

Section 42A Officer's Report

Hearing Stream 7: Other Topics

Subjects: Activities on the Surface of Water

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2 Introduction

2.1 Purpose of this report

- (1) This report is the Officer's Report for the *Activities on the Surface of Water* chapter of the Proposed Lower Hutt District Plan (the PDP).
- (2) This report is prepared under section 42A of the Resource Management Act 1991 (the RMA) to:
 - a. Assist the Hearing Panel in making their recommendations on the submissions and further submissions on the Proposed Lower Hutt District Plan (the PDP), and
 - b. Provide submitters with information on how their submissions/further submissions have been evaluated by the reporting officer(s) for this hearing stream, and their recommendations to the Hearing Panel.
- (3) The Hearing Panel may choose to accept or reject the conclusions and recommendations of these reports, or may come to different conclusions and make different recommendations, based on the information provided to them, including evidence provided to them by submitters.

2.2 Scope and structure

- (4) This report solely addresses submissions on the Activities on the Surface of Water chapter of the PDP. It does not address any submissions on definitions or Strategic Directions as none are particularly relevant for this topic.
- (5) The chapter and associated submissions are addressed through the following parts of this report:
 - A brief summary of the chapter,
 - A summary of the key statutory and policy context,
 - A summary of the submissions and further submissions that relate to the chapter,
 - A discussion on the key resource management issues raised through the submissions (if any), and

- A discussion on the matters raised and decisions requested in submissions, with recommendations on decisions requested from the author of that part of the report.

2.3 Author – Sean Bellamy

- (6) My full name is Sean Bellamy. I am an Intermediate Policy Planner in the Policy Planning team at Hutt City Council (the Council).
- (7) I hold the qualifications of a Master of Regional and Resource Planning from the University of Otago, and a Master of Earth Science from the University of Waikato. I am an intermediate member of the New Zealand Planning Institute.
- (8) I have approximately 12 years' experience in planning and resource management roles in local government, covering district plan reviews and resource consent processing. This experience includes processing resource consent applications for Dunedin City Council (planner) and Hawkes Bay Regional Council (senior planner) and managing the review of the residential section of the Hastings District Plan (planner).
- (9) I have been involved in the District Plan Review since 2022, including working on the Activities on Surface Water chapter and associated Section 32 evaluation report.
- (10) Although this is a Council hearing, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. I have complied with the Code of Conduct when preparing my written report and I agree to comply with it when I give any oral evidence.
- (11) Other than where I state that I am relying on the advice of another person, this evidence is within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- (12) Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinion. Where I have set out opinions in my evidence, I have given reasons for those opinions.

2.4 Supporting evidence

(13)

Other than the:

- Section 32 evaluation reports for this chapter, and
- Submissions on this topic,

there are no additional supporting documents or evidence for this report.

2.5 Procedural issues

(14)

At the time of writing this report there have not been any pre-hearing conferences, clause 8AA meetings, or expert witness conferencing in relation to submissions on the Activities on the Surface of Water chapter.

3 ASW – Activities on the Surface of Water

3.1 Chapter summary

- (15) The Activities on the Surface of Water chapter in the PDP manages activities on the surface of water upstream of the coastal marine area. It does this by managing non-motorised activities, motorised activities, and their effects.
- (16) Major surface bodies in the Hutt City district include the Te Awa Kairangi/Hutt River, Wainuiomata River and the Orongorongo River. The district also contains two lakes, Lake Kohangapiripiri and Lake Kohangatera.
- (17) The Activities on the Surface of Water chapter provides for non-motorised activities including recreational activities such as swimming, boating/kayaking and fishing as permitted activities. Resource consents are required for motorised activities, excluding those that relate to waterbody management activities undertaken by Hutt City Council or Wellington Regional Council.

3.2 Statutory and policy context

- (18) The statutory and policy context for the Activities on the Surface of Water chapter is outlined in detail in the section 32 evaluation report for this topic.
- (19) In addition, while there have been changes to the statutory and policy context for the PDP since it was notified (including new national policy statements and national environmental standards), these changes are not relevant for the Activities on the Surface of Water chapter.

4 Submissions

- (20) Two submissions address the Activities on the Surface of Water chapter. In the Summary of Decisions Requested, this represents a total of four submission points. No further submissions relate to these submission points.

4.1 Discussion of submissions and recommendations

- (21) This section is a discussion of the submission points on the Activities on the Surface of Water chapter, with my recommendations on decisions requested by submitters on this chapter.

4.1.1 ASW-P1: Low impact activities

Submission

- (22) The Wellington Fish and Game Council (509.13) supports Policy ASW-P1.

Recommendation

- (23) I recommend that the submission point of the Wellington Fish and Game Council be accepted and that Policy ASW-P1 be retained as notified.

4.1.2 ASW-P3: Benefits of river management activities

Submission

- (24) The Wellington Fish and Game Council (509.14) supports ASW-P3.

Recommendation

- (25) I recommend that the submission point of the Wellington Fish and Game Council be accepted and that Policy ASW-P3 be retained as notified.

