

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2022] NZEnvC 26**

IN THE MATTER

of the Resource Management Act 1991

AND

of a notice of motion under section 149T(2) to decide proposed Plan Change 1 to the Regional Plan: Waste for Otago (referred to the Environment Court by the Minister for the Environment under s142(2)(b) of the Act)

BETWEEN

OTAGO REGIONAL COUNCIL

(ENV-2020-CHC-128)

Applicant

Court: Environment Judge P A Steven  
Environment Commissioner K A Edmonds

Hearing: In Chambers on the papers

Last case event: Decision issued 30 November 2021

Date of Decision: 4 March 2022

Date of Issue: 4 March 2022

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**FURTHER DECISION OF THE ENVIRONMENT COURT**

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A: Pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court makes the decisions shown in the record of decisions attached as ‘Annexure 1: Plan Change 1 (Dust Suppressants) decisions on submissions’.



## REASONS

### Introduction

[1] The Minister for the Environment directed that Plan Change 1 ('PC1') to the Regional Plan: Waste for Otago be referred to the Environment Court under s142(2)(b) of the Act to give a decision on the provisions and matters raised in submissions.

[2] The court's decision *Re Otago Regional Council* [2021] NZEnvC 185 deals with the PC1 topic of the use of dust suppressants, and particularly, waste oil in Chapter 6. The court's decision followed the lodgement of amended provisions agreed by the parties who attended mediation<sup>1</sup> and an affidavit in support of Dolina Lily Lee, a senior analyst freshwater and land at the Regional Council. After a hearing on the papers, the court approved, pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, an amended version of PC1 as set out in 'Annexure 1: Plan Change 1 (Dust Suppressants) Provisions' to that decision.

### A record of decisions on submissions

[3] The court received a memorandum from the Regional Council on 15 February 2022, drawing the court's attention to a possible omission in its decision. It noted that the court did not include a record of decisions on submissions. While the Regional Council acknowledges that a decision on submissions does not require the court to give a decision that addresses each submission individually,<sup>2</sup> and the decision on submissions and reasons may address the submissions by grouping them according to provisions or matters to which they relate,<sup>3</sup> it considers a decision on submissions including the reasons for

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<sup>1</sup> *Re Otago Regional Council* [2021] NZEnvC 185 at [4]-[6].

<sup>2</sup> RMA, Schedule 1, cl10(3).

<sup>3</sup> RMA, Schedule 1, cl10(2)(a).

accepting and rejecting the submissions is needed in order to fulfil the court's decision-making obligations as part of the call-in process.

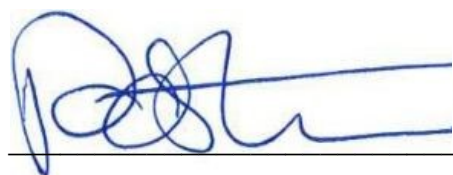
[4] Ms Lee's affidavit attached (in Annexure 4) recommended decisions on the relief sought in all the submissions with reasons, including on submissions from submitters who were not s274 parties, on Chapter 6 provisions in the notified plan change.

[5] The court accepts the Regional Council's argument and will issue a record of decisions on individual submissions, for completeness. The court has considered Ms Lee's recommended decisions, and concurs with them. However, the reasons for decisions on submissions are encapsulated in the reasoning set out in the court's earlier decision, so Ms Lee's reasons have been omitted from the record of submissions.

### **Decision on submissions**

[6] Pursuant to s149U(6) and cl10(1) to (3) of Schedule 1 of the Resource Management Act 1991, the court makes the decisions shown in the record of decisions attached as 'Annexure 1: Plan Change 1 (Dust Suppressants) decisions on submissions'.

