

The Hearing Panel

16 December – 17 December 2020
9.00 am

Staff Report for Hearing

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

Hearing of Application – APP-20202268

Gore District Council

Compiled by Jade McRae, Senior Consents Officer

- Hearing: The hearing is scheduled to commence at 9.00 am on Wednesday, 16 December 2020 in the Council Chambers, Gore District Council, 10C Ardwick Street, Gore.
- Application: Gore District Council has applied for a land use consent to disturb the bed of the Mataura River to construct a pedestrian and cycle bridge over the Mataura River, to construct one temporary causeway and to install temporary piles in the riverbed.
- Notification: The application was publicly notified on 19 August 2020. 14 submissions were received, 13 in opposition and one with no response.
- Executive Summary: As outlined in this report the key issues are:
- visual effects; and
 - amenity values.
- Recommendation: I recommend that the application is granted for the reasons that are detailed in this report.

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 Gore District Council. 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 Hearing Panel in making a decision on the application.

1.2 About the author

My name is Jade Linda McRae. I am a Senior Consents Officer employed by the Southland Regional Council. I have been employed by the Council firstly as a Consents Officer, and now Senior Consents Officer, since January 2019.

I hold the qualifications of Bachelor of Science majoring in Zoology and Psychology and a Certificate in Sustainable Nutrient Management in New Zealand Agriculture (intermediate Overseer). I am an accredited decision-maker through the Ministry for the Environment Making Good Decisions course.

I have been involved with the application since it was lodged and received by Council. I was the primary contact for undertaking a pre application review of the proposal and undertook a site visit on 24 July 2020.

For completeness, I have read the Environment Court of New Zealand Practice Note 2014 Code of Conduct for expert witnesses 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;
- Submissions;
- Resource Management Act 1991 (RMA);
- National Policy Statement on Freshwater 2020;
- Regional Policy Statement 2017;
- Regional Water Plan 2010;
- Proposed Water and Land Plan 2018;
- Te Tangi a Tauria (Iwi Management Plan) 2008.

I note that I have confined my report to those matter that Environment Southland (Regional Council) has jurisdiction over under the RMA and other relevant national and regional planning instruments.

2. The Application

2.1 The proposed activities

Applicant:	Gore District Council
Application:	Land use consent to disturb the bed of the Mataura River to construct a pedestrian and cycle bridge across the Mataura River, disturb the river bed with vehicles and machinery and use erosion control structures.
Site address or location:	near the intersection between Church and Huron Streets, on the east bank and Surrey Street on the west bank.
Legal description:	Section 80 Blk XVI, HYDRO and Road Reserve
Map Reference:	1287103E 4887653N

The works will involve:

- construction, and later removal, of a causeway on the western side of the riverbed;
- disturbance of the riverbed by vehicles;
- disturbance of the riverbed to drill holes for temporary piles (to be removed later);
- construction of a new bridge structure over the riverbed;
- placement of rock riprap to protect the abutments of the new bridge;
- sediment release into the water column associated with the bed disturbance activities.

The bridge design is known as a cable-stay bridge with back anchors and prevents the need for permanent piles in the river bed. As referred to in more detail below, this design is relevant to my recommendation as a piled bridge in the same location could have potential to accentuate the flood hazard in high flow events such as occurred in the February 2020 floods.

The proposed bridge will be 39 m high, 90 m long and 3 m wide. New water pipelines will be attached to the bridge to connect the East Gore treatment plant and Jacobstown wells as the current drinking water supply in Gore does not meet New Zealand Drinking Water Standards (NZDWS). One of the specific land parcels on which the bridge will be located is known as Section 80 Blk XVI and is currently owned by Ben Abernethy. However, future subdivision into Lot 1 and Lot 2 Section 80 Block XVI is planned and Lot 2, where the back anchors will be located, would then be purchased by the Council. New Zealand Transport Agency (NZTA) is funding 55% of the construction costs due to the bridge providing a safe shared link between East Gore and the centre of town for pedestrians and cyclists.

2.2 Planning framework

An application for resource consents was lodged with Environment Southland in accordance with these requirements of the proposed Southland Water and Land Plan (pSWLP) and the Regional Water Plan (RWP).

Regional Water Plan for Southland (2010)

- Standard conditions for placement, erection, reconstruction, maintenance, alteration, extension, demolition and removal of structures and bed disturbance activities under Rule 48(a).
- Bridge construction is a **restricted discretionary activity** under Rule 26(b).
- The placement of erosion control structures is a **discretionary activity** under Rule 30(c).
- Vehicles and machinery on a riverbed is a **restricted discretionary activity** under Rule 45(b).

Proposed Southland Water and Land Plan (2018)

- Standard conditions for placement, erection, reconstruction, maintenance, alteration, extension, demolition and removal of structures and bed disturbance activities under Rule 55A.
- Bridge construction and any associated bed disturbance is a **restricted discretionary activity** under Rule 57(b).
- The placement of erosion control structures is a **discretionary activity** under Rule 61(c).
- Vehicles and machinery on a riverbed is a **restricted discretionary activity** under Rule 77(b).

Overall, the application is considered to be a **discretionary activity**. Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA.

2.3 Further information request

Further information was requested from the applicant on the 21 July 2020. The requested information included:

1. in-depth details on paint colour and lighting to be used on the bridge. In particular, but not limited to, what colour of paint, what type of lighting, how many lights will be installed, what height they will be installed at and what direction they will face;
2. confirmation of the eastern abutment construction level. The design diagram shows the soffit at a level of 76.4 m (plan S101), but the abutment set out plan shows a level 76.269m (SOP-EA1) plan S111;
3. confirmation that no work associated with the cycleway/walkway in the floodway or stopbank will be undertaken until authorization under the Southland Flood Control and Drainage Management Bylaw 2020 has been granted.

The above information was provided by the applicant ([Attachment 1](#)).

2.4 Consultation, Notification and written approvals

2.4.1 Consultation

The applicant indicated, at the time of lodging the application, that it had undertaken consultation with owners of properties in the immediate vicinity of the bridge who would be potentially affected parties. An invitation to meet with Councillors and Council staff on Monday, 15 June 2020 was provided to those residents in Huron Street, River Terrace and Halton Street. A media release was

subsequently sent out to the wider Gore community outlining the proposal on Wednesday, 17 June 2020 and information is now available on the home page of the Council’s website.

Section 3.2 of the applicants AEE ([Attachment 2](#)) sets out that through previous consultation, the applicant engaged with Te Ao Mārama Inc and Hokonui Rūnanga, and are aware of the following sites within the catchment which have particular cultural significance:

- Māori ovens have been located approximately 20-30 m downstream of the bridge site on the eastern banks. While the proposed works will be in close proximity to these, conditions are proposed to ensure these sites are protected during with works;
- a Mātaitai Reserve (customary fishing area) on the main stem of the Matāura River near the town of Mataura. The proposed activity is approximately 10 km upstream of this reserve;
- there are also a number of traditional eel fishing sites along the length of the Matāura. It is unclear at this stage whether any of these are near the site.

2.4.2 Notification

The application was publicly notified on 19 August 2020 due to special circumstances. This was for the following reasons:

- the immense amount of public interest;
- a coherent assessment of effects by both councils is needed to assist public understanding; and
- the location of the bridges results in difficulty determining who is a potentially affected party as it will be able to be viewed from a vast array of locations around Gore.

