

Waimakariri District Council Proposed Waimakariri District Plan

Recommendations of the PDP Hearings Panel

Recommendation Report 11

Hearing Stream 4

Part 2: District-wide matters – ASW – Activities on the Surface of Water

This report should be read in conjunction with **Report 1** and **Recommendation Reports 2 and 31**.

Report 1 contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports, a record of all Panel Minutes, a record of the recommendation reports and a summary of overarching recommendations. It does not contain any recommendations per se.

Recommendation Report 2 contains the PDP Panel's recommendations on the PDP's Part 2: District-wide Matters – Strategic directions - SD Strategic directions objectives and policies.

Recommendation report 31 contains the PDP Panel's recommendations on the PDP's TEMP - Temporary Activities Chapter.

Appendix 1: Schedule of attendances

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version (provisions not consequentially renumbered)

The Hearings Panel for the purposes of **Hearing Stream 4** comprised Commissioners Gina Sweetman (Chair), Allan Cubitt, Gary Rae, Megen McKay, Neville Atkinson and Niki Mealings.

1. Introduction

Report outline and approach

1. This is Report 11 of 37 Recommendation Reports prepared by the PDP Hearings Panel appointed to hear and make recommendations on submissions to the Proposed Waimakariri District Plan (PDP).
2. The report addresses the provisions of the ASW – Activities on the Surface of Water Chapter and the submissions received on those provisions.
3. We have structured our discussion on this topic as follows:
 - (a) **Section 2** summarises key contextual matters, including relevant provisions and key issues/themes in submissions;
 - (b) **Sections 3** - contains our evaluation of key issues and recommended amendments to provisions;
 - (c) **Section 4** addresses any consequential issues considered necessary; and
 - (d) **Section 5** contains our conclusions.
4. This Recommendation Report contains the following appendices:
 - (a) **Appendix 1: Schedule of attendances** at the hearing on this topic. We refer to the parties concerned and the evidence they presented throughout this Recommendation Report, where relevant.
 - (b) **Appendix 2: Recommended amendments to the Proposed Plan – Tracked from notified version.** This sets out the final amendments we recommend be made to the PDP provisions relating to this topic. The amendments show the specific wording of the amendments we have recommended and are shown in a ‘tracked change’ format showing changes from the notified version of the PDP for ease of reference. Where whole provisions have been deleted or added, we have not shown any consequential renumbering, as this method maintains the integrity of how the submitters and s42A Report authors have referred to specific provisions, and our analysis of these in the Recommendation Reports. New whole provisions are prefaced with the term ‘new’ and deleted provisions are shown as struck out, with no subsequential renumbering in either case.
5. We record that all submissions on the provisions relating to the ASW – Activities on the Surface of Water chapter have been taken into account in our deliberations. In general, submissions in support of the PDP have not been discussed but are accepted or accepted in part. More detailed descriptions of the submissions and key issues can be found in the relevant s42A Reports, Responses to Preliminary Questions and written Reply Reports, which are available on the Council’s website. As stated above, our decision on each submission point is set out in Appendix 2.

6. In accordance with the approach set out in Report 1, this Report focuses only on 'exceptions', where we do not agree fully or in part with the s42A report author's recommendations and / or reasons, and / or have additional discussion and reasons in respect to a particular submission point, evidence at the hearing, or another matter.
7. The requirements in clause 10 of the First Schedule of the Act and s32AA are relevant to our considerations of the PDP provisions and the submissions received on those provisions. These are outlined in full in Report 1. In summary, these provisions require among other things:
 - (a) our evaluation to be focussed on changes to the proposed provisions arising since the notification of the PDP and its s32 reports;
 - (b) the provisions to be examined as to whether they are the most appropriate way to achieve the objectives; and
 - (c) as part of that examination, that:
 - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
 - ii. the efficiency and effectiveness of the provisions is assessed;
 - iii. the reasons for our recommendations are summarised; and
 - iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.
8. We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council's s42A report authors, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments attached to the relevant s42A Reports and/or Reply Reports. Those reports are part of the public record and are available on the Council website. Where our recommendation differs from the s42A report authors' recommendations, we have incorporated our s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.
9. A fuller discussion of our approach in this respect is set out in Section 5 of Report 1.

2. Summary of provisions and key issues

Outline of matters addressed in this section

10. In this section, we provide relevant context around which our evaluation of the notified provisions and submissions received on them is based. Our discussion includes:
 - (a) summary of relevant provisions;
 - (b) themes raised in submissions; and
 - (c) identification of key issues for our subsequent evaluation.

Relevant provisions

11. As indicated in paragraph 1.2 of this Recommendation Report, the relevant provisions we address relate to Part 2: District-wide matters – ASW – Activities on the Surface of Water.

