

Section 42A Report

Public Access

Prepared for the

Proposed Kaipara District Plan

Report prepared by: **Anna Turner**

13 April 2026

List of submitters and further submitters addressed in this report:

Submission Number	Submitter
70	James Barrett
99	Venessa Anich
136	Federated Farmers of New Zealand (Inc) - Northland Province (Federated Farmers)
149	Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird)
212	BA & JK Paton Ltd
217	Cato Bolam Consultants Limited (Cato Bolam)
294	Birt & Currie Surveyors Limited (Birt & Currie)
265	Environmental Defence Society Incorporated (EDS)
267	Northland Fish and Game Council (Fish and Game)
284	New Zealand Defence Force (NZ Defence Force)
304	Director General of Conservation (DOC)
349	WS & R Smellie and McConaughy Family Trusts
354	Mangawhai Tracks Charitable Trust
FS35	Bream Tail Residents Association
FS44	Daytona Trust
FS45	Director General of Conservation (DOC)
FS47	Federated Farmers of New Zealand (Federated Farmers)
FS93	Royal Forest and Bird Protection Society of NZ (Forest & Bird)
FS97	Tappenden Holdings Limited

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List of abbreviations used in this report

Abbreviation	Term
KDC	Kaipara District Council
NZCPS	New Zealand Coastal Policy Statement
PDP	Proposed District Plan
RMA	Resource Management Act 1991
CMA	Coastal Marine Area
RPS	The Regional Policy Statement for Northland
EDS	Environmental Defence Society Incorporated
DOC	Department of Conservation
EPA	Esplanade Priority Areas
ONF	Outstanding Natural Features
ONL	Outstanding Natural Landscapes
HNC	High Natural Character Areas
ONC	Outstanding Natural Character Areas
SASM	Sites and Areas of Significance to Māori
RMP	Reserve Management Plan
CMP	Conservation Management Plan
NPS-NH	National Policy Statement for Natural Hazards
NPS-IB	National Policy Statement for Indigenous Biodiversity

Executive Summary

- i. The Proposed Kaipara District Plan (PDP) was publicly notified in April 2025. The Public Access Chapter is located in Part 2 – District Wide Matters under Natural Environment Values and contains provisions to maintain and enhance public and customary access to and along the coastal marine area (**CMA**) and waterbodies, while managing any adverse effects of access on sensitive environments.
- ii. 21 primary submitters and 9 further submitters made submissions on the Public Access Chapter. Submitters are generally supportive of the intent of the chapter to maintain and enhance public access; however, a range of amendments are sought to improve clarity, ensure alignment with higher order policy documents and improve plan consistency and workability.
- iii. Submitters requesting amendments to provisions in the Public Access Chapter broadly fall into four categories:
 - a. Submitters seeking stronger direction to manage adverse effects of public access and to be clear when public access restrictions to the CMA and waterbodies are necessary to give effect to Policy 19(3) Walking access of the New Zealand Coastal Policy Statement (**NZCPS**).
 - b. Submitters seeking amendments to improve clarity, usability and implementation of provisions, including how Esplanade Priority Areas (**EPAs**) are identified.
 - c. Another key theme is requests for the Public Access Chapter to better align with higher order planning documents, particularly to ensure the chapter gives effect to the New Zealand Coastal Policy Statement (**NZCPS**).
 - d. Requests to amend the EPA maps to identify new EPAs.
- iv. My key recommendations to the Public Access Chapter are summarised as follows:
 - a. Amend the Overview statement to clarify that public access may be restricted in limited circumstances, consistent with Policy 19 (3) Walking access of the NZCPS.
 - b. Amend policy PA-P2 to align with Policies 13 and 15 of the NZCPS.
 - c. Introduce new policy PA-P3 Esplanade Priority Areas to clarify how EPAs are identified.
 - d. Introduce new policy PA-P4 Restriction of public access, setting out the circumstances where public access to, along or adjacent to the CMA and waterbodies can be restricted,

including for biodiversity protection, cultural values, public safety, and other matters consistent with Policy 19(3) Walking access.

- e. Include an advice note to clarify that rules in other Part 2 – District Wide Matters may apply to public access activities, in addition to the rules of the subdivision chapter.
- f. I do not recommend amendments to the mapped EPAs in response to submissions due to insufficient evidence provided.

1 Introduction

1.1 Qualifications and Experience

1. My name is Anna Marée Turner. I am a Senior Associate at Barker and Associates (**B&A**). I am contracted as an impartial planning consultant by Kaipara District Council (**KDC**) to assist with the Proposed Kaipara District Plan (**PDP**). My previous involvement with the PDP has been supporting peer reviews of Section 32 reports for various plan topics, including Public Access whilst I was employed at my previous role with SLR Consulting as a Principal Planning Consultant. I was not directly involved in the preparation of the Public Access chapter prior to notification. I was engaged by KDC to be the Reporting Officer for this topic in March 2026.
2. I hold a Bachelor of Planning (Hons) from the University of Auckland, and I am an intermediate member of the New Zealand Planning Institute.
3. I have 17 years' experience working as a planner, gained both in New Zealand and the United Kingdom. I have held roles working for the private sector and for local and central government on a range of resource consent and policy roles. My private sector experience includes obtaining resource consent for a range of developments including for telecommunications, kindergartens, parks infrastructure and works, commercial and residential developments and solar farms.
4. My public sector policy experience includes processing private plan change requests, notices of requirement and representing Council at hearings and Environment Court mediation. I supported the drafting of district and regional plan provisions for the Auckland Unitary Plan.
5. I have held roles at the Ministry for the Environment, contributing to the development of plan-making reforms associated with the Resource Legislation Amendment Bill 2015 and the development of the Natural and Built Environment Act 2023.
6. I have been closely involved in the development and implementation of national direction instruments under the Resource Management Act 1991 (**RMA**) (national policy statements and national environmental standards), from the policy decisions and drafting stage, the preparation of section 32 evaluation reports and implementation guidance. This includes the National Policy Statement and National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat and the National Policy Statement for Indigenous Biodiversity.

1.2 Preparation of the report

7. I am authorised by KDC to prepare this report under section 42A of the RMA to assist the PDP Hearings Panel. The purpose of this report is to both assist the Hearings Panel in hearing and deciding on submissions made on to the PDP, and to assist submitters in understanding how

their submission is being considered as part of the PDP process. This report includes my recommendations on matters raised in submissions, and any changes to the PDP that I consider to be appropriate having considered the statutory requirements.

8. I am the author of this report. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
9. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations that I have made in this report are not binding on the Hearings Panel. It should not therefore be assumed that the Hearings Panel will reach the same conclusions or decisions having considered all the submissions and evidence from submitters. The decision ultimately lies with the Hearings Panel.

