



## Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)

### Summary

I recommend the application is processed on a publicly notified basis. This is because:

- Under s95A of the RMA, if the adverse effects are, or are likely to be, more than minor, the application must be publicly notified. In this case:
  - It is the applicant's own assessment that adverse effects may be significant. This is in reference to cumulative effects with other factors, but it indicates that adverse effects may be more than minor, which means that the application should be publicly notified.
  - The proposal is inconsistent with the supporting information for the application, which favours a higher opening regime than the current system, and the applicant's proposal. The supporting information indicates that a higher opening regime will have less adverse effects than the applicant's proposal.
  - Lake Waituna is recognised by the applicant as having cultural and spiritual values, but the applicant has not consulted with iwi, nor carried out a cultural impact assessment. Therefore, in conjunction with, and because of, the potentially significant adverse effects on ecological values, the adverse effects on cultural and spiritual values is potentially more than minor.

### The application

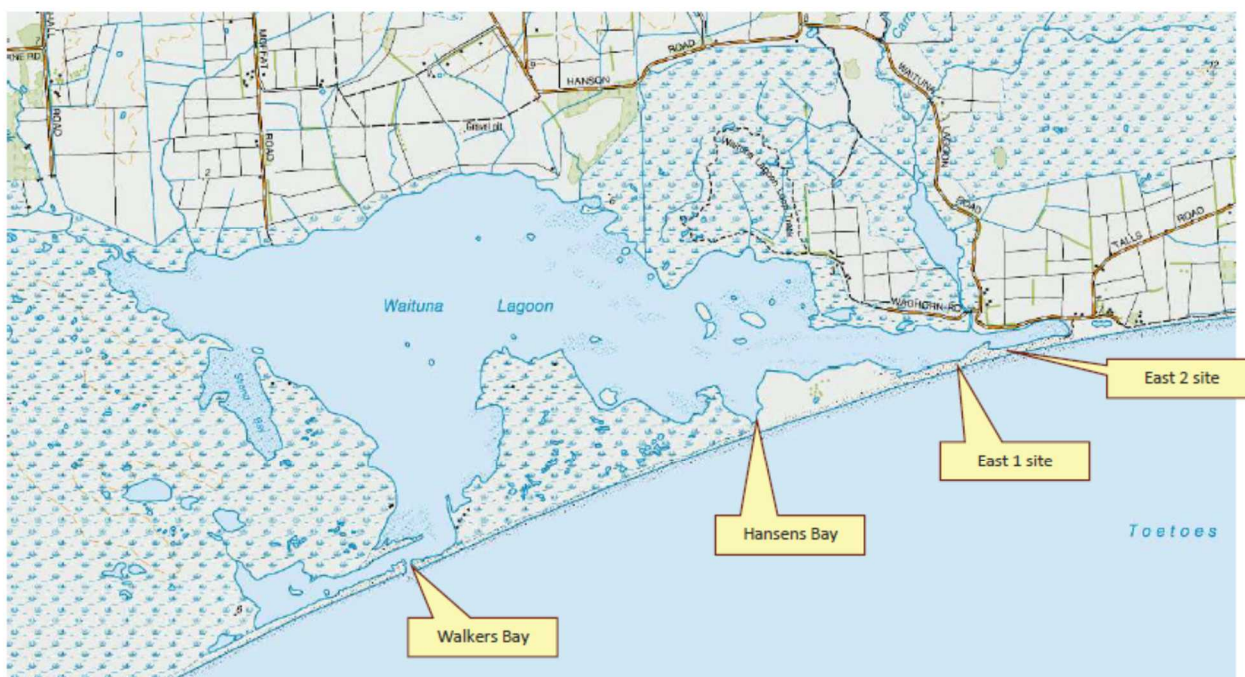
#### Particulars

Applicant:	E Pirie for the Lake Waituna Control Association
Application reference:	APP-20211669
Site address or location:	Walker's Bay and Hansen's Bay, and two other locations along coastal barrier, Lake Waituna
New consent(s) for new activity(ies) (s88)	<input type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input checked="" type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

#### The proposal

Mr Ewen Pirie, on behalf of the Lake Waituna Control Association, have applied for resource consents to periodically open a channel in the bank of Lake Waituna to divert and discharge the waters of the lake into Toetoes Bay, Foveaux Strait. The application identifies potential opening sites at Walker's Bay, Hansen's Bay, and two other sites along the barrier between the lake and the sea.

The application identifies the purpose of the opening is primarily to reduce lake levels in order to facilitate drainage outfall on farmland within the Waituna catchment. The application also identifies protecting the health of the lagoon as another purpose of the activity.



