

6.3 Statutory framework

6.3.1 Resource Management Act

Section 13(1) of the RMA restricts the range of activities that can be undertaken within the bed of a lake or river unless they are expressly allowed by a rule in a regional plan, any relevant proposed regional plan or a resource consent. However, in accordance with section 5 of the RMA people and communities should also be 'enabled' to provide for their social, economic and cultural wellbeing.

Environment Canterbury must attempt to achieve an integrated approach to the management of the beds of lakes and rivers that enables people and communities to use them, but also avoids, remedies or mitigates any adverse effects on the environment. Because section 13(1) restricts a range of activities in lake and river beds, including some that need not require resource consent, in promoting sustainable management, one issue the Proposed NRRP must resolve is how far to go with lifting the restrictions in section 13(1).

Under section 13(2) of the RMA activities are permitted unless provisions in a regional plan, or a proposed regional plan state otherwise or unless an exemption through resource consent or existing lawful use (under section 20 of the RMA) applies. Council can only have rules in relation to its section 30 functions, and because the activities in s. 13(2) have little impact on those functions, Chapter 6 does not include rules to restrict s. 13(2) activities, such as persons or vehicles entering or crossing the bed.

On the other hand, section 9 is generally permissive with respect to the use of land and activities can be undertaken as of right, unless a rule in a plan states otherwise. If a regional plan does not regulate land use, then the activity is allowed under the RMA (subject to provisions within a district plan). However, if a regional plan regulates land use in a river or lake bed, then under section 30(1)(c) of the RMA the regulations that the plan contains are restricted to those matters covered by its functions, i.e. soil conservation, water quality, water quantity, natural hazards, hazardous substances, the planting of plants, the maintenance and enhancement of ecosystems, and the maintenance of indigenous biological diversity. However, under section 30(1)(a) a regional plan can contain objectives, policies and non-regulatory methods relating to any matter that would help achieve integrated management.

Although regional councils have primary responsibility for soil conservation and management of rivers, the RMA gives territorial authorities responsibility for a number of closely related matters and there is some potential for overlap of responsibilities, particularly with respect to management of the beds in relation to natural hazards, the maintenance of indigenous biodiversity and land use. The control of the use of land for the avoidance or mitigation of natural hazards and the maintenance of indigenous biodiversity is within the powers of both regional councils and territorial authorities. However, management of the effects of structures in, or disturbance of, the bed of lakes or rivers for the purpose of avoiding flooding and erosion is a regional council function under section 13 of the RMA. This complexity is added to through the variations between provisions for the beds and margins of lakes and rivers in district planning documents. District council boundaries sometimes run down the middle of a river, or cut catchments in two, thereby creating resource management problems.

Section 75(2) of the RMA requires a district plan to not be inconsistent with a regional plan for any matter specified as its function under section 30(1)

6.3.2 Planning instruments under the RMA

6.3.2.1 Canterbury Regional Policy Statement

Set out below are the objectives from the CRPS. They provide strong direction to the content of Chapter 6 of the Proposed NRRP.

CRPS Chapter 10, Objective 1:

“With respect to land use and development within the beds and margins of lakes and rivers, protection, and where appropriate, enhancement of:

- (a) natural character;
- (b) significant habitats of indigenous flora and fauna;
- (c) significant natural features and landscapes;
- (d) mahinga kai areas, wāhi tapu, and wāhi taonga, and tangata whenua access to these;
- (e) habitat values of braided river beds;
- (f) significant amenity and recreation values;
- (g) heritage values;
- (h) significant habitats of trout and salmon;
- (i) life-supporting capacity (health) of aquatic and riparian ecosystems.”

CRPS Chapter 10, Objective 2:

“Protect the flood-carrying capacity of rivers from the adverse effects of land use within the beds and margins of rivers, or the obstruction of waterways by the accumulation of bed material and vegetation.”

CRPS Chapter 10, Objective 3:

“Protection of the stability and performance of essential structures from the adverse effects of land use within the beds and margins of rivers.”

