

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**UNDER THE**

**Resource Management Act 1991**

**IN THE MATTER OF**

an application for resource consent to  
discharge stormwater in Christchurch City and  
Banks Peninsula (CRC 190445)

by

**Christchurch City Council**

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**LEGAL SUBMISSIONS  
FOR THE DIRECTOR-GENERAL OF CONSERVATION**  
Submitter #SUB031490

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**9 November 2018**

**Department of Conservation**  
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## **May it please the Hearing Panel**

### *Introduction*

1. There is no question that managing stormwater discharges for the whole of Christchurch City and Banks Peninsula is a critical service for the district that needs to continue. A Counsel for the applicant has stated, it is a complex, challenging and necessary task.
2. It is evident that the City Council has devoted significant resources to developing its application, and that it is committed to expending further resources to develop and implement stormwater management plans. The City Council's stated intention to improve water quality by effectively managing the quality of stormwater discharges is commendable.
3. The Director-General of Conservation (DGC) has submitted in support of the application but has sought a few minor changes to the conditions that have been proposed. The DGC's submission has not taken issue with the adaptive management approach proposed.
4. The Department of Conservation (DOC) has a particular interest in the effects of the activity on natural values and environments for which it has some responsibility. The DGC has therefore sought the inclusion of conditions to ensure DOC will be consulted during the development of stormwater management plans and implementation plans. The reason for that relief sought is to ensure that DOC's specialist expertise and areas of responsibility will inform future planning for stormwater management in a timely manner.
5. DOC's interest in this application is based on its specific interest in:
  - a. Effects on the receiving environment, including the coastal environment; and
  - b. Effects on fresh water fish species and their habitats, particularly on Banks Peninsula.
6. In regard to the former, the Minister of Conservation is responsible for the preparation and recommendation of the New Zealand Coastal Policy Statement.<sup>1</sup> The application includes proposals to develop and review stormwater management plans for estuarine and coastal environments, which

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<sup>1</sup> Section 57 Resource Management Act 1991

are environments that are of particular relevance to DOC given the Minister of Conservation's role in relation to the New Zealand Coastal Policy Statement.

7. In regard to effects on fresh water fish and their habitats, the Director-General of Conservation is responsible for administering the Freshwater Fisheries Regulations, under which fish passage is provided for when culverts and fords are installed<sup>2</sup>.

8. In addition to those specific functions and powers, DOC has the functions set out in section 6 of the Conservation Act 1987, which, relevantly, include:

a. *to manage for conservation purposes all land and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department:*

ab. *To preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:*

b. *to advocate the conservation of natural and historic resources generally:*

c. *to promote the benefits to present and future generations of the conservation of natural and historic resources...*

d. *to prepare, provide, disseminate, promote and publicise educational and promotional material relating to conservation:*

...

g. *every other function conferred on it by any other enactment.*

9. The natural resources referred to above are defined in the Conservation Act as meaning:

a. *plants and animals of all kinds; and*

b. *the air, water, and soil in or on which any plant or animal lives or may live; and*

c. *landscape and landform; and*

d. *geological features; and*

e. *systems of interacting living organisms, and their environment;...*

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<sup>2</sup> Freshwater Fisheries Regulations 1983, Part 6 Fish Passage

10. The proposal to develop Implementation Plans is of interest to the DGC. Implementation plans may include stormwater mitigation methods and devices and a programme of works for development<sup>3</sup>. Such works are of interest to DOC given its responsibility for Part 5B, Freshwater Fisheries, of the Conservation Act 1987, and for enforcing the Freshwater Fisheries Regulations 1983.
11. Part 5B of the Conservation Act includes section 26ZJ, which makes it an offence to disturb or damage the spawning grounds of any freshwater fish. The Freshwater Fisheries Regulations include regulations that apply to any dam or diversion structure, culvert or ford, in waterways<sup>4</sup>.
12. DOC's preference is to be consulted on proposals for works in order to be able to advise of the risk of disturbing spawning grounds, and to be able to ensure compliance with the Freshwater Fisheries Regulations, during planning. This should enable any issues to be resolved at the planning stage, rather than having to be dealt with when works are being carried out or are complete.
13. Specifically, where plans are proposed that include mitigation methods, devices or works, early consultation with DOC may help avoid any issues regarding compliance with Section 26ZJ of the Conservation Act 1987, or with requirements regarding fish passage in the Freshwater Fisheries Regulations.

### **Adaptive management approach**

14. The City Council's proposal to take an adaptive management approach, including developing and implementing stormwater management plans and implementation plans, is understandable in light of the complexity of the task and the need to obtain better information.
15. However, the adaptive management approach does mean there is uncertainty for DOC about the detail of how stormwater discharges will be managed, and about the matters that might be considered in the development of stormwater management plans and implementation plans. DOC has sought to be consulted during their development to reduce that uncertainty and to ensure

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<sup>3</sup> Evidence of Jane West (planning) for the applicant, at page 104

<sup>4</sup> Regulations 41-50 Freshwater Fisheries Regulations 1983

there is an opportunity to contribute at an early stage in development and implementation.

16. The Supreme Court discussed the use of adaptive management in *Sustain Our Sounds Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 40 (SOS).
17. The Court started its assessment by considering the precautionary approach mandated in Policy 3 of the New Zealand Coastal Policy Statement (NZCPS), which requires a precautionary approach to be taken to managing activities in the coastal environment when the effects of those activities are uncertain but potentially significantly adverse.
18. In the present case, the complexities of managing stormwater discharges throughout the district have been acknowledged, as have the risks of dealing with run off from various sources, with varying contaminant concentrations. The activity appears to fit into the category to which NZCPS Policy 3 applies, having uncertain and potentially significantly adverse effects.
19. The Court in SOS considered that an adaptive management approach can legitimately be considered part of a precautionary approach when:
  - a. there is good baseline information about the receiving environment;
  - b. conditions provide for effective monitoring of adverse effects using appropriate indicators;
  - c. thresholds are set to trigger remedial action before effects become overly damaging
  - d. effects that might arise can be remedied before they become irreversible.
20. The first of the above factors are beyond the scope of the DCG's submission and are for the panel to decide on.
21. It is submitted, however, that a requirement to consult with DOC in the preparation of SMPs and implementation plans will add a measure of confidence that some of the effects which might arise can be identified early, triggering remedial action. That approach will help ensure damaging effects can be avoided or, when identified early, they can be remedied before they become irreversible.

#### **Policy 4 NZCPS**

22. Policy 4 of the NZCPS is also relevant to the DGC's submission seeking to be consulted. That Policy is:

*to provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment.*

*This requires: ... (b) working collaboratively with other bodies and agencies with responsibilities and functions relevant to resource management, such as where land or waters are held or managed for conservation purposes.*

23. In my submission it would be consistent with Policy 4(b) to require consultation with DOC regarding the preparation of stormwater management plans and implementation plans.

Susan Newell  
Solicitor

9 November 2018