

**IN THE MATTER OF:**           The Resource Management Act 1991

**AND**

**IN THE MATTER OF:**           Hearings on submissions concerning  
Proposed Plan Change 22 to the  
Horowhenua District Plan –  
Outstanding Natural Landscapes and  
Features

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**STATEMENT OF EVIDENCE OF HYWEL EDWARDS ON BEHALF OF HIGGINS  
AGGREGATES LIMITED**

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## INTRODUCTION

1. My name is Hywel Edwards. I am a Senior Planner for **Beca Carter Hollings & Ferner Ltd** (*Beca*) in its Wellington Office. I hold a Bachelor of Science (Hons) degree in City and Regional Planning and Diploma of Town Planning from the University of Wales, Cardiff. I have 10 years planning experience gained in the United Kingdom and New Zealand, including over 5 years as a consultant planner in New Zealand. I am a full member of the New Zealand Planning Institute.
2. I am familiar with Proposed Plan Change 22: Outstanding Natural Features and Landscapes to which these proceedings relate. My evidence relates to the submission to Plan Change 22 made by Higgins Aggregates Limited (*Higgins*).
3. Higgins undertakes a number of aggregate extraction, processing and related activities in the Horowhenua District, including a contracting and aggregates yard on Tararua Road, Levin. Higgins is a significant infrastructure service provider in the district.
4. I have read the Section 42a Hearing Report. I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court. The evidence in my statement is within my area of expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

## HIGGINS SUBMISSION

5. Higgins' submission on Plan Change 22 seeks Rule 19.5(c) and the definition of the term 'Earthworks' be amended to ensure that gravel extraction activities carried out in the beds of rivers and streams are not unduly restricted by the District Plan.
6. Given the definition of Earthworks in the operative District Plan and the fact that the Manawatu and Ohau Rivers (mainstems) have been recommended as High Amenity Landscapes (HAL), river-based gravel extraction could require land use resource consent (as a restricted discretionary activity) from Horowhenua District Council under Rule 19.5(c) as currently proposed.

7. Higgins' submission is that this is an unnecessary double-up of activities already covered by Section 13 of the Resource Management Act and the relevant Regional Plans.
8. Higgins' submission queries whether it is the intention of Rule 19.5(c) to capture such river-based activities. Higgins submission seeks that it be made clear that Rule 19.5(c) (and the definition of Earthworks) do not apply to river-based gravel extraction. I will address the relief sought by Higgins shortly in response to the Officer's Report.
9. Higgins' submission also raises a number of high-level points regarding a comprehensive policy framework for aggregate management, with a hierarchy of integrated Regional and District Planning provisions. At the broad level, Higgins seeks that planning for aggregates is recognised as a significant resource management issue in the District Plan. I also share that broad opinion.
10. However, I will not expand further on this general point in relation to Proposed Plan Change 22 because of the scope of the Proposed Plan Change being considered.

#### **SECTION 42a HEARING REPORT**

11. The Reporting Officer has accepted Higgins submission point in part, confirming and recommending that:
  - a) beds of rivers and streams are not in Horowhenua District Council's jurisdiction;
  - b) rivers and streams should be deleted from Plan Change 22 and that this issue be addressed further in the Plan Review; but
  - c) that specific changes requested to the definition and rules should not be accepted. Any exemptions cannot apply to the overall definition of earthworks as this would take its application beyond the scope of this plan change.
12. I generally accept the Officer's response to Higgins' submission (para 178 – 179).
13. The response and recommendation in respect of point 11a) above is clear and certain and I agree with this conclusion. Activities within rivers and streams, such as gravel

extraction activities undertaken by Higgins in the Manawatu and Ohau Rivers, are managed by the Regional, rather than the District, Council.

14. The response and recommendation in respect of point 11b) above is also clear and certain. I agree that rivers and streams should be deleted from Plan Change 22 and that such water-based landscape values should be considered further in the Plan Review.
15. The response and recommendation in respect of Point 11c) is less clear. This issue remains uncertain in terms of providing clarity in the District Plan that activities within the beds of rivers and streams (including river-based gravel extraction activities) are exempt from Rule 19.5(c).
16. I believe because the proposed provisions introduce an element of ambiguity into the District Plan as those provisions relate to gravel extraction (i.e. identifying rivers and streams as High Amenity Landscapes rather than distinguishing between river and stream margins / surface activities), the proposed provisions should clarify this jurisdictional ambiguity.
17. Notwithstanding this, I accept the Officer's point that amending the definition of earthworks itself to address this matter is outside the scope of this Plan Change, albeit this is a potential solution should the opportunity arise through further Plan review.
18. There are a number of ways to provide certainty in the District Plan to clarify that activities in the beds of rivers and streams are exempt from District Plan provisions. I discuss these below.

