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13 November 2007

The Chief Executive  
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PO Box 345  
**CHRISTCHURCH**

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**By Facsimile 03 365 3194**  
**Number of Pages / 7**

**Notice of Appeal - Rangitata Diversion Race Management Limited v Canterbury Regional Council - Proposed Canterbury Natural Resources Regional Plan**

1. Please find **enclosed** by way of service on behalf of Rangitata Diversion Race Management Limited a Notice of Appeal which has been lodged with the Environment Court in relation to the decisions on the Proposed Canterbury Natural Resources Regional Plan.
2. A hardcopy will follow by post.

Yours faithfully  
**HOLLAND BECKETT**

**MICHELLE PADDISON**  
Solicitor

encl.

**CONFIDENTIALITY:** The information contained in this facsimile (and any accompanying documents) may be legally privileged and confidential. The information is intended only for the recipient named above. If the reader of this facsimile is not the intended recipient you are notified that any use, disclosure, copying or distribution of the information is prohibited. If you have received this facsimile in error please notify us immediately and destroy the original documents. Thank you.

MPA-130354-253-L7-V1:jmn

<b>Partners</b>	Simon Paul Collett B.A.L.L.B. Vanessa Jane Hamm B.A.L.L.B. William Beau Holland LL.B.	John David Mackay LL.B. John Douglas Patterson LL.B. Michael Joseph Sharp B.Com.LL.M.	Dean Andrew Thompson LL.B. Mark Eaton Tingey B.Com.LL.B.	<b>Consultants</b>	Allen Conway Hunter LL.B. Michael John Smith LL.B. Nanette Marie Stone LL.B.
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**IN THE ENVIRONMENT COURT**

**ENV**

**IN THE MATTER**

of the Resource Management Act  
1991

**A N D**

**IN THE MATTER**

of an appeal pursuant to clause  
14(1) of the First Schedule to the  
Resource Management Act 1991

**BETWEEN**

**RANGITATA DIVERSION RACE  
MANAGEMENT LIMITED**

Appellant

**A N D**

**CANTERBURY REGIONAL  
COUNCIL**

Respondent

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**NOTICE OF APPEAL UNDER CLAUSE 14(1) OF THE FIRST SCHEDULE TO  
THE RESOURCE MANAGEMENT ACT 1991**

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**TO:** The Registrar  
Environment Court  
Christchurch

1. Rangitata Diversion Race Management Limited ("the Appellant") appeals against decisions of the Canterbury Regional Council ("the Respondent") on the Proposed Canterbury Natural Resources Regional Plan ("the Proposed Plan").
2. The Appellant made submissions and further submissions on the Proposed Plan.
3. The Appellant received notice of the decisions on 1 October 2007.
4. The decisions were made by the Respondent.

5. The decisions appealed, reasons for appeal, and relief sought are grouped together by matter and are set out below in the order in which the relevant matter appears in the Proposed Plan.

## **CHAPTER 1**

### **1. Chapter 1 – Definitions – "*precautionary principle*"**

- (a) The decision appealed is as follows:

The decision to not provide a definition of "*precautionary approach*" in the Proposed Plan.

- (b) The reasons for the appeal are as follows:

The Proposed Plan initially included the term "*precautionary principle*" in various policies including policies AQL8 and AQL10. The Respondent changed the term to "*precautionary approach*" as this term has found favour over the term "*precautionary principle*". The Respondent considered that it was not appropriate to define the term "*precautionary approach*" as it may change over time as case law develops.

Requiring a "*precautionary approach*" to various activities without defining such an approach causes uncertainty and encourages inconsistent decisions as a result of different "precautionary approaches" being applied. It is also less clear what a "*precautionary approach*" is, in contrast to the term "*precautionary principle*" which is more well established through international law. Therefore it is appropriate that the Proposed Plan provide a definition of "*precautionary approach*".

