

RESOURCE MANAGEMENT ACT 1991

PROPOSED HOROWHENUA DISTRICT PLAN

HEARING OF SUBMISSIONS

DECISION OF HEARING PANEL

TOPIC: Report on District Plan
Natural Features & Values

HEARING PANEL: Robert Nixon (Chair)
Cr Leigh McMeeken
Cr Garry Good

HEARING DATE: 12th April and 28th May 2013

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1.0 INTRODUCTION

- 1.1 We were appointed by the Horowhenua District Council to consider submissions on the Proposed District Plan relating to Natural Features and Values.
- 1.2 A hearing into the submissions was held on 12 April and 28 May 2013. The hearing was closed on the 13 September 2013.

Abbreviations

- 1.3 In preparing this decision we have used the following abbreviations:

DoC	Department of Conservation
District Plan	Proposed Horowhenua District Plan
NES	National Environmental Standard
NZHPT	New Zealand Historic Places trust
NZCPS	New Zealand Coastal Policy Statement
Officer's report	Report evaluating the applications prepared by Ms Sheena McGuire for our assistance under s42A(1) of the RMA
One Plan	Proposed Horizons Regional Council One Plan
The Act	Resource Management Act

2.0 OFFICER'S REPORT

- 2.1 We were provided with and reviewed the officer report prepared by Sheena McGuire pursuant to s42A of the Act prior to the hearing commencing.
- 2.2 The Officer's report noted that submissions received on Chapter 3 were confined to a relatively small number of submitters, but with some of those submitters commenting on numerous separate provisions. One primary issue raised concerned the respective roles of the Horizons Regional Council and the District Council with respect to the management of indigenous biodiversity, a matter of concern to both Federated Farmers and the Regional Council.
- 2.3 The second issue concerned the relationship between Chapters 3 and 4 of the District Plan, and in particular the purpose and application of Schedule 12, which identifies Priority Water Bodies which are subject to esplanade reserve and strips upon subdivision, which in turn is addressed separately under Chapter 4.
- 2.4 Finally, there was a submission made with respect to the addition of a further notable tree, and another raising concerns about the clarity of the rules relating to the removal of notable trees and the circumstances in which this activity could be undertaken.

3.0 SUBMITTER APPEARANCES

3.1 The following submitters made appearances at the hearing:

Ms. Penelope Tucker (Horizons Regional Council)

In addition, written submissions for presentation at the hearing were received from:

- Mike Hurley for Transpower
- Lorelle Barry for Todd Energy and KCE Mangahao Ltd
- Allen Little for Horowhenua Astronomical Society

4.0 EVALUATION

4.1 Introduction

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
67.08	Taiao Raukawa Environmental Resource Unit	Amend Chapter 3 Introduction to read 'kaitiaki is to preserve the sprit <u>spirit</u> of the land'.	

This submission simply sought that the word 'sprit' be corrected to read as 'spirit'. This submission was accepted.

4.2 Issue 3.2 Indigenous Biological Diversity

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.45	Federated Farmers of New Zealand	Amend Issue 3.2 to provide for a transfer of the biodiversity function from the Horowhenua District Council to the Manawatu-Wanganui Regional Council under Section 33 of the RMA and associated consultation takes place.	506.29 Ernslaw One Ltd - Support
96.46	Federated Farmers of New Zealand	Amend Issue 3.2 as follows: Land use, subdivision and development can result in the damage and destruction of areas of significant indigenous vegetation and significant habitats of indigenous fauna and the intrinsic values of ecosystems, including loss of indigenous biological diversity. <u>The single biggest threat to the long term viability of indigenous biodiversity is</u>	506.30 Ernslaw One Ltd - Support 527.08 Director-General of Conservation (DoC) - Oppose

Sub No.	Submitter Name	Decision Requested	Further Submission
		<p><u>that of invasive pests, both plant and animal. Pressure from land use activities such as clearance of forest and scrub and drainage of wetland areas is tightly controlled and significantly constrained through the regional policy statement.</u></p> <p>Or words to that effect.</p>	

By way of background, the reporting officer informed us that the issue of whether indigenous biological diversity was to be managed at the level of regional or district plans had been the subject of litigation extending to the High Court, and involved the contents of the Regional "One Plan". The outcome of this process was that the High Court had ruled that biological diversity was to be managed at the regional plan level.

Federated Farmers sought that a transfer of functions from the District Council to the Regional Council take place under Section 33 of the RMA with respect to the management of indigenous biological diversity. As this matter has been resolved by the High Court, we consider any process for the transfer of powers is unnecessary. In her evidence to the hearing (refer paragraph 5.3 below, and paragraph 11 of her evidence) Ms Penelope Tucker for the Regional Council drew our attention to the decision of Judge Kos (*Property Rights in New Zealand Inc v Manawatu-Wanganui Regional Council, NZHC 1272*) confirming this point. We suspect this submission point may have been overtaken by events, given the timing of the High Court decision. The Hearings Panel resolved that the submission point be rejected.

Federated Farmers (96.46) also sought an amendment to Issue 3.2 to emphasise pest and weed control and to recognise that private land owners are not the sole cause of biodiversity loss, and have made positive contributions to biodiversity. The reporting officer was of the opinion that the role of controlling pests and plant invasions is not a function of HDC under its district plan, and the submitter's suggested wording may detract from the primary issue the Council is seeking to manage. However, the Hearings Panel considered that there was scope to clarify the wording under the 'Discussion' for Issue 3.2 to strengthen the recognition that feral animals and invasive weeds were a threat to biological diversity. On this basis the submission point was accepted in part. The text changes are contained in Appendix A.

4.3 Objective 3.2.1

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
27.04	Horizons Regional Council	Delete Objective 3.2.1 and replace with an objective that covers the matters signalled in Policy 7-1(b)(ii) of the POP as the areas of territorial authority jurisdiction.	517.12 Horticulture NZ – In-Part
96.47	Federated Farmers of New Zealand	Amend Objective 3.2.1 to provide for a transfer of the biodiversity function from the Horowhenua District Council to the Manawatu-Wanganui Regional Council under Section 33 of the RMA	506.31 Ernslaw One Ltd - Support 517.13 Horticulture NZ -

Sub No.	Submitter Name	Decision Requested	Further Submission
		and associated consultation takes place, and Delete Objective 3.2.1.	Support 527.09 Director-General of Conservation (DoC) - Oppose
101.11	Director-General of Conservation (DoC)	Amend Objective 3.2.1 as follows so that it aligns with the Horizons Regional Council's One Plan; To protect the areas of significant indigenous vegetation and significant habitats of indigenous fauna <u>or to maintain indigenous biological diversity including enhancement where appropriate.</u>	

Submissions made on Objective 3.2.1 all relate to the roles and responsibilities of the Regional Council and HDC in applying land use controls for maintaining indigenous biological diversity. The submissions seek alignment with the One Plan in fulfilling the District Council's obligations in regards to indigenous biological diversity. The issue was somewhat complex, reflecting different perspectives on behalf of the Regional and District Councils, Federated Farmers and DoC.

Horizons Regional Council sought the deletion of Objective 3.2.1, which as notified reads "*To protect the areas of significant indigenous vegetation and significant habitats of indigenous fauna*".

The submitter argued that this matter was properly the responsibility of the Regional Council, noting that Policy 7-1 in the One Plan sets out local authority responsibilities for controlling land use activities for the purpose of managing indigenous biological diversity. The reporting officer considered that the intention of the objective was not to duplicate the role of the Regional Council, but rather to enable the district to consider any adverse impacts on indigenous biological diversity in circumstances where it was considering resource consents, particularly subdivision, which was not controlled by the Regional Council.

In paragraph 7 of her evidence, Ms Penelope Tucker stated that "*on reflection, I agree with Ms McGuire that these provisions provide the necessary policy framework to enable the District to be able to consider these matters when making decisions on resource consents, and therefore to give effect to POP Policy 7- 1(c). This does not undermine the fact that the Regional Council has the rule-making function for indigenous biological diversity, as consideration of these matters by the district will only be triggered for activities such as subdivision which are not controlled by the Region*".

We note that it is not uncommon for regional and district plans to contain objectives and policies relating to the same issue, as this is possible in terms of their overlapping functions under the RMA - urban growth being one example. Provided the objectives and policies at the district level do not unduly duplicate or are *inconsistent* with those in a regional policy statement or plan, then complementary objective and policy provisions may be appropriate at both regional and district levels. It is however important to avoid rules at both the regional and district plan levels relating to the same matter, but that is not the case with respect to the Proposed District Plan. An objective and policies on indigenous biological diversity will be helpful in situations where a resource consent for a discretionary or non-complying activity might trigger the need to consider a full range of

adverse effects, which in very limited circumstances (notably subdivision applications) may include indigenous biological diversity.

On this basis, we acknowledge and appreciate Ms Tucker's comments, and her response to the officer's report on behalf of the Regional Council. Accordingly, the Hearings Panel resolved that submission point 27.04 be rejected.

