

Before the West Coast Regional Council
IN THE MATTER OF the Resource Management Act 1991

And

IN THE MATTER OF the Plan Change 1 to the West Coast Regional Land
and Water Plan.

LEGAL SUBMISSIONS ON BEHALF OF THE DIRECTOR-GENERAL OF CONSERVATION

DATED 17 JUNE 2018

Department of Conservation
Private Bag 4715, Christchurch 8011
Attn K Murray
Ph 03 371 3759
kmurray@doc.govt.nz
Counsel Acting: D van Mierlo
Tel: 03 731 1070
email: dean@environmentalbarrister.co.nz

INTRODUCTION

1. These legal submissions are filed on behalf of the Director-General of Conservation (**the Director-General**) in relation to the Plan Change 1 to the West Coast Regional Land and Water Plan (PC1).

PROCESS TO DATE

2. The Director-General made a submission on PC1 when notified in 2016. Prior to PC1 being notified, Department of Conservation (**DOC**) staff worked with West Coast Regional Council (**WCRC**) staff to assess the boundaries of many schedule 2 wetlands. Through that process, the vast majority of proposed boundary adjustments were able to be agreed in advance between DOC and WCRC staff, and there were only a small minority of wetlands where questions remained as to the appropriateness of amending the mapped boundaries. These wetlands were identified in the Director-General's submission.
3. Since lodging the submission, further discussions have occurred between DOC and WCRC staff. As a consequence, the proposed amendments to boundaries for the remaining wetlands identified in the original submission, are now accepted by the Director-General and are no longer challenged. *- wetland areas*
4. The Director-General also accepts the recommended responses to the majority of the Director-General's submission points, as contained in the s 42A report. The exception is in relation to;
 - 4.1 the proposed amendment to the definition of vegetation disturbance so as to exclude the activity of sphagnum moss harvesting; and
 - 4.2 the proposed introduction of a new permitted activity rule for the harvesting of sphagnum moss in schedule 2 wetlands.
5. Accordingly, as other matters raised in the Director-General's submission have either been resolved, or the s 42A officers recommended response is accepted, these submissions, and the planning evidence filed in support, focus on the two outstanding issues summarised above.

6. At the outset I wish to acknowledge the constructive and collaborative manner in which WCRC has engaged with DOC in relation to the development of PC1, and the resolution of issues raised by it. That engagement has included working closely with DOC ecologists in identifying and refining the boundaries of schedule 2 wetlands, and involvement of DOC staff in a workshop and other activities directed at addressing the issue of sphagnum moss harvesting in scheduled wetlands. DOC staff have actively engaged in good faith with WCRC to progress these matters, and a number of issues have been resolved.
7. However, merely because some issues remain outstanding and not all issues have been resolved does not mean that the parties have not been working collaboratively. DOC staff have worked in good faith to explore the potential for resolution of issues, and in particular, the potential for a permitted activity rule for sphagnum moss harvest in schedule 2 wetlands. While, ultimately, a permitted activity rule has not been agreed (for reasons that will be expanded on in these legal submissions) it is submitted that the engagement of WCRC and DOC staff in the process of endeavouring to reach an agreed resolution has nevertheless been constructive.

8. In the s 42A report there is comment that:

"At a pre-hearing workshop in September 2017, Council staff, harvesting representatives, the Department of Conservation and Forest and Bird discussed the Landcare Report, and agreed to develop a new permitted rule."¹

9. In my submission, this comment is inappropriate and inaccurate. It is clear from the report that documented the workshop of interested parties convened to discuss sphagnum moss harvesting regulation and proposed plan provisions, that the discussions at that workshop were held on a confidential and without prejudice basis.² A careful reading of the report makes clear, that what parties, including DOC, agreed to do, was consider the development of a permitted activity rule. That is entirely what the DOC staff who attended the workshop did, in good faith. However, it does not follow that the workshop participants agreed to a permitted activity rule for sphagnum moss harvest in all schedule 2 wetlands being included in the WCL&WP. Indeed, it doesn't appear that final wording for a permitted activity rule emerged from the workshop which parties could have agreed to in any event.

