

Gore Proposed District Plan

Hearing Stream 6

Part 2: Natural Environment Values – Public Access

Section 42A of the Resource Management Act 1991

Section 42A Report – Public Access

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Interpretation

Abbreviations

Resource Management Act 1991	RMA or ‘the Act’
Gore District Council	GDC or ‘the Council’
Operative District Plan	ODP
Proposed District Plan	PDP
National Planning Standards 2019	PS
Southland Regional Policy Statement 2017	RPS
National Policy Statements	NPS
National Policy Statement on Highly Productive Land	NPS-HPL
National Policy Statement for Freshwater Management	NPS-FM
National Policy Statement for Urban Development	NPS-UD
National Environmental Standards	NES
National Environmental Standard for Freshwater 2020	NES-F
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011	NES-CS
Permitted Activity	PA
Controlled Activity	CA
Restricted Discretionary Activity	RDA
Discretionary Activity	DA
Non-complying Activity	NCA

Submitters and Further Submitters Names Abbreviations

Chorus New Zealand Limited	Chorus
Contact Energy Limited	Contact Energy
Department of Conservation	DOC
Environment Southland	ES
Fire and Emergency New Zealand	FENZ
Groundswell New Zealand	Groundswell
Heritage New Zealand Pouhere Taonga	Heritage NZ
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
Kāinga Ora – Homes and Communities	Kāinga Ora
KiwiRail Holdings Limited	KiwiRail
Mercury New Zealand Limited	Mercury
Ministry of Education	MOE
New Zealand Agricultural Aviation Association	NZAAA
New Zealand Defence Force	NZDF
New Zealand Heavy Haulage Association	NZ Heavy Haulage
New Zealand Helicopter Association	NZHA
New Zealand Transport Agency Waka Kotahi	NZTA
Royal Forest and Bird Protection Society of New Zealand inc	Forest & Bird
Southland District Council	SDC
Southland Federated Farmers of New Zealand	Federated Farmers
Spark New Zealand Trading Limited	Spark
Stoney Creek Station Limited	Stoney Creek
Transpower New Zealand Limited	Transpower
Woolworths New Zealand Limited	Woolworths

List of Submitters and Further Submitters

Submitter No.	Submitter Name
S60	Ronald Crispin
S68	John Baynes
S101	Transpower New Zealand Limited
S109	Department of Conservation
S115	Kevin Robertson
S121	Alliance Group Limited
S122	Fulton Hogan
S126	Southland Federated Farmers of New Zealand
S139	Hokonui Rūnanga Inc
S143	Rural Ratepayers Group
S146	Southland District Council
S148	Alistair & Bernadette Hunt

1. Executive Summary

1. The Proposed District Plan (“PDP”) for Gore District was publicly notified on 31 August 2023. The PDP includes the Public Access (PA) Chapter.
2. The PA Chapter seeks to maintain and enhance public access along waterbodies including the Mataura River and Waikaka stream. The chapter also maintains public access to the natural environment which is recognised as contributing to the well-being of people and communities.
3. There were 47 submissions, and no further submissions received for this topic. They were generally in support with a few requested changes.
4. Key issues identified through submissions are as follows:
 - Public access through private land be approved by a landowner and not resulting in adverse effects on landowner rights or result in adverse health and safety effects.
 - Request for discounts on ratings and damage to rural property due to public access paid for by the Council.
 - Esplanade reserves or strips required only for urban areas.
 - Public access restricted in areas with critical infrastructure.
 - Education of public as to where public access is available.
5. The report has been prepared in accordance with Section 42A of the RMA and outlines recommendations in response to the issues that have been identified through submissions. The report is intended to assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP, and to provide submitters with an opportunity to understand how their submissions have been evaluated and the recommendations made by officers, prior to the hearing.
6. As a result of submissions, a range of recommended changes have been made which are broadly summarised as follows:
 - Overview - to clarify the mechanisms for public access provisions, primarily to make clear to plan users that this chapter of itself does not grant public access over private land.
 - Particular effects of concern to mana whenua be specified to ensure provisions are clear and appropriate effects are identified and assessed.

