



Proposed Timaru District Plan

Section 42A Report: Public Access, Activities on the Surface of Water, and Versatile Soil

Report on submissions and further submissions

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Contents

List of Submitters and Further Submitters Addressed in this Report:.....	4
Abbreviations Used in this Report:	5
1. Introduction	6
1.1 Experience and Qualifications	6
1.2 Purpose and Scope of this Report	6
1.3 Procedural Matters.....	7
2. Topic Overview	8
2.1 Summary of Relevant Provisions of the PDP	8
2.2 Background to Relevant Provisions	9
3. Overview of Submission and Further Submissions.....	10
4. Relevant Statutory Provisions.....	12
5. Statutory Instruments.....	12
5.2 Resource Management Act 1991 (RMA)	12
5.3 New Zealand Coastal Policy Statement 2010 (NZCPS)	14
5.4 National Policy Statement for Freshwater Management 2020 (NPSFM).....	14
5.5 National Planning Standards 2019 (NP Standards)	15
5.6 National Policy Statement for Highly Productive Land 2022 – NPS-HPL.....	16
5.7 Canterbury Regional Policy Statement 2013 (CRPS)	18
5.8 Canterbury Land and Water Regional Plan 2016 (CLWRP)	19
5.9 Iwi Management Plans	20
5.10 Canterbury Regional Council Navigation Safety Bylaw 2016	20
6. Analysis and Evaluation of Submissions	21
6.1 Approach to Analysis	21
7. Public Access.....	22
7.1 General submissions.....	22
7.2 PA-O1 Public Access	24
7.3 PA – New Objective and Policy Requests	26
7.4 PA-P1 Benefits of Public Access.....	27
7.5 PA-P2 Requirements for Public Access.....	28
7.6 PA-P3 Design and Construction of Public Access	29
7.7 PA-P4 Limiting public access.....	30
7.8 PA-R1 Any new land use, subdivision or development	32
7.9 PA – Planning Maps and SCHED11	36
8. Activities on the Surface of Water	41
8.1 Provisions where no change is sought	41
8.2 General Submissions	41
8.3 ASW-O1 Protecting the values of the District’s Rivers	43

8.4	ASW-P3 Recreational use of motorised craft within specified areas of identified rivers ...	45
8.5	ASW-P4 Commercial activities	48
8.6	ASW-P6 Other non-commercial activities	50
8.7	ASW-R2 The use of motorised craft for specific environmental management or search and rescue purposes	52
8.8	ASW-R3 The recreational use of motorised craft on the Rangitata River	56
8.9	ASW-R4 The recreational use of motorised craft on the Ōrāri River	58
8.10	ASW-R5 The recreational use of motorised craft on the Ōpihi River	59
8.11	ASW-R6 The recreational use of motorised craft on the Pureora/Pareora River	61
8.12	ASW-R9 All other activities on the surface of the District's rivers	62
8.13	ASW-R10 Use of motorised craft within the fish spawning areas.....	63
8.14	New Rule – Te Ngawai, Te Moana and Waihi Rivers.....	64
8.15	SCHEM13 – Schedule of Fish Spawning Areas.....	65
8.16	SCHEM17 – Schedule of River Protection Areas	66
9.	Versatile Soils	69
9.1	General Matters	69
9.2	Provisions where no change is sought	71
9.3	Identification of Versatile Soils - Definition, Policy VS-P1 –, and Versatile Soils Overlay....	71
9.4	Description of the District – Rural Areas	77
9.5	Introduction.....	79
9.6	Alignment with the NPS-HPL	81
9.7	Objective VS-O1 – Protection of versatile soils	85
9.8	Policy VS-P2 – Maintaining availability of versatile soil	88
9.9	Policy VS-P3 – Expansion of urban areas.....	92
9.10	Policy VS-P4 – Rural Lifestyle Zone expansion	94
9.11	Rules	96
10.	Conclusion.....	101

Appendices

Appendix 1 – Changes Recommended to Provisions

Appendix 2 – Recommended Responses to Submissions

List of Submitters and Further Submitters Addressed in this Report:**Original Submitters**

Submitter Ref	Submitter Name	Abbreviation
2	Clayton Wallwork	Wallwork, C
36	Peter Bonifacio	Bonifacio, P
40	Rob Gerard	Gerard, R
48	Jet Boating New Zealand	Jet Boating
53	Helicopters South Canterbury 2015 Limited	Helicopters Sth Cant.
66	Bruce Speirs	Speirs, B
100	David and Judith Moore	Moore, D J and J
105	Peel Forest Estate	Peel Forest
119	Parinui Farm	Parinui Farm
113	Kerry James McArthur	McArthur, K J
143	Waka Kotahi NZ Transport Agency	Waka Kotahi
151	New Zealand Defence Force	NZDF
156	Royal Forest and Bird Protection Society	Forest & Bird
159	Transpower New Zealand Limited	Transpower
160	David Alexander and Susane Elizabeth Payne	Payne, D A and S E
165	Fonterra Limited	Fonterra
166	Penny Nelson, Director- General of Conservation Tumuaki Ahurei	Dir. General Conservation
169	Road Metals Company Limited	Road Metals
170	Fulton Hogan Limited	Fulton Hogan
171	Fernlea Farms Limited	Fenlea Farms
172	Silver Fern Farms	Silver Fern Farms
173	Alliance Group Limited	Alliance Group
174	Rooney Holdings Limited	Rooney Holdings
175	PrimePort Limited	PrimePort
181	Opuha Water Limited	OWL
182	Federated Farmers	Federated Farmers
183	Environment Canterbury/Canterbury Regional Council	ECan
185	Te Runanga o Ngāi Tahu	Te Rūnanga o Ngāi Tahu
190	North Meadows 2021 Limited and Thompson Engineering (2002) Limited	North Meadows
191	G.J.H Rooney	Rooney, G.J.H
192	Harvey Norman	Harvey Norman
194	Russell James King	King, R J
237	Aitken, Johnstone, and RSM Trust	Aitken et al
243	Ronald Clearwater	Clearwater, R
245	Horticulture New Zealand	Hort NZ
247	NZ Pork Industry Board	NZ Pork
248	White Water Properties Limited	White Water
249	Rooney Group Limited	Rooney Group
250	Rooney Farms Limited	Rooney Farms
251	Rooney Earthmoving Limited	Rooney Earthmoving
252	Timaru Developments Limited	TDL

255	NZ Frost Fans Limited	NZ Frost Fans
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Further Submitters

Submitter Ref	Further Submitter Name	Abbreviation
60	Milward Finlay Lobb	MFL
89	Dairy Holdings Limited	Dairy Holdings
90	Hermann Frank	Frank, H
156	Royal Forest and Bird Protection Society	Forest & Bird
160	David Alexander and Susanne Elizabeth Payne	Payne, D A and S E
166	Penny Nelson, Director- General of Conservation Tumuaki Ahurei	Dir. General Conservation
185	Te Runanga o Ngāi Tahu	Te Rūnanga o Ngāi Tahu
152	Radio New Zealand Limited	Radio NZ
229	Kāinga Ora - Homes and Communities	Kāinga Ora
245	Horticulture New Zealand	Hort NZ
247	NZ Pork Industry Board	NZ Pork
252	Timaru Developments Limited	TDL
255	NZ Frost Fans Limited	NZ Frost Fans
265	New Zealand Helicopter Association	NZHA
278	Rooney Group Limited, Rooney Holdings Limited, Rooney Earthmoving Limited and Rooney Farms Limited	Rooney Group et al

Abbreviations Used in this Report:

Abbreviation	Full Text
ASW	Activities on the Surface of Water
Council/ TDC	Timaru District Council
CRPS	Canterbury Regional Policy Statement
GIZ	General Industrial Zone
RPA	River Protection Area
NPSFM	National Policy Statement for Freshwater Management 2020
NP Standards/ NPS	National Planning Standards
NZCPS	New Zealand Coastal Policy Statement 2010
ODP/ Operative Plan	Operative Timaru District Plan
PDP	Proposed Timaru District Plan
RMA	Resource Management Act 1991
PA	Public Access
PAPO	Public Access Provision Overlay
ECan	Environment Canterbury/Canterbury Regional Council
NES	National Environmental Standard

1. Introduction

1.1 Experience and Qualifications

1.1.1 My full name is Andrew Cameron MacLennan. I am an Associate at the firm Incite. I hold a Bachelor of Science in Land Planning and Development from Otago University and a Masters of Resource Management from Massey University. I am an Associate Member of the New Zealand Planning Institute and a member of the Resource Management Law Association. I have 10 years' planning experience working in both local government and the private sector. During this time, I have worked in policy planning roles, consent processing roles, and consent applicant roles.

1.1.2 My policy planning experience includes working for a range of Councils drafting provisions for regional policy statements, regional plans, coastal plans, and district plans. I have also assisted with the drafting of associated section 32 evaluation reports, section 42A reports and reporting officer roles. I have experience participating in Environment Court processes such as expert conferencing, mediation, and hearings on plans and plan changes.

1.1.3 My relevant work experience includes:

- S42a reporting officer for the Waimakariri District Plan
- S42a reporting officer for the Otago Regional Policy Statement
- S42a reporting officer for the Marlborough Environment Plan
- S42a reporting officer for the Hurunui District Plan

1.1.4 Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. Having reviewed the submitters and further submitters relevant to this topic I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel.

1.2 Purpose and Scope of this Report

1.2.1 The purpose of this report is to provide the Hearing Panel with a summary and analysis of the submissions received on this topic and to make recommendations in response to those submissions, to assist the Hearing Panel in evaluating and deciding on the submissions.

1.2.2 This report is prepared under s42A of the RMA in relation to the Public Access, Activities on the Surface of Water, and Versatile Soils topics of the PDP. It covers the following matters:

- All provisions in the Public Access chapter;

- The Public Access Provisions Overlay (PAPO) that is associated with the Public Access chapter;
- SCHED11, which lists the waterbodies to which public access is provided;
- All provisions in the Activities on the Surface of Water chapter;
- SCHED13, which identifies fish spawning areas;
- SCHED17, which identifies river protection areas;
- All provisions in the Versatile Soils chapter;
- Description of the District – Rural Areas
- Versatile Soil Overlay
- The definition of “versatile soil”

1.2.3 This report considers the submissions and further submissions that were received in relation to the Public Access, Activities on the Surface of Water, and Versatile Soils chapters. It includes recommendations to either retain provisions without amendment, delete, add to or amend the provisions, in response to these submissions. All recommended amendments are shown by way of ~~strikeout~~ and underlining in **Appendix 1** to this Report, or, in relation to mapping, through recommended spatial amendments to the mapping. Footnoted references to the relevant submitter(s) identify the scope for each recommended change.

1.2.4 The conclusions reached and recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions having considered all the information in the submissions and the evidence to be brought before them, by the submitters.

1.3 Procedural Matters

1.3.1 There have been no pre-hearing conferences or expert witness conferencing in relation to submissions on this topic.

1.3.2 In order to better understand matters raised in their submissions, there has been informal email correspondence with the Dir. General Conservation [166.78] with respect their submission on PA-P3 which is described within the relevant section of this report.

1.3.3 A meeting was held between DOC and Jet Boat NZ on the 28th of February 2025. Three themes were discussed within the meeting:

- What effects are the permitted standards within rule ASW-R3, R4, R5, R6 seeking to manage, and restrictions should be included within the PDP managing the specific rivers of the district (Rules ASW-R3, R4, R5, R6)?
- Should other rivers be included within the permitted activity rule framework (Te Ngawai, Te Moana and Waihi Rivers)?
- Should additional fish spawning areas be added to the PDP?

- 1.3.4 Outcomes from the meeting are included within the relevant parts of the analysis below.

2. Topic Overview

2.1 Summary of Relevant Provisions of the PDP

- 2.1.1 This report relates to provisions associated with the Public Access, Activities on the Surface of Water, and Versatile Soils chapters. This section of the report provides a brief summary of the provisions relevant to this topic.

Public Access (PA)

- 2.1.2 The PA chapter sets out the circumstances and places where the Council will seek to require or encourage the provision of public access to and along the District's coastal marine area and margins of specified wetlands and rivers. Providing public access enables leisure, recreation and conservation activities to occur, and also allows people to enjoy the natural character and intrinsic qualities of these areas. Additionally, public access to these areas is highly important to Māori, as it provides for their cultural and traditional relationships with these areas, including enabling mahika kai.
- 2.1.3 This chapter contains one objective, which seeks that public access is maintained and enhanced, and only restricted where desirable. Four policies support this objective, and one rule which regulates how public access will be provided in relation to land use or subdivision proposals. The objectives and policies in this chapter also apply to subdivision that results in the creation of esplanade reserves and strips that are for the purpose of providing public access.
- 2.1.4 One schedule is relevant for this chapter, being SCHED11 – Schedule of Public Access Provisions. SCHED11 identifies parts of the coastal marine area and margins of specified wetlands and rivers where public access should be provided.

Activities on the Surface of Water (ASW)

- 2.1.5 The ASW chapter provides direction for activities which occur on the surface of water, including the use of motorised and non-motorised craft on rivers, and the construction of structures on the surface of water. It aims to regulate activities that could potentially have adverse effects on ecological, recreational, cultural, and natural character values of the District's rivers.
- 2.1.6 This chapter contains one objective, which seeks that the ecological, recreational, natural character and cultural values of the District's rivers are protected from adverse effects associated with activities on the surface of water. There are six policies which support the achievement of this objective. They provide guidance on the situations where activities are appropriate, including both recreational and commercial activities, and specified activities, and also provide direction on the adverse effects to be avoided.

- 2.1.7 There are ten rules in this chapter. Six of these provide for specific activities as permitted subject to conditions. Other activities are either discretionary or non-complying, and the use of motorised craft within fish spawning areas is prohibited.
- 2.1.8 Two schedules are relevant for this chapter. SCHED13 – Schedule of Fish Spawning Areas provides a list of the reaches of rivers which are identified as spawning sites for salmon, or habitat for upland longjaw galaxias. SCHED17 – Schedule of River Protection Areas identifies stretches of rivers which are within protection areas. The areas identified in both schedules are also included as a map layer.

Versatile Soils (VS)

- 2.1.9 The Versatile Soil chapter provides objectives, policies and rules for managing subdivision, land use and development within the versatile soils overlay. It aims to safeguard the land's capacity for primary production but excludes non-intensive primary production activities which may compromise the productive potential of the soil.

2.2 Background to Relevant Provisions

Public Access

- 2.2.1 Council is required to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers as a matter of national importance¹. However, there are currently no operative district plan rules for this except when esplanade strips or reserves are enabled through a subdivision application process.

Activities on the Surface of Water

- 2.2.2 Council is required to manage the environmental effects of activities on the surface of rivers and lakes². An activity that passes across or through the surface of water within an inland waterbody is considered a surface water activity, including the use of vessels, the use and location of structures, commercial activities, and contact recreation such as fishing and swimming. The Operative District Plan provides for the use of non-motorised craft throughout the district as a permitted activity, and the use of motorised craft for certain uses such as search and rescue as a permitted activity throughout the district. Motorised craft used for commercial activities are a discretionary activity throughout the district, and in general all other use of motorised craft is prohibited, apart from limited provision for motorised activities on the Rangitata River and the Ōpihi River.

Versatile Soils

- 2.2.3 Versatile soils are an important physical resource within the district. Some subdivision, land use and development activities may compromise its ongoing ability to be used productively. The focus on versatile soils is to ensure they can continue to be used for productive activities, such as farming. This is addressed through a versatile soil overlay in the proposed District

¹ RMA Section 6(d)

² RMA Section 31(1)(e)

Plan, which includes land classified as Class 1 or 2 in the land use capability system, along with specific provisions for this area. The “Versatile Soil” terminology and identification of Class 1 and 2 soils was rolled over from the ODP, and gave effect to the direction within the CRPS.

- 2.2.4 In November 2016, community feedback was sought on protecting high-quality soils in rural areas. The feedback supported protection measures focusing on land use rather than allotment size. Some feedback also considered that identification of high-quality soils should consider factors other than soil types, including ground contour and availability of irrigation.
- 2.2.5 In October 2020, Timaru District Council published a Draft District Plan, and feedback on versatile soils included support for enabling primary production, protecting versatile soils from inappropriate development, exempting schools from some rules, clarifying wording, and accommodating activities which support farming. Some opposition was voiced regarding intensive primary production in rural areas. Feedback also considered that impervious surfaces provisions need to exclude existing roads/road reserves.

3. Overview of Submission and Further Submissions

- 3.1.1 The full list of submission points addressed in this report are set out in **Appendix 2**. The following table provides a brief summary of the key issues raised in submissions, which are discussed in more detail in the “Analysis and Evaluation of Submissions” section of this report.

ISSUE NAME	SUMMARY OF ISSUE	POSITION OF SUBMITTERS
Private property rights	Clarification of private property rights within the PA chapter.	Federated Farmers seek amendments and a new objective and policy within the PA chapter to ensure that access only is provided with the agreement of the landowner where it is practicable to provide that access.
Objective PA-O1	The drafting of PA-O1 is uncertain.	Several submitters have sought amendments to PA-O1, seeking greater clarity on when public access should be restricted.
Various amendments to PA-P1 – PA-P4	Minor amendments are sought to PA-P1 – PA-P4 to improve the clarity and refine the policies.	Several submitters have sought a variety of minor amendments to PA-P1 – PA-P4 .
Rule PA-R1	Submitters seek clarification on how the rule is intended to apply.	Silver Fern Farms and Alliance Group and Speirs, B seek clarification on how the rule applies to sites in the GIZ and the relationship between the PA and SUB chapters.

Removals and amendments to planning maps	Submitters seek amendments to the Public Access Provisions Overlay (PAPO).	PrimePort, Harvey Norman, Wallwork, C, King, R J, and Rooney et al. seek amendments to the Planning Maps to delete specific parts of the PAPO.
ASW-O1	Amend AWS-O1 to provide a more flexible threshold of adverse effects.	Jet Boating seek and amendment to ASW-O1 to enable minor and less than minor effects.
ASW-P3 – P6	Provide more flexibility for motorised craft within the policy framework.	Amendment ASW-P3 – P6 to enable for jetboating when minimum flows within the river occur and remove the time of year restrictions.
ASW-R2	Amend the rule to provide for temporary military training activities.	NZDF seeks an amendment to the rule to ensure that temporary military training activities can use motorised craft on the surface of the water
ASW-R3 – R6	Provide more flexibility for motorised craft within the rule framework.	Amend ASW-R3 – R6 to permit for jetboating when minimum flows within the river occur, and remove the time of year restrictions.
ASW-R3	Align the rule framework with the Ashburton District Plan	Jet boat and Clearwater R, note that the Timaru-Ashburton district boundary centre of the Rangitata River and consider the provisions should match the Ashburton District Plan.
ASW-R6	Align the rule framework with the Waimate District Plan	Clearwater R, note that the Timaru-Waimate district boundary centre of the Pureora/Pareora River and consider the provisions should match the Waimate District Plan.
ASW-R9	Activity status for recreational jet boating	Jet boating seek that the activity status for recreational jet boating should be restricted discretionary rather than non-complying.
New rule	Additional rivers for jetboating	Jet Boating considers there are three additional rivers in the district that can be used for recreational jetboating as a permitted activity (Te Ngawai, Te Moana and Waihi Rivers).

National Policy Statement for Highly Productive Land	Submissions consider the provisions contained within the Versatile Soil chapter fail to give effect to the NPSHPL.	16 submissions have been received in total which seek amendments to improve consistency and better alignment with the NPSHPL 2022.
Versatile Soils overlay	Submissions seeking minor amendments to the Versatile Soils overlay	Eight submissions seek to amend or delete parts of the Versatile Soils Overlay.

4. Relevant Statutory Provisions

4.1.1 The assessment under the RMA for the PDP includes whether:

- it is in accordance with the Council’s functions (s74(1)(a));
- it is in accordance with Part 2 of the RMA (s74(1)(b));
- it will give effect to any national policy statement or operative regional policy statement (s75(3)(a) and (c));
- the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA (s32(1)(a));
- the provisions within the plan change are the most appropriate way to achieve the objectives of the District Plan (s32(1)(b)).

4.1.2 In addition, assessment of the PDP must also have regard to:

- any proposed regional policy statement, and management plans and strategies prepared under any other Acts (s74(2));
- the extent to which the plan is consistent with the plans of adjacent territorial authorities (s74 (2)(c)); and
- in terms of any proposed rules, the actual or potential effect on the environment of activities including, in particular, any adverse effect.

5. Statutory Instruments

5.1.1 The s32 reports for the Public Access, Activities on the Surface of Water, and Versatile Soils chapters set out the statutory requirements and relevant planning context for this topic in more detail. The section below summarises the provisions in planning documents that are considered to be particularly relevant.

5.2 Resource Management Act 1991 (RMA)

5.2.1 Section 5 of the RMA sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources. As applicable to the Versatile Soils chapter, sustainable management includes managing the use, development, and protection of natural resources, to provide for the wellbeing of people and communities, while sustaining

the potential natural resources to meet the needs of future generation, and safe-guarding the life-supporting capacity of soil.

- 5.2.2 Section 7(g) relates to any finite characteristics of natural resources. The Versatile soils provisions are specifically targeted at soils that, if not managed appropriately, could lose their ability to be used for primary production.
- 5.2.3 The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers is identified as a matter of national importance, which shall be provided for in the management of the use, development, and protection of natural and physical resources³.
- 5.2.4 Sections 229 – 237H of the RMA set out the purpose of these mechanisms, and the way in which esplanade reserves and strips, and access strips can be created. Of note:
- Esplanade reserves and strips have a range of purposes, including to enable public access to or along any sea, river, or lake⁴
 - An esplanade reserve 20m in width shall be set aside where any allotment of less than 4ha is created (unless a rule in a plan provides otherwise)⁵
 - Esplanade reserves or strips can only be set aside where any allotment of greater than 4ha is created if a rule in the District Plan requires it⁶.
- 5.2.5 Council is required to manage the environmental effects of activities on the surface of rivers and lakes⁷. The following matters of national importance are considered relevant to the management of activities on the surface of water:
- Section 6(a), requiring the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
 - Section 6(c), requiring the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna; and
 - Section 6(e), being the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga
- 5.2.6 In addition to the matters of national importance identified, Council must also have regard to the intrinsic values of ecosystems under Section 7(d), and the protection of the habitat of trout and salmon under Section 7(h).
- 5.2.7 The Rangitata River is also subject to a Water Conservation Order under Part 9 of the Resource Management Act 1991 (Water Conservation Order [Rangitata River] 2006). This

³ RMA Section 6(d)

⁴ Section 229(b), RMA

⁵ Section 230(3), RMA

⁶ Section 230(5), RMA

⁷ Section 31(1)(e), RMA

order means that water, coastal, or discharge permits cannot be granted where the order would be contrary to the provisions in the order.

5.3 New Zealand Coastal Policy Statement 2010 (NZCPS)

5.3.1 The NZCPS sets out objectives and policies to achieve the purpose of the RMA in relation to the coastal environment and must be given effect to by regional and territorial authorities. The following provisions are relevant to Public Access:

- Objective 4 seeks to maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by maintaining and enhancing public walking access to and along the CMA without charge, and where there are exceptional reasons that mean this is not practicable, providing alternative linking access close to the CMA.
- Policy 19 recognises the public expectation of and need for walking access to and along the coast that is practical, free of charge and safe for pedestrian use. It also seeks to maintain and enhance public walking access and only impose restrictions on this where necessary for specified reasons.
- Policy 20 seeks to control the use of vehicles on beaches, foreshore, seabed and adjacent public land to avoid adverse effects on those areas, and also requires identification of the locations where vehicle access is required for boat launching or as the only practicable means of access to a site or activity, or where it is able to be undertaken without resulting in adverse environmental effects.

