Proposed Plan Change 16: Network Utilities Officer report
# Table of contents

**INTRODUCTION** ........................................................................................................................................................................... 3  
**STATEMENT OF EXPERIENCE** .......................................................................................................................................................... 4  
**BACKGROUND TO PLAN CHANGE 16** ........................................................................................................................................... 4  
**CONSULTATION** ................................................................................................................................................................................ 5  
**STATUTORY CONSIDERATION** ......................................................................................................................................................... 7  
**SUBMISSION EVALUATION AND RECOMMENDATIONS** .................................................................................................................. 7  
  
**A**  PC16 IN ITS ENTIRETY ................................................................................................................................................................. 13  
**B**  NEW NETWORK UTILITIES CHAPTER - GENERAL .................................................................................................................... 15  
  i. Reverse Sensitivity – NU2.2, NU3.1.3, NU3.1.24, Definitions ..................................................................................................... 15  
  ii. Regionally significant network utilities - NU3.1.2.2, NU3.1.2.3, Methods NU4.1 and NU4.2, Environmental Outcomes NU5, D3.1.2 and Part M definitions .................................................................................. 18  
  iii. Stopbanks / Flood Hazard Area - NU3.2.2, NU3.3.4, NU6.1.4 ............................................................................................ 27  
  iv. Avoiding, Remediing and Mitigating Adverse Effects - NU3.3.1, NU3.3.5.1, NU3.3.5.2 .................................................................... 30  
  v. Policies 3.3.2 – 3.3.4, 3.3.6, Explanations 3.3.5.1 – 3.3.5.3, 3.3.5.5 ............................................................................................. 31  
**C**  NEW NETWORK UTILITIES CHAPTER - RULES, STANDARDS AND MATTERS OF CONTROL AND DISCRETION ................................................................................................................................. 34  
  i. Removal, maintenance and upgrading rules NU6.1.1, NU6.1.2 and Standards NU7.6 (Earthworks), NU7.7 (Vegetation), NU7.8 (Noise) ........................................................................................................ 34  
  ii. Radiocommunication and Telecommunication Masts, Antenna and Lines – Rules NU6.1.15, NU6.1.16, NU6.1.17, NU6.1.18, NU6.1.25 and Standards NU7.2.2, NU7.2.3 (Height), NU7.3.1, NU7.3.2, NU7.3.3, NU7.3.4, NU7.3.5 (Size and Diameter), NU7.9 (Matters of Discretion) ........................................................................................................ 38  
  iv. Cabinets – Rule NU6.1.19 and Standards NU7.2.4 (Height), NU7.3.6 (Size / Diameter), NU7.4 (Separation / Setback) ......................................................................................................................... 54  
  v. Roading and Traffic and Transport Structures ............................................................................................................................. 58  
  vi. Earthworks – NU7.6 .............................................................................................................................................................. 59  
  vii. 7.8 Noise ........................................................................................................................................................................ 63  
**D**  NEW PROVISIONS TO GIVE EFFECT TO THE NPSET .................................................................................................................. 63  
**E**  AMENDMENTS TO PART M: INTERPRETATION ........................................................................................................................... 72  
**F**  AMENDMENTS TO C7 TRANSPORT OBJECTIVES AND POLICIES ......................................................................................... 80  
**G**  AMENDMENTS SOUGHT TO ZONE CHAPTERS .......................................................................................................................... 81  
**H**  PLANNING MAPS .............................................................................................................................................................................. 82  

**LEGAL AND FINANCIAL IMPLICATIONS** ........................................................................................................................................... 83  
**PART 2 OF THE RESOURCE MANAGEMENT ACT** ......................................................................................................................... 83  
**DECISIONS ON SUBMISSIONS** ......................................................................................................................................................... 83  

**APPENDICES**

APPENDIX 1 – RESOURCE MANAGEMENT ACT 1991  
APPENDIX 2 – SECTION 32 ANALYSIS  
APPENDIX 3 – SUBMISSIONS AND FURTHER SUBMISSIONS  
APPENDIX 4 – SUMMARY OF SUBMISSIONS AND RECOMMENDATIONS ON SUBMISSIONS  
APPENDIX 5 – MAP SHOWING 1,000M RADIUS FROM THE RADIO NZ FACILITIES  
APPENDIX 6 – LEGAL ADVICE
APPENDIX 7 – RECOMMENDED CHANGES TO PROPOSED PLAN 16

APPENDIX 8 – PLAN CHANGE 16 NETWORK UTILITIES – REGIONALLY SIGNIFICANT NETWORK UTILITIES
Introduction

1. Plan Change 16 – Network Utilities (PC16) was publicly notified on 1 October 2013 with submissions closing on 15 November 2013. The summary of submissions was notified on 22 April 2014 for further submissions, which closed on 7 May 2014.

2. The overall policy aim of the proposed change is to:
   • review and update existing network utility provisions to ensure that they:
     • reflect best practice;
     • provide greater consistency between district plans across the region and
     • best serve and reflect public and stakeholder expectations and requirements;
   • rationalise existing network utility provisions across the District Plan;
   • avoid unnecessary duplication between District Plan provisions and other legislation or regulations;
   • give effect to the National Policy Statement on Electricity Transmission (NPSET);
   • give effect to the Regional Policy Statement for the Wellington Region (RPS);
   • give effect to the New Zealand Coastal Policy Statement (NZCPS), as appropriate; and
   • amend the District Plan as required so as not to duplicate or conflict with the National Environmental Standard on Electricity Transmission Activities (NESETA) and the National Environmental Standard on Telecommunication Facilities (NESTF).

3. The plan change has been prepared following significant consultation with, and input from, network utility operators and the Porirua Community. This has included the release for submission of a discussion document and a draft plan change and community and stakeholder meetings.

4. This report has been prepared in accordance with section 42A of the Resource Management Act (RMA). It considers the submissions and further submissions that were received in response to Plan Change 16 to the Porirua City District Plan (referred to in this report as ‘PC16’ and ‘the Plan’ respectively), and makes recommendations on the matters raised. Additional detail as to the reasoning behind PC16 can be found in the Section 32 report (attached as Appendix 2) prepared and notified as part of the plan change documentation.

5. The recommendations contained in the report are neither Porirua City Council (the Council) recommendations nor final decisions, but are instead intended to assist and inform the Hearing Committee’s deliberations on PC16.
Statement of experience
6. My full name is Gina Marie Sweetman. I am a sole provider, trading as Sweetman Planning Services, practicing as a planning consultant throughout New Zealand and based in Wellington. I hold a Masters in Planning (First Class Honours) and a Bachelor of Planning, both from the University of Auckland. I am a full Member of the New Zealand Planning Institute and an Accredited Independent Commissioner.

7. I have over twenty-two years’ experience working as a planner for local government, central government and as a planning consultant. My work experience includes, amongst other matters, preparing and presenting plan changes and associated policy advice to councils and presenting evidence at corresponding hearings.

8. With respect to PC16, I have been engaged by the Council to prepare the proposed change and accompanying Section 32 report, and to prepare this associated Section 42A report in which I provide my findings and recommendations on the submissions and further submissions received.

Background to Plan Change 16
9. The Council promulgated this plan change for a number of reasons:
   • The Plan was developed in the 1990s and took a very permissive approach to network utility provisions. The only amendment to date comprised the introduction of controls on above-ground lines.
   • Residents within the City have expressed concern about the controls around telecommunication facilities, particularly cell-sites, which are largely uncontrolled due to the permissive approach of the District Plan. However, the NESTF which deals with telecommunications on the road reserve and radiofrequency emissions now largely addresses this matter and the District Plan needs to be updated to reflect this.
   • Technology has changed since the Plan was first produced and therefore a review is timely.
   • The City has been subject to a reasonably high level of growth, meaning that some development is proposed in locations that could lead to conflict with existing or proposed network utility services and other infrastructure. Of particular note are the location of the Transpower transmission lines and the New Zealand Transport Agency approved development of the Transmission Gully Motorway.
   • Finally, new national instruments relating to network utilities have been promulgated and are required to either be given effect to or have the effect of rules that override the Plan. These national instruments are:
     • The National Policy Statement on Electricity Transmission (NPSET);
     • The National Environmental Standard on Electricity Transmission Activities (NESETA); and
     • The National Environmental Standard on Telecommunication Facilities (NESETF).
Consultation

10. As outlined in the section 32 report, prior to formal notification, extensive consultation was undertaken with network utility operators, the Titahi Bay Amateur Radio Club and Porirua community representative organisations. Wider public engagement was sought through public notices to attend workshops and provide feedback into the Discussion Document and Draft Plan Change.

11. In respect of consultation, the Council:
   • Held a community open forum involving presentations from network utility operators and an open floor (November 2011);
   • Released a discussion document identifying issues and potential options for feedback (April 2012);
   • After sending out letters to all potentially affected landowners, held a community meeting on the NPSET related provisions and subsequently formed a community working group to further develop and refine those provisions (June 2012);
   • Engaged with regionally significant network utility operators and other councils in the Region;
   • Engaged with Te Rūnanga O Toa Rangatira;
   • Released a draft plan change for feedback (January – March 2013). A total of 11 submissions were received; and
   • Held a further community meeting on the NPSET related provisions (February 2013).

Formal notification

12. PC16 was publicly notified on 1 October 2013 in the Kapi Mana and Dominion Post newspapers, and directly affected property owners were notified of the proposed change by mail.

13. In response, the Porirua City Council received 14 submissions. The submitters are:
   • Radio New Zealand Ltd (S1);
   • Vector Gas Limited (S2);
   • Telecom New Zealand Limited (S3);
   • Diane Strugnell (S4);
   • Pauatahanui Resident’s Association (S5);
   • Two Degrees Mobile Limited (2Degrees) (S6);
   • WEL Networks Limited (S7);
   • Powerco Limited (S8);
   • Kiwirail Holdings Limited (S9);
   • Transpower New Zealand Limited (S10);
   • New Zealand Transport Agency (NZTA) (S11);
   • Chorus New Zealand Limited (S12);
   • Greater Wellington Regional Council (S13); and
14. Council obtained legal advice in respect to the submissions received from NZTA and KiwiRail as to whether all aspects of those submissions were on or in scope of PC16. The legal advice found that there were elements of the two submissions that were not on or in scope of PC16. A copy of the legal advice was provided to both submitters. NZTA formally withdrew their submission on 4 February 2014. A copy of the legal advice is attached as Appendix 6.

15. A summary of decisions requested by these submitters was publicly notified on 22 April 2014. Further submissions closed on 7 May 2014.

16. The summary of submissions report was divided into three parts:
   (i) Decisions requested by submitters
   (ii) Decisions requested in order of the plan change amendment to which they relate
   (iii) Decisions sought by submitters that the Council considers are not on or in the scope of PC16.

Scope of Kiwirail’s submission

17. In respect of (iii) above, as outlined in (14), prior to notification of the summary of submissions, the Council sought legal advice on Kiwirail’s submission (S9) as to whether all parts of the submission were on or in the scope of the plan change. The aspects of Kiwirail’s submission that the Council considered to be out of scope or not on PC16 were seeking:
   (a) New acoustic rules and performance standards to be included in the District Plan for buildings, balconies and decks, which included setbacks from rail corridor boundaries for buildings, balconies and decks (a “no build” buffer) and internal design noise limits for new, relocated and altered dwellings and sensitive activities; and
   (b) New level crossing rules and performance standards to address safety concerns, including an access way restriction and sight triangles.

18. The legal opinion was subsequently updated to reflect that NZTA had withdrawn their submission and to reflect more recent applicable case law. A copy of the legal opinion is attached as Appendix 6. In summary, the legal opinion confirms the Council’s position that:
   - The new rules referenced in (a) above do not amend the proposed changes further and do not seek a different management regime for an existing proposed change. Rather, they seek to introduce a new management regime on a new issue. The relief sought would result in changes to PC16 that would directly affect property owners who have not been consulted with in relation to PC16. There is a real risk that people affected by PC16 (if modified through decisions to include the proposed buffer / setbacks and the noise insulation provisions) would be denied an effective opportunity to participate in the plan change process,
as they would not have been adequately informed of the changes through the notification of PC16; and

- The new rules referenced in (b) above are not on PC16. The scope of PC16 is clear in that it does not include amendments to Part H (Car Parking, Vehicle Movements and Roads). Although PC16 ensures that railway lines are provided for and their benefits realised, this does not extend in PC16 to include railway level crossings. Like in (a), there is a real risk that people affected by PC16 (if modified through decisions to include the provisions) would be denied an effective opportunity to participate in the plan change process, as they would not have been adequately informed of the changes through the notification of PC16.

- In respect of (b), it is also noted that New Zealand Railways Corporation is a requiring authority under the RMA and has a designation in place in the District Plan. Under the RMA, no person may do anything on the designated land without the requiring authority’s permission. Therefore, the relief sought by KiwiRail is in fact also not necessary, as the railway lines are already designated and KiwiRail’s concerns are addressed by other means.

19. I concur with the legal opinion and that the submission points addressed above are neither on nor in scope of PC16. For this reason, I have not given these submission points any further consideration.

Further submissions

20. Further submissions were received from:
- Radio New Zealand (FS1);
- Vector Gas Limited (FS2);
- Powerco Limited (FS3);
- Transpower New Zealand Limited (FS4);
- Telecom New Zealand Limited (FS5);
- Chorus New Zealand Limited (FS6).

21. WEL Networks Ltd withdrew their submission on 30 April 2014. As WEL Networks withdrew their submission, any further submissions on their submission are no longer able to be considered.

22. Copies of the submissions and further submission are attached as Appendix 3.

Statutory Consideration

23. Section 31 sets out the functions of the Council which include:
- 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 of the district.
24. Section 32 RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that the evaluation must:
   “(a) examine the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
   (b) examine whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives by –
      (i) identifying other reasonably practicable options for achieving the objectives; and
      (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
      (iii) summarising the reasons for deciding on the provisions; and
   (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

An assessment under s32(1)(b)(ii) must:
   (a) Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
      (i) Economic growth that are anticipated to be provided or reduced; and
      (ii) Employment that are anticipated to be provided or reduced; and
   (b) If practicable, quantify the benefits and costs referred to in paragraph (a); and
   (c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matters of the provisions.”

If the proposal will amend an existing plan provision, the examination under s32(1)(b) must relate to –
1. “The provisions and objectives of the amending proposal; and
2. The objectives of the existing proposal to the extent that those objectives –
   (i) Are relevant to the objectives of the amending proposal; and
   (ii) Would remain if the amending proposal were to take effect.”

23. Section 74 of the RMA states that the Council shall prepare and change the District Plan in accordance with its functions under s31, the provisions of Part 2 and its duty under s32.

24. Under s74, when preparing or changing a plan, a territorial authority is required to have regard to:
   (b) any –
      (i) management plans and strategies prepared under other Acts,
I consider the Long Term and Annual Plans are relevant plans, prepared under the Local Government Act.

25. Under s74(2A) a territorial authority:
“must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of a region”.

There are no relevant iwi management plans.

26. Section 75(3) of the RMA requires that district plans must give effect to –
   (a) “any national policy statement; and
   (b) any New Zealand coastal policy statement; and
   (c) any regional policy statement”

   and under s75(4), district plans must not be inconsistent with –
   “(b) a regional plan for any matter specified in section 30(1)”.

27. The decision in Long Bay-Okura Great Parks Society Incorporated v North Shore City Council (Decision A 078/2008) and amended in High Country Rosehip Orchards Ltd and Ors v Mackenzie DC [(2011) NZEnvC 387] sets out the mandatory requirements for district plan changes as being:

A. General requirements
   1. A district plan (change) should be designed to accord with, and assist the territorial authority to carry out - its functions so as to achieve, the purpose of the Act.
   2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.
   3. When preparing its district plan (change) the territorial shall:
      (a) have regard to any proposed regional policy statement;
      (b) not be inconsistent with any operative regional policy statement.
   4. In relation to regional plans:
      (a) the district plan (change) must not be inconsistent with any operative regional plan for any matter specified in section 30(1) [or a water conservation order]; and
      (b) must have regard to any proposed regional plan on any matter of regional significance etc;
   5. When preparing its district plan (change) the territorial authority must also:
      • have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent territorial authorities;
      • take into account any relevant planning document recognised by an iwi authority; and
      • not have regard to trade competition;
   6. The district plan (change) must be prepared in accordance with any regulation and any direction given by the Minister for the Environment.
   7. The requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.

B. Objectives [the section 32 test for objectives]:
8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan
   (a) taking into account:
      (i) the benefits and costs of the proposed policies and methods (including rules); and
      (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
   (b) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether than greater prohibition or restriction is justified in the circumstances.

D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.

E. Other statutes:

12. Finally territorial authorities may be required to comply with other statutes ...

I note that the above was formulated prior to the Resource Management Amendment Act 2013 and therefore does not reflect the recent amendment to s32, which is set out earlier.

Part 2 of the RMA

28. Part II of the RMA underpins the exercise of all functions, duties and powers, with the underlying purpose set out in Section 5 to ‘promote the sustainable management of natural and physical resources’. As such, Section 5 is fundamental to any assessment, with the approach being to weigh up the matters in Section 5(2) in order to reach a broad judgement as to whether a policy or rule promotes sustainable management.

29. In achieving this purpose, authorities need also to recognise and provide for the matters of national importance identified in s6, have particular regard to other matters referred to in s7 and take into account the principles of the Treaty of Waitangi referred to in s8.

30. There are no s6 matters relevant to this plan change.

31. The s7 matters that are relevant to this plan change are:
(b) “the efficient use and development of natural and physical resources:
(ba) the efficiency of the end use of energy:
(c) the maintenance and enhancement of amenity values:
(f) the maintenance and enhancement of the quality of the environment:”

32. There are no s8 matters relevant to this plan change. However, the duty to make informed decisions through consultation is relevant to PC16. Te Rūnanga o Toa Rangatira was consulted in preparing PC16.

**Regional Policy Statement**

33. Section 75 of the RMA also requires that a District Plan ‘give effect to’ any regional policy statement and be consistent with any relevant regional plan. Although there are no regional plans of relevance to this plan change, there are relevant provisions contained in the Regional Policy Statement for the Wellington Region 2013 (the RPS).

34. The relevant provisions from the RPS are attached as Appendix 5 to the Section 32 Report. There is clear direction in the RPS of the need to protect and manage regionally significant infrastructure, both in terms of its effects, and effects on it. The Greater Wellington Regional Council has advised that the RPS has been drafted to give effect to the NPSET.

**National Policy Statements**

35. Section 75 of the RMA further requires that a District Plan give effect to any national policy statement. There are two national policy statements relevant to PC16.

**The National Policy Statement on Electricity Transmission**

36. The National Policy Statement on Electricity Transmission (NPSET) came into force in April 2008 and applies to “the need to operate, maintain, develop and upgrade the electricity transmission network”. The NPSET contains one objective and 14 supporting policies. The overarching objective of the NPSET is:

“To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:
- managing the adverse environmental effects of the network; and
- managing the adverse effects of other activities on the network.”

37. The 14 supporting policies are broken down into the following categories, aimed at achieving the above objective:
- Recognition of the national benefits of transmission (Policy 1);
- Managing the environmental effects of transmission (Policies 2-9);
- Managing the adverse effects of third parties on the transmission network (Policies 10-11);
- Maps (Policy 12);
• Long-term strategic planning for transmission assets (Policies 13-14).

38. The NPSET requires councils to give effect to its provisions in plans made under the RMA by initiating a plan change or review within four years of its approval (by April 2012).

39. PC16 has been drafted to give effect to the NPSET.

**New Zealand Coastal Policy Statement**

40. The New Zealand Coastal Policy Statement (NZCPS) took effect on 3 December 2010 and guides local authorities in their day to day management of the coastal environment. The NZCPS contains seven objectives and 20 supporting policies. Objective 6 and Policy 6 are the most relevant to PC16, and are set out in Appendix 1 to the Section 32 Report.

41. The NZCPS does not have a specific timeframe for councils to give effect to it within. Therefore, councils are required to give effect to it as soon as is practicable and it must be given effect to in any plan change (as is relevant to and within the scope of the plan change).

42. The Council is responsible for that part of the coastal environment that is above mean high water springs. The NZCPS recognises the importance of infrastructure within the coastal environment, while also acknowledging that infrastructure can have adverse effects on that environment.

43. As set out in 5.6 of the section 32 report, it is considered that the existing provisions provide the Council with sufficient discretion to manage the effects of network utilities within the coastal environment. It is also considered that it would be more appropriate for the Council to undertake a review those parts of the Plan that relate to the coastal environment as one comprehensive review, rather than undertake piecemeal amendments as would be the case in respect of PC16.

**Submission Evaluation and Recommendations**

44. The submissions received have been summarised both by submitter in order of receipt and by the proposed amendments and provisions of PC16 to which they specifically relate. The summary of submissions, which includes the recommendations on submissions, is attached as Appendix 4 respectively. Full copies of the submissions are attached as Appendix 3.

45. For efficiency and in accordance with Clause 10(3) of the First Schedule of the RMA, the following evaluation has been undertaken on both an issues and provisions-based approach, as opposed to a submission by submission approach. The evaluation has been organised in accordance with PC16 as notified, as well as a specific evaluation of requested changes to provisions proposed to give effect to the NPSET.
46. The following evaluation should be read in conjunction with the summaries of submissions and the submissions themselves. Where I concur with the relief sought and rationale for that relief, I have noted my agreement and provided my recommendation in the summary of submission table in Appendix 4. Where I have undertaken further evaluation of the relief sought in a submission(s), my evaluation and recommendations are set out in this section of the report.

47. Where I recommend changes, these are shown in Appendix 7, Recommended Changes to Proposed Plan Change 16. Proposed new text under PC16 is underlined. Text proposed to be deleted is struck through. Text recommended to amended in response to submissions is double-underlined. Text recommended to be deleted is double-struck through.

48. The evaluation of submissions is structured as follows:
   A. PC16 in its entirety
   B. New Network Utilities Chapter - General
      i. Reverse sensitivity
      ii. Regionally significant network utilities
      iii. Stopbanks / Flood Hazard Area
      iv. Avoiding, Remedyng and Mitigating Adverse Effects
      v. Policies 3.3.2 – 3.3.4, 3.3.6, Explanations 3.3.5.1 – 3.3.5.3, 3.3.5.5
   C. New Network Utilities Chapter – Rules, Standards and Matters of Control and Discretion
      i. Removal, maintenance and upgrading
      ii. Radiocommunication and telecommunication masts, antennas and lines
      iii. Gas distribution and transmission
      iv. Cabibets
      v. Roading and Traffic and Transport Structures
      vi. Earthworks
      vii. Noise
   D. New Provisions to Give Effect to the NPSET
      i. Definitions
      ii. Earthworks
      iii. Milking Sheds and Intensive Rural Production Activity
   E. Amendments to Part M: Interpretation
      i. Minor upgrading
      ii. Sensitive activities
      iii. Upgrading
   F. Amendments to C7: Transport Objectives and Policies
   G. Amendments sought to Zone Chapters
   H. Amendments to Planning Maps

A  PC16 in its Entirety

Submission Points
49. Grant Fairbairn (S14) seeks that PC16 be revised to incorporate specific provisions outlined in the submission and that he did not support the implementation of PC16. In particular, his reasons are:
   - PC16 contains unnecessary duplication and complication, where details should only be reference from within the relevant national and international codes and standards that apply to national utilities.
   - The planned changes do not preserve landowner’s rights and are detrimental to landowners, for example with respect to planned upgrades or future development.
   - The planned changes give no acknowledgement or benefit to landowners that bear the national utilities.

50. In FS4.2, Transpower seek that the submission be disallowed, for the reasons that:
   (i) Sole reliance on NZECP34:2001 does not give effect to the NPSET
   (ii) NZECP does not manage sensitive activities and can permit activities that compromise the operation and maintenance of the National Grid
   (iii) Nothing in PC16 gives Transpower any property rights
   (iv) Property rights, compensation and access issues cannot be addressed within the scope of PC16
   (v) The Board of Inquiry for the NPSET identified that property rights and compensation issues were not relevant under the RMA.

Assessment

51. Section 5.3 of the s32 report prepared and notified with PC16 sets out how PC16 was drafted to avoid any unnecessary duplication and complication with relevant national and international codes and standards applying to network utilities. In particular, the rules and standards are drafted to only address environmental effects that are not otherwise managed through enforceable codes, standards and legislation. Section 10.1.2 deals in particular with how the NPSET is given effect to through PC16, again to ensure there is no unnecessary duplication or complication. The submitter has not provided any specific detail to consider as to where he considers that there is duplication and/or complication.

52. The other two points raised by the submitter relate to property rights. Case law under the RMA has established that local authorities have broad jurisdiction to impose controls on activities by imposing rules in a district plan, provided they fall within the scope of their powers and duties, and ultimately the purpose of the RMA – to promote the sustainable management of natural and physical resources - following consideration under section 32 of the RMA. This means that the RMA enables constraints to be placed on the rights of private landowners in order to advance the greater good of the community and the environment. Under section 85 of the RMA, compensation is not payable in respect of controls on land. Where a person considers that a plan provision may render the land incapable of reasonable use, they are able to challenge that provision on that basis through a submission.
53. In addition, the proposed rules and standards do not override a landowner’s private property rights and do not automatically enable a network utility operator to undertake any activity on any person’s property. A network utility operator would need to obtain the necessary approvals or follow the appropriate procedures under separate legislation to undertake work on any person’s property without their approval. I concur with the reasons given by Transpower in FS4.2.

54. Finally, proposed objectives 3.3.1 and 3.3.2 and policies 3.1.2 and 3.2.1 specifically recognise the benefits that network utilities provide.

**Recommendation**

55. It is recommended that S14 be rejected and FS4.2 be accepted.

**B New Network Utilities Chapter - General**

i. **Reverse Sensitivity – NU2.2, NU3.1.3, NU3.1.24, Definitions**

**Submission Points**

**NU2.2**

56. In S8.2, supported by FS1.1, FS2.2 and FS4.4, Powerco seek to amend NU2.2 as follows:

2.2 Managing adverse effects including reverse sensitivity effects on regionally significant network utilities.

Inappropriate subdivision, use and development in the vicinity of regionally significant network utilities may lead to adverse effects including reverse sensitivity effects that have the potential to impact upon the effective and efficient operation of such utilities. Inappropriate subdivision, use and development can result in damage to regionally significant network utilities and/or restrict access to such infrastructure including the ability to undertake maintenance and upgrade work. Reverse sensitivity can occur when sensitive activities locate near to or intensify by existing network utilities and seek to constrain the operation or expansion of these utilities. This may mean that the local, regional and national benefits of those regionally significant network utilities may be compromised. The City has a lot of well-established regionally significant network utilities located in close proximity to existing land use activities. The Council is predominantly concerned with new more intensive land use activities establishing in proximity to existing regionally significant network utilities that may lead to adverse effects, including reverse sensitivity effects on those utilities.

57. In S8.6, supported by FS1.2 and FS4.5, Powerco seek that NU3.1.3 be amended as follows:

Avoid, or as appropriate remedy or mitigate, the potential for any adverse effects, including reverse sensitivity effects on regionally significant network utilities from incompatible new subdivision, use and development occurring under, over, or adjacent to regionally significant network utilities.
58. In s8.7, supported by FS1.5, FS2.3 and FS4.6, Powerco seek that NU3.1.2.4 be amended as follows:

*Policy 3.1.3 requires that any potential adverse effects, including reverse sensitivity effects, on regionally significant network utilities are appropriately managed, with priority given to avoiding adverse effects, where practicable on those utilities. The location of inappropriate new subdivision, use or development in proximity to existing regionally significant network utilities has the potential to compromise the efficient operation and use of the network utility, including by restricting access, and result in the benefits of that network utility being reduced. In addition, the safety and amenity values of community may be adversely affected by locating in too close proximity to regionally significant network utilities...*

59. The reason for these amendments sought is to clarify that reverse sensitivity is one of a range of adverse effects on network utilities that may result from inappropriate subdivision, use and development in close proximity to existing network utilities.

**Definitions**

60. In S1.22, supported by FS2.8, Radio NZ seek that the following definition be used for reverse sensitivity:

*Means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.*

for the reason that it would assist plan users given its frequency of use and that the RPS definition would be appropriate and provide consistency.

61. FS3.5 supports this in part and would agree with the definition, but considers that a definition is not critical to the Plan, as it is already well defined through case law and in the RPS. FS4.12 states the preference to rely on case law, but can accept this definition.

**Assessment**

62. In respect to the requested changes to NU2.2, NU3.1.3 and NU3.1.2.4, as currently drafted, these provisions only address reverse sensitivity effects that may affect regionally significant network utilities, rather than wider potential adverse effects which may also affect such utilities. As such, I concur with the submitter that the Plan does not fully give effect to Policy 8 of the RPS, which is not only confined to reverse sensitivity effects, but deals with effects more generally arising from incompatible new subdivision, use and development occurring under, over, or adjacent to ‘regionally significant infrastructure’. The changes sought are effectively seeking for direct effects to be recognised, which I consider to be appropriate.

63. I concur that the wording sought through S8.2, S8.6 and S8.7 are appropriate, with the exception of NU2.2, where I do not agree with the wording “can result
in damage to”, as this is only one form of adverse effect that may occur. I recommend that “may result in adverse effects on” is more appropriate. I also recommend that the term “network utilities” be used, instead of “infrastructure”.

64. In respect to the proposed addition of a definition for reverse sensitivity, my preference is to rely on case law rather than a set definition in the District Plan. I consider it is unusual for a term that has been defined through case law to be “set” within a planning document, knowing that these definitions can be amended through subsequent case law.

**Recommendation**

65. It is recommended that S8.2, FS1.1, FS2.2 and FS4.4 be accepted in part, and S8.6, S8.7, FS1.2, FS1.5, FS2.3, FS4.5 and FS4.6 be accepted.

66. It is recommended that S1.22 and FS2.8 be rejected.

**Recommended Amendments**

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<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
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<tbody>
<tr>
<td>S8.2</td>
<td>NU2.2</td>
<td><strong>2.2 Managing adverse effects including reverse sensitivity effects on regionally significant network utilities.</strong> Inappropriate subdivision, use and development in the vicinity of regionally significant network utilities may lead to adverse effects including reverse sensitivity effects that have the potential to impact upon the effective and efficient operation of such utilities. Inappropriate subdivision, use and development may result in adverse effects on regionally significant network utilities and/or restrict access to such network utilities including the ability to undertake maintenance and upgrade work. Reverse sensitivity can occur when sensitive activities locate near to or intensify by existing network utilities and seek to constrain the operation or expansion of these utilities. This may mean that the local, regional and national benefits of those regionally significant network utilities may be compromised. The City has a lot of well-established regionally significant network utilities located in close proximity to existing land use activities. The Council is predominantly concerned with new more intensive land use activities establishing in proximity to existing regionally significant network utilities that may lead to adverse effects, including reverse sensitivity effects, on those utilities.</td>
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<tr>
<td>S8.6</td>
<td>NU3.1.3</td>
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ii. Regionally significant network utilities - NU3.1.2.2, NU3.1.2.3, Methods NU4.1 and NU4.2, Environmental Outcomes NUS, D3.1.2 and Part M definitions

Submission Points
67. There were several submissions in relation to regionally significant network utilities; in particular what was included in the definition in Part M, and the mapping thereof.

