

CHAPTER 4 – LAND USE ON LAKE OR RIVER BEDS OR REGIONALLY SIGNIFICANT WETLANDS

This chapter addresses the construction and use of structures, and stock movement on the bed of a lake, river or Regionally Significant Wetland. Chapter 13 of the Water Plan sets out the rules relating to such activities.

4.1 Structures

The notified plan change added new provisions to address the use, construction and maintenance of structures on or over the beds of lakes, rivers, and Regionally Significant Wetlands. It made the construction of crossing structures, such as culverts, single span bridges, easier in order to promote their use and reduce the effects of bed disturbance by livestock.

We considered the submissions presented, and recommend some changes to the notified rules. These are intended to increase flexibility for land managers and to avoid some practical issues that arose with the notified rules.

4.1.1 Recommendations

- (a) Amend notified Rules 13.1.1, 13.2.1.7 and 13.2.1.7B, in order to prevent animal waste from entering water:

13.1.1.1 The use of any structure that is fixed in, on, under, or over the bed of any lake or river, or any Regionally Significant Wetland, is a *permitted* activity, providing:

.....

(ba) Measures are taken to avoid animal waste is prevented from entering the lake, river or Regionally Significant Wetland water body; and

.....

13.2.1.7 The erection or placement of any single span bridge or culvert in, on or over the bed of a lake or river, or any Regionally Significant Wetland, is a *permitted* activity, providing:

.....

(g) Where the bridge is intended for use by stock, measures are taken to avoid animal waste entering the lake, river, or Regionally Significant Wetland.

13.2.1.7B Unless covered by Rule 13.2.1.7 or 13.2.1.7A, the erection or placement of any crossing in or on the bed of a lake or river, or Regionally Significant Wetland, is a *permitted* activity, providing:

.....

(g) Movement of bed material is not impeded; and

(h) Where the crossing is intended for use by stock, measures are taken to avoid animal waste entering the lake, river, or Regionally Significant Wetland.

- (b) Amend Rule 13.1.2.1 and notified Rule 13.2.1.7B, in order to provide consistent protection for Regionally Significant Wetlands:

13.1.2.1 Except as provided for by Rule 13.1.1.1, the use of a structure that is fixed in, on under or over the bed of any lake or river, or any Regionally Significant Wetland, is a *restricted discretionary* activity.

13.2.1.7B Unless covered by Rule 13.2.1.7 or 13.2.1.7A, the erection or placement of any crossing in or on the bed of a lake or river, or any Regionally Significant Wetland, is a *permitted* activity, providing:

(a) The crossing, or its erection or placement, does not cause any flooding, nor cause erosion of the bed or banks of the lake, ~~or river,~~ or Regionally Significant Wetland, or property damage; and

.....

- (c) Amend notified Rule 13.2.1.7A, in order to provide greater clarity:

13.2.1.7A The erection or placement of any boardwalk in, on or over a Regionally Significant Wetland, is a *permitted* activity, providing:

~~(a) The erection or placement, or the boardwalk, does not cause any flooding, nor any erosion.~~

- (d) Amend notified Rule 13.2.1.7B, in order to facilitate the construction of crossings:

13.2.1.7B Unless covered by Rule 13.2.1.7 or 13.2.1.7A, the erection or placement of any crossing in or on the bed of a lake or river, or any Regionally Significant Wetland, is a *permitted* activity, providing:

....

(b) The top of the crossing is no higher than ~~1.5~~ 2 metres above the lowest part of the bed where it is located; and

(c) The crossing does not exceed ~~40~~ 12 metres along the length of the lake or river; and

(ca) No more than 24 metres of crossing occurs on any 250 metre stretch

of any lake or river, with a minimum separation distance between any two crossings in or on the same lake or river of 12 metres; and
(d) There is no reduction in the flood conveyance of the lake, ~~or~~ river, or Regionally Significant Wetland; and
.....

- (e) Adopt a new generic discretion, which applies to restricted discretionary activity Rules 13.1.2.1, 13.2.2.1 and 13.3.2.1, in order to allow for the consideration of measures to avoid animal waste entering the lake, river or Regionally Significant Wetland:

(x) Any measures to avoid animal waste entering the lake, river or Regionally Significant Wetland.

