

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

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



Mark St.Clair
Chair and on behalf of the Panel

12 August 2025

BEFORE the Hearings Panel delegated
by Environment Southland

UNDER the Resource Management Act
1991

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

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

7 August 2025



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MAY IT PLEASE THE PANEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Date: 7 August 2025

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