2. Introduction

2.1 Author and qualifications

1. My name is Mishka Banhidi. I am employed as a Senior Planner at The Property Group. I am the author of this report.
2. I have a Bachelor of Applied Science in Environmental Management from the University of Otago, New Zealand. I am an associate member of the New Zealand Planning Institute (NZPI), which brings with it obligations with regard to continuing professional development.
3. I have been engaged as a contractor by Gore District Council to assist in the District Plan review and prepare the draft and proposed District Plans.
4. I have nine years of resource management experience and have worked for local government (Queenstown Lakes District Council and Thames Coromandel District Council) and in private consultancies. My experience includes preparation and processing of applications for resource consents. The preparation of a private plan change, as well as submissions on District, and Regional Plans across Aotearoa. I have been involved with the Gore District Plan review since 2022.

2.2 Code of Conduct

5. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Having reviewed the submitters and further submitters relevant to this topic I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel. The opinions expressed in this evidence are based on my qualifications and experience and are within my area of expertise. If I rely on the evidence or opinions of another my evidence will acknowledge that position.
6. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearing commissioners ("Hearings Panel").

3. Scope of report and topic overview

7. This report considers the submissions and further submissions that were received by the Council in relation to the PA chapter of the PDP.
8. The assessment of submissions will generally follow this format:
 - Submission information
 - Analysis of submissions
 - Recommendation and any amendments

- Where an amendment is recommended a section 32AA assessment is provided.
9. Recommendations are made to either retain provisions without amendment, or delete, add to or amend the provisions are shown by way of ~~strikeout~~ and underlining in red. **Appendix A** of this report contains a copy of the Public Access (PA) chapter with all recommended amendments are shown by way of ~~strikeout~~ and underlining in red.

4. Statutory considerations and planning framework

4.1 Resource Management Act 1991

10. The PDP has been prepared in accordance with the RMA and in particular, the requirements of:
- Section 74 – Matters to be considered by territorial authorities; and
 - Section 75 – Content of District Plans.
11. As set out in the Section 32 Evaluation Report for Public Access there are a number of higher order planning documents and other relevant plans which have provided direction and guidance for the preparation of the PDP. These documents and a comprehensive assessment of all relevant consultation and statutory considerations prior to public notification of the PDP are outlined in that Section 32 Report. The Section 42A Report: Introduction, General Provisions and Strategic Direction also provides an overview of the relevant Statutory considerations, higher order planning documents and other relevant plans and policies.
12. As noted in the Section 32 Evaluation Report, of specific relevance to the PA Chapter, section 230 of the RMA sets out the requirements for the provision of esplanade reserves, specifically the requirement of an esplanade reserve of 20 metres in width, set aside from an allotment of less than 4 hectares, to be established adjoining the bank of a river or lake. A river is defined as a river with an average width of 3m or where a river flows through an allotment. A lake is defined as a lake with an area of 8 hectares or more. It is noted that Esplanade Reserves are vested in the Council at the time of subdivision.
13. Esplanade Strip means a strip of land created as an interest over land, in favour of the Council. This is implemented through negotiation with the landowner as outlined within Section 235 of the RMA, noting no instrument for an esplanade strip by agreement may be registered unless all parties have provided their consent.
14. Also of specific relevance to the PA Chapter is the Maitai River Water Conservation Order. Water Conservation Orders are provided for under Part 9 of the RMA. Their purpose is to recognise outstanding amenity or intrinsic values of the water bodies and are the strongest form of protection of water under the RMA. A water conservation order can prohibit or restrict a regional council issuing new water and discharge permits. Regional policy statements, regional plans and district plans must not be inconsistent with the provisions of a Water Conservation Order. The Water Conservation (Maitai River) Order 1997 refers to outstanding fisheries and angling amenity and covers the Maitai River, the Waikaiti River, Otamaiti Stream and all tributaries of the Maitai River above the confluence with the Otamaiti

Stream. The order includes various provisions to preserve and protect these features including a minimum flow regime, standards that must be met by any discharges into the waters and a prohibition on the construction of any dam on any of these waterways.

15. It is not considered necessary to repeat the detail of all other relevant RMA sections and higher order documents in this report as these are covered within the relevant Section 32 Evaluation Report. However, where a higher order document is considered particularly relevant to the assessment of submissions or where there have been amendments to higher documents relevant to this topic these are discussed below.

