

Before Independent Hearing Commissioner appointed by Southland Regional  
Council  
at Invercargill

APP-20181316

---

*under:* the Resource Management Act 1991

*in the matter of:* Applications by Zane Smith and Jim Maass Barrett for  
resource consents to establish three new marine farms  
in Big Glory Bay, Stewart Island

*by:* **Sanford Limited**  
*Submitter*

Legal Submissions on behalf of Sanford Limited

---

Dated: 16 September 2019

---

REFERENCE: J M Appleyard (jo.appleyard@chapmantripp.com)  
A Hill (amy.hill@chapmantripp.com)

**Chapman Tripp**  
T. +64 3 353 4130  
F. +64 3 365 4587

60 Cashel Street  
PO Box 2510, Christchurch 8140  
New Zealand

www.chapmantripp.com  
Auckland, Wellington,  
Christchurch

**CHAPMAN  
TRIPP** 



May it please the Commissioner:

## **INTRODUCTION**

- 1 We appear on behalf of Sanford Limited (*Sanford*) in relation to the applications by Mr Zane Smith and Mr Jim Maass Barrett (*Applicants*) for resource consents to establish three new marine farms in Big Glory Bay (*the Application / the Proposal*).
- 2 Despite receiving the officer's s42A report (*s42A Report*) and the Applicants' evidence, Sanford remains opposed to the Application. If anything, its concerns have increased rather than decreased as this matter has progressed towards hearing.
- 3 The main reasons for its opposition are:
  - 3.1 the Application will adversely affect safe navigation into, around and out of Big Glory Bay – including access to Sanford's salmon farm sites; and
  - 3.2 the Application will adversely affect Sanford's existing aquaculture activities because it has the potential to alter hydrodynamic processes and ecological processes such as phytoplankton distribution.
- 4 The Applicants have not provided evidence that the adverse effects of the Application have been properly identified and assessed. Nor that they will be avoided, remedied or mitigated. As a result, Sanford seeks the application be declined.
- 5 Aside from the merits of the Application, Sanford has concerns relating to various procedural matters. It is not my practice to indulge in procedural point scoring where a client is a fully informed submitter who is not actually prejudiced by procedural deficiencies.
- 6 Here, though, there is actual prejudice which will be outlined in detail. Specifically, in relation to the failure to fully identify all affected parties and serve notice of the Application on them given that Sanford operates collectively and collegially with those other consent holders in Big Glory Bay, some of whom were not served.
- 7 Sanford is also concerned by the lack of clarity as to the correct location of the proposed new marine farms, which is vital in the context of navigational safety concerns.
- 8 Sanford will call the following witnesses:
  - 8.1 **Mr Ted Culley**, on Sanford's operations;



- 8.2 **Mr Jaco Swart**, on the marine farming which Sanford carries out in Big Glory Bay;
- 8.3 **Mr Jason Eriksson**, on navigation issues;
- 8.4 **Mr Peter Schofield**, a marine farmer in Big Glory Bay, about the effects of the Proposal on his activities and prejudice arising with regard to procedural deficiencies; and
- 8.5 **Dr Phil Mitchell**, on planning matters.

## **PROCEDURAL MATTERS**

- 9 The Applicants have not discharged their statutory obligations related to various procedural matters. In Sanford's submission, the combined effect of these procedural irregularities is that there is a real risk of prejudice to Sanford and other parties who operate alongside it in Big Glory Bay.

