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 publicly notified basis. This is because:

- The adverse effects on the environment from the proposed activity will be more than minor; and
- The mitigations proposed do not adequately compensate or offset the actual or potential adverse environmental effects.

The application

Particulars

Applicant:	A & J Stalker
Application reference:	APP-20211148
Site address or location:	80 Christie Road, Mossburn
New consent(s) for new activity (s88)	☒
New consent(s) for existing activity(ies) (s88)	☐
Change to conditions of existing consent(s) (s127)	☐

The proposal

The application is to divert water within a wetland and to modify a wetland to construct a farm access track across a 100m wide strip of Department of Conservation (DOC) land known as So Big Swamp which is recognised as a Regionally Significant Wetland. The farm track will be approximately 205m long and 10m wide. The total volume of earthworks required is estimated at 1,230m^3, approximately 1,080m^3 of this total volume of earthworks will occur within the wetland between two small streams located at the eastern and western boarders of the wetland. Clearance of wetland vegetation is estimated at 800m^2 on the Stalker property and 1,555m^2 on conservation land, approximately 767m^2 of this total area of vegetation clearance consists of indigenous species, such as harakeke flax and copper tussock, which are proposed to be translocated. The applicant has also applied for a concession from DOC for the construction of the proposed farm track on conservation land.

Six 300mm diameter culverts will be installed to enable surface and groundwater to flow under the track. Two 1,200mm diameter culverts will be installed in the two small streams present at the site. One culvert will be installed in the eastern watercourse (Moss burn) and the other in the western watercourse (Browns Stream).

The proposal includes measures to compensate for the earthworks and vegetation clearance in the wetland which include retaining all indigenous wetland plants and replanting them in low values areas of So Big Swamp, removing pest plant species, formally protecting 50ha of the wetland located on the Stalkers property with a QEII covenant or similar and fencing off 21ha of partially developed wetland area to let it regenerate back into a natural wetland.

The proposal cannot comply with Rules 20(c) of the Regional Water plan which is a discretionary activity or Rules 4 (discretionary activity) and 74(c) (non-complying activity) of the proposed Southland Water and Land plan. The proposal also triggers regulations 54(a) vegetation clearance within a natural wetland, 54(b) earthworks within a natural wetland and 54(c) diversion of water within a natural wetland which are all non-complying activities.

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

Figure 1: *Taken from the application showing the location of the farm track, 8 culverts and two small streams.*

Public notification consideration

1. Is notification mandatory?

1.1	**Has the applicant requested that the application be publicly notified? (s95(3)(a))**	☐ Yes	Application must be publicly notified. Go to 10.2
		☒ No	Go to 1.2
1.2	**Was further information, or commissioning of a report, requested under s92?**	☒ Yes	Go to 1.3
		☐ 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?**	☐ Yes	Public notification is required by s95C. Go to 10.2
		☒ 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?**	☐ Yes	Go to 4.1
		☒ No	Go to step 2.2
2.2	**Is each activity a controlled activity?**	☐ Yes	Application must not be publically notified unless special circumstances exist. Go to 4.1
		☒ No	Go to 2.3

2.3	**Is each activity a residential activity <u>and</u> a discretionary activity or a restricted discretionary activity?**	☐ Yes	Application must not be publically notified unless special circumstances exist. Go to 4.1
		☒ 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?**	☐ Yes	Application must be publicly notified. Go to 10.2
		☒ 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?**	☒ Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
		☐ No	Complete 3.3 and go to 4.1.

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

The existing environment

The application site is an existing sheep and beef farm located approximately seven kilometres north of Mossburn township. The western boundary of the farm borders Department of Conservation land which forms part of the So Big Swamp, which is listed as a Regionally Significant Wetland in the proposed Southland Water and Land Plan 2018, and has the status of a Stewardship Area under section 25 of the Conservation Act 1987. So Big Swamp is approximately 150ha in size and eventually drains to the Aparima River approximately 16km downstream via the Moss Burn, Reed Burn and Hamilton Burn waterways.

