

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) [nga Kaitono, the Applicants]

Application No. **APP-20242456**

Submissions in reply by Rōia/ Counsel for nga Kaitono, the Applicants

Dated: 12 September 2025

Department of Conservation | *Te Papa Atawhai*

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

Mana oranga: Mana Tangata: Mana ki uta: Mana ki tai: Mana Waituna

Ensuring the wellbeing of the people, the land, the waters, the ecosystems and the life-force of the Waituna catchment and lagoon, now and for future generations through a partnership approach

Introduction – tīmatanga kōrero

1. On behalf of nga Kaitono, the Applicants, I address the following matters that arose during the hearing or subsequently to assist ngā Kaikomihana, the Commissioners (Panel) in making decisions on this application:
 - a. Overview – tiro whānui
 - b. Issue 1 – the 20-year transitional water level regime is essential to restoring the hauora of Waituna
 - i. as Waituna is a natural inland wetland, any earthworks or drainage within the lagoon must be for restoration purposes
 - c. Issue 2 – the existing environment is the unmodified lagoon and the barrier beach bar
 - d. Issue 3 – how the Applicants will work together under the consent if granted, the operational framework
 - i. The Council, the Department and Awarua have differing roles and regulatory responsibilities independent of any consent
 - ii. the roles of Te Wai Parera Trust and Whakamana te Waituna Charitable Trust are distinct and they are not partners in the consent
 - e. Issue 4 – Waituna Lagoon is not part of the Council’s existing drainage network or flood control works
 - i. other actions are needed to address sedimentation and erosion in the tributaries
 - f. Issue 5 – the Applicants should retain discretion under the consent if granted
 - g. Issue 6 – how cultural monitoring is provided for under the consent if granted
 - h. Issue 7 – alternative gauge location validation and certification if required
 - i. Issue 8 – consent monitoring and implementation of 5-yearly review
 - i. proposed revisions to draft condition 52 re use of “trends”
 - ii. fringing vegetation should only be monitored every 5 years after an initial baseline survey
 - iii. the evidence does not support monitoring in the CMA

- iv. any consent reviews would follow standard RMA processes, with public participation depending on the circumstances of any review
- j. Issue 9 – how the applicants will communicate with the community, including about lagoon openings
- k. Issue 10 – methods to monitor sediment in the lagoon and proposed draft condition
 - i. there is no need for a baseline survey of the lagoon bed re sediment
- l. Issue 11 – draft conditions 32 and 33 for nesting birds need to be amended
- m. Additional corrections to proposed draft conditions with summary of all changes sought
- n. Other matters raised by submitters:
 - i. Criticism of the expert evidence for the Applicants is unjustified
 - ii. The Applicants will consider the Lagoon’s heartbeat or ‘mauri’ when making decisions under the consent if granted
 - iii. Waituna cannot wait until any Freshwater Management Unit processes are complete as this could risk failing to achieve the Waituna freshwater vision
- o. Conclusion – kupu whakatepe

Overview – tiro whānui

2. This application was jointly made by the Applicants (Te Runanga ō Awarua – Awarua, the Department of Conservation Te Papa Atawhai – the Department, and the Southland Regional Council (Environment Southland) – the Council) for the purpose of managing openings of Waituna Lagoon to maintain and restore the lagoon’s hauora and transition to a more natural regime. The proposed lagoon opening regime would move Waituna Lagoon to this state of hauora by maintaining and restoring its ecological health and cultural values over the 20-year term sought which takes us through to 2045.
3. The Applicants say the “package” of the proposed consent conditions work together to restore Waituna’s ecological health and cultural values, by having opening triggers based on:
 - a. water levels – transitioning with four 5-year stages over 20 years from lower levels to higher levels
 - b. water quality and ecosystem health – using a suite of attributes to determine whether an opening is required to improve water quality and/ or ecosystem health; and
 - c. fish passage – providing for opening where fish have not been able to successfully migrate in the previous 2 years

4. Waituna Lagoon is an important part of the Waituna catchment. However, it is but one part, with the proposed lagoon opening regime focused on and for the purpose of restoring the lagoon's hauora, being the receiving environment at the bottom of the catchment. There is other work underway in the wider catchment area to address water quality issues such as nutrient inputs, including from sedimentation and erosion in tributaries. This wider catchment work will help to restore Waituna to the desired state of hauora and healthy resilience.

Issue 1 – the 20-year transitional water level regime is essential to restoring Waituna's hauora

5. The Applicants seek a 20-year term primarily for the staged transition to the highest water level trigger sought in the final 5-year stage, when the lagoon is held at or above 2.5 masl for seven days. The Applicants' evidence supports this final stage¹ as being the water level and duration required to meet their goal of reducing the frequency of lagoon openings to achieve their aspiration to restore Waituna's ecological health and cultural values.
6. This applies the Applicants' multi-values approach to maintaining and restoring the key ecosystem and cultural values of Waituna: Taonga species, cultural significance, water quality, submerged macrophytes – including *Ruppia*, fish and aquatic invertebrate populations, Indigenous species dominance of coastal lake, bird populations, and fringing wetlands.² The Applicants seek to manage lagoon openings over time to maintain or enhance all these values and achieve their goal.
7. Following the pre-hearing meeting in March 2025, the Applicants seriously considered whether this final higher water level trigger is necessary to achieve their purpose of lagoon restoration. They sought advice from the Science Advisory Group (SAG) about whether a lower level such as 2.4m could achieve this purpose. The SAG's advice was provided in the Applicants' further information response dated 23 June 2025³, and states:⁴
 2. *2.5m remains the recommended maximum trigger for Waituna Lagoon in the long-term, given the goal to minimise the frequency of lagoon opening events (annually and in summer periods) and enable restoration of ecosystem health and transition to a more natural regime.*
8. SAG considered having an interim step of 2.4m could be accommodated and would put the lagoon on the path to a natural opening regime with some minor negative impacts on the

¹ Evidence of Dr Hugh Robertson for the Applicants dated 11 July 2025, paras 54-60, and 81-86.

² Application – Appendix B, Science Advisory Report – Technical review of conditions for opening Waituna Lagoon, Robertson et al, 2024 at Section 4, Table 1, pages 12-13

³ Applicants' further information response dated 26 June 2025, Appendix F: Advice on application of 2.4m or 2.5m trigger level for transitional lagoon opening, pp 143-146

⁴ *supra*, page 146

ecological and cultural values targets. However, the SAG confirmed the final long-term goal remained to transition to 2.5m to enable restoration.

9. Based on this advice, the Applicants amended the transitional regime proposed water level triggers condition to reduce the ability to open over summer⁵ at step 1 for years 1-5 to when water levels are at or above 2.4m for three consecutive days , and then at step 2 for years 6-10 providing the ability to open the lagoon when water levels are at or above 2.4m for three consecutive days year-round.
10. Retaining the 2.5m water trigger level with a longer duration of 7 days in the final step (years 16-20) provides the greatest opportunity for water levels in the lagoon to reduce naturally.⁶ This is demonstrated by Figure 2 in Dr Robertson's evidence where the graph shows a slow and steady decline from higher levels in 2017 when the lagoon was not opened (shown by the # symbol), contrasted with the sudden and steep falls in water levels following openings in the other parts of the graph (shown by the * symbol).⁷

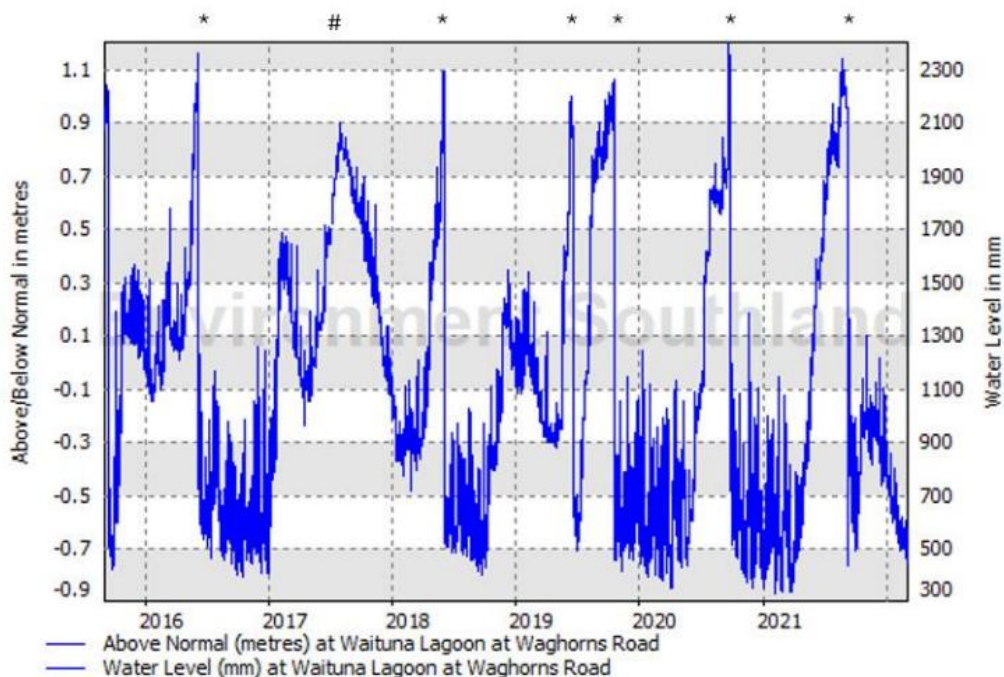


Figure 2. Water levels in Waituna Lagoon for the period September 2015 to February 2022. Asterisks (*) indicate lagoon openings. Hash (#) indicates where the 2.0m winter opening threshold under previous consent conditions were reached, however water levels naturally receded, and the lagoon was not opened.

