



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Report No. 6

Surface of Water Activities

**9-10 June 2014, 9.00 am
DRAWING ROOM
CIVIC THEATRE**

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TABLE OF CONTENTS

1.	Executive Summary	1
2.	Introduction	2
	2.1 Report Author.....	2
	2.2 Peer Review.....	2
	2.3 How to read this report	2
	2.4 Interpretation.....	2
	2.5 The Hearing Process.....	3
3.	Background	5
	3.1 Proposed Issues, Objectives and Policies	5
	3.2 Proposed Rule	6
4.	Statutory Context / Legislative Requirements	8
	4.1 Resource Management Act 1991	8
	4.1.1 Part 2 of the RMA.....	8
	4.1.2 Functions of Territorial Authorities under the RMA	9
	4.1.3 Consideration of alternatives, benefits, and costs.....	9
	4.2 Relevant Planning Policy Documents	9
	4.2.1 New Zealand Coastal Policy Statement.....	9
	4.2.2 National Policy Statements and National Environmental Standards	9
	4.2.3 Regional Policy Statement	10
	4.2.4 Proposed Regional Policy Statement	10
	4.2.5 Regional Plan.....	11
	4.2.6 Iwi Management Plans	11
5.	Analysis of submissions	12
	5.1. Public access over private property	12
	5.1.1 Vandalism, stock disturbance and other misdemeanours	12
	5.1.2 When access may not be appropriate or necessary	12
	5.1.3 Recommendation	13
	5.2 Use of regulatory methods as means of maintaining and enhancing public access.....	14
	5.2.1 Recommendation	14
	5.3 The need for a “strategic approach” to the retention or creation of public access.....	15
	5.4 Involvement of landowners when developing brochures on public access	15
	5.5 Minor Amendment.....	15
6.	Discussion of Section 32 matters	17
	6.1 Relevant Section 32AA Matters.....	17
	6.2 Section 32AA Further evaluation	17
7.	Concluding comments	19
	Appendix 1: Recommendations on submissions	20
	Appendix 2: Recommended Changes to the Proposed District Plan	26

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1. EXECUTIVE SUMMARY

There are provisions in the Proposed District Plan that seek to address issues surrounding Surface of Water Activities.

Under the Resource Management Act 1991, the Council's functions include the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes. The Proposed District Plan provisions address opportunities for recreational opportunities on the district's waterways and also seek to improve access to the waterways where possible.

Eleven submission and four further submission points were lodged on these provisions.

The amendments sought in the submissions relate to the Issues, Objectives, Policies and Methods of Implementation set out in Section 2.15.

While some of the submissions are comments on the Council's role in managing reserves in general and Council's awareness of safety issues and others are generally supportive of the approach proposed, the main issue raised in submissions relates to the conflict between public access to waterways over private property and private property rights. One submission point questions the use of regulatory methods, preferring that access be dealt with using a non-regulatory approach.

It is recommended that the framework in the Proposed District Plan be retained with a mixed regulatory and non-regulatory approach. It is also recommended that Policy 2 Public Access be amended to acknowledge that there may be situations where public access is not possible. The recommended changes are consistent with the Objectives in the Proposed District Plan and meet the requirements of the Resource Management Act 1991.

Matters relating to water quality and water quantity are discussed in the Section 42A report on Water.

In this report:

- Part 2 considers several key procedural issues.
- Part 3 provides general background to the proposed provisions.
- Part 4 summarises the various statutory provisions that apply to the consideration of the Proposed District Plan.
- Part 5 assesses the relevant issues raised by submitter and the effects of the relief sought and also the recommendations for the submission.
- Part 6 includes an evaluation of the provisions in accordance with Section 32AA of the RMA.
- Part 7 sets out the overall conclusions.
- Appendix 1 sets out recommendations on each of the submission points.
- Appendix 2 sets out the recommended changes to the text of the Proposed District Plan.

2. INTRODUCTION

2.1 Report Author

My name is Elizabeth Ann Devery. I am the Senior Planner – Policy at the Invercargill City Council, a position I have held since January 2003. I have over 14 years planning policy experience working in planning and regulatory roles in local government in New Zealand and the United Kingdom. These roles have focused on both developing and implementing District Plans and planning documents. I hold the qualifications of LLB/BA (Hons I) in Geography.

2.2 Peer Review

This report has been peer reviewed by Dan Wells and John Edmonds, from John Edmonds and Associates Ltd. Both John Edmonds and Dan Wells are practising resource management planners with a variety of experience throughout the plan change preparation process. Dan Wells has a Bachelor of Resource and Environmental Planning (Hons) and a Post Graduate Diploma in Development Studies, both from Massey University. John Edmonds has a Bachelor of Regional Planning from Massey University.

2.3 How to Read this Report

This report is structured as follows:

- Interpretation (an explanation of some of the terms used);
- Summary of the Hearing process;
- Background to the surface of water topic, and the provisions of the Proposed Invercargill City District Plan 2013;
- Description of the statutory framework within which the proposed provisions have been developed;
- Analysis of the submissions, including a discussion of the key issues raised through the submissions and further submissions received;
- Assessment of any proposed changes under Section 32AA of the RMA;
- Concluding comments;
- Appendix 1 detailing recommendations on individual submissions
- Appendix 2 detailing the recommended changes of the Proposed District Plan provisions relating to Surface of Water Activities.

To see recommendations on an individual submission please refer to the table in **Appendix 1**. The table sets out the name and relevant submission number of those that submitted on the Surface of Water Activities provisions; a brief summary of their submission and decisions requested, followed by my recommendation and the reasons for it.

2.3 Interpretation

In this report, the following meanings apply:

“CMA” means Coastal Marine Area

“Council” means the Invercargill City Council

“ES” means Environment Southland, the Southland Regional Council

“FS” means further submitter

“Hearings Committee” means the District Plan Hearings Committee established by the Council under the Local Government Act

“Operative District Plan” means the Invercargill City District Plan 2005

“Proposed District Plan” means the Proposed Invercargill City District Plan 2013

“Provisions” is a term used to collectively describe Objectives, Policies and Rules

“RMA” means the Resource Management Act 1991

2.5 The Hearing Process

A number of hearings are to be held to consider the submissions lodged to the Proposed Invercargill City District Plan 2013. The hearings have been divided up to ensure that submissions on similar issues have been grouped together and to enable the Hearings Committee to make decisions on the provisions relating to those issues. This report applies to the Surface of Water Activities provisions of the Proposed District Plan.

