

Gore Proposed District Plan

Hearing Stream 7:

Activities on the Surface of Water

Section 42A of the Resource Management Act 1991

Section 42A Report – Activities on the Surface of Water

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Interpretation

Abbreviations

Resource Management Act 1991	RMA or ‘the Act’
Gore District Council	GDC or ‘the Council’
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 Indigenous Biodiversity	NPS-IB
National Policy Statement for Urban Development	NPS-UD
National Policy Statement for Electricity Transmission	NPS-ET
National Environmental Standards	NES
National Environmental Standard for Freshwater 2020	NES-F

Submitters and Further Submitters Names Abbreviations

Department of Conservation	DOC
Environment Southland	ES
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
KiwiRail Holdings Limited	KiwiRail
New Zealand Defence Force	NZDF
New Zealand Transport Agency Waka Kotahi	NZTA

Royal Forest and Bird Protection Society of New Zealand inc	Forest & Bird
Southland District Council	SDC
Transpower New Zealand Limited	Transpower

List of Submitters and Further Submitters

Submitter No.	Submitter Name
S64 – FS13	Jet Boating NZ
S101	Transpower New Zealand Limited
S109	Department of Conservation
S110	Royal Forest and Bird Society of NZ Inc
S132	KiwiRail Holdings Ltd
S139	Hokonui Rūnanga Inc
S146	Southland District Council
S147	New Zealand Defence Force
FS14	NZ Transport Agency Waka Kotahi

1. Executive Summary

1. The Proposed District Plan (“PDP”) for Gore District was publicly notified on 31 August 2023. The PDP includes the Activities on the Surface of Water (ASW) Chapter.
2. The management of freshwater is primarily a regional Council function and managed by Environment Southland. However, the control of any actual or potential effects of the use, development, or protection of land and of activities in relation to river margins and the surface of water in rivers and lakes is a District Council function under Section 31 of the Act.
3. National and regional direction documents also require an integrated approach to freshwater management, the management of potential effects on stream health, and water quality and flows from land use and development. A Water Conservation Order applies to the Mataura River, the Waikaia River and some tributary streams. The Mataura River is also formally recognised for its cultural significance to Ngāi Tahu by way of a statutory acknowledgement. In addition, the Mataura River Mātaitai Reserve Bylaws applies above, at and below, the Mataura Falls to protect customary fishing rights. The ASW chapter provisions are intended to be consistent with, and where appropriate, give effect to these matters.
4. The ASW Chapter also recognises that the Mataura River and its tributaries are an important recreational resource and amenity feature for the wider community. Both floods and extremely low river flows are common occurrences and climate change forecasts predict an increase in both in the future. Protection works adjacent to the Mataura River have been constructed in urban areas, providing protection to Gore and Mataura and are frequently used as recreational areas within the floodways.
5. There were 31 submissions and 2 further submissions received for this topic. They were generally in support or partially supportive of the chapter.
6. Some of the key issues identified through submissions are as follows:
 - a. Addition of an objective to ensure protection of ecosystems, wildlife habitats and indigenous biodiversity.
 - b. Where possible the plan provisions should specify the particular effects of concern to mana whenua.
 - c. Support for the shared use and enjoyment of waterways and seek this is reflected in the objectives.
 - d. Consideration of activities on the surface of water that can have potential adverse effects on the ecological values associated with the District's rivers.
 - e. Amendments to the overview wording in relation to the potential effects of motorised activities, and that the operative Navigational Safety Bylaw be referenced.
 - f. Reconsideration of the placement of some of the policies as they may be better suited to or supported by a Natural Character or similar chapter.

- g. Prioritization of the health and safety of all users of waterbodies and their waterbodies.
 - h. Ensuring that infrastructure that has both a functional and operational need to be located above water bodies be enabled.
 - i. A permitted activity status for the use of motorized watercraft that complies with the Operative Environment Southland Navigation Safety Bylaw.
 - j. Clarification that ASW-R9 does not include fish exclusion barriers.
7. 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.
8. As a result of submissions, a range of recommended changes have been made which are broadly summarised as follows:
- a. Amendments to the overview wording in relation to the potential effects of motorised activities, and a more general reference to matters and documents administered by Environment Southland
 - b. The inclusion of consideration for operational need in the location of infrastructure and equipment used for monitoring or testing in the policy framework.

