

8.10 SURFACE OF WATER IN LAKES, RIVERS AND STREAMS

8.10.1 BACKGROUND

8.10.1.1 Statutory Background

Section 31 (e) of the Resource Management Act 1991 gives the District Council the following function, as one of the functions to give effect to the purpose of the Act:

"The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:"

When the definition of river and lake are included into the above function, the following provision results:

"The control of any actual or potential effects of activities in relation to the surface of water in:

1. a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal); and
2. a body of fresh water which is entirely or nearly surrounded by land."

Section 31 (e) of the Act does not relate to the management and control of the effects of activities in the coastal marine area. This responsibility rests with the regional councils.

Although not clearly explained in the Act, the function of surface of water matters is the District's responsibility due to past legislation and practice, and because the surface of water issues tend to be "local" which can and should be addressed and resolved at the local level.

The functions under this section of the Act are for the purpose of giving effect to the purpose and principles of the Act.

The District's role and responsibilities for managing activities on the surface of water, need to be put into the context of other functions related to water contained in the Act. Regional Councils are responsible for the control and management of the effects of activities on the water resource (both on top and under the surface of the land) in terms of:

- Soil conservation.
- Coastal marine area.
- Water quality.
- Water quantity, level and flow.
- Taking, using, damming and diversion of water.
- Discharge of contaminants into or onto water.
- Matters relating to the beds of water bodies.
- Taking and using geothermal energy.

As such, the Waikato Regional Council (Environment Waikato) has the primary responsibility for water matters and is also the authority that has the knowledge and experience in water and soil management.

The District's responsibilities in terms of controlling and managing the effects of activities in relation to the surface of water, must be complementary and interrelated with the responsibilities that Environment Waikato has for the quality and quantity of the water resource.

8.10.1.2 Effects of Activities

There are three aspects in considering the effect of activities in relation to the surface of water, and these are:

Effect of Land Based Activities on the Surface of Water

The manner in which land based activities are carried out has the potential to adversely effect the surface of water. For instance, the building of structures over the surface of the water (eg bridges) or in close proximity to the margins of a water body can affect the type and enjoyment of activities that are carried out on the surface of the water. Also, the way in which domestic and non-domestic effluent is disposed of on the land can in turn create a quality of water that is not conducive to surface of water activities (eg swimming).

Effect of Surface of Water Activities on the Surface of Water

Surface of water activities include the following:

- Transport of goods and people.
- Commercial recreation activities (eg jet boating, rafting).
- Fishing.
- Swimming.
- Duck shooting.
- Boating/canoeing/rafting.

In general, these activities do not adversely affect the quality or quantity of the water itself. However, the activities do have the potential to conflict with each other with respect to access and safety matters, especially where the water resource is limited. Also, some activities can detract from the amenity of the surface of water by creating a change in the characteristics of the water surface to an extent that other activities are no longer enjoyable (eg jet ski operations on a stretch of water used by anglers).

Effect of Surface of Water Activities on the Land

The activities that occur on the surface of the water can have an adverse effect on the adjoining land. In particular, noise from motorised transport and recreation craft can affect the enjoyment of land activities, and the wash from boats can erode the banks of water margins. Surface of water activities can also have an effect on the visual amenity and aesthetics of a water body when viewed from the land. This is particularly relevant in those situations where there are walkways alongside a river or picnic areas adjoining a lake.

The first aspect of surface of water activities is provided for within the zoning and performance standards of the District Plan. This section of the District Plan on surface of water issues deals with the last two aspects.

8.10.1.3 Hauraki District Situation

Lakes

There are two lakes in the District, being:

- Gilmour Lake in Waihi town, which is an artificial lake created as a replacement for the lake that was lost as a result of the Martha Hill mining operations; and
- Patetonga Lagoon which is a naturally occurring wetland adjoining the Piako River. This area was previously drained. Drainage has been stopped and the wetland is returning to near its natural state.

Rivers and Streams

The main rivers in the District are the Piako, Waihou, Ohinemuri, Waitawheta and Waitakaruru. All of these rivers have been modified to some extent as a result of farming, mining, drainage, stopbanking and other activities. The Piako and Waihou Rivers have been extensively modified by river control works.