- (c) The Appellant seeks the following relief:

The inclusion of a definition of "*precautionary approach*" in the Proposed Plan.

## 2. Chapter 1 – Definitions – "*production land*"

- (a) The decision appealed is as follows:

The decision to not amend the definition of "*production land*" to clarify whether irrigation races and associated areas fall within the definition or to exclude irrigation/water supply races and associated structures from the definition.

- (b) The reasons for the appeal are as follows:

The Appellant sought that the term "*production land*" be clarified as it was not clear whether the term included irrigation races and associated areas, and therefore not clear how some rules within the Proposed Plan might apply to irrigation races. The Respondent rejected the submission on the basis that the definition of "*production land*" is taken from the Resource Management Act 1991 ("the RMA").

While the definition of "*production land*" is taken from the RMA, this does not provide clarification as to whether or not irrigation races and associated structures fall within this definition, particularly when the term is used in regional rules. At regional plan level more detailed definitions are required. The Appellant's view is that irrigation races and associated areas are not "*production land*" as they are not used for production of primary products. However, there is ambiguity in the definition and to avoid uncertainty it is submitted that the definition should be clarified.

- (c) The Appellant seeks the following relief:

That the definition of "*production land*" be amended to exclude irrigation/water supply races and associated structures.

## 3. Chapter 1 – Definitions – "*public amenity areas*"

- (a) The decision appealed is as follows:

The decision to not clarify whether or not the Rangitata Diversion Race is a "*public amenity area*".

- (b) The reasons for the appeal are as follows:

The Appellant sought that the term "*public amenity area*" be clarified as it was not clear whether it included the Rangitata Diversion Race, and therefore not clear how some rules within the Proposed Plan might apply to the Rangitata Diversion Race if it constitutes a public amenity area. For example rules AQL70 and AQL71 in the Proposed Plan make reference to "*public amenity areas*". The Respondent rejected the submission on the basis that public amenity areas only includes those five areas where the public has a right of access and which are specified in the definition.

The current definition is open to different interpretations resulting in uncertainty. There is a pedestrian walkway alongside the Rangitata Diversion Race and, although the public does not have right of access to this under any statute, regulation, law, or by-law, it is regularly used by the public. There is also scope for the argument that the public have legal right of access to the walkway. Given the possible interpretation difficulties, the Appellant submits that clarification is required.

- (c) The Appellant seeks the following relief:

That the definition of "*public amenity areas*" be clarified to confirm that the Rangitata Diversion Race is not a "*public amenity area*".

#### 4. **Chapter 1 – Definitions – "*sensitive areas*"**

- (a) The decision appealed is as follows:

The decision to not specifically exclude the Rangitata Diversion Race from the definition of "*sensitive areas*".

- (b) The reasons for the appeal are as follows:

The definition of "*sensitive areas*" is "**Sensitive areas** include water bodies used for public water supply, any river, lake, stream pond or wetland...."

The Appellant sought that the term "*sensitive areas*" be clarified as it was not clear whether it included the Rangitata Diversion Race, and therefore not clear how some rules within the Proposed Plan might apply to the Rangitata Diversion Race if it constitutes a sensitive area. The Respondent rejected the submission on the basis that the Rangitata Diversion Race and associated races are not a public water supply.

However, there is ambiguity in the definition leaving scope for the argument that the Rangitata Diversion Race is a water body used for public water supply as the public uses the Rangitata Diversion Race. Given this ambiguity, it is important for certainty to specifically exclude such races from the definition of "*sensitive areas*".

- (c) The Appellant seeks the following relief:

The following to be added to the definition of "*sensitive areas*":

"... but excludes any irrigation, stock water or other man-made canal designed for the conveyance of water."

## 5. Chapter 1 – Definitions – "**Structure**"

- (a) The decision appealed is as follows:

The decision to not amend the definition of "*structure*" so that only buildings with a floor space over 2m<sup>2</sup> or larger are captured by the definition and fences, water pipes, cable and small culverts are excluded from the definition.

