

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

JOINT WITNESS STATEMENT OF THE PLANNING EXPERTS

Dated: 29 August 2025

INTRODUCTION

- [1] This Joint Witness Statement (**JWS**) relates to the application by Te Rūnanga o Awarua, Department of Conservation and Environment Southland for a periodic opening of the Waituna Lagoon, Kapuka South, Southland.¹
- [2] The JWS has been prepared in response to Minute #8 of the Hearing Panel. Specifically, it responds to the direction of the Hearing Panel that the planning experts conference on the proposed suite of conditions of consent, to address the matters raised by the Panel at the hearing.
- [3] The expert conferencing was conducted in person in Dunedin on 25 August 2025 and 26 August 2025, and via AVL (on parts of) 27 and 28 August 2025.
- [4] Attendees at the conference were:
- (a) Lisa Thorne, Taylor Planning for the Joint Consent Applicants;
 - (b) Danielle Petricevich, SLR Consulting for Environment Southland Consents; and
 - (c) Kate Sannazzaro, Federated Farmers NZ for Southland Federated Farmers.
- [5] The expert conferencing was facilitated by an independent facilitator, Shannon Johnston, CR Law.

CODE OF CONDUCT

- [6] This joint statement is prepared in accordance with section 9.4 of the Environment Court Practice Note 2023.
- [7] We confirm that we have read the Environment Court Practice Note 2023 and agree to abide by it.

PURPOSE AND SCOPE OF CONFERENCING

- [8] The purpose of conferencing was to address the matters raised by the Panel at the hearing on 28 July – 31 July 2025 and to produce an updated set of recommended conditions for consideration by the Hearing Panel.

¹ (APP-20242456)

- [9] The matters raised by the Panel are addressed by topic in **Appendix A**.
- [10] Changes to the conditions have also been recommended to address the further information provided by the applicants in response to Minute 8.²
- [11] The planners have conferred on a recommended set of conditions. These are agreed between DP and LT and in some instances where KS has reservations, they have been recorded.
- [12] KS further records that her participation in conferencing on conditions is to assist the Panel in the event that it decides to grant resource consent. The opinions expressed in her evidence to date remain.

AGREED ISSUES

- [13] Refer to Annexure A.

DISAGREEMENT AND REASONS

- [14] Refer to Annexure A.

CONDITIONS

- [15] An updated set of recommended conditions is attached³ as follows:
- (a) A clean version (**Appendix B**)
 - (b) A tracked change version (**Appendix C**).
- [16] The planners will also make available a word version of the updated conditions.

Date: 29 August 2025



LISA THORNE

² See Applicant's response to Minute 8 – Hearing Panel directions – Risk Assessment process – dated 12 August, 2025

³ The base conditions are the clean conditions provided in Appendix 1B of the Planning JWS, dated 28 July 2025.

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DANIELLE PETRICEVICH

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KATE SANNAZZARO

ANNEXURE A – EXPERT CONFERNCING (PLANNING) IN RESPONSE TO MATTERS RAISED IN THE HEARING PANEL’S MINUTE #8

Participants: Lisa Thorne (LT), Danielle Petricevich (DP), Kate Sannazzaro (KS)

WAITUNA LAGOON OPENING CONSENT APPLICATION – APP-20242456		
Topic / Issue / Condition	Agreed Position, with Reasons	Disagreement or Reservations, with Reasons
Above the Line Matters	All agree to record at the beginning of the consent the following matters: - Resource consent type - Activity description - Lapse and expiry (term) - Purpose of consent	KS would prefer the conditions to clearly link to each of the consents that have been granted for the suite of activities. KS is concerned that the current bundled approach has contributed to an inadequate assessment of distinct environmental effects of each of the activities being authorised. However, KS acknowledges that her concerns could be partially addressed by clearly identifying which conditions relate to which activity and consent type, either ‘above the line’ or in the structure of the conditions themselves. DP and LT would prefer to use the Environment Southland standard template which includes the same information as the conditions have been drafted to apply to the activity as a whole.
Use of directive language	All agree that the conditions should refer to ‘must’ as opposed to ‘shall’ with the exception of specific conditions that require the use of ‘may’ for the exercise of the consent holder’s discretion.	
Use of table of acronyms and definitions	All agree this should be included.	
Specificity of location	The planners acknowledge the applicant’s position to reflect specific alternative locations being Hansen’s Bay and The Fence in the conditions. Condition 1 and 2 been amended to reflect this, along with the provision of maps showing the locations of all three locations being Walker’s Bay (the primary location) and Hansen’s Bay and The	

