



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

Summary

I recommend the application is processed on a notified basis. This is because:

- 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.

The application

Particulars

Applicant:	Fiordland Trails Trust
Application reference:	APP-20191150
Site address or location:	Leg 6 of the Lake 2 Lake Cycle Trail between chainage 2200 and 2300
New consent(s) for new activity(ies) (s88)	<input checked="" type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

The proposal

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

Specific details of the proposal are detailed below:

The application relates to Leg 6 of the Lake 2 Lake Trail which is a multi-use trail from Te Anau to Manapouri. In total there are six legs to the trail as detailed below.

Legs 1 & 2	Te Anau to Queens Reach – 10.5km
Legs 3 & 4	Queens Reach to Ballon Loop Road – 8.7 km
Leg 5	Ballon Loop Road to Supply Bay Road – approx. 4 km
Leg 6	Manapouri back to Supply Bay Road

Leg 6 of the Trail has been constructed for the wetland for a distance of approximately 35 metres. The wetland area is associated with a spring fed stream that drains in Lake Manapouri. The site location is detailed below:



Figure 1: Map taken from the application showing the site location.



Figure 2: Map taken from the application showing the wetland and location.

The applicant has advised that 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 applicant amended the application on 1 April 2019 to include consent for the placement and use of two 800mm x 6 m culverts installed in the within the wetland itself as depicted in the photograph below:



Figure 3: Map taken from the updated application showing the position of the two culverts within the wetland.

A water table has been formed on the upstream side of the Trail to direct sub-surface flows from the wetland to the southern culvert. The applicant describes the area of wetland impacted from the Trail is approximately 120m², which represents approximately 0.3% of the wetland area.

NB: An assessment of satellite imagery by Wetlands Consultants Ltd indicates, however, that the wetland may occupy only approximately 0.75 hectares, and thus the extent of clearance would be 1.6% of the wetland extent. Accordingly, this figure is used within the report.



Figure 4: 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.

The applicant proposed the following amendments on 1 April 2019 to mitigate potential effects from the trail on the wetland:

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

Volunteered conditions to remedy and mitigate the effects of the trail on the wetland include:

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

The applicant proposed the following amendments on 11 April 2019 to promote clearance of exotic pest plant species to remediate effects of the trail on the wetland. This would promote clearance of exotic pest species in order to increase indigenous plant dominance. The area of pest plant management detailed in the document is approximately 2000m² as shown in Figure 5 below.



Figure 5: Photo taken from the revised information showing the proposed area for a weed management programme.

It is noted that it was suggested that a grove of deciduous tree that may be willows and 100m upstream of the trail be removed/eradicated, however as these are located on private property and the FFT cannot eradicate these trees.

The land subject to this application is managed by the Department of Conservation as Public Conservation/Recreation reserve land.¹

An Abatement Notice (EAS-20182800) was issued on 27 September 2018 regarding the unauthorised culvert (including its depth) and trail installation.

The applicant has sought a consent duration of 35 years.

Abbreviations

- RWP – Regional Water Plan (2010)
- pSWLP – proposed Southland Water and Land Plan (2018)
- RMA – Resource Management Plan 1991

Land use consent	
GPS Coordinates	1180612 E 4942051N and 1180593 E 4942084N
Relevant rule(s)	Rule 74 (c) - pSWLP
Activity Status	Non-complying activity
Area of wetland impacted	Approximately 0.75 hectares with extent of clearance being 1.6% of the wetland
Contractor	Work already completed.

Rule Assessment			
Discharge permit (s15)			
Description	Regional Plan	Rule	Status
The discharge of stormwater to land, or into surface water The discharge of stormwater to land, or into surface water	pSWLP	15	Permitted
	RWP	11	Permitted
Land-use (s13)			
Description	Regional Plan	Rule	Status
Modification of a wetland, including the installation of two culverts	pSWLP	74(c)	Non-complying
Water permit (s14)			
Description	Regional Plan	Rule	Status
Diversion of water	n/a	n/a	Discretionary under the RMA 1991

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

¹ The area of the trail subject to this application is not located within Fiordland National Park. The National Park is to the south-west of the subject wetland area.