6.3.2.2 Regional plans

A range of Environment Canterbury’s planning documents deal, to varying extent, with beds and margins of lakes and rivers. These plans include the following:

Table BLR1: Relationship between existing regional plans and water conservation orders and Proposed NRRP Chapter 6

Existing regional plans	Relationship to Proposed NRRP Chapter 6
Transitional Regional Plan for the Canterbury region (excluding Kaikoura District).	Carries over by-laws and other statutory provisions relating to the beds of lakes and rivers from the legislation and organisations that preceded formation of Environment Canterbury and the RMA. The Plan includes provisions addressing structures, bed disturbance, planting and removal of vegetation within the bed. The rules in the Transitional Regional Plan will cease to have effect when rules on the same matters in Chapter 6 become operative
Transitional Regional Plan for Kaikoura district.	Carries over by-laws and other provisions from the organisations that preceded the inclusion of Kaikoura District within the Canterbury region. The Plan includes provisions addressing structures, bed disturbance, planting and removal of vegetation within the bed. The Transitional Regional Plan is currently under review, with the majority of its provisions to be superseded by the Proposed NRRP. When the Proposed NRRP becomes operative the Transitional Regional Plan will be withdrawn.
Land and Vegetation Management Regional Plan: Part I Kaikoura East Coast.	This plan covers earthworks and vegetation clearance. The rules contained within this plan address vegetation removal and earthworks on land and, in some instances, the beds of lakes and rivers. Chapter 6 will not apply to those activities covered by

	specific provisions within the Land and Vegetation Management Regional Plan: Part I.
Land and Vegetation Management Regional Plan: Part II Port Hills.	This plan covers earthworks and vegetation clearance on the Port Hills. The rules contained within the plan address vegetation removal and earthworks on land, including the beds of lakes and rivers. Chapter 6 will not apply to those activities covered by specific provisions within the Land and Vegetation Management Regional Plan: Part II.
Opihi River Regional Plan.	Applies to the Opihi River catchment, including the river mouth, which is in the coastal marine area. The Opihi River Regional Plan only deals with surface water quality and quantity issues. Chapter 6 applies in the Opihi River catchment, except for those matters that are explicitly addressed by objectives, policies and rules in the Opihi River Regional Plan.
Proposed Waimakariri River Regional Plan.	Covers surface water quality and quantity, gravel extraction, structures and discharges to surface water within the catchment. Chapter 6 applies in the Waimakariri River catchment, except for those matters that are explicitly addressed by objectives, policies and rules in the Proposed Waimakariri River Regional Plan.
Proposed Regional Coastal Environment Plan.	Largely applies to the seaward side of the coastal marine area, but also contains provisions on the landward side of the coastal marine area dealing with coastal hazards. The provisions of Chapter 6 apply landward of the boundary of the coastal marine area.

6.3.2.3 District plans within the region

There are eleven territorial authorities (or district councils) within the Canterbury region. The functions of these authorities relevant to this chapter of the Proposed NRRP are contained within section 31 of the RMA, which states that every territorial authority shall have the following functions for the purpose of giving effect to the Act in its district:

- (a) the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district;
- (b) the control of any actual or potential effects of the use, development or protection of land, including, for the purpose of the avoidance or mitigation of natural hazards, the prevention or mitigation of any adverse effects of the storage, use disposal or transportation of hazardous substances and the maintenance of indigenous biological diversity; and
- (c) the control of subdivision of land.

These functions mean that district plans can have provisions, including rules for the beds and margins that can overlap with rules in Chapter 6, although the reasons for those rules may differ. Different district plans take different approaches and therefore, it is important in developing and implementing provisions in Chapter 6 that mechanisms are put in place to minimise confusion over roles and responsibilities in the beds and margins. Where consents are needed under both a district plan and Chapter 6 then methods for making that process as efficient as possible need to be implemented.

6.3.2.4 Water Conservation Orders

Water Conservation Orders exist on the Rakaia and Ahuriri Rivers, and on Lake Ellesmere/Te Waihora, and a Draft Water Conservation order exists on the Rangitata River. This chapter applies in the water bodies except for those matters explicitly regulated in the water conservation order.

6.3.2.5 Other statutory documents and legislation

Provisions in other statutory planning documents and legislation also have a bearing on the contents of this chapter. These include:

- (a) The Biosecurity Act (1993) - enables regional councils to address pest management issues. Pest species and methods for pest management are outlined within Environment Canterbury's regional pest management strategies. The role of the pest management strategy in managing the beds and margins of lakes and rivers, in particular recognition of pest plant species, is incorporated into Chapter 6. Under section 87 of the Biosecurity Act, beds and margins of rivers vested with the Crown are exempt from cost or obligation in a regional pest management strategy, unless an order provides for agreement otherwise.
- (b) Ngāi Tahu Claims Settlement Act 1998 – some beds of lakes and rivers are part of the settlement. Chapter 2 of the Proposed NRRP identifies these areas.