IN THE MATTER AND IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing of Submissions and Further Submissions on the Proposed Gore District Plan

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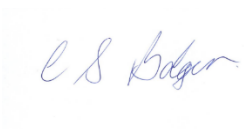
Gore District Plan - Decisions on Submissions
Topic 40: Activities on the Surface of Water

Hearings Panel Members



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Date of Hearing
6 November 2024

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Appendix B. Plan Chapter (attached as a separate document)

1 Introduction

1.1 Scope of this Decision

1.1.1 This document details the evaluation and decisions of the Hearings Panel on the submissions and evidence considered in relation to Activities on the Surface of Water chapter. The Hearings Commissioners comprising the Panel for this hearing were Commissioners Cliff Bolger, Maria Bartlett and Glenys Dickson.

1.1.2 This Decision focuses on the key issues in contention. Where there is no contention, such as submitter support for certain provisions, or minor matters where proposed changes are recommended in response to submissions, the Panel has adopted the recommendations and the underlying evaluation contained in the s42A Report prepared by Tina Carlson-McColl.

1.1.3 Attached is the updated provisions for the Activities on the Surface of Water chapter, referencing changes authorised by this and other Decisions of the Panel. Changes made in response to submissions are shown in normal black font, with text either underlined for additions or as ~~strikethrough~~ for deletions. A reference is also provided of the decision and paragraph number giving rise to the changes in response to submissions. Amendments made to the PDP pursuant to clause 16(2) are shown in the updated District Plan chapters in a green font. Shown in a red font are consequential numbering changes arising from provisions being added or deleted.

1.1.4 Appendix A lists the submissions considered in this decision and their outcome, described as accepted, accepted in part or rejected. For convenience, the Panel has chosen to make decisions on original submissions only. By implication, but not explicitly, it has also made decisions in relation to further submissions.

1.1.5 Attention is also drawn to Decision 2, Whole of Plan and Repeated Submissions that responds to submissions lodged to the District Plan as a whole, together with those lodged to multiple zones and/or chapters in the PDP. In some cases, these submissions may result in amendments to this chapter as well. Any such changes are annotated as a footnote in the updated provisions.

1.2 Abbreviations

1.2.1 In preparing this decision we have used the following abbreviations:

Full Text	Abbreviation
Activities on the Surface of Water	ASW
Clause 16(2) of the First Schedule of the RMA	cl 16(2)
Fire and Emergency NZ	FENZ
Gore District Plan	Plan
Hearings Panel	Panel
Hokonui Rūnanga Incorporated	Hokonui Rūnanga
KiwiRail Holdings Ltd	KiwiRail
NZ Transport Agency Waka Kotahi	NZTA
Proposed Gore District Plan	Proposed Plan or PDP
Report prepared under section 42A of the RMA	s42A Report
Resource Management Act 1991	RMA
RMA section	s
Royal Forest and Bird Society of NZ Inc	Forest and Bird

1.3 Statutory Considerations

1.3.1 The Panel's Decision1 Preliminary Matters and Statutory Requirements Relevant to Decisions sets out the legal framework and requirements for preparing a District Plan, as well as case law referred to in legal submissions and evidence provided to the

Panel. This framework is not repeated in this Decision. Rather, this Decision should be read in conjunction with Decision 1.

1.3.2 In s42A reports to the Panel, the authors are required to consider any alternative provisions put forward in the context of s32, and when changes are recommended, a further assessment under s32AA is provided if the change is a material departure from what was notified. That same obligation to make a further assessment under s32AA also applies to the Panel if it decides to make changes to the Plan in response to submissions which materially depart from the notified version.

1.3.3 Through Minute 5, the Panel requested submitters seeking changes to District Plan provisions to have regard to the s32 provisions and provide material to the Panel that would facilitate any additional s32AA assessment required if it was of a mind to accept the changes sought.

1.3.4 Where the Panel has made amendments to the Proposed Plan that are consistent with the recommendations contained within the s42A Reports and associated evidence the Panel has adopted the s32AA analysis contained within those reports and evidence, unless expressly stated otherwise. Those reports are part of the public record and are available on the Council's website.

1.3.5 Where the Panel has made amendments to the Proposed Plan that are not contained within the s42A Report, or which were not subject to a s32AA assessment provided by submitters, the Panel has undertaken the required s32AA analysis and has incorporated it into the body of the decision, with the required assessment forming part of the evaluation. The Panel is satisfied that the required substantive assessment has been undertaken where required.

