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## **Introduction**

1. My name is Ashiley Sycamore.
2. I hold the qualification of Bachelor of Social Sciences majoring in Environmental Planning from the University of Waikato.
3. I am an Associate Member of the New Zealand Planning Institute.
4. I have been employed by the Department of Conservation (DOC) as a Resource Management Planner since May 2022.
5. Prior to working for DOC, I was employed as a Consents Planner at Hamilton City Council for three years. I was predominantly tasked with processing land use and subdivision resource consent applications. I have also previously worked in the Regional Integrated Planning team at the Bay of Plenty Regional Council.
6. My experience at DOC includes assessing proposed regional and district plans, and interpreting Council plans across the country. I have prepared several submissions on District Plans, Regional Coastal Plans, and notified resource consent applications. Through my participation in various planning processes, I have developed a good understanding of resource management best practice, including indigenous biodiversity matters from a planning perspective.
7. I have presented evidence for Hamilton City Council's Plan Change 9 in relation to Significant Natural Areas and implementing the National Policy Statement for Indigenous Biodiversity (NPSIB).

## **Code of Conduct**

8. I confirm that I have read the code of conduct for expert witnesses as contained in clause 9 of the Environment Court's Practice Note 2023 (the Code). I have complied with the Code when preparing my written statement of evidence and will do so when I give verbal evidence before the Independent Commissioner. Although I note this is a Council hearing, I agree to comply with this code.

9. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
10. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

### **Scope**

11. I have been asked to provide planning evidence in relation to the notified resource consent and the submission by the Director-General of Conservation (DGC) for the Titiroa River tide gates and weir infrastructure. I am providing independent planning evidence for this hearing. I was not involved in the preparation of the DGC's submission on this matter in 2023.
12. As I am based in Hamilton, I was unable to complete a site visit prior to preparing my evidence. I intend to present my evidence in-person at the hearing in Invercargill and am planning to undertake a site visit the day before the hearing. If my position/evidence alters as a result of the site visit, I will state this at the hearing.
13. My evidence is divided into the following parts:
  - a. The Proposed Activity
  - b. Background and the DGC's submission
  - c. Activity Status
  - d. Consent Duration
  - e. Conditions of Consent
  - f. Statutory Framework
  - g. Conclusion

### **Material Considered**

14. In preparing this evidence, I have read and where necessary refer to the following documents:

- a) Titiroa tide gates and weir infrastructure – Resource consent application to occupy the Coastal Marine Area with a tide gate and a weir structure and to dam and divert water – 8 March 2021
  - b) Council’s request for further information s92(1) – Titiroa tide gates – APP-20211135 – 19 March 2021
  - c) APP-20211135 Titiroa Tide Gates Resource Consent Application – Response to RFI – 11 November 2022
  - d) “Environment Southland – Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)” – 9 August 2023
  - e) Environment Southland – Titiroa Tide Gate – Mitigation Options – 10 November 2022
  - f) Titiroa Tide/Flood Gate Positive Effects – June 2023
  - g) Submission on application concerning resource consent – Director-General of Conservation – 11 September 2023
  - h) Council’s Section 42A Report - Consent Hearing – Environment Southland’s Catchment Operations Division – APP-20211135 – 9 August 2024
  - i) The Statement of Evidence of Luke McSoriley (Planning) dated 16 August 2024 and submitted for the Applicant.
  - j) The Statement of Evidence of Laura Drummond (Freshwater Ecosystems) dated 16 August 2024 and submitted for the Applicant.
15. I have read and rely on the evidence by Ms Jane Bowen and Mr Alan Christie for the DGC.

### **The Proposed Activity**

16. The Application seeks resource consent for the existing tide gates and weir located within/over the Titiroa Stream. The purpose of the tide gates is to protect land north of the tide gates from tidally influenced flooding.

17. The Applicant for the proposal is Environment Southland's Catchment Operations Division. The Consent Authority is Southland Regional Council (also known by the brand name Environment Southland).
18. I generally agree with sections 2.1 & 2.2 of the Council's s42A report which describes the proposed activities and the affected environment.

