



GENERAL DISTRICT-WIDE MATTERS
Activities on the Surface of Water

Section 32 Report for the Proposed Waitomo District Plan

Section 32 Report – Activities on the Surface of Water

SUMMARY OF ISSUES	RESOURCE MANAGEMENT ACT 1991	NATIONAL DIRECTION	REGIONAL POLICY STATEMENTS	IWI MANAGEMENT PLANS CONT...
<p>The activities on the surface of water chapter addresses the following issues:</p> <ul style="list-style-type: none"> • Tourism and commercial activities are important for economic and social wellbeing, but they also have the potential to create adverse effects. • Activities and structures on the surface of the water can create conflict between activities and adversely affect the natural and cultural values of water bodies. • Some surface water activities in certain locations can have detrimental impacts on aquatic ecosystems and the margins of water bodies. • Waterbodies are culturally important, and their mauri can be adversely affected by inappropriate structures and activities on the surface of water. • Structures can enable increased public access and enjoyment of the water but may adversely affect natural character and landscape. 	<p>Section 6 RMA A number of section 6 matters are relevant to this topic.</p> <p>Section 6(a) requires the protection of the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.</p> <p>While the coastal marine area is controlled by the regional council, Waitomo District Council has jurisdiction over the surface of wetlands, and lakes and rivers. Activities and structures on the surface of the water should preserve the natural character as a matter of national importance.</p> <p>Section 6(b) requires the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.</p> <p>Section 6(c) requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna Waterbodies can provide important sites for indigenous vegetation and habitat of indigenous fauna, both in their riparian margins and within the waterbodies themselves. The use of motorboats and similar pleasure craft may adversely affect spawning and the habitats of indigenous species. In addition, wash generated by boats can adversely affect indigenous vegetation.</p> <p>Section 6(d) requires the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.</p> <p>This could be interpreted as requiring the maintenance and enhancement of public access to the surface of waterbodies.</p> <p>Section 6(e) requires that the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga be provided.</p>	<p>There are six National Policy Statements (NPSs) currently in place:</p> <ul style="list-style-type: none"> • New Zealand Coastal Policy Statement 2010 • NPS for Electricity Transmission 2008 • NPS for Renewable Electricity Generation 2011 • NPS for Freshwater Management 2020 • NPS on Urban Development 2020 • NPS for Highly Productive Land 2022 <p>The NPS for Freshwater Management is highly relevant to this topic. The NPS-FM sets out an objective and policies that focus on:</p> <ul style="list-style-type: none"> • Managing freshwater in a way that 'gives effect' to Te Mana o te Wai: (the integrated and holistic well-being of a freshwater body) in the management of fresh water; • Prioritising the health and wellbeing of water bodies and freshwater ecosystems, followed by the health needs of people, followed by the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future; • Avoiding overallocation, improving and maximising efficient allocation and use of water and safeguarding its life-supporting capacity; • Improving integrated management of fresh water and the use and development of land; • Establishing a national objectives framework, monitoring progress, and accounting for freshwater takes and contaminants; and • Providing for the active involvement of tangata whenua in freshwater management and that Māori freshwater values are identified and provided for. <p>While many of the objectives and policies relate to the functions of regional councils, those covering integrated management, and tangata whenua roles and interests are of relevance to the Council.</p> <p>Structures that generate electricity can be located on the surface of water bodies and in this regard the NPS for Renewable Electricity Generation 2011 is relevant. The NPS-REG, which took effect on 13 May 2011, recognises the importance of renewable energy. It promotes a more consistent approach to balancing the competing values associated with the development of New Zealand's renewable energy resources when councils make decisions on resource consent applications.</p>	<p>Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River (V&S) was adopted by the Waikato River Authority (WRA) as part of the Waikato River Settlement and is the primary direction-setting document for the Waikato River and activities within its catchments affecting the Waikato River. The ultimate vision is: "the Waikato River will be safe for people to swim in and take food from over its entire length."</p> <p>The V&S has 13 objectives to meet the vision.</p> <p>The district plan is required to give effect to the V&S, particularly as it is included in the Waikato Regional Plan. The Proposed District Plan will need to give effect to the V&S for parts of our district that are within the Waikato River catchment.</p> <p>There are a number of relevant objectives in this document relating to the management of the surface of water, including the promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities, but also the restoration and protection of the health and wellbeing of the Waikato River.