5.3.2 There is no direction in the NZCPS directly relevant to the Activities on the Surface of Water Chapter.

5.4 National Policy Statement for Freshwater Management 2020 (NPSFM)

5.4.1 The objective of the NPSFM is to ensure that natural and physical resources are managed in a way that prioritises the health and well-being of water bodies and freshwater ecosystems first and foremost, the health needs of people secondly, and finally, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

5.4.2 The policies of the NPSFM are not relevant to the PA chapter, however a number of policies are relevant to the ASW chapter:

- Policy 2 seeks that tangata whenua are actively involved in freshwater management, including decision making processes, and Māori freshwater values are identified and provided for.
- Policy 7 seeks that the loss of river extent and values is avoided to the extent practicable.
- Policy 8 requires that the significant values of outstanding water bodies are protected.

- Policy 9 requires that the habitats of indigenous freshwater species are protected.
- Policy 10 requires that the habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

5.4.3 While the direction in the NPSFM is predominantly applicable to regional councils, it is considered that managing activities on the surface of water will contribute to achieving the above outcomes.

5.5 National Planning Standards 2019 (NP Standards)

5.5.1 The NP Standards require that all District Plans must include a Public Access chapter and an Activities on the Surface of Water chapter, where these are relevant to the District⁸.

5.5.2 The Public Access chapter must be included under the Natural Environment Values section of the District Plan, in Part 2 – District Wide Matters, and should contain provisions to maintain and enhance public access to and along the CMA, lakes, and rivers⁹. Defined terms in the NP Standards that have relevance to Public Access include:

- Allotment
- Bed
- Esplanade reserve
- Esplanade strip
- Lake
- River
- Subdivision
- Wetland

5.5.3 The above terms are defined in the RMA, and the NP Standards cross-reference to those RMA definitions.

5.5.4 The Activities on the Surface of Water chapter must be included under the General District-Wide Matters section of the Plan, in Part 2 – District Wide Matters, and should contain provisions to manage activities on the surface of water¹⁰. Defined terms in the NP Standards that have relevance to the Activities on the Surface of Water topic include:

- Coastal Water
- Fresh water
- Lake
- River

⁸ NP Standards, District Plan Structure Standard, Mandatory Direction 3

⁹ NP Standards, District-Wide Matters Standard, Mandatory Direction 22

¹⁰ NP Standards, District-Wide Matters Standard, Mandatory Direction 27

- Structure
- Water
- Waterbody

5.5.5 The above terms are defined in the RMA, and the NP Standards cross-reference to those RMA definitions.

5.6 National Policy Statement for Highly Productive Land 2022 – NPS-HPL

5.6.1 During the review of the Timaru District Plan the government released the proposed National Policy Statement for Highly Productive Land (pNPS-HPL). The pNPS-HPL elevated the importance of highly productive land in land-use planning under the RMA. It required local authorities to identify land based on specific criteria and ensure its preservation for primary production, with minimum lot size standards and restrictions on sensitive activities.

5.6.2 The PDP was notified on 22 September 2022 with submissions closing on 15 December 2022. The NPS-HPL was gazetted on 19 September 2022 and came into effect from 17 October 2022. Given the timing of the NPS-HPL, the provisions of the PDP have not given effect to the requirements of the NPS-HPL.

5.6.3 The NPS-HPL establishes one primary objective and nine policies to protect highly productive land and restrict urban rezoning and inappropriate subdivision, use and development. The objective of the NPS-HPL is to ensure that highly productive land is protected for use in land-based primary production, both now and for future generations.

5.6.4 The NPS-HPL is relevant to land that is Land Use Capability (LUC) classes 1, 2, and 3 based on the classification in the New Zealand Land Resource Inventory. Of relevance to the proposed Plan:

- Clause 3.5(1) requires every regional council to notify in a proposed regional policy statement, using maps, all the land in its region that is highly productive land as soon as practicable and no later than 3 years from the commencement date of 17 October 2022. When the maps are operative, they will be included in district plans.
- Clause 3.5(7) provides that until a regional policy statement is operative, territorial councils must apply the NPS-HPL as if references to highly productive land were references to land that, at the commencement date of 17 October 2022:
 - is
 - zoned general rural or rural production; and
 - LUC 1, 2, or 3 land; but
 - is not
 - identified for future urban development; or

- subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
- Clause 3.7 stipulates that rural lifestyle zoning should be avoided unless it can be proven that the land faces long-term constraints making land-based primary production unfeasible while avoiding significant losses or impacts on highly productive land.
- Clause 3.8 requires that subdivision is avoided unless it can be demonstrated that the land's productive potential will be maintained, or the subdivision pertains to specified Māori land, infrastructure, or defence purposes. Territorial authorities must also take measures to prevent or lessen cumulative loss of highly productive land and reverse sensitivity effects on neighbouring productive land. This requires the inclusion of objectives, policies, and rules.
- Clause 3.9 requires that territorial authorities must prevent inappropriate use or development of highly productive land that does not involve land-based primary production, specifying appropriate land uses. These appropriate uses must minimise cumulative loss of productive land and avoid or mitigate reverse sensitivity effects on neighbouring land-based primary production activities.
- Clause 3.10 provides that territorial authorities may permit subdivision, use, or development of highly productive land under long-term constraints, subject to strict conditions:
 - The land must be economically unviable for at least 30 years, with consideration of criteria.
 - Significant loss or fragmentation must be avoided, as well as reverse sensitivity effects on neighbouring productive land.
 - The benefits of losing highly productive land must outweigh the costs.
- Clause 3.11 requires territorial authorities must enable the maintenance, operation, or upgrade of existing activities on highly productive land while minimising any loss of such land.
- Clause 3.12 mandates territorial authorities to prioritise land-based primary production over other uses, fostering opportunities to enhance the productive capacity of highly productive land in alignment with matters of natural importance.
- Clause 3.13 requires territorial authorities to identify common activities and effects related to land-based primary production on highly productive land in a rural environment, emphasising the avoidance or mitigation of reverse sensitivity effects from urban rezoning or rural lifestyle development and considering cumulative effects of any subdivision, use, or development on highly productive land.

5.6.5 Part 4 of the NPS-HPL states that every district council must notify changes to objectives, policies, and rules in its district plan to give effect to the NPS-HPL as soon as practicable, but

no later than 2 years after maps of highly productive land in the relevant regional policy statement become operative.

5.6.6 On 14 September 2024, amendments to the NPS-HPL came into effect, including:

- Changes to Clause 3.9, which clarify that certain activities are no longer considered inappropriate uses, provided they comply with mitigation requirements set by territorial authorities.
- New definitions for “greenhouse activities” to include plant-growing structures that do not depend on soil and align with the “intensive indoor primary production” definition with the National Planning Standards.
- A definition of “specified infrastructure” that has been expanded to cover the development, construction, decommissioning, replacement, and removal of essential services such as lifeline utilities, regionally significant infrastructure, and flood or drainage works.

5.7 Canterbury Regional Policy Statement 2013 (CRPS)

5.7.1 Section 75(3)(c) of the RMA sets out that a District Plan must give effect to any regional policy statement.

5.7.2 Of relevance to the Public Access topic, Chapter 10 of the CRPS recognises that continued and enhanced public and Ngāi Tahu access to and along the beds of rivers and lakes enables the use and enjoyment of these areas but can have adverse effects on bed values and can negatively affect essential structures, private property rights, and the cultural values of Ngāi Tahu¹¹.

5.7.3 Chapter 8 of the CRPS similarly acknowledges that there is a need to maintain and enhance public access and access for Ngāi Tahu, to and along the coastal marine area while controlling those aspects of public access, such as some types of vehicle use, which threaten the values of the coastal environment¹².

5.7.4 Both chapters set out a range of methods that local and territorial authorities are to implement to achieve the objectives and policies of the chapter. These methods are described in full in the Section 32 report for the PA chapter, and include both regulatory and non-regulatory actions.

5.7.5 With respect to Activities on the Surface of Water, Chapter 4 of the CRPS outlines the relationship Ngāi Tahu has with resources in the Canterbury region. Wai Māori or fresh water is a taonga for Ngāi Tahu as water is an essential and integral part of the connection between Ngāi Tahu, as tangata whenua and their tribal territory. Key issues relating to fresh water include the need to ensure the management of adverse effects on fresh water; the need to

¹¹ CRPS Issue 10.1.4

¹² CRPS Issue 8.1.5

ensure high quality fresh water supply for customary uses, and the protection of the intrinsic value of waterbodies and their riparian zones.

- 5.7.6 Chapter 7 sets out the issues, objectives and policies relating to freshwater for the region. Of importance to the Activities on the Surface of Water chapter is the need to protect the natural character of surface waterbodies. In recent years, many waterbodies have experienced depleted values, including water quality and water flows, and the objectives of the CRPS include provisions to ensure the sustainable management of fresh water, protect the intrinsic value of waterbodies and their riparian zones¹³, and promote the protection, restoration and improvement of lakes, rivers, wetlands and their riparian zones¹⁴.
- 5.7.7 As noted above, both chapters set out a range of regulatory and non-regulatory methods that local and territorial authorities are to implement to achieve the objectives and policies of the chapter. These methods are described in full in the ASW Section 32 report for the ASW chapter.
- 5.7.8 With respect to Versatile Soils Chapter, chapter 5 of the CRPS provides direction in relation to the land-use and infrastructure. It is relevant to the framework for versatile soil, as it directs that the natural resources contributing to the region's rural productive economy are maintained and enhanced in areas which are valued for existing or foreseeable future primary production, by avoiding development or fragmentation which forecloses the ability to make appropriate use of that land for primary production.¹⁵ It also requires that territorial authorities set out objectives and policies which identify areas to be used for primary production and control adverse effects of subdivision and land-use in rural areas by ensuring it does not foreclose the ability to utilise natural resources such as soil which is values for rural productive purposes.
- 5.7.9 Chapter 15 of the CRPS relates to soils and seeks to maintain and improve the quality of soil, including to safeguard its productive capacity. Versatile soils are defined by the CRPS as land classified as Land Use Capability I or II in the New Zealand Land Resource Inventory. The CRPS sets out objectives and policies that recognise the region's soils are vital productively and economically to the wellbeing of Canterbury and seeks to limit inefficient use and contamination. It requires territorial authorities to set out objectives and policies that help ensure land use activities and land management practices do not cause significant long term adverse effects on soil quality.

5.8 Canterbury Land and Water Regional Plan 2016 (CLWRP)

- 5.8.1 While the provisions of a regional plan relate only to the bed, banks, and riparian margins of a waterbody, activities on the surface of water, such as the use of motorised craft on rivers, is likely to have an effect on the wider river context, including habitats of indigenous fauna.

¹³ CRPS Objective 7.2.3

¹⁴ CRPS Policy 7.3.3

¹⁵ CRPS Policy 5.3.12

As the Proposed District Plan must not be inconsistent with the provisions of the CLWRP, Policy 4.101 is relevant as it seeks to avoid the damage or loss of any Critical Habitat.

- 5.8.2 Critical Habitat is defined spatially on the CLWRP Planning Maps, and includes any area which provides habitat for specified threatened fish species, including the upland longjaw galaxias (*galaxias prognathous*), which is found in the Timaru District.

5.9 Iwi Management Plans

- 5.9.1 Te Whakatau Kaupapa (TWK) is a resource management strategy for the Canterbury region published by Ngāi Tahu in 1990, which sets out a statement of Kāi Tahu beliefs and values which should be taken into account in preparation and change of resource management plans. Policies relating to topics of PA, ASW, and VS include:

- Consultation with Rūnanga on management practices that will impact on waterways in which they have beneficial rights (TWK p. 4-21, Policy 12);
- That the local Runanga should be involved in the management of mahinga kai resources, including fresh and salt-water fish (TWK p4.24, Policy 6).

- 5.9.2 The Iwi Management Plan of Kāti Huirapa for the Area Rakaia to Waitaki (IMP) was published in 1992. The IMP advocates for the following matters that are relevant to the topics of PA, ASW, and VS include:

- Breeding areas for fish, birds all species in waterways remain undisturbed.
- Protection and restoration of natural habitats should be encouraged.
- Access to mahika kai adjacent to Māori Reserves should be maintained to enable exercise of traditional rights and customary uses.

5.10 Canterbury Regional Council Navigation Safety Bylaw 2016

- 5.10.1 The Canterbury Regional Council Navigation Safety Bylaw 2016 sets out the rules that apply to activities on the surface of water in the Canterbury region. The bylaw includes general safety rules such as the requirement to wear lifejackets, the rules for who can oversee a vessel on the water, and the minimum age for operating power-driven vessels. Specific requirements are for the establishment of access lanes and reserved areas, as well as swing moorings, and details regarding the enforcement powers that the regional council has under the bylaw.

- 5.10.2 Of relevance to the Activities on the Surface of Water topic is that the bylaw sets river safety rules regarding the navigation of the river. Part 3 – Section 8 of the bylaw sets a 5-knot speed limit for rivers within the region and vessels can only exceed 5 knots where a speed uplifting zone (SUZ) (included within Appendix A) applies. In the Timaru District, the only river in the where this SUZ applies is the Rangitata River.

- 5.10.3 Part 3 – Section 8(3) of the bylaw states that the Harbourmaster may declare any river or inland waters in the Canterbury Region to be an SUZ, if the Harbourmaster, in his or her discretion, considers it safe to do so having regard to:
- the previous use of the waters;
 - the nature of the waters and any hazards, and;
 - any other matters considered appropriate.

6. Analysis and Evaluation of Submissions

6.1 Approach to Analysis

- 6.1.1 The PA chapter received 80 original submissions, and 46 further submissions. The ASW chapter received 53 original submissions, and 32 further submissions. The VS chapter received 44 original submissions, and 21 further submissions.
- 6.1.2 The analysis undertaken in this report is separated by chapter, with section 7 containing the analysis relevant to Public Access, section 8 containing analysis relevant to Activities on the Surface of Water, and section 9 containing analysis relevant to Versatile Soils.
- 6.1.3 The assessment of submissions generally follows the following format:
- A brief summary of the relevant submission points.
 - An analysis of those submission points.
 - Recommendations, including any amendments to plan provisions and the related assessment under s32AA.
- 6.1.4 Clause 10(2)(b), Schedule 1 of the RMA provides for consequential changes arising from the submissions to be made where necessary, as well as any other matter relevant to the PDP arising from submissions. Consequential changes recommended under clause 10(2)(b) are footnoted as such.
- 6.1.5 Clause 16(2), Schedule 1 of the RMA allows a local authority to make an amendment to a proposed plan without using a Schedule 1 process, where such an alteration is of minor effect, or may correct any minor errors. Any changes recommended under clause 16(2) are footnoted as such.
- 6.1.6 Further submissions have been considered in the preparation of this report, but in general, they are not specifically mentioned because they are limited to the matters raised in original submissions and therefore the subject matter is canvassed in the analysis of the original submission. Further submissions may however be mentioned where they raise a valid matter not addressed in an original submission.

6.1.7 Further submissions are not listed within Appendix 2. Instead, recommendations on the primary submissions indicate whether a further submission is accepted or rejected as follows:

- Where a further submission supports a primary submission and the primary submission is recommended to be accepted, or where a further submission opposes a primary submission and the primary submission is recommended to be rejected, the further submission is recommended to be accepted.
- Where a further submission supports a primary submission and the primary submission is recommended to be rejected, or where a further submission opposes a primary submission and the primary submission recommended to be accepted, the further submission is recommended to be rejected.
- Where a further submission supports or opposes a primary submission and the primary submission is recommended to be accepted in part, then the further submission is recommended to be accepted in part.

6.1.8 Waterton Farm [73.2], Rogers, B W [92.1], Moore, D and J [100.2], Peel Forest [105.1] and McArthur, K and J [113.1], in a primary submission, support the submission of Federated Farmers and seek the same relief as sought in that submission. Discussion of the Federated Farmers submission points and recommendations made in relation to these therefore applies to that of Waterton Farm [73.2], Rogers, B W [92.1], Moore, D and J [100.2], Peel Forest [105.1] and McArthur, K and J [113.1].

7. Public Access

7.1 General submissions

7.1.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Fenlea Farms	171.10, 171.11, 171.12
McArthur, K J	113.12
Dir. General Conservation	166.74
Federated Farmers	182.135

Submissions

7.1.2 Dir. General Conservation [166.74] seeks that the Introduction to the Public Access chapter is retained as notified as it is consistent with the RMA Section 6(d) and the NZCPS.

7.1.3 Fenlea Farms [171.10, 171.11, 171.12] opposes the approach to public access, including any objectives, policies and rules, standards and schedules in respect of the overlay relating to

158 Prattley Road. The submission notes that the public have historically accessed the Prattley Road Lagoon System (unauthorised access) and caused damage to native habitats. It states that the property is within SASM19 and SASM-4B, and the Prattley Road Lagoon is a wetland recognised in the Ngāi Tahu Claims Settlement Act 1998 (Schedule 49) as a statutory acknowledgement. Given this, the submitter considers 158 Prattley Road should be exempt from public access provision to protect sensitive indigenous species and their habitats, the natural character values of the coastal marine area, wetland or rivers and sites and activities of cultural value to mana whenua.

- 7.1.4 The submission states that unauthorised public access of the Prattley Road Lagoon System has disrupted private farming operations in the past, and Fenlea Farms believes public access over the Prattley Road Lagoon System within 158 Prattley Road will expose the public to a risk to public health and safety. The submitter seeks that the Prattley Road lagoon system be removed from SCHED11.
- 7.1.5 McArthur, K J [113.12] seeks that public access to properties is only allowed with the permission of the landowner.
- 7.1.6 Federated Farmers [182.135] seek that the introduction is amended to address the issue of public access across private property and the need to ensure that this access is provided with the agreement of the landowner where it is practicable to provide that access.

Analysis

- 7.1.7 With respect to the submitters seeking that public access is only allowed with the permission of the landowner, I note that this is already a well-established principle under New Zealand property law. As such, adding such provisions to the district plan, in my view, would be unnecessary. I note that within Ms White's summary statement on the SASM chapter at Hearing E (paragraph 9(b))¹⁶ saw no harm in including an explanatory note within either the general "how the plan works" section or the SASM Chapter. I have discussed this recommendation with Ms White and agree that an explanatory note could be added to the introduction section of the PA chapter explaining that public access to properties is only allowed with the permission of the landowner. This recommendation aligns with the additional advice note Ms White recommended within her reply report on the SASM chapter.
- 7.1.8 With respect to the submission from Fenlea Farms, I consider that the reasons why public access should not be provided to 168 Prattley Road described within the submission are valid. The provisions within the PA chapter do not require public access to the margins of identified wetlands and rivers identified within SCHED-11 in all circumstances. Instead, the provisions require an assessment as to whether public access to these identified areas is appropriate on a case-by-case basis. The direction within PA-P2 lists the matters to be considered when assessing whether public access should be provided. PA-P4 then lists the matters to be considered when public access should be exempted or limited. When an

¹⁶ https://www.timaru.govt.nz/_data/assets/pdf_file/0006/974895/Hearing-E-White-s42A-summary-Final.pdf

application is made for new land use or subdivision that engages the provisions of the PA chapter, I consider the information provided within the submission, can be provided within the application to exempt public access. This would need to be considered on a case-by-case basis. Given this, I do not recommend that amendments be made to the PA chapter.

Conclusions and Recommendations

7.1.9 For the reasons given above I recommend that an advice note is added to the introduction to the PA chapter as follows:

*It should be noted that there is no general right of public access across private land, and landowner consent must be obtained to access any private properties.*¹⁷

Section 32AA

7.1.10 I consider the recommended amendment to the introduction is minor in nature and improves plan consistency and clarity. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

7.2 PA-O1 Public Access

7.2.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Dir. General Conservation	166.75
Road Metals	169.27
Fulton Hogan	170.27
Fenlea Farms	171.13
Silver Fern Farms	172.64
Alliance Group	173.68
PrimePort	175.38
OWL	181.66
Federated Farmers	182.136

Submissions

7.2.2 Two submitters¹⁸ wish to retain PA-O1 as notified.

7.2.3 Two submitters¹⁹ consider that PA-O1 should clearly state that public access is restricted as the word “desirable” is too restrictive, and seek to amend PA-O1 as follows:

¹⁷ McArthur, K J [113.12]

¹⁸ Dir. General Conservation [166.75] and Federated Farmers [182.136]

¹⁹ Road Metals [169.27] and Fulton Hogan [170.27]

PA-O1 Public Access

Public access to and along the coastal marine area and the margins of identified wetlands and rivers is maintained and enhanced, and only restricted where ~~desirable~~ necessary to avoid adverse effects on natural character, landscape, indigenous biodiversity, cultural or recreational values, health and safety, or the rights of private property owners.

- 7.2.4 Fenlea Farms [171.13] consider that public access should be restricted where it is a matter of health and safety and preservation of sensitive indigenous species and habitats, and to account for periods where public access should be temporarily suspended.
- 7.2.5 Two submitters²⁰ consider the word “desirable” should be replaced with “necessary” as the term “desirable” does not infer an evidence-based approach.
- 7.2.6 OWL [181.66] considers the word “desirable” should be replaced with “appropriate” as the term “desirable” is not suitable in the context of Policy PA-P4.
- 7.2.7 PrimePort [173.38] supports public access to the coastal marine area and notes it should only be restricted in certain circumstances but considers the wording of the PA-O1 is uncertain and requires clarity.

Analysis

- 7.2.8 Each submission relating to PA-O1 broadly seeks the same relief, further clarity within the objective as to when public access is restricted, and a more certain word than “desirable” should be used.
- 7.2.9 The maintenance and enhancement of public access to and along the coastal marine area, rivers and lakes is a matter of national importance²¹, and this direction is reflected in the CRPS, which seeks the maintenance and enhancement of public access where appropriate²². Restrictions on public access can be appropriate to preserve cultural and spiritual traditions and practices, for conservation or soil erosion management purposes, or due to health and safety or property rights and land-use practices. Therefore, I consider that it is suitable to replace “desirable” with “appropriate”. However, I do not consider it necessary to extend the objective to specify the circumstances in which public access may be restricted, noting that such specifics are more appropriate at a policy level.

Conclusions and Recommendations

- 7.2.10 For the reasons given above I recommend that PA-O1 is amended as follows:

²⁰ Silver Fern Farms [172.64] and Alliance Group [173.68]

²¹ RMA Section 6(d)

²² CRPS Objective 8.2.5, Policy 8.3.5, Policy 8.3.6(e), Policy 10.3.5, and Methods to achieve Policy 13.3.2,

PA-O1 Public access

Public access to and along the coastal marine area and the margins of identified wetlands and rivers is maintained and enhanced, and only restricted where ~~desirable~~ appropriate²³.

Section 32AA

7.2.11 I consider the recommended amendment to PA-O1 is minor in nature and improves plan consistency and clarity. I consider this amendment aligns with relevant direction in the CRPS and achieves RMA Section 6(d). I consider that the recommended amendment to the objective is the most appropriate to achieve the purpose of the RMA.

7.3 PA – New Objective and Policy Requests

7.3.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Federated Farmers	182.137, 182.141

Submissions

7.3.2 Federated Farmers [182.137; 182.141] seek a new objective and policy to recognise that private property rights are a key area of focus that needs to be considered within this chapter and to recognise the additional impacts public access may have on the amenity value of selected landscapes and areas, may cause damage or create security risks.

7.3.3 The following wording has been proposed:

PA-OX

Practical and safe public access to and along the margins of lakes and rivers and the coastal environment 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.

PA-PX Public education

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.

²³ OWL [181.66].

