BEFORE A HEARINGS PANEL

UNDER	of the Resource Management Act 1991 ("**the Act**")
IN THE MATTER	of the hearing of submissions and further submissions on The Proposed Waikato District Plan (Stage 1) Hearing 5: Chapter 13 Definitions

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STATEMENT OF EVIDENCE BY VANCE ANDREW HODGSON FOR HORTICULTURE NEW ZEALAND

18 NOVEMBER 2019

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SUMMARY STATEMENT

1. This planning evidence addresses the submissions and further submissions made by Horticulture New Zealand ("**HortNZ**") on Hearing 5; Chapter 13 Definitions.

2. I have read the Section 42A Report on submissions and further submissions for Hearing 5, prepared by Anita Copplestone and Megan Yardley dated 05 November 2019. I agree with the statements made by the authors that it is not an easy task to determine the right time in a comprehensive plan review hearing process to consider definitions. The National Planning Standards have added further complexity to this matter.

3. I support the authors determination that many definitions will require further consideration, once the full extent of amendments and arising consequential amendments have been considered at future hearings. There may well be a need for subsequently additional reporting on definitions to the panel with time for evidence exchange.

4. HortNZ will appear in front of the Hearings Panel at a later date to discuss specific definitions and standards relating to a number of submissions, particularly those relating to:

    - Artificial Crop Protection and crop Support Structures.
    - Land disturbance associated with Primary Production.
    - High Class Soils.
    - Rural Industry and Primary Production.
    - Sensitive Land Use activities.
    - Workers Accommodation.

5. That being the case, I provide an analysis and recommendations on definitions where I can. I particularly

note that there may be benefit in HortNZ caucusing with future Section 42 report writers to assist the hearings panel, particularly in regard to the planning approach to 'artificial crop protection' and 'crop support structures'.

QUALIFICATIONS AND EXPERIENCE

6. My full name is Vance Andrew Hodgson. I am a director of Hodgson Planning Consultants Ltd, a resource management consultancy based in Waiuku. I have been employed in resource management related positions in local government and the private sector since 1994 and have been in private practice for 16 years. I hold a Bachelor of Resource and Environmental Planning (Hons) degree from Massey University.

7. I have worked in the public sector, where I was employed in student, assistant and senior policy planning roles by the Franklin District Council. I have provided resource management consultancy services to various district and regional councils. The scope of work for the public sector has been broad, covering plan change processes, submissions to national standards/regulations/policy statements and regulatory matters, mediation and appeals.

8. I have worked in geographic information system positions in the United Kingdom and worked for CKL Surveying and Planning Limited in Hamilton.

9. In private practice I regularly advise a range of private clients on statutory planning documents and prepare land use, subdivision, coastal permit, water permit and discharge permit resource consent applications. I have experience in resource consent applications, hearings and appeals on a

range of activities, particularly for activities in the rural environment.

10. Living and working in the rural environment of South Auckland / North Waikato, I have had a continuous association with the rural production sector and in particular the horticultural industry. From 2012 I have been providing resource management advice to HortNZ on policy matters across New Zealand.

11. I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

12. This evidence provides a planning assessment of those provisions on which HortNZ submitted and addresses the Section 42A Report provided by the Waikato District Council ("**WDC**").

13. The planning framework is well described in both the Section 32 Report and the Section 42A Report provided by the WDC. I generally agree with the analysis.

14. Given the general agreement I do not repeat the analysis of the applicability of those planning instruments or the compliance of the Proposed Waikato District Plan (**"PWDP"**) with those instruments. Rather this evidence sets out where I

depart from the views expressed in the Section 32 or Section 42A Reports, or where I consider that an alternative planning provision would better give effect to, be not inconsistent with, or have regard to (as the case may be), the various relevant documents.

15. The Section 42A Report is structured in a manner that considers definitions in groups of terms that are often considered or interpreted together. To assist the hearings panel, I have adopted a similar approach in my evidence and in doing so address the following definitions covered by submissions or further submissions of HortNZ.

- Building and Structure.
- Building Coverage.
- Accessory Building.
- Child Care Facility / Educational Facility.
- Earthworks / Ancillary Farming Earthworks.
- High Class Soils.
- Impervious Surfaces.
- Lifestyle Uses.
- Noise Sensitive Activity.
- Notional Boundary.
- Sensitive Land Use and Reverse Sensitivity.
- Rural Industry, Rural Activities and Rural Production Activities.
- Reservoir.
- Workers Accommodation.
- Airfield.

