

The Independent Hearing Commissioner

30 March 2020  
9.30 am

## Staff Report for Hearing - Addendum report, updating hearing schedule

*The recommendation in the staff report represents the opinion of the writer and it is not binding on the Independent Hearing Commissioner. The report is evidence and has no greater weight than any other evidence that the Commissioner will hear and consider.*

### Hearing of Application – APP-20191150

#### Fiordland Trails Trust

Compiled by Sonya Nicol, Consultant Consents Officer

- Hearing: The hearing is scheduled to commence at 9.30 am on Monday, 30 March 2020 at the Distinction Te Anau Hotel, 64 Lakefront Drive, Te Anau.
- Application: The Fiordland Trails Trust has applied for:
- retrospective resource consent for wetland modification to enable construction of 35 metres of the trail, the placement and use of two culverts and the use of Leg 6 of the Lake 2 Lake Te Anau to Manapouri Trail.
- Notification: The application was publicly notified on 6 May 2019 and 72 submissions to the application were received, 70 in support and two neutral.
- Recommendation: I recommend that the application is declined for the reasons that are detailed in this report.

## Executive Summary

The application is for retrospective resource consent for wetland modification to enable construction of 35 metres of the trail, the placement and use of two culverts and the use of Leg 6 of the Lake 2 Lake Te Anau to Manapouri Trail. An Abatement Notice (EAS-20182800) was issued on 27 September 2018 regarding the unauthorised culvert (including its depth) and trail installation.

The area where the trail and the associated culverts are located is classed as a wetland. The wetland area is associated with a spring-fed stream that drains into Lake Manapouri. The area of wetland impacted from the trail is approximately 120 m<sup>2</sup>. The wetland is not listed as a Regionally Significant Wetland with the proposed Southland Water and Land Plan (pSWLP).

Volunteered conditions to remedy and mitigate the effects of the trail on the wetland include infilling of the excavated ditch and three monitoring site visits involving walk-over inspections and promoting the clearance of exotic pest plant species to remediate effects of the trail on the wider wetland.

The application triggers Wetlands Rule 74(c) of the pSWLP for the use of land within a natural wetland, as the application is for the modification of a wetland, including the installation of two culverts. This plan sets out very clear and directive objectives and policies that adverse effects of activities on wetlands should be avoided.

In my view, there are two key issues that the Independent Hearing Commissioner needs to consider when making the decision on the proposal in terms of adverse effects on the wetland, namely hydrological effects and the direct loss of wetland vegetation.

There were 72 submissions to the application were received, 70 in support and two neutral. The submissions highlight the social, cultural and economic benefits that the Trail brings to Fiordland.

Overall, I recommend that the application be declined.

## **1. Introduction**

### **1.1 Status and purpose of this report**

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Fiordland Trails Trust. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the consent authority to consider the report at any hearing.

The purpose of the report is to assist the Independent Hearing Commissioner in making a decision on the application.

### **1.2 About the author**

My name is Sonya Nicol. I am a Consultant Consents Officer employed by the Southland Regional Council. I have 16 years' experience in planning and resource management roles in local government and as a private consultant. Over this time, I have prepared and processed resource consent applications, and have worked with a range of district and regional plans.

I hold the qualifications of a Bachelor of Resource Studies and a Postgraduate Diploma in Resource Studies. I am an Associate Member of the New Zealand Planning Institute.

I have been involved with the application since it was lodged and received by Council. I have also visited the site.

For completeness, I have read the Environment Court Code of Conduct and agree to abide by it.

### **1.3 Information relied on in preparation of this report**

In preparation of this report I have had regard to the following documents:

- Resource consent application;
- Further information provided under Section 92(1) of the RMA dated 1 April 2019;
- Technical review of the application completed under Section 92(2) of the RMA dated 26 February 2019;
- Resource Management Act 1991 (RMA);
- National Policy Statement on Freshwater 2014 (NPSFM);
- Southland Regional Policy Statement 2017 (RPS);
- Regional Water Plan for Southland 2010 (RWP);
- Proposed Southland Water and Land Plan (decisions version) 2018 (pSWLP); and
- Te Tangi a Tauria (Iwi Management Plan) 2008.

## 2. The application

### 2.1 The proposed activities

Applicant:	Fiordland Trails Trust
Application:	Retrospective resource consent for wetland modification to enable construction of 35 metres of the trail, the placement and use of two culverts and the use of Leg 6 of the Lake 2 Lake Te Anau to Manapouri Trail.
Site address or location:	Leg 6 of the Lake 2 Lake Cycle Trail between chainage 2200 and 2300
Legal description:	Public Land, owned by the Crown
Map Reference:	1180612E, N4942051 and 1180593 E, 4942084

#### The Proposal

The Fiordland Trails Trust (the applicant) is seeking retrospective resource consent for wetland modification to enable construction of 35 metres of the trail, the placement and use of two culverts and the use of Leg 6 of the Lake 2 Lake Te Anau to Manapouri Multi Use Trail (the Trail).

The application describes the existing environment in detail. The Trail has been constructed across the wetland for a distance of approximately 35 metres. The wetland area is associated with a spring fed stream that drains into Lake Manapouri. The trail crosses two streams that both have had culverts installed and are positioned at the southern and northern ends of the wetland. These culverts have been formed to have a width of 3.0 metres, with a 2.2 metre wide gravelled surface.

The immediate area of wetland impacted from the trail is approximately 120 m<sup>2</sup>.

Volunteered conditions to remedy and mitigate the effects of the trail on the wetland include infilling of the excavated ditch and three monitoring site visits involving walk-over inspections and promoting the clearance of exotic pest plant species to remediate effects of the trail on the wider wetland.

The applicant seeks a 35-year consent term.

### 2.2 Description of the affected environment

The application describes the existing environment in detail. The area where the trail, and the associated culverts are located is classed as a wetland. I note that some submissions have questioned if the area is classed a wetland, so I address this now so that the description of the affected environment is clear.

The pSWLP defines wetlands as:

*“include permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.”*

The technical review completed by Wildland Consultants Limited also references the description as contained within the Beale Consultants report which described the site as:

*“The wetland occurs at the base of small scarp on the eastern shore of Lake Manapouri. It is likely to be a spring-fed wetland as there is no obvious stream channel upstream of the wetland. The wetland occurs in mosaic of fernland, mānuka (Leptospermum scoparium) scrub, and Scotch broom (Cytisus scoparius). An informal walking track zigzags from the nearby Manapouri – Te Anau Highway to the lakeshore, just south of the wetland.*

*The ecological assessment (Beale Consultants 2018) accompanying the application classifies the wetland as a marsh wetland, with the dominant wetland plant being purei (Carex secta), with shrubs of mingimangi (Coprosma propinqua) and weeping mapou (Myrsine divaricata) on its margins. Wet ground between the two streams is occupied by stands of mānuka, shrubs of mingimangi, and the sedge rautahi (Carex coriacea) and swamp kiokio (Parablechnum minus), and this vegetation also comprises wetland vegetation. The report states that no plant species with a threat classification were observed in the wetland in the vicinity of the track. The report also indicates that one or more lizard species with a threat classification of At Risk-Declining may be present.*

*We note that one plant species found at the site, mānuka, has a current threat classification of At Risk-Declining, on the basis of the potential threat posed by myrtle rust (Austropuccinia psidii). Little weight has been attached to this due to the abundance of mānuka in Southland Region, because myrtle rust has not yet been detected in the lower South Island, and because mānuka is not a species that is commonly infected by myrtle rust in the North Island and northern South Island.*

Based on the description agreed by two ecologists as detailed above, I consider that the area subject to this application meets the definition of a wetland, as contained within the pSWLP.

The wetland is not listed as a Regionally Significant Wetland within the pSWLP. The application site is positioned above Lake Manapouri, which is a Ngāi Tahu Statutory Acknowledgement Area. The wetland is fed by a spring fed stream that drains into Lake Manapouri. The wetland area is defined as being within Natural State for Water Quality.

## 2.3 Actual and potential effects

### **Effects to be considered (Section 104(1)(a))**

Consideration has been given to the following effects:

- hydrological effects on the wetland;
- direct loss of wetland vegetation;
- design and location of the culverts including fish passage;
- social and economic and public access.

These issues are discussed below.

- **Hydrological effects on the wetland**

Based on the technical comments initially provided by Wildlands Consultants Ltd (dated 26 February 2019), the actual hydrological effects that occurred from wetland modification (prior to any remediation proposed) to enable the construction, the placement and use of culverts and the use of Leg 6 are more than minor.

*“The trail cuts across the flow of water in the upper part of the wetland, and diverts previously inflowing water into an adjacent stream. This is likely to cause local drying of the wetland adjacent to the water table and reduce water flow to the larger downstream part of the wetland. These effects are likely to cause local changes in wetland vegetation over time, allowing facultative wetland species such as mānuka to increase in abundance at the expense of obligate wetland species such as purei.”*

- **Direct loss of wetland vegetation**

Based on the technical assessment provided, the actual effects on indigenous vegetation (prior to any remediation) from wetland modification to enable construction, the placement and use of culverts and the use of Leg 6 of the Trail are more than minor.