Public notification consideration

1. Is notification mandatory?

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

2. Is notification precluded?

2.1	Is each activity subject to a rule or NES that precludes public notification?	<input type="checkbox"/> Yes	Rule(s): enter rule Go to 4.1
		<input checked="" type="checkbox"/> No	Go to step 2.2
2.2	Is each activity a controlled activity?	<input type="checkbox"/> Yes	Application must not be publicly notified unless there are special circumstances. Go to 4.1
		<input checked="" type="checkbox"/> No	Go to 2.3
2.3	Is each activity a residential activity and a discretionary activity or a restricted discretionary activity?	<input type="checkbox"/> Yes	Application must not be publicly notified unless there are special circumstances. Go to 4.1
		<input checked="" type="checkbox"/> No	Got to 3.1

3. Is notification required?

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

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

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

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

The existing environment

The land subject to this application is managed by the Department of Conservation as Public Conservation/Recreation reserve land. The area where the trail, and the associated culverts are located is classed as a wetland. The Wetland is not listed as a Regionally Significant Wetland with the pSWLP.

The application site is positioned above Lake Manapouri which is a Ngai Tahu Statutory Acknowledgement Area.

The wetland area falls within the Te Anau Groundwater Management Zone and the Te Anau Surface Water Management Zone. The application site falls within the Waiau River Catchment, and the Freshwater Management Unit is the Waiau. The physiographic zone for the site is Oxidising with the overland flow variant. The wetland is fed by a spring fed stream that drains in Lake Manapouri. The wetland area is defined as being within Natural State for Water Quality.

A technical review completed by Wildland Consultants Ltd 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 mingimingi (Coprosma propinqua) and weeping mapou (Myrsine divaricata) on its margins. Wet ground between the two streams is occupied by stands of mānuka, shrubs of mingimingi, 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.

The proximity to the Fiordland National Park and Lake Manapouri forms part of the receiving environment.

Adverse effects of the proposed activities on the environment

Consideration has been given to the following effects:

- Wetland (including hydrological and vegetation effects)
- Design and location of the culverts (including fish passage)
- Water quality
- Landscape, amenity values and public access

- Cultural and heritage values

Effects on wetland

Modification of a wetland can result in adverse effects including but not limited to reduction in water quality through loss of area and resultant ability to trap sediment and filter contaminants, increased risk of flooding potential, loss of indigenous vegetation and biodiversity values. The wetland is not listed as a Regionally Significant Wetland. The details below concentrate on the description of the wetland and the hydrological effects on the wetland and the direct loss of wetland vegetation from the trail construction.

Wetland overview

An Ecological Assessment prepared by Beale Consultants (2018) as part of the application outlines 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. 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.”

The report concludes in section 9 that: *“the magnitude of the effect of construction of the trail on the wetland is very low owing to the small area of wetland affected.”*

Given the assessment above, a technical review of the application was sought, and this is further explained within the paragraphs below.

Hydrological effects

The initial Technical review Technical review completed (dated 26 February 2019) by Kelvin Lloyd of Wildlands Consultants Ltd outlined amongst a number of other matters that:

“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.”

As outlined in the description of the proposal above, the applicant subsequently amended the application to ensure fish passage access through the culverts, filling in of the ditch excavated on one side of the formed trail, ongoing monitoring of the infilled area to check for settling of the substrate (with re-filling if required), and monitoring of subsequent colonisation by rautahi (*Carex coriacea*).

Based on the amended application, the Technical review completed by Kelvin Lloyd of Wildlands Consultants Ltd advised 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.”

Based on the Technical comments initially provided, the actual hydrological effects that occurred from wetland modification to enable the construction, the placement and use of culverts and the use of Leg 6 are more than minor. It is noted that remediation works have been proposed as part of the application,

however this assessment focuses on the actual effects which determines that the hydrological effects on the wetland from the activity are considered to be more than minor.

