

31 May 2013

The Registrar  
Environment Court  
99-101 Cambridge Terrace  
CHRISTCHURCH

By Courier



Dear Registrar

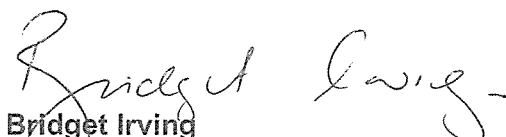
**DUNEDIN CITY COUNCIL v OTAGO REGIONAL COUNCIL  
CENTRAL OTAGO DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL  
CLUTHA DISTRICT COUNCIL v OTAGO REGIONAL COUNCIL  
DUNEDIN INTERNATIONAL AIRPORT LIMITED v OTAGO REGIONAL COUNCIL  
R BORST v OTAGO REGIONAL COUNCIL  
MCHOLLAND FARMING LIMITED v OTAGO REGIONAL 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** **MCHOLLAND FARMING LIMITED**

**Appellant**

**AND** **OTAGO REGIONAL COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

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**GALLAWAY COOK ALLAN  
LAWYERS  
DUNEDIN**

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To: The Registrar  
Environment Court  
Christchurch

1. **MCHolland Farming Limited** ("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 (submitter number 207).
3. The Appellant received notice of the decision on or about 20 April 2013.
4. The decision was made by Otago Regional Council.
5. The Appellant supports the intention of the plan change to improve and maintain water quality through adopting performance standards for permitted activities within the region but has some concerns about particular aspects of the plan change that it wishes to address through this appeal.
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) The Council's decision not the contain evaluation required by section 32(2)(a) of the Act.
  - (d) 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;

- (e) The Plan Change does not implement the National Policy Statement for Freshwater 2011 in that:
  - (i) It does not reflect the full range of values for fresh water, including primary production and assimilative capacity.
  - (ii) It fails to take a catchment approach to managing fresh water values.
- (f) The Decision fails to implement, and is inconsistent with, the provisions of the Regional Policy Statement (RPS). It is understood that a change to the RPS is now proposed. Proceeding with PC6A without first changing the RPS is inefficient plan making.
- (g) The achievement of the objectives of PC6A is reliant upon compliance with standards that are not readily capable of measurement (in particular schedule 16). If compliance is not readily capable of being determined then the rules are uncertain and therefore ultra vires.
- (h) Compliance with standards is required to establish the permitted activity status of land use activities on a day to day basis. In principle the use of permitted activity status for rural land use activities is supported, but the adopted standards are not readily capable of measurement. Compliance uncertainty is an untenable basis for investment in rural land uses.
- (i) The Decision indicates that compliance difficulties will be addressed by taking 'a pragmatic approach to enforcement'. In so far as that indicates that the rules introduced by PC6A will not be enforced, then this indicates a wilful failure to comply with section 84 of the Act, and cannot be relied upon as a reason to support PC6A.
- (j) The Plan Change 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. Nor does Chapter 5 of the Regional Plan: Water adequately identify matters such as economic and social wellbeing.

### **Specific reasons for appeal**

#### Catchment characteristics:

8. The decision assumes that every catchment in Otago has the same natural and human use values. 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.
9. 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 the values held in respect to the Waianakarua Catchment, so that any effects based plan provisions logically follow and address specific catchment characteristics.

#### Schedule 15 – Receiving Water Standards

10. The Appellant seeks that the Waianakarua Catchment in which they farm is transferred from Receiving Water Group 2 to Receiving Water Group 1. The Council's ecosystem monitoring has shown that the river is in good health, and water quality monitoring shows that it would comply with the receiving water standards for Receiving Water Group 1. Appellants understand that the grouping of catchments was arrived at based on accrual times. The Waianakarua Catchment sits right on the border between groups 1 and 2 with an accrual time of 30 days.. No evidential justification has been provided in the Decision for placing the Waianakarua Catchment in Receiving Water Group 2, as against Receiving Water Group 1. Nor has an appropriate section 32 analysis been completed to fully understand the implications of this decision.

#### Schedule 16 - Discharge Limits

11. The limits that will apply to the Waianakarua Catchment are those within Discharge Limit Area 2. As far as the appellants have been able to discover, those limits are not based on any monitoring data indicating thresholds for sensitivity for those water bodies.

