

Recommendation to Council from the Statutory Management Committee

12 December 2014

WANGANUI DISTRICT COUNCIL

Subject: Plan Change 33 – Flood Hazard
Decisions on Submissions

Meeting Date: 4th November 2014

1.0 INTRODUCTION

- 1.1 The Resource Management Act 1991 (RMA) requires each part of the District Plan to be reviewed not later than 10 years after the Plan becomes operative. The Plan was made operative on 27 February 2004. In accordance with Section 73(3) of the RMA, Council is presently reviewing the District Plan in Phases. This Plan Change is part of a series of changes proposed as part of Phase 5.
- 1.2 This report records the public notification and hearing process in relation to Plan Change 33. It records the Statutory Management Committee's recommendations and Council's decisions on submissions.

2.0 PROCEDURAL MATTERS

- 2.1 The Committee was convened to hear submissions on 4th November 2014. No submitters attended so the Committee reviewed the tabled evidence from submitters and listened to the reporting officer's recommendations before deliberating on submissions.
- 2.2 The Committee members were: Councillors Hamish McDouall (Chair), Helen Craig, and Independent Commissioners Jill Sheehy, Jenny Tamakehu and Alan Taylor.
- 2.3 Submitters who tabled information to support or expand their submissions were:
 - KiwiRail (Tabled letter)
 - Powerco Limited (Tabled letter)
 - Chorus NZ (Tabled email)
 - Horizons Regional Council (Tabled email)
- 2.4 Plan Change 33 was publicly notified in accordance with Clause 5 of the 1st Schedule of the RMA on Thursday 13 March 2014, with the period for submissions closing on 12 April 2014. A total of 5 submissions, were received at the close of submissions. One additional late submission was received.
- 2.5 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 RMA. The further submission process closed on Friday 13 June 2014. No further submissions were received.
- 2.6 One late submission was received, prior to notification of the summary of further submissions. The Committee agrees that no one is adversely affected or prejudiced by acceptance of this submission.

3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 The purpose of PC33 is to 'give effect' to the flooding provisions of Section 10 – Natural Hazards of the Horizons One Plan in conjunction with the ten year review of the Wanganui District Plan.
- 3.2 PC33 includes the identification of the extent of potential flood hazard on the Plan maps, and additional objectives, policies and rules to reduce risk to people and property through managing land use for a 200 year flood event.
- 3.3 Council has adopted the model for the Lower Whanganui Catchment provided by Horizons Regional Council to identify areas at risk of inundation by floodwater. Council is satisfied this information is sufficiently robust and fit for purpose.
- 3.4 Changes to the District Plan text recommended to Council as a result of submissions are included as marked up text in Appendix 3. Proposed changes to Plan maps are found in Appendix 4.

4.0 RELEVANT STATUTORY CONSIDERATIONS

4.1 RMA PART II CONSIDERATIONS

Sustainable management is defined in the Resource Management Act 1991 as meaning “*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 well-being 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.”*

- 4.2 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.

- 4.3 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.*

- 4.4 The Council is given these functions for the purpose of promoting the sustainable management of natural and physical resources, which is defined in section 5(2) as:

- 4.5 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.*
- 4.6 Further guidance and direction on the way in which resources are to be managed is provided in sections 6, 7 and 8 of the Act.
- 4.7 In accordance with Section 5 of the Resource Management Act, Proposed Plan Change 33 has been developed with a focus on providing for the community’s health and safety whilst avoiding or mitigating any adverse effects of activities on the environment, including people and property.
- 4.8 Section 6 of the Resource Management Act 1991 requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for matters of national importance, including:
- (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 cultural and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- 4.9 Plan Change 33 is consistent with Section 6 of the RMA 1991 as it introduces objectives, policies and rules that will ensure future subdivision and development will not worsen or accelerate any risk of flooding for people or property near the River, which could otherwise indirectly compromise access to the River.
- 4.10 Section 7 matters to which particular regard shall be had in assessing this Plan change are:
- (b) *the efficient use and development of natural and physical resources....*
 - (i) *the effects of climate change*
- 4.11 Horizons Regional Council (Horizons) has supplied the flood hazard data which is proposed to be mapped in the District Plan. This takes account of the risks to people, property and the effects of climate change as a matter of course.
- 4.12 PC33 identifies areas prone to flooding and addresses particular issues associated with subdivision, use or development of sites within such areas. Council is acting constructively and proactively to inform the Community about known hazards and their extent. This will assist landowners to make decisions in full knowledge of the potential risks and potential costs. In addition Council proposes to assess development on a case by case basis, subject to specified criteria. This will also facilitate an informed decision to enable efficient use and development of land in these hazard prone areas. In turn such an approach will facilitate maintenance of the quality of the environment.
- 4.13 With regards to Section 8, no specific concerns relating to Treaty issues have been raised during consultation or through submissions on the Plan Change.

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

5.2..1 In addition, the RMA requires District Plan provisions 'give effect' to the Regional Policy Statement (RPS) (section 75(3)). The Regional Policy Statement (RPS) is the main vehicle for interpreting and applying the sustainable management requirements of the RMA in a local context, and in this regard, guides the development of lower tier plans, including the District Plan.

5.2..2 The Horizon's RPS is contained within the Proposed One Plan along with the Regional Plan and Regional Coastal Plan. Section 10 of the Proposed One Plan addresses natural hazards.

5.2..3 The focus of Section 10 is set by Objective 10-1 which states:

"The adverse effects of natural hazard events on people, property, infrastructure and the well-being of communities are avoided or mitigated."

5.2..4 While Objective 10-1 refers to either avoidance or mitigation, Policy 10-2(c) states that avoidance should be preferred to mitigation.

5.2..5 Section 10 also allocates regulatory functions, with joint responsibility for the provision of information, but retains sole responsibility for region wide policies and objectives (including coastal land and activities on the beds of lakes and rivers), and collecting and analysing information regarding regional natural hazards. Whereas Wanganui District Council (WDC) is required to develop objectives, policies and other methods to control the use of land to avoid or mitigate natural hazards.

5.2..6 In addition to the allocation of roles and responsibilities, the One Plan also has policies that guide the management of development in flood prone areas, new critical infrastructure and climate change. Key areas include the requirement to use a 200 year return flood event, guidance as to where mitigation may be appropriate, the use of freeboard, and suitable evacuation safe areas.

5.2..7 A specific area located between the Awa, Bates Street, Ridgeway Street and Victoria Avenue is identified in Policy 10-2(ea) which identifies that minimum floor heights, flow and resilient building methods should be considered in this area. This area corresponds to the Arts and Commerce Zone and Riverfront Zone established by Plan Change 21 in Phase 1 of the District Plan Review.

5.2..8 Plan Change 33 gives effect to the One Plan objective 10 -1 and the related policies.

6.0 SUMMARY OF SUBMISSIONS

6.1 Refer to Appendix 1 to this report for a summary of each submission.

7.0 PRINCIPAL ISSUES IN CONTENTION

The submitters identified the following concerns about the Plan change:

Critical Infrastructure

- 7.1 PC33 is unclear and unworkable in that it is not clear how parts of the definition of critical infrastructure relates to associated lines, above or below ground, nor how new buildings and structures associated with telecommunications relate to the land use rules.
- 7.2 The provisions could imply that critical and non-critical infrastructure are regulated as 'buildings and structure', therefore regulating twice.
- 7.3 Ensure existing critical infrastructure within hazards can to be upgraded, and that new non-critical infrastructure is permitted.

Discrepancies and Clarifications

- 7.4 There are discrepancies between the 's32 evaluation' and 'marked up text' versions of PC33 Notification Report; That the provisions provide no benefit to KiwiRail's level of service in a 200 year event, and requests that the rules be more permissive, and easier to interpret.
- 7.5 Improve clarity regarding various provisions.

