

OFFICER'S REPORT FOR:

**Independent Hearing Commissioners:
Robert Schofield (Chair)
Loretta Lovell
Roger Maaka
Tim Aitken
Kate Taylor
Pip Burne**

TOPIC:

**Open Space and Recreation/ Public Access/
Activities on the Surface of Water**

PREPARED BY:

Stella Morgan

REPORT DATED:

10 February 2022

DATE OF HEARING:

14 to 17 March 2022

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Appendix A – Recommended Amendments to Plan Provisions

Appendix B - Summary of Recommended Responses to Submissions and Further Submissions

List of Submitters and Further Submitters addressed in this Report

Submitter Name	Submitter Number
Department of Conservation	S64
Federated Farmers of New Zealand (Federated Farmers)	S121
Hawke's Bay Regional Council	S11
Horticulture New Zealand	S81
Jet Boating New Zealand	S48
Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	S125

Further submitter Name	Further submitter number
Federated Farmers of New Zealand	FS25
Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird)	FS9

1.0 Introduction

1.1 Qualifications and Experience

- 1.1.1 My full name is Stella Ann Luoni Morgan. I am a Principal Planner and Director of Sage Planning (HB) Limited, a planning consultancy comprising three Principal Planners / Directors, established in 2015.
- 1.1.2 I hold a Bachelors degree in Geography, and a Master of Regional and Resource Planning, and am a full member of the New Zealand Planning Institute.
- 1.1.3 I have been a practicing planner for the past 25+ years. Prior to establishing Sage Planning, I was a planning consultant with Opus International Consultants (now WSP) for 10 years, and prior to that I worked in various roles including recreation planner and community development team leader (7 years) at Hastings District Council, and as a planner at Christchurch City Council, Queenstown Lake District Council, and Johnston Anderson Whitney Consultants.
- 1.1.4 Sage Planning has been engaged by Central Hawke's Bay District Council (CHB) as the lead planning consultants to assist with the full District Plan Review since August 2017. I was involved in scoping issues, preparing discussion documents, engagement with the community, and preparation of the Draft District Plan (notified in April 2019), reporting on informal submissions and recommending amendments to the Draft Plan, and subsequent completion of the Proposed District Plan including preparation of accompanying Section 32 Evaluation Reports.

1.2 Code of Conduct

- 1.2.1 I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014, and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.2.2 I am authorised to give this evidence on the Council's behalf to the Proposed District Plan Hearings Commissioners.

1.3 Conflict of Interest

- 1.3.1 I confirm that I have no real or perceived conflict of interest.

1.4 Involvement with the Proposed Plan

- 1.4.1 I was involved in scoping issues and preparing discussion documents for Council's District Plan Review Committee, engagement with the community, preparation of the Draft District Plan (notified in April 2019), reporting on informal submissions to the Committee and recommending amendments to the Draft Plan, and subsequent completion of the Proposed District Plan including preparation of the accompanying Section 32 Evaluation Reports.
- 1.4.2 I was the lead author of the various discussion documents and draft plan provisions relating to the Open Space and Recreation, Public Access and Activities on the Surface of Water, the reporting officer on informal submissions to the Draft District Plan on this topic, and contributed to the Section 32 Remaining District Wide Chapters and Relocated Building Provisions Topic Report (that included Open Space and Recreation, Public Access and Activities on the Surface of Water) accompanying notification of the Proposed District Plan (PDP).

1.5 Preparation of this Report

- 1.5.1 My role in the preparation of this report has been to review, provide analysis on, and make recommendations on the submissions and further submissions received in relation to the contents of Open Space and Recreation, Public Access, and Activities on the Surface of Water.
- 1.5.2 The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2.0 Scope of Report

2.1 Matters addressed by this Report

- 2.1.1 This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA). This report considers submissions that were received by the Council in relation to the provisions on Open Space and Recreation, Public Access, and Activities on the Surface of Water.

2.2 Overview of the Topic

- 2.2.1 The Open Space and Recreation section of the PDP outlines the values of public open space and recreation to Central Hawke's Bay and the District Plan approach to the provision of open spaces and recreational activities while being mindful of potential impacts of such activities on neighbouring landowners. Many of Council's open spaces and activities /facilities are designated in the PDP and also shown on the planning maps. Community and recreation facilities are also identified in SCHED 8 – Schedule of Identified Community Facilities and shown on the Planning Maps (for information purposes only). Recreational activities fall within the definition of 'community facilities' and are generally permitted across subject to standards.
- 2.2.2 The Public Access section of PDP responds to the section 6(d) matter of national importance that requires Councils to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers. The PDP Planning Maps identify the district's important waterbodies and, in this chapter and associated subdivision provisions, seeks to prioritise the creation of esplanade areas to provide public access to and along these areas.
- 2.2.3 The Activities on the Surface of Water section of the Proposed District Plan addresses the Council's RMA responsibilities (s31(e)) to manage the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes.
- 2.2.4 These Open Space and Recreation, Public Access, and Activities on the Surface of Water provisions update and amend provisions contained within the district-wide provisions of the Operative District Plan.

2.3 Statutory Requirements

- 2.3.1 The PDP 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).
- 2.3.2 As set out in the Section 32 Remaining District Wide Chapters and Relocated Building Provisions Topic Report, there are a number of higher order planning documents that provide direction and guidance for the preparation and content of the PDP, including the New Zealand Coastal Policy Statement (2010), the National Policy Statement for Freshwater Management (2020), and the Hawke's Bay Regional Resource Management Plan including the Regional Policy Statement (2006). These documents are discussed in detail within the Section 32 Topic Report.

2.4 Procedural Matters

- 2.4.1 There were no pre-hearing meetings or meetings undertaken in accordance with clause 8AA of Schedule 1, undertaken on the submissions relating to Open Space and Recreation, Public Access, and Activities on the Surface of Water prior to the finalization of this section 42A report.
- 2.4.2 No further consultation with any parties regarding Open Space and Recreation, Public Access, and Activities on the Surface of Water provisions has been undertaken since notification of the provisions.

Associated Mapping Error

- 2.4.3 The provisions in the Public Access chapter of the PDP and associated Subdivision Assessment Matters (in particular Subdivision Assessment Matter SUB-AM9) relate to areas adjacent to 'priority waterbodies' mapped on the District Plan Maps. A mapping error in the PDP has resulted in sections of the 'priority water bodies' being left off the Planning Maps, including Lake Whatuma and key rivers east of the main townships of Waipawa and Waipukurau.
- 2.4.4 No submissions have been received on this mapping error, so it cannot be corrected through relief on submissions.

2.4.5 It is considered that the correction of that omission goes beyond Council's powers under cl16 because there is a risk that the rights of members of the public might be affected by identifying those areas as priority waterbodies. As such, I understand the Council's intention is to address this matter separately through a variation to the PDP. This does not affect the content of the current report which relates to the plan provisions that will apply to priority waterbodies.

3.0 Consideration of Submissions Received

3.1 Overview of Submissions

3.1.1 As stated, this topic report addresses submissions received on Part 2 District Wide Matters: OSR – Open Space and Recreation, PA- Public Access and ASW – Activities on the Surface of Water.

3.1.2 Submission points were received as follows:

- Open Space and Recreation – two (2) submission points both in support and no (0) further submissions points.
- Public Access – fifteen (15) submission points and twelve (12) further submission points. Ten of these submission points are in support of the PDP provisions and five are seeking amendments.
- Activities on the Surface of Water – thirteen (13) submission points and no (0) further submission points. Eleven of these submission points are in support, one seeks an amendment, and one is in opposition.

3.1.3 Key matters in opposition for each of the sections is summarised below:

Open Space and Recreation

3.1.4 No matters in opposition submitted on.

Public Access

3.1.5 The need to address access by mana whenua to wāhi tapu on private land or to cross private land to sites of particular significance.

3.1.6 Clarification of matters related to esplanade reserves (Policies PA-P1 and PA-P2) and a request for a new policy regarding compensation for esplanade reserves provided.

3.1.7 A request to include reference to private land in Policy PA-P4, and request for a new policy to advocate and educate about public access.

Activities on the Surface of Water

3.1.8 A request to amend provisions to allow for jetboating outside of the fishing season, and to provide performance standards for commercial jet boating.

