



**PROPOSED FAR NORTH DISTRICT PLAN**  
**RECOMMENDATIONS OF THE INDEPENDENT HEARINGS**  
**PANEL**  
**RECOMMENDATION REPORT 5**  
**HEARING 5: Public Access and Activities on the Surface of**  
**Water**

**March 2026**

## **Recommendation Report 5**

Recommendation Report 5 is to be read in conjunction with the **Preamble Report** and **Recommendation Reports 1, 16 and 17**.

**Recommendation Report 5** contains the Panel's recommendation on: Part 1 – Introduction and General Provisions, Tangata Whenua, and Part 2 - Strategic Direction. It also contains the Panel's recommendations on a number of miscellaneous matters.

**Recommendation Report 5** also contains consequential amendments resulting from recommendations from other recommendation reports.

**Recommendation Report 5** contains the following appendices:

**Appendix 1:** Schedule of Hearing Attendances

**Appendix 2:** Hearings Panel Recommended Amendments to the PDP – tracked from the notified version (provisions not subsequently renumbered) including:

**Appendix 2.1:** Public Access

**Appendix 2.2:** Activities on the Surface of Water

**Appendix 3:** Summary table of the Hearings Panel recommended decisions on each submission point including:

**Appendix 3.1:** Recommended Decisions on Submissions – Public Access

**Appendix 3.2:** Recommended Decisions on Submissions - Activities on the Surface of Water

The Independent Hearings Panel for this hearing comprised of Robert Scott – Independent panel member and Chairperson; Peter Kensington - Independent panel member, Kelly Stratford – Council member.

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# RECOMMENDATION REPORT 5

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## 1. Introduction

### 1.1 Report Structure

This is **Recommendation Report 5** prepared by the Independent Hearings Panel appointed to hear and make recommendations with respect to submissions and further submissions lodged on the Proposed Far North District Plan (**PDP**).

This recommendation report makes findings and recommendations relating to submissions on the provisions in the following parts, sub-parts, chapters and sections of the PDP.

PDP Part	PDP Sub-Part		PDP Chapter or Provisions
<b>Part 2 – District-Wide Matters</b>	Natural Values	Environment	Public Access
	General Matters	district-Wide	Activities on the surface of water

### 1.2 Section 32AA of the RMA

The requirements in clause 10 of the First Schedule of the Act and s32AA RMA are relevant to our considerations of the PDP provisions and the submissions received on those provisions. These are outlined in full in the **Preamble Report**.

We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council’s s42A RMA authors, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments within or attached to the relevant s42A Reports, provided within evidence for submitters, and/or within the Right of Reply Reports. Those reports are part of the public record and are available on the Council website.

Where our recommendation differs from the s42A authors’ recommendations, we have incorporated our own s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.

As per Section 4.2 of the **Preamble Report** where we generally agree with the Council recommendations relating to the relief sought by those submitters who did not wish to speak at the hearing, we have concluded that these matters are not in contention. In that regard, we have focussed our discussion in this recommendation report on those submitters who presented evidence to us.

### 1.3 Consequential Amendments

This recommendation report contains consequential amendments, including to or from other plan chapters. These are discussed further in this report.

## 2. Procedural Issues

### 2.1 National Planning Instruments

As discussed in section 3.2 and 3.3 in the **Preamble Report**, where any national policy or environmental standard was notified prior to the hearing these provisions have been incorporated in the hearing report and addressed at the hearing and in our evaluations and recommendations. With regard to the ten national policy statements and environmental standards that came into effect on 15 January 2026 (i.e. after all hearings had been completed), we have determined (following legal advice) that the Council can only give effect to those documents through a Schedule 1 variation or plan change process. See also Minutes 40-42 which address this matter.

## 3. Topic 1: Public Access

### 3.1 Relevant Provisions

The relevant provisions we address in this recommendation report for this topic relate to:

- Public Access – Overview
- Objectives PA-O1 and PA-O2
- Policies PA-P1 to PA-P5.

### 3.2 Overview of Submissions Received

A total of 14 original submissions (74 submission points) and 18 further submissions (258 further submission points) were received on the Public Access chapter.

As set out in the hearing report, the majority of submissions on the public access topic came from:

- a) Community interest groups
- b) Iwi and Hapu groups
- c) Business and private landowners
- d) Local residents<sup>1</sup>
- e) Northland Federated Farmers of New Zealand<sup>2</sup>

The key issues identified for this topic are set out below:

- Key Issue 1: Esplanade reserves for land use applications
- Key Issue 2: Protection of ecological values
- Key Issue 3: Esplanade Priority Areas
- Key Issue 4: Waiving of Esplanade Reserve requirements

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<sup>1</sup> Lynley Newport (S98)

<sup>2</sup> 'Federated Farmers' (S421)

- Key Issue 5: Tangata whenua relationship with water
- Key Issue 6: Alignment with Subdivision provisions
- Key Issue 7: Esplanade Strips
- Key Issue 8: Private property rights
- Key Issue 9: Policy framework (not addressed elsewhere)

### 3.3 Key Issue 1 - Esplanade Reserves for Land Use Applications

#### 3.3.1 Matters Raised in Submissions and Evidence

Submissions received on this Key Issue<sup>3</sup> seek that esplanade reserves be required for land use activities (not just for subdivision). The reasons provided in the submissions are that the proposed approach (voluntary creation of esplanade reserves for land use activities) overlooks opportunities for improved access to waterbodies and the coast.