THE HORTNZ SUBMISSIONS AND FURTHER SUBMISSIONS

Building and Structure (419.116, 419.31, FS1168.90, FS1168.110)

16. Horticulture New Zealand sought changes to the proposed definition of 'building' to provide clarity around the regulatory framework for managing two common structural elements that support horticultural production systems:

- Artificial Crop Protection Structures, and
- Crop Support Structures.

17. Artificial crop protection structures are helpfully defined in some district plans, including for example the partly operative Auckland Unitary Plan and Whangarei District Plan as:

> *Open structures that are used to protect crops from damage.*
>
> *Includes:*
>
> *• bird netting; and • wind-break netting.*
>
> *Excludes:*
>
> *• greenhouses*

18. These are structures that are fixed to the land and are not partially or fully roofed – on the assumption that the material used is permeable.

19. Crop support structures are understood to encompass the variety of timber, steel and wire systems that are typically in place to provide a structure for horticultural crops to grow against. Examples include T-bars employed in kiwifruit orchards.

20. The Whangarei District Plan also helpfully defines these as follows:

Means open pervious, structures with the primary purpose to provide support for horticultural crops. Crop support structures are stand-alone unattached to any building.

21. The Section 42A report writers recommend the regulatory approach for managing artificial crop protection structures and crop protection structures should be considered at the future hearing to consider the Rural and Countryside Living Zone rules.

22. I support returning to this matter at this hearing and note that at this time the definition matter will need to be considered. Notably this appears to be the first district plan change process that HortNZ has been involved in where the Planning Standards are being incorporated. I understand that HortNZ had met and worked with Waikato District Council staff through the consultation phase of the PWDP to discuss the definition of buildings and structures relative to these activities and there may be benefit in caucusing with the Section 42A report writers in these future topics.

23. In considering the matter of structures, the report writers recommend that the term 'structure' is defined in the proposed plan and that the Planning Standards definition of the term 'structure' is used. I support the recommendation noting the relationship with artificial crop protection structures and crop protection structures.

Building Coverage 419.117

24. The clarity that Horticulture New Zealand sought around regulatory provisions for artificial crop protection structures and crop protection structures extended to a submission on

the definition of 'building coverage'. The concern being that if these structures are deemed buildings then they would be subject to building coverage limitations. The outcome a significant regulatory constrain for horticultural activity anticipated in a rural production environment.

25. Consistent with the discussion on the definition of 'building', the report writers recommend the regulatory approach for managing artificial crop protection structures and crop protection structures should be considered at a future hearing to consider the Rural and Countryside Living Zone rules.

26. I support returning to this matter at that hearing.

Child Care Facility (FS1168.11)
Education Facility (FS1168.115, FS1168.116)

27. Horticulture New Zealand opposed a submission by the Ministry for Education that sought to delete the definition of 'child care facility' from within the definition of 'education facility'. The outcome sought by HortNZ is a plan structure that recognises child care facilities as an educational facility and that the plan provides robust controls around these activities where they might be sensitive to the effects of rural production activities, within the rural environment and at the rural/urban interface.

28. It is the recommendation of the Section 42A report writers, that the plan relies on a format whereby the Planning Standards definition of 'educational' facility' replaces the proposed plans 'education facility' and that a sub-definition 'child care facility' is retained.

29. I support the recommendation. The issue for HortNZ that will be returned to in later hearings, is how the plan manages these activities that can be sensitive to the effects of rural production.

Earthworks (419.118, 419, 118, FS1168.92, FS1168.94)

30. It is the recommendation of the Section 42A report writers, that the Planning Standards definition of 'earthworks' is adopted. I agree with the recommendation. I also note that as a consequence of adopting this term, the Planning Standards definition of 'cultivation' will also need to be adopted.

31. Submissions from HortNZ and NZPork have requested an exclusion from the definition for earthworks for burying of material under the Biosecurity Act 1993. The report writers have recommended that this matter be considered in the context of the rules, and by the Section 42A authors for the Rural and Country Living Zones hearings. I support that recommendation and the return to this issue at another time.

32. As I understand it, the issue for HortNZ is that while biosecurity is generally managed under the Biosecurity Act, there is an interface with the RMA so that Regional and District Plans have a role to play in respect of managing biosecurity risks.

33. Regional Councils develop plant and animal pest management strategies that address known pests that are present in NZ. However unwanted organisms are not currently found in NZ so are not identified in regional pest management strategies or the National Pest Plan Accord.

34. In the event of a biosecurity incursion of an unwanted organism, there is the need to be able to respond rapidly to manage spread. Vegetation removal, burial, burning, spraying of material are methods that may be used, including in riparian areas.

