

RESOURCE MANAGEMENT ACT 1991

PROPOSED HOROWHENUA DISTRICT PLAN

HEARING OF SUBMISSIONS

DECISION OF HEARING PANEL

TOPIC: Report on District Plan
General Part 2 (Definitions)

HEARING PANEL: Robert Nixon (Chair)
Cr Tony Rush
Jane Black

HEARING DATE: 20th & 21st 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 General Part 2 – Definitions.

1.2 A hearing into the submissions received on General Part 2 - Definitions was held on the 20 and 21 May 2013. The hearing was closed on the 13 September 2013. The hearing also heard submissions in relation to General Part 3 (Assessment Matters, General Provisions, General & Miscellaneous Matters) and General Part 4 (Planning Maps). The decisions on these topics have been issued separately and have not been addressed in this decision.

Abbreviations

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

Chorus	Chorus New Zealand Ltd
CPTED	Crime Prevention through Environmental Design
DoC	Department of Conservation
Ernslaw One	Ernslaw One Limited
Federated Farmers	Federated Farmers of New Zealand
HAL	High Amenity Landscapes
HDC	Horowhenua District Council
Higgins	Higgins Group Holdings Ltd
Horizons	Horizons Regional Council
Horticulture NZ	Horticulture New Zealand
House Movers	House Movers Section of NZ Heavy Haulage Association Inc
HRC	Horizons Regional Council
KiwiRail	KiwiRail Holdings Ltd
NPS	National Policy Statement
NZDF	New Zealand Defence Force
NZ Pork	The New Zealand Pork Industry Board
Officer's report	Report evaluating the submissions prepared by Ms. Lynette Baish for our assistance under s42A(1) of the RMA
ONFL	Outstanding Natural Features and Landscapes
Proposed Plan	Proposed Horowhenua District Plan
Rayonier	Rayonier New Zealand Ltd
S42a	Section 42a Resource Management Act 1991
Telecom	Telecom New Zealand Ltd
The Act	Resource Management Act 1991
Transpower	Transpower New Zealand Ltd

2.0 OFFICER'S REPORT

2.1 We were provided with and had reviewed the Officer's report prepared by Horowhenua District Council Resource Management Planner Lynette Baish pursuant to s42A of the Act prior to the hearing commencing.

2.2 In her report Ms. Baish informed us that her report focused on General Matters: Definitions (Chapter 26) and associated provisions throughout the Proposed Horowhenua District Plan. She set out that the relevant provisions within the Proposed Plan are contained within Chapter 26 General Provisions: Definitions, and are cited throughout all parts of the District Plan. She went onto say that some of the provisions within the Operative District Plan relating to Definitions have been the subject of a number of plan changes since the District Plan became operative (September 1999) and that new or amended definitions were incorporated into the Operative District Plan through

Plan Change 8 (Natural Features), Plan Change 10 (Home Occupations), and Plan Change 19 (Stevensons Engineering).

2.3 Ms. Baish said that a number of submissions were made in relation to Definitions (Chapter 26) and that the submission points have been evaluated through the Officer’s report, with specific recommendations for each point raised within each submission.

3.0 SUBMITTER APPEARANCES

3.1 The following submitters made an appearance at the hearing (not all of whom presented specifically in relation to the General Part 2 (Definitions) topic:

- Higgins Holdings Limited
- Horizons Regional Council
- KiwiRail
- Horticulture New Zealand
- Warwick Meyer (on behalf of the Levin Golf Club), (on behalf of HDC – Community Assets) and (personal submission)
- John West and Gary Spelman
- Viv Bold
- Christine Mitchell (on behalf Horowhenua Farmers’ Ratepayer Group and Bruce and Christine Mitchell)
- Bryce Holmes (on behalf of Homestead Group Limited)
- Peter Everton

3.2 In addition, a written submission for presentation at the hearing was received from:

- House Movers Section of the NZ Heavy Haulage Association
- Powerco
- Rayonier New Zealand Ltd
- New Zealand Historic Places Trust
- New Zealand Pork Industry Board
- Richard Tingey

4.0 EVALUATION

Abbreviations

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
32.29	NZ Pork Industry Board	Add CPTED and other abbreviations used in the Plan to list of abbreviations.	

4.1 The officer's report noted there were 17 abbreviations listed at the beginning of Chapter 26, Definitions. It was not intended that this be an exhaustive list of abbreviations, and the emphasis in choosing abbreviations was to specifically identify those which are most commonly used in the Plan. The Hearings Panel resolved that it was not necessary to add an extensive list of abbreviations, and the submission point was accordingly rejected.

Definition – 'Building'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
78.15	Telecom New Zealand Ltd	Amend the definition of Building by exempting lightning rods.	
79.15	Chorus New Zealand Ltd	Amend the definition of Building by exempting lightning rods.	
98.00	Horticulture NZ	Amend Clause (g) of the definition of Building as follows: Building means any temporary or permanent or movable or immovable structure; and includes any structure intended for occupation by people or animals or machinery but does not include any of the following: (a) (g) Any pergola, <u>crop support structure</u> or <u>crop protection structure</u> or similar structure of a substantially open nature. ...	518.14 Transpower NZ Ltd – In-Part
99.45	Transpower New Zealand Ltd	Amend Clause (f) of the definition of Building as follows: (f) Any electricity poles and <u>towers</u> . pylons .	
37.03	Homestead Group Limited	Amend the definition of Building to avoid hardstand and car park areas being captured.	

4.2 Both **Telecom** and **Chorus** sought that lightning rods be excluded from the definition of "building", given that they were very small features with minimal visual impact. The officer's report generally concurred with the content of these submission points, but noted that the submissions did not quantify what might be "small". She recommended that lightning rods, provided they were less

than 2m above the height of the building or structure to which they were attached, be excluded from the definition of "building". The Hearings Panel agreed that this would be an appropriate approach, and the submission points were accepted in part.