Direct loss of wetland vegetation

The Technical review completed by Kelvin Lloyd of Wildlands Consultants Ltd sets out that:

“Beale Consultants (2018) assessed the effects of trail construction on the hydrological and ecological function of the wetland as being less than minor, due to the 120 m² loss of wetland habitat being a small proportion (0.3%) of the total wetland area. However, the wetland extent indicated by Beale Consultants (2018) includes non-wetland habitat near the lake, and it is not clear what area of wetland extent was used to calculate this percentage. Assessment of satellite imagery indicates, however, that the wetland may occupy only approximately 0.75 hectares, and thus the extent of clearance would be 1.6% of the wetland extent.”

Within the technical review it states:

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.

Options outlined to mitigate effects within the Technical report include:

*“A grove of deciduous trees which are almost certainly willows (*Salix spp.*) occur approximately 100 metres upstream of the affected wetland. These are most likely to be crack willow (*Salix fragilis*) but could potentially be grey willow (*Salix cineria*). In either case, they are significant weeds of wetland ecosystems, and are likely spread further downstream, and into the affected wetland over time. Willow invasion could potentially displace indigenous wetland vegetation and alter the hydrology of the wetland.*

Eradication of these willow trees would therefore represent a very positive effect that may reduce the residual adverse effects on the wetland to less than minor. Willows can be drilled and poisoned in situ. Willow control sites should be monitored for regrowth and regeneration, with additional control undertaken if required.

*Scotch broom (*Cytisus scoparius*) occurs in patches on the wetland margin, and while not likely to have adverse effects on the wetland, are very likely to be having adverse effects on the natural*

character of the wetland. Control of this Scotch broom could therefore mitigate adverse effects on natural character. Follow-up control would also be needed. Encouraging regeneration of mānuka on wetland margins, or planting it, would help to reduce future invasion of Scotch broom.

Residual effects of wetland vegetation loss caused by track construction could be addressed by eradication of willow trees. Effects on natural character of the wetland could be mitigated by control of Scotch broom and increasing indigenous plant dominance on the wetland margins.

As outlined above, the applicant proposed amendments on 11 April 2019 to promote clearance of exotic pest plant species to remediate effects of the trail on the wetland.

It is again noted that the applicant has proposed remediation of the wetland. However, 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 Lake 2 Lake Te Anau to Manapouri Multi Use Trail will be more than minor.

Effects from the design and location of the culverts including fish passage

The design and location of culverts can result in adverse effects on the surrounding environment if they are not for example correctly built for the passage of water or are an inappropriate diameter, design or position within the bed of a watercourse that they to be located in.

The applicants have advised that there are existing culverts in the waterways have been installed as permitted activities and are therefore excluded from this application. However, as outlined above, the applicant amended the application on 1 April 2019 to include consent for the placement and use of two 800mm culverts which are installed within the actual wetland area. These two culverts allow water to flow under the constructed trail. These culverts are two x 800mm diameter culverts x 6 metres and are purpose built plastic corrugated culverts meaning that the design of the culverts is correctly designed for their intended purpose thus reducing potential adverse effects from design failure.

The two culverts are under the trail and not within the existing bed of a watercourse (there are also existing culverts positioned to the north and south of the wetland). The culverts are considered under Rule 74 of the pSWLP for the use of land within a wetland, rather than under Rule 28 of the RWP and Rule 59 of the pSWLP.

Written approval from the Department of Conservation, Te Ao Marama Inc and Fish & Game was submitted when the application was originally lodged. However, the application was amended on 1 April to include the culverts as part of the consent, and although an existing situation given the culverts were installed, the written approvals do not directly acknowledge the two culverts that also need consent.

As outlined above, 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.

Effects on water quality

The construction of the trail and the installation of the culverts increases the potential for adverse effects on water quality. As explained in the sections above, the receiving environment is highly sensitive to change with the surrounding wetland and given proximity to Lake Manapouri which is Natural State Waters meaning that water quality within the area must be maintained, and appropriate management and mitigation measures must be in place.

As per the technical comments received from Wildlands Consultants Ltd, based on an assessment satellite imagery indicates that the wetland may occupy only approximately 0.75 hectares, and thus the extent of clearance would be 1.6% of the wetland extent, and some loss of sediment may have occurred at that time. There is however dense vegetation adjoining the trail which would assist with filtering and trapping sediment.