35. There are a range of threshold levels for biosecurity incursions and it is only when a biosecurity emergency is declared by the Minister that the emergency provisions in the Biosecurity Act override the RMA provisions. In other situations, a declaration may be made by the Chief Technical Officer of Ministry of Primary Industries (MPI). In such a declaration the regional and district plan rules need to be met in terms of disposal of infected material and given the urgency required it is not practical to have to obtain resource consent. Therefore, provisions are included in the RMA Plans to enable disposal or treatment of material to be undertaken in response to a biosecurity incursion.

36. The Section 42A Report also identifies that HortNZ (and others) have requested an exclusion for 'ancillary rural earthworks' from the definition of 'earthworks'. I agree with the report writers that as it is not possible to include an exclusion in a Planning Standards definition, the general rule of interpretation must be relied on. That is, where a more specific term is defined, it is that term that applies.

37. A definition of 'ancillary rural earthworks' is included in the Proposed Plan with permitted activity rules proposed in

- Rule 22.2.3.1 Earthworks – General in the Rural Zone.
- Rule 23.2.3.1 Earthworks – General in the Country Living Zone.

38. I agree with report writers that the relief sought is already set out in the Plan. However, as set out in my Evidence in Chief for Hearing 2, there remains an issue to resolve at the Rural Zone hearing. This relates to what appears to be an unintended application of general Rural Zone permitted activity standards to 'ancillary rural earthworks'. Should these remain as proposed, the permitted activity pathway for 'ancillary rural earthworks' would be unachievable.

Accessory Building (419.112)

39. Aligning with the definition of 'production land' under the RMA, HortNZ sought to introduce a new term of 'primary production' in the Proposed Plan, and that this proposed definition used the term 'auxiliary building'. HortNZ asked for the definition to note that 'auxiliary building' has the same meaning as 'accessory building'.

40. Setting aside for now the relevance or not of including a new term of 'primary production' I agree with the report writer's recommendation that the definition of 'accessory building' in the Proposed Plan should be replaced with the definition from the Planning Standards.

41. That being the case the outcome sought by HortNZ is redundant.

High Class Soils (419.124, FS1168.103)

42. Horticulture New Zealand sought an expansion to the definition of 'high class soils' raising concerns with the exclusions applied to some peat soils and the need to include Land Use Capability Class III soils.

43. I am not an expert in soil science and the productive capability of these soils is a matter HortNZ will likely return to with expert evidence at a later date. However, I am aware that to date various district and regional planning documents have defined high class soils / highly productive land; differently. This is an issue the consultation document on a proposed National Policy Statement for Highly Productive Land (NPS-HPL) discusses.

44. I agree with the Section 42A report writers, that in the absence of more detailed district or regional assessment and in the absence of a gazetted NPS-HPL, it is prudent to rely on the definition from the operative Waikato Regional Policy Statement. I also agree that this is a developing policy space and we need to be mindful of the NPS-HPL progression and the proposed plan timeline.

45. That being the case, I concur with the recommendation that the matter be further considered at the 'Other Matters' hearing at the end of the Proposed Plan Stage 1 hearing programme. Notwithstanding this deferral, I consider 'high class soils' a key resource management issue for the district and region that the decision makers should be cognisant off through the entire hearings process.

Impervious Surfaces (FS1168.105)

46. Horticulture New Zealand supported a submission of NZPork seeking farm tracks to be excluded from the definition of impervious surfaces. The submission and further submission are rejected on the basis that no clear justification has been provided to support the relief sought.

47. As I understand it, the concern of the rural sector relates to potential district plan controls on impervious surfaces in rural zones. Where these are in place, farm tracks should be excluded on the basis that these are of mixed surface material and on properties large enough to manage stormwater related runoff onsite. Unlike urban situations where onsite stormwater management has more challenges. Furthermore, regional plan rules are also in place (and developing through Plan Change 1) to manage discharges (including stormwater) from all surfaces.

48. As I read the proposed plan, there are no proposed controls on impervious surfaces in the rural zone. That being the case the exclusion sought by NZPork and supported by HortNZ is redundant. If I am wrong in my interpretation or if a control is introduced through the hearing process, it is my opinion that an exclusion for farm tracks should be provided.

Lifestyle Uses (FS1168.83)

49. Horticulture New Zealand supported a submission of Fontera seeking a definition of 'lifestyle uses'.

50. The Section 42A Report notes the various references within the plan to 'lifestyle uses', 'lifestyle activities' and 'rural lifestyle'. The only current policy reference is to 'lifestyle options' within Policy 5.2.3 Policy – Effects of subdivision and Development on Soils.

