

Before the Commissioner on behalf of
Otago Regional Council

Alexandra

Under the Resource Management Act 1991

In the matter of Application RM18.0046

Pioneer Energy Limited (PEL)

Applicant

Statement of Nigel Paragreen for the Otago Fish and Game Council

6 July 2022

Otago Fish & Game Council

PO Box 76, Dunedin 9054
p + 64 3 477 9076
otago@fishandgame.org.nz

Introduction

- 1 My name is Nigel Paragreen. I am the Environmental Officer for the Otago Fish & Game Council (**Fish and Game**). In this capacity I provide policy and planning advice to Fish and Game and represent them in proceedings like this. I have been in this role since 2017, and have worked in environmental management and environmental planning in New Zealand and Australia for the last 10 years.
- 2 I'm speaking in the place of Ian Hadland today, who is sick and sends his apologies.
- 3 Fish and Game is a statutory body with functions to advocate for angling and gamebird hunting values, and for the habitat upon which those species depend. Further detail on this is laid out in the Fish and Game submission.
- 4 I speak to you today in this capacity.

Submission and relief

- 5 Fish and Game's relief is that the application should be declined because of insufficient information and that, in the event the variation is to be granted, conditions be imposed that will limit the effects of the drawdown.
- 6 Since the submission was written, we've had key information provided from the applicant, in the models of scenarios B and C, and legal advice from the ORC stating that those scenarios are the relevant comparison.
- 7 Fish and Game's relief is still relevant, though this significantly changes the context they are viewed in, such that the issues identified in the submission can be boiled down to two themes, which I intend to speak to today:
 - a. Irrespective of which scenarios are used, there is not enough information to properly assess the adverse effects on recreation.
 - b. A comparison using scenarios B and C is unrealistic and they should not be the only comparators.
- 8 I note also the four issues identified by Fish and Game in its submission. These remain relevant and, for the most part, I leave them as read.

Consultation and insufficient information on hand

- 9 The consultation process clearly didn't go as planned for the parties and I'm reluctant to get into an unproductive discussion about the details. I note that F&G has provided an overview in its submission¹ and Mr Nicolson has provided a response in evidence.²
- 10 There are three points relevant to the consultation process which are useful to understand the context of the hearing:
- a. Critical information about the way in which the lake will be managed has not been available for much of the consultation period. It was well after submission deadlines that even the scenarios B and C were provided by the applicant. Furthermore, it was as late as the site visit that Fish and Game found out that one of the intended consequences of the variation was to lower the lake level in early summer, when recreational use is at high levels.
 - b. There has been slew of s92 information requests in relation to the application. This is indicative of the sparse information provided in the application. In total, the ORC website for this hearing process lists 44 further information requests.³ Again, 21 of these further information requests were considered necessary after the submission deadline.
 - c. Throughout the consultation period Fish and Game has identified a need for further information on the impacts of the variation on recreation. This has not been provided, as Dr Booth confirms in her evidence.
- 11 I highlight these points to demonstrate just how difficult it has been, and continues to be, to assess the adverse effects of this application. Despite a four-and-a-half-year consultation period, Fish and Game still does not have robust information to rely upon for an analysis of effects under scenario D and for recreation under scenarios B, C and D.

Lake Onslow recreation and amenity values

- 12 Fish and Game, as the body delegated by parliament with managing the sports fishery, has inherent expertise in the assessment of impacts on angling. We provide comments on angling with the weight of that expertise.

¹ Paragraphs 10 - 12

² Paragraphs 23 – 27 and 32 - 33

³ <https://www.orc.govt.nz/consents-and-compliance/current-notified-applications/rm18004-pioneer-energy-limited>

13 Angling as an activity is underpinned by two main factors – the fishery itself and access to the fishery. Various ecologists have provided evidence on impacts on the variation on the fishery itself. Mr Couper has outlined commonalities between them which indicates that higher, more stable lake conditions will produce better results for the fishery than a smaller and/or more variable lake. This is the experience of Fish and Game.

14 We are largely in agreement with the evidence provided on the recreational sports fishing values of Lake Onslow presented by Mr Nicolson⁴, and Dr Booth⁵ and also the amenity values description in the s42A report.⁶ In short, these identify the sports fishing value as high. This is reflected in the Fish and Game submission.

