

Plan Change 19 Decision

Decision of Commissioners Darryl Millar and Chris Clarke appointed by the Mackenzie District Council pursuant to the Resource Management Act 1991

PROPOSAL: Plan Change 19 – Activities on waterbodies

PROPOSAL: To amend an existing objective, policies and rules, and to insert new policies and rules to manage the effects of activities on the surface of waterbodies

HEARING DATE: 17th May 2019

HEARING ATTENDEES

Mackenzie District Council

- Ms Patricia Harte – Planner
- Mr Jeremy Head – Landscape Architect
- Mr Jon Farren - Acoustic Engineer

Submitters

- Ms Alanna Hollier – Planner (Canterbury Regional Council)
- Mr Andrew Feierabend – Statutory and Compliance Strategy Manager (Meridian Energy Limited)
- Ms Jane Whyte – Planner (Meridian Energy Limited)
- Ms Susan Newell – Counsel (Director General of Conservation)
- Mr Andrew Grant – Ecologist (Director General of Conservation)
- Mr Rob Gerard (Jet Boating NZ Limited)
- Mr James Jolly – Ecologist (Jet Boating NZ Limited)
- Mr Carey Vivian – Planner (Pukaki Downs Tourism Limited [PDTL], Blue Lake Investment (NZ) Limited [BLIL], Kaye and Luke Paardekooper, Lake Pukaki Natural Quiet Supporters [LPNQP])
- Ms Kaye Paardekooper
- Mr George Ormand (PDTL)
- Ms Stephanie Hagen
- Mr Arno Bynerelt
- Mr Mark Ivey
- Mr Ross Ivey (Glentanner Station)
- Ms Elaine Curin
- Mr Michael Thomas
- Bronwen Murray
- Mr Colin Stevens (Genesis Energy Limited)
- Ms Alice Barnett (Genesis Energy Limited)
- Ms Jenny Campbell
- Julia and Hamish Mackenzie (Braemar Station Limited)
- Zita and Walter Speck
- Mr Simon Cameron

Whilst not appearing, Statements and/or evidence were tabled on behalf of:

- The New Zealand Defence Force (Rebecca Davies)
- Martin and Penny Murray
- Opua Water Limited (Julia Crossman) - late

INTRODUCTION

Introduction and Background

1. The operative District Plan (the Plan) manages the effects of activities on waterbodies by way of an existing policy regime and “outdoor recreation activities” provisions contained in Section 7 Clause 7.
2. We were advised that Plan Change 19 (PC19) was prepared in response to concerns that the current provisions did not adequately or appropriately manage the effects of activities on waterbodies. Notably the section 32 report accompanying PC19 notes that the *“...primary issue that is being addressed by the proposed Plan Change is how to manage activities on the surface of water that limit adverse impacts on the natural environment and impacts on the human experience and enjoyment of an area”*.¹
3. As a consequence, Plan Change 19 as notified proposes to:
 - Amend the title of existing Objective 8, but leave the content unchanged;
 - Insert new policies 8A (values of waterbodies), 8B (Lake Pukaki), 8C (Commercial Activities) and 8D (Church of the Good Shepherd);
 - Renumber and retitle existing policy 8A (Recreational use of riverbeds and waterbodies) to policy 8E (Effects on wildlife and wildlife habitats);
 - Renumber existing policy 8B (Structures) to become policy 8F;
 - Renumber existing policy 8C (Regulations) to become policy 8G, with minor wording changes;
 - Renumber existing policy 8D (Cross boundary co-ordination) to become policy 8H; and
 - With respect to rules:
 - Remove references to activities on waterbodies from rules contained in Section 7 clause 7; and
 - Insert new rule 7A “Activities on or within waterbodies”
4. The detail of the District Plan amendments and the supporting section 32 report can be found in Attachments A and F (respectively) to Ms Harte’s section 42A report.
5. PC19 was publicly notified in December 2017. Submissions closed 9 March 2018 and 165 were received. In April 2018 a summary of submissions was notified with the further submission period closing in May 2018. An additional 14 further submissions received.

¹ PC19 s32 report – section 7

The Hearing

6. The hearing commenced on 28th November.
7. We adjourned the hearing in order to undertake a site tour, particularly around the margins of Lake Pukaki. Following this we issued Minute 2 which contained Directions for Ms Newell to provide additional legal submissions on the precautionary approach issue outlined in her opening submissions, and for Ms Harte to provide a supplementary report dealing with the viewing areas identified in Mr Head’s evidence.
8. Minute 2 also dealt with the evidence of Ms Crossman that was filed late. For reasons outlined in the Minute, we resolved to accept the evidence.
9. We do not propose to summarise the content of all evidence given, and statements made, at the hearing. Given that pre-circulation of evidence occurred, submissions have been filed, and all are a matter of record, our deliberations and the balance of this decision address the key issues on a topic basis.

Submissions

10. PC19 attracted a significant number of submissions and covered a diverse range of topics. Prior to the hearing the Council provided a summary which collated the submissions by issue.
11. The planning report prepared by Ms Harte was framed around the key submitter topics or issues, and included an assessment and recommendation for each. We have reviewed the submissions and Ms Harte’s report, and we are satisfied that the issues have been appropriately identified. Within this context we do not propose to repeat the summary or discuss each submission point in detail.

KEY ISSUES AND FINDINGS

The Scope of the Plan Change

12. Genesis Energy Limited (Genesis) and Meridian Energy Limited (Meridian) queried the scope of PC19 and how this related to the construction of objectives, policies and rules and their subsequent impact on the Waitaki Power Scheme (WPS). Mr Feierabend² (Meridian) summarised the issue as follows:

“The current draft of the Plan Change addresses structures in and on the surface of water and all commercial and non-commercial activities. The potential consequence of this

² Paragraph 3.7

proposition is that the change goes to the use of all structures and activities associated with the WPS rather than dealing with structures and activities associated with boating, jetties and boat ramps and the use of the surface of water.”

13. From our reading of all of the documentation associated with PC19 it is clear to us that there is a potential for the issue raised by the submitters to be real. It is equally clear, however, that it was not the intention of the proposed amendments to the Plan to have a wider impact.
14. In our view the key issue to consider is the jurisdictional framework for district plan provisions. Section 31(1)(e) deals with the functions of territorial authorities and limits the functions of the District Council to:
“the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes”
15. In our view the statutory position is clear. Any provisions contained within a district plan are limited to controlling effects of activities on the surface of rivers and lakes. PC19 as notified, and in subsequent iterations leading up to and during the course of the hearing, makes various references to “activities on and within waterbodies” (our emphasis). This phrase appears in headings, rural objective 8 and related policies and in provisions. In our view the reference to “within” should be deleted.
16. Mr Vivian raised an issue regarding the terms that are also used in rural objective 8³. In his view the title of the objective should be extended to include “and their beds”, and that the existing term “riverbeds” located in the body of the objective should be replaced with “their beds”. The full text (~~strikeouts~~ and insertions) of the amendment proposed by Mr Vivian is given below:
Rural Objective 8 –Activities on or within Waterbodies and their beds.
~~Recreational~~ *Activities being undertaken on or within the District’s ~~waterways~~ waterbodies and ~~riverbeds~~ their beds in a manner which avoids, remedies or mitigates potential adverse effects on conservation values, wildlife and wildlife habitats, public health and safety, the Waitaki Power Scheme, recreational values, takata whenua values and general amenity values.*
17. We accept that objective 8 should refer to “waterbodies” given the way the term is defined in the RMA. For jurisdictional reasons we do not support the reference to “their beds”. As Ms Whyte pointed out at the hearing there is the potential for confusion, as some may wish to interpret the objective in a manner that it is intended to apply to the beds of lakes and rivers – which for jurisdictional reasons it cannot.