- 4.3 **Homestead Group** sought that hardstanding and carparking be explicitly excluded from the definition of "building". The reporting officer was of the opinion that the definitions in the Plan clearly contemplated controlling structures and buildings, but not those with a minimum height of less than 2m, a similar provision found in many district plans. The Hearings Panel, while acknowledging the basis of the submitter's concerns, did not believe that hardstanding or car parking areas would be captured by the definition of building as set out in the Proposed Plan. Accordingly this submission point was rejected.
- 4.4 **Horticulture NZ** were concerned that the exclusion from the definition of "building" under subclause (g) was imprecise. It excludes *"any pergola or similar structure of a substantially open nature"*. The reporting officer agreed that the definition of "building" could exclude crop support structures, but that crop protection structures should be included in the definition. She contended that crop protection structures could include 'closed-in' buildings, such as tunnel houses, and therefore needed to be subject to the normal rules pertaining to buildings. Ms Wharfe, presenting evidence on behalf of Horticulture NZ maintained that crop protection structures are also open and vertical in nature; for example, artificial shelter belts constructed with posts and wind/shade cloth. Ms Wharfe considered that the words *"similar structures of a substantially open nature"* was too imprecise.
- 4.5 We agreed that this wording was imprecise, and did not provide adequate certainty. We think that the wording provided by Horticulture NZ goes some way to better provide for crop protection structures, while also ensuring that larger protection structures such as tunnel houses are captured by the definition of "building". To this end we resolve that the wording of the exclusion under subclause (g) should be amended to read *"Any pergola, crop support structure or vertical crop protection structure"*. On this basis, Horticulture New Zealand's submission point was accepted in part.
- 4.6 Finally, **Transpower** sought that the word "pylons" (as contained in the list of structures exempted from the definition of "building"), be replaced by the word "towers", in accordance with contemporary technical terminology. This was considered to be an appropriate amendment for this reason, and the submission point was accepted.

Definition – 'Bund'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
98.01	Horticulture NZ	Amend the definition of Bund by either: a) replace 'means' with 'includes' or b) add 'or sediment control mechanism' as follows: Bund means <u>includes</u> an embankment which may be used as a mitigation measure to limit noise effects, provide a visual screen or as a liquid containment system ... OR Bund means an embankment which may	

		be used as a mitigation measure to limit noise effects, provide a visual screen or as a liquid containment system designed to prevent the dispersal of hazardous substances from accidental on-site discharges <u>or sediment control mechanism.</u>	
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4.7 In response of the submission from Horticulture New Zealand, reporting officer recommended that the word "bund" should be amended to include embankments associated with a wider range of functions, including containment of hazardous substances, or the management of sediment. Presenting on behalf of Horticulture NZ, Ms Wharfe supported the amendments recommended by the officer. The Hearings Panel agreed that this widened definition properly included additional functions which bunds were typically intended to serve. The submission point was accepted with slightly modified wording from that sought by the submitter.

Definition – ‘Development’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
98.02	Horticulture NZ	Amend the definition of Development as follows: Development means carrying out any work or ancillary activity on any land including the construction, alteration, or demolition of any building or any excavation of land or any deposit of materials on land. <u>Development means carrying out construction, alteration or demolition of any building or any excavation of land not provided as a permitted activity and excludes day to day rural production activities such as fencing, cultivation and maintenance of farm tracks, orchard activities such as planting, shelterbelt and tree removal and root ripping.</u>	516.25 Federated Farmers of New Zealand - Support

4.8 Horticulture New Zealand sought an amended definition of "development". Rather than supporting an amendment to the definition, the officer recommended instead that the definition be deleted, As it was not achieving its original purpose. Furthermore, she considered it was essentially superfluous, as the related rules concerning development were self-explanatory. In response, Ms Wharfe agreed that it would be better to rely on the rules framework than amending the existing definition. We agreed with the officer and the submitter that the definition should be deleted, as it is not necessary to provide clarity for the administration of the District Plan. We were conscious however that deleting the definition would be outside the scope of the relief sought through the

submission, albeit that this was an acceptable course of action to the submitter. However as the definition did not appear to have any regulatory effect, it was considered that its deletion could be justified in accordance with Clause s16(2) to the First Schedule to the RMA.

- 4.9 Given the position taken by the submitter in response to the officer's report, the Hearings Panel resolved that the submission point be accepted in part.

Definitions – 'Earthworks' and Request for New Definition 'Aggregate Extraction'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
98.03	Horticulture NZ	<p>Amend the definition of Earthworks by adding an exclusion as follows.</p> <p>Earthworks means any alteration to the existing natural ground level including re-shaping, re-contouring, excavation, backfilling, compaction, stripping of vegetation and top soil and depositing of clean fill.</p> <p><u>The term earthworks does not include activities such as digging post holes, cultivation and harvesting of crops, planting trees removal of trees and root ripping, burials, drilling bores, digging of pits and installations of services where these activities do not reshape or re-contour the land.</u></p>	<p>506.48 Ernslaw One Ltd – In-Part</p> <p>528.22 Horizons Regional Council –In-Part</p>
77.01	Higgins Group Holdings Ltd	<p>Amend definition of Earthworks as follows:</p> <p>Earthworks means any alteration to the existing natural ground level including re-shaping, re-contouring, excavation, backfilling, compaction, stripping of vegetation and top soil and depositing of clean fill. <u>Earthworks does not include Aggregate Extraction.</u></p>	<p>506.36 Ernslaw One Ltd - Support</p> <p>513.09 Rayonier New Zealand Ltd - Support</p>
99.46	Transpower New Zealand Ltd	<p>Retain the definition of Earthworks, subject to relief sought under Rule 19.6.14.</p>	517.39 Horticulture NZ - Oppose
66.09	Bruce & Christine	<p>Amend the definition for Earthworks to align with Federated Farmers' request</p>	

