



SECTION 42A REPORT

Public Access

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List of Abbreviations

Submitters

Submitter Number	Abbreviation	Full Name of Submitter
S421	Federated Farmers	Northland Federated Farmers of New Zealand
S425	Twin Coast Cycle Trail	Pou Herenga Tai Twin Coast Cycle Trail Charitable Trust

Note: This table contains a list of submitters relevant to this topic which are abbreviated, and does not include all submitters relevant to this topic. For a summary of all submitters please refer to Section 5.1 of this report (overview of submitters). Appendix 2 to this Report also contains a table with all submission points relevant to this topic.

Others

Abbreviation	Full Term
CMA	Coastal Marine Area
FNDC	Far North District Council
MHWS	Mean High Water Springs
NRC	Northland Regional Council
ODP	Far North Operative District Plan
NPS	National Policy Statement
NPS-FM	National Policy Statement for Freshwater Management
PDP	Proposed District Plan
RMA	Resource Management Act
RPS	Regional Policy Statement



1 Executive summary

1. The Far North Proposed District Plan ("PDP") was publicly notified in July 2022. The Public Access Chapter is located in the Part 2 – District Wide Matters, Natural Environment Values section of the PDP.
2. 14 original submitters (with 74 individual submission points) and 18 further submitters (with 258 individual submission points) were received on the Public Access topic. 29 original submission points indicated general support for the provisions to be retained as notified, 27 submission points indicated support in part, with changes requested, whilst eight submission points opposed the provisions. 10 submission points did not state whether they support or oppose a provision.
3. The submissions can largely be categorised into several key themes:
 - a) Esplanade reserves for land use applications
 - b) Protection of ecological values
 - c) Esplanade Priority Areas
 - d) Waiving of Esplanade Reserve Requirements
 - e) Tangata whenua relationship with water
 - f) Alignment with Subdivision provisions
 - g) Esplanade strips
 - h) Private property rights
 - i) Policy Framework (not addressed elsewhere)
4. This report has been prepared in accordance with Section 42A of the Resource Management Act ("RMA") and outlines recommendations in response to the issues raised in submissions. This report is intended to both assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP and also provide submitters with an opportunity to see how their submissions have been evaluated, and to see the recommendations made by officers prior to the hearing.
5. The key changes recommended in this report include:
 - a) Inserting reference to mahinga kai and fisheries into Policy PA-P2.



- b) Amending Policy PA-P3 to ensure esplanade requirements are only waived in certain circumstances.
- c) Inserting reference to esplanade strips (in addition to Esplanade Reserves) to various Public Access Policies and Subdivision Standard SUB-S8. This recommended change provides Council with the option of requiring an esplanade reserve or an esplanade strip (at Councils discretion) through the subdivision consent process.

2 Introduction

2.1 Author and qualifications

- 6. My full name is Jaimee Cannon, and I am a Consultant Planner at Boffa Miskell Limited.
- 7. I hold the qualification of Master of Planning from University of Otago, and Bachelor of Arts (major in Geography) from the University of Otago. I am a full member of the New Zealand Planning Institute.
- 8. I have 11 years' experience in planning and resource management including policy development, formation of plan changes and associated Section 32 assessments; Section 42A report preparation; and the preparation of and processing of resource consent applications, outline plans and notices of requirement.
- 9. I have worked on several district plan reviews at various stages of the Schedule 1 process, including the South Taranaki District Plan Review and New Plymouth District Plan Review, during which I was responsible for preparing proposed provisions, preparing S32 reports and S42A reports across several topics. Since January 2022 I have been working with FNDC's District Plan Team on their Proposed District Plan. I was responsible for overseeing the preparation of the Section 32 Reports for Activities on the Surface of Water and Public Access.

2.2 Code of Conduct

- 10. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 11. I am authorised to give this evidence on the Council's behalf to the PDP hearings commissioners ("Hearings Panel").



2.3 Expert Advice

12. In preparing this report I have relied upon advice and guidance from Robin Rawson, Far North District Council Parks and Reserves Planner, in relation to Council's practices for esplanade reserves and strips and available funding for purchase of esplanade reserves in Council budgets. In Section 5.2 of this report I have explained where I have relied on advice from Ms Rawson in making my recommendations.

3 Scope/Purpose of Report

13. This Section 42A report relates to Hearing Stream 5 – Public Access. It has been prepared in accordance with Section 42A of the Resource Management Act to:
 - a) assist the Hearings Panel in making their decisions on the submissions and further submissions on the PDP; and
 - b) provide submitters with an opportunity to see how their submissions have been evaluated and the recommendations being made by officers, prior to the hearing.
14. This report responds to submissions on the Public Access chapter of the PDP.
15. Wherever possible, I have provided a recommendation to assist the Hearings Panel.

4 Statutory Requirements

4.1 Statutory documents

16. I note that the Public Access Section 32 report provides detail of the relevant statutory considerations applicable to the Public Access Chapter.
17. It is not necessary to repeat the detail of the relevant RMA sections and full suite of higher order documents here. Consequently, no further assessment of these documents has been undertaken for the purposes of this report.
18. However, it is important to highlight the higher order documents which have been subject to change since notification of the Proposed Plan which must be given effect to. Those that are relevant to the Public Access Chapter are discussed below.

4.1.1 Resource Management Act



19. On 19 December 2023 the coalition Government repealed both the Spatial Planning Act 2023 and Natural and Built Environment Act 2023. The Government has indicated that the RMA will also be repealed, with work on its replacement legislation to be in 2024. The RMA continues to be in effect until new replacement legislation is passed.

4.1.2 Resource Management (Freshwater and Other Matters) Amendment Bill

20. The Resource Management (Freshwater and Other Matters) Amendment Bill was released on 23 May 2024 and includes amendments to the hierarchy of obligations for Freshwater Management for resource consenting while a review and replacement of the National Policy Statement for Freshwater Management (NPS-FM) 2020 is undertaken.
21. The Select Committee is due to consider the Bill on 30 September 2024, and the Bill is expected to be passed by end of 2024. At the time of report writing, the Amendment Bill does not influence plan-making, as plans are still required to give effect to the current direction of the NPS-FM 2020 while a review of the NPS-FM is undertaken.

4.1.3 National Policy Statements

22. The PDP was prepared to give effect to the National Policy Statements (NPSs) that were in effect at the time of notification (27 July 2022). Several amendments to the NPS-FM 2020 (under section 53(1) and 33(2)(a) of the RMA) have been made since July 2022 primarily relating to:
 - Clarifying definition of natural inland wetland
 - Improving the clarity of policies and correct errors.
 - Providing a consenting pathway for quarrying activities, landfills and cleanfill areas, mineral mining and some urban development.
23. Except as outlined above, there are no new NPSs or changes to operative NPSs that are of particular relevance to the submissions received on the activities on the surface of water chapter. The relevant NPSs were addressed as part of the Statutory Context within the Public Access Section 32 Report.
24. As mentioned above, the Government is currently undertaking a review of the NPS-FM 2020. As District Plans must be "prepared



in accordance with¹ and “give effect to²” a National Policy Statement, the Hearing Panel must apply the NPS as it stands when making recommended decisions to the Council. The government are working on amending the NPS-FM, which they have indicated will take between 18 to 24 months and will include a robust and full consultation process with all stakeholders including iwi and the public. At this stage it is anticipated the revised NPS-FM will come into force sometime in 2026. If a revised NPS-FM comes into force prior to decisions being made, the Hearing Panel will need to consider the implications of the relevant National Policy Statements in their recommended decisions.

4.2 Council’s Response to Current Statutory Context

25. The evaluation of submissions and recommendations in this report are based on the current statutory context (that is, giving effect to the current NPSs). I note that the proposed amendments and replacement NPS do not have legal effect until they are adopted by Government and formally gazetted.
26. Sections 55(2A) to (2D) of the RMA sets out the process for changing District Plans to give effect to NPSs. A council must amend its District Plan to include specific objectives and policies or to give effect to specific objectives and policies in a National Policy Statement (NPS) if it so directs. Where a direction is made under Section 55(2), Councils must directly insert any objectives and policies without using the Schedule 1 process and must publicly notify the changes within five working days of making them. Any further changes required must be done through the RMA schedule 1 process (such as changing rules to give effect to a NPS).
27. Where there is no direction in the NPS under Section 55(2), the Council must amend its District Plan to give effect to the NPS using the RMA schedule 1 process. The amendments must be made as soon as practicable, unless the NPS specifies a timeframe. For example, changes can be made by way of a Council recommendation and decision in response to submissions, if the submissions provide sufficient ‘scope’ to incorporate changes to give effect to the NPSs.
28. I have been mindful of this when making my recommendations and believe the changes I have recommended are either within scope of the powers prescribed under Section 55 of the RMA or within the scope of relief sought in submissions.

