

**BEFORE THE COMMISSIONER APPOINTED
BY THE SOUTHLAND REGIONAL COUNCIL**

IN THE MATTER the Resource Management Act 1991

AND

IN THE MATTER of resource consents to occupy the Coastal Marine
Area with a tide gate and weir to dam and divert water

AND

IN THE MATTER of an application by **SOUTHLAND REGIONAL
COUNCIL**

**EVIDENCE SUMMARY OF LUKE MCSORILEY
30 August 2024**

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1. Thank you, Mr Commissioner. I confirm my qualifications and area of expertise as detailed in my evidence. The key matters that I will briefly summarise today relate to the environmental

Environmental Effects

2. The environmental effects of the proposed activity have been outlined and discussed in my evidence. In my opinion, relying on the evidence of Ms Drummond, Mr Conner, Mr Frisby and Mr Young, most of the adverse effects of the activity can be appropriately mitigated, and the weir and tides gates have positive environmental, social and economic effects. As explained at paragraph 1 of my rebuttal evidence (Attachment 1) in my opinion the activity is having adverse cultural effects.

Objectives And Policies

3. I have discussed the relevant statutory framework in my evidence and in my opinion the activity is consistent with some of the specific objectives and policies of the relevant planning documents whilst also being inconsistent with others. It is also my opinion that the frameworks of the relevant plan documents allow for and enable infrastructure such as the weir and tide gates where, as in this situation appropriate mitigation of adverse effects can be achieved.

Draft Resource Consent Conditions

4. A set of draft resource consent conditions has been provided for the Commissioners consideration (Attachment 2).

Conclusion

5. As outlined in my evidence, in my opinion, the activity is consistent with the purpose of the Resource Management Act 1991, in that it will provide for the sustainable management of the natural and physical resources. In my opinion, the purpose of the Act will be better met by the approval of the application than its refusal.

Luke McSoriley

30 August 2024

ATTACHMENT 1 – Rebuttal Evidence

Environmental Effects

Cultural Effects

1. In the summary of effects at paragraph 67 on my evidence I noted uncertainty on cultural effects of the activity. I have read the evidence Ms Blair and Mr Whaanga and accept that the activity is having adverse cultural effects.

Fish Passage

2. Ms Bowen and Ms Drummond both agree that the activity is having adverse effects on fish passage. Submitter evidence has suggested that the applicant is not proposing mitigation in relation to these effects. Ms Drummond in her rebuttal evidence has clarified the mitigation proposed. The applicant is now promoting additional options for mitigation of the effects on fish passage via changes to the tide gate infrastructure at the site. Changes to the tide gates are now proposed to provide a letterbox opening (vertical slot) or similar opening for unimpeded native fish passage when the gates are closed. The applicant also proposes boulder cluster installation in the diversion channel downstream of the tide gates to provide refugia habitat from predators and resting zones for fish. Monitoring of fish passage post modifications to the tide gates and reporting are also proposed. Conditions of consent have been tabled covering these mitigations measures. The activity now provides more effective mitigation in relation to fish passage and monitoring of these effects. As a result, the activity now better aligns to many of the relevant policy provisions that seek to mitigate these adverse effects.

Inanga Spawning

3. Both ecologists agree that the activity has adverse effects on inanga spawning. Ms Drummond in her rebuttal evidence has clarified the mitigation proposed. The applicant proposes mitigation in the form of 0.6ha of Inanga spawning habitat enhancement upstream of the gates and 0.53 ha of tributary enhancement for inanga spawning and native fish habitat downstream of the gates. Conditions of consent have been tabled covering these mitigations measures including habitat enhancement via

use of a Habitat Enhancement Plan (HEP) including monitoring and certification of the enhancement works.

4. The main objectives of the HEP are outlined in draft condition 4 and this approach seeks to ensure habitat enhancement is undertaken in an appropriate and effective manner to improve the current bank conditions for inanga spawning. I have carefully considered the appropriateness of the objectives of the HEP and I am of the view that it can ensure that the habitat enhancement can be implemented effectively and then provides a process for SRC to certify those works as completed to an appropriate standard. The HEP also provides some flexibility in terms of how the enhancement work is ultimately achieved both upstream and downstream and this is advantageous over a more rigid condition wording.

