

## Recommendations to Council from the Statutory Management Committee

Date: 8 June 2016

Councillors

### WHANGANUI DISTRICT COUNCIL

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**Subject:** Plan Change 45 – Natural Environment

**Decisions on Submissions**

**Meeting Date:** 17 March 2016

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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 45. 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 meeting.

#### 2.0 PROCEDURAL MATTERS

- 2.1 The Committee was convened to hear submissions on 17 March 2016. Two submitters attended. The Committee reviewed tabled evidence from submitters and listened to the reporting officer's recommendations before deliberating on submissions.
- 2.2 The Committee members were: Independent Commissioner Alan Taylor (Chair), Councillors, Jenny Duncan, Martin Visser and Independent Commissioner Jill Sheehy.
- 2.3 Submitters who tabled information to support their submissions were:
  - Burton Consultants on behalf of Powerco Ltd
  - Beca Ltd on behalf of Transpower New Zealand Limited
  - KTB Planning Consultants Ltd on behalf of Rayonier Matariki Forests Ltd
  - Horizons Regional Council
- 2.4 PC45 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.
- 2.5 A total of ten submissions, were received at the close of submissions.
- 2.6 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. Four further submissions were received.

### 3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 The purpose of PC45 is to review the provisions relating to Indigenous Forestry, Riparian Margins and the Urban River Landscape Overlay to take into account changes to legalisation, regional documents and community expectations.
- 3.2 Provisions relating to indigenous forestry are proposed to be removed because the environmental effects of discharge to water and sustainability are already handled at the regional and national government level. No submissions were received opposing this.
- 3.3 The proposed provisions for riparian margins are reduced to only those waterways that the community deem significant in terms of amenity and/or spiritual/cultural values. This is due to the Plan not needing to cover ecological issues which are handled by Horizons Regional Council. The simplification of the policies relating to riparian margins will result in the esplanade section in Chapter 13 (Subdivision and Infrastructure) being slightly re-worded to incorporate the purpose of taking esplanade reserves, which was previously covered by reference to the riparian margin policy. There will be no change in implementation of the esplanade provisions as a result of this format change.
- 3.4 The Urban River Landscape Overlay (formally the River Margin Landscape Conservation Overlay) is proposed to be extended and the existing objectives and policies clarified. The Overlay exists to enhance the link between the town and the Whanganui River, and to visually enhance the views of the urban area across the water. It is proposed to extend the area to include land adjoining the national cycle route and popular walkways within the urban boundary. This will require activities adjoining the cycle route and footpaths to consider the visual effects (and possible physical access if the activity is open to the public) of their activity on areas of high amenity value, on and adjoining the Whanganui River. The limits of the Overlay are the extent of the cycleway and footpath (which is where the majority of public access and amenity value is enjoyed) and the urban boundary (where the majority of people enjoy the River landscape).

### 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 –*

- i. *the avoidance or mitigation of natural hazards*
2. *The methods used to carry out any of the functions under subsection (1) may include the control of subdivision.*

In accordance with Section 5 of the RMA, PC45 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 7:

*Matters of national importance:*

- a. *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- b. ...
- c. *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- d. *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- e. *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*

The preservation of the coastal environment, the margins of waterways and public access is provided for in the proposed riparian margin changes. The protection of indigenous vegetation is handled under the One Plan and the proposed changes will emphasise this in the definition of 'Forestry'. The relationship of Maori and their ancestral lands and water is also provided for in the riparian margin policies.

## **5.0 RELEVANT POLICY STATEMENTS AND PLAN PROVISIONS**

### **5.1 National Policy Statements and Environmental Standards**

The Act requires that district plans give effect to any relevant national environmental standards (NES). A NES is a document prepared under the Act and national policy statement (NPS) to ensure that the same standards are enforced by each Council. The national environmental statements relevant to this plan change are:

- The New Zealand Coastal Policy Statement (2010)
- The National Policy Statement for Renewable Electricity Generation (2001)
- The National Policy Statement on Electricity Transmission (2008)

#### New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement (NZCPS) has been considered and given effect to in relation to the coastline being identified as a riparian margin. The NZCPS's purpose is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand. This was also considered during the reviews of the Reserves and Open Spaces Zone (PC28) and the Rural Zones

(PC36), which are zones within the coastline. The proposed identification of the coast as a riparian margin will be considered against the NZCPS.

