

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of the First Schedule
of the Act

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**
Appellant

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

Memorandum of Counsel

on behalf of the Southland Fish & Game Council

Dated: 23 July 2019

**COUNSEL for SOUTHLAND:
FISH AND GAME COUNCIL**

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MAY IT PLEASE THE COURT

1. Fish & Game's expert on water quality for Topic A, Professor Death, is not able to continue with further expert conferencing in the context of Topic B. Unfortunately Professor Death has significant capacity issues in the second half of 2019. This is partly due to another freshwater scientist at Massey University (where Professor Death teaches) taking on a position at Victoria University.
2. While it would have been preferable to continue with the same freshwater expert, Fish & Game advises that it intends to call Dr Adam Canning as its freshwater expert for the remainder of the hearings on the pSWLP. As outlined in this Memorandum, Dr Canning is very familiar with Professor Death's work. Dr Canning's evidence would build upon Professor Death's evidence at Topic A.
3. Counsel for the Dairy Interests, in a Memorandum dated 20 March 2019, suggests that parties with an interest in Topic B and not currently involved in Topic A, be given the opportunity to nominate experts to be involved with the further conferencing process. Fish & Game does not oppose that suggestion. Indeed, in relation to Appendix E, Fish & Game accepted that the numerics in that Appendix are to be the subject of the Topic B hearing.¹
4. Fish & Game supports the Court's suggestion for pre-conferencing, and then Court-facilitated conferencing, prior to the Topic B hearings. It is intended that Dr Canning participate in the further expert conferencing. Dr Canning is a co-author of the paper "*Clean but not green: A weight-of-evidence approach for setting nutrient criteria in New Zealand rivers*" (Death et al., 2018) upon which much of Professor Death's evidence for Topic A relies.² It is understood that this is the work that is referred to at [49] of the JWS Water Quality & Ecology as having potential value for the next stage of the process (in addition to Regional Council information).³

¹ Counsel for Fish & Game's Memorandum dated 20 March 2019. In that Memorandum Fish & Game also advised it filed Professor Death's evidence for the Topic A hearing to support the following points:

- (a) It is possible to set region wide freshwater outcomes at this time accordingly to the compulsory NPSFM value of ecosystem health; and
- (b) If baseline numeric outcomes for MCI, nitrate-nitrogen and dissolve reactive phosphorous are set according to the compulsory NPS value of "ecosystem health", a number of the water body classes in the Southland region are 'over allocated' (degraded).

² Including, in particular, Professor Death's Table 5 (page 34 EIC).

³ Also referred to in attachment "A" to its Minute the Court of 9 July 2019.

Site Visit

5. In relation to the site visit, Fish & Game notes the following sites not included in Counsel for the Regional Council's suggested itinerary, could be included in the itinerary without taking any further time:
 - (a) The Feldwick Road site proposed by Fish & Game and Forest & Bird (Site 2 on Map 3/3) is not at the Otahu [sic] Flats, as recorded in Counsel for the Council's suggested itinerary, but is a viewing location off Feldwick Road approximately 6km past the turn-off from the Ohai-Clifden Highway. Counsel for the Council's suggested itinerary recommends that after visiting the Feldwick Road site the Court back-track to return to SH99 (Clifden-Blackmount Road) to travel to Te Anau Control Gate structure. Fish & Game and Forest & Bird had suggested three sites not included on Council's suggested itinerary (3, 4 & 5 on Fish & Game's Map 2 (1/2)) that would show examples of wintering activities, including cultivation on a slope:
 - a. Visiting sites 3 & 4, would provide a shorter route to the Te Anau Control structure, and would prevent the need to double-back as suggested by the Council. It would involve continuing along Feldwick Road to Birchwood and then proceeding along Straun Flat road before returning to the Clifden-Blackmount Road.
 - b. Site 5 could then easily be viewed directly off Clifden-Blackmount Road and this site includes a fodder crop example.
 - (b) Ngā Rūnanga suggested to the Regional Council that the site visit involve the Queens Reach Nohoanga. Although this has been excluded from the Council's proposed itinerary, it is noted that this site could be seen by simply continuing along Golf Course Road before arriving at the Te Anau Control Gate Structure.
6. These suggestions are offered to assist the Court, on the understanding that the Court wished to view examples of farming activities that will be the subject of consideration in Topic B hearings.



S Ongley
Counsel for the Southland Fish and Game Council

Dated: 23 July 2019