The Hearings Committee comprises of accredited Invercargill City Councillors, with the assistance of an Independent Hearings Commissioner. This Hearings Committee is to consider the Proposed Plan and the submissions and further submissions lodged. The Hearings Committee has full delegation to issue a decision on these matters.

This report is prepared pursuant to Section 42A of the Resource Management Act 1991 (the “RMA”). Section 42A provides for a report to be prepared prior to a hearing setting out matters to which regard should be had in considering a Proposed District Plan and the submissions lodged to it. This report highlights those matters that are considered appropriate by the author for the Hearings Committee to consider in making decisions on the submissions lodged. This report has been prepared on the basis of information available prior to the hearing.

While the Hearings Committee is required to have regard to this report, regard must also be given to the matters raised in submissions, and presentations made at the hearing. The comments and recommendations contained in this report are not binding on the Hearings Committee and it should not be assumed that the Hearings Committee will reach the same conclusions set out in the report having heard from the submitters and Council advisers.

The hearing is open to the public, and any person may attend any part of the hearing. Those persons who lodged a submission have a right to speak at the hearing. They may appear in person, or have someone speak on their behalf. They may also call evidence from other persons in support of the points they are addressing.

At any time during or after the hearing, the Hearings Committee may request the preparation of additional reports. If that is done, adequate time must be provided to the submitters, to assess and comment on the report. The Hearings Committee may determine that:

- the hearing should be reconvened to allow responses to any report prepared, or
- any responses be submitted in writing within a specified timeframe.

At the conclusion of the hearing process, the Hearings Committee will prepare a written decision. The decision is sent to all persons who lodged a submission. If not satisfied with the decision the submitters have a right of appeal to the Environment Court. If an appeal is lodged, the RMA requires a copy to be served on all submitters with an interest in that matter. Any submitter served may, if they wish, become a party to the appeal either in support or opposition to it.

If there is an appeal, the Environment Court will provide an opportunity for mediation between the parties. If mediation is not accepted, or does not resolve the issues, a further hearing will take place before a Judge and Court appointed Commissioners. Except on points of law, the decision of the Environment Court is final.

3. BACKGROUND

Invercargill has been referred to as the “City of Water and Light” for a number of reasons. One of these is that approximately a quarter of the Invercargill City District is covered by water. The majority of this is in the Coastal Marine Area (CMA). Activities in the CMA are regulated by Environment Southland and it is not within the ambit of the District Plan to regulate the use of this area. In saying this though, there are a number of rivers, creeks and streams within the district that have value to many sectors of the community and are valued by a number of recreational users. The Invercargill City District is also the home to Lake Murihiku and areas of natural and man-made wetlands. Access to, and the use of these areas are to be managed by the Council through the District Plan. It is important that the ability to utilise the surface of the District’s waterways is retained so long as the effects of these uses are managed to avoid, where possible, or remedy or mitigate any adverse effects on the wider environment.

Strongly related to being able to use the surface of waterways is public access to them. Access to waterways is a matter of national and local importance. Whilst many areas adjoining the District’s waterways are in public ownership, there are areas along waterways in the district that are in private ownership. The maintenance and enhancement of opportunities for access, where possible, has been identified as an Objective in the Proposed District Plan. The changes notified as part of the Proposed District Plan include strengthening the policies relating to public access to waterways.

This report relates to the provisions in the Proposed District Plan addressing Surface of Water Activities. This includes Section 2.15 containing the issues, objectives, policies and methods of implementation for Surface of Water Activities. The Proposed District Plan also indirectly addresses Surface of Water Activities through the activity status of activities within each of the different zones, as set out in Section 3 of the Proposed Plan.

Section 3.18 Subdivision also addresses access to waterways as a matter to be considered through the subdivision consent process either through the formal esplanade strip provisions or as a matter to be considered when Council exercises its discretion.

Because of the nature of the surface of water resource in Invercargill and the demand to use it, this was an area of the Operative District Plan that did not require significant changes.

3.1 Proposed Issues, Objectives and Policies

Section 2.15 of the Proposed District Plan details the issues, objectives, policies and methods of implementation in relation to Surface of Water Activities.

The provisions seek to allow the use of the surface of lakes and rivers for recreational purposes, and to maintain and enhance access to lakes and rivers.

The Invercargill City District’s waterways are used by a number of recreational users and groups. There has not been significant pressure on our waterways regarding competition for Surface of Water Activities or adverse amenity effects caused by the use of the District’s waterways. Areas within the Invercargill District which are most sought after for recreational use fall within the Coastal Marine Area, which are the responsibility of the Regional Council and a number of agreements and plans have been developed with interest groups and Environment Southland to co-ordinate the use of this water resource. Due to the lack of competition over the use of the waterways and the scale of the actual effects of the use of the waterways, it was considered inappropriate to create a regulatory regime that was overly prescriptive.

The proposed policy instead seeks to “allow” the use of the waterways and to maintain and enhance recreational opportunities.

There is one objective and two policies relating to access to the waterways. The Objective is to improve public access where possible in a strategic and co-ordinated manner. While the Objective does not explicitly set out the situations where improvement of access may not be possible, the wording does acknowledge that there may be situations where access is not a viable option.

The Objective is addressed by two policies.

One focuses on the maintenance and enhancement of public access to the waterways. The policy does not carry through the recognition of possible restrictions to access arrangements. This is one of the key issues raised in submissions to the Surface of Water Activities provisions and will be discussed in more detail in Section 5 of this report.

The other policy relates to the development of a strategic approach towards the provision of access in liaison with Environment Southland and the Southland District Council.

3.2 Proposed Rule

There is no single identifiable rule in the Proposed District Plan that relates to Surface of Water Activities.

As in the Operative District Plan, the Proposed District Plan includes provisions detailing the activity status of different activities within each of the discreet Zones. The activity status and amenity provisions apply to activities on the surface of water, as well as to those activities being carried out on land. The effects of these activities will be considered where appropriate on a case-by-case basis and the Proposed Plan sets out a range of environmental standards that should be considered as part of any proposal to use the surface of waterways.