*Residual adverse effects on the wetland are more than minor, for the following reasons. Various matters need to be considered to determine the scale of residual effects:*

- *The wetland has been classified as a representative marsh wetland, a wetland class that has is one of the most reduced classes of wetland in most parts of New Zealand.*
- *The wetland is located within a land environment that retains less than 20% of its original indigenous cover nationally.*
- *Recent research in Southland has shown that the rate of wetland loss has not slowed, with 10.5% of Southland’s remaining wetlands (excluding those in Fiordland on Rakiura) being cleared between 1990 and 2012 (Robertson et al., in press).*
- *Clearance of indigenous wetland vegetation, while representing a relatively small wetland area, increases the cumulative loss of wetland extent, and the effects of this have not been avoided, remedied, or mitigated.*

*Overall, even though the extent of wetland loss is relatively small, the residual adverse effects are more than minor.*



**Figure 1: Photo taken from the Ecological Assessment submitted with the application, showing an elevated view of the northern culvert crossing looking in a southward direction showing vegetation within the wetland.**

- **Design and location of the culverts including fish passage**

The culverts are being considered as a land use activity as part of the modification of a wetland activity. As per the assessment provided in the section above, it is considered that the effects on the wetland from the activity which also includes the installation of two culverts will be more than minor.

- **Social and economic and public access effects**

The applicant highlights that the activity is having positive social and economic benefits, and enhanced public access to public land as well as enhances recreational opportunities. I consider that these are positive effects from the trail for the Fiordland community.

### ***Effects Conclusion***

When looking through the lens of the policies and objectives of the regional plans, the adverse effects arising from the proposed activity are expected to be more than minor. It is especially considered that the hydrological and the indigenous vegetation effects arising from the modification of the wetland to enable the construction of the trail, the placement and use of culverts, are more than minor.

### 3. Procedural Matters

#### 3.1 Regional Planning framework

Resource consent is required under the proposed Southland Water and Land Plan 2018.

##### *The Proposed Southland Water and Land Plan 2018 (pSWLP)*

- **Non-complying activity** under Rule 74(c) for the use of land within a natural wetland which in this instance is for wetland modification to enable construction of 35 metres of the trail, the placement and use of two culverts and the use of Leg 6 of the Lake 2 Lake Te Anau to Manapouri Multi Use Trail.

An application for resource consent has been lodged with Environment Southland in accordance with these requirements (attached). The applicant amended the application on 1 April 2019 to include consent for the placement and use of two 800 mm culverts which are installed within the actual wetland area. These two culverts allow water to flow under the constructed trail.

Overall, the application is considered to be a **non-complying** activity.

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 either of “gateway” tests in Section 104D, under Section 104B the Council may grant or refuse consent for a non-complying activity, and if it grants the application, may impose conditions under Section 108 of the RMA.

#### 3.2 Further information request

Further information was requested from the applicant on the 7 March 2019. The requested information included a request to provide:

- an assessment of potential remediation, mitigation or compensation actions that could potentially address the potential adverse effects on the existing wetland;
- confirmation that all the culverts within the wetland area have been constructed in accordance with the requirements of the Regional Water Plan (Rule 28) and the pSWLP (Rule 59);
- a map confirming the location of all of the culverts in this wetland area in respect of any existing streams. It is noted the application refers to the northern and southern culverts. This information is sought to determine if the trail is creating a type of “damming of the waterway”. Should this be the case an additional consent(s) as an amendment to the existing application may be required.

The above information was provided by the applicant (attached).



### 3.3 Notification and Submissions

The application was publicly notified on 6 May 2019. This was for the following reasons:

- the adverse effects, particularly the hydrological and the indigenous vegetation effects arising from the modification of the wetland to enable the construction of the trail, the placement and use of culverts and the use of Leg 6 of the Trail when seen through the lens of the policies and objectives of the RWP and the pSWLP will be more than minor.

72 submissions to the application were received, 70 in support and two neutral (from Guardians of Lakes Manapouri, Te Anau & Monowai and the Southland Conservation Board.

A number of submissions discussed the Abatement Notice (EAS-20182800) process which was issued on 27 September 2018 regarding the unauthorised culvert (including its depth) and trail installation. The submissions below focus on the resource consent application, rather than the Abatement Notice process. However, copies all of the submissions are included in the appendices (page number shown in table below), and are summarised as follows:

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
Sir A F Mark	Support	<ul style="list-style-type: none"> <li>The SDC consent outlines that there is no feasible alternative available.</li> <li>Among wetland flora listed only two species of <i>Carex</i>, <i>C. secta</i> and <i>C. virgata</i> considered as strict wetland species, while manuka is a woody species it is not a specific wetland species. Exotic species, notably scotch broom were common on this wetland.</li> <li>Status of wetland refers to its status as lowest status of all conservation lands.</li> <li>Digging up culverts or adding another culvert would likely result in greater impact than current situation.</li> <li>No alternative route, and building a boardwalk is likely to have a greater impact than any minor remediation proposed.</li> <li>Agree with Wildlands Consultants that remediation, mitigation or compensation actions should address adverse effects.</li> <li><i>Accept offer of Lake 2 Lake Trails Trust to remediate the situation and provide consent.</i></li> <li><i>The alternative is to require the FTT's to raise the 35m section of the trail that crosses the boardwalk sufficiently high as not to impact on the wetlands functioning ecology, but it is likely to have a greater impact with its construction, than the minor remediation proposed.</i></li> </ul>	Yes	
A S Dore	Support	<ul style="list-style-type: none"> <li>Hardly a significant impact, as the trail location was designed to avoid the wetland complex, consented by SDC and approved by DOC.</li> <li>Trail is an amazing public asset.</li> </ul>	No	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<ul style="list-style-type: none"> <li>• <i>Issue consent without conditions and avoid further costs.</i></li> </ul>		
A MacKay	Support	<ul style="list-style-type: none"> <li>• Retrospective consent is the best way to resolve the issue.</li> </ul>	No	
A Burgess	Support	<ul style="list-style-type: none"> <li>• Sets out background to the Leg 6 process which included getting Simon Beale to mark out the trail and flora and fauna that needed protected. To bypass the wetland FTT gained consent through SDC and four of the affected landowners.</li> <li>• After the trail was completed, but not open to the public, FTT were advised from ES that it breached the pSWLP.</li> <li>• Questions if there is a conflict of interest by seeking an independent ecologist, rather than relying on Simon Beale's report.</li> <li>• FTT is a voluntary group who want the all-purpose trail for the enjoyment and wellbeing of locals.</li> <li>• Concern with process.               <ul style="list-style-type: none"> <li>• <i>Wants retrospective approved rather than a hearing taking place.</i></li> </ul> </li> </ul>	No	
PD and NA Baker	Support	<ul style="list-style-type: none"> <li>• Effects are less than minor.</li> <li>• Draw attention to definition of wetland in pSWLP.</li> <li>• A significant part of the 35m actually supports dryland plants like broom and manuka and wetland only describes a small part of the 35 m</li> <li>• Take into account the benefit to the surrounding environment of the work undertaken by FTT in removing wilding conifers and other exotic weeds.</li> <li>• Removal of the track and replacement with a wooden deck would cause damage in excess of what has occurred to date.</li> <li>• Questions if the trails effects are upheld (more than minor) what effect would this have on future and past activities.               <ul style="list-style-type: none"> <li>• <i>Grant consent and limit conditions to compensatory works that the FTT have agreed to.</i></li> </ul> </li> </ul>	No	
BM Hagen	Support	<ul style="list-style-type: none"> <li>• FTT track has enhanced area.</li> <li>• Wetland has been enhanced.               <ul style="list-style-type: none"> <li>• <i>Grant consent with no cost to FTT</i></li> </ul> </li> </ul>	No	
B McCandless	Support	<ul style="list-style-type: none"> <li>• The wetland was virtually inaccessible to the public before construction of the trail.</li> <li>• It is polluted by exotic plant species.</li> <li>• Difference between less than minor and more than minor will not be clear to many submitters.</li> </ul>	No	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<ul style="list-style-type: none"> <li>• It is clear that both ecologists have agreed that the environmental impact is moderate.</li> <li>• FTT have offered to mitigate effects.</li> <li>• Significant amenity value of the Lake 2 Lake Trail should also be taken into consideration.</li> <li>• Trail has large recreation and economic benefits to region.</li> <li>• Public good is best served by approving application.                             <ul style="list-style-type: none"> <li>• <i>Approve application with mitigation.</i></li> </ul> </li> </ul>		
OD and MP Buckingham	Support	<ul style="list-style-type: none"> <li>• FTT make a huge contribution to community by building trails in places that people wouldn't otherwise have access to.</li> <li>• Effects are less than minor and should be judged on a broader platform.</li> <li>• Application should be judged on contribution it is making to the wellbeing of the community.</li> <li>• Consents is costly and diverts time and money away from trail developments.</li> <li>• Greater recognition should be given to submitters who use the trail rather than those who live outside the community.                             <ul style="list-style-type: none"> <li>• <i>Approve application without any mitigation measures.</i></li> </ul> </li> </ul>	Not stated	
C Stowe	Support	<ul style="list-style-type: none"> <li>• Broadly agree with Beale Consultants initial assessment of the vegetation cover, ecological values, hydrology and classification of the area as a spring-fed marsh wetland.</li> <li>• Area would meet most of the criteria for significance under the SRPS.</li> <li>• Acknowledge that marsh wetlands are among the most reduced wetland types at local and regional scales.</li> <li>• Mitigating factors include:</li> <li>• Trail is for demonstratable public and societal good.</li> <li>• Easily accessible way for people to explore and appreciate the diverse natural habitats in the area.</li> <li>• defining the true wetland area, and therefore the proportion of wetland affected, difficult and subjective.</li> <li>• culverts and formation of the water table have had a minor effect on the hydrology of the wetland (upstream or downstream) and are unlikely to impact on the structure and composition of the remaining vegetation in the future.</li> <li>• relatively small proportion of the total wetland vegetation has been impacted by the trail construction, and the minor modification to the hydrology of the area, are unlikely to impact</li> </ul>	No	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<p>the wider wetland's functionality and viability</p> <ul style="list-style-type: none"> <li>the wetland has relatively low significance. There are very large, intact and complex wetland systems present on both public and private land nearby, including regionally significant wetlands.</li> <li>The Waiau Trust and QEII have protected and created many wetlands over large parts of the Te Anau basin.               <ul style="list-style-type: none"> <li><i>Grant consent and carry out mitigation work suggested by Wildlands Ltd.</i></li> </ul> </li> </ul>		
Councillor Kremer	E Support	<ul style="list-style-type: none"> <li>Questions what defines minor.</li> <li>Can be assumed that both ecologists have some commonality on the impact to the environment as moderate.</li> <li>Public consultation should only occur when there are potential environmental impacts that have major or significant detrimental effects on the environment which this application does not qualify as.</li> <li>Need to recognise the significance vale the Lake 2 Lake trail adds to the Fiordland area.               <ul style="list-style-type: none"> <li><i>Grant consent and carry out mitigation work.</i></li> </ul> </li> </ul>	Yes	
Councillor Cockburn	R Support	<ul style="list-style-type: none"> <li>Construction care taken is evident and the effect has been less than minor.</li> <li>Community wellbeing, and the FTT have achieved remarkable positive results and raised funds to get a popular track established.</li> <li>Consent puts a cost burden on the local community.               <ul style="list-style-type: none"> <li><i>Look at logical and practical outcomes.</i></li> </ul> </li> </ul>	Yes	
E Jones	Support	<ul style="list-style-type: none"> <li>Retain as is, with some with some misgivings. given that Southland has lost so many wetlands,               <ul style="list-style-type: none"> <li><i>Would have preferred a bridge or a boardwalk, but do not support removing the existing structures as this could cause more damage.</i></li> </ul> </li> </ul>	No	
E Scott	Support	<ul style="list-style-type: none"> <li>Less than minor impact.</li> <li>Trail has been located to minimise any impact on wetland.</li> <li>Drainage is not impaired as two culverts enable the small streams to pass under the trail.</li> <li>FTT have done a fantastic job and is a shame to see resources spent on consents rather than building trails.               <ul style="list-style-type: none"> <li><i>Approve the section of trail to remain in place.</i></li> </ul> </li> </ul>	Not stated	
Fiordland Tramping & Outdoor Recreation Club	Support	<ul style="list-style-type: none"> <li>FTT is making a great effort to minimise any environmental effects of the trail.</li> <li>Trail has been positioned to avoid most of the wetland.</li> <li>Removing the trail would cause more damage than the existing trail does.</li> </ul>	Not stated	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<ul style="list-style-type: none"> <li>• <i>Grant consent to permit the current section of trail to remain.</i></li> <li>• <i>Support that the FTT enacts the minor changes recommended.</i></li> </ul>		
S & E Futter	Support	<ul style="list-style-type: none"> <li>• Unnecessary for retrospective application to be publicly notified.</li> <li>• FTT have been sympathetic to the environment.</li> <li>• Wetland area is not deemed regionally significant under the pSWLP.</li> <li>• Design and location of culverts do not cause a damming effects as all flows are passed under the trail while still allowing fish access.</li> <li>• Effects on landscape, amenity and public access are enhanced as area was previously little used or accessible.</li> <li>• pSWLP seeks to address activities known to have a significant effects on water quality, and do not believe that the section of trail in question does this when only 1.6% of the wetland is in question.</li> </ul> <p style="text-align: right;">• <i>Grant consent.</i></p>	No	
G L Laughton	Support	<ul style="list-style-type: none"> <li>• pSWLP is not yet operative.</li> <li>• Ensure a robust decision process.                             <ul style="list-style-type: none"> <li>• <i>Issue the consent with minor conditions for minor earthworks around the south culvert, minimal pest weed plant control and reduce fee to a minimum or nil.</i></li> </ul> </li> </ul>	No	
G Hoskin	Support	<ul style="list-style-type: none"> <li>• Positive health effects from Trail leading to less medical treatment required.</li> <li>• Economic benefits from trail.</li> <li>• This is an environmentally sustainable recreation project.</li> </ul> <p style="text-align: right;">• <i>Approve application.</i></p>	No	
Guardians of Lakes Manapouri, Te Anau & Monowai	Neutral	<ul style="list-style-type: none"> <li>• Not all wetland comprise the same values.</li> <li>• The s95 report and decision on notification was advanced on the basis that effects may be more than minor that included a GIS assessment which ma of unduly influenced the weighting.</li> <li>• Consider the proposal will satisfy both limbs of s104D as effects will be no more than minor and not contrary to the objectives and policies of the plans. Don't consider the proposal will create a perceived undesirable precedent.</li> <li>• Removing the trail or including a boardwalk would cause more damage to the wetland than the existing trail does.</li> <li>• Removing the trail may cause sediment into the receiving environment ad ultimately Lake Manapouri.                             <ul style="list-style-type: none"> <li>• <i>Trail should remain in place with mitigating, remedial and compensatory work carried out,</i></li> </ul> </li> </ul>	No	

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		<p><i>including fish passage is not compromised.</i></p> <ul style="list-style-type: none"> <li>• Council apply greater weighting to ground-truthed ecological surveys</li> <li>• Council recognises work has already been carried out, applicant is a community trust, effects are less than minor and both limbs of the s104D gateway are met.</li> </ul>		
H Beech	Support	<ul style="list-style-type: none"> <li>• Trail bring social, cultural and economic benefits.</li> <li>• Minimal negative impacts are well mitigated and are far outweighed by the positive benefits.                             <ul style="list-style-type: none"> <li>• Grant consent and waive fees.</li> </ul> </li> </ul>	No	
I Howe	Support	<ul style="list-style-type: none"> <li>• Tiny part of a wetland that has become infested with weeds.</li> <li>• Simon Beale’s “less than minor impact” should carry more weight as he assessed the impact of the trail on site.</li> <li>• Unbelievable that ES proceeded with a notified consent.                             <ul style="list-style-type: none"> <li>• Approve consent.</li> </ul> </li> </ul>	No	
J Burgess	Support	<ul style="list-style-type: none"> <li>• Large effort by FTT to develop the track.</li> <li>• Questions the difference from two ecologists regarding effects.                             <ul style="list-style-type: none"> <li>• Grant consent.</li> </ul> </li> </ul>	No	
K Turner	Support	<ul style="list-style-type: none"> <li>• Less than minor impact on the wetland.</li> <li>• Well engineering and built.</li> <li>• Ample room for flood water to flow to the wetland.</li> <li>• Water flow is not impeded and so the wetland is not affected.</li> <li>• Considers fish can travel through short culverts.</li> <li>• Trail is of benefit to local area.</li> </ul>	Not stated	
KF Bradley	Support	<ul style="list-style-type: none"> <li>• FTT built the trail through the best possible alignment and using the best option for allow the natural water flow from the two small wet runners to pass under the track.</li> <li>• Following Cave Creek, a national direction was made to reduce the numbers of structures, and cross track drainage was dealt with by building open cross drain cut outs or placing culverts under the track, and this has become best practise throughout NZ.</li> <li>• FTT used the best practice of using oversized sized pipe, to allow for flooding, plenty of cross flow surface area so the water flowing through the pipe is consistent with the creek flow, above and below the site.</li> </ul>	Not stated	
LA Rohan	Support	<ul style="list-style-type: none"> <li>• The 35 m length of trail occupies 100 m<sup>2</sup> of a wetland complex that exceeds 85 ha in area.</li> <li>• Of that 35 m perhaps 8 m is on a wet subgrade.</li> <li>• Two culverts are appropriately placed to two</li> </ul>	No	