<b>Water permit</b>	<b>Diversion of water</b>
Relevant rule(s)	Rule 20(b) of Regional Water Plan Rule 51(d) of proposed Water & Land Plan Regulation 52(2) of NES-Freshwater
Activity status	Non-complying
<b>Land use consent</b>	<b>Disturbance of lake bed</b>
Relevant rule(s)	Rule 47 of Regional Water Plan Rule 4 of proposed Water & Land Plan Regulation 52(1) of NES-Freshwater
Activity status	Non-complying
<b>Coastal permit</b>	<b>Opening of lake to the sea</b>
Relevant rule(s)	Rule 7.4.2.2 of Regional Coastal Plan
Activity status	Discretionary
<b>Coastal permit</b>	<b>Discharge of water into coastal waters</b>
Relevant rule(s)	Rule 7.3.2.1 of Regional Coastal Plan
Activity status	Discretionary

Overall, the application is a **non-complying** activity.

### Public notification consideration

#### 1. Is notification mandatory?

<b>1.1</b>	<b>Has the applicant requested that the application be publicly notified? (s95(3)(a))</b>	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
		<input checked="" type="checkbox"/> No	Go to 1.2
<b>1.2</b>	<b>Was further information, or commissioning of a report, requested under s92?</b>	<input checked="" type="checkbox"/> Yes	Go to 1.3

	<input type="checkbox"/> No	Go to step 2.1
<b>1.3 If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?</b>	<input type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to step 2.1

## 2. Is notification precluded?

<b>2.1 Is each activity subject to a rule or NES that precludes public notification?</b>	<input type="checkbox"/> Yes	Rule(s): enter rule Go to 4.1
	<input checked="" type="checkbox"/> No	Go to step 2.2
<b>2.2 Is each activity a controlled activity?</b>	<input type="checkbox"/> Yes	Application must not be publicly notified unless there are special circumstances. Go to 4.1
	<input checked="" type="checkbox"/> No	Go to 3.1

## 3. Is notification required?

<b>3.1 Are any of the activities subject to a rule or NES that requires notification?</b>	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to 3.2
<b>3.2 Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (see Note)</b>	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
	<input type="checkbox"/> No	Complete 3.3 and go to 4.1.

**Note:** In forming this opinion (a) to (e) apply:

- (a) we must disregard any effects on persons who own or occupy the land on which the activity will occur or any land adjacent to that land (section 95D(a));
- (b) we may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect (subject to Policy 36 of the pSWLP) (95D(b));
- (c) in the case of a restricted discretionary activity, we must disregard any adverse effects that do not relate to the matters over which the rule or NES restricts discretion (95D(c));
- (d) we must disregard trade competition and the effects of trade competition - 95D(d); and
- (e) we must disregard any effect on a person who has given written approval - 95D(e)

### 3.3 Reasons adverse effects on the environment are less than minor / minor / more than minor

#### *The existing environment*

The affected environment is Lake Waituna, the coastal marine area in Toetoes Bay adjacent to Lake Waituna and farmland in the lower Waituna catchment.

Lake Waituna is brackish coastal lagoon, although it is predominantly a freshwater environment. The lake area is about 1350 hectares. It is part of the Waituna Wetland Scientific Reserve, which is a Ramsar Wetland<sup>1</sup> of international importance. The Waituna Scientific Reserve is also recognised as a regionally significant wetland in the Regional Water Plan.

<sup>1</sup> From Wikipedia: The Ramsar Convention (formally, the Convention on Wetlands of International Importance, especially as Waterfowl Habitat) is an international treaty for the conservation and sustainable utilization of wetlands, recognizing the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value. It is named after the city of [Ramsar](#) in Iran, where the Convention was signed in 1971.

*Ruppia* is a key macrophyte in the lake and is considered<sup>23</sup> an indicator of the ecological health of the lake. It provides a habitat for invertebrates and fish, and a food source for invertebrates and waterfowl. It also plays a role in regulating water quality by stabilising sediments and reducing turbulence.

Lake Waituna is important for the life-cycle of indigenous fish species, such as the giant kokopu and common and redfin bullies. The lake also provides habitat for migratory bird species. The lake is the only significant habitat in the region for the spotless crake, South Island fernbird and Australasian bittern, and is an important summer refuge and feeding area for many trans-equatorial migrant species, and a wintering site for the New Zealand dotterel.

Lake Waituna is at risk of eutrophication from build-up of nutrients and sediments that have flowed into the lake from the wider catchment. Potentially the lake could shift to an algae-dominated state.

The Crown has acknowledged Ngāi Tahu's cultural, spiritual, historic and traditional association with both Lake Waituna and the coastal area of Foveaux Strait, which are statutory acknowledgement areas under the Ngāi Tahu Claims Settlement Act.

Lake Waituna is a locally important area for recreational fishing and game bird hunting.

The Waituna catchment is about 20,000 hectares. Much of the catchment has been developed for agricultural use, which includes the use of drains.

