

TIMARU



DISTRICT COUNCIL
Te Kaunihera ā-Rohe
o Te Tihi o Maru



YOUR PLAN OUR FUTURE
TIMARU DISTRICT PLAN REVIEW

Public Access S.32

May 2022



YOUR PLAN OUR FUTURE
TIMARU DISTRICT PLAN REVIEW
LAND USE PLAN

Timaru District Council

Section 32 Report **Public Access Chapter**

May 2022

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1 Public Access

1.1 Introduction

Section 6(d) of the RMA requires the Council, in managing the use, development and protection of natural and physical resources through its District Plan, to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers as a matter of national importance. However, there are no operative district plan rules for requiring, maintaining, or enhancing public access to and along the coastal marine area, lakes, and rivers, except when esplanade strips or reserves are enabled through a subdivision application process. This chapter looks at the mechanisms for ensuring public access is secured to and along the appropriate waterbodies and the coast (given there are no natural lakes of note in the district).

1.2 Community / Stakeholder / Iwi Engagement

The Council developed several discussion documents in 2017, which focused on the options to address the district's current and emerging resource management issues. Community feedback received on the extent of esplanade reserve and strip provisions is summarised below, as well as other matters raised by the community. It is noted that this feedback was received prior to the National Planning Standards being gazetted.

- There was both support for and opposition to the removal of the esplanade reserve or strip requirements in the District Plan. Those that supported the requirements were split between requiring esplanade reserves or strips along all waterways and the coastline and focusing the taking of esplanade reserves and strips only along identified waterways and coastlines.
- The reason for taking an esplanade reserve or strip should be clear, and that only required areas (i.e., utilised and of value) be taken.
- The esplanade reserve or strip requirement should be restricted to land titles that have a permanent waterway running through them (e.g., Burke Street, Pleasant Point).
- Concern was raised over access when rural streams are fenced off and the esplanade strip is covered with gorse and broom. Landowners raised concerns over public safety and access through farmland.
- Compensation should be paid for esplanade reserves and strips.

Feedback on the Draft District Plan

The Draft District Plan was released for public feedback in November 2020. The feedback gathered on this has been used to shape and guide the provisions of the Plan. The feedback of relevance to this chapter is summarised below:

- General support for the objective and policies;
- It is unclear how the thresholds for providing public access are related to those for esplanade provisions;
- The Port has specific operational requirements and at certain times public access to the Port could result in health and safety concerns. The Eastern Mole north of Talbot Street should be excluded from public access requirements;
- The provisions are supported as they recognise the benefits of providing public access along coastal marine areas and/or river to enable recreation and/or conservation activity;

- The provisions are supported as they will help overcome issues of land fragmentation and public access;
- Permanently restricting public access should not be allowed for unless full public consultation has been undertaken;
- There was an error in the numbering system, which referred to the wrong policy.

1.3 Strategic directions

The following strategic direction is particularly relevant to the Public Access topic:

SD-02 The Natural and Historic Environment

The district's natural and historic environment is managed so that:

- the health and wellbeing of the community are recognised as being linked to the natural environment;
- an integrated management approach is adopted that recognises that all parts of the environment are interdependent;
- the natural character of the coastal environment, wetlands and waterbodies is preserved and protected from inappropriate subdivision, use, and development;
- important landscapes and features are protected from inappropriate subdivision, use, and development;
- significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values recognised, protected and where appropriate, enhanced;
- the life-supporting capacity of ecosystems and resources is safeguarded for future generations;
- the important contribution of historic heritage to the District's character and identity is recognised, and significant heritage and its values are protected from inappropriate subdivision, use, and development.

SD-05 Mana Whenua

The mana whenua status of Kāti Huirapa is recognised and their historic and contemporary relationship with the District's land, water bodies and wetlands, coastal environment, and indigenous species is recognised and provided for by ensuring:

- mahika kai resources and habitats of indigenous species are sustained and opportunities for their enhancement or restoration are encouraged;
- the health of water body and wetland environments is protected from adverse effects of land use and development;
- the values of identified sites and areas of significance to Kāti Huirapa are recognised and protected;
- Kāti Huirapa retains, and where appropriate is able to enhance access to their sites and areas of significance;
- Māori reserve lands are able to be used by Kāti Huirapa for their intended purposes;
- Kāti Huirapa are able to carry out customary activities in accordance with tikanga;
- Kāti Huirapa are actively involved in decision making that affects their values and interests in these matters and are able to exercise their kaitiakitaka responsibilities.

While SD-02 does not specifically mention public access as a matter of strategic importance in the plan, it does signify the importance of significant habitats being identified and their values recognised, protected and enhanced. Improving public access to such places, where appropriate, is part of the wider promotion of awareness, giving people the ability to enjoy recreation in these locations. SD-05 does specifically highlight the need for Kāti Huirapa to benefit from public access to their sites of significance, which will include the coastal marine area.

1.4 Problem definition

The efficiency and effectiveness of the Operative Plan

Issue 4 in Part B (2) of the District Plan and its objectives and policies relate to public access. The issue states that *“private land tenure and some land use practices preclude recreational access to some public areas such as rivers and the coast.”*¹

Policy Framework

Related objectives seek those present rights of public access are retained and enhanced; that provision is made for additional access opportunities;² and to provide for public recreational access to the Port while maintaining public safety.³ Supporting policies seek to:

- Promote and enhance opportunities for public access and recreational use of the margins of rivers, wetlands, and coastal areas where compatible with the conservation values of these areas; and the matters that shall be considered in deciding whether to provide for access and recreation use in these areas;⁴
- Encouraging liaison with the Port of Timaru to maximise public access to the Port in a manner that is consistent with safety and the Port’s operational requirements;⁵
- Protecting public access to parts of the Port where there are no safety conflicts with Port operations;⁶
- Identify, maintain, and protect all legal public access;⁷ and
- To use esplanade reserves, esplanade strips and access strips to provide public access to waterbodies and to other areas of natural cultural or heritage value.⁸

Another policy in Part 2(B) of the District Plan sets out circumstances in which the size or width of an esplanade reserve or strip, or requirements to provide an esplanade reserve or strip can be amended or waived, which includes consideration of public access and recreation values.⁹

Rules Framework

There are no rules that relate specifically to public access in its own right.