Submissions

12. This chapter attracted ten original submitters (who raised 20 submission points) and four further submitters. Of the 20 original submission points, 16 support the provisions as notified with the remaining four submission points opposing the provisions or seeking amendments.

Key issues

13. The issues in contention on this chapter are limited to the ASW-R1 Use of Watercraft, as follows:
 - The absence of Te Kōhaka o Tūhaitara Trust as a listed authority permitted to use watercraft in ASW-R1(1);
 - Amendment to include defence purposes as an activity permitted to use watercraft in ASW-R1(3); and
 - The non-complying activity status for non-motorised watercraft on Jockey Baker Creek, Te Kōhanga Wetlands, Tūtaepatu Lagoon and Ashley / Rakahuri Saltwater Creek Estuary (Rakahuri Estuary).

3. ASW-R1 Use of Watercraft

Overview

14. The Panel has no recommended amendments in response to the submissions, beyond those recommended by the s42A report author.

Reasons

15. The submissions we consider here are those seeking amendments to ASW-R1 Use of Watercraft. In summary, these were:
 - (a) Seeking the addition of Te Kōhaka o Tūhaitara Trust as an agency with statutory responsibility for management of two of these waterbodies¹
 - (b) Seeking the addition of “defence” to the list of purposes which are permitted” in ASW-R1(3)²
 - (c) Reconsider the appropriateness of requiring resource consent for recreational use of watercraft that are not motor-powered in high natural character water bodies³
16. The only matter we need to address here is the submission of NZDF. The s42A report author only recommended accepting the New Zealand Defence Force’s amendment to ASW R1(4) to change “and” to “or” but recommended rejecting the substantive part of the submission, which sought the addition of “defence purposes” as a permitted activity to ASW-R1(3). The s42A report author noted that the New Zealand Defence Force’s submission was not clear on what activities are included in the definition of ‘defence

¹ Te Kōhaka o Tūhaitara Trust [113.3]

² New Zealand Defence Force [166.26]

³ Environment Canterbury [316.140], Forest and Bird [192.83]

purposes', drawing our attention to the National Planning Standards definition of 'temporary military training activities' (TMTA) and the Defence Act 1990 definition of 'defence purposes'. The report suggested that New Zealand Defence Force's address this matter at the hearing, but they chose not to attend or table evidence. Hence, the matter was only discussed between the Panel and the s42A report author.

17. In response to one of our preliminary questions, the s42A report author advised TMTA would most likely require consent to operate on these waterbodies under TEMP-R5 given the values of these waterbodies, which the report noted as being "high, very high and outstanding natural character", and the probability that such activities would not meet the restoration condition of that rule. The report author did not consider these waterbodies to be appropriate locations for such activities, particularly given the fact that New Zealand Defence Force has access to all the other waterbodies in the district. Furthermore, the report author noted that if the intention of the submission was in fact to give effect to section 5 of the Defence Act 1990, then the requested amendment is superfluous as that Act would override the District Plan provisions. The s42A report author recommended cross referencing between TEMP-R5 and ASW-R1.
18. Having considered the matter carefully, the Panel generally agrees with the position of the s42A report author on this matter. However, with respect to the cross reference between TEMP-R5 and ASW-R1 as suggested, we do not think this is necessary as the 'Introduction' section to the chapter already addresses what other provisions may apply to temporary activities. ASW-R1 is "[an]other District wide matter that may affect or relate to the site" where these activities occur.

4. Other matters and consequential changes

19. There are no consequential changes that we have identified as being necessary.

5. Conclusion

20. For the reasons summarised above, we recommend the adoption of a set of changes to the PDP provisions relating to Part 2: District-Wide Matters – ASW – Activities on the Surface of Water. Our recommended amendments are shown in Appendix 3.
21. Overall, we find that these changes will ensure the PDP better achieves the statutory requirements, national and regional direction, and our recommended Strategic Directions, and will improve its useability.

Appendix 1: Submitter attendance and tabled evidence for Activities on the Surface of Water - Hearing Stream 4

Attendee	Speaker	Submitter No.
Council Reporting Officer	<ul style="list-style-type: none">Bryony Steven	N/A
Canterbury Regional Council	<ul style="list-style-type: none">Joanne Mitten	316
Tabled evidence		
N/A	<ul style="list-style-type: none">N/A	N/A

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version
(provisions not consequentially renumbered)

ASW - Ngā momo tākaro ki runga i te wai - Activities on the surface of water

Introduction

Activities on the surface of water describes the range of recreational, commercial, and cultural activities that occur on the surfaces of rivers and lakes. This includes a range of non-motorised recreation activities, motorised activities, structures and accommodation on the surface of water bodies.