³ Paragraph 3.6

18. That aside there are, however, some subtle interpretative twists to the use of the term “riverbed” as it currently appears in Objective 8 (and in policy 8E) given the definitions of “waterbody”, “lake”, “river” and “bed”.
19. “Waterbody” is not defined in the Plan, but in the RMA it means:
“fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area”
20. “Lake” is defined in in the same manner in both the Plan and the RMA, as follows:
“means a body of fresh water which is entirely or nearly surrounded by land”
21. The definition of “river” varies between the RMA and the Plan. The Plan definition is:
“means a permanently or intermittently flowing body of freshwater with a formed and recognisable bed, but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation and farm drainage canal)”
22. “Riverbed” or “Lakebed” are not defined terms in the RMA or the Plan. “Bed” is defined in the RMA, but not in the Plan. The relevant parts of the definition are as follows:
- (a) *in relation to any river—*
 - (i) ...
 - (ii) *in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and*
 - (b) *in relation to any lake, except a lake controlled by artificial means,—*
 - (i) ...
 - (ii) *in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and*
 - (c) *in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and...*
23. Given the lack of definition of the term “riverbed”, it could remain in the objective, but that could lead to potential confusion as to what the term is intended to apply to. Given all the above, and the direction provided in section 13(2) and (2A) of the RMA we are inclined to remove the term “riverbed” from the objective. As a consequence of this, a similar change is required to policy 8E.

Commercial Activities and Essential Activities

24. Policy 8C which deals with “commercial activities”. Ms Whyte and Ms Harte suggested amendments to the policy to clarify its relationship to activities undertaken as part of the WPS. While we have doubts as to the absolute need for such a change given the definition of “commercial activity” and “utility” contained within the Plan, we accept the

recommendations. As a consequence of this, it is also proposed to insert rules (7A.1.1.d and 7A.2.1.d) to respond to the scope issue raised by Meridian and Genesis (see below).

25. Rules 7A.1.1.a and 7A.2.1.a provide permitted activity status for motorised and non-motorised craft on Lakes Tekapo, Benmore, Ruataniwha and Pukaki, and on all rivers other than the Opihi and Opuha Rivers where such craft is being used for a range of stated activities (for e.g. research or search and rescue). Various submitters sought changes to the scope of activities that could be covered by such rules⁴. In principle we agree with the need to expand the rules to accommodate the relief sought by the submitters and these were included in a revised version of the rules tabled by Ms Harte at the hearing on 30 November. The issue we have debated, however, relates to the recommendation of Ms Hollier that these stated activities only occur in circumstances where *“the activity is carried out in accordance with a statutory responsibility”*. While Ms Harte suggested slightly different wording in her S42A report, Ms Hollier’s recommendation was adopted in the tabled version of the report noted above.
26. Ms Hollier argued in evidence⁵ that the change was required so as to differentiate between activities being undertaken pursuant to a statutory responsibility, rather than those being carried out by the “general public”. In our view the amendment as suggested by Ms Hollier must also provide the opportunity for the general public that may also be exercising a statutory responsibility. An example of this could be the holder of an existing resource consent required to maintain or inspect a facility by way of consent condition. Within this context the extent of activities needs to be extended to cover this situation. In the absence of such a change, the holder of a consent may find themselves in a position where, in the extreme, undertaking an activity required under a consent condition would be a prohibited activity.
27. Related to this matter we also considered the submission of John and Bronwen Murray, and the statement tabled by Ms Murray at the hearing. Ms Murray outlined the process involved in an annual cull of Canada Geese on Lake Pukaki. As we understand it this a privately organised cull involving the local farming community. We have considered whether rule 7A.1.1.a would provide for this activity as discussed above. While the rule refers to “pest control” it seems doubtful whether it would fall within the “statutory responsibility” category. Accordingly, the rule would not apply and would fall to an alternate activity category and on Lake Pukaki this could be prohibited if it was considered to be a commercial motorised activity. While there is a prospect that such activities could be considered permitted given amendments that we are proposing to rules applying to Lake Pukaki (see below), there is doubt in our minds. Given this, and to ensure certainty in the application of the rules, we have made a further amendment to rule 7A.1.1.a (and other equivalent rules). Given this, the rule/s should be further amended to read⁶:

⁴ Noting also that similar provisions exist in rules 7A.3.1 and 7A.4.1

⁵ Paragraphs 38 and 39

⁶ There is a minor variation proposed for rule 7A.4.1.a which addresses the issue raised in the evidence of Ms Crossman

“Use of motorised and non-motorised craft for search and rescue, defence, maritime enforcement, civil emergency, scientific research and monitoring, pest control purposes, or for the purpose of ensuring, achieving or monitoring compliance with any condition of a resource consent granted prior to 17 May 2019. With the exception of pest control, all such activities must be carried out in accordance with a statutory responsibility”

28. Finally, while Ms Whyte suggested the wording linking the application of the rule to a statutory responsibility potentially adds some confusion to the circumstances under which the provision may apply (specifically as it relates to the WPS), we disagree. That aside Ms Harte proposed additional provisions that related specifically to WPS activities; namely new rules 7A.1.1.d and 7A.2.1.d, as follows:

Motorised and non-motorised activities relating to the operation, maintenance, upgrading and development of the Waitaki Power Scheme”.

29. We note for completeness that Ms Barnett (Genesis) also recommended inserting “monitoring” into the rule. We agree.

Activities on Lake Pukaki

Introduction and the evidence of Mr Head

30. There were many submissions on this topic and the views expressed were disparate. The key topic raised in submissions⁷ related primarily to the use of motorised recreational craft on the lake.
31. There was general consensus amongst submitters in their opposition to the use of the lake by commercial motorised craft. Given this, and the evidence that was presented to us, we accept the recommendations of Mr Head and Ms Harte insofar as it relates to such craft. Accordingly, we do not propose to discuss this aspect of PC19 any further.
32. The rules as notified are outlined in Table 1 below.

Table 1: Activities on or within Lake Pukaki

	Permitted	Non-Complying	Prohibited
Activity	Motorised and non-motorised craft for stated rescue, emergency, research, monitoring and pest control purposes. Non-commercial non-motorised activities.	Commercial non-motorised activities. Jetties and boat ramps.	Commercial motorised activities. Non-commercial motorised activities. Craft on the surface of waterways used for accommodation.