Definition
68. Submission points 3.2, 12.2, 3.11, 12.17 (Telecom and Chorus), supported by FS1.13 and FS1.14 (Radio NZ) seek that telecommunications and radiocommunications are included within the definition of regionally significant network utilities as follows:

Facilities for provision of ‘telecommunication’ as defined in section 5 of the Telecommunications Act 2001 and facilities for the provision of ‘radio communication’ as defined in section 2(1) of the Radiocommunications Act 1989.

69. Telecom and Chorus both state that specific provision for regionally significant network utilities is supported. The submission point is made on the basis that the policy framework and the definition of “Regionally significant network utilities” (in Amendment 5: Amendments to Part M – Interpretation) does not extend to telecommunications or radiocommunications. From the section 32 report it is understood that this relates to an error in the drafting of the RPS that provides incorrect references to strategic telecommunications and radiocommunication in the Telecommunications and Radiocommunication Acts. Telecom and Chorus consider that the exclusion of radiocommunications and telecommunications on this basis is inconsistent and unreasonable, and their inclusion is subsequently sought.

70. In S1.23, Radio NZ request that a new bullet point be added to the definition of regionally significant network utilities to include “Radio New Zealand’s radio transmission facilities at Titahi Bay”. Radio NZ consider that its operations at Titahi Bay are clearly included as being consistent with the inclusion of other network utilities that have vital roles and is consistent with
the reference to Wellington’s largest and most powerful communication facilities in NU1.2.

71. In S9.14, KiwiRail seek that the definition be amended as follows:

Regionally significant network utilities includes:

- the Strategic Transport Network, as defined in detailed in Appendix A to the Wellington Regional Land Transport Strategy 2010 to 2040

for the reason that there is no definition of Strategic Transport Network in the RLTS, but that this network is detailed in Appendix A of that document.

NU3.1.2.2 and NU3.1.2.3

72. As a consequence of and being consistent with their submission points to include telecommunication and radiocommunication facilities within the definition of regionally significant network utilities, Telecom and Chorus in s3.2 and S12.2, seek to respectively add “telecommunication lines” and “telephone lines” to the second to last line of NU3.1.2.2, and amend the last bullet point of NU3.1.2.3 to include “telecommunications”.

73. In S12.2, Chorus seek amendment to NU3.1.2.3 to make it clear that it is not feasible to identify telecommunication lines on the planning maps.

74. Radio NZ in FS1.3 support either amending NU3.1.2.3 as sought by Telecom and Chorus, or alternatively to add “telecommunications and radiocommunications”. In S1.5, Radio NZ also seeks to add a further bullet point to the list in explanation NU3.1.2.3, as follows:

That people and communities have access to communications, which include being a civil defence tool in the event of natural disaster

Methods

75. S3.6 and S12.7 seek the words “where appropriate” are added to the end of Method NU4.1, to provide consistency with NU3.1.1. S8.10 seeks that the words “to the extent practicable” or words to that effect, be added to the end of Method 1, to acknowledge that it will not be feasible to identify all regionally significant network utilities on the Planning Maps. S9.6 seeks that NU4.1 be retained.

76. Transpower in S10.13 seeks that the following wording change is made to NU4.2:

Regulatory Assessment Framework that includes rules and matters of control and discretion to guide assessment of the construction, operation, upgrading and maintenance of network utilities and inappropriate subdivision, use and development that occurs in proximity to regionally significant network utilities. The framework utilises permitted, controlled, restricted discretionary, discretionary and non-complying activity status and specific matters of control and discretion to assess and manage the actual and potential adverse effects.
for the reason that it is not only subdivision which is to be controlled in proximity to regionally significant infrastructure, but also inappropriate land use and development, which better reflects Policies 10 and 11 of the NPSET.

Environmental Outcomes

77. S1.13, seeks that a new environmental outcome to clarify that there is no expectation that the operations of lawfully established existing network utilities will be limited to avoid adverse effects on new developments or activities, as follows:
The operation of existing regionally significant network utilities is not limited due to reverse sensitivity effects from new incompatible development, activities or subdivision.

D3.1.2

78. In S1.24, Radio NZ seek that proposed new (i) and (j) to D3.1.2 be retained, and a new note be added as follows:
Note: “Proximity” in relation to Radio New Zealand’s transmission facilities at Titahi Bay means within 1000m of the edge of the facilities identified on the Planning Maps by XXXX.

79. Radio NZ notes in its submission that reference could be made to either K0201-RNZ’s designation number as marked on the Planning Maps or the requested marking of RNZ’s facilities as a regionally significant network utility. It seeks this amendment so that it is clear what proximity means in relation to Radio NZ’s transmission facilities, noting that its masts are very high and visually prominent, and some people could experience adverse visual effects some distance from the facility itself.

Chapter F Information to be Supplied – F7.2

80. S1.20 seeks that the specific reference: within 1,000m of Radio New Zealand’s transmission facilities at Titahi Bay identified on the Planning Maps by XXXX be added to F7.2, so as to enable Radio NZ to be made aware of any future subdivision applications in proximity to its facilities and so that the Council can be aware of any reverse sensitivity concerns.

Assessment

Definition

81. I generally concur with S9.14, which seeks to clarify that the Strategic Transport Network is detailed in an Appendix to the Wellington Regional Land Transport Strategy. However, the correct reference should be to Appendix 1 and not A, as requested by the submitter.

82. The issue of whether telecommunications and radiocommunications should be included as regionally significant network utilities is addressed in the s32 report that accompanied the notification of PC16. To reiterate, the s32 report states:
“..., In considering how to give effect to the RPS, an issue that has arisen is in respect of the definition of regionally significant infrastructure, which in the RPS includes:
• “strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001
• strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989”

A review of both pieces of legislation has identified that neither contain the definitions referred to. The explanation to the relevant policies provides no guidance as to what may or may not constitute a strategic telecommunication facility or radio-communications facility. Discussions with the Regional Council have not provided clarification. In the absence of certainty or clarification of what may or may not be a strategic telecommunications or radio-communications facility, the Proposed Plan Change does not contain these two matters as being regional significant network utilities. Without definitions of what the Regional Council considers are “strategic” telecommunication and radio communication facilities, it is not appropriate for the Council to presume the exact scope and nature of what these are. If the RPS is amended in the future to clarify what is meant by these terms, the District Plan can be updated to give effect to the amended RPS.”

83. I have also reviewed the officer’s report and decision report for the RPS which provided no additional guidance as to what strategic telecommunication and radiocommunication facilities are.

84. I have also considered the meaning of the word strategic. The Oxford dictionary definition1 of strategic is “relating to the identification of long-term or overall aims and interests and the means of achieving them” and “designed or planned to serve a particular purpose”.

85. The reasons provided by Telecom and Chorus for including radiocommunications and telecommunications in the list of regionally significant network utilities does not provide any guidance as to why such utilities should be included, beyond that they consider it to be inconsistent and unreasonable, and why they are strategic. Further, Telecom and Chorus have not clarified whether they propose that all radiocommunication and telecommunication facilities be included as being strategic, or whether criteria should apply to determine what is strategic, or not. I take their submission points s3.6 and s12.7 to infer that it may not be appropriate that all facilities are mapped on Council planning maps; however, they have not provided guidance on what may or may not be appropriate.

86. Following is the full definition from the RPS:
“Regionally significant infrastructure includes:
• pipelines for the distribution or transmission of natural or manufactured gas or petroleum
• strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001

1 www.oxforddictionaries.com
• strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989
• the national electricity grid, as defined by the Electricity Governance Rules 2003
• facilities for the generation and transmission of electricity where it is supplied to the network, as defined by the Electricity Governance Rules 2003
• the local authority water supply network and water treatment plants
• the local authority wastewater and stormwater networks, systems and wastewater treatment plants
• the Strategic Transport Network, as defined in the Wellington Regional Land Transport Strategy 2007-2016
• Wellington City bus terminal and Wellington Railway Station terminus
• Wellington International Airport
• Masterton Hood Aerodrome
• Paraparaumu Airport
• Commercial Port Areas within Wellington Harbour and adjacent land used in association with the movement of cargo and passengers and including bulk fuel supply infrastructure, and storage tanks for bulk liquids, and associated wharflines”.

87. I note that the above definition is reasonably specific as to what is included. For instance, not all roads are included but the Strategic Transport Network is, electricity distribution lines are not included, but transmission lines are, the Wellington City bus terminal and railway station terminus are included, but the sub-regional stations are not, the Wellington, Masterton and Paraparaumu airports are included, but not all airfields are. This demonstrates that the Regional Council must have thought to differentiate between utilities when compiling the definition, and in particular, consider that some were more regionally significant than others. I note that there is an unintentional error in NU3.1.2.2, where there should not be a reference to local electricity distribution network, as this is not included in the definition of regionally significant network utilities.

88. In the absence of additional guidance as to why and how telecommunications and radiocommunications generally should be considered to fall within the RPS definition or should otherwise be included within the definition of regionally significant network utilities regardless, I recommend that all submission points seeking their inclusion be rejected. Whether the RPS drafting is an oversight or not, I consider that it is not the Council’s role to fix drafting errors through individual plan changes; the Council’s role is to give effect to the RPS as it is drafted. Rather, the submitters should address this directly with the Regional Council.

89. However, in respect of Radio NZ’s submission point that its telecommunication facilities in Titahi Bay be included, I consider that this submission point can be accepted insofar as including it within the definition
of regionally significant network utilities. In particular, Radio NZ sets out in paragraphs 8 and 9 of its submission why its facilities are of regional significance, and in paragraph 11 identifies that its facilities are designated and occupy a single, discrete location that is already marked on the planning maps. I consider this provides the specificity to identify why it is of regional significant, and why it would be considered to be a strategic radiocommunications facility so as to meet the RPS definition. I therefore recommend that the bullet point sought by Radio NZ be accepted. However, to provide more specificity and certainty, I recommend that the designation reference in the Planning Maps also be included in the bullet point.

NU3.1.2.2 and NU3.1.2.3

90. For the reasons outlined above, I consider that the amendments sought by Telecom and Chorus to generically reference radiocommunications and telecommunications as examples of regionally significant network utilities be rejected.

91. In S1.5, Radio NZ seeks an additional bullet point referring to access to communications including as a civil defence tool be added to the list of benefits from regionally significant network utilities. The three existing bullet points in NU3.1.2.3 are taken directly from the RPS and adapted to the Porirua context. In respect of the benefits listed in the RPS, it includes “people have access to telecommunication services” as a fourth bullet point and “the provision of emergency services” at the end of the second bullet point in respect of essential services.

92. Again for the reasons cited above, I consider that the generic reference to communications (which covers both telecommunications and radiocommunications) is not appropriate. However, also as above, I consider that the facilities provided by Radio NZ at Titahi Bay do fall within the definition of regionally significant network utilities. I therefore recommend that the submission point be accepted in part, with the wording sought being modified as follows:

The services provided by Radio New Zealand’s communications facility at Titahi Bay, including as a civil defence tool in the event of natural disaster.

Methods

93. Method 1 as proposed reads: “Planning Maps that identify the location of both designated and undesignated regionally significant network utilities within the District”. S3.6 and S12.7 seek that “where appropriate” be added to the end, and S8.10 seeks “to the extent practicable”. I consider that it is appropriate that the method reflects NU3.1.2.2 which acknowledges that it is not always feasible to identify all regionally significant network utilities on the Planning Maps. I consider that the more appropriate wording is “to the extent practicable”. To that extent, I recommend that S9.6 be accepted in part.
94. Transpower’s submission point S10.13 seeks that the words “inappropriate” and “use and development” be added into NU4.2, so that it better reflects the particular provisions to give effect to the NPSET. This method addresses the regulatory assessment framework proposed in PC16.

95. I concur that adding those words would make NU4.2 consistent with the NPSET and the rule framework proposed in PC16 to give effect to it. However, NU4.2 also sets out the framework for other regionally significant network utilities. PC16 proposes a staged approach for managing adverse effects on regionally significant network utilities, as set out in NU3.1.2.4 with the rule framework immediately requiring any applications for subdivision that involve potential intensification in proximity to regionally significant network utilities to include an assessment and consultation with the network utility provider. As reflected in NU4.3, where rezoning would mean that the pattern and density of land use activities would change and may impact on regionally significant network utilities, new provisions will be introduced that address inappropriate subdivision, use and development.

96. I consider that the relief sought by Transpower is best addressed by differentiating in NU4.2 between the specific rule framework to give effect to the NPSET and the rule framework for managing effects on other regionally significant network utilities, as follows:

*Regulatory Assessment Framework that includes rules and matters of control and discretion to guide assessment of the construction, operation, upgrading and maintenance of network utilities, and inappropriate subdivision, use and development within National Grid Yards and National Grid Corridors and subdivision that occurs in proximity to regionally significant network utilities. The framework utilises permitted, controlled, restricted discretionary, discretionary and non-complying activity status and specific matters of control and discretion to assess and manage the actual and potential adverse effects.*

**Environmental Outcomes**

97. I consider that the relief sought by S1.13 is already adequately addressed through NU5.1 and NU5.3. What the submitter seeks is also beyond what is proposed through the regulatory assessment framework, where only the impacts of new subdivisions on regionally significant network utilities (other than the National Grid) are assessed. Further, what the submitter seeks goes beyond the provisions of s17, Duty to Avoid, Remedy, or Mitigate Adverse Effects, of the RMA, which sets out that every person has a duty to avoid, remedy or mitigate any adverse effects on the environment arising from an activity, whether or not the activity is carried on in accordance with existing use rights, a national environmental standard, a rule, a resource consent, or a designation. I therefore recommend that S1.13 be rejected.

**D3.1.2 and Chapter F F7.2**

98. In S1.24, Radio NZ are seeking that the term “proximity” is specifically defined as being within 1,000 metres of the edge of its facilities at Titahi Bay and in
S1.20 that any application for a subdivision is accompanied by evidence of discussion with Radio NZ, again within 1,000 metres of the edge of its facilities at Titahi Bay. The submission points neither explain nor provide justification for why 1,000 metres is the specific distance sought. The plan attached as Appendix 5 shows the extent of the area that would be included within a 1,000m radius from the two masts.

99. I understand why Radio NZ seeks to have this certainty defined in the Plan, as it would assist to clarify “proximity”. F7.2 provides certainty as to where there needs to be discussions held with the relevant network utility providers for the National Grid, State Highway, railway lines, and gas transmission and distribution lines, that is, the majority of regionally significant network utilities. Conversely, D3.1.2 does not provide such certainty, rather relying on the term “proximity”. The term proximity has been used to enable a case by case assessment to occur as to whether consultation is required beyond the minimum distances stipulated in F7.2, realising that in some cases, the effects of subdivisions may occur beyond these distances.

100. I have examined the area within Titahi Bay that would be impacted by the relief sought by Radio NZ being granted (refer to map in Appendix 5). While it extends partially over a Suburban zoned area built up area, most of this is already well established. However, Radio NZ has not provided justification as to why a distance of 1,000m has been provided or any evidence that the distance requested is appropriate.

101. On the basis of the information provided in the submission, I therefore recommend that S1.20 be rejected. I also recommend that S1.24 be rejected for the reasons above.

Recommendation
102. It is recommended that 3.2, 3.11, 12.2, 12.17, FS1.1.3 and FS1.14 be rejected insofar as they seek to have telecommunication and radiocommunication facilities generically included within the definition of regionally significant network utilities and referenced in NU3.1.2.2 and NU3.1.2.3.

103. It is recommended that S9.14 be accepted in part, with the words “detailed in Appendix 1 to”, being inserted after “the Strategic Transport Network”.

104. It is recommended that S1.23 be accepted in part, so that the definition sought also specifically references the existing designation.

105. It is recommended that S1.5 be accepted in part, so that the benefits from Radio NZ’s facility at Titahi Bay are included in the list.

106. It is recommended that S3.6, S9.6 and S12.7 be accepted in part and S8.10 be accepted with the words “to the extent practicable” being added to the end of NU4.1.
107. It is recommended that S10.13 be accepted in part and NU4.2 be amended to differentiate between the regulatory assessment framework relating to the National Grid and other regionally significant network utilities.

108. It is recommended that S1.13 be rejected.

109. It is recommended that S1.20 and S1.24 be rejected.

### Recommended Amendments

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<th>Submitter number</th>
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<td>Regionally significant network utilities includes:</td>
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<td>• Radio New Zealand’s radio transmission facilities at Titahi Bay, referenced K0201 on the Planning Maps.</td>
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<tr>
<td>S1.5</td>
<td>NU3.1.2.3</td>
<td>Add the following bullet point at the end of the three bullet points in NU3.1.2.3:</td>
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<td></td>
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<td>• The services provided by Radio New Zealand’s communications facility at Titahi Bay, which include being a civil defence tool in the event of natural disaster.</td>
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<tr>
<td>S10.13</td>
<td>NU4.2</td>
<td>Amend NU4.2 as follows:</td>
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iii. Stopbanks / Flood Hazard Area - NU3.2.2, NU3.3.4, NU6.1.4

Submission Point

110. In S13.1, Greater Wellington Regional Council seeks a new supporting policy requiring the location of utilities outside hazard areas or appropriate design if required to locate within them. The reason for this change is that the location of utilities should be regulated so that utilities are located outside the Flood Hazard Area (FHA) to minimise the risk to their operations in a flood event. Where they cannot be located outside a FHA, utilities should be designed to withstand the design flood event and so that they do not potentially cause adverse effects to others.

111. FS3.1 supported this in part, noting that it may not always be practicable to avoid locating network utilities in a FHA. FS4.7 was neutral, but sought that any policy be appropriately worded to recognise lifeline utilities are already required to be designed to continue operating after a civil defence event. FS5.5 and FS6.5 opposed, on the basis of an absence of specific policy wording, a blanket restriction being unreasonable and being wider than the relief sought in the rules.

112. In S13.4, GWRC seek that NU3.3.4 be amended to include a final bullet point “the placement is through a flood protection stop-bank”. The reason for this change is that there is no mention of the negative impacts of undergrounding services on or through flood protection stop-banks. Excavation and backfill in stop-banks can increase the chance of failure, and can be a serious matter with the swift rising nature of the rivers and streams in Porirua. FS5.6 and FS6.6 oppose this submission point in part, on the basis that it is unreasonable in instances where the undergrounding is in a road reserve in a stop bank (noting that roads are commonly used as utility corridors).

113. In S13.5, supported by FS3.2, GWRC seek to insert an additional rule 6.1.XX that that any upgrading involving replacement, repair or removal associated with the underground services affecting stop-banks becomes a restricted discretionary activity. The reason given is that these activities could have a negative impact on stop-banks and increase the potential for flood hazard risks if not completed properly. GWRC states that where earthworks have a potential to affect a stop-bank, compliance with GWRC guidelines and procedures is sought which cannot happen as a permitted activity. A restricted discretionary activity status would allow GWRC to be identified as an affected party where earthworks may affect a stop-bank or flood protection asset.

114. In S13.6, supported by FS3.3, GWRC seeks to insert an additional rule NU6.1.XX that the installation of any new underground services affecting stop-banks be a restricted discretionary activity, so as to ensure that the effects on stop-banks and flood hazard can be assessed for any application for new underground services.
115. In the body of their submission, GWRC sets out its position that:
- it considers that the effect of flooding on utilities or the possible effect of utilities on flood patterns needs to be addressed in the plan change. As regionally significant network utilities can both be affected by flooding and affect flood patterns, GWRC suggests that the Plan provides an appropriate link to policies and standards with natural hazards and relevant infrastructure; and
- it manages and maintains stop-banks through the Porirua City Centre which protect public and private property alike and which are often affected by utilities being placed through or along them. GWRC seeks to rationalise or remove services from GWRC-managed stop-banks, and to retain control over earthworks associated with the undergrounding of utilities or utility works which affect the stop-banks.

Assessment
116. In my opinion, there are two areas to these submission points; firstly managing activities in flood hazard areas or on or in proximity to stop-banks and secondly the management of stopbanks as an asset, to retain control over activities occurring on them.

117. In the first instance, the focus of PC16 is focused on managing the effects of network utilities and effects on network utilities. Its scope is on the management of network utilities, rather than the management of natural hazards, including hazard management devices. I appreciate that stopbank integrity is a legitimate issue. However, managing stopbank integrity cannot be simplified as an issue that is specific or limited to network utilities. In particular, utilities are not the only activity that may occur in or around flood hazard areas or stopbanks. Rather, from my perspective, it is an issue that is relevant to any activity occurring on, in, under or adjacent to any stopbank structure. Examples of other relevant activities include any earthworks, residential or non-residential activity, or development that might impact on a stopbank.

118. Councils within the Wellington Region, including GWRC, have recently embarked on a comprehensive natural hazard strategy which seeks a consistent and comprehensive approach to natural hazard management within the Region. I consider that these two submission points are more appropriately addressed through that process, where all activities that may impact on flood hazard areas, stopbanks, and other hazards can be assessed and an appropriate framework developed for their management.

119. Further, the first bullet point under NU3.3.4, which provides for undergrounding not to be required if there are natural or physical features or structures that makes underground placement impractical or unreasonable, would encompass sufficient scope for undergrounding not to be required through a stopbank, by way of a resource consent application. While I appreciate that this does not direct that there is no undergrounding through...
stopbanks, it provides an avenue for GWRC to negotiate with any network utility operator as to more appropriate means to site network utilities on or in proximity to stopbanks.

120. In respect to GWRC’s wish to retain control over activities occurring on stopbanks, I understand from an informal discussion with GWRC that a concern is that by requiring the underground placement of network utilities and providing for them as a permitted activity, that those network utility operators would just go ahead and do so without getting any other necessary approvals or liaising with GWRC. However, this is not different to any other situation where a network utility operator wishes to place utilities underground; they would still need to obtain the approval of the landowner, private or public.

121. I do not consider that policy direction or rules in a District Plan are the most appropriate or efficient means to address this concern. In my opinion, the concerns raised are more as an asset owner wanting to control activities occurring on the stopbank, rather than for resource management reasons. There are alternative and more appropriate options available to GWRC in this regard, such as, but not limited to, designating stopbanks as a requiring authority or entering into easements with the landowners (if not already owned by GWRC).

122. The use of PC16 to achieve the outcomes sought by GWRC would appear to be not the appropriate means to do so, and would be inefficient and effective compared to other options, given:
   • It only covers a limited range of activities that might affect stopbank integrity;
   • It appears to give or leave decision making authority on the impacts of activities on stopbank integrity in the hands of a third party who is not the asset owner (GWRC); and
   • It potentially subjects applicants to what might be a costly and time consuming resource consent process, where the ultimate call for deciding whether an activity can or cannot occur should rest with the stopbank asset owner.

Recommendation

123. It is recommended that S13.1, S13.4, S13.5, FS3.2, S13.6 and FS3.3 be rejected.

124. It is recommended that FS3.1 and FS4.7 be rejected in part.

125. It is recommended that FS5.5, FS5.6, FS6.5 and FS6.6 be accepted.

126. It is recommended that FS5.7 and FS6.7 be accepted in part.
iv. Avoiding, Remediing and Mitigating Adverse Effects - NU3.3.1, NU3.3.5.1, NU3.3.5.2

Submission Points

127. Several submitters sought changes to the wording of NU3.3.1.

128. In particular, S1.8 (Radio NZ) seeks that the word “any” is omitted, and the wording “where it is practicable to do so” added to the end, supported by FS4.8 (Transpower) and FS2.4 (Vector).

Ensure that network utilities are designed, located, developed, constructed, upgraded operated and maintained to avoid, remedy or mitigate any actual or potential adverse effects on the environment, where it is practicable to do so.

129. S3.4 (Telecom) and S12.4 (Chorus) seek that the wording “as far as practicable” is added to the end, supported by FS4.9 (Transpower):

Ensure that network utilities are designed, located, developed, constructed, upgraded operated and maintained to avoid, remedy or mitigate actual or potential adverse effects on the environment, as far as practicable.

130. S10.10 (Transpower), supported by FS1.6 (Radio NZ), seeks the wording “recognising the technical and operational constraints of regionally significant network utilities” at the end.

Ensure that network utilities are designed, located, developed, constructed, upgraded operated and maintained to avoid, remedy or mitigate actual or potential adverse effects on the environment, recognising the technical and operational constraints of regionally significant network utilities.

131. S3.4 (Telecom) and S12.4 (Chorus), supported by FS1.7 and FS1.8 (Radio NZ), seek that NU3.3.5.1 be amended as follows:

However, in some cases, it might not be entirely possible to avoid, or remedy all adverse effects associated with a network utility due to their technical and operational constraints, meaning that there will be some level of adverse effect on the surrounding environment that require mitigation.

132. S3.4 (Telecom) and S12.4 (Chorus), supported by FS1.9 and FS1.10 (Radio NZ), seek that NU3.3.5.2 be amended as follows:

Policy 3.3.1 recognises the importance of managing the design, location, development, upgrading, construction, operation and maintenance of network utilities and requires that any potential adverse effects arising from network utilities are avoided, remedied or mitigated as far as is practicable, recognising their technical and operational constraints.

S3.4 is also supported by FS4.11 (Transpower).

133. The reasons given for these requested amendments are:

- That due to their constraints, it is not always possible to avoid, remedy or mitigate adverse effects; particularly with the size of some facilities;
• The requirement to avoid, remedy or mitigate adverse effects is inconsistent with the acknowledgement elsewhere of the necessity of network utilities and their constraints;
• Amendments would provide consistency and a balanced approach.

Assessment
134. The submitters are concerned to ensure that NU3.3.1 is not read as an absolute, and that not all adverse effects need to be avoided, remedied or mitigated in all cases. They also seek to ensure that technical and operational constraints are recognised.

135. In respect of the latter point, NU3.2.1 already recognises that there are technical and operational requirements and constraints for network utilities. Given this, and that all policies are to be read together, I do not consider it is necessary to amend NU3.3.1 to replicate what NU3.2.1 already provides for. Any decision-maker will consider any matter against the relevant policies together.

136. In respect of the first point, s5(2)(c) of the RMA sets out that any adverse effects on the environment are to be avoided, remedied or mitigated. NU3.3.1 and NU33.5.1 and 3.3.5.2 reflect this. In the first instance, an applicant should aim to meet s5(2)(c) of the RMA, and avoid, remedy or mitigate any adverse effects of activities on the environment. Where all adverse effects cannot be avoided, remedied or mitigated, the resource consent process enables decision makers to consider matters where all or any adverse effects resulting from an activity cannot be avoided, remedied or mitigated and make judgments in terms of those particular circumstances alongside the policy framework. NU3.2.1 already establishes that there are technical and operational constraints associated with network utilities and as set out in the last paragraph, all policies need to be considered together. I consider that the amendments sought by the submitters would weaken the policy framework and lessen the onus in the first instance for applicants to avoid, remedy or mitigate adverse effects. Adding “as far as practicable” or similar also has the potential to not only complicate but also duplicate matters that have already been provided for. I do not consider the amendments sought are necessary.

Recommendation
137. It is recommended that S1.8, S3.4, S10.10, S12.4, FS1.6, FS1.7, FS1.8, FS1.9, FS1.10, FS2.4, FS4.8, FS4.9 and FS4.11 be rejected.

v. Policies 3.3.2 – 3.3.4, 3.3.6, Explanations 3.3.5.1 – 3.3.5.3, 3.3.5.5

Submission Points
138. In S6.1, 2Degrees seeks that NU3.3.2 and NU3.3.5.3 is amended to ensure that Regulation 4 of the NESTF is referenced. The submitter notes that the NESTF has two functions, with Regulation 4 providing permitted standards for
radiofrequency emissions and Regulations 5 – 9 providing performance standards for equipment in the road. The submitter seeks that explicit reference is made to Regulation 4.

139. In S13.3, GWRC seek that the wording of NU3.3.3 be retained, and that the wording of the policy or explanation should recognise that in some cases co-location should not be sought. GWRC outlines that it supports the principle of co-location but there is a potential risk of co-location when utilities are located on existing bridges or suspended below a bridge, where they are likely to catch debris and become vulnerable to damage, or constrict flood flows. GWRC seeks to remove services from GWRC-managed stop-banks and that the policy wording should recognise that in some cases co-location should not be sought.

140. In S10.12, Transpower seek that NU3.3.4 be amended to include the words “or economic” in the second bullet point to read:

- there are natural or physical features or structures, or technological or economic and operational constraints that makes underground placement impractical or unreasonable;

for the reason that this would reflect that the economics associated with undergrounding a line is a significant constraint that should be considered.

141. In S12.6, Chorus seek that NU3.3.4 and NU3.3.5.5 be amended to specifically reference that it is only new network utilities that are to be undergrounded and to also include the addition of an overhead line as a reason why an additional overhead lines may be provided for in particular defined situations. Chorus are concerned that NU3.3.4 as proposed does not distinguish between new or works associated with existing network utilities, noting that it is unreasonable to apply the policy to existing works. Chorus have also sought amendments to the definition of minor upgrading to allow the addition of overhead lines to existing support structures.

Assessment

142. In respect of 2Degrees submission point S6.1, I consider that providing explicit reference to Regulation 4 in NU3.3.2 is not appropriate, as this this policy addresses regulations and standards generally rather than specifically. However, I consider that it is appropriate to reference Regulation 4 in NU3.3.5.3, as this explicitly does specifically address the NESTF.

143. In respect of S13.3 by GWRC, NU3.3.3 as proposed seeks to enable, not require, co-location and only where it is efficient or practicable. The explanation sets out that co-location is not always possible and there are no rules in PC16 which require co-location to occur. The only rules in PC16 that are specifically relevant to co-location are those for telecommunication and radiocommunication facilities, which allow a greater height for co-location, and this would only occur where those seeking to co-locate agree to do so. In other circumstances, it is up to the individual network utility operators in
conjunction with other network utility operators to determine the most suitable location for their utilities and whether co-location is efficient and practicable. The circumstances which GWRC set out are reasons where it may not be efficient or practicable to allow co-location, and where they may not agree for co-location to occur. I consider that no amendment is necessary to either the policy or the explanation.

144. In respect of S10.12 by Transpower, I consider that the term “technological or operational constraint” already encompasses economic constraints. Further, any economic constraints would be the subject of any assessment under s104, subject to Part II. I therefore consider this amendment is unnecessary.

145. I concur with the first request for change in S12.6 that the addition of the word “new” to both NU3.3.4 and 3.3.5.5 would assist to make it clear that it is only new network utilities that are required to be undergrounded. I agree that it would be unreasonable to require existing network utilities to be undergrounded. I have addressed the matter of the requested amendment to the definition of minor upgrading in X.X, where I have recommended that the request be rejected.

Recommendation

146. It is recommended that S6.1 be accepted in part, and NU3.3.5.3 be amended to specifically refer to Regulation 4 of the NESTF.

