

## **Recommendations to Council from the Statutory Management Committee**

Date: 8 June 2016

Councillors

### **WHANGANUI DISTRICT COUNCIL**

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<b>Subject:</b>	<b>Plan Change 40 – Financial Contributions</b>
	<b>Decisions on Submissions</b>
<b>Meeting Date:</b>	<b>29 October 2015 and reconvened 11 February 2016</b>

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#### **1.0 INTRODUCTION**

- 1.1 Council is presently reviewing the District Plan in phases. This Plan Change is part of Phase 6 District Wide as it relates to every part of the District.
- 1.2 This report records the public notification and hearing process in relation to Plan Change 40. It records the Statutory Management Committee's recommendations and Council's decisions on submissions.
- 1.3 For details of the deliberations discussion refer to the formal Council Minutes of the meetings.

#### **2.0 PROCEDURAL MATTERS**

- 2.1 The Committee was convened to hear submissions on 29 October 2015. One submitter attended. The Committee reviewed the tabled evidence from a submitter and listened to the reporting officer's recommendations before deliberating on submissions.
- 2.2 The Committee reconvened on 11 February 2016 after the hearing was suspended to allow submitter 1 and Council Officers to discuss further the points raised by the submitter at the hearing. Outcomes of those discussions were reported back to all parties prior to 11 February 2016.
- 2.3 The Committee members were: Independent Commissioner Alan Taylor (Chair), Councillors Hamish McDouall, Jenny Duncan, Helen Craig and Independent Commissioner Jenny Tamakehu.
- 2.4 Submitters who tabled information to support their submissions were:
  - Transpower New Zealand Limited.
- 2.5 PC40 was publicly notified in accordance with Clause 5 of the 1st Schedule of the Resource Management Act 1991 (the Act) on 30 May 2015, with the period for submissions closing on Tuesday 30 June 2015.
- 2.6 A total of three submissions, were received at the close of submissions.
- 2.7 All submissions received were summarised and the decisions requested by submitters were publicly notified in accordance with Clause 7 of the First Schedule of the Act. The further submission process closed on Friday 31<sup>st</sup> July 2015. No further submissions were received.

### 3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 This Plan Change is one of a series of changes proposed as part of Phase 6 of the wider District Plan review which address district wide matters.
- 3.2 The Local Government Act 2002 and Resource Management Act 1991(RMA) allows councils to charge financial contributions as a way of mitigating adverse effects. Financial contributions are an option available to councils and developers as a way of mitigating adverse effects of activities. It is proposed that they could be collected for adverse effects on infrastructure, heritage or outstanding natural landscapes. They cannot be collected when Horizons, the NZ Transport Agency or another department of Council have already collected a payment for the specified purpose.
- 3.3 The purpose of PC40 is to identify when a financial contribution is appropriate and outline how a contribution will be calculated. It can only be collected to offset an adverse effect after other methods have been considered. The funds must be used by Council to address the adverse effect identified.

### 4.0 STATUTORY AND LEGISLATIVE FRAMEWORK

#### 4.1 Resource Management Act 1991

Section 74 of the Act requires the Council to change the District Plan in accordance with its functions under Section 31, the purpose of the Act in section 5 and the other matters under sections 6, 7 and 8.

Territorial authorities have the following functions under the Act:

#### *31 Functions of territorial authorities under this Act*

1. *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
  - a. *The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources.*
  - b. *The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –*
    - iii. *the maintenance of indigenous biological diversity;*
2. *The methods used to carry out any of the functions under subsection (1) may include the control of subdivision.*

The Council is given these functions for the purpose of promoting the sustainable management of natural and physical resources, which is defined as:

- 5(2) *In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:*

- a. *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- b. *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- c. *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

In accordance with Section 5 of the RMA, PC40 has been developed with a focus on avoiding, remedying or mitigating adverse effects of activities.

Further guidance and direction on the way in which resources are to be managed is provided in sections 6, 7 and 8 of the RMA.

Section 108 of the Act provides for the imposition of financial contributions in accordance with the purposes specified in the plan as follows:

*108 Conditions of resource consents*

*(1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).*

*(2) A resource consent may include any 1 or more of the following conditions:*

- a. *subject to subsection (10), a condition requiring that a financial contribution be made*

...