</p> <p>The Waikato Regional Policy Statement recognises the importance of ensuring appropriate public access to lakes and rivers, but also protecting the values that make a freshwater body outstanding. Waitomo District has two waterbodies classed as outstanding - Lake Taharoa and Lake Harihari. This is consistent with PDP as both of these lakes are recognised as outstanding natural features. In addition, the regional policy statement recognises the relationship of Māori and their culture and traditions, which is of particular importance as waterbodies are a taonga.</p> <p>The Manawatū-Whanganui One Plan seeks to manage surface water bodies in a manner which safeguards their life supporting capacity and recognises and provides for the values listed for each water body, as required by the NPSFM. These values are more relevant to water quality and as such are managed by the Regional Council and are not specifically addressed in this chapter.</p>	<p>The Waikato Tainui Environment Management (WTEP) Plan 2018 contains a number of provisions relevant to the surface of water. The following is a summary:</p> <ul style="list-style-type: none"> • enable access to and ability to undertake customary activities and resource use, including along the margins of waterways, is protected and enhanced. • The full range of Waikato ecosystem types found throughout the Waikato-Tainui rohe are robust and support representative native flora and fauna. • Taonga species are protected, restored and managed, consistent with the tikanga, kawa, maatauranga, and mana whakahaere of Waikato-Tainui. • To ensure that adverse environmental effects of tourism or recreation activities are managed to a level acceptable to Waikato-Tainui. <p>It is considered that the proposed provisions take into account the relevant provisions in the WTEP, as they enable activities with low impacts such as recreational uses and require higher intensity activities on the surface of water or those with greater effects to obtain resource consent.</p>
<p>OPERATIVE WAITOMO DISTRICT PLAN</p>	<p>Section 6(g) the protection of protected customary rights.</p>	<p>There are also 8 National Environmental Standards (NESs) currently in place:</p>	<p>IWI MANAGEMENT PLANS</p>	<p>OTHER RELEVANT PLANS OR LEGISLATION</p>
<p>Chapter 22 of the ODP contains a full suite of provisions which manage activities and structures on the surface of water. This includes 3 objectives, 3 polices and rules. Largely all activities that are permitted in the Conservation Zone or Rural Zone can be carried out on the surface of water, and any water based recreational activity is also permitted provided they comply with the standards which relate to erosion, the habitat of trout and indigenous species and noise generation. The use of motorised vessels on the Awakino River from its source to the State Highway 3 bridge at Mahoenui is a non-complying Activity. All other activities are a discretionary activity.</p> <p>The anticipated environmental outcomes are: (a) Noise effects from surface water activities maintained to similar levels as other land use activities.</p>	<p>Water is significant to Māori. There are often sites of cultural significance and customary activities undertaken in and around waterbodies, which links to section 6(g).</p> <p>Section 7 RMA The following clauses are relevant in section 7: Section 7(b) the efficient use and development of natural and physical resources.</p> <p>The surface of water is a resource, and activities should not be unduly restricted where they are appropriate and consistent with the purpose and principals of the Act.</p> <p>Section 7(c) the maintenance and enhancement of amenity values.</p> <p>Waterbodies contribute to the amenity values of an area, however activities on the surface of waterbodies</p>	<ul style="list-style-type: none"> • NES for Air Quality 2004 • NES for Sources of Human Drinking Water 2007 • NES for Telecommunication Facilities 2016 • NES for Electricity Transmission Activities 2009 • NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 • NES for Plantation Forestry 2017 • NES for Freshwater 2020 • NES for Storing Tyres Outdoors 2021 <p>The NES for Freshwater regulates activities that pose risks to the health of freshwater and freshwater ecosystems. The NES for Freshwater covers activities undertaken in wetlands and structures in waterbodies.</p>	<p>We are required to take into account planning documents recognised by an iwi authority and lodged with the territorial authority, and there are many provisions in these documents relevant to the management of activities on the surface of water. There are a number of relevant values expressed in these documents such as:</p> <ul style="list-style-type: none"> • the mana and mauri of waterways be enhanced; • enjoyment of the waterways is enhanced through improved access for swimming, fishing and boat launching and facilities and well managed speed limits and allocation of activities on the upper river; • The natural beauty and essence of the Waikato River is upheld; • Promote and support access to water; • Restore and protect the health and wellbeing of the river for present and future generations including access, fisheries, water quality, mahinga kai, rongoā Māori, and cultural landscapes. 	<p>The Maritime Safety Authority is established under The Maritime Transport Act 1994 and has a role to promote safety and, where required, enforce standards and investigate accidents and/or incidents.</p>