- (f) Amend Rule 13.2.2.1 as a consequential change:

13.2.2.1 Except as provided for by Rules 13.2.1.1, 13.2.1.2 and 13.2.1.5 to 13.2.1.7B, the erection or placement of any fence, pipe, line, cable, whitebait stand, eel trap, maimai, jetty, single span bridge or *crossing*, in, on, under, or over the bed of any lake or river, is a *restricted discretionary* activity.

In considering any resource consent for the erection or placement of any fence, pipe, line, cable, whitebait stand, eel trap, maimai, jetty, single span bridge or *crossing* in terms of this rule, the Otago Regional Council will restrict the exercise of its discretion to the following:

4.1.2 Reasons

▪ Use and placement of structures – “avoid animal waste”

The prevention of animal waste getting into water is a condition of notified Rule 13.1.1.1. The notified condition was intended to encourage the use of crossings that effectively direct animal waste away from lakes, rivers and Regionally Significant Wetlands. The amendment to the condition better recognises that there may be circumstances where it is not technically or practically feasible to prevent all animal waste from entering the water body. However where crossing structures are being used by livestock measures must be taken to manage animal waste.

A new condition has been added to the notified Rules 13.1.2.7 and 13.1.2.7B to ensure that such measures are incorporated in the design of bridges and crossings that are intended for use by livestock.

The relationship that exists between Rules 13.1.1.1, 13.2.1.7B and 13.5.1.8B means that the construction and use of crossings for livestock movement may be undertaken as permitted activities, providing measures are taken to avoid animal waste entering water or, in the case of low standard design-type fords or crossings, the requirements of Rule 13.5.1.8B are met.

- **Better protection of Regionally Significant Wetlands**

The use of structures under notified Rule 13.1.1.1 extends protection from animal waste to Regionally Significant Wetlands. Where the permitted activity conditions of Rule 13.1.1.1 cannot be met, resource consent will be required. An appropriate discretion is added to Rule 13.1.2.1. RMA Section 9 provides the legal basis for extending coverage of this rule to Regionally Significant Wetlands.

Notified Rule 13.2.1.7B has been amended to the same effect.

- **Restricted discretionary activity considerations**

Measures proposed to avoid animal waste entering water bodies need to be considered in consent applications. This is therefore included in the generic matters of discretion that apply to Rules 13.1.2.1, 13.2.2.1 and 13.3.2.1.

- **Width of crossings**

The permitted crossing width (along the river) for permitted activities in notified Rule 13.2.1.7B(c) can be increased from 10 metres to 12 metres to allow for low risk crossings in a wider range of situations. Due to the direct correlation between the length of a crossing and the height to which the structure can be safely constructed, the recommended amendment also allows for a limited increase of the maximum crossing height allowance without triggering any safety risks.

- **Height of crossings**

The maximum height standard for the top of crossings in Rule 13.2.1.7B(b) can be raised from 1.5 metres to 2 metres, because its other conditions adequately address adverse effects. It is not appropriate to allow for the construction of crossings higher than 2 metres as a permitted activity, because crossings are not regulated under the Building Act and it would be overly complex to specify construction standards, for safety, as part of a permitted activity rule. Furthermore, the height to which crossings can be safely constructed is controlled by the crossing length under condition (c). Where local topography requires the construction of a crossing that exceeds the maximum height specified in the permitted activity condition, a consenting option is available.

- **Structures and forestry activities**

We recognise the concerns of the forestry industry and other rural land users that some of the permitted activity conditions may restrict their ability to operate on steeper terrain. However we do not think it is appropriate to impose as rules industry codes that are

developed for specific industry groups. The permitted activity conditions in Rule 13.2.1.7 have been relaxed to address some of these concerns. Where the permitted activity conditions cannot be met, landholders can apply for a consent.