Relevant sections include:

New Zealand Coastal Policy Statement 2010		Proposed Plan Change 45
Objectives	Policy	Evaluation
<b>Objective 3</b> To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by: <ul style="list-style-type: none"> <li>•recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;</li> <li>•promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;</li> <li>•incorporating mātauranga Māori into sustainable management practices; and</li> <li>•recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.</li> </ul>	<b>Policy 2:</b> The Treaty of Waitangi, tangata whenua and Māori	The riparian margin provisions recognise the cultural values of the west coast by providing for development within 20 metres of the coast subject to cultural and amenity values being preserved.
<b>Objective 4</b> To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by: <ul style="list-style-type: none"> <li>•recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;</li> <li>•maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and</li> <li>•recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.</li> </ul>	<b>Policy 4:</b> Integration  <b>Policy 18:</b> Public open space  <b>Policy 19:</b> Walking access  <b>Policy 20:</b> Vehicle access	The riparian margin provisions recognise the amenity values of the west coast by providing for development within 20 metres of the coast subject to cultural and amenity values being preserved. Access is a recognised part of the amenity values in this area.
<b>Objective 6</b> To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that: <ul style="list-style-type: none"> <li>•the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;</li> <li>•some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;</li> </ul>	<b>Policy 6:</b> Activities in the coastal environment  <b>Policy 9:</b> Ports  <b>Policy 17:</b> Historic heritage identification and protection  <b>Policy 23:</b> Discharge of contaminants	Policy 10.3.1 (formally 10.3.18) identifies the riparian margins that contain amenity and cultural values.  There are no rules precluding development within these areas, however the objectives and policies will allow for consideration of the amenity and cultural effects through the

<ul style="list-style-type: none"> <li>•functionally some uses and developments can only be located on the coast or in the coastal marine area;</li> <li>•the coastal environment contains renewable energy resources of significant value;</li> <li>•the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;</li> <li>•the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;</li> <li>•the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and</li> <li>•historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.</li> </ul>		resource consent process as an 'other matter'.
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#### National Policy Statement on Renewable Electricity Generation

The National Policy Statement for Renewable Electricity Generation (NPSREG) is part of the New Zealand Energy Strategy. This purpose is to strengthen the policy framework relating to renewable energy.

This Plan Change gives effect to the NPSREG by providing for tidal and ocean energy production within the riparian margin as a network utility with a functional requirement to be in the area.

#### National Policy Statement on Electricity Transmission

The National Policy Statement on Electricity Transmission (NPSET) sets out objectives and policies to standardise through the country the approach to managing the localised effects caused by the national grid. This recognises that it is a matter of national importance the need to operate, maintain, develop and upgrade the electricity transmission network.

This Plan change gives effect to the NPSET by allowing network utilities within the riparian margin and Overlay as a permitted activity due to their importance to the community.

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

The One Plan is relevant to Plan Change 45 as it includes requirements relating to the implementation of the National Policy Statements as well as requiring the Council to be consistent with the document.

An assessment of how the provisions in Plan Change 45 compare with the Objectives and Policies of the One Plan are considered in Table 1 below.



One Plan – Indigenous Forestry (called Production Forestry in the One Plan)		Proposed Plan Change 45
Objectives	Policy	Evaluation
Objective 12-2: Regulation of activities affecting indigenous biological diversity	Policy 12-5A: Regional rules for activities affecting indigenous biological diversity.	The proposed removal of the Indigenous Forestry rules will have no effect on the implementation of the One Plan. There are no identified effects for the Council to consider, as the regional council already covers them.
One Plan – Riparian Margins		Proposed Plan Change 45
Objectives	Policy	Evaluation
Objective 16-1: Regulation of structures and activities in artificial watercourses and in the beds of rivers and lakes and damming.	Policy 16-1: Consent decision-making for activities in, on, under or over the beds of rivers and lakes	<p>The One Plan takes care of ecological effects and water quality of development within the riparian margin. Therefore the proposed removal of provisions relating to ecology from the District Plan is reasonable as any ecology effects will be managed under the One Plan.</p> <p>The One Plan does not address the local amenity, cultural and spiritual values of land adjoining waterways. District councils are best placed to assess these localised effects.</p> <p>PC45 removes the existing blanket rule affecting all waterways. Instead only those waterways of local amenity or cultural value are required to be considered. These are listed in the Plan to provide clarity and certainty.</p> <p>The Plan change complies with the Objective and Policy as it does not interfere with Regional Council commitments, yet provides for local input on the waterways considered important to the community.</p>

There are no other relevant sections of the One Plan to consider as part of this Plan change.

## 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 Submitters identified the following concerns in relation to PC45:
- Extent of the land lost to the riparian margin provisions
  - Restriction on activities within the riparian margin

## 8.0 SUMMARY OF EVIDENCE HEARD

- 8.1 Key evidence presented by submitters is summarised below:

### ***Federated Farmers (Sub 10)***

- The submitter was opposed to the rules for riparian margins as they felt they went too far to achieve the objectives. He also stated that there was no robust science as to what an appropriate riparian margin is and should be considered on a case by case basis.
- Water quality and stock control are handled through other programmes. Private land owners should not be compelled to provide any public access over their land.
- Inclusion of floodgates, roading, tracking and planting/harvesting of trees should be considered a permitted activity.
- Financial incentives such as waiving of resource consent fees should be considered during the hearing.

