

BEFORE THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for resource consents for the
Lake Te Anau to Manapouri multi use trail

BY **THE FIORDLAND TRAILS TRUST**
Applicant

**BRIEF OF EVIDENCE OF LUKE GERARD MCSORILEY FOR THE
FIORDLAND TRAILS TRUST**

4 September 2019

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1. My full name is Luke Gerard McSoriley. I hold the degrees of Bachelor of Resource Studies, Post-graduate Diploma in Resource Studies and a Master of Resource and Environment Planning. I am a Full Member of the New Zealand Planning Institute.
2. I have eighteen years' experience as a Resource Management Planner in a variety of resource management roles in Southland and overseas. I currently work for Opus International Consultants from its Invercargill Office and have done so since March 2013.
3. I am familiar with the Code of Conduct for Expert Witnesses contained in Environment Court of New Zealand Practice Note 2014. I have read and agree to comply with that Code. My evidence is within my area of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

4. In my evidence I discuss my involvement in the resource consent application (the application) and provide; background; a description of the activity, a brief overview of the application including changes that have been made since it was lodged; discuss the status of the activity in relation to the applicable regional plan rules; discuss section 104 and 104D, discuss the effects of the activity, provide a response to the Council Officer's Section 42A report and discuss the relevant statutory considerations.

Involvement in the Application

5. I drafted the resource consent application which was lodged with Southland Regional Council (Environment Southland) on 18 February 2019. I also drafted a further information response dated 1 April 2019 and provided further clarification in e-mails on 2 April, 11 April and 12 April 2019. The further information response letter and the e-mails are attached in Appendix 1 of my evidence. I have read the submissions and I have visited the site.

Response to Section 42A Report

6. I have read Mrs Nicol's 42A report and disagree with the recommendation to decline resource consent. The reasons why I disagree with the recommendation are outlined below. I support some of the recommended conditions outlined in the Section 42A but have recommended some changes as detailed in Appendix 4 of my evidence.

Background

7. The Fiordland Trails Trust (FTT) is a charitable trust constructing and maintaining a multiuse trail from Te Anau to Manapouri, known as the Lake 2 Lake Trail (the Trail). The Trail runs

along the true left (East) side of the upper Waiau River and is formed of 6 legs; five of which (Legs 1 – 4 and Leg 6) have been constructed.

8. In September 2018 Environment Southland issued an abatement notice relating to encroachment of part of Leg 6 of the Trail across a wetland for a length of approximately 35m. Wetland modification requires resource consent under the Proposed Southland Water and Land Plan (pSWLP). In response to the abatement notice the FTT retrospectively lodged an application seeking resource consent for wetland modification.

The Activity

9. The construction of a part of Leg 6 of the Trail, approximately 35 metres in length, has resulted in encroachment on a wetland associated with a spring fed stream that drains into Lake Manapouri. The resource consent application seeks retrospective resource consent for wetland modification associated with construction of this section of the Trail (the use of land within a wetland). The application was amended through a response to an Environment Southland further information s92 request and through subsequent e-mail clarifications (see Appendix 1). A decision to process the application on a publicly notified basis was made by Environment Southland under section 95 of the Act on the 18 April 2019. The application has been further amended to include a third culvert in the location shown in Mr Beale's evidence.
10. I have given no weight to the fact that this part of Leg 6 has been constructed in my assessment of the appropriateness of granting retrospective consent for this activity. I record however that the retrospective nature of this application means that in some places the existence of the 35m of trail makes the assessment of effects more convenient, which is reflected in some of the drafting of this evidence.

Activity Status

11. The modification of the wetland to enable formation of part of the Trail is a non-complying activity under Rule 74 (c) of the pSWLP. I note here that the pSWLP does not regulate wetland modification as a prohibited activity. As such the pSWLP does anticipate that some level of wetland modification may occur. I will discuss this issue in further detail below.
12. There is no equivalent land use wetland modification rule in the Operative Regional Water Plan (RWP). The activity is permitted.

Receiving Environment

13. The resource consent application (Section 2) and the Beale Ecological Assessment provide a detailed description of the receiving environment. I adopt those descriptions for the purposes of my evidence.

The Application

14. The application seeks retrospective resource consent for wetland modification (the use of land within a wetland).

Matters Raised In Submissions

15. At the close of the public notification process a total of 73 submissions has been received, 71 submissions in support and 2 neutral. No submissions opposing the application were received. The recommending report has summarised the matters raised in submissions. Some of the matters raised in the submissions are discussed in my evidence.

Written Approvals

16. FTT obtained written approval for the activity from the Department of Conservation, Te Ao Marama Inc and Fish & Game Southland. The written approvals were supplied as part of the resource consent application. None of these entities made submissions when the application was publicly notified.

The Trail As Infrastructure

17. The RMA definition of infrastructure includes '*structures for transport on land such as cycleways and walkways*' and the Trail is consistent with this definition. The Trail is also consistent with the pSWLP definition of regionally significant infrastructure. The regional significance of the Trail is highlighted in Mr Boniface's evidence in respect of its high levels of use and the economic and social benefits associated with it. These definitions are included in Appendix 2 of my evidence. The status of the Trail as transport infrastructure is discussed further in my evidence in relation to both environmental effects and the relevant policy framework.

The Permitted Baseline Section 104(2)

18. Under section 104(2) of the RMA, the Council may disregard an adverse effect of an activity on the environment if the district or regional plan or a national environmental standard permits an activity with that effect. In this instance, there is no permitted baseline.

Section 104 Matters

19. The matters that the Commissioner must have regard to include the actual or potential effects on the environment of allowing the activity, any relevant Plan or Proposed Plan provisions, and any other matter the Commissioner considers relevant. section 104 is subservient to Part 2 of the Act.

Section 104D The Gateway Tests

20. Wetland modification is a non-complying activity under Rule 74 of the pSWLP. When considering a non-complying activity, the Council may only, in accordance with section 104D, grant a resource consent for the activity if it is satisfied that the adverse effects of the activity are minor, or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan. If the application passes one of either of the limbs of the “gateway” tests in section 104D, under section 104B the Council may grant or refuse consent and if it grants the application, may impose conditions under section 108 of the RMA. There is no primacy given to either of the two limbs, so if one limb can be passed then the 'test ' is passed. As one of the limbs of the 'gateway test' has been passed, then the application is eligible for approval under s104.
21. My evidence concludes that the effects of the activity are no more than minor and the effects gateway test is met. This opinion is based on the conclusions of the Ecological Assessment supplied as part of the application, the expert evidence of Mr Beale and the ecological assessments of Dr Lloyd.
22. I am also of the opinion that when the objectives and policies are read and appraised as a whole with appropriate emphasis placed upon directive policies, which themselves are read as a whole, the activity also meets the second gateway test and is not contrary to the objectives and policies of the pSWLP or RWP. I understand the phrase “not contrary” means that the proposal must not be opposed in nature or opposite to what the policies are intending to achieve. The relevant plan provisions and my assessment of the activity against them are detailed below at paragraphs [49] – [92]. I note that my analysis in these paragraphs addresses section 104 and 104D assessments.
23. I note that the conclusion of the Section 42A Report in assessing adverse environmental effects applies the 'lens' of the objectives and policies of the relevant regional plans. I don't consider this necessary or appropriate when considering the effects limb of the gateway test.

24. I will now discuss the ecological effects of the activity and other relevant environmental effects before discussing the statutory considerations including the relevant plan and proposed plan as part of the assessment of the application under the broader section 104 assessment.