Historically the lake has been periodically opened to the sea since 1908, so the ecology of the lake is modified by those openings, as well as due to contaminants (particularly nutrients) from development upstream in the catchment. Records since 1972 show that there have been approximately 61 artificial openings over the last 50 years. 70% of those openings occurred at water levels in the lake of 2.2 metres or higher. Two openings occurred in that period at a water level below 2.0 metres. Since 1972, the connection with the sea created by those openings lasted less than 100 days for just over 50% of events, and about 25% exceeded 200 days.

### ***Adverse effects of the proposed activities on the environment***

*Note: for the purposes of the notification decision, only adverse effects should be considered.*

The main effects of opening the lake to the sea fall into the following categories:

- water quality in the lake;
- water quality in the coastal marine area;
- physical changes to the bed, bank and shore;
- ecological effects within the lake;
- cultural/heritage effects;
- inundation and impeded drainage on properties within the catchment;
- effects on recreational users.

### ***Water quality in the lake***

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<sup>2</sup> "Ecological Guidelines for Waituna Lagoon", (2013), Lagoon Technical Group, Environment Southland, pg 9

<sup>3</sup> H Robertson, G Ryder, N Atkinson, N Ward, C Jenkins, M de Winton, M Schallenberg, R Holmes, J Kitson, D Whaanga, S Blair, D Murray, "Review of conditions for opening Waituna Lagoon- Supporting Information", for the Whakamana Te Waituna Trust, July 2021, page 7.

When the lake is closed to the sea, there is a build-up of nutrients and nutrient-containing sediment in the lake. This has a negative effect on lake ecology, adversely affecting the *Ruppia* macrophytes, and there is a risk that the lake could change to a turbid, murky water body dominated by algal slime.

Opening the lake to the sea allows some of the excess nutrients to be flushed out. Sediments are also scoured out, removing more nutrients from the lake. So, a short term effect of opening the lake is beneficial in terms of reducing nutrient build-up. However, water circulation in the lake is uneven, so nutrients and sediments are preferentially flushed near the opening.

In the medium term, the opening results in changes to the salinity of the lake waters, which can be negative to plants and animals that are less tolerant to salinity. *Ruppia* is an important indicator of lake health, and it can cope with short periods of high salinity, but in the longer term coastal water would impact on *Ruppia* beds in the lake. Because of uneven mixing, some areas of the lake will be freshwater dominated for longer.

The applicant allows the openings to the sea to close naturally which, as discussed above, leads to variation in the periods when the lake is subject to higher salinity. The applicant “*would be amenable* [to closing the lagoon barrier] if a viable means of doing so could be developed and agreed upon”<sup>4</sup>.

Upon closure the salinity in the lake reduces, and nutrient and *chlorophyll a* (algae) levels start to increase.

Therefore the opening has both positive and negative effects on water quality in Lake Waituna.

#### ***Water quality in the coastal marine area***

The opening results in the discharge of waters from the lake into the sea. This will cause a visibly discoloured plume initially, associated with water quality in the lake, natural tannins in the lake water, and the scale of the initial outflow. However, the effect is temporary. Once the lake level stabilises, fresh water from the Waituna catchment will flow through, mixing with coastal water, and discharge into Toetoes Bay through the opening. It may still cause a visible plume, but it should not persist beyond reasonable mixing. At that time physio-chemical effects on coastal waters would be minor.

Effects on marine ecology from the discharge of water from the lake to the sea are expected to be minor. Freshwater from the lake will mix with coastal waters, similar to locations where rivers discharge into the sea.

#### ***Physical changes to the bed, bank and shore***

The effect on the bed, bank and shore where the opening is excavated is very localised. The activity creates an artificial channel between the lake and the coastal marine area. This has the potential to uncover an artefact, although Arcmap does not show any archaeological sites in the area. It will also have a natural character effect, although this will be mitigated by natural processes.

As I understand it, the excavated material is placed alongside the excavation, and is left for natural processes, such as tidal action, to redistribute. That could be described as ‘deposition’, which is a discretionary activity under Rule 10.2.2 of the Regional Coastal Plan where it occurs within the coastal marine area, and Rule 47 of the Regional Water Plan and Rule 4 of the proposed Water and Land Plan if it occurs on the lakebed. It would not be defined as a cleanfill discharge under the regional plans, but more as earthworks. The applicant has not applied for a resource consent for this activity, but the ‘opening’ activity under Rule 7.4.2.2 of the Coastal Plan does not provide for removal of material, and the placement

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<sup>4</sup> Response of 26 May 2022 to further information request  
Notification memorandum

or deposition of the material adjacent to the excavation has historically been a normal, if not specifically authorised, part of the opening activity.

Once the opening is dug, the application states that lake outflow and coastal processes result in changes at the opening, including that the width of the opening can change from 10-60 m over the course of a day. A gravel bank forms down-current of the dominant long-shore drift.

Within the lake, the openings have caused channels to form in the lakebed.

