25/RC/38

The Hearing Commissioners

29, 30 and 31 July 2025
9.00 am

Staff Report for Hearing

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Commissioners. The report is evidence and has no greater weight than any other evidence that the Commissioners will hear and consider.

Hearing of Application – APP-20242456
Te Rūnanga o Awarua, Department of Conservation, Environment Southland

Compiled by Danielle Petricevich, Consultant Consents Planner (SLR Consulting Ltd)

Applicant:	Te Rūnanga o Awarua, Department of Conservation, Environment Southland
Application Number:	APP-20242456
Location:	Waituna Lagoon
Activities for Consent:	See Table 1 (below). A consent term of 20 years is sought for all consents
Notification:	The application was publicly notified on Tuesday, 6 August 2024
Hearing:	The hearing is to commence at 9.00 am from 29 to 31 July 2025 in the Council Chambers, Environment Southland, corner of Price Street and North Road, Waikiwi, Invercargill.

Table 1: Consents Sought

Consent Type	Purpose
Water and Discharge Permits	• 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	• Earthworks and disturbance of the bed of Waituna Lagoon and margins • Disturbance of the CMA • Incidental indigenous vegetation clearance

1. Introduction

1.1 Reporting Planner – Qualifications and Experience

1.1.1 My name is Danielle Petricevich, I am employed by SLR Consulting Ltd, in the position of Principal Planner. I have been contracted by the Southland Regional Council (also known as Environment Southland) as the consent application processing planner and as such am the author of this s42A Report.

1.1.2 I hold a Bachelor of Science degree specialising in Geography from the University of Otago. I have been employed by SLR Consulting Ltd (formerly 4Sight Consulting Limited) since November 2022. Prior to that I was employed by the Bay of Plenty Regional Council (BOPRC) as a Senior Consents Planner since September 2017 and Environment Southland (as a Consents Planner) from 2014 - 2017. As such, I have over 10 years planning experience. In this time, I have processed a wide range of resource consent applications, including being the Council s42A Planner in Council Consent Hearings and Environment Court.

1.1.3 I am qualified as a Resource Management Act decision maker through the Making Good Decisions certification programme run by the Ministry for the Environment and am an Associate member of the New Zealand Planning Institute.

1.1.4 I have read the updated Environment Court Practice Note (2023), including the Code of Conduct for Expert Witnesses in giving evidence to the Environment Court. I agree to comply with that code when giving evidence to the Hearing Panel in this matter. I confirm that the issues addressed in this report are within my area of expertise, except where I state I am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

1.1.5 I can confirm that I undertook a site visit on 6 March 2025, to various locations around the Waituna Lagoon and surrounding rural area, this included the previous opening location at 'The Fence' (not open at the time of the site visit), the Waghorn Road bridge and the Department of Conservation walking track and viewing platform. A map of the area visited is included as **Appendix A**. Representative photos of the site visit are appended to this report as **Appendix B.** I was unable to get to the Walker's Bay opening location (which was open at the time) during this site visit due to health and safety constraints and unavailability of suitable transport.

1.1.6 In addition to the site visit, photos of the Walker's Bay opening site have been provided to me by the Environment Southland Science Team, via Mr Nick Ward. These photos were taken on 30 January 2025, as part of the regular monitoring of the Waituna Lagoon, and are appended to this report as **Appendix C**. Appendix E of the application also contains photos taken during and immediately after the opening of October 2019 and January 2024.

1.1.7 I also attended the pre-hearing meeting held on 7 March 2025. The pre-hearing report, required by section 99(5) is appended to this report as **Appendix D**.

1.2 Purpose and Scope of Report

1.2.1 This report has been prepared in accordance with section 42A of the Resource Management Act 1991 (RMA). The report provides my analysis of the resource management issues in respect of the consent application lodged by the Applicant with Environment Southland on 5 July 2024 and referenced as APP-20242456, for activities associated with the periodic opening of the Waituna Lagoon.

1.2.2 The purpose of the report is to assist the Hearing Commissioners in making a decision on the resource consent application, and as such provides a recommendation to the decision makers on whether to grant or decline the application, and under what conditions. This report has been prepared without knowledge of the content of any evidence (expert or lay) that will be produced, following this report, prior to or at the hearing.

1.2.3 The scope of the assessments undertaken in this report are based on the application (see Section 2.2 of this report) and receiving environment (see Section 2.4 of this report), as at the time of writing this report. To be clear this means the assessment relates to the effects of opening the lagoon to the Coastal Marine Area (CMA), including the effects of opening at the various proposed water levels and/or as a result of one of the other ecological or water quality triggers (including providing for fish passage). It does not include the effects of the lagoon remaining closed until a particular tigger is met, nor the Applicant making a determination to not exercise the consent when a trigger is met.

1.2.4 As such, outside of assessing the effects of opening the lagoon as a result of the proposed triggers, this assessment does not comment on the appropriateness of the water level triggers. Further information on the reasoning behind the triggers can be found within Section 6 of the Science Advisory Report[1] (Appendix B of the application). Additionally, the Applicant is not compelled to exercise their consent (if granted). As explored in Aoraki Water Trust v Meridian Energy Ltd[2], a resource consent is a right to use a resource, not an obligation to do so. These matters will be considered further in this report, where particularly relevant.

1.2.5 This report is intended to be read alongside the resource consent application, submissions received and technical reports, which are all appended to this report. In particular this report draws on and considers:

- The relevant sections of the Resource Consent Application[3] ('application'), including the assessment of effects on the environment (AEE) and appendices.
- The Consent Application Update, provided on 14 May 2025 (**Appendix E**).
- The Response to Request for Further Information Requests, dated 23/06/2025 (**Appendix F**).
- A Technical Review Report and advice provided by Ms Nicola Pyper and Mr Pete Wilson of SLR Consulting Ltd, included as **Appendix G**.
- Issues raised by submitters, as relevant to the application and related effects (summary of submission included as **Appendix H**).

1.2.6 If the decision makers decide to grant the resource consent application, this report provides recommendations on conditions of consent, that I consider are appropriate and required to ensure adverse effects can be adequately monitored, and avoided, remedied or mitigated. Recommended conditions of consent are appended this report as **Appendix I.** These conditions are based off the set of conditions provided as part of the consent application update, with amendments for clarity and/or to appropriately monitor the activity and its effects and mitigate adverse effects on the environment. These conditions have been workshopped with the Applicant's Planning Consultant, Ms Lisa Thorne, as part of expert planning caucusing. This caucusing and resolutions are detailed further in Section 2.7 of this report.

[1] Technical review of conditions for opening Waituna Lagoon. H. Robertson, N. Atkinson, M. de Winton, M. Schallenberg, R. Holmes, A. Rabel, K. Wilson, C. Jenkins, D. Whaanga, 2024.

[2] Aoraki Water Trust v Meridian Energy Ltd [2005] 2 NZLR 268 (HC)

[3] Periodic opening of Waituna Lagoon to maintain and restore ecological health and cultural values of the lagoon ecosystem, Resource Consent Application and Assessment of Environmental Effects. Taylor Planning, July 2024

1.2.7 In accordance with s42A (1A) and (1B), material contained within the application documentation is largely referenced rather than repeated where it is efficient to do so.

1.3 Information relied on in preparation of this report

1.3.1 In preparation of this report, I have had regard to the following documents:

- The resource consent application and assessment of environmental effects, prepared by Taylor Planning Limited and dated July 2024;
- The resource consent application and assessment of environmental effects, prepared by Taylor Planning Limited and dated July 2024;
- Additional information provided by the applicant following the pre-hearing meeting;
- Further information requested from the Applicant;
- The submissions on the application;
- Technical reviews of the application completed under Section 92(2) of the RMA, including technical evidence provided by:
  - Ms Nicola Pyper, Principal Freshwater Ecologist, SLR Consulting Ltd;
  - Mr Pete Wilson, Principal Marine Ecologist, SLR Consulting Ltd;
- Relevant statutory instruments including:
  - Resource Management Act 1991 (RMA or Act);
  - Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F);
  - National Policy Statement on Freshwater Management 2020 (NPS-FM);
  - National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB);
  - New Zealand Coastal Policy Statement 2010 (NZCPS);
  - Southland Regional Policy Statement 2017 (RPS);
  - Proposed Southland Water and Land Plan, 3 April 2018 (Decisions Version – with Appeals) (SWLP);
  - Regional Coastal Plan for Southland 2013 (RCP);
- Te Tangi a Tauira the Ngai Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan 2008 (IMP);
- The Southland Murihiku Conservation Management Strategy 2016 (CMS).

1.4 Attachments

1.4.1 The following attachments form part of this report:

Appendix A: Site Visit Map
Appendix B: Site Visit Photos
Appendix C: Walker Bay Opening Site Photos
Appendix D: Report of pre-hearing meeting
Appendix E: Consent Application Update
Appendix F: Further information provided by the Applicant
Appendix G: Technical Review Report
Appendix H: Summary of Submissions
Appendix I: Recommended Conditions

2. The application and procedural matters

2.1 Applicant and Location

Applicant: Te Rūnanga o Awarua, Department of Conservation (DOC), and Environment Southland
Site address or location: Waituna Lagoon

2.2 Proposed Activities

2.2.1 The application is for the periodic opening of the Waituna Lagoon, which includes the following activities:

- Water and Discharge Permits for:
  - The diversion and discharge of water and sediment from Waituna Lagoon to the 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.

2.2.2 The application states that the purpose of the proposed activities is to establish a regime to maintain and restore the ecological health and cultural values of the lagoon ecosystem, while giving effect to Te Mana o Te Wai (for the Waituna Lagoon), through the management of water levels in the lagoon. The management regime proposes to utilise a combination of water level, ecological, water quality and fish passage triggers and thresholds to guide the timing of lagoon openings. It is anticipated that over time, the frequency of openings will decrease as water level triggers increase and contaminant loading into the lagoon decreases with improved land use practices.

2.2.3 A key aspect of the proposal is to transition to an ecologically optimal opening regime over a 20-year period, noting that previous resource consents authorised frequent openings primarily for land drainage purposes. The proposal is that:

- For years 1-5, summer openings (1 September to 30 April) may occur if water levels are at or above 2.4mASL for 24 hours; and winter openings (1 May to 30 August) may occur if water levels are at or above 2.3mASL for seven consecutive days.
- For years 6-10, openings may occur if water levels are at or above 2.4mASL for three consecutive days.
- For years 11-15, openings may occur if water levels are at or above 2.5mASL for three consecutive days.
- For years 16-20, openings may occur if water levels are at or above 2.5mASL for seven consecutive days.
- Additional openings will be enabled if required for ecological / water quality, biosecurity, and/or fish passage reasons consistent with the opening thresholds recommended in the Science Advisory Report, and on the recommendation of a Science Advisory Group[4], if one or more indicators are exceeded.

2.2.4 The above opening regime (for water level triggers) has been amended over the duration of the consent process, primarily as a result of feedback from submitters. The above opening regime reflects the Applicant's latest proposed triggers. The proposal and opening regime are set out in detail within Sections 3.0 – 3.3 of the application and as amended within the Consent Application Update and discussed / assessed further within the Response to Request for Further Information. This has resulted in an additional step being added to the water level trigger regime, with years 6-15 being split into two different steps with a new water level trigger of 2.4mASL being proposed for years 6-10 and consequential changes to the trigger levels in years 1-5 and 6-10.