It is worth noting here that a general submission point, (31.1 R T Chapman) identified a potential weakness in the Zone provisions, in that recreational activities are not enabled in the Proposed District Plan. Recreational activities are not provided for as either permitted or discretionary activities in any of the zones, and as a result fall within the non-complying category. This is contrary to the proposed objectives and policies which seek to allow such activities to occur. However, this submission is not covered in this report as recreational activities are carried out on land as well as on the surface of water. Recreational activities could also have the potential to have effects that may not be anticipated within *all* Zones of the Proposed District Plan. This submission will be discussed in more detail in a later report.

In terms of rules on access to waterways, the subdivision process has been identified in the Proposed District Plan as the ideal time to consider formal access arrangements. In Section 3.18 Subdivision of the Proposed District Plan one of the matters over which the Council shall exercise its discretion is:

“(P) The extent to which the proposed subdivision retains and enhances public access to and along the coast and along the margins of streams and waterways”

Sections 3.18.8 – 3.18.12 of the Proposed District Plan also set out the requirements in terms of esplanade strips including the maximum width of any required esplanade strip, when the esplanade strip will be required as part of a subdivision. They also state certain areas in the District where esplanade strips will not be required. These include the Island Harbour of the Seaport and the Smelter Zone. Due to health and safety concerns and the operational requirements of these areas of the District public access is not appropriate and public are encouraged to contact the landowners should they wish to access any of these areas of the coast or waterways.

4. STATUTORY CONTEXT / LEGISLATIVE REQUIREMENTS

In developing the Proposed District Plan there are a number of statutory requirements guiding the process and outlining what must be considered. This section of the report details the statutory context.

4.1 Resource Management Act 1991

In reviewing the District Plan, Council must follow the process outlined in Schedule 1 of the RMA.

The First Schedule procedure includes notification for submissions (clause 5) and further submissions (clause 8), holding a hearing into submissions (clause 8(b)), and determining whether those submissions are accepted or rejected and giving reasons for the decisions (clause 10).

Clause 29(4) of the First Schedule to the RMA states that after considering a plan the local authority may decline, approve, or approve with modifications, the plan, and shall give reasons for its decisions.

Under Section 74 of the RMA, in relation to changes to the District Plan, Council must consider Part 2 of the Act (purposes and principles), Section 32 (alternatives, benefits and costs), and relevant regional and district planning documents.

4.1.1 Part 2 of the RMA

Part 2 of the RMA (ss5-8) sets out its purpose and principles.

The purpose of the RMA is set out in Section 5. I confirm that the provisions for Surface of Water Activities fall within the purpose of the Act. In particular, the provisions are designed to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, to safeguard the life-supporting capacity of the water and ecosystems, and to avoid, remedy or mitigate adverse effects on the environment.

Section 6 of the RMA sets out matters of national importance which must be recognised and provided for. Provisions on Surface of Water Activities cover a number of matters of national importance as waterways carry a range of cultural, amenity and ecological values. However, the subsection of most direct relevance is:

“(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers”

The Surface of Waterways provisions cover not only the activities using the surface of the water, but also access to the waterways and ensuring that this is maintained and enhanced, where possible.

Section 7 of the RMA sets out “other matters” for which particular regard shall be had. It is considered that the most relevant matters are the maintenance and enhancement of amenity values, and the quality of the environment; intrinsic values of ecosystems and any infinite characteristics of natural and physical resources. The Surface of Water Activities provisions seek to enable the use of the waterways for recreational purposes but also to ensure that any adverse effects of any activity using the surface of waterways are considered.

Section 8 of the RMA obliges persons exercising functions and powers under the RMA to take account of the principles of the Treaty of Waitangi. Representatives from Te Ao Marama Inc have been part of the Plan Review process as members of the Council's Plan Group that worked on developing the Proposed District Plan. Consultation with local Iwi has also occurred. Access to waterways and the use of the surface of water are matters of significance to tangata whenua. No submissions were made by the local runanga on the proposed District Plan Surface of Water Activities provisions.

4.1.2 Functions of Territorial Authorities under the RMA

Section 31 of the RMA states the functions of a territorial authority under that Act. One of the functions, as set out in Section 31(1)(e) is:

“The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes.”

The Surface of Water Activities provisions in the Proposed District Plan include policies and methods intended to manage the actual or potential effects of Surface of Water Activities as well as access to the Invercargill City District's waterways. These provisions fall within the Council's functions under the RMA.

4.1.3 Consideration of alternatives, benefits, and costs

Section 32 of the RMA states the Council's obligations in assessing the alternatives, benefits and costs.

Whilst a Section 32 report was released at the time of notification of the Proposed District Plan, the Council is required to carry out a further evaluation through the hearing, consideration and deliberation process before making its decision on the Plan Change. Section 6 of this report includes my evaluation of any recommended changes to the Proposed District Plan provisions in accordance with Section 32AA.

4.2. Relevant Planning Policy Documents

The RMA specifies a number of documents that need to be considered in a decision on a proposed District Plan and the weight that should be given to these. These are addressed in the following section.

4.2.1 New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement 2010 includes provisions recognising the importance of walking and vehicle access to the coastal marine area. This National Policy Statement is not relevant to the Surface of Water Activities provisions of the Proposed District Plan, which focus on public access to rivers and lakes. The Policies in the Coastal Environment section of the Proposed District Plan refer to public access to the coast and these provisions are covered by the Section 42A report on the Coastal Environment.

4.2.2 National Policy Statements and National Environmental Standards

In accordance with Section 75 of the RMA, a District Plan must give effect to National Policy Statements. Section 44A of the RMA prescribes District Plans must be

amended if a rule conflicts with a National Environmental Standard. There are no National Environmental Standards or National Policy Statements that directly relate to Surface of Water Activities.