⁵ This would apply between 1 September to 30 April

⁶ The 3rd stage in the proposed transitional regime is when water levels are at or above 2.5m for three consecutive days, applying in years 11-15.

⁷ Evidence of Dr Robertson supra, Figure 2 following para 50 at p17

11. I submit the purpose of the consent sought is to restore Waituna Lagoon's ecological health and cultural values, and this requires the transitional water level regime to be implemented over the full 20-year period sought. This restorative purpose is fundamental to the application. Should the Commissioners grant a resource consent which does not achieve restoration of Waituna Lagoon, this would frustrate the consent's purpose.
12. It would also be incorrect to take an approach that the proposed lagoon levels (2.3masl, 2.4masl and 2.5masl) set "upper and lower bands" within which consent may be granted and still meet the purpose of restoring the hauora of Waituna Lagoon. The SAG advice is clear the 2.5m water level and a duration of 7 days remains the appropriate final stage of the transitional regime to restore the lagoon's ecological health and cultural values.
13. As helpfully addressed by Mr Doesburg in submissions for the consent authority, there is a long-standing and well-established principle that consent conditions cannot negate or frustrate a consent.⁸
14. The Applicants wish to ensure the future and ongoing hauora of the lagoon, and they say – based on the evidence – failing to complete the water level transition to the final stage (holding the lagoon at or above 2.5masl for 7 days before opening the lagoon) will mean the lagoon's ecosystem health and cultural values will not be maintained and restored.
15. Some submitters described the proposed transitional water level regime as an "experiment". In response, the Applicants point to the evidence in support of the application including the modelling which has been undertaken and validated as outlined in Mr Measures's evidence.⁹ This is the best information available and supports the Applicants' goal of restoring Waituna's hauora by transitioning to the final stage of 2.5masl for 7 days. The previous lagoon opening regime was not sustainable as it does not provide for maintaining and restoring the ecological health and cultural values of Waituna.¹⁰
16. For these reasons, I submit granting a consent which does not allow the final stage to be reached would frustrate the purpose of this application.

⁸ Legal Submissions on behalf of Southland Regional Council (as Consent Authority) dated 31 July 2025, at paras 6-7, citing *Residential Management Ltd v Papatoetoe City Council* A62/86 [1986] NZPT 153. See also: *Ravensdown Growing Media Ltd v Southland Regional Council* C194/00, [2000] ELHNZ 493

⁹ Evidence of Richard Measures for the Applicants dated 11 July 2025 at paras 48-57. There was no contrary expert evidence suggesting lower levels would be sufficient to restore the hauora of Waituna

¹⁰ See Evidence of Mary de Winton for the Applicants dated 11 July 2025 at paras 45-50, evidence of

As the Lagoon is a natural inland wetland, earthworks and drainage within Waituna must be for restoration purposes

17. Waituna Lagoon, a regionally significant wetland under the proposed Southland Water and Land Plan, is a natural inland wetland.¹¹ Regulation 53 of the NES-F¹² prohibits certain activities within natural inland wetlands unless the activity has another status:

53 Prohibited Activities

- (1) Earthworks within a [natural inland wetland] is a prohibited activity if it—
 - (a) results, or is likely to result, in the complete or partial drainage of all or part of a [natural inland wetland]; and
 - (b) does not have another status under any of regulations 38 to 51.
 - (2) The taking, use, damming, [or diversion] of water within a [natural inland wetland] is a prohibited activity if it—
 - (a) results, or is likely to result, in the complete or partial drainage of all or part of a [natural inland wetland]; and
 - (b) does not have another status under any of regulations 38 to 51.
18. The Applicants say that as the activity (covering earthworks, vegetation clearance and diversion/ discharge of water) is for lagoon restoration purposes it is a restricted discretionary activity under regulation 39. That regulation requires a Restoration Plan is provided (including the information specified) and a condition is imposed requiring compliance with the Restoration Plan: regulation 39(5) and (6).
19. The Restoration Plan in the application is the Technical Report (Appendix B)¹³ which confirms the full implementation of the transitional water level regime is required to achieve the goal of restoring Waituna’s ecological health and cultural values. If any consent granted has conditions which would not provide for the lagoon to be restored, then this would place the Applicants in the unfortunate situation where the activity would no longer meet the requirements of the NES-F as a restricted discretionary activity and may default to a prohibited activity.
20. For these reasons it is submitted for the Applicants that if consent is granted this should be on the basis of implementing the full transitional regime.

Issue 2 – the existing environment is the unmodified lagoon and barrier beach bar

21. For sections 104 and 104D of the Resource Management Act 1991 (RMA), the Panel must consider adverse effects of the proposed activity (lagoon opening) on the “environment”. As

¹¹ This term is defined in the National Policy Statement for Freshwater Management 2020 (October 2024) at clause 3.21

¹² Resource Management (Environmental Standards for Freshwater) Regulations 2020

¹³ As confirmed by the section 42A report at 3.3.1.3. See also the August JWS Planning Annexure B at Appendix 2

discussed in the Applicants' Opening Submissions¹⁴, the existing environment is submitted to be Waituna Lagoon and its surrounds, including the barrier beach and the coastal marine area (CMA) – Te Ara a Kiwa Foveaux Strait without any consents in place.

22. Some submitters have approached this application on the basis the existing environment is the environment as modified under previous consents to open the lagoon (all of which have now expired). Based on this understanding, submitters have argued the proposed opening regime will have "effects" on tributaries and adjacent properties. The Applicants do not accept these arguments.
23. The Applicants say the proposed activity is managing lagoon openings, taking a multi-values approach, in accordance with their holistic goal to promote the hauora of Waituna Lagoon and restore its ecological health and cultural values. In support of their application the Applicants have provided expert evidence across the multiple values to show that the proposed lagoon opening regime will enhance or is neutral for each value.
24. The lagoon has been historically managed primarily for land drainage purposes, which involved artificially maintaining lower water levels to support surrounding land use.¹⁵ This historic management approach allowed the ecological and cultural health of the lagoon to decline, whereas through this application the Applicants seek to uplift and restore Waituna.
25. This activity is not impeding drainage as suggested by some submitters, rather a consequence of opening the lagoon is to enhance drainage and allow it to occur. Fluctuations in tributary flows from rainfall and surface runoff is a natural process and not an adverse effect. The Applicants say the activity of opening the lagoon has a positive effect on land drainage of nearby properties. It is submitted this is how the Commissioners should assess effects on the existing environment from this proposed activity.

Issue 3 – how the Applicants will work together under the consent if granted, the operational framework

26. Should consent be granted, the three Applicants will be the Consent Holder and will act together to operate under the consent. The first action the Applicants will be taking is to confirm their operational framework to implement the consent.

¹⁴ Legal Submissions on behalf of the Applicants dated 22 July 2025 at paras 44-47

¹⁵ I acknowledge openings annually under previous consents also had the effect of managing water quality and providing fish passage. However, the lagoon openings were not being undertaken for those purposes.

27. The Applicants have previously made a relationship agreement between themselves. They intend to reaffirm this agreement and confirm for each organisation in relation to the consent if granted, covering:
- a. the relationship principles of collaboration, trust, and commitment to integrated decision making
 - b. setting out the process for decision making to occur to implement the consent
 - c. lead relationship managers
 - d. key contacts, and how backups will be arranged as required
 - e. communication, including how the partners will implement the Communication Management Plan under the consent
 - f. how the partners' resources will be used to implement the consent, this includes how lagoon openings will be undertaken, and who will be responsible for monitoring¹⁶
 - g. how costs will be shared between the Applicants to implement the consent
 - h. dispute resolution, acknowledging the relationship principles of collaboration, trust and commitment to integrated decision making
28. The Applicants say they are ready and able to implement the consent (if granted) at any time of year and irrespective of whether there are holidays. The Council and the Department are organisations which operate 24/7 as required to be able to respond to emergencies¹⁷, and Awarua Rūnaka has confirmed it will ensure it is able to respond to emergencies.
29. The Applicants have already demonstrated their ability to work together in the processes leading to the two 2024 emergency lagoon openings. This included activating relevant Science Advisory Group members and having them available to provide advice and recommendations as required to support those opening events.
30. The August JWS Planning includes proposed conditions for a Consent Implementation Management Plan (CIMP)¹⁸ which must be certified by the Council in its Consent Authority role.¹⁹ The Applicants have previously provided a Consent Implementation Plan with an attached "Decision Tree".²⁰ The Decision Tree provides a starting point for the CIMP, and the

¹⁶ Currently the Council undertakes regular State of the Environment monitoring of some attributes including for chlorophyll-a, cyanobacteria, and bottom water dissolved oxygen concentration; the Department administers and co-ordinates other regular monitoring including the annual NIWA surveys for ruppia megacarpa and macrophytes, bird surveys etc. and will likely take on responsibility for fringing wetland vegetation surveys. All Applicants have confirmed where consent conditions require ongoing monitoring this will be resourced

¹⁷ This was a concern raised by Mrs van Gool in her further comments. In addition to their regular work, both the Council and the Department have 24-hour hotlines and procedures for managing public health and safety in emergency situations, including standing up incident teams in advance to manage predicted extreme weather events and for civil defence emergencies

¹⁸ Joint Witness Statement of the Planning Experts dated 29 August 2025, Annexure B, Draft Proposed Conditions of Consent at conditions 37-38

¹⁹ Supra, condition 35

²⁰ Further Information Response dated 26 June 2025 at page 63

Applicants will work together to have a CIMP in place within three months of a consent being granted.

