

RESOURCE MANAGEMENT ACT 1991

PROPOSED HOROWHENUA DISTRICT PLAN

HEARING OF SUBMISSIONS

DECISION OF HEARING PANEL

TOPIC: Report on District Plan
Open Space & Access to Water Bodies and
Surface Water

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

HEARING DATE: 10th 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 the Open Space Zone and Access to Water Bodies and Surface of Water.
- 1.2 A hearing into the submissions was held on 10 April 2013. The hearing was closed on the 13 September 2013.

Abbreviations

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

HDC	Horowhenua District Council
DoC	Department of Conservation
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 Claire Price for our assistance under s42A(1) of the RMA
One Plan	Proposed Horizons Regional Council One Plan
Proposed Plan	Proposed Horowhenua District Plan
The Act	Resource Management Act

2.0 OFFICER'S REPORT

- 2.1 We were provided with and reviewed the officer report prepared by Ms Claire Price on behalf of the Horowhenua District Council (HDC), pursuant to s42A of the Act prior to the hearing commencing. Her evidence addressed submissions on Chapters 4 and 11 of the Proposed Plan and rules in Chapter 20.
- 2.2 The Officer's report recommended that the policy framework for the Open Space Zone, and those relating to access to water bodies be retained largely unchanged. The only amendments suggested to improve reference within the plan to priority water bodies are set out in Schedule 12 and to ensure all values (cultural, heritage, conservation and recreation) inherent in water bodies were reflected in the policy framework. She considered that the submission seeking to manage light spill of the night sky be addressed through assessment criteria and that the rules relating to relocated buildings as a controlled activity be retained.
- 2.3 She recommended that the permitted activities rule be amended to provide for some conservation erosion protection and flood protection works undertaken by the Horizons Regional Council.
- 2.4 She recommended partial acceptance of submissions from New Zealand Defence Force relating to temporary military training exercises, but sought the retention of plan provisions relating to the night-time use of explosives and small arms, with particular reference to management of noise.
- 2.5 A minor amendment was proposed to address protection of sight distances at railway level crossings.

3.0 SUBMITTER APPEARANCES

The following submitters made appearances at the hearing:

- R.H. and M.A. Hood
- Rob Owen, New Zealand Defence Force
- Malcolm Hunt, Acoustic Consultant, for New Zealand Defence Force
- Emily Grace, Planning Consultant, for New Zealand Defence Force
- Penelope Tucker, Horizons Regional Council
- Allen Little, Michael White and Peter Shelton, Horowhenua Astronomical Society
- Sophie Campbell
- Charles Rudd

Philip Taueki (was heard at a separate hearing held 28 May and heard by all members of the District Plan Review Hearing Panel))

(A written statement was submitted on behalf of Todd Energy Ltd and KCE Mangahao Limited by Ms Lorelle Barry, planning consultant and Dr Huhana Smith Chairperson of Taiao Raukawa Environmental Resource Unit submitted a written presentation of her submission due to being unwell on the day of the Hearing)

4.0 EVALUATION

4.1 Chapter 4 Introduction

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
11.18	Philip Taueki	Include provisions restricting all development within the vicinity of Lake Horowhenua to prevent further contamination of this taonga.	511.04 HDC (Community Assets Department) - In-Part 519.13 Charles Rudd (Snr) - Support 527.00 Director-General of the Department of Conservation (DoC) - Support
11.19	Philip Taueki	No specific relief sought. Inferred: Amend Chapter 4 Introduction to clarify the ownership of Lake Horowhenua and restrict rather than provide access to and around the lake.	519.14 Charles Rudd (Snr) – Support
60.12	Muaupoko Co-operative Society	Include provisions restricting all development within the vicinity of Lake Horowhenua to prevent further contamination of this taonga.	519.31 Charles Rudd(Snr) - Support
60.13	Muaupoko Co-operative Society	No specific relief requested. Inferred: Amend Chapter 4 Introduction to clarify the ownership of Lake Horowhenua and restrict rather than provide access to and around the lake.	519.32 Charles Rudd(Snr) - Support

P.Taueki and the Muaupoko Co-operative Society have sought that the District Plan be amended to manage contaminants entering Lake Horowhenua, including restricting all development within the vicinity of Lake Horowhenua to protect water quality. The Hearings Panel is aware that historically there were discharges to the lake which adversely affected water quality and cultural values. In response to this, the Council have moved to a system of land-based treatment.

However it appears that the submitters have little faith in this alternative means of treatment. However engineering measures such as primary treatment and discharge to land rather than directly to receiving water, have not only been adopted at Lake Horowhenua, but extensively elsewhere in the country. This approach for the treatment of effluent and has replaced 'traditional' engineering solutions, which simply directed discharges of effluent and stormwater to the nearest water body. It is widely accepted in engineering terms as an effective means of avoiding contamination of water bodies, particularly in conjunction with primary treatment. It is acknowledged that some stormwater is still discharged to the lake. However the Council is committed to working in partnership with the Trustees, Domain Board, the Department of Conservation and the Horizons Regional Council to further address water quality issues.

We understand that there have been no discharges of effluent to Lake Horowhenua in recent years, and no further discharges to the lake are expected in the future. While the physical treatment of effluent is a responsibility of the District Council, the power to set standards and

impose conditions with respect to discharges to land and water under the RMA fall under the jurisdiction of the Horizons Regional Council. It is that body which sets standards relating to water quality, and if these are not met, can take the necessary enforcement action. Similarly, the regional plan also addresses standards required with respect to other effects of land use, such as stormwater disposal or the effects of land use practices on water quality. Matters relating an extension to the land-based system of effluent treatment are addressed in a separate decision on "Designations".

Mr Taueki's submission points have been made on the "Introduction" section of the District Plan, whereas the relief he seeks would have to be achieved through a more detailed policy, zoning and rules framework which would inevitably affect many other members of the community. The relief sought by the submitters would have major ramifications for thousands of households in the district. As already noted, a responsibility for the management of discharges to water is set by legislation at the Regional Council level - that of the Horizons Regional Council through its One Plan. The far reaching relief sought by the submitters cannot be given effect to through this submission, even if it could be justified, and for that reason is rejected.

A second distinct issue raised by P.Taueki and the Muaupoko Co-operative Society concerns public access around Lake Horowhenua. This prospect is opposed on the grounds that it is Maori freehold land, and there are sites of cultural significance around the lake margin. In his statement of submission, Mr Taueki stated *"there is no reference to the sites of cultural significance on the periphery of Lake Horowhenua, Lake Papaitanga and other water bodies that would preclude public access without causing cultural offence"*. He also stated that *"the provision to require esplanade reserves or strips along the coast and identified rivers, lakes and streams that are considered of significant value in the District is a complete repudiation of the values espoused Chapter One relating to Tangata Whenua"*.

Schedule 12 of the District Plan as notified identifies priority water bodies where it is anticipated that upon subdivision, land would be taken in the form of esplanade reserves or esplanade strips, in accordance with the provisions contained in Chapter 4 of the District Plan which contains objectives and policies concerning public access to water bodies. These provisions are in turn linked to Rule 24.2.5, which sets out requirements for esplanade reserves and esplanade strips, based on the classification of the water body in Schedule 12. In the case of Lake Horowhenua, it is classified as a "Group 1" priority water body on the grounds of natural, ecological, recreational/access and cultural values.

The taking of land by Councils upon subdivision is sometimes opposed by landowners in various parts of the country on philosophical grounds, usually in terms of issues of compensation and privacy. In this case of the esplanade provisions contained within the Horowhenua District Plan, not only have P. Taueki and the Muaupoko Cooperative Society raised public access as a concern, but it has also been raised by some members of the farming community as is discussed later in this decision (refer the discussion on the Hood's submission in Part 4.6 of this decision). The *reasons* for opposition from these parties are quite different, but both challenge the principle of taking land upon subdivision to provide public access along water bodies, whether it be Maori land in freehold or any other tenure, or other private land.

However there is a very important point of difference with respect to Lake Horowhenua which supports Mr Taueki's position. Unlike the situation adjacent to most water bodies in the district, private land does not directly adjoin Lake Horowhenua, because surrounding the lake is a "one chain strip" of land in Maori ownership. Section 230 (3) refers to the taking of an esplanade reserve

"along the bank of any river or along the margin of any lake....". Any subdivision of private land *outside* the one chain strip would be a subdivision of land which "would not be along" the margin of Lake Horowhenua. Consequently, there would appear to be no basis for acquiring an esplanade reserve or strip adjacent to Lake Horowhenua. If subdivision were to occur, it would require the subdivision of the one chain strip immediately adjacent to the lake margins in Maori ownership, which given its status and shape would seem to be quite unlikely, and we have no evidence that the Maori owners have expressed a wish to undertake any such subdivision in the future.

The Hearings Panel were only too well aware of the controversy surrounding the lake and its margins, and that with the passage of time there would be further developments relating to the lake, its management, the enabling or restricting of activities on and adjacent to the lake, and future restoration work. A proposed variation for identifying sites of cultural significance would also be highly relevant to this process.

With respect to the Hokio Stream which drains the lake, we understand that there is some general land that directly adjoins this stream on the southern side, with the "one chain strip" extending along its northern side. Part (but not all) of Hokio Stream is parallel to Hokio Beach Road and all of it is reasonably close to the road, which limits the utility of any potential esplanade reserve. Given the need for further consultation on Lake Horowhenua and its surrounds, the potentially limited utility of an esplanade reserve along Hokio Stream, and the close association between the lake and the stream itself, it was concluded that the issue of an esplanade reserve provisions in the District Plan needed to take account of both bodies of water concurrently. This waterway is categorised under Schedule 12 of the District Plan as a "Group 2" priority water body, based on its natural, ecological, recreational/access, and cultural values.

Accordingly, the Hearings Panel concluded that provision for taking an esplanade reserve around Lake Horowhenua should be removed, as it was not satisfied that when having regard to the one chain strip in Maori ownership, that the development of an esplanade reserve is either necessary or feasible in the context of this water body. A similar conclusion was reached with respect to the Hokio Stream. Accordingly it was resolved that submission points 11.19 (P. Taueki) and 60.13 (Muaupoko Cooperative Society) be accepted in part to the extent that the specification that an esplanade reserve be taken adjacent to Lake Horowhenua be removed. The Hearings Panel considered that it would not be appropriate to remove these water bodies from Schedule 12 to the District Plan, as they are significant water bodies in the context of Horowhenua District. Instead, it was considered it would be more appropriate to exclude the application of esplanade provisions adjoining Lake Horowhenua and the Hokio Stream under Rule 24.2.5. In arriving at these conclusions, we were not suggesting that public access around Lake Horowhenua was not appropriate at all. However we were mindful that the future management of the lake and access arrangements would inevitably be the subject of future consultation and negotiation, and could be revisited at a future point in time. Text changes to Rule 24.2.5 are attached as part of Appendix A to this decision.

The Hearings Panel was satisfied that an amendment of this nature was within the scope of submission points 11.19 and 60.13. That was readily apparent from the summary of the relief sought and from reading the full submission of the two submitters.

There were two other issues raised by Mr Taueki which the Hearings Panel considered should be given greater emphasis in the District Plan. The first of these was the recognition to be given to cultural sites, particularly with respect to Lake Horowhenua. The second was the need for greater recognition of the cultural significance of the lake itself. With respect to this, it was not entirely clear

to the Hearings Panel why public access would actually be *encouraged* to sites of cultural value (e.g. Policy 4.2.2)

To address these issues, the Hearings Panel resolved to make the following amendments;

- to amend Issue 4.2 and the Issue Discussion to clarify that public access should not have the effect of compromising sensitive cultural sites and areas particularly with respect to Lake Horowhenua;
- to amend Objective 4.2.1 (Public access to Water Bodies), Policy 4.2.6, and the Explanation and Principal Reasons so that potential effects on sites and areas of cultural significance are taken into account in considering public access to water bodies;
- to amend Policy 4.2.2 so that public access to water bodies is not a priority in terms of access to sites of cultural value.

The amendments to the text of the District Plan resulting from this decision are set out in Appendix A.

4.2 Issue (4.2) Access to Water Bodies

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
67.13	Taiao Raukawa Environmental Resource Unit	Amend Issue 4.2 to include more discussion on ongoing Maori relationships to access water bodies so that particular Māori customary rights to water bodies are recognised and maintained.	
96.15	Federated Farmers of New Zealand	Amend Issue 4.2 as follows: Maintaining and enhancing public access to water bodies and the coast is highly valued by the community. However, in maintaining and enhancing this public access, the operational requirements of adjoining landowners and landowner rights may <u>must not</u> be compromised, or <u>and</u> the other qualities of the water bodies and their margins including natural character, ecological values, and hazard risks may be <u>are not</u> degraded. Or words to this effect.	

Taiao Raukawa Environmental Resource Unit supported Issue 4.2 in part, but sought greater reference to Maori customary rights and water bodies, and how this relationship is to be recognised and maintained through procedures in the Marine and Coastal Areas (*Takutai Moana*) Act 2011. The reporting officer drew our attention to Policy 1.2.4 which states "*recognise and protect the cultural and spiritual values and characteristics of the coastal environment and waterways of special value to Tangata Whenua*". We agreed with the officer that this to some extent recognises the relief sought through the submission. Having regard to Dr Huhana Smith's

submission at the hearing, including the additional written submissions tabled at the Hearing, we accepted the officer’s recommendation that some amendments to the text of Issue 4.2 would be appropriate to provide greater recognition of cultural values and the need to consider Maori values in assessing the provision of access to water bodies. Reference should also be made to the amendments resulting from the submission by P. Taueki and the Muaupoko Cooperative Society, described under Part 4.1 above, which also affect the wording of Issue 4.2. The Hearings Panel resolved that the submission be accepted in part. The text changes are incorporated in Appendix A.

Federated Farmers expressed general support for the content of Issue 4.2, but sought a refinement to the wording to strengthen recognition of the effects of public access on the operational requirements of adjoining land uses, and on the natural values of the water body. In the Hearing Panel's opinion, there appears to have been a misunderstanding of what this introductory paragraph of Issue 4.2 is actually saying. It identifies as an issue that providing public access may in some circumstances compromise the operational requirements of adjoining landowners or the natural character, ecological values etc that waterway. Having identified this as an issue (or perhaps more correctly, a problem to be guarded against) the following objectives and policies contained provisions to address this potential issue (or problem). It appears the submitter may have interpreted the word "may" as meaning that these adverse effects are acceptable. We think proper reading of the introductory paragraph makes it clear that this is not the case.

For these reasons, the submission point was rejected.

4.3 Objective 4.1.1 Open Space Zone

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
98.28	Horticulture NZ	Amend Objective 4.1.1 as follows: Council’s parks and reserves are efficiently used and developed with a range of recreational activities and opportunities that meet the changing needs of community, while ensuring the uses and development are compatible with the character, <u>land uses</u> , and amenity of the open spaces and their surrounding environment.	
101.22	Director-General of Conservation (DoC)	Amend Objective 4.1.1 by adding wording to the effect as follows: “does not have significant adverse effects upon the environmental quality of the open space zone/areas, or on any surrounding land or water body”	

Horticulture NZ supported Objective 4.1.1, but sought an amendment to ensure the character, amenity and “land uses” within the open spaces and their surrounds are considered when developing any of the Council’s parks and reserves. The Hearings Panel considers this is a fairly

finely balanced issue of wording, but in the final analysis is of the view that the current reference in the Objective which reads "..... are compatible with the character and amenity of the open spaces and their surrounding environment" adequately encompasses consideration of effects on adjoining land use. Accordingly the submission point was rejected.

DoC sought greater emphasis on the recognition of adverse effects of development upon the environmental quality of the open space areas, or on any surrounding land or water body in the wording of the Objective itself. The reporting officer noted that while HDC's open spaces are predominately sports and neighbourhood parks where the primary issues from the use and development are impacts on character and amenity values, there are Council reserves that have particular natural qualities/values (e.g. native bush reserves). She recommended that it would be appropriate to address the thrust of the DoC submission with the use of more succinct wording through incorporating the words "special values" into Objective 4.1.1, with consequential amendments to the Issue Discussion, and the relevant constituent policies 4.1.6 and 4.1.9.

The Hearings Panel concurred with this, and recommended that the submission point be accepted in part. The text changes are contained in Appendix A.

Note: as a result of decisions made by the Hearings Panel on the Planning Maps (the Levin Golf Club), there will also be an amendment made to Objective 4.1.1 to make reference to privately owned open spaces.

4.4 Policies 4.1.3 – 4.1.7

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.23	Director-General of Conservation (DoC)	Amend Policy 4.1.3 as follows: Ensure the character, amenity and special values of individual parks and reserves are recognised <u>and protected</u> and recreational activities are compatible with the values of the site and the amenity values of the immediate environment.	509.00 New Zealand Historic Places Trust (NZHPT) - Support
117.04	New Zealand Historic Places Trust (NZHPT)	Amend Policy 4.1.3 to reflect heritage values of parks.	
67.12	Taiao Raukawa Environmental Resource Unit	Amend Policy 4.1.4 to reflect the following considerations: Claims to customary marine title or claims to common marine & coastal areas; and Recognise management and determination of areas of rare plant and bird life and sensitive coastal regions to be led by iwi and hapu.	
101.24	Director-General of Conservation (DoC)	Amend Policy 4.1.7 by either defining or explaining what is meant	511.05 HDC (Community Assets Department) – In-Part

Sub No.	Submitter Name	Decision Requested	Further Submission
		by "suitable places".	