Section 32 Report – Activities on the Surface of Water

<p>(b) Bank erosion limited to acceptable levels. (c) Effects on trout spawning habitats avoided, remedied or mitigated.</p>	<p>have the potential to create noise, wash and lights and adversely affect the amenity of other users and surrounding properties.</p> <p>Section 7 (f) maintenance and enhancement of the quality of the environment.</p> <p>Activities and structures on the surface of water have the potential to maintain and enhance the quality of the environment or create adverse effects.</p> <p>Section 7(h) the protection of the habitat of trout and salmon</p>	<p>The regulations are more relevant to activities on the beds of lakes and rivers (which is a regional council matter) rather than activities on the surface (which is within the district council jurisdiction).</p> <p>Relevant case law considered No relevant case law has been identified in relation to this chapter.</p>	<p>A summary of the provisions in the Maniapoto Iwi Environment Management Plan 2018 (MEMP) relevant to the surface of water are as follows:</p> <ul style="list-style-type: none"> To enhance and protect the ability of Maniapoto to access resources and undertake customary activities To protect and enhance the ability of Maniapoto to undertake customary activities on land and waterways throughout the rohe Ensure district plans provide for customary undertakings as a permitted or controlled activities Ngā Wai o Maniapoto is healthy and enhanced to protect the relationship of Maniapoto and water bodies. Enhance and protect the quality and integrity of Ngā Wai o Maniapoto and mahinga kai sources Ensure resource users recognise and provide for Maniapoto access to water to facilitate customary activities, land use activities, and for other purposes Access to freshwater bodies to undertake customary activities and uses are enhanced and protected Restore and enhance the mauri of Ngā Wai o Maniapoto and protect Te Mana o te Wai Ensure activities and natural resource use restore, protect, enhance and maintain continued development of indigenous biodiversity, including biodiversity/habitat corridors Identify and protect areas that would be adversely affected by activities or uses to maintain and enhance the mauri of water To ensure tourism activities are sustainable and provides for environmental, social, cultural and economic wellbeing of Maniapoto while protecting Maniapoto sites and culture 	<p>STRATEGIC DIRECTION</p>
<p>SCALE & SIGNIFICANCE s32(1)(c)</p>	<p>The use of motorboats and similar pleasure craft may adversely affect trout spawning and their habitats.</p> <p>The above matters are relevant when considering the management of activities on the surface of water and ensuring that they avoid, remedy or mitigate the adverse effects on the receiving environment, while ensuring that the quality of the environment is maintained and enhanced.</p> <p>Section 8 RMA Given the cultural significance of waterbodies to iwi, Section 8 is highly relevant.</p>	<p>Relevant case law considered No relevant case law has been identified in relation to this chapter.</p>	<p>A summary of the provisions in the Maniapoto Iwi Environment Management Plan 2018 (MEMP) relevant to the surface of water are as follows:</p> <ul style="list-style-type: none"> To enhance and protect the ability of Maniapoto to access resources and undertake customary activities To protect and enhance the ability of Maniapoto to undertake customary activities on land and waterways throughout the rohe Ensure district plans provide for customary undertakings as a permitted or controlled activities Ngā Wai o Maniapoto is healthy and enhanced to protect the relationship of Maniapoto and water bodies. Enhance and protect the quality and integrity of Ngā Wai o Maniapoto and mahinga kai sources Ensure resource users recognise and provide for Maniapoto access to water to facilitate customary activities, land use activities, and for other purposes Access to freshwater bodies to undertake customary activities and uses are enhanced and protected Restore and enhance the mauri of Ngā Wai o Maniapoto and protect Te Mana o te Wai Ensure activities and natural resource use restore, protect, enhance and maintain continued development of indigenous biodiversity, including biodiversity/habitat corridors Identify and protect areas that would be adversely affected by activities or uses to maintain and enhance the mauri of water To ensure tourism activities are sustainable and provides for environmental, social, cultural and economic wellbeing of Maniapoto while protecting Maniapoto sites and culture 	<p>STRATEGIC DIRECTION</p>
