

**BEFORE SOUTHLAND REGIONAL COUNCIL**

**UNDER** The Resource Management Act 1991

**IN THE MATTER OF** Applications by Jim Maass-Barrett and Zane  
Smith for 16 ha of new mussel farms in Big  
Glory Bay, Stewart Island

**BY** **Sanford Limited**  
Submitter

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**STATEMENT OF EVIDENCE BY DR PHILIP HUNTER MITCHELL**

9 SEPTEMBER 2019

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## Introduction

- 1 My full name is Philip Hunter Mitchell.
- 2 I have been engaged by Sanford Limited ("**Sanford**") to provide resource management and planning advice in respect of the applications by Zane Smith and Jim Maass-Barrett to establish three new mussel farms in Big Glory Bay ("**the proposal**").
- 3 I have prepared this statement of evidence at the request of Sanford.
- 4 In preparing this evidence I have read the evidence of Messrs Maass-Barrett and Engel filed by the applicant, the Council's section 42A report prepared by Mr Maclennan, and, at the time of drafting this evidence, the draft evidence that will be presented by other witnesses to be called by Sanford, namely Messrs Culley, Swart, Eriksson and Schofield.
- 5 I have visited Big Glory Bay on a number of occasions.

## Qualifications and experience

- 6 I hold the degrees of Bachelor of Engineering (Hons) and Doctor of Philosophy, both from the University of Canterbury.
- 7 I am employed by Mitchell Daysh Limited, an environmental consulting practice with offices in six locations around New Zealand that I co-founded in 2016. Previously I was a Director of Mitchell Partnerships Limited, an environmental consultancy I established in 1997, and which was merged with another firm to form Mitchell Daysh Limited. Prior to that, I was the Managing Director of Kingett Mitchell & Associates Limited, a firm that I co-founded in 1987.
- 8 I am a past president of the Resource Management Law Association, a Full Member of the New Zealand Planning Institute, and in 2015 was a recipient of the New Zealand Planning Institute's Distinguished Service Award.
- 9 I have practised in the resource management area for the past 30 years and my firm and I have had a lead resource management role in many significant projects throughout New Zealand during that time. My specialist areas of practice include providing resource management advice to the private and public sectors, facilitating public consultation processes, undertaking planning analyses, managing resource consent acquisition projects and developing resource consent conditions.
- 10 I am an accredited Hearings Commissioner (with a Chair's endorsement) and have acted as a Hearings Commissioner on approximately 40 occasions, many in the role of Hearing Chair.

- 11 I was appointed as a mediator / facilitator for the hearings on the Proposed Auckland Unitary Plan, was appointed jointly by the Minister for Canterbury Earthquake Recovery and the Christchurch City Council as a Hearings Commissioner for the replacement of the Christchurch City District Plan, and am currently chairing the hearings for the Proposed Waikato District Plan.
- 12 I have acted on several Ministerial advisory panels established to review aspects of the Resource Management Act 1991 (“RMA”) and was a member of the Technical Advisory Group established to review sections 6 and 7 of the RMA.
- 13 I have undertaken a large number of planning analyses of aquaculture proposals in Northland, Auckland, Waikato, Bay of Plenty, Marlborough, Nelson, Canterbury, Otago and Southland over the last approximately 20 years, including the recent applications by Sanford to vary the conditions of their salmon farm resource consents in Big Glory Bay.

### **Code of Conduct**

- 14 I have read, and agree to comply with, the Code of Conduct for Expert Witnesses contained in the Environment Court’s Practice Note 2014. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express

### **Purpose and Scope of Evidence**

- 15 In my evidence, I will:
- (a) Summarise the statutory tests the proposal must satisfy;
  - (b) Summarise the effects of the proposal, insofar as they relate to the matters of concern to Sanford;
  - (c) Summarise the provisions of the various planning documents of relevance to this proposal;
  - (d) Set out my assessment of the proposal against the requirements of sections 104D and 104 of the RMA;
  - (e) Address matters raised in the planning evidence of John Engel and in the section 42A report; and
  - (f) Present my overall conclusion.