ACTUAL OR POTENTIAL EFFECTS

25. In undertaking my assessment, I have been mindful of the distinction between the effects, particularly positive effects, of the Trail as a whole and those of the section of the Trail subject to this application. My assessment of the positive effects of the Trail on the region generally refers to the Trail as a whole, including the parts of Leg 6 this application relates to.
26. However, it is important to record that I recognise the 35m section that is proposed to cross the wetland is a part of Leg 6 but is not the only route available for that part of the leg to take. This is important because, while I understand an assessment of alternatives is not required, the effects from the rest of the Trail are only relevant to the extent that the Trail will not function without this part of it.
27. I am mindful of the evidence of Mr Boniface that an alternative downstream route through the wetland would require a much greater area of wetland to be crossed. I consider this would also require land use consent under the pSWLP. I have independently verified this through an analysis of the plans provided with the application and based on my observations when I undertook a site visit.
28. I have also reviewed the Southland District Council land use consent¹ and note condition 8, which, relevantly, requires the Trail to be at least 30m from property boundaries of Mahara Avenue and 1830 Manapouri – Te Anau Highway. This is a further constraint on the location of this part of Leg 6.
29. Therefore, I have determined that it is appropriate to consider the positive effects of the Trail as a whole when analysing the effects of this activity.

Ecological Effects

30. An Ecological Assessment of the effects of construction of the Trail on wetland ecology was undertaken by Simon Beale of Beale Consultants Ltd and was supplied as part of the application. This Assessment was peer reviewed by Glenn Davis an Ecologist at e3Scientific. The Assessment in relation to ecological effects stated: *“The effect of trail construction on the hydrological and ecological function of the wetland is assessed as less than minor”*.

¹ Which I prepared and lodged for the Trust.

31. The Ecological Assessment was then reviewed by Kelvin Lloyd of Wildlands Consultants Ltd. Dr Lloyd's first assessment dated 26 February 2019 concludes: "that the effects of constructing the trail across the wetland are likely to have been more than minor". Post the applicant's response to the further information letter on 1 April 2019, Dr Lloyd in his second assessment of 8 April 2019, in discussing proposed remedial works and monitoring, notes: "*If the infilling work is carried out successfully, this should remedy the adverse hydrological effects on the wetland to the point that they are less than minor*". Dr Lloyd in his conclusion states that: "*Remediation of the adverse hydrological effects on the wetland is likely to reduce those effects to a less than minor level*".
32. Dr Lloyd in his third and final assessment of 11 April 2019 concludes that the ecological effects on the wetland should be no more than minor:
- In our opinion, the residual adverse effects of wetland vegetation clearance caused by track construction can be addressed by the positive effects of weed control over the 2,000-metre squared area centred on the wetland and its riparian margins. Overall, the ecological effects on the wetland should be no more than minor if these actions, and the actions suggested earlier, are undertaken with sufficient care and diligence.*
33. FTT have provided additional information in relation to hydrological effects in the form of a hydrology review undertaken by Mr David Hamilton. This Assessment is appended to Mr Beale's evidence and I rely on it for my evidence. The Assessment recommends further mitigation in the form of the placement of an additional 300-400mm diameter culvert through the high ground approximately halfway between the two culverts previously installed. I include a draft condition of consent contemplating this recommendation at Appendix 3 of my evidence.
34. I note here that under the RWP culverts in wetlands are permitted activities provided they comply with the conditions of that rule. As noted earlier, under the pSWLP culverts in wetlands require resource consent under Rule 74 the wetland modification rule. Rule 74 regulates all activities within wetlands, including the installation of culverts. In my opinion the addition of the third culvert is further disturbance to the wetland and therefore is not permitted under the pSWLP.
35. I have assessed the application and its analysis of effects and consider that the additional culvert does not create any material additional effects that are not already contemplated within the AEE and supporting ecological assessment, Dr Lloyd's assessments and the responses to the RFIs. I do not consider that it changes the scale and intensity of the activity.

36. The 35m section of the Trail that crosses the wetland could potentially be removed and the wetland reinstated as an alternative to obtaining resource consent. However, the removal of the part of the Trail that has been modified from the wetland may result adverse effects on the wetland through further disturbance.
37. Mr Beale in his evidence has noted that retention of the existing culverts and placement of the additional culvert as recommended by Mr Hamilton, along with infilling of the water table, will avoid any adverse effects on the hydrology of the wetland and maintain wetland function by ensuring that potential localised changes in the wetland vegetation will be avoided. He also notes that the remedial hydrological and weed control measures are focussed on protecting the indigenous vegetation and habitats of the wetland which are assessed as ecologically significant under section 6(c) of the Act.
38. Mr Beale supports the proposed condition of consent requiring the consent holder to undertake an active weed management programme over an area of approximately 2,000 m² upstream of the trail. He also notes that reinstatement of the wetland hydrology in combination with weed control will restore and maintain the range and diversity of the indigenous plant communities and habitats within the wetland.
39. Mr Beale in his evidence concludes:

Both ecologists are in agreement that the marsh wetland is ecologically significant.

Both ecologists agree that the remedial measures involving the infilling of the table is appropriate and will effectively address the localised hydrological adverse effects on the wetland.

The proposed culvert installation as recommended by Mr Hamilton is an appropriate remedial measure in addressing adverse hydrological effects on the wetland downstream of the trail through reinstatement of surface and shallow sub-surface flows.

The combination of remedial measures will ensure the hydrological function of the wetland is maintained while avoiding any potential changes in the indigenous wetland vegetation cover within the affected areas.

The implementation of programmed weed control within the wetland as agreed to by the Trust is an appropriate compensatory action in response to wetland loss caused by trial construction. This will mitigate the effects of trail construction on the natural character of

the wetland by providing suitable conditions for indigenous wetland vegetation in the vicinity of the wetland to increase in extent to the benefit of the wetland's natural character.

40. I agree with Dr Lloyd that the ecological effects of trail construction on the wetland will be minor if the recommended remedial and compensatory measures are undertaken with sufficient care and diligence.
41. In my opinion, relying on the findings of the Ecological Assessment, the independent reviews of the Assessment by Dr Lloyd and his conclusions, the mitigation promoted by FTT, the recommendations of Mr Hamilton and related additional mitigation promoted by FTT and the conclusions in Mr Beale's evidence any adverse ecological effects will be no more than minor.

Landscape and Amenity Effects

42. This part of the Trail is located within an area with extensive vegetation cover and is not overly visible in the landscape. The Trail contributes to people's appreciation of the pleasantness and aesthetic coherence of the area and enables recreational enjoyment through walking and cycling. The construction of 35 metres of the Trail across the wetland has in my opinion had a less than a minor adverse environmental effect on landscape and amenity values.

Recreation and Public Access Effects

43. The 35m section of Trail that this application relates to is providing beneficial recreational opportunities and improved visitor experiences of the Te Anau – Manapouri area by improving public access into and through public land and conservation land. Locals are also regular users of the Trail and enjoy the recreational opportunities it provides. The Trail is available for use by both cyclists and pedestrians including residents and visitors and is having positive effects in relation to public access. I conclude the activity is having positive public access and associated recreation effects.

Transportation Effects

44. The Trail provides an important cycleway and walkway connection between Te Anau And Manapouri. The Trail provides an alternative transport route between the two townships to State highway 95 (SH95). There is no formed footpath or cycleway on SH95.

Social and Economic Effects

45. The activity is having social and economic benefits, including those described in Mr Boniface's evidence. Provision of enhanced public access to public land and improved recreational opportunities are positive social effects. Economic benefits are arising from people visiting the area to ride or walk the Trail and related economic activity.

Section 104(1)(ab)

46. Under section 104(1)(ab) when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
47. Mr Beale notes that the implementation of programmed weed control promoted by the applicant within the wetland will provide suitable conditions for indigenous wetland vegetation in the vicinity of the wetland benefit of the wetland's natural character. These are positive effects on the environment that will compensate adverse effects from allowing the activity.

Summary of Effects

48. The application seeks retrospective resource consent for wetland modification (the use of land within a wetland). The adverse effects of the activity will be no more than minor and there are positive environmental, social and economic effects. I will return to the positive effects proposed by FTT to compensate for any adverse effects on the wetland under section 104(1)(ab) later in my evidence.

STATUTORY CONSIDERATIONS

National Policy Statement for Freshwater Management (NPSFM) 2014

49. The NPSFM supports improved freshwater management in New Zealand. It does this by directing regional councils to establish objectives and set limits for fresh water in their regional plans. The Section 42A Report provides an overview of the relevant provisions and in my opinion the activity is not inconsistent with the relevant objectives and policies of the NPSFM.

