
Section 32 Report for the Proposed Waitomo District Plan

Section 32 Report – Financial Contributions

SUMMARY OF ISSUES	RESOURCE MANAGEMENT ACT 1991	NATIONAL DIRECTION	REGIONAL POLICY STATEMENTS	IWI MANAGEMENT PLANS CONT...
<p>The financial contributions chapter addresses the following issues:</p> <ul style="list-style-type: none"> Subdivision and development may place extra demands on infrastructure and lead to capacity being exceeded or increasing maintenance requirements beyond those anticipated and provided for. Development adjacent to the margins of rivers, lakes and some streams may impact on the instream values contained in those water bodies. Public access to the sea, rivers, streams and lakes may be restricted through inappropriate development or subdivision. Esplanades play a conservation role through riparian protection and protection of water quality. Inadequate bulk services may adversely affect the health of people and can lead to pollution of the environment. 	<p>Section 5 RMA Financial contributions achieve the purpose of the RMA by ensuring that the development is appropriately serviced, and that the costs of that development is borne by the developer rather than the ratepayers of the District.</p> <p>Infrastructure consists of the physical structures and networks that support and provide essential services to the communities of the District. The efficient use and management of infrastructure as a physical resource is critical to the District's economic productivity, environmental outcomes and wellbeing of the community. The benefits of infrastructure to the functioning of the district are therefore substantial.</p> <p>Connected and reliable infrastructure is vital to the functioning of the District. It enables people and communities to provide for their social, economic and cultural wellbeing in accordance with section 5(2) of the RMA.</p> <p>The efficient development and operation of the physical resources of infrastructure is fundamental to both present and future communities. In this respect the Objectives achieve section 5(2)(a) of the RMA.</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 purpose of the New Zealand Coastal Policy Statement (NZCPS) is to state objectives and policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand. The NZCPS recognises the provision of infrastructure within the coastal environment is important to the social, economic and cultural well-being of people and communities, and addressing issues such as the risk to existing infrastructure from coastal erosion and coastal hazards is important.</p> <p>All of the NZCPS policies referring to activities or use and development are relevant to infrastructure. However, the policies specific to infrastructure include:</p> <ul style="list-style-type: none"> Policy 6(1)(a) and (b) – which recognises the provision of infrastructure, including the generation and transmission of energy, are important activities; and considers the rate at which infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment; Policy 25(d) – where practicable, encourage the location of infrastructure away from areas potentially affected by coastal hazards over at least the next 100 years. 	<p>The Waikato Regional Policy Statement While there are no provisions specific to financial contributions, there are a number of provisions which address the integration of infrastructure and land use activities. Objective 3.12 Built environment is the key objective which requires development of the built environment (including transport and other infrastructure) and associated land use to occur in an integrated, sustainable and planned manner. The relevant policies are contained in Section 66 which seeks that subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner.</p> <p>The Financial Contributions chapter gives effect to these provisions by ensuring that additional loading on infrastructure caused by development is accommodated and funded.</p> <p>The Manawatū-Whanganui One Plan There are no provisions particularly relevant to financial contributions.</p>	<p>Waikato Tainui Environment Management Plan 2018 (WTEP) Section 26 addresses infrastructure, with the most relevant provisions being:</p> <p>Objective 26.3.4 Transportation infrastructure is developed and managed in a manner that provides for social, cultural, spiritual, economic, and environmental needs</p> <p>Policy 26.3.4.1 To ensure that transportation infrastructure is developed and managed in a manner that provides for social, cultural, spiritual, economic, and environmental needs</p> <p>It is considered that the proposed provisions take into account the relevant provisions in the WTEP, as transport infrastructure to support development will be planned and funded.</p>
<p>OPERATIVE WAITOMO DISTRICT PLAN</p>	<p>The continuing development of infrastructure enables people and communities to provide for their health and well-being in accordance with Section 5(2) of the RMA. For example, effective wastewater network and treatment is needed to ensure the health of people. Water is necessary to support life, and management of stormwater prevents flooding.</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 25 of the Operative District Plan (ODP) addresses financial contributions and esplanade reserves. The objectives address three matters:</p> <p>a) protect the natural and physical environment from adverse environmental effects associated with subdivision and development</p> <p>b) maintain and enhance access to the sea and along the margins of the District's significant lakes, rivers and streams; and</p> <p>c) equitable sharing of costs for infrastructure</p> <p>The rules set out the requirements for esplanade reserves and circumstance where those requirements may be waived. The chapter identifies the conservation values of each waterway within the district. The rules require that all works and services to be provided as part of any activity or subdivision on or within the site shall be funded entirely as a cost to the activity or subdivision. The rules address road access and bulk three waters services.</p>	<p>Section 6 RMA There are no clauses in section 6 of particular relevance.</p> <p>Section 7 RMA The following clause is relevant in section 7: (b) the efficient use and development of natural and physical resources (f) maintenance and enhancement of the quality of the environment (g) any finite characteristics of natural and physical resources</p> <p>Given the definition of 'environment' in section 2 of the RMA, infrastructure has the potential to affect the quality of the environment through effects on amenity values, as well as wider effects on people and communities.</p>	<p>There are also 8 National Environmental Standards (NESs) currently in place:</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>No NES's are relevant to financial contributions chapter.</p> <p>Relevant case law considered Tauranga City Council v Minister of Education [2019] NZEnvC 32</p>	<p>Maniapoto Environment Management Plan 2018 (MEMP)</p> <p>We are required to take into account planning documents recognised by an iwi authority and lodged with the territorial authority.</p> <p>A summary of the provisions relevant to Financial Contributions chapter are as follows:</p> <p>Policy 18.3.1.3 Urban planning and development is conducted in accordance with best practice principles, and infrastructure services provide for the environmental, social, economic, and cultural needs of Maniapoto within the financial capacity of the community.</p> <p>In addition, Section 22 contains various objectives and policies for infrastructure, which ensure infrastructure is appropriate while managing any adverse effects of that infrastructure.</p> <p>It is considered that the proposed provisions have appropriate regard to the objectives and policies in the MEMP, as they ensure that development is appropriately serviced by infrastructure in a way that is affordable for the community.</p>	<p>Section 106 of the Local Government Act 2002 relates to development contributions or financial contributions policy.</p>
<p>SCALE & SIGNIFICANCE s32(1)(c)</p>	<p>Section 8 RMA The effects of new infrastructure are important to iwi. In particular, the location of water intakes and wastewater discharges.</p>	<p>Designation — Requirement — Conditions — Interpretation — Jurisdiction</p>	<p>STRATEGIC DIRECTION</p>	<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: 1 Problem / Issue: 1 Degree of Shift from Status Quo: 1 Who and How Many Affected, Geographic Scale of Effects: 2 Degree of Impact on or Interest from Maori: 1</p>		<p>The Court addressed a preliminary question of law relating to the notice of requirement given under s 168 of the RMA by the Minister of Education ("the Minister") to Tauranga City Council ("the council") proposing to designate certain land at Wairakei, Papamoa for "education purposes – primary school and early childhood education centre". The council recommended to the Minister that he confirm the requirement subject to conditions, including condition 9, which specified that the Minister would pay to the council certain financial</p>		<p>The following objective from the Strategic Directions chapter of the PDP are relevant to this topic: SD-O21: Require subdivision and development within townships and within the future urban zone to occur in a planned, integrated and co-ordinated manner which ensures that infrastructure has sufficient capacity to accommodate the form and type of development anticipated.</p> <p>SD-O22: Where the area is appropriately serviced by existing or planned infrastructure,</p>

