

To: Hearing Panel – Proposed Te Tai o Poutini Plan

From: Ruth Evans – Reporting Officer

Date: 26 July 2024

Re: **s42A Author Right of Reply – Subdivision, Financial Contributions and Public Access**

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### Introduction and Purpose

- (1) The purpose of this report is to respond to the questions raised by Commissioners during the hearing for the Subdivision, Financial Contributions and Public Access topic for the proposed Te Tai o Poutini Plan (pTTPP). This report will also respond to outstanding matters in response to submissions and evidence presented at the hearing.
- (2) This report is supported by the following attachments:
  - o Attachment 1: Recommended provisions – right of reply
  - o Attachment 2: Recommendations on submissions and further submissions – right of reply
- (3) I have structured this reply to respond to general/overarching matters, followed by discussion on changes to provisions in the same order as the provisions in each chapter.
- (4) Where I have not specifically commented on a matter raised at the hearing, my position remains as set out in my s42A report and s42A report addendum.

### Overarching Matters

- (5) I have considered whether the change from ‘critical infrastructure’ to ‘regionally significant infrastructure’ as agreed in previous hearing streams is appropriate for this chapter<sup>1</sup>. I support the use of the term ‘regionally significant infrastructure’ in place of ‘critical infrastructure’ for consistency across the pTTPP and have made this amendment throughout.
- (6) During the hearing there was considerable discussion on whether the objectives, policies and rules should include further detail with respect to maintenance and enhancement / protection of amenity values, intrinsic values of ecosystems and maintaining and enhancing the quality of the environment (Resource Management Act 1991 (RMA) s7 matters). This includes relief sought by Frida Inta (e.g. S553.105 and S553.106).
- (7) Reflecting on the discussion at the hearing I consider there is merit in including reference to maintaining and enhancing amenity values in Objective 2. This sets the outcome to be achieved by policies and provisions where amenity is a specific consideration or where the provisions can affect amenity, for example minimum lot sizes. With respect to including maintaining or enhancing the quality of the environment, I consider this to be a broad outcome that the pTTPP as a whole must have particular regard to (as required by s7) and is therefore not necessary to list specifically as an outcome for subdivision. I note that the subdivision chapter must be read in conjunction with other parts of the plan that also set amenity outcomes and influence the quality of the environment, including the zone chapters and other district wide provisions.

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<sup>1</sup> Including the recommended amendments to regionally significant infrastructure supported in the right of reply for the Energy, Infrastructure and Transport Chapters hearing stream

- (8) With respect to intrinsic values of ecosystems, in my view there is limited opportunity for subdivision to influence this s7 matter – this matter is more appropriate to consider in the district wide ecosystems and biodiversity provisions.

**Subdivision provisions relating to natural hazards**

- (9) A number of submissions points on the Subdivision chapter which relate to natural hazards were allocated to the Natural Hazards hearing stream. These are set out in the table below.
- (10) I have discussed the approach to recommended changes and analysis in relation to the management of natural hazards risk provisions in the subdivision chapter with the s42A author for that topic. We agree that the subdivision provisions that refer to natural hazards as well as associated submissions, are best considered as part of that hearing topic, along with the assessment of submissions on that topic. This allows for holistic and integrated consideration of the topic as a whole, particularly given the extent and nature of submissions on natural hazards. I note that there may be consequential amendments required to the subdivision provisions as the natural hazards topic progresses, including any recommended changes arising from potential changes to mapping of natural hazards and overlays.
- (11) Subdivision related submission points that will be considered in the natural hazards hearing stream are as follows. These have been included in Appendix 2 for completeness as requested by the panel.

Submitter Name / ID	Submission Point	Position	Decision Requested
<b>SUB-O2</b>			
Toka Tū Ake EQC	S612.086	Amend	Define what constitutes a 'significant' natural hazard
Frank and Jo Dooley	S478.028	Amend	Amend to read: Subdivision occurs in locations and at a rate that: a. ...f. <del>Avoids</del> <del>Sufficiently mitigates</del> risks from significant natural hazards and are built to be resilient to natural hazards.
<b>SUB-P6</b>			
Frank and Jo Dooley	S478.029	Amend	Avoid subdivision: a. ... f. <del>In areas of that does</del> <u>not manage</u> significant risk of natural hazards, where this is for the purposes of accommodating and/or servicing people and communities.
Frank O'Toole	S595.017	Amend	Avoid subdivision: a. ... f. <del>In areas of that does</del> <u>not manage</u> significant risk of natural hazards, where this is for the purposes of accommodating and/or servicing people and communities.
Snodgrass Road submitters	S619.035	Amend	Delete Policy SUB-P6(f).
<b>SUB-R5</b>			
Grey District Council	S608.072	Amend	Amend Rule Condition 3(iv) title to remove reference to "Flood Plain" Rule to read: iv. Any Flood Susceptibility, Land Instability,