1.4 Procedural matters

1.4.1 There were no pre-hearing meetings or meetings undertaken in accordance with clause 8AA of Schedule 1, on the submissions relating to the Urban Form and Development chapter.

1.4.2 None of the Panel members identified any conflicts of interest.

1.4.3 No procedural matters were raised at the hearing.

1.4.4 No matters of trade competition were raised.

2 The Hearings

2.1 Activities on the Surface of Water Hearing

2.1.1 The hearing in relation to the Activities on the Surface of Water chapter was held on 24 June 2024 at the Gore District Council administration building, in Gore. Submissions with regard to the Activities on the Surface of Water chapter were heard together with other matters in Hearing Stream 7, comprising Earthworks, Infrastructure and Energy.

2.1.2 Prior to the hearing, the Panel received a s42A Report from Tina Carlson-McColl. The Report considered all submissions lodged to the Activities on the Surface of Water chapter.

2.1.3 At the commencement of the hearing, the Panel received supplementary evidence from Tina Carlson-McColl responding to matters raised in the evidence of submitters The Panel sought clarification from her regarding matters contained in her s42A Report and supplementary evidence at various times during the hearing.

2.1.4 Submitters who appeared at the hearing, speaking to matters dealt with in this Decision are shown in Table 1.

Table 1 Activities on the Surface of Water – Submitters Attending the Hearing			
No.	**Submitter**	**Attendees**	**Nature of Evidence**
S64	Jet Boating NZ	Kyle Simonsen Nathan Barker Eddie McKenzie	In person In person In person

2.1.5 Submitters who submitted further information in relation for the Panel to consider were:

- Department of Conservation (S190, FS31)

2.2 Other Hearings

2.2.1 Decision 2 lists the submissions lodged to the whole of the Plan. Submission S139.040 Hokonui Rūnanga Inc raises issues relevant to this decision and in that regard, relevant evidence was received by the Panel during the hearings to consider submissions to the Mana Whenua and Sites of Significance to Māori chapters from:

- Courtney Bennett for the Gore District Council
- Amy Beran for Hokonui Rūnanga

2.2.2 Bruce McKinlay presented evidence on behalf of the Department of Conservation at the Ecosystems and Indigenous Biodiversity Hearing held on 24 February 2025 pertaining to the ecological values of the Mataura River. This included reference to black-billed gull habitat on the Mataura River.

2.2.3 All written material received by the Panel is available on the Council's website.

3 Activities on the Surface of Water Overview, Objectives and Polcies

3.1 Standalone Submissions in Support

Submitter (S)	Decision Requested
S64.006 Jet Boating NZ	Retain ASW-P1 as proposed.
S101.068 Transpower NZ Ltd	Retain Rule ASW-R3 as notified.
S132.067 KiwiRail Holdings Ltd	Retain ASW-R3 as proposed.
S147.008 NZ Defence Force	Retain ASW-R4 as notified or wording of similar effect.
S64.010 Jet Boating NZ	Retain ASW-R4 as proposed.
S64.011 Jet Boating NZ	Retain ASW-R6 as proposed.
S109.105 Department of Conservation	Retain ASW-R8 as notified

3.1.1 There were no opposing submissions or submissions seeking change to the provisions above that are supported. Accordingly, these submissions are acknowledged and accepted.

3.2 Overview

Submitter (S)	Decision Requested
S109.098 Department of Conservation	While different user groups of the waterways perceive conflict between their activities from time to time, this is not at a scale that requires exclusive separation of activities or other management approaches. Motorised activities do however have the potential to impact on the amenity of the waterways, ~~and~~ adjoining land <u>and could have potential adverse effects on the ecological values associated with the District's rivers. The provisions of</u>

	this chapter seek to manage these adverse effects, while also providing for the sustainable use of motorised craft.
S64.001 Jet Boating NZ	The submitter supports the wording of point 3 of overview.
S64.002 Jet Boating NZ	Suggested amendment to wording: Motorized activities do however have the potential to have minimal impact on the amenity of the waterways and adjoining land.
S64.003 Jet Boating NZ	Amendment wording: The operative Navigation Safety Bylaws ~~2009~~ applies to the Gore district and is also administered by Environment Southland.

3.2.1 Tina Carlson-McColl in her s42A Report recommended amendments to the Overview in response to these submissions, generally adopting, with minor changes, the amendments sought to the third paragraph of the Overview by Department of Conservation and submission S64.003 of Jet Boating NZ. The Panel endorses those amendments. As no material changes are made to the first sentence of the third paragraph, submission S64.001 Jet Boating NZ is accepted.

