

13 July 2022

The Chief Executive
Environment Southland
Private Bag 90116
Invercargill
esconsents@es.govt.nz

Submission on the application by Mr E Pirie on behalf of the Lake Waituna Control Association for land use consent, discharge and coastal permits for the periodic opening of Waituna Lagoon to the sea.

I refer to the application by Mr Pirie on behalf of the Lake Waituna Control Association for resource consents for the periodic opening of Waituna Lagoon to the sea.

Please find enclosed a submission made jointly by the Director-General of Conservation Tumuaki-Ahurei and Te Rūnanga o Awarua in respect of these applications. The submission opposes the application and considers that it does not clearly demonstrate a functional need for ongoing opening to the sea for the purpose of land drainage and provides no evidential basis for the requirement to open the lagoon for this purpose.

The parties to this submission are concerned about the significant adverse effects of this activity on the significant ecological and cultural values of Waituna and the surrounding wetland environments. The submission attached details these concerns.

We acknowledge that the parties to this submission have a resource consent application in process currently to allow for occasional openings of the lagoon for ecological and cultural purposes. The triggers for opening the lagoon proposed in that application are quite different to what is proposed in this application and will protect the values of Waituna.

Please contact Lisa Thorne or Stevie-Rae Blair in the first instance if you wish to discuss any of the matters raised in this submission (email: lthorne@doc.govt.nz, stevie@tami.maori.nz phone: Lisa 027 227 5979 or Stevie-Rae 027 9542926).

Naku noa, na,

Dean Whaanga

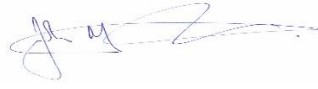


Kaiwhakahaere

Te Runaka o Awarua

DDI: 0212479166 | dean@tami.maori.nz

John McCarroll



Operations Manager/ Pou Matarautoki – Murihiku

Department of Conservation/Te Papa Atawhai

DDI: 0278861693 | jmccarroll@doc.govt.nz

Form 13: Submission on application concerning resource consent

Resource Management Act 1991

To: Southland Regional Council

Name of submitter: Penny Nelson, Director-General of Conservation (the **Director-General**), and Te Rūnanga o Awarua

This is a submission on an application by Mr E Pirie on behalf of the Lake Waituna Control Association (the **Applicant**) for resource consents.

Description of activity: Periodic opening of Lake Waituna to the sea by excavation of a channel through the gravel barrier separating Lake Waituna from Toetoes Bay. The works include disturbance of the foreshore and placement of excavated material adjacent to the excavation. Disturbance of the lakebed associated with the excavation of the channel. Diversion of water from Lake Waituna and associated wetlands. Discharge of water from Lake Waituna into the sea.

Trade competition: We are not trade competitors for the purposes of section 308B of the Resource Management Act 1991

This submission relates to: The whole application

The submission is: We oppose the application.

The Director-General's interest in the Application

1. The Director-General of Conservation (the **Director-General**) has all the powers reasonably necessary to enable the Department of Conservation (**DOC**) to perform its functions.¹ The Conservation Act 1987 (the **CA**) sets out DOC's functions which include (amongst other things) management of land and natural and historic resources for conservation purposes, preservation so far as is practicable of all indigenous freshwater fisheries, protection of recreational freshwater fisheries and freshwater fish habitats and advocacy for the

¹ Refer section 53 Conservation Act 1987

conservation of natural resources and historic heritage.² Section 2 of the CA defines ‘conservation’ to mean *‘the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generation’*.

2. DOC is also the authority responsible for managing the Waituna Wetlands Scientific Reserve under the Reserves Act 1977, which this proposed activity will occur within. Separate authorisation is required under the Reserves Act 1977.

