

Recommendations to Council from the Statutory Management Committee

Date: 1 December 2016

WHANGANUI DISTRICT COUNCIL

Subject:	Plan Change 51 – Miscellaneous
	Decisions on Submissions
Meeting Date:	30 November 2016

1.0 INTRODUCTION

1.1 Council is presently reviewing the District Plan in phases. This Plan Change is part of Phase 8 General Provisions and NZS4404:2010.

1.2 This report records the public notification and hearing process in relation to Plan Change 51. 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 30 November 2016. No submitters attended, however written hearing statements were tabled. The Committee reviewed the tabled hearing statements before deliberating on submissions.

2.2 The Committee members were: Commissioner Alan Taylor (Chair), Independent Commissioner Jill Sheehy and Commissioner Jenny Duncan.

2.3 Submitters who tabled information to support their submissions were:

- Transpower New Zealand Limited
- Powerco Limited

2.4 PC51 was publicly notified in accordance with Clause 5 of the 1st Schedule of the Resource Management Act 1991 (the Act) on 23 July 2016, with the period for submissions closing on 23 August 2016.

2.5 One submission was received at the close of submissions and one submission was received late on 26 August 2016.

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 period closed on 23 September 2016. One further submissions was received.

3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 The purpose of PC51 is to update the introduction, information requirements, and definitions chapters of the Plan and remove assessment criteria and methods chapters from the Plan.
- 3.2 This plan change will provide a clear and concise introduction to the Plan, and the resource consent process. It will also provide links to current resources relating to lodging resource consent applications, and the information requirements of such applications
- 3.3 The proposed changes to Chapter 2 Definitions ensure that terms used align with best practice terminology. Where relevant, definitions have been aligned with their respective legislative interpretations. Changes have also been made to ensure the definitions are clear and concise.
- 3.4 The existing assessment criteria in the Plan are largely duplications of objectives and policies within the operative District Plan. Such duplications can cause confusion and diminish the intent of the objective and policies. PC51 seeks to remove these duplications and rely on or amend the existing objectives and policies to incorporate any useful components of existing assessment criteria.
- 3.5 The RMA does not require inclusion of a list of methods in the Plan. Like Issue statements it is at council's discretion whether they be included. Many existing Plan methods in the Whanganui Plan are already covered in other strategic Council documents and are rarely referred to for guidance. Removing Chapter 24 - Methods from the Plan creates clarity and simplifies the District Plan without any consequence.

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...*
- 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:

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, PC51 has been developed with a focus on avoiding, remedying or mitigating adverse effects of activities and reducing the bureaucratic process associated with this requirement.

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.

4.2 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. There are national standards and policy that relate specifically to Plan Change 51 (PC51). However, PC51 is not inconsistent with any NES or NPS.

4.3 Regional Policy Statement and Regional Plan (the One Plan)

In addition, the Act requires District Plan provisions give effect to the Regional Policy Statement (section 75(3)). The Regional Policy Statement (RPS) is the main vehicle for interpreting and applying the sustainable management requirements of the Act in a local context, and in this regard, guides the development of lower tier plans, including the District Plan.

The Manawatu-Wanganui Regional Council (Horizons) combined the Regional Policy Statement and six regional plans into one document called the One Plan. The One Plan became operative on 19 December 2014.

Chapter 2 - Definitions ensure terms used within the Plan are consistent with their intentions. While there are no cross over with One Plan definitions. They ensure the District Plan is consistent with the One Plan through their use in Objectives, Policies and Rules.

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

4.4 Other Plans & Strategies

Another matter to which Council must have particular regard is other management plans and strategies. Those which are relevant provisions are discussed below. They have informed the preparation of this section 32 analysis.

Leading Edge Strategy 2015

Whanganui District Council adopted the Leading Edge Strategy at the end of 2015 as an overarching document to guide the work undertaken by Council. PC 51 meets the new direction of Council by ensuring definitions used in the District Plan are consistent with best practice terminology.

Updating the definitions and information requirements, removing methods and duplicate assessment criteria ensure the Plan is working efficient and effectively. Streamlining Chapters 2, 3, 23, 24 will help internal and external plan users to use the Plan faster and smarter.