1.3 Code of Conduct

10. While this is not a hearing held by the Environment Court, I confirm that I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

1.4 Conflict of Interest

11. I confirm that I have no real or perceived conflict of interest. Whilst B&A represent several clients who are submitters on the PDP, I was not involved in preparing any submissions on the PDP on behalf of any submitter. I did not work for B&A during the original submission process and was not involved with any work on the PDP for any of its clients. B&A have not submitted on this chapter.
12. B&A staff have assisted KDC with the formulation of section 32 evaluations for several PDP topics prior to the notification of the PDP. Regarding this matter, I confirm the following:
 - a. B&A is an independent planning consultancy providing planning and resource management advice and services. B&A act on behalf of several private and public clients throughout the country.
 - b. I was not involved in the preparation of the public access provisions or further work following notification of the PDP.

13. Noting the above, I have no conflict of interest to declare in regard to the preparation of this evidence, the hearing of this topic, or my future engagement in relation to this topic as part of the PDP review.

2 Scope of Report

2.1 Matters addressed by this report

14. The scope of this report is to consider the submissions and further submissions made in respect of the provisions in the Public Access chapter of the PDP and make recommendations.
15. This section 42A report also addresses the definitions which are specific to the Public Access chapter including the definition of Esplanade Priority Areas.

2.2 Overview of the Public Access Chapter

16. As notified, the Public Access chapter contains two objectives to enable and enhance public and customary access to and along the CMA and waterbodies, provided any access does not adversely affect the values of sensitive environments throughout Kaipara.
17. The policy framework seeks to ensure appropriate setbacks from public access along the CMA and waterbodies is maintained. It also manages activities within public access corridors to mitigate any adverse effects on the values of sensitive environments including for example, the Coastal Environment, High Natural Character Areas (**HNC**) and Outstanding Natural Character Areas (**ONC**).
18. The Public Access Chapter sits under the “Natural Environment Values” heading within Part 2 – District-wide matters in the PDP. The Public Access Chapter is to be read alongside other chapters in Part 2 – District-wide matters in the PDP where relevant, including the subdivision chapter and chapters that manage overlays including the Natural Character, Natural Features and Landscapes and Coastal Environment Chapters.
19. The policy framework recognises and provides for public and customary access by ensuring access is protected, maintained and enhanced through the identification of EPAs and ensuing subdivision provides public access in identified EPAs.
20. EPAs identify priority public access linkages to and along the CMA and waterways in key locations across Kaipara. The EPAs are shown as overlays on the District Plan maps. Appendix F provides a map of EPAs across the district.
21. The chapter does not contain any rules or standards. The Subdivision Chapter in Part 2- District-Wide Matters of the PDP sets out the applicable rules for the creation of esplanade reserves and

includes an objective and policy on the creation of esplanade reserves and strips. These provisions in the Subdivision chapter work in tandem with the Public Access objectives and policies.

22. Objective SUB-O5 Esplanade Reserves in the Subdivision Chapter sets out the purpose of esplanade reserves and strips which is to help protect conservation values, reduce natural hazards, and provide public access along waterways and coastal areas. Supporting Policy SUB-P5 Esplanade Reserves seeks to protect the natural values of the coastal environment and the district's lakes and rivers, while enabling public access to these areas through the creation of esplanade reserves or strips at the time of subdivision. This applies to allotments less than 4 hectares adjoining the coast or a qualifying lake or river and to allotments over 4 hectares on land on the margins of the coast or within EPAs.
23. Policy SUB-P5 exempts subdivision applications from the requirement to create esplanade reserves or esplanade strips where:
 - a. It is impractical to provide all or part of the esplanade reserve or strip due to the physical characteristics and/or constraints of the site;
 - b. A waiver or reduction in width is necessary to ensure the security of adjoining property, protect public safety, or protect wāhi tapu or culturally significant sites;
 - c. The purpose of the esplanade reserve or strip can be appropriately achieved through alternative means, including within the allotments created by subdivision;
 - d. A reduced width is sufficient to protect identified public access, recreation, or conservation values, or to provide for natural hazard mitigation; or
 - e. Where the costs of acquiring and/or maintaining the esplanade reserve or strip would outweigh the potential public benefit.
24. Policy SUB-P5 includes an advice note for plan users clarifying that the policies in the public access chapter are relevant to any resource consent application to waive or reduce the width of esplanade reserve or strip.
25. In accordance with the requirements of Section 230 of the RMA, Rule SUB-S8 of the Subdivision chapter requires a 20m wide esplanade reserve or strip along the MHWS, riverbank or lake margin when a subdivision creates lots smaller than 4ha on land adjoining the coast or a qualifying lake or river¹ in all zones. Rule SUB-S8 also requires a 20m wide esplanade reserve

¹ In accordance with 230(4) of the RMA the rule applies to allotments adjoining a river with a river bed wider than 3m or a lake with a bed of 8ha or more.

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- or strip along the MHWS, riverbank or lake margin when a subdivision creates lots larger than 4ha on land adjoining the MHWS or water bodies identified as Esplanade Priority Areas.
26. Non-compliance with Rule SUB-S8 of the Subdivision chapter requires a restricted discretionary activity resource consent. Council's discretion is restricted to several matters including:
- a. The costs and benefits of acquiring and maintaining the land
 - b. If an alternative means can achieve the purpose of the esplanade reserve or strip
 - c. The characteristics and constraints of the site
 - d. The actual and potential adverse effects on existing activities on adjoining sites
 - e. The effects of a reduction in width of the esplanade reserve or strip on achieving the purpose of the reserve, for example to enable public access to or along the CMA or any river or lake.
27. The Financial Contributions section in Part 2 – District Wide Matters 'Strategic Direction' contains objectives, policies, rules and standards to guide the assessment of financial contributions. Standard FC-S2 enables Council to recover contributions from developers (in money, land, or both) to avoid, remedy, or mitigate adverse effects of their activity, including to protect or enhance riparian areas where public access, habitat, or water quality values may be adversely affected and no esplanade area exists.
28. Compensation for taking esplanade reserves or esplanade strips is enabled through the following sections of the RMA:
- a. Section 237E requires council to compensate for taking esplanade reserve or strip where the width of the esplanade reserve/strip exceeds 20 metres on a lot of less than 4 hectares created when land is subdivided, with compensation being payable only for the land additional to the 20 metres.
 - b. Section 237F requires council to compensate for any esplanade reserve or strip of any width required to be set aside or created on a lot 4 hectares or more when land is subdivided.
29. Compensation is not required to be paid by the Council for taking esplanade reserves or strips where:
- a. a lot of less than 4 hectares is created when land is subdivided where the land is within 20 metres from the mark of MHWS of the sea or from the bank of any river or from the margin of any lake (s237E of the RMA); or

- b. a lot of more than 4 hectares is taken under a plan rule developed under s77(1)² of the RMA.