31. Once a consent is in place (if granted) the Applicants will be exercising the consent continuously. This includes applying the CIMP and being ready to respond to developing circumstances which may suggest the need to consider whether the lagoon should be opened. The Applicants will have active ongoing observations in place for lagoon water levels and the primary and secondary indicators of water quality and ecosystem health. They will confirm the process to stand up the Science Advisory Group (SAG), including setting expectations around when they would want the SAG to be on standby when observations suggest water quality and ecosystem health parameters are declining.
32. As part of developing the CIMP the Applicants will confirm expected timeframes for receiving and considering SAG recommendations, for making decisions whether to open the lagoon or not, and for how an opening is to occur.
33. The Council's experience with the 2024 emergency openings suggests a week is likely required to ensure suitable equipment and qualified personnel are available to undertake an opening having regard to weather and tidal conditions. The Applicants intend to build this timeframe (for opening the lagoon) into their decision-making process where the parameters are close to meeting one of the triggers, including having the SAG on standby and regular communication amongst themselves to support a robust and prompt decision.
34. The Applicants acknowledge the concerns of some submitters around their ability to resource the consent if granted. The Applicants confirm they will continue to use their existing resources to support the consent. The only parameters proposed by the draft consent conditions which are not currently being regularly observed are the annual surveys of diadromous fish and fringing vegetation survey.²¹
35. The Waituna catchment community will continue to have an important role through nominating one member of the SAG, as well as keeping the Applicants up to date with their observations of lagoon conditions. Communication is a two-way street. The Communications Management Plan will set out what is required of the Applicants, and they would encourage the community to continue to work with them to achieve the goal of restoring the hauora of Waituna.

²¹ August JWS Planning – Annexure B, proposed draft conditions 46 and 47

36. None of this preparation and establishing systems to operationalise the consent is unusual for the Applicants. Nor is working jointly with other partners on specific projects and keeping channels of communication open. For example, the Whakamana te Waituna Charitable Trust is a separate entity under which all three of the Applicants work together with partners with the wider purpose to restore the Waituna catchment.

The Council, the Department and Awarua all have different roles and regulatory responsibilities in relation to Waituna

37. The Council and the Department have regulatory responsibilities in relation to Waituna.
38. Under the Ngāi Tahu Claims Settlement Act 1998, Te Rūnanga o Ngāi Tahu has a statutory acknowledgement in respect of Waituna. Mr Whaanga's evidence described Ngāi Tahu Whānui's connections to Waituna.²² Awarua is acknowledged as holding mana whenua and as being the kaitiaki for Waituna. Both the Council and the Department acknowledge and work with Awarua in respect of Waituna.
39. The Council has functions and responsibilities under the Resource Management Act 1991 (RMA), to provide for the integrated management of natural and physical resources in the region, including Waituna. It is under these functions that Council has prepared strategies and plans providing for the integrated management of land, water, air, and coastal resources.²³ The Council has a general duty to monitor the state of the environment in the region to enable it to effectively carry out its functions under the RMA, and to make that information publicly available.²⁴
40. Through its RMA functions, the Council has a primary regulatory role in controlling the use, development or protection of natural and physical resources in accordance with the strategies and plans it administers. The Council as regulator, remains the Consent Authority for this application which has been delegated to the Commissioners, in recognition of the need for independent decision-making where the Council is also an applicant.
41. The Council has functions and responsibilities under the Local Government Act 2002, and other legislation, including the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996. The Council also operates the drainage network and flood control works under its catchment management functions. The Council may exercise its powers in the

²² Evidence of Dean Whaanga for the Applicants dated 11 July 2025 at paragraph 38 in particular

²³ The Council's functions under s31 RMA also include natural hazard avoidance and mitigation, activities in the coastal marine area, and water allocation

²⁴ Section 35 RMA

Waituna catchment under all these functions and works alongside Awarua in recognition of their mana whenua status and as kaitiaki for Waituna.

42. For clarity, whether the consent application is granted or not, the Council retains its s330 RMA powers which it can act under in an emergency independent of a consent. As reiterated by Mr Doesburg, Councils can use their s330 powers whether the adverse effect or sudden event was foreseeable or not.²⁵
43. The Department is established under the Conservation Act 1987 and has functions including: preserving all indigenous freshwater fisheries and protecting recreational freshwater fisheries, advocating the conservation of natural and historic resources generally, promoting the benefits to present and future generations of international co-operation on matters relating to conservation, and to the extent that the use of any natural resource is not inconsistent with its conservation, to foster the use of natural resources for recreation.²⁶
44. Section 4 Conservation Act requires that Act to be interpreted and administered as to give effect to the principles of the Treaty of Waitangi. This applies to all functions of the Department, and the Department considers s4 applies to all other legislation it administers specified in Schedule 1 of the Conservation Act, including the Reserves Act 1977 and the Wildlife Act 1953.²⁷
45. As advised in the Opening Submissions²⁸, the Department is the agency of the New Zealand Government which has responsibility for implementing the Ramsar convention on wetlands in New Zealand. The convention drives the Department to undertake actions to protect and restore Ramsar sites, including Waituna and its surrounding wetlands.
46. The Department administers Waituna Lagoon and several surrounding areas as reserves in accordance with the Reserves Act 1977, as well as the marginal strips up Waituna Creek.²⁹ The Department maintains the recreational assets in and around the reserve³⁰, as well as undertaking and facilitating regular surveys and other work to understand and protect the values of the lagoon and surrounding reserves.³¹
47. As manager of the public land and waters, the Department has responsibility for issuing concessions and other authorisations for activities that people wish to undertake in

²⁵ Submissions for the Consent Authority, at paras 41–44, and s330(1A) RMA

²⁶ Section 6 Conservation Act 1987, paragraphs (ab), (b), (c)(iii), and (e)

²⁷ See *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA)

²⁸ Applicants' Opening Submissions at para 5.b

²⁹ These are conservation areas administered under the Conservation Act 1987, s2(1) and s24

³⁰ as described in the Evidence of Jono Airey for the Applicants dated 10 July 2025

³¹ The evidence of Ms de Winton, Dr Holmes and Dr Robertson all describe

accordance with the legislation and the Department's statutory management documents.³², and it authorises activities in relation to protected and partially protected wildlife under the Wildlife Act 1953.

48. The Department keeps s4 Conservation Act 1987 in mind when undertaking its functions and responsibilities, acknowledging the role of Ngāi Tahu Iwi and particularly Awarua in relation to Waituna. This includes consulting Awarua on proposed actions and authorisations to ensure these give effect to the principles of the Treaty. When undertaking its work the Department works alongside Awarua to ensure Awarua can express its kaitiakitanga over the lagoon and adjoining reserves, wildlife, and indigenous freshwater fisheries.
49. Should consent be granted, the Applicants will continue to undertake these separate functions, roles and responsibilities, and work together to restore the hauora of Waituna.

Te Wai Pārera Trust and Whakamana Te Waituna Charitable Trust are not involved in the application, and the Trusts would not have a role under the consent if granted

50. To clarify, the Applicants do not include the registered charitable trusts of Te Wai Pārera Trust³³ or Whakamana Te Waituna Charitable Trust³⁴, and neither Trust would operate under the consent if granted or have any responsibilities under it.
51. As described in Mr Whaanga's evidence, Te Wai Pārera Trust has taken on the role and responsibility to manage land purchased around the lagoon to be retired from previous landuse, including to develop a Mahinga Kai Pā.³⁵ Te Wai Pārera Trust operates under a tikanga Māori framework applying the principles set out in Appendix A of Mr Whaanga's evidence.
52. Whakamana te Waituna Charitable Trust was established in 2018 and is a continuation of the collaboration by multiple partners in the Waituna catchment. Members of this Trust include all three Applicants, Southland District Council, Fonterra, Te Rūnanga o Ngāi Tahu and an independent community representative – now Mr van Rossum.³⁶
53. Whakamana te Waituna Charitable Trust has a wider role in the catchment taking action to restore the mana of Waituna as shown in its name "Whakamana te Waituna". This Trust has undertaken trials to develop new tools and methods including to reduce contaminants

³² Conservation General Policy 2005 and the Southland Murihiku Conservation Management Strategy 2016

³³ See Charities Services Register for Wai Parera Trust registration CC56980, and the Companies Office Charitable Trusts Register for Te Wai Parera Trust (2728374)

³⁴ See Charities Services Register for Whakamana Te Waituna Charitable Trust registration CC62231, and the Companies Office Charitable Trusts Register for Whakamana Te Waituna Charitable Trust (2721833)

³⁵ Evidence of Dean Whaanga at paras 58-65

³⁶ Submitter Maarten van Rossum confirmed this in his evidence at the hearing

entering waterways, reduce erosion, improve instream habitat and generally to improve the health and wellbeing of the Lagoon, its catchment and the community.³⁷

54. The continuing work of both Trusts is part of the broader actions being undertaken by many people and organisations within the Waituna catchment to improve and its ecosystem health and cultural values. This ongoing work within the catchment is complementary to the purpose of the consent, if granted, to restore the hauora and mana of Waituna.