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		<p>naturally occurring runners within a stream system.</p> <ul style="list-style-type: none"> <li>The two Ecologists agreed appropriate compensatory work to offset Kelvins perception of effect and FTT agreed this work.</li> <li>The 'real' wetland is to the west of the trail and contains quality wetland species. To the east is</li> <li>highly modified and well invaded by noxious weeds.               <ul style="list-style-type: none"> <li><i>Consent should be granted without conditions as it is a very minor issue.</i></li> </ul> </li> </ul>		
LC Harraway	Support	<ul style="list-style-type: none"> <li>Impact on the environment is less than minor.               <ul style="list-style-type: none"> <li><i>Grant consent.</i></li> </ul> </li> </ul>	No	
J R Harraway	Support	<ul style="list-style-type: none"> <li>Less than minor effect on the existing wetland.               <ul style="list-style-type: none"> <li><i>Grant consent to allow this wonderful asset to the benefit of locals and tourists.</i></li> </ul> </li> </ul>	No	
M Peacock of Destination Fiordland	Support	<ul style="list-style-type: none"> <li>Track is a key factor in continuing stimulation to local economy and wellbeing.</li> <li>Improved trails in Fiordland will contribute to area being viewed as a cycling destination which is of benefit to the region.</li> <li>Trail has established new businesses.</li> <li>Tourism is the biggest industry in Fiordland and requires ongoing development.</li> <li>FTT have demonstrated a commitment to developing the trail by ecologically and environmentally sound practices.</li> <li>Remedial work would be more environmentally friendly rather than removing the section of trail which would be more destructive.               <ul style="list-style-type: none"> <li><i>Approve with the condition that mitigating and remedial work is undertaken.</i></li> </ul> </li> </ul>	No.	
Manapouri Community Development Area Sub-Committee	Support	<ul style="list-style-type: none"> <li>Reference to SDC consent where effects on the environment would be less than minor.</li> <li>Simon Beale vs Wildlands effect assessment in process.               <ul style="list-style-type: none"> <li><i>Grant consent. FTT members and supporters have spent a lot of time and money, and the trail has generated a lot more revenue to the district.</i></li> </ul> </li> </ul>	No	
M Stallman	Support	<ul style="list-style-type: none"> <li>Modification has already taken place.</li> <li>Effects of modification are less than minor.</li> <li>Mitigation of effects is planned or part of existing management.</li> <li>Restoration and installation of an alternative has the potential to increase adverse effects.               <ul style="list-style-type: none"> <li><i>Grant consent with conditions to:</i> <ul style="list-style-type: none"> <li><i>Infill the excavated ditch prior to spring 2019</i></li> <li><i>Three monitoring site visits</i></li> <li><i>Undertaken additional infilling if there has been settling</i></li> </ul> </li> </ul> </li> </ul>	No stated	

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		<ul style="list-style-type: none"> <li>- Continue noxious weed management programme and extend to the area referenced by FTT.</li> <li>- Negotiate in good faith with the adjacent landowner to remove the willow trees upstream.</li> </ul>		
K & J McChlery	Support	<ul style="list-style-type: none"> <li>• Needless to have consent notified as effects are minor. Prior to building the trail noxious weeds were prevalent.</li> <li>• Before the trail the wetland was barely seen, and now it is there for everyone to see.</li> <li>• Value of mental and physical health from the track.                             <ul style="list-style-type: none"> <li>• <i>Work together to work on levels of a healthy wetland and levels of a healthy being.</i></li> <li>• <i>Change effects assessment to less than minor.</i></li> </ul> </li> </ul>	No	
Mr B Taylor	Support	<ul style="list-style-type: none"> <li>• If the trail wasn't there, places like this wetland would never be accessible to the public.</li> <li>• Trail is a great asset to the community.                             <ul style="list-style-type: none"> <li>• <i>Approve the application.</i></li> </ul> </li> </ul>	No	
B Hamilton	Support	<ul style="list-style-type: none"> <li>• Impact of the trail less than minor.</li> <li>• Trail crossed the wetland in the most practical place.                             <ul style="list-style-type: none"> <li>• <i>Support the FTT as a beneficial project for the community.</i></li> </ul> </li> </ul>	No	
C Carran	Support	<ul style="list-style-type: none"> <li>• Trail has been planned and built in the most economic and practical way.</li> <li>• When consideration of the terrain, high rainfall and the difficulty in finding a balance between recreation and the environment, the track has proven to be an asset to the area and has opened access to an area that was unknown.</li> <li>• Effects are very minor.</li> </ul>	No	
CE Hughes	Support	<ul style="list-style-type: none"> <li>• Minor crossing of wetland.</li> <li>• Climatic or geological events will have a greater impact on wetland than the trail.</li> <li>• Retrospective consent is wrong.                             <ul style="list-style-type: none"> <li>• <i>Grant consent.</i></li> </ul> </li> </ul>	No	
CH Barnes	Support	<ul style="list-style-type: none"> <li>• Alignment of the trail is the best that could be achieved.</li> <li>• Upstream are mature broom, manuka and a big fern which will not grow in wetland.</li> <li>• Area below the trail is much softer and in keeping with wetland habitat and has not be modified.</li> <li>• To modify or alter the trail in the area would detract from a tidy crossing of the creek.</li> <li>• It has not been established at any species have been or could be displaced by the crossing.</li> <li>• The area is not listed as a regionally significant wetland.</li> </ul>	No	



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		<ul style="list-style-type: none"> <li>• <i>Grant consent without any mitigating conditions and avoid further costs.</i></li> </ul>		
D Smith	Support	<ul style="list-style-type: none"> <li>• Area of concern is minute in size compared to the wetland.</li> <li>• Upstream side of wetland has been modified and fenced.</li> <li>• Previously was not accessible by humans.</li> <li>• <i>Make consent non-notifiable and if possible no consent at all.</i></li> </ul>	No	
D Bell	Support	<ul style="list-style-type: none"> <li>• No impacts on existing users of the area and less than minor impacts on the long-term future of an existing wetland.</li> <li>• Application has no impacts on historical recreation usage and outstanding natural landscapes.</li> <li>• Will be a long-term community asset providing health and recreation opportunities in addition to supporting local businesses.</li> <li>• <i>Grant consent with no modifications or restrictions.</i></li> </ul>	No	
D G Riley	Support	<ul style="list-style-type: none"> <li>• Asset of the trail outweighs the less than minor effects on the location.</li> <li>• <i>Grant application.</i></li> </ul>	No	
G Patterson	Support	<ul style="list-style-type: none"> <li>• Trail:                             <ul style="list-style-type: none"> <li>- does not impede water flow given the culverts</li> <li>- has only a tiny footprint given the size of the entire wetland</li> <li>- it is at the narrowest point reducing the impact to the system</li> <li>- ecological report recognises the significance of the wetland and minimal impact of the trail</li> <li>- trust obtained all other necessary consents</li> </ul> </li> <li>• Trail provides positive appreciation of the wetland for users and effects are less than minor.</li> <li>• <i>Support FTT</i></li> </ul>	Not stated.	
J MacMillian-Armstrong	Support	<ul style="list-style-type: none"> <li>• Work of FTT has resulted in a valuable resource.</li> <li>• Environmental impact on wetland is expected to be less than minor. This is more than offset by the significant benefits the trust provides.</li> <li>• As a GP a strong advocate for exercise and activity for which the trail provides for cyclists, volunteers, pre-school and school groups, runners and dog walkers.</li> <li>• FTT's limited resources are best spent on maintaining or expanding trails.</li> <li>• Impact on environment less than minimal once remedial work is undertaken.</li> <li>• Educational benefits and exposure the trail provides will likely enhance understanding of wetlands and help slow or reverse their loss.</li> </ul>	No	

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		<ul style="list-style-type: none"> <li>• <i>Accept remedial work as offered and grant consent.</i></li> </ul>		
J Cuttriss	Support	<ul style="list-style-type: none"> <li>• Restorative work will cause more negative effects than the current situation.</li> <li>• FTT have undertaken work with minimal disruption to the environment.</li> <li>• <i>Stop the process and support the Trust.</i></li> </ul>	No	
JF Turner	Support	<ul style="list-style-type: none"> <li>• Trail has a less than minor effect on the wetland.</li> <li>• An area of less than 100 m<sup>2</sup> has been affected, and without access to this area, most people would not know the area exists.</li> <li>• The strict application of the wetland definition has been an unreasonable influence.</li> <li>• Desktop study is unreasonable.</li> <li>• Consent should be judged on the contribution it is making to the community.</li> <li>• Has to be a balance between development and the environment.</li> <li>• Success of FTT's development is recorded by the usage of the trails and the benefit to the community.</li> <li>• <i>Grant retrospective consent without conditions.</i></li> </ul>	NO	
J Greaney	Support	<ul style="list-style-type: none"> <li>• Trail has a less than minor effect on wetland. This is supported by Simon Beale.</li> <li>• Fringing of wetland is a minor issue, the trail is located at the best possible location,</li> <li>• FTT is a charitable trust providing the trail for the local community and visitors.</li> <li>• Economic benefits demonstrate the significant asset that FTT have provided.</li> <li>• FTT control noxious weeds.</li> <li>• <i>Grant the consent without any conditions.</i></li> </ul>	No	
ML Crawford	Support	<ul style="list-style-type: none"> <li>• Minimal impact to the surrounding area, approximately 100m<sup>2</sup> of a 37-ha wetland (less than minor).</li> <li>• <i>Achieve a mutually acceptable conclusion, and Council approval the application.</i></li> </ul>	No	
M Sutton	Support	<ul style="list-style-type: none"> <li>• Area in question is not a wetland. Using the structural classes methods (Atkinson 1985), area is more accurately classified as "shrubland" or "scrub" or a mixture thereof.</li> <li>• Would describe area as a historic river or stream channel. There is some wetland below the trail which has a <i>Carex secta</i> margin.</li> <li>• The two culverts have been well positioned within the stream bed and should not pose a problem to most species.</li> <li>• Culverts were installed in a wetland in the around the mountains cycle trail, where ES judged the installation of culverts did not</li> </ul>	Not stated	

