



# Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)

## Summary

I recommend the application is processed on a publicly notified basis. This is because:

- The applicant has requested public notification (this came very recently in the process).
- The proposal may have more than minor adverse effects in inanga spawning habitat upstream of the tidegates. That in turn may have more than minor adverse effects on cultural values.
- I am unable to consider the mitigations proposed by the applicant.

## The application

### Particulars

Applicant:	ES Catchment Management Division
Application reference:	APP-20211135
Site address or location:	Titiroa River, Middleton Road South
New consent(s) for new activity(ies) (s88)	<input type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input checked="" type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

### The proposal

Environment Southland's Catchment Management Division has applied for resource consents associated with its existing tidegates in the Titiroa River, about 185 metres upstream of the Tokanui Gorge Road Highway bridge.

The applicant is seeking resource consents to:

- Occupy part of the coastal marine area with a tidegate structure
- Occupy part of the coastal marine area with a weir structure
- Dam and divert water

The tidegates operate by opening when there is positive downstream flow and shutting when tidal flow reverses. The primary purpose is to prevent high tides from raising water level beyond the gates, which would inundate a wider area. The tidegates are part of the wider Maitai Catchment Control Scheme designed to reduce flood damage of land.

The position of the tidegates is within the coastal marine area boundary.

<b>Coastal permit – occupy coastal marine area</b>	
Relevant rule(s)	9.1.1 of the Regional Coastal Plan
Activity status	Discretionary activity

<b>Coastal permit – dam water</b>	
Relevant rule(s)	Section 14(2) of the Resource Management Act
Activity status	Discretionary activity

Overall, the application is a **discretionary** activity.



Figure 1 View from upstream side when closed



Figure 2 View of tidegates from downstream when closed



Figure 3 View of tidegates overflowing during flood

## Public notification consideration

### 1. Is notification mandatory?

1.1	Has the applicant requested that the application be publicly notified? (s95(3)(a))	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
		<input type="checkbox"/> No	Go to 1.2
1.2	Was further information, or commissioning of a report, requested under s92?	<input checked="" type="checkbox"/> Yes	Go to 1.3
		<input type="checkbox"/> No	Go to step 2.1
1.3	If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?	<input type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2
		<input checked="" type="checkbox"/> No	Go to step 2.1

### 2. Is notification precluded?

2.1	Is each activity subject to a rule or NES that precludes public notification?	<input type="checkbox"/> Yes	Rule(s): enter rule Go to 4.1
		<input checked="" type="checkbox"/> No	Go to step 2.2
2.2	Is each activity a controlled activity?	<input type="checkbox"/> Yes	Application must not be publicly notified unless there are special circumstances. Go to 4.1
		<input checked="" type="checkbox"/> No	Go to 3.1

### 3. Is notification required?

3.1	Are any of the activities subject to a rule or NES that requires notification?	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
		<input checked="" type="checkbox"/> No	Go to 3.2

<b>3.2 Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (see Note)</b>	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
	<input type="checkbox"/> No	Complete 3.3 and go to 4.1.

**Note:** In forming this opinion (a) to (e) apply:

- (a) we must disregard any effects on persons who own or occupy the land on which the activity will occur or any land adjacent to that land (section 95D(a));
- (b) we may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect (subject to Policy 36 of the pSWLP) (95D(b));
- (c) in the case of a restricted discretionary activity, we must disregard any adverse effects that do not relate to the matters over which the rule or NES restricts discretion (95D(c));
- (d) we must disregard trade competition and the effects of trade competition - 95D(d); and
- (e) we must disregard any effect on a person who has given written approval - 95D(e)

### 3.3 Reasons adverse effects on the environment are less than minor / minor / more than minor

#### *The existing environment*

The tidegates are sited on the Titiroa Stream, about 185 metres upstream of the Tokanui Gorge Road Highway bridge, about 3.2 km northwest of Fortrose. The river has a catchment area of about 223 km<sup>2</sup>, and flows into Toetoes Harbour. The Titiroa Stream is about 20-30 metres wide upstream and downstream of the gates, although the channel is narrowed to about 6 metres wide either side of the gate location.



As can be seen from the aerial photograph above, the tidegates are sited in a diversion channel. The main channel is blocked by a weir that can be over-topped during flood events.