### ***New Zealand Defence Force (NZDF) (Sub 9)***

- The submitter supported the addition of bridges to the permitted activities list.

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

### **Federated Farmers**

- This Plan change is more targeted and restricts use of less land than under the operative rules, which was a blanket rule across all waterways. Ninety percent of the District will not be considered, as stated in the submission, only those waterways identified. The only tributaries considered are the Whanganui River tributaries, and that is because the treaty settlement considers them as part of the river being a legal entity in its own right.
- Policies – The proposed policies do not promote new public access on private land. The advice note under Policy 10.3.1 proposed by the submitter, would increase confusion for the public about access.
- The 20m setback proposed in the rules is based on the traditional amount for esplanade reserves. This is consistent with other documents (except when not looking at ecological issues, which is often site specific).
- Esplanade reserves take the land from the private owner and vest it in the Council. This is different to managing activities on private land within 20

metres of the waterway, which the riparian margin seeks to do. Therefore the submitter's comments regarding esplanade reserves are not relevant.

- Section 1.54 of the evidence suggests that the officer's report has not taken into account roading, tracking and trees. Roding and tracking could potentially effect amenity and cultural values and should still be considered on a case by case basis through the consent process. Trees for conservation, river management or habitat restoration purposes are provided for as a Permitted Activity under the proposed rules.
- What this Plan Change is going to restrict is structures and earthworks/vegetation clearance in these areas. Whether there are sheep or cattle in this area and how many is not relevant as they are Rural Activities and Permitted. There may be Horizons consents, but not at the District Council level. As this has caused confusion for the applicant, one option would be to exchange the word 'activities' in the Restricted Discretionary section to 'Structures and earthworks' to be more specific.

Powerco (written evidence):

- The Officer confirms that the rules for riparian margins and urban river overlays were renumbered as part of the re-formatting. The new numbers are now in brackets, but the hearing text has retained the old versions to make it easier for everyone to understand what is being referred to during the hearing. No other re-numbering is required.
- The wording of the opening statement of the riparian margin and urban river overlay rules is not a significant issue. Both the notified version and Powerco's version remind Plan users to consider the whole Plan when determining activity status. The notified version is similar in format and style to the rest of the Plan and was considered more user friendly by the planning department. Powerco's new version in the written evidence takes the comments in the officer's report and has offered a version that addresses their concerns but stays simple to read and similar to the rest of the Plan format. Therefore the officer recommends the following which combines both:

*10.6.1 Permitted Activities*

*The following are permitted activities (Note: the relevant Performance Standards of the underlying zone as well as any other relevant chapters apply, unless specified otherwise):*

Rayonier (written evidence):

- Rayonier expressed concern about the lack of definition for 'tributary' in relation to the Whanganui River. The term is the same term used in the Whanganui River Treaty Settlement as part of the entire legal body. Therefore it is reasonable to use the same term to protect the same entity. Clarification from the treaty settlement documents and the governing body (Te Awa Tupua) may be a better option to changing the term and ending up protecting something different from what the settlement states.

Rayonier and Federated Farmers comments re: Riparian Margin cultural values



- The submissions from Rayonier and Federated Farmers indicate a lack of understanding of the cultural and spiritual values to be considered when assessing activities in the natural environment. In order to provide guidance but not alter the legal weighting of the notified provisions, the Officer recommends an additional statement is added to the introduction of Chapter 10, reminding Plan users of the treaty settlement documents. This would give people a starting point on what is to be considered when assessing cultural effects.

*“The following documents should be considered when assessing any activity within the Natural Environment:*

- *The Whangaehu River Statement of Association*
- *The Whanganui River Treaty Settlement which recognises Te Awa Tupua as a living and indivisible whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements”*
- 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 respect to the issues of indigenous forestry, the urban river overlay and the minor changes to protected trees raised in relation to PC45 and the evidence tabled and officer’s reply.
- The Committee acknowledged that the Officer suggested a small addition to the introduction of Chapter 10 to clarify Treaty requirements. The Committee was in agreement on the issue.

### Riparian Margins

- The Committee accepted that the proposed provisions did not cover effects that are handled by Horizons Regional Council in relation to riparian margins, including water quality, stock access and ecology.
- The Committee considered the following questions:
  - What are the amenity values being protected and how does the riparian margin protect that?
  - and
  - What are the cultural values and how does the riparian margin strive to protect that?
- The Committee was concerned that the restrictions proposed in the notified text would not achieve the intention of the objectives and policies. The Committee discussed at length the validity of riparian margins outside the Regional Council restrictions.
- Referring to policies, the Committee agreed there was value in recognising key water bodies in our District. The Committee agreed to retain the riparian margin of 20 metres

and retain all objectives and policies in Chapter 10, but remove the rules in section 10.6. The note referring to the Regional Council would be retained, but moved to the start of the chapter to be more visible. The Committee determined that applying the policies and objectives to existing consent processes would achieve protection of the amenity and cultural value. Anyone proposing a subdivision, or where consent is required within the 20 metre riparian margin, will have to consider the amenity and culture values.