Sub No.	Submitter Name	Decision Requested	Further Submissions
	Mitchell	OR Amend the definition for earthworks to specify a threshold of 2.5 metres to allow normal farming activities such as tracking and fencelines.	
96.41	Federated Farmers of New Zealand	Amend definition of Earthworks by excluding agricultural and horticultural earthworks.	506.24 Ernslaw One Ltd - Support 506.25 Ernslaw One Ltd - In-Part 518.15 Transpower New Zealand Ltd – In-Part
65.09	Horowhenua Farmers' Ratepayer Group	Amend the definition for earthworks to align with Federated Farmers' request OR Amend the definition for earthworks to specify a threshold of 2.5 metres to allow normal farming activities such as tracking and fencelines.	518.16 Transpower New Zealand Ltd – In-Part 528.14 Horizons Regional Council –In-Part
77.00	Higgins Group Holdings Ltd	Include definition for Aggregate Extraction as follows: <u>“Aggregate Extraction means the use of land, buildings and plant for the primary purpose of extraction, winning, quarrying, excavation, taking and associated crushing and processing of mineral deposits such as, but not limited to, rock, gravel, and sand”.</u>	506.35 Ernslaw One Ltd - In-Part

4.10 **Horticulture NZ** sought that the definition of "earthworks" be amended so that 'normal' farming earthworks (day to day rural production activities including cultivation, harvesting removal of trees and root ripping) are exempted from earthwork rules. We noted that provision for earthworks in the Rural Zone formed part of Plan Change 22, and is not subject to any changes as part of the Proposed Plan. We can therefore only address the definition. However we noted in this regard that Rule 19.6.12 (as part of Plan Change 22) has two notes appended to it, the first of which excludes activities such as digging post holes, cultivation of crops, planting trees, burials, drilling bores, digging offal pits and installations of services where these activities do not reshape or recontour the land. (This note means while earthworks are controlled in specified areas, by their exclusion, they are permitted).

4.11 The officer commented that the approach to the Proposed Plan was to keep definitions succinct and provide clarity while the rules and conditions would be tailored to particular circumstances and activities. We agreed with the officer that there is a need to control farm related earthworks in certain areas and the rules are appropriate to set parameters for acceptable earthworks in terms of effects. In this regard, earthworks generally are not controlled across zones, but are controlled

where they are to be carried out in specified areas such as listed heritage sites, specified landscape domains, outstanding natural landscapes and features and flood hazard areas. Looking at the permitted activities in the Rural Zone, Primary Production Activities are permitted activities and turning to the definition of Primary Production Activities, this includes "*any agricultural, horticultural, floricultural, arboricultural, forestry or intensive farming activity but does not include mineral extraction or mineral processing or the harvesting clearance or modification of indigenous vegetation*". We considered that this includes the types of activities that the submitter is requesting be exempt from the definition of earthworks. On this basis, the Hearings Panel were of the opinion that the activities that Horticulture NZ would like specified as permitted activities are generally covered by the definition of Primary Production Activities. The rule framework then controls the types of earthworks that require specific management, and that it was not necessary or appropriate to amend the definition of earthworks. Accordingly the Hearing Panel rejected this submission point.

- 4.12 **Federated Farmers, B. and C. Mitchell and Horowhenua Farmer's Ratepayer Group** sought similar amendments that would exclude agricultural and horticultural earthworks from the definition of earthworks. Horowhenua Farmers' Ratepayer Group and the Mitchell's requested alternative changes to the definition if it was decided to not exclude agricultural and horticultural earthworks. They sought that the definition that was decided as part of Plan Change 22 be amended so that the depth and height of earthworks allowed (ie those earthworks to be excluded from the definition) be increased from 1m to 2.5m. At the hearing Ms Mitchell said that she would accept 1.5m rather than 2.5m. For the reasons outlined above in paragraph 4.11, the Hearing Panel rejected these submission points, as the matters of concern were already adequately covered under existing definitions and rules such that normal farming activities would not be "captured".
- 4.13 **Horizons Regional Council** (Ms Penelope Tucker) addressed their further submission, supporting in part the submissions of Horticulture New Zealand and Horowhenua Farmers Ratepayer Group. In her written submissions, (paragraphs 5 to 13) she sought the exclusion of farm dumps and offal pits (*resulting in an alteration to the existing ground level*) from the definition. She said that Horizons wanted to make it explicit that these were permitted activities and that the Regional Councils 'One Plan' controls them. The note referred to above (part of Plan Change 22) relates only to Specific Landscape Domains, and Horizons sought that this apply in the rural zone generally. The submitter considered that the clearest way of addressing this matter was through exclusions to the definition.
- 4.14 The officer reiterated that the approach to the definitions was to keep them succinct and avoid exclusions and rely on the rules for specificity. In addition, earthworks are permitted throughout the Rural Zone and therefore there is no need to exclude them from the definition if the relief sought by Horizons is to ensure they are permitted. We do not see that excluding these activities from the definition of earthworks achieves what Horizons are seeking. Rather, it could create confusion as to the status of these activities which, it could be argued, are also permitted as Primary Production Activities. There is also a potential difficulty with the scope of the Horizons further submission, which appears to seek relief through amendments which are well beyond the scope of the submission points that the further submitter purports to support in part. The Hearings Panel concluded that the definition of earthworks should not be changed as sought by Horizons, and the further submission was rejected.
- 4.15 **Higgins Group Limited** sought that provision be made for aggregate extraction as a specific activity rather than being included within the definition of earthworks and therefore the rules relating to earthworks. They made submissions on the Rural Zone provisions seeking new specific rules and in respect of this hearing they sought exclusion of aggregate extraction from the definition of earthworks and a new definition for aggregate extraction. The decision in relation to the main points of the submission is contained in the Rural Zone decisions, but the main points are summarised here.