51. I agree with the Section 42A report writers that is not necessary to define the term. However, the plan would be improved with the use of a consistent term and aligning with the terminology used in the Planning Standards and the Discussion Document on a Proposed National Policy

Statement for Highly Productive Land would assist. I would recommend that the word rural is used before the term lifestyle:

- Rural lifestyle uses.
- Rural lifestyle activities.
- Rural lifestyle options.

Noise Sensitive Activity (419.130, FS1168.111)

52. Horticulture New Zealand submitted on the definition of 'noise-sensitive activities' to refine the how this might be applied in regard to marae and marae complexes. I agree with the Section 42A report writers that no changes are required as the definition rightly assumes that spaces outside buildings on marae complex are likely to be noise sensitive.

53. Although not a submission of HortNZ, I also agree with the Section 42A Report recommendation to extend the definition to include 'places of assembly' as 'noise sensitive activities'. The terms 'noise-sensitive activities' and 'sensitive land use' are not interchangeable in this plan. 'Noise-sensitive activities' appear in rules that seek to manage the effects of noise whereas 'sensitive land use' has broader application for other effect management. In the context of recommend changes to the definition of 'notional boundary', it is important to ensure 'places of assembly' are recognised as a 'noise-sensitive activity'.

Notional Boundary (FS1168.128)

54. The further submission of HortNZ sought that the Planning Standard definition of 'notional boundary' be adopted in the plan. I agree with the Section 42A Report recommendation that this is accepted.

55. The amendment changes the reference within the 'notional boundary' definition from 'sensitive land use' to 'noise sensitive activity' as follows:

Notional Boundary (Proposed)

Means a line measured 20 metres, and parallel to any side of a residential unit or a building occupied by a sensitive land use, or the site boundary where this is closer to the residential unit or sensitive land use.

Notional Boundary (Planning Standards)

Means a line 20 metres from any side of a residential unit or other building used for a noise sensitive activity, or the legal boundary where this is closer to such a building.

56. The Section 42A Report assessment and recommendation is that the terms 'sensitive land use' and 'noise sensitive activity' are not interchangeable in the plan and should be defined as follows:

Noise-Sensitive Activity

Means the following:

(a) buildings used for residential activities, including boarding establishments, retirement villages, papakāinga housing development, visitor accommodation, and other buildings used for residential accommodation but excluding camping grounds;

(b) marae and marae complex;

(c) hospitals;

(d) teaching areas and sleeping rooms in an educational facility;

(e) places of assembly.

Sensitive land use

Means:

(a) an education facility, including a childcare facility, waananga and koohanga reo;

(b) a residential activity, including papakaainga building, retirement village, visitor accommodation, student accommodation, home stay;

(c) health facility or hospital;

(d) place of assembly.

57. Tabulating the definitions and activity listings assists with interpretation and the need for separate definitions, particularly in regard to the 'national boundary' related rules which have a building or room related focus:

Noise-Sensitive Activity	**Sensitive land use**
buildings used for residential activities, including boarding establishments, retirement villages, papakāinga housing development, visitor accommodation, and other buildings used for residential accommodation but excluding camping grounds	a residential activity, including papakaainga building, retirement village, visitor accommodation, student accommodation, home stay

teaching areas and sleeping rooms in an educational facility	an educational facility, including a childcare facility, waananga and koohanga reo
marae and marae complex	
hospitals	health facility or hospital
place of assembly	place of assembly

Sensitive Land Use and Reverse Sensitivity (419.133, FS1168.107, FS1168.108, FS1168.85)

58. On the definition of 'sensitive land use', HortNZ supported a submission from NZPork (197.16) that requested the definition should be widened to include 'cafes, restaurants, tourism/entertainment activity, community services'.

59. I consider that these activities can be 'sensitive land uses' in the rural zone and I agree with the Section 42A report writers' statement that reverse sensitivity effects can arise when such land uses are located in rural areas. I note however, that the structure of the proposed plan is such that widening the scope of the definition is not possible given the rules relating to 'sensitive land uses' apply in a wide range of zones in the district including: the Infrastructure and Energy Zone, Residential Zone, Rural Zone, Country Living Zone, Village Zone, and Rangitahi Peninsula Zone

60. That being the case, the matter is more appropriately considered by the Section 42A authors for the above zones noting that it is not just within the rural zone but also at the rural zone interface that reverse sensitivity issues can arise.