2. Introduction

2.1 Author and qualifications

9. My name is Tina Carlson-McColl, I am the author of this report. I am employed by The Property Group as a Senior Planner. I hold a Bachelor of Arts Sociology major, Planning minor from LaTrobe University, Australia. I have practiced as a Planner for 9 years in New Zealand and Australia in both district and regional Councils and in the private sector. I am an associate member of the New Zealand Planning Institute (NZPI), which brings with it obligations with regard to continuing professional development.
10. 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. I have been the lead planner on the preparation of the following chapters of the PDP, including the drafting of the Section 32 Evaluation reports¹ and the Designations Overview Report²:

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

² [Proposed District Plan - Designations | Let's Talk Gore District \(goredc.govt.nz\)](https://goredc.govt.nz/proposed-district-plan-designations)

- Transport
- Historical Heritage
- Activities on the Surface of Water
- Earthworks
- Commercial Centre Zones
- Designations

11. My experience includes work on strategic and policy projects as well as consent hearings. I have been involved in Council initiated Plan Changes and variations for Towong Shire Council and Gore District Council.

2.2 Code of Conduct

12. 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.

13. 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

14. This report considers the submissions and further submissions that were received by the Council in relation to the Activities on the Surface of Water chapter of the PDP.

15. 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.

16. 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 Activities on the Surface of Water chapter with all recommended amendments are shown by way of ~~strikeout~~ and underlining in red.

17. Clause 16(2) of the RMA allows a local authority to make an amendment to a proposed plan without using a Schedule 1 process, where such an alteration is of minor effect, or may correct any minor errors. A correction has been made in **Appendix A** under this clause to the left hand column of the rule table which specifies where the rule applies with the following change:

Surface of all Water**B**bodies

The correction aligns with the spelling of the defined term for 'waterbody'.

46. Clause 10(2)b of the RMA allows decisions on the PDP to include matters relating to consequential alterations to the PDP which are necessary, relevant or arising from submissions. Consequential amendments to the Activities on the Surface of Water chapter may be required to the objectives and policies relating to Mana Whenua and Ngāi Tahu cultural values based on previous Section 42A report recommendations. Consequential amendments to the PDP as a result of submission may include supporting the Activities on the Surface of Water chapter provision with a Natural Character chapter.

4. Statutory considerations and planning framework

4.1 Resource Management Act 1991

18. 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.

19. As set out in the Section 32 Evaluation Report for Rivers and their margins³ 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 Introduction, General Provisions and Strategic Direction Report for Hearing Stream 1 also provides an overview of the relevant Statutory considerations, higher order planning documents and other relevant plans and policies.

20. It is not considered necessary to repeat the detail of the 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 National Planning Instruments and other Relevant Plans and Policies

NPS for Freshwater Management 2020

The implementation of the National Policy Statement for Freshwater Management 2020 (NPS-FM) is primarily a regional council function, however territorial authorities must adopt an integrated approach to freshwater management in that the whole environment is connected. The fundamental concept of the NPS-FM is 'Te Mana o te Wai' that refers to the importance

³ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. Every territorial authority must include objectives, policies, and methods in its district plan 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.

In accordance with the NPS-FM requiring setbacks from waterways for development and works across all zones, and management of activities on the surface of water, has been adopted as an integrated method to manage the effects of growth and development in the PDP.

National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB)

21. The NPS-IB came into effect on 4 August 2023, and it provides direction to councils to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. The NPS-IB requires the creation of a regional biodiversity strategy and the identification and protection of Significant Natural Areas. This is to be achieved by working with communities, key stakeholders, landowners, and mana whenua. Moreover, the NPS-IB requires an integrated approach in the management of indigenous biodiversity and that local authorities must consider the social, economic, and cultural wellbeing of people and communities, promote the resilience of indigenous biodiversity to climate change, and adopt a precautionary approach.

The Resource Management (Freshwater and Other Matters) Amendment Bill (no legal effect)

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

Mataura River Mātaaitai Reserve

23. The Mataura River Mātaaitai 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 Mātaaitai Reserve encompasses the waters of the Mataura River upstream and downstream of the Mataura Falls/ Te Au Nui Pihapiha Kanakana. The Mataura River Mātaaitai Reserve Bylaws apply within the reserve. Under the bylaws all commercial fishing is prohibited

within the reserve, and no person, with the exception of customary fishing authorised by Tangata Tiaki/Kaitiaki, may take or possess Lamprey, Shortfin or Longfin eel or set fyke nets.

Southland Regional Council Navigation Safety Bylaws 2009 (Revised 2015)

24. The Navigation Safety Bylaws 2009 (Revised 2015) administered by Environment Southland provide for exemptions at various times of the year from the 5km per hour speed limit on the waterways of the Gore District, together with requests for specific dispensations. Any organisation may seek a temporary uplifting of speed restrictions to hold an organised event. Consultation is required with the Council, Fish and Game, and the Department of Conservation. If the organised event is approved, then signage is erected at appropriate public access points and advice is placed in newspapers prior to the event. The Maitara River is the only water body currently used for motorised activities in the district. However, for the Maitara River from 1 August to 30 September a general speed exemption is provided. In addition, a year-round exemption applies within the area of water 300 metres long and 100 metres wide, 4.8 kilometres downstream from Gore at Beattie's Beach

4.3 Section 32AA evaluation

25. 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.

