

Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)

Summary

I recommend the application is processed on a publicly notified basis. This is because I consider that the proposal will have more than minor adverse effects on the environment, based on the following in particular:

- the high ecological values and ecological significance of the areas to be disturbed
- the long-term adverse effects on those disturbed areas.

The application

Particulars

Applicant:	Tarora Development Limited
Application reference:	APP-20233491
Site address or location:	914 Takaro Road, Te Anau
New consent(s) for new activity(ies) (s88)	☒
New consent(s) for existing activity(ies) (s88)	☐
Change to conditions of existing consent(s) (s127)	☐

The proposal

Tarora Development Limited has applied for resource consents for:

- Vegetation clearance, earthworks, and land disturbance; and
- Damming, diverting and discharging water

associated with works to construct a fence and maintenance track within a wetland.

The purpose is to exclude predators from the wetland area, allowing for enhancement and regeneration of the wetland.

Land use consent and Water permit	
Relevant rule(s)	Regulation 42 of the NES-F ¹ Restricted Discretionary activity (vegetation clearance, earthworks, & dam, divert and discharge water) Rule 4 of the SWLP ² Discretionary activity

¹ Resource Management (National Environmental Standards for Freshwater) Regulations 2020

² SWLP = Southland Water & Land Plan

	Use of land within a wetland to maintain or enhance the wetland (not permitted by 74(a)). Rule 69 of the pSWLP (structure) Discretionary activity Rule 4 of the pSWLP (diversion of water) Discretionary activity
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Overall, the application is a **discretionary activity**.

Map showing the location of the proposed wetland fence, south of Takaro Lodge, and 20 km northeast of Te Anau township:





Position of the proposed boundary fence (red line) shown in relation to the wetland boundary (black line) through the northern section of the wetland



View west across mid-point of valley at wetland area/former lake site. The area where works have intercepted the wetland is out of site, well beyond the right margin of the photograph. The position of the proposed fenceline and track would be below the treeline on the far side of the valley.



View south from northwest corner from immediately south of proposed remediation area. Existing track visible on upper right of photo.

Photograph of predator proof fence along eastern side of the valley.



Image showing area where existing works intersect with wetlands. Remediation is to occur in these areas.



The predator-proof fence is classed as a wetland utility structure under the NES-Freshwater. As the track is required to provide for maintenance of the fence, it is also a wetland utility structure.

The activity is intended to maintain or enhance the wetland by excluding wild deer and pigs. However, it will result in the removal of indigenous vegetation and reduction in the size of the wetland. Therefore the activity cannot meet the permitted activity criteria under Rule 74(a) and is a discretionary activity under Rule 4³ of the Southland Water & Land Plan (as Rules 74[b] and [c] do not apply).

The diversion of water is incidental to the fence and track activity, rather than for the purpose of land drainage, which means that it does not fall under Rule 51(b) or Rule 51(e) of the Water and Land Plan. In the circumstances, I consider that the activity of damming and diverting water within a wetland falls under Rule 4. I note that, in terms of Rules 49 and 52, the diversion is non-consumptive and does not remove water from the catchment.

Although the activity is bundled as a discretionary activity, the restrictions on discretion under Regulation 56 of NES-F would have been:

- (a) the extent to which the nature, scale, timing, intensity, and location of the activity may have adverse effects on—
 - (i) the existing and potential values of the natural inland wetland, its catchment, and the coastal environment; and
 - (ii) the extent of the natural inland wetland; and
 - (iii) the seasonal and annual hydrological regime of the natural inland wetland; and
 - (iv) the passage of fish in the natural inland wetland or another water body:

³ Rule 74(b) does not apply to natural wetlands, and Rule 74(c) does not apply to modifications to maintain or enhance a wetland, so because the proposal does not meet the criteria under Rule 74(a) it defaults to Rule 4.

- (b) whether there are practicable alternatives to undertaking the activity that would avoid those adverse effects:
- (c) the extent to which those adverse effects will be managed to avoid the loss of the extent of the natural inland wetland and its values:
- (d) other measures to minimise or remedy those adverse effects:
- (e) how any of those adverse effects that are more than minor may be offset or compensated for if they cannot be avoided, minimised, or remedied:
- (ea) the extent to which the effects of the activity will be managed through applying the effects management hierarchy:
- (f) the risk of flooding upstream or downstream of the natural inland wetland, and the measures to avoid, minimise, or remedy that risk:
- (g) the social, economic, environmental, and cultural benefits (if any) that are likely to result from the proposed activity (including the extent to which the activity may protect, maintain, or enhance ecosystems).