- (b) The reasons for the appeal are as follows:

Federated Farmers of New Zealand Inc, North Canterbury Branch (submitter number 347) submitted that the definition of "*structure*" should be amended as above. The Appellant supported this submission. The Respondent rejected the submission and considered that its current definition of "*structure*" is appropriate as it is taken directly from the RMA.

While the definition of "*structure*" may have been taken from the RMA, a more detailed definition is necessary when applying particular rules to the management of resources at the regional plan level. In addition, the rules that primarily relate to large structures can often capture facilities such as culverts which have only minor adverse environmental effects.

Therefore, the definition should exclude water pipes, cables and small culverts and these should be managed by specific rules designed to avoid, remedy or mitigate any adverse effects that they may have on the environment.

- (c) The Appellant seeks the following relief:

That the definition of "*structure*" be amended so that only buildings with a floor space over 2m<sup>2</sup> or larger are captured by the definition and fences, water pipes, cable and small culverts are excluded from the definition.

### **CHAPTER 3**

#### **6. Chapter 3 – Rule AQL41 – Metal work processes**

- (a) The decision appealed is as follows:

The decision to retain the discretionary activity status where the permitted activity conditions cannot be met.

- (b) The reasons for the appeal are as follows:

The New Zealand Institute for Crop and Food Research Ltd (submitter number 374) submitted that it was not appropriate to default the activity to discretionary status if the permitted activity conditions were not complied with. The Appellant supported this submission. The Respondent's view is that the discretionary status is appropriate as the inability to comply with permitted activity conditions could, in some circumstances, result in significant adverse effects. However, making the activity status controlled or restricted discretionary would allow the Respondent to assess these adverse effects, while at the same time providing certainty for resource users. The activity being monitored is specific with specific effects and therefore it is appropriate to make use of controlled or restricted discretionary activity status, rather than defaulting to general discretionary activity status.

- (c) The Appellant seeks the following relief:

Provision that if the activity does not comply with the conditions in rule AQL41 then it is a controlled or restricted discretionary activity

**7. Chapter 3 – Rule AQL52 – Dry or wet abrasive blasting within an enclosed booth**

- (a) The decision appealed is as follows:

The decision to reject the Appellant's submission seeking the development of a rule that specifically permits abrasive outdoor abrasive blasting.

- (b) The reasons for the appeal are as follows:

The Appellant supported TrustPower Limited's submission that currently the Proposed Plan makes no allowance for situations where wet or dry abrasive blasting takes place outside of an enclosed booth. Therefore, it is impossible to undertake any form of abrasive blasting of large, fixed structures that cannot be practically dismantled, for example, pen stocks and other large structures. The Respondent considered that resource consent for discharges as a result of

abrasive blasting is required. However, this fails to take into account, or make provision for, abrasive blasting that is only temporary in nature and will not have significant adverse effects on the surrounding environment. Requiring a resource consent for such activity is unnecessary. The Appellant considers that such an activity should be permitted provided that the activity is temporary in nature and will not have significant adverse effects on the surrounding environment.

- (c) The Appellant seeks the following relief:

A new rule inserted into the Proposed Plan that allows for abrasive blasting outside of an enclosed booth to be a permitted activity, provided that the activity is temporary in nature and will not have significant adverse effects on the surrounding environment.

#### 8. Further reasons for the appeal

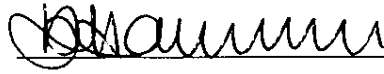
- (a) In addition to the matters set out in paragraphs 1 to 7 above, the further reasons for the appeal are as follows:
- (i) The decisions are not consistent with the purpose and principles of the RMA.
  - (ii) The decisions do not promote sound resource management practice.