61. HortNZ and other submitters sought the inclusion of a definition of 'reverse sensitivity' in the proposed plan. The Section 42A report writers provide a useful analysis of the matter in paragraph 571 as follows:

> *The authors of the Recommendations on Submissions Report for the Planning Standards record in detail in that report, the difficulties at the present time with providing a definition of 'reverse sensitivity', given that case law is still evolving and that the NPS for Renewable Electricity Generation is currently in conflict with case law on the 'existing environment'. The Ministry for the Environment concluded that it was not appropriate to define this term in the Planning Standards at the present time, and thus the draft definition for 'reverse sensitivity' was not retained. I am swayed by the recommendation in that report, and therefore recommend that a definition of 'reverse sensitivity' is not included in the Proposed Plan.*

62. I agree and find no particular reason to include a definition at this time to improve the interpretation or administration of the plan. A definition is provided in the Waikato Regional Policy Statement that has been through a Schedule 1 process should there be a need to refer to the higher order instrument or should the panel consider a need to include a definition at this time.

> *Waikato Regional Policy Statement: Glossary*
>
> *Reverse sensitivity – is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may*

seek to restrict the operation or require mitigation of the effects of the established activity

63. While it is my opinion that while a definition is not required, it remains important to have clear policy to set out the amenity and character expectations for the rural zones.

Rural Industry, Rural Activities and Productive Rural Activities (FS1168.84, FS1168.129, FS1168.130)

64. HortNZ submitted a further submission opposing the request from J and T Quigley Ltd (389.10) seeking to widen the ambit of the definition of 'rural industry' in the proposed plan to include child care facilities. I support the Section 42A report writer's recommendation to reject the submission as I do not consider this activity is 'rural industry'.

65. The Section 42A report authors recommend that the definition of 'rural industry' be replaced with that from the Planning Standards. I support the recommendation. There are consequential effects from doing so, including the need to then introduce the definition of 'primary production' and to consider the controls that might be placed on particular elements of 'rural industry'.

66. I support the recommended comprehensive consideration of these matters at Hearing 21A – Rural Zone.

Reservoir (419.132)

67. A submission of HortNZ sought the extension of the definition for reservoir to include water storage for irrigation. As identified by the Section 42A report writers, the damming and diversion of water for irrigation purposes is an activity

managed by the Waikato Regional Council through the Waikato Regional Plan. There are no obvious land use related matters that require the definition change sought.

Workers Accommodation (FS1168.133)

68. Several submitters have sought a definition of 'workers accommodation' (or similar) and a supporting rule package. The Section 42A report writers acknowledge that the submissions indicate that there is a demand for this type of accommodation across various zones.

69. It is my experience with the horticultural and pastoral sector that these activities are an integral and necessary part of the rural production system. I am aware that HortNZ have also produced a guidance note to assist growers with the process of providing seasonal works accommodation. Refer **Attachment 1**. www.hortnz.co.nz/assets/Natural-Resources-Documents/HortNZ-Guidance-to-Assist-the-Development-of-Seasonal-Workers-Accommodation.-February-2018.pdf

70. I concur with the Section 42A report writers, that in regard to the primary production need for 'workers accommodation', the matter is better considered comprehensively under the rural zone hearing topic.

Airfield (419.113, FS1168.113)

71. The submission and further submission of HortNZ sought that the definition of 'airfield' specifically excludes airstrips or landing areas used for farming. I understand the concern of HortNZ was in regard to any potential rural noise standard limitations on airstrips or landing areas used for aerial activity associated with farming.

72. ‘Farming noise’ is a defined term in the PWDP:

> *Means noise generated by agricultural vehicles, any aircraft used for aerial spraying, agricultural machinery or equipment and farm animals, including farm dogs. It does not include bird scaring devices and frost fans.*

73. As notified, ‘farming noise’ is a permitted activity pursuant to Rule 22.1.1.1: P1.

74. The report writers recommend that this matter is addressed at the Rural Zone hearing. I support that approach and note that HortNZ support Rule 22.1.1.1: P1 and, upon its retention, no changes to the definition of ‘airfield’ are likely to be necessary.

Vance Hodgson
November 2019

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New Zealand

Guidance to Assist
the Development of Seasonal Workers Accommodation

February 2018

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February 2018

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Use of this document:

This document is intended as a general guide to assist the design and construction of seasonal workers accommodation in the context of horticultural activities. While Horticulture New Zealand has taken every care in preparing this guidance, it should not be relied upon as establishing all requirements under the Resource Management Act 1991, the Building Act 2004, Building Code or Building Standards or the Immigration Act 2009. Readers should always refer to the appropriate regulation as the source document, and be aware that for specific situation or problems it may be necessary to seek independent legal advice.

Guidance to Assist the Development of Seasonal Workers Accommodation

February 2018

Introduction

This guidance document has been prepared by Horticulture New Zealand to assist growers in developing seasonal workers accommodation (SWA). This document aims to summarise the most relevant legislation that needs to be considered when designing and building SWA, hopefully assisting growers to more effectively liaise with Council's and future proof the accommodation they provide.

