

Planning Expert Conference Summary

Date: Friday, 16 November 2018

File Reference: APP-20171566

Subject: *Planning expert conference*

Record of teleconference of planning experts for application by Alliance Group Ltd, APP-20171566

Date of teleconference: 15 November 2018, 3 p.m. to 4 p.m.

Participants:

- John Kyle, Mitchell Daysh
- Lisa MacKenzie, Te Rūnanga o Ngāi Tahu
- Stephen West, Environment Southland

Matters discussed:

Use of weir structure:

Rule 29(d) of the Regional Water Plan permits the use of any dam or weir, subject to conditions, including clause 'v', which requires that fish passage shall not be impeded as a result of the activity.

- The witnesses **agree** that this rule is relevant to the existing weir structure.
- The witnesses **do not agree** whether the use of the existing weir complies with clause 'v' of Rule 29(d) of the Regional Water Plan. Mr Kyle's view is that the weir meets all of the conditions associated with Rule 29(d) including 'v' which states that fish passage shall not be impeded as a result of the activity. The activity which is the subject of the application is a diversion. Conditions are proposed to manage fish passage associated with that activity. Thus, he says that the application meets the requirements of the rule. Ms MacKenzie and Mr West do not agree with this assessment. All agree that if this rule cannot be relied upon the activity status of the weir is discretionary by virtue of Rule 29(e).

Consent duration:

The applicant is seeking a 25 year consent period. However an 8-year period had been recommended s42A RMA staff report.

- The witnesses **did not agree** about the appropriate consent term.

Reasons: All agree that this matter is likely to be a key matter for resolution at the hearing.

It is the opinion of Ms MacKenzie and Mr West that there were uncertainties about the effects on tuna, the effectiveness of mitigations and monitoring, which meant that a shorter duration was appropriate. Aligning the consent period with the consent for the corresponding operation on the opposite side of the weir was also logical and should provide for better management of the systems collectively.

Mr Kyle's opinion is that limiting the consent to a maximum of eight or less years in order to align with the MIE consent term is not necessary. The proposed conditions that will be proffered will require the consent holder to undertake monitoring on the effects of the diversion on downstream tuna migration. The purpose of this monitoring will then be used to inform the consent holder (the Council and the other stakeholders) as to the actual propensity for entrapment of tuna within the hydro race to occur, and to determine whether it is necessary to implement options to mitigate against the adverse effects of tuna entrapment.

He suggests that limiting the consent term to a shorter timeframe would create significant uncertainty for the consent holder, and there may be a reluctance on its part to invest in any required mitigation (which he believes will be expensive) if a return on that investment cannot be realised over a longer period. In addition, the consent conditions offered will require collaboration over the design of the monitoring program and then again in assessing the results and before promulgating and implementing necessary mitigation. Therefore he sees no cause to limit the consent term to less than 25 years. If anything, the approach promoted might prove to be best practice to management of the issue and could be subsequently applied to any renewal of the MIE consent that might ultimately be sought when that consent expires.

In addition, it is Mr Kyle's view that limiting the consent term as has been suggested also has insufficient regard to the benefits arising from the ongoing operation of the hydro plant, in that it is a significant physical resource for the Maitua Plant and creates energy from a renewable source, which finds support in various national and regional policy instruments. He also holds the view that a shorter consent term places insufficient weight on the requirements of section 104(2A) of the RMA which requires the consent authority to have regard to the value of the investment of the existing consent holder.

Condition 9 of the Water Permit conditions at the end of the appendices to the s42A RMA staff report:

Condition 9 (page 276 of the appendices) of the Water Permit conditions attached to the s42A RMA staff report referred to a Downstream Eel Passage Mitigation Plan.

- The witnesses do not agree over the requirement for such a mitigation plan in the context of a 8-year consent period.

Reasons: The witnesses all agree that mitigation is appropriate if adverse effects are identified through monitoring. However opinion is divided if it is reasonable to require a mitigation plan for a shorter term resource consent.

Mr West's opinion is that, if adverse effects and mitigation measures are identified through the monitoring programme, it is appropriate to have a plan setting out timeframes for implementation of the mitigation measures, and which identifies any measures that would not be implemented.