Regional Policy Statement 2017

50. The Regional Policy Statement for the Southland Region (SRPS) provides an overview of the resource management issues of the region. It sets out how natural and physical resources are to be managed in an integrated way to promote sustainable management. The 42A report identifies and discusses some of the relevant the objectives and policies of the SRPS but in my opinion there are additional provisions that need to be considered most notably those relating to infrastructure.

51. Policy INF.1 of the SRPS is not discussed in the 42A report but states:

Objective INF.1 – Southland’s infrastructure

Southland’s regionally significant, nationally significant and critical infrastructure is secure, operates efficiently, and is appropriately integrated with land use activities and the environment.

52. As noted above, the Trail is consistent with the SRPS definition of regionally significant infrastructure. Objective INF.1 seeks to enable the efficient operation of Southland’s regionally significant infrastructure. In my opinion retention of the 35m section of Trail that crosses the wetland will assist in terms of ensuring that the Lake 2 Lake Trail functions or operates efficiently.

53. Policy INF.1 of the SRPS is not discussed in the Section 42A Report but states:

Policy INF.1 - Regional, national and critical infrastructure

Recognise the benefits to be derived from, and make provision for, the development, maintenance, upgrade and ongoing operation of regionally significant, nationally significant and critical infrastructure and associated activities.

This policy seeks to recognise the benefits to be derived from the development of infrastructure. It also seeks to provide for the development and ongoing operation of regionally significant infrastructure such as the Trail and the 35m section of it that the application relates to. In my opinion the activity is consistent with this policy and as discussed below the pSWLP provides for the development and ongoing operation of regionally significant infrastructure.

54. Policy INF.2 of the SRPS is not discussed in the 42A report but states:

Policy INF.2 – Infrastructure and the environment

Where practicable, avoid, remedy or mitigate the adverse effects of infrastructure on the environment. In determining the practicability of avoiding, remedying, or mitigating adverse effects on the environment, the following matters should be taken into account:

- (a) any functional, operational or technical constraints that require the physical infrastructure of regional or national significance to be located or designed in the manner proposed;*
- (b) whether there are any reasonably practical alternative designs or locations;*
- (c) whether good practice approaches in design and construction are being adopted;*
- (d) where appropriate, and such measures are volunteered by a resource user, whether any significant residual adverse effects can be offset or compensated for; and*
- (e) the need to give effect to the NPSET (2008) including that planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.*

This policy requires Inclusion of objectives, policies and methods in regional plans that will enable the development, use, maintenance and upgrading of infrastructure, whilst ensuring the management of any associated adverse effects. The pSWLP does include provisions that do this and these are discussed further below. There is a functional and operational need for the physical infrastructure of the Trail to cross the wetland in this area. As noted in Mr Boniface's evidence there are limited alternative routes or locations. Good practice approaches in design and construction are being adopted in the form of mitigation measures promoted by the ecologists and agreed to and promoted by the applicant. In my opinion the activity is consistent with this objective.

55. Objective TRAN.1 of the SRPS is not discussed in the 42A report but states:

Objective TRAN.1 – Transport and land use

Development of transport infrastructure and land use take place in an integrated and planned manner which: (a) integrates transport planning with land use; (b) protects the function, safety, efficiency and effectiveness of the transport system; (c) minimises

potential for reverse sensitivity issues to arise from changing land uses; (d) provides for positive social, recreational, cultural and economic outcomes; (e) minimises the potential for adverse public health and environmental effects; (f) enhances accessibility and connectivity, maximising transport choice for users of the transport system.

The Trail is transport infrastructure and in my opinion the activity is consistent with protection of the function, safety, efficiency and effectiveness of the transport system (b). Provision of positive social, recreational and economic outcomes (d) and maximising of transport choice (f).

56. In regard to Objective WQUAL.1, Policy WQUAL.1 and Policy WQUAL.3 there is no evidence that the activity is having any significant adverse effects on water quality and I therefore conclude that it is consistent with these provisions. In her discussion of Policy WQUAL.7 Mrs Nicol notes that the Trail brings social and economic benefits to the Te Anau community and is a wonderful asset for the community and visitors to the region. For these reasons in my opinion the activity is consistent with Policy WQUAL.7.
57. In regard to Objective BIO.2 the ecological effects of the activity will be no more than minor and in my opinion the activity will maintain indigenous biodiversity. The mitigation measures promoted by the applicant will protect areas of significant indigenous vegetation and significant habitats of indigenous fauna for present and future generations. In my opinion the activity is consistent with this objective.
58. In regard to Policy BIO.2 and Policy BIO.4 the mitigation measures promoted by the applicant will protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. There is no ecological assessment or expert evidence indicating that fragmentation, reduction in the extent of, connections and linkages, loss of or damage to indigenous habitats and ecosystems has had more than minor adverse effects as a result of the activity. In my opinion the activity is not contrary to these policies.
59. Policy TW.3 requires iwi management plans to be taken into account and is a relevant provision. The iwi management plan for Southland - Te Tangi a Taurira is considered and discussed further below.
60. In my opinion the activity is not contrary to the relevant objectives and policies of the SRPS. The SRPS recognizes the importance of regionally significant infrastructure, seeks to enable its efficient operation and requires provision for its development and ongoing operation.

Operative Regional Water Plan 2010

61. In relation to Objective 12 of the RWP I agree with Mrs Nicol that the Lake 2 Lake Trail is consistent with the intent of the objective and is maintaining and enhancing public access.
62. Objective 10 requires habitats and ecosystems to be maintained, and where possible enhanced. The ecological effects have been discussed above, the activity will maintain wetland habitat and ecosystems and is consistent with this objective.
63. In relation to Policy 1A the relevant Iwi Management Plan has been taken into account and is discussed further below. Policy 3 seeks no reduction in water quality. No issues or concerns have been raised in relation to water quality effects and in my opinion the activity is not having adverse effects on water quality.
64. Policy 40 seeks to encourage the maintenance and restoration of existing wetlands and the creation of new wetlands.

Encourage the maintenance and restoration of existing wetlands and the creation of new wetlands.

I rely on Mr Beale's and Dr Lloyd's evidence that the proposed mitigation measures promoted by FTT, particularly the removal of pest plant species, provides for at least the maintenance of existing wetlands and, in fact, enhances the existing wetland. I understand on the basis of legal advice that an application for retrospective consent is assessed as if the activity has not occurred. Therefore, I do not consider removal of the Trail would be restoration of the wetland as contemplated by this policy.

65. In my opinion the activity is not contrary to the relevant objectives and policies of the RWP.

Proposed Southland Water and Land Plan 2018

66. In relation to the pSWLP the Section 42A Report concludes that the application is not consistent with the outcomes sought by objectives 14 and 17 and policies 32 and 33. These objectives and policies are discussed below along with a number of additional objectives and policies of the pSWLP that I consider relevant to the application.

67. I have considered the activity against all relevant provisions of the pSWLP. In particular I have appraised the objectives and policies as a whole when considering the section 104D gateway and section 104(1)(b)².

68. Objective 1 is not discussed in the Section 42A Report but states:

Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 1 is a broad high-level objective that sets the goal of sustainable management of land and water and associated ecosystems, the manner of management and the need to recognise the connectivity of water. As noted above the effects of the activity on the wetland are no more than minor. In my opinion the activity is not contrary to this objective.

69. Objective 2 is not discussed in the Section 42A Report but states:

Water and land is recognised as an enabler of primary production and the economic, social and cultural wellbeing of the region.

Objective 2 acknowledges water and land as an enabler for key RMA matters in the region. The activity is having positive social and economic effects and in my view is contributing positively to the wellbeing of the Southland Region. In my opinion the activity is consistent with Objective 2.

70. Objective 9A is not discussed in the Section 42A Report but states:

Surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

The benefits of the Trail have been discussed in Mr Boniface's evidence. This part of the Trail is an important part of the activity, which is supporting the local community in provision of social and economic wellbeing. The activity is consistent with sustainable management of surface water to support the reasonable needs of people and communities to provide for their social and economic wellbeing.