Federated Farmers (96.47) sought that a transfer of the indigenous biological diversity function from HDC to Horizons take place under Section 33 of the RMA. This matter is discussed under our decision on the same issue as covered in paragraph 4.2 above, where it is concluded that such a transfer is now unnecessary. Similarly it is not necessary to delete Objective 3.2.1, on the basis for our conclusions as set out in the discussion above with respect to the submission point of the Horizons Regional Council. The Hearings Panel resolved that submission points 96.47, 506.31 and 517.13 be rejected, and 527.09 be accepted.

The Department of Conservation sought that Objective 3.2.1 be amended to align with the wording of the Proposed One Plan to read "*To protect the areas of significant indigenous vegetation and significant habitats of indigenous fauna and to maintain indigenous biological diversity including enhancement where appropriate*". This amended wording was initially supported by the reporting officer as it aligns with the wording in the One Plan Policy 7–1(a). Ms McGuire explained that this wording in this policy set out the Regional Council's responsibilities, whereas that of the District Council was contained in Policy 7–1(b). She added that the 'enhancement' of biological diversity was addressed under One Plan Policy 7-2A.

While these issues can readily be lost in semantics, and we accept that the submission of DoC was intended to be helpful, the Hearings Panel concluded that its preference was to avoid discrepancies between the functions of the two councils and that the submission of DoC be rejected.

4.4 Policy 3.2.2

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
26.00	Horowhenua Astronomical Society Inc	Amend Policy 3.2.2 to incorporate protection of the natural light cycle at night as a way of maintaining and enhancing indigenous biological diversity.	
27.05	Horizons Regional Council	Delete Policy 3.2.2 and replace with a policy that seeks to recognise and retain notable trees and amenity trees within the district, in line with the requirements of the POP.	517.14 Horticulture NZ - In Part
101.12	Director-General of Conservation (DoC)	Retain Policy 3.2.3 as notified. Retain Policy 3.2.2 as notified.	

Policy 3.2.2 reads "*Manage the effects of subdivision, use and development to avoid, remedy or mitigate the adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna and the intrinsic values of the ecosystems.*"

The **Horowhenua Astronomical Society** sought the inclusion of the protection of the natural light cycle at night as a way of maintaining and enhancing indigenous biological diversity. The adverse effects of lightspill and end on the natural qualities of the night sky have been addressed in the decision of the Hearings Panel on submissions relating to "*Open Space and Access to Water Bodies, Water and the Surface of Water*"; and under "*Urban Environment and Rural Environment*". Those decisions resolved that an additional Assessment Criteria be included in Chapter 25 of the District Plan (Rules - Assessment Matters) to ensure that adverse effects generated from light spill on the night sky are included in any assessment of relevant resource consents. We agreed with the officer's assessment that this is a more appropriate means of addressing the concerns raised by the Horowhenua Astronomical Society.

(This submission was given effect to through the text changes associated with decisions on the Open Space Hearing and involves the addition of a new clause 25.6.3 (f)).

Horizons Regional Council requested that Policy 3.2.2 be deleted and replaced with a policy that seeks to recognise and retain notable trees and amenity trees within the district to align with the requirements of the One Plan. However, on the half of the Regional Council Ms Tucker stated that Horizons no longer opposed the inclusion of this policy in the District Plan, for the same reasons as discussed under our paragraph 4.3 above. The Hearings Panel resolved that submission point 27.05 be rejected.

The reporting officer advised that the submission point by DoC contained in the Summary of Submissions did not accurately record the original submission on Policy 3.2.2, incorrectly referring to Policy 3.2.3 instead. This submission supported Policy 3.2.2 and in the Hearings Panel resolved that it be accepted.

4.5 Policy 3.2.3

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
26.17	Horowhenua Astronomical Society Inc	Amend Policy 3.2.3 to incorporate protection of the natural light cycle at night as a way of maintaining and enhancing indigenous biological diversity.	
27.34	Horizons Regional Council	Delete Policy 3.2.3 and replace with a policy that seeks to recognise and retain notable trees and amenity trees within the district, in line with the requirements of the POP.	
96.48	Federated Farmers of New Zealand	Amend Policy 3.2.3 as follows: Encourage subdivision, land use and development that maintains and enhances indigenous biological diversity through the protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna, <u>and</u> recognise voluntary actions	506.32 Ernslaw One Ltd - Support

Sub No.	Submitter Name	Decision Requested	Further Submission
		<u>undertaken by landowners.</u> Or words to that effect.	
101.13	Director-General of Conservation (DoC)	Amend Policy 3.2.3 as follows: Encourage <u>where appropriate</u> subdivision, land use and development that maintains and enhances indigenous biological diversity through the protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna.	

Policy 3.2.3 reads "*Encourage subdivision, land use and development that maintains and enhances indigenous biological diversity through the protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*"

The **Horowhenua Astronomical Society** sought the same relief on this policy as with Policy 3.2.2. Our conclusions with respect to this are discussed in our paragraph 4.4 above, where it was concluded that the matter be addressed through adding an assessment matter for resource consents. On this basis the panel resolved that this submission point be accepted in part, with the text changes contained in Appendix A.

Horizons Regional Council requested that Policy 3.2.3 be deleted and replaced with a policy that seeks to recognise and retain notable trees and amenity trees within the district to align with the requirement of the One Plan. However Ms Penelope Tucker on behalf of the Regional Council indicated that Horizons no longer opposed the inclusion of this policy in the District Plan, for the same reasons as discussed under our paragraph 4.3 above. The Hearings Panel resolved that submission point 27.34 be rejected.

Federated Farmers sought an amendment to Policy 3.2.3 to recognise private land owners taking voluntary action to enhance or maintain indigenous biodiversity. With the exception of subdivision, the Council is no longer responsible for rules relating to indigenous biodiversity. It was somewhat unclear whether the recognition sought through the submission was for some form of financial compensation or as a positive factor when a resource consent was being assessed. If the latter, this can be raised as a positive effect in the assessment of a resource consent application. The focus of the policy is support for indigenous biodiversity in a manner complementary to the provisions of the One Plan, rather than the methods whereby this could be achieved which will primarily occur at the regional level. The wording of the policy itself strongly suggests that a positive approach would be taken to development (whether by private or public organisations) which enhances indigenous biodiversity. The Hearings Panel resolved that the wording of the Policy did not need to change, and that accordingly the submission point be rejected.

The Department of Conservation sought to add the words 'where appropriate' as a qualification to Policy 3.2.3. The reporting officer noted there may be situations where it may not be appropriate to encourage subdivision, land use and development even if it maintains and enhances indigenous biodiversity, but that the application of the term 'where appropriate' would be too subjective. The Hearings Panel considered that the addition of this word did not really add to or help to clarify the policy to any extent, and accordingly resolved that this submission point be rejected.

4.6 Issue 3.3 Lakes, Rivers and Other Water Bodies & Issue

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
80.20	Todd Energy Ltd	<p>Amend Issue 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies.</p> <p>The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.</p>	
92.21	KCE Mangahao Ltd	<p>Amend Issue 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies.</p> <p>The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.</p>	
80.22	Todd Energy Ltd	<p>Amend Issue Discussion 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies.</p> <p>The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.</p>	
92.24	KCE Mangahao Ltd	<p>Amend Issue Discussion 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies.</p> <p>The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.</p>	
96.50	Federated Farmers of New Zealand	<p>Amend 3.3 Issue Discussion as follows:</p> <p>.....The management of water its self (taking, use and discharge,); <u>activities including land disturbance, vegetation clearance and cultivation on the margins of water bodies (Chapter 5</u></p>	<p>513.13 Rayonier New Zealand Ltd - Support</p> <p>517.11 Horticulture NZ - Support</p>

Sub No.	Submitter Name	Decision Requested	Further Submission
		<p><u>and 12 Regional Policy Statement and Regional Plan</u>) and the beds of fresh water bodies (<u>Chapter 16, Regional Plan</u>) are managed by Horizons Regional Council. Or words to that effect.</p>	

Todd Energy Ltd and KCE Mangahao Ltd lodged submissions that relate to the scheduled priority water bodies and the purpose of these. Both submitters seek an explanation of the meaning of “priority water bodies” to assist with the interpretation and application of Schedule 12 and the associated provisions. This submission arises numerous times in this group of decisions and before other Hearings Panels. The substantive submission will be addressed in this section of the Hearings Panels decision, with cross reference made back to Part 4.6 where the same submission arises subsequently.

The reporting officer explained that the purpose of Schedule 12 Priority Water Bodies (Groups 1 and 2) is to provide for the maintenance and enhancement of public access to significant water bodies, and to create a buffer between priority water bodies and any developments adjacent to these. Chapter 4 – ‘Open Space and Access to Water Bodies’ seeks to outline the purpose and application of Schedule 12 in relation to public access to priority water bodies. Chapter 3 - Natural Features and Values seeks to outline the purpose and application of Schedule 12 in relation to the protection of the natural character of priority water bodies. We note that Schedule 12 identifies Group 1 water bodies as being the coastline, and Lakes Horowhenua and Papaitonga, while Group 2 appears to comprise smaller rivers in the district. These are priority water bodies because of their high natural character and significant values.

