

APPENDIX C: SECTION 32AA EVALUATION

Introduction

This section 32AA evaluation relates to the recommended amendments to the Public Access chapter (**Public Access chapter**) and supports the discussion, analysis and recommendations in the section 42A report.

A section 32AA evaluation is only required for changes recommended since notification; if there is no change to the notified version, a section 32AA evaluation is not required. The level of detail in this report needs to be at a level of detail that corresponds to the scale and significance of the changes recommended.

The section 32AA evaluation is structured to group and assess amendments where the rationale for the amendments is the same. As the recommended changes to the Overview text and advice notes are not made to a statutory section of the Public Access chapter, these changes are not evaluated in this report. In my view, these amendments do not alter the original intent of the provisions as notified, meaning no further evaluation under section 32AA is required.

The section 32AA evaluation has been structured as follows:

- a. Identification of Esplanade Priority Areas
- b. Activities within public access corridors
- c. Restricting public access

1. Objective of the proposal

Section 32(6) of the RMA defines the objectives as either the stated objective(s) or the purpose of the proposal. As no objectives are recommended to be amended, the purpose of the proposal is to support the protection, maintenance and enhancement of public and customary access to and along the CMA and waterbodies throughout Kaipara.

This objective of the proposal is the most appropriate way to achieve the purpose of the RMA, as demonstrated in the table below.

Evaluation of objectives	
Part 2 RMA	Comment
Section 5 Purpose	The objective seeks to achieve the protection, maintenance and enhancement of public and customary access to the CMA and waterbodies by identifying EPAs throughout Kaipara. This aligns with section 5(2)(a) to enable people and communities to meet the

Evaluation of objectives	
Part 2 RMA	Comment
	reasonably foreseeable public access needs of future generations and the wider direction in section 5(2) to enable people and communities to provide for their social and cultural well-being.
Section 6 Matters of national importance	The objective aligns with section 6(d) to maintain and enhance public access to and along the CMA, lakes, and rivers.
Section 7 Other matters	The objective supports the maintenance and enhancement of public access to and along the CMA and waterbodies throughout Kaipara by identifying EPAs, ensuring land adjacent to water is efficiently used for public access opportunities in accordance with s7(b) of the RMA.
Section 8 Treaty of Waitangi	The objective will ensure the customary access rights of Tangata Whenua/Mana Whenua to the CMA and waterbodies throughout Kaipara is maintained and enhanced through EPAs.

Identification of Options to Achieve the Objectives – identifying Esplanade Priority Areas

The following reasonably practicable options have been identified for identifying EPAs:

Option 1 – Retain the Public Access chapter as notified

Option 2 – Include a policy which sets out the criteria for identifying EPAs.

Preferred Option

As discussed in the s42A report, the identification of EPAs is an important aim of the PA chapter to support the protection, maintenance and enhancement of public and customary access to and along the CMA and waterbodies throughout Kaipara. The PA chapter encourages the identification of EPAs in Policy PA-P1. However, the policies of the PA chapter do not clearly identify the importance of EPAs and their aim to protect, maintain and enhance public and customary access. The chapter is not clear on what criteria is used to identify EPAs or their role in achieving public access. In my view, the identification of EPAs is a key policy of the PA Chapter to support the protection, maintenance and enhancement of public and customary access. To achieve this, option 1 is not the preferred option.

Option 2 proposes new policy PA-P3 to clearly set out the criteria to identify EPAs that aligns both with S229 of the RMA and the specific priorities for these areas in Kaipara. The proposed criteria to identify EPAs is supported by the evidence base for the chapter which has informed the identification of EPAs on the proposed district plan maps.

The policy provides a pathway for Council to obtain additional public and customary access in EPAs and removes confusion for plan users by clearly identifying the criteria to determine EPAs. The proposed policy gives effect to Part 2 of the RMA and other applicable higher order documents including the NZCPS and NRPS which promote public and customary access.

Overall, it is considered that option 2 will best achieve the objectives of the PA chapter.

Evaluation of Preferred Option Against Objective

This section contains an evaluation of preferred option 2 identified above.

