

SECTION 42A REPORT

Report on submissions and further submissions

Topic: Chapter 30 - Activities on the surface of water

Report prepared by: Alex Bell

Dated: 7 June 2024

TABLE OF CONTENTS

1.	Introduction	4
1.1	Qualifications and Experience.....	4
1.2	Code of Conduct	4
1.3	Conflict of Interest	4
1.4	Preparation of this report	4
2	Scope of Report	5
2.1	Matters addressed by this report	5
2.2	Overview of the topic / chapter	5
2.3	Statutory Requirements	5
2.4	Procedural matters.....	6
3	Consideration of submissions received	6
3.1	Overview of submissions	6
3.2	Structure of this report	6
3.3	Submissions seeking retention of existing provisions	6
3.4	Activities on the Surface of Water – General Comment.....	7
3.5	Public access and water body restoration	7
3.6	Exemptions.....	9
4	Conclusion	11
	APPENDIX 1 RECOMMENDED AMENDMENTS.....	12
	APPENDIX 2 SECTION 32AA EVALUATION	13

List of submitters and further submitters addressed in this report

Submitter No	Submitter Name	Abbreviation
43	Graymont Limited	GL
21	New Zealand Defence Force	NZDF
18	Auckland Waikato Fish and Game	AWFG
10	Waikato Regional Council	WRC
46	Federated Farmers	FF
FS10	King Country Energy	KCE
FS23	Te Nehenehenui	TNN

1. Introduction

1.1 Qualifications and Experience

1. My name is Alex Bell. I am employed by the Waitomo District Council as the General Manager – Strategy and Environment.
2. I hold the qualifications of Bachelor of Laws, Graduate Diploma in Environmental Planning and am completing my Post Graduate Diploma in Environmental Planning from the University of Waikato.
3. I have been employed in legal and planning roles in private practice, central government and local government for approximately 10 years. I have been employed by Council as the General Manager – Strategy and Environment since June 2021. In this role I am responsible for the Proposed Waitomo District Plan proceeding through the process under Schedule 1 of the RMA and the administration of the Operative Waitomo District Plan.

1.2 Code of Conduct

4. I confirm that I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note 2014 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.
5. I am authorised to give this evidence on the Council's behalf to the Proposed Waitomo District Plan hearings commissioners.

1.3 Conflict of Interest

6. I confirm that I have no real or perceived conflicts of interest.

1.4 Preparation of this report

7. This report considers the submissions and further submissions that were received in relation to Chapter 30 - Activities on the surface of water.
8. 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.

2 Scope of Report

2.1 Matters addressed by this report

9. This report is prepared in accordance with Section 42A of the Resource Management Act 1991 (RMA). This report considers submissions and further submissions that were received by the Council in relation to the provisions of Chapter 30 Activities on the surface of water within the Proposed Waitomo District Plan (the PDP. Chapter 30 - Activities on the surface of water does not restrict the use of the surface of water for recreational activities but largely seeks to manage tourism activities. Other effects and activities are addressed in various Section 42A reports, such as temporary activities, ecosystems and indigenous biodiversity and the noise chapters.

2.2 Overview of the topic / chapter

10. The water bodies in the district are highly valued for a range of recreational activities including, swimming, fishing, and boating. The PDP does not restrict the use of the surface of water for recreational activities but does manage tourism activities. Tourism activities are important for economic and social wellbeing, but they also have the potential to increase the intensity and frequency of use of an area and as a consequence, the potential for conflict between activities arises. Tourism activities also have the potential to conflict with the natural and cultural values of water bodies.
11. Water bodies are not zoned in this plan, but they are subject to the rules in this chapter and other relevant chapters such as the temporary activities, ecosystems and indigenous biodiversity and noise.

2.3 Statutory Requirements

12. The PDP has been prepared in accordance with the Council's functions under the RMA, specifically section 31, Part 2 and the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32. The section 32 report which addresses this Chapter sets out how the relevant national policy statements, national environmental standards, provisions of the Waikato Regional Policy Statement, the Manawatū-Whanganui One Plan, the Maniapoto Environmental Management Plan, the Waikato Tainui Environment Management Plan 2018 and Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River have been assessed and considered.

2.4 Procedural matters

13. At the time of writing this Section 42A report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

3 Consideration of submissions received

3.1 Overview of submissions

14. A total of nine submissions and two further submissions were received on this topic. Six of these submissions supported the retention of provisions as notified. Two submissions requested amendments to provisions and one submission provided a general comment requesting that activities such as hunting, angling and research could be more clearly provided for throughout chapter.

3.2 Structure of this report

15. Given the relatively low number of submissions and further submissions received on this chapter, the Section 42A report is structured by submissions that have requested retention of the provisions as notified, and then those seeking relief thereafter.
16. The assessment of submissions generally follows the following format: submission information; relief sought by the submitter, the recommendation and if required, any amendments to the plan.