One Plan Consistency

- 7.6 The Plan Change should refer to infrastructure throughout the policy stream (Issues, Objectives Policies) to reflect One Plan provisions.

8.0 SUMMARY OF EVIDENCE HEARD

8.1 Key evidence presented by Submitters:

As no submitters attended, the Committee read and asked the Reporting Officer questions to clarify their understanding of submissions as detailed below.

8.1.1 Critical Infrastructure

- Chorus NZ Ltd tabled evidence of a discussion with the Reporting Officer, which recommended amendments to provide for new and upgrades to telecommunication facilities as a permitted activity where no building exceeds 5m² gross floor area meets the relief sought. This included amendments to the definition of critical infrastructure to remove proposed subclause (c) and amendment to the permitted activity rules.
- Powerco Ltd raised concern that their submission that the term upgrade be amended to 'minor upgrade' to more accurately reflect the definition was not supported in the S42A report.

8.1.2 Discrepancies and Clarifications

- Kiwi Rail and PowerCo tabled evidence in relation to definitions for Upgrade, Critical Infrastructure and the performance standards applying to Permitted Activities.

8.1.3 One Plan Consistency

- Horizons tabled an email confirming support for the recommendations made in the S42a report in relation to its submission.

8.2 Key evidence presented in the Officer's report:

8.2.1 Critical Infrastructure

- In summary, the Reporting Officer said this proposed Plan change was to update the flood hazard information to reflect Horizon Regional Council's One Plan which required the 100 and 200 year flood events to be the flood control limit. Currently the 50 and 100 year flood events are in the Plan. It was noted that the area around the riverfront, had been through a Plan change process in the first phase of the District Plan review and was already regulated in terms of flood hazard.
- Ms O'Shaughnessy referred to submissions received.
- Chorus New Zealand Ltd (Chorus), had proposed some late changes received on 31 October 2014. Chorus understood that Horizon Regional Council's One Plan defined critical infrastructure as being infrastructure that needed to be able to operate when a 100 and 200 flood event occurred. The Plan change did not define telecommunications as 'critical infrastructure'. While this mirrored the One Plan definition and Council has to give effect to that, there was nothing stopping the Council deciding that telecommunications were important in an emergency. Use of the term 'critical infrastructure' in giving effect to the One Plan, meant anything else was deemed non-critical infrastructure. For semantic reasons this was offensive to Chorus as they considered themselves to be critical in the common use of the term as opposed to how the One Plan defined it.
- A potential compromise was now proposed, that satisfied the requirements of Chorus, to locate its infrastructure where needed to provide a reasonable service to its customers, as well as meeting Council's requirements to avoid unnecessary structures that might impede the flow of flood waters or create a risk for people in a flood event.
- The Reporting Officer referred to the email received on 4 November 2014 from Chorus NZ, supporting the proposed amendments (version two tabled). It was noted this would then supersede some of the recommendations contained in the Officer's Report.
- The Reporting Officer referred the Committee to page 26 of the marked-up text – Policy 8.3.16:

Avoid the establishment of new critical infrastructure within a flood risk overlay unless there is satisfactory evidence to show that critical infrastructure;

a. Will not be adversely affected by a 1 in 200 year flood event

b. Will not cause any adverse effects on the environment in the event of a flood

c. Is unlikely to cause a significant increase in the scale or intensity in the event of a flood

d. Cannot be reasonably located in an alternative location'

- Because the term 'critical infrastructure' did not include telecommunications, Chorus had requested that after Policy 8.3.16 relating to critical infrastructure the following be inserted.

"It is accepted that there are telecommunication facilities such as overhead or underground cables or masts, that can be site in flood hazard areas without undue risk

to the equipment and community or adverse effects on the environment in the event of a flood, and provision for this has been included accordingly.”