### **Notification**

- 10 The application was publicly notified. But notice must still be served directly on all affected persons.<sup>1</sup> Parties must have confidence in the RMA that where they are affected by a proposal they will be informed of this directly.
- 11 **Attachment 1** below is a record of the parties that were served with a notice of the Application supplied to Sanford by the Council.
- 12 The correspondence indicates the intention was to serve all other operators in Big Glory Bay. Several established marine farm consent holders and operators (Sanford, Gorton's Fisheries Limited, and EEC Limited) were served with the notice. However, not all of the consent holders within Big Glory Bay were served and there is no explanation why some were deemed affected and others were not.
- 13 Sanford is concerned this has caused prejudice to parties that will be affected by the Application and who should have been served directly with a copy of the notice. This includes parties who are consent holders with whom Sanford farms in partnership.
- 14 In particular, **Mr Peter Schofield** was not served with a notice of the application, despite also owning and operating marine farms in Big Glory Bay. Mr Schofield is an affected person – he earns his livelihood through marine farming and his farms will be potentially affected by the Proposal, as he explains in his evidence. Mr Schofield was unaware of the Application until August 2019. He then sought to participate and lodged a late submission. It appears that submission was not accepted by the Council as it is not discussed in the s42A Report. Mr Schofield was therefore prevented from participating in these proceedings in his own right and is not reliant on

---

<sup>1</sup> Resource Management (Forms, Fees and Procedures) Regulations 2003, reg 10(2)(a).



Sanford to call him as a witness. He has no appeal rights. Sanford was not aware until recently that those parties had not been served directly and were not aware the applications directly impacted them.

- 15 Sanford notes that Mr Jeff Walker is also a consent holder in Big Glory Bay. He is not on the list of parties served either.
- 16 Section 104(3)(d) RMA states that a consent authority must not grant a resource consent if the application should have been notified and was not. Sanford submits that this principle extends to the issue of direct service, which is direct notification on affected persons. In Sanford's submission the failure to serve affected parties amounts to a failure to notify and therefore s104(3)(d) requires that the application be declined.

**Uncertainty and incorrect notification of the location of farms**

- 17 There has been confusion as to the intended location of the marine farm sites throughout the application process.
- 18 There is a map and co-ordinates which accompanied the original Application. That map was included in the website notification to the public by clicking through to a link to the Application. That map has also been included in the s42A Officer's Report and referenced in **Mr Engel's** evidence.<sup>2</sup>
- 19 The version of the public notice in the Southland Times presumably had no click through function so only identified the application as being in "Big Glory Bay". There is no map, or coordinates, for the public to locate the sites.
- 20 However the first response to the s92 further information request states that the intended locations of the farms are different to what was notified and provides a different, amended map.<sup>3</sup> Mr Maass-Barrett's evidence also refers to the farms being intended to be in a different position to that which was notified, as did informal communications from the Applicants to Council.<sup>4</sup> The locations of all three proposed marine farms differ between the original and amended maps. There is some overlap in Site 1, but sites 2 and 3 are an entirely different size and in different locations in the amended map compared to what was shown on the original.
- 21 Therefore, an incorrect map of the location of the proposed farms was used for notification. Amendments to applications after notification are only

---

<sup>2</sup> Application for consents for three marine farms in Big Glory Bay, Stewart Island, 2 May 2018, at page 3 and Appendix 2; Section 42A Officer's Report, Andrew MacLennan, 16 September 2019 (*S42A Report*), at page 9; Statement of Evidence of John Engel, 2 September 2019, at [9].

<sup>3</sup> "APP-20181316 – Zane Smith & Jim Maass Barrett – response to a request for further information for an application for a coastal permit for marine farming" John Engel, 17 August 2018 (*First further information response*), at page 1 and Appendix 1.

<sup>4</sup> Evidence of Jim Maass-Barrett, 2 September 2019, at page 5; email correspondence from John Engel to Lacey Bragg and Andrew MacLennan dated 10 September 2019.





permissible if they are fairly and reasonably within the scope of the original application. This means they cannot increase the scale or intensity of the proposed activity or significantly alter the character or effects of the proposal.<sup>5</sup> It is a question of degree on the particular facts.<sup>6</sup> Sanford submits that in this case, the fact that the location and size of the areas applied for changed substantially between the two maps brings it outside of the scope of the original application and required fresh notification.