- 4.16 Mr Bashford presented evidence at the hearing on behalf of Higgins. He stated that aggregate extraction is an important contributor to the economy of the district and that there are large national infrastructure projects planned that will create further demand for this activity. He considered that the nature of aggregate extraction was different from other rural based activities for three reasons:
- They are fixed to a specific location where the resource is located
 - Demand is cyclic and when in demand it has effects beyond the site that can be a problem
 - It is often perceived as an industrial activity.
- 4.17 Mr Bashford outlined that the effects of aggregate extraction are specific to that activity, and not to earthworks generally. In particular he considered that while most of potential adverse effects of aggregate extraction can be internalised within the site, noise can be an effect experienced beyond the site boundary. Specific activities such as rock crushing and screening are particularly noisy and these have implications for reverse sensitivity issues.
- 4.18 The officers initially considered that specific recognition of aggregate extraction was unnecessary, as they were of the opinion there were no unique reasons to do so. They revised their opinion after further consideration and hearing more evidence from the submitter in relation to the nature and effects of the activity. We agreed with the submitter that the nature of the activity and its potential to generate effects needed to be managed through the Plan more effectively. To this end we agreed that aggregate extraction should be provided for as a specific activity and the provision amended accordingly. The decision relating to new provisions for aggregate extraction are found in the Rural Environment decision. In respect of the submission relating to the definition of earthworks, we consider that it should exclude aggregate extraction and that a new definition for this activity be introduced. Accordingly we accepted these submission points and the submitters definition is contained in the text changes set out in Appendix A.
- 4.19 **Transpower's** support for the earthworks definition is noted, and the decision on their submission points in relation to activities permitted in within the National Grid Corridor is contained in the Rural Zone Decisions. In recognition of amendments made in response to other submissions on this definition (such as that of Higgins Group above) this submission point was accepted in part.

Definition – 'Family Flat'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
108.39	HDC (Planning Department)	<p>Amend Family Flat definition as follows:</p> <p>Family Flat means any detached building which shall be capable of being a self-contained residential unit with kitchen and bathroom facilities, and shall be secondary in scale to any principal residential dwelling on the site.</p> <p><u>Note: A Family Flat in the Greenbelt Residential Zone shall be no more than 50m² in maximum gross floor area (plus a covered verandah up to 10m²).</u></p>	

4.20 This submission sought to provide an interim floorspace limitation for family flats in the Greenbelt Residential Zone pending a later plan change or variation to address the issue comprehensively across the District Plan. In other zones a floor space limitation is contained within the specific zone rules. Although incorporating this provision within the definition is somewhat cumbersome, the relief sought was considered acceptable as an interim measure, and the submission point was accepted.

Definition – ‘Hazardous Substance’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
95.47	New Zealand Defence Force (NZDF)	Retain definitions as notified.	

4.21 The support for Definition – ‘Hazardous Substances’ from the NZ Defence Force is noted and their submission is accepted.

Definition – ‘Noise Sensitive Activity’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
55.00	KiwiRail	Retain the definition of Noise Sensitive Activities as notified.	

4.22 The support for Definition – ‘Noise Sensitivity’ from KiwiRail is noted and their submission is accepted.

Definition – ‘Official Sign’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
41.20	Powerco	Amend the definition of Official signs to encompass asset identification and health and safety signs, Or, alternatively asset identification and health and safety signs could be included within the list of permitted signs by adding “identification and/or health and safety signs associated with infrastructure” to the following zones, Residential, Industrial, Commercial, Rural and Open Space.	512.01 Vector Gas Ltd - Support

4.23 Powerco tabled evidence supporting the officer’s recommendations that rather than alter the definition for "official sign", which has a specific meaning, health and safety signs should be added to the list of permitted signs. The Hearings Panel agreed with this submission point, as it provides for a type of sign that has a specific meaning while retaining the clarity of the definition for official sign. A new definition for "health and safety sign" was added as part of a separate decision by the Hearings Panel on Rural Environment as follows:

*" **Health and Safety Sign** means any warning of health and safety hazards, including but not limited to those required under any legislation such as Health and Safety in Employment Act 1992 and Hazardous Substances and New Organisms Act 1996".*

4.24 In respect of provision for asset identification signs, the officer recommended that these could fall within the provision for advertising signs. Powerco were in general agreement with this approach, but pointed out that there was a discrepancy between the provision for advertising signs as permitted activities, and the permitted activity conditions for signs which refers to public information signs (not advertising signs). There is also a definition for advertising signs but not public information signs. Powerco submitted that in order to provide clarity on the provision for this type of sign, reference to "public information signs" in the permitted activity conditions should be replaced with "advertising signs." We agreed that this would provide greater clarity and avoid confusion between the use of different terms. We therefore decided that the Tables 15-1, 19-1 and 20-1 be amended to replace the term public information signs with advertising signs. The Hearing Panel resolved that submission point be accepted in-part.

Definition – ‘Open Space’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
32.31	NZ Pork Industry Board	Amend as follows: Open Space means any public or private area of substantially unoccupied space or vacant land; and includes parks, reserves, playgrounds, landscaped areas, gardens, together with any ancillary seating and vehicle parking and pedestrian shelters and conveniences; but excludes any recreation facilities. It need not specifically be zoned as Open Space.	
96.43	Federated Farmers of New Zealand	Amend definition of Open Space as follows: Open Space means any public or private area of substantially unoccupied space or vacant land; and includes parks, reserves, playgrounds, landscaped areas, gardens, together with any ancillary seating and vehicle parking and pedestrian shelters and conveniences; but excludes any	502.01 Warwick Meyer– In-Part 506.27 Ernslaw One Ltd - Support

Sub No.	Submitter Name	Decision Requested	Further Submissions
		recreation facilities. It need not specifically be zoned as Open Space.	
98.05	Horticulture NZ	Amend the definition of 'Open Space' by: Open Space means any public or private area of substantially unoccupied space or vacant land; and includes parks, reserves, playgrounds, landscaped areas, gardens, together with any ancillary seating and vehicle parking and pedestrian shelters and conveniences; but excludes any recreation facilities. It need not specifically be zoned as Open Space. <u>Land used for Primary Production Activities is not included as open space.</u> OR Open Space means any public or private area of substantially unoccupied space or vacant land; and includes parks, reserves, playgrounds, landscaped areas, gardens, together with any ancillary seating and vehicle parking and pedestrian shelters and conveniences; but excludes any recreation facilities. It need not specifically be zoned as Open Space.	