DoC supports the intent of Policy 4.1.3, but have sought that the open space values are recognised "and protected" when contemplating new developments. The Hearings Panel considered that the balance of the policy as it is presently worded is appropriate. It relates to the Council's publicly owned reserves, the majority of which are for the purpose of public recreation, and some of which will undergo a process of limited change (as envisaged under Policy 4.1.4) in order to accommodate different recreational needs. The wording already makes reference to the need for compatibility with the values of the site, and for that reason no change to the wording is considered necessary. This submission point was accordingly rejected.

NZHPT supported Policy 4.1.3 in part, but sought better recognition of the heritage values inherent in parks and reserves. This raised a similar issue to the DoC submission point above, and consistent with that, the Hearings Panel took the view that reference to the "special values" already contained in the policy would encompass any relevant matters concerning heritage. This submission point was rejected on the basis that the existing policy wording is sufficient.

Taiao Raukawa Environmental Resource Unit sought that Policy 4.1.4 include consideration for claims to customary marine title, or claims to common marine and coastal areas, and the subsequent management of these areas to be led by Iwi and Hapu. At the hearing Dr Huhana Smith expanded on the role of Taiao Raukawa. She said that whanau groups own much of the coastline and noted that where Maori land reaches the sea and whanau have maintained an association with the area from 1840 to the present day without substantial interruption, they could apply for recognition of a protected customary right, or customary marine title or both under Section 101 of the Marine and Coastal Area (Takutai Moana) Act 2011. She described such arrangements as beneficial to the wider community, and added that Taiao Raukawa worked closely with the Horowhenua District Council on the appropriate way of recognising the special status of Tangata Whenua as a separate and distinct interest group.

The Hearings Panel acknowledged the comments of Ms Smith, but noted that it was considered that the content and thrust of her submission had already been recognised within the contents of Chapter 1 (Matters of Importance to Tangata Whenua) particularly under Policies 1.2.2 and 1.2.4. Specifically for this reason, it was not considered necessary to make an amendment to Policy 4.1.4 which has the much narrower ambit of how the Council's parks and reserves are managed. This submission point was rejected with respect to the requested change to Policy 4.1.4, but in doing so the Hearings Panel wishes to stress that the reason for this was that the submitter's concerns were already addressed elsewhere in the text of the Proposed Plan with additional text added to the Proposed Plan Chapter 5 Coastal Environment (refer section 4.2 of the Coastal Environment Hearing Decision).

DoC sought clarification of Policy 4.1.7, which directs the provision and management of storm water within the Open Space Zone. DoC sought clarification of the words "suitable places" with respect to the suggested use of open spaces for stormwater treatment. The reporting officer explained that the Council does not provide a reticulated system for disposal of stormwater from private property, which is currently managed by each individual property or development, typically by on-site collection and soakage. Stormwater from roads is collected and disposed of via a reticulated network. Currently a few reserves include provision for stormwater attenuation (e.g. Kennedy Park, Levin) or contain water bodies that collect stormwater (e.g. Holben Reserve, Foxton Beach). As noted earlier in these decisions, the use of ground soakage systems (such as swales)

has become commonplace nationally for the management of stormwater, including within Council open spaces, and the Council's Long Term Plan identifies the possibility of some of Council's parks and reserves further contributing to a future storm water management system. It would be difficult in advance to determine where such suitable places might be, although reserve management plans are one method. Overall, it was resolved that the relief sought by DoC would be difficult to establish with certainty and was essentially not necessary. For this reason, the submission point was rejected.

4.5 Objective 4.2.1 Public Access to Water Bodies

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.16	Federated Farmers of New Zealand	Amend Objective 4.2.1 as follows: Maintain and enhance public access to and along the coast, rivers, lakes and streams, at appropriate locations while preserving the natural character and other values of these water bodies and their margins <u>and recognising the right of private landowners to refuse access over private land.</u> Or words to this effect.	506.09 Ernslaw One Ltd - Support
11.20	Philip Taueki	No specific relief requested. Inferred: Amend Objective 4.2.2 to recognise and reference the cultural significance of waterways.	519.15 Charles Rudd (Snr) - Support
60.14	Muaupoko Co-operative Society	No specific relief requested. Inferred: Amend Objective 4.2.2 to recognise and reference the cultural significance of waterways.	519.33 Charles Rudd (Snr) - Support

Federated Farmers supports Objective 4.2.1 in part but sought additional wording which recognises the right of private landowners to refuse access over private land.

The objective provides a framework for public access in situations where land is taken for esplanade reserves or access is provided across esplanade strips. To this extent, it gives effect to Section 229 of the Act. There is otherwise no right of access over private land, but it would appear that Federated Farmers want this to be made explicit. The relief sought through the submission, namely to recognise the right to refuse access across private land, is part of common law. To that extent it is a matter separate to the content of the district plan, which in this case only provides opportunities for access to be made available when land is subdivided. While sympathetic with the sentiments contained within the submission, it is considered that the additional wording is not necessary in the context of a district plan objective or policy, and accordingly the submission point was rejected.

P. Taueki and Muaupoko Co-operative Society have sought reference to the cultural significance of waterways and particularly Lake Horowhenua in Objective 4.2.1. The Proposed Plan recognises and provides for cultural values of water bodies, both in Chapter 1, Tangata Whenua (Policy 1.2.4) and the values listed against Priority Water Bodies, Schedule 12. However, it is recognised that explicit recognition of cultural values of water bodies in Objective 4.2.1 is also appropriate and these submission points were accepted, with the addition of the words "cultural values" to the Objective. These have been included in the text changes in Appendix A.

4.6 Policies 4.2.2 – 4.2.7, Explanation & Principal Reasons and Methods

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.17	Federated Farmers of New Zealand	Amend Policy 4.2.2 as follows: Prioritise <u>Recognise</u> the needs for public access <u>where appropriate</u> to water bodies with significant natural/ecological, natural hazards, recreational/access and cultural values <u>whilst recognising the rights of private landowners to refuse access over private land</u> . Or words to this effect.	506.10 Ernslaw One Ltd - Support 517.16 Horticulture NZ - Support
11.21	Philip Taueki	No specific relief requested.	519.16 Charles Rudd (Snr) - Support
60.15	Muaupoko Co-operative Society	No specific relief requested.	519.34 Charles Rudd (Snr) - Support
96.18	Federated Farmers of New Zealand	Amend Policy 4.2.3 as follows: Require <u>where appropriate</u> esplanade reserves or strips along the coast and identified rivers, lakes and streams that are considered of significant value in the District <u>in accordance with Section 237 F of the RMA</u> .	
101.25	Director-General of Conservation (DoC)	Retain Policy 4.2.3 as notified.	
83.06	Ross Hood & Margaret Hood	Delete Policy 4.2.4. Or; Amend Policy 4.2.4 by being specific about other water bodies considered to fall under criteria.	
96.19	Federated Farmers of New Zealand	Amend Policy 4.2.6 as follows: Consider the reduction in width or waiver of the esplanade reserve or	

Sub No.	Submitter Name	Decision Requested	Further Submission
		<p>strips requirements where:</p> <p>The reduced width still provides for the use and enjoyment of the area;</p> <p>The purpose for the esplanade area can still be achieved;</p> <p>The creation of the esplanade area would adversely affect the natural, ecological, and cultural values of the water body and its margins;</p> <p>Public health and safety is protected;</p> <p>Conflicts with other recreational uses are minimised;</p> <p>Flooding and other natural hazards are managed; and</p> <p>Alternative public access is available.</p> <p><u>Compensation as per Section 237 of the RMA is impractical for the Council.</u></p> <p><u>The land has little or no value in terms of enhancing public access.</u></p> <p><u>Where the land is protected in perpetuity, provided that public access is secured along the margins of the coast, river or lake concerned.</u></p> <p><u>Protection of the riparian area is more appropriately achieved by an alternate protection mechanism.</u></p> <p><u>The subdivision involves only a minor boundary adjustment</u></p> <p><u>For reasons of public safety and/or security an esplanade reserve would be inappropriate. For example, where there are defence lands, existing road reserve, sensitive machinery, network utilities or works.</u></p> <p>Or words to this affect.</p>	
96.20	Federated Farmers of New Zealand	Retain Policy 4.2.7 as notified.	
83.07	Ross Hood & Margaret Hood	<p>No specific relief requested:</p> <p>Inferred: Amend Objectives and Policies in the Open Space Chapter</p>	

Sub No.	Submitter Name	Decision Requested	Further Submission
		which refer to the creation of public access/connections and acknowledge the effects of this access on rural dwellers and their farming operations can create privacy concerns.	
96.21	Federated Farmers of New Zealand	Retain Methods 4.2 as notified.	

Federated Farmers (96.17) have sought to amend Policy 4.2.2 to "recognise" rather than "prioritise" public access "where appropriate" to water bodies, and to ensure landowners have the right to refuse public access over private land.

The first part of the submission may have arisen because the submitter was unaware of the "Priority Water Bodies" identified in Schedule 12 to the District Plan, and labelled on the planning maps. These water bodies comprise the larger and most important water bodies in the District on the basis of their recreation, cultural, conservation values, and natural hazard risks. The purpose of this schedule is to identify those water bodies where the provision of esplanade reserves is a particular priority in the context of the entire stock of water bodies in the District.

As noted in our discussion under Section 4.5 above, it is considered that the refusal of access over private land is a matter of civil law rather than the resource management issue. For these reasons, the Hearings Panel considered that it would not be appropriate to make changes sought by the submitter, so accordingly both parts of this submission point were rejected.

Federated Farmers (96.18) also sought amendments to policy 4.2.3 such that requirements for esplanade reserves are qualified by the words "where appropriate" and that reference be made to Section 237F of the Act.

This matter is also being discussed in a similar context in part 4.1 of these decisions, with respect to the submissions by P. Taueki and the Muaupoko Operative Society, albeit that the basis of the submissions was different. The relevant provisions of the Act with respect to esplanade reserves are sections 77, 229 and 230. It is quite clear from the contents of these sections, and from case law, that esplanade reserves must be taken on allotments of less than 4ha unless a compelling case can be shown to the contrary, having regard to the various criteria in section 229. There is discretion available to increase or reduce the 20m width of any esplanade reserve that is required, but the onus is clearly on the Council to justify its position with respect to any departure from the required 20m standard. There is very limited discretion to waive the requirement for an esplanade reserve entirely. Those circumstances where esplanade reserve or strip requirements would be reduced or waived are covered by Policy 4.2.6.

The submitter's reference to Section 237F concerns the requirement for compensation to be paid where land is taken for esplanade reserves from lots of more than 4ha. Federated Farmers are concerned about the financial implications for the Council of taking esplanade reserves. The Council has attempted to adopt a policy of prioritising water bodies through Schedule 12, to avoid a situation where there is an expectation that esplanade reserves or strips will be taken along the many minor waterways found within the District. The Hearings Panel acknowledge that the submission is constructive, through recognising that there is a realistic limit to the extent to which esplanade reserves and strips can be taken, particularly from subdivisions over 4ha. However it

believes the approach of prioritising water bodies, rather than generally diluting the policy provisions, is a preferable approach.

However this and other submissions on Objective 4.2.1 and its attendant policies have raised concerns about the extent to which submitters are aware of the operation of Schedule 12 which contains the Priority Water Bodies to the District Plan. Elsewhere in submissions, Todd Energy and Mangahao KCE Ltd have specifically drawn attention to this issue. Such a reference is made under the "Methods for Issue 4.2 and Objective 4.2.1", but a more direct indication of the existence of the Schedule would assist readers of the plan. To that extent, the Hearings Panel considers it would be expedient to provide a cross reference under Policy 4.2.3 which specifically relates to these priority waterways, and would also provide a point of comparative reference with respect to Policy 4.2.4. Even if such an amendment were considered outside the scope of specific submissions, we consider it would fall within the ambit of Clause 16 (2) to the First Schedule to the Act. The text changes are included in Appendix A.

For this reason, submission point 96.18 of Federated Farmers was accepted in part, to the extent that a reference be incorporated below Policy 4.2.3 to Schedule 12, which lists "Priority Water Bodies".

P.Taueki (11.21) and the Muaupoko Co-operative Society (60.15) consider the requirement of esplanade reserves or strips along water bodies of significant value (Policy 4.2.3) to amount to a complete repudiation of the provisions in Chapter 1 (Matters of Importance to Tangata Whenua). No specific relief was sought, and it appeared to the Hearings Panel that the thrust of these submissions was essentially the same is that relating to public access around Lake Horowhenua discussed above in Section 4.1.

Unlike those earlier submissions (11.19 and 60.13) however, this submission appears to relate to **all** water bodies in the district, and if given effect to, would mean that the requirements under section 77 and 230 of the Act would have to be totally disregarded within Horowhenua District. For this reason, and the reasons given earlier in our Section 4.1, the Hearings Panel resolved that the submission points be rejected.

DoC (101.25) supports Policy 4.2.3 and seeks that it be retained as notified. As noted as has been made to this Policy, this submission point was accepted.

R. and M. Hood (86.06) oppose Policy 4.2.4 on the basis that it fails to provide clarity as to which water bodies might be subject to esplanade reserves and strip requirements. They also contend (86.07) that public access can have adverse effects on privacy, safety and the environment.

The "two-level" process whereby water bodies are identified for the purpose of esplanade reserves has been discussed previously in this decision, including in respect to the Federated Farmers submission on Policy 4.2.3 above. Policy 4.2.3 makes reference to "identified" water bodies, which are in fact those identified in Schedule 12 to the District Plan which are the "*rivers, lakes and streams that are considered of significant value in the District*". In terms of these waterways, the policy begins with the words "require esplanade reserves or strips"

Policy 4.2.4 on the other hand states that the Council will "consider esplanade strips as appropriate along the margins of other water bodies not identified for their significant values" In these circumstances esplanade strips would be required only where this contributed to the protection of conservation values, enabling public access or enabling public recreational use compatible with

conservation values. This creates what is effectively a hierarchy of relative importance for water bodies.

It is this policy which is of particular concern to the Hoods.

In her brief written submission, Mrs Hood began by criticising the subdivision of the hearing process into six or seven different sessions which she said discouraged submitters, and the officer's report appeared to reject almost all submissions out of hand. She said her family had lived in the area for 120 years and their opinions should be treated of equal value to those of 'expert' witnesses. She was particularly critical of the plans provisions encouraging public access, which she said would result in loss of privacy, littering, criminal damage, and a financial burden for the Council. She was of the view that the public had ample access to water bodies in the district.

As an initial point, the Hearings Panel had some sympathy with the difficulties that would be experienced by members of the public in coming to terms with district plans which were lengthy and complex documents. The submitters deserve credit for taking the effort to come to grips with the Proposed Plan and taking the time to present a submission to the hearing. The submitters may have been unaware of the linkage between the policy framework and the Priority Water Bodies identified in Schedule 12. This will be better addressed through the Proposed Plan through the proposed amendment set out in the discussion to Federated Farmers submission above, by the provision of a cross-reference under Policy 4.2.3. However, the Hearings Panel are convinced that the alternative method of hearing submissions (on a submitter by submitter basis, even if these involved submissions on completely different topics) would create even greater difficulties, and has rarely been adopted by other councils during the review of their plans. It would also result in all submissions, no matter how many, having to be heard by one hearings panel which would certainly lengthen the hearings process.

Mrs Hood questioned the necessity for further access along waterways. At this broader level, the Council is bound by the provisions of the legislation which in the case of allotments of less than 4ha, require a very strong case to be made to justify not taking esplanade reserves reducing the width. With respect to allotments of more than 4ha, the Council's approach has been to identify the Priority Water Bodies, and on other water bodies (which is the subject of Policy 4.2.4) only selectively take esplanade strips where doing so serves a useful purpose. Although the Council's options are limited by the legislation, on other small waterways where subdivisions of larger lots over 4ha are undertaken, the Council accepts that taking esplanade strips should only be undertaken in the circumstances covered under Policy 4.2.4. As the Council has no way of determining what land will be subdivided in the medium and long term future, it cannot identify the specific locations where esplanade strips on these larger lots might be taken. The reality is that for many of these 'lesser waterways' there is little real prospect of public access becoming available through the subdivision process.

Mrs Hood was particularly critical of the whole philosophy of taking esplanade reserves and strips, and in response to a question seemed to suggest that the legislation could be disregarded in that respect. Needless to say, the Hearings Panel did not consider that would be a realistic or lawful option. Horowhenua District Council is 'in the same boat' as every other District Council in New Zealand in this respect.

She expressed concerns about the potential loss of privacy that might be associated with providing for access to and along water bodies. However it seemed to the Hearings Panel that the implications of this occurring would be readily apparent at the time that a landowner made the decision to subdivide their land, and he/she could weigh that factor in the balance at that time.

Apart from other measures such as screening that might be considered when a decision on whether to subdivide was being taken, issues of privacy could apply to any landowner either rural or urban. These are issues that arise from the nature of the legislation itself, and not from the actions of the Council. We also consider that the submitter was on weaker ground in arguing that increasing access would result in greater vandalism, by way of an example in the District that she cited at the hearing. We consider that the kind of people that would vandalise private or public property would do so regardless of whether the land was in public ownership or not, and regardless of the existence of esplanade reserves or strips.