⁷ In addition to those discussed earlier relating to activities of the WPS and activities carried out under a statutory duty or monitoring requirement

33. We heard expert evidence on the effects associated with the use of the lake from Mr Head (Landscape) and Ms Harte (Planning). Mr Farren also provided evidence on noise issues, which we will return to later in this discussion.
34. The evidence of Mr Head considered the visual impacts from motorised craft (private or commercial) operating on the lake. In undertaking his assessment Mr Head considered the landscape character associated with the lake from various locations around the margins – these included a range of informal and formal viewing areas and access points (from road side laybys to the more formal areas such as Peters Lookout and the Pukaki Visitor Centre). Mr Head considered the potential impacts of motorised craft operating on the lake as viewed from these various locations.
35. In undertaking this assessment Mr Head noted that Lake Pukaki is a Statutory Acknowledgement Area, is located within the Mackenzie Basin Outstanding Natural Landscape, is a site of Natural Significance and its margins are zoned as Lakeside Protection Areas within the Plan.⁸
36. Mr Head’s overall view was that Lake Pukaki has “very high”⁹ landscape and visual values; acknowledging that it was not a “pristine” landscape. He noted the significance of the connection between the lake and Aoraki Mount Cook and opined¹⁰ that:
- *“the mountain backdrop is strongly connected with Lake Pukaki both in landscape and visual terms. The lake and its mountain backdrop cannot be separated”;*
 - *“In my opinion the central landscape issue concerns whether or not the visible presence of surface water craft on the lake will detract from the levels of grandeur, peacefulness, spectacular views, serenity, stillness, colour of the lake, sense of remoteness and cultural and spiritual values that are currently enjoyed. These values are widely held and can be appreciated from many different locations around the shores of the lake. It is therefore inappropriate to enable activities that potentially allow for motorised (potentially fast moving) surface water craft and their associated visual effects that extend beyond the craft itself (bow wave, wake disturbance etc.) to impact on these highly natural values above”; and*
 - *“It would be detrimental to this vista...if the sublime simplicity of the lake and mountain was interrupted by even one motorised surface water craft crossing the lake and diminishing this grandeur.”*
37. That said, Mr Head did acknowledge that there was some limited scope for motorised craft to operate on the eastern margins of the lake, as shown in Appendix 1 of his evidence.

⁸ Head evidence paragraph 2

⁹ Head evidence paragraph 3

¹⁰ Head evidence paragraphs 5, 8 and 27

38. We did not hear any competing expert landscape evidence.

Resident Users

39. We heard from submitters¹¹ that there is a long history (pre and post raising of the lake) of motorised recreational use of the lake; particularly from landowners and/or occupiers adjoining the lake margins (the “resident group”). Aside from a purely recreational activity, we were advised that this was seen by many of this particular user group as an essential part of their social and cultural wellbeing; as it provides mechanisms for social interaction between landowners and occupiers, and contributes to a sense of community. We were also advised that the resident group usage of the lake was limited in scope due to:

- The number of adjoining landowners;
- Variable climatic conditions and lake temperature; and
- The available boat launch facilities

40. To this end, the resident group suggested that their usage occurred primarily over a 2 or 3 month period in any year and was sporadic at other times.

41. We are drawn to the evidence of Mr Head and, for the most part accept his opinion on the potential impacts of motorised craft on the lake. We consider, however, that in the case of the resident group, it would be inappropriate to apply prohibited activity status. To do so would remove an important aspect of the social and cultural construct of that group and would not allow the continuation of an activity that to date, given its limited scale, does not appear to have had an impact of the magnitude suggested by Mr Head. That said we have found, based on the evidence of Mr Head, a need to ensure an appropriate operational separation from the key lookout/access points of Peters Lookout and the Lake Pukaki Visitor Centre at the southern end of the Lake. The separation distance from the Lake Pukaki Visitor Centre would still allow for some use of the bays to the south of the Tekapo B launching ramp on the east side of the lake, given that lake levels affect the ability to use the ramp. While topography will screen these bays from the Lake Pukaki Visitor Centre, we accept that craft operating in these areas will be visible from locations either side of the recently formed Haymans Road/State highway 8 car park. We reiterate, however, that in our view numbers are anticipated to be low and should remain largely static over time.

42. Accordingly, amendments to the relevant policy and rules are made to provide for permitted activity status for these users. The rule package developed for such activities includes a requirement to demonstrate that such activities occurred prior to PC19 becoming operative, that they fit within the “resident” users group category and the requirement to meet the minimum separation requirements mentioned above. We appreciate that there may be some administration (and enforcement) difficulties for the Council with such a provision – particularly with respect to the ability to identify whether any particular motorised water craft on the lake is in fact operating within the realms of

¹¹ Submitters Murray, Ivey, Cameron, McKenzie et al

the permitted activity rule. Given this, the Council may wish to engage with this particular group to develop a register or management tool that sits outside of the Plan.

43. For completeness we note that we did consider the alternate approach suggested by Mr Head of limiting such activities to the eastern margins of the lake or, if prohibited activity status was to be applied to this user group, reliance on existing use rights. We found the first option to be unworkable, given that it did not facilitate the existing use that occurred. The second option has an equally notable limitation, given the impact of section 10A(1)(c) of the RMA.

Non-resident Users

44. It is evident also from submissions that there are a number of existing “non-resident” users operating motorised craft recreationally on the lake. We have been unable to quantify the extent of such use. We do not, however, consider that they fall within the same general category as the resident user group such that they should be afforded permitted activity status. We say this as we do not accept that a social or cultural wellbeing argument exists here. Furthermore, we do not consider that permitted activity status is appropriate as:

- We have been unable to determine the scale and extent of such use – although it is likely to be limited; and
- There is potential uncertainty how the historic pattern of such use may change over time, should capacity pressures arise at other lakes; and
- Given our general acceptance of Mr Head’s evidence.

45. While it may be arguable for some that they have an established historic use, the limitations of section 10A of the RMA noted above apply. Given this, and the bluntness of applying prohibited activity status, we have concluded that the non-resident user group should be afforded the opportunity to pursue a consenting pathway. This is particularly so given Mr Head’s general acceptance that operation of craft on the eastern margins may be appropriate – from a landscape perspective. Accordingly, we have determined to amend PC19 as notified to provide for non-resident use of the lake by motorised recreational craft as a restricted discretionary activity (RDA), provided they meet minimum Peters Lookout and Lake Pukaki Visitor Centre separation distances. Assessment matters will require consideration of amenity effects, natural and conservation values, launching points and public safety. Policy amendments supporting this rule regime have also been made. Any proposal to not meet the separation distances would trigger prohibited activity status.