Regulatory Context

There are three key areas of regulation that must be considered when designing and building SWA:

- Resource Management Act 1991 (RMA)
- Building Regulation – Building Act 2004, Building regulations and the Building Code
- Recognised Seasonal Employer (RSE) worker accommodation standards

The relevant RMA and Building regulation are largely administered by District Councils. The RSE worker accommodation standards are administered by Immigration New Zealand and are only relevant if you are employing people from the RSE scheme. Each area of regulation has a different purpose and function, however these laps over when it comes to SWA and therefore all three need to be considered when designing and building the accommodation.

This is discussed below.

Resource Management Act 1991 (RMA)

The RMA is New Zealand's primary piece of legislation that sets out how we should manage our environment. It is based on the principle of sustainable management which involves considering effects our activities have on the environment, now and in the future, when making resource management decisions. Local Council's administer the RMA through Regional and District Plans.

Resource Consent

When it comes to SWA, it is likely that a resource consent will be required under the District Plan to establish the activity. Some District Plans specifically provide for this type of activity and understand what differentiates it from other types of accommodation, such as; visitor accommodation, motels, backpacker's and Bed and Breakfasts. The District Plan rules may include bulk and locations restriction's, such as; setbacks to boundaries, height and site coverage. There will also be a carparking requirement, which should typically be a low number of car parks given that most seasonal workers travel together in a van.

Other District Plans, typically those that are yet to be reviewed, do not specifically provided for SWA. When this is the case, you will need to provide a very clear explanation to Council of what SWA is and why it is different to other types of accommodation. The key difference is that SWA is not available for the public to book. It is solely for the use of able bodied employees of your horticultural operation. For this reason, you will not need disability access or other aspects that accommodation open to the public requires, such as roadside signage and a reception, or large number of car parks.
If the SWA facility is to be a standalone house on the property, then there will be requirements such as number of dwellings per property that will need to be met.

Resource consent applications take up to 20 working days to process on a non-notified basis. Should the application be notified, then Council processing may take up to 130 working days. Council can decline a resource consent or grant it subject to appropriate conditions. You have five years to 'give effect to a granted resource consent (i.e. – build the accommodation), otherwise it will lapse.

Development contributions may be payable to Council and the amount varies between Districts, as the amount depends on services provided.

Existing Use Rights (Certificate of Compliance)

Alternatively, existing use rights might apply, for example:

- Accommodation facilities or dwellings that were lawfully established prior to the District Plan.
- Accommodation facilities or dwellings that were lawfully established under previous District Plan rules, which permitted these at the time, but these rules have since been removed.

Determining existing use rights is not straightforward as it will also require an assessment of any changes in effects that have occurred overtime and whether the accommodation use has been discontinued at any point. Proof is required of the continued use as workers accommodation.

If you have existing use rights, you won't need to get a resource consent or comply with new District Plan provisions. However, if you wish to confirm existing use rights, you need to apply for a "certificate of compliance – existing use rights" (S.139A Resource Management Act 1991) and there will be an application fee. These take up to 20 working days to process.

The first step in establishing resource consent requirements or an existing use right should be talking to your District Council. You can phone or request a meeting with the Council's Duty Planner to establish your resource consent requirements and find out what information you will need to provide with any application. For larger or more complex applications, it is recommended that you engage a planning consultant to prepare the application for you.

Note: Contact details for local planning consultants can be found on the following website that is managed by the New Zealand Planning Institute: https://www.planningconsultants.org.nz/

Building Regulation

The regulation and performance of buildings sits under the following three-part framework:

- the Building Act 2004 (the Building Act), which contains the provisions for regulating building work
- the various Building Regulations, which contain prescribed forms, list specified systems, define 'change of use', and set out the rate of levy and fees for administering various functions under the Building Act, and
- the Building Code, which is contained in Schedule 1 of the Building Regulations 1992

The Building Act 2004

The Building Act provides the mandatory framework for the building control system to be followed when undertaking building work in New Zealand.

It applies to all:

- buildings including Crown buildings, except those which may be exempt for reasons of national security, and
- components in a building, including plumbing, electrical, mechanical installations and life-safety systems.
- All buildings unless specifically exempt by the Act or the District Council.

The Building Code

The Building Code is contained in Schedule 1 of the Building Regulations 1992. It sets out performance criteria that building work must meet in New Zealand. It covers aspects such as structural stability, access, moisture control, durability, services and facilities, protection from fire and energy efficiency. The Building Code does not prescribe how work should be done, but states how completed building work and its parts must perform. One advantage of having a performance-based Building Code is flexibility. It does not contain prescriptive requirements or stipulate that certain products or design methods must be used, which provides for developments and innovation in building design and technology.