- The Reporting Officer recommended supported this request. She explained the recommended changes to provisions for Permitted Activities, to enable minor upgrades to all infrastructure. The word ‘critical’ should be removed to avoid the use of the word ‘non-critical’. Rewording of (d): *New infrastructure (excluding critical infrastructure) including buildings up to 5m2 gross floor area*, enabled the Council to be more explicit about new infrastructure. This would provide an operator the ability to put their infrastructure into the flood hazard area. Five square metres provided for telecom communication cabinets.
- In reply to Cr McDouall’s query, the Reporting Officer said these amendments had been suggested by Chorus and were similar to those implemented in Horowhenua, and likely to be acceptable to Horizons.
- One further recommendation from Chorus was a note to be added to the end of the definition for critical Infrastructure to clarify that although telecommunications was not included within the definitions in Horizons Regional Council’s One Plan it was being copied into this plan:

“For the purposes of the provisions in the Flood areas A and B, telecommunications as defined under Section 5 of the Telecommunications Act 2001 are expressly excluded from the definition of ‘Critical Infrastructure’.”

- These were the key changes recommended to the officer’s report.

8.2.2 Discrepancies and Clarifications

- In relation to additional evidence tabled by KiwiRail Holdings Ltd (KiwiRail) and Powerco Ltd, the Reporting Officer responded to questions of clarification.
- Mr Taylor queried to what extent yards would be a factor in influencing the way a flood took place, or cleared, or obstructed the movement of floodwaters. He referred to the marked-up text, Clause 8.3.16: Critical Infrastructure in floodable areas, and sought clarity on what constituted an upgrade. In response the Reporting Officer referred to the definitions in the marked-up text (page 30 and 31) and noted these were about electricity and telecommunications.
- Mr Taylor referred to page two of the additional evidence provided by KiwiRail that recommended that the definition of upgrades should include ‘improvements to existing rail lines and yards’.
- Following further discussion, the Reporting Officer said attention had been drawn to the restrictiveness of the upgrade definition and it would be prudent for her to step back and revise this definition. She said the common meaning of the word ‘upgrade’ was extending the capacity of something existing. If something was existing in a flood hazard area it could be expected that maintenance, minor works and upgrades were allowed as a permitted activity.
- In reply to Cr McDouall’s query, Ms O’Shaughnessy agreed to revise the definition so the general intent of the word ‘upgrade’ would enable something more than maintenance but using the same structure or similar structure to that existing but which would constrain the scale of how large something could become through an upgrade,

and this should apply to everything including rail. At this point it was noted that use of the term Minor Upgrade was preferred by Powerco Ltd.

- The Reporting Officer revised the Upgrades definition. She referred the Committee to the marked-up text on page 30 and advised consideration could be given to removing the reference to ‘electricity and communications’ and after the word ‘includes’ the addition of the words ‘but is not limited to the ...’, so the paragraph would read:
“Upgrades – with regard to the provision for Flood Risk Area A and B, means works to provide for an increase in carrying capacity, efficiency, or security of infrastructure facilities utilising the existing support structures or structures of a similar scale or character and includes but is not limited to the:”
- The Reporting Officer advised that this change would then enable the Committee to add in the additional point sought by KiwiRail: “(viii) Improvements to existing rail lines and yards.”
- The Reporting Officer referred the Committee to Point 9 of KiwiRail’s additional evidence tabled which referred to page 29 of the marked-up text, definition of critical infrastructure and requested that the added reference ‘excludes the Wanganui Branch Rail Line’ be deleted.
- Ms O’Shaughnessy noted that KiwiRail had not sought this addition. She said the exclusion was technically correct as even though it was located in a flood hazard area in terms of life and death and managing a flood event, the branch line was not critical infrastructure as it would not matter if it was not operable for a week or two. It was an important economic piece of infrastructure but not critical in an emergency management sense of the word.
- The addition of the reference to the Regional Land Transport Strategy in the definition of critical infrastructure, as requested in the tabled evidence, was also supported by the Reporting Officer as it appeared to have been an omission at drafting as the definition was clearly intended to mirror the One Plan definition.
- Ms O’Shaughnessy referred the Committee to page 12 of Submission Analysis (point f.). Horizons Regional Council had sought an amendment to be more explicit as to which performance standards were being referred to in 8.8.1. She drew the Committee’s attention to page 3 of Powerco Ltd’s additional evidence that had taken issue with the remedy offered by the Planning Officer to Horizons’ request at point f. Powerco Ltd submitted that maintenance and upgrading of electricity assets should not be subject to any performance standards as such works could trigger the need for resource consent for maintenance and upgrading works on an existing electricity line support structure that did not comply with the height in relation to boundary standards of the underlying zone. This could result in unnecessary delays to such works and therefore jeopardise a reliable and secure supply of electricity to the District.
- Referring to the marked-up text on page 26, 8.8.1 Permitted Activities, the Reporting Officer advised the Committee could consider deleting the second part of the first sentence following the word ‘Zone’. This would mean that what logically could be undertaken would not be trapped by a definition that was much broader than required. Buildings and earthworks would need to comply with performance standards 8.9.1 to 8.9.3 only. This would enable maintenance and minor works to occur in a zone without