- The Committee considered the risk of not having rules for riparian margins and determined that the objectives and policies will still have to be taken into consideration for most consents. The biggest risk of 'no rules' is that an activity that is permitted elsewhere in the District Plan, in that case there would be no opportunity to consider the objectives and policies, nor require consultation with local hapu. The Committee considered the risk of this was relatively low including the risk of people building close to the riparian margin and not being required to obtain a consent. The intention of this Committee recommendation is that if consent is required by another Plan rule for activity within the riparian margin, that the Council is able to consider the implications for the water body and the amenity and cultural values of that activity proceeding.
- The Committee accepted the Officer's assessment that the S.32 evaluation had been completed appropriately.

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

Further evaluation for the S.32 report was required to consider the amendments that were made to the Plan change as a result of Council's Decision on Submissions. The S32AA 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 45 following Decisions on Submissions
- 3: Relevant Planning Maps
- 4: 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.

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<b>Policies and other topics</b>		
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**Permitted Activities**

**Submitter Name:** KiwiRail Holdings Limited

**Submission No:** [2.1pc45](#)

**Summary:**

Support the proposed Plan change, in respect to the provisions for River Margins and the Urban River Landscape Overlay as they recognise existing infrastructure and the occasionally limited options for location.

**Decision Sought:**

1. That Rules 10.6.1(i) and (iii) (Permitted Activities for Riparian Margins) is retained as notified.
2. That Rule 10.6.1(a) (Permitted Activities for the Urban River Landscape Overlay) is retained as notified.

**Submitter Name:** Transpower New Zealand Limited

**Further Submission No:** [4.1pc45](#)

**Summary:**

Support submission 2.1 in regards to retaining Rule 10.6.1. This is consistent with Transpower's submission.

**Submitter Name:** Powerco Limited

**Submission No:** [3.1pc45](#)

**Summary:**

Supportive of the proposed Plan change, as described below:

1. Rule 10.6.1 (Permitted Activities Riparian Margins) is intended to permit existing and new network crossings of waterways, but needs to be amended to correct typographical errors in numbering and to more accurately explain the relationship between this chapter and the rest of the Plan by amending the opening statement.
2. Rule 10.6.3 provides a default to restricted discretionary activity status for activities in the riparian margins that are not otherwise permitted, and is supported.
3. Rule 10.6.1 (Permitted Activities Urban River Landscape Overlay) is intended to permit existing and new network crossings of waterways, but needs to be amended to correct typographical errors in numbering and to more accurately explain the relationship between this chapter and the rest of the Plan by amending the opening statement.
4. Rule 10.8.2 provides a default to restricted discretionary activity status for activities in the Urban River Landscape Overlay that are not otherwise permitted, and is supported.

**Decision Sought:**

1. That Rule 10.6.1 (Permitted Activities Riparian Margins) is amended to clarify the relationship between this chapter and the rest of the Plan and to fix typographical errors.
2. Retain Rule 10.6.3 as drafted.



3. That Rule 10.6.1 (Permitted Activities Urban River Landscape Overlay) is amended to clarify the relationship between this chapter and the rest of the Plan and to fix typographical errors.
4. Retain Rule 10.8.2 as drafted.

**Submitter Name:** Chorus New Zealand Limited

**Submission No:** [4.1pc45](#)

Summary:

Support the proposed Plan change, in respect to the provisions for existing and new cables and lines within riparian margins, as it is appropriate in view of the minimal potential for adverse effects associated with these works.

Decision Sought:

That Rules 10.6.1(b)(iii) (Permitted Activities for Riparian Margins) is retained as notified.

**Submitter Name:** Spark New Zealand Trading Limited

**Submission No:** [5.1pc45](#)

Summary:

Support the proposed Plan change, in respect to the provisions for existing and new cables and lines within riparian margins, as it is appropriate in view of the minimal potential for adverse effects associated with these works.

Decision Sought:

That Rules 10.6.1(b)(iii) (Permitted Activities for Riparian Margins) is retained as notified.

**Submitter Name:** NZ Transport Agency

**Submission No:** [6.1pc45](#)

Summary:

Support the proposed Plan change, in respect to the provisions for existing and new network utilities, or fences, bridges, culverts, fords or flood protection structures.

Decision Sought:

That Rules 10.6.1(b)(i) (Permitted Activities for Riparian Margins) is retained as notified.

**Submitter Name:** Transpower New Zealand Limited

**Further Submission No:** [4.2pc45](#)

Summary:

Support submission 6.1 in regards to retaining Rule 10.6.1.

This is consistent with Transpower's submission.

**Submitter Name:** New Zealand Defence Force

**Submission No:** [9.1pc45](#)

Summary:

Opposed to the current wording of Rule 10.6.1 (Permitted Activities Riparian Margins). The activities provided for are very restrictive. It is not clear if the rule

applies on the waterway. Also there are a broad range of activities that could be undertaken within the river margin that would result in negligible effects, however it is not clear if these are provided for.