3.2.2 The Panel agrees with Tina Carlson-McColl at paragraph 52 of her s42A Report where she opposes the wording sought in submission S64.002 Jet Boating NZ. The reference is to the potential impact of motorised activities on the amenity of the waterways and adjoining land and in the Panel's view a descriptor, be it minor or major, of the level of the impact is not required.

3.2.3 At the hearing, Nathan Barker noted that reference to "waterways" would be better expressed as "water bodies" (as used in Policy ASW-P1) acknowledging that boating activities take place on lakes and back waters as well as in rivers. The Panel agrees and amends the terminology throughout the Plan as a minor change under RMA First Schedule clause 16(2).

3.2.4 The Panel does not agree that reference to "2009" should be removed from text describing the bylaws because it is the current bylaws that apply at the time of decision on the Plan, and that the full title of the bylaws should be referenced in the text.

3.2.5 Submission S64.001 Jet Boating NZ is accepted. Submission S64.002 Jet Boating NZ is rejected. Submissions S109.098 Department of Conservation and S64.003 Jet Boating NZ are accepted in part by amending the third and fourth paragraphs of the Overview as follows:

While different user groups of the ~~waterways~~ water bodies perceive conflict between their activities from time to time, this is not at a scale that requires exclusive separation of activities or other management approaches. Motorised activities do however have the potential to impact on ~~the amenity of the waterways and *adjoining land*.~~ other users, the amenity of the surrounding environment, and the natural environment values associated with the district's rivers. The provisions of this chapter seek to manage these adverse effects, while also providing for the sustainable use of motorised craft.

Discharges to water, taking and using water, and structures and bed disturbance activities in river beds may require resource consent approval from Environment Southland. In addition, the Southland Regional Council Navigation Safety Bylaws 2009 applies to the Gore District and is also administered by Environment Southland.

3.3 Objective ASW-O1

Submitter (S)	Decision Requested
S109.099 Department of Conservation	Retain as notified

S64.004 Jet Boating NZ	Retain as proposed.
S110.041 Royal Forest and Bird Society of NZ Inc	Add: 4. Do not adversely affect aquatic and riparian ecosystems, wildlife habitats and indigenous biodiversity.
FS14.020 NZ Transport Agency Waka Kotahi	*Disallow S110.041 Royal Forest and Bird Society of NZ Inc*

3.3.1 The Panel acknowledges the submissions in support of the objective and as no changes are being made to the provision, submissions S109.099 Department of Conservation and S64.004 Jet Boating NZ are accepted.

3.3.2 The Panel agrees with Tina Carlson-McColl at paragraph 47 of her s42A Report where she expresses the view that the addition sought by Forest and Bird is worded like a policy, and that Policies ASW-P4 and ASW-P5 have the same subject matter. The Panel considers at an objective level reference to the values associated with water bodies is sufficient with the wider biodiversity issues associated with rivers and their margins better considered in the Ecosystems and Indigenous Biodiversity chapter. No material was provided from Forest and Bird for the Panel to consider this matter further. Accordingly, submission S110.041 Royal Forest and Bird Society of NZ Inc is rejected.

3.4 Objective ASW-O2

Submitter (S)	Decision Requested
S109.100 Department of Conservation	Retain as notified
S139.062 Hokonui Rūnanga Inc	Amend to read ~~Mana whenua and tangata whenua are able to express their cultural relationships with the waterways and continue to practice various cultural activities or rituals without being unreasonably restricted by other activities and their associated facilities or structures.~~ Activities and structures on the surface of water bodies do not impede access to and exercise of mahinga kai or degrade the mauri of the water body; and Enable mana whenua to express their cultural relationships with the waterways and continue to practice customary uses."
S64.005 Jet Boating NZ	Amendment to wording. Mana whenua and tangata whenua are able to express their cultural relationships with the waterways and continue to practice various cultural activities or rituals without being unreasonably restricted by other activities and their associated facilities or structures, whilst also reasonably enabling shared use and enjoyment by others**.**

3.4.1 The Panel acknowledges the submission in support of the objective. As changes are being made to the provision, submission S109.100 Department of Conservation is accepted in part.

3.4.2 In response to submission S139.062 Hokonui Rūnanga Inc, Tina Carlson-McColl, at paragraphs 49-51 of her s42A report recommended changes to the objective. She did not support the precise wording sought but the Panel considers the intent of the submission has been reflected in the recommended revision, which the Panel has further amended for consistency with other decisions. Hokonui Rūnanga did not attend the hearing nor provide any feedback on the recommendation.

