

**IN THE MATTER OF** of the Resource Management Act 1991 (**'the Act'** or **'RMA'**)

**AND**

**IN THE MATTER OF** of Appeals under Clause 14 of the First Schedule of the Act in relation to the Proposed Southland Regional Water and Land Plan Decisions.

**BETWEEN** ALLIANCE GROUP LIMITED  
Appellant

**AND** SOUTHLAND REGIONAL COUNCIL  
Respondent

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**STATEMENT OF EVIDENCE BY JOHN KYLE**

**TOPIC A – SECTION 274 EVIDENCE ON BEHALF OF ALLIANCE GROUP LIMITED**

15 March 2019

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## 1. INTRODUCTION

- 1.1 My name is John Clifford Kyle. My qualifications and experience are set out in my Evidence in Chief dated 15 February 2019.
- 1.2 In preparing this evidence I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express here.
- 1.3 In preparing this evidence I have reviewed the submissions, further submissions, hearing evidence, the Southland Regional Council's decision, appeal and section 274 notices, as well as the evidence in chief that has been filed on behalf of the Southland Regional Council and the Topic A Appellants.
- 1.4 In this statement of evidence, I will address matters raised within Alliance Group Ltd's ("**Alliance**") 274 notices in relation to appeals by other parties on the following provisions which are relevant to Topic A:
- 1.4.1 The Southland Fish & Game Council ("**Fish & Game**"), Royal Forest & Bird Society ("**Forest & Bird**") and Ngā Rūnanga (Waihopai Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Ōraka Aparima, and Hokonui Rūnaka) and Te Rūnanga o Ngāi Tahu ("**Ngāi Tahu**") appeals on Objective 6;
  - 1.4.2 Fish & Game's appeal on Objective 7;
  - 1.4.3 Fish & Game and Forest & Bird appeals on Objective 13, Objective 13A and Objective 13B; and
  - 1.4.4 Fish & Game's appeal on Policy 45.

## 2. EXECUTIVE SUMMARY

- 2.1 Fish & Game, Forest & Bird and Ngāi Tahu seek to delete the word 'overall' from Objective 6. In my view, a literal interpretation of the resulting objective could be that it would not allow for any localised

reduction in water quality by a point source discharge even where the effects were assessed to be minor overall, and in turn that Objective 6 could comprise a bar to granting consent to any application where water quality was not either maintained or enhanced (depending on current state) in all circumstances and at all points within a water body. In my opinion, the inclusion of the word ‘overall’ in Objective 6 is necessary in that it refocuses the objective such that water quality is maintained or enhanced (whichever is necessary in the circumstances) at a Freshwater Management Unit (“**FMU**”) scale. I also consider that including the reference to ‘overall’ would be more consistent with the wording used in the National Policy Statement for Freshwater Management 2014 (“**NPSFW**”).

- 2.2 Fish & Game seeks additional text be added to Objective 7, which in my opinion is of a nature that, if it were to be required, it should be covered by policies and methods rather than the objective. However, in my assessment, the matters raised are already included in policies and methods in the Proposed Plan. The additional text is unnecessary and confuses the language of the objective such that its outcome is not clear.
- 2.3 The Fish & Game and Forest & Bird appeals seek various relief for Objectives 13, 13A and 13B such that the provisions would seek to avoid various effects. For reasons set out in my Evidence in Chief, the directive and protective language proposed is problematic and probably implausible to achieve in Southland, without imposing prohibitive costs on the activities which directly or indirectly discharge to land or water.
- 2.4 Fish & Game has sought amendments to Policy 45 to alter the circumstances when a FMU section of the Proposed Plan would prevail over the relevant provision within the Region-wide section of the Plan. As I understand the appeal point, it seeks to change the policy such that even where specific limits are set out for a FMU, the Region-wide section of the Plan may still have a trumping effect if water quality limits set out therein are more restrictive or limiting. The FMU limit setting process will be based on detailed monitoring and empirical assessment, coupled with collaboration with key stakeholders, and the limits set through this process should be a “best fit” to the baseline conditions and the human use values that prevail within the various water bodies concerned.

Subsequent management at the FMU level should be properly guided by this process and allowing for more general standards and limits cited elsewhere in the Plan to trump these provisions is not necessary and would not assist to achieve efficient plan administration. Nor does this properly respect the collaborative inputs key stakeholders are anticipated to have in setting appropriate limits.

### **3. OBJECTIVE 6**

3.1 Alliance lodged 274 notices opposing the appeals of Fish & Game, Forest & Bird and Ngāi Tahu which sought the word 'overall' be deleted from Objective 6 such that it would read:

*There is no reduction in the ~~overall~~ quality of freshwater, and water in estuaries and coastal lagoons, by:*

*(a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and*

*(b) improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.*

3.2 The nub of Alliance's opposition to deleting the term 'overall', is in respect of how the resultant objective could be applied to an individual discharge. By their very nature, many industrial and municipal discharges have a localised effect such that water quality at the point of discharge and within a prescribed mixing zone is not necessarily maintained, but the discharges are managed such that their effects on water quality overall fall within acceptable limits.