However, the National Policy Statement for Freshwater Management makes indirect reference to issues raised in this report. This National Policy Statement is mainly focused on the quality and quantity of freshwater in New Zealand. However, the NPS recognises the need for integrated management of our freshwater resources and highlights the importance of both the regional councils and territorial authorities working together on freshwater issues. There is the potential for Surface of Water Activities to impact on water quality and water quantity and where resource consents are required for activities using the water resource these matters will be considered through the Water provisions in the Proposed District Plan. However, the policy and methods in the Proposed District Plan on Surface of Water Activities do advocate for an integrated approach to addressing public access issues and therefore give effect to the policies in the National Policy for Freshwater Management.

4.2.3 Regional Policy Statement

Under Section 75 of the RMA, a District Plan must give effect to an Operative Regional Policy Statement.

The objectives and policies relating to access to lakes and rivers in the Operative Southland Regional Policy Statement are of greatest relevance to the topic at hand. This includes Objectives seeking to maintain and enhance public access.

The Lakes, Rivers and Wetlands policies in the Operative Regional Policy Statement seek to maintain and enhance access, however they also specify when restrictions on access may be necessary, and acknowledge that there may be occasions when access is not appropriate. One of the main issues raised in submissions is the concern that there are situations where landowners consider access over their property is not viable for a number of reasons. The proposed provisions do give effect to the Operative Regional Policy Statement, however whether the provisions are detailed enough is discussed in more detail in Section 5.1 of this report.

4.2.4 Proposed Regional Policy Statement

In accordance with Section 74, regard needs to be given to any proposed Regional Policy Statement. The Proposed Southland Regional Policy Statement was notified in May 2012.

Access to waterways is raised in the Proposed Southland Regional Policy Statement under the heading of Beds and Rivers and Lakes. The regional policies are focused on a strategic and coordinated approach to identifying priority areas and providing direction about where and when additional access should be established. In the Methods section, the Proposed Southland Regional Policy Statement goes on to state that District Plans shall include provisions identifying locations that are a priority for providing public access through the subdivision and land development process. The Proposed District Plan has not identified priority areas, however the objectives and policies highlight the need to liaise with the regional council and the other territorial authorities within Southland to develop a strategic and co-ordinated approach going forward. Environment Southland has not objected by way of submission to the methodology proposed.

The Proposed District Plan provisions provide for a future opportunity to carry out the Proposed Southland Regional Policy Statement method, should this method be retained through the Regional Council's hearing and decision-making process. It is therefore considered that an appropriate level of regard has been given to the Proposed Southland Regional Policy Statement.

4.2.5 Regional Plan

The Southland Regional Water Plan covers access to river beds and lake beds, with one objective (Objective 12) being maintaining and enhancing access, except in circumstances where public health and safety are at risk. The provisions within the Proposed District Plan are not inconsistent with the Water Plan provisions. As stated above, the Proposed District Plan provisions do not explicitly set out when it may be reasonable not to require improvements of public access to waterways. The term "where possible" in one of the Proposed Objectives could be interpreted so that risks to public health and safety into consideration when making decisions. This approach is not inconsistent with the Southland Regional Water Plan. Whether the Proposed District Plan provisions should be more detailed is discussed in more detail in Section 5.1 of this report, in the discussion of issues raised by submitters.

4.2.6 Iwi Management Plans

Ngai Tahu has lodged an Iwi Management Plan with the Council. The relevant document is the *Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 – The Cry of the People - Te Tangi a Taurira*. Access to waterways is an issue that is raised in a number of clauses of the Iwi Management Plan. For example, in 3.5.7 Subdivision and Development, loss of access to waterways when subdivision occurs adjacent to waterways is identified as an issue, and a policy seeking to maintain and enhance access to waterways of cultural importance to tangata whenua is also included. Addressing this, the Proposed District Plan includes methods requiring esplanade reserves at the time of subdivision.

The General Water policies of the Iwi Management Plan identify access to fresh water resources for cultural and customary use as an issue. The objectives and policies in the Proposed District Plan seek to enable recreational use of the waterways and the proposed rules place more restrictive activity status on activities that may affect these opportunities or that may have greater adverse amenity effects.

The issues and policies of the Iwi Management Plan have been had regard to in the development of the Proposed District Plan provisions in the objectives, policies and methods of implementation.

5. ANALYSIS OF SUBMISSIONS

Eleven points of submission and four points of further submission have been lodged commenting on, supporting and opposing the Surface of Water Activities provisions.

The key issues raised in the submissions are:

1. Public access over private property
2. Use of regulatory methods as means of maintaining and enhancing public access
3. The need for a 'strategic approach' to the retention or creation of public access
4. Involvement of landowners when developing brochures on public access

5.1 Public access over private property

Federated Farmers raised concerns in their submission (88.15) about access on or across private property and considered that it will not always be necessary or appropriate for public access to waterways to be provided. They also consider that where access is available, the provisions need to make it clear that landowner permission is required before any private land is accessed.

5.1.1 Vandalism, stock disturbance and other misdemeanours

Concerns were raised by the general public during consultation on the Proposed District Plan about public access over private property. These concerns were similar to those raised by Federated Farmers in its submission, including stock disturbance, vandalism, spread of disease and littering. These concerns are valid and there is the risk that these types of problems will result from public access on or adjoining private property.

However, it should be noted that formal esplanade strip and access strip easement instruments specify a number of activities that are prohibited on land over which the esplanade strip or access strip has been created (see clauses 1 and 2 Schedule 10 of the RMA). The activities of concern to the submitter and to landowners are prohibited activities under the access agreements.

The issue then is not the access itself, but enforcement of the conditions of the access and making the public aware of their rights and obligations. Landowners need to also be educated of their rights should any problems occur. Educating the public, through the development and dissemination of information brochures and signage, for example, are methods to counter these effects. These methods are included in the Methods of Implementation in the Proposed District Plan.

5.1.2 When access may not be appropriate or necessary

Federated Farmers considers that the plan provisions should reflect that access may not always be necessary or appropriate (88.15). Issue 4 of the Proposed District Plan acknowledges that there can be operational requirements of activities that restrict potential for access to, along and across some waterways. Objective 2 seeks improvement of public access to waterways "where possible". The Proposed District Plan policies and explanations, however, do not mention situations where improvements to access may not be possible.

There may be situations where public access should be restricted and where access strips and esplanade instruments are not appropriate or should be restricted in scope.