Public notification consideration

1. Is notification mandatory?

1.1	Has the applicant requested that the application be publicly notified? (s95(3)(a))	☐ Yes	Application must be publicly notified. Go to 10.2
		☒ No	Go to 1.2
1.2	Was further information, or commissioning of a report, requested under s92?	☒ Yes	Go to 1.3
		☐ No	Go to step 2.1
1.3	If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?	☐ Yes	Public notification is required by s95C. Go to 10.2
		☒ No	Go to step 2.1

2. Is notification precluded?

2.1	Is each activity subject to a rule or NES that precludes public notification?	☐ Yes	Rule(s): enter rule Go to 4.1
		☒ No	Go to step 2.2
2.2	Is each activity a controlled activity?	☐ Yes	Application must not be publicly notified unless there are special circumstances. Go to 4.1
		☒ No	Go to 3.1

3. Is notification required?

3.1	Are any of the activities subject to a rule or NES that requires notification?	☐ Yes	Application must be publicly notified. Go to 10.2
		☒ No	Go to 3.2
3.2	Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (see Note)	☒ Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
		☐ No	Complete 3.3 and go to 4.1.

Note: In forming this opinion (a) to (e) apply:

- (a) we must disregard any effects on persons who own or occupy the land on which the activity will occur or any land adjacent to that land (section 95D(a));
- (b) we may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect (subject to Policy 36 of the pSWLP) (95D(b));
- (c) in the case of a restricted discretionary activity, we must disregard any adverse effects that do not relate to the matters over which the rule or NES restricts discretion (95D(c));
- (d) we must disregard trade competition and the effects of trade competition - 95D(d); and
- (e) we must disregard any effect on a person who has given written approval - 95D(e)

3.3 Reasons adverse effects on the environment are less than minor / minor / more than minor

The existing environment

Tarora Development owns land at Takaro Road, near Te Anau. In 'The Pocket', an open basin area surrounded on three sides by indigenous forest, there is a wetland, draining to the south. The size is estimated at 37.5 ha. There was a small dam, creating a lake, but that failed a few years ago. As a result, the vegetation within the wetland is going through succession, with species around the margins becoming established within the former lake, while the former lake margins are becoming drier.

Dr C L Newell of Korowai Ecology identified a number of wetland types in the valley and along the line of the proposed fence and track. The report states that the wetland in 'The Pocket' runs north to south, and is described as a shallow wetland about 1.5 km in length, and about 0.4 km wide at its broadest point.

I was advised during my site inspection that there had been an access route along part of the proposed western fence line, although I understand that the route is outside the wetland itself.

Dr Newell describes the differing forms of vegetation along the line of the western fence line and track. In general this is outside the main wetland, but much of it has sedge wetland vegetation, particularly in seepage zones that extend like fingers from the main wetland up to the forest margin. There are also areas of bog-pine wetland and tussock-dominated wetland. Not all of the area is wetland, with tussock and grass species along the proposed alignment. But Dr Newell estimated that wetland vegetation occurred along approximately 75% of the proposed fence line.

Dr Newell identified the ecological value of the wetlands as very high. Section 5.2.1.2 of the Korowai Ecology report considers the wetland communities along the proposed fenceline and track in terms of the significance assessment criteria under Appendix 3 of the Southland Regional Policy Statement. This assessment is for determining if an area is an area of significant indigenous vegetation or a significant habitat of indigenous fauna for the purposes of s6(c) of the RMA. Dr Newell stated, in Section 5.2.1.2 of the report that:

"Six of the seven vegetation communities have ecological significance."

Table 3. Summary of Significance Assessment Criteria to determine if vegetation along the proposed western boundary fence line has ecological significance (based on Appendix 3 of the Southland Regional Policy Statement). ✓ = significance, - = not significant.

Vegetation Community:	Represent - ativeness	Rarity/ Distinctiveness	Diversity & Pattern	Ecological Context
Sedge wetland – v floor	✓	✓	✓	✓
Sedge wetland - slopes	✓	✓	✓	✓
Short mixed wetland	✓	✓	✓	✓
Red tussock wetland	✓	-	-	✓
Bog pine shrubland	✓	✓	✓	✓
Red tussock grassland	✓	-	-	✓
Mixed low grassland	-	-	-	-

From Page 23 of the Korowai Ecology report

“Six of the seven vegetation communities along the proposed western boundary fence line have a regional threat status:

- *One vegetation community (bog pine shrubland) has threatened status, although most of this community will be west of the proposed fence line.*
- *Two vegetation communities have “at risk” status: red tussock wetland, red tussock grassland.*
- *Three wetland communities are considered “rare”: sedge wetland – valley floor, sedge wetland – seepage slopes, short mixed wetland.”*