- **Minimum distance requirement between crossings**

The recommended minimum distance requirement between crossings strengthens the notified provisions and reduces the loss of natural character and instream ecological values when crossings are too close together. Recommended new condition (ca) of Rule 13.2.1.7B will avoid significant adverse effects, while providing for any situation where physical constraints or legal boundaries require closer proximity among crossings. Where condition (ca) cannot be met, the options are to install a bridge and a crossing, or apply for a consent.

- **Use of flood conveyance or flood event criteria**

Consideration of specific flood event criteria is appropriate when designing crossings that exceed a certain scale or in a challenging physical environment or local climate. However, the combination of the permitted activity conditions in amended Rule 13.2.1.7B implicitly limits the scale of the permitted crossing installations and catchment size, thereby minimising the need for technically complex assessments of potential flood hazards. Therefore it is appropriate to retain the term “flood conveyance”, as it provides a quick means of determining the suitability of the proposed crossings in low hazard-risk environments, while acting as an incentive to undertake more robust hydrological and flood hazard assessment in less certain situations.

- **Making the plan easier to read**

The minor change to notified Rule 13.2.1.7A makes this provision easier to read.

- **Definition of “crossing”**

Notified Rule 13.2.1.7 covers single span bridges, while Rule 13.2.1.7B covers all other crossings, including culverts and fords. There is no need to define the word “crossing” in the Glossary of the Water Plan. Defining it could result in some crossing types not being identified and being unintentionally excluded from the permitted activity rule. The word “crossing” in these rules is broad but sufficiently certain to be understood, applied consistently and enforced.

- **Retention of structure repair and maintenance provisions**

Activities on lake or river beds or Regionally Significant Wetlands related to the maintenance or repair of structures are sufficiently covered by Rules 13.3.1 and 13.5.1.3, which were not changed by the proposed plan change.

4.2 Activities in the beds of lakes and rivers and Regionally Significant Wetlands

Section 13.5 of the Regional Plan: Water contains rules that relate to a variety of activities that cause alteration of the beds of lakes and rivers and Regionally Significant Wetlands. The notified plan change amended section 13.5 in order to provide more flexibility for those undertaking these activities, while also reducing the effects of the associated disturbances and alterations on water quality.

We considered the submissions and recommend some changes to the notified rules.

4.2.1 Recommendations

- (a) Add new Rule 13.5.A.1 and amend the note box at the start of section 13.5, in order to provide greater clarity and certainty:

13.5 Alteration of the bed of a lake or river, *or of a Regionally Significant Wetland*

13.5.A General rules for Section 13.5

13.5.A.1 Discharges of bed material resulting from the alteration of the bed of a lake or river, or a Regionally Significant Wetland, are addressed only through rules in section 13.5.

Note: Alteration includes any disturbance, and the associated remobilisation (discharge) and redeposition (deposit) of bed material ~~sediments~~ already present, reclamation or deposition of cleanfill associated with works in the bed. ~~Under the Regional Plan: Water, reclamation and deposition of cleanfill associated with works in the bed of a lake or river, or wetland, are addressed through disturbance rules in Section 13.5, and not through discharge rules in Section 12.C.~~

- (b) Insert in notified Rules 13.5.1.1 and 13.5.1.2, and in operative Rules 13.5.1.5 and 13.5.1.9, and Rule 13.5.1.5B, the following wording after “The disturbance of the bed of ...”, in order to provide clarity and consistency:

and any resulting discharge or deposition of bed material.

- (c) Insert in notified Rules 13.5.1.3 and 13.5.1.4 the following wording after “The disturbance or reclamation of, or the deposition of ...”, in order to provide more clarity and certainty:

and any resulting discharge of bed material.

- (d) Adopt the generic permitted activity condition relating to the time requirement for undertaking and completing works and which applies to notified Rules 13.5.1.1 to 13.5.1.4.
- (e) Re-instate the “250 metres downstream” permitted activity condition to notified Rules 13.5.1.1, 13.5.1.2, 13.5.1.3 and 13.5.1.4, in order to provide greater flexibility:

(x) All reasonable steps ... beyond a distance of ~~250~~ ~~100~~ 250 metres downstream of the activity; and

4.2.2 Reasons

- **Remobilisation and redeposition of bed material**

Amending the notified note box providing a definition for alteration gives certainty by clarifying the activity status of rules under Sections 13 and 15 RMA so the permitted activities can be understood, applied consistently, and enforced.