¹ Page 35 of s 42A report, second paragraph in the "Reason" for rejecting the DG of Conservation's submission on this point.

² The front page of the report is clearly marked "confidential without prejudice".

10. To reiterate, DOC staff attended the sphagnum moss harvest workshop in good faith, and agreed, on a without prejudice basis, to give consideration to the development of a permitted activity sphagnum moss harvesting rule. That is precisely what occurred, however that consideration identified a number of issues with application of permitted activity status to sphagnum moss harvesting in scheduled wetlands. Those issues were communicated to WCRC staff and other attendees of the workshop. It is of concern that the record of that workshop, clearly marked confidential and without prejudice, should now be set out on the WCRC's website, and paraphrased in the s 42A report as part of the basis for the 42A officers recommended rejection of the Director-General's submission.

EVIDENCE

11. The Director-General is calling evidence from two expert witnesses at this hearing.
12. Dr Jane Marshall is a botanist and ecologist employed by DOC and based in Hokitika. Her evidence provides an overview of her involvement in the process of assessing the boundaries of schedule 2 wetlands, and her provision of expert ecological advice on the appropriate boundaries of wetlands considered by WCRC in the PC1 process.
13. Ms Linda Kirk is an RMA planner employed by DOC. Her previous employment includes periods with the Southland Regional Council, Environment Canterbury, and Te Runanga o Ngai Tahu. She provides a planning analysis of issues associated with the proposed sphagnum moss harvesting rule, and vegetation disturbance definition amendment.

SPHAGNUM MOSS HARVEST

14. The s32 Evaluation Report states that;
- Presently the Plan requires harvesters of sphagnum moss to obtain resource consent before undertaking the activity. This was an unintended outcome of the Environment Court case on identifying significant wetlands,³
15. In my submission, this statement is materially incorrect in two respects. The WCL&WP does not require harvesters of sphagnum moss to obtain resource consent before undertaking the activity. And the rule regime contained in the plan was not an

³ Section 32 Evaluation report, pages 4 and 10 (point N).

“unintended outcome” of the Environment Court’s decisions regarding significant wetlands on the West Coast.

16. Under the Land and Water Plan, sphagnum moss harvesting is;

- A permitted activity in wetlands that are not included in Schedule 1 or 2 (provided the harvesting occurs outside of the riparian margin of any lake or river, and in an area of less than 12° slope.)⁴
- A discretionary activity in Schedule 2 wetlands⁵
- A non-complying activity in Schedule 1 wetlands⁶.

17. The WCL&WP contains a carefully structured cascading rule framework, with activity status varying depending on the status of the wetland under the plan, on which the moss resource is located.

18. The s 32A report is in error when it states that moss harvesters are required to obtain consent before undertaking harvesting activity. For wetlands outside the Schedule 1 and 2, sphagnum moss harvesting is a permitted activity under Rule 10. — *check rule.*

19. The s 32A report does not appear to have quantified the extent of wetlands on the West Coast which are not included in Schedule 1 or 2, or the extent to which sphagnum moss resources are located on those wetlands. However, it appears that there are considerable sphagnum moss resources located outside of the scheduled wetlands. The s 42A report and Landcare (Buxton) Report indicate that only two scheduled wetlands on private land are known to have previously been harvested⁷. Yet it is clear that there is a sphagnum moss industry which has successfully operated on the West Coast for many years. If the moss is not coming from Schedule 1 and 2 wetlands, then it must be coming from non-scheduled wetlands. The Buxton report confirms this when it describes the extent of scheduled wetlands on the West Coast and then states

⁴ Rule 10

⁵ Rule 17

⁶ Rule 19

⁷ Buxton Report, page v; s 42A report, first paragraph on page 200; and first paragraph of the conclusions at page 213

These values do not include the vast majority of wetlands that are harvested for sphagnum.⁸ → check sentence

20. In summary;

- sphagnum moss harvesting is a permitted activity on non-schedule 1 and 2 wetlands (outside of river and lake riparian margins and less than 12° slope).
- The current rule structure in the L&WP was not an unintended consequence of the Environment Court's decision.
- The rule structure provides for a range of permitted, discretionary and non-complying activity statuses.
- The industry is currently sourcing *the vast majority* of moss from outside scheduled wetlands within the region.
- There is no evidence to indicate that non-scheduled wetlands (where moss harvesting is a permitted activity) are insufficient to provide a moss resource to moss harvesters.