Note: The purposes of the Building Act include setting performance standards to make sure people using buildings can do so safely and without endangering their health, and that they can escape if the building is on fire. However, having a performance-based Building Code does allow for innovation. All 'building work' undertaken to construct SWA must comply with the Building Code, whether or not a building consent is required.

Access and Facilities for People with Disabilities

The Building Act requires certain buildings that are being constructed or altered to have 'reasonable and adequate provision' by way of access, parking provisions and sanitary facilities for persons with disabilities who may be expected to visit or work in the building and carry out normal activities in these building. Such buildings include hotels, motels, hostels, boarding houses 'and other premises providing accommodation for the public'. The access and facilities requirements are primarily spelt out in the Building Code clauses D1, which covers movement throughout buildings, clause G1 that covers toilet and bathroom facilities and clause G3, which deals with kitchens.

[1]1 Schedule 2 of the Building Act 2004 identifies the building types that are required to have access and facilities for persons with disabilities: www.legislation.govt.nz/act/public/2004/0072/latest/DLM309341.html

If you are altering or changing the use of an existing building, you need to comply as nearly as is reasonably practicable with the Building Code provisions relating to access and facilities for people with disabilities (this 'test' differs from that required for newly constructed buildings). The new building work that is part of the alterations must comply with the Building Code.

However, there is the ability to seek exemption from providing the disability provisions under s118 of the Building Act.

There may be opportunities for designers to utilise alternative solution pathways to demonstrate compliance with the access and facility provisions of the Building Code. This will require the designer to clearly demonstrate how compliance is achieved with the relevant performance requirements of the Building Code.

The building's use, its attributes, importance level, lifespan and occupancy are also important considerations that need to be considered as part of this analysis. For example, it may be that particular areas or facilities are only likely to be used by ambulant workers, whereas communal areas such as cafeterias and are more likely to be used by all workers or visitors of the building, including non-ambulant workers or visitors. It is important to note that accommodated workers may experience injuries that could affect their mobility. This is where the designer needs to clearly articulate how the building is going to be used (by who, how this is managed) and the attributes of the building, so the Council can accurately assess compliance with sections 112, 113, 115, 116, 118 and 119 of the Building Act.

In 2008 HortNZ and the Department of Building and Housing developed a draft Code of Practice (COP) for seasonal worker accommodation in respect of New Zealand Building Code requirements for access and facilities for people with disabilities.

The COP recommends that:

1. All buildings proposed to accommodate seasonal workers will comply fully with all the relevant clauses of the New Zealand Building Code. The interpretation of section 118(1)(a) of the Building Act 2004 suggested in this code of practice, if accepted by the building consent authority, will mean that access and sanitary facilities for people with disabilities will not be required where the workers are required by the nature of their employment to be able to move without wheelchairs.

2. Where the buildings will accommodate seasonal workers under the RSE Scheme, the industry will abide by the rules of the scheme and any agreements as to living conditions for workers that have been agreed with the Department of Labour.

3. Any processing or factory facilities will be treated as if there is potential for wheelchair users to access and work in those buildings.

4. In the event that a worker becomes reliant on a wheelchair for movement, or is otherwise disabled, either temporarily or permanently, through accident or illness and requires accessible sanitary or other facilities, the industry accepts that alternative accommodation will be provided for any period for which it remains appropriate for the worker to be engaged.

5. Building owners agree to only accommodate people in seasonal worker accommodation who, by the nature of their employment, do not rely on a wheelchair for movement. In the event that the building containing seasonal worker accommodation is proposed to accommodate other employees or to undergo a change of use so that this code of practice would no longer apply, then the building owner undertakes to approach the relevant territorial authority and to address any additional requirements for the building's new use. This may include triggering the requirement to provide access and facilities for people with disabilities under section 115 – Code Compliance requirements: change of use of the Act.

6. Any building consent applications for seasonal worker accommodation that intends to refer to this code of practice should be lodged with the code enclosed. The industry acknowledges that this code of practice is not legally binding and that the final decision in each case rests with the building consent authority.

[2] See Clause A3 of the Building Code: www.legislation.govt.nz/regulation/public/1992/0150/latest/whole.html
[3] Now known as the Building and Housing Group within the Ministry of Business, Innovation and Employment.

Determinations

Determinations[4] provide a means of appeal for disputes about decisions made by a local authority about Building Code compliance. If an owner, designer, or another affected party does not agree with a council's decision they may seek a determination from the Building and Housing Group within the Ministry of Business, Innovation and Employment[5]. A determination is a binding decision made by the Building and Housing Group under the Building Act. It provides a way of solving disputes or questions about the rules that apply to buildings, how buildings are used, building accessibility and health and safety. Information is available on the Building and Housing Group's website www.dbh.govt.nz/determinations.

