

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposed

This Section 127 application is **GRANTED**. The reasons are set out below.

Application numbers:	APP-20157616-V1
Site address:	<i>Coastal Marine Area, Big Glory Bay, Stewart Island.</i>
Applicant:	<i>Sanford Limited</i>
Hearing commenced:	25 March 2019 at the offices of the Southland Regional Council, Invercargill
Hearing panel:	Mark Farnsworth Dr Brent Cowie Cr Eric Roy
Appearances:	<p><u>For the Applicant:</u> Jo Appleyard and Amy Hill – Legal Counsel Alison Undorf-Lay - Ted Culley Dr Phil Mitchell Ben Wybourne Dr Neil Hartstein Dr Mark James Jacobus Swart</p> <p><u>For the Submitters:</u> Department of Conservation Clare Lenihan – Legal Counsel Andrew Baxter Nardia Yozin</p> <p><u>For the Council</u> Danielle Korevaar Reporting Officer Dr Ken Grange</p> <p>Lacey Bragg Hearings Advisor</p>
Hearing adjourned	26 March 2019
Commissioners' site visit	24 March 2019
Hearing Closed:	2 April 2019

1 Introduction

1. This decision is made on behalf of the Southland Regional Council (“**the Council**”, often known as Environment Southland) by Hearing Commissioners Mark Farnsworth (chair), Dr Brent Cowie and Councillor Eric Roy, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from our deliberations on an application for a RMA Section 127 variation of consent conditions on seven consents, and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on 24 May 2018. Five submissions were received of which two were in support, one in conditional support; one in opposition; and one in opposition in part.
4. A submission from Forest and Bird requesting the application be declined was not accepted by the Council as it was invalid.

Initial Procedural Matters – Scope and Notification

5. Sanford Limited (**applicant**) had applied under s127 of the RMA to vary seven coastal permits for marine farms in Big Glory Bay on Stewart Island (often known as Rakiura). The variations sought to increase the nitrogen input from fish feed all the applicant’s salmon farms from 332 tonnes per year up to 659 tonnes per year in two stages; the first from the existing 483 tonnes to 583 tonnes, and the second to 659 tonnes per year. Associated changes sought were to enable Sanford Limited to use nitrogen allocation which is currently consented on other three marine farm sites for their operation and to update the monitoring regime.
6. The s42A reporting officer, Ms Danielle Korevaar, recommended that the application be treated as one for a new activity, and recommended a term of 20-years.
7. Acting for Te Rūnanga o Awarua and Te Rūnanga o Ngāi Tahu (**Ngāi Tahu**) Simpson Grierson provided the Panel with a letter dated 11 March 2019 that questioned this recommendation. They advised that the 20-year term of consent recommended in the s42A report raised a number of legal/jurisdictional issues, including that:
 - (a) A 20-year duration was not applied for. A council cannot grant more than what has been sought in an application, so the recommended a 20-year duration is beyond the scope of what the Council has jurisdiction to grant; and
 - (b) Potentially whether the notification decision was valid.
8. The letter also recorded that Ngāi Tahu and Sanford agree that the term of consent should be limited to the term of the original resource consents, which expire in 2025. Ngāi Tahu sought further comfort from the Council that the expiry date of the consents sought to be varied will remain as 2025.

9. The Panel sought legal advice on the issues raised in Simpson Grierson's letter. Wynn Williams provided that advice. In summary they said:
 - a) As the application was to vary conditions of existing consents the term cannot be changed and remains at 2025.
 - b) The notification was valid.
10. No submitter raised the status of the application being treated as a variation to existing resource consents under the provisions of s127.
11. Another factor which influenced our decision on status was that all the evidence tabled by both the applicant and Department of Conservation was geared to a s127 application, and not replacement consents. The consent itself is due to expire on 1 January 2025, and the information gained by monitoring the effects of the additional nitrogen loading from implementation of the variation will place the Council in a better position to consider any replacement consents at that time.
12. For these reasons we decided that the notification was valid, and that the application must be treated as one for a variation of the existing consents under s127 of the RMA, and so the hearing could proceed. This means that the application is for a **discretionary activity** under s127(3)(a) of the RMA.