<p>The assessment is based on eight factors outlined in Ministry for the Environment’s guidance on Section 32 reports. Each factor is scored in terms of its scale and significance (where 1 is low and 5 is high).</p> <p>Reason for Change: 2 Problem / Issue: 1 Degree of Shift from Status Quo: 4 Who and How Many Affected, Geographic Scale of Effects: 3 Degree of Impact on or Interest from Māori: 3 Timing and Duration of Effects: 2 Type of Effect: 1 Degree of Risk or Uncertainty:1</p> <p>Total (out of 40): 12</p>	<p>The use of motorboats and similar pleasure craft may adversely affect trout spawning and their habitats.</p> <p>The above matters are relevant when considering the management of activities on the surface of water and ensuring that they avoid, remedy or mitigate the adverse effects on the receiving environment, while ensuring that the quality of the environment is maintained and enhanced.</p> <p>Section 8 RMA Given the cultural significance of waterbodies to iwi, Section 8 is highly relevant.</p>	<p>Relevant case law considered No relevant case law has been identified in relation to this chapter.</p>	<p>A summary of the provisions in the Maniapoto Iwi Environment Management Plan 2018 (MEMP) relevant to the surface of water are as follows:</p> <ul style="list-style-type: none"> To enhance and protect the ability of Maniapoto to access resources and undertake customary activities To protect and enhance the ability of Maniapoto to undertake customary activities on land and waterways throughout the rohe Ensure district plans provide for customary undertakings as a permitted or controlled activities Ngā Wai o Maniapoto is healthy and enhanced to protect the relationship of Maniapoto and water bodies. Enhance and protect the quality and integrity of Ngā Wai o Maniapoto and mahinga kai sources Ensure resource users recognise and provide for Maniapoto access to water to facilitate customary activities, land use activities, and for other purposes Access to freshwater bodies to undertake customary activities and uses are enhanced and protected Restore and enhance the mauri of Ngā Wai o Maniapoto and protect Te Mana o te Wai Ensure activities and natural resource use restore, protect, enhance and maintain continued development of indigenous biodiversity, including biodiversity/habitat corridors Identify and protect areas that would be adversely affected by activities or uses to maintain and enhance the mauri of water To ensure tourism activities are sustainable and provides for environmental, social, cultural and economic wellbeing of Maniapoto while protecting Maniapoto sites and culture <p>It is considered that the proposed provisions will not conflict with the provisions in the MEMP, as they enable activities with low impacts such as recreational uses and require higher intensity activities on the surface of water or those with greater effects to obtain resource consent.</p>	<p>The following objective from the Strategic Directions chapter of the PDP are relevant to this topic:</p> <p>SD-O1. Uphold the partnership principles inherent within Te Tiriti o Waitangi by ensuring mana whenua are enabled to maintain and enhance the well-being (mauri) and health (hauora) of both people and the environment and empowered in the expression and application of kaitiakitanga.</p> <p>SD-O2. Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River) is achieved through active measures to protect and restore the health and well-being of the Upper Waipa Catchment.</p> <p>SD-O3. Mana whenua are able to exercise customary activities, protect, develop and use Māori land in a way that is consistent with their culture and traditions and provides for their social and economic aspirations.</p> <p>SD-O13. The district’s communities have access to a diverse and connected network of open spaces which offer a range of recreational experiences while protecting the values of scheduled sites, features and overlays.</p> <p>SD-O16. The district’s communities work towards reduced reliance on non-renewable sources of energy, increased use of renewable energy sources and greater energy conservation.</p> <p>UNCERTAINTIES AND RISKS s32(2)(c)</p> <p>The degree of risk and uncertainty is low due to the certainty provided by well-understood potential effects and the approach taken for their management in the proposed provisions. In addition, the provisions for the surface of water only apply in limited locations.</p>