Te Runanga interest in this application

3. The Waituna Catchment is a significant cultural landscape to Te Rūnanga o Awarua (from herein referred to as Ngāi Tahu) because of historical and contemporary associations. Waituna wetland, including the hāpua (coastal lagoon) Waipārera (Waituna Lagoon), is a taonga for Ngāi Tahu ki Murihiku.
4. Tribal history is embedded in the lagoon and the wetlands, rivers and lands that surround it. This association is expressed through the metaphorical understanding of land and waters as our ancestors did - our whakapapa which connects us to place at present. These associations include the formation of landscape, wāhi ingoa (place names), mahinga kai, wāhi tapū and archaeological sites.
5. Rangatiratanga is described in Te Tangi a Tauira, 2008 as ‘the exercise of tribal authority, chieftainship and the powers and qualities of chiefly leadership’. It is the right to make decisions for your own people concerning the resources within your takiwā and determining what, from a cultural perspective, represents satisfactory aquatic conditions and appropriate use.³
6. Kaitiakitanga is central to Ngāi Tahu and is key to their mana whenua. By exercising kaitiakitanga, Ngāi Tahu ki Murihiku actively work to ensure that spiritual, cultural and mahinga kai values are upheld and sustained for future generations. Kaitiakitanga in this context includes ensuring the protection, restoration and enhancement of all natural resources valued by Ngāi Tahu ki Murihiku.⁴ The application limits our ability as kaitiaki to ensure there is no effect on our values.
7. Papatūānuku (Mother Earth) supports all life, waterways represent the blood vessels that supply nourishment to her, through her, to all living things. In essence mauri is a force or power which is used to express the relative health and vitality of any place or being.⁵ Mauri

² Conservation Act 1987, section 6.

³ Cain, 2017.

⁴ pSWLP, 2016

⁵ Te Marino Lenihan, 2013

has both tangible and intangible qualities that can be used to reflect the health of a waterbody.

8. Water is fundamental to the health and wellbeing of who we are as Māori. The health, wellbeing and Mauri of the water is directly linked to the health and wellbeing of the people.
9. Mahinga kai is central to the Ngāi Tahu way of life and cultural wellbeing. It represents the ninth component of the 'Nine Tall Trees' that comprised Te Kerēme - the Ngāi Tahu Claim against the Crown; an intrinsic part of the tribe's identity, or the "DNA of Ngāi Tahu".⁶

Reasons for this submission

10. Waituna Lagoon covers an area of approximately 1350 ha, within a ~20,000 ha wetland complex. It is part of one of the largest wetland systems in New Zealand. Waituna Lagoon is administered on behalf of the Crown by the Department of Conservation as a Scientific Reserve under the Reserves Act 1977.
11. The Te Rūnanga o Ngāi Tahu Act 1996 (the TRoNT Act) and the Ngāi Tahu Claims Settlement Act 1998 (the Settlement Act) give recognition to the status of Papatipu Rūnanga as kaitiaki and manawhenua of the natural resources within their takiwā boundaries.
12. The Ngāi Tahu Claims Settlement Act 1998 gives effect to the provisions of the Deed of Settlement, entered between Ngāi Tahu and the Crown in 1997. The Cultural Redress elements of the Crown's Settlement Offer were aimed at restoring the ability of Ngāi Tahu to give practical effect to its kaitiaki responsibilities.
13. Waituna Lagoon was recognised by a Statutory Acknowledgement under the Ngai Tahu Claims Settlement Act 1998: section 206 and Schedule 73. The adjacent coastal marine area, Rakiura/Te Ara a Kiwa, is also a Statutory Acknowledgement under the Settlement Act: section 313, Schedule 104.
14. Taonga species were part of the cultural redress for mahinga kai, to give practical effect for Ngāi Tahu to undertake kaitiaki obligations. Through the settlement, the Crown acknowledged the relationship Ngāi Tahu has with these species. Not all species that are considered taonga were listed because of various reasons. All indigenous species are taonga to Ngāi Tahu because of their contribution to ecosystem health.
15. Waituna Lagoon was listed as a wetland of international importance under the Convention on Wetlands (Ramsar Convention) in 1976 for the significant ecological values that it supports. The Ramsar site was expanded in 2008 to encompass the wider Awarua wetland complex.