General Comment

46. We acknowledge that there were many submitters opposing any form of motorised craft on Lake Pukaki, including non-commercial (recreational). On this particular issue we heard from submitters Paardekooper, Ormand, Hagen and Campbell. For the reasons outlined above we consider it necessary to provide for resident use and to provide a consenting opportunity for non-resident use. In our view the first is limited in scale and impact, and the second will require a proposal specific assessment. Perhaps more

importantly, the second approach provides the Council with the ability to impose consent conditions that will improve on lake management opportunities.

47. It is important to state, however, that in our view the Plan provisions can only go so far in achieving environmental outcomes sought for the lake. To support the provisions the Council will need consider whether non-Plan responses are required; for such matters as advisory signage regarding the use of craft, launch locations and the Peters Lookout and Visitor Centre separation requirements. In addition, we have already commented above regarding the possible establishment of a ‘resident users’ management tool.

Noise

48. The Plan currently contains noise controls for powered watercraft (Section 14 Rule 2.3.4). PC 19 as notified does not propose to amend those provisions. In response to numerous submissions seeking the inclusion of noise standards a “Desktop Assessment” prepared by Mr Farren was included in the package of Council reports circulated ahead of the hearing. The purpose of Mr Farren’s report was to determine if it may be possible to identify an area within Lake Pukaki where motorised craft could operate and be “inaudible” at key scenic viewing locations (as identified by Mr Head).

49. Rule 2.3.4 currently reads:

i Powered watercraft shall be fitted with effective mufflers during all movement on water and shall not exceed the following noise limits at any point within the notional boundary of any residential dwelling:

On any day

7.00am to 9.00pm Sound Exposure Level (SEL) 85 dBA

9.00pm to 7.00am the following day Sound Exposure Level (SEL) 78 dBA

Provided no moving craft shall emit noise in excess of Sound Exposure Level of 90 dBA in any single driveby measured at any notional point more than 25m from the line of travel of the craft.

50. The majority of submitters on this issue sought a significant reduction on the allowable noise limits.

51. The assessment prepared by Mr Farren included a number of assumptions and clearly identified that significant additional investigation and assessment was required in order to develop a meaningful district plan solution to the issue (which we note, includes identifying the exact nature of the issue itself). In its current form the report does not assist us in our deliberations on this matter, other than to confirm that in the case of Lake Pukaki the scale of reduction in noise exposure sought by the submitters is unlikely to be achieved on the lake. We wish to stress that our comments here are not intended to be a criticism of the assessment and reporting undertaken by Mr Farren; rather the work that

he has been able to undertake simply reflects the isolated nature of the issue and the time available to prepare and file the report required for this hearing.

52. Given the above, we are faced with two options:

- Adjourn the hearing (and ultimately the issue of this decision) to allow further investigation and assessment to be completed; or
- Accept that this issue is resolved through the District Plan review process.

53. We favour the second option, as we consider it important to:

- Issue this decision now in order to establish revised Plan provisions for activities on the surface of water bodies;
- Assess the appropriateness and effectiveness of noise issues within a wider Plan integration perspective – this is purpose of the District Plan review; and
- Related to this, take account of the various environments in which waterbodies exist.

The Tasman, Cass, Godley and Dobson Rivers

54. The submission of the Director-General of Conservation (DGC) sought amendments to the provisions that would make commercial and non-commercial motorised craft (other than those required for essential services) a non-complying activity. The principle argument underlying the submission was a concern regarding the impacts of motorised craft on indigenous biodiversity values. We shall return to this issue in more detail below. The relief sought by the DGC was opposed by Jet Boating New Zealand Limited (JBNZ). Key to our deliberations on this issue we have considered the:

- evidence of Mr Grant (on behalf of the DGC);
- evidence of Mr Jolly; and
- the original and further legal submissions of Ms Newell (for the DGC) and the response of Mr Gerard (on behalf of JBNZ)

55. Mr Jolly and Mr Grant presented expert evidence in the field of ecology. The evidence of Mr Grant outlined the bird species found on these rivers and, variously, the relevant threat category¹². In particular he noted¹³:

- Of the 23 species recorded, 10 (43%) are classified as threatened;
- Four endemic bird species, the wrybill, kaki/black stilt, black-billed gull and black-fronted tern have evolved on braided rivers, and virtually all only breed on braided rivers;
- Two further endemic species, the banded dotterel and South Island pied oyster catcher use braided rivers as their major breeding habitats;

¹² Table 1 – page 5)

¹³ Grant evidence paragraphs 15 – 23 and 32

- The kaki, wrybill, banded dotterel and black-fronted tern are all threatened;
 - With the exception of kaki, these species are migratory. Kaki remain in riverbeds all year round
56. With specific reference to kaki, Mr Grant noted¹⁴:
- the need for human intervention in captive breeding, captive rearing and juvenile release programmes;
 - the use of the aforementioned rivers for release of captive birds;
 - the complexities that exist with determining kaki population;
 - that approximately 90% of the kaki population are found on the Godley, Tasman and Cass Rivers; and
 - as a consequence, the Godley, Tasman and Cass Rivers are critical habitat.
57. There is general alignment between Mr Jolly and Mr Grant as to the species found and their threat status. As a consequence, this aspect of their evidence is accepted. Where their opinions depart, however, is in the area of what impact motorised craft may have on these species and their habitats.
58. Mr Grant referenced a number of studies¹⁵ in his evidence, noting that:
- No definitive adverse effect was determined from observation of adult species feeding in areas inundated by jet boat wash operating on the Dart River. A “retreat” and “return” behaviour was observed and thus Mr Grant opined that this disrupted feeding. The report authors recommended further study;
 - Reports prepared by Hughey and Hudson have indicated that “jet boats are not a significant threat to riverbed birds”, in terms of nesting, roosting and feeding areas.
59. Those reports aside, Mr Grant was of the view that wave wake from jet boats could impact on bird habitat, behaviour and occupancy and/or directly to the loss of juvenile birds. The extent of such impacts would likely be determined by factors such as boat speed, the nature of any particular river channel and the frequency of boat use. Mr Grant also highlighted the potential impacts on nesting sites from craft being launched into rivers.
60. In Mr Grant’s view, there is insufficient information available to form an unequivocal view around the effects of motorised boat use of these rivers. Within this context, and given the species present and, for some, their threat status, Mr Grant considered that a precautionary approach was appropriate. Overall this led him to the view that motorised craft should not be present.
61. Mr Jolly formed a contrary view. In particular he emphasised the findings of the Hudson report, as we have summarised above, and commented further that¹⁶ “... *in a study of*

¹⁴ Grant evidence paragraphs 24 - 33

¹⁵ McKinlay and Smale, Hughey, and Hudson. Grant evidence paragraphs 36 - 50

effects of jet boats on aquatic birds in a high boat use area (including larger commercial boats) found that wakes were insufficient to wash away nests or birds feeding at the water's edge."