3.4.3 The Panel agrees with Tina Carlson-McColl, at paragraph 52 of her s42A report, that the addition sought by Jet Boating NZ is encapsulated in Objective ASW-O1(1) and

that enabling shared use of the river is outside of the powers and responsibilities of mana whenua. Accordingly, submission S64.005 Jet Boating NZ is rejected.

3.4.4 Submission S139.062 Hokonui Rūnanga Inc is accepted in part by revising Objective ASW-O2 as follows:

Mana whenua and *tangata whenua* are able to express their cultural relationships with the ~~waterways~~ water bodies and continue to practice ~~various~~ *mahinga kai* and customary ~~cultural~~ activities ~~or rituals~~ without being unreasonably restricted by other activities and their associated facilities or *structures*.

3.4.5 Consequential to this change:

(a) Policy ASW-P2 requires amending as follows:

Prioritise the health and safety of those undertaking non-commercial and non-motorised recreational and *mahinga kai* and customary ~~cultural~~ activities within *water bodies* and their margins.

(b) Policy ASW-P5(3) requires amending as follows:

protected customary rights and ~~Māori cultural practices and~~ *mahinga kai* and customary activities.

3.5 Policy ASW-P2

Submitter (S)	Decision Requested
S146.059 Southland District Council	Reconsideration of the placement of ASW-P2 into a Natural Character chapter or supported in such a chapter.
S64.007 Jet Boating NZ	Suggested amendment to wording. Prioritize the health and safety of those undertaking ~~non-commercial and non-motorized recreational and cultural~~ activities within waterbodies and their margins.

3.5.1 Policy ASW-P2 does not raise issues related to natural character. As a consequence, submission S146.059 Southland District Council is rejected.

3.5.2 Tina Carlson-McColl at paragraph 66 of her s42A Report states:

> In relation to the Jet Boating NZ (S64.007) submission to consider health and safety of all waterway users equally important, I agree that health and safety of all users are important. However, I consider that some groups or users may be more vulnerable to the use of motorised craft including those promoted in AWS-O1, and that commercial interest should not take precedence over others, and that this direction should be retained in the policy. Moreover ASW-P6 provides direction to limit activities, structures and infrastructure to maintain a safe environment for surface water activities. As the matter is addressed elsewhere in the policy framework I reject the submission.

3.5.3 The Panel agrees with that assessment and notes the evidence presented at the hearing by Jet Boating NZ did not refer to this policy. Accordingly, the Panel accepts the explanation given by Tina Carlson-McColl and submission S64.007 Jet Boating NZ is rejected.

3.6 Policy ASW-P3

Submitter (S)	Decision Requested
S101.067 Transpower NZ Ltd	Amend Policy ASW-P3 as follows: "ASW-P3 Enable the location of infrastructure and equipment used for monitoring or testing, where there is a functional need or

	operational need for this to be located on or above the surface of waterbodies"
S64.008 Jet Boating NZ	Suggested amendment to wording. Enable the location of infrastructure and equipment used for monitoring or testing, where there is a functional need for this to be located on or above the surface of waterbodies and it does not create an unacceptable navigational hazard to waterway users.

3.6.1 Tina Carlson-McColl at paragraph 67 of her s42A Report recommends accepting the Transpower submission and the Panel agrees. To ensure consistency with national direction and the Infrastructure chapter decision, the Panel considers that functional need and operational need should be restricted to critical infrastructure.

3.6.2 The Panel also agrees with Tina Carlson-McColl at paragraph 68 of her s42A Report where she notes that the issues of navigation safety raised by Jet Boating NZ is dealt with in Policy ASW-P6. The evidence presented at the hearing by Jet Boating NZ did not refer to this policy. Accordingly, submission S64.008 Jet Boating NZ is rejected.

3.6.3 Submission S101.067 Transpower NZ Ltd is accepted by amending Policy ASW-P3 as follows:

Enable the location of *critical infrastructure* and equipment used for monitoring or testing, where there is a *functional need* or *operational need* for this to be located on or above the surface of *water bodies*.

3.7 Policies ASW-P4 and ASW-P5

Submitter (S)	Decision Requested
S109.101, S109.102 Department of Conservation	Retain ASW-P4 and ASW-P5 as notified
S146.060, S146.061 Southland District Council	Reconsideration of the placement of ASW-P4(1) and ASW-P5(1)(a) into a Natural Character chapter or supported in such a chapter.