² I note I have adopted an identical approach to the RPS and RWP.

71. Objective 9B is not discussed in the Section 42A Report but states:

Objective 9B - The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.

Objective 9B seeks to enable the effective development of the Trail as a part of Southland's regionally significant infrastructure. The definition of infrastructure is broad (Appendix 2) and can therefore include a number of different types of activity that generate a number of different effects. The enabling of infrastructure in different parts of the region will depend on what is being managed, the effects of the infrastructure and the circumstances. As discussed in Mr Boniface's evidence, the wetland crossing is an appropriate route for the Trail in light of its purpose and function. The effects can be managed, and the function and quality of the wetland will be enhanced through the proposed mitigation measures. In these circumstances I consider the enabling of the Trail as regionally significant infrastructure appropriate, therefore approval of the application would be consistent with this objective. The construction of a 35m section of Trail across the wetland is consistent with enabling effective development of regionally significant infrastructure.

72. Objective 13 is not discussed in the Section 42A Report but states:

Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.

The application is for land use consent and the activity is enabling the use of land to support the economic and social wellbeing within the Southland Region. In my opinion the activity is consistent with Objective 13.

73. Objective 14 seeks to maintain or enhance the range and diversity of indigenous ecosystem types and habitats within wetlands and their life-supporting capacity. While there is a loss of habitat, as percentage of the wetland area that loss is small (no more than 1.6%). In the absence of evidence that the life-supporting capacity of the wetland is degraded, or the range and diversity is effected, I conclude that they are maintained.

74. Based on my understanding of the opinion of the ecologists, the mitigation measures promoted by the applicant will at least maintain and probably enhance the range and diversity of indigenous ecosystem types and habitats within the wetland and its life-supporting capacity.

As noted above the effects of the activity on the wetland are no more than minor. In my opinion the activity is consistent with this objective.

75. Objective 16 is not discussed in the Section 42A Report but states:

Public access to, and along, river (excluding ephemeral rivers) and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.

The activity is enabling public access to an along Lake Manapouri and Lake Te Anau, the Waiau River and numerous other waterways in the area and there is no evidence that significant indigenous biodiversity values are at risk. In my opinion the activity is consistent with maintenance and enhancement of public access.

76. Objective 18 is not discussed in the Section 42A Report but states:

All activities operate in accordance with “good management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.

The activity and in particular the mitigation promoted by the applicant is considered consistent with good management practice and will maintain water quality. In my opinion the activity is consistent with Objective 18.

77. Objective 17 states:

The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.

I note that Mr Beale in his evidence agrees with Mrs Nicol that the natural character value of the wetland has been diminished. Mr Beale goes on to take the view that the control of problem weeds in the wetland over the 2,000m² area proposed by the Trust will in his opinion compensate for the localised effects on the natural character of the wetland by increasing the overall extent of indigenous wetland vegetation in the vicinity of the trail, including the riparian margins. The mitigation measures promoted by the applicant will therefore enhance natural character values associated with the wetland consistent with the intent of this objective.

78. Policy 13 (1) is not discussed in the Section 42A Report but states:

Recognise that the use and development of Southland's land and water resources, including for primary production, enables people and communities to provide for their social, economic and cultural wellbeing.

The activity is having positive social and economic effects and is contributing positively to the wellbeing of the Southland Region. In my opinion the activity is consistent with Policy 13(1).

79. Policy 26A 'Infrastructure' is not discussed in the Section 42A Report but states:

Recognise and provide for the effective development, operation, maintenance and upgrading of regionally significant, nationally significant and critical infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

This policy implements Objective 9B, discussed above. The use of the phrase 'avoids where practicable or otherwise remedies or mitigates, adverse effects on the environment' in my opinion establishes that adverse effects associated with regionally significant infrastructure are anticipated under the pSWLP, including in wetlands in some circumstances. The effective development of this piece of regionally significant infrastructure needs to be recognised and provided for subject to the matters discussed above. In my opinion the activity is consistent with this policy. Mr Hamilton's report states that with remediation the water flow and levels in the wetland will not be affected by the Trail. Mr Beale and Dr Lloyd agree that indigenous wetland vegetation cover will not be compromised and overall the ecological effects will be minor. As such in my opinion the applicant has avoided adverse effects where practicable and otherwise mitigated adverse effects on the environment.

80. Policy 32 seeks to protect significant indigenous vegetation and significant habitats of indigenous fauna associated with natural wetlands. The mitigation measures promoted in relation to the activity, particularly the removal of pest plants from the wetland, will protect significant indigenous vegetation and significant habitats of indigenous fauna associated within the wetland. In my opinion the activity can be viewed as consistent with this policy.

81. Policy 33 seeks to prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal. The activity has resulted in loss of an area of the wetland through construction of the 35m section of Trail.

82. Policy 33 refers to the “area, function and quality” of the wetland and is not focused on the ‘area’ of wetland lost on a purely spatial basis. It is broader than that and also recognises the importance of the function of wetlands (including hydrology) and their quality and how the loss of habitat can impact on those matters.
83. Mr Beale’ has provided evidence that the hydrological function of the wetland can be maintained, potential changes in the indigenous wetland vegetation cover avoided and benefits to the wetland’s natural character achieved through remediation. In my opinion the activity is therefore only partially inconsistent with this policy. This is because while it has resulted in a localised reduction in area of wetland, it prevents any reduction in the function and quality of the wetland.
84. I note here that Policy 33 should not be considered in isolation and there are a number of other relevant provisions of the pSWLP that provide for and enable regionally significant infrastructure, amongst other things. I further note that wetland modification is not a prohibited activity under the pSWLP which, would be the appropriate approach if the plan sought to prevent any reduction in wetland area.
85. Mr Beale in his evidence notes that the remedial hydrological and weed control measures are focussed on protecting the indigenous vegetation and habitats of the wetland which are assessed as ecologically significant under section 6(c) of the Act and are measures that will maintain wetland function. He then concludes that these positive effects align with the intent of Policy 32 and 34 of the pSWLP and characterises this as an integrated approach to remedying the adverse effects of the Trail on the wetland.
86. In relation to policy 34 the activity through the mitigation measures promoted is consistent with maintenance of the wetland and its potential to improve water quality, offset peak river flows and assist with flood control. The activity is consistent with Policy 34.
87. Policy 38 seeks to reduce susceptibility of the Southland community and environment to natural hazards by improving planning, responsibility and community awareness for the avoidance and mitigation of natural hazards. The Section 42A Report concludes that the activity is not consistent with this policy but there is no explanation why. In my opinion the activity is not contrary to policy 38.
88. The Section 42A Report in summarising the assessment of the activity against the provisions of the pSWLP states:

“if the significance of the trail construction within the wetland is viewed in isolation within the context of the relevant regional plan policies and objectives, in my opinion the proposal

is not consistent with Policy 38 of the RWP, Objective 14, Policy 32 and Policy 33 of the pSWLP”.

89. The pSWLP states at the top of page 26: “that the policies of this Plan implement the Objectives and must be read in their entirety and considered together”. As noted above the Section 42A Report has not discussed and considered all the relevant objectives and policies of the pSWLP. In my opinion the activity must be assessed against all relevant provisions of the pSWLP. The provisions that have not been assessed include objectives 1, 2, 4, 9A, 9B, 13, 14, 16, 17, 18 and policies 13(1), 26A, 34 and 38. My assessment above concludes that the activity is consistent with all these provisions. My assessment also concludes that the activity is consistent with objective 14 and policies 32 and 38 and only partially inconsistent with Policy 33.
90. As outlined above, in my opinion the infrastructure provisions of the pSWLP are relevant to the activity and need to be considered. I have also identified that there is a distinction between the Trail as a whole (the Lake 2 Lake Trail) and the 35m section that the application relates to at paragraphs [25] – [26]. Given the extent of the Trail that the application relates to is only 35m in length, I do consider that more weight should be given to the provisions that directly relate to wetlands.
91. In my opinion the activity is consistent with the policy framework of the pSWLP. The pSWLP does not regulate wetland modification as a prohibited activity. The pSWLP does anticipate that some level of wetland modification may occur. For instance, the infrastructure related objectives and policies of the pSWLP enable regionally significant infrastructure in situations where the development of that infrastructure requires wetland modification.
92. I have taken account of the fact there are two relevant regional plans to consider. While my conclusions are that the activity is consistent with the policy direction in both plans, I have turned my mind to the matter of weight. Given the status of the pSWLP and that the majority of the provisions I have cited are not under appeal (notably the wetland policies), I have placed more weight on that plan.