As per the amended application, the applicant proposes to infill the water table back to the natural ground level of the wetland using the same peat and fine silt substrate that was removed during construction of the water table, and undertake monitoring of the infilled ditch with additional infilling undertaken to restore the surface to the original ground level if settling occurs. Ongoing adverse effects would include the potential for sediment to be released during rainfall events.

Effects on landscape, amenity values and public access

The installation of a trail and the two culverts could result in adverse effects on landscape, amenity values and public access within the area. It is noted that the site does not fall within the Fiordland National Park, however it is adjoining it. The land subject to this application is on Public Conservation Land.

Within the application, it is identified that the Fiordland Trails Trust obtained land use resource consent from the Southland District Council in February 2018, that that this consent, amongst other things considered effects the removal of indigenous vegetation and effects on landscape and amenity.

In terms of provision of public access, the applicant is a charitable trust established in 2007 to provide a network of trails in and around Fiordland for non-motorised activity. On their website they state that the track is *for a public multi-use trail which is a public asset and has been constructed for the use of all to enjoy, free-of-charge*. This means that the nature of the activity is for recreation within Public Conservation Land e.g. the provision of a track for walkers, runners, cyclists and any other non-motorised transport (note that e-bikes can be used).

As outlined in the application, this part of the trail is in a remote area and is not within a residential area. Overall, I agree with the applicant's assessment that the trail contributes to people's appreciation of the pleasantness and aesthetic coherence of the area and enables recreational enjoyment. This, however, must be weighed up against the changes in the appearance of the area through the construction of the trail and the installation of the culverts within a natural wetland as per the assessment of effects provided above.

Effects on cultural and heritage values

The installation of a trail and the culverts in this wetland location has the potential to adversely affect cultural values by impacting biodiversity, water quality and landscape as well as heritage values.

I have undertaken an assessment of the Iwi Management Plan Te Tangi a Tauira and there is nothing to indicate the application site is a culturally significant site, and it is noted that the applicant promotes the use of Ngai Tahu's Accidental Discovery Protocol. It is also noted that the application site adjoins a Ngai Tahu Statutory Acknowledgement Area – Lake Manapouri.

Written approval from Te Ao Marama Inc was submitted when the application was originally lodged. However, the application was amended on 1 April to include the culverts as part of the consent, and although an existing situation given the culverts were installed, the written approvals do not directly acknowledge the two culverts that also need consent.

Adverse effects that have been disregarded

Adverse effects of the activities are not likely to be more than minor. Consideration has been given to section 95D, which requires that effects in relation to the following circumstances must be disregarded:

- Parties who own or occupy the land or adjacent land;
- Effects outside the scope of restricted discretion;
- Trade competition; or
- Effects on a party who has provided written approval.

Council may also disregard an adverse effect if a rule or national environmental standard permits an activity with that effect.

As per Section 95D(a) of the RMA, effects on persons who own or occupy land under or adjacent to the proposed location have not been considered.

As outlined above, written approval from the Department of Conservation, Te Ao Marama Inc and Fish & Game was submitted when the application was originally lodged. However, the application was amended on 1 April to include the culverts as part of the consent, and although an existing situation given the culverts were installed, the written approvals do not directly acknowledge the two culverts that also need consent.

No rules or national environmental standards (NES) permit an activity with the same effect.

Planning provisions (policies and objectives) relevant to adverse effects

The relevant regional plans are the Regional Water Plan 2010 (RWP) and the proposed Southland Water and Land Plan 2018 (pSWLP 2018).

The proposed Southland Water and Land Plan decisions version was notified by the Consent Authority on 4 April 2018. Whilst not given the same weight as the provisions within the RWP when making a determination on the application under Section 104(1) (b) regard must, Subject to Part 2 of the Act, be had to the provisions of any proposed plan.

In addition, Te Tangi a Tauria, the Iwi Management Plan, is relevant for this application as it identifies tangata whenua values and beliefs.