2 The Proposal

13. The core of the applicant's proposal is to increase the allowable nitrogen loading in fish feed supplied to salmon in two steps.
14. The current nitrogen loading from food supplied to the seven existing Sanford salmon farm sites is currently just over 332 tonnes/nitrogen/year (t/n/y). Sanford have rights to use three additional marine farm sites which gives them a right to discharge 483 t/n/y. They propose to increase this in two steps: first up to 583 t/n/y until at least July 2021, and then to up to 659 t/n/y after that time.
15. The increase is sought at two sites: MF246, where the applicant proposes to move the rearing farm in September 2019, and LI 320, which is the one of the smolt farm sites. The total nitrogen loading from these two sites is proposed to increase to up to 415 and 200 t/n/y respectively, albeit within the limits imposed for the Big Glory Bay salmon farms as a whole.
16. The effects of increased loading at these two sites has been modelled hydrodynamically by Dr Hartstein, and the applicant proposes that similar modelling would be carried out at any other sites where increases to current loadings are proposed in the future.

17. The applicant cannot exercise the full increased nitrogen allocation provided for in the conditions of consent for about three years, as this is the time it takes to increase production of fry that eventually leads to the mature salmon being harvested.

Background and Site Visit

18. Big Glory Bay is a U-shaped embayment covering about 12 square kilometres on the south east side of Rakiura. It is surrounded by land in Rakiura National Park and access is only by boat. The bay is sheltered from the prevailing southerly and westerly winds, and so sea conditions are generally not very rough.
19. There is only one small inflowing stream. Currents in the bay are quite weak, and it takes about 28 days for 90% of the water in the bay to be turned over.
20. The bay has an average and reasonably uniform depth of about 20m. Most of the sea floor is muddy, and for this reason natural benthic biodiversity is low. There are few benthic species of conservation interest, and these are found well away from the marine farms.
21. There are, a total of 48 marine farms in the bay; 10 of these are presently salmon farms¹ and the balance are presently mussel farms. All these farms are in specific locations which reflects the old marine farm licences granted in the early 1970's. On Rakiura marine farming can only be carried out in Big Glory Bay as it is a prohibited activity in all other coastal areas of the island. Indeed, there is no other aquaculture carried out anywhere else in the Southland region.
22. It takes up to three years for salmon to grow to a size where they are harvested. Fish are taken from the brood farm at Big Glory Bay, stripped, and the eggs fertilised. The applicant raises fry at three sites on the mainland. When the fry reach, a weight of about 25 grams they are transferred to the smolt farm site in Big Glory Bay, where they remain for about 18 months by which time, they weigh about 1.5kg. They are then transferred to the main grower farm, where they remain until they are harvested at a weight averaging 4.5kg.
23. Only about 0.3% of the total area of Big Glory Bay is used for salmon farming at any one time. On site fish biomass is highest at the grower farm at up to 15 kg/m³, and lowest at the brood farm, where it averages only 0.5 kg/m³, and where only about 3,000 – 4,000 fish are held.
24. Water quality in Big Glory Bay is satisfactory, with consensus that the trophic status of the bay is best described as mesotrophic. Chlorophyll a biomass can vary substantially; between 1997 and 2017 it has been recorded between 0.1 and 17 ug/l. Bloom conditions occurred in 1988, 1989, 2010, 2012, 2013 and (most notably) 2017. Dr James, a witness for the applicant, attributed these blooms to upwelling of nutrient rich waters from offshore of the bay. Apart from 2017 mean chlorophyll a biomass is typically in the range from about 1 – 2.5 ug/l, and is generally highest in late winter/spring. There is a synergistic interaction between the salmon farms and mussel farms in Big Glory Bay, as any elevated chlorophyll a generated from additional

¹ Sanford owns seven of these salmon farm sites and is partnership with the owners of the other three sites. It also owns 27 of the mussel farm sites.

nitrogen inputs from salmon farms provides a food source for mussels, which are filter feeders.²

25. For the applicant Dr Hartstein had modelled the dispersal of nitrogen and the associated effluent “plume” from the proposed increase in nitrogen loadings at MF 246 and LI 320.³ While his modelling was criticised to some extent by Dr Longdill for the Department of Conservation, our understanding is that the model is suitably conservative, and so will overstate rather than understate possible adverse effects.
26. We undertook a site visit to Big Glory Bay on Sunday 24 March. Although there was a little rain the sea was very calm with no wind. We were taken by water taxi to the main salmon rearing farm at MF 246, and from there by boat around the bay. We thank the staff of Sanford who showed us around, and explained fully how the salmon farming operation was managed in Big Glory Bay. During this site visit we also saw a number of the mussel farms in the bay from quite close quarters.
27. The site visit provided an essential context to our consideration of the application. In particular we saw:
 - The key features of the bay and the physical setting of the salmon farms;
 - The interrelationship between salmon farms and mussel farms; and
 - How salmon farming operates in Big Glory Bay.