- 6 August De Eniro Papers - Dean States that this is what was made

STATUTORY SCHEME

21. PC1 as notified proposes to amend the definition of vegetation disturbance, so as to exclude sphagnum moss harvest. The intent, is that sphagnum moss harvest will then not be an activity that is regulated by rules which manage the activity of vegetation disturbance.

22. In response to submissions, the s 42A report proposes introducing a permitted activity rule for the activity of sphagnum moss harvesting.

23. In effect, both the proposed amendment to the definition of vegetation disturbance, and the proposed new permitted activity rule, are changes to the rules set out in the WCL&WP for managing the activity of sphagnum moss harvest.

22. Section 66 of the RMA provides that

66 Matters to be considered by a regional council

- (1) A regional council must prepare and change any regional plan in accordance with—
- (a) its functions under section 30; and
 - (b) the provisions of Part 2; and

⁸ Buxton, pg 4. S 42A report, pg 200.

- (c) a direction given under section 25A(1); and
- (d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
- (e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and

23. Under s 66(2), other management plans and strategies prepared under other Acts are a matter that a council must have regard to when preparing or changing a regional plan.

24. A regional plan is required to state the rules (if any) “to implement the policies” of the plan⁹. And s 68(1) RMA expressly provides that

68 Regional rules

- (1) A regional council may, for the purpose of—
- (a) carrying out its functions under this Act (other than those described in paragraphs (a) and (b) of section 30(1)); and
 - (b) achieving the objectives and policies of the plan,—
- include rules in a regional plan.

25. In summary, changes to the rules in the WCL&WP, or the introduction of any new rule, in relation to the harvest of sphagnum moss, are required to be;

- For the purpose of implementing or achieving the objectives and policies of the plan¹⁰
- In accordance with the WCRC’s functions under s 30 of the Act¹¹, and
- In accordance with Part 2 of the Act¹², and
- In accordance with council’s obligations to prepare and have regard to a s 32 report¹³, and
- Prepared so as to give effect to the National Policy Statement for Freshwater Management, and¹⁴.
- Prepared whilst having regard plans and strategies prepared under other legislation¹⁵, including the West Coast Conservation Management Strategy.

Each of these requirements is considered in turn, in relation to the proposed changes to the sphagnum moss harvesting rules outlined in PC1.

⁹ S 67(1) RMA

¹⁰ Section 67(1) and 68(1) RMA.

¹¹ Section 65(1) and 66(1) RMA.

¹² Section 66(1) RMA.

¹³ Section 66(1) RMA.

¹⁴ Section 67(3) RMA.

¹⁵ Section 66(2) RMA.

For the purpose of implementing or achieving the objectives and policies of the plan.

26. In a different resource management context, the Supreme Court has held that a requirement to “to give effect to” a policy means to “implement¹⁶” it. In my submission, it also follows that the requirement that rules in a plan are to “implement” policies¹⁷, means that those rules are to “give effect to” those policies. In essence this is confirmed in s 68(1) where it is stated that rules may be included in a regional plan for the purpose achieving the objectives and policies of the plan.
27. The requirement to implement, or give effect to a policy, has been recognised by the Supreme Court as being a “strong directive”¹⁸, and one that creates “a firm obligation on the part of those subject to it”.¹⁹
28. The requirement is affected by what the objective or policy relates to, or what must be given effect to. Accordingly, the terms of the objective or policy, and the extent to which they are directive, is critical. “A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.”²⁰
29. In the context of the issue of sphagnum moss harvest in Schedule 2 wetlands, the objectives and policies of the wetland management chapter (chapter 6) of the WCL&WP have prominence. While other objectives and policies also need to be considered, the plan itself records;
- Where provisions in the Plan dealing with wetlands are at variance with those in Chapters 4 and 5, the provisions in Chapter 6 take precedence.²¹
30. Particularly relevant objectives and policies are²²;
- 6.2 Objective 6.2.1. To recognise and provide for the protection of the natural character, indigenous biodiversity and other values of wetlands in the region.
- 6.3.2 To recognise the significant wetlands in Schedule 2 that are shown to meet any one of the ecological criteria in Schedule 3, and to identify and protect their values by

¹⁶ *Environmental Defence Society v New Zealand King Salmon Co Ltd*, [2014] NZSC 38, [77].

