

Waitomo District Council

Hearing on submissions on the Proposed Waitomo District Plan

Report and Decisions of the Independent Hearing Commissioners

Decision Report:

Chapter 30. Activities on the Surface of Water

19 June 2025

Commissioners

Greg Hill (Chair)

Wikitōria Tāne

Allan Goddard

Phil Brodie

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1. Introduction

1. This Decision Report relates to all the submissions received by the Waitomo District Council (Council) on Chapter 30 Activities on the Surface of Water. This includes related provisions within the Proposed Waitomo District Plan (PDP) such as Definitions (Chapter 9).
2. The chapter seeks to ensure that the use of the surface of water is not restricted for recreational activities, but that activities are managed appropriately to ensure that there is not a conflict between recreational and tourism uses, and that the natural and cultural values of water bodies are maintained.

2. Hearing arrangements

3. The hearing was held in person and online **on 16 and 17 July 2024 in Council's** offices at 15 Queen Street, Te Kuiti. All of the relevant information pertaining to this hearing (i.e., Section 42A Reports, legal submissions and evidence) is **contained on Council's website**.
4. The following parties submitted on this Chapter.

Submission No	Submitter
43	Graymont (NZ) Ltd
21	New Zealand Defence Force
18	Auckland Waikato Fish and Game
FS10	King Country Energy
FS23	Te Nehenehenui

5. The Panel heard from Ms Terry Calmeyer, who provided planning evidence on behalf of Graymont (NZ) Limited (Graymont) at the hearing on 16 July 2024.
6. The Panel also noted the submitter evidence that was filed by the New Zealand Defence Force supporting the recommendations in the Section 42A Report in relation to their submissions (21.11 and 21.13).

3. Submitter evidence

7. In her verbal evidence and in response to questions from the Panel, Ms Calmeyer supported the recommendations in the Section 42A Report in relation to the relief her client had sought to this Chapter.
8. In her evidence, Ms Calmeyer, accepted the recommendations in the Section 42A Report in relation to the relief sought to ASW-P2.3 and ASW-P2.4. Graymont in their submission considered ASW-P2.3 should be amended as it is not always appropriate to provide public access to a water body, particularly where there are health and safety issues associated with the same. In relation to ASW-P2.4, Graymont sought an amendment to the Policy noting that it is not always appropriate to provide public access to a water body or enable restoration.

4. Panel decision

9. Having considered the submissions and evidence presented, the Panel **acknowledged the general support for the PDP's amended provisions.**
10. The Panel agrees with the aim of this Chapter, which is to ensure conflict between users (recreational and tourism operators) is managed by segregating activities which are incompatible with particular water body environments, or with other activities (including temporary activities) occurring on the surface of water as far as practicable. The Panel found that:
 - The provisions enable people to readily access and safely enjoy using the surface of water for a range of activities, while protecting the natural character, cultural and ecological values of water bodies from inappropriate use and development.
 - The provisions ensure that amenity values of water bodies and their margins are maintained and enhanced.
 - Effect is given to the directions and outcomes in the Waikato River Vision **and Strategy and the Waipā Accord.**

ASW-P2.3

11. The Panel accepts the recommendation of the Section 42A Report writer in relation to ASW-P2.3. The provision as notified is consistent with section 6(d) of 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.

ASW-P2.4

12. The Panel accepts the recommendation of the Section 42A Report writer. However, we find an amendment should 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.
13. Otherwise, unless stated in the Panel decision above, the Panel has elected to adopt the recommendations in the Section 42A Report and the Section 42A Addendum Report on this chapter.

5. Conclusion

14. The Panel accepts the recommendations in the section 42A reports and where noted above, the evidence filed by the submitters. The reasons for this are those set out in the section 42A reports, the evidence, and provided in this Decision; collectively forming the section 32AA assessment informing this Decision.
15. Overall, the Panel is satisfied that the provisions of the Chapter as amended will provide a suitable framework for managing activities on the surface of water, while managing any adverse effects.
16. The Panel accepts, accepts in part, or rejects the submissions as set out in the Section 42A Report.

For the Hearing Panel

A handwritten signature in dark ink, appearing to read "Greg Hill", followed by a period.

Greg Hill, Chair

Dated: 19 June 2025

6. Appendix 1 – Submission Table

Activities on the surface of water – Submission points in order of s42A report

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
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.
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	Accept in part

Submission No	Submitter	Support/in part/oppose	Plan Provision	Relief Sought	Recommendation
				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.	
21.12	NZDF	Support	ASW-P2	Retain ASW-P2 as notified.	Reject in part
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

7. Appendix 2 – Decisions Version of the Chapter

Activities on the Surface of Water | Ngā mahi raweke ki te mata o te wai

Overview

The water bodies in the district are highly valued for a range of recreational activities including, swimming, fishing, and boating. This plan 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.

Structures such as jetties, whitebait stands and piers that are fixed to the bed of a lake or river are managed by the Waikato Regional Council and the Manawatū Whanganui Regional Council. The regional councils also have the responsibility of maintaining water quality and quantity. However, on the surface of water, regional and district council roles can intersect. For example, some surface water activities in certain locations can have detrimental impacts on aquatic ecosystems and the margins of water bodies through inappropriate levels of activity. Additionally, motorised boats operating in shallow waters can have adverse effects on plant life and fish spawning sites. As the range of activities occurring on water bodies increases, their compatibility with one another and their impacts on the environment need to be carefully considered.

Water bodies are not zoned in Waitomo district but they are subject to the rules in this chapter and other relevant chapters such as the [temporary activities](#), [ecosystems and indigenous biodiversity](#) and the [noise chapters](#).