Regional Water Plan (RWP)

- | | |
|--------------|---|
| Objective 1 | <i>Natural State Waters</i> |
| Objective 2 | <i>Maintain water quality</i> |
| Objective 10 | <i>Habitats and ecosystems</i> |
| Objective 12 | <i>Public access</i> |
| Objective 13 | <i>Natural character and outstanding natural features</i> |
| Policy 1A | <i>Take into account Iwi Management Plans</i> |
| Policy 1 | <i>Surface water body classes</i> |

- Policy 2 *Natural state waters*
- Policy 3 *No reduction in water quality*
- Policy 32 *Manage structures and bed disturbance activities in the beds of river and lakes, to avoid, remedy or mitigate adverse effects (10 matters listed)*
- Policy 38 *Adverse effects of activities*

Proposed Southland Water and Land Plan (pSWLP)

- Objective 1 *Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.*
- Objective 2 *Water and land is recognised as an enabler of primary production and the economic, social and cultural wellbeing of the region.*
- Objective 3 *The mauri of waterbodies provide for te hauora o te tangata (health and mauri of the people), te hauora o te taiao (health and mauri of the environment) and te hauora o te wai (health and mauri of the waterbody).*
- Objective 4 *Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.*
- Objective 6 *There is no reduction in the overall quality of freshwater, and water in estuaries and coastal lagoons, by:*
(a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and
(b) improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.
- Objective 14 *The range and diversity of indigenous ecosystem types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.*
- Objective 16 *Public access to, and along, river (excluding ephemeral rivers) and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.*
- Objective 17 *The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.*
- Objective 18 *All activities operate in accordance with “good management practice” or better to optimise efficient resource use safeguard the life supporting capacity of the region’s land and soils and maintain or improve the quality and quantity of the region’s water resources.*

- Policy 1 Enable papatipu rūnanga to participate*
- Policy 2 Take into account iwi management plans*
- Policy 10 Oxidising*
- Policy 13 Management of land use activities and discharges*
- Policy B7 of the National Policy Statement for Freshwater Management 2015 (as amended in 2017)*
- Policy 20 Management of water resources*
- Policy 28 Structures and bed disturbance activities of rivers (including modified watercourses) and lakes (13 matters listed)*
- Policy 32 Protect significant indigenous vegetation and habitat*
- Policy 33 Adverse effects on natural wetlands*
- Policy 34 Restoration of existing wetlands, the creation of wetlands and riparian planting*

Te Tangi a Tauria

Earthworks (Section 3.5.8)

- Policy 1 Consent applicants who are undertaking earthworks may be required to enter into Accidental Discovery Protocol and monitoring agreements with Ngai Tahu ki Murihiku.*
- Policy 6 Oppose any earthworks activity application whereby the adverse effects on cultural values are considered too significant.*
- Policy 9 Any earthworks or roadworks near rivers must have appropriate measures in place to avoid contaminants (including dust, sediment run-off from stockpiles or any hazardous substances) from entering waterways that may cause contamination, discolouration, or siltation in such waterways.*

Section 3.5.10 (General Water Policy)

- Policy 3 Protect and enhance the mauri, or life supporting capacity, of freshwater resources throughout Murihiku.*
- Policy 4 Manage our freshwater resources wisely, mō tātou, ā, mō ngā uri ā muri ake nei, for all of us and the generations that follow.*
- Policy 5 Promote the management of freshwater according to the principle of ki uta ki tai.*

Section 3.5.13 (Water Quality)

- Policy 1 The role of Ngai Tahu ki Murihiku as tangata whenua and kaitiaki of water must be recognised and provided for in all water quality management*

Policy 8 *Promote the restoration of wetlands and riparian areas as part of maintaining and improving water quality, due to the natural pollution abatement functions of such ecosystems.*

Section 3.5.16 (Mahinga Kai)

Policy 4 *Consider the actual and potential effects of proposed activities on mahinga kai places, species and activities when assessing applications for resource consent.*

Section 3.5.18 (Repo - Wetlands)

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

Conclusion: significance of adverse effects on the environment

The objectives and policies listed above have been used to inform and determine the level of adverse effects associated with the proposed activity.

