

Oral Submission

Southland Regional Water and Land Plan

Submission on behalf of the Big Bay Whitebaiters Group

9.00am, 24 May 2017, Invercargill

1. INTRODUCTION

1.1 My name is William Patrick Chisholm. I am an Environmental Consultant residing in Christchurch. I have run my own environmental consultancy business - Chisholm Associates, since April 1991. Prior to this I have held ecological survey and management positions with the New Zealand Forest Service (three years) and Department of Conservation (four years).

1.2 I hold a Masters degree with Honours in Zoology from Victoria University of Wellington. I am a member of the New Zealand Ecological Society and the New Zealand Freshwater Sciences Society. I am currently registered as a Certified Environmental Practitioner (CENVP). The CENVP programme is run by the Environment Institute of Australia and New Zealand (EIANZ).

1.3 This oral submission is made on behalf of the Big Bay White Baiters Group (“**BBWG**”), and further to the written submission lodged by myself on behalf of the BBWG on 19 July 2016, regarding Environment Southland’s draft Southland Regional Water and Land Plan.

1.4 The BBWG are the private owners of lawfully established whitebait huts, and whitebait stands at Big Bay, which are located at the outlet of the Awarua River, within the Pyke Forest Conservation Area. BBWG concerns relate specifically to Rule 65 which proposes the placement or erection of any replacement whitebait stand as a restricted discretionary activity. BBWG submits that this should be a permitted activity, subject to certain conditions which are outlined in the written submission.

1.5 The BBWG proposal has been opposed by the Fish and Game Council, and is not accepted in the S 42A Officers Report. In my oral submission I shall address these two objections separately.

2. OBJECTION RAISED BY FISH AND GAME COUNCIL

2.1 The Fish and Game Council written submission requests that Rule 65 be retained in its present form and suggests that Council further exercises its control over: *Any effects on natural character and amenity values, river morphology and dynamics (including erosion and deposition), public safety and public access, aquatic and riverine ecosystems and habitats (including fish passage), the spiritual and cultural values and beliefs of the tangata whenua, taonga species, historic heritage, landscape, navigational safety, and recreation values;*

2.2 Fish and Game Council also states that the BBWG proposal would “*not give effect to s 6(d) of the RMA*”, which concerns public access.

2.3 All existing whitebait stands are consented. Therefore, existing stands give effect to s 6 of the RMA, including effects on natural character and amenity values, river morphology and dynamics (including erosion and deposition), public safety and public access, aquatic and riverine ecosystems and habitats (including fish passage), the spiritual and cultural values and beliefs of the tangata whenua, taonga species, historic heritage, landscape, navigational safety, and recreation values. Rule 65 (e) uses Restricted Discretionary status to re-apply the same tests to rebuilt or relocated stands. The question is whether the scale and significance of the activity (relocating whitebait stands) makes this re-test necessary, or whether BBWG's proposed permitted activity conditions are sufficient to negate the need for this re-test.

2.4 With regard to the protection of legal access, BBWG would be amenable to an additional permitted activity condition which stated that the relocated stand did not impede public access.

2.5 With regard to reapplying the other tests to rebuilt or relocated stands under Restricted Discretionary status, BBWG submits that the scale and significance of this activity does not warrant this. Furthermore, BBWG has proposed a permitted activity condition which states: *the replacement stand is located on the same river as the original stand, as close as practicable to the former site, and the precise location of the replacement stand is supplied to Council prior to rebuilding;*

2.6 The term "practicable" is common in RMA consent conditions. "Practicable" has the meaning "that which can be practiced", rather than "that which is preferred, or convenient". Thus, this condition does not provide carte blanche for relocating stands anywhere. It specifies that the relocated structure must be placed in the nearest location where it can be operated for its purpose as a functioning whitebait stand. The BBWG suggested requirement to immediately notify Council of the new whereabouts gives Council the ability to readily monitor compliance with this condition.

3. S 42 A REPORT (the Report).

3.1 The Report states:

"... in my opinion, changing Rule 65(e) from a restricted discretionary activity to a permitted activity would not ensure that adverse effects are avoided, remedied or mitigated, in particular the matters that Environment Southland has listed as matters of discretion, and as such I do not support the change."

3.2 No other practical justification for imposing restricted discretionary status to this activity is provided in the Report.

