

IN THE MATTER OF
AND
IN THE MATTER OF

the Resource Management Act 1991

Resource consent applications by Te
Rūnanga o Awarua, Department of
Conservation and Environment
Southland, for the periodic opening of the
Waituna Lagoon, Kapuka South,
Southland (APP-20242456)

**DECISION OF THE HEARING COMMISSIONERS APPOINTED BY SOUTHLAND
REGIONAL COUNCIL PURSUANT TO SECTION 34A OF THE RESOURCE
MANAGEMENT ACT 1991**

Independent Commissioners:

Mark St.Clair (Chair)

Ian Boothroyd

Megen McKay

13 October 2025

APPOINTMENTS

- [1] Pursuant to Section 34A of the Resource Management Act 1991 (RMA), independent commissioners Mark St Clair (Chair), Ian Boothroyd and Megan McKay were appointed as commissioners by Southland Regional Council (SRC) to hear and determine the application lodged by the “Applicants” Te Rūnanga o Awarua, Department of Conservation (DOC) and Environment Southland for various resource consents for the periodic opening of the Waituna Lagoon, Kapuka South, Southland.

PROCEDURAL MATTERS

- [2] For the purposes of this decision report and for clarity, we refer to Environment Southland (ES) in its role as one of the applicants and Southland Regional Council (SRC, or “Council”) in its role as the consent authority as well as in its role in providing Section 42A of the RMA report/s and legal advice to the Panel.

Directions

- [3] SRC issued a hearing notice and timeframes for pre-circulation of the Section 42A report and evidence in accordance with Section 103B of the RMA. Our Minute #1, set out the manner in which the hearing was to be conducted. In addition, the Minute addressed a request from the Applicants to amend the Section 103B timetabling for the Section 42A report and Applicants’ evidence, and a request to hear from one expert witness, Dr Robertson, after the main hearing dates and sought input from the parties.
- [4] In Minute #2, having considered the input from the parties we granted the amendments to the timeframes and the request to hear from Dr Robertson after 8 August 2025. We record that the Section 42A Report and evidence pre-circulation was duly filed in line with the timetable. Minute #3 addressed submitters who did not wish to be heard, now wishing to be heard and our request for the organisation of site visits. Minute #4 addressed expert witness availability for expert conferencing and Minute #5 addressed a submitter’s request for a change of venue, that we declined. In Minute #6 we set out a request for some plans/maps to be available at the hearing, as well as some initial questions to be addressed at the hearing itself. Minute #7 set out further details as to the site visits.
- [5] Following the hearing (29 – 31 July 2025) we issued Minute #8 which set the time for hearing from Dr Robertson, directed the timeframe for independent facilitated conferencing amongst the planning witnesses as to conditions of consent and preparation of a Joint Witness Statement (JWS), the opportunity for submitters to respond to the risk assessment provided by the Applicant, any matters raised by Dr Robertson and comment on any matters in the conditions in the JWS; and for the Applicants’ right of reply.
- [6] In Minute #9 we addressed a request from Counsel of Federated Farmers for their expert witness to be excluded from the planning witnesses conferencing as to conditions. We left the decision on participation in the conferencing to the party.
- [7] Having heard from Dr Robertson on 13 August 2025, we issued Minute #10 setting out a range of matters that we requested the Applicant’s address in their reply statement.
- [8] The timeframes set out in Minute #8 were duly complied with by the parties, with the exception of a late response as to matters raised by Dr Robertson and the conditions in the JWS, which we accepted in Minute #11.

[9] On receipt of the Applicants' right of reply and having considered we had all the information we required, we closed the hearing (on 22 September 2025) by way of Minute #12.

[10] For completeness, we have annexed copies of the minutes to this decision as **Schedule 1**.

Preliminary Matters

[11] Before addressing the substantive matters as to the application, we begin by addressing any preliminary matters.

Scope

[12] At the hearing we questioned the Counsel as to the scope of our decision making in regard to a number of submissions that sought, if we granted consent, the authorisation or requirement for the opening of the lagoon to the sea at levels of 2.0maASL (mean average sea level) or 2.2mASL. Our initial questions were around jurisdiction to make such a decision or would such conditions frustrate the application sought. Ms Williams for the Applicants submitted that the levels sought were beyond the intent of the application. Ms Cook-Munro, Counsel for Federated Farmers submitted that such a condition was within scope, would be consistent with the last consent granted, that such a condition should be reasonably expected from discussion with the submitters and community, and could be imposed as it is reasonably related to the proposed activity.¹

[13] Mr Doesburg, Counsel for SRC² acknowledging that conditions cannot be imposed to frustrate the grant of a consent, submitted that, the fundamental issue in terms of our jurisdiction was that we could not impose lower opening thresholds than was applied for, because a consent cannot be granted for more than what was applied.³ As such, Mr Doesburg submitted that we could not grant consent authorising or requiring opening at 2.0mASL or 2.2mASL and that the upper limit of any diversion sought is 2.3mASL which is therefore the upper limit of the activity that can be authorised.

[14] Noting that the presentations of many of the submitters expressed concerns as to the management of the Waituna Catchment and lagoon and various alternative solutions had been offered, Mr Doesburg submitted the Panel's decision-making function was limited to considering and determining the application before it and not those wider matters.

[15] In reply, Ms Williams, further addressed the issue of frustrating the purpose of consent, submitting that not granting for a 2.5mASL for 7 days and the requirements for the water level to be regime to be implemented over the full 20-year period sought would also frustrate the purpose of the application, being the restoration of the lagoon's ecological health and cultural values.⁴ We return to the issue of duration later in the decision.

[16] The Panel acknowledge the wider catchment issues raised by many submitters and in particular the environmental improvements drawn to our attention made by the farming community, as well as, suggested alternative approaches. That said, from a legal

¹ Legal Submissions, Ms JM Cook-Munro, Paras 4.20 – 4.25

² Legal Submissions, Mr M Doesburg, Paras 3 - 10

³ *Sutton v Moule* (1992) 2 NZRMA 41 (CA).

⁴ Reply Statement, Ms P Williams, Paras 5 - 16

perspective we accept Mr Doesburg's submissions as to the proper approach to our decision-making function. As such we confine our decision to the matter of the application before us and record that any opening below 2.3m is beyond the scope of the application.

Council Functions and Flood Control

- [17] At this point we also record the position advanced by Federated Farmers that, "*The application needed to have addressed the functions of the Council - under the RMA, the LGA (Local Government Act 2002)*⁵ *and the Soil and Conservation and Rivers Control Act 1941 (SCRCA)*⁶ - to provide an assessment of how the application has met all of the statutory requirements set out in these Acts."⁷ This position was supported by evidence from Ms Sannazzaro, which in summary, suggested linkages between the lagoon opening and the efficient operation of the Council's Flood Control works⁸, and that an application for cultural and ecological purposes undermined one of Council's other functions, namely Flood Control Works. In addition, Ms Sannazzaro opined that the Council's use of emergency works provisions (Section 330 of the RMA) for previous openings of the lagoon indicates that the lagoon is flood control infrastructure.⁹
- [18] In responding to our questioning, Ms Cook-Munro and Ms Sannazzaro were unable to provide any documentation that the lagoon formed part of any flood control scheme; Ms Cook-Munro suggesting Policy 34 of proposed Southland Water and Land Plan (SWLP) indicates wetlands assist with flood control. Mr Doesburg, for SRC, submitted that the application was not an inquiry into the other functions of Council, that the maps associated with the Southland Flood Control and Drainage Management Bylaws include Waituna Creek but not the lagoon and that Policy 34 of the SLWP was a general statement and not confirmation that wetlands in the Southland Region are flood control works. He further explained reasons why the Council would not rely on emergency powers to manage such infrastructure if the lagoon was a flood control work.¹⁰ In reply, Ms Williams submitted that the lagoon, "... is not a "flood control work" as defined by the Bylaw ⁴¹ as it is not managed by or on behalf of the Council, being a scientific reserve administered by the Department."¹¹
- [19] Having carefully reviewed the various documents¹² drawn to our attention as to flood control infrastructure and considered the submissions of Counsel and evidence presented for the parties as to flood control and functions of Council, we find that the lagoon is not flood control infrastructure and the wider functions of Council under other legislation are not relevant to our decision making as to the application before us. That said, we concur with Mr Doesburg that we are able to consider the effects of application on the Waituna Creek Drainage System. Ms Petricevich, in response to matters raised in the hearing, noted that "*the Application is for the opening of the lagoon and reduction in water levels, so does not adversely impact on the flood infrastructure and management of it.*"¹³ We agree with that assessment.

⁵ In brackets added

⁶ In brackets added

⁷ Legal Submissions, J Cook-Munro, Para 4.12

⁸ Evidence in Chief (EIC), Ms K Sannazzaro, Paras 47-73

⁹ EIC, Ms K Sannazzaro, Paras 54 - 61

¹⁰ Legal Submissions, M Doesburg, Paras 31-40

¹¹ Reply Statement, Ms P Williams, Para 58 (Footnote omitted)

¹² Regional Policy Statement 2017, Southland Flood Control and Drainage Management Bylaw, Southland Water and Land Plan 2024

¹³ Response to matters raised in the hearing, Ms D Petricevich, dated 31 July 2025, Page 2.

Joint Applicants

- [20] A number of submitters raised issues in submissions and in their presentations to us, as to ability of the three applicants to work together in implementing any consent if granted. Ms Williams addressed the context of the three applicants and reasons for making the joint application in opening¹⁴ and in reply provided further detail as how the applicants would together work together if consent granted, including setting out the various roles and responsibilities and advising that the registered charitable trusts of Te Wai Pārerā Trust or Whakamana Te Waituna Charitable Trust were not part of the application group.¹⁵
- [21] Who the applicant/s are is not a matter for us. The ability for the Applicants to work together in implementing any granted consent is for them and we are entitled to assume that any applicant will comply with any conditions of consent imposed. Any compliance issues as to any conditions is a matter for the regulatory arm of Council. We accept the Applicants' clarifications as how they would work together and implement the consent if granted.

Requirement for land use consent application

- [22] In response to our questions in Minute #6, Ms Williams, submitted that land use consent under Section 9(3) of the RMA was not required due the application of Section 4(3) of the RMA¹⁶ which states;

(3) [Section 9\(3\)](#) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the [Conservation Act 1987](#) or any other Act specified in [Schedule 1](#) of that Act (other than land held for administrative purposes) that—

(a) is consistent with a conservation management strategy, conservation management plan, or management plan established under the [Conservation Act 1987](#) or any other Act specified in [Schedule 1](#) of that Act; and

(b) does not have a significant adverse effect beyond the boundary of the area of land.

- [23] Ms Williams further submitted that the application is on conservation land, the Department is a co-applicant, the proposal is consistent with the conservation management strategy and there would not be significant effects in the Coastal Marine Area (CMA) beyond the reserve.¹⁷ As such no land use consent was required. We also record that Ms Williams, during the hearing, handed up copies of the relevant sections of the Gazette Notices. No party challenged this position and as such we adopt it.

Site visit

- [24] We undertook a site visit to the Waituna Lagoon on 28 July 2025 to familiarise ourselves with the proposed opening points and the surrounding environment. As explained at the hearing, we were shown around the area by Ms P Hoffman, a DOC ranger, and boat skippers Mr R Miller and Mr C Owen. We also record that those persons were not involved in the hearing. In addition, we undertook site visits to three

¹⁴ Legal Submissions, Ms P Williams, Paras 5-10

¹⁵ Reply Statement, Ms P Williams, Paras 26-54

¹⁶ Legal Submissions, Ms P Williams, Paras 18-19

¹⁷ Legal Submissions, Ms P Williams, Paras 20 -26

submitters' properties on the 1 August 2025. For those site visits we were accompanied by Mr C Duncan, who again was not involved in the hearing itself. For completeness we record that Ms C Ongko, the hearing administrator for SRC, also accompanied us on the site visits.

Decision format

[25] We have had regard to the requirements of Section 113 of the RMA when preparing this decision. We note that we have acted in accordance with Section 113(3) which states:

“A decision prepared under subsection (1) may, -

- (a) instead of repeating material, cross-refer to all or a part of -
 - (i) the assessment of environmental effects provided by the applicant concerned:
 - (ii) any report prepared under section 41 C, 42A, or 92; or
- (b) adopt all or a part of the assessment or report and cross-refer to the material accordingly.”

[26] During the course of the hearing it became apparent that there were particular issues in relation to activity status, ecological effects, cultural values, public access and recreational effects, operational effects and other matters. We therefore focused our questions on these matters. We have consequently focused our decision on those same matters.

THE APPLICATION PROCESS

[27] Taylor Planning Ltd, on behalf of the Applicants, lodged a resource consent application dated 5 July 2024, with SRC for a suite of resource consents for the periodic opening of the Waituna Lagoon, Kapuka South, Southland. Public notification was sought by the Applicants with the application being publicly notified on 6 August 2024, with the submission period closing on 3 September 2024.

[28] Fifty-one (51) submissions were received during the submission period. Forty-two (42) submissions were opposed to the proposal, one (1) neutral, and eight (8) submissions were in support.¹⁸ A summary of the submissions was provided in the Section 42A report¹⁹ and is not repeated here.

[29] We record that we read the submissions in full and have had regard to them as part of our evaluation of the application.

[30] The Applicants provided additional information in November 2024, including;

- a) Review of Waituna Lagoon water balance modelling – R Measures
- b) Validation of Waituna Lagoon inundation and land drainage modelling – R Measures
- c) Advice on impact to CMA from Waituna opening – R Babel
- d) Draft Communications plan – Opening the Waituna Lagoon

[31] We record that there was a pre-hearing meeting held on 7 March 2025 in relation to the proposal. The resultant report required under Section 99 of RMA was included in the Section 42A Report²⁰ and we have had regard to the report in making our decision.

¹⁸ Section 42A Report, Ms D Petricevich, Paras 2.6.1 – 2.6.3

¹⁹ Section 42A Report, Ms D Petricevich, Paras 2.6.4 and Appendix H

²⁰ Section 42A Report, Ms D Petricevich, Appendix D

- [32] Post the pre-hearing meeting, SRC commissioned a report on freshwater and coastal ecology, and water quality effects under Section 92(2) of the RMA. The resultant report was included in the Section 42A Report.²¹
- [33] In addition, the Applicants provided further information in response to matters raised in the pre-hearing meeting as to governance structure, decision making tree, draft communications plan and further updates to proposed conditions. This information was distributed to the submitters by the Applicants. In addition, this information was included in the Section 42A Report.²²
- [34] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. In addition, a number of Joint Witness Statements (JWS) were filed including JWS – RMA Planners dated 28 July 2025²³ and Hydrodynamic and Land Drainage Experts JWS dated 29 July 2025. A further JWS from the planning experts and independently facilitated to address matters raised by us at the hearing in relation to conditions of consent should the application be granted, was filed on 29 August 2025.
- [35] We record that we read all of the evidence and have taken it into account as part of our evaluation of the application.

THE HEARING and ATTENDANCES

- [36] The hearing commenced at the SRC offices, Council Chambers, 220 North Rd, Waikiwi, Invercargill on 29 July 2025, at 9.00am. The hearing continued on the 30 and 31 July 2025, with the hearing being adjourned at 4.53pm on the 31 July 2025. As set out in Minute #4 the reason for the adjournment being to hear from Dr Robertson via Microsoft Teams which occurred on the 13 August 2025 from 10.30am till 12.18pm. The hearing was adjourned to provide the opportunity and time for expert conferencing on conditions, for the submitters to provide comment on the conditions resulting from that conferencing and for the Applicant's right of reply in writing. We record that those responses were, with one exception, duly filed in accordance with the time frames set out in Minute #8.
- [37] Having considered that we had all the information we required, we closed the hearing by way of minute (Minute #12) on 22 September 2025.
- [38] The attendances at the hearing were as follows:

Applicants

- [39] For the Applicants:

- Ms P Williams – Counsel for the Applicants;
- Mr D Whaanga - Kaiwhakahaere Kaupapa Taiao Te Ao Mārama Inc. Te Rūnanga o Awarua;
- Ms M De Winton – Freshwater Ecology (Vegetation) - National Institute of Water and Atmospheric Research (NIWA);

²¹ Section 42A Report, Ms D Petricevich, Appendix G

²² Section 42A Report, Ms D Petricevich, Appendix G

²³ Handed up to Panel, 3.30pm on 29 July 2025.

- Dr R Holmes – Freshwater Ecology (Fish) – Cawthron Institute;
- Mr S Jacques – Avifauna - Biodiversity Supervisor Department of Conservation (DOC);
- Mr J Airey – Recreation Values – Supervisor Heritage and Visitor, DOC;
- Dr M Schallenberg – Limnology – Director and Principal Scientist, Hydrosphere Research Ltd;
- Mr A Rabel – Water quality and Coastal ecology – Acting Manager – Science Investigations and Operations – Environment Southland;
- Mr R Measures – Hydrology – New Zealand Institute for Earth Sciences;
- Dr H Robertson – Freshwater Ecology – Principal Science Advisor, DOC; and
- Ms L Thorne – Planning - Taylor Planning Limited.

Submitters

[40] The following submitters:

- Mr D Simms
- Mr N De Haan
- Ms K Robertson
- Mr L McCallum
- Southern Star Farms Ltd;
 - (a) Mr D Crack
 - (b) Mrs J Crack
 - (c) Mr K Crack
 - (d) Mrs A Crack
 - (e) Mr Q Scandrett
 - (f) Mr J Scandrett, expert witness Agricultural and Engineering Consultant, Scandrett Rural Limited.
- Waituna Catchment Group
 - (a) Mr M van Rossum
 - (b) Mr M O'Connor
 - (c) Mr L Ballantine
 - (d) Mr A Egbers

- (e) Mrs A Crack
- (f) Mr D Crack
- (g) Mrs R van Gool on behalf of Mrs G Munro
- (h) Mr B Perriam
- (i) Mr M Waghorn;
- Southland Federated Farmers of New Zealand (Incorporated);
 - (a) Ms J M Cook Munro – Legal Counsel for Federated Farmers of New Zealand (incorporated) and
 - (b) Ms K Sannazzaro- Planning expert witness – Senior Policy Advisor for Federated Farmers of New Zealand (incorporated).
- Mr B McCrostie;
- Mr R McCrostie;
- Mr T Tatham;
- Mr P Duffy;
- Mr E Pirie;
- Mr L Esler;
- Southland District Council;
 - (a) Mr H Hare – Strategic Transport Manager
- Mr I Welsh;
- Mr G Hayes;
- Mrs R van Gool; and
- Mrs G Munro.

Council officers

- [41] The following council officers were in attendance and responded to matters raised:
- Ms D Petricevich - Consultant planner for SRC - SLR Consulting Ltd; and
 - Mr M Doesburg – Counsel representing SRC – Wynn Williams.
- [42] A Section 42A Report was prepared by Ms D Petricevich for SRC.
- [43] We were assisted in an administrative capacity by Ms C Ongko, Hearing administrator at SRC.

- [44] The parties provided additional material in response to our directions and questions at the hearing.
- [45] All of the material presented by the above parties is held on file at SRC. We took our own notes of the verbal presentations and any answers to our questions. For the sake of brevity, we do not repeat that material in the decision. However, we do refer to relevant matters raised in the material in subsequent parts of the decision.

LOCATION and SURROUNDING AREA

- [46] The location and surrounding area were fully described in section 5 of the application including description of the Waituna Catchment, the Waituna Lagoon itself and the coastal environment²⁴ as well as additional information included in the relevant Section 92 of the RMA responses. We adopt that description. Similarly adopting that description the Section 42A Report provides a summary of the site description and surrounding environment, which we consider useful and have set out in full:

2.3.2 Surrounding environment:

- The application site is the Waituna Lagoon, which is located within the Waituna (surface water) Catchment (see Figure 1).
- Land use within the catchment is a mixture of rural residential, arable, forestry, sheep, beef and dairy.
- Land use in the area surrounding the lagoon largely comprises of land used for primary production of which the majority is dairy land use.
- Land on the boundary of the lagoon is a mixture of privately owned land, and land owned by the Southland Regional Council or Te Wai Pārera Trust. This is shown in Figure 5 of the application.

2.3.3 Waituna Lagoon:

- The Waituna Lagoon is a large, brackish coastal lagoon located 40km southeast from Invercargill, fed by the Waituna, Carran and Moffat Creeks, and is approximately 1,350ha in size.
- Waituna Lagoon is within the Coastal Environment but is outside of the CMA.
- The water quality of the lagoon is affected by nutrient and fine sediment inputs from the catchment (riverine and groundwater), macrophyte and phytoplankton abundance, internal recycling of nutrients from sediments, and the open/close status of the lagoon.
- The Waituna Lagoon and surrounding wetlands are public conservation land, classified as a Scientific Reserve under the Reserves Act 1977.
- The ecological significance of the Waituna Lagoon and wetlands are recognised through its classification as a Ramsar wetland of International Importance (Ramsar site no. 102).
- Ngāi Tahu ki Murihiku have a long association with Waipārera (Waituna Lagoon), with it being an important area for mahinga kai. Additionally, wetlands are home to many taonga species and are important spawning and breeding grounds.
- Wāhi tapu and wāhi taonga are found along the shores of Waipārera due to the many years of occupation and use.
- The cultural significance of the lagoon is recognised through a Statutory Acknowledgement, under Section 206 and Schedule 73 the Ngāi Tahu Claims Settlement Act 1998. This acknowledges Ngāi Tahu's cultural, spiritual, historic, and traditional association to Waituna.
- The SWLP identifies the Waituna Scientific Reserve as a Regionally Significant Wetland and the Waituna lagoon as a Sensitive Waterbody.

²⁴ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 4

- The Southland District Plan identifies the Waituna Lagoon and wetland complex as an outstanding natural feature/landscape.
- Historically, the lagoon has been artificially opened to the sea primarily for land drainage reasons, this is detailed in Section 7 of the application. This activity requires resource consents, of which none have been in place since 2021.
- Walker's Bay has been the primary opening location, however Hansen's Bay and 'The Fence' have also been used as opening locations (see Figure 2).
- Since 2021 the lagoon has been opened twice under emergency works provisions to manage water quality within the lagoon. These openings occurred in January and September 2024, at 'The Fence' and at Walker's Bay (respectively). An aerial image of the opening undertaken in January 2024 is shown below as Figure 3.

- The September 2024 opening remained open for approximately seven months (closing on 7 May 2025).



Figure 1: Waituna Catchment (Source: Environment Southland Beacon Maps)



Figure 2: Opening locations (Source: Resource Consent Application)



Figure 3: Image of January 2024 Waituna Lagoon Opening at 'The Fence' (Source: Google Earth, 13/02/2024)

THE PROPOSAL

- [47] The proposal was described in a series of documents that formed the application²⁵, the Section 92 responses²⁶ and was summarised in the Section 42A Report prepared by Ms Petricevich²⁷ as well as by Ms Thorne²⁸. We record that the Section 42A Report includes details of the changes to trigger levels and timeframes of the proposed openings made by the Applicant in response to matters raised by submitters leading up to the issuance of the Section 42A Report.²⁹
- [48] The Applicant's proposal was further altered during the course of the hearing,³⁰ in relation to the alternative location openings at "the Fence" and Hansens Bay, where

²⁵ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 4

²⁶ Section 92 Responses from Tonkin and Taylor, Dated Letter 1 – 17 July 2023, Letter 2 – 27 July 2023, Letter 3 Dated 2 July 2023, Letter 4 – 18 August 2023, and Letter 5 – 14 August 2023

²⁷ Section 42A Report, Ms D Petricevich, Section 2.2

²⁸ EIC, Ms L Thorne, Paras 21 - 26

²⁹ Section 42A Report, Ms D Petricevich, Sections 2.2.3 and 2.2.5

³⁰ Applicants' Response to Minute #8, dated 12 August 2025

Applicant's identified specified particular co-ordinates at the "the Fence" and Hansens Bay within which the openings could occur rather than anywhere across the bar as in the original application. In addition, the Applicants responded to what standards the alternative opening locations would be assessed against and how that should be enabled in the conditions. In reply we observe that Applicants' were not opposed to the conditions set out in the Planning JWS of 29 August 2025 which included the above two matters, save as to minor amendments, which we address below.