2.3 Statutory Context

30. On the 9 December 2025, the Government introduced two new pieces of legislation to Parliament to replace the RMA as follows:
 - a. The Planning Bill – focused on planning to enable development and infrastructure.
 - b. The Natural Environment Bill – focused on managing the natural environment
31. The Government has announced its intention to proceed with the Select Committee process at pace through the first half of 2026, with both Bills intended to be passed into law before the 2026 general election. Although the signalled intent is for a quick transition to the new resource management system by the end of 2029, the RMA continues to be in effect until this new replacement legislation is passed, with planning documents prepared under the RMA remaining in effect until new national direction instruments are prepared, standardised plan content developed and new plans prepared (including Regional Spatial Plans, Natural Environment Plans and Land Use Plans).
32. The Operative Kaipara District Plan is thirteen years old and drafted in a matter that is misaligned with both the National Planning Standards and other district plans in the Northland region (being Whangarei and Far North district plans). Substantive work is required to better align it with other planning provisions in the region, as well as with the style, content and format of plans that are likely to be required under the new planning system. The Schedule 1 hearing process for the PDP is an important part of modernising the district plan and achieving clear and consistent provisions that will better integrate into the new planning system.
33. Once the new legislation is passed, the direction of the new legislation will be considered when making recommendations and alignment will be sought with this direction but only where it is within the scope of submissions to do so. As the new legislation is not yet in force and the content is not finalised, this section 42A report does not consider the direction contained in the new bills. This approach is consistent with a recent decision from the *High Court in Box Property*

² S 77 of the RMA: *Rules about esplanade reserves on subdivision and road stopping*

(2) A territorial authority may include a rule in its district plan which provides that in respect of any allotment of 4 hectares or more created when land is subdivided, esplanade reserves or esplanade strips, of the width specified in the rule, shall be set aside or created, as the case may be, under section 230(5).

Investments Limited v The Expert Consenting Panel [2025] NZH 1773 which held that decisions must be made based on the law as it currently stands, not on future legislative changes [at 35].

34. On 18 December 2025 10 new or amended national direction instruments came into effect on 15 January 2026. This new or amended national direction does not include any direction on the way activities in the Public Access chapter should be managed under district plans
35. The Public Access section 32 evaluation report provided detail of the relevant statutory considerations with respect to Part 2 of the RMA and the parts of the National Planning Standards relevant to the Public Access topic. I do not consider it necessary to repeat the detail of the full suite of higher order documents here. However, I do consider it useful to provide an overview of additional legislation relevant to this topic, a further explanation of the relevant provisions of the RPS and relevant lwi management plans.

Relevant additional legislation and plans

36. The Reserves Act 1997, the Conservation Act 1987 and the Walking Access Act 2008 are additional legislative/regulatory requirements that are also relevant to this topic.

Reserves Act 1977

37. The Reserves Act 1977 provides for the acquisition of land for reserves, and the classification and management of reserves. The functions set out in section 3(1)(c) include the following:
 - a. To provide for the preservation and management, for the benefit and enjoyment of the public, areas possessing some special feature or values such as recreational use, wildlife, landscape amenity or scenic value. For example, the reserve may have value for recreation, education, as wildlife habitat or as an interesting landscape.
 - b. To ensure, as far as practicable, the preservation of representative natural ecosystems or landscapes and the survival of indigenous species of flora and fauna, both rare and commonplace.
 - c. To ensure, as far as practicable, the preservation of access for the public to the coastline, islands, lakeshore and riverbanks and to encourage the protection and preservation of the natural character of these areas.
38. Esplanade reserves are created through subdivision under the RMA. The land may be vested in a council as all or part of a reserve contribution at the time of subdivision or created by the council or the Crown from land purchased from private land owners. In such cases the land becomes a reserve upon resolution of council to that effect or by gazette notice. A reserve can include water bodies and/or land adjoining the margins of water bodies. Reserves can be used for conservation purposes as well as a wide range of other values.

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39. The Reserves Act requires administering bodies to prepare Reserve Management Plans (**RMPs**). These plans set out in detail what activities can and cannot occur in the district's reserves. The Reserves Act determines the types of uses that are appropriate for reserve areas classified under the Act.
40. Section 74(2)(b)(i) of the RMA requires council to have regard to management plans and strategies prepared under other acts including The Reserves Act to the extent that their content has a bearing on resource management issues of the district when preparing a district plan. As I understand it, the operative reserve management plans in Kaipara are:
- a. Kai Iwi Lakes (Taharoa Domain) RMP;
 - b. Mangawhai Coastal and Harbour RMP;
 - c. Northern Wairoa Memorial Park RMP; and
 - d. Pou Tu o Te Rangi and Harding Park RMP

Conservation Act 1987

41. Part 4A Marginal strips of the Conservation Act 1987 creates and manages marginal strips in areas of Crown land that adjoin the sea, lakes or rivers. These strips are reserved from disposal by the Crown and are held for conservation purposes. They are also held to enable public access and recreational use of the strips and adjacent water bodies. Management of marginal strips is usually the responsibility of the Department of Conservation (**DOC**) but can be transferred to Council or adjoining owners where appropriate.

Walking Access Act 2008

42. The Walking Access Act 2008 provides for the establishment of walkways over public and private land. The New Zealand Walking Access Commission must obtain written consent from the relevant administering authority to declare a walkway over public land or negotiate easements or leases with landowners of private land.

Northland Regional Policy Statement

43. The Regional Policy Statement for Northland 2016 (**RPS**) includes several objectives, policies and implementation methods that direct the provisions of the PDP to maintain and improve public access to and along the CMA. The key relevant provisions of the RPS are as follows:
- a. Issue 2.6 of the RPS which recognises where land use and development can lead to the loss of access to sites to Wāhi tapu and sites of customary value which Māori have a special relationship with.

- b. Objective 3.15 Active Management of the RPS directs that public access to the coast is maintained or improved and Policy 4.7.1 requires plan provisions to recognise and promote the improvement of public access to the CMA and the margins of waterbodies except where access would compromise the conservation of historic heritage or significant indigenous vegetation and significant habitats of indigenous fauna.
- c. Policy 5.1.2(a) Development in the Coastal Environment seeks to enable people and communities to provide for their wellbeing through appropriate subdivision, use, and development that maintains and enhances public access to the CMA through sufficient development setbacks. Method 5.1.5 directs KDC to develop plan provisions that give effect to Policy 5.1.2.

Proposed Regional Plan for Northland

- 44. On 18 March 2026 Northland Regional Council adopted the Proposed Regional Plan for Northland. The Proposed Regional Plan for Northland will become operative on 27 March 2026. There is nothing in the Regional Plan that I consider is directly relevant to this topic.

2.4 Relevant Iwi management plans

- 45. Four iwi management plans were considered when developing the PDP, as set out in Section 2.5 of the Section 32 Overview Report³. The iwi management plans with particular direction on public access are outlined below.

Te Uri o Hau Kaitiakitanga o te Taiao 2011

- 46. Section 49 Māori Land includes an objective to assist and support Te Uri o Hau land holders in the cultural, environmental, social and economic development of Māori land held under the Te Ture Whenua Māori Act 1993. This objective is supported by the following Policy relevant to public access:

Assist Māori land holders in the protection of their indigenous ecosystems under the Nga Whenua Rāhui fund, supporting possible public access agreements with land holders. The objective is long term protection with inter-generational reviews of conditions.