3.7.1 The Panel acknowledges the submissions in support of the policies and as no changes are being made to the provisions, submissions S109.101 and S109.102 Department of Conservation and are accepted.

3.7.2 The Panel agrees with Southland District Council that Policies ASW-P4 and ASW-P5 are relevant to natural character issues and this is consistent with the direction of Minute 18 of the Panel and Decision 47 that includes a Natural Character chapter in the Plan. The Panel considers that retaining reference to natural character in ASW-P4 and ASW-P5 provides a link to the policies and objective of the Natural Character chapter. Accordingly, submissions S146.060 and S146.061 Southland District Council are accepted by adopting Decision 47.

3.8 Policy ASW-P6

Submitter (S)	Decision Requested
S109.103 Department of Conservation S64.009 Jet Boating NZ	Retain as proposed.
S132.066 KiwiRail Holdings Ltd	Requires clarification on whether Council has the jurisdiction to include objectives, policies and rules that relate to activities, structures and infrastructure on the surface of waterbodies.

3.8.1 The submissions in support are acknowledged and while other submissions have been lodged to the policy no changes have been made to it. Accordingly, submissions S109.103 Department of Conservation and S64.009 Jet Boating NZ are accepted.

3.8.2 With regard to the KiwiRail submission, the Panel notes the explanation given by Tina Carlson-McColl at paragraph 80 of her s42A Report that the functions of Territorial Authorities under Section 31(1)(e) include the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes. Louise Taylor in a statement of evidence submitted on behalf of KiwiRail acknowledged and accepted the explanation given. As no change is required to the chapter, submission S132.066 KiwiRail Holdings Ltd is rejected.

3.9 Notes

3.9.1 The Panel has considered notes to this chapter as part of decision to remove unnecessary duplication within the Plan and determined that Note 1 can be deleted because reliance can be placed on the introductory sections of the Plan. Note 2, Note 3 and Note 4 can be deleted in favour of incorporating additional text in the table within the How the Plan Works section, Relationship with other plans and documents, as discussed in Decision 3, and through reliance on the Mana Whenua chapter contextual information, as well as existing text in the Overview of this chapter. These changes are made as an amendment under Clause 16(2) of the First Schedule.

4. Activities on Surface of Water Rules

4.1 Rule ASW-R7

Submitter (S)	Decision Requested
S64.012 Jet Boating NZ	The submitter proposes that the surface of water activities in the PDP are consistent with adjacent District Plans, given the Mataura River flows In from Southland and out to Southland. The Southland District Council use the Environment Southland Navigation Safety Bylaw to manage surface of water activities. Add 1. The activity does not utilise any motorized watercraft; <u>or 2. The use of motorised watercraft complies with the Operative Environment Southland Navigation Safety Bylaw, the relevant Regional Plans in particular for structures in the beds of rivers.</u>
S109.104 Department of Conservation	Retain as notified
FS13.1 Jet Boating NZ	*Disallow S109.104 Department of Conservation*

4.1.1 The Panel acknowledges the submission in support of the rule. As changes are being made to the provision, submission S109.104 Department of Conservation is accepted in part.

4.1.2 The Panel notes that the thrust of the submissions and evidence of Jet Boating NZ focused on simplifying the manner in which jetboat activities on the district's water bodies is managed. In effect, Jet Boating NZ sought reliance on the Southland Navigation Safety Bylaw as the sole regulatory tool to control motorised activities on the Mataura River, expressing the view that the Proposed Plan provisions are a duplication.

4.1.3 The Panel is aware that under the Southland Regional Council Navigation Safety Bylaws 2009:

(a) Motorised water craft are prohibited from travelling at more than 5 knots (c9.2kph) on any of Southland's rivers, except where chapter 5 of the Bylaw uplifts the speed restrictions or a temporary uplift has been granted by Environment Southland.

(b) The speed restriction is uplifted for the period of 1 August to 30 September inclusive of each year for all the area of the Mataura River from the Ardlussa Bridge downstream to the Seaward Downs Bridge, which includes the entire length of the Mataura River within the Gore District.

(c) The speed restriction does not apply within the area of water 300m long and 100m wide, 4.8 kilometres downstream from Gore at Beattie's Beach.

4.1.4 The Panel was advised by Nathan Barker in his statement of evidence at the hearing that river conditions are not always suitable during August and September and the area at Beattie's Beach is used by the Gore Boat Club and is too small for jet boating.