Te Tangi au Tauira

93. The resource consent application and Mrs Nicol’s report identify the key policies of the relevant iwi management plan ‘Te Tangi’. The activity is generally consistent with the relevant policies but has involved modification of a wetland. The wetlands policy of Te Tangi 9.6.4 Wetlands (3.5.18) 1 states:

Avoid the direct or indirect drainage or modification of any existing wetland area.

The activity is not consistent with this policy. However as established above the adverse effects of the activity are no more than minor. In addition, consultation has been undertaken with Te Ao Marama and they have provided their written approval. I note that the 42A report concludes that Consideration of Te Tangi a Tauira and the involvement of Ngāi Tahu are consistent with and give effect to Objective D1 and Policy D1 of Te Tangi, these provisions are listed in the 42A report.

PART 2 OF THE RMA

94. Part 2 of the RMA sets out the purpose and principles of the RMA. Section 5 sets out the purpose of the RMA, as '*the sustainable management of natural and physical resources*'. In my opinion the proposal will sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations (Section 5 (2) (a)), will give rise to no more than minor adverse effects on the environment (Section 5 (2) (b)), and will safeguard the life-supporting capacity of air, water, soil, and ecosystems (Section 5 (2) (c)).
95. I agree with Mrs Nicol's opinion that the application is generally consistent with the purpose and the principles of the Act, as set out in Section 5 (paragraph 4 page 36). My opinion is also that the activity is consistent with the purpose and principles of the RMA.
96. Section 6 of the RMA lists the matters of national importance which are to be recognised and provided for. I consider the activity consistent with the preservation of the natural character of the wetland and its margins, and its protection from inappropriate use and development (Section 6 (a)). I consider the activity consistent with the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (Section 6 (c)). The activity is consistent with the maintenance and enhancement of public access (Section 6 (d)). The activity is also consistent with recognition and provision for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (Section 6 (e)). The adverse environmental effects of the activity have been discussed above and will be no more than minor. The activity will have a number of positive effects. In my opinion the activity is consistent with the relevant Section 6 matters.
97. In relation to Section 7 in my opinion the activity is consistent with the efficient use and development of natural and physical resources (7(b)), the maintenance and enhancement of amenity values (7(c)) and maintenance and enhancement of the quality of the environment (7(f)). The adverse effects of the activity will be no more than minor and as such I consider the activity has had regard to the intrinsic values of ecosystems (s7(d)).

With regard to Section 8 I agree with Mrs Nicol's assessment that the principles of the Treaty of Waitangi have been taken into account through the consideration of Te Tangi (Iwi Management Plan) and the relevant policies in other planning documents.

Conclusion

98. The adverse environmental effects of the activity are no more than minor. The activity is having positive social and economic benefits, is enhancing public access to public conservation land and is enabling recreational opportunities.
99. On balance the activity is consistent with relevant RMA plan and policy documents.
100. The proposal is consistent with the sustainable management purposes of the Resource Management Act 1991, in that it will provide for the sustainable management of the natural and physical resources. The purpose of the Act will be better met by the approval of the application than its refusal.



Luke McSorley

4 September 2019

Appendix 1 – Response to s92 further information request and related e-mails.

From: Sonya Nicol <sonya@slwp.co.nz>
Sent: Friday, 12 April 2019 9:28 a.m.
To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>
Cc: David Boniface <dajeck@xtra.co.nz>; Resource Consents <ResourceConsents@es.govt.nz>
Subject: RE: Fiordland Trails Trust - APP-20191150

Yes, I consider that would be the best way to address that too.

Thanks

Sonya

From: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>
Sent: Friday, 12 April 2019 9:17 AM
To: Sonya Nicol <sonya@slwp.co.nz>
Cc: David Boniface <dajeck@xtra.co.nz>; Resource Consents <ResourceConsents@es.govt.nz>
Subject: RE: Fiordland Trails Trust - APP-20191150

Good Morning

Thank you for your e-mail and for relaying the comments from Wildlands.
The 10m requirement and inspection of the weed control should be fine and possibly these matters could be covered by conditions?
If you require anything further from us please let me know.

Regards



Luke McSoriley

Workgroup Leader - Planning

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PO Box 647, Invercargill 9840, New Zealand

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From: Sonya Nicol <sonya@slwp.co.nz>
Sent: Friday, 12 April 2019 8:53 a.m.
To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>
Cc: David Boniface <dajeck@xtra.co.nz>; Resource Consents <ResourceConsents@es.govt.nz>
Subject: RE: Fiordland Trails Trust - APP-20191150

Hi Luke,

Wildlands Consultants Ltd (Kelvin) has advised that he supports the FTT revised proposal.

He suggested to avoid ambiguity, controlling weeds out to 10m either side of the trail (within the wetland area) would be better, rather than an 8-10 m range.

There would ideally be some performance standards, with inspection of the areas after control, to assess both the effectiveness of weed control, and that the control is not adversely affecting indigenous vegetation.

He would also support FTT continuing to discuss with the private landholder management of the willow trees, though notes that they can't commit to anything requiring third party permission unless they already have such permission.

Regards

Sonya

From: Sonya Nicol

Sent: Thursday, 11 April 2019 5:06 PM

To: 'McSoriley, Luke' <luke.mcsoriley@wsp-opus.co.nz>

Cc: David Boniface <dajeck@xtra.co.nz>; 'Resource Consents' <ResourceConsents@es.govt.nz>

Subject: RE: Fiordland Trails Trust - APP-20191150

Hi Luke,

Thanks for this. I have sent it on to Wildlands Consultants Ltd to get their comment on it. I will let you know the feedback once I have it.

Regards,

Sonya

From: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>

Sent: Thursday, 11 April 2019 3:14 PM

To: Sonya Nicol <sonya@slwp.co.nz>

Cc: David Boniface <dajeck@xtra.co.nz>

Subject: Fiordland Trails Trust - APP-20191150

Hello Sonya

Thank you for sending through the additional assessment from Wildlands Consultants Ltd on the Fiordland Trails Trust application.

Fiordland Trails Trust is willing to remediate adverse hydrological effects on the wetland through pest plant management.

The Trust would like to amend the application to promote clearance of exotic pest species in order to increase indigenous plant dominance.

Attached is a document detailing the pest plant management works proposed.

The area of pest plant management detailed in the document is approximately 2000sqm in size.

The photograph below provides an indication of the extent of pest plants present in this area.

Unfortunately the grove of willow trees referenced in the additional Wildlands Consultants Ltd assessment are located on private land.

The Trust can and will discuss removal of these trees with the landowner but cannot commit to clearance of them as part of a resource consent process.

Please see answers below in response to your questions on the culverts.



Feel free to contact me if you have any further questions.

Regards



Luke McSoriley

Workgroup Leader - Planning

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From: David Boniface <dajeck@extra.co.nz>

Sent: Thursday, 11 April 2019 2:31 p.m.

To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>

Cc: simon@bealeconsultants.co.nz; stephenhoskin@hotmail.com; julieburgess63@yahoo.co.nz

Alister Burgess <julieburgess63@yahoo.co.nz>

Subject: Re: FW: Fiordland Trails Trust - APP-20191150

Hi Luke,

The two 800mm dia culverts are each 6 metres long and are made of polyethylene.

Attached also is a sketch and our offer of additional noxious weed eradication work that may offset the influence the trail has on the wetland.

Happy to discuss.