The Proposed District Plan acknowledges that access is not appropriate in the Island Harbour area of the Seaport Zone and the Smelter Zone by stating that in these areas esplanade strips will not be required. I acknowledge that there may be health and safety and operational requirements of other activities in the District that may also make public access inappropriate. These situations should be considered on a case by case basis.

The question at hand is whether Policy 2 in the Surface of Water Activities section should be amended to acknowledge that such situations where access is withheld may occur. Federated Farmers have suggested wording to include in Policy 2. Other options could include a repetition of the term “where possible” from the Objective, or it could be a more detailed list as in Policy 6.5 Lakes, Rivers and Wetlands section of the Operative Regional Policy Statement. That policy lists the following reasons where restrictions may be necessary to:

- a. protect important amenity and ecological values
- b. protect sites important to tangata whenua
- c. avoid adverse environmental effects
- d. protect the integrity of flood alleviation or river management works
- e. protect rare and/or endangered species
- f. protect public health and safety; and
- g. provide for national security needs.

There are a number of valid reasons where access may not be appropriate and if this is to be acknowledged in the District Plan, then some guidance on what these reasons may be, would be useful.

I believe the relief sought by Federated Farmers, stating that landowners have a right to decline access, would be misleading and inappropriate. Private property rights should not be promoted in the District Plan as the sole reason for restricting access. Whilst the landowner does have rights, these also need to be weighed against the public benefits of public access to waterways, and where an esplanade agreement has been formally reached this will in most cases suffice for permission to access.

If the public are accessing private property where no access strip easement or esplanade instrument exists, or if they are accessing the property outside the terms of the esplanade instrument, then the landowner has the right to decline access and permission should be sought from the landowner prior to entering their private property. Where a formal public access agreement is in place and the public are acting within the terms of the access or esplanade instrument then that document will prevail.

5.1.3 Recommendation

My preference is that Policy 2 be amended to include the term “where possible” to follow on from the relevant Issue and Objective. To complement this, I recommend that the explanation paragraph should detail some of the reasons that could be considered for restricting public access. This list could mirror the list included in Policy 6.5 of the Operative Regional Policy Statement, as outlined above.

5.2 Use of regulatory methods as means of maintaining and enhancing public access

In its submission, Federated Farmers (88.16) opposes using the subdivision process to address access issues and considers that non-regulatory means should be used to secure access to waterways. They also consider that the landowners buy-in is necessary to ensure successful access arrangements.

There is some merit in the submitter's argument. For public access to be successful, where private property is involved, the buy-in of the landowner and occupier is vital to ensure public access that is well connected, functional and readily identifiable. Improvements to the publicly available resources, pamphlets, signs and mapping, as suggested in submission 88.16, are important non-regulatory tools to highlight the users' responsibilities and landowner details and rights. Esplanade strips, esplanade reserves, easements and access strips can also all be created on a voluntary basis. Encouraging these through non-regulatory means would have some result.

However, public access to waterways is considered a matter of national importance in the RMA. Objectives and policies in both the operative Regional Policy Statement and the Proposed Regional Policy Statement seek the maintenance and enhancement of public access. Non-regulatory methods alone would not be sufficient to address the importance of this matter and to give effect to the Objectives in the Proposed District Plan.

Unlike Federated Farmers, I believe that the subdivision process is an ideal time for the landowners to discuss access issues with the Council and to address it as part of any subdivision of land adjoining rivers and lakes. The best time to consider any requirement for formal esplanade strips is at the time of subdivision. This process provides an opportunity to make formal provision on Certificates of Title for public access to waterways. The RMA includes quite detailed provisions relating to esplanade reserves and esplanade strips in ss229-237H with a requirement that this be considered at the time of subdivision. Whilst the RMA provisions do provide an opportunity for councils to opt out of requirements for esplanade strips or to alter requirements, I believe including provisions in the Proposed District Plan to require esplanade strips at the time of subdivision gives the Council a practical opportunity to utilise these formal tools to maintain and enhance access.

The resource consent process provides an opportunity for the parties to negotiate access agreements that work for both the landowner and the public. Landowners can provide reasons for not including esplanade strips as part of a resource consent application and decisions on these matters can be made on a case by case basis. The RMA provisions and the subdivision consent process also enable the Council and landowners to alter the esplanade requirements where necessary. Pursuant to Section 237C of the RMA, an esplanade strip instrument can detail situations and times where an esplanade strip may be closed to the public, so long as any closure is adequately notified to the public by signs erected at all entry points. Landowners can also apply at a later stage to cancel or vary an esplanade strip under Section 234 of the RMA.

5.2.1 Recommendation

I believe addressing public access at the time of subdivision provides an opportunity for landowners and the Council to discuss the issue and to find a solution that addresses this matter of national importance in a way that landowners have some

input on. A mix of both regulatory and non-regulatory methods is appropriate and I recommend that the amendment to Policy 3 as sought by Federated Farmers in submission 88.16 to restrict the Council's approach to public access to just non-regulatory methods is not accepted.

5.3 The need for a “strategic approach” to the retention or creation of public access

The Proposed Southland Regional Policy Statement encourages local authorities to collaborate to develop a strategy to guide decisions on enhancing public access in the region. Policy 3 Liaison in the Proposed District Plan gives effect to this. Federated Farmers in its submission (88.16) states that they support Council liaising with Environment Southland and others to develop a strategic and co-ordinated approach to public access. However, in the relief sought, Federated Farmers is seeking the removal of the term “strategic” from Policy 3. No reason has been provided for the removal of this phrase from Policy 3.

A co-ordinated and strategic approach will enable the local authorities to not only work together but also to focus on priority areas where public access is considered most important or where improvements can best be made. A strategic approach will ensure that the local authorities' resources are used as efficiently and effectively as possible. I recommend that the words “strategic and” are retained in Policy 3 as notified.

5.4 Involvement of landowners when developing brochures on public access

One of the methods of implementation set out in Section 2.15.4 is a non-regulatory method of producing and disseminating brochures on the provision of public access. Federated Farmers in its submission 88.17 would like to see this method expanded to ensure that landowners are consulted in the development of these documents.

