

Before Independent Hearing Commissioners appointed by Southland
Regional Council
at Invercargill

APP-20157616-V1

under: the Resource Management Act 1991

in the matter of: Applications by Sanford Limited to change the
conditions of various resource consents that authorise
the farming of salmon in Big Glory Bay, Stewart Island

by: **Sanford Limited**
Applicant

Closing Legal Submissions on behalf of Sanford Limited

Dated: 29 March 2019

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May it please the Panel:

INTRODUCTION

- 1 These closing legal submissions are made in support of Sanford Limited's (*Sanford's*) application for change to the conditions of various resource consents that authorise salmon farming in Big Glory Bay, Stewart Island (*the Application / the Proposal*).

OVERVIEW

- 2 Big Glory Bay is the only location on Stewart Island where aquaculture is not a prohibited activity under the Regional Coastal Plan for Southland. The resource consents at issue here relate to long-standing, established marine farm activity. This Application is, at its core, about making the best use of the space and existing infrastructure in Big Glory Bay to optimise environmental, social and economic outcomes.
- 3 Evidence and discussion during this hearing has demonstrated a high level of agreement between the parties involved in this Application:
 - 3.1 The Environment Southland officer has recommended granting the application in the s42A Report and Environment Southland did not raise any further matters during the hearing;
 - 3.2 Te Rūnanga o Ngāi Tahu / Te Rūnanga o Awarua (*Ngāi Tahu*) did not wish to be heard; and
 - 3.3 The Director-General of Conservation has confirmed that the remaining concerns that it had were related to technical matters and drafting of conditions (discussed in detail below).
- 4 Turning to the Director-General of Conservation's evidence:
 - 4.1 **Dr Baxter** confirmed at the hearing in response to questions from the Panel that, while he considered that the impact on the benthic environment immediately below active salmon farms was significant, this point must be considered in the context of the spatial and temporal scale of Big Glory Bay. **Dr Baxter** agreed with statements made by **Dr James** that at any one time approximately 0.3% of Big Glory Bay is taken up by salmon farms and the following plan means that farming activity will cease after two years, allowing the sites to recover. **Dr Baxter** confirmed that his comments in paragraph [6.6] of his statement of evidence should not be taken to indicate any fundamental objection to the environmental effects of the Application, taken in the spatial and temporal context described above;
 - 4.2 **Dr Longdill** provided a supplementary statement of evidence confirming that the constraints that the conditions will put in place

satisfy the concerns raised in his earlier evidence.¹ **Dr Longdill** also confirmed his agreement with the conditions circulated after day 1 of the hearing, subject to minor changes that have been incorporated by **Dr Mitchell**.²

- 5 For completeness, Sanford also notes the Panel's clear statement that the Application is properly to be treated as a variation under s127 RMA.
- 6 The sole remaining matter at the conclusion of proceedings on 26 March 2019 was further refinement of the proposed conditions. This is addressed below.

CONDITIONS

- 7 A copy of the final version of the proposed conditions is lodged alongside these submissions.

Further changes made after conclusion of proceedings in response to comments from the Director-General and Panel

- 8 During the course of the hearing the drafting of the conditions has changed in response to points of clarification from the Panel and Director-General of Conservation. In particular, specific monitoring metrics have been moved from the monitoring plan that was proposed to be attached to the conditions into the conditions themselves.
- 9 Although no longer part of the consent conditions, the monitoring plan attached to **Dr James'** evidence will still be finalised by Sanford following the conclusion of the hearing and provided to Environment Southland, the Director-General of Conservation, and Ngāi Tahu. This monitoring plan will also direct day-to-day monitoring and management activities at the salmon farms by Sanford personnel.
- 10 **Dr Mitchell** has made the following further amendments to the proposed conditions in response to comments from **Dr Longdill** and discussion on Day 2 of the hearing (all of which relate to the set of general conditions applicable to all seven resource consents). These amendments are incorporated into the final set of conditions submitted alongside these closing submissions:

10.1 In Condition G1, amendment to the objective to read: "...from a mesotrophic towards a eutrophic state";

10.2 In Condition G5, indicating which of the monitoring sites are mussel farm sites;

10.3 In Figure 1:

¹ Further Statement of Evidence of Dr Longdill, at [9].