*(9) In this section, financial contribution means a contribution of—*

- a. *money; or*
- b. *land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or*
- c. *a combination of money and land.*

*(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless—*

- a. *the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
- b. *the level of contribution is determined in the manner described in the plan or proposed plan*

Financial contribution provisions must be developed in accordance with section 102 and 106 of the Local Government Act 2002.

## 5.0 RELEVANT POLICY STATEMENTS AND PLAN PROVISIONS

### 5.1 National Policy Statements and Environmental Standards

There are no National Policy Statements or National Environmental Standards relevant to this Plan change.

### 5.2 Regional Policy Statement and Regional Plan (the One Plan)

The One Plan contains provisions for financial contributions. The only requirement on territorial authorities is that any proposed financial contributions do not cover the same matters as the One Plan. The One Plan may collect financial contributions for the following purposes:

- Infrastructure
- Aquatic ecosystems and rivers
- Indigenous biological diversity
- Public access to and along the coastal marine area, lakes and rivers

While it is intended that this Plan change will allow for collecting financial contributions for infrastructure, it is unlikely that financial contributions would be charged for the same infrastructure as Horizons. However, Policy 18-3(da) requires that any financial contribution takes into account other financial contributions made to prevent duplicate charging. This is also incorporated into the Plan change.

Therefore, for the purposes of this evaluation, it is considered that the proposed District Plan provisions relating to financial contributions have given effect to the regional documents.

## 6.0 SUMMARY OF SUBMISSIONS

6.1 Refer to Appendix 1 to this report for a summary of each submission and Council's decision and reasons for each decision.

## 7.0 PRINCIPAL ISSUES IN CONTENTION

7.1 The submitter identified the following concerns in relation to PC40:

- Inadequate section 32 report
- Inadequate consultation
- Workability of provisions

## 8.0 SUMMARY OF EVIDENCE HEARD

8.1 Key evidence presented by submitters is summarised below:

***Reuters Construction Limited, GJ Gardiner Homes and Attrill Development Ltd***  
(Sub 1)

- The submitter opposed the policy on the basis that it was lacking in transparency and did not meet the evaluation requirements of section 32 of the Act. The result of this would be that developers would not be able to

reasonably determine the costs of a development before proceeding. There was also concern about the lack of consultation directly with the development community.

## 8.2 Officer's Right of Reply is summarised below:

- Transpower's tabled evidence asked for two different things. Firstly for a statement in the introduction excluding infrastructure facilities from needing financial contributions. The definition for Infrastructure facilities includes Council services for which we do intend to keep the ability to charge financial contributions. The statement in the introduction is not required as the introduction is not legally enforceable and to put it in could cause conflict with the policies. The Local Government Act states Council can only collect financial contributions for the activities specified, therefore there is no impact on Transpower's infrastructure as it is not specified in the policy. Therefore the officer recommended no changes.
- The second part of Transpower's submission requested that they are excluded from needing to pay financial contributions. The officer did not agree with this statement as there is the potential for Transpower's future activities to impact heritage and outstanding natural features and there is no evidence as to why they should be excluded from mitigating that cost if adverse effects occurred.
- At the meeting with Submitter 1 on 10<sup>th</sup> December 2015 to further discuss and consult on the provisions, the key discussion point was regarding the application of financial contributions to subdivision developments, rather than the concerns raised at the hearing.
- The focus of the submitter's hearing presentation was on the complexity of the proposed formulas, and the lack of certainty about what financial contribution fees might actually be for a development. However, the subsequent meeting with Council planners did not focus on the complexity of the proposed formulas, rather the focus of the submitter and developers in attendance at the meeting was to avoid the application of contributions at all to land the submitter seeks to develop and to understand where contributions would and would not be applied.
- The result of the additional meeting was that clarification to the provisions is recommended to state clearly that anticipated subdivision (subdivision that meets the performance standards) will not be liable for financial contributions.
- The Officer stands by all other comments and recommendations of the S42A report.

## 9.0 MAIN FINDINGS ON PRINCIPAL ISSUES

### 9.1 The Committee considered each submission and confirmed a decision for each.

Refer to Appendix 1 for the decisions on individual submissions.

- The Committee accepted the recommendations of the reporting officer in regards to Transpower's written evidence.

