

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

AT CHRISTCHURCH

ENV – 2018 – CHC – 000039

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 Proposed Southland Water and
Land Plan

BETWEEN

Alliance Group Limited

Appellant

AND

Southland Regional Council

Respondent

NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION

BECOME A PARTY TO PROCEEDINGS

Section 274 Resource Management Act 1991

Department of Conservation

Planning, Permissions and Land

Department of Conservation

Private Bag 4715

Christchurch 8140

Phone: 03 371 3700

Solicitor: Pene Williams

To: The Registrar
 Environment Court
 Christchurch

1. I, Lou Sanson, Director-General of Conservation (the Director-General) wish to be a party to an appeal against part of the decision of the Southland Regional Council on the Proposed Southland Water and Land Plan (the proposed Plan) by Alliance Group Ltd (the appellant), ENV – 2018 – CHC – 000039 (the notice).
2. I made a submission on the proposed Plan¹, in particular on Objective 11², Objective 13³, Objective 18⁴, Policy 14⁵, Policy 15⁶, and Policy 20⁷. I made a further submission on the proposed Plan on Rule 5⁸, Rule 6⁹ and Rule 49¹⁰.
3. I am not a trade competitor for the purposes of section 308C or section 308CA of the Resource Management Act 1991 (RMA).
4. I am interested in part of the appeal.

Interests in the Appeal

5. My interests in the appeal are as follows:

Objective 11

- 5.1. In paragraphs 7 – 9 of its notice, the appellant appeals that part of the decision dealing with Objective 11 and seeks as relief that the Objective be amended to have regard to the primacy of water supply for community water supplies and priority water takes.

Objective 13, New Objective 13A and New Objective 13B

- 5.2. In paragraphs 10 – 12 of its notice, the appellant appeals the decision on Objectives 13, 13A and 13B. The appellant is concerned that the decision

¹ Submitter Number 210

² Submission Point 210.32

³ Submission Point 210.34

⁴ Submission Point 210.57, Further submissions on points: Fonterra 277.16, Southland Fish and Game Council 752.34

⁵ Submission Point not included in summary of decisions requested refer to Director-General submission

⁶ Submission Point 210.54

⁷ Submission Point 210.58

⁸ Further submissions on points: Federated Farmers 265.74, Forest and Bird 279.60, Meridian Energy Ltd 562.11, PF Olsen Ltd 622.14, and Southland District Council 750.9.

⁹ Further submission on Alliance Group Ltd 17.26.

¹⁰ Further submissions on points: Environment Southland 247.14, Irrigation NZ Incorporated 414.9, and Southland Fish and Game Council 752.142

requiring all discharges of contaminants to land or water to be avoided if they will have significant or cumulative adverse effects on human health cannot be justified.

- 5.3. The appellant seeks Objective 13, Objective 13A and Objective 13B be deleted and replaced with the notified version of Objective 13, or in the alternative that Objective 13B be deleted.

Objective 18

- 5.4. In paragraphs 13 – 15 of its notice, the appellant appeals that part of the decision dealing with Objective 18 and seeks to amend Objective 18 to provide that discharges from industrial or trade processes shall operate in accordance with the best practicable option.

Policies 4 – 12 (Physiographic Zone Policies)

- 5.5. In paragraphs 16 – 18 of its notice the appellant appeals the decision dealing with Policies 4 – 12 inclusive and seeks these be amended to clarify that the Policies only apply to farming activities, and not to industrial and trade processes.

Policy 14 – Preference for discharge to land

- 5.6. In paragraphs 19 – 21 of its notice, the appellant appeals that part of the decision dealing with Policy 14 and seeks to amend the Policy as the appellant considers that the decision does not acknowledge that there may be practical reasons why a discharge to land is not appropriate.

New Policy 15A – Maintain water quality where standards are met,

New Policy 15B – Improving water quality where standards not met,

New Policy 15C – Maintaining or improving water quality after FMU processes, and

Policy 16A – Industrial and trade processes that may affect water quality

- 5.7. In paragraphs 22 – 24 of the notice, the appellant appeals that part of the decision dealing with Policies 15A, 15B, and 15C and Policy 16A. The appellant is concerned that Policies 15A, 15B and 15C may impose a prohibitive and unobtainable acceptable effects outcome on the appellant's discharges.

Policy 20 – Management of water resources

- 5.8. In paragraphs 25 – 27 of its notice, the appellant appeals that part of the decision dealing with Policy 20 and seeks to amend the Policy as the appellant is concerned the reference to ‘best management practices’ in Appendix O does not account for the age of the appellant’s plant and technology.
- 5.9. The Appellant seeks the reference to Appendix O in Policy 20 be deleted, or that Appendix O be amended so it acknowledges there are practical limits to improving water efficiency in older industrial and trade processes.