147. It is recommended that S13.3 be rejected.

148. It is recommended that S10.12 be rejected.

149. It is recommended that S12.6 be accepted in part, insofar as it seeks to specifically reference that it is only new network utilities that are to be undergrounded, and NU3.3.4 and NU3.3.5.5 be amended accordingly. It is recommended that the reference to the addition of a line to an existing structure as an example of aboveground lines be provided for be rejected for the reasons set out in paragraphs 322 – 324 of this report.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
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<tbody>
<tr>
<td>S6.1</td>
<td>NU3.3.2 NU3.3.5.3</td>
<td><strong>NU3.3.5.3</strong>&lt;br&gt;<em>Policy 3.3.2 recognises that some network utilities may adversely affect health and safety. For example, telecommunication facilities generate radio frequency emissions which may have detrimental effects on health. Any potential health effects arising from radiofrequency emissions are addressed by Regulation 4 of the Resource Management (National Environmental Standards for...</em></td>
</tr>
<tr>
<td>S12.6</td>
<td>NU3.3.4</td>
<td>Require the underground placement of new network utilities unless</td>
</tr>
<tr>
<td>S12.6</td>
<td>NU3.3.5.5</td>
<td>Policy 3.3.4 requires the underground placement of new network utilities unless particular circumstances apply.</td>
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C New Network Utilities Chapter – Rules, Standards and Matters of Control and Discretion

i. Removal, maintenance and upgrading rules NU6.1.1, NU6.1.2 and Standards NU7.6 (Earthworks), NU7.7 (Vegetation), NU7.8 (Noise)

Submission Points

150. In S8.12, Powerco seeks that the standards relating to earthworks (NU7.6), vegetation (NU7.7) and noise (NU7.8) be deleted from the rules addressing the removal (NU6.1.1) and operation and maintenance (NU6.1.2) of existing network utilities. S8.12 is supported by FS2.6 and FS2.7 from Vector.

151. Powerco’s stated concern is that reference to these standards, and the earthworks standards in particular, will result in resource consent being required for straightforward maintenance activities where a gas pipeline is in excess of 1.5m deep (as per NU7.6.2(b)). Powerco notes that those parts of the gas network that are within the road reserve are already subject to Corridor Access Requests under the National Code of Practice for Utility Operators’ Access to Transport Corridors and earthworks controls relating to any site controlled by the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

152. Although Powerco requests the deletion of all standards associated with NU6.1.1 and NU6.1.2, they also state that “the vegetation and noise standards can be accepted on the basis of the extent and nature of the vegetation provisions and need for utilities not to result in any on-going noise issue through their operation”. Reflective of this position, no specific evidence has been provided as to why the vegetation and noise standards are considered problematic and sought to be deleted.

153. FS2.6 and FS2.7 support the requested deletion of reference to the standards for the same overall reason, i.e. straightforward maintenance would not be a permitted activity. No reference is made to the applicability of the standards to ‘removal’ or ‘operation’, nor specific evidence presented as to why deletion of the vegetation and noise standards is sought.

Assessment

154. There are several relevant matters to the relief sought. Firstly, NU6.1.1 and NU6.1.2 deal with removal, operation and maintenance of existing network utilities, whereas the submission and further submissions are focussed
primarily on maintenance activities. Secondly, as noted above, SS8.12 is inconsistent in that it acknowledges the vegetation and noise standards as being appropriate, but still seeks their deletion. Thirdly, the further submissions provide no additional justification for the relief sought, meaning there is no evidence presented by either party as to why the noise and vegetation standards are considered problematic as they apply to either removal, operation or maintenance activities.

155. Regarding the noise standards, NU7.8 cross-references to the standards that apply within different zones as set out within the respective chapters of the Plan. I note that there is some variation in these chapters as to the noise standards that apply, including whether provision is made for noise associated with temporary activities (e.g. removal and maintenance) as compared to on-going noise (such as that associated with operation). Specifically, in all zones other than those classed as ‘Rural’ and ‘Judgeford Hills’ there are standards that apply to ‘construction, maintenance and demolition’ activities, which are generally less prescriptive than the standards that apply to other types of activities.

156. Given that Powerco has not provided justification for the relief sought in respect to noise, it is not possible to be definitive about their particular issue of concern. However, to the extent that the submission acknowledges that it is appropriate to have operational noise limits, it is assumed that, in line with Vector’s further submission, it is the noise limits that may apply during temporary activities that are problematic.

157. In any event, in the absence of any evidence on behalf of Powerco or Vector to demonstrate that the noise limits that apply to the ‘construction, maintenance and demolition’ (the latter term being akin to ‘removal’ as per NU6.1.1) of network utilities (contained in the Plan chapters relating to the City Centre, Industrial, Suburban, Recreational and Public Open Space Zones) are inappropriate, I consider there is no basis on which to grant the relief sought. The same conclusion applies in respect of the Rural and Judgeford Hills Zones, albeit that there is currently no recognition made for noise associated with ‘construction, maintenance and demolition’ activities. I consider that it is appropriate to have noise limits in these zones.

158. Although I do not believe it was the intention of either Powerco or Vector, the relief sought in respect of NU6.1.2 would have the consequence of removing any noise limits that apply to the operation of existing network utilities. I consider that this would be inappropriate as it would potentially give rise to significant adverse effects on the environment.

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2 In the City Centre, Industrial and Suburban zones, daytime (7am-10pm) noise limits associated with construction, maintenance and demolition are not quantified; rather s16 of the RMA (duty to avoid unreasonable noise) is specified.
159. In respect to the relief sought to delete the vegetation standard, there are relatively limited circumstances under which those standards would apply.

160. In particular, NU7.7.1 relates to the destruction of native vegetation in the Rural zone, which applies only where certain area and vegetation height criteria are exceeded (I note that the standard is identical to that contained in ‘Chapter D4 Rural Zone Rules and Standards’ of the Plan). As Powerco has stated in its submission, the majority of its gas network is located within the road reserve (see Attachment A in their original submission), which I consider will further limit the circumstances under which consent would be required on the basis of non-compliance with the vegetation standard.

161. In any event it is considered appropriate that the Council retain control over activities that would result in such destruction of native habitat, which is reflective of the importance accorded to such vegetation in Objective C4.2 and Policy C4.2.4 in ‘Chapter C04 Rural Zone’ of the Plan. The costs associated with occasional circumstances where resource consent may be required for vegetation clearance are appropriate on the basis that the potential adverse effects and environmental costs of vegetation clearance are potentially high.

162. NU7.7.2 applies to disturbance of vegetation on an ecological site within the Recreation or Public Open Space Zones, with a cross-reference to the standards specified in Sections D4B.2.1 and D4C.2.1, respectively, of the Plan. The cross-referenced Plan Sections permit vegetation disturbance on such sites where it is “…necessary for the current operation and maintenance of existing infrastructure, including roads, tracks, drains, stream or river access, fire water points, network utilities, structures, fencelines and firebreaks” (my emphasis added). Consequently, the cross-reference in NU7.7.2 to D4B.2.1 and D4C.2.1 is considered superfluous as those rules already permit disturbance of vegetation associated with the operation and maintenance of existing network utilities (cross reference to another provision in the Plan that permits the same activity is unnecessary).

163. However, the disturbance of vegetation on an ecological site associated with the removal of existing network utilities (which is a permitted activity under Rule NU6.1.1 subject to meeting NU7.7.2) is not provided for in Sections D4B.2.1 and D4C.2.1, which are cross-referenced standards in NU7.7.2 (D4B.2.1 and D4C.2.1 only permit vegetation disturbance on an ecological site associated with operation and maintenance of network utilities). This effectively means that consent is required under NU6.1.5 where such removal is to occur in an ecological site (vegetation clearance associated with removal of network utilities is not provided for in D4B.2.1 and D4C.2.1 and therefore does not meet NU7.7.2). This distinction is considered appropriate on the basis of the likely scale and nature of potential effects that may be associated with the removal of network utilities, as compared to those associated with their maintenance or operation.
164. Given the above, I consider that in relation to the vegetation standards, NU6.1.1 should remain as proposed and NU6.1.2 should be amended to only refer to NU7.7.1, rather than NU7.7 generally.

165. In terms of the deletion of earthworks standards, I accept in part the arguments made and do not consider it necessary that network utility removal and maintenance activities (and operation, albeit that it not strictly relevant) are subject to the full suite of earthworks controls under NU7.6. In particular, the construction and installation of new underground utilities (with some limited exceptions) are a permitted activity (NU6.1.14) subject to compliance only with NU7.6.1 (relating to the installation and maintenance of erosion and sediment control measures). However, having regard to the potential effects on the environment, I consider it reasonable that removal and maintenance works still be subject to the controls under NU7.6.1. Therefore I recommend that the removal and maintenance (and operation) of network utilities should not be subject to NU7.6.2, only to NU7.6.1. As a consequential amendment, I recommend that NU6.1.14 be amended to remove the reference to ‘operation and maintenance’ of new underground network utilities, as these two activities are already captured by NU6.1.2. Once any new underground network utility has been constructed, installed and developed, it will become an existing network utility, and covered by NU6.1.2.

166. As discussed further in paragraphs 264-265 of this report, dealing with submissions on earthworks NU7.6, I do not consider the reference in S8.12 to Corridor Access Requests under the National Code of Practice for Utility Operators’ Access to Transport Corridors and earthworks controls relating to any site controlled by the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 to be of relevance in this context.

**Recommendation**

167. It is recommended that S8.12 and FS2.6 and FS2.7 be accepted in part and that NU6.1.1 and NU6.1.2 be amended as shown below.

**Recommended Amendments**

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
</tr>
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| S8.12, FS2.6 and FS2.7 | NU6.1.1 Standards | Earthworks: 7.6.1  
Vegetation: 7.7  
Noise: 7.8 |
| S8.12, FS2.6 and FS2.7 | NU6.1.2 Standards | Earthworks: 7.6.1  
Vegetation: 7.7.1  
Noise: 7.8 |
| S8.12, FS2.6 and FS2.7 | NU6.1.14 | The construction, installation, and development, operation and maintenance of new underground network utilities, except for:  
- Electricity transmission lines above 110kV; and |
• Gas distribution and transmission pipelines at a pressure exceeding 2000 kilopascals.

ii. Radiocommunication and Telecommunication Masts, Antenna and Lines – Rules NU6.1.15, NU6.1.16, NU6.1.17, NU6.1.18, NU6.1.25 and Standards NU7.2.2, NU7.2.3 (Height), NU7.3.1, NU7.3.2, NU7.3.3, NU7.3.4, NU7.3.5 (Size and Diameter), NU7.9 (Matters of Discretion)

Submission Points

NU6.1.15, NU7.3.3 and NU7.3.4

168. In S3.8 and S12.12, Telecom and Chorus respectively seek identical changes to the size and diameter standards referenced in NU6.1.15 (7.3.1, 7.3.2, 7.3.3 and 7.3.4). I note that these submission points also purport to relate NU6.1.16 but no specific relief is sought to this rule.

169. Specifically, the submitters seek a horizontal diameter circle of 5m for antennas attached to masts in the Rural Zone under NU7.3.3 and NU7.3.4. As notified, NU7.3.3 and NU7.3.4 provide for a horizontal diameter circle of 1.2m where there is only one provider involved, and 750mm where there are two or more providers. The submitters’ position is that antennas attached to masts of 5m diameter are commonly deployed in rural areas, which can visually absorb these larger structures.

170. A similar change is sought to NU7.3.4 as it relates to the Industrial Zone. Specifically, they seek a horizontal diameter circle of 5m for antennas attached to masts involving two or more providers (i.e. the same horizontal diameter circle as permitted for one provider). The submitters’ position is that the proposed 750mm horizontal circle for two or more providers in NU7.3.4 is likely to be counterproductive at encouraging co-location in the Industrial zone as it is unlikely that a permitted 5m diameter arrangement allowed with one provider would be replaced by a more restrictive 750mm diameter option (notwithstanding the additional 5m height allowance for two or more providers).

NU6.1.16 and NU7.2.2

171. In S6.6, in respect of NU6.1.16 and NU7.2.2, 2Degrees seeks an increase in mast height from 15m to 18m within Suburban Shopping Centre Areas, where there are two or more providers. 2Degrees’ rationale is to allow for vertical separation between equipment to avoid interference and ensure operational autonomy (masts used by a single provider are restricted to the same 15m height). The submitter notes that the relief is especially justified given the diameter of such a mast would be restricted to <600mm above 6m and antenna would be restricted to being within a horizontal circle of 750mm (by NU7.3.2 and NU7.3.4, respectively).

NU6.1.17
172. S3.9 and S12.13 from Telecom and Chorus, respectively, are identical in the change they seek to NU6.1.17. Specifically, they seek that masts and associated antennas up to 12m in height be a permitted activity in the Suburban and Open Space Zones. I note that although not explicitly sought in either submission, this would in effect be achieved through expanding the scope of NU6.1.15 to include masts within these Zones and adding NU7.4.4 to the standards that apply.

173. Telecom and Chorus consider that a restricted discretionary activity status is unreasonable given the essential nature of telecommunications, and the increasing technical requirement to locate telecommunication masts close to the areas that they serve. They note that the relief sought is consistent with the provision in the Proposed Kapiti District Plan and less than the 13.5m permitted activity provision in the Decisions version of the Proposed Horowhenua District Plan. The submitters also note that the restriction on utility masts in the Open Space Zone is inconsistent with the provision for new above ground lines in that Zone, which permits support poles up to 12m in height.

174. S6.3 from 2Degrees also relates to NU6.1.17. Two alternative reliefs appear³ to be sought: either that masts with or without antennas in Suburban and Open Space Zones be a permitted activity; or alternatively that new, more lenient restricted discretionary standards be specified (the submitter does not specify what such standards should be).

175. The rationale for the first of these reliefs is that:
   - Given the large extent of Suburban zoning, blanket restricted discretionary status is unnecessarily restrictive;
   - Customer growth and consumer usage trends are in combination placing an ever increasing demand to provide services to residential and suburban areas. Technological constraints mean that facilities are increasingly required within these areas, close to where the services are being used;
   - It is important to retain permitted activity status for mast structures, to allow the submitter to plan and construct its Porirua network in the most effective and efficient way;
   - There are many areas within Open Space Zones that provide environments capable of effectively absorbing a mast structure, or indeed a replacement of an existing mast type structure (such as a flood light pole); and
   - Council discretion as landowner of these environments would ensure a suitable balance between provision for network utilities and good environmental outcomes.

³ The submission does not explicitly state that they are alternative reliefs, but from the context it has been interpreted that they are either / or.
176. The rationale for the alternative relief that there be more lenient restricted
discretionary standards specified as applying to NU6.1.17, is that:
- The same standards that apply to NU6.1.17 are applied as permitted
activity standards in NU6.1.16, including a number of standards that are
applied across all zones (such as NU7.3.1, NU7.3.2 and NU7.3.4), which
causes confusion;
- The standards are very restrictive (the same or stricter than other
permitted activity standards), especially considering that Council will
have discretion over the proposal;
- The standards are referred to as ‘permitted activity standards’ elsewhere
in the chapter.
- Given the restrictive nature of the restricted discretionary standards for
the Suburban and Open Space Zones, a likely scenario for such proposals
is discretionary activity status under Rule NU6.1.12. The submitter
considers that restricted discretionary activity status provides the most
suitable framework to deal with the vast majority of mast applications
for resource consent, allowing for sufficient consideration of relevant
matters. The submitter notes that there are 13 matters of discretion
reserved for mast applications made under 6.1.17, and considers these
matters more than sufficient.

177. 2Degrees also notes under S6.3 that the combination of standards NU7.3.1 –
NU7.3.4 impose a number of controls over the diameter of mast structures
and attached antenna, which encourages a slim profile and has the effect of
reducing potential visual impacts associated with bulk at height. The
submitter states that as such, slim mast structures should be subject to more
lenient height standards (such standards are not specified). However, it is
not clear from the submission the way in which it is intended that this
statement be reflected in terms of relief sought, e.g. whether it should be
reflected in the more lenient restricted discretionary standards that are
sought in respect of NU6.1.17, or whether more lenient height standards
than those that currently apply should be specified as part of a permitted
activity under NU6.1.15.

NU6.1.18, NU7.3.5 and NU7.9

178. S3.10 and S12.14 from Telecom and Chorus, respectively, are again identical
in the changes sought to NU6.1.18. Firstly, they seek that NU7.2.3 be
amended to read:

“Maximum height of an antenna and support structure, measured from the
highest part of the building to which it is attached, to a building.”

in order to clarify way in which the height measurement is to be taken.

179. Secondly, they seek that NU7.3.5 be amended to provide for antennas of
1.3m² in area in the Suburban Shopping Centre Area, Rural (including
Judgeford) and Open Space and Recreation Zones. In the case of the
Suburban Shopping Zone, I note that this is the area that was intended to
apply, but this was not clear in PC16 as notified due to a typographical error. In the case of the other Zones, an area of 0.8m$^2$ is proposed in PC16. The submitters seek this change for the reason that the proposed areas are unduly restrictive in terms of commonly deployed antenna sizes, and the level of visual effect generated given the location of the antennas on top buildings, or fixed to the side.

180. The third change sought under these submission points is for the deletion of NU7.9 so that it does not apply to NU6.1.18. The submitters consider that applying the height recession plane to building mounted antennas is unnecessary in terms of the size and bulk of the antennas and their location either attached to the side of buildings or on top, with little potential to generate adverse shading or dominance effects.

**NU6.1.25**

181. In S12.10, Chorus seeks to amend NU6.1.25 which classes new or additional above ground lines that are not permitted, restricted discretionary or discretionary activities, as non-complying in all Zones, so that any new or additional above ground lines are a discretionary activity. Chorus considers that a non-complying activity status is onerous and unreasonable in the context of the essential nature of telecommunication services. The submitter also notes that there is no provision for new or additional above ground telecommunication lines as a discretionary activity.

**Analysis**

**NU6.1.15, NU7.3.3, NU7.3.4**

182. I consider that the amend sought in S3.8 and S12.12 to NU7.3.3 and NU7.3.4 to increase the horizontal diameter circle for antennas attached to masts in the Rural Zone to 5m, would be inappropriate. While I appreciate that 5m may be appropriate in some rural environments, I do not consider that it would be appropriate in the Porirua rural environment which has particular characteristics that differentiates it from other rural environments through the country. In particular, the majority of Porirua’s rural environment is visible from its urban areas, is not in large landholdings and has a high visual catchment. I consider that this affects the Rural Zone’s ability to visually absorb the bulk associated with the 5m diameter sought. While I appreciate that there are a number of large masts already in existence within the City, I do not consider that there is the capacity to accommodate more masts of such bulk as a permitted activity.

183. However, I consider that S3.8 and S12.12 could be accepted in part by increasing the horizontal diameter circle to be 1.2m as it applies to antennas attached to masts for two or more providers, which is the diameter that applies to single masts. I consider that the rural environment would have the absorptive capacity for higher mast structures with an antenna diameter of 1.2m. I consider that this would offer more of an incentive for providers to co-locate their antennas and is keeping with NU3.3.3 and NU3.3.5.4.
184. This rationale also applies to the request to increase the horizontal diameter for antenna to 5m in the Industrial Zone where there are two or more providers utilising a mast (as per NU7.3.4). I consider that the character and amenity of the City’s Industrial Zones mean that they can absorb the potentially greater bulk associated with having more antenna on a higher mast without any significant visual impact.

185. I therefore recommend that NU7.3.3 remain unchanged, but that NU7.3.4 be amended to allow for increased horizontal diameter for antenna attached to masts where there are two or more providers in the Rural and Industrial Zones to 1.2m and 5m respectively.

**NU6.1.16, NU7.2.2**

186. I accept the rationale given in S6.6, which requests that the height of masts be increased to 18m in a Suburban Shopping Centre Area where a mast is to be utilised by two or more providers (through amendment to NU7.2.2). In particular, I consider that increasing the mast height is likely to incentivise the co-location of antenna in keeping with the policy framework, while ensuring that there are no increases to either mast diameter or horizontal diameter for antenna. As noted by the submitter, these other restrictions under NU7.3.2 and NU7.3.4 assist to mitigate the visual impact of an increase in mast height. Further, in conjunction with the required setbacks from boundaries in NU7.4, I consider that a 3m increase in height would not have a significant visual impact and while there may be some increased visual impact, such is on balance preferable to a greater number of masts of slightly lesser height (as may be the case if co-location was not technically feasible and each provider has its own mast). I also note that there are a limited number of Suburban Shopping Centre Areas within the City and as such it is unlikely that there will be a proliferation of 18m tall masts through the City as a result of such an amendment. I therefore recommend that S6.6 be accepted.

**NU6.1.17**

187. I do not support S3.9, S12.13 and one of the relief options in S6.3, which all seek that masts with or without associated antennas in Suburban and Open Space Zones be permitted activities. While I do not dispute the importance of telecommunications to the community, I do not consider that this importance, the technical need to locate masts in close proximity to the areas that they serve, nor the large extent of Suburban zoning, are sufficient justification to outweigh the need to assess proposals on a case by case basis to ensure that any potential impact on visual amenity and other relevant amenity considerations are appropriately assessed and managed. Further, the submitter has not provided any examples of or justification as to what the technological constraints are that they refer to.

188. S3.9 and S12.13 use permitted activity status within the proposed Kapiti and Horowhenua District Plans as justification for a permitted activity status
within Porirua. Firstly I note that the Kapiti Plan is at an early stage of the review process and has effectively been put on hold while the Council determines how to progress with it, with no hearings scheduled. Secondly, I do not consider this is sufficient to justify the change sought as each district is different in terms of receiving environment and community concerns and accordingly it is acceptable for those communities to decide to regulate activities in different ways. For instance, I note that the current provisions are similar with those in the Wellington City District Plan and less onerous than in the Hutt City District Plan. As outlined in the s32 report, residents of the City have expressed concern about the existing permissive nature of the Plan controls around telecommunication facilities, particularly cell-sites, and this provision is reflective of those concerns.

189. Regarding the point that there is an inconsistency in the activity status of masts compared to support poles associated with above ground lines in the Open Space Zone, I consider there to be three particularly relevant aspects. Firstly, in terms of visual impacts, I note that if masts were a permitted activity (under NU6.1.15), in addition to the same 12m height limitation, they could be up to 600mm in diameter above 6m in height and have antenna protruding in a circle of a 750mm diameter. As such, I consider there to be greater potential for adverse visual impacts, as compared to support poles for above ground lines (below 110kV) which are less bulky in nature and generally of a lower height. Further, there is likely to be a lower demand for new distribution lines within the Open Space Zone, as compared to within a Suburban Zone which would generate demand through residential growth and intensification.

190. More importantly, while I do not dispute the point made by 2Degrees that there are many areas within the Open Space Zone that could effectively absorb a mast structure, there are also many areas where it would not be appropriate for a mast structure to be located as a permitted activity. The Open Space Zone covers a wide range of environmental settings meaning that it is not possible, in my opinion, to provide for a blanket permitted activity status for activities that are likely to have more than minor adverse effects in some locations. The nature of the use, the varying sizes of open space areas, the proximity to Suburban Zones and the topography could all affect the appropriateness of a mast being located there and the effects it may generate.

191. The Open Space Zone has been differentiated from the Recreation Zone, in that the latter is more intensively used for active activities, such as sports grounds which are more likely to include structures such as light poles, rugby and soccer goals, grandstands and the like, and as such are more absorptive of mast structures than the more open nature of the Open Space zones which as a whole do not include such active activities with associated structures. I consider that the Open Space Zone can also be differentiated from the Rural Zone, where it is proposed that masts be permitted. In particular, the Open
Space zone is focussed on public open space where there is an expectation of continued amenity by the public. It is not a working environment which is the case of the Rural Zone, where you expect structures supporting rural activities.

192. In terms of the point that the Council, as landowner of public open space, will be able to exercise discretion (presumably in terms of whether it agrees to a proposed mast location), I do not consider that this is an appropriate mechanism to rely on to control environmental effects which fall under the RMA. Such reliance would offer no certainty that all the appropriate considerations would be taken into account, would not allow public participation if there was an adverse effect on neighbouring property owners, and would provide no certainty of consistent environmental outcomes. I also note that the Council may not always be the landowner of Open Space zoned land.

193. Regarding the alternative relief sought by 2Degrees in S6.3 that more lenient restricted discretionary standards be specified, I note that the standards set out in NU7 are not intended to just be permitted activity standards, and are not titled as such. As set out in Table NU6, these standards set the parameter for an activity. For example, masts are a permitted activity under NU6.1.15 if they comply with the standards set out in the column titled “standards” and it is intended under NU6.1.17 that masts are a restricted discretionary activity in the Suburban and Open Space Zones if they meet the standards specified in the column titled “standards”.

194. The purpose of having particular standards applying to masts with or without antenna in the Suburban and Open Space Zones was to provide certainty about what would generally be considered to be acceptable and appropriate heights, sizes and diameters in these Zones. Where an applicant seeks to exceed these, the activity would become a discretionary activity. I note that the matters of discretion relevant to this activity do not include NU9.3 and NU9.4, which relate to the heights of mast and antenna. I therefore do not support the relief sought in S6.3 in this regard.

195. As noted previously, in S6.3 2Degrees states that slim mast and antenna structures (subject to NU7.3.1 – NU7.3.4) should be subject to more lenient height standards. Also as noted above, it is not clear how the submitter intended that this statement be reflected in terms of the relief sought in respect of NU6.1.17. In any event, and particularly in the absence of any evidence from the submitter as to what ‘more lenient height standards’ would be appropriate, I do not recommend any changes to PC16.

196. In light of the above, I recommend that these submission points be rejected.

**NU6.1.18, NU7.2.3, NU7.3.5, NU7.9**
197. I agree with the relief sought under submissions S3.10 and S12.14 in respect of NU7.2.3; amending the wording will clarify where it is intended that the maximum height for an antenna and support structures be measured from.

198. In terms of the relief sought to NU7.3.5 to increase the diameter of antenna in the Suburban Shopping, Rural (including Judgeford), Open Space and Recreation Zones, I recommend that these be rejected, except in relation to the Suburban Shopping Centre Areas. These areas were set on the basis of achieving a level of consistency with the Wellington City District Plan and also ensuring that any antenna did not dominate the structures to which they were attached and reduce visual amenity to the surrounding area. I note that the Rural and Recreation Zones could have more capacity to absorb an increased area of 1.3m² should the submitters provide justification as to why an increased area is necessary. However, the submitters have not provided evidence as to why an increased area is sought.

199. In respect of the area for antenna in the Suburban Shopping Centre Areas; as noted above, I consider it is appropriate that it be clarified that the figure is 1.3m², as this is what was intended and was a typographical error in PC16 as notified.

200. Regarding the proposed deletion of NU7.9 from applying to NU6.1.18, I concur that the recession plane standard could be deleted, but only on the basis of the dimensions in NU7.3.5 being retained. The dimensions in NU7.3.5 have been designed to ensure that any antenna do not dominate the structures to which they are attached and reduce visual amenity to the surrounding area.

**NU6.1.25**

201. Regarding the change sought under S12.10 to NU6.1.25 such that new or additional above ground lines that are not permitted or restricted discretionary activities would be discretionary activities (rather than non-complying), I note that the objective and policies framework are clear that new overhead lines are not encouraged in zones other than the Rural, Judgeford Hill and Open Space Zones. Non-complying activity status is consistent with the objective and policy framework and is also consistent with work undertaken by the Council in 2002 on the effects of overhead lines within the City. This earlier work resulted in the current plan provisions, whereby new lines are a non-complying activity and is the approach proposed to be continued through PC16. I do not consider there is justification as to amend the existing plan provisions in this regard. I therefore recommend S12.10 be rejected.

**Recommendation**

202. It is recommended that submissions S3.8 and S12.12 be accepted in part and that NU7.3.4 be amended to allow increased horizontal diameter for antenna
attached to masts in the Rural and Industrial Zones where such masts are used by two or more providers.

203. It is recommended that S6.6 be accepted.

204. It is recommended that S3.9, S12.13 be rejected and S6.3 be rejected insofar as it sought the same relief.

205. It is recommended that S6.3 be rejected.

206. It is recommended that S3.10 and S12.14 be accepted in part and it be clarified where height measurements for antenna attached to buildings be taken from, and that the antenna area for Suburban Shopping Centre Areas be clarified as being 1.3m$^2$. It is recommended that the increase sought for antenna area in other Zones be rejected.

207. It is recommended that the deletion of Standard 7.9 be accepted and NU6.1.18 be amended accordingly.

208. It is recommended that S12.10 be rejected.

### Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
</tr>
</thead>
</table>
| S3.8, S12.12     | NU7.3.4, NU1.18, NU7.9 | Industrial – antenna located within a horizontal circle of 5m
Rural – antenna located within a horizontal circle of 1.2m
Health and Safety 7.1
Height 7.2.3
Size & Diameter 7.3.5
Height recession 7.9
Delete in its entirety |
| S6.6             | NU7.2.2             | All Shopping Centre Areas – 15m 18m |
| S3.10, S12.14    | NU7.2.3             | Maximum height of an antenna and support structure, measured from the highest part of the building to which it is attached to a building. |
| S3.10, S12.14    | NU7.3.5             | Suburban - Antenna diameter of 1m or area of 0.8m$^2$ 1.3m$^2$ in Suburban Shopping Centre Areas |


### Submission Points

Gas distribution < 2,000kPa
209. In S8.15, Powerco seek that a new rule be introduced that specifically provides for gas distribution lines under 2,000kPa as a permitted activity, as follows:

Rule 6.2.X  Underground gas distribution and transmission pipelines at a pressure not exceeding 2000 kilopascals, including aerial crossings of bridges, structures or streams, and ancillary equipment, including regulator stations, but not compressor stations.

Standards:
Vegetation: 7.7
Noise: 7.8

210. Powerco’s rationale is:

- While gas distribution networks are provided for as a permitted activity, this is through a number of rules. Seek certainty by introducing a specific rule.
- It is unclear under NU6.1.14 if this provides for ancillary above ground structures. NU6.1.9 - Above ground structures associated with the gas distribution network are ancillary to the network as a whole.
- To provide more certainty by addressing the above and below ground elements of the gas distribution network together.
- NU6.1.11 - regulator stations do not have a particular association with aerial crossings. It is not clear that regulator stations will be provided for where they are not associated with an aerial crossing. Given regulator stations are referenced in NU6.1.11 it is not clear to what extent they will be covered by NU6.1.9, which provides for network utility structures that are not otherwise listed in the table.
- The approach under NU6.1.28 is considered appropriate for gas pipelines not exceeding 2000 kilopascals.

**Gas distribution and transmission > 2,000kPa**

211. In S2.6, Vector has sought that the activity status of gas distribution and transmission pipelines at a pressure greater than 2000 kilopascals (kpa) be changed, through amendments to NU6.1.4, NU6.1.6, NU6.1.7, NU6.1.14 and NU6.1.28, so that the upgrading of existing and installation of new gas pipelines, at whatever pressure, are permitted activities. PC16 proposes that both the upgrading (under NU6.1.7) and installation of new pipelines (under NU6.1.28) above 2000kpa are restricted discretionary activities.