15 Of the recreation experts, Dr Booth is the most experienced and qualified to assess recreation and we consider that her evidence is accurate⁷ in the description of assessment limitations and the general description of recreation responses to scenarios.

16 On limitations, I highlight that in her evidence, Dr Booth explicitly states critical limitations in the application:⁸

- a. that the applicant relies on ecological assessments for recreation rather than access to the resource;
- b. that the report submitted with the application⁹, is incomplete and out of date; and
- c. that an assessment of effects with respect to recreation is absent.

17 Furthermore, she states in evidence that:¹⁰

"I have not undertaken an independent assessment of recreation values and effects of the proposed consent variation upon those values as that is not my role."

18 Critically, in evidence Dr Booth agrees with the Fish and Game submission in that:

⁴ Evidence of Mr Nicolson, paragraph 40iv

⁵ Evidence of Dr Booth, paragraphs 21, 34-39

⁶ S42A report, pg 18

⁷ I note that corrections have been made in her hearing statement.

⁸ Evidence of Dr Booth, paragraph 24

⁹ *Draft Interim Lake Onslow Amenity Report: Lake Onslow Recreation Values*

¹⁰ Evidence of Dr Booth, paragraph 25

*"The adverse effects upon angling arising from the altered operating regime cannot be determined from the information provided"*¹¹

19 As promised in its submission, Fish and Game has provided general information on recreation patterns and potential adverse effects.¹² We can associate these general trends with scenarios which create lower, more frequent or longer duration lake levels.

20 What cannot be gleaned from the general trends is how they manifest as effects for anglers. Dr Booth describes 'displacement' where changes in lake condition cause anglers to no longer fish the lake.¹³ Fish and Game expects that the displacement of anglers due to lower, longer or more frequent low-level events, as caused by this variation, may take the form of removing fishing options at the lake or potentially displacing anglers from the lake altogether. It would be logical that individuals would be displaced at different scales of change, according to their recreation preferences and palatability to risk.

21 Fish and Game is unable to inform the sensitivity between recreation impact (such as displacement) and lake level for any scenario because:

a. Scenarios B and C are so unrealistic and foreign at Lake Onslow, we find it difficult to imagine how anglers will react to those conditions – bar a general distaste compared to scenario A. I note that Dr Booth grapples with the same issue, stating that "... I am not clear whether anglers could fish Lake Onslow when it is at its lowest level..."¹⁴ The answer to that question is not clear to Fish and Game either.

b. There is no reliable information on likely lake levels under Scenario D on which to base an opinion. I do acknowledge that had we had information for this scenario, it is likely that we could more accurately imagine angler reaction, as lake levels are unlikely to be as drastically low as under scenarios B or C.

22 Dr Booth raises a valid concern in suggesting that at some point the recreation value of the lake may erode to such an extent that people no longer find it worth their while to visit

¹¹ Evidence of Dr Booth, paragraph 109(a)

¹² Submission of Fish and Game, paragraphs 29 - 38

¹³ Evidence of Dr Booth, paragraph 86

¹⁴ Evidence of Dr Booth, paragraph 92

the lake. Like Dr Booth, Fish and Game is unable to assess where that point lies. It is possible that it occurs somewhere between scenarios B and C.

23 The underlying issue of displacement illustrates is that there is little reliable information on hand which can be used to assess the adverse effects of the application upon recreation outside of generalisations.

24 I note that both planning experts carry on their policy analysis despite the documented concerns of Dr Booth and Fish and Game. Fish and Game submits that this is in error.

25 Fish and Game also cannot see how the variation could be granted with such a deficiency, as it is not possible to have regard to the adverse effects on recreation without a factual basis to do so.¹⁵

26 As an aside to the displacement concept. I feel I must briefly address Mr Nicolson's critique¹⁶ using data from the National Angler Survey. Mr Nicolson correlates angling effort with stability of the lake over time to make conclusions about angler preferences. For Fish and Game, who commissioned the surveys, this is an inappropriate use of the data. With only 4 data points over roughly 20 years and high error on estimates, there are not enough data points yet to make robust conclusions in the manner Mr Nicolson desires. The survey results are more useful for assessing the general scale and significance of fisheries.