The District Plan sets out methods relating in part to public access in the Natural Environment¹⁰, Recreation Zones¹¹, Subdivision¹² and Esplanade Provisions¹³ chapters. These methods relate to the need to provide esplanade reserves and esplanade strips, the use of esplanade reserves and strips to secure new areas of public access to coast and waterways, and the need to maintain existing areas which the public has access to.

¹ Timaru District Plan Part B(2) Issue 4

² Timaru District Plan Part B(2) Issue 4, Objective 1

³ Timaru District Plan Part B(2) Issue 4, Objective 2

⁴ Timaru District Plan Part B(2) Issue 4, Policy 1

⁵ Timaru District Plan Part B(2) Issue 4, Policy 2

⁶ Timaru District Plan Part B(2) Issue 4, Policy 2

⁷ Timaru District Plan Part B(2) Issue 4, Policy 3

⁸ Timaru District Plan Part B(2) Issue 4, Policy 4

⁹ Timaru District Plan Part B(2) Issue 1, Policy 13

¹⁰ Timaru District Plan Part B(2), Issue 1 Natural Values Policy (13), Issue 2 Objective (1) and Policy (1), Issue 4 Objective (1) and Policy (1)

¹¹ Timaru District Plan Part D(5), Policy 5.2.3.4

¹² Timaru District Plan Part D 6.3

¹³ Timaru District Plan Part D 6.4

These methods are reflected in the provisions in the District Plan regarding subdivisions as the assessment matters for both controlled and restricted discretionary activities require consideration of whether esplanade reserves to secure public access are proposed. The provisions relating to esplanade reserves and esplanade strips are considered in full within the Subdivisions topic, these rules are not considered in detail here, but are summarised below.

One way that the Plan secures new areas of public access is via Esplanade Reserves, Esplanade Strips, and Access Strips that are created during the subdivision of land. The issues, objectives, policies and methods are set out in Section 6.4.

Rule 6.4.2 (1) sets out the minimum dimensions required for esplanade reserves and when those dimensions should be applied. Specific requirements for legally binding agreements are set out in Rule 6.4.2 (1) (a) (iv) for Timaru Port, where public access is ensured but only when the area does not need to close for Port activities. When Port activities occur, the area is closed to ensure public safety.

Rule 6.4.2 (2) sets out the circumstances where an Esplanade Reserve or Strip can be created for allotments of 4ha or more.

Applications to waive or reduce an Esplanade Reserve is a discretionary activity that is publicly notified.

The Plan identifies rivers along which public access is particularly sought to be secured. The rivers are listed in Rule 6.4.2.7.

The subdivision provisions also contain specific mention of the need to provide public access, walkways and cycleways in accordance with outline development plans (ODPs), particularly Temuka Northwest Residential Expansion ODP, Washdyke Industrial Expansion Area ODP and Rural Residential (Brookfield Road) Zone. The Brookfield Road Zone requires a legal instrument securing unrestricted public pedestrian access over the walkway registered against the parent title.

Issues Identified

A review of the Operative Plan provisions that relate to Public Access, the way in which other District Plans address this issue, and the relevant statutory framework has been undertaken and identified the following issues that need to be addressed:

- Recognition in the District Plan provisions of the importance of providing Ngāi Tahu access to and along the CMA, river and lakes in order to give effect to the CRPS;
- Ensuring policies relating to Public Access reflect the circumstances where public access to and along the CMA and rivers and lakes may need to be limited/restricted, and ensure that these circumstances reflect those in the CRPS;
- Consider the extent to which the District Plan should manage vehicle access to beaches and riverbeds, or whether this is already managed via other means e.g., bylaws;
- Recognise that esplanade reserves have a range of purposes and public access is only one of these purposes.
- Recognise that if esplanade reserves/strips are used as the primary means of gaining public access, they are only available at the time of subdivision and therefore will not incorporate large scale changes in land use that do not occur under a subdivision consent.

Best practice / other Council approaches

The table below sets out an overview of the way that a range of other District Plans address the topic of Public Access. They include the territorial authorities that adjoin the Timaru District (Ashburton, Mackenzie, and Waimate Districts) as well as Hurunui and Palmerston North Districts. None of these plans were developed under the National Planning Standards.

Plan	Description of Approach
<p>Ashburton District Plan Operative 2014 Ashburton District Council NB it does not give effect to the CRPS as it was only made operative in 2014.</p>	<p>The Ashburton District adjoins Timaru District to the north. The District Plan is a second-generation plan and was made operative in 2014. The provisions relating to Public Access are primarily contained in the Subdivisions and Open Space Chapters, with some provisions in the Rural and Utilities Chapters. Two key issues relating to Public Access are identified in the District Plan, these are:</p> <ul style="list-style-type: none"> - The contribution of Esplanade Reserves, not only for providing Public Access but also the role they play in improving amenity of water body corridors and the management of flood hazards – this issue is set out in both the Open Space and Subdivision Chapters. - That Esplanade Reserves are effective in securing Public Access but are less effective for providing protection of natural values. <p>There are no specific objectives relating to Public Access in the District Plan. Policies that are specific to Public Access are set out in the Open Space and Subdivisions chapters. Policy 9.1M encourages the use of esplanade reserves to provide public access to the coast and protect the natural environment. Policy 6.1D and 9.3B relate to the taking of land instead of cash contributions where the areas will contribute to public open space, only where the areas are in proximity to river margins, lake shores, wetlands, or the coastline. Provisions relate to the following areas:</p> <ul style="list-style-type: none"> - An assessment matter in Chapter 14 Utilities regarding whether there is a loss or adverse effect on public access to views or viewpoints of the District’s Outstanding Natural Landscapes; and the effect protection works may have on public access to the coast or river margins. - An assessment matter in Chapter 3 Rural regarding whether tree planting, earthworks, clean fill, and buildings may affect public access; and whether works in riparian management areas may restrict public access.
<p>Mackenzie District Plan Operative 1st Generation</p>	<p>The Mackenzie District is situated west of the Timaru District. The District Plan is currently under review.</p> <p>The matters relating to Public Access are contained in several chapters: Subdivisions, Rural, Twizel Rural-Residential, Special Purpose, and Takata Whenua. The District Plan acknowledges the</p>

