

**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**

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**Council reply on Strategic Objectives addressed in Hearing Stream 4 - Gina Sweetman on behalf of Porirua City Council**

**Date: 8 March 2021**

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## **INTRODUCTION:**

- 1 My full name is Gina Marie Sweetman. I am a consultant planner engaged by Porirua City Council.
- 2 I have read the evidence and tabled statements provided by submitters relevant to the Section 42A Reports - Part B Strategic Directions FC-O3 and FC-O4 and Infrastructure as so far as it relates to FC-O1 and FC-O2.
- 3 I have prepared this Council reply on behalf of the Porirua City Council (Council) in respect of matters raised through Hearing Stream 4.
- 4 Specifically, this statement of evidence relates to the matters in the Section 42A Report - B Strategic Directions FC-O3 and FC-O4 and Infrastructure as so far as it relates to FC-O1 and FC-O2.
- 5 My statement of evidence also draws on my wider involvement in the PDP, where I provided an overall review and integration role for all Chapter authors and the PDP as a whole.
- 6 I am authorised to provide this evidence on behalf of the Council.

## **QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT**

- 7 Appendix C of the Section 42A Report sets out my qualifications and experience.
- 8 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**

- 9 This reply follows Hearing Stream 4 held on 8, 9, 11, 14 and 15 February 2022.
- 10 The main topics addressed in this reply include:
  - The wording of FC-O3;
  - Matters relating to the Proposed Natural Resources Plan;
  - The policy language used throughout the PDP and
  - Notification preclusion information in How the Plan Works section.
- 11 Appendix 2 contains recommended amendments to PDP provisions, with updated recommendations differentiated from those made in Appendix A of the Section 42A Report.

12 Appendix 1 of this reply contains a list of materials provided by submitters including expert evidence, legal submissions, submitter statements etc. This information is all available on the PDP (Proposed District Plan) hearings web portal at <https://pdportal.porirua.govt.nz>.

13 Appendix 2 contains recommended amendments to PDP provisions, with updated recommendations differentiated from those made in Appendix A of the Section 42A reports.

14 I have not provided an updated table of recommended responses to submissions and further submissions as my recommendations do not differ from those made in Appendix B of the s42A report.

15 For ease of reference, I have shown any changes proposed through this right of reply as follows:

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

**The wording of FC-O3**

16 During the hearing, the Panel asked whether this objective should be reworded as follows, to provide better clarity:

*Existing lawfully established activities are protected from the adverse effects, including reverse sensitivity effects, of incompatible activities.*

17 I have reviewed Kāinga Ora’s submission [81.204] on this objective, which sought the following amendment:

Porirua City’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

In this context ~~the~~ ongoing operation, character and amenity values of existing lawful activities are protected from incompatible activities.

18 The reason provided was that parts of Porirua will be transformed and the amenity values for individual landowners will be changed, as provided for by Objective 4 and Policy 6 of the

NPSUD. The submitter considers that the amenity of existing activities should not be protected at all costs and in some cases, it will be appropriate for the urban form to change in such a way that amenity values are detracted for some and improved for others, including when a proposal provides increased and varied housing density and types

19 In my view, there is no scope provided within that submission for the amendments that the Panel suggested.

### **Matters relating to the Proposed Natural Resources Plan**

20 The Panel had a number of questions relating to the PRNP, covering:

- The implication for the PDP if the PNRP is made operative, given the PDP refers to the PNRP in a number of places
- The current status of the PNRP
- The definition of minimise in the PNRP; and should the PDP adopt this definition for consistency

21 I address each of these in turn.

#### *Status of the PNRP and if it is made operative*

22 In my opinion, there is little in the way of implication if the PNRP is made operative either before or after decisions are released on submissions or the PDP is made operative.

23 As I informed the Panel during the hearing, as at the time of the hearing, there are only four outstanding appeal points, for which consent orders have been agreed between parties. These parties were waiting for approval from the Court. Once the Court has approved the consent orders, the Regional Council will be able to formally move to make the PNRP operative.

