

Recommendation Report

Whanganui District Council

Plan Change 60  
Miscellaneous 2

6 November 2023

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## 1 Introduction

[001] The Whanganui District Council (WDC or Council) has prepared Plan Change 60 (PC60) to the Operative Whanganui District Plan (WDP or Plan).

[002] PC60 makes a number of relatively minor changes to the WDP that are fully described in the Council's Section 32 Report. However, by way of summary the changes include:

- Rezoning several properties that are currently included in two or more zones so that they are instead contained in a single zone;
- Adding LUC3 land to the WDP in order to give partial effect to the National Policy Statement for Highly Productive Land 2022 (NPS-HPL);
- Clarifying the standards for vehicle crossings in relation to street trees and the specified widths of vehicle crossings;
- Clarifying the standards for minor residential units in the General Residential Zone to meet the objectives of a minor dwelling;
- Deleting a note in an earthworks standard;
- Limiting exceptions to the 'height in relation to boundary' standard;
- Adding two pōhutukawa trees to the WDP's schedule of Protected Trees (WDP Appendix C); and
- Clarifying the standards relating to the trimming of Protected Trees.

## 2 Appointments

[003] The Council, acting under section 34A of the Resource Management Act 1991, appointed independent hearing commissioner Rob van Voorthuysen<sup>1</sup> and councillors<sup>2</sup> Glenda Brown and Charlotte Melser to conduct a hearing of submissions and provide a Recommendation Report to the Council.

## 3 Process Issues

### 3.1 Notification and submissions

[004] PC60 was publicly notified in May 2023. Ten primary submissions were received. No further submissions were received.

[005] A summary of the submissions was published on the Council webpage<sup>3</sup> and was also contained in Appendix 3 the Section 42A Officers Report. We adopt<sup>4</sup> those summaries but do not repeat them here for the sake of brevity. However, we confirm that we read each original submission in full. Table 1 below lists the submitters.

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<sup>1</sup> Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 400 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy. In 2020 he was appointed as a Freshwater Commissioner by the Minister for the Environment under Clause 65 of Schedule 1 to the RMA.

<sup>2</sup> The councillors had not obtained Making Good Decisions certification prior to the hearing, although they had enrolled in the course. However, as Commissioner van Voorthuysen holds certification with a Chair's endorsement, the hearing Panel meets the requirements of clause 39B of the Schedule 1 of the RMA.

<sup>3</sup><https://www.whanganui.govt.nz/Property/Planning-Services/District-Plan-Changes/Current-Plan-Changes/Plan-Change-60-Miscellaneous-2>

<sup>4</sup> As provided for by section 113(3)(b) of the RMA.

#	Name
01	Rainer and Katharina Schmidt
02	Horticulture New Zealand Ahumara Kai Aotearoa
03	Powerco Ltd
04	McDonald's Restaurant (New Zealand) Ltd
05	Steven Archer
06	Michael O'Sullivan
07	Bernadine Bourke
08	Platinum Homes Whanganui/Manawatu
09	James Lees and Shirley Bennett
10	Horizons Regional Council

**Table 1: Submitters****3.2 Officer's recommendations**

- [006] The Council prepared an Officer's Report under s42A of the RMA that was authored by Council Policy Planner Leayne Huirua. We have had regard to that Report and the advice of Ms Huirua. She recommended the approval of PC60, subject to a number of amendments made in response to submissions received.

**3.3 Hearing, appearances and site visit**

- [007] We held a hearing at the Council offices in Whanganui on Wednesday 18 October 2023. Only three<sup>5</sup> of the original ten submitters appeared to speak to their submissions. Powerco Limited and McDonalds Restaurant precirculated expert evidence in conformance with our Minute 1. McDonald's Restaurant (Olivia Edwards) did not wish to be heard. Ms Edwards supported Ms Huirua's recommended amendments to NFL-PR-R1.
- [008] To facilitate an efficient Hearing process, we issued Minute 2 setting out in writing several questions of clarification for Ms Huirua. She helpfully provided a written response<sup>6</sup> to those questions prior to the Hearing. We discuss those matters in section 4 of this Recommendation Report.
- [009] We took our own notes of any answers given to verbal questions that we posed to the parties who appeared at the hearing.
- [010] We conducted a site visit of the proposed protected Tree in Helmore Street on the morning of Wednesday 18 October 2023, accompanied by Ms Huirua.
- [011] We closed the hearing on Wednesday 18 October 2023, having concluded that we required no further information from any of the parties.

**4 Consideration of submissions**

- [012] Ms Huirua recommended accepting in full the submissions of:
- Submitter 01: Rainer & Katharina Schmidt
  - Submitter 07: Bernadine Bourke
  - Submitter 08: Platinum Homes Whanganui/Manawatu
  - Submitter 09: James Lees & Shirley Bennett
  - Submitter 10: Horizons Regional Council

<sup>5</sup> 03 Powerco Limited, 05 Steven Archer and 06 Michael O'Sullivan.

