

**Before the Hearings Panel
At Porirua City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Porirua District Plan

Between **Various**

Submitters

And **Porirua City Council**

Respondent

**Council reply on Definitions and Definitions Nesting Tables – Michael David
Rachlin on behalf of Porirua City Council**

Date: 15th October 2021

INTRODUCTION:

1 My full name is Michael David Rachlin. I am employed as a Principal Policy Planner for Porirua City Council.

2 I have read the evidence and tabled statements provided by submitters relevant to the Section 42A Report – Definitions and Definitions Nesting Tables.

3 I have prepared this Council reply on behalf of the Porirua City Council (**Council**) in respect of matters raised through Hearing Stream 1.

4 Specifically, this statement of evidence relates to the matters in the Section 42A Report - Definitions and Definitions Nesting Tables.

5 I am authorised to provide this evidence on behalf of the Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

6 Appendix C of my section 42A report sets out my qualifications and experience.

7 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2014.

SCOPE OF REPLY

8 This reply follows Hearing Stream 1 held on the 27th and 29th September. Minute 2 of the Hearing Procedures allows for s42A report authors to submit a written reply within 10 working days of the adjournment of the hearing.

9 The main topics addressed in this reply include:

- Answers to questions posed by the Panel
- Changes to recommendations in s42A report

- 10 Appendix 1 has a list of materials provided by submitters including expert evidence, legal submissions, submitter statements etc. This information is all available on the PDP Hearings Portal.
- 11 Appendix 2 has recommended amendments to PDP provisions, with updated recommendations differentiated from those made in Appendix A of the s42A report.
- 12 Appendix 3 has an updated table of recommended responses to submissions and further submissions, with updated recommendations differentiated from those made in Appendix B of the s42A report.
- 13 Appendix 4 has a condensed version of the How the District Plan Works section, including the changes I recommend in paragraph 34 below.
- 14 Appendix 5 contains Ministry for the Environment advice regarding paragraph 4 to Part 14 of the National Planning Standards.
- 15 For ease of reference, I have shown any changes proposed through this right of reply as follows:

s42A Report	deletions / <u>insertions</u>
Right of Reply version	deletions / <u>insertions</u>

Answers to questions posed by the Panel

- 16 **Definition of Supermarket:** The Hearing Panel requested a response to whether in the recommended definition of supermarket:
- The term “pharmacy” should be replaced with “pharmaceuticals”.

- Whether the amended definition provides for a “dispensary”

17 I agree that “pharmaceuticals” is a more appropriate term than “pharmacy” within the context of the definition. The definition references the sale of items and foodstuffs, which the term ““pharmaceuticals” reflects rather than a “pharmacy”.

18 I am also satisfied that the definition (as amended) would provide for a dispensary. A dispensary is a place where medicines are prepared and provided for prescription. I consider this to be a back of house activity, similar to the preparation of foodstuffs undertaken to prepare items for sale, for example butchery or bakery. As such, in my view, no further change to the definition is required.

19 The recommended amended definition for supermarket is shown in Appendix 2. I do not consider that any amendments are required to the s32AA evaluation in my s42A report, given the minor nature of the change.

20 **Definition of childcare services:** The Hearing Panel requested a response to whether a definition of Puna Reo should be defined, given the mandatory direction in the National Planning Standards that Te Reo Māori terms used in rules must be defined or translated in English in the Definitions chapter¹.

21 I agree that a definition is required and have discussed the matter and definition wording directly with Te Rūnanga o Toa Rangatira. At this time, I am awaiting advice on the wording for the definition, which I would recommend be added to the Glossary in the Plan.

22 Once I have received the definition wording, I will advise the Hearing Panel at that time together with my recommendation.