Submissions closed on 16 September 2020. Fourteen submissions were received. These are included in the [appendices](#), and are summarised as follows:

Submitter	Oppose/Support	Issues/comments	Decision/Changes sought	To be Heard?
Rodney Bruce Bell	Oppose	Visual effects, light pollution, lack of consultation.	Decline	Yes
David & Carmel Bone	Oppose	Visual impacts on the natural landscape and views, erosion, flooding, light pollution, lack of consultation.	Bore or entrench the water pipes under the Mataura River at Maitland Street	Not detailed
Jenny Campbell	Oppose	Bird strike, lighting, flooding, erosion, lack of Cultural Impact Assessment (CIA), effects on known cultural and archaeological site downstream, Outstanding natural features (ONF), lack of consultation.	Decline	Yes

Submitter	Oppose/Support	Issues/comments	Decision/Changes sought	To be Heard?
David & Lynn Gray	Oppose	Lack of consultation, visual effects, effects on amenity value of the area, effects on Outstanding natural features (ONF) and Outstanding Natural Landscape (ONL), proposal being contrary to objectives and policies in the RPS, flood risk due to building embankment on West bank and weakening east flood bank, erosion, bird strike, lack of Cultural Impact Assessment (CIA), failure to consider cultural values, effects on known cultural and archaeological sites.	Decline	Yes
Christine Henderson	No detail	Lighting, type of bridge proposed, effects on insects and bird life, lack of consultation.	Alternative sources of water sourced by rainwater 'harvest' from roof to tanks to take the pressure off the present aquifer and enable a different configuration of the treatment plants and pipelines.	Yes
Hokonui Rūnanga Inc	Oppose	Lack of consultation, effects on cultural values, effects on known archaeological site 20m downstream, effects on flight path of avian taonga species, visual impacts on the River which is identified as an Outstanding Natural Feature (ONF) and Statutory Acknowledgement Area.	Decline or address matters raised.	Yes
Desmon Horrell	Oppose	Visual effects, lack of consultation, light pollution, increased flooding risk.	Decline	No
Ernest MacManus	Oppose	Effects on the river, flood banks and flood plain, lack of consultation.	Decline	Yes
Sally McIntyre	Oppose	Proposal does not promote the social, economic, environmental, and cultural well-being of the Gore community, risk to flood banks, visual effects.	Decline	No
Leith & Joy Mockford	Oppose	Visual effects, light pollution, lack of consultation, flood hazard, bird strike,	Move activity location further upstream.	No
Donald Morrison	Oppose	flood risk due to building embankment on West bank and weakening east flood bank, lack of consultation, light pollution, Outstanding natural features (ONF), lack of Cultural Impact Assessment (CIA).	Decline	Yes
Bruce & Margaret Thomson	Oppose	Visual effects, flood risk due to building embankment on West bank and weakening east flood bank, bird strike, light pollution, lack of consultation.	Decline	No

Submitter	Oppose/Support	Issues/comments	Decision/Changes sought	To be Heard?
Waimea Plains Landscape Preservation Society Inc	Oppose	Outstanding Natural Features (ONF) and Outstanding Natural Landscape (ONL), adverse effects on amenity values, Mataura River WCO, increased flood hazard, erosion, lack of Cultural Impact Assessment (CIA), cultural values, lack of evaluation of matters under Sections 5, 6, 7 & 8 of the RMA.	Decline	Yes
Gary & Wendy Weir	Oppose	Visual impacts on the natural landscape and views, light pollution, bird strike, increased erosion, placement of water pipes adversely effecting eastern flood bank integrity, lack of consultation.	Bore or entrench the water pipes under the Mataura River at Maitland Street	Yes

Other issues were raised in the 14 submissions received. These included public safety associated with vehicles, increased traffic, parking issues, wind and construction noise, safety issues associated with high winds, ongoing costs to the ratepayer, unnecessary spending of ratepayer money, design does not allow for wheelchair users, increased crime rate in the area, increased litter/rubbish in the area, property depreciation and proposal being contrary to objectives and policies in the Gore District Plan. However, these issues are outside the scope of the regional council and will be addressed in the assessment undertaken by the territorial authority reporting planner.

2.4.3 Written Approvals

The application included written approvals from the following:

- Department of Conservation (DoC); and
- Fish & Game New Zealand (Southland Region).

The above written approvals are [Attachment 3](#).

2.5 Section 99 pre-hearing meeting

No pre-hearing meeting was held for the application.

3. Assessment

3.1 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
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for*

- any adverse effects on the environment that will or may result from allowing the activity; 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.”

The same principle applies to other parts of the planning document hierarchy. Higher order documents should be regarded as being particularised in the relevant plan unless there is a problem with the relevant plan (such as it being unclear), or the relevant plan precedes the higher level documents, in which case more weight will need to be accorded to the higher level documents¹.

“That is, if the district or regional plan in question is ambiguous, incomplete, or illegal then an answer should be looked for in one of the higher instruments.”²

¹ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council [2017]*, paragraphs 35 and 36

² *Infinity Investment Group Holdings Ltd v Canterbury Regional Council [2017]*, paragraph 35

3.2 Part 2 of the Resource Management Act 1991

All considerations under Section 104 are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation.

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.”*

Section 6 of the Act specifies matters of national importance, which must be recognised and provided for by those exercising functions and powers under the Act, in achieving the purpose of the Act. The matters listed in Section 6 of the Act include the following:

- Section 6(a) *The preservation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*
- Section 6(b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*
- Section 6(c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- Section 6(d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.*
- Section 6(e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- Section 6(f) *The protection of historic heritage from inappropriate subdivision, use, and development.*
- Section 6(g) *The protection of recognised customary activities.*
- Section 6(h) *The management of significant risks from natural hazards.*

Other matters that the hearing panel must have particular regard for in achieving the purpose of the Act are listed in Section 7, as follows:

- Section 7(a) *Kaitiakitanga,*
- Section 7(aa) *The ethic of stewardship.*
- Section 7(b) *The efficient use and development of natural and physical resources.*
- Section 7(ba) *The efficiency of the end use of energy*
- Section 7(c) *The maintenance and enhancement of amenity values.*
- Section 7(d) *Intrinsic values of ecosystems.*
- Section 7(e) *[Repealed]*
- Section 7(f) *The maintenance and enhancement of the quality of the environment.*
- Section 7(g) *Any finite characteristics of natural and physical resources.*
- Section 7(h) *The protection of the habitat of trout and salmon.*
- Section 7(i) *The effects of climate change*
- Section 7(j) *The benefits derived from the use and development of renewable energy.*

Section 8 of the Act specifies that:

“...in achieving the purpose of the Act, all persons exercising functions and power under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi.”

Comment

In order to grant this application, the Commissioners must be satisfied that the proposed activity is consistent with the purpose of the Resource Management Act. As directed by decisions of the Environment Court, a decision-maker must make a broad judgement as to whether the proposed activity is consistent with the principles of sustainable management.

In this instance, I consider that the activity would not significantly adversely affect the long-term *“life-supporting capacity of ... water”* as the effects on water quality, including the effects on habitat and ecosystems and the chemical components of water quality would not be significantly adversely affected in the long-term. I consider that the development of the cycle/pedestrian bridge to connect Jacobstown wells and East Gore treatment plant provides for social and economic well-being of the local and regional community by developing regionally important infrastructure. The application promotes a level of development that has been widely accepted in other parts of Southland, though this location has specific and unique values. It is therefore important that Section 5(c), which requires *“avoiding, remedying, or mitigating any adverse effects of activities on the environment”* can also be satisfied.

As discussed in this report, while effects on outstanding natural features and amenity values are potentially significant at, and immediately around the bridge, the wider potential effects of the activities are considered to be temporary and no more than minor overall. Therefore, after taking a holistic assessment I consider that Section 5 is met.

Sections 6(a), (b) and (d) are relevant as the application directly concerns the use and development of the Mataura River and its margins. However, the function and purpose of the proposed bridge does depend on the preservation and protection of natural character and outstanding natural features being balanced against the desire to maintain and enhance public access to and along the river.

