

# Proposed Selwyn District Plan



## Right of Reply Report

### Activities on the Surface of Water

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## List of submitters and further submitters addressed in this report

Submitter ID	Submitter Name	Abbreviation
DPR-0032	Christchurch City Council	CCC
DPR-0260	Canterbury Regional Council (Environment Canterbury)	CRC
DPR-0295	Jet Boating New Zealand	JBNZ
DPR-0301	Upper Waimakariri/Rakaia Group (UWRG)	UWRG
DPR-0407	Royal Forest & Bird Protection Society of New Zealand Inc. (Forest & Bird)	Forest & Bird
DPR-0427	Lou Sanson, Director-General of Conservation	DOC
DPR-0448	New Zealand Defence Force	NZDF

## Abbreviations

Abbreviations used throughout this report are:

Abbreviation	Full text
CRPS	Canterbury Regional Policy Statement 2013
IMP	Mahaanui Iwi Management Plan 2013
Planning Standards	National Planning Standards
NPS-UD	National Policy Statement on Urban Development
NPS-UDC	National Policy Statement on Urban Development Capacity
PDP	Proposed Selwyn District Plan
RMA or Act	Resource Management Act 1991
SDP	Operative Selwyn District Plan
Wildlife Act	Wildlife Act 1953

## 1. Purpose of Report

- 1.1 The purpose of this report is to respond to the questions raised by the Hearings Panel during Hearing 12: Activities on the Surface of Water, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan (PDP) above those recommended in the Officers s42a evidence report.

## 2. Hearing Panel's Questions to the s42a Reporting Officer and/or the Submitters and their Response

- 2.1 The following questions were received from the Hearing Panel or posed to submitters for the Activities on the Surface of Water (ASW) Chapter, which sat on 10 May 2022.
- 2.2 The Hearing Panel questions have been addressed in order of how the provisions appear in the PDP; i.e., definitions, maps, objectives and policies, rules, rule requirements, matters for control or discretion and 'other' matters.

### [1] Status of activities on high country lakes

- 2.3 JBNZ discussed the activity status for the use of motorised watercraft on the listed high country lakes, which is either PER or PRO. The listed lakes are small and so boat wakes can travel a long distance relative to the size of the lake, causing disturbance to crested grebe nesting areas. On reflection, although unlikely, it may be possible for an application to demonstrate that some activity could be undertaken without

having an adverse effect on the significant ecological values associated with crested grebe habitat, and so a NC status would be more appropriate than PRO. I therefore recommend that this JBNZ submission point be accepted.<sup>1</sup>

## **[2] A consistent management regime for Te Waihora Lake Ellesmere**

- 2.4 The Panel requested that the Reporting Officer work with staff from Canterbury Regional Council and Christchurch City Council to develop provisions that, as near as possible, are consistent with the permitted activity rule in the Christchurch District Plan (CDP) for the use of motorised watercraft on the surface of Te Waihora Lake Ellesmere, while providing for the existing activities centered on Timbervale Point/Lakeside Domain.
- 2.5 The CDP Rule 18.8.1.1 P3 permits the use of motorised water craft (defined as meaning “any boat or water craft powered by an engine exceeding 1.5 horse power”), only where it is for the purposes of “customary harvesting, recreational and commercial fishing, game bird shooting, and park management activities”<sup>2</sup>.
- 2.6 Non-compliance with the permitted activity standard results in a RDIS status. The exercise of discretion is restricted to consideration of the matters set out in Rules 18.10.9, 9.5.5.3 and 18.10.10:

### ***18.10.9 Activities on the surface of water bodies<sup>3</sup>***

- a. The size and speed of any vessels to be used and the extent to which activities on the surface of the water body will adversely affect:*
- i. The natural values of water bodies and their margins;*
  - ii. Margin and bank stability and the likelihood of erosion;*
  - iii. Wildlife, including disturbance to nesting, feeding or spawning sites;*
  - iv. Residents in adjoining residential or rural zones, particularly in terms of noise impacts;*
  - v. Public access to the water body and create potential congestion where vessels are loaded and unloaded.*
  - vi. Ngāi Tahu/mana whenua cultural values, including indigenous biodiversity and mahinga kai.*
- b. Within a site of Ngāi Tahu cultural significance identified in Appendix 9.5.6, the matters set out in Rule 9.5.5 as relevant to the site classification. [Te Waihora Lake Ellesmere is listed as site 89, with a site classification of Ngā Wai]*