<sup>6</sup> Officer Response to Minute 2 Questions.



- [013] She recommended accepting in part the submissions of:
- Submitter 02: Horticulture New Zealand Ahumara Kai Aotearoa
  - Submitter 03: Powerco Limited
  - Submitter 04: McDonald's Restaurant (New Zealand) Ltd
- [014] She recommended rejecting the following submissions:
- Submitter 05: Steven Archer
  - Submitter 06: Michael O'Sullivan
- [015] We adopt Ms Huirua's assessments, her recommended amendments and her reasons for submitters 01, 02, 04, 07, 09, 10. That includes her recommendations made in response to the questions we posed in Minute 2. For the benefit of readers of this Recommendation Report we set out those further recommendations below, because they are in addition to the amendments contained in Appendix 3 of the Section 42A Report.
- [016] In response to the submission of Horticulture NZ, and to better give effect to NPS-HPL Policy 9, SUB-R2.6, 2.7, 2.8, 2.9 and 2.10 are recommended to be amended to add a sub-clause as follows.

The management of reverse sensitivity effects on land-based primary production activities undertaken on highly productive land

- [017] In response to the submission of Horizons Regional Council NFL-PT-S1 and NFL-PT-S3 are recommended to be amended:
- (a) To recognise that the New Zealand Arboricultural Association is currently reviewing its guideline documents titled "Trees on Development Sites", "Tree Protection Fencing", and "Amenity Tree Pruning Guide"; and
  - (b) to provide greater certainty regarding the state of tree prior to its pruning.
- [018] The amendments are:

All works will comply with Minimum Industry Standards, including Tree Care Guidelines produced, supported or recommended by the New Zealand Arboricultural Association, for:

- a. Tree pruning;
- b. Tree care on construction/development sites;
- c. Utility line clearance;
- d. Tree protection zones.

NFL-PT-S3

- a. An arborist's description of any intended destruction, removal, pruning or maintenance of any protected tree shall be submitted to Council a minimum of 10 working days prior to any such works commencing; and
- b. Photographic evidence of the completed works shall be submitted to Council within 10 working days of the completion of the works.

- [019] We now address the matters raised by the submitters who chose to appear at the Hearing.

#### 4.1 Issues raised by submitters

##### 4.1.1 Powerco Limited

- [020] Evidence was provided by Gary Schofield, a Senior Environmental Planner employed by Powerco. Mr Schofield outlined the nature of Powerco's business operations and discussed how overgrown trees can interfere with power lines, pose a fire risk, cause power outages and make it difficult for Powerco's crews to restore power. He advised that Powerco currently utilises the same contractor as Council to undertake tree trimming around the power network.

- [021] Mr Schofield said that Powerco trims problematic branches back to the stem of the tree, which was considered to be good arboricultural practice, being the best for the tree and also the best for the power network. Before and after photographic records of the trimming are taken. He noted that a number of District Plans<sup>7</sup> in the Powerco's catchment permitted tree trimming (without a size limitation) to comply with the Electricity (Hazards from Trees) Regulations 2003.
- [022] Mr Schofield advised that Powerco was opposed to the 50mm diameter limit being imposed on the trimming of Protected Trees (NFL-PT-R1) because the ability to undertake trimming was paramount, regardless of the thickness of the branch. Powerco was also concerned with rule NFL-PT-R2 which would capture a number of activities undertaken by network utility operators, such as maintaining existing assets.
- [023] In light of the above matters, Mr Scofield advised that Powerco still sought to amend NFL-PT-R1.1(a) as follows (Powerco's amendment is in red font):
- ~~Trimming~~ Pruning<sup>8</sup> and clearance of foliage or branches ~~no greater than 50mm in diameter~~ at the point of severance<sup>9</sup> from existing utility networks
- [024] We have carefully considered Mr Schofield's evidence. However, we are not persuaded that the removal of the words "no greater than 50mm in diameter" from NFL-PT-R1.1(a) is appropriate. Our reasons are:
- Rule NFL-PT-R1 only applies to the trees listed in Appendix C;
  - Rule NFL-PT-R1.1 is a permitted activity rule of general application and it is not limited to Powerco;
  - Clause NFL-PT-R1.1.a permits the pruning of trees that encroach land boundaries and that could have widespread application;
  - A 50mm diameter branch is reasonably large and it would take some time for a newly growing branch to reach that size. That means there would be ample time to remove problematic branches before they reach a 50mm diameter; and
  - Enabling the removal of protected tree branches larger than 50mm without any reference to either an arborist or to Council could feasibly result in inappropriate damage to the protected tree.
- [025] Mr Schofield was concerned that Ms Huirua's recommended amendment to what is now NFL-PT-R2.2 meant that resource consent would be required for any "*Fencing, earthworks, construction or reconstruction work within the dripline of protected trees*". That could capture activities such as temporary site fencing, repair of underground assets or the reconstruction of existing above ground assets. We accept that would be the case, but we consider that is appropriate to ensure the protection of the Appendix C Protected Trees.
- [026] We also note that should Powerco need to undertake urgent works of the type referred to by Mr Schofield, then as a network utility operator we understand Powerco could undertake those works under the emergency works provisions of section 330(1)(c) or (ca) of the RMA and, if necessary, seek retrospective consent thereafter under section 330AA of the RMA.
- [027] Mr Schofield was concerned about the addition of the Pohutukawa tree situated at 12 Helmore Street to WDP Appendix C. We viewed that tree on our site visit. We observed that the tree's branches are not encroaching either the power lines or the power pole with the transformer on it. In our lay person view it would take some time before any encroachment occurred. Consequently, we consider that rule NFL-PT-R1.1 would enable Powerco to trim any problematic branches before they posed a risk to the network.