3.2 Structure of this Report

3.2.1 Given the number, nature and extent of the submissions and further submissions received, I have structured the section 42A report to reflect the individual PDP chapter headings as follows:

- Key Issue 1: Open Space and Recreation
- Key Issue 2: Public Access
- Key Issue 3: Activities on the Surface of Water

4.0 Key Issue 1 – Open Space and Recreation

4.1 Submissions / Further Submissions Addressed

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S11.021	Hawke’s Bay Regional Council	OSR – Open Space and Recreation	Support	No Changes	Accept
S81.077	Horticulture New Zealand	OSR-P2	Support	Retain OSR-P2	Accept

4.1.1 In summary, two (2) submissions and no (0) further submissions were received to this section of the PDP.

4.2 Matters Raised by Submitters

4.2.1 Both submissions are in support of the OSR – Open Space and Recreation provisions, and no specific matters have been identified.

4.3 Analysis

4.3.1 S11.021 Hawke’s Bay Regional Council supported the provisions in full and sought no changes and S81.077 Horticulture New Zealand specifically supported Policy 2 of this section.

4.3.2 As both submissions on this section of the PDP were in support and no amendments have been requested, no further assessment is provided.

4.4 Recommendations

4.4.1 For the reasons outlined above, I recommend that the OSR – Open Space and Recreation provisions be **retained**.

4.5 Recommended Amendments

4.5.1 No amendments are required as a result of these submissions

4.6 Section 32AA Evaluation

4.6.1 Not applicable.

5.0 Key Issue 2 – Public Access

5.1 Submissions / Further Submissions Addressed

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested /Reasons	Summary Recommendation
S11.022	Hawke's Bay Regional Council	PA- Public Access	Support	No changes	Accept
S125.065	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA-I1	Support	Retain PA-I1 as notified.	Accept
S64.079	Department of Conservation	PA-O1	Support	Retain PA-O1 as notified.	Accept
FS9.362	Forest & Bird		Support	Reasons: Forest & Bird Supports the amendments sought other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.	Accept
S121.048	Federated Farmers	PA-O1	Support	Retain PA-O1 as proposed.	Accept
FS9.48	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	
S125.066	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA-O1	Support	Retain PA-O1 as proposed.	Accept
S125.067	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA-Policies	Amend	Redraft the policies in 'PA - Policies' to more fully and accurately reflect the history, relationships and whakapapa of Māori in the rohe. It needs to meet mana whenua aspirations to access key sites of significance and protect and provide for freshwater, coastal and cultural enhancement. Outside of these uses access should be managed to protect the cultural safety of freshwater and coastal waterbodies. The amended wording should be drafted collaboratively with the mana whenua of the District.	Reject
FS25.73	Federated Farmers		Neutral	The submitters concern about mana whenua access is better addressed in discussion with landowners rather than through the District Plan	Accept
S64.080	Department of Conservation	PA-P1	Support	Retain PA-P1.	Accept
FS9.363	Forest & Bird		Support	Forest & Bird Supports the amendments sought other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.	Accept

S121.049	Federated Farmers	PA-P1	Amend	Amend PA-P1 as follows: 'To require provide for the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps, except when a waiver would be appropriate. '	Accept in part
FS9.49	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	Reject
S121.051	Federated Farmers	PA-XX (new policy)	Amend	Add a new policy in the 'PA - Public Access' chapter in the Proposed Plan as follows: 'Compensation will be payable for esplanades reserves and strips vested in accordance with Section 237E and 237F of the RMA, unless agreed otherwise.'	Reject
FS9.51	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	Accept
S121.050	Federated Farmers	PA-P2	Support	Retain PA-P2 as proposed.	Accept in part
FS9.50	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	Reject
S64.081	Department of Conservation	PA-P3	Support	Retain PA-P3 as proposed	Accept
FS9.364	Forest & Bird		Support	Forest & Bird Supports the amendments sought other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.	Accept
S121.052	Federated Farmers	PA-P3	Support	Retain PA-P3 as proposed	Accept
FS9.52	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	Reject
S64.082	Department of Conservation	PA-P4	Support	Retain PA-P4	Accept
FS9.365	Forest & Bird		Support	Forest & Bird Supports the amendments sought other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.	Accept
S121.053	Federated Farmers	PA-P4	Amend	Amend PA-P4 as follows: 'To ensure that where new access to the coast is to be provided, that it is practical and safe, and is constructed to avoid, remedy or mitigate damage to: 1.6. Private property.'	Reject
FS9.53	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay,	Accept

				would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	
S121.054	Federated Farmers	PA-XX (new policy)	Amend	Add a new policy in the 'PA - Public Access' chapter in the Proposed Plan as follows: '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.'	Accept in part
FS9.54	Forest & Bird		Oppose	The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA.	Reject

5.1.1 In summary, fifteen (15) submissions and eleven (11) further submissions were received to the Public Access section of the PDP. Ten of these submissions are in support of the provisions as proposed and the remaining five seek amendments.

5.2 Matters Raised by Submitters

- The need to address access issues for mana whenua to wāhi tapu on private land, including providing for access across private land to sites of particular significance.
- The need for greater flexibility with respect to the provision of esplanade reserves (PA-P1 and PA-P2) and a request for a new policy regarding compensation when esplanade reserves are provided.
- A request to include reference to private land in Policy PA-P4

5.3 Analysis

Mana Whenua & Public Access

- 5.3.1 S125.065 Ngā hapū me ngā marae o Tamatea support retaining PA-I as notified.
- 5.3.2 S125.066 Ngā hapū me ngā marae o Tamatea support retaining PA-O1 as notified.
- 5.3.3 S125.067 Ngā hapū me ngā marae o Tamatea seek redrafting of the policies in this section collaboratively with the mana whenua of the District to more fully and accurately reflect the history, relationships and whakapapa of Māori in the rohe. They consider that policies for public access need to meet mana whenua aspirations to access key sites of significance, as well as to protect and provide for freshwater, coastal and cultural enhancement. They also consider that outside of these uses, access should be managed to protect the cultural safety of freshwater and coastal waterbodies.
- 5.3.4 Reasons given for re-drafting these policies as sought, include that sometimes mana whenua find it difficult to access wāhi tapu on private land or to cross private land to sites of particular significance. They advise that access to wāhi tapu is important for Māori, and acknowledge that the District Plan provisions for taking esplanade reserves and strips and access strips goes some way to addressing this issue. They would like safe access to practice traditional rituals and ceremonies, including the practice of kaitiakitanga and restoration of particular waterbodies.
- 5.3.5 Federated Farmers (FS25.73) further submitted on this submission point, and whilst they did not support or oppose this submission, indicated in their opinion mana whenua concerns about access would be better addressed in discussion with landowners rather than through the District Plan.
- 5.3.6 The Public Access section of the Plan responds to Council’s RMA section 6(d) responsibility to provide public access to and along the coastal marine area, lakes and rivers as a matter of national importance, as well as NZ Coastal Policy Statement Policy 18 (Public open space) and Policy 19 (Walking access) relating to public access in the coastal environment.
- 5.3.7 For Central Hawke’s Bay, limited public access to the District’s lakes, rivers and the coast has been identified as the key issue and the Planning Maps identify priority waterbodies where Council will consider

taking esplanade reserves, esplanade strips or access strips on the subdivision of land, for the purpose of achieving greater access to lakes, rivers, and the coast¹.

- 5.3.8 The Public Access chapter therefore seeks to encourage provision of public access in these priority areas whilst managing any adverse effects cultural values (among other things). The objective (which has not been challenged) for the Public Access chapter is:

PA-O1 Practical and safe public access to and along the margins of lakes and rivers and the coast is provided in a way that respects private property and does not result in adverse effects on natural character, landscape, indigenous biodiversity, historical heritage or cultural values.

- 5.3.9 Providing for public access in this manner does, as this submission states, partly meet the aspirations of mana whenua to provide for practice of their traditional rituals and ceremonies, including the practice of kaitiakitanga and restoration of particular waterbodies.
- 5.3.10 The issue of access to traditional sites and public access for areas with traditional importance as mahinga kai is recognised in the Strategic Direction of the District Plan as follows:

TW-I3 The loss and alienation of ancestral lands has limited the ability of tangata whenua to access traditional sites and food gathering areas, and to meet their social and economic aspirations.

TW-P8 To maintain and enhance public access to the District's public forests and significant waterways, wetlands and coastal areas, having regard to their traditional importance as mahinga kai.

- 5.3.11 The Public Access chapter however, does not address the issue of access across private land to cultural sites. More information is required from the submitter and hapu collectively to understand this issue and the best methods for responding to this, and whether District Plan (and this chapter in particular) is an available or appropriate method to address this concern.
- 5.3.12 Ngā hapū me ngā marae o Tamatea may wish to expand further on this at the hearing. Alternatively this may be an issue that Council and mana whenua explore more fully outside of this current District Plan process, and if required address through a future plan change.
- 5.3.13 In the interim, and in the absence of sufficient information to amend this section as sought, I recommend this submission be rejected.