## Planning Tests to be Satisfied

- 16 The section 42A report<sup>1</sup> and Mr Engel<sup>2</sup> have set out the various rules in the Regional Coastal Plan for Southland (“**Coastal Plan**”) which apply to this proposal and, in the interests of brevity, I do not repeat that analysis here. By way of summary, I agree with their assessments of the applicable rules and that, overall, the proposal is to be assessed as a non-complying activity.
- 17 As a non-complying activity, the proposal must satisfy one of the two gateway tests of section 104D of the RMA, namely:

### 104D Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
  - (b) the application is for an activity that will not be contrary to the objectives and policies of ... the relevant plan...
- 18 If the proposal passes through either of the section 104D gateways, it then needs to be assessed in accordance with section 104 which states:

### 104 Consideration of applications

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from 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

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<sup>1</sup> Section 42A Officers' Report 19/RC64, 16 September 2019 (“**section 42A report**”), Section 4.1.

<sup>2</sup> Evidence of John Engel, 2 September 2019, paragraphs 10 – 13.

- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

19 The next sections of my evidence summarise the environmental effects of the proposal that are of concern to Sanford and my assessment of the relevant planning documents, before then assessing the proposal against the statutory tests, starting with section 104D.

### **Actual and Potential Effects of Concern to Sanford**

20 The section 42A report and Mr Engel provide an analysis of the various effects of the proposal on the environment. In my evidence I only address the effects on navigation, coastal processes and carrying capacity, these being the matters raised in Sanford's submission. In that regard, I acknowledge that Sanford is a trade competitor of the applicants, and that section 104(3)(a) requires that trade competition and the effects of trade competition are to be disregarded when considering this proposal. However, the effects of the proposal on navigation, coastal processes and carrying capacity are not trade competition effects.

### *The Existing Environment*

21 It is well-established that the existing environment against which the effects of the proposal are to be assessed includes the environment as it might be modified by the implementation of existing resource consents, providing that doing so is not fanciful. In my opinion, neither the application documents, Mr Engel's evidence or the section 42A report address this matter adequately or accurately.

22 In my opinion, the existing environment when considering this proposal includes all 35 sites in Big Glory Bay where marine farming is authorised by existing resource consents being developed to the levels authorised by those consents. The consented marine farms are shown in Figure 1 on the following page<sup>3</sup> and comprise a total area of 161.5 hectares.

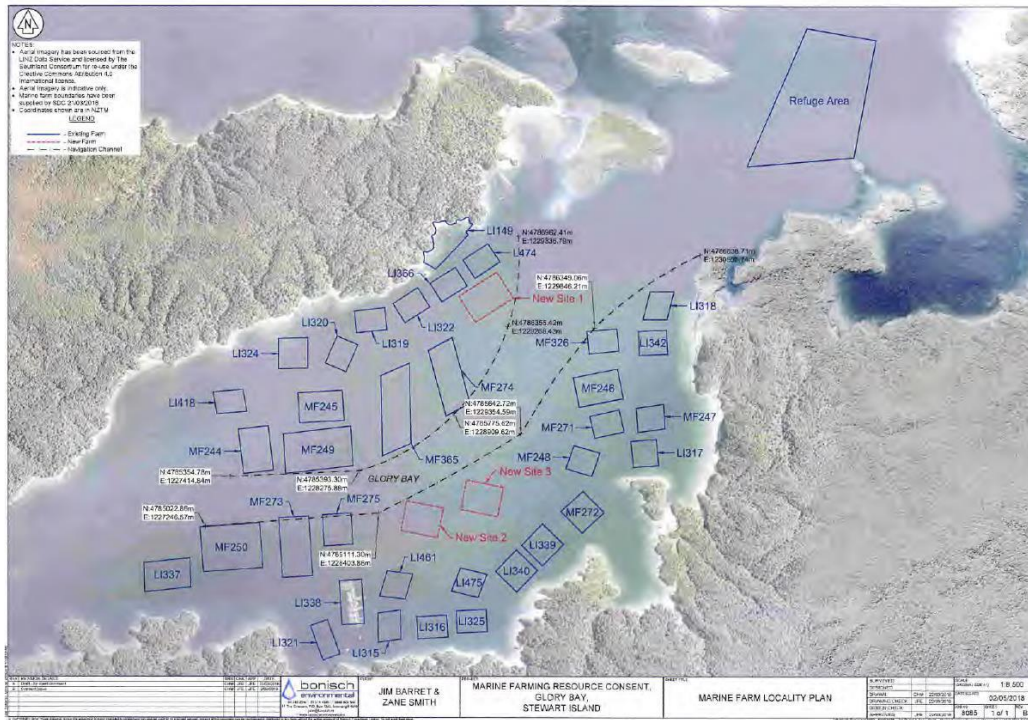
23 As will be described in detail by other Sanford witnesses:

- (a) Farming of King Salmon is authorised on 10 of the consented sites and comprises a total area of 45.5 ha;
- (b) Those 10 sites are also authorised to grow Greenshell mussels, scallops, blue mussels or oysters and there is no impediment to farming mussels on sites that are not holding salmon at any particular time;

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<sup>3</sup> Presented as Map 1 in the section 42A report.

- (c) Farming of Greenshell mussels and, in many cases, other shellfish such as scallops, blue mussels or oysters, is authorised at all the other 25 consented sites and these cover a total area of 116 hectares.



**Figure 1 Existing marine farm resource consents in Big Glory Bay**

- 24 Other witnesses will explain that compared to the situation at the time, the recent salmon farm consent variation application was lodged in late 2017:
- (a) The number of salmon farm areas in use at any one time is planned to increase from 3 to 5 by 2022;
  - (b) Salmon production is planned to increase by approximately 75% by 2022;
  - (c) Salmon production is planned to increase by approximately 100% by 2024; and
  - (d) The intensity of salmon farming activities is planned to double by 2024, with the number of farm-related vessels increasing in both size and number.
- 25 This has significant implications for the assessment of the environmental effects of concern to Sanford, which I now summarise.

*Effects on Navigation*

- 26 As will be explained by other witnesses for Sanford, and Mr Eriksson in particular, the navigation effects of concern to Sanford are:
- (a) Effects on the safety of vessels when they are outside the main navigation channel (or fairway) – which is most of the time for vessels working in the Bay; and
  - (b) Establishing marine farms at the proposed sites will compromise being able to relocate salmon farms and transfer fish between the various salmon farm sites in Big Glory Bay, as required by Sanford's resource consents.
- 27 The following reasons are cited by Mr Engel<sup>4</sup> and the section 42A report<sup>5</sup> for effects on navigation being acceptable:
- (a) The proposed sites are not located within the Big Glory Bay fairway, nor are they located in a position that will prevent safe navigation into, around, and out of Big Glory Bay;
  - (b) There have been no known navigation incidents in Big Glory Bay;
  - (c) Big Glory Bay is known to be a marine farming area, and users of the area know that extra care needs to be taken to navigate through it; and
  - (d) The sites will be marked in accordance with the "Guidelines for Aquaculture Management Areas and Marine Forms" booklet produced by Maritime New Zealand, the latest version of which is dated December 2005 (Maritime NZ Aquaculture Guidelines).
- 28 While maintaining the Big Glory Bay fairway provides for vessels accessing and departing Big Glory Bay, that does not address navigation in the Bay itself, as Mr Eriksson will explain in some detail, the key point being that working vessels work almost entirely out of the fairway.
- 29 I acknowledge that Environment Southland's Harbourmaster has stated that the proposal will not result in adverse navigational safety effects<sup>6</sup>, however no details of the Harbourmaster's reasoning are included in the section 42A report.
- 30 The section 42A report recommends that navigational safety be addressed by imposing a condition requiring the new marine farm sites to be identified and

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<sup>4</sup> Evidence of John Engel, paragraphs 37 – 39.