We received evidence from Vision Kerikeri, Our Kerikeri Community Trust, Carbon Neutral Trust, and Kapiro Conservation Trust. These groups presented a joint submission to us at the hearing.

The substance of the evidence was that, while esplanade reserves are triggered by subdivisions (less than 4ha in area), some large land use applications (such as retirement villages) should also be subject to the taking of an esplanade reserve. The evidence noted that the PDP currently only encourages the voluntary creation of esplanade reserves as set out in Policy PA-P5 which states as notified:

*Encourage the voluntary creation of esplanade reserves for land use activities where it:*

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

These submitters sought that the requirement for an esplanade reserve should apply to land use applications (not just subdivision). In particular, they sought that it should be

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<sup>3</sup> Kerikeri Community Charitable Trust (S272.016-017), Kapiro Conservation Trust (S445.015-016), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.017-018) and Carbon Neutral NZ Trust (S529.186-187)

obligatory in consents for retirement villages and similar developments that occur without subdivision.

### 3.3.2 Hearings Panel Evaluation

The hearing report highlighted that the approach taken in the PDP was not to require esplanade reserves for land use activities, as these can only be taken as a financial contribution by way of a condition on a land use consent if there are rules in the District Plan about financial contributions as per section 108(9) of the RMA. The reporting officer added that the PDP does not include financial contributions, which means esplanade reserves cannot be taken as a financial contribution by way of a condition on a land use consent (under s108(9) of the RMA).

Further to that, we were advised that the PDP does not currently include any ability for the Council to collect financial contributions nor does it have a similar Development Contributions policy under the Local Government Act. We were further advised by the reporting officer that the Council is currently investigating the appropriateness of a District-wide financial/development contributions policy in some form.

Subsequent to this hearing, the Council has resolved to introduce a development contributions policy to the PDP<sup>4</sup>. This new policy was adopted by the Council at its Extraordinary Meeting on 7 October 2025. The new policy will take effect from 29 May 2026. With regard to the potential for a rule to take an esplanade reserve associated with a land use development, we were advised that the adopted development contributions policy would allow for esplanade reserves or strips as a development contribution for land development.

At the hearing, the submitters acknowledged that the Council is working toward adoption of financial or development contributions. As an interim measure they proposed additional wording to identify and encourage specific methods such as voluntary contribution (without Council compensation) and third party funding.

While we acknowledge that the PDP already provides support and encouragement for the voluntary creation of esplanade reserves for land use activities, we are of the view that more specific reference can be made to the voluntary options available as an interim measure.

We invited the submitters to provide wording to us and this was received as supplementary evidence following the hearing. The reporting officer has considered the wording suggested and has recommended that additional wording can be added to the Overview section of the Public Access Chapter as follows:

*In cases where an esplanade is not required by the District Plan provisions, esplanades may be created by other methods. For example, a landowner may agree to provide an esplanade reserve or strip voluntarily (section 235 of the RMA) or a third party (such as a community group) may assist with funding a reserve.*

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<sup>4</sup> See - [https://www.fndc.govt.nz/\\_data/assets/pdf\\_file/0021/47802/ADOPTED-FINAL-Utu-Whakawhanake-Development-Contributions-Policy-2025-October-7-CM2.pdf](https://www.fndc.govt.nz/_data/assets/pdf_file/0021/47802/ADOPTED-FINAL-Utu-Whakawhanake-Development-Contributions-Policy-2025-October-7-CM2.pdf)

Having considered both the wording suggested by the submitters and the Council version we find that the proposed Council wording is preferred and will better achieve the relief sought by the submitters. We are also of the view that this approach is consistent with the adopted development contributions policy.

We, therefore, recommend that the Overview section be amended accordingly.

### 3.3.3 Hearings Panel Recommendations

We recommend accepting in part submissions S272.016 S272.017, S445.015, S445.016, S523.017, S523.018, S529.186 and S529.187 (as set out in **Appendix 3.1**), insofar as the provisions are not amended to require esplanade reserves for land use consents, however they already provide for “other methods” of creating esplanades, and the ‘Overview’ section is amended to provide guidance on these matters.

The recommended amendments are to include the following additional wording in the Overview section of the Public Access chapter:

*In cases where an esplanade is not required by the District Plan provisions, esplanades may be created by other methods. For example, a landowner may agree to provide an esplanade reserve or strip voluntarily (section 235 of the RMA) or a third party (such as a community group) may assist with funding a reserve.*

## 3.4 Key Issue 2 - Protection of Ecological Values

### 3.4.1 Matters Raised in Submissions and Evidence

Submitters<sup>5</sup> sought amendments to the Public Access chapter to include provision for the protection of indigenous species that are classified as threatened or at risk under the Department of Conservation New Zealand Threat Classification System (**NZTCS**) and for areas with significant ecological values.