3 Submissions Received

28. The Section 42A Report summarised the submissions⁴ received; listing the issues raised and the relief sought. Issues raised in submissions included:
 - Well-established salmon farm where innovation has reduced the possibility of adverse effects
 - Operation of considerable benefit to Stewart Island community;
 - No concerns with effects on marine mammals, seabirds, recreation amenity or landscape values;
 - No concerns with increases in production provided they are within sustainable limits;
 - Support cautious staged approach;
 - How the nitrogen cap will be managed;
 - Additional nitrogen impacts on algal blooms;
 - Lack of nutrient-phytoplankton -detritus water quality model;
 - Concerns relating to the scale of the operation;
 - Dissolved oxygen to be measured at depth not just surface;
 - No management plan to address legacy and future issues; and
 - Objection to the location of the transformer

Relief sought included:

² More detail was provided in a helpful summary on pp20 of the Officer's Report.

³ Noting that similar modelling is required before any increase in nitrogen loadings can be made at any other salmon farm site in Big Glory Bay.

⁴ See pp 14 and 15. A copy of each submission can be found on the Council' web page at <https://www.es.govt.nz/services/consents-and-compliance/notified-consents/Pages/Sanford-Limited.aspx>

- Grant the application;
- Address issues of concern;
- Staged approach
- Optimal sustainable use is made of areas already allocated; and
- Facilitate Ngāi Tahu's participation in forming appropriate mitigation conditions.

29. We note that although Ngāi Tahu were a submitter they did not appear at the hearing as the conditions proposed by the applicant had resolved their concerns with the proposal.

4 Summary of Evidence

30. Each of the s42A report, the applicant's expert evidence and the submitters' expert evidence were pre-circulated to all parties in accordance with the provisions of s41B of the RMA.

31. The Council's Section 42A Report prepared by **Danielle Korevaar** a Resource Management Consultant⁵, was circulated prior to the hearing and taken as read. Attached to the report were:

- Expert evidence of Dr Kenneth Grange, a consultant with expertise in marine benthic ecology; and
- A Technical Review – *Big Glory Bay Salmon Farms – Change of Conditions Application by Sanford Limited, May 2018*. Prepared by K Grange and N Broekhuizen of NIWA.

32. As already discussed, the Section 42A Report had considered the application as one for a replacement consent⁶ not the s127 variation to existing consents sought by the applicant. In relation to this matter Ms Korevaar did note

*"I consider that this will have little material difference in the context of this report, as the effects of the activity are assessed against the existing environment, which includes activities carried out under existing consents (Queenstown Lakes District Council v Hawthorn Estate Limited [2006] NZRMA 424 (CA)). Given some aspects of the existing operation are not proposed to change as a result of the increase in nitrogen input from feed, I consider the bulk of discussion and assessment, regardless of how the application is treated, will focus on the same effects."*⁷

33. Dr Mitchell agreed with the officer that whether the proposal is considered under 127 or as an application for a new activity makes no material difference to the substance of the statutory tests which apply to it. We also agree with Ms Korevaar on this matter.

34. No submitter raised the status of the application in their submission.

35. We note that case law cited by Ms Korevaar supports her contention that the application to vary the existing consents should have been treated as one for a new application. However, the proper time to make such a decision would have been when

⁵ With Incite (Christchurch) Limited

⁶ Section 42A Report at [4]

⁷ Ibid at page 18

the application was lodged, and when the s88 RMA tests that the application was “complete” were applied by the Council. Once the application was accepted as one for a s127 variation, we are of the view that path cannot be changed retrospectively.

