

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

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

Manner in which the hearing is to be conducted

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

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

Memorandum of Counsel for the Applicants, dated 24 June 2025

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

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

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

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

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



Mark St.Clair
Chair and on behalf of the Panel

25 June 2025

Appendix 1

BEFORE INDEPENDENT COMMISSIONERS APPOINTED BY THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

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

Application No. **APP-20242456**

Memorandum of Counsel for the Applicants

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

Dated: 24 June 2025

Department of Conservation | *Te Papa Atawhai*

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

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

Context about the Applicants' witness availability and hearing dates

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

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

Directions sought

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



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

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