5.0 SUMMARY OF SUBMISSIONS

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

6.0 PRINCIPAL ISSUES IN CONTENTION

- 6.1** The submitters identified the following concerns in relation to definitions within PC51:
- Definition of Structure
 - Definition of Development
 - Definition of Minor Upgrades

7.0 SUMMARY OF TABLED EVIDENCE

7.1 Key evidence tabled by submitters is summarised below:

Transpower Limited New Zealand (Sub 1)

- Transpower supports the Officer's hearing report recommendation.

Powerco Limited (Sub 2)

- Powerco supports the Officer's hearing report recommendation.

7.2 Officer's Right of Reply is summarised below:

The Officer's hearing report comments and recommendations were confirmed after consideration of the tabled evidence.

8.0 MAIN FINDINGS ON PRINCIPAL ISSUES

- 8.1** The Committee considered each submission and confirmed a decision for each.

Refer to Appendix 1 for the decisions on individual submissions.

- After considering tabled hearing statements from Transpower and Powerco the Committee supported recommendations in the Officer's hearing report.

9.0 SECTION 32 REPORT EVALUATION

Further evaluation of the Section 32 report was considered as a result of submissions. The Section 32AA report attached in Appendix 3 reconfirms the original Section 32 report. No changes were made to the evaluation as a result of submissions.

10.0 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.

11.0 APPENDICES

- 1: Decisions on Submissions and Reasons for Decisions
- 2: Marked- Up Version of Plan Change 51 following Decisions on Submissions
- 3: Section 32AA Evaluation

Signature of Chairman

Independent Commissioner Alan Taylor

Dated:

APPENDIX 1 – DECISIONS DECISIONS ON SUBMISSIONS

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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Submissions**Submitter Name:** [Transpower New Zealand](#)**Submission No:** 1**Summary:**

As notified, the definition of ‘structure’ would have the effect of making fences, walls and retaining walls below the heights listed in the definition exempt from the National Grid Yard controls in Chapter 3, Rural Environment. In addition to other matters, the National Grid Yard rules seek to control structures relative to their horizontal distance from National Grid support structures, including fences less than 1.8 metres in height. If not appropriately managed, the location of some structures can compromise the safe and efficient operation, maintenance, upgrading and development of the National Grid. This would undermine the District Plan’s implementation of the NPSET in relation to structures.

Decision Sought:

Relief requested is shown in **bold underline**.

Structure: means any building, equipment, device or other facility made by people and which is fixed to land and includes any raft. Excluding **(other than within the National Grid Yard):** ~~any fence or wall (other than a retaining wall) located within 1 metre of a property boundary,~~

- a. Any retaining wall less than 1.5m in height measured from the lowest adjoining ground level.
- b. Any fence or wall (other than a retaining wall) less than 1.8 metres in height measured from the lowest adjoining ground level within 1 metre of a property boundary.
- c. Any pool or tank which is less than 1.0m in height measured from the lowest adjoining ground level.
- d. Play equipment and letterboxes.

Council Decision:

That Submission 1 by Transpower New Zealand Limited be **Accepted**. The following amendments to the definition of the term ‘Structure’ are made as a result of this submission:

Structure: means any building, equipment, device or other facility made by people and which is fixed to land and includes any raft. Excluding **(other than within the National Grid Yard):** ~~any fence or wall (other than a retaining wall) located within 1 metre of a property boundary,~~

- a. Any retaining wall less than 1.5m in height measured from the lowest adjoining ground level.
- b. Any fence or wall (other than a retaining wall) less than 1.8 metres in height measured from the lowest adjoining ground level within 1 metre of a property boundary.

- c. Any pool or tank which is less than 1.0m in height measured from the lowest adjoining ground level.
- d. Play equipment and letterboxes.

Council Reasons for Decision:

1. Comments made by Transpower New Zealand Limited in relation to the Structure definitions are acknowledged and supported.
2. The proposed definition of “structure” in notified Plan Change 51, would have the effect of making fences, walls and retaining walls below the heights listed in the definition exempt from the National Grid Yard controls in Chapter 3, Rural Environment. This is because retaining walls less than 1.5m in height and fences and walls less than 1.8m in height are not considered to be ‘structures’ under the proposed definition and therefore would be excluded from rules 3.4.1(l) and 3.8.1(l). This does not give appropriate effect to Policy 10 of the NPSET in Transpower’s submission. Policy 10 states:

“In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.” (emphasis added)
3. Walls, retaining walls and fences even at low heights, should not be allowed to locate too close to National Grid poles and towers because they could compromise access for routine or emergency maintenance work or create electrical hazard risks. This would undermine the District Plan’s implementation of the NPSET in relation to structures.
4. This also ensures compliance with the National Policy Statement on Electricity Transmission (NPSET) and Nation Environmental Standard for Electricity Transmissions.
5. The change requested is considered appropriate for the reasons outlined in this submission.