## **SUMMARY RESPONSE FOR HEARING**

19. I support Higgins' submission that the proposed provisions potentially 'double up' on regulation by not making it explicitly clear the provisions do not relate to matters under the jurisdiction of the Regional Council (i.e. section 13 Resource Management Act matters relating to the beds of lakes and rivers). I note a significant number of submitters make a similar submission point which infers a degree of ambiguity.
20. A district council's functions and responsibilities relate to land use activities (section 9 RMA), including activities on the surface of waterbodies, whilst regional council functions

and responsibilities in the context of rivers and streams (section 13 RMA) relate to soil conservation and flooding (natural hazards).

21. I note the officer report agrees with this, specifically that gravel extraction when from the bed of a river is not within the jurisdiction of the District Plan (para 178 of officer report). I agree with the officer report that the District Plan is not the planning tool to manage activities within the beds of lakes and rivers.

22. I believe providing certainty on this jurisdictional matter will address a fundamental issue that this Committee must have regard to when making decisions on the current proposed Plan Change:

*"In relation to regional plans:*

*The district plan (change) must not be inconsistent with a regional plan for any matter specified in section 30(1) [regional council responsibilities]. . . . "*

23. To best resolve this issue, I believe rivers and streams should be deleted from Plan Change 22 and that further consideration be given to this jurisdictional matter in the Plan Review. I note this is a viewpoint shared in the officer report (para 179).

24. This relief will enable a more holistic approach to the Regional / District Plan inter-relationship, rather than be addressed through activity specific provisions. For example, this could enable a holistic review of the term 'Earthworks' in the District Plan, which is currently outside the scope of this plan change process.

25. Whilst noting the officer report recommends deleting rivers and streams from Plan Change 22 (in recognition that gravel extraction within the bed of a river is not an activity managed by the District Plan), the officer report recommended amendment Rule 19.5(c) (19.2.28) stops short of providing any clarification on this issue. I believe for reasons of good practice, certainty needs to be built into the proposed provisions in lieu of the ability to deal with this issue in a holistic fashion through the Plan Review.

26. I believe the addition of a note under 'Rule 19.5.c' should be inserted as a minimum. The note should confirm that earthworks within the bed of a river are not managed by

the District Plan, but rather the Regional Plan. This relief would provide certainty to Higgins and other plan users.

27. If the above relief is not accepted, the proposed Plan Change District Plan maps should be amended to clearly demarcate the areas within which land based earthworks rules of the District Plan apply within the water based High Amenity Landscapes. This will effectively include the waterbody margins (i.e. section 9 RMA activities), but specifically exclude the actual bed of the waterbody (section 13 RMA activities). This will clarify that activities within the bed are not managed by the District Plan, but rather the Regional Plan. For certainty, amendment of the District Plan maps should be supported by a qualifying statement / note in the District Plan text confirming the regional / district jurisdictions in the context of earthworks.
28. I acknowledge that a District Plan's jurisdiction also manages the activities on the surface of waterbodies. Therefore, a secondary overlay should be overlaid over the mainstem of the water-based High Amenity Landscape to address this. The two distinctive overlays would clearly demarcate the jurisdiction of the regional and district councils in a land use context. The secondary overlay method would maintain a holistic overview of the importance of the High Amenity Landscape areas at the District Plan level.
29. Complementing this amendment to the District Plan maps, I believe a note under 'Rule 19.5.c' should also be inserted to confirm that earthworks within the bed of a river are not managed by the District Plan, but rather the Regional Plan. This relief would provide certainty to Higgins and other plan users.
30. I believe amending the District Plan maps as I have outlined above is an appropriate method of clarifying this jurisdictional matter. This is particularly relevant for Plan Change 22 as amending the term 'Earthworks' (a potentially obvious solution to this overall jurisdiction issue) has been deemed outside the scope of this Plan Change process.

## **CONCLUSION OF RELIEF SOUGHT**

31. In summary, I seek that:

- a) rivers and streams be deleted from Plan Change 22 (and this issue be addressed in a holistic fashion as part of the Plan Review); and
- b) a note be inserted to the earthworks rule provisions clarifying that the provisions do not apply to activities within the beds of rivers and streams.

32. If the above relief is not accepted, I seek that:

- a) The District Plan Maps illustrating the water-based High Amenity Landscape areas be amended to include a two tier overlay demarcating the applicability of the District Plan in relation to activities in / over High Amenity Landscape areas (waterbodies); and,
- b) a note be inserted to the earthworks rule provisions clarifying that the provisions do not apply to activities within the beds of rivers and streams.

**Hywel Edwards**  
**31 October 2011**