I agree that there is merit in consulting with landowners as there are often conditions on access agreements that may need to be portrayed in the information documents. There are also a number of other interest groups that could potentially be involved in developing information brochures, such as tangata whenua, Environment Southland, Department of Conservation, Fish and Game and the New Zealand Historic Places Trust.

Method 4 is drafted in reasonably broad terms. Whilst it does not include mention of any interest group that should be involved, it does not exclude them either. If land owners are identified then so should the other potentially significantly affected parties. The wording of the proposed Method 4 is consistent with the methods proposed throughout the Proposed District Plan and I recommend that the wording is retained as notified.

5.5 Minor Amendment

I also recommend a change to the heading of Section 2.15 in response to a further submission by Environment Southland. Whilst the matter raised in the further submission is outside the scope of the original submission, it is considered that the change is a minor amendment that will result in no consequence to the intention and outcome of the provisions. The amendment will ensure that the Plan is user-friendly. The further submission notes that the policies and objectives cover both surface of

water activities and access to waterway issues and that the heading should make reference to both of these matters. It is considered that the effects of the amendment are so minor that the amendments can be made at this stage under clause 16 (2) of the First Schedule to the RMA.

6. DISCUSSION OF SECTION 32 MATTERS

Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan. This requires the preparation of an Evaluation Report. This section of the RMA was recently amended (since the notification of the Proposed District Plan) and the following summarises the current requirements of this section.

The first step of Section 32 requires that objectives are assessed to determine whether they are the most appropriate way to achieve the purpose of the RMA (as defined in Section 5).

The second step is for policies and rules to be examined to determine whether they are the most appropriate way to achieve the objectives. In this instance, the objectives are those in the Proposed District plan. This assessment includes requirements to:

- Identify the costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions (including effects on employment and economic growth)
- Identify other reasonably practicable options for achieving the objectives; and
- Assess the efficiency and effectiveness of the provisions in achieving the objectives.

Section 32AA of the RMA requires a further evaluation to be released with the decision. This further evaluation is to outline the costs and benefits of any amendments made after the Proposed District Plan was notified.

Section 32 states that the Evaluation Reports need to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal. This means that if, in its decision the Hearings Committee recommends minor changes from what was in the Proposed District Plan, a further evaluation can be relatively brief.

6.1 Relevant Section 32AA Matters

This section of the report evaluates the recommended changes to the policies and explanations on Surface of Water Activities. No amendments to methods of implementation, including rules, have been recommended. The amendments evaluated in this report are:

- Acknowledgement in the policies of circumstances where access to waterways is not possible (amendment to 2.15.3 Policy 2 – Public access)

The detail of the proposed changes to which this evaluation refers are set out in Appendix 2.

6.2 Section 32AA Further Evaluation

Surface of Water Activities are covered in the Surface of Water Activities section of the original Section 32 Evaluation Report, and indirectly in the Subdivision section. The recommended amendments are only minor changes and do not raise any significant matters outside the original evaluation report.

No changes to Objectives are recommended. As stated in the original Section 32 report, the Objectives as proposed are relevant and address the issues in a way that achieves the purpose of the RMA, particularly as they relate to land use and its effects on amenity values and to public access to waterways.

The recommended amendment to Policy 2.15.3 Policy 2 carries the wording on from the Objective through to the policies, which acknowledges that there are situations where public access is not possible. The amended policy continues to support the maintenance and enhancement of public access but will support landowners, the Council and interest groups to work together on a case-by-case basis to determine the most appropriate course of action. Supporting the policy with an explanation will further aid discussions and decisions on public access arrangements. The recommended policy also provides support for the esplanade rule, which acknowledges that in the Seaport and Smelter Zones access may not be possible and esplanade strips will not be required.

Due to the minor nature of the recommended changes, it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes. It is sufficient to state the amendment to 2.15.3 Policy 2 will ensure that the approach to public access is consistent through the Objectives, Policies and Rules of the District Plan. Whilst still favouring the maintenance and enhancement of access and acknowledging that public access to waterways is a matter of national importance and is valued by the wider community, the recommended amendment will enable landowners to enter into discussions with the Council around potential access requirements and conditions. Acknowledging logistical and practical limitations to access will ensure that matters such as the health and wellbeing of the community and any economic and operational requirements of the landowners are considered along with the benefits of public access. The recommended amendment to 2.15.3 Policy 2 is considered preferable to the alternatives of adopting the provisions as notified and those alternatives supported by submitters which are not recommended to be accepted.

7. CONCLUDING COMMENTS

The provisions in the Proposed District Plan reflect the importance of access to waterways and the use of the surface of waterways to the Invercargill City District and to New Zealand overall.

The Proposed District Plan sets out a mixed regulatory and non-regulatory approach to the issue and in the most part the provisions should be retained as notified. I have recommended no changes to the Issues, Objectives, Methods of Implementation and Rules.

I do, however, recommend that Section 2.15.3 Policy 2 - Public Access be amended to acknowledge that there may be situations where public access to waterways is not possible. This will not only carry through the approach proposed in the Objectives and support the proposed esplanade rule framework, but will also enable private property owners to enter into conversations with Council to discuss possible restrictions to access arrangements where appropriate.

The amendment to the title of Section 2.15 will result in a more user-friendly plan.

APPENDIX 1: RECOMMENDATIONS ON SUBMISSIONS

Submitter	Submission	Recommendation
GENERAL		
117.9 Southern District Health Board	<p>The submitter believes that the Council does an excellent job of managing the Sandy Point reserve and the work done to maintain access ways at the reserves</p> <p>DECISION SOUGHT Not stated</p>	<p>Comment noted</p> <p>The submission point is a general comment on the Council's operations. No amendment to the District Plan is required as a result of accepting this submission.</p>
FS34.11 ICC - Environmental Health and Compliance Services	<p>Support submission 117.9</p> <p>The further submitter states that the Council manages the accessways at the reserves and that it is aware of the safety factors for recreational surface water activities, as identified in the issues of the Proposed District Plan</p> <p>DECISION SOUGHT Not stated</p>	<p>Comment noted</p> <p>See reasons outlined for submission 117.9 above</p>
117.10 Southern District Health Board	<p>The submitter would like to raise the possibility of public transport options to Sandy Point and Oreti Beach for selected weekends during the spring and summer months</p> <p>DECISION SOUGHT Consider public transport out to Sandy Point and Oreti Beach</p>	<p>Comment noted</p> <p>The submission point is not a resource management issue that can be specifically advocated for in the District Plan. This submission is best suited to the Annual Plan process.</p>
117.21 Southern District Health Board	<p>The submitter would like to see issues of water quality addressed which would improve the health of the public and increase the enjoyments for people participating in recreational water activities</p> <p>DECISION SOUGHT The submitter would like to see issues of water quality addressed which would improve the health of the public and increase the enjoyments for people participating in recreational water activities</p>	<p>Reject</p> <p>Whilst it is acknowledged that surface of water activities can affect water quality, provisions covering water quality issues are covered in the Proposed District Plan under the heading of Water. It is not considered necessary to repeat these provisions under the Surface of Water Activities section of the Proposed District Plan.</p>