Analysis

- 7.3.4 I disagree that the additional objective and policy sought by the submitter is required. The intent of the additional objective and policy are largely captured within PA-O1 and its associated policies. I consider the details included within the proposed objective duplicates PA-P4, which specifically lists the circumstances within which public access can be limited. PA-P4 includes all the values listed within the proposed objective except landscape. However, NFL-R8 specifically manages the establishment of new roads, farm tracks and walking and cycling tracks within the outstanding natural landscape, outstanding natural features and visual amenity landscape overlays. As this rule would be triggered for any new public access provided within the landscape overlays, I see the existing provisions as sufficiently certain in achieving the RMA relating to protecting environmental values.
- 7.3.5 In addition, the objective proposed by the submitter appears to expand the scope of the PA chapter as it would apply to the margins of all lakes and rivers, as opposed to PA-O1 as notified, which is limited to the margins of “identified” wetlands and rivers.
- 7.3.6 With respect to the suggested policy, I note that there are a variety of sources that can be considered by the public regarding where public access is available. Herenga ā Nuku Aotearoa, the Outdoor Access Commission website²⁴ includes an interactive map showing public access areas throughout New Zealand, information on the types of legal public access, and advice on responsible behaviour. Given this, I disagree that a policy of this nature is required within the PDP.

Conclusions and Recommendations

- 7.3.7 I do not recommend the inclusion of any additional objectives or policies as a result of this submission point.

7.4 PA-P1 Benefits of Public Access

- 7.4.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Dir. General Conservation	166.76
Rooney Holdings	174.44
Te Runanga o Ngai Tahu	185.55
Rooney, G.J.H	191.44
Rooney Group	249.44
Rooney Farms	250.44
Rooney Earthmoving	251.44

²⁴ <https://www.herengaanuku.govt.nz/>

TDL	252.44
Federated Farmers	182.138

Submissions

- 7.4.2 Three submitters²⁵ wish to retain PA-P1 as notified.
- 7.4.3 Six submitters²⁶ seek that PA-P1 be amended to recognise the negative impacts public access can have on landowners, in particular those involved in primary production.

Analysis

- 7.4.4 The intent of PA-P1 is to recognise the benefits arising from the provision of public access. The relief sought above to include recognition of the impacts of public access is therefore not the intent of this policy. Policies PA-2 and PA-4 provide for the consideration of such matters, and as it is intended that the objectives and policies of the PA chapter are to be considered as a whole, these matters can be considered alongside the benefits recognised in PA-P1.

Conclusions and Recommendations

- 7.4.5 I recommend that PA-P1 is retained as notified.

7.5 PA-P2 Requirements for Public Access

- 7.5.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Dir. General Conservation	166.77
Silver Fern Farms	172.65
Alliance Group	173.69
ECan	183.94
PrimePort	175.39
Federated Farmers	182.139
Rooney Farms	250.45
Rooney Earthmoving	251.45
TDL	252.45
Rooney Holdings	174.45
Rooney, G.J.H	191.45

²⁵ Te Rūnanga o Ngāi Tahu [185.55], Dir. General Conservation [166.76] and Federated Farmers [182.138]

²⁶ Rooney Holdings [174.44], Rooney, G.J.H [191.44], Rooney Group [249.44], Rooney Farms [250.44], Rooney Earthmoving [251.44] and TDL [252.44]

Rooney Group	249.45
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Submissions

- 7.5.2 Six submitters²⁷ seek PA-P2 be retained as notified.
- 7.5.3 Six submitters²⁸ consider that “require” should be replaced with either “facilitate” or “promote”, as public access may not be appropriate in all circumstances, depending on the land use. They also seek that an additional clause is added to PA-P2 which recognises reverse sensitivity effects.

Analysis

- 7.5.4 I disagree with the suggested amendments to PA-P2. I consider the intention of PA-P2 is to “require” public access to be provided where the specific qualifiers listed within PA-P2 are achieved. The requirement within PA-O1 is to only restrict public access where appropriate (as per my recommended amendments to PA-O1 above). PA-P2 implements this objective by requiring public access to be provided in the first instance. The sub-clauses of PA-P2 then outline the opportunities to provide public access (clauses 1 to 3) and also limitations that may preclude these opportunities for public access (clauses 4 to 8).
- 7.5.5 The concept of reverse sensitivity is already considered within PA-P2(5), which ensures that the provision of public access does not constrain the operation of legally established activities or development potential. This clause relates to the specific aspects of reverse sensitivity that apply to the provision of public access. In my view, this approach is more certain, efficient and effective in achieving PA-O1 than adding an additional clause specifically referring to reverse sensitivity effects.

Conclusions and Recommendations

- 7.5.6 I recommend that PA-P1 is retained as notified.

7.6 PA-P3 Design and Construction of Public Access

- 7.6.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Silver Fern Farms	172.66
Alliance Group	173.70
Federated Farmers	182.140

²⁷ Dir. General Conservation [166.77], Silver Fern Farms [172.65], Alliance Group [173.69], PrimePort [175.39], Federated Farmers [182.139] and ECan [183.94]

²⁸ Rooney Holdings [174.44], Rooney, G.J.H [191.44], Rooney Group [249.44], Rooney Farms [250.44], Rooney Earthmoving [251.44] and TDL [252.44]

Submissions

- 7.6.2 Silver Fern Farms [172.66] and Alliance Group [173.70] consider that public access along rivers and the coastal marine area is, in some areas, subject to riverine and coastal processes that may preclude the maintenance of an access design that meets Council standards. As such, the submitter considers that the policy direction should not foreclose on the ability to consider alternative design outcomes. They seek to amend the policy as follows:

PA-P3 Design and construction of public access

Ensure that all public access routes are designed in accordance with Council standards for recreational areas where natural processes would not compromise the design.

- 7.6.3 Federated Farmers [182.14] wish to retain PA-P3 as notified.

Analysis

- 7.6.4 I disagree an amendment to PA-P3 is necessary. PA-P3 requires new public access routes to be designed in accordance with the Council standard. If access is subject to a natural process, this will be considered as part of the design process.

Conclusions and Recommendations

- 7.6.5 I recommend that PA-P3 is retained as notified.

7.7 PA-P4 Limiting public access

- 7.7.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Transpower	159.82
Road Metals	169.28
Fulton Hogan	170.28
Silver Fern Farms	172.67
Alliance Group	173.71
PrimePort	175.40
OWL	181.67
ECan	183.95
Te Runanga o Ngai Tahu	185.56
Dir. General Conservation	166.78
Rooney Holdings	174.46
Rooney, G.J.H	191.46
Rooney Group	249.46
Rooney Farms	250.46
Rooney Earthmoving	251.46
TDL	252.46

Submissions

7.7.2 Nine submitters²⁹ wish to retain PA-P4 as notified.

7.7.3 The Dir. General Conservation [166.78] seeks an additional subclause to be added to PA-P4 to ensure consistency with Policy 19 of the NZCPS. The suggested amendment is as follows:

PA-P4 Limiting public access

Only allow an exemption for the requirement to provide public access or limiting an existing public access, on a temporary or permanent basis, for one or more of the following reasons:

1. In order to protect:

a. sensitive indigenous species and their habitats; or

x. dunes and estuaries and other sensitive natural areas

b. [...]

7.7.4 Six submitters³⁰ seek a new subclause is added to PA-P4 identifying reverse sensitivity as a reason to limit public access.

Analysis

7.7.5 With respect to the submission from Dir. General Conservation, Council staff member contacted the submitter seeking clarification as to whether “*dunes and estuaries and other sensitive natural areas*” would be captured by clauses

- PA-P4(1)(a) - sensitive indigenous species and their habitat, or
- PA-P4(1)(g) - the natural buffers to coastal erosion or river flooding.

7.7.6 The response provided by the submitter from Technical Advisor (Ecology), Richard Clayton, was that “coastal dongas” were an example of an area not captured by PA-P4(1)(a) or (g) that would be captured by the proposed clause. He noted that these are a prevalent feature of the Canterbury coastline generally, and along the Timaru coastline specifically, some of them have significant ecological value³¹ He also noted that back dunes, dune slacks, or any wetlands would also be areas not captured within PA-P4, as notified.

7.7.7 I also agree with the submitter that this addition helps to ensure PA-P4 gives effect to Policy 19(1) of the NZCPS. Given this, I agree with the inclusion of the additional subclause.

7.7.8 With respect to the submitters who seek an additional subclause related to reverse sensitivity, I disagree with this amendment. I note that PA-P4(1) already provides the ability

²⁹ Transpower [159.82], Road Metals [169.28], Fulton Hogan [170.28], Silver Fern Farms [172.67], Alliance Group [173.71], PrimePort [175.4], OWL [181.67], ECan [183.95] and Te Rūnanga o Ngāi Tahu [185.56]

³⁰ Rooney Holdings [174.44], Rooney, G.J.H [191.44], Rooney Group [249.44], Rooney Farms [250.44], Rooney Earthmoving [251.44] and TDL [252.44]

³¹ <https://www.doc.govt.nz/documents/science-and-technical/sfc327entire.pdf>

to exempt public access on the basis of public health or safety, this aligns with the direction within Policy 19 of the NZCPS. I consider an additional subclause limiting or exempting public access on the basis of reverse sensitivity effects would require a subjective assessment of the potential for conflict between existing activities and public access, which could lead to inconsistent and uncertain outcomes. Furthermore, as noted in the assessment of PA-P2 above, reverse sensitivity concerns can be considered within PA-P2(5). Therefore, I do not consider the suggested amendment is required.

Conclusions and Recommendations

7.7.9 I recommend that PA-P4 is amended as follows:

PA-P4	Limiting public access
<p>Only allow an exemption for the requirement to provide public access or limiting an existing public access, on a temporary or permanent basis, for one or more of the following reasons:</p> <ol style="list-style-type: none"> 1. in order to protect: <ol style="list-style-type: none"> a. sensitive indigenous species and their habitats; or b. sites and activities of cultural value to mana whenua; or c. historic heritage; or d. public health or safety; or e. the natural character values of the coastal marine area, wetland or rivers; or f. the stability, performance, maintenance and operation of regionally significant infrastructure; or g. the natural buffers to coastal erosion or river flooding; or h. <u>dunes and estuaries and other sensitive natural areas: or</u>³² 2. in order to enable temporary activities including temporary events. 	

Section 32AA

7.7.10 I consider the recommended addition to PA-P4((1) is reasonably minor in nature, and helps to ensure that PA-P4 better gives effect to Policy 19 of the NZCPS. I consider the additional clause will have a slight environmental benefit as it will enable public access to be limited or exempt in order to protect dunes and estuaries and other sensitive natural areas. It will not have any greater economic, social or cultural effects than the notified provisions.

7.8 PA-R1 Any new land use, subdivision or development

7.8.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
OWL	181.68
Silver Fern Farms	172.68
Alliance Group	173.72

³² Dir. General Conservation [166.78]

Speirs, B	66.52
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Submissions

- 7.8.2 Silver Fern Farms [172.68] and Alliance Group [173.72] wish to delete PA-R1 as they consider it is unclear how this provision is intended to work with respect to sites in the GIZ. The submissions states that the rule appears to require a controlled or restricted discretionary resource consent to be obtained for any new development on a GIZ site larger than 5,000m² that includes a waterway identified in the Public Access Provision Overlay, if the proposal requires a discretionary or non-complying consent for any other reason.
- 7.8.3 The submissions state that both the Silver Fern Farms Pareora site and the Alliance site are larger than 5,000m² and adjoin the Public Access Provision Overlay (“PAPO”) along the foreshore, and the rule is silent on the foreshore PAPO. They consider the purpose and mechanics of this rule are unclear and clarification is sought.
- 7.8.4 Speirs, B [66.52] considers that all rules (and associated direction, where required) involving subdivision should be in one place in the PDP, being the subdivision chapter, and seeks for the word “subdivision” to be removed from the rule title of PA-R1.
- 7.8.5 OWL [181.68] wishes to retain PA-R1 as notified.

Analysis

- 7.8.6 With respect to the submissions from Silver Fern Farms and Alliance Group, the intention of the rule is that when development requiring resource consent is proposed on large industrial sites adjacent to the coast or listed waterbodies, consent is required for the new activity as either a controlled activity if public access is being proposed, or a restricted discretionary activity if public access is not being proposed. There is only one Public Access Provision Overlay applied within the PDP. The areas subject to Public Access Provisions are listed in SCHED11 - Schedule of Public Access Provisions. There is not an additional Public Access Provision Overlay specific to the foreshore. As such, PA-R1 applies to new land use, subdivision or development within the PAPO, whether this be near the foreshore or elsewhere.
- 7.8.7 I disagree with the submitter's suggestion that PA-R1 be deleted. I consider this rule is required to achieve the direction within PA-O1 that public access to and along the coastal marine area and the margins of identified wetlands and rivers be maintained and enhanced. However, I accept that once an application has been considered as either a controlled activity or a restricted discretionary activity under PA-R1, an applicant should not be captured by this rule for every new subsequent development on the site. I consider this would create an unnecessary consenting burden. Given this, I recommend that a new permitted standard be included within PA-R1 that ensures that subsequent developments on the site are permitted if the site has previously obtained resource consent under this rule.
- 7.8.8 I agree with the submission from Speirs, B, that the relationship between the subdivision chapter (SUB) and the PA chapter needs to be clarified. As notified, PA-R1 requires that a

new subdivision of a site overlaid or adjoining waterways identified in the Public Access Provision Overlay (listed in SCHED11) needs to provide “public access” if it is located in the General Residential Zone and creates five or more residential lots or is located in any other zone and requires a discretionary or non-complying activity consent. SCHED11 lists 39 areas subject to Public Access Provisions.

- 7.8.9 In addition, within the SUB chapter, SUB-O5, SUB-P7, and SUB-S8 require the creation of “esplanade reserves” and “esplanade strips” when land is subdivided on the margins of the coast and rivers listed in SCHED12-Schedule of Esplanade Provisions. SUB-S8 requires that when land is subdivided next to the coast or rivers listed in SCHED-12 – Esplanade Provisions, an esplanade reserve, esplanade strip, or access strip (at the Council's discretion) must be provided along the coast or river margins with the following minimum widths:
- 5m for allotments of 4ha or more.
 - 10m for allotments of less than 4ha.
- 7.8.10 However, no esplanade reserve or strip is required where the “public access” or the conservation or recreation values identified in SCHED 12 Esplanade Provisions is secured by a marginal strip under Part IV of the Conservation Act 1987. SCHED12 lists 69 waterbodies. It includes the same 39 water bodies listed in SCHED11 and an additional 30 waterbodies. I understand SCHED11 is a subset of SCHED12 and contains the waterways that were identified by the Council’s Parks Unit as waterways where public access was a priority.
- 7.8.11 As such, the PA and SUB chapters are complementary but distinct in focus. The PA chapter applies to all types of “public access”, including access both ‘to’ and ‘along’ the District’s coastal marine area and margins of specified wetlands, and directs these are provided for specific land use activities and also specific subdivisions that are located adjoining the 39 waterways listed in SCHED11. The SUB chapter applies to a broader geographic area, requiring the creation of esplanade reserves, strips, or access strips ‘along’ the 69 waterways listed in SCHED12. These include the 39 waterways in SCHED11, as well as 30 additional waterbodies of significant conservation or recreational value. The SUB chapter also allows flexibility by waiving esplanade requirements where public access or conservation values are already secured under the Conservation Act 1987.
- 7.8.12 Given the PA and SUB chapters are complementary but distinct in focus, I disagree with the deletion of the reference to “subdivision” within PA-R1.
- 7.8.13 I note that submission points on the location of PA-R1 have been considered within Mr Boyes s42A report on Subdivision and Development Areas³³. He has recommended that PA-R1 be retained in the PA chapter. I agree with this recommendation.
- 7.8.14 Finally, I note there is a minor numbering error and an additional full stop within PER-2 that I recommend be corrected under Clause 16(2) amendment.

³³ Paragraphs 7.1.11 – 7.1.31

Conclusions and Recommendations

7.8.15 I recommend PA-R1 be amended as follows:

PA-R1	Any new land use, subdivision or development	
<p>All sites overlaid or adjoining waterways identified in the Public Access Provision Overlay</p>	<p>Activity status: Permitted</p> <p>Where</p> <p>PER-1 The activity is located in the General Residential Zone and includes the creation of five or less residential units and/or residential allotments, and does not require a discretionary or non-complying activity resource consent in any other chapters; or</p> <p>PER-2 The activity is located in the General Industrial Zone and is on a site that is less than 5,000m² and does not require a discretionary or non-complying activity resource consent in any other chapters.³⁴; or</p> <p>PER-23³⁵ The activity is located in other zones and does not require a discretionary or non-complying activity resource consent in any other chapters; <u>or</u></p> <p>PER-4 <u>The site has previously obtained resource consent under this rule.</u>³⁶</p>	<p>Activity status where compliance not achieved: Controlled Activity</p> <p>Where</p> <p>CON-1</p> <p>1. Public access is proposed in accordance with the Public Access Provision Overlay identified on the planning maps and SCHED11 - Schedule of public access provisions.</p> <p>Matters of control are restricted to:</p> <ol style="list-style-type: none"> 1. the purpose of the public access; and 2. the location, design and width of the proposed public access having regard to Council's public access standards for recreation areas and the need to protect the matters listed under PA-P4.1; and 3. measures to ensure the health and safety of users of the proposed public access; and 4. measures to ensure security of private land from users of the proposed public access; and 5. any necessary restrictions on public access having regard to policy PA-P4; and 6. the legal instrument to ensure public access and the details of that instrument. <p>Activity status where compliance not achieved with CON-1: Restricted Discretionary</p> <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. whether public access should be provided or not, having regard to:

³⁴ Clause 16(2)

³⁵ Clause 16(2)

³⁶ Silver Fern Farms [172.68] and Alliance Group [173.72]

		<ul style="list-style-type: none"> a. the benefits of public access as outlined in PA-P1; and b. whether a significant public safety risk is created as a result of the public access; and c. whether there is any existing public accesses in the vicinity of the site and the suitability of those accesses to provide public accesses now and in the future; and d. whether the development will place additional demands for public access that is not capable of being met by any existing public access in the vicinity of the site; and e. whether the site or development is large enough to adequately accommodate public access without significantly constraining the site's development potential; and f. whether enabling public access would significantly constrain the operation of legally established activities occurring on the site; and g. whether Council has budget to compensate the landowner for the public access strip. <p>2. If public access is required, the matters listed for control under CON-1.</p>
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Section 32AA

7.8.16 I consider the recommended amendments to PA-R1 are minor in nature, and improve plan consistency and clarity. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

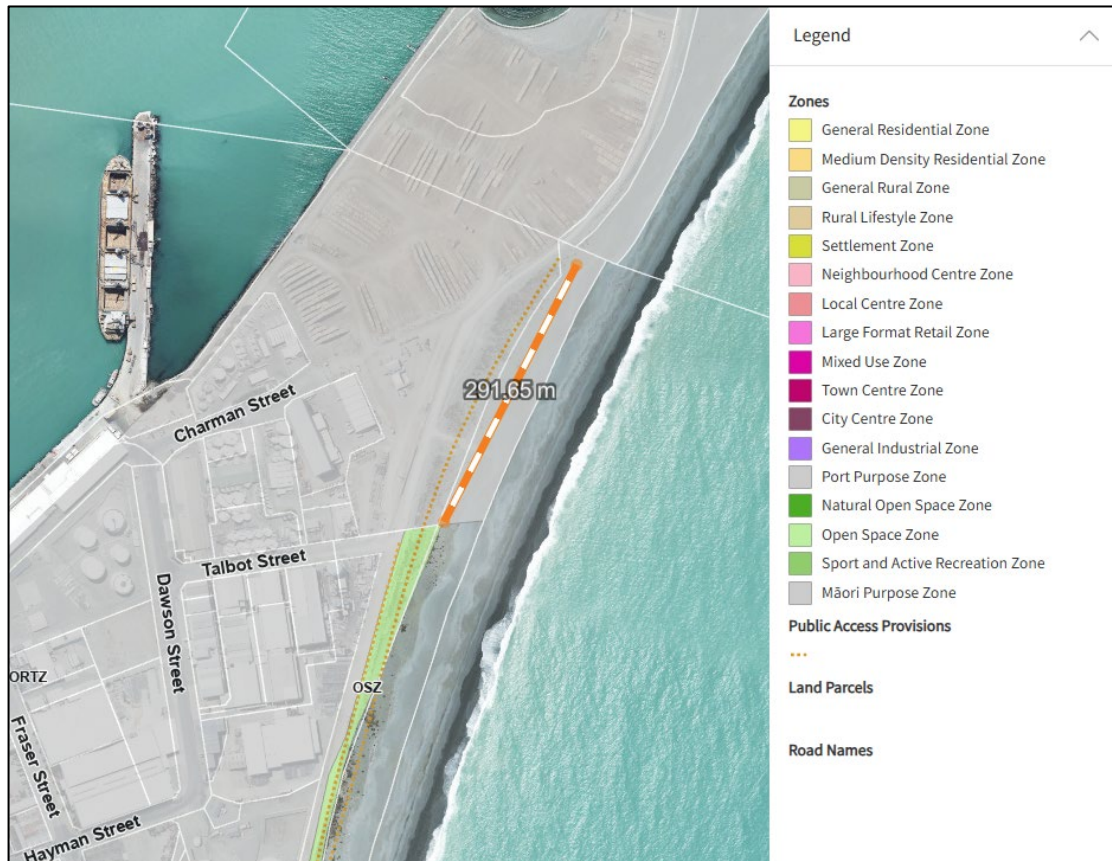
7.9 PA – Planning Maps and SCHED11

7.9.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
PrimePort	175.5, 175.6, 175.94
Harvey Norman	192.4
Wallwork, C	2.3
King, R J	194.1
Rooney Holdings	174.99, 174.100
Rooney, G.J.H	191.99, 191.100
Rooney Group	249.99, 249.100
Rooney Farms	250.99, 250.100
Rooney Earthmoving	251.99, 251.100
TDL	252.99, 252.100
Dir. General Conservation	166.79

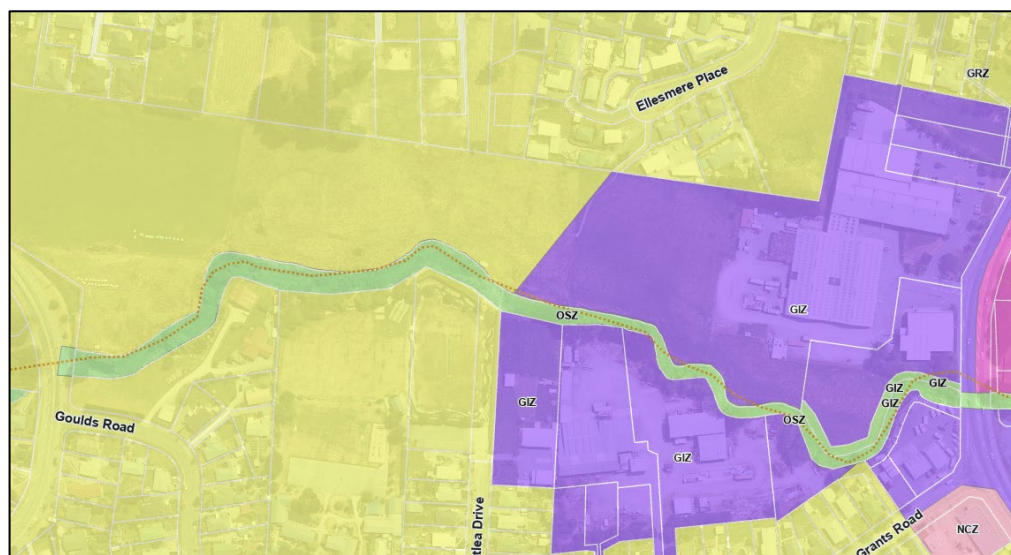
Submissions and analysis

- 7.9.2 Dir. General Conservation [166.79] wish to retain SCHED11 as notified.
- 7.9.3 PrimePort [175.5] seeks to amend the Planning Maps to delete the PAPO within Lot 2 DP 326718. The submitter notes that this land forms part of the Port Operational Area that periodically requires closure for health and safety reasons. Public access can be gained to the coast from Talbot Street, the adjoining Open Space Zone and along the coast itself. PrimePort [175.6] also seeks to ensure there is no public access provision requirement within the Operational Port area. Lastly, PrimePort [175.94] seeks that the public access provisions do not apply to land beside the Coastal Marine Area between Talbot and Charman Streets and seeks their removal from SCHED11.
- 7.9.4 In response to PrimePort's submission, I note that the "Timaru Port area between Unwin Street and the Eastern Mole extension" is already excluded from SCHED11. The submitter is seeking that this exclusion be extended to Tallbot Street. I understand this will exclude a stretch of approximately 290 meters of the coastline, as shown in the diagram below.