212. The submitter proposes that if the applicable standards for upgrading⁴ could not be met, the activity would become a restricted discretionary under NU6.1.6 (with a reduced scope of matters of discretion compared to NU6.1.7). In respect of new pipelines under the amended NU6.1.28, the submitter does not specify what, if any, additional permitted activity standards they consider should apply nor what activity status they consider should apply in the event that the applicable standards could not be met. The

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⁴ The Standards specified relate to Health and Safety, Earthworks, Vegetation and Noise
requested amendment to NU6.1.28 would result in a consequential amendment to NU6.1.14 in order to avoid duplication between the two rules in respect of new pipelines up to 2,000 kPa.

213. Vector considers that the proposed restricted discretionary activity status is inappropriate and unduly onerous because:

- it regularly installs gas pipelines with pressures exceeding 2,000 kPa and is highly experienced in this area, including in its safe operation;
- The effects are well understood and can be appropriately managed through permitted activity standards (for example earthworks effects are not materially different to those for pipes under 2000 kPa);
- While there are some temporary effects during construction, the level of effects associated with the operation and maintenance are well understood and can be appropriately managed through permitted activity standards;
- In other nearby districts, such as Stratford and Upper Hutt, such activities are permitted activities in rural zones; and in other districts are controlled activities, such as Waitomo. Therefore, this does not reflect best practice or achieve consistency with rules applying in nearby districts; and
- Vector operates in a highly regulated environment and is required by legislation to meet independent standards outside of the resource consenting arena. The controls imposed are duplicative and unnecessary requirements on Vector’s operations.

214. As an alternative, in the event that the above primary relief sought is not granted, in S2.7 Vector seeks the deletion of various matters of discretion in NU9 applicable to applications for the upgrading of existing (under NU6.1.7) and installation of new, pipelines (under 6.1.28) above 2000kPa. Vector considers that the matters over which discretion is reserved are too broad, unnecessary and duplicative of other legislation Vector is required to meet.

215. Following a phone conversation with Vector following the close of further submissions during which I requested more clarification as to other legislation referenced in their submission and advised that I would be unlikely to support the a permitted activity status, Vector submitted a letter (dated 19th May 2014) which provided some additional information / clarification on the matters of discretion they sought for deletion.

216. This letter differs slightly from the original submission (S2.7) both in terms of the matters of discretion sought for deletion and the relief sought. Specifically, whereas the original submission addresses NU9.10 (potential interference with public use and enjoyment of the land), the letter substitutes NU9.27 (extent to which the work is able to be conveniently

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5 I note that operation and maintenance are permitted activities in the first instance under NU6.1.2
accommodated underground without adversely affecting existing underground utility services). The relief sought differs in that in their submission, Vector seeks the deletion of all the matters of discretion specified, whereas in the letter they seek (albeit that the letter is inconsistent) that NU9.25 and NU9.26 be deleted as being already covered under NU9.2; and that 9.15 and 9.27 be deleted as being already covered under NU9.9. It would be appropriate for the submitter to address and clarify the relief sought at the hearing.

217. The table below sets out all the matters of discretion that Vector seeks deletion of, along with the rationale.

<table>
<thead>
<tr>
<th>Applicable Rule</th>
<th>Matter of Discretion sought for deletion</th>
<th>Rationale for Deletion</th>
</tr>
</thead>
<tbody>
<tr>
<td>NU6.1.7, NU6.1.28</td>
<td>9.2 – risks to public health and safety</td>
<td>Council should consider only effects associated with normal construction, operation and maintenance of gas pipelines. Many forms of infrastructure have a high potential impact or consequence in the event of a serious failure. How these events are avoided is for infrastructure to be constructed and maintained to certain requirements under the standards which regulate their design and operation. If such standards are being met, then Councils shouldn’t also consider the effects associated with failure. Vector has to comply with the HSE (Pipelines) Regulations, 1999 and AS2885 Pipeline Standards relating to design, construction, operation and maintenance. These are governed by MBIE who review documentation prior to construction to ensure compliance. Independent review of designs is also required and undertaken. NU9.25 and NU9.26 should be</td>
</tr>
<tr>
<td>NU6.1.7, NU6.1.28</td>
<td>9.25 – nature and hazardous properties of any liquid or substance carried</td>
<td>These matters are dealt with under separate legislation / regulations and are not relevant considerations at the resource consent stage.</td>
</tr>
<tr>
<td>NU6.1.7, NU6.1.28</td>
<td>9.26 – probability and environmental effects of a rupture of the pipeline</td>
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</tr>
</tbody>
</table>

The table below sets out all the matters of discretion that Vector seeks deletion of, along with the rationale.
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</thead>
<tbody>
<tr>
<td>NU6.1.28</td>
<td>9.9 – cumulative effects, including cumulative effects associated with existing utilities</td>
<td>deleted as the adverse effects are otherwise covered by NU9.2.</td>
</tr>
<tr>
<td>NU6.1.28</td>
<td>9.10 – potential interference with public use and enjoyment of the land (letter)</td>
<td>As underground structures, Vector does not consider such considerations are relevant to underground gas pipelines. There are strong drivers to be located underground, particularly from a visual amenity perspective. Further there has been drivers towards “Common Infrastructure Corridors” where utilities can be located with other utilities. Vector do not consider the effects on other utilities to be a matter for discretion by the Council but a matter to be resolved between utility operators. NU9.15 and NU9.27 should be deleted as the adverse effects are otherwise covered by NU9.9.</td>
</tr>
<tr>
<td>NU6.1.28</td>
<td>9.15 – interference with other land uses and utilities in the vicinity</td>
<td>These are not relevant considerations to underground gas pipelines.</td>
</tr>
<tr>
<td>NU6.1.7 NU6.1.28</td>
<td>9.27 – extent to which the work is able to be conveniently accommodated underground without adversely affecting existing underground utility services (submission and letter)</td>
<td></td>
</tr>
</tbody>
</table>

**Assessment**

**Gas distribution <2,000kPa**

218. I accept Powerco’s rationale that it would be useful to Plan users to include a specific definition for gas distribution lines less than 2,000kPa. An earlier draft of PC16 included such a rule, however this was omitted from the final draft as it was considered that such activities were implicitly permitted due to other proposed rules. I consider that providing a specific rule would provide clarity and certainty, and I therefore consider it would be appropriate.
219. However, in respect to the standards relevant to the rule, I consider that NU7.6.1 should also apply, as the installation of gas pipelines of any size would involve some form of land disturbance that should be appropriately managed. I therefore recommend that S8.15 be accepted in part.

**Gas distribution and transmission >2,000kPa**

220. Firstly, in respect of the weight that should be given to the letter from Powerco, I consider that it is within the scope of the original submission was intended to elaborate upon and clarify the original submission points, particularly in light of my advice that I would be unlikely to support a permitted activity status. I note that there were no further submissions made on S2.7, reflective of the fact that Rule NU6.1.7 deals only with the upgrading of electricity transmission lines above 110kV and gas distribution and transmission pipelines exceeding 2000kPa, while NU6.1.28 is even narrower in topic area in that it deals only with new gas distribution and transmission pipelines exceeding 2000kPa.

221. I do not consider that any submitters would be prejudiced by the contents of the letter, for the reason that the relief sought in the letter could be considered a more ‘moderate’ version of what was in the original submission, in that more of the matters of discretion were originally sought for deletion. If no further submitters were of the view that they would be affected either beneficially or adversely by the deletion of the original suite of matters of discretion sought in S2.7, I consider the same conclusion can apply in respect of the lesser number of matters now sought to be deleted, albeit that a new matter is sought to be deleted.

222. In respect of the request that the upgrading of existing and installation of new gas pipelines over 2,000kPa be a permitted activity, I consider it is appropriate that a restricted discretionary activity status remain. While it is recognised that there are other legislative and regulatory processes which govern aspects of the construction, maintenance and operation of high pressure gas pipelines, the submitter has not provided evidence that these other processes address all the potential effects that would otherwise be addressed through a resource consent process or that any ‘gaps’ in these other processes could otherwise be addressed through permitted activity standards, and, if so, what these should be.

223. In particular, I consider that by virtue of their higher pressure and therefore higher level of potential adverse effect (while of low probability) and different associated infrastructure that it is appropriate that the Council retain discretion through the resource consent process. I note that as a requiring authority, Vector could chose the alternative notice of requirement path to designate for any new lines it proposes. I also note that as part of the consultation on the draft of PC16, I discussed activity status with Vector, whereby it was agreed that a restricted discretionary activity status could be
applied rather than a discretionary activity status, and that matters of
discretion included in PC16 were appropriate.

224. In respect of the argument of consistency with other Plans, I note for interest
that gas transmission lines are a discretionary activity in the Proposed Kapiti
Coast, Upper Hutt, Wellington, Palmerston North, Ruapehu, Tauranga and
Ashburton District Plans and the Proposed Unitary Plan, and a restricted
discretionary activity in the Horowhenua and Rangitikei District Plans.

225. In my view the more fundamental issue is Vector has not addressed the
differing environmental contexts that exist between Porirua and Waitomo
and Stratford Districts. Porirua is more ‘peri-urban’ in nature than either
Waitomo or Stratford and is becoming increasingly so over time. As such,
Porirua has a differing set of constraints and considerations as regards
the provision of network utilities. Therefore, while a permitted or controlled
activity status may be considered appropriate in those particular Districts,
that does not mean the same necessarily applies in the context of Porirua and
in my view does certainly not justify the claims of such activity status being
‘best practice’. This is particularly the case considering the other District
Plans that I reference the above, of which the majority are “new” Plans.

226. In respect of the upgrading of existing pipelines in excess of 2,000kPa, the
relief sought would result in this activity being subject to a limited number
of standards under NU6.1.4, covering health and safety, earthworks, vegetation
and noise. The submitter has not provided specific evidence to demonstrate
how these standards, when taken in conjunction with the requirements of
the other regulatory processes that they must also work within, would
adequately address the issues of concern to the Council, as are currently
covered under NU6.1.7.

227. In respect of the relief sought to make new pipelines >2000 kPa a permitted
activity, or to retain it as a restricted discretionary activity subject to reduced
matters of direction under NU7.9, I consider that it would be inappropriate to
delete all the proposed matters of discretion. This is because they cover
issues that are of relevance from a RMA decision-making perspective,
notwithstanding that some or all of them may also be covered as
considerations under other legislation that Vector is required to comply with.

228. I do not agree that NU9.25 and NU9.26 could be deleted since they are
otherwise covered under NU9.2. In particular, NU9.2 addresses public health
and safety, while NU9.25 and NU9.26 address wider environmental effects
beyond effects on people. Deletion of these two matters of discretion would
restrict the Council from being able to assess impacts on environmental
health, such as potential contamination.

229. In respect of the modified request to delete NU9.15 and NU9.27; while there
may be some overlap between the issues covered under these matters and
those covered under NU9.9, I do not consider they are not directly analogous and that the impact on other parties of a utility with a higher risk element is a relevant RMA consideration. In addition, to the extent that there may be some limited repetition between the matters sought for deletion and NU9.9, I consider this preferable to the ‘gaps’ that would be left if those matters were deleted. I also consider it is relevant to note that NU9.27 applies to both NU6.1.7 and NU6.1.28, but NU9.9 only to NU6.1.28. This undermines the argument that NU9.27 could be deleted and the matter otherwise covered as it relates to NU6.1.7. In respect of the argument that NU9.9, NU9.10, NU9.15 and NU9.27 are not relevant considerations to underground infrastructure, I note that Rule NU6.1.28 also deals with potentially aboveground elements associated with such pipelines, including aerial crossings and ancillary equipment, including compressor compounds with compressor houses.

Recommendation

230. It is recommended that S8.15 be accepted in part by way of the insertion of a new permitted activity rule with associated standards.

231. It is recommended that S2.6 be rejected.

232. It is recommended that S2.7 be rejected.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
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<tbody>
<tr>
<td>S8.5</td>
<td>NU6.1.X.X</td>
<td>See below</td>
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</table>

<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Rule</th>
<th>Zone</th>
<th>Status</th>
<th>Standards</th>
<th>Matters of Control or Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1.XX</td>
<td>Underground gas distribution and transmission pipelines at a pressure not exceeding 2000 kilopascals, including aerial crossings of bridges, structures or streams, and ancillary equipment, including regulator stations but not compressor stations.</td>
<td>All</td>
<td>Permitted</td>
<td>Earthworks: 7.6.1  Vegetation: 7.7  Noise 7.8</td>
<td></td>
</tr>
</tbody>
</table>
iv. Cabinets – Rule NU6.1.9 and Standards NU7.2.4 (Height), NU7.3.6 (Size / Diameter), NU7.4 (Separation / Setback)

Submission Points

233. Telecom and Chorus in S3.7 and S12.11 seek NU7.4 be amended as it relates to the setback distance applicable to cabinets permitted under NU6.1.9 (that is, cabinets not covered by other rules and which are outside of the road reserve). In FS3.4 Powerco supports S3.7, which contradicts its submission point S8.22, which supports the introductory statement to NU7.4 and seeks that it be retained, given the effect of the relief sought under S3.7 and S12.11 would be to amend this introduction or the way in which it applies.

234. S3.7 and S12.11 seek two alternative reliefs. The first alternative proposes the deletion of wording from the introduction to NU7.4, as follows:

“With the exception of standard 7.4.1, which applies to all network utility structures, including lines, the following table applies to masts and antenna attached to masts and any cabinet or other network utility structure that is defined as a building that are not located in the road reserve”

The second alternative proposes that NU7.4 be amended to specify a minimum setback of 2m from any property boundary, other than a road or service lane boundary, for any cabinet permitted under NU6.1.9 that exceeds 1.5m in height and 5m² in area. The submitters clarify that they are not seeking deletion of the riparian zone setback of 20m which currently applies under NU7.4.1.

235. Telecom and Chorus’s rationale for both of the alternatives stems are that as notified, the combination of:

- the definition of ‘Buildings’ in Part M which includes any structure (i.e. including ‘cabinets’) but excludes, inter alia, structures less than 5m² in area and less than 1.5m in height;
- the permitted activity height limit of 3.5m specified for cabinets outside of the road reserve under NU7.2.4; and
- the permitted activity size limit of 15m² for cabinets outside of the road reserve specified under NU7.3.6,

means that cabinets between 1.5m and 3.5m in height, and 5m² to 15m² in area and which are located outside of the road reserve are subject to a permitted activity standard of a 10m setback in all zones.

236. They consider this to be too onerous as:

- cabinets of 2m in height are commonly deployed with minimal adverse amenity effects on adjacent properties (these must comply with NU7.8 for noise); and
- The proposed separation distances are inconsistent with, and considerably greater than those for non-network utility permitted activities, which include significantly higher and more bulky structures or buildings with potentially greater amenity effects.
237. In S8.20 and S8.21 Powerco seek two further changes to NU7.2.4 (height) and NU7.3.6 (size), which are the two standards relevant to NU6.1.9. Powerco requests the changes on the basis that PC16 as drafted does not provide for cabinets that are located within the road reserve but are not covered by the NESTF.

238. Powerco seeks that it either be clarified that there are no height and size limits that apply to cabinets within the road reserve which are not covered by the NESTF or that the same standards for cabinets outside the road reserve apply, i.e. 3.5m in height and 15m² in area.

Assessment

Cabinets outside the road reserve

239. I agree with S3.7, S12.11 and FS3.4 that the current setback distance for cabinets outside of the road reserve specified in NU7.4 are unnecessarily large, particularly when compared to those that apply to non-network utility structures through the use of a combination of yard, building height and recession plane standards. I consider that it is appropriate that the setbacks be reduced from those as notified, without risk of significant adverse effects on amenity. The potential effects on amenity are otherwise addressed through the noise, height and area standards. As such, I consider that S8.22 should be rejected insofar that I recommend the introduction to NU7.4 be amended.

240. However, I consider the relief sought that all cabinets defined as buildings would be excluded from NU7.4, is inappropriate as it would effectively leave them unconstrained in terms of setback distances. While any noise effects would be addressed through NU7.8, I do not consider such controls are sufficient to manage such potential adverse effects as amenity, overshadowing and visual dominance.

241. I consider that the alternative relief sought by Telecom and Chorus of a minimum setback of 2m from any property boundary other than a road or service lane boundary has some merit given the overall size of any structures would be limited by the provisions relating to height, size and diameter. However, in conjunction with the recommended amendment to limit the size and height of cabinets and other network utilities within the road reserve to less than 2m in height (addressed below), I do not consider that it is appropriate not to require a setback from a road or service lane boundary, and consider that the same 2m setback should be imposed. These setbacks would ensure that cabinets and other structures which meet the definition of a building and can be up to 15m² in area and 3.5m in height as a permitted activity, and therefore comparable to a carport, do not unduly dominate the streetscape.
242. I therefore recommend in the Industrial Zone that a 2m setback apply with any boundary in the Suburban, Rural and City Centre Zones and from a road or service lane boundary.

Cabinets within the road reserve
243. I agree with Powerco in S8.20 and S8.21 that further clarity is required regarding the height and size of cabinets (and other network utility structures not otherwise covered) located within the road reserve and which are not provided for under the NESTF. I note other network utility structures does not include transformers, substations and switching stations for distributing electricity and ancillary buildings, which are discretionary activities under NU6.1.27.

244. However, in my opinion neither of the relief options sought by the submitter are appropriate. Specifically, not providing any height and size restrictions on cabinets defined as buildings would be unjustified in terms of the potential for significant adverse effects on amenity. Likewise, I consider the height and size standards applying to network utility structures outside of the road reserve would be excessive, again on the basis of potential for significant adverse effects on amenity. Either of the options sought would also be at odds with the restrictions in place for cabinets within the road reserve which are covered under NESTF. I consider the default position should be to allow cabinets of the scale provided for by the NESTF.

245. In light of the above, I recommend that new standards be inserted into NU7.2 (height) and NU7.3 (size) dealing specifically with cabinets and other network utility structures not otherwise covered within the road reserve, and which are largely consistent with the standards that apply to structures to which the NESTF applies. As a consequence of inserting the new standards, NU6.1.9 must also be amended to refer to the new standards.

246. As an aside, I note that there is no restricted discretionary activity rule for cabinets and other network utility structures that do not meet the permitted activity standards. Unfortunately this was an oversight in the drafting, and there are no submissions seeking a relief that would provide for such a rule to be introduced.

Recommendation
247. It is recommended that S3.7, S12.11 and FS3.4 be accepted in part and setback distances for cabinets outside of the road reserve be reduced.

248. It is recommended that S8.20 and S8.21 be accepted in part.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
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</thead>
<tbody>
<tr>
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</table>

Appendix 1 – Resource Management Act 1991 56
<table>
<thead>
<tr>
<th>Standard</th>
<th>Zone</th>
<th>Separation distance or setback for masts and antenna attached to masts</th>
<th>Separation distance or setback for cabinets and other network utility structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.4.1</td>
<td>All</td>
<td>A minimum 20m riparian setback shall be maintained.</td>
<td>No less than 2 metres to a boundary in the Suburban, City Centre or Rural Zone and to a road or service lane boundary.</td>
</tr>
<tr>
<td>7.4.2</td>
<td>Industrial</td>
<td>No less than 10m from a boundary in the Suburban Zone.</td>
<td>No less than 2 metres to a boundary in the Suburban Zone.</td>
</tr>
<tr>
<td>7.4.3</td>
<td>Rural, Judgeford Hills</td>
<td>No less than 10m from any property boundary. Under 15m in height - no less than 20m from the closest wall of a dwelling (excluding balconies and decks). Over 15m in height – no less than 50m from the closest wall of a dwelling (excluding balconies and decks).</td>
<td>No less than 2 metres to all boundaries.</td>
</tr>
<tr>
<td>7.4.4</td>
<td>Suburban</td>
<td>Where located in a Suburban Shopping Centre Area, no less than 10m from a boundary in the Suburban Zone. No less than 10m from a boundary in the Suburban and Rural Zone.</td>
<td>No less than 2 metres to all boundaries.</td>
</tr>
<tr>
<td>7.4.5</td>
<td>Open Space, Recreation</td>
<td>No less than 10m from any boundary in the Suburban or Rural Zone.</td>
<td>No less than 2 metres to all boundaries.</td>
</tr>
</tbody>
</table>

S3.7, S12.11, FS3.4

NU7.4

S8.20

Height Standard NU7.2.X
**v. Roading and Traffic and Transport Structures**

**Submission Points**

249. In S8.17, Powerco seeks that NU6.1.33 (dealing with various structures within the road reserve) be amended to clarify that ‘network utilities’ are considered to be ‘infrastructure’ for the purposes of the rule and, therefore, are a permitted activity in the road reserve.

250. Powerco’s rationale is to clarify the status of network utilities in the road reserve, which it considers is unclear at present. The submitter notes that the Plan currently contains a definition of ‘infrastructure’, which includes publicly owned structures and networks. However, it is proposed to delete this definition from Part M as part of PC16. In lieu of this term being defined, the submitter states that ‘network utilities’ could generally be considered to be

<table>
<thead>
<tr>
<th>Size Standard</th>
<th>Utility City</th>
<th>Indus trial</th>
<th>Suburban</th>
<th>Rural</th>
<th>Judgefo rd Hills</th>
<th>Ope n Space</th>
<th>Recre ation</th>
</tr>
</thead>
<tbody>
<tr>
<td>NU7.3.X</td>
<td>City Centre</td>
<td>Indus trial</td>
<td>Suburban</td>
<td>Rural</td>
<td>Judgeford Hills</td>
<td>Open Space</td>
<td>Recreation</td>
</tr>
<tr>
<td>S8.20, S8.21</td>
<td>Rule 6.1.9: Cabinets and other network utility structures not otherwise listed in this table.</td>
<td>Standards: Health and Safety: 7.1</td>
<td>Height: 7.2.x, 7.2.4</td>
<td>Size and Diameter: 7.3.x, 7.3.6</td>
<td>Separation/Setback: 7.4</td>
<td>2m²</td>
<td>1.4m²</td>
</tr>
</tbody>
</table>
‘infrastructure’, and therefore a permitted activity in the road reserve. However, they seek that this be made explicit.

Assessment
251. Part M of the Plan contains a wide-ranging definition of ‘network utilities’. I am unclear if the submitter intends that it would be all such items so defined that are permitted within the road reserve, or only those that are related to ‘Roading and Traffic and Transport’ (as NU6.1.33 is within the section of the table specifically dealing with this topic area).

252. NU6.1.33 is purposefully structured to be specific to roading, traffic and transport structures. Network utilities, as defined in Part M, would not fall within that parameter. To avoid confusion, I consider that the best approach would be to delete the words “and infrastructure” from NU6.1.33, thus achieving the clarity sought by Powerco.

253. In respect of how network utilities are treated within the road reserve, I consider, subject to recommended amendments, that this Chapter is clear that it applies to all the City and is addressed specifically in NU1.10. Where a rule or standard is specific to the road reserve, this is clearly indicated in the rule or standard. That all formed and unformed roads are zoned (which PC16 does not seek to amend) is also clearly set out in NU1.10.

Recommendation
254. It is recommended that S8.17 be accepted in part and that NU6.1.33 be clarified by deleting the words “and infrastructure”.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
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<th>Recommended Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>S8.17</td>
<td>Rule NU6.1.33</td>
<td>Traffic control signals and devices, light and decorative poles and associated structures and fittings, post boxes, landscaped gardens, artworks and sculptures, bus stops and shelters, phone boxes, public toilets, and road furniture and infrastructure located within the road reserve.</td>
</tr>
</tbody>
</table>

vi. Earthworks – NU7.6

Submission Points
255. Telecom in S3.8 and Chorus in S12.12 seek certainty as to whether the exclusion for earthworks within 2.0m of the exterior wall of any building would apply to NU7.6.2(b) and seek an exemption for masts for pile foundations and excavations for concrete pad foundations up to 2.5m in depth. Telecom and Chorus specifically request that NU7.6.2(b) be amended to read:
Height, Depth – earthworks shall not exceed 1.5 metres in height or depth; except that pile foundations and excavations for concrete pad foundations, or similar, for network utility masts shall not exceed 2.5m in depth.

256. In s8.23, Powerco requests that the heading of NU7.6.2 be amended to be clear that it relates to earthworks, and suggest the following amendment:

7.6.2 Earthworks—slope, height, depth, recession plane and area of earthworks

257. Powerco also seek in S8.23 that earthworks and trenching within the road reserve be exempted from this standard. Powerco position is that:

- earthworks are already controlled through the Utilities Access Act 2010 and the National Code of Practice for Utility Operators’ Access to Transport Corridors 2011
- it is unclear what other effects are being sought to be managed and
- that requiring a resource consent would be an unnecessary duplication with other legislation.

Telecom and Chorus in FS5.9 and FS6.9 support this requested exemption.

258. Powerco also asks that clause (c), which relates to height recession planes, be deleted on the basis that it is confusing.

259. In S13.7, GWRC seek that the NU7.6.1 be reworded to have a more outcomes-focussed wording, on the basis that the referenced Erosion and Sediment Guidelines are soon to be reviewed and consideration should be given to other best practice options and which may be more relevant to small sites.

Assessment

260. I agree that the suggested wording in S8.23 for the heading for NU7.6 is a grammatical improvement on the notified wording. I also concur that the term ‘recession plane’ is unnecessary in the heading because it is a mechanism for controlling height (which is already mentioned in the heading). I recommend therefore that this aspect of S8.23 be accepted.

261. I also concur there may be some ambiguity as to how the 2m from the exterior wall exclusion is intended to apply. It was intended to apply the same way that the earthworks rules apply in all other zones – that is, any earthworks which are within 2 metres of any proposed building or swimming pool. The reason the Plan exempts these earthworks are that the effects of such earthworks, which would generally be limited to stability, will be addressed through a building consent process. I consider that the following amended wording would assist to clarify the exemption:

“The following shall apply to all network utility activities, except to earthworks within 2.0 metres of any network utility building or structure that is defined as a building, measured in plan view:...”
262. I do not support Telecom and Chorus’s proposed amendment to exempt network utility masts for pile foundations and excavations for concrete pad foundations or similar for network utility masts up to 2.5m in depth. This is for the reasons that the submitters have not provided any evidence as to why this depth or exemption is appropriate and that the purpose of the earthworks standard is to control the effects of excavations that are not subject to a building consent application (as explained above).

263. In terms of trenching, NU6.1.14 (as recommended to be amended to address S8.12, FS2.6 and FS2.7) provides for the construction, installation, development of new underground network utilities as a permitted activity subject to standards. As specified in NU6.1.14 and the proposed new permitted activity rule NU6.1.X dealing with gas pipelines up to 2,000kPa (As recommended in responses to S8.5), the only earthworks standard for new underground network utilities is NU7.6.1, which relates to erosion and sediment control measures. Therefore trenching works associated with the installation of new permitted underground network utilities are not subject to the requirements of NU7.6.2. I have addressed the amendments sought by Powerco to NU6.1.1 and NU6.1.2 previously, where I have recommended that be amended so that they only need to comply with NU7.6.1.

264. In relation to Powerco’s request that the earthworks standards need not apply to earthworks or trenching within the road reserve because they are already subject to controls under the Utilities Access Act 2010 and the National Code of Practice for Utility Operators’ Access to Transport Corridors 2011, Powerco has not provided any supporting evidence to demonstrate that either adequately addresses any effects that may arise for which the Council has responsibility for managing under s31 of the RMA through the Plan. It is clear in the Code of Practice that its assessment process is not intended to replace controls under the RMA, particularly given it states “Environmental effects are managed by the district plan process under the Resource Management Act and it is not appropriate for the CAR/WAP process to be used to achieve these effects”.

265. The Code of Practice also notes that conditions attached to a Work Access Approval by the Road Corridor Manager cannot, inter alia, “relate to the appropriateness of the Works rather than the actual undertaking of the Works itself; or try to address matters that are properly dealt with under the Resource Management Act, such as any matters addressed under district plans or requiring consents. The Road Corridor Manager’s role in setting Reasonable Conditions must be distinguished from the regulatory role that Territorial Authorities have under the Resource Management Act” (p43/44). As such, it is considered appropriate to retain controls over earthworks in the road corridor through the standards (as modified in recommendations above).

266. In respect of Powerco’s request to remove the reference to height recession planes from neighbouring property boundaries, I consider that its deletion
should be rejected. However, I consider the provision as drafted is unclear and should be clarified. The earthworks recession plane standard, which is also used elsewhere within the Plan as part of the earthworks standards, is intended to only apply where fill is involved (where the land is being built up through earthworks) and is not intended to apply to cuts. The purpose of this control is to manage the visual impact of fill on adjacent property owners. I consider that this remains valid in the event of any substantive fill earthworks undertaken as part of a network utility operation. I recommend that S8.23 be accepted in part by NU7.6.2(c) being clarified as follows:

Recession Plane – Any earthworks involving the raising of the height of land above existing ground level shall not exceed a height recession plane measured at an angle of 45 degrees from any neighbouring boundary.

267. In respect to the GWRC request to provide a more outcomes-focused outcome rather than referencing the GWRC erosion and sediment guidelines, GWRC did not provide any specific wording that would enable consideration of an alternative wording and the appropriateness of that wording. Introducing new best practice examples at this point would mean that potential submitters would not have the benefit of considering the proposed wording and being able to submit on it through the further submission process. On this basis, I recommend that this point be rejected.

Recommendation

268. It is recommended that S8.23 be accepted and the heading for section 7.6 be amended as requested.

269. It is recommended that S3.8, S12.12, S8.23 and FS5.9 and FS6.9 be accepted in part insofar as NU7.6.2 be amended to clarify the exclusions within 2 metres of network utility buildings and structures that are defined as buildings.

270. It is recommended that S8.23 be accepted in part insofar as how the recession plane applies is clarified through an amendment to NU7.6.2(c).

271. It is recommended that S13.7 be rejected.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
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</thead>
<tbody>
<tr>
<td>S3.8</td>
<td>NU7.6</td>
<td><strong>7.6.2 Earthworks—Slope, height, depth—recession plane and area of earthworks</strong></td>
</tr>
<tr>
<td>S3.8, S12.12, S8.23</td>
<td>NU7.6.2</td>
<td>“The following shall apply to all network utility activities, except to earthworks within 2.0 metres of any network utility building, network utility mast or electricity support structure, measured in plan view....”</td>
</tr>
<tr>
<td>S8.23</td>
<td>NU7.6.2(c)</td>
<td>Recession Plane — Any earthworks involving the raising of</td>
</tr>
</tbody>
</table>
vii. 7.8 Noise

Submission Points

272. Submission S1.19 from Radio New Zealand seeks that the following Note be added to S7.8:

"Noise from backup emergency generators at Radio New Zealand’s Titahi Bay facilities is exempt from these noise limits."

Alternatively, the submitter states that this same Note could be added to Section “D4C2.1 – Noise” of the Plan (the Public Open Space Zone Chapter).

