



Opotiki District Council

# Section 32 Evaluation Report

## 12. Surface of Water Activities

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September 2016

## 1. Introduction

Water is a taonga, essential to life. Healthy waterbodies are necessary for social, economic, spiritual and cultural reasons. Mauri can be harmed by activities that degrade water quality and by insensitive use. Water supports communities and their residential, commercial, industrial and recreation activities; it provides habitats for flora and fauna; it enables food to be gathered; and contributes to the landscapes of the district. In the District there are no lakes but there are many important rivers: Waiotahi, Waioeka, Otara, Takaputahi, Waiaua, Torere, Hawaii, Motu, Haparapara, Waikakariki, Kereu, Raukokore, and Whangaparaoa. The Motu and Waioeka Rivers are valued for their pristine qualities and high scenic values. The Waiotahi and Waioeka Rivers are regionally important trout fisheries.

Section 31 of the Resource Management Act 1991 (RMA) gives Ōpōtiki District Council (Council) responsibility for the control of the effects of activities on the surface of water in rivers and lakes. The Bay of Plenty Regional Council (BOPRC) has responsibility for activities on the surface of water in the coastal marine area which applies to the seaward side of Mean High Water Springs (MHWS) and for up to 1km inland from a river mouth or five times the width of the river mouth. BOPRC also has primary responsibility for the sustainable management of the water resources of the district.

Therefore, the Council must manage the actual or potential effects of activities on the surface of fresh water. These include motorised and non-motorised activities including boating and skiing, fishing, rafting, kayaking, game bird shooting, and organised events. Some commercial operations are also undertaken on the District's rivers, such as rafting and fishing. These activities may conflict with each other or other river users. They may adversely affect water quality, the scenic, cultural and habitat values of the water body and its margins, and the amenity of adjacent land. Increased levels of activity on the surface of water may result in adverse effects on amenity values, such as noise, traffic accessing the rivers, or light spill.

There are benefits derived from enabling a range of surface of water activities in terms of creating employment, enabling recreation and awareness of values of water bodies and supporting community wellbeing.

Activities on water may also affect nearby land, detract from natural character, or damage ecosystems and the interface between the land and water, as margins of water bodies can be sensitive. Section 6 of the RMA requires as a matter of national importance the preservation of the natural character of rivers and their margins and their protection from inappropriate subdivision, development and use, as well as ensuring public access to and along rivers.

Most activities are temporary in nature, but their effects must be controlled by Council. There are also central and regional government regulations in relation to the operation and safety of watercraft.

The Ōpōtiki Harbour in the Waioeka River Estuary has been identified in the BOP Regional Coastal Environment Plan (RCEP) as a Harbour Development Zone extending to the existing Wharf area. The zone provides for the development of the harbour to support aquaculture

and commercial operations. The activities on the surface of water in the Harbour Zone are in the Coastal Marine Area and are managed by BOPRC.

Integrated management is required for activities on the surface of the waters of the District as many rivers and streams flow through the District. Management and control need to be consistent with adjoining regional and territorial councils. In the Operative District Plan (ODP), Chapter 6 has been dedicated to surface of water activities.

Section 32 of the RMA requires Council to carry out an evaluation before a plan is publicly notified and before making a decision on submissions. The evaluation must examine whether each objective is the most appropriate way to achieve the purpose of the RMA and whether, having regards to their efficiency and effectiveness, the policies and other methods including rules are most appropriate or achieving the objectives. The evaluation must take into account the benefits and costs of policies, rules or other methods, as well as the risk of acting or not acting if there is uncertain or insufficient information about the subject.

This report provides the required evaluation of the objectives, policies and methods including rules relating to surface of water activities.

## **2. Legislative Framework**

### **2.1. Resource Management Act 1991 (RMA)**

Section 5 of the RMA sets out the purpose of the RMA as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
  - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 6 of the RMA requires preservation of the natural character of the coastal environment, lakes and rivers and their margins and their protection from inappropriate subdivision, development and use, maintenance and enhancement of public access, protection of significant habitats of indigenous fauna and relationship of Maori and their culture and traditions with ancestral water, waahi tapu and other taonga.