Submitter	Submission	Recommendation
FS6.3 Alliance Group Limited	<p>Oppose submission 117.21 While the further submitter agrees that it is appropriate to take measures to improve public health, it considers that water quality and freshwater management are functions of regional councils and that it is unnecessary to duplicate that function within the Proposed Plan</p> <p>DECISION SOUGHT Not stated</p>	<p>Accept</p> <p>The Council's function includes consideration of the effects of land use, and land use can affect water quality and water quantity. In this respect consideration of water quality and freshwater management is a function of the Council. However, water quality and freshwater management are covered in the Proposed District Plan under the heading of Water. It is not considered necessary to repeat these provisions under the Surface of Water Activities section of the Proposed District Plan</p>
SECTION 2.15 SURFACE OF WATER ACTIVITIES		
2.15.1 Issues and 2.15.2 Objectives		
117.18 Southern District Health Board	<p>The submitter supports the Council's awareness of safety factors for recreational surface of water activities as identified in the Issues, and specifically Issue 1. The submitter is also highly supportive of Objectives 1 and 2.</p> <p>DECISION SOUGHT Support Issue 1 and Objectives 1 and 2</p>	<p>Accept</p> <p>Retain Issue 1 and Objectives 1 and 2 as notified.</p>
FS34.12 ICC - Environmental Health and Compliance Services	<p>Support submission 117.18 The further submitter states that the Council manages the accessways at the reserves and that it is aware of the safety factors for recreational surface water activities, as identified in the issues of the Proposed Plan</p> <p>DECISION SOUGHT Not stated</p>	<p>Comment noted</p> <p>See reasons outlined for submission 117.9 above</p>
77.45 Te Runaka o Waihopai and Te Runaka o Awarua	<p>Support Objective 1 and 2</p> <p>DECISION SOUGHT Retain</p>	<p>Accept</p> <p>Retain Objectives 1 and 2 as notified</p>

Submitter	Submission	Recommendation
2.15.3 Policies		
77.46 Te Runaka o Waihopai and Te Runaka o Awarua	Support Policies 1, 2 and 3 DECISION SOUGHT Retain	Accept in part Retain Policy 1 and 3 as notified. Amend Policy 2 and its explanation as detailed below under submission 88.15.
88.15 Federated Farmers	Support in part Policy 2 – Public Access The submitter explains that private landowners have a number of concerns when it comes to allowing access on or across their property and considers that it will not always be necessary or appropriate for public access to waterways to be provided and this must be reflected within any plan provisions. Where such access is appropriate, the submitter believes it needs to be clearly recognised that landowner permission is required before any private land is accessed. DECISION SOUGHT Amend the wording of the policy as follows: Policy 2 Public access: To maintain and enhance public access to the waterways of the district, <u>while respecting landowners right to decline access.</u>	Accept in part Public access to waterways is a matter of national importance in the RMA. Opportunities to maintain and enhance public access should be encouraged and the importance of maintaining and enhancing access should be recognised in the District Plan provisions. However, it is acknowledged that there may be valid reasons for restricting access to some areas. Proposals which seek to reduce existing public access ideally should be considered on a case-by-case basis. Amend Policy 2 and explanation as follows: Policy 2 Public access: To maintain and enhance <u>where possible</u> public access to the waterways of the district. Explanation: <i>The provision of access to the margins of rivers and lakes is a matter of national interest and the public has traditionally enjoyed access to many of the waterways in the district for recreation. It is therefore important that this access be maintained and enhanced. Public ownership of the margins of the main waterways in the city along with the use of instruments such as esplanade strips are key methods of ensuring continued access to these resources.</i> <u>In certain areas and/or at certain times of the year the provision of public access to waterways is not</u>

Submitter	Submission	Recommendation
		<p><i>appropriate or possible. Restrictions to access should be determined on a case-by-case basis in order to:</i></p> <ol style="list-style-type: none"> a. <i>protect important amenity and ecological values;</i> b. <i>protect sites important to tangata whenua</i> c. <i>avoid adverse environmental effects</i> d. <i>protect the integrity of flood alleviation or river management works</i> e. <i>protect rare and/or endangered species</i> f. <i>protect public health and safety; and</i> g. <i>provide for national security needs.</i>
<p>88.16 Federated Farmers</p>	<p>Support in part Policy 3 – Liaison</p> <p>The submitter supports Council liaising with ES and others to develop a strategic and co-ordinated approach to public access. However, the submitter does not support Council addressing the issue of access to rivers and lakes at the time of subdivision, or by Environment Southland when considering effects of activities in river and lake beds.</p> <p>The submitter believes that Council can best ensure enduring legal access rights to waterways are secured and that private landowners have buy-in to the process for the future if they ensure that any access to the District's waterways across private land is managed appropriately and respectfully, including improving the publicly available resources, pamphlets, signs and mapping to ensure user responsibilities and landowners details and rights are clearly shown and known.</p> <p>DECISION SOUGHT Amend the wording of the policy as follows:</p> <p>Policy 3 Liaison: To liaise with Environment Southland and the region's other territorial authorities to develop a strategic and co-ordinated and <u>non-regulatory</u> approach to the retention or creation of public access to the waterways of the district</p>	<p>Reject</p> <p>Access to waterways is a matter of national importance. I accept that non-regulatory options have benefits but they should not be relied on as the sole means of securing access. There are options through regulatory means of addressing access issues. One of the best times to secure access arrangements is at the time of subdivision and the resource consent process provides an opportunity for the Council and the landowners to discuss the need for access and any possible reasons for restrictions and any conditions that may be necessary. The policy should not be amended to narrow Council's approach to just non-regulatory approaches.</p> <p>The submission supports a strategic and coordinated approach to public access, and there is nothing in the submission that justifies removal of the words "strategic and". A strategic approach will ensure that local authorities can work together to ensure that resources target priority areas.</p> <p>It is recommended that Policy 3 Liaison remain as notified</p>