In regard to Sections 6(e) and (g), 7(a) and (aa) and 8, Te Ao Mārama Inc and Hokonui Rūnanga were included in the consultation for this application. Additionally, a submission was received from Hokonui Rūnanga on this proposal which details their concerns. To address the Section 6(e) matters, the relevant policies of Te Tangi a Tauria are also included for consideration below.

Section 6(c) is also relevant in the respect that the river is habitat for native fauna. The Water Conservation (Mataura River) Order 1997 further stipulates the restriction of specific activities in order to protect its outstanding fisheries and angling features.

I consider that the application provides for Section 6(d) public access enhancement to and along the river.

Matters listed in Sections 7(b), (c), (f), (g) and (h) are also relevant to this application, especially those concerning amenity values.

As mentioned above, Section 7 provides for other matters. Subsections 7(a), 7(aa), 7(b), 7(c), 7(d), 7(f), 7(g) and 7(h) are of particular relevance to this application. These refer to kaitiakitanga/stewardship, efficient use of natural and physical resources, amenity values, ecosystems, maintaining the quality of the environment, any finite characteristics of resources and habitat of trout. The effects in relation to these other matters have been considered in Section 3.4 of this report.

With regard to Section 8, the principles of the Treaty of Waitangi are discussed in Chapter 3 of the RPS and reflected in Objective TW.1 and Policy TW.1. The principles of kawanatanga, partnership and rangatiratanga have been further outlined and considered in Section 3.9 of this report. The application was directly notified to those agencies representing Iwi and a submission outlining their concerns was received.

3.3 Description of the affected environment

The proposed Longford Bridge will be located over the Mataura River within the Gore township approximately 650 m north of the existing State Highway 1 Bridge.

The Mataura River is one of the four largest rivers in the Southland Region. The area of the Mataura catchment is the largest in the Southland Region and extends from the Eyre and Hector Mountain ranges in the north and discharges into Toetoes Estuary, approximately 35 km east of Bluff. The Mataura river is approximately 55 metres wide at the bridge site.

At Gore the river has a median flow of 49 cumecs. The highest recorded flow was 2,400 cumecs in the February 2020 floods, when the river was 4.8 metres above normal. The previously highest flow was 2,111 cumecs, which was 4.7 metres above normal, in October 1978. *Note: the height above normal is relevant to the flow monitoring site at the SH1 bridge and may be different at the proposed site.*

The river is a statutory acknowledgement area under the Ngāi Tahu Claims Settlement Act, which means that Ngāi Tahu has an acknowledged traditional, historical, cultural and spiritual association with the river.

The Water Conservation (Mataura River) Order recognises that the river has outstanding fisheries and angling amenity features, and the proposed site is within the protected waters under the Order. The provisions of the Order apply through s217 of the Resource Management Act.

The Council's Geographic Information System doesn't show any archaeological sites in the immediate vicinity of the bridge site.

The site is about 11 km upstream of a Gore District Council water take at Mataura, which is a registered potable water supply take.

3.4 Actual and potential effects

This application requires consideration of the following effects:

- Visual Effects/ Natural Character;
- Water Quality;
- Avifauna/ Bird strike;
- Public Access/ Amenity value;
- Navigational Safety;
- Flood risk/ River Morphology;
- Cultural Effects.

Visual Effects/Natural Character

The proposal will have a visual effect, be that as it may, it will have less of a visual effect when compared to a bridge with solid structures such as an arch or truss bridge. The proposed bridge height is 39 m at the peak of the mast which will be difficult to screen, particularly from those residents located along the eastern embankment. The applicant did submit a Landscape and Visual Impact Assessment report prepared by Align Limited. The report concluded that the mast, which is significantly taller than any immediate element in the surrounding landscape, gives the proposed bridge a visual presence that is likely to be far reaching and difficult to reduce through any landscape mitigation. The mast is a crucial component of the overall bridge design which requires no permanent supporting piles in the riverbed but is also the defining feature of the landscape and visual impacts. The lower portions of the structure will be more easily mitigated and provide considerably less visual impact than the mast. The applicant has proposed to plant vegetation and, in consultation with local Rūnanga, use appropriate lighting and paint colour to reduce the visual effects of the mast against the surrounding landscape.

It was considered that visual effects would be a key factor over the course of the Gore District Council public hearing and may have impacted on any prior permissions given by Environment Southland for the proposal. That formed part of my recommendation that special circumstances did apply, and as such, I considered it appropriate to notify the application so that the proposal was able to be considered in its entirety. However, the bridge construction only requires consent under the regional plans due to the temporary instream structures. If the bridge could have been completed without those structures, then, applying the permitted baseline, the bridge appearance would not be important to the regional consents. The territorial authority also engaged Mr Mike Moore, a Consultant Landscape Architect, to independently peer review the Align Landscape and Visual Impact Assessment. Therefore, with regard to visual effects, I recommend that the territorial authority takes the lead on visual issues and imposes appropriate consent conditions on this aspect of the application. This recommendation also aligns with section 102(4A) of the Resource Management Act (1991) which states “*Where 2 or more consent authorities separately decide applications, and all the consent authorities have agreed to grant a resource consent, they shall ensure any conditions to be imposed are not inconsistent with each other*”.

Water Quality

The proposal involves instream works, which may disturb aquatic habitat and affect water quality due to the release of sediments. These effects will be localised, of short duration and will dissipate upon conclusion of the works. The dilution in the river, which has a mean flow of 65 cumecs, will ensure that there is no more than minor effects on water quality beyond the zone of reasonable mixing (200 m in this instance).

The Mataura River has a Water Conservation Order (1997) which prohibits discharges into the protected waters if the effect of the discharge would breach the provisions of the order. However, it allows for discharges to be granted for the purpose of the construction of a bridge. This means the proposed activity will not contravene the provisions of the order.

The applicant has also proposed silt fences will be set up within 1 m of the edge of the river and will extend 20 m either side of the construction area with secondary protection to be installed in areas of high earth works. Additionally, a mitigation to the potential damage to fish habitat during the construction of the western causeway has been offered. The mitigation includes disturbing the area with noise, vibration, and potentially electrofishing to move instream life as much as possible before construction, if required.

Avifauna/Bird strike

A number of submissions have raised concerns around bird strike. The Hokonui Rūnanga specifically identified concerns associated with the impact on flight paths of avian taonga species. As a consequence of this ecological issue being raised by submitters, the territorial authority’s Reporting Planner requested an avifauna assessment under Section 92 (RMA) which sought to address the ecological effects of the bridge on avifauna.

An avifauna desktop assessment was prepared by Dr Della Bennett, a Senior Avifauna Ecologist at Wildlands Consultants Ltd. Her report is contained in [Attachment 4](#).

The Wildlands report identified 53 species of avifauna within 10 kilometre radius and that the proposed 10 month construction phase could potentially disturb foraging and roosting birds through the movement of trucks and machinery. Although this may be a short-term effect, the Wildlands report states that if impacts on breeding Threatened or At Risk braided river bird species are avoided

the effects of the construction will be less than minor. The report suggests construction effects can be avoided by:

- checking bird use of the area prior to construction;
- avoiding the bird breeding season.

Upon completion of the Longford bridge, the Wildlands report details that the levels of human activity and disturbance in the area will be higher than previously, but the overall impact on relevant bird species will be less than minor. Dr Bennett recommends that signage should be installed advising that all dogs should remain “under control at all times” to avoid chasing or displacing birds that are foraging or roosting.

The Wildlands report identifies that flight movements during the day will be marginally affected once the structure is completed. During daylight hours, most bird species will be able to avoid the steel mast and spiral strand cables due to the visibility and size of the structures. However, strikes could potentially occur during low light or poor weather conditions, such as during fog, or at night. As the proposed bridge is a static structure, there is a minor risk of bird strike for waterfowl as they are slow flying. However, faster-flying species could potentially have a higher strike rate risk, especially during conditions of low visibility. In spite of this, the general illumination of the township, lighting on the bridge structure, and previous experience with the bridge structure will help birds to avoid the structure. The Wildlands report recommends to aid birds identifying and avoiding the structure, UV lights, luminous tape or spherical aerial markers could be used.