### 3.4.2 Hearings Panel Evaluation

We heard evidence from Vision Kerikeri, Our Kerikeri Community Trust, Carbon Neutral Trust, and Kapiro Conservation Trust (in a combined presentation) that the PDP provisions on the protection of indigenous biodiversity are not sufficient at present, particularly with regard to the aspects identified in Appendix 5 of the Regional Policy Statement.

The Council hearing report stated the PDP chapter on biodiversity will provide sufficient protection for areas with significant ecological values and did not recommend any further changes for the following reasons:

1. The objective of the Public Access chapter in the PDP is to protect, maintain and enhance public access to and along the coastal marine area and waterbodies (Objective PA-O1);

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<sup>5</sup> Kerikeri Community Charitable Trust (S272.023-024), Kapiro Conservation Trust (S445.017-018), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S523.019-020) and Carbon Neutral NZ Trust (S529.192-193)

2. The Ecosystems and Indigenous Biodiversity chapter provides protection to indigenous species; and
3. The Public Access provisions already refer to indigenous biodiversity values. Amendments to the Public Access chapter to provide greater protection to indigenous species (as sought) would create unnecessary duplication with the provisions of the Ecosystems and Indigenous Biodiversity chapter which is not an efficient or effective approach.<sup>6</sup>

Having considered the evidence of Vision Kerikeri, Our Kerikeri Community Trust, Carbon Neutral Trust, and Kapiro Conservation Trust, and in response to our questions, the reporting officer stated that the PDP could be improved by amendments to Objective PA-O2 that better recognises the role of esplanades in protecting, maintaining or enhancing ecological or natural values. The recommended amendments are as follows:

*Public and customary access to and along the coastal marine area and waterbodies is provided in a way that considers<sup>7</sup> ~~assists with the management of natural hazard risks~~, and supports<sup>8</sup> the preservation of natural character, indigenous biodiversity, historic heritage, cultural and landscape values.*

We agree to these amendments on the basis that Objective PA-O2 would better recognise and acknowledge that public access is provided in a way that considers natural hazard risks, and supports the preservation of natural character, indigenous biodiversity, historic heritage, cultural and landscape values.

### **3.4.3 Hearings Panel Recommendations**

The Hearings Panel recommend that objective PA-O2 is amended to read as follows:

*Public and customary access to and along the coastal marine area and waterbodies is provided in a way that considers ~~assists with the management of natural hazard risks~~, and supports the preservation of natural character, indigenous biodiversity, historic heritage, cultural and landscape values.*

Accordingly, the Hearings Panel recommends accepting in part submissions S272.023, S272.024, S445.017, S445.018, S523.019, S523.020, S529.192.

## **3.5 Key Issue 3 – Esplanade Priority Areas**

### **3.5.1 Matters Raised in Submissions and Evidence**

We heard evidence from Vision Kerikeri, Our Kerikeri Community Trust, Carbon Neutral Trust, and Kapiro Conservation Trust (in a combined presentation) that sought to have the Esplanade Priority Areas in the ODP reinstated into the PDP. The reasons for this relief in the submissions and evidence presented to us can be summarised as follows:

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<sup>6</sup> Page 13 – Hearing report – Public Access

<sup>7</sup> Submissions S272.023-024, S445.017-018, S523.019-020 and S529.192-193.

<sup>8</sup> Submissions S272.023-024, S445.017-018, S523.019-020 and S529.192-193.

- a) Council should take all opportunities to gain access to waterbodies, as there is always future potential for contributing to connectivity.
- b) Kerikeri area is experiencing rapid growth and esplanade reserves play an important role in improving connectivity, active transport, green corridors and supporting compact land use.
- c) The Esplanade Priority Areas layer can usefully be used to encourage voluntary creation as a mitigation measure or offset.
- d) Esplanade Priority Areas also help provide transparent, consolidated land use/planning information for Council staff, developers and others.
- e) This layer can usefully inform applications for esplanade waivers to ensure that at an absolute minimum, areas that have been identified as part of future connections are not accidentally waived entirely or a limited width accepted.
- f) Failure to indicate the Council's interest could result in the consenting planner (or those undertaking monitoring), or a future landowner being unaware that there is Council interest, especially if there are frequent staff changes at Council.

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

The reporting officer postulated that the PDP did not identify Esplanade Priority Areas on planning maps as a large number of sites (approximately 70%) had already been “activated” over the life of the ODP. The reporting officer also referred to the lack of resource to acquire any further esplanade reserves and a desire to rely on the subdivision standards to trigger the creation of esplanade reserves.<sup>9</sup> The hearing report helpfully provided a table showing the percentage of “activated” esplanade priority areas and based on this analysis recommended that the reinstatement of the Esplanade Priority Areas into the PDP was not justified or appropriate.

