

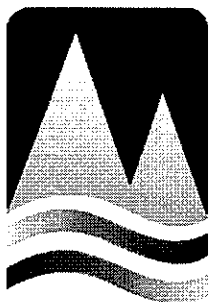
**Decisions on Submissions  
Received**

**on**

**Proposed Plan Change 1A**

**to the**

**Regional Plan: Water for Otago**



**Otago  
Regional  
Council**

**March 2006**

Accompanying  
ISBN 1-877265-03-9



## **Introduction to Hearing Committee Decisions on Submissions Received**

### **Background**

Proposed Plan Change 1A to the Regional Plan: Water for Otago was publicly notified on 17 August 2005 and four submissions were received by the closing date for submissions on 16 September 2005.

The Otago Regional Council notified its summary of submissions on 29 October 2005 and the closing date for further submissions was 25 November 2005. One further submission was received.

Part of Proposed Plan Change 1A was withdrawn on 21 December 2005. The proposed addition of new permitted activity rule 12.2.2.4, which allowed the taking of groundwater for the purpose of land drainage was withdrawn. The reason for the withdrawal was the rule could have been used to drain an aquifer, which has never been the intention of the land drainage rules.

Council staff prepared a report on the submissions and further submission and these were sent out to all submitters on 1 March 2006.

### **The Hearing Committee and Hearing Procedure**

The Hearing Committee comprised of Councillor Michael Deaker (Committee Chairperson), and Councillors Louise Croot and Colin Scurr, and was constituted at a meeting of the Otago Regional Council on 9 August 2005. It was agreed in constituting the Hearing Committee it would have the power to hear submissions and recommend decisions for the Council to approve.

Prior to commencement of the hearing on 7 March 2006, the Hearing Committee agreed to hold the hearing 'in paper' (i.e. no one would formally speak at the hearing but written information would be presented to the Hearing Committee) at the request of the one submitter that wanted to be heard. Robert Buxton (Manager Resource Planning), Michelle Cardno (Resource Planner) and Alastair Logan (Council's Legal Representative) attended the hearing to answer any questions from the Hearing Committee.

### **The Hearing**

The Hearing Committee received a staff report in respect of the submissions and further submission prior to the hearing on 7 March 2006 in Dunedin.

At the hearing, the Hearing Committee received and read written information in support of the submission from Contact Energy Limited.

Decisions were made by the Hearing Committee at the hearing. On 29 March 2006 the Council accepted these decisions and agreed to publicly notify them.

### List of Submitters and Further Submitters

List of submitter numbers and names

Submitter No.	Submitter Name	Submitter Address
1	Dunedin City Council	Tony Avery General Manager City Environment Dunedin City Council PO Box 5045 DUNEDIN
2	Department of Conservation Otago Conservancy	Marian van der Goes Community Relations Manager Department of Conservation Otago Conservancy PO Box 5244 DUNEDIN
3	Federated Farmers of New Zealand (Inc) Otago Provincial District	Matt Harcombe Senior Policy Analyst PO Box 5242 DUNEDIN
4	Contact Energy Limited	Chris Hansen Tonkin & Taylor Limited PO Box 2083 WELLINGTON

List of further submitter numbers and names

Further Submitter No.	Further Submitter Name	Further Submitter Address
5	Federated Farmers of New Zealand (Inc) Otago Provincial District	Matt Harcombe Senior Policy Analyst PO Box 5242 DUNEDIN

## Decisions on Submissions Received

1. **Submissions 3/1 (Federated Farmers of New Zealand (Inc) Otago Provincial District), 4/1 (Contact Energy Limited)  
Further Submission 1 (Federated Farmers of New Zealand (Inc) Otago Provincial District)**

### Decision Requested

Submission 3/1 requests that the proposed wording for the non-notification and non-service statement be adopted.

The proposed wording for the non-notification and non-service statement reads as follows:

For Rules 12.1.3.1, 12.2.3.4, 12.5.2.1, 12.8.2.1, 12.9.2.1, 12.10.2.1, 12.11.3.1, 13.1.2.1, 13.2.2.1, 13.3.2.1, 13.4.2.1, 13.7.2.1, 14.1.1.1, 14.2.2.1:

*Applications may be considered without notification under section 93 and without service under section 94(1) on persons who, in the opinion of the consent authority, may be adversely affected by the activity.*

For Rule 12.1.4.8:

*Application for resource consent to which this Rule applies, to take water from a river, may be considered without notification under section 93 and without service under section 94(1) on persons who, in the opinion of the consent authority, may be adversely affected by the activity, if the application is to take water from:...*

For Rule 13.5.2.1:

*Except in the case of extraction from the wet bed of a lake or river, applications may be considered without notification under section 93 and without service under section 94(1) on persons who, in the opinion of the consent authority, may be adversely affected by the activity.*

### Summary of Submission

The Federation supports the use of limited notification where appropriate and the effects of the activity on other persons are limited.