Determination 2008/111[6] sets a precedence for Seasonal Workers Accommodation with respect to the provision of access and facilities for people with disabilities. The determination arose from the local authority's decision that the proposed building must have access and facilities for people with disabilities. This decision was appealed to the then Department of Building and Housing.

The key facts of the case were:

1. The facilities are solely for seasonal worker accommodation.
2. By virtue of the nature of the work, persons requiring wheel chair for movement cannot carry out such work and would not be employed to carry out such work.
3. The orchard does not employ people who are not fully fit and cannot move without a wheelchair.
4. No visitors will be permitted to use the facilities.
5. A fresh resource consent would be required if the use of the buildings were to change from seasonal worker accommodation to any other use.

The decision was to reverse the local authority's decision to refuse to issue a building consent unless a ramp and accessible toilet were built.

This determination sets a useful precedence. It would be useful to provide a copy of this determination to your architect / designer and local authority for their reference, as it demonstrates that a waiver to the requirements with respect to access and facilities for people with disabilities is appropriate in this circumstance.

Applying for Building Consent

A building consent authority (your local District council's building control unit) will assess your building consent application. It is important that practitioners (architects and designers) provide quality documentation that clearly demonstrates Building Code compliance. Quality building consent documentation along with a pre-application meeting and a detailed design brief will help ensure the building consent process is much smoother. There may be a specific form required to apply for an exemption from providing disability facilities.

As recommended above, it will be useful to provide a copy of Determination 2008/111 to your architect/designers and your local authority when lodging a building consent.

A Council has up to 20 working days to process an application for building consent.

[4] www.dbh.govt.nz/determinations-about-determinations
[5] Previously the Department of Housing and Building
[6] www.dbh.govt.nz/UserFiles/File/Building/Determinations/2008/pdf/2008-111.pdf

RSE Worker Accommodation Standards

The Recognised Seasonal Employer (RSE) scheme came into effect in April 2007. The policy allows the horticulture and viticulture industries to recruit workers from overseas for seasonal work when there are not enough New Zealand workers.

Immigration New Zealand (INZ) administer the scheme and has RSE worker accommodation standards that must be complied with to qualify RSE employers to recruit RSE workers. These standards were updated and from 1 January 2018 mirror WorkSafe's Worker Accommodation Fact Sheet (November 2016).

The key changes from the accommodation standards that were in place prior to 1 January 2018 is an increase in the living space, and toilets and showers required per accommodated worker. Application has been made to INZ to permit grandfathering where accommodation was built complying with the earlier INZ standard.

INZ have also recently introduced a 'Self-Audit' form for RSE Employers to use – a copy of the version current in October 2017 is attached and that form implements the new INZ accommodation standard that applies from 1 January 2018. RSE employers can use this form to assess whether the accommodation for their RSE workers meets the INZ required standard.

More information about this scheme can be found on the Immigration New Zealand website:

https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme

Note: A Recognised Seasonal Employer (RSE) is a New Zealand employer whose core area of business is horticulture or viticulture and who has had an application for RSE status approved by INZ. An RSE is able to apply for an Agreement to Recruit (ATR) that will allow them to recruit workers who are not New Zealand citizens or residence class visa holders under the RSE Instructions.

[7] Immigration New Zealand Definition - https://www.immigration.govt.nz/opsmanual/59461.htm

Checklist for

Complying with requirements for seasonal workers accommodation

	RSE Accommodation	Yes	No	Refer to page:
1.	Are you currently, or planning to be, an RSE employer?	○	○	4
a.	If yes, have you informed your architect/designer that accommodation must comply with Immigration NZ RSE Worker Accommodation Standards?	○	○	4

	Resource Consent	Yes	No	Refer to page:
2.	Have you checked with the District Council if you require resource consent? (*If not required, go to step 4*)	○	○	4
3.	Have you contacted a local planning consultant to prepare and lodge a resource consent application?	○	○	4

	Building Consent	Yes	No	Refer to page:
4.	Do you have a building consent? (*If yes, go to step 8*)	○	○	7
5.	Have you engaged an architect/designer to prepare building plans?	○	○	7
6.	Have you informed your architect/designer that you do not have to provide access and facilities for people with disabilities?	○	○	5/6
7.	Have you lodged a building consent application with your District Council?	○	○	7
8.	Has your building consent and resource consent (if applicable) been approved by your District Council?	○	○	

If you answered 'Yes' to step 8

You are now ready to build your seasonal workers accommodation