¹ Section 74(1)(a) of the RMA

² Section 75(3)(a) of the RMA



4.2.1 National Planning Standards

29. The National Planning Standards determine the sections that should be included in a District Plan, including the Strategic Direction chapters, and how the District Plan should be ordered, and certain definitions that must be included. The Public Access provisions proposed and recommended in this report are consistent with the National Planning Standards.

4.2.2 Treaty Settlements

30. There have been no further Deeds of Settlement signed to settle historic Treaty of Waitangi Claims against the Crown, in the Far North District, since the notification of the PDP.

4.2.3 Iwi Management Plans – Update

31. When the PDP was notified in July 2022, Council had 14 hapū/iwi management planning documents which had been formally lodged with Council, as listed in the PDP Section 32 Overview Report. Council took these management plans, including the broader outcomes sought, into account in developing the PDP. Of the 14 hapū/iwi management planning documents, two have been revised since notification of the PDP:
- Ngā Tikanga mo te Taiao o Ngāti Hine' the Ngāti Hine Environmental Management Plan
 - Ahipara Takiwā Environmental Management Plan.

Ngāti Hine Environmental Management Plan

32. Ngā Tikanga mo te Taiao o Ngāti Hine' the Ngāti Hine Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with the Council in 2022, after notification of the PDP in July 2022. In respect of the Public Access Chapter the Ngāti Hine Environmental Management Plan provides the following direction:
- a) Public access provision must recognise the rights of access Ngāti Hine have to all wahi tapu, for the harvesting and collection of kaimoana and mahinga kai, fisheries, taonga prized for traditional, customary and cultural uses.
 - b) Restoration, enhancement and management of areas of indigenous flora and fauna, their habitats and ecosystems.

Ahipara Takiwā Environmental Management Plan



33. The Ahipara Takiwā Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with Council in 2023, after notification of the PDP in July 2022. In respect of the Public Access Chapter, the Environmental Management Plan provides direction in relation to the following:
- a) Public access provision must recognise the rights of access Ngāti Hine have to all wahi tapu, for the harvesting and collection of kaimoana and mahinga kai, fisheries, taonga prized for traditional, customary and cultural uses.
 - b) Require public foot access along riverbanks and the coast to be maintained.

Patukeha Hapu Management Plan

34. At the time of writing this report, FNDC anticipates that the Patukeha Hapu Management Plan will be finalised in October 2024.

4.3 Section 32AA evaluation

35. This report uses 'key issues' to group, consider and provide reasons for the recommended decisions on similar matters raised in submissions. Where changes to the provisions of the PDP are recommended, these have been evaluated in accordance with Section 32AA of the RMA.
36. The s32AA further evaluation for each key issue considers:
- a) Whether the amended objectives are the best way to achieve the purpose of the RMA.
 - b) The reasonably practicable options for achieving those objectives.
 - c) The environmental, social, economic and cultural benefits and costs of the amended provisions.
 - d) The efficiency and effectiveness of the provisions for achieving the objectives.
 - e) The risk of acting or not acting where there is uncertain or insufficient information about the provisions.
37. The s32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor and consequential changes that improve the



effectiveness of provisions without changing the policy approach are not re-evaluated.

4.4 Procedural matters

38. Due to the clarity of submissions, no correspondence or meetings with submitters needed to be undertaken and there are no procedural matters to consider for this hearing.

5 Consideration of submissions received

5.1 Overview of submissions received.

39. A total of 14 original submissions (74 submission points) and 18 further submissions (258 further submission points) were received on the Public Access Chapter.
40. The main submissions on the Public Access Chapter came from:
 - a) **Community interest groups** (Kapiro Conservation Trust (S445), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523), Our Kerikeri Community Charitable Trust (S272), Carbon Neutral NZ Trust (S529) and Pou Herenga Tai Twin Coast Cycle Trail Charitable Trust (S425) whom seek amendments to require esplanade reserves for land use applications, greater protection of ecological values and indigenous biodiversity and to reinstate Esplanade Priority Areas.
 - b) **Iwi and Hapū groups** (Te Rūnanga o Ngāti Rēhia (S559) and Ngāi Tukairangi No.2 Trust (FS151) whom seek amendments to recognise the ancestral relationship of tangata whenua to waterbodies.
 - c) **Businesses and/or private landowners** (P S Yates Family Trust (S333), Bentzen Farm Limited (S167), Setar Thirty Six Limited (S168), The Shooting Box Limited (S187) and MatauriTrustee Limited (S243), whom seek amendments to better align Public Access policies with Subdivision rules.
 - d) **Lynley Newport** (S98) who seeks amendments to provide flexibility in type of esplanades created during subdivision, through provision for esplanade strips.
 - e) **Northland Federated Farmers of New Zealand** ('Federated Farmers') (S421) which seeks amendments to recognise private property rights.
41. The key issues identified in this report are set out below:



- Key Issue 1: Esplanade reserves for land use applications
 - Key Issue 2: Protection of ecological values
 - Key Issue 3: Esplanade Priority Areas
 - Key Issue 4: Waiving of Esplanade Reserve requirements
 - Key Issue 5: Tangata whenua relationship with water
 - Key Issue 6: Alignment with Subdivision provisions
 - Key Issue 7: Esplanade Strips
 - Key Issue 8: Private property rights
 - Key Issue 9: Policy framework (not addressed elsewhere)
42. Section 5.2 constitutes the main body of the report and considers and provides recommendations on the decisions requested in submissions. Due to the large number of submissions received and the repetition of issues, as noted above, it is not efficient to respond to each individual submission point raised in the submissions. Instead, this part of the report groups similar submission points together under key issues. This thematic response assists in providing a concise response to, and recommended decision on, submission points.

5.2 Officer Recommendations

43. A copy of the recommended plan provisions for the Public Access chapter is provided in **Appendix 1 – Recommended provisions to this report.**
44. A full list of submissions and further submissions on the Public Access chapter is contained in **Appendix 2 – Recommended Decisions on Submissions to this report.**
45. Analysis and of Esplanade Priority Areas and supporting maps are contained in **Appendix 3 – Analysis and Maps of Esplanade Priority Areas**
46. Additional information can also be obtained from the Summary of Submissions (by Chapter or by Submitter) Submissions database Far North District Council (fndc.govt.nz) the associated Section 32 report on this chapter (fndc.govt.nz) and the ePlan Map - Far North Proposed District Plan (isoplan.co.nz).

5.2.1 Key Issue 1: Esplanade reserves for land use applications

Overview



Provision(s)	Officer Recommendation(s)
Objectives, policies and standards for esplanade reserves	Retain as notified

Analysis of Submissions on Key Issue 1

Matters raised in submissions

47. Our Kerikeri Community Charitable Trust (S272.016-017), Kapiro Conservation Trust (S445.015-016), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.017-018) and Carbon Neutral NZ Trust (S529.186-187) are seeking that esplanade reserves are required for land use activities (not just for subdivision). The reasons provided in the submissions are that the proposed approach (voluntary creation of esplanade reserves for land use activities) misses opportunities for improved access to waterbodies and the coast.
48. There are five further submissions in support, one further submission who support in part and five further submissions in opposition of the original submissions. A range of further submissions are in support of these submission points because additional opportunities for esplanade reserves provide better connectivity, recreational opportunities, and protection of conservation values of riparian margins. Further Submissions from the Shooting Box (FS67.73-74) oppose the original submissions because requiring esplanade reserves for land use applications would place the cost of providing esplanade reserves on the landowners, and such a "non-targeted provision of esplanade reserves" would not be an efficient or effective way to achieve the objectives.

Analysis

49. The PDP as notified requires the creation of an esplanade reserve when subdivision involves the creation of one or more lots less than 4 ha which adjoins waterbodies or the coastal marine area (through Standard SUB-S8 and as required by S230 of the RMA). Esplanade reserves are classified as reserves under the Reserves Act 1977. Land ownership is transferred to the Council at the time of subdivision meaning the Council is responsible for managing the reserves.
50. The PDP approach does not require esplanade reserves for land use activities, as these can only be taken as a financial contribution by way of a condition on a land use consent (under



S108(9) of the RMA), if there are rules in the District Plan about financial contributions.

51. The PDP does not include financial contributions, which means esplanade reserves cannot be taken as a financial contribution by way of a condition on a land use consent (under 108(9) of the RMA). However, voluntary creation of esplanade reserves for land use activities is encouraged for relevant sites in the PDP. Specifically, Policy PA-P5 encourages the voluntary creation of esplanade reserves for land use activities, and Policy PA-P1 seeks to protect, maintain and enhance public and customary access by utilising access strips, designations and any other mechanisms available to secure land or easements for public access, where not otherwise achieved through esplanade reserve requirements.
52. I acknowledge that this approach results in an increased reliance on methods outside the District Plan to provide strategic public access links (e.g. designations, acquisition of land, negotiated agreements with landowners, retaining unformed legal roads).
53. The PDP does not currently include any ability for the Council to collect financial contributions. I understand that financial contributions were not included in the notified PDP because at that time (2021/2022), Council's position was that development contributions (under the Local Government Act) were going to be the method used to collect funding for new infrastructure in the District.
54. Council is currently investigating the appropriateness of contributions in some form. This is in response to a resolution made by Council to develop a draft financial contributions chapter. This may be revisited in the PDP at a later date. However, at the time of writing this report this work has not been completed, nor approved by Council. If financial contributions are introduced, it will be done by a plan variation to the PDP (before decisions on submissions are made) or a plan change when the PDP becomes operative. The proposed provisions for financial contributions could include a requirement for esplanade reserves or strips as a financial contribution for land development. It would be premature to recommend accepting these submissions in advance of Council making a strategic decision on financial contributions in the District Plan overall.

Recommendation

55. For the above reasons, I recommend that the submissions S272.016 S272.017, S445.015, S445.016, S523.017, S523.018, S529.186 and S529.187 are accepted in part, in that the plan



provisions are retained as notified (i.e. do not require esplanade reserves for land use applications), with the exception of the removal of the term 'voluntary' from policy

Section 32AA evaluation

56. No change to the provisions is recommended at this stage. On this basis, no evaluation under Section 32AA is required.

5.2.2 Key Issue 2: Protection of ecological values

Overview

Provision(s)	Officer Recommendation(s)
Objectives and policies for Public Access	Retain as notified

Analysis of Submissions on Key Issue 2

Matters raised in submissions

57. Our Kerikeri Community Charitable Trust (S272.023-024), Kapiro Conservation Trust (S445.017-018), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.019-020) and Carbon Neutral NZ Trust (S529.192-193) seek amendments to the Public Access chapter to include provision for the protection of indigenous species that are classified as threatened or at risk under the Department of Conservation New Zealand Threat Classification System ("NZTCS") and for areas with significant ecological values. The reasons provided in the submissions is that the PDP approach does not provide sufficient protection of indigenous species where esplanade reserves play a key role in contributing to the protection of ecological values.
58. There are three further submissions in support, two further submissions who support in part and two further submissions in opposition of the original submissions.

Analysis

59. The Ecosystems and Indigenous Biodiversity Chapter of the PDP3 seeks to:
 - a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna (Objective IB-01)
 - b) within the coastal environment:

³ Including officer's recommended amendments set out in Section 42A Report for Ecosystems and Indigenous Biodiversity (Hearing 4). Hearing 4 is scheduled to be held 5 to 8 August 2024.



- i. avoid adverse effects of land use and subdivision on threatened and at-risk indigenous species, and
 - ii. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on indigenous species, habitats and ecosystems that are particularly vulnerable to modification (Policy IB-P2)
 - c) outside of the coastal environment:
 - i. avoid, remedy or mitigate adverse effects of land use and subdivision to ensure adverse effects are no more than minor on threatened and at-risk indigenous species (Policy IB-P3)
 - ii. avoid, remedy, mitigate, offset or compensate adverse effects of land use and subdivision to ensure there are no significant adverse effects on indigenous species, habitats and ecosystems that are particularly vulnerable to modification (Policy IB-P3)
- 60. The NZTCS is a database which is developed and used by the Department of Conservation to assess and record the threat status of New Zealand taxa (species, subspecies, varieties and forma) based on the risk of extinction, to inform their conservation priorities. The database is continually updated as assessments of flora and fauna are completed. I understand that when determining if an area is 'significant indigenous vegetation or significant habitat of indigenous fauna' under the District Plan (with reference to Appendix 5 of the RPS for Northland 2016) the NZTCS is a consideration when determining whether the 'rarity / distinctiveness' criteria is met. In addition, Mr Wyeth (Council's Reporting Officer for Ecosystems and Indigenous Biodiversity topic) has made recommended amendments to the Ecosystems and Indigenous Biodiversity chapter to provide stronger protection for threatened or at-risk indigenous species including new definitions for threatened indigenous taxa and at-risk indigenous taxa that reference the NZTCS (paragraph 80 of the Ecosystems and Indigenous Biodiversity S42A Report).
- 61. The PDP as notified recognises the contribution esplanade reserves make to the protection of ecological values and indigenous biodiversity. Objective PA-O2 seeks that public access to and along the coastal marine area ("CMA") and waterbodies assists with the preservation of indigenous biodiversity and Policy PA-P2 requires the creation of esplanade reserves at the time of subdivision where a reserve protects, maintains or enhances existing ecological and/or natural value.



62. I do not support the changes requested because:
- a) the objective of the Public Access Chapter in the PDP is to protect, maintain and enhance public access to and along the coastal marine area and waterbodies (Objective PA-01);
 - b) The Ecosystems and Indigenous Biodiversity Chapter provides protection to indigenous species;
 - c) The Public Access provisions already refer to indigenous biodiversity values (paragraph 61 above). Amendments to the Public Access chapter to provide greater protection to indigenous species (as sought) would create unnecessary duplication with the provisions of the Ecosystems and Indigenous Biodiversity Chapter which is not an efficient or effective approach.

Recommendation

63. For the above reasons, I recommend the submissions S272.023, S272. 024, S445.017, S445.018, S523.019, S523.020, S529.192 and S529.193 are rejected and the plan provisions are retained as notified.

Section 32AA evaluation

64. No change to the provisions is recommended at this stage. On this basis, no evaluation under Section 32AA is required.

5.2.3 Key Issue 3: Esplanade Priority Areas

Overview

Provision(s)	Officer Recommendation(s)
Esplanade Priority Areas Planning Maps	Retain PDP as notified – do not identify Esplanade Priority Areas on Planning Maps.

Analysis of Submissions on Key Issue 3

Matters raised in submissions

65. Our Kerikeri Community Charitable Trust (S272.023-024), Kapiro Conservation Trust (S445.017-018), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.019-020, S524.019-020) and Carbon Neutral NZ Trust (S529.192-193) seek that Esplanade Priority Areas are reinstated in the PDP. The reasons provided by submitters are:
- a) Council should take all opportunities to gain access to waterbodies, as there is always future potential for contributing to connectivity.



- b) Kerikeri area is experiencing rapid growth and esplanade reserves play an important role in improving connectivity, active transport, green corridors and supporting compact land use.
 - c) The Esplanade Priority Areas layer can usefully be used to encourage voluntary creation as a mitigation measure or off set.
 - d) Esplanade Priority Areas also help provide transparent, consolidated land use/planning information for Council staff, developers and others.
 - e) this layer can usefully inform applications for esplanade waivers to ensure that at an absolute minimum area that have been identified as part of future connections are not accidentally waived entirely or a limited width accepted.
 - f) Failure to indicate the Council's interest could result in the consenting planner (or those undertaking monitoring), or a future landowner being unaware that there is Council interest, especially if there are frequent staff changes at Council.
66. The submitters also seek that Esplanade Priority Areas are included in other areas within the District where communities wish to identify esplanade priority areas.
67. Each of these original submission points received three further submissions in support from Vision Kerikeri (FS569, FS570) and Kapiro Conservation Trust (FS566). Further submissions in opposition were also received from The Shooting Box Ltd (FS67), PS Yates Family Trust (FS68), Setar Thirty Six Limited (FS69) and Bentzen Farm Limited (FS66). The reasons provided for the further submissions in opposition are that the relief sought on additional esplanade priority areas lacks specificity and appears to seek the addition of additional esplanade priority areas outside a Schedule 1 RMA process and without proper S32 evaluation.

Analysis

68. Esplanade Priority Areas have been identified on the Planning Maps in the Operative District Plan ("ODP") since 2009, as riparian areas which have high recreational or conservation value and should be prioritised by Council when determining requirements for esplanade reserves and esplanade strips. These areas are only identified in the Kerikeri area including along the boundaries of Kerikeri River and Puketotara Stream.



69. I understand that the notified version of the PDP did not identify Esplanade Priority Areas on planning maps for the following key reasons:
- a) uncertainty regarding the appropriateness and location of identified Esplanade Priority Areas (i.e. a large number have already been 'activated' over the life of the ODP);
 - b) limited resources available for Council to purchase esplanade reserves; and
 - c) a preference to rely on:
 - i. general subdivision standards for the creation of esplanade reserves; and
 - ii. opportunities outside of the PDP to provide strategic direction on where public access could be prioritised (including the District-Wide Open Space Strategy, and the Kerikeri-Waipapa Spatial Plan⁴ which are currently being developed).
70. I have undertaken an analysis of the ODP Esplanade Priority Areas to determine which areas identified as Esplanade Priority Areas have been vested since they were identified prior to 2009. This process involved:
- a) A review of Council GIS maps⁵ with the following GIS layers:
 - Esplanade Priority Areas
 - Walkways
 - Reserves and Open Spaces (FNDC)
 - Proposed District Plan Zones.
 - b) A review of the "Kerikeri Walks" website⁶ and Interactive Map developed by the Kerikeri Walkways Group.
 - c) A site visit to several of the identified "Esplanade Priority Areas" within Kerikeri on 27 May 2024.
71. Appendix 3.1 and 3.2 to this report provides an overview and analysis of the Esplanade Priority Areas (extracted from the ODP maps) demonstrating the extent to which these areas have been

⁴ It is anticipated that the Kerikeri-Waipapa Spatial Plan will identify some high-level outcomes for enhancing access to open spaces in identified growth areas.

⁵ [Community facilities and plans \(arcgis.com\)](https://arcgis.com)

⁶ [KERIKERI WALKS - Five Waterfall walking network](#)



'activated' (i.e. vested as reserves and/or walkways). Table 1 demonstrates that approximately 70% of the Esplanade Priority Areas have been activated as esplanade reserves and vested in Council as Local Purpose Reserves under section 23 of the Reserves Act 1977. Land adjoining the Waipapa Stream to the north-east of the Kerikeri town centre is Crown-owned Marginal Strips. A number of these activated Esplanade Priority Areas also provide for public access in the form of Far North District Council (FNDC) walkways, including the Wairoa Stream Walkway, Kerikeri River Track and Te Araroa Trail.

72. For land which is a local purpose reserve which do not currently provide for public access, Council as owners of the Local Purpose Reserves are able to create walkways over this land in the future if it is appropriate to do so, which is a process managed outside of the District Plan.

Table 1 Percentage of 'activated' Esplanade Priority Areas

Stream	Length of Esplanade Priority Area (m)	Approx. Percentage Activated	Approx. Percentage Not Activated
Waipapa Stream	5,784m	100%	0%
Whiriwhiritoa Stream	1,995m	0%	100%
Kerikeri River	4,195m	100%	0%
Puketotara Stream	1,900m	68%	32%
Unnamed Stream (flows into Wairoa Stream)	1,872m	0%	100%
Wairoa Stream	3,708m	85.5%	14.5%
Okura River	2,307m	34%	66%
Kerikeri Inlet	1,163m	61%	39%
Total	22,924m	69.5%	30.5%

73. The Esplanade Priority Areas that are not activated, as shown in the maps contained in Appendix 3.2, are located along Kerikeri inlet (Map 2), Okura River (Map 3), a small portion of Wairoa Stream (Map 4), Whiriwhiritoa Stream (Map 5) and Puketotara Stream (Map 6).
74. Based on my analysis I do not consider it appropriate to reinstate Esplanade Priority Areas into the PDP for the following reasons:



- a) The majority of the Esplanade Priority Areas have already been activated and vested with Council as Local Purpose Reserves. Many of these areas also provide for publicly accessible walkways where Council as landowners, can continue to create more walkways and access routes to these reserves outside of the PDP.
- b) Under the PDP framework the subdivision process provides the opportunity to create esplanade reserves or strips adjacent to the coast and rivers to enable public access and recreation, or to manage conservation values.
- c) A number of Esplanade Priority Areas which have not yet been activated have future subdivision potential⁷ based on the underlying zoning of adjoining sites. In most cases, any future subdivision of these sites will trigger the requirement for a 20-metre-wide esplanade reserve under Standard SUB-S8. Identifying these discrete remaining areas as 'Esplanade Priority' is not necessary because Standard SUB-S8 already requires an esplanade reserve to be created when lots less than 4ha are created adjacent to the waterbody, or where lots larger than 4 ha are created Council has the option of requiring an esplanade reserve as a condition of subdivision consent⁸.
- d) For Esplanade Priority Areas with low future subdivision potential, Policy PA-P5 encourages the voluntary creation of esplanade reserves for land activities where they protect, maintain or enhance qualities of the adjoining CMA and waterbodies. This provides opportunities for these areas to still be activated through other mechanisms.
- e) Esplanade Priority Areas are only identified in the Kerikeri area. The reinstatement of these areas would create an inconsistent approach to esplanade reserve management across the District, especially when there is much greater need for open spaces (i.e. "parks poverty") in many other communities of the District. At this stage, the level of interest and desire for Esplanade Priority Areas for other communities across the District is not known.
- f) The Kerikeri-Waipapa Spatial Plan currently being developed will consider opportunities for enhancing public access to waterbodies and the coast when growth areas are identified adjacent to the coast and waterbodies, where esplanade

⁷ This includes the minimum lot size for each zone and the outcomes sought for the zone as expressed through the provisions for each zone.

⁸ Section 108(f) and s220(1)(aa) of the RMA.



reserves do not already exist and will identify some high-level outcomes for enhancing access to open spaces.

75. In addition to the above, the District-Wide Open Spaces Strategy is also currently being developed which will look ahead to the next 30 years, and consider the challenges and opportunities for Open Spaces. It will set the direction for how Council protects, provides and manages the District’s public open spaces network (parks, reserves, cycleways, beaches, rivers, playgrounds) and provide a framework to ensure the open space network can sustainably meet the needs of the growing community over the next 30 years.

Recommendation

76. For the above reasons, I recommend that the submission points from our Kerikeri Community Charitable Trust (S272.023-024), Kapiro Conservation Trust (S445.017-018), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.019-020, S524.019-020) and Carbon Neutral NZ Trust (S529.192-193) are rejected and the plan provisions are retained as notified (i.e., do not identify Esplanade Priority Areas on planning maps).

Section 32AA evaluation

77. No change to the provisions is recommended at this stage. On this basis, no evaluation under Section 32AA is required.

5.2.3 Key Issue 4: Waiving of Esplanade Reserve Requirements

Overview

Provision(s)	Officer Recommendation(s)
Policy PA-P3	Amend to strengthen policy wording so that waiving of esplanade requirements is only allowed in certain circumstances

Analysis of Submissions on Key Issue 8

Matters raised in submissions

78. Our Kerikeri Community Charitable Trust (S271.020), Twin Coast Cycle Trail (425.038), Kapiro Conservation Trust (S446.019), Carbon Neutral NZ Trust (S529.085) and Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S524.020) are not supportive of waiving of esplanade requirements, however they consider that if such a provision must be included, Policy PA-P3 should be amended to make it clear that waiving esplanade requirements should only occur in exceptional circumstances. The submissions seek that Policy PA-P3 is amended as follows:



"Policy PA-P3 ~~Allow~~ a Consider an application for waiver of any requirement for, or a reduction in the required width of, an esplanade reserve where the area is not identified as esplanade priority, and it can be demonstrated that:..."

79. There are a number of further submissions in support of the original submissions whom do not support the waiving of esplanade requirements.

Analysis

80. I acknowledge that the term "allow" being used in Policy PA-P3 may be interpreted as being too 'enabling' which may have perverse outcomes, because "allowing" the waiving of esplanade requirements, could be contrary to objective PA-O1 which seeks that:

Public and customary access to and along the coastal marine area and waterbodies is protected, maintained and enhanced for current and future generations.

81. The policy intent is that Council is provided with discretion to waive esplanade reserve requirements where it can be demonstrated that one or more of the criteria set out in Policy PA-P3 are met. In practice, this requires consideration of the application to waive the requirements, as part of Council's decision-making on resource consent applications.
82. I consider provision for waiving esplanade reserve requirements should only be in the exceptional circumstances listed in the criteria of Policy PA-P3, where it can be clearly demonstrated that public access is not appropriate for one or more of the listed reasons. Although it is appropriate in the PDP to balance the provision of public access (a matter of national importance under S6(d) of the RMA) with other matters of national importance (e.g. protection of historic and cultural heritage, preserving natural character and areas of significant indigenous vegetation and significant habitats of indigenous fauna), esplanade reserves can sometimes be used to assist with the protection of heritage and significant indigenous vegetation or habitats.
83. I have discussed the policy wording for PA-P3 with Robin Rawson, Council's Parks & Reserves Planner. We consider that there is merit in 'strengthening' Policy PA-P3 to avoid any 'loopholes' that could be used perversely by developers to argue that esplanade reserves or strips and associated public access are not necessary. In particular, I consider that the words "only allow" and deletion of clause (a) would better reflect the intent of the policy (that waiving requirements is in exceptional circumstances only). For example, considering clause (a), a



landowner or developer could argue that public access already exists in another location further down the coast or waterbody, therefore an esplanade is not required, whereas an esplanade reserve or strip could be appropriate for one or more of the criteria stated in Policy PA-P2.

84. As recommended under Key Issue 3 above, I do not support the reinstatement of Esplanade Priority Areas in the PDP therefore reference to esplanade priority areas within Policy PA-P3 is not supported.

Recommendation

85. For the above reasons I recommend that submissions S271.020, 425.038, S446.019, S529.085, S524.020 are accepted in part and Policy PA-P3 is amended as follows (except as recommended to be amended in response to other submissions).

Only allow ~~Allow~~ a waiver of any ~~the~~ requirement for, or a reduction in the required width of an esplanade reserve or esplanade strip in circumstances where it can be demonstrated that:

- ~~a. safe and reasonable public access or recreational use already exists and can be maintained for the future, while considering the potential effects of climate change, including sea level rise, erosion and accretion;~~*
- b. providing access will be detrimental to land and water-based habitats of indigenous flora and fauna within, and adjoining the margin;*
- c. providing access will be detrimental to any historic heritage place or site and area of significance to Māori;*
- d. it would protect the stability, performance, maintenance and operation of essential structures and infrastructure; or*
- e. restrictions on public access are necessary to ensure public health and safety.*

86. I consider that the above listed submissions provide sufficient scope for these recommended amendments because they are seeking to delete the policy or clarify that waiving esplanade requirements should only occur in exceptional circumstances, and the recommended wording amendments achieves the relief sought, in a more effective manner.

Section 32AA evaluation

87. The recommended change to Policy PA-P3 to strengthen the policy wording is appropriate for reasons provided in paragraphs



80 to 84 above, primarily to ensure that esplanade reserve or strip requirements are met (in accordance with Policy PA-P2) and requirements are only waived in exceptional circumstances. The recommended changes are appropriate to achieve the objectives of the PDP, in particular objective PA-O1 to protect, maintain and enhance public access to and along the coastal marine area and waterbodies.

5.2.4 Key Issue 5: Tangata whenua relationship with water

Overview

Provision(s)	Officer Recommendation(s)
New Objective	Retain as notified – do not insert new objective.
Overview	Retain as notified
Policy PA-P2	Amend clause (f) to reference mahinga kai and fisheries
Policy PA-P3	Retain as notified

Analysis of Submissions on Key Issue 5

Matters raised in submissions

88. Te Rūnanga o Ngāti Rēhia (S559) support the Public Access objectives and policies in part and seek amendments to further recognise the ancestral relationship of tangata whenua to waterbodies including as kaitiaki of water resources. I summarise and evaluate each of the related submission points in turn below.

Submission

89. Te Rūnanga o Ngāti Rēhia (S559.046) seek to include a new objective which recognises the relationship of tangata whenua to their ancestral waterways and maintenance of this relationship.
90. There are four further submissions in support and one further submission from Alec Cox (FS348.073) that oppose the submission point because the submission was not made by the closing date⁹.

Analysis

91. I acknowledge and recognise the relationship of tangata whenua to their ancestral waterways. I also acknowledge that tangata whenua are kaitiaki of water resources and that decision-makers must recognise and provide for the relationship of Māori with

⁹ Submission S559 has been accepted as a valid submission by the Hearing Panel (Panel Minute 2, dated 9 February 2024).



their ancestral waters as a matter of national importance under s6(e) of the RMA.

92. I note that the purpose of the Public Access Chapter is to maintain and enhance public access to and along the coastal marine area, lakes and rivers in accordance with matter of national importance 6(e) of the RMA.
93. I consider that the current PDP framework already appropriately recognises the relationship of tangata whenua to their ancestral waterways, in accordance with s6(e) and s8 of the RMA, through the following provisions in the respective chapters of the PDP:
 - a) Objective TW-O4 of the Tangata Whenua chapter which provides for tangata whenua relationships with their ancestral water. This objective highlights the relationship of tangata whenua and their ancestral water ways and the ability to maintain mana whenua in their rohe.
 - b) Policy TW-P2 which seeks to ensure that tangata whenua are provided with opportunities to actively participate in resource management processes involving water (including ancestral waterways)
 - c) Policy TW-P6 which lists a range of matters to be considered when assessing applications for land use and subdivision which may result in adverse effects on the relationship of tangata whenua with their ancestral lands and water and other taonga.
 - d) Policy ASW-P3 in the Activities on the Surface of Water Chapter which provides for tangata whenua's relationship with and cultural practices associated with freshwater.
 - e) Objectives PA-O1 and PA-O2 of the Public Access chapter which recognise customary access to along the coastal marine area and the preservation of historic heritage and cultural values.
 - f) Policy PA-P3 which seeks to allow waivers of esplanade reserves where it can be demonstrated that providing access will be detrimental to any historic heritage place or site and area of significance to Māori.
 - g) Policy PA-P5 which encourages the creation of esplanade reserves for land use activities where it provides for access to or the protection of the values of historic heritage or sites and areas of significance to Māori.



94. I consider that the insertion of a new objective within the Public Access Chapter would create duplication across the PDP regarding the relationship tangata whenua have with their ancestral waterways. As all of the objectives and policies, including the objectives in the Tangata Whenua Chapter, should be read and applied in conjunction, I consider that the PDP is in accordance with s6(e) and s8 of the RMA.
95. I also note that the functions and responsibilities of FNDC as a territorial authority are limited to managing effects of land use activities occurring on and adjacent to waterbodies (RMA, s31). This includes providing public access to waterbodies and managing activities on the surface of water. The maintenance and enhancement of water quality in waterbodies and the coast is the responsibility of the Northland Regional Council ("NRC") (RMA, s30(1)(c)(ii)).
96. Therefore, no changes are recommended in response to this submission.

Recommendation

97. Given the reasons above, I recommend that submission point S559.046 is rejected.

Overview

Submission

98. Te Rūnanga o Ngāti Rēhia (S559.040) seek to amend the Overview to include 'that where applicable, the transfer of esplanade strips to hapū will be supported or at least investigated'. The reasons provided in the submission is the amendment will support Objective TW-O4 which seeks to ensure tangata whenua maintain mana whenua in their rohe through relationships within their culture and traditions, ancestral lands, water, sites, wāhi tapu, and other taonga.
99. There are four further submissions in support and one further submission oppose the submission point.

Analysis

100. Esplanade strips are a legal instrument created between a landowner and a territorial authority. They are registered on the title, but the land within the strip remains in the ownership of the landowner.



101. I understand, based on legal advice provided by Simpson Grierson via email on 13 June 2024, that it is not legally possible to transfer an esplanade strip to a hapū under the RMA. An esplanade strip is created by registration of an instrument between the territorial authority and the subdividing owner. The underlying land remains in the ownership of the landowner. Generally, esplanade strips allow for full public access, but there may be limitations as to times or for other particular circumstances.

Recommendation

102. For the above reasons, I recommend that submission point S559.040 is rejected.

Policy PA-P2 and PA-P3

Submissions

103. Te Rūnanga o Ngāti Rēhia (S559.041-042) seek to amend Policy PA-P2 and PA-P3 to reference mahinga kai purposes and fisheries. The key reason provided is that if the policy wording simply refers to sites of significance to Māori, that sites of significance for mahinga kai and fisheries could be missed. Ngati Rēhia notes that access has long been a significant issue for them.
104. There are five further submissions in support and one further submission opposing the submission point.
105. Te Rūnanga o Ngāti Rēhia (S559.042) seek to amend Policy PA-P3 to allow a waiver or a reduction in the required width of an esplanade reserve to include additional criteria, where public access is detrimental to land in Māori title, mahinga kai and hapū fisheries. The submitter raises 'access' as a significant issue for Ngāti Rēhia, in particular where public access is provided along the coast adjacent to land in Māori title including in Te Tii, Wharengaere, Tapuaetahi and Tākou.

Analysis

106. Policy PA-P2 reads: "Require the creation of esplanade reserves to and along the coastal marine area and waterbodies when considering an application for subdivision where it:
 - a) *protects, maintains or enhances existing ecological and/or natural values;*
 - b) *protects, maintains or enhances the landscape values;*
 - c) *protects, maintains or enhances public access;*



- d) enables public recreation;*
 - e) provides connectivity between esplanade reserves, esplanade strips, access strips and other public places;*
 - f) provides for access to or the protection of the cultural or historic heritage values or sites and areas of significance to Māori; or*
 - g) does not increase the risk of natural hazards and assists in the mitigation of existing risks associated with natural hazards.”*
107. Policy PA-P3 provides direction on circumstances when a waiver of the requirements to provide an esplanade reserve may be appropriate.
108. I consider that the requested change to refer to mahinga kai and fisheries within Policy PA-P2 (clause f) is appropriate to achieve the objectives of the PDP which seek to recognise the relationship of tangata whenua with waterbodies, referred to in paragraph 93 above. I understand that mahinga kai and fisheries refers to the traditional seasonal food gathering rituals of tangata whenua. Mahinga kai is a significant concept within Māori culture, reflecting values of waterbodies that sustain life (including the life of people), reflecting the essence of kaitiakitanga (guardianship) and providing connections to ancestors who have managed and protected water resources.
109. The recommended amendments to the policy framework are also consistent with the direction of the Ngāti Hine Environmental Management Plan and the Ahipara Takiwā Environmental Management Plan¹⁰ and the Northland RPS. Issue 2.6 of the RPS recognises where land use and development can lead to loss of access to sites of customary value which Māori have a special relationship with. To address this issue, Objective 3.15 directs that public access to the coast is maintained or improved and Policy 5.1.2 seeks that people and communities are able to provide for their wellbeing through subdivision, use and development that maintains and enhances public access.
110. At this stage, I do not support insertion of reference to 'mahinga kai, fisheries, and land in Māori title' within the Policy PA-P3, as sought by Te Rūnanga o Ngāti Rēhia, for the following key reasons:

¹⁰ Section 4.2.3



- a) The current policy wording, in particular clause (c) to consider waiving or reducing requirements for esplanades where “providing access will be detrimental to any historic heritage place or site and area of significance to Māori” is already sufficiently broad to capture scenarios where public access may not be appropriate for cultural reasons.
- b) Mahinga kai and fisheries are primarily located in the coastal marine area and I have concerns that preventing public access to the coast for cultural reasons to protect mahinga kai and fisheries potentially goes beyond District Council’s responsibilities and functions under the RMA.
- c) The reference to mahinga kai, fisheries or land held within Māori title within Policy PA-P3 could lead to preserve outcomes, for example developers or landowners could argue through a resource consent application that esplanades and associated public access to the coast is not necessary, in order to protect mahinga kai and fisheries, or land held in Māori title, which would be contrary to the Public Access objectives.
- d) The current policy wording, in particular providing protection to areas of historical or cultural significance, strikes an appropriate balance between maintaining and enhancing public access to and along the coastal marine area, lakes and rivers (S6(e) RMA) and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga (S6(d) RMA).

Recommendation

- 111. I recommend that submission point S559.046 is rejected.
- 112. I recommend that submission point S559.040 is rejected and Overview is retained as notified.
- 113. I recommend that submission point S559.041 is accepted and Policy PA-P2 is amended as follows:

"Require the creation of esplanade reserves to and along the coastal marine area and waterbodies when considering an application for subdivision where it:...

(f) provides for access to or the protection of the cultural or historic heritage values or sites and areas of significance to Māori including for the purposes of mahinga kai and fisheries; or....



114. I recommend that submission point S559.042 is rejected and Policy PA-P3 is retained as notified.

Section 32AA evaluation

115. A section 32AA evaluation for the recommendation to include “for the purposes of mahinga kai and fisheries” in Policy PA-P2 is provided below:

- a) The recommended approach is more effective and efficient than the proposed approach at achieving the PDP objectives as a whole.
- b) The approach strikes an appropriate balance between the provision of public access (S6(d) RMA) and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (S6(e) RMA and TW-O4 of the PDP)).
- c) The amendments provide greater clarity and direction to plan users of when esplanade reserves may be appropriate for cultural reasons.
- d) The amendments enable tangata whenua to provide for their social, economic and cultural wellbeing.

116. The benefits of the recommended amendment is that opportunities for public access are more likely to be realised in circumstances where the esplanade would provide access to or protection of cultural or historic heritage values or sites and areas of significance to Māori (including mahinga kai and fisheries).

5.2.4 Key Issue 6: Alignment with Subdivision provisions

Overview

Provision(s)	Officer Recommendation(s)
Policy PA-P2	Retain as notified

Analysis of Submissions on Key Issue 6

Matters raised in submissions

117. Bentzen Farm Limited (S167.048), P S Yates Family Trust (S333.041), Setar Thirty Six Limited (S168.049), Matauri Trustee Limited (S243.066) and The Shooting Box Limited (S187.041) seek to delete Policy PA-P2 and replace with new policy as follows:



118. Policy XX Require esplanade reserves or strips when subdividing to specified lot sizes land adjoining the coast and other qualifying water-bodies.
119. The reasoning provided in the submissions is Policy PA-P2 as notified sets out criteria where esplanade reserves are required at the time of subdivision such as where is protects, maintains or enhances ecological and/or natural values. This goes beyond the criteria outlined in Standard SUB-S8. Instead, the submitters consider that the policy should align with the equivalent Subdivision Policy SUB-P7.
120. There are four further submissions in opposition of the original submissions.

Analysis

121. The notified Public Access Chapter contains objectives and policies which seek to ensure public access to and along the CMA and waterbodies is maintained and enhanced throughout the District.

122. In the notified PDP, Policy PA-P2 reads as follows:

Require the creation of esplanade reserves to and along the coastal marine area and waterbodies when considering an application for subdivision where it:

- a. protects, maintains or enhances existing ecological and/or natural values;*
- b. protects, maintains or enhances the landscape values;*
- c. protects, maintains or enhances public access;*
- d. enables public recreation;*
- e. provides connectivity between esplanade reserves, esplanade strips, access strips and other public places;*
- f. provides for access to or the protection of the cultural or historic heritage values or sites and areas of significance to Māori; or*
- g. does not increase the risk of natural hazards and assists in the mitigation of existing risks associated with natural hazards.*

123. The Subdivision chapter also contains Policy SUB-P7:



Require the vesting of esplanade reserves when subdividing land adjoining the coast or other qualifying waterbodies.

124. There are no rules or standards controlling public access or related activities in the Public Access Chapter. The policies are implemented through the resource consent process where opportunities to provide public access exist, and through Standard SUB-S8 which requires an esplanade reserve with a width of 20m is created when subdivision adjacent to Mean High Water Springs ("MHWS") or waterbodies occurs.
125. The intention is that Policy PA-P2 is considered for all subdivision applications, and whether an esplanade reserve is created is determined on a case-by-case basis. Through the resource consent process Council can require an esplanade reserve as a condition of subdivision consent when the allotments created are more than 4 ha¹¹. It would not be appropriate to amend the policy so that the policy direction is restricted to only subdivision activities which trigger SUB-S8 requirements (i.e. subdivision creating allotments less than 4 ha). The risk of accepting the submission is that it could result in missed opportunities to create esplanade reserves for subdivisions resulting in allotments of more than 4ha which may contribute to protecting, maintaining, or enhancing one or more of the above features and values, including public access. The notified policy enables Council to consider whether an esplanade reserve may be appropriate for lots greater than 4ha through the subdivision consent process, and could also motivate an applicants to offer reserves when the criteria area met.
126. I note that the notified drafting of Policy PA-P2 is also consistent s229 of the RMA which outlines the purpose of esplanade reserves and esplanade strips.
127. I consider notified Policy PA-P2 provides appropriate direction alongside Policy SUB-P7 and provides opportunities for esplanade reserves to be created for larger lot sizes through the subdivision process. This ensures public access is maintained and enhanced throughout the District giving effect to s6(d) of the RMA.

Recommendation

128. I consider that the notified PDP appropriately gives effect to the RPS and recommend that submissions S167.048, S333.041, S168.049, S243.066 and S187.041 are rejected and the plan provisions are retained as notified.

¹¹ Section 108(f) and s220(1)(aa) of the RMA.



Section 32AA evaluation

129. No change to the provisions is recommended at this stage. On this basis, no evaluation under Section 32AA is required.

5.2.5 Key Issue 7: Esplanade strips

Overview

Provision(s)	Officer Recommendation(s)
Policy PA-P1	Amend to include reference to esplanade strips
Policy PA-P2	
Policy PA-P3	
Policy PA-P5	
Standard SUB-S8	Amend to include reference to esplanade strips

Analysis of Submissions on Key Issue 7

Matters raised in submissions

130. Lynley Newport (S98.002) seeks to amend Policy PA-P1, Policy PA-P2, Policy PA-P3 and Policy PA-P5 to also include reference to esplanade strips. This would provide flexibility for landowners and Council with regard to the type of esplanade area created at the time of subdivision.
131. There is one further submission from Bentzen Farm Limited (FS66.116) who oppose the original submissions as the relief sought does not appropriately balance the costs to the landowners. The further submitter considers that inserting reference to esplanade strips is not an efficient or effective way to achieve the public access objectives.

Analysis

132. The PDP includes definitions for esplanade reserve and esplanade strip as follows:

Esplanade reserve – *"has the same meaning as in section 2 of the RMA, means a reserve within the meaning of the Reserves Act 1977*

(a) which is either –

- (i) a local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or*
- (ii) a reserve vested in the Crown or a regional council under section 237D; and*



(b) which is vested in the territorial authority, regional council, or the Crown for a purpose or purposes set out in section 229."

Esplanade strip – *"has the same meaning as in section 2 of the RMA, means a strip of land created by the registration of an instrument in accordance with section 232 for a purpose or purposes set out in section 229."*

133. The key differences between an esplanade reserve and an esplanade strip are ownership and width from the adjoining waterbody.
134. Esplanade reserves are classified as reserves under the Reserves Act 1977. Land ownership is transferred to the Council at the time of subdivision meaning the Council is responsible for managing the reserve. The boundary of an esplanade reserve is measured from the bank of a river or stream, the margin of a lake, and from MHWS within a coastal area. The landward boundary of an esplanade reserve does not change as the water boundary accretes or erodes.
135. Esplanade strips may be required by a rule in a District Plan when land is subdivided, or they may also be created voluntarily at any time by agreement. Esplanade strips are legal instruments which are registered on a property's Record of Title so remain in ownership of the landowner which includes their ongoing maintenance and management. The boundary of an esplanade strip moves with a river, lake or coastal boundary to offset any future erosion of land which may occur. Esplanade strips can exclude public access during periods of time as specified on the instrument (RMA s237C) and can be cancelled at any time given agreement by the territorial authority.
136. I understand from discussions with Robin Rawson, Council's Parks & Reserves Planner, that in practice, Council generally recommends 20m wide esplanade reserves for qualifying sites in urban areas such as Kerikeri and Waipapa, and an esplanade strip or conservation covenant in more remote areas, including rural areas. The recommendation of whether an esplanade reserve or strip is appropriate is however determined on a case-by-case basis by Council, as there are some circumstances where an esplanade strip may be more appropriate within a urban area, for example where the land is subject to natural hazards (e.g. erosion), because the width of an esplanade strip remains unchanged so that if the water edge is eroded, the strip (and associated land providing access) moves inland.



137. Ms Rawson has noted that esplanade strips are useful mechanisms for sites adjoining rivers which have significant movement to ensure public access is maintained in erosion-prone areas.
138. For the above reasons, I consider including provision for the creation of an esplanade strip (as an alternative to an esplanade reserve where applicable) is appropriate. The proposed amendments provide flexibility to determine the most appropriate type of esplanade (strip or reserve) for a site while still maintaining or enhancing public access under s6(d) of the RMA. The amendments sought are consistent with Council's current approach to esplanade reserves and esplanade strips (i.e. determined by Council on a case-by-case basis).

Recommendation

139. I recommend that submission point S98.001 is accepted and Policy PA-P1 is amended as follows:

"Protect, maintain and enhance public and customary access by:...(b) requiring subdivision activities to provide esplanade reserves or esplanade strips along the coastal marine area and waterbodies; and"

140. I recommend that submission point S98.002 is accepted and Policy PA-P2 is amended as follows:

"Require the creation of esplanade reserves or esplanade strips to and along the coastal marine area and waterbodies when considering an application for subdivision where it:..."

141. I recommend that submission point S98.003 is accepted and Policy PA-P3 is amended as follows:

"Allow a waiver of any requirement or a reduction in the required width of an esplanade reserve or esplanade strip where it can be demonstrated that:..."

142. I recommend that submission point S98.004 is accepted and Policy PA-P5 is amended as follows:

"Encourage the voluntary creation of esplanade reserves or esplanade strips for land use activities where it:..."

143. As a consequential amendment to submissions S98.002-004, I also recommend Standard SUB-S8 is amended as follows:



"Any subdivision involving the creation of one or more allotments less than 4ha which adjoins:

- 1. The line of MHWS;*
- 2. The bank of a river whose bed has an average width of 3m or more; and*
- 3. A lake that is larger than 8 ha in size.*

An esplanade reserve, or esplanade strip must be provided with a minimum width of 20m, in accordance with section 230 of the RMA."

144. As another consequential amendment to submissions S98.002-004, I also recommend the overview section the Public Access chapter is amended to explain that in certain circumstances, Council may determine that an esplanade strip is more appropriate, considering the effects of climate change, as shown in Appendix 1.

Section 32AA evaluation

145. The recommended approach is effective and efficient at achieving the Public Access objectives because it provides greater flexibility to determine the most suitable type of esplanade (reserve or strip) on a case-by-case process through the subdivision consent process, at Council's discretion. This ensures public access to the CMA and waterbodies is maintained and enhanced.
146. The width of an esplanade strip moves with the water boundary, this ensures that public access is maintained for waterbodies which have significant movement and may experience erosion over time.
147. The recommended amendment may generate economic benefits for Council who are not responsible for ownership or management of esplanade strips, as well as for landowners where the strips remains within their ownership and part of their allotment.
148. The amendments align with the Council's current practice for esplanade reserves and esplanade strips (as explained in paragraph 136 to 138 above).

5.2.6 Key Issue 8: Private property rights

Overview



Provision(s)	Officer Recommendation(s)
New Objective	Retain as notified – do not insert a new objective
New Policy	Retain as notified – do not insert a new policy.
Overview	Retain as notified

Analysis of Submissions on Key Issue 8

Matters raised in submissions

149. Federated Farmers (S421) seek to amend provisions to further recognise private property rights. The reasons provided in the submission are that landowners should not be required by the PDP to provide public access across private land as it generates adverse amenity and landscape effects, in particular on farming activities. The requested amendments are summarised below:

a) Amend Overview to address effects of public access across private property (S421.160). This is supported by one further submission and opposed by four further submissions.

b) Include New Objective (S421.163) as follows:

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

This is supported by three further submissions and opposed by four further submissions.

c) Include New Policy (S421.169) as follows:

PA-P6 To provide information and education to the public regarding where public access is available, and that access over private land is only by the permission of the landowner.

This is supported by one further submission and opposed by four further submissions.

Analysis

150. In my view, it is not appropriate to insert a new objective and policy to recognise private property rights within the Public Access chapter of the PDP.

151. The maintenance and enhancement of public access to and along the CMA and waterbodies is a matter of national importance under s6(d) of the RMA. Council therefore has a responsibility under the RMA (and other higher order documents



including the NZCPS and RPS) to recognise and provide for public access to and along the CMA and waterbodies. Provision for public access is also in the public interest and enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety.

152. The recommended PDP approach requires an esplanade reserve (or strip) at the time of subdivision when the subdivision results in allotments less than 4 ha (through SUB-S8) and provides policy direction enabling consideration of esplanade reserves or strips for other types of subdivision meeting criteria set out in Policy PA-P2. Under the PDP framework, Council cannot take land for esplanades for a land use consent application.
153. In addition, Policy PA-P3 provides direction on circumstances where an esplanade reserve (or strip) may not be appropriate, including where restrictions on public access are necessary to ensure public health and safety, or providing access will be detrimental to land and water-based habitats of indigenous flora and fauna within, and adjoining the margin. If a landowner who is subdividing is not supportive of providing public access and is concerned about effects on natural character, landscape, indigenous biodiversity, historical heritage, or cultural values, or health and safety they can explain their rationale to Council which will be considered and assessed on a case-by-case basis through the subdivision process, taking guidance from the criteria in Policy PA-P3.
154. With regard to providing information and education on public access, including where access is provided for over private land, the methods of achieving this are best achieved outside of the District Plan (e.g. signage).
155. The proposed and recommended policy wording within the Public Access chapter is appropriate and consistent with the outcomes sought by the higher order direction (e.g. RMA, NZCPS, RPS), which enables provision of public access to be determined on a case-by-case basis through the subdivision process. In particular, RPS Objective 3.15 Active Management and Policy 5.1.2 which provide specific direction on public access do not recognise private property rights.
156. In addition, a number of other chapters in the PDP also restrict private property rights for public benefit, specifically to recognise and provide for matters of national importance of the RMA such as Historic Heritage, Significant Natural Areas, Coastal Environment Overlay and Outstanding Natural Features and Landscapes. These chapters do not include provisions seeking to protect private property rights.



157. For the above reasons, I consider that the requested amendments to enable consideration of private property rights within the Public Access chapter are not appropriate.

Recommendation

158. I recommend that submission S421.060, S421.163 and S421.169 are rejected and the plan provisions are retained as notified.

Section 32AA evaluation

159. No change to the provisions is recommended at this stage. On this basis, no evaluation under Section 32AA is required.

5.2.7 Key Issue 9: Policy framework (not addressed elsewhere)

Overview

Provision(s)	Officer Recommendation(s)
Objectives and policies for Public Access	Retain as notified

Analysis of Submissions on Key Issue 9

Matters raised in submissions

160. Several submissions in support were received seeking to retain the Public Access objectives and policies as notified which have not been addressed as part of the “key issues” elsewhere in this report. I summarise and evaluate these submission points in turn below.

Public Access Objectives

Submissions

- 161. Federated Farmers (S421.161 and S421. 162) seek to retain Objective PA-O1 and Objective PA-O2 as notified or that any amendments achieve the same intent of the provisions.
- 162. There are four further submissions in support and four further submissions in opposition of the original submissions.

Analysis

163. I support retaining Objective PA-O1 and Objective PA-O2 as notified as the provisions seek to protect, maintain and enhance public access to and along the CMA and waterbodies, and that public access assists with the management of natural hazards, natural character, indigenous biodiversity, historic heritage and



cultural and landscape values. This direction is consistent with the RPS and s6(d) of the RMA.

Public Access Policies

Submissions in general support

164. Federated Farmers (S421.164-168) seek to retain Policy PA-P1, Policy PA-P2, Policy PA-P4 and Policy PA-P5 or that any amendments achieve the same intent of the provisions.
165. There is one further submission in support and four further submissions in opposition of the original submissions.
166. Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.001, S523.011-014) and Kapiro Conservation Trust (S445.001-004) support Policy PA-P1, Policy PA-P2, Policy PA-P4 and Policy PA-P5 which require the creation of esplanade reserves or strips along the CMA and waterbodies.
167. There are four further submissions in support and one further submission who supports in part the original submissions.
168. Northland Fish and Game Council (S436.030) seek that public access policies that maintain and enhance public access to and along wetlands, streams, lakes and river and provide for the creation and protection of esplanade reserves and strips as a permitted activity are retained as notified.
169. There is one further submission in support and four further submissions in opposition of the original submission.

Analysis

170. I recommend that Policy PA-P1, Policy PA-P2 and Policy PA-P5 are retained as notified except with reference to mahinga kai and fisheries (in Policy PA-P2) and esplanade strips for the reasons set out in Key Issues 5 and 7 above. I support retaining Policy PA-P4 as notified.

Submissions

171. Our Kerikeri Community Charitable Trust (S272.001, S272.011, S272.012, S272.014 and S272.015) and Carbon Neutral NZ Trust (S259.056 and S529.180-183) support Policy PA-P1, Policy PA-P2, Policy PA-P4 and Policy PA-P5 in part and seek to amend the provisions to require esplanade reserve or strips when subdivision involves the creation of one or more allotments of more than 4ha. The submitters consider there is a need to support connectivity and active modes of transport where s77 of



the RMA enables Council to include provision for esplanade reserves when lots of greater than 4ha are created through subdivision.

172. There are three further submissions in support and one further submission who supports in part the original submissions.

Analysis

173. The current PDP framework (including Standard SUB-P8) does not require an esplanade reserve or strip when allotments of more than 4ha are created through subdivision. In the case of subdivision where allotments of 4ha and greater are created, Council may require an esplanade reserve or strip, taking guidance from the Public Access objectives and policies (in particular Policy PA-P2 and PA-P4) where certain criteria are met, which is determined on a case-by-case basis.
174. I understand that compensation is payable (from Council to landowner) for taking an esplanade reserve or strip when subdivision involves an allotment more than 4 ha (under s237F of the RMA). However, no compensation is payable when Council takes an esplanade or strip for allotments less than 4 ha (under S237E of the RMA).
175. Because Council does not currently take development contributions or financial contributions, I understand that current Council budgets do not include provision for purchasing of esplanade reserves or strips throughout the District, therefore it would not be appropriate for the PDP to require the creation of esplanade reserves or strips for subdivision of land exceeding 4 ha in the PDP.

Recommendation

176. I recommend that submissions S421.164, S421.165, S421.166 and S421.168 are accepted in part and the plan provisions are retained except as amended in response to other submissions recommended elsewhere in this report. I recommend that submission S421.167 is accepted and Policy PA-P4 is retained as notified.
177. I recommend that submissions S272.001, S272.011, S272.012, S272.014, S272.015, S259.056, S529.180-183, S523.001, S523.011-014, S445.002-004 and S436.030 are accepted in part and the plan provisions are retained except as amended in response to other submissions recommended elsewhere in this report.

6 Conclusion



178. This report has provided an assessment of submissions received in relation to the Public Access Chapter. The primary amendments that I have recommended relate to:
- a) Inserting reference to mahinga kai and fisheries into Policy PA-P2.
 - b) Amending Policy PA-P3 to ensure esplanade requirements are only waived in certain circumstances.
 - c) Inserting reference to esplanade strips (in addition to Esplanade Reserves) to various Public Access Policies and Subdivision Standard SUB-S8. This recommended change provides Council with the option of requiring an esplanade reserve or an esplanade strip (as Councils discretion) through the subdivision consent process.
179. Section 5.2 considers and provides recommendations on the decisions requested in submissions. I consider that the submissions on the Public Access should be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations of this report and in Appendix 2.
180. I recommend that provisions for the Public Access are amended as set out in the Public Access Chapter in Appendix 1 below, for the reasons set out in this report.

Recommended by: Jaimee Cannon, Principal Planner, Boffa Miskell Limited

Approved by: Tammy Wooster – Team Leader District Plan, Far North District Council.

Date: 16 July 2024