Section 5.3 of Dr Newell’s report considered the ecological value in terms of EIANZ⁴ guidelines and determined that

“In summary, the assessment of the overall ecological value, based on ecological criteria outlined in EIANZ Guidelines (Roper-Lindsay et al. 2018), found (see Tables 4 & 5):

Six of the seven vegetation communities present along the proposed fence have high or very high ecological values. This reflects:

- *the rare status of many of these communities*
- *the high diversity of wetland communities*
- *the sensitivity of wetland communities to disturbance”*

Table 5. Explanation behind to assignment of the ecological value for each vegetation community shown in Table 4.

Vegetation Community:	Explanation of Ecological Value Rating	Ecological Value
Sedge wetland – v floor	A species-rich, rare wetland community.	Very High
Sedge wetland - slopes	A species-rich, rare wetland community.	Very High
Short mixed wetland	A species-rich, rare wetland community.	Very High
Red tussock wetland	A regionally rare wetland community.	Very High
Bog pine shrubland	Regionally and nationally rare community.	Very High
Red tussock grassland	A regionally rare community.	Very High
Mixed low grassland	Lower ecological values but species rich.	Moderate

From page 25 of the Korowai Ecology report

No threatened plant taxa were present along the proposed fence line, although there may be skinks and invertebrates that are either threatened or of very high ecological value.

⁴ EIANZ = Environment Institute of Australia and New Zealand

The land in 'The Pocket' is owned by the applicant, but the forest areas almost surrounding it on three sides are owned by the Department of Conservation. On the east side of the valley, amongst the forest and well outside the wetland on the valley floor, the applicant has already cut a track and constructed a fence. That existing fence turns west along the northern margin of the pocket. The proposed fence along the west side of the wetland is intended to join with the existing fence to contain the area.

At present the 'Pocket' area is subject to grazing and disturbance by wild deer, possums, and pigs. Dr Newell's report notes *"Evidence of deer browse on native vegetation is widespread. Recent and historic pig rooting was also observed in several locations throughout the wetland. Rooting permanently damages wetland communities, sometimes changing the composition of plant species present and drainage patterns."* (page 12)

Adverse effects of the proposed activities on the environment

The construction activities may have ecological and hydrological effects and effects on cultural and spiritual values. The applicant considers that protecting the wetland from pest animal species, particularly deer and pigs, will provide sufficient mitigation for the loss of wetland habitat.

The Southland District Council has confirmed that the activity would not contravene its rules on indigenous vegetation clearance.

Ecological effects

As mentioned above, the applicant commissioned an assessment from Dr C L Newell of Korowai Ecology. Dr Newell noted that the fence line would run through a mix of wetland and non-wetland areas, and that it followed *"the most logical position to ensure the least environmental impact to vegetation."* The report also noted that the fence could be positioned further into the forestry line to further reduce intersection with wetland areas but would disturb bat (pekapeka) habitat.

The applicant has proposed a mix of mitigation, remediation, and offsetting. Dr Newell identified removal of willow trees and ragwort, restoration planting and excluding animal pests from the wetland areas as mitigations. Removal of ragwort and willows should occur as soon as practicable, and plantings should begin within 2 years of completion of the fence.

The applicant considered the adverse effects identified by Dr Newell and proposes to avoid or mitigate them as outlined in the following table:

Potential Effects	Ranking of effect without mitigation	Management response	Comments/proposed mitigation measures
Noise from indigenous vegetation clearance and ground preparation for the fence line	Low-Moderate	Avoid/Mitigate	- For fauna, noise will be low and short lived. - Construction can be timed to avoid key breeding seasons.
Noise building the fence line	Low	Avoid/Mitigate	