4.2 Reserves Act 1977 and other relevant legislation

15. The Reserves Act 1977 applies to all public land that has been vested or gazetted under the Act. As a mandatory requirement of this Act, management plans should be prepared for all recreation reserves to provide a framework for future management decisions relating to their maintenance, use and development.
16. Recreation reserves, primarily around Gore and Mātaura, provide public access to the Mātaura River. The Mātaura River Māitaitai Reserve is established under the Fisheries Act 1996 and Fisheries (South Island Customary Fishing) Regulations 1999. It is intended to provide practical recognition of the rights guaranteed to tāngata whenua under the Treaty of Waitangi with the purpose of recognising and providing for customary management practices and food gathering. The Section 32 Report details the extent of, and restrictions that apply to, the Māitaitai Reserve.
17. The Ngāi Tahu Claims Settlement Act 1998 was enacted to achieve settlement of historical claims against the Crown. The Ngāi Tahu Claims Settlement Act 1998, amongst other things, identifies taonga species, and establishes tōpuni, statutory acknowledgements, dual place names and nohoanga sites. These instruments recognise the special association of Ngāi Tahu with these areas and resources and assist with Ngāi Tahu participation in processes under the Act and the Local Government Act 2002 (LGA). A Statutory Acknowledgment area applies to recognise Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Mātaura River and its tributaries.

4.3 National Planning Instruments

National Policy Statement for Freshwater Management 2020

18. The National Policy Statement for Freshwater Management 2020 (NPSFM) is considered relevant to the consideration of public access.
19. As detailed in the s32 Report for Public Access, the implementation of the NPSFM is primarily a regional council function, however the Council must adopt an integrated approach to freshwater management in that the whole environment is connected. The fundamental concept of the NPSFM is 'Te Mana o te Wai' that refers to the importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. The Council must include objectives, policies, and methods in the PDP to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative

effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

20. It is noted that since the PDP was publicly notified on 31 August 2023, there has been an amendment to the NPSFM as a result of a Court of Appeal decision which quashed Clause 3.33 relating to specified vegetable growing areas. This amendment has no effect on the PA Chapter of the PDP.
21. There is also currently a review of the NPSFM being undertaken by the Government, with a view to replace the NPS. At the current time, the NPSFM continues to have legal effect and the Council is required to adhere to the requirement of the NPS.

National Environmental Standard for Freshwater 2020

22. The National Environmental Standards for Freshwater (NES-FW) set requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. The standards have rules in relation to natural inland wetlands, reclamation of rivers, fish passage, fertiliser use, discharges in relation to farm conversions and agricultural intensification, and requirements for farm practices in relation to winter grazing, feedlots and stockholding areas. Setback requirements to all waterbodies for farming activities include 50m for feedlots and stockholding areas, and 5m for stock for winter grazing activities.
23. Further, part 3 of the NES-FW sets standards for various other activities that relate to freshwater, including but not limited to – construction and maintenance of wetland utility structures, construction of specified infrastructure, quarrying activities, and urban development. If specified within the standards of the above, general conditions relating to natural inland wetland activities apply. These general conditions relate to water quality and movement, earth stability and drainage, earthworks, land disturbance and vegetation clearance, vegetation and bird and fish habitats amongst others.

Resource Management (Freshwater and Other Matters) Amendment Bill

18. The Resource Management (Freshwater and Other Matters) Amendment Bill was introduced in May 2024 and among other things seeks to:
 - a. Exclude the hierarchy of obligations in the NPSFM from resource consenting.
 - b. Repeal the stock exclusion regulations in relation to sloped land.
 - c. Repeal National Environmental Standard for Freshwater (NES-F) restrictions around winter grazing.
 - d. Align the provisions for coal mining with other mineral extraction activities across the NPS-IB, NPS-FM and NES-F.
 - e. Suspend and extend timeframes under the NPS-IB, in particular for the identification of Significant Natural Areas (SNAs) and include them in district plans.
 - f. Amend the process for preparing and amending national direction documents.

24. At the current time, the Amendment Bill does not have any legal effect. Should the legislation pass prior to the hearing on Public Access (Hearing Stream 6), supplementary evidence will be provided to the Panel.

4.5 National Planning Instruments

Southland Regional Policy Statement

25. The Southland Regional Policy Statement 2017 (RPS) sets out the framework and priorities for resource management in the region. The RPS identifies the regionally significant issues around the management of the Region's natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved (policies and methods). Section 75(3) of the RMA requires the PDP is required to give effect to the RPS.
26. Of relevance to Public Access, the RPS Chapter 3 – Tangata Whenua requires territorial authorities to sustain or improve (where degraded) accessible mahinga kai and other customary resources associated with the district's important cultural waterways.
27. The RPS Chapter 5 – Water relates to freshwater and has three parts: Water Quality, Water Quantity and Beds of Rivers and Lakes. The RPS highlights that both regional and district plans are required to identify priority areas for public access and improving access through mechanisms such as esplanade reserves and strips, and access strips on subdivision consents. Other methods, such as investigations into specific values, provision of information on good practice for gravel removal activities and collaboration between all of the region's local authorities, with regard to public access provisions, will support the role of regional and district plans.

