

# **TAI POUTINI PLAN COMMITTEE**

**Hearing of Submissions on the Proposed Te Tai O Poutini Plan**

**Recommendation Report of Hearing Panel**

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## **Recommendation Report**

**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā  
Mahi ka Noho Hāngai ki ngā Hopua Wai**

**and**

**Activities on the Surface of Water – Ngā mahi ki te kārewa o te wai**

**Hearing date: 20 and 21 February 2024**

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### **HEARING PANEL**

Paul Rogers (Chair)

Maria Bartlett

Anton Becker

Sharon McGarry

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**CONTENTS**

<b>PART A – INTRODUCTORY MATTERS</b>	<b>3</b>
<b>1. Preliminary Matters</b>	<b>3</b>
1.1. Introduction	3
1.2. Terminology in this Report	5
1.3. Hearing Arrangements	7
1.4. Appearances	7
1.5. Overview of submitter evidence and statements received	7
1.6. Right of Reply	9
1.7. Procedural Steps and Issues	9
1.8. Site Visits	9
<b>PART B - STATUTORY REQUIREMENTS AND DOCUMENTS</b>	<b>10</b>
<b>PART C – SUBMISSIONS, EVIDENCE, EVALUATION AND RECCOMENDATIONS</b>	<b>11</b>
<b>2. NATURAL Character and margins of Waterbodies</b>	<b>11</b>
2.1. NC General/Whole Chapter	11
2.2. NC Overview	12
2.3. NC Definitions	19
2.4. NC Objectives	25
2.5. NC Policies	30
2.6. NC Rules	41
<b>3. Activities on Surface of Water Chapter</b>	<b>54</b>
3.1 ASW General/Whole Chapter	54
3.2 ASW Objectives	57
3.3 ASW Policies	59
3.4 ASW Rules	63

**APPENDICES**

Appendix 1 - Recommendations

## **PART A – INTRODUCTORY MATTERS**

### **1. PRELIMINARY MATTERS**

#### **1.1. Introduction**

1. Matters to do with our 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 Natural Character and Margins of Waterbodies – Ngā Ahua me ngā Mahi ka Noho Hāngai ki ngā Hopua Wai (**NC**) Chapter in the Natural Environment – Nga Uara Taiao Aotūroa section of the pTTPP; and Activities on the Surface of Water – Ngā mahi ki te kārewa o te wai (**ASW**) Chapter in the General District Wide Matters - Ngā Kaupapa ā-Rohe Whānui section of the pTTPP. The Report contains the Hearing Panel’s recommendations to Council on the submissions and further submissions received on these two chapters of the Plan.
3. The Section 32 Report<sup>1</sup> provided an evaluation of the options for the management of Natural Character and Waterbodies through the combined Plan, including the regulatory and policy direction, key resource management issues, the evidence base (research, consultation, information and analysis undertaken), the operative District Plan provisions, an analysis of best practice and an evaluation of the options.
4. The Section 42A Officer’s Report<sup>2</sup> (‘s42A Report’), authored by Ms Lois Easton, a planner with Kererū Consultants acting as the Reporting Officer, was circulated prior to the hearing. The s42A Report provided an analysis of submissions and further submissions received.
5. A total of 48 submissions and 22 further submissions relating to the Natural Character of Waterbodies and Activities on the Surface of Water were received
6. The s42A Report assessed a total of 323 submission points and 151 further submission points on the Natural Character and Margins of Waterbodies; and 89 submission points and 40 further submission points relating to the Activities on the Surface of Water. It provided summaries of the submissions and further submissions received and the relief sought; an analysis of the proposed changes to provisions; and recommendations on changes to the plan provisions (see Appendix 1 of s42A Report) and the accept/accept in part/reject recommendations for individual submission and further submission points (see Appendix 2 of the s42A Report).
7. The matters raised by submitters were grouped in the s42A Report in relation to each of the following key issues for each of the two chapters:
  - General/Whole Chapter;
  - Overview;

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<sup>1</sup> Te Tai o Poutini Plan – Section 32 Evaluation Report Five Natural Environment Values – Ngā Uara Taiao Aotūroa Ecosystems and Biodiversity -Ngā Pūnaha Rauropi me te Kanorau Koiora Natural Features and Landscapes - Ngā Ahua me ngā Horanuku Aotūroa Coastal Environment – Te Taiao o te Takutai Natural Character and Water

<sup>2</sup> Te Tai o Poutini Plan Section 42A Officer’s Report Natural Character and Margins of Waterbodies and Activities on the Surface of Water

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- Objectives;
  - Policies;
  - Rules
8. This Recommendation Report follows the same structure as the s42A Report and provides a brief summary of the issues raised in submissions and further submissions, the s42A Report analysis and recommendations, submitter evidence and the Reporting Officer's reply evidence, before providing our evaluation and recommendation.
  9. 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 TTPP provisions forms an integral part of the decision and records all recommended amendments (additions and deletions) to the notified TTPP provisions made by the Panel. The tracked change version of the TTPP 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.
  10. This Recommendation Report contains the reasons for the Panel's recommendations. These comprise either adoption of the reasoning and recommendations of the original section 42A Reports or the Reporting Officer's reply evidence (Councils' right of reply post hearing adjournment), or a specific reasoning by the Panel.
  11. Where the Panel recommends the TTPP provisions should remain as notified, it is because:
    - (a) The Panel has adopted the reasoning and recommendation of the s42A Report or Addendum to retain the provision as notified; or
    - (b) The Panel has adopted the reasoning and recommendation to retain the provision as notified as recommended in the Reporting Officer's reply evidence; or
    - (c) The Panel has recommended to retain the provision as notified for reasons set out in this Recommendation Report.
  12. Where there is a recommended change to a notified provision of the TTPP, it is because:
    - (a) The Panel has recommended amendment to a provision for reasons set out in this Recommendation Report in response to a submission point, which the s42A Report or Addendum did not recommend; or
    - (b) The Panel adopted the reasoning and recommendation of the s42A Report or Addendum to change the provision to that recommended in those reports; or
    - (c) The Panel has adopted the reasoning and recommendation to that recommended in the Reporting Officer's reply evidence; or
    - (d) A consequential change has been necessary following on from a decision in either (a), (b) or (c).

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
 Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
 Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

13. Where there may be a different recommendation between the s42A Report and the Reporting Officer’s Addendum or reply evidence (i.e., the recommendation by the Reporting Officer has changed as a result of hearing the evidence of submitters), unless the Panel 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.
14. If there are circumstances where the Panel consider that alternative relief is more appropriate than that requested in submissions and further submission to give effect to the RMA, national policy statements and/or RPS, 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.
15. If any changes are recommended to the provisions (since the Section 32A Report was completed) a further evaluation is undertaken, if required, pursuant to section 32AA of the RMA. Any such circumstances are referred to in this Recommendation Report in sufficient detail to demonstrate a further evaluation was undertaken.
16. Clause 16(2) of the First Schedule of the RMA enables the Panel to recommend amendments to alter information, where such an alteration is of minor effect, or may correct any minor errors. In the Panel’s 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**

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

ASW	Activities on the Surface of Water
Bathurst	Bathurst Resources Limited and BT Mining Limited
ECO	Ecosystems and Indigenous Biodiversity
EIT	Energy, Infrastructure and Transport
BDC	Buller District Council
Te Mana Ora	Community and Public Health (Te Whatu Ora
Councils	Buller District Council, Grey District Council, and Westland District Council
DOC	Department of Conservation
Director General	Director General of Conservation

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

Forest & Bird	Royal Forest and Bird Protection Society of NZ incorporated
GDC	Grey District Council
Manawa	Manawa Energy Limited
WCRCP	Proposed West Coast Regional Coastal Plan 2016
NC	Natural Character and Margins of Waterbodies
NPSIB	National Policy Statement for Indigenous Biodiversity 2023
NPSFM	National Policy Statement for Freshwater Management 2020
NESF	National Environmental Standard for Freshwater
NPS	National Planning Standards
NZCPS	New Zealand Coastal Policy Statement
Poutini Ngāi Tahu	Te Rūnanga o Ngāi Tahu, Te Runanga o Ngāti Waewae, Te Rūnanga o Makaawhio
pTTPP	Proposed Te Tai Poutini Plan
RMA or the Act	Resource Management Act 1991
RPS	West Coast Regional Policy Statement
SNA	Significant Natural Area
SASM	Sites and Areas of Significance to Māori
Transpower	Transpower New Zealand Limited
Waka Kotahi NZTA	NZ Transport Agency Waka Kotahi
WCRC	West Coast Regional Council
WDC	Westland District Council

### **1.3. Hearing Arrangements**

18. The hearing was held at the RSA Hokitika, 22 Sewell Street, Hokitika on the 20 and 21 of February 2024. A number of submitters appeared remotely by internet connection.
19. At the hearing, Ms Easton tabled a Planning Summary Statement to her s42A Report and Addendum Report with an updated Appendix 1 (recommended provisions with tracked changes) and Appendix 2 (Reporting Officer recommendations on submissions and further submissions).

### **1.4. Appearances**

20. The following submitters appeared at the hearing:

**Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu ('Poutini Ngāi Tahu') - Ms Rachel Pull, Senior Environmental Advisor**

**Bathurst Resources Limited and BT Mining Limited ('Bathurst')**

- Mr Joshua Leckie, Legal Counsel
- Ms Claire Hunter, Planner

**Westpower Limited**

- Mr Roger Griffiths, General Manager – Generation and Technology for Westpower
- Ms Sylvie Saskova, Technical Administrator for Westpower
- Mr Martin Kennedy, Planner

**Director General of Conservation ('Director General')**

- Mr Matt Pemberton, Counsel
- Ms Amy Young, Planner

**West Coast Fish and Game Council ('Fish and Game')**

- Mr Dean van Mierlo, Solicitor
- Mr Dean Kelly, Manager for West Coast Fish and Game Council
- Ms Helen Brosnan, Senior Policy Advisor for West Coast Fish and Game Council

**Ms Frida Inta** for herself and on behalf of the Buller Conservation Group

**Nikau Deer Farm Limited** - Mr George and Mrs Carol Coates

**Jet Boating NZ** - Mr Malcolm Smith

**Manawa Energy Limited ('Manawa')** - Ms Stephanie Styles, Planner

**Herenga ā Nuku Aotearoa/Outdoor Access Commission** – Ms Inger Perkins, Field Advisor

**Lake Māhinapua Aquatic Club Incorporated** - Mr Rob Daniel, Consultant Advisor

### **1.5. Overview of submitter evidence and statements received**

21. For those appearing at the hearing, legal submissions were received from:
  - (a) Mr Joshua Leckie/Ms Christina Sheard for Bathurst (dated 5 February 2024);

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- (b) Mr Matt Pemberton for the Director General of Conservation (dated 5 February 2024);  
and
  - (c) Mr Dean van Mierlo for West Coast Fish and Game Council (dated 5 February 2024).
22. For those appearing at the hearing, the following evidence and/or statements were received:
- (a) Ms Claire Hunter, Planner for Bathurst (dated 12 February 2024);
  - (b) Ms Amy Young, Planner for the Director General of Conservation (dated 22 January 2024);
  - (c) Ms Stephanie Styles, Planner for Manawa (dated 22 January 2024) and supplementary evidence (dated 21 February 2024);
  - (d) Ms Rachel Pull for, Senior Environmental Advisor for Ngāi Tahu (dated 19 January 2024);
  - (e) Ms Inger Perkins Regional, Field Advisor for Herenga ā Nuku Aotearoa/Outdoor Access Commission (dated 20 February 2024);
  - (f) Mr Malcolm Smith, Consultant Advisor for Jet Boating NZ (undated)
  - (g) Mr Dean Kelly, Manager for West Coast Fish and Game Council (dated 22 January 2024)
  - (h) Mr Helen Brosnan, Senior Policy Advisor for West Coast Fish and Game Council (dated 22 January 2024);
  - (i) Mr George Coates for Nikau Deer Farm Ltd (dated 21 February 2024);
  - (j) Mr Joshua Leckie on behalf of Bathurst Resources Limited and B T Mining Ltd (dated 5 February 2024);
  - (k) Mr Martin Kennedy, Planner for Westpower (dated 20 February 2024); and
  - (l) Ms Frida Inta on behalf of herself and Buller Conservation Group (dated 19 February 2024).
23. Following the receipt of the s42A Report and the Addendum Report:
- (a) Transpower advised<sup>3</sup> it did not intend to appear at the hearing and that the substance of the relief it had sought had been accepted by the Reporting Officer. Transpower identified one exception where it would prefer to support the use of the words '*avoided, remedied or mitigated*' in Objective NC-O1 and questioned the need for the objective to address effects.
  - (b) Chris Horne, planner on behalf of Chorus, Spark, One NZ and Forty South advised<sup>4</sup> that the Companies wished to record their support for the s42A Report recommendations in regard to all of their submissions on this topic and would not be filing any evidence.

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<sup>3</sup> Letter from Rebecca Eng, Technical Lead – Policy, Transpower New Zealand Limited dated 22 January 2024.

<sup>4</sup> Letter from Chris Horne, Consultant Planner dated 23 January 2024

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

24. Following the hearing adjournment, the following further information responding to matters raised in the hearing was received:
- (a) A response from Ms Pull on behalf of Poutini Ngāi Tahu confirming that the use of Kaimata/New River for recreational jet boating above the State Highway bridge is acceptable (dated 2 March 2024);
  - (b) A supplementary statement of planning evidence from Ms Styles for Manawa (dated 21 February 2024) updating the Panel on any outstanding requested changes in the provisions to provide clarity for the Panel;
  - (c) A response from Jet Boating NZ confirming its support for the proposed amendment presented by Poutini Ngāi Tahu in relation to allowing recreation jet boating above the State Highway bridge at Kaimata/New River; and
  - (d) A response from Mr George Coates to questions by the Panel to clarify terminology used in relation to natural hazard structures.

**1.6. Right of Reply**

25. Ms Easton provided a written Right of Reply (dated 28 March 2024) that included an updated Appendix 1 showing tracked changes to the notified provisions (Attachment 1).

**1.7. Procedural Steps and Issues**

26. No procedural matters or issues were identified during the hearing

**1.8. Site Visits**

27. As part of our general site visits around the region, we visited Lake Māhinapua and Lake Brunner.

## **PART B - STATUTORY REQUIREMENTS AND DOCUMENTS**

28. The Section 32 Report outlined the relevant statutory considerations applicable to natural character and the margins of waterbodies and activities on the surface of water; and the relationships between the sections of the RMA and higher order documents.
29. The s42A Report highlighted the relevant sections 6, 7 and 8 of the RMA, the National Policy Statement for Freshwater Management (**NPSFM**), National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**), National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**), Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**), and National Environmental Standard for Freshwater (**NESF**), two National Water Conservation Orders (Water Conservation (Buller River) Order 2001 and Water Conservation (Grey River) Order 1991) and the National Planning Standards (**NPS**).
30. In relation to the Water Conservation Orders, the s42A Report noted that most of the provisions relate to regional council functions, but that both also include a clause stating that a resource consent shall not be granted under section 9 of the Act (relating to land use) if the effect would be that the provisions of the water conservation order could not be observed. The Report noted that consents could only be issued by the district councils if they ensured that the values listed for the Buller River and Grey River were protected.
31. Clause 10 of the First Schedule states that it is not necessary to provide decisions on individual submissions. Recommendation of the Panel are made within the scope of requested relief, either individual submissions or groups of submissions making similar requests, as specified in reasons for recommendation.
32. The NPS mandatory direction 7.20 requires provisions relating to natural character of wetlands, lakes and rivers and their margins to be located in the Natural Character chapter of the Natural Environment Values section of the Plan. Mandatory direction 7.24 requires provisions relating to the management of activities on the surface of water to be located in the Activities on the Surface of Water chapter of the General District-wide Matters section of the Plan. The Panel is satisfied the Plan structure is consistent with this national direction.

## **PART C – SUBMISSIONS, EVIDENCE, EVALUATION AND RECCOMENDATIONS**

### **2. NATURAL CHARACTER AND MARGINS OF WATERBODIES**

#### **2.1. NC General/Whole Chapter**

##### **Submissions and Further Submissions**

33. Ten submission points and three further submission points relating to general matters on the whole NC Chapter were summarised in a Table on pages 12-13 of the s42A Report. One submission point was neutral, two submission points sought to retain the objectives, policies and rules, as notified, and six sought changes. The Panel has considered the relevant submissions and further submissions received and adopts the summaries in the s42A Report.

##### **Section 42A Report**

34. The s42A Report supported Forest & Bird's (S560.508) to move provisions relating to vegetation clearance to the Ecosystems and Indigenous Biodiversity (**ECO**) Chapter of the Plan, with cross references from the NC Chapter. It recommended moving Rule NC-R1 and Rule NC-R3 to the ECO Chapter. It noted Forest & Bird's (S560.044) request, that if the NC Chapter is retained, it should be referenced throughout the Plan. It did not support cross referencing within the rules because there were already specific references in the overview of each chapter guiding refence to other chapters where appropriate.
35. The s42A Report acknowledged Forest & Bird's submission (S560.243) requesting that the rules governing vegetation clearance be as least as stringent as the ECO Chapter and address RMA s6(c) matters. It noted this would be required when the rules affected were considered within the context of the ECO Chapter provisions.
36. The s42A Report did not support G.E and C.J Coates' request (S415.006) to delete the NC Chapter because they consider it does not align with the Regional Council rules and there is sufficient protection of waterbodies through land administered by the Department of Conservation (**DOC**).
37. The s42A Report supported in part the West Coast Regional Council's (S488.022) to ensure that there are no adverse effects on the social or economic welling being of West Coast people and communities. It considered it was unlikely no adverse effects on people and communities could be guaranteed. In response to a question from the Panel, Ms Easton agreed there was no national direction requiring no adverse effects on people.
38. The s42A Report did not support Grey District Council's request to remove all references to Sites of Significance to Māori (**SASM**) in the NC Chapter because this gives effect to RMA s6(e) as a matter of national importance.
39. There were no further recommendations from the Reporting Officer regarding the Whole Chapter.

##### **Hearing and Submitter Evidence/Statements**

40. Mr and Mrs Coates presented a statement to the Panel proposing that the NC Chapter should be removed in its entirety, as they considered it does not align with the Regional Council rules.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

They considered there was insufficient evidence to support the rules and insufficient consideration of private property rights. They indicated that there were inadequate provisions to enable them to operate their farm in an efficient manner, including the ability to realign watercourses, clear vegetation for existing and new fence lines, establish and maintain farm tracks, and create new bridges wider than 3m.<sup>5</sup>

**Reporting Officer Reply Evidence**

41. There was no change to the Reporting Officer's view expressed in the 42A Report in response to the presentation by Mr and Mrs Coates in her Right of Reply. She remained of the view that it was not appropriate to remove the entire NC Chapter.

**Hearing Panel's Evaluation**

42. The Panel agrees with Ms Easton that it is not appropriate to remove the NC Chapter, or to remove references to overlays or references to SASM in the NC Chapter.
43. The Panel has considered the concerns raised by Mr and Mrs Coates in relation to their ability to operate their farm and are satisfied the provisions enable the continuation of existing lawfully established activities and new activities that have minor adverse effects. We consider new activities with the potential for more than minor adverse effects on the natural character of waterbodies should be assessed through the resource consent process.
44. The Panel is satisfied that provisions align with Regional Council rules and do not duplicate Regional Council function. The Panel accepts Ms Easton's recommendation to reject Mr and Mrs Coates submission point to remove the whole NC Chapter.
45. The Panel acknowledges the Plan provisions must give effect to the purpose and principles of the RMA and the higher statutory order direction. There is no require to have no adverse effects on people and communities, however, the Panel considers the provisions sufficiently provide for existing activities and new activities that have minor adverse effects. The Panel notes the s32 evaluation accompanying the Plan considers the social and economic impacts of the proposed regulations and specifically note that the approach taken is not new and is a refinement of existing regulations relating to the margins of waterbodies.
46. The Panel accepts Ms Easton's recommendation to move all vegetation clearance provisions to the ECO Chapter, with cross references in the NC Chapter, is appropriate. The Panel notes this affects rules NC-P2, NC-R1 and NC-R3, which is addressed below.

**2.2. NC Overview**

**Submissions and Further Submissions**

47. Ten submission points and one further submission point relating to the Overview were summarised in a table on pages 17-18 of the S42A report. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

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<sup>5</sup> Statement of evidence presented 21 March 2024

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

48. All submission points sought amendments to include additional wording in the Overview except for one submission which supported retaining the wording as notified.

**Section 42A Report**

49. The s42A Report did not support Forest & Bird's (S540.244) request to provide more detailed explanation of the relationship with the NESF and the activities regulated by the NESF because it is focussed on Regional Council functions. However, it recommended adding short statement to clarify this relationship and the
50. The s42A Report supported minor amendments to the Overview wording to improve clarity and make it clear that the rules that apply to other chapters are applicable in the NC Chapter as well. It recommended the following amendments:

*Overview*

*Waterbodies and their margins are an important part of the West Coast/Te tai Poutini, waterbodies are connected Ki uta ki tai from the mountains to the sea) and have important values, including for biodiversity, cultural, **recreational** or historical reasons.*

*Under section 31 of the RMA district councils are responsible for the management of activities on land, including the margin of water bodies. **Natural Character and the margins of waterbodies require protection as a matter of national importance under Section 6(a) of the RMA. Te Tai o Poutini Plan also manages activities on the surface of waterbodies.***

[ ]

*Rivers, streams, lakes and wetlands have important ecological, natural character, **recreational** and hydrological values. They provide for habitat for native plants, fish, birds, lizards, frogs, insects and aquatic and terrestrial macroinvertebrate aquatic life **and opportunities for access to and along waterways.***

***Some waterbodies (both natural and artificial) also form an important resource for the generation of hydroelectricity which contributes to the wellbeing of people and communities***

[ ]

*The National Environmental Standard for Freshwater Management 2020 (NESFM) has specific rules which relate to freshwater in particular ~~as relate~~ **in relation** to activities in the margins of natural inland wetlands. **These rules relate to the regional functions of the West Coast Regional Council and are administered by the organisation. The provisions in Te Tai o Poutini Plan have been developed considering the NESF and what additional provisions are required to fulfil the statutory functions of the district councils in relation to natural character of waterbodies. Te Tai O Poutini plan provisions in relation to riparian margins of wetlands only relate to wetlands in the coastal marine area to avoid duplication with the NESF.***

[ ]

*EARTHWORKS - The Earthworks Chapter includes provisions around earthworks management. **These relate to requirements for earthworks within zones and include***

*general standards for earthworks. These rules apply in addition to rules on earthworks within the Natural Character of Waterbodies Chapter.*

*ECOSYSTEMS AND INDIGINOUS BIODIVERSITY – The Ecosystems and Indigenous Biodiversity Chapter contains provisions around vegetation clearance, including in the margins of waterbodies.*

[ ]

*ENERGY, INFRASTRUCTURE and TRANSPORT- The Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to energy infrastructure or transport activities that trigger resource consent on the Natural Character of Waterbodies Rules.*

### **Hearing and Submitter Evidence/Statements**

51. Ms Rachel Pull, on behalf of Poutini Ngāi Tahu, clarified that the further submission (FS41.664) only opposed Herenga ā Nuku Aotearoa/Outdoor Access Commission’s submission point in relation to the request to add further government departments to the third paragraph of the Overview. She considered this was not appropriate because the third paragraph recognised the legislative relationship between Councils and mana whenua in relation to waterbodies. She noted the further submission recommended the agencies listed be added as an Advice Note for public information purposes at the end of the Overview, as follows:

**Other Relevant Government Bodies**

**Aside from Regional and local government there are other key agencies and government groups involved in the integrated management of waterbodies. These include**

- **The Department of Conservation**
- **NZ Landcare Trust**
- **Catchment care and other restoration groups and**
- **The Herenga ā Nuku Aotearoa Outdoor Access Commission**

52. Ms Pull did not support the s42A Report recommendation to include cross referencing to the Energy, Infrastructure and Transport (EIT) chapters given it is standard practice to consider any relevant provisions when processing a resource consent. She highlighted the chapters of the Natural Environment Values section of the Plan include a statement under the policies of the chapter to refer to the policies of the EIT chapters, with the exception of the Public Access Chapter). She considered a specific reference would draw attention to them and imply they require special consideration of the EIT chapters. She requested removal of the statement from the policies section of the Natural Environment Values chapters ((Ecosystems and Indigenous Biodiversity, Natural Features and Landscapes, and Natural Character and the Margins of Waterbodies) as follows:

*Also where relevant refer to policies in the Energy, Infrastructure and Transport Chapters.*

53. Ms Pull sought to add the following to the Overview of the NC and ASW Chapters under ‘Other relevant Te Tai o Poutini Plan Provisions’:

Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai

**Energy, Infrastructure and Transport – The Energy, Infrastructure and Transport chapters contain provisions that manage Energy, Infrastructure and Transport activities and potential reserve sensitivity.**

54. Ms Pull's recommended amendment to the Overview to add other agencies as an Advice Note.

55. Ms Inger Perkins, on behalf of Herenga ā Nuku Aotearoa/Outdoor Access Commission, requested the following sentence be extended as follows in the Overview:

*Waterbodies are connected (Ki uta ki tai) from the mountains to the sea) and have important values including for biodiversity, cultural, **recreational** or historical reasons*

56. Ms Perkins accepted the further submission from Poutini Ngāi Tahu in opposition to including the requested addition of other agencies to the Overview and agreed with including an Advice Note as suggested by Ms Pull. However, Ms Perkins considered there was one notable omission from the list and recommended that the West Coast Fish and Game Council be added.

57. Ms Perkins also requested the following addition to the end of the Overview:

**Rivers streams, lakes and wetlands have important recreational values including opportunities for access to and along waterways.**

58. Ms Stephanie Styles, on behalf of Manawa Energy Limited ('Manawa'), sought to include a reference to hydroelectricity in the Overview to acknowledge the important resource that waterbodies are for the region in terms of providing for hydroelectricity generation.

59. Mr Martin Kennedy, on behalf of Westpower Limited, sought additional text in the Overview to give effect to the interrelationship between natural character and infrastructure that is significant to the region, as recognised in RPS Chapter 6, Policies 3 and 6 as follows:

**There is a considerable network of energy activities and infrastructure, including critical infrastructure, on the West Coast that services the communities spread throughout the region and into neighbouring regions. Such activities have been, and will continue to be developed and undertaken recognising and taking into account the local conditions. Given the topography and extent of waterbodies and landscapes on the West Coast practical management solutions are required to ensure maintenance and enhancement of the supply of renewable energy to, and between, communities for the benefit of those communities and the wider environment from the use and development of renewable energy. The National Policy Statement for Renewable Electricity Generation also recognises the constraints and requirements of such activities including, amongst other matters, being located where the resource is.**

60. Ms Frida Inta, on behalf of herself and Buller Conservation Group, requested the following amendments to the wording of the Overview wording:

*Waterbodies and their margins are **a vital underpinning** ~~an important part~~ of the West Coast **Region/Te Tai Poutini and its prosperity**. Waterbodies are connected (Ki uta ki tai*

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*from the mountains to the sea) and have important values, including those for biodiversity, ecosystem services, ~~cultural~~, ~~recreational~~ or ~~historical reasons~~.*

61. Ms Inta stated waterbodies are more than an important part of the West Coast, they *are* the West Coast, and she considered the proposed sentence overtly understated their importance. She considered the changes sought to correct grammatical errors and include reference to 'ecosystem services'.

**Reporting Officer Reply Evidence**

62. At the hearing, Ms Easton recommended adding the Advice Note agreed to by Ms Pull and Ms Perkins to the end of the Overview. She also agreed it was appropriate to add the West Coast Fish and Game Council. However, the Panel note that this Advice Note was not included in Ms Easton's Right of Reply. The Panel considers this was an oversight given her response to questions at the hearing.

**Hearing Panel's Evaluation**

63. The Panel accepts that Ms Easton's recommended amendments to the Overview provide greater clarity for most of the issues sought by submitters, as shown in Appendix 1 of the s42A Report.
64. The Panel accepts the recommendation to add a new Advice Note as agreed by Ms Pull and Ms Perkins, with the addition of the West Coast Fish and Game Council.
65. The Panel accepts Ms Easton's recommendation to reject the proposed amendments to the Overview proposed by Mr Kennedy on behalf of Westpower given this only repeats what is already stated throughout the Plan.
66. The Panel accepts the Buller Conservation Group's submission point (S552.094), as recommended by Ms Easton, but considers that the further text changes sought by Ms Inta at the hearing are not within the scope of the Buller Conservation Groups original submission point.
67. The Panel accepts the Reporting Officer's recommendation to add wording clarifying the NESF and the functions of the Regional Council and accept in part Forest & Bird's submission. However, the Panel recommends the overview is corrected to refer to the Resource Management (National Environmental Standard for Freshwater) Regulation 2020 (NESF).
68. The Panel considers it is appropriate to update the reference in the Overview to the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (NES-CF), which has replaced the NES-PF.
69. The Panel has also made minor corrections to the Overview to reflect the replacement of the NES-PF with the NES-CF, correct the use of capitals and grammatical errors.

**Recommendation**

70. For the reasons outlined above, and subject to our considerations of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

accepted or accepted in part, and recommends the following changes to the Natural Character and Margins of Waterbodies Overview:

OVERVIEW

Waterbodies and their margins are an important part of the West Coast/Te Tai Poutini. Waterbodies are connected (~~ki~~ ~~uta~~ ~~ki~~ ~~tai~~, from the mountains to the sea) and have important values, including for biodiversity, cultural, recreational<sup>6</sup> or historical reasons.

Under section 31 of the RMA district councils are responsible for the management of activities on land, including the margins of waterbodies. **Natural Character and the margins of waterbodies require protection as a matter of national importance under Section 6(a) of the RMA**<sup>7</sup>. **Te Tai o Poutini Plan also manages activities on the surface of waterbodies.**<sup>8</sup>

The West Coast Regional Council has responsibility for the management of wetlands, lakes and rivers, including land uses in the beds of rivers. This section of Te Tai o Poutini Plan focuses on the natural character of the margins of wetlands, lakes and rivers, thereby avoiding duplication with Regional Council functions.

The three district councils work with the West Coast Regional Council and Poutini Ngāi Tahu to ensure waterbodies are managed in an integrated way.

Poutini Ngāi Tahu have a special relationship with the mauri of waterbodies and ancestral, cultural spiritual or historical associations with waterbodies. Many waterbodies in the West Coast/Te Tai o Poutini are identified as statutory acknowledgement areas and there are also nohoanga entitlements in place in some locations. These waterbodies contain associated ~~kainga~~ ~~kāinga~~, ~~pa~~ ~~pā~~, important sites for the gathering of kai, ~~t~~ ~~auranga~~ ~~ika~~ and specialised zones for various activities of high cultural value, such as cleansing, iriiringa, food preparation and bathing, which continue to be vital to the wellbeing, livelihood and lifestyle of Poutini Ngāi Tahu.

Rivers, streams, lakes and wetlands have important ecological, natural character, recreational<sup>9</sup> and hydrological values. ~~They~~ ~~provide~~ ~~important~~ ~~habitat~~ ~~for~~ ~~native~~ ~~plants~~, ~~fish~~, ~~birds~~, ~~lizards~~, ~~frogs~~, ~~insects~~ and aquatic and terrestrial macroinvertebrate aquatic life **and opportunities for access to and along waterways.**<sup>10</sup>

**Some waterbodies (both natural and artificial) also form an important resource for the generation of hydroelectricity, which contributes to the wellbeing of people and communities.**<sup>11</sup>

The National Policy Statement for Freshwater Management 2020 (NPSFM) guides decision-making regarding the freshwater resources of New Zealand/Aotearoa. In particular, the councils must have regard to its objectives and policies in consent decision-making.

**The Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (NESF) has specific rules which relate to freshwater, in particular in relation to activities in the margins of freshwater wetlands. These rules relate to the regional functions of the West Coast**

<sup>6</sup> Herenga ā Nuku Aotearoa Outdoor Access Commission S274.004

<sup>7</sup> Buller Conservation Group S552.094

<sup>8</sup> Director General of Conservation S602.100

<sup>9</sup> Herenga ā Nuku Aotearoa Outdoor Access Commission S274.004

<sup>10</sup> Herenga ā Nuku Aotearoa Outdoor Access Commission S274.004

<sup>11</sup> Manawa Energy Limited S438.103

**Regional Council and are administered by that organisation. The provisions in Te Tai o Poutini Plan have been developed considering the NESF and what additional provisions are required to fulfil the statutory functions of the district councils in relation to natural character of waterbodies. The Tai o Poutini Plan provisions in relation to riparian margins of wetlands only relate to wetlands in the coastal marine area to avoid duplication with the NESF.**<sup>12</sup>

#### **Plantation-Commercial** Forestry

~~Plantation~~**Commercial** forestry is principally regulated by the Resource Management (National Environmental Standard for ~~Plantation~~**Commercial** Forestry) Amendment Regulations 2023 (NES-**PCF**).<sup>13</sup> However the NES-**PCF** allows that district plans can be more stringent where this gives effect to an objective in the National Policy Statement for Freshwater Management. Where provisions within this chapter over-rule the requirements of the NES-**PCF** an advice note to that effect is included within the rule.

Other relevant Te Tai o Poutini Plan provisions.

It is important to note that in addition to the zone chapters a number of District ~~w~~Wide and Overlay chapters also contain provisions that may be relevant for waterbodies, including:

- Public Access - The Public Access Chapter contains provisions relating to the provision and maintenance of public access to waterbodies.
- Subdivision - The Subdivision Chapter contains provisions which manage subdivision and specific standards in relation to the provision of esplanade reserves and strips, in particular SUB- S9
- Activities on the Surface of water – The Activities on the Surface of Water Chapter contains provisions that manage activities that occur on the surface of water.
- Coastal Environment – The Coastal environment Chapter contains provisions that manage the natural character of the coastal environment.
- Earthworks - The Earthworks Chapter includes provisions around earthworks management. **These relate to requirements for earthworks within zones and include general standards for earthworks. These rules apply in addition to rules on earthworks within the Natural Character of Waterbodies Chapter.**<sup>14</sup>
- **Ecosystems and Indigenous Biodiversity – The Ecosystems and Indigenous Biodiversity Chapter contains provisions around vegetation clearance, including in the margins of waterbodies.**<sup>15</sup>
- **Energy, Infrastructure and Transport - The Energy, Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to energy infrastructure or transport activities that trigger resource consent under Natural Character of Waterbodies Rules.**<sup>16</sup>

Also ~~view~~ the Strategic Objectives and Policies<sup>17</sup>

#### **Advice Note:**

#### **Other Relevant Government Bodies**

<sup>12</sup> Royal Forest and Bird Protection Society of New Zealand Inc S560.224

<sup>13</sup> Clause 16 RMA correction to reflect the enactment of the Resource Management (National Environmental Standard for Commercial Forestry) Regulations 2017, which replaces the NES-PF.

<sup>14</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.001

<sup>15</sup> Royal Forest and Bird Protection Society of New Zealand Inc S560.511

<sup>16</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.001

<sup>17</sup> Westpower Limited S547.312

Aside from regional and local government there are other key agencies and government groups involved in the integrated management of waterbodies. These include:

- Department of Conservation;
- West Coast Fish and Game Council
- NZ Landcare Trust;
- Catchment care and other restoration groups; and
- Herenga ā Nuku Aotearoa, the Outdoor Access Commission.<sup>18</sup>

## 2.3. NC Definitions

### Submissions and Further Submissions

71. Twenty-two submission points and seven further submission points relating to definitions were summarised in a Table on pages 18-21 of the s42A Report.
72. One submission supported retaining the definition of '**Artificial Lake or Pond**' as notified.
73. Two submission points and one further submission point supported retaining the definition of '**Lake**' as notified, with one requesting the exclusion of a dredge pond. One submission opposed the definition and requested use of the RMA interpretation, with one further submission point opposing this submission point.
74. Five submission points sought amendments to the definition of '**Riparian Margin**' and two further submissions supported two of the submission points.
75. Four submissions points and eight further submission points relating to the '*extent of riparian margins*' were summarised on page 48 of the s42A Report and assessed in relation to the NC rules. Four submissions sought amendments to the definition; and seven further submission points opposed the amendments sought and one further submission supported the amendments in part. These submission points are addressed here in relation to the definition of '*Riparian Margin*', as well as in relation to the rules.
76. One submission point supported the definition of '**River**' as notified and three submission points sought amendments.
77. One submission point supported the definition of '**Waterbody**' as notified and one submission point sought amendment to clarify the relationship between the definition and the zone.
78. Two submission points supported the definition of '**Wetland**' as notified.
79. Two submission points sought new definitions for '**Bank**' and two further submission points opposed these submission points.
80. Three submission points sought a new definition for '**Watercraft**' and one further submission supported in part.

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<sup>18</sup> Herenga ā Nuku Aotearoa Outdoor Access Commission S274.004

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

81. The Panel has considered the relevant submissions and further submissions and adopts the summaries in the s42A Report.

**Section 42A Report**

82. The s42A Report did not support the request to use the RMA definition of 'Lake' given the definition would potentially capture a range of artificially constructed ponds associated with other activities.
83. The s42A Report supported the changes to the definition of 'Riparian Margin' to refer to rivers and not streams. The Report agreed it was not clear where the riparian margin is measured from but considered it should be measured from the point of 'annual fullest flow' for any lake or wetland. It did not support a reduction of the distance determining the riparian margin given the rule changes recommended allow for farming to continue. It also supported the addition of 'within the coastal marine area' to specify that only wetlands within the coastal marine area are included within the definition (S620.041, FS79.7 and FS222.338).
84. The s42A Report did not support Manawa's request (S478.017) to standardise the width of the riparian margin to 10m given the different functions of the District Councils and the Regional Council. It also considered the riparian margins should not be substantially different between the Plan and the West Coast Regional Land and Water Plan (RLWP). It noted the RLWP has 20m riparian margins for lakes and recommended Manawa's requested to reduce this to 10m should be rejected.
85. The s42A Report did not support the requests to increase the riparian margin to 15m wide and recommended rejecting these submission points (S552.027 and S312.010) and accepting the six further submissions opposing this increase (FS232.048, FS150.028, FS215.028, FS215.029, FS104.040, FS222.027, FS231.041). It noted that the RLWP riparian margins for a river >3m is between 3-10m.
86. The s42A Report considered there was some merit in including 1-3m wide rivers in the definition given the riparian areas can have significant natural character. It noted the RLWP provides for 3m (pasture) or (5m (indigenous vegetation) riparian margin width for streams on low slope land and 10m width indigenous vegetation on land >12 degrees slope. In response to questions, Ms Easton considered 1-3m wide streams could have a 3m wide riparian margin, which would be consistent with the stock exclusion regulations.
87. The S42A Report did not support the request to identify the difference between intermittent and ephemeral waterbodies or the request to use the definition used in the RLWP given the definition of 'River' is set by NPS.
88. The s42A Report supported Poutini Ngāi Tahu's request to clarify the relationship between the definition of 'Waterbody' and zones, given the identification of waterbodies on the zone planning maps is confusing. It noted that only some waterbodies are identified on the planning maps, and a waterbody is not a zone in the planning maps. It recommended the identification of 'waterbody' is removed from the zone maps/layer and the areas identified be zoned General Rural Zone (GRUZ).
89. The s42A Report did not support the addition of a new definition for 'Bank' given the term is not used in the Plan.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

90. The s42A Report supported the addition of a new definition for 'Watercraft' with a qualifier at the end to identify motorised watercraft.

**Hearing and Submitter Evidence/Statements**

91. Ms Styles, on behalf of Manawa, requested that the definition of 'Riparian Margin' is simplified to a distance of 10m from all waterbodies because 20m for lakes would subject Manawa to unnecessary consenting requirements. She supported the 10m setback as notified for wetlands if these are to be addressed by a rule in the Plan. She disagreed with the s42A Report recommendation and noted the District Council and Regional Council functions are quite different in respect of riparian margins, with the District Council functions relating to the effects of land use and public access. She considered 'following' the RLWP provisions would result in unnecessary duplication and consenting costs.
92. Ms Styles noted Manawa has specific interests in riparian setbacks as its assets and operations are functionally and operationally required to be located within and adjacent to waterbodies, including natural lakes and rivers e.g. Kawhaka Creek and the Arnold River, and many artificial or modified waterbodies such as Kumara reservoir and Dillmans canal. She considered the 20m riparian margin from lakes may subject a greater number of Manawa activities to potential consenting requirements that are unnecessary for the district councils to manage, such as earthworks, vegetation clearance and structural maintenance.
93. Ms Pull, for Poutini Ngāi Tahu, requested (S620.041) an additional clause be added to the definition of 'Riparian Margin' to be consistent with the RLWP and ensure control of indigenous biodiversity on land with a slope of less than 12 degrees, as follows:
- (d) 5m of any river with an average bed width between 1-3m*
94. Ms Pull noted she disagreed with Ms Easton that waterbodies on the zone planning maps should be zoned GRUZ and considered the zoning should be that of the adjacent land (the same as roads). She did not support removing waterbodies from the zone planning maps.
95. Mr Martin Kennedy, on behalf of Westpower, sought to have the definition of 'River' aligned with the RLWP definition to give consistency of interpretation and implementation of documents.
96. Ms Amy Young, on behalf of the Director General of Conservation ('**Director General**') supported the new definition for 'Watercraft' recommended in the s42A Report.
97. Ms Inta, on behalf of herself and Buller Conservation Group, sought to have the definition of 'Riparian Margin' amended to include 'the point at which terrestrial vegetation commences'. She also sought the addition of the Buller District Council (**BDC**) Plan definition for 'Bank'.

**Reporting Officer Reply Evidence/Statements**

98. Ms Easton responded to questions from the Panel regarding the definition of 'Riparian Margin' used in NPS and the RLWP. She did not support using the RLWP definition given it is lengthy and complex. She noted the NPS definition for 'Bed' is the same as the RMA definition.
99. To address concerns relating to clarity around where the riparian margin is measured from, she recommended adding 'As measured from the point of annual fullest flow for a river or

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*annual fullest water level for a lake or wetland'* to the definitions. To further assist, Ms Easton recommended adding new definitions for '*Fullest flow*' (based on the RLWP definition) '*Bank*' (based on its ordinary meaning) and '*Bed*' (using the RMA meaning).

100. In response to questions, Ms Easton did not support the zoning of waterbodies to that of the adjacent land and was not comfortable if the zoning changed in the middle of a waterbody.
101. In her Right of Reply, Ms Easton provided further information of the extent of waterways <3m wide throughout the West Coast, the extent of these waterways in indigenous vegetation, and rules in the RLWP and NES-CF. She noted that most of the public conservation land administered by DOC is covered by indigenous vegetation and would have riparian margins under the RLWP of either 5m or 10m. For land outside public conservation land, Ms Easton used NIWA's River Environment Classification maps to review river 'order 1' (the smallest classified) streams and noted that most were not significantly vegetated on their margins and were on the flatter, more developed areas. Ms Easton considered that earthworks and vegetation clearance in riparian margins of these smaller waterbodies are restricted under the RLWP provisions, which provided a good degree of management of potential adverse effects on natural character.
102. Ms Easton also provided further information on restrictions in riparian margins under the NES-CF and the stock exclusion regulations; and riparian margins from lakes in the NES-CF and in other district plans.
103. Ms Easton considered the issue of '*naturalised lakes*' and the definition of a wetland under the NPS-FM. She noted this specifically included wetlands that had developed in or around a deliberately constructed waterbody, since the construction of the waterbody. She considered that a 'naturalised' artificial lake is likely to have developed this wetland fringe and would therefore meet the definition of natural inland wetland.
104. Ms Easton advised that if the Panel is concerned that 'naturalised' artificial lakes should be excluded from the definition of '*Artificial Lake or Pond*', this could be amended by amending the definition of '*Artificial Lakes or Ponds*' as follows:

*means a body of freshwater created by human intervention in a location where a lake or pond did not naturally exist and includes man made reservoirs. **Where the artificial lake has established a wetland margin that meets the NPSFM definition of natural inland wetland, this shall not be considered an artificial lake.***

105. However, Ms Easton noted there is no submission seeking an amendment to the definition of '*Artificial Lake or Pond*' or any changes to the rule, so was likely to be out of the scope of submissions.

### **Hearing Panel's Evaluation**

106. The Panel notes the NPS include a definition for '*Lake*' that has the same meaning as the RMA definition. Where a term is defined in the NPS the Plan must use the definition as defined in the NPS.
107. The Panel notes the proposed Plan definition is intended to avoid capturing a range of ponds artificially constructed as part of mining activity, sediment ponds for earthworks and farm ponds for stock water. The Panel agrees this is the intent but accept the Forest & Bird

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

submission points (S560.066 and S560.424) to use the RMA definition given it is a listed definition in the Planning Standards and its use is mandatory.

108. The Panel considers the proposed Plan definition of '*Artificial Lake or Pond*' addresses exceptions without changing the RMA definition. The Panel considers that adding an Advice Note to the definition, cross referencing the Plan definition of '*Artificial Lake or Pond*', is not necessary because the definition is clear.
109. The Panel acknowledges the Federated Farmers submission point seeking to reduce the distances in the definition of '*Riparian Margin*' if the rules do not allow for farming activities to continue; and the reduction in the distance from 20m to 10m for any waterbody, as sought by Manawa (S438.017).<sup>19</sup>
110. The Panel accepts Ms Easton's recommendation not to reduce the riparian margin for lakes from 20m to 10m and rejects Manawa's submission point requesting simplification to 10m for all waterbodies. The Panel considers 20m is consistent with the RLWP and other district plans, as outlined in Ms Easton's Reply.
111. The Panel accepts Poutini Ngāi Tahu's submission point (S620.041) that streams 1-3m wide should be included in the '*Riparian Margin*' definition. However, the Panel consider this should be 3m wide, which is consistent with the stock exclusion rule in the LWRP for pasture on low slope land. The Panel accepts Ms Easton's view that many of the lowland small streams are surrounded by pastoral farmland and that the majority of small streams with indigenous vegetation are within public conservation land. The Panel is also conscious that any indigenous vegetation clearance is subject to the ECO Chapter rules.
112. The Panel accepts Ms Easton's recommendation to reject the submission point from Federated Farmers (S524.017) to reduce the riparian margin distance given the rule framework enables existing farm operations to continue without unnecessary restriction.
113. The Panel accepts Ms Easton's recommendation to delete '*stream or*' from the definition of '*Riparian Margin*' given the NPS definition (RMA definition) of '*River*'; and to add '*that is located in the coastal marine area*' to clarify that only wetlands in the coastal marine area are included.
114. To assist in clarifying where the '*Riparian Margin*' is measured from, the Panel accepts Ms Easton's recommendation to add new definitions for '*Fullest Flow*', '*Bank*' and '*Bed*', as set out in her Right of Reply. However, we note that '*Bed*' is already included in the definitions in the Plan.
115. The Panel rejects the submission point of Westpower (S547.036) to use the RLWP definition of '*River*' given the Plan must use the NPS definition, which is the same as the RMA definition. The Panel also rejects Ms Inta and the Buller Conservation Group's submission points (S552.029 and S553.029) to differentiate between intermittent and ephemeral waterways

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<sup>19</sup> The Panel notes submission points S552.027, FS232.048, FS150.028, FS215.028, FS215.029, FS104.040, FS222.027, FS231.041, S312.010, S478.017, S620.041, FS79.7 and FS222.338 were included in the Table on page 48 of the s42A Report in relation to the extent of '*Riparian Margin*' in the definition. These submission points were addressed in relation to the rules in terms of the extent of riparian margins in paragraphs 175-179 of the s42A Report.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

and to add cross-reference to the RLWP given the definition used is based on the RMA definition and the RLWP is not consistent with this definition.

116. The Panel accepts Ms Easton's recommended new definition for 'Watercraft'.

117. The Panel accepts Ms Easton's recommendation to that waterbodies should be zoned General Rural Zone on planning maps to avoid confusion. We do not consider it is appropriate to zone them according to the adjacent land given the potential for different zoning on either side of the waterbody. The Panel is mindful that regulation of water and the beds of waterbodies is a Regional Council function.

**Recommendation**

118. For the reasons outlined above, and subject to our considerations of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following changes and additions to the **Definitions** to:

**RIPARIAN MARGIN**

means all land within:

- a. 10m of any wetland **that is located in the coastal marine area**,<sup>20</sup>
- b. 20m<sup>21</sup> of any lake; and
- c. 10m of any ~~stream or river~~<sup>22</sup> with an average bed width greater than 3m; **and**
- d. **3m of any river with an average bed width greater than 1m and less than 3m.**<sup>23</sup>

**As measured from the point of annual fullest flow for a river or annual fullest water level for a lake or mean high water springs for a coastal wetland.**<sup>24</sup>

**Advice Note: Activities within 10m of a natural inland wetland are regulated under the NESF and administered by the West Coast Regional Council.**

**WATERCRAFT**<sup>25</sup>

**means a boat or other vessel that travels on water. This excludes fixed structures on water and use for residential activities.**

**In relation to the Activities on the Surface of water provisions motorised watercraft means a watercraft that is operated or propelled by a motor.**

**BANK**<sup>26</sup>

**means the land on either side of a river which confines the natural flow of the water whether the normal flow, or flood flows.**

<sup>20</sup> Royal Forest and Bird Protection Society of New Zealand Inc S560.076

<sup>21</sup> Manawa Energy Limited S438.017

<sup>22</sup> Director General of Conservation S602.015

<sup>23</sup> Te Rūnanga O Ngāti Waewae, Te Rūnanga O Makaawhio and Te Rūnanga O Ngāi Tahu S620.041 and Buller Conservation Group S552.027

<sup>24</sup> Buller Conservation Group S552.028 and Frida Inta S553.028

<sup>25</sup> Department of Conservation S602.130 S602.022 and Ngai Tahu S620.191 620192

<sup>26</sup> Consequential amendment to Buller Conservation Group S552.028 and Frida Inta S553.028

**FULLEST FLOW**<sup>27</sup>

**means the maximum amount of flow or highest water level that can occur without the river water overtopping the banks and beginning to flow over the flood plain.**

## 2.4. NC Objectives

### **Submissions and Further Submissions**

119. Nine submission points relating to the objectives as a whole were summarised on page 23 of the s42A Report, all sought to retain the objectives as notified.
120. Twenty-one submission points and seven further submission points relating to **Objective NC-01** were summarised on page 24-26 of the s42A Report. Twelve submission points sought to retain the Objective as notified, eight submission points sought amendments; and seven further submissions opposed the amendments sought and one further submission point supported one amendment in part.
121. Eight submission points relating to **Objective NC-02** were summarised on page 27 of the s42A Report, all sought to retain the Objectives as notified.
122. Twenty-two submission points and ten further submission points relating to **Objective NC-03** were summarised on pages 27-30 of the s42A Report. Five submission points sought to retain the Objective as notified, one submission point sought to delete the Objective and 16 submission points sought amendments; and five further submission opposed one submission point to retain the Objective, four further submission point supported some of the amendments and one further submission point opposed one amendment.
123. The Panel has considered the relevant submissions and further submissions received and adopts the summaries in the s42A Report.

### **Section 42A Report**

124. In relation to **Objective NC-01**, the s42A Report did not support deleting the Objective given there are a range of activities that have a functional or operational need to locate on the edge of rivers and lakes.
125. It also did not support deleting '*while providing for appropriate subdivision, use and development*' or '*where adverse effects can be avoided or mitigated*'.
126. The s42A Report did not support separating the Objective into two or adding reference to taking a '*precautionary approach*'.

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<sup>27</sup> Consequential amendment to Buller Conservation Group S552.028 and Frida Inta S553.028

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

127. The s42A Report supported replacing ‘*providing for*’ with ‘*allow*’ and adding ‘*appropriately managed in accordance with the effects management hierarchy*’, as follows, as requested by the Director General<sup>28</sup>:

**NC-01**

*To preserve the natural character of lakes, rivers and wetlands and their margins while ~~providing for~~ **allowing** appropriate subdivision, use and development where adverse effects can be ~~avoided or mitigated~~ **appropriately managed in accordance with the effects management hierarchy.***

128. In relation to Objective **NC-02**, the s42A Report highlighted all of the submissions received were in support of retaining it as notified.
129. In relation to **Objective NC-03**, the s42A Report supported the 12 submission points requesting to include ‘*or operational*’ to refer to both functional and operational needs<sup>29</sup>. It did not support adding ‘*technical and locational*’ given the ‘*functional or operational need*’ sufficiently covers these matters; and the Plan includes a definition for ‘*functional need*’ and recommends a new definition for ‘*operational need*’.
130. The s42A Report did not support deleting reference to ‘*natural character*’, as requested by Manawa<sup>30</sup>, given the preservation and protection of the natural character of the margins of waterbodies from inappropriate subdivision, use and development is a RMA s6 matter.
131. The s42A Report acknowledged that while some of the amendments sought had merit, overall, the following proposed amendments sought by the Director General<sup>31</sup> were the most appropriate and aligned closer with the RMA direction set out in s6:

**NC-03**

*To provide for activities which have a functional **or operational** need to locate in the margins of lakes, rivers and wetlands ~~in such a way that the impacts~~ **while ensuring adverse effects** on natural character are minimised.*

**Hearing and Submitter Evidence/Statements**

132. Ms Styles, for Manawa, confirmed she was comfortable with the s42A Report recommendation for Objective NC-01 given the submission point sought to add ‘remedy’ and the effect management hierarchy includes provision for remedying effects.
133. In relation to NC-03, Ms Styles opposed use of the term ‘*minimise*’ sought. She sought simplification of the Objective by deletion of ‘*while ensuring adverse effects on natural character are minimised*’. She requested the following wording:

<sup>28</sup> Director General of Conservation S602.101

<sup>29</sup> WMS Group S599.069, Tiga Minerals and Metals Limited S493.064, Birchfield Coal Mines S601.050, BRM Developments S603.034, Birchfield Ross Mining Limited S604.044, Phoenix Minerals Limited S606.035, Whyte Gold Limited S607.033, KiwiRail Holdings Limited S442.060, Bathurst Resources S491.024, Waka Kotahi S450.102, Manawa Energy S438.105 and Chorus NZ Ltd, Spark NZ Trading Ltd, Vodafone NZ Ltd S663.050

<sup>30</sup> S438.105

<sup>31</sup> S602.103

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**NC-03**

~~To provide for **Activities** which have a functional **or operational** need to locate in the margins of lakes, rivers and wetlands **are provided for** in such a way that the impacts on natural character are minimised.~~

134. Ms Inta, on behalf of herself and Buller Conservation Group, sought to rewrite Objective NC-01 to require protection and not to provide for development at the expense of protection; and to correct poor grammar by moving 'adverse' to the front of effects management hierarchy. In relation to Objective NC-03, she requested use of the RPS terminology or at the very least a reference to RPS Chapter 7A Policy 3.
135. Ms Young, for the Director General, supported the s42A Report recommendations.
136. Mr Kennedy provided further clarification on Westpower's request to split Objective NC-01 into two parts to give a clearer intention of the outcomes and to better reflect RPS Chapter 7A Objective 1 and 2. He also sought that Objective NC-03 be reworded as sought in submission point S547.314 to give effect to the RPS.
137. Mr Joshua Leckie and Ms Christina Sheard, for Bathurst Resources Limited and B T Mining Limited, provided legal submission in support of the s42A Report recommendations regarding the inclusion of reference to both operational and functional need. They opposed the proposed changes to Objective NC 01 as recommended to replace 'provide for' with 'allow' (as proposed by the Director General) because this inappropriately narrowed the scope and application of the objective.
138. Ms Clare Hunter, for Bathurst, also provided planning evidence opposing the s42A Report recommendations in relation to replacing 'providing for' with 'allowing' in Objective NC-01. She supported adding 'or operational' to Objective NC-03.

**Reporting Officer Reply Evidence**

139. In her Right of Reply, having considered the evidence and statements, Ms Easton made no changes to her recommendations on amendments to the objectives. She addressed the scope available to make changes to the Objectives NC-01 to NC-03 and advised there is minimal scope available to amend NC-02 given all submissions supported this objective as notified.
140. In considering Bathurst's opposition to replacing 'provide for' with 'allow' (as requested by the Director General) in NC-01, Ms Easton considered 'allow' should be used for permitted activities and 'provide for' used for permitted activities or where a resource consent is required. She considered the appropriate term for use in an objective was 'provide for', although this change was not reflected in the updates to provisions in her Right of Reply.

**Hearing Panel's Evaluation**

141. In relation to **Objective NC-01**, the Panel disagrees with Ms Easton that the wording proposed by the Director General is the most aligned with RMA s6(a). In giving effect to RMA Part 2 matters of national importance the Panel must recognise and provide for -

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*s6(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*

142. The Panel considers the first part of the objective (as notified) combined with the wording proposed by Forest & Bird (S560.245) is consistent with the wording of s6(a). **NC-01**  
*To preserve the natural character of lakes, rivers and wetlands and their margins ~~while-and~~ **the protection of them from inappropriate subdivision, use and development** ~~where adverse effects can be avoided or mitigated.~~*
143. The Panel notes the above is also closely aligned with the wording of RPS Chapter 7B Objective 1:  
*To protect the natural character of the region's wetlands, and lakes and rivers and their margins, from inappropriate subdivision, use and development.*
144. The Panel considers the correct approach requires the preservation of natural character and the protection from inappropriate subdivision, use and development. How to achieve this objective, in terms of providing guidance on what is appropriate and the management of adverse effects, are matters for the policies. The Panel also considers that 'providing for' or 'allowing' appropriate subdivision, use and development is achieved through the rule framework with the guidance of policies. The Panel therefore rejects the Director General's submission point (S602.101) and recommends 'providing for' as retained as notified.
145. The Panel partly accepts the submission points of Ms Inta (S553.095), Buller Conservation Group (S552.095) and Forest & Bird (S560.245) which combine to form the Panel's recommended wording of Objective NC-01. The Panel also partly accepts the Grey District Council's submission point (S608.064) given the recommendation to delete 'where adverse effects can be avoided'.
146. The Panel accepts Ms Easton's recommendation to reject Westpower's (S547.313) request for NC-01 to be split two objectives given these simply repeat the RPS objective wording. The Panel also considers that the RPS objectives are not entirely consistent with RMA s6(a) because they do not reflect the obligation to 'preserve' natural character of waterbodies and their margins.
147. The Panel agrees with Ms Easton that it is not appropriate to add reference to 'the precautionary approach' to NC-01 and reject Te Mana Ora's submission point (S190.364).
148. In relation to **Objective NC-02**, the Panel accepts Ms Easton's recommendation to retain it as notified.
149. In relation to **Objective NC-03**, the Panel do not agree with Ms Easton that it is appropriate to add 'or operational need' given the direction of the TTPP definitions of 'Functional Need' and 'Operational Need'. The Panel considers that to give effect to RMA s6(a) direction to preserve and protect, the threshold should be high and 'Functional Need' requires an assessment to demonstrate the activity can only occur in the location through consideration of alternatives.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*'Operational Need'*, is a much lower threshold requiring an assessment of technical, logistical or operational characteristics or constraints, which may include financial considerations. The RPS Chapter 6, Policy 3 only requires particular regard to such constraints in relation to regionally and nationally significant electricity transmission, distribution and renewable electricity generation infrastructure.

- 150. The Panel considers adding *'or Operational Needs'* significantly changes the intent of Objective NC-03, which is to provide for those activities that must locate within the margins of lakes and waterbodies. The Panel considers a high threshold is appropriate to give effect to the RMA and the RPS. [Note the definition of functional need includes *'can only locate'*, whereas *'operational need'* is much wider NPS-IB definitions – relating effects on SNA.] RPS-REG Policy C1 *'particular regard to the need locate where the RE resource is available'*
- 151. The Panel agrees with Ms Easton that it is unnecessary to add *'technical'*, *'locational'* and *'constraints or requirements'* given the definition of *'Functional Need'* and *'Operational Need'* and rejects Westpower's submission point (S547.314).
- 152. The Panel accepts Ms Easton's recommendation to amend Objective NC-03 by deleting *'in such a way that the impacts'* and replacing this with *'while ensuring adverse effects'*, as requested by the Director General (S602.103).
- 153. The Panel notes Ms Inta and the Buller Conservation Grupo did not make a submission point in relation to Objective NC-03.
- 154. The Panel rejects NZTA Waka Kotahi's submission point to add *'any significant adverse effects'* (S450.102).

**Hearing Panel's Recommendations**

- 155. For the reasons outlined above, and subject to our considerations of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following changes to the **Objectives** in the NC Chapter set out below:

Natural Character and the Margins of Waterbodies Objectives
NC - 01
To preserve the natural character of lakes, rivers and wetlands and their margins <del>while providing for</del> <b>and the protection of them from in</b> appropriate <sup>32</sup> subdivision, use and development <del>where adverse effects can be avoided or mitigated.</del> <sup>33</sup>
NC – 02

<sup>32</sup> Royal Forest and Bird Protection Society of New Zealand Inc S560.245

<sup>33</sup> Buller Conservation Group S552.095 and Frida Inta S553.095

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

To recognise and provide for the relationship of Poutini Ngāi Tahu and their traditions, values and interests associated with the natural character of lakes, rivers and wetlands and their margins. notified.

NC – 03

To provide for activities which have a functional need to locate in the margins of lakes, rivers and wetlands ~~in such a way that the impacts~~ **while ensuring adverse effects**<sup>34</sup> on natural character are minimised.

## **2.5. NC Policies**

### **Submissions and Further Submissions**

156. Eight submission points relating to the whole of the NC policies were summarised on page 32 of the s42A Report, with all supporting retain the policies as notified.
157. Twelve submission points and eight further submission points relating to **Policy NC-P1** were summarised on pages 32-34 of the s42A Report. Three submission points either supported the Policy be retained, two sought to delete the Policy, six submissions the policy in part or sought to amend the Policy and one submission point opposed in part. Five further submissions sought to disallow one submission point, and two further submissions sought to allow one submission point.
158. Twenty-six submission points and 16 further submission points relating to **Policy NC-P2** were summarised on pages 35-38 of the s42A Report. Five submission points supported retaining the Policy as notified, one submission point sought to delete the Policy and 20 submission points sought wording amendments. Twelve further submission points opposed the wording amendments sought and four further submission points supported the wording amendments sought.
159. Twenty submission points and two further submission points relating to **Policy NC-P3** were summarised on pages 40-43 of the s42A Report. Five submission points supported the Policy as notified, one submission point sought to delete the Policy, and 14 submission points either supported the policy in part or sought wording amendments to the Policy. Two further submission points sought to allow the amendments sought in the submissions.
160. Seven submission points and one further submission points relating to **Policy NC-P4** were summarised on page 43 of the s42A Report. Five submission points supported the Policy as notified, two submission points sought wording amendments and one further submission point sought to disallow one of the wording amendments sought.
161. Eight submission points and two further submission points relating to **Policy NC-P5** were summarised on pages 43-44 of the s42A Report. Four submission points supported the Policy as notified and four submission points sought wording amendments. Two further submissions sought to disallow wording amendments sought.

<sup>34</sup> Director General of Conservation S602.103

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**Section 42A Report**

162. In relation to **Policy NC-P1**, the s42A Report did not support its deletion (Frida Inta S553.096 and Buller Conservation Group S552.096) given it sets the overall principles for what activities may be acceptable within the margins of a waterbody.
163. The s42A Report did not support replacing *'Minimise'* with *'Avoid, remedy or mitigate'* (Westpower S547.315, NZTA Waka Kotahi S450.103 and Manawa S438.106) or just *'mitigate'* (GDC S608.608) because the RMA s6(a) requirement to preserve natural character is a high threshold. It also did not support its replacement with *'Avoid'* (Forest & Bird S560.248) because this was an even higher threshold, which should be accompanied by non-complying activity status rules; and noted this was inappropriate given the wide range of existing activities in the margins of waterbodies and the substantially modified lowlands of the West Coast.
164. The s42A Report supported the amendments sought to add *'development'* (Forest & Bird S560.248); the addition of *'is of a form and scale that'* (Director General of Conservation S602.104); and *'including public access'* (Herenga ā Nuku Outdoor Access Commission S274.009). However, it recommended adding *'and maintains or enhances public access'* to better give effect to RMA s6(d).
165. In relation to **Policy NC-P2**, the s42A Report supported the replacement of *'provide for'* with *'allow'* (Director General of Conservation S602.105); the replacement of *'minimised'* with *'avoided, remedied or mitigated'* (Westpower S547.316, Grey District Council S608.609 and Manawa S438.107); the addition of *'energy activities'* to clause (b) (Westpower S547.317); and the addition of *'activities or Māori purpose activities in accordance with an Iwi/Papatipu Rūnanga Management Plan'* (Poutini Ngai Tahu S620.174).
166. The s42A Report supported the replacement of *'cultural purposes'* with *'activities for Māori Purpose Activities'* (Poutini Ngāi Tahu S620.174). However, it recommended the Iwi/Papatipu Rūnanga Management plan that is referenced within Rule NC – R1, was also included as only those activities in accordance with a Papatipu Rūnanga Management Plan are permitted in that rule.
167. The s42A Report supported in part the request to add a new clause (g) *'Adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna are avoided'* but recommended adding reference to locating activities outside Significant Natural Areas (**SNA**), in accordance with Policy 8 of the NPS-IB, at the beginning of the Policy.
168. The s42A Report did not support deleting the policy (Forest & Bird); adding *'subject to regional rules'* and deleting *'where significant'* (Frida Inta S553.097 and Buller Conservation Group S552.097); adding *'minerals extraction, exploration and prospecting activities'* (WMS Group S599.070, Birchfield Coal Mines S601.051, BRM Developments S603.035, Birchfield Ross Mining Limited S604.045 Phoenix Minerals Limited S606.036, Whyte Gold Limited S607.034); adding *'to undertake legally established activities'* (Bathurst Resource S491.025); adding a

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

new clause 'for food production purposes' (Hort NZ S486.036 and Federated Farmers S524.077); the addition of '*energy activities where there is a technical, locational*' to clause (c) (Westpower S547.318); and adding '*regionally significant infrastructure*' and replacing '*activities*' with '*structures*' (Manawa S438.107); or '*critical infrastructure*' (Westpower S547.317).

169. However, at the hearing, Ms Easton reconsidered her recommendation and agreed that replacing '*infrastructure*' with '*regionally significant infrastructure*' was appropriate because it reduced the scope of the policy and better aligned with the RPS.
170. In relation **Policy NC-P3**, the s42A Report did not support deleting the policy (Forest & Bird S560.250 and S560.515). It supported the addition of the '*or operational*' (Tiga Minerals S493.066, WMS Group S599.071, Birchfield Coal Mines S601.052, BRM Developments S603.036, Birchfield Ross Mining Ltd S604.046, Phoenix Minerals Ltd S606.037, Whyte Gold Ltd S607.035, Bathurst Resources and BT Mining Ltd S491.026, NZTA Waka Kotahi S450.105 and Manawa S438.108).
171. The s42A Report, did not support Westpower's (S547.319) request to add '*technical*', '*locational*' and '*constraints or requirements*' given the definition of '*Functional Need*' and '*Operational Need*'; or the request to replace '*adversely affect*' with '*avoid, remedy or mitigate adverse effects on*' (S547.320).
172. In relation to **Policy NC-P4**, the s42A Report supported the adding '*including weed and pest, control*' (New Zealand Agricultural Aviation Association S166.017); and recommended the addition of an Advice Note instead of a new method or rule (partly accepting Forest & Bird S560.259 and S560.516).
173. In relation to **Policy NC-P5**, the s42A Report supported moving the Policy to the Public Access Chapter (S553.098 and S552.098); and adding '*or for health and safety reasons*' and '*and/or health and safety*' to clause (b) (Westpower S547.321 and Manawa S438.109).

**Hearing and Submitter Evidence/Statements**

174. Ms Pull, for Poutini Ngāi Tahu, questioned the need for specific references to other parts of the Plan and considered this implied they required special attention. She also noted a lack of consistency in the cross-referencing wording between chapters. She considered the existing references to the EIT policies should be deleted and added to '*Other relevant Te Tai o Poutini Plan Provisions*' section of the overviews. She supported the s42A Report recommendations to retain NC-P3 as notified.
175. Mr Leckie and Ms Hunter, for Bathurst, sought changes to include reference to '*functional need*' in Policy NC-P3 and supported the amendments recommended in the s42A Report. Mr Leckie also sought greater recognition of lawfully established activities when undertaking activities that have a functional or operational need to locate in and around margins of waterbodies to be included in Policy NC-P2. He considered it was appropriate to not trigger the need for a district council resource consent if a land use activity had been lawfully

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

established and was authorised by a Coal Mining License. Ms Hunter supported the proposed amendments set out in paragraphs 103 and 131 of the s42A Report and amendments to NC-P2 to enable removal of indigenous vegetation and earthworks within riparian margins of waterbodies, to enable these activities to occur where they are lawfully established activities.

176. Mr Kennedy, for Westpower, considered the s42A Report recommended wording for NC-P1 was inconsistent with the RPS and sought the following wording:

*Avoid, remedy or mitigate the adverse effects of activities on the elements, patterns and processes that together contribute to the natural character of wetlands, lakes and rivers and their margins.*

177. Mr Kennedy considered including public access in NC-P1 suggested that maintenance and enhancement of access is required in all instances and should be a separate matter included in the Public Access Chapter.

178. Mr Kennedy supported the s42A Report recommendation to insert 'energy activities' in Policy NC-P2. In relation to Policy NC-P3, Mr Kennedy disagreed with the s42A Report recommendation and considered clause (b) should be amended as follows:

*They are of a form and scale that will not adversely effect avoid, **remedy, or mitigate adverse effects** on the natural character of the riparian ~~margin~~area.*

179. Mr Kennedy also sought alterations to Policy NC-P5 (now proposed to be PA-P1) to add 'or for health and safety reasons due to the operational requirements of regionally significant infrastructure' and 'and/or health and safety'; and delete 'natural hazard structures'.

180. Mr Pemberton, for the Director General considered Policy NC-P3 should be retained as notified. He noted the NPS-FM only makes limited allowances for activities which have a functional need, however there are no provisions for activities on the basis of an operational need. He notes the NPS-IB allows some activities within SNA that have an operational need but that this is not directly applicable to Policy NC-P3, which relates to effects on the natural character of riparian areas. He considered providing a pathway for buildings and structures within riparian margins was not consistent with section 6(a) of the RMA in relation to recognising and providing for the preservation of natural character of wetlands, lakes and rivers and their margins.

181. Ms Young, for the Director General, supported the amendments to Policies NC-P1 and NC-P2, as proposed in the Director General's submission. She did not consider that buildings that have an operational need should be afforded the same level of leniency as buildings and structures that have a functional need. She highlighted riparian margins are sensitive areas and provide habitat for spawning threatened indigenous species. She considered avoiding buildings and structures that do not have a functional need in these areas was preferable and Policy NC-P3 should be retained as notified.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

182. Ms Perkins, for Herenga ā Nuku Aotearoa/Outdoor Access Commission highlighted the request to add *'and maintains or enhances public access'* to Policy NC-P1.
183. Ms Inta, for herself and the Buller Conservation Group, disagreed with the recommended wording of Policy NC-P1, as she considered there was no reference to protecting the natural environment compared with other chapters that used the word protect on numerous occasions. In relation to Policy NC-P2, she questioned how wide the gap is between *'minor'* and *'significant'* and referred to RPS Chapter 7A Policy 4 in support of her evidence that uses *'no more than minor'*. She considered Policy NC-P2 breached the provisions of RPS and the RLWP. She highlighted that indigenous vegetation removal had been deleted from the rules in the NC Chapter given it is addressed in the Ecosystems and Indigenous Biodiversity (ECO) Chapter, and therefore indigenous vegetation should also be removed from Policy NC-P2.
184. Ms Styles, for Manawa, noted that *'natural character values'* in Policy NC-P1 could be interpreted in a variety of ways, in different contexts. To address this, she sought rewording of the policy to remove *'minimise'* and refer to *'identified natural character values'* to enable decisions to be based on the special values that merit protection and to reduce ambiguity when applying the policy. She also wanted to see a list of identified values somewhere in the Plan where it is applicable. She recommended the following wording:

**NC – P1**

~~Minimise~~ **Avoid, remedy or mitigate** the adverse effects of activities on the natural character of the riparian margins of lakes, rivers and wetlands by ensuring that subdivision, **development** and land use ~~is of a form and scale that maintains~~ **protects** the elements, patterns and processes that contribute to ~~their~~ **the identified** natural character **attributes, and maintains or enhances public access.**

185. In relation to Policy NC-P2, Ms Styles cautioned against applying any recommended changes to have the policy applied outside SNA given the NPS-REG, NPS-IB and NPS-FM; and considered applying the policy outside SNA was not appropriate or consistent with the NPS-IB which do not apply to renewable electricity generation activities. She requested the following amendments to reflect the terminology used in the NPS-REG and the definitions in the TTPP:

**NC – P2**

~~Provide for~~ **Allow** indigenous vegetation removal and earthworks within riparian margins of lakes, rivers and wetlands where:

~~1. This is located outside of a significant natural area; and~~

~~12.~~ **Significant adverse effects on natural character are minimised avoided, remedied or mitigated as far as practicable; and:**

a. It is for the purpose of natural hazard mitigation; or

b. It is for the maintenance, repair, upgrade and extension of network utilities, ~~energy activities~~ and **regionally significant** infrastructure including the national grid; or

c. It is for the establishment, operation, maintenance or upgrading of renewable ~~energy~~ **electricity** generation ~~structures~~ **activities** or infrastructure here this has a functional or operational need to be located in a riparian margin; or

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*d. It is for Poutini Ngāi Tahu ~~cultural purposes~~ **Activities or Māori Purpose**  
**Activities in accordance with an Iwi/Papatipu Rūnanqa Management Plan;***

*or*

*e. It is for the repair and maintenance of legally established structures; or*

*f. The activity has a functional or operational need to be located adjoining a waterbody.*

186. Ms Styles further reiterated to the Panel the need to be clear on what is being protected in Policy NC-P3. She requested the following amendments:

**NC – P3**

*Provide for buildings and structures within riparian margins of lakes, rivers and wetlands where these: a. Have a functional need or **operational need** for their location; and b. They are of a form and scale that will not adversely ~~effect~~ **affect** the **identified** natural character of the riparian area.*

187. Ms Styles had no concerns regarding the recommendation to move Policy NC-P5 into the Public Access Chapter.

**Reporting Officer Reply Evidence**

188. Having heard the evidence and undertaken further analysis Ms Easton considered Policy NC-P1 reflected RPS direction and references the elements, patterns and process. She considered there was no justification to include identified natural character values as sought by Manawa; and any concern relating to assessing indigenous vegetation clearance could be addressed by amending the Advice Note to direct Plan users to Policy NC-P2.

189. Revised Appendix 1 of the Right of Reply recommended the following amendments:

**NC-P1**

*Minimise the adverse effects of activities on the natural character of the riparian margins of lakes, rivers and wetlands by ensuring that subdivision, **development** and land use **is of a form and scale that** maintains the elements, patterns and processes that contribute to their natural character, **and maintains or enhances public access.***

**NC-P2**

*Provide for indigenous vegetation removal and earthworks within riparian margins of lakes, rivers and wetlands where:*

- 1. This is located outside of a significant natural area; and**
- 2. ~~s~~Significant adverse effects on natural character are ~~minimised~~ **avoided, remedied or mitigated** as far as practicable and
  - a. It is for the purpose of natural hazard mitigate; or*
  - b. It is for the maintenance, repair, upgrade and extension of network utilities, **energy activities** and infrastructure including the national grid; or*
  - c. It is for the establishment, operation, maintenance or upgrading of renewable energy generation structure or infrastructure where this has***

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- a functional or operational need to be located in the riparian margin;*  
*or*
- d. *It is for Poutini Ngāi Tahu ~~cultural purposes~~ **Activities or Māori purpose***  
**Activities in accordance with an Iwi/Papatipu Runanga Management**  
**Plan; or**
- e. *It is for the repair and maintenance of legally established structures or*
- f. *The activity has a functional or operational need to be located*  
*adjoining a waterbody*

**NC-P3**

Provide for **new buildings and structures and the upgrading of existing buildings**  
**and structures** within riparian margins of lakes, rivers and wetlands where these:

- a. *Have a functional need **or operational need** for their location; and*
- b. *They are of a form and scale that will not adversely ~~effect~~ **affect** the natural*  
*character of the riparian area.*

**NC-P4**

Encourage the restoration and enhancement of the natural character of the  
riparian margins of lakes, rivers and wetlands **including pest plant and pest**  
**animal control.**

**Advice Note:**

**1 The Objective and policy in the Public Access Chapter should also be**  
**considered when assessing resource consent in relation to activities in the**  
**margins of waterbodies**

**Hearing Panel's Evaluation**

190. In relation to **Policy NC-P1**, the Panel disagrees with Ms Easton that 'Minimise' is a higher threshold than 'Avoid, remedy or mitigate' and consider this assumes that minimising effects can achieve the preservation of natural character and its protection from inappropriate development. The Panel considers there will be circumstances where adverse effects on the natural character of waterbodies will need to be avoided and other circumstances where remedy or mitigating adverse effects may achieve the outcome of preservation and protection. The Panel accepts the submission points seeking to replace 'Minimise' with 'Avoid, remedy or mitigate' (Westpower S547.315, NZTA Waka Kotahi S450.103 and Manawa S438.106) gives effect to RMA s6(a) and the RPS.
191. The Panel considers replacing 'Minimise' with 'Avoid' is too restrictive given it is anticipated that some specified activities (i.e. RSI and REG activities) will have a functional need to locate within the margins of waterbodies.
192. The Panel also accept Manawa's (S438.107) request to replace 'structures' with 'activities' in clause (c) given the pTTPP definition for 'Renewable Electricity Generation Activities' includes structures.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

193. The Panel disagrees with Ms Easton's recommendation to add *'is of a form and scale'* (Director General S602.104) to NC-P1 because we agree with Ms Styles that it adds subjectivity, and it is unclear how activities would be assessed in relation to this policy.
194. The Panel partly accepts Manawa's request to replace *'maintains the elements, patterns and processes that contribute to natural character'* with *'protects the identified natural character values'* (Manawa S438.106) but consider that this should not include the word *'identified'* because the preservation of the natural character of margins of waterbodies require is not limited to identified values. It is appropriate to identify these values through a site-specific assessment in relation to considering a proposal.
195. The Panel agrees with Ms Easton's recommendation to add *'development'* (Forest & Bird S560.248) to better aligned with the wording of the RMA.
196. The Panel disagrees with Ms Easton's recommendation to add *'and maintains or enhances public access'* (Herenga ā Nuku Outdoor Access Commission S274.009) at the end of the policy. We accept the evidence of Ms Styles that this is not appropriate in relation to the NC provisions and should be addressed in the Public Access (PA) provisions. The Panel agrees and this is considered in the Panel's Recommendation Report on the PA Chapter
197. In relation to Policy **NC-P2**, the Panel agree with Ms Easton's recommendation to replace *'minimise'* with *'avoided, remedied or mitigated'* (Westpower S547.316, and Manawa S438.107) to give effect to RMA s6(a) and the RPS. However, we consider this requires the consequential deletion of *'as far as practicable'* given this relates to significant adverse effects which must be avoided either directly, or through remediation and mitigation, to achieve the preservation and protection of natural character of the margins of waterbodies. To only go as far as *'as far as practicable'* will not achieve preservation and protection of natural character values in the margins of waterbodies, as a matter of national importance.
198. Similarly, the Panel accepts the request to delete *'significant'* (Frida Inta S553.097 and Buller Conservation Group S552.097) because to allow environmental effects up to this threshold is not consistent with the directive of RMA s6(a) or RPS Chapter 7A, Policy 4 to only allow activities with no more than minor adverse effects would potentially lead to cumulative effects and will not achieve preservation and protection of natural character values in the margins of waterbodies, as a matter of national importance. The Panel considers this recommendation also negates the need to add a new clause (1) in relation to the protection of significant biodiversity and habitats by limiting effects on natural character to *'no more than minor'*.
199. The Panel also disagrees with Ms Easton's recommendation to include *'energy activities'* in clause (b) and agree with that this is not appropriate in clause (c) given the TTPP for *'Energy Activities'* and the direction of the NPSREG, NPSET and RPS. Similarly, the Panel considers the amendment sought by Manawa to replace *'renewable energy generation structures or infrastructure'* with *'renewable electricity generation activities'* in clause (c) is appropriate and aligns better with direction in the NPS-REG. However, the Panel agrees with Mr Kennedy and

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

Ms Styles that *'infrastructure'* should be *'regionally significant infrastructure'* to align with the RPS and its direction regarding functional or operational need in relation to RSI and renewable electricity generation. The Panel agree that *'infrastructure'* is too broad to give effect to the higher order statutory direction.

200. For the same reasons, the Panel considers that *'infrastructure'* should be *'regionally significant infrastructure'* clause (c), as a consequential amendment to the Westpower and Manawa submission points relating to clause (b). We note the request by Forest & Bird to delete this policy also provides wide scope for this amendment.
201. The Panel agree with Ms Easton to replace *'cultural purposes'* with *'Activities or Māori Purpose Activities in accordance with an Iwi/Papatipu Rūnanga Management Plan'* in clause (d).
202. The Panel has carefully considered the appropriate use of functional need or operational need in light of the higher order statutory direction and our recommendations on the NC Objectives. We consider *'operational needs'* should only be used where this is consistent with the national direction given this is a much lower threshold and reduces the level of protection required. We agree that the NPS-IB provisions are specific to activities within SNA and consider giving effect to this direction must be undertaken in conjunction with the identification of SNA. Furthermore, with the removal of vegetation clearance, the policy is now focused on earthworks within the margins of waterbodies.
203. The Panel considers the inclusion of *'operational need'* should be limited to regionally and nationally significant electricity transmission, distribution and renewable electricity generation infrastructure and RSI, to give effect to the NPSREG, NPSET and RPS. These activities are captured in clause (b). The Panel accepts that other activities should only be located in the margins of waterbodies where the higher threshold of functional need can be met given the importance and sensitivity of these areas to earthworks and disturbance. The Panel also agrees with Ms Styles that the policy should not be broadened by adding *'energy activities'* given the definition in the pTTPP includes non-renewable energy generation. The Panel agrees with Ms Styles and Mr Kennedy that the policy should apply to *'regionally significant infrastructure'* and not *'infrastructure'*; and accept this is consistent with national direction and the RPS.
204. For the same reasons, the Panel recommends deleting *'operational need'* from clause (f) to be consistent with NC-O3 and to give effect to national direction. The Panel considers this is within the scope of the request to delete the policy.
205. The Panel agree with Ms Easton's recommendations to reject the other submissions seeking changes for the reasons outlined in the s42A Report.
206. In relation to **NC-P3**, the Panel disagree with Ms Easton's recommendation to add *'or operational needs'* to clause (a) for the reasons discussed above in relation to NC-O3 and NC-P2.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

207. The Panel agree with Ms Easton’s recommended amendments to correct ‘*effect*’ by replacing it with ‘*affect*’ as sought by the Grey District Council; and to reject Westpower’s suggested rewording to address this. The Panel also considers replacing ‘*area*’ with ‘*margin*’ in clause (b), as a RMA First Schedule clause 16(2) correction is appropriate for clarity. Similarly, the Panel accept Ms Easton’s recommended wording additions clarify the intent to apply to both existing and new activities.
208. In relation to **NC-P4**, the Panel agree with Ms Easton’s recommendation to add ‘*including pest plant and pest animal control*’ as sought by NZ Agricultural Aviation Association to enable such activities.
209. The Panel agree with Ms Easton’s revised recommendation to not include Advice Note (2), as shown in the s42A Report, in NC-P4 due to her consideration of further legal information from the Director General.
210. In relation to **NC-P5**, the Panel agree with Ms Easton to delete NC-P5 and move this into the Public Access Chapter. We agree with Ms Easton that the additions sought by Westpower, in relation to health and safety, are not appropriate given the requirement to maintain public access to and along the margins of waterbodies. However, we consider the wording sought by Manawa in relation to the operational needs of RSI is appropriate; and therefore, recommend accepting Manawa’s submission point (S438.109).

**Hearing Panel’s Recommendation**

211. For the reasons outlined above, and subject to our considerations of Part 2 of the RMA the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following changes to the **NC Policies**:

<b>NC-P1</b>
<b><u>Avoid, remedy or mitigate</u></b> <sup>35</sup> adverse effects on the natural character of the riparian margins of lakes, rivers and wetlands by ensuring that subdivision, <b><u>development</u></b> <sup>36</sup> and land use maintains the elements, patterns and processes that contribute to their natural character.
<b>NC-P2</b>
Provide for <del>indigenous vegetation removal and</del> <sup>37</sup> earthworks within riparian margins of lakes, rivers and wetlands where <del>significant</del> adverse effects on natural character are <del>minimised as far as practicable</del> <b><u>avoided, remedied or mitigated</u></b> <sup>38</sup> and:
a. It is for the purpose of natural hazard mitigation; or
b. It is for the maintenance, repair, upgrade and extension of network utilities, and <b><u>regionally significant</u></b> <sup>39</sup> infrastructure including the national grid; or

<sup>35</sup> Westpower Limited (S547.315), NZTA Waka Kotahi (S450.103) and Manawa Energy Limited (S438.106)

<sup>36</sup> Royal Forest and Bird Protection Society of New Zealand Inc (S560.248)

<sup>37</sup> Consequential amendment Royal Forest and Bird Protection Society of New Zealand Inc (S560.508)

<sup>38</sup> Westpower Limited (S547.316), Grey District Council (S608.609) and Manawa Energy Limited (S438.107)

<sup>39</sup> Manawa Energy Limited (S438.107), Westpower Limited (S547.317)

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- c It is for the establishment, operation, maintenance or upgrading of renewable electricity generation ~~activities~~<sup>40</sup> or **regionally significant**<sup>41</sup> infrastructure where this has a functional or operational need to be located in a riparian margin; or
- d It is for Poutini Ngāi Tahu ~~cultural purposes~~**Activities or Māori Purpose Activities in accordance with an Iwi/Papatipu Rūnanga Management Plan**;<sup>42</sup> or
- e It is for the repair and maintenance of legally established structures; or
- f. The activity has a functional ~~or operational~~<sup>43</sup> need to be located adjoining a waterbody.

**NC-P3**

Provide for **new** buildings and structures **and the upgrading of existing buildings and structures**<sup>44</sup> within riparian margins of lakes, rivers and wetlands where these:

- a. Have a functional need for their location; and
- b. They are of a form and scale that will not adversely effect ~~effect~~<sup>45</sup> the natural character of the riparian ~~area~~**margin**.<sup>46</sup>

**NC-P4**

Encourage the restoration and enhancement of the natural character of the riparian margins of lakes, rivers and wetlands **including pest plant and pest animal control**.<sup>47</sup>

**Advice Note:**

**The objective and policy in the Public Access Chapter should also be considered when assessing resource consents in relation to activities in the margins of waterbodies.**<sup>48</sup>

**NC-P5**

~~Reduction in public access to waterbodies can be considered when natural hazard mitigation works are required to protect communities from a significant natural hazard threat. When assessing proposals for natural hazard structures, effects on public access should be considered and ways to minimise them found, including:~~

- ~~a. Provision of alternate certain and enduring access; and~~
- ~~b. Provision of public amenity or opportunity for environmental benefit along the structure, provided that the physical integrity of the structure is maintained.~~<sup>49</sup>

**Public Access – Te Āheinga Tūmatanui**

<sup>40</sup> Manawa Energy Limited (S438.107)

<sup>41</sup> Royal Forest and Bird Protection Society of New Zealand Inc (S560.249) and consequential amendment to Manawa Energy Limited (S438.107), Westpower Limited (S547.317)

<sup>42</sup> Te Rūnanga O Ngāti Waewae, Te Rūnanga O Makaawhio and Te Rūnanga O Ngāi Tahu S620.174

<sup>43</sup> Royal Forest and Bird Protection Society of New Zealand Inc (S560.249)

<sup>44</sup> Clause 16(2) First Schedule of the RMA

<sup>45</sup> Grey District Council (S608.610)

<sup>46</sup> Clause 16(2) First Schedule of the RMA

<sup>47</sup> New Zealand Agricultural Aviation Association (S166.017)

<sup>48</sup> Buller Conservation Group (S552.098) and Frida Inta (S553.098)

<sup>49</sup> Buller Conservation Group (S552.098) and Frida Inta (S553.098)

**NC-P5PA-P1**<sup>50</sup>

Reduction in public access to waterbodies can be considered when natural hazard mitigation works are required to protect communities from a significant natural hazard threat or when required for public safety due to the operational requirements of regionally significant infrastructure.<sup>51</sup> When assessing proposals for natural hazard structures,<sup>52</sup> effects on public access should be considered and ways to minimise them found, including:

- a. Provision of alternate certain and enduring access; and
- b. Provision of public amenity or opportunity for environmental benefit along the structure, provided that the physical integrity of the structure is maintained.

## 2.6. NC Rules

### **Submissions and Further Submissions**

211. Seventeen submission points and 18 further submission points relating to the whole of the NC rules were summarised on pages 46-48 of the s42A Report, with all, except one, seeking amendments.
212. Eight submission points relating to **Rule NC-R1** were summarised on pages 53-57 of the s42A Report. Three submission points sought retention of the rule as notified and two submission points sought amendments. Seven submission points sought to reduce the range of permitted activities within the rule, with nine further submission points in opposition. Sixteen submission points sought to increase the range of permitted activities, with three further submission points in opposition and three further submission points in support. Seven submission points specific to natural hazard mitigation (clause (j) in the rule) sought amendments, with one further submission point in support and one further submission point in opposition. Five submission points on the volume of earthworks and area of vegetation clearance allowed sought amendments.
213. Twenty-two submission points and seven further submission points relating to **Rule-R2** were summarised on pages 62-65 of the s42A Report. Two submission points sought retention of the rule as notified, one submission point sought to delete the rule and 19 submission points sought amendments. Three further submission points opposed the wording amendments sought and three further submission points supported the word amendments sought.
214. Eleven submission points and two further submission points relating to **Rule NC-R3** (hazard mitigation structures) were summarised on pages 67-68 of the s42A Report. Two submission points supported the rule as notified, two submission points sought to delete the rule, and eight submission points sought amendments. Two further submission points opposed the amendments sought.

<sup>50</sup> Buller Conservation Group (S552.098) and Frida Inta (S553.098)

<sup>51</sup> Manawa Energy Limited (S438.107), Westpower Limited (S547.317)

<sup>52</sup> Consequential amendment to Buller Conservation Group (S552.098) and Frida Inta (S553.098)

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

215. Twenty-one submission points and two further submission points relating to **Rule NC-R3** (indigenous vegetation and earthworks not meeting permitted activity standards) were summarised on pages 69-71 of the s42A Report. Two submission points supported the rule as notified, five submission points sought to correct a numbering error, and 13 submission points sought amendments. Two further submission points opposed the amendments sought.
216. Seven submission points and one further submission points relating to **Rule NC-R4** were summarised on page 72 of the s42A Report. Five submission points sought to retain the rule as notified, two submission points sought to correct the numbering, and one sought to retain at least a discretionary activity status.
217. Sixteen submission points and one further submission point relating to **Rule NC-R5** were summarised on pages 73-74 of the s 42A Report. One submission point supported the rule as notified, two submission points sought to correct a numbering error, two submission points sought to delete the rule, and 11 submission points sought amendments. One further submission point supported the submission point to delete the rule.
218. Eight submission points sought **new rules** and twelve further submissions opposed new rules requested and one further submission supported a new rule.

**Section 42A Report**

219. In relation to the **Rules as a Whole**, the s42A Report supported correcting the numbering (Grey District Council S608.619), avoiding duplication with the NESF and regional council functions (Forest & Bird S560.252 and S560.509, Westpower S547.401, Grey District Council S608.614, S608.615 and S608.616).
220. The s42A Report did not support better protection for watercourses during development (Marie Elder S352.007) because it was not clear what changes to the provisions were sought; and did not support including more stringent rules than the NESF for natural wetlands (Forest & Bird S560.039).
221. In relation to Forest & Bird's request (S560.041) to revise the rules to give effect to RMA S6(a) requirements and to remove all permitted activities within riparian margins, the s42A Report did not support this because it considered there were a number of other matters that needed to be weighed alongside s6(a), including 6(e) and 6(h), the national direction of the NPSREG and NPSET, and the RPS. It noted RPS Chapter 7A Policy 4 and highlighted there were a wide range of existing uses that exist in the margins of waterbodies, that can only be undertaken in the margins of waterbodies. It noted the ECO Chapter provided for a range of permitted activities for vegetation clearance and that the NC rules have fewer permitted activities. For these reasons, it did not support a wholesale increase in stringency.
222. In relation to **Rule NC-R1**, the s42A Report supported, in part, clarifying the relationship of the ASW Chapter with the Energy Chapter as sought by Transpower (S299.084), if clause (b) is retained. It did not support changing the activity status when compliance is not achieved from

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- discretionary to restricted discretionary (Laura Coll McLaughlin S574.135, William McLaughlin S567.213, Chris & Jan Coll S558.135 and Chris J Coll Surveying Limited S566.135) given the preservation of natural character in margins of waterbodies is a RMA s6(a) matter of national importance.
223. The s42A Report did not support deleting Rule NC-R1 (Forest & Bird S560.253) because it considered lowland areas are already substantially modified and that within this context there are appropriate activities which should be permitted. It highlighted that the NESF specifically allows for earthworks and vegetation clearance for natural hazards work within riparian margins of wetlands, as well as for arable and horticulture uses; both the NPSREG and NESETA anticipate permitted activities; and the NPS-IB does not apply to renewable electricity generation and electricity transmission. It also noted the LWRP permitted activity standards apply in riparian margins in relation to water quality, earthworks and vegetation clearance.
224. The s42A Report did not support deleting Rule NC-R1 clauses (1)(a), (h) or (i) (Buller Conservation Group S552.099 and S552.215, and Frida Inta S553.099 and S553.219), as it considered fence lines can be key in reducing the impact of stock access on waterbodies, and regulations require the fencing of cattle 3m from and waterways >1m wide. It noted that enabling Poutini Ngāi Tahu activities and those on Māori Purpose zoned land gave effect to RMA s6(e) matters of national importance. It also did not support combining clauses (f) and (g) (Buller Conservation Group S522.214 and Frida Inta S552.218).
225. The s42A Report supported widening NC-R1(b) to all infrastructure or energy activities (Westpower S547.323) given there was very little difference in terms of the extent of the activities covered. Similarly, it also supported in part the widening clause (c) to include energy activities and infrastructure where such activities are located underground (Westpower S547.324) but not where these are above ground.
226. The s42A Report did not support adding '*to undertake legally established activities*' clause (e) (Bathurst (491.027) given this would substantially expand the range of activities and no detail was provided about the types and scale of activities sought.
227. The s42A Report did not support increasing the limit in clause (g) from 3m to 10m (Westpower S547.325) given the potential for significant adverse effects and the need to assess effects through a resource consent process.
228. The s42A Report supported adding '*or a site of significance to Māori in Schedule Three*' (Poutini Ngāi Tahu S5620.176) to clause (j) to give effect to RMA s6(e).
229. The s42A Report supported in part to add a new clause to Rule NC-R1 to include '*New network utilities and regionally significant infrastructure where these are underground and located within a formed legal road or attached to an existing bridge*' (Chorus NZ Ltd, Spark NZ Trading Ltd and Vodaphone NZ Ltd S663.051). It noted that if these are underground service there is no visual impact on natural character of the riparian area. It also supported adding '*formed legal road*', as sought by Poutini Ngāi Tahu (FS41.728).

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

230. The s42A Report supported adding a new clause '*Clearance of pest plants and pest animals for biosecurity purposes*', as sought by NZ Agricultural Aviation Association (S166.018), but recommended using wording consistent with Policy NC-P4.
231. The s42A Report did not support including whitebaiting or structures associated with whitebaiting in Rule NC-R1 because these structures are addressed under Rule NC-R2.
232. The s42A Report supported, in part, the submissions from Buller Conservation Group (S552.218) and Frida Inta (S553.333) to address the issue of lands that are mapped as waterbodies in the planning maps. It recommended removing the waterbody identifier on the zoning layer and zoning these areas General Rural.
233. The s42A Report did not support the inclusion of a new clause for clearance and earthworks for '*bridges and/or dams as part of a Temporary Military Activity*' as a permitted activity, as sought by the NZ Defence Force (S519.030).
234. The s42A Report did not support adding new clauses '*food production purposes*' and '*biosecurity purposes*'; but recommended using '*Arable, horticultural or pastoral farming use where this is a lawfully established activity that is no greater in intensity, scale or character over time than at 14 July 2022*' using wording consistent with the NESF and NPS-IB as alternative relief (Hort NZ S486.037 and Federated Farmers of New Zealand S524.079).
235. In relation to submissions on natural hazard mitigation in Rule NC-R1, the s42A Report recommended deleting reference to '*natural hazard activities*' and replacing this with '*hazard mitigation structures*'. It recommended new clause '*Maintenance and repair of natural hazard mitigation structures*' and amending clause (j) to '*New Hazard mitigation structures and upgrading of existing hazard mitigation structures undertaken by a statutory agency or their nominated contractor*'. It considered this enabled maintenance and repair of existing hazard mitigation structures regardless of who undertakes the activity, while retaining the specification that such vegetation clearance and earthworks for new natural hazard mitigation structures should be undertaken by a statutory agency or their authorised contractor. It also recommended that clause (5) should be amended so that restrictions only apply to natural hazard mitigation structures owned or managed by a statutory agency.
236. In relation to submissions on the volume of earthworks/area of vegetation clearance allowed in Rule NC-R1, the s42A Report did not support the addition of offsetting by riparian margin enhancement (Frida Inta S553.223). It did not consider the rule was too restrictive given it would enable maintenance and construction of up to a 3m wide river crossing. It did not support an increase in the area of vegetation clearance or volume of earthworks as sought by Westpower (S547.327 and S547.326) and Manawa (S438.110) given this would increase adverse effects.
237. The S42A Report did not support changing the activity where compliance is not achieved from discretionary to restricted discretionary, as sought by Manawa (S438.110). It did support the

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

submission point from Manawa seeking to replace *'critical infrastructure'* with *'regionally significant infrastructure'*.

238. In relation to **Rule NC-R2**, the s42A Report did not support the deleting the rule (Forest & Bird (S560.254) and making the activities discretionary given the range of existing activities and the need to provide for their ongoing existence and operation. It again highlighted the context of the substantially modified lowlands of the West Coast.
239. The s42A Report supported adding *'including energy activities and infrastructure'* to clause (a) (Westpower S547.328 and KiwiRail S442.063) and consistency with similar amendments to Rule ASW-R1. It also supported adding a new clause to allow temporary maimai for game bird hunting (West Coast Fish and Game Council S302.005); as well as a timeframe for removal at the end of the season (Grey District Council FS1.080).
240. The s42A Report supported including *'have a functional need to be located in the riparian margin'* in the first part of the rule (Buller Conservation Group S552.100 and Frida Inta S553.100) but recommended this is *'functional or operational need'* to be consistent with the policy. It did not support adding *'technical, locational, functional or operational constraints or requirements'* (Westpower S547.329).
241. The s42A Report supported in part the submission from NZ Defence Force (S519.031) that temporary bridges that do not include earthworks or vegetation clearance are appropriate but did not consider temporary dams are appropriate within a riparian margin.
242. The s42A Report did not support adding a new clause *'Associated with a lawfully established activity and have an operational or functional need to be in that location'* (Bathurst Resources S491.111) given the word 'associated' would expand the definition of lawfully established activities. It did not support the deleting clause (e) *'natural hazard mitigation structures being constructed by a statutory authority or their nominated contractor'*<sup>53</sup> given the need for restrictions to give effect to RMA s6.
243. The s42A Report supported adding a new clause *'Pump sheds'*, as sought by Horticulture NZ (S524.080). It did not support the deletion of network utilities, parks facilities, natural hazard mitigation structures, renewable electricity generation facilities and stormwater discharge structures and water supply intake structures from the permitted activities (Director General S602.108) given the need to provide for existing activities. It considered that separate rules were appropriate to deal with the substantive issue of which activities are permitted.
244. In relation to **Rule NC-R3** (Natural Hazard Mitigation Structures), the s42A Report recommended its deletion given amendments to Rule NC-R2 provide for natural hazard mitigation structures. However, it supported a new restricted discretionary rule for natural hazard mitigation structures within riparian margins not meeting permitted activity standards.

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<sup>53</sup> Grey District Council (S608.066), Buller District Council (S538.224, William McLaughlin (S567.216), Chris & Jan Coll (S558.136), Chris J Coll Surveying Limited (S566.136) and Laura Coll McLaughlin (S574.136)

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

245. In relation to **Rule-NC-R3** (Indigenous Vegetation and Earthworks not meeting Permitted Activity standards), the s42A Report did not support amending the heading to add ‘*or controlled*’ or a new controlled activity rule.<sup>54</sup> It did not support adding ‘*excluding mineral extraction, exploration and prospecting activities*’<sup>55</sup>(Bathurst Resources S491.111) given the potential for significant adverse effects on natural character. It noted the strategic direction supporting minerals extraction and the direction on the natural environment have equal weight; and mineral extraction cannot override the RMA and other national direction.
246. In relation to a submission from Forest & Bird (S560.256) seeking to ensure that the rules are no more lenient than the NESF, the s42A Report recommended that rules in relation to vegetation clearance be moved to the ECO Chapter. It did not recommend the same rules apply to the margins of waterbodies as they are to be considered in a separate manner and that national instruments recognise that different activities have functional or operational needs to locate in the margins of waterbodies.
247. In relation to **Rule NC-R4**, the s42A Report recommended correcting rule numbering. It did not support the submission from Forest & Bird (S560.257) seeking that the rules are no more lenient than the NESF or the ECO or EW Chapter rules given the Rule NC-R4 specifically addresses buildings and structures and effects on natural character of the margins of waterbodies is a separate matter under the RMA.
248. In relation to **Rule NC-R5**, the s42A Report recommended correcting rule numbering. It did not support deleting the rule (Buller District Council S538.227 and Director General of Conservation S602.111) or changing the activity status from discretionary to controlled.<sup>56</sup> It did not support the submission from Forest & Bird (S560.257) seeking that the rules are no more lenient than the NESF or the ECO or EW Chapter rules given the Rule NC-R4 specifically addresses buildings and structures and effects on natural character of the margins of waterbodies is a separate matter under the RMA.
249. In relation to requests for **new rules**, the s42A Report did not support new controlled activity rules for new hazard mitigation structure or for earthworks, vegetation clearance, building and structures given this may be inappropriate within a riparian margin and consent cannot be declined for a controlled activity. It did not support a new restricted discretionary activity rule for earthworks not meeting the permitted activity standard given the wording of RMA s6(a).
250. The s42A Report noted it was not opposed in principle to a new non-complying activity rule for activities that are likely to cause significant adverse effects but sought further information from the submitter. It did not support a prohibited activity where reductions in setbacks are sought.

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<sup>54</sup> Westpower (S547.331 and S547.333), Chris & Jan Coll (S558.143), Chris J Coll Surveying Limited (S566.143) and Laura Coll McLaughlin (S574.143)

<sup>55</sup> WMS Group (S599.072), TiGa Minerals and Metals Limited (S493.067), Birchfield Coal Mines Ltd (S601.053), BRM Developments Limited (S603.037), Birchfield Ross Mining Limited (S604.047), Phoenix Minerals Limited (S606.038) and Whyte Gold Limited (S607.036)

<sup>56</sup> William McLaughlin (S567.220, S567.212, S567.215, S547.217), Chris & Jan Coll (S558.134, S558.137 and S558.139), Chris J Coll Surveying Limited (S566.134, S566.137 and S566.139), Laura Coll McLaughlin (S574.134, S547.137 and S574.139) and Grey District Council (S608.067)

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**Hearing and Submitter Evidence/Statements**

251. Ms Pull, for Poutini Ngāi Tahu, sought to amend Rule NC-R2 as follows:

*NC-R2 Buildings and Structures within the Riparian Margin of a River, Lake or Wetland*  
*Activity Status: Permitted*

*Where:*

1. **All standards in Rule NC-R1 and ECO-RX in relation to riparian margins are complied with; and**
2. *Where the buildings and structures...*

252. Ms Pull clarified that the further submission (FS41.189) was concerned with unmanaged effects from temporary bridges and that the reasons given in the s42A Report adding a new clause stated that temporary bridges do not include earthworks or vegetation clearance. She considered this would clarify how the activity is required to comply with the earthworks and vegetation clearance limits in the riparian margin; and was similar to how the earthworks permitted activities are organised.

253. Ms Styles, for Manawa, noted in relation to all the rules that they must give effect to the NPS-REG and not impose higher levels of restrictions on REG activities than other similar activities. She highlighted the need for consistent terminology throughout the Plan relating to REG activities and RSI to avoid confusion in interpretation.

254. In relation to NC-R1, Ms Styles sought that the quantity limits do not apply to REG activities or are significantly increased to reasonably provide for RSI activities. She noted that unlike ONL, riparian margins are confined to a linear area and large areas can need to be used as part of a power scheme or access. She considered placing restriction on existing REG activities fails to give effect to the higher order direction. She recommended excluding maintenance, operation, minor upgrade and repair of existing REG activities. She considered the default status should be restricted discretionary, which was similar to other rules dealing with similar matters.

255. Ms Styles saw merit in relocating indigenous vegetation clearance with riparian margins to the ECO Chapter but highlighted the need to avoid duplication or confusion. She considered the new rules were in effect a duplication of NC-R1 and NC-R3 but apply to vegetation clearance only. She had the same concerns in relation to the new rules and the request for a restricted discretionary default activity status and not discretionary.

256. Mr Kennedy, for Westpower, considered that if riparian margins of 5m were required for waterways with bed widths <3m there would be significant regulatory impacts that had not been assessed. He noted the further submission (FS222.027 and FS222.0338) to disallow these submissions remained valid.

257. Mr Kennedy noted the recommended changes to NC-R1 in the s42A Report was wider than the clarification sought (S547.324) and it was unclear how the rule would provide for both above and below ground connections, as the notified wording intended. He requested the

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

amendment should use the wording originally submitted. He considered the area and volume limits should be 30m<sup>2</sup> and 30m<sup>3</sup> respectively based on a 10m wide riparian margin and a 3m crossing. He considered clauses (2) and (3) should apply to 'new' indigenous vegetation clearance and earthworks; noting this may now apply to new ECO-RX. He considered 'minor upgrading' was too restrictive for RSI activities and noted there was scope to provide a restricted discretionary activity rule.

258. Ms Young highlighted the Director General's submission to delete the following activities from Rule NC-R2:

- *Network utilities;*
- *Parks facilities*
- *Natural hazard mitigation structures constructed by a statutory agency or their nominated contractor;*
- *Renewable electricity generation facilities where these have a functional need to locate within the riparian margin;*
- *Stormwater discharge structures and water supply intake structures constructed in accordance with NZS 4404 Code of Practice for Land Development and Subdivision Infrastructure.*

259. Ms Young considered these activities should not be permitted and should be assessed through a resource consent process to enable appropriate conditions to be imposed. She recommended that these activities and hazard mitigation structures should be restricted discretionary activities.

**Reporting Officer Reply Evidence**

260. In her Right of Reply, Ms Easton noted that the maximum limit of 25m<sup>2</sup> proposed under Rule NC-R1 was the same as the RLWP rule. She highlighted that the vegetation clearance and earthworks rules under the NESF are very strict within 10m of a wetland, with limited permitted activities and activities requiring resource consent, outside of those specified, being a non-complying activity. She clarified the district council functions in this regard relate to vegetation clearance and earthworks within a margin of a wetland.

261. In Reply, Ms Easton relation recommended one additional change to NC-R1 to replace 20m<sup>2</sup> with 25m<sup>2</sup> in clause (3). There were no other changes to the other NC rules identified in her updated Appendix 1.

**Hearing Panel's Evaluation**

262. The Panel recommends consistency changes to the NC rules to use the phrase '*statutory agency or authorised contractor acting on its behalf*' which clarifies that the statutory agency is in control. The Panel notes this is a plan-wide issue, and that this approach is consistent with the Panel's recommended wording for Rule EW-R2(2)(g) in relation to hazard mitigation structures, as well as elsewhere in the Plan.

263. The Panel has considered Ms Easton's clarifications regarding duplication of regional council functions under the NESF. We accept her advice that district council functions are limited to

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

the riparian margins of 'coastal' wetlands (i.e. those that do not meet the definition of a natural inland wetland).

264. In relation to **Rule NC-R1**, the Panel accepts Ms Easton's recommended amendments and new clauses; and her recommendation to clarify indigenous vegetation clearance is recommended to be addressed in the ECO Chapter by removing the reference in the rule heading and recommending new Rule ECO-RX and new Rule ECO-RXX. However, we note that both these recommended new ECO rules have changed substantially as the result of expert caucassing and the resulting recommendations in the ECO hearing. Although this is primarily structural in terms of separating out permitted activities into separate rules and the substance of the new rules relied on by Ms Easton remains very similar in scope and scale.
265. In the ECO Recommendation Report, recommended ECO-R1(2) addresses vegetation clearance in riparian margins and limits this to 20m<sup>2</sup> per 200 metres of linear length, as a permitted activity, with a default to a discretionary activity. We agree this is appropriate to ensure effects on natural character values are no more than minor. We noted this is consistent with the relief sought by Manawa (S438.110). We also consider this outcome partly addresses the relief sought by Forest and Bird (S560.253) because it defaults to a discretionary activity.
266. The Panel considers it is appropriate to add '*lawfully established*' in relation to hazard mitigation structures in new clause (k) and existing farm use in new clause (n). This is consistent with clause (f) and the Panel's approach plan-wide. However, we have simplified the wording to remove reference to '*character, intensity and scale*' in clause (n) because this is inherent in RMA s10.
267. The Panel has carefully considered the submission from Westpower seeking to increase the permitted width for establishing a river crossing point from 3m (as notified) to 10m for energy activities. The Panel consider this increase is too permissive for earthworks within the margins of waterbodies given the potential for more than minor adverse effects on natural character, which should be assessed through a resource consent process.
268. The Panel accepts the submissions seeking to delete clause (5) because new clauses (k) and (l), replacing clause (j) (as notified) appropriately address hazard mitigation structures.
269. In relation to **Rule NC-R2**, the Panel disagrees with Ms Easton's recommendation to add '*or operational need*' to locate buildings or structures within the riparian margin, for the reasons discussed in relation to the policies. The Panel considers the list of matters provided for is appropriate.
270. The Panel considers it is not appropriate to add '*energy activities*' to clause (a) given its definition in the pTTPP, national direction and the RPS. However, we agree that '*infrastructure*' should be replaced with '*regional significant infrastructure*' for the same reasons. We note that renewable electricity generation facilities are appropriately included in clause (f) but consider this should be '*renewable electricity generation activities*'.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

271. The Panel accepts Ms Easton’s recommendations to include the addition to clause (b) but considers the words ‘*game bird*’ are not needed.
272. The Panel accepts the addition of new clauses (h) and (i) given these activities have the functional need to be located within the margins of waterbodies. In response to a question from the Panel, Ms Easton advised that if a limit of the size of pump shed was necessary 5m<sup>2</sup> was appropriate. We consider it is appropriate to include a maximum size limit given the potential for more than minor adverse effects.
273. The Panel considers it is appropriate to include new advice note (2), as a consequential amendment to the West Coast Fish and Game Council’s request to add temporary mai mai, to be consistent with advice note (3) in NC-R2.
274. In relation to **Rule NC-R3**, the notes that the notified plan had two rules labelled NC-R3. The Panel agrees with the reasoning and recommendation to change the activity status for natural hazard mitigation structures to from permitted to restricted discretionary with addition of matters of discretion for clarity; and to delete the Indigenous vegetation clearance as a consequential amendment to moving vegetation clearance to the ECO Chapter. To achieve this, we accept the recommendation to delete the permitted activity rule NC-R3; and amending notified discretionary activity NC-R5 to be restricted discretionary and renumbering this NC-R3.
275. In relation to **Rule NC-R4**, the Panel agrees with Ms Easton’s recommendation retain this rule as notified, except for renumbering this NC-R5.
276. In relation to **Rule NC-R5**, the Panel agrees Ms Easton’s recommendation to change the numbering sequence on this rule.

**Hearing Panel’s Recommendation**

277. For the reasons outlined, and subject to Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following amendments to the **NC Rules**:

**Natural Character and the Margins of Waterbodies Rules**

Note: There may be a number of plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this chapter as well as rules in other chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of these identified rules. Details of the steps Plan users should take to determine the status of an activity are provided for in General Approach.

**Permitted Activities**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

<b>NC - R1</b>	<b><del>Indigenous Vegetation Clearance and</del><sup>57</sup> Earthworks within the Riparian Margin of a River, Lake or Wetland</b>
<b>Activity status Permitted</b>	
<p>1. Where this is outside of any Significant Natural Area identified in Schedule Four and for:</p> <ul style="list-style-type: none"> <li>a. Fence lines; or</li> <li>b. Maintenance, operation, minor upgrade and repair of network utilities <del>critical</del> <b>regionally significant</b><sup>58</sup> infrastructure or renewable electricity generation activities; <u>or</u></li> <li>c. <b><u>New network utilities and regionally significant</u></b><sup>59</sup> <b><u>infrastructure where these are underground and located within a formed legal road or attached to an existing bridge; or</u></b><sup>60</sup></li> <li>d. Connections to wastewater, stormwater and reticulated network utility systems <b><u>and underground energy and infrastructure connections;</u></b><sup>61</sup> or</li> <li>e. Installation of an environmental monitoring and extreme weather event monitoring facility; or</li> <li>f. Maintenance and repair of lawfully established structures; or</li> <li>g. The construction of parks facilities, parks furniture or public access points within an Open Space and Recreation Zone; or</li> <li>h. The establishment of a river crossing point up to 3m wide; or</li> <li>i. Poutini Ngāi Tahu Activities; or</li> <li>j. Activities on Māori Purpose Zoned Land <b><u>or a site of significance to Māori in Schedule Three</u></b><sup>62</sup> and <b><u>is</u></b><sup>63</sup> undertaken in accordance with an Iwi/Papatipu Rūnanga Management Plan; or</li> <li>k. <b><u>Maintenance and repair of lawfully established natural hazard mitigation structures; or</u></b><sup>64</sup></li> <li>l. <b><u>New natural hazard mitigation activities structures and upgrading of existing natural hazard mitigation structures</u></b> undertaken by a statutory agency or <del>their nominated</del> <b><u>authorised contractor acting on its behalf; or</u></b><sup>65</sup></li> <li>m. <b><u>Clearance of pest plants and pest animals for biosecurity purposes; or</u></b><sup>66</sup></li> <li>n. <b><u>Arable, horticultural or pastoral farming use where this activity is lawfully established at 14 July 2022; and</u></b><sup>67</sup></li> </ul> <p>2. <del>The amount of indigenous vegetation clearance is not greater than 20m<sup>2</sup> per 200m length of Riparian Margin;</del><sup>68</sup></p> <p>3. The amount of earthworks is not greater than <b><u>25</u></b><sup>69</sup> 20m<sup>3</sup> per 200m length of Riparian Margin; <b><u>and</u></b></p> <p>4. All earthworks stockpiles are located outside of the riparian margin of the waterbody; <del>and</del></p>	

<sup>57</sup> Consequential amendment Royal Forest and Bird Protection Society of New Zealand Incorporated S560.508

<sup>58</sup> Manawa Energy Limited S438.110

<sup>59</sup> Manawa Energy Limited S438.110

<sup>60</sup> Chorus NZ Ltd, Spark NZ Trading Ltd, Vodafone NZ Ltd S663.051

<sup>61</sup> Westpower Limited S547.324

<sup>62</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.175 and S620.176

<sup>63</sup> RMA First Schedule Clause 16(2) amendment.

<sup>64</sup> William McLaughlin S567.211, Chris & Jan Coll S558.133, Chris J Coll Surveying Limited S566.133, Buller District Council S538.223 and Laura Coll McLaughlin S574.133

<sup>65</sup> William McLaughlin S567.211, Chris & Jan Coll S558.133, Chris J Coll Surveying Limited S566.133, Buller District Council S538.223 and Laura Coll McLaughlin S574.133

<sup>66</sup> New Zealand Agricultural Aviation Association S166.018

<sup>67</sup> Horticulture New Zealand S486.037, Federated Farmers of New Zealand S524.079

<sup>68</sup> Consequential amendment Royal Forest and Bird Protection Society of New Zealand Incorporated S560.508

<sup>69</sup> Westpower Limited S547.401

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

5. ~~Unless carried out by a statutory agency or their nominated contractor responsible for natural hazard mitigation, the clearance and earthworks are not located within areas used and identified for natural hazard mitigation structures.~~<sup>70</sup>

**Advice Notes:**

1. Rules in other Overlay Chapters particularly Historic Heritage, Sites and Areas of Significance to Māori, Natural Hazards and Natural Features and Landscapes may also apply in these locations.
2. **Also refer to Rules in the Energy, Infrastructure and Transport Chapters for activities in relation to those matters.**<sup>71</sup>
3. Activities within the margins of waterbodies and wetlands are also the subject of regulation under the NES Freshwater, NPS Freshwater **Management**<sup>72</sup> and the West Coast Regional Land and Water Plan.
4. This Rule also applies to ~~plantation~~ **commercial** forestry activities, where this provision is more stringent than the NES-~~CPF~~.<sup>73</sup>

**Activity status where compliance not achieved:** Discretionary

**NC - R2 Buildings and Structures within the Riparian Margin of a River, Lake or Wetland**

**Activity Status Permitted**

Where the buildings and structures **have a functional need to locate in the riparian margin and**<sup>74</sup> are:

- a. Network utilities **and regionally significant infrastructure; or**<sup>75</sup>
- b. Temporary whitebait stands **and temporary mai mai for game bird hunting provided these are removed within two weeks of the end of the season; or**<sup>76</sup>
- c. Environmental monitoring facilities; **or**<sup>77</sup>
- d. Parks facilities and parks furniture within an Open Space and Recreation Zone; **or**<sup>78</sup>
- e. Natural Hazard mitigation structures constructed by a statutory agency or **authorised** ~~nominated contractor~~ **acting on its behalf;**<sup>79</sup> or
- f. Renewable energy generation **activities**facilities<sup>80</sup> ~~where these have a functional need to locate within the riparian margin;~~<sup>81</sup> or
- g. Stormwater discharge structures and water supply intake structures constructed in accordance with NZS 4404 Code of Practice for Land Development and Subdivision Infrastructure; **or**

<sup>70</sup> William McLaughlin S567.211, Chris & Jan Coll S558.133, Chris J Coll Surveying Limited S566.133, Buller District Council S538.223 and Laura Coll McLaughlin S574.133

<sup>71</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.001

<sup>72</sup> RMA First Schedule Clause 16(2) amendment.

<sup>73</sup> RMA First Schedule Clause 16(2) amendment to reflect the enactment of the Resource Management (National Environmental Standard for Commercial Forestry) Regulations 2017, which replaces the NES-PF.

<sup>74</sup> Buller Conservation Group S552.100 and Frida Inta S553.100

<sup>75</sup> Westpower S547.328 and KiwiRail S442.063

<sup>76</sup> West Coast Fish and Game Council S302.005

<sup>77</sup> RMA First Schedule Clause 16(2) amendment.

<sup>78</sup> RMA First Schedule Clause 16(2) amendment.

<sup>79</sup> Consequential amendment Plan-wide amendment

<sup>80</sup> RMA First Schedule Clause 16(2) amendment to used defined term.

<sup>81</sup> Consequential amendment Buller Conservation Group S552.100 and Frida Inta S553.100

- h. Temporary bridges constructed as part of a temporary military training activity; or<sup>82</sup>**  
**i. Pump sheds, less than 5m<sup>2</sup>.**<sup>83</sup>

**Advice Notes:**

1. Rules in other Overlay Chapters particularly Historic Heritage, Sites of Significance to Māori, Natural Hazards and Natural Features and Landscapes may apply in these locations.
2. **Activities within the margins of waterbodies and wetlands are also the subject of regulation under the NES Freshwater, NPS Freshwater Management and the West Coast Regional Land and Water Plan.**<sup>84</sup>

Activity status where compliance not achieved: Discretionary

**~~NC R3 — New Natural Hazards Mitigation Structures~~**

-

~~Activity Status Permitted~~

-

~~Where:-~~

- ~~1. These are constructed by a Statutory Agency or their authorised contractor~~

~~Activity status where compliance not achieved: Discretionary~~<sup>85</sup>

**Restricted Discretionary Activities**

**NC-R53 Natural Hazard Mitigation Structures within the Riparian Margin of a River, Lake or Wetland**<sup>86</sup> **not meeting Permitted Activity Rules**

Activity Status: **Restricted** Discretionary

**Discretion is restricted to:**

- Design and location of the structure;**
- Visual impact of the structure; and**
- Methods to avoid, remedy or mitigate adverse effects on natural character or public access.**<sup>87</sup>

Activity status where compliance not achieved: N/A

**Discretionary Activities**

<sup>82</sup> New Zealand Defence Force S519.03

<sup>83</sup> Horticulture New Zealand S486.0387, Federated Farmers of New Zealand S524.080

<sup>84</sup> Consequential amendment Fish and Game Council S302.005

<sup>85</sup> Director General of Conservation S602.109 and Royal Forest and Bird Protection Society Inc. S560.255

<sup>86</sup> RMA First Schedule Clause 16(2) amendment

<sup>87</sup> William McLaughlin S567.220, Chris & Jan Coll S558.134, Chris J Coll Surveying Limited S566.134, and Laura Coll McLaughlin S574.134, Grey District S608.067

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
 Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
 Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

<b>NC-R34</b>	<b><del>Indigenous Vegetation Clearance and</del><sup>88</sup> Earthworks within the Riparian Margin of a River, Lake or Wetland<sup>89</sup> not meeting Permitted Activity Rules</b>
Activity Status: Discretionary	
Advice Notes:	
<ol style="list-style-type: none"> <li>1. This rule also applies to <del>plantation</del> <b>commercial</b> forestry activities, where this provision is more stringent than the NES-<del>CPF</del>.<sup>90</sup></li> <li>2. The NES-Freshwater has extensive regulation around works that can be undertaken in or near any natural <b>inland</b><sup>91</sup> wetland. These rules are administered by the West Coast Regional Council and are not repeated in this Plan.</li> </ol>	
Activity status where compliance not achieved: N/A	
<b>NC R45</b>	<b>Buildings and Structures within Riparian Margin of a River, Lake or Wetland not meeting Permitted Activity Rules</b>
Activity Status: Discretionary	
<b>NC R5</b>	<b><del>Natural Hazard Mitigation Structures not meeting Permitted Activity Standards</del></b>
Activity Status: Discretionary	
Activity status where compliance not achieved: N/A <sup>92</sup>	

### 3. ACTIVITIES ON SURFACE OF WATER CHAPTER

#### 3.1 ASW General/Whole Chapter

##### Submissions and Further Submissions

278. Eight submission points and one further submission point relating to general matters/whole ASW Chapter were summarised in a table on page 80 of the s42A Report. Three submission points were in support of retaining the chapter as notified, one submission point sought to remove all references to Site or Area of Significance to Māori (**SASM**) in the Chapter and one further submission opposed this. Three submission points sought amendments to the Overview.

279. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

<sup>88</sup> Consequential amendment Royal Forest and Bird Protection Society of New Zealand Inc (S560.508)

<sup>89</sup> RMA First Schedule Clause 16(2) amendment

<sup>90</sup> RMA First Schedule Clause 16(2) amendment

<sup>91</sup> RMA First Schedule Clause 16(2) amendment

<sup>92</sup> Consequential amendment from new restricted discretionary rule (William McLaughlin S567.220, Chris & Jan Coll S558.134, Chris J Coll Surveying Limited S566.134, and Laura Coll McLaughlin S574.134, Grey District S608.067)

### Section 42A Report

280. The s42A Report did not support the Grey District Council submission point (S608.078) that sought to remove the any reference to SASM from the Chapter because s6(e) and (f) of the RMA requires recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; and the protection of historic heritage, which includes the definition of Sites of Significance to Māori.
281. The s42A Report supported in part Westpower’s submission points (S547.394 and S547.395) seeking changes to the Overview to highlight the needs of energy activities and infrastructure and recommended amended wording that fits with wording used in the Overview of other chapters.
282. The s42A Report noted one request to add references in to the Strategic Objectives and Policies in the Overview but considered this was unnecessary given there is already a reference to them and a link in place for this.
283. The s42A Report recommendation in relation to amending the Overview to give relief to the submissions seeking changes.

#### *Overview*

*On the West Coast/Te Tai o Poutini a range of activities occur on the surface of rivers, streams, lagoons and lakes. These include activities that have a functional need to locate on water surfaces such as jetties and piers, recreation activities like fishing and boating and cultural activities undertaken by Poutini Ngāi Tahu. **Some waterbodies (both natural and artificial) also form an important resource for the generation of hydroelectricity which contributes to the wellbeing of people and communities.***

[ ]

**• Energy, Infrastructure and Transport -The Energy, Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to Energy, Infrastructure or Transport Activities that trigger resource consent under the Activities on the Surface of Water Rules.**

### Hearing and Submitter Evidence/Statements

284. Ms Inta objected to the recommended addition in the Overview of ‘*Some waterbodies (both natural and artificial) also form an important resource for the generation of hydroelectricity*’, She noted the chapter was about activities on the surface of water whereas hydro encompasses the whole of the waterbody and the activities should be about only boats or things that float on the water.
285. Mr Kennedy, for Westpower, noted partial support of what was sought by Westpower in the Overview in the s42A Report recommendation. However, he considered that rather than giving reference to hydroelectricity under the heading of ‘Strategic Objectives and Policies’

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

this should be relocated under 'Other Relevant Te Tai Poutini Plan provisions'. He considered this would provide consistency across the whole document.

286. Ms Styles, on behalf of Manawa, acknowledged the recommended amendment in the s42A Report to the provisions in the Overview and agreed with this recommendation.

287. Ms Pull, on behalf of Poutini Ngāi Tahu, opposed the recommended reference to the policies of the Energy, Infrastructure and Transport Chapter and suggested a revised wording, as follows:

**Energy, Infrastructure and Transport – The Energy, Infrastructure and Transport chapters contain provisions that manage Energy, Infrastructure and Transport activities and potential reserve sensitivity.**

**Reporting Officer Reply Evidence**

288. Ms Easton's Right of Reply made no changes to the recommendations to the Overview shown in Appendix 1 of the s42A Report.

**Hearing Panel's Evaluation**

289. The Panel notes that Ms Inta did not specifically submit on the ASW Overview but opposed the s42A Report recommendation based on the proposed wording of the additional sentence. The Panel are conscious that the wording of the additional sentence proposed is different to that requested by Westpower (S547.395) and that Ms Inta did not have the opportunity to make a further submission on the recommended wording. The Panel accepts this recommended wording is alternative relief to the submission point but consider it could not be anticipated by submitters.

290. While the Panel agrees that activities on the surface of water can and do provide benefits for the community and environment, there is no statutory direction in the RMA or RPS to 'recognise and provide' for surface water activities that provide benefits. The Panel agrees that any benefits are relevant considerations in a consent process. The Panel considers the additional sentence wording can be improved to better reflect the amendment sought as follows:

**Activities on the surface of water can provide benefits and contribute to the wellbeing of people and communities.**

291. The Panel therefore partly accept Westpower's submission point (S547.395).

292. The Panel rejects the Grey District Council submission point (S608.078) seeking to remove references to SASM from the Chapter and accepts Poutini Ngāi Tahu's further submission (FS41.020). The Panel agrees that identifying SASM recognises and provides for RMA s6(e) and (f) matters of national importance.

293. The Panel accept Ms Easton's recommendation to add reference to the EIT chapters as shown in the Right of Rely.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**Hearing Panel's Recommendation**

294. For the reasons outlined above, and subject to our considerations of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following changes to the **ASW Overview**:

**Overview**

On the West Coast/Te Tai Poutini a range of activities occur on the surface of rivers, streams, lagoons and lakes. These include activities that have a functional need to locate on water surfaces such as jetties and piers, recreation activities like fishing and boating and cultural activities undertaken by Poutini Ngai Tahu. **Activities on the surface of water can provide benefits and contribute to the wellbeing of people and communities.**<sup>93</sup>

The provisions in this chapter manage the effects of activities on the surface of water. Many of the activities that occur on the surface of water have few effects (e.g. occasional recreational boating or sailing). Other more permanent activities such as structures have potential to generate adverse effects which could compromise important water values (such as the natural character, ecological, cultural, amenity and recreational values of waterbodies).

Other Relevant Te Tai Poutini Plan provisions.

- Natural Character and the Margins of Waterbodies- Many activities on the surface of water may also involve activities in the riparian margin if the adjacent riverbank or lakeside.
- Provisions for managing activities next to waterbodies are found in the Natural Character and the Margins of Waterbodies Chapter.
- Sites and Areas of Significance to Māori. – Many rivers and lakes have a high degree of significance to Poutini Ngai Tahu and are identified in Schedule Three Sites and Areas of Significance to Māori, where rivers or lakes are included within Schedule three the Sites of Significance to Māori provisions also apply.
- **Energy, Infrastructure and Transport - The Energy, Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to Energy, Infrastructure or Transport Activities that trigger resource consent under the Activities on the Surface of Water Rules.**<sup>94</sup>

Other relevant regulations

The responsibility for managing the effects of activities on the bed of waterbodies lies with the West Coast Regional Council and are managed through the West Coast Regional Land and Water Plan.

**3.2 ASW Objectives**

**Submissions and Further Submission.**

295. Twelve submission points and one further submission point relating to the **Objective ASW-01** were summarised in a table on pages 81-82 of the 42A Report. Seven submission points sought

<sup>93</sup> Westpower Limited (S547.394 and S542.395)

<sup>94</sup> Westpower Limited (S547.396)

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

to retain the Objective as notified and five submission points sought amendments, with one further submission point opposing the request to delete references to SASM.

**Section 42A Report**

296. The s42A Report supported the amendments sought by the Director General (S602.129) to add '*landscape, natural feature*' to include to the landscape and natural features values of the district's waterbodies.
297. The s42A Report did not support amendments sought by Jet boating NZ to add '*more than minor adverse effects*'; or addition of a new objective as sought by Westpower (S547.397) and William Mc Laughlin (S567.340) given the current objective expressed the direction sought by the TTPP Committee and community during the plan development phase. It agreed with the further submission from Poutini Ngāi Tahu (FS41.054) that the benefit of activities and structures on surface water are considered in any consent process.

**Hearing and Submitter Evidence**

298. Mr Kennedy, for Westpower, sought to include a new objective to recognise and provide for the benefits of activities on the surface of water, with a focus on regionally significant infrastructure (**RSI**) activities that have a need to locate on the surface of water given this is acknowledged in the Overview section. He considered this was relevant given the potential benefits to the community need to be acknowledged in the Plan. Given the rejection of a new objective, he suggested the following amendment:

*ASW-01 – The ecological .... and lagoons are;*

*a. Protected from the adverse effects of activities and structures on the surface of water,  
or*

*b. **In the case of RSI activities and structures with an operational or functional need to locate on the surface of water adverse effects are managed.***

299. Mr Kennedy suggested with this amendment to the objective, the new objective requested (S547.397) would be more appropriately expressed as a new policy as follows:

***ASW-PX – The benefits of RSI activities and structures which have an operational or functional need to locate on the surface of water are recognised and provided for.***

300. Mr Malcolm Smith, on behalf of Jet Boating NZ, sought consideration in the objective to recognise that minor and less than minor adverse effects may be acceptable in some circumstances.

**Reporting Officer Reply Evidence**

301. Ms Easton made no changes to her recommendation on Objective ASW-01 from Appendix 1 of the s42A Report in her Right of Reply.

**Hearing Panel's Evaluation**

302. The Panel accepts Ms Easton's recommended amendments to Objective ASW-01 and accepts the Director General's submission point (S602.129); and recommends the changes to the

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

Objective as shown in the Right of Reply. However, the Panel considers the addition should be *'natural landscape and features'* to use language consistent with RMA s6(a).

303. The Panel has considered the need for a new objective or second limb to ASW-01 to recognise and provide for the benefits of activities on the surface of water, as requested by Westpower. The Panel agrees with Ms Easton that the benefits of any proposed activities would be considered in a consent process.
304. The Panel rejects the requested wording for a new objective (Westpower S547.397 and William McLaughlin S567.340) because there is no statutory direction to *'recognise and provide for'* the benefits of activities on the surface of water; and accepts Poutini Ngāi Tahu's further submission in opposition (FS41.054).
305. The Panel has also considered the alternative relief sought by Mr Kennedy and his change in focus to the operation or functional need for RSI to locate on the surface of water. The Panel rejects this alternative relief because it goes beyond the scope of the new objective sought in the original submission (S547.397).
306. The Panel also rejects Westpower's submission point (S547.398) to reword the Objective and considers adding *'are appropriately managed'* increases uncertainty.

**Hearing Panel's Recommendation**

307. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following amendments to **Objective ASW-01**:

**ASW-01**

The ecological, recreational, natural character, **natural landscape and features**,<sup>95</sup> amenity and Poutini Ngāi Tahu values of the District's rivers, lakes and lagoons are protected from the adverse effects of activities and structures on the surface of water.

**3.3 ASW Policies**

**Submissions and Further Submissions**

308. A total of sixteen submission points and eight further submission point were received relating to the policies as a whole and individual policies were summarised in a Table on pages 83-85.
309. Six submission points and one further submission point related to the **policies as a whole**. Four submission points sought to retain the policies as notified and two submission points sought additional wording to the policies and one further submission point opposed the alternative wording sought.

<sup>95</sup> Director General of Conservation S602.129

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

310. One submission point was received in relation to **Policy ASW-P1** sought to retain the policy as notified.
311. Five submission points and two further submission points were received relating to **Policy ASW-P2**. Three submission points sought to retain the policy as notified and two submission points sought amendments. Two further submission points opposed these amendments.
312. Four submission points and five further submission points were received relating to **Policy ASW-P3**. Two submission points sought to retain the policy as notified, and two submission points sought amendments. Four further submission points supported amendments, and one further submission opposed an amendment sought.

**Section 42A Report**

313. The s42A Report did not support submissions seeking a new policy specifically providing for energy and Infrastructure on the surface of water, including critical infrastructure, due to technical, locational, functional or operational constraints or requirements (Chris J Coll Surveying Limited S566.275 and Westpower S547.399). It also did not support giving a blanket policy support for infrastructure without consideration of the values or effects to give effect to Part 2 of the RMA.
314. In relation to **Policy ASW-P1**, the s42A Report acknowledged the support for the policy from Te Mana Ora. It recommended no changes to Policy ASW-P1 as notified.
315. In relation to **Policy ASW-P2**, the s42A Report acknowledged the support from Jet Boating New Zealand, Poutini Ngāi Tahu, and Te Mana Ora. for ASW-P2.
316. The s42A Report did not support the submission point from the Lake Māhingapua Aquatic Club in relation to ASW-P2 to exclude the Club's motorised watercraft use of Lake Māhingapua where it conflicts with Poutini Ngāi Tahu values. She highlighted the RMA s6 requirement to recognise and provide for the relationship of Māori and their culture and traditions within their ancestral lands, water sites waahi tapu and other taonga as a matter of national importance. She noted that specific waterbodies, including Lake Māhinapua, are identified as SASM and where access by motorboat is considered inappropriate by Poutini Ngāi Tahu.
317. The s42A Report did not support the amendment sought by Forest & Bird (S560.525) to delete the word '*significantly*' from Policy ASW-P2 given the policy recognises that some use of motorised watercraft is used for biosecurity, health and safety and monitoring services. The Panel considers the preservation of natural character and the protection of the values in ASW-01 requires the avoidance of more than minor adverse effects. As worded, the Policy enables adverse effects up to a level where it does not significantly impacting these values. The Panel considers the Policy should only enable activities that have no more than minor effects to be consistent with the RMA s6 and the RPS (Chapter 7A Policy 4).
318. In relation to **ASW-P3**, the s42A Report acknowledged the support from Poutini Ngāi Tahu and Te Mana Ora. It supported the four further submissions indicating that the plan provisions do

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

not explicitly provide for commercial port activities for the Greymouth and Buller Ports. It noted that the TTPP Committee were undertaking consultation with the community over a draft variation to the Plan to specifically address this concern.

319. Ms Easton did not support the submission from Forest & Bird to delete the word '*significantly*' from ASW-P3 as per the reasons outlined above in relation to ASW-P2..
320. Ms Easton did not support the submission from Westpower Limited seeking to alter the first paragraph of ASW-P3 to refer to (avoids, remedies or mitigates) as this would change the direction of the policy to be much more enabling of commercial activities and structures.

**Hearing and Submitter Evidence**

321. Mr Kennedy on behalf of Westpower Limited sought the addition of a new policy to provide for matters that are proposed to be regulated through the Rules for which there are no relevant objectives or policies. He recommended the following:

*ASW-PX Provide for energy and infrastructure activities including RSI and structures which have a functional need or operational need to occur on the surface of water where adverse effects are avoided, remedied or mitigated.*

322. Mr Kennedy noted that if there is an intent to regulate activities which have a need to locate on the surface of water they should be provided with a relevant policy.
323. Mr Malcolm Smith representing Jet Boating New Zealand further reiterated their support for ASW-P2 as notified.
324. Ms Pull on behalf of Poutini Ngāi Tahu further reiterated their support for ASW-P3 as notified.

**Reporting Officer Reply Evidence**

325. There was no additional comment in relation to the policies from the Ms Easton.

**Hearing Panel's Evaluation**

326. The Panel accepts the amendment sought by Forest & Bird (S560.525) to delete the word '*significantly*' from Policy ASW-P2. We acknowledge that the intent of the policy is to provide for non-commercial use of motorised watercraft for biosecurity, health and safety and monitoring services. However, we consider that deleting '*significant*' without qualification would require the protection from all adverse effects.
327. The Panel considers the preservation of natural character and the protection of the values in ASW-01 would not be achieved by '*not impact significantly*' in relation to natural character, ecosystems, biodiversity, and Poutini Ngāi Tahu values. As worded, the Policy would enable adverse effects up to a level less than '*significantly*' impacting these values. The Panel considers this is contrary to the direction of RMA s6 and the RPS (Chapter 7A Policy 4).

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

328. RPS Chapter 7A Policy 4 directs ‘Allow activities which have no more than minor adverse effects on natural character.’ It is clear that the policy intent is to have permitted activity status for activities that have no more than minor effects.
329. Overall, the Panel finds preservation and protection national directives are not supported by enabling activities with less than significant (i.e. ‘not impact significantly’) and can only be given effect to by enabling activities with no more than minor effects. The Panel considers this is consistent with the permitted activity rule framework; and where adverse effects are more than minor, the rule framework enables the assessment of effects through the resource consent process.
330. The Panel notes that Variation 1 – Activities on the Surface of Water to the Plan inserts a new policy into the ASW Chapter enabling the use of ports. The evaluation of this is addressed in the recommendation report for Variation 1. The recommendation to include ASW-P4 is included below.

**Hearing Panel’s Recommendation**

331. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, and recommends the following changes to the **ASW Policies**:

<b>Activities on the Surface of Water Policies</b>
<b>ASW - P1</b>
Enable the non-commercial use of non-motorised watercraft on rivers, lakes and lagoons.
<b>ASW - P2</b>
Enable the non-commercial use of motorised watercraft on rivers, lakes and lagoons on the West Coast where this does not <b>have more than minor adverse effects</b> <del>impact significantly</del> <sup>96</sup> on natural character, ecosystems and biodiversity values, Poutini Ngāi Tahu values, public access, amenity or disruption of natural quiet.
<b>ASW - P3</b>
Provide for commercial activities and structures on the surface of West Coast/Te Tai o Poutini rivers, lakes and lagoons provided that the activity does not create:
a. Adverse effects on:
i. Significant natural heritage values including identified scheduled sites;
ii. Cultural and spiritual values including sites and areas of significance to Māori;
iii. Poutini Ngāi Tahu values and in particular as relate to culturally significant rivers and lakes;
b. <del>Significant</del> <b>More than minor</b> <sup>97</sup> adverse effects on:
i. Amenity values;
ii. Ecological values;

<sup>96</sup> Royal Forest and Bird Protection Society of New Zealand Inc (S560.525)

<sup>97</sup> Royal Forest and Bird Protection Society of New Zealand Inc (S560.525)

- iii. Natural character;
- iv. Other recreational uses; and
- c. Cumulative adverse effects with any other structures or activities on the surface of waterbodies.

#### **ASW – P4**

**Enable the use of the Port of Greymouth and Westport Harbour Ports 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.**<sup>98</sup>

### **3.4 ASW Rules**

#### **Submissions and Further Submissions.**

- 332. Eight submission points and four further submission point relating to the **ASW Rules as a whole** were summarised on page 86-87 of the s42A Report. Six submission points sought to retain the rules as notified and two submission points sought amendments. Four further submission points opposed the amendments sought.
- 333. No submissions were received on **Rule ASW-R1**.
- 334. Eight submission points and five further submission points relating to **Rule ASW-R2** were summarised on page 87-89 of the s42A Report. Eight submissions sought amendments to the rule; and four further submissions opposed the amendments requested and one further submission supported in part an amendment.
- 335. One submission seeking an amendment to the heading of **Rule ASW-R3** was summarised on page 89 of the s42A Report.
- 336. Five submission points and three further submission points relating to **Rule ASW-R4** were summarised on pages 89-90 of the s42A Report. Five submission points sought amendments to the rule and two further submission points opposed the amendments requested and one further submission point supported in part an amendment requested.
- 337. Three submission points and two further submission points relating to **Rule ASW-R5** were summarised on pages 90-91 of the s42A Report. One submission point sought to retain the rule as notified and two submission points sought amendments to the rule. One further submission point supported in part an amendment and one further submission opposed an amendment.
- 338. Five submission points and six further submission points relating to **Rule ASW-R6** were summarised on pages 91-92 of the s42A Report. Five submission points sought amendments to the rule and one further submission point supported an amendment. Four further submission points opposed an amendment requested and one further submission point was neutral.

<sup>98</sup> New rule inserted by for Variation 1 – Activities on the Surface of Water of the TTPP. See the Recommendation Report on Variation 1

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

339. Three submission points and two further submission points relating to **Rule ASW-R7** were summarised on page 92 of the s42A Report. Three submission points sought amendments to the rule and two further submission points opposed the amendments sought.
340. The Panel adopts these summaries and has considered the relevant submissions and further submissions.

**Section 42A Report**

341. In relation to **Rule ASW-R2**, the s42 Report considered that including reference to the lakes and waterbodies currently included in the Buller District Plan may be appropriate given these waterbodies have a high state of naturalness and ecological values, and are located within areas of high natural character or outstanding natural landscapes. However, it invited the submitters requesting these changes to provide more information at the hearing.
342. The s42A Report did not support the deletion of the 'Makaawhio River and Kaimata/New River' from the rule, as requested by Jet Boating New Zealand (S161.003), given the low loss of recreational amenity compared to a high degree of cultural benefit by including these rivers in the rule.
343. The s42A Report supported in part an amendment to the Rule to include motorised craft on Lake Māhinapua for the setting of buoys and the direction of regattas and club sailing. It considered the best approach was to provide a specific exemption to the rule for the regattas of the Lake Māhinapua Aquatic Club rather than a general exemption for motorised craft. It noted a further submission by Poutini Ngāi Tahu opposed this request, and encouraged dialogue between the two submitters to reach agreement. It suggested the best approach may be a specific number of days that such an activity can occur and suggested the following wording:

*'Use of Lake Māhinapua for the yachting regattas and club sailing associated with the Lake Māhinapua Aquatic Club where the craft are propelled by a motor but not exceeding a speed of 5 knots.'*

344. The s42A Report supported a new clause, as sought by Poutini Ngāi Tahu (S620.196), to include 'Mātauranga Māori Monitoring' because this better enabled them to undertake their kaitiaki role.
345. The s42A Report did not support including suction dredging in the rule (Mineral West Coast (S569.031) given the potential to have significant effects on natural character and cultural values in rivers and lakes that are at particular risk of adverse effects.
346. The s42A Report supported Te Tumu Paeroa's request (S440.038) to add a new clause, as follows:

**'Access to landlocked parcels where primary and physical access is only achieved through crossing the waterway'**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

347. The s42A Report did not consider restricting this to just the landowner, as sought in further submissions by Poutini Ngāi Tahu (FS41.058) would reasonable.
348. In relation to **Rule ASW-R3**, the s42A Report supported adding ‘and waterways’ to the heading, as requested by Westpower (S547.403). However, it recommended ‘*and artificial waterways*’ in the interests of clarity.
349. In relation to **Rule ASW-R4**, the s42A Report supported adding ‘*These are temporary Mai Mai installed for the purposes of lawful gamebird hunting*’, as requested by Fish and Game (S302.006); but also recommended adding a timeframe as requested by the Grey District Council (SFS1.081) ‘*provided these are removed within 2 weeks of the end of the game season*’. It noted the same approach is recommended for Rule NC-R2.
350. The s42A Report supported an amendment to make it clear that whitebait stands should also be ‘*temporary*’ (Poutini Ngāi Tahu S620.197) and noted that this was a drafting error. It also supported the request to move the reference to written approval from Poutini Ngāi Tahu to an Advice Note.
351. The s42A Report supported including ‘*the laying of temporary marker buoys by the Lake Māhinapua Aquatic Club Inc. on Lake Māhinapua during the sailing season of October to April*’ (Lake Māhinapua Aquatic Club S332.002). It noted this would be consistent with section 3.4.7 of the Lake Māhinapua Management Plan.
352. The s42A Report did not support the deletion of ‘*temporary swimming platforms installed for a single swimming season*’ (Director General S602.131) and invited the submitter to provide more information at the hearing.
353. The s42A Report did not support Westpower’s requests (S547.504 and S547.508) to add two new permitted activity rules because it would duplicate the regulation of activities already controlled by the WCRC. It noted the rule provides for a very limited range of structures as permitted activities, given the WCRC regulates activities in the beds of rivers to address different matters in relation to their regional function.
354. The s42A Report supported improving clarity for existing energy activities and infrastructure structures given the different approach to existing use rights under Section 10A of the RMA than occurs for existing structures and activities on land. It considered it is appropriate that the rule specifically provides for existing lawfully established energy and infrastructure structures.
355. In relation to **Rule ASW-R5**, the s42A Report supported the request to add a new matter of control ‘*Management of effects on ecological, biodiversity and conservation values*’ (Director General S602.132). It noted the further submission (BDC FS149.127) supported this addition but did not support making temporary swimming platforms subject to the rule. It invited the submitter to provide more information at the hearing on their reasoning why they consider

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

temporary swimming platforms need consent (Director General S602.134), and why they consider that the activity status should be discretionary through the addition of a new rule.

356. In relation to **Rule ASW-R6**, the s42A Report did not support the submissions (Buller Conservation Group S552.125 and Frida Inta S553.125) seeking to extend the list of waterbodies in relation to those where commercial activities are not acceptable because no information was provided regarding which waterbodies such an extension should apply to or why.
357. The s42A Report noted the further submission (West Coast Bulk Logistics Limited FS152.003) seeking a new rule to allow for vessel activities on the surface of rivers associated with Port Operations. It noted this would be covered in Variation 1 to the Plan.
358. The s42A Report supported moving the reference to '*Written Approval form the Poutini Ngāi Tahu Rūnanga*' from the rule to an Advice Note (Poutini Ngāi Tahu S620.199).
359. The s42A Report did not consider the amendment to specifically exclude suction dredging (Tiga Minerals and Metals Limited (S493.068) was necessary given this activity would fall under the definition of 'Industrial Activity', not 'Commercial Activity'.
360. The S42A Report supported inclusion of the following additional matter of discretion: 'Effects on Ecological, biodiversity and conservation values' (Director General S602.133) and considered it was appropriate these matters are considered in any assessment.
361. In relation to **Rule ASW-R7**, the s42A Report supported the amendment sought by Poutini Ngāi Tahu for the reference to limited notification be to Poutini Ngāi Tahu, however, it noted that limited notification clauses are no longer lawful. She proposed an amendment to the clause as follows:

*When making notification decisions in relation to this rule, the council will be informed by advice from Poutini Ngāi Tahu and should the application be notified it will be served on the relevant Poutini Ngāi Tahu Rūnanga.*

362. The s42A Report did not support the amendment by Tiga Minerals and Metals Limited to exclude suction dredging activities because suction dredging has the potential to have significant effects on natural character and cultural values in rivers and lakes, which is appropriately assessed through a resource consent process.
363. The s42A Report did not consider the amendments to the rule proposed by Forest & Bird to be an improvement to the clarity of the rule but supported the submission in part given a minor amendment to the rule was recommended.

**Hearing and Submitter Evidence/Statements**

364. Ms Inta, for herself Buller Conservation Group, sought inclusion of the list of sites currently identified in the Buller District Plan that restrict motorised craft to be added to the list in the TTPP. She highlighted the s42A Report agreed that these such waterbodies are highly natural

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

with high ecological values. She suggested an addition to the ruling stating '*Motorised craft are only allowed on lakes accessible by formed road and exclude the lakes listed in the current Buller Plan*'.

365. Ms Inta requested further restrictions to limit motorised craft to 1/3 of the length of the river and to restrict such craft to the lower reaches of rivers. She also proposed the following additional wording to ASW-R4:

(1) These are temporary whitebait stands installed in accordance with West Coast whitebait Fishing regulations and are removed within 2 weeks of the end of the whitebait season

(2) These are temporary mai mai installed for the purposes of lawful gamebird hunting provided these are removed within 2 weeks of the end of the game bird season.

366. Ms Inta also sought to include the list of restricted waterbodies in the current Buller District Plan to be included in ASW-R5.

367. Mr Kennedy, for Westpower, sought to add '*The plan currently regulates watercraft, structures and commercial activities*' to the note regarding '*Activities on the surface of Water rules*'. He considered this would simplify interpretation and application of the rules for Plan users.

368. Mr Kennedy noted concern regarding the s42A Report comment '*If there are activities that should be identified as non-complying, I prefer that a specific rule is included and invite the Department of Conservation to provide information on this at the hearing*' and the implications of this given there was little information and it would be unclear how other submitters on the rules could provide further input. He considered that such a process would normally occur through a further submission process.

369. Ms Young, for the Director General, provided comment on the request to include all swimming platforms in Rule ASW-R5 and indicated she was not aware of any instances where temporary swimming platforms had caused concern, as verified by checking with local DOC staff. She agreed s42A Report recommendation that temporary swimming platforms should be under Rule ASW-R4 and permanent swimming platforms should be considered under Rule ASW-R5. She also agreed that a non-complying activity catch all rule is not appropriate for swimming platforms and agreed permanent swimming platforms should remain a controlled activity.

370. Ms Pull, for Poutini Ngāi Tahu, addressed their further submission (FS41.058) on Te Tumu Paeroa's submission (S440.038) on ASW-R2 for the use of waterbodies to access landlocked parcels of land. She noted support for addressing past errors such as landlocked parcels preventing the use and development of Māori land. She highlighted the two alternatives outlined in the further submission – enabling access on a case by case basis or limiting access to the landowner only. Given the s42A Report recommendation, she recommended limiting the rule to Māori Land to minimise potential effects and replacement of the terms used as follows:

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

*Access to **Māori Land that is** a landlocked ~~parcels~~ **site** where primary and physical access is only achieved through crossing the ~~waterway~~ **waterbody***

371. Ms Pull supported the s42A Report recommendation for Rules ASW- R2 and ASW-R4 but sought the following amendments to Rule ASW-R4(4) and to the Advice Note on ASW-R6:

*Written approval is **recommended** from the relevant Poutini Ngāi Tahu Rūnanga-Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio. **In relation to** Lake Māhinapua, written approval from Te Rūnanga o Ngāi Tahu **in addition** to Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio is recommended.*

372. After the hearing, Ms Pull provided a supplementary statement of evidence regarding use of Kaimata/New River for jet boating. She advised the cultural experts, Mr Paul Madgwick and Mr Francois Tumahai, were comfortable with the approach identified by Jet Boating New Zealand to use an alternative entry point for jet boating on Kaimata/New River above the State Highway bridge; and that Poutini Ngāi Tahu have no further opposition under further submission FS41.051 on S161.003 by Jet Boating New Zealand, in relation to Rule ASW-R2 and Kaimata/New River. Ms Pull advised that opposition to the removal of Makaawhio River from Rule ASW-R2 remained.

373. Mr Smith, on behalf of Jet Boating NZ, noted they had sought the exclusion of the Makaawhio River (Jacobs River) and the Kaimata/New River from Rule ASW-R2 but that after further consideration and looking at the reality of difficult access around the lower reaches of the Makaawhio River, they now accepted the proposed restriction on this river. In relation to the Kaimata/New River, Mr Smith noted the river afforded high recreational jet boating values when conditions are suitable, and they wanted to retain the use of the river. He noted they had given consideration to using another access points to the river, rather than using the lagoon, and had attempted to consult with Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu but that no response had been received. Mr Smith noted they were keen to pursue an outcome where the river can be shared by users.

374. After the hearing, Jet Boating NZ provided a further statement of evidence supporting the supplementary evidence of Ms Pull and advised of agreement with Poutini Ngāi Tahu that recreational jet boating activities on Kaimata/New River, above the State Highway bridge, will not have more than minor effects.

375. Ms Helen Brosnan, for the West Coast Fish and Game Council, sought a minor amendment to the drafting of Rule ASW-R2(1)(b) and requested that 'and' in the middle line be replaced with 'or', so it cannot be read as requiring any motorised watercraft use on the listed rivers to be for both sportfish and gamebird management at the same time. She also indicated that reference to 'Fish and Game New Zealand' should be changed to 'West Coast Fish and Game Council' as they are a separate legal identity. In conclusion, she supported the inclusion of a permitted activity rule for temporary mai mai and suggested a suitable maximum size, if the Panel considered it appropriate.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

376. Mr Dean Kelly, for West Coast Fish and Game Council, provided a statement of evidence outlining the reasons for the use and role of mai mai for game bird hunting.
377. Mr Dean Van Mierlo presented legal submission on behalf of West Coast Fish and Game Council. He clarified the land status surrounding Lake Māhinapua and indicated support for the s42A Report recommendation regarding to mai mai structures.
378. Mr Rob Daniel, for the Lake Māhinapua Aquatic Club, outlined the Club's establishment in 1943 and its activities and use of Lake Māhinapua for sailing regattas. He noted the Club sought to continue 80+ years of sailing without resource consents or approval from Poutini Ngāi Tahu. He requested all activities be permitted, including recognition of the existing eight permanent marker buoys and use of motorised watercraft travelling more than 5 knots for health and safety during regattas.

**Reporting Officer Reply Evidence**

379. In her Right of Reply, Ms Easton recommended that Rule ASW-R4 should refer to the existing eight permanent marker buoys used by the Lake Māhinapua Aquatic Club given these had no existing use rights. She also proposed an amendment to ASW-R2 to allow boats used by the Lake Māhinapua Aquatic Club to exceed 5 knots of speed for search and rescue activities, as outline by Mr Daniel at the hearing.
380. In response to the questions from the Panel relating to defining whitebaiting as a 'Commercial Activity', Ms Easton recommended adding an Advice Note stating that Rule ASW-R6 does not apply to whitebaiting.
381. Ms Easton recommended the following further amendments highlighted in yellow in Appendix-Updated Appendix 1 of the Right of Reply:

***ASW -R2 Use of Motorised Watercraft for Non-commercial Use on the Surface of Rivers Lagoons and Lakes.***

*Activity Status Permitted*

*Where;*

1. *This does not occur on the surface of Lake Mahinapua or Mahinapua Creek/Tuwharewhare, Waitangroto River, Makawhio river, Arahura River, Kaimata/New River, Makatata Stream or Saltwater Lagoon(at Paroa) except*
  - a *As provided for in an Iwi/Papatipu Runanga Management Plan for these awa, roto and hapua; or*
  - b *Where the activity is for:*
    - i *Matauranga Maori Monitoring;*
    - ii *Scientific investigations or monitoring;*
    - iii *Law enforcement;*
    - iv *Search and Rescue work;*
    - v *Conservation work undertaken by the Department of Conservation in respect of their duties under the Conservation Act 1987, Wildlife Act 1953 or Fisheries Act 1983;*

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- vi *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 fish and Game New Zealand;*
- vii *Biosecurity work carried out by the West coast Regional Council or Fish and Game New Zealand;*
- viii *Access to landlocked parcels where primary and physical access is only achieved through crossing the waterbody; or*
- ix *Use of Lake Mahinapua for the yachting regattas and club sailing associated with the Lake Mahinapua Aquatic Club during the sailing season of October to April where the craft are propelled by a motor but not exceeding a speed of 5 knots, **except in an emergency response.***

**ASW-R4** *Installation of Structures on the Surface of Natural Waterbodies*

*Activity Status Permitted*

*Where:*

- a. *These are temporary whitebait stands installed in accordance with the West Coast Whitebait Fishing Regulations*
- b. *These are temporary maim ai installed for the purposes of lawful gamebird hunting provided these are removed within two weeks of the end of the game bird season;*
- c. *These are temporary swimming platforms installed for a single swimming season; or*
- d. *These are structure installed by Poutini Ngai tahu that are identified in an Iwi/Papatipu Runanga Management Plan for Arahura River, Mkaawhio River, Waitangiroto River, Mahinapua Creek/Tuwharewhare, Makatata Stream or Lake Mahinapua ~~and have written approval of the relevant Poutini Ngai Tahu Runanga Te Runanga o Ngati Waewae or Te Runanga O makaawhio~~*
- e. *This is ~~the laying of temporary~~ marker buoys **used** by the Lake Mahinapua Aquatic Club Inc on Lake Mahinapua ~~during sailing season October to April~~ or*
- f. **This is the operation, maintenance and repair of existing structures where this is of the same or similar scale and intensity as of 14 July 2022.**

**Advice Note:**

**For the avoidance of doubt this rule does not apply to whitebaiting activities on the surface of water.**

**Hearing Panel's Evaluation**

382. The Panel accepts Ms Easton's recommendation to retain **Rule ASW-R1**, as notified.
383. In relation to **Rule ASW-R2**, the Panel notes that Ms Easton's recommendations do not reflect the agreement between Jet Boating NZ and Poutini Ngāi Tahu to delete Kaimata/New River, above the State Highway Bridge from Rule ASW-R2 and the consequential amendment to Rule ASW-R6. The Panel accepts the restriction on motorised watercraft use should only apply to below the State Highway bridge in the Saltwater Lagoon, which is identified as a Site and Area

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

of Significance to Māori. The Panel recommends the reference to Kaimata/New River is deleted from the Rule ASW-R2 and Rule ASW-R6.

384. The Panel accept the evidence of the West Coast Fish and Game Council that it is a separate legal entity to Fish and Game New Zealand and that the references to the Fish and Game New Zealand in Rule ASW-R2(1)(v) and (vi) should be corrected. The Panel notes there is no specific submission point from West Coast Fish and Game Council seeking this relief but accept this is a minor correction.
385. The Panel agrees with Ms Easton's recommendation to add '*Mātauranga Māori monitoring*' and accept Poutini Ngāi Tahu's submission point (S620.196).
386. The Panel agrees with Ms Easton's recommendation to add '*Access to landlocked parcels where primary and physical access is only achieved through crossing the waterbody*' and to accept Te Tumu Paeroa' submission point (S440.038). The Panel does not agree this should be restricted to Māori Land only or to landowners only, as recommended by Ms Pull, for Poutini Ngāi Tahu. The Panel accepts Ms Easton's recommendation to use the terms '*parcels*' and '*waterbody*'.
387. The Panel agrees with Mr Easton's recommendation to add '*Use of Lake Māhinapua for the yachting regattas and club sailing associated with the Lake Māhinapua Aquatic Club Incorporated during the sailing season of October to April where the craft are propelled by a motor but not exceeding a speed of 5 knots except in an emergency response*' (Neville Higgs S329.001). However, the Panel considers '*craft*' should be replaced with '*watercraft*' given the inclusion of a new definition. The Panel is satisfied this addresses the concerns raised at the hearing by Mr Daniel.
388. The Panel notes there is no information from the Buller District Council regarding Ms Inta and Buller Conservation Group's requests to add the lakes included in the Buller District Plan to ASW-R2. We do not consider this is appropriate without further analysis.
389. The Panel accepts Ms Easton's recommendation to amend **Rule ASW-R3** to add '*and Artificial Watercourses*' (Westpower S547.403)
390. In relation to **Rule ASW-R4**, the Panel accepts Ms Easton's recommendations to add '*temporary*' to clause (1) (Poutini Ngāi Tahī S620.197) and a new clause '*These are temporary mai mai installed for the purposes of lawful gamebird hunting*' (West Coast Fish and Game Council S302.006).
391. The Panel notes Ms Inta's request at the hearing for use of the same rule wording for the removal of temporary whitebait stands and for temporary mai mai, and her view that these structures should be removed after the season ends. Although the Panel notes Ms Inta did not make a specific submission point on ASW-R4, we agree that consistency is important in relation to enabling temporary seasonal activities and the clauses should be similar for temporary mai mai and whitebait stands. The Panel considers adding a requirement to

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

remove these structures two weeks after the season ends addresses the submission point (S620.197) seeking to ensure these are temporary.

392. The Panel notes Ms Easton's updates to Rule ASW-R4 and ASW-R5 did not include the amendments sought by Ms Pull in evidence. The Panel has considered the wording proposed by Ms Pull for a new advice note (4) stating that written approval from the relevant rūnanga is recommended given the deletion of written approval from clause (4). We consider it is appropriate for the advice note to state that consultation with the relevant rūnanga is recommended given written approval cannot be required for a permitted activity.
393. The Panel accepts Ms Easton's recommendation to add new clause (5) addresses the concerns raised by the Lake Māhinapua Aquatic Club Incorporated (S332.002) to provide for the existing maker buoys on the surface of Lake Māhinapua and agree this does not need to be limited to a specific period. However, the Panel recommends replacing '*This is marker buoys*' with '*These are marker buoys*' to correct the grammar.
394. The Panel accepts Ms Easton's recommendation to include a new clause '*This is the operation, maintenance and repair of existing structures where this is of the same or similar scale and intensity as of 14 July 2022*' to address Westpower's request (S547.0508) for a new permitted activity. However, we have simplified the wording, as addressed above in relation to the NC rules. We consider a new permitted activity for structures on the bed would duplicate Regional Council functions.
395. The Panel notes Ms Young's agreement that temporary swimming platforms should not be deleted from ASW-R4 (Director General S602.131) and permanent swimming platforms should be under Rule ASW-R5.
396. New **Rule ASW-4A**, as inserted by Variation 1 – Activities on Surface Water to the TTPP is shown in the recommendations below. This is addressed in the Recommendation Report on TTPP Variation 1.
397. In relation to **Rule ASW-R5**, the Panel agrees with Ms Easton's recommendation to add '*Management of effects on ecological, biodiversity and conservation values*' (Director General of Conservation S602.132); and to add an Advice Note to ASW-R6 giving clarity to whitebaiting being exempt from this Rule.
398. The Panel notes Ms Young's evidence for the Director General confirmed agreement that permanent swimming platforms should be considered under Rule ASW-R5 as controlled activities.
399. In relation to **Rule ASW-R7**, the Panel accepts Ms Easton's recommended changes to make the heading of the rule clearer and to reflect wording requested by Poutini Ngāi Tahu.
400. The Panel accepts Ms Easton's recommendation to reject the request from TiGa Minerals and Metals Limited (S493.069) to not include suction dredges as a permitted activity given the

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

potential for significant adverse environmental effects, in the absence of parameters. However, the Panel notes there is a significant gap in the rule framework in relation to commercial activities on waterbodies not listed in Rule ASW-R6 (which are the identified sensitive waterbodies) with the default activity status being discretionary for those commercial activities.

**Hearing Panel’s Recommendations**

401. For the reasons outlined above, and subject to our consideration of Part 2 of the RMA, the Panel recommends that the relevant submission points identified in footnotes below are accepted or accepted in part, recommends that Rule ASW-R1 is retained as notified, the addition of new Rule ASW – R4A and the following changes to Rule ASW-R2, Rule ASW-R3, Rule ASW-R4, Rule ASW-R5, Rule ASW-R6 and Rule ASW-R7, as follows:

<b>Activities on the Surface of Water</b>	
Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.	
<b>Permitted Activities</b>	
<b>ASW-R1</b>	<b>Use of Non-motorised Watercraft for Non-Commercial Use on the Surface of Rivers, Lagoons and Lakes</b>
Activity Status Permitted	
Advice Note: Use of non-motorised watercraft for temporary events on the surface of waterbodies within Sites and Areas of Significance to Māori are also subject to Rule SASM-R5	
Activity status where compliance not achieved: N/A	
<b>ASW-R2</b>	<b>Use of Motorised Watercraft for Non-Commercial Use on the Surface of Rivers, Lagoons and Lakes.</b>
Activity Status Permitted.	
Where:	
1. This does not occur on the surface of Lake Māhinapua or Māhinapua Creek/Tuwharewhare, Waitangiroto River, Makaawhio River, Arahura River, Kaimata/New River <b><u>below the State Highway bridge</u></b> <sup>99</sup> Makatata Stream or Saltwater Lagoon (at Paroa) except:	
a. As provided for in an Iwi/Papatipu Runanga Management Plan for these awa, roto and hāpua; or	
b. Where the activity is for:	
i <b><u>Mātauranga Māori monitoring</u></b> ; <sup>100</sup>	
ii Scientific investigations or monitoring;	

<sup>99</sup> Jet Boating New Zealand S161.003

<sup>100</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.196

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- iii Law enforcement;
- iv Search and rescue work;
- v Conservation work undertaken by the Department of Conservation in respect of their duties under the Conservation Act 1987, Wildlife Act 1953 or Fisheries Act 1983;
- vi 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 West Coast Fish and Game Council New Zealand; ~~or~~<sup>101</sup>
- vii Biosecurity work carried out by West Coast Regional Council or West Coast Fish and Game Council New Zealand; <sup>102</sup>
- viii Access to landlocked parcels where primary and physical access is only achieved through crossing the waterbody; or<sup>103</sup>
- ix Use of Lake Māhinapua for the yachting regattas and club sailing associated with the Lake Māhinapua Aquatic Club Incorporated during the sailing season of October to April where the watercraft are propelled by a motor but not exceeding a speed of 5 knots except in an emergency response.<sup>104</sup>

Activity status where compliance not achieved: Discretionary

**ASW-R3 Installation of Structures on the Surface of Artificial Lakes and Ponds and Artificial Watercourses**<sup>105</sup>

Activity Status Permitted.

Activity status where compliance not achieved: N/A

**ASW-R4 Installation of Structures on the Surface of Natural Waterbodies**

Activity Status Permitted

Where:

1. These are temporary<sup>106</sup> whitebait stands installed in accordance with the West Coast Whitebait Fishing Regulations and are removed within two weeks of the end of the whitebait season; or
2. These are temporary mai mai installed for the purposes of lawful gamebird hunting provided these are removed within two weeks of the end of the game bird season; or<sup>107</sup>
3. These are temporary swimming platforms installed for a single swimming season; or
4. These are structures installed by Poutini Ngāi Tahu that are identified in an Iwi/Papatipu Runanga Management Plan for Arahura River, Makaawhio River, Waitangirotu River, Māhinapua Creek/Tuwharewhare, Makatata stream or Lake Māhinapua; ~~and have written approval of the relevant Poutini Ngāi Tahu Runanga - Te Runanga o Ngāti WaeWae or Te Runanga o Makaawhio;~~  
or<sup>108</sup>

<sup>101</sup> RMA First Schedule clause 16(2) correction

<sup>102</sup> RMA First Schedule clause 16(2) correction

<sup>103</sup> Te Tumu Paeroa – The Office of the Māori Trustee S440.038

<sup>104</sup> Neville Higgs S329.001

<sup>105</sup> Westpower S547.403

<sup>106</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.197

<sup>107</sup> West Coast Fish and Game Council S302.006

<sup>108</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.197

5. These are marker buoys used by the Lake Māhinapua Aquatic Club Incorporated on Lake Māhinapua; or<sup>109</sup>
6. This is the operation, maintenance and repair of existing lawfully established structures as of 14 July 2022.<sup>110</sup>

Advice Notes:

1. Whitebait stands are primarily regulated by the West Coast Regional Council through the West Coast Regional Land and Water Plan.
2. Where structures are proposed on the surface of waterbodies check the Natural Character and the Margins of Waterbodies provisions to determine whether consent is required for the landward portion of the structure located in any riparian margin.
3. Where structures are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these are also subject to Rule SASM - R6 in the Sites of Significance to Māori Chapter.
4. Consultation with the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio is recommended. In relation to Lake Māhinapua consultation with Te Rūnanga o Ngāi Tahu in addition to Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio is recommended.<sup>111</sup>
5. For the avoidance of doubt this rule does not apply to whitebaiting activities on the surface of water.<sup>112</sup>

Activity status where compliance not achieved: Controlled where standard ~~23~~ is not complied with. Discretionary where standards 1, 2, 4, 5 and ~~36~~ are not complied with.<sup>113</sup>

**ASW – R4A Use of Watercraft for Commercial Activities and Port Activities on the Surface of Water**<sup>114</sup>

**Activity Status: Permitted**

**Where: This is the use of the surface of water for commercial activities on water and other Port Activities**

1. 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
2. Associated with Westport Harbour Port and harbour, and seaward of the State Highway 67 Bridge on the Kawatiri/Buller River.

**Activity status where compliance not achieved: Restricted Discretionary.**

**Controlled Activities**

**ASW-R5 Permanent Swimming Platforms on the Surface of Natural Waterbodies**

Activity Status Controlled

<sup>109</sup> Lake Māhinapua Aquatic Club Incorporated S332.002

<sup>110</sup> Westpower S547.0508

<sup>111</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.197

<sup>112</sup> RMA First Schedule clause 16(2) clarification

<sup>113</sup> Consequential amendment as a result of changes to the rule.

<sup>114</sup> New rule added by Variation 1 to the TTPP – Activities on the Surface of Water. See Variation 1 Recommendation Report.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

1 Where this does not occur in the Arahura River, Makaawhio River, Makatata Stream or Lake Māhinapua.

Matters of control are:

- a. Size, design and location of structure
- b. Water safety measures.
- c. Compliance with any Iwi/Papatipu Runanga Management plan or where this does not exist advice from the relevant Poutini Ngāi Tahu Rūnanga- Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio; ~~and~~
- d. Management of effects on natural character of the waterbody and its margins; **and**
- e. **Management of effects on ecological, biodiversity and conservation values.**<sup>115</sup>

Activity status where compliance not achieved: Discretionary

#### **Restricted Discretionary Activities**

#### **ASW-R6 Commercial Activities on the Surface of Rivers, Lagoons and Lakes and 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 Māhinapua, Māhinapua Creek/Tumwharewhare, Makatata Stream, Saltwater Lagoon (at Paroa), Waitangiroto River or Kaimata New River is in accordance with an Iwi-Papatipu Runanga Management plan ~~and has approval of the relevant Poutini Ngāi Tahu Runanga Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio.~~<sup>116</sup>

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;
- 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 on ecological, biodiversity and conservation values;**<sup>117</sup>
- f. Effects on noise of the natural character, ecological and amenity values; and
- g. Effects on Poutini Ngāi Tahu cultural values including access to mahinga kai and scheduled sites and areas.

Advice Notes:

1. Where activities are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these **are**<sup>118</sup> also subject to rules in the Sites and Areas of Significance to Māori Chapter.

<sup>115</sup> Director General of Conservation S602.132

<sup>116</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.199

<sup>117</sup> Director General of Conservation S602.133

<sup>118</sup> RMA First Schedule clause 16(2) correction

Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai

2. Written approval is recommended from the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio. In relation to Lake Māhinapua, written approval from Te Rūnanga o Ngāi Tahu in addition to Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio is recommended.<sup>119</sup>

**Discretionary Activities**

**ASW – R7 Use of Motorised Watercraft for Non - Commercial Use, Commercial Activities, and Structures on the Surface of Water not meeting Permitted, Controlled or Restricted Discretionary Activity provided for in another rule**<sup>120</sup>

Activity Status Discretionary

**Notification:** Any activity not provided for in an Iwi/Papatipu Rūnanga Management Plan for Makaawhio River, Arahura River, Lake Māhinapua, Māhinapua Creek/Tuwharewhare, Waitangiroto River, Makatata Stream Saltwater Lagoon (at Paroa) or Kaimata/New River always be limited notified to the relevant Poutini Ngāi Tahu rūnanga and may be publicly notified. **When making notification decisions in relation to this rule, the Council will be informed by advice from Poutini Ngāi Tahu and should the application be notified, it will be served on the relevant Poutini Ngāi Tahu rūnanga.**<sup>121</sup>

Activity status where compliance not achieved: N/A

**Amendments to Planning Maps**

Amend the zoning maps so that waterbodies are identified as General Rural Zone.<sup>122</sup>



**Paul Roger**  
Hearings Panel – Chair



**Anton Becker**  
Hearings Panel Member



**Sharon McGarry**  
Hearings Panel Member



**Maria Bartlett**  
Hearings Panel Member

**Date: 11 September 2025**

<sup>119</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.199

<sup>120</sup> Royal Forest and Bird Protection Society of New Zealand Inc S560.528

<sup>121</sup> Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu S620.200

<sup>122</sup> Frida Inta S553.333 and Buller Conservation Group S552.218

## APPENDIX 1 RECOMMENDATIONS

### Definitions

#### **RIPARIAN MARGIN**

means all land within:

- e. 10m of any wetland that is located in the coastal marine area;
- f. 20m of any lake; and
- g. 10m of any stream or river with an average bed width greater than 3m; **and**
- h. **3m of any river with an average bed width greater than 1m and less than 3m.**

As measured from the point of annual fullest flow for a river or annual fullest water level for a lake or mean high water springs for a coastal wetland.

Advice Note: Activities within 10m of a natural inland wetland are regulated under the NESF and administered by the West Coast Regional Council.

#### **WATERCRAFT**

means a boat or other vessel that travels on water. This excludes fixed structures on water and use for residential activities.

In relation to the Activities on the Surface of water provisions motorised watercraft means a watercraft that is operated or propelled by a motor.

#### **BANK**

means the land on either side of a river which confines the natural flow of the water whether the normal flow, or flood flows.

#### **FULLEST FLOW**

means the maximum amount of flow or highest water level that can occur without the river water overtopping the banks and beginning to flow over the flood plain.

### Natural Character and the Margins of Waterbodies Chapter

#### **OVERVIEW**

Waterbodies and their margins are an important part of the West Coast/Te Tai Poutini. Waterbodies are connected (~~ki~~ **ki** uta ki tai, from the mountains to the sea) and have important values, including for biodiversity, cultural, **recreational** or historical reasons.

Under section 31 of the RMA district councils are responsible for the management of activities on land, including the margins of waterbodies. **Natural Character and the margins of waterbodies require protection as a matter of national importance under Section 6(a) of the RMA. Te Tai o Poutini Plan also manages activities on the surface of waterbodies.**

The West Coast Regional Council has responsibility for the management of wetlands, lakes and rivers, including land uses in the beds of rivers. This section of Te Tai o Poutini Plan focuses on the natural

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

character of the margins of wetlands, lakes and rivers, thereby avoiding duplication with Regional Council functions.

The three district councils work with the West Coast Regional Council and Poutini Ngāi Tahu to ensure waterbodies are managed in an integrated way.

Poutini Ngāi Tahu have a special relationship with the mauri of waterbodies and ancestral, cultural spiritual or historical associations with waterbodies. Many waterbodies in the West Coast/Te Tai o Poutini are identified as statutory acknowledgement areas and there are also nohoanga entitlements in place in some locations. These waterbodies contain associated ~~kāinga~~ **kāinga**, ~~pā~~ **pā**, important sites for the gathering of kai, ~~tāuranga~~ **tāuranga** ika and specialised zones for various activities of high cultural value, such as cleansing, iriiringa, food preparation and bathing, which continue to be vital to the wellbeing, livelihood and lifestyle of Poutini Ngāi Tahu.

Rivers, streams, lakes and wetlands have important ecological, natural character, **recreational** and hydrological values. They provide important habitat for native plants, fish, birds, lizards, frogs, insects and aquatic and terrestrial macroinvertebrate aquatic life **and opportunities for access to and along waterways.**

**Some waterbodies (both natural and artificial) also form an important resource for the generation of hydroelectricity, which contributes to the wellbeing of people and communities.**

The National Policy Statement for Freshwater Management 2020 (NPSFM) guides decision-making regarding the freshwater resources of New Zealand/Aotearoa. In particular, the councils must have regard to its objectives and policies in consent decision-making.

**The Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (NESF) has specific rules which relate to freshwater, in particular in relation to activities in the margins of freshwater wetlands. These rules relate to the regional functions of the West Coast Regional Council and are administered by that organisation. The provisions in Te Tai o Poutini Plan have been developed considering the NESF and what additional provisions are required to fulfil the statutory functions of the district councils in relation to natural character of waterbodies. The Tai o Poutini Plan provisions in relation to riparian margins of wetlands only relate to wetlands in the coastal marine area to avoid duplication with the NESF.**

~~Plantation~~ **Commercial** Forestry

~~Plantation~~ **Commercial** forestry is principally regulated by the Resource Management (National Environmental Standard for ~~Plantation~~ **Commercial** Forestry) Amendment Regulations 2023 (NES-**PCF**). However the NES-**PCF** allows that district plans can be more stringent where this gives effect to an objective in the National Policy Statement for Freshwater Management. Where provisions within this chapter over-rule the requirements of the NES-**PCF** an advice note to that effect is included within the rule.

Other relevant Te Tai o Poutini Plan provisions.

It is important to note that in addition to the zone chapters a number of District ~~Wide~~ and Overlay chapters also contain provisions that may be relevant for waterbodies, including:

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- Public Access - The Public Access Chapter contains provisions relating to the provision and maintenance of public access to waterbodies.
- Subdivision - The Subdivision Chapter contains provisions which manage subdivision and specific standards in relation to the provision of esplanade reserves and strips, in particular SUB- S9
- Activities on the Surface of water – The Activities on the Surface of Water Chapter contains provisions that manage activities that occur on the surface of water.
- Coastal Environment – The Coastal environment Chapter contains provisions that manage the natural character of the coastal environment.
- Earthworks - The Earthworks Chapter includes provisions around earthworks management. **These relate to requirements for earthworks within zones and include general standards for earthworks. These rules apply in addition to rules on earthworks within the Natural Character of Waterbodies Chapter.**
- **Ecosystems and Indigenous Biodiversity – The Ecosystems and Indigenous Biodiversity Chapter contains provisions around vegetation clearance, including in the margins of waterbodies.**
- **Energy, Infrastructure and Transport - The Energy, Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to energy infrastructure or transport activities that trigger resource consent under Natural Character of Waterbodies Rules.**

Also ~~view~~ the Strategic Objectives and Policies

**Advice Note:**

**Other Relevant Government Bodies**

**Aside from regional and local government there are other key agencies and government groups involved in the integrated management of waterbodies. These include:**

- **Department of Conservation;**
- **West Coast Fish and Game Council**
- **NZ Landcare Trust;**
- **Catchment care and other restoration groups; and**
- **Herenga ā Nuku Aotearoa, the Outdoor Access Commission.**

**Natural Character and the Margins of Waterbodies Objectives**

**NC - 01**

To preserve the natural character of lakes, rivers and wetlands and their margins ~~while providing for~~ **and the protection of them from** inappropriate subdivision, use and development ~~where adverse effects can be avoided or mitigated.~~

**NC – 02**

To recognise and provide for the relationship of Poutini Ngāi Tahu and their traditions, values and interests associated with the natural character of lakes, rivers and wetlands and their margins. notified.

**NC – 03**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

To provide for activities which have a functional need to locate in the margins of lakes, rivers and wetlands in such a way that the impacts while ensuring adverse effects on natural character are minimised.

**NC-P1**

**Avoid, remedy or mitigate** adverse effects on the natural character of the riparian margins of lakes, rivers and wetlands by ensuring that subdivision, **development** and land use maintains the elements, patterns and processes that contribute to their natural character.

**NC-P2**

Provide for ~~indigenous vegetation removal and earthworks~~ within riparian margins of lakes, rivers and wetlands where ~~significant adverse effects on natural character are minimised as far as practicable~~ **avoided, remedied or mitigated** and:

- a. It is for the purpose of natural hazard mitigation; or
- b. It is for the maintenance, repair, upgrade and extension of network utilities, and **regionally significant** infrastructure including the national grid; or
- c. It is for the establishment, operation, maintenance or upgrading of renewable electricity generation ~~activities~~ structures or **regionally significant** infrastructure where this has a functional or operational need to be located in a riparian margin; or
- d. It is for Poutini Ngāi Tahu ~~cultural purposes~~ **Activities or Māori Purpose Activities in accordance with an Iwi/Papatipu Rūnanga Management Plan**; or
- e. It is for the repair and maintenance of legally established structures; or
- f. The activity has a functional ~~or operational~~ need to be located adjoining a waterbody.

**NC-P3**

Provide for **new** buildings and structures **and the upgrading of existing buildings and structures** within riparian margins of lakes, rivers and wetlands where these:

- a. Have a functional need for their location; and
- b. They are of a form and scale that will not adversely ~~effect~~ **affect** the natural character of the riparian ~~area~~ **margin**.

**NC-P4**

Encourage the restoration and enhancement of the natural character of the riparian margins of lakes, rivers and wetlands **including pest plant and pest animal control**.

**Advice Note:**

**The objective and policy in the Public Access Chapter should also be considered when assessing resource consents in relation to activities in the margins of waterbodies.**

**NC-P5**

Reduction in public access to waterbodies can be considered when natural hazard mitigation works are required to protect communities from a significant natural hazard threat. When assessing proposals for natural hazard structures, effects on public access should be considered and ways to minimise them found, including:

- e. Provision of alternate certain and enduring access; and
- d. Provision of public amenity or opportunity for environmental benefit along the structure, provided that the physical integrity of the structure is maintained.

**Natural Character and the Margins of Waterbodies Rules**

Note: There may be a number of plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this chapter as well as rules in other chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of these identified rules. Details of the steps Plan users should take to determine the status of an activity are provided for in General Approach.

**Permitted Activities**

**NC - R1 ~~Indigenous Vegetation Clearance and~~ Earthworks within the Riparian Margin of a River, Lake or Wetland**

**Activity status Permitted**

1. Where this is outside of any Significant Natural Area identified in Schedule Four and for:
  - a. Fence lines; or
  - b. Maintenance, operation, minor upgrade and repair of network utilities ~~critical~~ **regionally significant** infrastructure or renewable electricity generation activities; or
  - c. **New network utilities and regionally significant infrastructure where these are underground and located within a formed legal road or attached to an existing bridge; or**
  - d. Connections to wastewater, stormwater and reticulated network utility systems **and underground energy and infrastructure connections;** or
  - e. Installation of an environmental monitoring and extreme weather event monitoring facility; or
  - f. Maintenance and repair of lawfully established structures; or
  - g. The construction of parks facilities, parks furniture or public access points within an Open Space and Recreation Zone; or
  - h. The establishment of a river crossing point up to 3m wide; or
  - i. Poutini Ngāi Tahu Activities; or
  - j. Activities on Māori Purpose Zoned Land **or a site of significance to Māori in Schedule Three** and **is** undertaken in accordance with an Iwi/Papatipu Rūnanga Management Plan; or
  - k. **Maintenance and repair of lawfully established natural hazard mitigation structures; or**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
 Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
 Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- l. New ~~Natural hazard mitigation activities~~ **structures and upgrading of existing natural hazard mitigation structures** undertaken by a statutory agency or ~~their nominated authorised~~ contractor **acting on its behalf; or**
  - m. **Clearance of pest plants and pest animals for biosecurity purposes; or**
  - n. **Arable, horticultural or pastoral farming use where this activity is lawfully established at 14 July 2022; and**
- ~~2. The amount of indigenous vegetation clearance is not greater than 20m<sup>2</sup> per 200m length of Riparian Margin;~~
  - 3. The amount of earthworks is not greater than ~~25~~**20**m<sup>3</sup> per 200m length of Riparian Margin; **and**
  - 4. All earthworks stockpiles are located outside of the riparian margin of the waterbody; ~~and~~
  - 5. ~~Unless carried out by a statutory agency or their nominated contractor responsible for natural hazard mitigation, the clearance and earthworks are not located within areas used and identified for natural hazard mitigation structures.~~

**Advice Notes:**

- 1. Rules in other Overlay Chapters particularly Historic Heritage, Sites and Areas of Significance to Māori, Natural Hazards and Natural Features and Landscapes may also apply in these locations.
- 2. **Also refer to Rules in the Energy, Infrastructure and Transport Chapters for activities in relation to those matters.**
- 3. Activities within the margins of waterbodies and wetlands are also the subject of regulation under the NES Freshwater, NPS Freshwater **Management** and the West Coast Regional Land and Water Plan.
- 4. This Rule also applies to ~~plantation~~ **commercial** forestry activities, where this provision is more stringent than the NES-~~CPF~~.

**Activity status where compliance not achieved:** Discretionary

**NC - R2 Buildings and Structures within the Riparian Margin of a River, Lake or Wetland**

**Activity Status Permitted**

Where the buildings and structures **have a functional need to locate in the riparian margin and** are:

- a. Network utilities **and regionally significant infrastructure; or**
- b. Temporary whitebait stands **and temporary mai mai for game bird hunting provided these are removed within two weeks of the end of the season; or**
- c. Environmental monitoring facilities; **or**
- d. Parks facilities and parks furniture within an Open Space and Recreation Zone; **or**
- e. Natural Hazard mitigation structures constructed by a statutory agency or **authorised** ~~nominated~~ contractor **acting on its behalf; or**
- f. Renewable energy generation **activities** ~~facilities where these have a functional need to locate within the riparian margin; or~~
- g. Stormwater discharge structures and water supply intake structures constructed in accordance with NZS 4404 Code of Practice for Land Development and Subdivision Infrastructure; **or**

- h. Temporary bridges constructed as part of a temporary military training activity; or
- i. Pump sheds, less than 5m<sup>2</sup>.

**Advice Notes:**

1. Rules in other Overlay Chapters particularly Historic Heritage, Sites of Significance to Māori, Natural Hazards and Natural Features and Landscapes may apply in these locations.
2. Activities within the margins of waterbodies and wetlands are also the subject of regulation under the NES Freshwater, NPS Freshwater Management and the West Coast Regional Land and Water Plan.

Activity status where compliance not achieved: Discretionary

**NC R3 — ~~New Natural Hazards Mitigation Structures~~**

-

~~Activity Status Permitted~~

-

~~Where:-~~

- ~~1. These are constructed by a Statutory Agency or their authorised contractor~~

~~Activity status where compliance not achieved: Discretionary~~

**Restricted Discretionary Activities**

**NC-R53 Natural Hazard Mitigation Structures within the Riparian Margin of a River, Lake or Wetland not meeting Permitted Activity Rules**

Activity Status: **Restricted** Discretionary

**Discretion is restricted to:**

- a. **Design and location of the structure;**
- b. **Visual impact of the structure; and**
- c. **Methods to avoid, remedy or mitigate adverse effects on natural character or public access.**

Activity status where compliance not achieved: N/A

**Discretionary Activities**

**NC-R34 Indigenous Vegetation Clearance and Earthworks within the Riparian Margin of a River, Lake or Wetland not meeting Permitted Activity Rules**

Activity Status: Discretionary

Advice Notes:

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

1. This rule also applies to ~~plantation~~ **commercial** forestry activities, where this provision is more stringent than the NES-~~CPF~~.
2. The NES-Freshwater has extensive regulation around works that can be undertaken in or near any natural **inland** wetland. These rules are administered by the West Coast Regional Council and are not repeated in this Plan.

Activity status where compliance not achieved: N/A

**NC R45 Buildings and Structures within Riparian Margin of a River, Lake or Wetland not meeting Permitted Activity Rules**

Activity Status: Discretionary

~~**NC R5 Natural Hazard Mitigation Structures not meeting Permitted Activity Standards**~~

~~Activity Status: Discretionary~~

~~Activity status where compliance not achieved: N/A~~

**Public Access Chapter– Te Āheinga Tūmatanui**

~~**NC P5PA-P1**~~

Reduction in public access to waterbodies can be considered when natural hazard mitigation works are required to protect communities from a significant natural hazard threat or when required for public safety due to the operational requirements of regionally significant infrastructure. When assessing proposals ~~for natural hazard structures~~, effects on public access should be considered and ways to minimise them found, including:

- a. Provision of alternate certain and enduring access; and
- b. Provision of public amenity or opportunity for environmental benefit along the structure, provided that the physical integrity of the structure is maintained.

**Activities on the Surface of Water Chapter**

**Overview**

On the West Coast/Te Tai Poutini a range of activities occur on the surface of rivers, streams, lagoons and lakes. These include activities that have a functional need to locate on water surfaces such as jetties and piers, recreation activities like fishing and boating and cultural activities undertaken by Poutini Ngai Tahu. **Activities on the surface of water can provide benefits and contribute to the wellbeing of people and communities.**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

The provisions in this chapter manage the effects of activities on the surface of water. Many of the activities that occur on the surface of water have few effects (e.g. occasional recreational boating or sailing). Other more permanent activities such as structures have potential to generate adverse effects which could compromise important water values (such as the natural character, ecological, cultural, amenity and recreational values of waterbodies).

Other Relevant Te Tai Poutini Plan provisions.

- Natural Character and the Margins of Waterbodies- Many activities on the surface of water may also involve activities in the riparian margin if the adjacent riverbank or lakeside.
- Provisions for managing activities next to waterbodies are found in the Natural Character and the Margins of Waterbodies Chapter.
- Sites and Areas of Significance to Māori. – Many rivers and lakes have a high degree of significance to Poutini Ngāi Tahu and are identified in Schedule Three Sites and Areas of Significance to Māori, where rivers or lakes are included within Schedule three the Sites of Significance to Māori provisions also apply.
- **Energy, Infrastructure and Transport - The Energy, Infrastructure and Transport Chapter contains policies that are also relevant and should be assessed in relation to Energy, Infrastructure or Transport Activities that trigger resource consent under the Activities on the Surface of Water Rules.**

Other relevant regulations

The responsibility for managing the effects of activities on the bed of waterbodies lies with the West Coast Regional Council and are managed through the West Coast Regional Land and Water Plan.

**ASW-O1**

The ecological, recreational, natural character, **natural landscape and features**, amenity and Poutini Ngāi Tahu values of the District’s rivers, lakes and lagoons are protected from the adverse effects of activities and structures on the surface of water.

**Activities on the Surface of Water Policies**

**ASW - P1**

Enable the non-commercial use of non-motorised watercraft on rivers, lakes and lagoons.

**ASW - P2**

Enable the non-commercial use of motorised watercraft on rivers, lakes and lagoons on the West Coast where this does not **have more than minor adverse effects** ~~impact significantly~~ on natural character, ecosystems and biodiversity values, Poutini Ngāi Tahu values, public access, amenity or disruption of natural quiet.

**ASW - P3**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel  
 Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and  
 Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

Provide for commercial activities and structures on the surface of West Coast/Te Tai o Poutini rivers, lakes and lagoons provided that the activity does not create:

- a. Adverse effects on:
  - i. Significant natural heritage values including identified scheduled sites;
  - ii. Cultural and spiritual values including sites and areas of significance to Māori;
  - iii. Poutini Ngāi Tahu values and in particular as relate to culturally significant rivers and lakes;
- b. ~~Significant~~**More than minor** adverse effects on:
  - i. Amenity values;
  - ii. Ecological values;
  - iii. Natural character;
  - iv. Other recreational uses; and
- c. Cumulative adverse effects with any other structures or activities on the surface of waterbodies.

**ASW – P4**

**Enable the use of the Port of Greymouth and Westport Harbour Ports 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.**

**Activities on the Surface of Water**

Note: There may be a number of Plan provisions that apply to an activity, building, structure and site. In some cases, consent may be required under rules in this Chapter as well as rules in other Chapters in the Plan. In those cases, unless otherwise specifically stated in a rule, consent is required under each of those identified rules. Details of the steps Plan users should take to determine the status of an activity are provided in General Approach.

**Permitted Activities**

**ASW-R1      Use of Non-motorised Watercraft for Non-Commercial Use on the Surface of Rivers, Lagoons and Lakes**

Activity Status Permitted

Advice Note: Use of non-motorised watercraft for temporary events on the surface of waterbodies within Sites and Areas of Significance to Māori are also subject to Rule SASM-R5

Activity status where compliance not achieved: N/A

**ASW-R2      Use of Motorised Watercraft for Non-Commercial Use on the Surface of Rivers, Lagoons and Lakes.**

Activity Status Permitted.

Where:

1. This does not occur on the surface of Lake Māhinapua or Māhinapua Creek/Tuwharewhare, Waitangiroto River, Makaawhio River, Arahura River, Kaimata/New River **below the State Highway bridge**, Makatata Stream or Saltwater Lagoon (at Paroa) except:

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- a. As provided for in an Iwi/Papatipu Runanga Management Plan for these awa, roto and hāpua; or
- b. Where the activity is for:
  - i **Mātauranga Māori monitoring;**
  - ii Scientific investigations or monitoring;
  - iii Law enforcement;
  - iv Search and rescue work;
  - v Conservation work undertaken by the Department of Conservation in respect of their duties under the Conservation Act 1987, Wildlife Act 1953 or Fisheries Act 1983;
  - vi The control and management of sports fish (as defined in the Conservation Act 1987) ~~or~~ game (as defined in the first schedule of the Wildlife Act 1953) by **West Coast Fish and Game Council New Zealand;** or
  - vii Biosecurity work carried out by West Coast Regional Council or **West Coast Fish and Game Council New Zealand;**
  - viii **Access to landlocked parcels where primary and physical access is only achieved through crossing the waterbody; or**
  - ix **Use of Lake Māhinapua for the yachting regattas and club sailing associated with the Lake Māhinapua Aquatic Club Incorporated during the sailing season of October to April where the watercraft are propelled by a motor but not exceeding a speed of 5 knots except in an emergency response.**

Activity status where compliance not achieved: Discretionary

**ASW-R3 Installation of Structures on the Surface of Artificial Lakes and Ponds and Artificial Watercourses**

Activity Status Permitted.

Activity status where compliance not achieved: N/A

**ASW-R4 Installation of Structures on the Surface of Natural Waterbodies**

Activity Status Permitted

Where:

1. These are **temporary** whitebait stands installed in accordance with the West Coast Whitebait Fishing Regulations **and are removed within two weeks of the end of the whitebait season; or**
2. **These are temporary mai mai installed for the purposes of lawful gamebird hunting provided these are removed within two weeks of the end of the game bird season; or**
3. These are temporary swimming platforms installed for a single swimming season; or
4. These are structures installed by Poutini Ngāi Tahu that are identified in an Iwi/Papatipu Runanga Management Plan for Arahura River, Makaawhio River, Waitangiroto River, Māhinapua Creek/Tuwharewhare, Makatata stream or Lake Māhinapua; ~~and have written approval of the relevant Poutini Ngāi Tahu Runanga Te Runanga o Ngati WaeWae or Te Runanga o Makaawhio;~~  
**or**
5. **These are marker buoys used by the Lake Māhinapua Aquatic Club Incorporated on Lake Māhinapua; or**
6. **This is the operation, maintenance and repair of existing lawfully established structures as of 14 July 2022.**

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**Advice Notes:**

6. Whitebait stands are primarily regulated by the West Coast Regional Council through the West Coast Regional Land and Water Plan.
7. Where structures are proposed on the surface of waterbodies check the Natural Character and the Margins of Waterbodies provisions to determine whether consent is required for the landward portion of the structure located in any riparian margin.
8. Where structures are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these are also subject to Rule SASM - R6 in the Sites of Significance to Māori Chapter.
9. **Consultation with the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio is recommended. In relation to Lake Māhinapua consultation with Te Rūnanga o Ngāi Tahu in addition to Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio is recommended.**
10. **For the avoidance of doubt this rule does not apply to whitebaiting activities on the surface of water.**

Activity status where compliance not achieved: Controlled where standard ~~23~~ is not complied with.  
Discretionary where standards 1, **2, 4, 5** and ~~36~~ are not complied with.

**ASW – R4A Use of Watercraft for Commercial Activities and Port Activities on the Surface of Water**

**Activity Status: Permitted**

**Where: This is the use of the surface of water for commercial activities on water and other Port Activities**

1. **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**
2. **Associated with Westport Harbour Port and harbour, and seaward of the State Highway 67 Bridge on the Kawatiri/Buller River.**

**Activity status where compliance not achieved: Restricted Discretionary.**

**Controlled Activities**

**ASW-R5 Permanent Swimming Platforms on the Surface of Natural Waterbodies**

Activity Status Controlled

- 1 Where this does not occur in the Arahura River, Makaawhio River, Makatata Stream or Lake Māhinapua.

Matters of control are:

- a. Size, design and location of structure
- b. Water safety measures.

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

- c. Compliance with any Iwi/Papatipu Runanga Management plan or where this does not exist advice from the relevant Poutini Ngāi Tahu Rūnanga- Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio; ~~and~~
- d. Management of effects on natural character of the waterbody and its margins; and
- e. **Management of effects on ecological, biodiversity and conservation values.**

Activity status where compliance not achieved: Discretionary

**Restricted Discretionary Activities**

**ASW-R6 Commercial Activities on the Surface of Rivers, Lagoons and Lakes and 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 Māhinapua, Māhinapua Creek/Tumwharewhare, Makatata Stream, Saltwater Lagoon (at Paroa), Waitangiroto River or Kaimata New River is in accordance with an Iwi-Papatipu Runanga Management plan ~~and has approval of the relevant Poutini Ngāi Tahu Runanga 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;
- 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 on ecological, biodiversity and conservation values;**
- f. Effects on noise of the natural character, ecological and amenity values; and
- g. Effects on Poutini Ngāi Tahu cultural values including access to mahinga kai and scheduled sites and areas.

Advice Notes:

- 1. Where activities are proposed on the surface of waterbodies within Sites and Areas of Significance to Māori these **are** also subject to rules in the Sites and Areas of Significance to Māori Chapter.
- 2. **Written approval is recommended from the relevant Poutini Ngāi Tahu rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio. In relation to Lake Māhinapua, written approval from Te Rūnanga o Ngāi Tahu in addition to Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio is recommended.**

**Discretionary Activities**

**ASW – R7 Use of Motorised Watercraft for Non - Commercial Use, Commercial Activities, and Structures on the Surface of Water ~~not meeting Permitted, Controlled or Restricted Discretionary Activity~~ provided for in another rule**

Activity Status Discretionary

**Recommendation Report of the Proposed Te Tai O Poutini Plan Hearings Panel**  
**Natural Character and Margins of Waterbodies - Ngā Ahua me ngā Mahi ka Noho Hangi ki ngā Hopua Wai and**  
**Activities on the Surface of Water - Ngā mahi ki te kārewa o te wai**

**Notification:** Any activity not provided for in an Iwi/Papatipu Rūnanga Management Plan for Makaawhio River, Arahura River, Lake Māhinapua, Māhinapua Creek/Tuwharewhare, Waitangiroto River, Makatata Stream Saltwater Lagoon (at Paroa) or Kaimata/New River always be limited notified to the relevant Poutini Ngāi Tahu rūnanga and may be publicly notified. **When making notification decisions in relation to this rule, the Council will be informed by advice from Poutini Ngāi Tahu and should the application be notified, it will be served on the relevant Poutini Ngāi Tahu rūnanga.**

Activity status where compliance not achieved: N/A

**Amendments to Planning Maps**

Amend the zoning maps so that waterbodies are identified as General Rural Zone.