7.9.5 I agree with the additional exclusion, given this area is a working part of the Port and periodically subject to public closure for health and safety reasons.

7.9.6 Harvey Norman [192.4] seeks to amend the PAPO so that it is only contained within the Open Space Zone. I disagree this amendment is required. The relevant section of the PDP planning maps are shown below. PA-R1 applies to “all sites overlaid or adjoining waterways identified in the Public Access Provision Overlay” Given that the Taitarakihi Creek is listed within SCHED11, the provisions of PA-R1 will apply to the sites Taitarakihi Creek, regardless of whether it is contained within the Open Space Zone or not.



- 7.9.7 Wallwork, C [2.3] seeks to amend the PAPO so that the Hae Hae Te Moana River at 1986 Te Moana Road is located within the Four Peaks Esplanade Reserve as the mapped areas are not accessible from Te Moana Road and see this as an error, and that the overlay be redrawn as shown by the blue line on the below map:



- 7.9.8 I disagree a re-alignment of Public Access Provision Overlay is required. PA-R1 applies to “all sites overlaid or adjoining waterways identified in the Public Access Provision Overlay”. Given this section of the Hae Hae Te Moana River is listed within SCHED11 the provisions of PA-R1 will apply to the Hae Hae Te Moana River regardless of whether it is contained within the 1986 Te Moana Road site boundary or not.
- 7.9.9 King, R J [194.1] seeks to remove the Public Access Provision Overlay on 136 Landsborough Road from both SCHED11 and the PAPO. The submitter operates a farming operation on the site and is concerned that access would create safety issues, devalue the property, and create biosecurity risks. Similarly, six submitters³⁷ seek to amend SCHED11 and the PAPO overlay to remove the unnamed tributary of the Pareora River. The submitters note that this tributary flows from a vegetated gully that has been identified as an SNA and consider there is no reason for this tributary to be included in SCHED11.
- 7.9.10 With respect to these submissions, I disagree that these sites should be removed from the Public Access Provision Overlay. I note that this overlay will only be triggered when a new land use, subdivision or development is proposed on the site that requires a discretionary or non-complying activity resource consent. In this situation, the provision of public access will be considered on a case-by-case basis as part of the resource consent process required by

³⁷ Rooney Holdings [174.99, 174.100], Rooney, G.J.H [191.99, 191.100], Rooney Group [249.99, 249.100], Rooney Farms [250.99, 250.100], Rooney Earthmoving [251.99, 251.100] and TDL [252.99, 252.100]

PA-R1. Through the consent process, matters such as the protection of public health or safety can be considered a reason to exempt or limit public access.

Conclusions and Recommendations

7.9.11 I recommend that SCHED11 - Schedule of public access provisions is amended as follows:

SCHED11 — SCHEDULE OF PUBLIC ACCESS PROVISIONS	
Name of Waterbody	Area subject to Public Access Provisions
Coastal Marine Area	1. Along only, except within the Timaru Port area between Unwin Street and the Eastern Mole extension to <u>Tallbot Street</u> ³⁸

7.9.12 I recommend that the Public Access Provision Overlay within the planning maps is amended to remove the section of the overlay that applies beyond Tallbot Street.

Section 32AA

7.9.13 I consider the recommended amendments to SCHED11 and the Public Access Provision Overlay to be minor in nature and help achieve PA-O1 as they ensure that public access to coastal marine area restricted where appropriate. I consider the amendments will not have any greater environmental, economic, social or cultural effects than the notified provisions.

³⁸ PrimePort [175.6]

8. Activities on the Surface of Water

8.1 Provisions where no change is sought

8.1.1 The following provisions included within the ASW Chapter received no submissions or only received submissions in support seeking their retention:

- ASW-P1³⁹
- ASW-P2⁴⁰
- ASW-P5⁴¹
- ASW-R1
- ASW-R7⁴²
- ASW-R8⁴³

8.1.2 I recommend the provision listed above be retained as notified.

8.2 General Submissions

8.2.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Te Rūnanga o Ngāi Tahu	185.74
Forest & Bird	156.132
Dir. General Conservation	166.86

Submissions

8.2.2 Te Rūnanga o Ngāi Tahu [185.47] considers that the objective and subsequent policies and rules should apply to all waterbodies rather than just rivers, given that the chapter is above the surface of water. They seek that “rivers” is replaced with “waterbodies” throughout the chapter.

8.2.3 Forest & Bird [156.132] consider that the introduction should recognise the value of the Rangitata WCO, and motorised craft activities on the surface of water bodies should be discouraged during river bird breeding season. They seek the following amendment to the introduction to the ASW Chapter:

³⁹ Forest and Bird [156.134]

⁴⁰ Forest and Bird [156.135]

⁴¹ Jet Boating [48.3], Forest and Bird [156.137]

⁴² Dir. General Conservation [166.92]

⁴³ Dir. General Conservation [166.93]

Activities occurring on the surface of water can have potential adverse effects on the ecological values, natural character values, recreational values and cultural values associated with the District's rivers. The Water Conservation (Rangitata River) Order 2006 sets out the special features of the river and to be protected from adverse effects. The provisions of this chapter seek to manage these adverse effects, while also providing for the sustainable use of motorised craft.

- 8.2.4 Dir. General Conservation [166.86] supports the policies which seek to protect the values of the districts rivers, avoid adverse effects of motorised craft and manage the effects of surface water activities on fish spawning areas, habitat of breeding birds and on flora and fauna within riparian margins. The policy is consistent with the RMA Part 2, Section 6(c) and Section 31(1)(e). They seek that all policies within the ASW chapter are retained as notified.

Analysis

- 8.2.5 With respect to the use of “waterbodies” in place of rivers, I note that the extent of freshwater environments subject to this chapter is limited to rivers, as there are no natural lakes in the District. Lake Opuha is considered as a man-made feature within the Opuha River, and features such as the Opihi River Lagoon are considered to be coastal water (seaward of mean highwater springs). Therefore, I consider that in the context of the Timaru District it is appropriate to only refer to rivers.
- 8.2.6 In response to the submission from Forest & Bird, the notified ASW chapter has been drafted in accordance with the Water Conservation (Rangitata River) Order 2006. The policy framework directs that the use of motorised craft shall be avoided during particular times of the year and within identified fish spawning areas. This is supported by the rule framework for permitted activities, which includes conditions requiring the use of motorised craft to be undertaken outside of specified periods to protect vulnerable waterbodies and ecosystem values at appropriate times of the year. However, I disagree that the introduction needs to specifically refer to the Rangitata WCO, as it does not include any specific direction required to be implemented by district councils.
- 8.2.7 Finally, Council staff have identified an error in the application of the ASW chapter. Within the PDP, the rivers include underlying zones (which are almost exclusively General Rural Zoning). The drafting of the rules within the ASW chapter does not include an explanation that the rules of the ASW chapter take precedence over the rules within the zones chapter. Given GRUZ-R28 within the General Rural Zone chapter is a catch-all rule that sets a discretionary activity status for “Activities not listed in the Rules section of this chapter”. When applied, this would mean that all activities within the ASW Chapter would require resource consent as discretionary activity as they are not listed in the GRUZ chapter. To resolve this, I recommend that an additional note be added within the rules section of the ASW chapter that states that the rules within the ASW chapter take precedence over the rules in Part 3 – Area Specific Matters - Zone Chapters. I consider this amendment can be made as a Clause 16(2) minor amendment.

Conclusions and Recommendations

- 8.2.8 For the reasons given above, I recommend that the note within the rules section be amended as follows:

Note: *Activities not listed in the rules of this chapter are classified as a permitted under this chapter. The rules within the ASW chapter take precedence over the rules in Part 3 – Area Specific Matters - Zone Chapters.⁴⁴ For certain activities, consent may be required by rules in more than one chapter in the Plan. Unless expressly stated otherwise by a rule, consent is required under each of those rules. The steps plan users should take to determine what rules apply to any activity, and the status of that activity, are provided in Part 1, HPW – How the Plan Works - General Approach.*

Section 32AA

- 8.2.9 I consider the recommended amendment to the note is minor in nature and better reflects the intent of the policy. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

8.3 ASW-O1 Protecting the values of the District's Rivers

- 8.3.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.1
Forest and Bird	156.133
Dir. General Conservation	166.85
ECan	183.105
Te Rūnanga o Ngāi Tahu	185.75

Submissions

- 8.3.2 Three submitters⁴⁵ support the objective and seek it to be retained as notified.
- 8.3.3 Jet Boating [48.1] seeks the following amendment to reflect that minor and less than minor effects are acceptable:
- The ecological, recreational, natural character and cultural values of the District's rivers are protected from the more than minor adverse effects of activities on the surface of water.*
- 8.3.4 Te Rūnanga o Ngāi Tahu [185.75] supports the objective insofar as it seeks to protect the cultural values of the District's rivers. However, the submitter considers that objective and

⁴⁴ Clause 16(2) RMA

⁴⁵ Forest and Bird [156.133], Dir. General Conservation [166.85] and ECan [183.105]

subsequent policies and rules should apply to all waterbodies and be not limited to rivers, given that the provision is about the surface of water. They seek the following amendments:

ASW-O1 Protecting the values of the District's ~~rivers~~ waterbodies

The ecological, recreational, natural character and cultural values of the District's ~~rivers~~ waterbodies are protected from the adverse effects of activities on the surface of water.

Analysis

- 8.3.5 With respect to the submission point from Jet Boating, I agree in part with the suggested amendment. I agree that the requirement to protect against all adverse effects is overly restrictive and is not required in order to ensure the values of the district's rivers are protected. However, I also disagree that the qualifier "more than minor" should be included within the objective. Including such a qualifier creates an effects test within the objective that is better suited to a case-by-case assessment within a resource consent process. Including such a qualifier could potentially allow adverse effects that, while minor individually, may cumulatively compromise the values of the rivers over time, undermining the overall intent of the objective to protect the values of the river.
- 8.3.6 In my view, a more balanced approach would be to ensure that the values of the district rivers are protected from the adverse effect of "inappropriate" activities on the surface of water. This would allow for flexibility in managing activities while ensuring the protection of the district rivers. It would also provide a framework that supports context-specific provisions without predetermining outcomes through specific effects tests embedded within the objective itself.
- 8.3.7 As set out in paragraph 8.2.5, the extent of freshwater environments subject to this chapter is limited to rivers as there are no natural lakes in the District, and lagoons and estuaries are considered coastal water. Therefore, the use of "waterbodies" in place of "rivers" is not appropriate.

Conclusions and Recommendations

- 8.3.8 For the reasons given above I recommend that ASW-O1 be amended as follows:

ASW-O1	Protecting the values of the District's rivers
The ecological, recreational, natural character and cultural values of the District's rivers are protected from the adverse effects of <u>inappropriate</u> ⁴⁶ activities on the surface of water.	

Section 32AA

- 8.3.9 I consider the recommended amendment to ASW-O1 to provide a more balanced approach to the management of the District's rivers while ensuring that the values of the rivers are

⁴⁶ Jet Boating [48.1]

protected from inappropriate activities. I consider that the recommended amendment to the objective is the most appropriate to achieve the purpose of the RMA.

8.4 ASW-P3 Recreational use of motorised craft within specified areas of identified rivers

8.4.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.2
Te Rūnanga o Ngāi Tahu	185.76
Forest and Bird	156.136

Submissions

8.4.2 Forest and Bird [156.136] support the policy and seek it to be retained as notified.

8.4.3 Jet Boating [48.2] considers it appropriate to provide for recreational jet boating within identified rivers when minimum flows occur but considers it inappropriate to limit jet boating to a specific time of the year. The submitter considers that it is not necessary to limit recreational jet boating activities to specific times of the year. If a minimum water flow criteria is adopted, the submitter considers this will have a practical effect of only enabling recreational jet boating in “high flow” conditions. During these conditions, other recreational river users are very unlikely to be on the river, and the potential for conflict or interruption by recreational jet boating is very low. The submitter also notes that higher flows will likely have the immediate effect of naturally disturbing fauna in and about the river margins to the extent that recreational jet boating will not provide any significant further impacts. The same comments apply to flora about the river margins.

8.4.4 With respect to clause ASW-P3(2), the submitter considers that the elements of restriction within this clause that have been rolled over from the operative District Plan are outdated and should be removed and replaced with controls related to minimum water flows.

8.4.5 Jet Boating seek the following amendment:

Provide for the non-commercial recreational use of motorised craft in areas identified in SCHED17 - Schedule of River Protection Areas where any more than minor adverse effects associated with their use are:

~~1. avoided by stipulating the time of the year when the activities can occur, and;~~

~~2. for Jet Boat NZ activities on the Ōpihi River, mitigated by limiting the duration, frequency and nature of those activities~~

avoided by stipulating a minimum water flow when the activities can occur.

- 8.4.6 Te Rūnanga o Ngāi Tahu [185.76] considers that structures are also used for non-commercial activities and the consideration of these should be guided by a policy. They recommend reconsidering how the policy will apply to structures for recreational activities.

Analysis

- 8.4.7 In response to the submission from Jet Boating, I agree in part with the suggested amendments. I agree with the removal of clause ASW-P3(2) as it enables outdated activities that are specific to “JetBoat NZ activities” which has been rolled over from the ODP, this is also reflected in suggested amendments to ASW-R4 below.

- 8.4.8 I also agree that there should be more policy direction supporting the use of flow rates within specific rivers. I note that the provisions of the ASW chapter (ASW-R3 - ASW-R6) include permitted activity standards that require a specific flow rate be achieved to comply with a permitted standard. I consider these permitted standards are not reflected within the supporting policy. As such, I agree that amendments should be made to ASW-P3 to acknowledge that minimum water flows are also used to determine when the activities can occur.

- 8.4.9 With respect to the submitter’s suggestion that the “time of year” restriction within ASW-P3 should be removed, I disagree with this suggested amendment. I note that these “time of year” restrictions in the Ōpihi and Rangitata rivers have been rolled over from the ODP provisions and are incorporated in the ASW-R3 and ASW-R5. Similar restrictions have also been included on the Ōrāri River (ASW-R4) and the Pureora / Pareora River (ASW-R6). These restrictions are included to prevent jet boat use on the rivers during bird breeding and salmon spawning seasons. The s32 report for the ASW chapter notes that:

“This preferred approach updates the plan provisions to consider new waterbodies for inclusion in the plan, whilst ensuring the protection of bird and fish species that breed in the waterbodies and assist in protecting the indigenous flora and fauna that live in riparian margins.”

- 8.4.10 What I am not clear on is whether the “time of year” restrictions should be included in addition to the “flow rate” restrictions or whether achieving one of these restrictions is sufficient to ensure the protection of birds breeding and salmon spawning in the river bed. As noted above, the submission from Jet Boat suggests that if a minimum water flow criteria is adopted, this will ensure that recreational jet boating is only permitted in “high flow” conditions where fauna in river margins is already disturbed, and recreational jet boating will not create any significant further impacts. I am of the view that I do not have sufficient evidence to conclude that just including a “flow rate” restriction is sufficient to ensure the protection of birds breeding in the river bed.

- 8.4.11 These permitted standards were discussed at the meeting held between DOC and Jet Boating. However, there was no agreement that a “flow rate” restrictions would be sufficient on its own to protect the values of the rivers included within Rules ASW-R3, R4, R5, R6. As

such, I have recommended that both the “time of year” and “flow rate” restrictions are included within ASW-P3. However, I welcome further expert evidence from either party that supports further amendments to this policy.

- 8.4.12 Within the meeting held between DOC and Jet Boating it was also suggested that a breach of the “time of year” restriction should act as a trigger for assessment rather than a strict avoidance, as there are likely to be locations on these rivers where recreational use of motorised craft could occur in a manner that does not adversely affect fish spawning or bird breeding, but this would need to be considered on a case-by-case basis. As notified, this policy requires that any adverse effects associated with the recreational use of motorised craft use are avoided by stipulating the time of the year when the activities can occur. This policy is achieved through ASW-R3 – R6, which sets a non-complying activity status for breaches of the “time of year” restriction. Setting a non-complying activity status and requiring that these activities must be avoided unless they occur outside of fish spawning and bird breeding seasons effectively creates a prohibition of these activities during these seasons, which I consider unreasonable.
- 8.4.13 Instead, if an application is made to undertake these activities outside the stipulated times and minimum water flow levels, I consider an assessment should be made as to whether the activity will have an adverse effect on the value of the river. In my view the intention of this policy is to set a policy framework for the permitted activity rules within ASW-R3 - ASW-R6, while also providing direction on the management of non-commercial recreational use of motorised craft that do not achieve the permitted standards. I have recommended a re-drafting of the policy to reflect this.
- 8.4.14 With respect to the submission from Te Rūnanga o Ngāi Tahu, I consider that as ASW-P3 is specifically drafted to apply to the use of motorised craft within RPAs, rather than “activities” more broadly. I note that this submission point is identified as applying to both ASW-P3 and ASW-P6, and the merits of the requested amendments in relation to ASW-P6 are assessed in the relevant section below. Amending the title of ASW-P4 will clarify that “structures” are managed by ASW-P4, without compromising the intent of ASW-P3 to prevent adverse effects from motorised craft.

Conclusions and Recommendations

- 8.4.15 For the reasons given above, I recommend that ASW-P3 be amended as follows:

ASW-P3	Recreational use of motorised craft within specified areas of identified rivers
<p>Provide for the non-commercial recreational use of motorised craft in areas identified in SCHED17– Schedule of River Protection Areas where any adverse effects associated with their use are:</p> <ol style="list-style-type: none"> 1. avoided by stipulating the time of the year when the activities can occur; and 2. for Jet Boat NZ activities on the Ōpihi River, mitigated by limiting the duration, frequency and nature of those activities.⁴⁷ 	

⁴⁷ Jet Boating [48.2]

Manage the adverse effects of commercial recreational use of motorised craft in areas identified in SCHED17 - Schedule of River Protection Areas by:

1. providing for their use:
 - a. within stipulated times of the year: and
 - b. within stipulated minimum water flows: and
2. avoiding the use of motorised craft outside the stipulated times and minimum water flow levels within (1), where it would result in adverse effects on the ecological, recreational, natural character, or cultural values of the rivers.⁴⁸

Section 32AA

8.4.16 I consider the recommended addition to AWS-P3(2) which removes reference to an event that no longer occurs on the Ōpihi River is reasonably minor in nature. I consider the amendments to include a new clause which requires that a minimum flow be stipulated when non-commercial recreational use of motorised craft can occur, and also the reframing of the policy so it is focused on potential adverse effects on the values of the river, will better give effect to ASW-O1. ASW-O1 requires the values of the District's rivers waterbodies are protected, and I consider including an additional clause helps to ensure the ecological, recreational, natural character, or cultural values of the rivers are protected.

8.5 ASW-P4 Commercial activities

8.5.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Te Rūnanga o Ngāi Tahu	185.77

Submissions

8.5.2 Te Rūnanga o Ngāi Tahu [185.77] considers amendments are required to consider any adverse effects on sensitive environments and Kāti Huirapa in order to allow for a more holistic assessment of any effects. They seek the following amendments

Only allow commercial activities and structures on the surface of the District's rivers where it can be demonstrated that the activity and/or structure will not result in any:

1. *adverse effects on fish spawning in the areas identified in SCHED13 – Schedule of Fish Spawning Area; and*

[...]

⁴⁸ Jet Boating [48.2]

7. the extent of any adverse social, cultural and environmental effects, including on any sensitive environments;

8. the adverse effects on the spiritual and cultural values and beliefs of Kāti Huirapa, including measures to avoid, remedy or mitigate adverse effects.

Analysis

8.5.3 With respect to the addition of ASW-P4(7), I note that as notified, ASW-P4 requires a demonstration that commercial activities and structures will not result in adverse effects on the following:

- Fish spawning in areas identified in SCHED13 – Schedule of Fish Spawning Areas
- Habitat of breeding birds
- Any other flora and fauna within riparian margins
- Cumulative effects with other structures and activities
- Cultural and spiritual values
- Other recreational uses

8.5.4 I consider that these matters are sufficiently broad and already capture the effects included within clause (7) proposed by Te Rūnanga o Ngāi Tahu.

8.5.5 With respect to the addition of ASW-P4(8), I agree that the reference to the “spiritual and cultural values and beliefs of Kāti Huirapa” better reflects the intent of the policy. As such, I recommended an amendment to clause (5) to reflect the drafting proposed by the submitter.

Conclusions and Recommendations

8.5.6 I recommend that ASW-P4(5) be amended as follows:

ASW-P4	Commercial activities
<p>Only allow commercial activities and structures on the surface of the District’s rivers where it can be demonstrated that the activity and/or structure will not result in any:</p> <ol style="list-style-type: none"> 1. adverse effects on fish spawning in the areas identified in SCHED13 - Schedule of Fish Spawning Area; and 2. adverse effects on the habitat of breeding birds; and 3. adverse effects on any other flora and fauna within riparian margins; and 4. cumulative adverse effects with other structures and activities on the surface of the river; and 5. adverse effects on <u>the spiritual and cultural values and beliefs of Kāti Huirapa</u> cultural and spiritual values⁴⁹ associated with the river; and 6. significant adverse effects on other recreational uses. 	

⁴⁹ Te Rūnanga o Ngāi Tahu [185.77]

Section 32AA

8.5.7 I consider the recommended amendment to the ASW-P4 is minor in nature and better reflects the intent of the policy. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

8.6 ASW-P6 Other non-commercial activities

8.6.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.4
Te Rūnanga o Ngāi Tahu	185.78, 185.79

Submissions

8.6.2 Jet Boating [48.4] considers the policy should refer to avoidance of the use of non-commercial motorised craft only in circumstances where any adverse effects are significant. They consider that the minimum water flow control will negate the need for controls around fish spawning and bird breeding. They seek the following amendments to the policy:

Avoid the use of non-commercial motorised craft not otherwise provided in ASW-P2 to ASW-P5, unless the use of motorised craft:

1. ~~*occurs outside of fish spawning season/s; and will not result in significant adverse effects on fish spawning.*~~
2. ~~*occurs outside of bird breeding season/s; and will not result in significant adverse effects on bird breeding.*~~
3. *will not result in significant adverse effects on other flora and fauna[...]*
4. *will not result in significant cumulative adverse effects [...]*
5. *will not result in significant adverse effects on cultural and spiritual values[...]* and
6. *will not result in significant effects on other recreational uses.*

8.6.3 Te Rūnanga o Ngāi Tahu [185.78] considers that structures are also used for non-commercial activities and should be guided by a policy. They recommend reconsidering how the policy will apply to structures for non-commercial activities.

8.6.4 Te Rūnanga o Ngāi Tahu [185.79] also seek an amendment to consider any adverse effects on sensitive environments and Kāti Huirapa in order to allow for a more holistic assessment of any effects. They seek the addition of the following clauses:

7. *the extent of any adverse social, cultural and environmental effects, including on any sensitive environments;*

8. the adverse effects on the spiritual and cultural values and beliefs of Kāti Huirapa, including measures to avoid, remedy or mitigate adverse effects.

