

TAI POUTINI PLAN COMMITTEE

Hearing of Submissions on the Proposed Te Tai O Poutini Plan

Recommendation Report of Hearing Panel

Recommendation Report: Variation 1

Activities on the Surface of Water

Hearing Date: 4 December 2024

HEARING PANEL

Dean Chrystal (Chair)

Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel
Variation 1 - Activities on the Surface of Water

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PART A – INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Introduction

1. Matters to do with my appointment and other preliminary matters applicable to all Hearing Panel’s recommendations on the Proposed Te Tai o Poutini Plan (**pTTPP** or ‘the Plan’) are recorded and addressed in Recommendation Report 1.
2. This Recommendation Report relates to Variation 1: Activities on the Surface of Water (‘Variation 1’). Variation 1 proposed three very specific and interrelated changes to the Plan relating to activities on the surface of water to achieve the one specific outcome (i.e. avoiding undue regulation of Port activities by the Plan itself). It includes the addition of a new Policy ASW-P4, a new Rule ASW-R4A, and the amendment to the title of Rule ASW-R6. Through these additions and amendment, Variation 1 provides for the commercial activity of the Ports of Greymouth and Westport on the surface of water as permitted activities, whereas other commercial activities on the surface of water are covered by Rule ASW-R6 and Rule ASW-R7 and are either restricted discretionary or discretionary activities.
3. This Recommendation Report contains my evaluations and recommendations to the TTPP Committee on the submissions received on the Activities on the Surface of Water subsection of the General District-Wide Matters section of Part 2 – District Wide Matters of the Plan.
4. The Section 32 Report¹ (‘s32 Report’), authored by Ms Lois Easton, a principal planner, provided an evaluation of the options for the management of commercial activities on the surface of rivers, lagoons and lakes. It notes that the need for the Variation was brought about because of an omission in the proposed TTPP which failed to recognise that the Coastal Marine Area boundary, as set out in the West Coast Regional Coastal Plan is downstream of the two ports and as a consequence commercial activities are a Restricted Discretionary Activity. The s32A report notes that it was never intended that the Plan would regulate commercial port activities in this way, and on discovery of this oversight, the Section 32 Report concluded that a Variation to the Plan would be the best means to rectify the situation.
5. Five submissions were received on Variation 1. No further submissions were received.
6. The Section 42A Officer’s Report² (‘s42A Report’), authored by Mr Douglas Bray, a senior policy planner with West Coast Regional Council acting as the Reporting Officer, was circulated prior to the hearing. The s42A Report provided an analysis of the submissions received; and made recommendations on the Plan. It also included a Section 32AA Evaluation for Variation 1 which considered the effectiveness and efficiency, costs and benefits, and the risk of acting or not acting on the variation.
7. The s42A Report recorded the relatively brief submissions received from the entities listed below, with the brevity due to the submissions primarily being matters of clarification rather than substance.
 - (a) The Harbourmaster, Buller District Council (S665.003)

¹ Te Tai o Poutini Plan – Section 32 Evaluation Report - Variation 1: Commercial Activities on the Surface of Water