3.3 Alliance is concerned that a literal interpretation of the resulting objective would not allow for any localised reduction in water quality by a point source discharge, even where the effects were assessed to be minor overall, and in turn that Objective 6 would therefore comprise a bar to granting consent to any applications where water quality was not either maintained or enhanced (depending on current state) in all circumstances and at all points within a water body. I agree that the resulting objective could be interpreted in the literal way that concerns Alliance. I can also

see why this would be of concern to Alliance, as when an application for a discharge permit is being considered there is no presumption at that point that the activity will continue to occur, and it is current convention that the activity be assessed against a receiving environment which does not include the effect of the existing discharge.

- 3.4 I acknowledge that the Southland Regional Policy Statement includes various provisions which refer to water quality being ‘maintained or improved’ without the qualifier ‘overall’.<sup>1</sup> However, my interpretation is those provisions clearly relate to the broader management of water quality at a FMU scale. They do not direct, nor do they appear to require that this outcome should be achieved at all points within a water body, in all circumstances. Nor do the Proposed Plan’s policies require water quality be maintained at all points within a water body. They direct that the adverse effects of point source discharges be ‘*minimised*’<sup>2</sup> and ‘*avoided where practicable and otherwise remedied or mitigated*’<sup>3</sup>. They also allow for a zone of reasonable mixing before assessing compliance with the Proposed Plan’s various water quality standards<sup>4</sup>.
- 3.5 Having to manage discharges such that they result in what is effectively a “no change” outcome insofar as water quality is concerned would seem to be an implausible outcome to achieve in Southland, without imposing prohibitive costs on the activities which result in such discharges. Many of the municipal and industrial activities that would be affected by the proposed objective have significant economic and social benefits. I am not aware of any s32 analysis undertaken by those suggesting this change that quantifies the benefits and the costs associated with taking this approach.
- 3.6 In my opinion, the inclusion of the word ‘overall’ in Objective 6 is necessary in that it refocuses the objective such that water quality is maintained or enhanced (whichever is necessary in the circumstances) at a FMU scale. I also consider that including the reference to ‘overall’

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<sup>1</sup> WQUAL.1 – Water quality goals, WQUAL.2 – Lowland water bodies and WQUAL.3 – Water in natural state.

<sup>2</sup> Policy 16A.

<sup>3</sup> Policy 15A and Policy 15B.

<sup>4</sup> Policy 15A and Policy 15B.

would be more consistent with the wording used in the National Policy Statement for Freshwater Management 2014 (“**NPSFW**”).<sup>5</sup>

#### **4. OBJECTIVE 7**

4.1 Alliance lodged a s274 notice opposing a Fish & Game appeal point which seeks that Objective 7 be amended as follows:

*Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes, or earlier when considering relevant consent applications.*

4.2 I agree with Mr McCallum-Clark’s analysis<sup>6</sup> that this objective is targeted at ‘over-allocation’ in an NPSFW context, that ‘over-allocation’ is a defined term in the NPSFW, and that it is not possible or appropriate for a decision maker to guess during a resource consent process what ‘over-allocation’ means in a catchment, or what the appropriate means for phasing it out will be, until the FMU limit setting process is complete.

4.3 I do agree with the Appellants that prior to the FMU process being complete, the Proposed Plan should contain suitable provisions to guide decision makers considering resource consent applications in degraded catchments on how the degraded state should be addressed by the application. However, in my view:

4.3.1 Any such direction that is necessary should be included in the Proposed Plan’s policies and methods (not Objective 7) and this would be consistent with the approach taken in the NPSFW;<sup>7</sup>

4.3.2 The Proposed Plan’s provisions already contain enough direction in this regard, to the extent they can prior to the FMU process being complete;

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<sup>5</sup> See Objective A2 of the NPSFW.

<sup>6</sup> EIC of Mr McCallum Clark paragraph 66 – 68.

<sup>7</sup> See for example Policy A1 and Policy A2 of the NPSFW.

4.3.3 The changes sought by Fish & Game make Objective 7 confusing and uncertain; and

4.3.4 The changes sought by Fish & Game are also unnecessary.

4.4 I note Mr McCallum-Clark reaches a similar conclusion.<sup>8</sup>

4.5 Mr McCallum-Clark has identified Policies 15B, 17A, 40 and 42 as providing suitable guidance to decision makers considering resource consent applications in degraded catchments.<sup>9</sup> I agree with that.<sup>10</sup> I would also add Policy 16A to that list which requires the adoption of the best practicable option to manage the treatment and discharge of contaminants derived from industrial and trade processes. Noting that a consideration of the receiving environment is a cornerstone of the best practicable option approach.