Issue 4 – Waituna Lagoon is not part of the Council’s drainage network or flood control works

55. The Lagoon is at the bottom of the Waituna catchment. It is the final receiving environment for inflows from tributaries before these waters enter the CMA – Te Ara a Kiwa Foveaux Strait. When the Lagoon is in a closed state, this connection with the CMA occurs by seepage through the barrier bar.³⁸
56. Waituna Lagoon is not subject to the Southland Flood Control and Drainage Management Bylaw 2020 (Bylaw).³⁹ The Bylaw applies to Waituna Creek and does not apply to the smaller tributaries: Moffat Creek or Carrans Creek:



Figure 1 - extract from Council maps showing waterways managed under the Bylaw in green, and the lowest portion of Moffat Creek circled in red

³⁷ [About us - Whakamana te Waituna](#)

³⁸ Along with the people, birds and other fauna which travel back and forth between the CMA and Waituna

³⁹ <https://www.es.govt.nz/about-us/plans-and-strategies/bylaws/flood-control-management-bylaw>

57. The Bylaw defines “*flood control works*” as meaning certain structures or apparatus in waterways:
- “... that [are] managed by or on behalf of the Council and that has or is intended to have the effect of stopping, diverting, controlling or restricting or otherwise regulating the flow or spread of flood water in or out of a body of water ...”⁴⁰*
58. The Lagoon receives flood waters from the catchment. It does not by itself generate the elevated rainfall and resulting flood waters managed under the Bylaw. It 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.
59. The Council’s functions in respect of Waituna also include setting the planning framework within which the lagoon sits. Here, the Southland Regional Policy Statement⁴², proposed Southland Water and Land Plan⁴³, and Regional Coastal Plan⁴⁴ all provide special recognition for Waituna. These Council planning processes all had extensive community participation, and the resulting documents show the wider Southland community value protecting and restoring Waituna, and the Council has a function to act accordingly.

Other actions are needed to address sedimentation and erosion in the tributaries

60. Some submitters raised concerns about sediment and erosion occurring in the tributaries flowing into Waituna Lagoon. The tributaries carry sediment from higher up in the catchment which ultimately enters the Lagoon and may also affect the tributaries.
61. Sediment and erosion issues in tributaries are largely the result of higher inflows upstream resulting from natural weather events and surface water flows, among other influences, and not from the activity of opening the Lagoon.⁴⁵ Opening Waituna, whether to address water quality or because one of the other triggers is met, will likely reduce sedimentation and improve water quality within the lagoon.
62. As some submitters acknowledged at hearing, there are several methods to reduce the impact of sediment load in the lagoon and in the tributaries, and more than one method is required to achieve reduction. One method is stream bank protection, with evidence being provided in the hearing about work undertaken in Waituna Creek as part of the Council’s

⁴⁰ Supra at clause 4.1 Definitions

⁴¹ I refer also to Mr Doesburg’s Submissions for the Consent Authority, at paras 36-39.

⁴² Southland RPS at Policy WQUAL.3 Wetlands and outstanding freshwater bodies and Policy WQUAL.4 – Awarua Wetland, which includes Waituna

⁴³ Policy 46 – the Waituna catchment is identified as a separate FMU, and as noted in the Opening Submissions for the Applicants Waituna is recognised as both a regionally significant wetland and a Sensitive Water Body

⁴⁴ Chapter 6 Estuaries includes a reference to Waituna Lagoon when open, Policy 6.1.4 – Protect the cumulative habitat value of Southland estuaries, Policy 7.4.2.2 – The status of Waituna Lagoon and Rule 7.4.2.2 – Opening of the Waituna Lagoon, Policy 8.8 – Protection of Significant Areas, and Landscape Unit 5 - Waituna

⁴⁵ Further Information Response dated 26 June 2025 at section 2.1 Erosion and Sedimentation, pages 5-6

catchment improvement programme. Other methods described by submitters and being used in the catchment include development and restoration of other wetlands, riparian planting and some land use changes.

63. The Applicants understand an application has been lodged with the Council by the Whakamana Te Waituna Charitable Trust to carry out stream bank protection works in Moffat Creek, covering the part of the Creek from its confluence with the Lagoon up to where the creek first crosses Moffat Road (shown within the red oval in Figure 1 above).⁴⁶

Issue 5 – the Applicants should retain discretion under the consent if granted

64. Under the proposed draft conditions of consent⁴⁷ the lagoon may be opened under draft condition 11 for the water level transitional regime, under draft condition 12 for water quality and ecosystem health purposes, or under draft condition 13 for fish passage. Each of these draft conditions as worded allows the Applicants to decide in each circumstance whether to open the lagoon or not.
65. Some submitters consider that once any trigger conditions for opening are reached, then the Applicants should have no discretion and be required to open the lagoon.⁴⁸
66. Draft condition 11 specifies the water levels and durations which would apply to each of the four 5-year stages of the proposed 20-year term of the consent if granted. This draft condition states for each stage that when the water levels and duration are reached, openings may occur. The proposed water level and duration triggers are intended to transition the lagoon opening regime to a more natural state.
67. Having the flexibility to not open Waituna Lagoon even though water levels are rising, allows the lagoon the opportunity to naturally recede. Having variable water levels is Waituna Lagoon's natural state, as illustrated by Figure 2 below which shows the variation in water levels over the 7-day period from 3-10 September. Water levels over this period exceeded 2masl three times, and then naturally receded.

⁴⁶ Should this consent be granted and the work progress, this will protect the stream bank within the lower part of the Southern Star Farms property. I acknowledge there is no certainty this application will result in a resource consent being granted

⁴⁷ August JWS Planning, Annexure B

⁴⁸ This view is summarised in the comments of Ms Sannazzaro, the planning expert for Federated Farmers in the August JWS Planning, Annexure A at pages 6 and 8

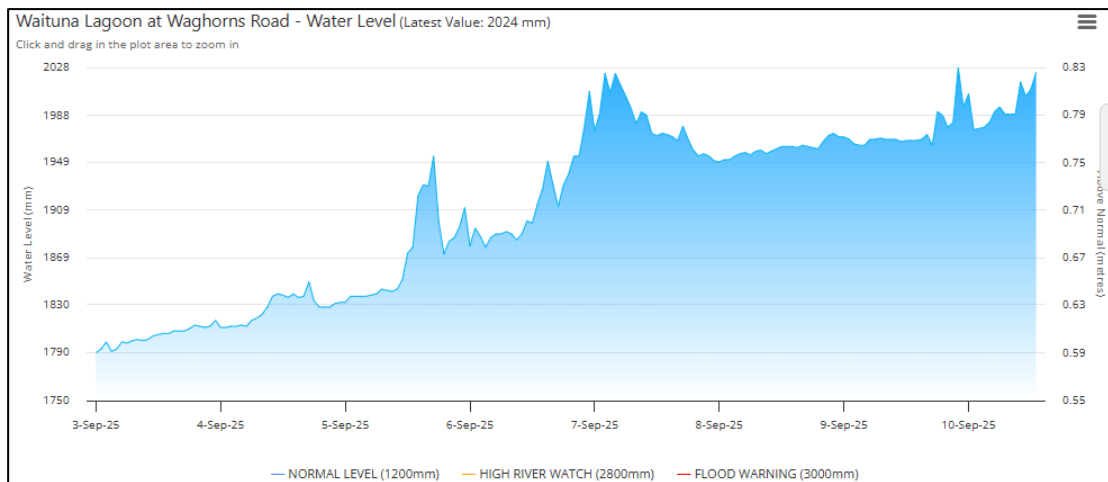


Figure 2 - Waituna Lagoon water levels measured at Waghorn's Road from 3-10 September 2025, showing natural peaks and recessions, sourced from ES Environmental Data website