### **Background and the DGC's submission**

19. The previous consent (Application Number: APP-204122) was approved on 29 October 2015 for a 5-year term. The DGC lodged a submission for the previous application and opposed the application in part. The previous DGC submission sought conditions to require the Applicant to complete a fish survey to determine whether fish passage is impeded by the tide gates.
20. Condition 2 of the approved consent required the consent holder to undertake a fish survey by 30 June 2017. The fish survey under Condition 2 was also required to be forwarded to the Consent Authority and the Department of Conservation (Murihiku District) by 31 July 2017, as specified by Condition 3. The fish survey was completed in 2021 (after the expiry of APP-204122), with an additional fish survey completed in 2022 as part of the Applicant's response to Council's s92 further information request. The Department of Conservation first received a copy of the fish survey on 8 March 2021, being the same day the resource consent was lodged with Southland Regional Council, meaning Condition 3 of the previous consent was not complied with.
21. The previous consent expired on 29 October 2020 and the current application ('Application') was lodged on 8 March 2021.
22. Further information was provided by the Applicant in 2022 as a response to a Council s92 request for further information. Supplementary information was also provided in 2023.
23. The Application was publicly notified on 14 August 2023. The DGC lodged a submission on the Application on 11 September 2023. The DGC's submission opposed the Application as notified and noted concerns in relation to:

- a) Insufficient information on the effects of the gates on indigenous freshwater species, particularly migratory species.
  - b) Insufficient information to demonstrate the scale of positive social and economic effects.
  - c) Insufficient information to illustrate that the tide gates need to close on every incoming tide.
  - d) No consideration of alternatives that would close the gates only when water levels read a critical elevation, reducing the effects on fish passage, and no consideration of fish-friendly tide gate alternatives.
  - e) The proposed habitat restoration does not adequately offset the adverse effects on freshwater species.
  - f) Policy 11(a) of the NZCPS requires that adverse effects on at-risk species (which includes Inanga) are avoided.
24. No pre-hearing meetings have occurred for this Application.
25. In my opinion, the concerns raised by the DGC's submission have not been satisfied by any new information provided by the Applicant.

### **Activity Status**

26. I agree with the Application that the activity status is a Discretionary activity overall. The Council's s42A report also concludes that activity status for the Application is a Discretionary activity. I generally agree with the reasoning stated in section 2.3 of the Council's s42A report as to why the Application is overall a Discretionary activity.

### **Consent Duration**

27. The Application seeks a 15-year consent term.
28. Although my evidence as set out below considers that the Application lacks sufficient information and is contrary to some of the relevant plan provisions, I provide the following consideration on consent duration, in case the Independent Commissioner is minded to grant the Application.
29. I agree with section 4.3 of the Council's s42A report that if the Application is approved, that a consent duration of no more than five years would be

appropriate. Detailed conditions would also need to form part of the decision in this scenario, including appropriate monitoring, maintenance, reporting and review conditions to ensure fish passage and īnanga spawning are provided for as set out in Ms Bowen's evidence. My reasoning for this is explained in the Statutory Framework section below.

### **Conditions of Consent**

30. Section 4.4.1 of the Council's s42A report outlines potential consent condition topics, in the case the Application is approved. Draft conditions are attached to Appendix 7 of the Council's s42A report.
31. The Applicant has not provided draft conditions or commented on the Council's draft conditions at the time this evidence was prepared. Mr McSoriley's evidence notes that the Applicant intends to provide draft consent conditions prior to the hearing.
32. As the Applicant has not provided comments on the Council's draft conditions, nor provided their own draft conditions, I have not completed an assessment of the suitability of the conditions as they are likely subject to change.
33. I also consider that the draft conditions provided by the Council are not suitable consent conditions as they are being used to fill in the information gaps in the Application, or to attempt to address the significant adverse effects that the Application has not appropriately avoided, remedied, or mitigated.

### **Statutory Framework**

34. In this section of my evidence, I will identify the relevant statutory planning documents, and the relevant policy guidance provided by them for making a decision on this application.
35. I consider that the proposal is inconsistent with the relevant planning documents, as discussed in more detail below, on the matters of effects of the proposal on fish passage and effects of the proposal on īnanga (whitebait) spawning. In this regard, I take a view consistent with the conclusions reached in the Council's s42A report.



36. Rather than go through each relevant planning instrument and provision individually, I have focussed on the areas of disagreement with the s42A author and Mr McSoriley, where I have additional comments, or where I wish to highlight an important point.

#### **Section 104 (1) of the Resource Management Act 1991**

37. Section 104 of the RMA sets out key matters for consideration for resource consent.
38. With regard to Section 104 (1)(a), I consider two of the key matters for consideration by the Independent Commissioner include:
- a) Effects of the proposal on fish passage
  - b) Effects of the proposal on īnanga (whitebait) spawning
39. I note that I have considered these to be the key effects that I have focussed on for the purpose of this evidence, however they are not the only effects. I consider the effects on the environment identified under point 2.5.1 of the Council's s42A report to be accurate.