			Coastal Alert or Coastal Tsunami Hazard Overlay;
<b>SUB-R6</b>			
Grey District Council	S608.073	Amend	Amend Rule Condition 3(iv) title to remove reference to "Flood Plain" Rule to read: iv. Any Flood Susceptibility, Land Instability, Coastal Alert or Coastal Tsunami Hazard Overlay;
<b>SUB-R8</b>			
Grey District Council	S608.074	Support	Amend Rule Condition 3(v) title to remove reference to "Flood Plain" Rule to read: iv. Any Flood Susceptibility, Land Instability, Coastal Alert or Coastal Tsunami Hazard Overlay.
<b>SUB-R13</b>			
Laura Coll McLaughlin	S574.238	Amend	Delete "sensitive activities" from point d.
Grey District Council	S608.076	Amend	Amend Rule title to remove reference to "Flood Plain" Rule to read: Subdivision to create allotment(s) in the Flood Susceptibility, Land Instability, Coastal Alert, Coastal Setback, Lake Tsunami and Coastal Tsunami Overlays
<b>SUB-R20</b>			
Laura Coll McLaughlin	S574.250	Retain	Support
<b>SUB-R21</b>			
Laura Coll McLaughlin	S574.251	Amend	Amend to: Activity status where compliance not achieved: Non-complying N/A.
Frank O'Toole	S595.016	Amend	Amend to read: Subdivision occurs in locations and at a rate that: a. ...f. <del>Avoids</del> <u>Sufficiently mitigates</u> risks from significant natural hazards and are built to be resilient to natural hazards.
<b>SUB-R23</b>			
Grey District Council	S608.077	Amend	Amend Rule title to remove reference to "Flood Plain" Rule to read: Subdivision to create Allotments in the Flood Susceptibility, Land Instability, Coastal Alert, Coastal Setback, Lake Tsunami and Coastal Tsunami Overlays not meeting Restricted Discretionary Activity Standards
<b>SUB-S2</b>			
Margaret Montgomery	S446.065	Oppose in part	Delete Clause 1 in relation to building platforms.

(12) For completeness I note that the following matters were discussed at the subdivision hearing, that should be considered further in the natural hazards hearing:

- (a) Whether clause (d) of Policy 1 should be consolidated with Policy 4;
- (b) Whether references to natural hazards in Policy 6 should be consolidated with Policy 4;

- (c) Whether there is an opportunity via submissions to amend Policy 4 to more appropriately give effect to the NZCPS;
  - (d) Whether clause 1 of SUB-S1 should be deleted.
- (13) Finally on the issue of natural hazards, during the hearing the panel asked what weight could be given to the Proposed National Policy Statement for Natural Hazard Decision Making 2023. I note that s74 of the RMA requires that proposed regional policy statements must be had regard to, but there is not an equivalent clause to have regard to proposed national policy statements. I checked this matter with Wynn Williams, who advised there is no requirement in terms of the legal tests for preparing a district plan that require regard to be given to a proposed national policy statement and the orthodox position is that a proposed national policy statement has no legal effect in a plan making context.

## Subdivision

### Overview

- (14) I recommend amending the overview to include reference to the provision of infrastructure services, reflecting that this is provided for in the chapter provisions. This is a minor amendment for clarity.
- (15) Minor amendments to how the various overlays are referred to are also recommended to align with RMA terminology and wording of objectives, policies and rules in the subdivision chapter and applicable overlays<sup>2</sup>. Additional wording is also recommended to be included to recognise that not all of these features, sites and areas are identified by the pTTPP. For example they may be identified via another process such as a resource consent. This recognises that Significant Natural Areas have only be identified in the pTTPP for the Grey District (refer Schedule 4).
- (16) With respect to the reference to ‘significant natural hazards’ in the overview, it is recommended that ‘significant’ be removed in this case as the overlays manage risk from natural hazards / natural hazards that are not all ‘significant’. This may require revisiting following the natural hazards topic hearing depending on the overall approach recommended.
- (17) Finally I recommend additional text be added as a minor amendment to remind plan users that the subdivision provisions must be read in conjunction with other district wide provisions such as natural hazards and risks, and natural environment values. This also addresses in part the relief sought by Forest and Bird (S560.521) for the overlay to include reference to other chapters.

### Objective 2

- (18) In addition to the changes set out above in relation to overarching matters, SUB-O2 is also recommended to be amended to improve clarity and consistency with other provisions in the chapter in relation to highly productive land – linking clause (g) to the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) consistent with Policy 6, and minor amendments to clause (f) to improve wording.

### Objective 3

- (19) During the hearing the panel raised a concern with the language used in Objective 3 moving away from RMA language, and using different terminology to how the overlays are expressed. I have recommended that this objective is split into subparts to improve clarity. My recommended

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<sup>2</sup> Note that this paragraph may require further updating if amendments are made to the relevant overlays or names through decisions on other chapters.

amendments to clause (a) of the objective focusses on protecting the section 6 matters which I consider is the intent of the first part of the objective. Clause (b) then focusses on the second part – the physical characteristics of the site and surrounding environment.