Matters related to Esplanade Reserves (Policy PA-P1 and PA-P2 and request for new policy)

- 5.3.14 Policies PA-P1 and PA-P2 relate to the provision of esplanade areas and submissions on these two policies are therefore considered together.
- 5.3.15 S64.080 Department of Conservation has submitted in support of Policy PA-P1 with their reasons being it is appropriate in terms of RMA section (6a) and 6(d), and NZ Coastal Policy Statement Policies 18,19 and 20, and seek that it should be retained as notified.
- 5.3.16 Forest & Bird (FS9.363) further submitted in support of the Department of Conservation submission on the basis that they support all Department of Conservation submissions other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.
- 5.3.17 S121.049 Federated Farmers seeks an amendment to Policy PA-P1 as follows:

'To require provide for the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps, except when a waiver would be appropriate.

- 5.3.18 Federated Farmers reason for this amendment is to build in the ability to waiver such requirements, similar to the neighbouring district Hastings District Plan RMP4, as in their view even along priority waterbodies there will be circumstances where waiving the requirement for esplanade reserves/strips or access strips is necessary, such as for safety reasons (e.g. where the site is industrial), or where it is impractical (e.g. where the site has steep cliffs) or for financial reasons (e.g. if the Council does not have the resources to provide fair compensation). They note that although the subsequent policy (Policy PA-P2) provides for

¹ As noted the PDP has a mapping error that resulted in a number of the priority water bodies not being mapped. It is intended that this will be amended by a Variation to the Plan in due course.

waivers, this only applies to non-priority waterbodies. They note that Policy RMP4 in the neighbouring Hastings District Plan for waivers, applies to all waterbodies.

- 5.3.19 Forest & Bird (FS9.49) further submitted opposing all submissions by Federated Farmers on the basis that the amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA. They have not provided any specific reasons for their opposition to this particular submission point.
- 5.3.20 S121.050 Federated Farmers supports Policy PA-P2 and seeks that it be retained as proposed. They support it on the basis that waiving is appropriate in certain circumstances, such as for safety reasons (e.g. where the site is industrial); is impractical (e.g. where the site has steep cliffs), or financial reasons (e.g. if the Council does not have the resources to provide fair compensation.) They remind the Council that compensation is payable under Sections 237E.2 and 237F and that landowners should not be compelled to gift land without compensation.
- 5.3.21 Forest & Bird (FS9.50) further submitted opposing all submissions by Federated Farmers on the basis that the amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawke's Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA. They have not however provided any specific reasons to this submission point.
- 5.3.22 Whilst Forest & Bird (FS9.50) have opposed Federated Farmers support for this policy, it is a generic opposition to all of Federated Farmers submission points. In the context of this specific policy, and Federated Farmers support for it, there is no reason to uphold Forest & Birds opposition.
- 5.3.23 The RMA provides for esplanade areas to be set aside when allotments of less than 4 hectares adjacent to water bodies are created (s230), unless a rule in a district plan provides otherwise (s77(1)). The RMA also provides that a Council may include a rule in a District Plan to require esplanade areas on allotments greater than 4 ha (s77(2)). Thus the presumption is, that unless there are rules in the District Plan that state otherwise, esplanade areas will be set aside on subdivision creating allotments under 4 ha. In all other circumstances, it is optional. If waivers are intended for allotments under 4 ha, this needs to be provided for in a rule in a District Plan.
- 5.3.24 PDP policies PA-1 and PA-2 indicate that on subdivision Council will require esplanade areas alongside priority waterbody areas, but provide for a waiver of such requirements for non-priority waterbody areas.
- 5.3.25 The associated PDP subdivision rules relating to esplanade reserves provide assessment matters that must be considered when making decision on a subdivision proposal. SUB-AM9 sets out matters to assess when a subdivision includes creation of an esplanade reserve. In summary these matters provide for assessment against:
- the purpose for the creation of such an area (as set out in section 229 of the RMA), (SUB-AM9(1));
 - whether such an area needs to be created (SUB-AM9(2)); and
 - an assessment of the adverse effects of any waiver (SUB-AM9(3)).
- 5.3.26 Thus the rules, via the assessment matters, provide for a discretion to take esplanade areas on all relevant subdivisions, rather than a specific requirement as indicated by policy PA-P1, and provide for consideration of a waiver in circumstances where the RMA requires such provision (i.e. on all sites under 4ha).
- 5.3.27 Federated Farmers submission seeking flexibility in the circumstances when esplanade areas will be provided alongside priority waterbodies (through applying waiver provisions (SUB-AM9(3)) or determining if they are in accordance with the purpose (SUB-AM9(1)) or are needed (SUB-AM9(2)), can therefore currently be achieved under the existing rule framework.
- 5.3.28 However I do consider that the existing policy and rule framework is not clear in this respect, and in developing my recommendation, have examined the purpose of these provisions as follows:
- 5.3.29 The PDP Public Access provisions relating to esplanade areas update the Operative District Plan provisions and take into account recommendations provided as part of a review of the rural landscapes prepared to assist Council with the review of the District Plan (the '*terraforme* report'²).

² Rural Landscape Assessment, Central Hawke's Bay District Council, District Plan Review Terraforme (2016)

- 5.3.30 Maps 45-48 of the Operative District Plan identify areas of land adjoining lakes (e.g. Lake Whatuma and Horseshoe Lake), rivers and streams or the coast in the District (e.g. parts of the Waipawa River, Tukituki River, Tukipo River and Manganuku Stream) where esplanade reserves or esplanade strips may be required on subdivision under Rule 9.9.1(e) of the Operative District Plan. The *terraforme* report considered whether or not esplanade reserves should be taken upon subdivision and whether the District Plan should include rules to waive this requirement, and concluded as follows³ :

'streams and rivers are an important part of the Central Hawke's Bay (CHB) district landscape. They dissect the plains and link the ranges to the coast.

The Waipawa and the Tukituki rivers in particular an important part of this landscape. The Porangahau river also has a special place in this landscape. None of the rivers exist in isolation and all form part of the network of waterways that dissect the CHB landscape and dictate, to a level, the landuse patterns.

The rivers, stream and waterways were considered as part of this assessment.

This report recommends that the District Plan include a requirement for esplanade reserves in accordance with s230 of the RMA.

There is nothing to suggest through this assessment that the requirement for esplanade reserves or strips in accordance with s.230 (and s.229) should be waived. It must be acknowledged that like many other areas CHB may not ever have an entire network of esplanade reserves given it is highly unlikely that all area adjoining streams and rivers will be subdivided into allotments of 4 h or less. Not taking esplanade reserve is considered to compromise the ability of Council to strategically acquire land in the future should this deemed appropriate.

Each case for requiring esplanade reserves should be considered on its merits'

- 5.3.31 The waterbodies identified on Operative District Plan Maps 45-48 were re-confirmed through this report as being 'priority waterbodies' for providing esplanade areas on subdivision (and as such creating public access to and along these areas). The Public Access provisions of the PDP were written on this basis.⁴
- 5.3.32 In the 'Introduction' to the Public Access provisions, the PDP states 'The District Plan includes provisions for taking esplanade reserves, esplanade strips, or access strips on subdivision of land (RMA sections 229 – 237H) – with priority being placed on providing access to the Waipawa, Tukituki and Porangahau rivers, and Lake Whatuma providing an important mechanism to enable public access to be maintained and enhanced ' and the 'Anticipated Environmental Results' provide the following guidance on the outcomes sought by these provisions:

'PA-AER1 The District's lakes and rivers are accessible to the public in appropriate locations and in a way that respects other recognised values and private property.

PA-AER2 The coast is accessible to the public in appropriate locations and in a manner that minimises disturbance to the foredunes and protects other recognised values within the coastal environment.'

- 5.3.33 I also note the reference to Hastings District Plan Policy RMP4 cited in Federated Farmers submission that states:

'POLICY RMP4 - Provide for (where it is appropriate) the waiving of requirements for esplanade areas (esplanade reserves and esplanade strips)'

and their amendment seeking a similar approach for the PDP.

- 5.3.34 With respect to that particular policy, I note it sits alongside other policies that identify specific locations where esplanades will be required. I consider this provides helpful guidance, particularly as the HDC District Plan has recently been reviewed and therefore been robustly tested.
- 5.3.35 Taking into account the current PDP Public Access provisions and the relevant rules (via assessment matters) in the subdivision chapter as discussed above, I have concluded that the purpose of these provisions is to prioritise and encourage the taking of esplanade reserves on all sites being created adjacent to identified priority waterbodies (under or over 4ha), and to provide for waivers of any requirement to create sites in appropriate circumstances (as set out in the assessment matters). Council is not seeking to create esplanade areas on other non-priority waterbodies.