Submitter	Submission	Recommendation
<p>FS39.20 Environment Southland</p>	<p><i>Oppose submission 88.16</i></p> <p>The further submitter considers that the approach to the retention or creation of public access to the waterways of the District should be strategic, as stated in the policy, not ad hoc or haphazard. This is consistent with Method BRL.7 of the Proposed RPS. They further consider that regulatory as well as non regulatory mechanisms should be considered as a means of providing public access.</p> <p>The further submitter notes that Policy 3 (and Policy 2) of Section 2.15 are largely about public access rather than “surface of water activities” as the Section is named. They suggest amending the title to provide greater clarity about the content of this section.</p> <p><i>DECISION SOUGHT</i> Disallow decision sought.</p>	<p><i>Accept in part</i></p> <p>A mixed regulatory and non-regulatory approach provides a framework to enable the use and development of the surface of water and to maintain and enhance access to waterways, while safeguarding environmental quality. It is recommended that the policy remain as notified, both retaining the strategic approach and continuing a mixed regulatory and non-regulatory approach.</p> <p>The comments in the further submission about the title of the “Surface of Water Activities section is noted. While this is a matter that is outside the scope of the original submission, it is considered that a change to the title of this section could be made under cl16(2) of Schedule 1 of the RMA as a minor amendment. Changing the title will not have any effect on the intention or the detail of the Objectives and Policies, but would aid users in the Plan to identify what matters are covered in this section of the Proposed District Plan. There are links between the use of the surface of waterways and access to them which justify these provisions sitting under the same heading.</p> <p>It is recommended that the title to section 2.15 be amended to read as follows:</p> <p><u>2.15 Surface of Water Activities and Access to Waterways</u></p>

Submitter	Submission	Recommendation
2.15.4 Methods		
88.17 Federated Farmers	<p>Support in part Method 4. The submitter believes that organisations representing farmers' interests must be consulted when brochures are developed on the provision of public access to waterways, and that the public should be educated about landowners' rights and concerns in regards to public access.</p> <p>DECISION SOUGHT Amend the wording of the method as follows:</p> <p>Method 4 Production and dissemination of brochures on provision of public access, <u>in discussion with land owners as a significantly affected party.</u></p>	<p>Reject</p> <p>It is acknowledged that there is merit in consulting with landowners when carrying out education on access to waterways. However, Council would be remiss to include landowners as the only party to be consulted with. There are a number of other interested parties that ideally should be involved in the production of information brochures. The method of implementation is drafted in broad terminology that, whilst it does not explicitly include any of these interested parties, does not exclude them either.</p>
SUBDIVISION		
2.14.3 Policies		
77.44 Te Runaka o Waihopai and Te Runaka o Awarua	<p>Support Policy 11 – Public Access</p> <p>RELIEF SOUGHT: Retain</p>	Accept
3.18 Rules		
18.101 Environment Southland (part thereof)	<p>Support 3.18.4(P)</p> <p>RELIEF SOUGHT: Retain “3.18.4(P) The extent to which the proposed subdivision retains and enhances public access to and along the coast and along the margins of streams and rivers” as a matter to be taken into account</p>	Accept

APPENDIX 2: RECOMMENDED CHANGES TO THE PROPOSED DISTRICT PLAN

(Underline indicates recommended additions, strikethrough indicates recommended deletions.)

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.14 Subdivision

Objective 11: Public access to and along the coast and along the margins of streams and rivers is retained and enhanced.

Policy 11 Public Access: To maintain and enhance through the subdivision process, public access to and along the coastline, waterways and public space of Invercargill.

***Explanation:** Recognition and provision for the enhancement of public access to and along the coastal marine area and rivers and lakes is a requirement of the RMA. Improved access to the coast, rivers, lakes, conservation estate and other public spaces can be achieved at the time of subdivision through a range of mechanisms.*

2.15 Surface of Water Activities and Access to Waterways

2.15.1 **Issues** (Page 2-54) – No change

2.15.2 **Objectives** (Page 2-55) – No change

2.22.3 **Policies**

Policy 1 Recreational activities (Page 2-55) – No change

***Explanation:** (Page 2-55) – No change*

Policy 2 Public Access (Page 2-55): To maintain and enhance where possible public access to the waterways of the district.

***Explanation** (Page 2-55): The provision of access to the margins of rivers and lakes is a matter of national interest and the public has traditionally enjoyed access to many of the waterways in the district for recreation. It is therefore important that this access be maintained and enhanced. Public ownership of the margins of the main waterways in the city along with the use of instruments such as esplanade strips are key methods of ensuring continued access to these resources.*

In certain areas and/or at certain times of the year the provision of public access to waterways is not appropriate or possible. Restrictions to public access should be determined on a case by case basis in order to:

- a. *protect important amenity and ecological values;*
- b. *protect sites important to tangata whenua*
- c. *avoid adverse environmental effects*
- d. *protect the integrity of flood alleviation or river management works*

- e. protect rare and/or endangered species
- f. protect public health and safety; and
- g. provide for national security needs.

Policy 3 Liaison (Page 2-55) – No change

Explanation (Page 2-55) – No change

2.15.4 Methods of Implementation (Page 2-55) – No change

SECTION THREE - RULES

3.18 Subdivision (Page 3-32)

3.18.4 Applications under Rule 3.18.3 above shall address the following matters which will be among those taken into account by the Council: ...

(P) (Page 3-34) No change

Esplanade Strips

3.18.8 (Page 3.35) No change

3.18.9 (Page 3.35) No change

3.18.10 (Page 3.35) No change

3.18.11 (Page 3.36) No change

3.18.12 (Page 3.36) No change