62. He also discussed the low frequency of recreational craft using these rivers, based on the statements of Mr Gerard, as a context in which to consider the Hudson findings.
63. Mr Jolly cited his own experiences in the Waimakariri and Wairau rivers, noting little disturbance to birds during survey programmes.
64. The evidence that we have heard does not point to an absolute conclusion regarding the significance of effects on these particular bird species, particularly given that we are considering non-commercial motorised craft¹⁷.
65. Ms Newell commented specifically on the "frequency" issue in her opening legal submissions¹⁸ stating that *"... it cannot be assumed that the situation will not change in the future."* Ms Newell also supported the precautionary approach recommended by Mr Grant. We discussed this during the hearing and, as a result, we issued Minute 2 requiring additional legal submissions from Ms Newell and provided other parties with the opportunity to respond. In this case, JBNZ responded by way of a statement prepared by Mr Gerard.
66. Ms Newell's additional submissions¹⁹ cited *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 noting that the precautionary principle refers to an approach where *"there are uncertainties and environmental risks that need to be managed while taking those uncertainties into account..."*. Ms Newell submitted that in *McIntyre v Christchurch City Council* [1996] NZRMA 289, when referencing an Australian case, the Court described the precautionary principle as:
"a statement of common sense... It is directed towards the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty. Its premise is that where uncertainty or ignorance exists concerning the nature or scope of environmental harm (whether this follows from policies, decisions or activities), decision-makers should be cautious."
67. As Ms Newell rightly points out, the issue for our consideration is the weight and robustness of the evidence we have received. We agree with Ms Newell where she submits in paragraph 8 that *"... the precautionary principle applies when there is a threat of serious or irreversible damage; a lack of certainty about the threat does not mean no action should be taken to minimise risk."*

¹⁶ Jolly evidence paragraph 6.3

¹⁷ Noting that commercial motorised craft are proposed to be discretionary activities requiring resource consent.

¹⁸ Newell opening legal submissions paragraph 11

¹⁹ Newell further legal submissions paragraphs 3 - 7

68. When addressing this issue Ms Newell submits that an *“inability to quantify the potential impacts of adverse effects does not mean the effects themselves can be disregarded”* and that in her view there is evidence to suggest that motorised craft do have adverse effects on birds citing behavioural and wake-wash effects²⁰.
69. It is at this point that we depart from Ms Newell’s argument. We have received evidence that assesses the impact of jet boat operations on braided river bed species, and the frequency of jet boat use, although we acknowledge that there will always be reasons to argue that further research and analysis is appropriate.
70. What we have in front of us is competing evidence from two experts in the field and, following deliberation, we favour the evidence of Mr Jolly over that of Mr Grant. Our point here is that there is not a void of evidence on the issue. As is often the case in any scientific enquiry, research may not always be able to answer all questions or prove all issues beyond doubt. This was a matter highlighted in the response from Mr Gerard²¹ by way of reference to *Rotorua Bore Users Association v Bay of Plenty Regional Council* which, when considering the application of the precautionary principle, states:
- “The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide on the weight which can be given to it with such care as the situation requires...”*
71. Given the above, we do not accept the relief sought by the DGC

Lakes Alexandrina and McGregor

72. The submission of the DGC sought amendments to rules 7A.3.1, 7A.3.2 and 7A.3.4. The DGC sought changes to the activity status for yachts and sail boats on both lakes as *“... their wakes can cause significant effects on indigenous biodiversity”*²². As a result, the DGC sought that commercial and non-commercial sail boats and yachts be prohibited activities. While not referenced in the submission, Ms Newell’s legal submissions presented at the hearing noted, in paragraph 21, that the relief sought by the DGC relates to the Gazette notice which is reference in *“Objective 8”*. Upon review of policy framework (as notified), we believe this should have referred to policy 8E (policy 8A in the Plan) in which the explanation reads (our emphasis):

“Lake Alexandrina and Lake McGregor form part of a wildlife refuge that was initially established in 1899, and re-gazetted in 1957 under the Wildlife Act 1953. At this time restrictions were also gazetted limiting boats to those ‘wholly propelled by oars or paddles’ to prevent disturbance of wildlife habitats and bird breeding areas.”

²⁰ Newell further legal submissions paragraph 20

²¹ Gerard Statement paragraph 10, and we acknowledge that this is not a legal submission

²² DGC submission – page 31- 33

73. The issue is not discussed in the evidence of Mr Grant.
74. Plan Change 19, as notified, proposed that all motorised activities would be prohibited, and that non-commercial non-motorised and commercial non-motorised activities would be permitted activities and discretionary activities, respectively.
75. The policy explanation supporting the DGC's submission has been rolled into proposed policy 8E which, in itself, is a modification of existing policy 8A. It is arguable that there appears to be a disconnect between the explanation supporting policy 8A (proposed 8E) and the rule provisions. That said, the disconnect existed prior to the notification of Plan Change 19. We heard no evidence as to the status and effect of the Gazette notice, nor did we hear any evidence from Mr Grant as to the impact such activities may have on indigenous biodiversity. Within this context we remain unconvinced that a district plan response is required; particularly along the lines suggested in the DGC submission. Our principle reason for adopting this position is that while the planning provisions may not potentially align with the requirements of the gazette notice, this is not fatal to the outcomes anticipated for the area given the duties and responsibilities that exist under the Wildlife Act (in particular section 14).
76. As a consequence, we do not accept the relief sought by the DGC.

OVERALL ASSESSMENT AND DECISION

Introduction

77. Section 74 of the RMA requires that we have regard to any Proposed Regional Policy Statement, Regional Plan, Management Plan or strategy. Section 75 requires that a Plan must give effect to, amongst other things, any Regional Policy Statement or National Policy Statement and must not be inconsistent with a Regional Plan (as it relates to Section 30(1)). We are satisfied as to the relationship between PC19 and the various Regional Council Plans. Equally we are satisfied with the alignment of PC19 with the National Policy Statement on Electricity Transmission 2008, and the Canterbury Regional Policy Statement, subject to the various amendments outlined above.

The District Plan and Section 32

78. The plan change as notified proposes amendments to the existing rule and policy framework to accommodate the issues outlined in the section 32 report. The proposal by its very nature is, therefore, somewhat constrained by the very framework which surrounds it. During the course of the hearing and in our deliberations we have seen issues manifest from this approach; particularly in the form of scope considerations and how, for example, noise effects should be appropriately dealt with. An alternate approach may have been to consider the issues within the context of a wider Plan review

process which may have enabled alternate policy and rule solutions, and wider consideration of Plan integration matters. The fact remains, however, that we have a plan change proposal in front of us and we are therefore bound to consider the proposal, submissions, statements and make a decision.