68. Draft conditions 12 and 13 require the Applicants to have a written recommendation from the Science Advisory Group⁴⁹ that a Lagoon Opening is necessary. Nevertheless, the draft conditions still provide discretion to the Applicants in response to the Science Advisory Group's recommendations – noting the purpose of the consent is to maintain and restore the ecological health and cultural values of Waituna, and as public entities the Applicants would need to give reasons why they might not exercise the consent.
69. As discussed in the evidence of Dr Robertson⁵⁰, Ms De Winton⁵¹, Dr Schallenberg⁵², and Mr Rabel⁵³, the timing and frequency of opening events can have a significant impact on the ecological health of the lagoon and its cultural values.
70. Providing for discretion in decision-making is important as the Applicants are seeking to manage Waituna Lagoon for multiple values and this requires flexibility. The evidence is clear that Spring-Summer openings are detrimental to *Ruppia* growth, and that *Ruppia* is a keystone ecological species.⁵⁴ If, for example, the lagoon has not been opened within the previous 24 months at a time which supported upstream fish passage, the Applicants need the flexibility to decide whether to open the lagoon over Winter and before Spring.
71. Similarly, if water quality is declining and one or more of the primary indicators is reaching critical levels but the weather forecast is for an extreme event, the Applicants need the flexibility to decide whether an immediate opening is appropriate, or they should wait and reassess after the weather event. Alternatively, there may be circumstances where none of

⁴⁹ being the group established in accordance with draft conditions 17-21

⁵⁰ Evidence of Dr Robertson supra at para 51

⁵¹ Evidence of Mary de Winton, supra, at paras 45-49

⁵² Evidence of Dr Marc Schallenberg for the Applicants dated 10 July 2025, at paras 32-34

⁵³ Evidence of Ash Rabel for the Applicants dated 11 July 2025, at paras 35-36

⁵⁴ Evidence of Mary de Winton, supra paras 45-49

the primary indicators may have reached a critical level, but several primary indicators and secondary indicators may all have exceeded warning levels. In this situation, on a recommendation from the Science Advisory Group, the Applicants may decide a lagoon opening is appropriate to ensure the lagoon's water quality and ecosystem health is maintained.

72. These scenarios illustrate why it is important to retain discretion in decision-making to ensure all values are considered and the risks understood before each lagoon opening event.

Issue 6 – how cultural monitoring is provided for under the consent if granted

73. The August JWS Planning requested draft condition 14 for cultural values be reviewed by a cultural expert.⁵⁵ I confirm Awarua has reviewed condition 14 and are satisfied that it provides the opportunity for Awarua to appropriately exercise its kaitiakitanga in relation to Waituna. It is important to Awarua that it can decide when and how to undertake cultural health monitoring including in relation to any lagoon opening, and condition 14 is worded in a way which retains this discretion to Awarua.
74. There are other draft conditions proposed in the August JWS Planning Appendix B Draft Conditions which include references to Te Ao Mārama Inc:
- 24(a) – Accidental Discovery
 - 35 – re certification of management plans
 - 51 – annual monitoring report
 - 52 – five-yearly monitoring report
 - Appendix 3 – Accidental Discovery Protocol
75. Awarua has confirmed that these references (together with a reference to Te Rūnanga o Ngāi Tahu in the Accidental Discovery Protocol) are appropriate to retain in the consent.
76. Te Ao Mārama Inc. represents and supports the four Papatipu Rūnanga ki Murihiku⁵⁶ all of whom have an oversight and advisory role with the Council as regulator. While Awarua is recognised as having mana whenua and the right to exercise kaitiakitanga over Waituna, the combined interests of Awarua with the other Papatipu Rūnanga are addressed by these references in the draft conditions.

⁵⁵ August JWS Planning, Annexure A at pages 4 and 8

⁵⁶ Made up of Awarua, Hokonui, Ōraka Aparima, and Waihopai

Issue 7 – Alternative gauge location validation and certification if necessary

77. Draft condition 5 provides for the use of the existing water gauge at Waghorn's Bridge to measure water levels, this is a standard gauge maintained by the Council and which provides information 24/7 on a telemetered basis. As a 20-year term is sought, it is appropriate to include a process for certification and then use of an alternative gauge, which is addressed by draft condition 6. The Planners have requested the draft condition be reviewed.⁵⁷
78. Mr Rabel has reviewed this draft condition. Mr Rabel comments:
- “Any replacement gauge should only be implemented after it had been validated and certified as being in a suitable location to accurately record lagoon water levels. All water level gauges managed by the Council are regularly validated to confirm their ongoing accuracy, including the Waghorn Road gauge.”*
79. Mr Rabel also advised that installing a new gauge may take time, with location dictating the appropriate set up, and conditions dictating location. Further, suppliers may not always have the appropriate equipment in stock or readily available causing delay. Allowing for all this, and, acknowledging the preferred state is the disestablishment or removal of the Waghorn's Bridge gauge should only occur once a new gauge is installed and validated, the Applicants seek draft condition 6 is retained with a 30-working day timeframe if consent is granted.

Issue 8 – Monitoring plan and implementation of 5-yearly review

80. The August JWS Planning proposes draft conditions 43 – 46 which set out how the Monitoring Plan (MOP) is to be developed and certified. The MOP is to be reviewed every 5 years in accordance with draft condition 46 for the purpose of ensuring the MOP remains relevant for the duration of the consent if granted, while providing for continuity of monitoring information. These draft conditions bring the proposed monitoring plan⁵⁸ up into the conditions and provides a clear process for certification.
81. Draft condition 47 and Table D ensures the Critical Indicators for water quality and ecosystem health in Tables B and C are monitored at appropriate intervals for each indicator, including providing for increased frequency of monitoring if a bloom is detected. This is consistent with draft condition 12 which provides for a lagoon opening for the purpose of water quality and ecosystem health.

⁵⁷ August JWS Planning Annexure A at pages 2 and 7

⁵⁸ See Applicants' Further Information Response dated 26 June 2025, Appendix D pages 79-82

82. The Applicants propose draft condition 45 be revised to acknowledge the Consent Holder may use the Council's State of the Environment (SOE) data as part of the MOP. The Applicants propose revised wording to include a note in the condition, as follows:
- 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**, and fringing wetland and terrestrial vegetation, and the Waituna Lagoon water levels. Note: 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.
 - (b) ...
83. Adding this note reduces replication of effort while ensuring the Applicants are still required to undertake monitoring should the Consent Authority, in future, no longer include the relevant parameter in its SOE programme.
84. The Applicants say draft condition 47 and Table D need a similar note.
85. The results of the MOP are to be aggregated and included in the annual monitoring report (AMR). Under draft condition 51 the AMR is to be provided to the Consent Authority, Te Ao Mārama Inc, and the Waituna Catchment Committee.⁵⁹ This draft condition also provides an opportunity for recommendations on any amendments necessary for a certified management plan. If the Applicants wished to amend any certified management plan, they would have to follow the certification process set out in draft conditions 35 and 36.
86. Under draft condition 52, the monitoring results over each 5-year period are to be aggregated and included in five-yearly monitoring reports, together with a summary of observations from the annual monitoring and reporting. Again, if the Applicants wished to amend any certified management plans, there is a process to do so and recertify these in draft conditions 35-36.

The Applicants seek to revise draft condition 52 to replace “trends” with “observations”

87. Mr Rabel comments regarding draft condition 52 the term “trends” has a particular scientific meaning and is not appropriate in the condition, as it may require analysis of each separate phase with little value. Mr Rabel also questions whether it is helpful to summarise statistically significant trends at 5-year intervals as typically a longer data record is required

⁵⁹ This is the catchment liaison committee established by the Council and referred to at para 6 of the Submissions for the Applicants dated 22 July 2025

to identify a change with confidence. For these reasons, the Applicants propose revisions to draft condition 52 as follows:

52. 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, 30 June 2035, and 30 June 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~~ observations from any cultural health monitoring undertaken by Awarua Rūnanga;
 - (b) The aggregated five-yearly results and a summary of ~~trends~~ observations from monitoring and reporting in accordance with **Conditions 47, 48 and 49** and the **MOP**;
 - ~~(c) A summary of any statistically significant trends;~~
 - (d) Any steps taken by the **Consent Holder** in response to monitoring and any previous 5-yearly ~~trend~~ observations, including any amendments to **Management Plans**; and

...

Once the baseline survey is repeated, fringing vegetation should also be monitored every 5 years

88. Draft condition 48 provides for an initial baseline survey of indigenous fringing wetland and terrestrial vegetation, to be repeated at 5-yearly intervals in line with the timing for other 5-yearly reporting.
89. Dr Robertson's evidence confirmed this is an appropriate timeframe to assess trends in fringing vegetation, and that carrying out monitoring more frequently may be too early to reliably detect changes in vegetation responding to the changes from the transitional water level regime.⁶⁰
90. Several submitters had concerns about manuka dieback around the lagoon following elevated water levels over winter 2024, before the Council acted under its s330 RMA emergency powers to open Waituna in late September 2024. Dr Robertson explained that manuka is a plant that is known to move 'downslope' and has established in areas around the lagoon likely because of the altered hydrology.⁶¹ Manuka decline is likely an indication that native wetland vegetation is increasing, and the lagoon is being restored.

