

31 May 2013

The Registrar
Environment Court
99-101 Cambridge Terrace
CHRISTCHURCH

By Courier



Dear Registrar

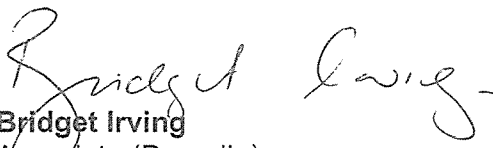
**DUNEDIN CITY COUNCIL v OTAGO REGIONAL COUNCIL
CENTRAL OTAGO DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL
CLUTHA DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL
DUNEDIN INTERNATIONAL AIRPORT LIMITED v OTAGO REGIONAL COUNCIL
R BORST v OTAGO REGIONAL COUNCIL
MCHOLLAND FARMING LIMITED v OTAGO REGIONAL COUNCIL
LAKES LANDCARE GROUP v OTAGO REGIONAL COUNCIL
CARDRONA LAND CARE GROUP v OTAGO REGIONAL COUNCIL**

We enclose for filing:

1. Notice of Appeal (in duplicate) for Dunedin City Council;
2. Notice of Appeal (in duplicate) for Central Otago District Council;
3. Notice of Appeal (in duplicate) for Clutha District Council;
4. Notice of Appeal (in duplicate) for Dunedin International Airport Limited;
5. Notice of Appeal (in duplicate) for Robert Borst;
6. Notice of Appeal (in duplicate) for MCHolland Farming Limited;
7. Notice of Appeal (in duplicate) for Lakes Landcare Group;
8. Notice of Appeal (in duplicate) for Cardrona Land Care Group;
9. Each appeal is filed with duplicates of Submission and Further Submission (where relevant) of the Appellant. Duplicate copies of the relevant Decision and Proposed Plan Change 6A incorporating the Council's Decisions are included;
10. List of submitters who have been served;
11. Eight cheques for \$511.11 each for the filing fees.

If you have any questions please do not hesitate to contact us.

Yours faithfully
GALLAWAY COOK ALLAN


Bridget Irving
Associate (Dunedin)

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV 2013-CHC-

UNDER	the RESOURCE MANAGEMENT ACT 1991
IN THE MATTER	of Proposed Plan Change 6A
BETWEEN	CARDRONA LAND CARE GROUP
	Appellant
AND	OTAGO REGIONAL COUNCIL
	Respondent

**NOTICE OF APPEAL
AGAINST DECISION OF RESPONDENT ON PROPOSED PLAN CHANGE
6A**

DATED 4 JUNE 2013

**GALLAWAY COOK ALLAN
LAWYERS
WANAKA**

Solicitor on record:
Solicitor to contact: Jan Caunter
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To: The Registrar
Environment Court
Christchurch

1. **Cardrona Land Care Group** ("the Appellant") appeals against the decision of Otago Regional Council on Proposed Plan Change 6A to the Regional Plan: Water ("**Plan Change**").
2. The Appellant made a submission on the Plan Change.
3. It received notice of the decision on or about 19 April 2013, that notice made by form of letter advising the decision was available for viewing on the Respondent's website..
4. The decision was made by Otago Regional Council.
5. The Appellant represents a number of farmers in the Cardrona Valley with sheep, beef and deer holdings. These farmers generally support the principle of good water quality in the region, but have very real concerns about the plan change in its current form.
6. The aspects of the decision being appealed are set out below.

General reasons for appeal

7. The decision:
 - (a) Will not promote the sustainable management of resources and will not achieve the purpose of the Resource Management Act 1991;
 - (b) Is contrary to Part 2 of the Act;
 - (c) Does not represent the most appropriate means of exercising the Respondent's functions, and is not appropriate in terms of section 32 of the Act;
 - (d) PC6A places water quality objectives above all else with very little scope for considering other matters relevant under the Resource Management Act 1991 ("the Act"), such as economic and social wellbeing.

Specific reasons for appeal

Catchment characteristics:

8. The decision assumes that every catchment in Otago and Southland has the same characteristics and that the same plan provisions should apply across the board. This assumption is flawed and incorrect. The proposed plan change fails to recognise that not all plan provisions can address the same rural environment and the different activities that occur within that rural environment. The Cardrona Valley's characteristics have not been taken into account in the decision. These characteristics are set out in the Appellant's original submission (attached)
9. The Cardrona Valley and the water bodies within it are impacted by erosion from old mining areas and other activities within the valley also contribute to sediment and run off. These effects are not the fault of farmers, nor can it be their responsibility to protect the river and streams from these uncontrolled environmental effects. These effects have not been recognised or provided for in the decision. Rather, the decision intends that landholders will be held responsible for all discharges from their land, whether or not the discharges are under their control.
10. The Respondent's decision has failed to respond to the need for catchment studies to be undertaken, deciding that this approach is too complex. The Appellant is of the view that more work should be done by the Respondent in investigating and understanding each catchment, so that any effects based plan provisions logically follow and address specific catchment characteristics.

