

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHC-287

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 Dunedin City
District Plan

BETWEEN **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

19 DECEMBER 2018

Royal Forest and Bird Protection Society of New Zealand Inc.
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Ph 021558241
Solicitor acting: Sally Gepp

TO: The Registrar
 Environment Court
 CHRISTCHURCH

AND TO:

INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird) appeals against part of the decisions of Dunedin City Council (Respondent) on the Proposed Second Generation Dunedin City District Plan (**District Plan**).
2. Forest & Bird made a submission on the District Plan.
3. Forest & Bird is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 (**RMA**).
4. Forest & Bird received notice of the decision on 7 November 2018.
5. The decision was made by the Respondent.
6. The parts of the decision that Forest & Bird is appealing are:
 - a. Chapter A.1.4 *Definitions*
 - b. Chapter A2.2 *Dunedin is Environmentally Sustainable and Resilient*.
 - c. Chapter C.10 *Natural Environment*.
 - d. Rule 16.3.4.27
 - e. Subdivision within Areas of Significant Biodiversity Value (**ASBV**) (all zones)
7. The reasons for the appeal are that the District Plan:
 - 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. Does not adequately assist the respondent to fulfil its functions under s31 RMA;
- e. Does not give effect to the New Zealand Coastal Policy Statement 2010 ('NZCPS') or the Otago Regional Policy Statement (partly operative) as required under s75 RMA; and
- f. 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.

8. Without detracting from the generality of the above the following reasons for appeal and relief sought are provided:

Provision	Reasons for appeal	Relief sought
Definition of vegetation clearance	The definition restricts clearance to destroying as opposed to adversely modifying/degrading, and is restricted to directly causing an extensive failure. Where indigenous vegetation is concerned (a sub-set of vegetation clearance) it is important to ensure modifying/degrading the indigenous component, and indirectly causing loss are controlled.	Amend definition to include degradation of indigenous vegetation and remove requirement for extensive failure to be directly caused by an activity. Ensure definition covers loss of indigenous vegetation as a result of irrigation.
Definition of no net loss	A definition of no "overall" reduction in indigenous biodiversity values is uncertain and will not maintain biodiversity	Delete "overall"
Policy 2.2.3.1	The District Plan is inadequate in only identifying Areas of Significant Biodiversity Value (ASBV) that are on public land. This does not implement the Otago RPS. Policy 2.2.3.1 is to promote protection of significant indigenous vegetation and/or habitats of indigenous fauna in a schedule	Amend to direct that qualifying areas are to be protected as ASBV in the schedule. Include a new method to set out a process for this to occur.

	as ASBV or QEII covenant and/or other legal covenant. This is insufficient to ensure the protection of qualifying areas as ASBV.	
Policy 10.2.1.2	This policy allows adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna whenever avoidance is “not practicable” which is inadequate to protect IBDA, and is uncertain. Sub-paragraphs a – c do not provide for remediation or mitigation of effects and the relationship between the three sub-paragraphs is uncertain. Policy does not give effect to the Otago RPS	Require that adverse effects on areas meeting the criteria in Policy 2.2.3.2 are avoided (not just “where practicable”) unless they are consistent with maintenance of the site’s biodiversity values.
Policy 10.2.1.3	Many of the activities listed in Policy 10.2.1.3 are inconsistent with protection of the ASBV’s values. No net loss is not sufficient to protect ASBVs. Policy does not give effect to the Otago RPS	Require that the listed activities are avoided unless they are consistent with maintenance of the ASBV’s biodiversity values.
Policy 10.2.1.4	Many of the activities listed in Policy 10.2.1.4 are inconsistent with protection of the ASBV’s values. No net loss is not sufficient to protect ASBVs	Require that the listed activities are avoided unless they are consistent with maintenance of the ASBV’s biodiversity values.
Policy 10.2.1.5	The policy is supported in part but there is no policy of encouraging retention of indigenous vegetation. Retention of vegetation is consistent with Objective 10.2.1 and s 31 RMA.	Amend policy (or add a new policy) encouraging retention of indigenous vegetation: <u>Encourage the retention of indigenous vegetation and habitats and conservation activity in all zones to increase resilience, buffering and connectivity</u>
Policy 10.2.1.6	Minor adverse effects on biodiversity values can cause cumulative loss that means biodiversity is not maintained.	Amend policy to add: <u>and the biodiversity values are maintained or enhanced.</u>
Policy 10.2.1.7	The significant values of wetlands and significant indigenous vegetation/significant habitat of indigenous fauna must be protected, which is not achieved by a “no net loss” outcome. Policy does not give effect to Otago RPS	Amend to require that indigenous vegetation clearance within a wetland or of the other vegetation/habitat types listed is avoided.
Policy 10.2.1.11	It is unclear whether this policy is providing for subdivision of ASBVs – this should be discouraged as fragmentation and fencing degrade ASBVs. Policy cross-	Amend to discourage subdivision of ASBVs and to include reference to Policy 10.2.1.1.