The tidegates are an existing structure which open and close depending on the direction of water movement. That means that they close on tidal inflows, reducing the potential for tides to cause higher water levels upstream of the gates, which protects land upstream of the gates, particularly during flooding periods. The application states that the tidegates “influence approximately 11,500 hectares” of land. Much of the flood-prone area upstream of the gates is owned Environment Southland and leased out, although there are also two large areas of privately owned land as well.

The site of the tidegates is tidally influenced, and the salt wedge (the seawater) extends about 158 metres upstream of the gates.

The Titiroa River is a popular whitebaiting river, with about 100 whitebait stands downstream of the bridge. Much of the area downstream is land owned by Environment Southland and includes developed pasture, wetlands, and rough vegetation near the river banks. It is generally flat, and the pasture areas are crossed by drains that, in many instances, have flap gates to prevent tidal effects on land drainage. Upstream of the tidegates, the land to the east of the river is hilly, with floodplain to the west of the river that is shared with the Maitai River.

### ***Adverse effects of the proposed activities on the environment***

The adverse effects of the occupation of the coastal marine area by tidegates, and the damming of water by the gates, include:

- Impacts on the spawning of inanga (whitebait)
- Impacts on fish passage
- Natural character effects
- Navigational safety effects
- Cultural and spiritual values effects.

The most significant effect is on the spawning of inanga. This occurs because the tidegates interfere with spawning migration during high spring tides, and by confusing the salinity ‘cues’ that inanga use to coordinate spawning behaviour. The gates may also interfere with hatching by limiting the subsequent spring tide so that the eggs dry out before the next period of inundation.<sup>1</sup>

The applicant has determined that the gates have adversely affected inanga spawning habitat along 1.95 km of the river upstream of the gates, amounting to an area of 1.38 hectares. The applicant is proposing to address this effect by enhancing inanga spawning habitat, but I understand this to be a form of offsetting, rather than mitigation. Enhancing the habitat would have positive effect that cannot be considered at the notification stage (although it can be considered at the s104 decision stage of the consent process).

The tidegates prevent fish passage during incoming tidal conditions. A fish survey found four migratory indigenous fish species were present both upstream and downstream of the gates, and in similar size ranges, indicating that fish are able to pass through the tidegates when they are open. The applicant’s consultant, PDP, determined that the gates have only a minor adverse effect on fish migration and water velocity through the gates does not present too great a barrier to most migrating fish. That said, I note that the Southland Whitebaiters’ Association has commented that it has concerns about whitebait being trapped by the gates at times. That would make the whitebait more susceptible to predation.

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<sup>1</sup> From A851628: Titiroa Tide Gate Mitigation Options Report, (2022), G Scott, B Throssell & L Drummond, Pattel Delamore Partners Ltd

The Titiroa River is navigable for small boats. Those boats cannot pass through the tidegates, but could be carried around it. I also note that our harbourmaster had no concerns with the proposal. Therefore I consider that adverse effects on navigation are no more than minor.

The river is modified to provide for the tidegates. However the diversion channel and the gates themselves are only evident when within about 100 metres. The outlet of the diversion channel is visible from the Tokanui Gorge Road Highway bridge, but the gates are not. I also note that the area surrounding the tidegates includes developed pasture, roads and a bridge. As such, I consider that effects on natural character are no more than minor.

I note that the tidegates are within a statutory acknowledgement area<sup>2</sup> under the Ngāi Tahu Claims Settlement Act. Therefore the Crown has acknowledged that Ngāi Tahu have a cultural, spiritual, historic and customary association with the area. I note that Te Rūnanga o Ngāi Tahu is a customary marine title applicant, and that they had not comment when consulted by the applicant, preferring consultation to occur with papatipu rūnanga. I note that the applicant met with a representative from Te Ao Marama Inc in November 2021, and endeavoured to provide further information following field work. The applicant has also had regard to the provisions of Te Tangi a Tauira, the Ngāi Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan, and has identified Te Ao Marama Inc as an affected party.