Numerous streams and creeks occur throughout the District, especially in the hill areas. As with the rivers, many of these watercourses have also been modified to some extent. Some streams and creeks in the Department of Conservation estate are in a relatively natural state.

Artificial Watercourses

The Plains area of the District contains substantial canals, drains and river cuts. The definition of "river" in Section 2 of the Act, defines these features as "artificial watercourses".

As set out in Section 31 (e) of the Act, the District Council is not charged with having any jurisdiction over the surface of water activities for these artificial watercourses. However, these "artificial watercourses" come within the definition of "land" (ie includes land covered by water and the air space above the land). As such, the activities on the surface of these artificial watercourses is controlled and managed either by the zoning and the performance standards contained within the zone, or by the designation where this is applicable.

The District Council is responsible for surface of water activities in relation to natural and modified streams and rivers.

Resource Management Issues

No major existing resource management issues in relation to surface of water matters have been identified as requiring resolution in the District Plan. However, it is recognised that the District Plan can have a role to play in:

- The allocation of the surface of water resource (ie resolving the conflicting demands of users of the water surface); and
- Controlling and managing the detrimental effects of surface of water activities on the environment and on other activities.

8.10.1.4 District Plan Provisions

The District Plan contains a number of provisions that have a part (either direct or indirect) to play in controlling the effects of activities on the surface of water, and these are as follows:

Designations

River control works (including stopbanks, canals and drains) under the ownership and/or control of Waikato Regional Council have been designated. The area designated includes the waters contained in canals, drains etc, but does not include the water of the major rivers.

Some of the drainage works that are the responsibility of the District Council are also designated by that authority.

Water supply catchments have been designated for that purpose, thereby ensuring that any activity would be in accordance with that designated purpose.

Zones

The Conservation (Indigenous Forest), Conservation (Wetland), Reserve (Passive) and Reserve (Active) zones all have objectives, policies and rules that in some way contribute to controlling the adverse effects of land activities on the surface of water in lakes and rivers.

Policy Areas

The Karangahake Gorge Scenic Corridor Policy Area includes controls and management of land use activities, which are specifically designed to protect the amenity values of the gorge (which includes consideration of the surface of water of the Ohinemuri River).

Performance Standards

A number of the performance standards will have a "side effect" of controlling and managing the detrimental effects of land activities on the surface of water (eg Setback from Public Drains, Domestic and Non-Domestic Effluent Disposal, Stormwater Drainage, Noise, Vibration in Ground). However, these performance standards are not designed to specifically deal with the effects of surface of water activities on each other, or the effects of surface of water activities on land based activities.

Matters of National Importance and "Other" Matters

Various provisions are included in the Plan, which seek to address matters such as the:

- Preservation of the natural character of lakes and rivers and their margins;
- Maintenance and enhancement of public access to and along lakes and rivers; and
- Maintenance and enhancement of the quality of the environment.

Surface of Water Rules

Provision has been made for activities "normally" found on the surface of the water (eg swimming, navigation aids, recreational boating, fishing) to be carried out within the limits of the appropriate performance standards.

Activities that either exceed the performance standard or are not permitted activities on the surface of the water require assessment through the resource consent process.

8.10.1.5 Provisions Outside the District Plan

Although the Act requires that control of the effects of surface of water activities is a function of the District Council, the way in which this is carried out may be outside the District Plan, through such measures as:

Bylaws

Previously, bylaws and regulations under the Harbours Act 1950 have been used to control boating and recreation activities on the surface of the water.

Hauraki District Council was never a Harbour Board, nor did it have a grant of control in relation to any water bodies within the District. No bylaws under the Harbour Act 1950 were promulgated by the District and therefore none are now in force. There is presently no action being undertaken for the District to either become a Harbour Board or to have grant of control.

Reserve Management Plans

Where the water body is within the boundaries of a reserve, then under the Reserve Act 1977, a management plan can be prepared to control and manage the activities that occur on the water. None of the water bodies in the District fall within this category of reserve, therefore no management plans have been prepared.

