

BEFORE THE SOUTHLAND REGIONAL COUNCIL

APP-20191150 and APP-20191703

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for resource consents for the
Lake 2 Lake multi use trail

BY **THE FIORDLAND TRAILS TRUST**
Applicant

RIGHT OF REPLY AND PROPOSED CONDITIONS FOR THE APPLICANT

19 June 2020

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MAY IT PLEASE THE COMMISSIONER:

1. The Applicant is exercising its right of reply.
2. At the conclusion of the hearing you indicated your wish to see the Applicant focus its attention in reply to the proposal and proposed conditions of consent. Accordingly, that is largely what this reply does.

The Proposal

3. There are two options before you should you determine it appropriate to grant consent:
 - (a) With the third culvert; and
 - (b) Without the third culvert.
4. The Applicant maintains its position in respect of the effects and planning framework as set out in submissions of counsel and evidence. The wetland enhancement that would be enabled by the third culvert would improve the application's consistency with the policy framework, without any adverse effects upstream, given Mr Beale's and Mr Hamilton's evidence¹. Dr Lloyd's preference that the habitat remain dryland is, as he put it, thinking about the issue as an ecologist and not from a planning perspective², so in my submission need not be determinative. In addition, Mr Beale does not agree with him. As such it is submitted consent can be granted on the basis of the first option and the Trust sees some advantages with this approach in the context of the issues with wetland loss in the region.
5. Counsel's notes record an exchange between the Commissioner and the Reporting Officer where the Officer accepted that if the third culvert does not proceed then the application passes through the effects gateway³. The Applicant has therefore, carefully considered its position on the third culvert.
6. While its position is as set out above and it is not withdrawing the third culvert application, the Applicant offers, in the alternative, a proposal

¹ Notably his response to a question that he was confident the proposed stop logs would mitigate the risk of upstream dewatering.

² Recorded in counsel's notes.

³ She maintains her position that consent should not be granted under s 104. The Applicant's position on s 104 has been addressed and will not be repeated here.

whereby the area within the yellow polygon that would be the site of the “new” wetland be planted with facultative species that have a greater tolerance of wet or dry conditions similar to that found on the margins of the wetland currently (e.g. manuka, weeping mapou and rohutu). As inferred above, Dr Lloyd cast doubt of the extent of the wetland adjacent to the Trail prior to construction and, as such, would satisfy Dr Lloyd’s concerns, which is the only issue that he says may cause adverse effects that are more than minor. It would necessitate declining two of the consents sought⁴ but the Applicant is content with that if you are ultimately persuaded by Dr Lloyd’s evidence.

Conditions

7. Attached as Appendix RoR-1 are the conditions proposed by the Applicant under option (a) and as RoR-2 those for option (b)⁵. RoR-1 collapses the land use conditions into a single document (for convenience), and includes a separate diversion permit.
8. References to the use of the Trail have been deleted from all the consents because the consent is not authorising that activity.
9. The plan attached to my submissions⁶ has been included as part of the consent. It is noted that the third culvert is shown on the plan so it is not entirely accurate for option (b) but it is the only plan available showing the yellow polygon. However, it is clear on the consent which culverts are authorised and a note has been added addressing the point.
10. What was condition 9 of both proposals has been deleted because there is no evidence that these species are present and the conditions are therefore unnecessary.
11. New conditions from 13 and 11 have been added to address the planting that has been proposed within the yellow polygon. The conditions include the preparation of an ecological management plan.
12. The conditions are otherwise substantively the same as those attached to Mr McSoriley’s evidence.

⁴ See paragraphs 18(c) and (d) of Submissions of Counsel for the Applicant.

⁵ See paragraph 3.

⁶ WSP Plan: 6-VQ422.20 PO1 B.

13. It is noted that no discharge consent is sought so the conditions proposed by the Officer have not been addressed⁷.

Miscellaneous Matters

14. Finally, there are several matters arising during the hearing that I wish to address:
- (a) Mr Hamilton is the only hydrologist you have heard from and he is satisfied that the third culvert will not lead to adverse effects on hydrology of the upstream side of the wetland. Whether there is an adverse ecological effect is at issue between the ecologists as set out above;
 - (b) As noted above, there has been doubt raised by Dr Lloyd as to the extent of wetland habitat that would be lost due the trail. If that is correct, and there is no evidence to the contrary because the Applicant has not attempted to quantify loss spatially, in the context of the wetland policies the extent of any inconsistency (which is not accepted) would be even less;
 - (c) A question was put to Mr McSoriley about the weight that should be given to draft national policy statements under s 104(1)(c). His answer was that from a planning perspective they should not be considered because they are in draft and could still change. From a legal perspective, I agree with his conclusion and note that if drafts were to be considered under s 104 they would probably have been referred to at subs (1)(b)(iii) and (iv).



CP Thomsen
Counsel for the Applicant
19 June 2020

⁷ Counsel is told there may have been an error in the application referring to the same.