Analysis

- 8.6.5 With respect to Jet Boating’s submission on clauses (1) and (2) of ASW-P6, I agree in part with the suggested amendments. I note that this policy provides direction on the management of non-commercial motorised craft on the rivers not managed by ASW-P2 to ASW-P5. This policy is achieved through ASW-R9, which sets a non-complying activity status for all other activities on the surface of the District’s rivers. Setting a non-complying activity status and requiring that these activities must be avoided unless they occur outside of fish spawning and bird breeding seasons effectively creates a prohibition of these activities during these seasons, which I consider unreasonable. Instead, if an application is made to undertake these activities within the fish spawning and bird breeding seasons, I consider an assessment should be made as to whether the activity will have an adverse effect on fish spawning and bird breeding rather than requiring a complete avoidance of these seasons. I have recommended an amendment to the policy to reflect this. I have also recommended consequential amendments to the drafting to avoid repetition within the policy.
- 8.6.6 With respect to Jet Boating’s submission on clauses (3), (4) and (5) of ASW-P6, I consider that a threshold of “significant” adverse effects on flora and fauna, cumulative effects, and cultural and spiritual values is too high, and would not achieve ASW-O1 which requires the protection of ecological, recreational, natural character and cultural values of the District’s rivers.
- 8.6.7 I disagree with the submission point from Te Rūnanga o Ngāi Tahu. I consider that ASW-P4 provides direction on the management of structures, and therefore the suggested amendments to ASW-P6 are not required. As a consequential amendment I recommend that the title of ASW-P4 is amended so it clarifies that it applies to “Commercial activities and structures”.
- 8.6.8 For the reasons discussed above in relation to Te Rūnanga o Ngāi Tahu’s submission on ASW-P4, I consider the suggested addition to ASW-P6(7) are not required within the ASW-P6, as the notified drafting contains sufficient scope to consider the effects sought to be included.
- 8.6.9 With respect to the addition of clause (8) sought by Te Rūnanga o Ngāi Tahu, as noted above, I agree that the reference to the “spiritual and cultural values and beliefs of Kāti Huirapa” better reflects the intent of the policy. As such, I recommended an amendment to clause (5) to reflect the drafting proposed by the submitter.

Conclusions and Recommendations

- 8.6.10 For the reasons given above I recommend that ASW-P4 and ASW-P6 is amended as follows:

ASW-P6	Other non-commercial activities
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Avoid the use of non-commercial motorised craft not otherwise provided in ASW-P2 to ASW-P5, unless the use of motorised craft will not result in⁵⁰:

1. ~~occurs outside of~~ adverse effects on fish spawning and bird breeding season/s⁵¹; and
2. ~~occurs outside of bird breeding season/s; and~~⁵²
3. ~~will not result in~~⁵³ adverse effects on other flora and fauna within riparian margins as a consequence of activities on the surface of the water; and
4. ~~will not result in~~⁵⁴ cumulative adverse effects with other commercial activities on the surface of the river; and
5. ~~will not result in~~ adverse effects on the spiritual and cultural values and beliefs of Kāti Huirapa cultural and spiritual values⁵⁵ associated with the river; and
6. ~~will not result in~~⁵⁶ significant adverse effects on other recreational uses.

ASW-P4 Commercial activities and structures⁵⁷

Only allow commercial activities and structures on the surface of the District's rivers where it can be demonstrated that the activity and/or structure will not result in any:

1. adverse effects on fish spawning in the areas identified in SCHED13 - Schedule of Fish Spawning Area; and
2. adverse effects on the habitat of breeding birds; and
3. adverse effects on any other flora and fauna within riparian margins; and
4. cumulative adverse effects with other structures and activities on the surface of the river; and
5. adverse effects on cultural and spiritual values associated with the river; and
6. significant adverse effects on other recreational uses.

Section 32AA

8.6.11 I consider the recommended amendments to ASW-P4 and ASW-P6 are minor in nature, and improve plan consistency and clarity. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

8.7 ASW-R2 The use of motorised craft for specific environmental management or search and rescue purposes

8.7.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
NZDF	151.14

⁵⁰ Jet Boating [48.4]

⁵¹ Jet Boating [48.4]

⁵² Jet Boating [48.4]

⁵³ Jet Boating [48.4]

⁵⁴ Jet Boating [48.4]

⁵⁵ Te Rūnanga o Ngāi Tahu [185.77]

⁵⁶ Jet Boating [48.4]

⁵⁷ Consequential amendment associated with Te Rūnanga o Ngāi Tahu [185.78]

Dir. General Conservation	166.87
OWL	181.72

Submissions

8.7.2 Dir. General Conservation [166.87] supports the rule and permitted activity status for the use of motorised craft for specific environmental management and seeks to retain PER-7 as notified.

8.7.3 NZDF [151.14] seeks an amendment to the rule to ensure that NZDF can use motorised craft on the surface of water, as any adverse effects will be temporary and similar to search and rescue. The seek the following rule amendment:

ASW-R2 The use of motorised craft for specific environmental management, temporary military training, or search and rescue purposes

Activity status: Permitted Where:

PER-1 [...]

PER-8 The use is for temporary military training activities. [...]

8.7.4 OWL [181.72] partly supports the rule and seeks to ensure the use of motorised craft on the surface of water for inspecting infrastructure, such as water intake structures and associated scheme infrastructure, and resource consent monitoring is not precluded by the PDP. As these activities are not expressly covered by the proposed rules in this chapter, they recommend the following amendments:

The use of motorised craft for specific environmental management or search and rescue purposes as follows: [...]

PER-7 The use is for undertaking inspections or regionally significant infrastructure and resource consent monitoring by a network utility operator.

Analysis

8.7.5 With respect to the submission from NZDF, firstly, I have considered whether these activities would already be permitted by the TEMP chapter of the PDP. I note that the rule framework within the TEMP-R2 provides for temporary military training activities. However, these rules refer to temporary military training activities undertaken on a “site”. Surface water bodies are not included in the definition of site, and therefore I consider temporary military training activities on the surface of water are not captured by this rule.

8.7.6 With respect to the merits of the submission point, I agree with the submitter that the effects of the use of motorised craft on the surface of the water for temporary military training activities will be comparable to that of search and rescue, which is permitted within the notified rule. I also note that policy TEMP-P1 recognises the social, economic, cultural and environmental benefits of temporary military training activities. Given this, I agree with the

suggested amendment. I recommend that the permitted activity include the duration that limits that apply to temporary military activities within TEMP-R2(PER-2). As a consequential amendment, I recommended that an addition be made to ASW-P2, which is the parent policy to this rule, to include temporary military training activities.

- 8.7.7 With respect to the submission from OWL, I agree with the suggested amendment. I agree that the effects of the inspections provided by the proposed rule are comparable to those permitted by PER-3 and PER-4 related to resource management monitoring and ECAN and the Council undertaking their statutory responsibility. I note that EI-P1 recognises the benefits of Regionally Significant Infrastructure and enables the operation, maintenance, repair, upgrade, and development of this infrastructure. Given this, I agree that the inspection of regionally significant infrastructure and resource consent monitoring by a network utility operator should be permitted within ASW-R2.

Conclusions and Recommendations

- 8.7.8 For the reasons given above I recommend that ASW-R2 and ASW-P2 amended as follows:

ASW-R2	The use of motorised craft for specific environmental management, temporary military training, and or⁵⁸ search and rescue purposes	
All rivers	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The use is for search and rescue purposes; or</p> <p>PER-2 The use is for scientific research; or</p> <p>PER-3 The use is for resource management monitoring undertaken by Canterbury Regional Council or Timaru District Council or their contractors; or</p> <p>PER-4 The use is for undertaking a statutory responsibility by Canterbury Regional Council or Timaru District Council or their contractors; or</p> <p>PER-5 The use is for hydrological survey undertaken by the National Institute of Water and Atmospheric Research, Canterbury Regional Council or Timaru District Council or their contractors; or</p>	Activity status when compliance not achieved: Discretionary

⁵⁸ Consequential amendment to NZDF [151.14]

<p>PER-6 The use is for the control and management of sports fish (as defined in the Conservation Act 1987) and game (as defined in the First Schedule of the Wildlife Act 1953) by the Fish and Game Council or its successors; or</p> <p>PER-7 The use is for the control and management of indigenous fish and any other flora and fauna by Te Rūnanga o Arowhenua or the Department of Conservation (or its successors), for the purpose of exercising their respective duties and functions under the Conservation Act 1987, the Wildlife Act 1953 and the Fisheries Act 1983; <u>or</u></p> <p>PER-8 <u>The use is for temporary military training activities where the duration of the activity does not exceed a total of 31 calendar days per year, excluding set-up and pack-out activities; or</u>⁵⁹</p> <p>PER-9 <u>The use is for undertaking inspections of regionally significant infrastructure and resource consent monitoring by a network utility operator.</u>⁶⁰</p>	
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ASW-P2	Use of motorised craft for specified activities
Enable the use of motorised craft on the surface of the District's rivers at any time of the year for the purpose of carrying out specified environmental management, <u>temporary military training, and</u> or ⁶¹ search and rescue duties.	

Section 32AA

- 8.7.9 I consider the recommended amendments to ASW-R2 and the consequential amendment to ASW-P2 will have an economic benefit as it will remove the need for these activities to obtain resource consent for activities that are required for the New Zealand Defence Force's operational capacity or to ensure the operation, maintenance, repair, upgrade, and development of this regionally significant infrastructure. I consider the recommended amendments may result in an environmental cost, as these activities could be undertaken

⁵⁹ NZDF [151.14]

⁶⁰ OWL [181.72]

⁶¹ Consequential amendment to NZDF [151.14]

during the bird breeding or fish spawning season which may adversely affect the ecological values of the affected river. I consider the risk of adverse environmental effects to be low given the nature of these activities means that they will only occur when required, and the addition of this activity will not result in a considerable increase in the level of motorised craft use. I consider these potential ecological effects need to be considered against the benefits these activities provide.

- 8.7.10 On balance, I consider the amendments will enable the appropriate use of motorised craft as a permitted activity and will achieve the direction within PA-O1.

8.8 ASW-R3 The recreational use of motorised craft on the Rangitata River

- 8.8.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.5
Dir. General Conservation	166.88
Clearwater, R	243.1

Submissions

- 8.8.2 Jet Boating [48.5] and Clearwater, R [243.1] support the rule and seek it to be retained as notified. Clearwater, R [243.1], also notes that the Timaru-Ashburton district boundary is centre of this waterway and hence any provisions should match the Ashburton District Plan.
- 8.8.3 Dir. General Conservation [166.88] supports the rule, however, they note an error in reference to the SCHED-Schedule of Fish Spawning Area and seek amendments to reflect the correct schedule number, SCHED 13.

Analysis

- 8.8.4 With respect to the alignment of the provisions with those in the Ashburton District Plan for this river, I consider ASW-R3 does largely align with the requirements in the Ashburton District Plan managing activities on the surface of the Rangitata River.
- 8.8.5 ASW-R3(1) permits recreational use of motorised craft on the Rangitata River above Red Rocks provided three permitted standards are achieved being:
- The activity is not commercial
 - use is undertaken between August and February (inclusive)
 - use is not within any of the fish spawning areas
- 8.8.6 ASW-R3(2) permits recreational use of motorised craft on the Rangitata River below Red Rocks provided the activity is not commercial

8.8.7 Similarly, Rule 3.8.3(k) permits activities on the Surface of Water Bodies, except where listed as a Discretionary or Prohibited Activity. These are as follows:

- Rule 3.8.5(e) sets a discretionary activity status for commercial activities on Rangitata River and its tributaries outside the months of March to July (inclusive) above the Red Rocks; and
- Rule 3.8.7(a) sets a prohibited activity status for the use of motorised craft on Rangitata River and its tributaries between the months of March to July (inclusive) above Red Rocks

8.8.8 Given the above, both sets of rules include limits the use of the Rangitata River above Red Rocks between March and July and also limit commercial activities. They also both permit the use of recreational motorised crafts below red rocks. Of note, Jet Boating has submitted in support of ASW-R3, considering it acceptable insofar as it provides a degree of consistency with the Ashburton District Plan provisions⁶².

8.8.9 I agree that the reference to SCHED14 in place of SCHED13 is an error.

Conclusions and Recommendations

8.8.10 For the reasons given above I recommend that ASW-R3 is amended as follows:

ASW-R3		The recreational use of motorised craft on the Rangitata River	
1. River Protection Area above Red Rocks (RPA-1)	Activity status: Permitted	Activity status when compliance not achieved with PER-1: Discretionary	
	Where:	Activity status when compliance not achieved with PER-2: Non-complying	
	PER-1 The use is not for a commercial activity; and	Activity status when compliance not achieved with PER-3: Prohibited	
	PER-2 The use is undertaken between August and February (inclusive); and		
	PER-3 The use is not within any of the fish spawning areas identified in SCHED14 ⁶³ - Schedule of Fish Spawning Area.		
2. River Protection Area below Red Rocks	Activity status: Permitted	Activity status when compliance not achieved with PER-1: Discretionary	
	Where:		
	PER-1 The use is not for a commercial activity.		

⁶² Jet Boating [48.5]

⁶³ Dir. General Conservation [166.88]

(RPA-2)

Section 32AA

8.8.11 I consider the recommended amendment to ASW-R3 is minor in nature and corrects an error in the PDP. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

8.9 ASW-R4 The recreational use of motorised craft on the Ōrāri River

8.9.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Gerard, R	40.1
Jet Boating	48.6
Dir. General Conservation	166.89
Clearwater, R	243.2

Submissions

8.9.2 Dir. General Conservation [166.89] support the rule and seek it to be retained as notified.

8.9.3 Three submitters⁶⁴ consider that recreational jet boating or other motorised craft use can be undertaken as a permitted activity year-round in RPA-3 where the flow is recorded as being greater than 20 cumecs, and seek the removal of the time/date restriction as follows:

Activity status: Permitted

Where:

PER-1 The use is not for a commercial activity; and

PER-2 The use is undertaken between March and August (inclusive); and

PER-3 The flow at the Ōrāri Gorge is 20 cumecs or greater.

8.9.4 One of these submitters also seeks that the River Protection Area referenced in ASW-R4 is amended, however this aspect of the submission is discussed in the analysis of submissions relating to SCHED17 – River Protection Areas.

Analysis

8.9.5 With respect to the submitters seeking the removal of the time restriction, as noted in the assessment of ASW-P3, I consider that the submitters have not provided sufficient evidence

⁶⁴ Gerard, R [40.1], Jet Boating [48.6], and Clearwater, R [243.2]

to demonstrate that the flow rate restriction within ASW-R4 on its own is sufficient to ensure the protection of ecological values of the Ōrāri River from inappropriate activities as required by AWS-O1. As such, I disagree with the suggested amendment.

Conclusions and Recommendations

8.9.6 I recommend that ASW-R4 be retained as notified.

8.10 ASW-R5 The recreational use of motorised craft on the Ōpihi River

8.10.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Gerard, R	40.3
Jet Boating	48.7
Dir. General Conservation	166.90
Clearwater, R	243.3

Submissions

8.10.2 Dir. General Conservation [166.90] supports the proposed rule and seeks it to be retained as notified.

8.10.3 Gerard, R [40.3] and Jet Boating [48.7] consider the proposed standards are redundant and inappropriate as the rule relates to the historical (1980s) use of the river for jet sprints. They also believe the time restrictions are unnecessary as there has been no indications of adverse effects of jet boating on fishing or nesting birds in the riverbed. Both parties suggest amendments to remove PER-2 with the exception of the flow standard.

8.10.4 Clearwater, R [243.3] also notes the outdated provisions and considers the permitted activity status should apply year-round when flows are greater than 20 cumecs. They also seek amendments to ensure that the river has a permitted activity status from the State Highway 1 bridge to the District boundary, being the confluence with the Opuha river at Raincliff.

Analysis

8.10.5 With respect to the submitters seeking the removal of the standards that specifically provide for a Jet Boat NZ organised event that is now considered redundant, I agree with the amendments seeking this be removed. I also agree with the submitters that this specific rule should be replaced by a more enabling rule that permits the recreational use of motorised craft on the Ōpihi River provided permitted standards are included within the rule that ensure that the ecological, recreational, natural character and cultural values of the river are protected from inappropriate activities. As noted in the assessment of ASW-P3 above, I consider the submitters have not provided sufficient evidence to demonstrate that the flow rate restriction within ASW-R5 is sufficient to protect the values of the Ōpihi River.

8.10.6 At the meeting between DOC and Jetboat NZ it was suggested that the “time of year” restriction included within PER-2 as notified does not align with the DOC guidance for Conservation of braided river birds in South Canterbury⁶⁵, which recommends that “from early September to late January, too much disturbance from people, vehicles and pets can result in the deaths of their eggs and chicks”. Given this I consider that as part of the amendments to ASW-R5 PER-2 I recommend that the “time of year” restriction included within PER-2 is amendment to align with the DOC guidance.

Conclusions and Recommendations

8.10.7 I recommend that ASW-R5 be amended as follows:

ASW-R5 The recreational use of motorised craft on the Ōpihi River		
River Protection Area between SH1 Bridge and confluence of the Ōpihi and Opuha/Ōpūaha Rivers (RPA-4)	Activity status: Permitted	Activity status where compliance not achieved with PER-1 and PER-2: Discretionary
	<p>Where:</p> <p>PER-1 The use is not for a commercial activity; and</p> <p>PER-2 The use is undertaken between <u>March and August (inclusive); and</u>⁶⁶</p> <p>PER-3 <u>The flow, when measured at the State Highway 1 Bridge, is 20 cumecs or greater.</u>⁶⁷</p> <p>The use is a Jet Boat New Zealand (or its successor)-organised event that complies with the following standards:</p> <ol style="list-style-type: none"> 1. there are no more than two events per calendar year; and 2. the event occurs between September and February (inclusive); and 3. the event occurs between the hours of 10am and 3pm; and 4. the flow when measured at the State Highway 1 Bridge is 20 cumecs or greater⁶⁸. 	<p><u>Activity status when compliance not achieved with PER-2 or PER-3: Non-complying</u>⁶⁹</p>

⁶⁵ <https://www.doc.govt.nz/documents/conservation/land-and-freshwater/Freshwater/PRR/conservation-braided-river-birds.pdf>

⁶⁶ Gerard, R [40.3], Jet Boating [48.7] and Clearwater, R [243.3]

⁶⁷ Gerard, R [40.3], Jet Boating [48.7] and Clearwater, R [243.3]

⁶⁸ Gerard, R [40.3], Jet Boating [48.7] and Clearwater, R [243.3]

⁶⁹ Gerard, R [40.3], Jet Boating 48.7] and Clearwater, R [243.3]

Section 32AA

8.10.8 I consider the recommended amendments to ASW-R5 remove the specific and redundant rule and replace it with a more enabling rules which also ensures that values of the Ōpihi River are protected from the adverse effect of inappropriate activities as required by AWS-O1. I consider the “time of year” restriction recommended to be included within the permitted activity will ensure that the ecological values of the river are protected. I consider the recommended amendment will have an economic and social benefit as it enables greater use of the Ōpihi River for motorised craft while ensuring the environmental values of the river are protected.

8.11 ASW-R6 The recreational use of motorised craft on the Pureora/Pareora River

8.11.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Gerard, R	40.4
Jet Boating	48.8
Dir. General Conservation	166.91
Clearwater, R	243.4

Submissions

8.11.2 Dir. General Conservation [166.91] supports the provision and seeks it to be retained as notified.

8.11.3 Three submitters⁷⁰ consider that recreational jet boating can occur within the River Protection Area without a time/date restriction, subject to a minimum water flow of 20 cumecs. They seek the removal of PER-2 for this reason.

8.11.4 Clearwater, R [243.4] also notes that the centre of this river is the boundary with the Waimate District and hence any provisions should align with the Waimate District Plan.

Analysis

8.11.5 With respect to the submitters seeking the removal of the time and date restriction, as noted in the assessment of ASW-P3, I consider that the submitters have not provided sufficient evidence within their submission that demonstrates that the flow rate restriction within ASW-R6 on its own is sufficient to ensure the protection of ecological values of the Pureora / Pareora River from inappropriate activities as required by AWS-O1. As such I disagree with the suggested amendment.

⁷⁰ Gerard, R [40.4], Jet Boating [48.8], and Clearwater, R [243.4]

- 8.11.6 With respect to the alignment of the provisions with those in the Waimate District Plan for the Pureora / Pareora river, I note that Waimate District Plan permits the use of motorised craft on the Pureora/Pareora River. In contrast, ASW-R6 includes a number of restrictions on motorised craft within RPA-5. I acknowledge that these proposed restrictions within AWS-R6 create a cross-boundary inconsistency which will create enforcement issues, as the restrictions will only apply to the centre of the Pureora / Pareora river. However, in my view, ensuring cross-boundary alignment alone is not sufficient justification for the removal of the proposed restrictions. These limitations on the use of motorised craft on the Pureora/Pareora River have been proposed within the PDP to ensure the protection of ecological, recreational, natural character and cultural values of the river as required by AWS-O1 and removing these restrictions will not achieve this objective.
- 8.11.7 I note that the Waimate District Plan was notified in 2011 and became operative in 2014. Given that the Waimate Plan is nearing the end of its 10-year lifetime and will likely be reviewed in the near future, I consider there is merit in retaining the proposed permitted standards, and these can be considered when the Waimate District Council undertake a review of their district plan.

Conclusions and Recommendations

- 8.11.8 I recommend that ASW-R6 be retained as notified.

8.12 ASW-R9 All other activities on the surface of the District's rivers

- 8.12.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.9
Dir. General Conservation	166.94

Submissions

- 8.12.2 Dir. General Conservation [166.94] supports the rule and seeks it to be retained as notified.
- 8.12.3 Jet boating [48.9] considers that the activity status for recreational jet boating should be restricted discretionary rather than non-complying. They note that ASW-P6 specifically notes the matters for consideration, and it will be consistent to provide a rule that requires specific assessment and exercise of discretion. They seek the following amendments:

Activity Status: ~~Non-Complying~~ Restricted Discretionary

Where: matters of discretion are restricted to the following:

- 1. the effects to fish spawning.*

2. the effects to bird breeding.
 3. the effects to flora and fauna within riparian margins as a consequence of activities on the surface of the water; and
 4. the cumulative effects to other commercial activities on the surface of the river; and
 5. the effects to cultural and spiritual values associated with the river; and
 6. will not result in significant adverse effects on other recreational uses.
- NC-1 RD-1 Any activity not listed in any other rules above.

Analysis

- 8.12.4 With respect to the submission from Jet Boating, I consider the non-complying activity status within ASW-R9 is required to achieve the direction within ASW-P6, which requires that the use of non-commercial motorised craft is not otherwise provided in ASW-P2 to ASW-P5 is to be avoided unless it is undertaken in accordance with ASW-P6(1) – (6). I note that the drafting approach used across the PDP, is for the phrase “avoid, unless” to be used at a policy level to support non-complying activities that are not anticipated within a particular area. The policy direction within ASW-P6 signals that the rule framework is intended to be restrictive where necessary to prevent adverse environmental effects. Given this, I disagree with the submitter that the catch-all activity status for all other activities on the surface of the District’s rivers should be a restricted discretionary activity.

Conclusions and Recommendations

- 8.12.5 I recommend that ASW-R9 is retained as notified.

8.13 ASW-R10 Use of motorised craft within the fish spawning areas

- 8.13.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.10
Dir. General Conservation	166.95

Submissions

- 8.13.2 Dir. General Conservation [166.95] supports the rule and seeks it to be retained as notified
- 8.13.3 Jet Boating [48.10] considers it appropriate to restrict recreational jet boating in fish spawning areas but seeks the activity status is changed to non-complying rather than prohibited.

Analysis

8.13.4 ASW-P9 requires that the use of motorised craft within fish spawning areas identified in SCHED13 - Schedule of Fish Spawning Area is to be avoided except as provided for by ASW-R2. Given the policy direction is to avoid these activities, I consider the prohibited activity status is appropriate.

8.13.5 I note if ASW-R10 could be read that the use of motorised craft within the fish spawning areas is prohibited, when this is not what is required by ASW-P5, which provides an exclusion for activities provided for by ASW-R2. To avoid confusion, I recommend a minor amendment is made to ASW-R10 to clarify that the prohibited activity status does not apply to use of motorised craft that is provided for by ASW-R2. I consider this is a minor amendment that can be made under clause 16(2) of the RMA.

