

Submission on a Publicly Notified Application for Resource Consent

To: Environment Southland
Private Bag 90116
Invercargill 9840

Attention: Ryan Hodgson – Senior Consents Officer

Name of submitter: Fish & Game New Zealand – Southland Region (Fish & Game)
PO Box 159
Invercargill 9825

Name of applicant: Southland District Council (the applicant)

Application: APP-20233398

Description of activity: Consent of 5 years duration to discharge an average of up to 250m³/day of wastewater from the Balfour treatment plant to the Longridge Stream.

Discharge location: Balfour WWTP
Physical location: 4 Kruger Street, Balfour, 9779
Legal description: Section 1240 Block XXI Hokonui Survey District

Balfour WWTP Discharge Location
Physical location: Longridge Stream at or about NZTM2000 1258033E - 4913911N .
Legal description: Section 1240 Block XXI Hokonui Survey District

Activity status: The proposed discharge falls as a non-complying activity under Rule 33A(b) of the proposed Southland Water and Land Plan (pSWLP).

Restrictions on non-complying activities require the proposal to pass through one of the two gateway tests set out in s 104D of the Resource Management Act 1991 (the RMA).

Our submission relates to: The whole application.

Our submission is: Fish & Game oppose the application.

Our reasons for comments are:

Fish and Game is responsible for the management of sports fish and game birds within the Southland region. Fish and Game have an interest in wastewater discharge to surface water, particularly where they may affect water quality and aquatic ecosystems.

The immediate receiving environment for the discharge proposed discharge is an unnamed drainage channel that flows into the Longridge Stream near Balfour. The Longridge Stream is a slow-moving gravel / hard bed stream, that is characterized by straightened channel form and catchment dominated by pastoral land use. In turn, the Longridge Stream flows into the Waimea Stream on the Waimea Plains. The Waimea Stream is similarly characterized by a gravel / hard

bed, straightened channel form and catchment dominated by pastoral land use. The Waimea Stream subsequently flows into the Mataura River immediately upstream of Mandeville.

The Mataura catchment has significant sports fish and game values, including recreational hunting and fishing opportunities, for the following reasons:

1. It is a significant habitat of indigenous and introduced birds, including game bird species which have been hunted since the late 19th century during the annual game bird hunting season.
2. It supports a nationally significant brown trout fishery and angling amenity features which are recognized pursuant to the Water Conservation (Mataura River) Order 1997 ('Mataura WCO') as including:
 - a. The Mataura River from its source (approximate map reference NZMS 260 E42: 502333) to its confluence with the sea (approximate map reference NZMS 260 F47: 877946); and
 - b. The Waikaia River and its tributaries, the Otamita Stream, and all other tributaries of the Mataura River upstream of its confluence with the Otamita Stream (approximate map reference NZMS 260 F45: 881582).

For avoidance of doubt, the Waimea Stream is located upstream of the Otamita Stream. As such, the Waimea and Longridge Streams are recognized by the Mataura WCO.

The Mataura River is one of the most heavily fished brown trout rivers in New Zealand and provides habitat for a self-sustaining population of wild brown trout. The 2014 / 2015 National Angling Survey¹ provides that 36,100 ± 3,470 angler days were spent in the Mataura catchment during the 2014 / 2015 angling season, including:

- a. 30,690 ± 3,330 angler days on the main stem of the Mataura River including:
 - i. 10,500 ± 3,020 angler days above Gore; and
 - ii. 20,180 ± 3,330 angler days below Gore.
- b. 270 ± 150 angler days on the Waimea Stream.

The Waimea Stream, including its tributaries, provide important brown trout spawning habitat for the mid-Mataura River.

The Waimea Stream and Mataura River downstream of the Waimea confluence can be fished using a range of angling techniques and provides angling opportunities for inexperienced and experienced trout anglers alike. The Waimea Stream and its tributaries particularly appeal to dry fly anglers seeking a small stream fishing experience targeting rising brown trout.

¹ Unwin M. (July 2016), *Angler usage of New Zealand lake and river fisheries - Results from the 20014 / 15 National Angling Survey*, NIWA, Appendix 1.