Regards

David

On 11 April 2019 at 13:49 "McSoriley, Luke" <luke.mcsoriley@wsp-opus.co.nz> wrote:

Hi David

A couple more questions.

Ta

Luke

From: Sonya Nicol <sonya@slwp.co.nz>
Sent: Thursday, 11 April 2019 1:46 p.m.
To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>
Cc: Resource Consents <ResourceConsents@es.govt.nz>
Subject: Fiordland Trails Trust - APP-20191150

Hi Luke,

When you come back with that other information from the FTT/Simon B this afternoon, can you please also confirm the length of the two culverts under the trail –the width is 800mm in the application. Can you please also confirm if they are e.g. plastic culverts, or if not, what they are made from.

The other culverts based on the photos you provided are 400mm x 6 metres

Thanks

Sonya

SONYA NICOL

Southern Land & Water Planning

T 027 505 0077 | E sonya@slwp.co.nz | W www.slwp.co.nz



RESOURCE CONSENTS | POLICY ADVICE | LANDSCAPE ASSESSMENTS & PLANS | FARM ENVIRONMENT PLANS | DOC CONCESSIONS

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-LAEmHhHzdJzBITWfa4Hgs7pbKI

RE: s92 Further information request - Fiordland Trails Trust



Hi Sonya

Thank you for the update.

The culverts in the wetland require resource consent under Rule 74 of the pSWLP and form part of the Trail. We have sought resource consent under Rule 74 of the pSWLP for wetland modification. As the application is retrospective all affected parties have a good understanding of what has been constructed including the culverts.

We also note that the culverts in the wetland are permitted under the RWP. As noted in the response to the RFI the culverts meet the permitted conditions of Rule 28 of the RWP.

Given the permitted status, what environmental effects associated with the culverts could be of a concern? We don't consider updated written approvals or further consultation necessary.

Regards



OPUS

Luke McSoriley

Workgroup Leader - Planning

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From: Sonya Nicol <sonya@slwp.co.nz>

Sent: Tuesday, 2 April 2019 9:08 a.m.

To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>

Cc: Resource Consents <ResourceConsents@es.govt.nz>

Subject: RE: s92 Further information request - Fiordland Trails Trust

Hi Luke,

Thanks for the revised information. I will get Kelvin to review it, and provide updated technical comments on if the amendments and conditions proposed will overcome his original assessment that the effects on the wetland from the trail are more than minor.

One question for you – with the application now also seeking consent for the culverts, are you/ have you sought updated approvals from DOC, F&G and TAMI? I note in their approvals they looked at photos of the trail but it didn't include the culvert plan you have just submitted?

Thanks

Sonya

From: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>

Sent: Monday, 1 April 2019 2:16 PM

To: Sonya Nicol <sonya@slwp.co.nz>

Cc: Resource Consents <ResourceConsents@es.govt.nz>; David Boniface <dajeck@xtra.co.nz>
Subject: RE: s92 Further information request - Fiordland Trails Trust

Hello Sonya

Please find attached a response to the request for further information.

Regards



Luke McSoriley

Workgroup Leader - Planning

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From: Sonya Nicol <sonya@slwp.co.nz>
Sent: Thursday, 7 March 2019 1:05 p.m.
To: McSoriley, Luke <luke.mcsoriley@wsp-opus.co.nz>
Cc: Resource Consents <ResourceConsents@es.govt.nz>
Subject: s92 Further information request - Fiordland Trails Trust

Hello Luke,

Further to our conversation this week, please find attached a s92 further information request for Leg 6 of the Fiordland Trails Trust application.

Also, I don't have appear to have an email address for the Fiordland Trails Trust contact for this application – can you please confirm it for me?

Please don't hesitate to contact me with any questions.

Regards

Sonya

SONYA NICOL

Southern Land & Water Planning

T 027 505 0077 | E sonya@slwp.co.nz | W www.slwp.co.nz

Environment Southland
C/- Sonya Nicol
sonya@slwp.co.nz

Ref: 6-VQ422.20 025SO

FTT Wetland Modification APP-20191150 - Response to RFI

Dear Sonya

Thank you for your letter of 7th March requesting further information relating to this application. A response to your questions is detailed below.

1. Ecological Assessment

The applicant's ecologist has discussed effects on the wetland with the technical reviewer. Attached to this letter are e-mails detailing these discussions. Potential remediation and mitigation actions to address adverse effects on the existing wetland have been discussed. As an outcome of these discussions the applicant proposes to undertake the following additional work and promotes this as an amendment to the resource consent application:

- a) Infilling of the water table back to the natural ground level of the wetland this autumn using the same peat and fine silt substrate that was removed during construction of the water table.
- b) Monitoring of the infilled ditch with additional infilling undertaken to restore the surface to the original ground level if settling occurs.

The following resource consent conditions relating to the proposed remediation and mitigation measures are suggested:

1. Infilling of the excavated ditch will be undertaken prior to spring 2019.
2. Three monitoring site visits involving walk-over assessments are to be undertaken by the applicant. Photographic evidence is to be obtained during each assessment and a brief assessment documenting each site visit completed and provided to Southland Regional Council.
 - The first assessment will take place immediately after the remedial works have been implemented, to demonstrate the remediated ground level.
 - The second assessment will be undertaken in August 2019 to assess whether there has been any settling. The applicant is to undertake additional infilling if there has been settling.
 - The third assessment will take place in December to confirm if rautahi has colonised the infilled area. The third assessment will also provide a recommendation as to the need for any further monitoring.

2. Culverts

The applicant confirms that all culverts have been placed to meet the permitted conditions of Rule 28 (a) of the Operative RWP and are permitted activities.

FTT lowered one culvert installed in a waterway, in October 2018, in response to the abatement notice that was served in September 2018. Attachment 1 details the changes to this culvert including before and after photographs.

We note that Rule 59 (a) of the pSWLP specifically excludes placement, erection or reconstruction of culverts in natural wetlands (please see attached). This exclusion means that Rule 59 (b) of the pSWLP which refers to permitted conditions of 59 (a) is not applicable to culvert works in a natural wetland. Our interpretation of this exclusion is that relevant pSWLP rule for culvert works in natural wetlands is Rule 74.

As noted in the application and in the Ecological Assessment the Trail crosses two streams spanned by culverts located at the southern and northern ends of the wetland. The streams define the extent of the wetland. The culverts installed at the southern and northern extent of the wetland have been placed in waterways that flow into the wetland. These culverts are permitted under Rule 28 (a) of the RWP and 59 (a) of the pSWLP.

The applicant has not dammed any waterways at the site.

Under the pSWLP the wetland modification activity associated with construction of the Trail is not captured by plan rules relating to waterways. As stated in the abatement notice and in the resource consent application activity in a wetland is a use of land under Section 9 (2) of the RMA 1991. Rule 74 of the pSWLP regulates the use of land within a wetland. The application seeks retrospective resource consent for wetland modification under Rule 74 of the pSWLP and this incorporates placement and use of those culverts placed in the wetland.

There is a distinction between culverts in a waterway and culverts in a wetland under the pSWLP. As noted above all culverts that FTT installed in waterways are now permitted activities. Resource consent is sought under Rule 74 of the pSWLP for two culverts installed in the wetland itself. A map detailing the location of the two culverts constructed in the wetland is attached as Map 1. These culverts allow water to flow under the constructed Trail. We note that while Rule 59(a) is not relevant to culverts installed in a wetland the two culverts installed in the wetland meet most of the permitted conditions of this rule.

Please contact me if you wish to discuss this further.



Regards

Luke McSoriley
Workgroup Leader - Planning

L2L Trail Leg 6,

Culvert at GPS Coordinates 11080612 E, 4944088 N

To whom it may concern


The abatement notice, dated 27 September 2018 served on Fiordland Trails Trust (FTT) Item 2 refers.

FTT were required to modify this culvert to comply with the requirements of the Proposed Southland Water and Land Plan




Rule 59(a) (v) is 'the invert (or bottom) of any culvert is installed to a depth of either 300 millimetres below the natural bed level or one-third of the diameter of the culvert, whichever is the lesser;'

The culvert lowering work was completed in October 2018.