Plan	Description of Approach
	<p>common interests between Takata Whenua and the community regarding enhancement of public access to waterways for mahinga kai. The Subdivisions Chapter identifies the issue of using Esplanade Reserves to enhance public access and refers to s6(d) regarding public access in the RMA.</p> <p>Overall, the objectives reflect the need to preserve the natural character of lakes, rivers, wetlands, and their margins whilst promoting public access to these areas. Several Special Purpose zones cover key areas that are valued for their natural character and recreation purposes. For example, the Opuha Dam zone contains a specific objective regarding securing access to the lake area behind the dam for the public to use and enjoy; whilst the Ruataniwha zone objective recognises the importance of the lake to the rowing community whilst ensuring adverse effects on the environment and public access are avoided.</p> <p>The policies relating to these provisions reflect the desire to encourage public access where it can be reasonably gained as a part of new developments and subdivision. Specific policies apply in the special purpose zones, including policies regarding reasonable access at Opuha Dam, and policies to maintain public access and provide new links at Pukaki Downs Tourist Zone.</p> <p>Provisions related to Public Access in these chapters are:</p> <ul style="list-style-type: none"> - Rules within the Subdivisions Chapter that require the creation of Esplanade Strips and Esplanade Reserves; a key explanation for these provisions is that they will create opportunities for public access in the district. - Assessment matters in the Subdivisions and Rural Zone Chapters regarding whether a proposed activity or building restricts public access. - In the Special Purpose Opuha Dam Zone rules are set out to ensure that public access to the dam and lake area is provided, for activities both on and adjacent to the lake. - The Assessment Matters set out in the Twizel Rural-Residential zone provisions require, where relevant, the assessment of whether a proposal will restrict public access to waterbodies and their margins.
<p><i>Waimate District Plan</i> Second generation plan Waimate District Council Operative 2014</p>	<p>The Waimate District adjoins Timaru District to the south. The District Plan is a second-generation plan and was made operative in 2014. Within the District Plan, the matter of Public Access is spread across the Takata Whenua, Subdivisions, Rural, and Utilities Chapters. One issue in the District Plan specifically refers to Public Access, located in the Takata Whenua Chapter the issue</p>

Plan	Description of Approach
	<p>acknowledges that the general community and Takata Whenua concerns regarding the protection and, where necessary, continued restoration of public access to mahinga kai.</p> <p>Objectives in the District Plan relate to the development of Esplanade Reserves in the Subdivisions Chapter.</p> <p>There is one policy in the District Plan which relates to Public Access, located in the Rural Chapter the policy reflects the need to identify and retain public access facilities where these are required for Public Access and recreational uses, and to consider future Public Access opportunities.</p> <p>Provisions related to Public Access in these chapters are:</p> <ul style="list-style-type: none"> - Rules regarding the minimum allotment size requirements for esplanade strips and reserves in the Subdivisions Chapter. - A list of rivers in the district where Public Access is to be encouraged through the creation of esplanade strips. Rule 9.3.1 requires the creation of esplanade strips when any subdivision occurs adjacent or adjoining these rivers, unless otherwise exempt. - Assessment matters relating to Public Access are contained in the Rural Chapter and relate to whether Public Access is restricted by activities in the beds of rivers, lakes, or wetlands; and riparian management areas, and the degree to which a building or activity will restrict public access and enjoyment of the waterway margin. - An assessment matter in the Utilities Chapter which applies to any coastal or river protection works and requires consideration of whether Public Access is restricted by the works.
<p>Hurunui District Plan Second generation plan Operative 2018 Hurunui District Council</p>	<p>The Hurunui District is situated in North Canterbury and covers the area east of the Southern Alps, from the Hundalee Valley to Amberley.</p> <p>The District Plan is a second-generation plan that was made operative in June 2018. Within the District Plan, Public Access is dealt with in Chapter 6: Access to Lakes and Rivers, and Chapter 12: Coastal Environment.</p> <p>Objectives and policies seek to ensure provision of, maintenance and enhancement of public access, and there is a schedule of rivers that are a priority for access and margin protection.</p>