⁶⁰ See Dr Robertson's evidence for the Applicants at para 71. I note in the August JWS Planning Ms Sannazzaro expressed disagreement, Annexure A at page 10. However, there is no contrary expert evidence to support a more frequent monitoring regime for fringing vegetation

⁶¹ Evidence of Dr Robertson, supra, at para 71 and refer also Further Information Response June 2025, at section 2.4

The evidence does not support inclusion of conditions to monitor effects in the CMA

91. In the August JWS Planning, Ms Sannazzaro suggested that monitoring should include effects of lagoon openings on the CMA, noting there was no technical evidence to support this.⁶²
92. As acknowledged by the Technical Review Report⁶³ the opening locations are likely to be a high-energy environment and there have been no reports of algal blooms in the CMA during more than 80 years of lagoon openings. The closest urban activities are 15 km west and substantial dilution of any discharge would occur in the high-energy marine environment over that distance.
93. Mr Pirie’s evidence at hearing discussed all proposed opening locations along the bar going back to the 1950s, and he did not report or have records of any lasting impact from lagoon openings on the CMA.
94. For these reasons the Applicants maintain there is no need to monitor effects of openings on the CMA. Human health issues arising from lagoon opening events are addressed by other monitoring parameters as discussed in the Applicants’ June further information response.⁶⁴

Consent reviews would follow the standard RMA processes, and the public may have an opportunity to participate

95. Draft condition 53 provides for the Consent Authority to undertake a consent review in accordance with sections 128 and 129 RMA on or before 31 August 2026 or within 2 months of any enforcement action being taken by the Consent Authority. This review is not tied to the AMR or the 5-yearly reporting cycle and is a standard consent condition. Depending on the circumstances, the Consent Authority may decide public notification is required under s130 RMA.
96. As with any consent holder, the Applicants may apply for a change to any consent conditions under s127 RMA, which would then be processed as a consent application. As part of this process the Consent Authority would have to consider, whether any person is adversely affected, including persons who submitted on the original application and may be affected by the proposed change: s127(4) RMA. In this instance the current application was bundled as “non-complying” and the Applicants requested public notification.

⁶² August JWS Planning, Annexure A at pages 9-11

⁶³ Technical Memorandum – Waituna Lagoon Ecology Technical Review APP-20242456, dated 30 May 2025, and attached as Appendix G to the s42A report, at pages 228-229

⁶⁴ Further Information Response dated 23 June 2025 at section 2.2, pages 6-8

Issue 9 – how will the Applicants communicate information including about opening the lagoon

97. The Planners have proposed draft conditions 39-42 for the development of the Communication Management Plan (CMP) if consent is granted, which are acceptable to the Applicants. The CMP certified in accordance with the draft condition 35 would replace the draft Communications Management Plan developed with members of the Waituna Catchment Group and attached to the May 2025 consent update.⁶⁵
98. Minimum CMP requirements in draft condition 41 include:
- a. an identified liaison person for the Consent Holder
 - b. communications at least quarterly by email, and an annual in-person meeting
 - c. confirmation of channels and methods to make information accessible and publicly available about the exercise of the consent, monitoring results etc.
 - d. confirmation of channels for interested parties to make enquiries or raise concerns with the Consent Holder and timeframes for the Consent Holder to respond
99. As with the draft communication management plan previously supplied, under draft condition 42 the Consent Holder must work with the Waituna Catchment Committee to develop the CMP and any review of the CMP before it is certified. The Applicants take this obligation seriously, and they undertake to work with the community in the development of the CMP (and any review).
100. Draft conditions 15 and 16 require the Consent Holder to provide notice of any upcoming lagoon opening no later than 24 hours prior to opening. This notice must go to all stakeholders identified in the CMP and the Waituna Catchment Committee and must also be published on the Council's website and/ or in a newspaper.⁶⁶
101. I remind the Panel that should a temporary closure of part of the scientific reserve be required for public safety, including to facilitate a lagoon opening, the Department as manager of the scientific reserve would publish an "alert" on its website advising the public of the temporary closure of part of the reserve, and the reasons for that closure. This is the Department's standard practice where a public safety closure is required.

⁶⁵ Consent Application Update – Changes to Proposed Conditions 14.05.25, pages 26-28.

⁶⁶ In the August JWS Planning Annexure A at page 8 Ms Sannazzaro proposed publication in a newspaper should be required every time the lagoon is opened. The Applicants do not support this, as time constraints and newspaper timing requirements may mean that newspaper publication is not timely to inform the public before the opening is to occur.

Issue 10 – Methodology for monitoring sedimentation within the lagoon

102. Having received advice from Mr Rabel and Dr Robertson, the Applicants intend to monitor suspended sediment monthly following National Environmental Monitoring Standards (NEMS) methods.⁶⁷ This would provide data on changes in sediment levels in the lagoon, including in response to resuspension of benthic sediments.
103. Further, the annual NIWA Ruppia surveys undertaken since 2009 have been monitoring the characteristics of benthic sediments across the 47-48 sites surveyed.⁶⁸ The 2025 NIWA Technical Report on Vegetation Status in Waituna Lagoon: Summer 2025⁶⁹ (attached as Annexure A) discusses the sediment characteristics of the lagoon bed, and includes Figure 7 showing changes in substrate type in the lagoon recorded during each of the annual monitoring surveys from 2009-2025.⁷⁰

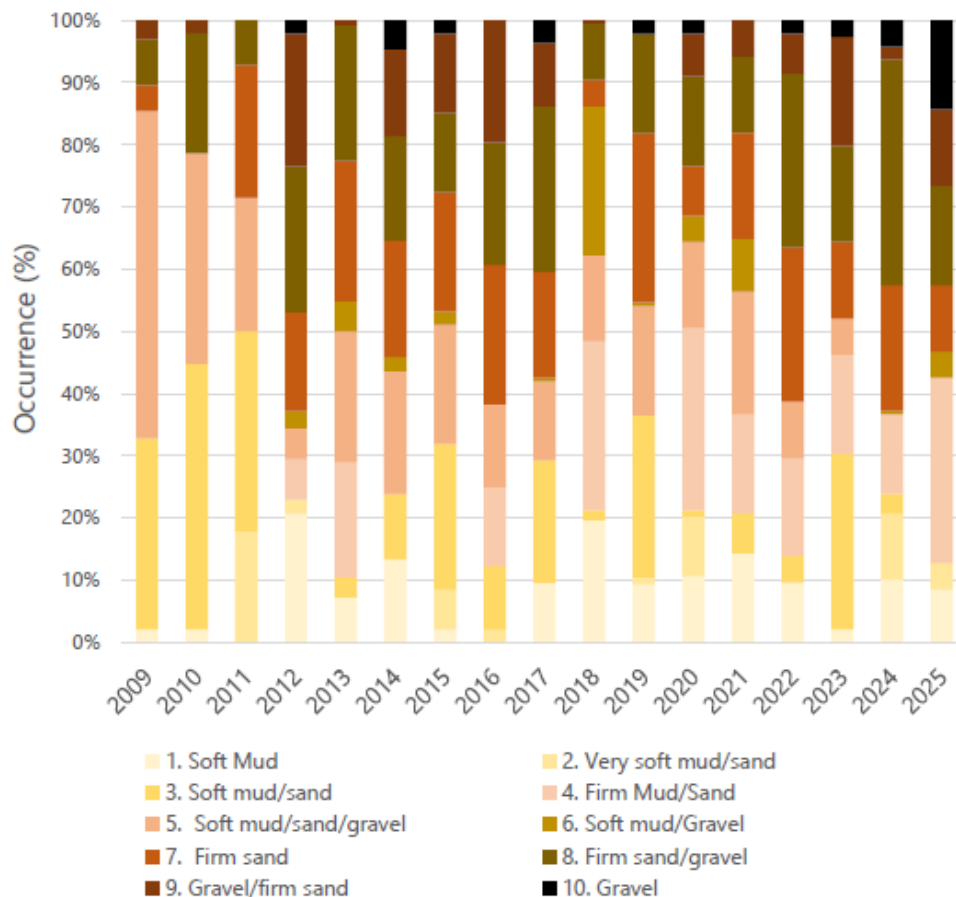


Figure 7: Bar plot illustrating the composition in substrate type (% occurrence), recorded during each of the annual monitoring surveys. Substrate types are numbered from softer to harder.

⁶⁷ The NEMS are a series of environmental monitoring standards, prepared by the NEMS steering group on authority from the Regional Chief Executive Officers (RCEOs) and the Ministry for the Environment (MfE), and aim to ensure consistency in the way environmental data is collected and handled. The Council is a member of the NEMS group: [National Environmental Monitoring Standards » National Environmental Monitoring Standards \(NEMS\)](#)

⁶⁸ Refer Evidence of Mary de Winton for the Applicants at paras 32-34 and Figure 2

⁶⁹ Evidence of Ms de Winton at para 36, and refer DOC website: [Vegetation Status in Waituna Lagoon Summer 2025](#)

⁷⁰ Supra, 4. Sediment Characteristics at page 13

104. Should consent be granted, the Applicants propose that draft condition 47 Table D be amended to provide for monitoring of sediment, by the insertion of two additional rows as follows:

Indicator (unit)	Timing
Suspended sediment (TSS mg/L)	Monthly
Benthic sediment (% soft mud – gravel)	Annually

There is no need for a baseline lagoon bed survey to assess sediment accumulation and depth

105. Mr Welsh, a submitter on the application, in his further comments suggests there be a baseline lagoon bed survey to assess sediment accumulation and depth.⁷¹ The annual NIWA surveys referred to above have been assessing benthic sedimentation across the lagoon providing a baseline, and the Applicants propose this would continue. Figure 7 from the 2025 NIWA report above shows a wide variation in sediment type in the lagoon bed over the past 16 years, indicating the lagoon benthic environment is highly mobile from year to year. For these reasons Mr Rabel and Dr Robertson advise it is unnecessary to undertake a baseline lagoon bed survey as suggested.