The schedule below indicates the situation prior to the culvert relaying.

Dia - mm	Length metres	Gradient degrees	Purpose	Culvert inlet	Culvert outlet	Comment
400	6m	3	Acts as a drainage ditch from Kepler Farm, existing waterway, manmade back when farm was established in 1970's			Placed to existing ditch. Embedment u/s 80mm, d/s 60mm. Sedimentation of invert – 30mm deep u/s. Flowing freely and no impediment to fish movement. Not strictly to rule. Could be embedded further if necessary

The schedule over indicates the culvert post relaying and complying with Rule 59(a) (v).

Dia - mm	400	Length metres	6m	Gradient degrees	3	Purpose	Acts as a drainage ditch from Kepler Farm, existing waterway, manmade back when farm was established in 1970's	Culvert inlet	 <p>Blue pen indicates original bed level</p>  <p>Looking immediately upstream of inlet</p>	Culvert outlet	 <p>Blue pen indicates original bed level</p>	Comment	<p>Culvert is 400mm internal diameter.</p> <p>Inlet is embedded 150mm below original ground level. (80mm of sediment depth within invert).</p> <p>Outlet is embedded 140mm below original ground level (90mm of sediment within invert)</p>
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David Boniface

David Boniface

Trustee and Engineer to FTI

Leg 6 Lake2 Lake Trail – Culvert locations to natural runners within wetland



Rule 59 – Culverts

- (a) The placement, erection or reconstruction of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a river, modified watercourse or wetland (excluding natural wetlands), and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:
- (ia) the general conditions set out in Rule 55A; and
 - (i) the maximum diameter of any single culvert is 1,200 millimetres; and
 - (iii) any culvert is positioned so that its alignment is the same as the river; and
 - (iv) any culvert is designed to pass flood flows (either through, around or over the culvert) and does not increase the risk of flooding to neighbouring properties; and
 - (v) the invert (or bottom) of any culvert is installed to a depth of either 300 millimetres below the natural bed level or one-third of the diameter of the culvert, whichever is the lesser; and
 - (vi) any culvert is purpose built for the passage of water (i.e. not a drum, container or other item not designed as a culvert); and
 - (viii) fill over any culvert is not be greater than 4 metres (the vertical distance measured from the crest of the fill to the natural bed at the downstream invert of the structure); and
 - (ix) any structure is not within any mātaimai, nohoanga, or taiāpure.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

- (b) The placement, erection or reconstruction of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a river, modified watercourse or wetland, and any associated bed disturbance and discharge resulting from carrying out the activity, that does not meet one or more of the conditions of Rule 59(a) is a controlled activity.

The Southland Regional Council will exercise control over the following matters:

1. the design and location of the culvert;
2. any effects on flood risk, river morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitat (including fish passage), taonga species, the spiritual and cultural values and beliefs of the tangata whenua, landscape, natural character and amenity values, navigational safety and public access.
3. any conditions in Rule 59(a) that cannot be met.

Appendix 2 – Infrastructure Definitions

Resource Management Act 1991 & Southland Regional Policy Statement 2017

Infrastructure

- (a) Pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy;
- (b) A network for the purpose of telecommunication as defined in Section 5 of the Telecommunications Act 2001;
- (c) A network for the purpose of radiocommunication as defined in Section 2(1) of the Radiocommunications Act 1989;
- (d) Facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
 - (i) uses them in connection with the generation of electricity for the person's use; and
 - (ii) does not use them to generate any electricity for supply to any other person;
- (e) A water supply distribution system, including a system for irrigation;
- (f) A drainage or sewerage system;
- (g) Structures for transport on land by cycleways, rail, roads, walkways, or any other means;
- (h) Facilities for the loading or unloading of cargo or passengers transported on land by any means;
- (i) An airport as defined in Section 2 of the Airport Authorities Act 1966;
- (j) A navigation installation as defined in Section 2 of the Civil Aviation Act 1990;
- (k) Facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in Section 2(1) of the Port Companies Act 1988;
- (l) Anything described as a network utility operation in regulations made for the purposes of the definition of “network utility operator” in Section 166 of the Act.

Proposed Southland Water and Land Plan 2018

Regionally significant infrastructure

Means infrastructure in the region which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure.

Appendix 3 – Updated Conditions of Consent

1. This consent authorises wetland modification to enable the construction of 35 metres of the Lake 2 Lake trail, the placement and use of **three two** culverts and the use of Leg 6 of the Lake 2 Lake at the location specified above, as described in the application for resource consent dated 18 February 2019 and further information provided on 1 and 11 April 2019 **and 18 September 2019**.
2. The **third culverts** shall be **installed sized and constructed and located** as detailed in the **further information provided on 18 September 2019 application and located within the areas as identified and described in the application**.
3. The Consent Holder shall infill the excavated ditch back to the ground level of the wetland by 31 December 2019. The consent holder shall notify the Consent Authority in writing (escompliance@es.govt.nz) on commencement and upon completion of the works.
4. The Consent Holder shall undertake three monitoring site visits involving walk-over assessments and photographic evidence shall be obtained during each assessment along with an assessment documenting each site visit completed which shall be provided to the Consent Authority in writing (escompliance@es.govt.nz). The Consent Holder shall:
 - a) Undertake the first monitoring site visit assessment immediately after the remedial works required in condition 3 have been implemented, to demonstrate the remediated ground level;
 - b) Undertake the second monitoring site visit assessment by March 2020 to assess whether there has been any settling. The applicant shall undertake additional infilling back to the ground level of the wetland if there has been settling; and
 - c) Undertake the third monitoring site visit assessment by 1 October 2020 to confirm if rautahi has colonised the infilled area. The third assessment will also provide a recommendation as to the need for any further monitoring if rautahi has not colonised the infilled area.
5. The Consent Holder shall undertake three monitoring site visits involving walk-over assessments and photographic evidence shall be obtained during each assessment along with an assessment documenting each site visit completed which shall be provided to the Consent Authority in writing (escompliance@es.govt.nz). The Consent Holder shall:
 - a) Undertake the first monitoring site visit assessment immediately after the remedial works required in condition 3 have been implemented, to demonstrate the remediated ground level;
 - b) Undertake the second monitoring site visit assessment by March 2020 to assess whether there has been any settling. The applicant shall undertake additional infilling back to the ground level of the wetland if there has been settling; and
 - c) Undertake the third monitoring site visit assessment by 1 October 2020 to confirm if rautahi has colonised the infilled area. The third assessment will also provide a recommendation as to the need for any further monitoring if rautahi has not colonised the infilled area.
6. The consent holder shall ensure that:
 - a) contaminants, other than sediment, but including cement and oil are prevented from entering the waterway during the construction works;
 - b) all reasonable steps shall be taken to minimise the release of sediment to water;
 - c) the structure and approaches are constructed so that run-off from the structure is discharged to land rather than directly to the stream/river;
 - d) fish passage is not impeded as a result of the works;