[4] Comprises of technical experts with scientific and cultural knowledge of coastal lagoon ecosystems, including experts from external institutions. Suitably qualified members of the group represent DOC, Awarua Rūnanga and Environment Southland, and will have a community representative invited (via the Lake Waituna Control Association).

2.2.5 The water level transitional regime works towards the ultimate water level of 2.5mASL for the lagoon. The Science Advisory Report explores several matters including the levels the lagoon was previously managed at, and ecological and cultural values to determine the ultimate water level (of 2.5mASL) to achieve the long-term objective (of maintaining and restoring the ecological health and cultural values of the lagoon ecosystem). The proposed 2.5mASL level is based on (see Section 6.3 of the Science Advisory Report for further detail):

- the increased level reducing the frequency of openings,
- the duration of high water levels being limited so that period of light limitation on submerged plants and inundation of ex-farmed soils is minimal,
- the ability to undertake opening events triggered by fish passage requirements or ecological/water quality triggers to support ecological and cultural values.

2.3 Description of the Site and Surrounding Environment

2.3.1 The site and surrounding environment are described within Section 5 of the application. I have reviewed this description and adopt it. Included in the summaries below is information from the application and additional information relevant to the application.

2.3.2 Surrounding environment:

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

2.3.3 Waituna Lagoon:

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

- The Southland District Plan identifies the Waituna Lagoon and wetland complex as an outstanding natural feature/landscape.
- Historically, the lagoon has been artificially opened to the sea primarily for land drainage reasons, this is detailed in Section 7 of the application. This activity requires resource consents, of which none have been in place since 2021.
- Walker's Bay has been the primary opening location, however Hansen's Bay and 'The Fence' have also been used as opening locations (see Figure 2).
- Since 2021 the lagoon as been opened twice under emergency works provisions to manage water quality within the lagoon. These openings occurred in January and September 2024, at 'The Fence' and at Walker's Bay (respectively). An aerial image of the opening undertaken in January 2024 is shown below as Figure 3.
- The September 2024 opening remained open for approximately seven months (closing on 7 May 2025).

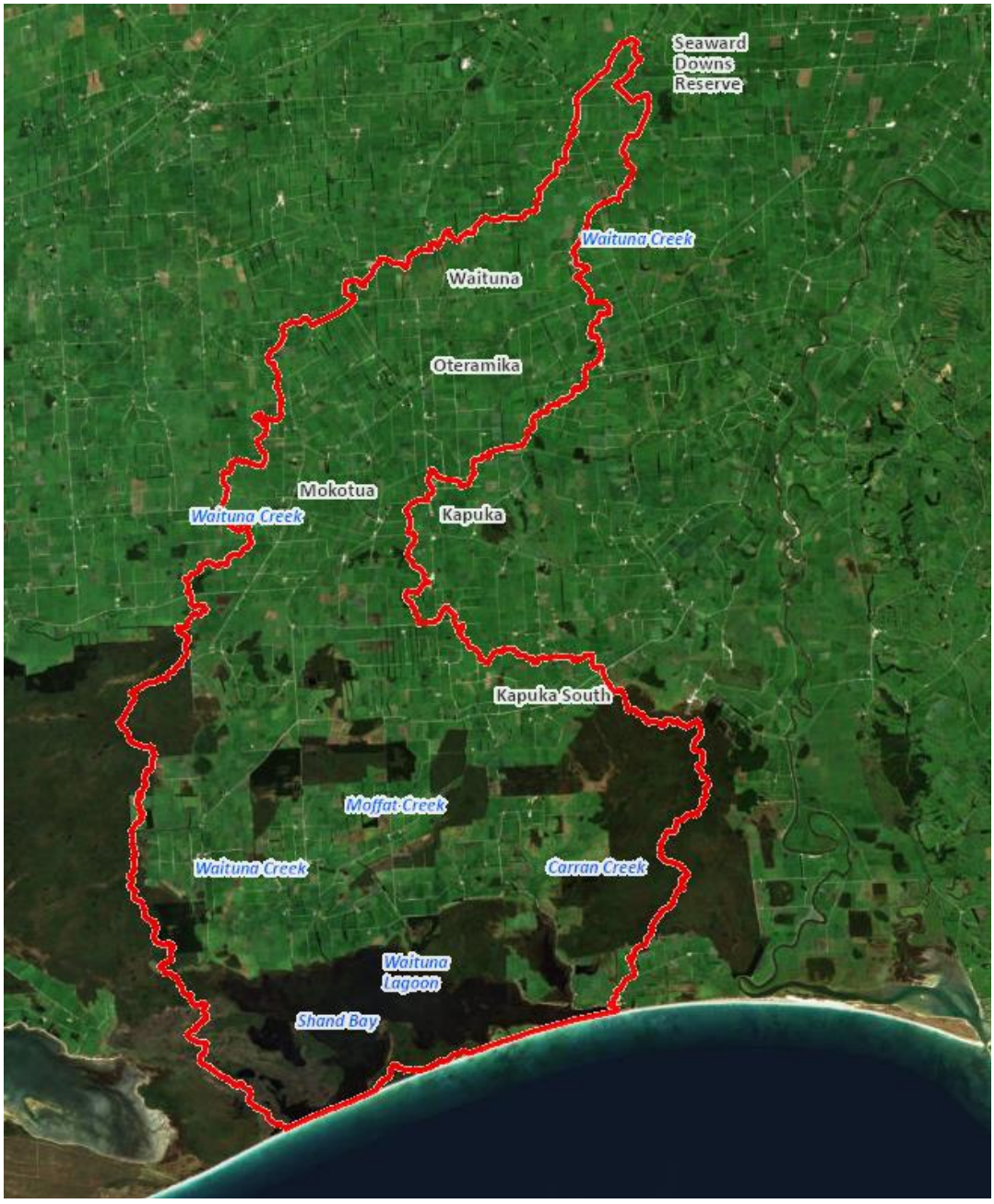

Figure 1: Waituna Catchment (Source: Environment Southland Beacon Maps)

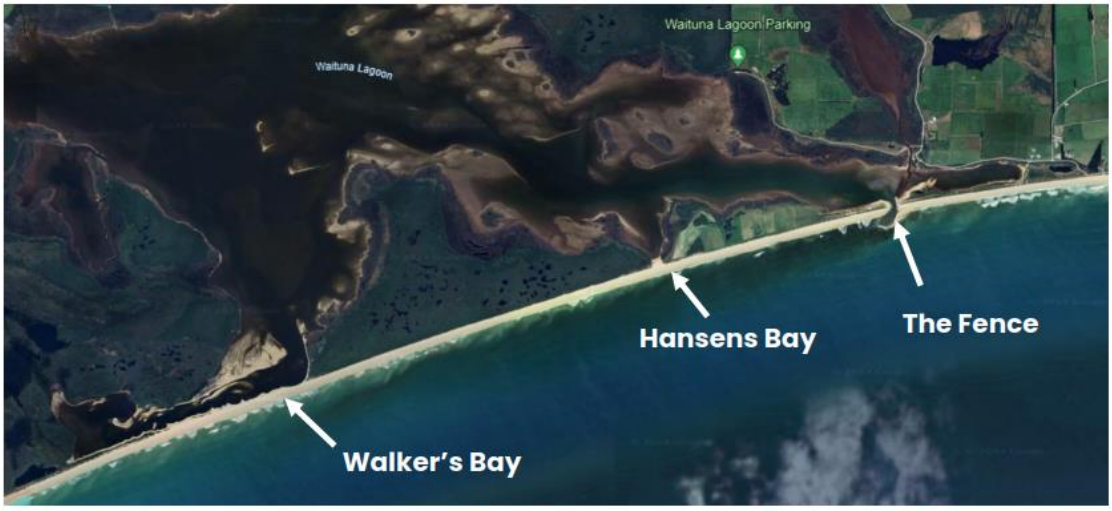

Figure 2: Opening locations (Source: Resource Consent Application)

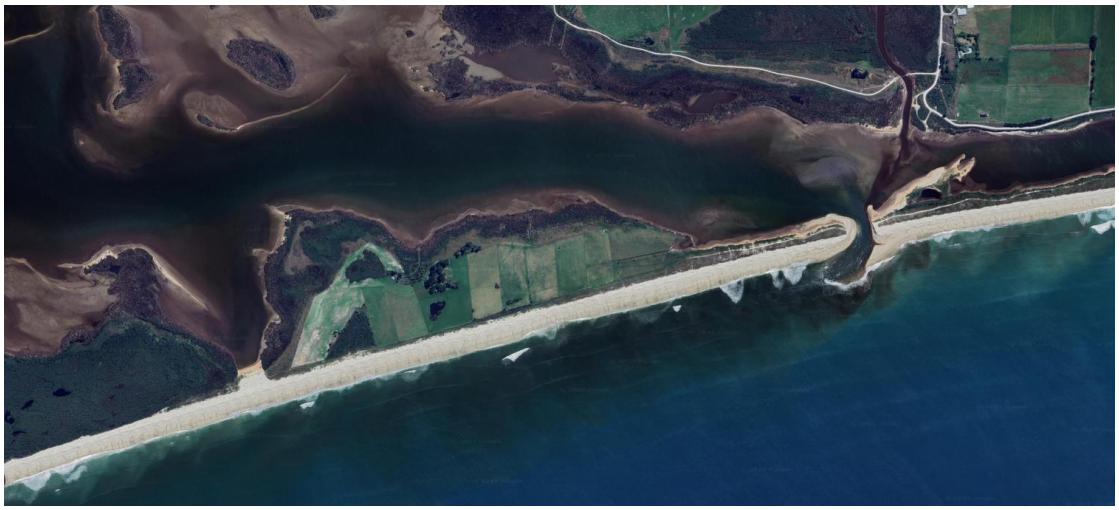

Figure 3: Image of January 2024 Waituna Lagoon Opening at 'The Fence' (Source: Google Earth, 13/02/2024)

2.4 Receiving/Existing Environment

2.4.1 In assessing the potential effects on the environment, the receiving/existing environment for effects must be considered.

2.4.2 The receiving environment is a mandatory consideration that is defined by case law, and it is the environment beyond the site upon which a proposed activity might have effects. This includes the existing and reasonably foreseeable future state of the environment upon which effects will occur, including:

a. the environment as it might be modified by the utilisation of rights to carry out permitted activities; and
b. the environment as it might be modified by implementing resource consents that have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

2.4.3 In this case, the receiving environment is as described in Section 9.1.2 of the application, as being "*the lagoon as is, where lagoon levels naturally fluctuate and where the water quality varies, based on climate, meteorological, and land use factors.*"

2.4.4 The application also details that:

"There is currently no resource consent in place for an opening regime for the lagoon, and lagoon opening cannot be undertaken as a permitted activity."

and clarifies that:

"the environment as modified by the previous consented opening regime, does not form the receiving environment. The previous consents for opening activities have expired so cannot be considered to be part of the receiving environment or existing environment for the purposes of determining the application."

