Otago Regional Council

ORC NOTIFICATION RECOMMENDATION REPORT

Application No: RM25.221
Prepared for: Staff Consents Panel
Prepared by: Ralph Henderson, Consultant Planner
Date: 07 July 2025

Subject: **Notification recommendation for application RM25.221 by Otago Regional Council to disturb the bed of a river and to discharge concrete dust to water for the purpose of maintaining the sill structure (weir) on Lake Tuakitoto outlet**

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1. Purpose

To report and make recommendations under sections 95A-G of the Resource Management Act 1991 (the Act) on the notification decision for the above application.

2. Background Information

Applicant:	Otago Regional Council
Applicant's Agent:	SLR Consultants
Site address or location:	Lake Tuakitoto outlet, Kaitangata
Legal description(s) of the site:	Water
Record of title number and owner:	n/a
Map reference(s):	NZTM (2000) E 1355830, N 4874397
Consent sought:	Land use (RM25.221.01) and discharge permit (RM25.221.02)
Purpose:	to undertake maintenance on the sill structure/ weir on the Lake Tuakitoto outlet drain

Existing Consents
Land Use Consent 94549 for the construction of the sills structure. The sills themselves are removable components.

Water Permit 94423 for the damming of water to maintain minimum summer lake levels in Lake Tuakitoto. During winter, the sills are generally open (i.e., raised) to allow water to drain from the catchment to prevent flooding, whereas the sills are lowered in summer to maintain lake level. The lake level must be kept above 100.77 metres above datum (0.77 metres above sea level) between 30 September in any year and 16 May in any following year. This consent expires on 1 October 2029.

2.1 Key issues/risks

The key issues/risks with the application are:

- The proposed works require construction activity in the river, including driving of new struts into the bed, temporary diversions of the drain, and the establishment of sediment control measures.

- The works will involve modification of the sill structure that sits within the waterway and the creation of a fish passage ramp adjacent to the banks of the waterway / drain that is pinned to the bed.
- To enable fitting of the replacement concrete sills it may be necessary to undertake grinding in the bed of the watercourse potentially resulting in a discharge of concrete dust to water.

At this stage there are no principal issues in contention that need to be raised.

2.2 Summary

I recommend the application is processed on a non-notified basis.

This is because:

- The adverse effects on the environment from the proposed activity will be no more than minor; and
- The mitigations proposed adequately compensate or offset the actual or potential adverse environmental effects.

3. Description of Activity

Emma Burford of SLR Consultants ("**SLR**") has provided a description of the proposal on pages 1-7 of the Application titled: Lake Tuakitoto Sill Replacement – Resource Consent Application, SLR Consulting, 30 April 2025. This description is adopted for this report. The key points of the activity are explained below.

The Applicant is proposing to undertake maintenance of the existing sill structure that sits across Scheduled Drain 222 ("**SD222**") (Figure 1).

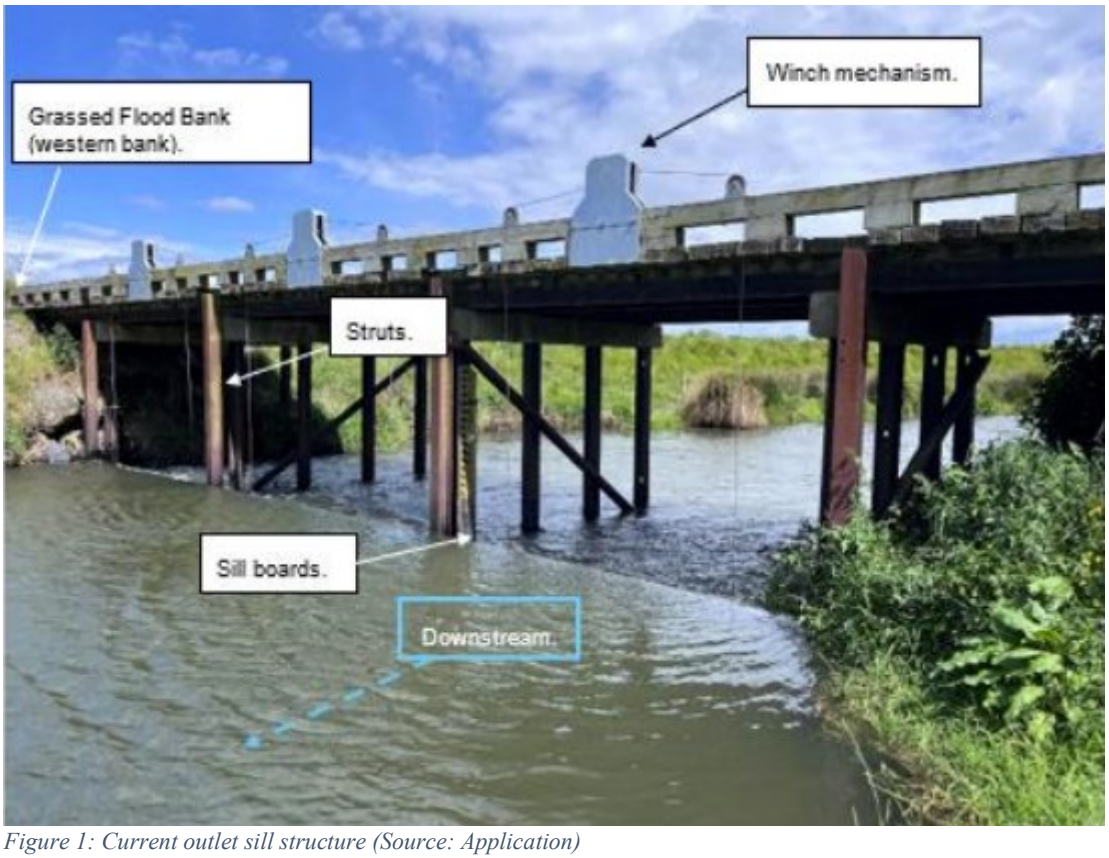


Figure 1: Current outlet sill structure (Source: Application)

The purpose of the sills structure is to maintain a minimum water level in Lake Tuakitoto and the associated wetland complex upstream of the SD222. The existing winches shown on Figure 1 are not functional and the sills are comprised of wooden boards that are manually placed or removed from between the struts under the bridge across SD222 to adjust water levels. This process creates a number of health and safety issues due to the need to enter the drain to move the boards. The sill structure is a weir that controls water level and may be altered by changing the sill height. The RPW does not define a weir or sill but includes reference to weirs in relation to the damming of water. The National Environmental Standard for Freshwater (NES-F) defines a weir as:

means an open-topped structure across the full width of any river or connected area that—
(a) alters the water level and the flow characteristics of the water; and
(b) allows water to flow passively through or over the top

The proposed new design is shown in Figure 2 and will enable the lower concrete stop log and upper steel stop log to be raised and lowered safely from the bridge structure.

The construction design and methodology will generally include the following:

- Manual removal of existing wooden sill boards and installation of new concrete sill slabs (prefabricated offsite).
- Replacement of winch mechanism (for changing sills height) with a secondary mechanism (undertaken via machinery from the bridge platform).
- Removal of existing struts and installation of new struts into the wet bed, mechanically driven in by machinery on the bridge platform or the grassed area adjacent to the banks of the SD222.
- The installation of a safety rail along the bridge platform (where work will be undertaken from the bridge platform).
- Provision of new fish passage ramp located on the eastern side of the structure (lightweight construction pinned to the bed of the watercourse).
- Temporary diversion - localised management of water levels through the sills, via a temporary bund structure or similar upstream of the structure, and bypass pipe or channel, during the maintenance works.

Works may also include:

- The erection of scaffolding (attached to the bridge structure, not attached or abutting the grass banks or wet bed of SD222) to enable the sills to be accessed without wading through the watercourse.
- Grinding of concrete upper edge of lower sill within the bed of the watercourse, if required, to prepare surface for new replacement sill to be installed.

The Applicant has obtained bylaw approval for works within 7m of a floodbank under clause 3.2.f.ii of the Flood Protection Bylaw ("**the bylaw**").