Evidence for the Applicant

36. The applicant’s legal counsel Ms Jo Appleyard tabled opening legal submissions. She addressed the matters that she thought relevant to our decision making and listed the witnesses for the applicant and the matters each would cover.
37. **Edward Culley**, the General Manager Aquaculture for Sanford provided a written brief of evidence which set out:
- Some background to Sanford and its operations;
 - the demand for New Zealand salmon and Sanford’s role in the market;
 - the history of salmon farming in Big Glory Bay;
 - the need for industry growth and why Sanford’s selected Big Glory Bay;
 - the rationale for the Application and the role of fallowing in managing salmon farms and their environmental effects; and
 - the future environmental management proposed.
38. **Alison Undorf-Lay**, the Industry Liaison Manager for Sanford Limited provided evidence which covered:
- why environmental sustainability is fundamental to Sanford’s business philosophy;
 - how that approach has been applied in practice to Big Glory Bay;
 - the socio-economic benefits the community derives from the Big Glory Bay operations;
 - the importance of our Big Glory Bay brand; and
 - how Sanford has approached community and stakeholder consultation.
39. The pre-circulated evidence of **Jacobus Swart**, Big Glory Bay Salmon Farm Manager for Sanford Limited provided:
- a detailed description of the locations and layout of our salmon farms in Big Glory Bay;
 - a description of our farming operations, both as they exist now and how they will change over time;
 - an outline of how Sanford’s use of technology has evolved and improved over time as the company moved from producing a frozen product to a fresh one; and
 - Sanford’s approach to technological advancement and their commitment to continuous improvement.
40. **Benjamin Wybourne**, a Technical Account Manager for Skretting⁸ Australia, provided a written statement of evidence which addressed:
- Background information about Skretting and its experience in fish feed manufacturing and use on marine farms;
 - facts and figures about salmon feed formulations and how the feeding of fish is managed;

⁸ Skretting is an international manufacturer of aquaculture feeds.

- how pellet production and the feeding of fish has evolved over time and is continuing to evolve; and
 - the importance of nitrogen in salmon feed and how releases into the environment are minimised.
41. **Dr Mark James**, an Aquatic Ecologist and Director of Aquatic Environmental Sciences Limited provided a written evidence⁹ which:
- described the environment of Big Glory Bay and commented on environmental changes over time;
 - assessed of the environmental effects of this proposal; and
 - outlined the key monitoring and farm management changes that the applicant proposed be implemented.
42. Dr James' evidence also discussed water quality and the benthic environment of Big Glory Bay. We do not need to summarise this here as we address these matters elsewhere in this decision.
43. **Dr Neil Hartstein**, who is a Director and Senior Oceanographer at Aquadynamic Solutions, provided evidence¹⁰ addressed the hydrodynamic environment in Big Glory Bay and detailed how it had been modelled by the applicant.
44. In his conclusion Dr Hartstein opined¹¹ that given the records of nutrient concentrations and chlorophyll-a biomass in the water column for the last 30-years, and even though farmed fish biomass had increased over that time, the overall range of concentrations and biomass appears to have remained similar. He asserted that this means that Big Glory Bay has assimilated the increases in nutrient loading occurring over the years without signs of significant adverse effects.
31. **Dr Philip Mitchell**, of Mitchell Daysh Limited, provided a written brief of evidence which:
- outlined the proposed changes to salmon farming resource consents in Big Glory Bay and explained how the conditions to manage the activity have evolved since the application was lodged;
 - discussed the planning framework that applies;
 - summarised the actual and potential environmental effects associated with the proposal;
 - discussed the matters raised in submissions and respond to the section 42A report;
 - provided a consideration of the proposal against the requirements of section 104 and Part 2 of the RMA; and
 - discussed the resource consent condition changes.
32. Dr Mitchell noted¹² that conditions of consent have continued to refined since the publication of the s42A Report and that they had reached a point where they have been accepted and agreed by both the Department of Conservation (DoC) and Te Runanga o Awarua. He also understood that they had been generally accepted by the Council.

⁹ The technical detail in Dr James' evidence has not been summarized, it can be found on the Council's web page.

¹⁰ The technical detail in Dr Hartstein's evidence has not been summarised, it can be found on the Council's web page.

¹¹ Dr Hartstein EiC at [109]

¹² Dr Mitchell EiC at [35]

33. Dr Mitchell also commented on the consent period recording¹³ that he agreed with the S42A report that the effects of the proposed activities would justify a 20-year term, that is not what was asked for in the application.
34. Ms Appleyard provided a written right of reply on Friday 29 March. It traversed some of the submissions and evidence on the effects of salmon farming in Big Glory Bay, and discussed some of the proposed conditions of consent.