Section 7 requires that regard is given to a number of matters relevant to activities on the surface of the water, as follows: kaitiakitanga, the ethic of stewardship, the efficient use and development of natural and physical resources, the maintenance and enhancement of

amenity values, intrinsic values of ecosystems, maintenance and enhancement of the quality of the environment, and the protection of the habitat of trout and salmon.

Section 31 of the RMA gives Council the responsibility for managing any actual or potential effects of activities in relation to the surface of water in rivers and streams. Section 2 of the RMA includes the surface of the water in a lake or river in the definition of land. Activities within the Coastal Marine Area including the Ōpōtiki Harbour Development Zone and the mouths of rivers and streams are controlled by the BOPRC.

## 2.2. National Policy Statements

The Council must give effect to National Policy Statements in the District Plan under sections 55 and 75(3)(a) of the RMA.

## 2.3. National Environmental Standards

Section 44A of the RMA requires the Council to ensure that a rule in the district plan does not duplicate, or be in conflict with, a national environmental standard. There are five National Environmental Standards (NES).

## 2.4. Regional Policy Statement

Section 74 of the RMA requires that the District Plan must give effect to the Operative RPS. The RPS identifies the values associated with the coastal environment in section 2.2 and in particular Objective 2 and Policies CE2B which the requirement to preserve, restore and, where appropriate, enhance the natural character and ecological functioning of the coastal environment.

Objective	RPS Objective	Policies	Relevance to the Surface of Water
2	Preservation, restoration, and, where appropriate, enhancement of the natural character and ecological functioning of the coastal environment	CE2B CE4A CE 6B	Managing adverse effects on natural character in the coastal environment and protecting and restoring natural coastal margins and indigenous biodiversity
19	The preservation of the natural character of the regional coastal environment (including coastal marine areas) wetlands, lakes and rivers and their margins	MN 1B	Recognise and provide for matters of national importance in relation to rivers and their margins
20	The protection of significant indigenous habitats and ecosystems, having particular regards to their maintenance, restoration and intrinsic values	MN1B MN2B	Recognise and provide for matters of national importance in relation to rivers and their margins
27	The quality and mauri of water in the region is maintained or, where necessary to meet the identified values associated with its required use and protection, enhanced	WL1B	Enabling land use change

### 3. Key Issues

3.1 The key issues to be addressed in relation to activities on the surface of the water are as follows:

#	Issue	Commentary
1	Incompatible surface of water activities on the same stretch of water may compromise safety and limit public access	Safety for and between user groups may be a significant potential adverse effect, especially between commercial and recreational users or motorised and non-motorised vessels. Therefore, the ODP has required resource consent for activities with higher potential effects such as noise from motors, increased numbers of vessels, higher speeds and the like. These are appropriate mechanisms. In addition higher use of some areas can restrict their availability by the general public.
2	Surface of water activities may degrade water quality and damage margins of water bodies, destroying or modifying ecological habitats and important areas for breeding.	Motorised boats can generate wakes that erode margins and result in siltation of habitats. Higher numbers of vessels and uncontrolled boat launching can also degrade margins.
3	Surface of water activities can adversely affect the natural character and amenity values of water bodies and adjoining land by causing increased traffic movement, noise, and light spill.	Higher numbers of vessels, uncontrolled boat launching and events can detract from natural character and lead to a reduction in amenity for adjacent land areas.
4	Surface of water activities may be incompatible with important cultural, spiritual, or historic values.	Cultural values may be adversely affected by surface of water activities. Mauri may be damaged and not respected.

### 4. Summary of Plan Provisions

The issues, objectives, policies, rules and other provisions and their relationship in the PDP are set out in the following table.