Objectives

Refer also to the relevant objectives in Part 2 District - Wide Matters

- ASW-O1. Enable people to readily access and safely enjoy using the surface of water for a range of activities.
- ASW-O2. Protect the natural character, cultural and ecological values of water bodies from inappropriate use and development.
- ASW-O3. Maintain and enhance the amenity values of water bodies and their margins.
- ASW-O4. Give effect to the directions and outcomes in the Waikato River Vision and Strategy and the Waipā Accord.

Policies

Refer also to the relevant policies in Part 2 District - Wide Matters

- ASW-P1. Ensure conflict between users is managed by segregating activities which are incompatible with particular water body environments, or with other activities

(including temporary activities) occurring on the surface of water as far as practicable.

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-P3. Provide for the use of the surface of water for private recreational activities, outdoor education activities, navigational aids, signs and surface safety structures.

ASW-P4. Where an activity or structure may adversely affect areas of cultural or spiritual values or associations of importance to mana whenua, ensure appropriate consultation and/or cultural advice is obtained from mana whenua as kaitiaki.

Rules

The rules that apply to activities on the surface of water are contained in the tables listed below. To undertake any activity, it must comply with the rules listed in:

- ASW - Table 1 - Activities Rules; and
- Any relevant provision in Part 2 District-Wide Matters; and
- Any relevant provision in Part 3 Area Specific matters;

Where an activity breaches more than one rule, the most restrictive status shall apply to the activity.

[Refer to Part 1 - How the Plan Works](#) for an explanation of how to use this plan, including activity status abbreviations.

*Note: Where the structure is attached to the bed of a lake or river, a resource consent may also be required from the **Waikato Regional Council or Manawātū-Whanganui Regional Council**.*

The rules in this table apply to activities on the surface of water in all zones	
ASW-R1.	Permitted activities on the surface of water
<p>Activity status: PER</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The activity is for private recreational use including swimming, canoeing, rafting, boating, food gathering, hunting, angling, kayaking and jet boating; or 2. The activity is an outdoor education activity; or 3. The activity is carried out by a local authority or organisation exercising powers, functions and duties required as part of their responsibilities under any relevant statutory provisions; or 4. The activity is a navigational aid, sign or surface structure erected or permitted by the Harbour Master. <p>Activity status where compliance is not achieved: N/A</p>	
ASW-R2.	Structures on the surface of the water
<p>Activity Status: PER</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The structure is an intake or discharge structure less than or equal to 2 m²; or 2. The structure is for hydro-electricity generation of up to and including 5 kW of electricity per holding (see ENGY-R7). 	<p>Activity status where compliance is not achieved: RDIS</p> <p>Matters over which discretion is restricted:</p> <ol style="list-style-type: none"> (a) Effects on existing recreational values; and (b) The benefits from the proposed structure; and (c) Whether the proposed structure would adversely impede or affect the flow of flood waters; and (d) The extent to which the activity impacts on natural character, cultural and amenity values; and (e) Effects on water bodies which have cultural spiritual and/or historic values and interests or associations of importance to mana whenua, the impact on those values, and the outcome of any consultation and/or cultural advice provided by mana whenua as kaitiaki, including with respect to mitigation measures; and (f) Effects on public access to any water body; and (g) Effects on any scheduled site or feature; and (h) Whether the activity adversely affects any adjoining land-based activities; and (i) The extent to which alternative locations have been considered.
ASW-R3.	Temporary events on the surface of water
<p>Activity Status: PER</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The temporary event complies with the provisions applicable to the relevant zone adjacent to the surface of water. See the temporary activities chapter. 	

ASW-R4.	Noise on the surface of water	
Activity Status: PER		
Where:		
1. The use of the surface of water does not result in noise levels in excess of the permitted noise levels in the general rural zone. See the noise chapter .		
ASW-R5.	Tourism activities on the surface of water	
Activity Status: PER		Activity status where compliance is not achieved: DIS
Where:		
1. The activity does not involve motorised craft; and		
2. The activity does not exceed 30 paying customers per day; and		
3. The activity does not require exclusive use of an area of water; and		
4. Activities on the surface of water underground (including caving and cave tubing or the use of a punt) require a resource consent for a discretionary activity.		
ASW-R6.	Activities not otherwise listed in ASW - Table 1	
Activity Status: DIS		Activity status where compliance is not achieved: N/A
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 Manawatu-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](#).

ASW - Table 2 - Performance Standards

There are no Performance Standards

8. Appendix 3 – Section 32AA Evaluation

17. A Section 32AA evaluation is only required for any changes that are proposed to the provisions of this plan since the original Section 32 evaluation report for the proposal was completed. The Section 32AA evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.

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.
18. Section 32AA: It is considered that given the minor nature of the change recommended it does not warrant a Section 32AA evaluation given the scale and significance of the change recommended is minor and will not have any implications on any other provisions.

ASW-R7.	Exemptions
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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 Manawātū-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

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

Effectiveness and efficiency

19. ASW-R7 provides a list of activities that are exempt from the rules in the activities on the surface of water chapter. 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 Manawatu**-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.
20. It is considered that the amendments set out above will ensure more effective and efficient decision making, as it provides greater certainty for applicants and decision-makers.

Costs and benefits

21. On balance, financial costs should be reduced with the additional exemption, which will provide a benefit to applicants for resource consent, and provide greater clarity to plan users. It will also provide environmental benefit as it will allow necessary works to be undertaken that will improve land drainage and water body management.

Risk of acting or not acting

22. It is considered that there is sufficient information to justify the changes above and there is a need to provide for the amendments as it could lead to increase costs and time burden for applications that should not trigger consent.

Decision about most appropriate option

23. The recommended rule is the most appropriate way to achieve the purpose of the RMA. Additionally, this approach is consistent with the policy framework and the relevant objectives and policies.