4.25 **The New Zealand Pork Industry Board** were concerned at the potential implications of the definition of "Open Space" in conjunction with the operation of Rule 19.6.4(c)(iii) which requires intensive farming operations to achieve a setback of 600m from specified zone boundaries. The concern was that the wording the final sentence of the definition would imply that any intensive farming operation had to be set back 600 m from an area of "open space", whether actually zoned open space or not. However it is clear that the wording of Rule 19.6.4(c)(iii) specifically refers to (among other zones) required setbacks from the Open Space Zone. For this reason, the Hearings Panel did not consider that the interpretation of concern to the submitter would in reality arise, and accordingly the submission point was rejected. However, the broader issue of what is meant by "open space" is also addressed under the following paragraph below addressing submission points from Federated Farmers and Horticulture New Zealand.

4.26 **Federated Farmers and Horticulture NZ** were concerned that definition of "open space" in the Plan as notified, could include private farm land, and that this could lead some people to think that such land was publicly accessible. In her section 42A report, the officer commented that the definition needs to recognise that there could be provision for privately owned open space - for example, golf courses and perhaps private gardens. She considered that the list of examples in the definition was sufficient illustration that it was clear that primary production activities were not included in the definition. However we think there is some force in the submitters argument that "open space" is not well described as "*.....any public or private area of substantially unoccupied space or vacant land....*".

4.27 We concur with the officer and a further submitter (Meyer), that private land should be included

within the definition to provide for circumstances where the owners of privately owned land were supportive of Open Space Zoning, such as the Levin Golf Club facility. However we accept that the proposed wording is too open to interpretation and uncertainty as reflected by the submitters' concerns, and that it could be interpreted by some to include all open rural land. We decided that the issue is not so much about ownership, as one about correctly specifying the activities which might take place in areas of open space. We have provided a new definition that we consider is more succinct and should not be interpreted as including farmland. The Hearings Panel is of the view that this amendment, although not adopting the same wording sought in the submission, would address the substantive concerns of the submitters. This amended definition is as follows:

"Open space means any land (whether or not zoned Open Space) which is developed for recreation or amenity activities that do not take place in buildings".

On this basis, the Hearing Panel resolved that the submission points be accepted in part.

Definition – 'Plantation Forestry'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
50.06	Rayonier NZ Ltd	Delete the proposed definition of Plantation Forestry and include a replacement definition as follows: <u>Plantation forestry means the commercial production of trees for wood products and ancillary activities. Activities ancillary to plantation forestry include; establishment and planting, earthworks, infrastructure maintenance, harvesting and the minor and temporary disturbance of indigenous vegetation.</u>	506.76 Ernslaw One Ltd - Support

4.28 The submitter sought the inclusion of a range of ancillary activities to be included in the definition of "plantation forestry". The officer commented that the definition is not meant to be an exhaustive list of all associated activities. In addition, the Proposed Plan seeks to control some of the activities sought to be listed by the submitter and by including them in the definition would enable them to be permitted; for example, earthworks. Although finely balanced, the Hearings Panel concluded that the existing definition was adequate, and resolved that the submission point be rejected.

Definition – 'Relocated Building'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
40.38	House Movers Section of NZ Heavy Haulage	Amend the definition of Relocated Building.	

Sub No.	Submitter Name	Decision Requested	Further Submissions
	Association Inc.	Relocated Building means any previously used building which is transported in whole or In-Parts and re-located from its original site to a new its <u>destination</u> site; but excludes any pre-fabricated building which is delivered dismantled to a site for erection on that site.	
40.02	House Movers Section of NZ Heavy Haulage Association Inc.	Amend the Definitions section of the plan to accord with trade practice and usage so as to distinguish between the activities of removal, re-siting, and relocation of dwellings and buildings.	

4.29 House Movers presented evidence during the course of the hearings on the District Plan, but did not specifically address submission point 40.38. Mr Ashton for House Movers briefly addressed the second matter in respect of providing for “removal” but did not provide any specific rationale why the amendment sought was necessary. We consider that the definition for "relocated building" provides adequately for the process of relocation of a building from its original site to a new site, wherever in the District that may be. The Hearings Panel resolved that the submission points be rejected.

Definition – ‘Sensitive Activities’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
99.47	Transpower New Zealand Ltd	Amend the definition of Sensitive activities as follows: Sensitive Activities means any of the following activities: Residential activities Visitor accommodation Community activities Recreational facilities and activities Camping grounds Educational facilities Places of assembly Marae and papakainga housing Cafes and restaurants <u>For activities within the National Grid</u>	

Sub No.	Submitter Name	Decision Requested	Further Submissions
		<u>corridor, recreational facilities and activities are not considered “sensitive activities”.</u>	
98.06	Horticulture NZ	Amend the definition of Sensitive activities by inserting additional facilities as follows: <u>hospitals, rest homes or medical facilities.</u>	500.24 NZ Pork Industry Board - Support
110.01	W.Fraser	Amend definition for Sensitive Activities to include 'houses of prostitution' and 'liquor stores' as Sensitive Activities.	