79. Within this context we have considered the section 32 report accompanying the plan change and largely accept it. We have made changes to Objective 8 designed to clarify its application and to address the scope issues identified by Genesis and Meridian. Consequently, this flows through to the relevant policies.
80. We have made a significant departure at both a policy and rule level to the provisions applying to activities on Lake Pukaki. As has been discussed earlier, the policy approach we favour is one that enables some non-commercial motorised activities on the lake for established users; either as a permitted activity or through a consenting pathway. In the case of existing lake users that may deem to be “permitted”, this approach has been taken in recognition of the contribution this makes to the social and cultural wellbeing of user communities. While providing for these activities, however, we consider it essential to protect the values associated with the key scenic viewing areas at Peters Lookout and the Lake Pukaki Visitor Centre.
81. From an efficiency and effectiveness perspective we accept that the permitted activity rule provisions we have proposed for motorised recreational users may be challenging to implement and enforce. As we have suggested, however, the Council may wish to formulate non-district plan mechanisms to assist. During our deliberations on this particular issue we considered applying a blanket prohibited activity status for commercial **and** non-commercial motorised activities, as was sought by a number of submitters. On balance we do not consider such an approach appropriate for the reasons outlined earlier.
82. Overall we have formed the view that the proposal is aligned with the relevant statutory documents and Plans that we are required to have regard to, or give effect to. Within the context of the framework in which we must consider this proposal we find that this proposal represents the most appropriate means of achieving the objectives and policies of the District Plan, the CRPS and the Purpose and Principles of the Act.
83. As a consequence the Plan Change, with amendments as detailed in this Decision, should be incorporated into the Plan.
84. Given the above, Appendix One confirms the amendments to the District Plan.

Dated at Christchurch this 17th day of May 2019



Darryl Millar
Hearing Commissioner



Chris Clarke
Hearing Commissioner

Appendix One: District Plan Amendments Plan Change 19

DISTRICT PLAN AMENDMENTS

District Plan Amendments – Interpreting the Changes

1. Amendments proposed as part of the Plan Change as notified, and as accepted in this decision, are shown as:
 - text to be added is shown as **underlined**; and
 - text removed as ~~strike through~~.
2. Further amendments resulting from the Hearing Panel's deliberations and decision are shown as:
 - text to be added is shown as **underlined**; and
 - text removed as ~~strike through~~.

A Amend Rural Zone Policies (Section 7) as follows:

Rural Objective 8 – ~~Surface of Waterways~~ Activities on ~~or within~~ Waterbodies

*~~Recreational a~~ Activities being undertaken on ~~or within~~ the District's **waterbodies** ~~waterways and riverbeds~~ in a manner which avoids, remedies or mitigates potential adverse effects on conservation values, wildlife and wildlife habitats, public health and safety, **the Waitaki Power Scheme**, recreational values, takata whenua values and general amenity values.*

Reasons

- There is potential for recreational activities and associated vehicle use to have a number of adverse effects on ~~waterways~~ **waterbodies** and riverbeds including:
 - noise
 - reduction in navigational safety
 - conflict with other recreationalists
 - degradation of river, lake and adjoining wildlife habitats
 - increased bank erosion caused by wave action or activity on the banks
 - water contamination from turbidity, exhaust fumes and human effluent
 - litter and other wastes in the area
 - disturbance to wading birds and other wildlife, especially during the breeding season (August to January inclusive)

It is appropriate in providing for **water-based activities** recreation throughout the District that these adverse effects are minimised to enable environmental and recreational quality to be maintained.

Rural Policy 8A – Values of Waterbodies

To acknowledge the range of values associated with waterbodies within the District and to maintain or enhance those values through management of activities on ~~or within~~ waterbodies.

Explanation and Reasons

- As for Objective 8
- The District contains nine major rivers, seven notable lakes and numerous other waterbodies, many of which are valued for takata whenua values, recreation, habitat, conservation, general amenity and hydro power production. The sensitivity of these waterbodies to impacts from recreational use varies considerably and needs to be managed to avoid loss of important natural and cultural values.

Rural Policy 8B – Lake Pukaki

To protect the unique natural quiet, beauty and tranquillity values and experience of Lake Pukaki by: avoiding motorised activities on the Lake other than for essential activities.

- Prohibiting commercial motorised activities on the lake, other than for essential activities or activities associated with the Waitaki Power Scheme;*
- Prohibiting non-commercial motorised activities, other than essential activities, that adversely impact on the use and enjoyment of the viewing areas of Peters Lookout and Lake Pukaki Visitor Centre;*
- Avoiding associated adverse effects of jetties and boat ramps and the adverse effects of commercial non-motorised activity; and*
- Providing for essential activities, limited established non-commercial motorised activities and activities associated with the Waitaki Power Scheme.*

Explanation and Reasons

- As for Objective 8
- The unique natural and cultural values of Lake Pukaki and its prominent position at the foot of Aoraki are highly valued locally, nationally and internationally. It is very important that these values, which include natural quiet and tranquillity, remoteness, grandeur and wildness, and the experience of these values, are not compromised by:
 - Commercial motorised boating on the Lake;
 - Ensuring non-commercial motorised craft are separated from Peters Lookout and the Lake Pukaki Visitor Centre;
 - To allow for limited non-commercial motorised craft operation on the Lake that recognises established levels of recreational activity, some of which contributes to social wellbeing.

Rural Policy 8C – Commercial Activities excluding Waitaki Power Scheme activities

To avoid, remedy or mitigate the adverse effects of commercial activities through assessment by way of resource consent, except for commercial motorised activities on Lakes Pukaki, McGregor and Alexandrina, and the Opihi and Opuha Rivers (during spawning periods), which are prohibited.

Explanation and Reasons

- As for Objective 8
- The potential for greater frequency and intensity of use associated with commercial activities, as compared to non-commercial activities, justifies these activities requiring resource consent. This process enables the Council to assess the impacts (including cumulative impacts) of any proposal on the waterbodies and adjoining land and recognises that it is not possible to anticipate the form and effects of future commercial activities.
- It is considered unreasonable and impractical to subject non-commercial activities to control except where special values of a waterbody and its surrounds justify control or prohibition.
- **This policy does not apply to the Waitaki Power Scheme**

Rural Policy 8D – Church of the Good Shepherd

To manage commercial activities on Lake Tekapo in the vicinity of the Church of the Good Shepherd in order to maintain a level of quietness and tranquillity in keeping with the special character of the Church and its surroundings.

Explanation and Reasons

- As for Objective 8
- The Church of the Good Shepherd at Lake Tekapo Village is of particular cultural and spiritual significance and its special character as a place of stillness and meditation is an essential part of the local and visitor experience. It is important to manage activities in the vicinity of the Church that have the potential to compromise this character and the needs of the Church community.

Rural Policy 8E A – Effects on Wildlife and Wildlife Habitats Recreational Use Of Riverbeds And Waterbodies

*To avoid, remedy or mitigate the adverse effects of ~~the recreational~~ **and commercial** use of ~~riverbeds and waterbodies~~ **(in particular the use of off road vehicles and power boats)** on wildlife and wildlife habitats.*

Explanation and Reasons

- As for Objective 8
- The braided riverbeds of the Tasman, Dobson, Hopkins, Ohau, Tekapo, Pukaki, Cass, Godley and Macauley rivers are important breeding habitats for many important and threatened species. It is important that care is undertaken during the breeding season as disturbance of parent birds leaves eggs and chicks unattended and therefore extremely vulnerable to predation and cold temperatures.
- Off-road vehicles can inadvertently run over eggs and chicks.
- Lake Alexandrina and Lake McGregor form part of a wildlife refuge that was initially established in 1899, and re-gazetted in 1957 under the Wildlife Act 1953. At this time restrictions were also gazetted limiting boats to those 'wholly propelled by oars or paddles' to prevent disturbance of wildlife habitats and bird breeding areas.
- The predominately single thread braided river channels of the Opihi and Opuha rivers **and the single confines of the South Opuha and North Opuha** are widely utilised by trout and salmon for spawning, **incubation and juvenile rearing. The Opihi and Opuha rivers contain brown trout**

and salmon and the North and South Opuha contain brown and rainbow trout. During the spawning season eggs and fry buried in the riverbed gravels are particularly susceptible to disturbance from motorised boats.