Issue 3.3 concerns inappropriate subdivision, land use and development in, on or adjacent to water bodies. The officer's report conceded that the application of Schedule 12 is not clearly stated in Issue 3.3, and that for these reasons the submission points had raised a matter that did need to be addressed.

However the officer’s report concluded that the Explanation and Principal Reasons for Objective 3.3.1 was a more appropriate part of the chapter to emphasise the linkage between Chapter 3 and Schedule 12. The Hearings Panel were firmly of the opinion that there was a clear need for a much more explicit link between Chapter 3 and Schedule 12, and further that this should form part of the commentary associated with the lead objective, rather than within the text of the Issue 3.3. The Hearings Panel decided that the Explanation and Principal Reasons for Objective 3.3.1 be amended to provide an explanation of the purpose of Schedule 12 and its application. On this basis, it resolved that the submission points be accepted in-part (to the extent of amending the explanation and principal reasons for objective 3.3.1. The text changes are contained in Appendix A.

Federated Farmers sought that all Regional Council responsibilities for the management of activities in and adjacent to lakes, rivers or streams be listed in the ‘Issue Discussion’ for Issue 3.3 as provided for by rules in the One Plan. The Hearings Panel accepted that this would provide a useful addition to the text and provide guidance for readers of the District Plan, and accordingly resolved that the submission point be accepted. The text changes to paragraph two of Issue Discussion 3.3 are set out in Appendix A.

4.7 Objective 3.3.1

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
80.24	Todd Energy Ltd	Amend Objective 3.3.1 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
92.25	KCE Mangahao Ltd	Amend Objective 3.3.1 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
101.14	Director-General of Conservation (DoC)	Amend Objective 3.3.1 as follows: To protect the natural character of lakes, rivers, <u>wetlands</u> and other water bodies and their margins, from inappropriate use, and development.	

Todd Energy Ltd and KCE Mangahao Ltd made submissions that relate to the linkage between scheduled priority water bodies and Chapter 3. This issue was discussed in the Hearings Panel's assessment under our paragraph 4.6 above, and consequential amendments were made to the explanation and principal reasons for Objective 3.3.1. It was resolved that submission point be accepted in part, with the text changes contained in Appendix A.

DoC made a submission seeking clarification of the meaning of the words '*other water bodies*' in Objective 3.3.1 which reads:

"To protect the natural character of lakes, rivers and other water bodies and their margins, from inappropriate use and development."

DoC were concerned that wetlands need to be explicitly covered in the policy. We consider it was appropriate that wetlands be incorporated in the wording of the policy, and further to this accepted the reporting officer's proposal that the term 'water body' be clearly explained in the 'Issue Discussion' for Issue 3.3. For consistency, and as a consequential amendment, the term "wetlands" will need to be added wherever reference is made to "lakes, rivers and other water bodies" which includes Policies 3.3.2, 3.3.3, 3.3.5, 3.3.7, 3.3.8, and 3.3.9. To the extent that this would address the issues raised by DoC, this submission point was accepted in part. Text changes are contained in Appendix A.

4.8 Policy 3.3.2

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.51	Federated Farmers of New Zealand	Amend Policy 3.3.2 as follows: Identify priority lakes, rivers and other water bodies with high natural character and conservation, recreation, cultural, amenity and intrinsic value, <u>for the purpose of creating a comprehensive network of esplanade reserves and strips to maintain and enhance public access and natural character.</u>	528.20 Horizons Regional Council -Oppose
80.03	Todd Energy Ltd	Amend Policy 3.3.2. provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
92.03	KCE Mangahao Ltd	Amend Policy 3.3.2. provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
101.15	Director-General of Conservation (DoC)	Amend Policy 3.3.2 through rewording to better provide for wetland types generally.	

Policy 3.3.2 reads "*Identify priority lakes, rivers and other water bodies and their margins, from inappropriate use, and development.*"

Federated Farmers have all raised essentially the same concerns addressed above under Part 4.7, concerning the purpose of identifying priority lakes, rivers and other water bodies with high natural character.

As discussed in Part 4.7, it was considered appropriate that the 'Explanation and Principal Reasons' for Issue 3.3 be amended to explain in more detail the basis for the identification of priority water bodies and the meaning of Group 1 and 2 Priority Water Bodies, and 'how related

objectives and policies are to be applied'. Although the submitter is correct to the extent that these waterways have a linkage to provisions enabling the creation of esplanade reserves and esplanade strips, the policy has wider application, and extends to the protection of river margins generally, in circumstances where adjoining development is contemplated. The Hearings Panel resolved that the submission point be accepted in-part, with the text changes shown in Appendix A.

Todd Energy Ltd and KCE Mangahao Ltd sought clarification on the purpose and application of Group 1 and 2 Priority Water Bodies in Policy 3.3.2. This matter has been addressed earlier in our paragraph 4.6, with the Hearings Panel having made amendments to the explanation and principal reasons for Objective 3.3.1, which better gives effect to the intent of the submissions. The Hearings Panel resolved that these submissions be accepted in part, with the text changes set out in Appendix A.

DoC seek amendment to Policy 3.3.2 to ensure that wetlands are adequately protected as natural features in the Horowhenua District. DoC request that the objective be amended to list wetlands as a protected feature, as well as lakes, rivers and other water bodies. This has been addressed earlier in our discussion under our paragraph 4.7, where the same issue arose with respect to Objective 3.3.1. This submission was accepted in part, and amendments made to the various provisions in Chapter 3 to make reference to wetlands. The text changes are contained in Appendix A.

4.9 Policy 3.3.3

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
80.21	Todd Energy Ltd	Amend 3.3.3 to provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
92.22	KCE Mangahao Ltd	Amend 3.3.3 to provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
96.52	Federated Farmers of New Zealand	Delete Policy 3.3.3	517.15 Horticulture NZ – Support

Sub No.	Submitter Name	Decision Requested	Further Submission
			528.21 Horizons Regional Council -Oppose
101.16	Director-General of Conservation (DoC)	Amend Policy 3.3.3 through rewording to better provide for wetland types generally.	

Policy 3.3.3 reads "*Manage the design, location and scale of subdivision and/or land development and use adjoining lakes, rivers and other water bodies so they retain their special values and natural character.*"

Todd Energy Ltd and KCE Mangahao Ltd seek clarification on the purpose and application of Group 1 and 2 Priority Water Bodies in Policy 3.3.3. It has been agreed that it is in fact necessary to provide this clarification, as has been discussed above under Parts 4.6 and 4.7 of these decisions. The necessary text changes are contained in Appendix A.

DoC have sought amendment to Policy 3.3.3 to ensure that wetlands are adequately protected as natural feature in the Horowhenua District, by explicit reference to them as a category of water body. These matters have been addressed earlier under Part 4.6 of these decisions. The submission point was accepted and the necessary text changes are contained in Appendix A.

Federated Farmers sought the deletion of Policy 3.3.3 on the basis of their suggested amendments to Policy 3.3.2, which they argued would make Policy 3.3.3 redundant. This appeared to be based on the contention of the submitter that Policy 3.3.2 was confined to the provision of esplanade reserves and strips, whereas it has a wider basis of addressing riparian development as a whole. There is some element of duplication in the two policies, the key difference being that the first is concerned with the identification of priority water bodies, and the second with the management of activities adjacent to them. Although the matter of determining the best approach to the drafting of these provisions is rather finely balanced, the Hearings Panel concluded that the policy be retained. The Hearings Panel resolved that submission point 96.52 be rejected.

4.10 Policy 3.3.4

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
26.02	Horowhenua Astronomical Society Inc	Amend Policy 3.3.4 to consider and control the amount and type of artificial lighting for any subdivision or development proposals close to a water body.	
80.23	Todd Energy Ltd	Amend 3.3.4 to provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation	

Sub No.	Submitter Name	Decision Requested	Further Submission
		projects.	
92.23	KCE Mangahao Ltd	Amend 3.3.4 to provide clear policy direction and to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	

Policy 3.3.4 concerns the protection of the natural character of lakes and rivers and water bodies from subdivision use and development, with an attached set of seven assessment matters. The submissions made on this Policy by the **Horowhenua Astronomical Society** are virtually the same as those made on Policy 3.2.3 addressed earlier in discussion under Part 4.5 of these decisions. In our assessment of their submission on that matter, we concluded that it would be preferable to address the protection of the night sky under the assessment matters contained in the rules in Chapter 25 of the District Plan, which enables their consideration to the general resource consent process. On this basis, their submission point is accepted in part. Policy 3.3.4 however, is focused on quite different environmental issues to those of concern to the Society.

Todd Energy Ltd and KCE Mangahao Ltd seek clarification on the purpose and application of Group 1 and 2 Priority Water Bodies in Policy 3.3.4. These matters are the same as those which have been addressed earlier under our consideration of Issue 3.3, Objective 3.3.1 and Policy 3.3.2 in our paragraphs 5.6-5.8. The submissions are accepted in part, and text changes are contained in Appendix A.