¹ Paragraph 2, Part 14, National Planning Standards

- 23 **Definition of tertiary education service:** The Hearing Panel sought clarification on whether the recommended changes to this definition were allowed under the National Planning Standards, given the requirements of paragraph 4, Part 14 to the Standards.
- 24 I have discussed this with the National Planning Standards team at the Ministry for the Environment. They confirm, that since the definition of tertiary education is a subsidiary definition of “educational facility”, reference to the Education and Training Act 2020 is not caught by Paragraph 4, Part 14 to the National Planning Standards². This is because the primary definition (i.e. educational facility) does not reference the Education Act 1989, or the updated Education and Training Act 2020.
- 25 In view of the advice from the Ministry for the Environment, I am satisfied that the definition of tertiary education service recommended in the s42A report is within scope for the Hearings Panel. As such, in my view, no further change to the definition is required and I do not make any changes to my s42A hearings report on this matter.
- 26 **Retail Activity Table:** The Hearing Panel requested a table showing the activity status for retail activity, supermarket, large format retail activity and trade supplier in the commercial and mixed use zones. I produce the table below:

² See Appendix 5 for full advice

Table 1 – Activity table for Commercial and Mixed Use Zones

Zone	Retail activity	Supermarket	Large format retail activity	Trade supplier
City Centre Zone	P	n/a	RDIS	DIS
Local Centre Zone	P	RDIS	DIS	NC
Neighbourhood Centre Zone	P (up to 200m ²)	n/a	DIS	NC
Mixed Use Zone	P	n/a	P (up to 1500m ²)	RDIS (up to 1500m ²)
Large Format Retail Zone	RDIS	n/a	P	P

P = Permitted, RDIS = Restricted Discretionary, DIS = Discretionary, NC = Non-Complying

- 27 **Rule Framework for supermarkets:** The Panel requested further information on how the rule frameworks for the Commercial and Mixed Use zones address supermarkets.
- 28 Supermarket activities can be a retail activity, a supermarket, or a large format retail activity (where a store/tenancy exceeds a gross floor area of 450m²), depending on their scale and the zone. This means that for supermarkets (which could include Metro stores, dairies and superette if they meet the definition for a supermarket) the PDP approach across the commercial and mixed use zones is:
- 29 **City Centre Zone:** A dairy, Metro store or superette would be a permitted retail activity if the store or tenancy has a gross floor area of up to 450m², while a larger ‘full service’ supermarket would be a large format retail activity, and as such a restricted discretionary activity.

- 30 **Local Centre Zone:** A Metro store, superette or larger, ‘full service’ supermarket would be a supermarket as defined in the PDP, regardless of their gross floor area, and as such a restricted discretionary activity. Other types of retail activities would be permitted, while large format retail activity (except a supermarket) would be discretionary activities.
- 31 **Neighbourhood Centre Zone (NZC):** A dairy, Metro store or superette would be a retail activity if the store or tenancy has a gross floor area of up to 450m² (there is a permitted gross floor area threshold of up to 200m² for retail activities in the NCZ), while a larger ‘full service’ supermarket would be a large format retail activity.
- 32 **Mixed Use Zone:** A Metro store, superette and larger ‘full service’ supermarket would be permitted as a retail activity or a large format retail activity respectively, where the store or tenancy has a gross floor area over 450m². This is up to a gross floor area threshold of 1500m².
- 33 **Large Format Retail Zone:** Dairies, Metro store or a superette with a gross floor area of less than 450m² are a restricted discretionary activity. However, Large format retail activities, including supermarket formats with a gross floor area of more than 450m², are a permitted activity. This reflects the purpose of the zone and the role it plays in the city to provide for “big box” retailing.
- 34 **Guide for plan users regarding definitions:** The Panel requested whether the Plan would benefit from notes guiding plan users on how definitions are used in the Plan. They also requested a response to whether there was scope to provide for these guide notes in the submissions received to the PDP.
- 35 In my opinion, I consider that notes would benefit Plan users in how to interpret and apply definitions in relation to the provisions of the Plan. I also consider that the submissions from Kāinga Ora [81.27, 81.30, 81.39, 81.152][81.809] provide the necessary scope. These submissions seek the deletion of several defined terms and reliance on their plain and

common meaning. 81.809 seeks such other relief, or consequential or other amendments as considered appropriate and necessary to address the concerns set out in submissions. Accordingly, I make changes to my recommendations in relation to these submissions. I set these out in Appendix 3, in an updated table of recommended responses to submissions and further submissions, with updated recommendations differentiated from those made in Appendix B of the s42A report.