Submitter's Evidence¹⁴:

35. The only submitter who appeared at the hearing was the Department of Conservation, who had Ms Clare Lenihan present as Counsel, and three expert witnesses, whose evidence had been pre-circulated.
36. **Andrew Baxter**, a Technical Advisor (Marine) in the Department's Biodiversity Group provided a written brief of evidence giving a technical assessment of the application and, in particular, the development of the revised set of conditions¹⁵ dated 18 December 2018 which were now before the hearing. He pointed out that these revised conditions had been developed and agreed between the technical advisors for the Department of Conservation (himself and Dr Peter Longdill) and Sanford Limited (Dr Mark James and Dr Neil Hartstein).
37. Mr Baxter said¹⁶ that the seabed beneath and in the immediate vicinity of salmon farm cages is significantly degraded. Effects can be mitigated through a range of measures including good site location, specific cage placement, staged/adaptive development, monitoring, stocking levels, feed management, and fallowing.
38. He said that the agreed set of new conditions, subject to a minor amendment agreed to, subsequent to the 18 December version of the revised conditions, address the Director-General's concerns regarding benthic effects and will result in a clearer and more effective monitoring framework for benthic effects.
39. **Dr Peter Longdill**, the Environmental and Sustainability Manager for the Hamad Port Project within the State of Qatar provided a technical assessment of the application. He noted his involvement in the development of the revised set of conditions dated 18 December 2018, where he was focused primarily on water column and water quality aspects. He also contributed to the discussions and agreements on the benthic ecology conditions. He said that the process undertaken proved very fruitful and ultimately lead to a revised set of conditions being agreed between DoC and the applicant.
40. Dr Longdill expressed¹⁷ reservations on the modelling undertaken by the applicant. However, despite this, he was of the view that the model result still provides "a somewhat useful indicator of the dispersion and dilution of dissolved wastes from the

¹³ Ibid at [51]

¹⁴ In order of presentation at the hearing

¹⁵ Baxter EIC at [3.1]

¹⁶ Baxter EIC at [4.1]

¹⁷ Dr Longdill EIC at [6]

farms". He also addresses the potential increases in chlorophyll-a biomass noting the need for staging.

41. We note that Dr Longdill did not appear at the hearing and so we could not question him as intended via a video link. He did however provide an additional brief of evidence that was provided when the hearing re-convened on 26 March.
42. **Nardia Yozin**, an RMA planner with the Department provided a brief of evidence which addressed the Director-General's submission, which was largely concerned with the ability for Big Glory Bay to assimilate the nitrogen increases proposed by the applicant. Concerns included uncertainty around how the proposed conditions would effectively monitor changes and manage potential adverse effects on water quality and benthic values. Ms Yozin considered that the agreed revised conditions provide the necessary certainty sought through the submission and can effectively manage any potential adverse effects over the remaining term of the consent through to 2025. She also outlined her concern with the officer's s42A report recommendation that the consents are granted for a 20-year duration.

Close of Hearing

43. As noted above the applicant provided a written closing legal submission on Friday 29 March, together with a full set of revised consent conditions, and we closed the hearing on 2 April.

5 Assessment

44. Decisions on resource consent applications for discretionary activities are made under the criteria listed in Section 104(1) of the RMA. Subject to Part 2 of the Act, we must have regard to the following matters:
 - a) any actual and potential effects on the environment of allowing the activity; and
 - b) any relevant provisions of
 - i. a national environmental standard;
 - ii. other regulations;
 - iii. a national policy statement;
 - iv. a New Zealand coastal policy statement;
 - v. a regional policy statement or proposed regional policy statement;
 - vi. a plan or proposed plan; and
 - c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
45. In relation to these matters and the present applications:
 - We discuss Part 2 RMA matters in Paragraphs 61-64 below.
 - We see the actual and potential effects of the activities for which consent is sought as being those on local benthic ecology and on water quality. There are also significant benefits to the local and regional economy from granting these variations. We discuss this below at paragraph 55
 - There are no relevant national environmental standards or regulations

- The relevant national policy statement is the NZ Coastal Policy Statement (“**NZCPS**”) 2010 (the NZCPS). which we discuss in Paragraphs 56-59.
- The Southland Regional Policy Statement 2017 (“the **RPS**”) is discussed at paragraph 58.
- Regional Coastal Plan for Southland (“the **RCP**”) is discussed where, noting that this was prepared and near finalised before the NZCPS 2010 was gazetted.
- We also considered that Murihiku’s Iwi Management Plan – *Te Tangi a Tauira* to be relevant and reasonably necessary to determine the application under s104(1)(c).

