

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2016-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 Otago Regional Policy Statement Decisions

BETWEEN **ALLIANCE GROUP LIMITED**

Appellant

AND **OTAGO REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL

TO: The Registrar
Environment Court
Christchurch

- 1 **Alliance Group Limited ("Appellant")** appeals against decisions of the Otago Regional Council ("**Respondent**") on its Proposed Otago Regional Policy Statement ("**Proposed RPS**").
- 2 The Appellant made a submission on the Proposed RPS.
- 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 Monday 3 October 2016, and understands that the appeal period closes 9 December 2016.
- 5 The decisions were made by the Respondent.

Policy 3.1.1

- 6 The decision appealed is as follows:
 - (a) The decision not to amend the policy so that it suitably recognises and provides for the development and growth of infrastructure that also relies on fresh water resources;
 - (b) The decision to amend the policy so that it reads "*Manage freshwater to achieve all of the following...*"
 - (c) The decision to refer to and rely on Policy 1.1.2 – Economic Wellbeing as providing for the concerns of the Appellant.
- 7 The reasons for the appeal are as follows:
 - (a) The Appellant is concerned that this policy does not suitably recognise that the use of the region's fresh water resources is essential for the social and economic wellbeing of the region.
 - (b) The Appellant is concerned that this policy has been amended to require that freshwater must be managed to "achieve all of the following", this does not recognise that in some situations it will not be possible or necessary to achieve all of the outcomes specified in the policy.

- (c) The policy should also recognise the economic benefit of the use of water resources to ensure it is suitably balanced.
- (d) The structure and grammar of the policy needs to be amended so it reads more legibly.

8 The Appellant seeks that Policy 3.1.1 is amended as follows:

Policy 3.1.1 Fresh water

Where appropriate, manage freshwater to: ~~Manage fresh water to achieve all of the following:~~

- a) *Maintain or enhance ecosystem health in all Otago aquifers, and rivers, lakes, wetlands, and their margins;*
- b) *Maintain or enhance a range and extent of habitats provided by fresh water, including the habitat of trout and salmon;*
- c) *Provide for the migratory patterns of freshwater species, unless detrimental to indigenous biological diversity;*
- d) *Avoid aquifer compaction and seawater intrusion in aquifers;*
- e) *Maintain good water quality, including in the coastal marine area, or enhance it where it has been degraded;*
- f) *Maintain or enhance coastal values;*
- g) *Maintain or enhance the natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers;*
- h) *Maintain or enhance the quality and reliability of existing drinking and stock water supplies;*
- i) *Provide for important recreation values;*
- j) *Maintain or enhance the amenity and landscape values of rivers, lakes, and wetlands;*
- k) *Control the adverse effects of pest species, prevent their introduction and reduce their spread;*
- l) *Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion;*
- m) *Avoid, remedy, or mitigate adverse effects on existing infrastructure that is reliant on fresh water;*
- n) Maintain infrastructure and industry that provides for the economic, health and safety and social wellbeing of the community to operate within their design parameters and provide for appropriate upgrade and expansion of infrastructure and industry that are reliant on access to fresh water resources;
- o) Maintain the ability of water users to provide for the economic, health and safety and social wellbeing of the community.

Policy 1.1.2

9 The decision appealed is as follows:

- (a) The decision to include Policy 1.1.2 which relates to economic wellbeing.

10 The reasons for the appeal are as follows:

- (a) The Appellant considers the drafting of this policy to be inappropriate.
- (b) The policy requires that the provisions of economic wellbeing arising from the use and development of natural and physical resources can only be recognised if the adverse effects of such activities can be managed to give effect to all of the objectives and policies of the RPS.
- (c) Development proposals are not required to “give effect” to the RPS, this is a direction to Councils in preparation of their regional and district plans. The RPS is a matter of consideration under section 104 of the Act for applications.
- (d) This policy does not address the concerns of the Appellant that the RPS does not adequately recognise the economic benefit and community wellbeing that can be derived from the use and development of natural and physical resources.