- 4.30 At the hearing, **Transpower** did not specifically comment on their submission point 99.47 or the officers’ recommendation. This was that the rule should be amended rather than the definition, to provide clarity that recreational facilities and activities are not considered sensitive activities within the National Grid corridor. We agree with the officers’ evaluation that amending the rule rather than the definition better achieves the outcome sought by the submitter. This would be implemented by amending Rule 19.6.14(b) to exclude recreational facilities and activities from the provision for setbacks from the Transmission Line Corridor. On this basis, the Hearings Panel considers it would be appropriate that Submission point 99.47 be accepted. The amendments to Rule 19.6.14 are contained in Appendix A.
- 4.31 **Horticulture NZ** sought that the range of uses listed in the Plan as "sensitive activities" be extended to include hospitals, rest homes or medical facilities rather than relying on the generic listings in the Plan. The officer was satisfied that the generic list included the facilities and activities sought by the submitter. We accepted the submitter's argument that clarity would be best achieved through adding reference to the above activities as being ‘sensitive’ as they are often treated as such in other district plans, and the current term "community activities" was insufficient. Accordingly the Hearings Panel resolved that this submission point be accepted.
- 4.32 The submission by **W. Fraser** requested that houses of prostitution and liquor stores be listed as sensitive activities. We acknowledge the officer's explanation that "*although I agree that houses of prostitution and liquor stores are indeed the types of activities that would impact on sensitive activities, I do not consider they are sensitive activity in themselves (i.e. impacted by other activities)*". Perhaps understandably, the submitter has misinterpreted the intent of the rule. We also agree with the officer that such activities are subject to regulation under other statutes. For this reason, the Hearings Panel resolved that this submission point be rejected.

Definitions – ‘Site’ and ‘Notional Boundary’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
44.21	Genesis Power Ltd	Amend definition of Notional Boundary as follows: ...with regard to the measurement of	

Sub No.	Submitter Name	Decision Requested	Further Submissions
		noise, the legal boundary of the property site on which any rural dwelling is located or a line 20m from the dwelling whichever point is closer to the dwelling.	
44.20	Genesis Power Ltd	Amend definition of Site as follows: an area of land comprised wholly of <u>one (1) computer freehold register certificate of title</u> ; or the area of land contained within an allotment on an approved plan of subdivision; or the area of land which is intended for the exclusive occupation by one (1) residential unit; or an area of land held in one (1) computer <u>freehold</u> register.	

4.33 The officers report noted that the concept of the 'notional boundary' had been included in the Proposed Plan to deal with the regulation of noise in rural areas, this being a practical response given the intent to protect residential amenity around a dwelling on a farm, rather than having the rule applying to an entire farm. The term notional boundary is only associated with noise rules and conditions, as is typically the case with other district plans. The Hearings Panel agreed with the reporting officer that it would not be appropriate to remove reference to noise in the definition, as this was the only context in which it applied. It was however agreed that it would be appropriate, as sought by the submitter, to replace the term "property" with the term "site". The latter word is most commonly used in district plans, and is a term (unlike property) which is defined in the Proposed Plan.

4.34 It was agreed that it was appropriate to replace the term "Certificate of Title" with the term "*one computer freehold register*" as this was now the contemporary term used in terms of computerised registers relating to the ownership of land. This is the terminology adopted by LINZ following the change from paper-based Certificates of Title between 1999 and 2002. The Hearings Panel resolved that submission point 44.20 be accepted, and that submission point 44.21 be accepted in part.

Definitions – 'Temporary Military Training Activity' and 'Temporary Activity'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
95.00	New Zealand Defence Force (NZDF)	Retain definition of Temporary Military Training Activity as notified.	

Sub No.	Submitter Name	Decision Requested	Further Submissions
95.01	New Zealand Defence Force (NZDF)	Amend definition of Temporary Activity by adding a sub-clause to the exemption list as follows: ... it does not include Temporary Military Training Activities.	

4.35 The support for the definition of "Temporary Military Training Activity" by NZ Defence Force is noted and their submission point 95.00 was accepted. In relation to their submission point 95.01 relating to the wider definition of "Temporary Activity" we agree with the submitter and the reporting officer that the definition of Temporary Activities should exclude Temporary Military Training Activities, as this is already subject to a separate definition. The Hearings Panel resolved that this submission point be accepted, with the necessary wording changes set out in Appendix A.

Definition – ‘Vehicle Service Station’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
93.28	The Oil Companies	Support definition for Vehicle Service Station.	

4.36 The support for Definition – ‘Vehicle Service Station’ from The Oil Companies is noted and their submission is accepted.

Requested New Definition – ‘Reverse Sensitivity’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
32.33	NZ Pork Industry Board	Include new definition for "Reverse sensitivity" as follows: <u>Reverse sensitivity means the vulnerability of an existing lawfully established activity to complaints from new activities which are sensitive to the adverse environmental effects being generated by the existing activity, thereby creating the potential for the operation and/or expansion of the existing activity to be constrained.</u>	506.68 Ernslaw One Ltd - Support 513.05 Rayonier New Zealand Ltd - Support 516.29 Federated Farmers of New Zealand - Support 524.09 Higgins Group Holdings Ltd - Support

Sub No.	Submitter Name	Decision Requested	Further Submissions
98.07	Horticulture NZ	Include a new definition for “Reverse sensitivity” as follows: <u>“Reverse sensitivity” is the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.</u>	505.17 Powerco - Support 506.50 Ernslaw One Ltd - Support 513.25 Rayonier New Zealand Ltd - Support 516.30 Federated Farmers of New Zealand - Support

4.37 The issue of reverse sensitivity was discussed at length at the Rural Environment hearing in relation to how the management of these effects are dealt with in the Plan. Specifically, DoC, NZ Pork and Horticulture NZ sought rewording of Objective 2.5.1 to clarify that the objective clearly addresses reverse sensitivity effects. The officer agreed that some rewording would clarify the objective, and the Hearings Panel dealing with the Rural Environment made specific changes to the Objective and its ‘Explanation and Reasons’ to both explain and strengthen provisions designed to protect existing activities from reverse sensitivity effects.

4.38 NZ Pork and Horticulture NZ have also submitted that there needs to be a definition of reverse sensitivity and they provided suggested wording, a position supported by the reporting officer. While we could appreciate the intention behind these submission points, we were not convinced that a definition of reverse sensitivity was in fact required. As noted above, Objective 2.5.1 and its Explanation and Reasons sets out the aims for avoiding the potential conflict between established activities and new adjacent activities, and the policies outline that separation distances and other measures will be used to manage potential effects. These are further implemented through rules where separation distances and setbacks provide protection for activities from the effects generated by a new activity. There is no mention of ‘reverse sensitivity’ in the rules and there is no need to, as the matter is already comprehensively addressed. The Hearings Panel therefore resolved that these submission points be rejected.