	Fence as the alternative locations. New and amended conditions 7 through 10 provide for certification of alternative sites to Walkers Bay on the basis that the effects are the same or less than if the opening had occurred at Walkers Bay. In preparing these conditions, the planners have had regard to Table 9 of the applicant's response to Minute 8 and Table A of that same memorandum. The consent authority will be certifying a report prepared by a SQEP against standards within the condition (using Table A of the applicant's response to Minute 8).	
Alternative gauge location	The planners all agree that there needs to be clarity around the location of the gauge at Waghorn's Bridge and certainty around alternative locations if required in the future by reference to a clearly articulated certification process to ensure the gauge location is representative of the lagoon's average water level and measures and records the same data in the same way (for example telemetered to the Regional Council). Amended conditions 5 and 6 address the above matters. Where a new monitoring gauge is necessary, the planners require expert advice to inform the time period for replacement, noting that it should be as soon as possible following removal or disestablishment of Waghorn's Road Bridge gauge.	
Timing/duration of water level and how this is expressed e.g. 24 hours	The intention for this condition is for a continuous 24-hour period. There is a difference between the number of consecutive 24 hour periods within conditions, for example, 3 and 7 consecutive days. See defined term.	

Indigenous fringing wetland and terrestrial vegetation	The planners agree that the quality and health of indigenous fringing wetland and terrestrial vegetation must be monitored as part of the consented activities.	
Monitoring parameters	The planners agree that monitoring parameters (what is being monitored, and at what frequency) needs to sit within the conditions. How the monitoring will occur is now required to be detailed within a monitoring plan and there is specificity around the information requirements for that plan. This addresses the examples discussed at the hearing regarding Ruppia, dissolved oxygen, and fish monitoring.	
Express Decision Maker in decision tree to make it clear	Appendix 4 has been deleted, and the conditions now set out who is responsible for decisions, and there is a requirement for a management plan which provides for how those decisions will occur as between the consent holders. In some cases the decision must be made after the recommendation of the SAG but ultimately the consent holder must decide how to act on that recommendation.	
Spill control Biosecurity measures	The planners agree that there should be more certain conditions around spill control and conditions for biosecurity measures (eg Clean Machinery Protocol) and erosion and sediment control.	
Machinery access	The management of use of machinery will be addressed in part through the spill control and biosecurity measures referred to above, as well as through a proposed nesting birds condition. Otherwise machinery access in the coastal area is permitted under the relevant planning framework (Coastal Plan Rule 10.1.7).	
Nesting birds	The planners all agree that a nesting birds condition is required for the opening site, and one has been proposed for the common nesting period. The proposed condition reflects the nesting period for threatened and at risk shore bird species as per (what the planners understood to be)	

	Dr Robertson's and Mr Jacques' opinion in response to questioning from the Panel. The applicant needs to confirm the nesting period.	
Matauranga Māori conditions	The planners agree that the conditions should provide opportunity for cultural monitoring and input into preparation of management plans by Awarua Rūnanga, and that any outcomes are recorded and reported on with a view to informing future occurrences of the consented activities. The planners consider this could be achieved through the monitoring and reporting conditions now proposed. The planners would like confirmation of the appropriate entity outside of the consent holder, whether this is Awarua Rūnanga or Te Ao Mārama	
5-year review condition – purpose and detail. How this will work in practice	The intention was not to use the 5-yearly reporting to inform amendments to consent conditions without reference to the appropriate statutory processes (s127, s128). The conditions have been amended to provide greater guidance as to the content of the five-yearly report. The exception is a potential amendment of a management plan in response but this would be subject to the certification process now set out in the conditions.	KS maintains her position that the term of any consent granted should not extend beyond 31 December 2029. On that basis KS questions the utility of a review condition.
Management plans	All planners agree that there needs to be a management plan process set out within the conditions – for preparation, review, certification and implementation. All planners agree that where there are bottom lines, that they are recorded in the conditions of consent. Management plans should only set out how those bottom lines will be met.	KS considers that the consent can, and should, be drafted in a manner that does not require the development of a management plan. However, to the extent that the consent relies on a management plan approach, she considers the proposed condition outlining the management plan process should be included.
SAG members compensation condition	The planners agree that the condition is offered as an Augier condition and is included accordingly.	
SAG condition – minimum number of people / expertise	The conditions now reflect that there is a minimum of four SQEP on the SAG at any one time, with representatives from the consent holder, an independent chair and the	