26. 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).

27. 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

28. The Section 42A Introduction, General Provisions and Strategic Direction Report prepared for Hearing Stream 1 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
29. The Section 32 Evaluation Report for Rivers and their margins⁴ assesses and considers the relevant higher order planning documents and any strategic plans which provide direction and guidance for the preparation and content of Activities on the Surface of Water chapter. Where relevant these documents are considered in more detail in the assessment of submission points.
30. The management of freshwater is primarily a regional Council function and managed by Environment Southland. However, the control of any actual or potential effects of the use, development, or protection of land and of activities in relation to river margins and the surface of water in rivers and lakes is a District Council function under Section 31 of the Act.
31. National and regional direction documents also require an integrated approach to freshwater management, the management of potential effects on stream health, and water quality and flows from land use and development. A Water Conservation Order applies to the Mataura River, the Waikaia River and some tributary streams. The Mataura River is also formally recognised for its cultural significance to Ngāi Tahu by way of a statutory acknowledgement. In addition the Mataura River Mātaaitai Reserve Bylaws applies above, at and below, the Mataura Falls. The provisions relating to rivers and their margins are intended to be consistent with, and where appropriate, give effect to these.
32. The ASW Chapter also recognises that the Mataura River and its tributaries are an important recreational resource and amenity feature for the wider community. Both floods and extremely low river flows are common occurrences and climate change forecasts predict an increase in both in the future. Protection works adjacent to the Mataura River have been constructed adjacent to urban areas, providing protection to Gore and Mataura and are frequently used as recreational areas within the floodways.

⁴ [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports/)

6. Consideration of submissions

6.1 Structure of the report

33. Submissions on Activities on the Surface of Water have raised a number of issues which have been grouped by Objectives, Policies and Rules within this report. I have considered substantive commentary on primary submissions contained in further submissions as part of my consideration of the primary submission(s) to which they relate.
34. 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 submission by submission approach. I have organised the evaluation in accordance with the layout of chapters of the PDP as notified.
35. Due to the number of submission points, this evaluation is generic only and may not contain specific recommendations on each submission point, but instead discusses the issues generally. This approach is consistent with Clause 10(2)(a) of Schedule 1 to the RMA. Specific recommendations on each submission / further submission point are contained in **Appendix B**.
36. 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**.
37. 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 prepared for Hearing Stream 1.

6.2 Overview of submissions

38. There were 31 submissions and 2 further submissions received for this topic. They were generally in support or partially supportive of the chapter.
39. Some of the key issues identified through submissions are as follows:
- k. Addition of an objective to ensure protection of ecosystems, wildlife habitats and indigenous biodiversity.
 - l. Where possible the plan provisions should specify the particular effects of concern to mana whenua.
 - m. Support for the shared use and enjoyment of waterways and seek this is reflected in the objectives.

- n. Consideration of activities on the surface of water that can have potential adverse effects on the ecological values associated with the District's rivers.
 - o. Amendments to the overview wording in relation to the potential effects of motorised activities, and that the operative Navigational Safety Bylaw be referenced.
 - p. Reconsideration of the placement of some of the policies as they may be better suited to or supported by a Natural Character or similar chapter.
 - q. Prioritization of the health and safety of all users of waterbodies and their waterbodies.
 - r. Ensuring that infrastructure that has both a functional and operational need to be located above water bodies be enabled.
 - s. A permitted activity status for the use of motorized watercraft that complies with the Operative Environment Southland Navigation Safety Bylaw.
 - t. Clarification that ASW-R9 does not include fish exclusion barriers.
40. A list of submitters and further submitters relating to the topic is provided at the start of this report.
41. General submissions on the chapter are discussed in section 6.4, followed by Objectives in section 6.5, Policies in Section 6.6 and 6.7 and Rules in section 6.8.

6.3 Format for consideration of submissions

42. 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.
43. 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 General submissions – chapter overview

Matters raised by submitters

46. DOC (\$109.098) support in part the overview of the ASW chapter but seek an addition to consider potential adverse ecological values as follows:

While different user groups of the waterways perceive conflict between their activities from time to time, this is not at a scale that requires exclusive separation of activities or other management approaches. Motorised activities do however have the potential to impact on the amenity of the waterways, ~~and~~ adjoining land and could have potential adverse effects on the ecological values associated with the district's rivers. The provisions of this chapter seek to manage these adverse effects, while also providing for the sustainable use of motorised craft.

47. Jet Boating NZ (S64.001) has a view that use and enjoyment of waterways should be permitted and can be shared by various users/organisations. The following wording is supported:

While different user groups of the waterways perceive conflict between their activities from time to time, this is not at a scale that requires exclusive separation of activities or other management approaches.