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<p>Timing and Duration of Effects: 3 Type of Effect: 2 Degree of Risk or Uncertainty: 1</p> <p>Total (out of 40): 12</p>		<p>contributions. The Minister rejected the imposition of condition 9 on the basis that the financial contributions had been imposed on the designation as if it were a resource consent condition under s 108 of the RMA, which was in error. The Minister stated that as requiring authority he was not required to pay development contributions under the Local Government Act 2002 ("the LGA"), which did not bind the Crown. The parties now posed the following preliminary question of law: "Do ss 171 or 174 of the RMA allow a territorial authority to recommend, and the Environment Court to impose, conditions requiring monetary contributions on designations in circumstances where the requiring authority has not offered such conditions on an Augier basis?"</p> <p>The Court noted that the operative Tauranga City District Plan ("the plan") provided for the taking of money to mitigate the effects of development in the City. While the plan noted that most contributions towards the costs of infrastructure were taken under the LGA, in four circumstances financial contributions might be taken to augment these, including the LGA exemption to the Crown from paying development contributions. The Court then considered the relevant statutory provisions, including those in pt 8 of the RMA, relating to designations and requirements, being ss 171, 174, and in pt 6 relating to resource consents, being s 108, in addition to the definition of "conditions" in s 2 of the RMA. The LGA provisions considered included ss 197AA - 221. The Court noted there were important jurisdictional differences between a monetary "development contribution" defined in s 197(2) of the LGA, and a "financial contribution" under s 108(9) and (10) the RMA. First, the statutory context was different. Second, a financial contribution on a resource consent could be appealed under s 120 of the RMA, while a requirement for a development contribution could be the subject of an objection on the grounds listed in s 199D of the LGA. Third, s 8(1) of the LGA stated that, with exceptions, the LGA did not bind the Crown, whereas s 4 of the RMA provided that the Crown was generally bound by the RMA.</p> <p>The Court reviewed the legal framework within which conditions might be imposed under the RMA and the purpose of s 108(2) of the RMA. After considering in detail relevant decisions of the High Court and the Supreme Court, the Court distinguished these on the ground that they arose in quite different contexts from the present case. The Court rejected the Minister's submission that schools were infrastructure, stating that the definition in s 2 of the RMA of "infrastructure" did not include anything like a school. Schools existed to be schools rather than to enable or support other activities. Further, while the Crown was exempt from development contributions under the LGA, there was no exemption in the LGA in relation to schools. Furthermore, schools were likely to place demands on public infrastructures.</p> <p>The Court stated that the principal issue was whether the power to recommend or impose conditions on a requirement for a designation included the same or similar power as for a resource consent. While there were several differences between pts 6 and 8 of the RMA, the essential powers in relation to the imposition of conditions were very similar, and the limits on them were the same. The Court was not persuaded that it was determinative that the express power in s 108(2) of the RMA included a list, while the express powers in ss 171</p>		<p>encourage development and intensification that enables more people to live in, and more businesses and community services to be located in the district's existing townships.</p> <p>UNCERTAINTIES AND RISKS s32(2)(c)</p> <p>The degree of risk and uncertainty is low as financial contributions are well understood as a concept. The only uncertainty is the quantum of development that is likely and its location. While the Proposed District Plan can create opportunities for development in appropriate locations through zoning, it cannot force development to occur.</p>
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		<p>and 174 did not. It was difficult to identify any reason why the powers to impose conditions in the two processes should be substantially different in any way.</p> <p>The Court determined that the imposition of financial contribution conditions was within scope of the general powers to recommend and impose conditions in ss 171 and 174 of the RMA. To the extent that this amounted to incorporating the provisions in s 108(2)(a), (9) and (10) into ss 171 and 174, with any necessary changes having been made, that was a necessary implication in order to ensure that designations might be made subject to appropriate conditions to the same extent as resource consents in light of the purpose of the RMA. Accordingly, the Court found that the preliminary question of law should be answered: "yes".</p>		
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OBJECTIVE(S) s32(1)(a)