Decision Sought:

1. Amend Rule 10.6.1 to clarify its application.
2. Confirm if the rules apply on waterways.

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

**Submission No:** [10.2pc45](#)

Summary:

Not opposed to intent of Plan change, but would like to make the following changes in regards to the Riparian Margin Rules:

1. It is assumed that if fences are Permitted Activities that 'floodgates' would be too. However, clarification of this for Plan users to requested.
2. Landowners need to be able to manage their land when there is no effect on the riparian margin without interference from the Council. Therefore new Permitted Activities to cover Rural Activities is requested.
3. That sub section vi) of the operative District Plan rules for Riparian Margins is re-instated as it would allow for the wider objectives of the margins to be met without triggering a resource consent process and would allow Regional Council and Environment Grant works to proceed.
4. The riparian margin rules create an imposition of landowners for the benefit of the public and therefore consent fees should be waived.

Decision Sought:

1. That 'floodgates' is added to Rule 10.6.1(b)(i) as a Permitted Activity.
2. That a new Permitted Activity is included providing for replacement, maintenance, upgrade or removal of an existing or new structure, road, track, earthwork, fence or trees that are located within 20 metres of a key waterway, or within a riparian margin.
3. That a new Permitted Activity is included providing for the installation of a new fence, bridge, culvert, ford or flood protection structure, where that structure will enhance, or protect the natural character of the key waterway.
4. That a Permitted Activity is reinstated that provides for the planting, tending, harvesting or clearing any vegetation including non-indigenous trees, for conservation, river management or habitat purposes.
5. That where an activity requires Resource Consent because of the Riparian Margin rules, that Council waives the Resource Consent fees and this is noted under Rule 10.6.3.

**Submitter Name:** **Horizons**

**Further Submission No:** [1.1pc45](#)

Summary:

Support in part submission 10.2 paragraphs 1.14, 1.15 and 2.23-2.25. Federated Farmers seeks to include two new provisions in the riparian margin rules.

Horizons supports the inclusion of provisions to allow as permitted activities the fencing of waterways, planting of riparian margins and installation of stock crossings for the purpose of improving water quality and enhancing riparian and in-stream



indigenous biodiversity habitat. Such provisions will enhance the continuation of Horizon's freshwater and biodiversity programmes.

**Council Decision:**

That submissions 2.1, 3.1, 4.1, 5.1, 6.1, 9.1 and 10.2 from KiwiRail Holdings Limited, Powerco Limited, Chorus New Zealand Limited, Spark New Zealand Trading Limited, NZ Transport Agency, New Zealand Defence Force and Wanganui Federated Farmers of New Zealand and further submissions 1.1, 4.1 and 4.2 from Horizons and Transpower New Zealand Limited be **accepted in part**.

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

**Chapter 2 – Definitions**

**Riparian Margin:** means the strip of land along the edge of a waterbody waterway including streams, lakes and wetlands. The riparian margin starts at the mean high spring water level and extends inland 20 metres.

This definition only applies to waterbodies waterways identified in Policy 10.3.18[10.3.1].

**Chapter 10 – Natural Environment**

**10.6 RULES – INDIGENOUS FOREST & RIPARIAN MARGINS**

Note: The Manawatu-Wanganui Regional Council should be consulted regarding any activity which results in disturbance to the beds of waterways and their riparian margins, to identify any Regional Council requirements.

**10.6.1 Permitted activities.**

The following are permitted activities provided they shall comply with the Performance Standards of the underlying zone as well as any other relevant chapters

- a. Activities on or near waterways not listed in Policy 10.3.8 as a key waterway.
- b. Activities within 20 metres of a key waterway listed in Policy 10.3.8 and that involve:
  - i. Replacement, maintenance, upgrade or removal of an existing network utility, or a fence, bridge, culvert, ford or flood protection structure.
  - ii. Clearance of plant pests and restoration of indigenous biodiversity,
  - iii. Maintenance of existing or installation of new cables and lines in, under or over roads, bridges or culverts.

**10.6.3 Restricted Discretionary Activities.**

The following are restricted discretionary activities:

- a. Activities within 20 metres of a key waterway (listed in Policy 10.3.18) that are not provided for in Rule 10.6.1[10.4.1].

Council restricts its discretion to the following matters:

- i. effects on the spiritual/cultural values of the waterway;
- ii. effects on the landscape amenity;
- iii. Any enhancement of the public access or visual amenity of the area.