Removal of the Tide Gates

5. The evidence of Mr Gardner and Mr Frisby indicates that removal of tide gate infrastructure would have adverse environmental effects in terms of rural land use activities upstream of the tide gates. The evidence of Ms Sycamore and Ms Ferguson does not discuss these adverse effects in detail. These potential adverse effects are relevant to the activity and can't be ignored. The evidence of Mr Gardner and Mr Frisby also indicates that the tide gate infrastructure has positive economic effects on rural land upstream of the tide gates. These positive effects must also be considered (refer to discussion at paragraphs 45 – 50 of my evidence).

Summary of Effects

6. Given the above my opinion is the same as outlined at paragraph 67 of my evidence aside from accepting that the activity does have adverse cultural effects.

Effects Management Hierarchy

7. The applicant is proposing mitigation in relation to the adverse effects of fish passage and inanga spawning. The effects management hierarchy, in relation to rivers, means an approach to managing the adverse effects of an activity on the extent or values of a river that requires that firstly adverse effects are avoided where practicable then where adverse effects cannot be avoided, they are minimised where practicable; then

where adverse effects cannot be minimised, they are remedied where practicable. The adverse effects of the activity cannot be avoided or minimised, but the applicant is remedying these effects. The applicant has therefore applied the effects management hierarchy to the activity consistent with Clause 3.24 of the NPSFM.

Statutory Framework

8. Ms Sycamore considers the Application contrary to some of the relevant plan provisions. These are listed and discussed in her evidence. Having read the evidence of Ms Blair and Mr Whaanga I agree that the activity is not consistent with the relevant avoid policies of the Iwi Management Plan. Mr West provides a useful analysis of these provisions at 3.9.4 to 3.9.13 of his recommending report and I adopt that.
9. However, as outlined in my evidence the activity is also consistent with a range of relevant plan provisions notably those relating to infrastructure. Mr West is of the same opinion noting at 4.2.7 of his report that there is strong policy support for the activity because of the status of the weir and tide gates as infrastructure. As outlined in my evidence there are also supportive policies recognising the economic and social benefits of rural land use upstream of the tide gates. Ms Sycamore does not discuss these supportive policy provisions in her evidence in detail, and I note that all relevant plan provisions must be considered.
10. At paragraph 35 of her evidence Ms Sycamore concludes that the proposal is inconsistent with the relevant planning documents. In my opinion the activity is consistent with some of the specific objectives and policies of the relevant planning documents whilst also being inconsistent with others. Therefore, it should not be concluded that overall, the activity is inconsistent with all relevant planning documents.
11. My evidence highlights the status of the weir and tide gates as infrastructure. The SRPS and the pSWLP both recognise the importance of regionally significant infrastructure and seek to enable for its development and ongoing operation. Provisions of the pSWLP also recognise the importance of land and water as enablers of Southland's social and economic wellbeing. The activity now provides effective mitigation in relation to fish passage and monitoring of these effects.

Habitat enhancement is also promoted by the applicant. The activity now better aligns to many of the relevant policy provisions that seek to mitigate these adverse effects. In my opinion overall the frameworks of the relevant plan documents allow for and enable infrastructure such as the weir tide gates where, as in this situation appropriate mitigation of adverse effects can be achieved.

Luke McSoriley

ATTACHMENT 2 – Resource Consent Conditions

Schedule of Draft Conditions Titiroa Weir and Tide Gates APP-20211135

Expiry date: September 2034 (10-year term)

Habitat Enhancement

1. The consent holder shall undertake inanga spawning habitat enhancement upstream of the tide gates over a minimum area of 0.6 ha as detailed on Figure 1 V2.
2. The consent holder shall undertake 0.53 ha of tributary enhancement for inanga spawning and native fish habitat downstream of the gates as detailed on Figure 1 V2.
3. Habitat enhancement shall commence within 2 years of grant of this consent and be in accordance with the Habitat Enhancement Plan detailed in condition 4 - 7.