Implementation Methods

- To promote the Braided River Care Code.
- To promote continued awareness of the wildlife refuge status of Lakes Alexandrina and McGregor, and to restrict accommodation use of the lake.
- To prevent the use of motorised craft upstream of the confluence of the Ophi and Opuha rivers, between 1 April and 30 September, excluding the Opuha Dam Zone.
- ~~To encourage Central Government and the Canterbury Regional Council to control activities on the surface of water.~~
- Council will work with agencies such as the Department of Conservation, Fish and Game Council, the Royal Forest and Bird Society, to identify breeding areas of braided riverbed birds and to investigate mechanisms to control or avoid disturbance of birds, particularly during the breeding season.

Environmental Results Anticipated

- Increased awareness of the impact of recreation activities on the breeding habitats of wading birds and other indigenous fauna.
- The continued protection of Lakes Alexandrina and McGregor as a wildlife refuge and associated restrictions.

Rural Policy 8FB - Structures

*To ensure that the location, design and use of structures and facilities, within or near **waterbodies** **waterways** are such that any adverse effects on visual qualities, safety, **indigenous habitat** and conflicts with recreational and other activities on the **waterbodies** **waterways** are avoided or mitigated.*

Explanation and Reasons

- As for Objective 8
- Structures which intrude over or through water which enable greater recreational use of the water can thereby create a potential for conflicts between different recreationalists and cause problems associated with exceeding the carrying capacity of the existing shore vegetation and facilities.
- Structures can create safety problems for on-water users.
- Structures can significantly alter the character and visual appearance of riparian areas and waterways.

Implementation Methods

- Recreational Activities - Controls on Jetties and Boat Ramps

Environmental Results Anticipated

- Structures in or adjacent to waterways which do not hinder water safety and which are visually appropriate.

- A level of recreational activity which does not significantly impact on the natural environment.

Rural Policy 8GC-- Regulations

To seek the continued administration and control of navigational safety matters principally through support the Canterbury Regional Council in implementing navigation safety regulations and or bylaws, equivalent mechanisms under the Harbours Act and its successor.

Explanation and Reasons

- As for Objective 8
- All navigational safety considerations for Controls placed on water-based recreational and commercial activities are enforced by the Canterbury Regional Council through navigation safety regulations and bylaws. by the Water Recreation Regulations 1979 are considered to enforce suitable controls with respect to navigational safety.
- Current speed upliftings through Navigational Safety bylaws of the Water Recreation Regulations within the District are considered appropriate to allow for certain recreational activities on the District's waterbodies and should therefore be retained.

Environmental Results Anticipated

- Maintenance of the general standard of Navigation on the District's waterways.
- Continued use of gazetted areas for motorised water recreation.

Rural Policy 8H D-- Cross Boundary Co-Ordination

To co-ordinate with adjoining territorial authorities where activities on the surface of rivers and lakes cross territorial boundaries, including the co-ordination of resource consent processes.

Explanation and Reasons

- Because the Opuha and Opihi Rivers and Lakes Ohau, Ruataniwha and Benmore form the part of the northern and southern boundaries of the District the Council considers a joint approach should be taken for the control of water based activities in conjunction with Timaru, Waitaki and Waimate District Councils.

B Amend Section 7 - Rural Zone Rules Clause 7 as follows:

7 OUTDOOR RECREATIONAL ACTIVITIES - EXCLUDING ACTIVITIES ON OR WITHIN WATERBODIES

7.1 Permitted Activities - Outdoor Recreational Activities

7.1.1 Non-commercial outdoor recreation on land or in the air. ~~or water which complies with the following standards:~~

- a ~~These shall be no motorised boating above the confluence of the Opihi and Opuha rivers.~~

- ~~b — No craft on the surface of waterways shall be used for accommodation, other than for overnight accommodation where all effluent is contained on board the craft.~~
- ~~c — Notwithstanding 7.1.1.b, there shall be no craft on the surface of Lakes Alexandrina or McGregor used for accommodation including overnight accommodation.~~

7.1.2 Commercial Outdoor Recreation Activities with the following character, scale and intensity:

Character: predominantly non-motorised

Scale: up to 20 people per group

Intensity: up to 3 groups per day

~~Notwithstanding this rule, all commercial recreation on or within waterbodies is a permitted activity.~~

7.1.3 Group or individual visits to experience farming or rural activities.

7.2 **Controlled Activities - Outdoor Recreational Activities**

7.2.1 Commercial Outdoor Recreation where the activity has the following character, intensity and scale:

Character: predominantly non-motorised

Scale: more than 20 people per group, AND/OR

Intensity: more than 3 groups per day

7.2.2 Commercial Outdoor Recreation where the activity has the following character, intensity and scale:

Character: predominantly motorised

Scale: up to 20 people per group

Intensity: up to 3 groups per day

7.2.3 **Matters Subject to Council's Control**

In considering activities referred to in 7.2.1 and 7.2.2, the Council's control shall be limited to the impact of the activity, both directly and indirectly on:

- the enjoyment of and experience available in the area;
- landscape values;
- other recreational opportunities;
- public safety and health;
- traffic safety and efficiency;
- nature conservation and wildlife values;
- water quality;
- amenity of adjoining occupiers.

7.3 **Discretionary Activities - Outdoor Recreational Activities**

7.3.1 Commercial Outdoor Recreation where the activity has the following character, intensity and scale:

Character: predominantly motorised

Scale: more than 20 people per group AND/OR

Intensity more than 3 groups per day

~~7.3.2 Jetties and boat ramps~~

~~7.4 Non-Complying Activities – Outdoor Recreational Activities~~

~~7.4.1 Craft on the surface of waterways used for accommodation where the effluent is not contained on board the craft.~~

~~7.4.2 Notwithstanding 7.4.1 above, craft on the surface of Lakes Alexandrina and McGregor used for accommodation, including overnight accommodation.~~

C Amend Section 7 - Rural Zone Rules by adding the following new Clause 7A – Activities on **or Within Waterbodies**

7A ACTIVITIES ON **OR WITHIN WATERBODIES**

7A.1 Activities on **or within Lakes Tekapo, Benmore and Ruataniwha and all rivers other than the Ophi and Opuha Rivers**