We are conscious of the submitter's criticisms with respect to the rejection of submission points. Nevertheless we have considered the content of this submission carefully. With respect to subdivisions of under 4ha, the Council's hands are largely tied by the provisions of the legislation, regardless of the actual benefits that others might argue would derive from public access.

Policy 4.2.6 does provide for circumstances where esplanade provisions might be reduced or waived, but it is quite another matter to suggest they should not be required at all in the District. This issue was also discussed in Section 4.1 of this decision with respect to the relief sought in the Taueki submission. For subdivision of allotments over 4ha, the Council has recognised that the taking of esplanade strips will not be appropriate in all circumstances, which is recognised through the identification of Priority Water Bodies in Schedule 12 which is linked Policy 4.2.3, and the provisions of Policy 4.2.4 where the taking of any esplanade strips would only occur where this achieved the purposes identified in the policy. It is not anticipated that Esplanade reserves or strips would be taken on the many small waterways in the district.

However the Hearings Panel accepted in part an amendment suggested by Federated Farmers with respect to Policy 4.2.6 as discussed below, which would go some way to meeting the concerns of the submitter. This would be to add an additional criterion that esplanade strips would not be taken where it would be of little or no value in terms of enhancing public access. The suggested text changes are further outlined in the discussion below and in Appendix A with respect to Policy 4.2.6, and for this reason it was resolved that the Hood submission be accepted in part.

Federated Farmers supports Policy 4.2.6 in part, but sought to expand the circumstances in that esplanade reserves or strips are to be waived. They have set out a range of circumstances where a waiver might be appropriate; we also note that there are seven such circumstances already contained as part of Policy 4.2.6.

One additional matter suggested by Federated Farmers are minor boundary adjustments, which on the face of it is has some merit, but unless "minor" could be realistically defined to provide sufficient legal certainty, it would be very difficult to administer.

The officer's report discussed the second bullet point included in the relief sought by Federated Farmers, which would provide for a waiver where "*the land has little or no value in terms of enhancing public access*". There may be circumstances where an esplanade reserve is isolated from the existing network of open spaces, and might be of little value to enhancing public access (or protecting conservation values, recreation and or for reduction in risk of natural hazards). However, on balance she concluded that the open space network along the priority water bodies was a long term aspiration, and to offer a waiver because the current value of the area is not considered to add value "would be short sighted".

Nevertheless, we think there is some merit in Federated Farmers submission. There will be circumstances where the pattern of land ownership, the size of the properties concerned and their

limited subdivisional potential, alternative access possibilities, limited potential for establishing a contiguous strip, and site-specific topographical features, mean that even in the longer term, taking an esplanade reserve or strip may serve little purpose. For this reason, we consider that it would be appropriate to add the following bullet point;

- "The taking of an esplanade reserve would be unlikely to be of value in terms of enhancing public access in the particular location concerned, even in the longer term"

Other matters raised in the Federated Farmers submission are already addressed, albeit in somewhat different ways, under the various bullet points already contained in Policy 4.2.6. The Hearings Panel resolved that the submission point be accepted in part to the extent of the wording changes set out above. The submission in support for Policy of 4.2.3 by DoC (101.25) was accepted.

Federated Farmers supported Policy 4.2.7 as notified and their submission point was accepted.

4.7 General Matters Raised in Submissions

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
11.22	Philip Taueki	No specific relief requested. Inferred: Include a list/schedule of cultural sites of significance in Chapter 4 where public access would to water bodies would not be appropriate.	519.17 Charles Rudd(Snr) - Support
33.01	Levin Golf Club	Amend Chapter 4 to make consequential amendments arising from the Levin Golf Club site (160 Moutere Road) being rezoned as Open Space.	
51.05	Waitarere Beach Progressive & Ratepayers Association (WBPRA)	No specific relief requested. Inferred: that Council land which may have potential for future infrastructure should not be rezoned Open Space without local consultation.	
60.16	Muaupoko Co-operative Society	No specific relief requested. Inferred: Include a list/schedule of cultural sites of significance in Chapter 4 where public access would to water bodies would not be appropriate.	519.35 Charles Rudd (Snr) - Support
67.09	Taiao Raukawa Environmental Resource Unit	No specific relief requested.	

Sub No.	Submitter Name	Decision Requested	Further Submission
83.08	Ross Hood & Margaret Hood	No specific relief requested: Inferred: Amend Objectives, Policies and Methods in the Open Space Chapter which refer to the taking of land for public access/connections and the implications on the cost of creating and maintaining these reserves and strips and calculating the value of the land taken.	
98.54	Horticulture NZ	Amend the definition of 'open space' refer to relief sought in Definitions Chapter.	
101.21	Director-General of Conservation (DoC)	Include a policy that provides for the management of riparian margins or to that effect.	

Mr Taueki and the Muaupoko Co-operative Society considered that Chapter 4 should manage the potential impact of providing public access to water bodies where access could be detrimental to the protection of sites of cultural significance located near or within the esplanade area. This matter was discussed extensively in paragraph 4.1 of this decision, which also includes a number of text changes which at least in part give effect to the relief sought through these submission points. For this reason these submission points were accepted in part, and the text changes are contained in Appendix A.

The Levin Golf Club supported the zoning of Open Space Zone over the Golf Course property from its previous Rural zoning.

The Levin Golf Club is a privately owned facility located to the west of Levin and Lake Horowhenua. The Golf Club was established in 1911, with substantial development occurring in the 1950s to create the 18 hole course, and associated facilities. The rezoning sought by the Levin Golf Club was considered under the General Provisions – (Part 4 Planning Maps) Hearings, whereby it was decided that the rezoning provided through the District Plan be upheld a position which was supported by the Club itself. Accordingly this submission point was accepted.

As a brief footnote to this submission point, as part of a separate decision relating to the Planning Maps and the rezoning of the Levin Golf Club site, an amendment is being made to Objective 4.1.1 to expand its ambit to address the development of both Council owned and privately owned open space.

WBPRAs noted that the Council holds designated land which could be potentially valuable for future infrastructure, and would like to be consulted should this land be rezoned Open Space. No specific relief was sought by the submitter.

We were advised that the Council designations in Waitarere Beach rolled over into the Proposed Plan include D130, D133, D134 and D157 and include reserves, the surf club and the Waitarere Beach Motor Camp. The new Open Space Zone underlies all of these designations. Other parks and reserves in Waitarere Beach not designated, but rezoned Open Space, include the Waitarere

Domain, the undeveloped walkway between Park Avenue and the foreshore, Holmwood Park and other smaller neighbourhood parks. Any future rezoning of Open Space in Waitarere Beach would require a plan change and consultation would be carried out with the community. With respect to future infrastructure developments in Waitarere, the existing (and rolled over) designations do not provide as of right for infrastructure other than that specifically associated with the use and development of a reserve. The submitter did not appear at the hearing to expand upon this submission. This submission point was accepted in part to the extent that any future rezoning proposals would be subject to consultation in the normal course of events.

Taiao Raukawa Environmental Resource Unit advocates for hapū tinorangatiranga and co-management opportunities for certain areas of coastline according to kawa or protocols set down by ancestral customary interests that continue today. No specific relief is sought in this submission point. However, we agree with the reporting officer that the subject material contained in this generic submission point is covered within Chapter 1, Matters of Importance to Tangata Whenua. Reference should also be made to Part 4.4 of these decisions. On this basis it was resolved that this submission point be accepted in-part.

R. & M. Hood sought amendments to Chapter 4 which would provide monetary compensation for a landowner where land is taken by the Council to fulfil the open space network and clarification on who would be responsible for maintenance.

Sections 237E-G of the RMA are relevant to compensation with respect to the taking of Esplanade reserves or strips. Esplanade reserves or strips are required where a proposed subdivision adjoins a water body of at least 3m in width for a stream or river, or 8 hectares in area for a lake. The RMA has specified an arbitrary distinction between subdivisions that create new lots of 4ha and greater, and those of less than 4ha. For subdivisions creating lots of *less than 4ha*, no compensation is required for an esplanade strip or reserve that will be vested with the Council. Compensation would however be required for the taking of esplanade reserves or strips from subdivisions that create *4ha lots or larger*, or which seek to take a reserve having a greater width than 20m. The Council is responsible for the costs associated with maintaining esplanade reserves, and the landowner in the case of esplanade strips. On a more general level, section 85 of the RMA makes it clear that compensation is not otherwise payable as a result of controls over land, unless a landowner can demonstrate that the land is rendered incapable of reasonable use.

On the understanding that the submitter was seeking that the Council commit to paying compensation, even in circumstances where this is specifically not required by legislation, this submission point was rejected.

Horticulture NZ is concerned that the definition of open space is broader than Council parks and reserves. This issue has also arisen during the hearings on definitions (submission point 98.05), where the subject of "open space" was also the subject of submission points from Federated Farmers and the New Zealand Pork Industry Board. As part of resolving that submission point, the Hearings Panel on Definitions resolved that the issue was more correctly one of specifying activities, rather than the matter of land ownership, and resolved to include a new definition which excluded any land that could be used for farming purposes. Consistent with the Hearing Panel's conclusions with respect to the submissions on "Definitions", it was resolved that submission point 98.54 be accepted in part.

DoC sought that the policy framework of the Open Space and Access to Water Bodies Chapter extend to include a policy to implement riparian management. This is already addressed through Objective 3.3.1 which calls for the protection of the "*natural character of lakes, rivers and other*

water bodies and their margins, from inappropriate use and development" and through Policy 3.3.6 which seeks to *"promote and encourage the development or maintenance of planted water body margins"*. These are reinforced through methods contained in Chapters 3 and 4, and to that extent there is no need for any additional policy provisions beyond those contained within the Proposed Plan. The Hearings Panel on submissions relating to Natural Values has separately made a decision to alter the wording in Policy 3.3.6 so that it refers to "riparian margins" rather than "planted water body margins". It was resolved that the submission point be accepted in part.

4.8 Chapter 20 Open Space Zone Rules 20.1– 20.4

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
40.29	House Movers Section of NZ Heavy Haulage Association Inc.	Amend Rule 20.1 to include "The placement of any Relocated building and/or accessory building on any site subject to the conditions at [rule ref]".	
40.43	House Movers Section of NZ Heavy Haulage Association Inc.	Amend Rule 20.1(d) as follows: "The construction, alteration of, addition to, removal, re-siting and demolition of buildings and structures for any permitted activity".	
95.06	New Zealand Defence Force (NZDF)	Retain Rule 20.1 (i) as notified	
27.22	Horizons Regional Council	Amend the Permitted Activity Conditions to provide for soil conservation, erosion protection, river control or flood protection works undertaken by, or on behalf of Horizons Regional Council as a permitted activity; and Provide for this criterion to be carried over to all other activity types in the Proposed Plan regarding soil conservation, erosion protection, river control or flood protection works undertaken by, or on behalf supervised by of Horizons Regional Council.	524.06 Higgins Group Holdings Ltd - Support
40.27	House Movers Section of NZ Heavy Haulage Association Inc.	Delete Rule 20.2I	
117.24	New Zealand Historic Places Trust (NZHPT)	Amend Rule 20.4 to include subdivisions that negatively impact on the heritage values of any sites	

Sub No.	Submitter Name	Decision Requested	Further Submission
		listed in Schedule 2.	

House Movers Section of NZ Heavy Haulage Association Inc sought that the placement of relocated buildings and accessory buildings be a permitted activity, instead of being classed as a controlled activity. Consequential changes sought were amendments to Rule 20.1(d), deletion of Rule 20.2(c) and the insertion of new permitted activity conditions in Rule 20.6.

This matter was considered in detail by the Hearings Panel hearing submissions relating to the Urban Environment (refer paragraphs 4.13 - 4.22 of that decision). For consistency, the same submission point has been made over a number of separate chapters. The only issue ultimately in contention was whether relocated buildings should be a permitted or controlled activity, with the latter involving a requirement for a bond. As a result of considering the evidence, it has been resolved that the status of relocated buildings remain as a controlled activity, and accordingly that the submission points be rejected.

NZDF supported the inclusion of temporary military training activities as permitted activities in Rule 20.1(l) and sought that this rule be retained. This submission was accepted.

Horizons Regional Council supported in part the permitted activity conditions, but sought amendments to ensure it could carry out its functions (soil conservation, erosion protection, river control, or flood protection works) in all of its river and drainage scheme areas as permitted activities. It was explained in the Officer's report that the original intent of the policy and rule framework was to provide for these works outside the Flood Hazard Overlay Areas due to their functional role in protecting people and property from the risks of natural hazards. However, Rule 20.1(g) as worded could be interpreted as not permitting these works outside of the Flood Hazard Overlay Areas. For this reason it was recommended that a separate permitted activity be added to Rule 20.1 to clarify this matter. In addition, a minor re-wording of Rule 20.1(g) was recommended to clarify that work is undertaken on "behalf" of Horizons rather than being "supervised" by them.

The decisions made on submissions under 'Natural Hazards' resolved that for consistency, the above recommended changes apply across all zones (refer paragraphs 4.40-4.42 of the Natural Hazards Hearing decision). It was considered that the amendments proposed better clarify the intentions of the District Plan, and for this reason this submission point of the Horizons Regional Council was accepted.

NZHPT sought an amendment to Rule 20.4 (Discretionary Activities) so that subdivisions that might negatively impact the heritage values of any sites in Schedule 2 (listed historic heritage buildings, structures and sites) be made discretionary activities. However under Rules 20.4(g)(iii) and Rule 20.4(h)(iii) subdivision within a heritage setting of any listed heritage building or structure, or subdivision on a listed heritage site, all of which are identified in Schedule 2, is a discretionary activity. The Hearings Panel assumes that the submitter may have been unaware of these provisions, which already appear to satisfy its concerns. To this extent, it was resolved that the submission point be accepted in part.

4.9 Rule 20.6 Permitted Activity Conditions

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
25.07	Michael White	Amend Permitted Activity Conditions 20.6 to include rules that control the emission of outdoor lighting at and above the horizontal and to limit the level and timing of lighting in the Open Space zone.	525.23 Maurice and Sophie Campbell - Support
26.14	Horowhenua Astronomical Society Inc.	Amend Permitted Activity Conditions 20.6 to include rules that control the emission of light at and above the horizontal and to limit the level and timing of lighting in the Open Space Zone.	
40.30	House Movers Section of NZ Heavy Haulage Association Inc.	<p>Include the following performance standards/conditions (or to the same or similar effect) for relocated buildings:</p> <p>Permitted Activity Standards for Relocated Buildings</p> <p><u>i) Any relocated building intended for use as a dwelling (excluding previously used garages and accessory buildings) must have previously been designed, built and used as a dwelling.</u></p> <p><u>ii) A building pre-inspection report shall accompany the application for a building consent for the destination site. That report is to identify all reinstatement works that are to be completed to the exterior of the building.</u></p> <p><u>iii) The building shall be located on permanent foundations approved by building consent, no later than [2] months of the being moved to the site.</u></p> <p><u>iv) All other reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed with [12] months of the building being delivered to the site. Without limiting (iii) (above) reinstatement work is to include</u></p>	

Sub No.	Submitter Name	Decision Requested	Further Submission
		<p><u>connections to all infrastructure services and closing in and ventilation of the foundations.</u></p> <p><u>v) The proposed owner of the relocated building must certify to the Council that the reinstatement work will be completed within the [12] month period.</u></p>	
95.49	New Zealand Defence Force (NZDF)	Retain the removal of conditions as notified	
108.19	HDC (Planning Department)	<p>Amend Rule 17.6.17(a)(i) as follows:</p> <p>All activities, except network utilities on sites less than 200m², shall be provided with vehicle parking spaces, manoeuvring areas, and loading facilities in accordance with the permitted activity conditions in Chapter 21.</p>	
5.07	Elaine Gradock	<p>No specific relief requested.</p> <p>Inferred: Retain proposed Rule 20.6.7(a)(i) noise limits.</p>	
95.30	New Zealand Defence Force (NZDF)	<p>Amend Rule 20.6.7(d) as follows:</p> <p>The noise limits in Rule 20.6.7(a) <u>and the provision of Rule 20.6.7 (b)</u> shall not apply to... Temporary Military Training Activities.</p>	
108.36	HDC (Planning Department)	<p>Amend Rule 20.6.7(d)(iv) as follows:</p> <p>Vehicles being driven on a road (within the meaning of Section 2(1) of the Transport Act 1962), or within a site as part of or compatible with a normal residential <u>recreation</u> activity.</p>	
95.40	New Zealand Defence Force (NZDF)	Retain Rule 20.6.8 as notified (conditionally).	
108.06	HDC (Planning Department)	<p>Amend Rule 20.6.18(b) as follows:</p> <p>Any temporary sign shall be displayed for no longer than two (2) calendar months in every calendar year <u>of a 12 month period</u> and removed within seven (7) days after the event. Temporary signs do not</p>	

Sub No.	Submitter Name	Decision Requested	Further Submission
		need to be on the site of the temporary activity.	
95.16	New Zealand Defence Force (NZDF)	Retain Rule 20.6.22 (a) (iii) as notified	
95.11	New Zealand Defence Force (NZDF)	Retain Rule 20.6.22(a)(i) as notified.	
95.54	New Zealand Defence Force (NZDF)	Retain Rule 20.6.22(a)(ii) as notified.	
95.25	New Zealand Defence Force (NZDF)	Retain Rule 20.6.22 (a) (iv) (v) as notified (conditionally)	
95.35	New Zealand Defence Force (NZDF)	Retain current provisions in the District Plan in regards to night time noise, which state; <u>Impulse Noise Resulting from the use of explosives and small arms is not to exceed 122 dBC.</u>	
55.33	KiwiRail	Include a new rule (20.6.X) to the conditions for permitted activities as follows: <u>No building or structure shall be erected, no materials shall be deposited, or vegetation planted that would obscure the sight distances from any road and rail intersection as shown in Diagram 2 (Chapter 21 - Traffic Sight Lines at Road and Rail Intersections).</u>	506.58 Ernslaw One Ltd – In-Part 521.11 NZ Transport Agency (NZTA) – In-Part

Michael White and the Horowhenua Astronomical Society Inc. (the Society) sought amendments to the permitted activity conditions in Rule 20.6 to include rules that control the emission of outdoor lighting.