Figure 2: *So Big Swamp listed in Appendix A of the proposed Southland Water and Land Plan 2018.*

Adverse effects of the proposed activities on the environment

Effects on ecosystems

The modification of the So Big Swamp wetland may adversely affect ecosystems due to the removal of high value indigenous wetland vegetation which provides habitat for 'At Risk - Declining' plant, lizard and bird species.

An ecological assessment was undertaken by Dr Kelvin Lloyd, Wetland Ecologist at Wildland Consultants, to determine the most appropriate location and to understand the effects of the proposed access track across conservation land. The site was visited and the ecological assessment report submitted with the application which concluded "*there is only one place where access across the area of Stewardship Land should be considered due to high value indigenous vegetation extending across most of the width of gully below the wire rush bog, allied with very wet conditions further downstream*".

The ecological assessment report also concluded that the adverse effects from the removal of indigenous wetland vegetation could be mitigated by "*retaining all cleared harakeke, and as much mingimingi and other indigenous wetland plant species as possible, for replanting in adjacent low value wetland sites*". It also describes Harakeke flax as "*a very tough plant that is very practical to replant. Splitting of large plants into individually-rooted clumps can provide a large number of plants for subsequent replanting, thus resulting in a greater area of planting than of clearance*". The applicant has identified an area of 758m^2 on the Stalker property and 821m^2 on DOC land where replanting could occur. Approximately 767m^2 (300m^2 on the applicants' property and 467m^2 on DOC land) of wetland vegetation will be cleared and the harakeke flax and copper tussock split into 5-10 individual plants and transplanted which will result in an area of 1,279m^2 for the transplanted wetland plants to grow and become dense flaxland.

The ecological assessment report was technically reviewed by Melissa Jager, Senior Terrestrial and Freshwater Ecologist at E3 Scientific, and Chris Stowe, Ecologist at Urtica Ecology. The technical review report concluded that "*the methodology was sound and consistent with standard ecological practice* [and] *information on flora, fauna, threatened species, vegetation/habitat types and ecological significance were provided at a sufficient level of detail and that the conclusions were sound*." The review report also "*agreed that flax and copper tussock could be split and transplanted successfully, however, … it will not necessarily recreate 'like for like' the wetland habitat removed as the areas identified for replanting are likely to have a different ecological context (e.g. hydrology and possibly soils)*". As a result, I consider that despite the fact that the transplanted vegetation will multiply overtime, an area of So Big Swamp the size of the farm track will still be lost from the overall size of the Regionally Significant Wetland.

Dr Lloyd's ecological assessment also concluded "*eradicating silver birch, grey willow, contorta pine and isolated gorse and scotch broom …* [would] *improve the quality of the overall wetland complex and …* [would] *help maintain current wetland functions.*" The applicant has requested that both mitigations, transplanting wetland plant species and pest plant eradication, be included as consent conditions to give Council the reassurance that potential or actual adverse effects will be mitigated.

Additional mitigations that have been offered to compensate or off set the adverse effects on the wetland ecosystem which include formal protection of an area of high value indigenous wetland vegetation on the Stalker property adjacent to the So Big Swamp. This area is approximately 50ha in size (see figure 3 below) and the applicant is willing to protect it with a QEII covenant or Department of Conservation covenant but does not want this included as a consent condition due to the arrangement requiring third party agreement. As a result, I have no reassurance that this mitigation will actually occur and therefore cannot place weight on it as a mitigation to compensate or offset any potential or actual adverse environmental effects. Additionally, the E3 Scientific report notes that area of land already has "*a high*

degree of protection via local government statutory regulations [and] *the weed burden within the wetlands upstream of the proposed access is very low, so the benefits arising from this compensation are relatively minor*".

