

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under Clause 14(1) of Schedule 1 of the RMA in relation to the proposed Southland Water and Land Plan (**pSWLP**)

Between **Gore District Council, Southland District Council and Invercargill City Council (Territorial Authorities)**

Appellants

And **Southland Regional Council (Environment Southland)**

Respondent

Notice of appeal

16 May 2018

Appellants' solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 Gore District Council, Southland District Council, and Invercargill District Council (**Territorial Authorities**) appeal against part of the decision of Environment Southland on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 Gore District Council, Southland District Council, and Invercargill District Council are the three territorial authorities located within Southland Region. These three territorial authorities made both joint and individual submissions. This appeal is a joint appeal and relates to the joint submission made on the pSWLP.
- 3 The Territorial Authorities are not trade competitors for the purpose of section 308D of the Resource Management Act 1991.
- 4 The Territorial Authorities received notice of the decision on 4 April 2018.
- 5 The decision was made by Environment Southland.
- 6 The parts of the decisions appealed relate to:
 - (a) Rule 15 – Discharge of stormwater;
 - (b) Rule 33 – Community sewage schemes (discharge to land); and
 - (c) Rule 33A – Community sewerage schemes (discharge to water).

Rule 15 – Discharge of Stormwater

- 7 Rule 15 regulates the discharge of stormwater into waterways and includes different activity statuses based on where the stormwater originates from and its contents. Stormwater is defined in the pSWLP as "*surface water run-off subsequent to precipitation*". The decisions version of the rule says:
 - (a) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, is a permitted activity provided the following conditions are met...
- 8 The Territorial Authorities are not opposed to the cascading nature of the rule regarding activity status or the specified conditions. Instead the Territorial Authorities are concerned with the use of the defined term "stormwater" and the potential for interpreting "stormwater" to only include water resulting from rainfall, but not the contaminants that find their way into that water as it moves across

land into the stormwater network, or other sources of water such as drainage or groundwater that enter the network and are discharged from it.

Relief sought

- 9 Amend references to "stormwater" to "stormwater, water and contaminants" throughout this rule. Alternatively include a definition of "stormwater" that applies specifically to Rule 15 to include a specific reference to water and contaminants.
- 10 In addition to the above, the following relief is also sought:
 - (a) Any additional or alternative relief that achieves the same or similar outcome; and
 - (b) Consequential or ancillary changes to the above.

Rule 33 – Community sewage schemes (discharge to land)

- 11 Rule 33 regulates the discharge from community sewage schemes to land with discretionary activity status if various conditions are met and non-complying activity status if those conditions are not met. One of the conditions is that the discharge is not "*within 20 meters of a river, lake, artificial watercourse, modified watercourse, natural wetland or the coastal marine area.*" The Territorial Authorities accept the rationale for this condition for new sewage schemes that are not yet built. However, many existing sewage schemes already breach this condition and would therefore be considered as non-complying activities when applying for consent renewals. Non-complying activity status for an existing sewage scheme discharge is not appropriate; and should only apply to new schemes that fail to meet the conditions.

Relief sought

- 12 Amend the discretionary Rule 33 to differentiate between existing and new community sewage schemes and consequentially the non-complying rule as follows:
 - (aa) The discharge of effluent or bio-solids onto or into land, from a community sewerage scheme that was constructed before 4 April 2018 in circumstances where contaminants may enter water is a discretionary activity.
 - (a) The discharge of effluent or bio-solids onto or into land, in circumstances where contaminants may enter water, from a community sewerage scheme is a discretionary activity, provided the following conditions are met for community sewerage schemes constructed after 4 April 2018:

...

- (b) The discharge of effluent or bio-solids onto or into land, in circumstances where contaminants may enter water, from a community sewerage scheme constructed after 4 April 2018 that does not meet the conditions of Rule 33(a) is a non-complying activity.

13 In addition to the above, the following relief is also sought:

- (a) Any additional or alternative relief that achieves the same or similar outcome; and
- (b) Consequential or ancillary changes to the above.

Rule 33A – Community sewerage schemes (discharge to water)

14 Rule 33A makes all discharges to water from a community sewage scheme non-complying. The Territorial Authorities consider that sustainable management would be better met by differentiating between the discharge of treated sewage and untreated sewage. Whilst the activity status of untreated sewage should remain as non-complying the discharge of treated sewage should be a discretionary activity. This differentiation would better incentivise the treatment of community sewage and is a more appropriate response to the different environmental effects, and better implements the relevant objectives and policies of the pSWLP.

Relief sought

15 Insert a new sub-rule:

- (aa) The discharge of **treated** effluent from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland is a **discretionary** activity.

16 Amend sub-rule (a):

The discharge of untreated effluent or bio-solids from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland is a non-complying activity.

17 In addition to the above, the following relief is also sought:

- (a) Any additional or alternative relief that achieves the same or similar outcome; and
- (b) Consequential or ancillary changes to the above.

Attachments

- 18 The following documents are **attached** to this notice:
- (a) A copy of the Territorial Authorities' joint submission and further submissions;
 - (b) A copy of the relevant parts of the decision; and
 - (c) A list of names and addresses of persons to be served with this notice.

Dated this 16th day of May 2018



Michael Garbett/Rachel Brooking
Counsel for the Territorial Authorities

Address for service of the Territorial Authorities

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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 Territorial Authorities; 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).

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.