The Society was represented at the hearing by three witnesses, Mr Allen Little, Mr Michael White, and Mr Peter Shelton. Also present was Ms Sophie Campbell, in support of the Society's submission.

The Society believed that wasteful outdoor lighting reduced the intrinsic and amenity value of the night sky. They considered that excessive light spill was a result of poor directional control of light, which also raised related issues such as the wasteful use of energy. The observation was made that night lighting in parks and sports grounds within the District revealed excessive floodlighting with light flowing beyond its target area. They drew attention to the Ministry for the Environment's Urban Design Protocol, which in their opinion supported the efficient use of lighting, noting that "directing light downward to only where it is needed, in just the amount needed, saves money, energy, and reduces greenhouse gases - all while protecting the environment, wildlife, and improving human health". Ms Campbell went further and was of the view that there should be no

requirement to have street lighting in rural areas, making reference to the Lake Tekapo Dark Sky Reserve.

Numerous submission points from these submitters have been lodged on the District Plan and generally raise the same issue over various zone rules and other plan provisions. Clearly lighting is required within some Council parks and reserves where more intensive recreational activities take place, although it is accepted that light spill needs to be managed so that lighting systems are efficient and the degree of illumination appropriate to what is required to enable night-time recreational activities to occur.

Rule 20.6.6 which manages light spill from a site zoned Open Space onto any site within an adjoining Residential Zone, typifies the trend in district plans for the management of light spill which was previously unregulated in many district plans. That said however, the purpose of the standards is the protection of residential amenity rather than the avoidance of atmospheric light spill as such, although the district plan controls are complementary in assisting with achieving both outcomes. The standard requires any light source within a park or reserve to be managed and directed in such a way that does not exceed 10 lux (lumens per square metre) measured either horizontally or vertically.

We were advised by the officers that the Subdivision and Development Principles and Requirements 2012 includes measures to ensure new street lighting in rural areas and sensitive urban areas are designed to have anti-glare shields fitted, or be of a type that restricts light dispersion into the sky. These measures are aimed directly addressing the protection of amenity values and either directly or indirectly managing light spill in a way that has less impact on the night sky.

The Hearings Panel concurred with the Reporting officer's suggestion that additional text could be added to the 'Assessment Criteria' for resource consents in circumstances where the light spill standard described above might be breached. The relevant provision is clause 25.6.3. The suggested criteria would directly address light spill effects on the night sky, and are set out in Appendix A. To the extent that this satisfies the relief sought by the submitters, the submission points are accepted in part.

NZDF (95.49, 95.16, 95.11 and 95.54) supports the proposed temporary military activity provisions where there have been changes from the Operative District Plan that have removed ambiguous and redundant permitted activity conditions. However the NZDF (95.25, 95.35, 95.40 and 95.30) also had concerns over the inclusion of new noise and vibration standards and undertook a technical review to understand the implications and whether the changes in the Proposed Plan provisions were appropriate from their point of view.

The New Zealand Defence Force (NZDF) lodged a number of submissions on various chapters in the District Plan seeking specific provision to undertake temporary military training (TMT) exercises, with particular emphasis on a rules framework which would enable such exercises to be undertaken as of right.

Background and evidence

The relevant Proposed Plan chapters each contained a rule specific to TMT. These were Rule 15.6.31 (Residential), Rule 16.6.23 (Industrial), Rule 17.6.25 (Commercial), Rule 19.6.30 (Rural) and Rule 20.6.22 (Open Space). A submission was also lodged with respect to the Greenbelt

Residential Zone, although this is subject to separate procedures under Plan Change 21 to the Operative District Plan.

The hearings of submissions on the various District Plan chapters above, was undertaken before different Hearings Panels. NZDF appeared at two of these hearings, those relating to the Open Space held on 10 April, and at the Urban Environment Hearing on 22 April. This reflects the dilemma faced by submitters who have lodged "plan wide" submissions which were common to different plan chapters, and which for reasons of practical necessity had to be heard on a chapter by chapter (i.e. topic) basis. Following the presentation of their submission to the Hearings Panel dealing with Open Space issues, NZDF wrote to Council expressing concern that the matters raised in their submission needed to be considered holistically in terms of the District Plan as a whole.

This concern was noted by the Council, and the need for a consistent decision across the different Hearings Panels and District Plan Zones is acknowledged. On 28 May 2013 the members of the various hearing panels which heard the NZDF submission met to consider this matter and other "cross chapter" issues. This included a review of previous evidence relating to provision for TMT including a response from Ms Emily Grace, the NZDF consultant planner, to the "officer's right of reply".

For such a discrete topic as this, an extraordinary effort both by NZDF and its consultants, and by Council officers and their advisers, was devoted to this subject. Ultimately, the only issue of disagreement turned on a very narrow point, that being the management of noise associated with live firing exercises and the use of explosives for TMT exercises undertaken at night. The debate became somewhat esoteric, particularly in respect to competing acoustic evidence.

NZDF are in the process of rolling out a standard suite of desired plan provisions - or template - for incorporation into district plans generally, of which the Horowhenua District Plan review was the first example within this process. It was common ground between the reporting officers for the Council and the witnesses for NZDF that in practice, it would be difficult to comply with the permitted activity standards if undertaking TMT exercises at night anywhere within the Horowhenua District, except in the Tararua Ranges, regardless of whether the standards proposed by the Council, or those proposed by NZDF, were adopted. This was primarily because of the pattern of settlement and density of development within the district, as confirmed by Mr Robert Owen, the Environmental Manager (Property) for NZDF. However NZDF were anxious to have a standard set of rules across district plans to manage TMT, and upon questioning, Mr Owen confirmed that in practice, a consequence of the rules promoted by NZDF would be to confine such training exercises to districts containing areas of sparsely populated land - given the need for large physical setbacks to avoid sensitive noise receptors such as dwellings, educational and health facilities.

The Hearings Panel sympathised with the objectives of the NZDF, and we are of the opinion that the most appropriate solution would be for a National Policy Statement, or National Standards, to be promulgated for the management of TMT exercises throughout the country. It seems to be monumentally inefficient for NZDF to have to go through a separate process on a Council by Council basis to provide for its training activities. However in the absence of such national standards, the Council was faced with having to consider standards which were appropriate to the circumstances of its own district.

The rule as originally drafted for each zone read as follows:

All temporary military activity shall, in addition to the other conditions, also comply with the following conditions:

- (i) no permanent structures shall be constructed;*
- (ii) the activity shall not require excavation (permanent or mechanical), unless provided for in this district plan;*
- (iii) the duration of any temporary military training activity shall not exceed 31 consecutive days;*
- (iv) noise shall not exceed the limits as set out in Table 2 of NZS 6803:1999 Acoustics - Construction Noise when applied at any noise sensitive activities;*
- (v) noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise; and*
- (vi) noise resulting from the use of explosives and small arms shall not occur between 8.00 PM and 7.00 AM the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.*

Mr Owen noted that while opportunities for weapons training would in practice be restricted to only a few locations in the District, he added that the activities of NZDF included search and rescue support, such as during the Manawatu floods of 2004, and the Christchurch earthquakes. The benefits to the community of the former activity especially, would be well known to the Council.

At the Open Space hearings on 10 April Ms Emily Grace, the resource management consultant for NZDF, noted that the issue of contention between her client and the Council was the appropriate control of the effects of noise from TMT exercises. She outlined the primary areas of difference as being whether the amendments sought by NZDF were within the scope of the original submission; the application of the construction standard to daytime noise associated with TMT; the management of helicopter noise; the appropriate assessment criteria for assessing any applications which did not comply with the permitted activity standards; the use of a separation standard for night-time TMT exercises; and the appropriate standard for assessing the noise of night-time TMT exercises where this separation distance could not be satisfied.

By the end of the hearings process, and following presentations at successive hearings, a point was reached whereby dispute between the position of Council officers and NZDF and its advisers was confined only to the last point. This was whether an alternative "permitted activity" noise standard should apply in situations where the required setback for night-time live firing and explosives exercises could not be met, or whether a resource consent for a "controlled activity" should be required.

However, turning first to the issue of scope, NZDF in its original submission points (95.25 and 95.35) offered qualified support to the proposed rules relating to TMT, but also sought that impulse noise resulting from the use of explosives and small arms should not exceed 122 dBC and noted that a technical review was under way which would further inform their submissions. On balance, we were satisfied that the amended and more detailed position subsequently taken by NZDF in the hearings was within scope, given that the wording of the original submission points were sufficient to put on notice any other potentially interested parties who might have sought to be involved as further submitters. Council officers also did not wish to pursue this matter further.

Returning to noise issues, Mr Malcolm Hunt is an acoustic consultant engaged by NZDF and has extensive experience in the field of environmental noise, and in advising NZDF on the particular characteristics of their activities. Based on field measurements at NZDF sites and modelling, he has devised an extensive suite of proposed rules to govern TMT activities with respect to noise. Mr Hunt prepared a 20 page report presented to the hearings entitled "*Re -Assessing Noise from Temporary Military Training in New Zealand - District Plan Recommendations*", dated January 2013. This noted that TMT exercises generated three distinct sources of noise, these being (1) mobile noise sources, (2) fixed noise sources, and (3) weapons firing, destination and pyrotechnics, of which management of the last of these was the key point of contention. He noted that "*TMT activities involving weapons firing, detonations and pyrotechnics require specialised noise management owing to the impulsive nature of the sounds which can be particularly annoying in some cases*" (page 17). He said that the L_{max} descriptor was not a suitable measure for quantifying noise from weapons firing and explosives. He said traditional methods for managing noise associated with TMT, such as those in the operative district plan, failed to take account of the wide variation in duration and scale of TMT, relied on old systems of measurement, and did not adequately address the need to deal with impulse noise. He added that within NZS 6802 it was specifically acknowledged that it was not designed to address impulse noise.

In his summary he said that "*the recommended amended controls (put forward by NZDF) do not rely solely on specifying decibel limits applicable to each category of noise source. Achieving a minimum threshold separation distance from sites where potentially noisy weapons firing or explosive sounds take place to the nearest noise sensitive receiver site is a key element of the approach recommended for this noise source category which has the highest potential to create adverse noise effects over wide areas. TMT activities involving firing and explosive sounds are proposed to be permitted to occur within the minimum separation distances outlined below, however in those cases the activities would be required to be undertaken in accordance with the certified Noise Management Plan to ensure the heightened risk of adverse noise effects is adequately managed*".

The separation distances proposed by Mr Hunt are based on ensuring that sound levels received beyond a specified distance will be "reasonable" - generally less than 55dBA during daytime and less than 45dBA at nighttime. The separation distance required from any dwelling, residential zoned site, or building used for residential, educational or health-care purposes would (in the case of live firing of weapons or explosive events) be at least 1500m during daytime and 4500m at night, and for firing blank ammunition at least 750m during daytime and 2250m at night.

In his draft set of rules, Mr Hunt proposed that where the setback conditions could not be satisfied, TMT exercises be a *permitted activity* subject to night-time sound levels not exceeding a peak sound pressure level of 90 dBC at or within the 20m notional boundary of any dwelling, residentially zoned site, or building used for residential, educational or health-care purposes. A Noise Management Plan should also be required, prepared by a suitably qualified expert and approved by the Council at least 15 working days prior to the activity taking place.

There was no disagreement between Mr Hunt and the Council's acoustic adviser, Mr Nigel Lloyd, on the appropriate standards for *daytime* activities involving weapons firing and explosives.

Mr Lloyd's written advice to the Council on the submissions of NZDF (dated 26 March 2013), was that "*it is unreasonable to have night-time firing of weapons and single or multiple explosions as permitted activities in the District Plan given the high potential for noise impact on residents, stock and wildlife and given the large separation distances required to achieve reasonable night-time*

criteria". He went on to say that the Proposed Plan provides for these night-time activities as controlled activities, and that this was appropriate, given that details on noise levels could be provided through the application and through a case-by-case assessment, including identifying the mitigation measures.

Council officers were of the opinion that the separation distances would be *"largely ineffective and inefficient in the Horowhenua context"*, on the basis that they would have the effect of largely ruling out the ability for NZDF to undertake TMT at night within most of the district, without the need for resource consent. However the Council officers and Mr Lloyd ultimately concluded that if NZDF were comfortable with these setbacks, and bearing in mind that they were intended to become a standard adopted nationally, they would offer a consistent approach and provided certainty from the perspective of NZDF. The effect will be to restrict night-time TMT exercises towards more sparsely populated districts, but NZDF were prepared to live with that.

However the Council officers and Mr Lloyd remained committed to their position that night-time firing of weapons and noise associated with single or multiple explosions should remain a controlled activity. Mr Lloyd contended that while noise from fixed or mobile sources is likely to be either relatively constant or slightly variable at a 'moderate' level, the firing of weapons or the use of explosives would produce sudden and impulsive noises at a very high level. Mr Lloyd advised the Council that in terms of the noise from TMT activities, any comparison with the 65 dB (L_{Amax}) night-time standard in the Proposed Plan was not appropriate, because it compared two different kinds of noise. He argued that the 90dBC noise standards suggested by NZDF would not be appropriate, because of the low background night-time noise levels within all zones in the district (residential, open space, and rural). This would make high impulse noise levels from TMT exercises very distinctive, and the Council was concerned about the potential for sleep disturbance. The Council also argued that the construction noise standard has no night-time peak sound limit, while hours of operation are restricted under the Proposed Plan at night for other activities generating impulse noise, such as bird scaring devices (Rule 19.6.7 (e)).

In response, Mr Hunt argued that the 90dBC level proposed by NZDF was appropriate as the *"...C- weighted peak level limit ensures both the impulse of nature of the sound and the low frequency content of the sound are adequately accounted for"* (Hunt, Statement of evidence, paragraph 5.10, 10 April). He said 90 dB would register at about the same level as L_{AFmax} 65dB at a distance of 1m from a car door closing. He added that the Council had agreed that noise from mobile and fixed sources would be acceptable when received at a noise sensitive site during night time, if it did not exceed L_{AFmax} 75dB, which is accepted as being (subjectively) twice as loud. In his view, compliance with the standard of 90dB promoted by NZDF would have a *de minimus* effect on sensitive receptors at or beyond the recommended buffer distances.

In terms of those matters that were agreed, such as the management of noise sources from TMT during daylight hours, control of helicopter noise etc, the rules contained in each zone relating to TMT changed substantially from those contained in the Proposed Plan when it was notified, except subclauses (a) (i - iii). The amended rules as proposed by the Council to manage TMT exercises are set out below. The proposed conditions varied slightly between those in residential zones, and those in other zones. In each case the remaining area of dispute between the Council and NZDF relates to the Council's proposed subclause (x) which states:

"No training activities involving the use of explosives and/or firing of weapons shall occur between 7.00pm and 7.00am".

Assessment

The Hearings Panel were faced with something of a dilemma given this conflicting evidence. We acknowledge the expertise of Mr Hunt who has demonstrated a high level of familiarity with the operational requirements of NZDF, with particular reference to the noise impacts of the various activities which undertakes. We had the benefit of hearing his evidence in person, although we did not hear a person from Mr Lloyd, who provided written comments to the Council on the material submitted by NZDF.

We also acknowledge the fact that from the time of the first hearing in August, a substantial measure of agreement has been reached on a range of plan provisions relating to TMT, the only issue in contention now relating to the narrow - but not necessarily insignificant - issue of how to best manage noise associated with live firing and use of explosives at night. While the significance of whether this activity should be subject to controlled activity status or a permitted activity status subject to conditions, is probably unlikely to be of more than academic significance in the context of Horowhenua District. However the Hearings Panel appreciates that given this is the first District Plan subject to the roll-out of model standards for NZDF activities, we appreciate that it is of wider significance to this submitter.

We were also of the view that controlled activity status for activities of this nature were unlikely to add significant value or additional protection for the community, noting that it is most likely that they would take place on the Rural Zone. However we note that provision for TMT is made in all zones, albeit with more restrictive provisions in residential zones.

We again reiterate that it would be a far more efficient process for such exercises to be subject to some form of national standard or policy.

Having regard to the evidence before us, the Hearings Panel resolved that the submission points be accepted.

As a final point, we note that submission Point 95.40 concerned 'vibration' (Rule 20.6.8). In her evidence to the Hearings Panel (dated 2 April 2013 - her paragraph 5.2) Ms Emily Grace for NZDF indicated that her client no longer wish to pursue an amendment to the rule on 'vibration'. Accordingly this particular submission point was rejected.

