

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2018-CHC-**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under Clause 14(1), 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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**NOTICE OF APPEAL**

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**TO:** The Registrar  
Environment Court  
Christchurch

1 **Alliance Group Limited ("Appellant")** appeals against decisions of the Southland Regional Council ("**Respondent**") on its Proposed Southland Regional Water and Land Plan ("**Proposed WLP**").

2 The Appellant made a submission on the Proposed WLP.

3 The Appellant is not a trade competitor for the purposes of section 308D of the Act.

4 The Appellant received notice of the decisions on 4 April 2018 and understands that the appeal period closes 17 May 2018.

5 The decisions were made by the Respondent.

6 The decisions appealed, reasons for the appeal and relief sought are grouped together by topic and are set out below generally in the order in which the relevant provisions appear in the Proposed WLP.

#### **Objective 11**

7 The decision appealed is as follows:

- (a) The decision not to include in Objective 11 reference to the primacy of community water supplies and priority takes as a matter to be had regard to when allocating and using water efficiently.

8 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that the objective provides no guidance to decision making on the primacy of water supply for community water supplies and priority takes.
- (b) The Appellant considers reference to these water uses in Objective 11 is required to provide appropriate direction in the Proposed WLPs objectives for these important matters which are recognised in subsequent policies, thereby improving the coherence of the Proposed WLP.

- 9 The Appellant seeks that Objective 11 be amended as set out below, or alternatively that a new objective be inserted which requires decision makers to have regard to the primacy of community water supplies and priority takes when managing the allocation and use of water:

**Objective 11**

*Water is allocated and used efficiently having had regard to the primacy of community water supplies and priority takes*

**Objective 13, Objective 13A and Objective 13B**

- 10 The decision appealed is as follows:
- (a) The decision to separate Objective 13 into three separate objectives;
  - (b) The decision to make Objective 13B broadly applicable to all discharges to land and water, rather than being a condition on enabling the use and development of land and soils; and
  - (c) That Objective 13B seeks discharges of contaminants to land or water that have significant or cumulative effects on human health be 'avoided'.

- 11 The reasons for the appeal are as follows:
- (a) The management directive in the notified version of Objective 13 was that the use and development of land and soils be enabled in certain circumstances. It stated:

*Objective 13*

*Enable the use and development of land and soils, provided:*

- (a) *the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and discharges to land;*
- (b) *the discharge of contaminants to land or water that have significant or cumulative effects on human health are avoided; and*
- (c) *adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.*

- (b) The decision split Objective 13 and created three new Objectives including Objective 13B which seeks to avoid all discharges in certain circumstances. It would apply to point source discharges and states:

*Objective 13B*

*The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.*

- (c) Based on the outcome of the *King Salmon case (Environmental Defence Society Inc v The New Zealand King Salmon Co. Limited [2014] NZSC 38)* the use of the word 'avoid' is generally accepted to mean 'not allow' or 'prevent the occurrence of'.
- (d) The Appellant is concerned that an objective seeking that all discharges of contaminants to land or water be 'avoided' if they will have cumulative effects on human health cannot be justified.
- (e) The Appellant is also concerned the Respondent does not have scope to include Objective 13B in the Proposed WLP, noting that it represents a fundamental broadening in planning direction from the notified provision. The submission relied on to make the change is submission *558.2 N McRae* which sought to "*remove the word 'provided' and the requirements of (a) to (c) inclusively*" from Objective 13. Creating a new standalone objective out of (b) which now applies to all point source discharge activities does not give effect to the intent of this submission.

12 The Appellant seeks:

- (a) Objective 13, Objective 13A and Objective 13B be deleted and replaced with Objective 13 from the notified version of the Proposed WLP; or
- (b) Objective 13B be deleted.

**Objective 18**

13 The decision appealed is as follows:

- (a) The decision that Objective 18 seek all activities (not just farming activities) operate at 'good management practice or better'.

14 The reasons for the appeal are as follows:

- (a) Good management practices are defined in the Proposed WLP as follows:

***Good Management Practices***

*Include, but are not limited to, the practices set out in the various Good Management Practices factsheets available on the Southland Regional Council's webpage*

- (b) The Appellant is concerned the reference to 'good management practices' is a vague and uncertain test for assessing the effects of industrial and trade process discharges. It also has the potential to be a moving target as no Schedule 1 process is required to create, update and change Good Management Practice factsheets on the Respondent's webpage.
- (c) The Appellant considers Objective 18 should seek discharges from industrial and trade processes be in accordance with the "best practicable option" which is a readily understood and more certain assessment method. This would also provide a specific objective basis for Policy 16A.