- 47. Section 44 includes an objective to development Te Uri o Hau commercial redress properties at a rate and in a manner that is economically and environmentally sustainable for future generations. This objective is supported by the following policy relevant to public access:

³ [Public Access S32 Report](#)

Manage public access to the foredune system to ensure the health and stability of this area.

Nga Ture mo Te Taiao o Te Roroa 2019

48. A key issue for Te Roroa is public pressure to open up many areas containing sites for use by the general public. Te Roroa note the current Crown policy of providing access for all to and along all parts of our waterways and coastline raises significant issues.
49. Te Roroa recognise the desire of most New Zealanders to be able to access our waterbodies and coastline for a variety of reasons and uses and highlight a key issue is a conflict between public access, protection of sites and resources of importance to Te Roroa. Public access can conflict with prudent management of returning Settlement asset, e.g. increased fire risk to plantation forestry. To address this issue Te Roroa policies, seek the following outcomes regarding Public Access:
 - a. to all waahi tapu,
 - b. for the harvesting and collection of kaimoana and mahinga kai
 - c. to our fisheries, and
 - d. to taonga prized for traditional, customary and cultural uses.
50. Policies and plans prepared by statutory agencies must recognise the rights of access that Te Roroa have:
 - a. to all waahi tapu,
 - b. for the harvesting and collection of kaimoana and mahinga kai
 - c. to our fisheries, and
 - d. to taonga prized for traditional, customary and cultural uses.
51. Public access rights should not be given precedence over spiritual and customary values and sites.
52. Public access rights should not be given precedence where this endangers or conflicts with management of Settlement assets such as plantation forestry.

2.5 Summary of advice from iwi authorities:

53. Advice from iwi authorities is set out in Section 3 of the Section 32 evaluation report for the Public Access chapter⁴. In summary, advice received emphasised the need to provide for access for Mana Whenua to customary areas and sites of significance while also restricting access where necessary.
54. Joint feedback from Te Uri o Hau Settlement Trust and Te Roroa Whatu Ora Trust on the PDP requested Policies PA-P1 and PA-P2 should be combined to simplify the chapter while achieving

⁴ [Public Access S32 Report](#)

the same outcome. The Public Access S32 report states these policies have been combined in response to this feedback, however I confirm these policies have not been combined in the notified PDP and no submission has been received requesting this.

2.6 Procedural matters

55. James Barrett [S70.3] seeks to add Paerata, Te Aotahi, Waiotama, Kirikopuni, Mareikura and Pukehuia to the EPA mapping. I contacted James Barrett via email on 2 March 2026 to request clarity on the locations of where EPAs are sought to assist with preparing this section 42A report. I have not received a response to address Mr Barrett's submission.

2.7 Organisation of the report

56. The key issues identified in this report are set out below and are largely grouped by key themes:
- a. Topic 1: Natural environment values and public access
 - b. Topic 2: Public Access Restrictions
 - c. Topic 3: Managing Adverse Effects
 - d. Topic 5: Identifying EPAs
 - e. Topic 6: Overview and general submissions
 - f. Topic 7: Objectives
 - g. Topic 8: Policies

2.8 Submissions and further submissions

57. 31 primary submitters and 9 further submitters made submissions on the Public Access Chapter. The summary of submissions and further submissions pertaining to this section 42A report, and my recommendation for each are attached as Appendix A. The original submission and further submission documents can be found on KDC's website.
58. While all submitters have been read and considered in the summary of submissions (Appendix A), responses have not necessarily been written for each individual submission point. To assist the Hearings Panel in achieving clause 10(2) of the First Schedule of the RMA, I have provided reasons for my recommendations to accept or reject submissions and further submissions generally by themes. Responses have been written for individual submissions that raise matters that differ from other submissions within the same thematic group or that request specific amendments to the provisions.

2.9 Recommended changes

59. Where I have recommended amending provisions as a result of considering the submissions and further submissions, these are contained as tracked changes in Appendix B. Text that is recommended to be amended is shown as **red text**, with deletions being ~~struck through~~, and additional text underlined. Any recommended changes are coloured red for ease of locating.

2.10 Section 32AA evaluation report

60. 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 the section 32AA evaluation reports needs to be at a level of detail that corresponds to the scale and significance of the changes recommended. To streamline this report, where a change has been recommended, the corresponding section 32AA evaluation is attached in Appendix C.

3 Topic 1: Natural environment values and public access

3.1 Introduction

61. This section addresses submissions requesting amendments to the Public Access chapter to recognise public access can potentially affect the natural environment, including indigenous vegetation and significant habitats of indigenous fauna.
62. One submitter opposes the Public Access chapter in part, seeking broad amendments to better address indigenous biodiversity. Two further submitters support this position (in full or in part), three opposed it, and one did not state a clear position, indicating a mixed level of support overall.

3.2 Analysis

63. Environmental Defence Society Incorporated (**EDS**) [S265.6] opposes the Public Access Chapter in part and seeks amendments across the entire Natural Environment chapters in Part 2- District Wide Matters of the PDP to give effect to national direction and regional planning including the National Policy Statement for Indigenous Biodiversity (**NPS-IB**) and the National Policy Statement for Freshwater Management (**NPS-FM**). EDS requests an entire re-draft of all relevant objectives, policies, rules and standards to ensure planning outcomes are achieved which will not jeopardise the integrity of Kaipara's natural environment.
64. EDS submits that without mapping being undertaken for Significant Natural Areas (**SNA**), it is not possible to state that the PDP gives effect to national direction or is the most effective or efficient way of achieving the principles and purposes of the RMA, including section 6(c). EDS does not agree that relying on a future plan change to the plan will address this issue.

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65. I consider that EDS [S265.6] does not request specific amendments to the Public Access chapter, rather it broadly seeks Public Access as well as the chapters in the Natural Environment section of Part 2 – District Wide Matters are redrafted to give effect to the NPS-IB and NPS-FM.
66. Six further submissions were received in response to this submission. Forest & Bird [FS93.69] supports the EDS submission on the basis that it will support the improvement of outcomes for indigenous biodiversity. DOC [FS45.86] supports the submission in part, agreeing that the Public Access chapter needs amending to give effect to the NPS-IB, NPS-FM and section 6(c) of the RMA. Bream Tail Residents Association [FS35.104], Daytona Trust [FS44.45] and Tappenden Holdings Limited [FS97.45] oppose the submission from EDS on the basis that the submission lacks the specificity of relief required of submissions to a proposed plan and is not supported by a s32 analysis.
67. Federated Farmers of New Zealand [FS47.96] also lodged a submission in response to EDS submission [S265.6], however the submission does not state if Federated Farmers oppose or support the submission, nor provide any reasons for the further submission or the relief it seeks.
68. The Overview Section 32 report confirms Council has chosen not to give effect to NPS-IB through the PDP, and instead allow the NPS-IB to be given effect to through a future plan change once the requirements are more certain and to allow more time for engagement with potentially affected landowners.
69. Regarding the EDS submission on SNA mapping and opposition to the use of a future plan change to give effect to the NPS-IB, I note the NPS-IB direction to map SNAs does not currently apply (these requirements have been paused for three years)⁵. The Overview Section 32 report for the PDP confirms Council has chosen not to give effect to NPS-IB through the PDP to allow the NPS-IB to be given effect to through a future plan change once the requirements are more certain and to allow more time for engagement with potentially affected landowners. I consider any amendments to Council's approach to SNA mapping and the preference to give effect to the NPS-IB through a future plan change is outside of the scope of the Public Access Chapter and Hearing.
70. I am aware that EDS requests amendments to the Ecosystems and Indigenous Biodiversity topic to give effect to relevant national direction instruments, chiefly the NPS-IB and the NPS-FM. That topic is yet to be heard, and I consider it the most appropriate topic to consider EDS submission on how the plan as a whole gives effect to the NPS-IB and any related considerations of the NPS-FM through district wide rules.