Submitter Name: Powerco Limited

Submission No: 2

Summary:

Definition of Development

Plan Change 51 proposes to amend the definition of ‘development’ to read as follows:

Development means:

- a. Any erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure in, on, under, or over the land; or
- b. Any excavation, drilling, tunnelling, or other disturbance of the land; or
- c. Any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land; or
- d. Any deposit of substance in, on, or under the land; except where these activities are carried out as part of a subdivision which is subject to the rules of the District Plan and the provisions of the Resource Management Act 1991.

~~*In relation to any land, means the development or redevelopment of the land (not being a subdivision of the land) by:*~~

- ~~*a. Constructing, erecting, or altering a building or buildings for the purpose of providing a third or more additional household units.*~~
- ~~*b. Constructing, erecting, or altering any one or more buildings intended to be used solely or principally for commercial or industrial purposes where the value of the construction, erection or alteration will exceed \$100,000.*~~

1. Powerco is not necessarily opposed to amending the definition of ‘development’ currently used in the District Plan. However, it is concerned that the wording proposed may result in unexpected or unintended consequences. This is because the proposed changes significantly alter the scope of activities that will be covered by the definition and, therefore, subject to plan provisions relating to ‘development’.
2. The current definition applies to activities involving buildings only. However, the proposed new definition would apply to activities associated with any building or structure, earthworks, vegetation clearance and the deposition of substances. Given the term ‘development’ is widely used throughout the District Plan, the implications of changing the definition are difficult to fully understand but are potentially significant. It is noted that the Council is well advanced in its rolling review of the District Plan and that use of the term ‘development’ in previous plan changes will have been based on the current definition.
3. Further, the proposed new definition may result in uncertainty around which provisions are intended to apply to certain activities. For example, there are

already specific District Plan provisions relating to earthworks and vegetation clearance. However, under the proposed new definition of ‘development’, these activities would also be covered by District Plan provisions relating to ‘development’ creating the potential for confusion around which provisions would prevail.

4. As a matter of certainty and clarity, Powerco, therefore, considers the definition of ‘development’ should be amended to apply to buildings only, as per the current definition in the operative District Plan.

Minor Upgrades

Plan Change 51 proposes to amend the definition of ‘minor upgrades’ to read as follows:

Minor upgrades: ~~With regard~~

In relation to Chapter 11 – Natural Hazards the provisions for Flood Risk Area A and B, means works to provide for an increase in carrying capacity, efficiency, or security of infrastructure facilities, utilising existing support structures or structures of a similar scale or character and includes the:

- (i) addition of circuits and/or conductors;*
- (ii) reconductoring of the line with higher capacity conductors;*
- (iii) resagging of conductors;*
- (iv) addition of longer more efficient insulators;*
- (v) addition of earthwires (which may contain telecommunication lines, earthpeaks and lightning rods);*
- (vi) replacement or alteration of an existing telecommunication antenna.*
- (vii) widening of existing roads.*
- (viii) Improvements to existing rail lines and yards.*

Minor upgrade~~ing~~ does not include an increase in the voltage of the line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage.

In relation to lawfully established network utility structures in a Land Stability Assessment Area means to expand the capacity of existing structure, where the effects that result from the process are the same or similar in character, scale and intensity as those that existed at the 2nd November 2012 or prior to the commencement of the minor upgrade for activities established after 2nd November 2012.

~~Minor upgrading: In relation to lawfully established network utility structures in a Land Stability Assessment area means to expand the capacity of an existing structure, where the effects that result from the process are the same or similar in character, scale and intensity as those that existed at the 2nd November 2012 or~~

~~prior to the commencement of the minor upgrading for activities established after 2nd November 2012.~~

