

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

**IN THE MATTER** of 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 - APP-20211135

**AND**

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

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**JOINT WITNESS STATEMENT – PLANNING**

**13<sup>th</sup> November 2024**

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## INTRODUCTION

1. Expert conferencing of the planning expert witnesses was held via Teams on Wednesday 6<sup>th</sup> November 2024 and on Tuesday 12<sup>th</sup> November 2024.
2. Participants at the conferencing were:
  - a) Luke McSoriley;
  - b) Stephen West
  - c) Ashiley Sycamore: and
  - d) Margaret Ferguson.
3. In preparing this statement, the expert witnesses have read and understood the Code of Conduct for Expert Witnesses as included in the Environment Court of New Zealand Practice Note 2014.
4. The Joint Witness Statement contains the following matters:
  - those matters which are agreed between the experts; and
  - those matters which are not agreed and the reasons in each case.
5. These are recorded in the table below.

Dated on the 13th day of November 2024




Luke McSoriley



Ashiley Sycamore



Margaret Ferguson



Stephen West

Ref #	Issue	Statement of agreed position	Statement of disagreed position
1.	<p>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)</p>	<p><b>LM, MF, SW, AS</b> - The physical, legal environment on the landward side of the floodgate structure is one predominantly characterised by rural land use activities. The original natural environment has been modified and developed to enable rural land uses and flood protection of farmland.</p> <p><b>MF, SW, AS, LM</b> - We consider the physical, legal environment on the landward side of the floodgate structure lawfully established pasture.</p> <p><b>SW, AS</b> - We consider the physical, legal environment on the landward side of the floodgate structure lawfully established pasture that will revert to wetland or at least poorly drained land. Based on the tide</p>	<p><b>LM</b> - Parts of the landward area are likely revert to wetland or at least poorly drained land if the tide gates were removed.</p> <p><b>MF</b> - I consider the physical, legal environment on the landward side of the floodgate structure lawfully established pasture that will revert to a 'wet' area or wetland due to the water table rising in the absence of tide gates not currently being authorised (consented).</p>

		gates not currently being authorised (consented).	
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)	<p><b>MF, SW, AS, LM</b> - Under the RMA framework the landward side of the floodgate structure is not part of the Coastal Marine Area (CMA) the boundary of which sits at the tide gate structure. Policy 1 of the NZCPS 'Extent and Characteristics of the Coastal Environment' is considered relevant. Policy 1 of the NZCPS identifies the CMA as being part of the Coastal Environment (Policy 1 (2) (a)).</p> <p><b>MF, SW, AS</b> – We agree that the landward side of the floodgate structure is part of the coastal environment. The reason being that this area aligns to Policy 1 (2) (c), (h) and (i) of the NZCPS.</p>	<p><b>LM</b> – The Southland District Plan has given effect to Policy 1 of the NZCPS and identifies the Coastal Environment via an overlay on the District Plan Maps (refer to Appendix 1). The landward side of the floodgate structure is not identified as part of the Coastal Environment under the District Plan.</p> <p>The Southland District Plan also gives effect to the Southland RPS which in turn gives effect to the NZCPS (including Policy 1 of the NZCPS). I note that Method 4 – 'District Plans' (d) required appropriate definition of the Coastal Environment in the District Plan. The plan is fully operative.</p>

			<p>Policy 1 of the NZCPS also identifies the CMA as being part of the Coastal Environment (Policy 1 (2) (a). The landward side of the tide gates is not in the CMA.</p> <p>The landward side of the tide gates is not identified as part of the Coastal Environment in the relevant District Plan nor is it part of the Coastal Environment by default of being located within the CMA.</p> <p>The landward side of the floodgate structure is subject to coastal influences including via the tidal flows of the Titiroa Stream. The purpose of the tide gates is to prevent tidal flows on the landward side of the structure, and this has enabled development of the rural land use activities that are legally established on the landward side. While I accept Policy 1 (2)</p>
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			<p>(c) and (h) of the NZCPS could be deemed applicable to the landward area the relevant statutory documents have not identified the landward side as the Coastal Environment.</p> <p>I note that in terms of Policy 1 (2) (i) of the NZCPS the tide gates are in the CMA and the question asked by the Commissioner relates to the landward side.</p>
3.	<p>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?</p>	<p><b>MF, SW, AS, LM</b> - The following statutory documents apply on the landward side of the floodgate structure:</p> <ul style="list-style-type: none"> <li>• SRPS</li> <li>• NPS-FM</li> <li>• NPS-IB</li> </ul>	<p><b>LM</b> – I understand the question to relate to activities on the landward side of the tide gates generally.</p> <p>The NZCPS could apply where an activity requires resource consent on the landward side of the structure. The NZCPS could be a matter to have regard to in any policy assessment. This would likely be influenced by the proposed activity and its</p>