Previous openings at Walker's Bay have resulted in a build-up of marine gravels. There are also a series of over-wash fans created by the sea over-topping the barrier berm due to the lower barrier height in this area. The application also identifies sand intrusion into the lake as an issue associated with the openings.

An opening of the lake at Hansen's Bay in 2011 resulted in all the *Ruppia* beds in the bay being scoured and removed by the high velocity of flow through the opening.

### ***Ecological effects within the lake***

As discussed above, the opening has effects on water quality and effects on the macrophytes in the lake due to scouring, water flow and salinity.

In the short term, there can be beneficial effects on water quality and ecology due to the removal of nutrients, which reduces the growth of nuisance algae. However, at the same time there can be physical scouring of the lake bed which removes more nutrients but can also damage the macrophyte beds. Lower water levels also affect *Ruppia* growth<sup>5</sup>.

In the medium term, the opening can change the salinity levels in the lake, impacting on species that are not saltwater tolerant. Marine sand intrusion arising from the openings also affects *Ruppia* growth within the lake. When the lagoon is open for too long nuisance slime algae can increase<sup>6</sup>.

Because the opening closes naturally the lake can remain open for anywhere between a few weeks to over a year. Modelling by Waikato University suggests that an open period of one to three months is the optimum period to reduce the likelihood of phytoplankton blooms but still protect native species.

Supporting information provided with the application indicates that the proposed opening regime may have an adverse effect on *Ruppia*, based on the last five years: *"The increase of the lagoon opening threshold in 2017 (to 2.2m during spring/summer) has not prevented lagoon openings from occurring during the germination and early growing season. Furthermore, the two recent occurrences of spring/summer openings, in consecutive years, has negatively impacted Ruppia populations."*

The opening facilitates passage to and from the sea for a number of fish species, such as sea-run trout. It is also an important habitat for spawning and a nursery for juveniles. Opening the lake to the sea is likely to be important for the recruitment of native species, all of which undergo marine migration as part of their life history.

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<sup>5</sup> Lagoon Technical Group for Environment Southland, "Ecological Guidelines for Waituna Lagoon" (2013),Pg 18

<sup>6</sup> Lagoon Technical Group for Environment Southland, "Ecological Guidelines for Waituna Lagoon" (2013),Pg 18

<sup>7</sup> H Robertson, G Ryder, N Atkinson, N Ward, C Jenkins, M de Winton, M Schallenberg, R Holmes, J Kitson, D Whaanga, S Blair, D Murray, "Review of conditions for opening Waituna Lagoon- Supporting Information", for the Whakamana Te Waituna Trust, July 2021, page 15.

Opening the lake exposes mud flats that were previously covered, creating feeding opportunities for wading birds. The lake also becomes tidal.

The supporting documentation with the application states the following about a higher trigger level for opening of the lake to the sea: *“the fringing wetland system would benefit from episodic inundation at levels >2.0m. For example, the inundation of low-lying rushland will promote the establishment of native wetland vegetation and promote habitat diversity”*, and that *“increasing the trigger level to 2.5 m will provide for beneficial episodes of inundation and rejuvenation of valuable fringing wetland plant communities”*<sup>8</sup>. This does not fully support the opening regime proposed by the applicant.

Section 5.3 of the application states that:

*“On the information available, it is not possible to say with any certainty that the effect of opening the lagoon under the current regime on significant indigenous vegetation and significant habitats of indigenous species will only be minor. Similarly, it is not possible to state that those effects will only be minor at a higher opening level, or even if left to open naturally.*

*All that can be concluded from the information available is that a managed opening of the lagoon will have some positive effects on water quality and for fish species that migrate or rely on a lagoon/estuary for part of their lifecycle, but potentially significant effects on macrophyte growth and the wetlands on the lagoon margins if the duration of an opening is excessive. For the most part, effects will be minor but significant effects cannot be ruled out.”*

The application includes a September 2017 report by M Shallenberg and H Robertson for the Waituna Science Advisory Group, titled ‘Maximum Lagoon Trigger Level’, which recommended *“raising the lagoon level trigger value to 2.5 m to avoid spring-summer openings, which can be detrimental to the ecology of the macrophytes and the health of the lagoon. This new trigger level will also improve the health of the fringing wetland plant community.”*<sup>9</sup> The Science Advisory Group also noted that *“regular opening of the lagoon during winter is still likely to be required as a strategy to mitigate water quality impacts. Opening events may also be required in the event of prolonged algal blooms.”*<sup>10</sup>

In response to an information request, the applicant has made the following statement:

*“The difficulty is that there is no strong evidence to confirm that Ruppia cover will improve if the openings are at a higher level as at that depth, there is potential to adversely affect macrophyte growth due to reduced light penetration. However, it is acknowledged that the higher opening level is the consensus of the experts involved, so the Association is unsure what would be an acceptable mitigation measure.”*<sup>11</sup>

My concern with that, is that the applicant is using supporting information for the application that favours a higher opening level regime, which is inconsistent with the applicant’s proposal. The applicant is not providing sufficient information to demonstrate that the adverse effects of its own proposal on the ecology of the lake and fringing wetlands is only minor.