2.4.5 I agree with, and adopt, the Applicants description of the receiving environment from which the assessment of effects of the activity needs to be considered against. Simplified, a 'do nothing' approach to management of the lagoon, its water levels and water quality is the receiving environment. This means that the adverse effects of opening the lagoon must be assessed (altering the environment), rather than the effects of not opening the lagoon (allowing natural processes to take place).

2.5 Planning Framework

2.5.1 Resource consents are required under the SWLP, the Regional Coastal Plan (RCP), National Environmental standards for Freshwater (NES-F), and section 14 of the RMA.

Southland Water and Land Plan (proposed)

2.5.2 While the SWLP is partially operative, all aspects of the SWLP that are relevant to this application are partially operative and therefore have full legal effect. Therefore, there is no need to revert to the Operative Southland Water Plan.

2.5.3 Resources consents are required under the following rules of the SWLP:

- Rule 4(a), for the discharge of coastal water and sediment to the lagoon, as a *Discretionary Activity*.
- Rule 49(d), for the abstraction and diversion of surface water from the lagoon to the coastal marine area, as a *Non-Complying Activity*.
- Rule 71, for the excavation and disturbance of the bed of a lake, as a *Discretionary Activity*.
- Rule 74(b), for the use of land within a wetland for the purpose of maintaining or enhancing the wetland, as a *Discretionary Activity*.

Regional Coastal Plan

2.5.4 Resources consents are required under the following rules of the RCP:

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

It is noted that the Applicant has not included the requirement for resource consent under Rule 10.1.6 is noy included in application. This was discussed during expert planning caucusing and agreed by the Applicant that resource consent is required under this rule.

National Environmental Standards for Freshwater

2.5.5 Resource consent is required under Regulation 39 of the NES-F as a *Restricted Discretionary Activity*, for vegetation clearance, earthworks/land disturbance, the taking/damming/diversion of water and the discharge of water, within or within 10 – 100m of a natural inland wetland, as these activities are to be undertaken for the purpose of natural inland wetland restoration[5], wetland maintenance[6], or biosecurity. The Applicant addresses this within section 4.4 of the application.

2.5.6 Having reviewed the application and its purpose, it is clear the proposed activities are for the purpose of wetland restoration and/or maintenance. The opening activities provide for wetland maintenance as they will prevent the deterioration of the wetland's ecosystem health through ensuring significant adverse effects do not occur as a result of poor water quality. The openings also provide for the restoration of the wetland, through active intervention appropriate to the type and location of the wetland with the purpose of restoring its ecosystem health. I consider that the proposed opening regime is appropriate to the wetland type and location given the proposed activities mimic the natural historic openings of the lagoon to the CMA. Additionally, the transitional approach to the opening heights provides a pathway to restoring the hydrological functioning of the wetland, while also addressing water quality issues.

Resource Management Act

2.5.7 Resource Consent is required under the RMA by sections 14 and 87B as a *Discretionary Activity*, for the diversion of water in the CMA, as this activity is not captured by the RCP.

Bundled Activity Status

2.5.8 Overall, the application is considered to be a ***non-complying activity***.

2.5.9 When considering a Non-Complying Activity, the Council may only, in accordance with Section 104D, grant a resource consent for the activity if it is satisfied that the adverse effects of the activity are minor, or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan. If the application passes the "gateway" tests in Section 104D, under Section 104B the Council may grant or refuse consent for a non-complying activity, and if it grants the application, may impose conditions under Section 108 of the RMA.

2.6 Notification and Submissions

2.6.1 A decision was made to process the application via public notification on 5 August 2024 under Section 95 of the RMA, as the Applicant requested public notification.

2.6.2 The application was publicly notified on 6 August 2024. As part of the public notification of the application, direct notice was served to the relevant required authorities, groups identified by the Applicant who were previously consulted and property landowners and lease holders (on Environment Southland owned land) within 2km of the lagoon and 2km of the most upstream locations identified in the NIWA Report (*Waituna Lagoon level impacts on land drainage and inundation. Investigation Stages 1 and 2. Prepared for Department of Conservation, February 2016*).

[5] **restoration**, in relation to a natural inland wetland, means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning

[6] **wetland maintenance** means activities (such as weed control) which prevent the deterioration, or preserve the existing state, of a wetland's ecosystem health, indigenous biodiversity or hydrological functioning

2.6.3 As a result of the public notification, 51 submissions were received on the application. Eight of these submissions are in support of the application, one is neutral and the remaining 42 submissions are in opposition to the application. At the time of writing this report, there are 35 submitters seeking to be heard.

2.6.4 A summary of submissions is attached to this report as **Appendix H**. Submission points are considered against each relevant effect, assessed below in section 2.6 of this report. Key themes of the submissions received are:

- Water quality issues as a result of higher opening level requirements (e.g. build-up of nutrients) and catchment and lagoon erosion and sedimentation.
- Water quantity effects, such as inundation of land and the need for a lower trigger level for opening, with the majority of submitters requesting a 2.2 m opening level.
- Adverse effects on ecological values such those on ruppia as a result of shading from tannins, loss of vegetation and general ecological impacts from higher water levels and impacts resulting from poor water quality.
- Concerns around the frequency of openings for fish passage.
- That the proposal reflects a movement towards a more natural environment, with it providing for enhancement of taonga fauna species, taonga mahinga kai and native flora species, and restoring the mauri, health and wellbeing of the wetland and its ecosystem.
- Inundation of roads and access tracks
- Adjustments to water level triggers and timing of openings. Primarily seeking a 2.2m level opening and these to occur in the winter season.
- Adjustments to the staging/duration of stages of opening levels.
- Consent duration.

2.6.5 Submissions have been used to identify potential effects and understand community and expert perspectives relating to the proposal and effects. These are therefore considered in further detail within Section 2.8 of this report and also inform the statutory assessment within Section 3 of this Report.

2.7 Expert Caucusing - Planning

2.7.1 Minute 1 of the Hearings Commissioners directs expert conferencing prior to the preparation of their reports/evidence (including applicable conditions of consent), and through to the commencement of the hearing.

2.7.2 On 27 June 2025, the recommended conditions of consent as were circulated to Ms Thorne, along with a list of the key issues and effects (as identified throughout this report). Ms Thorne and I then met online and via phone on 30 June 2025 and 01 July 2025 to discuss.

2.7.3 At the time of our meeting, the known resource management planning experts are:

- Ms Danielle Petricevich – engaged by the Southland Regional Council
- Ms Lisa Thorne – engaged by the Applicant.

2.7.4 The Planning experts (Ms Thorne and I) agree:

- The key themes of submissions received on the resource consent application are those set out in section 2.6.4 of this report.
- The effects of the proposed activities are:
  - Water Quantity, Flooding, Inundation and Impeded Drainage

  - Water Quality
  - Ecological Values, including habitats, ecosystems, fish passage and indigenous biological diversity
  - Cultural Values
  - Historical Heritage
  - Natural Character, Natural Features and Landscapes, including Outstanding Natural Character and Features
  - Public Access, Recreational Values and Amenity, including that of the Coastal Environment
  - Positive Effects
- On the rules and planning framework that the consents are required under, as detailed in Section 2.5 of this report.
- On the receiving/existing environment, as detailed in Section 2.4 of this report.
- That Objective 1 of the NPS-FM is no longer a relevant consideration as per Section 104(2F) of the RMA, as detailed in 3.4.1 of this report.
- On the relevant provisions under Section 104(1)(b), and agree that Objective 4 of the NZCPS is relevant (see Section 3.5.3 of this report for further detail).
- That the resource consent application passes both limbs of the Section 104D 'gateway test'.
- That the resource consent application can be granted for a duration of 20 years, subject to the imposition of appropriate conditions.
- For the most part, that the recommended conditions of consent (see **Appendix I**) are appropriate and represent an appropriate set of conditions to manage, monitor and mitigate the effects of the proposed activities. Some last-minute changes to conditions have been made as a result of the ecological technical review and comments from the Compliance Team. While these have been shared with Ms Thorne, we have not had time to discuss these changes. I anticipate that we will be able to meet and address these changes through Ms Thornes evidence.

2.7.5 There are no areas of disagreement between the planning experts, subject to discussing the final recommended changes to consent conditions.

2.8 Effects on the Environment

2.8.1 Clause 6 of Schedule 4 of the RMA outlines the information required in an assessment of effects. The following actual and potential effects of this proposal have been identified (through analysis of the key issues and effects raised in the relevant statutory direction).

2.8.2 Having reviewed the relevant statutory direction, the SWLP does not provide fulsome coverage of this proposal as a unique activity. The primary focus of the SWLP objectives and policies is around discharge and water take activities. There are some general policies which provide some direction; however, it is considered that the objective and policies of the RCP and RPS provide better direction for the proposal. Given the Waituna Lagoon is located within the Coastal Environment, it is entirely appropriate to draw on the direction of the RCP and RPS to inform the effects assessment where the objectives and policies provide for more complete consideration of the activity than the SWLP.

2.8.3 The effects (adverse and positive) relevant to the proposal are:

- Water Quantity, Flooding, Inundation and Impeded Drainage
- Water Quality
- Ecological Values, including habitats, ecosystems, fish passage and indigenous biological diversity
- Cultural Values

- Historical Heritage
- Natural Character, Natural Features and Landscapes, including Outstanding Natural Character and Features
- Public Access, Recreational Values and Amenity, including that of the Coastal Environment
- Positive Effects

2.8.4 **Water Quantity, Flooding and Inundation effects**

2.8.4.1 As detailed above in section 2.3 of this report, a 'do-nothing' approach represents the existing environment. To be clear, this means that not opening the lagoon, any natural fluctuation in water levels and any effects occurring as a result, form part of the existing environment and are not an adverse effect resulting from the proposed opening activities. Section 9.9 of the application also details that natural fluctuations in water quality are part of the receiving environment. It is important to keep this in mind when considering the impacts of the proposed activities on water quantity, especially in the context of flooding/inundation of land with the catchment. I consider that flooding/inundation of land is not an adverse effect of the proposed activities (to open the lagoon), rather it is a result of the natural fluctuation of water levels within the lagoon as a result of rainfall, groundwater flows, evapotranspiration, losses to groundwater and the CMA, etc.

2.8.4.2 Taking into account the above, the primary statutory direction in relation to water quantity comes from Policy 33 of the SWLP which seeks to prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal. The adverse effects of a reduction in water quantity within the lagoon (as a result of openings) are assessed within the ecological effects section of this report.

2.8.4.3 The Applicant has undertaken an assessment of effects on neighbouring land, detailing that proposed openings are initially likely to occur every two years, and that the transitional approach to raising opening levels will provide landowners time to adapt to the natural water levels (with less openings). In addition to neighbouring land, there are potential impacts on roads and tracks as a result of the water levels. Waghorn Road and the DOC track are the two roads/tracks most likely to be impacted by inundation.

2.8.4.4 The Applicants assessment takes into account the work undertaken by NIWA to model inundation and land drainage impacts as a result of water levels in the lagoon.[7] This initial modelling was undertaken in 2016, and therefore the Applicant also commissioned NIWA to compare the model results against image and video files showing observed inundation in September and October 2024 in order to validate the results of the modelling.[8] The validation report compares the extent to which upstream inundation and land drainage impacts could occur at various lagoon levels with image and video files showing observed inundation in September and October 2024, to assess the accuracy of the modelling.[9] The validation report concludes that the 2016 modelling accurately reproduces observed areas of inundation at a 2.5 m lagoon level with 90th percentile river flows, indicating the results are broadly appropriate for use in the application.