24 In my view, all that would be required once that occurs is that reference in the PDP to the Proposed Natural Resources Plan can be amended to Natural Resources Plan. This could be done via Clause 16 of Schedule 1 prior to the PDP being made operative as an alteration of minor effect (16(2)) or by Clause 20A of Schedule 1 after the PDP is made operative, as correction of a minor error.

#### *Minimise*

- 25 The PNRP definition of minimise was agreed by consent order dated 4 June 2021. That definition is *“Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.”*
- 26 I understand how it could be helpful if the same definition of minimise was used in the PNRP and PDP. This will have policy implications however.
- 27 I note that the Chapter authors have been using a policy approach of using minimise where *“there is likely to be a significant adverse effect, and seek to reduce to the most extent possible”*, as is set out in the Drafting Standard which the Panel has already been provided. This approach obviously predated the consent order being agreed to the PNRP and means that there is inconsistency between how the term is used between the two plans. As the Panel has identified, possible and reasonably practicable do have different meanings between them; with possible being more restrictive than reasonably practicable.
- 28 Mr McDonnell has already addressed Waka Kotahi’s submission points [82.296, 82.1647 , 82.165, 82.95, 82.44, 82.46, 82.47] that sought to replace the term minimise with mitigate, on the basis that the term is difficult to interpret and apply in practice, in section 9.11 of the Part A Overarching section 42A report. He recommended rejection of these points, which I support. Ms Whitney on behalf of Transpower [FS04.6 to the Waka Kotahi submission points] addressed the use of minimise in sections 8.12 to 8.15 of her expert evidence. In 8.13 she stated that she was not opposed to the term being used but noted that the appropriateness of the term would need to be assessed on a provision-by-provision basis, and in the absence of a definition, the plain English meaning would need to be used. Ms Whitney identifies this plain English meaning to be *“minimise means to reduce (something, especially something undesirable) to the smallest possible amount or degree”*.
- 29 I note that there are no submissions which directly seek a definition of minimise be included, but I consider that the Waka Kotahi submissions do provide scope for the policy approach used in the Drafting Standard to be included as a definition, so as to interpret and apply the term consistently. As such, should the Panel wish to include a definition, in my view, it should be *“seek to reduce to the most extent possible”*, as has been used by the Chapter authors.
- 30 In my opinion, if the Panel was to use the definition in the PNRP instead of that used by Chapter authors, Chapter authors would need to reconsider all policies that currently use

minimise under section 32AA to identify whether it was appropriate to do so or whether a different policy approach was required. Given that minimise is used in policies of chapters that the Panel has already heard, in my view, the Panel may need to consider re-opening the hearing for any submissions on those policies.

- 31 Alternatively, the Panel may see merit in the current approach taken in the PDP of not defining the term and allowing its application based on its plain English meaning.

### **Policy wording in the PDP**

- 32 The Panel asked whether it would be helpful for Plan users to understand the meaning of the policy directive wording used in the PDP. As discussed with the Panel and explained earlier to the Panel through HS1, Chapter Authors followed a “drafting standard” in approaching policy wording to ensure consistency. The table in Appendix 3 sets out the relevant table from the Drafting Standard.

- 33 In the first instance, beyond submissions that seek that different wording be used<sup>1</sup>, I note that there are no submission points which seek clarification of policy wording or how words are defined and applied.

- 34 In my opinion, there is no defined need for this table or a version of it to be included. The terms in my view can stand on face value and their plain English meaning. If a plan user wants to see why a particular policy approach is taken and the rationale for the policy, that is the role and purpose of the section 32 evaluation reports.

### **Notification preclusions in How the Plan Works**

- 35 Ms Williams for Kāinga Ora rightly identified that rules that have notification preclusions are not exempt from public or limited notification if there are special circumstances<sup>2</sup>. It was identified during questioning that the How the Plan Works section could be improved to be clearer of this.

- 36 I have reviewed the section on notification under the General Approach subsection. The paragraph on controlled activities is correct and refers to the ability for notification to occur if there are special circumstances. However, the reference to section 95A(4) is incorrect and

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<sup>1</sup> Waka Kotahi – minimise to mitigate; Kāinga Ora – avoid to discourage; Forest and Bird – provide for to only provide for.

<sup>2</sup> Section 6.9 onwards in her statement of evidence.