Regional Rules

Through its responsibilities for the control and management of the quality and quantity of water (both surface and underground) there may be rules in the Waikato Regional Plan that in order to be complied with, will determine the type and scale of the activities that can be carried out on the surface of the water.

Water Recreation Regulations 1979

These regulations regulate water recreation in all harbours (which includes navigable lakes or rivers) and all tidal waters, that are not already within the jurisdiction of a Harbour Board. It is important to note the limited extent of these regulations (ie they only apply to navigable water and only to recreation activities). These Regulations are not amended or repealed by the Resource Management Act 1991, and are therefore still enforceable.

The Jet Boat Association had the Regulations modified by uplifting the 5 knot speed restriction from the Waihou River.

8.10.2 RESOURCE MANAGEMENT ISSUES

Activities on the surface of the water need to be controlled and managed in a manner to ensure that any detrimental effects on the environment and on other activities (both on the surface of the water and on the land) are either avoided, remedied or mitigated.

In addition, surface of water activities have to be allocated space and/or time for use of the water surface, to avoid conflicts between the competing users of the resource.

8.10.3 ANTICIPATED ENVIRONMENTAL RESULTS

The avoidance of detrimental effects of surface of water activities on the quality and amenity of the water bodies in the District and on the adjoining land environment.

Management of surface of water activities to avoid conflict between the competing users of the resource.

8.10.4 OBJECTIVES AND POLICIES

Objective 1

To ensure that surface of water activities on lakes, rivers and streams do not adversely affect other surface of water activities, or the environment and amenity of adjoining land.

Policies

Objective 1 will be achieved by implementation of the following policies:

1. Activities should be of a scale that is compatible with the environmental capacity of each individual water environment.
2. Surface of water activities should avoid having an adverse effect on the environmental quality and the amenity of the adjoining land and the activities on the land.
3. "Active" surface of water activities should not have an adverse effect on other "passive" surface of water activities.

Reasons

1. Many of the activities that are carried out on the surface of water within the Hauraki District are recreation activities, which require management and control.

Objective 2

To achieve as full an assessment of surface of water issues as is possible.

Policies

Objective 2 will be achieved by implementation of the following policies:

1. Requiring that where surface of water activities may give rise to adverse effects on the environment, a resource consent is to be sought and obtained.
2. Undertaking consultation with persons and bodies with an interest in the water resources (eg tangata whenua, Waikato Regional Council, Department of Conservation, user groups), as part of considering any resource consent application.
3. Liaising with statutory and non-statutory bodies and persons through formal and informal mechanisms.

Reasons

1. The resource consent process provides for consultation with other users of the resource who have an interest in and information regarding the issue.
2. A better outcome for the environment is likely if a full understanding of the issues and conflicts is available for the decision makers.

8.10.5 METHODS TO IMPLEMENT OBJECTIVES AND POLICIES

The principal method by which Council will implement the above objectives and policies through the District Plan is by the use of zones and rules to control and manage the activities on the surface of the water.

In particular:

- zoning water bodies within the Conservation (Wetland) and Conservation (Indigenous Forest) zones as part of the respective zone.
- zoning Lake Gilmour in Waihi as Reserve (Passive).
- zoning all other water bodies as Rural.
- providing for surface of water activities as additional activities permitted in each of the respective zones.
- having the performance standards applicable in each of the respective zones also apply to activities on the surface of water.
- using the resource consent process to assess activities that have the potential to cause significant environmental detriment and/or conflict with other surface of water users.

Council recognises that much of the responsibility for water matters rests with the Waikato Regional Council. However, many of the surface of water matters are "local" in nature and/or require a land activity consent from the District Council. In many instances, resource consents from both authorities are likely to be required.

Monitoring of activities in terms of resource consent conditions and the need to undertake enforcement action to achieve compliance with those conditions and performance standards, will indicate whether the approach adopted is working or not.

Reviewing the District Plan as a result of coordinating the District Plan provisions with those of the Waikato Regional Plan will provide opportunities to assess the effectiveness and efficiency of the provisions.