Plan	Description of Approach
	<p>Related rules are provided through the subdivision chapter to require the provision and formation of esplanade reserves and strips.</p>
<p>Palmerston North District Plan Second generation plan Palmerston North District Council</p>	<p>The Palmerston North District is situated in the North Island, whilst geographically it is not close to the Canterbury region, the plan provisions relating to Activities on the Surface of Water were made operative in 2018 and are therefore a recent example. The objectives relating to Public Access seek to ensure that subdivision secures provision of esplanade reserves and strips in appropriate areas.</p> <p>Policies provide direction around the width of esplanades and when waivers or reductions may be considered.</p> <p>Rules require the provision of esplanade reserves at least 20 metres wide for lots less than 4 hectares in area, except where such lots are along the bank of any river whose bed has an average width of 3 metres or more where the river flows through or adjoins the lot concerned.</p>
<p>Selwyn Proposed District Plan Notified in October 202</p>	<p>Selwyn District within Canterbury are currently going through hearings on the PDP. It has been prepared in accordance with the National Planning Standards and is giving effect to the CRPS.</p> <p>The PDP has an introduction which explains the differences between esplanade reserves, strips, and public access. It contains two objectives which are focused on ensuring Selwyn’s community has access to and along the district’s surface water bodies and coastal marine area, and the conservation values of the district’s water bodies, and coastal marine areas are protected.</p> <p>The two policies require public access to listed surface water bodies and the coastal marine are. The first requires access, where such access will not adversely affect the character, conservation values or cultural values; where it strengthens access; facilitates access by Ngāi Tahu for mahinga kai; where there is a community benefit and there is an acceptably low risk to public health/safety. The second requires the creation of esplanade strips or reserves to maintain and enhance water quality, riparian vegetation, and naturalness of an area.</p> <p>The rules require a 20m wide esplanade reserve for subdivision creating a less than 4ha allotment if it adjoins the coastal marine area of listed surface water body. Public access strips and esplanade strips are also required at subdivision stage.</p>

Other methods that could be used to encourage the provision of public access are set out below:

Identifying Public Access Corridors within the District

There is the potential for the Timaru District Council to identify key strategic public access corridors (likely for walking and/or cycling and/or users of mobility devices) within the district, which might include corridors along the coast and/or rivers. These networks could be identified on the planning maps, including whether various sections of the network have been secured or not (e.g., through designations or other mechanisms).

There is the option to apply a zone to land that forms a public access corridor (e.g., a 20m strip of land adjacent to waterbodies) and manage land use activities within those corridors to ensure that public access is maintained and enhanced (or restricted where necessary e.g., for conservation purposes).

Activities that are in the proximity to a public access corridor could also be managed if they could have adverse effects on the corridor (e.g., particularly noisy, or noxious activities).

TDC would need to also understand the extent to which land required for, or that is already part of, a public access corridor has been secured e.g., via esplanade strips or reserves; land acquisitions; or access strips.

It is noted that public access corridors would not necessarily be limited to land adjoining waterways and the coast but could be part of a suite of approaches that contribute to fulfilling the Council's duties under Part 6(d) of the RMA.

Identifying Public Access Corridors within future development areas

There are a range of examples where a structure plan or outline development plan that is either included in a District Plan, or required to be prepared ahead of subsequent development, must identify future public access, and ensure it is provided for through subsequent development. One such example is the Wēiti Precinct Plan in Auckland. The extent to which this is useful/relevant to the Timaru District will be informed by whether structure planning of this nature is undertaken within the district (or is required to be via other parts of the proposed District Plan).

Incentivising the provision of public access links

There is the potential for the Council to consider including provisions that 'reward' developers with additional development rights (e.g., density or height) if public access over and above what is otherwise required at the time of subdivision, and/or in particularly desirable locations is provided.

This approach would best be tied to the identification of strategic public access routes as outlined above so that the public/private benefit balance is appropriately 'struck'.

1.5 Statutory and Planning Context

District plans are part of a hierarchy of RMA policy and planning instruments. The RMA prescribes how district plans are to align with other instruments, and this is summarised in the table below:

Statutory document	Alignment requirement for Proposed District Plan	Comment
NZCPS	Give effect to	Implement according to the applicable policy statement's intentions.
NPS/NES		
CRPS Regional Coastal Environment Plan		

Canterbury Land and Water Plan		Are the provisions of the Proposed DP compatible with the provisions of these higher order documents? Do the provisions alter the essential nature or character of what the higher order documents allow or provide for?
Specific management plans and strategies prepared under other legislation	Have regard to	Give genuine attention and thought to the matter as above.
Adjoining district plans: <ul style="list-style-type: none"> • Ashburton District Plan • Waimate District Plan • Westland District Plan • Mackenzie District Plan 	Have regard to the extent to which there is a need for consistency	
Iwi Management Plan of Kati Huirapa Te Whakatau Kaupapa Ngai Tahu Resource Management Strategy for the Canterbury Region	Take into account	Address the matter and record.

Resource Management Act

The general Section 32 report sets out an overview of Part 2 of the RMA. Of relevance to the topic of Public Access, section 6(d) requires the Council, in managing the use, development and protection of natural and physical resources through its District Plan, to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers as a matter of national importance.¹⁴

Section 8 requires that the principles of Te Tiriti o Waitangi / the Treaty of Waitangi shall be considered when exercising functions and powers under the RMA.

One of the principal mechanisms by which public access to and along the coastal marine area, lakes and rivers is provided is through esplanade reserves and strips, and access strips. Sections 229 – 237H of the RMA set out the purpose of these mechanisms, and the way in which esplanade reserves and strips, and access strips can be created. Of note:

- Esplanade reserves and strips have a range of purposes, including to enable public access to or along any sea, river, or lake;¹⁵
- An esplanade reserve 20m in width shall be set aside where any allotment of less than 4ha is created (unless a rule in a plan provides otherwise).¹⁶
- Esplanade reserves or strips can only be set aside where any allotment of greater than 4ha is created if a rule in the District Plan requires it.¹⁷

National Policy Statements

The following National Policy Statements are of relevance to the Public Access topic:

¹⁴ RMA section 6(d)

¹⁵ RMA section 229(b)

¹⁶ RMA section 230(3)

¹⁷ RMA section 230(5)