### ***9.5.5.3 Ngā Wai<sup>4</sup>***

- a. Whether the relevant Papatipu Rūnanga has been consulted, the outcome of that consultation and whether the development or activity responds to, or incorporates the outcome of that consultation;*

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<sup>1</sup> DPR-0295.002 JBNZ

<sup>2</sup> <https://districtplan.ccc.govt.nz/pages/plan/Book.aspx?exhibit=DistrictPlan&hid=308515>

<sup>3</sup> <https://districtplan.ccc.govt.nz/pages/plan/Book.aspx?exhibit=districtplan&hid=308553>

<sup>4</sup> <https://districtplan.ccc.govt.nz/pages/plan/Book.aspx?exhibit=districtplan&hid=306118>

- b. Effects on sites of archaeological value including consideration of the need to impose an Accidental Discovery Protocol or have a cultural monitor present;*
- c. The effects of the proposed activity on Ngāi Tahu values and the appropriateness of any mitigation measures including new planting and improved access for customary use;*
- d. Whether the proposal will remove indigenous vegetation and any effects on mahinga kai and other customary uses;*
- e. The extent to which the proposed activity will affect the natural character of the waterbody and its margins, or Te Tai o Mahaanui / the coastal environment.*
- f. The provision of information on Ngāi Tahu history and association with the area;*
- g. Whether wastewater disposal and stormwater management systems recognise the cultural significance of ngā wai, and do not create additional demand to discharge directly; and*
- h. In respect of utilities, the extent to which the proposed utility has technical or operational needs for its location.*

**18.10.10 Te Waihora (Lake Ellesmere), Wairewa (Lake Forsyth), and Kaitōrete Spit - Open Space Water and Margins Zone<sup>5</sup>**

- a. The extent to which the activities will impact tangata whenua's cultural values, customary harvesting rights, the viability of the lakes as a source of mahinga kai, and the health of their ecology.*
- b. The ability to prevent nutrients and pollutants from entering the lakes.*
- c. Whether the activities are consistent with the established cultural significance of the lakes to iwi.*
- d. The extent to which activities are designed to avoid sediment and contaminants from entering the lakes and coastal waters.*
- e. The extent to which activities are designed to avoid inducing erosion, subsidence or landslip.*
- f. Whether the opening and closing of Te Waihora (Lake Ellesmere) and Wairewa (Lake Forsyth) manages lake water levels in a way which avoids, remedies or mitigates adverse effects on the character and the cultural, ecological and amenity values of the lakes.*
- g. The extent to which public vehicle access to Kaitōrete Spit and the margins of Te Waihora (Lake Ellesmere), other than to formed roads or authorised vehicle tracks, and except for emergency services, farming, and scientific research, will adversely affect the natural character, indigenous ecosystems, human safety or the amenity values of the lake margins and the adjacent land.*

- 2.7 The closest equivalent set of provisions that could be included in the PDP, developed in conjunction with CCC and ECan staff as requested by the Panel, is shown in **Appendix 1**. I do not recommend that the provisions be incorporated into the PDP, for the following reasons:

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<sup>5</sup> <https://districtplan.ccc.govt.nz/pages/plan/Book.aspx?exhibit=districtplan&hid=308554>