[7] Walsh, J. M., Measures, R. J., Bind, J., Haddadchi, A. (2016). Waituna Lagoon level impacts on land drainage and inundation: Investigation stages 1 and 2. NIWA Client Report CHC2016-010 prepared for Department of Conservation.
[8] Measures, R. J., Bind, J. (2024). Validation of Waituna Lagoon inundation and land drainage modelling. NIWA Report No: 2024352CH
[9] This imagery includes a prolonged period of lagoon levels exceeding 2.3 m until the lagoon was opened on 25 September 2024 and levels dropped.

Submissions

2.8.4.5 Submissions on the application in relation to this topic are substantial. These primarily relate to the impact of the proposed opening levels on surrounding land uses, including inundation of land (and property rights) and access, and the social and economic effects of this.

2.8.4.6 Submitters have requested adjustments to water level triggers and timing of openings. Primarily seeking a 2.2m level opening and these to occur in the winter season. It is my understanding that these requested amendments are to ensure that surrounding land is not impacted by impeded drainage, inundation or flooding as a result of high water levels within the lagoon (usually combined with or as a result of high rainfall events), which are more likely to occur during the winter period. Additionally, and as identified by the Applicant, summer openings are more likely to be avoided if the lagoon has been opened in the preceding winter period.

2.8.4.7 The applicant has amended the proposal (as detailed in Section 2.2 of this report) to respond to the concerns raised in submissions regarding the water level triggers and impacts of increased water levels. These amendments include an additional transitional period, which creates another step in the water level triggers. As described by the Applicant in their Further Information Response, these changes respond to the key concerns of submitters as expressed at the pre-hearing meeting. The Applicant goes on to note that:

- Feedback received from the Waituna Catchment Committee (on behalf of the community), is that these changes still do not go far enough. Noting most submitters are seeking a water level opening trigger of between 2.0m and 2.3m ASL.
- While the Applicant understands the communities preferred water level triggers, lower trigger levels are not supported by the Science Advisory Group, would likely have more than minor adverse effects on the ecological and cultural values of the lagoon, and would delay restoring the lagoon to a state of hauora.

Conclusions

2.8.4.8 As previously detailed, adverse water quantity effects on neighbouring land e.g. flooding, inundation and impeded drainage are a result of the existing environment, rather than the proposed activity. The opening of the lagoon at any level will result in positive effects in respect to these effects, as it will relieve any of these effects if they are occurring at the time the lagoon is open. As such, I consider that that the adverse effects flooding, inundation or impeded drainage are not considered an adverse effect of the proposed activity to open the lagoon.

2.8.4.9 Given the vast receiving environment of the CMA, the discharge is unlikely to result in any noticeable changes in respect to water quantity within this receiving environment.

2.8.4.10 The adverse effects of lowered water levels will primarily impact water quality and ecological values and therefore have been assessed within the following sections of this report.

2.8.4.11 Adverse effects related to water quantity are therefore considered to be less than minor and acceptable.

2.8.5 **Water Quality**

2.8.5.1 Adverse effects on water quality within the lagoon may occur through the release of sediment during opening activities and through the inflow of coastal waters into the lagoon while it is open. Furthermore, the opening of the lagoon also has the potential to adversely affect water quality within the CMA through the release of sediment and nutrients (from the lagoon) while the lagoon

is being opened and is open. As detailed above, a reduction in water quantity within the lagoon may also impact on the water quality of the lagoon.

2.8.5.2 There are several generic policies within the SWLP that require the management of water quality effects such as Policy 20 directing the management of adverse effects, including those on water quality, from the use and development of surface water resources (associated with the taking, abstraction, use, damming or diversion of surface water and groundwater). Additionally, Policy 28 seeks to manage water quality effects from bed disturbance activities. The RCP seeks to maintain water quality within the coastal environment (Objective 7.2.2.1), recognises the importance of freshwater and effects on the CMA from altered freshwater quality (Policy 7.2.2.1) and Policy 7.2.2.3 seeks to manage the water quality of CMA within the areas classified as People and Aquatic Life (P & AL) for those purposes.

2.8.5.3 In relation to water quality, submitters have raised concerns with the amount of sediment and nutrients entering the lagoon and the need for these to be flushed out regularly and potential increased erosion and sedimentation as a result of high water levels. The Applicant considers that these issues relate to what is occurring as part of the existing environment, with the proposal seeking the opportunity to open the lagoon to relieve pressure on the lagoon and its ecosystem as a result of poor water quality. I agree with the Applicant and as such, the impacts of land use and diffuse discharges within the catchment on the water quality of the lagoon cannot be considered nor can the impact of high-water levels within the lagoon.

2.8.5.4 I consider that the key effects on water quality from opening the lagoon are the inflow of coastal water into the lagoon and alternatively the impacts on water quality within the CMA from the discharge of lagoon water into the CMA. Any erosion and sedimentation caused by the opening of the lagoon is also a matter that can be considered. These matters are discussed further below.

2.8.5.5 The Applicant considers that any adverse effects on water quality within the lagoon will be neutral or positive (depending on the reason for opening), with openings for the improvement (release of water with poor water quality) of water quality within the lagoon being positive and openings as a result of the trigger water level being reached, or for the purpose of providing for fish passage being neutral.

2.8.5.6 When opening of the lagoon for the purpose of improving water quality i.e. a water quality threshold trigger has been met (rather than a water level trigger), adverse effects are most likely to occur within the CMA, as this is where the poor quality water is being discharged to. The Applicant has provided information that details the water movement within the bay is high, as evident from the lack of reported marine algal blooms (or otherwise) in the area. The Applicant also considers that the discharge to the CMA will have temporary and no more than minor effects on water quality within the CMA.

2.8.5.7 There is the potential for human health impacts as a result of changes in water quality within the CMA. The Applicant has identified that signage and fencing of the lagoon opening will occur due to the risk of sand bank slumping or people being swept away in the strong flow/currents caused by opening the lagoon. Additionally, if cyanobacteria biovolume meets or exceeds guideline values within the lagoon, there will be signage erected at the main access points to the lagoon as well as public notification. The Applicant also notes that to date the dominant bloom species is a freshwater obligate family of cyanobacteria which would be killed in a brackish/marine environment. The Applicant has also reviewed lagoon monitoring results for closed-state E. coli, and given the rapid mixing and strong dilution, the Applicant considers that faecal coliform concentrations will be further reduced and unlikely to pose any substantial risk to the public.

2.8.5.8 With respect to erosion and sedimentation, the Applicant has assessed that during open periods, total suspended solid (TSS) concentrations are higher as there is more particulate matter in the water column. They suggest that this is likely due to resuspension of settled sediment, or from the coastal waters. However, they also note that the tributaries will provide an ongoing source of sediment to the lagoon, which is likely to increase during high flow events.

2.8.5.9 The Applicant has proposed an updated set of draft proposed conditions. These include an additional condition (Condition 15) which requires that the consent holders must engage a suitably qualified expert(s) to prepare a Monitoring Plan. The purpose of the monitoring plan is to direct the parameters to be monitored and the frequency of monitoring the proposed opening triggers, and the primary and secondary indicators of lagoon water quality and ecosystem health. They have provided a draft Monitoring Plan, with this to be finalised following a decision on the consent application.

2.8.5.10 Water quality within the marine environment has not been monitored, and there has not been any investigations of the benthic environment around the bay. The Applicant has not proposed to undertake any water quality monitoring within the CMA as part of the proposed conditions of consent.

2.8.5.11 A technical review of the application and its supporting documents was undertaken by SLR Ecologists (Ms Nicola Pyper, Principal Freshwater Ecologist, and Mr Pete Wilson, Principal Marine Ecologist), for the purpose of understanding whether the proposal e.g. triggers are appropriate for the intended outcomes, identifying any gaps in the technical assessments and understanding whether the proposed conditions are adequate. This review is appended to this report as **Appendix G**. Neither Ms Pyper or Mr Wilson raised concerns regarding impacts on water quality in the lagoon, however Mr Wilson does note that the discharge to the CMA could impact human health as there may be elevated levels of faecal bacteria and/or toxin-producing cyanobacteria in the discharge, which is likely to make the water unsuitable for swimming or gathering shellfish near the point(s) of discharge. However, the remoteness of the site and likely lack of human use is noted and therefore Mr Wilson suggests these effects could be mitigated by the use of warning signs during openings. Mr Wilson has reviewed the further information provided by the Applicant as a result of the original technical review and is satisfied with the Applicant's response.

2.8.5.12 The technical review further notes the need for more specific details of ongoing monitoring and more robust monitoring conditions leading up to, during and post openings (of the lagoon) and further information on the impact of erosion and sedimentation. The Applicant has now addressed these matters, as detailed above and in the further information provided.

Conclusions

2.8.5.13 Having reviewed the application and statutory direction, the Applicant has not assessed effects on water quality within the lagoon or CMA from opening activities (bed disturbance), and the consent conditions do not provide for any controls around erosion and sedimentation occurring due to bed disturbance while opening the lagoon. However, it is noted that the substrate is small pebbles and sand (rather than soil) therefore the opening activities are unlikely to impact water quality like soil would. Additionally, the substrate would naturally wash in and out of both environments if the lagoon opened on its own. The Applicant has proposed to undertake a risk assessment for any openings at locations other than Walker's Bay. I have proposed, in the recommended conditions, that this risk assessment includes the assessment of impacts on water quality from bed disturbance, erosion and sedimentation of the opening site, and that this assessment identifies measures to mitigate this risk.

2.8.5.14 Having considered the submissions, technical reviews, Applicants information, and taking into account the recommended conditions, I consider that the adverse effects on water quality can be effectively managed and mitigated via the conditions of consent I have recommended, and that the Applicant has sufficient measures in place to reduce the likelihood of effects on human health. The technical review comments from Mr Wilson suggest that additional visual monitoring of the discharge plume could be undertaken to confirm the extent of the plume in the CMA and therefore likely extent of impacts. However, given the other advice from Mr Wilson and the assessments provided by the Applicant regarding the nature of the CMA in this area, the likely reduction in effects due to water movement and use of the CMA in this area, I do not consider it necessary to include a condition of this nature.

2.8.5.15 With consideration of the above in the context of the statutory framework, I consider that the adverse effects on water quality are temporary, mitigated and are acceptable. I also agree with the Applicant that at worst these adverse effects are neutral when considering the positive effects associated with the opening activities (related to water level and fish passage triggers), and that when opening activities are required for water quality purposes, the effects on water quality overall will be positive.

2.8.6 **Ecological Values, including habitats, ecosystems, fish passage and indigenous biological diversity**

2.8.6.1 Adverse effects on ecological values of the lagoon have been considered, as opening events may result in lowered water levels in the lagoon which has the potential to cause effects on ecological values including vegetation and habitat. Furthermore, the physical act of opening the lagoon to the CMA may cause disturbance to vegetation and any habitat which is present in the lagoon or in the CMA. However, it is recognised that the proposal is for the maintenance and restoration of the wetland and as such, seeks to maintain or improve the values of the wetland through the opening activities.

