

OFFICER'S REPORT FOR:

Hearings Panel

SUBJECT:

Proposed Waimakariri District Plan: Tomonga
mārea - Public Access

PREPARED BY:

Bryony Steven

REPORT DATED:

15-May-2023 Updated report with errors
corrected in track changes 10 August 2023

DATE OF HEARING:

Hearing Stream 4 (17 – 21 July 2023)



WAIMAKARIRI
DISTRICT COUNCIL

Executive Summary

1. This report considers submissions received by the Waimakariri District Council in relation to the relevant objective, policies, and advice notes as they apply to the Public Access chapter in the Proposed Waimakariri District Plan. This report outlines recommendations in response to the issues that have emerged from these submissions.
2. The Tomonga mārea - Public Access chapter received 25 submission points from nine submitters. An additional four submission points that were made across the whole Proposed Plan are addressed in this report for how they apply to the Public Access chapter (PA chapter). There are eight further submitters on the original submission points addressed in this report. The majority of primary submissions received supported the provisions as notified and four submissions sought various amendments. The following are considered to be the key issues in contention in the chapter:
 - Avoiding adverse effects on productive soils and rural production activities;
 - Compensation for esplanade reserves and strips;
 - Provision to waive requirements for esplanade areas; and
 - Provision to provide for education on where public access is available.
3. This report addresses each of these matters, as well as any other issues raised by submissions.
4. The PA chapter may be subject to a number of consequential amendments arising from submissions to the whole of the Proposed Plan and other chapters.
5. As a result of my analysis of submissions, I have recommended a change to the Proposed Plan provisions to address matters raised in submissions and are summarised below:
 - Amend PA-P3 to add a new clause to provide for restriction on public access where necessary to protect land-based primary production from potential reverse sensitivity effects that cannot otherwise be mitigated.
6. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the Proposed Plan should be amended as set out in **Appendix A** of this report.
7. For the reasons set out in the Section 32AA evaluation and included throughout this report, I consider that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:
 - achieve the purpose of the RMA where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives, and
 - achieve the relevant objectives of the Proposed Plan, in respect to the proposed provisions.

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Interpretation

8. This Officer's reports utilises a number of abbreviations for brevity as set out in [Table 1](#) and 2 below:

Table 1: Abbreviations

| Abbreviation | Means |
|------------------|--|
| RMA | Resource Management Act 1991 |
| District Council | Waimakariri District Council |
| Operative Plan | Operative Waimakariri District Plan |
| Proposed Plan | Proposed Waimakariri District Plan |
| ECan | Environment Canterbury/Canterbury Regional Council |
| NPS-HPL | National Policy Statement on Highly Productive Land 2022 |
| PA chapter | Public Access chapter |
| RPS | Operative Canterbury Regional Policy Statement |
| WDC | Waimakariri District Council |

Table 2: Abbreviations of Submitters' Names

| Abbreviation | Means |
|-------------------|--|
| CIAL | Christchurch International Airport Ltd |
| Clampett | Clampett Investments Limited |
| DoC | Department of Conservation Te Papa Atawhai |
| Federated Farmers | Federated Farmers of New Zealand Inc. |
| Forest and Bird | Royal Forest and Bird Protection Society of New Zealand Inc. |
| Hort NZ | Horticulture New Zealand |

In addition, references to submissions includes further submissions, unless otherwise stated.

1 Introduction

1.1 Purpose

9. The purpose of this report is to provide the Hearings Panel with a summary and analysis of the submissions received on the PA chapter and to recommend possible amendments to the Proposed Plan in response to those submissions.
10. This report is prepared under section 42A of the RMA. It considers submissions received by the District Council in relation to the relevant objectives, policies, and advice notes as they apply to the PA chapter in the Proposed Plan. The report outlines recommendations in response to the key issues that have emerged from these submissions.
11. This report discusses general issues or topics arising, the original and further submissions received following notification of the Proposed Plan, makes recommendations as to whether or not those submissions should be accepted or rejected, and concludes with a recommendation for changes to the PA provisions in the Proposed Plan based on the preceding discussion in the report.
12. The recommendations are informed by the evaluations I have undertaken as the Reporting Officer. No technical advice was sought to address submissions on the PA chapter. In preparing this report I have had regard to recommendations made on SD-O1(4) *Natural environment* and UFD-P2(2)(c) *Identification/location of new Residential Development Areas* in the Strategic Directions and Urban Form and Development s42A Reports. At the time of writing this report I have not had the benefit of reviewing the reporting officers right of reply in respect of these provisions.
13. This report is provided to assist the Hearings Panel in their role as Independent Commissioners. The Hearings Panel may choose to accept or reject the conclusions and recommendations of this report and may come to different conclusions and make different recommendations, based on the information and evidence provided to them by submitters.

1.2 Author

14. My name is Bryony Annette Steven. My qualifications and experience are set out in **Appendix C** of this report.
15. My role in preparing this report is that of an expert planner.
16. I was not involved in the preparation of the Proposed Plan and did not author the Section 32 Evaluation Report for the Public Access chapter. However, I have reviewed the Section 32 Evaluation Report in preparing my evidence.
17. Although this is a District Council Hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court 2023. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence.
18. The scope of my evidence relates to the Public Access chapter. I confirm that the issues addressed in this statement of evidence are within my area of expertise as an expert policy planner.

19. Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.
20. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

1.3 Key Issues in Contention

21. The PA chapter received 25 submission points from nine submitters and eight further submitters made further submissions on the original submission points addressed in this report. The majority of primary submissions received supported the provisions as notified and four submissions sought various amendments. These submissions sought outcomes such as amendments to PA-P2 *Providing for public access* to ensure public access avoids adverse effects on rural production activities and productive soils.
22. Additionally, four general submission points from two submitters were received on the whole of the Proposed Plan and these submission points were opposed by five further submitters. I have considered these submissions and further submissions in relation to the PA chapter.
23. I consider the following to be the key issues in contention in the chapter:
 - Avoiding adverse effects on productive soils and rural production activities;
 - Compensation for esplanade reserves and strips;
 - Provision to waive requirements for esplanade areas; and
 - Provision for public education on where public access is available.
24. I address each of these key issues in this report, as well as any other issues raised by submissions.

1.4 Procedural Matters

25. At the time of writing this report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on the PA chapter.

2 Statutory Considerations

2.1 Resource Management Act 1991

26. The Proposed Plan has been prepared in accordance with the RMA and in particular, the requirements of:

- section 74 Matters to be considered by territorial authority, and
- section 75 Contents of district plans.

27. There are a number of higher order planning documents and strategic plans that provide direction and guidance for the preparation and content of the Proposed Plan. These documents are discussed in detail within the Section 32 Evaluation Report: Public Access.

2.2 Section 32AA

28. I have undertaken an evaluation of the recommended amendments to provisions since the initial section 32 evaluation was undertaken in accordance with s32AA . Section 32AA states:

32AA Requirements for undertaking and publishing further evaluations

(1) A 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) be 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).

29. The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the PA chapter is contained within the assessment of the relief sought in submissions in section 3 of this report, as required by s32AA(1)(d)(ii).

2.3 Trade Competition

30. Trade competition is not considered relevant to the Public Access provisions of the Proposed Plan.

31. There are no known trade competition issues raised within the submissions.

3 Consideration of Submissions and Further Submissions

3.1 Overview

32. There were nine submitters on the PA chapter and a total of 25 submission points. The chapter was widely supported by the submitters with only four submission points seeking changes.

- Objective PA-O1 *Provision of public access* was supported as notified by Fulton Hogan [41.28], Transpower [195.91], Hort NZ [295.96], ECan [316.120], RIDL [326.332], Federated Farmers [414.152] and DoC [419.110].
- Policy PA-P1 *Maintaining and enhancing public access* was supported as notified by RIDL [326.333] and DoC [419.111].
- Policy PA-P2 *Providing for public access* was supported as notified by ECan [316.121], RIDL [326.334] and DoC [419.112]. Hort NZ [295.97] and Federated Farmers [414.153] seek amendments to PA-P2.
- Policy PA-P3 *Adverse effects of public access* was supported as notified by Fulton Hogan [41.29], Canterbury Botanical Society [122.4], Transpower [195.92], Hort NZ [295.98], RIDL [326.335], Federated Farmers [414.154], and DoC [419.113].
- Federated Farmers [414.155 and 414.156] proposed two new policies.

33. An additional four general submission points by Clampett [284.1] and RIDL [326.1, 326.2 and 326.3] sought amendments across the whole of the Proposed Plan and are addressed in this report for how they apply to the PA chapter.

34. Further submissions that support or oppose original submissions in their entirety are:

- Forest and Bird [FS78] supports the submissions from Canterbury Botanical Society [122] and DoC [419] in their entirety as they are *"in accordance with the requirements of the RMA"*.
- CIAL [FS80] supports the submission from ECan [316] and support ECan's request that the *"Proposed Plan give effect to the CRPS."*
- CIAL [FS80] supports the submission from Hort NZ [295] and *"agrees that management of highly productive land must be addressed in the Proposed Plan."* CIAL point out that the National Policy Statement for Highly Productive Land (NPS-HPL) is now operative and directs urban growth to be avoided on highly productive land.
- Richard and Geoff Spark [FS37] and David Cowley [FS41] oppose the whole submission by ECan [316] and state *"the amendments sought are not realistic, achievable, necessary, or appropriate, and are inconsistent with the RMA and national policy direction, including the NPS-UD."* The further submitters seek the ECan submission is rejected where it is inconsistent with, or will have implications for, the relief sought in their original submissions.
- Ohoka Residents Association [FS137] oppose the entirety of the submission by RIDL [326].

35. With the exception of the Forest and Bird further submission [FS78], the general further submissions are not specific to the submission points addressed in this report and I have not considered their content further.
36. Further submissions on the plan wide submissions from RIDL discussed in paragraph 33, were received from Forest and Bird [FS78], Ohoka Residents Association [FS84], Ohoka Residents Association [FS137]¹, Andrea Marsden [FS119], and Christopher Marsden [FS120]. These further submissions opposed the relief sought by RIDL.
37. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submission(s).