3. Great diversity of wildlife is associated with the Mataura FMU, including waterfowl, and other bird species such as heron, gulls, oyster-catcher, and dotterels, particularly in the lower reaches.
4. The Mataura River, including its estuarine waters and tributaries, provide important spawning grounds and habitat for indigenous fish species, including varieties of flat fish, eels, lamprey, and whitebait.
5. The Toetoes (Fortrose) Estuary is popular for fishing, shellfish collection, duck hunting, boating / kayaking, bathing, and bird study.

The Mataura River and Toetoes Estuary downstream of the discharge point are the receiving environment for industrial / municipal discharges, including treated wastewater discharges from townships managed by Southland District Council (e.g., Balfour and Riversdale), the Alliance meat processing plant at Mataura, the Gore District Council wastewater treatment sites at Gore (including wastewater inflows from meat processing by Silver Fern Farms and milk processing by Mātaura Valley Milk) and Mātaura and the Dongwha wood / MDF processing plant at Mātaura.

The significance of the Mātaura catchment is recognised insofar as:

1. The Mātaura River has a statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998 which recognises Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Mātaura River.² Specifically, Schedule 42 of the Ngāi Tahu Claims Settlement Act recognises that:
 - a. The Mātaura River was an important source of mahinga kai, noted for its indigenous fishery;
 - b. The Mātaura Falls were particularly associated with the taking of kanakana (lamprey); and
 - c. The mauri of the Mātaura represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānau with the river.
2. The Mātaura River in the vicinity of Mātaura township is a Mātaitai Reserve established under the Fisheries Act 1996. Mātaitai Reserve Areas are designed to give effect to the obligations stated in the Treaty of Waitangi Fisheries Claims Settlement Act 1992 to develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights.

² Refer to sections 205 and 206 and Schedule 42 – Statutory Acknowledgement for Mātaura River of the Ngāi Tahu Claims Settlement Act 1998.

Position on the Application:

Fish & Game oppose the application for the following reasons:

1. Assessment of the environment

The application does not address how the effects of the applicant's proposed discharge are to be assessed. Fish & Game submits that:

- a. Discharge consents under the Resource Management Act 1991 (the RMA) are not permanent and do not carry existing use right protections. In a re-consenting process, as is the case here, new consents are granted rather than renewals. It should not be assumed that Applicant's existing discharge consent, which is subject to a finite term, i.e., time limited, will be renewed or renewed on the same conditions.³
- b. The environment (for the purpose of assessing effects) should exclude the effects of ongoing discharges under the applicant's existing consent intended to be replaced, unless it can be established that it would be fanciful or unrealistic to assess the existing discharge without those discharges continuing. Assessing the applicant's application as if its existing consents to be replaced are not part of the environment allows a more thorough assessment of effects.
- c. The RMA requires the following steps to be undertaken when assessing the application to discharge contaminants to surface water:
 - i. Identification of the environment;
 - ii. Identification of the actual and potential effects, including cumulative effects, on the environment;
 - iii. Assessment of those effects; and
 - iv. Identification of whether measures are available or necessary to avoid, remedy or mitigate those effects.

The decision whether to grant consent follows. The matter should not be approached on the basis that mitigations from the current level of effects, including receiving water quality and ecological health, associated with the applicant's discharge are simply considered. The RMA requires an assessment of the application as if the applicants discharge activity is not currently occurring.

2. Fish fauna

The application does not present any assessment of the individual and cumulative effects of the discharge on fish fauna associated with the discharge to the Mataura FMU.

³ *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948; and *Environmental and Resource Management Law* (LexisNexis), at [8.33].

The Freshwater Fisheries database⁴ provides that the following indigenous fish species are found in the waterways associated with the discharge.