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<sup>8</sup> M Shallenberg & H Robertson, ‘Maximum Lagoon Trigger Level’, report for the Waituna Science Advisory Group, September 2017, page 9.

<sup>9</sup> M Shallenberg & H Robertson, ‘Maximum Lagoon Trigger Level’, report for the Waituna Science Advisory Group, September 2017, page 10.

<sup>10</sup> M Shallenberg & H Robertson, ‘Maximum Lagoon Trigger Level’, report for the Waituna Science Advisory Group, September 2017, page 10.

<sup>11</sup> Response of 26 May 2022 to further information request

### ***Cultural/heritage effects***

The applicant acknowledges that Lake Waituna is culturally significant to iwi. However, no formal consultation has occurred, although the chairman of the association has met with representatives of Te Ao Marama Inc on at least one occasion.

Both Lake Waituna and the adjacent coastal marine area are statutory acknowledgement areas under the Ngāi Tahu Claims Settlement Act. The Crown has acknowledged Ngāi Tahu's association with these areas. The statutory acknowledgement notes that:

- the Waituna wetland was a major food basket in terms of wildlife and indigenous fish species. Harakeke, raupo, manuka, totara and totara bark, and pingao were also regularly harvested cultural materials. Paru or black mud was available, and particularly sought after as a product for making dyes;
- as a result of the history of use and occupation of the area, there are wahi tapu and wahi taonga all along its shores. It is also possible that particular sections of the wetland were used for waiwhakaheketupapaku (water burial). Urupa and wahi tapu are the resting places of Ngai Tahu tupuna and, as such, are the focus for whanau traditions. These are places holding the memories, traditions, victories and defeats of Ngai Tahu tupuna, and are frequently protected by secret locations.

Therefore the proposed works will affect an area of significance to Ngāi Tahu.

Policy 3.6.2(25) of Te Tangi a Tauria is to *“recognise for Ngāi Tahu history and use of the coastal environment and the identification and protection of wāhi tapu and wāhi taonga sites when new land use development occurs”*.

The applicant has confirmed that Te Wai Parera Trust, which owns property near the lake, is not part of the applicant group. Nor are the Whakamana Te Waituna Trust, Te Rūnanga o Ngāi Tahu, Te Rūnanga o Awarua or Te Ao Marama Inc.

Although Arcmap does not show any archaeological sites in the area, the statutory acknowledgement points to the history of use and occupation in the area. Therefore the opening could disturb, directly or indirectly through erosive processes, an area of importance to Ngāi Tahu archaeological material or other archaeological material.

The applicant has not sought a cultural impact assessment (CIA) and, in response to an information request, the applicant stated that it did not consider that such an assessment was necessary at this time. I have not, for the purposes of s95C of the RMA, considered that this was a refusal that automatically warranted notification, as the applicant did provide reasoning and responded to other parts of the information request.

In the absence of consultation by the applicant or a CIA, and given the cultural significance of the area, I am not satisfied that the application demonstrates that the adverse effects on cultural values is minor. Due to the context of the area as a traditional area for gathering food and resources, and the potential ecological effects of the proposal, my view is that, on balance, the proposal is likely to have more than minor adverse effects on cultural values.