#### **Section 124 of the Resource Management Act 1991**

40. Section 124 of the RMA does not apply to the Application as the previous consent expired before a new consent was lodged.
41. As s124 does not apply, the Application should be treated as a new resource consent application.

#### **National Environmental Standards for Freshwater (NES-F)**

42. I agree with section 3.4 of the Council's s42A report that no national environmental standards or other regulations apply to the Application.
43. As the tide gates and weir were existing structures in the Titiroa Stream on 2 September 2020, regulations 61-74 of the NPS-F do not apply.

#### **New Zealand Coastal Policy Statement 2010 (NZCPS)**

44. As the tide gates are fully within the coastal marine area boundary, the NZCPS is applicable. Notwithstanding this, the NZCPS applies to the coastal environment, which has a further range than the coastal marine area, and covers both the location of the tide gates and the weir.

45. I disagree with the aspect of the Council's s42A report under point 3.6.2 that considers the NZCPS to be a high-level document and, in general, considers its provisions are not readily directly applied to individual activities. Several provisions of the NZCPS are directive and specific regarding their application to the consideration of consent applications.
46. Point 3.6.1 of the Council's s42A report lists the NZCPS provisions that have been considered relevant to the Application. I agree with the provisions identified under this point.
47. Points 3.6.3 to 3.6.9 of the Council's s42A report provides an assessment of some of the relevant NZCPS provisions identified under Point 3.6.1. Point 3.6.7 includes reference to Policy 7 of the NZCPS, however as Policy 7 does not deal with indigenous biodiversity (it instead deals with Strategic Planning), I consider this to be an error and is instead meant to be an assessment of Policy 11 of the NZCPS.
48. While the Council's s42A report has provided an assessment of some of the relevant NZCPS provisions, the Council Officer does not draw any conclusions as to if the Application is contrary (or compatible) with the relevant NZCPS objectives and policies.
49. Policy 11(a) of the NZCPS requires that the adverse effects of activities on threatened or at-risk species are avoided. As noted in Ms Bowen's evidence, īnanga (*Galaxias maculatus*) exist within the Application's catchment and are listed as At Risk-Declining in the New Zealand Threat Classification System. Other threatened or at risk species may also exist in the Application's catchment including giant kōkopu (*Galaxias argenteus*, At Risk – Declining), longfin eel (*Anguilla dieffenbachii*, At Risk – Declining), kōaro (*Galaxias brevipinnis*, At Risk – Declining), and lamprey (*Geotria australis*, Threatened – Nationally Vulnerable). Paragraph 20 of Ms Bowen's evidence states that this catchment is also important habitat for at risk or threatened freshwater fish.
50. Ms Bowen's evidence considers that the Titiroa tide gates likely impact detrimentally on īnanga spawning that could occur in the vicinity of the gates/dam. Ms Drummond's evidence identifies that the activity is having adverse effects on īnanga spawning, upstream migration of īnanga and

is restricting fish passage more generally when the tide gates are closed. Ms Drummond's evidence also considers that there is no way to avoid the effects of the activity without removing the tide gate structure and giving back the land to full tidal inundation and flooding. Ms Bowen's evidence also concludes that the best option ecologically for the gates, as stated by Ms Drummond, is removal.

51. Policy 11(a) provides a clear 'avoid' directive for any adverse effects on values which meet the policy 11(a) criteria, and policy 11(b) provides a clear 'avoid' directive for any significant adverse effects on other values.
52. Based on my understanding of the Applicant's evidence from Ms Drummond, and Ms Bowen's assessment, the information available illustrates that the biodiversity values meet the criteria under Policy 11(a)(i) and 11(b)(ii) & (b)(iv).
53. The evidence further considers that the Application is not able to avoid adverse effects of the activities on īnanga spawning and īnanga spawning habitat. For these reasons, I consider the Application as proposed to be contrary to Policy 11 of the NZCPS.

#### **National Policy Statement for Freshwater Management 2020 (NPS-FM)**

54. I agree with the Council's s42A report and Mr McSoiley's evidence that the NPS-FM is relevant, and the Application requires assessment against it.
55. The NPS-FM 2020 has a single objective (2.1) which is:  
*"The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*  
*(a) first, the health and well-being of water bodies and freshwater ecosystems*  
*(b) second, the health needs of people (such as drinking water)*  
*(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future".*
56. Policy 1 requires that freshwater is managed in a way that gives effect to Te Mana o Te Wai.