- 22 This error in notification has not been remedied.
- 23 The confusion as to the proposed location of the application is evident in the fact that the Council officer has used the original map (and appears to have therefore assessed the Application against that map) in the s42A Report. It is unclear which version the Harbourmaster used to assess navigational safety. The confused position has made it difficult for submitters to understand the location of the Proposal and prepare evidence accordingly. It also casts into doubt the basis upon which the reports and assessments carried out by the Council officers, the Harbourmaster, Davidson Environmental, and the Cawthron Institute were determined.
- 24 In addition, as set out in Mr Eriksson's evidence, the co-ordinates provided in the Application to indicate the proposed location of the farms were not related to a marine chart, nor were any equivalent marine coordinates provided.<sup>7</sup> The coordinates that the Applicants provided were confusing and did not assist parties to determine the location of the farms. The coordinates do not relate to Big Glory Bay. This application is for an activity in the coastal marine area, therefore marine coordinates would have been appropriate.

**Marine and Coastal Access (Takutai Moana) Act 2011 (MACA Act)**

- 25 Sanford is concerned by the way that the Applicants have approached their obligations under the MACA Act to notify and seek the views of any group that has applied for recognition of customary marine title in the area. This was a matter of particular care in relation to Sanford's own application for a variation to its marine farm resource consents.
- 26 The Applicants have identified Te Rūnanga o Ngāi Tahu as the only MACA Act claimant relevant to the Proposal.<sup>8</sup> Mr Engel says in his evidence that "a copy of the application will be forwarded to this group",<sup>9</sup> indicating that he has not yet served Te Rūnanga o Ngāi Tahu. The MACA Act requires an

---

<sup>5</sup> Darroch v Whangarei DC A018/93, at page 27.

<sup>6</sup> See also discussion in *Waitakere CC v Estate Homes Ltd* [2006] NZSC 112, at [35]; *King Country Energy Ltd v Waikato RC* A130/09, at [12].

<sup>7</sup> Evidence Jason Eriksson, at [56].

<sup>8</sup> Application for consents for three marine farms in Big Glory Bay, Stewart Island, 2 May 2018, at section 4.10; Statement of Evidence of John Engel, 2 September 2019, at [48].

<sup>9</sup> Statement of Evidence of John Engel, 2 September 2019, at [49].



RMA applicant to notify and seek the views of the MACA Act claimant *before* lodging a resource consent application.<sup>10</sup>

- 27 In any event there are in fact two other MACA Act claims that cover the whole of the South Island – made by Mr Cletus Maanu Paul and Mr Rihari Dargaville on behalf of New Zealand Māori Council members.<sup>11</sup> These parties were served prior to Sanford making its own application for variation of its resource consents.
- 28 The Applicants concluded that there is no need to notify Mr Paul because “*the Minister for Treaty of Waitangi Negotiations has declined to engage with them*”.<sup>12</sup> However Mr Paul has a live application for a recognition order in the High Court under s98 MACA Act and must still be notified as an Applicants in that process, regardless of the Minister’s determination with regard to engaging with Mr Paul for a recognition agreement under s95 MACA Act.
- 29 The Applicants have not engaged with those claims lodged under s98 of the MACA Act, which are readily available for public viewing on the Courts of New Zealand website.
- 30 I note that in Chapman Tripp’s experience in other projects involving applications for resource consent in the common marine and coastal area, Mr Paul in particular has engaged when he has been notified.
- 31 If the intention is to now notify the claimants late, in breach of the MACA Act, then an additional party will also need to be notified – recently another claim relating to the entire South Island has been lodged on behalf of the Waitaha Grandmothers Council, joined to Mr Paul’s application.

## **SANFORD’S POSITION**

### **Overview**

- 32 Sanford has an ownership interest in ten coastal permits for salmon farming at various sites in Big Glory Bay, which expire in January 2025. It farms three of these sites in partnership with Mr Schofield and Mr Walker – those sites are MF366 and MF474 (Mr Walker) and MF342 (Mr Schofield).<sup>13</sup>
- 33 In April 2019 Sanford was granted variations to its existing coastal permits to allow for an increase in total nitrogen input (via salmon feed) into the Big Glory Bay environment from 332 tonnes per year to 659 tonnes per

---

<sup>10</sup> Marine and Coastal Area (Takutai Moana) Act 2011, s 62(3).