- (20) Another discussion during the hearing was whether this objective (and others) is giving effect to higher order direction including the RMA and New Zealand Coastal Policy Statement 2010 (NZCPS). For example Policy 11 in relation to indigenous biodiversity and Policy 13 in relation to preservation of natural character in the NZCPS uses the language to ‘avoid significant adverse effects’ and ‘avoid, remedy mitigate other adverse effects’ (Policy 11), or ‘avoid adverse effects...in areas...with outstanding natural character’ and ‘avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects’ (Policy 13). I note that Objective 3 (or other policies in the subdivision chapter) does not provide this specific direction – the focus is on protection and what the overlays seek to achieve, rather than setting different thresholds depending on whether what is being protected is significant, the adverse effect is significant, or the adverse effect is not significant but still must be avoided, remedied or mitigated. I have not found specific submission points on the subdivision provisions that give scope to amend the provisions to set out this more nuanced/detailed direction. I note the panel has recently sought legal advice on whether amendments can be made to give effect to higher order documents, and that the advice is that changes are limited to those sought by submissions. On this basis I have not recommended splitting out Objective 3 (and subsequent changes to policies to give effect to Objective 2). I acknowledge that the panel may find scope to make this change via a broad submission allocated to another topic. If there is scope via other submissions I consider an additional clause could be included after clause (a): ‘avoids, remedies or mitigates adverse effects on other values’.

#### **Objective 5**

- (21) I recommend a minor amendment to Objective 5 to improve clarity of language to align with language used in s229 of the RMA – to refer to ‘natural values’ rather than ‘identified significant natural heritage’. A further minor amendment is also recommended to refer to ‘water bodies’ to align with the RMA definition.

#### **Objective 6**

- (22) I have reflected on discussion at the hearing and evidence of Mr Kennedy for Westpower (paragraph 8.5) in relation to this objective. I note the submitter’s concerns with what ‘appropriate’ is in this instance, and agree it may be difficult to determine what appropriate is on a case by case basis. I have recommended additional wording to link the requirement for open space to take into account the need created by the proposed subdivision. This still allows for the strategic provision of open space and opportunity to respond to any existing need while acknowledging not every subdivision, e.g. subdivision associated with provision of infrastructure may not in itself generate a need for open space.

#### **Policy 1**

- (23) Minor amendments are recommended to Policy 1 to align with the recommended language used in Objective 3 with respect to the s6 matters, as well as minor changes to correct the tense of certain words.

#### **Policy 2**

- (24) Minor amendments to Policy 2 are recommended to correct tense/typographical errors.

- (25) At the hearing it was discussed whether clause n.ii. should contain an exemption for lines to and from substations in industrial zones (where they are permitted under the Energy chapter). I note that the reply for Infrastructure, Energy and Transport recommended that new distribution lines should be undergrounded. I do not support an exemption in Policy 2 as this would create an inconsistency with the Energy provisions.
- (26) I have further considered whether the request by Mr Ellerm (S581.046) for an amendment to Policy 2 and the panel's question of whether this matter should be addressed in a standard. I consider that Standard 7 as worded provides for appropriate provision of wastewater services for subdivision and no addition is required.

### **Policy 3**

- (27) Minor amendments are recommended to Policy 3 to improve clarity. At the hearing the panel asked whether reference to 'riparian margins' should be deleted. I agree that this reference is an odd addition given the focus of the policy is on matters managed by overlays, however I have not found any scope to delete it. I recommend a minor amendment to delete the words 'within or' as I agree with the point made by Ms Inta in the hearing that it would be unusual for subdivision to occur 'within' a riparian margin.

### **Policy 5**

- (28) Minor amendments to Policy 5 are recommended to improve clarity of language and consistency of pTTPP terminology. I also support focussing reverse sensitivity on regionally significant infrastructure, on the basis that this is the recommended direction in strategic directions.

### **Policy 6**

- (29) A minor amendment to Policy 6 is recommended to refer to 'lawfully established activities', for consistency of language across the pTTPP.
- (30) During the hearing a number of potential issues with Policy 6 were discussed with respect to the direction to 'avoid' those activities listed and in the context that the equivalent activity status should be 'non-complying'. I note that the non-compliance status for many of the subdivision rules is restricted discretionary or discretionary. Non-complying is typically only used in relation to subdivision in some of the natural hazard overlays, where the standards are not met for subdivision in the Future Urban Zone, where the rule is breached for subdivision in the national grid subdivision corridor, and for specific circumstances such as subdivision in the Natural Open Space Zone or separating a minor residential unit from the principal dwelling in the General Rural Zone. I also note there is no specific policy direction for subdivision proposals that seek to breach the minimum lot size standard.
- (31) While some submitters seek that various clauses be deleted, I maintain the view expressed in my s42A report (paragraph 162) that the policy direction relates to relevant resource management issues. I have not found scope in submissions to amend the activity status to more appropriately give effect to this policy in full, but acknowledge this could be revisited as hearings on the zone topics progress, particularly as this is where submissions on the minimum lot size standard are being heard.
- (32) With respect to clause (e) (renumbered as (f)), I note this policy does not fully give effect to the NZCPS, however I have not found scope within submissions on this chapter to amend the activity status.