¹⁷ Section 67(1) RMA.

¹⁸ *Environmental Defence Society v New Zealand King Salmon Co Ltd*, [2014] NZSC 38, [77].

¹⁹ *Environmental Defence Society v New Zealand King Salmon Co Ltd*, [2014] NZSC 38, [77].

²⁰ *Environmental Defence Society v New Zealand King Salmon Co Ltd*, [2014] NZSC 38, [80].

²¹ WCL&WP, pg 23.

²² See also 4.3.1, 4.3.3 and 5.2.1

controlling activities in those wetlands and their margins to ensure their natural character and ecosystems (including ecosystem functions and habitats) are sustained.

6.3.3 To recognise that there is no hierarchy of significance between wetlands included in Schedule 1, and wetlands included in Schedule 2 that meet any one of the ecological criteria in Schedule 3.

6.3.5 To recognise and provide for the protection of wetlands by promoting the maintenance and enhancement of the natural values of all wetlands in the region and by managing adverse effects of activities on the values present, including natural character, ecosystems (including ecosystem functions and habitats), aesthetic values or amenity values.

31. In my submission, amending the definition of vegetation disturbance, so that sphagnum moss harvesting does not require a resource consent within Schedule 2 wetlands, or introducing a permitted activity rule (with compliance standards) to enable sphagnum moss harvesting as a permitted activity within Schedule 2 wetlands, would not *implement, give effect to, or achieve* this objective, or these policies.

32. The Buxton report identifies the potential for sphagnum moss harvesting activity to adversely affect natural character and indigenous biodiversity values of wetlands²³.

The potential ecological impacts of sphagnum harvesting in New Zealand were first investigated in the 1980s (Denne 1983; Johnson 1988). Wetland health can decline through changes in hydrology, water pollution, nutrient enrichment, and invasion by weeds and pests, which lead to biodiversity loss and impaired wetland functioning (Clarkson et al. 2004). Sphagnum mires are very sensitive to human impact; for example, trampling may induce small pools, while removal of sphagnum in other sites may cause the substrate to dry out and slow regrowth (Denne 1983). Díaz and Silva (2012) note that indiscriminate exploitation in Chilean wetlands could cause disruption of sphagnum ecosystems, changes in water storage capacity and reduction of biodiversity.

These effects may be short or long term depending on their severity. Harvesting exposes sites to the risk of weed invasion, particularly on drier margins. Gorse and Spanish heath can be problematic, and Sphagnum subnitens can increase in areas where *S. cristatum* is preferentially harvested. There is the potential risk of pollution (oil or fuel) from machinery, and possible degradation of mudfish habitat. Dragging of bales by hand or use of quad bikes can result in localised drainage. Succession to taller, woody vegetation is delayed by harvesting. This can be either positive or negative depending on the ecological values of the site (Figure 5).

Previous guidelines (Buxton et al. 1995) suggested that sphagnum harvesting requires careful site selection, avoiding excessively wet or very dry areas, ensuring the post-harvest surface is near but above the mean water table level, and reseeding of the site (i.e. leaving about a third of the acrotelm behind to speed recovery). Avoiding machinery or practices that cause rutting or drainage of the bog was also emphasised.

²³ See Buxton, pg 10 – 11. Section 42A report, pgs 206 – 207.

Failure to follow these guidelines had resulted in some moss-producing areas being severely degraded.

33. A permitted activity process does not provide for or enable an assessment of a wetlands Appendix 3 values, and nor does it provide Council with a sufficient level of control to ensure the natural character, ecosystems, ecosystem functions and habitat values are sustained.
34. The current discretionary activity status of sphagnum moss harvest within Schedule 2 wetlands implements, and gives effect to, the relevant objectives and policies in the WCL&WP.
35. Importantly, discretionary activity status does not prohibit sphagnum moss harvest in scheduled wetlands. The activity can be approved, subject to appropriate assessment of values and adverse effects on those values. This enables council to give effect to or implement the objective and policies of the wetland chapter.
36. The explanations to the policies also confirm this position.