Issue	Objective	Policies	Rules	Other Methods
1	1	12.2.1.1, 12.2.1.2	12.3.1, 12.3.2, 12.3.3, 12.4, 12.5, 12.6	12.7 b, f
2	2	12.2.2.1, 12.2.2.2, 12.2.2.3	12.3.1, 12.3.2, 12.3.3, 12.4, 12.5, 12.6	12.7 b, c, d, e
3	2	12.2.2.1, 12.2.2.2, 12.2.2.3	12.3.1, 12.3.2, 12.3.3, 12.4, 12.5, 12.6	12.7 d, e
4	1, 2	12.2.1.1, 12.2.1.2 12.2.2.1, 12.2.2.2, 12.2.2.3	12.3.1, 12.3.2, 12.3.3, 12.4, 12.5, 12.6	12.7a, b, d

## 5. Changes Made to ODP Approach

- 5.1 The ODP has a standalone chapter on activities on the surface of water and relies on cross-reference from zones. The plan maps identify the surface of water as “hydrography” but this term is not used elsewhere in the plan and does not give guidance for the zoning applicable. Therefore, the PDP applies Rural zoning to enable appropriate management of the surface of water in accordance with the objectives for that zone.
- 5.2 A number of amendments have been made to the objectives, policies, rules and other methods to clarify provisions where unclear, delete unnecessary text and update references.
- 5.3 There are three objectives which have been re-worded and integrated into two objectives to provide clearer guidance for surface of water activities. The two objectives relate to enabling a range of activities on the surface of water where safety and conflict concerns can be addressed and, secondly, to ensure that the effects of activities are managed appropriately.
- 5.4 Rules are the principal method for managing the effects of activities on the surface of water. They are supported by other methods. The other methods are included to encourage community initiative and implementation of riparian management areas along water bodies. Management of riparian areas can help to maintain the integrity of water body margins, and can provide habitats for a variety of fauna and flora.

## 6. Evaluation – Appropriateness of Objectives

- 6.1 Objectives are to be assessed as to whether they are the most appropriate to achieve the purpose of the RMA. ‘Most appropriate’ has been interpreted to mean ‘suitable’.

	Objectives	Appropriateness
12.2.1	Enabling a wide range of activities on rivers where safety and access and conflicts between activity groups can be managed	Addresses Issues 12.1.1 and 4. <b>Section 5:</b> The objective will achieve the purpose of the RMA by enabling the use of the surface of water for a range of social, cultural and economic activities while sustaining the potential of natural and physical resources, safeguarding the life-supporting capacity of the water and ecosystems and managing adverse effects. <b>Section 6:</b> The objective recognises the need to provide access to waterbodies which is a matter of national importance identified in section 6(d) <b>Section 7:</b> The objective provides for the management of activities on the surface of water that is in accordance with section 7(b), (c), (f) and (g). <b>Section 8:</b> The objective is consistent with the principles of the Treaty. <b>RPS:</b> It gives effect to Objectives 10, 13 and

		20 of the RPS and policies IW2B, IW5B, IR3B and IR5B.
12.2.2	Surface of water activities maintain or, where appropriate, enhance the natural character, amenity, recreational, ecological and cultural values of water bodies and their margins.	<p>Addresses Issues 12.1.2, 3 and 4.</p> <p><b>Section 5:</b> The objective will promote the purpose of the RMA, with a focus on maintaining and where appropriate enhancing the natural character and other values.</p> <p><b>Section 6:</b> The objective recognises the matters of national importance identified in section 6(a) and 6(e).</p> <p><b>Section 7:</b> The objective recognises and provides for the management of activities on the surface of water that is in accordance with section 7(b), (c), (d), (f), (g) and (h).</p> <p><b>Section 8:</b> The objective is consistent with the principles of the Treaty.</p> <p><b>RPS:</b> It gives effect to Objectives 2, 13, 19, 20 and 27 of the RPS and policies CE2B, CE4A, CE6B, IW2B, IW5B, MN1B, MN2B and WL1B.</p>

- 6.2 These objectives are considered to be the most appropriate methods of achieving the purpose of the RMA as they recognise the matters set out in Part 2 of the RMA, they give effect to the relevant objectives and policies in the RPS, and they will guide the appropriate management of activities on the surface of water.

## 7. Evaluation – Achieving the Objectives

### 7.1 Section 32(1)(b) Requirements

Section 32(1)(b) of the RMA requires examination of whether the provisions (being policies, rules and other methods) in the Proposed Plan are the most appropriate way to achieve the objectives. The appropriateness must be considered in relation to:

- “(i) identifying other reasonably practicable options for achieving the objectives; and*
- (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
- (iii) summarising the reasons for deciding on the provisions”.*

These are set out below.