36 In terms of changes to the PDP, I recommend that the following be added to the How the District Plan Works section (more fully set out in Appendix 4):

Recommended Changes

Definitions

Where a word or phrase is shown in blue in the Plan, these have the meaning set out in their definitions listed in the Interpretations chapter. For ease of use, these defined words have been hyperlinked in the Plan to their corresponding definition.

In all other cases, where a word or phrase is not shown in blue, the plain and common meaning shall apply.

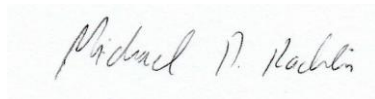
37 I have not undertaken a s32AA evaluation of this addition since the notes do not form part of the statutory provisions of the Plan.

38 **Guide for plan users regarding definitions nesting tables:** The Panel requested whether the Plan would benefit from notes guiding plan users on how to use the definitions nesting tables in the Plan. They also requested a response to whether there was scope to provide for these guide notes in the submissions received to the PDP.

39 As with definitions, I consider that notes would benefit Plan users in how to use the definitions nesting tables. However, I have reviewed the submissions and cannot find any that provide scope to introduce guidance notes for the definitions nesting tables. The submissions

received on this topic, sought only that the definitions nesting tables be retained as notified or else sought specific relief in relation to the placement of specific activities in the tables.

Date: 15th October 2021



Michael D. Rochlin

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Appendix 1 – List of materials provided by submitters

Statements of supplementary planning evidence	Overarching Matters - Torrey McDonnell Definitions and Nesting Tables - Michael Rachlin
Submitter evidence	Alastair Smaill For Greater Wellington Regional Council [137 And Fs40] Karen Williams For Kāinga Ora [81 And Fs65] Mary Santos For Foodstuffs [122] Meghan Barrett For Firstgas Limited [84 And Fs63] Pauline Whitney For Transpower NZ Ltd [60 And Fs04] [Addendum] - Pauline Whitney For Transpower NZ Ltd [#60 And Fs04] Rebecca Eng For Transpower NZ Ltd [60 And Fs04]
Legal submissions	Ezekiel Hudspith For Transpower New Zealand [60 And Fs04] Attachment 1- EDS Inc v The NZ King Salmon Co Ltd [2014] Attachment 2 - Tauranga Environmental Protection Society v Tauranga City Council [2021] Nick Whittington For Kāinga Ora [81 And Fs65]
Submitter written presentations	Paul Botha [118 And Fs27] Plimmerton Residents Association [218] Robyn Smith [168 And Fs09] Paremata Residents Association [190]
Submitter statements	Chorus, Spark And Vodafone [51] Department Of Corrections [135] Fire and Emergency NZ [119] John Cody [184] - Hearing Stream 1 Ministry of Education [134] Waka Kotahi New Zealand Transport Agency [82]

Appendix 2 – Recommended amendments to PDP provisions

In order to distinguish between the recommendations made in the s42A report and the recommendations that arise from this report:

- s42A recommendations are shown in red text (with underline and ~~strike out~~ as appropriate); and
- Recommendations from this report in response to evidence are shown in blue text (with underline and ~~strike-out~~ as appropriate).

Definitions

Supermarket

means a retail shop selling a wide range of foodstuffs and non-food grocery items for consumption and use off-site, where foodstuffs comprise more than ~~90~~ 80 percent of the total retail floor space. Foodstuffs include:

- a. fresh produce, meat, fish and dairy; and
- b. chilled, frozen, packaged, canned and bottled foodstuffs and beverages.

Non-food grocery items include:

- a. cooking, cleaning and washing products;
- b. kitchenwares; ~~and~~
- c. toiletries; ~~and~~
- d. pharmacy pharmaceutical products

For the purposes of this definition retail floor space does not include:

- storerooms;
- back of house including delivery areas;
- trolley storage areas;
- entrance lobbies;
- behind counter areas; and
- checkouts.