² Activities on the Surface of Water

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- (b) Westpower Limited (S547.0513)
 - (c) The West Coast Regional Council (S488.041)
 - (d) The Manager, Port of Greymouth (S666.002)
 - (e) WMS Group HQ Limited and WMS Land Co Limited (S599.176)
8. The s42A Report summarised the submissions and relief sought; an analysis of the submissions on the provisions; and recommendations on the provisions and submissions. Specifically, the Reporting Officer recommended that all the requested decisions be accepted as detailed in the s42A Report.
9. This Recommendation Report follows the same structure of the s42A Report and provides a summary of the issues raised in submissions, the s42A Report analysis and recommendations, before providing my evaluation and recommendation. As the submitters did not provide evidence, the Reporting Officer does not have reply evidence.
10. This Recommendation Report should be read in conjunction with the s42A Report and the tracked change version of the notified Plan provisions (attached as **Appendix 1** to this Report). The tracked change version of the pTTPP provisions forms an integral part of the decision and records all recommended amendments (additions and deletions) to the notified pTTPP provisions made by the Panel. The tracked change version of the pTTPP shows the Panel's recommended changes to the notified provisions in **bold and underlining** indicating additions and ~~striketrough~~ indicating deletions. If there is any discrepancy between this Recommendation Report and the tracked change version of the Plan, the tracked change version of the Plan shown in **Appendix 1** of this Report must prevail.
11. This Recommendation Report contains the reasons for my recommendations. These comprise either adoption of the reasoning and recommendations of the original s42A Reports or a specific reasoning.
12. Where I recommend the pTTPP provisions should remain as notified, it is because:
- (a) I have adopted the reasoning and recommendation of the s42A Report or addendum to retain the provision as notified; or
 - (b) I have recommended to retain the provision as notified for reasons set out in this Recommendation Report.
13. Where there is a recommended change to a notified provision of the pTTPP, it is because:
- (a) I have recommended amendments to a provision for reasons set out in this Recommendation Report in response to a submission point, which the s42A Report did not recommend; or
 - (b) I have adopted the reasoning and recommendation of the s42A Report to change the provision to that recommended in the original s42A Report; or
 - (c) I have adopted the reasoning and recommendation to that recommended in the Reporting Officer's reply evidence; or

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- (d) A consequential change has been necessary following on from a decision in either (a), (b) or (c).
14. Where there may be a different recommendation between the s42A Report and the Reporting Officer's addendum (i.e., the recommendation by the Reporting Officer has changed as a result of hearing the evidence of submitters), unless the recommendation specifically adopts the original s42A Report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
15. If there are circumstances where I consider that alternative relief is more appropriate than that requested in submissions to give effect to the RMA, NZCPS, national policy statements, RPS and/or the West Coast Regional Coastal Plan but are still within the scope of the relief sought, the relevant recommendation clearly sets out the nature of the change and the reason for the change. This is recorded in this Recommendation Report.
16. If any changes are recommended to the provisions (since the s32A Report was completed) a further evaluation, if required, has been undertaken pursuant to s32AA of the RMA. Any such circumstances are referred to in this Recommendation Report in sufficient detail to demonstrate a further evaluation was undertaken.
17. Clause 16(2) of Schedule 1 of the RMA enables me to recommend amendments to alter information, where such an alteration is of minor effect, or may correct any minor errors. In the recommendations below each section considered in Part C of this Report and in the tracked change version of the notified Plan provisions (**Appendix 1** of this Report) records any such minor amendments.

1.2. Terminology in this Report

18. Throughout this Report, the following abbreviations will be used:

BDC	Buller District Council
Councils	Buller District Council, Grey District Council, and Westland District Council
NCO	National Conservation (Grey River) Order 1991
NES-FW	National Environmental Standards for Freshwater
NPS-FW	National Policy Statement for Freshwater Management
NZCPS	New Zealand Coastal Policy Statement
Planning Standards	National Planning Standards
Port of Greymouth	PoG
RMA or the Act	Resource Management Act 1991
RPS	West Coast Regional Policy Statement

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The Ports	The Westport Harbour Port and the Port of Greymouth
WCO	Water Conservation (Buller River) Order 2001
WCRC	West Coast Regional Council
WCRCP	West Coast Regional Coastal Plan
WCRLTP	West Coast Regional Land Transport Plan
WCRLWP	West Coast Regional Land and Water Plan
WMS	Westland Mineral Sands

1.3. Hearing Arrangements

19. The hearing was held via Audio Visual on the 4 December 2024.

1.4. Appearances

20. No submitters appeared at the hearing.

1.5. Right of Reply

21. No right of reply was necessary.

1.6. Procedural Steps and Issues

22. No procedural matters were raised at the hearing.

1.7. Site Visits

23. No site visits relating to these chapters were undertaken.

PART B - STATUTORY REQUIREMENTS AND DOCUMENTS

24. The Activities on the Surface of Water subsection is one of seven subsections in the General District Wide Matters section located in Part 2 – District-Wide Matters – Te Wāhanga 2 – Ngā Kaupapa ā-Rohe Whānui. This subsection has objectives, policies and rules for activities occurring on the surface of rivers, streams, lagoons and lakes across the districts. The activities include the use of motorised watercraft for non-commercial, commercial, and Ports purposes; commercial activities; and the installation of structures and swimming platforms.

25. The s32 Report outlined the relevant statutory considerations applicable to Activities on the Surface of Water; and the relationships between the sections of the RMA and higher order documents.

26. The s42A Report highlighted the relevant matters from section 6, 7 and 8 of the RMA, along with the NPS-FW, NES-FW, NZCPS, National Planning Standards, WCO, NCO, RPS, WCRCP, WCRLWP, WCRLTP, and iwi management plans.

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27. The s42A Report indicated that three Iwi Management Plans apply specifically within the West Coast/Te Tai o Poutini Region. However, the Report highlights that none of the three plans are of relevance to the particular issue of concern, being activities on the surface of water. The Report acknowledged that the Buller/Kawatiri/Kawatore River and Grey/Mawhera/Mawheranui River do have particular significance within the wider landscape to Poutini Ngai Tahu. However, it points out that neither River is subject to a Statutory Acknowledgement or any other means of protection or recognition provided for in the Ngai Tahu Claims Settlement Act 1998.
28. Clause 10 of Schedule 1 of the RMA states that it is not necessary to provide decisions on individual submissions. Recommendations are made within the scope of requested relief, either individual submissions or groups of submissions making similar requests, as specified in reasons for recommendation. References to relevant submissions are made in the footers.
29. The National Planning Standards mandatory direction 7.27 requires provisions relating to managing activities on the surface of water be in an Activities on the Surface of Water chapter within the General District Wide Matters section of the Plan. I am satisfied the Plan structure, including Variation 1, is consistent with this national direction.

PART C – SUBMISSIONS, EVIDENCE, EVALUATION AND RECOMMENDATIONS

2. ACTIVITIES ON THE SURFACE OF WATER

2.1. Policy ASW-P4

Submissions

30. Five submissions relating to Policy ASW-P4 were received and are summarised in a Table on page 17 of the s42A Report.
31. All submissions supported the new Policy ASW-P4 and requested that the policy be added / retained / supported / adopted in the Plan. No submissions requested amendments to the wording of Policy ASW-P4.
32. I have considered the relevant submissions received and adopt the summaries in the s42A Report.

Section 42A Report

33. The Reporting Officer recommended that the five submissions be accepted, and Policy ASW-P4 as worded in Variation 1 be inserted into the Plan. In doing so, the Reporting Officer highlighted that Policy ASW-P4 would improve the workability of the Plan, particularly in relation to the Ports and their operations.

Hearing and Submitter Evidence

34. No submitters appeared at the hearing, and no hearing evidence was received.

Hearing Panel's Evaluation

35. I agree with the Reporting Officer's s32AA Report.

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36. The Reporting Officer implied in the s32AA Report that the insertion of Policy ASW-P4 in the Plan would clarify that the Ports day-to-day operations on the surface of water are supported by the Plan's policy and rule framework. The Reporting Officer also implied that this clarification would improve the Ports certainty of operating on the surface of water, and the future development of the Ports. I agree with these implications.

Hearing Panel's Recommendation

37. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, I recommend that Policy ASW-P4 be added to the Plan as set out in the below section.

ASW-P4

Enable the use of the Port of Greymouth and Westport Harbour Ports and their use of the Māwheranui/Grey and Kawatiri/Buller Rivers for port activities and commercial activities associated with the ports.

2.2. Rule ASW-R4A

Submissions

38. Five submissions relating to Rule ASW-R4A were received and are summarised in a Table on pages 17 to 18 of the s42A Report.
39. All submissions supported the new Rule ASW-R4A and requested that the rule be added / retained / adopted in the Plan. The WCRC highlighted that the continued operation of the Ports is consistent with the WCRLTP. No submissions requested amendments to the wording of Rule ASW-R4A.
40. I have considered the relevant submissions received and adopt the summaries in the s42A Report.

Section 42A Report

41. The Reporting Officer recommended that the five submissions be accepted, and Rule ASW-R4A as worded in Variation 1 be inserted into the Plan.
42. In doing so, the Reporting Officer indicated that Rule ASW-R4A would clarify that the Ports day-to-day operations on the surface of water are permitted activities under the Plan. This is suggested as removing considerable uncertainty about whether the Ports require resource consent for their specific activities on the surface of water. Therefore, the insertion of Rule ASW-R4A will improve the workability of the Plan generally, as stated by the Reporting Officer.
43. Additionally, the Reporting Officer highlighted that not adding Rule ASW-R4A to the Plan would not be conducive to future development of the Ports, nor enabling the Ports to continue to function effectively as regionally significant infrastructure.
44. Lastly, the Reporting Officer highlighted that the Plan is not intended to, nor does it need to, regulate the activities of the Ports.

Hearing and Submitter Evidence

45. No submitters appeared at the hearing, and no hearing evidence was received.

Hearing Panel's Evaluation

46. I agree with the Reporting Officer's s32AA Report.

47. Specifically, I agree that providing specifically for the Ports operations on the surface of water will distinguish them from other activities occurring on the surface of water, thereby reducing uncertainty in the application of the Plan. Consequently, the insertion of Rule ASW-R4A in the Plan will avoid any unnecessary regulatory process for regionally significant infrastructure, for example requiring the Ports to obtain a resource consent for their day-to-day operations on the surface of water.

Hearing Panel's Recommendation

48. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, I recommend that Rule ASW-R4A be added to the Plan as set out in the below section.

ASW-R4A	<u>Use of watercraft for Commercial Activities and Port Activities on the Surface of Water</u>
<u>Activity Status Permitted:</u>	
<u>Where: This is the use of the surface of water for commercial activities on water and other Port Activities</u>	
1. <u>Associated with Port of Greymouth and harbour, and seaward of the State Highway 6 Bridge on the Māwheranui/Grey River, and including within the Erua Moana Lagoon; or</u>	
2. <u>Associated with Westport Harbour Port and harbour, and seaward of the State Highway 67 Bridge on the Kawatiri/Buller River.</u>	
<u>Activity status where compliance not achieved: Restricted Discretionary</u>	

2.3. Rule ASW-R6

Submissions

49. Five submissions relating to Rule ASW-R6 were received and are summarised in a Table on page 18 of the s42A Report.

50. All submissions supported the amendment to Rule ASW-R6 and requested that the amendment be supported / retained / adopted in the Plan. The WCRC highlighted that the continued operation of the Ports is consistent with the WCRLTP. No submissions requested amendments to the wording of Rule ASW-R6.

51. I have considered the relevant submissions received and adopt the summaries in the s42A Report.

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Section 42A Report

52. The Reporting Officer recommended that the five submissions be accepted, and the amendment to Rule ASW-R6 as worded in Variation 1 be inserted into the Plan.
53. In doing so, the Reporting Officer indicated that the amendment to Rule ASW-R6 will further assist in clarifying which commercial activities on the surface of water are not a permitted activity and, therefore, require resource consent.
54. Consequently, the Reporting Officer implied that providing this certainty will improve the workability of the Plan generally.
55. Lastly, as previously mentioned above, the Reporting Officer highlighted that not amending Rule ASW-R6 would not be conducive to future development of the Ports, nor enabling the Ports to continue to function effectively as regionally significant infrastructure.

Hearing and Submitter Evidence

56. No submitters appeared at the hearing, and no hearing evidence was received.

Hearing Panel's Evaluation

57. I agree with the Reporting Officer's s32AA Report.
58. For similar reasons as detailed above, I agree that distinguishing the Ports operations from other activities occurring on the surface of water, specifically by excluding the Ports from Rule ASW-R6, will reduce uncertainty in the application of the Plan and avoid any unnecessary regulatory process.

Hearing Panel's Recommendation

59. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, I recommend that the amendment to Rule ASW-R6 be added to the Plan as set out in the below section.

ASW-R6	Commercial Activities on the Surface of Rivers, Lagoons and Lakes not associated with Westport Harbour Port and Port of Greymouth
Activity Status Restricted Discretionary	
Where:	
1. Any commercial activity on the Makaawhio River, Arahura River, Lake Mahinapua, Mahinapua Creek/Tuwharewhare, Makatata Stream, Saltwater Lagoon (at Paroa), Waitangiroto River or Kaimata/New River is in accordance with an Iwi/Papatipu Rūnanga Management Plan and has written approval of the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio.	
Discretion is restricted to:	
a. Effects on public access and recreational use of the waterbody;	
b. Effects on landscape, natural features or natural character of the waterbody and its margins;	

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- c. Effects on the amenity values or any adjacent residential activities;
- d. Effects on significant natural or historic heritage values including effects on scheduled sites or areas;
- e. Effects of noise on the natural character, ecological and amenity values; and
- f. Effects on Poutini Ngāi Tahu cultural values including access to mahinga kai and scheduled sites and areas.

Advice Note:

1. Where activities are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these also subject to rules in the Sites and Areas of Significance to Māori Chapter.

Activity status where compliance not achieved: Discretionary



Dean Chrystal

Hearings Panel - Chair

Date: 7 April 2025

APPENDIX 1 – RECOMMENDATIONS ON PLAN PROVISIONS

ASW

Activities on the surface of water - Ngā mahi ki te kārewa o te wai

Add the following provisions:

ASW – P4 Enable the use of the Port of Greymouth and Westport Harbour Ports and their use of the Māwheranui/Grey and Kawatiri/Buller Rivers for port activities and commercial activities associated with the ports.

<u>ASW - R4A</u>	<u>Use of watercraft for Commercial Activities and Port Activities on the Surface of Water</u>	
<u>Activity Status: Permitted</u>	<ol style="list-style-type: none"> 1. <u>Associated with Port of Greymouth and harbour, and seaward of the State Highway 6 Bridge on the Māwheranui/Grey River, and including within the Erua Moana Lagoon; or</u> 2. <u>Associated with Westport Harbour Port and harbour, and seaward of the State Highway 67 Bridge on the Kawatiri/Buller River.</u> 	<u>Activity status where compliance not achieved:</u> <u>Restricted Discretionary</u>
<u>Where: This is the use of the surface of water for commercial activities on water and other Port Activities</u>		

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<p>ASW - R6</p>	<p>Commercial Activities on the Surface of Rivers, Lagoons and Lakes <u>not associated with Westport Harbour Port and Port of Greymouth</u></p>	
<p>Activity Status Restricted Discretionary Where:</p> <ol style="list-style-type: none"> Any commercial activity on the Makaawhio River, Arahura River, Lake Mahinapua, Mahinapua Creek/Tuwharewhare, Makatata Stream, Saltwater Lagoon (at Paroa), Waitangiroto River or Kaimata/New River is in accordance with an Iwi/Papatipu Rūnanga Management Plan and has written approval of the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio. <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> Effects on public access and recreational use of the waterbody; Effects on landscape, natural features or natural character of the waterbody and its margins; Effects on the amenity values or any adjacent residential activities; Effects on significant natural or historic heritage values including effects on scheduled sites or areas; Effects of noise on the natural character, ecological and amenity values; and Effects on Poutini Ngāi Tahu cultural values including access to mahinga kai and scheduled sites and areas. <p>Advice Note:</p> <ol style="list-style-type: none"> Where activities are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these also subject to rules in the Sites and Areas of Significance to Māori Chapter. 		<p>Activity status where compliance not achieved: Discretionary</p>