Conclusions and Recommendations

8.13.6 I recommend that ASW-R10 is amended as follows:

ASW-R10	Use of motorised craft within the fish spawning areas <u>except as provided by ASW-R2</u>⁷¹	
Fish Spawning Area Overlay	Activity status: Prohibited	Activity status where compliance not achieved: Not Applicable

Section 32AA

8.13.7 I consider the recommended amendment to ASW-R10 is minor in nature, and improves plan consistency and clarity. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

8.14 New Rule – Te Ngawai, Te Moana and Waihi Rivers

8.14.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Jet Boating	48.11
Clearwater, R	243.5, 243.6, 243.7

Submissions

8.14.2 Jet Boating [48.11] considers there are three additional rivers in the district that can be used for recreational jetboating, for small jetboats. They consider the addition of the following rule:

⁷¹ Clause 16(2) RMA

ASW-RX Te Ngawai, Te Moana and Waihi Rivers.

Activity Status: Permitted

Where:

PER-1 The use is not for a commercial activity; and

PER-2 The flow at the relevant ECan flow recorder is 10 cumecs or greater.

8.14.3 Clearwater, R [243.5, 243.6, 243.7] also considers there are additional rivers in the district that are of interest to the jet boating community, indicating that the rivers of Te Ngawai, Te Moana and Waihi would be of interest to smaller jet boat owners. They recommend the additions of three rules to provide for the recreational use of motorised craft on each of the three rivers, with reference to ensure jet boating is permitted year-round when river flows exceed 10 cumecs.

8.14.4 Dir. General Conservation [166.3FS] lodged a further submission seeking that DOC if the Te Ngawai, Te Moana and Waihi Rivers are included within the PDP, then they consider these rivers should be assessed in terms of identifying areas that may be fish spawning areas and sections of those rivers that should be protected and the rules amended to provide for that protection.

Analysis

8.14.5 I agree in principle with the concept that the PDP could permit the recreational use of motorised craft within additional rivers provided the ecological, recreational, natural character and cultural values of the District's rivers are protected from the adverse effects. However, I also agree with the further submission from Dir. General Conservation that if the recreational use of motorised crafts is permitted on additional rivers, there needs to be permitted standards included to ensure the values of these rivers are protected as required by ASW-O1. Without this assessment I disagree any amendments to the PDP are justified. If further evidence is provided to support the addition of these rivers I would reconsider this recommendation in light of any further evidence.

Conclusions and Recommendations

8.14.6 I do not recommend any amendments to the PDP as a result of these submissions.

8.15 SCHED13 – Schedule of Fish Spawning Areas

8.15.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Dir. General Conservation	166.96
ECan	183.172

Submissions

8.15.2 ECan [183.172] support the inclusion of Fish Spawning Areas and seek it is to be retained as notified and updated to include any other spawning areas identified through the submission process.

8.15.3 Dir. General Conservation [166.96] seeks the following amendments to SCHED13:

- Include an extended Fish Spawning Area including the Upper Rangitata River as Upland Longjaw galaxias habitat.
- Consider other native fish, such as Inanga and Stokells smelt, within the Timaru District, where the associated rules for surface water activities should also apply.

Analysis

8.15.4 I understand that the Schedule of Fish Spawning Areas included within SCHED 13 aligns with the “Critical Habitats – Rivers” mapping included within Plan Change 7 (PC7) to the Canterbury Land and Water Regional Plan. I agree in principle with the concept that the PDP could include an extended Fish Spawning Area to incorporate the Upper Rangitata River. However, the submitters have not provided sufficient details to determine where this additional Fish Spawning Area should be located. As such, without further evidence supporting the location of these additional sites, I disagree any amendment should be made to SCHED13. If further evidence is provided to support the addition of these rivers I would reconsider this recommendation in light of any further evidence.

Conclusions and Recommendations

8.15.5 I do not recommend any amendments to the PDP as a result of these submissions.

8.16 SCHED17 – Schedule of River Protection Areas

8.16.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Forest and Bird	156.187
Dir. General Conservation	166.98
Jet Boating	48.12, 48.13

Submissions

8.16.2 Dir. General Conservation [166.98] supports SCHED17 and seeks it to be retained as notified.

8.16.3 Forest and Bird [156.17] supports SCHED17 and seeks it to be retained, with the addition of more stretches and preferably entire rivers, to be consistent with Te Mana o te Wai. They note that rivers are dynamic and protecting particular stretches is reliant on the protection of the river as a whole.

- 8.16.4 Jet Boating [48.12] considers adding Te Ngawai, Te Moana and Waihi Rivers to SCHED17 to align with their potential for recreational use. Jet Boating [48.13] also notes that Schedule 17 refers to the RPA-3 river section and incorrectly references the “Opihi River” instead of correctly referencing the “Ōrāri River.” Gerard, R [40.1] seeks amendments to the map for the River Protection Area (RPA-3) so the upstream limit is at the top of the gorge.

Analysis

- 8.16.5 With respect to the submission from Forest and Bird, I acknowledge that the name of the River Protection Overlay within SCHED17 is somewhat misleading as this overlay identifies the rivers where the recreational use of motorised craft is permitted, provided permitted standards are achieved. In all areas outside of the identified RPA’s the recreational use of motorised craft is a non-complying activity (ASW-R10). These parts of the rivers have been identified as they are considered appropriate for the use of recreational use of motorised crafts within appropriate limits. Therefore, I disagree that these areas should be increased to include whole rivers.
- 8.16.6 With respect to the submission from Jet Boating, as noted within the “New Rule” section above, I agree in principle with the concept that the PDP could permit the recreational use of motorised craft within additional rivers. However, I also agree with the further submission from Dir. General Conservation that if the recreational use of motorised crafts is permitted on additional rivers, there needs to be limits included to ensure that fish spawning areas or bird breeding habitats are protected from the use of motorised crafts. Without this assessment I disagree any amendments to the PDP are justified.
- 8.16.7 With respect to the submissions from Gerard, R I note that the stretch of the Ōrāri river upstream of the Ōrāri Gorge is identified as a High Naturalness Area within the PDP. I consider extending the River Protection Overlay into this to this stretch of river will not achieve ASW-O1 which requires that the natural character values of the districts river are protected from the adverse effects of inappropriate activities. As such, I disagree with the suggested amendment.
- 8.16.8 Finally, I agree with Jet Boating that Schedule 17 incorrectly refers to the “Opihi River” in RPA-3 rather than the “Ōrāri River”. I also note there is a minor error within SCHED17 – Schedule of River Protection Areas, there is a missing word within RPA-2, and this should include “Rangitata” before river. I consider this amendment can be made as a Clause 16(2) amendment.

Conclusions and Recommendations

- 8.16.9 I recommend the following amendments to the PDP as a result of these submissions:

SCHED17 — SCHEDULE OF RIVER PROTECTION AREAS

Unique Identifier	Location
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RPA-1	A stretch of the Rangitata River between NZMS 260 J36 Grid:515208 upstream to the river ends (above Red Rocks).
RPA-2	A stretch of the <u>Rangitata</u> ⁷² river between NZMS 260 J36 Grid:515208 downstream to the river mouth (below Red Rocks).
RPA-3	A stretch of the <u>Ōpihi Ōrāri</u> ⁷³ River between BY19:553-335 to the Factory Road Bridge over the river (K38:77-681).

Section 32AA

8.16.10 I consider the recommended amendment to SCHED17 to be minor in nature and to improve the clarity of the PDP. It will not have any greater environmental, economic, social or cultural effects than the notified provisions.

⁷² Clause 16(2)

⁷³ Jet Boating [48.13]

9. Versatile Soils

9.1 General Matters

- 9.1.1 NPS-HPL came into force on 17 October 2022. Due to the timing of the NPS-HPL, the provisions of the notified VS chapter do not give effect to the NPS-HPL. The section 32 report associated with the VS chapter⁷⁴ describes the relationship between the notified VS chapter and the proposed NPS-HPL at the time of notification. Section 1.4.2 is states:

“The Government has released a proposed National Policy Statement for Highly Productive Land (pNPSHPL) intended to provide greater clarity on how to manage highly productive land under the RMA. It states that primary production is often given inadequate consideration in RMA decision making, resulting in uncoordinated urban expansion over, and fragmentation of, highly productive land, when less productive land may be available and better suited for urban use, preventing the use of this finite resource by future generations.

The pNPSHPL would require the Council to identify highly productive land within the District Plan, and to protect it from inappropriate subdivision, use and development. From a timing perspective, the process directed in the pNPSHPL would require that regional councils first undertake the identification assessment, with this then implemented through district plans. The criteria for identifying highly productive land would include consideration of land use capability classification, but also include other factors. The ability for Timaru District to fully implement the pNPSHPL, in terms of identification of highly productive land, is therefore dependent on Environment Canterbury completing the identification. Once gazetted, an NPS would need to be given effect to through the district plan. However, it is not certain when this NPS will be gazetted, nor to what extent the final version will change from the proposed version. This results in a level of uncertainty as to how these soils should be managed in the District Plan. “

- 9.1.2 Section 4.1 of the NPS-HPL requires that the Council give effect the NPS-HPL from the commencement date. Section 4.2 then states that the Council must notify changes to objectives, policies, and rules in its district plan to give effect to the NPS-HPL as soon as practicable, but no later than 2 years after maps of highly productive land in the relevant regional policy statement become operative.
- 9.1.3 The PDP was notified on 22 September 2022, with submissions closing on 15 December 2022. The NPS-HPL was gazetted on 19 September 2022 and came into effect from 17 October 2022. Therefore, potentially affected parties had several months to understand the NPS-HPL and make submissions and further submissions with reference to its requirements. While there is broad scope within these general submissions to make amendments to the VS chapter to give effect to the NPS-HPL, it is relevant that the specific changes required to implement the NPS-HPL have not been directly consulted on as part of the PDP process. As such, while there is technically scope, the appropriateness of introducing these changes at this stage in the review process needs to be considered. Additionally, Clause 3.3 of the NPS-

⁷⁴ https://www.timaru.govt.nz/data/assets/pdf_file/0004/668686/16-Section-32-Versatile-Soils-and-Contaminated-Land.pdf

- HPL requires that the NPS-HPL requires that any changes to plans to give effect to it must actively involve tangata whenua (to the extent they wish to be involved. This involvement will be required as part of any future plan change process to give effect to the NPS-HPL.
- 9.1.4 As part of this report, I have attempted to reconcile the VS chapter with the requirements of the NPS-HPL by suggesting various amendments to its provisions that fall within the scope of the submissions. These recommended amendments have been balanced with the need for natural justice.
- 9.1.5 To be clear, while I consider there is scope within the submissions to make changes to the VS chapter to give effect to the NPS-HPL, the amendments I have recommended within the chapter are not intended to fully “give effect” to the NPS-HPL. To fully implement the requirements of the NPS-HPL, I consider a plan change will be required once the mapping of the NPS-HPL is made operative. This approach ensures that the process of giving effect to the NPS-HPL allows for appropriate community and iwi participation, as required by the NPS-HPL. While there may be technical scope to implement changes at this stage, a broader and more inclusive process is necessary to ensure that the full implications of the NPS-HPL are properly considered. As such, I have sought to align the VS chapter with the NPS-HPL as far as appropriate, acknowledging that the provisions of the NPS-HPL will apply regardless when triggered by a plan change or resource consent process.
- 9.1.6 Given this, I have recommended a number of amendments to the objective and policies on the VS chapter that are “aligned with” the NPS-HPL. I have framed these amendments as being “aligned with” rather than “give effect” to the NPS-HPL, because it is my view that to “give effect” to the requirements of the NPS-HPL, the rules within the VS chapter would need to be reviewed from a first principles basis to determine which activities would need to be managed to implement the direction within the NPS-HPL. In particular Clause 3.9 of the NPS-HPL, which requires that territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production. I have not undertaken the exercise within this report of determining which activities would need to be managed within the VS chapter to achieve this requirement because I consider introducing a raft of new rules within the VS chapter managing new activities that were not included within the notified version of the PDP would create natural justice issues, as affected land owners would not have had a chance to submit on any new rules that may affect their property.
- 9.1.7 As such, my recommended amendments are focused on aligning the objective and policy direction of the VS chapter with the NPS-HPL as an interim measure until a plan change process is undertaken. In the meantime, when a land use, subdivision consent, or plan change is applied for, the objectives and policies of both the VS chapter and the NPS-HPL will need to be considered, and I consider it would be unhelpful to any decision maker if the objectives and policies of the VS chapter were not aligned with the direction of the NPS-HPL.

9.2 Provisions where no change is sought

- 9.2.1 The VS-P4 included within the VS Chapter received no submissions. I recommend VS-P4 be retained as notified.

9.3 Identification of Versatile Soils - Definition, Policy VS-P1 –, and Versatile Soils Overlay

- 9.3.1 VS-P1 – Identification of versatile soils and the Versatile Soils Overlay have been considered together, as they directly relate.

- 9.3.2 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Versatile soils definition	
Speirs, B	66.12 and 66.13
ECan	183.12
Hort NZ	245.29
Forest and Bird	156.34
Policy VS-P1	
Hort NZ	245.62
Forest and Bird	156.129
ECan	183.97
Hort NZ	245.65
Versatile Soils Overlay	
Parinui Farm	119.1
Te Rūnanga o Ngāi Tahu	185.2
Payne, D A and S E	160.4
Silver Fern Farms	172.157
OWL	181.71
North Meadows	190.4
Aitken et al	237.4
Forest and Bird	156.128, 156.129

Submissions

Definition of “Versatile Soils”

- 9.3.3 Four submitters consider the PDP should align with the NPS-HPL and seek the following amendment to replace the definition of “versatile soil” with “highly productive land”, as follows:⁷⁵

~~“Versatile soil~~ Highly Productive Land

means land classified as Class 1 or 2 under the land use capability classification system, as set out in Lynn I.H., Manderson A.K., Page M.J., Harmsworth G.R., Eyles G.O., Douglas G.B., Mackay A.D., Newsome P.J.F. (2009). Land Use Capability Survey Handbook – a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch Ltd; Lincoln, Landcare Research New Zealand Ltd; Lower Hutt, Institute of Geological and Nuclear Sciences Ltd.

Means land identified as Land Use Capability Call 1, 2, or 3, as mapped by the NZ Land Resource Inventory or by more detailed mapping using the Land Use Capability classification system.

- 9.3.4 NZ Frost Fans [245.3FS] have lodged a further submission in support of the proposed amendments, particularly those proposed by Hort NZ [245.29]. Payne, D A and S E [160.24FS] have also lodged a further submission supporting the proposed changes by ECan [183.12]. They state that removing reference to the versatile soils definition and map will remove confusion and enable ECan as the responsible authority to undertake accurate and ground truthed NPS-HPL mapping across the region.
- 9.3.5 Forest and Bird [156.34] support in part the definition to “versatile soil”, as they presume the PDP predates the release of the NPS-HPL but consider the Council should now take the opportunity to reflect the new national direction.

Identification of versatile soils

- 9.3.6 In accordance with the amendment sought to replace the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seeks the deletion of reference to “versatile soil” and replaces it with “highly productive land”.
- 9.3.7 Three submitters⁷⁶ note that the PDP omits the identification of LUC 3 land, presuming the PDP predates the release of the NPS-HPL. As such, they seek to amend VS-P1 to include identification and mapping of versatile soil.⁷⁷
- 9.3.8 Payne, D A and S E [160.26FS] have lodged a further submission opposing the submission of ECan [183.97]. They state that ECan needs to develop a nuanced framework to identify what is highly productive land in Canterbury, rather than relying on the classification system provided within the NPS-HPL.

⁷⁵ Hort NZ [245.29], Forest and Bird [156.34], Speirs, B [66.12 and 66.13], ECan [183.12]

⁷⁶ Forest and Bird [156.129], ECan [183.97], Hort NZ [245.65]

⁷⁷ Forest and Bird [156.128]

Versatile Soils Overlay

- 9.3.9 OWL [181.71] supports the provisions of the proposed Versatile soils overlay and considers they are consistent with, and give appropriate effect to, the NPS-HPL.
- 9.3.10 Forest and Bird [156.129] seek to amend the Versatile Soils overlay to include LUC 3 to give effect to the direction of the NPS-HPL.
- 9.3.11 Te Rūnanga o Ngāi Tahu [185.2] notes the NPS-HPL requires the active involvement of tangata whenua in decision-making and acknowledges the overlay seeks to comply with this. As such, they consider the best way to recognise tikanga Māori in respect of the Ōrakipaoa Wetland is to remove the versatile soil overlay, as they consider the area unsuitable for promoting primary production.
- 9.3.12 Silver Fern Farms [172.157] queries the accuracy of the Versatile Soil overlay, specifically in relation to land adjacent to one of their processing plants. They report the overlay encompasses areas developed with a railway corridor and extends to the adjacent foreshore. They seek amendments to the planning maps to ensure that the associated rules do not inappropriately apply to foreshore areas and land developed with infrastructure.
- 9.3.13 Four submissions seek to delete the Versatile Soils Overlay in respect to specific site locations, two of which note the sites have been identified as Future Development Areas and consider the overlay to be at odds with these identified areas.⁷⁸ Two submissions oppose the identification of their respective properties on the Versatile Soils Overlay.⁷⁹

Analysis

Definition of “versatile soils”

- 9.3.14 The NPS-HPL does not refer to “versatile soils”, rather defines “highly productive land” as:

“land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)”

- 9.3.15 Clause 3.4 requires regional councils to identify and map highly productive land that:

(a) is in a general rural zone or rural production zone; and

(b) is predominantly LUC 1, 2, or 3 land; and

(c) forms a large and geographically cohesive area.

⁷⁸ Payne, D A and S E [160.4], Aitken et al [237.4]

⁷⁹ North Meadows [190.4], Parinui Farm [119.1]

- 9.3.16 The PDP definition of “versatile soil” has been rolled over from the Operative District Plan and reads as follows:

land classified as Class 1 or 2 under the land use capability classification system, as set out in Lynn I.H., Manderson A.K., Page M.J., Harmsworth G.R., Eyles G.O., Douglas G.B., Mackay A.D., Newsome P.J.F. (2009). Land Use Capability Survey Handbook – a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch Ltd; Lincoln, Landcare Research New Zealand Ltd; Lower Hutt, Institute of Geological and Nuclear Sciences Ltd.

- 9.3.17 A definition of “highly productive land” is not included in the PDP.

- 9.3.18 I acknowledge the definition of versatile does not align with the NPS-HPL and accept that now that the NPS-HPL has been gazetted it creates an inconsistency between the NPS-HPL and the VS chapter as this definition is not aligned. For this reason, I support removing the definition of “versatile soil” and replacing it with a definition of “highly productive land” that aligns with the definition listed within the NPS-HPL.

VS-P1 – Identification of versatile soils

- 9.3.19 As discussed in section 7 of this report, I support the amendment sought to replace the definition of “versatile soil” with the definition for “highly productive land” and, as a consequential amendment, support the amendment sought by Hort NZ to delete reference to “versatile soil” and replace it with “highly productive land”.

- 9.3.20 Regarding the identification and mapping of versatile soil, clause 3.4(1) of the NPS-HPL requires every regional council to identify and map highly productive land. Clause 3.5(1) of the NPS-HPL requires this mapping to be undertaken within 3 years of the NPS-HPL commencement date in a proposed regional policy statement. Until a regional policy statement containing maps of highly productive land in the region is operative, clause 3.5(7) requires territorial authorities to interpret and apply the NPS-HPL as if references to highly productive land were references to land that fall under certain criteria. This includes identifying highly productive land as land that, at the commencement date of the NPS:

(a) is

(i) zoned general rural or rural production; and

(ii) LUC 1, 2, or 3 land; but

(b) is not:

(i) identified for future urban development; or

(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

- 9.3.21 I agree with the submitters that the notified version of VS-P1 does not give effect to the NPS-HPL. I agree that amendments are necessary to both VS-P1 and the corresponding Versatile

Soils Overlay to remove the inconsistencies between the overlay and the application of the NPS-HPL.

- 9.3.22 In relation to VS-P1, I recommend that reference to the “Rural Lifestyle Zone” is removed from the policy as clause 3.5(7) of the NPS-HPL only identifies highly productive land as land zoned “general rural or rural production”. I also recommend that the reference to “versatile soil” be replaced with a reference to “highly productive land”. Finally, I recommend that the policy removes reference to “identifying” land and instead refers to “recognising” land that achieves the requirements of Clause 3.5(7) of the NPS-HPL.

Versatile Soils Overlay

- 9.3.23 The PDP includes a “Versatile Soil” overlay, which maps all Class 1 or 2 soils as versatile soils. I agree with submitters that this does not give effect to the requirements of clause 3.5(7) of the NPS-HPL, which requires that until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority must apply the description of highly productive plan set out in clause 3.5(7)⁸⁰, acknowledging that clause 4.1(2) states that the Council must notify changes to objectives, policies, and rules in its district plan to give effect to this NPS-HPL as soon as practicable, but no later than 2 years after maps of highly productive land in the relevant regional policy statement become operative.
- 9.3.24 I have considered three options to respond to this submission point.
- 9.3.25 Firstly, I considered retaining the status quo, which is the “Versatile Soil” overlay. This overlay includes LUC 1 or 2 soils. If this option was progressed there would be a misalignment between the application of the NPS-HPL and the VS chapter until a plan change is undertaken to align the application of the VS chapter.
- 9.3.26 Secondly, I have considered whether the “Versatile Soil” overlay should be removed and a definition of “Highly Productive Land” be relied on until the Canterbury Regional Council notifies a “Highly Productive Land” overlay that archives clause 3.4(1) of the NPS-HPL. While I consider this would be aligned with the NPS-HPL, from a plan usability perspective, I consider it may be inconvenient for plan users to rely on a definition reference to maps on external land use capability system mapping system rather than using maps within the ePlan. However, this is how the NPS-HPL is currently implemented under the ODP.
- 9.3.27 I also considered the option of including a “Transitional Highly Productive Land” overlay which identifies areas of LUC Class 1, 2 and 3 within the General Rural Zone. I note that within

⁸⁰ Which states that highly productive land:

(a) is

(i) zoned general rural or rural production; and
(ii) LUC 1, 2, or 3 land; but

(b) is not:

(i) identified for future urban development; or
(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

the PDP ePlan mapping, there is a “Non-District Plan Layer” tab, which includes a “Transitional Highly Productive Land” overlay that identifies areas of LUC Class 1, 2 and 3 within the General Rural Zone. This layer could be used until the Canterbury Regional Council notifies a “Highly Productive Land” overlay that archives clause 3.5(7) of the NPS-HPL.

- 9.3.28 On balance, I consider that through the PDP hearings process, the PDP should align the VS chapter with the requirements of the NPS-HPL as far as possible, while not pre-empting the mapping process to be undertaken by the Canterbury Regional Council. Fully giving effect to the NPS-HPL will occur when the Council undertakes a plan change within two years of the RPS maps becoming operative, as required by clause 4.1(2) of the NPS-HPL. As such, I have recommended that the Versatile Soil Overlay within the PDP be deleted and the PDP rely on the definition of “Highly Productive Land” included within clause 3.5(7) of the NPS-HPL to set the geographic areas that the VS chapter applies to until this mapping becomes operative.
- 9.3.29 With respect to the submitters seeking amendments to the Versatile Soil overlay, given I have recommended the deletion of the overlay, this resolves the concerns raised within this submission. These submitters will have an opportunity to submit on the mapping of the HPL layer when it is notified by the Canterbury Regional Council in accordance with clause 3.4 of the NPS HPL.
- 9.3.30 I have considered the natural justice issues that may arise as a result of this recommendation. I acknowledge that this recommendation expands the geographic area to which the VS chapter applies. However, as noted within Section 9.1 above, given the timing between when the NPS-HPL was gazetted and when the submissions and further submissions on the PDP closed, I consider potentially affected parties had both the opportunity to identify the land to which the overlay would apply as sought in submissions, and sufficient time to understand the extent of the NPS-HPL and make submissions and further submissions with reference to the requirements within the NPS-HPL. Therefore, it is my view, the recommendation to extend the scope of the VS chapter to include LUC 3 land was clearly raised in submissions, and the NPS-HPL would apply to this land regardless. Furthermore, with the exception of VS-R1, the PDP does not impose any additional restrictions on the LUC 3 land beyond those already included within by the NPS-HPL. As a result, I consider that no natural justice issues are likely to arise from this recommendation.