[49] We find it useful to set out a brief summary of the main aspects of the proposal that was the focus of our decision, which we record as follows:

- The purpose - to manage poor water quality and other risks to the lagoon that result from the cumulative adverse effects of contaminant discharges and land use activities within the catchment; and reduce the frequency of openings to protect the lagoon ecosystem by opening at higher threshold levels than consented previously, to protect and restore its biodiversity, and when necessary to provide for fish passage.
- The proposed trigger levels for openings are as follows;
 - For years 1-5, summer openings (1 September to 30 April) may occur if water levels are at or above 2.4mASL for 24 hours; and winter openings (1 May to 30 August) may occur if water levels are at or above 2.3mASL for seven consecutive days;
 - For years 6-10, openings may occur if water levels are at or above 2.4mASL for three consecutive days;
 - For years 11-15, openings may occur if water levels are at or above 2.5mASL for three consecutive days; and
 - For years 16-20, openings may occur if water levels are at or above 2.5mASL for seven consecutive days.

ACTIVITY STATUS AND RULES

[50] The application³¹ and the Section 42A Report³² set out the applicable rules under the SWLP, the Regional Coastal Plan for Southland (RCP), the regulation of the National Environmental Standards for Freshwater (NES-FW) and relevant sections of the RMA. In the JWS, dated 28 July 2025, the planners agreed as to the applicable rules identified in the Section 42A Report, with the exception of Regulation 39 of the NES-FW.³³

[51] Before addressing the NES-FW, we adopt the planning witnesses' views as to the applicable rules for the relevant regional plans as follows;

SWLP

- Rule 4(a), for the discharge of coastal water and sediment to the lagoon, as a *Discretionary Activity*.

³¹ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 4

³² Section 42A Report, Ms D Petricevich, Section 2.5

³³ JWS – RMA Planners, dated 28 July 2025, 2. Areas of Agreement – Row 2

- Rule 49(d), for the abstraction and diversion of surface water from the lagoon to the CMA, as a *Non-Complying Activity*.
- Rule 71, for the excavation and disturbance of the bed of a lake, as a *Discretionary Activity*.
- Rule 74(b), for the use of land within a wetland for the purpose of maintaining or enhancing the wetland, as a *Discretionary Activity*.

Regional Coastal Plan

- Rule 10.1.6, for the disturbance of the CMA, as a *Discretionary Activity*.
- Rules 7.4.2.2, 7.2.2.1 and 7.3.2.1, for discharges to the CMA, as a *Discretionary Activity*.
- Rule 10.5.3, for the removal of vegetation, as a *Discretionary Activity*.

- [52] In addition, Ms Petricevich identified that resource consent was also required under Sections 14 and 87B of the RMA as an innominate activity, hence a discretionary activity, as the diversion of water in the CMA was not an activity captured by the RCP.³⁴
- [53] We adopt the planners agreed position as to the applicable rules and bundled activity status as non-complying under the applicable Regional Plans.
- [54] In relation to the activity status under the NES-FW, Ms Thorne and Ms Petricevich were of the view that the lagoon was a wetland under the SWLP and that Regulation 39 of the NES-FW was triggered as the purpose of the application fell under “*Restoration, wetland maintenance and biosecurity of natural inland wetlands*”, as a restricted discretionary activity for vegetation clearance, earthworks/land disturbance, the taking/damming/diversion of water and the discharge of water, within or within 10 – 100m of a natural inland wetland.
- [55] Ms Sannazzaro, in evidence³⁵ and as recorded in the Planning JWS of 28 July 2025, set out reasons for reaching the view that there was insufficient evidence to conclude that the lagoon was a ‘natural inland wetland’ and that regard must be had to the Wetland Delineation Protocol (WPD). Part of Ms Sannazzaro evidence was that the lagoon was not mapped in the SLWP as a regionally significant wetland. Ms Williams submitted that in Appendix A of the SWLP, the lagoon was listed as a Regional Significant Wetland, (3) Waituna Scientific Reserve’ and as a Sensitive Water Body (3) Waituna lagoon.³⁶ We also questioned Dr Schallenberg on this matter as to classification of the lagoon and in his expert view the lagoon was a natural inland wetland. In addition, we note Mr Doesburg’s explanation that the WPD is only required as to the Council’s mapping function under the NPS-FW and not required to be completed until 2030.³⁷ We are not persuaded by Ms Sannazzaro’s proposition that if the lagoon is not a wetland then the NES-FW does not apply. Rather we accept Ms Williams’ submission and Dr Schallenberg’s evidence that the lagoon is both a wetland as defined in the RMA and a natural inland wetland under the NES-FW.
- [56] Hence, we accept the reasoning of Ms Petricevich and Ms Thorne that under the NES-FW the proposal falls to be considered under Regulation 39 of the NES-FW as a restricted discretionary activity. In addition, we accept that the application includes a

³⁴ Section 42A Report, Ms D Petricevich, Para 2.5.7

³⁵ EIC, Ms K Sannazzaro, Paras 82-95 and Appendix 4, and JWS – RMA Planners, dated 28 July 2025, 3. Areas of Disagreement – Row 2

³⁶ Legal Submissions, Ms P Williams, Paras 57 - 61

³⁷ Legal Submissions, Mr M Doesburg, Para 45a

Restoration Plan as required by Regulation 39(5) and the Applicant has offered a condition to meet the requirements of Regulation 39(6).³⁸

- [57] In conclusion, we accept the applicable rules and regulations set out above and that the overall activity status classification is non-complying.³⁹

STATUTORY PROVISIONS

- [58] This application falls to be considered as a non-complying activity under Part 2 and Sections 104, 104B, 104D, 105, 107, 108 and 108AA, of the RMA.

SECTION 104D OF THE RMA

- [59] As a non-complying activity, the application must go through a two-step process⁴⁰. First it must be assessed against the gateway test of section 104D of the RMA; only if it satisfies one or other of those two tests can it then proceed to be fully assessed on its merits against the other provisions of section 104 of the RMA.

- [60] Section 104D states:

(1) Despite any decision made for the purpose of section 95A(2) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

- [61] The first test, Section 104D(1)(a), requires that we consider *only* the adverse effects of the activity on the environment. Whatever benefits are alleged are not a relevant consideration – they belong to the subsequent overall assessment. Furthermore, in considering whether the adverse effect on the environment is *minor*, the effects to be considered are as proposed to be remedied or mitigated – and also take into account the baseline of effects permitted and the nature of the existing environment.

- [62] The main effects cited in submissions and at the hearing include, ecological effects, cultural values, public access and recreational effects, operational effects and other matters.

- [63] Rather than repeat our determination in relation to the adverse effects, we refer to paragraphs [69] to [165].

- [64] Accordingly, we find that the application passes the first gateway test of Section 104D(1)(a) because, based on the evidence, ecological effects, cultural values, natural

³⁸ Section 42A Report, Ms D Petricevich, Para 3.3.1.3

³⁹ Section 42A Report, Ms D Petricevich, Para 2.5.8

⁴⁰ Section 42A Report, Ms D Petricevich, Para 2.5.9

character effects, public access and recreational effects, heritage effects, operational effects and other matters will be no more than minor.

- [65] Turning to the second test, Section 104D(1)(b), the test is whether the activity is *contrary to* the respective objectives and policies of the SWLP and the RCP.
- [66] Rather than repeat our determination in regard to the objectives and policies of the SWLP and the RCP, we refer to paragraphs [177] to [180].
- [67] Accordingly, we find that the application satisfies the second gateway test of Section 104D. Having met both gateway tests the application can therefore proceed to full assessment under Section 104 and 104B.

PRINCIPAL ISSUES IN CONTENTION

- [68] The principal issues in contention, as we have determined them, include:

- Existing Environment
- Ecological Effects and Values; multiple ecological value approach, water quality, aquatic plant communities and ruppia, fish passage, fringing wetlands, adaptive management, sedimentation, monitoring review period, and trigger ecological values,
- Cultural Values,
- Heritage Effects,
- Natural character and Landscapes,
- Public access along the coast and recreational values,
- Operational Effects, and
- Other Matters.

We address these issues in the following sections.

Existing Environment

- [69] In her opening submissions, Ms Williams emphasised that the existing environment comprises the Waituna Lagoon and its surrounds, including the barrier beach and the CMA and importantly, without any consents in place.⁴¹ This is further emphasised by Ms Petricevich in the Section 42A Report who clarified that the assessment of effects relates to the effects of opening the lagoon to the CMA, including the effects of opening at the various proposed water levels and/or as a result of one of the other ecological or water quality triggers.⁴²
- [70] Several submitters approached the application with a mixed view of the existing environment, including on the basis that the existing environment is the environment as modified under previous consents to open the lagoon.
- [71] The submissions of Counsel for SRC, Mr Doesburg, were helpful in determining the existing environment as 'a catchment that terminates at a lagoon, which cannot lawfully be opened at any level (other than in accordance with emergency works powers).'⁴³
- [72] As we comment in paragraph [16] of our decision and in our discussion below, whilst we acknowledge the effects of the application on wider catchment issues raised by

⁴¹ Legal Submissions, Ms P Williams, Paras 44-47.

⁴² Section 42A Report, Ms D Petricevich, Para 1.2.3

⁴³ Legal submissions, Mr M Doesburg, Paras 11-16

many submitters, we accept Ms Williams and Mr Doesburg's submissions as to the existing environment.

- [73] Confirming what constitutes the existing environment is important in our considerations of the matters in dispute, including in understanding the multi-values approach undertaken by the Applicants.

Multiple ecological values approach

- [74] In evidence, Dr Robertson outlined how the environmental water requirements of multiple ecological values are critical to the management and restoration of the ecological health of the lagoon. This approach considered the response of water quality, submerged plants, fish, avifauna and fringing vegetation to different water level scenarios compared to a situation where water levels and the open/closed status of the lagoon is unmanaged.⁴⁴
- [75] This multi-value approach contrasts with the approach taken for previous lagoon opening consents, being for land drainage, and the views of many submitters who point to more singular values in their submissions, for example fish passage or algal blooms.
- [76] In his evidence, Dr Schallenberg states that a 'natural' opening regime would be considered a desired endpoint for long-term ecological restoration of the system.⁴⁵ In response to questions, Dr Schallenberg stated that improved water quality would be a desired end point, a conclusion also reached by Dr Robertson when questioned on the same matter.
- [77] In taking a multi-values approach, Dr Robertson acknowledge that the different values will have different responses to water level variation,⁴⁶ and Dr Schallenberg acknowledged that opening the lagoon to facilitate flushing and fish passage is provided for as these are two ecological functions that could be adversely affected by a higher trigger level and longer durations of closure.⁴⁷
- [78] Dr Robertson also acknowledges that the multi-values approach means that there will be adverse effects associated with opening events, including reduction of aquatic and wetland habitat for rare and threatened species as water levels recede, but he sets this against the risk of leaving the system unmanaged.⁴⁸
- [79] The same matter is supported by Mr Rabel, who comments in his evidence that he agrees with submitters that water quality would benefit from frequent annual openings of the lagoon, but goes on to acknowledge that there are other components of the ecosystem that would be adversely affected, and that an opening regime that responds to these multiple values is necessary to manage overall lagoon health.⁴⁹
- [80] We were encouraged by the degree of acceptance and accommodation of the multi-values approach by the Applicants' experts, with no expert favouring a specific ecological entity or feature over any other.
- [81] We accept the multi-values approach as a compelling and acceptable means for managing the ecological health and cultural values of the lagoon ecosystem, especially set alongside the requirement for monitoring for these values. We discuss the requirement to report and review the monitoring plan below.

⁴⁴ EIC, Dr H Robertson, Para 46

⁴⁵ EIC, Dr M Schallenberg, Para.32

⁴⁶ EIC, Dr H Robertson, Para 45

⁴⁷ EIC, Dr M Schallenberg, Para 40

⁴⁸ EIC, Dr Robertson, Para 85

⁴⁹ EIC, Mr A Rabel, Para 18

Water Quality

- [82] Several submitters raised concerns that with the less frequent opening of the lagoon there would be adverse effects on water quality, as the lake fills up with nutrients and silt.⁵⁰ Mr D Simms commented opening of the lake flushes out the algae, nutrients and silt, and that the longer the lagoon stays open, the healthier the lagoon becomes. In evidence for the Applicants, Mr Rabel also confirmed that water quality improves during an open phase due to the flushing of accumulated contaminants out to sea, along with the incursion of low-nutrient ocean water into the lagoon on high tides.⁵¹
- [83] Mr Rabel goes on to comment how regular (annual) lagoon opening reduced the risk of eutrophication through the export of accumulated nutrients but also has implications for other ecological values.⁵² In his evidence, Dr Robertson clarified that the aim of the operating regime was to reduce the frequency of human-induced lagoon opening events.⁵³
- [84] Many submitters commented on the initiatives occurring in the catchment aimed at improving the downstream water quality of the lagoon.⁵⁴ In his presentation, Mr Pirie commented that there are not many properties that are not doing something on their land to improve the downstream lagoon, acknowledging that it varies amongst landowners. In their presentation, the Waituna Catchment Group pointed to the emphasis on farm plans and the improvement in compliance with effluent standards, mechanisms leading to reductions in nitrogen filtration, re-battering of stream banks and riparian planting; the latter also emphasised in the presentation from Mr de Haan.
- [85] In response to questions from the Panel, Mr Q Scandrett provided useful insight into catchment and on-farm improvements, commenting that such works, including some having been trialled but not yet implemented, need time to catch up with changes to lagoon management. We understood that to mean that good work was happening in the catchment but not fast enough for improvements to the lagoon, and he concluded that the two objectives need to 'run together' in determining the lagoon management.
- [86] When this was put to Dr Robertson, he responded that in the absence of a lagoon opening regime, nutrient levels will increase but can take a while to 'kick in', and the water quality deterioration would remain a significant risk; a view reflected in the evidence of Mr Rabel.⁵⁵
- [87] The Applicants provided evidence on water quality and how nutrient loads are one of the main threats to ecological values of the lagoon.⁵⁶
- [88] In response to questions, Dr Schallenberg acknowledged the good work by landowners of the catchment but added that he had expected much greater progress towards improvements in water quality than was being observed in the lagoon and the reason the operating regime has been proposed to improve water quality and ecology of the lagoon. In his evidence, he states that nutrient loads have not reduced to the safe recommended guidelines.⁵⁷

⁵⁰ Submissions from Mr D Simms, p.3; Waituna Catchment Group, p.3;

⁵¹ EIC, Mr A Rabel, Para 22

⁵² EIC, Mr A Rabel, Para 23

⁵³ EIC, Dr H Robertson, Para 80

⁵⁴ Submissions from Mr N de Haan,

⁵⁵ EIC, Mr A Rabel, Para 35

⁵⁶ EIC Dr M Schallenberg, Para.26; EIC Dr Robertson.

⁵⁷ EIC, Dr Schallenberg, Para 27, p.8.

- [89] When questioned, both Dr Robertson and Dr Schallenberg emphasised that until water quality entering the lagoon improves, there remains a significant risk of the lagoon deteriorating.
- [90] Dr Robertson acknowledged that there are adverse effects associated with lagoon opening events, as well as the significant risk to the ecosystem of leaving the system unmanaged.⁵⁸ He goes on to say that the proposed conditions of consent are responsive to these issues and with specific processes to mitigate these effects.
- [91] We agree that the proposed conditions of consent and the implementation of multiple triggers are responsive to the range of environmental stressors occurring within the lagoon and find that the proposed consent conditions and trigger values are acceptable for the management of adverse effects of the proposed opening regime of the lagoon.
- [92] In terms of the effects on water quality of the openings themselves the proposal had significantly moved from that of the original application⁵⁹, to address the risk assessment as to the opening locations, refining of the opening locations and conditions of consent as recommended in the JWS 29 August 2025 to address amongst other matters, minimising disturbance and any erosion and sediment control methods. With the imposition of those conditions, we are satisfied that effects on water quality for lagoon and CMA from the opening operation will be acceptable.

Aquatic plant communities and *Ruppia*

- [93] The Applicants provided evidence on the importance of aquatic plant communities in intermittently closed and open lakes and lagoons (ICOLLs)⁶⁰ noting that Waituna Lagoon retains a somewhat natural ecological condition through the presence of aquatic plants, notably *Ruppia*.⁶¹
- [94] In his evidence, Dr Schallenberg set out the current vulnerability of the lagoon to a flip to a more prolonged devegetated and degraded state, pointing to the vulnerability of the aquatic plants.⁶² He emphasised three threat indicators for aquatic plants being high nutrient loads, high year-to-year variability in plant biomass in the lagoon, and the unprecedented phytoplankton bloom in the lagoon in January 2024.⁶³ In his presentation, Dr Schallenberg emphasised that *Ruppia* is a key factor in the resilience of the lagoon ecosystem, and resilience would be lost if the *Ruppia* were to collapse.
- [95] Some submitters maintained contrasting views of what would benefit the aquatic plants. Mr Esler questioned the application of *Ruppia* as an indicator species and pointed to the fringing saltmarsh as a desirable ecology for the lagoon, noting that what might be considered best for *Ruppia* could mean the flooding of the saltmarsh and thus may not be best for the lagoon as a whole.⁶⁴
- [96] Ms de Winton commented that *Ruppia* has an important ecosystem engineer role in the lagoon⁶⁵, a role also emphasised by Dr Robertson in response to questions, who also considered that getting *Ruppia* back in place was key to the restoration of the lagoon. He again emphasised that *Ruppia* is extremely vulnerable to the open/close regime.
- [97] Ms de Winton provided evidence on the factors influencing *Ruppia* in the lagoon, based on extensive monitoring data. We heard how the monitoring has demonstrated the

⁵⁸ EIC, Dr Robertson, Para 85, p.27.

⁵⁹ Section 42A Report, Ms D Petricevich, Para 2.8.5.13

⁶⁰ Intermittently Closed and Open Lakes/Lagoons, EIC Dr M Schallenberg, Para 17.

⁶¹ EIC of Dr M Schallenberg, Dr H Robertson and Ms M de Winton.

⁶² EIC, Dr Schallenberg, Para 23

⁶³ EIC, Dr Schallenberg, Para 23.

⁶⁴ Submission from Mr Esler, Dated 4 September 2024, Para 2

⁶⁵ EIC, Ms M de Winton, Paras 39-50

benefits to *Ruppia* development by avoiding spring/summer lagoon openings.⁶⁶ Ms de Winton also provided evidence that the previous consent operating regime was not effective in protecting *Ruppia*.⁶⁷

- [98] The threat of algal blooms and the impact of reduced light penetration on *Ruppia* was raised by several submitters.⁶⁸ In her evidence, Ms de Winton acknowledged the potential influence of shading and competition for light by microalgae as a potential stressor on aquatic plants. Ms de Winton went on to state that established macrophytes are likely to persist under insufficient light conditions for 1-4 months⁶⁹ and that lagoon openings to disrupt algal blooms would be important to maintain a light climate for macrophyte growth.⁷⁰
- [99] Ms de Winton further confirmed acceptance of the requirement to open the lagoon to disrupt algal blooms, and to open at least every two years for fish passage.⁷¹
- [100] Ms de Winton was also persuasive in clarifying the persistence of plant growth, with greater height at higher water levels, which would be expected under conditions promoted by the proposed application.⁷²
- [101] We found the evidence of Ms de Winton persuasive as it was informed by the results and understanding from monitoring data collected from 2009 to the present day. Ms de Winton went on to explain how the proposed consent conditions and operating regime will support *Ruppia* dominated vegetation.⁷³

Fish passage

- [102] Several submitters commented on the need for annual openings to allow for the passage of migratory fish and to support the native fish populations within the lagoon and upstream along the tributaries of the lagoon.⁷⁴ This view was emphasised in the presentation from Ms Crack.
- [103] The application provides for opening the lagoon at least once every two years if other triggers have not allowed for opening, for the purpose of facilitating the passage of fish between the freshwater lagoon and the coastal marine environment. In his evidence, Dr Holmes explained that the proposed management regime is likely to result in both positive and negative effects for different components of the lagoon's fish community, but that the condition to open at least every two years for fish passages will alleviate potential negative effects.⁷⁵
- [104] Dr Holmes went on to comment that as the proposed regime requires opening of the lagoon for a range of reasons, opportunities for fish passage will also arise as a consequence of openings triggered for other environmental reasons, and that periods of closure will be positive for giant kokopu recruitment and may compensate for reduced recruitment of migratory fish populations.⁷⁶

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Submissions from Mr C McCrostie, dated 31 August 2025, para 1. P.1.;

⁶⁹ EIC, Ms M de Winton, Para 57

⁷⁰ EIC, Ms M de Winton, Para 58

⁷¹ Ibid.

⁷² EIC, Ms M de Winton, Paras 77-78

⁷³ EIC, Ms M de Winton, Paras 51-65

⁷⁴ Ballantine, dated 28 August 2025, p.2.; Van Rossum, dated 3 September 2025, p.2.; Waituna Catchment Group, dated 3 September 2025, p.2.;

⁷⁵ EIC, Dr Holmes, Paras 62-64

⁷⁶ Ibid.

- [105] In his evidence, Dr Holmes also explained the risks to fish of a no consent environment, where the lagoon is left to a natural opening regime, the greatest risk would be from deteriorating water quality.⁷⁷
- [106] We found the evidence of Dr Holmes well-reasoned and compelling and accept that an opening of the lagoon at least every two years, and possibly on other occasions, will balance the positive and negative effects on lagoon fish populations.

Fringing wetland

- [107] Several submitters expressed concern regarding the effects of the proposed opening regime on fringing wetlands and other vegetation of the lagoon. The matter was also raised in a Section 92 request for further information from SRC.⁷⁸
- [108] In his response to the Section 92 request and in his evidence, Dr Robertson explained the characteristics of the fringing wetland and concluded that irregular inundation at higher water levels is positive for these systems as they will make growing conditions for exotic species, such as introduced grasses and gorse more difficult.⁷⁹
- [109] In response to questions, Dr Robertson commented on the downslope creep of terrestrial vegetation, especially of manuka, which is successful at moving into new environments, because of previous opening regimes for the lagoon. He emphasised that he would expect that there will be some dieback with the sometimes higher water levels of the proposed operating regime. He remained unconcerned about some dieback and expected that there will be a period of transition to wetland ecosystems.
- [110] The dieback in manuka and other vegetation has been observed and was commented on by submitters.
- [111] In a statement received in response to Dr Robertson's presentation, Mr Welsh raised the issue of the loss of invertebrate and vertebrate species from inundation of the existing fringing wetland areas and raised whether a survey would be prudent to quantify potential loss.⁸⁰
- [112] Similar views were expressed in the submission of Mr Esler, regarding the presence of cushion-bog plant assemblages fringing the lagoon as well as invertebrates such as the Tiwai Boulder Butterfly⁸¹, and in his presentation further explaining the dependence of the butterfly caterpillar on specific food plants.
- [113] In the Section 42A Report, Ms Petricevich recommended the inclusion of a condition of consent for monitoring of the fringing wetland plant communities for the purpose of observing any changes in vegetation. Dr Robertson agreed with that approach and provided a commentary on the frequency of monitoring.⁸² We agree with the inclusion of a consent condition requiring monitoring of the fringing vegetation of the lagoon.
- [114] In evidence, Dr Robertson also proposed a frequency of monitoring with baseline survey and thereafter assessment of vegetation at 5-year intervals, which we calculate to amount to four surveys over the duration of a proposed 20-year consent period. We are persuaded that this frequency is sufficient to measure and demonstrate adverse effects of the proposed regime.