Relevance – The objectives address the relevant resource management issues and ensure that any adverse effects on the District’s infrastructure arising from development is appropriately managed through the imposition of financial contributions. The objectives ensure that the distribution of costs of upgrading or providing new infrastructure is fair and reasonable. The objectives give effect to RPS, in particular:

- Objective 3.12 Built Environment which focuses on the integration of land uses and infrastructure; and
- Policy 6.1 ensuring that subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner.

Usefulness – The objectives set clear direction for financial contributions.

Reasonableness – The objectives will ensure that costs are reasonably estimated and shared, and that the ratepayers are not required to meet the cost of servicing new development .

Achievability – The approach maintains tangata whenua and community goals for servicing development. The approach is well understood and within Council’s statutory powers.

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:

- Address the resource management issues identified.
- Give effect to relevant sections of the RMA by ensuring that development is appropriately serviced for infrastructure and thus meeting the environmental, social, cultural and economic well-being of the community
- Give effect to the NPS-UD by ensuring the integration of development with infrastructure
- Give effect to the directions in the RPS ensure development is planned and serviced by appropriate infrastructure.
- Assist with achieving Strategic Objective SD-O21 and SD-O22 by ensuring infrastructure is able to accommodate planned growth.
- While the objectives are likely to increase the cost of development, they do not impose costs on the community.
- The costs arising from the objectives will be fair and relate directly to the effect of development on existing and new infrastructure.