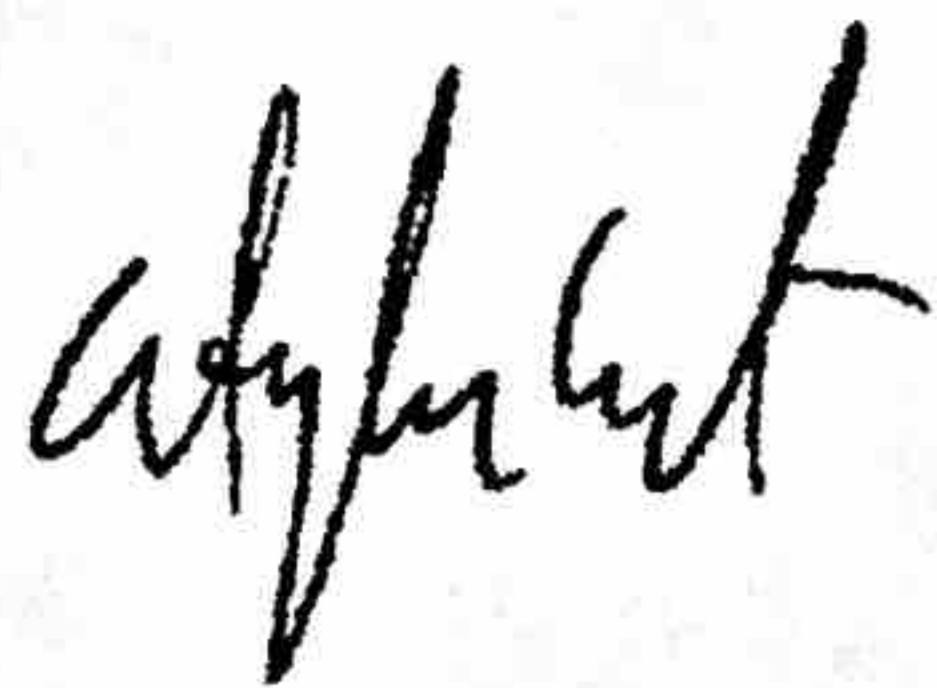
Ms MacKenzie's opinion is that adverse effects should be mitigated where practicable. The draft condition does not necessarily require implementation of all mitigations during the consent period.

It is Mr Kyle's opinion that a longer term consent is necessary to justify the investment required for mitigation measures, which can only be properly understood once the results of monitoring are known, but considers that these measures are likely to be costly. A shorter term would not provide sufficient security for the investment made, and in his opinion it would be unreasonable to require the consent holder to make such a substantial investment inside a short-term consent. If a short term consent was imposed, he suggests that this should be coupled with monitoring conditions and any necessary mitigation be settled at the time the consent is reapplied for.

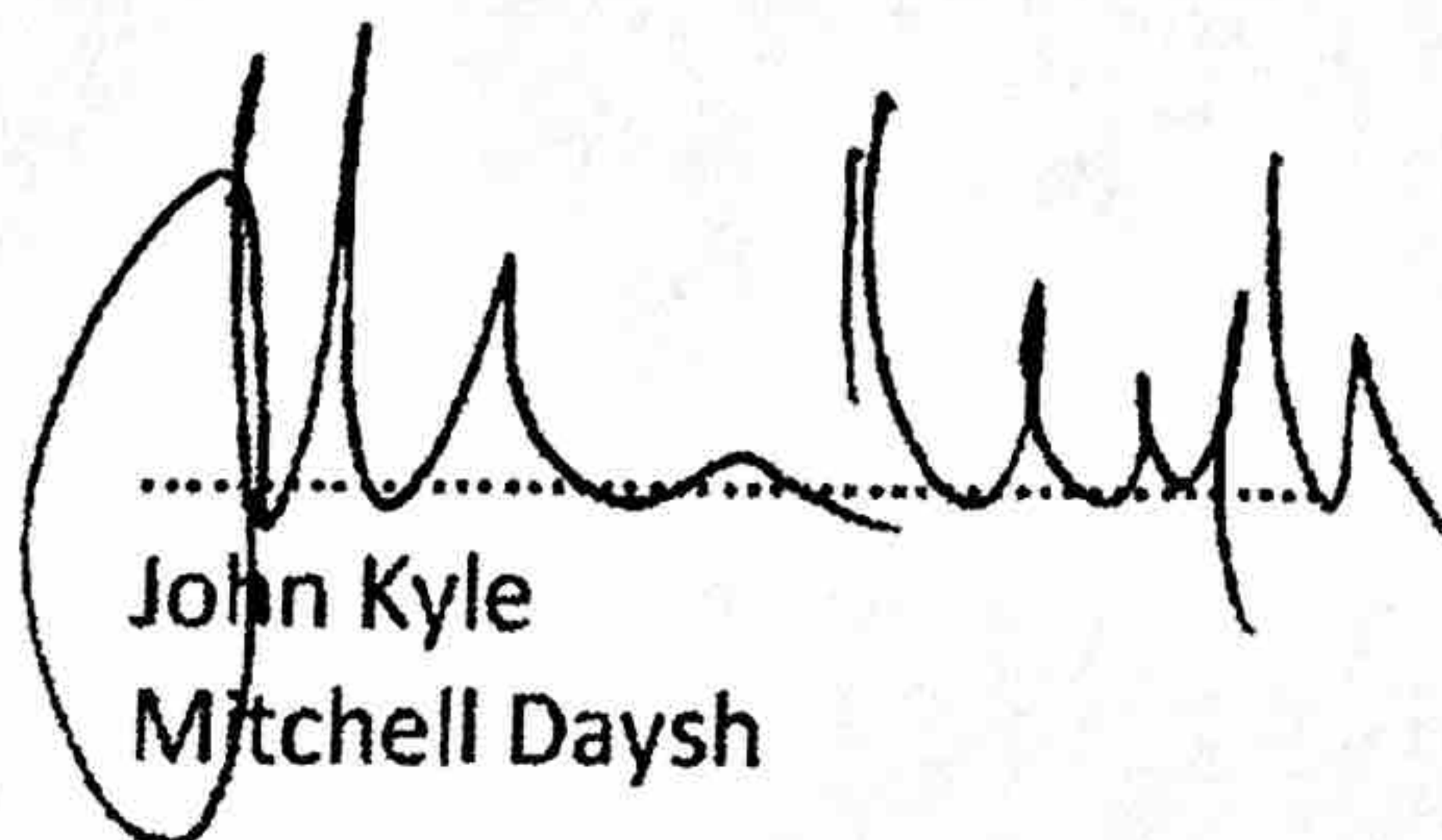
Condition 5 of the Water Permit conditions at the end of the appendices to the s42A RMA staff report:

Condition 5 (page 273 of the appendices) of the Water Permit conditions attached to the s42A RMA staff report referred

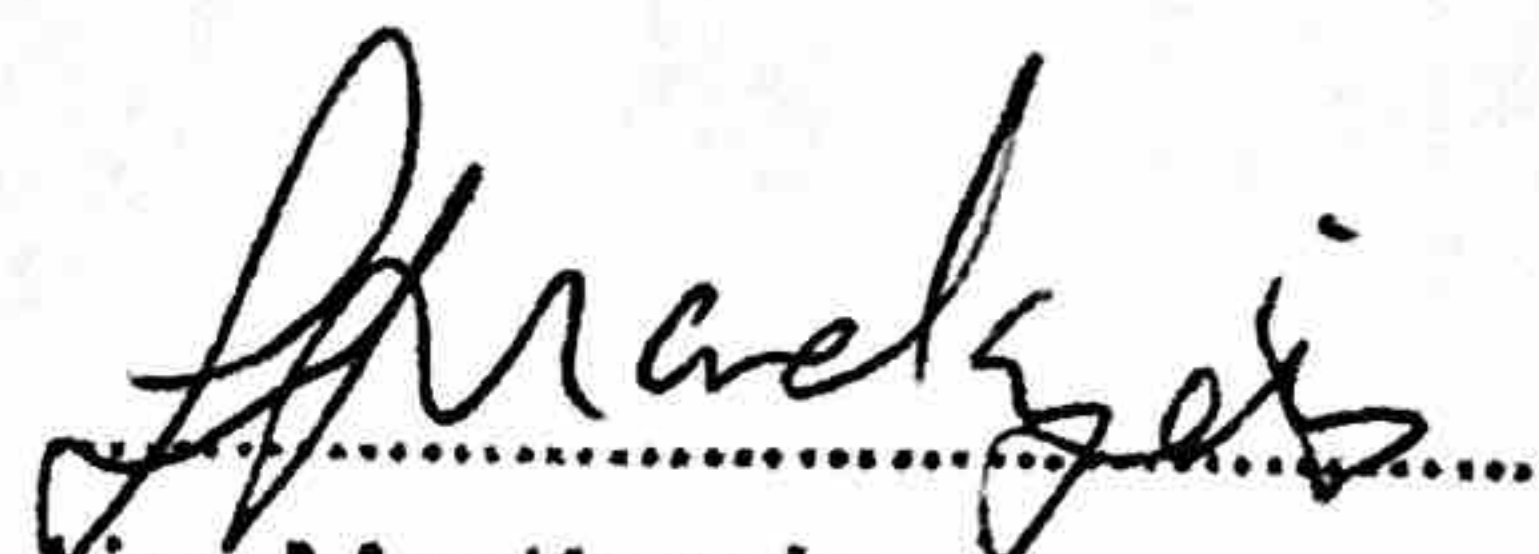
- The witnesses agree that it is appropriate to include a condition that clearly states that the Elver Trap and Transfer system should return the trapped elvers to the Mataura River.



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Stephen West
Environment Southland



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John Kyle
Mitchell Daysh



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Lisa MacKenzie
Te Rūnanga o Ngāi Tahu