³ Rural Landscape Assessment, Central Hawke's Bay District Council, District Plan Review Terraforme (2016)

⁴ As noted the PDP has a mapping error that resulted in a number of the priority water bodies not being mapped. This will be amended by a Variation to the Plan towards the end of the hearings process.

- 5.3.36 Using Hastings District Plan as guidance, I recommend the following amendments to Policies PA-P1 and PA-P2 to more clearly reflect this. This proposed amendment also provides for the relief sought by the submission from Federated Farmers on this matter, however they may wish to further comment on this at the hearing.

PA-P1 To ~~require~~ prioritise the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps.

PA-P2 To provide for the waiving of requirements for esplanade areas (esplanade reserves, esplanade strips or access strips) ~~on non-priority water bodies~~, where appropriate.

Refer SUB-AM9 for guidance as to where a waiver might be considered appropriate.

- 5.3.37 A consequential amendment to the Assessment Matter SUB-AM9 in the subdivision provisions is also recommended to further clarify this approach. I note that no submissions have been received on this assessment matter, and do not consider any parties would be prejudiced by this proposed consequential amendment.

SUB-AM9 Esplanade Reserves, Esplanade Strips and Access Strips

1. The purposes for the creation of esplanade reserves and/or esplanade strips set out in section 229 of the RMA.
- 2a. **Whether an esplanade reserve or esplanade strip of up to 20 metres wide is needed to be created or vested when a lot is created along any priority water body shown on the Planning Maps (including consideration of the adverse effects of not providing the full potential width and the benefits of providing the full width).**
- 2b. Whether an esplanade reserve or esplanade strip of up to 20 metres wide is needed to be created or vested when a lot is created along the bank of any ~~other river or lake~~ waterbody identified on District Planning Maps, ~~or along the coast~~ (including consideration of the adverse effects of not providing the full potential width and the benefits of providing the full width).

Note: This does not apply to subdivisions that are required for a boundary adjustment.

3. Whether any waiver or reduction in size or width of an esplanade reserve or esplanade strip will adversely affect:
 - a. The ecological characteristics of the land that contribute to the maintenance and enhancement of the natural functioning of the adjacent river, lake or sea;
 - b. The water quality of the adjoining river, lake or sea;
 - c. The land and water-based habitats present on or adjoining the subject land area;
 - d. The public's ability to gain access to and along the lake, river or sea;
 - e. The recreational use of the land and adjacent water;
 - f. The natural character and visual amenity of the river, lake, or coast; and
 - g. The ability of the Central Hawke's Bay District Council and/or the Hawke's Bay Regional Council to gain access to and along the margins of the river, lake, or sea for maintenance purposes.
 - h. Whether any waiver or reduction in size or width of the esplanade reserve or esplanade strip will:
 - i. Ensure the security of private property or the safety of people;
 - j. Maintain or enhance the protection of wāhi taonga, including wāhi tapu and mahinga kai as well as the provision of access to areas of importance to Māori;
 - k. Whether the land is within a natural hazard area or in an area where there is an identified risk from one or more natural hazards.
 - l. Whether there is another protection mechanism, such as QEII Trust Covenant, that will be more appropriate than an esplanade reserve or esplanade strip.'

- 5.3.38 I consider that this proposed amendment will more accurately reflect the intention of these provisions in the PDP whilst achieving the outcomes sought by Federated Farmers submission on this matter. For these reasons I recommend that S121.050 Federated Farmers be accepted in part.

- 5.3.39 S121.051 Federated Farmers has sought the inclusion of a new policy as follows:

'PA-XX (new policy)**Compensation will be payable for esplanades reserves and strips vested in accordance with Section 237E and 237F of the RMA, unless agreed otherwise.**

- 5.3.40 Compensation is a matter that must be addressed at the time of subdivision as set out in sections 237E and 237F of the RMA. For this reason I do not support the inclusion of a new policy as sought by this submitter and recommend that this submission be rejected.

Policy PA-P3

- 5.3.41 S64.081 Department of Conservation has submitted in support of Policy PA-P3 with their reasons being it is appropriate in terms of RMA section (6a) and 6(d), and NZ Coastal Policy Statement Policies 18,19 and 20, and seek that it should be retained as notified.
- 5.3.42 Forest & Bird (FS9.364) further submitted in support of the Department of Conservation submission on the basis that they support all Department of Conservation submissions other than where the decision sought is inconsistent with Forest & Birds original submission, as they would improve protection and maintenance of indigenous biodiversity.
- 5.3.43 S121.052 Federated Farmers has submitted in support of Policy PAP3 encouraging public access. They note that public access across private land is a matter for the landowner so the District Plan must not compel it, however Council encouragement is appropriate. They support this policy be retained as notified.
- 5.3.44 Forest & Bird (FS9.52) further submitted opposing all submissions by Federated Farmers on the basis that the amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawke's Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA. They have not provided specific reasons to this submission point.
- 5.3.45 Forest & Bird in this instance have contradictory further submissions given their general stance of supporting all Department of Conservation submissions and opposing all Federated Farmers submissions. In the context of this specific policy, there is no reason to uphold Forest & Birds opposition, and I consider Policy PA-P3 should be retained as sought by these original submitters.

Policy PA-P4

- 5.3.46 S64.082 Department of Conservation has submitted in support of Policy PA-P4 and seek that it should be retained as notified.
- 5.3.47 Forest & Bird (FS9.365) further supported this submission, on the basis that they support all DOC original submissions where the decision sought is consistent with Forest & Birds original submission. Forest & Bird do not, however, provide any specific reasons addressing the retention of this particular policy.
- 5.3.48 S121.053 Federated Farmers seeks an amendment to Policy PA-P4 to include private property within this policy as follows:

'To ensure that where new access to the coast is to be provided, that it is practical and safe, and is constructed to avoid, remedy or mitigate damage to:

1. dunes, estuaries and other sensitive natural areas or habitats;
2. geological systems or processes;
3. ecological systems or to indigenous flora and fauna;
4. historical heritage; or
5. sites and areas of significance to tangata whenua.

6. private property.'

- 5.3.49 Federated Farmers reason for this amendment is to provide for private property as a consideration when providing public access that does not cause damage. The submitter states that, as a group, farmers provide more public access across their private property than other landowners (such as residential or industrial) and are familiar with adverse effects of doing so such as rubbish, weed incursions or nuisance effects on their homes and places of work. They note that weed incursions are a particular concern with Chilean Needle Grass and Yellow Bristle Grass now in the region, which can create significant damage to livestock welfare and pasture quality.
- 5.3.50 Forest & Bird (FS9.53) opposed this submission, on the basis that they oppose all Federated Farmers original submissions, stating that the amendments and decisions sought by Federated Farmers would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS,

NZCPS and NPSFM or would not achieve the purpose of the RMA. Forest & Bird do not, however, provide any reasons for opposing the particular amendment sought.

5.3.51 Whilst I acknowledge Federated Farmers concerns regarding public nuisance in relation to public access across farmland, these are not construction matters as sought to be addressed by this policy. Where public access is constructed over private land, there are other legal mechanisms for dealing with any construction effects including land owner agreements, however the ongoing management of such public access is not something that is able to be addressed by the RMA.

5.3.52 For these reasons I do not recommend adopting the amendment as sought by this submitter.

New Policies

5.3.53 S121.054 Federated Farmers has sought the inclusion of an additional new policy as follows:

PA-XX (new 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.'

5.3.54 Forest & Bird (FS9.51 & FS9.54) further submitted on the basis that they oppose all Federated Farmers original submissions, stating that the amendments and decisions sought by Federated Farmers would result in continued loss of indigenous biodiversity in Hawkes Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA. Forest & Bird do not, however, provide any reasons for opposing the particular amendment sought.

5.3.55 Given this section is about maintaining and enhancing public access, specific additional policy to educate and inform about the location of public access and private property rights will not in my view assist in achieving the objective of this section. However, a reference could be included as part of Council's advocacy role outlined in PA-M3 Advocacy and Liaison. If the Commissioners consider that is an appropriate response proposed wording is suggested as follows:

PA-M3 Advocacy and Liaison

Directly negotiating with landowners, as appropriate, to encourage them to voluntarily establish public access to and along the coast or priority waterbodies-; informing the public as to the location of public access to rivers, lakes and coast and educating the public that access over private land is only by the permission of the landowner.