### **Policy 9**

- (33) During Ms Inta's appearance at the hearing the panel discussed whether the requirement for esplanade reserves should be limited to allotments of less than four hectares.
- (34) Under SUB-S9 of the pTTPP, the creation of an esplanade reserve or strip is required where any subdivision creates an allotment smaller than four hectares, in accordance with section 230(3) of the RMA. Section 77(2) of the RMA enables district plans to include a rule which provides that an esplanade reserve or strip be provided where subdivision creates an allotment greater than four hectares.
- (35) I have reviewed the operative district plans for Buller, Westland, and Grey and note that:
- (a) The Buller District Plan includes rules (7.9.6.1) which require esplanade reserve and strips be provided where any allotment of four hectares or greater is created. There are no rules which relate to allotments less than four hectares, however the District Plan includes a cross reference to the requirements of section 230 of the RMA.
  - (b) The Westland District Plan (Section 7.7) and Grey District Plan (13.8.1), do not include specific requirements for the creation of esplanade reserves or strips, but include a cross reference to the requirements of section 230 of the RMA.
- (36) With respect to approaches in other recent district plan reviews: the Wellington City 2024 District Plan – Decisions Version (SUB-S7) and New Plymouth Proposed District Plan – Appeals Version (SUB-S8) require the provision of an esplanade or strip irrespective of the size of the new allotment. The Proposed Timaru District Plan (SUB-S8) includes a different width requirement for allotments that are less than four hectares (5m minimum width) and allotments that are greater than 4 hectares (10m minimum width).
- (37) I therefore consider it appropriate to amend this policy (and associated provisions) so that the requirement is not limited to allotments of less than four hectares. Scope to make this amendment is considered to be consequential to Buller Conservation Group (S552.104) and Frida Inta (S553.104) submissions on the subdivision rules.
- (38) At the hearing it was discussed whether including reference to natural hazards in this policy is appropriate. I note that the wording largely aligns with s229 of RMA and prefer to retain it, although I note the RMA language is 'mitigating natural hazards'. 'Reduction' of natural hazard risk is one part of mitigation.

#### **Rule 1**

- (39) I have further considered whether an additional permitted rule should be included where the boundary adjustment results in a reduced number of allotments (as supported by Ms Hadfield at paragraph 15 of her summary statement dated 15 April 2024). I have discussed this with planners from the district councils, who noted that it is not a common occurrence for boundary adjustment proposals that reduce the number of lots. On this basis I consider a specific pathway for this type of proposal is not required.
- (40) A minor amendment is recommended to clause (b) to rely on reference to the defined term of lawfully established activity (noting that the panel have indicated they may make further changes to this).

#### **Rule 2**

- (41) Minor amendments to this rule are recommended for clarity and consistency reasons.
- (42) At the hearing the panel asked whether the reference to the 'coast' in clause (4) should be to the 'coastal environment' or 'coastal marine area'. I note that the coastal environment is mapped, and that in many cases the mapping extends the coastal environment some way inland. On this basis I do not

recommend amending to ‘coastal environment’. I consider that s229 and s230 of the RMA provides direction with respect to creation of esplanade reserves, including reference to mean high water spring in relation to esplanade reserves in coastal areas, and there is no specific reference to the coastal marine area.

### Rule 3

- (43) Minor amendments to this rule are recommended for clarity and consistency reasons.
- (44) Further amendments to matter of control (f) are recommended to reflect the recommended changes in language in Objective 3 and Policy 1, as well as Policy 3 with respect to s6 matters and overlays. I also acknowledge the point made in the statement of Susan Aitken from Poutini Environmental dated 14 March 2024 and prepared on behalf of Ngāi Tahu, that the amendment supported at s42A stage to change ‘protection, maintenance and enhancement’ to ‘management of adverse effects’ diminishes the need to protect historic heritage and other s6 matters. I agree with the point made by Ms Aitken and support bring this language back into the matter of control, along with the other amendments to align with recommended wording in the objectives and policies.
- (45) The panel asked if reverse sensitivity should be included as a matter of control for controlled activity subdivisions. I have expressed the view previously that reverse sensitivity is best addressed via zone provisions, but also acknowledge that breaches of minimum lot sizes and subsequent potential for increased development can cause reverse sensitivity effects. To meet the controlled activity status the minimum lot size standard must be met to achieve controlled activity status, therefore I do not consider reference to reverse sensitivity is required to be included as matters of control.
- (46) For completeness, I maintain the view expressed in my s42A report that reference to amenity values is not certain enough as a matter of control.

### Rule 4

- (47) I have reconsidered the previous recommended amendments (in my s42A report) that softened the language with respect to matter of control (c). As outlined above, in response to the statement of Ms Aitken, I recommend further changes to ensure that the clause properly gives effect to s6 of the RMA. I have also made minor amendments for consistency with clause (f) of Rule 3.

### Rule 5

- (48) Minor amendments are recommended for clarity and consistency, including reference to lawfully establish activities.
- (49) At the hearing the panel asked if the recommended change from ‘constraints’ to ‘considerations’ in relation to geotechnical matters changed the meaning, as geotechnical matters are typically talked about as constraints. In my view ‘considerations’ does not exclude ‘constraints’ and I am therefore comfortable with the recommended wording. I also recommend keeping the reference to natural hazards ‘and’ geotechnical considerations, because ‘or’ may indicate that only one of those should be considered.
- (50) Clause (4) of Rule 5 lists specific Sites and Areas of Significance to Māori (**SASM**). Clarification was sought from Poutini Ngāi Tahu in Minute 23 as to the list of SASM that should be are subject to the exemption. A memorandum was tabled with the panel on behalf of Ngāi Tahu responding to Minute 23 that explains that one additional SASM should be included in this list. Relying on this advice from Ngāi Tahu I therefore recommend the clause is updated to include SASM 62 No.31 Māwhera Native Reserve.