4.11 Policy 3.3.5

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.17	Director-General of Conservation (DoC)	Amend Policy 3.3.5 through rewording to better provide for wetland types generally.	

Policy 3.3.5 concerns the need for setbacks for activities and buildings from waterways. Consistent with their other submissions, DoC have sought reference be made to wetlands. This has been addressed earlier in our discussion under Part 4.7, where the same issue arose with respect to Objective 3.3.1. This submission was accepted in part, and amendments made to the various provisions in Chapter 3 to make reference to wetlands. The text changes are contained in Appendix A.

4.12 Policy 3.3.6

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
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Sub No.	Submitter Name	Decision Requested	Further Submission
96.14	Federated Farmers of New Zealand	Amend Policy 3.3.6 to include non-regulatory methods which promote and encourage actions such as financial assistance, provision of material and plants, rates relief and regulatory incentives. Or words to this effect.	506.08 Ernslaw One Ltd - Support
101.18	Director-General of Conservation (DoC)	Amend Policy 3.3.6 by clarifying what is meant by the term "planted water body margins" or provide explanation within the section.	

Policy 3.3.6 reads "*Promote and encourage the development or maintenance of planted water body margins.*"

Federated Farmers have sought the inclusion of non-regulatory methods in conjunction with the implementation of Policy 3.3.6. This submission is similar in nature to others lodged by the submitter, which seek to promote or require the Council to adopt non-regulatory methods such as financial assistance to landowners with respect to planting within the margins of water bodies.

The focus of the policy is to encourage planting in the margins of water bodies, and would normally only be required in a regulatory sense if there were a resource consent granted adjacent to a water body which might require as a condition of consent that some planting be undertaken. We are not convinced that landowners should have an expectation of compensation in such circumstances, although the positive effects of such activities can be taken into account. Collaborative methods are already provided for in terms of the non-regulatory methods for implementing Objective 3.3.1. The Hearings Panel resolved that this submission point be rejected.

DoC sought clarification of the meaning of the term 'planted water body margins'. The officer's report explained that this term is not referred to or defined within any section under Issue 3.3. It was noted that a more commonly used term was 'riparian planting'. We agreed that this term is likely to convey more meaning to readers of the District Plan, and is more widely quoted in literature relating to the management of water bodies. Accordingly, the Hearings Panel resolved that this submission point be accepted. The text changes are set out in Appendix A.

4.13 Policy 3.3.8

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
98.26	Horticulture NZ	Retain Policy 3.3.8.	

The only submission lodged on Policy 3.3.8 was in support, and was accordingly accepted, noting that the policy will be amended to include the word "wetlands" as a consequential amendment to submissions lodged by DoC on the provisions in Chapter 3.

4.14 Policy 3.3.9

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
83.05	Ross Hood & Margaret Hood	No specific relief request. Inferred: Amend Policy 3.3.9 through acknowledging that recreational use and enjoyment of water bodies can have adverse effects on the environment.	528.15 Horizons Regional Council -Oppose
101.42	Director-General of Conservation (DoC)	Amend Policy 3.3.9 as follows: Provide for the maintenance of the natural character of lakes, rivers <u>and their margins</u> and other water bodies, whilst balancing the need to provide public access to and along these water bodies by way of an esplanade network. Include a cross reference to Section 11, Policy 11.1.3.	

Policy 3.3.9 reads "*Provide for the maintenance of the natural character of lakes, rivers and other water bodies, whilst balancing the need to provide public access to and along these water bodies by way of an esplanade network.*"

Mr and Mrs Hood appeared at the hearings and gave written evidence under the hearing topic 'Open Space Zone and Access to Water Bodies'. At that hearing Mrs Hood expressed her dissatisfaction that she and other submitters had to appear at multiple hearings to present their overall submission.

The Hoods are critical of provisions in the District Plan which purport to encourage or provide for public access, particularly in the context of esplanade reserves, esplanade strips, and access strips. They contended that public access especially where it facilitated large numbers of people having access to river margins, could result in loss of privacy, damage to natural values, and vandalism. They were also critical of the need to provide for public access if this were in fact required along the many minor waterways throughout the Horowhenua District.

In considering the submission on this particular policy, we note that it does not call for indiscriminate public access, but seeks to balance the protection of natural character of water bodies with the need for public access to and along these water bodies. Provision for Esplanade reserves and strips is a requirement of the RMA under section 230 of the Act for the subdivision of properties of less than 4 ha in area. It is a requirement applicable to all district councils, not only within the Horowhenua. It is a requirement on identified waterways as set out in Schedule 12 of the District Plan, and not on waterways generally, or on allotments of more than 4 ha. The policy framework also has to address other effects on waterways such as vegetation clearance and earthworks, independently of any esplanade requirements. The Hearings Panel considered that this particular policy struck an appropriate balance given legislative requirements and the need to protect natural values. The submitter appeared to be taking the position that the legislation itself

was flawed, and that the Council should disregard it. It was resolved that this submission point be rejected.

The submission of DoC sought that Policy 3.3.9 also make reference to the margins of lakes and rivers consistent with Section 6(a) of the RMA, along with a cross reference to policy 11.1.3 which also concerns access to waterways. Throughout Chapter 3 there is various reference to lakes, rivers and other water bodies, and their margins. Although not all water bodies would be of a status such that they would be captured by Section 6(a) of the Act, reference to the margins of waterways would be consistent with the terminology of the act and the intention of the policy. We were advised by the reporting officer that cross referencing is only provided in Rule Chapters. We were not convinced that a cross reference of this nature between policies was necessary.

The submission of **DoC** was accepted in part to the extent that reference be added to the margins of rivers within Policy 3.3.9. The text changes are contained in Appendix A.

4.15 Explanation & Principal Reasons for Objective 3.3.1

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
80.26	Todd Energy Ltd	Amend Explanation and Principle Reasons 3.3.1 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
92.17	KCE Mangahao Ltd	Amend Explanation and Principle Reasons 3.3.1 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	

These two submissions seek clarification on the purpose and application of Group 1 and 2 Priority Water Bodies and raised the same issues as those which have been addressed earlier under our consideration of Issue 3.3, Objective 3.3.1 and Policy 3.3.2 in Parts 4.6-4.8. The submissions are accepted in part, and text changes are contained in Appendix A.

4.16 Methods for Issue 3.3 & Objective 3.3.1

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
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Sub No.	Submitter Name	Decision Requested	Further Submission
80.25	Todd Energy Ltd	Amend Methods 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	
92.26	KCE Mangahao Ltd	Amend Methods 3.3 to clarify the purpose and application of Schedule 12 and the two groups or priority water bodies. The resultant wording should not constrain the further development of the Mangahao Power Station and renewable electricity generation projects.	

These two submissions seek clarification on the purpose and application of Group 1 and 2 Priority Water Bodies and raised the same issues as those which have been addressed earlier under our consideration of Issue 3.3, Objective 3.3.1 and Policy 3.3.2 in our paragraphs 4.6-4.8. The submissions are accepted in part, and text changes are contained in Appendix A.

4.17 Issue 3.4 Notable Trees

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.20	Director-General of Conservation (DoC)	Retain intent of Issue 3.4.	

This submission in support was accepted

4.18 Methods for Issue 3.4 & Objective 3.4.1

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
16.00	Robert White	No specific decision requested. Inferred: Retain the method which outlines the potential for Council to provide financial assistance through a fund for land owners with notable trees on their property. Assist the submitter with repair of broken path.	

This submission in support was accepted.

4.19 Chapter 3 - General Matters

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
98.25	Horticulture NZ	Amend the provisions in relation to Issue 3.3 to ensure that existing primary production activities are not adversely affected through provisions in Section 3.3 or duplication of Regional Plan requirements.	
96.49	Federated Farmers of New Zealand	Amend Chapter 3 to relocate all provisions under Issue 3.3 to Chapter 4: Open Space and Access to Water Bodies.	
25.00	Michael White	Amend Chapter 3 to include the night sky as a natural feature and the protection of the night time environment through proper lighting controls and rules a priority. Council should register the Levin Adventure Park as a Star Park and commit to reducing and controlling light pollution around this area to a minimum.	525.16 Maurice and Sophie Campbell - Support
11.17	Philip Taueki	No specific relief requested. Inferred: Retain and implement the objectives and policies in Chapter 3.	
60.11	Muaupoko Co-operative Society	No specific relief requested. Inferred: Retain and implement the objectives and policies in Chapter 3.	

Horticulture NZ sought amendments to avoid duplication in terms of requirements between district and regional plans. This issue was discussed under Part 4.3 of our decision with respect to the submissions of the Regional Council, to which reference should be made. The Regional Council accepted at the hearing that the provisions in the District Plan complement rather than duplicate the provisions in the One Plan. The respective roles of the two bodies are contained and clarified under the "Methods" for Issue 3.3 and Objective 3.3.1. Rules have regulatory effect, and those relating to open space and the protection of indigenous biodiversity are not duplicated in both plans.