Another mitigation offered in the application but not taken into consideration in Dr Lloyd's ecological assessment is to fence off a 21ha wetland area on the Stalker property (see figure 3 below) that has been partially developed into pasture and allow the wetland to restore and enhance. At face value this mitigation appears to offset the adverse effects, in reality this wetland area should have never been 'partially developed' in the first place as this is likely to be a breach of rule 74(c) (pSWLP) which states: "*The use of land within a natural wetland that is not for one or more of the purposes listed in Rule 74(a)* [maintaining or enhancing a wetland or maintaining existing authorised structures within the wetland] *or 74(ab)* [commercial peat harvesting] *is a non-complying activity".* It is understood that Council's Compliance Department is currently investigating this matter. Therefore, while fencing the area will, over time, restore the wetland back to its original state, I do not consider this a mitigation to compensate or offset adverse effects of the current application but instead remediation for using land within a natural wetland without a resource consent.

Figure 3: *Taken from the application showing the 50ha to be protected and the 21ha to be fenced.*

No lizard species were observed during the site visit but Dr Lloyd's report notes that "*three lizard species with a threat classification of 'At Risk – Declining' may be present on the conservation land that would be affected by the proposed access track*". The three species include (in order of likelihood of occurrence) the

southern grass skink, cryptic skink and Southland Green skink. The E3 Scientific report notes that no assessment of the magnitude of impact on lizards due to habitat loss has been included in the application.

Effects on water quantity/hydrology

There is no proposed abstraction of water as part of the proposal. A hydrological assessment was undertaken by Hank Stocker, Senior Engineer from Geosolve, and the corresponding report was submitted with the application. The report concluded that "*if provided with appropriate culverts, the proposed access track will not impede drainage … within the wetland; The track will not result in any water leaving the wetland additional to the current situation, i.e. the track will not cause any drainage of the wetland; The track will not have significant effect on water flow patterns within the wetland*." The E3 Scientific report considers that "*despite the proposed measures to avoid modification to wetland hydrology, … there remains sufficient doubt as to the medium to long term effects on the wetland immediately above and/or below the proposed road*". Consequently, I consider the potential effects on water quantity to be more than minor.

Effects on water quality

The proposal involves instream works which may affect water quality due to the release of sediments into waterways during construction. These effects will be localised, of short duration and will dissipate upon conclusion of the works. The applicant has also confirmed the installation of the two large instream culverts will occur in a manner that ensures they will meet the permitted activity conditions in both the proposed Southland Water and land plan 2018 and the National Environmental Standards for Freshwater Management 2020. I consider the effects on water quality as less than minor. The track has also been designed with a 4% gradient to ensure stock effluent and storm water run-off passes through a grassed swale and planted slope face before entering the wetland.

Effects on cultural and heritage values

The proposal has the potential to adversely affect cultural values by impacting biodiversity and taonga species. The ecological assessment report recorded 33 indigenous plant species during the site visit, three of which (Carex tenuiculmis, Mānuka and Tufted hair grass) have a national conservation status of 'At Risk – Declining'. Mānuka is also listed as a Taonga plant species under Appendix M of the proposed Southland Water and Land plan 2018. None of these 'At Risk - Declining' plant species are being removed as part of the vegetation clearance, it will predominantly involve harakeke flax and copper tussock.

Four indigenous bird species were present in the So Big Swamp area owned by the Stalker's: Grey warbler, Black-backed gull, Paradise shelduck and Spur-winged plover. All of these are classified as 'Not Threatened' however the Grey warbler, Black-backed gull and Paradise shelduck are listed as Taonga bird species under Appendix M of the proposed Southland Water and Land plan 2018. Mātātā/South Island fernbird (*Bowdleria punctata punctata*) was present in the wetland habitats on the conservation land. They have a national conservation status of 'At Risk – Declining' and are also listed as a Taonga bird species under Appendix M of the proposed Southland Water and Land plan 2018.

There are no known cultural or archaeological sites within the vicinity of the proposed location. It is noted that the applicant promotes the use of Ngai Tahu's Accidental Discovery Protocol as there is still a chance the activity may uncover a previously unknown artefact.