⁵ In accordance with s78 of the RMA (Time-limited modifications to the NPSIB 2023).

71. Regarding submissions requesting the redrafting of the chapter to give effect to the NPS-IB and NPS-FM, I recommend new Policy PA-P4 setting out circumstances where restricting public access to the CMA and waterbodies is appropriate in accordance with Policy 19(3) of the NZCPS in Topic 2 below. This includes restricting access to protect threatened indigenous species.
72. I do not recommend further amendments to the chapter in response to these submissions. I consider any further amendments to provide greater protection to indigenous species (as sought) would create unnecessary duplication with the provisions of the Ecosystems and Indigenous Biodiversity Chapter. Public Access activities are not exempt from vegetation clearance and land disturbance rules in Part 2 – District Wide rules of the PDP.
73. Several other chapters of the PDP include a note to clarify for plan users when Part 2 – District Wide Matters apply. I consider it appropriate to include a note to clarify that Part 2 – District Wide Matter rules would apply to public access activities where triggered. I propose an advice note, which provides consistent wording with other advice notes in the PDP is included under the 'Rules' heading of the chapter.

3.3 Recommendations

74. I recommend the following note be included under the 'Rules' section of the Public Access Chapter:

2. There may be rules in other Part 2 - District-wide matters that apply to public access activities, in addition to the rules of the Subdivision chapter.

4 Topic 2: Public Access Restrictions

4.1 Introduction

75. The Public Access chapter does not identify when public access should be restricted. Policy 19(3) of the NZCPS directs when a restriction on public access is required.
76. This topic addresses submissions requesting amendments to the chapter to be clear when access should be restricted and to ensure the chapter gives effect to the NZCPS.

4.2 Analysis

77. NZ Defence Force [284.20] seek either to amend the wording of PA-P1 to provide for public access restrictions where appropriate for health and safety reasons in relation to defence or temporary military training activities; or alternatively a new policy to be added as follows:

PA-P3 Restriction of public access

Only allow restriction of public walking access to, along and adjacent to the coastal marine area where the restriction is necessary to:

... [including any other reasons as necessary

- a. Protect public health or safety, or
- b. Provide for temporary activities or special events, or
- c. Provide for the safe and efficient operation of regionally significant infrastructure,
or
- d. Address other exceptional circumstances sufficient to justify the restriction

78. BA & JK Paton Ltd [S212.15] and Cato Bolam [S217.48] support PA-P2 in part. These submitters note that while objective PA-O2 and policy PA-P2 acknowledge the risks of public access on sensitive environments, the actual mechanisms to mitigate or restrict access in these areas are vague or missing.

79. Forest & Bird [S149.67] request a new policy to establish where and under what circumstances public access will be restricted, that includes the following circumstances:

- a. To protect indigenous biodiversity values
- b. To protect threatened indigenous species
- c. To protect sensitive natural areas or habitats
- d. To avoid harm to ecological systems or to indigenous flora and fauna.

80. DOC [FS45.52] further submitted, supporting this Forest & Bird submission for a new policy on the basis that it recognises and provides for section 6(c) of the RMA.

81. Forest & Bird [S149.66] seeks clarification that public access in some cases is restricted to avoid adverse effects on sensitive environments by amending policy PA-O2 as follows:

PA-O2 Adverse effects of public access

Public access does not adversely affect the values of sensitive environments, such as the , High Natural Character Areas, Outstanding Natural Character Areas, Outstanding Natural Landscapes, Outstanding Natural Features and Sites and Areas of Significance to Māori. Where it does, public access is restricted.

82. DOC [FS45.51] further submitted, supporting Forest & Bird and the restriction of public access, especially in the coastal environment to effect to Policy 19 and 20 of the NZCPS.

83. Forest & Bird [S149.65] additionally seek amendments to the Overview Statement to insert text restricting public access in the coastal environment where required in accordance with policies 19 and 20 of the NZCPS and any consequential amendments.
84. Federated Farmers [S136.89] support in part the Overview Statement and requests a user note is added to the Overview Statement as follows:

Note: The public access provisions in the District Plan do not override other legal requirements, including the legal rights of landowners in relation to access, and in relation to health and safety matters. Public access over private land is only available where permission is given by the landowner.

85. Federated Farmers raises concerns about trespassing on coastal or riparian margins and considers it appropriate to limit public access when access would be unsafe when farming activities are being undertaken, for example, when tree felling or during harvest or lambing activities.
86. I agree with NZ Defence Force, Forest & Bird and DOC that the Public Access chapter should be clear about the circumstances where restricting public access is necessary. I agree that a new stand-alone policy setting out the circumstances where public access to, along or adjacent to the CMA can be restricted is appropriate to clearly give effect to the higher order direction in Policy 19(3) of the NZCPS.
87. Policy 19(3) of the NZCPS directs the following in regard to restricting public walking access:

(3) Only impose a restriction on public walking access to, along, or adjacent to the coastal marine area where such a restriction is necessary:

- a. to protect threatened indigenous species; or*
- b. to protect dunes, estuaries and other sensitive natural areas or habitats; or*
- c. to protect sites and activities of cultural value to Māori; or*
- d. to protect historic heritage; or*
- e. to protect public health or safety; or*
- f. to avoid or reduce conflict between public uses of the coastal marine area and its margins; or*
- g. for temporary activities or special events; or*
- h. for defence purposes in accordance with the Defence Act 1990; or*

- i. to ensure a level of security consistent with the purpose of a resource consent; or*
- j. in other exceptional circumstances sufficient to justify the restriction.*

(4) Before imposing any restriction under (3), consider and where practicable provide for alternative routes that are available to the public free of charge at all times.”