5.3.56 Submitters on this point may also like to provide the Hearings Panel with feedback on the proposed wording.

5.4 Recommendations

5.4.1 For the reasons outlined above, I recommend that the section on Public Access be amended (as outlined in Recommended Amendments below).

5.4.2 I recommend that the following submission(s) be **accepted**:

- Hawke's Bay Regional Council, S11.022
- Ngā hapū me ngā marae o Tamatea, S125.065
- Department of Conservation, S64.079, S64.080, S64.081, S64.082
- Federated Farmers, S121.048, S121.052
- Ngā hapū me ngā marae o Tamatea, S125.066

5.4.3 I recommend that the following submission(s) be **accepted in part**:

- Federated Farmers, S121.049, S121.050, S121.054

5.4.4 I recommend that the following submission(s) be **rejected**:

- Ngā hapū me ngā marae o Tamatea, S125.067
- Federated Farmers, S121.051, S121.053

5.5 Recommended Amendments

5.5.1 I recommend the following amendment(s) are made:

- amendments– ~~strike through~~ and underlined

PA-P1 To ~~require~~ prioritise the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps.

PA-P2 To provide for the waiving of requirements for esplanade areas (esplanade reserves, esplanade strips or access strips) ~~on non-priority water bodies~~, where appropriate.

Refer SUB-AM9 for guidance as to where a waiver might be considered appropriate.

PA-M3 Advocacy and Liaison

Directly negotiating with landowners, as appropriate, to encourage them to voluntarily establish public access to and along the coast or priority waterbodies-; informing the public as to the location of public access to rivers, lakes and coast and educating the public that access over private land is only by the permission of the landowner.

...

PA-M3 Advocacy and Liaison

Directly negotiating with landowners, as appropriate, to encourage them to voluntarily establish public access to and along the coast or priority waterbodies-; informing the public as to the location of public access to rivers, lakes and coast and educating the public that access over private land is only by the permission of the landowner.

5.5.2 I also recommend the following consequential change to SUB – Subdivision Chapter Assessment Matter SUB-AM9:

SUB-AM9 Esplanade Reserves, Esplanade Strips and Access Strips

1. The purposes for the creation of esplanade reserves and/or esplanade strips set out in section 229 of the RMA.
- 2a. Whether an esplanade reserve or esplanade strip of up to 20 metres wide is needed to be created or vested when a lot is created along any priority water body shown on the Planning Maps (including consideration of the adverse effects of not providing the full potential width and the benefits of providing the full width).
- 2b. Whether an esplanade reserve or esplanade strip of up to 20 metres wide is needed to be created or vested when a lot is created along the bank of any other ~~river or lake~~ waterbody identified on District Planning Maps, ~~or along the coast~~ (including consideration of the adverse effects of not providing the full potential width and the benefits of providing the full width).

5.6 Section 32AA Evaluation

- 5.6.1 The changes proposed, in isolation, are not considered to be a significant departure from the Proposed District Plan as notified.
- 5.6.2 The recommended amendments to policies PA-P1 and PA-P2 provide clearer direction on the types of circumstances that Council will consider the creation of public access and will improve the effectiveness of the PDP in achieving objective PA-O1. There will be no additional costs as a result of this amendment and there will potentially be cost savings to the community though providing clearer direction for when waivers to public access provision are anticipated.
- 5.6.3 The recommended amendment to Method PA-M3, slightly expands the advocacy and liaison role with respect to private land and further S32AA re-evaluation is not warranted.

6.0 Key Issue 3 – Activities on the Surface of Water

6.1 Submissions / Further Submissions Addressed

Submission Point	Submitter (S) / Further Submitter (FS)	Provision	Position	Summary of Decision Requested	Summary Recommendation
S11.027	Hawke's Bay Regional Council	ASW	Support	No changes	Accept
S48.008	Jet Boating New Zealand	ASW-I1	Support	Retain	Accept
S48.002	Jet Boating New Zealand	ASW-O1	Support	Retain	Accept
S48.003	Jet Boating New Zealand	ASW-P1	Support	Retain	Accept
S48.004	Jet Boating New Zealand	ASW-P2	Support	Retain	Accept
S48.005	Jet Boating New Zealand	ASW-R1	Amend	<p>Amend ASW-R1(3) as follows:</p> <p>'Any River Upstream of the Confluence of the Tukituki and Waipawa Rivers³. Activity Status: DIS</p> <p>Where the following conditions are met: N/A Tukituki River main stem above the Waipawa River confluence</p> <p>Activity Status: PER</p> <p>Where the following performance standards are met:</p> <p>1) Non-commercial</p> <p>2) Excluding July, August and September</p> <p>Activity status where compliance not achieved: DIS</p> <p>Waipawa River main stem above the Tukituki confluence</p> <p>Activity Status: PER</p> <p>Where the following performance standards are met:-</p> <p>1) Non-commercial</p> <p>2) Excluding July, August and September</p> <p>Activity status where compliance not achieved: DIS</p> <p>Note: This does not apply to the use of small motorized, remotely-controlled craft, operated by suitably qualified persons, for river monitoring purposes.'</p>	Reject
S48.006	Jet Boating New Zealand	ASW-R2	Amend	<p>Amend ASW-R2(1) as follows:</p> <p>'1. Activity Status: PER</p> <p>Where the following conditions are met:</p> <p>N/A Non-commercial.'</p>	Reject

S48.007	Jet Boating New Zealand	ASW-AM1	Support	Retain	<Accept / Accept in part / Reject>
S48.010	Jet Boating New Zealand	ASW-M1	Support	Retain	<Accept / Accept in part / Reject>
S48.009	Jet Boating New Zealand	ASW-M2	Support	Retain	<Accept / Accept in part / Reject>
S48.010	Jet Boating New Zealand	ASW-AER1	Support	Retain	<Accept / Accept in part / Reject>
S48.011	Jet Boating New Zealand	ASW-AER2	Support	Correct typo as follows: 'AWRASW-AER2'	<Accept / Accept in part / Reject>
S48.012	Jet Boating New Zealand	ASW-AER3	Support	Retain	<Accept / Accept in part / Reject>

6.1.1 In summary, thirteen (13) submissions and no (0) further submissions were received to the Activities on the Surface of Water (ASW) section of the Plan.

6.2 Matters Raised by Submitters

6.2.1 S48 Jet Boating New Zealand has sought amendments to both rules as outlined below and a minor correction to Anticipated Environmental Results AER2. All other parts of this chapter were otherwise supported.

6.3 Analysis

6.3.1 S48.005 Jet Boating New Zealand seeks an amendment to ASW-R1 as follows:

ASW-R1 Use of motorised craft on the surface of rivers and lakes
~~Any River Upstream of the Confluence of the Tukituki and Waipawa Rivers~~

~~3. Activity Status: DIS~~

~~Where the following conditions are met: N/A~~

Tukituki River main stem above the Waipawa River confluence

Activity Status: PER

Where the following performance standards are met:

- 1) **Non-commercial**
- 2) **Excluding July, August and September**

Activity status where compliance not achieved: DIS

Waipawa River main stem above the Tukituki confluence

Activity Status: PER

Where the following performance standards are met:-

- 1) **Non-commercial**
- 2) **Excluding July, August and September**

Activity status where compliance not achieved: DIS

Note: This does not apply to the use of small motorized, remotely-controlled craft, operated by suitably qualified persons, for river monitoring purposes.'

6.3.2 Jet Boating New Zealand submit that potential effects on spawning can be mitigated by excluding motorised activity during the same period that the fishing season is closed and that for the rest of the year motorised craft should be permitted, subject to performance standards as there are no proven adverse effects on trout habitat and the habitat and indigenous fauna.

- 6.3.3 While they support the permitted status for recreational use on all other waterways, they submit that commercial use should be subject to a performance standard.
- 6.3.4 The provisions as proposed for Activities on the Surface of Water are essentially a roll-over from the Operative District. There were no submissions to the draft plan relating to activities on the surface of water.
- 6.3.5 It is noted that ASW-P1 specifically refers to the effects of motorized craft on 'trout habitat and the habitat of indigenous fauna' and thus associated rule ASW-R1 is not limited to effects on fish species only. It would therefore in my mind be inappropriate to amend the rules as proposed by Jet Boating New Zealand as it would fail to protect the habitat of trout and indigenous fauna as proposed by these provisions, including Rules ASW-R1.
- 6.3.6 I therefore recommend this submission be rejected.
- 6.3.7 S48.006 Jet Boating New Zealand seeks an amendment to ASW-R2 as follows:

ASW-R2 All other activities on the surface of rivers and lakes not otherwise provided for:

All Rivers and Lakes

'1. Activity Status: PER

Where the following conditions are met:

~~N/A~~ Non-commercial.'