<sup>5</sup> Section 42A report, Section 6.1.

<sup>6</sup> *Ibid.*

marked in accordance with the Maritime NZ Aquaculture Guidelines. Based on what I understand Mr Eriksson's evidence will say, this fails to recognise the effects of the proposal on the ability for working vessels to safely move around the Bay, as opposed to travelling into and out of it. As Mr Eriksson will also explain, the proposed farms would block access to Sanford's existing salmon farm sites and significantly restrict their use, particularly given Sanford's existing salmon and mussel farming activities and the intensification of salmon farming activities that will occur over the next 5 years.

*Effects on Hydrodynamic Processes and Phytoplankton*

- 31 Mr Culley will outline Sanford's concern that the proposed new farms may restrict water flow in and around Big Glory Bay, and thereby restrict Sanford's ability to exercise its own consents to their authorised potential. Mr Culley will also state that the applicant has provided no evidence to alleviate Sanford's concerns, despite those concerns being set out in its submission. In my experience of marine farming consent applications throughout New Zealand, it is standard practice for applicants to be required to address these matters.
- 32 The initial technical peer review undertaken by Davidson Environmental for the Council in May 2018 identified shortcomings in the information provided by the applicant on water hydrodynamics, productivity, and effects on the water column, and suggested that a NIWA water column expert provide additional comment on these matters.<sup>7</sup> This was not done.
- 33 Although not referred to by Mr Engel or Mr Maass-Barrett, the subsequent technical peer review undertaken for the Council by the Cawthron Institute in October 2018 ("**the Cawthron review**") also raised concerns about cumulative effects, and the lack of assessment of them in the application documents. In that regard, the conclusion of the Cawthron review states<sup>8</sup> the following:

The three shellfish farms applied for under 'APP-20181316 – Zane Smith & Jim Maass Barrett', are each unlikely to cause environmental effects of concern on their own. However, consideration of cumulative effects on phytoplankton depletion and current speed may be appropriate.

The application focussed on nutrient enrichment potentially caused by the proposed farms, however depletion effects are a more important consideration for the water column. Depletion effects are not well considered in the application or the RFP.

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<sup>7</sup> Davidson Environmental "Review of the Assessment of Environmental Effects and technical information relating to a resource consent application for three new marine farms in Big Glory Bay", May 2018, Page 3 – presented on page 146 of the section 42A report.

<sup>8</sup> E Newcombe "A review of water column aspects of a resource consent application for three shellfish farms in Big Glory Bay, Stewart Island", 29 October 2019, Pages 5 and 6 – presented on pages 178 and 179 of the section 42A report.



While the effects of small- to medium scale farms are not generally expected to be of concern, the siting of the farms in an enclosed bay with significant existing mussel farming and relatively slow current speeds increases the likelihood of phytoplankton depletion. The likelihood of cumulative effects of the multiple farms within Big Glory Bay is difficult to assess. A bay-wide approach is necessary to assess cumulative effects and can range in complexity.

Quantification of the historical and current levels of mussel farming is required as the first step in any such assessment. In this case, it seems that if it can be demonstrated that the three proposed farms would not increase the intensity of mussel farming beyond that of the past farming intensity (due to other farms being converted from mussel to finfish farming) and those historic effects were acceptable, then concerns regarding cumulative effects of mussel farms could be addressed. If an unacceptable degree of uncertainty remains after further information is sought, a staged approach to development (with appropriate monitoring) of the proposed farms may be appropriate.

Single-farm monitoring would not address bay-wide effects of aquaculture on the water column, and integrated monitoring and/or modelling would be a better approach.