⁶ Te Karaka. July 2015. http://ngaitahu.iwi.nz/our_stories/the-ninth-tree/

16. Waituna Lagoon is considered one of the best remaining examples of a natural coastal lagoon in New Zealand and is unique in Southland and New Zealand. Waituna Lagoon is in moderate-good condition compared to other coastal lakes/lagoons in New Zealand. The ecological condition of the lagoon is maintained by its aquatic plant community, dominated by *Ruppia* (*Ruppia megacarpa* and *Ruppia polycarpa*). Whereas other coastal systems such as the Wainono Lagoon and Te Waihora/Lake Ellesmere (both in the Canterbury Region) have undergone ecological shifts that resulted in a loss of native aquatic plants and subsequent decline into turbid, algal dominated systems.
17. The *Ruppia*-dominated plant community of Waituna Lagoon provides important habitat and food resources for a number of species, including threatened and at risk bird and fish species and migratory waterbirds, and helps to regulate the lagoon's water quality.
18. Waituna Lagoon is also highly valued for recreational fishing and duck shooting, including a Brown Trout fishery.
19. Waituna Lagoon is the focus of the Whakamana Te Waituna Partnership⁷ project which seeks to:
 - a. Re-establish a hydrological regime that protects the ecological, cultural, scientific and recreational values associated with Waituna Lagoon's status (Ramsar site, scientific reserve, taonga of Te Rūnanga o Awarua and Southland).
 - b. Provide alternative land-use options for the land adjacent to the lagoon to improve water quality to the lagoon.
 - c. Demonstrate the scalability of alternative drainage system design/management and farm system interventions to reduce impacts of ground and surface water contaminants on Waituna Lagoon and its tributaries
 - d. Re-establish Te Rūnanga o Awarua's connection and role as kaitiaki
20. Waituna Lagoon is one of five significant wetlands nationally that are subject of the Department's Arawai Kākāriki Wetland Restoration Programme. The Waituna Lagoon catchment is also part of the Living Water restoration partnership between the Department and Fonterra.

Effects of lagoon opening on significant cultural and ecological values

21. Ki uta ki tai is a natural resource management framework that reflects the notion all resources are connected, from the mountains to the sea, and must be managed as such. Furthermore, it reflects that we belong to the environment and are only borrowing the

⁷ Whakamana Te Waituna is a partnership between Environment Southland, Awarua Runanga, Department of Conservation, the Fonterra Cooperative and Southland District Council.

resources from the generations that are yet to come. Ki Uta ki Tai is about standing on the land and knowing the effects, both positive and negative, in every direction.⁸

22. It is acknowledged that artificial opening of Waituna Lagoon has occurred historically for some time and in recent history for the purpose of maintaining land drainage in areas of existing farmland adjacent to the landward margin of the Lagoon.
23. However, prolonged, ill-timed or regular opening of the Lagoon to the sea negatively impacts on the ecology of the Lagoon and is a significant risk to the overall ecological and cultural health and functioning of the Lagoon⁹.
24. Prolonged, ill-timed or frequent periods of the Lagoon being open to the sea has been shown to have a negative impact on native aquatic plants within the Lagoon. This is caused by lower lagoon levels resulting in the direct loss of aquatic plants and increased salinity caused by saltwater intrusion impacting plant reproduction. Decline of the keystone aquatic plants (*Ruppia*) will consequently increase the vulnerability of the Lagoon, and the threatened and taonga species it supports, to proliferation of algal blooms.
25. Ngāi Tahu indicators of Health¹⁰ are derived from understanding what is needed to support cultural association and cultural practice, as well as overall community health.¹¹ The characteristics of the water body (smell, shape, fish passage, bed, flow, etc.) have a direct impact on its health and surrounding lands. The indicators of health are based on Mātauranga Māori that has been developed and transmitted through the use of natural resources. Prolonged, ill-timed or regular opening of the Lagoon to the sea has a significant negative impact on the wellbeing, values, use and association of Ngāi Tahu to the lagoon.
26. The resource consents that this application seeks to replace were granted for a short term (5 years), with the intention being that alternatives to the current practice of opening the lagoon be investigated. The interim thresholds for opening the lagoon to the sea represented a compromise between the parties that allowed for continued opening, while providing some limit to the damage to the ecology caused by openings. The 5-year consent that came into effect in February 2017, included specific conditions providing for:
 - A higher opening threshold in spring-summer (2.2m) in effort to reduce the frequency of opening events and decrease negative effects on aquatic plants
 - The ability to open lagoon in spring-summer at 2.0m (not 2.2m) if there had been strong macrophyte growth in previous 3 years

⁸ Cain, A. 2017 pSWLP evidence.