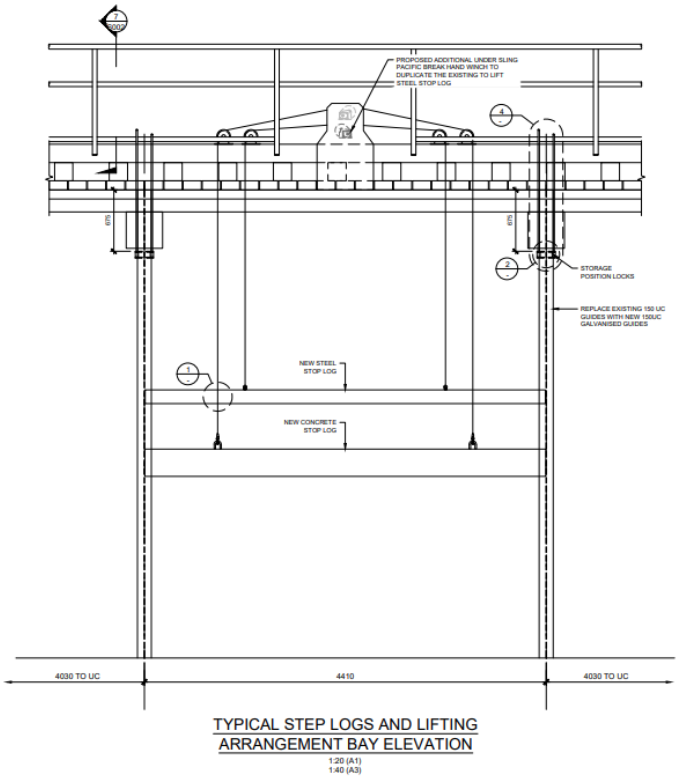


Figure 2: Design of proposed stop logs and lifting structure

Detailed construction design and methodology based on the above will be confirmed when a construction contractor has been confirmed.

Duration of three years to compete design and undertake works and lapse period of 5 years is sought.

3.1 Proposed Conditions

The applicant has volunteered the following conditions of consent:

1. Final detailed design drawings for works must be submitted to and approved by ORC prior to works being undertaken. This includes a fish passage lightweight ramp design, and includes rounded top edge of upper sill board to aid fish passage.
2. Works must not be undertaken between 1 May and 30 September inclusive.
3. The consent holder must prepare and implement a Construction Management Plan (CMP) including Sediment and Erosion Control measures. The CMP must be submitted to and approved by ORC prior to works commencing. The CMP must include but not be limited to:
   a) Plans and provisions to ensure no machinery will be located in the wet bed of water course / Scheduled Drain 222
   b) Provide for an area to be marked out for vehicle and machinery storage that is set back from surface water and from the flood bank such that flood banks are not accessed and risk of scouring grass area adjacent to the banks is minimised.
   c) Provide for refuelling and storage areas to be set back from surface water, stored on the gravel roads area only. Risk of contaminant entering the watercourse is minimised. Provide details of spill clean-up methodology/process.
   d) Include details of manual access and egress point(s) into the watercourse from the eastern bank immediately downstream of the sills.

e) No wet concrete will be used on or adjacent to the site. Replacement sill 'slabs' must be prefabricated offsite.
f) Details of sediment control measures must be provided both upstream and downstream of the structure. The methodology must be in accordance with GD05.
g) Details of sediment control measures must be provided for the eastern bank of Scheduled Drain 222, should machinery operate from the grass area adjacent to the banks. Sediment controls upstream and downstream must include provision for potentially catching concrete grinding dust and minimising discharge to water.
h) Details of temporary diversion (coffer dam / bund or similar), to divert flows during sill works. Temporary diversion must maintain flows through sill structure such that levels upstream (Lake Tuakitoto) do not drop below 100.77 metres above datum, in accordance with resource consent conditions of Water Permit 94423.
i) Temporary bund to be located downstream of structure, to prevent tidal up flow through the site during works.
j) Weather and tide forecasts will be monitored, and works will not be undertaken during or immediately after rain events or King Tides.

4. An ecologist must be on the site for fish recovery from the isolated areas (during and immediately following diversion set up).
5. The weather conditions must be monitored by the consent holder prior to and during construction. Works should only be performed if no significant rainfall events are forecast for the following 7 days.
6. If a significant rainfall event is forecast following commencement of works, the site must be stabilised to the extent practicable, and any temporary bund and diversion infrastructure removed, until lake levels/stream outflow recedes, and work can safely recommence.
7. A temporary marker (stake or similar) must be placed in the stream channel upstream of the temporary bund with the minimum lake level and a warning level clearly marked. Should the stream level fall below the warning level, immediate action must be taken to reduce the diversion flow to prevent the lake level falling below 100.77m datum.

The applicant has provided the following documentation with the application:

- Resource consent application and supporting information report signed by the applicant and dated 30 April 2025
- Ecological assessment, SLR Consultants, dated 31 January 2025
- Proposed plans by Calibre dated 15 June 2025

3.2 Compliance with Current Consent

No compliance issues have been identified with the exercise of the existing consents.

3.3 Description of the Environment

A description of the site and surrounding environment is provided in Section 4 of the application and that is adopted for the purposes of this report. Key details are as follows:
The applicant's property is located in South Otago, approximately 4.2 km north of the small rural settlement of Kaitangata.

Lake Tuakitoto is approximately 480metres (m) to the north of the sill structure and SD222 flows into the Clutha River/Mata-au approximately 5.4km south of the site. The surrounding land use is primarily rural in nature. The general location of the proposed structure is shown in Figure 1 below.

Figure 3: Site location (Source: Application)

The sill structure site is an ORC asset designed to maintain water levels in Lake Tuakitoto during summer low flow periods and to enable the lake to drain during higher flow periods. The sill structure is located on a bridge owned by the ORC that crosses SD222. On the western bank of SD222 is an ORC floodbank. The structure forms part of the ORC Flood Management Scheduled Drain network that provides drainage and flood management between Lake Tuakitoto and the Matau Branch of the Clutha River /Mata Au. Downstream of the site on SD222 are the Kaitangata Flood Gates which manage the potential for water in the Clutha to flow up the drain when water levels in the river are high as a result of flooding or high tides. Due to the proximity of the site to the coast

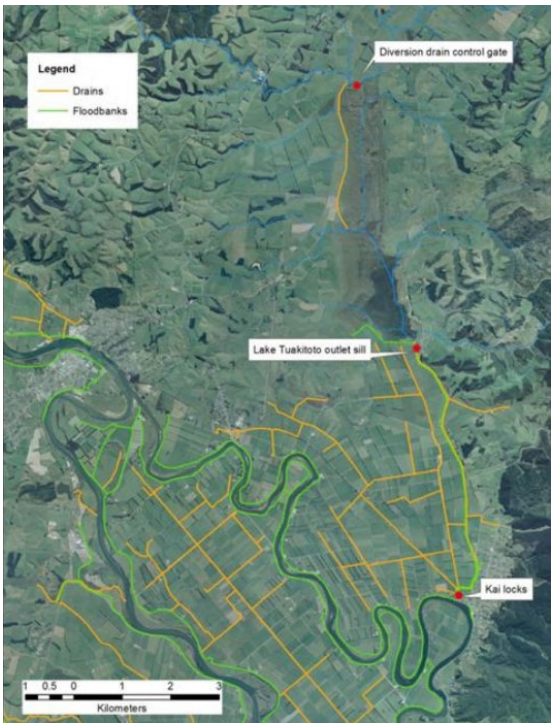


Figure 4: Lower Clutha Flood Control and Drainage Scheme (Source: Application)

3.3.1 Surface Water

Lake Tuakitoto is defined in the RPW as:

Lake Tuakitoto	The variable and more or less continuous body of water commonly known as Lake Tuakitoto, including Robson's Lagoon, situated at and about map reference NZMS260 H46:650370. The shoreline of the lake is defined as the variable extent of surface water, as it is observed at any particular time, whether of natural extent or whether restricted by any floodbank.

SD222 is a modified natural water course providing drainage from the lake to Matau Branch of the Clutha River /Mata Au immediately to the north of Kaitangata. SD222 is approximately 10m wide at the location of the sill structure and has a sand/ silt bed. Flows in SD222 are affected by tidal conditions in the Clutha River/ Mata Au and can occur in both directions.

Water levels in SD222 are not monitored however the Applicant has provided modelled data for flows based on NZ River Maps in Table 1 below.

Table 1: Predicted flow characteristics for SD222 (Source: NZ River Maps)

Flow Statistic	Lake Tuakitoto Outlet
Mean flow (m^3/s)	1.35
Median flow (m^3/s)	0.835
Mean annual low flow (MALF) (m^3/s)	0.343
1 in 5-year low flow (m^3/s)	0.244
FRE3[1] events per year	12
February flow seasonality	0.575
Month lowest mean flow	Feb

There are no consented water takes from SD222 and there are no other consented activities in the general vicinity of the works.

The Regional Plan: Water for Otago (RPW) outlines the natural and human use values of various watercourses throughout the Otago Region. SD222 is not identified in this schedule. Lake Tuakitoto is identified for the following natural and ecosystem values shown in Table 2

Table 2: Schedule 1A Natural Values (Source; RPW Schedule 1A)

Taieri/Clutha Plains subregion		
Water body	**Ecosystem Values**	**Significant indigenous vegetation and significant habitat of indigenous fauna**
Lake Tuakitoto	Ppass, Psilt, Psand, Pplant, Psize, Weedfree, Hspawn, Hjuve(t), Hriparian, Trout, Eel, Birddiv, Birdrare, Rarefish, Fishdiv	Significant habitat for giant kokopu. Also a breeding population of fernbird.
Lake Kaitangata (and Lake Kaitangata/Lake Tuakitoto Drainage)	Weedfree, Eel, Rarefish, Fishdiv	Significant habitat for giant kokopu.