27 More in-depth information is required to understand the linkages between lake levels and angling effort, which is one point Fish and Game has been arguing.

Scenarios B and C are unrealistic

28 At an even more fundamental level, Fish and Game is concerned about the suggestion that scenarios B and C are the relevant comparators against which a decision should be made. These scenarios are entirely divorced from the reality of how the lake is and will be managed.

29 In evidence, Mr Jack states clearly that "*Any change to Lake Onslow will likely be indistinguishable from the historic variability*".¹⁷ His justification for that is that it is "*not in*

¹⁵ Resource Management Act s104(1)(a)

¹⁶ Evidence of Mr Nicolson, paragraph 40(x)

¹⁷ Evidence of Mr Jack, paragraph 22

PEL's interests to draw down Lake Onslow at significantly higher rates"¹⁸ because failing to meet its hedged commitments will lead to "significant economic losses for the company".¹⁹

30 Based on this, I perceive broad agreement between the applicant and Fish and Game that it is unlikely the Lake will be managed under either scenario B or C.

31 Quality Planning, a resource which exists to "promote good practice by sharing knowledge about all aspects of practice under the RMA",²⁰ provides a description of the receiving environment which is similar to that of the Otago Regional Council's legal opinion. Its advice²¹ includes this helpful statement:

"The 'environment' upon which effects should be assessed is therefore the existing and reasonably foreseeable future environment. In identifying the environment, a council should consider the environment as it is at the time of the application. It should also consider the likelihood of change to that environment in the future, based upon the activities that could be carried out as of right or with respect to resource consents that have been granted (where it is likely that they will be given effect to)."

32 The consents at Lake Onslow will certainly be implemented in future, at least in part. For Fish and Game, the question at hand is whether it is reasonably foreseeable that the consents will be exercised to their maximum, given that it is so clearly against the interests of the consent holder. For Fish and Game, the answer to that question is no.

33 I note that legal counsel has provided some support to this line of thought. Ms Irving states that "That is not to say that the 'on the ground' environment is to be completely ignored. A certain degree of pragmatism needs to be employed, taking a 'real world' view of how the consent will be exercised."²² Similarly, when the Otago Regional Council's legal opinion discusses the *Hawthorn* case, the authors state it must be applied using a 'real world'

¹⁸ Evidence of Mr Jack, paragraph 19

¹⁹ Evidence of Mr Jack, paragraph 20

²⁰ <https://www.qualityplanning.org.nz/>

²¹ <https://www.qualityplanning.org.nz/node/850>

²² Opening submissions of counsel for the applicant, paragraph 10

approach.²³ In this case, the evidence submitted by Pioneer reveals that scenarios B and C are unrealistic in real world conditions.

34 It is not clear to me how we will take that real world view without genuinely considering effects under scenarios A and D.

35 The applicant has been clear that they will not provide information on what lake levels may look like under scenario D.²⁴ This means it is impossible to consider the resulting adverse effects as required by section 104 of the Resource Management Act. I note that no expert witness has provided a genuine analysis of effects under scenario D.

36 If the commissioner were to agree with Fish and Game and find that scenarios A and D are relevant comparisons, we find it difficult to see how the variation could be granted given the lack of information for scenario D.

Mitigation

37 In the alternative, if the variation is to be granted, then Fish and Game seeks that conditions be imposed which will keep the applicant to their word that "*Any change to Lake Onslow will likely be indistinguishable from the historic variability*".²⁵

38 The most likely conceptual candidate for a consent condition which may achieve this is a monthly restriction on the drawdown. This would give the applicant additional flexibility to draw the lake down in the short term, while limiting the extent to which that flexibility can be exercised in the medium term.

39 The applicant has stated that 1,200mm/month would be acceptable to them. Fish and Game has no specific problem with that number. We simply have no idea to what practical extent it will restrict the exercise of the variation.

Conclusion

40 Thank you for the opportunity to speak to Fish and Game's submission.

²³ Wynn Williams memorandum dated 13 May 2022, paragraph 21

²⁴ Fish and Game submission, paragraph 48 – 49. Further information request dated 23 September 2021. Evidence of Mr Nicolson, table within paragraph 29.

²⁵ Evidence of Mr Jack, paragraph 22