Iwi Environmental Management Plan(s)

28. 'Te Tangi a Tauira – The Cry of the People' the Ngai Tahu Ki Murihiku Natural Resource and Environmental Management Plan identifies a broad range of relevant matters when considering where and how Gore grows and develops. In particular, there is a desire to:
- a. Limit the impacts of climate change on indigenous species and ecosystems and the risks of natural hazards by appropriately managing urban development and providing for sustainable energy and transport systems.
 - b. Protect sites of significance and indigenous biodiversity areas along with appropriate management of water.
 - c. Limit impacts of industrial activity and subdivision by involving iwi in decision making processes and managing land use, building and water issues
 - d. Providing appropriate infrastructure management.
25. 'Te Tāhū o Te Whāriki', the Ngāi Tahu Climate Change Strategy, identifies a need to assess future commercial risks, protect wahi tapu, mahinga kai and other taonga, prepare plans to relocate Marae and Runānga facilities threatened by increasing hazards, as well as influence agencies to develop climate change responses.

Parks, Recreation and Facility Strategy 2013

26. The strategy sets out provisions and standards for different types of parks. Linkage Parks are referred to, and further described, in the NZRA Parks Categories 2011 as Recreation and Ecological Linkages. Linkage Parks are usually linear in shape and provide an important role in providing access to and along waterways. They generally have a low level of development and maintenance. Examples include areas along the Maitai River.

Gore District Trails Feasibility Strategy 2017

27. The Gore District Trails Feasibility Study undertaken in 2017 also provides a basis for the development of public access corridors linking open spaces and other public areas. The report highlights the anticipated health, wellbeing benefits, tourism, economic benefits, social and cultural benefits from public access to waterways.

District Growth Strategy – Gore Economic and Social Background Report

28. The Maitai River is highlighted as one of the most important recreation resources for the district. However, the report expresses a concern about a reduction in recreation participation and a drop in fishing days downstream of Gore (observed for the period between 2001-2008). It is speculated that this drop may be related to a perception of declining water quality, although it may be more accurately linked to low summer flows.

4.3 Section 32AA evaluation

30. Any recommended amendments to provisions since the initial section 32 evaluation was undertaken are evaluated in accordance with section 32AA. Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) further evaluation required under this Act-

- (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
- (b) must be undertaken in accordance with section 32(1) to (4); and*
- (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
- (d) must—*
 - (i) published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.*

(2) To avoid doubt an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).

(3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.

31. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the topics of this report is contained within the assessment of the relief sought in submissions in section 3, as required by s32AA(1)(d)(ii).
32. The Section 32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor, and consequential changes that improve the effectiveness of provisions without changing the policy approach are not re-evaluated.

5. Background

33. The Section 42A Report: Introduction, General Provisions and Strategic Direction includes details of the PDP notification, submission statistics and a general overview of the background to the PDP. In addition, the report provides an overview of National Planning Instruments and other Policies and Plans relevant to the PDP as a whole.
34. The Section 32 Evaluation Report¹ for the PA Chapter is relevant to this Section 42a Report. The Section 32 Evaluation Report assesses and considers the relevant higher order planning documents and any strategic plans which provide direction and guidance for the preparation and content of these chapters. Where relevant these documents are considered in more detail in the assessment of submission points.

6. Consideration of submissions

6.1 Structure of the report

35. Submissions on the PA Chapter have been grouped as follows:

- Submissions in support of provisions
- General submissions
- Submissions specific to provisions

36. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on both an issues and provisions-based approach, as opposed to a

¹ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

submission by submission approach. I have organised the evaluation in accordance with the layout of chapters of the PDP as notified.

37. Specific recommendations on each submission / further submission point are contained in **Appendix B**.
38. The following evaluation should be read in conjunction with the summaries of submissions and the submissions themselves. Where I agree with the relief sought and the rationale for that relief, I have noted my agreement, and my recommendation is provided in the summary of submission table in **Appendix B**. Where I have undertaken further evaluation of the relief sought in a submission(s), the evaluation and recommendations are set out in the body of this report. I have provided a marked-up version of the Chapter with recommended amendments in response to submissions as **Appendix A**.
39. This report only addresses definitions and submissions on mapping specifically relevant to this topic. Definitions that relate to more than one topic and general mapping submissions have been addressed in the Section 42A Introduction, General Provisions and Strategic Direction Report.