48. Jet Boating NZ (S64.002) acknowledge that motorized activities have potential for minimal impact on the amenity of waterways and adjoining land but in comparison to natural river fluctuations think the effects are negligible. The following amendment is requested:

Motorized activities do however have the potential to have minimal impact on the amenity of the waterways and adjoining land.

49. Jet Boating NZ (S64.003) recommend the date on the Navigation Safety Bylaw be removed as it is updated every five years. The following amendment is recommended:

Discharges to water, taking and using water, and structures and bed disturbance activities in riverbeds may require resource consent approval from Environment Southland. The operative Navigation Safety Bylaws ~~2009~~ applies to the Gore District and is also administered by Environment Southland.

Assessment

50. The chapter overview provides a brief introduction to the resource management issues associated with the topic and the chapter provisions, it is intended for informative purposes only.
51. In terms of the DOC (S109.098) submission I acknowledge that the paragraph around the impacts of motorised activities appear to only relate to amenity effects, and that the paragraph does not accurately reflect other potential adverse effects managed in the provisions or the issues identified in the Section 32 Report Rivers and their margins⁵. However the proposed wording would emphasise ecological effects specifically, and I consider that a reference to 'natural environment values' would better reflect the full gambit of considerations in a more general term, and I therefore accept the submission in part.

⁵Page 18, Issue 4, Section 32 Report - Rivers and their margins [Section 32 Reports | Let's Talk Gore District \(goredc.govt.nz\)](https://www.goredc.govt.nz/section-32-reports-let-s-talk-gore-district)

52. In terms of the Jet Boating NZ submissions, I acknowledge and accept the support of submission point S64.001 as no change is proposed to the first sentence of the paragraph, however to state that jetboating only have the potential to have minimal impact would be contrary to the identified resource management issues and the provisions, as highlighted in the previous paragraph, and I therefore reject submission point S64.002.
53. In terms of Jet Boating NZ submission point S64.003, I acknowledge that bylaws are regularly reviewed and updated and agree that the reference may become outdated over time. I also consider that it is not necessary to refer to the specific bylaw in the overview, and that a more general reference is preferable for the purpose of the overview, I therefore accept the submission in part with a minor amendment to the proposed text to refer to the full name but omit the year.

Recommendation

54. I recommend, for the reasons given above, that the overview is amended, as shown in Appendix A, and below:

Overview

...

While different user groups of the waterways perceive conflict between their activities from time to time, this is not at a scale that requires exclusive separation of activities or other management approaches. Motorised activities do however have the potential to impact on ~~the amenity of the waterways, and adjoining land~~ other users, the amenity of the surrounding environment, and the natural environment values associated with the district's rivers. The provisions of this chapter seek to manage these adverse effects, while also providing for the sustainable use of motorised craft.

Discharges to water, taking and using water, and structures and bed disturbance activities in river beds may require resource consent approval from Environment Southland. In addition, the Southland Regional Council Navigation Safety Bylaws ~~2009~~ apply to the Gore District and are also administered by Environment Southland.

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

Section 32AA Evaluation

56. The following evaluates the recommendation to amend the Activities on the Surface of Water Chapter Overview under section 32AA of the RMA.

Effectiveness and efficiency

57. The proposed changes do not change the chapter provisions but provide greater direction and clarity to plan users of the resource management issues associated with motorised activities and the provisions in the chapter, and the closely associated responsibilities of Environment

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

Costs and benefits

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. There are no apparent costs with the proposal.

Risk of acting or not acting

The risk of acting or not acting is generally low as the overview is for informative purposes only, however the range of potential effects related to motorised activities will not be highlighted to plan users to if the proposed amendment is not made.

Conclusion as to the most appropriate option

The proposed amendment is considered to be a more appropriate way to assist with achieving the objectives than the notified version of the PDP.

6.5 Objectives ASW-O1 and ASW-O2

Matters raised by submitters

ASW-O1

58. ASW-O1 is copied in below:

ASW-O1

Activities on the surface of *water* and associated facilities and *structures*:

1. contribute to sustainable recreational, social and economic opportunities for the community;
2. maintain and enhance the values associated with *waterbodies* on which surface *water* activities take place; and
3. are resilient to the *effect of climate change*.

59. DOC (\$109.099) and Jet Boating NZ (\$64.004) support ASW-O1 and seek it is retained as notified.

60. Forest and Bird (\$110.041) seek to ensure that ecosystems, habitats and biodiversity are not harmed due to activities on the surface of water with the following addition to ASW-O1:

4. Do not adversely affect aquatic and riparian ecosystems, wildlife habitats and indigenous biodiversity.

NZTA (FS14.020) oppose Forest and Bird's submission as it goes beyond the scope of directives of the NPS for Freshwater and Indigenous Biodiversity.

ASW-O2

61. ASW-O2 is copied in below:

ASW-O2

Mana whenua and tangata whenua are able to express their cultural relationships with the waterways and continue to practice various cultural activities or rituals without being unreasonably restricted by other activities and their associated facilities or structures.