Requested New Definition – ‘Supermarket’

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
71.11	Progressive Enterprises Ltd	Include definition for “Supermarket” as follows: <u>Supermarket means a retail shop where a comprehensive range of predominately domestic supplies and convenience goods and services are sold for consumption or use off-premise, and includes lotto shops and pharmacies located within such premises.</u>	

- 4.39 Commissioner Nixon declared a conflict of interest in respect of this submission point, and did not participate in the Hearings Panel's decision on this particular matter.
- 4.40 The officer's report noted that references to supermarkets were concentrated in the Urban Zone provisions of the Proposed Plan where they were discussed in conjunction with large format retail activities. The officer's report considered there was little contention or confusion over the scope or meaning of the term 'supermarket'. The Hearings Panel agreed with the officer's conclusion and the submission point was rejected.

Requested New Definition – 'Wastes'

Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submissions
27.01	Horizons Regional Council	Include a definition for "wastes" in relation to Policy 2.5.6 and only cover areas within Council's jurisdiction.	

- 4.41 Ms Tucker presented evidence at the hearing and stated that Horizons were satisfied that the matter would be adequately addressed through the Rural Environment Hearing. As a result of decisions made by the Hearings Panel on that topic, it was decided to adopt the officers' recommendation that Rule 19.6.17 (Waste Disposal) be amended to exclude those wastes that are regulated by Horizons Proposed 'One Plan'. Accordingly submission point 27.01 seeking amendment to the definition was rejected, but as agreed with Horizons the amendment to Rule 19.6.17 meant there was no longer any need to include a definition.

5.0 DECISION

5.1 For all of the foregoing reasons we resolve the following:

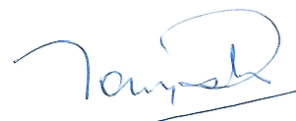
1. That pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 Part 2 General - Definitions (Chapter 26) be approved including the amendments set out in Appendix A to this decision.
2. That for the reasons set out in the above report submissions and further submissions are accepted, accepted in part or rejected as listed in Appendix B to this decision.



Robert Nixon (Chair)



Jane Black



Cr Tony Rush

Dated: 23 September 2013

APPENDIX A: Proposed Plan as amended by Hearing Decisions

Text to be added to the Proposed Plan is shown as underlined and any text to be deleted is shown as ~~strikethrough~~.

Chapter 26: Definitions

Add a new definition as follows

Aggregate Extraction Activities means the use of land, buildings and plant for the primary purpose of extracting and processing aggregates, including but not limited to rock, gravel and sand. Processing includes associated on site crushing, screening, washing and blending of aggregates.

Amend the definition of Building as follows:

Building means any temporary or permanent or movable or immovable structure; and includes any structure intended for occupation by people or animals or machinery but does not include any of the following:

- (a) Any fence or wall which has a height of 2 metres or less.
- (b) Any structure which has a height of 2 metres or less and having a floor area of less than 5.5m² which is located at least 1 metre from any adjoining property boundary.
- (c) Any vehicle, trailer, tent, caravan, or boat.
- (d) Any swimming pool or tank which has a height of less than 1 metre above ground.
- (e) Any part of a deck, terrace, balcony, or patio which has a height less than 1 metre above ground.
- (f) Any electricity poles and ~~pylons towers~~.
- ~~(g) Any pergola, crop support structure or vertical crop protection structure or similar structure of a substantially open nature.~~
- (h) Scaffolding or falsework erected temporarily for maintenance and construction purposes.
- (i) Lightning rods and their mountings where they do not exceed 2 metres above the building or structure to which it is attached.

Amend the definition of Bund as follows:

Bund means an embankment which may be used as a mitigation measure for different effects, including but not limited to, limit noise effects, provide a visual effects (e.g. screening), or as a liquid containment system for hazardous substances, and for sediment and erosion control. ~~designed to prevent the dispersal of hazardous substances from accidental on-site discharges.~~

Delete the definition of Development as follows:

~~**Development** means carrying out any work or ancillary activity on any land including the construction, alteration, or demolition of any building or any excavation of land or any deposit of materials on land.~~

Amend definition of Earthworks as follows:

Earthworks means any alteration to the existing natural ground level including re-shaping, re-contouring, excavation, backfilling, compaction, stripping of vegetation and top soil and depositing of clean fill. Earthworks does not include Aggregate Extraction.

Amend the definition of Family Flat as follows:

Family Flat means any detached building which shall be capable of being a self-contained residential unit with kitchen and bathroom facilities, and shall be secondary in scale to any principal residential dwelling on the site.

Within the Greenbelt Residential Zone, a Family Flat shall be no more than 50m² in maximum gross floor area (plus a covered verandah up to 10m²).

Amend the definition of Notional Boundary as follows:

Notional Boundary means, with regard to the measurement of noise, the legal boundary of the ~~property site~~ on which any dwelling is located or a line 20 metres from the dwelling whichever point is closer to the dwelling.

Amend the definition of open space as follows:

Open Space means any ~~public or private area of substantially unoccupied space or vacant land (whether or not zoned Open Space) which is developed for recreation or amenity activities that do not take place in buildings;~~ and includes parks, reserves, playgrounds, landscaped areas, gardens, together with any ancillary seating and vehicle parking and pedestrian shelters and conveniences; ~~but excludes any recreation facilities. It need not specifically be zoned as Open Space.~~

Amend the definition of Sensitive activities by inserting additional facilities as follows:

Sensitive Activities means any of the following activities:

- Residential activities
- Visitor accommodation
- Community activities
- Recreational facilities and activities
- Camping grounds
- Educational facilities
- Places of assembly
- Marae and papakainga housing
- Cafes and restaurants
- Hospitals, rest homes or medical facilities.