⁷⁷ EIC, Dr R Holmes, Paras 56-58

⁷⁸ Response to requests for further information, dated 23 June 2025, s2.5, p.11-13.

⁷⁹ EIC, Dr H Robertson, Para 68

⁸⁰ Mr I Welsh, Statement in response to Dr Robertson's presentation, dated 25 August 2025, p.2-3.

⁸¹ Submission from Mr Esler, dated 4 September 2025, para 1, p.1-2.

⁸² EIC, Dr H Robertson, Paras 70-71

Adaptive management

- [115] As a point of clarification, several experts for the Applicants referred to the application of the proposed resource consents and trigger values as providing 'adaptive management'. When questioned, Dr Robertson confirmed that the proposed operating regime is not adaptive management in the understanding typically applied in resource management, as there is only one response to the triggers being met, i.e., opening the lagoon, and no other alternatives of management are considered.

Sedimentation Effects

- [116] We were troubled by the reports and observations of sedimentation in the lagoon, and the uncertainty of whether sedimentation is likely to increase as a result of the proposed opening regime and whether it results in adverse effects. Several submitters expressed concern that leaving the lagoon at high water levels increases erosion of banks of tributaries to the lagoon and thus increasing sedimentation of the lagoon with detrimental effects.⁸³
- [117] In evidence for Southern Star Farms, Mr Scandrett explained how the high-water levels extending over grazed farm land increases the potential for soil erosion and loss of sediments to the lagoon. He explained that this results from the saturation of the soils during high water levels and the banks of the tributaries slumping as the high-water levels recede. This was also emphasised by Mr D Crack in his presentation who explained his experience of what was once a stony-bottomed lagoon is now silty with the build-up of sediment, and when the silt is exposed, it can get blown around.⁸⁴
- [118] In his presentation and accompanying notes, Mr Welsh commented on the increased sediment load arising from the lake tributaries and drew our attention to the western end of the lagoon with its bed covered in sediment.⁸⁵ He also commented on the benthic habitat becoming anoxic⁸⁶, an observation also repeated by Mr D Crack. In his response to evidence of Dr Robertson, Mr Welsh emphasised that the sediment deposits in then lagoon appear to be anaerobic in character and devoid of macrophyte communities.⁸⁷
- [119] Mr Rabel addressed erosion and sedimentation effects in the response to requests for further information⁸⁸ and states that the main source of sediment is from catchment inflows and marine sediments that may ingress during lagoon opening. Mr Rabel draws from monitoring of total suspended solids (TSS) in the lagoon and concludes that during lagoon opening, the TSS is from other sources being the resuspension of settled sediment, or from coastal waters.⁸⁹
- [120] No substantive evidence or information was forthcoming on levels of settled sediment occurring in the lagoon. We understand that sediment type forms one of the attributes measured annually as part of the annual *Ruppia* monitoring at 47-48 sites within the lagoon⁹⁰ but data on the extent or depth of sedimentation does not appear to be collected.

⁸³ Submissions of Koenig, p.2; B McKenzie, p.4.; LJ McKenzie, p.2.; D Simms, p.6; Southern Star Farms, p. 20-23.

⁸⁴ Mr D Crack, presentation notes, dated 30 July 2025, p.1.

⁸⁵ Mr I Welsh, presentation notes, 31 July 2025, Para 3, p.2.

⁸⁶ Ibid.

⁸⁷ Mr I Welsh, Notes arising from evidence of Dr H Robertson, dated 25 August 2025, para 1b., p.1

⁸⁸ Response to requests for further information, dated 23 June 2025, s2.1, p.5-6.

⁸⁹ Ibid.

⁹⁰ NIWA 2025, Vegetation status in Waituna Lagoon: Summer 2025.

- [121] An assessment of this data on the benthic substrate type (years 2009 to 2025) appeared in the reply statement⁹¹ with the suggestion that the lagoon benthic environment is highly mobile from year to year. In response to questions, Dr Robertson explained the importance of *Ruppia* and other macrophytes in stabilising sediments and that there were significant risks in not having healthy macrophytes in terms of the potential for destabilising sediments. We found this statement in contrast with the observations expressed by Mr Welsh and Mr Crack.
- [122] We remain troubled by the uncertainties of the potential effects of the proposed opening regime on the extent, location and impacts of sedimentation of the lagoon and we were not satisfied that sufficient evidence has been presented to allay our concerns and those of submitters that adverse effects of the proposed opening regime on sedimentation have been addressed.
- [123] Accordingly, we include a consent condition that establishes a baseline and repeatable and quantifiable settled sediment monitoring programme, that includes the identification of areas, depth, character and extent of sediment deposition, a method to assess the likely source of sediments, and a means of assessing areas of change of settled sediment.

Monitoring review period

- [124] Some submitters commented on the proposed review period for the monitoring conditions. In her submission and presentation, Ms Robertson commented that the 5-year review of the effectiveness of the consent is too long to wait and act if there are any issues regarding the conditions of the consent.⁹²
- [125] In the Applicants' reply submissions, Counsel for the Applicants drew our attention to a comment from Mr Rabel who questions how helpful it is to summarise statistically significant trends at 5-yearly intervals when a longer data record is required to identify change with confidence.⁹³ We agree that longer data records support a more robust assessment, but we regard the interpretation and reporting of observed changes on a frequent basis as imperative to the proposed operating regime.
- [126] For the avoidance of doubt, we have taken 5-yearly to mean a cumulative expression of change, meaning reporting on 5, 10, 15 and 20 years of data respectively as the implementation of any proposed consent conditions proceeds; hence a progressively more robust data to interpret and report.
- [127] We are also taken to understand that the current regular monitoring and reporting of specific parameters will continue, for example, the annual *Ruppia* report. We note that this monitoring is identified in condition 47 in the JWS dated 29 August 2025 and the reporting is addressed in Condition 51.
- [128] In the same reply statement, a comment from Mr Rabel is to amend condition 52 by replacing the term 'trends' with 'observations.' We remain cautious over such a word change as there will be some data (e.g., water quality) that may well be sufficiently robust for a more significant statistical trend test.
- [129] We have drawn on the strength of the evidence presented before us such that our expectation is that the greatest analysis and scientific test of the monitoring data will be undertaken to reassure the Council and submitters that any actions and/or review of the monitoring and the trigger values is robust and stands up to challenge.

⁹¹ Reply Statement, Ms P Williams, Paras 102-195

⁹² Presentation of Ms K Robertson, dated 30 July 2025, Para 2, p.2.

⁹³ Reply Statement, Ms P Williams, Para 87

- [130] Accordingly, we favour retaining reference to trends where appropriate for the data, along with observations of where the data is more qualitative. We have amended the consent condition to reflect this finding, including any cultural health monitoring.

Trigger ecological values

- [131] There was little discourse amongst the parties on the proposed primary and secondary trigger values. In his response to the presentation of Dr Robertson, Mr Welsh comments on the absence of any sampling protocol to accompany the water quality and biology parameters and sets out some examples along with a proposed initial review period of very 2-3 years.⁹⁴
- [132] We note that the proposed consent conditions include a requirement for the preparation and implementation of a Monitoring Plan (MOP) which itself must include the method of monitoring.⁹⁵ We agree with Mr Welsh regarding the need for clarity of the trigger (warning and critical) values, and we have added a line item to the consent condition to require sampling protocols and the statistical metric that is being applied as the warning and/or critical indicator level to be set out in the MOP.

Conclusion as to Ecological Effects

- [133] Considering all of the combined ecological effects as we have determined them, and taking account of evidence and submissions; subject to the conditions imposed, we find that those effects to be acceptable.

Cultural Values and effects

- [134] There were no submissions that challenged the cultural values set out in the application or in the evidence presented. Several submitters acknowledged the importance of māhinga kai and taonga species⁹⁶ in their presentations to us, and none disputed Mr Whaanga's evidence describing the lagoon as a taonga of national and tribal significance. Some submitters raised concerns about the governance role of iwi in lagoon management.⁹⁷
- [135] Evidence was provided by Mr Whaanga on behalf of Te Rūnanga o Awarua⁹⁸, supported by the Cultural Values Report prepared by Te Ao Mārama Inc.⁹⁹ That evidence described Waituna Lagoon / Waipārera as a taonga with deep whakapapa connections and statutory recognition under the Ngāi Tahu Claims Settlement Act.¹⁰⁰ The lagoon has long been a pātaka kai and remains central to the cultural identity, wellbeing, and kaitiakitanga responsibilities of Ngāi Tahu ki Murihiku.¹⁰¹ Its significance spans cosmological, spiritual and ecological dimensions, expressed through

⁹⁴ Mr I Welsh, statement in response to Dr Robertson's presentation, dated 25 August 2025, p.3.

⁹⁵ JWS, dated 29 August 2025, Proposed consent condition 45(d)

⁹⁶ Presentations of Ms N Paterson (read by Ms A. Crack), Mr C McCrostie, Mr L Ester, and Ms G Munro

⁹⁷ Presentations of Mr T Tatham, Ms R van Gool, Mr G Hayes, Southern Star Farms Ltd, and Waituna Catchment Group

⁹⁸ EIC, Mr D Whaanga, dated 11 July 2025

⁹⁹ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: Mana whenua values, associations and connections to Waipārera, prepared by Te Ao Mārama Inc, 2023

¹⁰⁰ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix A: Ngāi Tahu Claims Settlement Act 1998 – Statutory Acknowledgement for Waituna/ Waipārera.

¹⁰¹ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: Mana whenua values, associations and connection to Waipārera, Prepared by Te Ao Mārama Inc, 2023, pp. 5-6

mātauranga traditions and the ki uta ki tai framework.¹⁰² Core values identified include māhinga kai, kaitiakitanga, wai in its many forms, mauri, mana, manaaki, and taonga species.¹⁰³

- [136] In addition, Taonga species of particular importance were identified as kanakana, tuna, īnaka, and *Ruppia*.¹⁰⁴ Mr Whaanga emphasised that the hauora of the lagoon is inseparable from the wellbeing of mana whenua and the wider community, and that restoring its mauri and mana is essential to cultural and ecological health.¹⁰⁵ Mr Whaanga also described how, over time, the mauri and abundance of taonga species have been diminished by historic opening regimes and land use changes, and that restoration is necessary to return the lagoon to a healthier baseline¹⁰⁶. Finally, Mr Whaanga outlined restoration initiatives being led by Te Rūnanga o Awarua, including the work of Te Wai Pārera Trust.¹⁰⁷
- [137] In reaching our findings on cultural effects, we have recognised and provided for Section 6(e), had particular regard to Section 7(a) kaitiakitanga, and taken into account Section 8 of the RMA. We have also had regard to Te Tangi a Tauira as an iwi management plan relevant to this application. We note that cultural evidence identified potential risks if opening regimes are not well managed — including impacts on īnaka migration, māhinga kai access, and the mauri of the lagoon — which reinforces the importance of robust conditions and monitoring.¹⁰⁸
- [138] We agree with Ms Thorne’s planning evidence¹⁰⁹ which adopts the cultural values evidence of Mr Whaanga and concludes that the proposed regime will have a positive effect on cultural values and the health of the lagoon as a living system. We note that the consent conditions, as amended¹¹⁰, give effect to those values, including Rūnanga representation on the Science Advisory Group¹¹¹, cultural health monitoring¹¹², and accidental discovery protocols.¹¹³ In particular, cultural health monitoring will track the condition of taonga species, water quality, and indicators of mauri, with mana whenua directly involved in reporting and review. Taken together, these conditions embed mana whenua participation in implementation, monitoring and adaptive management, giving practical effect to rangatiratanga and kaitiakitanga.
- [139] We also accept the assessment of Ms Petricevich¹¹⁴ that the proposed opening regime, developed with mana whenua involvement, is consistent with Te Tangi a Tauira and cultural aspirations. While artificial openings are not part of traditional custom¹¹⁵, the evidence demonstrates that the proposed regime is more natural than

¹⁰² Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: Cultural Values Report, Te Ao Mārama Inc, 2023, pp. 4–7

¹⁰³ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: Cultural Values Report, Te Ao Mārama Inc, 2023

¹⁰⁴ EIC, Mr D Whaanga, Para 11

¹⁰⁵ EIC, Mr D Whaanga, Paras 12–13

¹⁰⁶ EIC, Mr D Whaanga, Paras 10–12; Application, Appendix H: Cultural Values Report, Te Ao Mārama Inc, 2023, pp. 5–6

¹⁰⁷ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: Cultural Values Report, Te Ao Mārama Inc, 2023

¹⁰⁸ EIC, Mr D Whaanga, dated 11 July 2025, Paras 12–14; Application, Appendix H: Cultural Values Report, Te Ao Mārama Inc, 2023, pp. 6–7

¹⁰⁹ EIC, Ms L Thorne, dated 11 July 2025, Para 46

¹¹⁰ JWS – 29 August 2025, Recommended Condition 14

¹¹¹ JWS – 29 August 2025, Recommended Consent Condition 19

¹¹² JWS – 29 August 2025, Recommended Consent Condition 14

¹¹³ JWS – 29 August 2025, Recommended Consent Conditions 24 - 26 incorporating Appendix 3: Wāhi Taonga/Tapu Accidental Discovery Protocol

¹¹⁴ Section 42A Report, Ms D Petricevich, Para 2.8.7

¹¹⁵ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Appendix H: *Mana whenua values*,

in the past and directed towards the restoration of mauri and hauora, consistent with both mātauranga and planning evidence. We find that the inclusion of recommended condition 14 ensures that cultural values are not only recognised but embedded in implementation and monitoring, and that mana whenua will continue to exercise their kaitiakitanga responsibilities.

- [140] In summary, having considered all the submissions and evidence on this matter, and subject to the imposition of amended conditions, we find that any adverse effects on cultural values will be acceptable.

Heritage Effects

- [141] There were no submissions that raised concerns about adverse effects on historic heritage or archaeology. The application noted that while no mapped archaeological sites are recorded on the Waituna Bar at Walker's Bay, wāhi tapu and wāhi taonga associated with historic occupation and use are found along the shores of the lagoon.¹¹⁶ Some archaeological material has been discovered in recent times, mainly linked to māhinga kai practices.¹¹⁷
- [142] The Applicants' proposed, and the Section 42A Report supports, that any potential effects on archaeological or heritage values be addressed through an Accidental Discovery Protocol (ADP), now incorporated into the consent conditions 24-26 and Appendix 3.¹¹⁸ This approach anticipates the possibility of unrecorded sites and ensures a precautionary process if kōiwi tangata, taonga, or other archaeological material are encountered. For clarity, the protocol operates alongside the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA); if archaeological material is confirmed, an archaeological authority may be required before works resume.¹¹⁹
- [143] We agree with Ms Thorne's planning evidence that the proposed conditions appropriately manage any potential adverse effects on historic heritage¹²⁰, consistent with s 6(f) of the RMA. We also accept Ms Petricevich's conclusion¹²¹ that adverse effects on these values will be acceptable, with the ADP and HNZPTA process providing an appropriate precautionary response to chance finds.
- [144] In summary, having considered the application, the Section 42A Report assessment, and the evidence of Ms Thorne, we find that potential adverse effects on historic heritage are acceptable and will be adequately managed by the consent conditions.

Natural Character and Landscape Effects

- [145] For clarity, when we refer to "natural character effects," we mean how the proposed regime may affect the naturalness of the lagoon and coastal environment, including its physical features, natural processes, and the degree to which the area is perceived as unmodified by human activity.¹²²

associations and connection to Waipārerā, prepared by Te Ao Mārama Inc, 2023, pp. 6–7; EIC, Mr D. Whaanga, p. 4; Section 42A Report, Ms D. Petricevich, Para 2.8.7.

¹¹⁶ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024, Assessment of Environmental Effects, section 9.5

¹¹⁷ Section 42A Report, Ms D Petricevich, Paras 2.8.8.1 - 2.8.8.2

¹¹⁸ JWS, dated 29 August 2025, Consent Conditions 24-26, incorporating Appendix 3: Wāhi Taonga/Tapu Accidental Discovery Protocol

¹¹⁹ Heritage New Zealand Pouhere Taonga Act 2014

¹²⁰ EIC, Ms L Thorne, Para 46

¹²¹ Section 42A Report, Ms D Petricevich, Para 2.8.8.3

¹²² Resource Management Act 1991, s 6(a); New Zealand Coastal Policy Statement 2010, Policy 13

- [146] There were no submissions that raised specific concerns about adverse effects on natural character. Mr L. Esler, in his submission and reinforced in his presentation to us, described the lagoon as a unique natural environment and outdoor classroom for ecological study.¹²³ He and other submitters¹²⁴ raised concerns that lagoon openings were sometimes delayed, resulting in high water levels and loss of wetland fringe vegetation. We note that those matters are more properly addressed under ecological effects but note them here for completeness.
- [147] The application acknowledged that Waituna Lagoon is located within Landscape Unit 5 in the RCP as having particular elements and distinctive features. The lagoon was described as a key landscape element valued for its wildlife diversity, isolation, and remoteness. Lagoon openings were assessed as having temporary, transitory, and no more than minor effects on landscape and natural character due to short-term excavation and natural reclosure. Openings were also considered necessary to protect natural character in the longer term by maintaining lagoon health.¹²⁵
- [148] Ms Petricevich agreed with the Applicants assessment that lagoon-opening activities would have temporary, localised, and transitory effects on landscape and natural character, given the short-term alteration of the foreshore and lagoon appearance¹²⁶. Owing to the temporary nature, remoteness, and the fact that openings replicate natural coastal processes, she concluded that any adverse effects on natural character would be acceptable¹²⁷.
- [149] We accept the assessment of Ms Petricevich, that any adverse effects on natural character will be acceptable. The relevant consent conditions — including those restricting excavation footprint and vehicle access, setting limits on the duration of works, and requiring public notification and signage — ensure that any physical disturbance remains temporary, localised, and reversible.
- [150] In summary, having considered the application, the officer's assessment, and the evidence before us, we are satisfied that potential adverse effects on natural character are acceptable and will be appropriately managed by the consent conditions.

Public Access Effects

- [151] Several submitters raised concerns about public access, particularly the potential for the footpath, DOC walking track, road and bridge, and opportunities for observation to be cut off when lagoon levels are high, as well as, access for recreational opportunities including fishing.¹²⁸ Ms K. Robertson described periodic loss of access to the DOC walking track and viewing platform when the Waghorn Road bridge is submerged, although these arise from natural lagoon levels rather than from the proposed opening regime.¹²⁹ Southland District Council, while supporting the consent, noted that the bridge must close when water levels reach around 2.3 m and that flooding periodically affects public access and bridge durability¹³⁰. Mr L. Simms, both in his submission and presentation to us, described how high lagoon levels can cut off vehicle access to his family's long-standing fishing hut, and at times flood the hut itself, threatening its continued use as both a place of recreation and a valued part of his family's heritage connection to the lagoon.¹³¹ Similar concerns were raised by the Waituna Catchment

¹²³ Presentation of Mr L Esler, Page. 2

¹²⁴ Presentations of Mr T Tatham, Ms R van Gool, Mr G Hayes, Southern Star Farms Ltd, and Waituna Catchment Group

¹²⁵ Application, Assessment of Environmental Effects, section 9.8

¹²⁶ Section 42A Report, Ms D Petricevich, Para 2.8.9.3

¹²⁷ Section 42A Report, Ms D Petricevich, Para 2.8.9.6

¹²⁸ Presentations of Mr T Tatham, Ms R van Gool, Mr G Hayes, Waituna Catchment Group, and Ms N Paterson.

¹²⁹ Presentation of Ms K Robertson

¹³⁰ Submission from Southland District Council

¹³¹ Presentation of Mr L Simms

Group¹³² and Southern Star Farms Ltd¹³³, who emphasised the importance of managing access around walking tracks and observation points during high lagoon levels and excavation works. We note, however, that these constraints arise primarily from the natural behaviour of the lagoon system, rather than being effects of the proposed opening regime itself.

- [152] The Applicants acknowledged that lagoon openings would temporarily impede public access where a channel is excavated through the Waituna Bar. They noted that natural coastal processes would later close the channel, reinstating full access along the beach. Public notification of each opening would occur through Environment Southland's website, social media, and direct notice to Fish & Game, Southland District Council, and nearby landowners. The Applicants also confirmed that signage and public safety measures would be addressed through the Opening Plan required by consent conditions. On that basis, they concluded that adverse effects on public access would be no more than minor.¹³⁴
- [153] Ms Petricevich recorded that recreational activities at and near the lagoon include walking, bird watching, trout fishing, and duck shooting, noting the RCP identifies limited public access points and highlights the area's recreational significance.¹³⁵ She summarised that submitters had raised concerns about access to the lagoon, impacts on fishing, and the DOC walking track.¹³⁶ Ms Petricevich agreed with the Applicants that lagoon-opening activities would temporarily impede access along the Waituna Bar and possibly the beach, but that these effects would be short-term and acceptable.¹³⁷ Public notification through social media and direct notice to affected parties was considered adequate, and she concluded that the proposal is consistent with the outcomes of the SWLP, RCP and RPS, primarily because of the temporary nature of the effects.¹³⁸
- [154] DOC, as a co-applicant, confirmed through Mr Airey's recreation evidence that visitor use of the Waituna Lagoon walking track is very low, averaging one to two people per day¹³⁹. He noted that other nearby recreation sites are more popular and accessible, and therefore the Waituna track attracts limited use¹⁴⁰. DOC maintains the boardwalk, viewing platform and loop track on a monthly basis¹⁴¹, and did not identify any concerns that lagoon openings would restrict public use.
- [155] We accept the Section 42A Report assessment that the proposed regime will have only temporary and acceptable effects on public access. The consent conditions requiring a Communications Plan and Opening Plan ensure that openings are well-publicised, signage is in place, and public safety is maintained during excavation works. We note that broader access limitations around the lagoon, including periodic closure of the Waghorn Road bridge, result from natural lagoon level fluctuations rather than from the proposed activity itself.
- [156] In summary, having considered the submissions, the application, and the officer's assessment, we find that potential adverse effects on public access will be acceptable and will be appropriately managed by the consent conditions.