Evaluation of Preferred Option Against Objective(s)		
	Costs	Benefits
Environmental	<p>Public access areas can easily become degraded and damaged if no care is taken to maintain or enhance these areas. This could be from litter or ecological degradation from overuse.</p> <p>These costs have already been identified as part of implementing the proposed provisions. It is anticipated that the proposed Policy will not increase these costs.</p>	<p>Will enable EPAs where they protect or enhance waterbodies and natural values associated with esplanade reserves or strips.</p>
Economic	<p>Enables a clearer and simpler approach for managing public and customary access to the CMA and waterbodies to simplify plan interpretation and reduce time and cost associated with resource consent applications for both applicants and council.</p> <p>May result in increased resource consenting costs on applicants due to greater requirements to provide esplanade reserves and strips than the current status quo under the KDP.</p>	<p>Public access enhances the District's towns and communities, by enabling more visitors (tourism) as well as increasing access to remote parts of the district which can have recreational value.</p>

	<p>Increased costs to council associated with the maintenance of esplanade reserves.</p> <p>These costs have already been identified as part of implementing the proposed provisions. It is anticipated that the proposed Policy will not increase these costs.</p>	
Social	<p>Concerns that the public will access private property that is identified with an EPA.</p> <p>Potential loss of privacy.</p> <p>Security concerns.</p>	<p>Increased public access across Kaipara has significant social benefits for people to experience recreational activities within the district.</p>
Cultural	<p>No identified cultural costs.</p>	<p>Public access can have positive benefits on customary activities by providing access to waterbodies to enable Māori to exercise kaitiakitanga of lakes, rivers and the CMA.</p>
Economic growth provided or reduced	<p>No potential impacts on economic growth are identified.</p>	
Employment opportunities	<p>No potential impacts on employment opportunities are identified.</p>	
Uncertain or insufficient info	<p>The information supporting this policy is sufficient. The policy is supported by Council's evidence base for the PDP and statutory requirements set out in section 229 of the RMA.</p>	
Risk of acting or not acting	<p>Low risk of acting as the recommended new policy is primarily to clarify the intent of the notified chapter and better align the PA chapter with higher order policy direction and section 229 of the RMA.</p>	
Effectiveness		
<p>The proposed new policy is more effective as it provides a stronger link to higher order documents including the RMA and removes confusion for plan users to determine the importance of EPAs in the policy framework and the criteria used to identify them.</p>		
Efficiency		

The proposed policy will be more efficient as it will ensure plan users understand the objectives of the PA Chapter and the criteria for the identification of EPAs. This makes reading and understanding the PA Chapter more efficient for plan users.

Summary

For the reasons set out above, Option 2 is the most efficient and effective option for achieving the purpose of the PA chapter. As such, Option 2 is the most appropriate option in accordance with section 32AA of the RMA.

2. Activities within public access corridors

Activities within public access corridors must be appropriately managed and the PA Chapter must give effect to Policy 13 (Preservation of natural character) and Policy 15 (Natural features and natural landscapes) of the NZCPS. In my view PA-P2 as notified does not give effect to this higher order policy. To achieve this, I recommend the following amendments to Policy PA-P2:

PA-P2	Activities within public access corridors
	<p>1. Manage activities within public access corridors to avoid mitigate adverse effects on the values of:</p> <p>1. The Coastal Environment;</p> <p>2. High Natural Character Areas;</p> <p>3. a. Outstanding Natural Character Areas;</p> <p>4. b. Outstanding Natural Landscapes; and</p> <p>5. c. Outstanding Natural Features; and</p> <p>6. d. Sites and Areas of Significance to Māori.</p> <p>Manage activities within public access corridors to avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects on the values of:</p> <p>7. a. The Coastal Environment; and</p> <p>8. b. High Natural Character Areas</p>

Identification of Options to Achieve the Objective

The following reasonably practicable options have been identified for PA-P2:

Option 1 – Retain PA-P2 as notified

Option 2 - Amend PA-P2 as proposed

Preferred Option

As discussed in the s42A report, activities within public access corridors must be appropriately managed and the PA Chapter must give effect to Policy 13 (Preservation of natural character) and Policy 15 (Natural features and natural landscapes) of the NZCPS. As notified PA-P2 does not give effect to these policies.