For the court



**P A Steven**  
**Environment Judge**



## Annexure 1: Plan Change 1 (Dust Suppressants) decisions on submissions

Row	Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision requested	Court decision
1	Chapter 6	10007	10007.01		Helen and John Barrett	Oppose	Decline the plan change.	Reject
2	Chapter 6	10013	10013.01		Residents of lower Coronet Peak Station Road, Queenstown	Oppose	Delete proposed provisions which disallow use of waste oil as a dust suppressant.	Reject
3	Chapter 6	10006	10006.01		John Fenby	Oppose	Approve the plan change with amendments - allow limited use of oil as a suppressant within a specified distance of a rural home.	Reject
4	Chapter 6	10019	10019.01		Dunedin City Council:	Support	Amend by providing a 1-year transition period to cease using waste oil as a dust suppressant.	The DCC has withdrawn their submissions on this issue. No response required.
5				FS102	Federated Farmers of New Zealand – Otago and North Otago provinces	Support		See above
6				FS104	Southern District Health Board	Oppose		See above
7	Chapter 6	10014	10006.01		James Miles	Oppose	Approve the plan change with amendments - require all residential houses within 100m of an unsealed road with a speed limit over 30kph to have a 50m sealed section of road on each side of the dwelling.	Reject
8	Chapter 6	10010	10010.02		Matthew Sole	Support	Retain the plan change as notified.	Reject
9	Section 6.1.2.2	10027	10027.01		Federated Farmers of New Zealand – Otago and North Otago provinces	Support	Adopt deletion of the word "lubricating" throughout section 6.1.2.2; and Delete reference to 1991 survey.	Accept in part
10	Section 6.1.2.2	10031 10025	10031.02 10025.01		Department of Conservation Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain additions to Section 6.1.2.2.	Accept
11	Issue 6.2.5	10027	10027.02		Federated Farmers of New Zealand – Otago and North Otago provinces		Retain Issue 6.2.5 as notified.	Accept
12	Objective 6.3.1	10031	10031		Director General of Conservation		Retain additions to Objective 6.3.1.	Accept
13	Policy 6.4.10	10009	10009.10		Southern District Health Board	Support	Amend final sentence of explanation to Policy 6.4.10 as follows: <u>With safer alternatives now more readily available, waste oil should no longer must not be applied as a dust suppressant.</u>	Accept
14				FS102	Federated Farmers of New Zealand – Otago and North Otago provinces	Oppose		Reject
15	Policy 6.4.10	10025 10027 10031 10018 10021 10023	10025.02 10027.03 10031.03 10018.01 10021.01 10023.01		Royal Forest and Bird Protection Society of New Zealand Inc  Federated Farmers of New Zealand – Otago and North Otago provinces  Director General of Conservation  Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Kāi Tahu ki Otago)  Te Rūnanga o Ngāi Tahu  Ngāi Tahu Ki Murihiku	Support	Retain Policy 6.4.10 as notified.	Reject

Row	Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision requested	Court decision
16	Methods 6.5.6 and 6.5.23	10027	10027		Federated Farmers of New Zealand – Otago and North Otago provinces	Support	Retain Methods 6.5.6 and 6.5.23 as notified.	Accept
		10025	10025.03		Royal Forest and Bird Protection Society of New Zealand Inc			
		10031	10031		Director General of Conservation			
17	Rule 6.6.2	10030	10030.01		Beatrice Lee	Support in part	Amend Rule 6.6.2 to require councils to provide another form of dust suppressant that is not toxic.	Reject
18	Rule 6.6.2	10025	10025.04		Royal Forest and Bird Protection Society of New Zealand Inc	Support in part	Amend Rule 6.6.2(c) and (d) as follows: ... (c) <del>The discharge does not produce an objectionable odour, or a conspicuous oil or grease film, scum or foam in any:</del> (i) <del>Lake, river or Regionally Significant Wetland; or</del> (ii) <del>Drain or water race that flows to a lake, river, Regionally Significant Wetland or coastal marine area; or</del> (iii) <del>Bore or soak hole; and</del> (d) <del>The discharge is not undertaken in a manner that results in ponding or overland flow that enters any:</del> (i) <del>Lake, river, Regionally Significant Wetland or coastal marine area; or</del> (ii) <del>Drain or water race that goes to any lake, river, Regionally Significant Wetland or coastal marine area.</del>	Accept in part
19				FS102	<i>Federated Farmers of New Zealand – Otago and North Otago provinces</i>	<i>Oppose</i>		Reject in part
20				FS103	<i>Otago Fish and Game and Central South Island Fish and Game</i>	<i>Support</i>		Accept in part
21				FS106	<i>Kāi Tahu ki Otago</i>	<i>Support</i>		Accept in part
22	Rule 6.6.2	10031	10031.05		Department of Conservation	Support in part	Retain additions, and delete from Rule 6.6.2(c)(i) and (ii) and (d)(i) and (ii): “ <del>Regionally Significant</del> ” and replace with “ <i>natural</i> ”	Accept
23				FS102	<i>Federated Farmers of New Zealand – Otago and North Otago provinces</i>	<i>Support in part</i>		Accept
24				FS103	<i>Otago Fish and Game and Central South Island Fish and Game</i>	<i>Support</i>		Accept
25				FS104	<i>Southern District Health Board</i>	<i>Oppose</i>		Reject
26				FS105	<i>Royal Forest and Bird Society</i>	<i>Support</i>		Accept
27				FS106	<i>Kāi Tahu ki Otago</i>	<i>Support</i>		Accept
28	Rule 6.6.2	10029	10029.02		Lynne Stewart	Support	Retain Rule 6.6.2 as notified.	Reject
		10031	10031.04		Director General of Conservation			
		10009	10009.02		Southern District Health Board			
		10018	10018.02		Kāi Tahu ki Otago			
		10021	10021.02		Te Rūnanga o Ngāi Tahu			
		10023	10023.02		Ngāi Tahu Ki Murihiku			
		10027	10027.04		Federated Farmers of New Zealand – Otago and North Otago provinces			
29	Rule 6.6.3	10027	10027.05		Federated Farmers of New Zealand –	Support	Retain Rule 6.6.3 as notified. – Although consideration of the matter as a restricted	Accept in part