The evidence presented by the submitters restated their preference for the Esplanade Priority Areas to be reinstated on the basis that Kerikeri-Waipapa area is experiencing rapid growth and esplanade reserves play an important role in improving connectivity, active transport and green corridors and that esplanade priority mapping helps to provide transparent, consolidated land use/planning information for Council staff, landowners, developers and others. The evidence also stated that identified esplanade priority areas could provide a spatial representation of areas that could still need to be acquired as esplanade reserves using voluntary methods. It was put to us that while Council budgets were not focused on acquiring esplanade areas, this could change in the future and having these areas identified could be helpful.

In response to this evidence the reporting officer engaged with other Council staff (Council Parks and Reserves and Strategic Planning divisions) and advised that the

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<sup>9</sup> Hearing report paragraph 71

Kerikeri-Waipapa Spatial Plan (Adopted by the Council in June 2025) would identify and map “blue green networks” with an implementation strategy to identify how the esplanade areas can be secured.

The reporting officer’s recommendation is to let the Spatial plan process determine which, if any, esplanade priority areas are identified and the strategy to acquire them.

We can confirm that the adopted Spatial Plan has mapped “blue-green networks” which includes “enhancing public access” in its purpose.

### **3.5.2 Hearings Panel Evaluation**

The Hearings Panel agree with the submitters that the identification of Esplanade Priority Areas would still be a helpful tool even if the current Council policy is to not use ratepayer funds to acquire them. We agree with the submitters that esplanade areas can still be acquired by a voluntary process, either by community fund-raised to acquire them or working with land developers to volunteer them and that this should be recognised and encouraged in the PDP.

We support the identification of the “blue green network” into the Kerikeri/Waipapa Spatial Plan, being similar to the Esplanade Priority Areas in the ODP.

### **3.5.3 Hearings Recommendations**

The Hearings Panel recommend that the submissions requesting the Council insert mapped Esplanade Priority Areas in the PDP are accepted in part in that the “implementation actions” of the Kerikeri-Waipapa Spatial Plan should be the primary instrument to identify how the esplanade areas can be secured (i.e. activated).

## **3.6 Key Issue 4 – Waiving of Esplanade Reserve Requirements**

### **3.6.1 Matters Raised in Submissions and Evidence**

The submissions from Our Kerikeri Community Charitable Trust (S271.020), Twin Coast Cycle Trail (425.038), Kapiro Conservation Trust (S446.019), Carbon Neutral NZ Trust (S529.085) and Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S524.020) are not supportive of waiving of esplanade requirements. However, they consider that if such a provision must be included, Policy PA-P3 should be amended to make it clear that waiving esplanade requirements should only occur in exceptional circumstances. There are a number of further submissions in support of the original submissions which do not support the waiving of esplanade requirements.

The reporting officer recommended a number of amendments to Policy PA-P3 as follows:

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

- a. *~~safe and reasonable public access or recreational use already exists and can be maintained for the future, while considering the potential effects of climate change, including sea level rise, erosion and accretion;~~*

- b. *providing access will be detrimental to land and water-based habitats of indigenous flora and fauna within, and adjoining the margin;*
- c. *providing access will be detrimental to any historic heritage place or site and area of significance to Māori;*
- d. *it would protect the stability, performance, maintenance and operation of essential structures and infrastructure; or*
- e. *restrictions on public access are necessary to ensure public health and safety.*

We also asked the reporting officer to clarify whether any submissions on the Public Access topic had sought amendments to provisions to enable esplanade reserves or strips wider than 20m in width. The reporting officer confirmed in the right of reply that there are no submissions seeking amendments to provisions or seeking a default width for esplanades of larger than 20m. Therefore, it was the view of the reporting officer that there is no scope to consider a default width larger than 20m.

We also asked for the reporting officers to clarify whether a default 20m wide width was appropriate for an esplanade strip (as Subdivision Standard SUB-S8 only referred to esplanade reserves) and reporting officer responded in the right of reply that a default 20m was appropriate for esplanade strips as well as esplanade reserves for the following reasons:

- a) Section 232(1) of the RMA states that esplanade strips may be required by a rule in a plan when land is subdivided, and the width of an esplanade strip shall be specified in a rule in a District Plan.
- b) When esplanade strips are created in the Far North District, they are generally in rural areas, and generally 20 metres wide (however occasionally the width can be reduced to 10 metres where there are constraints).
- c) The default width of 20m specified in Standard SUB-S8 does not prevent a larger width being provided in certain circumstances through the subdivision consent process (determined on a case-by-case basis).
- d) In circumstances where a width less than 20m is appropriate, the Council can consider the circumstances on a case-by-case basis, through the resource consent process, taking guidance from Policy PA-P3.<sup>10</sup>

The reporting officer also recommended adding further guidance (via Advice Note 3) in the Public Access chapter to acknowledge that the purpose of esplanade reserves or strips goes beyond public access (considering s229 of the Resource Management Act), and that any application to waive the requirement for, or reduce the width of, an esplanade specified in SUB-S8 would be considered against those matters (s229 of the RMA) in addition to Policy PA-P3. Submission S271.020 and others provide scope for this recommended change.