PROVISIONS s32(1)(b)

EFFICIENCY & EFFECTIVENESS s32(1)(b)(ii), 32(2)(a)(i), s32(2)(a)(ii)	ALTERNATIVES s32(1)(b)(i)
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<p>Benefits Anticipated</p> <p><u>Environmental</u></p> <ul style="list-style-type: none"> • Effects of servicing can be more effectively and efficiently managed through a network rather than each site managing their own (particularly wastewater and stormwater). <p><u>Economic</u></p> <ul style="list-style-type: none"> • The costs of development are borne by the developer rather than the community • Ensures costs of infrastructure upgrades and extensions can be recovered • There are cost efficiencies in a single network rather than each landowner providing their own infrastructure <p><u>Social</u></p> <ul style="list-style-type: none"> • Ensures development are appropriately serviced and thus provides for people’s health and safety <p><u>Cultural</u></p> <ul style="list-style-type: none"> • Over time the proposed provisions will assist with improving the capacity of the three waters networks to improve, and thereby reducing, discharges in the natural environment. An improvement of the health of the natural environment will allow the cultural values to improve with time. • As the health of the natural environment improves, there will be greater ability and opportunity for traditional cultural practices. <p>Costs Anticipated</p> <p><u>Environmental</u></p> <ul style="list-style-type: none"> • In some instances, an infrastructure network could create greater adverse effects than each site managing their own infrastructure <p><u>Economic</u></p> <ul style="list-style-type: none"> • Likely to result in the costs of servicing developments being passed onto the eventual purchaser. • May increase the cost of development. 	<p>For the purpose of this evaluation, the Council has considered the following potential options:</p> <ol style="list-style-type: none"> 1. The proposed provisions; and 2. The status quo. <p>The ODP provisions are not considered to be efficient or effective in achieving the objectives.</p> <p>In order to identify other reasonably practicable options, the Council has undertaken the following:</p> <ul style="list-style-type: none"> - Reviewed other relevant district plan provisions for activities on financial contributions; and - Sought feedback from Council asset managers in terms of infrastructure.
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<p><u>Social</u></p> <ul style="list-style-type: none"> • There are no social costs anticipated. <p><u>Cultural</u></p> <ul style="list-style-type: none"> • There are no cultural costs anticipated. <p>Economic growth opportunities The Financial Contributions chapter is unlikely to create or diminish economic growth opportunities, although it will increase the costs of development.</p> <p>Employment opportunities The financial contributions chapter is unlikely to have any effect on employment opportunities.</p>	
<p>QUANTIFICATION OF BENEFITS & COSTS s32(2)(b)</p>	
<p>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.</p>	
<p>EFFICIENCY & EFFECTIVENESS s32(1)(b)(ii)</p>	<p>REASONS FOR PROVISIONS s32(1)(b)(iii)</p>
<p>Section 32(1)(b)(ii) requires assessing the efficiency and effectiveness of the provisions in achieving the objectives:</p> <p><u>Efficiency</u> The proposed provisions are considered to be efficient in achieving the proposed objectives because</p> <ul style="list-style-type: none"> • They give effect to higher order policy documents ; • The proposed provisions directly implement the proposed objectives; • The proposed provisions provide the flexibility to consider the actual costs of effects; and • The proposed provisions are simple and are consistent across the various zones. <p><u>Effectiveness</u> The proposed provisions are considered to be effective in achieving the proposed objectives because:</p> <ul style="list-style-type: none"> • They give effect to higher order policy documents through a clear, transparent and consistent framework for calculating costs of infrastructure within the District Plan; • While the proposed provisions will result in some additional economic costs to developers, it is considered that the resulting benefits to future occupants of the District outweigh these costs. The provisions should result in less future costs in terms of rate increases and greater development contributions due to capacity issues being addressed at the time of subdivision; • The proposed provisions take a consistent approach across development in the District; • The proposed provisions reflect existing practice, and the proposed provisions formalise this approach (which is accepted by the development community); and • The proposed provisions would assist with the transfer of costs for addressing the issue of three waters network capacity from the wider community and local and regional government onto developers at the time the developments are undertaken. 	<p>Section 32(1)(b)(iii) requires a summary of the reasons for deciding on the provisions: Having considered the proposed provisions and the status quo it is considered that the proposed provisions are the most appropriate way to achieve the objectives. The proposed provisions ensure that the costs of servicing new development is calculated in a fair and transparent way that avoids the costs being borne by the wider community. This framework has a number of economic, and social benefits which are considered to outweigh the resulting costs.</p>