Appendix 3 – Recommended responses to submissions and further submissions

To distinguish between the recommended responses in the s42A report and the recommended responses that arise from this report updated recommended responses from this report in response to evidence are show in tracked changes in blue. See table below:

Definitions – submissions seeking deletion of definitions							
81.27	Kāinga Ora	Addition	Delete definition: Addition means any works undertaken to an existing building which has the effect of increasing the gross floor area of that building.	3.4	Reject Accept in Part	See body of the report and Council Right of Reply	No Yes
FS40.49	GWRC		<i>Oppose deletion. Term is used in Natural Hazards provisions and specifically relates to an increase in floor area, which is relevant to natural hazards. Any other additions which may be included in the common meaning of the word are not relevant and so need to be excluded from the concept of 'addition'</i>				
81.30	Kāinga Ora	Alteration	Delete definition: Alteration means any work to existing buildings or structures which involves the change, removal or replacement of walls, windows or features which results in an external appearance different to its existing appearance.	3.4	Reject Accept in Part	See body of the report and Council Right of Reply	No Yes
FS14.5	Heritage NZ		<i>Support deletion. Alteration is an important concept for heritage provisions and the PDP includes a definition of 'Heritage Alteration'. with regard to heritage matters, a definition of 'alteration' is not necessary.</i>				
81.39	Kāinga Ora	Boundary	Delete definition: Boundary means the legal perimeter of a site.	3.4	Reject Accept in Part	See body of the report and Council Right of Reply	No Yes
81.53	Kāinga Ora	Contractors yard	Delete definition: Contractors yard means a yard based depot where there is storage of machinery and materials, plus ancillary buildings, for the purpose of operating a contracting business, including: a. earthmoving; b. scaffolding; c. construction; and d. roading and other infrastructure.	n/a	Accept	Agree with submitter	Yes
81.121	Kāinga Ora	Overlay	Delete definition:	3.4	Reject	See body of the report	No

			<p>Overlay</p> <p>means the spatially identified sites, items, features, settings or areas with distinctive values, risks or other factors within the City which require management in a different manner from underlying zone provisions, as set out in Schedules 2 to 11 and the Natural Hazard Overlay and Coastal Hazard Overlay.</p>				
FS14.10	Heritage NZ		<p><i>Oppose deletion. Note that the term ‘overlay’ is used throughout the plan and if deleted each reference to overlay would need to refer in full to all the spatially identified sites and areas.</i></p>				
225.66	Forest and Bird	Overlay	<p>means the spatially identified sites, items, features, settings or areas with distinctive values, risks or other factors within the City which require management in a different manner from underlying zone provisions. <u>The overlays for Porirua are, as set out in Schedules:</u></p> <p><u>SCHED2 Historic Heritage Items (Group A)</u> <u>SCHED3 Historic Heritage Items (Group B)</u> <u>SCHED4 Historic Heritage Sites</u> <u>SCHED5 Notable Trees</u> <u>SCHED6 Sites and Areas of Significance to Māori</u> <u>SCHED7 Significant Natural Areas</u> <u>SCHED8 Urban Environment Allotments</u> <u>SCHED9 Outstanding Natural Features and Landscapes</u> <u>SCHED10 Special Amenity Landscapes</u> <u>SCHED to 11 Coastal High Natural Character Areas</u></p> <p>and the Natural Hazard Overlay and Coastal Hazard Overlay. <u>All overlays are shown on the Planning maps and managed through provisions in the district wide chapters.</u></p>	3.4	Accept in Part	See body of the report	No
81.152	Kāinga Ora	Setback	<p>Delete definition</p> <p>Setback means the distance between a structure or activity and the boundary of its site, or other feature specified in the Plan.</p>	3.4	Reject Accept in Part	See body of the report and Council Right of Reply	No Yes
225.72 ³	Forest and Bird	Setback	<p>Amend the definition to clarify the meaning of site and features, as follows (or similar):</p>	3.4	Accept in Part	See body of the report	No

³ Oppose - Kāinga Ora [FS65.62]

			<p>means the distance between a structure or activity and the boundary of the its-site, the bed of a waterbody, an overlay or other feature specified in the Plan.</p> <p>Or</p> <p>In relation to a building, means the distance between the building a structure or activity and the boundary of, the its site, or other infrastructure feature-specified in the Plan</p>				
Definitions – all others							
81.809	Kāinga Ora	General	Such other relief, or consequential or other amendments as considered appropriate and necessary to address the concerns set out in submission.	3.6.11	Accept in part	See body of the report and Council Right of Reply	Yes

Appendix 4 – How the District Plan Works section with changes arising from the Hearing.