1. This definition essentially provides for a different range of activities associated with minor upgrading of existing infrastructure to be undertaken in the Flood Risk Area A & B compared to in the Land Stability Assessment Area.
2. The need to take a different approach in each of these areas is unclear, particularly in relation to the minor upgrading of electricity lines, where the two definitions would appear to cover largely the same types of activities. Further, the inclusion of road widening and improvements to existing rail lines and yards does not sit comfortably within that part of the definition applying to the Flood Risk Area A & B, as that part of the definition essentially relates only to electricity and telecommunication lines i.e. by virtue of the requirement that such minor upgrades must utilise ‘existing support structures or structures of a similar scale or character’.
3. The definition of ‘minor upgrading’ as it applies to electricity or telecommunication lines should be amended to provide further clarity on the scope of activities that can be undertaken as ‘minor upgrading’. It is noted that the definition states “examples of minor upgrading may include:...” and therefore it is not “limited to”, however for clarity Powerco seek to include additional examples into the definition. The specific examples sought to be included relate to tower or pole replacement and the increase of the height of a tower or pole.
4. With respect to Powerco’s proposed activities, the activities referred to will not have an adverse effect on the environment for the following reasons:
 - i. Tower or pole replacement does not happen regularly and is likely to be required for foundation reasons. Powerco has few towers on its lines, but a new high voltage line connection to a windfarm could necessitate the need for towers. When the need arises for replacement, support structures will generally be built in the same or similar location as the previous - however in some circumstances this cannot be achieved. In that case, the support structures will be rebuilt as close as practicable to the previous location, in order to minimise outage or line jointing. If Powerco has to modify the alignment of any line, it is required to obtain easements in accordance with the Electricity Act, which in turn is likely to address potentially affected parties (should this arise).

- ii. The requirement to increase the height of a pole or tower to meet the requirements of NZECP 34:2001 is often driven by building activities under or in close proximity to existing infrastructure. It may also be required where there is more current going down a line, to meet increased demand, and where the resulting increase in sag cannot be addressed on an ongoing basis by resagging the line.
5. The effects of the activities sought are considered to be less than minor in the context of the existing line.

Decision Sought:

(Additions are underlined with deletions in strikethrough)

1. Amend the definition of 'development' to apply to buildings only, as per the current definition in the operative District Plan. This could be achieved by making the following changes or changes to the same effect:

Development means any use of land involving the erection, alteration, addition, repair, maintenance, or relocation of a building or buildings on a site.

- ~~a. Any erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure in, on, under, or over the land; or~~
- ~~b. Any excavation, drilling, tunnelling, or other disturbance of the land; or~~
- ~~c. Any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land; or~~
- ~~d. Any deposit of substance in, on, or under the land; except where these activities are carried out as part of a subdivision which is subject to the rules of the District Plan and the provisions of the Resource Management Act 1991.~~

2. Amend the definition of 'minor upgrades' to remove the distinction between

Flood Risk Area A & B and Land Stability Assessment Area and to include more specific examples of works that do not have an adverse effect on the environment, as follows:

In relation to Chapter 11 – Natural Hazards means increasing the carrying capacity or efficiency of an existing network utility while the effects of that utility remain the same or similar in character, intensity and scale. Examples of minor upgrading may include:

For electricity and telecommunication lines:

- (a) Adding circuits and conductor to electricity and telecommunications lines.
- (b) Reconductoring lines with higher capacity conductors.
- (c) Resagging conductors.
- (d) Bonding of conductors.
- (e) Adding longer or more efficient insulators.

(f) Adding earthwires to electricity lines, which may contain telecommunication lines, earthpeaks and lightning rods.

(g) Adding electrical or telecommunication fittings.

(h) Replacement of cross arms with cross arms of an alternative design.

(i) Support structure replacement within the existing alignment of the line or within 5m of the existing support structures being replaced.

(j) An increase in support structure height required to achieve compliance with NZECP34:2001

(k) An increase in support structure height by no more than 15% of the base height of the support structure, and where the base height is defined as the height of the structure at the date of public notification of the Plan.

Minor upgrading shall not include an increase in the voltage of an electricity line unless the line was originally constructed to operate at the higher voltage but has been to operating at a reduced voltage.

Other infrastructure:

(l) Widening of existing roads

(m) Improvements to existing rail lines and yards.