273. The text is sought in order to recognise that Radio NZ occasionally has to resort to using backup emergency generators at its sites, to ensure that radio transmission from its facilities continues in the event of a power failure. The submitter states it would be difficult for Radio NZ’s backup generators to comply with the noise limits applying in D4C.2.1-Noise (as referenced by NU7.8). Such exemption from the noise limits would recognise the significant public interest in ensuring Radio NZ’s facilities can continuously transmit, particularly in the event of a natural hazard which may cause power failure, and the transient nature of the noise effect.

Assessment

274. Radio NZ’s Titahi Bay facilities are already covered by a designation that provides for its activities and overrides the District Plan rules. Accordingly, there is no need for this advice note to be included and it is recommended that the relief sought be rejected.

Recommendation

275. It is recommended that S1.19 be rejected.

D New Provisions to Give Effect to the NPSET

i. Definitions

Submission Points

Electricity Transmission Corridor and Electricity Transmission Yard

276. In S10.23 and S10.24, Transpower seeks to amend the definition of Electricity Transmission Corridor and Electricity Transmission Yard, so as to clarify how the Corridor and Yard are measured. In the requested changes, they propose to add the following sentences to each of the definitions:

*The measurement of setback distances from National Grid electricity lines shall be taken from the centre line of the National Grid line and the outer edge of any support structure. The centre line at any point is a straight line between the centre points of the two support structures at each end of the span.*
277. The stated reason for requesting this change is to clarify the measurement of setback distances.

278. Transpower also seek through several submission points to amend the terms Electricity Transmission Corridor and Electricity Transmission Yard throughout PC16 to National Grid Corridor and National Grid Yard respectively, so as to be more easily understood by the public.

**Electricity Transmission Yard**

279. In S10.24, Transpower seeks to amend the definition of Electricity Transmission Yard. In the requested change, they seek to delete the following sentences: *Except where the site is subject to a consent notice or easement that provides for a lesser separation distance from an electricity transmission line. In such circumstances, the separation distances contained in the consent notice or easement shall apply.*

280. The stated reason for this amendment is to remove the exception to sites subject to a consent notice or easement. Transpower understands there are some inaccuracies with the measurements provided in existing consent notices with the measurement conflicting with NZECP34. Given compliance with NZECP34 is mandatory, such contradiction is potentially confusing and may pose a risk to the integrity of the National Grid, as well as pose a risk to public safety. The removal of the reference to consent notices would ensure a consistent management approach that enables a full assessment of effects should the proposed permitted activity rule not be complied with.

**Transmission Line**

281. In S10.31, Transpower requests that definition of Transmission Line be amended from Means ‘transmission line’ as defined in the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations, 2009 to read: *Means any part of the National Grid as defined in the National Policy Statement on Electricity Transmission 2008. Or Means the assets owned and operated by Transpower NZ Limited as part of the National Grid.*

282. Transpower states that it supports the definition in that it reflects the NESETA, but that it seeks it to be expanded to ensure that any future lines, should they be required, are also captured.

**Assessment**

283. I consider that there is merit in the amendment sought by Transpower in S10.23 and S10.24 to clarify how to measure the Corridor and Yard, as it assists to provide clarity. However, I consider that the reference to electricity lines and then lines would add confusion, and recommend instead that the reference in both cases should be to transmission lines.
284. I concur with the rationale for amending the terms Electricity Transmission Corridor and Electricity Transmission Yard to National Grid Corridor and National Grid Yard respectively.

285. The issue of the request to delete the reference to consent notices and easements is of a more significant concern. This clause was inserted into the proposed definition to address the circumstances where setbacks had already been agreed between Transpower, the landowner / developer and the Council at the time of subdivision / development of the land and are now restrictions of the computer register. As outlined in their submission point, Transpower advises that some of these consent notices or easements have errors, and conflict with the NZECP, setting a lesser distance. In most of these cases, the consent notices or easements impose a lesser distance restriction than the proposed new rules would, meaning the new rules would introduce new restrictions above and beyond the consent notice / easement.

286. Having a consent notice or easement on a computer register does not restrict a council’s ability to impose new rules that have greater restrictions, if such a rule can be justified under s32. A consent notice or easement reflects a restriction that existed at a particular time and for a particular reason. That Transpower was in error in the restrictions it imposed is not a reason for not imposing new rules that seek to address particular effects – which are in the case of the Yard, safety and access. The rationale for the Yard and the effects it addresses are set out in NU3.1.4, NU3.1.2.5 and section 10.1.2 of the section 32 report. I consider that the rationale for these rules outweighs that the setbacks provided in the consent notices or easements are in some cases less than what the proposed new rule requires. The resultant impact is that those with such consent notices or easements in place on their computer registers will have a greater setback imposed and may require a resource consent for particular works where one was previously not required. I therefore recommend that this submission point be accepted and the exception deleted.

287. I consider that it is appropriate to amend the definition of transmission line as the NESETA only applies to existing lines as 14 January 2010 and therefore would not capture any new lines erected after that date. However, the definition sought by Transpower would include assets other than just transmission lines, such as cables, stations and sub-stations that are all listed assets under the NPSET. I do not consider that it is appropriate that the definition of transmission line extends to include other Transpower assets that are not actually transmission lines.

288. Transmission lines have been included specifically in PC16, as they relate to both the National Grid Yard and Corridor and have specific rules attached to them under NU6, Rules.

289. I therefore prefer that the definition that is used in the NESETA is transposed in its entirety, rather than the definition proposed through PC16, as follows:
(a) means the facilities and structures used for, or associated with, the overhead or underground transmission of electricity in the national grid; and
(b) includes transmission line support structures, telecommunication cables, and telecommunication devices to which paragraph (a) applies; but
(c) does not include an electricity substation

Recommendation

290. It is recommended that S10.23 and S10.24 be accepted in part insofar as they seek to clarify how to measure the Corridor and Yard, with the reference to electricity lines and lines being amended to transmission lines.

291. It is recommended that all the submission points seeking to amend the terms Electricity Transmission Corridor and Electricity Transmission Yard to National Grid Corridor and National Grid Yard respectively be accepted.

292. It is recommended that S10.24 be accepted insofar as it seeks to delete the exceptions relating to consent notices and easements.

293. It is recommended that S10.31 be accepted in part and the definition of transmission line be amended.

Recommended Amendments

<table>
<thead>
<tr>
<th>Submitter number</th>
<th>Provision Reference</th>
<th>Recommended Amendment</th>
</tr>
</thead>
</table>
| S10.23           | Part M Definition of Electricity Transmission Corridor | **Electricity Transmission National Grid Corridor**  
Means the area located within:  
• 32m of a 110kV transmission line  
• 37m of a 220kV transmission line  
measured either side of the centreline of the transmission line, as depicted in Diagram 1. The measurement of setback distances from National Grid transmission lines shall be undertaken from the centre line of the National Grid transmission line and the outer edge of any support structure. The centre line at any point is a straight line between the centre points of the two support structures at each end of the span.  
Note: the **Electricity Transmission National Grid Corridor** does not apply to underground cables or any transmission lines (or sections of line) that are designated.  
Amend to National Grid Corridor and National Grid Yard throughout PC16. |
<table>
<thead>
<tr>
<th>Transmision Corridor</th>
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</table>
| S10.24 | **Part M**
| **Definition Electricity Transmission Yard** |  |
| **Electricity Transmission National Grid Yard** | **Means:**
| • the area located 12 metres either side of the centreline of an above ground electricity National Grid transmission line which is 110kV or greater
| • the area located 12 metres in any direction from the edge of an electricity National Grid transmission pole or tower, associated with a line which is 110kV or greater
| as depicted in Diagram 1. The measurement of setback distances from National Grid transmission lines shall be undertaken from the centre line of the National Grid transmission line and the outer edge of any support structure. The centre line at any point is a straight line between the centre points of the two support structures at each end of the span.
| Except where the site is subject to a consent notice or easement that provides for a lesser separation distance from an electricity transmission line. In such circumstances, the separation distances contained in the consent notice or easement shall apply.
| Note: the Electricity Transmission National Grid Corridor does not apply to underground cables or any transmission lines (or sections of line) that are designated. |
| S10.31 | **Part M**
| **Definition of Transmision Line** |  |
| **Means** ‘transmission line’ as defined in the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations, 2009:
| (a) means the facilities and structures used for, or associated with, the overhead or underground transmission of electricity in the national grid; and
| (b) includes transmission line support structures, telecommunication cables, and telecommunication devices to which paragraph (a) applies; but
| (c) does not include an electricity substation. |

### ii. Earthworks

**Submission Points**

294. Transpower, through S10.33, S10.43, S10.53, S10.63 and S10.71, supported by FS3.6, seeks to introduce a new permitted activity rule relating to earthworks within an Electricity Transmission Yard (National Grid Yard) into the Suburban, Rural, Judgeford Hills, Recreation and Open Space Zones, as follows:

**XXX) Earthworks within a National Grid Yard that:**
a) are undertaken by a Network Utility Operator or undertaken as part of agricultural or domestic cultivation, or repair, sealing or rescaling of a road, footpath, driveway or farm track shall be a permitted activity; or

b) complies with the permitted activity standards for earthworks within a National Grid Yard.

295. In S10.41, S10.52, S10.58, S10.69 and S10.77 Transpower also seeks to introduce a new permitted activity standard into the Suburban, Rural, Judgeford Hills, Recreation and Open Space Zones, as follows:

x) Any earthworks within a National Grid Yard:

   (i) within a distance measured 12 metres from the outer visible edge of any National Grid support structure, any earthworks shall not exceed a depth (measured vertically) of 300mm

   (ii) shall not create an unstable batter that will affect a National Grid support structure;

   (iii) shall not result in a ground to conductor clearance of less than: 6.5m (measured vertically) from a 110kV National Grid transmission line; or 8m (measured vertically) from a 220kV National Grid transmission line.

296. Further, Transpower seeks through S10.37, S10.38, S10.47, S10.50, S10.53, S10.65, S10.67, S10.73 and S10.75 to introduce a new restricted discretionary activity rule and a new non-complying activity rule into Suburban, Rural, Judgeford Hills, Recreation and Open Space Zones, as follows:

**Proposed restricted discretionary rule:**

*Earthworks within a National Grid Yard that do not comply with permitted activity standard 4B.2.1 Maximum Earthworks Limits (vii)(i) but comply with standards (ii) and (iii) for earthworks within a National Grid Yard.*

Subject to sections 95A(2)(b), 95A(2)(c), 95A(4) and 95C of the Act, a resource consent application under this rule will be precluded from public notification under section 95A, and limited notification will be served on Transpower New Zealand Limited as the only affected party under section 95B.

**Proposed non-complying rule:**

*Earthworks within a National Grid Yard that do not comply with permitted activity standard 4B.2.1 Maximum Earthworks Limits (vii)(ii) and/or (iii) for earthworks within a National Grid Yard.*

297. The reasons given by Transpower for these requested amendments are:

- Inappropriate earthworks can result in adverse effects on the National Grid; including:
  - Reducing the vertical safety distance
  - Undermining support structures
  - Generating dust
  - Restricting access to support structures
- A rule would be in accordance with Policy 10 of the NPSET.
While reference to the NZECP is supported, reliance on the NZECP alone is not supported as it does not effectively manage activities to ensure the operation and maintenance of the National Grid is not compromised.

The NZECP does not address access for maintenance or upgrading, reverse sensitivity, amenity or sensitivity issues.

The NPSET places the responsibility on decision makers to the extent reasonably possible to manage activities to avoid reverse sensitivity effects. Relying on the NZECP alone does not give effect to the NPSET.

Restricted discretionary activity status is sought as such an activity status allows for a full assessment of effects, but allows for such earthworks where appropriate. The 12m area around any support structure is key to ensure that there is a platform where the heavy machinery required to maintain the transmission assets can be located.

A non-complying activity status is sought for those earthworks which create an unstable batter or reduction in conductor clearance as such activities have a higher risk and safety factor. A non-complying activity status sends a clear message that such activities are inappropriate.

**Assessment**

298. Section 2, Minimum Safe Distances for Excavation and Construction Near Overhead Electric Line Supports, of the NZECP outlines the requirements for building or excavation near overhead line support structures (towers, poles and stay wires). This section states:

- “The minimum safe distances are designed to limit the chance of damage or hazards being created by the building or excavation;
- The minimum distances also ensure that the support structures can be accessed for inspection and maintenance;
- Excavations and other works near overhead electric line supports can compromise the structural integrity of the overhead electric line.”

299. Section 2.2 sets out the restrictions in respect of excavation near overhead electric line supports, and in particular:

**2.2.1 Subject to clause 2.2.2, prior written consent of the pole owner shall be obtained for any excavation or other interference with the land near any pole or stay wire of an overhead electric line where the work:**

(a) **is at a greater depth than 300mm within 2.2m of the pole or stay wire of the line; or**

(b) **is at a greater depth than 750mm between 2.2m and 5m of the pole or stay wire; or**

(c) **creates an unstable batter.**

**2.2.2 Clause 2.2.1 does not apply to vertical holes, not exceeding 500mm diameter, beyond 1.5m from a pole or stay wire.**

**2.2.3 Prior written consent of the tower owner shall be obtained for any excavation or other interference with the land near any tower supporting any overhead electric line where the work:**

(a) **is at a greater depth than 300mm within 6m of the outer edge of the visible foundation of the tower;**
(b) is at a greater depth than 3m between 6m and 12m of the outer edge of the visible foundation of the tower; or
(c) creates an unstable batter.

2.2.4 Nothing in clauses 2.2.1 – 2.2.3 applies in respect of normal agricultural cultivation or the repair, sealing, or resealing of the existing surface of any road, footpath, or driveway.”

300. In my opinion, what Transpower is seeking is further restrictions on earthworks than is otherwise required by the NZECP. In particular, earthworks controls would extend to 12m, rather than 2.2m for a pole or 6m for a tower. The rationale for this is that the NZECP does not enable Transpower to address all potential adverse effects arising from earthworks, and the area of concern extends beyond 2.2m and 6m.

301. In respect of the proposed permitted activity standard, I do not consider that proposed clause (ii) is sufficiently certain that it could fall within a permitted activity standard. In particular, I cannot see how an applicant or Council officer would be able to determine whether any particular proposal would or would not create an unstable batter without obtaining expert engineering advice an undertaking an assessment. Whether earthworks or excavation would create an unstable batter or not is rather a matter that I would expect to see as a matter of control or discretion to a controlled or restricted discretionary activity rule. Further, this proposed standard duplicates what is already contained within ss2.2.1 and 2.2.3 of the NZECP. However, I do consider that the other two clauses (i) and (iii) are certain and can be measured and fall within what can be required as for a permitted activity standard.

302. However, irrespective that clauses (i) and (iii) as requested could be provided for as a permitted activity standard, Transpower have not provided evidence as to why the restrictions on earthworks already contained within the NZECP are not adequate, why this standard is required in addition to NZECP and why the particular measurements in the proposed standard are appropriate. In respect of the proposed permitted activity rule, clause a) simply duplicates section 2.2.4 of the NZECP. I do not consider that it is appropriate for a rule to be introduced into the District Plan which is already in existence and enforceable under separate regulation.

303. The stated reasons for requesting the earthworks standard and associated rules do not address this beyond a general statement that reliance on NZECP is not supported, particularly given the NZECP states that the distances set out in it are designed to limit the chance of damage or hazards. On this basis, without sufficient evidence to support the appropriateness of this standard and associated rule framework, I recommend that they be rejected.

Recommendation

iii. **Milking Sheds and Intensive Rural Production Activity**

**Submission Points**

305. In S10.25, Transpower seeks to insert a new definition for Intensive Rural Production Activity, to support its proposed rule seeking milking sheds and intensive rural production activity as a non-complying activity.

306. In S10.49 and S10.56, Transpower seek to introduce a new non-complying activity rule into the Rural and Judgeford Hills Zones, as follows:

vi) **Milking Shed building(s) (excluding associated ancillary structures and stockyards) or building(s) used for an intensive rural production activity (excluding associated ancillary structures), located within the National Grid Yard.**

307. The reason for this amendment is that “Inappropriately sited buildings or structures can pose a risk to the safety and integrity of the National Grid. The rule is sought on the basis of the issues such structures pose to the access and maintenance of the National Grid as they can cover an extensive area of land, and it may be expensive to disrupt or restrict access, cause animal welfare issues, or require these activities to be relocated while Transpower carries out work on its transmission assets.”

**Assessment**

308. As set out above, Transpower seek to introduce a new non-complying rule restricting the placement of milking shed buildings and buildings used for intensive rural production activities from being located within the Electricity Transmission (National Grid) Yard, as well as a supporting definition.

309. At present, there is no definition for intensive rural production activities in the Plan, primarily for the reason that to the best of the Council’s knowledge, there are no such activities occurring in the City and therefore no such buildings in existence. The last activity that would fall within the requested definition (a chicken farm located on the Haywards Hill Road at Pauatahanui) ceased activity in or around 2008.

310. In particular, in respect of the Judgeford Hills Zone, intensive animal farming, including pig farming, is already a non-complying activity in all but the Primary Production Area, where it is a discretionary activity. While the National Grid line runs through the Zone area\(^6\), and part of where it runs through is the Primary Production Area, given the layout of the Structure Plan and its sub-zones, and the topography, I consider it a very remote possibility that intensive farming and associated buildings would ever occur within the Electricity

\(^6\) See the Judgeford Hills Structure Plan in Chapter 4A of the District Plan.
Transmission (National Grid) Yard. However, in the event that such an activity was proposed, it is already at least a discretionary activity and therefore all potential effects are able to be addressed and would be clearly located within a Electricity Transmission (National Grid) Yard, and would already be subject to proposed Rule D4A.1.2xxii as a restricted discretionary activity. I do not see the need to introduce a new rule into the Judgeford Hills Zone where any effects that Transpower is concerned about can already be managed through the proposed rule framework in PC16.

311. In respect of the Rural Zone, intensive farming would fall within the definition of primary production activities. While primary production activities are a permitted activity, buildings associated with them are a controlled activity, which include the location of the building as a matter of control. Any activities that emit an objectionable odour or fall within the definition of offensive trades\(^7\) are a non-complying activity. Any new building within a Electricity Transmission (National Grid) Yard would be a restricted discretionary activity. Therefore, any new building associated with an intensive farming activity would already be subject to at least a restricted discretionary activity consent with Transpower expressly identified as an affected party and able to address the effects it is concerned about through the matters of restriction proposed.

312. Transpower’s rationale for this amendment is that the structures associated with intensive farming activities pose issues in respect to access and maintenance. I appreciate that an aim of Transpower is to obtain consistency in its corridor management approach through the country and have consistent rules. However, in the absence of a NES that sets out specific rules, the NPSET is to be interpreted in the context of each city or district and its district plan.

313. Given the existing District Plan rule framework, the new rules proposed through PC16, and the topography and land use patterns within the City, I consider that it would be highly unlikely for any such activity to establish within the City in the foreseeable future and without the need for at least a restricted discretionary activity resource consent. I consider that a new non-complying activity rule relating specifically to milking shed buildings and other buildings for intensive rural production activities is unnecessary in the circumstances and I recommend these submission points be rejected.

Recommendation

314. It is recommended that S10.25, S10.49 and S10.56 be rejected.

E Amendments to Part M: Interpretation

i. Minor Upgrading

Submission Points

\(^7\) See definitions of objectionable odour and offensive trades on page M-18 of the District Plan.
315. In S12.8 and S12.15, Chorus seeks that the definition of ‘minor upgrading’ be amended to alter the range of works that can be undertaken as a permitted activity under NU6.1.3 (the minor upgrading of existing electricity and telecommunication lines). The changes sought are as follows:

**Minor upgrading – Means an increase in the carrying capacity, efficiency or security of electricity and telecommunication lines, which utilise existing or replacement support structures and includes:**

10 The replacement of existing antennas on telecommunication facilities provided they comply with the permitted activity standards

10 The addition of new overhead telecommunication lines that do not exceed 30mm in diameter to existing support structures in road.

11 An increase in the height of replacement poles in road reserve by a maximum of 1m, for the purpose of achieving road controlling authority clearance requirements, provided the permitted height in Rule 7.2.1 is not exceeded.

**Minor upgrading shall not include:**... The addition of any new circuits, lines (with the exception of new overhead telecommunication lines as provided in item 10 above) or utility structures.

I note that Transpower in S10.26 seeks that the definition be retained.

316. Chorus request to delete the provision relating to the replacement of existing antennas on telecommunication facilities so as to avoid confusion given that the “minor upgrading” definition and associated Rule 6.1.3 relates to ‘lines’ only and the replacement of antennas on existing facilities is addressed through the “upgrading” Rule 6.1.4 and associated definition.

317. Chorus also seek to allow for additional lines to be included as part of minor upgrading, because:

- telecommunications are recognised in the policy framework as an essential service;
- additional lines on existing structures are an efficient use of an existing resource; and
- they can be installed so that visual effects are minimal in the context of the existing structures.

318. Chorus seeks increase the height of replacement poles in the road reserve in order to achieve road controlling authority clearance requirements.

**Assessment**

319. I disagree in part with the reasoning given by the submitter as regards the replacement of existing antennas on telecommunication facilities, insofar as the definition of ‘upgrading’ specifically excludes ‘minor upgrading’ (i.e. since replacement of existing antennae on telecommunication facilities is listed in the definition of ‘minor upgrading’, it could not also be undertaken as ‘upgrading’ under NU6.1.4). However, I agree that antennae replacement would fit more comfortably outside of the definition of ‘minor upgrading’ since, as the submitter notes, the definition relates to electricity and
telecommunication lines only, with ‘lines’ being defined separately in the Plan to ‘antenna’. The definition of ‘minor upgrading’ as notified is:

*Minor upgrading means an increase in the carrying capacity, efficiency or security of electricity and telecommunication lines, which utilise the existing or replacement support structures and includes:* […]

320. I consider that the deletion of the reference to antenna as sought by the submitter is appropriate. I consider that the replacement of existing antenna would effectively fall within a maintenance definition (where like is being replaced with like) which I address in paragraph 341 of this report or within the definition of upgrading (where there is a difference in effects).

321. In terms of the requested amendment to provide for additional lines as part of ‘minor upgrading’, I consider there is some merit to the arguments put forward by the submitter insofar as utilising existing support structures is an efficient use of existing infrastructure and that provision of telecommunication networks is supported by the policy framework in the Plan.

322. However, I cannot support such an amendment. Firstly, I am concerned at the potential for significant cumulative visual impacts arising from multiple additional lines being added to existing support structures, without any ability for the Council to restrict how many “new overhead lines” are added over time. I am also concerned about what permitted activity standards would be appropriately prescribed to ensure that those adverse effects are avoided, remedied or mitigated, particularly given the variability of environmental settings in which the activity may occur. The effect of the submitter’s requested change is that the addition of lines to existing structures would fall within Rule NU6.1.3 as a permitted activity, rather than being treated as a restricted discretionary activity under NU6.1.24. The visual amenity values, the visual characteristics of existing structures and lines, and therefore the acceptability of additional lines vary throughout the District, which makes the control of such potential effects through permitted activity standards complicated. The requested amendment would also apply on an iterative basis such that multiple additional lines could be added to existing structures over time as long as each additional line was no greater than 30mm diameter.

323. I consider that it is appropriate that the addition of new lines to existing structures within the road reserve remain a restricted discretionary activity under NU6.1.24 on the basis that each situation needs to be assessed on its merits through the consenting process on a case by case basis, taking into account such things as the number of existing lines, the sensitivity of the area within which it is located, the impact on local character and amenity values, and the visibility of the structure. As drafted, PC16 provides for existing aboveground lines to be replaced and restrung, as well as a minor increased in diameter.
324. I note that the Council undertook a plan review in and around 2002 which assessed the network of aboveground lines within the City, in particular amenity effects. This work concluded that in some places around the City there were potential adverse effects associated with new lines which meant that applying a permitted activity status would be inappropriate and warranted an assessment through the resource consent process.

325. I consider increasing the pole height to be appropriate, particularly in light of the fact that such increase would be limited to a maximum of 1 metre and the height standards in NU7.2.1 must also be complied with. The limitation of the increased height to activities within the road reserve, and the specific circumstances in which an increase in height can be undertaken (to achieve height clearances for roads) limits the extent of the activity and therefore the extent of its effects. I do not consider that this amendment would adversely impact on Transpower in respect of S10.26.

Recommendation
326. It is recommended that S12.8 and that part of S12.15 be rejected in part, insofar as they relate to the addition of a line to an existing structure be rejected.

327. It is recommended that s12.8 and S12.15 be accepted in part, insofar as they seek to include reference to an increase of height of existing structures in the road reserve in order to achieve roading authority height clearances.

328. It is recommended that S12.15 be accepted in part, insofar as it seeks the deletion of reference to the replacement of antenna.

329. It is recommended that S10.26 be accepted in part, insofar as the definition is proposed to be amended.

Recommended Amendments

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<tr>
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ii. Sensitive Activities

Submission Points
330. Radio NZ in S1.21 request that the proposed definition for sensitive activities be deleted and a more descriptive definition, such as that used in the RPS be added, as follows:

*Means activities which suffer should they experience adverse effects typically associated with some lawful activities. For example, dust or noise from a quarry or port facility, noise in an entertainment precinct, smells from a sewage treatment facility. Activity considered sensitive includes, any residential activity, any early childhood education centre, and any hotel or other accommodation activity. It may also include hospitals, schools and respite care facilities.*

331. Transpower in FS4.13 seeks that either S1.21 be disallowed or a separate definition of sensitive activities in relation to the National Grid be provided. Transpower supports an exclusive definition of sensitive activities and does not consider that the examples listed reflect all of the issues that can create reverse sensitivity issues for the National Grid infrastructure. Further, Transpower sets out that under the NPSET hospitals and schools are clearly defined as sensitive activities and it is opposed to the changes proposed where hospitals and schools are not clearly included.

332. Kiwirail in S9.15 also seek that the definition be amended, as a consequential amendment to Kiwirail’s proposed standards for mitigation of sensitive activities. This submission point was erroneously identified as being in scope; however, as it is a consequential amendment in respect to the new rules they have sought which are out of scope / not on the plan change, then it is not in scope and I have not considered it further.

333. Transpower in S1O.30 seek that the definition of sensitive activities is either retained as notified, or amended to remove the reference to tertiary education facilities. The reason for seeking that tertiary education facilities be removed is because they are not necessarily sensitive.

Assessment
334. The only rules in the Plan that reference sensitive activities are in respect to the Electricity Transmission (National Grid) Yard. For this reason, it is considered most appropriate for it to be focussed on the matters of concern in respect to those rules. Radio NZ’s requested amendment in S1.21 would broaden the definition to matters wider than are addressed through the rules. While I can appreciate that consistency with the RPS is important, this definition has been developed in the context of the NPSET and for the purpose of giving effect to the NPSET. I therefore recommend that the amendment sought by Radio NZ be rejected.

335. As outlined in the previous paragraph, the intent of the sensitive activities definition is to give effect to the NPSET. The definition was drafted in a
manner to be consistent with other definitions within the District Plan, rather than the broader definition in the NPSET which is “Sensitive activities includes schools, residential buildings and hospitals”. When PC16 was drafted, this was interpreted to include tertiary education facilities. However, if Transpower are satisfied that tertiary education facilities do not fall within schools, I consider the amendment sought can be accepted.

Recommendation
336. It is recommended that S1.21 be rejected and FS4.13 be accepted.

337. It is recommended that S10.30 be accepted insofar as it seeks to remove the reference to tertiary education facilities.

Recommended Amendments

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| S10.30           | Part M – Definition of Sensitive Activities | **Sensitive Activity**  
|                  |                     | Means the following activities: |
|                  |                     | - Residential |
|                  |                     | - The accommodation or care of people |
|                  |                     | - Pre-school, primary, intermediate, and secondary schools and tertiary education facilities. |

iii. Upgrading

Submission Points
338. In S8.13, Powerco seeks that the definition of ‘upgrading’ be deleted or amended such that it “relates to an increase in capacity, security or efficiency for network utilities not otherwise provided for where the scale of the upgrade works does not result in the existing structures exceeding more than a specified threshold (e.g. 15%)”. The definition as notified reads: “As it applies to network utilities, upgrading excludes ‘minor upgrading’ and means the replacement, repair or renewal of existing network utilities but does not extend to any increase in height or size or change in location, or the installation of additional or new above ground lines, which would not comply with a permitted network utility rule or permitted activity standard or any condition of a resource consent for that network utility.”

339. The submitter’s reasons for the request are that the definition as notified:
- is restricted to standard maintenance activities required to maintain the integrity of the infrastructure, rather than what would be considered upgrading works relating to ‘improvements in capacity, efficiency and security’;
- will result in ongoing confusion and interpretive difficulties as ‘maintenance’ is provided for separately under NU6.1.2 (which is related to operation and maintenance of existing network utilities, rather than upgrading);
excludes any increase in height or size or change in location of network utilities, whereas in reality, most parts that require replacement or renewal will be replaced with the modern day equivalent, which will not necessarily be of exactly the same size or height; and

- is confusing and inappropriate in that it refers to compliance with the permitted network utility rules and activity standards and resource consent conditions, when it is not appropriate to make all resource consent conditions de-facto permitted activity standards.

Assessment

340. I concur in part with Powerco that there is potential for confusion to arise from the combination of the definition of ‘upgrading’ (which includes ‘the replacement, repair or renewal of existing network utilities’ and is used in NU6.1.4, NU6.1.6 and NU6.1.7) and the reference in NU6.1.2 to ‘maintenance’, which in my view can reasonably (and in the absence of a definition in the Plan as notified) be interpreted to include ‘repair’. I also agree that the definition as drafted does not clearly provide for improvement of existing network utilities, which I note is contrary to the approach taken in respect of existing electricity and telecommunication lines under the definition of ‘minor upgrading’. I also agree that the reference to compliance with resource consent conditions could result in some confusion and extends the scope of the definition to an unknown extent. I would note though, that the definition as drafted does allow for increases in height or size or a change in location, subject to qualifications, which do provide for a degree of upgrading.

341. In light of the above, I agree that changes to improve clarity are necessary. However, in my view neither the deletion of the definition of upgrading and subsequent reliance on the commonly understood meaning of ‘upgrade’, nor amending the definition to refer to an increase in capacity, security or efficiency that does not exceed a specified threshold, is appropriate. Such changes would add complexity and potential interpretation issues. Rather, I propose that a new definition for ‘maintenance’ be included in the Plan and the definition of ‘upgrading’ be amended, as follows:

Maintenance – As it applies to network utilities, means the replacement, repair or renewal of existing network utilities and where the effects of that utility remain the same or similar in character, intensity and scale, and excludes ‘minor upgrading’ and ‘upgrading’.

Upgrading – As it applies to network utilities, upgrading excludes ‘minor upgrading’ and means the replacement, repair, or renewal or improvement or increase in carrying capacity, operational efficiency, security or safety of existing network utilities but excludes:

- ‘maintenance’ (as it relates to network utilities); and
- ‘minor upgrading’; and
- any activity specifically provided for under Rules NU6.1.9 to NU6.1.38; and does not extend to...
• any increase in height or size or change in location, or the installation of additional or new above ground lines, unless such increase or change is specifically provided for and would not comply with the applicable a permitted network utility rule or permitted activity standard specified in NU7.2, NU7.3 or NU7.4, or any condition of a resource consent for that network utility."