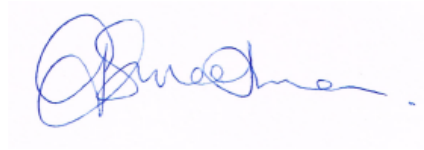
it should be sections 95A(9) and 95B(10). I consider this is a clause 16 matter that can be corrected as it is a factual application of the RMA.

37 The paragraph on restricted discretionary, discretionary and non-complying activities does not refer to the ability for Council to require public or limited notification under section 95A(9) or 95B(10). I consider that including these is a clause 16 matter, given it is factual application of the RMA.

38 I have recommended amendments accordingly, as set out in Appendix 2.

**Date:** 8/3/2022

Gina Sweetman  
Consultant Planner



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## Appendix 1 – List of materials provided by submitters

<b>Statements of supplementary planning evidence</b>	Ben Cartwright For Transpower [60] Pauline Whitney For Transpower [60] (11 Feb 22) Pauline Whitney For Transpower [60] (14 Feb 22) Pauline Whitney For Transpower [60]
<b>Submitter evidence</b>	Alex Gifford (Planning) For Nz Defence Force [124] Angie Crafer (Transport) For Kāinga Ora [81] Ben Cartwright For Transpower [60] Brendon Liggett (Corporate - Noise And Vibration) For Kāinga Ora [81] Cath Heppelthwaite (Noise) For Waka Kotahi - Attachment C [82] Cath Heppelthwaite (Noise) For Waka Kotahi [82] Chris Horne For Powerco [83] Claudia Jones (Planning) For Waka Kotahi [82] Darran Humpheson (Acoustic) For Nz Defence Force [124] Dean Raymond On Behalf Of Heritage Nz Pouhere Taonga [65] Dr Stephen Chiles (Noise And Vibration) For Kiwirail [86] Dr Stephen Chiles (Noise) For Waka Kotahi [82] Gary Scholfield For Powerco [83] Graeme Mccarrison For Spark, Andrew Kantor For Chorus, Colin Clune For Vodafone Jon Styles (Noise And Vibration) For Kāinga Ora [81] Karen Williams (Planning) For Kāinga Ora [81] Luke Braithwaite (Lighting And Signage) For Waka Kotahi [82] Meghan Barrett For Firstgas Ltd [84] Michelle Grinlinton-Hancock (Planning) For Kiwirail [86] Nicola Hine For Firstgas Ltd [84] Rebecca Davies For Nz Defence Force [124] Rebecca Eng For Transpower [60] Robert Swears For Waka Kotahi [82] Timothy Lester For Wellington Electricity [85] Tom Anderson On Behalf Of Chorus, Spark And Vodafone [51] Submitter Rebuttal Evidence - Claudia Jones For Waka Kotahi [82] Submitter Rebuttal Evidence - Jon Styles For Kāinga Ora [81] Submitter Rebuttal Evidence - Karen Williams For Kāinga Ora [81] Submitter Rebuttal Evidence - Michelle Grinlinton-Hancock (Planning) For Kiwirail [86] Submitter Rebuttal Evidence - Pauline Whitney For Transpower Nz [60]
<b>Legal submissions</b>	Christina Sheard For Waka Kotahi [82] - Noise And Vibration D A Allan And A K Devine For Kāinga Ora [81] - Noise Ezekiel Hudspith For Transpower Nz [60] - Outline L J Rapley For Kiwirail [86] Nick Whittington For Kāinga Ora [81] - Notification, Earthworks, Rail Corridor Rosemary Broad And Katherine Anton For Director General Of Conservation [135] Transpower Attachment - Environmental Defence Society Inc V New Zealand King Salmon Company Ltd 2014 Nzsc 38 Transpower Attachment - Port Otago Ltd V Environmental Defence Society Inc [2021] Nzca 638 Transpower Attachment - Taranaki Energy Watch Inc V South Taranaki District Council [2018] Nzenvc 227