	catchment community, should they nominate a representative, required as part of that minimum group. The condition has been amended to provide greater clarity around additional SQEP. The consent holder has the ability to appoint additional SQEP at any time. The planners acknowledge the need for a process to enable feedback from the community to the consent holder and the intention of the communications plan is to provide for that. The conditions now also make clear that the consent holder is obliged to prepare and implement a communications plan with that purpose and to ensure that any feedback from the community is had regard to as appropriate.	
Appendices in conditions – Check EC Practice Note 10(4)	The planners agree that bottom lines or standards within the appendices must form part of the conditions of consent. Where appendices set out processes or administrative matters that are required by conditions, they remain appropriate. Example: aspects of the archaeological discovery protocol.	
Annual Monitoring Report – frequency. Is Annual sufficient? Timing of reporting relevant to monitoring	An annual monitoring requirement is considered appropriate. Changes to the conditions have been made to ensure that the timing of the annual report fits with the broader consenting obligations (for example monitoring).	
Conditions for access closure/warning	The planners have included signage and public safety requirements as part of an Opening Plan requirement.	
Duration of consent and Policy 40	Duration is now addressed in the recommended 'above the line' information.	KS maintains her position that the consents, if granted, should not extend beyond 31 December 2029, to align with the timing and development of the Waituna Freshwater Management Unit.

Reservation of discretion	The conditions have been reviewed by the planners to remove reserved discretion to third parties (separate to the discretion otherwise sitting with the consent holder to act).	KS records a concern that the consent holder maintains discretion whether to act in certain circumstances, for example, when critical primary indicators or water trigger levels are reached.
Definition of SQEP	The planners have included within the definition of SQEP reference to an expert acting in accordance with the Environment Court Code of Practice. This is intended to address concerns raised by members of the community regarding independence of SAG advisers when they were employees/representatives of the consent holders. Experts on SAG must be acting in accordance with the code (impartially etc). The planners have considered alternative wording, however given its Augier nature, it has been retained as recommended within the planning evidence to date.	
Augier conditions	The planners understood that the Panel wanted to have Augier conditions expressly identified. On that basis the planners note the following: • All planners agree Conditions 17-19 regarding the formation of a third party advisory group (SAG) in is Augier, which would otherwise be provided by a SQEP. • All planners agree that Conditions 19 (b) and 20 regarding the need for an independent chair is an Augier condition. • All planners agree that Conditions 21 and 22 regarding a Waituna Catchment Committee SAG nomination is an Augier condition. • All planners agree that the aspect relating to a clearly identified route to reach the opening site in Condition 31 is Augier (relating to a permitted activity).	LT and DP agree Condition 11(a), (b) and (c) are Augier conditions in that they provide a transitional regime towards the proposed trigger/limit to account for community feedback. All planners agree that a limit in itself is not augier. KS disagrees that these conditions are Augier. While the applicant may have supported a transition approach, the purpose of the consent is ' <i>To establish an opening regime ... by transitioning to a more ecologically optimal opening regime</i> '. Condition 11 is imposed to limit or reflect the purpose of the consent. Further, KS considers a condition managing the transition is necessary to manage adverse effects given the lagoon's opening history.

