

Proposed Horowhenua District Plan

Open Space Zone and Access to Water Bodies, Water and Surface of Water

Hearing: 10th April 2013

Officer Right of Reply and Response to Commissioners Questions

I have considered the evidence presented by Horizons Regional Council (submitter no 27) at the Open Space Zone and Access to Water Bodies, Water and Surface of Water hearing on 10th April 2013. With respect to a provision managing activities and structures on the surface of water (Rule 19.6.28(b)) Hearing Commissioner Nixon directed me to work with Pen Tucker from Horizons on amendments to the rule to satisfy the issues Horizons had raised in their evidence.

The evaluation and amended wording is presented below. On behalf of Horizon's, Pen Tucker and Clare Barton have reviewed the recommended amendments to Rule 19.6.28(b) and confirm they are satisfied. Refer to Appendix 1 for the response (email) from Pen Tucker.

Activities on the Surface of Water

Activities on the surface of water were addressed by Pen Tucker (Horizons Regional Council) at the hearing. Mrs Tucker commented on Rule 19.6.28(b) and viewed the rule as being unclear, particularly in regard to the reference to "other structures" and the potential duplication with the Proposed One Plan rules in relation to structures in, on, under and over the beds of rivers and lakes, such as bridges, culverts and fords.

This matter was evaluated in Section 4.18 of the Section 42A Report and below I respond to the evidence presented at the hearing.

Firstly, I confirm HDC's roles and responsibilities are set out in Section 31 of the RMA, and with respect to water bodies and it states "*the control of actual and potential effects of activities in relation to the surface of water in rivers and lakes*".

Chapter 11 of the Proposed Plan sets out the policy framework for this matter which acknowledges that there are other agencies with responsibilities for the management of water (i.e. Horizons Regional Council). Objective 11.1.1 and Policies 11.1.2 – 11.1.4 seek that recreational activities on the surface of water bodies are provided while managing effects on the values inherent in water bodies (ecological, natural character, landscape, spiritual, cultural and recreational). It is noted that the policies do not direct the management of structures that may impede or result in conflict of uses. However it is noted that Policy 11.1.2 does seek to enable the appropriate "use" of the surfaces of rivers and lakes, which would broadly include structures where these facilitate such uses.

The Chapter 11 Methods refer to District Plan rules that permit activities on the surfaces of rivers and lakes provided that they have no more than minor adverse environmental effects.

To implement these policies and methods, rules apply in the Rural Zone (zone applying to waterbodies) to manage activities on the surface of water (i.e. Rule 19.6.28). The first sub

clause in Rule 19.6.28 provides for a range of activities, as long as they are of short duration to reduce conflict between activities and maintain the values of the waterbodies. The second sub-clause of this rule manages the size and height of structures to ensure they do not impede the recreational use of the surface of water bodies and/or generate potential adverse effects on the values of the water body.

Having considered the evidence presented, on reflection, I consider the type of structures aimed at being managed in the rule are those placed on, or are immediately above the surface water, such as pontoons, recreation structures or water features. The rule exempts structures such as bridges (or other structure forming part of the roading resource) and the maintenance, upgrade or replacement of network utilities. I consider this exemption does two things.

Firstly the exemption elevates the provision of infrastructure over other competing uses of the surface of the water. It was for this reason the initial recommendation in the Open Space and Access to Water Bodies, Water and Surface of Water Section 42A Report amended Rule 19.6.28 to refer to "Horowhenua District Council's" roading network.

Secondly, the exemption attempts to avoid managing the types of structures that are managed by Horizons Regional Council. This is because bridges, or other roading infrastructure, facilitates the crossing of a water body and require structures in, on, over or under the "bed" of the river or lake. The maintenance, upgrade or replacement of network utilities could include relaying of lines, pipes for water supply, electricity, gas, telephone, and therefore adding structures to bridges or creating new structures on or beneath the bed of the lake or river.

To avoid the duplication of consent requirements between the District Plan and the Proposed One Plan, I consider Rule 19.6.28 should be amended so that it only manages the size and height of structures that are on the surface of water. All other structures (in, on, over and under the bed of a river or lake) would continue being managed via Rule 16.12 of the Proposed One Plan.

Structures on the surface of water will be supported by other structures that are anchored in the bed of the river or lake and therefore require consideration under both the District Plan and the Proposed One Plan, where the focus of the District Plan will be the activity the structure is facilitating and the visual effects.

The parameters set in Rule 19.6.28(b) are 3m in height and 10m² in gross floor area and these thresholds have been rolled over from the Operative District Plan. Horizons consider improved consistency with the parameters set in Rule 16.12 would be appropriate, which are 20m². As mentioned previously, the Proposed One Plan manages structures on, in, under or over the "bed" of the river or lake and are based on how much of the river/lake bed is occupied by the structure. Therefore the size and type of measure is different to that of the District Plan.