National Policy Statements	Relevance
New Zealand Coastal Policy Statement 2010	<p>The NZCPS states policies to achieve the purpose of the RMA in relation to the coastal environment. Of note to the topic of Public Access the NZCPS:</p> <ul style="list-style-type: none"> • Seeks to maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable, providing alternative linking access close to the CMA;¹⁸ • Recognises the public expectation of, and need for, walking access to and along the coast that is practical, free of charge and safe for pedestrian use;¹⁹ • Seeks to maintain and enhance public walking access to, along and adjacent to the CMA;²⁰ • Only seeks to impose a restriction on public walking access to, along or adjacent to the CMA where restrictions are necessary for the following purposes:²¹ <ul style="list-style-type: none"> ○ to protect threatened indigenous species; or ○ to protect dunes, estuaries and other sensitive natural areas or habitats; or ○ to protect sites and activities of cultural value to Māori; or ○ to protect historic heritage; or ○ to protect public health or safety; or ○ to avoid or reduce conflict between public uses of the coastal marine area and its margins; or ○ for temporary activities or special events; or ○ for defence purposes in accordance with the Defence Act 1990; or ○ to ensure a level of security consistent with the purpose of a resource consent; or ○ in other exceptional circumstances sufficient to justify the restriction. • States that prior to imposing any restriction for the reasons set out above, consideration should be given to alternative routes that are always available to the public free of charge;²² • Seeks to control the use of vehicles (apart from emergency vehicles) on beaches, the foreshore, seabed, and adjacent public land where:²³ <ul style="list-style-type: none"> ○ damage to dune or other geological systems and processes; or

¹⁸ NZCPS Objective 4

¹⁹ NZCPS Policy 19(1)

²⁰ NZCPS Policy 19(2)

²¹ NZCPS Policy 19(3)

²² NZCPS Policy 19(4)

²³ NZCPS Policy 20(1)

National Policy Statements	Relevance
	<ul style="list-style-type: none"> ○ harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or ○ danger to other beach users; or ○ disturbance of the peaceful enjoyment of the beach environment; or ○ damage to historic heritage; or ○ damage to the habitats of fisheries resources of significance to customary, commercial, or recreational users; or ○ damage to sites of significance to tangata whenua; ○ might result. ● Encourages the identification of locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access;²⁴ ● Encourages the identification of any areas where, and times when, recreational vehicular use on beaches, the foreshore and seabed may be permitted, with or without restriction as to the type of vehicle.²⁵

A territorial authority must prepare and change its district plan in accordance with any regulations.²⁶ None of the National Environmental Standards currently in place are of relevance to the Public Access topic.

National Planning Standards

A territorial authority must prepare and change its district plan in accordance with any regulations.²⁷ The National Planning Standards require that all District Plans must include a Public Access chapter if relevant to the district.²⁸ This chapter must be included under the Natural Environment Values section of the District Plan, in Part 2: District Wide Matters. The Public Access chapter should contain provisions to maintain and enhance public access to and along the coastal marine area, lakes, and rivers.²⁹

Defined terms in the National Planning Standards that have relevance to the Public Access topic include:

- Allotment
- Bed
- Esplanade reserve
- Esplanade strip
- Lake

²⁴ NZCPS Policy 20(2)

²⁵ NZCPS Policy 20(3)

²⁶ RMA section 74(1)(f)

²⁷ RMA section 74(1)(ea)

²⁸ National Planning Standards, District Plan Structure Standard, Mandatory direction 3

²⁹ National Planning Standards, District-wide Matters Standard, Mandatory direction 22

- River
- Subdivision
- Wetland

All of the above terms are defined in the RMA, and the National Planning Standards cross reference to those RMA definitions.

Canterbury Regional Policy Statement 2013

A district plan must give effect to any regional policy statement.³⁰ Of particular relevance to the Public Access topic, Chapter 10 of the Canterbury Regional Policy Statement (CRPS) recognises that continued and enhanced public and Ngāi Tahu access to and along the beds of rivers and lakes enables the use and enjoyment of these areas but can have adverse effects on bed values and can negatively affect essential structures, private property rights, and the cultural values of Ngāi Tahu.³¹

Chapter 8 of the CRPS similarly acknowledges that there is a need to maintain and enhance public access and access for Ngāi Tahu, to and along the coastal marine area while controlling those aspects of public access, such as some types of vehicle use, which threaten the values of the coastal environment.³²

Related objectives and policies in Chapter 10 seek to:

- Maintain and enhance public and Ngāi Tahu access to and along rivers and lakes;³³
- Promote the maintenance and enhancement of public and Ngāi Tahu access to and along the beds of lakes and rivers and to ensure that subdivision, use and development does not result in inappropriate loss of existing access subject to:³⁴
 - protecting public health and safety, and avoiding conflict between different types of access;
 - avoiding adverse effects on the values of the beds, or stability of banks;
 - protecting Ngāi Tahu cultural values and sites of significance from inappropriate public access;
 - protecting the stability, performance and operation of essential structures in, on, under or over the beds;
 - ensuring the integrity of flood-protection vegetation is maintained;
 - avoiding conflicts with the legal rights and lawful activities of owners/occupiers of river or lake beds and adjacent land, or of the owners/operators of infrastructure in, on, under or over the bed; and
 - engaging with the Walking Access Commission to identify and negotiate issues around public access.

Related objectives and policies in Chapter 8

- Seek to maintain and enhance appropriate public and Ngāi Tahu access to and along the CMA to:
 - Enhance recreational opportunities; and
 - Enhance the ability of Ngāi Tahu as tangata whenua to access kaimoana and exercise tikanga Māori;³⁵
- Stipulate the circumstances where public access to and along the CMA may need to be controlled:³⁶
 - protecting public health and safety.