88. To ensure the Public Access chapter gives effect to Policy 19 Walking Access of the NZCPS and to make it clear to plan users when public access to the CMA is restricted, I recommend new policy PA-P4: Restriction of public access which sets out the circumstances where public access to the CMA can be restricted in alignment with Policy 19(3) of the NZCPS as set out in the recommendations section.
89. I do not agree with Forest & Bird [S149.66] that amendments to PA-O2 are required. In my view, 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.
90. I agree with Forest & Bird [S149.65] that the Overview Statement should be consistent with the NZCPS. The PDP must give effect to the NZCPS⁶, and I consider the Overview Statement should be clear about the circumstances where public access to the CMA can be restricted to give effect to Policy 19(3) of the NZCPS. To address this submission, I recommend amendments to the Overview Statement that sets out the circumstances where public access to the CMA can be restricted in alignment with Policy 19(3) of the NZCPS.
91. Regarding Forest & Bird [S149.65] requesting the Overview Statement accord with Policy 20 of the NZCPS, Policy 20 of the NZCPS directs the control of the use of vehicles on beaches, the foreshore, the seabed and adjacent public land where there is a risk of harm to particular values in the coastal environment. I understand that vehicle access is managed through rules in the Proposed Regional Plan for Northland for access below MHWS and KDC bylaws for access above MHWS. I consider it is neither appropriate nor efficient and effective to consider new restrictions on vehicle access to the coastal environment through the PDP. These matters are addressed elsewhere, and I consider adding further references in the Public Access Chapter would represent unnecessary duplication.
92. With respect to the submission of Federated Farmers [S136.89], I consider it inappropriate to include a user note in the Overview Statement to recognise public access provisions do not override the legal rights of landowners in relation to access. In my view, the objectives and policies of the chapter do not override the key requirements of the RMA that enable public access through landowner and council agreement as follows:

⁶ Sections 62(3) and 75(3)(b) of the RMA require District Plans to give effect to the NZCPS.

- a. Access strips can be established at any time by agreement between the landowner and Council under s273B of the RMA and can be cancelled at any time when agreed by the landowner and Council.
 - b. An esplanade strip for example, can include provisions to exclude access by the public during certain times or under certain conditions (as prescribed in Form 31, in Schedule 1: Forms of the RMA).
 - c. Esplanade strips can be varied or cancelled by a territorial authority subject to the procedure set out in s234 of the RMA. Similarly, where a condition applies, an esplanade strip can be changed, reviewed and cancelled under s127-132 of the RMA.
93. 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. This does not include the protection of a landowner's legal access rights. Policy 19 (3)(e) of the NZCPS⁷ does however allow for a restriction on public access to the CMA to protect public health or safety and I agree that the Overview Statement should recognise this.

4.3 Recommendations

94. I recommend the wording of the Overview Statement is amended as follows in response to submissions:

The RMA and the New Zealand Coastal Policy Statement 2010 (NZCPS) requires that the maintenance and enhancement of public access to the coastal marine area, and waterbodies is recognised and provided for as a matter of national importance. Policy 19(3) of the NZCPS sets out limited circumstances where restrictions on public walking access to, along or adjacent to the CMA can be imposed where necessary. For example, restrictions may be imposed to protect public health or safety or for temporary activities or special events.

95. I recommend new Policy PA-P4: Restriction of public access in response to submissions:

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. <u>For defence purposes in accordance with the Defence Act 1990; or</u> 	

⁷ NZCPS: Policy 19(3) “Only impose a restriction on public walking access to, along or adjacent to the coastal marine area where such a restriction is necessary: ...(e) to protect public health or safety...”

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.

5 Topic 3: Managing adverse effects

5.1 Introduction

96. This topic addresses submissions requesting amendments to policies to manage adverse effects from public access on the values of sensitive environments to give effect to the NZCPS.

5.2 Analysis

97. DOC [S304.95] seeks to amend PA-P2 to give effect to policies 13 and 15 of the NZCPS regarding the avoidance of adverse effects on activities and natural character within the coastal environment and to recognise and provide for section 6(c) of the RMA regarding the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
98. Forest & Bird [FS93.205] further submitted, supporting DOC's submission in full on the basis that it seeks to improve the provisions and improve outcomes for indigenous biodiversity.
99. Policy 13 (Preservation of natural character) of the NZCPS requires the avoidance of any adverse effects of activities on the natural character in areas of the coastal environment with outstanding natural character. The policy directs that significant adverse effects of activities on natural character in all other areas of the coastal environment be avoided and all other adverse effects be avoided, remedied or mitigated:

Policy 13 Preservation of natural character

(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:

- a. avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
- b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;.....*

100. Policy 15 (Natural features and natural landscapes) requires the avoidance of any adverse effects of activities on ONF's and ONL's in the coastal environment and directs that significant adverse

effects of activities on other natural features and natural landscapes in the coastal environment be avoided, remedied or mitigated.

Policy 15 Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

- a. avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
- b. avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;..*

101. 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) and 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.

102. I agree with DOC [S304.95] that PA-P2 must give effect to policies 13 and 15 of the NZCPS. In my view, PA-P2 conflicts with the policies in the Coastal Environment Chapter and Natural Features and Landscape chapters of the plan which avoid adverse effects on natural character areas and the characteristics, qualities and values of ONF's and ONL's. I recommend PA-P2 be amended to align with policies 13 and 15 of the NZCPS and policies in the Coastal Environment and Natural Features and Landscape chapters in Part 2- District Wide Matters.

103. Regarding DOC's request to amend PA-P2 to recognise and provide for section 6(c) of the RMA to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna, I consider proposed Policy PA-P4 will ensure public access is restricted to protect threatened indigenous species.

5.3 Recommendations

104. I recommend the following amendments to Policy PA-P2 in response to submissions:

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

6 Topic 4: Identifying EPAs

6.1 Introduction

105. The Public Access chapter does not identify how EPAs will be identified. This topic addresses submissions requesting clarification of the criteria used to identify EPAs.
106. Submitters seek clarification of the criteria used to identify EPAs and their role.

6.2 Analysis

107. BA & JK Paton Ltd [S212.12] and Cato Bolam [S217.45] request an amendment to PA-O1 to provide clarification on the criteria used to identify key linkages to the CMA, rivers and lakes as Esplanade Priority Areas.
108. Birt & Currie Surveyors Limited [S294.5] seeks to amend the purpose and/or the mapping of EPAs to make clear what their purpose is. Birt & Currie consider there are multiple purposes for esplanades and sometimes not all purposes are relevant, they also query if Council wish to acquire all identified EPAs
109. EPAs are defined in the plan as - *an area of land indicated on the Planning Maps as Esplanade Priority Area, adjoining the coast, rivers or streams*⁸. This definition provides direction to Plan users that EPAs are identified on the planning maps but does not provide any clarity on the criteria used to identify these areas. Appendix F provides a map of the location of EPAs identified on the PDP maps across the district.
110. The KDC Parks and Asset Management Team have provided a memo setting out the methodology used to inform EPAs. This memo is in **Appendix E** of this report. This confirms the EPAs were identified by council through an in-house mapping exercise informed by the Kaipara

⁸ See Part 1 – Introduction and general provisions, Interpretation, Definitions: Esplanade Priority Areas: means an area of land indicated on the Planning Maps as Esplanade Priority Area, adjoining the coast, rivers or streams.

District Council Spatial Plan 2020, a report commissioned by council by Xyst entitled Kaipara District Council - Reserves and Open Space Analysis - District Plan Review 2021 and local knowledge.