Soil disturbance through excavation	High	Avoid/Mitigate	- Minimise excavation. - Build access road on top of existing soil profile with gravel.
Loss of organic matter & soil biota due to excavation	Low	Avoid/Mitigate	
Disruption to the natural soil profile	High	Avoid/Mitigate	
Disturbance to vegetation adjacent to road by soil overrun	High	Avoid/Mitigate	- Build access road on top of existing soil profile creating minimal overrun. - Any overrun will be added back onto the access road or carted off site. At northern end of the wetland, carefully scrape all soil off adjacent wetlands.
Soil erosion and run off	Low	Avoid/Mitigate	- Limit the width of the access track to 4 m. - Undertake works with erosion and sediment controls in place.
Invasion of undesirable weedy plants from roading machinery into areas with exposed soil.	Moderate-High	Avoid/Mitigate	- Clean equipment before entering work site to ensure equipment is free of mud and plant seeds. - Active and ongoing removal/spray programme to eliminate any undesirable weeds that establish.
Invasion of undesirable	Moderate-	Avoid/Mitigate	Use cleaned gravel.
weedy plants from roading gravels	High		Active and ongoing removal/spray programme to eliminate any undesirable weeds that establish.
Invasion of problem weedy plants into intact indigenous vegetation	Moderate-High	Mitigate	Active and ongoing removal/spray programme to eliminate any undesirable weeds that establish.
Disrupt natural water flow across wetland through water diversion	High	Avoid/Mitigate	Use of culverts and geotextile cloth as appropriate and drainage gravels as fill for the track over wetland areas that will at least partially allow water to flow naturally from one side of road to other.
Disrupt natural water flow across wetland by placement of fill on wetland	High	Avoid/Mitigate	

Generate organic material (tree stumps, roots, slash, branches)	Low	Avoid/mitigate	- Access road and fence line to be within the non-forested band east of the forest edge. - Remove any cleared vegetation from the site.
Disturbance to root systems of tree species adjacent to cleared/excavated area	Very High, cumulative	Avoid/Mitigate	Position the access road and fence line to minimise damage to mature tree roots. Excavation that would result in root disturbance should be at least 6 metres from the base of mature beech trees and at least 3.5 metres from the base of mature trees of other woody species.
Loss of indigenous biodiversity (also see loss of habitat, habitat fragmentation, loss of key species)	Moderate	Avoid /mitigate /offset	- Limit the width of the access track to 4 m. - Mitigated long-term by enhancement planting in the old lake bed to improve habitat for native wetland species and removal of willows and ragwort. - Where possible route road through grassland vegetation.
Loss of habitat	Low-moderate	Mitigate/offset	
Habitat fragmentation/loss of connectivity/flow	Moderate-High	Avoid/mitigate /offset	
Loss of key species	Low-moderate	Avoid/offset	
Disruption/alteration of	Moderate-High	Mitigate/offset	
ecosystem processes			
Reduction in vegetation health	Moderate-High	Mitigate/offset	- Where possible route road through grassland vegetation. - Offset by enhancement planting in the old lake bed to improve habitat for native wetland species, and removal of willows and ragwort.

Loss of key wetland communities	Moderate-High	Avoid/offset	- For low wetland communities, where possible route road through grassland vegetation. For the bog pine shrubland, route road away from the shrubland or through natural gaps between the shrubland and adjacent forest. - Offset by enhancement planting in the old lake bed to improve habitat for native wetland species, and removal of willows and ragwort.
Edge Effects	Low	Avoid/mitigate	Access route and fence line to positioned away from the forest edge in non forest vegetation.
Disrupt the flow of native species due to fence and road	Moderate-High	Mitigate/offset	

Dr Newell estimated that the proposed works would disturb 4,060 m² of wetland areas, all of which were of high ecological value. 40% of this area is sedge wetland – valley floor, which is a type of wetland that is widespread throughout ‘The Pocket’ wetland. By comparison Dr Newell estimated the entire wetland at about 375,000 m² in size, so the area disturbed by the works would amount to 1% of the total wetland area.

To minimise the disturbance, the applicant will remove the spoil or overburden from the track construction (which I understand to be the soil overrun mentioned above), which will limit the disturbance to the width of the track and fence, about 4 metres. Removing the spoil during construction adds to the expense, but if the spoil had been placed alongside the track, as it was at the northwest corner, the disturbance would be almost double. Not placing the spoil within the wetland is therefore an important way of avoiding some of the potential impact of the proposal.

In Section 6.2 of the Korowai Ecology report Dr Newell discussed the duration of various effects on the environment of the proposed activity. The long term effects were then listed in the summary as:

- Soil disturbance through excavation
- Disruption to the natural soil profile Disturbance to vegetation adjacent to road by soil overrun
- Invasion of undesirable weedy plants from roading machinery into areas with exposed soil
- Invasion of undesirable weedy plants from roading gravels
- Invasion of problem weedy plants into intact indigenous vegetation
- Disrupt natural water flow across wetland through water diversion
- Disrupt natural water flow across wetland by placement of fill on wetland
- Disturbance to root systems of tree species adjacent to cleared/excavated area
- Habitat fragmentation/loss of connectivity/flow
- Alter wetland community composition
- Loss of key wetland communities
- Disruption/alteration of ecosystem processes
- Reduction in vegetation health
- Disrupt the flow of native species due to fence and road

Dr Newell stated that “most of these probable environmental effects would affect only a small proportion (<5%) of the wetland, although the impacts of altering drainage and water flow patterns could affect a much larger proportion of the wetland.”