342. While both definitions provide for replacement, repair or renewal, I propose that this be differentiated by reference to the nature of the replacement, repair or renewal. In the definition of ‘maintenance’ the replacement, repair or renewal must be limited to a level where the effects of the utility remain the same or similar in character, intensity and scale. While there is an element of subjectivity to that definition, it is considered appropriate in this situation as it would be inappropriate to require resource consent for replacement utilities with more modern parts that have effectively the same effects as the parts they replace.

343. I consider the above definitions, in conjunction with that of ‘minor upgrading’, will:
• make it clear that ‘maintenance’ and ‘upgrading’ are mutually exclusive, thereby removing any potential overlap between NU6.1.2 (dealing with ‘maintenance’) and NU6.1.4, NU6.1.6 and NU6.1.7;
• add clarity to what can be undertaken as part of ‘maintenance’ activities;
• provide for the improvement of existing network utilities, which is more in keeping with what is provided for under ‘minor upgrading’ for existing electricity and telecommunication lines;
• be more specific in terms of what rules and standards are applicable in the event that an increase in height or size or change in location is proposed.

Recommendation
344. It is recommended that S8.13 be accepted in part, through an amendment to the definition of upgrading and a new definition for maintenance.

Recommended Amendments

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capacity, operational efficiency, security or safety of existing network utilities but excludes:
- ‘maintenance’ (as it relates to Network Utilities); and
- ‘minor upgrading’; and
- any activity specifically provided for under Rules NU6.1.9 to NU6.1.38; and does not extend to any increase in height or size or change in location, or the installation of additional or new above ground lines, unless such increase or change is specifically provided for and which would not comply with the applicable a permitted network utility rule or permitted activity standard specified in NU7.2, NU7.3 or NU7.4 or any condition of a resource consent for that network utility.”

F Amendments to C7 Transport Objectives and Policies

Submission Points

345. In S8.18, Powerco seek to insert new wording to the explanatory statement in C7 to clarify the status of roads within the City and to clearly identify whether or not all provisions of the adjoining zone will apply within the road corridor, as follows:

The zoning of existing formed and unformed road and railways is the same as that of adjoining land. Where the land on opposite sides of the road or railway has different zonings, the boundary between the two underlying zones is the centreline of the road or railway.

346. In S9.16, in that part of the submission that is within scope, Kiwirail seeks the following amendment to the introduction to C7:

Roads and rail are also a network utilities as defined under the Resource Management Act. The State Highway Network and the North Island Main Trunk Line are both is also identified as being regionally significant infrastructure in the Regional Policy Statement and the Council is required to recognise its benefits and protect it them from incompatible activities and reverse sensitivity effects. Chapter NU of the Plan addresses how effects from the construction, operation and maintenance of roads and how activities on roads are managed and how the state highway network is recognised and protected from reverse sensitivity effects.

Assessment

347. The issue raised in S8.18 is already picked up in NU1.10 which sets out the existing treatment of roads within the City. All roads in the City are zoned, with the zoning clearly shown in the Planning Maps. PC16 does not propose to change this approach.

348. I concur that the North Island Main Trunk Line should be included within the introduction as it does form a significant part of the transportation network and is specifically identified as a regionally significant network utility in the RPS. I recommend that a consequential amendment is undertaken to also
refer to the North Island Main Trunk Line in the last sentence so as to be consistent with the approach taken in Chapter NU, as follows:

*Chapter NU of the Plan addresses how effects from the construction, operation and maintenance of roads and how activities on roads are managed and how the state highway network and North Island Main Trunk Line is recognised and protected from reverse sensitivity effects.*

**Recommendation**

349. It is recommended that S8.18 be rejected.

350. It is recommended that S9.16 be accepted in part.

**Recommended Amendments**

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<td>C7</td>
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G Amendments sought to Zone Chapters

**Submission Points**

351. In S8.30, Powerco seek that a new subdivision standard be introduced into each of the zone chapters, as follows:

*Each new lot created shall be able to incorporate a building platform in a position which does not encroach on any required building setback or easement.*

352. The reason for this amendment is to ensure that any existing network utilities that may be affected by inappropriate subdivision, use and development are identified at the time of subdivision and taken into account in the design and layout of that subdivision and future use and development.

**Assessment**

353. In respect to building setbacks, the Plan already contains subdivision standards within the Industrial, City Centre and Suburban Zones which require applicants to display, on vacant allotments, that it is practicable to construct a dwelling / building which can comply with all the permitted
activity standards. As such, the first part of Powerco’s submission point is already addressed within the Plan.

354. In respect to easements, the Council’s resource consent planners have advised that in situations where a plan shows an indicative building site located over a network utility that they would already require the utility operator’s approval as part of the consent application. In addition, amendment 4 to F7.2 proposes that all existing and proposed easements be included in the information requirements for subdivision applications. In some instances, it may be acceptable for a building to be located over an easement; this proposed standard would result in new consents being required where none are currently.

355. Powerco have not provided justification as to why this requested amendment is necessary and appropriate in all circumstances. I therefore do not consider that this proposed new standard is necessary.

Recommendation
356. It is recommended that S8.30 be rejected.

H Planning Maps
Submission Points
357. In S2.8, Vector seek that the Planning Maps be amended to reflect the revised pipeline corridor data that it supplied the Council. Vector advised that the Planning Maps, as notified, are not accurate and that the Council has requested updated data to be provided.

Assessment
358. At the time of notification, letters were sent out to property owners that showed up in the Council’s Geographic Information Systems (GIS) maps as having gas transmission pipelines (that operate at a pressure exceeding 2000 kPa) traversing through their property. Unfortunately, as advised by Vector, the metadata supplied to the Council was out of date and therefore incorrect. Vector has since provided the Council with new GIS data files.

359. The Council has since run a new GIS query with the new data provided by Vector and as a result have informed property owners of the error, new and additional letters have been sent out and the maps for PC16 updated accordingly. The updated PC16 maps are attached in Appendix 8. It is not considered that any party is impacted by this amendment, as the sole purpose is to show the existing lines on the Planning Maps and does not result in any new rules applying to those properties. I therefore recommend S2.8 be accepted.

Recommendation
360. It is recommended that S2.8 be accepted.
Legal and financial implications

361. The RMA allows for submitters to appeal the decision of a local authority to the Environment Court. Therefore, any Council decision is subject to legal challenge.

Part 2 of the Resource Management Act

362. Any plan change must serve the purpose of the RMA.

363. I have set out what I consider to be the relevant Part 2 matters in paragraphs 28 – 32 above. I consider that PC16 is consistent with section 7 of the RMA, in particular ss(b), (ba), (c) and (f) for the reasons that it enables network utilities within the City in a manner that provides for the management of associated effects of network utilities and effects on regionally significant network utilities.

Decisions on submissions

364. Council is required to issue decisions on submissions. For the reasons outlined in this report, I recommend that the decisions requested by the submitters be rejected, accepted, or accepted in part, as set out in Appendix 4.

Report Prepared by

Gina Sweetman
Consultant Planner

Approved for Release

Matt Trlin
Manager Environment and City Planning
Appendix 1 – Resource Management Act 1991

Section 5: Purpose
(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
(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.

Section 6: Matters of national importance
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following 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) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
(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 Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga:
(f) the protection of historic heritage from inappropriate subdivision, use, and development:
(g) the protection of recognised customary activities.

Section 7: Other Matters
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—
(a) kaitiakitanga:
(aa) the ethic of stewardship:
(b) the efficient use and development of natural and physical resources:
(ba) the efficiency of the end use of energy:
(c) the maintenance and enhancement of amenity values:
(d) intrinsic values of ecosystems:
(e) [Repealed]
(f) maintenance and enhancement of the quality of the environment:
(g) any finite characteristics of natural and physical resources:
(h) the protection of the habitat of trout and salmon:
(i) the effects of climate change:
(j) the benefits to be derived from the use and development of renewable energy.

Section 8: Treaty of Waitangi
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 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 of the district:
   (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; and
      (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
      (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
      (iii) the maintenance of indigenous biological diversity:
   (c) [Repealed]
   (d) the control of the emission of noise and the mitigation of the effects of noise:
   (e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
   (f) any other functions specified in this Act.
(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

Section 32: Requirements for preparing and publishing evaluation reports
(1) An evaluation report required under this Act must—
   (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
   (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
      (i) identifying other reasonably practicable options for achieving the objectives; and
(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
(iii) summarising the reasons for deciding on the provisions; and
(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

(2) An assessment under subsection (1)(b)(ii) must—
(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
(i) economic growth that are anticipated to be provided or reduced; and
(ii) employment that are anticipated to be provided or reduced; and
(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—
(a) the provisions and objectives of the amending proposal; and
(b) the objectives of the existing proposal to the extent that those objectives—
(i) are relevant to the objectives of the amending proposal; and
(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

(5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
(a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
(b) at the same time as the proposal is publicly notified.

(6) In this section,—
objectives means,—
(a) for a proposal that contains or states objectives, those objectives;
(b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means,—
(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:
(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

Section 32AA: Requirements for undertaking and publishing further evaluations
(1) A further evaluation required under this Act—
(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and

(b) must be undertaken in accordance with section 32(1) to (4); and

(c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and

(d) must—

(i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement), or the decision on the proposal, is publicly notified; or

(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

(2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(iii).

(3) In this section, proposal means a proposed statement, plan, or change for which a further evaluation must be undertaken under this Act.

Section 74: Matters to be considered by territorial authority

(1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations.

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—

(a) any—

(i) proposed regional policy statement; or

(ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and

(b) any—

(i) management plans and strategies prepared under other Acts; and

(ii) [Repealed]

(iia) relevant entry in the Historic Places Register; and

(iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Māori customary fishing),—

to the extent that their content has a bearing on resource management issues of the district; and

(c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

(2A) A territorial authority, when preparing or changing a district plan, must—

(a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and
(b) recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.

(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition.

Section 75: Contents of district plans

(1) A district plan must state—
   (a) the objectives for the district; and
   (b) the policies to implement the objectives; and
   (c) the rules (if any) to implement the policies.

(2) A district plan may state—
   (a) the significant resource management issues for the district; and
   (b) the methods, other than rules, for implementing the policies for the district; and
   (c) the principal reasons for adopting the policies and methods; and
   (d) the environmental results expected from the policies and methods; and
   (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
   (f) the processes for dealing with issues that cross territorial authority boundaries; and
   (g) the information to be included with an application for a resource consent; and
   (h) any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.

(3) A district plan must give effect to—
   (a) any national policy statement; and
   (b) any New Zealand coastal policy statement; and
   (c) any regional policy statement.

(4) A district plan must not be inconsistent with—
   (a) a water conservation order; or
   (b) a regional plan for any matter specified in section 30(1).

(5) A district plan may incorporate material by reference under Part 3 of Schedule 1.
Appendix 2 – Section 32 Analysis
SECTION 32 REPORT
PROPOSED DISTRICT PLAN CHANGE 16
NETWORK UTILITY PROVISIONS

1.0 Introduction .................................................................................................................. 3

2.0 Statutory Context ......................................................................................................... 3
  2.1 Section 32 .................................................................................................................. 3
  2.2 Part 2 of the RMA .................................................................................................... 3
  2.3 Case Law .................................................................................................................... 4

3.0 Background .................................................................................................................. 5
  3.1 Current District Plan Provisions ................................................................................ 5
  3.2 Statutory framework ................................................................................................. 6
  3.3 National Policy Statements and National Environmental Standards ...................... 7
  3.4 Regional Policy Statement ...................................................................................... 10
  3.5 Other relevant Legislation and Regulations ................................................................ 10

4.0 Research and Consultation ......................................................................................... 10
  4.1 Research .................................................................................................................... 10
  4.2 Consultation .............................................................................................................. 10

5.0 The Objectives / Aims of the Proposed Plan Change .............................................. 13
  5.1 Best practice, consistent and up-to-date provisions .................................................. 14
  5.2 Recognising and implementing the NPSET, the NESETA and the NESTF .................. 14
  5.3 Avoiding unnecessary duplication ............................................................................ 14
  5.4 Rationalising Provisions through the District Plan .................................................... 15
  5.5 Giving effect to the RPS – regionally significant infrastructure .................................. 16
  5.6 Giving effect to the NZCPS ...................................................................................... 16

6.0 The Issues to be Addressed by the Plan Change ...................................................... 17
  6.1 Balancing the national, regional and local benefits of network utilities with effects on the local environment ................................................................. 17
  6.2 Managing reverse sensitivity effects on regionally significant network utilities .................................................................................................................... 17

7.0 An explanation of the proposed amendments to the District Plan ......................... 18

8.0 Plan Change Options ................................................................................................. 18
  8.1 Option 1 – Status quo ............................................................................................... 18
  8.2 Option 2 – Limiting the review to only give effect to the NPSET and the RPS ............... 18
  8.3 Option 3 – Amending the Plan, with no consolidation of network utility provisions ................................................................................................................. 19
8.4 Option 4 - Amending the Plan as proposed .............................................. 19
8.5 Option 5 – Deferring the plan change till a comprehensive review is undertaken ................................................................. 19

9.0 Assessment of the Objectives and Policies of the Proposed Plan Change .................................................................................... 19
9.1 Legislative requirements ..................................................................... 19
9.2 Appropriateness of the Objectives and Policies ................................ 20
9.3 Objective 3.1 .................................................................................. 20
9.4 Objective 3.2 .................................................................................. 21
9.5 Objective 3.3 .................................................................................. 23

10.0 Assessment of the Methods, including Rules, Information requirements and Definitions associated with this Proposed Plan Change 24
10.1 Discussion on the Proposed Rules and Methods: ......................... 25
10.2 Discussion on the Assessment Criteria and Information Requirements ............................................................................. 28
10.3 Discussion on the Definitions .......................................................... 29

11.0 Conclusion ...................................................................................... 29

Table 1: Comparison of the Appropriateness of the Objectives and Policies, and the Efficiency and Effectiveness of Policies, Rules and Other Methods ....................................................................................................................... 30

Appendix 1: Relevant NZCPS Objective and Policies ................................ 38
Appendix 2: Activities covered under the NESETA: ............................ 40
Appendix 3: Conditions to be a permitted activity under the NESTF ...... 42
Appendix 4: Clause 4 – Radiofrequency fields from the NESTF ............ 43
Appendix 5: Relevant Extracts from the Regional Policy Statement for the Wellington Region .......................................................... 44
    Relevant Issue: .................................................................................. 44
    Relevant Objective ............................................................................ 44
    Relevant Policies ............................................................................... 44
    Relevant Definitions .......................................................................... 47
Appendix 6: Relevant Legislation and Regulations .................................. 48
    The Telecommunications Act 2001 and the New Zealand Electrical Code of Practice for Electrical Safe Distances ................................................................. 48
    The Electricity (Hazards from Trees) Regulations 2003 ................... 48
    The Electricity Act 1992 and the Gas Act 1992 .................................. 48
    The Utilities Access Act 2010 and the National Code of Practice on Utilities’ Access to the Transport Corridors 2011 ... 48
    Council Bylaws .................................................................................. 51
Appendix 7: Table of Issues and Preferred Options from the Discussion Document ................................................................................... 52

Appendix 2 – Section 32 Analysis 2
Introduction

The Resource Management Act 1991 (the RMA) requires Porirua City Council (the Council) to carry out an evaluation of a proposed plan change under Section 32 (s32) before it can be publicly notified.

This report presents:
- The statutory context to the plan change;
- The background to the plan change;
- The research and consultation undertaken in preparing the proposed Plan Change;
- The issues arising from that background that the proposed Plan Change is intended to address;
- The objective of the proposed Plan Change;
- An explanation of the proposed amendments to the Porirua City District Plan (the District Plan);
- An assessment of the extent to which each objective is the most appropriate way to achieve the purpose of the RMA;
- Having regard to their efficiency and effectiveness, and benefits and costs, an assessment of the appropriateness of the proposed policies, rules and other methods in achieving the proposed objectives.

The report concludes that the proposed Plan Change is the most appropriate means of addressing the resource management issues identified and achieving the purpose of the RMA.

Statutory Context

2.1 Section 32

Section 32 requires that, before the Council publicly notifies a proposed change to the District Plan, it must carry out an evaluation to examine:
(a) “the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

An evaluation must also take into account:
(a) the benefits and costs of policies, rules, or other methods; and
(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods”.

Benefits and costs are defined in the RMA as including benefits and costs of any kind, whether monetary or non-monetary.

2.2 Part 2 of the RMA

In carrying out a s32 analysis, an evaluation is required of how the proposed change achieves the purpose and principles contained in Part 2 of the RMA. Section 5 sets out the
purpose of the RMA, which is to promote the sustainable management of natural and physical resources. Sustainable management includes managing the use, development, and protection of natural and physical resources to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety. In achieving this purpose, authorities need also to recognise and provide for the matters of national importance identified in s6, have particular regard to other matters referred to in s7 and take into account the principles of the Treaty of Waitangi referred to in s8.

There are no s6 matters relevant to this plan change.

The s7 matters that are relevant to this plan change are:
   (b) “the efficient use and development of natural and physical resources:
       (ba) the efficiency of the end use of energy:
       (c) the maintenance and enhancement of amenity values:
       (f) the maintenance and enhancement of the quality of the environment:”

There are no s8 matters relevant to this plan change. However, the duty to make informed decisions through consultation is relevant to this proposed plan change.

2.3 Case Law

The decision in Long Bay-Okura Great Parks Society Incorporated v North Shore City Council (Decision A 078/2008 ), and amended in High Country Rosehip Orchards Ltd and Ors v Mackenzie DC ([2011] NZEnvC 387) at pages 17-18 to reflect the changes made by the Resource Management Amendment Act 2005, sets out the mandatory requirements for district plan changes as being (and taking into account the 2009 amendments to the RMA):

A. General requirements
1. A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve, the purpose of the Act.
2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.
3. When preparing its district plan (change) the territorial shall:
   (a) have regard to any proposed regional policy statement;
   (b) not be inconsistent with any operative regional policy statement.
4. In relation to regional plans:
   (a) the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) [or a water conservation order]; and
   (b) must have regard to any proposed regional plan on any matter of regional significance etc;
5. When preparing its district plan (change) the territorial authority must also:
   • have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent territorial authorities;
   • take into account any relevant planning document recognised by an iwi authority; and
   • not have regard to trade competition;
6. The district plan (change) must be prepared in accordance with any regulation and any direction given by the Minister for the Environment.
7. The requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.

B. Objectives [the section 32 test for objectives]:
8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.

C. Policies and methods (including rules) [the section 32 test for policies and rules]
9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;
10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan:
   (a) taking into account:
      (i) the benefits and costs of the proposed policies and methods (including rules); and
      (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
   (b) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether greater prohibition or restriction is justified in the circumstances.

D. Rules
11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.
12. There are special provisions for rules about contaminated land.
13. There must be no blanket rules about felling of trees in any urban environment.

E. Other statutes:
14. Finally territorial authorities may be required to comply with other statutes.

**Background**

### 3.1 Current District Plan Provisions

This plan change has arisen for a number of reasons:
- The District Plan was developed in the 1990s and took a very permissive approach to network utility provisions. The only amendment to date comprised the introduction of controls on above-ground lines.
- Residents within the City have expressed concern about the controls around telecommunication facilities, particularly cell-sites, which are largely uncontrolled due to the permissive approach of the District Plan. However, the NESTF which deals with telecommunications on the road reserve and radiofrequency emissions now largely addresses this matter and the District Plan needs to be updated to reflect this.
- Technology has changed since the District Plan was first produced and therefore a review is timely.
- The City has been subject to a reasonably high level of growth, meaning that some development is proposed in locations that could lead to conflict with existing or
proposed network utility services and other infrastructure. Of particular note are the location of the Transpower transmission lines and the New Zealand Transport Agency approved development of the Transmission Gully Motorway.

- Finally, new national instruments relating to network utilities have been promulgated and are required to either be given effect to or have the effect of rules that override the District Plan. These national instruments are:
  - The National Policy Statement on Electricity Transmission (NPSET)
  - The National Environmental Standard on Electricity Transmission Activities (NESETA)
  - The National Environmental Standard on Telecommunications Facilities (NESTF).

3.2 Statutory framework

The purpose of the RMA is to promote the sustainable management of natural and physical resources. 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 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.

Under s73(4), a territorial authority must amend a district plan to give effect to a regional policy statement if:

(a) the statement contains a provision to which the plan does not give effect; and
(b) one of the following occurs:
   (i) the statement is reviewed under section 79 and not changed or replaced; or
   (ii) the statement is reviewed under section 79 and is changed or replaced and the change or replacement becomes operative; or
   (iii) the statement is changed or varied and becomes operative.

Under s73(5) a territorial authority must comply with subsection (4)-

(a) within the time specified in the statement, if a time is specified; or
(b) as soon as reasonably practicable, in any other case.

Under s74, when preparing or changing a plan, a territorial authority is required to have regard to:

(b) any –
   (i) management plans and strategies prepared under other Acts,

Under s74(2A) a territorial authority:

must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of a region.

There are no relevant iwi management plans.

Section 75(3) of the RMA requires that district plans must give effect to –
(a) “any national policy statement; and
(b) any New Zealand coastal policy statement; and
(c) any regional policy statement”

Under s75(4), district plans must not be inconsistent with –
“(b) a regional plan for any matter specified in section 30(1)”.

Under ss73 and 74 of the RMA, the Council must have a district plan that is in accordance with its functions under s31, which are (inter alia):
- to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources;
- the control of the effects of the use, development, or protection of land; including in respect of natural hazards, hazardous substances, contaminated land and indigenous biodiversity;
- the control of noise; and
- the control of effects of activities in relation to the surface of water in rivers and lakes.

3.3 National Policy Statements and National Environmental Standards

3.3.1 The National Policy Statement on Electricity Transmission

The National Policy Statement on Electricity Transmission (NPSET) came into force in April 2008 and applies to “the need to operate, maintain, develop and upgrade the electricity transmission network”.

The NPSET contains one objective and 14 supporting policies. The overarching objective of the NPSET is:

“To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:
- managing the adverse environmental effects of the network; and
- managing the adverse effects of other activities on the network.”

The 14 supporting policies are broken down into the following categories, aimed at achieving the above objective:
- Recognition of the national benefits of transmission (Policy 1);
- Managing the environmental effects of transmission (Policies 2-9);
- Managing the adverse effects of third parties on the transmission network (Policies 10-11);
- Maps (Policy 12);
- Long-term strategic planning for transmission assets (Policies 13-14).

The NPSET requires councils to give effect to its provisions in plans made under the RMA by initiating a plan change or review within four years of its approval (by April 2012).

3.3.2 The New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement (NZCPS) took effect on 3 December 2010 and guides local authorities in their day to day management of the coastal environment. The
NZCPS contains seven objectives and 20 supporting policies. Objective 6 and Policy 6 are the most relevant to this current review, and are set out in Appendix 1.

The NZCPS does not have a specific timeframe for councils to give effect to it within. Therefore, councils are required to give effect to it as soon as is practicable and it must be given effect to in any plan change (as is relevant to and within the scope of the plan change).

The Council is responsible for that part of the coastal environment that is above mean high water springs. The NZCPS recognises the importance of infrastructure within the coastal environment, while also acknowledging that infrastructure can have adverse effects on that environment.

3.3.3 The National Environmental Standard on Electricity Transmission Activities (NESETA)

The NESETA came into effect on 14 January 2010. The NESETA sets out a national framework of permissions and consent requirements for activities on existing electricity transmission lines that existed prior to 14 January 2010. Activities include the operation, maintenance and upgrading of existing lines. The NESETA:

- specifies that electricity transmission activities are permitted, subject to terms and conditions to ensure that these activities do not have significant adverse effects on the environment;
- specifies the resource consent requirements for electricity transmission activities that do not meet the terms and conditions for permitted activities.

Activities that are permitted include:

- operating existing transmission lines;
- maintaining conductors (wires) and adding a limited number of conductors provided limits on electric and magnetic fields are not exceeded;
- signs on transmission line support structures (within specified size limits);
- strengthening, upgrading and replacing support structures and foundations.

The NESETA only applies to existing high voltage electricity transmission lines. It does not apply to the construction of new transmission lines, or to substations. The NES also does not apply to electricity distribution lines (the lines carrying electricity from regional substations to electricity users).

The specific activities that the NESETA regulations cover are set out in Appendix 2.

The NESETA does not apply to the following activities:

- the construction of new lines;
- the construction or use of a bridge or culverts;
- the control of the use of land to prevent or mitigate any adverse effects of the storage, use, disposal, or transportation of hazardous substances;
- refuelling vehicles or equipment;
- the use of land as a landing area for helicopters;
- earthworks, to the extent that they are subject to a regional rule.
3.3.4 The National Environmental Standard on Telecommunication Facilities (NESTF)

The NESTF came into force on 9 October 2008. In summary, the NESTF provides that:

- An activity (such as a mobile phone transmitter) that emits radio-frequency fields is a permitted activity provided it complies with the existing New Zealand Standard (NZS2772.1:1999 Radio-frequency Fields Part 1: Maximum Exposure Levels 3kHz-300GHz). This applies everywhere, and is not limited to just the road reserve.
- The installation of telecommunications equipment cabinets along roads or in the road reserve is a permitted activity, subject to specified limitations on their size and location.
- Noise from telecommunications equipment cabinets located alongside roads or in the road reserve is a permitted activity, subject to specified noise limits.
- The installation of masts and antennas on existing structures alongside roads or in the road reserve is a permitted activity, subject to specified limitations to height and size.

Activities that do not qualify as permitted activities under the regulations can be managed through the District Plan.

The NESTF sets out relevant status for where the relevant regulations are and are not met, which are:

- **permitted** – if the facility complies with regulation 4 (radio frequency fields) and the conditions in regulations 6 to 9 (NES only);
- **controlled** – if the facility does not comply with conditions in regulations 6 to 9 and the facility was permitted or controlled in the relevant district plan or proposed plan;
- **restricted discretionary** – if the facility does not comply with conditions in regulations 6 to 9 and was restricted discretionary in the relevant district plan or proposed plan;
- **unrestricted discretionary** – if the facility does not comply with conditions in regulations 6 to 9 and was unrestricted discretionary in the relevant district plan or proposed plan;
- **non-complying** – if the facility does not comply with conditions in regulations 6 to 9 and was non-complying in the relevant district plan (or for radiofrequency fields, if the proposal does not meet the requirements of regulation 4);
- **prohibited** – if the facility does not comply with conditions in regulations 6 to 9 and was prohibited in the relevant district plan.

The conditions to be a permitted activity and the clause applying to radiofrequency fields are set out in Appendices 3 and 4. The assessment of any resource consent application (regardless of activity status) should be under the terms and conditions for assessment prescribed in the relevant district plan, as if the NESTF did not exist.

The exception to this is where a district plan permits something in excess of the level permitted by the regulations. In this situation, the permitted activity in excess of the regulations becomes a controlled activity. Control is limited to the aspect that does not comply with the regulations.

What this means is that by limiting control to regulations 6 to 9, a council need only consider the aspect that tips a proposal outside the parameters of the regulations. For example, if a plan permits cabinets up to 2 metres in height and the regulation only permits a cabinet up to 1.8 metres in height, then a 2 metre-high proposal by a telecommunications company...
would be a controlled activity. When assessing the application, the council’s control would be limited to the height of the cabinet only (ie, the aspect of “non-compliance”).

3.4 Regional Policy Statement

The Regional Policy Statement for the Wellington Region (RPS) was made operative on 24 April 2013.

The relevant provisions from the RPS are attached as Appendix 5. There is clear direction in the RPS of the need to protect and manage regionally significant infrastructure, both in terms of its effects, and effects on it. The Greater Wellington Regional Council has advised that the RPS has been drafted to give effect to the NPSET.

3.5 Other relevant Legislation and Regulations

There are a number of other pieces of legislation and regulations that are relevant to network utilities, and have been considered in preparing this proposed Plan Change. These are:

- the Telecommunications Act 2001
- the New Zealand Electrical Code of Practice for Electrical Safe Distances 2001
- the Electricity (Hazards from Trees) Regulations 2003
- the Electricity Act 1992
- the Gas Act 1992
- the Utilities Access Act 2010
- the National Code of Practice on Utilities’ Access to the Transport Corridors 2011
- Council Bylaws under the Local Government Act 2002
- The Porirua City Council Code of Land Development and Subdivision Engineering

Further information on these relevant pieces of legislation and regulation are contained in Appendix 6.

Research and Consultation

4.1 Research

The following research was undertaken in developing this proposed plan change:

- A review of five district plans that were identified as being comparative to Porirua City Council, within proximity to Porirua City Council and had recently amended their relevant plan provisions. A comparative review was also undertaken of the District Plan;
- A review of guidance material on the three national instruments produced by the Ministry for the Environment;
- A review of other district plans around New Zealand to see how NPSET has been given effect to; including review of evidence presented at hearings, and decisions on plan changes.

4.2 Consultation

4.2.1 Legislative requirements
Clause 3 of the First Schedule of the RMA specifies the people who must be consulted in the preparation of a plan, including plan changes.

The provisions relevant to this Proposed Plan Change are:

“3. Consultation
(1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—
   (a) The Minister for the Environment; and
   (b) Those other Ministers of the Crown who may be affected by the policy statement or plan; and
   (c) Local authorities who may be so affected; and
   (d) The tangata whenua of the area who may be so affected, through iwi authorities.
(2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.
(3) [not relevant]
(4) In consulting persons for the purposes of subclause (2), a local authority must undertake the consultation in accordance with section 82 of the Local Government Act 2002”.

4.2.2 Statutory Consultation

The Ministry for the Environment, Te Rūnanga O Toa Rangatira and all of the local authorities within the Wellington Region were consulted on this Proposed Plan Change.

The Ministry for the Environment provided no specific feedback. Local authorities within the Region had the opportunity to provide comments on draft version of the Proposed Plan Change.

Te Rūnanga O Toa Rangatira advised that they had no particular comment to make pre-notification of the plan change.

4.2.3 Consultation with Stakeholders

Consultation was undertaken with the following utility providers in researching and preparing the Proposed Plan Change:

- Porirua City Council staff
- New Zealand Transport Authority
- Kiwirail
- Greater Wellington Regional Council
- Telecom
- Chorus
- Wellington Electricity
- Transpower
- Vodafone
- New Zealand Police
- Smartlinx
- Kordia
- 2Degrees
- Meridian Energy
- Vector
- Airways
- Powerco
- New Zealand Post
- Meteorological Service
- WEL Networks
- TelstraClear
Consultation was also undertaken with the Titahi Bay Amateur Radio Club and Porirua community representative organisations. The remainder of this section describes the consultation undertaken with stakeholders.

4.2.4  Engagement with the Titahi Bay Amateur Radio Club

Through consultation and written feedback, the Titahi Bay Amateur Radio Club has advised that they are not network utility providers and should not be subject to the same restrictions as network utilities. They instead seek separate provisions specifically relating to amateur radio facilities. As the purpose of this plan change is, amongst other matters, to review and update the network utility provisions with the District Plan, no further consideration has been given to amateur radio facilities, and provision for such facilities will be considered as part of an appropriate and separate plan review process.