- 6.3.8 Jet Boating New Zealand have not offered any specific reason supporting their request nor provided any guidance on appropriate standards. In the absence of any specific reasoning or alternatives it would not be appropriate to change rule ASW-R2 as requested and for this reason I recommend this submission be rejected.
- 6.3.9 S48.011 Jet Boating New Zealand seeks an amendment to Anticipated Environmental Result ASW-AER2 to correct a typo as follows:
- AWRASW-AER2'**
- 6.3.10 I agree that this is just a typing error and should be amended as sought.

6.4 Recommendations

- 6.4.1 For the reasons outlined above, I recommend that ASW-R1 and ASW-R2 be retained (as proposed).
- 6.4.2 I recommend that the following submission(s) be **accepted**:
- Hawke's Bay Regional Council, S11.027
 - Jet Boating New Zealand, S48.008, S48.002, S48.003, S48.004, S48.007, S48.010, S48.009, S48.010, S48.011, S48.012
- 6.4.3 I recommend that the following submission(s) be **rejected**:
- Jet Boating New Zealand, S48.005, S48.006

6.5 Recommended Amendments

- 6.5.1 I recommend the following amendment(s) are made:

– amendments– ~~strike through~~ and underlined

AWRASW-AER2 surface of the District's rivers and lakes.

6.6 Section 32AA Evaluation

- 6.6.1 Not applicable

7.0 Conclusion

7.1 Topic Conclusions

- 7.1.1 Submissions have been received in support of, and in opposition to the Proposed District Plan.
- 7.1.2 Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the Proposed District Plan should be amended as set out in Appendix A of this report.
- 7.1.3 I consider that the proposed provisions will be the most appropriate means to achieve the purpose of the Resource Management Act 1991, and achieve the relevant objectives of the Proposed District Plan in respect to the proposed provisions.

7.2 Topic Recommendations

- 7.2.1 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 Central Hawke's Bay District Plan is amended in accordance with the changes recommended in Appendix A of this report.

APPENDIX A

Recommended Amendments to Plan Provisions

Tracked Change Amendments

<~~strikethrough~~ and underlined>

OSR – Open Space and Recreation

Introduction

Access to open space and the wide range of recreation opportunities it offers provides significant benefits to community health and wellbeing and contributes to thriving, healthy and liveable communities. The Central Hawke's Bay environment has abundant opportunities across a wide range of settings, including the bush-clad ranges of the Ruahine forest, the rivers, lakes and their margins, open space reserves, and the extensive coastline including Te Angiangi Marine Reserve. Most of these spaces are administered and managed by the Department of Conservation, the Hawke's Bay Regional Council, or the District Council.

The Council provides many recreation facilities (such as swimming pools, sports fields and playgrounds etc) that are valued and utilised by the community and there are also private landowners and organisations who contribute to public recreation opportunities, such as golf-clubs, Backpaddock Lake and Ranui Farm Park (mountain biking), and the Rotary Rivers Pathway Trust (trails).

Council recognises the significant benefits and values of accessible recreation opportunities and seeks to enable and encourage these opportunities in a sustainable way. Recreational activities and the development of facilities can have adverse effects on the amenity of the open space areas as well as their adjoining environments. These effects can include:

- noisy activities, night lighting or late hours of operation which can cause a nuisance for adjoining residential areas;
- large buildings such as clubrooms which can cause shading on neighbouring areas and be visually unappealing;
- lack of car-parking space which can cause problems with on-street parking and congestion in adjoining streets; and
- commercial or club concessions that can exclude public users from areas of reserves and create adverse effects relating to car-parking, litter and toilet facilities.

Potential adverse effects can also occur as a result of access to sensitive environments (landscape/cultural/ecological environments). Such effects can include, for example, earthworks in Outstanding Natural Landscapes, removal of vegetation in Significant Natural Areas, or earthworks or inappropriate access to wāhi tapu, wāhi taonga or sites of significance.

Many Council-owned open spaces and activities / facilities are designated in the District Plan and shown on the Planning Maps. This means that works within these spaces take place according to the purpose they have been designated for, regardless of the underlying zone provisions. Community and recreation facilities are also identified in SCHED8 – Schedule of Identified Community Facilities of this Plan and shown on the Planning Maps (for information purposes only).

Recreational activities (as community facilities) are generally permitted activities within the Zones and include a wide range of activities and facilities such as walkways, cycleways and trails (where located outside of road reserves), playgrounds and skate parks, fields and courts changing rooms, club rooms etc.

Issues

OSR-I1 Adequate provision for accessible recreational opportunities in appropriate locations.

Explanation

Accessible open spaces and recreation activities (as part of 'community facilities') that are appropriately located, should be available to satisfy the needs of the District's population. Regardless of ownership, Council seeks to encourage the provision of accessible open spaces and recreation facilities that will benefit the community in a way that is mindful of potential impacts on neighbouring landowners.

Objectives

OSR-O1 Open space and recreational opportunities that are accessible and appropriately located to meet the needs of residents and visitors, while avoiding, remedying or mitigating any adverse effects.

Policies

OSR-P1 To facilitate, provide, and maintain a wide variety of open spaces and recreation opportunities in locations that are accessible to users.

OSR-P2 To ensure that buildings and development associated with recreational activities are established in a way that avoids or mitigates adverse effects, including reverse sensitivity effects, on neighbouring properties.

Methods

Methods for implementing the policies:

OSR-M1 Designation

Designating Council Reserves under the Plan to enable the continued recognition and function of these areas for recreational and open space purposes and identifying these in the list of Designations in the District Plan and on the Planning Maps. Note: not all Council open spaces and facilities are designated.

OSR-M2 Reserve Management Plans

Developing reserve management plans for the use, development, and management of Council-owned and administered reserves.

OSR-M3 Information

Identifying open spaces and recreational opportunities in APP1-SCHED8 – Schedule of Identified Community Facilities of the District Plan and on the Planning Maps, for information purposes.

OSR-M4 Collaboration

1. Continuing to work with other organisations (Department of Conservation, Hawke's Bay Regional Council) and private landowners to provide for a range of appropriate open space and recreational opportunities within the District.
2. Engaging and supporting hapū and marae, community organisations and private landowners to enable access to a wide range of accessible recreation opportunities across the District.

OSR-M5 District Plan

1. Providing for recreational activities (within the definition of 'community facilities') as a permitted activity, subject to complying with access, parking, noise, light standards etc.
2. Limiting buildings for community facilities to 100m² of gross floor area in all zones except the Commercial Zone and General Industrial Zone (which have no gross floor area limit), so that the potential adverse effects of large-scale buildings can be appropriately avoided, remedied, or mitigated.
3. Standards and related assessment matters for community facilities requiring resource consent addressing potential adverse effects on neighbours and the community.
4. Assessment matters for community facilities requiring resource consent within sensitive environments such as Outstanding Natural Landscapes and Features, Significant Natural Areas, wāhi tapu, wāhi taonga or sites of significance.
5. Rules and performance standards relating to earthworks.

Principal Reasons

The principal reasons for adopting the policies and methods:

The District has abundant open space and recreation areas including large domains, picnic areas and active sports areas. These policies acknowledge that open spaces and the recreation opportunities provided are important to the health and wellbeing of the community and visitors to the community. While recreational activities are permitted across all zones, buildings for recreational use are generally limited in gross floor area to ensure that any adverse effects of large-scale buildings for recreational activities can be assessed through a resource consent process.

Many Council-owned public reserves are designated, and most community facilities are also scheduled in the District Plan for information purposes.

Anticipated Environmental Results

The environmental results anticipated from the policies and methods:

- OSR-AER1** **Provision of a wide range of recreational opportunities in recognition of the diversity of community recreational needs.**

- OSR-AER2** **Open spaces and recreational facilities that are convenient and accessible to users.**

- OSR-AER3** **Recreational activities undertaken in a manner which do not adversely affect the general amenity of the surrounding environment.**

PA – Public Access

Introduction

Central Hawke's Bay has an extensive coastal margin and numerous rivers, streams and lakes that contribute to the District's identity and sense of connection to the environment and are highly valued by the community. Maintaining and enhancing public access to and along the coastal marine area and the margins of these waterbodies is a matter of national importance (section 6(d)).