The Schedule 1A Values include:

- Large water body supporting high numbers of particular species, or habitat variety, which can provide for diverse life cycle requirements of a particular species, or a range of species.

[1] FRE3 is the mean number of events per year that exceed three times the median flow, and provides an estimate of flow flashiness, with lower values meaning less frequent events.

- Access within the main stem of the catchment through to the sea or lake unimpeded by artificial means such as weirs and culverts.
- Plant/sand/silt/ bed composition of importance to resident biota.
- Absence of aquatic pest plants identified in the Pest Plant Management Strategy for the Otago Region.
- Presence of significant fish spawning areas for trout and salmon.
- Presence of significant areas for development of juvenile trout.
- Presence of a significant range of indigenous fish species.
- Presence of riparian vegetation of significance to aquatic habitats.
- Presence of indigenous fish species threatened with extinction.
- Significant presence of trout and eel.
- Presence of indigenous waterfowl threatened with extinction.

Table 3: Migration and spawning timing for fish species in the vicinity of Lake Tuakitoto (Source: Application)

Species	Threat status	Direction	Life stage	Summer			Autumn			Winter			Spring		
				D	J	F	M	A	M	J	J	A	S	O	N
Common bully	Not Threatened	▼	Larvae												
		▲	Juvenile												
		-	Adult												
Giant bully	At Risk - Naturally Uncommon	▼	Larvae												
		▲	Juvenile												
		-	Adult												
Longfin eel	At Risk - Declining	▲	Glass eel												
		▲	Juvenile												
		▼	Adult												
Shortfin eel	Not Threatened	▲	Glass eel												
		▲	Juvenile												
		▼	Adult												
Common smelt	Not Threatened	▼	Larvae												
		▲	Juvenile												
		-	Adult												
Īnanga	At Risk - Declining	▼	Larvae												
		▲	Juvenile												
		▼	Adult												
Lamprey	Threatened - Nationally Vulnerable	-	Larvae												
		▼	Juvenile												
		▲	Adult												
Giant kokopu	At Risk - Declining	▼	Larvae												
		▲	Juvenile												
		-	Adult												
Brown trout	Introduced and naturalised	-	Larvae												
		▼	Juvenile												
		▲	Adult												
Perch	Introduced and naturalised	-	Adult												

The fish diversity, rare fish and importance for spawning and juvenile fish habitat extends into the drainage network to the south of Lake Tuakitoto and includes a significant habitat for giant kokopu. Schedule 1AA of the RPW identifies Otago resident native freshwater fish and their threat status. The Lake Tuakitoto is known to provide habitat for giant kokopu, Longfin Eel, Lamprey, Inanga (Table 3) which are within this schedule and identified as declining.

Schedule 1B of the RPW identifies rivers where the water taken is used for public water supply purposes and Schedule 1C identifies registered historic places. There are no Schedule 1B or 1C values in close proximity to the proposed activity.

Schedule 1D of the RPW identifies the spiritual and cultural beliefs, values and uses associated with water bodies of significance to Kai Tahu. Lake Tuakitoto is identified as important to Kai Tahu for a number of beliefs, values and uses (Table 4, Table 5).

Table 4: Schedule 1D: Kai Tahu Values (Source; RPW Schedule 1D)

Taieri/Clutha Plains subregion									
Water body	**MA1**	**MA2**	**MA3**	**MA4**	**MB1**	**MB2**	**MB3**	**MB4**	**MB5**
Lake Tuakitoto	✓	✓		✓	✓	✓	✓	✓	

Table 5: Code for Kai Tahu beliefs, values and uses ascribed to water bodies (Source; RPW Schedule 1D)

Code	Mana Interests:
MA1	**Kaitiakitanga** – the exercise of guardianship by Kai Tahu in accordance with tikanga Maori* in relation to Otago's natural and physical resources; and includes the ethic of stewardship.
MA2	**Mauri** – life force; for example the mauri of a river is most recognisable when there is abundance of water flow and the associated ecosystems are healthy and plentiful; a most important element in the relationship that Kai Tahu have with the water bodies of Otago.
MA4	**Waahi taoka** – treasured resource; values, sites and resources that are valued and reinforce the special relationship Kai Tahu have with Otago's water resources.
Code	**Access/Customary Use Interests:**
MB1	**Mahika kai** – places where food is procured or produced. Examples in the case of waterborne mahika kai include eels, whitebait, kanakana (lamprey), kokopu (galaxiid species), koura (fresh water crayfish), fresh water mussels, indigenous waterfowl, watercress and raupo.
MB2	**Kohanga** – important nursery/spawning areas for native fisheries and/or breeding grounds for birds.
MB3	**Trails** – sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
MB4	**Cultural materials** – water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

3.3.2 Regionally Significant Wetlands

Lake Tuakitoto is identified as a Regionally Significant Wetland in Schedule 9 of the RPW.

3.3.3 Site Visit

A site visit was undertaken on 9 December 2024 as part of pre-application discussions for the proposal.[2]

4. Status of the Application

Activities in the bed of a watercourse may be undertaken as a permitted under Rule 13.5.1.1, subject to conditions. The duration of works to complete the maintenance of the sill structure will exceed the 10-hour duration permitted under Rule 13.5.1.1(f) and will require consent as a ***discretionary*** activity under Rule 13.5.3.1.

It is noted that alteration includes any disturbance, and the associated remobilisation (discharge) and redeposition (deposit) of bed material already present, reclamation or deposition of cleanfill associated with works in the bed. A separate discharge permit is therefore not required for the activity, given that the discharges will be remobilised sediment and silt. However, the final fitting of the concrete sills is anticipated to require the griding of concrete within the bed of SD222. The discharge of concrete dust to water is a discharge not

[2] Pre-application number RM24.685

provided for by Rules 12.A, 12.B or 13.5 and will require consent as a ***discretionary*** activity under Rule 12.C.A.1 for the discharge of contaminants to water.

4.1 Permitted Activity Rules

The repair and maintenance of the structure that will not alter the scale, nature or function of the structure is permitted under Rule 13.3.1.1.

The alteration of a lawful structure in a river is permitted under Rule 13.3.1.2 where there is no permanent change to the scale, nature or functions of the structure.

The remobilisation of sediment in the bed of the river associated with the maintenance of the structure is permitted under Rule 13.5.1.1.

The temporary diversion of water within the bed of the water course for the purpose of repair or maintenance of a lawful structure is permitted under Rule 12.3.2.3. The diversion will be achieved via the bund of a coffer dam or similar structure upstream and downstream of the sill structure. Water will be channelled around or piped through the part of the sill structure undergoing works at each stage of construction.

5. Assessment of Adverse Environmental Effects

An assessment of effects is provided in the application and that is adopted for the purposes of this report. Key details are outlined below as it relates to understanding the scale of effects and to inform the recommendation on notification.

5.1 Effects on the Hydraulic Capacity and Flow Characteristics of SD222 and Lake Tuakitoto

All instream work has the potential to affect the particular dynamics and characteristics of the hydraulic properties of waterways, including reducing flow resistance, increasing flow velocities, and transference of energy. Actual or potential effects to be generated from such changes to water dynamics include flooding, erosion, scouring and land instability.

The instream works required to undertake the proposed maintenance of the sill structure will be short in duration, requiring days of work, rather than weeks. Works will be undertake between October and April in the low flow / dry season identified by catchment analysis and will avoid work during rain events if possible. The proposal will require the installation of temporary bunds up and downstream of the sill structure to manage potential flows from either direction. The final design of mitigation has yet to be determined and will be certified by Council prior to adoption, but is anticipated to involve a bund that diverts flow away from a 1/3 of the sill structure while works are being undertaken on that section, maintaining flows through the remaining 2/3s of the structure. Although the area for flow will be reduced this will be well within the capacity of SD222 particularly during low flow periods.

To minimise potential hydrological effects the Applicant has volunteered conditions 4, 5 and 6 to avoid works when weather may be unfavourable and maintain the lake level (Section 3.1).

Overall, the effects of the temporary instream works on the hydrological capacity of SD222 are considered to be less than minor due to the proposed methodology, volunteered conditions and limited duration of works.

5.2 Effects on Water Quality

Instream works can result in disturbance of the bed or bank, or the mobilisation of instream sediments that can adversely affect water quality.

The proposed methodology avoids works on the banks of the drain and construction machinery will operate from land at all times to avoid the discharge of sediment into the waterway.

The proposed removal and replacement of the struts will be undertaken by crane and new struts will be driven into the bed of the SD222 to minimise disturbance of sediment within the waterway. Sediment discharges will be further minimised by the installation of sediment control measures up and downstream of the sill structure.

