
Form 13: Submission on application concerning resource consent

Resource Management Act 1991

To: Southland Regional Council

Name of submitter: Penny Nelson, Director-General of Conservation / Tumuaki Ahurei
(the **Director-General**)

This is a submission on an application from Catchment Management Division, Southland Regional Council (the **Applicant**) for a resource consent.

Description of activity: Seek consent to authorise the following activities at Titiroa tide gates, adjacent to Middleton Road South, Fortrose:

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

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

Trade competition: I am not a trade competitor for the purposes of section 308B of the Resource Management Act 1991

My submission relates to: The whole application

My submission is: I oppose the application.

The Director-General's interest in the Application

1. The Director-General of Conservation (the **Director-General**) has all the powers reasonably necessary to enable the Department of Conservation (**DOC**) to perform its functions.¹ The Conservation Act 1987 (the **CA**) sets out DOC's functions which include (amongst other things) management of land and natural and historic resources for conservation purposes,

¹ Refer section 53 Conservation Act 1987

preservation so far as is practicable of all indigenous freshwater fisheries, protection of recreational freshwater fisheries and freshwater fish habitats and advocacy for the conservation of natural resources and historic heritage.² Section 2 of the CA defines ‘conservation’ to mean *‘the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generation’*.

2. DOC is also the authority responsible for administering Conservation Act 1987, the Wildlife Act 1953 and the Freshwater Fisheries Regulations 1983.

Reasons for the Director-General’s submission

3. The New Zealand Fish Passage Guidelines state that “[a]ll tide and flood gates are considered barriers to fish passage.”³ The existing floodgate uses an outdated passive design which prevents fish passage. When the gate is closed, no fish can pass. This has adverse effects on fish population and habitat in the Titiroa Stream. The proposal to consent this structure without modification will result in further loss of freshwater species.
4. The application documents refer to positive social and economic effects through drainage and flood protection. However, there is no modelling or other adequate assessment to demonstrate that the passive tidal gates are needed. Even if the tidal gates are needed, there is no modelling or other adequate assessment in the application documents to demonstrate that the gates need to close on every incoming tide.
5. The passive existing gates close on every incoming tide as water flowing upstream pushes against them. The New Zealand Fish Passage Guidelines refer to design features that can be used to lower the impact on fish passage. For example, automatic electric or hydraulically powered gates that operate the gate only when water levels reach a critical elevation.⁴ The application documents do not assess the option of upgrading the design of the structure to avoid and mitigate adverse effects. The application documents do not provide the level of detail required by clause 6 of Schedule 4 of the Resource Management Act 1991.
6. I consider that the site contains **significant values** and that the Application does not contain enough information on the extent of significant values within the site. The application focuses on the effects on inanga with little information provided on the effects of the floodgates on other freshwater species in particular migratory species.

² Conservation Act 1987, section 6.

³ New Zealand Fish Passage Guidelines Version 1.2 December 2022, at paragraph 4.5 on page 70.

⁴ New Zealand Fish Passage Guidelines Version 1.2 December 2022, at paragraph 4.5 on pages 70 and 71.

7. There are no alternative designs proposed in the application to mitigate these effects, rather the applicant is seeking to offset effects by restoring and enhancing other inanga spawning habitats along Titiroa Stream.
8. I am not convinced that alternatives have been given sufficient consideration. The proposal to consent this structure without modification will result in further loss of inanga and potentially other freshwater species.
9. The proposal to renew the application without modification of the floodgate structure will continue to create **significant risk** to environments and native species.
10. I am not convinced that the assessment of effects is adequate or that the Proposal is consistent with the relevant provisions of the plan.
11. Without being limited to such matters, the Director-General notes the following with respect to the Application:
 - a. There is limited assessment of effects of the floodgate on freshwater species other than Inanga.
 - b. The habitat restoration proposed does not adequately offset the effects of the tidal gates on freshwater species.
 - c. The existing floodgates are not consistent with the New Zealand Fish Passage Guidelines.
12. The decisions sought in my submission are required to ensure that, the decision-maker:
 - a. recognises and provides for the matters of national importance listed in Section 6 of the Resource Management Act 1991 (the **Act**); and
 - b. has particular regard to the intrinsic values of ecosystems as required in Section 7(d) of the Act.
 - c. has particular regard to the NZCPS 2010 and the NPSFM 2020 in relation to providing passage for freshwater migratory species.
13. The Applicant has provided insufficient information and I am concerned that the proposal does not adequately identify how the proposal will avoid, remedy, or mitigate potential adverse effects or, how the proposal will achieve Objective 1, Policy 3, Policy 5 and Policy 11 of the New Zealand Coastal Policy Statement 2010.
14. The Director-General's concerns have been identified following a review of the information that has been provided to date. The Director-General's submission relates to the whole Application. Additional and/or more specific concerns with respect to the Application may be identified once more adequate information has been made available to the Director-General.

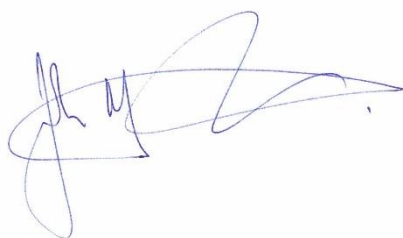
15. Without being limited to such matters, the Director-General notes the following with respect to the Application:

Freshwater indigenous biodiversity

16. The Director-General is concerned that the Application does not adequately address the actual or potential effects on freshwater indigenous biodiversity. This is because the Director-General considers that the AEE does not adequately identify potential effects on these values. There has not been adequate assessment of the ecological values of the receiving environment.
17. The Application includes an ecological assessment, but it does not adequately assess the effects of the floodgates on migratory species other than inanga.
18. The Application relies on habitat restoration to offset the effects rather than avoiding the effects by providing fish passage.
19. Section 6(c) of the Act requires that all persons exercising functions and powers under it shall recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. As the Application does not provide sufficient information to assess the ecological values of the site, it fails to give effect to Section 6(c) of the Act.
20. Section 7(d) of the Act requires that all persons exercising functions and powers under it shall have particular regard to the intrinsic value of ecosystems. The failure of the Application to assess potential effects on freshwater indigenous biodiversity means that the applicant is not giving effect to Section 7.
21. Policy 11(a) of the New Zealand Coastal Policy Statement requires that adverse effects on at risk species (which includes inanga) are avoided.

I do wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.



John McCarroll
Director/Manager Operations

Murihiku Region

Acting pursuant to delegated authority on behalf of Penny Nelson, Director-General of Conservation

Date: 11 September 2023

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

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