- After questioning submitter 1 the Committee was concerned that the submitter and the reporting officer had not had enough time to understand each other's viewpoint and what the Plan change was proposing. Therefore the hearing was postponed until this discussion could occur and be reported back to the parties.
- The Committee reconvened on 11 February 2016. The submitter did not wish to attend again, however had provided his verbal support to the changes discussed as a result of the meeting. The changes proposed, as a result of the further discussions with the submitter 1, involved specifically excluding subdivision from the financial contribution requirements and clarifying that the contributions are for adverse effects not anticipated by the zone.
- The Committee accepted the report back from the officer outlining the results of the meeting with submitter 1, and apart from a couple of minor changes to the wording for further clarity was content for the Plan change to proceed.
- The Committee requested from the officer that a template for the new financial contributions be developed and tested before the provisions became operative to prevent issues and further confusion once implemented.
- The Committee accepted the officer's assessment that the S.32 evaluation had been completed appropriately. The scale of the S.32 evaluation is based on the scale of the Plan change. At the questioning of the submitter at the first hearing, it was confirmed that the submitter had not read the provisions fully. When read with the background research, the Committee concluded that the S.32 report was sufficient for Plan change 40.

#### **10.0 SECTION 32 REPORT EVALUATION**

Further evaluation for the S.32 report as a result of the further information requested and supplied was required to incorporate the amendments that were made to the Plan change as a result of Council's Decision on Submissions. The S.32AA report is attached as Appendix 3.

#### **11.0 STATEMENT OF DECISIONS AND REASONS**

Refer to Appendix 1 to this report for the Council's decision and reasons relating to each submission. Refer to Appendix 2 for the complete version of the Plan change maps and text.

#### **12.0 APPENDICES**

- 1: Decisions on Submissions and Reasons for Decisions
- 2: Marked- Up Version of Plan Change 40 following Decisions on Submissions
- 3: Section 32AA Evaluation

Signature of Chairman



Independent Commissioner Alan Taylor

Dated: 15/06/2016.

**APPENDIX 1 – Decisions on Submissions and Reasons for Decisions**

The following are the summary of submissions received and decisions of Council on each submission following consideration of the evidence.

<b>Contents Page</b>		
	<b>Submission No.</b>	<b>Page</b>
<a href="#"><u>Reuters Construction Limited, GJ Gardiner Homes and Attrill Development Ltd</u></a>	1	8
<a href="#"><u>Wanganui Federated Farmers of New Zealand</u></a>	3	8
<a href="#"><u>Transpower New Zealand Limited</u></a>	2	11



**Submitter Name:** Reuters Construction Limited, GJ Gardiner Homes and Attrill Development Ltd

**Submission No:** [1.1pc40](#)

Summary:

Oppose the proposed plan change. The proposed plan change is not transparent and disadvantages the developer.

Decision Sought:

A more transparent policy that has certainty of costs for the development including costs of upgrades or compensation for additional work.

**Submitter Name:** Wanganui Federated Farmers of New Zealand

**Submission No:** [3.1pc40](#)

Summary:

Supportive of the proposed plan change. We note that this option gives greater certainty to developers along with a greater tool set of options to apply to recover contributions.

Decision Sought:

Retain as drafted.

**Council Decision:**

That Submission 1 from Reuters Construction Limited, GJ Gardiner Homes and Attrill Development Ltd be **accepted in part**.

That Submission 3 from Wanganui Federated Farmers of New Zealand be **accepted**.

The following amendments are made as a result of these submissions:

**Chapter 20 – Financial Contributions**

Whanganui District Council will only apply financial contributions to land use activities and not subdivision, as subdivision is an expected and provided for activity in every part of the District. Council prefers to work with developers utilising tools such as Developer Agreements to attribute infrastructure costs of development appropriately to those who benefit directly.

**Objectives**

20.1.1 To ensure positive effects on the environment are achieved to offset any adverse effects of subdivision or development.

**Policies**

**20.2.1 Provision of Infrastructure**

Financial contribution to mitigate adverse effects will be in accordance with the following:

- a. The extent that the activity creates an adverse effect that could be offset by a financial contribution to achieve the objectives and policies of this plan.



- b. The extent to which the financial contribution avoids, remedies or mitigates any on-site and off-site adverse environmental effects caused by any subdivision, use or development not anticipated in the relevant zone.
- c. The extent to which the positive environmental effects relating to a type of infrastructure to off-set the adverse environmental effects.