Planned remediation areas:

The applicant had carried out preparatory work to establish a track across the northwest corner of the wetland, to join the existing track along the western margin of the valley with the existing track and fence array on the eastern side of the valley. At the northern end of the valley the new track cut across wetland areas, removing vegetation and soil and altering the movement of water. This particular area is estimated to be about 300 m² and is to be remediated.

While a track is needed to support the proposed fence for much of its length, where the works have damaged the most recognisably wetland area, the area is to be remediated and fenced without a supporting track. The fence will be accessible from the tracks on either side of the ‘red’ area.



Red area: Most clearly wetland area. This area is to be fully restored as far as practicable. Given the orientation of the valley, interruption of hydrological processes in this area may be more significant than elsewhere along the western margin. Fence can be erected but no track in this area.

(Lower southern part of red area appears much longer on aerial than it did on the ground.)

Approximate southern co-ordinate 1,204,370 4,970,965 NZTM

Approximate eastern co-ordinate 1,204,414 4,971,000 NZTM



View north across Red area. Area in foreground has been stripped back to clay. Upper centre shows that excavation has intercepted wetland.



View west in Red area showing exposed clay base and cut face of wetland beyond it.

Purple area: northern side of track appears to intersect a lesser wetland. Restoration to extend about midway across new track.



View west along east-west track. Northern side of track cuts into wetland, but track cuts less into substrate on south side.



View of intercepted wetland area on north side of east-west track. Purple area.

Yellow area: southern half of track, spoil heap and spongy pasture. Track can be shifted more to this side if required. Fence can run along this alignment (South side of track may have been wetland before the track intercepted the wetland on the northern side, but now has appearance of pasture and isolated rushes)



View west on south side of east-west track. Ground is spongy but appears to be dominated by pasture species. Spoil heap is adjacent to track (hidden). Yellow area.



Reverse view along track to east. Spoil heap and Yellow area to the south of the track centre. Drain and gravel heap in foreground marks the end of the Red area.

Consideration of illegal works:

The damage to the wetlands that occurred when the track was created across the wetland was a breach of Rule 4 of the Southland Water and Land Plan and Regulation 42 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. However, caselaw is clear that there is limited scope to consider that in the consent process:

“... past conduct of an applicant is a matter of enforcement and does not provide a legitimate ground for refusing to grant a resource consent. It may become relevant in deciding the adequacy of conditions if there is evidence that earlier conditions have not proved to be satisfactory. However, the making of an application for a resource consent and the hearings that follow both before a consent authority and this Court on appeal should be allowed to become a trial of an applicant.” Walker v Manukau CC, EnvC C213/99, page 6.

The fact that the applicant is seeking a partly retrospective consent is also not an important factor:

“There is nothing inherently wrong with retrospective consents and we make clear that the consent parts of the Act are not to be used as a punitive arm. If a council in any particular instance considers there has been a breach of the RM Act or of the terms of its plan, it should use the prosecution or enforcement sections not punish the applicant by refusal of resource consent.” Colonial Homes Ltd v Queenstown Lakes DC PT Decision W104/95 28 August 1995, page 1.

Accordingly, the fact a retrospective consent for illegal works is sought does not change the assessment required.

With regard to the baseline for consideration of effect, where the proposal involves remediation of past illegal works, the damage caused by those works should not be considered to be the legal existing environment but at the same time it is the existing physical environment. In other words, the application should be considered as if those works had not occurred, although in practical terms the consent decision itself may have to apply conditions to ensure remediation towards the intended outcome.

S95D – are adverse effects more than minor?

Section 95D of the Resource Management Act asks whether an activity will have or is likely to have **adverse effects** on the environment. The use of “adverse effects” can be contrasted to “actual and potential effects on the environment of allowing the activity” in section 104.

In *Bayley v Manukau City Council* [1999] 1 NZLR 568 the Court of Appeal held that balancing good and bad effects is appropriate under s 104 but not when determining notification “save to the extent that the possibility of an adverse effect can be excluded because the presence of some countervailing factor eliminates any such concern for example, extra noise being nullified by additional sound proofing.”

The Court of Appeal returned to its findings in *Bayley* in *Norman v Tupuna Maunga o Tamaki Authority* [2020] NZCA 30. The Court said it would be wrong to consider only those aspects of the application that may be thought adverse in environmental terms, and leave out of account those which may be said to be positive in a relevant way. If there is a “direct and sufficient linkage” between the positive and adverse effect, then it would be artificial to leave out the positive effect when assessing whether the adverse effects on the environment would be more than minor. Of relevance in this instance, the judgement in *Bayley* in *Norman v Tupuna Maunga o Tamaki Authority* then went on to discuss temporary effects (paragraphs 262-272).