Policy 42 – Consideration of water permit applications

- 5.10. In paragraphs 28 – 30 of its notice the appellant appeals the decision on Policy 42, concerned that this potentially applies minimum flow/ levels or environmental flow/ levels to its takes. The appellant seeks to amend the Policy to exclude takes for its operations from being subject to minimum flow/ levels or environmental flow/ levels.

Rule 5 – Discharges to surface waterbodies, and

Rule 6 – Discharges to surface water bodies that do not meet water quality standards

- 5.11. In paragraphs 31 – 33 of its notice, the appellant appeals that part of the decision dealing with Rule 5 and Rule 6 and seeks to amend Rule 5 and Rule 6 as the appellant’s processing operations are reliant on the ability to discharge to surface waterbodies.
- 5.12. The appellant seeks Rules 5 and Rule 6 be amended so that achieving the standards in Appendix E and Appendix C is not determinative of activity status for discharges from its processing plants, and that Rules 5 and 6 be amended so that replacement consents for existing discharge activities are discretionary activities.

Rule 49 – Abstraction, diversion and use of surface water

- 5.13. In paragraphs 34 – 36 of its notice, the appellant appeals that part of the decision dealing with Rule 49 and seeks to amend the Rule as the appellant considers the activity status it creates is inappropriate and the requirement for non-consumptive takes and diversions to be returned within 100 metres of the take or diversion point is arbitrary and not effects based.
- 5.14. The appellant also appeals the discretion criteria in particular the application of Appendix R – Fish Screening Standards and Guidelines.

- 5.15. The appellant seeks Rule 49 provide for all non-consumptive take, diversion and use of water as a restricted discretionary activity. The appellant seeks to amend Appendix R be amended so that it only applies to permitted activities or the Appendix is deleted.

Appendix E – Water Quality Standards

- 5.16. In paragraphs 40 – 42 of its notice, the appellant appeals that part of the decision dealing with Appendix E as the appellant is concerned that the standards have not been developed having regard to natural variability.
- 5.17. The appellant seeks the standards in Appendix E be amended so they take appropriate account of existing land use, existing water quality and natural variability.

Director-General's positions on parts of the appeal

6. I oppose the relief sought in the notice with respect to: Objective 11; Objective 13B in part; Objective 18, Policy 14, Policies 15A, Policy 15B, Policy 15C, Policy 20; Policy 42; Rule 5; Rule 49; and Appendix E. The reasons for opposing the relief sought are as follows:

Objective 11

- 6.1. I oppose the relief sought for Objective 11 as it changes the intent of the Objective from managing water allocation efficiently to having particular regard to community water supplies and priority takes. Under the decision at Policy 25 priority takes are intended to identify and prioritise abstractions during periods of water shortage. Expanding this objective to require regard to be had to these in managing water allocation generally is inappropriate.
- 6.2. The relief sought by the appellant:
- 6.2.1. fails to give effect to the National Policy Statement for Freshwater Management 2014 (amended 2017) (NPSFM) as required by section 67(3) of the RMA in particular: Objective B3 and Policy B4.
- 6.2.2. fails to give effect to the Southland Regional Policy Statement (SRPS) as required by section 67(3) of the RMA, in particular: Objectives WQUAN.1 and WQUAN.2, Policies WQUAN.1, WQUAN.2, WQUAN.3, WQUAN.4 and WQUAN.6.

Objective 13B

- 6.3. I oppose in part the alternative relief seeking the deletion of Objective 13B.
- 6.4. The relief sought by the appellant:
- 6.4.1. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1 and A2, and Policy A1.
- 6.4.2. in the coastal environment, fails to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) as required by section 67(3) of the RMA, in particular: Objectives 1, 6 and 7 and Policies 3, 5, 13, 21 and 23.
- 6.4.3. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objective WQUAL.1, and Policies WQUAL.1, WQUAL.2, and WQUAL.3.

Policy 14 – Preference for discharge to land

- 6.5. I oppose the relief sought by the appellant as it:
- 6.5.1. in the coastal environment, fails to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) as required by section 67(3) of the RMA, in particular: Objective 1, and Policy 23.
- 6.5.2. fails to give effect to the SRPS as required by section 67(3) of the RMA in particular: Policies WQUAL.8 and WQUAL.10.