- 34 The Council did seek further information from the applicant in response to the concerns raised by the Cawthron review. Although some anecdotal information was provided by Mr Engel, it appears neither of the reviewers was asked to provide further comment on that response.
- 35 In the section 42A report, Mr MacLennan seems to have accepted that the anecdotal information was sufficient for him to conclude that the activity will have a less than minor effect on the ecological carrying capacity of the receiving environment.<sup>9</sup> I hold a contrary opinion, in that I have not seen any information that enables me to draw any conclusion as to the scale and significance of these effects.
- 36 I note that the assessment provided by Mr Engel in the second further information response, places significant weight on the proposition that if 16 hectares of new mussel farms were installed, the area of mussel farming in Big Glory Bay would still be less than has been accommodated in the past, due to Sanford having removed some 24 hectares of mussels to develop its salmon farming sites<sup>10</sup>. The further information response also notes that if Sanford intensified salmon farming in Big Glory Bay in the manner its consents currently allow, this would further increase the phytoplankton in the bay for mussels to consume.<sup>11</sup> In my opinion,

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<sup>9</sup> Section 42A report, Sections 6.3 and 6.5.

<sup>10</sup> John Engel "Response to additional request for information dated 8 November 2018 for an application for coastal permit for marine farming", 12 December 2019, pages 10 – 11.

<sup>11</sup> Ibid, page 11

that assessment misrepresents the existing environment, as I have already explained. It is also a matter that Mr Culley will address in some detail.

#### *Summary re Effects*

37 I conclude that the effects of the proposal on navigation and navigational safety are significantly adverse. Also, I am unable to form any conclusion as to the cumulative effects of the proposal on current flows and phytoplankton levels, because no assessment of them has been provided.

#### **Provisions of the Relevant Planning Documents**

38 I agree with Mr Engel and Mr Maclennan, that the relevant planning provisions are contained in the New Zealand Coastal Policy Statement 2010 (“**NZCPS**”), the Southland Regional Policy Statement 2017 (“**RPS**”), the Coastal Plan and Te Tangi a Tauria -the Natural Resource and Environmental Iwi Management Plan for Ngāi Tahu ki Murihiku (“**Iwi Management Plan**”).

39 However, the provisions identified in the application documents, Mr Engel’s evidence and the section 42A report differ and, in my opinion, the analysis of those provisions in those documents is incomplete. For that reason, I address some of the key elements in more detail below.

40 In doing so, I provide no written analysis of the Iwi Management Plan, as for the most part I do not consider it speaks directly to the key issues at play here. However, as does the NZCPS (for reasons I will explain below), the Iwi Management Plan advocates that a precautionary approach be taken when considering the effects of the proposal on coastal processes and carrying capacity.<sup>12</sup>

#### *The New Zealand Coastal Policy Statement*

41 I agree with the application documents, Mr Engel and Mr Maclennan that marine farming in Big Glory Bay is generally supported by Objective 6, Policy 6 and Policy 8 of the NZCPS, but with important caveats that I address below. These provisions state [**emphasis added – see paragraph 42 for context**]:

##### **Objective 6**

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and

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<sup>12</sup> Policy 3.6.3(3) of the Iwi Management Plan.

development in **appropriate places and forms, and within appropriate limits**

#### **Policy 6 Activities in the coastal environment**

... in relation to the coastal marine area:

- (c) recognise that there are activities that have a functional need to be located in the coastal marine area, and **provide for those activities in appropriate places**

#### **Policy 8 Aquaculture**

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:

- (a) including in regional policy statements and regional coastal plans provision for aquaculture activities in **appropriate places** in the coastal environment, recognising that relevant considerations may include:
  - (i) the need for high water quality for aquaculture activities; and
  - (ii) the need for land-based facilities associated with marine farming;
- (b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and
- (c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.

42 As foreshadowed, each of the above contains important caveats, to the effect that aquaculture is not appropriate in all circumstances and that site-specific assessments are required. Specifically, they all refer to activities being undertaken in “*appropriate places*”, while Objective 6 also refers to activities being undertaken within “*appropriate limits*”.