Adding a new rule to the start of section 13.5 and amending Rules 13.5.1.1 to 13.5.1.5, 13.5.1.9 and 13.5.1.5B clarifies that the provisions in section 13.5 address all matters relating to the disturbance, reclamation, deposition and any resulting discharge of bed material.

- **Limiting duration of discolouration**

The removal of “consecutive” in the notified rule conditions requiring completion of work within 10 hours and the addition of “within the wetted bed” provides more flexibility than is in the current operative Water Plan. The non-consecutive 10 hour requirement relates only to work within the wetted bed and does not cover the time taken to prepare or undertake work on the bed or banks where they are dry. There is a consent pathway for those who are unable to complete work in wetted bed areas within this period.

- **Limiting downstream effects of discolouration**

The distance within which significant changes in the colour or visual clarity of the receiving water caused by instream works or activities are allowed can be relaxed. The 100 m distance standard as proposed in the notified rules may be overly restrictive in swift rivers, which are often naturally characterised by high levels of sediment transport. Furthermore, there is no known instance where the 250 m standard in the operative Plan has caused any significant issue for water quality immediately beyond the zone of disturbance.

4.3 Livestock disturbance

The notified plan change proposed new rules relating to the disturbance the bed of any lake, river or Regionally Significant Wetland by livestock. It notably prohibited intentional driving of stock on the bed of lakes, rivers or Regionally Significant Wetlands.

We considered the submissions relating to livestock disturbance and recommend that the rules be clarified, and that a consent option be made available for intentional driving of livestock on the bed of a lake, river or Regionally Significant Wetland.

4.3.1 Recommendations

- (a) Amend notified Rule 13.5.1.8A, in order to provide more certainty and clarity:

13.5.1.8A The disturbance of the bed of any lake or river, or any Regionally Significant Wetland, by livestock, excluding intentional driving of livestock, and any resulting discharge or deposition of bed material, is a *permitted* activity, providing it does not:
(a) Involve feeding out; or
(b) Cause or induce noticeable slumping, pugging or erosion; or
~~(b) Expose soil; or~~
~~(c) Involve feeding out; or~~
~~(d) Increase the colour or reduce the Result in a visual change in colour or clarity of water; or~~
~~(e) Damage fauna, or New Zealand native flora, in or on any Regionally Significant Wetland.~~

- (b) Delete the note box below notified Rule 13.5.1.8A:

~~Note: This rule does not authorise any discharge to water or discharge to land in circumstances where contaminants may enter water. Sections 15(1)(a) and 15(1)(b) of the Act apply.~~

- (c) Delete notified section 13.5A and amend notified Rule 13.5.1.8B, in order to clarify the rules for bed disturbance where livestock is being intentionally driven across the bed of a lake, river, or Regionally Significant Wetland:

~~**13.5A Entering onto or passing across the bed of a lake or river, or a Regionally Significant Wetland**~~
~~**13.5A.0 Prohibited activities: No resource consent will be granted**~~

~~13.5A.0.1 The entering onto or passing across the bed of any lake or river, or any Regionally Significant Wetland by livestock, for the purpose of moving livestock from one location to another;~~
~~(a) Excluding the use of any authorised structure over water and the bed of any lake or river, or any Regionally Significant Wetland; and~~
~~(b) Excluding seasonal muster;~~
~~Is a **prohibited** activity.~~

13.5.1.8B The disturbance of the bed of any lake or river, or any Regionally Significant Wetland, by livestock where they are being intentionally driven ~~due to seasonal muster~~, and any resulting discharge or deposition of bed material, is a **permitted** activity, providing there is no: ~~it does not cause or induce slumping, pugging or erosion.~~
(a) Existing structure available for use, and there is no suitable site for the erection or placement of a structure, to avoid bed disturbance; or
(b) Visual change in colour or clarity of water, after the disturbance ceases; or
(c) Noticeable slumping, pugging or erosion.

