

**BEFORE A 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 and to dam and divert water

**AND**

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

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**FOURTH MEMORANDUM OF COUNSEL FOR THE APPLICANT  
24 October 2024**

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FLETCHER VAUTIER MOORE  
LAWYERS  
PO BOX 3029  
RICHMOND 7050

Telephone: (03) 543 8301  
Facsimile: (03) 543 8302  
Email: [cthomsen@fvm.co.nz](mailto:cthomsen@fvm.co.nz)  
Solicitor: Chris Thomsen

## MAY IT PLEASE THE COMMISSIONER

1. As signalled in the memorandum for the Director-General of Conservation dated 22 October 2024, the Applicant wrote to the parties on 16 October 2024 detailing its proposed way forward.
2. The Applicant's letter was written openly and is its current preferred approach to the application. Importantly however, this approach is subject to the up-coming expert conferencing, which will assist the Applicant to refine the proposal in light of the expert opinions of the other parties' experts, particularly on an appropriate monitoring regime to determine the effectiveness of the proposed mitigation. The Director-General has also mentioned the usefulness of conferencing on the potential for a combined letterbox and active, or self-regulating, gate. As previously noted, direct discussions with submitters are also intended.
3. In the meantime, the Applicant considers it may be helpful for you to have a copy of the abovementioned letter, which is attached as Appendix 1.
4. Counsel is also aware that the Commissioner has asked the Director-General about the proposed term of the consent. Counsel confirms that the term being sought is 5 years *from the date consent is granted*.<sup>1</sup>



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CP Thomsen  
Counsel for the Applicant  
24 October 2024

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<sup>1</sup> It is noted the application is for a retrospective consent, therefore the term of any consent must include the period the gates occupied the site while the application was under consideration. Practically speaking we would expect the consents, if granted, would record an expiry date e.g. 24 October 2029 for administrative convenience.

# Appendix 1



FLETCHER VAUTIER MOORE  
LAWYERS

Department of Conservation  
Nelson  
By email: [mpemberton@doc.govt.nz](mailto:mpemberton@doc.govt.nz)

**Office**  
Author  
Telephone  
Facsimile  
Email  
Matter No

**Richmond**  
C P Thomsen  
03 543 8301  
03 543 8302  
cthomsen@fvm.co.nz  
608464\1

and

Te Ao Marama Inc  
Invercargill  
By email: [stevie@tami.maori.nz](mailto:stevie@tami.maori.nz)

16 October 2024

Attention: Matt Pemberton and Stevie-Rae Blair

Dear Submitters

## TITIROA TIDE GATES - FISH PASSAGE

1. We refer to our previous attendances in respect to the proposed tide gates at Titiroa Stream.
2. As signalled previously, Environment Southland wishes to engage with the Director-General and Te Ao Marama Inc on proposed amendments to its application to enable fish passage when the gates are closed.
3. Environment Southland proposes the installation of a letterbox in the centre gate to allow fish passage when the gates are closed, which would be required by a condition of consent. The letterbox would be required to be installed within a reasonable time frame (perhaps 12 months) after the granting of consent. **Attached** to this letter is a drawing of the proposed letterbox.
4. Key features of the letterbox design are as follows.
  - (a) The dimensions are 600x200 mm. The opening is slightly larger than the Taranaki Creek site in Canterbury, so as to provide more comfortable passage for larger fish and easier passage on rising and falling tide ranges.
  - (b) Unlike Taranaki Creek, no closeable 'flap' or door is proposed, which is for engineering convenience. Environment Southland is satisfied that removal of debris collected around the opening can be managed operationally, given the relative velocity of the side channel.

MC-608464-1-500-V5

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**Nelson**  
Level 2, 105 Collingwood Street  
Ph: (03) 548 1469

**Richmond**  
265a Queen Street  
Ph: (03) 543 8301

**Motueka**  
175D High Street,  
Ph: (03) 528 7030

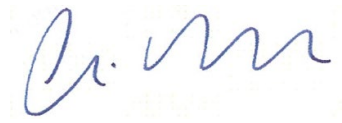
**Postal Address**  
PO Box 90, Nelson 7040, DX WC 70009

**Takaka** by appointment

MC-608464-1-500-V5

- (c) As noted above, the letterbox will be installed on the middle of the three existing gates and there are no other changes proposed to the structure. The middle gate will be temporarily removed for the work to be undertaken.
5. For the avoidance of doubt, there are no other changes from the position at the hearing, including a 5 year consent term from the date consent is granted, the proposed use of boulders to provide fish resting zones and refuge and spawning habitat enhancement.
  6. Council is alert to fish passage being an issue that is important for tide gates nationwide. As part of its proposal Environment Southland proposes a monitoring programme to provide some insight into the use of letterboxes on tide gates. The intent is that this monitoring will contribute to the knowledge base to help infrastructure owners and stakeholders determine the effectiveness of letterboxes to mitigate adverse effects on fish passage. To achieve this, it proposes to share its monitoring data with the Director-General and Te Ao Marama Inc, which can be secured as an obligation by a condition of consent (offered on an *Augier* basis if required).
  7. Ms Drummond has provided a starting point for a monitoring programme, which we suggest could be discussed at expert conferencing. The proposal is for, at least, biannual monitoring, once during summer base flows to replicate the previous survey and once during a migration period to target a key species (such as inanga). The monitoring would include:
    - (a) Installation of a modified fyke net on the upstream side of the letterbox opening for a full tidal cycle (6hrs) and the downstream side for a full tidal cycle (6 hrs) on a day where high tide fell at midday. Its purpose is to show how many and which species of fish are moving through the opening.
    - (b) Fish surveys (4 fykes and 4 Gee minnow traps) upstream and downstream of the diversion channel the evening after the gate monitoring. Its purpose is to see if there is a proportional number of fish upstream/downstream of the gates and compare to the last fishing survey results.
  8. It is further proposed that cultural monitoring to monitor matters of concern to local rūnanga is undertaken to help inform future decision-making and improve engagement between Ngā Rūnanaga and Council. Council wishes to discuss whether the Cultural Health Index, or an equivalent, would be suitable to test how the proposed letterbox is addressing matters of concern.
  9. Our client sees an opportunity to create a mutually beneficial proposal that achieves its goal of a short term consent and contributes to the knowledge around the use of tide gates and mitigation of fish passage effects nationwide. The future of the Titiroa gates could then be considered with the wider community (including submitters to this process and other stakeholders).
  10. We would be pleased to discuss with you further or to arrange discussion amongst the parties respective experts.