The consequential changes affect no less than five chapters of the District Plan, and involves reasonably significant amendments and additions to the text. This occurs in three places in the rules for each of the five chapters, being:

- the permitted activity conditions for the Residential, Industrial, Commercial, Rural, and Open Space Zones (i.e. Rules 15.6.31, 16.6.23, 17.6.25 and 19.6.30 and 20.6.22);
- the 'Matters of Control' for the Residential, Industrial, Commercial, Rural, and Open Space Zones (Rules 15.7.4, 16.7.6, 17.7.6, 19.7.10 and 20.7.6);
- an additional Clause within Chapter 28 for information requirements for a 'Noise Management Plan' for temporary military training activities.

The details of the text changes are contained in Appendix A to these decisions.

The House Movers Section of NZ Heavy Haulage Association Inc. (40.30) sought to insert new permitted activity conditions for relocated buildings.

The House Movers Section of NZ Heavy Haulage Association Inc submitted on the Proposed Plan provisions opposing controlled activity status for relocated buildings (dwellings), and have sought permitted activity status.

This is another issue which has arisen in across a number of hearings for the different zones (Open Space, Urban Environment and Rural Environment). The submission is discussed in detail in the decision of the Hearings Panel dealing with the Urban Environment. This decision retains the existing approach of Controlled Activity status and the use of bonds to ensure completion of works. An exemption to this has been provided for by making relocated buildings of up to and including 40m² in gross floor area to be a permitted activity across all zones. The basis for maintaining this approach, including reference to previous case law, is addressed in detail under that particular decision. Consistent with that decision, the submission point was rejected.

The HDC (Planning Department) sought three detailed amendments to improve the workability of the permitted activity conditions with respect to Vehicle Parking, Manoeuvring, and Loading standards, the Noise standards (Rule 20.6.7(d)(iv)) and temporary signs standards (20.6.18(b)).

Firstly, the HDC (108.19) sought to amend Permitted Activity Condition 20.6.15 which requires all permitted activities to comply with the standards set out in Chapter 21 for vehicle parking spaces, manoeuvring areas and loading facilities. (*In the summary of submissions this was inadvertently referred to as Rule 17.6.17 (a) (i)*).

The rule as notified excludes network utilities on sites less than 200m², from the Chapter 21 standards. However as Chapter 21 does not have any car parking standards for network utilities, it is considered that the exemption for smaller sites to be redundant. The Hearings Panel acknowledges this is the case, and this submission point was accepted.

Secondly, HDC (108.36) sought an amendment to the noise condition in Rule 20.6.7(d)(iv) which lists those activities that are *exempt* from the Open Space Zone noise standards. Subclause (iv) refers to vehicles being driven on a road "or within a site as part of, or compatible with, a normal residential activity". The concern was that the rule refers to "residential" activities, whereas the exemption is intended to exclude the noise of a tractor or mower carrying out maintenance on Council's parks and reserves. The officer pointed out that the alternative wording sought by HDC (recreation activities) might also have unintended consequences, as vehicles associated with "recreation" activities could potentially include motorsport, which because of its potentially major impacts should be required to comply with the Open Space Zone noise conditions.

It was agreed that the wording of the condition could be amended within scope to provide an exemption for "*vehicles used for the purpose of maintaining parks and reserves*". The text changes are contained in Appendix A, and accordingly the submission point was accepted in part.

Thirdly, HDC also identified an anomaly with the duration standard for temporary signs set out in Rule 20.6.18(b). The amendment sought was to clarify the intent of the standard which was to allow temporary signs to be installed for 2 months over a 12 month period. The Hearings Panel concluded that the amendment was appropriate, and the submission point was accepted. The text change is included in Appendix A.

KiwiRail sought the inclusion of specified conditions for rail intersection sight distances consistent with the provisions of Diagram 2 in Chapter 21, with application to the Open Space Zone. Ernslaw One in their cross submission supported KiwiRail, but sought that the relief sought be qualified such that the sight distance standard only related to new forestry planting and not established

forestry plantations. The basis of KiwiRail's submission, which was made elsewhere on other plan provisions, was to require a sight distance standard at rail and road intersections in order to maintain sufficient visibility at railway crossings. The sight distance standard is contained within Chapter 21 and other zone chapters, except for the Open Space Zone. The Hearings Panel agreed it would be consistent to include the sight distance standard in the Open Space Zone, and that the submission point be accepted. The concern of Ernslaw One was noted, but it was considered that this would be addressed by existing use rights, and that there would be few situations where existing commercial forestry plantations would be located in the Open Space Zone.

Elaine Gradock supported the introduction of the new noise limit during the shoulder time period of 7.00pm – 10.00pm. This submission point was accepted.

4.10 Rule 20.7 Matters of Control and Conditions for Controlled Activities

Submissions Received

(a) Subdivision of land

Sub No.	Submitter Name	Decision Requested	Further Submission
117.19	New Zealand Historic Places Trust (NZHPT)	Amend Rule 20.7.1(vi) as follows: Effects on significant sites and features, including natural, cultural, <u>archaeological</u> and historical sites.	
41.39	Powerco	Amend Rule 20.7.1(a)(iv) as follows The provision of servicing, including water supply, wastewater systems, stormwater management and disposal, streetlighting, telecommunications and electricity <u>and, where applicable, gas.</u>	

NZHPT sought to extend the matters of control for subdivisions so that consideration of effects on significant archaeological sites is specified. Objective 13.2.1 aims to protect significant historic heritage within Horowhenua District from inappropriate subdivision, use and development. Subdivision can have an adverse effect on archaeological sites, and accordingly it was resolved that the submission point be accepted. The text changes to clause 20.7.1 are contained in Appendix A.

Powerco requested the inclusion of the servicing requirements for subdivisions to extend to the provision of gas, where applicable. Clause 20.7.1 (iv) already makes reference to other utility services, so the inclusion of gas reticulation was considered appropriate, and the submission point was accepted. Text changes are contained in Appendix A.

(b) Relocated Buildings

Sub No.	Submitter Name	Decision Requested	Further Submission
40.28	House Movers Section of NZ Heavy Haulage Association	Delete Rule 20.7.3	

Sub No.	Submitter Name	Decision Requested	Further Submission
	Inc.		
40.36	House Movers Section of NZ Heavy Haulage Association Inc.	Delete any provision in the Plan for a performance bond or any restrictive covenants for the removal, re-siting, and relocation of dwellings and buildings. Inferred delete Rule 20.7.3(b).	

The House Movers Section of NZ Heavy Haulage Association Inc submitted on the Proposed Plan provisions opposing controlled activity status for relocated buildings (dwellings), and sought permitted activity status.

As noted under Part 4.9 above, this issue has arisen in across a number of hearings for different zones (Open Space, Urban Environment and Rural Environment). The submission is discussed in detail in the decision of the Hearings Panel dealing with the Urban Environment. This decision retains the existing approach of Controlled Activity status and the use of bonds to ensure completion of works. The basis for maintaining this approach, including reference to previous case law, is addressed in detail under that particular decision. Consistent with those conclusions, this decision point was rejected.

(c) Temporary Military Training Activities

Sub No.	Submitter Name	Decision Requested	Further Submission
95.45	New Zealand Defence Force (NZDF)	Retain Controlled activity status. Amend Rule 20.7.6 by clarifying matters for control, especially in regards to noise.	

The NZDF generally supported the 'Matters of Control' set out for temporary military training activities, but seek further clarification with respect to noise matters. Issues relating to the relief sought by this submitter are contained above in paragraph 4.9.

4.11 Rules 20.8 Matters of Discretion and Conditions for Restricted Discretionary Activities

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
94.23	NZ Transport Agency	Retain Rule 20.8.7(a)(iv) as notified	
94.27	NZ Transport Agency	Retain Rule 20.8.7(a)(v) as notified	

The NZTA supports the 'Matters of Discretion' that recognise the need for NZTA approval where the sign fronts a State Highway, and the requirement to consider the cumulative effect of signs. The two submission points were accepted.

4.12 General Matters Raised in Submissions on the Open Space Zone Provisions

Submissions Received

(a) National Environmental standards

Sub No.	Submitter Name	Decision Requested	Further Submission
93.24	The Oil Companies	Retain the cross reference to National Environmental Standards in Chapter 20.	

The Oil Companies expressed support for the cross reference to the National Environmental Standards in the Open Space Zone Chapter. The submission point was accepted.

(b) Relocated Buildings

Sub No.	Submitter Name	Decision Requested	Further Submission
40.10	House Movers Section of NZ Heavy Haulage Association Inc.	<p>Amend the Proposed Plan to provide for the relocation of buildings/dwellings as no more restrictively than a restricted discretionary activity (in the event that it is not a permitted activity) and that such application expressly provided for on a non-notified, non-service basis and subject to the following assessment criteria:</p> <p><u>Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for resource consent:</u></p> <p>i) <u>proposed landscaping</u></p> <p>ii) <u>the proposed timetable for completion of the work required to reinstate</u></p> <p>iii) <u>the appearance of the building following reinstatement</u></p>	

House Movers Section of NZ Heavy Haulage Association Inc have requested an alternative method of providing for relocated building/dwellings if the Proposed Plan does not provide for these activities as permitted activities. The relief sought is Restricted Discretionary Activity status, a non-notification clause, and better policy recognition for relocated buildings. The issue of the status of relocated buildings under the District Plan is covered extensively under the Urban Environment decision and summarised under Part 4.9 above.

This particular submission point has sought that should permitted activity status for relocated buildings not be adopted by the Council, then applications for relocated buildings should be processed non-notified, and not be more than a restricted discretionary activity. This is in fact very close to what the Council has adopted through its decisions, and by making the status of such

activities a controlled activity, has adopted a position which is actually more liberal than restricted discretionary status. Accordingly this particular submission was accepted.

(c) Earthwork Provisions on Heritage Sites

Sub No.	Submitter Name	Decision Requested	Further Submission
117.30	New Zealand Historic Places Trust (NZHPT)	Amend Chapter 20 to include earthworks rules that apply to historic heritage sites. Any earthworks within these sites should be restricted discretionary or discretionary activities dependent on the effects of the proposed earthworks on the heritage values of the sites.	

NZHPT are concerned that earthworks on sites containing heritage features could have potential adverse effects on heritage values, and request restricted discretionary activity consent for earthworks within heritage sites.

It appears that the submitter may have been unaware that this matter is already addressed in the District Plan. The Open Space Zone (and all other Zones in the Proposed District Plan) require discretionary activity consent for earthworks within the heritage setting of a Group 1 or 2 listed heritage item, and earthworks within a heritage site - refer Rule 20.4(g)(v), and Rule 20.4(h)(ii). The assessment matters in Chapter 25 that relate to earthworks within a heritage site (Clause 25.7.16(a)(xiv)), require an assessment of likely damage, modification or destruction of an archaeological site. Similarly, any earthworks involving destruction or irreversible change within a heritage site would need to be evaluated against the rarity and integrity of the listed heritage site under clause 25.7.16(b)(vi).

Given these circumstances the Hearings Panel resolved that it would be appropriate that the submission point of NZHPT be accepted in part, but with no text changes required, as the submitter's concerns are comprehensively addressed in the existing rules and assessment matters.

(d) Network Utility Rules

Sub No.	Submitter Name	Decision Requested	Further Submission
78.11	Telecom New Zealand Ltd	Delete all Network Utility Rules and Standards within the Open Space Chapter, other than specific cross referencing to particular standards in the zone chapters where relevant and reasonably applicable to network utilities.	
79.11	Chorus New Zealand Ltd	Delete all Network Utility Rules and Standards within the Open Space Chapter, other than specific cross referencing to particular standards in the zone chapters where relevant and reasonably applicable to	

Sub No.	Submitter Name	Decision Requested	Further Submission
		network utilities.	

Telecom and Chorus have both raised the same concern over the format of the Proposed Plan in terms of how it addresses rules and standards for network utilities. The submitters prefer a 'standalone' chapter for network utilities and the avoidance of cross references to particular zone standards.

The officers explained that the format of the rules and standards in the Proposed Plan is based on five zone chapters and three district-wide chapters – Vehicle Access, Manoeuvring and Roads (Chapter 21), Utilities and Energy (Chapter 22), and Hazardous Substances (Chapter 23). The district-wide chapters only set out permitted activity standards which apply across all five zones. The Zone Chapters provide identify the relevant activity status and any consent requirements within each zone.

The issue raised by the two submitters is a finely balanced one, as there are both advantages and disadvantages in terms of having all utility rules in one chapter. From the perspective of utility providers, having all the relevant rules in one chapter is clearly advantageous in terms of user-friendliness. On the other hand, a plan user who wishes to know what all relevant rules are within a particular zone would likely consider it preferable to have the relevant rules including utilities within the zone chapters. There is no "right" or "wrong" answer to this question.

The Open Space Zone permits the construction, operation, maintenance and upgrading of network utilities (Rule 20.1(f)(i)). The permitted activity conditions for network utilities in the Open Space Zone cross reference to Chapter 22 (Rule 20.6.16) and require compliance with any relevant Open Space Zone standards.

Overall, while conscious of the potential advantages from the submitter's perspective, the Hearings Panel concluded that the case for adopting the format sought by the submitters was not sufficiently compelling nature as to justify restructuring the plan to provide the relief sought. Accordingly it was resolved that the submission points raised by Telecom and Chorus be rejected.

4.13 Chapter 24 Rules Subdivision and Development Esplanade Reserves/Strips (Rule 24.2.5)

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
96.40	Federated Farmers of New Zealand	Amend Rule 24.2.5 as follows: (b) All esplanade reserves required by (a) above shall be vested in the Council, and have a minimum width of 50 metres, where adjacent to the Tasman Sea (from MHWS) and 20 metres, where adjacent to any other <u>Schedule 12</u> water body. And That Rules 24.2.5 (f) and (g) are retained.	

Sub No.	Submitter Name	Decision Requested	Further Submission
101.72	Director-General of Conservation (DoC)	Include a new sub-clause to Rule 24.2.5 as follows: <u>Topography along the margins of the water bodies which result in increased runoff from adjacent land.</u>	
83.10	Ross Hood & Margaret Hood	No specific relief requested. Inferred: Delete Rule 24.2.5 (h)	

Federated Farmers supported in part the esplanade provisions in Rule 24.2.5, but sought specific reference to 'Schedule 12 Priority Water bodies' in the text of Rule 24.2.5(b). Rule 24.2.5 (a) and (b) are intended to operate conjunctively, and specify when an esplanade reserve is required (i.e., subdivision of an allotment of less than 4ha), and where a subdivision adjoins a Group 1 Priority Water body, the extent of the esplanade reserve required (50m adjacent to the Tasman Sea, 20m for the Group 1 Priority Water Bodies).

The submission has merit as it correctly identifies the need for a reference in Rule 24.2.5 (b) enabling people to readily identify (by reference to Schedule 12) those water bodies where an esplanade reserve is required upon subdivision. The issue of better cross references to Schedule 12 has also been raised in other submissions. It is also considered appropriate that the word 'Group 1' is also added to correctly refer to those water bodies where esplanade reserves are required. On this basis, the submission point was accepted in part, with the text changes included in Appendix A.

DoC sought the amendment of Rule 24.2.5 to provide for consideration of topography along the margins of water bodies to allow for increased run-off from adjoining land. Unfortunately, the Hearings Panel did not hear any additional explanation as to specific reasons for the relief sought, and in the absence of such, resolved that the submission point be rejected.

Ross and Margaret Hood opposed Rule 24.2.5(h) which provides that Council may require esplanade reserves to be fenced to protect the values of the reserve. The submitter contends that such a requirement would be costly for private landowners, and it is assumed that the relief sought is that this clause be deleted.

The Officer's report noted that the esplanade reserve provisions in the Operative District Plan require all esplanade reserves to be fenced and to specify the type of fence expected. It was explained that in reviewing the provisions, that these fencing requirements could be financially onerous, but that in some circumstances fencing off an esplanade reserve would be appropriate - for example to prevent damage from stock. Accordingly the Proposed Plan states that "*Council may require reserves to be fenced to protect the value of the reserve*". The Proposed Plan is less demanding in terms of requiring fencing than the Operative District Plan that is replacing. However it can still require the protection of esplanade reserves from adjoining land use activities when considered appropriate.

In terms of costs to landowners, it has to be noted that this situation will only arise if a landowner chooses to subdivide their land, and even then, the fencing requirement is more flexible than was the case in the past. The potential cost of any fencing would be assessed by a subdivider as part of the decision-making process they would undertake in making a decision as to whether or not to

subdivide their land. The Hearings Panel concluded that on balance, the requirement is set out in Rule 24.2.5 (h) was reasonable. It was resolved that the submission point be rejected.

4.14 Rule 24.2.6 Subdivision and Development Access Strips

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
83.11	Ross Hood & Margaret Hood	Amend Rule 24.2.6(b) so that all areas are specifically named and documented so there can be no misunderstanding of which areas are involved.	

Ross and Margaret Hood oppose in part Rule 24.2.6(b) which states that with respect to access strips, *"notwithstanding any other provisions or rules in the District Plan, in respect of any unscheduled water body, heritage item or site or area of significant conservation values, an access strips shall only be created where there is a demonstrated need for public access or protection of conservation or recreational values"*.

The submitter also made reference to this matter in their submission to the hearing, which was based on uncertainty as to which water bodies or other features which might be subject to the taking of an access strip, and the necessity for such access arrangements.