- a. The provisions are ineffective. Compliance with the rule could be as simple as carrying a hand-held fishing reel on a jetski or in a jetboat, with no intention to actually fish. This would comply with the letter of the rule, but would not achieve the desired outcome of minimising bird disturbance.
  - b. The provisions are inefficient. They do 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 Timbervard Point/Lakeside Domain) or learn-to-sail and learn-to-kayak activities which also occur on the lake. They also do not provide for search and rescue training.
- 2.8 Section 74(2)(c) RMA requires the Panel to have regard to the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities – in this case, the Christchurch District Plan. Use of the lake does differ in the two districts, as the larger Selwyn District area includes public access boat ramps, while the smaller Christchurch City area does not. Given the ease with which the CDP provisions can be circumvented, and the activities which are not provided for at Timbervard Point/Lakeside Domain and elsewhere on the lake, I do not consider that they are an effective or efficient way to achieve objective ASW-O1, and so do not consider that the PDP needs to be consistent with them.
- 2.9 However, I do consider that there would be value in 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.

## Appendix 1 Possible amendments

Insertions are shown underlined and deletions are shown ~~struck through~~

Text amendments highlighted in **yellow** show amendments recommended in the s42A Officer's report

Text amendments highlighted in **blue** show amendments recommended in this report

Text amendments highlighted in **black** show amendments identified in this appendix to address the question from the Hearing Panel, but which are not recommended amendments

### Definitions

<b>COMMERCIAL FISHING</b>	Has the same meaning as s2(1) of the Fisheries Act 1996 <sup>6</sup>
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### Activities on the Surface of Water

<b>ASW-Overview</b>
Activities on the surface of water bodies can disturb wildlife and affect the amenity and recreational values of lakes or rivers. While the Canterbury Regional Council Navigation Safety Bylaw 2016 controls the speed limits of vessels on water bodies in Canterbury (including those in the Selwyn District), it does so for public safety reasons, rather than to protect wildlife, amenity, and recreational values.  A number of smaller lakes in the District, particularly those in the High Country, provide habitat for Southern crested grebes, a nationally vulnerable bird species, as well as a number of other indigenous species. Noise from motorised watercraft, even moving at relatively slow speeds can cause disturbance to birds, and at worst lead to nest abandonment.

### ASW-Objectives and Policies

ASW-Objectives	
ASW-O1	Activities on the surface of water bodies do not have an adverse effect on significant <sup>7</sup> ecological values.
ASW-Policies	

<sup>6</sup> Defined in the CDP as having the same meaning as s2(1) of the Fisheries Act 1996: commercial fishing means taking fish, aquatic life, or seaweed in circumstances where a fishing permit is required by section 89 [All fishing to be authorised by fishing permit unless specific exemption held]. New PDD definition required, to match CDP definition

<sup>7</sup> DPR-0295.001 JBNZ

<b>ASW-P1</b>	Enable the use of motorised and non-motorised watercraft on the surface of water bodies while controlling motorised watercraft on the surface of the District's <b>high country</b> <sup>8</sup> lakes <b>where appropriate</b> <sup>9</sup> to manage adverse effects on <b>threatened</b> <sup>10</sup> indigenous fauna.
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## ASW-Rules

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

ASW-Rule List	
<b>ASW-R1</b>	Use of motorised watercraft

ASW-R1	Use of motorised watercraft	
<b>All Zones</b>	<b>Activity status:</b> PER 1. Use of motorised watercraft on the surface of water bodies except where ASW-R1.3 <b>or ASW-R1.5</b> applies; or 2. Use of non-motorised watercraft on the surface of water bodies.	<b>Activity status when compliance not achieved:</b> N/A
<b>GRUZ</b>	<b>Activity status:</b> PER 3. Use of motorised watercraft on the surface of the following High Country Lakes: <ul style="list-style-type: none"> <li>• Lake Blackwater</li> <li>• Lake Catherine</li> <li>• Lake Evelyn</li> <li>• Lake Georgina</li> <li>• Lake Grasmere</li> <li>• Lake Hawdon</li> <li>• Lake Henrietta</li> <li>• Lake Ida</li> <li>• Lake Leticia</li> <li>• Lake Lillian</li> </ul>	<b>Activity status when compliance not achieved:</b> 4. When compliance with any of ASW-R1.3a is not achieved: <b>PRO NC</b>