The margins of the District's waterbodies are valued for many reasons including their natural character and contribution to water quality, their role as indigenous habitats for flora and fauna, amenity and public access reasons, and their importance to tangata whenua. While many of the ecological values of the District's significant riparian margins are recognised as Significant Natural Areas in ECO-SCHED5 and shown on the planning maps, additional protection in some cases is also warranted to maintain and enhance public access values.

The District Plan includes provisions for taking esplanade reserves, esplanade strips, or access strips on subdivision of land (RMA sections 229 – 237H) – with priority being placed on providing access to the Waipawa, Tukituki and Porangahau rivers, and Lake Whatuma providing an important mechanism to enable public access to be maintained and enhanced.

Public access to the coast is largely limited to where rural roads end at the coast. These roads accessing the coast largely coincide with the presence of beach settlements and coastal developments. There are multiple points of public access at these locations, generally associated with public open space areas and recreation reserves.

Issues

PA-I1 Limited Public Access to Lakes, Rivers, and the Coast

Lack of practical and safe public access to and along the coast can restrict cultural practices and recreational opportunities within the coastal environment. Conversely, provision of public access in inappropriate locations can adversely affect other recognised values within the coastal environment.

Explanation

The lakes, rivers and coast are an important recreational resource for the District's residents and visitors, and access to the coast is also of traditional and continuing cultural importance to tangata whenua.

Existing public access to the coast is typically provided in and around the coastal settlements, from public walking and vehicle access points often within open space reserves. Policies 19 & 20 of the NZCPS recognise the public expectation of practical and safe access, and seek to maintain public walking access to the coast and identify opportunities to enhance it, as well as

recognise the need to identify appropriate locations for vehicle access and control use of vehicles on beaches and adjacent public land where they may cause damage, disturbance or danger.

The location and design of any new public access points needs to be compatible with the natural character, natural features and landscapes, indigenous vegetation and sensitive habitats of indigenous fauna (particularly sensitive dune areas), and the amenity values of the lake or river concerned or the coastal environment, as well as mindful of sites and activities of importance to tangata whenua and sites of historical heritage. New public access points also need to be respectful of private property.

Objectives

PA-O1 Practical and safe public access to and along the margins of lakes and rivers and the coast is **provided maintained and enhanced** in a way that respects private property and does not result in adverse effects on natural character, landscape, indigenous biodiversity, historical heritage or cultural values.

Commented [RM1]: S75.071 Forest & Bird - Coastal Topic, Issue 4

Policies

PA-P1 To **require prioritise** the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps.

Commented [SM2]: S121.049 Fed Farmers Public Access Topic Key Issue 2

PA-P2 To provide for the waiving of requirements for esplanade areas (esplanade reserves, esplanade strips or access strips) **on non-priority water bodies**, where appropriate.

Commented [SM3]: S121.050 Federated Farmers Public Access Topic Key Issue 2

Refer SUB-AM9 for guidance as to where a waiver might be considered appropriate.

PA-P3 To encourage the provision of appropriate opportunities for public access within the coastal environment when subdividing land adjacent to the coastal marine area.

PA-P4 To ensure that where new access to the coast is to be provided, that it is practical and safe, and is constructed to avoid, remedy or mitigate damage to:

1. dunes, estuaries and other sensitive natural areas or habitats;
2. geological systems or processes;
3. ecological systems or to indigenous flora and fauna;
4. historical heritage; or
5. sites and areas of significance to tangata whenua.

Rules

Provision for the taking of esplanade reserves, esplanade strips and access strips is addressed through the subdivision consent process and the associated provisions in the SUB – Subdivision chapter of the District Plan.

Methods

Methods for implementing the policies:

PA-M1 Identification and Mapping of Priority Waterbodies

Identifying priority areas on the Planning Maps where esplanade reserves, esplanade strips or access strips are desirable to maintain and enhance public access.

PA-M2 Subdivision Assessment Matters for Esplanade Reserves, Esplanade Strips or Access Strips

Assessment matters for determining whether the taking of esplanade reserves are required to be vested in Council on subdivision, and the situation and condition under which Council may reduce or waive the requirement to provide esplanade reserves.

PA-M3 Advocacy and Liaison

Directly negotiating with landowners, as appropriate, to encourage them to voluntarily establish public access to and along the coast or priority waterbodies: **informing the public as to the location of public access to rivers, lakes and coast and educating the public that access over private land is only by the permission of the landowner.**

Commented [SM4]: S121.054 Federated Farmers Public Access Topic Key Issue 2

PA-M4 Annual Plan

Provision through the Annual Plan for the maintenance and enhancement of public amenities, such as access to the coast and to various waterbodies, from public open space reserves.

Principal Reasons

Public access to and along the coast, and to the lakes and rivers throughout the District, should be promoted but needs to be carefully managed so as not to compromise other recognised values, particularly within the coastal environment, and be done in a way that respects private property.

Anticipated Environmental Results

PA-AER1 The District's lakes and rivers are accessible to the public in appropriate locations and in a way that respects other recognised values and private property.

PA-AER2

The coast is accessible to the public in appropriate locations and in a manner that minimises disturbance to the foredunes and protects other recognised values within the coastal environment.

GENERAL DISTRICT-WIDE MATTERS

ASW – Activities on the Surface of Water

The provisions in this chapter override the respective Zone provisions in Part 3 Area-Specific Matters, unless otherwise specified in this chapter.

Introduction

Central Hawke's Bay District Council has the responsibility for managing the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes (section 31(e) RMA).

Surface water activities include the use of craft, structures and contact recreation on the inland waters of the District: being the surface of lakes, rivers and wetlands. Recreational activities have the potential to cause a variety of adverse effects, including impacts on water quality, conflict between activities, and impacts on ecological systems and habitats.

Issues

ASW-11 Activities on the surface of water can affect habitats of flora and fauna, water quality, and people's amenity values.

Explanation

Central Hawke's Bay District Council is responsible for the control of activities on the surface of inland waters where such activities can impact on ecological systems and habitats, and in terms of impacts on amenity values (e.g. excessive noise).

Most surface water activities in the District do not have any adverse effects on the environment. However, there are a few areas where the use of motorised craft may have adverse effects on wildlife or on people's amenity values, being Lake Whatuma, Horseshoe Lake, and upstream of the confluence of the Waipawa and Tukituki Rivers. Consequently, surface water activities in these areas are managed by this Plan.

Objectives

ASW-O1 To enable the use of the surface of waterbodies for a wide range of recreational, commercial, and cultural activities, while mitigating any adverse effects arising from that use.

Policies

ASW-P1 To avoid, remedy or mitigate adverse effects of motorised craft on the surface of water upstream of the confluence of the Tukituki and Waipawa Rivers, on trout habitat and the habitat of indigenous fauna.

ASW-P2 To mitigate adverse effects of motorised craft on the surface of Horseshoe Lake and Lake Whatuma, on the habitat of indigenous fauna and on people’s amenity values.

Rule Overview Table

Use/activity	Rule Number
Use of motorised craft on the surface of rivers and lakes	ASW-R1
All other activities on the surface of rivers and lakes not otherwise provided for	ASW-R2

Rules

It is important to note that in addition to the provisions in this chapter, zone chapters and a number of other Part 2: District-Wide Matters chapters also contain provisions that may be relevant for activities involving activities on the surface of water.

ASW-R1 Use of motorised craft on the surface of rivers and lakes		
On Horseshoe Lake or Lake Whatuma	<p>1. Activity Status: PER</p> <p>Where the following conditions are met:</p> <p>a. Limited to engines that are less than 5 horsepower.</p> <p><i>Note: This does not apply to the use of small motorized, remotely-controlled craft, operated by suitably qualified persons, for river monitoring purposes.</i></p>	<p>2. Activity status where compliance not achieved: DIS</p>
Any River Upstream of the Confluence of the Tukituki and Waipawa Rivers	<p>3. Activity Status: DIS</p> <p>Where the following conditions are met: N/A</p> <p><i>Note: This does not apply to the use of small motorized, remotely-controlled craft, operated by suitably qualified persons, for river monitoring purposes.</i></p>	<p>4. Activity status where compliance not achieved: N/A</p>
All Other Rivers and Lakes	<p>5. Activity Status: PER</p> <p>Where the following conditions are met: N/A</p>	<p>6. Activity status where compliance not achieved: N/A</p>

ASW-R2 All other activities on the surface of rivers and lakes not otherwise provided for

<p>All Rivers and Lakes</p>	<p>1. Activity Status: PER</p> <p>Where the following conditions are met: N/A</p>	<p>2. Activity status where compliance not achieved: N/A</p>
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Assessment Matters

For Discretionary Activities, Council’s assessment is not restricted to these matters, but it may consider them (among other factors).