Amend the definition of Site as follows:

Site means an area of land ~~comprised wholly of~~ held in one (1) computer register (certificate of title); or the area of land contained within an allotment on an approved plan of subdivision; or the area of land which is intended for the exclusive occupation by one (1) residential unit; ~~or an area of land held in one (1) computer register.~~

Amend the definition of Temporary Activity as follows:

Temporary Activity means any short term activity and any buildings and structures associated with that activity and includes, but is not limited to:

- any event such as a gala, a sports event, a festival, a market or an outdoor music event; or

- any short term filming activities.

It does not include Temporary Military Training Activities.

Make consequential amendments to correct references in respect of advertising signs and to include Health and Safety Signs as a permitted activity in the following zones:

Chapter 15: Residential Zone

Amend Rule 15.1(h) as follows:

The following types of signs:

(i)...

(v) Health and safety signs

Amend Rule 15.6.27 Table 15-1 as follows:

Table 15-1: Maximum Face Area for Signs

Type of Sign	Maximum Face Area (m ²) per site
Public information Advertising signs, located on the site to which the activity relates identifying the building, property or business which can include a sign attached to the building	1m ²
<u>Health and safety signs</u>	<u>N/A</u>

Chapter 16: Industrial Zone

Amend Rule 16.1(l) as follows:

The following types of signs:

(i)...

(vi) Health and safety signs

Chapter 17: Commercial Zone

Amend Rule 17.1(n) as follows:

The following types of signs:

(i)...

(vi) Health and safety signs

Chapter 19: Rural Zone

Amend Rule 19.1(l) as follows:

(iv) ...

(v) Health and Safety Signs

Amend Rule 19.6.26 Table 19-1 as follows:

Table 19-2: Maximum Face Area for Signs

Type of Sign	Maximum Face Area (m ²) per site
Public information Advertising signs, located on the site to which the activity relates identifying the building, property or business which can include a sign attached to the building	1m ²
<u>Health and safety signs</u>	<u>N/A</u>

Amend Rule 19.6.14(b) by adding an additional bullet point as follows:

- Recreational activities and facilities

Chapter 20: Open Space Zone

Amend Rule 20.1(e) as follows:

The following types of signs:

(i)...

(ix) Health and safety signs

Amend Rule 20.6.18 Table 20-1 as follows:

Table 20-3: Maximum Face Area for Signs

Type of Sign	Maximum Face Area (m ²) per site
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<p><u>Public information-Advertising</u> signs, located on the site to which the activity relates identifying the building, property or business which can include a sign attached to the building</p>	<p>1m²</p>
<p><u>Health and safety signs</u></p>	<p><u>N/A</u></p>

APPENDIX B: Schedule of Decisions on Submission Points

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
32.29		NZ Pork Industry Board		Reject
78.15		Telecom New Zealand Ltd		Accept In-Part
79.15		Chorus New Zealand Ltd		Accept In-Part
98.00	518.14	Horticulture NZ Transpower New Zealand Ltd	In-Part	Accept In-Part Accept In-Part
99.45		Transpower New Zealand Ltd		Accept
37.03		Homestead Group Limited		Reject
98.01		Horticulture NZ		Accept
98.02	516.25	Horticulture NZ Federated Farmers of NZ	Support	Accept In-Part Accept In-Part
98.03	506.48 528.22	Horticulture NZ Ernslaw One Ltd Horizons Regional Council	In-Part In-Part	Reject Reject Reject
77.01	506.36 513.09	Higgins Group Holdings Ltd Ernslaw One Ltd Rayonier New Zealand Ltd	Support Support	Accept Accept
99.46	517.39	Transpower New Zealand Ltd Horticulture NZ	Oppose	Accept In-Part Accept In-Part
66.09		Bruce & Christine Mitchell		Reject
96.41	506.24 506.25 518.15	Federated Farmers of NZ Ernslaw One Ltd Ernslaw One Ltd Transpower New Zealand Ltd	Support In-Part In-Part	Reject Reject Reject Accept In-Part
65.09	518.16 528.14	Horowhenua Farmers' Ratepayer Group Transpower New Zealand Ltd Horizons Regional Council	In-Part In-Part	Reject Accept Reject
77.00	506.36	Higgins Group Holdings Ltd Ernslaw One Ltd	In-Part	Accept

108.39		HDC (Planning Department)		Accept
95.47		New Zealand Defence Force (NZDF)		Accept
55.00		KiwiRail		Accept
41.20	512.01	Powerco Vector Gas Ltd	Support	Accept In-Part Accept In-Part
32.31		NZ Pork Industry Board		Reject
96.43	506.27 502.01	Federated Farmers of NZ Ernslaw One Ltd Meyer	Support In-Part	Accept In-Part Accept In-Part Accept In-Part
98.05		Horticulture NZ		Accept In-Part
50.06	506.76	Rayonier NZ Ltd Ernslaw One Ltd	Support	Reject Reject
40.38		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
40.02		House Movers Section of NZ Heavy Haulage Association Inc.		Reject
99.47		Transpower New Zealand Ltd		Accept
98.06	500.24	Horticulture NZ NZ Pork Board	Support	Accept Accept
110.01		Fraser		Reject
44.21		Genesis Power Ltd		Accept In-Part
44.20		Genesis Power Ltd		Accept
95.00		New Zealand Defence Force (NZDF)		Accept
95.01		New Zealand Defence Force (NZDF)		Accept
93.28		The Oil Companies		Accept
32.33	506.68 513.05 516.29 524.09	NZ Pork Industry Board Ernslaw One Ltd Rayonier New Zealand Ltd Federated Farmers of NZ Higgins Group Holdings Ltd	Support Support Support Support	Reject Reject Reject Reject Reject
98.07		Horticulture NZ		Reject

	505.17	Powerco	Support	Reject
	506.50	Ernslaw One Ltd	Support	Reject
	513.25	Rayonier New Zealand Ltd	Support	Reject
	516.30	Federated Farmers of NZ	Support	Reject
71.11		Progressive Enterprises Ltd		Reject
27.01		Horizons Regional Council		Reject