<sup>7</sup> South Taranaki District Plan, Manawatu District Plan and New Plymouth District Plan.

<sup>8</sup> This change or wording was part of PC60.

<sup>9</sup> The grey wash words were not in the notified PC60 provisions, but were recommended in Ms Huirua's Section 42A Report.



[028] We note Mr Schofield supported Ms Huirua's recommendations for GRZ-S4-2; CRZ-S5-2; SETZ-S4-3; COMZ-OC-S6-3 and OSZ-S3-1.

[029] We recommend that the Powerco Limited's submission is accepted in part.

#### 4.1.2 Steven Archer and Michael O'Sullivan

[030] Mr O'Sullivan and Mr Archer spoke to their submissions at the hearing.

[031] Mr O'Sullivan read out 'legal advice' that he had purportedly received from Andrew Cameron, an RMA solicitor well-known to us. We advised Mr O'Sullivan that we could not place any weight on that 'legal advice' because it fell into the category of hearsay. To give that 'legal advice' any weight we would have needed to hear from Mr Cameron in person so that we could both verify that the advice was indeed from him and question him about that advice. Having said that, we do not accept the PC60 amendments relating to the NPS-HPL are in any way 'unlawful'.

[032] We advised Mr O'Sullivan and Mr Archer that:

- Section 3.8 of the NPS-HPL requires territorial authorities to avoid the subdivision of highly productive land unless one of the three criteria in section 3.8(1) applies to the land;
- Until such time as Horizons Regional Council maps the highly productive land in the region, section 1.3(1) of the NPS-HPL states that LUC 1, 2, or 3 land is the land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification;
- Landowners who consider the New Zealand Land Resource Inventory to be incorrect for their land can engage a suitably qualified expert to undertake more detailed mapping of their land using the Land Use Capability classifications;
- The District Plan rule controlling subdivision (SUB-R2) is a restricted discretionary activity rule. Under section 104C of the RMA, when considering an application for a resource consent for a restricted discretionary activity the Council must consider only those matters over which it has restricted the exercise of its discretion; and
- Rule SUB-R2 does not currently restrict discretion over the avoidance of the subdivision of highly productive land. That is problematic as decision-makers are required to give effect to the NPS-HPL. Consequently, the amendments promulgated by PC60 are what we consider to be a short-term fix to enable decision-makers to give effect to the NPS-HPL in advance of the Council initiating a more holistic plan change<sup>10</sup> once Horizons has undertaken the mapping of highly productive land in the region in fulfilment of its obligations under NPS-HPL section 3.4.

[033] Having outlined these matters to the submitters we provided them an opportunity to respond. They stated there was confusion amongst the public and practitioners regarding the NPS-HPL. We accept that may well be the case, but we consider that the PC60 amendments will enable that confusion to be rectified as Council's consent planners will be better enabled to assess subdivision applications in conformance with the NPS-HPL.

[034] In conclusion, having considered the matters raised by the two submitters, we find the PC60 amendments relating to 'highly productive land' (including those contained in Ms Huirua's answers to our Minute 2) to be both appropriate and consistent with the NPS-HPL.

[035] We recommend that Mr O'Sullivan and Mr Archer's submissions are rejected.

<sup>10</sup> In accordance with section 3.5(3) of the NPS-HPL. That section only refers to maps of highly productive land but the Council may very well wish to introduce other relevant 'highly productive land' objectives, policies or rules at that time.



#### 4.2 National policy statements and national planning standards

[036] Section 74(1)(ea) of the RMA states that a change to a district plan must be done in accordance with a national policy statement, a New Zealand coastal policy statement<sup>11</sup>, and a national planning standard. In addition, ss75(3)(a) to (ba) of the RMA require the WDP to give effect to those instruments.