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### Decision Requested

Submission 4/1 requests that the proposed wording for the non-notification and non-service statement be amended to read as follows:

*Applications will be considered without notification under section 93 and without service of notice under section 94(1), unless the Council considers that special circumstances apply.*

### Summary of Submission

The proposed non-notification statement would remove the certainty that exists with the current statement. By replacing the word 'will' in the current statement with the word 'may' in the proposed statement, there would no longer be any certainty for an applicant that applications will be processed without notification and service of notice.

Further information tabled by Submitter 4/1 at the hearing put forward alternative wording for the non-notification statement, which reads as follows:

*Applications do not need to be notified under section 93 and do not need to be serviced under section 94(1) on persons who, in the opinion of the consent authority, may be adversely affected by the activity.*

While Submitter 4/1 states the alternative wording reflects the wording of section 94D of the RMA, Submitter 4/1 concedes it does not provide as much certainty as the use of the word 'will'. However, the submitter considers that it provides more certainty than the use of the word 'may'.

### **Further Submission**

Further Submission 5 supports Submission 4/1 as it provides clarity of intent and gives more certainty to users of the plan and applicants that applications will not be served on affected persons where appropriate.

### **Decision A**

- (i) The decision requested by Submission 3/1 is **accepted**; and
- (ii) The decision requested by Submission 4/1, which is supported by Further Submission 5, is **rejected**.

### **Reasons for Decision**

- (i) The Hearing Committee agreed with the legal opinion obtained by the Otago Regional Council on the wording of non-notification and non-service provisions, which states the following:
  - (a) The non-notification and non-service provisions in rules in a proposed plan should be expressed in terms that closely follow the statutory language.
  - (b) In law, the Plan cannot go further than what the Resource Management Act 1991 (RMA) permits.
  - (c) The absolute statement promoted by Submitter 4/1 and supported by Further Submission 5 goes beyond what is allowed by the RMA.
- (ii) The Hearing Committee agreed there would be no change to the processing of resource consents as a result of using the word 'may' instead of 'will' in the non-notification and non-service provisions. Even if the word 'will' was used, the discretion given by the RMA would prevail. Therefore, it is best for users of the Plan that wording of the non-notification and non-service provisions is expressed explicitly.
- (iii) The Hearing Committee considered the alternative wording put forward by Submitter 4/1 for the non-notification and non-service provisions and came to the following conclusion:
  - (a) The words 'do not need to be' and 'may' carry the same meaning therefore it is simpler and more succinct to use the word 'may'.

## **2. Submission 3/2 (Federated Farmers of New Zealand (Inc) Otago Provincial District)**

### **Decision Requested**

Delete the words '(with resultant restriction of takes)'.

### **Summary of Submission**

Reductions in flows may not necessarily in itself lead to a restriction of takes depending on residual and minimum flows – incorrect and simple assumption to make.

**Decision B**

The decision requested by Submission 3/2 is **accepted**.

**Reasons for Decision**

- (i) It is correct that where land use activities result in a reduction in flows in a river it will not always lead to takes from a river having to be restricted.

3. **Submissions 1/1 (Dunedin City Council), 2/1 (Department of Conservation Otago Conservancy)**

**Decision Requested**

Submission 1/1 does not request a decision.

**Summary of Submission**

Generally supports the proposed amendments.

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**Decision Requested**

Submission 2/1 requests that Proposed Plan Change 1A be adopted in its entirety.

**Summary of Submission**

The changes are minor corrections, amendments and matters consequential to recent Resource Management Amendment Acts.

**Decision C**

Submission 1/1 and the decision requested by Submission 2/1 are **accepted in part**.

**Reasons for Decision**

- (i) Proposed Plan Change 1A is a series of minor amendments, some of which are consequential to recent RMA amendments.
- (ii) Submissions 1/1 and 2/1 are to be accepted in part because Submission 3/2, which requests the deletion of words, has been accepted (see Decision B).