	• All planners agree that Condition 37 and 38 regarding the Consent Implementation Plan are not managing an effect and are Augier conditions. • All planners agree that Conditions 40-42 regarding the Communications Management Plan are not managing an effect and are Augier conditions.	
Assessment of Effects		As a general comment, KS is concerned that the application focuses almost exclusively on the combined effects of all activities, making it difficult to identify, avoid, remedy, or mitigate the specific effects of some of the individual activities through conditions. KS is of the view the application lacks sufficient information to enable a proper assessment of the environmental effects of each of the individual activities being authorised. DP and LT consider that the conditions adequately address the effects of the proposed activities with monitoring, management, and mitigation measures.
Specific Conditions		
Condition 6 Waghorn's Road Bridge gauge	All planners seek expert advice as to an appropriate timeframe for installing a new gauge, noting that it needs to be the shortest time possible to avoid loss of monitoring data.	
Condition 11 Lagoon Opening – Water Level Transitional Regime		KS records that she does not support this condition as it provides for historically high water levels to be reached before the lagoon may be opened, and it enables a staged increase in allowable water levels over the requested 20 year term (see KS' earlier comment on the proposed term of consent). KS also notes her reservations about the use of the defined term "Lagoon Opening" in this condition (and as used in conditions generally). In her view, the condition should apply

		only to the disturbance component of the activity and not to the associated diversion and discharge components. This is because diversion and discharge will continue to occur as lagoon water levels drop below the specified thresholds – a process over which the consent holder has no control once the disturbance works are complete. LT and DP consider use of “Lagoon Opening” appropriate because the activity of opening while primarily is disturbance, facilitates the discharge/diversion at the point in time it is opened. LT and DP consider the definition captures the entire activity.
Condition 12 Lagoon Opening – Water Quality and Ecosystem Health	The planners agree further certainty around the meaning of ‘significant biosecurity risk’ will be necessary for the purposes of Table B. In their view this could be a matter addressed by the applicant through reply, given that the table was derived by expert evidence.	
Condition 12(c) Lagoon Opening – Water Quality and Ecosystem Health		KS records her concern that, under the proposed condition, when critical indicators are met, the consent holders are required to receive a recommendation from the SAG before taking action. KS considers that the presence of critical indicators should trigger immediate action, without the need for input from a third party. If certain indicators are not considered ‘critical’ in isolation, then the condition should specify which combinations of indicators, when occurring together, are to be treated as critical and requiring immediate response. LT and DP note the conditions are drafted to ensure that the consent holder is not compelled to act. Opening the lagoon is at their discretion, as long as a trigger has been met.
Condition 14 Cultural Values	Planners suggest drafting of cultural conditions is reviewed by the cultural expert.	
Condition 15 Opening Notice		KS would prefer this condition to necessitate public notice in the newspaper on every occasion opening occurs - it would not need to be 24 hours before opening.

		LT and DP consider that the condition requires notification prior to lagoon opening, and depending on lagoon opening times, notice in a newspaper may not be practical or achievable.
Condition 31 Bird Nesting	All planners agree that this condition should be reviewed by the applicant's bird experts.	KS is of the opinion that the movement of vehicles to the lagoon opening site is a permitted activity under Coast Plan Rule 10.1.7, although she accepts this is offered by the applicant as an Augier condition. LT considers the applicant is proffering a condition to assist in the management of effects on birds in relation to the movement of the consent holder's vehicles when accessing the site. DP is comfortable with the condition on an Augier basis.
Condition 35 Certification of Management Plan	All planners would like the applicant to confirm whether for the purposes of Management Plan preparation, the entity being engaged and consulted with is Te Ao Mārama Inc or Awarua Rūnanga. This query applies to other conditions where the consent holder is seeking information or is required to engage with mana whenua. The planners will accept the advice of Awarua Rūnanga on this matter.	
Condition 37 Consent Implementation Management Plan	All planners agree that the requirements for the consent implementation management plan along with the amendments to conditions mean that Appendix 4 as had been proposed is no longer required at this stage. A CIMP will be prepared and submitted.	
Condition 44 and 45 Monitoring		KS considers that the objective and content of the monitoring plan should also include monitoring of effects in the CMA e.g, plume observations as suggested in the SLR Waituna Lagoon Ecology Technical Review dated 30 May 2025 and any water quality monitoring necessary to assess alignment with water quality outcomes established in Coastal Plan Rule 7.2.2.1. LT and DP are of the opinion that the monitoring of the discharge to the CMA is not necessary, based on the advice