6.2 Overview of submissions

40. The submission period ran from 31 August to 26 October 2023 and was then extended to 27 November 2023 by Council resolution. Council received 130 submissions containing 5542 submission points.
41. Some submissions were received after the 27 November 2023 5:00pm deadline, however these submissions were accepted and are not considered late as they were received up until midnight 27 November 2023.
42. A total of 47 submissions and no further submissions are addressed in this report section of this report. A list of submitters on PA chapter is provided at the start of the report.
43. Submissions in general support of the provisions are addressed at Section 6.4, general submission are at Section 6.5 and specific submission are at Section 6.7.

6.3 Format for consideration of submissions

44. For each identified topic, I have considered the submissions that are seeking changes to the PDP in the following format:
- Matters raised by submitters;
 - Assessment;
 - Summary of recommendations; and
 - Section 32AA assessment.

45. The recommended amendments to the relevant chapters are set out in **Appendix A** of this report where all text changes are shown in a consolidated manner.

6.4 Submissions in support

6.4.1 Matters raised by Submitters

46. The following provisions are supported by submitters and no amendments are proposed:
- a. DOC (s109.088) supports PA-P1 as it gives effect to RMA requirements and Southland Regional Policy Statement objectives and policies.
 - b. DOC (s109.090) and Hokonui Rūnanga (s139.060) support PA-P3 as notified.
 - c. DOC (s109.091) supports PA-P4 as notified.

Assessment

47. Support for the provisions above are acknowledged and are accepted.

Recommendation

48. No amendments are recommended.
49. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.5 General Submissions

6.5.1 Matters raised by submitters – General

50. Rural Ratepayers (s143.001) seek amendments to the PA chapter to ensure that public are aware of all the risks and dangers of rural zone. They submit that landowners should be indemnified for any risk or harm that may occur to a member of the public as the Council is encouraging and expediting public access. Rural Ratepayers (s143.004) further submit that where the Council imposes public access on landowners, a discount on ratings should be given as relief on behalf of the community that benefits. Council shall also repair any damage to rural properties because of PA.
51. SDC (s146.053) support the PA objectives and policies and notes the new provisions should reduce any cross-boundary issues.

Assessment

52. The Rural Ratepayer's submission above represents a common theme of the submission on this chapter where a misunderstanding has occurred as to the role of the PA Chapter and the mechanism utilised to implement public access.
53. This chapter does not grant the public the right to access private land. The primary mechanism to provide public access is through the esplanade reserve provision through the subdivision

process in accordance with Section 230 of the RMA. This process relates to the creation, through subdivision, of any allotment of less than 4 hectares adjoining the sea, river or lake an esplanade reserve 20 metres in width is required along the bank of any river. Esplanade Reserves are vested with the Council.

54. Insofar as this relates to submissions (s143.001) and (s143.004), as Esplanade Reserves are vested with the Council and the Council becomes the landowner, any associated indemnity is internal to the Council and no rates are payable on the vested land from the original landowner.
55. In term of financial contributions from esplanade reserve provisions, as outlined within section 237E of the RMA - Compensation for taking esplanade reserves or strips on allotments of less than 4 hectares, no compensation is payable for any area of land within 20 metres from the bank of any river or the margin of any lake. It is noted that compensation is required for esplanade reserves above and beyond this requirement, however no rule is proposed within the PDP requiring this.
56. As outlined within PA-P2, PA-P3 and PA-P4 the PA Chapter does provide for the negotiation of public access through the development and subdivision process. Specifically, PA-P2 (3) specifically provides for the negotiation for access strips and PA-P3 provides for the enhancement of public access at the time a site is redeveloped. Esplanade Strips are developed in mutual agreement with the Council and landowners where ratings, indemnity, signage etc are at the discretion of the respective negotiating parties.
57. Support from SDC is acknowledged.

Recommendation

58. No amendments are recommended.
59. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.5.2 Matters raised by submitters – Additional Provisions Sought

60. SFF (s126.114), Ronald Crispin (s60.117), John Baynes (s68.235), Kevin Robertson (s115.115) , Rural Ratepayers Group (s143.126), and Alistair & Bernadette Hunt (s148.127) support a new policy being included in the plan for education of the public as to where public access is available, and where landowner permission is required. The PDP maps multiple categories that plan users may believe are freely available for public access, like SNAs, ONF/Ls, and waterways, yet many of these are on private land and access is only by the permission of the landowner.