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<sup>10</sup> Paragraph 39 - Hearing Report 5 – Right of Reply.

The following changes to Advice Note 3 have been recommended and we agree with them:

**Notes:**

...

3. *The rules and standards relating to subdivision and the creation of esplanade reserves or esplanade strips are located in the Subdivision chapter of the Plan. Any application to waive the requirement for, or reduce the width of, an esplanade specified in SUB-S8 will be considered against the purposes of esplanade reserves and esplanade strips in Section 229 of the Resource Management 1991 and Policy PA-P3.*

### 3.6.2 Hearings Panel Evaluation

As outlined above, we agree with the changes recommended by the reporting officer in response to submissions and evidence presented to us at the hearing.

### 3.6.3 Hearings Panel Recommendations

The Hearings Panel recommend that Policy PA-P3 is amended as follows:

**PA-P3** *~~Only allow~~ ~~Allow~~ a waiver of ~~any the~~ requirement ~~for~~, or a reduction in the required width of an esplanade reserve or esplanade strip in circumstances where it can be demonstrated that:*

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

and that amendments be made to the Advice Notes as follows:

**Notes:**

1. *There are no rules for public access contained within this chapter.*
2. *The activities to improve public access are enabled through zone rules for conservation activity in Part 2 - Area Specific Matters.*

3. *The rules and standards relating to subdivision and the creation of esplanade reserves or esplanade strips are located in the Subdivision chapter of the Plan. Any application to waive the requirement for, or reduce the width of, an esplanade specified in SUB-S8 will be considered against the purposes of esplanade reserves and esplanade strips in Section 229 of the Resource Management 1991 and Policy PA-P3.*

Accordingly, the Hearings Panel recommend that submissions S271.020, 425.038, S446.019, S529.085, S524.020 are accepted in part as set out in Appendix 3.1.

### **3.7 Key Issue 5 - Tangata Whenua Relationship with Water**

#### **3.7.1 Matters Raised in Submissions and Evidence**

There were a number of submissions on this topic from Te Rūnanga o Ngāti Rēhia (S559).

Te Rūnanga o Ngāti Rēhia seek to include a new objective which recognises the relationship of tangata whenua to their ancestral waterways and maintenance of this relationship. They also sought to amend the Overview to include 'that where applicable, the transfer of esplanade strips to hapū will be supported or at least investigated'.

The reasons provided in the submission is the amendment will support Objective TW-O4 which seeks to ensure tangata whenua maintain mana whenua in their rohe through relationships within their culture and traditions, ancestral lands, water, sites, wāhi tapu, and other taonga.

Te Rūnanga o Ngāti Rēhia (S559.041- 042) also seek to amend Policy PA-P2 and PA-P3 to reference mahinga kai purposes and fisheries. The key reason provided is that if the policy wording simply refers to sites of significance to Māori, that sites of significance for mahinga kai and fisheries could be missed. Ngāti Rēhia notes that access has long been a significant issue for them.

In addition, they also seek to amend Policy PA-P3 to allow a waiver or a reduction in the required width of an esplanade reserve to include additional criteria, where public access is detrimental to land in Māori title, mahinga kai and hapū fisheries. The submitter raises 'access' as a significant issue for Ngāti Rēhia, in particular where public access is provided along the coast adjacent to land in Māori title including in Te Tii, Wharengaere, Tapuaetahi and Tākou.

There were a number of further submissions in support of each of these submission points.

#### **3.7.2 Hearings Panel Evaluation**

In the hearing report, the reporting officer acknowledged that tangata whenua are kaitiaki of water resources and that decision-makers must recognise and provide for the relationship of Māori with their ancestral waters as a matter of national importance under s6(e) of the RMA. However, the reporting officer advised us that the current PDP framework already appropriately recognises the relationship of tangata whenua to their ancestral waterways, in accordance with s6(e) and s8 of the RMA, through the following

provisions in the respective chapters of the PDP (i.e in the Tangata Whenua chapter (refer to **Recommendation Report 1**)). On this basis no further changes were recommended.

With regard to Te Rūnanga o Ngāti Rēhia’s submission to include a statement in the Overview regarding the transfer of esplanade strips to hapū, we were advised by the reporting officer that it is not legally possible to transfer an esplanade strip to a hapū under the RMA and that this was confirmed by legal opinion. Accordingly, this relief was not recommended.

With regard to Te Rūnanga o Ngāti Rēhia’s submissions to amend Policy PA-P2 and PA-P3 to reference and acknowledge mahinga kai purposes. The hearing report recommended that specific reference be made to mahinga kai in PA-P2 with regard to the creation of esplanade reserves but not for PA-P3 with regard to a waiver and reduction on the basis that Clause (c) of PA-P3 already requires consideration of “providing access will be detrimental to any historic heritage place or site and area of significance to Māori” in its wording.