⁹ Refer to: Robertson et al. 2021 (Review of Conditions for opening Waituna Lagoon); de Winton & Elcock 2021 (Vegetation Status in Waituna Lagoon: Summer 2021); Lagoon Technical Group 2013 (Ecological Guidelines for Waituna Lagoon)

¹⁰ Te Tangi a Tauri, 2008

¹¹ Ngāi tahu ki Murihiku Objectives, 2020

- A lagoon opening threshold of 2.0m in winter (May-Sept)
- A lagoon opening threshold of 1.8m in winter, if it had not been open for 12 months
- Emergency opening at >1.5m in the event of prolonged algal blooms or poor water quality.

27. While the short-term conditions represented a step-forward at the time, an expert technical review of the conditions for opening Waituna Lagoon, prepared for the Whakamana Te Waituna Trust in 2021¹², stated “the 2017 changes to the water level thresholds for lagoon opening were not sufficient to prevent the consent conditions being triggered and opening events from occurring”. The ecological and cultural values of the Lagoon remain under significant threat from prolonged and frequent opening events, unless a higher lagoon opening threshold is applied.

28. Since the granting of those consents, farmed land surrounding the lagoon that is relatively low-lying and subjected to impeded drainage has been purchased using central and local government funding for the specific purpose of enabling a more environmentally sustainable approach to lagoon opening, to help restore the mana and mauri of Waituna Lagoon. In our view this has removed the need to open the lagoon to the sea at the 2.0 and 2.2m thresholds for land drainage that were previously applied.

Deficiencies in the application

29. The application fails to, with any certainty, characterise the effect of high lagoon levels on the drainage of the adjacent farmland. Such an assessment would also account for the role of other water sources and drainage restrictions that may be affecting farm drainage, and take note of the extent and duration that land drainage may be affected.

30. The applicant has failed to demonstrate a functional need to open the lagoon to the sea at the levels proposed.

31. The application fails to apply the most recent relevant information on the effects of the opening regime on the ecological and cultural health of the Lagoon, particularly the “Review of the conditions for opening Waituna Lagoon (Robertson et al. 2021)” submitted to the Whakamana Te Waituna Trust (and publicly available on the WTW website, [see here](#)), and fails to apply the recommended water level thresholds to maintain and enhance the significant values of the Lagoon.

32. The application does not attempt to avoid or mitigate the adverse impacts of the proposed opening regime on the Lagoon and fringing wetlands. Rather, it puts the economic benefit of opening the Lagoon for land drainage ahead of the ecological benefits of a healthy lagoon and the maintenance and restoration of significant cultural values. This approach is contrary

¹² Robertson et al. 2021 Review of Conditions for opening Waituna Lagoon

to the fundamental concept of Te Mana o te Wai which is at the heart of the National Policy Statement for Freshwater Management 2020 (NPS-FM), discussed further below.

33. The application fails to recognise or provide for cultural values and uses and the effects on these are significant, including but not limited to those that are described in this submission.
34. The application places undue emphasis on the benefits of flushing nutrients from the Lagoon, which are a relevant consideration but will also occur if the Lagoon is opened following the 2021 technical recommendations, which included provision for lagoon opening in the event of algal blooms (poor water quality events). The application attempts to use this as an “offset” for the adverse effects of opening the regime on Lagoon biodiversity which is not considered to be appropriate in this case.
35. The application also proposes new sites for the artificial opening of the Lagoon at locations further to the east of the lagoon. However, the application fails to present an adequate assessment of effects of the risk to the lagoon ecosystem from opening at these locations.
36. The application also proposes a condition enabling opening the lagoon for fish passage every 12 months that is contrary to the 2021 technical recommendation to enable opening for fish passage every 24 months, due to the risk of frequent opening on overall ecological values.

Consultation

37. Te Rūnanga o Awarua and the Department have significant interests in Waituna Lagoon yet there has been no substantive consultation regarding this application. The application does not sufficiently assess the impact on the significant values held by either submitter.
38. It is not good resource management practice to seek to consult with parties through the resource consent process, this should have occurred prior to lodging the application.
39. The existing consent has consent conditions that require annual liaison meetings with parties listed in that consent, including DOC and Ngai Tahu. These have not been undertaken.