A 10m² gross floor area would enable a platform or raft size structure (3m x 3.3m) to be placed on the surface of the water as of right, which is considered appropriate given the limited risk of multiple structures being erected and enables a recreational activity and use. A 20m² threshold would enable a 4m x 5m structure and is considered to be significantly larger and may have the potential to generate adverse effects and compete for space conflicting with other uses of the surface of the water.

I consider the District Plan and Proposed One Plan manage different aspects of structures and water bodies, therefore the parameters do not need to be the same.

Recommendation

Having heard the evidence, I recommend submission point 27.30 be accepted in part, and that Rule 19.6.28 be amended as set out below.

Recommended Amendments

That Rural Zone rule 19.6.28 be amended as follows:

19.6.28 Activities on the Surface of the Water

- (a) Any activity on the surface of any lake or river shall not exclusively occupy any defined area of water for more than 8 hours per day, for more than seven (7) consecutive days.
- (b) 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 10m² gross floor area and shall not exceed 3 metres height above the water surface.

Note: The Proposed One Plan manages all structures in, on, under or over the bed of rivers and lakes. Therefore, any anchors or piles used in conjunction with any structure permitted by 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 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 14th September 2012.

Appendix 1: Response from Horizons Regional Council (Pen Tucker and Clare Barton) on the recommended amendment to Rule 19.6.28

From: [Penelope Tucker](#)
To: [Claire Price](#)
Cc: [Clare Barton](#)
Subject: RE: Proposed HDC - Matters to work through together
Date: Thursday, 23 May 2013 3:18:42 p.m.

Hi Claire,

As discussed this afternoon, I have considered the amendments you propose, and how they will provide for the matters raised in Horizons' submission and my evidence. I am comfortable that these proposed amendments will address the issues raised around odour, structures on/above the surface of water and minimum lot size where reticulated services are not available.

As you know, I do have some concerns regarding Table 15-3 Standard for Low Density Areas in Hokio Beach and Waikawa Beach. While I understand that the (considerably larger) minimum lot size that applies in the Rural Zone will prevail until the Low Density Area zone is serviced and the Zone comes into effect, and that no change can be made to this provision through the current Plan Review, the inclusion of the provision is problematic. I would just like to register that I have concerns that this could potentially be very confusing for anyone wanting to subdivide in that area.

Thanks very much for your help this afternoon.

Kind regards,
Pen

Pen Tucker | Policy Analyst
DDI 06 952 2948

From: Claire Price [mailto:Claire.Price@boffamiskell.co.nz]
Sent: Friday, 17 May 2013 12:23 p.m.
To: Penelope Tucker
Cc: David McCorkindale
Subject: RE: Proposed HDC - Matters to work through together

Pen,

Apologies for the delay in getting the draft wording to you. For each of the topics I have provided a brief background/explanation to give the draft provisions some context, the draft amendments then follow on next page.

Please find attached the following:

- Residential Zone - subdivision provisions
- Open Space Zone - activities on surface water rule
- Zone-wide – Odour

We are intending to do a final right of reply and update to the Hearing Panel on the 28th May on any outstanding matters, including these topics where discussing with Horizons. We would ideally like to get your final comments on the provisions by Thursday (23rd May) next week, noting that we will be available to discuss these matters with you over the next week.

Regards

Claire Price

From: Penelope Tucker [<mailto:pen.tucker@horizons.govt.nz>]
Sent: Monday, 6 May 2013 5:00 p.m.
To: Claire Price
Subject: RE: Proposed HDC - Matters to work through together

Thanks Claire, I look forward to receiving your proposed wording.

Regards
Pen

Pen Tucker | Policy Analyst
DDI 06 952 2948

From: Claire Price [<mailto:Claire.Price@boffamiskell.co.nz>]
Sent: Monday, 6 May 2013 4:58 p.m.
To: Penelope Tucker
Subject: Proposed HDC - Matters to work through together

Afternoon Pen,

Just following up on the matters the HDC Hearing Panel agreed we could work through together.

Tomorrow I am hoping to send through amended wording for the:

- Subdivision Table (15-3) in the Residential Zone and new RDA provision where reticulated disposal of wastewater is not available for settlements zoned Residential.
- Permitted activity condition for odour (Rule 16.6.7) – to reflect better alignment with POP.

Commissioner Nixon (Open Space Zone Access to Water and the Surface of Water Hearing) also directed that we work on wording for Rule 19.6.28 Activities on the Surface of the Water, and I am hoping to get suggested wording to you later on this week.

Looking forward to ironing out the above issues with you.

Regards

Claire Price



Claire Price | Planner

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