Policy 6.3.1 Wetlands in Schedule 1 have been verified as ecologically significant and therefore are to be protected. Any wetland modification is likely to result in the degradation or loss of the values of the wetlands or the wetlands themselves.

Policy 6.3.2 Schedule 2 contains a list of wetlands that either are, or are likely to be, ecologically significant. Some of these areas and the particular values present have not been verified and therefore will be subject to an assessment of significance through the resource consent process.

Policy 6.3.3 Policy 6.3.3 makes it clear that there is no hierarchy between the significance of wetlands in Schedules 1 and 2. The wetlands identified in Schedules 1 and 2 have been arrived at using two separate processes and no hierarchical importance is to be accorded to one Schedule over the other.

37. As noted, there is no hierarchy intended in the WCL&WP between Schedule 1 and 2 wetlands, rather they were simply derived through a different process. In short, some Schedule 2 wetlands are as significant as Schedule 1 wetlands, and vice a versa. As noted in the explanation to policy 6.3.1, "any wetland modification is likely to result in the degradation or loss of the values of the wetlands or the wetlands themselves". Assessments of significance are to occur for Schedule 2 wetlands, through the resource consent process. A permitted activity process does not enable this to occur.
38. The methods described in the WCL&WP, (which are not proposed to be amended by PC1), also help confirm the position.

6.4.6 Where assessment of any wetland (whether in Schedule 1 or 2, or not yet identified in the Plan) is required under the Plan for a plan change, variation or resource consent, it shall be carried out in accordance with the ecological criteria set out in Schedule 3.

6.4.7 Schedule 1 and Schedule 2 were derived from two different planning processes. Where assessments of the wetlands in Schedule 2 demonstrate that the ecological criteria in Schedule 3 are met those wetlands should be included in Schedule 1. Equally, where the criteria are not met, those wetlands should be removed from Schedule 2. Changes to Schedule 1 and 2 to either include or remove wetlands will be the subject of a plan change process.

39. Use of a permitted activity status would not enable assessment of significance values against Appendix 3, within Schedule 2 wetlands.

40. It is clear from the methods that the intention in chapter 6, is to progressively assess Schedule 2 wetlands against the criteria in Appendix 3, and then either move those wetlands over to Schedule 1, or remove them from Schedule 2, through a plan change process.²⁴ It is also clear that, despite assessing numerous Schedule 2 wetland boundaries for the purpose of PC1, there has not been an assessment of Schedule 2 wetlands against the Appendix 3 criteria. And there has been no movement of significant wetlands from Schedule 2 to Schedule 1.

41. In my submission, the failure to give effect to the intent of the plan in this respect is regrettable. Had Council assessed and carried over all the confirmed significant wetlands in Schedule 2, to Schedule 1, then it would be much more feasible to provide for a permitted activity rule for any remaining Schedule 2 wetlands (because we could have confidence that significant wetlands were no longer included in Schedule 2). Similarly, if Schedule 2 wetlands were assessed and confirmed as not containing Appendix 3 values, they could be removed from Schedule 2. In that case, the activity of sphagnum moss harvesting would then be a permitted activity within those wetlands²⁵

42. In the absence of further ecological assessment, confirming the presence or absence of ecological values described in Appendix 3 in a Schedule 2 wetland, then a permitted

²⁴ The introduction text at 6.1 also states;

"It is intended that over time as ecological assessments are undertaken wetlands identified as meeting the Schedule 3 criteria will all be included in Schedule 1. Where an assessment demonstrates that the ecological criteria in Schedule 3 are met, those wetlands will be included in the regional plan by way of a plan change. Equally, where the criteria are not met, those wetlands should be removed from Schedule 2 by way of a plan change."

²⁵ Rule 10 WCL&WP.

activity status for sphagnum moss harvesting would not give effect to, or implement, the objectives and policies of the WCL&WP.