Public Access/ Amenity Value

The bridge construction activities will restrict access to the river for the public which will affect angling amenity, but only in the immediate construction areas and only during the construction period, which is anticipated to be up to 10 months. I consider that once the bridge construction is complete the bridge will provide greater public access to both sides of the flood banks, the river channel and angling and swimming spots.

Navigational Safety

With regard to navigational safety, the application was referred to Maritime NZ, who had no comment. Regional Council’s Harbour Master also had no navigational safety concerns with the proposed bridge design. His comments are attached ([Attachment 5](#)).

Flood Risk/River Morphology

A structure such as a bridge can impede flow and catch debris, resulting in localised erosion, deposition and further diversion of water to adjoining land during flood periods. In this case, the structure will have no permanent piles in the riverbed and during construction of the bridge the western causeway will have minimal restrictions on the river channel. The bridge has been designed to allow a 1 in 50 year (+ climate change) flood event to pass with 600 mm to spare above the flow. The design will also allow a flow similar to the February 2020 flood (2,450 m³/s), which is the largest flow on record, to pass with 1500 mm to spare above the flow. The applicant has proposed that should significant flood events be forecast during the construction period, within 20 hours of a predicted high water event, any temporary crane platform will be removed. This will be possible as the applicant has noted staff will always be available during the working week (construction team living locally), and one man will be available on standby (within 2 hours of the site) during weekends when the construction team are not on site. Council’s Technical Engineer has reviewed the bridge

designs and he is confident that the bridge will have no adverse effects on flows during future high flow events. His comments are attached ([Attachments 6 and 7](#)).

I also note that all works associated with the bridge in the floodway or stopbanks require authorisation under the Southland Flood Control and Drainage Management Bylaw 2020.

Cultural Effects

There are no known cultural or archaeological sites within 800 m of the construction site, however Heritage New Zealand was contacted in June 2020 regarding an exposed burn feature in the true left bank of the Mataura River approximately 50 m downstream of the proposed bridge site. A survey of the feature was undertaken by an Archaeologist and it was identified that more background research was needed for this feature to be classified as an archaeological site. Furthermore, the majority of the bridge construction will occur on the true right bank of the Mataura River and the applicant has proposed a consent condition that a suitably qualified Archaeologist is present on site during the excavation phase.

There is also a chance the construction works may uncover a previously unknown artefact. Rivers were traditionally transport routes in the past, so there is some risk that there may be an artefact in the area of works. The risk of discovering a previously unknown artefact has been addressed by the applicant proposing the consent condition that a suitably qualified Archaeologist is present on-site during the excavation phase to ensure that any currently known, and potentially as yet uncovered, cultural sites are identified. The standard Accidental Discovery Protocol consent condition is also proposed to be included in the land use permit.

The Mataura River Statutory Acknowledgement Area under Schedule 42 of the Ngāi Tahu Claims Settlement Act 1998, due to its cultural significance to Ngāi Tahu. On the 6 August 2020 a copy of the application was sent to Te Rūnanga o Ngāi Tahu who were invited to advise Regional Council of any concerns they may have, to which we did not receive a reply. The applicant also indicated at the time of lodging the application that they had made initial consultation with Te Ao Mārama Inc and Hokonui Rūnanga to address any cultural or spiritual effects they were concerned about. However, it is evident by Hokonui Rūnanga submission that they still have some concerns that need to be addressed.

Assessment of alternatives

Alternative options have been discussed in Section 5.1 of the AEE. These included:

1. attaching the new pipelines to the existing traffic bridge. This option was disregarded due to the cost (\$4.5 million), it would not qualify for NZTA funding, the age of the bridge and the bridge is not a Council-owned structure;
2. building a standalone arch network pipe bridge on the shortest route between the East Gore water plant and Jacobstown wells. This option was disregarded due to the cost (\$4 million), a standalone bridge would not qualify for NZTA funding, the bridges location would be the widest part of the Mataura River which would result in a significant amount of earthwork to raise the bridge level for flood protection;
3. build an arch network pipe footbridge at the proposed location. This option was disregarded due to the costs (\$3.4 million), provides little additional value to the project, increased costs due to hydraulic and geotechnical inputs and the solid structure of an arch bridge is more visually intrusive than the open style of the cable-stay bridge;

4. placing the pipelines under the Mataura Riverbed. The option was disregarded due to geological challenges of drilling under the river and the unknown costs associated as contractors could not provide the applicant with a fixed cost to drill under the river.

I note that a number of the submissions raised alternative options for delivering a pipeline and also alternative bridge locations. A number of options identified above were identified in submissions.

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

Section 104 requires consideration of any NES that is relevant. In this case, the National Environmental Standards for Human Drinking Water (NES) needs to be considered. These regulations aim to reduce the risk of drinking water sources being contaminated.

Regulation 12 of the NES requires a consent authority to consider whether an activity could result in an event, or a consequence of an event, that may have significant adverse effect on the quality of water at any registered drinking water abstraction point. Regulation 12 applies to abstractions serving at least 25 people for more than 60 calendar days a year. Regulation 7 has the same criteria, as Regulation 12 but applies to registered drinking water sites that supply water to no fewer than 501 people. These regulations further stipulate that if the situation described above applies, a condition must be imposed on the resource consent which requires notification of the registered drinking water supply operators.

In this case there may be some incidental discharge of sediment to water. However, it would not extent beyond the zone of reasonable mixing.

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

National Policy Statement for Freshwater Management (NPSFM) 2020

The National Policy Statement for Freshwater Management 2020 came into force on 3 September 2020, replacing the earlier National Policy Statement for Freshwater Management 2014. It contains the following provisions that are relevant to the proposal:

Section 1.3 of the NPSFM refers to Te Mana o te Wai as a fundamental concept:

“Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.”

“Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.”

The six principles are:

- (a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
- (b) *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations
- (c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others
- (d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future
- (e) *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations
- (f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

The NPSFM contains the following objective and Policies of relevance to the proposal:

- Objective 1 *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
- (a) first, the health and well-being of water bodies and freshwater ecosystems*
 - (b) second, the health needs of people (such as drinking water)*
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*
- Policy 1: *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*
- Policy 2: *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*
- Policy 3: *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
- Policy 4: *Freshwater is managed as part of New Zealand’s integrated response to climate change.*
- Policy 7: *The loss of river extent and values is avoided to the extent practicable.*
- Policy 8: *The significant values of outstanding water bodies are protected.*
- Policy 9: *The habitats of indigenous freshwater species are protected.*
- Policy 10: *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*
- Policy 15: *Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.*

The NPSFM 2020 details a specific requirement under Subpart 3.24 that every regional council must include the following policy (or words to the same effect) in its regional plan(s):

“The loss of river extent and values is avoided, unless the council is satisfied:

- (a) That there is a functional need for the activity in that location; and*
- (b) The effects of the activity are managed by applying the effects management hierarchy.”*

Comment

There should be minimal long-term effects of the proposed bridge structure due to the lack of structures in the bed of the river and the design caters for sea level rise due to climate change (Policy 4). Effects on river morphology and ecology from the structure and from any associated maintenance activities would not be contradictory to Policies 9 and 10. The static nature of the bridge once constructed and the nature of materials used would not have any ongoing water quality effects (Policy 3). The impact on the ‘*health and well-being*’ of the river would not be significantly altered in the long-term and therefore the proposal gives effect to Te Mana o te Wai (Policy 1).

It is considered the application is consistent with Policy 2 as Te Rūnanga o Ngāi Tahu were sent a copy of the application and asked to provide comment on any concerns. Hokonui Rūnanga have also provided a submission on their concerns to be addressed.