Table 1 – Indigenous fish species in the Longridge and Waimea Streams

Common name	Scientific name	Threat classification
Diadromous species		
Longfin eel	<i>Anguilla dieffenbachii</i>	At risk
Shortfin eel	<i>Anguilla australis</i>	Not threatened
Inanga (Waimea Stream only)	<i>Galaxias maculatus</i>	At risk
Common bully	<i>Gobiomorphus cotidianus</i>	Not threatened
Non-diadromous species		
Gollum galaxias	<i>Galaxias gollumoides</i>	Nationally vulnerable
Upland bully	<i>Gobiomorphus breviceps</i>	Not threatened
Freshwater invertebrates		
Koura / crayfish	<i>Paranephrops zealandicus</i>	Declining

Table 2 – Indigenous fish species in the Maitara River

Common name	Scientific name	Threat classification
Diadromous species		
Longfin eel	<i>Anguilla dieffenbachii</i>	At risk
Shortfin eel	<i>Anguilla australis</i>	Not threatened
Torrentfish	<i>Aldrichetta forsteri</i>	At risk
Giant kokopu	<i>Galaxias argenteus</i>	At risk
Inanga	<i>Galaxias maculatus</i>	At risk
Lamprey	<i>Geotria australis</i>	Nationally vulnerable
Common bully	<i>Gobiomorphus cotidianus</i>	Not threatened
Redfin bully	<i>Cobiomorphus cotidianus</i>	At risk
Common smelt	<i>Retropinna</i>	
Non-diadromous species		
Gollum galaxias	<i>Galaxias gollumoides</i>	Nationally vulnerable
Alpine galaxias	<i>Galaxias aff. paucispondylus</i> "Southland"	Nationally vulnerable
Southern flathead	<i>Galaxias</i> "southern"	Declining
Upland bully	<i>Gobiomorphus breviceps</i>	Not threatened

All the above indigenous fish species found in the mainstem of the Maitara River are described as Taonga Species in Appendix M of the pSWLP.

⁴ <https://nzffdms.niwa.co.nz/search>

In addition, the Freshwater Fisheries database shows that the mainstem of the Mataura River provides habitat for two species of introduced sports fish - brown trout and Chinook salmon.

Table 3 – Introduced and naturalised species in the Longridge Stream, Waimea stream, and Mataura River

Common name	Scientific name	Threat classification (2013) ⁵
Diadromous species		
Chinook salmon (Mataura River only)	<i>Oncorhynchus tshawytscha</i>	Introduced and naturalised
Non-diadromous species		
Brown trout ⁶	<i>Salmo trutta</i>	Introduced and naturalised

The diadromous species identified migrate between freshwater and the ocean as part of their life cycle. Brown trout also move within freshwater, and some have an estuarine or marine phase to their life cycle. This behavior makes these species susceptible to harm from habitat, including water quality degradation, especially when they migrate up or downstream to and from the ocean or move a lot within freshwater.

3. State of receiving environment(s)

The application identifies that water quality in the receiving surface water environment at Longridge Stream is degraded and the current wastewater discharge is considered to contribute to the poor water quality in the Longridge Stream. Fish & Game does acknowledge that the Longridge Stream has degraded water quality and ecological health conditions both up and downstream of the discharge point, however, this does not constitute a licence to pollute nor warrant no improvement(s) in the quality of the discharge.

Publicly available data shows that water quality in the Waimea Stream and Mataura River receiving environment downstream of the discharge point is also degraded, including with reference to attribute bands in the National Policy Statement for Freshwater Management 2020 (NPS-FM) for some indicators.⁷

⁵ Ibid.

⁶ Brown trout move extensively within fresh water and some have a marine phase to their life cycle.

⁷ <https://www.lawa.org.nz/explore-data/southland-region/river-quality/mataura-river/waimea-stream-at-mandeville/>;
<https://www.lawa.org.nz/explore-data/southland-region/river-quality/mataura-river/mataura-river-at-gore/>;
<https://www.lawa.org.nz/explore-data/southland-region/river-quality/mataura-river/mataura-river-200m-ds-mataura-bridge/>;
<https://www.lawa.org.nz/explore-data/southland-region/river-quality/mataura-river/mataura-river-at-seaward-downs/>; and
<https://www.lawa.org.nz/explore-data/southland-region/river-quality/mataura-river/mataura-river-at-mataura-island-bridge/>

The Maitara River flows to a sensitive downstream receiving environment (Toetoes / Fortrose Estuary), which is a highly valued and significant habitat.⁸ Toetoes Estuary is also degraded, with some attributes beyond its assimilative capacity. The application does not provide an assessment of the load of total nitrogen and total phosphorus (tons/year) the discharge is contributing to Toetoes Estuary.