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		<p>amount to drainage of the wetland.</p> <ul style="list-style-type: none"> <li>Impacts are less than minor.</li> </ul>		
MI Hagen	Support	<ul style="list-style-type: none"> <li>Trail is a major benefit to ratepayers.</li> <li>Effects are less than minor.</li> <li>Save the public a lot of hard-earned money.               <ul style="list-style-type: none"> <li><i>Grant consent in favour of FTT.</i></li> </ul> </li> </ul>	Yes.	
NJ Hodges	Support	<ul style="list-style-type: none"> <li>impossible to see what adverse effect this small section of the trail is having on the ecology on the surrounding area.</li> <li>vegetation on the top side of the trail is a mixture of manuka and other natives which are not usually found in wetlands.</li> <li>not a wetland but more a spring feed creek and should not be considered of any great ecological value.</li> <li>the whole area is rapidly becoming modified by noxious weeds, e.g. broom, barbary, blackberry etc, maybe Environment Southland would be better off putting resources into reducing the impact of these.               <ul style="list-style-type: none"> <li><i>Grant consent and leave the trail as is.</i></li> </ul> </li> </ul>	No	
RE Turner	Support	<ul style="list-style-type: none"> <li>FTT have done a great job in building trails.</li> <li>If there are minor effects they will be able to be resolved.</li> </ul>	Not stated	
RN Wilson	Support	<ul style="list-style-type: none"> <li>Endorses Mr McCandless's submission.</li> <li>Prior to the opening of the trail the area was virtually inaccessible to the wider public.</li> <li>The intrinsic environmental value of the particular area concerned was questionable.               <ul style="list-style-type: none"> <li><i>Approve consent as modified by their proposal to remediate the effects of the cycle trail.</i></li> </ul> </li> </ul>	No	
S Marwick	Support	<ul style="list-style-type: none"> <li>Less than minor effect on the wetland.</li> <li>Trail has been constructed to minimise any ecological impacts on this wetland by skirting its eastern side.</li> <li>Only a small portion could be regarding as having any impact on the hydrogeology of the wetland.</li> <li>Existing vegetation to the upstream side is not made up of typical wetland species e.g. mature <i>Carpodetus serratus</i> (Marbleleaf), <i>Myrsine divaricata</i> (Weeping matipo) and <i>Leptospermum scoparium</i> (Manuka). True wetland species such as <i>Carex secta</i> are common on the downstream side and have not been affected by the construction of the trail.</li> <li>The culverts do not alter the hydrology, nor will they impede any possible fish movements.</li> <li>The area in question is not a pristine wetland but is already highly modified. Noxious weeds are prevalent in this area and the Fiordland</li> </ul>	No	

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		<p>Trails Trust (with funding from the Department of Conservation Community Fund) have, over the past 12 months, spent in excess of \$24,000 in weed control in the vicinity of this section of the trail.</p> <ul style="list-style-type: none"> <li>• Simon Beale’s assessment of less than minor should be accepted.</li> <li>• trail provides an excellent opportunity for the public to appreciate our local indigenous vegetation including our wetland ecosystems                             <ul style="list-style-type: none"> <li>• <i>Grant consent and assess the impact as less than minor.</i></li> </ul> </li> </ul>		
SJ Hoskin	Support	<ul style="list-style-type: none"> <li>• Positive social, cultural, health and economic benefits from the trail.</li> <li>• Draws positive attention to Te Anau as a tourism destination.</li> <li>• Any negative impacts have been well mitigated and are far outweighed by positive benefits.                             <ul style="list-style-type: none"> <li>• <i>Grant consent without conditions. Seek a waiver of fees.</i></li> </ul> </li> </ul>	No	
IR Barnes	Support	<ul style="list-style-type: none"> <li>• Wetland was unknown prior to the trail construction.</li> <li>• Not listed as a regionally significant wetland within pSWLP.</li> <li>• Wetland is spring fed and has been enhanced by the work.</li> <li>• To disturb the track would cause more damage to the wetland.</li> <li>• No confirmed sighting of lizard species.</li> <li>• Wetland vegetation is of poor quality.</li> <li>• Do not believe the pSWLP has been significantly breached.                             <ul style="list-style-type: none"> <li>• <i>Would like to see mitigating work to be simple and achievable for a wonderful recreational facility.</i></li> </ul> </li> </ul>	No	
M & J Newsome	Support	<ul style="list-style-type: none"> <li>• Wetland is a very small section of the whole trail.</li> <li>• It is nice to stand at the culverts and watch the freshwater and see clearly what lies beneath.</li> <li>• Does not impede the area.</li> <li>• Request Council grant the application.</li> </ul>	No	
N J Wilson	Support	<ul style="list-style-type: none"> <li>• The impact of the trail passing through this small section of wetland is less than minor.</li> <li>• Over time the impact on the larger wetland is negligible.</li> <li>• Offer of weed control remediation is good, and the FTT have the skills to carry out this work.</li> <li>• The trail has opened up areas to family groups and people with disabilities that could not previously venture into these areas.</li> <li>• It is a great community resource.</li> </ul>	No	

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		<ul style="list-style-type: none"> <li>• <i>Grant conditions without further conditions.</i></li> </ul>		
P Cuttriss	Support	<ul style="list-style-type: none"> <li>• The track has been carefully planned to have minimal impact.</li> <li>• Given that Iwi, DOC and Fish &amp; Game provided support ES should sign off.</li> <li>• Fiordland community are proud of the FTT team with huge benefits for the health and wellbeing of thousands of people annually.               <ul style="list-style-type: none"> <li>• <i>Allow the proposed activities.</i></li> </ul> </li> </ul>	No	
R Howe	Support	<ul style="list-style-type: none"> <li>• Trail allows the natural watercourses to each side of the wetland. Fish passage is not restricted.</li> <li>• Track skirts the wetland edge that also contains many weeds.</li> <li>• Covers 100 m<sup>2</sup> of a 37 ha wetland complex which is a small percentage.</li> <li>• FTT have created a valuable resource and asset to the Fiordland community.               <ul style="list-style-type: none"> <li>• <i>Approve the application.</i></li> </ul> </li> </ul>	No	
R & J McBride	Support	<ul style="list-style-type: none"> <li>• The trail has been positioned to avoid the wetland (swamp).</li> <li>• There are two culverts to allow water to flow under the trail.</li> <li>• Adverse effects are less than minor.</li> <li>• Removal of the trail (as per the Abatement notice) would cause more damage.</li> <li>• Support all of the hard work by the FTT to develop the trail, which is a valuable asset to the community, visitors and holiday makers.</li> <li>• The trail enables access to areas that weren't accessible before.</li> </ul>	Not stated	
RA Youldon	Support	<ul style="list-style-type: none"> <li>• The consent issued by SDC should have been all that is required.</li> <li>• Effect on wetland is less than minimal and was virtually inaccessible and unknown before the cycle trail was out in.</li> <li>• FTT should be encouraged and congratulated for opening the trail.</li> <li>• Opening it up will allow ease of access and control of pest plants for many years.</li> <li>• Conflicting findings of the experts should have been sorted out before notification.               <ul style="list-style-type: none"> <li>• <i>Grant consent without any undue restriction.</i></li> </ul> </li> </ul>	No	
RH Stephenson	Support	<ul style="list-style-type: none"> <li>• To be a premier tourist destination and an environmentally acceptable country, there must be a balance between land use and conservation practices.</li> <li>• The trail is providing a premier experience and is used by locals and visitors.</li> <li>• The two ecologists discussed differences and</li> </ul>	Yes	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<p>agreed on actions to mitigate the effects, and this action should have enabled the Trust to proceed.</p> <ul style="list-style-type: none"> <li>• <i>The Council should support this application unreservedly.</i></li> </ul>		
R Hoskin	Support	<ul style="list-style-type: none"> <li>• Use trail along with literally thousands of people (nearly 1000 a month). The trail is outstanding.</li> <li>• Trust is a diligent group who have donated thousands of hours of time to enrich environment.</li> <li>• Trail was placed to avoid large tracts of wetland and to have the least impact on the environment.</li> <li>• Water/fish/weeds can pass through culverts.</li> <li>• Before the trail was made this area was inaccessible so trail can't negatively affect the amenity value.</li> <li>• The wetland is hardly significant. Further west there may be Marsh Wetland and to the east of this type of Wetland. The East side of the trail has a few Carex Secta on the banks of the creek of which the trail crosses.</li> <li>• There are plenty of invasive weeds, and funds would be better spent on managing that.</li> <li>• Consideration should be given to the end outcome of proceedings, as it is obvious the community are using and enjoying this trail. <ul style="list-style-type: none"> <li>• <i>Take into account the big picture and of how little an environmental impact it has made to date. The trail is an awesome community asset.</i></li> <li>• <i>Grant consent without conditions, and Council waive fees given the social, cultural and economic benefits of the trail.</i></li> </ul> </li> </ul>	No	
R Smith	Support	<ul style="list-style-type: none"> <li>• FTT have been assisted by a qualified ecologist who found effects to be minor or less than minor.</li> <li>• If remedial work was required it would cause more damage.</li> <li>• Wasn't aware that area was a wetland, and it isn't listed as a regionally significant wetland.</li> <li>• Needs of all users must be considered.</li> <li>• Access to our country is of upmost importance.</li> <li>• FTT have provided for the community and tourism.</li> </ul>	No.	
SJ Smith	Support	<ul style="list-style-type: none"> <li>• Consent was granted by SDC and they directed the track away as far as possible to minimise damage to fish and indigenous plant life in the area.</li> <li>• Removal of the track to include a boardwalk so that effects are "less than minor" could cause more damage and cost.</li> </ul>		