<sup>11</sup> CIV-2017-404-000538 Dargaville; CIV-2017-485-000512 Paul. Details of these applications are available on the High Court website at <https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-lists/applications-marine-coastal-list>.

<sup>12</sup> Application, 2 May 2018, footnote 12.

<sup>13</sup> Evidence of Ted Culley, 12 September 2019, at [28].



year and to enable Sanford to use nitrogen allocations consented to other marine farms in its operations.

34 This allows for Sanford's salmon farm operations to grow while ensuring that the total nitrogen input in Big Glory Bay is restricted to sustainable levels. As **Mr Culley** and **Mr Swart** will explain, Sanford plans to convert its existing three salmon farm areas to five, with a resulting increase in production. This growth will be managed through staging and adaptive management as well as a rigorous monitoring programme.

35 The variation was granted based on substantial modelling, monitoring, and scientific analysis of the Big Glory Bay environment.

36 Sanford also holds and operates 14 other consents for mussel farms in Big Glory Bay.

### **The environment**

37 Essentially, the Applicants have failed to properly assess the environment in which the effects of this Application will occur. This has in turn set the entire assessment of effects off on an incorrect footing.

38 The 'environment' includes the future environment as it may be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely those consents will be implemented.<sup>14</sup>

39 As **Mr Culley** explains, Sanford holds 24 marine farm consents for Big Glory Bay, ten of which can be used to farm salmon. There are also another 11 mussel farm consents held by other parties. Sanford's salmon farming consents can be used to farm mussels when there are no salmon being farmed in the area. **Mr Culley** has explained the level of growth in Sanford's salmon farm business anticipated following the recent variation of its salmon farming marine farming consents and explained that many of the steps towards this increased production are already underway. It is not only likely that these existing consents will be implemented, they have all already been implemented. And Sanford has already taken steps to implement the recently-granted variation.

40 The future levels of farming anticipated under Sanford's existing consents also require a corresponding increase in vessel activity in the Bay, a matter than has not even been contemplated in the consideration of navigation effects. This is discussed by **Mr Eriksson** and **Mr Swart**.

41 This is the environment against which the Application must be considered. In particular, it is the environment in which cumulative effects should be considered. The Application's flaws in failing to correctly identify the environment have formed the basis upon which the s42A Report has been

---

<sup>14</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA), at 442.



prepared, and the review that Ms Newcombe has undertaken. The failure to correctly assess the environment at the outset means the assessment of effects is fundamentally flawed.

#### **Inadequate information**

- 42 Section 104(6) RMA states that a consent authority may decline an application for resource consent on the grounds that it has inadequate information to determine the application. In assessing the adequacy of information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in information being available.<sup>15</sup>
- 43 Here, Sanford submits the Application contains several information inadequacies which were not rectified by either of the Applicants' responses to the Council's requests for further information. While the reports provided by Davidson Environmental and the Cawthron Institute provide some additional material, they are simply reviews of the Application. Consequently we find ourselves at this hearing discussing potential effects related to navigation, hydrology, ecological processes and cumulative effects in Big Glory Bay without the assistance of any experts in those matters.
- 44 In Sanford's submission, the Proposal should be declined on the grounds of inadequate information.