#### 9. Further relief sought

- (a) In addition to the matters set out in paragraphs 1 to 7 above, the Appellant seeks the following relief:
- (i) Any similar relief with like effect;
  - (ii) Any consequential amendments to ~~the Proposed Plan which arise~~ from the reasons for the appeal or the relief sought;
  - (iii) Costs.

10. The Appellant attaches the following documents to this notice:
- (a) Copies of the Appellant's submissions and further submissions (with a copy of the submissions supported by the further submissions) on the Proposed Plan:
  - (b) Copies of the Respondent's decisions on the matters which are the subject of this notice of appeal, appearing in the order in which the matters are set out in this notice;
  - (c) A list of names and addresses of the persons to be served with a copy of this notice of appeal.

**Signature:** **RANGITATA DIVERSION RACE MANAGEMENT LIMITED**  
by its authorised agent:

  
\_\_\_\_\_  
Vanessa Jane Hamm  
Solicitor for the Appellant

**Date:** 13 November 2007

**Address for service of Appellant:** The Chairman  
Rangitata Diversion Race Management Limited  
18 Kermode Street  
PO Box 61  
**Ashburton**

**Telephone:** (03) 307 8320

**Fax:** (03) 307 8321

**Email:** rdrman@xtra.co.nz

**Note to Appellant**

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, 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).

**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 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 30 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).

The copy of this notice served on you does not attach copies of the Appellant's submissions or the decisions appealed. These documents may be obtained, on request, from the Appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

**Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Auckland address** of the Environment Court is:

8<sup>th</sup> Floor, District Court Building  
3 Kingston Street  
Auckland

Its postal address is:

PO Box 7147  
Wellesley Street  
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091  
Fax: (09) 916 9090

**The Wellington address** of the Environment Court is:

The District Court Building  
43-49 Ballance Street  
Wellington

Its postal address is:

PO Box 5027  
Lambton Quay  
Wellington

And its telephone and fax numbers are:

Telephone: (04) 918 8300  
Fax: (04) 918 8303

**The Christchurch address** of the Environment Court is:

83 Armagh Street (corner Durham Street)  
Christchurch

Its postal address is:

PO Box 2069  
Christchurch

And its telephone and fax numbers are:

Telephone: (03) 962 4170  
Fax: (03) 962 4171

RDRML

**LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A  
COPY OF THIS NOTICE OF APPEAL**

The Chief Executive  
Canterbury Regional Council  
PO Box 345  
CHRISTCHURCH

<b>Submitter Number</b>	<b>Submitter Name &amp; Address</b>
8	Primary Producers Co-Operative Society Ltd, Christchurch PO Box 283 CHRISTCHURCH
117	TrustPower Limited C/- Boffa Miskell Ltd PO Box 13373 TAURANGA
172	Alliance Group Limited, Christchurch P O Box 1472 CHRISTCHURCH
238	Director General of Conservation C/- Department of Conservation Canterbury Conservancy Private Bag 4715 CHRISTCHURCH
285	Alliance Group Limited C/-Aurora Pacific P O Box 16 489 Hornby CHRISTCHURCH
286	Michael Eder 143 Broad Road R D 2 RANGIORA
317	Simon Christien 3 Selwyn Street Somerfield CHRISTCHURCH
338	Transit New Zealand, Christchurch P O Box 1479 CHRISTCHURCH
347	Federated Farmers of New Zealand Inc, North Canterbury Branch P O Box 1992 Burnside CHRISTCHURCH
365	Meridian Energy Limited C/- Boffa Miskell Ltd P O Box 110 CHRISTCHURCH
370	Department of Corrections C/- Opus International Consultants Ltd PO Box 1482 CHRISTCHURCH