¹³² Presentation of Waituna Catchment Group (A. Egbers; B. Perriam; M. van Rossum; M. Waghorn; G. Munro)

¹³³ Presentation of Southern Star Farms Ltd

¹³⁴ Application, Assessment of Environmental Effects, section 9.10

¹³⁵ Section 42A Report of Ms D Petricevich, Paras 2.8.10.1 and 2.8.10.2

¹³⁶ Section 42A Report of Ms D Petricevich, Paras 2.8.10.3

¹³⁷ Section 42A Report of Ms D Petricevich, Paras 2.8.10.4

¹³⁸ Section 42A Report of Ms D Petricevich, Paras 2.8.10.4 and 2.8.10.5

¹³⁹ EIC, James Airey, Para 21

¹⁴⁰ EIC, James Airey, Paras 11-12

¹⁴¹ EIC, James Airey, Para 16

Operational Effects

- [157] Several submitters described practical, on-the-ground issues observed during past openings. These included health and safety risks around excavation machinery, temporary restrictions on access to and along the foreshore¹⁴², and potential disturbance of shorebirds at the opening site.¹⁴³ Concerns were also expressed about uncertainty and inconsistency in how and where cuts were made, creating confusion and increasing safety risks.¹⁴⁴ Others emphasised the importance of timely openings, clear triggers, defined accountability, and stronger community communication to ensure the process is managed effectively.¹⁴⁵
- [158] These concerns were explored with the planning witnesses during the hearing, where the Panel identified gaps in the original draft conditions. Following conferencing, the planners recommended strengthened provisions, which we included in the final consent.¹⁴⁶ We are satisfied that these amendments address both the operational risks identified by submitters and the need for clearer accountability on site.
- [159] In their evidence-in-chief, the applicant's experts identified the need for clearer management of operational risks. Mr Jacques (DOC) emphasised controls such as daylight-only works, pre-opening ecological walkovers, and exclusion zones around bird nests.¹⁴⁷ Ms Thorne's planning evidence, supported by the application material, highlighted the role of management plans — including the Communications Management Plan, Complaints and Incident Reporting procedures, and the Opening Plan covering methodology, access restrictions, erosion and sediment controls, emergency contacts, and site reinstatement.¹⁴⁸ In their Submissions in Reply, the Applicants added further measures on spill prevention and biosecurity procedures¹⁴⁹ and confirmed that Walker's Bay will be the default opening site, with any alternatives requiring a certified risk assessment.¹⁵⁰
- [160] The final suite of conditions now provides clear operational safeguards. In particular:
- Conditions 31–33 require a pre-opening ecological walkover by a SQEP, designation of a single machinery access route (1 Aug–31 Jan), and 50-metre exclusion zones around any identified bird nests. These measures directly address concerns about disturbance to shorebirds and safety risks around machinery.
 - Condition 35 requires certification of a Communications Management Plan (CMP), including a liaison person, a complaints log, an incident reporting pathway, and DOC coordination. This provides the accountability and transparency sought by submitters who emphasised unclear responsibilities and weak communication.
 - Conditions 41–42 strengthen complaints handling and stakeholder liaison, ensuring timely response to community concerns. This ensures timely resolution of issues and greater community confidence in the process.
 - Condition 47 imposes biosecurity and spill-prevention controls, including a prohibition on refuelling within 20 m of surface water and on pea gravel, and

¹⁴² Presentations of Mr E. Pirie and Ms K. Robertson

¹⁴³ Presentations of Ms K. Robertson, Ms N. de Haan, and Waituna Catchment Group,

¹⁴⁴ Presentations of Mr E. Pirie and Waituna Catchment Group

¹⁴⁵ Presentations of Mr L. Esler, Mr I. Welsh, Mr G. Hayes, Ms R. van Gool and Mr M. Waghorn (Waituna Catchment Group)

¹⁴⁶ Joint Witness Statement – Planning Experts, dated 29 August 2025, Paras 10–12

¹⁴⁷ EIC, Mr S Jacques (DOC – Avifauna), Paras 34–39

¹⁴⁸ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to maintain and restore ecological health and cultural values of the lagoon ecosystem – July 2024, Section 10.5

¹⁴⁹ Reply Statement, Ms P Williams, Paras 21–26

¹⁵⁰ Applicants' Response to Minute #8, Dated 12 August 2025

mandatory containment and reporting of any spills. This addresses submitter concerns about machinery safety, environmental protection, and biosecurity risks.

- Condition 50 requires a detailed Opening Plan prior to each event, covering methodology, signage and access restrictions, erosion and sediment controls, emergency contacts, daylight working hours (unless safety requires otherwise), weather-related triggers to pause works, and reinstatement of the site. This provides the certainty and consistency sought by submitters, avoiding confusion about how and where cuts are made.
- Conditions 44–49, 51–52 establish monitoring and reporting requirements, including cultural health monitoring and adaptive management. This ensures that lessons are carried forward and issues are not repeated in future openings.

[161] The Section 42A Report concludes that the original draft conditions lacked sufficient detail¹⁵¹ which we explored with the planning witnesses at the hearing and was addressed through conferencing, with the resultant JWS of 29 August 2025.

[162] We are satisfied that these measures appropriately address the operational concerns raised by submitters and the Panel. The strengthened conditions clearly provide for health and safety, protect ecological values (including shorebirds), and ensure transparent lines of responsibility and communication. On this basis, we are satisfied that any adverse operational effects will be acceptable and appropriately managed.

Other matters

[163] As to submissions that raised effects on property values or submitters who raised in the presentations that we impose conditions requiring compensation to affected landowners, Mr Doesburg addressed both matters in his submission to us¹⁵². He referenced case law to support his submission that effects on property values are generally considered a proxy for other adverse effects,¹⁵³ as well as other issues such as the subjectivity of evaluation evidence when provided and double counting of effects.¹⁵⁴ We concur with the reasons set out by Mr Doesburg and hence find that it is not appropriate to consider property devaluation as an effect. In relation to compensation as a condition of consent, his submission¹⁵⁵ was that any such condition is unlikely to meet the requirements of Section 108AA as well as the Newbury tests, unless such a condition was to be offered by the Applicants, which for this application is not the case. We accept Mr Doesburg's submissions in that we cannot impose our own compensation conditions.

[164] We record that we have considered the positive effects of the proposal, although not as part of the Section 104D of the RMA gateway test, but rather as part of the overall section 104 of the RMA assessment. Those positive effects were identified by Ms

¹⁵¹ Section 42A Report of Ms D. Petricevich, Paras 2.8.9.2–2.8.9.6

¹⁵² Legal Submissions, Mr M Doesburg, Paras 25 - 30

¹⁵³ City Rail Link Limited v Auckland Council [2017] NZEnvC 204 at [62]-[63]

¹⁵⁴ Foot v Wellington City Council, ENVC Wellington W73/98, 2 September 1998 at [254] – [255]

¹⁵⁵ Legal Submissions, Mr M Doesburg, Paras 28 - 30

Petricevich¹⁵⁶, through reference to section 9.3 of the application and Ms Thorne¹⁵⁷, which include:

- The transition to a more ecologically optimal and natural environment.
- The provision of fish passage to support biodiversity.
- The avoidance of significant adverse effects due to poor water quality.
- An improved relationship of mana whenua to the lagoon.
- Contributing to the restoration of mauri.
- Ability to access the DOC walking track after high water levels.

[165] We accept the assessment of Ms Petricevich and Ms Thorne.

SECTION 104 RMA

[166] Section 104 (1) of the RMA requires that a consent authority:

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan, and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[167] We have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections and turn now to the statutory provisions requirement of Section 104(1)(b).

National Environmental Standards (NES)

[168] We have addressed the proposal against the regulation triggers in the NES-FW above. See paragraphs [54] to [56], and do not repeat it here.

National Policy Statements (NPS)

¹⁵⁶ Section 42A Report, Ms D Petricevich, Section 2.8.11

¹⁵⁷ EIC, Ms L Thorne, Para 49

- [169] The application contained a fulsome assessment of the relevant national policy statements, namely, the New Zealand Coastal Policy Statement (NZCPS), National Policy Statement for Freshwater Management (NPS-FM) and the National Policy Statement for Indigenous Biodiversity (NPS-IB).¹⁵⁸
- [170] Ms Petricevich agreed with and adopted the application's assessment as to the NPS-IB.¹⁵⁹ In terms of the NPS-FW, Ms Petricevich similarly agreed and adopted the application's assessment, noting that the sole objective of the NPS-FM could no longer be considered for resource consent applications due to amendment to Section 104 (2F) RMA.¹⁶⁰ Finally, she assessed proposal against the NZCPS, concluding, "*that it is not contrary to and largely is consistent with the direction provided by the objectives and policies.*"¹⁶¹
- [171] Noting the additional matters addressed in the Section 42A Report, Ms Thorne agreed with the above assessments.¹⁶² We were not persuaded by Ms Sannazzaro's references in evidence to how the NPS-FM applied. It was not clear to us that it was an assessment of the proposal against the objectives and policies of national instrument.
- [172] We accept and adopt the reasoning of Ms Petricevich and Ms Thorne that the proposal is not contrary to the relevant national instruments.

Southland Regional Policy Statement ("the RPS")

- [173] The application detailed an assessment of the proposal as to the RPS addressing tangata whenua, water quality and the bed of lakes, biodiversity, the coast, natural hazards, natural features and landscapes and historic heritage concluding the activity was consistent with and not contrary to the objectives and policies of the RPS.¹⁶³
- [174] While concurring with and adopting the assessment in the application, Ms Petricevich conducted an additional detailed identification assessment of the proposal as to relevant objectives and policies of the RPS¹⁶⁴ that in her view provided more direction as to the proposal than the SWLP. She concluded, that while there were some temporary adverse effects would mean that the proposal was not entirely consistent with the direction of the RPS, the proposal was not contrary to the policies of the RPS, and there are also may aspects of the proposal which are entirely consistent with and provide for the outcomes sought by RPS.
- [175] Ms Thorne did not provide any additional evidence in relation to the RPS. Again, we found Ms Sannazzaro's references in evidence to the RPS appeared to be primarily to the application of certain parts of RPS in supporting a position as to flood control works or FMUs, rather than to an assessment of the proposal against the RPS.
- [176] We adopt the reasoning of Ms Petricevich and find that proposal is consistent with and not contrary to the objectives and policies of the RPS.

Regional Coastal Plan 2013 (RCP)

- [177] The application included and assessment of the proposal as to the RCP addressing management of effects, protection of significant values, tangata whenua values,

¹⁵⁸ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to maintain and restore ecological health and cultural values of the lagoon ecosystem – July 2024, Section 10.2 – 10.4

¹⁵⁹ Section 42A Report, Ms D Petricevich, Section 3.4.2

¹⁶⁰ Section 42A Report, Ms D Petricevich, Section 3.4.1

¹⁶¹ Section 42A Report, Ms D Petricevich, Section 3.5.10

¹⁶² EIC, Ms L Thorne, Para 51

¹⁶³ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 10.5

¹⁶⁴ Section 42A Report, Ms D Petricevich, Section 3.6

seabed and foreshore disturbance, concluding the activity was consistent with and not contrary to the objectives and policies of the RCP.¹⁶⁵

- [178] Ms Petricevich had nothing to add to the assessment in the application, opining “*that the proposal is not contrary to, and is largely consistent with the objectives and policies of the RCP.*”¹⁶⁶ We heard no evidence to the contrary so adopt Ms Petricevich’s reasoning and conclusion.

Proposed Southland Water and Land Plan (SWLP)

- [179] Ms Petricevich clarified that the other applicable regional plan was the SWLP, which is partially operative. However, all aspects of the of the SWLP relevant to the application were not under appeal, hence partially operative and had full legal effect. As such there is no need to revert to the operative Regional Water Plan (RWP).
- [180] Noting the assessment in the application and the assessments undertaken in relation to the national policy instruments and the RPS, Ms Petricevich had nothing further add, concluding that the proposal is not contrary to the objectives and policies of the SWLP.¹⁶⁷ We heard nothing to the contrary and adopt Ms Petricevich’s reasoning and conclusion.

Other matters under s104(1)(c)

- [181] The Te Tangi a Taura the Ngai Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan 2008 (IMP) and the Southland Murihiku Conservation Management Strategy 2016 (CMS) were identified as relevant matters to be considered in the application.¹⁶⁸
- [182] Ms Petricevich adopted the applications assessments concluding the proposal was consistent with the direction in both the IMP and CMS. We heard nothing to the contrary, so adopt Ms Petricevich’s reasoning and conclusion.

SECTION 105 RMA

- [183] Section 105(1) of the RMA is relevant to the proposal in relation to the discharge from the lagoon once the lagoon has been opened to the CMA. The Section 42A Report,¹⁶⁹ assessed the application against the relevant matters of Section 105(1) namely;
- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (b) the applicant’s reasons for the proposed choice; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.
- [184] Section 105(1) of the RMA was not directly addressed by any other party. We note that section 9.2 of the application addressed the alternative modelled scenarios to

¹⁶⁵ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 10.7

¹⁶⁶ Section 42A Report, Ms D Petricevich, Para 3.7.2.2

¹⁶⁷ Section 42A Report, Ms D Petricevich, Para 3.7.1

¹⁶⁸ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 10.8 – 10.9

¹⁶⁹ Section 42A Report, Ms D Petricevich, Section 3.11

identify the best scenario to achieve the purpose of the proposal, namely the improved ecological and health and cultural values of the lagoon. That analysis showing that the even a do-nothing approach could lead to significant adverse effects. As we recorded above, alternatives sought by several submitters for lower levels (e.g. 2.2mASL) are not within the scope of the application, so therefore not available for us to consider. As such, we find the assessment under Section 105 appropriate including the assessment of alternatives.

SECTION 107 RMA

- [185] Section 107(1) of the RMA was assessed in the application concluding that the adverse effects listed were not anticipated to occur as a result of the proposed activity and the visibly discoloured plume at the initial opening of the lagoon would be temporary and not cause any significant effect on aquatic life or other CMA values.¹⁷⁰ The Section 42A Report also addresses this matter.¹⁷¹
- [186] Having considered all of the evidence in relation to the effects on coastal waters we are satisfied that, subject to compliance with the conditions of consent, the discharge of contaminants to water or to land that may enter water, will not give rise to any of the Section 107(1) effects in the relevant receiving waters.

DURATION

- [187] The application sought a duration of 20 years for all resource consents.¹⁷² The submitters sought a range of consent terms, generally 2 -10 years.
- [188] The submitters reasons for seeking a shorter term included that there are too many unknowns, to provide for a better understanding of the potential effects of the opening frequencies and the potential damage that a long terms consent might create. These matters were further expanded on by the submitters in their presentations to us.
- [189] In response to questions, Dr Robertson stated that he was comfortable that a 20-year consent period is sufficient to detect meaningful trends and emphasised that the 20-year duration is based on a science perspective that with monitoring in place can inform the consent holder. He went on to say that should a shorter period than 20-years be granted, there was no risk from a technical perspective, and while he did not recommend a shorter consent duration, it was more a matter of avoiding the cost of more frequent applicants for consents.
- [190] The Applicants also addressed the reasons for seeking a 20 year term in reply, noting the transitional 5 yearly approach to the trigger levels.¹⁷³ In summary, that a final level of 2.5mASL along with a 20 year term is required to restore the lagoon's ecological health and cultural values and that to grant a lesser term would frustrate the consent purpose.
- [191] In evidence, Ms Sannazzaro set out reasoning and opined that a shorter term for any consent, if granted, should apply to allow for the alignment with the development of the Waituna Freshwater Management Unit (FMU) as required by the NPS-FM and noting Policy 40 7. of the SWLP.¹⁷⁴ Both Mr Doesburg in submissions¹⁷⁵ and Ms Williams in

¹⁷⁰ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 11

¹⁷¹ Section 42A Report, Ms D Petricevich, Section 3.12

¹⁷² Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 1.1

¹⁷³ Reply Statement, Ms P Williams, Paras 5 -16

¹⁷⁴ EIC, Ms K Sannazzaro, Paras 27 -46

¹⁷⁵ Legal Submissions, Mr M Doesburg, Par 45(b)

reply¹⁷⁶ set out reasons why they considered not to be appropriate, include that the application did not seek to use a resource and that process of establishing FMUs is on hold due to central government proposed changes to the RMA and that any plan change for FMU is unlikely to be publicly notified until the end of 2027. We accept the reasons of Mr Doesburg and Ms Williams and find that it is not appropriate to shorten the duration sought for any alignment to a FMU process.

- [192] Ms Petricevich¹⁷⁷ and Ms Thorne¹⁷⁸ were of the view that a 20-year term was appropriate given the nature and scale of the potential effects and the recommended conditions which include monitoring of conditions with the 5 yearly reviews of the effectiveness of the consent. In response to our questioning, they considered that the recommended term was consistent with Policy 40 of the SWLP as to determining the term of resource consents. We accept that position and taking account of all the submissions and evidence, we find that a term of 20 years is appropriate.

CONDITIONS s108 and S108AA

- [193] Acknowledging the suite of conditions included in the application and updated via Section 92 Response, amendments following prehearing meeting which included a staggered increase in the trigger level for openings in 5 yearly intervals, Ms Petricevich recommended a suite of conditions in the Section 42A Report reflecting her own assessment.¹⁷⁹ Ms Thorne generally agreed to the changes to conditions recommended by Ms Petricevich, but some minor amendments.¹⁸⁰ A further suite of recommended conditions were attached to the JWS – RMA planners dated 28 July 2025, with Ms Petricevich and Ms Thorne in agreement that that the conditions were appropriate. Ms Sannazzaro's recorded view being, in summary, that the application was fundamentally deficient and it was premature to comment on conditions meaningfully until matters of flood control works, council functions and future FMU process were properly addressed.
- [194] At the hearing we questioned Ms Petricevich and Ms Thorne on several matters in the recommended conditions, such as the location of the opening sites, alternative gauging site locations, potential benefit of an abbreviations and acronyms section, varying uses of “must”, “shall” and “may”, of comprehensiveness of the definitions, lapse date, limit on volume of waste, standards or triggers included as part of management plans rather than as specific conditions, management plans (the requirement to prepare, to be prepared by suitably qualified person/s, the purpose of the management plan, the process for certification, the process for amendment and a requirement to comply with the management plan once certified), specification as to monitoring and reporting, conditions around operational works, reference to documents outside of the conditions, the reservation of discretion, grammatical and cross referencing issues and others. As identified above, we requested independent facilitated conferencing between the planners to address the matters raised by the Panel and the Panel wish to acknowledge the work of the planners and facilitator in addressing the matters raised. The resulting suite of conditions from the Planners JWS was sent to the parties for comment.
- [195] We record that five (5) of the submitters availed themselves of the opportunity to comment on the conditions.¹⁸¹ Matters raised in response, include the workability of

¹⁷⁶ Reply Statement, Ms P Williams, Paras 122- 131

¹⁷⁷ Section 42A Report, Ms D Petricevich, Para 4.1.5

¹⁷⁸ EIC, Ms L Thorne, Para 57

¹⁷⁹ Section 42A Report, Ms D Petricevich, Section 3.13 and Appendix 1

¹⁸⁰ EIC, Ms L Thorne, Paras 58 – 59 and Appendix 1

¹⁸¹ Mrs J Crack, Southern Star Farms Limited, Mr I Welsh, Mr L McCallum, Mrs R van Gool

the proposed conditions, issues as to timelines, the role of compliance, and narrow focus of conditions.

- [196] In reply, the Applicants addressed a number of matters related to the conditions, including retaining discretion, the inclusion of cultural monitoring conditions, alternative gauging location and validation, monitoring and implementation of 5-yearly review, communication to public as to lagoon opening methodology of sedimentation monitoring, bird nesting conditions and other corrections.¹⁸²
- [197] We find the resulting Planning JWS dated 29 August 2025, and the explanations as to the proposed amendments in the Reply Statement address a number of the issues raised by us during the hearing.
- [198] Having reviewed the conditions presented by the parties, we find the conditions to generally be appropriate having considered the effects. However, there are further amendments to the conditions, which we have made in line with our findings above, as well as tying the opportunity for review of conditions following the 5 yearly monitoring reports, which we are not persuaded that the changes recommended to the to that monitoring regime and allowing for amendments to management plans¹⁸³ sufficiently addresses.
- [199] Our final suite of conditions are attached in **Schedule 2**.

PART 2 – RMA

- [200] This application is to be considered under Section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.
- [201] In *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316), the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.
- [202] The application states that,
- “The majority of planning documents, against which this application is assessed, have been prepared with a coherent set of policies designed to achieve clear environmental outcomes.*
- However, for completeness, an assessment of the application against Part 2 is provided below...”¹⁸⁴*
- [203] Ms Petricevich, considered that the relevant planning documents appropriately reflected the provisions of Part 2 and as such referring to Part 2 would not add anything to the evaluative process.¹⁸⁵ Ms Thorne concurred with that view.¹⁸⁶
- [204] Considering the matters identified in the RJ Davidson decision, we find that an assessment as to Part 2 is not required for the reasons put forward by Ms Petricevich.

¹⁸² Reply Statement, Ms P Williams, Dated 12 September 2025, Paras 64 - 112

¹⁸³ JWS, 29 August 2025, Annexure A Page 4, Row 3

¹⁸⁴ Resource Consent Application and Assessment of Environmental Effects – Periodic opening of Waituna Lagoon to main and restore ecological health and cultural values of the lagoon ecosystem - July 2024- Section 13, Page 133

¹⁸⁵ Section 42A Report, Ms D Petricevich, Section 3.9.1

¹⁸⁶ EIC, Ms L Thorne, Para 53

CONCLUSION and DECISION

[205] Acting under delegated authority pursuant to Section 34A, and Sections 104, 104B, 104D, 108, 108AA of the Resource Management Act 1991, the application made by Te Rūnanga o Awarua, Department of Conservation and Environment Southland to Southland Regional Council (APP-20242456) for the periodic opening of the Waituna Lagoon to the sea at Waituna Lagoon, Kapuka South, Southland, is granted, subject to conditions.

[206] This decision is made for the reasons discussed throughout and, in summary, because:

- (a) The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
- (b) Subject to the imposition of appropriate conditions, the activity that is **granted** is generally consistent with the provisions of the proposed Southland Water and Land Plan and the Regional Coastal Plan; and
- (c) The activity that is **granted** is unlikely to have any significant adverse effects on the environment provided the conditions imposed are fully implemented.

[207] The consent conditions attached as **Schedule 2** are imposed.

DATED this 13th day of October 2025.



Mark St.Clair (Independent Commissioner - Chair)



Ian Boothroyd (Independent Commissioner)



Megen McKay (Independent Commissioner)

Schedule 1 – Minutes

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #1**

1. Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioners Mark St.Clair (Chair), Ian Boothroyd, and Megen McKay have been appointed by Southland Regional Council (SRC) to hear and determine the application lodged by Te Rūnanga o Awarua, Department of Conservation and Environment Southland (the Applicant) for various resource consents for the periodic opening of the Waituna Lagoon, Kapuka South, Southland. Specifically; the resource consents applied for are:
 - Water and Discharge Permits for:
 - The diversion and discharge of water and sediment from Waituna Lagoon to the Coastal Marine Area (CMA)
 - The diversion and discharge of seawater and sediment from the CMA into the Waituna Lagoon
 - Land Use and Coastal Permits for:
 - Earthworks and disturbance of the bed of Waituna Lagoon and margins
 - Disturbance of the CMA
 - Incidental indigenous vegetation clearance
2. The parties should note that for the purposes of this hearing and for clarity, the Commissioners (or the Panel) refer to Environment Southland (ES) in its role as one of the applicants and Southland Regional Council (SRC) in its role as the consent authority and also in its role in providing section 42A of the RMA report/s.
3. As per the Council's Hearing Notice of 10 June 2025, the hearing is scheduled to commence at **9.00am Tuesday 29 July 2025**, and continuing on **Wednesday 30 July 2025** and **Thursday 31 July 2025**. The venue being the Council Chamber of Environment Southland Council office, corner of North Road and Price Street, Waikiwi, Invercargill.
4. Similarly, the Council's Hearing Notice of 10 June 2025 set out the pre-circulation of the section 42A of the RMA Report, the Applicant's evidence and any submitter expert evidence under section 103B of the RMA.
5. The purpose of this minute is to provide some further explanation as to the manner in which the hearing will be conducted and seek input from the parties to request from the Applicant (see Memorandum of Counsel for the Applicants, dated 24 June 2025 as **Appendix 1**) for amendments to the section 103B of the RMA timetabling and a request for an expert witness to be heard at a later date.