#### **Navigation**

- 45 One of Sanford's core concerns with the Proposal is the impact that it will have on Sanford's existing marine farm consents.
- 46 Big Glory Bay is a busy place – it contains several mussel and salmon farms and a number of vessels.
- 47 As **Mr Swart** and **Mr Eriksson** will explain, Sanford's salmon farming operation requires that the location of salmon farms be changed on a two-yearly basis so that the seabed beneath the sites can be rested. It is a condition of Sanford's resource consents. This involves moving the entire fish farm around the Bay between Sanford's salmon farm consent areas, with the fish inside, towed by a large boat. If Sanford cannot properly and safely access these areas with enough space to allow for several vessels to tow a salmon farm structure in and out safely, and anchor and secure that farm structure, then it will be unable to comply with the conditions of its consent and its salmon farm operations will be significantly restricted.
- 48 Sanford's salmon farming operations also require it to move fish around between farms as they grow. **Mr Eriksson** and **Mr Swart** discuss this in their evidence – in short, fish are moved between each of Sanford's salmon

---

<sup>15</sup> Resource Management Act 1991, s 104(7).





farm sites in a transporter pen. Again, this requires space for several vessels to manoeuvre safely.

- 49 The s42A Report and the Applicants appear to focus only on the impacts that the Proposal will have on the 'Big Glory Bay fairway' – the area of the bay which the Regional Coastal Plan seeks to keep free from marine farms. The Applicants also assert that, because there are already a number of marine farms in the bay, people know to navigate carefully and so the effects on navigation of the Proposal will be less than minor.
- 50 This is not an answer to Sanford's concerns, which relate to access to its salmon farm sites and the safety of its vessels navigating across and through the Bay to carry out its consented farming activities. The Applicants have not considered this potential effect in any detail. While the s42A Report comments that the Harbourmaster has reviewed the application, it is not clear whether the Harbourmaster was made aware of Sanford's obligations to move its salmon farms at least every two years in order to operate under its consents, or the operational logistics that this obligation entails.
- 51 In addition, because the existing environment has not been properly described, the assessment of navigational safety in the context of all existing consents being fully implemented has not been considered it is unclear how the environment was described to the Harbourmaster.
- 52 **Mr Maass-Barrett** states in his evidence that Sanford is now satisfied that the corrected position of Site 1 allows for access to Sanford's farms (Li 474 and Li 366).<sup>16</sup> This is not correct. Sanford did not provide that assurance to the Applicants. **Mr Swart** has addressed this matter in his evidence.

### **Hydrodynamics**

- 53 Sanford's other main concern relates to the effects of the application on the hydrodynamics in Big Glory Bay. That is, the impact that additional mussel lines and structures would have on the current flows in the Bay. Water flow is important to marine farming and so any potential restriction to free flow of water to existing farm sites is of concern to Sanford.
- 54 The Applicants have not provided any expert evidence or assessment of the hydrodynamic effects of the Proposal. In her review, Ms Newcombe of the Cawthron Institute comments that "*the positions of the proposed farms are such that they could conceivably contribute to a slowing of currents in Big Glory Bay*" and that cumulative effects on hydrodynamics arising from the Application are possible.<sup>17</sup> Despite these comments and the concerns raised by Sanford, the Applicants have not provided any assessment or expert evidence on this matter.

---

<sup>16</sup> Statement of Evidence Jim Maass Barrett, 2 September 2019, at p5.

<sup>17</sup> E Newcombe "A review of water column aspects of a resource consent application for three shellfish farms in Big Glory Bay, Stewart Island" 28 October 2018, at pages 3 to 5



- 55 **Mr Culley** has attached to his evidence advice that Sanford has received from its expert, Dr Neil Hartstein, following a review of the application and Ms Newcombe's review. Dr Hartstein was an expert witness in the recent consent variation hearings and is familiar with the hydrodynamics of Big Glory Bay. Dr Hartstein's advice is that it is likely the Proposal could reduce current flow and phytoplankton supply and that further study is necessary.
- 56 Dr Hartstein is based in Malaysia and has not been called to this hearing because of the obvious point that there is no assessment for him to review. He says in his advice to Sanford: "*Unfortunately the application provides no evidence that they have studied the potential hydrodynamic implications of adding an additional 35 mussel long lines in Big Glory Bay.*" And "*Similarly, the Cawthron document failed to provide a review/study of the hydrodynamic implications of the proposed application without which I fail to see how they can make conclusions as to the suitability of the consent.*"