The proposed works may require limited griding of the edges of the lower concrete sills in the sill structure. If required this may result in the discharge of small volumes of ground concrete dust into SD222. The CMP will detail measures to control and collect concrete dust generated to minimise any discharge if it is necessary to grind the concrete sill within waterway.

The sediment control measures will be detailed in a CMP to be certified by Council and the Applicant has advised these will be consistent with GD05 Guidelines. Subject to adoption and implementation of the proposed conditions effects on water quality are considered to be less than minor.

5.3 Effects on Aquatic Ecosystems

The natural ecosystem values of the unnamed tributary are discussed in Section 3 of this report and it is identified that Lake Tuakitoto is known to provide habitat for giant kokopu, Longfin Eel, Lamprey and Inanga which are within this schedule and identified as declining.

The sill structure is operated to manage water levels in Lake Tuakitoto and the associated wetland complex to maintain ecological values and avoid flooding. The proposed works will result in temporary disturbance in the immediate area of the sill structure but will not be changing the functionality of the existing sill and will not result in any changes to lake levels of the associated wetlands beyond the immediate construction period.

Temporary disturbance of the habitat may result in some increased discoloration of the water during works, effects associated with driving of the new struts and temporary isolation of parts of the waterway with sediment control measures and bunds. These effects will be mitigated through the proposed CMP and the limited duration and timing of works to avoid periods of sensitivity for significant species. The applicant has indicated that all machinery used will be well maintained and clean, and all works will be undertaken outside of SD222. This will prevent contamination of the watercourse. No machinery will be refuelled or cleaned within the watercourse and all machinery used in other watercourses will be water blasted before being used on the site to prevent the spread of pest plant species such as didymo. The ecological assessment provided by SLR has concluded that the effects on habitat disturbance will be less than minor due to the limited area and duration of disturbance. I adopt this assessment and note that effects on vegetation will also be minimal as the area of works is dominated by exotic grass and weed species and disturbance will be minimal.

The proposal to include a fish ramp is expected to improve fish passage past the sill structure. Potential positive effects include increased densities of smelt and īnanga are anticipated, and a boost in larvae and whitebait production. The ecological assessment notes that:

> *"The potential for increased migration of whitebait and elvers into the lake would not only enhance adult population recruitment but it also acts as a crucial food subsidy for resident piscivorous birds like white-faced heron (Egretta novaehollandiae) and little pied cormorant (Microcarbo melanoleucos) and fish like longfin and shortfin eels, brown trout, and giant kōkopu. Flounder may return to the lake's fishery, and various other native fish species, including the giant kōkopu, are also likely to benefit."*

Adverse effects on Schedule 1A values and Regionally Significant Wetlands are less than minor and effects on fish passage will be positive.

5.4 Effects on River Values

The maintenance of the sill mechanism will result in small changes to the existing structure but in the context of the existing bridge, drain and floodbank, the effects on the natural character of SD222 are considered to be minimal as there are existing structures on the watercourse and the works will not affect the ecology, natural flow characteristics or water quality of the river.

The required works will be short in duration and will not restrict access along the bank of SD222 for the public except in the immediate area of works. Temporary construction activity will have minimal effect on visual amenity and the proposed changes are substantially the same as the existing sill structure and visual effects of the maintenance will be de minimis. Works will be undertaken Monday-Saturday, 7am-7pm, to ensure natural character, amenity and public access are maintained outside normal working hours.

There are no recognised heritage values associated with SD222.

Aukaha were notified of the activity through the statutory acknowledgement process and have provided their written approval to the activity. Effects on iwi and cultural values are considered to be less than minor.

5.5 Effects on Other Water Users

There are no downstream consented water takes on the unnamed tributary and takes further downstream (including permitted takes) will be unaffected by the works due to their minor nature and the proposed mitigation measures.

SD222 is relatively easily accessible for recreational users for fishing but is not identified as of particular recreational value relative to other watercourses in the immediate area. However Lake Tuakitoto is identified as a fishing location of interest to anglers in the Lower Clutha area on the Fish and Game website.[3] The existing sill structure prevents instream passage down SD222. However recreational users can access the waterway from the banks and could continue to follow the drain up or downstream by moving around the area of works. Overall, as the proposed works will be short in duration and will only restrict recreational users or anglers to a small area of SD222 in the immediate locality of works it is considered the effects on recreational users will be no more than minor.

[3] https://www.fishandgame.org.nz/freshwater-fishing-in-new-zealand/where-to-fish/regional-info/otago/lower-clutha-rivermata-au/

Otago Regional Council

5.6 Consideration of Alternative Methods

The proposal seeks to replace the existing wooden sills with an alternative permanent sill structure that will require less frequent disturbance of SD222 through manual operations. The Applicant has proposed conditions to minimise the discharge of concrete dust as far as possible and to mitigate any discharge that does occur.

5.7 Conclusion

Overall, the adverse effects of the proposed activity are expected to be no more than minor.

6. Notification and Written Approvals

6.1 Section 95A Public Notification

Step 1: Is public notification mandatory as per questions (a) – (c) below?

(a) Has the applicant requested that the application be publicly notified? **No**

(b) Is public notification required by Section 95C? **No**

Has further information been requested and not provided within the deadline set by Council? **No**

Has the applicant refused to provide further information? **No**

Has the Council notified the applicant that it wants to commission a report but the applicant does not respond before the deadline to Council's request? **No**

Has the applicant refused to agree to the Council commissioning a report? **No**

(c) Has the application been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977? **No**

Step 2: Is public notification precluded as per questions (a) – (b) below?

(a) Is public notification precluded by a rule in the plan or a NES? **No**

(b) Is the application for one or more of the following activities but no other activities**:**

(i) A controlled activity? **No**

(ii) *[repealed]*

(iia) A restricted discretionary, discretionary or non-complying activity but only if the activity is a boundary activity? **No**

(iii) *[repealed]*

Step 3: Does the application meet either of the criteria in (a) or (b) below?

(a) Is the application for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? **No**

(b) Will the activity have or be likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? **No**

The adverse environmental effects on the environment from the proposal are discussed in elsewhere of this report. Based on this review, I consider that there will not be more than minor adverse effects on the environment (discounting the site and adjacent sites).

Step 4: Do special circumstances exist in relation to the application that warrant the application being publicly notified? **No**

6.2 Section 95B Limited Notification

Step 1

Section 95B(2) Are there any affected groups or persons identified under Section 95B(2):

(a) Protected customary rights groups? **No**

(b) Customary marine title groups? **No**

Section 95B(3)(a) Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? **No**

Section 95B(3)(b) Is a person to whom a statutory acknowledgement is made an affected person under Section 95E? **No**

Step 2

Is Limited Notification precluded under Section 95B(6)?

(a) Is the application for a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that preclude limited notification? **No**

(b) Is the proposal a Controlled Activity that requires consent under the District Plan (other than a subdivision of land)? **No**

Step 3

Having regard to Section 95E of the Resource Management Act, identify persons who would be adversely affected by the proposed activity by effects that are minor or more than minor, but not less than minor and give reasons why affected parties were identified.

The following parties were not considered to be affected parties to the application as effects on them will be less than minor or they are not considered to be affected parties:

Party	Why they are not affected
Fish & Game (F&G)	The effects on sports fish and game values will be less than minor and F&G have provided affected party approval.
Aukaha on behalf of Mana Whenua	The effects of the proposed maintenance will be limited in extent and duration and are unlikely to affect any of the identified values of Lake Tuakitoto identified in Schedule 1D of the RPW and Aukaha have provided affected party approval on behalf of Te Runanga o Ōtākou indicating they have no concerns with the application.
Department of Conservation (DoC)	The effects of the proposal on areas of the Department's statutory interest are considered to be less than minor and DoC has provided affected party approval.

Written approvals were provided with the application from Aukaha, DoC and F&G. As approvals have been provided from these parties effects on them have not been considered and they have not been considered as affected parties.

Have all persons identified as affected under Step 3 provided their written approvals?
N/A

Step 4 Further notification in special circumstances
Do special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under Section 95E as not being affected persons)? **No**

If notification or limited notification is required then has the applicant paid the additional notification fee? Not applicable

6.3 Other Notifications

Not applicable.

7. NOTIFICATION RECOMMENDATION:

In accordance with the notification steps set out above, it is recommended that the application proceed on a non-notified basis.

Name: Ralph Henderson
Title: Consultant Planner
Date: 17 July 2025
Signature: 

Otago Regional Council

DECISION ON NOTIFICATION

Sections 95A to 95G of the Resource Management Act 1991

Date: 25 July 2025

Application No: **RM25.221**

Subject: ***Decision on notification of resource consent application under delegated authority***

Decision under Delegated Authority

The Otago Regional Council decides that this resource consent application is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

The above decision adopts the recommendations and reasons outlined in the Notification Recommendation Report above in relation to this application. I have considered the information provided, reasons and recommendations in the above report. I agree with those reasons and adopt them.