- iv. ~~The necessity to undertake the activity at the riparian edge or within the riparian margin.~~

~~Note: Refer also to the esplanade reserve requirements in Chapter 13A, Subdivision Rules, Section 13.8 and to the financial contribution provisions in Chapter 20 of this Plan, in relation to activities requiring subdivision or landuse consent along waterway.~~

## **[10.4]10.7 RULES – URBAN RIVER LANDSCAPE OVERLAY**

### **[10.4.1]10.6.1 Permitted activities.**

The following are permitted activities (Note: the relevant Performance Standards of the underlying zone as well as any other relevant chapters apply, unless specified otherwise):

provided they comply with the Performance Standards of the underlying zone as well as any other relevant chapters;

#### **Council Reasons for Decision:**

- 1 The comments of KiwiRail Holdings Limited, Transpower New Zealand Limited, Powerco Limited, Chorus New Zealand Limited, Spark New Zealand Trading Limited, NZ Transport Agency, the New Zealand Defence Force, Wanganui Federated Farmers of New Zealand and Horizons are noted and appreciated.
- 2 The submission remedies sought are accepted by the Committee, except where commented on below:
- 3 Several submissions raised the issue that the **permitted activities list** for riparian margins was too restrictive. The Committee concluded that the rules were not meeting the objectives and policies relating to riparian margins. Therefore the Committee chose to remove the rules, but retain the objectives and policies so that they could be considered as part of any discretionary or non-complying resource or subdivision consent assessment within these areas.
- 4 As a result of removing the permitted activity standard (which set the distance from the waterbody that the riparian margin applied), the **definition** of riparian margin was modified to confirm it only applies for the 20 metres inland from the mean high spring water level, which was the same as for the notified proposed rule.
- 5 Powerco proposed a revision to simplify the statement under Rule 10.7.1 that explains the relationship with the other parts of the Plan. The Committee chose to adopt a modified version of what Powerco provided which is more consistent with the existing Plan format.
- 6 Federated Farmers requested a statement that Council would **waive resource consent fees** for activities that do not comply with riparian margin rules. Council's fee structure is determined in the Annual Plan and not in this forum. No changes were made as a result of this part of the submission.

## **Policies and Other Topics**

**Submitter Name:** Horizons

**Submission No:** [1.1pc45](#)

**Summary:**

Support the proposed plan change. The plan change will give effect to the One Plan in regards to riparian margins and the proposed provisions for the Urban River Landscape Overlay are in general accordance with the One Plan.

**Decision Sought:**

1. That proposed policy 10.3.18 be retained as drafted.
2. That the advice note before rule 10.6, outlining the potential for Regional Council consent is retained as drafted.
3. That an advice note above rule 10.6.1 outlining the potential for Regional Council consent is added.

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

**Further Submission No:** [3.1pc45](#)

**Summary:**

Support in part submission 1.1 in regards to adding an advice note for rule 10.6.1 outlining the potential for Regional consent to be required. Federated Farmers agrees that where relevant, the District Plan should make reference to the wider rules of the Regional Council to provide greater clarity and understanding to the Plan user.

**Submitter Name:** Transpower New Zealand Limited

**Submission No:** [7.1pc45](#)

**Summary:**

Supportive of the intent of Plan change, but would like to make the following recommendations:

1. Add two new policies to the Natural Environment Chapter to recognise that network utilities are located in natural areas and have a functional and locational need to be there.
2. That Rule 10.6.1(b)(i) (Permitted Activities for Riparian Margins) meets the requirements of the NPSET and is retained as the National Grid crosses the Whanganui River.
3. That Rule 10.9.1(a)(i) is amended to permit the trimming of Protected Trees no matter what the size of the branch in accordance with the NPSET when it is a threat to the safe and efficient operation of the National Grid.

**Decision Sought:**

1. That two new policies are created that recognise the functional and locational need for network utilities in riparian margins and river environments.
2. That Rule 10.6.1(b)(i) (Permitted Activities for Riparian Margins) is retained.
3. That Rule 10.9.1(a)(i) is amended to permit the trimming of Protected Trees no matter what the size of the branch.

**Submitter Name:** Powerco Limited

**Further Submission No:** [2.1pc45](#)

**Summary:**

Support submission 7.1 in regards to adding additional policies around the operation and maintenance of network utilities in natural areas and amending rule 10.9.1(a)(i) (Protected Trees) to remove the branch size limit.

**Submitter Name:** Rayonier Matariki Forests Limited

**Submission No:** [8.1pc45](#)

Summary:

Supportive of the intent of the proposed Plan change, but with the exemption of the following issues:

1. Amend Objective 10.2.5 to reflect the proposed issues with Policy 10.3.18 and Rules 10.6.1 and Rules 10.6.3.
2. Supportive of the approach to identify key waterways, however the inclusion of all tributaries of the Whanganui and Whangaehu Rivers could have significant effects of existing and future production forestry operations. There is no clear definition of tributary in the proposed Plan change and therefore any stream could be considered.
3. The proposed definition of 'Forestry' is different to the One Plan. Making the definitions the same would reduce confusion for Plan users.