Inanga are listed as a taonga species in Appendix M of the proposed Southland Water and Land Plan, and Policy 1 of Section 3.6.13 of Te Tangi a Tauira is

*“Avoid coastal activities that may disturb, and have a direct or indirect detrimental impact, on areas of significant vegetation and habitats. Direct impacts may be physical damage while indirect impacts may include effects arising from siltation, deposition or displacement over time.”*

Policy 2 of that section is to

*“Advocate protection of species located in the coastal environments that are of cultural importance to ensure continued cultural well-being”.*

Te Tangi a Tauira refers to inanga as an important resource in terms of customary food gathering, such as in the Toetoes estuary.

Only manawhenua can determine if there is an adverse cultural or spiritual effect. The proposal is outside the existing agreements with Te Ao Marama Inc. about activities that can be regarded as minor. In that circumstance the agreement is that Te Ao Marama Inc. is to be considered an affected party.

Given the effects on inanga spawning habitat, and Policy 1 of Section 3.6.13 of Te Tangi a Tauira, and in the absence of feedback from Te Ao Marama Inc, I am unable to conclude that effects on cultural and spiritual values are no more than minor.

### ***Planning provisions (policies and objectives) relevant to adverse effects***

The following are key policies in the Coastal Plan in terms of determining adverse effects.

- Policy 5.6.5            It is a national priority to protect:
- a            characteristics of traditional, spiritual, historical or cultural significance to Maori identified in accordance with tikaka Maori; and

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<sup>2</sup> the Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait Coastal Marine Area), which is a statutory acknowledgement area under Schedule 104 and the Maitai River under Schedule 42 of the Ngāi Tahu Claims Settlement Act 1998

- b significant places or areas of historic or cultural significance; which in themselves or in combination, are essential or important elements of the natural character of the coastal marine area.

Policy 7.4.3.1 Provide for effective fish passage through or around structures built within permanent waterbodies in the coastal marine area.

These policies identify that impacts on characteristic of traditional significance to Maori would be a significant adverse effect, and that fish passage effects are important with regard to structures. As discussed above, inanga are a taonga species as identified in the proposed Water & Land Plan, and in Te Tangi a Taurira as being important for customary food gathering.

**Conclusion: significance of adverse effects on the environment**

In my view the adverse effects on the environment will be more than minor due to the disruption of inanga spawning habitat. While the applicant is proposing works to offset the adverse effects on such habitat, I am unable to consider offsets for the purposes of the notification determination. That, in turn leads me to conclude that adverse effects on cultural and spiritual values are also more than minor, as inanga are a traditional mahinga kai of significance to local iwi.

On 4 August 2023 the applicant concluded its period of consultation and requested that the application proceed by public notification.

**4. Special circumstances and public notification**

<b>4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?</b>	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input type="checkbox"/> No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

**4.2 Reasons why special circumstances do or do not exist**

Special circumstances that warrant notification may exist in this instance. A division of Environment Southland is the applicant, and much of the land being protected by the tidegates is owned by ES, although leased out. So notification would help address any perceived conflicts of interest.

**Affected Parties and Limited Notification**

**5. Protected Customary Rights Group or Customary Marine Title group**

<b>5.1 Is the activity in the coastal environment, within an area where it may adversely affect a protected customary rights group(s) or a customary marine title group(s) (see s95G)?</b>	<input type="checkbox"/> Yes	Go to 5.2
	<input checked="" type="checkbox"/> No	Go to 6.1
<b>5.2 May the activity have adverse effects on a protected customary right carried out in</b>	<input type="checkbox"/> Yes	The customary rights group(s) is an affected customary rights

accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?

No

group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1 Go to 6.1

The reason that the proposal will not affect a customary marine title group is that Te Rūnanga o Ngāi Tahu's application to be a customary marine title group is still pending.

### 5.3 Adversely affect a protected customary rights group(s) or a customary marine title group(s):

List the parties

## 6. Statutory Acknowledgement Areas

6.1 Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?

Yes

Go to 6.2

No

Go to 6.3

6.2 Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?

Yes

Include TRONT in 8.2 and go to 6.3

No

Go to 6.3

### 6.3 Reasons why adverse effects on Te Rūnanga o Ngāi Tahu are less than minor, minor or more than minor:

Te Rūnanga o Ngāi Tahu has advised the applicant that it had no comment on the application, preferring that the applicant consult with papatipu rūnanga.