PA-P2 requires that activities are mitigated in sensitive environments rather than avoided. This may result in adverse effects from activities within public access corridors on sensitive environments and

does not align with the following policy requirements for protecting sensitive environments set out in Part 2- District Wide Matters:

- a. The Coastal Environment chapter requires that adverse effects of land use and development on the values of natural character areas are avoided (Policy CE-P1)
- b. Policy NFL-P3 of the Natural Features and Landscapes chapter requires land use and development avoid any adverse effects on the characteristics, qualities and values of Outstanding Natural Features and Outstanding Natural Landscapes.

As option 1 does not give effect to the NZCPS and conflicts with the policy framework in the Coastal Environment Chapter and Natural and Landscapes Chapter of the PDP, Option 1 is not the preferred option.

Option 2 proposes amendments to PA-P2 to ensure the policy gives effect to Policies 13 and 15 of the NZCPS and to align with the policy framework in the Coastal Environment Chapter and Natural and Landscapes Chapter of the PDP. For these reasons, it is considered that Option 2 will best achieve the objectives of the PA chapter.

Evaluation of Preferred Option Against Objective

This section contains an evaluation of preferred option 2 identified above.

Evaluation of Preferred Option Against Objective(s)		
	Costs	Benefits
Environmental	No identified environmental costs.	Environmental benefits associated with the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.
Economic	No identified economic costs.	
Social	Social costs where public access cannot be enabled to avoid adverse effects on the environment. These potential social costs are considered to be marginal as public access is supported where these effects are avoided.	No identified social benefits.
Cultural	No identified cultural costs.	Cultural benefits associated with public access being managed to avoid adverse effects on the values of Sites and Areas of Significance to Māori.

Economic growth provided or reduced	No potential impact on economic growth.
Employment opportunities	No potential impact on employment opportunities.
Uncertain or insufficient info	The information supporting this policy is certain. The amendments to the policy incorporate the wording from policy 13 and 15 of the NZCPS. The NZCPS clearly sets out how the effects of subdivision, use and development of land on these environments must be managed.
Risk of acting or not acting	Low risk of acting as the recommended new policy is primarily to clarify the original intent of the policy and to ensure the chapter and PDP gives effect to Policy 13 and 15 of the NZCPS.
Effectiveness	
The proposed policy will be more effective as it will ensure the PDP gives effect to the NZCPS and removes conflicts with higher order policy.	
Efficiency	
The proposed policy will be more efficient as it clearly sets out how effects from land use and subdivision are to be managed on the values of these environments and removes conflicts in the PDP for plan users and resource consent applicants to navigate.	
Summary	
For the reasons set out above, Option 2 is the most efficient and effective option for achieving the purpose of the PA chapter. As such, Option 2 is the most appropriate option in accordance with section 32AA of the RMA.	

3. Restricting Public Access

In accordance with Section 75(3) of the RMA the PDP must give effect to higher order planning instruments, including the NZCPS. Policy 19(3) Walking Access of the NZCPS sets out the circumstances where restrictions can be placed on public walking access to, along or adjacent to the CMA. To give effect to Policy 19(3) of the NZCPS, new Policy PA-P3 is proposed as follows:

PA-P4	<u>Restriction of public access</u>
<p><u>Only impose a restriction on public walking access to, along or adjacent to the coastal marine area and waterbodies where such a restriction is necessary to:</u></p> <ol style="list-style-type: none"> 1. <u>Protect threatened indigenous species; or</u> 2. <u>Protect dunes, estuaries and other sensitive natural areas or habitats; or</u> 3. <u>Protect sites and activities of cultural value to Māori; or</u> 4. <u>Protect historic heritage; or</u> 5. <u>Protect public health or safety; or</u> 6. <u>Avoid or reduce conflict between public uses of the coastal marine area and its margins; or</u> 7. <u>For temporary activities or special events; or</u> 	

8. For defence purposes in accordance with the Defence Act 1990; or
9. Ensure a level of security consistent with the purpose of a resource consent; or
10. In other exceptional circumstances sufficient to justify the restriction.

Before imposing any restriction listed above, consider and where practicable provide for alternative routes that are available to the public free of charge at all times.