In accordance with Councils functions under s 30 of the Act

43. In relation to the harvesting of sphagnum moss from wetlands which are, or are likely to be significant, one of the relevant functions of a regional council (in s 30(1)(ga)) is the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity within a region. Another relevant function is contained in s 30(1)(c)(iia), the control of the use of land for the purpose of maintenance and enhancement of ecosystems in waterbodies.

44. It is submitted that, in light of the findings in the Buxton report, permitted activity status for sphagnum moss harvesting would not assist the Council to carry out its functions under s 30(1)(ga) or (c)(iia) of the Act.²⁶ Permitted activity status would not maintain indigenous biodiversity, or maintain and enhance ecosystems. Again, it is important to appreciate that the choice is not between permitted and prohibited activity status. The choice is between permitted and discretionary activity status. The ability to exercise discretion, and impose conditions or decline consent, is what enables Council to ensure proposed activities will maintain or enhance indigenous biological diversity and maintain or enhance ecosystems within significant wetlands.

In accordance with Part 2 of the Act

45. The functions of a regional council emphasised above, relate back to the overall purpose of the Act, including s 5(2)(b) - safeguarding the life supporting capacity of ecosystems, s 7(d) the intrinsic values of ecosystems, and s 6(c), the recognition and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. And indeed, the existing objectives and policies of the WCL&WP, and the current cascading rule status of non-complying (for Schedule 1 wetlands), discretionary (for Schedule 2 wetlands) and permitted (for non-scheduled wetlands) was confirmed by the Court after very careful consideration of Part 2.

²⁶ Buxton notes that "Excluding sphagnum moss harvesting from the definition of vegetation disturbance may present the Council with a risk under its obligations to protect biodiversity in Scheduled wetlands." -At pg vi, pg 196 of s 42A report.

46. As noted above, a regional council must prepare and change any regional plan in accordance with the provisions of Part 2. Accordingly, a fundamental issue is whether the proposed rules for sphagnum moss harvest contained in PC1 are in accordance with Part 2.

47. Part 2, and section 5 in particular, sets out the purpose of the Act. This is referred to as the 'engine room' of the RMA, driving all decisions made under the Act²⁷. It sets out the statutory purpose, and any statutory discretion under the Act needs to be exercised in a way that is consistent with and promotes this statutory purpose. Sections 6, 7 and 8 inform, and add context to the sustainable management purpose, by respectively describing matters of national importance that must be recognised and provided for, other matters to which particular regard must be had, and Treaty of Waitangi principles that must be taken into account, in achieving the purpose of the Act.

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing 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 and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

48. Social and economic considerations are an important part of sustainable management. But of course, they are certainly not the only part. Paragraphs (a), (b) and (c) of s 5(2), set out important components of sustainable management. They are essential prerequisites to decision making under the Act, and any changes to the WCL&WP needs to provide for the sustaining of the potential for the natural and physical resources of the region (other than minerals) to meet the reasonably foreseeable needs of future generations, the safeguarding of the life supporting capacity of air, water, soil and ecosystems, and the avoidance, remediation or mitigation of adverse effects of activities on the environment. PC 1 must recognise and give effect to 'the while' requirement in s 5(2) of the Act.

²⁷ See *Auckland City Council v John Woolley Trust* [2008] NZRMA 260, at [47].

49. Sections 6, 7 and 8 set out, respectively, matters of national importance to be recognised and provided for, other matters to which particular regard must be had, and Treaty of Waitangi considerations. Section 6 matters relate primarily to recognition, protection, and preservation of aspects of the natural, cultural and historic resources. Section 7 matters likewise include many matters relating to the maintenance and enhancement of natural and physical resources. These are all important matters which are directly relevant to the sustainable management of significant, or likely to be significant wetlands within the region.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
 - (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) *[Repealed]*
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

8 Treaty of Waitangi

In achieving the purpose of this Act all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

50. In my submission, permitted activity status for sphagnum moss harvesting in Schedule 2 wetlands would be contrary to;

- Section 5(2)(a), (b) and (c).
- Section 6(a), (b) and (c)
- Section 7(aa), (c), (d), (f) and (g).