2.8.6.2 The SWLP identifies Waituna Scientific Reserve as a Regionally Significant Wetland and Waituna Lagoon as a Sensitive Waterbody. The RCP (section 3.10.8) details that a three-kilometre strip of coastal farmland separates the scientific reserve from the Fortrose Spit, which contains nationally significant dune communities. Recognising the significance of the site, Policy 33 of the SWLP is directly relevant, which directs to protect significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biodiversity, prevent the reduction in area, function and quality of natural wetlands and avoid the loss of extent and protect the values of natural inland wetlands. Likewise, the RCP policies require the protection of habitats of important species and preserve habitats of distinct communities.

2.8.6.3 Submitters have raised concerns in relation to the opening regime and ecological changes including vegetation die off, the need to set an ecological health objective based on a stable and self-sustaining native macrophyte (aquatic plant) population, ensuring there is sufficient monitoring, and the need for the opening regime to reflect a future focused ecological (amongst other matters), science-based outcome. Their concerns are largely related to the impacts of increased water levels within the lagoon, rather than the decrease in water level as a result of opening the lagoon.

2.8.6.4 The application provides an assessment of ecological values at section 9.5 and within the further information response. In summary, the assessment details:

- That while the lower opening levels proposed (2.3masl and 2.4masl) as part of the transition are not optimal for lagoon health, they represent a step towards the enhancement of ecosystem health.
- The provision for openings related to fish passage will have positive effects on fauna values.

- Water quality openings will protect ecological values by enabling openings when there is a risk of algal bloom.
- The potential adverse impacts on macrophytes and macroalgae and submerged plant communities as a result of the openings, being that the openings can result in changes in water level, salinity, and nutrient state.
- Fringing wetland species will likely be affected by the physical opening works, with the Walkers Bay site having the least adverse impacts due to the historic disturbance at this location having already impacted the vegetation located at this site.
- The proposed opening regime provides for a range of conditions for different avifauna.
- Any fringing wetland plant species will be adapted to increased inundation, but that there may be some dieback of terrestrial plants (noting that this is not an impact of the application), including those which may have migrated downslope as a result of prolonged periods of modified hydrology.
- The proposed opening regime including transition of water levels over time will allows for vegetation to also transition over time.
- The proposed transitional regime will provide for a range of habitats for bird species.
- Foraging habitats for some wader species/migrants may be reduced during summer periods, when compared to more frequent spring/summer openings under past regimes, but the wider Awarua-Waituna Ramsar site provides other foraging habitat.
- The inundation of rushes will also support cryptic wetland birds, including the threatened, nationally critical Australasian bittern.
- A change in water level trigger from 2.5mASL to 2.4mASL is anticipated to have a minor adverse effect on ecological values, based on further analysis of the frequency of opening events as a result of the change in water level trigger.

2.8.6.5 The Applicant has also provided a further assessment based on monitoring undertaken over the period the lagoon was last open, to help understand the potential effects of a prolonged opening event. In summary:

- There appeared to be some die off of bullies along the shoreline of the lagoon. It is presumed that this was due to rapid dewatering of the lagoon, leading to the fish being stranded.
- There was notable growth of a native macroalgae for part of the period. Blooms are typically linked to warm, low flow, sunny conditions. It is noted that this is the first time that this has occurred.
- No detailed monitoring of fringing plant communities was undertaken, however many of the plant communities that have established provide valuable habitat. It is also accepted that there may be some transition and die back of terrestrial species which have migrated downslope due to the lower water levels (associated with previously managed water levels).
- Monitoring of aquatic plant communities in early 2025 shows that none of the ecological targets (of the Lagoon Technical Group[10]) were met, highlighting the need for careful balance between the need to open the lagoon and conserving aquatic plants.
- The main option to manage effects from opening the lagoon, is allowing it to close. The Applicant has explored options, but none guarantee success. The Applicants key measures to manage how long the lagoon is open for is timing of openings and the selection of sites which have a higher likelihood of rapid closure (if needed e.g. if the lagoon is opened in the summer).

2.8.6.6 The Applicant has included monitoring of fringing plant communities within their Monitoring Plan, this will ensure there is a consistent approach to the way the changes in fringing wetland plant

[10] Lagoon Technical Group (2013). Ecological Guidelines for Waituna Lagoon. Report prepared for Environment Southland.

community are monitored over the term of the consent, which will feed into the 5-yearly effectiveness review.

2.8.6.7 The technical review (undertaken by Ms Pyper) acknowledges that while the transition period may not be optimal for ecological values, there is the need to balance stakeholder interests. The transition period also provides the Applicant with the opportunity to monitor the adverse effects of opening at various levels and whether the opening regime triggers are resulting in the intended positive effects. This will allow the Applicant to undertake an adaptive management approach to the lagoon openings as a response to the monitoring undertaken, but will also provide time for the lagoon and catchment community to adjust to the changes.

2.8.6.8 The review notes the need for a Monitoring Plan, due to the complexity of the opening regime and adaptive management approach and suggests that in addition to the monitoring of key indicators proposed in the application, monitoring of fringing wetland plant communities and indigenous avifauna should be considered. It also recommends that potential effects on other ecological values should be considered, namely fringing wetland plant communities and indigenous avifauna and that erosion and sedimentation effects should be considered in the application. The Applicant has now provided this additional information and included monitoring of fringing vegetation with the Monitoring Plan requirements.

2.8.6.9 The technical review considers that the fish passage opening triggers are appropriate, and the process for identifying openings (including risk assessment) is considered an appropriate way to manage potential effects on the lagoon and respond in an adaptive way to the results of ongoing data collection.

2.8.6.10 Ms Pyper also undertook a review of the further information provided by the Applicant. In summary her technical review concludes:

- Many native bird species may experience positive or neutral effects as a result of the lagoon being opened and water levels lowering.
- Groups may be adversely affected by the opening of the lagoon, however many of these species are mobile and opportunistic generalists, that can relocate to other areas of the wider wetland if required.
- Inundation has the potential to affect the recruitment of species that build nests close to the ground (nesting birds) in fringing wetland vegetation. Therefore, lagoon opening would lower the risk of this occurring.
- Other species nest on the seaward shoreline and therefore would be unaffected by water levels; and the southern black-backed gull may benefit from lowered water levels, as they have been observed nesting on exposed islands when water levels are low.
- The applicant notes that “Drying of fringing wetland during the spring-summer breeding season will not only expose and endanger nests of cryptic swamp species (including to risk of predation by exotic mammals) but limit safe feeding opportunities for parents and developing young, increasing stress and ultimately reducing chances of survival”. Therefore, the opening of the lagoon has the potential to adversely affect the feeding, recruitment, and survival of cryptic swamp species including the Threatened Australasian Bittern. However, the applicant also notes that there are very few records of bittern at Waituna Lagoon. Therefore, while there is the potential for bittern to be adversely affected, the risk is considered low.
- Given the overall aim is to transition to a more natural regime, with the lagoon being opened less frequently and remaining closed for longer periods of time, this low risk of adverse effects on bittern is considered acceptable. Overtime, as the lagoon transitions to a more natural regime, bittern and other cryptic swamp species are expected to be positively affected by prolonged periods of inundation.

- The information provided indicates that lagoon opening has the potential to have an adverse effect on the fringing wetland community. Nevertheless, the regime proposed represents a transition to a more natural hydrology, working towards longer periods of inundation that would promote the growth and establishment of native communities that are tolerant of wet conditions.
- Regular surveys to monitor fringing wetland vegetation is recommended.
- The applicant noted that during the most recent opening event, a visible die-off of bullies occurred along the shoreline of the lagoon.
- Considering the lack of information on fish stranding that occurs as a result of lagoon opening, monitoring is recommended.

Conclusion

2.8.6.11 The Applicant has provided an assessment of effects which highlights the adverse and positive effects of the proposal. The Applicant has sufficiently addressed the information gaps identified by the technical reviewers and has included additional monitoring, as per their recommendations.

2.8.6.12 I would also like to highlight that the proposal includes different water level triggers for summer and winter in the earlier years of the consent. The purpose of this is to decrease the likelihood of a summer opening as a result of a water level trigger, which is likely to have greater adverse effects on ecological values (than a winter opening). Additionally, the Applicant would not be compelled to open the lagoon if a water level trigger was met, and as such could decide that the adverse effects of an opening at a particular time would result in adverse ecological effects which outweighed the benefits of opening the lagoon.

2.8.6.13 When considering the adverse ecological effects in light of the policy direction, I consider that they are mitigated or remedied (once closed) and are a result of providing for positive outcomes in the lagoon e.g. avoiding an algal bloom or providing for fish passage, or are part of the transition to a more optimal opening regime for the ecological values of the lagoon. These positive outcomes align with the direction of the SWLP and the protection/restoration requirement of the NPS-FM (Policy 6). Any adverse effects are likely to be temporary in nature, and will be remedied once the lagoon is closed again. Additionally, I agree with the Applicant and consider that the effects on ecological values are likely to be neutral to positive and will result in the movement towards a more natural environment while protecting the lagoon.

2.8.6.14 As such, I consider that the adverse effects of the proposed activities are acceptable. from adverse water quality outcomes, and providing for fish passage.

2.8.7 **Cultural Values**

2.8.7.1 As noted above (paragraph 2.3.3), the cultural significance of the lagoon is recognised through a Statutory Acknowledgement, under Section 206 and Schedule 73 the Ngāi Tahu Claims Settlement Act 1998. This acknowledges Ngāi Tahu's cultural, spiritual, historic, and traditional association to Waituna. Of specific relevance to the proposal is the framework provided through Objectives 2, 4 and 5 of the SWLP which seek the following outcomes:

- The mauri of the water provides for the health of the environment, waterbody and people;
- Tangata whenua values and interests are identified and reflected in freshwater management; and
- There is access to and customary use of mahinga kai resources, nohoanga, mātaitai and taiāpure.

2.8.7.2 Submissions were received from Te Ao Marama Incorporated on behalf of Te Runanga o Hokonui, Te Runanga o Oraka Aparima and Te Runanga o Waihopai, Te Waiparera Trust and Te Runanga o Ngai Tahu in support of the resource consent application. Key aspects of these submissions are:

a. There is support for the establishment of a regime that systematically moves towards the natural environment, and provides for reconnection of mana whenua.
b. The application provides for enhancement of taonga fauna species, taonga mahinga kai and native flora species.
c. The application restores the mauri, health and wellbeing of the wetland and its ecosystem.
d. The application aligns with Te Rūnanga o Ngāi Tahu cultural values and associations with Waituna Lagoon.

2.8.7.2 The Applicant acknowledges the mana whenua of the area within Section 2 of the application. Here they note that Te Rūnanga o Ngāi Tahu is the tribal representative body of Ngāi Tahu whānui (iwi), and that the application is located within the takiwā of Te Rūnanga o Awarua (hapū). Te Ao Marama Inc. represents the interests of the four Papatipu Rūnanga within Murihiku (Southland).