62. DOC (S109.100) support ASW-O2 and seek it is retained as notified.
63. Hokonui Rūnanga (s139.062) support in part ASW-O2 but seek that wherever possible plan provisions should specify the particular effects of concern to mana whenua to ensure the plan provisions are clear and that appropriate effects are identified and assessed. They seek the following amendment:

~~Mana whenua and tangata whenua are able to express their cultural relationships with the waterways and continue to practice various cultural activities or rituals without being unreasonably restricted by other activities and their associated facilities or structures.~~ Activities and structures on the surface of water bodies do not impede access to and exercise of mahinga kai or degrade the mauri of the water body; and Enable mana whenua to express their cultural relationships with the waterways and continue to practice customary uses."

64. Jet Boating NZ (S64.005) seek amendments to ASW-O2 to ensure the shared use and enjoyment of waterways. They seek the following inclusion:

Mana whenua and tangata whenua are able to express their cultural relationships with the waterways and continue to practice various cultural activities or rituals without being unreasonably restricted by other activities and their associated facilities or structures, whilst also reasonably enabling shared use and enjoyment by others.

Assessment

ASW-O1

47. The ASW-O1 objective sets out the overarching outcomes sought to achieve the purpose of the Act in relation to activities on the surface of water. In relation to the values associated with waterbodies on which surface water activities take place these are sought to be maintained and enhanced, as per ASW-O1.2. The values of the waterbodies, which includes aquatic and riparian ecosystems, wildlife habitats and indigenous biodiversity, and directions around these are set out in more detail in the policies, including ASW-P4 and ASW-P5. Although the Forest and Bird submission (s110.041) to a degree links to the values listed in ASW-P4 and ASW-P5 I consider that the wording directive is too specific for the objective. Further the direction 'do not adversely affect' sets out a policy direction to 'avoid' that would align with a non-complying or prohibited rule status, which is not reflected through the provisions. I also agree with the NZTA (FS14.020) submission that the proposed amendment goes beyond the scope of directives of the national policy directions for freshwater and indigenous biodiversity, and I therefore reject the Forest and Bird (s110.041) submission.

48. Support from DOC and Jet Boating NZ for ASW-O1 is acknowledged and accepted as the objective is proposed to be retained.

ASW-O2

49. The ASW-O2 objective relates to the outcomes sought by and for mana whenua in relation to activities on the surface of water. In principle I consider it appropriate to adopt objectives that Hokonui Rūnanga as mana whenua considers best expresses the outcomes sought for managing impacts on their cultural values and kaitiakitanga responsibilities within the PDP. The approach to the Hokonui Rūnanga Inc submissions were considered as part of Hearing Stream 3, and I consider it appropriate to apply a consistent approach to the (s139.062) submission.
50. However, in terms of the specific Hokonui Rūnanga (s139.062) submission, I consider that the specificity of the wording is more suited to a policy rather than an objective, and the proposed directive to 'not impede access to and exercise of...' would align with an 'avoid' policy and potentially a non-complying or prohibited rule status. This direction is not reflected through the provisions, although could potentially be appropriate in specific areas such as the Mātaura River Mātaitai Reserve.
51. However, the proposed wording does not provide a distinction between areas, and in my opinion the broad application of the proposed objective goes beyond the direction to achieve the purpose of the Act to 'recognise and provide for' section 6 matters and 'have particular regard to' Section 7 matters. I therefore consider that the notified PDP wording of ASW-O2 is more appropriate than the proposal and recommend rejecting the s139.062 submission, however I would invite Hokonui Rūnanga to provide alternative wording as my position may change if further evidence is provided.
52. In terms of the Jet Boating NZ (S64.005) proposal to include a reference to mana whenua enabling shared use and enjoyment by others, the provision for recreational, social and economic opportunities for the community are addressed in ASW-O1.1. It is also not mana whenua's role or responsibility to enable shared use. I therefore do not support the proposed change and reject the submission.
53. The support of DOC (S109.100) for ASW-O2 is acknowledged and accepted as the objective is proposed to be retained.

Recommendation

54. I recommend, for the reasons given above, that the Activities on the Surface of Water objectives are retained as notified and as shown in **Appendix A**.
55. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.6 Policies- ASW-P1, ASW-P2, ASW-P3

Matters raised by submitters

ASW-P1

56. ASW-P1 is copied in below:

ASW-P1

Facilitate and promote the recreational and cultural use of *waterbodies*.

57. Jet Boating NZ (S64.006) support ASW-P1 and seek it is retained as notified.

ASW-P2

58. ASW-P2 is copied in below:

ASW-P2

Prioritise the health and safety of those undertaking non-commercial and non-motorised recreational and cultural activities within *waterbodies* and their margins.