### 20.2.3 Purpose of contributions

1. Financial contributions may be considered on a case by case basis to mitigate or remedy adverse effects created by the need to upgrade or extend public infrastructure for the subdivision, use or development of land not anticipated in the relevant zone or non-compliance with performance standards relating to:
  - a. Infrastructure
  - b. Outstanding natural landscapes; or
  - c. Built heritage
2. Financial contributions may be taken in the form of cash, land, works or a combination of these in discussion with the applicant.
3. Contributions ~~shall~~ will only be used to address the specific adverse effects for which they are taken. The Council shall generally ensure that a financial contribution is used to fund mitigation activities as close as reasonably possible to the site where the adverse effects occur, or at one or more similar sites where the adverse effects occur, provided the community of benefit is the generally the same.
4. Financial contributions ~~shall~~ will not be taken where this would result in a duplication of payments already made for that specific purpose either to the Horizons Regional Council, The New Zealand Transport Agency or Whanganui District Council.
5. Financial Contributions will not be taken for effects related to subdivision.

### 20.2.4 Level of Contributions

1. Financial contributions to mitigate adverse effects generated on or off-site will be determined following consideration of:
  - a. Any other methods available to address the adverse effects. e.g. redesign;
  - b. The short and long term effects on the existing and future environment, including communities;
  - c. The extent to which the financial contribution avoids, remedies or mitigates any on-site and off-site adverse effects caused by the subdivision, use or development not anticipated in the relevant zone;...
3. The level of any financial contribution shall be determined in the manner detailed below, in order to mitigate any adverse effects of a proposed activity, where these relate to:

a. Outstanding Natural Landscapes

Contribution = value of land required + cost of mitigation.

The contribution will be ~~determined~~ advised by an independent ~~by~~ by a natural landscape specialist and tangata whenua.

Contributions may be directed to facilitate or fund river or gully restoration, improved public access or the protection, restoration or enhancement of the values as identified in policy 10.3.18 [10.3.1].

b. Heritage Items

- i. The level of contribution shall equate to the cost of replacing or replicating any heritage values or components to be lost if the activity proceeds. The cost of replacement or replication shall be quantified advised by a suitably qualified and experienced heritage expert.

**Council Reasons for Decision:**

1. Both submissions relate to the changes made to the financial contributions section as a result of the Local Government Act (LGA) amendments. The LGA states that financial contributions can only be collected if the reasons for collecting them and the formulas used are clear and set out in the Plan.
2. After further consultation with submitter 1, the Committee adopted the revised version of the proposed provisions which now set out clear circumstances for when financial contributions can be collected and states that it is only one method for mitigating adverse effects not anticipated by the zone. As subdivision is an anticipated activity throughout the District, it is unreasonable to require a financial contribution. However if the land use activity associated with the subdivision is unanticipated (for example a higher density than permitted by the Plan), this could have an effect on how infrastructure is managed and generate an adverse effect. This could potentially be addressed with a financial contribution, however an additional statement was added to Policy 20.2.3(2) to confirm that this cannot be a surprise cost. The developer must have a say in this option, and other methods must be considered (Policy 20.2.4(1)(a)).
3. The Committee recognised that Council needs to make the formulas as easy to use as possible for both parties. Therefore it recommended that before the decisions are released, that an Excel spreadsheet template was developed and tested to make sure that the policy could be applied consistently and that the costs would not be excessive. It also recommended that this template be available to the development community.
4. Minor changes to the terminology of the policies was made by the Committee to further clarify that the process and formulas are only a starting point for discussions.

**Submitter Name:** Transpower New Zealand Limited

**Submission No:** 2.1pc40

Summary:

Neutral to proposed plan change. This plan change should not affect public infrastructure as it is not liable for financial contributions.

Decision Sought:

The addition of a statement to the effect that the development of public infrastructure is not subject to financial contributions.

**Council Decision:**

That Submission 2 from Transpower New Zealand Limited be **accepted in part**.

No amendments were made as a result of this submission.

**Council Reasons for Decision:**

1. The Committee agreed with the submitter that financial contributions cannot be collected for national infrastructure outside of Council's control. By specifically stating the types of activities that may generate a financial contribution, it is made clear that there is no circumstance in which a contribution would be collected for Transpower assets. Therefore a specific statement is not required.
2. The submitter's written evidence also requested a statement that Transpower would not be liable for any financial contributions. The Committee rejected this suggestion as there was no evidence as to why Transpower should be exempt. As the financial contribution provisions are designed to be one method of mitigation and can only occur if the applicant and Council agree, it is unlikely that Transpower will be made to pay a financial contribution unless it is the best option for both parties.