<sup>8</sup> DPR-0032.033 CCC, DPR-0260.132 CRC

<sup>9</sup> DPR-0032.033 CCC, DPR-0260.132 CRC

<sup>10</sup> DPR-0404.054 Forest & Bird



	<ul style="list-style-type: none"> <li>• Lake Marymere</li> <li>• Moana Rua/Lake Pearson</li> <li>• Red Lakes</li> <li>• Lake Rubicon</li> <li>• Lake Sarah</li> <li>• Lake Selfe</li> <li>• Vagabonds Inn</li> </ul> <p><b>Where:</b></p> <p>a. The activity is for the purpose of:</p> <ul style="list-style-type: none"> <li>i. Scientific investigations or monitoring; or</li> <li>ii Law enforcement; or</li> <li>iii Emergency search and rescue work; or</li> <li>iv Biosecurity work carried out by the Canterbury Regional Council <b>or</b> the Department of Conservation<sup>11</sup></li> </ul>	
<b>GRUZ</b>	<p><b>Activity status: PER</b></p> <p><b>5. Use of motorised watercraft on the surface of Te Waihora Lake Ellesmere</b></p> <p><b>Where:</b></p> <p><b>a. The watercraft is powered by an engine with a maximum of 1.5 horse power<sup>12</sup>, or</b></p> <p><b>b. The watercraft is being used in conjunction with one or more of:</b></p> <ul style="list-style-type: none"> <li><b>i. mahinga kai<sup>13</sup></b></li> <li><b>ii. recreational fishing<sup>14</sup></b></li> <li><b>iii. commercial fishing<sup>15</sup></b></li> </ul>	<p><b>Activity status when compliance not achieved:</b></p> <p><b>6. When compliance with any of ASW-R1.5 is not achieved: RDIS</b></p> <p><b>Matters for discretion:</b></p> <p><b>7. The exercise of discretion in relation to ASW-R1.6 is restricted to the following matters:</b></p> <ul style="list-style-type: none"> <li><b>a. NATC-MAT1 Natural Character<sup>22</sup></b></li> <li><b>b. SASM-MAT3 Ngā Wai<sup>23</sup></b></li> </ul>

<sup>11</sup> DPR-0427.063 DoC

<sup>12</sup> From the CDP definition of 'motorised watercraft'. Including the CDP definition in the PDP would result in it applying to High Country lakes, which is outside the scope of the CCC and CRC submissions.

<sup>13</sup> Refer CDP definition of 'customary harvesting': means the harvesting of indigenous vegetation or indigenous fauna by mana whenua, in accordance with tikanga, for traditional uses. These include: a. food gathering; b. carving; c. weaving; and d. traditional medicine.

<sup>14</sup> CDP only permits recreational fishing, but recreational boating, including jet ski and water ski, occurs from Lakeside Domain <https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/11647/Leap%2046-Te%20Waihora%20Recreation%20Monitoring%20Programme.pdf?sequence=1&isAllowed=y>

<sup>15</sup> Defined in the CDP as having the same meaning as s2(1) of the Fisheries Act 1996: commercial fishing means taking fish, aquatic life, or seaweed in circumstances where a fishing permit is required by section 89 [All fishing to be authorised by fishing permit unless specific exemption held]. New PDD definition required, to match CDP definition