3.1.1 Report Structure

38. Submissions on the PA chapter raised a small number of issues which have been addressed based on the provisions to which they relate. I have considered further submissions on primary submissions as part of my consideration of the primary submissions to which they relate.
39. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on a 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 Proposed Plan as notified.
40. 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 submissions table in **Appendix B**. Where I have undertaken further evaluation of the relief sought in a submission, 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 in **Appendix A**.
41. There are no definitions specific to this topic.

3.1.2 Format for Consideration of Submissions

42. For each identified topic, I have considered the submissions that are seeking changes to the Proposed Plan in the following format:
 - Matters raised by submitters;
 - Assessment;
 - Summary of recommendations; and
 - Section 32AA evaluation.
43. The recommended amendments to the PA chapter are set out in **Appendix A** of this report where all text changes are shown in a consolidated manner.

¹ I advise that the Ohoka Residents Association submitted two further submissions; [FS84] and [FS137]. Further submission 137 was received after the close of further submissions and was accepted by the Hearings Panel Chair.

44. I have undertaken a s32AA evaluation in respect to the recommended amendments in my assessment.

3.2 General

3.2.1 Matters raised by submitters

45. The Kaiapoi-Tuahiwi Community Board [147.15] support the provisions in the PA chapter.

3.2.2 Assessment

46. I concur with the submission point and recommend the submission is **accepted in part**, subject to amendments made in response to other submissions on the PA chapter.

3.2.3 Summary of recommendations

47. I recommend that the submission from Kaiapoi-Tuahiwi Community Board [147.15] be **accepted in part**.

48. I recommend that no change be made to the PA chapter in the Proposed Plan in response to the submission.

3.3 Objective PA-O1 Provision of public access

3.3.1 Matters raised by submitters

49. Fulton Hogan [41.28], Transpower [195.91], Hort NZ [295.96], ECan [316.120], RIDL [326.332], Federated Farmers [414.152], and Doc [419.110] support PA-O1 and seek it is retained as notified.

50. Fulton Hogan [41.28] and Transpower [195.91] both support the concept that public access can be restricted where there may be adverse effects on health and safety. Transpower note that this is relevant to the safe operation, maintenance, and upgrade of the National Grid.

51. Hort NZ [295.96] support that the provision acknowledges effects on private property owners, and that public access could compromise "*the ability to continue primary production activities.*"

52. ECan [316.120] identify that PA-O1 gives effect to the Regional Policy Statement (RPS).

53. Federated Farmers [414.152] support "*the wording that access must not create adverse effects on the rights of private property owners.*" The submitter states that landowner permission is required to cross private land and that limiting public access is appropriate and legal when access will be unsafe or disruptive to farming activities.

Further submissions

54. CIAL [FS80] support the Hort NZ [295.96] submission.

55. Richard and Geoff Spark [FS37] and David Cowley [FS41] oppose the ECan [316.120] submission point. CIAL [FS80] support the ECan [316.120] submission point.

56. Forest and Bird [FS78] support the DoC [419.110] submission point.

57. Ohoka Residents Association [FS137] oppose the RIDL [326.332] submission point.

3.3.2 Assessment

58. I concur with the submissions and recognise the restriction of public access is appropriate in some circumstances as provided for in PA-O1.

3.3.3 Summary of recommendations

59. I recommend that the submissions from Fulton Hogan [41.28], Transpower [195.91], Hort NZ [295.96], ECan [316.120], RIDL [326.332], Federated Farmers [414.152], and Doc [419.110] be **accepted**.
60. My recommendations in relation to the further submissions by CIAL [FS80], Richard and Geoff Spark [FS37], David Cowley[FS41], Forest and Bird [FS78], and the Ohoka Residents Association [FS137] reflect the recommendations on the relevant primary submission.
61. I recommend that no change be made to the PA chapter in the Proposed Plan in response to these submissions.

3.4 Policy PA-P1 Maintaining and enhancing public access

3.4.1 Matters raised by submitters

62. RIDL [326.333] and DoC [419.111] support PA-P1 as notified and seek it is retained.

Further submissions

63. Ohoka Residents Association [FS137] oppose the RIDL [326.333] submission point.
64. Forest and Bird [FS78] support the DoC [419.111] submission point.

3.4.2 Assessment

65. I concur with the submissions.

3.4.3 Summary of recommendations

66. I recommend that the submissions from RIDL [326.333] and DoC [419.111] be **accepted**.
67. My recommendations in relation to the further submissions by Ohoka Residents Association [FS137] and Forest and Bird [FS78] reflect the recommendations on the relevant primary submission.
68. I recommend that no change be made to the PA chapter in the Proposed Plan in response to these submissions.

3.5 Policy PA-P2 Providing for public access

3.5.1 Matters raised by submitters

69. Hort NZ [295.97] request an amendment to PA-P2 to insert a new clause:

"4. ensuring access avoids adverse effects on productive soils and established rural production activities."

Hort NZ supports PA-P2(2) *"that takes into account the risk to public health and safety."* However, they point out that *"Many horticultural operations require the use of agrichemical sprays to ensure*

plant health and the use of heavy machinery. Allowing public access along land adjoining horticultural operations has the potential to increase health and safety risks.