The recommended amendments to PA-P2 are as follows:

**PA-P2** *Require the creation of esplanade reserves to and along the coastal marine area and waterbodies when considering an application for subdivision where it:...*

...

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

We note that Te Rūnanga o Ngāti Rēhia did not appear at the hearing and we assume that this submitter is satisfied with the reasoning provided in the hearing report. We also agree with the reporting officer that the current PDP framework already appropriately recognises the relationship of tangata whenua to their ancestral waterways and repeating those relationships again in this chapter would be unnecessary repetition. We agree with the amended wording to PA-P2 to recognise mahinga kai.

### **3.7.3 Hearings Panel Recommendations**

The Hearings Panel recommend that Policy PA-P2 is amended as follows:

**PA-P2** *Require the creation of esplanade reserves to and along the coastal marine area and waterbodies when considering an application for subdivision where it:...*

...

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

We also note that further amendments to policy PA-P2 are discussed in section 3.9.3 below.

Accordingly, we recommend that submission points S559.040; S559.042 and S559.046 are rejected; and submission point S559.041 is accepted

### **3.8 Key Issue 6 – Alignment with Subdivision Provisions**

#### **3.8.1 Matters Raised in Submissions and Evidence**

Bentzen Farm Limited (S167.048), P S Yates Family Trust (S333.041), Setar Thirty Six Limited (S168.049), Matauri Trustee Limited (S243.066) and The Shooting Box Limited (S187.041) seek to delete Policy PA-P2 and replace with a new policy to require esplanade reserves or strips when subdividing to specified lot sizes land adjoining the coast and other qualifying water-bodies. The reasoning for this is for objective PA-O2 to align with Policy SUB-P7 (which essentially says the same).

The hearing report states:

*I consider notified Policy PA-P2 provides appropriate direction alongside Policy SUB-P7 and provides opportunities for esplanade reserves to be created for larger lot sizes through the subdivision process. This ensures public access is maintained and enhanced throughout the District giving effect to s6(d) of the RMA.<sup>11</sup>*

#### **3.8.2 Hearings Panel Evaluation**

We received no evidence on this matter at the hearing and assume that the following the hearing report recommendation, this matter was no longer in contention. We agree with and adopt the hearing report recommendation.

#### **3.8.3 Hearings Panel Recommendations**

We find that notified Policy PA-P2 provides appropriate direction alongside Policy SUB-P7 and provides opportunities for esplanade reserves to be created for larger lot sizes through the subdivision process. Accordingly, we recommend that submissions S167.048, S333.041, S168.049, S243.066 and S187.041 are rejected and the plan provisions are retained as notified (other than where we recommend other amendments in response to other submission points that have been accepted or accepted in part).

### **3.9 Key Issue 7 – Esplanade Strips**

#### **3.9.1 Matters Raised in Submissions and Evidence**

Lynley Newport (S98.002) seeks to amend policies PA-P1, PA-P2, PA-P3 and PA-P5 to also include reference to esplanade strips. The submission states that this would provide flexibility for landowners and Council with regard to the type of esplanade area created at the time of subdivision.

There is one further submission from Bentzen Farm Limited (FS66.116) who oppose the original submissions as the relief sought does not appropriately balance the costs to the landowners. The further submitter considers that inserting reference to esplanade strips is not an efficient or effective way to achieve the public access objectives.

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<sup>11</sup> Paragraph 127 - Hearing Report 5 – Public Access

### 3.9.2 Hearings Panel Evaluation

The reporting officer supports the submission of Ms Newport on the basis that the relief sought would create more flexibility in determining which method was appropriate on a case-by-case basis. For example, we were advised that esplanade strips are a useful mechanism for sites adjoining rivers or subject to natural hazards which can result in significant movement, and a moveable esplanade strip could ensure public access is maintained in erosion prone areas. The reason for this is that the width of an esplanade strip remains unchanged even if the water edge is eroded, the strip (and associated land providing access) moves with it.

We agree with this approach and the flexibility to create an esplanade reserve or strip depending on the most appropriate circumstances.

### 3.9.3 Hearings Panel Recommendations

The Hearings Panel recommend that:

- a) Submission point S98.001 be accepted and Policy PA-P1 be amended as follows:

**PA-P1** *Protect, maintain and enhance public and customary access by:...*

...

- b. *requiring subdivision activities to provide esplanade reserves or esplanade strips along the coastal marine area and waterbodies; and ....*

- b) Submission point S98.002 is accepted and Policy PA-P2 is amended as follows:

**PA-P2** *Require the creation of esplanade reserves or esplanade strips to and along the coastal marine area and waterbodies when considering an application for subdivision where it: ...*

- c) Submission point S98.003 be accepted and Policy PA-P3 be amended as follows:

**PA-P3** *Allow a waiver of any requirement or a reduction in the required width of an esplanade reserve or esplanade strip where it can be demonstrated that: ...*

We note that we also recommended other, further amendments to policy PA-P3 in section 3.6.3 above.