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		<ul style="list-style-type: none"> <li>• Questions if high rainfall would flood a boardwalk.</li> <li>• FTT relies on donations and grants.</li> <li>• Wetland is not listed as Regionally Significant and there fore weeds causing more problems up the track.                             <ul style="list-style-type: none"> <li>• <i>Allow the FTT to keep the current track and provide them with finances to exterminate all exotic trees and shrubs in that section of the wetland.</i></li> <li>• <i>The health and wellbeing of the thousands of people who use the track is surely more important than the loss of minimal indigenous plants around that small section of track which will regenerate anyway.</i></li> <li>• <i>Don't make FTT go through an expensive and time-consuming resource consent process.</i></li> </ul> </li> </ul>		
R & M Slee	Support	<ul style="list-style-type: none"> <li>• Effects are less than minor.                             <ul style="list-style-type: none"> <li>• <i>The trail should be left the way it is.</i></li> </ul> </li> </ul>	No	
S Crook	Support	<ul style="list-style-type: none"> <li>• Use the trail for pleasure, fitness and to gain access to stretches of the Waiau River which were not previous easy to access on foot.</li> <li>• Have visited the culvert site in wet and dry conditions and observed very little or insignificant change in the height and volume of water draining via the culvert.</li> <li>• Site is overgrown and choked with weeds, and if this wetland area is of more than minor significance then why has it been neglected by ES.</li> <li>• Concerned by abatement notice being issued, that the consent was required to be publicly notified, that community funds are wasted by consent process and that the Community project has not been reported in Council minutes.                             <ul style="list-style-type: none"> <li>• <i>Ask that ES work with FTT to update ES website community section to include details of the Trail</i></li> <li>• <i>Encourage ES to be proactive and work with FTT to create educational information boards through giving staff time and that ES fund signage resources to highlight areas of educational interest along the length of the trail.</i> <ul style="list-style-type: none"> <li>• <i>Support the two culverts remaining in place</i></li> <li>• <i>Retrospective consent is granted to the FTT.</i></li> </ul> </li> </ul> </li> </ul>	Yes.	
Southland Conservation Board	Neutral	<ul style="list-style-type: none"> <li>• Board wishes to ensure that the objectives and policies in relation to wetlands are upheld.</li> <li>• Given the vulnerability of the remaining wetlands it is important to clarify the nature and magnitude of effects on them.                             <ul style="list-style-type: none"> <li>• <i>Wishes council to make a decision, based on the</i></li> </ul> </li> </ul>	No	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		<p><i>evidence that is consistent with the objectives and policies of the pSWLP and the SRPS.</i></p> <ul style="list-style-type: none"> <li>• <i>If Council declines the Consent, the Board would support the construction of approved boardwalks over the wetland as effects of these would be minor.</i></li> <li>• <i>Would support conditions that ensure pest plants were removed from the area on an ongoing basis.</i></li> </ul>		
Southland Forest & Bird	Support	<ul style="list-style-type: none"> <li>• Work of FTT has a valuable community benefit.</li> <li>• Wetland loss should not be allowed to continue.</li> <li>• Wetlands should be given highest protection from loss.</li> <li>• As consent is retrospective all parties have not done an adequate job in assessing effects and protecting the wetland values along the trail.</li> <li>• Effects are more than minor because of the rate Marsh type wetland (Carex and other indigenous vegetation). Support the assessment by Wildlands Consultants.</li> <li>• Extent of wetland is small, there are adverse effect on the wetland, including likely hydrological functioning of the wetland, which should have been avoided.</li> <li>• Preference is a boardwalk, however, believe damage to remove the gravel and rectify this would create greater adverse effects and is not warranted.</li> <li>• Because scale is small, the damage in this case can be mitigated as per that proposed.</li> <li>• <i>Support the FTT subject to mitigation.</i></li> </ul>	Not stated	
Southland Mountain Bike Club	Support	<ul style="list-style-type: none"> <li>• Trail promotes low carbon tourism and recreational amenity.</li> <li>• Opportunity for exposure to wetland habitat that will educate public about the importance of halting the decline of wetlands.</li> <li>• Increase road safety.</li> <li>• <i>Grant consent.</i></li> <li>• <i>FTT to remediate the causeway structure with that of a boardwalk of sufficient length to allow flow through of the natural water table to ensure that wetland habitat is not reduced.</i></li> <li>• <i>Erection of education signage on the role of wetlands.</i></li> <li>• <i>FTT to manage or remediate any invasive species in the wetland.</i></li> </ul>	No	
S McNaughton	Support	<ul style="list-style-type: none"> <li>• Can see no real harm, and not in favour making FTT reapply for consent.</li> <li>• Must be a middle ground on ecologist's reports.</li> <li>• Thousands of people have used the trail without complaint.</li> </ul>	Not stated	



Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
S Marwick	Support	<ul style="list-style-type: none"> <li>• Trail has a less than minor effect.</li> <li>• Has been constructed to minimise any ecological impacts.</li> <li>• Only a portion of the 35 m could be regarded as having any impact on the hydrology of the wetland.</li> <li>• Vegetation adjacent to the upstream side of the trail is not made up of typical wetland species e.g. mature <i>Carpodetus serratus</i> (Marbleleaf), <i>Myrsine divaricata</i> (Weeping matipo) and <i>Leptospermum scoparium</i> (Manuka). True wetland species such as <i>Carex secta</i> are common on the downstream side and have not been affected by the construction of the trail.</li> <li>• Culvert shave been positioned to carry water via their natural water courses.</li> <li>• Unlikely that the trail will cause any change in the composition of the wetland over time.</li> <li>• Area is not pristine wetland, but is already highly modified, and noxious weeds are present.</li> <li>• Route was approved by SDC.</li> <li>• Simon Beale’s opinion of “less than minor impact” should be accepted.</li> <li>• Trail provides an excellent opportunity for the public to appreciate local indigenous vegetation including our wetland ecosystems.                             <ul style="list-style-type: none"> <li>• <i>Request that the Council find in favour of the FTT and assess the impact as less than minor.</i></li> </ul> </li> </ul>	No	
S Hoskin	Support	<ul style="list-style-type: none"> <li>• Trail brings so brings social, cultural, health and economic benefits to individuals, families, the community and New Zealand.</li> <li>• Draws positive attention to Te Anau.</li> <li>• Minimal negative consequences of the trail, and have been mitigated, and are far outweighed by the positive benefits.                             <ul style="list-style-type: none"> <li>• <i>Grant consent without conditions.</i></li> <li>• <i>Seek a Waiver of fees given the social, cultural and economic benefits of the trail and the Charitable Trust status of the applicant.</i></li> </ul> </li> </ul>	No	
Te Anau Community Board	Support	<ul style="list-style-type: none"> <li>• In granting the original Resource Consent the Southland District Council stated that the adverse effect on the environment would be less than minor. It noted that public notification had already been undertaken by the Southland Conservation Management Strategy (2016) and recommended that vegetation clearance be done in conjunction with an ecologist, to ensure minimal impact on the area. Simon Beale, the ecologist engaged by the Fiordland Trails Trust also assessed the impact would be less than</li> </ul>	No	

Submitter	Oppose/ Support	Issues/Comments <i>Decisions/Changes sought</i>	To be heard?	Submission Page No
		minor. <ul style="list-style-type: none"> <li>• Department of Conservation, Fish and Game, and Te Ao Marama Inc were happy to provide approval for the retrospective resource consent to be granted.</li> <li>• Beale Consultants assessed impacts as less than minor, and the wetland is not within a rare ecosystem.</li> <li>• Credence on the interpretation that the impact be more than minor is questioned.</li> <li>• Trail provides social and economic benefits to Fiordland.</li> <li>• Volunteer trustees have worked tirelessly fundraising and notifying this consent is an unnecessary cost.                             <ul style="list-style-type: none"> <li>• <i>Council grant consent, and FTT should not be made to incur significant costs in obtaining consent.</i></li> </ul> </li> </ul>		
Te Anau School Board of Trustees	Support	<ul style="list-style-type: none"> <li>• School supports the New Zealand Curriculum for Education Outside the classroom.</li> <li>• If mitigation measures are undertaken, the ecologists conclude that; the potential effects on the wetland should be no more than minor.</li> <li>• Under s104D of the Act if pest control is imposed as a condition in the consent, the potential effects of this activity on the wetland environment should be no more than minor, and Council can grant consent.</li> <li>• The wetland modification meets part 5 of the RMA.</li> <li>• The trail enables the Te Anau community to provide for their social well-being and their health.                             <ul style="list-style-type: none"> <li>• <i>Purpose of the RMA can continue to be met with the addition of a structure over the wetland.</i></li> <li>• <i>The wetland habitat can be sustained and safeguarded through mitigating effects of the proposed structure through pest control.</i></li> <li>• <i>The wetland modification meets the purpose of the Act and can lawfully be awarded by the Council under s104D and should be approved.</i></li> </ul> </li> </ul>	Not stated	

### 3.4 Statutory Considerations

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the Resource Management Act, 1991, states:

- (1) *When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2, have regard to:*

- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any relevant provisions of:
  - (i) a national environmental standard;
  - (ii) other regulations;
  - (iii) a national policy statement;
  - (v) a regional or proposed regional policy statement;
  - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. This means that the matters in Part 2 prevail over other provisions of the RMA or provisions in planning instruments in the event of a conflict. Section 5 states the purpose of the RMA and Sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.