43 I acknowledge that if additional marine farming is to occur around Stewart Island, the Coastal Plan suggests it should occur in Big Glory Bay. However, as I discuss below, the farms are not deemed appropriate just by virtue of locating in Big Glory Bay, and proposed sites should still be assessed on a case by case basis. I do not consider that the applicants have provided sufficient evidence to demonstrate that the proposed marine farms will be located in an appropriate place within Big Glory Bay or that an additional 16 hectares of mussel farms will be within appropriate limits, in particular with regard to the potential cumulative effects that could result.

44 In my view Policy 3 of the NZCPS is also directly relevant and requires a precautionary approach to be adopted in respect of the potential effects on hydrodynamic processes and carrying capacity. It states:

**Policy 3 Precautionary approach**

- (1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse...

45 Mr Maclennan considers that a precautionary approach is not required because it is “unlikely” the effects will be significantly adverse.<sup>13</sup> In my opinion, that is an incorrect application of Policy 3 and it conflates the two tests inherent in the policy - these being that caution is required when the effects of the activity are “uncertain, unknown, or little understood”, and those effects are “potentially significantly adverse”.

46 Based on the information provided by the applicant, the Cawthron review, the Davidson Environmental review, and evidence that will be presented by Sanford’s other witnesses, my assessment is that the cumulative effects of this proposal on coastal processes and carrying capacity are both “uncertain” and “potentially significantly adverse”. Thus, a precautionary approach is required.

47 Application of the precautionary approach in the coastal environment generally invokes one of two responses, either not undertaking the proposed activity or applying adaptive management techniques. No adaptive management measures are proposed by the applicant here. Nor is any alternative precautionary approach proffered. As such, applying a precautionary approach would, in my opinion, lead to these applications being declined.

48 For completeness, I agree with the application documents, Mr Engel and Mr Maclennan that the directive provisions in the NZCPS addressing landscape, natural character and biodiversity, do not present a barrier to locating marine farming activities in Big Glory Bay.

*The Regional Policy Statement*

49 Two objectives of the NZCPS directly address aquaculture, as follows: **[emphasis added]**:

**Objective COAST.2 – Activities in the coastal environment**

Infrastructure, ports, energy projects, aquaculture, mineral extraction activities, subdivision, use and development in the coastal environment are provided for and able to expand,

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<sup>13</sup> Section 42A report, Section 7.1

where appropriate, **while managing the adverse effects of those activities.**

**Objective COAST.5 – Aquaculture**

Recognise the contribution of aquaculture to the well-being of people and communities by making provision for aquaculture in appropriate locations **while:**

- (a) protecting coastal indigenous biodiversity in accordance with Policy BIO.3;**
- (b) protecting outstanding natural features, landscapes and natural character in accordance with Policy COAST.3; and**
- (c) avoiding, remedying, or mitigating other adverse effects.**

50 The words I have emphasised in these two objectives are important, in that they establish definitive “bottom lines” that must be satisfied.

51 Also relevant when considering effects on sustainability and carrying capacity are Policy COAST.4 – Infrastructure, port, aquaculture, mineral extraction and energy projects and Policy COAST.5 – Management of effects on coastal water quality and ecosystems. They state:

**Policy COAST.4 – Infrastructure, port, aquaculture, mineral extraction and energy projects**

Recognise and make provision for nationally significant, regionally significant or critical infrastructure that has a functional, operational or technical need to be located within the coastal environment, and appropriate port, aquaculture, mineral extraction activities and energy projects that must be located within the coastal environment.

**Policy COAST.5 – Management of effects on coastal water quality and ecosystems**

Avoid, remedy or mitigate adverse effects of land-based and marine activities on coastal water quality and its ecosystems.

52 With respect to clauses (a) and (b) of Objective COAST.5 – Aquaculture, I acknowledge that Policies BIO.3 and COAST.3 indicate that if additional marine farms were to be established at Stewart Island, they would more likely occur in Big Glory Bay than elsewhere.