- e) all construction equipment, machinery, plant, and debris are removed from the site on completion of the works;
 - f) silt disturbance and instream works are kept to a minimum;
 - g) no washing of equipment occurs in the stream/river;
 - ~~h) the batters of the cycle trail shall be resown upon completion of the works;~~
 - h*i*) works shall, as far as practicable, be undertaken when flows in the watercourse are low.
7. The consent holder shall ensure that the culverts authorised by this consent do not cause any flooding, erosion, scouring, land instability or property damage.
 8. The consent holder shall visually inspect the culvert*s* and trail authorised by this consent every two months to check for any indication of scour erosion at the culvert outlets and to ensure they are maintained in sound structural condition.
 9. In the event of any contamination of the watercourse the consent holder shall remove the contaminants immediately from the site and notify, without undue delay, the Consent Authority.
 10. There shall be no disturbance of the roosting and nesting areas of the black fronted tern, black billed gull, and banded and black fronted dotterel, or the feeding areas of the banded and black fronted dotterel, as a result of the exercise of this consent.
 11. The consent holder shall take all reasonable precautions to minimise the spread of pest plants and aquatic weeds. In particular, the consent holder shall:
 - a) remove any vegetation caught on the machinery;
 - b) where necessary, clear vegetation from the site;
 - c) avoid working in areas where aquatic weeds such as Lagarosiphon major are known to be present (for information, contact Environment Southland); and
 - d) to avoid the spread of the didymosphenia geminata or any other pest plant, do not use machinery that has been used in any area where the pest plant(s) are known to be present in the previous 20 working days, unless it has been thoroughly cleansed.
 12. The consent holder shall have in place at all times, an active noxious weed management programme to eradicate noxious weeds, covering an area of up to 2,000m² within the wetland immediately upstream of from the trail edge, as described in the application for resource consent dated 18 February 2019 and further information provided on 1 and 11 April 2019.
 13. The consent holder shall pay an annual administration and monitoring charge to the Consent Authority, collected in accordance with Section 36 of the Resource Management Act, 1991. This charge may include the costs of inspecting the site upon completion of the works (or otherwise as set by the Consent Authority's Annual Plan).
 14. In the event of a discovery, or suspected discovery, of a site of cultural importance (Waahi Taonga/Tapu) during the construction, the consent holder shall immediately cease operations in that location and inform the local iwi authority (Te Ao Marama Inc, phone 03 931 1242).

Operations may recommence at a time as agreed upon in writing with the Consent Authority. The discovery of Koiwi (human skeletal remains) or Taonga or artefact material (e.g. pounamu/greenstone) would indicate a site of cultural importance. Appendix A to this consent outlines the process that is to be followed in the event of such a discovery.

15. The Consent Authority may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this consent during the period 1 February to 30 September each year, or within two months of any enforcement action being taken by the Consent Authority in relation to the exercise of this consent, or on receiving monitoring results, for the purposes of:
- a) determining whether the conditions of this permit are adequate to deal with any adverse effect on the environment, including cumulative effects, which may arise from the exercise of the permit, and which it is appropriate to deal with at a later stage, or which become evident after the date of commencement of the permit;
 - b) ensuring the conditions of this consent are consistent with any National Environmental Standards Regulations, relevant plans and/or Policy Statement;
 - c) amending the monitoring programme to be undertaken; or
 - d) adding or adjusting compliance limits.

Appendix 4 – Relevant Plan Provisions

Southland Regional Policy Statement 2017

Objective INF.1 – Southland’s infrastructure - Southland’s regionally significant, nationally significant and critical infrastructure is secure, operates efficiently, and is appropriately integrated with land use activities and the environment.

Policy INF.1 - Regional, national and critical infrastructure - Recognise the benefits to be derived from, and make provision for, the development, maintenance, upgrade and ongoing operation of regionally significant, nationally significant and critical infrastructure and associated activities.

Policy INF.2 – Infrastructure and the environment - Where practicable, avoid, remedy or mitigate the adverse effects of infrastructure on the environment. In determining the practicability of avoiding, remedying, or mitigating adverse effects on the environment, the following matters should be taken into account:

- (a) any functional, operational or technical constraints that require the physical infrastructure of regional or national significance to be located or designed in the manner proposed;
- (b) whether there are any reasonably practical alternative designs or locations;
- (c) whether good practice approaches in design and construction are being adopted;
- (d) where appropriate, and such measures are volunteered by a resource user, whether any significant residual adverse effects can be offset or compensated for; and
- (e) the need to give effect to the NPSET (2008) including that planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.

Objective TRAN.1 – Transport and land use - Development of transport infrastructure and land use take place in an integrated and planned manner which: (a) integrates transport planning with land use; (b) protects the function, safety, efficiency and effectiveness of the transport system; (c) minimises potential for reverse sensitivity issues to arise from changing land uses; (d) provides for positive social, recreational, cultural and

economic outcomes; (e) minimises the potential for adverse public health and environmental effects; (f) enhances accessibility and connectivity, maximising transport choice for users of the transport system.

Policy TW.3 - Take iwi management plans into account.

Objective WQUAL.1 - Water quality in the region:

- (a) safeguards the life-supporting capacity of water and related ecosystems;
- (b) safeguards the health of people and communities;
- (c) is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;
- (d) is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.

Policy WQUAL.1 - Overall management of water quality

- (a) Identify values of surface water, groundwater, and water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and formulate freshwater objectives in accordance with the National Policy Statement for Freshwater Management 2014; and
- (b) Manage discharges and land use activities to maintain or improve water quality to ensure freshwater objectives in freshwater management units are met.

Policy WQUAL.3 - Identify and protect the significant values of wetlands and outstanding freshwater bodies.

Policy WQUAL.7 - Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

Objective BIO.2 - Maintain indigenous biodiversity in Southland and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna for present and future generations.

Policy BIO.2 - Areas of significant indigenous vegetation and significant habitats of indigenous fauna in the Southland region will be protected and, where appropriate, enhanced.

In giving effect to this policy, particular regard will be had to the following potential adverse effects:

- (i) fragmentation of, or reduction in the extent of, significant indigenous vegetation or significant habitats of indigenous fauna;
- (ii) fragmentation or disruption of connections and linkages between significant ecosystems or significant habitats of indigenous fauna;
- (iii) loss of, or damage to, buffering of significant ecosystems or significant habitats of indigenous fauna;
- (iv) loss or reduction of rare or threatened indigenous species populations or habitats.

Policy BIO.4 - Manage a full range of indigenous habitats and ecosystems to achieve a healthy functioning state, and to ensure viable and diverse populations of native species are maintained, while making appropriate provisions for lawful maintenance and operation of existing activities. In giving effect to this policy, regard will be had to the following potential adverse effects:

- (i) fragmentation of, or reduction in the extent of, indigenous vegetation or habitats of indigenous fauna;
- (ii) fragmentation or disruption of connections and linkages between ecosystems or habitats of indigenous fauna;
- (iii) loss of, or damage to, buffering of ecosystems or habitats of indigenous fauna;
- (iv) loss or reduction of rare or threatened indigenous species' populations or habitats.

Regional Water Plan for Southland 2010

Objective 10 – Habitats and ecosystems

To maintain or enhance the diversity and integrity of aquatic and riverine habitats and ecosystems.

Objective 12 – Public access

To maintain and enhance public access to river beds (including beds of streams and modified watercourses) and lake beds except in circumstances where public health and safety are at risk.

Policy 1A - Take into account Iwi Management Plans

Policy 38 - Avoid, remedy or mitigate the adverse effects of activities on wetlands through an integrated management approach with the Southland territorial authorities.

Policy 40 - Encourage the maintenance and restoration of existing wetlands and the creation of new wetlands.

Proposed Southland Water and Land Plan 2018

Objective 1 - Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 2 - Water and land is recognised as an enabler of primary production and the economic, social and cultural wellbeing of the region.

Objective 9A - Surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

Objective 9B - The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.

Objective 13 - Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.

Objective 14 - The range and diversity of indigenous ecosystem types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

Objective 16 - Public access to, and along, river (excluding ephemeral rivers) and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.

Objective 17 - The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.

Objective 18 - All activities operate in accordance with "good management practice" or better to optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

Policy 13 (1) - Recognise that the use and development of Southland’s land and water resources, including for primary production, enables people and communities to provide for their social, economic and cultural wellbeing.

Policy 26A - Recognise and provide for the effective development, operation, maintenance and upgrading of regionally significant, nationally significant and critical infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

Policy 32 - Protect significant indigenous vegetation and significant habitats of indigenous fauna associated with natural wetlands, lakes and rivers and their margins.

Policy 33 - Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal.

Policy 34 – Restoration of existing wetlands, the creation of wetlands and riparian planting

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. the establishment of wetland areas and associated indigenous riparian plantings, including on-farm, in subdivisions, on industrial sites and for community sewerage schemes.

Policy 38 – Natural hazards - Reduce the susceptibility of the Southland community and environment to natural hazards by improving planning, responsibility and community awareness for the avoidance and mitigation of natural hazards.