- e) Submission point S98.004 be accepted and Policy PA-P5 be amended as follows:

**PA-P5** *Encourage the voluntary creation of esplanade reserves or esplanade strips for land use activities where it: ...*

- f) As a consequential amendment to submissions S98.002-004, we also recommend Standard SUB-S8 be amended as follows:

**SUB-S8** *Any subdivision involving the creation of one or more allotments less than 4ha which adjoins:*

1. *The line of MHWS;*

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

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

This amendment is identified in **Recommendation Report 16, Appendix 2.1 - Subdivision** chapter.

- g) As another consequential amendment in response to submission S98.002-004, we recommend that the overview section of the Public Access chapter is further amended to explain that in certain circumstances, the Council may determine that an esplanade strip is more appropriate, considering the effects of climate change. The recommended amendment is as follows:

*In some circumstances, Council may determine that an esplanade strip is more appropriate. Council will consider the effects of climate change, including sea-level rise and risks of natural hazards when making decisions.*

### **3.10 Key Issue 8 – Private Property Rights**

#### **3.10.1 Matters Raised in Submissions and Evidence**

Federated Farmers (S421) seek amendments to the PDP to recognise private property rights and “educate” the public that access across private land is only permitted with a landowner’s approval.

The reasons provided in the submission are that landowners should not be required by the PDP to provide public access across private land as it generates adverse amenity and landscape effects, in particular on farming activities.

Federated Farmers was represented by Ms Cook-Munro stated that the District Plan needs to be clear that access is not available across private land unless it is with permission from the landowner. Ms Cook-Munro added that the District Plan should not compel the landowner to always provide access across what is essentially their business and home.<sup>12</sup>

Ms Cook-Munro referred to issues that have arisen in coastal or riparian areas where landowners, have had encounters with unwelcome trespassers, some with dogs, which are disruptive to their farming operations, create security issues for themselves and their stock, have put them into dangerous situations, or created nuisance effects like littering or human waste. Ms Cook-Munro set out a new objective (PA-03) which would read as follows:

*Practical and safe public access to and along the margins of lakes and rivers and the coastal environment is provided in a way that respects private property and does not result in adverse effects on natural*

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<sup>12</sup> Paragraph 19 of Evidence Jo – Anne Cook-Munro.

character, landscape, indigenous biodiversity, historical heritage, or cultural values.

The hearing report and reply acknowledged the issue of persons accessing private property and confirmed to us that there is no general right of public access across private land; and that farmers have the right to exclusive occupation and enjoyment of their land. We understand that this right is enforceable under the provisions of the Trespass Act 1980. We also acknowledge that in many cases persons may access private land in the mistaken assumption that public access is enabled over that land.

### **3.10.2 Hearings Panel Evaluation**

We understand the concerns raised by Federated Farmers and the issues that unauthorised public access over private land can have on farming practice, safety and animal welfare. However, we agree with the reporting officer that the public access chapter of the District Plan is not the appropriate mechanism to reinforce private property rights. We consider that restricting the public from entering and using private land, where there is no public access mechanism in place, is essentially beyond the scope of the District Plan and the Public Access chapter in particular.

We do however, consider that other methods such as signage would achieve a better and more direct outcome to manage this issue. For these reasons, while we acknowledge the issue unauthorised public access over private land to coastal and riparian areas, we do not support the relief sought by Federated Farmers.

### **3.10.3 Hearings Panel Recommendations**

The Hearings Panel recommend that submissions S421.160, S421.163 and S421.169 are rejected and the provisions are retained as notified.

## **4. Topic 2: Activities on the Surface of Water**

### **4.1 Relevant Provisions**

The relevant provisions we address for this topic relate to:

- Overview
- Objective ASW-01
- Policies ASW-P1 to ASW-P4
- Rules ASW-R1 to ASW-R4

### **4.2 Overview of Submissions Received**

A total of eight original submissions (with 13 individual submission points) and 154 further submissions (with 301 individual submission points) were received on the Activities on the Surface of Water topic. Three original submission points indicated general support for the provisions to be retained as notified, six submission points indicated support in part, with changes requested, whilst one submission point opposed the provisions and three submission points did not specify.

As set out in the hearing report the majority of submissions on the activities on the surface of water topic came from:

- Local community and conservation groups
- Iwi and hapu<sup>13</sup>
- New Zealand Defence Force (**NZDF**)
- Far North District Council
- Waka Kotahi - NZTA
- Local property owners and businesses.

### **4.3 Key Issues**

The key issues identified in the hearing report and in evidence are set out below:

#### **4.4 Key Issue 1: Tangata Whenua Relationship with Water**

A submission<sup>14</sup> associated with this key issue sought new objectives concerning the relationship of Tangata Whenua to their ancestral waterways and the maintenance of that relationship as well as a new objective seeking the control of activities adjacent to waterways.