3.3 Submissions seeking retention of existing provisions

17. The four submissions below have all sought retention of various provisions as notified, and no other submissions or further submissions have been received on these provisions.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
43.59	Graymont (NZ) Limited (GL)	Support	ASW-O3	Retain ASW-O3 as notified.	Accept
21.11	New Zealand Defence Force (NZDF)	Support	ASW-P1	Retain ASW-P1 as notified.	Accept
18.26	Auckland Waikato Fish and Game (AWFG)	Support	ASW-R1	Retain as notified.	Accept
21.13	NZDF	Support	ASW-R1	Retain ASW-R1 as notified.	Accept

Analysis and recommendation

18. It is considered that the relief sought by the submitters to retain these provisions as notified is accepted.
19. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

3.4 Activities on the Surface of Water – General Comment

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
18.34	Auckland Waikato Fish and Game (AWFG)	N/A	General comment	Anglers and hunters often rely on the surface of water to engage in the sports. AWFG also relies on water to access and monitor sites in undertaking its operations. These activities could be more clearly provided for throughout the Chapter 30.	Reject.

Analysis and recommendation

20. Auckland Waikato Fish and Game have supplied a general comment observing that the chapter could better provide for hunting, angling and scientific research. It is not clear how the submitter wishes the provisions to be amended. It is also noted that these activities are provided for within the other chapters of the plan. For example, HW-R2 provides for activities undertaken for scientific purposes as a permitted activities across all zones in the district and recreational hunting is defined and permitted in the general rural zone. Additionally, amendments are recommended to ensure that noise emitted in the course of recreational hunting is not subject to the noise provisions in the general rural and natural open space zones. For these reasons it is recommended that the submission point is rejected, however, the submitter may wish to provide further details on this matter at the hearing.
21. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

3.5 Public access and water body restoration

22. Two submissions were received on this provision, and two further submissions.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
43.60	GL	Support with amendment	ASW-P2	Amend ASW-P2 as follows: ... 3. Ability to provide, maintain, or enhance public access to the water body, <u>where practicable</u> ; and 4. Ability to restore and rehabilitate the water body and/or off-set any adverse effects, <u>where required</u> ; and 5. Ability...	Accept in part
FS10.21	King Country Energy	Support		Allow	Accept in part
FS23.199	Te Nehenehenui	Oppose		Te Nehenehenui seeks to enhance the protection and maintenance of its people and taonga within the taiao as guided by Ko Tā Maniapoto Mahere Taiao – Maniapoto's Environmental Management Plan. Where submission points do not align with this, or have the potential to negatively impact on iwi, hapu, whanau cultural values, sites, and all taonga within TNN area of interest, TNN opposes submission points of this nature and requests that Waitomo District Council consider this when finalising the PDP review.	Accept in part
21.12	NZDF	Support	ASW-P2	Retain ASW-P2 as notified.	Reject in part

Analysis and recommendation

23. ASW-P2 seeks to ensure that any activities proposing to locate on the surface of the water are appropriate. The policy provides direction on a number of matters including effect of activities on natural character and recreational values, whether there is a functional need to locate on the surface of the water and whether there is an ability to provide, maintain, or enhance public access to the water body to restore and rehabilitate the water body and/or off-set any adverse effects.
24. Graymont (NZ) Limited have requested that ASW-P2.3 and P2.4 are amended to provide qualifying matters to the policy points. The submitter considers it is not always appropriate to provide public access to a water body or enable restoration, particularly where there are health and safety issues associated with the same. The requested amendments are as follows:

Ensure any activities (including temporary activities) proposing to locate on the surface of the water, including structures and tourism activities, are appropriate having regard to the:

3. *Ability to provide, maintain, or enhance public access to the water body, where practicable; and*
4. *Ability to restore and rehabilitate the water body and/or off-set any adverse effects, where required; and*

25. It is noted that there is strong direction from both the RMA section 6(d), and the Waikato Regional Policy Statement (WRPS) (Objective IM-O10 – Public access and Policy M-P6 – Maintain and enhance public access) to ensure the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers. It is considered that the current wording of ASW-P2.3 is consistent with the RMA and WRPS while allowing sufficient flexibility through the use of the word ‘ability’, for consideration to be given where public access could be inappropriate for health and safety reasons. It is also considered that ASW-P2.3 is also consistent with (Policy IM-P7 – Appropriate restrictions on public access) of the WRPS which specifies that it is appropriate to restrict public access for reasons such as health and safety. Additionally, the governing sentence of ASW-P2 requires assessment of whether activities are appropriate ‘having regard to’ the matters listed. No amendment is considered necessary.
26. However, it is considered that an amendment could be made to ASW-P2.4, as it is agreed that not all water bodies will require restoration and rehabilitation, and the proposed wording provides sufficient flexibility for these circumstances. As the submission from the New Zealand Defence Force sought that the provision as notified be retained, this submission has been rejected in part due to the submission on ASW-P2.4 from the Graymont being accepted in part.
27. Section 32AA: It is considered that given the scale and significance of the change recommended as a result of the above submission, a section 32AA evaluation is not required.