### **Cumulative effects**

- 57 The definition of "effect" in section 3 RMA includes "any cumulative effect which arises over time or in combination with other effects".
- 58 As well as those effects discussed above, Sanford is concerned with the overall cumulative effect that the Proposal will have on the hydrology and ecological processes such as phytoplankton distribution in Big Glory Bay. In particular, Sanford submits that the potential cumulative effects of this Proposal have not been adequately assessed and therefore the Applicants cannot provide reassurance that they will be avoided, remedied or mitigated.
- 59 Ms Newcombe states at several points in her review that it is possible the proposal, in combination with existing marine farms, may have adverse cumulative effects on phytoplankton communities in the Bay.<sup>18</sup> She also concludes that cumulative effects on hydrology are possible.<sup>19</sup> Despite those comments, and despite being explicitly asked by the Council in its second request for further information to provide more detail and evidence on this issue, the Applicants have not provided any further information or assessment of these effects. Nor have they called any expert evidence on the matter.
- 60 In the second further information response the Applicants argued that cumulative effects will not occur because there has been a reduction in overall Bay-wide mussel farming.<sup>20</sup> The Applicants state that the 24ha of farms permitted for salmon farming are holding salmon or being fallowed

---

<sup>18</sup> E Newcombe "A review of water column aspects of a resource consent application for three shellfish farms in Big Glory Bay, Stewart Island" 28 October 2018, at page 3.

<sup>19</sup> Ibid, at page 5.

<sup>20</sup> "Response to an additional request for information dated 8 November 2018 for an application for a coastal permit for marine farming" 12 December 2018 (*Second further information response*), page 10 and 11.



and therefore this space has been 'freed-up' for their mussel farm.<sup>21</sup> This is an inadequate response. It fails to properly consider and assess the effects in question, and it makes incorrect assumptions. Sanford's resource consents enable it to farm mussels on the salmon farm sites while they are being rested. While this is not happening in 2019, it is likely to happen in the future. The s42A Report has also failed to consider this fact because it has incorrectly determined the environment against which the effects should be assessed.

- 61 The Applicants also claim that this mussel farm Proposal is necessary in order to remove nutrients from the environment as a result of Sanford's recent consent variations.<sup>22</sup> In saying this, they rely on a statement cherry-picked from Sanford's evidence at that hearing. While there were comments made in Sanford's evidence and scientific reports about the potential impact of mussel farms on nitrogen in the Bay, the scientific assessment and modelling explicitly did not rely on the presence of mussels in the Bay as mitigation nor did it factor the presence of mussel farms into the modelling or assessment of the effects of the variation.<sup>23</sup> It is therefore incorrect to assert that mussel farms are necessary to, in essence, offset Sanford's salmon farm consents. Sanford submits that this argument is to be treated with significant caution, certainly in the absence of the experts who made the statements who were present at the Sanford variations hearing but who are not here today.

#### **Precautionary approach**

- 62 The New Zealand Coastal Policy Statement (NZCPS) Policy 3 requires that decision-makers adopt a precautionary approach towards proposed activities whose effects on the coastal environment are unknown, uncertain, or little understood, but potentially significantly adverse.
- 63 Sanford submits a precautionary approach is required in this case.
- 64 The Applicants have not provided sufficient information or analysis of the effects of this Proposal. The effects on the coastal environment are therefore unknown and uncertain. Rather than instruct their own experts, the Applicants have attempted to rely on information and analysis provided by Sanford in previous applications or submitted as part of the Bay-wide monitoring that Sanford's experts undertake pursuant to Sanford's marine farm consents. But this information does not cover the specific sites in this Proposal, nor was that information prepared with this Proposal in mind it

---

<sup>21</sup> S42A Report, at page 14; Statement of Evidence Jim Maass Barrett, 2 September 2019, at p7; First further information response, page 7 and 8.