The assessment must be at a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects of the Proposed Plan. The Operative District Plan contains an existing chapter, Chapter 6, to address the effects of activities on the surface of water. As set out in section 5 above, the approach taken in the Proposed District Plan is to amend the provisions only where necessary to:

- Clarify the provisions;
- Improve consistency across the Plan;
- Respond to new statutory requirements, such as through a national or regional policy statement;
- Delete unnecessary text;
- Update references.

Only where there are new statutory requirements through a national policy statement or regional policy statement have new provisions been introduced. A change in activities or the way they are managed requires examination of the provisions in more detail.

Therefore, as the plan provisions, being policies and rules, have not materially changed and are generally well understood and accepted as appropriate mechanisms to achieve environmental outcomes sought through the district plan, a detailed re-examination of the plan provisions is not considered to be necessary.

## 7.2 Reasonably Practicable Options

In terms of reasonably practicable options, as discussed above, the plan provisions have been generally carried forward. The reasonably practicable options are therefore considered to be:

Options	Response
Do nothing	<ul style="list-style-type: none"> <li>▪ No policy or rule in the plan.</li> <li>▪ Rely on other non-statutory methods as set out in the chapter</li> <li>▪ BOPRC plan provisions address the issue and duplication is unnecessary</li> </ul>
Status Quo	<ul style="list-style-type: none"> <li>▪ Carry forward the policy or rule without change or with only minor amendment</li> </ul>
New policy or provision	<ul style="list-style-type: none"> <li>▪ Address an issue that is not addressed or is ineffective in the operative plan</li> <li>▪ Give effect to a new requirement in a NPS or RPS</li> <li>▪ Align with plans or other statutory documents</li> </ul>

7.1.5 The plan provisions have been generally carried forward with amendments to clarify and improve consistency across the plan and with other documents. the status of activities and standards to be applied are well known to the community and well understood.

The “Do Nothing” option has not been selected as it is not acceptable where a policy or rule is required to achieve the purpose of the RMA and the objectives set out above. Either the status quo (with or without minor amendments for clarification) or a new provision have been assessed as reasonably practicable options. The proposals are concluded to be the only reasonably practicable options to evaluate.



## 7.3 Policies and methods

### 7.3.1 Efficiency and Effectiveness

In assessing the efficiency and effectiveness of the proposed provisions, the RMA requires the Council to “*identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:*

- (i) *economic growth that are anticipated to be provided or reduced; and*
- (ii) *employment that are anticipated to be provided or reduced”.*

If practicable, the benefits and costs referred should be quantified.

### 7.3.2 Efficiency

The proposed policies will be efficient in achieving the objectives as they give clear direction for potential activities on the surface of the water and guidance for decision makers.