### ***Inundation and impeded drainage on properties within the catchment***

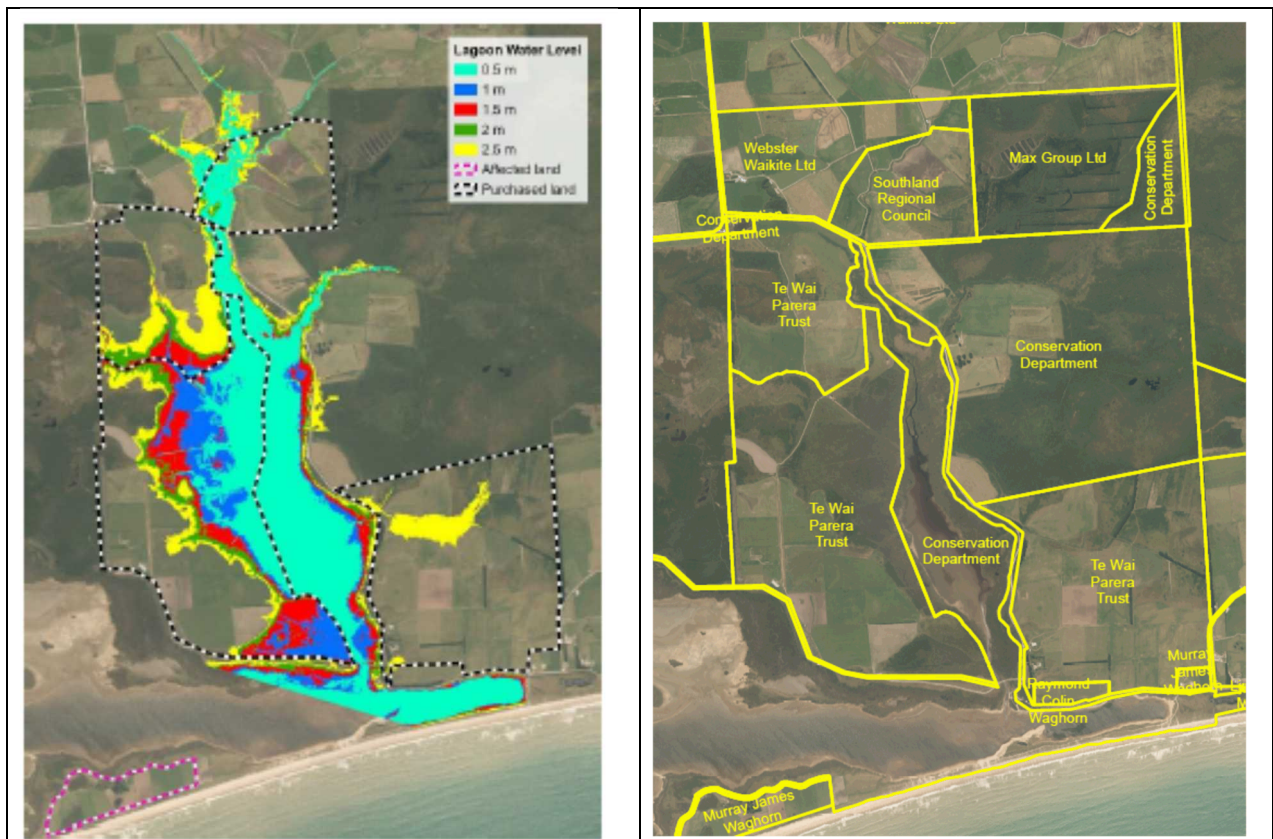
Impeded drainage potentially impacts the economic production of agricultural land in the lower catchment, and therefore the livelihood of the farmers and farm workers. Very high lake levels also result in flooding



of roads, affecting access in some areas. Opening the lake mitigates drainage issues, but the level of opening impacts on the area and period of impeded drainage.

I am unclear how much consideration should be given to this effect in the notification report. The application is for opening of the lake to the sea beyond the period of the last resource consent. The artificial openings can only be carried out via a resource consent, or potentially under the emergency works provisions of the Resource Management Act. So the opening regime is not part of the existing environment for the purposes of determining the adverse effects of the proposal, although the development of land facilitated by the history of openings is part of the environment. On the face of it, relief from impeded land drainage due to the openings is a positive effect, but positive effects should not be considered for the purposes of the notification decision (although can be taken into account later in the process for the decision whether to grant or refuse the application). Even if some landowners would prefer a lower opening regime, the openings are not part of the existing environment, so the proper consideration is against the background of a natural opening regime, which would probably be at higher levels.

Section 7 of the application includes maps showing land drainage effects at various lake levels. Many of these maps show a black and white dotted line that represents land purchased by Te Wai Parera Trust. The following is a side-by-side comparison of the land drainage effects map at Carran Creek with the corresponding land ownership boundaries.



While the maps show land drainage effects on some private land, the most affected land areas are owned by the Department of Conservation, Te Wai Parera Trust or the Southland Regional Council<sup>12</sup>. The applicant has confirmed that Te Wai Parera Trust is not part of the applicant group. No information is provided as to whether these agencies will benefit from improved drainage of their properties or if their values would be adversely affected by improved drainage at the proposed opening levels. However, I understand that they

<sup>12</sup> I understand that this is land that the Council purchased on the understanding that it was likely to be affected by higher lake levels in future. However the land is currently leased to neighbouring farms.

are holding the land for ecological reasons, and not for agricultural production. As the supporting information is that a higher opening regime would be beneficial, it is likely that their interests are adversely affected by the proposal.

With regard to the proposal to open the lake to the sea when lake levels exceed 2.2 metres, the application states that *“any residual effects on land drainage for low-lying properties not purchased by Whakamana Te Waituna<sup>13</sup> are considered minor in both extent and frequency. Similarly, the duration of inundation on road infrastructure is relatively short-lived<sup>14</sup>”*.