15 The Appellant seeks that Objective 18 is amended as follows:

***Objective 18***

*All farming activities operate in accordance with "good management practice" or better, and discharges from industrial or trade processes shall operate in accordance with the best practicable option, to optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.*

**Policies 4 – 12**

16 The decision appealed is as follows:

- (a) The requirement in each policy to implement 'good management practices' to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage and / or lateral drainage.

17 The reasons for the appeal are as follows:

- (a) Good management practices are defined in the Proposed WLP as follows:

***Good Management Practices***

*Include, but are not limited to, the practices set out in the various Good Management Practices factsheets available on the Southland Regional Council's webpage*

- (b) The Appellant is concerned the reference to 'good environmental practice' is a vague and uncertain test for assessing the effects of industrial and trade process discharges.

- 18 The Appellant seeks Policies 4 – 12 be amended so it is clear they apply to farming activities and not industrial and trade processes.

**Policy 14**

- 19 The decision appealed is as follows:

- (a) The decision not to acknowledge in Policy 14 that there may be practical reasons why a discharge to land is not appropriate or preferable to a discharge to water.

- 20 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that Policy 14 does not acknowledge that there may be practical reasons why a discharge to land is not appropriate, even when the effects of discharging to water may be greater than a hypothetical discharge to land.
- (b) Secure and reliable access to a suitable area of land, the size and cost of the land-based discharge operation, and technological issues may be examples of this.
- (c) The decision wording of Policy 14 fails to give effect to Policy WQAL.8 of the Southland Regional Policy Statement which states:

***Policy WQAL.8 – Preference for discharge to land***

*Prefer discharges of contaminants to land over discharges of contaminants to water, where:*

- (a) *a discharge to land is practicable;*
- (b) *the adverse effects associated with a discharge to land are less than a discharge to water.*

21 The Appellant seeks that Policy 14 be amended as follows:

***Policy 14 – Preference for discharges to land***

*Prefer discharges of contaminants to land over discharges of contaminants to water where a discharge to land is practicable and appropriate, unless adverse effects associated with a discharge to land are greater than a discharge to water. Particular regard shall be given to any adverse effects on cultural values associated with a discharge to water.*

**Policy 15A, Policy 15B, Policy 15C and Policy 16A**

22 The decision appealed is as follows:

- (a) The decision to use of Appendix E Water Quality Standards and Appendix C ANZECC Sediment Guidelines in the policies as a measure of whether industrial and trade discharge activities achieve acceptable instream environmental outcomes.
- (b) The policies do not adequately acknowledge the influence of background water quality and the practical limits on the extent to which individual discharges can contribute to improving degraded water quality beyond the zone of reasonable mixing.

23 The reasons for the appeal are as follows:

- (a) The Appellant's processing operations are reliant on the ability to discharge into surface water bodies in various Southland catchments.
- (b) The standards in Appendix C and Appendix E will not be achievable in the foreseeable future in some of those catchments due to the catchment's existing land uses and natural processes which influence existing water quality.
- (c) The standards in Appendix C and Appendix E are therefore not appropriate short-term measures of whether water and habitat quality in those catchments is acceptable in a sustainable management context.
- (d) The Freshwater Management Unit (FMU) process is the appropriate forum for establishing the long-term strategy for maintaining and improving water quality in those catchments.

- (e) The Appellant may need to re-consent its point source discharges in those catchments prior to the FMU process being complete.
  - (f) The Appellant is concerned that Policy 15A and Policy 15B may impose a prohibitive and unobtainable acceptable effects outcome on its discharges, and that the policies do not acknowledge that it will not be practicable or appropriate for its point source discharges to improve water quality beyond the zone of reasonable mixing.
  - (g) The Appellant considers it is unclear how Policy 15A and Policy 15B are intended to apply to discharges from industrial and trade premises given Policy 16A clearly relates to those activities.
  - (h) The Appellant considers that Policy 16A (which requires industrial and trade processes to minimise the adverse effects of their discharges by adopting the best practicable option to manage the treatment and discharge of contaminants) contains adequate and appropriate activity specific policy direction for industrial and trade discharges.
  - (i) The Appellant considers it sufficient and appropriate that Policy 15 sets high level management direction for maintaining and improving water quality, on the basis that this direction would feed into the best practicable option assessment required by Policy 16A.
- 24 The Appellant seeks that Policy 16A be retained and that Policy 15A and Policy 15B be deleted and replaced with the following provision sought in its submission:

**Policy 15 - Maintaining and improving water quality before FMU processes.**

Until freshwater objectives and freshwater management unit limits are established in accordance with Policy 47 manage land use activities and discharges in order to:

1. Maintain water quality in surface water bodies where it is better than the water quality standards specified in Appendix E Water Quality Standards; or



2. Where practicable, improve water quality in surface water bodies where it does not meet the water quality standards specified in Appendix E 'Water Quality Standards'.

