

## MEMO

**DATE:** 09/09/2026

**TO:** David Allen, Hunua Quarry Expert Panel Chair

**CC:** Phernne Tancock; Nick Pollard on behalf of Winstone Aggregates

**FROM:** Jeremy Prebble on behalf of Department of Conservation

**SUBJECT:** Hunua Quarry FTAA-2603-1185 Minute 8 Response

### DOC position on the Freshwater Fisheries Regulations 1983

Via Panel Minute 8, dated 04 September 2026 (Minute 8) the Panel has sought DOC's position on whether regulation 42(2) of the Freshwater Fisheries Regulations 1983 (**Regulations**) applied to existing culverts and fords or whether it only applies to those constructed after the regulations came into force (1983).

It is understood this is relevant as if the Regulations apply to existing (pre-1983) culverts and fords, then it is a pre-existing legal obligation on the applicant to provide a safe fish passage (or seek a written exemption from the DG of Conservation) and informs the ongoing discussion between the parties in relation to offset and compensation measures proposed by the applicant.

#### **Regulation 42 provides:**

##### *42 Culverts and fords*

*(1) Notwithstanding [regulation 41\(2\)\(d\)](#), no person shall construct any culvert or ford in any natural river, stream, or water in such a way that the passage of fish would be impeded, without the written approval of the Director-General incorporating such conditions as the Director-General thinks appropriate.*

*(2) The occupier of any land shall maintain any culvert or ford in any natural river, stream, or water (including the bed of any such natural river, stream, or water in the vicinity of the culvert or ford) in such a way as to allow the free passage of fish:*

*provided that this requirement shall cease if the culvert or ford is completely removed or a written exemption has been given by the Director-General.*

*(3) A person who contravenes this regulation commits an infringement offence and is liable to—*

*(a) an infringement fee of \$800; or*

*(b) a fine imposed by a court not exceeding \$1,600.*

#### **DOC position on existing – pre 1983 culverts and fords:**

The position DOC takes on this issue can be stated briefly:

- Regulation 42(2) applies not only to new culverts and fords but to their ongoing maintenance. The language of the provision does not distinguish between future structures or past ones. There is also

- an ability to obtain a written exemption, which is a strong signal to have it apply to pre-existing culverts as well.
- The onus is on the occupier to show that any culvert or ford, regardless of when it was built, either has fish passage, or an exemption from that requirement.
- The requirement to either have fish passage or an exemption is only from 1983 onwards. What this means is because the requirement only came into force in 1983, the Department would not prosecute someone under these regulations for a pre-1983 situation (past breaches).
- Interpreting regulation 42(2) in this way is not giving it retrospective effect (Legislation Act 2019) because it does not make illegal the maintenance of a culvert without fish passage before 1983. Instead, it makes illegal the maintenance of a culvert or ford built before 1984, if maintained without free fish passage after 1983.
- This interpretation is not unjust or out of keeping with the intention of the legislation; Parliament has provided occupiers with the ability to gain an exemption from the Director-General (presumably where it would be unjust to require fish passage).
- There is a savings provision in the regulations (clause 74). It is not clear whether any existing authority exists in the present case and whether any transitional arrangements could therefore apply. In the absence of such information, this note is prepared on the assumption no existing legal authorisation for the culvert/fords exists.

## Conclusion

DOC's view is the Regulations apply to all culverts and fords, including those constructed prior to 1983. In relation to the extent of culvert remediation being included in the offsetting/compensation package, DOC considers that the occupiers of the relevant culverts and fords have an existing obligation to remediate them under s 42(2) of the Regulations, and that including the remediation of these culverts risks additionality for this present process.



Jeremy Prebble

On behalf of the Department of Conservation