4.1.5 Nathan Barker also advised the Panel, Jet Boating NZ hosts one event on the Mataura River within the Gore District between 1 August – 30 September each year with 20 - 30 boats in attendance and applies to Environment Southland for at least three temporary uplifts on the Mataura River within the Gore District at other times during the year. These uplifts are for members only and last for one day at a time, although a backup date can be sought in the event that conditions are unsuitable. As a condition of the uplifts public notice must be given so the public are aware of the events taking place.

4.1.6 Nathan Barker stated that, as jet boating is mostly done outside of the peak of summer, conflicts with people wanting to swim in the Mataura River are avoided. He added, logs held by club members indicate that when conditions are good there might be 3-4 groups each week, with each group having 1-4 boats, using the river. However, these numbers would be much lower during the middle of winter, and from mid to late summer when the flow is too low. He also noted the New Zealand Jet Boat River Racing Association hosts an annual race on the Mataura River which spans the Southland and Gore Districts, but Jet Boating NZ does not host any racing events.

4.1.7 At paragraphs 54 and 56 of his evidence, Nathan Barker stated:

> Overall, I am concerned the proposed ASW-R7 will have the effect of banning casual jet boating on the Mataura outside of the 1 August – 30 September window, because of the time, cost and uncertainty involved in such applications. This would mean that access is effectively denied for reasons JBNZ is not clear on, based on the information we have seen so far.
>
> JBNZ considers the ability to access rivers for a traditional kiwi pass time is important and valuable, and that requiring a resource consent for such an activity is not necessary.

4.1.8 Nathan Barker acknowledged the concerns from anglers during the fishing season stating as most of the "hot spots" for trout fishing are located further up the river, outside of the Gore District, there is only minimal conflict between jet boating and anglers in the District. He also referred to concerns from the Department of Conservation regarding the impact of jet boats on black-billed gulls, dotterels and terns, expressing the view that while birds are sometimes disturbed by passing boats and fly off, they soon return.

4.1.9 Kyle Simonsen in his legal submissions to the hearing on behalf of Jetboating NZ, submitted that jet boating promotes a matter of national importance under s6(d) of the RMA by enhancing access along rivers and it has co-existed alongside other activities and indigenous biodiversity on the Mataura River for many years. He added there is

no evidence of any adverse effects on birds and fish spawning, despite the Director-General of Conservation being a submitter, and Southland Fish and Game being involved in the enforcement of the Navigation Safety Bylaw.

4.1.10 With regard to fish spawning Kyle Simonsen submitted this took place in April and May generally within areas not accessed by jet boats and therefore there was no need to provide protection to fish spawning sites. He stated Jet Boating NZ did acknowledge the significant recreational and economic benefits trout fishing provides to the Gore District and accepted that regulation may be appropriate to limit the potential for jet boating to conflict with trout fishing. In that regard he promoted revisions to ASW-R7 that would allow for casual and organised jet boating between 16 March and 14 December each year, outside of the period that most trout fishing takes place, provided that a speed uplift has otherwise been granted by Environment Southland. Jet Boating NZ did seek however one club event be held between 14 December and 16 March suggesting this would unlikely have a significant effect on fishing values, while promoting shared enjoyment of the Mataura River.

4.1.11 Kyle Simonsen also submitted that with regard to potential impacts on avifauna, Nathan Barker's evidence should be relied on to conclude that regulation is not required to avoid potential effects on the identified bird species.

4.1.12 Having reviewed the Council's s32 documents for the Proposed Plan, Kyle Simonsen highlighted there was no concern regarding noise from jet boats, with limits only applying to ancillary aspects of events such as loud speakers. Likewise, there was no conflict between surface water activities and the Statutory Acknowledgement that applied to the Mataura River. In addition, the PDP provisions did not need to apply to speed of vessels as that is dealt with under the Bylaw.