		<ul style="list-style-type: none"> <li>• pSWLP</li> <li>• SDP</li> </ul> <p><b>MF, SW, AS</b> – Plus the NZCPS.</p> <p><b>MF, SW, AS</b> – Policy 7 of the NPS-FM confirms the loss of river extent and values are to be avoided to the extent practicable. Policy 7 is broader than Policy 11 of the NZCPS which is specific to indigenous biodiversity only.</p> <p><b>MF, SW, AS</b> - In this instance given Policy 11 of the NZCPS is specific, it will have more weight than Policy 7 of the NPS-FM when indigenous biodiversity effects are being considered.</p>	<p>location. Where an activity is located close to the CMA boundary the NZCPS could be considered a relevant matter but the further inland the activity is the less likely the NZCPS would be relevant.</p> <p>Under the District Plan if the activity is outside the Coastal Environment as mapped generally the NZCPS would not be a relevant consideration for resource consents.</p> <p>In terms of reconciling Policy 7 and clause 3.24 of the NPS-FM and Policy 11 of NZCPS when considering the landward side of the flood gate structure I would place more weight on the NPS-FW provisions over Policy 11 of the NZCPS.</p> <p>In terms of the framework of the RMA as outlined above the landward side it is not</p>
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			<p>part of the Coastal Environment in a regulatory sense as any activities undertaken in this area are not located within the CMA and are not regulated under the RCP.</p> <p>Policy 7 seeks to avoid loss of river extent and values to the extent practicable. This is an 'avoid' policy, unless there is a functional need for the activity in the location and the effects management hierarchy is applied. There is a functional need for the tide gates at the site to enable existing legally established rural land use upstream of the tide gates. the effects management hierarchy is discussed below.</p>
4.	If applicable, has the effects management hierarchy set out in clause 3.24(3) been	<b>MF, SW, AS, LM</b> - The effects management hierarchy set out in clause 3.24(3) is applicable. With regard to	<b>LM</b> - The effects management hierarchy is an approach to managing the adverse



	<p>appropriately applied? If not, what else is required to achieve that?</p>	<p>adverse effects on inanga spawning and fish passage the Ecology JWS provides certainty with regard to the effects management hierarchy on those matters.</p> <p>This may or may not have covered off the cultural values component noting that a TAMI representative was part of the Ecology JWS in respect of mātauranga maori input.</p>	<p>effects of an activity on the extent or values of a river that requires:</p> <p><i>(a) adverse effects are avoided where practicable; then</i></p> <p><i>(b) where adverse effects cannot be avoided, they are minimised where practicable;.....</i></p> <p>Given the nature of the tide gates and their role, it is not practicable to avoid all adverse effects, but the adverse effects are minimised via the proposed mitigation.</p> <p>The effects management hierarchy set out in clause 3.24(3) has been appropriately applied.</p> <p><b>MF</b> – The effects management hierarchy has not covered off adequately the cultural values component. Given the level of</p>
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			intervention and system change the mauri of the stream has been so affected it undermines all other iwi values.
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?	<p><b>MF, SW, AS</b> – Yes clause 3.26 of the NPS-FM applies to the floodgate structure.</p> <p>Clause 1.5 (1) states that the NPS-FW applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area). The NPS-FW can be applied to receiving environments such as the CMA (including structures in the CMA) where resource consents are sought under the relevant regional water plan. It also potentially applies to activities under the RCP even</p>	<p><b>LM</b> – Clause 3.26 of the NPS-FM requires specific changes to every regional council's regional plan relating to fish passage. The regional plan that needs to be changed is the relevant regional water plan which in this case is the pSWLP.</p> <p>3.26 of the NPS-FM does not apply directly to the tide gates as they are located in the CMA and sit under the RCP framework. The application seeks resource consent under the relevant rules of the RCP.</p> <p>Clause 1.5 (1) states that the NPS-FW applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving</p>