Habitat Enhancement Plan

4. Prior to habitat enhancement required under conditions 1 and 2 commencing, the Consent Holder shall submit a Habitat Enhancement Plan (HEP) to SRC for certification. The main objectives of the HEP are to:
 - (a) To ensure habitat enhancement is undertaken in an appropriate and effective manner to improve the current bank conditions for inanga spawning. For example, by reducing the bank angle to optimise the potential spawning area to increase tidal level fluctuations in proximity to the salt wedge.
 - (b) To ensure native fish habitat enhancement is undertaken to improve current instream conditions within the unnamed tributary, downstream of the tide gates.
5. The HEP shall include, as a minimum, the following details:
 - (a) An assessment of habitat enhancement options for inanga spawning, including methodology, timing to minimise adverse effects of works, and pre and post enhancement monitoring.
 - (b) Detailed identification of the areas and sites for restoration, including baseline condition data for post enhancement comparison.
 - (c) Detail on how enhancement is going to be undertaken, including any instream works and associated mitigation (fish salvage etc.) and culvert remediation.
 - (d) Follow up reporting on the success of enhancement works, via post works inanga spawning surveys (as per Condition 6).

6. The certification process for the HEP shall be confined to confirming the Plan gives effect to its objectives, consent condition requirements, and contains the required information.
7. The HEP may be submitted in parts or in stages to reflect a staged implementation of the habitat enhancement.

Inanga Spawning Surveys and Mapping

8. Inanga spawning surveys are to be undertaken on two occasions over the peak spawning months of March to June once pre-enhancement and once post enhancement and a report provided to the Consent Authority after each survey. Inanga spawning surveys are to include observations on egg development. The surveys and monitoring shall be supervised by a suitably qualified and experienced person.
9. The consent holder shall undertake further inanga habitat mapping upstream and downstream of the tide gates based on this survey information to further quantify the amount of habitat potentially impacted by the activity. This information shall be provided to SRC within 2 years of grant of consent.

Fish Passage

10. The consent holder shall undertake boulder cluster installation in the diversion channel downstream of the tide gates to provide refugia habitat from predators and resting zones for fish.
11. The consent holder shall fit the tide gates to provide a letterbox opening (vertical slot) or similar opening, to provide for unimpeded native fish passage when the gates are closed on at least one of the tide gates.

Fish Passage Monitoring

12. The consent holder shall monitor of the effects of the tide gates on fish passage three times within 24 months of fitting the letterbox opening (vertical slot) or similar opening on the tide gate. This shall be undertaken via a fish survey targeting native fish moving through the provided opening during migratory periods and provision of a report of the monitoring to the Consent Authority after each survey. The monitoring shall be undertaken by a suitably qualified and experienced person.

Water Quality Monitoring

13. The consent holder shall undertake three salinity surveys in the Titiroa Stream over a range of flow conditions to determine the salt wedge location and provide a report on these surveys to the Consent Authority within 1 year of grant of this consent.
14. The consent holder shall monitor dissolved oxygen and temperature along the river during summer low flows and provide a report of this monitoring to the Consent Authority annually.

Standard Conditions

15. This consent authorises occupation of the coastal marine area and the damming of tidal waters with a weir and tide gate structure, as described in the application for resource consent dated 8 March 2021.
16. The consent holder shall always during the term of this consent maintain the weir and tide gate structures in good repair, appearance and condition.
17. The consent holder shall notify the Consent Authority (escompliance@es.govt.nz), of any alteration to the structure which is carried out without resource consent pursuant to a permitted activity rule in an operative regional plan.
18. In consideration of the right to occupy Crown Land in the coastal marine area for the activity specified above, the consent holder shall, each year, pay to the Consent Authority the appropriate coastal occupation charge specified in the Regional Coastal Plan. Each financial year, commencing 1 July, the charge shall be adjusted for inflation in accordance with the Consumer Price Index. The sum payable in the first year of this consent (or the proportion thereof for which the consent is current) is \$..... plus GST, and shall be payable in advance on invoice. The revenue from this charge shall be used only for the purpose of promoting the sustainable management of the coastal marine area.
19. The Consent Authority may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this consent during the period 1 February to 30 September each year, or within two months of any enforcement action being taken by the Consent Authority in relation to the exercise of this consent for the purposes of:
 - (a) determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.
 - (b) If the monitoring undertaken under condition 10 of this resource consent identifies adverse effects on the ecological values of the Titiroa Stream, determining whether the conditions of this consent are appropriate to any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.
 - (c) ensuring the conditions of this consent are consistent with any National Environmental Standards Regulations, relevant plans and/or the Environment Southland Regional Policy Statement

Figure 1 V2

