- b. Avoiding new and further over allocation, and phasing out existing over allocation, of contaminants;
- c. Ensureing the efficient allocation and use of water by undertaking all of the following: ...

e. Method 3.1.3.e be amended as follows:

Identifying fresh water management units that include all fresh water bodies in Otago and identifying values and establishing fresh water quantity and quality objectives, being either limits or targets, in accordance with the National Policy Statement for Freshwater Management 2014.

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<sup>10</sup> E.g outstanding natural landscapes and outstanding natural character areas.

- f. Method 3.3.1.f be amended as follows:

Maintain good water quality and improve it where it is degraded.

- g. Policy 3.2.14.a and Policy 3.2.16.a be amended by deleting the word “*significant*” from each.

### **Coast**

17. The Decisions Report states that Chapter 3<sup>11</sup> “*provides for an appropriate level of management and protection of coastal resources*”<sup>12</sup>, including in respect of biodiversity. EDS disagrees. The PRPS does not address coastal biodiversity the management and protection of which is subject to very specific direction in Policy 11 NZCPS.

18. EDS seeks that a new policy be inserted providing for protection of coastal biodiversity to give effect to Policy 11 NZCPS.

### **Landscapes**

19. Policies 3.2.2 and 3.2.4 provide for identification and management of outstanding natural landscapes, features, and seascapes. Policy 3.2.4.a requires avoidance of adverse effects on the values that contribute to the “*significance*” of the natural landscape, feature, or seascape. This is confusing and incorrect. The adjectives significant and outstanding have different meanings in the RMA context and different assessment methodologies apply. For clarity, consistency, and certainty<sup>13</sup> Policy 3.2.4 should refer to outstanding values not significant values.

20. EDS seeks that Policy 3.2.4.a be amended as follows:

- a. Avoiding adverse effects on ~~those the~~ outstanding values which contribute to of the ~~significance of~~ natural feature, landscape or seascape.

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<sup>11</sup> Notified RPS Chapter 2.

<sup>12</sup> 7.5.2 pg 54 Decisions Report.

<sup>13</sup> The importance of clear and consistent language is recognised at 4.8ff Decisions Report.

## **Part B Chapter 4 Communities in Otago are resilient, safe and healthy**

21. Policy 4.5.1 provides for strategic and coordinated urban growth and development. Its application is general. Further direction is required for the coast<sup>14</sup> to give effect to the strategic planning and development requirements in Policies 6 and 7 NZCPS.

22. EDS seeks that a new subsection 'i' be inserted into Policy 4.5.1 as follows:

i. In the coastal environment also by:

i. consolidation of existing urban areas.

ii. avoiding sprawling or sporadic patterns of development.

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

### ***Objectionable discharges***

23. Policy 5.4.1 directs how discharges that are "*objectionable or offensive*" are to be managed. It is not clear<sup>15</sup> what discharges are captured by the policy, what "*objectionable*" or "*offensive*" mean, or how to establish if a discharge is "*objectionable or offensive*" to "*Kai Tahu and/or the wider community*".

24. It is not clear how this policy is intended to work with, and is arguably contradictory to, controlling discharges to water to manage within limits, avoid over allocation, and safe guard life supporting capacity.

25. EDS seeks that Policy 5.4.1 be amended to:

- a. Respond to the issues raised and clarify its application.
- b. Control point sources and non-point sources discharges to fresh and coastal water to give effect to the NPSFM and NZCPS.

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<sup>14</sup> Again, EDS does not agree that the appropriate level of management and protection of coastal resources has been achieved: 7.5.2 pg 54 Decisions Report.

<sup>15</sup> See 9.6.2 Decisions Report. The relevant recommendation is 226.



### ***Biodiversity offsetting***

26. Policy 5.4.6 provides for the use of biodiversity offsetting to address residual adverse effects. It sets out 5 specific criteria<sup>16</sup> to which an offset must adhere and aligning with best practise. Those criteria are supported. 2 further best practice criteria have not been included: additionality and timing of biodiversity gains. Offsetting seeks to counter balance loss of biodiversity in one location with gains elsewhere. 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.