triggering a resource consent requirement, unless already required by another section of the Plan.

- The recommendation by Powerco on Page 3 of its tabled evidence is thus supported in relation to deleting reference to underlying zone performance standards – if these are relevant the activity will be specified in the relevant zone or utilities section of the plan
- In response to Cr McDouall's query, the Reporting Officer said this change would mitigate Powerco Ltd's concern.

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 submissions.

9.2 Critical Infrastructure

- The Committee accepted that changes proposed by Chorus and Kiwirail and supported by the Reporting Officer should be approved as largely as indicated in the tabled evidence in relation to the definition of 'critical infrastructure', and related changes to rule 8.8.1 and policy 8.3.16.

9.3 Discrepancies and Clarifications

- The Committee noted that Kiwirail, Powerco Ltd and Chorus NZ largely supported the proposed Plan change including most of the amendments recommended in the s42a report.
- The Committee supported the amendments recommended in the Officer's report but where relevant preferred the wording recommended by Kiwirail in their tabled evidence, including amendments to the definition of 'Upgrades'.
- The Committee agreed in relation to the definition of upgrades, that additional point (viii) be added on page 31 of the marked-up text.
- The Committee also preferred the Powerco Ltd position in relation to use of the more explicit term 'minor upgrades', as it would more accurately define what is covered by the definition and may assist with the review of the Utilities section as indicated by Powerco Ltd in its tabled evidence. The Plan should be amended accordingly.
- In relation to the Powerco's submission, that it was unreasonable to require infrastructure to comply with underlying zone rules just because they are potentially located in a Flood Risk Area A or B. Compliance with underlying zone rules is specified as relevant in each zone or topic chapter. The Committee accepted the submitter's view that this was unnecessarily restrictive.
- The Committee did not consider the proposed amendments to the definition of 'Flood Risk Area A' were sufficiently clear and added reference to the River to improve clarity.

9.4 One Plan Consistency

- The Committee acknowledged and appreciated the support of Horizons Regional Council in relation to this Plan change.
- The Committee confirmed that a practical, and as far as possible, enabling approach to provision of infrastructure was preferred, whilst recognising the need to give effect to the One Plan including taking a precautionary approach to hazard management.

10.0 Section 32 REPORT EVALUATION

10.1 The S.32 report has been updated to include an evaluation of the amendments to the Plan resulting from Council's Decision on Submissions. These changes are recorded in the report attached as Appendix 4.


11.0 STATEMENT OF DECISIONS AND REASONS

11.1 Refer to Appendix 1 to this report for the Council's decision and reasons relating to each submission. Refer to Appendices 2 and 3 for the complete version of the Plan change text and maps.

12.0 Appendices:

- 1: Decisions on Submissions and Reasons for Decisions
- 2: Marked- Up Version of Plan Change 33 following Decisions on Submissions
- 3: Relevant Planning Maps
- 4: Section 32 and 32AA Evaluations

Signature of Chairman



Councillor Hamish McDouall

Dated 15 January 2015