Manner in which the hearing is to be conducted

6. For completeness, the hearing scheduled commencement and continuance, days and dates remain in place. In order to provide some further explanation as to manner in which the hearing will be conducted, the Commissioners make these further directions.
7. Pursuant to s41C(1) of the RMA, the Commissioners direct that in respect of expert evidence pre-circulated in accordance with the Council's Hearing Notice, the hearing will be conducted in the following manner:
 - a) Section 42A report(s) and all pre-circulated expert evidence will be taken as read;
 - b) The applicant that has provided the pre-circulated evidence is to call the witness in person;

- c) The witness should be introduced and asked to confirm his or her qualifications and experience;
 - d) The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - e) The witness will then be given an opportunity to draw to the attention of the Commissioners the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioners will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - f) The witness may then be questioned by the Commissioners.
8. Non-expert evidence and legal submissions may be read aloud on the day the relevant party appears at the hearing. Written versions may be provided at the hearing, or earlier if parties wish, but are not required to be pre-circulated. Any written material should be tabled with the Hearing Administrator at the time of presentation and will be made available to all parties.
- We observe that the Memorandum of Counsel for the Applicants, dated 24 June 2025, states that directions are sought for the Applicants' opening legal submissions to be provided 5 working days before the hearing on 22 July 2025.
- 9. The Commissioners request that as soon as practicable following receipt of any such evidence or legal submissions received pursuant to Directions [8] and [9], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
 - 10. The Commissioners also request that all parties (the SRC section 42A of the RMA reporting officer/s, Te Rūnanga o Awarua, Department of Conservation and Environment Southland as the Applicant and any submitters) calling expert witnesses to facilitate conferencing among their respective experts on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing. The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence (Environment Court Practice Note 2023, Sections 9.3 and 9.4). The Commissioners will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
 - 11. In order to better understand the proposal, and its wider context, the Commissioners propose to undertake an initial site visit to the proposal site prior to the hearing. A request will be made to the Applicant to make a suitably qualified person available to conduct our initial site visit. Such person must not be presenting evidence, or making representations at the hearing, and should address any relevant Health and Safety requirements and briefing for the Panel, prior to commencement of the site visit. The Commissioners will report back to all parties on matters observed during this site visit, prior to, or at the commencement of, the hearing.

Memorandum of Counsel for the Applicants, dated 24 June 2025

- 12. On 25 June 2025, we received a memorandum of Counsel for the Applicant dated 24 June 2025 (see **Appendix 1**). The memorandum provides reasons for and seeks directions from the Commissioners as follows;
 - a) The Section 42A report is available by 4 July 2025, being 2 working days before the report would be due (8 July).

b) The Applicants to provide their expert evidence by 11 July 2025 – again 2 working days before it is due (15 July).

c) The Applicants' opening legal submissions be provided 5 working days before the hearing commences on 22 July 2025.

d) At the end of the hearing on 31 July 2025, rather than the hearing being closed, the hearing is adjourned to be reconvened on a date after 8 August 2025 for Dr Robertson to attend and present his evidence and answer any questions from the Commissioners.

13. In regard to the request in paragraph 12 d), Ms Ongko, the hearings administrator for SRC under our instruction, clarified with the Applicants that they sought that Dr Robertson's presentation and any questions from the Panel would be by way of audio/visual link (e.g. Microsoft Teams or Zoom), rather than reconvening all the parties in Invercargill after the 8th August 2025.
14. Having reviewed the reasons set out in the memorandum, we are minded to grant the requests. However, before reaching a final view on the matter, we wish to provide the opportunity for the submitters and SRC section 42A Reporting officers to advise if they are opposed, with reasons, to the requests.
15. To that end, the Commissioners direct that if any submitter or the SRC section 42A Reporting officers are opposed to the Applicants' requests as set out in paragraph 12 above, then they are to advise the Commissioners setting out reasons, and that any such notice of opposition is to be provided to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearings' Administrator at SRC, by way of email, no later than **12noon on Monday 30 June 2025**.
16. The Commissioners request that as soon as practicable following receipt of any such information received pursuant to Direction 15, SRC provides a copy to all other parties to these proceedings by way of email.
17. On receipt of any material set out in Direction 15 above, the Commissioners will then proceed to make a decision on the Applicants' requests and issue a further minute setting out the next steps.
18. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

25 June 2025

Appendix 1

BEFORE INDEPENDENT COMMISSIONERS APPOINTED BY THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND IN THE MATTER of various resource consent applications for periodic openings of Waituna Lagoon Waipārera by Te Rūnanga o Awarua, the Department of Conservation and the Southland Regional Council (Environment Southland) [the Applicants]

Application No. **APP-20242456**

Memorandum of Counsel for the Applicants

Seeking hearing directions and request for expert witness to be heard at a later date

Dated: 24 June 2025

Department of Conservation | *Te Papa Atawhai*

Solicitor rōia: Pene Williams

Phone waea: 027 408 3324

Email īmera: pwilliams@doc.govt.nz

TĒNĀ E NGĀ KAIKOMIHANA, NEI RĀ KA MIHI, IF IT MAY PLEASE THE COMMISSIONERS –

1. This memorandum is filed on behalf of the Applicants: Te Rūnanga o Awarua, the Department of Conservation (Te Papa Atawhai) and the Southland Regional Council (Environment Southland); who have jointly applied for resource consents to periodically open Waituna Lagoon/ Te Waipārera.
2. This memorandum seeks directions on the timing of the section 42A report and Applicants' expert evidence, as well as seeking the hearing be adjourned from 31 July and reconvened in August so that the Applicants' key expert, Dr Hugh Robertson, can present his evidence in person.

Context about the Applicants' witness availability and hearing dates

3. Waituna Lagoon is part of the (enlarged) Awarua Wetlands Ramsar site – the Ramsar site covering the lagoon was declared in 1976 and was enlarged to cover adjacent areas in 2008. Dr Hugh Robertson (DOC) is one of the technical experts advising the Applicants and is currently Chair of the Science and Technical Review Panel for the Contracting Parties to the Ramsar Convention on Wetlands. Dr Robertson has been leading the technical advice for the Applicants on their application.
4. The Applicants have worked with experts providing advice including: Dr Robin Holmes (Cawthron Institute), Richard Measures (NIWA), Mary de Winton (NIWA), and Associate Professor Marc Schallenberg (University of Otago), as well as Dr Robertson. These are all busy people, and some have pre-planned travel and other commitments over June – August 2025.
5. In May 2025 the Southland Regional Council consents team (ES consents team) proposed potential hearing dates for the application, indicating these would be 26-28 August 2025.
6. When these potential dates were communicated to submitters several contacted the ES consents team and the applicants to say this was not suitable, as some submitters are farmers and their busiest period is August – September. The ES consents team came back to the Applicants for advice on the most suitable 3-day timeframe for a hearing in mid-late July.
7. The Applicants canvassed availability of their expert witnesses. Dr Holmes (freshwater ecology) and Mr Measures (hydrology) are both unavailable from late June until late July 2025, as they are overseas. The Applicant's counsel and consultant planner also have constraints (other commitments) until late July.

8. Dr Robertson is unavailable from 13 July – 8 August. This is because he is travelling overseas to attend the 15th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, which is being held in Zimbabwe from 23-31 July 2025.¹ Meetings of the Conference of the Contracting Parties to the Convention are held every three years and these dates have been set for some time, as has Dr Robertson's planned travel and attendance in his role as Chair of the Science and Technical Review Panel.
9. The Applicants replied to the ES consent panel proposing hearing dates from 29-31 July – while acknowledging that Dr Robertson is not available for those dates. Provided the section 42A report is available slightly early, Dr Robertson's written evidence can be provided before his planned travel. Dr Robertson's presentation to the Commissioners will need to be after his return to New Zealand in August.

Directions sought

10. For these reasons, the Applicants seek the following directions from the Commissioners:
 - a. The Section 42A report is available by 4 July 2025, being 2 working days before the report would be due (8 July).
 - b. The Applicants to provide their expert evidence by 11 July 2025 – again 2 working days before it is due (15 July).
 - c. The Applicants' opening legal submissions be provided 5 working days before the hearing commences on 22 July 2025.
 - d. At the end of the hearing on 31 July 2025, rather than the hearing being closed, the hearing is adjourned to be reconvened on a date after 8 August 2025 for Dr Robertson to attend and present his evidence and answer any questions from the Commissioners.
11. The Applicants do not seek a change to when any expert evidence for submitters is due, and this would remain 5 working days before the hearing commences, on 22 July 2025, giving submitters the benefit of 2 additional working days to consider the Applicants' expert evidence.
12. I trust this memorandum sets out the reasons for the directions sought, and if the Commissioners have questions or want to clarify any matters, please advise me.



Pene Williams, rōia ki Nga Kaitono/ counsel for the Applicants

¹ [15th meeting of the Conference of the Contracting Parties | The Convention on Wetlands, The Convention on Wetlands](#)

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #2**

1. In Minute #1, dated 25 June 2026, the Panel provided further explanation as to the manner in which the hearing will be conducted and sought input from the parties on the Applicants' request to amendment to the section 103B of the RMA timetabling and as well as a request for an expert witness to be heard at a later date.
2. In relation to the latter matter, the Panel provided an opportunity for the submitters and SRC section 42A Reporting officer to advise if they are opposed, with reasons, to the requests from the Applicant. At the close of the period in which to respond, namely **12noon on Monday 30 June 2025**, seven (7) submitters (C McCrostie, K Robertson, L McCallum, M van Rossum, R McCrostie, Southern Farms Ltd and T Tatham) advised that they were opposed to the request for Dr Robertson to appear at a date after 8 August 2025, along with reasons (See Appendix 1 to this minute). We record that there was no specified opposition from any submitter or section 42A Reporting officer, to the Applicants' request for amendments to the section 103B of the RMA timetabling.
3. The Panel has considered each of the Applicants' requests in turn and begins with the request for the amendments to the time tabling for the pre-circulation of section 42A Report, Applicants' evidence and legal submissions, noting that the Applicants did not seek to amend the timeframe for the filing of any submitter expert evidence. In summary, the Applicants sought that the section 42 report/s and Applicants' evidence be filed 2 working days ahead of the timeframes set out in the Council's Notice of Hearing of 10 June 2025, to allow for witness availability and preparation of said evidence. No party was opposed to the request. The Panel agree to the request, for the reasons set out in the memorandum, that there is no party who would be prejudiced by the request and in terms of section 21 of the RMA in avoiding unreasonable delay.
4. Accordingly, the Section 103B timetabling in the Council's hearing notice is put aside and replaced with the following.
5. Pursuant to section 103B(2) of the RMA, the Commissioners direct that the SRC Section 42A report/s be provided to the parties, by way of email, including link to the Council's website, no later than **12noon on Friday 4 July 2025**.
6. Pursuant to section 103B(3) of the RMA, the Commissioners direct that the Applicant is to provide written briefs of all their evidence to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by way of email, no later than **12noon on Friday 11 July 2025**.
7. The Commissioners request that as soon as practicable following receipt of any such evidence received pursuant to Direction [6], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
8. Pursuant to section 103B(4) of the RMA, the Commissioners direct that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by way of email, no later than **12noon on Monday 22 July 2025**.
9. The Applicants' opening legal submissions are to be provided to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by way of email, no later than **12noon on Monday 22 July 2025**.
10. The Commissioners request that as soon as practicable following receipt of any such evidence or legal submissions received pursuant to Directions [8] and [9], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.

11. In terms of Directions [5], [6], [8] and [9] the reports and evidence should be provided to SRC electronically by way of email. Hard copies of the evidence should only be provided on request.
12. The second request from the Applicants is essentially for the Panel to hear Dr Robertson out of order to the other parties, with Dr Robertson to appear by way of audio/visual link (e.g. Zoom), after the 8th August 2025. The reason being that Dr Robertson is overseas from 13 July to 8 August 2025. As noted above, seven (7) submitters opposed the delay in hearing from Dr Robertson. The reasons for the opposition are set out in Appendix 1, and in summary include, it would delay the process, raise issues of fairness, and suggest that someone else could present on behalf of Dr Robertson. We acknowledge the concern raised that the Applicant agreed to the hearing dates despite Dr Robertson's unavailability. While it would have been preferable for the Applicant to ensure the availability of all key witnesses prior to confirming dates, the Panel must now determine how best to proceed in light of the circumstances.
13. The Panel has considered the matters raised by the submitters in full. For completeness, we note the usual format for first instance RMA hearings is for the Applicant to present their case first, followed by the submitters and then the section 42A of the RMA reporting officers. The final step is that the Applicant has the right of reply. In this instance, there is a request to hear one of the Applicants' witnesses out of order.
14. In relation to the suggestion that someone else could present Dr Robertson's evidence, the Panel does not consider this to be appropriate. The Panel is required to test the evidence put before it, and in this case, any questions arising in relation to Dr Robertson's written evidence must be directed to Dr Robertson personally.
15. In reaching our decision on this aspect of the request we note that Dr Robertson's written evidence will be pre-circulated and his presentation, albeit at a later date, will be primarily to answer any questions from the Panel. Submitters will have the opportunity during their presentation to raise any issue they have with Dr Robertson's pre-circulated evidence. In addition, as a matter of fairness, the Panel will provide the opportunity for all parties to respond specifically to Dr Robertson's verbal presentation of evidence and to any questions from the Panel.
16. Delaying the entire hearing till after the 8th August 2025, for the unavailability of one witness, will not run to an efficient process.
17. We find that the most appropriate approach is to hear firstly the Applicants' case with the exception of Dr Robertson, secondly the submitters, and thirdly the Section 42A Reporting officer response to the matters raised in the hearing. The hearing would then be adjourned. A date can subsequently be set to hear from Dr Robertson by audio/visual link, followed by an opportunity for the submitters to respond only to any matters raised by Dr Robertson and then similarly the Section 42A Reporting officer.
18. The final step of the Applicant's reply would be in writing at time to be set following that audio/visual link.
19. Therefore, the Panel grant the Applicant's request for Dr Robertson to appear by way of an audio/visual link after the 8th August 2025. The Applicant should advise Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC of Dr Robertson's availability after the 8th August 2025, so that a hearing time may be determined.
20. The other hearing dates and time, set out in the Notice of Hearing remain unchanged.
21. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

30 June 2025

[REDACTED]

From: Carl McCrostie [REDACTED]
Sent: Sunday, 29 June 2025 6:29 pm
To: Resource Consents
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

CAUTION: This email originated from outside of the organisation. Do not click on links or open attachments unless you recognise the sender and know the content is safe.

Hi Catherine

I am writing in opposition to the applicants wanting to reconvene the Waituna hearing after the 8 th of August.
My reasons for this are as follows.

- The message that this will send to the submitters will be that the commissioners are prepared to allow special treatment of the applicants this will further erode any confidence that exists in the process.
- The applicants will be at an advantage having gone through the three day hearing and then reconvening so they can have the last word.
- This process has dragged on long enough and with a rapidly filling Lagoon another emergency opening is likely. By reconvening this is only going to extend the timeline to a working consent.
- Surely there is someone else within Dr Robertsons circle that could rise to the occasion.

Anyway these are my thoughts on this matter
I appreciate the opportunity to share them.

Regards

Carl McCrostie

Sent from [Outlook for iOS](#)

From: Resource Consents <ResourceConsents@es.govt.nz>

Sent: Wednesday, June 25, 2025 4:36:16 PM

To: Resource Consents <ResourceConsents@es.govt.nz>

Cc: Danielle Petricevich <danielle.petricevich@slrconsulting.com>

Subject: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine

Hearing Administrator

[REDACTED]

From: Katrina Robertson [REDACTED]
Sent: Monday, 30 June 2025 12:00 pm
To: Resource Consents
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

CAUTION: This email originated from outside of the organisation. Do not click on links or open attachments unless you recognise the sender and know the content is safe.

Hi

With regard to the extension requested by the Applicant to enable Dr Robertson to present his evidence, I'm curious as to why the Applicant agreed to the hearing dates when their lead technical advisor was unable to attend those dates. I feel it's more efficient and to the benefit of everyone, submitters, the Applicant and the commissioners to have it all occur across the 3 days rather than extending it out at a later date. I think either someone needs to present the evidence on his behalf or the dates need to be changed.

Thanks
Katrina

Get [Outlook for Android](#)

From: Resource Consents <ResourceConsents@es.govt.nz>
Sent: Wednesday, June 25, 2025 4:36:16 PM
To: Resource Consents <ResourceConsents@es.govt.nz>
Cc: Danielle Petricevich <danielle.petricevich@slrconsulting.com>
Subject: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine
Hearing Administrator

[REDACTED]

From: Lloyd McCallum [REDACTED]
Sent: Sunday, 29 June 2025 7:57 pm
To: Resource Consents
Subject: [External] FW: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

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Catherine

Thankyou for passing on the minute from the hearing panel.

I make the following comments;

- I have read the full minute and this availability of people for meetings has delayed many Waituna Lagoon discussions over many years.
- If we had continuous rights then I would say wait until October, but we don't.
- The closed Lagoon is rising and looking at a 3rd Emergency opening in as many years regardless of your hearing panel timetable.
- These are all large businesses you mention in your email and it is hard to believe that they are unable to meet these dates before agreeing to the July date changes.
- We were told as a community to step up or miss out attending the prehearing meeting which none of these experts attended.
- I understand in a normal timetable of hearings the applicant and their experts would be up early and others could either agree or disagree with statements made as we move through the hearing.
- When the Waituna Control Association had a consent in process, there was very high pressure put on them to keep the process moving along, days not months now two and half years.
- We have been told to trust the hearing process, this is getting harder and harder to do.
- If you do agree with this request then it should be open to all interested parties to attend and make comment.

There is strong public interest and media in this consent hearing with a rising Lagoon in the background, I suggest a normal hearing process or delay the hearing.

Lloyd McCallum

From: Resource Consents <ResourceConsents@es.govt.nz>
Sent: Wednesday, 25 June 2025 4:36 PM
To: Resource Consents <ResourceConsents@es.govt.nz>
Cc: Danielle Petricevich <danielle.petricevich@slrconsulting.com>
Subject: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456
Importance: High

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui
Catherine
Hearing Administrator

[REDACTED]

From: Maarten van Rossum [REDACTED]
Sent: Sunday, 29 June 2025 9:16 pm
To: Resource Consents
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

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Dear Catherine

Thank you for sending through the minute from the hearing panel.

We, from the Waituna Catchment Committee, acknowledge that Dr Robertson is one of the key people who needs to present on behalf of the applicant at the hearing but we have the following concerns:

- We have been told we have to trust in the process but we feel this will be undermined by allowing an extension to occur.
- The community was told to step up or miss out attending the pre hearing meeting, which we did and this extension again would undermine that.
- Is there not someone else within Dr Robertsons team who could take his place and present?
- Due to the change in circumstances and changes to the consent conditions several people who weren't going to speak would now like the option to do so.

The lagoon is currently closed and is filling rapidly. No doubt we will be looking at a 3rd emergency opening before a consent is granted, therefore we feel that trust needs to be maintained in the process as much as possible because this process has been drawn out for nearly two years.

Regards
Community Representative
Maarten van Rossum

On Wed, 25 Jun 2025 at 16:39, Resource Consents <ResourceConsents@es.govt.nz> wrote:

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine

Hearing Administrator

[REDACTED]

From: Janette McCrostie [REDACTED]
Sent: Monday, 30 June 2025 10:50 am
To: Resource Consents; Maarten van Rossum
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

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Hi Catherine

It is with disappointment on my behalf that the Hearing Panel has granted an extension to DOC.

A disregard of one of the most basic fundamentals in law where plaintiffs and defendants get to put their case and sum up simultaneously.

There by creating equity & fairness where neither party has the opportunity to analyse in depth at their leisure opposing arguments as well as having the final say.

The Hearing Panel has created a perceived advantage , not a good start.

Regards Ray McCrostie

On Wed, Jun 25, 2025 at 4:39 PM Resource Consents <ResourceConsents@es.govt.nz> wrote:

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine

[REDACTED]

From: Joanne Crack [REDACTED]
Sent: Monday, 30 June 2025 12:06 pm
To: Resource Consents
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

[REDACTED]

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Hello Catherine,

In regards to the recent minute, we are not impressed that the Applicant would seek to prolong the hearing process. Surely someone could present on behalf of Dr Robertson?

The level of trust that we, and the community, have for the Applicant is very low already. This looks like the Applicant attempting to have the last word with the Commissioners.

Also the Applicant has changed the consent conditions, we believe further submissions should now be allowed and, those who already submitted but indicated they did not want to speak to their submission, nor attend a hearing, these people should all now be given the option to attend etc.

Is time of the essence? Difficult to say as the lagoon is currently closed and filling quickly. This upcoming hearing will not result in an opening consent before the lagoon needs opened again - so a third emergency opening is likely.

Alternatively, if the hearing is allowed to be reconvened on 8 August 2025 for Dr Robertson to attend and present his evidence and answer any questions from the Commissioners, then there should be an option for relevant opposing submitters to further respond to him and to the commissioners at a later date.

We would also question the merits of the Applicant organising a site visit for the Commissioners - the commissioners must be able to view the affected farmland and infrastructure. To date the Applicant has shown little interest in affected parties. For example if our farm is not included in a site visit then the Commissioners would have a skewed view of the lagoon height issue.

Thanks and regards,
Jo Crack
Southern Star Farms Ltd

On Wed, Jun 25, 2025 at 4:36 PM Resource Consents <ResourceConsents@es.govt.nz> wrote:

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine

Hearing Administrator

[REDACTED]

From: sarah tatham [REDACTED]
Sent: Monday, 30 June 2025 11:21 am
To: Resource Consents
Subject: [External] Re: Circulation of Minute 1 - Waituna Lagoon Consent application Hearing APP-20242456

CAUTION: This email originated from outside of the organisation. Do not click on links or open attachments unless you recognise the sender and know the content is safe.

To Catherine

I feel with the time that has gone past and plenty of warning people need to be there in person.
Ewen Pirie was not allowed to speak via Zoom at pre hearing so Dr Roberts should have to be there or get some one to stand for him.
Shifting the goal posts to suit your agenda should not be allowed and you are seen to do it time and time again.

Thanks Trev Tatham
Co-Chair of the Waituna Catchment Liaison Committee

[Yahoo Mail: Search, organise, conquer](#)

On Wed, 25 Jun 2025 at 4:36 pm, Resource Consents
<ResourceConsents@es.govt.nz> wrote:

Tēnā koutou

Please find attached Minute 1 from the Hearing Panel.

Ngā mihi nui

Catherine

Hearing Administrator

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #3**

1. In response to Minute #1, dated 25 June 2025, the Panel received some queries in addition to the input sought from the parties on the Applicants' request to amend the section 103B of the RMA timetabling and to allow an expert witness to be heard at a later date. Those queries related to submitters that had indicated they did not wish to be heard now wishing to be heard, as well as the site visit/s by the Panel. We address each of those matters in turn.
2. The Panel notes that the section 42A of the Resource Management Act (RMA) report has been released and made available to the parties.

Submitters that now wish to be heard

3. In relation to submitters that had indicated in their submission that they did not wish to be heard, potentially now wishing to be heard, then those submitters may do so. To assist in organising the hearing, if there is any submitter that now wishes to be heard, they should contact Ms Catherine Ongko (Resourceconsents@es.govt.nz), Hearing Administrator at Southland Regional Council (SRC), by way of email, no later than **12noon on Friday 18 July 2025**, so that an appearance time can be arranged.