In accordance with council's obligations to prepare and have regard to a s 32 report

51. I have earlier noted that the s 32A evaluation report materially misstates the position and fails to acknowledge or recognise the extent that sphagnum moss harvest is already permitted under the WCL&WP (outside Schedule 1 and 2 wetlands). Furthermore, the s 32A evaluation also fails to recognise that the vast majority of moss harvest in the region comes from non-scheduled wetlands. In my submission, a thorough s 32A evaluation of this issue would include;

- Analysis of the extent of non- Schedule 1 and 2 wetlands available for moss harvest in the region
- Analysis of the economic costs and benefits of the proposed changes to the rules
- Analysis of the environmental effects, including effects on the Appendix 3 significance values of the Schedule 2 wetlands subject to the proposal,
- Analysis of the extent to which the proposal achieves the purpose of the Act, including those provisions in Part 2 directly relevant and applicable to wetlands, and significant indigenous vegetation and habitats.

Give effect to the National Policy Statement for Freshwater Management

52. The National Policy Statement for Freshwater Management 2014 (**NPSFM**) sets objectives for both water quality, and quantity.

53. NPSFM Objective B4 requires *the protection of significant values of outstanding freshwater bodies.*

54. NPSFM Objective A2 requires that the overall quality of fresh water within a freshwater management unit is maintained or improved while ... (b) protecting the significant values of wetlands.

55. The wording of Objective B4 and A2, like many within NPSFM, is directive or prescriptive in nature, and as a consequence, PC1 must give effect to, or implement²⁸, the objective, in the context of the West Coast region.

Having regard to the West Coast Conservation Management Strategy

56. In considering PC1, regard must be had to the West Coast *Te Tai o Poutini* Conservation Management Strategy (**WCCMS**), prepared under the Conservation Act 1987. The WCCMS provides as follows;

3.7.10 Sphagnum Moss Harvesting

A concession is required to harvest sphagnum moss on public conservation land. The commercial harvest of indigenous species is inconsistent with the purposes for which some public conservation lands are held, consequently concessions for sphagnum moss harvesting will not be granted in those areas.

Scientific evidence suggests that moss has a growth rate enabling repeated harvesting every 7 to 10 years, with exceptional areas ready in less than this time. However, moss harvesting operations can have adverse effects on wetland ecology. Harvesting moss can disrupt the natural functioning of freshwater ecosystems, lead to the introduction of invasive weeds, cause tracking and introduction of rubbish, disturb wildlife and adversely affect other species present in sphagnum moss swamps. Harvesting activities can also give rise to increased risk of fire. Over 90% of freshwater wetlands in New Zealand have been lost to human modification; therefore freshwater wetlands are an ecosystem of high national priority for increased protection.

CONCLUSION

57. Schedule 2 wetlands, are wetlands which the Environment Court has confirmed are significant, or are likely to be significant. The Objectives and Policies of the WCL&WP require that their values be protected, and that activities within them be controlled to ensure their natural character and ecosystems are sustained.

²⁸ See *Environmental Defence Society v New Zealand King Salmon Co Ltd* [2014] NZSC 38. At para 77. ““Give effect to” simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it.”

58. There is currently a cascading activity status for sphagnum moss harvest (and other vegetation disturbance), non-complying in Schedule 1 wetlands, discretionary in Schedule 2 wetlands, and permitted in wetlands outside Schedules 1 and 2 (and outside of riparian margins or erosion prone areas).
59. Discretionary activity status provides for a full assessment of values, including an assessment against the ecological criteria in Appendix 3 to the plan. Sphagnum moss harvesting is not prohibited in Scheduled wetlands. It can occur, subject to assessment and the imposition of appropriate conditions.
60. The ability to consider an application, assess a site against the ecological criteria in Appendix 3, impose conditions, or even decline an application, are essential in order to give effect to or implement the relevant objectives and policies in the WCL&WP, and achieve the purpose of the Act. For these reasons, the current discretionary activity status for sphagnum moss harvest in Schedule 2 wetlands should be retained.



D van Mierlo
Counsel for the Director-General of Conservation
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