The provisions of the District Plan within Chapter 3, and particularly the rules in the plan, do not seek to regulate existing horticultural activities, and are only likely to be triggered by a proposed development which adversely affected water bodies or their margins. The Hearings Panel resolved that this submission point be rejected.

Federated Farmers were of the view that the provisions under Issue 3.3 would be more appropriately located within Chapter 4 - Open Space and Access to Water. The Hearings Panel

understands that there is a degree of overlap between the two chapters. In particular, the issue of taking esplanade reserves and strips, while predominantly addressed within the provisions of Chapter 4, also arise under Issue 3.3 and Policy 3.3.4. However chapter 4 is where the taking of land through subdivision is specifically addressed at a policy level. The provisions in chapter 3 have a broader emphasis and relate primarily to the 'Natural Features and Values' in the district, of which water bodies are one important component. The values associated with water bodies within this chapter are not confined to what would be defined as outstanding natural features and landscapes (ONFL).

In considering the structure of any District Plan, there can always be debate over whether it could be constructed and its contents organised, in different ways. The Hearings Panel are of the opinion that it is appropriate that objectives and policies relating to the natural and cultural values of waterways remain as part of the Chapter 3 which addresses the overall natural features and values of the district. However it is agreed that it would be helpful for plan users to provide a cross reference to those aspects of development associated with waterways which would be captured by esplanade provisions upon subdivision. This can be achieved by providing a cross reference to the esplanade provisions and to Schedule 12 within the explanation and reasons for Objective 3.3.1. On this basis it was resolved that the submission be accepted in part.

Mr M.White sought the inclusion of an 'issue' and associated policies on the preservation and reclamation of the night sky. This issue was addressed earlier in paragraph 4.4 and proposed amendments to the District Plan were outlined therein. This submission and further submission are accepted in part.

Philip Taueki and the Muaupoko Co-operative Society expressed general support for the contents of chapter 3 and the submissions were accordingly accepted.

4.20 Rule 15.1(m) – Residential Zone Permitted Activity List (Notable Trees)

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
116.00	Truebridge Associates Limited	Delete Rule 15.1(m) as a permitted activity and insert as a discretionary activity.	

Rule 15.1(m) specifies permitted activities in the Residential Zone, with specific reference to notable trees. **Truebridge Associates** lodged a submission that the removal of notable trees would be more appropriately classified as a discretionary activity.

The rules for each zone, including the Residential Zone, begin with a list of permitted activities. In the case of notable trees, Rule 15.1 (m) states:

"Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:

- (i) The removal or partial removal of the Notable Tree*
- (ii) Any activities within the drip line of a Notable Tree*
- (iii) Any trimming and maintenance of a Notable Tree"*

On the face of it, the rule appears to be a nonsense, because it provides for the removal of Notable Trees, or works that may adversely affect them, as a permitted activity. A similarly worded rule also appears under Chapter 16 (Industrial Zone), Chapter 17 (Commercial Zone), Chapter 19 (Rural Zone), and Chapter 20 (Open Space Zone).

The officer explained that the structure of all rule chapters in the Proposed Plan provided that activities which can be undertaken without resource consent, are listed as permitted activities. Following the list of permitted activities there are ‘Conditions’ for permitted activities, which mean that if these are not complied with, a resource consent would be required. Under clause 15.1 however, the status of permitted activities is qualified by cross reference to other provisions of the chapter. This is a common form of rule construction found in ‘effects’ based plans. The ‘Introduction’ section also explains that all permitted activities must comply with the Permitted Activity Conditions specified in each set of zone rules, but users of the District Plan may well simply proceed directly to the rule and seek guidance from that. However the Hearings Panel agreed with the submission of Truebridge Associates that it would be understandable that a reader of the plan would conclude that the removal of a notable tree was a permitted activity.

The reality is that under Rule 15.3, the removal or partial removal of a notable tree would become a restricted discretionary activity pursuant to Rule 15.6.28. The activity would only be permitted if there was confirmation that the tree was dead, removal was required for emergency work, etc.

The nature of this permitted activity rule however, makes it particularly vulnerable to misinterpretation. The Hearings Panel sought that the reporting officer pursue possible alternative wording to clarify the matter. This had two outcomes, the first to add a note underneath a permitted activity rule referring to the required standards applicable to it - in the case of notable trees in the Residential Zone, this being Rule 15.6.28. Secondly, the same issue arises in all other relevant chapters, and as a consequential amendment the rule needs to be clarified in these chapters as well.

The rules requiring clarification are 15.1 (m), 16.1 (q), 17.1 (w), 19.1 (p), and 20.1 (j) to ensure a consistent approach across zones. On this basis, the submission of Truebridge Associates was accepted in part. The wording amendments are set out in Appendix A.

4.21 Rule 19.4.12 – Rural Zone Discretionary Activity (Notable Trees)

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.70	Director-General of Conservation (DoC)	Amend Rule 19.4.12 by adding references so that in considering an application for a resource consent under Rule 19.4.12 the Council will have regard to the matters of assessment set out in Policies 3.4.2 – 3.4.5.	

One submission was made on Rule 19.4.12 requesting the inclusion of a cross-reference to relevant policies.

DoC sought the inclusion of a cross-reference to policies 3.4.2-3.4.5 in Rule 19.4.12. While a helpful suggestion, the Hearings Panel considered that the structure of the plan as framed is

sufficient to enable plan users to identify the links between the objectives and policies without unduly 'bulking up' the document with cross-references. There are circumstances in which cross-references are to be added with respect to specific issues, but not at a general level between policies and rules. The submission point was rejected.

4.22 Rule 19.6.27 – Rural Zone Conditions for Permitted Activities (Notable Trees)

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
99.31	Transpower New Zealand Ltd	Amend Rule 19.6.27 Notable Trees as follows in the event relief sought under Chapter 22 is not accepted: c) Any trimming and maintenance of a tree listed in Schedule 3 - Notable Trees shall be limited to: (ii) the removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or interfering with <u>likely to compromise</u> the effective operation of those overhead wires or utility networks.	

Transpower New Zealand Ltd sought an amendment to Rule 19.6.27(c) to ensure that the protection of notable trees does not compromise the operation of overhead wires or utility networks. This is a permitted activity rule relating to notable trees, which provides for trimming and maintenance of such trees, but limited to minor trimming necessary to maintain the health of the tree, the removal of branches interfering with buildings, structures, overhead wires or utility networks, the removal of broken branches or dead wood, or works required during an emergency. This submission turned on a rather subtle point that the words " *interfering with those overhead wires or utility networks* ", currently contained in the rule, overlooked the fact that overhead wiring network would already have reached the point where it was being "interfered" with by that point. The Hearings Panel was initially attracted to the wording of the submission, which sought an amendment to read "the removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or ~~interfering with~~ likely to compromise the effective operation of those overhead wires or utility networks".

However the Hearings Panel, while acknowledging the vital importance of maintaining utility networks, were also aware that there were only a very small number of notable trees as a proportion of the tree cover in the district as a whole, and similarly as a proportion of the trees which would be likely to have any adverse effects on overhead reticulation. While accepting that it would be proper in appropriate circumstances to enable trimming to be undertaken - including trimming prior to any problems actually arising - it was also important to be satisfied that the nature of the trimming proposed was necessary and not simply expedient. Given the importance of notable trees, and the need to ensure that the trimming was undertaken in an appropriate manner, it was considered necessary to require that any such work be supervised by a qualified arborist.

Accordingly, it was resolved that the submission be accepted in part, with the qualification of additional wording to the rule. This is considered by the Panel to be within the scope of the original submission; in addition to ensure consistency across the various zones in the District Plan, a similar consequential amendment is required to rules 15.6.28 (c) (ii); 16.6.20 (c) (ii); 17.6.22 (c) (ii); and 20.6.19 (c) (ii). The amendments are set out in full in Appendix A.

The Hearings Panel notes that there are also assessment criteria which apply to works affecting Notable Trees under Rule 25.7.15, which arise in the course of Submission point 55.12 under Part 4.24 below (KiwiRail).

4.23 Rule 20.1(j) – Open Space Zone Permitted Activity (Notable Trees)

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.71	Director-General of Conservation (DoC)	Amend Rule 20.1 (j) by considering cross-referencing to notable trees chapters/rules.	

DoC have sought the inclusion of a cross-reference in Rule 20.1(j), in the Open Space Zone, to other notable tree provisions in other chapters. The Hearings Panel appreciated that this was a helpful submission, but given that the District Plan was structured in a manner where the zone rules were clearly set out in each zone chapter (albeit with a consequent element of repetition), a cross-reference in this case was not necessary. It was resolved that this submission point be rejected.

4.24 Assessment Criteria 25.7.15(e) Notable Trees

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
55.12	KiwiRail	Amend Assessment Criteria 25.7.15(e) as follows: e) The extent to which work on or near a Notable Tree is necessary to preserve or maintain the efficiency or safety of any public work, network utility or road <u>or railway</u> .	