Objective 12 of the RWP requires public access to 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. I consider the intent of the Lake 2 Lake Trail is consistent with this objective, however this must also be viewed in conjunction with the modification of a wetland as further discussed 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 and given that the activity for consideration is the modification of a natural wetland, I consider that the proposal is not consistent with objective 14. Objective 17 of the pSWLP requires the natural character values of wetlands to be protected from inappropriate use and development. As I cannot conclude that the effects on the wetland when viewed in isolation from any remediation works promoted by the applicant, are not more than minor, I consider that the proposal is not in accordance with the direction of Objective 17.

Policy 38 of the RWP requires that adverse effects of activities on wetlands should be avoided wherever possible through an integrated management approach. Policy 32 of the pSWLP requires protection of significant indigenous vegetation and significant habitat of indigenous fauna associated with natural wetlands, lakes and rivers and their margins. 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. 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, and the technical comments from Wildlands Consultants Ltd, 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 the proposal is not consistent with Policy 38 of the RWP, Policy 32 and Policy 33 of the pSWLP.

Policy 3.5.18.1 of Te Tangi directs to avoid drainage or modification of any existing wetland area, and this application is for the modification a wetland area.

Overall, I consider that the adverse effects arising from the modification of the wetland to enable construction, 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 will be more than minor.

4. Special circumstances and public notification

4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?	<input type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input checked="" type="checkbox"/> No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

4.2 Reasons why special circumstances do or do not exist

I do not consider there to be special circumstances as the activity is not out of the ordinary and the circumstances around the application are not unusual or exceptional (*Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR). The recent Urban Auckland case clearly sets out the requirements for special circumstances with regards to the decision on notification under s95A(4) of the RMA. I do not believe that the proposed activity will trigger the requirement for special circumstances as the regional plans provide appropriate guidance which relate to this application for consent for modification of a wetland for the installation of a trail and culverts, there is no conflict of interest between the parties and it is unlikely that public participation would elicit additional information that may be relevant for consent conditions.

Affected Parties and Limited Notification

5. Protected Customary Rights Group or Customary Marine Title group

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

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

N/A

6. Statutory Acknowledgement Areas

6.1 Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?	<input type="checkbox"/> Yes	Go to 6.2
	<input type="checkbox"/> No	Go to 7.1
6.2 Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?	<input type="checkbox"/> Yes	Include TRONT in 8.2 and go to 6.3
	<input type="checkbox"/> No	Go to 6.3

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

It is noted that the application site adjoins a Ngai Tahu Statutory Acknowledgement Area being Lake Manapouri

7. Is limited notification precluded?

7.1 Is each activity subject to a rule, NES or regulation that precludes limited notification?	<input type="checkbox"/> Yes	Go to 9.1
	<input checked="" type="checkbox"/> No	Go to 8.1

8. Are any people adversely affected?

8.1 Are the adverse effects on a person minor or more than minor (but not less than minor)?	<input type="checkbox"/> Yes	Go to 8.2
	<input type="checkbox"/> No	Go to 8.3

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

Person	Effect on person (see Note)	Reasons why effect is minor or more than minor	Has written approval been provided?
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Note: In forming this opinion (a) to (c) apply:

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

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

9. Special Circumstances – Limited Notification

9.1 Are there special circumstances that warrant limited notification of any other persons?	<input type="checkbox"/> Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	<input type="checkbox"/> No	Go to 10

9.2 Reasons special circumstances exist and persons to be notified

Recommendation and decision

10. Officer's recommendation

10.1	The application be processed non-notified	<input type="checkbox"/>
10.2	Public notification is required/recommended	<input checked="" type="checkbox"/>
10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	<input type="checkbox"/>



Sonya Nicol
Consultant Planner

Date: 18 April 2019

Decision under Delegated Authority

11.1	I agree with the recommendation	<input checked="" type="checkbox"/>
11.2	The application will be processed non-notified	<input type="checkbox"/>
11.3	The application will be publicly notified	<input checked="" type="checkbox"/>
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	<input type="checkbox"/>

This decision is made under delegated authority by:



Michael Durand
Consents Manager

Date: 18/4/19