Reasons

1. Refer to Section 2.0 which sets out Council's main reasons for adopting a zone and rule based approach to the achievement of objectives and policies.
2. The assessment of activities through the resource consent process enables consideration of the adverse effects of the surface of water activities to be undertaken and appropriate conditions to be attached to any consent.
3. Monitoring is the method proposed to be used for assessing the effectiveness of the District Plan.
4. The Conservation and Reserve zones and performance standards for adjoining land activities that have an objective of "conservation" are appropriate for controlling and managing surface of water activities (ie both the land and surface of water activities should meet the same level of environmental amenity).
5. The performance standards of the Rural zone are appropriate to manage the effects of activities on the surface of the water. There are specific rules which provide for surface of water activities in addition to those provided in the Rural zone.

8.10.6 RULES

8.10.6.1 Zoning

1. Where the following zones immediately surround any lakes or apply to both sides of rivers and streams, then the surface of the lake, river or stream shall have the same respective zoning as the surrounding land zoning:
 - Conservation (Indigenous Forest).
 - Conservation (Wetland).
 - Reserve (Passive).
 - Reserve (Active).
2. Lakes, rivers and streams not covered under 1. above shall be zoned Rural.
3. The performance standards applicable for the zone in 1. and 2. above shall apply to surface of water activities.

8.10.6.2 Permitted Activities

In addition to the permitted activities in the zones specified in 8.10.6.1 above, the following are also permitted activities on the surface of water in all zones, where they comply with the Performance Standards specified in Rule 8.10.6.6 below:

1. Motorised and non-motorised private recreation, including maimai.
2. Any navigation structure or activity essential for the preservation of safety.
3. Scientific, historic, recreation, nature conservation or water and soil conservation activities in accordance with the Wildlife Act 1953, Te Ture Whenua Maori Act 1993 (Maori Land Act 1993), Conservation Act 1987, Queen Elizabeth II National Trust Act 1977 or Reserves Act 1977.

8.10.6.3 Controlled Activities

In addition to controlled activities provided in the respective zones, the following are controlled activities where they shall comply with the Performance Standards specified in Rule 8.10.6.6 below, and shall be assessed in relation to the criteria specified in Rule 8.10.6.3 A. below:

- Social, sporting, recreation and cultural events of a temporary nature (ie not lasting longer than four days for each event)

A. Assessment Criteria for Controlled Activities

The following criteria will be used to assess a controlled activity.

1. The amount of damage the event is likely to cause to the local flora and fauna of the water and adjoining land environment.
2. The amount of damage likely to be caused to the banks and margins of the water body and whether the actions that can be taken to reduce the effects on these water margins are adequate.
3. The extent to which the event will disrupt the other users of the water, or severely restrict them from carrying out their activities.
4. The nature and duration of noise (ie is the noise intermittent, continuous, early in the morning or late at night) and whether there are activities nearby that would be significantly affected by the noise.

8.10.6.4 Discretionary Activities

In addition to the discretionary activities in the zones applying to the surface of water specified in 8.10.6.1 above, the following are also discretionary activities on the surface of water anywhere in the District and shall be assessed in relation to the criteria specified in Rule 8.10.6.4 A. below:

1. Motorised recreation and commercial transport.
2. Structures and activities not provided for under 8.10.6.2 and 8.10.6.3 above.
3. Jetties, moorings, wharves, marinas, ramps, slipways or other facilities associated with obtaining access to and from the water.
4. Rafts, houseboats and other floating structures.
5. Social, sporting, recreation and cultural events not provided for under 8.10.6.3 above.
6. Any permitted or controlled activity that does not meet the performance standards specified in the respective zones.

A. Assessment Criteria for Discretionary Activities

The following criteria will be used to assess a discretionary activity:

1. The relevant performance standards, assessment criteria and environmental results for permitted and controlled activities set out in Section 9.0 - Performance Standards for Subdivision and Development.
2. The assessment criteria for controlled activities set out in Rule 8.10.6.3 A.
3. The degree to which the activity will limit public access to the water body.

4. The effect the activity will have on the implementation of the esplanade reserve policy.

8.10.6.5 Non Complying Activities

1. Any activity not provided as a permitted, controlled or discretionary activity.

8.10.6.6 Performance Standards

The performance standards specified for land use activities in the zone in which the water body is located, shall be met by permitted and controlled activities located on the surface of water of lakes, rivers and streams.