Statutory Assessment

40. The application is contrary to Part 2 of the Resource Management Act, in particular section 5, sections 6(a), (c), (d) and (e), sections 7 (a), (d) and (f) and section 8. This is because the application fails to promote sustainable management of natural and physical resources, to recognise and provide for the preservation of natural character of the coastal environment and for the protection of wetlands and lakes and their margins. The application also fails to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to maintain public access along the coastal marine area, lakes and rivers. The application does not have regard to kaitiakitanga; it does not provide for the relationship of Māori and their culture and traditions with their ancestral

lands, water, sites, wāhi tapu and other taonga; nor does it take into account the principles of Te Tiriti o Waitangi.

41. I consider the activity as proposed is inconsistent with the objectives and policies of the New Zealand Coastal Policy Statement 2010, specifically Objectives 1, 2, and 3, and Policies 2, 3, 5, 11 and 13.
42. The activity is not consistent with the Objective and Policy 1 of the NPS-FM in the way that it prioritises the use of resources to provide for economic well-being ahead of the health and wellbeing of water bodies and freshwater ecosystems in a manner that is inconsistent with Te Mana o Te Wai. The NPS-FM Objective specifically priorities:
 - a. first, the health and well-being of water bodies and freshwater ecosystems
 - b. second, the health needs of people
 - c. third, the ability of people and communities to provide for the social, economic and cultural well-being, now and in the future.
43. The application is also inconsistent with:
 - a. Policy 2 of the NPSFM as it fails to identify and provide for Māori freshwater values and actively involve tangata whenua in freshwater management;
 - b. Policy 8 in failing to protect the significant values of outstanding water bodies; and
 - c. Policy 9 in failing to protect the habitat of indigenous freshwater species.
44. The application is contrary to the objectives and policies of the Southland Regional Policy Statement Objectives 2.1 and 2.2, and Objective 5.1, 6.1, 6.3, 6.4, and Policies 6.1, 6.5, 6.8, and is contrary to the similar objectives and policies of the proposed Southland Water and Land Plan.
45. I consider the proposed activity is contrary to the Regional Coastal Plan for Southland particularly Objective 7.4.2.1 and Policy 7.4.2.2 regarding the opening of Waituna Lagoon to the sea. The activity will also be contrary to objectives and policies of the Regional Water Plan, specifically Objectives 10 and 13, and Policy 32.
46. The application is also contrary to policies set out in Te Tangi a Taurira, the applicable Iwi Management Plan, which should be considered under section 104 of the Resource Management Act when considering resource consent applications. The main kaupapa of the plan is *ki uta ki tai* (described above). In particular, but not limited to:
 - a. Policy 3.6.2.8 to require that an assessment of environmental effects includes and assessment of the cultural effects and potential cumulative effects on the natural character of the coastal environment.

- b. Policy 3.6.2.25 to recognise 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.
- c. Policy 3.6.13.1. to avoid coastal activities that may disturb, and have a direct or indirect detrimental impact, on areas of significant vegetation and habitats.
- d. Policy 3.5.10.1 to give effect to the role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater in freshwater policy, planning and management.

Decision sought

47. I seek that the Council **declines the application**, given the shortcomings identified above. We **do wish to be heard** in support of this joint submission.

If others make a similar submission, we will consider presenting a joint case with them at a hearing.



John McCarroll

Manager Operations

Murihiku

Acting pursuant to delegated authority on behalf of Penny Nelson, Director-General of Conservation

Date: 13th July 2022

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011



Dean Whaanga

Kaiwhakahaere

Te Rūnanga o Awarua

Date: 13th July 2022

Address for service:

Attn: Lisa Thorne, Planner
lthorne@doc.govt.nz
027 227 5979

Department of Conservation,
Level 1
John Wickliffe House
265 Princes Street
Dunedin 9054

Attn: Stevie-Rae Blair, Kaitohutohu Taiao
stevie@tami.maori.nz
027 9542926

Te Aō Marama Inc,
408 Tramway Road,
Heidelberg
Invercargill 9812