4.1.13 Tina Carlson-McColl at paragraphs 51 - 54 of her statement of evidence stated:

> The Navigation Safety Bylaw manages navigation safety, but it does not manage other environmental effects of the activity. I acknowledge Mr Barker's comment that the rule would require resource consents to be applied for as well as speed uplifts, and that this may have a cost implication. However, I reject legal counsels' comment that this would equate to banning jetboating outside of the 1 August – 30 September window as there is a consenting pathway for these actives, and a speed uplift is also required.
>
> In terms of Mr Barkers evidence, I acknowledge that there is recreational benefit for jetboaters in allowing for the activity, and that in terms of conflict with other recreational users that there may be other factors such as the time of year that can limit the potential conflict. However, in terms of the proposed 16 March to 14 December time period I note that there is potential overlap with the fishing season and other seasonal recreational use.
>
> As per the gazetted Anglers Notice for the Southland Region for that portion of the Mataura River above Gore (State Highway 1 Bridge) the fishing season commences on 1 October each year and closes on 30 April the following year. For the portion of the river below Gore the fishing season also commences on 1 October but closes on 31 May the following year. There is therefore the potential that the time period in ASW-R7 could be extended to the period between 1 June to 30 September.
>
> However, in terms of the potential effects on indigenous biodiversity, I note that Mr Barkers evidence is based on observation rather than expert opinion and cannot be relied on as expert evidence. The potential effect of extending the time period is unknown in terms of nesting and spawning, and I therefore do not have sufficient evidence to support extending the period.

4.1.14 While the Department of Conservation did not however seek any changes to Rule ASW-R7 and supported the submission to that rule by Jet Boating NZ, it was stated in submission S109. 098 to the Overview:

> The D-G recommends that the overview includes consideration of potential adverse effects of activities on the surface of water that can have potential adverse effects on the ecological values associated with the District's rivers. Motorised activities can disturb birds on the nest or foraging for food at the waters edge as well as fish spawning areas and flora and fauna within riparian margins. For example, Black-billed gulls (At risk-declining) use the Mataura River for nesting and foraging habitat. The breeding season is from August to March each year. Banded Dotterel (At risk declining) also use the braided river islands for nesting habitat (July to January). Black-fronted tern (Threatened - Nationally Endangered) are present in low numbers in the Mataura River, their breeding season is from October to January). Motorised craft on the surface of water should only occur where adverse effects on fish spawning areas, habitat of breeding birds and flora and fauna within riparian margins is mitigated.

4.1.15 Bruce McKinlay in evidence presented at the hearing to consider submissions to the Ecosystems and Indigenous Biodiversity chapter of the Plan stated:

> The bulk of the breeding habitat for black-billed gulls is in the rivers of the South Island. Black-billed gulls are recognised as a braided riverbed specialist in as much as they rely on sparsely vegetated gravels on inland riverbeds, where they nest in dense colonies in aggregations, often associated with black-fronted terns.
>
> Breeding occurs from August and is completed by the end of February. The length of the season on any given river or part of a river is determined by the amount of disturbance on the river either from natural events such as floods or human disturbance.
>
> Over a period of years, the sites where colonies establish can move as the river changes and islands establish and get washed away. In the case of the Mataura River, colonies have been recorded at a number of sites up and down the river, both on islands in the river and at the margins/beaches alongside the river. The size of sites varies as well with a given site having 1,000 nests in one year and then 10,000 the following year.

4.1.16 The Panel recognises that the Mataura River is important for its recreational, cultural and ecological values. In addition to being a nationally important brown trout fishery, between October to April / May, the Mataura River and its margins is utilised for swimming and other recreational use. There was no evidence presented to the Panel, nor in the s32 documentation when the PDP was prepared that these activities were adversely impacted by jet boating on the river. Nor was any evidence presented that suggested casual boating was at such a level that gave rise to adverse effects that justified control.

4.1.17 The evidence did however highlight to the Panel the importance of the river and its margins for:

(a) Nesting by Black-billed gulls and Banded Dotterel with a critical period being the period from August to February.

(b) Spawning by brown trout in March and April.

4.1.18 The Panel is persuaded that restrictions on organised jet boating events are justified during parts of these times. The movement of vehicles and trailers on the gravel margins of the river can also damage nesting sites of at risk and threatened bird species. Jetboat travel and the associated wash also disturbs the birds, although it

was suggested this disturbance is only temporary. The Panel also considers that some priority should also be given to spawning fish to facilitate sustainability.

4.1.19 In considering the jetboat issues, the Panel has some concerns with regard to the Southland Regional Council Navigation Safety Bylaws 2009 and considers they are in need of review. The Bylaw enables use of the river by jetboats during the months of August and September which is a critical time for nesting by black-billed gulls and banded dotterels. The Panel was advised that river conditions over these months are not always suitable either.

4.1.20 Having regard to the above matters the Panel concludes through the District Plan:

(a) no restrictions can be justified for casual boating; and

(b) Organised events should be limited during the months of August, September, April and May.