46. Another consideration is that the Rakiura/Te Ara A Kiwa (Stewart Island / Foveaux Strait) coastal marine area is identified a statutory acknowledgment area under Schedule 104 of the Ngāi Tahu Claims Settlement Act 1998.
47. We also address Sections 105 and 107 of the Act, as these must be considered for all applications for coastal permits.
48. As the activity for which consent is sought is discretionary, section 104B of the RMA is relevant for our decision. Under s104B, we can either grant or refuse one or more of the consents sought. If granted, we may impose conditions under s108 of the Act. In this case we have granted all the consents sought with conditions that we consider avoid or mitigate the effects of the proposal.
49. We have made this assessment relatively brief. In relation to Part 2 and its relevance to our decision, and the three main statutory instruments, there was little disagreement between Ms Appleyard and Dr Mitchell for the applicant, Ms Yozin for DoC and Ms Korevaar, the s42A reporting officer for the Council.
50. We see the actual and potential effects of granting the variation sought as being:
 - a) on benthic ecology below the salmon farm sites;
 - b) on the trophic status of the water column in Big Glory Bay; and
 - c) positive effects.
51. There is no doubt that the benthos below the salmon farm sites is dominated by a few opportunistic and pollution tolerant species, along with bacterial mats of sulphur tolerant species such as *Beggiatoa* present at times at times. Such effects are not permanent, as the evidence demonstrated that once the fish farm is moved from a site, and it is left to fallow, the benthos recovers over a period of about 3-5 years.
52. For this reason, Dr James referred to these effects as “generally benign or minor”¹⁸. Mr Baxter questioned this assertion,¹⁹ and we agree with him that they are neither benign nor minor. Importantly however the adverse effects are reversible in Big Glory Bay, and so we do not see the proposal leading to any significant adverse effects on aquatic life. Additionally, we note that groups such as marine mammals and sea birds are little affected, if at all, by the Sanford’s operation in Big Glory Bay.
53. In the marine environment trophic status is measured by chlorophyll a biomass. There is no composite Trophic Level Index²⁰ as there is in lakes, although in response to a question Dr James said work was being carried out to try and develop such an index in estuarine and inshore waters.
54. Conditions of consent agreed between the applicant and DoC require retention of the existing trophic status of Big Glory Bay, as measured by chlorophyll a biomass in the water column. Given this, we are satisfied that effects on existing water quality from the proposal will not be significant.

¹⁸ At Paragraph 15

¹⁹ At Paragraph 6.6

²⁰ Commonly known as the TLI, this composite index is based on chlorophyll a biomass, water clarity and nutrient concentrations.

55. There are significant positive effects from granting the variation sought. Sanford's salmon farm operations on Rakiura generate some \$39 million in revenue, and it currently employs 24 FTE's on site in Big Glory Bay, and a further 70 FTE's in the processing plant in Bluff. Employment at Bluff will increase once additional salmon are available after about three years. Marine farming is the second largest form of employment on Rakiura after tourism, but unlike tourism it has no notable seasonal peaks and troughs.
56. Ms Appleyard traversed the relevant objectives and policies of the NZCPS in her opening submissions.²¹ Both she and Ms Korevaar highlighted provisions, such as Objective 6 and Policies 6 and 8, which recognise that activities in the Coastal Marine Area can provide for the social, cultural and economic well-being of people and communities, and that activities such as aquaculture have a functional need to be located within the Coastal Marine Area.
57. Other potentially relevant instruments in the NZCPS include:
- a) Objective 3 and Policy 2, which address the Principles of the Treaty of Waitangi, tangata whenua and Maori interests. Sanford had actively consulted with Te Runanga te Awarua during the development of the proposal, and again worked alongside the Runanga to resolve the concerns raised in its submission.
 - b) Policy 3, which requires a precautionary approach to proposed activities where effects are uncertain, unknown, or little understood, but potentially significantly adverse. The evidence shows there are no significant adverse effects from the implementation of the applicant's proposal.
 - c) Objective 2, and Policies 13 and 15, which require the preservation of the natural character of the coastal environment, and natural features and landscapes from inappropriate use or development. We note that the natural character and landscape values associated with Big Glory Bay would be unlikely to qualify as outstanding under the criteria using the criteria in Chapter 10 of the Southland Regional Policy Statement, and that the proposal will result in little, if any, increase in the visual effects of aquaculture in Big Glory Bay.
58. We agree with Ms Appleyard²² that (like the NZCPS), the Regional Policy Statement provides for aquaculture while managing adverse effects, and that it helps provide for the wellbeing of people and communities.
59. As discussed in the s42A report the proposal is consistent with the Regional Coastal Plan in that the plan recognises Big Glory Bay as the only appropriate site for aquaculture on Rakiura²³. It achieves this by making aquaculture a discretionary activity in Big Glory Bay, but a prohibited activity elsewhere on Rakiura.
60. Both Ms Appleyard and particularly Ms Korevaar traversed the relevant provisions of the Te Tangi a Tauria Iwi Management Plan.²⁴ We consider that the consultation