53 However, for the reasons set out earlier, I do not consider the proposal avoids, remedies or mitigates its adverse effects on navigation, and the applicant has provided no factual basis to confirm that the cumulative effects on hydrodynamic processes and carrying capacity will be avoided, remedied or mitigated. Therefore, I cannot conclude that the proposal aligns with Objective COAST.2 – Activities in the coastal environment, Objective COAST.5 – Aquaculture (c), or

Policy COAST.5 – Management of effects on coastal water quality and ecosystems. I also cannot conclude that the proposal is “appropriate aquaculture” in terms of Policy COAST.4 – Infrastructure, port, aquaculture, mineral extraction and energy projects.

*The Coastal Plan*

54 I agree with the application documents and Mr MacLennan that the Coastal Plan identifies Big Glory Bay as an appropriate location for marine farming activities and that it is the only such location at Stewart Island. However, the Coastal Plan provides no comfort that just by locating the proposed farms in Big Glory Bay, as opposed to elsewhere, it means that they are deemed to be appropriate and, therefore, should be granted consent.

55 Regarding navigation and safety issues, the following objectives and policies are directly relevant but are not addressed in any detail by Mr Engel or the section 42A report:

**Objective 5.3.6 - Safe environment**

To maintain a safe environment for all people using of the coastal marine area.

**Policy 5.3.12 - Safety of the public**

Ensure that activities that take place in the coastal marine area do not endanger public safety

**Objective 11.2.1 - Location of structures**

To ensure that structures are located in the most appropriate site so as to avoid, remedy or mitigate adverse effects of their presence.

**Policy 11.2.1 - New structures and extensions to existing structures**

Avoid, wherever practicable, remedy or mitigate any adverse effects associated with the presence and construction of new structures, and extensions to existing structures, in the coastal marine area.

**Objective 11.8.1 - Safe and efficient navigation**

To ensure there is safe and efficient navigation in the coastal marine area.

**Policy 11.8.2 - Avoid adverse effects on navigation safety**

Avoid any adverse effects from structures and activities on navigation safety.

56 Given the evidence that will be presented by Mr Swart and Mr Eriksson, I consider that the proposal offends all these provisions.

57 Also relevant are the following [**emphasis added**]:

**Policy 4.6.1 - Concentrate compatible activities**

Encourage concentration of compatible activities in areas of existing uses and developments, **where adverse effects can be avoided, remedied or mitigated**, in preference to using undeveloped areas in the coastal marine area.

**Objective 4.7.1 - Avoid, remedy or mitigate cumulative adverse effects**

**To avoid, remedy or mitigate cumulative adverse effects.**

**Objective 4.7.2 - Obtain an appropriate level of use in the coastal marine area**

**To obtain a level of use which is appropriate in the coastal marine area**, particularly in areas where remoteness, wilderness and tranquillity are significant components of the environment.

**Policy 4.7.1 - Avoid, remedy or mitigate adverse cumulative effects**

**To avoid, remedy or mitigate adverse cumulative effects of activities in the coastal marine area.**

**Objective 5.8.1 - Efficient use and development of natural and physical resources**

To provide for efficient use and development of natural and physical resources in the coastal marine area **where adverse effects are avoided, remedied or mitigated**.

**Policy 5.8.1 - Efficient use and development of natural and physical resources**

To recognise and have regard for the efficient use and development of natural and physical resources in the coastal marine area, **while having regard to the finite character of some natural and physical resources**.

**Objective 12.1.2 - Avoid, remedy or mitigate interference with coastal processes**

**To avoid, remedy or mitigate the interference of coastal processes by coastal use and development** where such interference could cause adverse effects.

**Policy 12.1.5 - Effects of structures and activities on coastal processes and vice versa**

**Take into account the effects of structures and activities on coastal processes** and vice versa.

**Objective 15.1.1 - Avoid, remedy or mitigate any adverse effects**

**Avoid, remedy or mitigate any adverse effects** of marine farming operations.

- 58 Because the proposal does not avoid, remedy or mitigate adverse effects on navigation, and the applicant has provided no information to confirm that it will avoid, remedy or mitigate the cumulative effects on hydrodynamic processes and carrying capacity, in my opinion, the proposal is clearly contrary to these provisions.