KiwiRail sought an amendment to Clause 25.7.15(e) to facilitate essential safety work in relation to the notable trees located near the railway corridor. Unlike the discussion previously on the Transpower submission (99.31), this concerns an assessment matter, not a rule. Subclause (e) states *"the extent to which work on or near a Notable Tree is necessary to preserve or maintain the efficiency or safety of any public work, network utility or road"*. KiwiRail have requested that railways should also be listed to ensure that level crossing sightlines are kept clear for safety purposes. The Hearings Panel considered that the relief sought was consistent with the protection of other important infrastructure, and noted the qualifications attached to the trimming of such trees as described under Part 4.22 above, and the other assessment matters under Clause 25.7.15. Given these safeguards, the Hearings Panel resolved that the submission point be accepted. The wording amendments are shown in Appendix A.

4.25 Chapter 26 - Definitions

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
108.37	HDC (Planning Department)	Include definition for "bed" as follows: <u>Bed has the same meaning as in the Resource Management Act 1991.</u>	

'Bed' is a term that **HDC (Planning Department)** consider requires definition, as it is included in Rules 19.6.4(a)(v) and 19.6.4(a)(x) in relation to setbacks from water bodies. The Hearings Panel resolved that this submission point be accepted on the basis of providing greater clarity and consistency in the application of the rules. The wording amendments are contained in Appendix A.

4.26 Schedule 3 - Notable Trees

Submission Received

Sub No.	Submitter Name	Decision Requested	Further Submission
1.00	Scotson & McKay	Include the <i>Podocarpus Totara</i> at 61 Kuku East Road, Levin as a Notable Tree with Schedule 3.	

Scotson & McKay sought the inclusion of a *Podocarpus Totara* tree located on their property at 61 Kuku East Road, Levin to Schedule 3 of the District Plan. A way of background, the reporting officer advised the Panel that the Council had invited the community to nominate trees of significance that may be worthy of protection under the District Plan. The submitters made contact with Council seeking to list a Totara tree on their property after the District Plan had been finalised and publicly notified. As a result, this particular tree was not assessed or included in Schedule 3.

The tree has been assessed by a qualified arborist, which concluded that the tree met the minimum STEM criteria as required by the District Plan to be included on the Schedule of Notable Trees. While the tree is partially located within the road reserve, it is currently within the fenced curtilage managed by the land owners, and is located well clear of the existing road formation. The Council's Roading Services Manager is not opposed to listing the tree in Schedule 3 - Notable Trees. Accordingly the Hearings Panel resolved that the submission point be accepted, with the addition to the schedule shown in Appendix A.

5.0 SECTION 32

5.1 Section 32 requires an evaluation of whether an objective is the most appropriate way to achieve the purpose of the Act and whether, having regard to their efficiency and effectiveness, the policies, rules and other methods are the most appropriate for achieving the objective. As we understand it the use of the term "most appropriate" in s.32(3) of the Act has a meaning similar to suitable rather than superior. As such, changes sought therefore only need to be preferable in resource management terms to the existing provisions in order to be the "most appropriate" way of satisfying the purpose of the Act.

- 5.2 None of the submissions made on the Proposed Plan involved adding additional objectives policies or rules, or making existing provisions more restrictive. The submissions did not substantively challenge the content of objectives and policies, all rules rather seeking refinements or clarification. There were submissions seeking that objectives and policies on biodiversity be removed from the plan, which was resolved with one of the submitters, which importantly was Horizons Regional Council. Overall, there was a perhaps surprising lack of opposition to the objectives policies and rules in principle, at least in so far as this topic area was concerned.
- 5.3 The submission of Federated Farmers sought transfer of powers, and this is no longer required having regard to a recent decision of the High Court. Accordingly no changes were made to the plan provisions which have the effect of increasing its regulatory impact, with the exception of a requirement for an arborist's opinion to be sought where notable trees were being trimmed.
- 5.4 There were submissions seeking that a clearer linkage be provided between the objectives and policies in the esplanade provisions that apply along priority waterways, but those submissions of the particular points subject to this Hearing appeared to the Hearings Panel to be seeking clarification of their application rather than challenging whether such provision should be provided or not. Even the submission by the Hoods on Policy 3.3.9 related to acknowledging their contention that there were possible adverse effects associated with public access, the thrust of their submission of the hearing appeared to be based on disagreement with the legislation itself.
- 5.5 Amendments to the plan to satisfy the submissions by DoC included reference to wetlands at a policy level, and are consistent with the requirements of Sections 6 and 7 of the Act and which were not opposed by any other parties. Other submissions were related to matters of cross-referencing and that part of the plan where particular provision should be located, rather than substantive issues associated with their interpretation and enforcement. Changes made to the rules relating to notable trees have the effect of slightly liberalising the relevant rules, and ensuring that they were consistent across the various zones in the District Plan.
- 5.6 Overall, the Hearings Panel concluded that with the amendments and refinements made to the provisions of the District Plan which were subject of these hearings, that the relevant provisions were considered to be necessary to achieve the purposes of the Act, and would be effective and efficient.

6.0 DECISION

For all the following reasons we resolve the following:

1. That pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 that the Horowhenua District Plan be amended as set out in Appendix A of this decision.
2. That for the reasons set out in the above report submissions and further submissions are accepted, accepted in part or rejected as listed in Appendix B to this decision.



Robert Nixon (Chair)



Cr Garry Good



Cr Leigh McMeeken

Dated: 23 September 2013

APPENDIX A: Proposed Plan as amended by Hearing Decisions

1. Amend third paragraph of Chapter 3: Introduction to read:

...

"To Tangata Whenua it is specifically the natural environment that provides an identity. It is turangawaewae – a standing place, where the role of kaitiaki is to preserve the spirit of the land. The natural environment is the creator, providing physical and spiritual nourishment."

2. Amend Issue Discussion for Issue 3.2 to read:

...

"The remaining natural habitats are is small, fragmented and under pressure from pests and disturbance faced with a number of pressures. One of the main threats to indigenous biological diversity in the Horowhenua District is pests such as feral animals and invasive weeds. In addition to this, there are land use ~~A number of activities that~~ have the potential to adversely affect remaining areas of significant indigenous vegetation and habitats of indigenous fauna. Such activities and their effects include uncontrolled stock grazing that can damage indigenous forest understorey and limit regeneration, and the fragmentation of remnant indigenous forest and wetland areas through clearance for pasture and exotic forestry. ~~Other threats include, feral animals, invasion of weeds and drainage.~~"

3. Amend Issue 3.3 to read:

Issue 3.3 Lakes, Rivers, Wetlands and Other Water Bodies

Inappropriate subdivision, land use and development in, on, or adjacent to lakes, rivers, wetlands and other water bodies, can adversely affect their natural character and other values such as ecological, recreation, cultural and amenity values.

4. Amend Issue Discussion for Issue 3.3 to read:

"The Horowhenua has numerous lakes, rivers and other water bodies of varying size and significance which are valued for a range of conservation, recreation, cultural, amenity and intrinsic reasons. In the context of this District Plan 'other water bodies' includes streams and tributaries, wetlands and dune lakes. Under Section 6 of the RMA, one of the matters of national importance is the preservation of the natural character of wetlands, lakes, and rivers, and wetlands and their margins, and the protection of them from inappropriate use, subdivision and development. Another matter of national importance provided for in the RMA is the maintenance and enhancement of public access to and along lakes and rivers.

Responsibility for the management of activities in and adjacent to lakes, rivers, wetlands or streams other water bodies is a responsibility shared between the Horizons Regional Council and the Council. The Council is responsible for managing the effects arising from activities on the surface of these water bodies, as well as subdivision, development and use of the land along the

margins of rivers, lakes, wetlands and other water bodies. The management of the water itself (taking, use, discharges), activities including land disturbance, vegetation clearance and cultivation on the margins of water bodies, as well as the beds of freshwater bodies, are managed by Horizons Regional Council.

Lake Horowhenua is the largest freshwater body in the District and is highly valued for its cultural, recreational, natural and amenity values. There are smaller dune lakes and wetlands scattered throughout the rural areas of the District. The Manawatu River is the largest river in the Horowhenua and its catchment includes extensive land area outside of the District. There are a number of other rivers and streams draining from the Tararua Ranges towards the Tasman Sea. In addition, there are other smaller streams and tributaries across the plains and coastal areas connected to these lakes and rivers.

Lakes, rivers, wetlands and other water bodies have many values. They are natural drainage channels and systems. The water bodies and their edges provide habitats for both aquatic and terrestrial species. They also often function as ecological corridors along which animals move to other habitats. In addition, they form an integral component of the landscape. They are also important for recreational uses such as boating, fishing and swimming.

Water bodies also have important cultural values. For Tangata Whenua, waters are seen as the lifeblood of the land and therefore, of the people. Access to water and the management of water quality and ecological systems are important to Tangata Whenua for social, economic, spiritual and cultural reasons, including customary activities. The margins of water bodies are also where many wāhi tapu and other cultural heritage sites may be located.