In paragraphs 70 to 75 of *R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316*, the Court of Appeal discussed the application of Part 2 of the RMA, with regard to the earlier Supreme Court decision, *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38*. The Court of Appeal noted that under Section 104, the “statutory language plainly contemplates direct consideration of Part 2 matters”. The Court also noted that plans made by local authorities may not necessarily reflect the provisions of Part 2 of the Act. The following is from paragraphs 74 and 75 of the *R J Davidson Family Trust* decision:

*“If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application. Reference to pt 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies. Equally, if it appears the plan has not been prepared in a manner that appropriately reflects the provisions of pt 2, that will be a case where the consent authority will be required to give emphasis to pt 2.*

*If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words “subject to Part 2” in s 104(1), the statement of the Act’s purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.”*

I consider that the Regional Policy Statement and the regional plans have been developed in accordance with the purpose of the Resource Management Act. However, the Regional Water Plan predates the National Policy Statement for Freshwater Management and the Regional Policy Statement for Southland 2017, so there may be inconsistencies that warrant reference to Part 2 of the RMA for clarification.

Therefore, those matters which are relevant for this application are as follows:

- description of the receiving environment;
- assessment of the actual and potential effect of the activity on the environment;

- relevant provisions of the Regional Water Plan and the Proposed Southland Water and Land Plan (2018);
- relevant provisions of the Southland Regional Policy Statement;
- relevant provisions of the National Policy Statements and National Environmental Standards;
- Part 2 of the RMA.

Sections 108 and 220 provide for consent to be granted subject to conditions and sets out the kind of conditions that may be imposed.

### **3.5 Relevant provisions of the relevant regional plan objectives, policies and rules (Section 104(1)(b)(v))**

Council is currently operating under the Regional Water Plan (RWP) and the proposed Southland Water and Land Plan (pSLWP).

The proposed Southland Water and Land Plan was notified by the Consent Authority on 3 June 2016 and decisions on the proposed Plan were notified in June 2018. The proposed Southland Water and Land Plan is subject to appeal; however, as it has legal effect under Section 104(1)(b) regard must, subject to Part 2 of the Act, be had to the provisions of any proposed plan. The relevant provisions of both plans are detailed below and are considered in turn.

The objectives and policies of the Regional Water Plan and the proposed Southland Water and Land Plan that are relevant to this application have been grouped according to topic.

#### **Key Policies**

I consider that the objectives and policies below are of the most significance and inherently acknowledge the wetland provisions in relation to the proposed activities.

#### **Regional Water Plan (RWP)**

*Objective 12*                      *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.*

#### **Comment**

Objective 12 of the RWP requires public access to river beds be maintained and enhanced and sets out in the explanation that public access to Crown land is a traditional right and is important for social, cultural and recreational reasons. The trail sits above Lake Manapouri, so while this trail is not strictly to a river or a lake bed as per Objective 12, I have included it, as I consider the overall intent of the Lake 2 Lake Trail is consistent with this objective as it provides public access to these areas. However, the creation of this access must also be viewed in conjunction with the modification of a wetland.

Policy 1A of the RWP requires Te Tangi to be taken in account and this occurs below.

Policy 38 of the RWP requires that any adverse effects of activities on wetlands should be avoided wherever possible through an integrated management approach. As outlined above, I consider that the adverse effects from the application will likely be more than minor.

### **Proposed Southland Water and Land Plan (pSWLP)**

*Objective 14<sup>1</sup>                    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 17<sup>2</sup>                    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.*

*Policy 32<sup>3</sup>                        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.*

### **Comment**

I have considered this proposal against the objectives and policies above, and in my opinion the proposal is not consistent with the outcomes sought by those objectives and policies as detailed below.

Objective 14 of the pSWLP requires that the range and diversity of indigenous ecosystem types and habitats within wetlands and their life-supporting capacity are maintained or enhanced. The proposed activity is for the modification of a natural wetland, rather than the enhancement, and therefore I consider that the proposal will not maintain the natural wetland as required by Objective 14. I acknowledge that the applicants, through the discussions by the two Ecologists have proposed remediation of the wetland, to enhance the area following the construction of the trail by undertaking infilling of the ditch, undertaking monitoring site visits and clearing pest plants. In my opinion, Objective 14 identifies that the outcome that the plan is aiming to achieve is that wetlands are maintained as the starting point, or that where they are already maintained, landowners may for example wish to enhance the existing wetland habitat. As the wetland is modified by this proposal, I do not consider that the proposal is consistent with Objective 14, although I acknowledge that the applicant has volunteered remediation/enhancement works as outlined above to seek to remedy adverse effects.

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<sup>1</sup> Appeal to Environment Court by:

(i) Alliance Group Limited ENV-2018-CHC-000039

(ii) Southland Fish and Game Council ENV-2018-CHC-000037

(iii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

<sup>2</sup> Appeal to Environment Court by Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

<sup>3</sup> Appeal to Environment Court by Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Objective 17 of the pSWLP requires the natural character values of wetlands to be protected from inappropriate use and development. In terms of remediation, I acknowledge Wildlands Consultants Limited advised on 8 April 2019 that: *“The applicant has agreed to undertake these works and monitoring and provided photographic evidence that showed fish passage should not be restricted through the culverts. 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.”* The natural character will be modified, overall I consider that the proposal is not in accordance with the direction of Objective 17, although it is acknowledged that the applicants have proposed pest plant management which would enhance the natural character, however Policy 32 of the pSWLP requires protection of significant indigenous vegetation and significant habitat of indigenous fauna associated with natural wetlands. I note that the Ecological Assessment prepared by Beale Consultants (2018) as part of the application states:

*“The wetland vegetation and habitats for indigenous fauna has been assessed to be of ecological significance in terms of Section 6 (c) of the RMA. The significance assessment reflects the representativeness of the wetland vegetation within the Upukerora Ecological District, the pattern of the vegetation types associated with the wetland and its ecological context.”*

Under the pSWLP, the wetland is not listed as a Regionally Significant Wetland. I consider that if the trail construction within the wetland is viewed in isolation, then the effects from the construction would not be consistent with Policy 32 of the pSWLP given that the ecologist’s viewpoint is that the wetland vegetation and habitats for indigenous fauna has been assessed to be of ecological significance in terms of Section 6 (c) of the RMA.

Policy 33 of the pSWLP requires the prevention of the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal. As has been described above, this application is for the modification of a wetland to enable construction of 35 metres of the trail, the placement and use of two culverts. In my opinion, the application does result in the reduction in wetland area, due to the installation of a formed trail which by its nature has resulted in changes to the natural landform and vegetation. Research shows that wetlands were previously more prevalent, with the Southland region having only 10% of its historic wetlands (excluding Fiordland and Rakiura/Stewart Island National Parks) remaining.<sup>4</sup> By undertaking the remedial works proposed by the applicant, the remaining vegetation and habitat would be protected. However, in my opinion this does not overcome a reduction in area and function from the modification of the wetland through the installation of culverts and track to be consistent with Policy 33. Policy 33 is not subject to appeal, and therefore I place greater weight on this policy.

Within the pSWLP, the wetland is not listed as a Regionally Significant Wetland. Although full weight is not yet given to the proposed plan, it does have significant weight and contains stronger wetland provisions than the operative plan. As per the assessment outlined above, 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. Consent is sought under Rule 74(c) of the pSWLP only.

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<sup>4</sup> Referenced in the Proposed Southland Water and Land Plan, s42A report and taken from Clarkson, B., Briggs, C., Fitzgerald, N., Rance, B., Ogilvie, H. (2011), *Current and historic wetlands of Southland Region: Stage 2. Landcare Research Contract Report LC312*, Hamilton. p. 16.

### 3.6 Relevant provisions of the Southland Regional Policy Statement 2017 (Section 104(1)(b)(v))

The Southland Regional Policy Statement 2017 became operative on 9 October 2017.

The following objectives and policies in the Regional Policy Statement 2017 are of particular relevance to this application:

#### Tangata Whenua

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

#### Comment

The iwi management plan for Southland - Te Tangi a Tauria is considered below.

#### Water Quality

*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.*

#### Biodiversity

*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.*

**Comment**

Consideration has been given to the water quality section for the land use activities proposed by this application. Objective WQUAL.1 sets out the overall framework for water quality within the Southland region, and of particular relevance to this application are the requirements that water quality in the region safeguards the life-supporting capacity of water and related ecosystems and is maintained, or improved in accordance with freshwater objectives formulated under the NPS-FM. Policy WQUAL.2 sets out how maintaining water quality will be approached, and Policy WQUAL.3 directs that the significant values of wetlands need to be identified and protected.

I acknowledge that the trail is located near to Lake Manapouri which is classed as Natural State Waters which must be maintained.

Policy WQUAL.7 recognises the social, economic and cultural benefits from the use, development or protection of water resources. I agree that the trail brings social, economic and cultural benefits to the Te Anau community and is a wonderful asset for the community and visitors to the region, so the intent of the trail largely meets Policy WQUAL.7.

Objective BIO.2 directs that indigenous biodiversity is maintained and that areas of significant indigenous vegetation and significant habitats are protected. As set out in the explanation to this objective, Sections 30(1)(ga) and 31(1)(b)(iii) of the RMA task regional councils and territorial authorities respectively with maintaining indigenous biodiversity. Furthermore, Section 6(c) of the RMA requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna to be recognised and provided for. I have included Council functions as some submitters thought consent for wetland modification was part of the original SDC consent for the trail, rather than requiring consent from Environment Southland.