[037] The National Policy Statement for Highly Productive Land 2022 (NPS-HPL) is relevant and it was addressed in the Section 32 Report.<sup>12</sup> We find Ms Huirua's recommendations to be consistent with the NPS-HPL and we discussed the concerns of submitters who raised NPS-HPL matters (Horticulture NZ, Steven Archer and Michael O'Sullivan) in preceding sections of this Recommendation Report.

[038] The National Planning Standards (NP Standards) were released on 5 April 2019 and their focus is on the format and consistency of plan provisions. The NP Standards were addressed in the Section 32 Report. We are satisfied that both the provisions of PC60, and Ms Huirua's recommendations in response to the submissions, are consistent with the NP Standards.

#### 4.3 National environment standards and other regulations

[039] Section 74(1)(f) of the RMA states that a change to a district plan must be done in accordance with any regulations. No relevant national environmental standards or regulations were brought to our attention other than the Electricity (Hazards from Trees) Regulations 2003<sup>13</sup> and we ourselves are not aware of any.

#### 4.4 Regional policy statement (RPS) and regional plan

[040] Section 75(3)(c) of the RMA requires that the WDP gives effect to the RPS. In Whanganui the RPS is contained in Part 1 of the Horizons One Plan 2014. We are familiar with the contents of the One Plan.<sup>14</sup> We are satisfied that PC60 is consistent with the RPS. We observe that the submission of Horizons RC generally supported PC60, subject to some minor amendments relating to the definition of highly productive land and the trimming of protected trees. Horizons did not wish to be heard.

[041] Section 75(4)(b) of the RMA states that the WDP must not be inconsistent with any matter specified in s30(1) relating to the functions of regional councils. In this area the relevant regional plan is Part 2 of the Horizons One Plan 2014. No such matters were brought to our attention and we note that Horizons Regional Council did raise any such matters in their submission.

#### 4.5 Management plans and other strategies

[042] Section 74(2)(b) of the RMA states that when changing the WDP the Council should have regard to management plans and strategies prepared under other Acts. In this case the Section 32 Report<sup>15</sup> identified and addressed the *Nгаа Rauru Kītahi – Puutaiao Management Plan*. The Section 32 Report noted that the Council undertook consultation on PC60 with Council's tangata whenua partners and no further issues or objections raised. We note that there were no submissions on PC60 from iwi or hapu.

[043] We conclude that PC60 has had appropriate regard to the above management plan.

#### 4.6 Other matters

[044] No other relevant matters were brought to our attention and we are not aware of any.

#### 4.7 Part 2 matters

[045] Under s74(1)(b) the Council must prepare the WDP in accordance with the provisions of Part 2 of the RMA. We find that PC60, as recommended to be amended, does not offend any Part 2 provisions.

<sup>11</sup> The New Zealand Coastal Policy Statement 2010 (NZCPS) is not relevant

<sup>12</sup> Section 3.2.5 Rural Zones – Highly productive land

<sup>13</sup> Addressed in the evidence of Gary Schofield.

<sup>14</sup> Commissioner van Voorthuysen was a hearings commissioner for the first instance hearing of submissions on the One Plan.

<sup>15</sup> Section 2.1.4 Other Plans and Strategies.2.2.



#### 4.8 Amendments to PC60

[046] Our recommended amendments to the WDP text arising from PC60 are set out in Appendix 1. Recommended amendments to the WDP maps are set out in Appendix 2.

#### 4.9 Section 32AA

[047] Section 32AA of the RMA requires a further evaluation of any changes that are made to a proposal after the initial Section 32 Report has been completed. The further evaluation may be the subject of a separate report, or referred to in the decision-making record.<sup>16</sup> Clause 10 of Schedule 1 to the RMA directs that the Council's decision on submissions on a plan is to include such further evaluation, to which it is to have particular regard when making its decision.<sup>17</sup> If our recommendations are adopted by the Council, this Recommendation Report (including our adoption of Ms Huirua's assessment of submissions) is intended to form part of the Council's decision-making record and as such it includes our section 32AA assessment.

#### 5 Recommendation to Council

[048] Pursuant to the powers delegated to us by the Whanganui District Council under section 34A of the Resource Management Act 1991, we recommend that the Council approves PC60 to the Operative Whanganui District Plan, inclusive of the amendments to the provisions set out in Appendix 1 and the amendments to the Planning Maps set out in Appendix 2.

[049] We note that Council officers will need to insert the 'Map ref' and 'Legal Description' information into the two new rows for Protected Trees T121 and T122 in Appendix C of the District Plan.

Signed by the commissioners:



Rob van Voorthuysen (Chair)



Glenda Brown



Charlotte Melser

Dated: 6 November 2023

<sup>16</sup> RMA, s 32AA(1)(d) and (2).

<sup>17</sup> RMA, Schedule 1, cl 10(4)(aaa).