57. Te Mana o te Wai is a fundamental concept and “*is relevant to all freshwater management*” (Clause 1.3(2) of the NPS-FM). Te Mana o te Wai sets out a hierarchy of obligations that firstly prioritises the health and well-being of waterbodies and freshwater ecosystems (this is the same as the priorities set out in the Objective above). In my opinion, the Application has not demonstrated the health and well-being of water bodies and freshwater ecosystems has been prioritised in the first instance.
58. I agree with the Council’s s42A report that the NPS-FM provisions identified under point 3.5.3 are relevant to the Application, however I also consider Clause 3.26 (Fish passage) to be relevant as outlined further below.
59. I agree with the Council’s s42A report that the Applicant has not demonstrated that it has applied the effects management hierarchy and has therefore not demonstrated its compliance with the requirements of Clause 3.24 of the NPSFM.
60. I note that Policy 28A of the pSWLP partly gives effect to Clause 3.24 and as stated in the Council’s s42A report, I agree that it is necessary to refer to the NPS-FM for the full requirements of this clause.
61. Clause 3.26 (Fish passage) details the requirements for fish passage policies in regional plans. As the pSWLP partly gives effect to Clause 3.26, not fully (similar to Clause 3.24), I consider that it is necessary to refer back to the NPS-FM for the full requirement of this clause.
62. The Council’s s42A report considers that there is likely to be ongoing adverse effects on fish passage if the application is approved. Ms Bowen’s evidence states that “*All tide gates are considered barriers to fish passage, however, the Titiroa tide gates are an outdated passive tide gate design, that open and close passively dependent on the tide*”. I consider that the Application has not demonstrated its compliance with the requirements of Clause 3.26 of the NPS-FM which requires that the passage of fish is to be maintained or is improved by instream structures.
63. Ms Bowen’s evidence goes on to state that replacement of the passive tide gate with a modern design would reduce the effects on fish passage.

64. Overall, I consider the Application in its current form has not demonstrated its alignment with the NPS-FM, including Clause 1.3 – Te Mana o te Wai, Clause 3.24 – Rivers, and Clause 3.26 – Fish Passage.

#### **Southland Regional Policy Statement 2017 (SRPS)**

65. I agree with the identification and assessment of the relevant SRPS provisions under Section 3.7 of the Council's s42A report. I have no further comment to make for the SRPS provisions for this Application.

#### **Regional Coastal Plan for Southland 2013 (RCP)**

66. The Council's s42A report outlines the RCP provisions relevant to the Application under point 3.8.2. I concur with the Council Officer's assessment on which provisions of the RCP are applicable to the Application.
67. While the Council's s42A report has identified Policy 4.2.1, 4.2.2, and 4.3.2 to be applicable to the Application, an assessment of these provisions has not been completed in the s42A report, nor in Mr McSoriley's evidence. An assessment of Policy 5.4.1.2 has been included in the Council's s42A report and Mr McSoriley has included a response to this in his evidence. My evidence provides further assessment of these policies below.
68. Policy 4.2.1 requires that proposals for uses and developments in the coastal marine area justify the *functional necessity* for that location or demonstrate that there is *no practicable alternative location* outside the coastal marine area. The Application considered two alternatives to the proposed activities being "do nothing" or "remove infrastructure" (Section 5 of the Assessment of Environment Effects, March 2021). The Application has not included an assessment of the functional necessity for the proposed location. I consider there is insufficient information to complete an assessment of the Application's alignment with Policy 4.2.1 of the RCP.
69. Policy 4.2.2 requires *alternative sites and methods* to be considered when the adverse effects of use or development are more than minor. In my opinion, Ms Bowen's evidence and Ms Drummond's evidence illustrates that the Application results in more than minor adverse effects

on īnanga spawning habitat upstream of the tide gate. It is also likely that the Application results in more than minor adverse effects on cultural values, however no assessment of alternative sites and methods has formed part of the Application. I consider there is insufficient information to complete an assessment of the Application's alignment with Policy 4.2.2 of the RCP.