³⁰ RMA section 75(3)(c)

³¹ CRPS Issue 10.1.4

³² CRPS Issue 8.1.5

³³ CRPS Objective 10.2.4

³⁴ CRPS Policy 10.3.5

³⁵ CRPS Objective 8.2.5

³⁶ CRPS Policy 8.3.5

- avoiding significant adverse effects on natural, physical, amenity, recreational, cultural, and historic heritage values of the coastal environment.
- avoiding damage to natural buffers to coastal erosion.
- protecting Ngāi Tahu sites of special value.
- protecting the stability, performance, maintenance, and operation of regionally significant infrastructure in the coastal environment or other commercial maritime facilities.
- avoiding conflicts with the legal rights and lawful activities of owners/occupiers of land in the coastal environment.
- ensuring compliance with legislative maritime security requirements for ships and port facilities.
-

The CRPS provides directions for the Council that are relevant to the Public Access topic, including:

Relating to the beds of lakes and rivers
Territorial authorities should consider appropriate measures that will maintain and enhance, and where appropriate, control public access to and along the beds of rivers and lakes.
Local authorities will identify areas where there is existing public access that should be retained, and identify locations where access is desirable, and the conditions under which that access shall occur. These areas may be illustrated on a map, and if so, they should be regularly updated.
Local authorities should advocate and promote the appropriate establishment of reserves, covenants, heritage orders, plan provisions, esplanade reserves and strips, bylaws and management agreements that will maintain and enhance and, where appropriate, control public access to, and along, the beds of rivers and lakes and their banks or margins.
Local authorities should advocate, promote, and undertake actions to provide appropriate vehicle or other access to river and lake beds and their banks or margins and, when and where appropriate, to control or prevent such access through provisions in plans, reserves, covenants, heritage orders, esplanade reserves and strips, bylaws and management agreements, or the construction and maintenance of physical barriers or other measures.
Relating to the CMA
Territorial authorities to set out objectives and policies and may include methods in district plans to maintain and enhance appropriate public access to the coastal marine area.
Local authorities should work together with government agencies and land occupiers or owners and government agencies to: <ul style="list-style-type: none"> • advocate for and promote actions to provide or enhance appropriate access to and along the coastal marine area; and • ensure that there are bylaws, physical barriers, or other measures in place to control the entry to or passage along the parts of the coastal marine area that have high values, and where they need protection from particular types of public access. <p>This may include provisions in district plans, esplanade and other reserves, covenants, bylaws, management agreements, and the construction and maintenance of physical barriers or other measures that will manage access.</p>
Local authorities should recognise public and Ngai Tahu access as issues in district or regional coastal strategies.
Relating to the CMA and the beds of rivers and lakes

Local authorities will engage with Ngāi Tahu as tāngata whenua and use iwi management plans to identify Ngāi Tahu values relevant to:

- maintaining and enhancing Ngāi Tahu access to and along the beds of rivers and lakes and the coastal marine area; and
- protecting Ngāi Tahu cultural values and sites of significance from inappropriate public access.

Timaru District Off-road Biking and Walking Strategy 2012-22

The Timaru District Off-road Biking and Walking Strategy includes a series of proposed extensions and linkages to the existing biking and walking network in Timaru. It may be relevant to provide some of these aspirational connections through the provision of public access under the District Plan.

Timaru District Consolidated Bylaw 2018

Chapter 7 of the Timaru District Consolidated Bylaw (Bylaw) manages the use of parks, reserves, beaches, and recreational tracks in a manner that will not impinge upon the enjoyment of others or cause damage to natural areas and improvements. The Bylaw includes provisions that restrict the use of motor vehicles in reserves (which includes esplanade reserves) including the speed of vehicles.

The Bylaw also sets out a specific suite of provisions that relate to beaches, including that no person shall drive or operate any vehicle on any part of a beach at a speed greater than 20km/hr.³⁷

2 Approach to Evaluation

Section 32(1)(b) requires an evaluation of whether the provisions are the most appropriate way to achieve the objectives by identifying other reasonably practicable options, assessing the efficiency and effectiveness of the provisions in achieving the objectives, and summarising the reasons for deciding on the provisions.

The assessment must identify and assess the benefits and costs of environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment. The assessment must, if practicable, quantify the benefits and costs and assess the risk of acting or not acting if there is uncertain or insufficient information available about the subject matter.

The proposed provisions relevant to the Public Access chapter have been assessed in accordance with the following issues:

Issue 1 – A need to recognise the importance of providing Ngāi Tahu access to and along the CMA, river and lakes in order to give effect to the CRPS.

Issue 2 – A need to ensure policies relating to Public Access reflect the circumstances where public access to and along the CMA and rivers and lakes may need to be limited/restricted, and ensure that these circumstances reflect those in the CRPS

Issue 3 – The extent to which the District Plan should manage vehicle access to beaches and riverbeds, or whether this is already managed via other means e.g. bylaws.

Issue 4 - Recognise that esplanade reserves have a range of purposes and public access is only one of these purposes.

³⁷ Timaru Consolidated Bylaw 2018 Clause 730.1

Issue 5 - Recognise that if esplanade reserves/strips are used as the primary means of gaining public access, they are only available at the time of subdivision and therefore will not incorporate large scale changes in land use that do not occur under a subdivision consent.

2.1 Scale and significance

The table below sets out the scale and significance of managing public access in the district in terms of Council's statutory obligations, who may be affected by any proposed changes to the management regime, the type of effects that may occur and where in the District is mostly likely to be affected by the proposed changes to the District Plan. This will inform the nature and extent of the analysis of the proposed changes to the public access provisions. For example, proposed provisions that will result in an overall high level of scale and significance will require a more in-depth analysis of proposed objectives, policies and rules including, potentially, an economic analysis, compared to changes that will have a low-level significance.