2.8.7.3 The Applicant has provided an assessment of cultural effects in Section 9.6 of the application. This assessment is informed by the 'Cultural Values Report' (CVR) for the mana whenua values, associations, and connection to Waipārera (Waituna Lagoon) that is included as Appendix H of the application. The key aspects of the Applicants assessment are as follows:

- Ngāi Tahu values and uses should be recognised and provided for.
- Awarua Rūnanga have the ability to exercise kaitiakitanga.
- Resources must be cared for and managed in a sustainable way, and the mauri and ecological health of Waipārera is to be prioritised.
- Mahinga kai is an important environmental indicator, and that Ngāi Tahu ki Murihiku have been disconnected from mahinga kai, which has led to detrimental intergenerational impacts on Ngāi Tahu identity.
- Species that characterise a healthy lagoon environment have reduced and been replaced by species that are more commonly associated with enriched and degraded systems.
- The mauri has been diminished through human interaction within the catchment.
- Te Rūnanga o Awarua are a joint consent applicant, which enables their exercise of kaitiakitanga over Waipārera.
- The proposal seeks to contribute to improved mahinga kai values through the maintenance and restoration of the ecological values.
- The Cultural Values Report supports the lagoon being closed during key submerged vegetation growing seasons through spring-summer to enhance the high macrophyte species diversity and development.
- The Cultural Values Report details the support for the proposed regime to improve mauri.

Conclusions

2.8.7.4 Having reviewed the CVR and submissions, I agree with the Applicant's assessment above, and am satisfied that the potential adverse effects are acceptable, as guided by the CVA and submissions. The only comment I would like to add is that, with reference to the outcomes sought in the SWLP, I am satisfied that the proposal will contribute towards cumulative efforts to improve the overall mauri of the lagoon, that the proposal directly provides for tangata whenua interests and values, and could, in the future, contribute to the revitalisation of the lagoon for mahinga kai purposes. I therefore have assessed that any adverse effects on cultural values will be acceptable given the proposal largely would result in positive effects on cultural values.

2.8.8 **Historical Heritage**

2.8.8.1 The application assesses that there are no mapped archaeological sites in the relevant District Plan planning map or Regional Coastal Plan as being located on the Waituna Bar at Walker's Bay. However, it does detail that "*Wāhi tapu and wāhi taonga are found along the shores of the lagoon due to the many years of occupation and use. There have been some archaeological sites recorded in recent times, with the items found mostly associated with collecting and cooking mahinga kai*".

2.8.8.2 The RCP details that the mainland is not renowned for its archaeological or heritage values, however directs that heritage values are to be protected. However, it is noted that while there are no recorded sites, there is still the possibility of unrecorded sites (as per the previous finds). The Applicant proposes that the adverse effects on historical heritage can be adequately mitigated through the implementation of an accidental discovery protocol and has proposed a consent condition to this effect.

2.8.8.3 I agree with the Applicant and consider that the adverse effects will be acceptable and can be appropriately mitigated via the implementation of an accidental discovery protocol.

2.8.9 **Natural Character, Natural Features and Landscapes, including Outstanding Natural Character and Features**

2.8.9.1 The RCP seeks to preserve natural character and details that this area of coastline has dominant landscapes of "*extensive shingle beaches, gravel bars, dunelands and their associated native vegetation, and the adjoining peat bogs, lagoons, estuaries, salt marshes and tidal flats, most of which are largely unmodified*". The Waituna landscape is assessed (as Landscape Unit 5) in Appendix 4 of the RCP. This assessment gives this area a 'naturalness' rating of 4+ (being semi-natural[11] to natural[12]) and assesses that the following activities could adversely affect the natural character of this area:

- All vertical structures and elements may be incompatible within this unit, e.g. towers, pylons, high buildings, exotic tree planting.
- Further drainage to the wetlands.
- Any intensive land use of the fragile coastal elements.
- Reduction in the buffer zone around the margins of the wetlands.
- Sand and gravel extraction around lagoon margins.
- Further infestation of weed species over peatlands.

2.8.9.2 Consistent with the semi-natural/natural classification of the site, the relevant policy framework does not afford a significant level of protection to the existing landscape values, although Policy 20 of the SWLP does require 'consideration' of effects on natural character as a result of the use and development of surface water resources.

2.8.9.3 The Applicant has assessed that the proposed activity will have temporary and transitory effects on landscape and natural character each time the lagoon is opened, as the opening will alter the appearance of the foreshore and lagoon. The opening is likely to remain for a few months and will close via natural coastal processes. The Applicant has also given consideration to the potential landscape effects where the lagoon remains open for longer periods of time. The Applicant proposes to reduce the likelihood of this occurring through implementing measures to try to avoid

[11] **Semi-Natural (4):** high inherent values and where indigenous characteristics are still dominant, but where some localised modifications have occurred to the original character

[12] **Natural (5):** high inherent value and where the original characteristics of the landscape are still completely intact. All human elements (huts) and activities (tramping) are subservient in the wider context

summer openings when sea conditions are less likely to close the lagoon. As detailed above, this includes having different water level triggers for summer and winter in the earlier years of the consent.

2.8.9.4 Additionally, the Applicant may choose to open the lagoon at locations which are likely to be closed by sea conditions sooner than others if they did need to open the lagoon in less optimal conditions e.g. summer.

Conclusions

2.8.9.5 Overall, I agree with the Applicant's assessment and consider that adverse effects on landscape and natural character values will be acceptable, largely due to the temporary nature of these adverse effects. Additionally, I have considered that the site is remote, and openings are not easily visible to the public, and also the openings are mimicking a natural process.

2.8.9.6 The temporary nature of effects and remoteness of the location, and mitigation measures proposed, I consider that these adverse effects are acceptable.

2.8.10 **Public Access along the coast, Recreational Values and Amenity, including that of the Coastal Environment**

2.8.10.1 As detailed in the application, recreational activities occur at and near the lagoon, including walking, bird watching, trout fishing and duck shooting.

2.8.10.2 Section 3.10.6 of the RCP details the recreational and amenity values of the section of coastline from Tiwai Point to Fortrose (which includes the Waituna Lagoon area). Notably, it details the lack of easy access to the coast, other than the direct access provided at the east end of Waituna Lagoon. The RCP goes on to detail that trout fishing is popular at the mouth of the lagoon, with the spot being known for very large sea-run trout. The area is also known to be popular for gamebird hunting. The RCP seeks amenity values and public access are to be protected, maintained and enhanced (where possible).

2.8.10.3 A number of submissions in opposition to the application have been received, that relate to these matters. A key theme from these submissions is concern around recreational values including access to the lagoon, impacts on fishing and the DOC walking track.

2.8.10.4 The Applicant has provided an assessment of effects on recreational values in Section 9.11, and coastal access in Section 9.10 of the Application, which makes the following key points:

- While fishing and boating access to the lagoon is possible at all times and the reserve/lagoon is not a high use recreational site.
- The openings will result in the formation of a temporary channel between the lagoon and CMA.
- This channel will impede public access along the Waituna Bar and potentially along the beach (due to the flow of water). However, this will be temporary, and natural process will eventually close the opening.
- The Applicant proposes to notify the public of when an opening is occurring via public communications (such as social media) and will also notify specific parties, including affected landowners, directly.
- The proposal provides for positive effects on recreational values, through the improvement in water quality. Openings will also relieve any inundation of the walking track.

Conclusions

2.8.10.5 I agree with the Applicant's assessment and conclude that any adverse effects on public access along the coast and lagoon, recreational values and amenity will be temporary and acceptable. I am therefore satisfied that the outcomes sought by the SWLP, RCP and RPS, will be achieved primarily due to the temporary nature of effects.

2.8.11 **Positive Effects**

2.8.11.1 The application assesses the positive effects associated with the proposal in Section 9.3. The purpose of the opening regime is to maintain and restore the ecological health and cultural values of the lagoon, and as such primarily results in positive effects. These include:

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

2.8.11.2 I agree with the Applicant's assessment and conclude that the proposed activities could result in the positive effects the applicant has identified.

2.8.12 **Assessment of Effects Conclusion**

2.8.12.1 Having considered the adverse and positive effects (actual and potential) of the proposal, along with the mitigation measures and consent conditions proposed by the Applicant, I conclude that while the proposal will result in some adverse effects. These effects are largely temporary, no more than minor and acceptable, and are a consequence of providing a regime which will ultimately result in net positive effects on the environment. The effects in line with the outcomes sought by the SWLP, RCP and RPS.

2.8.12.2 I consider that the recommended conditions (see **Appendix I**), adequately manage and monitor the adverse effects of the proposed activities.

3. Statutory Assessment

3.1 Statutory Considerations

3.1.1 Section 104 of the RMA sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) states:

> *(1) When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2, have regard to:*
> *(a) any actual and potential effects on the environment of allowing the activity; and*
> *(b) any relevant provisions of –*
> *(i) a national environmental standard:*
> *(ii) other regulations:*
> *(iii) a national policy statement:*
> *(iv) a New Zealand coastal policy statement:*
> *(v) a regional or proposed regional policy statement:*
> *(vi) a plan or proposed plan; and*

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

3.1.2 The following statutory documents are of relevance to this application:

- Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F)
- National Policy Statement for Freshwater Management 2020 (NPS-FM)
- National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB)
- New Zealand Coastal Policy Statement 2010 (NZCPS)
- Southland Regional Policy Statement 2017 (RPS)
- Southland Water and Land Plan 2024 (SWLP) – partially operative
- Regional Coastal Plan for Southland 2013 (RCP)
- Te Tangi a Tauira the Ngāi Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan 2008 (IMP)
- The Southland Murihiku Conservation Management Strategy 2016 (CMS).

3.2 Actual and potential effects (Section 104(1)(a))

3.2.1 The actual and potential effects of the proposed activities were considered earlier of this report. It has been concluded that any adverse effects will be temporary in nature and acceptable. The proposed activities also have the potential to result in positive effects.

3.3 Relevant provisions of National Environmental Standards (Section 104(1)(b)(i))

3.3.1 **National Environmental Standards for Freshwater (NES-F)**

3.3.1.1 Resource consent is required under Regulation 39 the NES-F as a Restricted Discretionary Activity, for the activities of earthworks, vegetation clearance and diversion/discharge of water, that are for the purpose of natural inland wetland restoration, wetland maintenance, or biosecurity.

3.3.1.2 The Applicant has assessed the relevant restricted discretionary matters within the resource consent application, as per Regulation 39(4).

3.3.1.3 The application contains a Restoration Plan (as part of Appendix B), as required by Regulation 39(5) and a condition of consent is proposed by the Applicant which meets the requirements of Regulation 39(6).

3.4 Relevant provisions of National Policy Statements (Section 104(1)(b)(iii))

3.4.1 **National Policy Statement for Freshwater Management 2020 (NPS-FM)**

3.4.1.1 The Applicant has provided an assessment of the proposal against the NPS-FM in section 10.3 of the application. They have identified that clause 2.1 contains the sole objective of the NPS-FM, while this objective remains part of the NPS-FM it can no longer be considered when making a decision on a resource consent application as per s104(2F). As such, I have not considered this clause any further.