#### **Rule 6**

(51) As per my comment on Rule 5, I recommend keeping the reference to natural hazards 'and' geotechnical considerations, because 'or' may indicate that only one of those can be considered.

#### **Rule 10**

(52) Clarification has been sought by the panel regarding clause 1 of this rule (that requires written approval from the relevant rūnanga) and whether an exception is needed for those SASM listed in clause (4) of Rule 5 – being the SASM where subdivision is a controlled activity. While I note that the heading of Rule 10 is for those sites and areas that do not meet Rule 5, for clarity and efficiency I recommend an exception be included.

#### **Rule 11**

(53) At the hearing it became apparent that the panel already had evidence before it on this rule as part of submissions on the natural features and landscapes hearing topic. I have corresponded with Ms Easton, the s42A author for this topic and we have agreed that the residual submission points that were allocated to the subdivision hearing stream be reallocated to the natural features and landscape hearing and Ms Easton will address these holistically in the right of reply for that topic. I have noted the transfer of these points in Appendix 2.

#### **Rule 12**

(54) I recommend minor amendments to align this matter of discretion with the similar matter of discretion in Rules 5 and 6, including reference to lawfully established activities and regionally significant infrastructure.

#### **Rule 13A**

(55) A minor amendment is recommended to correct a typographical error.

#### **Standard 2**

(56) I had recommended that clause 1 of SUB-S2 be deleted in my s42A report (paragraph 375), but had not shown it as a deletion in the s42A version of the provisions. I consider there is opportunity to delete this clause as it repeats a requirement of the building code. However, as this matter relates to a requirement for a flood free building platform, I suggested the appropriateness or otherwise of this clause be considered as part of the natural hazards hearing stream. I note there is a submission point on this allocated to natural hazards: Margaret Montgomery (S446.065).

#### **Standard 4**

(57) I recommend amending the reference to 'freshwater' in SUB-S4 clause (3) be amended to 'waterbody'. I understand it has been agreed in previous hearings to amend this reference to 'waterbody' and support this change for consistency across the pTTPP. At the hearing it was also discussed whether the reference should extend to include 'coastal water'. While I agree that stormwater disposal may affect coastal water, I consider including this reference expands the standard beyond what was notified where there is no scope through submissions on this standard to do so. I would support this being included if there was broad scope via submissions on another topic, or if the hearings panel determined this was a clause 16(2) amendment.

(58) Clarification was sought from the panel on Standard 9 regarding the word 'shall' in that standard, and whether 'must' is more appropriate. I agree that 'must' is more certain and recommend this clause be

amended. For consistency I recommend this change is made where 'shall' is used in a similar manner throughout the provisions, including this standard and several others, and where it is used in the financial contributions provisions.

#### **Standard 7**

- (59) The panel asked for further information with respect to why consultation with energy providers is required where the subdivision creates more than 15 lots. I have not been able to find any supporting information that indicates why the trigger is 15 lots. I have spoken to the planners from the district councils who did not have any information on this matter either. I note that Westpower have requested that this be deleted, and a clause be included that requires applicants to provide written confirmation of electricity supply from the network utility operator as part of complying with the standard. I understand that clauses that rely on a third party to provide approval / certification have been the subject of discussion in previous hearings, and that an agreed legal position on this question is being developed. At this stage I do not support the suggested clause but consider this matter could be revisited as part of overall plan integration if the panel form the view that certification clauses are appropriate. In the meantime I also note that this approval could still be required by the council as part of the consenting process.
- (60) With respect to the question of how future lot owners will be aware of any alternative energy supply, my expectation is that this would be included on the record of title.

#### **Standard 8**

- (61) The same question regarding the 15 lot trigger for consultation arises in relation to this standard, as noted above I have not been able to find any information that informs why 15 lots is the threshold.
- (62) Again, similar to Standard 7, I consider that any alternative means of providing telecommunications services will be documented on the record of title.
- (63) Following the appearance of representatives of telecommunications companies at the hearing, I understand that the issue that the telecommunications providers are trying to avoid by their requested amendment to clause (1) (S541.001) is digging up the road reserve twice – once for standard telecommunication services and again once fibre becomes available. I consider the wording sought by the submitters to require this for particular zones may be problematic where fibre is not yet available (or potentially limiting if fibre becomes available in other areas outside these zones in the future). I therefore recommend an amendment to clause (1) to require the fibre connection where it is available. Regarding the second part of the request for written approval to be provided, I maintain the view that this is more appropriately addressed via the resource consent process – particularly given the potential legal issue with requiring approval from a third party as part of a standard (noting that this remains a live issue as noted in paragraph 59 above).

#### **Standard 9**

- (64) Potential for wording improvements were identified by the panel in relation to clause (b) of this standard. Despite this being the wording used in the RMA (s230(4)) I agree the s42A recommended wording could be more eloquent, and recommend further minor edits for clarity purposes. I note the Ms Easton in her reply for the Natural Character of Waterbodies and Activities on the Surface of Water hearing topic (paragraphs 12) recommends that the national planning standards definition of 'bed' be included in the pTTPP.