70. Policy 4.3.2 states “Manage the *frequency, duration and regularity of activities* where this avoids, remedies or mitigates the adverse effects of those activities on the coastal environment”. There are options presented in Ms Drummond's evidence that could mitigate some of the adverse effects on fish passage and īnanga spawning e.g. remove the gates, install automated gates, or install self-automated gates. Ms Bowen's evidence strongly agrees with this point of Ms Drummond's evidence. Automated or self-automated gates could assist to manage the frequency, duration and regularity of the activities. However, I am unclear from reading the Applicant's evidence whether any of these options presented by Ms Drummond form part of the Application currently being considered. In its current form, I consider that the Application does not align with Policy 4.3.2.
71. Policy 5.4.1.2 of the RCP states “Protect the habitats of species in the coastal marine area which are important for commercial, recreational, traditional or cultural purposes.” As detailed in Mr Christie's evidence, Titiroa Stream is one of the main locations in Southland where recreational whitebaiting occurs. As noted in the Council's s42A report, Policy 5.4.1.2 is also applicable for cultural purposes, specifically whitebait/īnanga as a mahinga kai resource.
72. Mr McSoriley's evidence considers that the activity is consistent with Policy 5.4.1.2 as “...the proposed mitigation will protect the habitats of species in the CMA...”. I disagree with this assessment of Policy 5.4.1.2. Mr McSoriley's evidence references “the proposed mitigation” several times and notes “the evidence of Ms Drummond provided the proposed mitigation...”. From my review of the Application, it does not appear that any of the mitigation options have been adopted by the Applicant. In its current form the Application does not provide sufficient information to

illustrate how it protects the habitats of species in the coastal marine area which are important for recreational or cultural purposes. It is my opinion that the Application does not align with Policy 5.4.1.2 for this reason.

73. Overall, I consider the Application in its current form has not provided sufficient information for an assessment of Policy 4.2.1 and 4.2.2 of the RCP to be completed. In addition, I consider that the Application does not align with Policies 4.3.2 and 5.4.1.2 of the RCP.

### **Proposed Southland Water and Land Plan (pSWLP)**

74. This plan is relevant to the application as per Section 104(1)(b)(vi) of the RMA.
75. The Council's s42A report outlines the pSWLP provisions relevant to the Application under point 3.8.13. I agree with the Council Officer's assessment on which provisions of the pSWLP are applicable to the Application.
76. Policy 40 of the pSWLP is applicable when determining the consent duration for the Application. As detailed under point 4.3.2.6 of the Council's s42A report, the tide gates have been operating without consent since 2020 and the fish survey required by the previous consent conditions was completed after the specified date. Section 124 of the RMA does not apply to the Application as the previous consent expired before a new consent was lodged.

### **Section 104(6)**

77. I note for completeness that s104(6) of the RMA provides the discretion to decline an application for a resource consent where there is inadequate information to make a determination.
78. Ms Bowen's evidence outlines that there is insufficient information in the Application on the effects of the tide gates on īnanga spawning and fish passage, notwithstanding the available evidence that identifies a strong likelihood of adverse effects on them.

79. In my opinion, the Application also has not provided sufficient information to assess the proposal against all the relevant provisions required under section 104(1) of the RMA.
80. I consider that option is available to the Independent Commissioner in this case, as well as the option of adjourning the hearing while further baseline information is gathered as considered necessary by Ms Bowen.

## **Conclusion**

81. The DGC's submission raised several concerns with the Application and many of these have not been addressed by new information provided by the Applicant.
82. Section 124 of the RMA is not applicable, and the Application needs to be treated as a new resource consent application.
83. The evidence of the Council and for the DGC considers that the activity will result in adverse effects on river values, including cultural and spiritual values, fish passage, and īnanga spawning at this location.
84. Both Ms Bowen and Ms Drummond consider that the activity is having adverse effects on īnanga spawning, upstream migration of īnanga, and is restricting fish passage. It is also likely that some of these effects will be significant.
85. While some mitigation options have been presented by the Applicant, I am unclear whether any of these have been adopted by the Applicant and form part of the current Application.
86. I do not consider that all the relevant statutory provisions have been adequately assessed by the Council's s42A report and the Applicant. Based on the above expert evidence, and considering this advice against the relevant planning framework, it is my view that the Application is either contrary to, or has not provided sufficient information to adequately assess the relevant provisions of the New Zealand Coastal Policy Statement (specifically Policy 11), the National Policy Statement for Freshwater Management, the Southland Regional Policy Statement, and the Proposed Southland Water and Land Plan.



87. In my opinion, based on the Application in its current form, there is insufficient information available to make a decision on the Application and the available information indicates that the Application is contrary to Policy 11(a) of the NZCPS. There are also significant adverse effects on river values including fish passage and īnanga spawning that do not support the ability to approve the application.



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Ashley Sycamore

DATED 23 August 2024