Issue: Public Access		
Reasons for change in policy	District Plan Review Giving effect to a matter of national importance in the RMA Giving effect to a higher order RMA document (RPS)	High
Relevant Statutory Considerations / Drivers	RMA Parts 6, 7 and 31 NZ Coastal Policy Statement National Planning Standards RPS Chapters 8 and 10	High
Degree of shift from status quo required	A moderate shift to give effect to the zoning approach in the National Planning Standards, to provide more explicitly for Public Access and to incorporate provisions beyond subdivision.	Medium
Who and how many will be affected?	This is likely to be limited to landowners and developers close to rivers and the CMA	Low / Medium
Degree of impact on, or interest from iwi / Maori	It is likely that Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu will have a particular interest in this topic given their interest in providing for access to areas used for Mahika kai.	High
When will affects occur?	Effects will occur on an ongoing basis into the future as development and subdivision occurs and opportunities to provide public access are lost	Medium
Geographic scale of impacts / issue	Land close to rivers and the CMA, but likely to be in Residential and Business zoned areas where subdivision and development are more likely to occur.	Low / Medium
Type of effect(s)	A lack of public access to rivers and lakes, particularly in residential and business zones as there is no ability to require it to be provided at the time of undertaking development. Reliance on taking	Medium

	esplanade reserves and strips at the time of subdivision of land may limit opportunities to provide public access The creation of public access that is isolated and does not link to a wider network of walkways and cycleways.	
Degree of policy risk, implementation risk, or uncertainty	There is a high level of understanding of the need for public access and mechanisms to achieve this. The policy approach has been tailored to this understanding. There is a good level of understanding of benefits and costs, and the approach is similar to that employed elsewhere.	Low
Overall Assessment of Scale and Significance		Medium

2.2 Approach to Managing Public Access Issues

The objective and policy framework is intended to provide clarity on the need to provide public access as a matter of national importance.

It is proposed to incorporate policy that supports the taking of esplanade strips/reserves through subdivision and the provision of public access at the time of undertaking or consenting larger land use developments. The policy framework is focussed on the benefits of providing public access to and along the CMA and identified rivers, when and where this is required, design standards and when public access should be limited.

One rule is proposed in this chapter to focus on requiring public access to be provided along waterbodies and the CMA at the time of undertaking larger land use development. This will enable consideration of the ability to improve access to waterbodies and the CMA when development occurs rather than missing such opportunities because subdivision has not occurred.

Changes proposed

Operative Plan	Proposed Plan
Objective and policy framework.	Objective and policy framework emphasising why, when, where and how public access is to be provided.
No rule on land use activity.	One rule relating to public access provision as a controlled activity at the time of undertaking larger land use developments.

2.3 Quantification of Costs and Benefits

Section 32(2)(b) requires that if practicable the benefits and costs of a proposal are quantified. It is considered that the provision of, and adverse effects on public access are difficult to quantify in monetary terms and it is seen as inappropriate to try to do so, therefore a detailed economic analysis has not been undertaken to assist in the quantification of benefits and costs.

2.4 Choice of Evaluation Method(s)

Given the scale and significance of the issues related to the provision of public access, it is proposed to assess the preferred option against the status quo. The options will be assessed using a cost-benefit analysis, given the discussion above on costs and benefits.

Proposed Objective

This section of the report evaluates the proposed objectives as to whether they are the most appropriate to achieve the purpose of the Act.

PA-O1 Public Access

Public access to and along the coastal marine area and the margins of identified wetlands and rivers is maintained and enhanced, and only restricted where desirable.

3 Evaluation of Objective

3.1 Proposed objective

The proposed objective for the Public Access chapter is:

Public access to and along the coastal marine area and the margins of identified rivers is maintained or enhanced and only restricted where necessary.

3.2 Evaluation

Category	Criteria	Comments
Relevance	Directed to addressing a resource management issue	Achieves The objective seeks to maintain or enhance public access to and along the CMA and identified rivers but acknowledges that access may need to be restricted at times. This recognises the different purposes of areas such as esplanade reserves and strips where public access may be provided alongside providing habitats for breeding birds.
	Focused on achieving the purpose of the Act	Achieves The objective directly addresses the resource management issue of natural importance set out in section 6(d) of the Act.
	Assists a council to carry out its statutory functions	Achieves The objective sets the direction for the maintenance and enhancement of public access whilst providing for public safety and other values of areas such as esplanade reserves and strips. As such, it directly addresses section 31 of the RMA by achieving integrated management of the effects of the use or development of land and associated natural and physical resources of the district and promoting the social and cultural wellbeing of the community under s10 of the Local Government Act 2002. It will also assist in minimising impacts on public safety.
	Within scope of higher-level documents	Achieves The objective gives effect to the NZCPS and the CRPS by ensuring that the District Plan includes provisions to provide for public access.
Feasibility	Acceptable level of uncertainty and risk	Achieves The Council has provided for, managed, and maintained public access for many years. Therefore, the level of risk and uncertainty regarding the public access provisions is low.

	Realistically able to be achieved within council's powers, skills and resources	Achieves The Council is already achieving the provision and management of public access. Therefore, the proposed objective can be achieved within Council's powers, skills, and resources.
Acceptability	Consistent with identified iwi/Māori and community outcomes	Achieves. The objective is broad and is nonspecific as to the reasons as to why public access is required and therefore does not limit it to any situation. The further detail in the policy recognising the need for providing for the relationship between Māori and their ancestral land, water, sites, wahi tapu and toaka, including for mahika kai.
	Will not result in unjustifiably high costs on the community or parts of the community	Achieves The proposed provisions are based on similar provisions in the Operative Plan, with a more tailored approach and some additions to achieve greater effectiveness. These are not expected to result in unjustifiably high costs on the community or parts of the community.

4 Identification of Options

The following sets out the reasonably practicable options for achieving the public access objective.

4.1 Option 1: Status Quo

This option involves a continuation of the operative Plan provisions including the current objectives, policies, rules, and approaches to taking esplanade reserves or strips at the time of subdivision.