²¹ At Paragraph 77.1

²² At Paragraph 77.2

²³ See Pages 26 and 27.

²⁴ At Paragraph 77.4 and pp 42-44 respectively.

undertaken by the applicant, and provision of ongoing information about the environmental effects of the proposal, help fulfil the requirements of this Iwi Management Plan.

61. Decisions on resource consent applications are made “subject to Part 2 of the Act”. How this is to be interpreted has been the subject of a recent Court of Appeal decision.²⁵ This has meant that although decisions on resource consent applications must consider Part 2, it cannot be used to justify an outcome that is contrary to the thrust of policies where the Plan is coherent and has had due regard to Part 2 in its preparation.
62. Given that the RCP dates back to about 2008, and that its preparation predated the NZCPS 2010, we reviewed the need to discuss “if the Plan is now coherent”.
63. Although we are not convinced this is the case overall, for the present proposal we do consider its provisions coherent in that it bans aquaculture in all of Rakiura except Big Glory Bay. It provides clear policy direction on where aquaculture should be carried out, in our view this is the key test here.
64. We also consider the proposal to be consistent with Part 2. It meets s5 tests by providing for the use and development of a natural resource in a way that enables people and communities to provide for their social, economic and cultural wellbeing while meeting the three tests listed: sustaining the potential of the resource to provide for future generations, safeguarding the life supporting capacity of water and ecosystems and (via conditions) avoiding or mitigating adverse effects.
65. Section 6(a) tests have already been discussed in relation to Objective 2 and Policies 13 and 15 of the NZCPS. None of the other matters of national importance listed in s6 weigh against granting the proposal, and nor do those in s7.
66. Section 8 matters have been addressed, as discussed above in relation to Objective 3 and Policy 2 of the NZCPS.
67. In conclusion, there are no matters in s104 that direct us towards declining the variation sought, and indeed, our evaluation lends substantial support to granting the proposal. This was reinforced by no submitter actively involved in the process asking that the application be declined.
68. There are two other sections of the RMA that we must address in making our decision, namely s105 and s107.
69. Section 105(1) of the Act requires that we must, in addition to s104 considerations, have regard to:
 - a) *the nature of the discharge and the sensitivity of the environment to adverse effects;*
 - b) *the applicant’s reasons for the proposed choice; and*

²⁵ RJ Davidson Family Trust v Marlborough DC (2018) NZCA 316.

c) *any other possible alternative methods of discharge, including discharge into any other receiving environment.*

70. We have already discussed that the receiving environment in Big Glory Bay is not very sensitive to the proposed discharges, and clearly there is no other possible receiving environment. According there is no impediment in S105(1) to granting the variation sought.
71. S 107 places restrictions on granting of coastal permits if any of the criteria in S107(1) apply, in which case there are possible exemptions in s107(2). The only possible criterion we have to consider is whether there are significant adverse effects on aquatic life. While this could occur below the salmon farms, this is not a permanent effect as the farm sites can be moved to other locations and the seabed left to recover. The evidence is that this will occur gradually over 3-4 years. According s107 does not restrict our ability to grant the variation sought.