		<p>though this plan predates it and the RCP has yet to give effect to it.</p>	<p>environments (which may include estuaries and the wider coastal marine area).</p> <p>The NPS-FW can be applied to receiving environments such as the CMA (including structures in the CMA) where resource consents are sought under the relevant regional water plan. No resource consents are required or sought for the tide gate structure under the pSWLP.</p>
6.	<p>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.</p>	<p><b>MF, SW, AS, LM</b> – No.</p> <p>The RCP predates the current NZCPS and as such does not give full effect to it.</p> <p>The pSWLP predates the current NPS-FW but has been updated to incorporate clause 3.24 'Rivers' from the NPS-FW. The</p>	<p><b>LM, SW</b> – Yes, the Coastal Environment overlay of the Southland District Plan, which gives effect to the NZCPS including Policy 1. Noting that Policy 1 of the NZCPS also defines the CMA as part of the Coastal Environment.</p>

		<p>'Rivers' policy is incorporated as 28A in the pSWLP.</p> <p>The RCP also predates the NPS-FM and does not give effect to the provisions of the NPS-FM which apply in the associated areas which can cross over to the CMA.</p>	
7.	<p>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</p>	<p><b>MF, SW, AS, LM</b> – The Ecologist JWS recommends that condition 8 be amended to require surveys on 3 occasions rather than 2. We support this change and the word 'two' should be replaced with 'three'. We note in the Ecology JWS that the 3</p>	<p><b>LM</b> – The applicant would need to check if the 30th of June 2026 date suggested for Condition 11 is feasible.</p> <p><b>MF</b> – Condition 12 should be amended to reflect the requirement for cultural monitoring as part of overall fish passage</p>