59. SDC (S146.059) support in part ASW-P2 but recommend that it may be better suited to, or supported in, a Natural Character chapter.

60. Jet Boating NZ (S64.007) considers health and safety of all waterway users equally important. They seek the following amendment:

Prioritize the health and safety of those undertaking ~~non-commercial and non-motorized recreational and cultural~~ activities within waterbodies and their margins.

ASW-P3

61. ASW-P3 is copied in below:

ASW-P3

Enable the location of *infrastructure* and equipment used for monitoring or testing, where there is a *functional need* for this to be located on or above the surface of *waterbodies*.

62. Transpower (S101.067) support in part ASW-P3 but seek to include activities that have an operational need for locating above a waterbody. The following amendment is required:

Enable the location of infrastructure and equipment used for monitoring or testing, where there is a functional need or operational need for this to be located on or above the surface of waterbodies.

63. Jet Boating NZ (S64.008) generally supports ASW-P3 but is concerned that some infrastructure and/or equipment may present as an unacceptable navigation hazard. The following is requested:

Enable the location of infrastructure and equipment used for monitoring or testing, where there is a functional need for this to be located on or above the surface of waterbodies and it does not create an unacceptable navigational hazard to waterway users.

Assessment

ASW-P1

64. Support from Jet Boating NZ (S64.006) support of ASW-P1 is acknowledged and accepted as the policy is proposed to be retained.

ASW-P2

65. SDC (S146.059) support in part is acknowledged, but rejected as ASW-P2 does not relate to natural character. However, I note a similar SDC submission (S146.060) in relation to ASW-P4 and the matter will be addressed in Section 6.7 of this report.
66. In relation to the Jet Boating NZ (S64.007) submission to consider health and safety of all waterway users equally important, I agree that health and safety of all users are important. However, I consider that some groups or users may be more vulnerable to the use of motorised craft including those promoted in AWS-O1, and that commercial interest should not take precedence over others, and that this direction should be retained in the policy. Moreover ASW-P6 provides direction to limit activities, structures and infrastructure to maintain a safe environment for surface water activities. As the matter is addressed elsewhere in the policy framework I reject the submission.

ASW-P3

67. In relation to the Transpower (S101.067) submission to include activities that have an operational need for locating above a waterbody ASW-P3, I agree that this is a relevant consideration when considering the location of infrastructure, and is consistent with Policy 3 of the NPS-ET, and therefore accept the submission.
68. In relation to Jet Boating NZ (S64.008) submission to make a reference to navigational hazards, I consider that ASW-P6 provides direction to limit activities, structures and infrastructure to maintain a safe environment for surface water activities, including for the navigation of watercraft. As the matter is addressed elsewhere in the policy framework I reject the submission.

69. Recommendation

70. I recommend, for the reasons given above, that ASW-P3 is amended as shown in **Appendix A**, and below:

ASW-P3

Enable the location of *infrastructure* and equipment used for monitoring or testing, where there is a *functional need* or operational need for this to be located on or above the surface of *waterbodies*

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

Section 32AA Evaluation

72. The following evaluates the recommendation to amend ASW-P3 under section 32AA of the RMA.

Effectiveness and efficiency

The proposal will provide greater direction and clarity to plan users of how the objectives of the plan are sought to be achieved, including ASW-O1 in that facilities and structures on the surface of water contribute to sustainable recreational, social and economic opportunities for the community, and INFR-O1 to provide for infrastructure to meet the needs of the community. The proposed change is consistent with the direction of higher order documents such the RPS policy INF.1 to make provision for significant and critical infrastructure, and policy 3 of the NPS-ET in considering technical and operational requirements of the network when managing the effect on transmission activities. The amendment will enable the Council to effectively administer the PDP in a clear and consistent manner.

Costs and benefits

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. There are no apparent costs with the proposal.

Risk of acting or not acting

There is the potential for the operational need of infrastructure to not be appropriately considered in decision making if the proposed amendment is not made.

Conclusion as to the most appropriate option

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

6.7 Policies – ASW-P4, ASW-P5, ASW-P6

Matters raised by submitters

73. ASW-P4, ASW-P5 and ASW-P6 are copied in below:

ASW-P4

Manage the *effects* of activities undertaken on the surface of *water* to maintain or enhance:

1. the natural character, landscape values and amenity of the *waterbody* and its margins;
2. *water* quality and quantity;
3. aquatic and riparian ecosystems, wildlife habitats and indigenous *biodiversity*;
4. public and customary access, customary rights, use and enjoyment of that locality; and
5. Ngāi Tahu cultural values including those listed in MW-2.3.

ASW-P5

Limit commercial surface *water* activities to those that are compatible with:

1. the values of that *waterbody*, including:
 - (a) the natural values and amenity of the *waterbody* and its margins;
 - (b) wildlife habitats and indigenous *biodiversity*;
 - (c) public use and enjoyment of that locality; and
 - (d) Ngāi Tahu cultural values including those listed in MW-2.3.
2. the surrounding land uses and established *infrastructure*; and

3. protected customary rights and Māori cultural practices and activities.