Those waterways subject to proposed esplanade reserve provisions are contained in Schedule 12 to the District Plan. Generally, the purpose of access strips is to provide for relatively rare circumstances where access is required "to" rather than "along or adjacent to" features such as a river or stream. The circumstances where this may be appropriate will depend entirely on whether a subdivision is undertaken by a landowner, and the utility or otherwise of an access strip is completely dependent on where that subdivision is located, the need for public access, factors such as topography, as well as the nature of the subdivision itself. While ideally it would be preferable to provide a greater degree of certainty, it would be very difficult in advance to determine when an access strip might be required, as the location and nature of future subdivisions are completely unknown. However requiring access strip is linked specifically to whether the land is subdivided or not; it cannot be simply imposed on a landowner unless that person is undertaking a subdivision, and even then, is not likely to be required in most cases. If the council wished to take land to provide access outside of the subdivision process, then it would need to undertake a designation and pay compensation.

The Hearings Panel acknowledges the point that the submitter was attempting to make, but in recognition of the above factors, resolved that submission point be rejected.

4.15 Chapter 11 – Water and Surface of Water, 11.1 Issue Discussion

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
67.17	Taiiao Raukawa Environmental	Amend Issue Discussion 11.1 by including a new sentence at the end	

Sub No.	Submitter Name	Decision Requested	Further Submission
	Resource Unit	of paragraph 5 as follows: <u>Other areas of Māori land in the district have Ngā Whenua Rahui kawenata or covenants under the Reserves and Conservation Acts.</u>	

Taiao Raukawa Environmental Resource Unit supported in part the ‘Issue 11.1 Discussion for Activities on Surface of Water’, subject to an amendment which acknowledges other areas of Maori land are also protected and managed as reserves under the Reserves Act and Conservation Act. The submission refers to Nga Whenua Rahui, which is a contestable Ministerial fund established in 1991 to provide funding for the protection of indigenous ecosystems on Maori land. Its scope covers the full range of natural diversity originally present in the landscape. Issue 11.1 relates to activities on the surface of water.

The Hearings Panel considers it is appropriate that reference be made to Nga Whenua Rahui in the text set out under the issue, and accordingly the submission point was accepted. The text changes are contained in Appendix A.

4.16 11.1.2 Policy and Methods

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
101.62	Director-General of Conservation (DoC)	Amend Policy 11.1.2 through explaining what “significant values” means within this policy or define the term “significant values”.	
101.63	Director-General of Conservation (DoC)	Amend Method section 11.1 by providing a list of these existing management arrangements.	

DoC sought clarification on what was meant by ensuring that the “significant values” of waterways and their margins are recognised and provided for in the wording of Policy 11.1.2. The Plan also refers to existing management arrangements for certain lakes in the district, and the submitter seeks clarification what these arrangements are.

The “significant values” referred to in the policy are contained in Issue 11.1, and include landscape, ecology, significance to Tangata Whenua, and recreational values. They are also described in Objective 11.1.1. The Hearings Panel are satisfied that the values which DoC seeks to have clarified are already contained in the objective, and inform the subsidiary policies, including Policy 11.1.2. For this reason, the Hearings Panel considers the intent of further submission point 101.62 is already addressed, and no change to the Policy is required. On this basis this particular submission point was rejected.

However, merit was seen in the submitter’s suggestion that the ‘Methods for Issue 11.1 and Objective 11.1.1’ be expanded by making reference to management arrangements for specific water bodies, notably Lake Horowhenua, and Lake Papaitonga. Accordingly submission point 101.63 was accepted, and the text changes are contained in Appendix A.

4.17 Rule 19.6.4 (Rural Zone) Permitted Activity Standards - Setbacks from Priority Water Bodies

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
108.08	HDC (Planning Department)	Amend Rule 19.6.4(a)(v) and 19.6.4(a)(x) as follows: (v) 20 metres from <u>the bed of</u> any water body listed in Schedule 12 - Priority Water Bodies. (x) 20 metres from the bed of any water body listed in Schedule 12 - Priority Water Bodies.	528.29 Horizons Regional Council - Support

The HDC (Planning Department) sought a minor wording change to Rule 19.6.4(a)(v) to clarify the building setback from priority water bodies identified in Schedule 12, specifically to make it clear where the 20m building setback is measured from. The addition of a reference to “bed” would provide the necessary clarity, because the term “bed” (of a river or lake) is defined in the RMA, and is commonly in used in planning documents. The Hearings Panel considered the amendment proposed by the officers was appropriate and this submission point was accepted. The text change is contained in Appendix A.

4.18 Rule 19.6.28 (Rural Zone) Permitted Activity Standards - Activities on the Surface of the Water

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
95.48	New Zealand Defence Force (NZDF)	Amend Rule 19.6.28 as follows: Any activity on the surface of any lake or river (<u>excluding any temporary military training activity</u>) shall not....	
27.30	Horizons Regional Council	Amend Rule 19.6.28(b) to provide clarification.	

NZDF sought an amendment to the permitted activity standard (Rule 19.6.28) which manages activities on the surface of water. Although the subject of the submission is TMT activities on the surface of water, the rule relates to the Rural Zone provisions. The amendment seeks to exclude temporary military training activities from the surface of water rules, so that these activities only operate under the specific “temporary military training activity rule and standards”.

Rule 19.1(i) permits activities of a recreational nature on the surface of any water body, subject to the criteria in Rule 19.6.28. Temporary military training activities are permitted in the Rural Zone under Rule 19.1(r) subject to performance standards under Rule 19.6.30. The definition of ‘temporary military training activity’ specifically includes “*an activity on the surface of any water body, undertaken for Defence purposes*”.

The Officer's report argued that given that the activities provided for in Rule 19.1(i) and 19.6.28 apply to *recreation* activities, these rules did not apply to temporary military training activities. The definition of "temporary military training activities" includes defence activities undertaken on the surface of water, and are managed by the provisions in Rule 19.1(r) and 19.6.30.

While the Hearings Panel agreed that at first sight there might appear to be some element of possible ambiguity in terms of the application of the rules, the distinction between TMT activities on one hand, and recreational activities on the other, was sufficiently clear such that no change to the rules was required. For this reason the submission point was rejected.

Horizons sought an amendment to Rule 19.6.28(b) to clarify the wording and scope of this permitted activity standard, which manages structures erected, moored or placed on or above any water surface with reference to an exclusion for road bridges. At the hearing Ms Penelope Tucker (Horizons Regional Council) expanded on her concerns that the rule was unclear, and that the rule also had the potential to duplicate the Proposed One Plan rules. Following her presentation, the Hearings Panel requested that the reporting officer revisit this issue in consultation with Horizons.

The role of a district council as set out under section 31 of the RMA includes the "control of any actual and potential effects of activities in relation to the *surface* of waters in rivers and lakes". Section 13 of the RMA regulates the use of the *beds* of lakes and rivers, and it is a regional council responsibility.

Following discussion between the officers, we were presented with a brief report outlining amended text as agreed between Horizons and Horowhenua District Council. The proposal was to amend Rule 19.6.28 so that it only addressed the size and height of structures that are on the surface of water, with all other structures (in, on, over and under the bed of a river or lake) being managed by Rule 16.12 of the Proposed One Plan.

It was noted that structures on the surface of the water which were supported by other structures on the bed of a river (such as a bridge) would require consideration under both the district and regional plans, with the former focusing on visual effects.

The agreed text changes were to amend rule 19.6.28 (b) to limit its ambit to structures erected, moored or replaced on any water surface, by removing the 'exclusion' relating to bridge structures, and adding an advisory note cross referencing to the provisions of the Proposed One Plan.

The Hearings Panel concurred with the wording arrived at between the officers of the two councils and resolved that the submission point be accepted in part. Text changes are contained in Appendix A to this decision.

4.19 Schedule 12 – Priority Water Bodies

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
80.04	Todd Energy Ltd	Delete Schedule 12 OR Amend Chapter 3 as requested in Submission points 92.03, 92.21-92.17 to clarify the purpose and	524.07 Higgins Group Holdings Ltd - Support

Sub No.	Submitter Name	Decision Requested	Further Submission
		application of Schedule 12.	
92.04	KCE Mangahao Ltd	Delete Schedule 12 OR Amend Chapter 3 as requested in Submission points 92.03, 92.21-92.17 to clarify the purpose and application of Schedule 12.	524.08 Higgins Group Holdings Ltd - Support

Todd Energy Ltd and KCE Mangahao Ltd both opposed the inclusion of Mangaore Stream in Group 2 of Schedule 12.

Although the submitters were not represented at the hearing, the Hearings Panel did receive a written statement prepared by Ms Lorelle Barry of Sigma Consultants, on behalf of the submitter. It was noted that Todd Energy owned land in the Tararua foothills and provided management support for the Mangahao Power Station.

The written statement noted that Mangaore Stream was listed as a Group 2 'Priority Water Body', and that the implications of its inclusion in Schedule 12 were unclear. For this reason there was concern that the listing could limit the operations of the Power Station. There was also concern at the lack of linkages within the Proposed Plan between the objectives/policies and rules including Schedule 12, and that the officer's report had not adequately addressed the concerns raised in the submission.

These submissions have arisen on various chapters of the review of the District Plan. Schedule 12 of the Proposed Plan sets out what are defined as "Priority Water Bodies" and are split into two groups. Group 1 listed coastline and various major rivers and lakes within the district which are seen as having the highest values in terms of such factors as natural, ecological, recreational, cultural, and other values, as well as their significance in terms of the desirability of public access to and from these water bodies. Those in Group 2, which include the Mangaore Stream, are of lesser significance, but are still considered to be important waterways for the purpose of the values listed above. The Officer's report explained that the selection of these waterways is based on provisions within the operative District Plan, the "default RMA provisions (Section 230), where every water body over 3 metres in width is subject to an esplanade reserve or strip", but most importantly, the contents of the Open Space Strategy undertaken as background to the preparation of the Proposed Plan.

The primary significance of the provisions in Schedule 12 is to identify those water bodies which are the most significant such features in the district, and which have significant values in terms of their natural, ecological, recreational and cultural characteristics. It also identifies those waterways where the taking of esplanade reserves or strips upon subdivision will be undertaken, as is required under the subdivision provisions of the RMA. The Hearings Panel agreed that the linkages within the Proposed Plan between Schedule 12 and the objectives and policies were ambiguous for plan users. That said, it understands that the purpose of Schedule 12 is to identify water bodies on the basis of their significance and potential recreational and environmental values, with respect to taking of esplanade reserves upon subdivision. Accordingly the significance of the listing in Schedule 12 is that should subdivision be undertaken adjacent to the Mangaore Stream, including on land owned by the submitter, it was probable that an esplanade reserve would be sought. It is perhaps unfortunate that the submitter was unable to be represented at the hearing so that the

specific implications for subdivision (if any) in terms of the operation of the power station, could be further explored.

Earlier in Part 4.6 of this decision a similar concern was raised by Federated Farmers, and the Hearings Panel have agreed to provide a reference below Policy 4.2.3 to provide a specified link between that policy (which relates to Esplanade reserves or strips) and Schedule 12.

In terms of the appropriate response to the submission point, it was noted that Ms Barry's conclusions called for clear links between Schedule 12 and other strategies used to interpret the chapter. Given the clarification provided for under the wording of Policy 4.2.3 (refer Appendix A for text changes), it was considered the most appropriate course of action was that the submission point be accepted in part.

5.0 SECTION 32

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 section 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.

The primary issue arising through submissions concerned the taking of esplanade reserves and esplanade strips upon subdivision. These submissions broadly fell into three groups, being those from P. Taueki and Muaupoko Cooperative Society concerning the taking of esplanade reserves in terms of effects on cultural sites of significance to Maori; submissions from Federated Farmers and others with respect to imply access across private land, or the effects on adjoining private land resulting from public access; and the clarity of plan provisions and their application, raised in submissions from KCE Mangahao Limited and Todd Energy with respect to their particular property interests. Apart from the Taueki submission, the only submission questioning the entire validity of taking esplanade reserves and strips was a submission from R. and M. Hood.

The background to these issues was addressed in the course of this decision, notably in Parts 4.5 4.6, 4.9 and 4.19. The challenge to the taking of an esplanade reserve around Lake Horowhenua has been addressed through recognition that the presence of an existing strip of Maori land around this water body effectively meant that the taking of such a reserve would not be possible, quite apart from any cultural considerations.

In terms of the other submissions, the Hearings Panel was satisfied that the taking of esplanade provisions was clearly mandated by the provisions of the legislation itself, having regard to sections 77, 229 and 230 of the RMA. The Panel did not consider that having regard to the legislation and to case law, that there was an ability to completely waive a requirement to take esplanade reserves or strips entirely with respect to waterways within the District. In this respect, Horowhenua District Council was following the same requirements as every other district council in New Zealand. It was satisfied that identifying 'priority' waterways in the district through Schedule 12, and requiring esplanade reserves or strips adjacent to these waterways was an efficient and effective way of giving effect to the legislation. In terms of other waterways, taking esplanade reserves or strips on a more limited case-by-case basis, and incorporating within Policy 4.2.6 those circumstances where it would not be appropriate to take esplanade reserves or strips upon subdivision reflected an appropriate policy balance.

Considerations where esplanade reserves or strips would not be taken could include sensitive sites of cultural significance, or circumstances in which even in the longer term, the acquisition of esplanade reserves or strips is unlikely to provide usefully for public access. The RMA (unlike in the UK for example), does not provide for a "right to roam" principle, and does not imply that there is a right of direct access across private land - this is a separate issue. The trigger for taking esplanade reserves is a decision made by a landowner to subdivide land to create allotments of less than 4ha adjacent to water bodies, and in any other circumstances compensation is payable and/or designation required. Overall, the Hearings Panel was satisfied that the provisions contained in the plan, subject to the amendments made through decisions, satisfy the requirements of Section 32 of the Act.

The second issue arises with respect to regulating the activities of temporary military training exercises (TMT). In the final analysis, agreement was reached on the manner in which most TMT exercises were managed with respect to district plan requirements between Council officers and representatives of NZDF, with the exception of night firing exercises and use of explosives. The Hearings Panel however wishes to record it considers the current process whereby each district council determines its own requirements for managing these activities (which are of nationwide significance and application for NZDF activities) to be completely inefficient, and the requirements of NZDF would be better achieved through a national standard or similar process. It is perhaps ironic that this is in fact what NZDF is trying to achieve through a submission process on individual district plans.

None of the submissions made on the Proposed Plan involved adding additional objectives, policies or rules, or making existing provisions more restrictive, and accordingly no changes were made to the plan provisions which have the effect of increasing their regulatory impact.

There were no challenges seeking the removal of objectives and policies, or submissions that the rules be made more liberal with respect to the demolition or alteration of heritage buildings, and the officer's reports made no reference to any specific section 32 challenges made through submissions.

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

Chapter 4 Open Space and Access to Water bodies

1. Amend Objective 4.1.1 Open Space Zone as follows:

Objective 4.1.1

Council's parks and reserves and identified privately owned open spaces are efficiently used and developed with a range of recreational activities and opportunities that meet the changing needs of community, while ensuring the uses and development are compatible with the character, ~~and~~ amenity and special values of the open spaces and their surrounding environment.

2. Make consequential amendments to 4.1 'Issue Discussion', and to Policy 4.1.6 and Policy 4.1.9 as follows:

4.1 Issue Discussion

....

The parks and reserves have many similar characteristics and amenities, such as a predominance of open space over built structures. In addition, some individual parks and reserves have special features and values, and include natural qualities, cultural significance or heritage interests. Furthermore, parks and reserves are located within residential and rural environments, where conflicts can arise at their boundaries.

Policy 4.1.6

Manage non-recreation activities to ensure these activities are compatible with the recreation, character, ~~and~~ amenity and special values of the Open Space Zone.

Policy 4.1.9

Manage the nature, scale and level of environmental effects from activities and built structures in the Open Space Zone to minimise adverse effects on the character, ~~and~~ amenity and special values of properties in the adjoining Residential Zone.

3. Amend Issue 4.2 as follows:

Issue 4.2:

Maintaining and enhancing public access to water bodies and the coast is highly valued by the community. However, in maintaining and enhancing this public access, the operational requirements of adjoining landowners and landowner rights may be compromised, or the other qualities of the water bodies and their margins including natural character, ecological values, sensitive cultural sites and areas, and hazard risks may be degraded.

4. Amend 4.2 'Issue Discussion' paragraph 1, and insert a fourth paragraph as follows:

However, in providing for this access, care needs to be taken to ensure it is in a form that does not adversely affect the operational requirements of landowners, such as farming operations or hydro energy generation activities, as well as degrading the natural character, ~~or~~ ecological values or cultural values of the water bodies and their margins.

...

The relationship that Maori have with water bodies (and their margins) is to be recognised and provided for when considering the maintenance and enhancement of public access networks to and along lakes, rivers and other water bodies in the district. It is important that public access does not take place in a manner which degrades cultural value of sites of significance to Tangata Whenua, and where this might be the case, consultation is undertaken with them with respect to the creation of public access, particularly in respect to Lake Horowhenua. No esplanade requirements apply with respect to Lake Horowhenua, as it is already surrounded by a strip of land in Maori ownership, as is one side of Hokio Stream which drains the lake.