Issue 11 – the bird nesting draft conditions 32-33 should be amended

106. The planners agreed that a nesting bird condition was required for the lagoon opening site and noted that Mr Jacques' (and Dr Robertson's) advice was needed to confirm the nesting period.⁷² The planners further agreed draft condition 31 (and conditions 32-33) should be reviewed by the Applicants' bird experts.
107. Mr Jacques has confirmed (email dated 8 August 2025 in Annexure B) the bird nesting period in draft condition 31 of between 1 August and 31 January, is appropriate. He states the species likely to be nesting on the bar are banded dotterels and variable oystercatchers, both currently classified as At Risk.⁷³ The likelihood of banded dotterel nests along the bar is high, with a density of approximately 2 nests every kilometre. Mr Jacques advises passing vehicles will cause temporary disturbance to nests, but incubating birds will quickly re-settle once the threat has gone.

⁷¹ Further comments of Submitter Ian Welsh provided on 5 September 2025

⁷² August JWS Planning Annexure A at pages 3-4

⁷³ Banded dotterel (*Charadrius bicinctus*) is currently assessed as At Risk: Declining, and Variable Oystercatcher (*Haematopus unicolor*) is currently assessed as At Risk: Recoverin. See Conservation status of birds in Aotearoa New Zealand, 2021, Robertson et al, [nzics36entire.pdf](#)

108. Draft condition 32 is generally appropriate. However, Mr Jacques does not consider the 50m radius exclusion from each nest proposed by draft condition 33 is practicable, given the narrowness of the bar along much of its length. Mr Jacques recommends the draft conditions be amended to mark nests found with flags; require vehicles to be at least 10m away when passing marked nests and not linger within 50m; and not undertake any excavation or other disturbance within 50m of a marked nest.

109. Applying this advice, the Applicants propose amendments to draft conditions 32 and 33 as follows:

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) name of attendees
 - (iii) 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
 - (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:

- (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.

~~establish a 50m radius exclusion zone, measured from the nest, within which the **Consent Holder** and its representatives, vehicles or machinery may not enter, until the chicks have fledged or the nest has failed or otherwise has been naturally abandoned.~~

110. Should consent be granted, the Applicants seek that draft conditions 32 and 33 be revised as set out above to protect nesting birds from the lagoon opening activity.

The Applicants propose corrections to some draft conditions and summarise all changes sought

111. Should consent be granted the Applicants generally accept and adopt the proposed draft conditions in the August JWS Planning Annexure B. In addition to the changes to draft conditions the Applicants have proposed above, the Applicants seek corrections as follows:

- a. **Table** with Terms and Meanings – Consent Holder, should read:

“Te Rūnanga o Awarua, Environment Southland in their capacity as Consent Holder and not in their capacity as regulator, and Department of Conservation Te Papa Atawhai”

Comment – the Applicants say this change is appropriate for clarity

- b. **Condition 12 Table B, and Condition 47 Table D**, both refer to “*significant biosecurity risk*”. The planners expressed concern this term was not sufficiently clear.⁷⁴ The Applicants propose a definition of the term “significant biosecurity risk” be added to the definitions table at the start of the consent as follows:

Term	Meaning
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, and any “organism of interest” listed on the Environment Southland website

- c. Condition 12 Table C has a ** to explain in relation to the Macrophytes and *Ruppia megacarpa* secondary indicators, this is “*Based on the results from annual surveys undertaken in late summer*”. Condition 47 Table D also has a **, but with no explanation. This relates to Diadromous fish (īnanga, lamprey/ kanakana, eel/ tuna, and kokopu) density. In this instance the ** was intended to refer to “*Plankton assessment may also be undertaken, if suitable and cost-effective methods are available to survey juvenile fish population abundance*”. The Applicants propose this reference be added to Table D, with a ***.

112. In summary the draft conditions where the Applicants propose revisions are:

- Table of Terms and Meanings – amendment to “Consent Holder”
- Table of Terms and Meanings – new Term “Significant biodiversity risk”
- Condition 6 – alternative gauge location, insert “30” working days
- Conditions 32 and 33 – revision of bird nesting conditions
- Conditions 45 and 47 – add note re use of SOE data
- Condition 47 Table D – insert new parameters and frequency for sediment
- Condition 47 Table D – add new *** explanatory reference

⁷⁴ August JWS Planning Annexure A at pages 8 and 10

Submitter concerns (not previously addressed)

Criticism of the expert evidence for the Applicants is unwarranted

113. In further comments, some submitters have criticised Dr Robertson’s evidence and claimed that the expert evidence for the Applicants is incorrect or lacking information.
114. There was limited expert evidence provided by submitters and only one technical expert – Mr John Scandrett for Southern Star Farms Ltd, who gave evidence on farm drainage systems.⁷⁵ The Applicants’ expert witnesses are suitably qualified and experienced and all of them have visited Waituna on multiple occasions over the years. Submitters did not call contrary expert evidence, and the s42A report writer was satisfied by the Applicants’ response to the Technical Peer Review.⁷⁶
115. Much of this criticism appears to arise from a misunderstanding of the purpose of the application to restore Waituna to a state of hauora applying a multiple values approach. Some submitters considered that experts making appropriate concessions in response to questions demonstrated a lack of certainty, which misunderstands the nature of this evidence.
116. Many submitters focused on only one or two aspects, e.g. too much focus on Ruppia, wading birds, or fish passage. The expert evidence for the Applicants demonstrates how these values, along with others (such as the importance of retaining Ruppia in the Lagoon as an ecosystem engineer⁷⁷, providing appropriate fish passage to ensure valued taonga species are retained in the catchment and some species can recover⁷⁸, and providing improved habitat for ‘swamp’ birds⁷⁹) are all being considered as part of the proposed lagoon management regime to maintain and restore the ecological health and cultural values of Waituna.
117. This misunderstanding was also shown by the criticism of how Te Wai Pārera Trust lands are being managed. This fails to acknowledge or understand these lands are intended to be retired from previous land uses and transitioned to a new style of management in accordance with tikanga principles and reestablishing cultural connection as outlined in Mr Whaanga’s evidence.⁸⁰

⁷⁵ Mr Scandrett participated in the JWS Hydrodynamic and land drainage, together with Mr Measures, Mr Rabel and Dr Schallenberg, where the experts agreed on the impact of higher water levels in the lagoon on land drainage

⁷⁶ Section 42A Report at 2.8.5.11-15, 2.8.6.7, 2.8.6.9-11

⁷⁷ Evidence of Ms de Winton at para 47

⁷⁸ Evidence of Dr Holmes at para 55 and Table 3

⁷⁹ Evidence of Sean Jacques for the Applicants dated 11 July 2025 at para 54

⁸⁰ Evidence of Mr Whaanga at paras 63-68

118. For these reasons, the Applicants say these criticisms are unjustified and the expert evidence for the Applicants supports granting the consent.

The Applicants would consider the Lagoon's heartbeat or 'mauri' when making decisions

119. Mrs van Gool comments that lagoon openings decisions should have a focus on the 'mauri'/ heartbeat of the lagoon and its environs.⁸¹
120. The Applicants agree their intention is to restore the hauora of Waituna, and thereby its 'mauri', heartbeat. If consent is granted the SAG who would make recommendations to the Consent Holder includes an Awarua representative for their knowledge of the cultural values of the lagoon. The SAG also could have a suitably qualified expert nominated by the Community, and that person may have knowledge of cultural values and the historic management of the lagoon. If consent is granted the Applicants intend to take a holistic approach to restore multiple values of the lagoon, with multiple indicators to be assessed.
121. For these reasons, consideration of the 'mauri' or heartbeat of the lagoon would be integral to decisions on how best to manage openings of Waituna, and the Applicants would not be "solely relying on science". The Applicants say the proposed draft conditions are appropriate and support their holistic and multi-values approach.

Waituna cannot wait until any Freshwater Management Unit processes are complete as this could risk failing to achieve the Waituna FMU freshwater vision

122. The planning expert for Federated Farmers, Ms Sannazzaro, objects to the proposed 20-year consent term in part because she says a shorter term would align with the timing and development of the Waituna freshwater management unit.⁸²
123. The National Policy Statement for Freshwater Management 2020 (NPS-FM) provides for long-term visions for freshwater⁸³ as part of the approach to implementing the NPS-FM. Southland has identified a long-term freshwater vision the Waituna freshwater management unit (FMU), which gives effect to Te Mana o te Wai and which the Council intends to include when it is able to publicly notify changes to the Southland Water and Land Plan. The vision for Waituna FMU is:⁸⁴

⁸¹ Further comments of Raewyn van Gool provided 5 September 2025

⁸² August JWS Planning – Annexure A at paged 6-7 re Duration of consent and Policy 40

⁸³ Most recently amended as at October 2024

⁸⁴ [Southland's visions - Environment Southland Water and Land](#)

Waituna freshwater management unit

The waters of Waituna catchment, Waituna Lagoon Waipārera and connected coastal waters, will be restored to a state of hauora and healthy resilience by 2045, for the benefit of current and future generations.

