

BEFORE THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER OF:

Resource Consent Application: **APP-20211135**

APPLICANT: **Catchment Operations Division, Environment Southland**

Minute 3 of Hearing Commissioner Allan Cubitt

1. Minute 2 dated 17 September 2024 set out the timeframe for the Applicant to response to my questions, along with a timeframe for the submitters to respond to the amended proposal. This information has now been received and as indicated in Minute 2, this minute now addresses the next step in the process, being the conferencing between the parties expert planning and ecological witnesses.
2. I hereby direct that expert conferencing occurs in relation to the matters set out in Appendix 1. Joint witness statements are to identify points of agreement on the issues, and, where experts disagree, a brief commentary on specific points of agreement. Expert conferencing is to occur in accordance with the Environment Court Consolidated Practice Note 2023–Code of Conduct for expert witnesses available at the <https://environmentcourt.govt.nz/about/practice-note/>. As I noted in Minute 2, Ms Blair, for Te Ao Marama, is to be included in the expert ecology conferencing, given her knowledge of tikanga Māori.
3. In terms of a timeframe for this to be completed, I consider a two-week period is probably adequate, which leads to a date of 8 November. However, I am conscious of it being a busy time of year which can impact on availability, and I am therefore comfortable that the parties advise on what a suitable timeframe may be. Accordingly, I hereby direct that the applicant confirms an agreed timeframe for conferencing by 29 October.
4. All responses and other correspondence shall be directed to the Consents Co-ordinator, Ms Ongko, at catherine.ongko@es.govt.nz.

Dated: 24 October 2024



Allan Cubitt
Hearing Commissioner

Appendix 1

Planning Expert Conferencing

1. What is the physical, legal environment on the landward side of the floodgate structure (which denotes the CMA boundary)? Is it drained and improved, lawfully established pasture or drained and improved, lawfully established pasture that will revert to wetland? Or is it some other environment? (Ecological and engineering input may be needed to assist in answering this question)
2. Is the landward side of the floodgate structure part of the coastal environment given its distance from the actual coastline (noting that the CMA boundary on the river is somewhat arbitrary) and its improved pasture character? (Ecological input may be needed to assist in answering this question)
3. What statutory documents apply on the landward side of the floodgate structure? If both the NZCPS and the NPS-FM apply, how do we reconcile Policy 7 and clause 3.24 of the NPS-FM (which is not an 'avoid' policy) and Policy 11 of NZCPS?
4. If applicable, has the effects management hierarchy set out in clause 3.24(3) been appropriately applied? If not, what else is required to achieve that?
5. Does 3.26 of the NPS-FM apply to the floodgate structure (which is located in the CMA), bearing in mind clause 1.5(1) of the NPS-FM?
6. Do the relevant local authority planning documents give full effect to the relevant policies of the NZCPS and the NPS-FM? Please set out any gaps identified.
7. Please consider the proposed conditions and their adequacy, along with any recommended changes, should I determine that the consent should be granted. Please also turn your mind to the practical and financial implications of requiring significant habitat enhancement if there is no ongoing certainty of the gates being in place for the long term (See question 2 to the ecologists).
8. Such other matters as the experts see fit to consider.

Ecological Expert Conferencing

1. What is the optimal design of the 'letterbox' proposed to enhance fish passage, and what monitoring conditions should be put in place to establish its effectiveness?
2. Having regard to the effects management hierarchy set out in clause 3.24(3), what is the appropriate level of habitat enhancement that should be provided if consent is granted?
3. If consent is granted for a short period of time, what would be the effect on any areas enhanced for habitat purposes if the gates are eventually removed? If this enhancement work would become redundant under that scenario, is there a practical alternative that would avoid this outcome, along with the costs of providing such work for a short-term consent only?

4. Consideration of the proposed conditions and their adequacy, along with any recommended changes, should I consider consent should be granted.
5. Such other matters as the experts see fit to consider.