Assessment

61. The submissions above raise an important point, that as demonstrated by the common theme within the submissions. There is a common misperception over the role of the PA Chapter, and where and how public access is provided for. This points to a deficiency with the chapter that does not make this clear. Based on this it is considered that an addition to the overview of the

chapter explaining the role of the chapter and making it clear that PA Chapter does not grant unrestricted access over private land.

62. An amendment of the overview section is considered a more appropriate implementation of the above submissions, rather than a general education of the public policy addition. The issue being with a policy that every subdivision consent with an esplanade reserve would then need to address how the application addressed the policy, which would be an unhelpful addition to the assessment burden. By adding an explanation to the overview, it would make clear to plan users that public access over private land is not provided for.

Recommendation

63. I recommend, for the reasons given above, that the overview section of the Public Access is amended with the following addition as follows:

“There are no specific rule within this District Plan relating to Esplanade Reserve provision. As such, the provision defaults to Section 230 of the Resource Management Act (RMA). Under this section, when land is subdivided and an allotment of less than 4 hectares is created, a 20-metre-wide esplanade reserve must be set aside from that allotment along the mean high-water mark of the sea, the bank of any river, or the margin of any lake, as applicable. This reserve shall vest with Council in accordance with Section 231 of the RMA.

This chapter does not grant the public unrestricted access to private land. Access is primarily provided through Esplanade Reserves, Council reserves, or by negotiating with private landowners, primarily via the Esplanade Strip process. Permission from landowners is required over private land unless explicitly indicated by signage or maps.”

64. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

The following evaluates the recommendation to amend the overview under section 32AA of the RMA.

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner and will avoid a misunderstanding of the role of the PA Chapter.

The benefits of the proposal are that it is clear what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. The benefit of an amendment to the overview, rather than the addition of the policy, is that the overview clarifies any misconstruction of the chapter, without overreaching in terms of the resource consenting assessment burden for plan users. There are no apparent costs with the proposal.

There is the potential the provision of public access to be misunderstood if the proposed amendment is not made.

The proposed amendment is considered to be a more appropriate way to achieve the purpose of the Act than the notified version of the PDP.

6.6 Submissions Specific to Provisions

6.6.1 Matters raised by submitters – PA-O1

65. SFF (s126.111), Ronald Crispin (s60.114), John Baynes (s68.232), Kevin Robertson (s115.112), Rural Ratepayers Group (s143.123), and Alistair & Bernadette Hunt (s148.124) support in part PA-O1 but seek the following addition for clarity:

Public access, when approved by a landowner, is provided to and along waterbodies with high recreational, scenic, Ngāi Tahu cultural or amenity values

66. Alliance Group (s121.055) suggests the following amendment for recognition of areas that are inappropriate for public access.

Public access is provided in appropriate locations to and along waterbodies with high recreational, scenic, Ngāi Tahu cultural or amenity values.

67. Rural Ratepayers (s143.010) seek amendments to PA-O1 and seek that where the Council imposes Public Access on landowners, a discount on rating should be given as relief on behalf of the community that benefits. Further, the Council shall repair any damage to rural properties and accept responsibility as an exacerbator.

68. Hokonui Rūnanga (s139.059) seek amendments to PA-O1 to read:

Public access is provided to and along waterbodies with high recreational, scenic, ~~Ngāi Tahu cultural~~ or amenity values or which are valued for mahinga kai; provided public access is appropriate considering any cultural value associated with the area such as silent files or other wāhi tapu.

69. DOC (s109.085) support PA-O1 and seek it is retained as notified.

Assessment

70. Support from SDC is acknowledged.

71. In regards to the submission requesting “*when approved by a landowner*” to PA-O1. As outlined above the provision of public access is either via the Esplanade Reserve process, whereby the land is vested and the Council becomes the landowner, or through negotiation through a redevelopment process. In the first case as the landowner is the Council, “landowner approval” is therefore a given, and in the second instance, access provision will be assessed on its merits and either the land vested with The Council in lieu of reserve provision, or negotiated as a public easement, in either instance again landowner permission is a given and the addition of landowner approval, within the objective is unnecessary.