111. This memo confirms EPAs were identified in areas located near existing popular reserves where they would logically extend and enhance access along rivers or coastal areas, enabling public access and recreational use in a manner consistent with conservation values and the purpose of esplanade reserves and strips under Section 229 of the RMA. This exercise prioritised areas that met the EPA criteria listed in the Xyst report.
112. The purpose of the report by Xyst was to assess, identify and recommend EPAs within the District and to assess the current areas of Reserve and Open Spaces land available within the Kaipara District. The scope of the report was to evaluate the supply of land within each of the National Planning Standard zones (i.e. Natural Open Space, Open Space, Sport and Active Recreation zones). This report is in **Appendix D** of this report.
113. The Xyst report assessed areas around the coast, rivers and townships of Kaipara by considering existing esplanade reserves, other forms of public access, and potential priority areas for inclusion in the District Plan. EPAs were considered to have greater priority where these criteria were met:
 - a. completed existing esplanade or open space networks
 - b. formed part of proposed or existing walking and cycling trails
 - c. reconnected townships and other community settlements with river or coastal connections
 - d. were needed to create access links⁹.
114. The report identified EPAs throughout the district, for example, including in Clarks Bay, Mangawhai, Matakoho and Tinopai and these recommended areas are mapped as EPAs in the PDP. Many of the mapped EPAs in the PDP have recognised conservation values and are subject to ONF or High Natural Character Area overlays for example and the criteria for identifying EPAs should reflect this.
115. As outlined earlier in my report, section 229 of the RMA establishes that esplanade reserves and strips serve to protect conservation values and enable public access and recreation, including maintaining or enhancing natural functioning, water quality, aquatic habitats, and natural character, as well as mitigating natural hazards. In my view, this statutory purpose provides the

⁹ Kaipara District Council Reserves and Open Space Analysis District Plan Open Space Review. Xyst August 2021, P. 18.

appropriate foundation for identifying EPAs, such that these areas should be located where land is capable of fulfilling one or more of those functions.

116. I do not agree with Birt & Currie Surveyors Limited's [S294.5] submission requesting the purpose and/or the mapping of the EPAs be amended to include EPAs that council wants to acquire. Brit & Currie consider there are multiple purposes for esplanades, and not all of these purposes are relevant.

117. A review of Northland District Plans demonstrates the Proposed Far North District Plan removed EPAs; however, the Operative Whangarei District Plan identifies EPAs in the District-Wide Matters – Natural Environment Values -Riparian and Coastal Margins chapter. Policy RCM-P3 of the Whangarei District Council utilises the following criteria to identify EPAs:

To identify EPAs within the coastal environment and alongside particular rivers, where the land involved will serve one or more of the purposes of esplanade reserves or esplanade strips set out in section 299 of the Resource Management Act 1991¹⁰.

118. Policy RCM-P3 provides a useful example of how Section 229 of the RMA is used to help identify EPAs. In alignment with this approach, I consider it appropriate that EPAs are identified in the PDP where they can serve one or more purposes of esplanade reserves or esplanade strips in section 229 of the RMA. I also consider that EPAs should be identified where they can meet one or more of the criteria set out in the Xyst report noted above.

119. Based on the above assessment, I recommend including a new Policy PA-P3 setting out clear criteria to identify EPAs where they serve one or more purposes of esplanade reserves or strips set out in section 229 of the RMA and where they meet the following criteria in alignment with the criteria set out in the Xyst report as follows:

- a. *Connect to an esplanade reserve or esplanade strip, or the open space network; or*
- b. *Form part of a proposed or existing walking and cycling trail; or*
- c. *Reconnect townships and other community settlements with a waterbody or the coastal marine area.*

120. In my view, proposed Policy PA-P3 is specific and clearly identifies the criteria used to identify EPAs in the PDP. The policy implements Objective PA-O1 by setting out how public and customary access to the CMA and waterbodies can be maintained and enhanced through the identification of EPAs.

¹⁰ See Operative Whangarei District Plan, Policy RCM-P3 Esplanade Priority Areas.

6.3 Recommendations

121. In response to submissions, I recommend new Policy PA-P3:

PA-P3	Esplanade Priority Areas
<p><u>Identify Esplanade Priority Areas to protect, maintain and enhance public and customary access to and along the coastal marine area and waterbodies where they:</u></p> <ol style="list-style-type: none"> 1. <u>serve one or more of the purposes of esplanade reserves or esplanade strips set out in section 229 of the Resource Management Act 1991; and</u> 2. <u>connect to an esplanade reserve or esplanade strip, or the open space network; or</u> 3. <u>form part of a proposed or existing walking and cycling trail; or</u> 4. <u>reconnect townships and other community settlements with a waterbody or the coastal marine area.</u> 	

7 Topic 5: New EPAs

7.1 Introduction

122. EPAs are mapped on the PDP maps as an overlay. One submission requests an EPA be applied to sites across Kaipara.

7.2 Analysis

123. James Barrett [S70.3] seeks to add Paerata, Te Aotahi, Waiotama, Kirikopuni, Mareikura and Pukehuia to the EPA's mapping. This is sought on the basis that establishing these additional sites as Esplanade Reserves will enable managed public access to these sites and provide opportunities to educate the community about the cultural and ecological significance of the Wairoa River and Tangiteroria's site of significance. Mr Barrett also requests that Council uphold Section 229 of the RMA.

124. As noted in the procedural section of this report, I contacted James Barrett via email on 2 March 2026 to request clarity on the locations of where EPAs are sought to assist with preparing this section 42A report. I have not received a response to identify the locations of EPA's sought to address Mr Barrett's submission. Therefore, given the lack of detail and information to justify the request and the uncertainty of the spatial extent being sought, I recommend that these submission points are rejected.

7.3 Recommendations

125. I do not recommend amendments to the EPA Mapping in response to the above submissions.

8 Topic 6: Overview and general submissions

8.1 Introduction

126. This section addresses submissions requesting amendments to the Overview Statement of the Public Access chapter.

127. Submitters generally support the Overview Statement in part but seek amendments to better recognise specific uses and to acknowledge when public access should be restricted for health and safety reasons and the restrictions set out in the NZCPS.

8.2 Analysis

Acknowledgement of users of unformed legal roads

128. Venessa Anich [S99.14] seeks to amend the Overview Statement to acknowledge users of unformed legal roads can be walking, cycling or horse riders as the use of the unformed legal road in the Kaipara District is a valuable asset for these types of transport users.

129. I agree that unformed legal roads can be used for walking, cycling or horse riding. Unformed legal roads have the same status as any other legal road; the public may pass along both formed and unformed legal roads, even if the road is not physically constructed or marked out. This has been confirmed in caselaw including *Tauranga City Council v Faulkner* [2016] NZHC 1440. Under the Local Government Act 1974, Councils do have specific powers to restrict or control the usage of roads, including unformed roads, in limited circumstances (e.g. for public safety and emergencies). However, in general, the default position is that unformed roads are vested in councils and held for public use.