Public access is likely to result in reverse sensitivity issues arising as some members of the general public complain of noise, spray and visual amenity. Reverse sensitivity issues contribute to the loss of productivity by limiting operation."

Hort NZ also identify that *"rural character and form are as much a part of the landscape as the subject water body."*

70. Federated Farmers [414.153] submitted to insert the following new clause into PA-P2:

"4. Compensation will be payable for esplanades reserves and strips vested in accordance with Section 237E and 237F of the RMA, unless agreed otherwise."

Federated Farmers state that: *"compensation is payable under Sections 237E.2 and 237F [RMA]. Landowners should not be compelled to gift land without compensation."*

71. ECan [316.121], RIDL [326.334] and DoC [419.112] support PA-P2 as notified and seek it is retained.

Further submissions

72. CIAL [FS80] support the Hort NZ [295.97] submission point.

73. Richard and Geoff Spark [FS37] and David Cowley [FS41] oppose the ECan [316.121] submission point. CIAL [FS80] support the ECan [316.121] submission point.

74. Ohoka Residents Association [FS137] oppose the RIDL [326.334] submission point.

75. Forest and Bird [FS78] support the DoC [419.112] submission point.

3.5.2 Assessment

Hort NZ [295.97] - public access and productive soil

76. The submission by Hort NZ seeks policy direction to protect productive soils and established rural production activities from the adverse effects of public access.

77. At the time that Hort NZ submitted on the Proposed Plan, the National Policy Statement for Highly Productive Land (NPS-HPL) was not operative. I consider the specific matter of public access raised within the assessment of the Hort NZ submission on PA-P2 requires the newly operative NPS-HPL to be considered. The wider applicability of the NPS-HPL in relation to the Proposed Plan will be addressed in greater detail in later reports.

78. Clause 3.9(2)(c) of the NPS-HPL provides for public access as an appropriate use or development of highly productive land as it is for a purpose under s6(d) of the RMA and is also specifically provided for under cl 3.9(2)(i) of the NPS-HPL.

79. The provisions of cl 3.9(2) are subject to the measures in cl 3.9(3) and 3.9(4). Clause 3.9(3) requires Council to take measures to ensure the use (in this case public access):

(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and

(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

80. Clause 3.9(4) requires the District Plan to include objectives, policies, and rules to give effect to cl 3.9.
81. Hort NZ identify potential health and safety risks and reverse sensitivity issues arising from the provision of public access adjacent to horticultural operations e.g. complaints about visual amenity, noise, and agrichemical sprays. Health and safety risks are already provided for in PA-P3 *Adverse effects of public access* that enables the restriction of public access where it is necessary to protect public health or safety (PA-P3(4)). I consider this sufficiently provides for the health and safety concern raised by Hort NZ.
82. As the NPS-HPL cl 3.9(4) requires the District Plan to have provisions to give effect to clause 3.9, I consider an amendment to PA-P3 to add a new clause is appropriate to give effect to the NPS-HPL within the PA chapter. Hort NZ sought the amendment to PA-P2, however, I think amendment to PA-P3 is more appropriate as PA-P3 is concerned with the adverse effects of public access whereas PA-P2 seeks to provide for new and enhanced public access.

Recommendation

83. I recommend PA-P3 is amended as shown in **Appendix A** to read:

Restrict public access to and along the CMA and water bodies with high values, where it is necessary to protect:

...

6. land-based primary production from potential reverse sensitivity effects where it cannot otherwise be mitigated.

84. The proposed wording diverges from the wording requested by Hort NZ. However, it is more in line with the wording in the NPS-HPL. The proposed wording reflects cl 3.9(3)(b) of the NPS-HPL but does not reflect the wording in cl 3.9(3)(a) as I consider public access is more likely to contribute towards reverse sensitivity issues than the loss of the availability and productive capacity of highly productive land. This is because the provision of public access typically only takes an area sufficient to provide walking and vehicle access and would potentially already be subject to other methods to provide access, including esplanade agreements or reserves.

Federated Farmers [414.153] - compensation for the taking of esplanade reserves/ strips

85. Federated Farmers [414.153] submitted to amend PA-P2 to add a new clause to provide for compensation on the taking of esplanade reserves and strips. I consider the suggested amendment may be misleading to plan users as compensation is not payable in all situations. In accordance with s237E(2) of the RMA, where an esplanade reserve or strip on an allotment less than 4ha, is greater than the 20m minimum, compensation is payable for the area above the 20m, unless the owner agrees otherwise. Whereas section 237F provides for compensation for an esplanade reserve or strip of any size that is taken on an allotment of 4ha or more, unless the owner agrees otherwise.
86. The wording of the requested amendment may incorrectly imply to plan users that compensation is payable on the taking of esplanade reserves/strips in all circumstances. I also consider the

requested amendment within a policy to be inappropriate as the amendment is an operational function best carried out at the consent stage subject to the specific context of any subdivision or land use application and it is therefore unnecessary to add this as a policy.