11 The Appellant seeks that Policy 1.1.2 be deleted.

Policy 3.1.5

12 The decision appealed is as follows:

- (a) The decision not to include reference in the policy that the use of coastal water resources can also be essential to the economic and social wellbeing of the region;
- (b) The decision to amend the policy so that it requires coastal water to be “*managed to achieve all of the following*”:

13 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that this policy does not suitably recognise that the use of the region’s coastal water resources is essential for the social and economic wellbeing of the region.

- (b) The Appellant is concerned that this policy has been amended to require that coastal water must be managed to “achieve all of the following”, this does not recognise that in some situations it will not be possible or necessary to achieve all of the outcomes specified in the policy.
- (c) The policy should also recognise the economic benefit of the use of coastal water to ensure it is suitably balanced.
- (d) The structure and grammar of the policy needs to be amended so it reads more legibly.

14 The Appellant seeks that Policy 3.1.5 is amended as follows:

Policy 3.1.5 Coastal water

Where appropriate, manage coastal water to: ~~achieve all of the following:~~

- a) *Maintain or enhance healthy coastal ecosystems;*
- b) *Maintain or enhance the range of habitats provided by the coastal marine area, including the habitat of trout and salmon;*
- c) *Provide for the migratory patterns of coastal water species unless detrimental to indigenous biological diversity;*
- d) *Maintain coastal water quality or enhance it where it has been degraded;*
- e) *Maintain or enhance cultural values;*
- f) *Provide for important recreation values;*
- g) *Control the adverse effects of pest species, prevent their introduction and reduce their spread.*
- h) *Maintain infrastructure and industry that provides for the economic, health and safety and social wellbeing of the community to operate within their design parameters and provide for appropriate upgrade and expansion of infrastructure and industry that are reliant on access to coastal water resources;*
- i) *Maintain the ability of coastal users to provide for the economic, health and safety and social wellbeing of the community.*

Policy 3.1.7

15 The decision appealed is as follows:

- (a) The decision not to include reference in the policy that the use of soil resources can also be essential to the economic and social wellbeing of the region;

- (b) The decision to amend the policy so that it requires soil resources to be *“managed to achieve all of the following”*;
 - (c) The decision to amend (h) to “avoid the creation of contaminated land”.
- 16 The reasons for the appeal are as follows:
- (a) The Appellant is concerned that this policy does not suitably recognise that the use of the region’s soil resources is essential for the social and economic wellbeing of the region.
 - (b) The Appellant is concerned that this policy has been amended to require that soil resources must be managed to “achieve all of the following”, this does not recognise that in some situations it will not be possible or necessary to achieve all of the outcomes specified in the policy.
 - (c) The policy should also recognise the economic benefit of the use of the region’s soil resources to ensure it is suitably balanced.
 - (d) Industrial activities are listed on the Ministry for the Environment (MfE) Hazardous Activities and Industries List (HAIL). The use of hazardous substances, or the discharge of wastewater could result in sites being classified as “contaminated land” and as a result of (h) in this policy, a subsequent requirement that the activities be avoided. The Appellant is concerned that this could have significant implications for the development of industrial land in the Otago region and potential ramifications for economic activity necessary to provide for community wellbeing.
 - (e) The structure and grammar of the policy needs to be amended so it reads more legibly.
- 17 The Appellant seeks that Policy 3.1.7 is amended as follows:

Policy 3.1.7 Soil values

Where appropriate, manage soils to ~~achieve all of the following~~:

- a) Maintain or enhance their life supporting capacity;*
- b) Maintain or enhance soil biological diversity;*
- c) Maintain or enhance biological activity in soils;*
- d) Maintain or enhance soil function in the storage and cycling of water, nutrients, and other elements through the biosphere;*

- e) *Maintain or enhance soil function as a buffer or filter for contaminants resulting from human activities, including aquifers at risk of leachate contamination;*
- f) *Maintain or enhance soil resources for primary production;*
- g) *Maintain the soil mantle where it acts as a repository of historic heritage objects unless an archaeological authority has been obtained;*
- ~~h) *Avoid the creation of contaminated land;*~~
- i) *Control the adverse effects of pest species, prevent their introduction and reduce their spread.*
- j) *Maintain the ability to use soils for infrastructure and industry and by those providing for the economic, health and safety and social wellbeing of the community.*

Policy 3.1.9

18 The decision appealed is as follows:

- (a) Not to substantially amend or delete this policy as requested in the submission of the Appellant.

