

Before Environment Southland

In the Matter of the Resource Management Act 1991

And an Application for a Resource Consent

By the Fiordland Lakes Trust (APP-20191703)

for a resource consent for a period of 25 years for the diversion of surface water, the diversion of groundwater and for wetland modification associated within the installation of a third culvert at Leg 6 of the Lake 2 Lake Te Anau to Manapouri Multi Use Trail;

to install a third culvert, diversion of surface water and groundwater and wetland modification associated with a section of the Lake 2 Lake Te Anau to Manapouri Multi Use Trail.

Location: Leg 6 of the Lake 2 Lake Trail between chainage 2200 and 2300 at about NZTM2000 1180612E, N4942051 and 1180593E and N4942084

Submitters comments on revised conditions by Maurice Allan Rodway

1. I made a submission on this application which was concerned with the following issues:

- a. The proposal does not adequately remedy the adverse effects of building a cycleway over a naturally occurring wetland.
- b. The cycleway has caused a degradation of a natural wetland and this is contrary to the proposed National Policy for Freshwater Management (Sept 2019), the proposed National Environmental Standards for Freshwater (2019) and contrary to the Southland Water and Land Plan (pWALP) which is currently under appeal before the Environment Court.
- c. The proposal does not adequately remedy fish passage restrictions caused by the cycleway.
- d. The cycleway had diverted groundwater adjacent to the wetland/stream ecosystem and there are no proposals to remedy the adverse effects of this activity.

2. My expertise and qualifications relevant to this application have been provided in my evidence presented to the hearing on June 12 2020:

3. As a submitter I have been asked to comment on the revised conditions the applicant has prepared as requested by Commissioner McGarry.

4. My understanding of the mitigation proposal is.

The conditions are intended to mitigate the adverse effects of placing the cycleway over the wetland. There are two culverts which allow the water which flows through the wetland to pass under the cycleway. A third culvert is one option the applicants propose to further mitigate the adverse effects. Another option is to leave the two existing culverts in place and not add a third culvert. The applicant is also proposing to undertake certain earthworks, weed control and planting of native plants nearby as part of the mitigation package.

5. The cycleway is a gravel structure that has been built over the wetland and covers about 105 square meters of the wetland, it is about 35m long and 3m wide at the base. The exact area is uncertain as some of the land under the cycleway at this location is dryer, but the majority of the 105 square meters was wetland. This area of land is no longer wetland. It is a cycleway.

6. The mitigation does not address the effect of the cycleway on the area of wetland that has been changed from being a wetland to a cycleway. The area of the wetland has been reduced and the wetland that has been removed cannot function as a wetland. The actions proposed are compensation or offsetting for adverse effects that are not proposed to be altered. Therefore, the actions are not mitigation but compensation, or offsetting.

7. Compensation or offsetting should only be approved if it is not possible to avoid, remedy or mitigate adverse effects. There has been a large amount of case law in relation to offsetting. For a comprehensive discussion see: <https://www.andersonlloyd.co.nz/wp-content/uploads/2013/10/Biodiversity-offsets-the-latest-on-the-law.pdf> (accessed 24 June 2020). A relevant section of that report is:

Business and Biodiversity Offsets Programme literature defines the 'mitigation hierarchy' to be:

1. Avoidance: measures taken to avoid creating impacts from the outset, such as careful spatial or temporal placement of elements of infrastructure, in order to completely avoid impacts on certain components of biodiversity. (An example of this would be to avoid areas of significance by careful placement of infrastructure or location of facilities).
2. Minimisation: measures taken to reduce the duration, intensity and / or extent of impacts (including direct, indirect and cumulative impacts, as appropriate) that cannot be completely avoided, as far as is practically feasible. (An example of this would be minimising the footprint of an activity).
3. Rehabilitation / restoration: measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and / or minimised. (An example would be the revegetation of areas disturbed by construction activities).
4. Offset: measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimised and / or rehabilitated or restored, in order to achieve no net loss or a net gain of biodiversity. Offsets can take the form of positive management interventions such as restoration of degraded habitat, arrested degradation or averted risk, protecting areas where there is imminent or projected loss of biodiversity.