Decision Sought:

1. That Objective 10.2.5 is amended to be consistent with any changes to Policy 10.3.18.
2. Amend Policy 10.3.18 so that only tributaries of the Whanganui River greater than 3 metres in width are considered a 'key waterway'.
3. Amend Rule 10.6.1(b)(iv) to provide for existing forestry and its associated activities as a Permitted Activity.
4. Amend the definition of 'Forestry' to be the same as the One Plan.
5. Amend the terminology of the Plan to replace 'waterway' with 'rivers, lakes and waterbodies'.

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

**Submission No:** [10.1pc45](#)

Summary:

Not opposed to intent of Plan change, but would like to make the following changes in regards to the Riparian Margin Objectives and Policies:

1. That Objective 10.2.5 is amended to recognise the existing production land uses on those margins or adjoining land. The current wording could frustrate a landowner's ability to access water for reasonable uses.
2. That Policies 10.3.2 and 10.3.8 are amended as minor adverse effects can be tolerated by riparian margins and the adjoining landowner is likely to have the largest positive effect on preservation of these waterways.
3. That Policies 10.3.9, 10.3.18 and 10.3.19 are limited to where there is public access only as there is no public right to roam over private land in New Zealand.

Decision Sought:

1. That Objective 10.2.5 is amended to recognise the existing production land uses on those margins or adjoining land.
2. That Policies 10.3.2 and 10.3.8 are amended to limit consideration to effects that are more than minor on riparian margins.

3. That Policies 10.3.9, 10.3.18 and 10.3.19 are limited to where there is public access only.

**Council Decision:**

That submission 1.1, 7.1, 8.1 and 10.1 from Horizons Regional Council, Transpower New Zealand Limited, Rayonier Matariki Forests Limited and Wanganui Federated Farmers of New Zealand and further submissions 2.1 and 3.1 from Powerco Limited and Wanganui Federated Farmers of New Zealand be **accepted in part**.

The following amendments are made as a result of the submissions.

*All references to 'waterways' replaced with 'waterbodies'.*

**Chapter 2 - Definitions**

**Forestry:** means activities associated with all planting of trees for carbon sequestration purposes or production forestry including associated activities of tracking, earthworks, land preparation, planting, pruning, thinning, clearing understorey (indigenous and exotic species), and harvesting.

~~means all activities associated with the preparation of land and subsequent planting and harvesting of~~ but excludes shelterbelts, planting for soil conservation purposes, and planting to form property boundaries, and excludes milling and other processing activities of the wood product.

Note that forestry of native trees has additional requirements in the Horizons One Plan and the Forest Act 1993.

**10.3 POLICIES**

**Riparian Margins**

**[10.3.4] 10.3.9** To maintain, or enhance where appropriate, public access to and along the key waterbodies indicated in Policy 10.3.18[10.3.1]. ~~coast, rivers and lakes of the District~~

**[10.3.6]10.3.19** To ensure activities adjoining key waterbodies recognise and provide for:

- a. The importance of the waterbody and riparian margin as a traditional food source.
- b. The presence of rare or threatened species.
- c. Existing public access and existing uses of the riparian margin area.
- d. Social and cultural values associated to the area.

*To be listed under Riparian Margins and Urban River Landscape Overlay headings:*

**10.3.7 & 10.3.10** Recognise that some network utilities have a function and locational need to be located in the Districts Natural Areas, including riparian margins and river environments and that their continued operation and maintenance is a functional requirement.

**[10.4] 10.7 RULES – URBAN RIVER LANDSCAPE OVERLAY**

**[10.4.1]10.6.1 Permitted activities.**



Note: The Manawatu-Wanganui Regional Council should be consulted regarding any activity within 10 metres of the Whanganui River or within 8 metres of the landward toe of a flood protection structure including stopbanks, to confirm any Regional requirements.

## **[10.6]10.9 RULES - PROTECTED TREES**

The following rules apply to any tree shown as a Protected Tree in Appendix C.

### **[10.6.1]10.9.1 Permitted activities.**

The following are permitted activities throughout the District:

- a. Minor trimming and maintenance to any protected tree. This is limited to:
  - i. trimming and clearance of foliage or branches no greater than 100mm in diameter from existing utility networks which have the potential to compromise the operation of the network utility (or access to), street lights or land boundary encroachments that does not alter the shape or health of the tree;

### **Council Reasons for Decision:**

1. The comments of Horizons, Wanganui Federated Farmers of New Zealand, Transpower New Zealand Limited, Powerco Limited and Rayonier Matariki Forests Limited are noted and appreciated.
2. The submission remedies sought are adopted by the Committee, except where commented on below:
3. After reviewing all the evidence provided by the submitters in regards to the limits on **Permitted Activities** within the riparian margin, the Committee concluded that while the objectives and policies for riparian margins were valid, the rules were not achieving what the objectives sought to protect and were therefore deleted from the Plan. The amenity and cultural values would still be considered through the objectives and policies when processing resource consents.
4. Horizons and Federated Farmers support was noted by the Committee, for the proposed **advice note** under the Permitted Activities for the Urban River Landscape Overlay that details the One Plan requirements. Horizons also proposed an advice note at the start of the Riparian Margin rules. As the Committee decided to remove these provisions, the advice note was instead relocated to the introduction of Chapter 10 under the riparian margin heading.
5. Transpower, supported by Powerco, requested minor changes to the **Protected Tree** rules. The Committee determined that the changes proposed would create no additional adverse effects beyond those permitted by the operative rules and may create positive effects. Works to safeguard life and property are already permitted, so to specifically provide for network utilities to carry maintenance work out on these trees could prolong the life of the trees as the work could be undertaken before it got to an unsafe level.



