

Submitter No: 17.

Submitter Name: Alliance Gp Ltd.

Date Received: 27 / 9 /17

BEFORE THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF the Proposed Water and Land Plan

SUMMARY EVIDENCE CLAIRE HUNTER

27 SEPTEMBER 2017

1. SUMMARY OF CLAIRE HUNTER EVIDENCE 12 MAY 2017

Introduction

- 1.1 My name is Claire Hunter and I am a Senior Consultant with the planning firm, Mitchell Daysh Limited, based in Dunedin. My qualifications and experience are set out in my evidence dated 12 May 2017.
- 1.2 I am joined today by Mr Doyle Richardson who is Alliance Group Limited's Environmental Manager. Mr Richardson is available to answer any questions the Panel may have with regard to Alliance's Plants and operations in the Southland region. I am also joined by Dr Mark James who has prepared evidence on behalf of Alliance Group Limited addressing specifically some of the water quality standards that have been proposed for waterways with which Alliance has an interest.
- 1.3 Within the Southland region, Alliance currently operates three plants situated at Lorneville, Makarewa and Mataura. Notably it is the largest employer in Southland, employing over 2,200 people seasonally.

Beneficial Use and Development of Water and Land Resources

- 1.4 Alliance made various submissions on the provisions of the Proposed Southland Water and Land Plan (Proposed Plan). In summary Alliance submitted that an essential part of regional growth and economic wellbeing within the Southland region is generated by the farming and rural industry. It provides the backbone to the regional economy and Alliance submitted that such activities should not be constrained by inappropriate or unduly onerous Plan provisions unless such provisions are necessary to achieve the purpose of the Act. In this regard Alliance submitted in support of Objective 2 which recognises that water and land are enablers of economic, social and cultural wellbeing within the Southland Region.
- 1.5 I agree that this is an appropriate objective, but consider that it needs to be supported by policy. I have suggested such a policy in my evidence.¹ It is particularly important in my view that the Proposed Plan suitably recognises that there are significant benefits that can be derived from the use and development of the region's

¹ Paragraph 3.6

land and water resources, subject to this occurring within acceptable environment limits. This is on the basis that the objectives and policies of a planning document have assumed a greater role following the High Court's confirmation of *King Salmon* and *Davidson*², which essentially confirms that *King Salmon* type evaluations of policy should also apply to the assessment of resource consent applications. In practice, this means that once the Proposed Plan becomes operative when considering an application for resource consent a decision maker cannot go beyond the objectives and policies of the plan and refer to Part 2, unless under exceptional circumstances. Accordingly, it is important that the objectives and policies of the Proposed Plan provide this balance, and suitably recognise and provide for the continued use and development of the water and land resource within acceptable environmental limits.

Proposed Discharges and Avoidance of Effects

- 1.6 Alliance is also concerned that there is an overarching emphasis within the Proposed Plan to avoid all discharges (both point and non-point source) which cause a reduction in water quality or do not achieve alignment with the water quality standards in Appendix E. This approach is not considered to be consistent with the National Policy Statement for Freshwater Management (NPSFM) which requires regional councils to maintain water quality within Freshwater Management Units (FMU). To explain, the NPS does not require that there is absolutely no reduction in the quality of freshwater at any point in every surface water body, estuary and coastal lagoon throughout the region. Rather it approaches management of water quality at the FMU level. In this regard it allows there to be some variance within a given water body, but requires that the overall quality of water within the FMU achieves certain prescribed attribute standards. If this approach was not applied it would be virtually impossible in some cases for larger scale industries to undertake point source discharges at all.
- 1.7 In the light of the above, it is my view that as a general principle careful precision is required in drafting policy to ensure that its language prescribes outcomes that genuinely achieve the stated purpose of the Act. Use of terms like “avoid” or “prevent” should only be applied where the stakes are highest in terms of a need to

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 and *R J Davidson Trust v Marlborough District Council* [2017] NZHC 52

preserve environmental qualities that prevail in a given location or situation. In light of *King Salmon* and *Davidson*, the panel should be aware that where such language is used, this will generally foreclose any activity that results in any adverse effect which changes the state of water quality, however small. Consideration should be given to adopting terms like “avoid, remedy or mitigate” if greater flexibility in approaching the management of adverse effects is desired in a certain set of circumstances or where environmental values determine that such an approach is the most efficient and effective. Diligence is necessary to ensure that the use of unduly narrow language in policy drafting does not improperly impede otherwise worthy outcomes.