Site Visit/s by the Panel

4. In Minute #1, the Panel requested that the applicant arrange an initial site visit for the Panel and that the Panel would update the parties at or prior to the hearing on matters observed. The Panel received a query that the Panel should also view affected farmland and infrastructure identified by the submitters. The Panel notes that viewing individual properties requires the permission of the landowner.
5. The Panel proposes to undertake an initial site visit on Monday 28 July 2025 and intends to view the proposed opening locations (Walker's Bay, Hansens Bay, and The Fence), Te Wai Pārerā Trust Land, Waghorn Road Bridge, publicly accessible points to the tributaries – Waituna Creek, Carran Creek, Moffat Creek, and the Waituna Lagoon Loop Track. Arrangements to facilitate the initial site visit are underway.
6. The Panel, also wishes to view examples of private land potentially affected as raised by submitters on Friday 1 August 2025. The Panel request that the submitters liaise amongst themselves to identify and arrange access and times for the Panel, to view three example sites on Friday 1 August 2025, starting at 9.00am and needing to be completed by 2pm. The Panel, as with the initial site visit, will need to be accompanied on the site visits to individual properties and the person guiding the Panel must not be presenting evidence, or making representations at the hearing. To be clear this is not an evidence collecting exercise, but rather an opportunity to view examples of the issues identified by the submitters. The Panel will have its own transportation to travel to and between the example sites.
7. The Panel requests that the submitters identify and arrange a draft schedule of the properties to visit and table that draft schedule at the commencement of the hearing on Tuesday 29 July 2025. The Panel will review the draft schedule and make a determination as to which properties to visit.
8. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

10 July 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #4**

1. The Panel received today, a memorandum (see **Appendix 1**) from counsel for the submitter, Federated Farmers of New Zealand, Ms Cook-Munro, advising that their expert witness, we assume a planner, was not available for the requested expert conferencing in the lead up to preparing their evidence. Ms Cook-Munro believes that their witness would be available in the week before the hearing commences, 23 July 2025 to 28 July 2025.
2. In Minute #1 (dated 25 June 2025), paragraph 10, the Panel requested expert conferencing and understands that this may not be possible in the lead up to the preparation of expert evidence. Nonetheless, the Panel would encourage expert conferencing, if it was possible to arrange in the week leading up to the hearing. To that end, if the parties engaging expert witnesses could liaise amongst themselves to arrange conferencing and any resulting Joint Witness Statement/s in the week before the hearing, the Panel would be grateful.
3. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

11 July 2025

Appendix 1

BEFORE

the Hearings Panel delegated
by Environment Southland

UNDER

the Resource Management Act
1991

IN THE MATTER

of the hearing of a notified
resource consent applications
from Te Rūnanga o Awarua,
Department of Conservation
and Environment Southland for
the periodic opening of the
Waituna Lagoon, Kapuka South,
Southland (APP-20242456)

**MEMORANDUM OF COUNSEL FOR FEDERATED FARMERS OF
NEW ZEALAND (INCORPORATED) RELATING TO HEARINGS
PANEL MINUTE 1**

11 July 2025



Solicitor acting: Jo-Anne Cook-Munro
444 Anglesea Street
PO Box 447
Hamilton

Telephone: 0800 327 646
Email: jcookmunro@fedfarm.org.nz

MAY IT PLEASE THE PANEL

1. In its Minute 1 dated 25 June 2025, the Hearings Panel at paragraph 10 requested that:

“... all parties (the SRC section 42A of the RMA reporting officer/s, Te Rūnanga o Awarua, Department of Conservation and Environment Southland as the Applicant and any submitters) calling expert witnesses to facilitate conferencing among their respective experts on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing.”

2. The Hearings Panel noted that the aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence.
3. Federated Farmers of New Zealand (Incorporated) (**Federated Farmers**) lodged a submission dated 3 September 2024 to the notified resource consent applications from Te Rūnanga o Awarua, the Department of Conservation and Environment Southland for the periodic opening of the Waituna Lagoon, Kapuka South, Southland (APP-20242456) (**the applications**).
4. Federated Farmers, like other parties, is in the process of developing its position in respect of the application and drafting its evidence for the hearings which are due to commence at 9.00am on Tuesday, 29 July 2025.
5. As per the Hearing Notice received by email on Tuesday 10 June 2025, submitters' expert evidence is due with the Hearings Panel by noon, Tuesday 22 July 2025.
6. Federated Farmers is not in a position to participate in expert conferencing prior to the submission of its expert witness evidence on 22 July 2025. The applications have raised complex and complicated issues which our expert witness has been required to address. Our expert witness has indicated that they need all the available time prior to the deadline to formulate their position, as well as drafting their evidence.

7. In addition, our expert witness will need time to review the applicant's evidence which is to be lodged today, Friday 11 July 2025. Federated Farmers is also waiting on information to be sent from one of the applicants which has taken longer than expected to be received.
8. Federated Farmers believes that its expert witness would be able to attend expert conferencing the week before the hearing commences being 23-28 July 2025.



Jo-Anne Cook-Munro
Counsel for Federated Farmers of New Zealand (Incorporated)

Date: 11 July 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #5**

1. The Panel received yesterday, a memorandum (see **Appendix 1**) from Mr Tuckey a submitter, raising the concern that the application is to be heard in the premises of one of the Applicants and in summary that for reasons of transparency and fairness, the choice of venue should be reconsidered.
2. The Panel has carefully considered Mr Tuckey's request and the reasons expressed for that request. The Panel wish to assure Mr Tuckey and any other submitters that the Panel is independent of Applicants' and will run a fair and transparent hearing regardless of the venue.
3. The hearing venue was advised to all parties on 10 June 2025 as part of the hearing notice. Noting that one month has since elapsed and that there is now only two weeks to the commencement of the hearing on 29 July 2025, the Panel have reached the conclusion that it is too late logistically to now change the venue. The Panel will conduct the hearing in a manner so that venue will not prejudice any party.
4. The panel wish to clarify that if any person who has made a submission intends to present expert evidence at the hearing pursuant to section 103B(4) of the RMA, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by way of email, no later than **12noon on Tuesday 22 July 2025**.
5. Similarly, the Applicant's opening legal submissions are to be provided to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by way of email, no later than **12noon on Tuesday 22 July 2025**.
6. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

15 July 2025

Appendix 1

-----Original Message-----

From: Warren Tuckey [REDACTED]
Sent: Sunday, 13 July 2025 9:12 pm
To: Catherine Ongko [REDACTED]
Subject: [External] Resource Consent Application - Waituna Opening

CAUTION: This email originated from outside of the organisation. Do not click on links or open attachments unless you recognise the sender and know the content is safe.

The Chairman
Independent Hearing Panel

Dear Sir,

Sorry to raise this matter so late but I am concerned that the hearing of this application is to be held in the premises of one of the applicants.

I would have thought that it would be preferable for the sake of independence for this application to be heard in a neutral/impartial location to ensure fairness and transparency, enabling all parties to present their submissions without the potential influence of one of the applicant's premises.

Although I have elected not to speak to my submission, the informal pre-hearing meeting in one of the applicant's didn't feel appropriate to me and I am sure that the formal hearing at that venue will feel even more inappropriate.

I suggest that the choice of venue be urgently reconsidered for these reasons.

Warren Tuckey
Sent from my iPad

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #6**

1. The Panel notes that the section 42A of the Resource Management Act (RMA) Report (s42A Report) and the Applicants' evidence has been filed and made available to the parties.
2. Following an initial review of the application, the s42A Report and the Applicants' evidence, the Panel have identified some initial questions for the Applicants to address at the hearing. Any submitters and the section 42A Reporting officer may similarly address the questions at the hearing.
3. The questions relate to the proposed lagoon opening locations, the interface between the coastal marine area (CMA) and the lagoon, including the status of the area (the shingle bank) between the lagoon and the CMA, is it land (section 9 of the RMA), bed (section 13 of RMA), foreshore (section 12 of the RMA) or something else? The purpose of the questions is to gain a more detailed understanding of the consent triggers and what has been applied for.
4. To that end, we direct that at the hearing, the Applicants provide;
 - a) A plan view and cross section sketch/es and description of the proposed opening location interface, indicating the CMA, land, bed, lagoon and area proposed to be opened.
 - b) In addition to the regional consents' triggers identified in the application, section 42A Report and Applicants' evidence, does the proposal trigger any land use consents from the District Council? If yes, which consents, if not, why not?
 - c) The Panel may have additional questions arising from the presentation of this material.
5. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

16 July 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #7**

1. In Minute #3, dated 10 July 2025, the Panel set out its proposed site visit to the opening locations and other places scheduled for Monday 28 July 2025 and sought for the submitters to liaise amongst themselves to suggest three (3) example sites of issues identified by the submitters, with the site visits scheduled for Friday 1 August 2025. The Panel requested the submitters to table a draft schedule for the visits to the three sites at the commencement of the hearing on Tuesday 29 July 2025.
2. As part of the organisation of the site visit to the proposed opening locations, which is to occur by boat, the Panel has been advised that if the weather is not favourable, the Panel may not be able to undertake that component of the site visit on Monday 28 July 2025. If that situation were to arise, then the alternative would be to undertake the site visit on Friday 1 August 2025. That would potentially conflict with the scheduled site visit to the three submitter-identified locations.
3. To address this matter, the Panel requests that the submitters, please organise the visits so that the Panel could potentially visit the three example sites on Monday 28 July 2025, should the Panel be unable to visit the proposed opening locations on that day.
4. This will also require the submitters to identify the three example sites and advise the Panel in the week before Monday 28 July 2025. Therefore, the Panel requests that the submitters liaise amongst themselves to identify and arrange a draft schedule of the properties to visit for Friday 1 August 2025 and as a backup alternative Monday 28 July 2025. The submitters are requested to provide a draft schedule for the site visits to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, via email by **12noon on Thursday 24 July 2025**. The schedule should include contact phone numbers so that Ms Ongko can advise the three example site property owners. The Panel will review the draft schedule and make a determination as to which properties to visit.
5. The Panel understands that this is somewhat inconvenient, but is necessary to ensure that the Panel can visit all of the locations within the time available.
6. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

18 July 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #8**

1. The hearing commenced as scheduled at 9.00am on Tuesday 28 July 2025, and we adjourned the hearing at 4.45pm on Thursday 31 July 2025. The purpose of the adjournment being; for the Applicants to address a clarification matter, to confirm the date and time for the Panel to hear and question the Applicants' witness Dr Robertson, for facilitated expert planning conferencing as to conditions to occur, the opportunity for the submitters to provide written comments on those previous three matters and allow for the Applicants' right of reply in writing. For completeness, we confirm that the Panel undertook site visits to three locations arranged by the submitters on the 1 August 2025.
2. Accordingly, and as explained at the hearing, the Panel directs;
3. The Applicant is to provide clarification as to what the risk assessment is assessing and to what standards the alternative location/s are to be assessed, for the proposed alternative opening location/s anywhere along the coastal bar adjoining the lagoon. The Applicants are directed to provide that clarification to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at Southland Regional Council (SRC), via email by **3pm on Tuesday 12 August 2025**.
4. The Panel request that as soon as practicable following receipt of any such clarification received pursuant to Direction [3], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
5. The Panel direct that SRC arrange a reconvening of the hearing, via Microsoft Teams or Zoom, for **10.30am on Wednesday 13 August 2025**, for the purpose of the Panel to hear from and question the Applicants' witness Dr H Robertson, as initially signalled in Minute #2 dated 30 June 2025. Having heard from Dr Robertson, the hearing will be again adjourned.
6. The planning experts are directed to conference on the proposed suite of conditions of consent, to address the matters raised by the Panel at the hearing. SRC is directed to engage an independent person experienced in the preparation of conditions to facilitate the conferencing. The date of the conferencing is to be organised amongst the planning experts and independent facilitator. The conferencing should be conducted in person. Any resulting Joint Witness Statement (JWS) from the conferencing must include PDF and WORD versions of any recommended suite of conditions.
7. The Panel directs that any resulting JWS from the planning experts' conferencing be provided to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, via email by **3pm on Friday 29 August 2025**.
8. The Panel request that as soon as practicable following receipt of any such JWS received pursuant to Direction [7], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
9. Following receipt of the JWS as to conditions, the submitters are invited to provide written comment on; the clarification as to the risk assessment (Direction [3]), the hearing and questioning of Dr Robertson (Direction [5]), and/or the JWS on recommended consent conditions (Direction [7]). As explained at the hearing, the submitters' comments should respond to those three matters and not relitigate matters already addressed at the hearing 29 to 31 July 2025. Any responses from the submitters are to be provided to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at Southland Regional Council (SRC), via email by **3pm on Friday 5 September 2025**.

10. The Panel request that as soon as practicable following receipt of any such comments received pursuant to Direction [9], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
11. Finally the Panel direct that the Applicants provide their reply statement in writing to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, via email by **3pm on Friday 12 September 2025**.
12. The Panel request that as soon as practicable following receipt of the Reply Statement received pursuant to Direction [11], SRC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
13. As explained at the hearing, the Panel will then determine if they have all the information they require, before closing the hearing by way of minute and moving to deliberations and preparation of the decision.
14. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

1 August 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #9**

1. In Minute #8, dated 1 August 2025, the Panel directed conferencing amongst the planning experts on the proposed suite of conditions of consent to address the matters raised by the Panel at the hearing. On 7 August 2025, the Panel received a memorandum (see **Appendix 1** attached) from Ms Cook-Munro, Counsel for Federated Farmers of New Zealand (Federated Farmers), requesting that Ms Sannazzaro, expert planning witness for Federated Farmers, be excluded from the conferencing and setting out reasons.
2. The Panel has been advised that the planning experts' conferencing is scheduled to take place on Monday 25 August 2025.
3. Having carefully considered the request, the Panel records that conferencing would assist in the Panel's deliberations and as set out in Minute #5, the Panel encourages expert conferencing. However, the decision on participation is ultimately for each party, and the Panel can then draw any inferences that are appropriate. We would be obliged if Federated Farmers would please confirm in writing its position regarding Ms Sannazzaro's attendance at the conferencing, way of email to Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC, by **12noon on Friday 15 August 2025**.
4. The remainder of the timetabling set out in Minute #8 remain.
5. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

12 August 2025

BEFORE the Hearings Panel delegated
by Environment Southland

UNDER the Resource Management Act
1991

IN THE MATTER of the hearing of a notified
resource consent applications
from Te Rūnanga o Awarua,
Department of Conservation
and Environment Southland for
the periodic opening of the
Waituna Lagoon, Kapuka South,
Southland (APP-20242456)

**MEMORANDUM OF COUNSEL FOR FEDERATED FARMERS OF
NEW ZEALAND (INCORPORATED) RELATING TO HEARINGS
PANEL MINUTE 8**

7 August 2025



Solicitor acting: Jo-Anne Cook-Munro
444 Anglesea Street
PO Box 447
Hamilton

Telephone: 0800 327 646
Email: jcookmunro@fedfarm.org.nz

MAY IT PLEASE THE PANEL

1. In its Minute 8 dated 1 August 2025, the Hearings Panel at paragraph [6] directed that:

“The planning experts are directed to conference on the proposed suite of conditions of consent, to address the matters raised by the Panel at the hearing. SRC is directed to engage an independent person experienced in the preparation of conditions to facilitate the conferencing. The date of the conferencing is to be organised amongst the planning experts and independent facilitator. The conferencing should be conducted in person. Any resulting Joint Witness Statement (JWS) from the conferencing must include PDF and WORD versions of any recommended suite of conditions.”

2. The Hearings Panel has requested that the JWS from the conferencing should be provided to the Hearing Administrator at Environment Southland by 3pm on Friday, 29 August 2025.
3. Federated Farmers of New Zealand (Incorporated) (**Federated Farmers**) lodged a submission dated 3 September 2024 to the notified resource consent applications from Te Rūnanga o Awarua, the Department of Conservation and Environment Southland for the periodic opening of the Waituna Lagoon, Kapuka South, Southland (APP-20242456) (**the application**).
4. Federated Farmers presented its legal submissions and expert planning evidence on Wednesday, 30 July 2025 to the Hearings Panel.
5. Federated Farmers has been extremely clear in its opposition of the applications that have been sought. The reasons for its opposition were clearly set out in the documentation that has been provided to the Hearings Panel.
6. Ms Sannazzaro participated in the previous expert planning witness conference which resulted in a JWS dated 28 July 2025. She participated in good faith and in accordance with the guidance provided by the Environment Court Practice Note 2023 in section 9.5. Where she was able to do, Ms Sannazzaro indicated her agreement to the information contained in the application.

7. While the intent behind the Hearings Panel direction is appreciated, Federated Farmers has concerns over what its expert planning witness is being asked to do.
8. Ms Sannazzaro has indicated to the Hearings Panel her concerns with the application. Her participation in the first JWS held with the applicants and Council's planners resulted in a table which set out clearly what had been agreed upon and what was still in disagreement.
9. The JWS also showed recommended amendments to the proposed consent conditions. The recommended amendments were agreed upon the applicants and Council's planners without input from Ms Sannazzaro who stated:

*"In my view, the application and associated assessments are fundamentally deficient. They fail to identify Environment Southland's regionally significant Flood Control Works or acknowledge the Council's related functions and statutory responsibilities. Additionally, there is no assessment of how this proposal might affect, or be influenced by, the future FMU process. Given these omissions, I consider it premature to comment meaningfully on the draft consent conditions until these matters are properly addressed."*¹

10. Following the hearing, Ms Sannazzaro's concerns remain, and it is her expert opinion that:

- a. The significance of the lagoon, its history of managed openings, and its role within the wider catchment have not been appropriately considered in determining the 'existing environment'. The Waituna catchment is unique, as reflected in its identification as a stand-alone Freshwater Management Unit (**FMU**).

It is not appropriate to treat the definition of existing environment as fixed or incapable of evolving in response to such unique circumstances. Adopting a rigid approach risks overlooking the real-world context, artificially limiting the effects assessment and potentially denying submitters a meaningful opportunity to challenge the proposal.

¹ Joint Witness Statement – RMA Planners, dated 28 July 2025, p22.

By relying on a conventional and narrow interpretation, the application is framed solely as a lowering of water levels. This framing disregards more than a century of active water level management, and as a result, enables the effects of prolonged high water levels - such as flooding, land and public infrastructure inundation, and bank stability - to be overlooked.

- b. There is insufficient information in the application to enable a proper understanding of the activity's effects on the environment. Section 88(2)(b) of the Resource Management Act 1991 (**RMA**) requires that an application include information relating to the activity, including an assessment of its environmental effects.

Schedule 4, clause 1 of the RMA further requires that assessment to be proportionate to the scale and significance of effects. Regardless of whether the activity is characterised as a lowering or raising of lagoon water levels, the application seeks long-term, exclusive control² over a sensitive and significant freshwater body. This is a significant activity. The failure to identify and assess several key matters results in material omissions in the context of s104(1) of the RMA, undermining the ability to fully understand the actual and potential effects of the proposal:

- i. The applicant seeks a 20-year term and broad discretion over whether, and when, to open the lagoon. This effectively centralises control over a freshwater body in a way that is inconsistent with the integrated management approach promoted in the National Policy Statement for Freshwater Management (**NPS-FM**) and the Proposed Southland Water and Land Plan (operative in part) (**SWLP**).
- ii. There is no assessment as to how this level of exclusive control may affect the forthcoming FMU limit-setting process for the Waituna catchment. Notably, SWLP Policy 40 requires consideration of whether the duration of the consent will better enable implementation of the revised freshwater management

² The planners' Joint Witness Statement (at p4) confirms that a second consent for this activity would be problematic and potentially derogate from this one.

frameworks developed through that process. The application does not engage with this requirement.

- iii. Environment Southland, as a co-applicant, seeks consent solely to provide for ecological and cultural values, despite also holding statutory responsibilities for managing natural hazards, flood control and soil conservation. Exercising one function in a manner that undermines or neglects others in a manner that could cause adverse effects, is a relevant consideration under s104 of the RMA.
 - iv. It is foreseeable that Environment Southland may need to open the lagoon again in future to manage flood risk. However, the application does not address how such a future need - whether through s330 or another consent – would be affected by the proposal, particularly in relation to the principle of derogation of grant.
 - v. Further, the application proposes to delay in lagoon opening until historically high water levels are reached and seeks to retain full discretion not to open the lagoon at all. This approach risks exacerbating flooding and erosion within the catchment.
 - vi. The application does not identify the regionally significant flood control works within the catchment. There is no consideration of the potential effects of a change in water level on the operation of that infrastructure, and how it may impact its effectiveness, integrity or functioning.
- c. The lack of adequate information compromises the statutory assessment required under s104(1) of the RMA, including the consideration of relevant planning provisions. This materially affects the ability to determine whether the proposal aligns with applicable policy frameworks:
- i. There is no assessment of the application against several relevant provisions, including RPS Method WQUAN.1(g), and SWLP Policies 26A, 39A, and 40. In addition, limited regard has been given to the principal reasons for adopting Coastal Plan

Policy 7.4.2.2, which offers valuable context for lagoon management and is relevant to the consideration of this proposal.³

- ii. There remains some uncertainty regarding the application of the National Environmental Standards for Freshwater (**NES-F**). The status of the lagoon as a 'natural inland wetland' under the framework of the NPS-F and NPS-FM has not been clearly established. The SLWP maps indicates the lagoon is a Sensitive Waterbody and not a Regionally Significant Wetland, and no assessment has been undertaken using the Wetland Delineation Protocol. This lack of clarity creates uncertainty around the regulatory framework that applies to the activity.
11. In summary, it is Ms Sannazzaro's expert opinion that the application does not contain sufficient information to enable a proper assessment of its actual and potential effects on the environment. Accordingly, it is her opinion that consent should be declined under s104(6) of the RMA.
12. On that basis, Ms Sannazzaro respectfully requests to be excluded from participating in expert conferencing on the proposed suite of consent conditions, as in her view, the application is not sufficiently developed to allow for meaningful or appropriate discussion of potential conditions.



Jo-Anne Cook-Munro
Counsel for Federated Farmers of New Zealand (Incorporated)

Date: 7 August 2025

³ "However, when the mouth blocks, the lagoon gradually fills with water and can impact upon farmland, public roads and bridges. It is necessary, therefore, to develop means of overcoming these adverse effects."

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #10**

1. On 13 August 2025 at 10.30am, we reconvened the hearing to hear from and pose questions to the Applicants' expert witness, Dr Robertson. We adjourned the hearing at 12.19pm on the same day, with the remainder of the hearing timetable to follow that set out in Minute #8, dated 1 August 2025.
2. Having heard from all the parties, the Panel sets out below the matters it understands were requested for the Applicant to address in the right of reply. For completeness, this is by no means a comprehensive list and the Applicants may of course reply on any matter raised in the hearing. For the information of the parties, no new evidence may be introduced in a reply statement.
3. The matters are;
 - a. Operational Framework
 - i. How will exercising of any consent granted, work? What organisations are involved?
 - ii. Details of the governance structure and decision-making framework for the implementation of the consent?
 - b. Cultural monitoring in consent conditions
 - i. Details of any cultural monitoring conditions proposed, if any?
 - c. Alternative Gauge Location
 - i. Alternatives to Waghorn's Bridge if this site is not used?
 - d. Implementation of 5 yearly review
 - i. How will the proposed review be implemented in practice, and by whom?
 - ii. Will and how will the outcomes of the review be communicated?
 - iii. Will and how will the outcomes of the review require implementation (e.g. amendment of conditions) by the consent holders?
 - iv. What, if any, will be the opportunity for submitters/public to provide feedback/submit on any review?
 - e. Sedimentation within the lagoon
 - i. Is there any proposed monitoring of sedimentation levels and distribution in the lagoon?
 - ii. If so, what methodology for monitoring sedimentation depths and distribution within the lagoon is proposed?
 - iii. How would any proposed methodology, including any proposed measurement and establishment of triggers for sedimentation monitoring be reflected in any conditions, should consent be granted?
4. The remainder of the timetabling set out in Minute #8 remains in place.
5. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

15 August 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #11**

1. By 3pm on 5 September 2025, we received four (4) written responses from submitters commenting on; the clarification as to the risk assessment, the hearing and questioning of Dr Robertson, and/or the JWS on recommended consent conditions as set out in Minute #8. These comments were distributed to the Applicants and other parties.
2. This morning, we were advised of a late response from a submitter, Mrs van Gool, received at 5.33pm on 5 September 2025. In considering the requirements of section 37 and section 37A of the RMA, we accept the out of time response, finding that no party is unduly prejudiced and the delay is not unreasonable. We request that SRC pass on the late response to the Applicants and other parties.
3. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

8 September 2025

**Te Rūnanga o Awarua, Department of Conservation and Environment Southland,
Resource consent applications for the periodic opening of the Waituna Lagoon,
Kapuka South, Southland. (APP-20242456)
Minute #12**

1. In accordance with the timeframe set out in Minute #8, the Applicants' filed their reply statement on 12 September 2025, with Southland Regional Council (SRC) distributing that statement to the parties.
2. On 15 September 2025, the Panel was advised that submitter, Southern Star Farms, had responded to the Applicants' reply statement, noting that they were unsure if they could comment on the Applicants' Right of Reply. The Panel advises that the process does not provide the opportunity for submitters or the Council in its regulatory function (e.g. section 42A Reporting officer) to respond to the Applicants' Right of Reply. As such, the Panel cannot take account of any matters in the response from the submitter.
3. The Panel has now reviewed all the information provided and concluded that it does not require any further information. As such, the hearing is now closed as of today's date 22 September 2025. The Panel will now move to its deliberations and preparation of the decision. The parties are advised that it is anticipated that the decision will be available on or before 13 October 2025.
4. The Panel has been advised that the statutory timeframe for the application expires on 30 September 2025. To ensure sufficient time for deliberations and preparation of its decision, the Panel extends the statutory timeframe until 30 October 2025, under section 37 of the RMA. In reaching this decision the Panel has considered the interests of the Applicants' and submitters as to the extension, the interests of the wider community as to an adequate assessment of the proposal and the duty under section 21 of the RMA to avoid unreasonable delay, as required by section 37A of the RMA.
5. Any correspondence to the Commissioners should be directed through Ms Catherine Ongko (ResourceConsents@es.govt.nz), Hearing Administrator at SRC.