So, Section 5.1.8 of the application describes positive effects of the proposal that may be of relevance for the notification determination as:

- reducing the ecological and biodiversity impacts of browsing, rooting and trampling of the wetland by large, introduced animals, and
- enabling ecologically sensitive and rare wetland species to recover.

The fencing will have an immediate effect in stopping further degradation of the wetland by pigs and deer. In time the adverse effects of the disturbance on a small percentage of the wetland (estimated at <5% by Dr Newell) by the track and fence will be counter-balanced by restoration of the majority of wetland arising from the exclusion of those animals. But there are likely to be long-term adverse effects in the areas that are directly disturbed.

In short, I consider that the proposal will have adverse effects that, for the purposes of the consideration under s95D and s95A(8), will be more than minor. That is because of:

- The high ecological value and ecological significance of the wetland areas along the proposed fence and track;
- The disturbance of approximately 4,060 m² of wetland along the proposed fence and track;
- The long-term adverse effects to the areas that will be disturbed; and
- The delay in counter-balancing beneficial effects over the wider wetland.

That last point is derived from comments in Dr Newell’s report summarising conservation benefits “as recovery takes place”, which implies that recovery will occur over a period, and I also noted the proposed timeframe for commencement of plantings. However, because it is an implied delay I give it less weight than the other factors.

In terms of the scale of the affected area, 4,060 m² may seem small in the overall context of the wetland, but it is still thousands of square metres of ecologically significant wetland that will be lost or damaged. It is estimated that the Southland Region has lost 90% of its original natural wetlands in developed areas⁵,

⁵ Issues section of proposed Southland Water & Land Plan, page 21
Notification memorandum

which increases the value and significance of the remaining wetlands. Therefore, while I acknowledge that in the longer term the fencing and plantings will have beneficial effects on the ecology of the wetland, for the purposes of s95D, I consider that, based on the information provided in the application, the adverse effects will be more than minor, at least temporarily.

Planning provisions (policies and objectives) relevant to adverse effects

The following policies are relevant to the consideration of adverse effects on the environment.

Southland Water & Land Plan provisions:

- Policy 33 Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal.
- Policy 33A The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:
- (a) the loss of extent or values arises from any of the following:
 - (i) the customary harvest of food or resources undertaken in accordance with tikanga Māori
 - (ii) wetland maintenance, restoration, or biosecurity (activities to eliminate or manage pests and unwanted organisms, as those terms are defined in the Biosecurity Act 1993⁶)
 - (iii) scientific research
 - (iv) the sustainable harvest of sphagnum moss
 - (v) the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)⁷;
 - (vi) the maintenance or operation of specified infrastructure, or other infrastructure (a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring);

<https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/about-us/plans-and-strategies/regional-plans/proposed-southland-water-and-land-plan/documents/2024%2005%20Proposed%20Southland%20Water%20and%20Land%20Plan.pdf>

⁶ The Biosecurity Act definition of pest refers to the regional pest management plan, which includes feral pigs as a pest.

<https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/about-us/plans-and-strategies/regional-plans/southland-regional-pest-management-plan/documents/Southland%20Regional%20Pest%20Management%20Plan%202019%20-%202029.pdf>

⁷ wetland utility structure—

- (a) means a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring; and
- (b) for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):
 - (i) jetties:
 - (ii) boardwalks and bridges connecting them:
 - (iii) walking tracks and bridges connecting them:
 - (iv) signs:
 - (v) bird-watching hides:
 - (vi) monitoring devices:
 - (vii) maimai

(vii) natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or

- (b); or
- (c); or
- (d); or
- (e); or
- (f)

- Policy 34 Recognise the importance of wetlands and indigenous biodiversity, particularly their potential to improve water quality, offset peak river flows and assist with flood control, through encouraging:
- 1. the maintenance and restoration of existing natural wetlands and the creation of new wetlands; and
 - 2.

Definitions from the National Policy Statement for Freshwater Management 2020 that are relevant to Policy 33A:

Loss of value, in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values:

- (a) any value identified for it under the NOF process
- (b) any of the following values, whether or not they are identified under the NOF process:
 - (i) ecosystem health
 - (ii) indigenous biodiversity
 - (iii) hydrological functioning
 - (iv) Māori freshwater values
 - (v) amenity values

Restoration, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.