3.6 Exemptions

28. Two submissions were received on exemptions.

Submission No	Submitter	Support / in part / oppose	Plan Provision	Relief Sought	Recommendation
10.109	Waikato Regional Council (WRC)	Oppose	ASW-R2	Include an exemption under ASW-R7 for flood protection and erosion control purposes. *submitter has listed R2 but the correct provision is ASW-R7*	Accept in part
46.61	Federated Farmers (FF)	Support	ASW-R7	Retain ASW-R7 as notified.	Reject

Analysis and recommendation

29. ASW-R7 provides a list of activities that are exempt from the rules in the activities on the surface of water chapter. The Waikato Regional Council request that ‘flood protection and erosion control purposes’ are added to this list of exemptions in ASW-R7.1(iii). It is considered that this submission point can be accepted in part. ASW-R7.1(iii) currently provides for structures for flood management or protection purposes, or drainage works where these are undertaken by the Waikato or Manawatū-Whanganui Regional Councils, Waitomo District Council or on their behalf by an approved contractor. However, no explicit provision for erosion control purposes is included. Erosion control works are a critical aspect of water body management. Generally, resource consents are required from the regional council to undertake works in the bed of lakes and rivers and this plan does not wish to hinder this important activity further. Therefore, the submission is accepted in part, and the provision can be amended as set out below:

ASW-R7.	Exemptions
---------	------------

1. The following activities are exempt from the provisions of ASW – Table 1:
 - (i) Municipal water supply intake structures; and
 - (ii) Rural water supply intake structures; and
 - (iii) Structures for flood management or protection purposes, [erosion control purposes](#), or drainage works where these are undertaken by the Waikato or Manawatū-Whanganui Regional Councils, Waitomo District Council or on their behalf by an approved contractor; and
 - (iv) Municipal wastewater discharge structures; and
 - (v) The operation and maintenance of existing district roads, bridges and state highways; and
 - (vi) The following sites in the rural production zone with a primary purpose of hydroelectric power generation: RPROZ-14 Wairere Hydro Power Station, Aria Road and RPROZ-15 Mokauiti Hydro Power Station, Totoro Road and RPROZ-16 Speedies Road Hydro Power Station, Speedies Road and RPROZ-17, Boulder Creek Road Hydro Power Station, Waipa Valley Road; and
 - (vii) Provisions specific to new hydro-electricity generation activities are contained in the [energy chapter](#).

30. As the submission from the Federated Farmers sought that the provision as notified be retained, this submission has been rejected due to the submission on ASW-R7.1(iii) being accepted.
31. Section 32AA: It is considered that given the scale and significance of the change recommended as a result of the above submission, a section 32AA evaluation is not required.

4 Conclusion

32. Submissions have been received in support of, and in opposition to the notified provisions of the Proposed Waitomo District Plan. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, it is recommended that the proposed district plan should be amended as set out in Appendix 1 of this report.
33. For the reasons set out in the section 32AA evaluations included throughout this report, it is considered that the proposed provisions, with the recommended amendments, will be the most appropriate means to:
 - Achieve the purpose of the Resource Management Act 1991 where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
 - Achieve the relevant objectives of the proposed district plan, in respect to the proposed provisions.

APPENDIX 1 RECOMMENDED AMENDMENTS

ASW-P2. Ensure any activities (including temporary activities) proposing to locate on the surface of the water, including structures and tourism activities, are appropriate having regard to the:

1. Particular natural character, ecological, cultural, historical, amenity and/or recreational values of the water body and the impact of the activity on these values; and
2. Purpose of the activity and whether it has a functional need to locate on the surface of the water; and
3. Ability to provide, maintain, or enhance public access to the water body; and
4. Ability to restore and rehabilitate the water body and/or off-set any adverse effects, [where required](#); and
5. Ability to maintain or enhance the natural character and natural functions of the water body and its margins; and
6. Potential to create new or exacerbate existing natural hazards, including flooding or streambank erosion.

ASW-R7.	Exemptions
----------------	-------------------

1. The following activities are exempt from the provisions of ASW – Table 1:
 - (i) Municipal water supply intake structures; and
 - (ii) Rural water supply intake structures; and
 - (iii) Structures for flood management or protection purposes, [erosion control purposes](#), or drainage works where these are undertaken by the Waikato or Manawatū-Whanganui Regional Councils, Waitomo District Council or on their behalf by an approved contractor; and
 - (iv) Municipal wastewater discharge structures; and
 - (v) The operation and maintenance of existing district roads, bridges and state highways; and
 - (vi) The following sites in the rural production zone with a primary purpose of hydroelectric power generation: RPROZ-14 Wairere Hydro Power Station, Aria Road and RPROZ-15 Mokaiti Hydro Power Station, Totoro Road and RPROZ-16 Speedies Road Hydro Power Station, Speedies Road and RPROZ-17, Boulder Creek Road Hydro Power Station, Waipa Valley Road; and

Provisions specific to new hydro-electricity generation activities are contained in the energy chapter.

APPENDIX 2 SECTION 32AA EVALUATION

Section 32AA

The evaluation of the recommended amendments to provisions since the initial section 32 evaluation was undertaken has been undertaken in accordance with section 32AA of the RMA.

The required section 32AA evaluation for changes proposed as a result of consideration of submissions with respect to the activities on the surface of water is contained within the assessment of the relief sought within this report, as required by section 32AA(1)(d)(ii).