Policy 15A – Maintain water quality where standards are met,Policy 15B – Improving water quality where standards not met,Policy 15C – Maintaining or improving water quality after FMU processes, andPolicy 16A – Industrial and trade processes that may affect water quality

- 6.6. I oppose the relief sought by the appellant on these Policies, as this relies on the Freshwater Management Unit process to ensure that water quality in the region is maintained or improved. The relief sought does not provide decision makers in the interim with appropriate guidance for waterbodies that do not meet the water quality standards in Appendix E.
- 6.7. The relief sought by the appellant:

- 6.7.1. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1 and A2, and Policy A1.

- 6.7.2. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.7.3. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1 and WQUAL.2, and Policies WQUAL.1 and WQUAL.2.

Policy 20 – Management of water resources

- 6.8. I oppose the relief sought by the appellant as it:
 - 6.8.1. fails to give effect to NPSFM as required by section 67(3) of the RMA, in particular: Objective B5.
 - 6.8.2. fails to give effect to the SRPS as required by section 67(3) in particular: Objective WQUAN.1, and Policy WQUAN.1.

Policy 42 – Consideration of water permit applications

- 6.9. I oppose the relief sought by the appellant as this:
 - 6.9.1. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective B3 and Policy B2.
 - 6.9.2. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Policy WQUAN.2.

Rule 5 – Discharges to surface waterbodies and

Rule 6 – Discharges to surface water bodies that do not meet water quality standards

- 6.10. I oppose the relief sought by the appellant, as it:
 - 6.10.1. is contrary to section 69(3) of the RMA as it creates standards that may result in the reduction of water quality.
 - 6.10.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective A1 and Objective A2.
 - 6.10.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1, and 7, and Policies 3, 5, 11, 13, 21 and 23.

- 6.10.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, and WQUAL.2, and Policy WQUAL.2.

Rule 49 – Abstraction, diversion and use of surface water

- 6.11. I oppose the relief sought as it fails to protect fish from abstractions and diversion.
- 6.12. The relief sought by the appellant:
- 6.12.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognize and provide for matters of national importance including: section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.12.2. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1, and Policy 11.
- 6.12.3. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objective WQUAN.1, and Policy WQUAN.1.

Appendix E – Water Quality Standards

- 6.13. I oppose the relief sought by the appellant as it:
- 6.13.1. is contrary to section 10(4) of the RMA as it creates the expectation of protection of existing uses of land.
- 6.13.2. is contrary to section 69(3) of the RMA as it creates standards that may result in the reduction of water quality.
- 6.13.3. fails to give effect to the NPSFM as required by section 67(3) in particular: Objective A1 and Objective A2.
- 6.13.4. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1, and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.13.5. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1 and WQUAL.2, and Policy WQUAL.2.

7. I support the relief sought in the notice with respect to Objective 13, Objective 13A, and Objective 13B (in part); and Policies 4 – 12. The reasons for supporting the relief sought are as follows:

Objective 13, Objective 13A and Objective 13B

- 7.1. I support the relief sought to delete the decision versions of Objective 13, Objective 13A and Objective 13B and replace these with the notified version of Objective 13, as the decision version removes the need to consider adverse effects including on ecosystems.
- 7.2. The relief sought by the appellant:
- 7.2.1. gives effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective A1.
- 7.2.2. in the coastal environment, gives effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1, and 7, and Policies 3, 5, 11, 13, and 21.
- 7.2.3. gives effect to the SRPS as required by section 67(3) of the RMA, in particular: Objective WQUAL.1 and Policy WQUAL.2.

Objective 18

- 7.3. I support the relief sought that industrial or trade processes operate in accordance with the best practicable option as good management practices are unclear and need to be clarified.
- 7.4. The relief sought by the appellant:
- 7.4.1. gives effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1 and WQUAL.2, and Policies WQUAL.1 and WQUAL.2.

Policies 4 – 12 (Physiographic Zone Policies)

- 7.5. I support the relief seeking to clarify the application of these policies, as this will assist the implementation of the proposed Plan and:
- 7.5.1. give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective A1 and A4.

7.5.2. give effect to SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, and WQUAL.2, and Policies WQUAL.1, WQUAL.2 and WQUAL.3.

8. I agree to participate in mediation or other alternative dispute resolution of the proceedings.

Dated the 22nd of June 2018



Aaron Fleming, Director Operations, Southern South Island Region

Pursuant to delegated authority from the Director-General of Conservation¹¹

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Planning, Permissions and Land

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¹¹ A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18-32 Manners Street, Wellington 6011