This decision is made under delegated authority by:

Allan Cubitt
Independent Decision Maker for Otago Regional Council

Otago Regional Council

ORC SECTION 42A REPORT

1. Summary of Recommendation

I recommend that this application be approved, subject to the conditions discussed at the end of this report.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision on the application.

There are no principal issues in contention with the applicant and no evidence was heard as it relates to the application as it is being processed non-notified without a hearing. The key risks/issues with the application were discussed in Section 2.2 of this report.

2. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

As this application is for a discretionary activity, the Council may grant or refuse the application. If granting consent, the Council may impose conditions under section 108 of the Act.

2.1 Section 104(1)

The remaining matters of Section 104 to be considered when assessing an application for a resource consent are:
(a) the actual and potential effects on the environment of allowing the activity;
(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
(b) any relevant provisions of a national environmental standard, other regulations, a national policy statement, the Regional Policy Statement (RPS), RPW; and
(c) any other matter the Council considers relevant and reasonably necessary to determine the application.

2.2 S104(1)(a) – Actual and potential effects on the environment of allowing the activity

The actual and potential adverse environmental effects of the proposed activity were considered earlier in this report.

In addition to these adverse effects, it is considered that the proposal will have the following positive effects:

- The maintenance will enable continued operation of the sill structure to protect the ecological values of Lake Tuakitoto and the associated wetland that are dependent upon water levels being maintained.
- The proposed maintenance will reduce the health and safety risks associated with operating the existing sill structure.

- The proposal will result in an improvement for fish passage past the sill structure providing additional ecological benefits to the area.

2.3 S104(1)(ab)

The applicant has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from allowing the activity. This is because the potential adverse effects are expected no more than minor.

2.4 S104(1)(b) Relevant Planning Documents

The relevant planning documents in respect of this application are:

- The National Environmental Standard for Sources of Human Drinking Water 2007
- Resource Management (National Environmental Standards for Freshwater) Regulation 2020
- Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 and Amendment Regulations 2020
- The National Policy Statement for Freshwater Management 2020
- The Proposed Regional Policy Statement and Partially Operative Regional Policy Statement
- The Regional Plan: Water for Otago
- Proposed Plan Change 7 (Water Permits) (PPC7)

2.4.1 National Environmental Standard for Sources of Human Drinking Water

Regulations 7 and 8 of the National Environmental Standard for Sources of Human Drinking Water (NES) need to be considered when assessing discharge permits that have the potential to affect registered drinking water supplies that provide 501 or more people with drinking water for 60 or more calendar days each year.

Regulations 11 and 12 of the NES requires the Consent Authority to place an emergency notification condition on relevant consent holders if it is assessed that the activity could pose a risk to the drinking water supply in the case of an unintended event (e.g. a spill or other accident). If the Consent Authority considers that such a risk exists, a condition must be placed on the consents that requires the consent holder to notify the drinking water supplier if such an event occurs. Regulation 11 states that Regulation 12 applies to activities with the potential to affect registered drinking water supplies that supply 25 or more people with drinking water for 60 or more days of a calendar year.

There are no drinking water supplies that may be affected by the proposal.

2.4.2 National Policy Statement for Freshwater Management

The NPS-FM 2020 was introduced in September 2020 and amended in December 2022, replacing previous iterations from 2011, 2014 and 2017. The NPS-FM sets out a single objective, 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); and
c. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Section 104 of the RMA has been amended to include section 104(2F) which provides that when considering an application and any submissions received, a consent authority must not have regard to clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020). Subsection (2F) applies despite subsection (1)(b)(iii) and any other provision of the RMA.

As a result, clause 1.3(5) and clause 2.1 (the objective) of the NPSFM 2020 has not been assessed. The relevant policies of the NPS-FM 2020 are considered below:

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 6:	*There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*
Policy 7:	*The loss of river extent and values is avoided to the extent practicable.*
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.*

The Applicant has consulted with Aukaha on behalf of tangata whenua and affected party approval has been provided by relevant runaka. The purpose of the existing sill structure is to assist in the integrated management of freshwater in the immediate area by managing flood risk and ecological values of the Lake Tuakitoto system. The proposed maintenance works will ensure the structure continues to ensure the effects on the receiving environment can be managed to minimise adverse effects. The proposed maintenance works are important to prevent adverse effects on natural inland wetlands around Lake Tuakitoto and to protect the habitats of indigenous freshwater species and trout by maintaining summer water levels. The proposal will avoid the loss of river values to the extent practicable.
Overall, the proposal is consistent with the policy direction of the NESFM.

2.4.3 National Environmental Standards for Freshwater 2020

Regulation 60 states that subsection of the NES-F relating to fish passage does not apply to an existing structure that was in the river at the close of 2 September 2020, including any later extension or alteration to that structure.

Notwithstanding Regulation 60, the Applicant proposes to establish a fish ramp and as the sill structure is an ORC asset the details, including detailed drawings relating to the maintenance work and the fish passage ramp, will be held by the ORC, and will therefore meet the requirements of Regulations 62 and 64.

2.4.4 Operative Regional Policy Statement 2019 and Proposed Regional Policy Statement 2021

The RPS's provide an overview of the resource management issues for the Otago Region and the ways of achieving integrated management of its natural and physical resources. There are currently two regional policy statements in play in the Otago Region:

- Operative Otago Regional Policy Statement 2019 (**ORPS 2019**); and

- Proposed Otago Regional Policy Statement (**P-ORPS 2021**), which was first notified on the 26th of June 2021 and on 30 September 2022 for the freshwater instrument components. On 30 March 2024 a decision was released.

Where two documents have legal effect, weighting is applied, with the weight determined taking into consideration:

- The extent to which the proposed plan has been tested through the submissions and hearings process
- The potential for injustice
- The extent to which new measures represent a significant policy shift from the operative plan

There is some support through caselaw for giving proposed provisions more weight, particularly where the proposed plan introduces a change in the resource management strategy.[4]

In this case, the 2021 RPS gives effect to the most recent suite of national direction, including the NPSFM 2020. Given the 2021 ORPS has been through the hearings process with decisions released, and gives effect to national direction, it is recommended that more weight be given to the decisions on the 2021 RPS.

Table 6 identifies all the relevant objectives and policies in the Operative RPS for this application as well as similar objectives and policies in the Proposed RPS. Where both objectives/policies need to be considered (where the proposed RPS 2021 policy is shaded), weighting has been applied. Where the proposed RPS 2021 objective/policy is effectively operative (shaded white in the proposed RPS 2021 column) full consideration has been given to the 2021 policy because it is effectively operative. Additional relevant objectives and policies in the proposed RPS 2021 are listed in Table 7 below.

[4] *Mapara Valley Preservation Society Inc v Taupo District Council* EnvC (A083/07), *Auckland Regional Council v Waitakere Council* (A065/08)

Table 6: Assessment of the relevant objectives and policies in the Operative RPS 2019 and companion objectives and policies in the Proposed RPS 2021

Operative RPS 2019 Strikethrough of the objective or policy means it has not been assessed (i.e. it has been replaced by a Proposed RPS 2021 provision)	Proposed RPS 2021 Shaded objectives and policies are under appeal and will be weighed against the operative RPS objectives and policies	Assessment
Objective 1.1 Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities **Policy 1.1.1** Economic Wellbeing **Policy 1.1.2** Social and cultural wellbeing and health and safety	**IM-O3 –Sustainable impact** Otago's communities provide for their social, economic, and cultural well-being in ways that support or restore environmental integrity, form, functioning, and *resilience*, so that the life-supporting capacities of air, *water*, soil, and ecosystems are sustainably managed, for future generations.	The sill structure is part of Council infrastructure to manage both natural hazards and ecological conditions in Lake Tuakitoto and is consistent in providing for the social, economic and cultural wellbeing of the community and the ecological integrity of the waterways.
Objective 1.2 Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago **Policy 1.2.1** Integrated resource management	**IM-O2 – Ki uta ki tai** The management of *natural and physical resources* embraces ki uta ki tai, recognising that the *environment* is an interconnected system which depends on its connections to flourish and must be managed as an interdependent whole. **IM-P5 – Managing environmental interconnections** Manage the use and development of interconnected *natural and physical resources* by recognising: (1) situations where the value and function of a *natural or physical resource* extends beyond the immediate, or directly adjacent, area of interest, (2) situations where *effects* of an activity extend to a different part of the *environment*, and (3) the impacts of management of one *natural or physical resource* on the values of another, or on the *environment*. **IM-P7 – Cross boundary management** Coordinate the management of *natural and physical resources* and the environment across jurisdictional boundaries and, whenever possible, between overlapping or related agency responsibilities. **CE-P1A – Integrated management/ki uta ki tai** Implement an integrated approach to managing Otago's coastal environment that: (1) recognises the interactions, ki uta ki tai, between the terrestrial *environment*, *fresh water*, and the *coastal marine area*, including the migration of fish species between *fresh water* and *coastal water*, (2) provides for the natural functioning of coastal processes at the physical interface between *land*, *fresh water*, and the *coastal water*, (3) ensures the *effects* of the use and development of *land* and *fresh water* maintain or enhance the health and well-being of the coastal environment, and (4) takes into account the ongoing *effects* of *climate change*. **LF-WAI-P3 – Integrated management/ki uta ki tai** Manage the use of *fresh water* and *land*, using an integrated approach that is consistent with tikaka and kawa, that: (1) sustains and, to the greatest extent practicable, restores or improves: (a) the natural connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral), (b) the natural connections and interactions between *land* and *water,* from the mountains to the sea,	The value provided by the sill structure extends beyond the immediate area of interest to the wider Lake Tuakitoto catchment and protects ecological, cultural and recreational values. The maintenance of the structure is important to enable the structure to continue to deliver these functions.