(65) Consequential to the agreement that esplanade reserves are not limited to allotments of less than four hectares, I recommend that the reference to four hectares in this standard be removed.

### Financial Contributions

(66) For clarity and plan consistency reasons, as noted above I recommend amending 'shall' to 'must' throughout this chapter.

### Policy 3

(67) I have reviewed the wording of this policy in light of the proposed changes to the rule framework and recommendation for a discretionary activity consenting pathway (recommended prior the hearing in response to Te Tai o Poutini Plan Committee (S171.010)). I consider the words 'in discussion with the applicant but at the final discretion of the council' to be superfluous as this is what happens as part of a resource consent process. The policy will be engaged with if an applicant seeks consent under any of the financial contributions rules which naturally includes both the applicant and the council, with the council having discretion to grant consent or not. I note that this gives partial relief to submission points Chris & Jan Coll (S558.149), Chris J Coll Surveying Limited (S566.149), William McLaughlin (S567.226) and Laura Coll McLaughlin (S574.149).

### Policy 5

(68) I recommend amending 'shall' in this policy to 'can' to recognise that this list is not exhaustive, and not all of the infrastructure and facilities listed will be provided in every scenario.

### Rule 1

(69) I recommend that the words 'unless determined otherwise by the council' be deleted, as this is determination is provided for in the consenting process, consequential the recommendation to include an activity status for non-compliance with the rules in this chapter.

### Rule 2

(70) Ms Hadfield's evidence for Ball Developments Ltd (S453.015) and Davis Ogilvie & Partners Ltd (S465.011) is to include a rule similar to that in the Tasman Resource Management Plan, that allows for works that go above and beyond what is required to be waived or offset via a rule. In my view this is more appropriately considered via a resource consent application, allowing for consideration of the value of additional works and any ongoing costs such as maintenance. The panel asked me to consider, if the resource consent process is to be used in this scenario, whether the policy direction is satisfactory to allow consideration of the matters outlined by Ms Hadfield (paragraphs 54 to 59 of Ms Hadfield's statement of evidence dated 15 March 2024). In my view FC-O2 and the financial contributions policies collectively provide flexibility for this to be considered, including through directions to remedy or mitigate adverse effects resulting from the proposal (FC-P1), applying financial contributions in a fair and equitable manner (FC-P2), providing for either cash or land or a combination (FC-P3).

### Public Access

(71) During the hearing the panel heard from a number of submitters (Fish and Game, Outdoor Access Commission, Federated Farmers) on the public access topic. A number of questions were raised, including:

(a) Is the public access chapter located in the right part of the pTTPP;

- (b) Should the reference to unformed legal roads in the overview section should be retained, either in part or in full; is there any other reference to unformed legal roads in the pTTPP;
- (c) Should the chapter contain provisions relating to health and safety; and
- (d) Is a policy or policies required to give effect to the objective, or is this adequately given effect to by other pTTPP provisions.

(72) To inform the analysis I have reviewed a number of district plans with respect to how they deal with public access. The resource management matters and provisions that have been included within the Public Access Chapter for other second generation District Plans are summarised in the table below.