	<p>Transpower Attachment - Taranaki Energy Watch Inc V South Taranaki District Council [2020] Nzencv 165</p> <p>Transpower Attachment - Taranaki Energy Watch Inc V South Taranaki District Council [2020] Nzencv 18</p> <p>Transpower Attachment - Tauranga Environmental Protection Society V Tauranga City Council [2021] Nzhc 1201</p> <p>Transpower Attachment - Transpower New Zealand Ltd V Auckland Council [2017] Nzhc 281</p>
<b>Submitter presentations</b>	<p>Summary of Evidence Karen Williams For Kāinga Ora [81]</p> <p>Summary of Evidence Robert Swears for Waka Kotahi [82]</p> <p>Counsel Speaking Notes for Transpower [60]</p> <p>Mike Arnold [175] (Attachment 1)</p> <p>Mike Arnold [175] (Attachment 2 - Photo of Parabolic Dish)</p> <p>Mike Arnold [175]</p> <p>Powerco [83]</p> <p>Speaking Notes Tom Anderson for Telcos [51]</p> <p>Summary of Evidence Alex Gifford For Nz Defence Force [124]</p> <p>Summary of Evidence Cath Heppelthwaite For Waka Kotahi [82]</p> <p>Summary of Evidence Claudia Jones For Waka Kotahi [82]</p> <p>Summary of Evidence Dr Stephen Chiles (Noise and Vibration) For Kiwirail [86] And Waka Kotahi [82]</p> <p>Summary of Evidence John Styles for Kāinga Ora [81]</p> <p>Summary of Evidence Luke Braithwaite For Waka Kotahi [82]</p> <p>Summary of Evidence of Ben Cartwright for Transpower [60]</p> <p>Summary of Evidence of Rebecca Eng For Transpower [60]</p> <p>Summary Statement Michelle Grinlinton-Hancock For Kiwirail [86]</p> <p>Survey and Spatial Nz (Wellington Branch) [72]</p> <p>Trotr [264]</p>
<b>Submitter statements</b>	<p>Greater Wellington Regional Council [137]</p> <p>Milmac Homes Ltd [258] - Earthworks Chapter</p> <p>Paul Botha [118]</p> <p>Robyn Smith [168]</p> <p>Carrus Corporation Ltd [68]</p> <p>Fenz [119]</p> <p>Ministry of Education [134]</p> <p>Oil Companies [123] (Updated 20 Jan 2022)</p> <p>Z Energy Ltd [92] - Noise Chapter</p>
<b>Submitter memos</b>	<p>Joint Memorandum of Counsel for Hearing Stream 4 - Kiwirail And Waka Kotahi (27 Jan 22)</p> <p>Joint Memorandum of Counsel Regarding Hearing Stream 4 Infrastructure Policies - Transpower And Director General Of Conserva</p> <p>Memo to Panel - Alex Gifford For Nz Defence [124] (15 Feb 22)</p> <p>Memo to Panel - Andrew Cameron For Titahi Bay Amateur Radio Club [224] (21 Feb 22)</p> <p>Memo to Panel - Hs4 Additional Information - Firstgas [84]</p> <p>Memorandum of Counsel - Transpower Nz Regarding Filing of Hearing Stream 4 Submissions (2 Feb 2022)</p> <p>Memorandum of Counsel - Waka Kotahi [82] (16 Feb 22) - Attachment 1 - Ports of Auckland V Auckland City Council</p> <p>Memorandum of Counsel - Waka Kotahi [82] (16 Feb 22)</p> <p>Memorandum of Counsel For Transpower [60] - Hearing Stream 4 (15 Feb 22)</p>
<b>Joint Witness Statements</b>	<p>Noise - PCC and NZ Defence Force</p>

	Road and Rail Noise - experts for Kāinga Ora, Kiwirail, PCC and Waka Kotahi Transport - experts for Kāinga Ora, PCC and Waka Kotahi
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## Appendix 2 – Recommended amendments to PDP provisions

In order to distinguish between the recommendations made in the Section 42A 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).

### Notification

An application for resource consent for a controlled activity will be considered without public or limited notification or the need to obtain written approval from affected parties unless:

1. Otherwise specified by a rule applying to the particular activity; or
2. The Council decides that special circumstances exist under sections 95A(49) and 95B(10)<sup>3</sup> of the RMA.