124. This application is consistent with and gives effect to the vision for the Waituna FMU as the purpose is to restore Waituna to a state of hauora over the 20-year term sought through to 2045.
125. Clauses 3.7 – 3.20 in the NPS-FM set out the National Objectives Framework (NOF) including identification of the values of each FMU and setting environmental outcomes for each value (clause 3.9), setting target attribute states, environmental flows and levels etc. to support the achievement of the environmental outcomes (clauses 3.11 and 3.12), then setting limits and preparing actions plans to achieve the environmental outcomes (clauses 3.12, 3.13, 3.14, 3.15). Limits may be set on resource use to achieve target attribute states.
126. Rules must be used that set environmental flows and levels for each FMU in regional plans, with different flows and levels possible within different parts of an FMU. Limits may be set for lakes (clause 3.16). Take limits for resource use must be identified to meet environmental flows and levels for each FMU (clause 3.17).
127. This application does not seek to use a resource, rather it is for the purpose of managing natural features and processes through the proposed lagoon opening regime. I submit the take limits that may be set within the catchment's FMU are unlikely to affect the operation of the consent if granted, noting clause 3.17(4) states:

(4) Take limits must be identified that:
(a) provide for flow or level variability that meets the needs of the relevant water body and connected water bodies, and their associated ecosystems; and
(b) safeguard ecosystem health from the effects of the take limit on the frequency and duration of lowered flows or levels; and
(c) provide for the life cycle needs of aquatic life; and
(d) take into account the environmental outcomes applying to relevant water bodies and any connected water bodies (such as aquifers and downstream surface water bodies), whether in the same or another region.
128. Waituna is a relevant connected water body which is downstream at the bottom of the catchment. Any process setting environmental flows and take limits must implement the FMU's freshwater vision and provide for the factors in clause 3.17(4) in relation to Waituna.
129. As previously noted, the NPS-FM is currently under review and the government has also announced it intends to repeal and replace the RMA before the next general election in 2026. The Council has advised that Plan Change Tuatahi to the Southland Water and Land

Plan (which is when the FMU NOF process will formally get underway) is unlikely to be publicly notified before the end of 2027.

130. The Applicants say issuing a short-term consent of 5 years to allow time for FMU processes would likely fail to implement the Waituna FMU freshwater vision and put the achievement of the vision – to restore Waituna’s hauora and build healthy resilience by 2045 – at risk.
131. For these reasons the Applicants continue to seek a consent for a 20-year term to allow the implementation of the proposed regime to transition and restore Waituna to a state of hauora and healthy resilience.

Conclusion – kupu whakatepe

132. The Applicants want to acknowledge and thank the community and other stakeholders for their continued engagement in this consent process. This confirms that Waituna is highly valued and significant to many, and the Applicants’ proposed approach to managing the lagoon is consistent with upholding multiple values in recognition of Waituna’s significance.
133. Should consent be granted the Applicants look forward to continuing to work with the community, including through the participation of a community representative on the SAG, and through the multiple opportunities for engagement including those outlined as a minimum for the CMP.⁸⁵
134. The Applicants say outstanding issues have been addressed in this right of reply, and the Commissioners should be able to approve the grant of consents as sought on the proposed draft conditions as revised by these submissions.



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

⁸⁵ August JWS Planning, Annexure B at proposed draft conditions 40-41

Annexure A

NIWA Report – Vegetation Status in Waituna Lagoon: Summer 2025

[separate attachment]

Annexure B – email from Mr Jacques dated 8 September 2025

Pene Williams

From: Sean Jacques
Sent: Monday, 8 September 2025 4:35 pm
To: Pene Williams
Cc: Dell O'Connor; Katie Collins; Hugh Robertson; John McCarroll
Subject: RE: Waituna - are you able to provide comments on the proposed consent conditions and timing of bird nesting on the gravel bar? ASAP please

Hi Pene,

My feedback on the conditions as follows;

- whether the timeframe in condition 1 of 1 August to 31 January is appropriate, Yes, this timing is suitable with respect to mitigating disturbance to nesting birds on the shingle bar.
- and, whether the 50m radius exclusion zone would be workable in practice on the gravel bar; and if not what other distance might be appropriate?

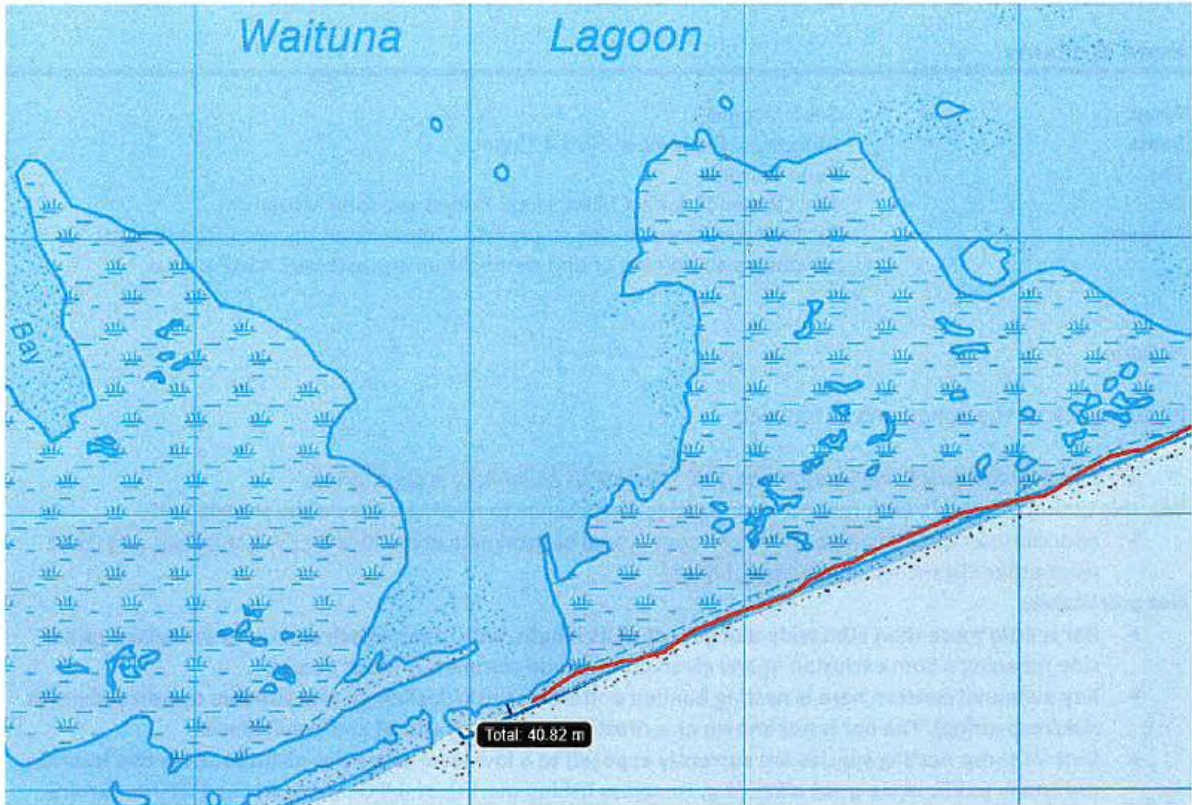
Not practicable;

- Bar is little more than 50m wide along most of its length, with steep beach and wet swampland either side meaning a 50m exclusion at any given point would completely block access.
- Key avifaunal concern here is nesting banded dotterel (at risk/declining), and variable oystercatcher (at risk/recovering). The bar is not known as a roosting or foraging site of any significance.
- Both of these nesting species are currently exposed to a low level of regular disturbance in this location, especially public using quad bikes (e.g. to access fishing marks), and DOC using tracked ATV to service trapping network. A passing vehicle will cause temporary disturbance, but incubating birds will quickly re-settle once threat is gone. Both species incubate for c4 weeks and have precocious young that leave the nest within hours of hatching. Continued disturbance in the vicinity of the nest during incubation is likely to lead to nest failure.

My suggestion as reasonable mitigating actions is;

- Nests found during walkover should be marked with flags
- Passing vehicles and machinery of consent holder should give these a minimum of 10m in passing and not linger within 50m of the marked nests.
- Continued disturbance such as excavation should not occur within 50m of any nest site.

The screenshot below illustrates a typical width of the bar and the c7km to be travelled to the Walkers Bay opening site. Banded dotterel nests are frequent along this route, occurring a density of approximately two per kilometer.



Let me know if you need more information,
Cheers,
Sean