27. EDS seeks that new subsections 'g' and 'h' be inserted into Policy 5.4.6 as follows:

g. The offset will achieve biodiversity outcomes above and beyond results that would have occurred if the offset was not proposed.

h. The delay between the loss of biodiversity through the proposal and the gain or maturation of the offset's biodiversity outcomes is minimised.

### ***Minerals and petroleum***

28. Mining and petroleum exploration is managed under Policy 5.4.8. Avoidance of significant adverse effects is required. There is no reason why a different management standard for adverse effects be applied to mining and petroleum than to other activities in outstanding and significant natural areas. This fails to give effect to the NZCPS and NPSFM and is inconsistent with Part 2 RMA and with Objective 3.2 PRPS and its policies. All adverse effects should be avoided not only significant adverse effects.

29. EDS seeks that Policy 5.4.8.b be amended as follows:

b. Where it is not possible to avoid locating in the areas listed in a) above, avoiding ~~significant~~ adverse effects of the activity on those values that contribute to the significant or outstanding nature of those areas;

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<sup>16</sup> Policy 5.4.6.b – f.

### ***Activities in the coastal marine area***

30. Objective 5.4 and its policies focus on minimising adverse effects of the use and enjoyment of Otago’s natural and physical resources. Specific high impact activities that require bespoke provisions have been identified and addressed<sup>17</sup>. Activities within the coastal marine area require similarly directive provisions and have not been addressed elsewhere in the PRPS. Otago’s coastline is extensive and has pockets subject to development pressure. Growth, expansion, and developed has been controversial in some areas. The PRPS should give direction on how and where future development should occur to give effect to the NZCPS and provide an important link between the NZCPS and regional plans.

31. EDS seeks a new policy be inserted as follows:

#### **Policy 5.4.8 Activities in the coastal marine area**

In the coastal marine area:

- a. Recognise that some activities have a functional need to be located in the CMA;
- b. Provide for those activities in appropriate locations, forms and limits;
- c. Direct activities that do not have a functional need to be located in the CMA to alternate locations; and
- d. Provide for the efficient use of space through requiring multi-purpose use.

### **Part D Schedules & Appendices**

#### ***Schedule 4 Significance criteria***

32. A note has been included in Schedule 4 stating that the criteria apply to the terrestrial, coastal, and marine environments<sup>18</sup>. This is supported. The Schedule uses the Department of Conservation’s “*ecological districts*” as the spatial scale of assessment for the terrestrial environment. Changes are also required to the criteria to provide for the equivalent spatial scale that applies to the marine environment: coastal biographic regions.

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<sup>17</sup> E.g discharges and mining/petroleum.

<sup>18</sup> Recommendation 117 Decisions Report.

33. EDS seeks that 'coastal biographic region' be inserted into Schedule 4 where "ecological district" is referenced, being: Criteria 1, 2a, 2b.

#### **RELIEF**

34. EDS seeks:

- a. The relief or alternative relief (in response to the reasons for the appeal) set out in paragraphs 11, 16, 18, 20,22, 25, 27, 29, 31, 33 above;
- b. Such consequential or further relief as may be necessary to fully address the reasons for this appeal and give effect to the relief sought; and
- c. Costs.

#### **ANNEXURES**

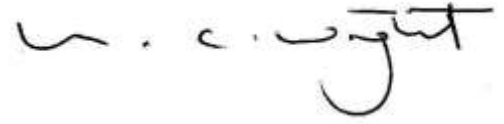
35. The following documents are **attached** to this notice:

- a. Copy of the Appellant's submission (**Annexure A**);
- b. Copy of the Appellant's further submission (**Annexure B**);
- c. Copy of the Appellant's submissions to the hearings panel (**Annexure C**);
- d. Copy of the relevant parts of the Respondent's decision: text and report (**Annexure D**); and
- e. List of names and addresses of persons to be served with a copy of this notice (**Annexure E**).

**DATED** at Auckland this 9<sup>th</sup> day of December 2016

Signed for and on behalf of the  
**ENVIRONMENTAL DEFENCE SOCIETY**

**INCORPORATED** by its duly authorised agent



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**Madeleine Cochrane Wright**

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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.