130. In my view, it is inappropriate to amend the Overview Statement to acknowledge that users of unformed legal roads can be walking, cycling or horse riders. I consider the key purpose of the Public Access chapter is to ensure public access to, adjacent to, and along the CMA and waterbodies is maintained and enhanced whilst managing any adverse effects from access on sensitive environments. The key mechanisms to achieve this under the RMA are the establishment of esplanade reserves and strips and through the identification of EPAs. I do not consider the acknowledgement of different types of road users to be relevant to the Public Access chapter.

8.3 Recommendations

131. I do not recommend amendments to the Overview Statement in response to the above submissions.

9 Topic 7: Objectives

9.1 Introduction

132. The two objectives in the Public Access chapter set the expected outcomes for managing public access to the CMA and waterbodies in the Kaipara District. Both objectives seek to maintain and enhance public and customary access while recognising the need to protect important environmental and cultural values.

133. Submitters generally support the Public Access objectives. One submitter requests amendments to PA-O1 to recognise the Lincoln Downs recreation reserve.

9.2 Analysis

134. Fish and Game [S267.15] supports PA-O1 and requests the objective is retained as notified.

135. Mangawhai Tracks Charitable Trust [S] supports in part PA-O1 but seek to amend the wording of the objective to include the Lincoln Downs recreation reserve. This is sought on the basis that the notified wording refers only to coastal and waterbodies which would not encompass the Lincoln Downs recreation reserve. The submissions consider that enabling access to this reserve is important because the site is significant to the Kaipara District and wider Northland region.

136. BA & JK Paton Ltd [S212.13], Cato Bolam [217.46] support PA-O2 and request the objective is retained as notified.

137. Mangawhai Tracks Charitable Trust [S354.1] raise concerns regarding the lack of explicit provision for public access to the Lincoln Downs recreation reserve. In response, I highlight that the primary focus of Objective PA-O1 is to maintain and enhance public and customary access to and along the CMA and waterbodies, rather than to address access to all areas of public open space. I consider the objective appropriately focuses on public access to and along the CMA and waterbodies and does not extend to specific inland reserves. On this basis, I recommend no changes in response to this submission.

138. Notwithstanding this, I note public access to natural open space areas is supported through other provisions of the plan. Objective NOSZ-O2 of the NOSZ which applies to land mostly classified as reserve land managed under the Reserves Act 1997 supports natural open spaces being accessible and safe for the public to use and enjoy for leisure, recreation and cultural activities. Policy NOSZ-P2 supports compatible recreation activities in the NOSZ. I consider this policy framework provides appropriate support for public access to areas such as the Lincoln Downs

recreation reserve without the need to amend Objective PA-O1, which is intentionally focused on access to the CMA and waterbodies. I consider the relief sought is unnecessary, as the plan already provides for public access to natural open space areas through the NOSZ provisions.

9.3 Recommendations

139. I do not recommend amendments to either PA-O1 or PA-O2 in response to the above submissions.

10 Topic 8: Policies

10.1 Introduction

140. The Public Access policies seek to protect and enhance public and customary access to and along the CMA and waterbodies while ensuring that access is appropriately managed to protect important environmental, landscape, and cultural values.
141. Policy PA-P1 promotes the protection, maintenance, and enhancement of public and customary access to and along the CMA and waterbodies by identifying Esplanade Priority Areas, requiring subdivision to provide public access in these areas where practicable, and maintaining appropriate setbacks from public access along the CMA and waterbodies.
142. Policy PA-P2 requires that activities within public access corridors are managed to mitigate adverse effects on the values of the Coastal Environment, High Natural Character Areas, Outstanding Natural Character Areas, ONL, ONFs and Sites and Areas of Significance to Māori.
143. Submitters generally support Policy PA-P1 and seek amendments to require the policy to apply post subdivision and to more clearly define the policy.

10.2 Analysis

PA-P1 Providing public and customary access

144. WS & R Smellie and McConaughy Family Trusts [S349.12] support PA-P1, particularly the emphasis on 'practical access' and seek to retain as notified.
145. BA & JK Paton Ltd [212.14] and Cato Bolam [S217.47] seek to amend PA-P1 to only apply post-subdivision or with compensation mechanisms. These submitters consider land use and development is already limited without compensation before subdivision takes place under the PDP through the requirement of mandatory setbacks from waterbodies to preserve future esplanade strips.

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146. Both submitters also seek the inclusion of a definition or assessment criteria for 'practicality', including topography, cultural constraints, ecological sensitivity, or existing access provisions as a lack of definition may lead to inconsistency or overly discretionary application by Council. Both submitters raise concerns that the policy could limit land use and development without compensation or subdivision taking place and could affect existing use rights and land values.
147. Regarding the relief sought by BA & JK Paton Ltd [212.14] and Cato Bolam [S217.47] to amend Policy PA-P1 to apply post subdivision stage, I consider there is no tool available under the RMA to secure public access to the CMA and waterbodies in EPA's and other areas post subdivision. I set out the key statutory provisions and processes for securing esplanade reserves and strips under the RMA in Section 2.2 of this report. I do not consider it appropriate to amend PA-P1 to apply post the subdivision stage as this would not be in alignment with the processes for securing esplanade reserves or strips under the RMA.
148. BA & JK Paton Ltd [212.14] and Cato Bolam [S217.47] also request an amendment to PA-P1 to apply compensation mechanisms for public access through esplanade reserves or access strips. I disagree that PA-P1 limits land use and development without compensation. In my view, PA-P1 does not alter or restrict the application of compensation provisions under sections 237E and 237F of the RMA.
149. Similarly, I disagree that Policy PA-P1 could limit or affect existing use rights. Existing use rights are established under Section 10 of the RMA and PA-P1 does not limit or affect these protections enabled under the RMA.
150. Regarding the request to provide clearer direction on how the term "practical" is to be defined and applied when determining whether subdivision should provide public access, I consider it unnecessary to amend PA-P1 to define the term 'where it is practical to do so' in the Policy. In my view, retaining a degree of flexibility is appropriate, as the practicality of providing public access will depend on the specific characteristics of each site. This may include factors such as topography, the presence of cultural values, ecological sensitivity, and existing public access arrangements, all of which can vary significantly across the district. Furthermore, the term "practical" is a commonly used term in higher order policy documents and within the PDP within several different policy contexts. Defining this term for the intention of clarity for public access provisions could have unintended consequences for the interpretation of other provisions elsewhere in the PDP.
151. Notwithstanding the above, I consider that these matters are appropriately assessed on a case-by-case basis through the subdivision process, rather than being exhaustively defined within PA-P1, to avoid unintended constraints or exclusion of relevant considerations. On that basis, I consider that additional prescriptive criteria is unnecessary, as PA-P1 provides an appropriate

level of discretion to determine where site-specific circumstances mean it is practical to provide public access to the CMA and waterbodies through the subdivision processes.

10.3 Recommendations

152. I do not recommend amendments to PA-P1 in response to the above submissions.