~~In relation to Chapter 11 – Natural Hazards the provisions for Flood Risk Area A and B, means works to provide for an increase in carrying capacity, efficiency, or security of infrastructure facilities, utilising existing support structures or structures of a similar scale or character and includes the:~~

~~(i) addition of circuits and/or conductors;~~

~~(ii) reconductoring of the line with higher capacity conductors;~~

~~(iii) resagging of conductors;~~

~~(iv) addition of longer more efficient insulators;~~

~~(v) addition of earthwires (which may contain telecommunication lines, earthpeaks and lightning rods);~~

~~(vi) replacement or alteration of an existing telecommunication antenna.~~

~~(vii) widening of existing roads.~~

~~(viii) Improvements to existing rail lines and yards.~~

~~Minor upgrade does not include an increase in the voltage of the line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage.~~

~~In relation to lawfully established network utility structures in a Land Stability~~

~~Assessment Area means to expand the capacity of existing structure, where the effects that result from the process are the same or similar in character, scale and intensity as those that existed at the 2nd November 2012 or prior to the~~

~~commencement of the minor upgrade for activities established after 2nd November 2012.~~

3. In giving effect to the specific outcomes set out in the following schedules, the following general relief is sought:
- (a) Achieve the purpose and principles of the Resource Management Act 1991 (RMA) and consistency with the relevant provisions in Sections 6 - 8 RMA;
 - (b) Give effect to the relevant provisions of the Horizons One Plan;
 - (c) Assist the Council to carry out its functions of achieving the integrated management of the effect of the use, development or protection of land;
 - (d) Implement the statutory tests in section 32 and the requirements in the First Schedule RMA;
 - (e) Address, as relevant, the considerations identified by the Environment Court for planning instruments in decisions such as Long Bay-Okura Great Park Society Inc v North Shore City Council (and subsequent case law);
 - (f) Avoid, remedy or mitigate any relevant and identified environmental effects;
 - (g) Make any consequential relief as required to give effect to this submission, including any consequential relief required in any other sections of the District Plan Review that are not specifically subject of this submission but are required to ensure a consistent approach is taken throughout the document; and
 - (h) Any other relief required to give effect to the issues raised in this submission.

Further Submitter Name: Transpower New Zealand Limited

Further Submission No: FS1

Supports Submission 2 in Part

Summary:

Transpower supports this submission to the extent that the proposed definition is not clear. If a definition for development is included within the District Plan, the definition needs to address all uses of the word within the Plan to ensure its applicability is clearly understood to plan users.

Council Decision:

That Submission 2 by Powerco Limited and Further Submission by Transpower NZ Limited be **Accepted in Part**. The following amendments to definitions for terms 'Development' and 'Minor Upgrade' are made as a result of these submissions:

Development: means any use of land involving the erection, alteration, addition, repair, maintenance, or relocation of a building or buildings on a site.

~~a. Any erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure in, on, under, or over the land; or~~

~~b. Any excavation, drilling, tunnelling, or other disturbance of the land; or~~

~~c. Any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land; or~~

~~d. Any deposit of substance in, on, or under the land; except where these activities are carried out as part of a subdivision which is subject to the rules of the District Plan and the provisions of the Resource Management Act 1991~~

Minor Upgrades: In relation to Chapter 11 – Natural Hazards means increasing the carrying capacity or efficiency of an existing network utility while the effects of that utility remain the same or similar in character, intensity and scale. Examples of minor upgrading include:

For electricity and telecommunication lines:

- (a) Adding circuits and conductor to electricity and telecommunications lines.
 - (b) Reconductoring lines with higher capacity conductors.
 - (c) Resagging conductors.
 - (d) Bonding of conductors.
 - (e) Adding longer or more efficient insulators.
 - (f) Adding earthwires to electricity lines, which may contain telecommunication lines, earthpeaks and lightning rods.
 - (g) Adding electrical or telecommunication fittings.
 - (h) Replacement of cross arms with cross arms of an alternative design.
 - (i) Support structure replacement within the existing alignment of the line or within 5m of the existing support structures being replaced.
 - (j) An increase in support structure height required to achieve compliance with NZECP34:2001
 - (k) An increase in support structure height by no more than 15% of the base height of the support structure, and where the base height is defined as the height of the structure at the date of public notification of the Plan.
- Minor upgrading shall not include an increase in the voltage of an electricity line unless the line was originally constructed to operate at the higher voltage but has been to operating at a reduced voltage.

Other infrastructure:

- (l) Widening of existing roads
- (m) Improvements to existing rail lines and yards.

Council Reasons for Decision:

1. For the reasons detailed by the submitter, the changes requested to the Development definition by Powerco Limited are considered appropriate.
2. The definition of 'Development' proposed by Powerco Limited has been checked against the use of term in the District Plan and is considered appropriate for all uses of the word within the Plan.
3. For the reasons outlined in the submission, the Minor Upgrades definition is amended as requested with a minor change to remove reference to the word

‘may’ as it is superfluous and has the potential to diminish the weight of the rest of the definition.