How the District Plan works
Please follow the steps shown in the Step by step guide for using the District Plan below to determine what activity status applies to your property or proposal.
Please note that the Infrastructure, Renewable Electricity Generation, Subdivision and Temporary Activities chapters operate slightly differently to the rest of the Plan and generally operate as standalone chapters containing all relevant objectives, policies, rules and standards relating to those activities, unless otherwise specifically identified in those chapters. If you are undertaking any activities relating to infrastructure, renewable electricity generation or wanting to undertake any temporary activities or subdivide your property, please start by looking at those chapters after you have looked at the planning maps to determine what zone your activity or property is in and whether any overlays, features and/or designations apply. Unless otherwise specified in the introduction or in the chapter, the rules in the Infrastructure, Renewable Electricity Generation, Temporary Activities and Subdivision chapters are the only rules that apply to the listed activities.
[.....]
As outlined in the Step by step guide for using the District Plan, users should first look at the planning maps to identify what zones, overlays, features and/or designations applies to your property or area.
[.....]
Users should then refer to the relevant area-specific (zone) rules and standards in Part 3 and district-wide rules and standards in Part 2 that apply to your proposal. These will determine whether your proposal requires a resource consent, and if so, its activity status.
[.....]
If what you are proposing does not comply with a number of rules in different chapters, generally the resource consent applications required will be "bundled" together and assessed against the most restrictive activity status that applies.
[.....]
To find out more about how the District Plan works refer to the Ministry for the Environment's An everyday guide to the RMA or the Council's Resource Consents webpage.
Exception

The Proposed Porirua District Plan does not apply to the land known as Plimmerton Farm, being Lot 2 DP 489799, 18 State Highway 1, Plimmerton, which is identified on the planning maps. Lot 2 DP 489799 is subject to Proposed Plan Change 18 to the Operative Porirua District Plan.

Table 2 National Environmental Standards and rules in the District Plan

National Environmental Standard	Can the District Plan have more restrictive rules	Explanation
[.....]	[.....]	[.....]
Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016	Yes	In relation to activities within: 1. Scheduled notable trees within the Notable Trees chapter; 2. Heritage items, heritage settings, historic heritage sites, and areas within the Historic Heritage and Sites and Areas of Significance to Māori chapters; 3. Outstanding Natural Features and Special Amenity Landscapes in the Natural Features and Landscapes chapter; 4. Significant Natural Areas in the Ecosystems and Indigenous Biodiversity chapter; and 5. Land adjoining the coastal marine area within the Coastal Environment chapter.
[.....]	[.....]	[.....]
Resource Management (National Environmental Standards for Electricity Transmission)	Yes	In relation to activities within: 1. Scheduled notable trees within the Notable Trees chapter; 2. Significant Natural Areas in the Ecosystems and Indigenous Biodiversity chapter; and 3. Heritage items, heritage settings, historic heritage sites and areas within the