² Further Statement of Evidence of Dr Longdill, at [12].

- (a) Changing the names of the 'control' sites (WS3 and WS4) to 'mid bay monitoring sites';
- (b) Removal of the note in Figure 1 stating that the monitoring sites are 'indicative only';
- (c) Adding two new notes to clarify the locations of the monitoring sites; and
- (d) Providing Figure 1 in an A3 size;

10.4 Inserting a new Table 1 specifying the co-ordinates for existing water quality monitoring sites;

10.5 In Table 3, inserting footnotes to clarify and provide further guidance on the interpretation of the following monitoring parameters:

- (a) 'infauna';
- (b) 'epifauna'; and
- (c) 'number and type of species'.

10.6 In Table 4, amendment to the title of column two and Note 1 to standardise and clarify the language used. The intention is for monitoring requirements to apply if a farm has been in use cumulatively for at least three months of the past 12 month reporting period.

11 Finally, one additional consequential change is proposed. Schedule A and the draft monitoring plan propose a 30 September due date for submission of the annual monitoring report to Environment Southland. Condition 19 in the site specific consent conditions required updating to reflect this.

Proposed deletion of Appendix One to site specific conditions

12 The Panel asked counsel to address the extent to which removal of Appendix One from each site specific condition may result in unintended consequences. The Director-General of Conservation has queried whether Appendix One to each of the site specific consent conditions should be removed to reduce complexity that, in the Director-General's submission, may hinder implementation and enforcement.

13 **Dr Mitchell's** response to this comment highlighted that condition 16(a) in each of the site specific conditions notes that in the event of conflict or inconsistency in monitoring provisions, those in the general conditions would prevail. **Dr Mitchell** also noted that personnel implementing the monitoring conditions would be doing so using the monitoring plan, rather than referencing the conditions directly.

- 14 There is some overlap between Appendix One and the general conditions (Schedule A) proposed as part of this Application, but there is not total overlap. In particular, Appendix One 1(a)(i) and (ii) specifies generally that seabed monitoring shall be undertaken on at least two marine farm sites per year within the Bay so that each site covered by a resource consent held by Sanford (including both mussel farms and salmon farms) is monitored at least once prior to 1 January 2025. These requirements are not contained in Schedule A.
- 15 Sanford submits that, while the complexity in the conditions and overlap between Appendix One and Schedule A is not ideal, it is a reflection of the fact that the current proceedings are a variation, not a wholesale renewal or new application. This added complexity is not insurmountable in terms of the day to day administration of the monitoring requirements and consent conditions.

CONCLUSION

- 16 In summary, as outlined in opening legal submissions, the Assessment of Environmental Effects and 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.
- 17 Salmon farming has a well-established history in Big Glory Bay, and Sanford has a long-standing connection to the site and to the local and regional community. Sanford has demonstrated its commitment to continued improvement and modern farming techniques which ensure production is optimised while environmental impact is minimised.
- 18 Big Glory Bay has been specifically identified in the relevant planning documents as an appropriate location for aquaculture – one that should be utilised optimally into the future. Sanford submits that this Application aligns well with that goal and with the applicable policies in the NZ Coastal Policy Statement, Southland Regional Policy Statement, the Regional Coastal Plan for Southland, and Te Tangi a Tauria Iwi Management Plan.
- 19 As emphasised by **Dr James, Dr Hartstein** and **Dr Baxter** at the hearing, the spatial and temporal scale of the salmon farming activities in the context of the Big Glory Bay environment means that any environmental effects are well within the carrying capacity of the environment. In any case, 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 through the hearing process.
- 20 Sanford respectfully submits that the Panel should grant the Application subject to the conditions presented alongside these legal submissions, which reflect the position agreed between the parties at the hearing.

Date: 29 March 2019



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Counsel for Sanford Limited