Row	Provision	Submitter ID	Submission Point ID	Further Submitter ID	Submitter Name	Support/ Oppose	Decision requested	Court decision
					Otago and North Otago provinces		discretionary activity should be contemplated.	
30	Rule 6.6.3	10018 10021 10023 10025	10018.03 10021.03 10023.03 10025.05		Kāi Tahu ki Otago Te Rūnanga o Ngāi Tahu Ngāi Tahu Ki Murihiku Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain Rule 6.6.3 as notified.	Accept
31	Rule 6.6.4	10018 10021 10023 10025	10018.04 10021.04 10023.04 10025.06		Kāi Tahu ki Otago Te Rūnanga o Ngāi Tahu Ngāi Tahu Ki Murihiku Royal Forest and Bird Protection Society of New Zealand Inc	Support	Retain Rule 6.6.4 as notified.	Accept
32	AER 6.7.6.	10027	10027.06		Federated Farmers of New Zealand – Otago and North Otago provinces		Amend Section 6.7.6 as follows: <del>The use of waste oil as a dust suppressant is avoided, and the adverse effects of the use of other waste lubricating oil as a dust suppressants are avoided, remedied or mitigated.</del>	Reject
33	AER 6.7.6.	10025 10031	10025.07 10031.06		Royal Forest and Bird Protection Society of New Zealand Inc Director General of Conservation		Retain Section 6.7.6 as notified.	Accept
34	Definition of Waste Oil	10025 10031	10025.12 10031.12		Royal Forest and Bird Protection Society of New Zealand Inc Director General of Conservation		Retain the definition as notified.	Accept
35	Plan Change 1	10008	10008.01		Maori Point Vineyard Ltd	Support	Approve the plan change with amendments - Add new section which requires monitoring of bores and other sources of potable water for contamination by agricultural chemicals and nutrient loads.	Reject
36				FS102	<i>Federated Farmers of New Zealand – Otago and North Otago provinces</i>	<i>Oppose</i>		Accept
37	Plan Change 1	10022	10022.01		Shaping Our Future Incorporated	Support	Approve Plan Change 1	Accept in part
38	Plan Change 1	10024	10024.01		Otago Fish and Game Council and the Central South Island Fish and Game Council	Support	Support intent of Plan Change 1.	Accept in part
39				FS105	<i>Royal Forest and Bird Protection Society of New Zealand Inc</i>	<i>Support</i>		Accept in part
40	Plan Change 1	10031	10031.01		Department of Conservation	Support	Retain provisions unless altered by any specific general, or consequential relief sought below.	Accept in part
41				FS103	<i>Otago Fish and Game Council and the Central South Island Fish and Game Council</i>	<i>Support</i>		Accept in part