### 7.3.3 Effectiveness

#### Objective 12.2.1

<b>Issue relationship</b>	12.1.1 & 4
<b>Objective 12..2.1</b>	Enabling a wide range of activities on rivers where safety and access and conflicts between activity groups can be managed
<b>Policies</b> 12.2.1.1  12.2.1.2	Manage the location and scale of motorised and commercial activities to minimise conflict and risk to safety between activities on the surface of water.  Ensure that access is provided in appropriate locations to avoid damage to the margins of water bodies
<b>Methods</b>	Methods to give effect to the policies relate to: <ul style="list-style-type: none"> <li>▪ The status of activities, being permissive for non motorised and low impact activities</li> <li>▪ Enabling controls to be imposed through the consent process for events and motorised or commercial activities</li> <li>▪ Identifying different areas for potentially competing user groups</li> <li>▪ Requiring consideration of the location and design of access to the rivers for high frequency activities.</li> <li>▪ Deferring to Regional Council bylaws for managing the effects of some activities</li> <li>▪ Requiring consideration of the scale and effects of new activities in relation to waterbodies and riparian areas</li> <li>▪ The use of the restricted discretionary classification to allow activities to be considered in relation to relevant potential effects and may enable the establishment of activities which have economic benefits to the community</li> </ul>
<b>Benefits</b>	
<b>Environmental benefits</b>	<ul style="list-style-type: none"> <li>▪ Identifies that activities with higher levels of effects will be allowed subject to controls in appropriate locations</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Clear benefits to the environment through supporting access in appropriate locations</li> <li>▪ Will enable the specific effects on the environment that relate to water bodies to be considered</li> <li>▪ Allows specified aspects of activities to be managed where appropriate to the potential effects of an activity.</li> <li>▪ Well used approach which achieves the purpose of the management of surface of water activities in a way that is consistent with the objectives</li> </ul>
<b>Economic Benefits</b>	<ul style="list-style-type: none"> <li>▪ Greater certainty about the types of issues to be addressed for commercial activities that may generate employment opportunities</li> <li>▪ Undertaking activities safely from appropriate locations will support different activities which may result in economic benefits</li> <li>▪ Greater certainty about the types of effects that will be controlled</li> <li>▪ Using restricted discretionary activities enables consideration of limited range of effects with consequential reduced costs of process</li> </ul>
<b>Social Benefits</b>	<ul style="list-style-type: none"> <li>▪ Supports a range of surface of water activities with priority for low impact users, while allowing for other commercial activities as well</li> <li>▪ Undertaking activities safely from appropriate access will support well managed activities with social benefits</li> <li>▪ Risk of social costs is reduced by having the policy</li> </ul>
<b>Cultural Benefits</b>	<ul style="list-style-type: none"> <li>▪ Will reduce potential conflicts which may impact on cultural values</li> <li>▪ Managing adverse effects and locating access in relation to cultural values will result in cultural benefits</li> <li>▪ Risk of cultural costs is reduced by having the policy</li> <li>▪ Cultural benefits in consideration of effects on adjacent land</li> <li>▪ Provides for management of relevant effects which may include cultural values</li> </ul>
<b>Costs</b>	
<b>Environmental Costs</b>	<ul style="list-style-type: none"> <li>▪ Reduced environmental costs</li> <li>▪ Risk of environmental effects is addressed through the policy</li> <li>▪ Some opportunity remains for activities to adversely affect the environment</li> </ul>
<b>Economic Costs</b>	<ul style="list-style-type: none"> <li>▪ May be increased application costs associated with management of activities but enabling safer sharing of waterbodies will reduce risk</li> <li>▪ The policy may result in higher costs for operators of commercial activities</li> </ul>
<b>Social Costs</b>	<ul style="list-style-type: none"> <li>▪ Some activities may be limited where they would compromise the values of the water body</li> </ul>
<b>Cultural Costs</b>	<ul style="list-style-type: none"> <li>▪ Some activities may be limited where they would compromise other values of the water body</li> </ul>
<b>Risk of Acting or Not Acting</b>	Risk is a factor of potential consequences and the likelihood of a consequence occurring.
	The risk of not acting may lead to conflicts where activities on the rivers are incompatible due to the extent of the activity, the speed of boats, noise or other effects and reasonable access is not available to all groups. this outcome is not consistent with the achieving the purpose of the RMA. There is sufficient information known about the consequences
<b>Overall Assessment</b>	The inclusion of the provisions above is supported as enabling the purpose of the RMA to be achieved including sections 6 and 7 matters.