3.4.1.2 While the objective cannot be considered, the policies of the NPS-FM are still relevant to the proposal. Of particular relevance to this application are Policies 1, 2, 5, 6, and 9. The Applicant has provided an assessment of these policies in Section 10.3 of the Application. I agree with and adopt their assessment concluding that the proposal is not contrary to the policies of the NPS-FM. In

particular, the proposal will not result in the permanent loss in extent or values of a natural inland wetland, as the proposal seeks to maintain and restore wetland values through opening the lagoon to ensure it is not adversely impacted by poor water quality, algal blooms and to provide for fish passage. While there is the potential for temporary losses, in the long term the proposed regime seeks to maintain and restore the values of the wetland. The Applicant proposes to monitor the wetland and its values, and employ an adaptive management regime to adopt new mitigations or amend existing measures as a result of monitoring.

3.4.1.3 The effects management hierarchy is required to be applied to applications under Regulation 39(7) of the NES-F. The Applicant has undertaken this assessment within section 10.3.5 of the application and a further assessment within the further information response. The effects management hierarchy underpins the proposal, and whilst the absolute avoidance of effects is not possible, the proposed regime and supporting adaptive conditions which enable opening activities to occur over time ensure that the adverse effects can be minimised or remedied. It is unlikely that any offsetting or compensation will be required. However, the Applicant could employ these measures if they deem necessary via a review of consent, as informed by the monitoring they propose to undertake.

3.4.2 National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB)

3.4.2.1 The Applicant has provided an assessment of the proposal against the NPS-IB in section 10.4 of the application. The Applicant notes that the objective of the NPS-IB is to maintain indigenous biodiversity so there is at least no overall loss, achieved through protection and restoration, and recognising mana of tangata whenua as kaitiaki, and people and communities as stewards of indigenous biodiversity amongst other things.

3.4.2.2 They have assessed the relevant policies of the NPS-IB, being Policies 1, 2, 3, 4, 6, 7, 8, 9 and 13. The Applicant has concluded that "*the activity is consistent with and not contrary to the objectives and policies of the NPSIB as it gives effect to the decision-making principals of the NPSIB, adopts a precautionary approach to biodiversity protection, and to protect and restore the lagoon to achieve a healthier functioning state*."

3.4.2.3 I agree with and adopt the Applicant's assessment.

3.5 Relevant provisions of the New Zealand Coastal Policy Statement (Section 104(1)(b)(iv))

3.5.1 The NZCPS sets out objectives and policies which provide guidance on the management of activities within the coastal environment to achieve the 'sustainable management' purpose of the RMA. The Applicant notes that the Waituna Lagoon is entirely located within the Coastal Environment.

3.5.2 The Applicant has provided an assessment of the proposal against the NZCPS in section 10.2 of the application.

3.5.3 Objectives 1, 2, 3, 4 and 5 are the objectives of relevance to the application. The Applicant specifically addresses Objectives 1, 2, 3 and 5 within their assessment of the NZCPS, while Objective 4 is not directly considered the Applicant has assessed the adverse effects on access to the coast and recreation within sections 9.10 and 9.11 of the application. The policies relevant to these objectives and the application are Policies 2, 6, 13, 14, 18, 19, 25 and 26.

3.5.4 Objective 1 seeks to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land through the methods listed. It is noted that the proposal seeks to maintain and restore the ecological health and cultural values of the lagoon ecosystem, this relates to all three methods

described in Objective 1. I agree with the Applicant's assessment and consider that the proposal is not contrary to Objective 1.

3.5.5 Objective 2 seeks that management of the coastal environment preserves the natural character of the coastal environment and protects natural features and landscape values, through the methods recognised in the objective. These methods include encouraging the restoration of the coastal environment, which is the primary objective of the proposal. It is recognised that the natural character of the coastal environment will be temporarily impacted during opening events through the creation of a channel and the artificial lowering of water levels within the lagoon. However, this is as a result of the restoration of the environment as supported by Objective 1. Policies 13 and 14 also provide direction regarding natural character. The natural movement of water and sediment, and natural elements, processes and patterns will be temporarily disrupted, however these temporary adverse effects on natural character values are necessary to protect landscape and natural character values that would otherwise be adversely affected if an algal bloom were to proliferate, or if fish passage was not enabled. The application seeks to maintain and restore the lagoons ecological health and cultural values, as such, this contributes to the preservation of the natural character of the coastal environment. I consider that the proposal is not contrary to Objective 2 and Policies 13 and 14.

3.5.6 Objective 3 directs to take into account the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment through the methods detailed in the objective. Policy 2 provides further direction providing direction relating to iwi management plans. The application is made by joint applicants which include Te Rūnanga o Awarua, the Applicant has considered Te Tangi a Tauira the Ngai Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan, a Cultural Values Report has been prepared by Te Ao Maraman Inc. on behalf of Te Rūnanga o Awarua, and Te Rūnanga o Ngai Tahu and Te Ao Marama Incorporated on behalf of Te Rūnanga o Hokonui, Te Rūnanga o Oraka Aparima and Te Rūnanga o Waihōpai, have submitted in support the application. All of these show that there has been ongoing and genuine inclusion of tangata whenua as kaitiaki and in the management of the coastal environment.

3.5.7 The maintenance and enhancement of public open space qualities and recreational opportunities of the coastal environment are the goal of Objective 4. Policies 6, 18 and 19 provide further direction on the need for public open space and recreational values of the coastal marine area and adjacent coastal environment. Specific to the proposed activities, public access along the coast may be impeded while the lagoon is open, due to the flowing channel of water and recreational activities within the CMA may be impacted due to the release of poor-quality water. Policy 19 provides the ability to restrict public walking access for a number of reasons, including (a) to protect threatened indigenous species; or (b) to protect dunes, estuaries and other sensitive natural areas or habitats; or (c) to protect sites and activities of cultural value to Māori. As the activities causing the walking restrictions are for these purposes, and the restrictions will be temporary and intermittent it is considered that the proposal is not contrary to these objectives and policies.

3.5.8 Objective 5 relates to natural hazards. The Applicant has proposed that the application seeks to protect and restore the Waituna Lagoon, which is considered a natural defence to coastal hazards. Policies 25 and 26 provide further direction on this matter. I agree with the Applicant's assessment and consider that the proposal will not increase the risk of harm from natural hazards and that the maintenance and restoration of the lagoon will also restore and protect the ability of the lagoon to provide natural defences against coastal hazards. As such, the proposal is not contrary to these objectives and policies.

3.5.9 The Applicant also assesses Objective 7 and Policy 5 (management of the CMA in relation to other obligations and Acts), I agree with and adopt their assessment.

3.5.10 When assessing the proposal against the NZCPS, I consider that it is not contrary to and largely is consistent with the direction provided by the objectives and policies.

3.6 Relevant provisions of the Southland Regional Policy Statement 2017 (Section 104(1)(b)(v))

3.6.1 The objectives and policies of the RPS that are of particular relevance to this application are considered within section 10.5 of the application. The Applicant has addressed these in themes e.g. tangata whenua, water quality etc, according to the chapters of the RPS. Having reviewed the Applicant's assessment, I accept the assessment provided and have nothing further to add.

3.6.2 As previously discussed, in some instances the RPS provides more direction on the proposal than the SWLP, due to the uniqueness of the proposal and the focus of the SWLP on discharges and water takes.

3.6.3 With respects to the relevant objectives and policies contained within Chapters 3 (Tangata Whenua), 8 (Natural Hazards), 14 (Historic Heritage), I concur with and adopt the Applicant's assessment in relation to these matters. As such, I consider that the proposal is not contrary to these objectives and policies.

3.6.4 In relation to the relevant objectives and policies contained within Chapters 4A (Water Quality), 4C (Beds of Lakes and Rivers), 6 (Biodiversity), 7 (Coast) and 10 (Natural Features and Landscapes), I have undertaken a further assessment of the key objectives and/or polices below.

Water Quality

3.6.5 Policy WQUAL.3 directs that the significant values of wetlands and outstanding freshwater bodies are identified and protected. Policy WQUAL.4 provides specific direction in relation to Awarua Wetland, in that the water quality is to be enhanced by ensuring that discharges of contaminants and land use activities both individually and on a cumulative basis have no more than minor adverse effects on the significant characteristics and water quality of the Awarua Wetland. Policy WQUAL.7 directs to recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

3.6.6 As detailed in the application, the Waituna Lagoon and wetlands have significant ecological, natural character, cultural and recreational values. The Application proposes to maintain and restore these values primarily through avoiding significant adverse effects associated with poor water quality and through the provision of fish passage.

Beds of Lakes and Rivers

3.6.7 Policy BRL.1 seeks to manage the effects in values and physical properties, this includes natural character, instream ecological values (including bird habitat) heritage and cultural values, amenity and recreational values. Policy BR.4 seeks that public access is maintained and enhanced to, along and across lakes and rivers, including that bed disturbance activities do not impede public access unless necessary to do so for safety reasons. BRL.5 recognises the social, economic and cultural benefits that may be derived from the use, development or protection of river and lake beds

3.6.8 The proposed activities will not be able to maintain public access entirely (around the perimeter of the lagoon) as the opening activities will cause temporary public access restrictions while the lagoon

is open to the coast. However, the opening activities are for the purpose of maintaining and restoring the values of the lagoon, which will help achieve the outcomes sought by Policy BRL.1. The openings may also have adverse effects on the values listed in Policy BRL.1 if the lagoon is opened and does not close for a significant amount of time. However, the proposal is to try and avoid the need for openings when these conditions may occur. Additionally, the Applicant proposes to monitor lagoon conditions which will be able to inform the timing and location of future openings. The opening regime is also supported by tangata whenua in that it will result in a more naturalised opening regime in the long term which will support cultural values.

Biodiversity

3.6.9 Policy BIO.3 seeks to protect coastal indigenous biodiversity in line with the direction of the NZCPS. Policy BIO.4 seeks to manages indigenous habitats and ecosystems and has regard to particular effects such as loss or reduction of rare or threatened indigenous species' or habitats. Policy BIO.7 promotes the active and integrated management to maintain, restore and enhance indigenous biodiversity. Policy BIO.8 recognises the importance of the role of tangata whenua as kaitiaki and their values and interests.

3.6.10 Having reviewed these policies the application generally aligns with the policy direction. While there may be some adverse effects on indigenous biodiversity, the proposal as a whole seeks to maintain and restore ecological and cultural values of the lagoon, through the transition to a more natural opening regime, while protecting the lagoon against potential significant adverse effects associated with poor quality water entering the lagoon.

Coast

3.6.11 Policy COAST.2 directs that adequate measures of methods are utilised to manage adverse effects. It does this by providing specific direction in relation to particular types of effects e.g. protect indigenous biodiversity, maintain amenity, and maintain public access.

3.6.12 Policy COAST.3 seeks to manage effects on natural features and landscape values in order to protect the coastal environment.

3.6.13 As assessed above, the proposed activities are likely to have some adverse effects within the coastal environment (which includes the lagoon). These effects are likely to be temporary and will be monitored over the duration of the consent. The Applicant is able to employ an adaptive management approach through the recommended consent conditions to respond to any adverse effects. It is also noted that some adverse effects are required to enable the objective of the consent application, which is to maintain and restore the values of the lagoon.