	(c) the habitats of *mahika kai* and indigenous species, including taoka species associated with the *water bodies,* (4) manages the effects of the use and development of land to maintain or enhance the health and well-being of *freshwater*, *coastal water* and associated ecosystems, (5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable, (6) has regard to foreseeable *climate change risks*, and the potential effects of *climate change* on *water bodies,* including on their natural functioning, (7) has regard to cumulative *effects,* and (8) applies a precautionary approach where there is limited available information or uncertainty about potential adverse *effects,* in accordance with IM-P6.	
Objective 2.1 The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions **Policy 2.1.1** Treaty Obligations **Policy 2.1.2** Treaty Principles	**MW-O1 – Principles of Te Tiriti o Waitangi** The principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, utilising a partnership approach between councils and papatipu rūnaka to ensure that what is valued by *mana whenua* is actively protected in the region. **MW-P1 – Treaty obligations** Promote awareness and understanding of the obligations of *local authorities* in regard to the principles of Te Tiriti o Waitangi, tikaka Māori and kaupapa Māori. **MW-P2 – Treaty principles** *Local authorities* exercise their functions and powers in accordance with the principles of Te Tiriti o Waitangi, by: (1) recognising the status of Kāi Tahu as *mana whenua* and facilitating Kāi Tahu involvement in decision-making as a partner under Te Tiriti o Waitangi, (2) including Kāi Tahu in resource management processes, implementation and decision-making to the extent desired by mana whenua, (3) recognising and providing for Kāi Tahu values and addressing resource management issues of significance to Kāi Tahu, as identified by *mana whenua*, in resource management decision-making processes and plan implementation, (4) recognising and providing for the relationship of Kāi Tahu culture and traditions with their ancestral lands, and waters, encompassing wai māori and wai tai, significant sites, *wāhi tūpuna,* wāhi tapu and wāhi taoka, and other taoka by ensuring that Kāi Tahu have the ability to identify these relationships and determine how best to express them, (5) ensuring that *regional plans* and *district plans* recognise and provide for Kāi Tahu relationships with Statutory Acknowledgement Areas, tōpuni, *nohoaka* and customary fisheries identified in the NTCSA, including by actively protecting the mauri of these areas, (6) having particular regard to the responsibility of Kāi Tahu to exercise their role as kaitiaki, as an expression of mana and rakatirataka, (7) actively pursuing opportunities for: (a) delegation or transfer of functions to Kāi Tahu, and (b) partnership or joint management arrangements, (c) taking into account iwi management plans when making resource management decisions, (8A) *regional plans* and *district plans* recognising and providing for aquaculture settlement outcomes identified under the Māori Commercial Aquaculture Claims Settlement Act 2004, and (8B) recognising and providing for mātauraka and tikaka in environmental and resource management.	The Applicant has recognised the cultural value of Lake Tuakitoto to mana whenua. The proposal is considered consistent with the direction of the Iwi management plan and Aukaha have provided affected party approval on behalf of local runaka.
Objective 2.2 Kāi Tahu values, interests and customary resources are recognised and provided for **Policy 2.2.1** Kāi Tahu wellbeing	**MW-P3 – Supporting Kāi Tahu hauora** The natural environment is managed to support Kāi Tahu hauora by: (1) recognising that Kāi Tahu hold an ancestral and enduring relationship with all whenua, wai māori and *coastal waters* within their takiwā, (2) protecting customary uses, Kāi Tahu values and relationships as identified by Kāi Tahu to resources and areas of	The Applicant has recognised the cultural value of Lake Tuakitoto to mana whenua. The proposal is considered consistent with the direction of the Iwi management plan and

	significance, and restoring these uses and values where they have been degraded by human activities, (3) safeguarding the mauri and life-supporting capacity of natural resources, recognising the whakapapa connections of Kāi Tahy with these resources as taoka, and the connections to practices such as *mahika kai,* and (4) working with Kāi Tahu to incorporate mātauraka into resource management processes and decision-making.	Aukaha have provided affected party approval on behalf of local runaka.
Policy 3.1.1 Fresh water	**LF-FW-P7 – *Fresh water*** *Environmental outcomes, attribute* states (including target *attribute* states), environmental flows and levels, and limits ensure that: (1) the health and well-being of *water bodies* and *freshwater* ecosystems is maintained or, if *degraded,* improved, (2) the habitats of indigenous species with life stages dependent on *water* bodies are protected and sustained, (2A) the habitats of trout and salmon are protected insofar as this is consistent with (2), (2B) fish passage is provided for, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats, (3) *specified rivers and lakes* are suitable for primary contact within the following timeframes: (a) by 2030, 90% of *rivers* and 98% of *lakes*, and (b) by 2040, 95% of *rivers* and 100% of *lakes*, and (4) resources harvested from *water bodies* including *mahika kai* and *drinking water* are safe for human consumption.	The technical assessment indicates that the adverse effects of the proposal on the health of the river will no more than minor and will protect the habitats of indigenous species and trout and salmon. The proposal will also provide for fish passage.
Policy 3.1.2 Beds of rivers, lakes, wetlands, and their margins	**LF-FW-P13 – Preserving natural character and instream values** Preserve the natural character and instream values of *lakes* and *rivers* and the natural character of their *beds* and margins by: (1) avoiding the *loss of values* or extent of a *river*, unless: (a) 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 (in relation to natural inland wetlands and rivers), (2) not granting resource consent for activities in (1) unless the consent authority is satisfied that: (a) the application demonstrates how each step of the *effects management hierarchy* (in relation to natural inland wetlands and rivers) will be applied to the *loss of values* or extent of the *river*, and (b) any consent is granted subject to conditions that apply the effects management hierarchy (in relation to natural inland wetlands and rivers) in respect of any loss of values or extent of the river, (c) if *aquatic offsetting* or *aquatic compensation* is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the NPSFM, and has had to regard to the remaining principles in Appendix 6 and 7 of the NPSFM, as appropriate, and (d) if *aquatic offsetting* or *aquatic compensation* is applied, any consent granted is subject to conditions that will ensure that the offspring or compensation will be maintained and managed over time to achieve the conservation outcomes, (3) establishing environmental flow and level regimes and *water* quality standards that support the health and well-being of the *water body,* (4) to the extent practicable, sustaining the form and function of a *water body* that reflects its natural behaviours, (5) recognising and implementing the restrictions in Water Conservation Orders, (6) preventing the impounding or control of the level of Lake Wanaka, (7) preventing modification that would permanently reduce the braided character of a *river*, (8) controlling the use of *water* and *land* that would adversely affect the natural character of the *water body*, and (9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity, reduce *contaminant* loss to *water bodies* and support natural flow behaviour.	The proposed maintenance of the sill structure will have less than minor adverse effects on natural character or instream values and is consistent with the effects management hierarchy.
Policy 3.1.9 Ecosystems and	**ECO-O1 – Indigenous *biodiversity*** Otago's *indigenous biodiversity* is healthy and thriving and any overall decline in condition, quantity and diversity is halted.	The proposal is consistent with ECO-O2 and ECO-P8 as the proposed fish