5. Amend Objective 4.2.1 Public Access to Water Bodies as follows:

Objective 4.2.1

Maintain and enhance public access to and along the coast, rivers, lakes and streams, at appropriate locations while preserving the natural character, cultural values and other values of these water bodies and their margins, and where the need for the protection of sites and areas of significance to Tangata Whenua is taken into account.

6. Amend Policy 4.2.2 as follows:

Policy 4.2.2

Prioritise the need for public access to water bodies with significant natural/ecological, natural hazards, and recreational/access ~~and cultural~~ values.

7. Add the following note after Policy 4.2.3:

Note: Refer to Schedule 12 which identifies Priority Water Bodies in the District

8. Amend the third bullet point of Policy 4.2.6 and add two additional bullet points reading as follows:

- The creation of the esplanade area would adversely affect the natural, and ecological ~~and cultural~~ values of the water body and its margins;
- The creation of the esplanade area would adversely affect sensitive sites or areas of significance to Tangata Whenua;

- The taking of an esplanade reserve or strip would be unlikely to be of value in terms of enhancing public access in the particular location concerned, even in the longer term.

9. Add an additional paragraph to the Explanation and Principal Reasons for Policies 4.2.1 - 4.2.7 before the final paragraph, reading as follows:

The appropriateness of providing public access which might affect sensitive sites or areas of significance to Tangata Whenua, or the form of that access, has to be considered carefully in terms of potential adverse cultural impacts. There are sites of particular significance in the vicinity of Lake Horowhenua and its margins, which are important to Muaupoko.

Chapter 11 Water and Surface of Water

10. Amend the 11.1 'Issue Discussion' as follows:

Some of the District's water bodies are managed as public or private protected areas. For example, the surface water of Lake Horowhenua has been declared a public domain and is under the control of the Horowhenua Lake Domain Board. Lake Papaitonga (also known as Lake Waiwiri) is managed by the Department of Conservation as part of the Papaitonga Scenic Reserve. Other small lakes are managed under Queen Elizabeth II Covenants and the Te Ture Whenua Act 1993 reserves. Other areas of Māori land in the district have Ngā Whenua Rahui kawenata or covenants under the Reserves and Conservation Acts.

The control over activities on water surfaces is an additional and separate function vested in the District Council by the RMA.

11. Amend Methods for 11.1 and Objective 11.1.1 as follows:

Methods for Issue 11.1 and Objective 11.1.1

The following ~~Existing~~ private and public management arrangements for ~~certain~~ Lakes Horowhenua and Lake Papaitonga would seem to operate quite effectively:-

- Horowhenua Lake Domain Board and the Horowhenua Lake Trustees; and
- Papaitonga Scenic Reserve, managed by DoC.

Duplication of roles under the RMA may be inappropriate.

Chapter 15 Residential Zone

12. Amend the temporary military training activity permitted activity conditions (Rule 15.6.31) for the Residential Zone as follows:

15.6.31 Temporary Military Training Activities

- (a) *All temporary military training activities shall, in addition to the other conditions, also comply with the following conditions:*

- (i) *No permanent structures shall be constructed.*
- (ii) *The activity shall not require excavation (permanent or mechanical), unless provided for in this District Plan.*
- (iii) *The duration of any temporary military training activity shall not exceed 31 consecutive days.*
- (iv) *Noise generated from mobile sources (other than weapons firing and use of explosives) shall be assessed in accordance with and not exceed the limits as set out in NZS 6803:1999 Acoustics - Construction noise when applied at any noise sensitive activity.*

Noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise.

- (v) *Noise generated from any fixed source (other than weapons firing and/or use of explosives) shall not exceed the following limits when measured at the site boundary:*

- On any day -

- 7.00am – 7.00pm: 55 dB $L_{Aeq(15min)}$
- 7.00pm – 10.00pm: 50 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 45 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 75 L_{AFmax}

Noise levels shall be measured and assessed in accordance with the provisions of NZS 6801:2008 Acoustics - Measurement of environmental sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental noise.

- ~~(vi) *Noise resulting from the use of explosives and small arms weapons shall not occur between 8.00pm and 7.00am the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.*~~

- (vi) *Noise generated from the use of helicopters shall be assessed in accordance with NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas and comply with the limits set out therein.*

Noise levels shall be measured in accordance with NZS6801:2008 Acoustics - Measurement of Sound.

- (vii) *Any training activities involving the use of explosives and/or firing of weapons shall comply with either:*

(a) the separation distances identified in Table 15.3; or

(b) If minimum separation distances In Table 15.3 cannot be met:

- *Daytime sound levels do not exceed a peak sound pressure level of 120 dBC when measured at the site boundary; and*
- *Night time sound levels do not exceed a peak sound pressure level of 90 dBC when measured at the site boundary; and*
- *Provided the New Zealand Defence Force produces and undertakes the activity in accordance with a Noise Management Plan submitted to the Council at least*

15 working days prior to the activity being undertaken (refer 28.2.X for information requirements for Noise Management Plan).

Table 15.3: Separation Distances for Temporary Military Training Activities involving explosives and/or weapons.

<u>Type of military noise source</u>	<u>Standards</u>	
	<u>Time (Monday to Sunday)</u>	<u>Separation distance required from any site within the Residential Zone</u>
1. <u>Live firing of weapons and single or multiple explosive events</u>	7.00am to 7.00pm <u>(daytime hours)</u>	<u>At least 1500m</u>
	7.00pm to 7.00am <u>(night time hours)</u>	<u>At least 4500m</u>
2. <u>Firing of blank ammunition</u>	7.00am to 7.00pm <u>(daytime hours)</u>	<u>At least 750m</u>
	7.00pm to 7.00am <u>(night time hours)</u>	<u>At least 2250m</u>

13. Amend the temporary military training activities ‘Matters of Control’ (Rule 15.7.4) as follows:

15.7.4 Temporary Military Training Activities

(a) Matters of Control

~~(i) The avoidance, remedying or mitigating of any adverse effects on the environment.~~

(i) The size and positioning of buildings and structures;

(ii) The measures used to avoid, remedy or mitigate adverse effects from excavation;

(iii) Methods to manage effects on the amenity and character of the area as a result of non-compliance with the noise and duration permitted activity conditions;

(iv) The actual and potential adverse effects on the safety and efficiency of the road network, as a result of additional traffic generation for a prolonged period of time; and

- (v) The provision of safe and efficient vehicular access and on-site car parking to avoid, remedy or mitigate potential traffic effects.

Chapter 16 Industrial Zone

14. Amend the temporary military training activity permitted activity conditions (Rule 16.6.23) for the Industrial Zone as follows:

16.6.23 Temporary Military Training Activities

- (a) *All temporary military training activities shall, in addition to the other conditions, also comply with the following conditions:*

- (i) *No permanent structures shall be constructed.*
- (ii) *The activity shall not require excavation (permanent or mechanical), unless provided for in this District Plan.*
- (iii) *The duration of any temporary military training activity shall not exceed 31 consecutive days.*
- (iv) *Noise generated from mobile sources (other than weapons firing and/or use of explosives) shall be assessed in accordance with and not exceed the limits as set out in, NZS 6803:1999 Acoustics - Construction noise when applied at anythe notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary.*

Noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise.

- (v) *Noise generated from any fixed source (other than weapons firing and use of explosives) shall not exceed the following limits when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary:*

• On any day -

- 7.00am – 7.00pm: 55 dB $L_{Aeq(15min)}$
- 7.00pm – 10.00pm: 50 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 45 dB $L_{Aeq(15min)}$
- 10.00am – 7.00am: 75 L_{AFmax}

Noise levels shall be measured and assessed in accordance with the provisions of NZS 6801:2008 Acoustics - Measurement of environmental sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental noise.

- ~~(vi) Noise resulting from the use of explosives and small arms weapons shall not occur between 8.00pm and 7.00am the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.~~

(vi) Noise generated from the use of helicopters shall be assessed in accordance with NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas and comply with the limits set out therein.

Noise levels shall be measured in accordance with NZS6801:2008 Acoustics - Measurement of Sound.

(vii) Any training activities involving the use of explosives and/or firing of weapons shall comply with either:

(a) The separation distances identified in Table 16.1; or

(b) If minimum separation distances in Table 16.1 cannot be met:

- Daytime sound levels do not exceed a peak sound pressure level of 120 dBC when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Night time sound levels do not exceed a peak sound pressure level of 90 dBC when measured at or within the 20 metre notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Provided the New Zealand Defence Force produces and undertakes the activity in accordance with a Noise Management Plan submitted to the Council at least 15 working days prior to the activity being undertaken (refer 28.2.X for information requirements for Noise Management Plan).

Table 16.1: Separation Distances for Temporary Military Training Activities involving explosives and/or weapons.

<u>Type of military noise source</u>	<u>Standards</u>	
	<u>Time (Monday to Sunday)</u>	<u>Separation distance required from any residential dwelling unit or building used for noise sensitivity activities in any Zone, and any site within the Residential Zone or Greenbelt Residential Zone</u>
<u>1. Live firing of weapons and single or multiple explosive events</u>	<u>7.00am to 7.00pm (daytime)</u>	<u>At least 1500m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 4500m</u>

<u>2. Firing of blank ammunition</u>	<u>7.00am to 7.00pm</u>	<u>At least 750m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 2250m</u>

15. Amend the temporary military training activities 'Matters of Control' (Rule 16.7.6) as follows:

16.7.6 Temporary Military Training Activities

(a) Matters of Control

- ~~(i) The avoidance, remedying or mitigating of any adverse effects on the environment.~~
- (i) The size and positioning of buildings and structures;
- (ii) The measures used to avoid, remedy or mitigate adverse effects from excavation;
- (iii) Methods to manage effects on the amenity and character of the area as a result of non-compliance with the noise and duration permitted activity conditions;
- (iv) The actual and potential adverse effects on the safety and efficiency of the road network, as a result of additional traffic generation for a prolonged period of time; and
- (v) The provision of safe and efficient vehicular access and on-site car parking to avoid, remedy or mitigate potential traffic effects.

Chapter 17 Commercial Zone

16. Amend the temporary military training activity permitted activity conditions (Rule 17.6.25) for the Commercial Zone as follows:

17.6.25 Temporary Military Training Activities

- (a) *All temporary military training activities shall, in addition to the other conditions, also comply with the following conditions:*
 - (i) *No permanent structures shall be constructed.*
 - (ii) *The activity shall not require excavation (permanent or mechanical), unless provided for in this District Plan.*
 - (iii) *The duration of any temporary military training activity shall not exceed 31 consecutive days.*
 - (iv) *Noise generated from mobile sources (other than weapons firing and use of explosives) shall be assessed in accordance with and not exceed the limits as set out in, NZS 6803:1999 Acoustics - Construction noise when applied at anythe notional*

boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary.

Noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise.

- (v) Noise generated from any fixed source (other than weapons firing and/or use of explosives) shall not exceed the following limits when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary:

• On any day -

- 7.00am – 7.00pm: 55 dB $L_{Aeq(15min)}$
- 7.00pm – 10.00pm: 50 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 45 dB $L_{Aeq(15min)}$
- 10.00am – 7.00am: 75 L_{AFmax}

Noise levels shall be measured and assessed in accordance with the provisions of NZS 6801:2008 Acoustics - Measurement of environmental sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental noise.

- ~~(vi) Noise resulting from the use of explosives and small arms weapons shall not occur between 8.00pm and 7.00am the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.~~

- (vi) Noise generated from the use of helicopters shall be assessed in accordance with NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas and comply with the limits set out therein.

Noise levels shall be measured in accordance with NZS6801:2008 Acoustics - Measurement of Sound.

- (vii) Any training activities involving the use of explosives and/or firing of weapons shall comply with either:

(a) The separation distances identified in Table 17.1; or

(b) If minimum separation distances in Table 17.1 cannot be met:

- Daytime sound levels do not exceed a peak sound pressure level of 120 dBC when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Night time sound levels do not exceed a peak sound pressure level of 90 dBC when measured at or within the 20 metre notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Provided the New Zealand Defence Force produces and undertakes the activity in accordance with a Noise Management Plan submitted to the Council at least 15 working days prior to the activity being undertaken (refer 28.2.X for information requirements for Noise Management Plan).

Table 17.1: Separation Distances for Temporary Military Training Activities involving explosives and/or weapons.

<u>Type of military noise source</u>	<u>Standards</u>	
	<u>Time (Monday to Sunday)</u>	<u>Separation distance required from any residential dwelling unit or building used for noise sensitivity activities in any Zone, and any site within the Residential Zone or Greenbelt Residential Zone</u>
<u>1. Live firing of weapons and single or multiple explosive events</u>	<u>7.00am to 7.00pm (daytime)</u>	<u>At least 1500m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 4500m</u>
<u>2. Firing of blank ammunition</u>	<u>7.00am to 7.00pm</u>	<u>At least 750m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 2250m</u>

17. Amend the temporary military training activities ‘Matters of Control’ (Rule 17.7.6) as follows:

17.7.6 Temporary Military Training Activities

(a) Matters of Control

~~(i) The avoidance, remedying or mitigating of any adverse effects on the environment.~~

(i) The size and positioning of buildings and structures;

(ii) The measures used to avoid, remedy or mitigate adverse effects from excavation.

(iii) Methods to manage effects on the amenity and character of the area as a result of non-compliance with the noise and duration permitted activity conditions;

- (iv) The actual and potential adverse effects on the safety and efficiency of the road network, as a result of additional traffic generation for a prolonged period of time; and
- (v) The provision of safe and efficient vehicular access and on-site car parking to avoid, remedy or mitigate potential traffic effects.

Chapter 19 Rural Zone

18. Amend Rural Zone permitted activity conditions (building setbacks) in Rule 19.6.4(a)(v) and (x) as follows:

19.6.4 Building Setbacks from Boundaries and Separation Distances

- (a) All buildings shall comply with the following setbacks:

(v) 20 metres from the bed of any water body listed in Schedule 12 – Priority Water Bodies.

...

(x) 20 metres from the bed of any water body listed in Schedule 12 – Priority Water Bodies.

19. Amend Subclause (b) of Rule 19.6.28 'Activities on the Surface of the Water' as follows:

~~Any structure erected, moored, or placed on or above any water surface but excluding any bridge or other structure forming part of the roading resource, or the maintenance, replacement or upgrading of network utilities, shall not exceed 10 m² gross floor area and shall not exceed 3 m height of the water surface.~~

Note: The Proposed One Plan manages all structures in, on, or under the beds of rivers and lakes. Therefore, any anchors or piles used in conjunction with any structure permitted by the Rule 19.6.28 (b) must be assessed against the Horizons Regional Council Proposed One Plan in terms of Section 13 of the RMA.

Further, any works in relation to the damming or diversion of any water; or discharges to water must be assessed against the Proposed One Plan in terms of Sections 14 and 15 of the RMA.

~~Additional resource consents or permits may be required from the Horizons Regional Council in respect of other aspects of the activity including structures on the bed of any river or lake; damming or diversion of any water; or discharges to water in terms of Sections 13, 14 and 15 of the RMA.~~

Note: Rule 19.6.28 has immediate legal effect from 14 September 2012.

20. Amend the temporary military training activity permitted activity conditions (Rule 19.6.30) for the Rural Zone as follows:

19.6.30 Temporary Military Training Activities

(a) All temporary military training activities shall, in addition to the other conditions, also comply with the following conditions:

- (i) No permanent structures shall be constructed.
- (ii) The activity shall not require excavation (permanent or mechanical), unless provided for in this District Plan.
- (iii) The duration of any temporary military training activity shall not exceed 31 consecutive days.
- (iv) Noise generated from mobile sources (other than weapons firing and/or use of explosives) shall be assessed in accordance with and not exceed the limits as set out in, NZS 6803:1999 Acoustics - Construction Noise when applied at any the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary.

Noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise.

- (v) Noise generated from any fixed source (other than weapons firing and/or use of explosives) shall not exceed the following limits when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary:

- On any day -

- 7.00am – 7.00pm: 55 dB $L_{Aeq(15min)}$
- 7.00pm – 10.00pm: 50 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 45 dB $L_{Aeq(15min)}$
- 10.00am – 7.00am: 75 L_{AFmax}

Noise levels shall be measured and assessed in accordance with the provisions of NZS 6801:2008 Acoustics - Measurement of environmental sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental noise.

- ~~(vi) Noise resulting from the use of explosives and small arms weapons shall not occur between 8.00pm and 7.00am the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.~~

- (vi) Noise generated from the use of helicopters shall be assessed in accordance with NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas and comply with the limits set out therein.

Noise levels shall be measured in accordance with NZS6801:2008 Acoustics - Measurement of Sound.

- (vii) Any training activities involving the use of explosives and/or firing of weapons shall comply with either:

- (a) The separation distances identified in Table 19.3; or

- (b) If minimum separation distances in Table 19.3 cannot be met:

- Daytime sound levels do not exceed a peak sound pressure level of 120 dBC when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Night time sound levels do not exceed a peak sound pressure level of 90 dBC when measured at or within the 20 metre notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Provided the New Zealand Defence Force produces and undertakes the activity in accordance with a Noise Management Plan submitted to the Council at least 15 working days prior to the activity being undertaken (refer 28.2.X for information requirements for Noise Management Plan).

Table 19.3: Separation Distances for Temporary Military Training Activities involving explosives and/or weapons.