Identification of Options to Achieve the Objectives

The following reasonably practicable options have been identified for giving effect to the policy guidance for the restrictions to public access:

Option 1 – Retain the policies as notified

Option 2 – A new policy restricting public access for limited reasons, as requested by various submitters

Option 3 – Proposed Policy PA-P3 to give effect to Policy 19(3) of the NZCPS

Preferred Option

As discussed in the s42A report, the PA chapter as notified does not give effect to Policy 19(3) of the NZCPS. Based on this, as currently notified, it is not clear for plan users when public access is restricted. This may result in public access being enabled to areas where restriction is necessary to protect the environment, for example to protect threatened indigenous species or sensitive habitats. It is also not clear that public access would be restricted to protect cultural values such as Wahi Tapu sites and sites of cultural significance to Māori which would be in conflict with section 6 of the RMA. As such, Option 1 is not the preferred option.

Option 2 involves a new Policy that restricts public access to, along or adjacent to the CMA or waterbodies for health and safety reasons in relation to defence or temporary military training activities or for the protection of indigenous biodiversity, threatened species, natural areas or habitats and avoid harm to ecological systems or to indigenous flora and fauna as requested by submitters. These recommendations are considered to create a more restrictive suite of reasons where public access would be restricted than is set out in Policy 19(3) of the NZCPS and does not accurately capture the full suite of matters set out in Policy 19(3) of the NZCPS that prescribe when public access can be restricted. As such, Option 2 is not the preferred option.

Option 3 is the preferred option as proposed Policy PA-P3 ensures the Public Access chapter gives effect to Policy 19(3) of the NZCPS and supports the effective and efficient implementation of Objective PA-O2. In my view, the PDP must give effect to the NZCPS, and I consider the new policy achieves this, whilst making it clear for plan users when public access to the CMA is restricted in alignment with higher order policy. In my view it is important that the policy accurately reflects the circumstances where public access is restricted in alignment with Policy 19(3) of the NZCPS. PA-O2 provides clear direction that a key objective of the Public Access chapter is to ensure public access does not adversely affect

the values of sensitive environments. In my view Policy PA-P3 will ensure the policy framework can effectively and efficiently achieve PA-O2.

Overall, it is considered that Option 3 will best achieve the objectives of the Public Access chapter

Evaluation of Preferred Option Against Objective

This section contains an evaluation of preferred option 3 identified above.

Evaluation of Preferred Option Against Objective(s)		
	Costs	Benefits
Environmental	No identified environmental costs.	Environmental benefits associated with the protection to threatened species and natural habitats, dunes, estuaries and other sensitive natural areas or habitats.
Economic	No identified economic costs.	No identified economic benefits.
Social	Social costs where the public are restricted from access to the CMA and waterbodies. These potential social costs are considered to be marginal in comparison to the social benefits associated with the Policy.	Social benefits associated with the community being protected from accessing the CMA and waterbodies where there is risk to the public health or safety. Conflicts between public uses of the CMA and its margins will be avoided or reduced.
Cultural	No identified cultural costs.	Cultural benefits associated with public access being restricted to protect sites and activities of cultural value to Māori.
Economic growth provided or reduced	No potential impact on economic growth identified.	
Employment opportunities	No potential impact on employment opportunities identified.	
Uncertain or insufficient info	The information is certain. The PDP must give effect to the NZCPS. The NZCPS clearly sets out where a restriction on public access is required to inform this policy.	
Risk of acting or not acting	Low risk of acting as the recommended new policy is primarily to clarify the original chapter intent and to ensure the chapter and PDP gives effect to Policy 19(3) of the NZCPS.	
Effectiveness		

The proposed policy will be more effective as it will ensure the PDP gives effect to the NZCPS and clearly sets out where a restriction on public access is necessary for plan users.

Efficiency

The proposed policy will be more efficient as it clearly sets out where a restriction on public access is necessary for plan users. This makes reading and understanding the PA Chapter more efficient for plan users.

Summary

For the reasons set out above, Option 3 is the most efficient and effective option for achieving the purpose of the PA chapter. As such, Option 3 is the most appropriate option in accordance with section 32AA of the RMA.