4.2.5  Community Open Forum

A Community Open Forum was held at Pataka in Porirua on Thursday 10 November 2011. This forum provided an opportunity for network utility providers to outline to the Council and community what services they typically provide in Porirua and things that they typically need to do to maintain their systems and from time to time to expand or modify their systems to deal with growth or technology change. The community was also provided with the chance to share interests or concerns that they would like to see considered and provided for in managing network utility maintenance and upgrades. Stakeholders and community groups were invited individually and public notices advertising the Open Forum were also placed in the Kapi Mana News.

The Open Forum was used to inform the Council of some of the issues that needed to be addressed as part of the plan change. It was also used to form the basis for open communication and engagement with Network Utility providers and the community to inform the discussion document and draft plan change for network utility management in the city.

The following stakeholders gave presentations:

- Chorus
- Smartlinx
- Kordia
- 2 Degrees
- Titahi Bay Amateur Radio
- Transpower

4.2.6  Discussion Document

The material gathered from the Open Forum and other relevant information was used to produce a discussion document. The Discussion Document sets out the objectives for a potential plan change, and 15 issues identified through consultation and research, as well as potential options to address those issues. A table setting out the issues and options, including the Council’s then preference on the options is attached as Appendix 7.

The discussion document was publicly released for comment on 7 April 2012. It was also emailed directly to those who had already been consulted with. Separate meetings were
held with some of the stakeholders. A public meeting on the discussion document was held on 24 April 2012.

Feedback on the document closed on 11 May 2012 and responses were received from 18 different parties. One of the key issues of contention was the potential impact of a buffer corridor around the electricity transmission lines / National Grid proposed by Transpower to give effect to the NPSET.

4.2.7 Community Meeting on the NPSET related provisions

A community meeting was held on 7 June 2012 in response to the feedback received on the discussion document on the potential impact of new provisions to give effect to the NPSET. The Council sent a letter of invitation to all property owners whose properties were located within 32 metres of a high voltage transmission line. There were approximately 70 – 80 attendees at the meeting. From the meeting, a separate smaller resident working group comprising four members was set up to work with Transpower and the Council to develop appropriate provisions for Porirua City to be presented back to affected property owners at a later community meeting.

4.2.9 Engagement with regionally significant infrastructure providers

The Council also engaged with regionally significant infrastructure providers and other councils in the Region to discuss how policies in the PRPS would be given effect to, as one of the outcomes sought was to achieve consistency through the Region.

4.2.10 Draft Plan Change

A draft plan change was notified on 22 January 2013 with submissions closing on 8 March 2013. A total of 11 submissions were received. Where necessary, submissions were followed up to provide for clarification. This was an informal non-statutory process used to help shape and form the plan change, and was not a formal submission process under the First Schedule of the RMA.

4.2.11 Further Community meeting on NPSET provisions

The draft provisions prepared by the working group were circulated to all potentially affected property owners prior to being presented to a community meeting on 12 February 2013. The meeting attracted approximately 15 attendees.

The Objectives / Aims of the Proposed Plan Change

The objective and aims of the Proposed Plan Change are to:

- review and update existing network utility provisions to ensure that they:
  - reflect best practice;
  - provide greater consistency between district plans across the region and
  - best serve and reflect public and stakeholder expectations and requirements;
- rationalise existing network utility provisions across the District Plan;
- avoid unnecessary duplication between District Plan provisions and other legislation or regulations;
- give effect to the NPSET;
- give effect to the RPS;
• give effect to the NZCPS, as appropriate; and
• amend the District Plan as required so as not to duplicate or conflict with the NESTA and the NESTF.

5.1 Best practice, consistent and up-to-date provisions

A key driver of this plan change is to ensure that the District Plan’s network utility provisions reflect and provide for Porirua and its community now and into the future, best practice, and public and stakeholder expectations and requirements. Another key driver is to achieve a higher level of consistency of provisions with other district plans within the Region. To this end, this plan change has been developed with a high level of collaboration with other territorial authorities with neighbouring boundaries and the Regional Council.

5.2 Recognising and implementing the NPSET, the NESETA and the NESTF

One of the main reasons for the plan change is that the Council is required to recognise and implement national environmental standards and national policy statements in accordance with ss44 and 55 of the RMA. The NPSET states in its Preamble:

In accordance with section 55 (2A)(a) of the Act [the RMA], and within four years of approval of this national policy statement, local authorities are to notify and process under the First Schedule of the Act a plan change or review to give effect as appropriate to the provisions of this national policy statement.

The NPSET requires that the Council must take some action, recognising the Council’s requirement to give effect to the NPSET and not conflict with nor replicate the NESETA. This has formed a particular impetus for this plan change being undertaken at this time. The statutory context under the RMA and the NPSET is one where it is not a matter of if this Plan Change be promulgated, but rather how, and through which, appropriate plan provisions.

The s32 evaluation reports prepared by the Ministry for the Environment for the NPSET, the NESETA and the NESTF have been considered in preparing this s32 evaluation.

5.3 Avoiding unnecessary duplication

In developing any proposed plan change, it is important to consider the relationship between the District Plan and the RMA, and other relevant legislation and regulations. Where possible, the approach should be to avoid any duplication or discrepancy with other legislation or regulations that control network utilities. Therefore, should a matter already be satisfactorily controlled / managed by other means, the District Plan should not duplicate or undermine that legislation or regulation. However, if the other legislation or regulation does not adequately address all the relevant environmental effects from a particular network utility, then it is appropriate that the District Plan include suitable provision to manage those effects.

As an example, in the context of this plan change, the conveyance of electricity in New Zealand is provided for and regulated under the Electricity Act 1992. The management of land use and the physical resources of electricity conveyance fall under the RMA in terms of s31. However, any plan change cannot override the statutory requirements of the Electricity Act. Regardless of any plan change, the conveyance of electricity must continue.
to operate under the provisions and regulations of the Electricity Act. The purposes of the Electricity Act are:

(a) to provide for the regulation, supply, and use of electricity in New Zealand; and
(b) [Repealed]
(c) to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and
(d) to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and
(da) to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and
(e) to provide for the regulation of electrical workers.

Similarly, Clauses 2.2, Excavation near Overhead Electric Line Supports, and 2.3, Installation of Conductive Fences Near Overhead Electric Line Supports, of the NZECP34:2001, the New Zealand Electricity Code of Practice for Electrical Safe Distances, have specific controls on excavation and conductive fences within proximity of transmission poles and towers. As such, there is already regulation that controls these matters and there is no need to replicate such provisions within the District Plan. It is noted that the line owner’s permission is already required prior to carrying out these works. Local authorities do not have the ability to give approval under, or the resources to assess compliance with NZECP34:2001. Including such provisions within the District Plan would default to a process where the Council seeks approval of the line owner on behalf of the applicant through the resource consent process. This is not considered to be an efficient process as applicants would incur a financial cost through the resource consent process for something that they can already access directly from Transpower. Therefore it is considered that the management of these activities should not be included within the District Plan; however it is considered appropriate to advise plan users of their legal responsibilities under NZECP34:2001 in the form of advice notes.

The NZECP also contains specific provisions in respect of the construction of buildings and similar structures near overhead power line supports and near conductors. It could be argued that there is no requirement to include provisions within the District Plan to manage or control any effects arising from the location of buildings, and types of activities undertaken, in proximity to power line structures and conductors. However, consultation and research through the development of the Proposed Plan Change has clarified that the following effects associated with the proximity of buildings and particular activities are not addressed through the NZECP and are therefore appropriate to be managed through the District Plan:

- health and safety, in particular electrical shock that may arise from earth potential rise, step and touch voltages, induction voltages, conductor drop and flashovers; and
- the access to, and inspection and maintenance of lines.

5.4 Rationalising Provisions through the District Plan

Currently, Section C14 of the District Plan contains the objectives and policies for network utilities, while each zone chapter of the District Plan contains its own network utility rules. This has resulted in duplication between chapters, where the same, or similar, rules are repeated, leading to the increased “size” of the District Plan. One of the objectives of this Proposed Plan Change is to rationalise, where appropriate, the network utility provisions.
within the Plan. It is noted that the recent Heritage Plan Change (PC15) has rationalised all heritage related objectives, policies and rules into one chapter.

5.5 Giving effect to the RPS – regionally significant infrastructure

As outlined previously, the District Plan has to give effect to the RPS, and it has to do so as soon as is practicable. Given this plan change seeks to amend District Plan provisions in respect of network utilities, consideration has also been given to the relevant objective and policies of the RPS to ensure they are given effect to.

Policy 7 of the RPS requires that district plans shall include policies and / or methods that recognise the benefits from regionally significant infrastructure.

Policy 8 of the RPS requires that district plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.

Policy 39 of the RPS requires the Council when considering a variation or review of the District Plan, to have particular regard to:

“(a) the social, economic, cultural and environmental benefits of regionally significant infrastructure; and
(c) protecting regionally significant infrastructure from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure...”

Full copies of the relevant policies are contained in Appendix 5.

However, in considering how to give effect to the RPS, an issue that has arisen is in respect of the definition of regionally significant infrastructure, which in the RPS includes:

- “strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001
- strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989”

A review of both pieces of legislation has identified that neither contain the definitions referred to. The explanation to the relevant policies provides no guidance as to what may or may not constitute a strategic telecommunication facility or radio-communications facility. Discussions with the Regional Council have not provided clarification. In the absence of certainty or clarification of what may or may not be a strategic telecommunications or radio-communications facility, the Proposed Plan Change does not contain these two matters as being regional significant network utilities. Without definitions of what the Regional Council considers are “strategic” telecommunication and radio communication facilities, it is not appropriate for the Council to presume the exact scope and nature of what these are. If the RPS is amended in the future to clarify what is meant by these terms, the District Plan can be updated to give effect to the amended RPS.

5.6 Giving effect to the NZCPS

In developing this Proposed Plan Change, consideration has also been given to the NZCPS and to what extent the Proposed Plan Change should give effect to it.

Currently, any development within the coastal environment is subject to the relevant zone provisions in which it is located. This includes extra controls on earthworks within riparian
setbacks (from mean high water springs) and a 20m yard boundary from riparian setbacks. It is unclear from the District Plan as to whether network utilities need to meet these provisions. It is considered appropriate and is therefore recommended that network utilities are subject to these controls where they are located in proximity to riparian setbacks, given the sensitivities of the coastal environment.

Generally, it is considered that the existing provisions provide the Council with sufficient discretion to manage the effects of network utilities within the coastal environment. It is also considered that it would be more appropriate for the Council to undertake a review those parts of the Plan that relate to the coastal environment as one comprehensive review, rather than undertake piecemeal amendments as would be the case in respect of this current network utilities review.

The Issues to be Addressed by the Plan Change

The following issues were identified through the research and consultation undertaken in developing the Proposed Plan Change:

1.1 Balancing the national, regional and local benefits of network utilities with effects on the local environment

An important issue is managing the actual and potential or perceived adverse environmental effects arising from network utilities while also recognising the key role they play and benefits they have locally, regionally and nationally, and to ensure the operational requirements of the network utility concerned is not unreasonably restricted. Failing to adequately provide for network utilities may result in the desired level of well-being and quality of life not being achieved within the City. This is because network utilities provide essential services to people’s homes and businesses, such as water, transport means, electricity, gas and telecommunications, and are critical for the effective functioning and liveability of the City.

However, the construction, operation and/or maintenance of network utilities can have adverse effects and adversely affect the amenity of areas of the City, as a result of noise, emissions, and visual dominance. Some network utilities are relatively large, visually prominent and capable of generating significant adverse effects on the surrounding environment. They may also have potential or perceived adverse effects on public health and safety. Adverse effects may only occur at the time of construction or installation of the utility, but in some instances may continue throughout its operation or during maintenance works. In some cases, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with a utility, meaning there will be some level of adverse effect on the surrounding environment. In such circumstances, there is a need to carefully consider both the benefits the utility will provide and the significance of the adverse effects on the surrounding environment.

1.2 Managing reverse sensitivity effects on regionally significant network utilities

Inappropriate subdivision, use and development in the vicinity of regionally significant network utilities may lead to reverse sensitivity effects that have the potential to impact upon the effective and efficient operation of such utilities. Reverse sensitivity can occur when sensitive activities locate near to or intensify by existing network utilities and seek to
or constrain the operation or expansion of these utilities. This may mean that the local, regional and national benefits of those regionally significant network utilities may be compromised. The City has a lot of well-established regionally significant network utilities located in close proximity to existing land use activities. The Council is predominantly concerned with new more intensive land use activities establishing in proximity to existing regionally significant network utilities that may lead to reverse sensitivity effects on those utilities.

An explanation of the proposed amendments to the District Plan

The individual amendments to the District Plan proposed by the Proposed Plan can be summarised as:
(a) Chapter C14 Network Utilities deleted in entirety
(b) Amendment 3: New Chapter including:
   • Introduction
   • Resource Management Issues
   • Objectives and Policies
   • Methods
   • Anticipated Environmental Outcomes
   • Rules
   • Standards
   • Matters of Control or Discretion
(c) Amendments to Part F: Information to be supplied
(d) Amendments to Part M: Interpretation
(e) Amendments to C7: Transport Objectives and Policies
(f) Amendments to D1: City Centre Zone Rules and Standards
(g) Amendments to D2: Industrial Zone Rules and Standards
(h) Amendments to D3: Suburban Zone Rules and Standards
(i) Amendments to D4: Rural Zone Rules and Standards
(j) Amendments to D4A: Judgeford Hills Zone Rules and Standards
(k) Amendments to D4B: Recreation Zone Rules and Standards
(l) Amendments to D4C: Public Open Space Zone Rules and Standards
(m) Amendments to District Plan Maps

Plan Change Options

In considering changes to the current network utilities provisions in District Plan, four different options were identified and evaluated.

8.1  Option 1 – Status quo

This option involves not making any changes to existing network utilities plan provisions. This would mean that the plan continued to operate as it does now with a standalone chapter on network utilities containing the relevant objectives and policies, but the rules relating to network utilities being contained within the relevant zone chapter.

8.2  Option 2 – Limiting the review to only give effect to the NPSET and the RPS
This option involves undertaking a review of the existing network utility provisions and amending them to the extent required to give effect to the NPSET and the RPS only, and not reviewing the provisions relating to other network utilities.

8.3 Option 3 – Amending the Plan, with no consolidation of network utility provisions

This option involves amending the existing and adding new objectives and policies in chapter C14 and rules within each zone chapter. This proposal will involve amendments to each chapter of the Plan that contains network utility provisions.

8.4 Option 4 - Amending the Plan as proposed

This option involves amending existing and adding new objectives, policies and rules within a new network utilities chapter, making small changes to the relevant parts of other chapters and amending existing and adding new definitions to the Plan. This proposal places the majority of the network utility provisions in one chapter.

8.5 Option 5 – Deferring the plan change till a comprehensive review is undertaken

This option involves waiting to review the network utility provisions until a comprehensive review of the Plan is undertaken. The Council has committed to a rolling review of its District Plan, therefore there is no comprehensive review planned. Further, the Council is obligated under the NPSET to have commenced a review of its Plan to give effect to the NPSET by April 2012.

Assessment of the Objectives and Policies of the Proposed Plan Change

1.3 Legislative requirements

Section 32 requires examination of the ‘extent to which each objective is the most appropriate way to achieve the purpose of the Act’. The Council must therefore be satisfied that the proposed objectives in the District Plan are the most appropriate means of achieving the purpose of the Act. The examination required by s32(3)(a) suggests there should be a comparison of each proposed objective with alternative ways of achieving the purpose of the RMA. Case law supports the view that each objective must be examined during evaluation, but it is not necessary that each objective individually be the most appropriate way of achieving the purpose of the Act.

Section 32(3)(b) requires the Council to evaluate:

“whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;

Section 32(4) (a) states that this evaluation must take into account:

“the benefits and costs of policies, rules, or methods;”

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Appendix 2 – Section 32 Analysis
9.2 Appropriateness of the Objectives and Policies

Each of the proposed objectives and their supporting policies are further discussed and analysed below.

9.3 Objective 3.1

Objective 3.1
To recognise the benefits of regionally significant network utilities and ensure their functions and operations are not unreasonably compromised by other activities.

Analysis and appropriateness of the objective:
This objective gives effect to the RPS, by recognising the importance of regionally significant network utilities within the City. This objective and its supporting policies ensure that the local, regional and national benefits of these significant network utilities are recognised and that they are protected from any use, development or subdivision that would be incompatible with them. The current plan does not specifically recognise regionally significant network utilities. The term “regionally significant network utilities” is proposed as an alternative to the RPS term “regionally significant infrastructure”. This terminology is preferred as it better relates to the definition of network utilities in the RMA and the term “infrastructure” can be interpreted to be wider than network utilities.

Giving effect to the RPS is required by the RMA. The current plan does not give effect to this particular part of the RPS, therefore this proposed objective is considered to be the most appropriate way to achieve the purpose of the Act.

This objective also gives effect to objective 1 and policy 1 of the NPSET. While the objective is not specific to the National Grid, the National Grid clearly falls within the definition of regionally significant network utilities. It is not considered necessary to have a separate objective specific to the National Grid.

Policies:
To support this objective four policies are proposed.

3.1.1 Identify regionally significant network utilities within the City on Council planning maps, as appropriate.

3.1.2 Recognise the national, regional and local benefits of regionally significant network utilities.

3.1.3 Avoid, or as appropriate, remedy or mitigate, the potential for any reverse sensitivity effects on regionally significant network utilities from incompatible new subdivision, use and development occurring under, over, or adjacent to regionally significant network utilities.

3.1.4 Ensure the safe and efficient functioning and operation of the National Grid by avoiding inappropriate establishment of sensitive activities and incompatible buildings and structures within a defined Electricity Transmission Yard.

Analysis and appropriateness of the policies:
These policies are proposed to ensure that regionally significant network utilities are recognised and protected to fulfil the requirements of Objective 3.1. Firstly it is important to identify these regional significance network utilities in the District Plan so that they can be protected. However, some of those network utilities are at a scale where it would not be feasible to identify them all within the Plan, for example gas and electricity distribution lines. For this reason, the policy provides that these utilities are identified, as appropriate. This policy gives effect to policy 12 of the NPSET, which requires that the National Grid is identified in Council planning maps.

Policy 3.1.2 requires the recognition of benefits of the regionally significant network utilities at a city, regional or national level. Specific benefits are not set out, as these will vary on a case by case basis. This policy gives effect to policy 1 of the NPSET and policy 7 of the RPS.

Policy 3.1.3 aims to ensure that any adverse reverse sensitivity effects on regionally significant network utilities are avoided, or if appropriate, remedied or mitigated. This policy gives priority to avoiding these effects wherever possible, while recognising that it may not always be possible for all adverse reverse sensitivity effects to be avoided. Inappropriate subdivision, use and development located within close proximity to regionally significant network utilities can jeopardise their successful operation and or maintenance. The amenity and safety of people and the community can also be jeopardised when inappropriate use or development is located within close proximity to regionally significant network utilities. This policy gives effect to policy 10 of the NPSET and policy 8 of the RPS.

Policy 3.1.4 recognises that the electricity transmission network is a matter of national significance under the NPSET. The provision of an Electricity Transmission Yard safeguards both the operation and maintenance of the transmission network and the health, safety and amenity of the community. This policy gives effect to policies 1, 2, 10 and 11 of the NPSET, and Policy 8 of the RPS.

These proposed provisions are considered to give effect to the relevant policies in the RPS and NPSET, achieve the proposed objective and meet the purpose of the RMA.

9.4 Objective 3.2

Objective 3.2
To recognise and provide for the sustainable, secure and efficient use, operation and development of network utilities within the City.

Analysis and appropriateness of the objective:
Network utilities are essential to the continued safe and efficient operation of the City. If network utilities fail, the quality of life and wellbeing within the City will fall. Therefore, it is considered necessary to recognise the benefits of all network utilities in the City, and not just those that are regionally significant, while also recognising that those benefits are generally more felt at a local, rather than regional or national, scale.

This objective provides for the social, cultural and economic health and wellbeing of Porirua, therefore this proposed objective is considered to be the most appropriate way to achieve the purpose of the Act.

Policies:
To support this objective four policies are proposed.

3.2.1 Recognise and provide for the:
- need for new and the maintenance and upgrading of existing network utilities; and
- technical and operational requirements and constraints of network utilities in assessing their location, design, development, construction and appearance; and
- benefits that network utilities provide to the economic, social and cultural functioning of the City.

3.2.2 Enable the efficient construction, installation, operation, upgrading and maintenance of network utilities.

3.2.3 Ensure that the provision and operation of utilities that cross jurisdictional boundaries is managed in an integrated manner.

3.2.4 Encourage the appropriate use of designations for new network utilities and extensions to existing network utilities that are not designated.

Analysis and appropriateness of the policies:
To ensure that network utilities can be efficiently used, operated and developed, Policy 3.2.1 lists some of the specific issues and benefits that need to be recognised and provided for in the City. This includes recognising and providing for the technical and operational requirements and constraints when choosing the location or design of network utilities. Unlike other land use activities, network utilities will generally have more limited options when it comes to sites, approach, construction or design. This needs to be considered when assessing applications for network utilities.

As noted above network utilities are essential to the functioning of Porirua City, therefore it is considered necessary to allow for their construction, operation, upgrading, maintenance and installation, as provided for by Policy 3.2.2.

Policies 3.2.1 and 3.2.2 give effect to Policies 1, 2, 3 and 5 of the NPSET.

Policy 3.2.3 recognises that the lineal nature of many network utilities means that they can cross over council boundaries. It is essential that any cross boundary issues are managed in the most efficient and integrated manner possible. This includes plan provisions as well as applications for new or upgraded network utilities.

It is often appropriate for network utilities to be designated, especially those that are linear in nature. Policy 3.2.4 encourages designations where they are appropriate, which may in particular be where land acquisition may be required or to protect the interests of the network utility operator. This policy gives effect to Policy 13 of the NPSET.

These proposed provisions are considered to give effect to the relevant policies in the RPS and NPSET, achieve the proposed objective and meet the purpose of the RMA.
9.5 Objective 3.3

Objective 3.3
To manage any adverse effects on the environment resulting from the design, location, operation, upgrading and maintenance of network utilities.

Analysis and appropriateness of the objective:
Objective 3.3 recognises that although network utilities are essential to the operation of our communities, they may also result in adverse effects on the environment. This objective notes that some network utilities can be large and visually prominent and can also produce effects that impact adversely on public health and safety.

This objective at a high level gives effect to Policies 7 and 8 of the NPSET. It also achieves the purpose of the Act by requiring decision-makers to consider any adverse effects arising from network utilities.

Policies:
To support this objective six policies are proposed.

3.3.1 Ensure that network utilities are designed, located, developed, constructed, upgraded, operated and maintained to avoid, remedy or mitigate any actual or potential adverse effects on the environment.

3.3.2 Ensure network utilities, in particular those emitting electric and magnetic fields, are designed, located, upgraded, operated and maintained to comply with relevant national environmental standards and to meet other nationally recognised standards.

3.3.3 Enable the co-location or multiple use of network utilities where this is efficient and practicable and assists with avoiding, remedying or mitigating adverse effects on the environment.

3.3.4 Require the underground placement of network utilities unless
- there are natural or physical features or structures, or technological and operational constraints that makes underground placement impractical or unreasonable;
- they are of a temporary nature and required for emergency purposes or critical events; and
- they are of a nature that they can only operate aboveground.

3.3.5 Encourage the use of roads as network utility corridors in accordance with the National Code of Practice for Utility Operators’ Access to Transport Corridors.

3.3.6 Encourage network utility providers to consult with local communities on the appropriate placement, location and design of new network utilities.

Analysis and appropriateness of the policies:
Policy 3.3.1 seeks that any adverse effects from network utilities are avoided remedied or mitigated. No hierarchy is given between avoiding, remedying or mitigating adverse effects, in recognition that the level of adverse effects and how these are managed may need to be
different depending on the type of network utility, its location, as well as other relevant factors. The policy acknowledges that although many network utilities are restricted in their choice of location or design, there are often small changes that can be made in the interest of the environment or public health and safety.

Network utilities such as telecommunications facilities and electricity distribution and transmission lines have the potential to adversely affect public health and safety. Policy 3.3.2 recognises this risk and aims to manage it through compliance with relevant national and international standards. By not referring to specific national or international standards, it ensures that the District Plan will not need updating should the standards change over the life of the plan. This policy gives effect to Policy 9 of the NPSET.

Policy 3.3.3 recognises that co-locating or the multiple use of network utilities may in some circumstances be a way to reduce adverse effects, such as visual impact. This policy enables co-location and multiple use of single structures to occur, where practicable.

The undergrounding of network utilities often ensures that adverse effects on the environment are reduced or avoided, particularly visual effects. Policy 3.3.4 encourages underground placement wherever possible, while also recognising that there may be factors that do not make undergrounding a feasible option.

Policy 3.3.5 recognises that locating network utilities in road corridors can often reduce adverse effects. The use of road corridors is encouraged where possible as long as the conflicts with the primary function of the road corridor and with other co-located network utilities are managed.

Policy 3.3.6 encourages network utility operators to consult with the local community when they are deciding the location and design of new network utilities. This consultation is of benefit to the community and the provider as innovative solutions can often arise from the community and means that the community is informed of changes.

These proposed provisions are considered to give effect to policies 7, 8 and 9 of the NPSET, achieve the proposed objective and meet the purpose of the RMA.

Assessment of the Methods, including Rules, Information requirements and Definitions associated with this Proposed Plan Change

Having identified objectives and policies that will:

- update the existing provisions to ensure they reflect best practice and provide greater consistency across the region;
- better serve and reflect public and stakeholder expectations and requirements;
- rationalise the provisions across the District Plan;
- Give effect to the NPSET and the RPS;
- Not be inconsistent with or duplicate the NESET and NESTF; and
- Meet the purpose of the Act.

A set of rules, other supporting methods, information requirements and definitions, have been developed to achieve these desired outcomes.
An overall assessment of the appropriateness of the policies, rules and other methods is set out in Table 2. The policies, rules and other methods have been assessed as a whole and have been informed by consultation with landowners and relevant interest groups as outlined in section 5.0 of this report.

10.1 Discussion on the Proposed Rules and Methods:

10.1.1 Rules and methods relating to regionally significant network utilities and reverse sensitivity

As outlined earlier, Policy 8 of the RPS requires that district plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.

Careful consideration was given as to whether there needed to be specific rules introduced to address potential reverse sensitivity effects arising from State Highways 1 and 58 and the North Island Main Trunk Line (the railway line). Through the consultation process in developing the Proposed Plan Change, both the New Zealand Transport Agency and Kiwirail sought specific rules be included to address noise effects, which would restrict any new protected premise or facility (residential buildings, marae, educational facilities and spaces in buildings used for overnight medical care) being located within 40 metres of an existing or designated state highway and require acoustic insulation for any new building or additions to existing buildings within specified distances of the state highway and railway line.

A significant proportion of the two state highways which run through Porirua’s developed suburban areas are restricted to a speed limit of 50kph. In terms of effects it is difficult to differentiate between those generated by a 50kph state highway and a busy local road.

Further information was sought from both NZTA and Kiwirail as to the type and number of complaints that had been received along the existing state highways and the railway line. Neither NZTA nor Kiwirail provided evidence of relevant complaints so as to demonstrate that there was an actual effect occurring that needed to be managed. This in itself does not mean that potential effects from potential use and development does not need to be managed. For this reason, consideration was given to the development potential and existing plan provisions along the state highways and the railway line.

State Highway 58 and the route of the Transmission Gully Motorway are located predominantly through rural zoned land, whereby the construction of one dwelling per certificate of title containing a minimum land area of 2000m² is a controlled activity, and development above this, including those activities described as “protected premises or facilities” is a discretionary activity. This means that there is very low development potential along both existing and proposed routes. Where an application is made for development as a discretionary activity, it is more than likely that NZTA would be identified as an affected party and be involved through the resource consent process, at which stage it would be able to raise concerns with potential reverse sensitivity effects. It is considered that imposing a blanket rule as proposed by NZTA is not appropriate or necessary in this circumstance.

However, it is proposed to include two relevant matters of control / discretion for any subdivision applications that require consultation with NZTA and provide the ability to impose conditions relating to the design and location of development. It is considered this addresses NZTA’s concerns.
In respect of State Highway 1, the approval of the new Transmission Gully and its subsequent construction and operation is most likely to result in the existing State Highway 1 being transferred to Porirua City Council and losing its state highway classification. NZTA has publicly stated that Transmission Gully will be operational by 2020. This will result in significantly less traffic using the existing route. The areas of land along the State Highway 1 route where “protected premises or facilities” may be located as permitted activities are already well-established areas, with little opportunity for greater intensification.

The railway line runs generally along or in close proximity to the existing State Highway 1. As with State Highway 1, the areas of land along the railway line where “protected premises or facilities” may be located as permitted activities are already well-established areas, with little opportunity for greater intensification.

It is considered unreasonable in the circumstances to impose a rule on development along State Highway 1 and the railway line. However, it is acknowledged that greater intensification could occur as a result of subdivision. For this reason, it is proposed to include two relevant matters of control / discretion for any subdivision applications that require consultation with NZTA and / or Kiwirail and provide the ability to impose conditions relating to the design and location of development. It is considered this approach addresses NZTA and Kiwirail concerns in a balanced and reasonable manner.

It is considered that any potential reverse sensitivity effects on these regionally significant network utilities would be best addressed at the time of any plan change that would provide for intensification of development along the state highways or railway line. This is clearly signalled through policy 3.1.3 and its accompanying explanation and method 4.3.

However, regionally significant network utilities are not just limited to the state highways and railway line; consideration is also required to be given to other regionally significant network utilities. Specific provisions relating to the National Grid are addressed below. It is noted that the majority of the other regionally significant network utilities are designated and / or protected by easements or of a nature whereby any reverse sensitivity effects would be minimal. For this reason, it is considered that specific rules that would manage use and development occurring in proximity to such utilities are not necessary.

However, in order to manage any potential effects arising from intensification, as outlined above, new matters of control / discretion are proposed for any subdivision application, requiring consultation with the owner or operator of any regionally significant network utilities located on or in close proximity to the subject site and providing control / discretion over the design and layout of the subdivision.

10.1.2 Rules and methods relating to reverse sensitivity and the National Grid

As outlined earlier in this s32, Policies 10 and 11 of the NPSET require that the adverse effects of third parties on the National Grid are managed. This is in addition to what is required through Policy 8 of the RPS.