6 Principal issue to be addressed

72. After having thoroughly read all the evidence, submissions and reports, we came to a preliminary conclusion that the variation could be granted. This has been confirmed by our assessment of the proposal against the statutory criteria.
73. Additionally, the site visit helped us put the Sanford's salmon farming operation in Big Glory Bay into a "real world" context. It may be a large operation in terms of the number of salmon raised and harvested, but in the wider environment of the bay salmon farming only covers a very limited area, and adverse effects can be managed, particularly as the farm sites can be moved around and the seabed and associated benthos can be left to fallow and recover.
74. The site visit also allowed us to better understand why there was qualified support for the proposal from the Department of Conservation, and why Ngāi Tahu was not opposed to the consents being granted provided certain conditions were met. For these reasons we were generally comfortable with the application being granted, subject to stringent conditions.

7 Our findings

Conditions

75. We acknowledge the work of the applicant, and particularly Dr Mitchell, in trying to integrate new conditions of consent into the existing conditions for the salmon farm sites in Big Glory Bay. This has not been a simple exercise, as some of those existing conditions are now no longer strictly applicable. However as this was an application to vary existing conditions of consent, it was not possible to review comprehensively many of the existing conditions. This will have to wait until applications are made to replace the existing consents before they expire in 2025.
76. To get around this Dr Mitchell had proposed specific changes to each of the seven consents, along with a set of general conditions that would apply to each of these consents. We thank him for his very good work on this.

77. There was one matter in the applicant's initial proposed consent conditions that was not acceptable to the panel, which was their intention to leave the monitoring provisions to a "management plan" that would then be certified by officers of the Regional Council. We all shared the view that monitoring provisions should be an integral part of the conditions of consent. Accordingly, after some discussion when we adjourned the hearing on Monday 25 March, we asked the applicant to prepare new conditions that would incorporate monitoring provisions.
78. The applicant did this, so we had these revised conditions by the commencement of the hearing on Tuesday 26 March. After hearing from Dr Hartstein and Dr James for the applicant, and Mr Baxter and Ms Lenihan for the Department of Conservation, we collectively worked through the proposed conditions of consent with them and Dr Mitchell. We also received a written response to our points of clarification from Dr Longdill which Dr Mitchell was able to factor into his consideration. We found this a constructive exercise, and we thank those witnesses for all their help in that discussion.
79. These provided for substantially more monitoring that presently exists, including around the salmon farming sites, and ambient environment water quality monitoring sites. We worked through these with the applicant and other parties present, including particularly Dr Grange for the consent authority and Mr Baxter for the Department of Conservation. By the time we adjourned the hearing, there was consensus among the parties about the proposed conditions of consent. This is reflected in our decision, along with some further minor amendments to improve clarity and update some matters.

Duration

80. As the application was one to vary conditions of existing consents, the term of the consent cannot be changed, and so the consents still expire on 1 January 2025.

Overall Conclusion

81. We concur that the expert evidence provided by Sanford demonstrates that the increase in nitrogen input sought through this Application will result in social and economic wellbeing benefits for the region. Any adverse effects of the increased intensity of salmon farming will be avoided, remedied or mitigated through the conditions accompanying the application, as amended in response to the concerns of submitters and at the request of the Panel.

8 Decision

82. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 105, 107, and Part 2 of the RMA, we determine that the s127 application for a variation of consent conditions should be granted as per the attached documents.

Reasons

83. Big Glory Bay is an appropriate place to provide for aquaculture it is the only area at Stewart Island where this is not a prohibited activity.

84. Aquaculture makes a significant existing and potentially greater contribution to the social, economic and cultural well-being of people and communities of Stewart Island. This is recognised in the statutory planning documents, and aquaculture activities are provided for in the coastal environment of Rakiura only in Big Glory Bay.
85. The Application is an efficient use of natural and physical resources because:
- it seeks to more efficiently use the existing consent area and marine farming sites in Big Glory Bay while ensuring that any adverse environmental effects can be assimilated into the receiving environment.
 - Sanford has demonstrated that any adverse effects of the proposal can be largely be avoided or mitigated.
86. Te Rūnanga o Awarua as the relevant papatipu rūnanga of Te Rūnanga o Ngāi Tahu have been consulted extensively through this process. Ngāi Tahu confirmed that it no longer has any concerns with the proposal.
87. The Department of Conservation were the only party who appeared at the hearing, and they were in agreement with the amended conditions put forward by the applicant on 26 March.
88. Conditions of consent will enable the effects of the proposal to be monitored in full, and this will enable the Council to more comprehensively review the entire operation when replacement consents are sought in about 2023.



Mark C Farnsworth MNZM
Chairperson of the Hearing Panel
For- Dr Brent Cowie & Councillor Eric Roy
26 April 2019