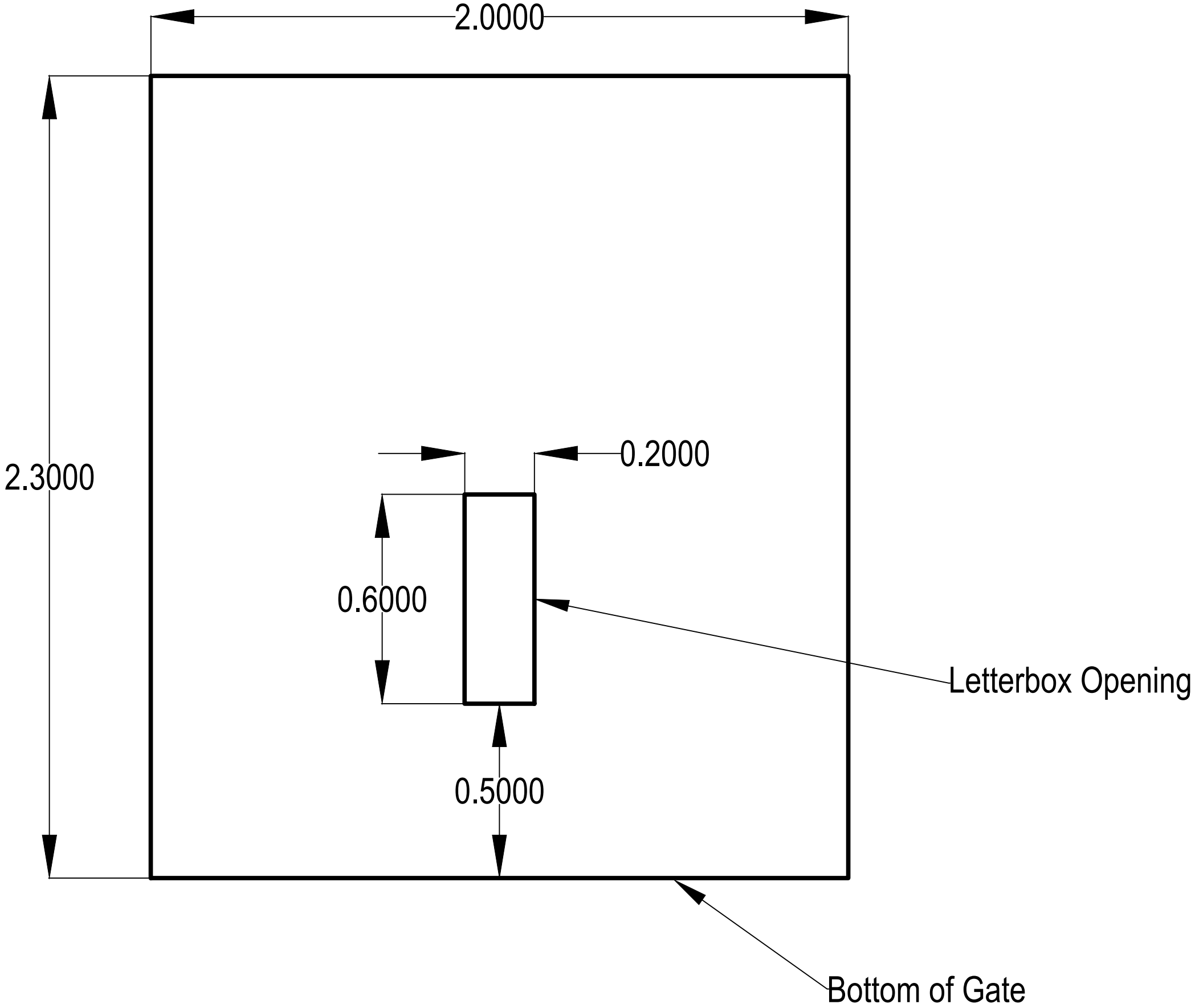
Yours faithfully  
**Fletcher Vautier Moore**

A handwritten signature in blue ink, appearing to read 'C. P. Thomsen', is positioned above the printed name.

**C P Thomsen**  
Partner

Copy To: Fish and Game  
Invercargill  
Attention: Zane Moss  
[zane.moss@southlandfishgame.co.nz](mailto:zane.moss@southlandfishgame.co.nz)

Elevation of Gate and Letterbox Dimensions (m)



# Section View of Gate and Letterbox with Estimated Tide Levels

Upstream

Downstream (Estuary-Side)