<sup>22</sup> Statement of Evidence Jim Maass Barrett, 2 September 2019, at p7.

<sup>23</sup> Sanford application for variation of marine consents, Assessment of Effects, Volume 1, Aquatic Environmental Solutions, 28 April 2018, at page 6. available online at [https://www.es.govt.nz/services/consents-and-compliance/notified-consents/Documents/2018/Sanford%20Limited/Assessment%20of%20Effects%20Volume%201%20-%20Aquatic%20Environmental%20Sciences\(Mark%20James\).pdf](https://www.es.govt.nz/services/consents-and-compliance/notified-consents/Documents/2018/Sanford%20Limited/Assessment%20of%20Effects%20Volume%201%20-%20Aquatic%20Environmental%20Sciences(Mark%20James).pdf).



would be inappropriate to rely on it particularly when the relevant experts who prepared that information (for Sanford) are not here.

65 As discussed in the Cawthron Institute review and in Sanford's evidence, the effects – particularly cumulative effects – are potentially significantly adverse. It is possible that cumulative effects on hydrodynamics will occur as a result of the application. It is also likely that the proposal will negatively impact on navigation within the Bay and in particular Sanford's ability to access its salmon farm sites safely when manoeuvring vessels, particularly when moving its farms or fish between sites. The navigational impacts are likely to have potentially significant health and safety consequences as well as impacting on Sanford's ability to carry out its existing salmon farming business.

66 In light of this, a precautionary approach is required – and Sanford submits that given the Applicants' failure to properly assess the existing environment, the effects of the Proposal, and in the absence of any evidence in support of an adaptive management approach, the most appropriate way to apply NZCPS Policy 3 is to decline the Application.

**Inconsistent with relevant policies and objectives**

67 **Dr Mitchell** has analysed the Proposal against the relevant policies and objectives of the relevant plans and concluded that it is inconsistent with several.

68 In particular, Sanford submits the Proposal is inconsistent with:

68.1 the NZCPS policy 3 mandating a precautionary approach (discussed above);

68.2 Objective 4.7.2 and Policy 4.7.1 Southland Regional Coastal Plan, which require that adverse cumulative effects are avoided, remedied or mitigated;

68.3 The various objectives and policies in the NZCPS and Coastal Plan directing that aquaculture activities be located in appropriate places and requiring that adverse effects are avoided, remedied or mitigated.

**Non-complying activity**

69 As a non-complying activity, the Proposal can only be granted if the Commissioner is satisfied that:<sup>24</sup>

69.1 The adverse effects of the activity will be minor; or

69.2 The activity will not be contrary to the objectives and policies of the relevant plan.

---

<sup>24</sup> Resource Management Act 1991, s 104D.





- 70 The Applicants have not demonstrated that the effects of the Proposal will be less than minor. There is an insufficient evidential basis for the Commissioner to be "satisfied" of this. The Application is also contrary to the objectives and policies of the relevant plans. Therefore, the 'gateway' thresholds in s104D are not met.

### **CONCLUSION**

- 71 The Application must be declined for the following reasons:
- 71.1 The various procedural irregularities that have occurred have created a real risk of prejudice to Sanford and several parties who also operate with Sanford in Big Glory Bay. At least two directly affected parties have not been able to participate in this hearing as submitters;
  - 71.2 S104(3)(d) requires that the application be declined because it should have been directly notified to some parties and it was not;
  - 71.3 There is inadequate information available to determine the application – in particular there is no expert hydrological evidence. The Applicants have failed to properly identify the environment against which effects should be assessed and they have made incorrect assumptions, such as those relating to the interplay of their Proposal with Sanford's existing consents and salmon farm operations;
  - 71.4 The potential environmental effects are more than minor – with regard to Sanford's interests, the effects of most concern are impacts on navigation within Big Glory Bay, hydrology, ecological processes such as the effect on phytoplankton, and the cumulative effects; and
  - 71.5 The proposal is contrary to the objectives and policies of the NZCPS, Southland Regional Policy Statement, Southland Regional Coastal Plan, and the Iwi Management Plan.