	<p>being in place for the long term (See question 2 to the ecologists).</p>	<p>surveys occur in March, April and May and we recommend wording to this effect.</p> <p><b>MF, SW, AS, LM</b> – We agree that should consent be granted updated references should be included in the consent documents referencing the updated information provided at and after the hearing.</p> <p><b>MF, SW, AS, LM</b> – We agree that condition 9 can be removed as it could be covered by condition 8.</p> <p><b>MF, SW, AS, LM</b> – We suggest an amendment to condition 10 in response to comments in the Ecology JWS as follows:</p> <p><i>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</i></p>	<p>monitoring. See appendix 2 for suggested wording.</p>
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		<p><i>resting zones for fish. <u>Boulder cluster placement shall be informed by measurements of velocity for optimal results.</u></i></p> <p>We note that boulder placement could require resource consent under Rule 10.2.4 of the RCP. However, the diversion channel is part of the tide gate infrastructure and as such could be provided for through this consent.</p> <p><b>MF, SW, AS, LM</b> – We agree that Condition 11 should be amended with the word ‘unimpeded’ changes to ‘improved’ or ‘enhanced’.</p> <p><b>MF, SW, AS</b> – The following sentence should be added to Condition11: <i>These works shall be completed as soon as practical after the first round of inanga</i></p>	
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		<p><i>spawning surveys and no later than 30<sup>th</sup> June 2026.</i></p> <p><b>MF, SW, AS, LM</b> – We agree that Condition 14 should be amended as follows:</p> <p><i>14. The consent holder shall monitor dissolved oxygen and temperature along the river during summer low flows <u>via use of a continuous logging probe</u> and provide a report of this monitoring to the Consent Authority annually.</i></p> <p><b>MF, SW, AS, LM</b> – The Ecologist JWS raises concerns about the wording of the review condition. However, we do not consider the wording of draft condition 19 (b) problematic. The wording of condition 19 (c) should include a reference to cover proposed regional plans.</p>	
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8.	Such other matters as the experts see fit to consider.	<b>MF, SW, AS, LM – None identified.</b>	
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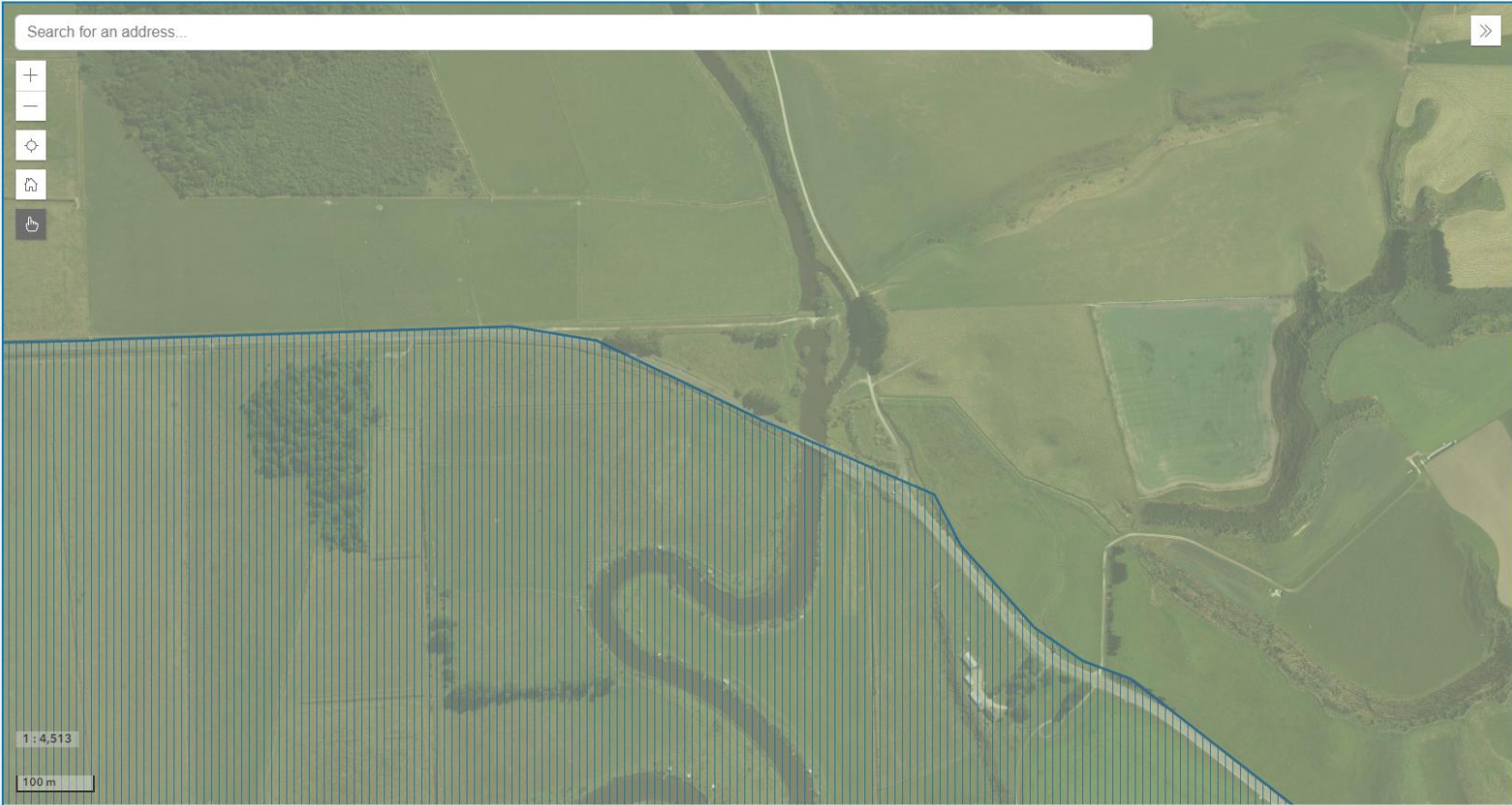


**Appendix 1 – Southland District Plan Coastal Environment Overlay**

# District Plan



Search for an address...



Map Tools

- Outstanding Natural Feature/Landscape
- Visual Amenity Landscape
- Mountain Overlay
- General District Wide Matters**
- Rivers and Streams Requiring Esplanade Mechanisms
- Verandah Requirements
- Coastal Environment
- Significant Geological Sites and Landforms
- Noise Sensitive Activity Exclusion Zone
- Area Specific Overlays**
- Rural Settlement Area
- Woodlands Agricultural Research Farm
- Commercial Precincts
- Lakeside Protection Area
- Stewart Island/Rakiura Transitional Overlay
- (LDRZ-TRZB) Lead Contamination Area
- (LDRZ-TRZB) Scenic Protection Zone A
- (LDRZ-TRZB) Scenic Protection Zone B

Legend

Help

## **Appendix 2 – Suggested Wording Condition 12**

### **Fish Passage Monitoring**

The consent holder shall monitor 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 the following:

- a) native fish moving through the provided opening during migratory periods, and
- b) taonga species identified by mana whenua moving through the provided opening during migratory periods.

The provision of a report of the monitoring (to include both a) and b) above) is to be provided to the Consent Authority after each survey. The monitoring outlined in a) above shall be undertaken by a suitably qualified and experienced person. The monitoring outlined in b) above shall be designed and implemented by Te Ao Marama on behalf of mana whenua.