### **Policy 20**

25 The decision appealed is as follows:

- (a) The direction in Policy 20(3) that the criteria established in Appendix O and Appendix L.4 be used to determine whether an industrial or trade activity is using water efficiently and reasonably.

26 The reasons for the appeal are as follows:

- (a) Appendix O requires that *'the rate and volume of abstraction for resource consent applications to take and use water for purposes other than irrigation, group or community water supply will be calculated in accordance with best management practices for efficient use of water in relation to that use'*.
- (b) The Appellant is concerned the reference to 'best management practices' in Appendix O does not account for the age of the plant and technology involved. Best management practices for water use in a new processing plant with state of the art technology would not be achievable in older plants with older processing technology.

27 The Appellant seeks that 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**

28 The decision appealed is as follows:

- (a) The direction in Policy 42 that priority uses, such as the Appellant's processing facilities, should be subject to minimum flow or level or environmental flow or level regimes.

29 The reasons for the appeal are as follows:

- (a) The Appellant's water takes are priority water takes, which enable its processing plants to continue to operate to process stock

during drought conditions when animal welfare is at stake and perishable foods are being processed.

- (b) The Appellant does not consider it appropriate to impose minimum flow restrictions on all new or replacement consents for its processing plants.
- 30 The Appellant seeks that Policy 42 be amended so it does not require its processing facilities to be subject to minimum flow or level and environmental flow or level regimes set in accordance with Appendix K.

#### **Rule 5 and Rule 6**

- 31 The decision appealed is as follows:
- (a) The decision to use instream compliance with Appendix E Water Quality Standards and Appendix C ANZECC Sediment Guidelines as a means of determining activity status.
  - (b) The decision to attribute non-complying activity status to existing discharge activities from industrial and trade premises.
- 32 The reasons for the appeal are as follows:
- (a) The Appellant's processing operations are reliant on the ability to discharge into surface water bodies in various Southland catchments.
  - (b) The standards in Appendix C and Appendix E will not be achievable in the foreseeable future in some of those catchments due to the catchment's existing land use and natural processes.
  - (c) The standards in Appendix C and Appendix E are therefore not appropriate short-term measures of whether water and habitat quality in those catchments is acceptable.
  - (d) Conditions (i) and (ii) on Rule 5 make it likely that the Appellant's discharges would be a non-complying activity, even if the replacement application proposes to reduce the contaminant load in the discharge relative to existing compliance limits.
  - (e) The Appellant considers non-complying activity status is inappropriate for an existing discharge from a regionally significant industrial and trade process.

33 The Appellant seeks:

- (a) That Rule 5 and Rule 6 be amended so that achieving the standards in Appendix E Water Quality Standards and Appendix C ANZECC Sediment Guidelines is not determinative of activity status for discharges from its processing plants.
- (b) That Rule 5 and Rule 6 be amended so that replacement consents for existing discharge activities are discretionary activities.

**Rule 49**

34 The decision appealed is as follows:

- (a) The decision not to attribute an existing non-consumptive take and use of surface water restricted discretionary activity status; and
- (b) The decision that Appendix R – Fish Screening Standards should apply to existing non-consumptive take and use of surface water.

35 The reasons for the appeal are as follows:

- (a) The Appellant currently holds water permits that enable water from the Maitara River to be dammed, diverted and used for hydroelectric power generation purposes (consent 98031). The Water Conservation (Maitara River) Order 1997 also specifically recognises and exempts this existing infrastructure from having to comply with its conditions, provided any future water permits are renewed and/or granted subject to similar terms and conditions of the former (existing) permits.
- (b) The water diverted from the Maitara River by the Appellant would not be returned within 100 metres of the diversion point.
- (c) The Appellant considers that the requirement in Rule 49 for non-consumptive takes or diversions to be returned within 100 metres of the take or diversion point is arbitrary and not effects based.
- (d) The Appellant considers non-complying activity status is inappropriate for an existing non-consumptive take or diversion.
- (e) The Fish Screening Standards in Appendix R which apply to takes such as that for the Appellant's Maitara hydroelectric power generation activity are overly prescriptive and restrictive.