Conclusions and Recommendations

- 9.3.31 I recommend that the definition of versatile soil is amended as follows:

<u>VERSATILE SOIL HIGHLY PRODUCTIVE LAND</u>	means land classified as Class 1 or 2 under the land use capability classification system, as set out in Lynn I.H., Manderson A.K., Page M.J., Harmsworth G.R., Eyles G.O., Douglas G.B., Mackay A.D., Newsome P.J.F. (2009). Land Use Capability Survey Handbook—a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch Ltd; Lincoln, Landcare Research New Zealand Ltd; Lower Hutt, Institute of Geological and Nuclear Sciences Ltd.
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	<p><u>has the same meaning as in section 1.3 of the National Policy Statement for Highly Productive Land 2022 (as set out in the box below):</u></p> <p><u>means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)</u>⁸¹</p>
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9.3.32 I recommend the VS-P1 is amended as follows:

VS-P1	Identification of versatile soils highly productive land
	<p>Identify <u>Recognise</u> land in the General Rural Zone and the Rural Lifestyle Zone classified as Class 1_a or 2 under the land use capability classification system as versatile soil <u>as highly productive land if it meets the definition of highly productive land</u>⁸²</p>

9.3.33 I recommend deleting the Versatile Soil Overlay within the PDP.

Section 32AA

9.3.34 I consider the recommended amendments to the definition, policy, and overlay ensure the policy gives effect to the NPS-HPL and VS-O1 without pre-empting the mapping process to be undertaken by the Canterbury Regional Council.

9.3.35 This option may result in an increased cost to landowners as VS-R1 will apply to a larger area, potentially creating additional resource consent requirements. This option will have an environmental benefit as it will provide greater protection to highly productive land in the district, ensuring its long-term availability for primary production. The recommended amendments will not have any greater social, and cultural effects than the notified provisions.

9.3.36 On balance, I consider these suggested amendments are more efficient and effective in achieving VS-O1 and the NPS-HPL as they prevent duplication and potential inconsistencies between the PDP and the future RPS mapping and provide greater protection to highly productive land.

9.4 Description of the District – Rural Areas

9.4.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

⁸¹ Hort NZ [245.29], Forest and Bird [156.34], Speirs, B [66.12 and 66.13], ECan [183.12]

⁸² Hort NZ [245.62]

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Fonterra	165.12
Hort NZ	245.3

Submissions

9.4.2 Fonterra [165.12] seeks the following amendment to the “Rural Areas” description:

“Furthermore, the district contains a large proportion of high class productive, or versatile, soils. These are the soils classified as Class 1, ~~to 2~~ and 3 under the Land Use Capability (LUC) classification system and are highly productive for a range of primary production activities industries[-...]”

9.4.3 Hort NZ [245.3] considers this section of the proposed plan should align with the NPS-HPL and seeks amendments as follows:

“Furthermore, the district contains a large proportion of high class productive, or versatile, soils highly productive land. These are the soils classified as Class 1 to 2 under the Land Use Capability (LUC) classification system and This is land identified as Land Use Capability Call 1, 2, or 3, as mapped by the NZ Land Resource Inventory or by more detailed mapping using the Land Use Capability classification system and are highly productive for a range of primary industries. These soils This land tend to be concentrated around townships and urban areas because towns were historically established in areas where the resources supported agriculture and growth. As a result, urban sprawl and changes in land use on the fringe of urban areas can reduce the availability of versatile soils Highly Productive Land for productive uses.”

Analysis

9.4.4 In response to the submissions from Fonterra and Hort NZ, I support the request to amend this description to align with the terminology used in the NPS-HPL. I have proposed several changes to the description that address the intent of the submission points.

Conclusions and recommendations

9.4.5 I recommend that the Description of the Rural Area, within the Description of the District section be amended as follows:

Rural Areas

Rural areas are dominated by agricultural land use, with some areas of horticulture and viticulture. Farming is largely pastoral, with sheep and beef farms dominating in the steeper or higher altitude areas and dairy farms occupying much of the plains, particularly at Rangitata Island.

In recent years, rural lifestyle blocks have gained popularity, and subdivisions to supply this property market has resulted in the fragmentation of rural land, and the loss of productive land to rural residential use. This increase in rural residential activities, and urban creep into areas that have traditionally been farmed can, in some locations, cause conflict between landowners. New residential land uses may be impacted by existing farming activities occurring in the working rural

environment. A balance is needed between these activities to maintain the ability of farming activities to continue in a rural environment.

Furthermore, the district contains a large proportion of highly high-class productive land, or versatile soils. ~~These are the soils classified as Class 1 to 2 under the Land Use Capability (LUC) classification system and are highly productive for a range of primary industries.~~⁸³ These soils tend to be concentrated around townships and urban areas because towns were historically established in areas where the resources supported agriculture and growth. As a result, urban sprawl and changes in land use on the fringe of urban areas can reduce the availability of highly productive land versatile soils for productive uses.⁸⁴

Section 32AA

9.4.6 I consider the recommended amendment to the Description of the Rural Area improves the clarity of the PDP and fulfils the requirement to give effect to national direction.

9.4.7 The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions.

9.5 Introduction

9.5.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
New Zealand Pork	247.1, 247.10
Hort NZ	245.62

Submissions

9.5.2 NZ Pork [247.1] expresses concern that the NPS-HPL directs councils to prevent the establishment of piggeries and other Intensive Indoor Primary Production on Highly Productive Land and argues that this directive lacks careful consideration, which is inappropriate.

9.5.3 NZ Pork [247.10] generally supports the approach taken to provide for primary production activities with a functional and operational need to be located in the rural environment and on versatile soils but seeks amendments to further support this approach. Specifically, they seek to delete the reference to “non-intensive” primary production within the Introduction.

9.5.4 In accordance with the amendment sought to replace the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seeks to delete the reference to “versatile soil” and replace it with “highly productive land”.

⁸³ Hort NZ [245.3]

⁸⁴ Fonterra [165.12], Hort NZ [245.3]

Analysis

- 9.5.5 With respect to the submission point from NZ Pork, I note that the August 2024 amendments to Clause 3.9(2) of the NPS-HPL include a direction that the use or development of highly productive land is not considered inappropriate if it provides for intensive indoor primary production or greenhouse activities. As notified the Introduction focuses on ensuring that the ongoing ability to use the land productively for “primary production (except intensive primary production)” is not compromised. However, the NPS-HPL has a focus on prioritising and supporting “land-based primary production”.
- 9.5.6 Given this, I agree that the chapter's introduction should be amended to focus on ensuring the ongoing ability to use the land productively for “land-based primary production” and remove the references to “intensive primary production.”
- 9.5.7 As discussed in section 7 of this report, I support the amendment sought to replace the definition of “versatile soil” with the definition of “highly productive land” and, as a consequential amendment, support the amendment sought by Hort NZ to delete reference to “versatile soil” and replace it with “highly productive land”.

Conclusions and Recommendations

- 9.5.8 I recommend the Introduction is amended as follows:

VERSATILE SOIL**Introduction**

~~Versatile soils are~~ Highly productive land is⁸⁵ an important natural resource within the District. Sustainable management under the RMA includes managing the use, development, and protection of natural resources in a way that sustains the potential of these resources to meet the needs of future generations and safeguards the life-supporting capacity of soil.

This chapter provides provisions for managing subdivision, land use and development within areas of the district that meet the definition of highly productive land⁸⁶ ~~the Versatile Soils Overlay~~, to ensure that the ongoing ability to use the land productively for land-based⁸⁷ primary production ~~(except intensive primary production)~~ is not compromised. ~~The focus within this chapter is on non-intensive primary production, as intensive primary production activities may compromise the productive potential of the soil.~~⁸⁸

Section 32AA

- 9.5.9 I consider the recommended amendment to the introduction improves the clarity of the PDP and will be more consistent with and give better effect to the NPS-HPL.

⁸⁵ Hort NZ [245.62]

⁸⁶ Hort NZ [245.62]

⁸⁷ NZ Pork [247.10]

⁸⁸ NZ Pork [247.10]

- 9.5.10 The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

9.6 Alignment with the NPS-HPL

- 9.6.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Forest and Bird	156.127, 156.130
Speirs, B	66.25
OWL	181.70, 181.69
Fonterra	165.80
Hort NZ	245.63
NZ Frost Fans	255.3
ECan	183.96

Submissions

- 9.6.2 Forest and Bird [156.130] highlight that the NPS-HPL sets out to restrict urban rezoning of highly productive land and seeks to insert an additional policy to avoid urban rezoning unless certain matters which are detailed in the NPS are met. No suggested wording has been provided.
- 9.6.3 Forest and Bird [156.127] Hort NZ [245.63] and NZ Frost Fans [255.3] also consider amendments are required to reflect the NPS-HPL, particularly the approach to Versatile Soils/Highly Productive Land to align with clause 3.4 for the NPS. The submission by Hort NZ [245.63] is supported by NZ Pork [247.44FS] and NZ Frost Fans [255.6FS], while opposed by Payne, D A and S E [160.31FS]. Payne, D A and S E [160.31FS] consider that versatile soil references cannot be replaced or have specific rules relating to NPS-HPL before ECan has completed mapping.
- 9.6.4 Fonterra [165.80] consider the PDP must give effect to the NPS-HPL but seeks no specific detailed amendments.
- 9.6.5 Speirs, B [66.25] considers the Versatile Soil Chapter needs to reflect the NPS-HPL and seeks it to be amended to be consistent with the terms in the National Policy Statement.
- 9.6.6 ECan [183.96] considers the entire chapter, including all provisions, should be amended to give effect to the NPS-HPL, changing its focus to highly productive land. This submission is supported by Hort NZ [245.73FS], NZ Pork [183.96], MFL [60.109FS] and Dairy Holdings [89.18FS] as it will provide clarity as to the manner in which the NPS-HPL is applied to intensive primary production and will give effect to the NPS-HPL.

- 9.6.7 OWL [181.70], [181.69] considers the Versatile Soil Chapter and the Transitional Highly Productive Land Overlay is consistent with, and gives appropriate effect to, the directions of the NPS-HPL and seeks it is retained as notified.

Analysis

- 9.6.8 I agree with the submitters that the VS chapter does not give effect to the NPS-HPL, given the timing of the notification of the PDP. There are several clauses of the NPS-HPL that require that territorial authorities include particular requirements within their district plans. These include:

- Clauses 3.6(4) and (5) - Restricting urban rezoning of highly productive land;
- Clause 3.7 - Avoiding rezoning of highly productive land for rural lifestyle;
- Clause 3.8 – Avoiding subdivision of highly productive land;
- Clause 3.9 - Protecting highly productive land from inappropriate use and development;
- Clause 3.10 - Exemption for highly productive land subject to permanent or long-term constraints;
- Clause 3.11 - Continuation of existing activities;
- Clause 3.12 - Supporting appropriate productive use of highly productive land; and
- Clause 3.13 - Managing reverse sensitivity and cumulative effects.

- 9.6.9 Each of the following clauses of the NPS-HPL have been grouped and assessed to determine whether the provisions of the PDP align with these requirements.

[Restricting urban rezoning of highly productive land](#)

- 9.6.10 The submissions on VS-P3 are assessed in section 9.10 of this report below. I consider the amendments recommended to VS-P3 set out below align with the relevant requirements of Clause 3.6 of the NPS-HPL. I note that any new rezoning of highly productive land for urban use will be undertaken through a plan change or plan review process where the VS-P3 will be considered. No further amendments to the PDP are considered necessary.

[Avoiding rezoning of highly productive land for rural lifestyle and exemptions](#)

- 9.6.11 The submissions on VS-P4 are assessed in section 9.11 of this report below. I consider the amendments recommended to VS-P4 set out in section 9.11 align with the relevant requirements of Clauses 3.7 of the NPS-HPL. I note that any new rezoning of highly productive land for rural lifestyle use will be undertaken through a plan change or plan review process where the VS-P4 will be considered. No further amendments to the PDP are considered necessary.

Protecting highly productive land from inappropriate use and development

- 9.6.12 The submissions on VS-P2 are assessed in section 9.9 of this report below. I consider the amendments recommended to VS-P2 set out in section 9.9 align with the relevant requirements of Clauses 3.8 and 3.9 of the NPS-HPL at the policy level. In relation to clause 3.8, I consider VS-R2 to ensure that the subdivision of a site in the highly productive land overlay requires resource consent as a restricted discretionary activity. I consider the matters of discretion included within VS-R2 to provide the ability to consider the relevant requirements of the NPS-HPL.
- 9.6.13 When considering the rules within the PDP that achieve clause 3.9 of the NPS-HPL, I note that VS-R1 limits the area covered by buildings and impervious surfaces, and any activity that breaches this threshold requires resource consent as a restricted discretionary activity. In the assessment of VS-R1 below, I have recommended amendments be made to the matters of discretion within VS-R1 to align with the recommended amendments to VS-P2(5). However, as discussed within section 9.1 above, in my view the rules of the VS chapter do not give effect to the direction set out within clause 3.9 of the NPS-HPL, and a plan change process would be required to analyse which activities would need to be managed in the Timaru District to ensure inappropriate use or development of highly productive land is avoided.

Exemptions for highly productive land

- 9.6.14 The submissions on VS-P2 are assessed in section 9.9 of this report below. I consider the amendments recommended to VS-P2 set out in section 9.9 align with to the relevant requirements of Clauses 3.10 of the NPS-HPL at the policy level.

Continuation of existing activities

- 9.6.15 When considering the requirements of clause 3.11 of the NPS-HPL, I note that there is no policy within the VS chapter that provides for the continuation of existing activities such as the maintenance, operation, or upgrade of any existing activities located on HPL. Given this requirement is explicitly set out within the NPS-HPL, I recommend that a new policy be included within the VS chapter that enables the maintenance, operation or upgrade of any existing activity on highly productive land while minimising the loss of highly productive land which aligns with clause 3.11 of the NPS-HPL. This additional policy is not seeking to enable existing use rights that are already provided for within Section 10 of the RMA, it acknowledges that there are already activities operating in HPL areas, and it enables the maintenance, operation or upgrade of these existing activities.
- 9.6.16 When considering the rules within the PDP that achieve clause 3.11 of the NPS-HPL, I note VS-R1 already achieves this direction as it sets a total maximum area for extending the footprint of an activity on HPL as a permitted activity. This enables the upgrade of an existing activity but ensures the loss of HPL from the activities is minimised.

Supporting appropriate productive use of highly productive land

- 9.6.17 When considering the requirements of clause 3.12 of the NPS-HPL, I note that there is no policy within the VS chapter that provides for prioritising the use of highly productive land for land-based primary production over other uses or encourages opportunities that maintain or increase the productive capacity of highly productive land. I consider these concepts are touched on within VS-P2(2), encouraging land use practices that reduce the potential for erosion. I consider amendments are required to VS-P2 to align with clause 3.12 of the NPS-HPL. Given the requirements of clause 3.12 of the NPS-HPL are reasonably concise and align with the existing direction within VS-P2, I recommended that VS-P2(2) be amended to align with clause 3.12(a) and a new subclause (6) added to VS-P2 to align with clause 3.12(b).
- 9.6.18 Finally, when considering the requirements of clause 3.13 of the NPS-HPL, I note there is a suite of provisions within the GRUZ chapter that manage reverse sensitivity and cumulative effects. As such, I consider the provisions of the GRUZ align with to clause 3.13, and no further amendments to the VS chapter are required.

Conclusions and Recommendations

- 9.6.19 I recommend an VS-P2(2) be amended to align with to clause 3.12(a) and a new subclause (6) added to VS-P2 to align with clause 3.12(b). These amendments are shown in section 9.9 below.
- 9.6.20 I recommend the following additional policy be included within the VS chapter:

<u>VS-P5</u>	<u>Existing activities</u>
	<u>Enable the maintenance, operation or upgrade of any existing activity on highly productive land, while minimising the loss of highly productive land.</u> ⁸⁹

Section 32AA

- 9.6.21 The inclusion of a new policy, VS-P5, ensures that the continuation, maintenance, operation, and upgrade of existing activities on highly productive land is explicitly recognised, in accordance with clause 3.11 of the NPS-HPL. The addition of VS-P5 will have an economic benefit as provides policy support for the maintenance, operation or upgrade of any existing activity on highly productive land. It also provides an environmental benefit as t ensures that any upgrades or modifications minimise the loss of highly productive land. Overall, I consider this additional policy helps achieved VS-O1 and clause 3.11 of the NPS-HPL.

9.7 Objective VS-O1 – Protection of versatile soils

9.7.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Silver Fern Farms	172.69
Hort NZ	245.62
NZ Pork	247.11

Submissions

9.7.2 NZ Pork [247.11] generally supports the approach taken to provide for primary production activities with a functional and operational need to be located in the rural environment and on versatile soils but seeks amendments to further support this approach. Specifically, they seek to delete the reference to “non-intensive” primary production within the objective.

9.7.3 Silver Fern Farms [172.69] identify clause 3.9(2) of the NPS-HPL, which sets out a range of uses that may be appropriate on versatile soils, in addition to non-intensive primary production. They seek the following amendment to VS-O1 to ensure all these activities are considered:

Versatile soils ~~remain available for non-intensive primary production and~~ are protected from inappropriate subdivision, use and development.

9.7.4 In accordance with the amendment sought to replace the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seeks to delete the reference to “versatile soil” and replace it with “highly productive land”.

Analysis

9.7.5 Before analysing the merits of the submission point, I consider it is necessary to set out the requirements of the NPS-HPL and contrast this with the direction set out within the PDP.

9.7.6 The NPS-HPL objective states:

Highly productive land is protected for use in land-based primary production, both now and for future generations.

9.7.7 “Land-based primary production” is defined within the NPS-HPL as:

means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.

9.7.8 The VS-O1 within the PDP states:

Versatile soils remain available for non-intensive primary production and are protected from inappropriate subdivision, use and development”.

9.7.9 “Non-intensive primary production” is defined in the PDP as:

means primary production that is not defined as intensive primary production.

9.7.10 “Intensive primary production” is defined in the PDP as:

means any activity defined as intensive indoor primary production or intensive outdoor primary production.

9.7.11 “Intensive indoor primary production” is defined in the PDP as:

means primary production activities that principally occur within buildings and involve growing fungi, or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry.

9.7.12 “Intensive outdoor primary production” is defined in the PDP as:

means primary production activities involving the keeping or rearing of livestock that principally occurs outdoors, where the regular feed source for the livestock is substantially provided from off-site sources, but excludes:

- a. calf-rearing for three months in any calendar year;*
- b. pig production for domestic self-subsistence home use;*
- c. extensive pig farming;*
- d. free range poultry farming; and*
- e. the feeding of supplementary feed during adverse weather events such as drought or snow.*

9.7.13 Given the definitions set out above, I consider “land-based primary production” as defined within the NPS-HPL applies more broadly than the definition of “non-intensive primary production” used within the VS-O1. I consider that retaining the narrow definition of “non-intensive primary production” within VS-O1 would be at odds with the objective of the NPS-HPL which requires that highly productive land is protected for use in land-based primary production. As notified, VS-O1 would effectively prioritise a subset of “land-based primary production”. Given this, I agree with submitters who seek amendments to VS-O1 to align it with the NPS-HPL.

9.7.14 In response to the concerns raised by the NZ Pork and Silver Fern Farms, I agree that the scope of the objective should be broader than “non-intensive primary production”, but I disagree with the submitter's suggested amendments that the objective apply to all primary production, or not refer to primary production at all. Instead, I recommend that the drafting of the objective align with the drafting of the NPS-HPL objective and refer to “land-based – primary production”, and a new definition of “land-based primary production” be included within the PDP.

9.7.15 I support the submission from Hort NZ seeking to delete reference to “versatile soil” and replace it with “highly productive land”.

9.7.16 I have also considered how this recommended definition would interact with the other suite of primary production definitions in the PDP. I consider the introduction of this recommended definition can be considered alongside the other primary production definitions i.e., a land-based production activity may or may not also meet the definition of intensive indoor or outdoor primary production depending on the nature of the activity.

Conclusions and Recommendations

9.7.17 I recommend VS-O1 is amended as follows:

VS-O1	Protection of versatile soils <u>highly productive land</u> ⁹⁰
Versatile soils <u>Highly productive land</u> ⁹¹ remains ⁹² available for non-intensive land-based ⁹³ primary production and is <u>are</u> ⁹⁴ protected from inappropriate subdivision, use and development.	

9.7.18 I recommend that a new definition is added to the PDP as follows:

<u>LAND-BASED PRIMARY PRODUCTION</u>	<p><u>has the same meaning as in section 1.3 of the National Policy Statement for Highly Productive Land 2022 (as set out in the box below):</u></p> <p><u>means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land</u>⁹⁵</p>
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Section 32AA

9.7.19 I consider the recommended amendment to the introduction improves the clarity of the PDP and will be more consistent with the NPS-HPL.

9.7.20 The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

⁹⁰ Hort NZ [245.62]

⁹¹ Hort NZ [245.62]

⁹² Consequential amendment to Hort NZ [245.62]

⁹³ NZ Pork [247.11] and Silver Fern Farms [172.69]

⁹⁴ Consequential amendment to Hort NZ [245.62]

⁹⁵ NZ Pork [247.11] and Silver Fern Farms [172.69]

9.8 Policy VS-P2 – Maintaining availability of versatile soil

9.8.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Fonterra	165.81
Road Metals	169.29
Fulton Hogan	170.29
Silver Fern Farms	172.70 172.71
NZ Pork	247.12

Submissions

- 9.8.2 Fonterra [165.81] supports VS-P2 and seeks it to be retained as notified.
- 9.8.3 NZ Pork [247.12] generally supports the approach taken to provide for primary production activities with a functional and operational need to be located in the rural environment and on versatile soils but seek amendments to further support this approach. Specifically, they seek to delete the policy's reference to “non-intensive” primary production.
- 9.8.4 Silver Fern Farms [172.70 and 172.71] support clause (5)(b) and seek it is retained as notified, but consider the outcomes sought in clause (3) to be unclear and seek to understand whether the focus is on the physical state of the ground after construction activities or on addressing and improving soil quality in the case of contamination.
- 9.8.5 Two submitters oppose the policy as they state it does not recognise that quarries need to be located where the aggregate is located.⁹⁶ They highlight the NPS-HPL provides policies and consenting pathways for quarries to be located in areas of versatile soils and consider such an approach should be provided for within the proposed Plan and seek the following amendment:

VS-P2 Maintaining availability of versatile soils

1...

[...]

- 5. only allowing activities that foreclose the ability to use versatile soils for non-intensive primary production where:*

[...]

c) it is provided for by VS-P3; or

⁹⁶ Road Metals [169.29], Fulton Hogan [170.29]

d) the activity is a quarry that provides significant national or regional public benefit that could not otherwise be readily achieved using resources within New Zealand.

9.8.6 TDL [252.28FS], [252.44FS], Rooney Group et al [278.38FS], [278.44FS] have lodged further submissions supporting the proposed additions above.

Analysis

9.8.7 In relation to the submission from NZ Pork, as discussed in the analysis of submissions on VS-O1 above, I agree that the reference to “non-intensive” primary production within the objective, does not align with the requirements of the NPS-HPL, which focuses on prioritising and supporting land-based, primary production. Given this, I recommend that “non-intensive” is replaced with “land-based” to give effect to the objective within the NPS-HPL.