Research commissioned by Environment Southland shows that significant reductions in total loads of nutrients (nitrogen and phosphorus)⁹ and E.coli¹⁰ are required in the Maitara FMU to achieve the the National Objectives Framework (NOF) national bottom lines in the NPS-FM 2020 .

Recent findings of the Environment Court on the pSWLP, including mapping of water quality degradation, show that large parts of the Maitara FMU, including Toetoes Estuary, are degraded with respect to suspended sediment, DIN, DRP, E-coli, and MCI.

The application does not sufficiently address individual or cumulative effects of the discharge on surface water quality or existing receiving environment degradation, including estuarine functioning. The applicant proposes to install a UV system to reduce E.coli counts in the wastewater discharge within 2 years, however, no consideration is given to whether reduction in the loads of total nitrogen or total phosphorus from the discharge is warranted due to degraded state of the receiving environment. The proposal will continue to contribute to adverse cumulative effects on the Longridge Stream, Waimea Stream, Maitara River, and Toetoes Estuary that are more than minor.

4. Increase in wastewater volume

Monitoring of the existing consent has shown the consented maximum discharge daily flow of 250m³/day has been exceeded on numerous occasions.

The applicant intends on replacing the existing consent by providing for an annualised average discharge of 250m³/day – no maximum discharge volume is proposed. In short, flexibility in consent conditions is sought to remediate previous non-compliance. Continuing the existing discharge through adoption of an average daily flow rate of 250m³/s and no maximum cap is inconsistent with the NPS-FM and pSWLP policy framework directing improvement.

5. Delay and uncertainty

The applicant's current discharge consent was granted on 2 February 2004 and expires on 2 February 2024, i.e., a consent of 20 years duration. During this time, the vision for freshwater management has significantly changed, including the clear policy direction to prioritize the health and well-being of the Maitara FMU and its freshwater ecosystems,

⁸ Toetoes Estuary is recognized as part of the Awarua Plain – Southland Estuaries, which is recognized as a regionally significant wetland in Appendix B of the pSWLP.

⁹ Snelder, T. November 2021. *Assessment of Nutrient Load Reductions to Achieve Freshwater Objectives in the Rivers, Lakes and Estuaries of Southland Including Uncertainties - To inform the Southland Regional Forum process*. Report prepared by Land Water People for Environment Southland.

¹⁰ Snelder, T. and Fraser, C. August 2021. *Assessment of Escherichia coli Load Reductions to Achieve Draft Freshwater Objectives in the Rivers of Southland Murihiku - To inform the Southland Regional Forum process*. Report prepared by Land Water People for Environment Southland.

which are degraded. Objective 6 of the pSWLP seeks to improve water quality where water bodies are degraded by human activities.

The application proposes:

- a. To maintain the wastewater treatment system and discharge of treated wastewater to Longridge Stream during the proposed 5-year consent duration while investigations, consenting, and construction is undertaken to upgrade the existing wastewater treatment plant. Investigations will assess alternative effluent disposal methods.
- b. That the requirement for ongoing discharges to Longridge Stream and decommissioning of the existing treatment plant, beyond the proposed consent duration, will be addressed as part of a future long term consent application.

It is unclear why the applicant has not explored options for improvement or alternatives, including a discharge to land option, during the 20-year duration of the current consent. The actual period until an alternative long term discharge solution is arrived at could foreseeably be much longer than 5 years. The proposed 5-year consent duration cannot:

- a. Provide any certainty that applicant will not apply in the future to continue to discharge treated waste water to the Mataura River;
- b. Avoid the potential for further delay under s 124 of the RMA - there exists the possibility for the proposed discharge to the Mataura River to extend significantly beyond the 5-year consent duration sought; or
- c. Determine the future work programme and time for implementation of a long-term consent, including the potential staging of management actions or processes for transition to a land-based discharge.

The application suggests that the long-term solution is a discharge to land, but it is not the subject of the current consent applied for. The long-term solution will be determined by a separate resource consent process as required under s 15 of the RMA. To the extent that actions in progressing the long-term solution are relied upon as part of this application, they should be built into the consent issued, rather than assumed.