Date: 16 September 2019

---

**J M Appleyard / A Hill**  
Counsel for Sanford Limited



**Attachment 1**



---

**From:** Andrew MacLennan <andrew@incite.co.nz>  
**Sent:** Thursday, 7 February 2019 8:34 AM  
**To:** Resource Consents  
**Subject:** RE: Public notice

Morning Lacey,

Ok great. I will send the letter out to the applicant.

In terms of the affected party approval table, all of the parties that are in the table should be notified:

Sanford Ltd  
Gorton's Fisheries Ltd  
EEC Ltd  
Maas Mussels and Oysters Ltd  
Southland District Council  
Te Ao Marama Inc  
Te Rūnanga o Ngāi Tahu  
Department of Conservation  
Fish and Game  
Minister for Conservation  
Minister of Fisheries  
Minister of Conservation  
Fish and Game Council

I thought that ES might have standard addresses for service for these parties so I didn't fill this out. If not I can have a look on their websites and fill the table in.

Thanks  
Andrew

---

**From:** Resource Consents <ResourceConsents@es.govt.nz>  
**Sent:** Wednesday, 6 February 2019 2:08 PM  
**To:** Andrew MacLennan <andrew@incite.co.nz>  
**Subject:** RE: Public notice

Hi,

Your letter is good to go.  
It had totally slipped my mind that we had a public holiday this week (so much going on)  
Hopefully the rest of this goes smoothly.  
Let me know if I have missed anything else.

And just to clarify for me the other parties in your affected parties table, SDC and TRONT who you provided addresses for are the only other ones (other than marine farm owners and requested parties) who I'm required to serve?

Thanks

Lacey

## Resource Consents

Environment Southland *Te Taiao Tonga*

P 03 211 5115 | [DDI](#) | [M](#)

Cnr Price St & North Rd, Private Bag 90116, Invercargill 9840

[ResourceConsents@es.govt.nz](mailto:ResourceConsents@es.govt.nz) | [www.es.govt.nz](http://www.es.govt.nz) | [facebook.com/enviromentsouthland](https://facebook.com/enviromentsouthland)

The information contained in this email message is for the attention of the intended recipient only. If you are not the intended recipient please advise the sender immediately and delete the email and attachments. Any use, dissemination, reproduction or distribution of this email and any attachments by anyone other than the intended recipient is improper use of the information.

**From:** Andrew MacLennan [<mailto:andrew@incite.co.nz>]

**Sent:** Tuesday, 5 February 2019 4:01 p.m.

**To:** Resource Consents

**Subject:** FW: Public notice

FYI

I'll let you know when I hear back from John.

In relation to the addresses for service within list for public notification I send through, do I need to do anything else with that?

Thanks

---

**From:** Andrew MacLennan

**Sent:** Tuesday, 5 February 2019 3:57 PM

**To:** 'John Engel' <[john@bonisch.nz](mailto:john@bonisch.nz)>

**Subject:** Public notice

Good Afternoon John,

Please find attached the public notice to appear in the Southland Times.

Please let me know if you have any comments on the content of the notice.

Regards

Andrew

---

**Andrew MacLennan**

Senior Resource Management Consultant



PO Box 25-289

Christchurch

Phone 03 379 9749

Moblie 021 157 7486

[andrew@incite.co.nz](mailto:andrew@incite.co.nz)

[www.incite.co.nz](http://www.incite.co.nz)

This e-mail and any attachment(s) contains information that is both confidential and possibly legally privileged. No reader may make use of its content unless use is approved by Incite.

This e-mail message has been scanned for Viruses and Content and cleared by **NetIQ MailMarshal**

---

This email has been filtered by SMX. For more information visit [smxemail.com](http://smxemail.com)

---