Effects on landscape, natural character and public access

The proposed location is part of a rural setting and, as outlined in the application, is not identified as an Outstanding Natural Feature or Outstanding Natural Landscape. There is also no formed access to the

wetland to allow public access and the proposal will not enhance public access to So Big Swamp. Once the farm track is completed there will be new fencing on either side of the track to prevent stock accessing the wetland. This will not look out of place in the rural setting but must be weighed up against changes in appearance and natural character of the wetland. The E3 Scientific report concluded the proposed transplanting mitigation "*does not necessarily compensate for the fragmentation and loss of connectivity and natural character of the existing wetland values which are noted to be 'very high'."* And they consider *"that the effects on the natural character of the wetland would be more than minor* [and] *cannot be adequately mitigated or compensated for".*

Adverse effects that have been disregarded

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;
- If a rule or national environmental standard permits an activity with that effect;
- Trade competition; or
- Effects on a party who has provided written approval.

Planning provisions (policies and objectives) relevant to adverse effects

The following are the most relevant provisions:

- National Policy Statement for Freshwater Management 2020 (NPSFM)
  - Objective 1 seeks to ensure that natural and physical resources are managed in a way that prioritises first, the health and well-being of water bodies and freshwater ecosystems, second, the health needs of people, third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
  - Policy 1 seeks to manage freshwater in a way that gives effect to Te Mana o te Wai.
  - Policy 2 seeks actively involve Tangata Whenua in freshwater management and Maori freshwater values are identified and provided for.
  - Policy 6 seeks to ensure there is no further loss of extent of natural inland wetlands, their values are protected and their restoration is promoted.
  - Policy 9 seeks to protect the habitats of indigenous freshwater species.

- Proposed Water and Land Plan 2018 (pSWLP)
  - Policy 3 seeks to manage activities that adversely affect taonga species.
  - Policy 20 seeks to manage the taking, abstraction, use, damming or diversion of surface water and groundwater.
  - Policy 32 seeks to protect significant indigenous vegetation and significant habitats of indigenous fauna associated with natural wetlands, lakes and rivers and their margins.
  - Policy 33 seeks to prevent the reduction in area, function and quality of natural wetlands, including drainage, discharges and vegetation removal.

- Regional Water Plan 2010 (RWP)
  - Policy 14 manages the taking, use, damming or diversion of surface water.
  - Policy 38 seeks to avoid, remedy or mitigate the adverse effects of activities on wetlands through an integrated management approach with the Southland territorial authorities.
  - Policy 40 encourages the maintenance and restoration of existing wetlands and the creation of new wetlands.

- Iwi Management Plan / Te Tangi a Tauira 2008

- Policy 3.5.18.1 seeks to avoid the direct or indirect drainage or modification of any existing wetland area
- Policy 3.5.18.3 seeks to advocate for the restoration and enhancement of wetland areas, as part of any consent application where it is deemed feasible to include such conditions
- Policy 3.5.18.4 seeks to require wetlands be fenced in any area where they may be at risk from stock damage.

The NPSFM 2020 also details a specific requirement under Subpart 3.22 that every regional council must include the following policy (or words to the same effect) in its regional plan(s):

"*The loss of extent of natural wetland is avoided, their values are protected, and their restoration is promoted, except where:*

(a) The loss of extent or values arises from any of the following:
- *(i) The customary harvest of food or resources undertaken in accordance with tikanga Māori*
- *(ii) Restoration activities*
- *(iii) Scientific research*
- *(iv) The sustainable harvest of sphagnum moss*
- *(v) The construction or maintenance of wetland utility structures*
- *(vi) The maintenance or operation of specific infrastructure, or other infrastructure*
- *(vii) Natural hazard works; or*

(b) the regional council is satisfied that:
- *(i) the activity is necessary for the construction or upgrade of specified infrastructure; and*
- *(ii) the specified infrastructure will provide significant national or regional benefits; and*
- *(iii) there is a functional need for the specified infrastructure in that location; and*
- *(iv) the effects of the activity are managed by applying the effects management hierarchy."*

The **effects management hierarchy** is defined in the NPSFM as "*an approach to managing the adverse effects of an activity on the extent or values of a wetland (including cumulative effects and loss of potential value) that requires that:*