Plan	Summary of Key Public Access provisions
Porirua City Proposed District Plan – Appeals Version  17 May 2024	<ul style="list-style-type: none"> <li>• A Public Access Chapter is included in the Natural Environment Values section.</li> <li>• One objective, to maintain and enhance public and customary access to along Porirua City’s coastal and riparian margins.</li> <li>• Two policies that seek:               <ul style="list-style-type: none"> <li>○ To enable activities in coastal and riparian margins that maintain and enhance public and customary access.</li> <li>○ Maintain and enhance public and customary access to and along coastal and riparian margins by requiring the creation of esplanade reserves and considering other opportunities to obtain access to the coast, Harbour, and waterbodies through subdivision and development.</li> </ul> </li> <li>• There are no rules contained in this chapter.</li> </ul>
Wellington City 2024 District Plan – Decisions Version  10 May 2024	<ul style="list-style-type: none"> <li>• A Public Access Chapter is included in the Natural Environment Values section.</li> <li>• Two objectives:               <ul style="list-style-type: none"> <li>○ Maintain and enhance public access to the coast and waterbodies.</li> <li>○ Ensure that public access does not have a negative impact on existing values, such as natural character, indigenous biodiversity, landscape values, historic heritage, sites of significance to Māori or the coastal environment.</li> </ul> </li> <li>• Three policies that:               <ul style="list-style-type: none"> <li>○ Seek to enable activities within coastal and riparian margins that do not limit or prevent public access to, along or adjacent the coast and waterbodies.</li> <li>○ Seek to and enhance public access to, along or adjacent the coast and waterbodies, including by ensuring that public access is allowed for through subdivision design and through the creation of esplanade reserves or esplanade strips.</li> <li>○ Identify the circumstances where an exception to providing public access is appropriate. This includes protecting public health or safety.</li> </ul> </li> <li>• There are no rules contained in this chapter.</li> </ul>
Partially Operative Selwyn District Plan (Appeals Version)  19 August 2023	<ul style="list-style-type: none"> <li>• A Public Access Chapter is included in the Natural Environment Values section.</li> <li>• Two objectives:               <ul style="list-style-type: none"> <li>○ Public access to and along the District’s key surface water bodies and coastal marine area.</li> <li>○ Public open space and public access activities do not adversely affect natural character values and indigenous biodiversity values of surface water bodies and the coastal marine area.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Two policies that: <ul style="list-style-type: none"> <li>○ Identify the circumstances where public access is required. This includes where there is an acceptably low risk to public health or safety.</li> <li>○ Require the creation of esplanade strips and reserves.</li> </ul> </li> <li>• Rules which: <ul style="list-style-type: none"> <li>○ Require the creation of esplanade reserves at the time of subdivision which creates an allotment smaller than 4 hectares.</li> <li>○ Manage land adjoining an existing esplanade reserve, land that has been previously set aside, or otherwise described in section 236 of the RMA.</li> <li>○ Manage the subdivision of land in the bed of a river, lake or the coastal marine area.</li> <li>○ Require the creation of esplanade strips at the time of subdivision which creates an allotment smaller than 4 hectares adjoining an identified water body.</li> </ul> </li> </ul>
<p>New Plymouth Proposed District Plan – Appeals Version  14 September 2023</p>	<ul style="list-style-type: none"> <li>• A Public Access Chapter is included in the Natural Environment Values section.</li> <li>• Three objectives: <ul style="list-style-type: none"> <li>○ Public access to and along the coast and waterbodies with high recreational, scenic or amenity values.</li> <li>○ The development of the district’s shared pathway network to provide public access.</li> <li>○ That access to the coast and waterbodies does not result in adverse effects on natural character, indigenous biodiversity, historic heritage, cultural, or landscape values, or n the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.</li> </ul> </li> <li>• Five policies that: <ul style="list-style-type: none"> <li>○ Seek to identify and map public access corridors and manage the effects of activities on public access corridors.</li> <li>○ Require the creation of esplanade reserves or strips at the time of subdivision.</li> <li>○ Manage adverse effects to regionally significant surf breaks.</li> </ul> </li> <li>• Rules for activities on sites containing a mapped public access corridor.</li> </ul>
<p>Proposed Timaru District Plan  22 September 2022</p>	<ul style="list-style-type: none"> <li>• A Public Access Chapter is included in the Natural Environment Values section.</li> <li>• One objective, to maintain and enhance public access to and along the coastal marine area and the margins of identified wetlands and rivers, and only restrict access where desirable.</li> <li>• Four policies that: <ul style="list-style-type: none"> <li>○ Recognise the benefits of public access;</li> <li>○ Identify the circumstances where public access is required;</li> <li>○ Seek to ensure the design of public access is in accordance with Council standards; and</li> <li>○ Identify the circumstances where an exception to providing public access is appropriate. This includes public health or safety.</li> </ul> </li> <li>• A rule which manages land use, subdivision, and development on sites overlaid or adjoining waterways identified in the Public Access Provision Overlay. The rule requires, as a controlled activity, public access to be proposed in accordance with the identified Overlay and Schedule within the Plan. The rule</li> </ul>

	also identifies instances in the zones where public access is not required, i.e., in the General Residential zone where five or less residential units or allotments are created, and the activity does not require a discretionary or non-complying resource consent under any other rule of the Plan.
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- (73) My comments in relation to these district plan approaches to public access are as follows:
- (a) It is common for the plans to locate the public access chapter in the Natural Environment Values section.
  - (b) All plans reviewed are focussed to providing public access along and adjacent to waterbodies, such as the coastal marine area, or lakes and rivers or riparian margins. I consider that is consistent with the direction provided for under section 6(d).
  - (c) The New Plymouth Proposed District Plan – Appeals Version provides for public access more generally, however this is in relation to public access corridors which are spatially identified within the planning maps.
  - (d) There are direct links to the creation of esplanade reserves and esplanade strips at the time of subdivision, including cross references to provision in the Subdivision Chapter.
- (74) The public access chapter for the pTTPP is located in the District Wide Matters – Natural Environment Values section. This is consistent with other plans, as well as the national planning standards. I therefore recommend the public access chapter remain in this part of the plan.
- (75) With respect to recognising health and safety effects associated with providing for public access in other plans, I note the following.
- (76) The provisions in the Wellington City 2024 District Plan – Decisions Version, Partially Operative Selwyn District Plan (Appeals Version), and Proposed Timaru District Plan recognise that effects on public health or safety are a relevant consideration to identified circumstances where public access it is appropriate to not provide public access.
- (77) I note that this provision for an exemption is provided in the context of public access being required to be provided along and adjacent the coastal marine area, rivers and lakes, and identified waterbodies, as opposed to health and safety considerations associated with providing public access over privately owned land more generally.