The applicant has clarified that it is not seeking a higher opening level due to the length of time that land is affected by inundation and impeded drainage, rather than the difference in land area that would be affected. *“Land affected at a lagoon level of 2.0m will be affected for longer while waiting for the level to rise to 2.5m, which will affect the farmers’ ability to actively farm that land. Some of it may still be able to be grazed, but production will be reduced, or it may not be able to be cultivated, if that is necessary. It could also require pasture to be resown after being wet for too long.<sup>15</sup>”*

### ***Effects on recreational users***

In general, it is expected that opening the lake to the sea will have beneficial effects on recreational users, in that it will allow passage to and from the lake for a number of fish species.

Higher lake levels are potentially beneficial for duck hunting. However it is unclear whether the opening regime proposed by the applicant would adversely affect duck hunting or be beneficial.

Opening of the lake may cause a rapid reduction in lake levels, which may make access to the lake more difficult in places due to exposed mud flats.

### ***Planning provisions (policies and objectives) relevant to adverse effects***

*The National Policy Statement for Freshwater Management 2020:*

- Objective: The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems
  - (b) second, the health needs of people (such as drinking water)
  - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.
- Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
- Policy 8: The significant values of outstanding water bodies are protected.
- Policy 9: The habitats of indigenous freshwater species are protected.

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<sup>13</sup> Which is held by Te Wai Parera Trust

<sup>14</sup> Response of 26 May 2022 to further information request

<sup>15</sup> Response of 26 May 2022 to further information request

*Regional Policy Statement:*

Policy WQUAL.3 Identify and protect the significant values of wetlands and outstanding freshwater bodies.

*Proposed Water and Land Plan:*

Policy 33 Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal.

*Regional Coastal Plan:*

Policy 7.4.2.2 Recognise the status of the Waituna Lagoon as a major part of the Waituna Wetlands Scientific Reserve when considering its opening for the purpose of relieving adjoining land and infrastructure from the adverse effects of inundation.

*Te Tangi a Taurira:*

Policy 3.5.10.1 The role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater must be given effect to in freshwater policy, planning and management.

Policy 3.5.18.1 Avoid the direct or indirect drainage or modification of any existing wetland area.

**Conclusion: *significance of adverse effects on the environment***

The test under s95A is whether the adverse effects on the environment are more than minor. As referenced above, the application itself states that *“it is not possible to say with any certainty that the effect of opening the lagoon under the current regime on significant indigenous vegetation and significant habitats of indigenous species will only be minor”*. Section 7 of the application also states *“On the information available, it is likely that effects will be no more than minor, but there is a low probability that a significant adverse effect could occur under certain circumstances. However, any significant effect is most likely to be as a result of a combination of factors rather than just the opening of the lagoon.”*

Therefore the application itself determines that adverse effects may be more than minor. The combination of factors is not fully explained by the applicant, but that is likely associated with the lake remaining open for a prolonged period due to coastal conditions, leading to adverse ecological effects in the lake. In RMA terms, a combination of factors is a cumulative effect.

The key adverse effects relate to:

- The proposal is likely to impact on the water quality and ecology of Lake Waituna and the fringing wetlands.
- The proposal affects an area of significant cultural value, but the applicant has not consulted with tangata whenua, nor sought a cultural impact assessment, although there is some reference to informal discussion with members of Te Ao Marama Inc.

#### 4. Special circumstances and public notification

<b>4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?</b>	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input type="checkbox"/> No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

#### 4.2 Reasons why special circumstances do or do not exist

I consider that the following warrant notification of the application as a special circumstance:

- The application affects a sensitive area, Lake Waituna and the surrounding wetlands, that has significant cultural and ecological values.
- There are both positive and negative effects on the environment of an artificial opening regime, and the applicant notes that there are uncertainties about some effects.
- The application is reliant on supporting documents that show preference for a higher opening level.
- The positive value of the proposed opening regime, compared to that preferred by the supporting documents, is uncertain.
- The further information response of 26 May 2022 indicates that the applicant expects the application to involve debate, negotiation and compromise with a number of parties, seeking agreed amendments, before it is eventually decided.
- There is a lack of mitigations, particularly in terms of closing the lake barrier. So if it does not close naturally, it may remain open for a prolonged period, which has been shown to have more than minor adverse effects on the environment.

#### Affected Parties and Limited Notification

#### 5. Protected Customary Rights Group or Customary Marine Title group

<b>5.1 Is the activity in the coastal environment, within an area where it may adversely affect a protected customary rights group(s) or a customary marine title group(s) (see s95G)?</b> There currently no customary marine title groups, but there is an application to become one by Te Rūnanga o Ngāi Tahu (TRONT). The applicant consulted with TRONT stated that they would support Papatipu Rūnaka in their response to the application. However the applicant has not consulted with Te Ao Marama, which represents Papatipu Rūnaka.	<input type="checkbox"/> Yes	Go to 5.2
	<input checked="" type="checkbox"/> No	Go to 6.1
<b>5.2 May the activity have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?</b>	<input type="checkbox"/> Yes	The customary rights group(s) is an affected customary rights group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1
	<input type="checkbox"/> No	Go to 6.1