Public access to and along water bodies is also a major issue, as limited access constrains the recreational values of freshwater environments. However, access must be provided in a form that does not adversely affect the conservation values, increase risk to natural hazards or any operational requirements of adjoining landowners, such as farming operations.

Activities on land near water bodies can adversely affect the values of the water bodies if not properly managed. Over time, water bodies and their margins can deteriorate because of changes to land use in their catchments. As many water bodies throughout the District flow through farmland, there has been, and remains, potential for modification of the ~~river~~ water body margin areas by unsustainable land use practices, vegetation clearance, or earthworks. In addition, the subdivision of land on the edges of river, lakes, wetlands and ~~wetlands~~ other water bodies leads to intensified settlement that in turn can detrimentally affect the natural character of riparian areas and potential conflict with their recreational use (for example, wetlands used for hunting).

Fundamental to preserving the natural character of lakes, rivers, wetlands and other water bodies is the need to protect the attributes that constitute natural character of Horowhenua's lakes, river, wetlands and other water bodies and their amenity values – in particular, the potential loss of reasonable buffer areas along the edge of water bodies. Such buffers allow for vegetated strips, which are important for ecological purposes (fish habitats and reduction of water and silt runoff from pastures), as well as to maintain visual and landscape values. Such buffers can also provide for public access and natural hazard defence systems. The required depth of such buffers will vary widely – in urban areas, they need not be as extensive as they need to be in rural areas, particularly on the banks of major rivers, lakes, wetlands and other water bodies ~~wetlands~~.

5. Amend Explanation and Principal Reasons for Objective 3.3.1 to read:

...

"An effective way to achieve protection of the natural character of water bodies is creating a buffer between waterways and adjoining activities, which could include the creation of an esplanade reserve or strip. In addition, when development, land use change or subdivision occurs, it provides an opportunity to consider the potential for restoration and enhancement of the natural values of the margins of waterways.

Council has prepared an Open Space Strategy which identifies water bodies with significant values where creating esplanade reserves or strips are considered a priority.

These priority water bodies are listed in Schedule 12-Priority Water Bodies. In terms of the application of this Schedule, there are provisions which provide for: separation distances between buildings and priority water bodies in the Rural Zone; the creation of esplanade reserves which relate to subdivisions adjacent to Group 1 Priority Water Bodies; and the creation of esplanade strips which relate to subdivisions adjacent to Group 2 Priority Water Bodies in Schedule 12.

The priority water bodies identified are where new connections allow for the creation of a natural buffer to protect the natural values of water bodies and their margins as well as providing for public access.

As land adjoining these priority water bodies is subdivided and developed, opportunities can arise for formal access to be obtained through the subdivision process. This systematic process allows a District-wide network to be developed over time and can result in the restoration and enhancement of water bodies and their margins.

While rivers, lakes and wetlands are susceptible to inappropriate activities that may adversely affect their natural character and special values, in general, provision for the cultural and recreational use and enjoyment of the water bodies should continue to be made, as such activities do not create significant environmental issues. Other tools outside the District Plan can be successfully used to separate or manage conflicting activities if required (for example, bylaws)."

6. Amend Policy 3.3.2 as follows:

"Identify priority lakes, rivers, wetlands, and other water bodies with high natural character and conservation, recreation, cultural, amenity and intrinsic values."

7. Amend Policy 3.3.3 as follows:

"Manage the design, location and scale of subdivision and/or land development and use adjoining lakes, rivers, wetlands and other water bodies so they retain their special values and natural character."

8. Amend Policy 3.3.4 as follows:

"Ensure subdivision, use and development protects the natural character of lakes, rivers, wetlands and other water bodies and maintain and enhance their special values by having regard to the following matters in assessing proposals:

- extent to which natural processes, elements and patterns that determine the area's natural character are sustained, and/or restored and rehabilitated;
 - degree of change to landform and relief;
 - degree of protection of vegetation cover and patterns, including use of a buffer;
 - compatibility with existing level of modification to the environment;
 - functional necessity to be located in or near the water body and no reasonably practicable alternative locations exist;
 - ability to mitigate any potential adverse effects of subdivision, use, and development; and
 - provision of public amenity and access to land acquired by Council for reserve purposes."
-

9. Amend Policy 3.3.5 as follows:

"Ensure the adverse effects on the natural character and special values of lakes, rivers, wetlands and other water bodies are avoided or mitigated through establishing setbacks for activities and buildings that may cause adverse effects. "

10. Amend Policy 3.3.6 to read:

"Promote and encourage the development or maintenance of riparian planting along water body margins."

11. Amend Policy 3.3.8 as follows:

"Promote a strategic approach to the management of lakes, rivers, wetlands and other water bodies and their margins and catchments, particularly by using management plans for areas with significant environmental issues that require a collaborative approach with other groups or organisations."

12. Amend Policy 3.3.9 to read:

"Provide for the maintenance of the natural character of lakes, rivers and other water bodies and their margins, whilst balancing the need to provide public access to and along these water bodies by way of an esplanade network."

Residential Zone

13. Amend Rule 15.1(m) to read as follows:

" Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:.

(i) The removal or partial removal of a Notable Tree.

(ii) Any activities within the drip line of a Notable Tree.

(iii) Any trimming and maintenance of a Notable Tree.

Note: The above activities must comply with all Conditions for Permitted Activities specified in Rule 15.6.28."

14. Amend Rule 15.6.28(c)(ii) to read:

The removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or interfering with likely to compromise the effective operation of those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.

Industrial Zone

15. Amend Rule 16.1(q) to read:

" Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:.

- (i) The removal or partial removal of a Notable Tree.
- (ii) Any activities within the drip line of a Notable Tree.
- (iii) Any trimming and maintenance of a Notable Tree.

Note: The above activities must comply with all Conditions for Permitted Activities specified in Rule 16.6.20."

16. Amend Rule 16.6.20(c)(ii) to read:

The removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or interfering with likely to compromise the effective operation of those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.

Commercial Zone

17. Amend Rule 17.1(w) to read:

" Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:.

- (i) The removal or partial removal of a Notable Tree.
- (ii) Any activities within the drip line of a Notable Tree.
- (iii) Any trimming and maintenance of a Notable Tree.

Note: The above activities must comply with all Conditions for Permitted Activities specified in Rule 17.6.22."

18. Amend Rule 17.6.22(c)(ii) to read:

The removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or ~~interfering with likely to compromise the effective operation of~~ those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.

Rural Zone

19. Amend Rule 19.1(p) to read:

Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:.

- (i) The removal or partial removal of a Notable Tree.
- (ii) Any activities within the drip line of a Notable Tree.
- (iii) Any trimming and maintenance of a Notable Tree.

Note: The above activities must comply with all Conditions for Permitted Activities specified in Rule 19.6.27.

20. Amend Rule 19.6.27(c) to read:

- c) Any trimming and maintenance of a tree listed in Schedule 3 - Notable Trees shall be limited to:
 - (ii) the removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or ~~interfering with likely to compromise the effective operation of~~ those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.
-

Open Space Zone

21. Amend Rule 20.1(j) to read:

Where a tree is listed in Schedule 3 - Notable Trees the following are permitted activities:.

- (i) The removal or partial removal of a Notable Tree.
- (ii) Any activities within the drip line of a Notable Tree.
- (iii) Any trimming and maintenance of a Notable Tree.

Note: The above activities must comply with all Conditions for Permitted Activities specified in Rule 19.6.27.

22. Amend Rule 20.6.19(c)(ii) to read:

The removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or ~~interfering with~~ likely to compromise the effective operation of those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.

23. Amend Assessment Criteria 25.7.15 to read:

"e) The extent to which work on or near a Notable Tree is necessary to preserve or maintain the efficiency or safety of any public work, network utility or road or railway."

24. Include a new definition in Chapter 26 - Definitions as follows:

"Bed has the same meaning as in the Resource Management Act 1991."