4.1.21 Submission S64.012 Jet Boating NZ is accepted in part by amending Rule ASW-R7 as follows:

ASW-R7 Sport and Recreation Activity

Mataura River

Activity status: Permitted

Where:

1. The activity ~~does not utilise~~ involves the use of any motorised or non-motorised watercraft; ~~or~~ and

2. Organised events by Jet Boating New Zealand Incorporated, its member clubs or branches exceeding four motorised watercraft are limited to:

   (a) one event during the period 1 August to 30 September; and

   (b) one event each month in April and May.

~~2. The activity uses motorised watercraft at a speed of less than 5 knots on any part of the Mataura River (excluding its tributaries);~~

~~(a) the activity, including events organised by member clubs of the NZ Jet boating Association, occurs during the period 1 August to 30 September.~~

~~(b) at other times, during the period 1 October to 31 July, motorised craft must not travel at a speed that exceeds 5knots.~~

~~Except that~~

~~3. Within that part of the Mataura River shown on the District Plan Maps within the area of water 300 metres long and 100 metres wide, 4.8 kilometres downstream from Gore at Beattie's Beach; or~~

Note: ~~This~~ The activity permitted by Rule ASW-R7(2) may also require~~s~~ approval ~~under~~ from the Southland Regional Council ~~Navigation Safety Bylaws 2009 (revised 2015) administered by Environment Southland~~

4.1.22 Having regard to the provisions of RMA S32AA the Panel considers:

(a) By being more enabling than the notified version and associated recommendations in response to submissions this approach is more efficient for Plan users and users of the water bodies in the District.

(b) Removal of restrictions within the Plan applying to the speed of motorised vessels on the Mataura River removes a duplication of powers and processes

administered by Environment Southland under the Navigation and Safety Bylaws, thereby providing a more efficient consenting process, both in terms of time and cost.

(c) There is a risk that if the rule is not revised and the conditions deleted then some aspects of the provisions would become difficult to enforce and monitor.

(d) There are also risks associated within intensive boating activities on the Mataura River, as occurs with organised events. Recognising that, a limit is placed on the number of events that can take place as a permitted activity.

(e) The modified rules are considered more appropriate at achieving the objectives of the Activities on the Surface of Water Chapter than the notified version.

4.2 Rule ASW-R9

Submitter (S)	Decision Requested
S109.106 Department of Conservation	Amend ASW-R9 clarify that the rule does not include fish exclusion barriers which are sometimes required to avoid trout or undesirable species incursions where there is non-diadromous galaxias habitat

4.2.1 Tina Carlson-McColl at paragraph 102 of her s42A Report outlined that Rule ASW-R9 reflects the provisions of the Mataura River Water Conservation Order that prohibits the construction of any dam on the Mataura River, the Waikaia River, Otamita Stream and all tributaries of the Mataura River above the confluence with the Otamita Stream and the Proposed Plan must not be inconsistent with the Conservation Order. Elizabeth Williams in a statement of evidence on behalf of the Department of Conservation was accepting of that explanation. As the rule reflects a statutory requirement, submission S109.106 Department of Conservation is rejected.

5. Additional Matters

5.1 Whole of Plan Submissions

Submitter (S)	Decision Requested
S139.040 Hokonui Rūnanga Inc	Wherever possible the plan provisions should specify the particular effects of concern to mana whenua to ensure the plan provisions are clear and that appropriate effects are identified and assessed, including when Hokonui Rūnanga Inc may be an affected party. Amend references to 'Ngāi Tahu values' with more detailed description of particular effects to be avoided, remedied or mitigated.
S139.091 Hokonui Rūnanga Inc	Make consequential amendments to rules that refer to 'Ngai Tahu cultural values' by adding the words: "as identified in the objectives and policies for this zone and listed in MW2.3"

5.1.1 Courtney Bennett and Amy Beran in their joint response to Minute 15 drew attention to various provisions in the Activities on the Surface of Water chapter that they consider could be reviewed having regard to the submissions of Hokonui Rūnanga. Courtney Bennett in her statement of evidence to the final hearing also provided additional comment, and with regard to these comments the Panel notes:

(i) Objective ASW-O2 was subject to a submission by Hokonui Rūnanga with changes being made consistent with that submission, with consequential changes to other provisions in the chapter.

(ii) Policies ASW-P4 and ASW-P5 refer to MW-2.3 and that requires amending to refer to MW-1.2.

5.2 Section 32AA

6.2.1 The s42A Report prepared for the Activities on the Surface of Water chapter and for Sites and Areas of Significance to Māori chapter hearings included assessment of s32AA matters. The Panel too has had regard to the relevant s32AA provisions to fill any gaps. The Panel has not identified any need for a further s32AA assessment as a result of matters contained in this decision.