Policy BIO.2 requires that that areas of significant indigenous vegetation and significant habitats of indigenous fauna in the Southland region will be protected. Within the Ecological Assessment prepared by Beale Consultants (2018) it outlines that the wetland vegetation and habitats for indigenous fauna have been assessed to be of ecological significance in terms of Section 6 (c) of the RMA.

To give effect to Policy BIO.2, particular regard must be had to potential adverse effects including fragmentation, reduction in the extent of, connections and linkages, loss of or damage to indigenous habitats and ecosystems. In my opinion, the modification of the wetland in this area does not protect the wetland in accordance with the outcome sought by the policy, as the trail has resulted in the reduction of, and fragmentation of this wetland area, which has been assessed as having ecological significance, and therefore is not consistent with Policy BIO.2.

Policy BIO.4 requires the maintenance of indigenous biodiversity in addition to protecting identified areas of significant indigenous vegetation and significant habitats of indigenous fauna while having regard to potential adverse effects. There are adverse effects from this proposal.

### 3.7 Relevant provisions of national policy statements (Section 104(1)(b)(iii))

#### ***National Policy Statement for Freshwater Management (NPSFM) 2014***

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 NPSFM was amended in August 2017.

The following objectives and policies in the National Policy Statement for Freshwater Management (NPSFM) 2014 are of particular relevance to this application:

#### **Water Quality**

*Objective A1 To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and the health of people and communities, in sustainably managing the use and development of land, and of discharges of contaminants.*

*Objective A2 The overall quality of fresh water within a region is maintained or improved while protecting the significant values of outstanding freshwater bodies; protecting the significant values of wetlands; and improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.*

#### **Comment**

Objectives A1 and A2 direct councils to protect the significant values of wetlands and outstanding freshwater bodies. Given that this proposal results in the loss of habitat and the fragmentation of an existing wetland, I do not consider it is in accordance with Objectives A1 and A2.

## Integrated management

*Objective C1*                      *To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.*

*Policy C1*                         *By every regional council managing fresh water and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.*

### Comment

These provisions require that the links between land use and water quality are managed.

## Tāngata whenua roles and interests

*Objective D1*                      *To provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.*

*Policy D1*                         *Local authorities shall take reasonable steps to involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region; work with iwi and hapū to identify tāngata whenua values and interests in fresh water and freshwater ecosystems in the region; and reflect tāngata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.*

### Comment

With regard to these provisions, I note that applicant had obtained the written approval of Te Ao Marama Inc when the application was first lodged, but the application was amended on 1 April 2019 to include the culverts as part of the consent and no updated written approvals were sought by the applicant prior to notification. Te Ao Marama Inc did not submit on the notified application. Consideration of Te Tangi a Tauira and the involvement of Ngāi Tahu are consistent with and give effect to Objective D1 and Policy D1.

### 3.8 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

No applicable National Environmental Standards for this activity. This application is not for a water abstraction or discharge, and there are no registered drinking water sites downstream of the proposed activities, therefore this section is not applicable

**3.9 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))**

***Te Tangi a Tauria***

I consider that the provisions of Te Tangi a Tauria, the Iwi Management Plan for Southland are relevant and reasonably necessary to the determination of this application, particularly given Policy 1A of the Regional Water Plan and Policy 2 of the proposed Southland Water and Land Plan.

The policy most relevant to this application is:

**Section 3.5.18 (Repo - Wetlands)**

*Policy 1*                                  *Avoid the direct or indirect drainage or modification of any existing wetland area.*

**Comment**

Policy 3.5.18.1 directs to avoid drainage or modification of any existing wetland area, and this application is for the modification a wetland area. Therefore, in my opinion the proposal is not consistent with this policy.

**3.10 Section 105 matters relevant to discharge or coastal permits**

This application is not for a water abstraction or discharge; therefore, this section is not applicable.

**3.11 Section 107 restriction on grant of certain discharge permits**

This application is not for a water abstraction or discharge; therefore, this section is not applicable.

**3.12 Part 2 of the Resource Management Act 1991**

All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. This means that the matters in Part 2 prevail over other provisions of the RMA or provisions in planning instruments in the event of a conflict. Section 5 states the purpose of the RMA and sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.

The purpose of the Resource Management Act, as specified in Section 5 of the Act, is *to promote the sustainable management of natural and physical resources*. It states that:

*“In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:*

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

The application of Section 5 involves an overall broad judgement of whether a proposal will promote the sustainable management of natural and physical resources. The enabling and managing functions found in s5(2) should be considered of equal importance and taken as a whole. Sections s6,7 and 8 provide further context and guidance to the constraints found in s5(2) (a) (b) and (c). The commencing words to these sections differ, thereby establishing the relative weight to be given to each section.

In relation to the matters outlined in Section 5 it is considered that this application is generally consistent with the purpose and the principles of the Act, as set out in Section 5. This is the promotion of the sustainable management of natural and physical resources. However, I consider that reference to Section 5 is of limited assessment when assessing the application against Policy 32 of the proposed Southland Water and Land Plan. That policy has been prepared in accordance with the RMA, gives effect to the National Policy Statement for Freshwater Management and is clear and directive. I consider that reference to Part 2 cannot justify an outcome contrary to the clear intention of that key policy. The trail does enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, but this must be viewed in context of the wetland modification.

Part 6 matters have been covered within the various Council planning instruments, however there are two matters of national importance that need to be recognised and provided for in the context of this application these are section 6(e) and (c). Section 6(e). This is the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. However, the area is not part of the Statutory Acknowledgment Area under the Ngai Tahu Claims Settlement Act 1996 and there are no known areas of cultural importance within the site. Consideration has also been given, as per Section 104(1) to the relevant Iwi Management Plan for Southland. Furthermore, the wetland vegetation and habitats for indigenous fauna has been assessed to be of ecological significance in terms of Section 6 (c) of the RMA.

Section 7(c), the maintenance and enhancement of amenity values, Section 7(d) intrinsic values of ecosystems and Section 7(f), the maintenance and enhancement of the quality of the environment are both relevant to the wetland modification.

With regard to Section 8 of the Act, the principles of the Treaty of Waitangi have been taken into account. This is through the consideration of Te Tangi (Iwi Management Plan) and the relevant policies in other planning documents.

To provide completeness for this report, it is my view that the application is generally consistent with the purpose of the RMA. There are some concerns with regards to Part 2 in relation to Section 6(c). I also consider the application to be contrary to Section 7(c), 7(d) and 7 (f) as the assessment of effects concludes that the proposed activities, especially when cumulative is likely to result in adverse effects on the wetland.

## 4. Recommendations

### 4.1 Whether to grant

The activities applied for have been considered together, and as such the highest consent test applies. The application is therefore considered as a **non-complying activity**.

Under Section 104D the Council may grant consent if it is satisfied that either the adverse effects will be minor, or the application will not be contrary to the objectives and policies of the relevant proposed and operative plans. If the application passes either one of these “gateways”, the application falls to be considered under Section 104(1)(a) and 104B(a) of the RMA and can be granted or refused. If the Council grants the application, it may impose conditions under Section 108 of the RMA.

The above report outlines the effects of the proposed activity, both adverse as well as the positive effects as raised by the large number of submissions highlighting the positive social, cultural, economic and health benefits of the trail. When considering this application through the lens of the policies of the regional plans, specifically the proposed Southland Water and Land Plan, it is considered that adverse effects resulting from the activity will be more than minor, as the plan sets out very clear and directive objectives and policies that adverse effects of activities on wetlands should be avoided.

When assessing the application as a whole it is noted that the applicants have volunteered mitigations to remedy adverse effects. The application is retrospective, meaning modification of the wetland has already occurred; the preference for the wetland area would have been for a raised boardwalk to avoid adverse effects on the wetland.

Having regard to all of the effects of the proposal, I conclude that the adverse effects from the proposed activity will be more than minor and I do not consider that the proposal sufficiently avoids or mitigates its adverse effects.

Because the effects of the activities have been assessed as having a more than minor effect on the environment, the application must meet the second of the gateway tests. In order to meet the second test, the application must not be contrary to the policies and objectives of the relevant operative and proposed plans.

My opinion is that the proposal is not consistent with the outcomes sought by the objectives and policies of the pSWLP. In particular, Policy 33 of the pSWLP requires that activities prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal. Granting consent would not be consistent with this policy.

Objectives 14 and 17 seek outcomes where habitats within wetlands are maintained or enhanced and the natural character values of wetlands, including natural habitats, are protected from inappropriate use and development. In my opinion granting consent would not contribute towards achieving those objectives and rather would detract from them.

As such, I conclude that the proposed activities are contrary to the objectives and policies of the pSWLP.

Therefore, the application does not meet either of the gateway tests for non-complying activities as set out in Section 104D (1)(a) of the RMA.

If, however, the application was considered to pass one of the gateway tests, it would fall to be considered under Section 104 of the RMA. Given my conclusion on the actual and potential effects of the proposal and the clear direction in the pSWLP, I consider that the application should not obtain consent under section 104.

However, if the Hearing Commissioner is satisfied that either the adverse effects will be minor, or the application will not be contrary to the objectives and policies of the relevant proposed and operative plans they can refuse or grant the application and impose conditions. I have included draft conditions in the appendices in the event that the Hearing Commissioner chooses to grant the application.

Sonya Nicol  
**Consultant Consents Officer**

RECOMMENDATIONS IN COUNCIL REPORTS ARE NOT TO BE CONSTRUED  
AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL