

ACTIVITIES ON THE SURFACE OF WATER

CONTENTS

1	Scope of Report.....	2
2	Hearing and Submitters Heard	2
3	Sub-topic Recommendations.....	3
3.1	ASW-O1.....	3
3.2	ASW-P1	3
3.3	ASW-R1 – Activities on High Country Lakes.....	4
3.4	ASW-R1 – Activities on Te Waihora/Lake Ellesmere	5
3.5	ASW-R1 – Other Matters	6
4	Other Matters	7
	Appendix 1: Recommended Amendments.....	8
	Amendments to the PDP Maps.....	8
	Amendments to the PDP Text.....	8
	Appendix 2: List of Appearances.....	10

1 Scope of Report

- [1] This Recommendation Report relates to the Activities on the Surface of Water chapter of the PDP and contains the Hearing Panel's recommendations to Council on the submissions and further submissions received on that chapter.
- [2] The Hearing Panel members for Activities on the Surface of Water chapter were:
- Lindsay Daysh
 - Malcolm Lyall
 - Rob van Voorthuysen (Chair)
 - Yvette Couch-Lewis
- [3] The initial Section 42A Report and the end of hearing Section 42A Report (Reply Report) for this topic were:
- Activities on the Surface of Water, 30 March 2022, Rachael Carruthers
 - Activities on the Surface of Water, 3 August 2022, Rachael Carruthers
- [4] The Hearing Panel's recommended amendments to the notified provisions of the Activities on the Surface of Water chapter are set out in Appendix 1. Amendments recommended by the Section 42A Report author that have been adopted by the Hearing Panel are shown in strike out and underlining. Further or different amendments recommended by the Hearing Panel are shown in strike out, underlining and red font.
- [5] There are no recommended amendments to the notified planning maps.
- [6] Further submitters are not listed in the tables in this Recommendation Report because further submissions are either accepted or rejected in conformance with our recommendations on the original submissions to which they relate.
- [7] We note, as was set out in the Section 42A Report, that matters relevant to our consideration of the submissions on this chapter include the National Water Conservation (Te Waihora/Lake Ellesmere) Order 1990 and the National Water Conservation (Rakaia River) Order 1988. In that regard we note Ms Carruthers' advice that consents that would not ensure that the values listed for Te Waihora/Lake Ellesmere and the Rakaia River were protected could not be issued by the Council.

2 Hearing and Submitters Heard

- [8] The hearing for the Activities on the Surface of Water chapter was held on Monday 9 May 2022. There were seven submitters on the chapter, however only three submitters eventually wished to be heard:

Sub #	Submitter	Original
DPR-0032	CCC	✓
DPR-0260	CRC	✓
DPR-0295	Jet Boating NZ	✓

- [9] The witnesses and counsel we heard from are listed in Appendix 2. A copy of their legal submissions and evidence (both precirculated and tabled) is held by the Council. We do not

separately summarise that material here, but we refer to or quote from some of it in the remainder of this Recommendation Report. We record that we considered all submissions and further submissions, regardless of whether the submitter or further submitter appeared at the hearing and whether or not they were represented by counsel or expert witnesses.

3 Sub-topic Recommendations

- [10] In this part of the Recommendation Report we assess the submissions by sub-topic, using the same headings as the initial Section 42A Report.

3.1 ASW-O1

- [11] For the following submitters and their submission points we adopt the recommendations and reasons of the Section 42A Report author.

Sub #	Submitter	Submission Points
DPR-0260	CRC	131
DPR-0295	JBNZ	001

- [12] In terms of s32AA of the RMA, for these submissions we are satisfied that in response to the submission of Jet Boating NZ, Ms Carruthers' recommendation to amend objective ASW-O1 to prevent adverse effects on 'significant' ecological values, rather than all ecological values, would result in better consistency with s6(c) RMA and is the most appropriate option for achieving the relevant objectives of this Plan and other relevant statutory documents.

3.2 ASW-P1

- [13] For the following submitters and their submission points we adopt the recommendations and reasons of the Section 42A Report author.

Sub #	Submitter	Submission Points
DPR-0260	CRC	132
DPR-0295	JBNZ	002
DPR-0407	Forest & Bird	054

- [14] In terms of s32AA of the RMA, for these submissions we are satisfied that Ms Carruthers' recommendations to amend policy ASW-P1 so that it:

- is more widely applicable to the lakes in the Selwyn District,¹ in response to the submissions of CCC and CRC; and
- directs decision-makers to manage adverse effects on all indigenous fauna, in response to the submission of Forest and Bird.

- [15] These are the most appropriate options for achieving the purpose of the RMA, the relevant objectives of this Plan and other relevant statutory documents. In particular, we agree with Ms Carruthers that the amendment relating to indigenous fauna would better align with s6(c) and s31(b)(iii) RMA and the Wildlife Act, given the importance of lakes such as Te Waihora/Lake Ellesmere as significant bird habitat.

- [16] We were inclined to agree with CCC and CRC that ASW-P1 should also refer explicitly to Te Waihora/Lake Ellesmere, for the reasons that they cited in their submissions, particularly the

¹ We have slightly altered the recommended wording.

fact that it is covered by a National Water Conservation Order and is highly valued for its biodiversity and Māori cultural values. However, including Te Waihora Lake Ellesmere in the Policy would only be appropriate if there was a PDP rule that would give effect to the Policy. As will be seen from section 3.4 of this Report we do not consider that a suitable rule can be included. On that basis we decline to recommend the inclusion of Te Waihora Lake Ellesmere in ASW-P1.

3.3 ASW-R1 – Activities on High Country Lakes

- [17] For the following submitters and their submission points we adopt the recommendations and reasons of the Section 42A Report author.

Sub #	Submitter	Submission Points
DPR-0295	JBNZ	003
DPR-0427	DOC	063
DPR-0448	NZDF	058

- [18] In terms of s32AA of the RMA, for these submissions we are satisfied that in response to the submission of DOC, Ms Carruthers' recommended amendment to include the Department of Conservation in ASW-R1.3.a.iv in recognition of the biosecurity work that the Department undertakes on and around the listed lakes, is the most appropriate option for achieving the purpose of the RMA, the relevant objectives of this Plan and other relevant statutory documents.
- [19] We agree with Ms Carruthers' advice that the NZDF submission did not contain any detail about why temporary military training activities should be allowed occur on the high country lakes listed in ASW-R1.3 that support significant habitat for the Australasian Crested Grebe (*Podiceps cristatus*) which has the status of Threatened – Nationally Vulnerable, rather than any of the high country lakes where the ASW-R1.3.a restrictions do not apply. As noted by Dr Smith, military exercises in the listed high-country lakes could impact those birds during their breeding season given that they make nests out of sticks and aquatic vegetation that float on the water of those lakes.²
- [20] We heard from Jet Boating NZ (Malcolm Smith) who sought that recreational jet boating activities be allowed on the listed high country lakes as a non-complying activity. Mr Smith appeared to be mostly concerned about the 'precedent' of making jet boating activities 'prohibited' on those lakes. We note Mr Smith's evidence to us was that none of those lakes are currently accessible to, or used by, the jet boating community.
- [21] Nevertheless, in her Reply Report Ms Carruthers advised that it may be possible (although somewhat unlikely given that non complying activities are 'generally not to be condoned') for an applicant to demonstrate that some boating activity could be undertaken without having an adverse effect on the significant ecological values associated with Crested Grebe habitat, and so a non-complying activity status would be more appropriate than a prohibited activity. We agree and recommend accordingly. We are satisfied that 'strict' activity status will still give effect to the objectives of the Plan and the higher order statutory instruments.

² Statement of Des Harry Vincent Smith on behalf of Selwyn District Council, Ecosystems and Indigenous Biodiversity, Activities on the Surface of Water, 30 March 2022, paragraphs 11 and 15.

3.4 ASW-R1 – Activities on Te Waihora/Lake Ellesmere

- [22] For the following submitters and their submission points we adopt the recommendations and reasons of the Section 42A Report author.

Sub #	Submitter	Submission Points
DPR-0032	CCC	034, 051
DPR-0260	CRC	133

- [23] As we referred to earlier, Te Waihora/Lake Ellesmere is one of New Zealand's most important wetland systems and its outstanding values are recognised in a National Water Conservation Order as: *"habitat for wildlife, indigenous wetland vegetation and fish, and as being of significance in accordance with tikanga Māori in respect of Ngāi Tahu history, mahinga kai and customary fisheries."*
- [24] Both CCC and CRC sought that the PDP should adopt a regime for the control of motorised vessels on the surface of Te Waihora that was consistent with the regime contained in the Christchurch City Plan. We can see the logic in that as it is obviously undesirable to have two different rule regimes controlling surface water craft on a single Lake. A consistent approach would give effect to SDC's obligations under RMAs74(2)(c) to have regard to the extent to which the PDP needs to be consistent with the plans of adjacent territorial authorities.
- [25] We note that the ecological evidence of Dr Smith for SDC highlighted the significant indigenous biodiversity (avifauna or birdlife) values of Te Waihora and he supported the management of motorised water craft, as was sought by CCC, to protect those values.
- [26] Mr Lightbody appeared for CCC and he advised that the Christchurch City Plan permits activities on the surface of Te Waihora that are associated with customary harvesting, commercial and recreational fishing, game bird shooting and lake management or conservation activities, while a Restricted Discretionary resource consent is required for other activities on the surface of the Lake.
- [27] We note that under section 10A(1) of the RMA, if we imposed a rule requiring other users (other than those authorised by the CCC rule) to seek a resource consent then if those users' effects were of the same or similar in character, intensity, and scale as what existed before the activity stopped being a permitted activity, then those users would have six months to apply for consent once the rule became operative.
- [28] For the CRC Ms Mehlhopt submitted that the *Canterbury Regional Council Navigation Safety Bylaw 2016* imposes speed restrictions on Te Waihora/Lake Ellesmere for the purposes of safety and not for the protection or maintenance of indigenous biodiversity. Any protection of indigenous biodiversity as a result of speed restrictions would be coincidental only. She submitted that relying on coincidental management by the Navigation Safety Bylaw was not the most appropriate way to achieve ASW-O1.
- [29] We considered that ideally a rule should be inserted in the PDP that aligned with that contained in the Christchurch City Plan, insofar as that was practically achievable given the different defined terms used in the Christchurch City Plan and the PDP and the existence of the water ski access zone at Timber Yard Point. We asked Ms Carruthers, Mr Lightbody and Ms Mehlhopt to jointly develop such a rule for our consideration.

- [30] In Appendix 1 of her Reply Report Ms Carruthers provided wording (developed in conjunction with CCC and CRC representatives as requested by us) for an equivalent set of provisions to CDP Rule 18.8.1.1 P3 that could be included in the PDP. However, she did not recommend the inclusion of those provisions because:
- (a) They were ineffective because a person could comply with the permitted activity standards by simply carrying a hand-held fishing reel on a jet ski or in a jetboat, with no intention to actually undertake any fishing. This would not achieve the desired outcome of minimising bird disturbance; and
 - (b) The provisions were inefficient as they did not provide for slow-travelling powered vessels providing supervision of non-powered vessels, such as safety craft associated with rowing training (such as school teams based at Selwyn Huts on Days Road, northeast of Timberyard Point/Lakeside Domain) or learn-to-sail and learn-to-kayak activities which also occur on the area of the Lake within the Selwyn District. Nor did they provide for search and rescue training; and
 - (c) Use of the Lake does differ between the SDC and CCC districts, as the larger Selwyn District area includes public access boat ramps, whereas the smaller Christchurch City area does not.
- [31] Having reviewed the jointly developed provisions we reluctantly agree that they would not be fit for purpose and would not achieve objective ASW-O1. In that regard we note:
- (a) the provisions would not impose a speed limit on the water craft and the speed of a boat has a significant impact on the wake it produces; and
 - (b) the proposed matters of discretion would be unduly onerous for a 'lay person' boat owner to assess and provide evidence of a probative nature in relation to them. In that regard the provisions would not be practical.
- [32] We therefore do not recommend the inclusion of the Te Waihora/Lake Ellesmere rules that were helpfully jointly developed for our consideration. However, we also endorse Ms Carruthers' support³ for *"... a future project that involved all those with an interest in Te Waihora/Lake Ellesmere (not just the parties to this hearing) that results in changes to both the PDP and the CDP, in order to achieve a consistent management regime for the lake, with provisions in both plans that achieve the objective."*

3.5 ASW-R1 – Other Matters

- [33] For the following submitters and their submission points we generally adopt the recommendations and reasons of the Section 42A Report author. We note that this results in no change to the notified provisions.

Sub #	Submitter	Submission Points
DPR-0407	Forest & Bird	055
DPR-0448	NZDF	056, 057

³ Section 42A Reply Report, paragraph 2.9.

4 Other Matters

- [34] The recommended amendments to the PDP provisions contained in Appendix 1 are those that result from this Hearing Panel's assessment of submissions and further submissions. However, readers should note that further or different amendments to these provisions may have been recommended by:
- Hearing Panels considering submissions and further submissions on other chapters of the PDP;
 - the Hearing Panels considering rezoning requests, and
 - the Independent Hearing Panel (IHP) considering submissions and further submissions on Variation 1 to the PDP
- [35] Any such further or different amendments are not shown in Appendix 1 of this Recommendation Report. However, the Chair⁴ and Deputy Chair⁵ of the PDP Hearing Panels have considered the various recommended amendments and have ensured that the overall final wording of the consolidated version of the amended PDP is internally consistent.
- [36] In undertaking that 'consistency' exercise, care was taken to ensure that the final wording of the consolidated version of the amended PDP did not alter the intent of the recommended amendments contained in Appendix 1 of this Recommendation Report.
- [37] No other matters were brought to our attention.

⁴ Who is also the Chair of the IHP.

⁵ Who chaired one stream of hearings.

Appendix 1: Recommended Amendments

Note to readers: Only provisions that have recommended amendments are included below. All other provisions remain as notified. Amendments recommended by the Section 42A Report author that have been adopted by the Hearing Panel are shown in strike out and underlining. Further or different amendments recommended by the Hearing Panel are shown in strike out, underlining and red font.

Amendments to the PDP Maps

There are no amendments recommended to PDP Planning Maps arising from our recommendations on the submissions and further submissions covered by this Recommendation Report.

Amendments to the PDP Text

Part 2 – District Wide Matters

General District Wide Matters

ASW – Activities on the Surface of Water

ASW-Objectives and Policies

ASW-Objectives	
ASW-O1	Activities on the surface of water bodies do not have an adverse effect on <u>significant</u> ⁶ ecological values.
ASW-Policies	
ASW-P1	Enable the use of motorised and non-motorised watercraft on the surface of water bodies while <u>where appropriate</u> , ⁷ controlling motorised watercraft on the surface of the District's high country lakes to manage adverse effects on threatened ⁸ indigenous fauna.

⁶ DPR-0295.001 JBNZ

⁷ DPR-0032.033 CCC and DPR-0260.132 CRC

⁸ DPR-0404.054 Forest & Bird

ASW-Rules

ASW-R1	Use of motorised watercraft	
All Zones	Activity status: PER 1. Use of motorised watercraft on the surface of water bodies except where ASW-R1.3 applies; or 2. Use of non-motorised watercraft on the surface of water bodies	Activity status when compliance not achieved: N/A
GRUZ	Activity status: PER 3. Use of motorised watercraft on the surface of the following High Country Lakes: ... Where: a. The activity is for the purpose of: i. Scientific investigations or monitoring; or ii. Law enforcement; or iii. Emergency search and rescue work; or iv. Biosecurity work carried out by the Canterbury Regional Council or the Department of Conservation ⁹	Activity status when compliance not achieved: 4. When compliance with any of ASW-R1.3a is not achieved: PRO <u>NC</u> ¹⁰

⁹ DPR-0427.063 DOC

¹⁰ DPR-0295.003 JBNZ

Appendix 2: List of Appearances**Hearing Appearances**

Sub #	Submitter	Author	Role
DPR-0032	CCC	Kirk Lightbody	Planning
DPR-0260	CRC	M A Mehliopt	Counsel
DPR-0295	Jet Boating NZ	Malcolm Smith	Representative