	references should include Policy 10.2.1.1.	
Objective 10.2.2	Objective is not consistent with NZCPS or s 6.	Amend to refer to protection of biodiversity values and preservation of natural character.
Policy 10.2.2.2	Requirement to maintain or enhance is not consistent with NSCPS or s 6	Amend to refer to protection of biodiversity values and preservation of natural character.
Policy 10.2.2.4	“Maintenance or enhancement” is not consistent with NZCPS requirement to protect indigenous biodiversity in the coastal environment and avoid adverse effects/avoid significant adverse effects on specified biodiversity values	Amend to be consistent with NZCPS
Policy 10.2.2.6	“Maintenance or enhancement” is not consistent with NZCPS requirement to protect indigenous biodiversity in the coastal environment and avoid adverse effects/avoid significant adverse effects on specified biodiversity values.	Amend to be consistent with NZCPS
Policy 10.2.2.8	This policy does not give effect to NZCPS Policies 11 and 13.	Amend to be consistent with NZCPS.
Policy 10.2.3.4	This policy does not give effect to Policy 13 NZCPS	Amend to be consistent with NZCPS.
Policy 10.2.3.7	The policy does not give effect to Policy 13 NZCPS. Some of the cross references to other policies are not appropriate.	Amend to be consistent with NZCPS.
Rule 10.3.2.1	The following activities should not be considered vegetation clearance-small scale: iv. clearance for the construction of tracks (associated with permitted land use or city-wide activities only) up to: 1. 2m in width in ASBVs, ONFs, ONCCs, HNCCs and NCCs; 2. 3m in width outside these areas; xiii. clearance of indigenous vegetation from areas that, within the last 10 years, <u>have been cultivated</u> or clear of such vegetation (outside ASBVs, ONFs, ONCCs, HNCCs and NCCs only), provided that the clearance is associated with a permitted land use or city-wide activity. Some rules relating to plantation forestry	Delete item iv. Delete cultivation from item xiii as some forms of cultivation may not have resulted in clearance of vegetation. Amend for consistency with

	are not consistent with the NESPF.	NESPF
Rule 10.3.2.2	10.3.2.2(a) setback reference to “clearly defined bed” is uncertain. 5 m setback is insufficient for waterbodies less than 3 m wide. Waterbody is defined to include wetland, but different setbacks are provided for wetlands and other waterbodies. The exemptions in d should not apply within wetlands. Forestry-related provisions are not consistent with the NESPF	20m setback should apply to any water body. Clarify in the rule or waterbody definition that the larger wetland setback applies to wetlands, and that the setback is assessed from the wetland edge, not from the bank of the water body at the point of its annual fullest flow or annual highest level without overtopping its bank. Reduce width of tracks to Amend d so that vegetation clearance within a wetland is a non-complying activity. Amend forestry-related provisions to be consistent with NESPF.
Rule 10.3.2.3	Activities that contravene the standard should be non-complying because of their adverse impacts on threatened species	Amend c to specify that activities that contravene the standard are non complying.
Rule 10.3.3	Irrigation pipes “of any size” are not appropriate within setbacks as a permitted activity.	Delete item p, consequentially amend q
Assessment of controlled activities 10.4	The provision lists only some relevant objectives and policies and repeats the text of some objectives and policies. The matters of control should include the location of buildings and assessments should include assessments on indigenous biodiversity. Location can impact on natural character. The lighting of buildings along the coast can impact on sea birds when located in the vicinity of existing breeding colonies or new seabird	Ensure objectives and policies are comprehensively listed or delete reference to objectives and policies. Do not repeat text of objectives and policies. Amend to include location of buildings and assessment of effect on indigenous biodiversity including seabirds.