		of the technical experts, noting that the SLR technical peer reviewer was satisfied with the 26 June information responses provided by the applicant.
Condition 45	Planners have not included any additional conditions relating to sedimentation monitoring, as it is being addressed by the applicant as directed by Minute 10.	
Condition 47 – Table D Monitoring indicators	Planners agree to include Table D in the conditions as a bottom line for the monitoring parameters and frequency. In doing so they agree that is important that the parameters to be monitored are defined as clearly as possible. For example, further certainty around the meaning of ‘significant biosecurity risk’ will be necessary. In their view this could be a matter addressed by the applicant through reply, given that the table was derived by expert evidence.	
Condition 48 Monitoring of indigenous fringing wetland and terrestrial vegetation		KS records a reservation around the frequency of monitoring proposed under this condition with regard to the effects of historically high water levels on surrounding vegetation. KS would prefer to see more frequent assessment (such as annually) in the early years of this consent (noting her position on term). KS is of the view that the consent should also include a condition requiring basic monitoring of visible water quality effects in the CMA following each opening as suggested in the SLR Waituna Lagoon Ecology Technical Review dated 30 May 2025. For example: The Consent Holder must record visual observations of water quality in the Coastal Marine Area during and for 48 hours following each lagoon opening event. Observations must include, but not be limited to, the presence and extent of any visible discolouration, surface films, scums, or plumes. A summary of these observations must be provided to

		the Consent Authority within 10 working days of the opening. KS is also of the view a further condition requiring monitoring of seawater to assess alignment with water quality outcomes established in Coastal Plan Rule 7.2.2.1, may be necessary. However, KS is not aware of any expert evidence addressing the specific requirements of this rule. DP and LT have relied on expert advice regarding the scope and extent of monitoring as reflected in the draft condition.
Condition 50 Opening Plan	The planners have agreed to require the applicant to detail any necessary erosion and sediment control methods in an Opening Plan. The consent holder will need to provide details of any erosion and sediment control methods as part of this plan (and in advance of each opening). In dealing with erosion and sediment control in this way, the planners have relied on the evidence of Mr Measures as to the level of effect and also their understanding that Environment Southland do not have a best practice guideline.	
Other Comments		KS considers that the draft consent conditions do not adequately establish requirements for some aspects of the lagoon opening activities. To ensure appropriate restrictions on indigenous vegetation clearance, KS proposes the following conditions: • This consent authorises only incidental clearance of indigenous vegetation directly necessary to carry out the disturbance activity. • The area of vegetation clearance associated with the disturbance activity at the lagoon opening location must be limited to the minimum necessary to enable the activity to proceed safely and effectively. • The Consent Holder must confine disturbance activities to previously modified or non-vegetated areas wherever practicable.

		KS also proposes conditions to restrict and manage effects related to disturbance: • The Consent Holder must ensure that the disturbance of the lake bed and foreshore is limited to the minimum extent necessary to carry out the activity. • The Consent Holder must stockpile all material excavated during lagoon opening in a stable location above mean high water springs and outside of areas containing indigenous vegetation or wetland species. DP and LT agree that the conditions could include minimisation of the area of indigenous vegetation clearance and disturbance, to the extent necessary to carry out the activity. KS is of the opinion that the inclusion of a condition requiring the monitoring of saline parameters during and after each opening should be considered. This may provide a more immediate line of evidence to inform the adaptive management of the lagoon's ecological health. KS considers the consent should include an advice note stating: • For the avoidance of doubt, nothing in this consent limits the ability of the Southland Regional Council or the Southland District Council to undertake lagoon opening using powers provided for under s330(1) of the RMA. DP and LT do not consider the consent precludes the exercise of s 330 powers.
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