(a) adverse effects are avoided where practicable; and

(b) where adverse effects cannot be avoided, they are minimised where practicable; and

(c) where adverse effects cannot be minimised, they are remedied where practicable; and

(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and

(e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and

(f) if aquatic compensation is not appropriate, the activity itself is avoided"

Conclusion: significance of adverse effects on the environment

The above policies have been used to inform and determine the level of adverse effects associated with the proposed activity, as the direction of the policies help establish what effects are acceptable and therefore whether the adverse effects of the proposed activities are less than minor, minor or more than minor.

There is clear policy direction in the NPSFM that the loss of extent and values of wetlands should be avoided unless the proposal is for one of the activities listed in the subpart 3.22 Inland Wetland policy. The current application is not to undertake any of the activities listed in section (a) or (b) of this policy nor

is the farm track considered specified infrastructure[1]. With regard to the effects management hierarchy I do not consider that the applicant can avoid, minimise or remedy the adverse effects of their proposal. I consider the transplanting of harakeke flax and copper tussock as offsetting the adverse effects and eradicating pest plants as compensating for the adverse effects. Despite this, the effects management hierarchy is only relevant if the proposal was for the construction or upgrade of specified infrastructure.

It is well documented that wetlands in Southland are declining and most of the loss is due to conversion to other land uses (Robertson *et al*., 2019)[4] and the 'flaxland swamp' wetland type has suffered the greatest extent of loss in Southland with only 1% of pre-European (circa 1840) extent remaining (Clarkson et al., 2011)[5]. So despite the fact that an area of low value wetland could be utilised for the translocation of wetland plant species in order for them to multiply and increase that areas value, a section of So Big Swamp which provides habitat for Taonga bird species is likely to be permanently lost. This contravenes policies 3 and 32 of the proposed Southland Water and Land plan.

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.

On the whole, I consider that the adverse effects on the environment, in particular the wetland ecosystem, Taonga species and the natural character of the wetland, arising from the modification of the wetland to enable earthworks, vegetation clearance and the placement and use of culverts will be more than minor and cannot be adequately compensated by the mitigations offered by the applicant.

Recommendation and decision

10. Officer's recommendation

10.1	**The application be processed non-notified**	☐
10.2	**Public notification is required/recommended**	☒
10.3	**The application be placed on hold while the applicant tries to obtain written approvals from the affected persons**	☐
10.4	**Limited notification is required. Persons to be served notice are those listed in 8.2**	☐

Jade McRae
Senior Consents Officer

Date: 16 June 2021

[1] Defined in the NPSFM as: Infrastructure that delivers a service operated by a lifeline utility or regionally significant infrastructure[2] identified as such in a regional policy statement or regional plan or any public flood control, flood protection or drainage work carried out by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and River Controls Act 1941 or for the purpose of drainage by draining districts under the Land Drainage Act 1908.

[2] Regionally significant infrastructure is defined in the RPS 2017 as: Infrastructure in the region which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure[3].

[3] Critical infrastructure is defined in the RPS 2017 as: Infrastructure that provides services which, if interrupted, would have a significant effect on the wellbeing and health and safety of people and communities and would require reinstatement, and includes all strategic facilities.

[4] Robertson et al. 2019: Loss of wetlands since 1990 in Southland, New Zealand. New Zealand Journal of Ecology, Vol. 43, No. 1.

[5] Clarkson et al. 2011: Current and historic wetlands of Southland Region: Stage 2. Report prepared by Landcare Research for the Department of Conservation.

Decision under Delegated Authority

11.1	**I agree with the recommendation**	☒
11.2	**The application will be processed non-notified**	☐
11.3	**The application will be publicly notified**	☒
11.4	**The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons**	☐
11.5	**The application will be limited notified. The parties to be served notice are those listed in section 8.2**	☐

This decision is made under delegated authority by:

Bruce Halligan
Acting Consents Manager

Date: 21 June 2021