indigenous biological diversity	**ECO-O2 – Restoring and enhancing** *Restoration* and enhancement activities result in an overall increase in the extent and *occupancy* of Otago's *indigenous biodiversity*. **ECO-P6 – Maintaining indigenous *biodiversity*** Outside the coastal environment and excluding areas protected under ECO-P3, manage Otago's *indigenous biodiversity* by: (1) applying the effects management hierarchy (in relation to indigenous biodiversity) to manage significant adverse effects on indigenous biodiversity), and (2) requiring the *maintenance of indigenous biodiversity* for all other adverse *effects* of any activity, and (3) notwithstanding (1) and (2) above, for regionally significant infrastructure and nationally significant infrastructure that is either renewable electricity generation or the National Grid avoid, remedy or mitigate adverse effects to the extent practicable. **ECO-P8 – Restoration and enhancement** The extent, *occupancy* and condition of Otago's indigenous *biodiversity* is increased by: (1) restoring and enhancing habitat for indigenous species, including taoka and mahika kai species, (2) improving the health and *resilience* of *indigenous biodiversity*, including ecosystems, species, ecosystem function, and *intrinsic values*, (3) buffering or linking ecosystems, habitats and ecological corridors, ki uta ki tai and (4) prioritising all the following for *restoration*: (a) significant natural areas whose ecological integrity is degraded, (b) threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems, (c) areas that provide important connectivity or buffering functions, (d) areas of *indigenous biodiversity* on native reserves and *Māori land* where *restoration* is advanced by the Māori landowners, (e) any other priorities specified in regional biodiversity strategies or any national priorities for *indigenous biodiversity restoration*.	passage ramp will enhance indigenous biodiversity in the area by improving fish passage past the existing barrier.
Objective 5.1 Public access to areas of value to the community is maintained or enhanced **Policy 5.1.1** Public Access	**LF-LS-P22 – Public access** Provide for public access to and along *lakes* and *rivers* by: (1) maintaining existing public access, (2) seeking opportunities to enhance public access, including access by *mana whenua* in their role as kaitiaki and for gathering of *mahika kai*, and (3) encouraging landowners to avoid restricting access unless it is necessary to protect: (a) health and safety, (b) significant natural areas, (c) areas of outstanding natural character, (d) outstanding natural features and landscapes, (e) places or areas with special or outstanding *historic heritage* values, or (f) places or areas of significance to Kāi Tahu, including wāhi taoka, wāhi tapu and wāhi tūpuna, (g) establishing vegetation, or (h) a level of security consistent with the operational requirements of a lawfully established activity.	The proposal will result in temporary limitations to public access during construction work which is consistent with the intent of these policies and objectives.

Table 7: Additional relevant objectives and policies of the RPS 2021

Proposed RPS 2021 Shaded objectives and policies are under appeal and weighting will be given to them	**Assessment**
IM-P1 – Integrated approach to decision-making Giving effect to the integrated package of objectives and policies in this RPS and other relevant statutory provisions requires decision-makers to: (1) consider all provisions relevant to an issue or decision and apply them purposively according to the terms in which they are expressed and (2) if after (1) there is an irreconcilable conflict between any of the relevant RPS and/or statutory provisions which apply to an activity, only consider the activity if: (a) the activity is necessary to give effect to a relevant policy or statutory provision and not merely desirable, and (b) all options for the activity have been considered and evaluated, and (c) if possible, the chosen option will not breach any other relevant policy or statutory provision, and (d) if (c) is not possible, any breach is only to the extent required to give effect to the policy or statutory provision providing for the activity, and (3) if 2(d) applies, evaluate all relevant factors in a structured analysis to decide which of the conflicting policies or statutory provisions should prevail, or the extent to which any relevant policy or statutory provision should prevail, and (4) in the analysis under (1), (2) or the structured analysis under (3), assess the nature of the activity against the values inherent in the relevant policies or statutory provisions in the particular circumstances. **IM-P3 – Providing for *mana whenua* cultural values in achieving integrated management** Recognise and provide for the relationship of Kāi Tahu with natural resources by: (1) enabling *mana whenua* to exercise rakatirataka and *kaitiakitaka*, (2) facilitating active participation of *mana whenua* in resource management processes and decision making, (3) incorporating mātauraka Māori in processes and decision-making, and (4) ensuring resource management provides for the connections of Kāi Tahu to *wāhi tūpuna*, wai māori (including awa [rivers] and roto [lakes] and wai tai (including te takutai moana [coastal marine area]) and *mahika kai* and habitats of taoka species.	There are no irreconcilable conflicts with the provision of the RPS or other statutory provisions. The Applicant has recognised and made provision for the involvement of mana whenua in the proposal.

Otago Regional Council

LF-WAI-O1 – *Te Mana o te Wai*

Otago's *water bodies* and their health and well-being are protected, and restored where they are *degraded*, so that the mauri of those water bodies is protected, and the management of *land* and *water* recognises and reflects that:

(1) *water* is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,

(2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,

(3) each *water body* has a unique whakapapa and characteristics,

(4) *fresh water, land,* and *coastal water* have a connectedness that supports and perpetuates life,

(4A) protecting the health and well-being of *water* protects the wider *environment*,

(5) Kāi Tahu exercise rakatirataka, manaakitaka and their *kaitiakitaka* duty of care and attention over wai and all the life it supports, and

(6) all people and communities have a responsibility to exercise stewardship, care, and respect in the management of *fresh water*.

LF-WAI-P1 – Prioritisation

In all decision-making affecting *fresh water* in Otago, prioritise:

(1) first, the health and well-being of *water bodies* and *freshwater* ecosystems (te hauora o te wai) and the exercise of *mana whenua* to uphold this,

(2) second, the health needs of people, (te hauora o te tangata) interacting with *water* through:

  (a) ingestion (such as drinking of water and consuming resources harvested from the water body),

  (b) immersive activities (such as harvesting resources and primary contact), and

  (c) personal hygiene activities (such as food preparation, utensil washing, oral hygiene, showering and flushing the toilet), and

(3) third, the ability of people and communities to provide for their social, economic, and cultural well- being, now and in the future.

LF-WAI-P2 – Mana whakahaere

Recognise and give practical effect to Kāi Tahu rakatirataka in respect of *fresh water* by:

(1) facilitating partnership with, and the active involvement of, *mana whenua* in *freshwater* management and decision-making processes,

(2) sustaining the environmental, social, cultural and economic relationships of Kāi Tahu with *water bodies*,

(3) providing for a range of customary uses, including *mahika kai*, specific to each *water body*,

(4) incorporating mātauraka into decision making, management and monitoring processes, and

(5) managing wai and its connections with whenua in a holistic and interconnected way – ki uta ki tai.

LF-WAI-P4 – Giving effect to *Te Mana o te Wai*

All persons exercising functions and powers under this RPS and all persons who use, develop or protect resources to which this RPS applies must recognise that LF-WAI-O1, LF-WAI-P1, LF-WAI-P2 and LF-WAI-P3 are fundamental to upholding *Te Mana o te Wai*, and must be given effect to when making decisions affecting *fresh water,* including when interpreting and applying the provisions of the LF chapter.

Maintenance of the sill structure is required to enable it to continue to protect the functioning of Lake Tuakitoto and associated wetlands and their ecological and cultural values.
The proposal is considered to be consistent with the relevant policies of the Iwi Management Plan and affected party approval has been provided on behalf of mana whenua.

Table 7: Additional relevant objectives and policies of the RPS 2021

Proposed RPS 2021 Shaded objectives and policies are under appeal and weighting will be given to them	Assessment
LF-FW-O10 – Natural character The natural character of *wetlands, lakes* and *rivers* and their margins is preserved and protected from inappropriate subdivision, use and development. **LF-FW-P14 – Restoring natural character and instream values** Where the natural character or instream values of *lakes* and *rivers* or the natural character of their margins has been reduced or lost, promote actions that, where practicable: (1) restore a form and function that reflect the natural behaviours of the *water body*, (2) improve *water* quality or quantity where it is *degraded,* (3) increase the presence, *resilience* and abundance of indigenous flora and fauna, including by providing for fish passage within *river* systems, and where necessary and appropriate, creating fish barriers to prevent incursions from undesirable species, (4) improve *water body* margins by naturalising bank contours and establishing indigenous vegetation and habitat, and (5) restore natural connectivity between and within *water* systems.	The proposal does not result in the inappropriate use and development of rivers and their margins and will increase the resilience and abundance of indigenous fauna by providing fish passage within the river system.

Assessment against the Regional Policy Statements

Section 104(2F) of the RMA only directs that consent authorities must not have regard to clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020). However, it does not otherwise direct that consent authorities must not have regard to provisions of other planning documents, such as regional policy statements, that similarly relate to the hierarchy of obligations. For completeness, policy LF-WAI-P1 (Prioritisation) has been given regard to for the purposes of this proposal, but in any case consideration of this policy, or not, does not have any substantial impact on the recommendation in respect of the proposal.

Overall, subject to the recommended conditions of consent, it is considered that the application is consistent with the relevant objectives and policies of the ORPS 2019 and the P-ORPS 2021.

2.4.5 Regional Plan: Water

Relevant objectives and policies of the RPW are found in Chapter 5 (Natural and Human Use Values of Lakes and Rivers), Chapter 7 (Water Quality) and Chapter 8 (The Beds and Margins of Lakes and Rivers). *Only include and discuss relevant policies. Delete those not required.*

Policy 5.4.2 To undertake the works in a manner that avoids, in preference to remedying or mitigating, adverse effects on natural values and character, ecology and habitat, water supply values, historic places or archaeological sites, values of significance to Kai Tahu, amenity values, lawful water users and causing or exacerbate flooding, erosion, land instability, sedimentation or property damage.