The matter potentially impacted the most is Policy 8: *“The significant values of outstanding freshwater bodies are protected”*. The Mataura River is subject to Water Conservation (Mataura River) Order 1997 in accordance with Section 214 of the RMA. The Order is further discussed below.

It is considered the application is consistent with Policy 15 as the new bridge will firstly, provide a safe alternative route for cyclists and pedestrians which links east Gore to the main town centre, and secondly, will aid in connecting water pipes from Jacobstown wells to the East Gore treatment plant which will ultimately supply Gore with drinking water that will meet New Zealand Drinking Water Standards (NZDWS).

Policy 12 *“The national target for water quality improvement is achieved”* has been excluded from this assessment as it refers to contaminants that will not be released as part of the bed disturbance activities.

I consider the proposal is consistent with the ‘Rivers’ policy that must be included in regional plans as the loss of river extent and values will be avoided in the long-term due to the design of the bridge not disturbing the water in the river or the river bed once construction is complete. However, due to the applicant most likely being unable to avoid the loss of river extent and values during the construction phase, the Council must be satisfied there is a functional need for the bridge in that location and the effects management hierarchy has been implemented.

I consider that there is a functional need for the bridge in that location. This is because the sole purpose of a bridge is to span a physical obstacle, in this case that obstacle is the Mataura River, which can only be found in that particular location and that particular environment. Other locations have been explored by the applicant, which all have pros and cons with regard to visual effects and costs, however if moved to another location the structure will still require a construction phase and will still be required to span the width of the Mataura River. The applicant has also implemented the effects management hierarchy by avoiding navigational safety issues and flood risk effects by utilising a design that requires no permanent piles in the bed of the river and will allow a

high flow event larger than any other ever recorded to pass with no implications to the structure. The proposal also minimises adverse water quality and cultural effects that cannot be avoided by using silt fences to minimise the release of sediment to the river and proposing that a suitably qualified Archaeologist is present on site during the excavation phase.

3.7 Relevant provisions of the Southland Regional Policy Statement (Section 104(1)(b)(v))

Southland Regional Policy Statement 2017

The Southland Regional Policy Statement 2017 became operative on 9 October 2017. It pre-dates the NPSFM 2020, so may not give effect to or be consistent with it. Therefore, regard should be given to the higher order document.

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

Tangata whenua

Policy TW.1 *Consult and enhance tangata whenua involvement in local authority resource management decision-making processes.*

Policy TW.3 *Take iwi management plans into account within local authority resource management decision making processes.*

Policy TW.4 *When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that recognises and provides for traditional Māori uses and practices relating to natural resources, the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources, mahinga kai and access to areas of natural resources used for customary purposes, mauri and wairua of natural resources, places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua, and Māori environmental health and cultural wellbeing. Also recognise that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

Policy TW.5 *Assist and enable the use and development of Māori land and resources, in a manner that is sustainable.*

Water Quality

Policy WQUAL.1 (a) *Identify values of surface water, groundwater, and water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and formulate freshwater objectives.*
 (b) *Manage discharges and land use activities to maintain water quality, or improve it, to ensure freshwater objectives are met.*

- Policy WQUAL.2 *All waterbodies – Maintain and improve water quality, having particular regard to nitrogen, phosphorus, sediment and microbiological contaminants.*
- Policy WQUAL.3 *Identify and protect the significant values of wetlands and outstanding freshwater bodies.*
- Policy WQUAL.6 *To manage discharges and land use activities to maintain the quality of water and the associated values where it is in its natural state.*
- Policy WQUAN.7 *Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.*
- Policy WQUAL.11 *Avoid, as far as practicably possible, remedy to mitigate the risks that the adverse effects of land use activities and discharges of contaminants have on the sources of community water supplies.*
- Policy WQUAN.12 *Integrate the management of land use, water quality, water quantity and the use, development and protection of resources wherever possible.*

Beds of lakes and rivers

- Policy BRL.1 *Regional plans shall include policies and methods that:*
- (a) avoid as far as practicable, and only where avoidance is not practicable, remedy or mitigate, adverse effects of activities in the beds of lakes and rivers on:*
 - i. natural character;*
 - ii. instream ecological values, including bird habitat;*
 - iii. historic heritage, cultural and spiritual values;*
 - iv. amenity values;*
 - v. recreational values;*
 - vi. the performance and operation of critical infrastructure;*
 - (b) manage adverse effects of activities in the beds of lake and rivers on:*
 - i. erosion and deposition processes;*
 - ii. flooding risk, bank stability and drainage capacity;*
 - iii. the social, economic, cultural and environmental wellbeing of the community*
 - (c) recognise the outstanding characteristics identified in water conservation orders applying to rivers within the region.*
- Policy BRL.4 *Public access to, along and across lakes and rivers will be maintained and enhanced by:*
- (a) identifying surface water bodies or locations that are a priority for access;*
 - (b) providing direction about where and when additional access should be established;*
 - (c) ensuring structures and bed disturbance activities in the beds of lakes and rivers do not impede public access, unless it is necessary to do so for safety reasons; and*

- (d) *consulting with territorial authorities, tangata whenua, stakeholders and local landowners to develop non-regulatory methods to encourage retention or establishment of public access*

Policy BRL.5 *Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of river and lake beds*

Natural Hazards

Policy NH.3 *Take a precautionary approach towards managing the effects of climate change and sea level rise and any associated changes in the scale and frequency of natural hazards to ensure potential adverse effects are avoided or mitigated.*

Policy NH.4 *In managing natural hazards, the following implementation priorities are to be adopted:*

1. *avoid exposure to areas at significant risk from natural hazards where practicable;*
2. *mitigate the effects of natural hazards by managing land use and in areas known to be susceptible to the effects of natural hazards;*
3. *undertake physical works needed to reduce the potential for the natural hazard to affect people and infrastructure*

Natural Features and Landscapes

Policy LNF.1 *To identify and assess Southland’s outstanding natural features and landscapes using, but not limited to, the following regional factors:*

- (a) *natural science factors, which specifically includes the geological, topographical, ecological and dynamic components of the landscape;*
- (b) *aesthetic values, including memorability and naturalness;*
- (c) *expressiveness (legibility), which is how obviously the landscape demonstrates the formative processes which helped to create it;*
- (d) *transient values, which specifically includes the occasional presence of wildlife or its values at certain times of the day or of the year;*
- (e) *whether the values are shared and recognised;*
- (f) *value to tangata whenua;*
- (g) *historical and heritage association;*
- (h) *the presence of water including in seas, lakes, rivers and streams;*
- (i) *vegetation, particularly native vegetation; and*
- (j) *wild or scenic values.*

Policy LNF.4 *Local authorities shall protect outstanding natural features and landscapes from inappropriate subdivision, use and development by having regard to the following:*

- (a) *whether the adverse effects of inappropriate activities on outstanding natural features and landscapes are avoided;*
- (b) *the extent to which the outstanding natural feature or landscape would be modified or damaged including duration, frequency, magnitude or scale of any effect;*
- (c) *the irreversibility of adverse effects on outstanding natural features or landscape values;*

- (d) *the resilience of the outstanding natural feature or landscape to change;*
- (e) *opportunities to remedy or mitigate previous adverse effects on the outstanding natural feature or landscape;*
- (f) *whether the activity will lead to cumulative adverse effects on the outstanding natural feature or landscape;*
- (g) *the relationship of the landscape to the surrounding environment.*

Infrastructure

Policy INF.2

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

- (a) *any functional, operational or technical constraints that require the physical infrastructure of regional or national significance to be located or designed in the manner proposed;*
- (b) *whether there are any reasonably practical alternative designs or locations;*
- (c) *whether good practice approaches in design and construction are being adopted;*
- (d) *where appropriate, and such measures are volunteered by a resource user, whether any significant residual adverse effects can be offset or compensated for.*

Comment

It is considered the application is consistent with policies TW.1, TW.3, TW.4 and TW.5 as Te Rūnanga o Ngāi Tahu were sent a copy of the application and asked to provide comment on any concerns. Hokonui Rūnanga have also been consulted prior to, and during, the application process. Hokonui Rūnanga provided a submission on their concerns to be addressed. These concerns include effects on a potential archaeological site 20m downstream, effects on the flight path of avian taonga species, visual effects on an ONF and public safety.