4.1.3 ASW-R1: Non-motorised activities on the surface of water

Submission

- (26) The Wellington Fish and Game Council (509.15) supports ASW-R1.

Recommendation

- (27) I recommend that the submission point of the Wellington Fish and Game Council be accepted and that Rule ASW-R1 be retained as notified.

4.1.4 ASW-R2: Motorised activities on the surface of water bodies

Submission

- (28) The New Zealand Defence Force (404.17) supports Rule ASW-R2 in part, and seeks the following amendment to Rule ASW-R2.1:

ASW-R2: Motorised activities on the surface of water bodies.

1. Activity status: Permitted

Where:

- a. On the Hutt River, the activity takes place downstream of the Ava Bridge, or*
- b. The activity is associated with waterbody management activities undertaken by Hutt City Council or Wellington Regional Council.*
- c. The activity is to undertake the statutory functions of a government department or local government body.*

Assessment

- (29) The submitter has not given any reasons for permitting motorised activities on the surface of water bodies where the activity is to undertake the statutory functions of a government department or local government body. The submission simply requests that they should be provided for.
- (30) I consider the proposed amendment is overly broad. It would essentially exempt any government department or local government body from requiring a resource consent for any activity it undertakes on the surface of

water anywhere in Lower Hutt. I consider a narrower definition of activities would provide for more effective and efficient regulation. For example, this might be limited to temporary military activities and civil defence activities.

(31) A resource consent is an effective tool for managing effects. It is difficult to assess the proposed amendment. A permitted activity status means that there is no consideration of any adverse effects from the activity, or consideration of their avoidance, mitigation or remediation. It is possible that the activities could have effects on natural character, ecology and indigenous biodiversity, public access, and noise that are best managed through a resource consent process.

(32) I acknowledge that the argument could be made that the effects of temporary military activities and civil defence activities are likely partially minimised by their temporary nature but consider there needs to be some elaboration of the potential effects through informed evidence from the submitter. For example, activities on the surface of water are potentially limited to the Hutt River, Wainuiomata River, Lake Kohangapiripiri and Lake Kohangatera. The Hutt River is located in a highly urbanised area, whilst the two lakes have significant ecological and cultural values. Temporary Military Training Activities can include the potential use of explosives, which both creates noise and can have a detrimental effect on aquatic fauna.

(33) It might be that additional requirements attached to the permitted activity status, that:

- limit the hours of operation,
- limit the location of some activities, and/or
- provide for public notification

could provide for the activities, whilst providing sufficient avoidance and mitigation of effects.

(34) Ultimately, my recommendation is dependent on the hearing panel's decision on temporary activities. The proposed amendment needs to be considered, as part of an overall set of amendments made by the submitter to provide for Temporary Military Training Activities. This includes amendments to:

- The definition of temporary activity,

- The provisions in the Temporary Activities chapter, and
- The provisions in the Noise chapter.

to provide for temporary military training activities. If the associated submissions are accepted and temporary military training activities are permitted, I see little benefit in requiring resource consent solely for activities on the surface of water.

- (35) Overall, I have reservations recommending the submission be accepted. It is not that I do not accept that there is a public good. I am unsure of the potential impact associated with the proposed amendment. I could change my recommendation if the scope of amended provision was more clearly defined and limited, the costs and benefits of the proposed change are clearer, and if the panel decides to amend the District Plan to include, and permit, Temporary Military Training Activities.

Recommendation

- (36) I recommend that the submission point of NZDF be rejected and that Rule ASW-R2 be retained as notified.

5 Conclusion

- (37) This report has provided an assessment of submissions received in relation to the Activities on the Surface of Water chapter.
- (38) Section 4 assesses and provides recommendations on the decisions requested in submissions. I consider that the submissions on this topic should be accepted or rejected, as set out in my recommendations in this report and in Appendix 1.
- (39) I do not recommend any amendments to the chapter in response to these submissions. I consider that the provisions as notified will be efficient and effective in achieving the purpose of the RMA and the relevant objectives of the PDP.

6 Attachments¹

Appendix I: Submission points and recommended decisions for the Activities on the Surface of Water chapter

¹ Most officer reports for the PDP hearings include an appendix that shows the reporting officers recommended amendments to the relevant chapter/s through a tracked-changes version of the chapter/s. However, no amendments to the Activities on the Surface of Water chapter are recommended.

Appendix 1: Submission points and recommended decisions for the Activities on the Surface of Water chapter

Submission #	Submitter	Topic/Provision	Decision requested	Recommendation
509.13	Wellington Fish and Game Council	Policy ASW-P1: Low impact activities	Retain provision as notified	Accept the submission point and retain the policy as notified
509.14	Wellington Fish and Game Council	ASW-P3: Benefits of river management activities	Retain provision as notified	Accept the submission point and retain the policy as notified
509.15	Wellington Fish and Game Council	ASW-R1: Non-motorised activities on the surface of water	Retain provision as notified	Accept the submission point and retain the rule as notified
404.17	New Zealand Defence Force	ASW-R2: Motorised activities on the surface of water bodies	Amend provision	Reject the submission point and retain the rule as notified