<p>OBJECTIVE(S) s32(1)(a)</p>
<p>Relevance – District councils have a requirement to manage any actual or potential effects of activities in relation to the surface of water in rivers and lakes. Lakes and waterways are particularly important in our District, as they are a significant part of the character and identity of the District and are a source of recreation and enjoyment for both the community and visitors. AWS-O1 recognises the importance of accessing the surface of water and enabling the use of the resource for a range of activities. It recognises the recreation and amenity values of the surface of water in accordance with section 6(d) and 7(c). The natural character of water bodies is recognised in ASW-O2 and will address the requirements under s6(a) of the RMA to preserve natural character and protect it from inappropriate use, development and protection. AWS-O3 recognises the amenity values of waterbodies in accordance with section 7(c) if the RMA. ASW-O4 recognises the importance of the Waikato River Vision and Strategy and the Waipā Accord.</p> <p>Usefulness – The objectives provide clarity as to what is to be achieved in relation to managing activities on the surface of water when considering a resource consent application under section 104. The objectives clearly articulate an outcome related to the effects of structures and activities, rather than the uses themselves (which was the approach of the ODP). The objectives provide an overall framework that then allows the development of policies to identify key matters in relation to the management of the natural character of the surface water bodies to guide decision makers considering consent applications.</p> <p>Reasonableness – The objectives do not create unjustifiably high costs on the community. Recreational use of lakes and rivers is part of New Zealand’s culture, and this is explicitly enabled by ASW-O1.</p> <p>Achievability – The character and amenity of Waitomo District will not be compromised, consistent with the strategic objectives. The outcomes stated in the objectives are achievable and are within the functions of the Council.</p>

Section 32 Report – Activities on the Surface of Water

Are the objectives the most appropriate way to achieve the Purpose of the Act?

The proposed objectives are considered to meet the tests of relevance, usefulness, reasonableness and achievability. The objectives are the most appropriate way to achieve the purpose of the RMA because they:

- Will enable people to provide for their health by enabling recreational activities on the surface of water.
- Sustain the potential of the surface of waterbodies as a resource by protecting the natural character, cultural and ecological values.
- Will address the requirement of section 6(a) to preserve the natural character of lakes and rivers.
- Will address the requirement under section 6(c) of the RMA to protect significant habitats of indigenous fauna.
- Ensures public access to lakes and rivers in accordance with section 6(d) of the RMA.
- Are within the jurisdiction of the Council and is able to be achieved within the exercise of its functions.
- Will deliver water provisions for the District Plan that are updated and appropriately targeted. It will address the key resource management issues identified above.
- A continuation of the status quo would continue the identified issues of focus purely on motorboats and other pleasure craft, and result in ineffective and inefficient water provisions in the PDP. The proposed objectives address these issues and provide a clear and streamlined approach to the management of waterbody issues in the District (including structures as well as activities), that falls within the functions of the Council under section 31 of the RMA.

PROVISIONS s32(1)(B)

EFFICIENCY & EFFECTIVENESS s32(1)(b)(ii), 32(2)(a)(i), s32(2)(a)(ii)

ALTERNATIVES s32(1)(b)(i)

Benefits Anticipated

Environmental

- Will have environmental benefits for indigenous species, and indigenous habitat, ecology and biodiversity in general..
- Retains the natural character of waterbodies.
- Recognises the potential for destabilisation and erosion of streambanks.

Economic

- Explicitly enables tourism operations.
- May restrict activities on particularly sensitive waterbodies.
- Enables small scale electricity generation.

Social

- Enables recreational use of all waterbodies.
- No restrictions on private recreational use of lakes and waterbodies.
- Enables access to waterbodies.
- Explicit recognition of outdoor education activities.
- Enables navigational aids and signage necessary for safety.
- Contribution to the District identity.
- Provision for essential infrastructure structures which will ensure the health and safety of the community.
- Manages potential adverse effects to retain amenity

Cultural

- Recognises the cultural values of waterbodies..
- Preserves the natural character of waterbodies

Costs Anticipated

Environmental

- Possibility for erosion and damage to edges / banks from the wash from motorised boats.