- 1.8 In this regard I note that some of Alliance’s discharges from its Plants are likely to be non-complying activities in accordance with the Proposed Plan. This is largely because Alliance’s plants are located within catchments that are all strongly influenced by surrounding land use and non-point discharges which have impacted upon water quality. For example, at its’ Lorneville Plant, (which has recently gone through a re-consenting process), despite significant improvements in the discharge quality being proposed, this is predicted to only result in a localised improvement in water quality within the Makarewa River, and some of the water quality standards in the Plan will be difficult to achieve until such time as water quality further up the catchment is markedly improved.
- 1.9 If the language of the provisions in the Proposed Plan require the absolute avoidance of adverse effects, one could argue that no reduction in water quality and/or absolute compliance with the Appendix E water quality standards (e.g. Proposed Policy 15 and Policy 17 of the Plan) is the only available management outcome. This is not appropriate and I am of the view that the Proposed Plan, like the operative plan, needs to better acknowledge circumstances where due to the existing environment compliance with the water quality standards cannot be achieved via amendments I have suggested to Proposed Policies 13, 15, 17 and Rules 5 and 6.
- 1.10 I also thought it might be useful to run through how the rules and policy framework of concern will work in practice:
- A discharge activity is proposed which cause a reduction in the water quality standards in Appendix E – say it is a temporary reduction.

- It is however a non-complying activity pursuant to Rules 5 and 6 of the Proposed Plan.
- A non-complying activity requires a fulsome investigation into the actual or potential effects of the activity and consent cannot be granted unless one of the two “gateway” tests can be satisfied.
- A forensic assessment of the application’s consistency with the objectives and policies of the Plan will be necessary.
- Policy 15 requires “*avoiding new discharges to surface waterbodies that will reduce water quality beyond the zone of reasonable mixing*”. Policy 17 seeks to “*avoid adverse effects on water quality... discharges from effluent management systems*”.
- In the *King Salmon* era ‘avoiding’ means ‘not allowing’ or ‘preventing the occurrence of’ and where a directive policy requires avoidance of an activity, it effectively acts as a prohibition and prevents the granting of a resource consent. There is limited ability to consider the overall merits of the proposal in such circumstances.

1.11 Policies 15 and 17 provide no flexibility for consideration of the existing environment, the duration or spatial extent of the reduction (e.g. how temporary or long lasting the effect or reduction will be), the scale or significance of the adverse effects resulting from the reduction, or the mitigation or remediation that might be proposed to address any such reduction. This inflexibility is not appropriate in my view.

Water Takes

1.12 Alliance is also concerned that the Proposed Plan does not suitably recognise the critical nature of its water takes. During times of extreme drought, farmers can often be forced to quickly de-stock their farms, which leads to an influx of animals at Alliance’s plants. It is therefore necessary to enable Alliance’s plants to continue to process stock primarily in the interests of animal welfare during such times. Alliance’s current water take consents all recognise this, however it is not recognised through the provisions of the Plan and it is my view that this needs to be better provided for.

Discharges from Industrial and Trade Processes

- 1.13 Alliance is also concerned with some of the conditions which trigger non-complying activity status attaching to some of the rules within the Proposed Plan. Rule 34 for example, sets out that the discharge to land of wastewater, sludge or effluent from an industrial or trade processes is a discretionary activity provided certain conditions can be achieved. Failure to comply with these conditions results in non-complying activity status. One of these conditions is a requirement to undertake a pond drop test. Advice from Pattle Delamore Partners³ indicates that there are a number of issues associated with applying the pond drop test on large scale effluent storage and treatment schemes and conclude that for wastewater systems such as at Alliance's Lorneville Plant to assess the structural integrity is not a useful method. I am of the view that such conditions will be difficult to easily assess and if there are any issues with structural integrity of the storage facilities then this in my view is something that can be picked up and adequately addressed through a discretionary activity consent process.

Appendix E Limit Setting

- 1.14 Alliance is also concerned with some of the limit setting that has been undertaken as part of the Proposed Plan. In particular it is noted that the Appendix E standards are a "roll over" from the existing water quality standards contained in the operative Water Plan. There is evidence that some of these limits are inconsistent with existing state of the environment conditions and also other water quality guidelines and standards that are available. It is also not clear what the status of these standards will be once the limit setting process that is required to manage water quality in each FMUs in the region has occurred.

Mataura Bridge Bathing Site

- 1.15 Fish and Game (via its submission on the Proposed Plan) sought to include the Mataura River at the Mataura Bridge within the list of popular bathing sites in Southland. This area is located immediately downstream of Alliance's Mataura Processing Plant's discharge to the river. Alliance has stated that it does not consider

³ Appendix B to C Hunter Evidence dated 12 May 2017

it appropriate to include this site as an identified bathing area. Alliance is committed to progressive improvements in its environmental performance, including at Mataura. However, managing water quality at this location to a contact recreation standard would likely be impractical and highly onerous, without proportionate benefit. This could have significant adverse effects on the viability of the Plant and such effects have not been properly considered in section 32 terms. As such it is my view that it would not be appropriate to include this site as a designated bathing area.

Conclusion

- 1.16 I'd like to thank the Panel for its time today and for allowing Alliance's submission to be heard. I'd be happy to answer questions now, or at the end of the summary presentation by Dr James.