**Other chapters in the pTTPP which give effect to the Public Access chapter**

- (78) The panel requested information on whether there are other chapters in the pTTPP which give effect to the PA chapter and PA-O1. The Overview text of the PA chapter identifies relevant provisions being located in the Poutini Ngāi Tahu, Sites and Areas of Significance to Māori, Subdivision, Natural Character and Activities Adjacent to Waterbodies, Activities on the Surface of the Water, and the Coastal Environment.
- (79) The primary provisions that give effect to the public access are those that require esplanade reserves and strips in the subdivision chapter. The provisions that I consider are of particular relevance are identified and summarised below:
- (a) SUB-O5, SUB-P9, and SUB-S9 of the Subdivision chapter require the provision of esplanade reserves and esplanade strips at the time of subdivision. In particular, SUB-O5 recognises that that esplanade reserves and strips created through subdivision provide public access to and along water bodies and the coastal marine area.
  - (b) ASW-P2 of the Activities on the Surface of Water Chapter enables motorised water craft where this does not impact public access.

(80) I do not consider there is any scope to include additional policy in this chapter beyond what is recommended with respect to health and safety below.

#### **Reference to health and safety in the chapter**

(81) There were relatively few submissions on this chapter, and the scope to make changes is reasonably narrow. Manawa Energy Limited (Manawa Energy) (S438.102) have requested a new policy that I did not support at s42A stage on the basis that it largely repeated the objective. I maintain the view that maintenance of infrastructure is provided for already in the pTTPP and do not consider this to be repeated in the chapter. I have reflected on whether the public safety aspect of the policy should be included following questions during the hearing and consider that health and safety is a relevant consideration for the provision of public access, including influencing decisions on esplanade reserves or strips. I therefore recommend a policy be included that recognises this aspect of public safety. I recommend using the wording 'have regard to' rather than 'take into account' as the former is generally accepted as more directive.

(82) With respect to higher order direction, maintenance and enhancement of public access as recognised by s6(d). The NZCPS also recognises that restrictions on public walking access may be imposed to protect public health or safety (Policy 19(3)(e)). The West Coast Regional Policy Statement Section 4 Policy 4(b) seeks to promote the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers where it contributes to the economic, social and cultural wellbeing of people and communities. I consider the recommended policy gives effect to this direction. I also note there is other legislation that specifically manages health and safety

#### **The management of unformed legal roads under the pTTPP**

(83) The panel have queried whether the pTTPP refers to unformed legal roads beyond the requirements in the Transport chapter, which relate to requirements for physical formation.

(84) The only other reference to unformed legal roads under the pTTPP provisions is Rule INF-R12, which provides for new telecommunications poles, new antenna attached to poles and new antenna attached to a building not regulated by the NES-TF as a permitted activity. Rule INF-R12.1.v.b provides for a headframe not exceeding 6m in diameter in all other zones, and including within unformed legal roads.

(85) In my view, this reference is not significant, and there are otherwise no references to unformed legal roads under the pTTPP that relate to a relevant resource management matter that would require cross reference in the PA chapter.

(86) I have recommended a minor change to the overview section, to retain the first sentence on unformed legal roads. While the overview has no legal weight and I am neutral as to whether the text should be retained or not, I understand there was a general preference for this sentence to be retained for context.

#### **S32AA**

(87) Section 32AA of the RMA requires a further evaluation to be undertaken in accordance with s32(1)-(4) if any amendment has been made to the proposal (in this case the pTTPP) since the original s32 evaluation report was completed. Section 32AA requires that the evaluation is undertaken in a level of detail that corresponds to the scale and significance of the changes. Minor changes to correct errors or improve the readability of the pTTPP have not been individually evaluated. In terms of s32AA, these minor amendments are efficient and effective in improving the administration of the pTTPP provisions, being primarily matters of clarification rather than substance.

- (88) I note that I did not include a full s32AA evaluation alongside the changes recommended in the s42A addendum. I consider the majority of recommended changes are of a minor nature and are intended to improve the workability of the pTTPP.
- (89) More substantive changes have been recommended to the financial contributions chapter following the s42A version. This includes providing a clear consenting pathway for proposals that seek to reduce or waive financial contributions which improves pTTPP effectiveness and efficiency. The recommended removal of provisions that provided for the offsetting and compensation, including FC-P6 and consequential amendments to the rules including deletion of FC-R12 is considered to be more efficient and effective at achieving the objectives of the pTTPP because it removes the potential for uncertainty and ambiguity for determining the amount of financial contribution required to offset or compensate. As noted in my s42A addendum, values may change from site to site, and the nature and extent of adverse effects that may require offsetting or compensation will typically only be determined from a proposal specific assessment – they are not able to be objectively set out and quantified in a plan rule.
- (90) I consider the benefits outweigh the costs in deleting these provisions given the potential costs associated with addressing the uncertainty in the notified provisions. Given the uncertainty with how the notified approach would play out in practice, and that there is not a comparable example of this approach working else where, I consider the risk of retaining the notified approach to be higher than amending it.
- (91) The additional policy recommended for public access is considered to be effective at localising what is expressed by the objective. I consider providing direction in this chapter is complementary to the other provisions in the pTTPP that give effect to the public access objective and therefore improves efficiency of pTTPP implementation. For these reasons the benefits outweigh the costs.
- (92) I consider that there is a good degree of certainty with respect to how the amendments to the provisions will provide for public access across the districts. I consider that there is sufficient information on which to act in relation to these matters.
- (93) The recommended amendments to these provisions are therefore considered to be more appropriate than the notified version in the pTTPP.