Activities) Regulations 2009		Historic Heritage chapter and Sites and Areas of Significance to Māori chapter.
Notification		
[.....]		
An application for resource consent for a restricted discretionary, discretionary or non-complying activity is subject to the normal tests for notification under the relevant sections of the RMA, unless otherwise specified by a rule applying to the particular activity.		
[.....]		
<p>When deciding whether any person is affected in relation to an activity for the purposes of section 95E of the RMA, Porirua City Council will give specific consideration to the following entities with responsibility for any natural or physical resources which may be affected by the activity, including:</p> <ul style="list-style-type: none"> a. In relation to infrastructure, the network utility operator that owns or operates that infrastructure; b. In relation to historic heritage, Heritage New Zealand Pouhere Taonga; c. In relation to natural resources and the coastal environment, the Minister of Conservation; d. In relation to sites or areas of significance to Māori, Ngāti Toa Rangatira; and e. In relation to a rule which addresses reverse sensitivity effects, the operator of the activity which is protected by the rule from such effects. 		
Information to be submitted with resource consents		
[.....]		
An AEE is a written statement that must be prepared in accordance with Schedule 4 of the RMA.		
[.....]		
Where relevant and/or applicable, applicants should demonstrate they have considered any tangata whenua interests and impacts. See the Tangata Whenua chapter for further information.		
[.....]		
Legal effect of rules		
Except as outlined below, the rules in the District Plan will only have legal effect once a decision on submissions relating to the rule is made and publicly notified. Section 86B of the RMA allows councils to seek legal effect from public notification. The Porirua City Council has not exercised use of this option under s86B.		
[.....]		

This means that the rules in the Ecosystems and Indigenous Biodiversity, Historic Heritage, and Sites and Areas of Significance to Māori chapters, as well as some rules in the Infrastructure, Renewable Electricity Generation, Signs and Subdivision chapters that relate to activities regarding the protection or development of Significant Natural Areas, Historic Heritage and Sites and Areas of Significance to Māori have legal effect from public notification of the District Plan.

[.....]

The teal gavel icon identifies a rule that has delayed legal effect



These rules apply to signs on Council land (except for Council Reserves). These rules will only have legal effect once the Proposed Plan becomes operative in accordance with clause 20 of Schedule 1. This is to avoid any possible duplication of process with the Signs Bylaw 2020 which requires a signs permit for the same reasons as a resource consent would be required.

Definitions⁴

Where a word or phrase is shown in blue in the Plan, these have the meaning set out in their definitions listed in the Interpretations chapter. For ease of use, these defined words have been hyperlinked in the Plan to their corresponding definition.⁵

In all other cases, where a word or phrase is not shown in blue, the plain and common meaning shall apply.⁶

⁴ [Kāinga Ora \[81.27, 81.30, 81.39, 81.152\]\[81.809\]](#)

⁵ [Ibid](#)

⁶ [Ibid](#)

Appendix 5 – Advice from Ministry of the Environment

Kia ora Michael

Thank you for your query regarding the requirements set out in paragraph 4 to Part 14 of the National Planning Standards. In particular, you asked whether your proposal to change the definition of “tertiary education services” in the Porirua Proposed District Plan to reflect updated legislation was precluded by the National Planning Standards. From what you’ve sent through, this doesn’t appear to be the case.

Here, the relevant parts of the National Planning Standards state:

Para 1. Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities must use the definition as defined in the Definitions List. However if required, they may define: a. terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List. b. additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.

Para 4. Where the Definitions List incorporates a definition from legislation, the definition applied is the version included in the legislation on the date of gazettal of this standard.

The Planning Standards themselves do not define ‘tertiary education services’. Instead, the Planning Standard defines ‘educational facility’ to mean “...land or buildings used for teaching or training by child care services, schools, or tertiary education services, including any ancillary activities .

The definition of ‘educational facility’ does not refer to the Education Act, or the updated Education and Training Act. Therefore, should PCC wish to amend ‘tertiary education services’ to align with the Education and Training Act 2020, we do not consider that this is precluded by the Planning Standards. Nor do the Planning Standards need to be updated in order for PCC to be able to make this change.

Ngā mihi

Nicole Mistal (she/her*)

Kaitātari Matua | Senior Analyst

National Direction

Ministry for the Environment | Manatū Mō Te Taiao

022 343 1994 | nicole.mistal@mfe.govt.nz | mfe.govt.nz

Ministry staff work flexibly by default. For me this means I usually work from home on Mondays and Fridays (from 8.30am – 12.30pm only).

**If you are wondering about the use of the pronouns she/her on this signature, read [this article](#) about how sharing pronouns in this way can help create an inclusive and safe environment for transgender and nonbinary colleagues.*