Wetland maintenance means activities (such as weed control) which prevent the deterioration, or preserve the existing state, of a wetland's ecosystem health, indigenous biodiversity or hydrological functioning.

Comment

Policy 33 seeks to prevent the reduction in area, function and quality of natural wetlands. The proposed works will reduce the area of the wetland and have localised and temporary effects on the function and quality of the wetland.

With regard to Policy 33A, the proposal is a fence for maintenance, restoration and biosecurity purposes (in this case exclusion of wild pigs and deer), and the associated track would be classed as a wetland utility structure. Therefore the structures fall within the classes described in Policy 33A(a)(ii) and Policy 33A(a)(v). To this extent, the activity is not to be avoided under Policy 33A.

Policy 33A provides relief from the requirement to avoid the loss of extent of wetlands, and to protect wetland values, in some circumstances. However, meeting an exception in Policy 33A does not mean that loss of wetland extent is supported by Policy 33, or that effects on extent or values should be regarded as minor in those circumstances.

The definition of 'loss of value', which is relevant to Policy 33A, helps identify adverse effects that should be considered with regard to activities within or affecting wetlands. Ecosystem health, indigenous biodiversity and hydrological functioning are all affected by the proposal.

Policy 34 emphasises the importance of wetlands and indigenous biodiversity and seeks to encourage maintenance and restoration of wetlands. The proposal is consistent with that intent, but there will be adverse effects on the wetland and indigenous biodiversity that Policy 33 recognises as important.

Te Tangi a Tauira provisions:

- | | |
|------------------|---|
| Policy 3.5.18(1) | Avoid the direct or indirect drainage or modification of any existing wetland area. |
| Policy 3.5.18(3) | Advocate for the restoration and enhancement of wetland areas, as part of any consent application where it is deemed feasible to include such conditions. |
| Policy 3.5.18(4) | Require that wetlands are fenced in any area where they may be at risk from stock damage. |
| Policy 3.5.17(3) | For Ngāi Tahu ki Murihiku, all species are taonga, whether weta, snail or kiwi, and the effects of an activity on species must consider all species equally. |
| Policy 3.5.17(4) | Where practical, indigenous vegetation that is removed or damaged as a result of land use activity should be replaced. |
| Policy 3.4.11(1) | Advocate that all management decisions shall take into account the protection and survival of indigenous species of flora and fauna (rare and not rare, and including taonga species contained in the Ngāi Tahu Claims Settlement Act 1998) in their natural habitats and ecosystems. |
| Policy 3.4.11(2) | Ensure that animal/bird pest control programmes avoid adverse impacts on mahinga kai species or to areas of cultural significance. |
| Policy 3.5.10(1) | The role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater must be given effect to in freshwater policy, planning and management. |

Comment

The above policies (from sections on the plan on wetlands, biodiversity, animal and bird pests, mahinga kai and water⁸) indicate that activities in wetlands and affecting biodiversity can impact on cultural and spiritual values. I have included some provisions that can be viewed as supportive of the applicant's intent to maintain, restore or enhance the wetland, because I consider that these either identify potential effects (e.g. stock damage), or can apply to cumulative effects (e.g. protection of species under Policy 3.4.11(1)).

Conclusion: significance of adverse effects on the environment

From the information in the application I consider that the adverse effects on the environment of the proposal are more than minor. The key factors in my view are:

⁸ The application site is within the Hill Country & Foothills area defined in Te Tangi a Tauira. However text in Section 3.4.9 of the plan clarifies that Policies 3.5.10-5.3.20 in the Southland Plains section also apply to this area.

- There are wetland areas along the proposed fence and track that have high ecological values, and have ecological significance.
- The works will disturb about 4,060 m² of wetland areas. Although this is 1% of the wetland area in The Pocket, it is in absolute terms (i.e. not relative) a large area of wetland with high ecological values and ecological significance that will be disturbed.
- There will be long-term effects in the areas that are disturbed. In my opinion these long-term effects are more than minor, given the value and significance of the wetland.
- The fence will prevent further degradation of the wetland by deer and pigs, but restoration of the wetland ecology and biodiversity will take time to develop. The temporary effects of the degradation will, separate to the long-term effects, be more than minor until the positive effects of the applicant's management responses take effect.

I acknowledge that the area of disturbance is only a small percentage of the wetland, and that the applicant has provided a list of measures to avoid, remedy or mitigate adverse effects. One of the most effective will be carting away the spoil during the track construction, which alone will almost halve the potential area of disturbance.