72. In regards to the Alliance submission (s121.055), it is unclear what is meant by “inappropriate locations”, however it is assumed that based on Alliance’s position adjacent to the Maitake River and potential access issues that could be considered “inappropriate” this submission is in reference to health and safety concerns. Health and safety concerns are addressed within PA-O3 and PA-P5, which provides for due consideration of this concern and is considered to give effect to the intent of this submission.
73. Regarding the Rural Ratepayers (s143.010) submission seeking a discount on rating through PA-O1. As outlined above public access is either provided by vested public land (esplanade reverses) or through negotiations at a development stage, in the former no rating on private land owners would apply and on the latter any rating rebate, or compensation for damage would be negotiated on a case by case basis.
74. It is the Hokonui Rūnanga submission (s139.059) seeking amendments to PA-O1 to delete reference to “Ngāi Tahu cultural values”, and instead refer to mahinga kai, cultural values and wāhi tapu. The relief sought potentially narrows the scope decision makers and mana whenua have for considering Ngāi Tahu cultural values in decision-making under this plan and weakens wording around protecting Ngāi Tahu cultural values. However, it is my recommendation that the policy approach mana whenua deem most appropriate for managing impacts on their cultural values and kaitiaki responsibility be adopted and this submission point be accepted.

Recommendation

75. I recommend, for the reasons given above, that the relief sought by submissions (s126.111), (s60.114), (s68.232), (s115.112), (s143.123), (s148.124) (s121.055) (s143.010) is rejected, however it is considered that the intent behind the submissions is provided for within the plan.
76. The relief sought by submission (s139.059) is supported:
- PA-O1 Public access is provided to and along waterbodies with high recreational, scenic, ~~Ngāi Tahu cultural or amenity values~~ or which are valued for mahinga kai; provided public access is appropriate considering any cultural value associated with the area such as silent files or other wāhi tapu."
77. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

Section 32AA Evaluation

The following evaluates the recommendation to amend PA-O1 under section 32AA of the RMA.

The proposal will enable the Council to effectively administer the PDP in a clear and consistent manner.

The benefits of the proposal are that it narrows the scope of cultural values to be considered at the request of Hokonui Rūnanga, helping to direct plan users to what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs with the proposal.

The proposed amendment is considered to be a more appropriate way to achieve the purpose of the Act, provided the Hokonui Rūnanga is comfortable with the narrowing of scope, than the notified version of the PDP.

6.6.2 Matters raised by submitters – PA-O2

78. Alliance (s121.056) seek amendment to PA-O2 as follows to ensure recognition for existing activities:

The District's pathway network is developed in appropriate locations to provide public access to the natural environment including for the gathering of food and mahinga kai activities, to enhance recreational opportunities and to improve the District as a world-class trout fishing destination.

79. Rural Ratepayers (s143.011) oppose in part PA-O2 and seek that where the Council imposes public access on landowners, a discount on rating should be given as relief on behalf of the community that benefits. Further, the Council shall repair any damage to rural properties and accept responsibility as an exacerbator.

80. DOC (s109.086) supports PA-O2 as notified.

Assessment

81. Support from DOC is acknowledged.
82. In relation to Alliance's submission and the requested relief, it is again assumed that the reticence towards only allowing for public access in appropriate locations is due to health and safety concerns. This is provided for through PA-O3 and PA-P5, which both provide for the consideration of health and safety, it is considered the intend behind this submission is provided for within the chapter as notified
83. The Rural Ratepayers submission repeats their requested financial relief, this is addressed within section 54-56 of this assessment.

Recommendation

84. No changes are recommended.
85. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.6.3 Matters raised by submitters – PA-O3

86. SFF (S126.112), Ronald Crispin (s60.115), John Baynes (s68.233), Kevin Robertson (s115.113) , Rural Ratepayers Group (s143.124), and Alistair & Bernadette Hunt (s148.125) support in part PA-O3 but seek amendments to ensure that access does not result in adverse effects on the rights of private property owners as follows:

Amend PA-O3: Public access does not result in adverse effects on natural character, indigenous biodiversity, historic heritage, cultural, landscape values, ~~or~~ healthy and safety, or the rights of landowners.

87. Rural Ratepayers (s143.012) oppose in part PA-O3 and seek that where the Council imposes public access on landowners, a discount on rating should be given as relief on behalf of the community that benefits. Further, the Council shall repair any damage to rural properties and accept responsibility as an exacerbator.