6. Transpower, supported by Powerco, requested **two new policies** (one in riparian margins and the other in the Urban River Landscape Overlay) to recognise network utilities in these areas. This was adopted by the Committee as there are rules relating to network utilities in this chapter, and additional policy guidance in how to assess these activities is good practice, rather than just relying on Chapter 22.
7. Rayonier suggested an alteration to the **definition of Forestry** to match the One Plan. Having a consistent definition between planning documents makes the process easier for Plan users. However the Horizons definition includes 'soil conservation forestry' as part of a forestry activity whereas this is specifically excluded from the operative District Plan definition.

Soil conservation planting is planting for erosion control to retain landforms. As areas of Whanganui are prone to erosion, this is an important activity – especially near roads and other infrastructure. The 10 metre setback that applies to forestry would reduce the effectiveness of soil conservation forestry. Therefore the Committee adopted a more consistent definition of forestry, but still excluded soil conservation planting.

The existing exclusions were also retained as they provide clarity to rural and lifestyle activities as to when their small scale plantings become 'forestry activities'. This does not interfere with the submitter's objective of providing a consistent approach to forestry across the region.

Another difference from the Horizons definition that was not altered as a result of this submission is the inclusion of 'indigenous forestry'. This is because Horizons have provisions regarding how to manage the effects of 'indigenous forestry' and therefore need a separate definition. The District Plan has removed these provisions as a result of this Plan change as there are no effects that are not already handled by Horizons or the Ministry of Primary Industries. Therefore the District Plan treats indigenous forestry the same as any other forestry activities where amenity and shading are the dominant considerations.

8. Rayonier suggested the term '**waterways**' is replaced with 'rivers, lakes and waterbodies' to be consistent with the One Plan and RMA. All three terms are not required, as the definition of 'waterbodies' in the RMA covers rivers and lakes. As 'waterbodies' is a RMA term, the Committee decided that all references to waterways is replaced with 'waterbodies' in order to provide more clarity to plan uses, which is in line with what Rayonier requested.
9. Rayonier and Federated Farmers requested changes to **Policy 10.3.18** to limit the areas that the riparian rules would apply to tributaries greater than 3 metres wide on the Whanganui River and only to public land for the Matarawa Stream, Whangaehu and Whanganui Rivers and the West Coast. The significant waterbodies in this District have cultural/spiritual value that extend for their entire length and include all tributaries. Council has an obligation to recognise and provide for the relationship between Maori and their culture and traditions with their ancestral waters. For example, the Treaty of Waitangi settlement in respect of the Whanganui River describes the river as a living and indivisible whole from the mountains to the sea (Te Awa Tupua) and includes the tributaries.

10. Federated Farmers proposed an alteration to **Objective 10.2.5** for riparian margins to provide for existing production land uses. Existing legally established activities are protected by existing use rights and do not need to be specifically referenced in the Plan, especially at the objective level.

Rayonier proposed that this objective be amended to be consistent with any changes to policy 10.3.18 and rules 10.6.1 and 10.6.3. As no changes to policy 10.3.18 were adopted and the rules relating to riparian margins removed, there is no requirement to consider any alterations.

11. Federated Farmers proposed alterations to **Policies 10.3.2 and 10.3.8** to limit the effects to those that are more than minor. This is not supported as policies assist with understanding how the objective is to be met. Limiting consideration of effects to those that are 'more than minor' is against section 17 of the RMA which states *"Every person has a duty to avoid, remedy, or mitigate any adverse effect..."*. The term is subjective and no evidence was provided to the Committee about why minor effects should not be considered.

12. Federated Farmers recommended that **Policy 10.3.9** is altered to exclude private land with no public access. The policy proposes 'to maintain or enhance where appropriate public access to or along the coast, rivers or lakes of the District.' only. Therefore the additions proposed are unnecessary as the policy does not propose to require new areas of public access and only applies where public access already exists.

13. Federated Farmers have requested an addition to **Policy 10.3.19** to specify landowner agreement to public access. This policy is intended to help decision makers understand the potential effects and consider them when assessing applications for new activities. It is not about increasing public access over private land. The Committee chose to clarify the policy to limit it to existing public access and uses as well as defining the area that is to be considered as the 'riparian margin' only.