*Summary Regarding the Planning Provisions*

- 59 Based on the above analysis, I have concluded that the proposal is at odds with a number of key planning provisions and, if implemented, would result in an outcome that is not supported by the statutory planning documents. It is also demonstrably contrary to the objectives of the Coastal Plan.

**Section 104D Conclusion**

- 60 As stated in paragraph 37 of my evidence, in my opinion the effects of the proposal on navigation and navigational safety are significantly adverse. Also, I am unable to form any conclusion as to the cumulative effects of the proposal on current flows and phytoplankton levels, because no assessment of them has been provided.
- 61 As stated in paragraph 58 of my evidence, I consider that the proposal is at odds with a number of key planning provisions and, if implemented, would result in an outcome that is not supported by the statutory planning documents. It is also demonstrably contrary to the objectives of the Coastal Plan.
- 62 Accordingly, I consider that the proposal fails both gateway tests of section 104D and therefore cannot be granted consent.

**Section 104 Matters**

- 63 Notwithstanding that I have concluded that the proposal does not satisfy the requirements of section 104D, I set out below my assessment of a number of key issues posed by the assessment of the proposal against the requirements of section 104(1). These are as follows:



- (a) The application documents, Mr Engel and Mr MacLennan do not define the existing environment appropriately and, as a result, the conclusions they reach regarding effects differ from mine and, in my opinion, are erroneous.
- (b) The proposal does not avoid, remedy or mitigate adverse effects on navigation, and the applicant has provided no factual basis to confirm that the proposal will avoid, remedy or mitigate the cumulative effects on hydrodynamic processes and carrying capacity.
- (c) Policy 3 of the NZCPS requires that a precautionary approach is needed in respect of the potential effects on hydrodynamic processes and carrying capacity. As I have already stated, application of the precautionary approach in the coastal environment generally invokes one of two responses, either not undertaking the proposed activity or applying adaptive management techniques. No adaptive management measures are proposed by the applicant here. Nor is any alternative precautionary approach proffered. As such, applying a precautionary approach would, in my opinion, lead to these applications be declined.
- (d) The RPS contains objectives which recognise the contribution of aquaculture to the well-being of people and communities by making provision for aquaculture in “appropriate places”. In that regard, I acknowledge that if additional marine farming is to occur around Stewart Island, the Coastal Plan suggests it should occur in Big Glory Bay. However, those objectives and policies also include definitive caveats regarding environmental effects, such that I have concluded that the proposal is not located in an “appropriate place”. Nor will it occur within “appropriate limits”.
- (e) As set out above, there are also numerous other objectives and policies in the Coastal Plan which are confronting for this proposal.
- (f) Regarding navigation, the effects are dictated by the (fixed) locations of the proposed new farms. Based on the evidence to be provided by other Sanford witnesses, these locations are not appropriate, nor can they be rectified by imposing consent conditions regarding navigational lighting.
- (g) Regarding effects on water flows and carrying capacity, it is the cumulative effects that are important. Assessing those cumulative effects first requires the effects of the existing and consented activities in Big Glory Bay to be assessed and then the effects of this proposal “added on”, resulting in a “whole of Bay” assessment. This has not been done.
- (h) Such a “whole of Bay” assessment will be required in 2025 when all the existing marine farm consents in Big Glory Bay expire and new applications

will need to be made. Those applications for replacement consents would be frustrated if this proposal was implemented because despite being the “last cab off the rank” they would be the only marine farming activities that would form part of the “existing environment” when the currently authorised activities were being re-assessed. In my opinion, that situation would be both inequitable and contrary to good resource management practice.

### **Overall Conclusion**

64 For all the reasons outlined above, I have concluded that this proposal fails both gateway tests of section 104D, do not promote sustainable management, nor satisfy the requirements of section 104.



**Philip Mitchell**

9 September 2019