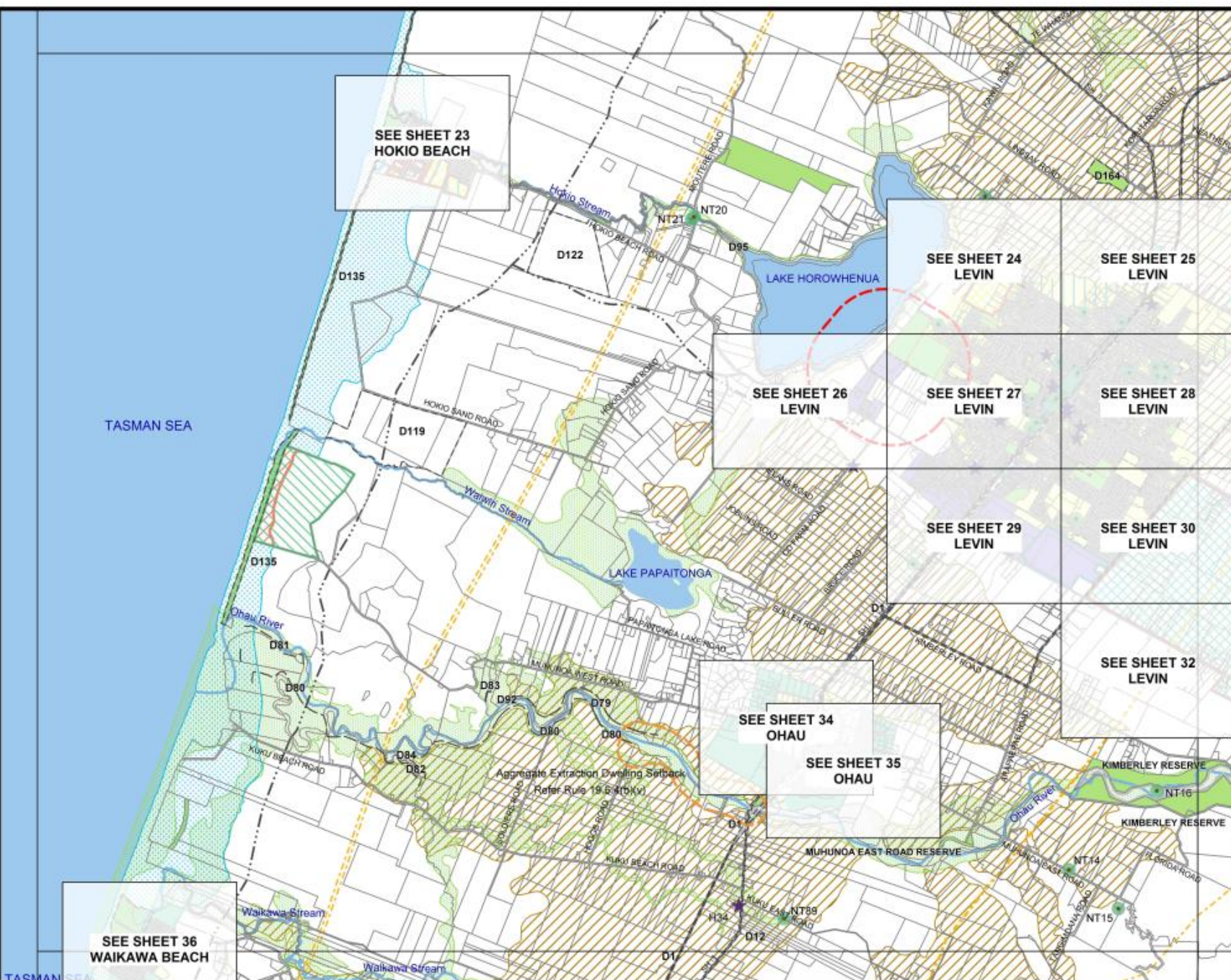
25. Include a new tree to Schedule 3 - Notable Trees as follows:

The following trees are identified as Notable Trees within the Horowhenua District.

...

Map No.	Ref.	Latin Name	Common Name	Location	Score	Legal Description
<u>7</u>	<u>NT89</u>	<u>Podocarpus Totara</u>	<u>Totara</u>	<u>61 Kuku East Road, Levin</u>	<u>167</u>	<u>Lot 1 DP 56764</u>

26. Amend Planning Map 7 to show new notable tree NT89 as attached.



LEGEND

ZONES

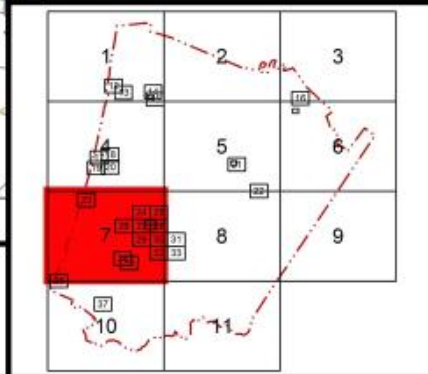
- Commercial Zone
- Industrial Zone
- Residential Zone
- Rural Zone
- Greenbelt Residential Zone
- Open Space Zone
- Residential Deferred Zone
- Greenbelt Residential Deferred Zone

OVERLAYS

- Greenbelt Residential Waitare Rise
- Greenbelt Residential Foxton Beach North
- Strathnaver Coastal Natural Character Area
- Strathnaver Coastal Hazard Area
- Muhunua West Forest Park
- Muhunua West Forest Park Coastal Natural Character and Hazard Area
- Low Density Area
- Medium Density Area
- Large Format Retail Area
- Town Centre Heritage/Character Area
- Foxton Tourism Area
- Pedestrian Area
- Coastal Natural Character and Hazard Area
- Flood Hazard Area (1:50,000 Rural Maps Only)
- Moutoa Floodway (1:50,000 Rural Maps Only)
- Versatile Land (LUC Class I & II Soil)

FEATURES

- Notable Tree
- Historic Heritage Building, Structure or Site
- Gas Transmission Pipeline
- National Grid Corridor (High Voltage Transmission Line)
- Designation
- Road



Scale 1 : 50,000

HOROWHENUA DISTRICT PLAN
RURAL

Planning Map 7

APPENDIX B: Schedule of Decisions on Submission Points

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
67.08		Taiao Raukawa Environmental Resource Unit		Accept
96.45	506.29	Federated Farmers of New Zealand Ernslaw One Ltd	Support	Reject Reject
96.46	506.30 527.08	Federated Farmers of New Zealand Ernslaw One Ltd Director-General of Conservation (DoC)	Support Oppose	Accept In-Part Accept In-Part Accept In-Part
27.04	517.12	Horizons Regional Council Horticulture NZ	In-Part	Reject Accept In-Part
96.47	506.31 517.13 527.09	Federated Farmers Ernslaw One Ltd Horticulture NZ Director-General of Conservation (DoC)	Support Support Oppose	Reject Reject Reject Accept
101.11		Director-General of Conservation (DoC)		Reject
101.12		Director-General of Conservation (DoC)		Accept
26.00		Horowhenua Astronomical Society		Accept In-Part
27.05	517.14	Horizons Regional Council Horticulture NZ	In-Part	Reject Reject
26.17		Horowhenua Astronomical Society		Accept In-Part
27.34		Horizons Regional Council		Reject
96.48	506.32	Federated Farmers Ernslaw One Ltd	Support	Reject Reject
101.13		Director-General of Conservation (DoC)		Reject
80.20		Todd Energy Ltd		Accept In-Part
92.21		KCE Mangahao Ltd		Accept In-Part
80.22		Todd Energy Ltd		Accept In-Part
92.24		KCE Mangahao Ltd		Accept In-Part
96.50	513.13	Federated Farmers Rayonier New Zealand Ltd	Support	Accept Accept

	517.11	Horticulture NZ	Support	Accept
80.24		Todd Energy Ltd		Accept In-Part
92.25		KCE Mangahao Ltd		Accept In-Part
101.14		Director-General of Conservation (DoC)		Accept In-Part
96.51	528.20	Federated Farmers Horizons Regional Council	Oppose	Accept In-Part Accept In-Part
80.03		Todd Energy Ltd		Accept In-Part
92.03		KCE Mangahao Ltd		Accept In-Part
101.15		Director-General of Conservation (DoC)		Accept In-Part
80.21		Todd Energy Ltd		Accept In-Part
92.22		KCE Mangahao Ltd		Accept In-Part
96.52	517.15 528.20	Federated Farmers Horticulture NZ Horizons Regional Council	Support Oppose	Reject Reject Accept
101.16		Director-General of Conservation (DoC)		Accept
26.02		Horowhenua Astronomical Society Inc		Accept In-Part
80.23		Todd Energy Ltd		Accept In-Part
92.23		KCE Mangahao Ltd		Accept In-Part
101.17		Director-General of Conservation (DoC)		Accept In-Part
96.14	506.08	Federated Farmers Ernslaw One Ltd	Support	Reject Reject
101.18		Director-General of Conservation (DoC)		Accept
98.26		Horticulture NZ		Accept
83.05	528.15	Ross and Margaret Hood Horizons Regional Council	Oppose	Reject Accept
101.42		Director-General of Conservation (DoC)		Accept In-Part
80.26		Todd Energy Ltd		Accept In-Part
92.17		KCE Mangahao Ltd		Accept In-Part
80.25		Todd Energy Ltd		Accept In-Part

92.26		KCE Mangahao Ltd		Accept In-Part
101.20		Director-General of Conservation (DoC)		Accept
16.00		Robert White		Accept
98.25		Horticulture NZ		Reject
96.49		Federated Farmers		Accept In-Part
25.00	525.16	Michael White Maurice and Sophie Campbell	Support	Accept In-Part Accept In-Part
11.17		Philip Taueki		Accept
60.11		Muaupoko Co-operative Society		Accept
116.00		Truebridge Associated Limited		Accept In-Part
101.70		Director- General of Conservation (DoC)		Reject
99.31		Transpower New Zealand Ltd		Accept In-Part
101.71		Director-General of Conservation (DoC)		Reject
55.12		KiwiRail		Accept
108.37		HDC (Planning Department)		Accept
1.00		Scotson & McKay		Accept