I consider that effects on the yet to be identified archaeological site located approximately 20 m downstream of the eastern end of the bridge will be less than minor due to the major construction works, including a causeway crane platform, would occur on the western end of the bridge. The applicant also commissioned an Avifauna assessment, which was prepared by a Senior Avifauna Ecologist at Wildlands Consultants Ltd, to address effects on birds in relation to the construction of the bridge. The report concluded that the construction should occur outside of the nesting season, or the applicant should engage an ecologist to undertake a survey prior to the start of construction, and that birds will become accustomed to the increased presence of humans and the presence of the bridge. With that in mind I consider the effects on avian and taonga species to be less than minor. Effects on ONF has been discussed below.

The potential for the temporary discharge of sediment associated with the bridge construction would not affect the river's water quality beyond the zone of reasonable mixing. Therefore, it is consistent with Policies WQUAL.1, WQUAL.2, Policy WQUAL.3, WQUAL.6 and WQUAL.12. Policy WQUAL.11 seeks to sustain the quality of water for community water supplies and Policy WQUAN.7 seeks to recognise the social, economic and cultural benefits from the using and protecting water. The application is consistent with both these policies as the only contaminant that will be released (within the zone of reasonable mixing) is sediment.

With regard to Policies NH.3 and NH.4 there will be minimal long-term flood risk effects of the proposed bridge structure due to the design which caters for sea level rise as a result of climate change. The support abutments will not exacerbate pressure on the flood banks based on Council's Technical Engineer review of the proposal.

Policies BRL.1 and BRL.5 refer to the values of, and benefits derived from, river beds. The application includes piles in the bed of the river and vehicles on the bed of the river. However, these activities are of a temporary nature during construction. The proposal will provide a safe drinking water supply as well as improving the walking and cycling access between East and West Gore. Therefore, I consider that the proposal is consistent with the above policies.

The proposed bridge promotes the enhancement of public access to the river and its margins for the purpose of recreation, which is a positive effect in terms of the Regional Policy Statement, particularly Policy BRL.4.

Policies LNF.1 and LNF.4 refer to Southland's outstanding natural features and landscapes and protecting them from inappropriate development. The Mataura River is identified as an outstanding natural feature in the Gore District Plan. The issue identified is the potential for a cable stay bridge design to damage the natural character of the river. The landscape directly surrounding the river is of rural nature (livestock grazing) with man-made stopbanks and beyond that is residential housing on the east side of the river and an industrial area to the west side of the river. Key matters are the protection of outstanding natural features of rivers and to protect them from inappropriate use and development. In spite of this, there is another bridge located 650 m downstream from the proposed site, therefore this kind of infrastructure is not out of the ordinary in this location. Whilst the policies provide for the values of certain outstanding natural feature and landscapes, they do not preclude the use of these spaces, or for consents to be granted in these areas.

Policy INF.2 discusses avoiding, remedying or mitigating adverse effects of infrastructure on the environment by giving regard to location, design, alternative locations and designs, utilising best practice and compensating or offsetting effects. The application is consistent with this policy as the design was chosen to avoid permanent structures in the riverbed, the location was chosen due to cost to the ratepayer, alternatives were considered and disregarded, the bridge has been designed and reviewed by multiple Chartered Professional Engineers (CPEng) and mitigations such as planting vegetation and using appropriate lighting and paint have been offered by the applicant.

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

At present both the Regional Water Plan for Southland and the proposed Southland Water and Land Plan are in effect. The Regional Water Plan is operative. The proposed Southland Water and Land Plan has been through the notification, submission and hearing stages, and is currently before the Court with regard to decisions on appeals.

Both plans pre-date the NPSFM 2020 so may not give effect to or be consistent with it. Therefore, regard should be given to the higher order document.

Regional Water Plan (2010)

The Regional Water Plan for Southland became operative in January 2010. The rules that apply have been discussed elsewhere. The following provisions are of relevance to the determination of the proposal and have been grouped according to topic:

Water quality

- Policy 1 *Recognise the different characteristics of the surface water body classes when managing discharges and apply water quality standards established under any Water Conservation Order.*
- Policy 3 *Notwithstanding any other policy or objective in this plan, allow no discharges to surface water bodies that will result in a reduction of water quality beyond the zone of reasonable mixing, unless it is consistent with the promotion of the sustainable management of natural and physical resources, as set out in Part 2 of the Resource Management Act 1991, to do so.*
- Policy 4 *For surface water bodies outside Natural State Waters, manage point source and non-point source discharges to meet or exceed the water quality standards referred to in Rule 1 and specified in Appendix G “Water Quality Standards”, unless it is consistent with the promotion of the sustainable management of natural and physical resources, as set out in Part 2 of the Resource Management Act 1991, to do so and so avoid levels of contaminants in water and sediments that could harm the health of humans, domestic animals including stock and/or aquatic life.*
- Policy 9 *When determining the size of the zone of reasonable mixing, minimise the size of the area where the relevant water quality standards are breached.*

Comment

A range of objectives and policies in the Regional Water Plan seek to control effects of activities on water quality.

Policy 1 seeks to recognise and protect specific waterway types, in this case the surface water body is classified as ‘Mataura 3’, and draws down the need to apply quality levels in accordance with any Water Conservation Order. In this instance, the 1997 Order on the Mataura is applicable and is discussed further below. Policies 3 and 4 link to the maintenance of overall water quality and to ensuring water quality standards are met. This is particularly relevant to the construction of the proposed bridge with the pile driving into the bed. The effects of the sediment release are considered to be temporary only, with less than minor effects after reasonable mixing. The proposed bridge design, construction and existence is unlikely to give rise to more than minor effects on water quality. Therefore, the application is consistent with Policies 1, 3 and 4.

Policy 9 is pertinent to the application as it recognises that some discharges do not have adverse effects on water quality after mixing with the water in the waterway over a reasonable “zone” of mixing. The application is consistent with this policy.

River Bed Use and Development

Policy 1A *Any assessment of an activity covered by this plan must take into account any relevant Iwi Management Plan.*

Policy 32 *Manage structures and bed disturbance activities in beds of rivers and lakes, to avoid, remedy or mitigate adverse effects on:*

- (a) water quality and quantity;*
- (b) habitats, ecosystems and fish passage;*
- (c) indigenous biological diversity;*
- (d) historic heritage, spiritual and cultural beliefs;*
- (e) public access and amenity values;*
- (f) natural character and outstanding natural features;*
- (g) river morphology and dynamics, including erosion and sedimentation;*
- (h) flood risk;*
- (i) infrastructural assets;*
- (j) navigational safety.*

Comment

With regard to Policy 1A, Te Tangi au Taurira is considered further below.

The proposed activities are consistent with Policy 32, which lists the adverse effects that must be managed for structures and activities that may disturb the bed of a river. The main matters listed in Policy 32 are addressed in turn below.

There would not be any adverse effect on water quantity as a result of the activities as no water would need to be diverted as a result of the construction of the bridge.

The chosen construction method means that the bridge would not have a significant adverse effect on water quality beyond the zone of reasonable mixing, and any effect would only be short-term.

Due to the construction methodology and mitigation measures proposed there would be no impact on fish passage as a result of the activities, and a less than minor effect on fish habitat as a result of the activities.