12. The combination of the measurement point in rule 12.C.1.1 and the Schedule 16 values for limit area 2 makes those limits incapable of being complied with because:
- (a) Neither the values in schedule 16 nor rule 12.C.1.1 provide for reasonable mixing.
  - (b) The limits are not readily capable of sampling, especially for diffuse discharges.
  - (c) Farmers have no way of knowing whether they are complying or not.
  - (d) There is a lack of understanding or research into the nature of 'discharges' that result from overland flow (other than via tile drains or similar). As a result there are no management techniques available to address this issue currently. The Appellants are potentially left in the position where they cannot comply with schedule 16, nor do they have any available options to achieve compliance.
13. The Appellant seeks:
- (a) Amendment of policy 7.D.2 as necessary to address the concerns below.
  - (b) The compliance dates for Schedule 16 for Discharge Limit Area 2 be suspended until further monitoring and assessment can be done to fully understand the Waianakarua Catchment.
  - (c) The Schedule 16 values for the Waianakarua Catchment should be based upon actual monitoring data for the catchment with allowance for reasonable mixing.
  - (d) The dates for schedule 16 compliance should not be set until the background research supporting achievable contaminant values has been completed and management techniques can be developed to assist in achieving compliance.

#### Compliance and uncertainty

14. The rules (in particular 12.C.1.1) in the decision present insurmountable compliance challenges. They are, in places, uncertain, leading to an inability for the Appellant 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.

15. The term “where the discharge first enters water” in rule 12.C.1.1(d) is uncertain and incapable of measurement for any point source discharge, but especially for diffuse discharges. Accordingly the Schedule 16 values become meaningless and incapable of enforcement.
16. Rule 12.C.1.1(d)(1) is not supported by any section 32 assessment. Nor is it apparent that this rule was requested by any submission or supported by any evidence that the hearing commissioners received. It is unclear what rule applies when this rule does not (i.e. prior to April 2020 or when the flows referred to in Schedule 16B are above median).
17. The Appellant is unable to identify specific relief that would resolve its concerns in respect of the uncertainty of the rules as they are currently drafted. However, any relief would need to address the following:
  - (a) Clarification around what ‘discharge’ includes, particularly in relation to the treatment of overland flows and how compliance by diffuse discharges will be determined (for example how diffuse discharges on properties that are not tile drained will be addressed).
  - (b) The rules and applicable policy framework must provide for reasonable mixing.
  - (c) The discharge standards within schedule 16 must be robust and achievable through the use of Best Practicable Options for land management.

#### Consenting Pathway

18. All of the rules providing for a restricted discretionary activity consent to be sought assume ultimate compliance with the discharge standards for permitted activities within a specified timeframe. Given the policy framework included within PC6A (Policy 7.D.4-7.D.7), resource consent for any activity that cannot comply with the permitted activity standards and within a 2-5 year timeframe is going to be unsupportable, regardless of the actual environment impact.
19. Policy 7.D.7 unreasonably and unnecessarily fetters the discretion of the decision maker in respect of the duration of resource consents that can be granted.

20. 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. This rule is void for uncertainty in its current form. It is also inconsistent with policy 7.B.3.
21. The Appellant seeks:
- (a) Policy 7.D.7 be amended to remove reference to specific timeframes.
  - (b) The Policy framework needs to be amended to identify the use of Best Practicable Options.
  - (c) removal of any assessment matters that refer to achievement of the permitted activity standards. Instead the rules should focus on the use of Best Practicable Options and where necessary staging to ensure such techniques can be employed in an economically viable way. In particular rule 12.C.2.4(c)-(d) need to be deleted or amended to reflect the comments above.
  - (d) Removal of 12.C.2.4(e) or amendment to be consistent with section 124B.
  - (e) removal of reference to ‘short term consents’ or clarification of what this means.

#### Section 32 assessment

22. There is no section 32 report evaluating the provisions included in 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.

#### **Relief sought**

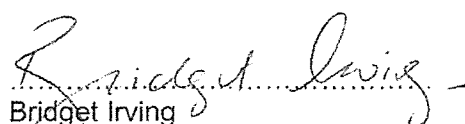
23. The Appellant seeks the following relief:
- (a) That the Court amends the Decision as set out in this appeal, or such other relief to give effect to the Appellant’s concerns;



- (b) If the relief sought cannot be granted, then that the Plan Change be cancelled.
- (c) 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
- (d) Costs of an incidental to this appeal.

24. 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.

  
 Bridget Irving  
 Solicitor for the Appellants

  
 Date

Address for service  
 Of Appellants:

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 Lawyers  
 Cnr High and Princes Street  
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 Dunedin 9054

Telephone: (03) 477 6721

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Contact Person: Phil Page

Bridget Irving

## **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