7A.1.1 Permitted Activities on **or within Lakes Tekapo, Benmore and Ruataniwha and all rivers other than the Ophi and Opuha Rivers**

~~7A.1.1.a Use of motorised and non-motorised craft for search and rescue, **defence, maritime enforcement,** civil emergency, scientific research and monitoring, **and pest control purposes, or for the purpose of ensuring, achieving or monitoring compliance with any condition of a resource consent granted prior to 17th May 2019. With the exception of pest control, all such activities must be carried out in accordance with a statutory responsibility.**~~

~~7A.1.1.b Non-commercial motorised and **non-commercial** non-motorised activities~~

~~7A.1.1.c Craft on the surface of waterways used for accommodation where all effluent is contained on board the craft.~~

~~7A.1.1.d **Motorised and non-motorised activities related to the operation, maintenance, monitoring, upgrading and development of the Waitaki Power Scheme.**~~

7A .1.2 Discretionary Activities on **or within Lakes Tekapo, Benmore and Ruataniwha and all rivers other than the Ophi and Opuha Rivers**

~~7A.1.2.a Commercial motorised and **commercial** non-motorised activities~~

~~7A.1.2.b Jetties and boat ramps~~

7A.1.3 Non-complying Activities on or within Lakes Tekapo, Benmore and Ruataniwha and all rivers other than the Ophi and Opuha Rivers

7A.1.3.a Craft on the surface of waterways used for accommodation where effluent is not contained on board the craft.

7A.2 Activities on or within Lake Pukaki

7A.2.1 Permitted Activities on or within Lake Pukaki

7A.2.1.a Use of motorised and non-motorised craft for search and rescue, defence, maritime enforcement, civil emergency, scientific research and monitoring, and pest control purposes, or for the purpose of ensuring, achieving or monitoring compliance with any condition of a resource consent granted prior to 17th May 2019. With the exception of pest control, all such activities must be carried out in accordance with a statutory responsibility.

7A.2.1.b Non-commercial non-motorised activities

7A.2.1.c Non-commercial motorised activities which meet the following standards:

- i Motorised activities on Lake Pukaki must not occur within 3km of Peters Lookout and 5km of the Lake Pukaki Visitor Centre located at the south end of the Lake; and**
- ii The activity can only be undertaken by owners or occupiers of landholdings adjacent to Lake Pukaki; and**
- iii The owners or occupiers of land adjacent to Lake Pukaki must have undertaken motorised activities on Lake Pukaki prior to 17th May 2019.**

7A.2.1.d Motorised and non-motorised activities related to the operation, maintenance, monitoring, upgrading and development of the Waitaki Power Scheme.

7A.2.2 Restricted Discretionary Activities on Lake Pukaki

7A.2.2.a Non-commercial motorised activities where the activity is carried out at least 3km from Peters Lookout and 5km of the Lake Pukaki Visitor Centre at the south end of the Lake, other than as provided for in rule 7A.2.1.c

Matters of discretion

- Visual, noise, vibration, lighting and traffic effects, including cumulative effects, on opportunities for passive recreation and on people's enjoyment of peace, tranquillity and sense of remoteness associated with Lake Pukaki and its surroundings.**
- Impacts on natural character and values including conservation values, riparian values and water quality**
- Location of launching points and any associated structures**
- Impacts on public safety**

7A.2.2 Non-complying Activities on or within Lake Pukaki

7A.2.2.a Commercial non-motorised activities

7A.2.2.b Jetties and boat ramps

7A.2.3 Prohibited Activities

7A.2.3.a Commercial motorised activities

7A.2.3.b Non-commercial motorised activities **within 3km of Peters Lookout or 5km of the Lake Pukaki Visitor Centre at the south end of the Lake**

7A.2.3.c Craft on the surface of waterways used for accommodation.

7A.3 Activities on **or within Lakes Alexandrina and McGregor**

7A.3.1 Permitted Activities on **or within Lakes Alexandrina and McGregor**

7A.3.1.a Use of motorised and non-motorised craft for search and rescue, **defence, maritime enforcement,** civil emergency, scientific research and monitoring, **and** pest control purposes, **or for the purpose of ensuring, achieving or monitoring compliance with any condition of a resource consent granted prior to 17th May 2019. With the exception of pest control, all such activities must be carried out in accordance with a statutory responsibility.**

7A.3.1.b Non-commercial non-motorised activities

7A.3.2 Discretionary Activities on **or within Lakes Alexandrina and McGregor**

7A.3.2.a Commercial non-motorised activities

7A.3.3 Non-complying Activities on **or within Lakes Alexandrina and McGregor**

7A.3.3.a Jetties and boat ramps

7A.3.3.b Craft on the surface of waterways used for accommodation

7A.3.4 Prohibited Activities on **or within Lakes Alexandrina and McGregor**

7A.3.4.a Commercial motorised activities

7A.3.4.b Non-commercial motorised activities

7A.4 Activities on **or within the Opihi and Opuha Rivers**

7A.4.1 Permitted Activities on **or within the Opihi and Opuha Rivers**

7A.4.1.a Use of motorised and non-motorised craft for search and rescue, **defence, maritime enforcement,** civil emergency, scientific research and monitoring, **and** pest control purposes, **or for the purpose of ensuring, achieving or monitoring compliance with any condition of a resource consent granted prior to 17th May 2019, or for undertaking operational inspections of the Opuha Dam Scheme infrastructure. With the exception of pest control or Opuha Dam Scheme infrastructure inspections, all such activities must be carried out in accordance with a statutory responsibility.**

7A.4.1.b Non-commercial non-motorised activities

7A.4.2 Discretionary Activities on **or within the Opihi and Opuha Rivers**

7A.4.2.a Jetties and boat ramps

7A.4.2.b Commercial non-motorised activities

7A.4.3 Non –complying Activities on ~~or within~~ the Opihi and Opuha Rivers

7A.4.3.a Commercial motorised activities **excluding the period 1 April to 30 September**

7A.4.3.b Non-commercial motorised activities **excluding the period 1 April to 30 September**

7A.4.3.c Craft on the surface of waterways used for accommodation

7A.4.4 Prohibited Activities on ~~or within~~ the Opihi and Opuha Rivers

7A.4.4.a Commercial motorised activities during the period 1 April to 30 September

7A.4.4.b Non-commercial motorised activities during the period 1 April to 30 September

C Amend Section 3 - Definitions as follows:

Amend the definition of commercial activities as follows:

Commercial Activity: means the use of land, **water** and buildings for the display, offering, provision, sale or hire of goods, equipment, or services, and includes shops, showrooms, travel and real estate agencies, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, **recreational activities where a charge for profit is involved**, the sale of liquor and associated parking areas; but excludes ~~recreational activities~~, community and service activities, home occupations **not-for profit recreational activities** and visitor accommodation. Notwithstanding that service activities are excluded, commercial activity includes the ancillary manufacturing or repair of goods which have the same or similar effect on the environment as the retailing of those goods.

CHANGES TO THE PLANNING MAPS

No changes to the planning maps are proposed.