## 7. Is limited notification precluded?

7.1 Is each activity subject to a rule, NES or regulation that precludes limited notification?

Yes

Go to 9.1

No

Go to 8.1

## 8. Are any people adversely affected?

8.1 Are the adverse effects on a person minor or more than minor (but not less than minor)?

Yes

Go to 8.2

No

Go to 8.3

### 8.2 Person(s) considered to be adversely affected (complete and go to 8.3)

Person	Effect on person (see Note)
Te Ao Marama Inc Hokonui Rūnanga Inc.	Adverse effects on cultural values, in particular with regard to mahinga kai and taonga species due to impacts on inanga spawning habitat. The applicant has also identified Te Ao Marama Inc as an affected party, although Hokonui Runanga Inc may have an interest in this location as well.
Fish & Game New Zealand	Effects on the passage of trout. These are expected to be minor, but the applicant has identified Fish & Game NZ as an affected party.



Department of Conservation	The Department is adversely affected due to the impacts on inanga spawning habitat. The applicant has also identified the Department as an affected party.
Southland Conservation Board	The Board has an advisory role to DOC and may be affected for the same reasons as DOC.
Southland Recreational Whitebaiters Association	The Southland Recreational Whitebaiters Association has raised concerns about the effects of the tidegates on whitebait migration. That, in turn, affects the interests of the members of the association in terms of the whitebait available to be caught.

**Note:** In forming this opinion (a) to (c) apply:

- (a) We may disregard an adverse effect of the activity on the person if a rule or an NES permits an activity with that effect; and
- (b) We must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

### 8.3 Reasons why no other person is considered to be adversely affected

The landowners and leasees upstream of the tidegates benefit from the tidegates. They are not adversely affected by the proposal, but would be at least interested, particularly if the application was notified.

### 8.4 Other parties to be sent notice

In terms of Regulation 10 of the Resource Management (Forms, Fees, and Procedure) Regulations, I consider that the following landowners/leasees should be sent notice:

- S D B & C R McKenzie, 298 Fortrose Otara Road, RD 5, Invercargill 9875 Email: [greenbush298@gmail.com](mailto:greenbush298@gmail.com)
- L C Frisby, 235 Fleming Road, RD 5, Titiroa, Invercargill 9875 Email: [frizz.raeleen@gmail.com](mailto:frizz.raeleen@gmail.com)
- K P Morton, 35 Glenalmond Crescent, Rockdale, INVERCARGILL 9812
- P R & M L Golden, 276 Middleton Road, RD 5, INVERCARGILL 9875
- A H & J T Holms, 28 Holms Road, RD 5, INVERCARGILL 9875

Environment Southland owns much of the land upstream and downstream of the tidegates. Our Property Officer has provided contact information for the leasees.

## 9. Special Circumstances – Limited Notification

<b>9.1 Are there special circumstances that warrant limited notification of any other persons?</b>	<input type="checkbox"/> Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	<input checked="" type="checkbox"/> No	Go to 10

### 9.2 Reasons special circumstances exist and persons to be notified

## Recommendation and decision

### 10. Officer's recommendation

The applicant has requested public notification.

10.1	The application be processed non-notified	<input type="checkbox"/>
10.2	Public notification is required/recommended	<input checked="" type="checkbox"/>
10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons. If they are not obtained, the application will be limited notified.	<input type="checkbox"/>
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	<input type="checkbox"/>
10.5	That the parties listed in 8.2 be confined as affected parties, and the parties listed in 8.4 be sent notice as owners or occupiers of areas where the effects (positive or negative) of the tidegates occur.	<input checked="" type="checkbox"/>



Stephen West  
Principal Consents Officer

Date: 9 August 2023

### Decision under Delegated Authority

11.1	I agree with the recommendation	<input checked="" type="checkbox"/>
11.2	The application will be processed non-notified	<input type="checkbox"/>
11.3	The application will be publicly notified	<input type="checkbox"/>
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons. If they are not obtained, the application will be limited notified.	<input type="checkbox"/>
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	<input type="checkbox"/>
11.6	The parties listed in section 8.2 are affected parties, and the parties listed in 8.4 be sent notice as owners or occupiers.	<input checked="" type="checkbox"/>

This decision is made under delegated authority by:



Bruce Halligan  
Consents Manager  
Date: 9 August 2023