The bridge would have a positive and negative effect on public access and amenity values, as it would enhance public access, but during the construction phase will limit angling access to the specific site where the bridge would be.

There would be localised effects on river morphology around the temporary bridge piles. However, the application is considered to be consistent with this sub-clause as the design of the bridge has been chosen to reduce effects on river morphology beyond small scale temporary effects.

Natural character and outstanding natural features are also key matters raised in Policy 32. The Mataura River is recognised as an outstanding natural feature in the Gore District Plan. It is considered that the application is potentially inconsistent with this provision of the policy. This is due to the chosen design of the bridge having high visual impact. The chosen bridge site also results in the bridge, and in particular the mast, lacks the ability to be screened from view when in the

immediate area of the bridge. Nevertheless, there is another bridge located 650 m downstream from the proposed site, which demonstrates this type of infrastructure is not unusual in this location.

Whilst there would be vehicles present during the construction, this would be for a limited duration. Vehicle access, all be it to a limited extent is provided for in the area 275 m upstream, which indicates that vehicles are not out of context in the area. The construction period is estimated to be 10 months. Therefore, any effect on natural character would be short-term.

The chosen bridge design means that the bridge would not have a significant adverse effect on navigational safety, nor will it increase the potential flood risk.

Term and granting of Consent

Policy 14A *To determine the term of a water permit consideration will be given, but not limited, to a range of factors, fully listed in the policy.*

Policy 14B *In addition to the matters specified in section 104 of the Act, when considering a water permit application for a previously authorised activity where the status of the activity has altered solely as a consequence of subsequent permits being granted to increase allocation from that resource; the activity and knowledge of its adverse effects are the same or similar in character, intensity, and scale to that which existed previously; and the adverse environmental effects of the activity are not significant. Regard will be given to the status of the activity at the time the original water permit was granted; and the conditions that applied to that permit.*

Comment

Term of consent is discussed below in Section 4.1.

Proposed Southland Water and Land Plan (2018)

The rules of the proposed Southland Water and Land Plan that apply have been discussed elsewhere. The pSWLP decisions version was released in April 2018 and a large number of the plan provisions are subject to appeals that have yet to be resolved. Interim Decision #1, #2, #3 and #4 of the Environment Court were released on 20 December 2019, 29 June 2020, 23 July 2020 and 6 November 2020 respectively. These Interim Decisions make a number of amendments to the provisions of the Plan. They also provide very clear direction on where the Plan is heading and what wording will be used for the objectives and policies, especially those that have been “confirmed” or “amended”.

I consider that the confirmed and amended provisions are now “locked in” by the Environment Court and will not be changed further, in the absence of a further appeal to the proposed plan. As such, I consider that those provisions that are confirmed or amended should now be treated as if they were the wording within the proposed Plan and significant weight should be given to them. Further changes to the confirmed and amended provisions are possible, though could now only occur through further appeals lodged in higher courts, or by a variation to the proposed plan being instigated by the Council. Provisions still subject to appeal are shaded grey below.

The following provisions are of relevance to the determination of the proposal:

Ngāi Tahu policies

- Policy 1 *Enable Papatipua Runanga to effectively undertake their Kaitiaki responsibilities in freshwater and land management through the methods listed in the Policy.*
- Policy 2 *Take into account Iwi Management Plans and assess water quality taking into account Ngāi Tahu indicators of health.*

Comment

These matters are addressed in respect to Te Tangi au Taurira below.

Water quality

Policy 15A *Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by avoiding, remedying or mitigating the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met.*

Policy 15B *Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by avoiding where practicable and other wise remedying or mitigating the adverse effects of new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing.*

Comment

The Mataura River at the site meets some of the Water Quality Standards set out in Appendix E but not others, therefore both policy 15A and 15B are relevant. However, the contaminants of concern will not be released during the proposed activities and therefore the application is consistent with both policies.

River beds

Policy 28 *Manage structures, bed disturbance activities and associated discharges in the beds and margins of rivers to avoid, remedy or mitigate adverse effects on:*

1. *water quality and quantity;*
2. *habitats, ecosystems and fish passage;*
3. *indigenous biological diversity;*
4. *the spiritual and cultural values and beliefs of the tangata whenua;*
5. *mātaítai and taiāpure;*
6. *public access (except in circumstances where public health and safety are at risk) and amenity values;*
7. *natural character values and outstanding natural features;*
8. *river morphology and dynamics, including erosion and sedimentation;*
9. *flood risk;*

10. *infrastructure assets;*
11. *navigational safety; and*
12. *landscape values.*

Comment

The proposed activities are consistent with Policy 28, which overlap with RWP Policy 32 with the exception of landscape values. Therefore, I will not repeat my assessment except for considering the activities on landscape values.

The surrounding landscape is river floodplain which has been heavily modified with flood banks and pastoral stock grazing. The wider landscape includes residential housing on the east side and industrial area on the west with Gore township beyond this. Considering the landscape has already been modified and another bridge exists 650m downstream from the proposed site demonstrates this type of infrastructure is not unusual within this landscape.

Climate Change and Natural Hazards

Policy 37 *Avoid or mitigate increased risks on the environment arising from climate change, taking into account the potential effects of rising sea levels and the potential for more variable and extreme weather patterns in coming decades.*

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

Comment

With regard to Policies 37 and 38 there should be minimal long-term flood risk effects of the proposed bridge structure due to the design, which caters for anticipated more frequent and more severe storms, as a result of climate change.

Term and Consideration of Consent

Policy 39A *Integrated management.*

Policy 40 *Determining the term of resource consents.*

Policy 41 *Matching monitoring to risk.*

Comment

Term of consent is discussed below in Section 4.1.

Freshwater Management Unit Policies

Policy 44 *Implementing Te Mana o te Wai*

Policy 45 *Priority of FMU values, objectives, policies and rules*

Policy 46 *Identified FMUs*

Comment

The above provisions relate to the identification of Freshwater Management Units and the subsequent development of policies and rules. As part of this process water quality and quantity limits will be set for each unit. This is part of the National Objective Framework process of addressing water quality and the direction provided by the NPS for Freshwater Management 2020.

Conclusion to Policy Assessment – Regional Plans

The activities have been considered against all relevant provisions of the RWP and the pSWLP. The key policies from the RWP related to water quality and river bed disturbance. It is considered that the activities are consistent with these provisions. The key policies in the pSWLP give direction around maintaining and improving water quality. It is considered that the activities are generally consistent with these provisions.

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

Water Conservation (Mataura River) Order 1997

Appendix F of the proposed Southland Water and Land Plan contains the Mataura River Water Conservation. This Order came into effect in August 1997. The purpose of the order is to preserve and protect the features of the water of the Mataura River and associated tributaries at certain points. This is because the waters include ‘*outstanding fisheries and angling amenity features*’.

The full Order is contained in [Attachment 8](#) to this report.

The Order applies to the bridge and bed disturbance sites as they are within the area identified as “*protected waters*” - the Mataura River from its source (approximate map reference NZMS 260 E42:502333) to its confluence with the sea (approximate map reference NZMS 260 F47:877946).

Clauses 5 to 7 of the Order apply to the “*protected waters*” sites and restrict activities that involve rates of flow, damming, discharging and water quality alteration.

Further to this, Clause 5 specifies that the “*The prohibitions . . . do not apply to . . . the construction . . . of bridges*”. It is submitted that the proposed bridge is within those activities expected in the scope of the Order.

The identified characteristics of the Order, fish habitat and angling amenity were not key factors identified in submissions for opposition to the proposed bridge and written approval from Fish & Game has been submitted.

While the construction activities would temporarily affect the habitat of the river from bed disturbance activities and sediment release, in the long-term the bridge would become a stable part of the river bed habitat with no more than minor effect on it. The bridge would more significantly affect the angling amenity, affecting the feeling of remoteness and wilderness from the existence of the bridge structure in an otherwise pastoral environment. It should be noted that, once the bridge is established, the bridge would not affect the ability to undertake angling along this stretch of river - in fact it may enhance public access along the river banks.