36 The Appellant seeks:

- (a) Rule 49 provide for all non-consumptive take, diversion and use of water as a restricted discretionary activity.
- (b) That Appendix R be amended so that it only applies to permitted activities or is deleted.

#### **Rule 50**

37 The decision appealed is as follows:

- (a) The decision not to include applications for existing priority takes as a controlled activity under Rule 50.

38 The reasons for the appeal are as follows:

- (a) The rule framework in the Proposed WLP could make applications for the Appellant's existing priority takes a non-complying activity.
- (b) This does not appropriately recognise the primacy of priority takes, and the need to provide for them in the Proposed WLP.

39 The Appellant seeks:

- (a) Rule 50 provide for the existing take and use of water by priority takes as a controlled activity.

#### **Appendix E – Water Quality Standards**

40 The decision appealed is as follows:

- (a) The inclusion of water quality standards in Appendix E which do not take appropriate account of existing water quality and natural variability.

41 The reasons for the appeal are as follows:

- (a) The standards do not appear to have been developed having regard to natural variability nor do they appear to be based on robust assessments of existing water quality in river systems. In turn some of the standard or limits appear to be inconsistent with other water quality guidelines and standards that are available, and in some cases will be unobtainable in many catchments in the foreseeable future. For example, water clarity of 1.3m would be difficult to achieve naturally in most of the lowland river bodies in Southland.

- (b) This is of concern as the standards are used in the objectives, policies and rules of the Proposed WLP to determine activity status and to guide assessments of whether the effects of an activity are acceptable.
- 42 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.

### **Appendix G**

- 43 The decision appealed is as follows:
- (a) The inclusion of 'Mataura River at Mataura River Bridge' in the list of popular bathing sites in Appendix G.
- 44 The reasons for the appeal are as follows:
- (a) This site (that is, the waters immediately under the bridge and 100 metres upstream and downstream of the bridge) is immediately downstream of the reasonable mixing zone of the Appellant's discharges to the Mataura River.
  - (b) The contact recreation water quality standards in Appendix E apply for 1km upstream of the site, meaning they apply to a stretch of river within the reasonable mixing zone of the Appellant's discharges to the Mataura River.
  - (c) As the site of an existing discharge, the management of water quality to a contact recreation standard is an impractical and highly onerous requirement.
- 45 The Appellant seeks deletion of 'Mataura River at Mataura River Bridge' from the list of popular bathing sites in Appendix G.

### **Appendix J**

- 46 The decision appealed is as follows:
- (a) The decision not to include reference to the Appellant's water takes from the Makarewa River and Mataura River for its plant water and potable water requirements in Appendix J '*Drinking Water Protection Zones*'.
- 47 The reasons for the appeal are as follows:

- (a) Appendix J of the Proposed WLP identifies drinking water protection zones in the region. The Appellant's current water abstraction activities from Oreti River and the Makarewa River are identified in Appendix J.
- (b) The inclusion of these sites provides for the protection of the Appellant's water abstraction for plant and potable water at its Lorneville Plant. The Appellant supports the inclusion of these sites in Appendix J to the Proposed WLP but considers that Appendix J should be broadened to also include reference to all its takes for its Southland Plants. The Appellant also takes water from the Makarewa River for plant and potable supply to its Makarewa Plant, and from the Mataura River to supply its Mataura Plant.

48 The Appellant seeks its water takes from the Makarewa River for its Makarewa processing plant and Mataura River for its Mataura plant be included in Appendix J '*Drinking Water Protection Zones*'.

#### **Further Relief Sought**

- 49 In addition to the matters set out in paragraphs 6 to 48 above, the Appellant seeks the following relief:
- (a) Any similar relief with like effect which addresses the Appellant's concerns;
  - (b) Any consequential amendments which arise from the Appellant's submission, the reasons for the appeal or the relief sought; and
  - (c) Such other relief as the Court considers appropriate.

#### **Costs**

50 The Appellant seeks costs in relation to this appeal.

#### **Attachments**

- 51 Copies of the following documents are attached to this appeal:
- (a) a copy of the Appellant's submission or further submission (with a copy of the submission opposed or supported by my further submission) (**Annexure A**):

- (b) a copy of the relevant decision (or part of the decision) (**Annexure B**):
- (c) a list of names and addresses of persons to be served with a copy of this notice (**Annexure C**).

**DATED** this 17th day of May 2018



Doyle Richardson

Alliance Group Limited

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DUNEDIN

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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 and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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, further submissions or parts 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.



**Annexure A**

**Appellant's Submission and Further Submission**

**Annexure B**

**Copy of the Decision**

**Annexure C**

**Submitters**