### 5.3 Adversely affect a protected customary rights group(s) or a customary marine title group(s):

List the parties

#### 6. Statutory Acknowledgement Areas

6.1	Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?	<input checked="" type="checkbox"/> Yes	Go to 6.2
		<input type="checkbox"/> No	Go to 6.3
6.2	Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?	<input checked="" type="checkbox"/> Yes	Include TRONT in 8.2 and go to 6.3
		<input type="checkbox"/> No	Go to 6.3

#### 6.3 Reasons why adverse effects on Te Rūnanga o Ngāi Tahu are less than minor, minor or more than minor:

The proposal may have adverse effects on Lake Waituna and the surrounding wetlands that the applicant concedes may be significant. Given the historic and cultural association of the lake and the coastal marine area to Ngāi Tahu, there is therefore potential for adverse effects on Te Rūnanga o Ngāi Tahu to be more than minor.

#### 7. Is limited notification precluded?

7.1	Is each activity subject to a rule, NES or regulation that precludes limited notification?	<input type="checkbox"/> Yes	Go to 9.1
		<input checked="" type="checkbox"/> No	Go to 8.1

#### 8. Are any people adversely affected?

8.1	Are the adverse effects on a person minor or more than minor (but not less than minor)?	<input checked="" type="checkbox"/> Yes	Go to 8.2
		<input type="checkbox"/> No	Go to 8.3

#### 8.2 Person(s) considered to be adversely affected (complete and go to 8.3)

Person	Effect on person (see Note)
Te Rūnanga o Ngāi Tahu	Adverse effects on cultural and spiritual values, and on taonga species.
Te Ao Marama Inc & Te Rūnanga o Awarua	Adverse effects on cultural and spiritual values, and on taonga species. <i>(Note: Te Rūnanga o Awarua is joint applicant for a competing application to operate openings at a higher level)</i>
Department of Conservation	Representing the Crown as landowner of the site where the excavation will occur, and much of the wider wetland reserve. Adverse effects on indigenous species may impact on DOC's interests. <i>(Note: Department of Conservation is joint applicant for a competing application to operate openings at a higher level)</i>
Te Wai Parera Trust	Landowner of much of the land (outside of the reserve) that is most affected by impeded drainage, so would be affected by the proposed opening regime.
Fish & Game NZ	Adverse effects on the ecology of Lake Waituna may impact on the habitat of trout, and therefore on the interests of F&GNZ. They will also represent the interests of individual anglers and duckshooters that utilise the area.

Forest & Bird Protection Society of New Zealand	Adverse effects on the ecology of Lake Waituna may impact on the interests of FBSNZ.
Southland Conservation Board	Adverse effects on the ecology of Lake Waituna may impact on the interests and goals of the SCB.

**Note:** In forming this opinion (a) to (c) apply:

- (a) We may disregard an adverse effect of the activity on the person if a rule or an NES permits an activity with that effect; and
- (b) We must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

### 8.3 Reasons why no other person is considered to be adversely affected

I have not included the adjoining landowners and leasees of land in the area as adversely affected parties. As discussed above, the comparison for the proposed period (beyond the last permit) would be against a natural opening regime, which would probably be at higher levels, and less frequent, so with greater land drainage effect on the nearby land. So the opening regime sought by the applicant should be beneficial, in terms of land drainage, for those landowners<sup>16</sup>. That said, they will still be able to make submissions if the application is publicly notified, and for the purposes of notification I believe that it would be prudent to notify the neighbouring landowners as they will have an interest greater than the general public.

It is difficult to identify everyone that may be adversely affected, but other groups and individuals will have the opportunity to submit on the application if it is publicly notified.

### 9. Special Circumstances – Limited Notification

<b>9.1 Are there special circumstances that warrant limited notification of any other persons?</b>	<input type="checkbox"/> Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	<input type="checkbox"/> No	Go to 10

### 9.2 Reasons special circumstances exist and persons to be notified

## Recommendation and decision

### 10. Officer's recommendation

As the adverse effects are more than minor (the applicant notes that adverse effects may be significant), the application should be publicly notified.

<b>10.1 The application be processed non-notified</b>	<input type="checkbox"/>
<b>10.2 Public notification is required/recommended</b>	<input checked="" type="checkbox"/>

<sup>16</sup> They may also be part of the applicant group, but the membership is unclear.

10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	<input type="checkbox"/>



Stephen West  
Principal Consents Officer

Date: 7 June 2022

**Decision under Delegated Authority**

11.1	I agree with the recommendation	<input checked="" type="checkbox"/>
11.2	The application will be processed non-notified	<input type="checkbox"/>
11.3	The application will be publicly notified	<input checked="" type="checkbox"/>
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	<input type="checkbox"/>

This decision is made under delegated authority by:



Bruce Halligan  
Acting Consents Manager

Date: 8 June 2022