87. I agree with the submission by ECan [316.121], RIDL [326.334] and DoC [419.112].

3.5.3 Summary of recommendations

88. For the reasons outlined in the assessment above, I recommend the submissions by ECan [316.121], RIDL [326.334] and DoC [419.112] be **accepted**.

89. For the reasons outlined in the assessment above, I recommend the submission by Hort NZ [295.97] be **accepted in part**.

90. For the reasons outlined in the assessment above, I recommend the submissions by Federated Farmers [414.153] be **rejected**.

91. My recommendations in relation to the further submissions by Richard and Geoff Spark [FS37], David Cowley [FS41], CIAL [FS80], Ohoka Residents Association [FS137], and Forest and Bird [FS78] reflect the recommendations on the relevant primary submission.

92. I recommend that PA-P3 be amended to read:

Restrict public access to and along the CMA and water bodies with high values, where it is necessary to protect:

...

6. land-based primary production from potential reverse sensitivity effects where it cannot otherwise be mitigated.

3.5.4 Section 32AA evaluation

93. In my opinion, the amendment to PA-P3 is more appropriate in achieving the objectives of the Proposed Plan than the notified provisions. It better gives effect to the NPS-HPL, and it provides greater certainty to land-based primary producers that public access can be restricted when there are reverse sensitivity effects that cannot be mitigated. The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions.

3.6 Policy PA-P3 Adverse effects of public access

3.6.1 Matters raised by submitters

94. Fulton Hogan [41.29], Canterbury Botanical Society [122.4], Transpower [195.92], Hort NZ [295.98], RIDL [326.335], Federated Farmers [414.154], and DoC [419.113] all support PA-P3 as notified and seek the policy is retained.

95. Fulton Hogan and Transpower support the restriction of public access to protect public health and safety and Transpower consider the policy "*gives effect to Policies 2 and 5 of the NPSET*" [National Policy Statement on Electricity Transmission].

96. Canterbury Botanical Society support that public access can be restricted "*where necessary to protect naturally rare or threatened indigenous flora.*"

97. Hort NZ and Federated Farmers support restrictions on public access that could adversely affect private property rights and Hort NZ specifically identify effects that could compromise the *"ability to continue primary production activities."*

Further submissions

98. Forest and Bird [FS78] support the Canterbury Botanical Society [122.4] submission point.

99. CIAL [FS80] support the Hort NZ [295.98] submission point.

100. Forest and Bird [FS78] support the DoC [419.113] submission point.

101. Ohoka Residents Association [FS137] oppose the RIDL [326.335] submission point.

3.6.2 Assessment

102. I concur with the submitters and agree that there are circumstances where restricting public access is appropriate. As addressed above, I have recommended an amendment to PA-P3 in response to the Hort NZ [295.97] submission.

3.6.3 Summary of recommendations

103. PA-P3 is recommended to be amended in response to the Hort NZ [295.97] submission as discussed in section 3.5.

104. I recommend the submissions by Fulton Hogan [41.29], Canterbury Botanical Society [122.4], Transpower [195.92], Hort NZ [295.98], RIDL [326.335], Federated Farmers [414.154], and DoC [419.113] be **accepted in part**.

105. My recommendations in relation to the further submissions by Forest and Bird [FS78], CIAL [FS80], and the Ohoka Residents Association [FS137] reflect the recommendations on the relevant primary submission.

106. I recommend that no change be made to the PA chapter in the Proposed Plan in response to these submissions.

3.7 Submissions seeking new Policies

3.7.1 Matters raised by submitters

107. Federated Farmers [414.155] submitted to insert a new Public Access policy:

"To provide for the waiving of requirements for esplanade areas (esplanade reserves, esplanade strips or access strips) where appropriate."

Federated Farmers submit that *"even along priority waterbodies there will be circumstances where waiving is necessary, such as for safety (eg where the site is industrial) impractical (eg where the site has steep cliffs) or financial (eg if the Council does not have the resources to provide fair compensation.)"*

108. Federated Farmers [414.156] submitted to insert a new Public Access policy:

"To provide information and education to the public regarding where public access is available, and that access over private land is only by the permission of the landowner."

They state that a new policy is needed for: *“education of the public as to where public access is available, and where landowner permission is required. ... Sometimes private land will extend right down to the water or further, depending on the Certificate of Title. Sometimes esplanade reserves will not be continuous but be interspersed with private land. ... We do not want users of the District Plan to think they can wander over private land at will.”*

3.7.2 Assessment

Federated Farmers [414.155] – waive esplanade areas

109. I agree with Federated Farmers [414.155] that there will be circumstances where it is appropriate to waive requirements for esplanade reserves and strips. However, I do not consider it necessary to amend the PA chapter policy framework to include the proposed policy. Similar to my view above, the waiving of esplanade reserves or strips is an operational process available under the RMA that is carried out at the consent stage. It is important to retain discretion to consider applications on an individual basis and policy direction is unnecessary for this function.
110. The purpose of the PA provisions is to provide an objective and policy framework for the consideration of potential public access opportunities to a range of public amenities (not just esplanade reserves or strips).
111. I note that the subdivision chapter has provisions for esplanade areas in objective SUB-O3, policy SUB-P10, rule SUB-R2, standard SUB-S17, (including Table SUB-2: *Esplanade Reserve or Esplanade Strip Requirements for water bodies*), and matter of discretion SUB-MCD4, which support my opinion that this is a matter to be considered as part of a subdivision resource consent application. Also, I understand the purpose of a policy is to set out the way in which an objective is to be achieved. The wording of the proposed policy provides no guidance as to where the waiving of an esplanade is *“appropriate”*. Accordingly, I do not consider the proposed policy provides any benefit to plan users.