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:

1. Otherwise specified by a rule applying to the particular activity; or
2. The Council decides that special circumstances exist under sections 95A(49) and 95B(10) of the RMA<sup>4</sup>.

The notification provisions are set out in sections 95A-95F of the RMA. The provisions of the RMA require the Porirua City Council to consider a number of matters when making a notification decision. These are summarised below:

1. Does the Council have sufficient information to consider the application?
2. Has the applicant requested public notification?
3. Does a rule or national environmental standard require public notification of the application or preclude public or limited notification of the application?
4. Are there any special circumstances which warrant the application being publicly or limited notified?
5. Will the activity have, or is the activity likely to have, adverse effects on the environment that are more than minor?
6. Are there any persons who are adversely affected in a minor or more than minor way in relation to the activity?

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:

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<sup>3</sup> Clause 16 RMA

<sup>4</sup> Clause 16 RMA

1. In relation to infrastructure, the network utility operator that owns or operates that infrastructure;
2. In relation to historic heritage, Heritage New Zealand Pouhere Taonga;
3. In relation to natural resources and the coastal environment, the Minister of Conservation;
4. In relation to sites or areas of significance to Māori, Ngāti Toa Rangatira; and
5. In relation to a rule which addresses reverse sensitivity effects, the operator of the activity which is protected by the rule from such effects.

### Appendix 3 - Policy wording used in the Council's Drafting Standard

Policy wording	What does it mean?	Activity Status
Avoid / prohibit	Use for policies that seek to prohibit or prevent an activity or prevent any adverse effects.	Non-complying / prohibited
Avoid...unless	Use for policies that seek to prevent an activity or avoid adverse effects except where there are special circumstances specified, and /or the effects are minor.	Non-complying
Avoid, remedy or mitigate	<p>Use where the policy applies to a range of activities and/or effects across the Plan.</p> <p>There may be circumstances when it is desirable to use the term 'avoid, remedy or mitigate adverse effects', or in other circumstances to use these words individually.</p> <p>As with 'avoid', if 'remedy' or 'mitigate' are used individually, the effects to be remedied or mitigated need to be described.</p> <p>Use in preference to 'manage' which has no meaning defined under the RMA caselaw. HSNO caselaw comments that 'manage' can mean many things - such as, prevent, reduce or avoid. Therefore, it is not a helpful direction due to its broad meaning.</p> <p>'Avoid' means 'not allow' or 'prevent the occurrence of'.</p> <p>'Remedy' means counteracting something undesirable.</p> <p>'Mitigate' is to make something milder or less intense or severe, or 'to lessen the rigour or the severity of effects'.</p>	Restricted discretionary, discretionary
Protect	Means there should be restrictions placed on things; where there is a trade off or balance required. Indicates that there are both benefits and potential adverse effects.	Restricted discretionary, discretionary, non-complying

Recognise the benefits of	Means there is a trade-off required / a balance; indicates that there are benefits and adverse effects. Likely to require an accompanying policy that manages the adverse effects.	Restricted discretionary, discretionary
Maintain and enhance	Use for policies making a statement about an environment or feature where there is some capacity for change, particularly opportunities for positive change.	Restricted discretionary, discretionary
Maintain	Use for policies making a statement about an environment or feature where change is anticipated, but may need to be managed	Controlled, restricted discretionary
Only allow...where	Use for policies that provide for activities but only in the right circumstances/ where effects can be adequately managed/ where key outcomes can be achieved.	Restricted discretionary, discretionary
Minimise	Use for policies where there is likely to be a significant adverse effect, and seek to reduce to the most extent possible.	Restricted discretionary, discretionary
Require	Use for policies that set up performance standards.	Permitted activity or controlled activity with standards. If the standards cannot be met then default to restricted discretionary activity if all potential matters for discretion can be listed, or to discretionary activity if there is reason for uncertainty.
Provide for	Use for policies that set up what is generally provided for or encouraged.	Restricted discretionary Controlled Permitted (can set up standards)
Enable / encourage / allow / permit	Use for policies that set up what is generally provided for or encouraged.	Permitted
Identify	Use for policies that relate to identifying specific features or values, particularly when listing them in the Plan.	No direct relationship with the rules.