ASW-P6

Limit activities, *structures* and *infrastructure* on or above the surface of *waterbodies* to ensure these are consistent with the provisions of the Maitake River Water Conservation Order, and that their location:

1. maintains the flow of *water* in that *waterbody*;
2. maintains a safe environment for surface *water* activities, including the navigation of watercraft; and
3. is resilient to the *effects of climate change*.

74. DOC (\$109.101), (\$109.102) and (\$109.103) supports ASW-P4, ASW-P5 and ASW-P6 and seek they are retained as notified.
75. SDC (\$146.060) and (\$146.061) support in part ASW-P4 and ASW- P5 but consider that they may be better placed in or supported by a Natural Character or other such chapter.
76. Jet Boating NZ (\$64.009) support ASW-P6 and seek it is retained as notified.
77. KiwiRail (\$132.066) seek clarification on ASW-P6 on whether Council has the jurisdiction to include objectives, policies and rules that relate to activities/structures/infrastructure on the surface of waterbodies.

Assessment

78. The support from DOC (\$109.101), (\$109.102) (\$109.103) for ASW-P4, ASW-P5 and ASW-P6, and from Jet Boating NZ \$64.009 for ASW-P6 is acknowledged and accepted as the policies are recommended to be retained as notified.
79. The support in part from SDC (\$146.060) and (\$146.061) for ASW-P4 and ASW- P5 is acknowledged and accepted as I agree that the policies could be supported by a natural character chapter, and this is consistent with the direction of Minute 18 of the Hearings Panel and will be further considered in Hearing Stream 9.
80. In relation to the KiwiRail (\$132.066) submission seeking clarification on whether Council has the jurisdiction to include provisions that relate to surface water activities, the function of territorial authorities under Section 31(1)(e) includes the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes.

Recommendation

81. I recommend, for the reasons given above, that ASW-P4, ASW-P5 and ASW-P6 are retained as notified and as shown in **Appendix A**.
82. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.8 Rules – ASW-R3, ASW-R4, ASW-R7, ASW-R8, ASW-R9

Matters raised by submitters

ASW-R3

83. ASW-R3 provides for Operation and maintenance of established infrastructure as a permitted activity.
84. Transpower (S101.068) support ASW-R3 and seek it is retained as notified.
85. KiwiRail (S132.067) support ASW-R3 subject to the clarification sought of ASW-P6 and supports the permitted activity status associated with ongoing operation, maintenance and upgrading of infrastructure.

ASW-R4

86. ASW-R4 provides for Use of motorised watercraft for government statutory functions as a permitted activity.
87. NZDF (S132.067) supports ASW-R4 and seek it is retained as notified.
88. Jet Boating NZ (S64.010) support ASW-R4 and seek it is retained as notified.

ASW-R5

89. ASW-R5 provides for Commercial Activities as permitted activities where the commercial activity is guided fishing that does not utilise any motorised watercraft.
90. Jet Boating NZ (S64.011) support ASW-R5 and seek it is retained as notified.

ASW-R7

91. ASW-R7 is copied in below:

ASW-R7 Sport and Recreation Activity

Mataura River

Activity status: Permitted

Where:

1. The activity does not utilise any motorised watercraft; or
2. The use of motorised watercraft on any part of the Mataura River (excluding its tributaries) where:
 - (a) the activity, including events organised by member clubs of the NZ Jet boating Association, occurs during the period 1 August to 30 September.
Note: This activity requires approval under the Southland Regional Council Navigation Safety Bylaws 2009 (revised 2015) administered by Environment Southland.
 - (b) at other times, during the period 1 October to 31 July, motorised craft must not travel at a speed that exceeds 5 knots.

Except that:

Within that part of the Mataura River shown on the District Plan Maps within the area of *water* 300 metres long and 100 metres wide, 4.8 kilometres downstream from Gore at Beattie's Beach; the activity may be undertaken at any time.

92. Jet Boating NZ (S64.012) oppose ASW-R7 and seek that the surface of water activities in the PDP are consistent with adjacent District Plans, given the Maitava River flows in from Southland and out to Southland. The following change requested to condition 2:

2. The use of motorised watercraft complies with the Operative Environment Southland Navigation Safety Bylaw, the relevant Regional Plans in particular for structures in the beds of rivers.

93. DOC (S109.104) supports ASW-R7 and seeks it is retained as notified. Jet Boating NZ (FS13.1) oppose this submission as they seek maintained access to the Maitava River.

ASW-R8

94. ASW-R8 specifies that any activities and associated facilities and structures on the surface of waterbodies not provided for in the list of rules is a Discretionary Activity.