#### **4.5 Key Issue 2: Te Mana o te Wai**

A submission<sup>15</sup> associated with this key issue sought that the concept of Te Mana o te Wai is applied to all freshwater issues that may be affected by development throughout the PDP. The submissions seek that in response to the NPS-FM clause 3.5(4), PDP policies and rules are introduced to promote positive effects and to avoid, remedy or mitigate adverse effects (including cumulative effects) of urban development on the health and wellbeing of water bodies and freshwater ecosystems.

#### **4.6 Key Issue 3: Policy and Rule Framework**

Submissions sought that policy ASW-P3<sup>16</sup> and rule ASW-R3 (Structures)<sup>17</sup> be retained as notified with one further submission opposing that submission because that further submitter considers the rule will result in a loss of indigenous biodiversity values.

#### **4.7 Key Issue 4: Reservoirs**

Submission points 368.062, 368.063 and 368.064 from the Far North District Council request the amendment of rules ASW-R1, ASW-R2 and ASW-R3 to remove the reference to Waingaro and Manuwai reservoirs in particular, allowing for the inclusion of potential future reservoirs in the provisions.

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<sup>13</sup> Te Rūnanga o Ngāti Rēhia (S559) and Ngāi Tukairangi No.2 Trust (FS151)

<sup>14</sup> Te Rūnanga o Ngāti Rēhia (S559.047)

<sup>15</sup> Kapiro Residents Association (S429.006)

<sup>16</sup> Submission S394.041 from Haititaimarangai Marae Kaitiaki Trust

<sup>17</sup> S160.024 from Manulife Forest Management (NZ) Ltd

#### 4.8 Key Issue 5: Rule Formatting

Submission S217.022 and S217.023 from the New Zealand Defence Force seek amendments to rule ASW-R2 (the use of motorised craft) to remove performance standard PER-3 and make amendments to PER-4 in order to make the rules clearer to understand.

#### 4.9 Key Issue 6: Temporary Military Training Activities

The New Zealand Defence Force (**NZDF**) submission point (S217.023) seeks to include defence purposes as a permitted activity under the new rule for “motorised craft for other purposes”. NZDF notes that Temporary Military Training Activities can include the use of motorised craft on the surface of waterbodies. NZDF seeks that “defence purposes” are included in the new rule.

#### 4.10 Hearings Panel Evaluation

These key issues were comprehensively assessed and reported on within the Council’s hearing report and a number of minor amendments are recommended to address the issues raised in Key Issues 4 and 5. The hearing report recommended that all other submissions be either rejected or accepted in part but with no further amendments to the PDP provisions.

We did not receive any evidence on the submissions associated with these key issues and consequently we accept the recommendations contained in the hearing report in relation to these matters associated with activities on the surface of water. We also adopt the s32AA evaluation with regard to those amendments proposed.

The recommended amendments are set out in **Appendix 2.2** to this recommendation report.

#### 4.11 Hearings Panel Recommendation

The Hearings Panel recommend the amendments to the Activities on the Surface of Water chapter as set out in **Appendix 2.2**.

In addition, the Hearings Panel recommend that:

- a) Rules ASW-R1 – ASW-R3 are amended to remove specific reference to the Waingaro and Manuwai reservoirs; and
- b) Rules are reformatted, including splitting the rules for “motorised craft” and “non-motorised craft” into separate rules for different purposes / activities, in order to improve clarity and plan interpretation and implementation.

These amendments are also set out in **Appendix 2.2**.

Accordingly, the Hearings Panel recommend that submissions and further submissions are accepted, accepted in part and rejected as identified in **Appendix 3.2**.

## 5. Conclusion

The Far North District has an extensive coastline and many rivers and lakes with high recreational, cultural and amenity values. The communities in the district value access

to these resources. We acknowledge that the coastal and riparian margins provide public and customary access, together with landscape or visual amenity, recreation, hazard management and ecological values. With regard to activities on the surface of water, we are of the view that the Council has an obligation to manage any actual or potential effects of activities in relation to the surface of water in rivers and lakes. This includes activities that have a functional need to locate on water surfaces such as jetties and piers, recreation activities such as fishing and boating, and customary activities undertaken by tangata whenua.

For the reasons set out in this recommendation report, we recommend a set of changes to the provisions relating to public access and activities on the surface of water.

The Hearing Panel's recommended amendments are shown in **Appendices 2.1 and 2.2**.

Our recommendations also include recommendations for consequential amendments to or from other recommendation reports.

We have had regard to the submissions and further submissions received, the evidence tabled and presented to us and to the council's hearing reports (including the rights of reply). We have also incorporated our own s32AA evaluation when needed into the body of our recommendation report as part of our reasons for any recommended amendments.

Accordingly, we recommend that the submissions and further submissions should be accepted, accepted in part or rejected, as set out in this recommendation report and in the table of Recommended Decisions on Submissions in **Appendices 3.1 and 3.2**.

Overall, we consider that our recommendations will ensure the PDP achieves the statutory requirements, national and regional policy directions, and provide for the PDP being easier to implement and understand for users of it.