9.8.8 Regarding the submission from Silver Fern Farms raising concerns with the intent of VS-P2(3), I consider the intent of VS-P2(3) is to ensure that any earthwork activity undertaken should restore the productive potential of the soil properties of the soil to the levels they were prior to the earthworks being undertaken. I accept that the wording of VS-P2(3) is unclear, and I have recommended the addition of the word “productive” to clarify the intent of the clause.

9.8.9 In response to the submissions from Road Metals and Fulton Hogan seeking greater recognition of the locational constraints of quarries, I note clause 3.9 of the NPS-HPL requires that territorial authorities avoid inappropriate use or development of highly productive land if it does not involve land-based primary production, unless it aligns with specified criteria. Sub clause (j)(iv) states includes:

(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:

(i) ..

(iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.

9.8.10 I also note that within the Fonterra [165.80] submission point there is a very broad scope to amend the VS chapter to reflect the NPS-HPL. There are three clauses with the NPS-HPL that are relevant to the consideration VS-P2:

- Clause 3.8 - Avoiding subdivision of highly productive land
- Clause 3.9 - Protecting highly productive land from inappropriate use and development
- 3.10 Exemption for highly productive land subject to permanent or long-term constraints

9.8.11 When comparing the content of clause 3.8 of the NPS-HPL with VS-P2(4), I consider that VS-P2(4) is inconsistent with the requirements set out within clause 3.8 of the NPS-HPL. VS-

P2(4) ensures that subdivision results in allotment sizes that retain the productive capacity for non-intensive primary production. In contrast, clause 3.8 is more directive and requires the subdivision of highly productive land to be avoided unless specific criteria listed within clause 3.8 are achieved.

9.8.12 When considering the content of clauses 3.9 and 3.10 of the NPS-HPL, I note there are a number of uses listed within clause 3.9 that are not included within VS-P2, and a number of exclusions within clause 3.10 that are not included within VS-P2(5). In addition, VS-P2(5) includes clauses that are contrary to the direction of clause 3.10.

9.8.13 Given the inconsistencies between VS-P2 and clauses 3.8, 3.9, and 3.10, rather than recommending an amendment to VS-P2 that will achieve the outcome sought by Road Metals and Fulton Hogan, I consider a broad amendment to VS-P2 is required to align Clauses 3.8, 3.9 and 3.10 of the NPS-HPL.

9.8.14 When considering the best drafting approach to align VS-P2 with the NPS-HPL, I have considered several drafting options:

- Replicate the text of clauses 3.8, 3.9 and 3.10 within VS-P2;
- Include specific cross-reference to clauses 3.8, 3.9 and 3.10 within VS-P2;
- Include a cross-reference to the NPS-HPL generally; or
- Not include any specific additions within VS-P2, and rely on clauses 3.8, 3.9 and 3.10 being applied when a resource consent or plan change is triggered.

9.8.15 I consider there are benefits and costs to each approach.

- The benefit of replicating the text is that the PDP is a standalone document and there is no need to refer a different document. However, this would create a very long and complex policy, and any amendments to the NPS-HPL could then create an inconsistency between the two documents.
- The benefit of the specific cross-references is that it ensures the policy is consistent with the length of other provisions in the chapter. However, it requires plan users to refer to a separate document and would require a plan change if the NPS-HPL is amended, and if amendments are made to the NPS-HPL the cross-references in the PDP may become redundant.
- The benefit of including a cross-reference to the NPS-HPL generally, is that the high-level intent of clauses 3.8, 3.9 and 3.10 can be incorporated into VS-P2 while avoiding crossing references or replication. However, it requires plan users to refer to a separate document and provides no direction within the policy as to what is considered “inappropriate” subdivision, use and development as this needs to be considered within the context of the relevant NPS-HPL provision.
- The benefit of not including any specific additions is that clauses 3.8, 3.9 and 3.10 will apply within resource consents regardless of the drafting within the PDP. However,

not including direction that aligns with clauses 3.8, 3.9 and 3.10 will create a gap in the VS chapter, potentially leading to uncertainty in plan interpretation and implementation.

- 9.8.16 On balance, I recommend introducing new clauses to VS-P2 that include a cross-reference to the NPS-HPL generally. I consider this to be a temporary measure until a plan change is developed that gives effect to the NPS-HPL. This approach ensures alignment with the NPS-HPL while maintaining a concise policy structure within the PDP that is not tied directly to cross-reference to specific clauses in the NPS-HPL. It avoids unnecessary duplication while ensuring that the direction of the NPS-HPL is embedded within the policy framework, reducing the risk of misinterpretation or omission. I note that a similar cross-reference has been included within the Partially Operative Selwyn District Plan (Appeals Version)⁹⁷.

Conclusions and Recommendations

- 9.8.17 I recommend VS-P2 is amended as follows:

VS-P2	Maintaining availability of versatile soils
	<p>Maintain the availability of <u>highly productive land versatile soils for non-intensive land-based</u>⁹⁸ primary production within the Versatile Soils Overlay⁹⁹ by:</p> <ol style="list-style-type: none"> 1. limiting areas covered by buildings or other impervious surfaces; and 2. encouraging <u>opportunities that maintain or increase the productive capacity of highly productive land, such as</u>¹⁰⁰ land use practices that reduce the potential for erosion; and 3. requiring earthworks be undertaken in a manner that restores the <u>productive</u>¹⁰¹ properties of the soil to the levels they were prior to the earthworks being undertaken; and 4. ensuring any subdivision results in allotment sizes which retain the productive capacity for non-intensive land-based¹⁰² primary production; and 5. only allowing activities that foreclose the ability to use versatile soils for non-intensive primary production where: <ol style="list-style-type: none"> a. the activity is necessary to support non-intensive primary production; or b. there are significant wider public benefits from the activity and there is a functional, technical or operational need to be located in overlay; or c. it is provided for by VS P3; and 6. <u>prioritising the use of highly productive land for land-based primary production over other uses; and</u>¹⁰³ 7. <u>avoiding inappropriate subdivision, use and development of highly productive land, except as provided for by the National Policy Statement for Highly Productive Land 2022.</u>¹⁰⁴

⁹⁷ GRUZ-P1A states:

Avoid the inappropriate use and development of highly productive land, except as provided for by the National Policy Statement for Highly Productive Land 2022.

⁹⁸ NZ Pork [247.11] and Silver Fern Farms [172.69]

⁹⁹ Hort NZ [245.62]

¹⁰⁰ Fonterra [165.80]

¹⁰¹ Silver Fern Farms [172.71]

¹⁰² NZ Pork [247.11] and Silver Fern Farms [172.69]

¹⁰³ Fonterra [165.80]

¹⁰⁴ Fonterra [165.80]

Section 32AA

9.8.18 The recommended amendments to VS-P2 to ensure consistency with clauses 3.8, 3.9, and 3.10 of the NPS-HPL. These amendments will remove inconsistencies between the PDP and the NPS-HPL, ensuring there is a cohesive policy framework between the NPS-HPL and the VS chapter until a future plan change is undertaken to give effect to the NPS-HPL.

9.8.19 Given the requirements of the NPS-HPL already apply to activities undertaken with an areas identified as highly productive land, I consider the recommended amendments to VS-P2 will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration, as the amendments ensure alignment with the NPS-HPL.

9.9 Policy VS-P3 – Expansion of urban areas

9.9.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
White Water	248.4
Hort NZ	245.62
NZ Pork	247.13

Submissions

9.9.2 White Water [248.4] considers it should be made specific that VS-P3 does not apply to identified Future Development Areas, including FDA13. They highlight urban expansion is now managed by the NPS-HPL which impacts the management of FDAs. They seek amendments to exempt FDAs from the policy or to delete the policy in its entirety. This submission is supported by TDL [252.66FS], Rooney Group et al [278.65FS] and MFL [60.161FS]

9.9.3 NZ Pork [247.13] generally support the approach taken to provide for primary production activities with a functional and operational need to locate in the rural environment and on versatile soils but seek amendments to further support this approach. Specifically, they seek to delete reference to “non-intensive” primary production within the policy.

9.9.4 In accordance with the amendment sought to replace the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seeks to delete the reference to “*versatile soil*” and replace it with “*highly productive land*”.

Analysis

9.9.5 As highlighted in the analysis of VS-P2 above, the Fonterra [165.80] submission point provides broad scope to amend the VS chapter to reflect the NPS-HPL. When considering the content of clause 3.6(4) of the NPS-HPL, I note there are very specific requirements

directing when non-tier 1 and 2 territorial authorities may allow rezoning of highly productive land, these include:

- (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and*
- (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and (*
- (c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

9.9.6 Subclause (5) of 3.6 also states:

Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

9.9.7 I consider VS-P3 as notified is inconsistent with the requirements of clauses 3.6(4) and (5) of the NPS-HPL. Given this, rather than recommending an amendment to VS-P3 that will achieve the outcome sought by NZ Pork and Hort NZ I consider a broader amendment to VS-P3 is required to give effect to clauses 3.6(4) and (5) of the NPS-HPL.

9.9.8 As noted in the analysis of VS-P2 above, when considering the best drafting approach to give effect to the NPS-HPL, I have considered several drafting options:

- Replicate the text of clauses 3.6(4) and 3.6.(5) within VS-P3;
- Include a cross-reference to clauses 3.6(4) and 3.6.(5) within VS-P3; or
- Include a new clause that give effect to the intent of the clauses 3.6(4) and 3.6.(5).

9.9.9 In contrast to the assessment of VS-P2 above, given the limited nature of the matters included within clauses 3.6(4) and (5) of the NPS-HPL, I consider re-producing clauses 3.6(4) and (5) within VS-P3 will avoid the need for a cross reference within the policy while also ensuring that the policy is easily understood to the plan users. As such, I recommend that VS-P3(1) – (3) be removed and replaced with the matters listed in clauses 3.6(4) and (5) of the NPS-HPL.

9.9.10 Regarding the submission of White Water I note that clause 3.5(7) of the NPS-HPL provides a description of highly productive land that excludes areas that are “identified for future urban development” or “subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle”. As noted in the assessment of the Versatile Soils overlay in Section 9.3 above, I have recommended that the Versatile Soils overlay be removed and replaced by the definition of “highly productive land”. Given this, I consider no further amendments are required to VS-P3 as any Future

Development Areas that do not meet the definition of “highly productive land” will no longer be captured by VS-P3.

Conclusions and Recommendations

9.9.11 I recommend VS-P3 is amended as follows:

VS-P3	Expansion of urban areas
<p>Avoid the expansion of urban areas into <u>areas of highly productive land</u> the Versatile Soils Overlay unless a it is demonstrated through a Future Development Area plan process that:</p> <ol style="list-style-type: none"> 1. there is a shortage of capacity within existing urban area to meet projected demand; and 2. the irreversible loss of versatile soils for non-intensive primary production is outweighed by the wider public benefits of the proposal; and 3. alternative locations and options, including intensification of existing urban areas, to meet the required demand, are less feasible. 1. <u>the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and</u> 2. <u>there are no other reasonably practicable and feasible options for providing the required development capacity; and</u> 3. <u>the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values; and</u> 4. <u>the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.</u>¹⁰⁵ 	

Section 32AA

9.9.12 The recommended amendments to VS-P3 to ensure consistency with clauses 3.6 of the NPS-HPL. These amendments will remove inconsistencies between the PDP and the NPS-HPL, ensuring there is a cohesive policy framework between the NPS-HPL and the VS chapter until a future plan change is undertaken to give effect to the NPS-HPL.

9.9.13 Given the requirements of the NPS-HPL already apply to the expansion of urban areas within areas identified as highly productive land, I consider the recommended amendments to VS-P3 will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration as the amendments ensure alignment with the NPS-HPL.

9.10 Policy VS-P4 – Rural Lifestyle Zone expansion

9.10.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
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¹⁰⁵ Fonterra [165.80]

Hort NZ	245.62
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Submissions

- 9.10.2 In accordance with the amendment sought to replace to the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seek to delete reference to “versatile soil” and replace it with “highly productive land”.

Analysis

- 9.10.3 In relation to the submission from Hort NZ, I support the amendment to replace “versatile soil” with the definition for “highly productive land” within VS-P4.

- 9.10.4 With respect to the alignment between the NPS-HPL and the VS-P4, I note that clause 3.7 of the NPS-HPL, states:

Territorial authorities must avoid rezoning of highly productive land as rural lifestyle, except as provided in clause 3.10

- 9.10.5 The exceptions with clause 3.10 of the NPS-HPL are specific and require a series of assessments to be undertaken before a territorial authority is able to allow land to be used for rural lifestyle purposes.

- 9.10.6 The blunt nature of VS-P3, which seeks to avoid the expansion of the Rural Lifestyle Zone into the Versatile Soils Overlay without exception, is more restrictive than the requirements within clause 3.10 of the NPS-HPL. I consider retaining this approach appropriate as the development of the PDP has considered that it is important to avoid the expansion of the Rural Lifestyle Zone prevent land fragmentation and protect highly productive soils. As such, I recommend that the more restrictive direction within VS-P4 is retained.

Conclusions and Recommendations

- 9.10.7 I recommend VS-P4 is amended as follows:

VS-P4	Rural Lifestyle Zone expansion
	Avoid the expansion of the Rural Lifestyle Zone into the Versatile Soils Overlay <u>areas of highly productive land</u> . ¹⁰⁶

Section 32AA

- 9.10.8 The recommended amendments to VS-P4 retain the direction within the PDP that the expansion of the Rural Lifestyle Zone into versatile soils should be avoided. However, the applying this avoidance approach to “highly productive land” as opposed to the Versatile Soils Overlay will mean that this policy will apply to a larger area of the District. This amendment will have an environmental benefit as the productive potential of LUC 1, 2, and 3 areas will be protected from the expansion of the Rural Lifestyle Zoning. This amendment may have an economic cost as will restrict the expansion of the Rural Lifestyle Zoning on

¹⁰⁶ Hort NZ [245.62]

highly productive land, reducing the development potential of highly productive land. I consider the recommended amendments to VS-P4 will not have any greater social, and cultural effects than the notified provisions.

- 9.10.9 On balance, I consider the environmental benefits of the recommended amendments outweigh the potential economic costs. I consider amendments will ensure highly productive land is protected from inappropriate subdivision, use and development better achieving the direction within VS-O1.

9.11 Rules

Rule VS-R1 – Buildings and impervious surfaces

- 9.11.1 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Waka Kotahi	143.92
Bonifacio, P	36.4
Silver Fern Farms	172.72
Hort NZ	245.62
NZ Pork	247.14

Submissions

- 9.11.2 Waka Kotahi [143.92] support VS-R1 and seek it is retained as notified.
- 9.11.3 Bonifacio, P [36.4] considers the rule impractical for farming activities and seeks justification for the conditions.
- 9.11.4 Silver Fern Farms [172.72] seek to amend as follows the permitted activity standard to provide for repairs and routine maintenance to existing development in the overlay where the extent of site coverage is not increased:

Activity status: Permitted

Where:

PER-1

The maximum area covered by buildings and impervious surfaces must not exceed 10% of that portion of the site within the overlay or 2000m² within the overlay, whichever is the lesser. Except this does not apply to buildings and impervious surfaces for the widening or upgrading (including sealing) an existing road within the existing road reserve, or to repairs and maintenance that do not increase the existing extent of site coverage by buildings and impervious surfaces.

[...]

- 9.11.5 NZ Pork [247.14] generally support the approach taken to provide for primary production activities with a functional and operational need to locate in the rural environment and on versatile soils but seek amendments to further support this approach. Specifically, they seek to amend the rule as follows, to include an additional matter of discretion:

Matters of discretion are restricted to:

[...]

4. The extent to which the primary production activity has a functional and operation need to locate in the rural environment and on versatile soil.

- 9.11.6 In accordance with the amendment sought to replace the definition of “versatile soil” with “highly productive land”, Hort NZ [245.62] seek to delete reference to “versatile soil” and replace it with “highly productive land”. This submission is supported by NZ Pork [247.43FS], who consider it will provide clarity in the manner in which the NPS-HPL is applied to intensive primary production.

Analysis

- 9.11.7 Regarding justification for VS-R1, the purpose of VS-R1 is to control building and impervious surface development within the Versatile Soil Overlay, limiting it to 10% of the site area. This rule is required to achieve VS-P2(1) which aims to preserve versatile soils for non-intensive primary production by restricting building and impervious surface coverage. I consider VS-R1 adequately achieves the direction provided by VS-P2(1) by addressing the potential effects of site coverage on the versatile soil resource.
- 9.11.8 Regarding the amendment sought by Silver Fern Farms, I note that repairs and maintenance that do not increase the existing extent of site coverage by buildings and impervious surfaces will not be captured by the VS-R1.
- 9.11.9 With respect to the submission point from NZ Pork seeking to insert an additional matter of discretion providing for the operational and functional requirements of the primary industry, I agree in part with the suggested amendment. As noted in the “Giving effect to the NPS-HPL” section above, I have recommended an amendment to VS-P2(8) which requires that inappropriate use or development of highly productive land (as described in clause 3.9 of the NPS-HPL) is avoided. I consider consequential amendments are required to the matter of discretion within VS-R1 to enable consideration as to how the potential activity give effect to directive requirements of clause 3.9(2) of the NPS-HPL.
- 9.11.10 I support the submission from Hort NZ seeking to delete the reference to “versatile soil” within VS-R1 and replace it with “highly productive land”.

Conclusions and Recommendations

- 9.11.11 I recommend VS-R1 is amended as follows:

VS-R1

Buildings and impervious surfaces

<p>Highly Productive Land Versatile Soil Overlay¹⁰⁷</p>	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1 The maximum area covered by buildings and impervious surfaces must not exceed 10% of that portion of the site within the overlay or 2000m² within the overlay, whichever is the lesser. Except this does not apply to buildings and impervious surfaces for the widening or upgrading (including sealing) an existing road within the existing road reserve.</p>	<p>Activity status when compliance not achieved: Restricted Discretionary</p> <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. the extent to which the buildings or impervious surfaces are necessary to support <u>non-intensive land-based</u>¹⁰⁸ primary production. 2. the extent to which alternate locations outside the <u>Versatile soil highly productive land</u>¹⁰⁹ overlay are available on the site and have been considered. 3. the extent to which the activity will result in adverse effects on the versatility of the soils which are irreversible. 4. <u>the extent to which the buildings or impervious surfaces will achieve the requirements of the NPS HPL.</u>¹¹⁰
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9.11.12 I consider the recommended amendment to the rule listed above ensures the requirements of the NPS-HPL are met and continues to achieve VS-O1 and VS-P2(1).

9.11.13 The recommended amendment will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

Rule VS-R2 – Subdivision of a site in the Versatile Soil Overlay

9.11.14 The following table sets out the submission points covered in this section of the report (which may be individually or more broadly discussed). The decision requested in relation to each point is provided in full in Appendix 2:

SUBMITTER NAME	SUBMISSION POINT NUMBER(S)
Bonifacio, P	36.5
Hort NZ	245.62
Forest and Bird	156.131

¹⁰⁷ Hort NZ [245.62]

¹⁰⁸ Hort NZ [245.62]

¹⁰⁹ Hort NZ [245.62]

¹¹⁰ 10.2.4 Fonterra [165.80]

Submissions

- 9.11.15 Bonifacio, P [36.5] considers VS-R2 to be too restrictive and seeks justification for the conditions.
- 9.11.16 Forest and Bird [156.131] note the NPS-HPL sets out clear requirements for subdivision and consider the rule fails to reflect these and seeks the rule's activity status is amended from restricted discretionary to discretionary. This submission is supported by the further submission of MFL [60.54FS] who consider the Versatile Soil Overlay should be modified or deleted to acknowledge the NPS-HPL.
- 9.11.17 In accordance with the amendment sought to replace the definition of "versatile soil" with "highly productive land", Hort NZ [245.62] seeks to delete the reference to "versatile soil" and replace it with "highly productive land".

Analysis

- 9.11.18 The purpose of VS-R2 is to manage the subdivision of sites in the Versatile Soil Overlay across all zones with discretion restricted to assessing the impact of proposed subdivisions on versatile soils' fragmentation and ensuring allotment size and shape to allow for non-intensive primary production. This achieves VS-P2(4) which seeks to preserve versatile soils for non-intensive primary production within the Versatile Soils Overlay by ensuring that any subdivision maintains allotment sizes that retain the productive capacity for non-intensive primary production.
- 9.11.19 Clause 3.8 of the NPS-HPL, territorial authorities "must avoid" the subdivision of highly productive land unless certain conditions are met and the adverse effects are avoided or otherwise mitigated. These conditions include demonstrating the retention of overall productive capacity for the long term, subdivision on specified Māori land, or subdivision for specified infrastructure or defence facilities with a functional or operational need.
- 9.11.20 I agree in part with Forest and Bird. I agree that the NPS-HPL sets out clear requirements for subdivision, some of which are not included within the notified matters of discretion. However, I disagree that changing the activity status from restricted discretionary to discretionary is required to incorporate these additional matters. Instead, I recommend an additional matter of discretion be added to the rule to enable the range of matters that are required to be considered by the NPS-HPL.
- 9.11.21 As discussed in section 9.3 of this report, I support the amendment sought to replace the definition of "versatile soil" with the definition for "highly productive land" and, as a consequential amendment, support the amendment sought by Hort NZ to delete the reference to "versatile soil" and replace it with "highly productive land" within VS-R2.
- 9.11.22 Finally, I note that the submission points on the location of VS-R2 have been considered within Mr Boyes s42A report on Subdivision and Development Areas¹¹¹. He has

¹¹¹ Paragraphs 7.1.11 – 7.1.31

recommended that VS-R2 be removed from the VS chapters and included as a new rule within the SUB chapter. I agree with this recommendation, provided the recommended amendments to VS-R2 set out below are included within the relocated rule.

Conclusions and Recommendations

9.11.23 I recommend VS-R2 (referred to as SUB-13 within the SUB s42A report) is amended as follows:

VS-R2 SUB- R13¹¹²	Subdivision of a site in the <u>Versatile Soil Overlay on highly productive land</u>¹¹³	
All zones	<p>Activity status: Restricted Discretionary</p> <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. the extent to which the proposed subdivision and the layout of allotments will result in fragmentation of versatile soils <u>highly productive land</u>¹¹⁴; and 2. the extent to which the size and shape of any proposed allotments will allow for any versatile soils <u>highly productive land</u>¹¹⁵ to continue to be used for non-intensive primary production. 3. <u>the extent to which the subdivision achieves the requirements of the NPS HPL.</u>¹¹⁶ 	Activity status where compliance not achieved: Not applicable

Section 32AA

9.11.24 I consider the recommended amendment to the rule listed above is minor in nature but improves the clarity of the PDP and will be more consistent with and give better effect to the NPS-HPL.

9.11.25 The recommended amendments will not have any greater environmental, economic, social, and cultural effects than the notified provisions. However, there will be benefits from improved plan interpretation and more efficient plan administration.

¹¹² Clause 10(2)(b) relying on Speirs, B [66.45 to 66.54].

¹¹³ Hort NZ [245.62]

¹¹⁴ Hort NZ [245.62]

¹¹⁵ Hort NZ [245.62]

¹¹⁶ Forest and Bird [156.131]

10. Conclusion

- 10.1.1 This report has considered the framework for the management for the Public Access, Activities on the Surface of Water, and Versatile Soils chapters within the PDP.
- 10.1.2 The majority of the recommendations to the Public Access and Activities on the Surface of Water chapters have been made to improve the provisions, but which do not alter the intent and outcomes sought in relation to these matters. Rather, they are expected to result in a more efficient and effective framework to achieve these outcomes.
- 10.1.3 The recommendations to the Versatile Soils chapter have been made to ensure alignment with the NPS-HPL as an interim measure until a plan change process is undertaken to give effect to the requirements of the NPS-HPL.
- 10.1.4 Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, I recommend that the PDP should be amended as set out in Appendix 1 of this report.
- 10.1.5 For the reasons set out in the Section 32AA evaluation included throughout this report, I consider that the recommended amended objectives and provisions are the most appropriate means to achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2, and otherwise give effect to higher order planning documents.