<u>Type of military noise source</u>	<u>Standards</u>	
	<u>Time (Monday to Sunday)</u>	<u>Separation distance required from any residential dwelling unit or building used for noise sensitivity activities in any Zone, and any site within the Residential Zone or Greenbelt Residential Zone</u>
<u>1. Live firing of weapons and single or multiple explosive events</u>	<u>7.00am to 7.00pm (daytime)</u>	<u>At least 1500m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 4500m</u>
<u>2. Firing of blank ammunition</u>	<u>7.00am to 7.00pm (daytime)</u>	<u>At least 750m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 2250m</u>

21. Amend the temporary military training activities 'Matters of Control' (Rule 19.7.10) as follows:

19.7.10 Temporary Military Training Activities

(a) Matters of Control

- ~~(i) The avoidance, remedying or mitigating of any adverse effects on the environment.~~
- (i) The size and positioning of buildings and structures;
- (ii) The measures used to avoid, remedy or mitigate adverse effects from excavation.
- (iii) Methods to manage effects on the amenity and character of the area as a result of non-compliance with the noise and duration permitted activity conditions;
- (iv) The actual and potential adverse effects on the safety and efficiency of the road network, as a result of additional traffic generation for a prolonged period of time; and
- (v) The provision of safe and efficient vehicular access and on-site car parking to avoid, remedy or mitigate potential traffic effects.

Chapter 20 Open Space Zone

22. Add to Rule 20.1 the following:

“Relocated buildings up to and including 40m² in gross floor area.”

“Soil conservation, erosion protection, river control or flood protection works undertaken by, or on behalf of Horizons Regional Council.”

23. Amend Rule 20.1(g)(i) as follows:

- “(i) Soil conservation, erosion protection, river control or flood protection works undertaken by, or on behalf supervised of Horizons Regional Council.”

24. Amend the second bullet point under Rule 20.1(g) as follows:

- “Refer to rules in the Horizons Regional Council’s Proposed One Plan relating to activities in the bed of lakes and rivers, for land adjacent to rivers ~~zoned for river and flood control~~, all land use activities in the coastal marine area, coastal foredunes, areas with flood control and drainage schemes, and erosion protection works that cross or adjoin mean high water springs.”

25. Amend Rule 20.2(c) as follows:

The placement of any relocated building and/or accessory building on any site (refer Rule 20.7.3)

Except

Any relocated buildings up to and including 40m² in gross floor area.

26. Amend the permitted activity noise conditions in 20.6.7 as follows:

20.6.7 Noise

(d) The noise limits in Rule 20.6.7(a) and (b) shall not apply to:

- (i) Fire and civil emergency sirens.
- (ii) Construction, maintenance and demolition work.
- (iii) The operation of the Main North Island Trunk Railway.
- (iv) Vehicles being driven on a road (within the meaning of Section 2(1) of the Transport Act 1962), or vehicles used for the purpose of maintaining parks and reserves within a site ~~as part of, or compatible with, a normal residential activity.~~
- (v) Temporary military training activities.
- (vi) Temporary events.

27. Amend the permitted activity vehicle parking, manoeuvring and loading condition in 20.6.15 as follows:

20.6.15 Vehicle Parking, Manoeuvring, and Loading

(a) All activities, ~~except network utilities on sites less than 200m²,~~ shall be provided onsite vehicle parking, manoeuvring areas, and loading facilities as required in Chapter 21.

28. Add a new permitted activity condition under Rule 20.6.16 as follows:

20.6.16 Safety and Visibility at Road and Rail Intersection

(a) No building or structure shall be erected, no materials shall be placed, or vegetation planted that would obscure the railway level crossing approach sight triangles as detailed in Appendix 1: Traffic Sight Lines at Road and Rail Intersections in Chapter 21.

And consequential changes to numbering.

29. Amend the permitted activity signs condition in 20.6.18 as follows:

20.6.18 Signs

(b) Any temporary sign shall be displayed for no longer than two (2) calendar months of a 12 month period ~~every calendar year~~ and removed within seven (7) days after the event. Temporary signs do not need to be on the site of the temporary activity.

30. Amend the temporary military training activity permitted activity conditions (Rule 19.6.30) for the Open Space Zone as follows:

20.6.22 Temporary Military Training Activities

(a) All temporary military training activities shall, in addition to the other conditions, also comply with the following conditions:

- (i) No permanent structures shall be constructed.
- (ii) The activity shall not require excavation (permanent or mechanical), unless provided for in this District Plan.
- (iii) The duration of any temporary military training activity shall not exceed 31 consecutive days.
- (iv) Noise generated from mobile sources (other than weapons firing and use of explosives) shall be assessed in accordance with and not exceed the limits as set out in, NZS 6803:1999 Acoustics - Construction noise when applied at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary.

Noise levels shall be measured and assessed in accordance with that Standard as if it were construction noise.

- (v) Noise generated from any fixed source (other than weapons firing and use of explosives) shall not exceed the following limits when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary:

- On any day -

- 7.00am – 7.00pm: 55 dB $L_{Aeq(15min)}$
- 7.00pm – 10.00pm: 50 dB $L_{Aeq(15min)}$
- 10.00pm – 7.00am: 45 dB $L_{Aeq(15min)}$
- 10.00am – 7.00am: 75 L_{AFmax}

Noise levels shall be measured and assessed in accordance with the provisions of NZS 6801:2008 Acoustics - Measurement of environmental sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental noise.

- ~~(vi) Noise resulting from the use of explosives and small arms weapons shall not occur between 8.00pm and 7.00am the following day and shall otherwise comply with Section 8.1.4 of NZS 6803:1999.~~

- (vi) Noise generated from the use of helicopters shall be assessed in accordance with NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas and comply with the limits set out therein.

Noise levels shall be measured in accordance with NZS6801:2008 Acoustics - Measurement of Sound.

- (vii) Any training activities involving the use of explosives and/or firing of weapons shall comply with either:

- (a) The separation distances identified in Table 20.3; or

(b) If minimum separation distances in Table 20.3 cannot be met:

- Daytime sound levels do not exceed a peak sound pressure level of 120 dBC when measured at the notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary and;
- Night time sound levels do not exceed a peak sound pressure level of 90 dBC when measured at or within the 20 metre notional boundary of any noise sensitive activity, or any Residential Zone or Greenbelt Residential Zone site boundary; and
- Provided the New Zealand Defence Force produces and undertakes the activity in accordance with a Noise Management Plan submitted to the Council at least 15 working days prior to the activity being undertaken (refer 28.2.X for information requirements for Noise Management Plan).

Table 20.3: Separation Distances for Temporary Military Training Activities involving explosives and/or weapons.

<u>Type of military noise source</u>	<u>Standards</u>	
	<u>Time (Monday to Sunday)</u>	<u>Separation distance required from any residential dwelling unit or building used for noise sensitivity activities in any Zone, and any site within the Residential Zone or Greenbelt Residential Zone</u>
<u>1. Live firing of weapons and single or multiple explosive events</u>	<u>7.00am to 7.00pm (daytime)</u>	<u>At least 1500m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 4500m</u>
<u>2. Firing of blank ammunition</u>	<u>7.00am to 7.00pm</u>	<u>At least 750m</u>
	<u>7.00pm to 7.00am (night time)</u>	<u>At least 2250m</u>

31. Amend the Matters of Control for Subdivisions Clause 20.7.1 as follows:

20.7.1 Subdivision of Land (Rule 20.2(a))

...

(iv) The provision of servicing, including water supply, wastewater systems, stormwater management and disposal, streetlighting, telecommunications and electricity and, where applicable gas.

...

(vi) Effects on significant sites and features, including natural, cultural, archaeological and historical sites.

32. Amend the temporary military training activities 'Matters of Control' (Rule 20.7.6) as follows:

20.7.6 Temporary Military Training Activities

(a) Matters of Control

~~(i) The avoidance, remedying or mitigating of any adverse effects on the environment.~~

(i) The size and positioning of buildings and structures;

(ii) The measures used to avoid, remedy or mitigate adverse effects from excavation.

(iii) Methods to manage effects on the amenity and character of the area as a result of non-compliance with the noise and duration permitted activity conditions;

(iv) The actual and potential adverse effects on the safety and efficiency of the road network, as a result of additional traffic generation for a prolonged period of time; and

(v) The provision of safe and efficient vehicular access and on-site car parking to avoid, remedy or mitigate potential traffic effects.

Chapter 24 Subdivision and Development

33. Amend Conditions for Activities Requiring Resource Consent, Esplanade Reserves/Strips in Rule 24.2.5 as follows:

24.2.5 Esplanade Reserves/Strips

Subdivision

The following apply in all Zones:

(a) An Esplanade reserve shall be required where an allotment of less than 4 ha is to be created adjacent to the water bodies listed in Group 1 in Schedule 12 -- Priority Water Bodies.

(This clause shall not apply to Lake Horowhenua)

(b) All esplanade reserves required by (a) above shall be vested in the Council, and have a minimum width of 50 metres, where adjacent to the Tasman Sea (from MHWS) and 20 metres, where adjacent to any other Group 1 Schedule 12 - Priority Water Body.

(c) An Esplanade strip shall be required and created where an allotment of less than 4 ha is to be created adjacent to the water bodies listed in Group 2 in Schedule 12 - Priority Water Bodies.

(This clause shall not apply to the Hokio Stream)

34. Add a subclause to the Assessment Matter relating to light spill Rule 25.6.3 as follows:

25.6.3 Light Spill

- (a) The extent to which the light will adversely affect adjoining allotments.
- (b) The necessity and function of the proposed lighting source (e.g. security, public amenity, recreation or safety) that requires the extent of luminance and position within the site.
- (c) Extent of light spill generated and identification of sensitive activities potentially adversely affected by glare.
- (d) The duration over a day/night, of the use of the lighting source, and recurrence of the activity over a week, month and/or particular time of year.
- (e) The proposed methods for avoiding, remedying or mitigating adverse effects on the environment and neighbouring properties, including but not limited to the design and specification of the lighting, the hours of operation, implementation of a management plan.
- (f) The sensitivity of the night sky at the site and surrounds to increases of lightspill and the proposed methods to mitigate adverse effects from lightspill on the night sky.

Chapter 28 General Provisions

35. Add the following new Clause 28.2.XX to Chapter 28, Clause 28.2 *"Information to be supplied with applications for resource consent and other planning related applications"*

28.2.X Information Requirements: Noise Management Plan for Temporary Military Training Activities

The Noise Management Plan required under Rules 15.6.31, 16.6.23, 17.6.25, 19.6.30 and 20.6.22 shall contain the following:

- (i) State the objectives of the Management Plan (i.e. comply with a peak sound pressure level of 120 dBC (daytime) and 90 dBC (night time) when measured at the notional boundary of any residential dwelling unit or noise sensitive activity, or any site boundary in the Residential Zone or Greenbelt Residential Zone).
- (ii) A description of the site including but not limited to any characteristics which may mitigate noise and a map showing potentially affected noise sensitive activities.
- (iii) A description of the activity, including times, dates, nature and location of the activity and noise sources and a map showing the predicted peak sound pressure levels (noise contour map).
- (iii) Methods to ensure the emission of noise does not exceed the noise level specified in Rules 15.6.31, 16.6.23, 17.6.25, 19.6.30 and 20.6.22, including but not limited to, location and orientation of dwellings, location of activities and hours of operation.

- (iv) Detail on the programme for notification and communication with the occupiers of affected noise sensitive activities prior to the activities commencing, including updates during the event.
- (v) Detail procedures for receiving and deciding on complaints.
- (vi) Detail procedures for noise monitoring and reporting.

APPENDIX B: Schedule of Decisions on Submission Points

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
11.18	511.04	Philip Taueki HDC (Community Assets Department)	Oppose In-Part	Reject Accept In-Part
	519.13	Charles Rudd(Snr)	Support	Reject
	527.00	Director-General of Conservation (DoC)	Support	Reject
60.12	519.31	Muaupoko Co-operative Society Charles Rudd(Snr)	Support	Reject Reject
11.19	519.14	Philip Taueki Charles Rudd(Snr) -	Support	Accept In-Part Accept In-Part
60.13	519.32	Muaupoko Co-operative Society Charles Rudd(Snr)	Support	Accept In-Part Accept In-Part
67.13		Taiao Raukawa Environmental Resource Unit		Accept In-Part
96.15		Federated Farmers of New Zealand		Reject
98.28		Horticulture NZ		Reject
101.22		Director-General of Conservation (DoC)		Accept In-Part
101.23	509.00	Director-General of Conservation (DoC) New Zealand Historic Places Trust (NZHPT)	Support	Reject Reject
117.04		New Zealand Historic Places Trust (NZHPT)		Reject
67.12		Taiao Raukawa Environmental Resource Unit		Reject
101.24	511.05	Director-General of Conservation (DoC) HDC (Community Assets Department)t	Support In-Part	Reject Reject
96.16	506.09	Federated Farmers of New Zealand Ernslaw One Ltd	Support	Reject Reject
11.20	519.15	Philip Taueki Charles Rudd(Snr)	Support	Accept Accept
60.14	519.33	Muaupoko Co-operative Society Charles Rudd(Snr)	Support	Accept Accept
96.17	506.10	Federated Farmers of New Zealand Ernslaw One Ltd	Support	Reject Reject
	517.16	Horticulture NZ	Support	Reject

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
11.21	519.16	Philip Taueki Charles Rudd(Snr)	Support	Reject Reject
60.15	519.34	Muaupoko Co-operative Society Charles Rudd(Snr)	Support	Reject Reject
96.18		Federated Farmers of New Zealand		Accept In-Part
101.25		Director-General of Conservation (DoC)		Accept
83.06		Ross Hood & Margaret Hood		Reject
96.19		Federated Farmers of New Zealand		Accept In-Part
96.20		Federated Farmers of New Zealand		Accept
83.07		Ross Hood and Margaret Hood		Accept In-Part
96.21		Federated Farmers of New Zealand		Accept
11.22	519.17	Philip Taueki Charles Rudd(Snr)	Support	Accept In-Part Accept In-Part
33.01		Levin Golf Club		Accept
51.05		Waitare Beach Progressive Association (WBPA)		Accept In-Part
60.16	519.35	Muaupoko Co-operative Society Charles Rudd(Snr)	Support	Accept In-Part Accept In-Part
67.09		Taiao Raukawa Environmental Resource Unit		Accept In-Part
83.08		Ross Hood & Margaret Hood		Reject
98.54		Horticulture NZ		Accept In-Part
101.21		Director-General of Conservation (DoC)		Accept In-Part
40.29		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
40.43		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
95.06		New Zealand Defence Force (NZDF)		Accept
27.22	524.06	Horizons Regional Council Higgins Group Holdings Ltd	Support	Accept Accept

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
40.27		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
117.24		New Zealand Historic Places Trust (NZHPT)		Accept In-Part
25.07	525.23	Michael White Maurice and Sophie Campbell	Support	Accept In-Part Accept In-Part
26.14		Horowhenua Astronomical Society Inc.		Accept In-Part
40.30		House Movers Section of NZ Heavy Haulage Association Inc		Reject
95.49		New Zealand Defence Force (NZDF)		Accept
108.19		HDC (Planning Department)		Accept
5.07		Elaine Gradock		Accept
95.30		New Zealand Defence Force (NZDF)		Accept
108.36		HDC (Planning Department)		Accept In-Part
95.40		New Zealand Defence Force (NZDF)		Reject
108.06		HDC (Planning Department)		Accept
95.16		New Zealand Defence Force (NZDF)		Accept
95.11		New Zealand Defence Force (NZDF)		Accept
95.54		New Zealand Defence Force (NZDF)		Accept
95.25		New Zealand Defence Force (NZDF)		Accept In-Part
95.35		New Zealand Defence Force (NZDF)		Accept In-Part
55.33	506.58 521.11	KiwiRail Ernslaw One Ltd NZ Transport Agency (NZTA)	In-Part In-Part	Accept Accept In-Part Accept
117.19		New Zealand Historic Places Trust (NZHPT)		Accept
41.39		Powerco		Accept
40.28		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
40.36		House Movers Section of NZ Heavy Haulage Association Inc.		Reject

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
95.45		New Zealand Defence Force (NZDF)		Accept In-Part
94.23		NZ Transport Agency (NZTA)		Accept
94.27		NZ Transport Agency (NZTA)		Accept
93.24		The Oil Companies		Accept
40.10		House Movers Section of NZ Heavy Haulage Association Inc.		Accept
117.30		New Zealand Historic Places Trust (NZHPT)		Accept In-Part
78.11		Telecom New Zealand Ltd		Reject
79.11		Chorus New Zealand Ltd		Reject
96.40		Federated Farmers of New Zealand		Accept In-Part
101.71		Director-General of Conservation (DoC)		Reject
83.10		Ross and Margaret Hood		Reject
83.11		Ross Hood & Margaret Hood		Reject
67.17		Taiao Raukawa Environmental Resource Unit		Accept
101.62		Director-General of Conservation (DoC)		Reject
101.63		Director-General of Conservation (DoC)		Accept
108.08	528.29	HDC (Planning Department) Horizons Regional Council	Support	Accept Accept
95.48		New Zealand Defence Force (NZDF)		Reject
27.30		Horizons Regional Council		Accept In-Part
80.04	524.07	Todd Energy Ltd Higgins Group Holdings Ltd	Support	Accept In-Part Accept In-Part
92.04	524.08	KCE Mangahao Ltd Higgins Group Holdings Ltd	Support	Accept In-Part Accept In-Part