



Whitewater NZ

Mo ngā awa te aroha, he waiaroha For the love of rivers

Date: 27 October 2021.

Health and Safety Policy Team
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Whitewater New Zealand disagrees with the rationality of the assessment and the proposals made in the consultation document and summary of proposals. We respectfully submit that these proposals be discarded.

1. Whitewater NZ (WWNZ) is the advocacy body for recreational whitewater river sports in Aotearoa. Our membership of approximately 1,000 is made up of kayakers, canoeists, pack-rafters, rafters and many other whitewater river enthusiasts. We also represent a group of over 4000 (non-paid) supporters who are also active whitewater river users. Our mission is to protect and restore Aotearoa's whitewater rivers and enhance opportunities to enjoy them safely. Our membership and executive consist of professionals in river sports and athletes, with sound appreciation of risks especially for naturally occurring hazards. We are considered experts in this field.
2. We base these submissions on the following documents¹.
 - a. Consultation Document:
<https://www.mbie.govt.nz/dmsdocument/17061-adventure-activities-keeping-it-safe-consultation-document>
 - b. Summary of Proposals:
<https://www.mbie.govt.nz/dmsdocument/17064-adventure-activities-keeping-it-safe-summary-of-proposals>
3. Whitewater New Zealand holds the view that:
 - a. ***The absolute best entity to measure and manage risks (especially natural hazards), then notify participants, is the organiser, guide or adventure co-ordinator.***
 - b. *Acceptance of this principle allows natural hazards to be considered and managed by professionals in the outdoor environment rather than attempts by unqualified, and sometimes non-local landowners and land managers.*

¹ We also note numerous inconsistencies in these documents. For example, page 3 of the Summary of Proposals states "The current regulatory regime does not explicitly address the risks that come from natural hazards" Then on page 5 it states "Operators have an obligation to manage natural hazard risks as part of their general duties under the HSW Act."



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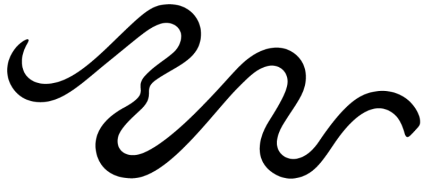
4. Whilst we understand that clubs and recreational outdoor users are not contemplated by the proposed changes, Whitewater New Zealand is concerned that the implications, especially those on landowners, will be applied indiscriminately to all users of the natural environment.

ONE: The proposed increased responsibilities placed on landowners and land managers will likely result in blanket refusal of access to all recreational users through or on the land.

5. Neither of the options proposed on page 4 of the Summary of Proposals Document is tenable for landowners and/or land managers such as farmers, local authorities, iwi, hapu and private landowners. Nor would these proposals result in safer outcomes for outdoor recreators or operators.
6. It is the belief of Whitewater New Zealand that the proposed changes will undo decades of work by voluntary organisations like ours, as well as the Access Commission, to gain access to recreate outdoors. Many access arrangements are tentative and based on mutual respect between our members and affiliates, and the landowners. Part of this respect is the understanding that the best person to assess risk in the outdoor setting is the private recreationalist or adventure activity operator themselves as they are experienced and /or the qualified professional in this area. This is further reinforced by the current worksafe advice² which took two years to produce after the commencement of the 2015 HSW Act.
7. The additional requirements proposed are asking often unqualified, in some cases non-local landowners to make an assessment of factors that may affect the safety of complex adventure activities which may require years of study and experience. It is inappropriate to place that responsibility and liability on landowners.
8. The example given in the Summary of Proposals that the landowner should be responsible to review the operators weather forecasting is irrational and illustrative of a wider issue of the transfer of responsibility from the regulator to the landowner.
9. Whitewater NZ expects that the added cost and work to comply with the proposed natural hazard assessment and mitigation, along with liability concerns, will result in blanket refusal from private landowners to both commercial and recreational groups for access to and from rivers, and in some cases, use of the rivers themselves. In addition, access to public land owned or by under-resourced entities such as local councils and/or local reserves managed by iwi and hapu groups will be significantly restricted.
10. In the river context it is unclear if landowners of riverbeds, which can include multiple private landowners along a single river, iwi and hapu, some electricity companies, LINZ, DOC,

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<https://www.worksafe.govt.nz/laws-and-regulations/operational-policy-framework/operational-policies/policy-clarification-recreational-access-and-the-health-and-safety-at-work-act-2015/>



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Dept of Defence etc will result in liability concerns over ad hoc events such as floods, rockslides and other natural occurrences.

11. *The transfer of liability to the landowner and the proposed 'reasonable efforts' explained in the last paragraph of page 4 of the summary or proposals are highly likely to lead to a chilling effect on adventure activity and a reduction in access to the outdoors for all. As such, Whitewater NZ does not support this aspect of the proposal.*

TWO: Erroneous definition of natural hazard

12. Paragraph 2 on page 55 of the consultation document labels 'rapids' as a natural hazard. This is alongside 'volcanic eruptions' and 'avalanches'. This categorisation is erroneous. Rapids are a result of gradient and water, much like ski slopes, mountain bike tracks and hiking trails. Unlike volcanic eruptions and avalanches, rapids are always present, can be observed and analysed and have predictable hydro-mechanical behavior. As of themselves rapids are not a natural hazard, but a natural feature³.

13. *Whitewater NZ requests rapids be removed from this definition.*

THREE: The data on fatalities underpin the documents, however it is exaggerated and inconsistent.

14. The information regarding accidents and fatalities due to natural hazards in adventure activities underpin these proposals. These statistics provide a context in which the proposals seek to address. On page 7 the goal of the proposals is stated as "to reduce the number of injuries and deaths that occur in adventure activities". Whitewater New Zealand fully supports this goal, however the data of status quo must be clearly presented.

15. Listed are some inaccuracies we have noticed.

- a. Fatality statistics in the consultation document (pages 57 and 58) do not add up to 4 per year, in natural hazards in adventure activities as is claimed in the summary of proposals and consultation document respectively.
- b. The examples used on pages 57 to 60 confuses workplace accidents and natural hazard related accidents, which adds otherwise incomplete reporting of fatalities.
- c. The New Zealand fatality statistics are later compared on page 60 with total deaths in the outdoors with Australia and the United Kingdom. It is the opinion of Whitewater New Zealand that these 3 countries are incomparable due to stark differences in: geography, geological instability, participation levels in the outdoors and focus of their tourism industries.

³ This is also inconsistent within the document: *Natural hazards are physical, quick-onset natural events with a degree of localised impact that have the potential to cause fatalities. These include risks of extreme weather, water surges and flooding, rockfalls, landslides and avalanches, and eruptions.* (Page 3 proposals doc; P17 Consult doc)



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- d. The statistics provided do not compare deaths with participation levels, so there is no understanding if the fatalities are increasing or decreasing in frequency, nor can we compare with other industries or nations effectively.

16. *Whitewater New Zealand asks that these data inaccuracies are addressed as they underpin the argument for the proposed changes.*

IN CONCLUSION

17. The proposed regulation changes could have far reaching consequences not only to activity operators but all outdoor recreationalists. As such Whitewater New Zealand asserts that:

- a. ***The absolute best entity to measure and manage risks (especially natural hazards), then notify participants, is the organiser, guide or adventure co-ordinator.***
- b. *Acceptance of this principle allows natural hazards to be considered and managed by professionals in the outdoor environment rather than attempts by unqualified landowners or land managers.*

If you have any questions about the above please don't hesitate to contact me.

Hamish Darling
President
Whitewater NZ
+64 (20) 40059708
e: president@whitewater.nz
w: whitewater.nz