95. DOC (S109.105) supports ASW-R8 and seek it is retained as notified.

ASW-R9

96. ASW-R9 prohibits the damming of waters of Maitava River, Otamita Stream, or any other tributaries of the Maitava River upstream of its confluence with the Otamita Stream.

97. DOC (S109.106) support in part ASW-R9 but seeks a note to clarify that the rule does not include fish exclusion barriers which are sometimes required to avoid trout or undesirable species incursions where there is non-diadromous galaxias habitat.

Assessment

ASW-R1 to ASW-R4 and ASW-R5

98. The support of Transpower (S101.068) and KiwiRail (S132.067) for ASW-R3, NZDF (S132.067) for ASW-R4 and Jet Boating NZ (S64.010) (S64.011) for ASW-R4 and ASW-R5 is acknowledged and accepted as no changes are recommended to the rules.

ASW-R7

99. ASW-R7 permits recreational use of motorised craft and is consistent with the speed limits and exemptions set out in the Southland Regional Council Navigation Safety Bylaws 2009 (revised 2015) administered by Environment Southland for the Maitava River. In relation to the Jet Boating NZ (S64.012) submission to directly refer to the Navigation Safety Bylaws I consider that there would be no change in effect to the rule, as this would achieve the same outcome. However, for the ease of plan users I consider that it is clearer to have the conditions included in the rule rather than referencing an external document and therefore reject the submission.

100. The support of DOC (S109.104) for ASW-R7 is acknowledged and accepted as no change is recommended to the rule, and I reject the Jet Boating NZ (FS13.1) further submission.

ASW-R8

101. The support of DOC (S109.105) for ASW-R8 is acknowledged and accepted as no change is recommended to the rule.

ASW-R9

102. The ASW-R9 rule gives effect to the Water Conservation Order that applies to the Mataura River and refers to outstanding fisheries and angling amenity. The district plan must not be inconsistent with the provisions of a Water Conservation Order. The order prohibits the construction of any dam on the Mataura River, the Waikaia River, Otamita Stream and all tributaries of the Mataura River above the confluence with the Otamita Stream. I acknowledge that the intent with the DOC (S109.106) submission is to protect indigenous biodiversity consistent with Section 6(c) of the Act, however it is unclear from the submission what a fish exclusion barrier entails, and I do not have sufficient information to determine whether it could dam the waters and be contrary to the Water Conservation Order. As I cannot determine whether it is appropriate to include the note, I reject the submission. However, my position on this may change should additional evidence be provided by the submitter.

Recommendation

103. I recommend, for the reasons given above, that the ASW rules are retained as shown in **Appendix A**.
104. It is recommended that submissions and further submissions are either accepted, accepted in part or rejected as shown in **Appendix B**.

6.9 Submissions on rules with legal effect

105. The Activities on the Surface of Water Chapter rules have immediate legal effect. The rules will continue to have legal effect as notified until a decision is made and any changes to the rule is made operative.

7. Consequential and Minor Amendments

106. Clause 16(2) of the RMA allows a local authority to make an amendment to a proposed plan without using a Schedule 1 process, where such an alteration is of minor effect, or may correct any minor errors. A correction has been made in **Appendix A** under this clause to the left hand column of the rule table which specifies where the rule applies with the following change:

Surface of all Water**B**bodies

The correction aligns with the spelling of the defined term for 'waterbody'.

107. Clause 10(2)b of the RMA allows decisions on the PDP to include matters relating to consequential alterations to the PDP which are necessary, relevant or arising from submissions. Consequential amendments to the Activities on the Surface of Water chapter may be required to the objectives and policies relating to Mana Whenua and Ngāi Tahu cultural values based on previous Section 42A report recommendations. Consequential amendments

to the PDP as a result of submission may include supporting the Activities on the Surface of Water chapter provision with a Natural Character chapter.

8. Conclusions and Closing Recommendation

8.1 Conclusions

108. This report has provided an assessment of submissions received on the Activities on the Surface of Water Chapter.

109. The submissions were supportive of the objectives in relation to the shared use of waterbodies and the values of the waterbody, Submissions sought amendments to:

- a. protect indigenous biodiversity and specify particular effects of concern to mana whenua;
- b. support the provisions with a Natural Character chapter, recognise the health and safety of all users of waterbodies;
- c. provide for consideration of operational need for the location of infrastructure, reference the Operative Environment Southland Navigation Safety Bylaw to permit motorised watercraft; and
- d. include a note exemption for fish barriers in relation to damming structures.

110. I consider that the submissions on the ASW Chapter 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. Amendments to the overview wording in relation to the potential effects of motorised activities, and a more general reference to matters and documents administered by Environment Southland
- b. The inclusion of consideration for operational need in the location of infrastructure and equipment used for monitoring or testing in the policy framework.

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.

8.2 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
Tina Carlson- McColl Consultant Planner		4 October 2024