4. Special circumstances and public notification

4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?	☐ Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	☒ No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

4.2 Reasons why special circumstances do or do not exist

Special circumstances are circumstances outside the common run of things that are exceptional, abnormal or unusual, but less than extraordinary or unique. They are circumstances that would make notification desirable despite general provisions existing that exclude the need for notification.

As mentioned above, the applicant did carry out some works at the northern end of the wetland. I don't consider that those unauthorised works warrant notification of the application, in part because of the limited scale of the area that was disturbed, and the planned remediation.

Affected Parties and Limited Notification

5. Protected Customary Rights Group or Customary Marine Title group

5.1 Is the activity in the coastal environment, within an area where it may adversely affect a protected customary rights group(s) or a customary marine title group(s) (see s95G)?	☐ Yes	Go to 5.2
	☒ No	Go to 6.1
5.2 May the activity have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?	☐ Yes	The customary rights group(s) is an affected customary rights group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1

☐ No Go to 6.1

5.3 Adversely affect a protected customary rights group(s) or a customary marine title group(s):

List the parties

6. Statutory Acknowledgement Areas

6.1	Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?	☐ Yes	Go to 6.2
		☒ No	Go to 6.3
6.2	Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?	☐ Yes	Include TRONT in 8.2 and go to 6.3
		☒ No	Go to 6.3

6.3 Reasons why adverse effects on Te Rūnanga o Ngāi Tahu are less than minor, minor or more than minor:

As the activity is not within a statutory acknowledgement area I consider that Te Ao Marama Inc, representing the local runanga, is more directly affected than Te Rūnanga o Ngāi Tahu. I note that Te Ao Marama Inc can draw on assistance from Te Rūnanga o Ngāi Tahu when needed.

7. Is limited notification precluded?

7.1	Is each activity subject to a rule, NES or regulation that precludes limited notification?	☐ Yes	Go to 9.1
		☒ No	Go to 8.1

8. Are any people adversely affected?

8.1	Are the adverse effects on a person minor or more than minor (but not less than minor)?	☒ Yes	Go to 8.2
		☐ No	Go to 8.3

8.2 Person(s) considered to be adversely affected (complete and go to 8.3)

Person	Effect on person (see Note)
Te Ao Marama Inc, representing the Rūnanga Papatipu o Murihiku	Effects on cultural and spiritual values, including impacts on the habitats of taonga species.
Department of Conservation	Effects on indigenous plant and animal species in the wetland. Also due to the proximity of the works to Conservation Estate.
Southland Conservation Board	Due to the proximity of the works to Conservation Estate.

Other persons (not necessarily affected, but to be served notice)

Person	Reason
Southland District Council	Regulation 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003

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Note: In forming this opinion (a) to (c) apply:

- (a) We may disregard an adverse effect of the activity on the person if a rule or an NES permits an activity with that effect; and
- (b) We must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

8.3 Reasons why no other person is considered to be adversely affected

The wetland is about 600 metres north and upgradient of the Landcorp Farming boundary, so I don't consider that they would be affected by activities within or adjacent to the wetland.

While the proposal is within the Waiau catchment, it should have no adverse effect on surface water flows, and so should not adversely affect the interests of Meridian Energy Ltd with regard to electricity generation from the Manapouri hydro-electric power generation plant.

There are no archaeological sites shown on our GIS system, so I don't consider that Heritage New Zealand Pouhere Taonga is an affected party.

I acknowledge that various parties, such as the Environmental Law Initiative, may be interested in applications for modification of wetlands, but I am not clear that such interest would make them affected.

That said, Regulation 10(2)(d) does allow Council to send notice to such groups when serving notice. If there are additional parties that you consider should be sent notice, even if you don't consider them to be affected, please list them here:

Person	To be served in accordance with Regulation 10(2)(d) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003

9. Special Circumstances – Limited Notification

9.1 Are there special circumstances that warrant limited notification of any other persons?	☐ Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	☒ No	Go to 10

9.2 Reasons special circumstances exist and persons to be notified

I have not identified any special circumstances that would warrant notification of anyone else.

Recommendation and decision

10. Officer's recommendation

10.1	The application be processed non-notified	☐
10.2	Public notification is recommended	☒
10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons. If they are not obtained, the application will be limited notified.	☐
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	☐



Stephen West
Principal Consents Officer

Date: 6 June 2024

Decision under Delegated Authority

11.1	I agree with the recommendation	☒
11.2	The application will be processed non-notified	☐
11.3	The application will be publicly notified	☒
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons. If they are not obtained, the application will be limited notified.	☐
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	☐

This decision is made under delegated authority by:



Lacey Bragg
Consents Manager

Date: 10 June 2024