Thursday, 31 July 2025

APP-20242456: SECTION 42A PLANNER RESPONSE AND RECOMMENDATION

1. Introduction

My name is Danielle Petricevich. I am employed by SLR Consulting Ltd as a Principal Planner. I have been contracted by the Southland Regional Council (Environment Southland) to process this resource consent application and am the author of the s42A report prepared under the Resource Management Act 1991 (RMA).

Since my s42A Report was prepared, I have also participated in expert conferencing of planners (being Ms Thorne, Ms Sannazzaro and myself). I can confirm that the conferencing has not altered my views on the application.

I have reviewed the evidence submitted by the Applicant and submitters and have been present during the entire hearing, taking note of any verbal evidence and questions.

2. Key Issues Raised in Evidence, Hearing and Response

- Effective Implementation of Consent – Joint Applicants
  - I acknowledge the concerns of submitters, however what the makeup of who holds the consent is not a relevant consideration for the panel in making a decision on this application. Whether it is one applicant or multiple, there can still be issues with implementation.
- What the Existing Environment is
  - The Federated Farmers Legal Counsel and Planning Expert have now confirmed that the existing environment relied upon in the application and s42A report are legally and technically correct.
  - This is therefore an environment with no consent in place and subsequently no ability to open the lagoon (other than under s330).
  - The application is therefore for the opening of the lagoon and subsequent reduction in water level within the lagoon and only the effects of this can be considered.
- Triggers and Values
  - The majority of the submitters in opposition seek a lower water level trigger of 2.0-2.3m. The primary purpose of the requested level is to manage the effects of high water levels on land associated with impeded drainage and surface inundation.
  - Other submitters have suggested that the values triggers (primary and secondary triggers) are inappropriate. Generally, this is because the focus is on one value, where the Applicant has taken a multi-value approach, balancing the various values of the lagoon.
  - In my view the Panel cannot change the proposed trigger level or tigger values as these align with the purpose of the consent sought and setting a different trigger would be outside of the scope of the consent applied for. Reducing a trigger level could result in adverse effects on values the Applicant is proposing to restore or maintain, and these effects have not been assessed.
- Scope of Effects Assessment
  - Concerns have been raised about the lack of proper assessment of drainage/flooding impacts. Having regard to the existing environment, I consider that the assessment undertaken is appropriate.

  - Federated Farmers have also suggested that an effects assessment of impacts on flood infrastructure should have been undertaken given that Waituna Creek is mapped as part of part of Environment Southlands flood management scheme. As above, the Application is for the opening of the lagoon and reduction in water levels, so does not adversely impact on the flood infrastructure and management of it.
- Consent Duration
  - Many submitters have submitted that a consent duration of 20 years is too long given the uncertainties in consent performance, implementation as a result of having joint consent holders, and other matters such as future planning processes around FMUs.
  - Key considerations for the duration of consent from case law and practice are:
    - Nature and scale of the activity - Larger or more complex activities may justify longer durations, especially where significant investment is involved.
    - Environmental risk and uncertainty - Where effects are uncertain, fluctuating or potentially significant, shorter durations may be appropriate to allow for reassessment.
    - Monitoring and review mechanisms - The presence of robust monitoring, adaptive management, and review conditions can support a longer duration.
    - Policy direction - Relevant planning documents may provide guidance or constraints on duration (e.g. regional plans may specify maximum durations for certain activities).
    - Level of investment - The scale of investment and the need for certainty to support that investment is a relevant factor
  - I remain of the view that the consent duration is appropriate when giving consideration to these matters, including the proposed transitional regime and reviews within the consent conditions.
- Conditions of Consent
  - I have carefully reflected on the Panel’s questions concerning the consent conditions, and agree some work can be done to make the structure of the consent conditions more suitable, and that amendments to conditions can make them more certain.
  - I do want to note that most of the references to “may” and “shall” are purposeful as to not infer that the Applicant “must” open the consent. However, I do think that with some rewording, if desired, these conditions could include “must” rather than “may” and “shall”.
  - Also, in terms of adaptive management, there is no need to have an adaptive management regime within the consent conditions. There monitoring, reporting and review framework is sufficient to deal with any unintended adverse effects. There is also no suggestion that the Applicant could just change parameters of the consent without going through a formal planning process e.g. under s127, s128 or if out of scope via an application for a new consent. Additionally, the consent builds in some flexibility e.g. if monitoring shows a particular opening location or time of year results in unintended adverse effects they could

just choose not to open at that location or time. Additionally, the consent does not compel them to Act, so even if a trigger is met, they may choose not to open due to learnings from previous openings.

- In relation to some gaps identified within the conditions by the panel, I consider that conditions should be included relating to spill management, pest plant biosecurity management, and shorebird nesting. I also think that the conditions around the management plans could be strengthened by including some standards within the conditions e.g. the communications management plan could set out the frequency or points the applicant must communicate consent implementation information with the community. These kinds of standards weren't included in the conditions to date, as the Applicant has been pro-active in preparing these plans. However, including some minimum requirements within the conditions avoids the ability for the Applicant to change these matters easily within the plans.
- A number of submitters have raised potential conditions or amendments to conditions outside of the triggers that warrant consideration e.g. certainty of communication between applicant and community.
- I am happy to partake in expert planning conferencing with Ms Thorne to come up with a set of conditions that give effect to the points raised by the panel, to assist the panel in their decision making.

3. NPS-FM Objective 1 Hierarchy

While the hierarchy in Objective 1 is no longer able to be applied, Policy 1 of the NPS still provides direction on Te Mana o Te Wai. Policy 2 also directs to identify and provide for Māori freshwater values. The SWLP also contains objectives and policies regarding Māori freshwater values. So, while there is no longer a hierarchy elevating these matters, they are still a relevant consideration, and the panel can still consider the positive effects that the application is trying to achieve.

4. Conclusion

I remain of the opinion that subject to the imposition of appropriate consent conditions, the adverse effects will be no more than minor and are acceptable and that the application is largely consistent with, and more importantly not contrary to, the applicable statutory direction. As such I am of the opinion that the application meets at least one of the gateway tests for non-complying activities under s104D and therefore may be granted. There is also no reason to decline the consent in accordance with s107.

The applicant has sought a 20-year consent duration, which I consider appropriate given the nature of the activity, the scale of effects, and the proposed monitoring and review mechanisms proposed in the consent conditions.