Natural Features and Landscapes

3.6.14 Policy LNF.4 is the key policy in the RPS relating to this proposal. It requires the protection of outstanding natural features and landscapes from inappropriate use/development and has regard to a number of matters, including whether adverse effects of inappropriate activities can be avoided, the extent to which the which the outstanding natural feature or landscape would be modified or damaged including duration, frequency, magnitude or scale of any effect, and the irreversibility of adverse effects on outstanding natural features or landscape values.

3.6.15 When considering the application in light of this policy, I would not consider that it would be an inappropriate use/development of the lagoon, as the purpose is to maintain and restore it values. In relation to the matters within the policy, any adverse effects are assessed as being temporary

and in the context of the activity are required to enable the maintenance and restoration of the lagoon and its values. It is also unlikely that any effects will be irreversible given the proposed regime and monitoring.

Conclusion

3.6.16 In conclusion, I consider that there may be some temporary adverse effects which would mean that the proposal isn't entirely consistent with the direction of the RPS, however the proposal is not contrary to the policies of the RPS. There are also may aspects of the proposal which are entirely consistent with and provide for the outcomes requested of the RPS policies.

3.7 Relevant provisions of a plan or proposed plan (Section 104(1)(b)(vi))

3.7.1 **Proposed Southland Water and Land Plan 2018 (SWLP)**

3.7.1.1 Council is currently operating under two Regional Plans – the Regional Water Plan (RWP) and the SWLP, which is partially operative.

3.7.1.2 While the SWLP is partially operative, all aspects of the SWLP that are relevant to this application are partially operative (not under appeal) and therefore have full legal effect. Therefore, there is no need to revert to the RWP.

3.7.1.3 The Applicant has provided a fulsome assessment of the application against the SWLP within section 10.6 of the application and had provided a further assessment of specific policies within the further information response.

3.7.1.4 Having reviewed the SWLP, the Applicant's assessment, and having undertaken the above assessments of the NPS-FM, NPS-IB and RPS, I have nothing further to add, and consider that the proposal is not contrary to the objectives and policies of the SWLP, and additionally helps achieve many of the outcomes sought in the plan such as the protection of habitats of indigenous fauna and the prevention of the reduction of the quality of wetlands.

3.7.2 **Regional Coastal Plan for Southland 2013 (RCP)**

3.7.2.1 The Applicant has provided an assessment of the application against the RCP within section 10.7 of the application and had provided a further assessment of specific policies within the further information response.

3.7.2.2 Having reviewed the RCP, the Applicant's assessment, and having undertaken the above assessments of the NZCPS, NPS-IB and RPS, I have nothing further to add and consider that the proposal is not contrary to, and is largely consistent with the objectives and policies of the RCP.

3.8 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

3.8.1 **Te Tangi a Tauira the Ngai Tahu ki Murihiku Natural Resources and Environmental Iwi Management Plan 2008 (IMP)**

3.8.1.1 The Applicant has provided an assessment of the application against the IMP within section 10.8 of the application. Having reviewed the application, submissions and the IMP, I adopt the Applicant's assessment and consider the that the proposal is consistent with the direction provided by the policies of the IMP.

3.8.2 **The Southland Murihiku Conservation Management Strategy 2016 (CMS)**

3.8.1.2 The Applicant has provided an assessment of the application against the CMS within section 10.9 of the application. Having reviewed the application, submissions and the CMS, I adopt the Applicant's assessment and consider the that the proposal is consistent with the direction provided by the CMS.

3.9 Part 2 of the Resource Management Act 1991

3.9.1 The applicable planning provisions have been prepared having regard to Part 2, and there is a coherent set of policies designed to achieve clear environmental outcomes, referring to Part 2 of the RMA for an overall judgement is not necessary not will it add anything to the evaluative process. As such, I have not undertaken an assessment of the proposal against Part 2.

3.10 Particular restrictions for non-complying activities (Section 104D)

3.10.1 Under section 104D, Council may grant consent if it is satisfied that either the adverse effects will be minor, or the application will not be contrary to the objectives and policies of the relevant proposed and operative plans. If it grants the application, it may impose conditions under s.108 of the RMA.

3.10.2 Having assessed the effects of the proposed activities and the proposal against the relevant objectives and policies of the RCP and SWLP, I consider that there will be no more than minor adverse effects on the environment and that the proposal is not contrary to the objectives and policies of the RCP and SWLP.

3.10.3 Therefore, the application meets at least one of the gateway tests for non-complying activities and therefore may be granted.

3.11 Matters relevant to discharge or coastal permits (Section 105)

3.11.1 Section 105(1) matters are relevant to the decision, as the application is for a discharge that would contravene section 15. Under section 105(1), the consent authority must have regard to:

(a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
(b) the applicant's reasons for the proposed choice; and
(c) any possible alternative methods of discharge, including discharge into any other receiving environment.

3.11.2 The nature of the discharge is the water being discharged from the lagoon once it has been opened to the coastal marine area. As described in this report and in the Coastal Memo provided by the Applicant, the coastal waters in this area will have high water movement and that the receiving environment is vast.

3.11.3 The primary reason for the choice to open the lagoon to the coastal marine area (and in the proposed primary locations) is that this mimics the historical natural opening of the lagoon. The transitional regime to opening levels is proposed to ensure that the effects (adverse and positive) can be monitored and if needed the regime could be adapted.

3.11.4 The Applicant has provided an assessment of alternatives with section 9.2 of the application. This states that alternative opening scenarios were considered and modelled as part of the development of the application to see what the best scenario would be to achieve the purpose of the proposal (being the maintenance and restoration of ecological health and cultural values of the lagoon). This included a do-nothing approach, and while this potentially leads to the same end outcome, it could also lead to significant adverse effects. The proposed opening regime will allow the Applicant to manage the lagoon to avoid those adverse effects.

3.12 Restriction on grant of certain discharge permits (Section 107)

3.12.1 The Applicant undertakes an analysis of the proposal against section 107 within section 11 of the application. They have concluded that the discharge to the CMA may cause a temporary visibly discoloured plume initially as the lagoon is opened and drainage of lagoon water occurs, however this is should not persist beyond the zone of reasonable mixing.

3.13 Conditions of consent (Section 108)

3.13.1 The Applicant has proposed a set of consent conditions, which have been updated throughout the consent process to give effect to submitters concerns and issues raised in the technical reviews of the application.

3.13.2 Having reviewed the Applicant's proposed conditions (of which the latest set are contained within the further information), I consider that the conditions they have proposed are largely adequate to manage and mitigate adverse effects and to monitor the effects of the proposed activities.

3.13.3 The conditions I recommend are appended to this report as **Appendix I**. These are based off of the conditions proposed by the Applicant. But include some amendments to the conditions to ensure they are robust and give effect to the comments and suggestions of the technical reviewers and Compliance Team. The most significant changes to the conditions are to:

- Applicants proposed condition 5(c) – recommend this is removed. This condition explicitly provided for the ability for the public to request the consent holder undertake an opening. I recommend that this is not included as it could set an unreasonable expectation on the consent holder to open the lagoon. Additionally, there is nothing to stop the public from requesting this outside of it being a consent condition. This request is supported by the Communications Plan proposed by the Applicant. If the Commissioners are of the mind to keep this condition, I recommend that the condition is edited to ensure that the request to open the lagoon is subject to one of the triggers under condition 5 (a) or (b) being met, to maintain consistency between the purpose of the opening and that of the consent.
- Conditions 9 and 10 – recommend addition. These conditions have been moved from the 'Science Advisory Group' section and reworded so that they are a requirement of the consent holder, rather than on a third party (being the Science Advisory Group).
- Applicants proposed conditions 11 and 15 – recommend removal. As per the above point, these conditions were conditions on a third party and therefore *ultra vires*.
- Condition 17 – recommend amendments. Amendments have been made to increase the readability of the condition and give effect to the technical review undertaken by Ms Pyper. The additional monitoring requirements are proposed to monitor potential adverse effects which have been identified by submitters and the Applicant.
- Condition 20 – recommend amendments. The amendments to this condition are proposed to ensure a thorough but reasonable review of the effectiveness of the consent and monitoring, and into the adverse effects of the activity are undertaken. Ms Thorne and I both consider that there are some potential improvements to be made to this condition, which would

separate the review required after each event out from the 5-yearly review. The purpose of this being that the review after an opening would be a more confined review of the adverse effects and any specific measures that would need to be addressed prior to any further openings, compared to the 5-yearly review which would be broader to identify any larger scale changes required to the consent, including monitoring.

- Condition 23 – recommend amendments. These amendments are recommended to ensure the risks of the opening locations are adequately considered, along with any potential mitigation measures, or the need to identify another opening location. This risk review could also identify that the adverse effects of an opening may outweigh the benefits.

3.13.4 Due to timing constraints, these final conditions have not been reviewed by the Applicant prior to circulation of this report. However, I expect that Ms Lisa Thorne, and I will be able to discuss these prior to the circulation of her evidence, in which Ms Thorne can address the outcome of our discussion.

4. Recommendations

4.1 Whether to grant

4.1.1 This report has examined the resource management issues of importance to the proposal, which requires a range of resource consents from Southland Regional Council under the NES-F, RCP and SWLP. These resource consent requirements are summarised in section 2.5 of this report, but overall, the proposal has a non-complying activity status.

4.1.2 In considering the potential and actual environmental effects, it is my conclusion that, subject to the imposition of appropriate conditions, the actual/potential adverse effects will no more than minor and acceptable, with many of the effects being temporary, when considering the proposal in light of the statutory direction. Fundamental to the mitigation of effects is that the proposal itself is for an adaptive management regime whereby opening activities will at progressively change over time so that they better reflect a natural opening regime, while also mitigating/avoiding adverse effects associated with poor water quality in the catchment.

4.1.3 In respect of the matters set out in Section 104(1)(b) of the RMA, I consider that the application is largely consistent with the relevant statutory direction and in relation to s104D, are not contrary to this direction. Due to the unique nature of the activity, there are no national or local level policies directly relevant, however, the outcomes sought by policies that are relevant at a more generic level. I consider that the outcomes sought by the policy framework would not be compromised by the granting of the consent, nor undertaking of the activities. The resulting effects in large are likely to be positive and for the purpose of maintenance and restoration of ecological health and cultural values of Waituna Lagoon, in line with the direction of the NPS-FM.

4.1.4 Regard has been had to section 105 of the RMA, and the Applicant has undertaken an assessment of the proposal against section 107. With respects to section 107, there may be some temporary changes to the visual clarity of water within the CMA when the lagoon is opened. However, the Applicant has assessed that this will be temporary and should not persist beyond the zone of reasonable mixing. As such, it is not likely to cause the effects listed in section 107(1) beyond the zone of reasonable mixing and therefore does not need to be declined.

4.1.5 The Applicant has proposed a consent duration of 20 years. I consider that the proposed consent duration is appropriate given the nature and scale of potential adverse and positive effects, and recommended conditions which include the monitoring of conditions and 5-yearly reviews of the effectiveness of the consent.

4.1.6 Based on my assessment of the submissions, expert evidence, the relevant planning provisions and recommended conditions, I have reached the conclusion that the resource consent applications can be granted (pursuant to Sections 104B and 108 of the RMA) subject to the imposition of appropriate consent conditions (as appended to this report).

Danielle Petricevich
Consultant Consents Officer (SLR Consulting Ltd)