	breeding restoration sites.	
Assessment of restricted discretionary activities (performance standard contraventions) 10.5	The provision lists only some relevant objectives and policies and repeats the text of some objectives and policies.	Ensure objectives and policies are comprehensively listed or delete reference to objectives and policies. Do not repeat text of objectives and policies.
Assessment of restricted discretionary activities 10.6	The provision lists only some relevant objectives and policies and repeats the text of some objectives and policies. Assessment criteria are not consistent with the NZCPS by referring to policy allowing for compensation for all restricted discretionary activities, where compensation is not consistent with a requirement to avoid adverse effects on outstanding natural character and outstanding natural landscapes in the coastal environment or areas meeting Policy 11 NZCPS.	Ensure objectives and policies are comprehensively listed or delete reference to objectives and policies. Do not repeat text of objectives and policies. Delete references to compensation in relation to activities affecting Policy 11, 13, 15 NZCPS areas. Make any consequential amendments to matters of discretion required as a result of other relief sought in this Notice of Appeal
Assessment of discretionary activities 10.7	It is not appropriate to specify that some objectives and policies are “priority considerations”. The provision lists only some relevant objectives and policies and repeats the text of some objectives and policies. Assessment criteria are not consistent with the NZCPS by referring to policy allowing for compensation for all restricted discretionary activities, where compensation is not consistent with a requirement to avoid adverse effects on outstanding natural character and outstanding natural landscapes in the coastal environment or areas meeting Policy 11 NZCPS. The status of the guidance regarding no	Delete reference to “priority” objectives and policies. Ensure objectives and policies are comprehensively listed or delete reference to objectives and policies. Do not repeat text of objectives and policies. Delete references to compensation in relation to activities affecting Policy 11, 13, 15 NZCPS areas Make any consequential amendments to matters of discretion required as a result of other relief sought in this Notice of Appeal Provide a new definition of “no

	practicable alternative locations is unclear	practicable alternative locations” if policies referring to this are retained.
Assessment of non-complying activities 10.8	It is not appropriate to specify that some objectives and policies are “priority considerations”. The provision lists only some relevant objectives and policies and repeats the text of some objectives and policies. Assessment criteria are not consistent with the NZCPS by referring to policy allowing for compensation for all restricted discretionary activities, where compensation is not consistent with a requirement to avoid adverse effects on outstanding natural character and outstanding natural landscapes in the coastal environment or areas meeting Policy 11 NZCPS.	Delete reference to “priority” objectives and policies. Ensure objectives and policies are comprehensively listed or delete reference to objectives and policies. Do not repeat text of objectives and policies. Delete references to compensation in relation to activities affecting Policy 11, 13, 15 NZCPS areas Make any consequential amendments to matters of discretion required as a result of other relief sought in this Notice of Appeal
Special Information Requirements 10.9	10.9.2 Vegetation Clearance This information should be required whenever large scale indigenous vegetation clearance-large scale is to be undertaken. The information should be provided by an ecologist. The information does not appear necessary when non-indigenous vegetation is to be cleared. b. should refer to species present <u>or</u> known to use a site No information is required for the consent authority to determine whether avoidance of adverse effects is practicable (as referred to in Policy 10.2.1.2 and others).	Amend to require this information for all vegetation clearance – large scale, and to be provided by an ecologist: Council may request a report by an ecologist or similarly qualified person is required.... for applications where resource consent is required for <u>indigenous</u> vegetation clearance <u>–large scale</u>. Amend b to: b. a description of the indigenous wildlife present and <u>or</u> known to use the site If policies are to be retained that use the phrase “or, if avoidance is not practicable”, include special information requirements to enable the consent authority

		to determine whether avoidance is practicable.
Rule 16.3.4.27	Shelterbelts and small woodlots are not appropriate in ASBV as they require vegetation clearance, fragment the habitat and modify the ecosystem	Change activity status from RD to NC.
All zones - subdivision rules	The rules do not address subdivision of ASBVs (other than subdivision for the purpose of an ASBV). Subdivision of ASBVs is usually inappropriate as it fragments the habitat and results in additional fencing and intensified land use that is likely to adversely affect the ASBV. Policy 10.2.1.11 provides guidance about when subdivision that affects ASBVs is appropriate	Include rules in all zones specifying that subdivision within ASBVs is a non-complying activity.

9. Forest & Bird seeks:

- a. The relief or alternative relief set out in this notice of appeal.
- b. Such consequential or further relief as may be necessary to fully address the reasons for appeal and give effect to the relief sought;
- c. Costs.

APPENDICES

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

- a. Forest & Bird submission;
- b. A copy of the parts of the decision appealed; and
- c. List of parties to be served.

Dated 19 December 2018



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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 or the 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 Christchurch.

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