The District Council controls any actual or potential effects of activities in relation to the surface of water in rivers and lakes. Certain activities on the surface of rivers and lakes can create disturbance which can compromise the cultural, recreational, ecological and amenity values of rivers and lakes. Managing the adverse effects from surface water activities is important to preserve the values of rivers and lakes throughout the District.

The Regional Council is responsible for managing the water resources of the District. The Regional Council is also responsible for managing surface water activities in the CMA, which is located on the seaward side of the MHWS, navigation, and any activities occurring in, under, or over the bed of a river or lake.

The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.

Other potentially relevant District Plan provisions

As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to activities on the surface of water include:

- Natural Character of Freshwater Bodies – this chapter contains provisions for activities that may be undertaken in natural character of scheduled freshwater bodies setbacks.
- Special Purpose Zone (Kāinga Nohoanga): how the Activities on the Surface of Water provisions apply in the Special Purpose Zone (Kāinga Nohoanga) is set out in SPZ(KN)-APP1 to SPZ(KN)-APP5 of that chapter.
- Any other District wide matter that may affect or relate to the site.
- Zones: the zone chapters contain provisions about what activities are anticipated to occur in the zones.

Objectives

ASW-O1	Surface water values Activities on the surface of water are enabled for public access, and provide for the appreciation of natural, recreational and amenity values of rivers and lakes.
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Policies

ASW-P1	Surface water activities Enable activities on the surface of water where they have minimal disturbance to natural, recreational and amenity values of rivers and lakes.
ASW-P2	Houseboats on the Kaiapoi River Provide for houseboats where: 1. moored in a location that does not compromise use for other surface water activities;

	2. they are navigable vessels designed to be navigated on a water body; 3. existing public access to, or along, the Kaiapoi River is maintained; and 4. any adverse effects to the values associated with water bodies, including natural character values and cultural values, are protected in order to maintain those values.
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Activity Rules

ASW-R1	Use of <u>motorised</u>¹ watercraft	
Rural Zones Residential Zones Open Space and Recreation Zones	Activity status: PER	Activity status when compliance not achieved: N/A
Jockey Baker Creek - VHNC Te Kōhanga Wetlands - HNC Tūtaepatu Lagoon - HNC Ashley/Rakahuri Saltwater Creek Estuary - ONC²	Activity status: PER Where: <ol style="list-style-type: none"> the activity is undertaken on behalf of the District Council, Regional Council, government agency, or Fish and Game¹, <u>or Te Kōhaka o Tūhaitara Trust</u>³; the activity is undertaken for scientific research and education purposes; the activity is undertaken for civil defence, fire fighting or search and rescue purposes; the activity is undertaken by mana whenua for cultural and mahinga kai purposes; and <u>or</u>⁴ the activity is undertaken for farm management purposes. 	Activity status when compliance not achieved: NC
ASW-R2	Any houseboat on the surface of water	
Kaiapoi River Overlay	Activity status: RDIS Matters of discretion are restricted to: ASW-MD1 - Houseboats	Activity status when compliance not achieved: N/A
All Zones	Activity status: NC	Activity status when compliance not achieved: N/A

1 Forest and Bird [192.83] and Environment Canterbury [316.140].

2 Forest and Bird Protection [192.83] and Environment Canterbury [316.140].

3 Te Kōhaka o Tūhaitara Trust [113.3].

4 New Zealand Defence Force [166.26].

Advice Notes

ASW-AN1	Activities and structures may also be subject to controls outside the District Plan. Reference should also be made to any other applicable rules or constraints within other legislation or ownership requirements including the following: <ol style="list-style-type: none">1. The Canterbury Regional Council Navigational Safety Bylaw 2016.2. The Maritime Transport Act 1994, and maritime rules made under this Act.3. Northern Pegasus Bay Bylaw 2016.
ASW-AN2	The District Council has jurisdiction for activities on the surface of water up to the MHWS boundary. The Regional Council has jurisdiction for activities on the surface of water seaward of MHWS.
<u>ASW-AN3</u>	<u>Motorised watercraft use on the Ashley / Rakahuri Saltwater Creek Estuary – ONC is managed by the Regional Council in the Regional Coastal Environment Plan for the Canterbury Region.</u> ⁵

Matters of Discretion

ASW-MD1	Houseboats <ol style="list-style-type: none">1. The extent to which the houseboat compromises the use of the surface of water for other users.2. The extent to which the houseboat has been designed to be navigated on a water body.3. The extent to which the houseboat compromises existing public access to the Kaiapoi River.4. The extent to which amenity values, ecological, cultural or recreational values, including any natural character values associated with the Kaiapoi River are compromised.
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⁵ Forest and Bird Protection [192.83] and Environment Canterbury [316.140].