ASW-AM1 Motorised Craft on Lakes and Rivers

1. The degree to which motorised craft are compatible with, and will not adversely affect the spawning of trout, or trout habitat generally, or the nesting habitat of any indigenous birdlife.
2. Any adverse effects of the proposed motorised craft in terms of:
 - a. Noise that is incompatible with the levels acceptable in a particular lake or river; and
 - b. Any cumulative effect from the activity in conjunction with other activities in the vicinity.

Methods

Methods, other than the above rules, for implementing the policies:

ASW-M1 Hawke’s Bay Regional Council Navigation & Safety Bylaw 2018

The Navigation & Safety Bylaws have been adopted by the Hawke’s Bay Regional Council under the Local Government Act 1974 and apply to all waterbodies in the Central Hawke’s Bay District. The bylaws regulate the control and use or management of vessels, prevent nuisances arising from the use of vessels and the actions of persons and things on or in the water, amongst other things. It also regulates the speed of vessels relative to other vessels, to people in the water, and to the shore or any structure.

ASW-M2 Harbourmaster

The Hawke’s Bay Regional Harbourmaster’s role is to oversee the safety of recreational boating (including kayaks, paddleboards, dinghies, and jet ski’s etc) that use the District’s coast and rivers.

ASW-M3 Hawke’s Bay Regional Coastal Environment Plan

Hawke’s Bay Regional Council is responsible for controlling activities in relation to the surface of the water within the coastal marine area across the Region.

Principal Reasons

The principal reasons for adopting the policies and methods:

The upper areas of the Waipawa and Tukituki river catchments are important ecologically, and limits on motorised craft are appropriate to avoid or mitigate adverse effects on the habitat of trout and habitat of indigenous fauna. Horseshoe Lake and Lake Whatuma similarly provide important habitat and are also subject to amenity impacts for those residing nearby and other users of these lakes.

Anticipated Environmental Results

The environmental results anticipated from the policies and methods:

- ASW-AER1** **A wide range of recreational, commercial and cultural activities are able to utilise the surface of the District’s rivers and lakes.**
- A~~W~~RSW-AER2** **Few conflicts arise between surface of water activities and adjoining activities.**
- ASW-AER3** **Trout and other wildlife habitats are protected from motorised craft activities on the surface of water.**

Commented [SM1]: S48.012 Jet Boating NZ
ASW Topic Report Key Issue 3

APPENDIX B

Summary of Recommended Responses to Submissions and Further Submissions

Table: Summary of Recommended Responses to Submissions and Further Submissions

Open Space and Recreation

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.021	Hawke's Bay Regional Council	OSR - Open Space and Recreation	No changes.	Accept	No
S81.077	Horticulture New Zealand	OSR-P2	Retain OSR-P2.	Accept	No

Public Access

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.022	Hawke's Bay Regional Council	PA - Public Access	No changes.	Accept	No
S64.079	Department of Conservation	PA-O1	Retain PA-O1.	Accept	No
FS9.362	Forest & Bird		Allow		
S64.080	Department of Conservation	PA-P1	Retain PA-P1.	Accept in part (subject to amendments from other submissions)	No
FS9.363	Forest & Bird		Allow	Accept in part (subject to amendments from other submissions)	
S64.081	Department of Conservation	PA-P3	Retain PA-P3.	Accept	
FS9.364	Forest & Bird		Allow		
S64.082	Department of Conservation	PA-P4	Retain PA-P4.	Accept	
FS9.365	Forest & Bird		Allow		
S121.048	Federated Farmers	PA-O1	Retain PA-O1 as proposed.	Accept	
FS9.48	Forest & Bird		Disallow	Reject	
S121.049	Federated Farmers	PA-P1	Amend PA-P1 as follows: 'To require provide for the establishment of esplanade reserves, esplanade strips or access strips when subdividing land adjacent to priority water bodies shown on the Planning Maps, except when a waiver would be appropriate. '	Accept in part	Yes

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
FS9.49	Forest & Bird		Disallow	Reject	
S121.050	Federated Farmers	PA-P2	Retain PA-P2 as proposed.	Accept in part	Yes
FS9.50	Forest & Bird		Disallow	Reject	
S121.051	Federated Farmers	PA-XX (new policy)	Add a new policy in the 'PA - Public Access' chapter in the Proposed Plan as follows: 'Compensation will be payable for esplanades reserves and strips vested in accordance with Section 237E and 237F of the RMA, unless agreed otherwise.'	Reject	No
FS9.51	Forest & Bird		Disallow	Accept	
S121.052	Federated Farmers	PA-P3	Retain PA-P3 as proposed.	Accept	No
FS9.52	Forest & Bird		Disallow	Reject	
S121.053	Federated Farmers	PA-P4	Amend PA-P4 as follows: 'To ensure that where new access to the coast is to be provided, that it is practical and safe, and is constructed to avoid, remedy or mitigate damage to: 1. 6. Private property. '	Reject	No
FS9.53	Forest & Bird		Disallow	Accept	
S121.054	Federated Farmers	PA-XX (new policy)	Add a new policy in the 'PA - Public Access' chapter in the Proposed Plan as follows: '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.'	Accept in part	Yes
FS9.54	Forest & Bird		Disallow	Reject	
S125.065	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA-I1	Retain PA-I1 as notified.	Accept	No
S125.066	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA-O1	Retain PA-O1 as notified.	Accept	No
S125.067	Ngā hapū me ngā marae o Tamatea (Nga hapu me nga marae o Tamatea)	PA - Policies	Redraft the policies in 'PA - Policies' to more fully and accurately reflect the history, relationships and whakapapa of Māori in the rohe. It needs to meet mana whenua aspirations to access key sites of significance and protect and provide for freshwater, coastal and cultural enhancement. Outside of these uses access should be managed to protect the cultural safety of freshwater and coastal waterbodies. The amended wording should be drafted collaboratively with the mana whenua of the District.	Reject	No
FS25.73	Federated Farmers		Disallow	Accept	

Activities on the Surface of Water

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S11.027	Hawke's Bay Regional Council	ASW - Activities on the Surface of Water	No changes.	Accept	No
S48.001	Jet Boating New Zealand	ASW-I1	Retain ASW-I1.	Accept	No
S48.002	Jet Boating New Zealand	ASW-O1	Retain ASW-O1.	Accept	No
S48.003	Jet Boating New Zealand	ASW-P1	Retain ASW-P1.	Accept	No
S48.004	Jet Boating New Zealand	ASW-P2	Retain ASW-P2.	Accept	No
S48.005	Jet Boating New Zealand	ASW-R1	<p>Amend ASW-R1(3) as follows:</p> <p>'Any River Upstream of the Confluence of the Tukituki and Waipawa Rivers³. Activity Status: DIS Where the following conditions are met: N/A Tukituki River main stem above the Waipawa River confluence</p> <p>Activity Status: PER</p> <p>Where the following performance standards are met:</p> <p>1) Non-commercial</p> <p>2) Excluding July, August and September</p> <p>Activity status where compliance not achieved: DIS</p> <p>Waipawa River main stem above the Tukituki confluence</p> <p>Activity Status: PER</p> <p>Where the following performance standards are met:-</p> <p>1) Non-commercial</p> <p>2) Excluding July, August and September</p> <p>Activity status where compliance not achieved: DIS</p> <p>Note: This does not apply to the use of small motorized, remotely-controlled craft, operated by suitably qualified persons, for river monitoring purposes.'</p>	Reject	No
S48.006	Jet Boating New Zealand	ASW-R2	<p>Amend ASW-R2(1) as follows:</p> <p>'1. Activity Status: PER</p> <p>Where the following conditions are met: N/A Non-commercial.</p>	Reject	No

Submission Point	Submitter/Further Submitter Name	Plan Provision	Summary of Decision Requested	Officer Recommendation	Amendments to Proposed Plan?
S48.007	Jet Boating New Zealand	ASW-AM1	Retain ASW-AM1.	Accept	No
S48.008	Jet Boating New Zealand	ASW-M1	Retain ASW-M1.	Accept	No
S48.009	Jet Boating New Zealand	ASW-M2	Retain ASW-M2.	Accept	No
S48.010	Jet Boating New Zealand	ASW-AER1	Retain ASW-AER1.	Accept	No
S48.011	Jet Boating New Zealand	ASW-AER2	Correct typo as follows: 'AWRASW-AER2'	Accept	Yes
S48.012	Jet Boating New Zealand	ASW-AER3	Retain ASW-AER3.	Accept	No