Economic

- The generation of electricity is limited by the small size permitted.

Social

- Noise standards may limit activities that can be undertaken.
- The natural character may be affected by the presence of small structures.

Cultural

No cultural costs anticipated.

For the purpose of this evaluation, the Council has considered the following potential options:
 1. The proposed provisions; and
 2. The status quo.

The ODP provisions are not considered to be efficient or effective in achieving the objectives. The provisions of the ODP very much focus on motorboats and other pleasure craft whereas the proposed provisions recognise a much broader range of activities and structures, as well as the effects of those activities / structures.

In order to assess whether the policies are the appropriate way to achieve the Objective, Council has:

Section 32(1)(b)(i) identified other reasonably practicable options; the Council has undertaken the following:

- Reviewed other relevant district plan provisions for activities on the surface of water.
- Sought feedback from Council asset managers in terms of infrastructure.
- Collated feedback from discussions with iwi

QUANTIFICATION OF BENEFITS & COSTS s32(2)(b)

Section 32(2)(b) requires that, where practicable, the benefits and costs of a proposal are to be quantified. Given the assessment of the scale and significance of the proposed provisions, specific quantification of the benefits and costs in this report is considered neither necessary, beneficial nor practicable in relation to this topic.

Section 32 Report – Activities on the Surface of Water

EFFICIENCY & EFFECTIVENESS <i>s32(1)(b)(ii)</i>	REASONS FOR PROVISIONS <i>s32(1)(b)(iii)</i>
<p>Section 32(1)(b)(ii) requires addressing the efficiency and effectiveness of the provisions in achieving the objectives:</p> <p><u>Efficiency</u> The proposed provisions have considerably more benefits, and clearly set out the acceptable activities with no or minimal effects as well as those which require closer assessment through the consenting process. The package of provisions will be efficient in achieving the objectives.</p> <p><u>Effectiveness</u> The proposed provisions are the most effective in achieving the objective as they directly address the resource management issues and the outcomes sought through the objectives. The provisions are consistent with the purpose and principles of the RMA, and recognise and provide for the social, economic and cultural benefits of activities on the surface of water, while ensuring adverse effects will be acceptable. The proposed provisions are considered to be the most effective means of achieving the objective as together they will:</p> <ul style="list-style-type: none"> • give effect to the Waikato RPS and Manawatū-Whanganui One Plan RPS objectives and policies. • enable the Council to fulfil its statutory obligations, including section 6(a), 6(e), 7(e), 7(d) and 7(h) and is consistent with its functions under section 31 of the RMA. • ensure that adverse effects on the natural character of the waterbodies are managed appropriately by requiring consent for activities that could cause more than minor adverse effects, and therefore enabling measures to protect natural character to be imposed as consent conditions. • address the management of activities within the jurisdiction of the Council that could affect the natural character of the margins of waterbodies, whilst avoiding unnecessary duplication with Regional Council functions and plan requirements. • enable the Council to effectively administer its District Plan and to monitor the outcomes of the proposed provisions in a clear and consistent manner. 	<p>Section 32(1)(b)(iii) summarising the reasons for deciding on the provisions:</p> <p>The proposed provisions are considered to be the most appropriate approach to achieve the objectives of this Chapter. The provisions appropriately give effect to higher order policy documents, including being consistent with the purpose and principles of the RMA. The package of provisions takes account of the two iwi management plans. The approach adopted of managing activities on the surface of waterbodies that could affect natural character, cultural and ecological values is considered to be the most appropriate way to achieve the purpose of the RMA. Managing the use of the surface of waterbodies is a function of the Council. The social, cultural and environmental benefits of providing for the recreational use on the District’s waterbodies, while controlling the use of activities and structures that will have adverse effects will effectively achieve the objectives.</p> <p>The recommended policies and rule requirements assessed in this report are the most appropriate to achieve the objectives for the District Plan, having considered other reasonably practicable options and having assessed the efficiency and effectiveness of the provisions.</p>