<sup>22</sup> Compare CDP 18.10.9.a.i, 18.10.9.a.vi

<sup>23</sup> Compare CDP 18.10.9.b, 9.5.5.3, 18.10.10.a

	<p>iv. game bird shooting</p> <p>v. scientific investigations or monitoring;<sup>16</sup></p> <p>vi. law enforcement;<sup>17</sup></p> <p>vii. emergency search and rescue work;<sup>18</sup></p> <p>viii. biosecurity work carried out by the Canterbury Regional Council or the Department of Conservation;<sup>19</sup></p> <p>ix. conservation activities;<sup>20</sup></p> <p>x. recreational activities within an area set aside for that activity by the Canterbury Regional Council Navigation Safety Bylaw 2016 and Controls<sup>21</sup></p>	<p>c. The size and speed of any watercraft to be used and the extent to which activities on the surface of the water body will adversely affect;<sup>24</sup></p> <p>i. Margin and bank stability and the likelihood of erosion, subsidence or landslip;<sup>25</sup></p> <p>ii. Wildlife, including disturbance to nesting, feeding or spawning sites;</p> <p>d. The extent to which activities are designed to avoid sediment and contaminants from entering the lake<sup>26</sup></p> <p>e. The extent to which vehicle access to the lake associated with the activity will:</p> <p>i. create potential congestion where vessels are loaded and unloaded<sup>27</sup></p> <p>ii. adversely affect the indigenous ecosystems, human safety or the amenity values of the lake margins and the adjacent land<sup>28</sup></p>
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<sup>16</sup> Loosely within the CDP definition of 'park management activities', consistent with ASW-R1.3

<sup>17</sup> Existing activity at Lakeside Domain, consistent with ASW-R1.3

<sup>18</sup> Existing activity at Lakeside Domain, consistent with ASW-R1.3

<sup>19</sup> Within the CDP definition of 'park management activities', consistent with ASW-R1.3

<sup>20</sup> Within the CDP definition of 'park management activities'

<sup>21</sup> As requested by the Panel. This provision would NOT provide for other existing recreational activities from other primary access points around the lake, such as safety vessels associated with rowing training from Selwyn Huts

<sup>24</sup> Compare CDP 18.10.9.a.ii, 18.10.9.a.iii, 18.10.9.a.iv

<sup>25</sup> Also compare CDP 18.10.10.e

<sup>26</sup> Compare CDP 18.10.10.b, 18.10.10.d

<sup>27</sup> Compare CDP 18.10.9.a.v

<sup>28</sup> Compare CDP 18.10.10.g

## Appendix 2: Amended Table of Submission Points

Text amendments highlighted in **blue** show amendments recommended in this report

Submitter ID	Submitter Name	Submission Point	Plan Reference	Position	Decision Requested	Recommendation	Section of report
DPR-0032	CCC	033	ASW-P1	Oppose In Part	Amend as follows: Enable the use of motorised and non-motorised watercraft on the surface of water bodies while controlling motorised watercraft on the surface of the District's high country lakes <u>and Te Waihora/Lake Ellesmere</u> to manage adverse effects on threatened indigenous fauna	Accept in part	8
<i>DPR-0407</i>	<i>Forest &amp; Bird</i>	<i>FS024</i>	<i>ASW-P1</i>	<i>Support</i>	<i>Accept the submission</i>	<i>Accept in part</i>	<i>8</i>
DPR-0032	CCC	034	ASW-R1	Oppose In Part	Amend as follows: 1. Use of motorised watercraft on the surface of water bodies except where ASW-R1.3 <u>or ASW-R1.x applies</u> ; or	Reject	10
<i>DPR-0407</i>	<i>Forest &amp; Bird</i>	<i>FS025</i>	<i>ASW-R1</i>	<i>Support</i>	<i>Accept the submission but add restrictions to limit motorised watercraft for recreational and commercial uses.</i>	<i>Reject</i>	<i>10</i>
DPR-0032	CCC	051	New	Oppose In Part	Insert a new rule specific to Te Waihora/Lake Ellesmere which restricts the use of motorised watercraft on Te Waihora/Lake Ellesmere to activities associated with customary harvesting, commercial and recreational fishing, game bird shooting and lake management or conservation activities.	Reject	10
<i>DPR-0407</i>	<i>Forest &amp; Bird</i>	<i>FS026</i>	<i>New</i>	<i>Support</i>	<i>Accept the submission but add restrictions to limit motorised watercraft for recreational and commercial uses.</i>	<i>Reject</i>	<i>10</i>
DPR-0260	CRC	131	ASW-O1	Support	Retain as notified.	Accept	7
DPR-0260	CRC	132	ASW-P1	Support In Part	Amend as follows: Enable the use of motorised and non-motorised watercraft on the surface of water bodies while controlling motorised watercraft on the surface of the District's <u>high country</u> lakes <u>where appropriate</u> to manage adverse effects on threatened indigenous fauna.	Accept	8
<i>DPR-0407</i>	<i>Forest &amp; Bird</i>	<i>FS028</i>	<i>ASW-P1</i>	<i>Support</i>	<i>Accept the submission</i>	<i>Accept</i>	<i>8</i>
DPR-0260	CRC	133	ASW-R1	Support In Part	That Te Waihora/Lake Ellesmere is also included in the list of lakes where the activities on the surface of water are restricted. Mahinga kai activities should be enabled (in addition to the other permitted activities listed in ASW-R1.3a) on the surface of the lake but other	Reject	10