Mark St.Clair
Chair and on behalf of the Panel

22 September 2025

Schedule 2 – Conditions Imposed

Discharge, Coastal and Water Permits and Land Use Consent

Under Sections 9, 12, 13, 14, 15, 104 and 104D of the Resource Management Act 1991, a resource consent is granted by the Southland Regional Council to **Te Rūnanga o Awarua, the Department of Conservation, Environment Southland** from **13 October 2025**.

Please read this Consent carefully, and ensure that any staff or contractors carrying out activities under this Consent on your behalf are aware of all the conditions of the Consent.

Details of Permit

Purpose for which permit is granted: To establish an opening regime to maintain and restore the ecological health and cultural values of the Waituna Lagoon ecosystem, by transitioning to a more ecologically optimal opening regime.

Location: Waituna Lagoon

Expiry date: 20 years after the date of the grant of this consent.

Lapse date: 10 years after the date of the grant of this consent.

In the conditions of these resource consents the following terms and acronyms have the following meanings:

Term	Meaning
AMR	Annual Monitoring Report
CIMP	Consent Implementation Management Plan
CMP	Communications Management Plan
Consecutive day	A 24 hour period, starting at any time of the day
Consent Authority	Environment Southland (Southland Regional Council) as regulator of the resource consent
Consent Holder	Te Rūnanga o Awarua, Environment Southland in their capacity as Consent Holder, and Department of Conservation Te Papa Atawhai.
Emergency Situation	Means an adverse effect or sudden event in accordance with s330(b)-(f) of the RMA

Lagoon Opening	Means the opening of the Waituna Lagoon to the Coastal Marine Area (CMA) and all associated diversion, discharge and land use activities.
Management Plan	Means the management plans required under any one or more of the consent conditions, being the Consent Implementation Management Plan, Monitoring Plan, and Communications Management Plan.
masl	Metres above sea level (measured to NZ Vertical Datum 2016)
MOP	Monitoring Plan
OP	Opening Plan
Opening Site	Means the location of the Waituna Lagoon opening channel.
Restoration Plan	Means the restoration plan for natural inland wetlands in accordance with Regulation 39(6) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020
Science Advisory Group	Means the group established in accordance with Conditions 17 through 21.
Significant biosecurity risk	An “unwanted organism” under the Biosecurity Act 1993, a “noxious fish” under the Freshwater Fisheries Regulations 1983, organisms specified as “pests” under the Southland Regional Pest Management Plan 2019 as amended 14 December 2022, and any “organism of interest” listed on the Environment Southland website as at 13 October 2025.
SQEP	Suitably qualified and experienced person(s) For the purpose of the Science Advisory Group, SQEP also means a person acting in accordance with the Environment Court Code of Conduct for Expert Witnesses, with qualifications in a scientific or related discipline related to coastal lagoon ecosystems (such as water quality, ecology, geomorphology, or freshwater or coastal processes), or a representative of Awarua Rūnanga with cultural knowledge.
Surface Water	Means water above the ground whether flowing or not, and includes fresh water and coastal water

Conditions

1. This consent authorises the **Consent Holder** to open the Waituna Lagoon (**Lagoon Opening**) at Walker’s Bay as shown on Consent Plan APP20242456-01 (**Appendix 1**) between NZTM 1,262,340E 4,831,360 N and 1,261,460E 4,831,000 N. Where the opening of the Waituna Lagoon has not occurred at Walker’s Bay within the previous 5 years the **Lagoon Opening** must meet the requirements of **Condition 8**.
2. Subject to **Condition 7**, the **Consent Holder** may also open the Waituna Lagoon (**Lagoon Opening**) at the following locations:
 - (a) at Hansen’s Bay as shown on Consent Plan APP20242456-02 (**Appendix 1**) between NZTM 1265267E 4832530N, and 1265448E 4832596N; or
 - (b) The Fence as shown on Consent Plan APP20242456-03 (**Appendix 1**) between NZTM 1266955E 4833037N, and 1237453E 4833232N.

3. The **Lagoon Opening** must be undertaken in accordance with the most recently certified version of the following:

- (a) Consent Implementation Management Plan (**CIMP**);
- (b) Communications Management Plan (**CMP**); and
- (c) Monitoring Plan (**MOP**).

Where there is any conflict between conditions of consent and any details of a **Management Plan**, the consent conditions prevail.

4. The **Consent Holder** must comply with the **Restoration Plan (Appendix 2)**. Where there is any conflict between conditions of consent and any details of the **Restoration Plan**, the consent conditions prevail.
5. The water level of Waituna Lagoon must be measured at the Waghorn's Bridge gauge (at or about NZTM2000 1267505E 4833745N), and must be measured in **masl**.
6. If the Waghorn's Road Bridge gauge is removed or disestablished, the **Consent Holder** must install a new water level gauge as soon as possible and no later than 30 working days. If the **Consent Holder** installs a new water level gauge, the **Consent Holder** must ensure that the type and location of gauge are certified by the **Consent Authority** as being able to provide accurate water level data that is representative of the average water level for the Waituna Lagoon.

Lagoon Opening Location

7. Before a **Lagoon Opening** at an alternative location to Walkers Bay, identified in **Condition 2**, the **Consent Holder** must provide a report prepared by a **SQEP** to the **Consent Authority** for certification confirming that the effects on the ecological and cultural attributes set out in **Table A** below are the same or less than if the **Lagoon Opening** had occurred at Walkers Bay.

TABLE A:

Attribute	Standard relative to Walkers Bay
Submerged and aquatic plants	Disturbance of established beds of submerged and aquatic plants
Habitat and migration pathways for fish species	Disturbance of fish habitat and adversely affecting migration pathways for fish species
Fringing wetlands, including rare and threatened plant species	Disturbance of wetland habitat at the opening location, including rare and threatened plant species
Bird nesting, including rare and threatened bird species	Disturbance of known bird nesting at the opening location, including for rare and threatened bird species
Water quality in the lagoon	That increased water flow/movement towards the opening location will adversely affect water quality in the lagoon

Attribute	Standard relative to Walkers Bay
Sites of cultural importance (Wāhi Taonga/Tapu)	Disturbance of sites of cultural importance

8. If an opening at Walkers Bay has not been undertaken within the preceding five years, the **Consent Holder** must provide a report prepared by a **SQEP** to the **Consent Authority** for certification confirming that the effects on the ecological and cultural attributes set out in **Table A** are the same or less than if the **Lagoon Opening** occurs at either of the alternative locations identified in **Condition 2**.
9. Before a **Lagoon Opening** certified under **Condition 7 or 8**, the **Consent Holder** must consider:
 - (a) the potential for the **Opening Site** to remain open for an extended duration of more than three months, and any measures that could be employed to reduce the duration of opening; and
 - (b) the practical feasibility of the opening location site, including in respect of health & safety.
10. A **Lagoon Opening** undertaken in accordance with **Condition 7 or 8** must not occur until written certification of the report addressing the matters in **Table A** required under those conditions has been received from the **Consent Authority**.

Lagoon Opening – Water Level Transitional Regime

11. Except where **Conditions 12 or 13** apply, the **Consent Holder** must only undertake **Lagoon Openings** as follows:
 - (a) for the first five years from the grant of consent (years 1-5), being to 13 October 2030:
 - i. summer openings (1 September to 30 April) may occur if water levels are at or above 2.4masl for three **consecutive days**; and
 - ii. winter openings (1 May to 30 August) may occur if water levels are at or above 2.3masl for seven **consecutive days**;
 - (b) for the next five years of the consent (years 6-10), being from 13 October 2030 to 12 October 2035, openings may occur if water levels are at or above 2.4masl for three **consecutive days**; and
 - (c) for the next five years of the consent (years 11-15), being from 13 Oct 2035 to 12 October 2040, openings may occur if water levels are at or above 2.5masl for three **consecutive days**; and
 - (d) for the final five years of the consent (years 16-20), being from 13 Oct 2040 to 12 October 2045 openings may occur if water levels are at or above 2.5masl for seven **consecutive days**.

Lagoon Opening – Water Quality and Ecosystem Health

12. Where a **Lagoon Opening** is for the purpose of water quality and ecosystem health, the **Consent Holder** must only undertake a **Lagoon Opening** when:

- (a) One or more of the primary lagoon water quality and ecosystem health indicators in **Table B** have reached a Critical Indicator Level, or
- (b) One or more of the primary or secondary lagoon water quality and ecosystem health indicators in **Table B and C** have reached a Warning Indicator Level, and action is necessary to prevent or mitigate an **Emergency Situation**; and
- (c) The **Consent Holder** has received a written recommendation from the **Science Advisory Group** that a **Lagoon Opening** is necessary to manage the risk of a significant adverse ecological effect on Waituna Lagoon having regard to the Primary and Secondary Indicators in **Table B and C**, and any other relevant scientific information, including habitat for threatened and at-risk bird species during critical life stages.

TABLE B:

Primary Indicators Levels for Waituna Lagoon

	Water quality, biosecurity or ecosystem health indicator	Warning indicator level	Critical indicator level
PRIMARY indicators	Chlorophyll-a (a sustained visible algal bloom* over a period of 14 days or longer)	0.012 - 0.06 mg/L	≥ 0.06 mg/L
	Cyanobacteria	Biovolume great than 5mm ³ /L (and more than 50% of phytoplankton biovolume present as toxic or potentially toxic cyanobacteria)	Biovolume greater than 10mm ³ /L (and more than 80% of phytoplankton biovolume present as toxic or potentially toxic cyanobacteria)
	Bottom water dissolved oxygen concentration	< 2 and ≥ 0.5 mg/L	< 0.5 mg/L
	Incursion of a new non-native species that is a significant biosecurity risk	Incursion of worrisome species but low risk of proliferation	High risk species incursion (eDNA or positive sighting or capture of new non-native species)
Interpretation	* A “visible algal bloom” must be identified by: (i) A chlorophyll-a concentration and/or (ii) An observations by an appropriately qualified and experienced person. These observations must include the location and approximate extent and intensity of the visible algal bloom on each day of observation.		

TABLE C:

Secondary Indicators Levels for Waituna Lagoon

	Water quality or ecosystem health indicator	Warning indicator level	Critical indicator level
SECONDARY indicators	Total phosphorus concentration	≥ 0.05 and < 0.1 mg/L	≥ 0.1 mg/L
	Total nitrogen concentration	≥ 0.75 and < 1.5 mg/L	≥ 1.5 mg/L

	Water clarity (Secchi disc depth)	≥ 0.5 m and < 1 m	< 0.5 m
	Nuisance epiphytes or benthic algae**	>10% cover	>30% cover
	Macrophytes**	<30% lagoon wide cover abundance	<20% lagoon wide cover abundance
	Ruppia megacarpa**	Present at <20% of lagoon monitoring sites	Present at <10% of lagoon monitoring sites
	Diadromous fish (īnanga, lamprey/kanakana, eel/tuna) density (Waituna Creek)	Declines in diadromous fish populations (density and/or biomass)	Substantial declines in diadromous fish populations (density and/or biomass)
	Toxins/pathogens	Cyanotoxin producing genes in cyanobacteria present, but no cyanotoxins detected. Prolonged level of E. coli >260 cfu/100ml and not human source	Cyanotoxins detected across lagoon E. coli prolonged level above 1200 cfu/100ml

** Based on the results from annual surveys undertaken in late summer.

Lagoon Opening – Fish Passage

13. Where a **Lagoon Opening** is for the purpose of providing for diadromous fish species, the **Consent Holder** must only undertake a **Lagoon Opening** if:
- (a) The opening takes place between 1 April and 30 November; and
 - (b) Waituna Lagoon has not been opened in the previous 24 months, or
 - (c) Waituna Lagoon was opened during the past 24 months, but the timing of the open period did not support upstream migration of threatened or at-risk fish species; and
 - (d) The **Consent Holder** has received a written recommendation from the **Science Advisory Group** that a **Lagoon Opening** is necessary to enable fish passage having regard to the Primary and Secondary Indicators in **Table B and C** and any other relevant scientific information, including habitat for threatened and at-risk bird species during critical life stages and cultural information.

Cultural Values

14. The **Consent Holder** must provide for the ongoing exercise of kaitiakitanga of Awarua Rūnanga through the following (as a minimum):
- (a) Invitation to undertake cultural health monitoring; and
 - (b) Invitation to undertake **Lagoon Opening** monitoring.

Opening Notice

15. The **Consent Holder** must, no later than 24 hours prior to the **Lagoon Opening**, notify the parties in **Condition 16(b)** that Waituna Lagoon is to be opened. The notice must include:
- (a) The **Opening Plan** for the **Lagoon Opening**, required by **Condition 51**.

- (b) The reason for the opening by reference to **Conditions 11 to 13**, and
- (c) The current water level at Waituna Lagoon and average daily water levels for the previous seven days, where the opening is undertaken in accordance with **Condition 12**.

16. The notice required by **Condition 15** must be:

- (a) Published on the Environment Southland Website and/or in the newspaper; and
- (b) Provided to:
 - i. the Waituna Catchment Committee;
 - ii. any stakeholders identified in a **CMP**; and
 - iii. the **Consent Authority**.

Science Advisory Group

17. The **Consent Holder** must establish a **Science Advisory Group** within 20 working days of the grant of this consent.

18. The purpose of the **Science Advisory Group** is to:

- (a) Act as an advisory group to the **Consent Holder**; and
- (b) Provide recommendations to the **Consent Holder** under **Conditions 12 and 13**.

19. The **Science Advisory Group** must include a minimum of four members comprising:

- (a) **SQEP** representatives of:
 - i. the Director-General of Conservation;
 - ii. Awarua Rūnanga;
 - iii. Environment Southland;
 - iv. Waituna Catchment Committee (if nominated in accordance with **Condition 21**), and
 - v. Any other **SQEP** appointed by the **Consent Holder**.
- (b) A **SQEP** to Chair, from an organisation independent of the **Consent Holder** and Waituna Catchment Committee.

20. The Chair's independence must be certified by the **Consent Authority**, prior to appointment to the **Science Advisory Group**.

21. Within 5 working days of the grant of the consent, the **Consent Holder** must invite the Waituna Catchment Committee to nominate a representative on the **Science Advisory Group** and accept the nominee, provided the nominee is a **SQEP**.

22. The **Consent Holder** must fund all actual and reasonable expenses of any **SQEP** nominated by the Waituna Catchment Committee.

23. The **Consent Holder** must ensure that any recommendation provided by the **Science Advisory Group** is in writing and records the views of all members.

Accidental Discovery

24. In the event that a **Lagoon Opening** results in the discovery or disturbance of an archaeological site, kōiwi tangata, wāhi tapu or wāhi taonga, the **Consent Holder** must cease disturbance activities in the immediate vicinity of the accidental discovery and inform:
- (a) Te Ao Mārama,
 - (b) Heritage New Zealand Pouhere Taonga,
 - (c) The **Consent Authority**, and
 - (d) In the event of Kōiwi tangata being discovered, the New Zealand Police.
25. Disturbance activities in the immediate vicinity of the discovery or disturbance must be suspended until the **Consent Holder** has been advised in writing that the discovery or disturbance is not of an archaeological site, kōiwi tangata, wāhi tapu or wāhi taonga, or work can otherwise recommence by the parties set out in **Condition 24**.
26. In addition to **Conditions 24 and 25**, the protocol in **Appendix 3** must be followed. Where there is any conflict between conditions of consent and any details of the protocol in **Appendix 3**, the consent conditions prevail.

Biosecurity and Spill Prevention

27. Prior to any machinery or equipment entering the foreshore, the **Consent Holder** must ensure that all vehicles and equipment are free of any unwanted organisms or pest species.
28. All machinery must be operated to ensure that spillages of fuel and other hazardous substances are prevented.
29. The **Consent Holder** must not store fuel and other hazardous substances or undertake refuelling of machinery within 20m of **Surface Water** and not on pea gravel.
30. The **Consent Holder** must contain any accidental spills as soon as possible and notify without undue delay, the **Consent Authority** and the Operations Manager (Murihiku) of the Department of Conservation.

Bird Nesting

31. The **Consent Holder** must establish a single and clearly identified route for the movement of vehicles and machinery on and off the **Opening Site** at all times between 1 August and 31 January, to minimise disturbance of threatened or at-risk bird roosting, nesting and feeding areas.

32. Within 10 working days prior to each **Lagoon Opening**, a **SQEP** must walk over the **Opening Site(s)** on foot to determine whether there is any threatened or at-risk bird nesting in the vicinity. The **Consent Holder** must complete a record following the walkover which must:
- (a) Include, but not be limited to, the following:
 - i. date and time of walk over;
 - ii. names of attendees;
 - iii. a map or plan showing the area of the walk over; and the location of flags installed to show the location of any threatened or at-risk bird nests identified; and
 - iv. photographs of the walk over area; and
 - (b) Be provided to the **Consent Authority**.
33. Where a nest is identified by the walkover required by **Condition 32**, or at any time during **Lagoon Opening**, the **Consent Holder** must, until the chicks have fledged or the nest has failed or otherwise has been naturally abandoned;
- (a) Install a flag indicating the nest's location if a flag is not already present,
 - (b) Ensure any passing vehicles stay at least 10 metres away from the nest,
 - (c) Ensure any vehicles do not remain within 50 metres of the nest, and
 - (d) Not undertake any disturbance to the bar or otherwise undertake any activity within 50 metres of the nest.

Management Plans

34. All **Management Plans** must be prepared by a **SQEP** with expertise in a field related to the relevant **Management Plan**.
35. All **Management Plans** must be certified as follows:
- (a) the **Management Plan** must be developed in consultation with Te Ao Mārama Inc, and any feedback of Te Ao Mārama Inc must be provided to the **Consent Authority**;
 - (b) the **Management Plan** must be provided to the **Consent Authority** no less than 90 working days following the grant of the resource consent and 20 working days prior to the first **Lagoon Opening**, whichever is sooner;
 - (c) the certification process must be confined to confirming that the relevant **Management Plan** complies with the requirements of the relevant condition(s);
 - (d) If the **Management Plan** is not certified by the **Consent Authority** within 20 working days of the **Management Plan** being provided, the **Consent Holder** must request reasons and recommendations be provided by the **Consent Authority** as to why certification has not been provided, and where necessary, resubmit an amended **Management Plan** for certification.
36. Any **Management Plan** may be amended at any time by the **Consent Holder**. Any amendments to a **Management Plan** must be submitted by the **Consent Holder** to the **Consent Authority** for certification, and the certification process under **Condition 35** must be followed.

Consent Implementation Management Plan

37. A **Consent Implementation Management Plan (CIMP)** must be prepared and certified in accordance with **Condition 35**. The objective of the **CIMP** is to set out how the **Consent Holder** will work to implement the consent, including the decision-making process for **Lagoon**

Openings.

38. The **CIMP** must contain the following, as a minimum:

- (a) Confirmation of the roles and responsibilities of the **Consent Holder** and the **Science Advisory Group**, including the appointment of a relationship manager for each of the three **Consent Holder** parties;
- (b) A nominated primary point of contact for the **Consent Holder**;
- (c) Timing and details concerning actions to be undertaken by the **Consent Holder** and **Science Advisory Group** in carrying out responsibilities under the conditions relating to opening and closing of Waituna Lagoon. This must include the process and timing for the **Science Advisory Group** providing its recommendations to the **Consent Holder** as to the opening of the Waituna Lagoon;
- (d) A decision making process for the **Consent Holder** when considering a **Lagoon Opening** and any recommendation of the **Science Advisory Group**; and
- (e) A process for coordinating implementation of consent conditions between each of the three **Consent Holder** parties and to ensure that all obligations under the consents are met.

Communications

39. A register of complaints must be maintained by the **Consent Holder** of any complaint alleging adverse effects from exercise of the consent and any response of the **Consent Holder**. The complaints register must be provided to the **Consent Authority** upon request.

40. A **Communications Management Plan (CMP)** must be prepared and certified in accordance with **Condition 35**. The objective of the **CMP** is to detail:

- (a) The channels and methods that must be used to make information related to the exercise of the consent publicly available and accessible.
- (b) How interested parties will be kept informed of the information related to the exercise of the consent in (a) above, and the frequency of updates.
- (c) The channels available for interested parties to make enquiries or raise concerns to the **Consent Holder**, and timeframes for responses.

41. The **CMP** must contain the following, as a minimum:

- (a) An identified communications liaison person on behalf of the **Consent Holder**;
- (b) Frequency of communication (which must be no less than quarterly email updates and annual in-person meetings);
- (c) A list of key stakeholders, organisations and members of the public who will be communicated with;
- (d) Topics of communication including but not limited to updates as to any **Lagoon Opening**, and annual and five-yearly monitoring reporting;
- (e) Channels and methods that must be used to make information related to the exercise of the consent publicly available and accessible.
- (f) The channels available for interested parties to make enquiries or raise concerns to the **Consent Holder**, and timeframes for responses.