4.6 It seems clear from the evidence produced by Dr Death<sup>11</sup>, Dr Kitson<sup>12</sup>, Mr Ward<sup>13</sup>, and Mr Hodson<sup>14</sup> that many Southland waterbodies are degraded, and in some cases are further deteriorating. However, in my opinion the FMU limit setting process should be the key mechanism by which the Council and the community obtain a best understanding about what states various water bodies are currently in, and what needs to be achieved in terms of their future management. Until this limit setting is completed, it would not appear to be practicable for a consent authority to properly understand the extent to which over allocation has occurred and where it needs to be rectified by altering the allocation limits assigned to various consents with a given waterway.

## **5. OBJECTIVE 13**

5.1 Alliance lodged s274 notices in opposition to Fish & Game and Forest & Bird appeals on Objectives 13, 13A and 13B. The relief sought by these appeals requests that various effects be avoided. As outlined in my

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<sup>8</sup> EIC of Mr McCallum Clark paragraph 69.

<sup>9</sup> EIC of Mr McCallum Clark paragraph 69.

<sup>10</sup> Subject to having some reservations around the detail of Policy 15B which I will address when that provision is being heard.

<sup>11</sup> EIC of Dr Death on behalf of Southland Fish & Game Council.

<sup>12</sup> EIC of Dr Kitson on behalf of Ngai Tahu.

<sup>13</sup> EIC of Mr Ward on behalf of Southland Regional Council.

<sup>14</sup> EIC of Mr Hodson on behalf of Southland Regional Council.

Evidence in Chief on this matter, this would seem to be a very difficult, and probably implausible outcome to achieve in Southland, without imposing prohibitive costs on the activities which directly or indirectly discharge to land or water.<sup>15</sup> I have read the Fish & Game and Forest & Bird appeals and the evidence of Mr Farrell, and I have not changed my opinion with respect to this matter.

## 6. POLICY 45

6.1 Alliance lodged a s274 notice in opposition to a Fish & Game appeal point seeking to alter the circumstances when a FMU section of the Proposed Plan prevails over the relevant provision within the Region-wide section. The changes sought in the Fish & Game appeal are as follows:

*In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Regionwide Policies.*

*Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless ~~it is explicitly stated to the contrary.~~ the provision in the relevant FMU Section of this plan is not more lenient or less protective of water quality, quantity or aquatic ecology than the Region-wide Objectives and Region-wide Policies.*

*As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.*

*~~Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.~~*

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<sup>15</sup> EIC of John Kyle, 15 February 2019, paragraph 3.1 – 3.8.



6.2 From Mr Farrell's evidence, it appears these changes stem from a Fish & Game submission which sought to ensure that the FMU-specific policies are not more lenient or less protective of water quality, quantity or aquatic ecology than region-wide provisions.<sup>16</sup> And in turn, it would seem to me that the word "not" in the relief sought by the appeal is an error. It would seem that Mr Farrell has also identified this problem in the Fish & Game appeal, as the revised wording he proposes for Policy 45 does not include reference to more 'lenient' provisions.<sup>17</sup>

6.3 As I understand the appeal point, the suggested amendments to Policy 45 seek to change the policy such that even where specific limits are set out for a FMU, the Region-wide section of the Plan may still have a trumping effect if water quality limits set out therein are more restrictive or limiting. It is my understanding that the FMU limit setting process will be based on detailed monitoring and empirical assessment, coupled with collaboration with key stakeholders. Whilst the output of this process remains to be seen, I would expect that if the analyses are conducted on a proper and inclusive basis, there should be reasonable stakeholder buy in to the limit setting process. Moreover, limits should be a "best fit" to the baseline conditions and the human use values that prevail within the various water bodies concerned. Thus, subsequent management at the FMU level should be properly guided by this process and allowing for more general standards and limits cited elsewhere in the Plan to trump these provisions is not necessary. Nor does this properly respect the collaborative inputs key stakeholders are anticipated to have in setting appropriate limits in the first place.

6.4 Potentially having two limits applying to some FMU's would also make the Plan more difficult to understand and administer. For these reasons I do not support the relief sought by Fish & Game.

## **7. CONCLUSION**

7.1 Overall, it is my view that the changes sought by the cited appeals to Objective 6, Objective 7, Objective 13 and Policy 45 are unhelpful and not required in order to better achieve the requirements of s32 of the Act or

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<sup>16</sup> Mr Farrell on behalf of Fish & Game, paragraph 237.

<sup>17</sup> Mr Farrell on behalf of Fish & Game, paragraph 175.

for the purpose of achieving sustainable management of natural and physical resources.

**John C Kyle**

15 March 2019