19 The reasons for the appeal are as follows:

- (a) The policy applies broadly to all ecosystems and its lacks appropriate specificity and directness to be useful in its interpretation and application;
- (b) The Appellant is concerned that the policy requires all areas of indigenous vegetation to be maintained and enhanced, regardless of its significance, or level of adverse effect being derived from its potential removal or modification;
- (c) It inappropriately mixes the obligations inherent in sections 6 and 7 of the Act.

20 The Appellant seeks that Policy 3.1.9 is deleted.

Policies 3.2.17 and 3.2.18

21 The decision appealed is as follows:

- (a) To reject the Appellant's submission and retain Policies 3.2.17 and 3.2.18.

22 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that these policies create unnecessary duplication within the RPS, given the similar requirements which are to be achieved via Policy 3.1.7 which requires the management of certain soil values.
- (b) The Act seeks that the life supporting capacity of soils is sustained, this is not the same as requiring its protection and the avoidance of adverse effects. The Appellant does not consider it is appropriate to apply the same level of management as to something that should be protected versus something that is to be sustained.

23 The Appellant seeks that Policies 3.2.17 and 3.2.18 are deleted.

Policy 4.6.9

24 The decision appealed is as follows:

- (a) The rejection of the Appellant's submission to delete this policy.

25 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that this policy is inappropriate and unenforceable.
- (b) Industrial activities are listed on the Ministry for the Environment (MfE) Hazardous Activities and Industries List (HAIL). The use of hazardous substances by industries could result in their sites being classified as contaminated land and a subsequent requirement that the activities be avoided. The Appellant is concerned that this could have significant implications for the development of industrial land in the Otago region and potential ramifications for economic activity necessary to provide for community wellbeing.

26 The Appellant seeks that Policy 4.6.9 is deleted.

Policy 5.4.1

27 The decision appealed is as follows:

- (a) The decision to "*Manage discharges that are objectionable or offensive to Kai Tahu and/or the wider community*"...

- (b) The decision to require the avoidance of significant adverse effects.

28 The reasons for the appeal are as follows:

- (a) The Appellant is concerned that this policy has no regard to the nature of the discharge, the receiving environment or any mitigation. Instead it applies in any circumstance where Kai Tahu and/or the community may consider the discharge to be objectionable or offensive.
- (b) The Appellant is concerned that the community will have varying degrees of tolerance as to when a discharge is considered to be objectionable or offensive and this is considered to be too subjective and is inappropriate.
- (c) The Appellant is concerned that the policy requirement to "avoid significant adverse effects" establishes a hierarchical approach that is not appropriate and cannot be justified.
- (d) The policy is vague and does not provide any guidance around how significant the adverse effects are that require avoidance.

29 The Appellant seeks that Policy 5.4.1 is deleted.

Further Relief Sought

30 In addition to the matters set out in paragraphs 6 to 29 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.

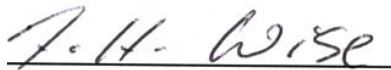
Attachments

31 Copies of the following documents are attached to this appeal:

- (a) The Appellant's submission and further submission (**Annexure A**);

- (b) The relevant parts of the Respondent's decisions (**Annexure B**);
and
- (c) A list of the names and addresses of the persons to be served
with a copy of this notice of appeal (**Annexure C**).

DATED this 8th day of December 2016



F Wise

Alliance Group Limited

Address for service of Appellant:

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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.