42. The **Consent Holder** must develop and review the **CMP** in consultation with the Waituna Catchment Committee.

Monitoring

43. The **Consent Holder** must develop a Monitoring Plan (**MOP**). The **MOP** must be prepared and certified in accordance with **Condition 35**.
44. The objective of the **MOP** is to ensure that the **Consent Holder** is effectively monitoring:
- (a) The water level of Waituna Lagoon and the indicators listed in **Table B and C**;
 - (b) The effects of opening Waituna Lagoon on the indicators listed in **Table B and C**,
 - (c) The extent, type and health of indigenous fringing wetland and terrestrial vegetation, and
 - (d) The location, distribution, depth, character and extent of settled sediment deposition.
45. The **MOP** must include, but not be limited to:
- (a) Parameters to be monitored, which must include, the indicators set out in **Table B and C**, indigenous fringing wetland and terrestrial vegetation, and the Waituna Lagoon water level;
 - (b) The statistic or metric to inform the indicator levels set out in **Tables B and C**;
 - (c) The location of monitoring sites, ensuring representative samples and measurements are taken and account for locations that are of higher risk to ensure that the Waituna Lagoon health is effectively monitored when Waituna Lagoon is open and closed;
 - (d) Minimum frequency to meet the requirements of **Table D**; and
 - (e) The frequency and/or timing and method of monitoring, to ensure that the Waituna Lagoon health is effectively monitored when Waituna Lagoon is open and closed.
 - (f) How the water level, location and timing of openings will be recorded, how long the Waituna Lagoon is open to the sea, when it closes (to the nearest week).
- Advice Note: In relation to Condition 45 (a), some parameters are monitored by the **Consent Authority** under its State of the Environment (SOE) Monitoring programme and the **Consent Holder** may use relevant SOE data to meet this requirement.*
46. The **Consent Holder** must review the **MOP** every five years and update the **MOP**, if required. The purpose of the review is to ensure that the **MOP** remains relevant for the duration of the resource consent, while providing for continuity of monitoring information, and may include to:
- (a) Move, remove or add monitoring locations to ensure monitoring locations are representative;
 - (b) Remove or add monitoring parameters and/or amend frequencies/timings where it is demonstrated that continued monitoring is not required, or additional

monitoring is required;

- (c) Respond to changes in monitoring approaches and parameters where these have been adopted in national or regional planning instruments.

47. The **Consent Holder** must monitor indicators of lagoon water quality and ecosystem health in **Table B and C**. For each indicator this must, at a minimum, be undertaken at the frequency set out in **Table D**.

TABLE D:

Indicator (unit)	Timing
Chlorophyll-a (mg/L)	Monthly (Increasing frequency if bloom detected)
Cyanobacteria (biovolume, mm ³ /L)	Monthly (Increasing frequency if bloom detected)
Bottom water dissolved oxygen concentration (mg/L)	Continuous / Monthly (May increase if cyanobacterial bloom detected)
Incursion of a new non-native species that is a significant biosecurity risk	6-monthly
Total phosphorus (TP) and Total nitrogen (TN) concentration (mg/L)	Monthly
Water clarity (m)	Monthly
Nuisance epiphytes / benthic algae (% cover abundance)	Annual
Macrophytes (% cover abundance)	Annual
Ruppia megacarpa presence	Annual
Diadromous fish (īnanga, lamprey/kanakana, eel/tuna, and kokopu) density***	Annual for the first 3 years, 5 yearly thereafter, on or before 30 April.
Toxins/pathogens	Samples: monthly Toxin assessment: If bloom detected
Suspended sediment (TSS mg/l)	Monthly

Benthic sediment (% soft mud – gravel)	Annually
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*** Plankton assessment may also be undertaken, if suitable and cost-effective methods are available to survey juvenile fish population abundance.

***Advice Note:** In relation to Condition 47, some parameters are monitored by the **Consent Authority** under its State of the Environment (SOE) Monitoring programme and the **Consent Holder** may use relevant SOE data to meet this requirement.*

48. The **Consent Holder** must undertake monitoring of indigenous fringing wetland and terrestrial vegetation:
 - (a) Prior to the first opening of Waituna Lagoon undertaken in accordance with this consent, but no later than 30 April 2026;
 - (b) In year 5 of this consent on or before 30 April 2030; and
 - (c) Every 5 years thereafter on or before 30 April.

49. The **Consent Holder** must undertake monitoring of settled sediment deposition in the lagoon:
 - (a) Prior to the first opening of Waituna Lagoon undertaken in accordance with this consent, but no later than 30 April 2026;
 - (b) In year 5 of this consent on or before 30 April 2030; and
 - (c) Every 5 years thereafter on or before 30 April.

50. The **Consent Holder** must report to the **Consent Authority** any observed fish strandings (including fish species, number and location) at the **Opening Site** during **Lagoon Opening** works, within 5 working days of the observation of any fish stranding.

Opening Plan

51. An Opening Plan (**OP**) must be prepared and submitted to the **Consent Authority** for information purposes, prior to each **Lagoon Opening**. The **OP** must set out how the **Consent Holder** will manage the **Lagoon Opening** to minimise the adverse effects of the **Lagoon Opening** disturbance works. The **OP** must include:
 - (a) The reason for opening;
 - (b) Details of the proposed opening methodology, including any necessary erosion and sediment control methods;
 - (c) The proposed opening location;
 - (d) Likely duration of works;
 - (e) A description of the methods to be implemented to ensure compliance with conditions of this consent;
 - (f) Implementation of any relevant mitigation measures specific to the opening location, timing and duration.
 - (g) Signage detailing access and human health and safety considerations;

- (h) Any restrictions on public access for health and safety purposes;
- (i) Emergency contacts; and
- (j) A nominated **Consent Holder** representative to be on site during the **Lagoon Opening** works.

Reporting

52. The **Consent Holder** must prepare an Annual Monitoring Report (**AMR**) and provide it to the **Consent Authority**, Te Ao Mārama Inc. and the Waituna Catchment Committee by 30 June each year. The **AMR** must contain the following information, for the previous 12 months up until 30 April, as a minimum:

- (a) The results of any cultural health monitoring undertaken by **Awarua Rūnanga**;
- (b) The results of monitoring undertaken in accordance with **Conditions 47, 48, 49 and 50** and the **MOP**;
- (c) The results of the bird nesting walkovers, as required by **Condition 32**;
- (d) A summary of compliance with the conditions and any measures undertaken to resolve any non-compliances;
- (e) A summary of any feedback received by the **Consent Holder** in accordance of the requirements of the **CMP** and any response;
- (f) Any steps taken by the **Consent Holder** in response to monitoring, including any amendments to **Management Plans**; and
- (g) A summary of any **Lagoon Opening/s**, including:
 - i. Where the **Lagoon Opening** took place, including the reasons for the use of any alternative location;
 - ii. When the Waituna Lagoon was opened;
 - iii. The opening methodology and timeline
 - iv. How long the Waituna Lagoon was open for, including the approximate date it closed;
 - v. The purpose of opening the Waituna Lagoon;
 - vi. Any information / data that informed a **Lagoon Opening**, including any recommendations of the **Science Advisory Group**;
- (h) A summary of when opening triggers were met, and whether the Waituna Lagoon was opened or not and why. This must include:
 - i. For a water level trigger specified in **Condition 11**, details on the prevailing wind conditions (direction and strength), and comment whether it was considered that the wind conditions were influencing water levels at the time; and
 - ii. Any lagoon monitoring information necessary to show compliance with the opening criteria specified in **Conditions 11, 12 and 13**. This must include a copy of the written recommendations from the **Science Advisory Group** of the reason for opening or not.
- (i) Any recommended changes to the **Opening Location**, timing and methodology for future openings to better protect lagoon and ecosystem health and cultural values.
- (j) Recommendations on any amendments necessary to a certified **Management Plan**

required by the conditions of this resource consent.

53. The **Consent Holder** must prepare a five-yearly monitoring report and provide it to the **Consent Authority**, Te Ao Mārama Inc. and the Waituna Catchment Committee by 30 June 2030, 2035 and 2040. The five-yearly monitoring report must provide the following information, as a minimum:
- (a) The aggregated five-yearly results and a summary of trends and /or observations from any cultural health monitoring undertaken by **Awarua Rūnanga**;
 - (b) The aggregated five-yearly results and a summary of trends and/or observations from monitoring and reporting in accordance with **Conditions 47, 48, 49 and 50** and the **MOP**;
 - (c) A summary of any statistically significant trends and/or observations;
 - (d) Any steps taken by the **Consent Holder** in response to monitoring and any previous 5-yearly trend and/or observations, including any amendments to **Management Plans**; and
 - (e) A summary of the overall performance of any **Lagoon Opening/s** over the aggregated five-yearly reporting period, including:
 - i. Where and when the Waituna Lagoon was opened;
 - ii. The opening methodology and timeline
 - iii. How long the Waituna Lagoon was open for, including the approximate date it closed;
 - iv. The purpose of opening the Waituna Lagoon;
 - (f) A summary of when opening triggers were met, and whether the Waituna Lagoon was opened or not and why. This must include:
 - i. For a water level trigger specified in **Condition 11**, details on the prevailing wind conditions (direction and strength), and comment whether it was considered that the wind conditions were influencing water levels at the time; and
 - ii. Any lagoon monitoring information necessary to show compliance with the opening criteria specified in **Conditions 11, 12 and 13**. This must include a copy of the written advice from the **Science Advisory Group** of the reason for opening or not.
 - (g) Any recommended changes to the **Opening Location**, timing and methodology for future openings to better protect lagoon and ecosystem health and cultural values.

Consent Review

54. The **Consent Authority** may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the **Consent Holder** of its intention to review the conditions of this consent on or before 31 August 2026, or within two months of 30 June 2030, 2035 and 2040, or within two months of any enforcement action being taken by the **Consent Authority** in relation to the exercise of this consent for the purposes of:
- (a) Determining whether the conditions of this consent are adequate to deal with any unanticipated adverse effect on the environment, including cumulative effects, which may arise from the exercise of the consent, and which it is appropriate to deal with at a later stage, or which become evident after the date of granting of the

consent, including the effects of climate change.

- (b) Ensuring the conditions of this consent are consistent with any National Environmental Standards Regulations, relevant plans and/or Policy Statement.
- (c) Assess the need for, and where necessary require, changes to monitoring or the monitoring regime to better understand the adverse effects of the activity.

for the **Southland Regional Council**

A stylized, handwritten signature in black ink, appearing to be a cursive representation of a name.A handwritten signature in black ink that reads "J. R. Boothroyd".A handwritten signature in blue ink that reads "m. McLean".

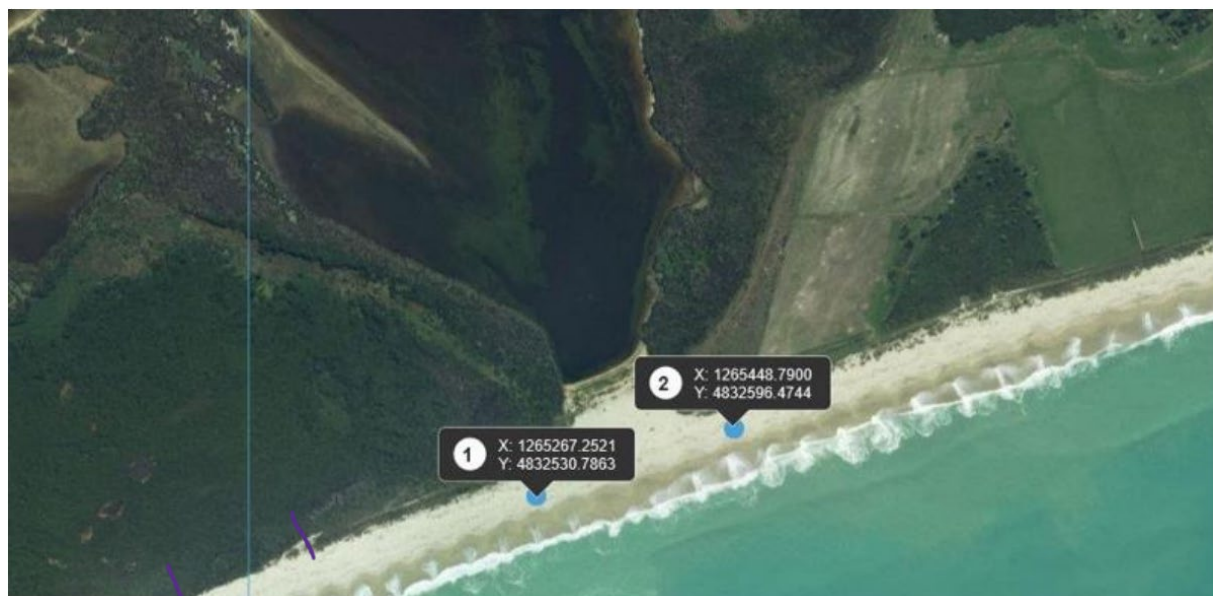
Independent Hearing Commissioners

Appendix 1

Consent Plan APP-20242456-01: Walkers Bay Opening Location



Consent Plan APP-20242456-02: Hansens Bay Opening Location



Consent Plan APP-20242456-03: The Fence Opening Location



Appendix 2

Restoration Plan

Clauses 39(5) and (6), set out that an application for a restricted discretionary activity must include a restoration plan that includes the information set out in Schedule 2 of the NESFW, and must impose a condition that requires compliance with the restoration plan.

The applicant considers these matters have been addressed through the Resource Consent Application, parts of this plan refer to the consent application and associated technical documents.

Note. not all requirements of this plan are required for this activity.

1 Details of activity site and natural inland wetland

The following information:

a) the physical address of the site of the activity:

The physical address of the site, being Waituna Bar and the possible opening site.

b) the names of the owners of the site:

His Majesty the King, with the scientific reserve administered by the Department of Conservation on behalf of the Crown.

c) the contact details for the owners:

Operations Manger C/- Department of Conservation, Murihiku District Office, 7th floor, CUE on Don, 33 Don Street, Invercargill, P O Box 743, Invercargill 9840

d) the legal description of the site, including the estate or interest held by the owners and any legal status or designation that applies to the site:

Legal description of the site: Waituna Wetlands Scientific Reserve, Crown Land, section 29 Block XIII Oteramika HUN

e) a map showing the location and boundaries of the natural inland wetland:

This is included on Page 34 (Figure 5) of the Resource Consent Application.

f) the details of the legal status of the natural inland wetland under any enactment or plan:

Scientific reserve under the Reserves Act 1977, part of a scheduled Ramsar site, Statutory Acknowledgement site under the Ngāi Tahu Claims Settlement Act 1998, Outstanding Natural Landscape or feature under the Southland District Plan.

g) the details of any management partners, including tangata whenua or key stakeholders, involved in the restoration plan.

The management partners are the co-applicants, being Awarua Rūnanga, DOC and Environment Southland.

2 Features and values of natural inland wetland

A description of the features and values of the natural inland wetland that are relevant to a restoration plan, including the following information:

a) *the type of natural inland wetland:*

See section 4 of Appendix B to the Resource Consent Application- Technical review of Conditions for Opening Waituna Lagoon.

b) *the vegetation in the natural inland wetland, including the dominant types of vegetation and any species of note (for example, rare species, invasive weeds, or unusual plant communities):*

See section 4 (Table 1) of Appendix B to the Resource Consent Application- Technical review of Conditions for Opening Waituna Lagoon

c) *the hydrology of the natural inland wetland, including—*

- i. *its water sources and flows (for example, streams, rivers, seeps, or solely rain):*
- ii. *its water levels (for example, permanent open water of more than 1 m depth, shallow water of 5 cm to 1 m depth, or conditions of being saturated with water of -5 to +5 cm depth, seasonally saturated, generally dry, or dry):*
- iii. *any modifications (for example, drains, weirs, culverts, canals, or stop banks):*

For Water Quality, See Section 5.2 of Appendix B to the Resource Consent Application- Technical review of Conditions for Opening Waituna Lagoon.

For Water levels and Hydrology see section 5.2.3 of the Resource Consent Application.

d) *the types of soil in the natural inland wetland:*

The soil orders within the Waituna Catchment include Brown Soils predominantly in the north of the catchment and gley, podzol, and organic soils predominantly in the south with minor recent soils close to the coast. Variability in the soil orders reflect different parent materials, landform ages and wetness.

The proportion of slowly permeable soils in the Waituna Catchment is 36% with and additional 61% of the catchment with moderate over slow drainage.

e) *any artificial features in the natural inland wetland (for example, roads, electricity lines, buildings, and access points):*

These include Waghorn Road and Bridge, associated boat ramp, the Waituna Lagoon loop track and viewing platform, and approximately 15-20 recreational structures.

f) *any fauna known to use the natural inland wetland or its surrounding area:*

See section 5.2 of the Resource Consent application.

g) *any special features of the natural inland wetland (for example, sites of cultural significance such as archaeological features, areas of cultural harvest, historic sites, or recreational areas).*

See Cultural Values Report Appendix G to the Resource Consent Application.

3 Issues with natural inland wetland

The following information:

- a) *a description of the current state or condition of the features and values of the natural inland wetland:*

See section 4 of Appendix B to the Resource Consent Application- Technical review of Conditions for Opening Waituna Lagoon.

- b) *a discussion of the threats to the natural inland wetland and the opportunities for restoring its features and values.*

See section 5.2 of the Resource Consent Application. The application and associated SAR report describe the current state and condition of the lagoon and discusses the threats and opportunities for restoring its features and values.

4 Management objectives for natural inland wetland

The specific objectives for managing the natural inland wetland based on its features, values, and issues, and taking into account—

- a) *its legal status under any enactment or plan; and*
b) *any existing or required resource consents or agreements with landowners or other relevant persons.*

This application is for a new lagoon opening regime to maintain and restore the ecological health and cultural values of the lagoon ecosystem in accordance with Te Mana o te Wai, and the purpose of wetland restoration and maintenance under the National Policy Statement for Freshwater Management 2020.

A history of artificial lagoon openings and nutrient and sediment inputs associated with land use in the catchment have affected the lagoon's ecology and water quality. Awarua Rūnanga, DOC, and Environment Southland seek to transition the management of water levels within the lagoon to a more ecologically optimal opening regime which supports ecological and cultural values,

The proposed consent conditions (check) set management objectives for Waituna Lagoon and take into account its legal status. There are no existing resource consents for this activity, and those required are addressed by the application. Agreements with some landowners (e.g. Te Wai Pārerā Trust) are addressed in supporting letters. Other landowners have been consulted as part of the application process as members of the Lake Waituna Control Association.

5 Operational details for achieving management objectives

An outline of the activities that will be carried out to achieve the objectives for managing the natural inland wetland, including the following:

- a) *the timelines for the activities and the persons responsible for resourcing and delivering them:*

The Resource Consent Application is for a 20 year term, with a transitional regime to higher lagoon levels. The lagoon will be periodically opened depending on the condition of the lagoon. Therefore, a timeline of work cannot be accurately provided.

In terms of resourcing and delivery, this will be the co-applicants, being Awarua Rūnanga, DOC and Environment Southland.

- b) *scale plans showing the operational areas:*

This is included on Page 60 (Figure 16) of the Resource Consent Application.

- c) *the planting to be done, including—*
- i. *a diagram showing the general areas for planting:*
 - ii. *the species to be used within specific areas (for example, areas of standing water, wetter margin areas, or drier areas):*
 - iii. *the spacing of the plants:*
 - iv. *the sources of the plants (for example, local native plant nurseries or locally-sourced seed):*
 - v. *the approach to releasing the plants (including how often, for how many years, and by what method weeding will be done around the plants):*

Not applicable. No planting is to take place under this resource consent.

- d) *any vegetation to be removed, including species and methods of removal (for example, cutting, digging, or spraying):*

We expect some vegetation to be removed when the lagoon is opened. However this is not the purpose of the application, this will be a secondary outcome of the lagoon being mechanically opened.

- e) *any machinery to be used and the purpose of its use:*
- f) *a description of the approach to water management, including—*
- i. *any changes to water levels or movement of water during and after the restoration works:*
 - ii. *if water will be dammed or diverted,—*

See section 3.2 of the Resource Consent Application for an outline of how the works will be carried out, it is worth noting that the activity itself will result in the levels of the wetland changing, this is the purpose of opening the lagoon. There will also be a diversion of water.

- a) *how that will restore or enhance the natural inland wetland:*
- b) *any structures that will be installed:*
- c) *the time of year when the works will be carried out:*
- d) *the methods to be used to minimise effects on flora and fauna*
- e) *the approach to managing erosion and sediment to be used during all of the works:*
- f) *any animal pest control to be carried out, including—*
- i. *which animal pests are present:*
 - ii. *how often, and for how many years, the animal pest control will be carried out:*
 - iii. *the method by which the animal pest control will be carried out:*
 - iv. *a description of the actions to be taken to minimise any adverse effects on fauna or to enhance values for fauna.*

See section 3.2 of the Resource Consent application for an outline of how the works will be carried out. There will be no structures placed. There will be no pest control carried out as part of this consent process. The application includes the diversion and discharge of water and sediment from Waituna Lagoon to the sea, the discharge of seawater and sediment to the lagoon.

6 Review and reporting

A description of the approach for assessing progress against the restoration plan and reporting that progress to the consent authority, including—

- a) *timelines for reporting progress; and*

b) how any requirement to report under a resource consent will be met.

See section 3 of the Resource Consent application for information related to the Monitoring of the lagoon, noted also that whilst not directly part of this consent there are several organisations that also undertake monitoring of the lagoon regularly.

AUTH-20242456

Appendix 3

Protocol in the event of a discovery, or suspected discovery, of a site of cultural importance (Waahi Taonga/Tapu)

Upon the discovery of artefact discovery, the following shall take place:

1. In the event that Kōiwi (human skeletal remains) are discovered, the works in that area of the site shall cease immediately and Tangata Whenua (Te Ao Marama and appropriate Papatipu Rūnanga), NZ Police and/or Heritage New Zealand Pouhere Taonga, and the Southland Regional Council, shall be notified as soon as practicable.
 - a. The site is to be immediately secured upon discovery to prevent further disturbance of the discovery site.
2. Taonga or artefact material (e.g. pounamu / greenstone artefacts) other than Kōiwi will be treated in similar manner so that their importance can be determined, and the environment recorded by qualified archaeologists alongside the appropriate Tangata whenua. Te Ao Mārama Inc are to be contacted in the event of taonga or archaeological artefact discovery in accordance with the Protected Objects Act 1975.

Contact details for Te Ao Marama Inc. are as follows:

Te Ao Mārama Inc.
98 Yarrow Street, Invercargill, 9810.
office@tami.maori.nz
(03) 9321242

3. In-situ (Natural State) Pounamu/Greenstone Accidental Discovery Pursuant to the Ngāi Tahu (Pounamu Vesting) Act 1997: All natural state pounamu/greenstone in the Ngāi Tahu tribal area is owned by Te Rūnanga o Ngāi Tahu. The Ngāi Tahu Pounamu Resource Management Plan provides for the following measures:
 - a. Any in-situ (natural state) pounamu/greenstone accidentally discovered should be reported to the Pounamu Management Officer of Te Rūnanga o Ngāi Tahu as soon as is reasonably practicable. The Pounamu Management Officer of Te Rūnanga o Ngāi Tahu will in turn contact the appropriate Kaitiaki Papatipu Rūnanga; and
 - b. In the event that the finder considers the pounamu is at immediate risk of loss such as erosion, animal damage to the site or theft, the pounamu/greenstone should be carefully covered over and/or relocated to the nearest safe ground. The find should then be notified immediately to the Pounamu Management Officer.
 - c. The find should then be notified immediately to the General Manager, Te Ao Turoa, at Te Rūnanga o Ngāi Tahu.

Ngai Tahu contact details are as follows:

General Manager, Te Ao Turoa

Te Rūnanga o Ngāi Tahu
Te Whare o Te Waipounamu
15 Show Place, Addington, PO Box 13 046
Christchurch 8024
Trudy.Heath@ngaitahu.iwi.nz

Archaeological Sites

Archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act (2014), and approval is required from Heritage New Zealand before archaeological sites can be modified, damaged or destroyed. Not all archaeological sites are known or recorded precisely.

Where an archaeological site is inadvertently disturbed or discovered:

1. Further disturbance must cease until approval to continue is obtained from Heritage New Zealand; and
2. The New Zealand Police and Te Ao Marama Inc also need to be advised if the discovery includes kōiwi tangata/human remains.

Contact details for Heritage New Zealand are:

Heritage New Zealand
c/o Regional Archaeologist Otago/Southland
PO Box 5467, Dunedin
Phone: (03) 477 9871
Mobile 027 240 8715
infodeepsouth@heritage.org.nz