3.3 With all due respect to the Report author(s), I expect their experience in the placement, construction or operation of whitebait stands to be somewhat limited, especially at Big Bay. Conversely, I would expect considerably greater experience in this activity from BBWG members. My submission explains how BBWG accepts that relocated stands should be relocated as close as practicable to original stands. In cases where a stand washes away in a flood, this is likely to be in exactly the same place. In cases where a river has changed course, the location of the new stand is restricted by the condition that the replacement stand is erected a minimum distance of 20 metres from any existing stand. This will significantly constrain the ability to relocate the new stand far from its original site.

3.4 In the absence of any other justification for the opinion expressed in the Report, it is prudent to take advice from whitebaiters who have the practical field experience of these

situations, Their advice is that the adverse effects of relocating stands under the proposed permitted activity conditions, would be no more than minor.

3.5 The Report rejects the BBWG submission that Policy 31 is relevant to this issue. Policy 31 states:

Restrict the allocation of space for whitebait stands in the beds of lakes, rivers, modified watercourses and streams to:

- 1. stands lawfully existing as of 1 June 2003; or*
- 2. new stands used in lieu of previously lawfully existing stands, but as close as practical to the former site where that site can no longer be used because of either natural alterations to the course of the river, bank erosion or high-water mark alterations.*

3.6 The Report then mentions Policy BRL.2 of the pSRPS, and its requirement for the need for maintenance, enhancement and upgrading while avoiding, remedying or mitigating adverse effects. I note that Policy BRL.2 of the pSRPS contains general provisions for the beds of rivers and lakes, while Policy 31 provides a specific course of action to achieve or implement an objective.

3.7 The Report takes the position that Policy 31 is not relevant because:

The purpose of Policy 31 (Whitebait stands), is to restrict the allocation of space for whitebait stands to those that were lawful as of 1 June 2003, or new stands used in lieu of previously lawful existing stands, as close as practical to the former site.

3.8 This is incorrect. There is no indication within Policy 31 that its sole purpose is to restrict allocation space for of whitebait stands. Indeed, Policy 31 is listed under the heading “**Activities that affect water quality and quantity**”. Consequently, Policy 31 has been developed with regard to these wider issues, not just the allocation of space. The BBWG proposal is fully consistent with Policy 31, and it gives particular regard to wider activities, including those listed in Rule 65 (b). BBWG is now also prepared to ensure the maintenance of public access. Therefore, the BBWG proposal to make this activity a permitted activity gives regard to all of the wider issues, and to dismiss it on the basis of a narrow reading of Policy 31, and general provisions in the pSRPS, is not prudent or correct.

4. DISRUPTION OF WHITEBAITING ACTIVITIES

4.1 The BBWG submission states: *There is the potential for serious disruption to whitebaiting if a resource consent is required to replace a whitebait stand which washes away during the season.* There is a considerable historical database of whitebait catch information from Big Bay, (and I understand Martins Bay) whitebait stands. This catch information has potential value to our knowledge of long-term whitebait population trends, as these data provide baseline catch information from unmodified catchments. Any disruption to the ability to continue this activity has the potential to interrupt the continuity of this database. This would consequently derogate from the RMA s 5 (2) purpose to manage “*the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being...*”. RMA S 6 (c), 7 (a), 7 (aa) and 7 (h) are similarly derogated if this database is disrupted. RMA S 7 (i) of particular relevance here, as the effects of climate change on ocean currents and migrant native fish populations is poorly known. These data would have significant benefit to our understanding of this, and the Water and Land Plan should not be developed in such a way that it potentially reduces the value of this scientific resource.

5. SUMMARY AND CONCLUSION

5.1 The planning matters raised by Fish and Game Council and the S 42 A Report are not compelling enough to overturn the BBWG proposal that the relocation of whitebait stands be a permitted activity, subject to the conditions stated in the BBWG submission.

5.2 In response to the concern raised in the Fish and Game submission BBWG would accept an additional permitted activity condition which states :

The (relocated) stand situated over, in or on public land does not impede any legal access to the river.

5.3 The continuity of the historic catch database is potentially very important, and the measures suggested by Fish and Game, and the S 42A Report, requiring stand relocation to be a restricted discretionary activity, will have a potential adverse effect on the positive benefits of this.

W.P. Chisholm

For BIG BAY WHITEBAITERS GROUP