Policy 5.4.4 To recognise Kai Tahu's interests in Otago's lakes and rivers by promoting opportunities for their involvement in resource consent processing.

Policy 5.4.6 Legal public access to and along the margins of lakes and rivers will only be restricted where necessary…to protect the health or safety of people and communities, to ensure a level of security consistent with the purposes of a resource consent; or in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.

Policy 5.4.7 Where existing public access to or along the margins of Otago's lakes or rivers is restricted, the provision or enhancement of alternative access may be required with respect to the restriction of existing legal public access, and will be promoted with respect to the restriction of informal access arrangements.

Policy 5.4.8 To have particular regard to topography, natural flow characteristics or water levels, water colour and clarity, ecology, the extent of use or development within the catchment, when considering adverse effects on natural character of lakes, rivers and their margins.

Policy 5.4.9 To have particular regard to aesthetic values and recreational opportunities provided by a lake or river, or its margins when considering adverse effects on amenity values.

Policy 8.5.1 To require, where necessary, desirable and practicable, any structure in or on the bed of any lake or river to provide for fish migration through or past it, or alternative remedial measures where fish migration is not practicable.

Policy 8.6.1 To have regard to any adverse effect on the spawning requirements of indigenous fauna, and trout or salmon; bed and bank stability; water quality; amenity values caused by any reduction in water clarity; and downstream users.

Policy 8.6.2 To promote best management practices for activities that occur within or adjacent to the bed of lakes and rivers in order to avoid, remedy or mitigate any adverse effect.

The maintenance of the sill structure is essential to ensuring it can continue to function in a manner that maintains water levels in Lake Tuakitoto and the associated wetland areas. The assessment of adverse effects indicates adverse effects associated with the maintenance works will be less than minor and freshwater and ecosystems will not be degraded as a result of the works. Potential adverse effects on indigenous fauna will be avoided by undertaking works outside the spawning season and the proposed maintenance will include the provision of a fish passage ramp, improving fish passage past the structure in both directions. The proposed construction methodology will protect defences against water adjacent to the site and the Applicant has obtained approval for the works under the Flood Management and Protection Bylaw. The Applicant has consulted mana whenua regarding this proposal and affected party approval for the works has been obtained.

Overall, subject to the recommended conditions of consent, it is considered that the application is consistent with the relevant objectives and policies of the RPW.

2.5 Section 104(1)(c) Any other matters

2.5.1 The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP)

The NRMP is considered to be a relevant other matter for the consideration of this application. This is because the RPW is yet to be amended to take into account this Plan and this Plan expresses the attitudes and values of the four Papatipu Rūnaka: Te Rūnanga o

Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga. The following objectives and policies are of most relevance to this application:

- To require that work be undertaken when water levels are naturally low or dry.
- To require that works are not undertaken during spawning season of certain fish species and fish passage is provided for at all times.
- To require that any visual impacts at the site of the activity are minimal.
- To require that all practical measures are undertaken to minimise sediment or other contaminant discharge and that wet concrete does not enter active flow channels.
- To require that machinery only enters the dry bed of the waterway to the extent necessary to undertake the work, and that it is kept clean and well-maintained, with refuelling occurring away from the waterway. Machinery operating in flowing water is to be discouraged.
- To require that buffer zones are established and agreed upon with the Papatipu Runaka between the flowing water and the site of any river or instream work.

The proposed works will be undertaken during the summer season when water levels are naturally low and outside spawning season to the extent possible. Fish passage will be maintained by limiting the area of operational bunds within SD222 to only part of the channel at any time. No machinery will operate from within the waterway and conditions are proposed to ensure they are clean and refuelling will occur away from the waterway.

Overall, subject to the recommended conditions of consent, it is considered that the application is consistent with the above policies of the NRMP. Aukaha did not identify any concerns and provided written approval to the proposal.

There are no other matters considered relevant or reasonably necessary to determine the application.

3. Part 2 of the Act

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, sections 5, 6, 7 and 8.

The Court of Appeal has recently clarified how to approach the assessment of “subject to Part 2” in section 104(1). In *R J Davidson* the Court of Appeal found that (in summary):[5]

- Decision makers must consider Part 2 when making decisions on resource consent applications, where it is appropriate to do so. The extent to which Part 2 of the RMA should be referred to depends on the nature and content of the planning documents being considered.
- Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the consent authority. The consideration of Part 2 "would not add anything to the evaluative exercise" as "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". However, the consideration of Part 2 is not prevented, but Part 2 cannot be used to subvert a clearly relevant restriction or directive policy in a planning document.

[5] R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316.

- Where it is unclear from the planning documents whether consent should be granted or refused, and the consent authority has to exercise a judgment, Part 2 should be considered.
- If it appears that the relevant planning documents have not been prepared in a manner that reflects the provisions of Part 2, the consent authority is required to consider Part 2.

The application is consistent with the purpose and principles of the Act, as outlined in Sections 5-8. The proposed activity will enable the natural and physical resources of the river to meet the reasonable foreseeable needs of future generations and have a no more than minor effect on the life-supporting capacity of the ecosystem associated with the watercourse. The recommended consent conditions will ensure that any adverse effects of the activity will be avoided, remedied or mitigated. There are no matters of national importance that may be affected by the proposed activity. Particular regard has been given to intrinsic values of ecosystems maintenance and enhancement of the quality of the environment. The proposed activities are consistent with these matters, provided recommended consent conditions are adopted. The principles of the Treaty of Waitangi have been taken into account and the application has been processed according to Council's protocol for consultation with Iwi.

Overall, the application is considered to be consistent with Part 2 of the Act, given the nature of the activity and the proposed conditions of consent.

4. Section 108 and 108AA of the Act

The attached conditions are recommended in accordance with Sections 108 and 108AA of the Act. These conditions have been recommended because:

- The conditions will provide certainty regarding the measures to be adopted to give effect to the consent based on final design.
- The conditions will ensure effects on the environment are managed to avoid or mitigate adverse effects.
- The conditions will enable the adaptive management of mitigation measures during construction to manage adverse effects.

5. Recommendation

That the Council grants to the Otago Regional Council Land Use Consent RM25.221.01 and discharge permit RM25.221.02, subject to the terms and conditions set out in the attached consent.

5.1 Reasons for the Recommendation

(a) The effects of the activity are expected to be less than minor.
(b) The activity is consistent with the relevant statutory requirements.
(c) The activity is consistent with Part 2 of the Act.

5.2 Term of Consent

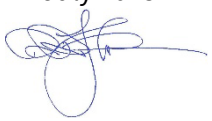
Case law has distilled the following factors that will be relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;

- Whether adverse effects would be likely to increase or vary during the term of the consent;
- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
- That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
- Whether review conditions are able to control adverse effects;
- Whether the relevant plan addresses the question of the duration of a consent;
- The life expectancy of the asset for which consents are sought;
- Whether there was significant capital investment in the activity/asset; and
- Whether a particular period of duration would better achieve administrative efficiency.

The application seeks a term of three years. A consent term of three years is recommended for the following reasons:

- A three year term will enable detailed design for the proposal to be completed and will provide some flexibility around the timing of construction enabling the Applicant to avoid works when conditions are unfavourable.
- A three year term provides some flexibility if construction is delayed due to short term changes in priorities.
- A three year term provides certainty that the works will be implemented in a timely manner and reduces the risk that the potential impacts may change during the period between the issuing of decision and the implementation of the consent.

Name: Ralph Henderson
Title: Consultant Planner
Date: 17 July 2025
Signature: 

Otago Regional Council

DECISION ON RESOURCE CONSENT APPLICATION

Section 113 of the Resource Management Act 1991

Date: 25 July 2025.

Application No: **RM25.221.01 and RM25.221.02**

Subject: ***Decision on non-notified resource consent application under delegated authority***

1. Notification

The application was approved to be processed non-notified and under delegated authority on 25 July 2025.

2. Decision and Reasons for Decision

I have considered the information provided, reasons and recommendation in the above report.

No principal issues were in contention and no evidence was heard as this was a non-notified consent that did not require a hearing. There are no main findings as it relates to any principal issues in contention.

I agree with the reasons and recommendations provided by Consultant Planner Ralph Henderson in the above report and adopt them as the reasons for decision under Section 113(1) to (3). This decision, report and any accompanying letter are the written decision under Section 113(4).

3. Conditions (section 108)

Pursuant to sections 108 and 108AA of the RMA, this consent is issued subject to the appended conditions.

4. Decision under delegated authority

Under delegated authority, this resource consent application is granted by the Otago Regional Council by:

Allan Cubitt
Independent Decision Maker for Otago Regional Council

Otago Regional Council