6. Alternatives

Fish & Game considers the application, which does not involve an assessment of alternatives, including upgrades (particularly when the receiving environment for its discharge is degraded), is inconsistent with:

- a. Schedule 4, s 6(1) of the RMA, which requires:

“An assessment of the activity’s effects on the environment must include the following information: . . .

“(d) if the activity includes the discharge of any contaminant, a description of—

- (i) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (ii) *any possible alternative methods of discharge, including discharge into any other receiving environment.* (Emphasis added)

b. Section 105(1) of the RMA, which requires in assessing an application for a discharge permit, the consent authority has regard to:

- “(a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (b) *the applicant’s reasons for the proposed choice; and*
- (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.* (Emphasis added)

Options for alternative receiving environments in the Balfour area include:

- a. Partial discharge to the and land;
- b. Irrigation to land with all wastewater volume irrigated;

Based on continued use of the existing receiving environment, options include treatment upgrades to provide betterment to the existing surface water environment. For example, improved treatment to reduce nutrient levels in the wastewater. Options such as these are not considered in the application.

7. Consultation

No consultation has occurred with Fish & Game. If so, Fish & Game would have expressed concerns about lack of consideration of alternatives and certainty that improvements to the discharge will be made.

8. Review

The proposed consent conditions do not provide for any utilization of reviews. Fish & Game considers a consent of this nature should be subject to a rigorous review process, i.e., bi-annual, or yearly reviews, including reporting on progress of the land-based discharge option, given the importance of the process to a long-term solution (which will require future consents).

9. Consent duration

The applicant seeks a 5-year consent duration. Fish & Game considers that this is too long for the following reasons:

- a. There are significant cultural and recreational values associated with the Mataura FMU. The Mataura FMU is in a degraded state – there is a substantial gap between current state and the desired environmental outcomes. Improvement in water quality is required to meet the requirements of the NPS-FM 2020 and the pSWLP, let alone

achieve hauora. Continuation of the existing wastewater discharge will not result in any improvement in water quality.

- b. The date at which the wastewater discharge to the Longridge Stream will cease is unknown and is dependent on the outcome of a future long-term consent – see bullet point 5 regarding delay and uncertainty.
- c. No explanation is provided as to why a 5-year duration is required to progress the land-based discharge option or what financial and / or strategic plans are in place to facilitate the process.

Planning assessment:

As presented, the adverse effects of the proposed discharge are more than minor. Proposed consent conditions do not provide for sufficient improvement in water quality in the Mataura FMU downstream of the discharge. The application is contrary to:

1. The purpose of sustainable management defined in Part 2 of the RMA. Consent conditions proposed by the applicant do not:
 - a. Safeguard the life-supporting capacity of water and ecosystems; or
 - b. Avoid, remedy, or mitigate adverse effects.
2. Matters of national importance outlined in s 6 of the RMA, including: 6(a) and (c).
3. Other matters outlined in s 7 of the RMA, including: 7 (aa), (b), (d), (f) and (h) of the RMA.
4. The objectives and policies of the National Policy Statement for Freshwater (2020), including:
 - a. The fundamental objective of Te Mana o te Wai and hierarchy of obligations that firstly prioritises the health and well-being of waterbodies and freshwater ecosystems;
 - b. Policies 1, 2, 3, 5, 8, 9, 10, 12, and 13; or
 - c. The effects management hierarchy.
5. The objectives and policies of the pSWLP, including: Objectives 1, 2, 4, and 6(a), and Policies 14, 15B(2), 17A(1), and 32.
6. Policies 3 and 4 of the Regional Water Plan for Southland.

Decision that Fish & Game wish the Council to make:

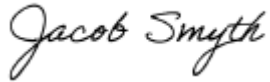
That the application be declined given the short comings identified above.

Fish & Game does not wish to be heard in support of its submission at a hearing if needed.

Fish & Game does not wish to be involved in any pre-hearing meeting that may be held for this application.

If others make a similar submission, Fish & Game will not consider presenting a joint case with them at a hearing.

Fish & Game has served a copy of its submission via e-mail on the applicant.



Jacob Smyth
Resource Management Officer
Fish & Game New Zealand – Southland Region

Date: Monday, 11 September 2023

Cc: Southland District Council

C/- GHD Limited
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Attention: Jan Steenkamp

Sent via e-mail: Jan.Steenkamp@ghd.com