Federated Farmers [414.156] – education on public access

112. Federated Farmers [414.156] seek a new policy to provide the public with information and education regarding public access. Whilst the provision of public access is an RMA matter, the RMA does not require the Council to educate the public on public access. The Proposed Plan maps existing esplanade areas (with Table SUB-2: *Esplanade Reserve or Esplanade Strip Requirements for water bodies* setting out where new reserves are sought) and there are other publicly available resources that sit outside the District Plan that inform the public of where access is available. It is not the responsibility of the District Plan to inform the public how to use public access areas.

3.7.3 Summary of recommendations

113. For the reasons outlined in the assessment above, I recommend the submissions by Federated Farmers [414.155 and 414.156] be **rejected**.

3.8 Advice Note PA-AN1

3.8.1 Matters raised by submitters

114. ECan [316.122] support that PA-AN1 directs plan users to regional planning documents and seek PA-AN1 is retained as notified.

Further submissions

115. Richard and Geoff Spark [FS37] and David Cowley [FS41] oppose the ECan [316.122] submission point. CIAL [FS80] support the ECan [316.122] submission point.

3.8.2 Assessment

116. I concur with ECan [316.122].

3.8.3 Summary of recommendations

117. I recommend the submission by ECan [316.122] be **accepted**.
118. My recommendations in relation to the further submissions by Richard and Geoff Spark [FS37], David Cowley [FS41] and CIAL [FS80] reflect the recommendations on the relevant primary submission.
119. I recommend that no change be made to the PA chapter in the Proposed Plan as a result of the submission.

3.9 Other Methods**3.9.1 Matters raised by submitters**

120. Clampett [284.1] and RIDL [326.1, 326.2, 326.3] submitted to remove public and limited notification on all controlled and restricted discretionary activity rules, and to remove the terms avoid, remedy, and mitigate from the Proposed Plan provisions.

Further submissions

121. Forest and Bird [FS78], Ohoka Residents Association [FS84], Ohoka Residents Association [FS137], Andrea Marsden [FS119] and Christopher Marsden [FS120] oppose the RIDL [326.1] submission point.
122. Forest and Bird [FS78], Andrea Marsden [FS119], Christopher Marsden [FS120], and Ohoka Residents Association [FS137] oppose the RIDL [326.2] submission point.
123. Forest and Bird [FS78] and Ohoka Residents Association [FS137] oppose the RIDL [326.3] submission point.

3.9.2 Assessment

124. The PA chapter does not use the terms avoid, remedy, or mitigate in the objective or policies and the chapter does not contain rules. Therefore, the submissions will not result in changes to the chapter.

3.9.3 Summary of recommendations

125. For the reasons outlined in the assessment above, I recommend the submissions by Clampett [284.1] and RIDL [326.1, 326.2, and 326.3], in terms of their application to the PA chapter, be **rejected**.
126. My recommendations in relation to the further submissions by Forest and Bird [FS78], Ohoka Residents Association [FS84], Ohoka Residents Association [FS137], Andrea Marsden [FS119] and Christopher Marsden [FS120] reflect the recommendations on the relevant primary submission.

4 Conclusions

127. Submissions have been received in support of, and in opposition to, the Public Access chapter in the Proposed Plan. While most of these submissions support the chapter as notified, some submissions seek amendments to PA-P2 and the addition of two new policies.

128. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend the Proposed Plan's Public Access chapter should be amended as set out in **Appendix A** of this report.

129. For the reasons set out in the s32AA evaluation and included throughout this report, I consider that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:


- achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives, and
- achieve the relevant objectives of the Proposed Plan, in respect to the proposed provisions.

Recommendations:

I recommend that:

1. The Hearing Commissioners accept, accept in part, or reject submissions (and associated further submissions) as outlined in **Appendix B** of this report; and
2. The Proposed Plan is amended in accordance with the changes recommended in **Appendix A** of this report.

Signed:

| Name and Title | | Signature |
|----------------|-----------------------------------|---|
| Report Author | Bryony Steven Graduate Planner |  |

Appendix A. Recommended Amendments to the Tomonga mārea – Public Access Chapter

Where I recommend changes in response to submissions, these are shown as follows:

- Text recommended to be added to the Proposed Plan is underlined.
- Text recommended to be deleted from the Proposed Plan is ~~struck through~~.