4.2 Option 2: Combined Subdivision and Land use Approach

This option builds on the operative Plan provisions and seeks to add rules to require the provision of public access at the time of undertaking larger scale land use consents. The approach to limiting this to larger scale land use activities is to avoid unreasonably impacting on small scale or otherwise permitted activities.

The intent of this approach is to recognise that large scale land use change can occur without subdivision and that there is a need to gain public access outside the subdivision process.

5 Evaluation of Options

5.1 Evaluation table

OPTION 1 <i>Status-quo</i>			
Benefits			

Environmental	Economic	Social	Cultural
<p>Medium</p> <p>The ability of people to gain greater access to rivers and the CMA is a benefit to the wider community and environment and the current provisions provide for this through the subdivision processes.</p>	<p>Low</p> <p>There may be savings in terms of time and cost as the Council and community are familiar with the provisions.</p>	<p>Medium</p> <p>Continuation of the existing approach provides familiarity along with a level of certainty to the community. The outcomes achieved by the existing provisions will contribute to the provision of public access, which can also contribute positively to recreation and amenity values which are valued by the community.</p>	<p>Medium</p> <p>The outcomes achieved by the existing provisions may contribute to the ability to gain access to rivers and the CMA for cultural values.</p>
Costs			
Environmental	Economic	Social	Cultural
<p>Medium</p> <p>The existing provisions do not enable a gain of public access at the time of land use consents instead relying on subdivision processes which may not always occur.</p>	<p>Low</p> <p>The provisions continue to result in economic costs on landowners who have land adjoining rivers and the CMA, due to providing for public access at the time of the subdivision of land.</p>	<p>Low</p> <p>The community may be dissatisfied with the outcomes achieved by the existing provisions.</p>	<p>Low</p> <p>The community may be dissatisfied with the outcomes achieved by the existing provisions.</p>
Efficiency	<p>This option is efficient in the ability to gain improved public access through ongoing subdivision processes, with benefits outweighing costs. However, it is not efficient in terms of providing for public access through land use processes where a subdivision is not required or sought</p>		
Effectiveness	<p>This approach would be effective in achieving the objective of provision of public access but only in relation to subdivision activities and not land use development.</p>		
Strategic Direction(s)	<p>This option does not directly contribute to the relevant strategic objective as it does not provide for cultural values.</p>		
Overall Appropriateness of Option 1	<p>This option would in part achieve the objective.</p>		

OPTION 2

Combined Subdivision and Land use Approach

Benefits Environmental	Economic	Social	Cultural
<p>Medium</p> <p>The ability of people to gain greater access to rivers and the CMA is a benefit to the wider environment. The current provisions provide for this through subdivision processes and this proposed option would enable public access to be achieved at the time of land use consent also. This greater opportunity and more explicit policy directive will provide for enhanced opportunities for other environmental benefits such as riparian enhancement works.</p>	<p>Medium</p> <p>There may be savings in terms of time and cost as the Council and community are familiar with the provisions, as they similar to those for esplanade reserves or strips.</p>	<p>Medium</p> <p>Continuation of the existing approach provides familiarity along with a level of certainty to the community. The outcomes achieved by the taking of esplanade reserves and strips at the time of subdivision will be enhanced through the taking of public access at the time of land use consents. The combined approach will contribute positively to recreation and amenity values which are valued by the community.</p>	<p>Medium</p> <p>The outcomes achieved by the existing provisions, combined with the additional new provisions, will may contribute to the ability to gain access to waterways and the CMA for cultural values and this will be more explicit and directive within the policy framework.</p>
Costs Environmental	Economic	Social	Cultural
<p>None identified</p>	<p>Low</p> <p>The provisions will have some economic cost to landowners who have land adjoining rivers and the CMA, due to the taking of public access at the time of change in use of the land.</p>	<p>Low</p> <p>A change to the approach may be of concern to some landowners.</p>	<p>None identified</p>
Efficiency	<p>This option is an efficient method of meeting the objective given the costs and benefits identified above, and the issues identified with the existing provisions.</p>		
Effectiveness	<p>This option will be effective at implementing the objective and more effective than the status quo as greater opportunity for public access will be enabled.</p>		
Strategic Direction(s)	<p>This option is better aligned with the strategic objectives as it allows for incorporation of cultural values and access to cultural resources.</p>		

Overall Appropriateness of Option 2	This option is the most appropriate in achieving the objective
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5.2 Risk of Acting or Not Acting

Where there is uncertain or insufficient information, an evaluation of the risk of acting or not acting is important. In this case it is considered that there is little uncertainty in the issue or the potential significance of the issue. It is considered that given that the proposed provisions have a similar approach to the operative provisions, there is sufficient information to act.

It is therefore concluded that there is a low risk of acting in the proposed manner to introduce updated and replacement provisions to appropriately manage the provision of public access.

6 Preferred Option

This evaluation has been undertaken in accordance with Section 32 of the RMA to identify the need, benefits and costs and the appropriateness of the proposal having regard to its effectiveness and efficiency relative to other means in achieving the purpose of the RMA. The evaluation demonstrates that Option 2 is the most appropriate option as:

- The approach will enable greater opportunities for gaining public access to and along waterways and the CMA.
- The provisions will be more directive in terms of the benefits, the location of and when public access will be required.
- The benefits outweigh the costs, and the approach will be effective in ensuring public access is obtained through both subdivision and larger land use proposals.

Overall, it is considered that the set of preferred provisions is the most appropriate given that the benefits outweigh the costs, and there are considerable efficiencies to be gained from adopting the preferred provisions. The risks of acting are also clearly identifiable and limited in their extent. This preferred approach combines the traditional subdivision consent approach to obtaining esplanade reserves/strips, with a new approach to considering opportunities for gaining improved public access at the time of large-scale land use development.