374	New Zealand Institute of Crop & Food Research Limited C/- Opus International Consultants Ltd PO Box 1482 CHRISTCHURCH
378	Canterbury Growers Society Inc Secretary P O Box 35148 Shirley CHRISTCHURCH
379	Christchurch City Council, Civic Offices P O Box 237 CHRISTCHURCH
391	Carter Holt Harvey Panels MDF Limited P O Box 1001 Ashley RANGIORA
397	H W Hendricks P O Box 88 KAIAPOI
401	NZ Vegetable & Potato Growers Fed. Inc and NZ Fruitgrowers' Fed Inc P O Box 10 232 WELLINGTON
405	Timaru District Council P O Box 522 TIMARU
406	Tasmin Farms Limited C/- Cubitt Consulting Limited P O Box 5006 DUNEDIN
411	NZMP P O Box 33 TEMUKA
413	A Gillanders Almond Bank Greendale Road DARFIELD
416	NZMP C/- Bentley & Co. Ltd PO Box 4492 Shortland St AUCKLAND
418	Andrea & Neville Chalmers 349 Lower Beach Road R D 4 ASHBURTON
429	Selwyn District Council Private Bag 1 LEESTON
432	Land Information New Zealand Landward Management Ltd Private Bag 5627 DUNEDIN
F3004	John H Gardiner 16 Hororata Road PO Box 71 DUNSANDEL

F3005	Ian A Upston Brookside RD2 LEESTON
F3006	Ken Turpin 119 Kiri Kiri Road OXFORD
F3007	John C Stewart Horarata R D 2 DARFIELD
F3008	Paul I Bruce R D 12 RAKAIA
F3009	Robert & Averil Leckey "Mason Hills" Inland Road WAIARUA R D
F3010	Scott Anderson Fyfe downs ROTHERHAM
F3011	Noel Dalley Brookdale R D 2 LEESTON
F3012	Rosalie Kerr Wards Road R D 1 DARFIELD
F3013	Craig Robertson The Schack Abners Head Sheffield CANTERBURY
F3014	Murray Robertson Courtenay No 1 R D CHRISTCHURCH
F3015	Alan McDowell 401 Brayleys Rd Ohoka R D 2 KAIAPOI
F3016	RH Friedman Clintons Road R D 1 CHRISTCHURCH
F3017	Barry Shepherd The Glens Box 40 OMARAMA
F3018	PG Morrison Hukanui DARFIELD R D

F3019	P & SM Turnbull Mt Teraico R D KAIKOURA
F3020	Margaret Robertson Mt Oakden R D 2 DARFIELD
F3021	Neil Robertson Mt Oakden R D 2 DARFIELD
F3022	Neil Scott Kimberly Road DARFIELD R D
F3023	WS Rowe Dunsandel R D 2 LEESTON
F3024	A D Cullen R D 1 DARFIELD
F3025	Peter J Croft Newlands No 1 R D AMBERLY
F3026	Barry Parsons R D 13 RAKAIA
F3027	A W Andrews R D 21 GERALDINE
F3028	I & HO Handy Hampnett 635 S H 8 No 4 R D TIMARU
F3029	David Davison Lowry Peaks CULVERDEN 8272
F3030	Ian C Bruce Hororata R D 2 DARFIELD
F3031	Evelyn Bruce Leaches Road HORORATA 8172
F3032	Dannie McAughtrie Willowburn Station OMARAMA
F3033	Ilam & Upper Riccarton Residents Association Inc 21 Solway Avenue Ilam CHRISTCHURCH

F3034	Fish & Game NZ, Central South Island Region PO Box 150 TEMUKA
F3035	Ilam & Upper Riccarton Residents Association Inc C/- 3 Kelson Lane Ilam Park CHRISTCHURCH 4
F3036	Ilam & Upper Riccarton Residents Association Inc C/- Mrs J Sinclair 3 Kelson Lane Ilam CHRISTCHURCH
F3037	Lionel Donaldson Valetta No 1 R D ASHBURTON
F3038	Ilam & Upper Riccarton Residents Association Inc C/- 3 Kelson lane Ilam CHRISTCHURCH
3039	Maureen Robertson Glen Rannoch Farm Courtenay No 1 R D CHRISTCHURCH