## Objective 12.2.2

<b>Issue relationship</b>	<i>12.1.2, 3, &amp; 4</i>
<b>Objective 12.2.2</b>	Surface of water activities maintain or, where appropriate, enhance the natural character, amenity, recreational, ecological, historic heritage, and cultural values of water bodies and their margins
<b>Policies</b> <b>12.2.2.1</b>  <b>12.2.2.2</b>  <b>12.2.2.3</b>	<p>Manage the scale and effects of surface of water activities to ensure that natural character and the recreational and ecological values of the water body and its margins are maintained and, where appropriate, enhanced.</p> <p>Surface of water activities should not degrade the mauri of waterbodies and cultural values, nor adversely affect historic heritage values.</p> <p>Manage motorised activities on the surface of water to avoid, remedy or mitigate adverse effects on the amenity values of the water bodies and adjacent land.</p>
<b>Methods</b>	<p>Methods to give effect to the policies relate to:</p> <ul style="list-style-type: none"> <li>▪ The status of activities, being permissive for non motorised and low impact activities</li> <li>▪ Enabling controls to be imposed through the consent process for events and motorised or commercial activities</li> <li>▪ Identifying different areas for potentially competing user groups</li> <li>▪ Requiring consideration of the location and design of access to the rivers for high frequency activities.</li> <li>▪ Requiring consideration of the scale and effects of new activities in relation to waterbodies and riparian areas</li> <li>▪ Requiring consideration of cultural values associated with water bodies</li> <li>▪ Ensuring that the quality of a water body is not degraded by surface of water activities</li> <li>▪ The use of the restricted discretionary classification allows activities to be considered in relation to relevant potential effects and may enable the establishment of activities which have economic benefits to the community</li> </ul>
<b>Benefits</b>	
<b>Environmental benefits</b>	<ul style="list-style-type: none"> <li>▪ Will ensure a clear focus on the specific aspects of the environment that relate to water bodies</li> <li>▪ Likely to be environmental benefits if the mauri of the waterbody is protected</li> <li>▪ Identifies that the adverse effects of motorised activities will be controlled to protect the amenity values of adjacent land.</li> <li>▪ Allows specified aspects of activities to be managed where appropriate to the potential effects of an activity.</li> <li>▪ Well used approach which achieves the purpose of the management of surface of water activities in a way that is consistent with the objectives</li> </ul>
<b>Economic Benefits</b>	<ul style="list-style-type: none"> <li>▪ Ensuring the integrity of water bodies is not compromised will support sustainable activities on the surface of the water</li> <li>▪ Greater certainty about the types of effects that will be controlled</li> <li>▪ Using restricted discretionary activities enables consideration of limited range of effects with consequential reduced costs of process</li> </ul>
<b>Social Benefits</b>	<ul style="list-style-type: none"> <li>▪ Risk of social costs is reduced by having the policy</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Ensuring the integrity of water bodies is not compromised will benefit the community</li> <li>▪ Provides support for areas adjacent to water bodies that adverse effects will be controlled</li> <li>▪ Provides for management of effects but allows opportunities for lower cost processes</li> </ul>
<b>Cultural Benefits</b>	<ul style="list-style-type: none"> <li>▪ Risk of cultural costs is reduced by having the policy</li> <li>▪ Ensuring the integrity of water bodies is not compromised will result in cultural benefit</li> <li>▪ The requirement to ensure mauri and cultural values are not degraded will result in cultural benefits</li> <li>▪ Cultural benefits in consideration of effects on adjacent land</li> <li>▪ Provides for management of relevant effects which may include cultural values</li> </ul>
<b>Costs</b>	
<b>Environmental Costs</b>	<ul style="list-style-type: none"> <li>▪ Reduced environmental costs</li> <li>▪ Risk of environmental effects is reduced</li> <li>▪ Some opportunity remain for activities to adversely affect the environment</li> </ul>
<b>Economic Costs</b>	<ul style="list-style-type: none"> <li>▪ Some activities may be limited where they would compromise the values of the water body</li> <li>▪ Economic costs may be incurred in achieving the outcome sought by the policy</li> </ul>
<b>Social Costs</b>	<ul style="list-style-type: none"> <li>▪ Some activities may be limited where they would compromise the values of the water body</li> </ul>
<b>Cultural Costs</b>	<ul style="list-style-type: none"> <li>▪ Some activities may be limited where they would compromise other values of the water body</li> </ul>
<b>Risk of Acting or Not Acting</b>	Risk is a factor of potential consequences and the likelihood of a consequence occurring.
	<p>The risk of not acting may lead to activities on the rivers adversely affecting the environment and result in degradation of cultural and environmental values and consequentially loss of social and economic opportunities.</p> <p>The risk of not acting is not consistent with achieving the purpose of the RMA, and especially section 6 and 7.</p> <p>There is sufficient information known about the consequences</p>
<b>Overall Assessment</b>	The inclusion of the provisions above is supported as enabling the purpose of the RMA to be achieved including sections 6 and 7 matters.