88. Alliance (s121.057), Fulton Hogan (s122.007) and DOC (s109.087) support PA-O3 as notified.

Assessment

89. Support from Alliance, Fulton Hogan and DOC is acknowledged.

90. Regarding the submissions requesting the addition of the “rights of landowners” be added to PA-O3, as outlined above, this chapter does not grant the public access over private land in of itself. The mechanism for the provision of public access through the District Plan, is primarily through the esplanade reserve process, whereby the Council becomes the landowner. In all other instances public access over private land would be obtained through a negotiation process primarily associated with development, rather than acquired through section 230 of the RMA, and therefore the landowner will have agency to ensure that their rights as landowners are duly considered through the negotiation process. The Objective as notified provides for the consideration of all other relevant effects including health and safety and no further addition is recommended.

91. The Rural Ratepayers submission repeats their requested financial relief, this is addressed within section 54-56 of this report.

Recommendation

92. No recommendations are recommended.

93. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.6.4 Matters raised by submitters – PA-P2

94. SFF (s126.113), Ronald Crispin (s60.116), John Baynes (s68.234), Kevin Robertson (s115.114), Rural Ratepayers Group (s143.125), and Alistair & Bernadette Hunt (s148.126) oppose PA-P2 as they do not support the creation of esplanade reserves or strips where land is being subdivided for the purpose of facilitating farming in the Rural Zone. They seek the following amendments:

Maintain and enhance public access by:

1. requiring for urban areas through the subdivision process the provision of esplanade reserves and/or esplanade strips along waterbodies, ~~particularly in urban areas~~ and along public access corridors.

95. DOC (s109.089) supports PA-P2 as drafted.

Assessment

96. Support from DOC is acknowledged.

97. The submissions requesting an amendment to PA-P2 are acknowledged, as the primary focus of public access is to service urban areas, and along public access corridors, that are more likely to be well utilised by the public. However, that does not mean there is no benefit for rural public access, particular when acknowledging the importance of the Mataura River and Waikaka Stream to the district from a cultural, recreational and sport fishing perspective.

98. Furthermore, it is noted that the primary provision of public access is obtained through subdivision of lots less than 4ha, within the General Rural Zone this would require subdivision consent as a non-complying activity as the minimum lot size is 8ha. Only in instances where the proposal is considered suitable, despite the non-complying activity status, would an esplanade reserve be considered. It is noted that in this instance as assessment of the matters outlined within relevant objectives and policies will still be considered, for example PA-P5, which is considered sufficient consideration of potential adverse effects associated with Public access.

Recommendation

99. No changes are recommended.

100. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.6.4 Matters raised by submitters – PA-P5

101. Alliance (s121.058), Fulton Hogan (s122.008) and DOC (s109.092) support PA-P5 as notified.

102. Transpower (s101.062) opposes PA-P5 and seeks amendments to ensure that public access is restricted when necessary to protect the operation of the National Grid. The following amendment is requested:

Restrict public access in areas that would result in adverse effects on critical infrastructure, natural character, indigenous biodiversity, historic heritage, cultural, or landscape values.

Assessment

103. Support from Alliance, Fulton Hogan and DOC is acknowledged.

104. Transpower's submission to include direct reference to critical infrastructure within PA-P5 is acknowledged, however it is considered that the adverse effects from a health and safety perspective are addressed through PA-O3 and PA-P5.

105. In terms of protecting critical infrastructure from the public, it is less clear what adverse effects are aiming to be mitigated by restricting public access in relation to the National Grid. Transpower is invited to provide evidence demonstrating what effects are aiming to be

mitigated by their requested relief, however in the interim it is not considered a necessary addition to the policy.

Recommendation

106. No changes are recommended

107. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

7. Conclusions and Closing Recommendation

7.1 Conclusions

108. This report has provided an assessment of submissions received on the PA Chapter of the PDP.

109. The submissions ranged between support for the provisions with some concerns over landowner rights and the suitability of public access within the Rural environment.

110. I consider that the submissions on the PA Chapter assessed in this report be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations in this report including **Appendix B**.

111. Overall, I recommend that the provisions are amended as shown in Appendix A for the reasons set out in this report. The main changes recommended include:

- a. An addition to the overview the better explain the role of the PA Chapter and the mechanisms for the provision of public access.
- b. Minor change to PA-O1 to direct plan users to more specific cultural considerations.

112. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA, the relevant objectives of the PDP and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken throughout this report.

7.2 Closing Recommendation

113. The Hearing Panel accept, accept in part, or reject all submissions (and associated further submissions) as outlined in **Appendix B** of this report.

Signed:

Name and Title	Signature	Date
Mishka Banhidi Consultant Planner		16 September 2024