Te Tangi a Tauria

Te Tangi a Tauria, Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008, is the Iwi Management Plan for Southland.

Consideration of this plan is supported by Policy 1A of the Regional Water Plan and Policy 2 of the proposed Southland Water and Land Plan. Therefore, I consider that it is a matter that is relevant and reasonably necessary to the determination of this application under s104(1)(c) of the Resource Management Act.

The policies relevant to this application are:

- Policy 3.5.10.1 *The role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater must be given effect to in freshwater policy, planning and management.*
- Policy 3.5.10.3 *Protect and enhance the mauri, or life supporting capacity, of freshwater resources throughout Murihiku.*
- Policy 3.5.10.4 *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 3.5.10.5 *Promote the management of freshwater according to the principle of ki uta ki tai, and thus the flow of water from source to sea.*
- Policy 3.5.10.8 *Protect and enhance the customary relationship of Ngāi Tahu ki Murihiku with freshwater resources.*
- Policy 3.5.11.2 *Promote river management that adopts the priorities established in the Te Rūnanga o Ngāi Tahu Freshwater Policy 1997. The priorities are:*
Priority 1: Sustain the mauri of the waterbodies within the catchment.
Priority 2: Meet the basic health and safety needs of humans (drinking water).
Priority 3: Protect cultural values and uses.
Priority 4: Protect other instream values (indigenous flora and fauna).
Priority 5: Meet the health and safety needs of humans (sanitation).
Priority 6: Provide water for stock.
Priority 7: Provide for economic activities including abstractive uses.
Priority 8: Provide for other uses.
- Policy 3.5.11.4 *Management of our rivers must take into account that each waterway has its own mauri, guarded by separate spiritual guardians, its own mana, and its own set of associated values and uses.*
- Policy 3.5.11.6 *Require that rivers recognised as Statutory Acknowledgements be recognised for their special associations to Ngāi Tahu beyond the expiry date of 20 years. This means that places identified as Statutory Acknowledgements should continue to be:*
– Identified in relevant district and regional plans and policy statements as notice of their cultural importance to Ngāi Tahu (noting on plans).

- *Considered a trigger for a notice of application to Ngāi Tahu with respect to resource consents relating to, or impacting on, such areas (notice of applications).*
- *Given regard to by Councils, the Environment Court and Historic Places Trust when decisions are made about who has the right to comment and be listened to, or to appear in court (Standing).*
- *Accepted as evidence of the relationship of Ngāi Tahu with a particular area in any proceedings under the RMA or Historic Places Act.*

Policy 3.5.11.7	<i>The cultural importance of particular rivers (e.g. Statutory Acknowledgements, rivers associated with whakapapa and identity) must be reflected in the weighting of Ngāi Tahu responses and submissions on consents associated with these rivers.</i>
Policy 3.5.11.10	<i>Ensure that all native fish species have uninhibited passage from the river to the sea at all times, through ensuring continuity of flow ki uta ki tai.</i>
Policy 3.5.11.16	<i>Prioritise the restoration of those waterbodies of high cultural value, both in terms of ecological restoration and in terms of restoring cultural landscapes.</i>
Policy 3.5.13.1	<i>The role of Ngāi Tahu ki Murihiku as tangata whenua and kaitiaki of water must be recognised and provided for in all water quality management.</i>
Policy 3.5.13.2	<i>Strive for the highest possible standard of water quality that is characteristic of a particular place/waterway, recognising principles of achievability. This means that we strive for drinking water quality in water we once drank from, contact recreation in water we once used for bathing or swimming, water quality capable of sustaining healthy mahinga kai in waters we use for providing kai.</i>
Policy 3.5.13.7	<i>When assessing the effects of an activity on water quality, where the water source is in a degraded state, the effects should be measured against the condition that the water source should be, and not the existing condition of the water source</i>

Comment

The proposed bridge and associated bed disturbance activities are considered to generally be in accordance with the policies relating to water quality, rivers and water in general for the following reasons: The short-term effects of sediment release and the use of steel encased in timber would not adversely affect the water quality after reasonable mixing; the proposed bridge design provides for the high flow and flood events without impediment to the river; notice of the application was served on Iwi due to the Mataura River being recognised as a Statutory Acknowledgment Area; and fish passage will not be impeded as a result of the proposal and the impact on the ‘life supporting capacity’ of the river would not be significantly altered in the long-term.

There is likely to be a short-term and temporary effect on water quality as a result of the release of sediment during construction of the proposed bridge. This is not inconsistent with the provisions of the Iwi Management plan. Further to this, the Iwi Management plan seeks to sustain the water resource in the long-term and the application is consistent with this. Therefore, any short-term construction and establishment effects would not contradict the long-term goals of Te Tangi a Taurira.

3.10 Section 105 and 107 matters relevant to discharge or coastal permits

Sections 105 and 107 address certain matters (in addition to the matters in Section 104(1)), relating to discharge permits and coastal permits where the proposal would otherwise contravene Section 15 (or Sections 15A or 15B) of the RMA. The sensitivity of the receiving environment has been considered, being in particular the key risk to water quality in the Mataura River through sediment release from the bridge construction. However, in this case these two sections are not considered relevant as the works are not in the coastal marine area and the discharge of contaminants is not the primary activity.

4. Recommendations

4.1 Term of consent

The applicant has requested a consent term of 4 years. The application details construction time is estimated at 10 months duration however in the event construction cannot proceed due to extreme weather or high flows, it can be completed in the following years without having to reapply for consent.

When considering the term of consent, it is important to consider **Policy 14A** (*determining the term of a water permit*) and **Policy 43** of the RWP and **Policy 40** (*determining the term of resource consents*) of the pSWLP. Policy 40 requires that determination of the term includes:

- granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration, and frequency of adverse effects from the activity or the capacity of the resource;
- relevant tāngata whenua values and Ngai Tahu indicators of health;
- the duration sought by the applicant and reasons for the duration sought;
- the permanence and economic life of any capital investment;
- the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and
- the timing of development of FMU sections of this plan, and whether granting a shorter or longer duration will better enable implementation of any revised frameworks established in those sections.

I consider that (should consent be granted) a term of four years would be consistent with the above policy. Overall, I recommend that if the resource consent is granted, it should be subject to a term of **four years**.

4.2 Whether to grant

The activities applied for have been considered together, and as such the highest consent test applies. The application is considered to be a **discretionary** activity and as such the Council may grant or refuse the consent under Section 104B. If it grants the application, Council may impose conditions under Section 108 of the RMA.

- the proposed activities are not contrary to the policies and objectives of; and
- provided that the applicant adheres to the recommended conditions of consent, any adverse effects on the environment are expected to be no more than minor.

Subject to new or contrary evidence being presented at the hearing I recommend that under Section 104B of the RMA that consent for activities required from Environment Southland are **granted**.

The reasons for this recommendation are:

- in regards to Section 104(1)(a) of the RMA the activity will bring about adverse effects which are likely to be minor;
- the adverse effects will be adequately avoided, remedied or mitigated by erecting silt fences to prevent sediment entering the river, having an archaeologist onsite during construction, a bridge design that allows a 1 in 50-year flood to pass and has no permanent piles in the river which reduces river bed disturbance and enhances navigational safety for boat users;
- in regards to Section 104(1)(b) the activity is consistent with the relevant provisions of the NPSFM 2020, the Southland Regional Policy Statement 2017, the proposed Southland Water and Land Plan, the Regional Water Plan and the iwi management plan for Southland;
- the application is considered to meet the relevant provisions of Part 2 of the RMA.



Jade McRae
Senior Consents Officer

Attachment 9: Draft Land Use Consent AUTH-20202268

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