- (d) Amend Rule 13.5.3.2, in order to clarify the activity status for livestock crossing Regionally Significant Wetlands:

13.5.3.2 Unless covered by Rules 13.5.1.1, 13.5.1.3, 13.5.1.5A, 13.5.1.8A, 13.5.1.8B or 13.5.2.1, the alteration of any Regionally Significant Wetland, is a **discretionary** activity.

- (e) Amend the Principal reasons for adopting under section 13.5.3, in order to remove the references to provisions that are recommended to be deleted:

Principal reasons for adopting

The alteration of the bed of a lake or river can only occur if it is expressly allowed by a rule in a regional plan or any proposed regional plan, or by a resource consent (Section 13(1) of the Resource Management Act).

No person may disturb, remove, damage, or destroy any plant or part of any plant (whether exotic or indigenous) or the habitats of any such plants or of animals in, on, or under the bed of any lake or river in a manner that contravenes a rule in a regional plan or proposed regional plan, unless that activity is expressly allowed by a resource consent or is an existing lawful use allowed by Section 20A of the

Act (Resource Management Act Section 13(2)(b)).

~~In relation to Rule 13.5.1.8, Conditions (a) to (d) of the rule address Section 13(1) of the Resource Management Act and Conditions (d) and (e) address Section 13(2)(b) of the Resource Management Act. Rules 13.5.2.1 and 13.5.3.1 provide for the preservation of the natural state of the shoreline of Lake Wanaka, consistent with Section 4(c) of the Lake Wanaka Preservation Act 1973. ...~~

4.3.2 Reasons

- **Animal waste entering water**

Providing for discharge and deposition directly associated with livestock disturbance in notified Rules 13.5.1.8A and 13.5.1.8B and removing the note box below Rule 13.5.1.8A gives more certainty by clarifying the activity status of rules.

- **Replacing “increase or reduce” with “visual change” in water**

Replacing the word “conspicuous” and amending notified Rule 13.5.1.8A to “visual change” in relation to clarity or colour effectively aligns the livestock disturbance rules with recommended amendments to notified Rule 12.C.1.2 regarding sediment. The use of the narrative qualifier “visual” as opposed to numerical qualifiers allows for on-the-spot assessment with no need for the use of technical instruments or measuring tools.

- **Intentional driving of stock and random stock access to lakes, rivers and Regionally Significant Wetlands**

Amendments to notified Rules 13.5.1.8A and 13.5.1.8B clearly distinguish intentional movement of livestock from roaming stock, and avoid any conflict between rules.

These recommended changes also ensure greater consistency between the permitted activity conditions of notified Rules 13.5.1.8A and 13.5.1.8B and better alignment with the proposed standard for sediment discharges included in section in 12.C.

- **Stock access to lakes, rivers and Regionally Significant Wetlands**

The deletion of notified Rule 13.5A.0 and subsequent amendments to notified Rules 13.5.1.8A and 13.5.1.8B clarify the original intent of the rules, which was to avoid frequent stock crossings through water bodies while still allowing stock access to, and through, water infrequently. The reference to “seasonal muster” is removed as it was seen as uncertain. The amendments to the conditions of the permitted activity rules are considered sufficient to control effects on in-stream values that are more than minor and minimise risk of damage to the beds of lakes, rivers and Regionally Significant Wetlands.

Rule 13.5.1.8A still allows for some light grazing of riparian margins as a means of weed control as long as the rule conditions are met. The requirement to meet all conditions in the rule in order to be allowed stock access to the bed of a lake or river still places a high expectation on landholders to protect water quality by managing stock access.

- **Fencing**

There is no rule explicitly requiring the fencing of lake or river beds due to the practicality and effectiveness of a single approach for all situations. However, in areas where the permitted activity conditions in livestock bed disturbance rules are difficult to meet and the installation of a crossing and/or fencing is possible, landholders are encouraged to consider these as measures to achieve compliance. A consenting option is available for situations where the conditions cannot be met.

- **Principal reasons for adopting**

The principal reasons for adopting are amended as Rule 13.5.1.8 is being deleted.