Compliance and uncertainty

11. The rules in the decision present insurmountable compliance challenges. They are, in places, uncertain, leading to an inability for farmers to know on a day-to-day basis whether they are complying with the rules. Such a high level of uncertainty is untenable and inconsistent with the scheme of the Act. Uncertain rules are unlawful.
12. The rules are void for uncertainty. By way of example only (and without limitation):

- (a) Rule 12.C.2.2(ii) addresses Restricted Discretionary Activity resource consents and notes that a “short-term activity with a short-term effect” would fall under this activity status in particular circumstances. Landholders have no way of knowing what a “short-term activity with short-term effects” means as this is not defined in the plan change.
- (b) Rule 13.5.1.8A addresses the disturbance of beds of lakes and rivers by livestock, excluding intentional driving of livestock. This is a permitted activity if there is no “feeding out”. There is no definition of “feeding out” in the plan change and the effect of this rule is unclear. In the Cardrona Valley during winter, stock often come to feed near rivers or streams. They do not feed in or on the beds of rivers and streams but have to cross rivers and streams to access the feed provided given the nature of the high country stations on which they are located. To avoid this “disturbance”, all water bodies on these farms would need to be fenced. That is not practical, nor is it economic. The current farming practice is not affecting water quality in the Cardrona Valley.
- (c) Rule 13.5.1.8B addresses the disturbance of any bed of a lake or river or any regionally significant wetland by livestock when they are being intentionally driven. This is a permitted activity providing, amongst other things, there is no “existing structure available for use, and there is no suitable site for the erection or placement of a structure, to avoid bed disturbance.” This can be interpreted as meaning that every river bed that has a “suitable site” will require the construction of a single span bridge (as culverts cannot be installed without a resource consent). The Appellant’s members wish to avoid any debate with the Respondent about whether or not an activity is permitted. .

Section 32 assessment

- 13. There is no section 32 report setting out the reasons for the Decision. The 2012 Section 32 Report prepared in regard to the notified version of the Plan Change failed to:

- (a) adequately evaluate each objective and consider whether it is the most appropriate way to achieve the purpose of the Act;
- (b) establish whether the Policies and Rules are the most efficient and effective way to achieve the Objectives.

Inconsistency with other legislation and planning instruments

- 14. The PC6A Objectives do not address the variety of values that water has (as outlined under the National Policy Statement: Freshwater Quality 2011 ("NPS")) and as a result PC6A fails to achieve the purpose of the Act.
- 15. PC6A is in many places inconsistent with the provisions of the Act, the NPS and the Otago Regional Policy Statement ("RPS"), particularly where it does not:
 - (a) properly address freshwater objectives set out in the NPS;
 - (b) provide for reasonable mixing;
 - (c) incorporate qualifiers (e.g. offensive or conspicuous) in relation to discharges;
 - (d) assess discharges or bed disturbance based on the actual and potential effects on the environment.

Prohibited activity status

- 16. The use of prohibited activity status inappropriately removes the ability for a resource consent application to be made and considered on its merits and the effects of the activity in question assessed against other relevant factors.

The prohibited activity rules are not supported by proposed Objectives and Policies and are not adequately assessed in the 2012 section 32 report or in the Decision.

Modelling

- 17. The Respondent is limiting its modelling to a software programme that is soon to be outdated (see for example Rule 12.C.1.3). There are

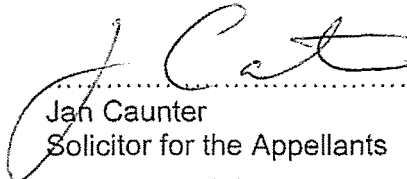
questions over whether OVERSEER is in fact the correct software to address all catchments within the region.

18. The Decision is inconsistent in the messages it is sending about the need for data to be collected by landholders. By way of example, Policy 7.D.1(b)(ii) refers to **encouragement** of landholders providing relevant information to support the catchment or aquifer studies undertaken by the Council, but other plan provisions appear to **require** that data be collected and provided in order to justify activities on site (refer for example Rule 12.C.1.3).
19. The Appellant is concerned that the collection of data in the Cardrona Valley catchment as the water quality there is already of high quality, is unnecessary, as the water quality in that catchment is already high, despite a long history of farming and mining in the Valley. The Appellant is of the view that any data should be collected by the Respondent as part of its statutory functions and that the administrative burden being placed on landholders to use OVERSEER will not achieve any RMA purpose.

Relief sought

20. The Appellant seeks the following relief:
 - (a) That the Court amends the Decision as set out in this appeal, or such other relief to give effect to the Appellant's concerns;
 - (b) Such further or consequential relief (including consequential amendments to any of the provisions) as may be necessary to fully give effect to the relief sought in this appeal; and
 - (c) Costs.
21. The Appellant attaches the following documents to this notice:
 - (a) a copy of its submission;
 - (b) a copy of the relevant decision;

- (c) a list of names and addresses of persons to be served with a copy of this notice.



 Jan Caunter
 Solicitor for the Appellants
 4/6/13

 Date

Address for service
 Of Appellants: Gallaway Cook Allan
 Lawyers
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 Wanaka 9343

Telephone: (03) 443 0044

Fax: (03) 443 6651

Email: jan.caunter@gcalegal.co.nz

Contact Person: Jan Caunter

Advice to Recipients of Copy of Notice of Appeal

1. How to become party to proceedings

You may be a party to the appeal if you made a 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 this notice was lodged with the Environment Court. 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).

2. 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) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the Appellants.

3. Advice

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

P O Box 2069
Christchurch 8140
Telephone: (03) 962 4170
Fax: (03) 962 4171