8. The offsetting philosophy applies particularly in large mining and roading projects where it is not possible to avoid, remedy or mitigate adverse effects. This does not apply in this case where it is relatively easy to remove the offending structure and replace it with a bridge or boardwalk which will have virtually no adverse effects (none if it is a bridge that

spans the wetlands completely, and very little if it is a boardwalk that needs some piles in the wetland to support the structure). MfE Quality Planning Website for guidance on offsetting is in my evidence. <https://www.qualityplanning.org.nz/index.php/node/767> In my view the offsetting proposed here is not consistent with the guidance given in this document.

8. The offsetting proposed in this case is to undertake weed control and plant native species as proposed in conditions 14 and 15 of the proposed consent. While weed control is desirable, planting native species that would become established anyway if the habitat is protected has little value. Offsetting should result in a net biodiversity gain. This programme does not meet the principles of mitigation hierarchy set out above, where avoidance of adverse effects if possible, is the first thing that should be done. The offsetting should result in a no net loss of biodiversity. This would require at least 105m² of wetland to be replaced in the same wetland, i.e. enlarge the wetland nearby so that there is no reduction in area, function and quality overall. The applicants are not proposing to do this and it would not be appropriate to do so since the land in the vicinity is already conservation land with other values that should be protected.

9. The proposed conditions are intended to reduce the effects on the wetland so that they are minor. If this is the case the consent could be granted, but only if the activity was also not contrary to the objectives and policies of the relevant proposed plan. (s104D RMA)

10. It could be argued that the activity, with the mitigation/offsetting, has only a minor effect on the wetland because, compared to the overall size of the wetland, only a relatively small proportion of the wetland has been affected. However, given the area affected and the significance and rarity of the type of habitat I contend that the effects of the activity, even with the proposed conditions, are more than minor.

11. It cannot be argued that the activity is not contrary to the policies and objectives of the proposed plan. In particular:

Objectives 14, 16, 17, 20, 26, 28, 32 and 33.

The reasons the activity is still contrary to these policies is that the proposal does not remove the gravel and fill that makes up the cycleway so the wetland in this area no longer exists.

While all of these policies are relevant when considering s104D (1) (b) (ii) in particular policies 32 and 33 are particularly important.

The activity does not protect significant indigenous vegetation and habitat as this has been destroyed and is not to be restored at the site of the cycleway, or nearby in the same wetland. The area of the wetland has been reduced; the wetland cannot function there now and since it is not a wetland anymore and the quality of the wetland under the cycleway has been reduced to the point that it is non-existent.

12. The proposed Water and Land Plan is written to protect wetlands and ensure they not be reduced in size and the indigenous vegetation and habitats therein are not damaged.

13. If this consent is granted it would be a precedent for further wetland loss provided applicants propose to undertake some weed control and planting of replacement plants nearby. The objectives and policies of the pWALP in relation to wetlands will not be met and the 2020 National Policy Statement for Freshwater, (NPS) which is consistent with the proposed plan, will also not be complied with.

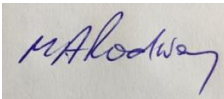
14. The NPS in relation to Freshwater Management due to come into force in 2020 (this is the NPS that has been through the consultation period and is final) includes the following:

“Avoid any further loss or degradation of wetlands and streams, map existing wetlands and encourage their restoration.”

Granting a consent that allows the loss of wetland area, function and quality is not consistent with this.

15. The consent cannot be granted in its present form with the mitigations proposed by the applicant. The mitigations are in fact offsets which do not comply with best practise for offsetting. Granting this consent would be contrary to the proposed Southland Water and Land Plan and therefore not consistent with the Resource Management Act (1991).

16. My submission is that this consent should not be granted.

Signed 

June 24 2020