Submitter ID	Submitter Name	Submission Point	Plan Reference	Position	Decision Requested	Recommendation	Section of report
					recreational uses should be limited as far as practicable.		
DPR-0407	Forest & Bird	FS029	ASW-R1	Support	Accept the submission	Reject	10
DPR-0295	JBNZ	001	ASW-O1	Support In Part	Amend as follows: Activities on the surface of water bodies do not have <del>an</del> <u>a more than minor</u> adverse effect on ecological values.	Reject	7
DPR-0407	Forest & Bird	FS021	ASW-O1	Oppose	Reject the submission	Accept	7
DPR-0295	JBNZ	002	ASW-P1	Support In Part	Amend as follows: Enable the use of motorised and non-motorised watercraft on the surface of water bodies while controlling motorised watercraft on the surface of the District's high country lakes to manage <u>more than minor</u> adverse effects on threatened indigenous fauna.	Reject	8
DPR-0407	Forest & Bird	FS022	ASW-P1	Oppose	Reject the submission	Reject	8
DPR-0295	JBNZ	003	ASW-R1	Support In Part	Amend the activity status as follows: 4. When compliance with any of ASW-R1.3a is not achieved: <del>PRO</del> <u>NC</u>	<del>Reject</del> <u>Accept</u>	9
DPR-0407	Forest & Bird	FS023	ASW-R1	Oppose	Reject the submission	<del>Accept</del> <u>Reject</u>	9
DPR-0407	Forest & Bird	054	ASW-P1	Support In Part	Amend as follows: Enable the use of motorised and non-motorised watercraft on the surface of water bodies while controlling motorised watercraft on the surface of the District's high country lakes to manage adverse effects on <del>threatened</del> indigenous fauna.	Accept	8
DPR-0301	UWRG	FS132	ASW-P1	Support	Allow in full	Accept	8
DPR-0407	Forest & Bird	055	ASW-R1	Support	Retain as notified	Accept	11
DPR-0301	UWRG	FS133	ASW-R1	Support	Allow in full	Accept	11
DPR-0427	DoC	063	ASW-R1	Support	Amend as follows: 3. Use of motorised watercraft on the surface of the following High Country Lakes: ... iv. Biosecurity work carried out by the Canterbury Regional Council <u>and the Department of Conservation</u>	Accept in part	9

Submitter ID	Submitter Name	Submission Point	Plan Reference	Position	Decision Requested	Recommendation	Section of report
DPR-0301	UWRG	FS204	ASW-R1	Support	Allow in full	Accept in part	9
DPR-0407	Forest & Bird	FS229	ASW-R1	Support	Accept the submission	Accept in part	9
DPR-0448	NZDF	056	ASW-R1	Support	Retain ASW-R1.1 as notified	Accept	11
DPR-0448	NZDF	057	ASW-R1	Support	Retain ASW-R1.2 as notified	Accept	11
DPR-0448	NZDF	058	ASW-R1	Oppose	<p>Amend as follows:</p> <p>3. Use of motorised watercraft on the surface of the following High Country Lakes:</p> <p>...</p> <p>Where:</p> <p>a. The activity is for the purpose of:</p> <p>...</p> <p><u>v. Temporary military training activities.</u></p> <p>or, alternatively amend iii. as follows:</p> <p>iii Emergency <u>services and</u> search and rescue work; or</p>	Reject	9