| Policies | |
|-----------------|--|
| PA-P1 | <p>Maintaining and enhancing public access</p> <p>Maintain and enhance existing public access to and along the CMA, surface freshwater bodies, and reserves by managing the adverse effects of activities and development, where these would limit public access, or compromise the use or enjoyment of these areas.</p> |
| PA-P2 | <p>Providing for public access</p> <p>Provide for new and enhanced public access to and along the CMA, water bodies and reserves by:</p> <ol style="list-style-type: none"> 1. encouraging or requiring the creation of esplanade reserves, strips or easements in areas where there are benefits for public access, recreation, cultural values for mana whenua (including customary harvesting) or maintenance; 2. work with land owners to provide for safe and appropriate public access to reserves with high recreational, scenic, natural character and cultural values; and 3. encouraging the use of mechanisms such as easements to provide for public walking access when a land use or development provides an opportunity for access. |
| PA-P3 | <p>Adverse effects of public access</p> <p>Restrict public access to and along the CMA and water bodies with high values where it is necessary to protect:</p> <ol style="list-style-type: none"> 1. naturally rare or threatened indigenous flora and fauna; or 2. dunes, estuaries, the margins of rivers, lakes and wetlands, or any other sensitive environments; or 3. sites of cultural significance to Māori, including archaeological sites; 4. public health or safety; or 5. the rights of private property owners, where providing for public access would significantly compromise these rights; <u>or</u> 6. <u>land-based primary production where from² potential reverse sensitivity effects where it³ cannot otherwise be mitigated⁴.</u> |

² Error correction

³ Error correction

⁴ Horticulture New Zealand [295.97].

Appendix B. Recommended Responses to Submissions and Further Submissions

The recommended responses to the submissions made on this topic are presented in Table B 1 below.

Table B 1: Recommended responses to submissions and further submissions relating to Public Access chapter

| Sub. Ref. | Submitter / Further Submitter | Provision | Decision Requested | Section of this Report where Addressed | Officer's Recommendation | Officers' Reasons/Comments | Recommended Amendments to Proposed Plan? |
|--|---|-----------------------|---|--|--------------------------|--|--|
| General | | | | | | | |
| 147.15 | Kaipoi-Tuahiwi Community Board | Public Access General | Retain Public Access section as notified. | 3.2 | Accept in part | I agree with submitter, subject to recommended amendments made in response to other submissions on the PA chapter. | No |
| PA-O1 Provision of public access | | | | | | | |
| 41.28 | Fulton Hogan Limited | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| 195.91 | Transpower New Zealand Limited | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| 295.96 | Horticulture New Zealand | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept | | No |
| 316.120 | Canterbury Regional Council | PA-O1 | Retain PA-O1 as notified or retain the original intent. | 3.3 | Accept | Agree with submitter. | No |
| FS37 | Richard and Geoff Spark | | Reject the submission | | Reject | | No |
| FS41 | David Cowley | | Reject the submission | | Reject | | No |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept | | No |
| 326.332 | Rolleston Industrial Developments Limited | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Reject | | No |
| 414.152 | Federated Farmers of New Zealand Inc | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| 419.110 | Department of Conservation | PA-O1 | Retain PA-O1 as notified. | 3.3 | Accept | Agree with submitter. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Allow the submission | | Accept | | No |
| PA-P1 Maintaining and enhancing public access | | | | | | | |
| 326.333 | Rolleston Industrial Developments Limited | PA-P1 | Retain PA-P1 as notified. | 3.4 | Accept | Agree with submitter. | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Reject | | No |
| 419.111 | Department of Conservation | PA-P1 | Retain PA-P1 as notified. | 3.4 | Accept | Agree with submitter. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Allow the submission | | Accept | | No |
| PA-P2 Providing for public access | | | | | | | |

| Sub. Ref. | Submitter / Further Submitter | Provision | Decision Requested | Section of this Report where Addressed | Officer's Recommendation | Officers' Reasons/Comments | Recommended Amendments to Proposed Plan? |
|---|---|-----------|---|--|--------------------------|--|--|
| 295.97 | Horticulture New Zealand | PA-P2 | Amend PA-P2 by inserting a new clause: "... <u>4. ensuring access avoids adverse effects on productive soils and established rural production activities.</u> " | 3.5 | Accept in part | See body of the report for the assessment of this submission point. Note I have recommended an amendment to PA-P3 not PA-P2 as requested. | Yes |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept in part | | No |
| 316.121 | Canterbury Regional Council | PA-P2 | Retain PA-P2 as notified or retain the original intent. | 3.5 | Accept | Agree with submitter. | No |
| FS37 | Richard and Geoff Spark | | Reject the submission | | Reject | | No |
| FS41 | David Cowley | | Reject the submission | | Reject | | No |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept | | No |
| 326.334 | Rolleston Industrial Developments Limited | PA-P2 | Retain PA-P2 as notified. | 3.5 | Accept | Agree with submitter. | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Reject | | No |
| 414.153 | Federated Farmers of New Zealand Inc | PA-P2 | Amend PA-P2 by adding a new clause: "Provide for new and enhanced public access to and along the CMA, water bodies and reserves by: ... <u>4. Compensation will be payable for esplanades reserves and strips vested in accordance with Section 237E and 237F of the RMA, unless agreed otherwise.</u> " | 3.5 | Reject | See body of the report for the assessment of this submission point. | No |
| 419.112 | Department of Conservation | PA-P2 | Retain PA-P2 as notified. | 3.5 | Accept | Agree with submitter. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Allow the submission | | Accept | | No |
| PA-P3 Adverse effects of public access | | | | | | | |
| 41.29 | Fulton Hogan Limited | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| 122.4 | Canterbury Botanical Society | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Allow the submission | | Accept in part | | No |
| 195.92 | Transpower New Zealand Limited | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |

| Sub. Ref. | Submitter / Further Submitter | Provision | Decision Requested | Section of this Report where Addressed | Officer's Recommendation | Officers' Reasons/Comments | Recommended Amendments to Proposed Plan? |
|--|---|-----------|--|--|--------------------------|---|--|
| 295.98 | Horticulture New Zealand | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept in part | | No |
| 326.335 | Rolleston Industrial Developments Limited | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Reject | | No |
| 414.154 | Federated Farmers of New Zealand Inc | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| 419.113 | Department of Conservation | PA-P3 | Retain PA-P3 as notified. | 3.6 | Accept in part | I agree with the submitter, subject to recommended amendments to PA-P3 in response to Hort NZ [295.97]. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Allow the submission | | Accept in part | | No |
| Proposed New Policies | | | | | | | |
| 414.155 | Federated Farmers of New Zealand Inc | General | Insert new Public Access Policy: "To provide for the waiving of requirements for esplanade areas (esplanade reserves, esplanade strips or access strips) where appropriate." | 3.7 | Reject | See body of the report for the assessment of this submission point. | No |
| 414.156 | Federated Farmers of New Zealand Inc | General | Insert new Public Access policy: "To provide information and education to the public regarding where public access is available, and that access over private land is only by the permission of the landowner." | 3.7 | Reject | See body of the report for the assessment of this submission point. | No |
| Advice Notes | | | | | | | |
| 316.122 | Canterbury Regional Council | PA-AN1 | Retain PA-AN1 as notified or retain the original intent. | 3.8 | Accept | Agree with submitter. | No |
| FS37 | Richard and Geoff Spark | | Reject the submission | | Reject | | No |
| FS41 | David Cowley | | Reject the submission | | Reject | | No |
| FS80 | Christchurch International Airport Ltd | | Allow the submission | | Accept | | No |
| General / Plan wide submissions | | | | | | | |
| 284.1 | Clampett Investments Limited | General | Amend all controlled and restricted discretionary activity rules: "Applications shall not be limited or publicly notified, on the basis of effects associated specifically with this rule and the associated matters of control or discretion." | 3.9 | Reject | See body of the report for the assessment of this submission point. | No |

| Sub. Ref. | Submitter / Further Submitter | Provision | Decision Requested | Section of this Report where Addressed | Officer's Recommendation | Officers' Reasons/Comments | Recommended Amendments to Proposed Plan? |
|-----------|---|-----------|--|--|--------------------------|---|--|
| 326.1 | Rolleston Industrial Developments Limited | General | Amend the Proposed District Plan to delete the use of absolutes such as 'avoid', 'maximise' and 'minimise'. | 3.9 | Reject | See body of the report for the assessment of this submission point. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Reject the submission | | Accept | | No |
| FS84 | Ohoka Residents Association | | Reject the submission | | Accept | | No |
| FS119 | Andrea Marsden | | Reject the submission | | Accept | | No |
| FS120 | Christopher Marsden | | Reject the submission | | Accept | | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Accept | | No |
| 326.2 | Rolleston Industrial Developments Limited | General | Amend so that all controlled and restricted discretionary activity rules include the following wording, or words to like effect: " <u>Applications shall not be limited or publicly notified, on the basis of effects associated specifically with this rule and the associated matters of control or discretion.</u> " | 3.9 | Reject | See body of the report for the assessment of this submission point. | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Reject the submission | | Accept | | No |
| FS119 | Andrea Marsden | | Reject the submission | | Accept | | No |
| FS120 | Christopher Marsden | | Reject the submission | | Accept | | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Accept | | No |
| 326.3 | Rolleston Industrial Developments Limited | General | Amend controlled and restricted discretionary activity rules to provide direction regarding non-notification. | 3.9 | Reject | See body of the report for the assessment of this submission point. | No |
| FS137 | Ohoka Residents Association | | Reject the submission | | Accept | | No |
| FS78 | Royal Forest and Bird protection Society of New Zealand Inc | | Reject the submission | | Accept | | No |

Appendix C. Report Author's Qualifications and Experience

I hold the following qualifications:

Master of Environmental Policy and Management from Lincoln University and a Bachelor of Arts from Victoria University of Wellington. I have one year experience working as a Graduate Planner.

My work experience includes:

- Duty Planner providing planning advice to the public;
- Public engagement – providing planning advice at community 'drop-in sessions';
- Summarising submissions to the Proposed District Plan, Variation 1 and 2, and Private Plan Change RCP031;
- Preparation of policy research paper – qualifying matters proposed across New Zealand;
- Preparation of public notices, letters, website content and summary documents;
- Preparation of reports to Council; and
- Preparation of s42A reports for the District Plan review.

I have been employed by the Waimakariri District Council since March 2022 as a Graduate Planner within the Development Planning Unit Team.