The Proposed Plan Change includes rules which seek to manage potential adverse effects of third parties on the National Grid. Care has been taken to ensure that there is no duplication between plan provisions and existing regulation, so as to avoid potential situations where the Council is considering matters that are otherwise already addressed and managed, thus avoiding unnecessary duplication and costs to all parties involved. For example, the rules and matters of consideration / discretion do not require compliance with
the NZECP, as compliance with the NZECP is not within the role, function or scope of the Council and the focus is on ensuring that the Council is assessing effects that are not otherwise already managed within the scope of the NZECP. Similarly, specific rules sought by Transpower in respect of excavation in proximity to the National Grid have not been included as this is already specifically managed through the NZECP and inclusion would result in unnecessary duplication. However, advice notes have been proposed throughout the Proposed Plan Change to ensure that plan users are aware of the NZECP and other relevant regulations, such as those relating to tree trimming.

As outlined earlier, the proposed rules were developed as a collaborative exercise by a working group comprising affected landowners, Transpower and Council staff. The rules are primarily focussed on managing the construction of new structures and the undertaking of sensitive activities within a defined Electricity Transmission Yard (12 metres either side of a transmission line and from the edge of a tower or pole) and controlling subdivision located within a defined Electricity Transmission Corridor.

Managing buildings and certain activities within an Electricity Transmission Yard is focussed on avoiding incompatible buildings and activities from occurring that may potentially compromise the safe and effective functioning of the National Grid, while also managing potential health and safety effects on those buildings and activities. A non-complying activity status is proposed for the construction and use of any building for a sensitive activity within the Yard to reinforce that, given the risks and potential effects, such a location for such activities is generally not appropriate.

The purpose of managing subdivisions within an Electricity Transmission Corridor is to ensure that any potential reverse sensitivity effects that may arise from the subsequent development of the subject land can be assessed and managed in advance of that development occurring. Particular consideration is given to ensuring that any subdivision of land is able to provide suitable building platforms located clear of the Electricity Transmission Yard, through the use of different activity status.

10.1.3 Rules and methods relating to other network utilities

The development of the Proposed Plan Change involved a review of the existing network utility provisions in the District Plan so as to determine whether they remained “fit for purpose” and reflected current needs and best practice. An option could have been to retain the provisions as is, either in their standalone sections or in a consolidated chapter, as proposed. However, the review determined that some of the provisions should be reviewed and amended. In particular, there was no incentive provided to co-locate network utilities on one structure and no rules managing the heights of antenna located on buildings. The broad nature of how many of the rules were written also resulted in some uncertainty about the treatment of particular network utilities. The Proposed Plan Change seeks to provide greater certainty and clarity for all plan users of what the activity status is for different network utilities and the matters against which any resource consent application will be assessed.

It was felt that there was potential to increase the height of telecommunication and radiocommunication facilities and incentivise the co-location of such utilities within particular zones as a permitted activity, where these zones have greater absorptive capacity and the heights of these structures would not be out of keeping. In the City Centre zone, the Plan Change incentivises locating antenna on buildings over stand-alone new towers, so as to reduce the amenity effects of such stand-alone towers. Conversely, the Plan Change
enables stand-alone towers in the Industrial Zone, where amenity effects are a lesser consideration.

The rules also promote the undergrounding of network utilities, generally as a permitted activity, as this results in the least level of environmental effects. A higher activity status is used where particular underground network utilities may have adverse effects, such as health and safety. The Plan Change retains, while streamlining, rules relating to overhead lines.

The methods recognise that rules in the Plan are only one means of managing the effects of, and effects on, network utilities, and include both regulatory and non-regulatory measures. Particular note is made of the need to comply with national environmental standards and internationally recognised codes and standards, as well as the Plan’s regulatory framework.

The proposed amendments to the rules and methods are considered to be necessary and appropriate to support the effective delivery of the objectives and policies.

10.1.4 Rules and methods relating to Natural Hazards and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

The plan change purposefully does not address or consider natural hazards or the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. Both of these matters are wider issues that are being considered as part of the Council’s wider review of the District Plan.

10.2 Discussion on the Assessment Criteria and Information Requirements

A series of standards and matters of control and discretion have been developed to assist network utility providers, applicants for proposals that may impact on certain network utilities, the general public and the Council. These standards provide certainty for plan users of the parameters around the different activity status, and what the permitted baseline level of effects is. The Plan previously contained no assessment criteria or matters of control or discretion, beyond the policies, to guide plan users in preparing, responding to or assessing proposals. The Council has chosen to specify matters of control and discretion rather than broader assessment criteria, and tailor these specifically to different types of network utilities and activity status, recognising that different network utilities have different types of effects.

The Plan Change also includes proposed amendments to the information requirements to accompany applications for resource consent, which are linked to the matters of control and discretion. These amendments should ensure that any application for a network utility includes the relevant information that the Council will need in order to be able to assess and determine an application.

These are all considered to be necessary and appropriate to support the effective delivery of the objectives and policies in the proposed plan change.
10.3 Discussion on the Definitions

The Plan Change includes amendments to existing definitions and the introduction of new definitions. These have been developed to ensure there is a clear and definitive interpretation of the provisions contained within the plan change. To avoid confusion and inconsistency, where a term is already defined by legislation or regulation, then the term is not repeated, but the relevant legislation or regulation is referenced. In some instances, further clarification is provided.

As discussed earlier, strategic telecommunication and radiocommunication facilities have been excluded from definition of regionally significant network utilities as these are not defined in the two pieces of legislation cited in the RPS definition.

The amended and new definitions are considered to be necessary and appropriate to support the effective delivery of the objectives and policies in the proposed plan change.

Conclusion

This report provides a summary assessment of Proposed Plan Change 16 consistent with s32 of the RMA.

The report describes the purpose of the Plan Change, the consultation process involved in its development and summarises an evaluation of:

- The objective/aim of the proposed plan change;
- The broad plan change options;
- The proposed amendments to the policy framework to introduce new objectives and policies; and
- The proposed rules, standards and other methods.

The report concludes that the Proposed Plan Change is the most appropriate way to achieve the purpose of the RMA and to give effect to the NPSET and the RPS. This conclusion is based on the recognition that the changes proposed to the District Plan are entirely consistent with the purpose of the RMA and seeks to overcome identified limitations in the District Plan.

The report considers five broad plan change options which could be used to implement these objectives. It concludes that the proposed Plan Change is the most appropriate.
Table 1: Comparison of the Appropriateness of the Objectives and Policies, and the Efficiency and Effectiveness of Policies, Rules and Other Methods

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
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</thead>
<tbody>
<tr>
<td>Status Quo (no change)</td>
<td>Amending the Plan to only give effect to the NPSET and RPS</td>
<td>Amending the Plan with no consolidation of provisions</td>
<td>Amending the Plan as proposed with consolidation of provisions</td>
<td>Deferring the plan change until a comprehensive review is undertaken</td>
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</table>

**Costs**
- Council
  - No costs in terms of implementation, as no change required to the current District Plan.
  - Does not meet statutory requirements regarding the NPSET, the NESET and the NESTF.
  - Does not give effect to the RPS.
- Network utility providers
  - Continue to face inconsistent rules across the region.
  - Plan does not address changes in technology since plan was notified and made operative.
  - May need to apply for unnecessary consents or be subject to unnecessary restrictions.
- Public / landowners:
  - Health and safety effects associated with transmission lines not addressed.

**Option 2**
- Council
  - Low costs associated with the development and implementation of a limited scope proposed plan change.
  - Opportunity cost of not reviewing other network utility provisions at the same time.
- Network utility providers
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - Time taken to review all chapters of the Plan to ensure no relevant provisions are missed.
- Public / landowners
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.

**Option 3**
- Council
  - Low-moderate costs associated with the development and implementation of a proposed plan change.
  - Duplication of provisions through the plan makes updating provisions more complex.
- Network utility providers
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - May result in consents being required where they were not previously.
- Public / landowners
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.

**Option 4**
- Council
  - Low-moderate costs associated with the development and implementation of a proposed plan change.
- Network utility providers
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - May result in consents being required where they were not previously.
- Public / landowners
  - Low costs associated with submission and hearing costs associated with making submissions and attending hearings on the plan change.
  - Utility providers would continue to face inconsistent rules across the region and have technologies that are not recognised in the plan.
<table>
<thead>
<tr>
<th>Option 1</th>
<th>Status Quo (no change)</th>
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<tbody>
<tr>
<td>• Existing plan may not sufficiently address adverse environmental effects of network utilities.</td>
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<tr>
<td>• Plan may be unduly restricting utility provision with community wellbeing not being provided for.</td>
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<tr>
<td>Environment</td>
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<tr>
<td>• Potential for works to be carried out which are not as sensitive to the environment as under the proposed plan change.</td>
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<tr>
<td>• Current rules may not sufficiently address the relevant adverse environmental effects.</td>
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<tr>
<th>Option 2</th>
<th>Amending the Plan to only give effect to the NPSET and RPS</th>
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<tbody>
<tr>
<td>• Time taken to review all chapters of the Plan to ensure no relevant provisions are missed.</td>
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<tr>
<td>• Low costs associated with landowners needing to seek additional resource consents for certain activities and development within proximity to transmission lines, and early engagement with regionally significant network utility providers.</td>
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<tr>
<td>Environment</td>
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<tr>
<td>• Better assessment criteria and consideration of effects of and on regionally significant network utilities only.</td>
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<tr>
<th>Option 3</th>
<th>Amending the Plan with no consolidation of provisions</th>
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</thead>
<tbody>
<tr>
<td>• Reduced plan change costs due to the plan change being placed within a whole of plan review.</td>
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<tr>
<td>Network utility providers / public / landowners</td>
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<tr>
<td>• Reduced costs associated with submission and hearing processes, as parties could submit on the whole plan at once.</td>
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<tr>
<th>Option 4</th>
<th>Amending the Plan as proposed with consolidation of provisions</th>
</tr>
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<tbody>
<tr>
<td>• Council</td>
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<tr>
<td>• Meets statutory requirements to give effect to NPSET, RPS, and reflect NESETA and NESTF.</td>
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<tr>
<td>• Achieves some consistency with other plans in the Region, and the wider country.</td>
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<tr>
<td>• Provides more certainty and clarity to plan users by better distinguishing between different types of network utilities.</td>
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<tr>
<td>• Provides more robust standards for and assessment</td>
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<thead>
<tr>
<th>Option 5</th>
<th>Deferring the plan change until a comprehensive review is undertaken</th>
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<tbody>
<tr>
<td>• Council</td>
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<tr>
<td>• In time, reduced environmental costs.</td>
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<tr>
<td>Environment</td>
<td></td>
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<tr>
<td>• Potential for works to be carried out which are not as sensitive to the environment as under the proposed plan change.</td>
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**Benefits**

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<tr>
<th>Council</th>
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<tbody>
<tr>
<td>• No costs, as no change required to the current District Plan.</td>
</tr>
<tr>
<td>Network utility providers</td>
</tr>
<tr>
<td>• No costs associated with submission and hearing processes, as no change needs to be initiated to the current District Plan.</td>
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<td>Public / landowners</td>
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</tbody>
</table>
| • No costs associated with submission and hearing processes, as no change

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**Appendix 2 – Section 32 Analysis**

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31
<table>
<thead>
<tr>
<th>Option 1</th>
<th>Status Quo (no change)</th>
<th>Option 2</th>
<th>Amending the Plan to only give effect to the NPSET and RPS</th>
<th>Option 3</th>
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<th>Option 4</th>
<th>Amending the Plan as proposed with consolidation of provisions</th>
<th>Option 5</th>
<th>Deferring the plan change until a comprehensive review is undertaken</th>
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</thead>
</table>
| Needs to be initiated to the current District Plan. | Network utilities.  
- Recognises the benefits of regionally significant network utilities. | Network utility providers  
- Benefits of all network utilities recognised, locally, regionally and nationally.  
- Provides a clearer regulatory framework to assess the effects of all network utilities, and effects on regionally significant network utilities.  
- Provides a needed update to existing provisions, including a clearer assessment framework.  
- May result in fewer unnecessary consents being required. | Network utility providers  
- Benefits of all network utilities recognised, locally, regionally and nationally.  
- Provides a clearer regulatory framework to assess the effects of all network utilities, and effects on regionally significant network utilities.  
- Provides a needed update to existing provisions, including a clearer assessment framework.  
- May result in fewer unnecessary consents being required. | Environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities. | Environment  
There are no known environmental benefits. | Public / landowners  
- Ensures that the potential effects of and on regionally significant network utilities are addressed.  
- Recognises the benefits of regionally significant network utilities. | Public / landowners  
- Ensures that the potential effects of all network utilities and on regionally significant network utilities are addressed.  
- Recognises the benefits of regionally significant network utilities.  
- Provides more certainty about the likely scale and location of network utilities.  
- More robust consideration of environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities. | Public / landowners  
- Ensures that the potential effects of all network utilities and on regionally significant network utilities are addressed.  
- Recognises the benefits of regionally significant network utilities.  
- Provides more certainty about the likely scale and location of network utilities.  
- More robust consideration of environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities. | Environment  
There are no known environmental benefits. |
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<td></td>
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<td>applications and potential effects on the public / landowners.</td>
<td>Environment&lt;br&gt;• Provides a clearer regulatory framework to assess the effects of, and effects on, regionally significant network utilities and other network utilities.&lt;br&gt;• Reduced environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities.</td>
<td>Environment&lt;br&gt;• Provides a clearer regulatory framework to assess the effects of, and effects on, regionally significant network utilities and other network utilities.&lt;br&gt;• Reduced environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities.</td>
<td>Environment&lt;br&gt;• Recognises the benefits of regionally significant network utilities.&lt;br&gt;• Provides more certainty about the likely scale and location of network utilities.&lt;br&gt;• More robust consideration of applications and potential effects on the public / landowners.&lt;br&gt;• Consolidation in one chapter makes provisions easy to source and understand.</td>
<td>Environment&lt;br&gt;• Provides a clearer regulatory framework to assess the effects of, and effects on, regionally significant network utilities and other network utilities.&lt;br&gt;• Reduced environmental effects as a result of a more comprehensive approach being taken to network utilities including provisions such as the encouragement of the co-location of facilities.</td>
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<tr>
<td>Option</td>
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<td>Option 2</td>
<td>Amending the Plan to only give effect to the NPSET and RPS</td>
<td>Option 3</td>
<td>Amending the Plan with no consolidation of provisions such as the NPSET, NESET, NESTF and RPS.</td>
<td>Option 4</td>
<td>Amending the Plan as proposed with consolidation of provisions such as the NPSET, NESET, NESTF and RPS.</td>
<td>Option 5</td>
<td>Deferring the plan change until a comprehensive review is undertaken</td>
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<tr>
<td><strong>Effectiveness and efficiency</strong></td>
<td><strong>Does not amend the Plan as required under the NPSET and RPS.</strong></td>
<td><strong>Effective in that Plan is amended to give effect to NPSET and RPS.</strong></td>
<td><strong>Provides increased efficiency through:</strong></td>
<td><strong>Provides increased efficiency through:</strong></td>
<td><strong>Provides increased efficiency through:</strong></td>
<td><strong>Effective and efficient in that all provisions are considered as a package, reducing transaction costs associated with a single plan change.</strong></td>
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<td></td>
<td><strong>Results in inefficiency of conflicting provisions with NESETA and NESTF.</strong></td>
<td><strong>Opportunity cost of not reviewing provisions relevant to wider network utilities.</strong></td>
<td><strong>Avoiding unnecessary repetition of provisions through the Plan; more accurate identification and mapping of existing regionally significant network utilities;</strong></td>
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<td><strong>Avoiding unnecessary repetition of provisions through the Plan; more accurate identification and mapping of existing regionally significant network utilities;</strong></td>
<td><strong>Is not effective or efficient in that it does not give effect to NPSET and RPS and existing provisions conflict in part with NESETA and NESTF.</strong></td>
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<td><strong>Certainty</strong></td>
<td><strong>Provides certainty and familiarity to existing District Plan users through not changing the current provisions.</strong></td>
<td><strong>Provides certainty on how the effects of and on regionally significant network utilities will be managed.</strong></td>
<td><strong>Provides increased effectiveness as:</strong></td>
<td><strong>Provides increased effectiveness as:</strong></td>
<td><strong>Provides increased effectiveness as:</strong></td>
<td><strong>Opportunity costs incurred with network utility providers continuing to need what may be unnecessary consents, against rules which do not meet best practice.</strong></td>
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<td><strong>Does not provide certainty that the Plan reflects best practice and current technology and provides for a robust assessment framework.</strong></td>
<td><strong>Does not provide certainty that the provisions relevant to other network utilities are fit for purpose.</strong></td>
<td><strong>it aligns with the NPSET, the NESET, the NESTF and the RPS.</strong></td>
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<td><strong>Ensures applicants and the public have more certainty about the effects being managed.</strong></td>
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**Certainty**
- Provides certainty to District Plan users through accurately identifying appropriate network utility activities, and giving criteria that will be applied to assess consent applications.
- Provides more certainty about how and to what extent different network utilities will be managed.
- Applying tailored criteria to guide the assessment of consent applications.

**Certainty**
- Provides certainty to District Plan users through accurately identifying appropriate network utility activities, and giving criteria that will be applied to assess consent applications.
- Provides certainty through having all relevant provisions located within one chapter.
- Provides more certainty about how and to what extent different network utilities will be managed.

**Appropriateness**
- Plan continues to only partially give effect to the policy intent in the RPS.
- Plan would not give full effect to the NPSET, the NESET and the NESTF.
- Does not meet statutory obligations and does not meet the purpose of the RMA.
- Gives effect to the NPSET.
- Gives effect to the RPS.
- Avoids conflict with the NESETA and NESTF.
- Meets the purpose of the RMA.
- Provides better consistency through the Region and within New Zealand.
- Provides a robust and comprehensive regulatory framework for the assessment of the benefits and adverse effects associated with network utilities.
- Gives effect to the NPSET.
- Gives effect to the RPS.
- Avoids conflict with the NESETA and NESTF.
- Meets the purpose of the RMA.
- Reflects best practice.
- Provides better consistency through the Region and within New Zealand.
- Avoids unnecessary duplication and repetition in the District Plan.
- Provides better certainty for all plan users.
- Provides a robust and comprehensive regulatory framework for the assessment of the benefits and adverse effects associated with network utilities.
- Would delay an opportunity to give effect to relevant provisions within the RPS.
- The plan would not give full effect to the NPSET, the NESET and the NESTF until the whole of plan review is undertaken, which is not planned to occur.
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### Risks

- The council will face the risk of being noted publicly by the government, Transpower and relevant network utility providers as one of the councils that has not taken account of national instruments like the NPSET, the NESET and the NESTF.
- The council will risk being identified as a local authority, which is not giving effect to the RPS.
- The notified completed second generation district plan may be appealed for failing to give effect to the RPS and NPSET.
- Costs and delays with appeals following the release of the decision.
- Would not provide a comprehensive review and analysis of all the benefits and effects of network utilities, meaning some benefits and effects may be overlooked, resulting in opportunity costs.
- Costs and delays with appeals following the release of the decision.
- Risk that not all effects and benefits have been identified and appropriately addressed. Will be mitigated through a public notification, submissions and hearing process.
- Costs and delays with appeals following the release of the decision.
- Risk that not all effects and benefits have been identified and appropriately addressed. Will be mitigated through a public notification, submissions and hearing process.
- The council will face the risk of being noted publicly by the government as one of the councils that has not taken account of national instruments like the NPSET, the NESET and the NESTF.
- The council will risk being identified as a local authority, which is not giving effect to the RPS.

### Conclusion

- While the status quo offers some cost savings to the Council by not requiring a plan change, this option would also not achieve the effectiveness and provides a comprehensive review of provisions relevant to the NPSET and RPS, and would not realise the benefits of undertaking a comprehensive review of provisions relevant to the NESETA and NESTF, and provide a more robust and comprehensive regulatory framework for the assessment.
- This option would give effect to the NPSET and RPS, and remove any conflict with the NESETA and NESTF, and provide a more robust and comprehensive regulatory framework for the assessment.
- This option would give effect to the NPSET and RPS, and remove any conflict with the NESETA and NESTF, and provide a more robust and comprehensive regulatory framework for the assessment.
- While the option of deferring changes to the network utility provisions to when a full plan review is carried out would offer some cost savings to the Council by not requiring a
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- Option 1: Status Quo (no change)
  - Efficiency gains offered by the proposed plan change. In particular, the Council would not have given effect to the NPSET, RPS, the NESET and the NESTF. For these reasons this option is not considered to be appropriate.

- Option 2: Amending the Plan to only give effect to the NPSET and RPS
  - All network utilities, not just those that are regionally significant.

- Option 3: Amending the Plan with no consolidation of provisions
  - Assessment of the benefits and effects of network utilities.
    - However, it would also result in unnecessary duplication and repetition between chapters in the District Plan which can be confusing to plan users.

- Option 4: Amending the Plan as proposed with consolidation of provisions
  - Assessment of the benefits and effects of network utilities.
    - This option would provide more certainty and clarity to plan users of the relevant provisions against which to assess network utilities.

- Option 5: Deferring the plan change until a comprehensive review is undertaken
  - Separate plan change, this option would also not achieve the effectiveness and efficiency gains offered by the proposed plan change. In particular, the Council would take a lot longer to take in account the NPSET, RPS, the NESET and the NESTF. For these reasons this option is not considered to be appropriate.
Appendix 1: Relevant NZCPS Objective and Policies

“Objective 6: 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:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- 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;
- functionally some uses and developments can only be located on the coast or in the coastal marine area;
- the coastal environment contains renewable energy resources of significant value;
- the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;
- 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
- historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.

Policy 6: Activities in the coastal environment

1. In relation to the coastal environment:
   a. recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;
   b. consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;
   c. encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;
   d. recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;
   e. consider where and how built development on land should be controlled so that it does not compromise activities of national or regional importance that have a functional need to locate and operate in the coastal marine area;
   f. consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;
   g. take into account the potential of renewable resources in the coastal environment, such as energy from wind, waves, currents and tides, to meet the reasonably foreseeable needs of future generations;
   h. consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;
   i. set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and
   j. where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value.

2. Additionally, in relation to the coastal marine area:
a. recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations;
b. recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;
c. recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;
d. recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there; and
e. promote the efficient use of occupied space, including by:
   i. requiring that structures be made available for public or multiple use wherever reasonable and practicable;
   ii. requiring the removal of any abandoned or redundant structure that has no heritage, amenity or reuse value; and
   iii. considering whether consent conditions should be applied to ensure that space occupied for an activity is used for that purpose effectively and without unreasonable delay.”
Appendix 2: Activities covered under the NESETA:

- Operating existing transmission lines and using access tracks - regulation 5.
- Adding, replacing or maintaining overhead conductors (but not adding circuits) (adding conductors subject to EMF conditions) - regulation 6.
- Adding, replacing or maintaining overhead earth wires and aerial communications cables - regulation 7.
- Adding overhead circuits (where support structure was designed and built to carry an extra circuit) (subject to EMF conditions) - regulation 8.
- Adding or replacing overhead circuits, conductors, earth wires or cables that do not meet permitted activity conditions (subject to EMF conditions) - regulation 9.
- Increasing the voltage or current rating of a line (subject to EMF conditions) - regulation 10.
- Adding, replacing or maintaining underground conductors (adding conductors subject to EMF conditions) - regulation 11.
- Undergrounding of existing transmission lines, including termination towers (subject to EMF conditions) - regulation 12.
- Specified activities that breach EMF conditions in regulation 10 - regulation 13.
- Altering, relocating or replacing support structures and foundations within height, size and relocation distance limits - regulation 14.
- Altering, relocating or replacing support structures and foundations, exceeding permitted thresholds - regulation 15.
- Altering, relocating or replacing support structures not meeting controlled activity conditions (subject to EMF conditions) - regulation 16.
- Temporary structures and temporary line deviation - regulation 17.
- Temporary structures and temporary line deviation exceeding time constraints - regulation 18.
- Removal of transmission lines - regulation 19.
- Removal of transmission lines not meeting permitted conditions - regulation 20.
- Installing, modifying or maintaining a telecommunication device on a transmission line support structure - regulation 21.
- Installing or modifying a telecommunication device on a transmission line support structure not meeting permitted conditions - regulation 22.
- Signs attached to transmission line support structures - regulation 23.
- Signs above the size limit or not attached to a support structure - regulation 24.
- Preparing for and applying protective coatings to a support structure - regulation 25.
- Application of surface coatings not complying with permitted conditions - regulation 26.
- Wet, dry and non-abrasive blasting - regulation 25.
- Wet, dry and non-abrasive blasting not complying with permitted conditions - regulation 26.
- Wet, dry and non-abrasive blasting not complying with controlled conditions - regulation 27.
- Discharging contaminants to water - regulation 28.
- Discharging contaminants to water, not complying with permitted conditions - regulation 29. Trimming, felling or removing trees or vegetation - regulation 30.
- Trimming, felling or removing trees or vegetation - regulation 31.
- Earthworks relating to an existing transmission line - regulation 32.
- Earthworks relating to an existing transmission line not complying with permitted conditions - regulation 33.
- Earthworks relating to an existing transmission line in a historic heritage area unless archaeological authority obtained - regulation 34.
- Earthworks relating to an existing transmission line on potentially contaminated land - regulation 35.

Appendix 3 – Submissions and Further Submissions
• Construction noise and vibration associated with transmission activities not complying with permitted conditions - regulation 38.
• Any transmission activity not described in NES as permitted, controlled, restricted discretionary or non-complying - regulation 39.
Appendix 3: Conditions to be a permitted activity under the NESTF

(1) This condition applies if an original utility structure in a road reserve is replaced by a replacement utility structure. The replacement utility structure must not have a diameter that is more than the original utility structure’s diameter at its largest point plus 50%.

(2) This condition applies if the addition of an antenna makes a structure into a replacement utility structure in a road reserve. The height of the replacement utility structure must be no more than the original utility structure’s highest point plus the lesser of 3 m or 30%⁹.

(3) This condition applies if an antenna on a replacement utility structure in a road reserve is replaced. The combined height of the replacement utility structure and the replacement antenna must be no more than the combined height of the replacement utility structure and the original antenna. This essentially means that the overall height of the structure and antenna must not increase where replacements occur.

(4) This condition applies if an antenna is added or replaced under subclause (2) or (3). The antenna – excluding the mount, if there is one, and the shroud, if there is one, and ancillary equipment, if there is any – must fit within the dimensions of a cylindrical shape that, when measured along the centre line of the original utility structure or the replacement utility structure, is no more than 2m high and no more than 0.5m in diameter.

(5) This condition applies if a dish antenna either is added to an original utility structure in a road reserve or a replacement utility structure in a road reserve or replaces an antenna on an original utility structure in a road reserve or a replacement utility structure in a road reserve. The dish antenna must have a diameter of no more than 380mm, must not protrude from the structure’s centre line by more than 0.6m, and must be one of only two on the structure.

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⁹ If the height of the original structure is less than 10 metres, the maximum height increase is 30 per cent. If the height of the original structure is 10 metres or higher, the maximum height increase is 3 metres.
Appendix 4: Clause 4 – Radiofrequency fields from the NESTF

(1) This regulation applies to the planning and operation of a telecommunication facility that generates radiofrequency fields.

(2) A telecommunication facility is a permitted activity as far as radiofrequency fields are concerned if the network operator that plans and operates the facility complies with —
   (a) the conditions in subclauses (3) and (4); and
   (b) the condition in subclause (5), if it applies.

(3) The first condition is that the network operator plans and operates the telecommunication facility in accordance with NZS 2772: Part 1: 1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3 kHz to 300 GHz.

(4) The second condition is that the network operator ensures that the relevant local authority receives, before the telecommunication facility becomes operational, the following:
   (a) written or electronic notice of where the facility is or where it is proposed to be; and
   (b) a report that —
      (i) is prepared in accordance with NZS 6609.2: 1990 Radiofrequency Radiation: Part 2: Principles and Methods of Measurement 300 kHz to 100 GHz; and
      (ii) takes account of exposures arising from other telecommunication facilities in the vicinity of the facility; and
      (iii) predicts whether the radiofrequency field levels at places in the vicinity of the facility that are reasonably accessible to the general public will comply with NZS 2772: Part 1: 1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3 kHz to 300 GHz.

(5) The third condition applies if the prediction referred to in subclause (4)(b)(iii) is that the radiofrequency field levels will reach or exceed 25% of the maximum level authorised by NZS 2772: Part 1: 1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3 kHz to 300 GHz for exposure of the general public. The network operator must ensure that the relevant local authority receives, within three months of the telecommunication facility becoming operational, a report that —
   (a) is prepared in accordance with NZS 6609.2: 1990 Radiofrequency Radiation: Part 2: Principles and Methods of Measurement 300 kHz to 100 GHz; and
   (b) provides evidence that the actual radiofrequency field levels at places in the vicinity of the facility that are reasonably accessible to the general public comply with NZS 2772: Part 1: 1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3 kHz to 300 GHz.
Appendix 5: Relevant Extracts from the Regional Policy Statement for the Wellington Region

Relevant Issue:

Chapter 3.3 Energy, Infrastructure and Waste

2. Infrastructure

Infrastructure enables communities to provide for their social, economic and cultural wellbeing. The management, use and operation of infrastructure can be adversely affected when incompatible land uses occur under, over, or adjacent.

Explanation

The roading network, airports, the port, telecommunication facilities, the rail network and other utilities and infrastructure, including energy generation, transmission and distribution networks, are significant physical resources. This infrastructure forms part of national or regional networks and enables communities to provide for their social, economic, and cultural wellbeing and their health and safety. The efficient use and development of such infrastructure can be adversely affected by development. For example, land development can encroach on infrastructure or interfere with its efficient use. Infrastructure can also have an adverse effect on the surrounding environment. For example, the operation or use of infrastructure can create noise which may adversely impact surrounding communities. These effects need to be balanced to determine what is appropriate for the individual circumstances.

The National Policy Statement on Electricity Transmission (2008) sets out objectives and policies to enable the management of effects on and of the electricity transmission network under the Resource Management Act. The Statement recognises that efficient and secure electricity transmission plays a vital role in the well-being of New Zealand and makes it explicit that electricity transmission is to be considered a matter of national significance.

Relevant Objective

Objective 10
The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected.

Relevant Policies

Policy 7: Recognising the benefits from renewable energy and regionally significant infrastructure – regional and district plans

District and regional plans shall include policies and/or methods that recognise:
(a) the social, economic, cultural and environmental benefits of regionally significant infrastructure including:
   (i) people and goods can travel to, from and around the region efficiently and safely;
   (ii) public health and safety is maintained through the provision of essential services: - supply of potable water, the collection and transfer of sewage and stormwater, and the provision of emergency services;
   (iii) people have access to energy so as to meet their needs; and
   (iv) people have access to telecommunication services.
(b) the social, economic, cultural and environmental benefits of energy generated from renewable energy resources including:
(i) security of supply and diversification of our energy sources;
(ii) reducing dependency on imported energy resources; and
(iii) reducing greenhouse gas emissions.

Explanation

Energy generated from renewable energy resources and regionally significant infrastructure can provide benefits both within and outside the region. Renewable energy benefits are not only generated by large scale renewable energy projects but also smaller scale projects.

Renewable energy means energy produced from solar, wind, hydro, geothermal, biomass, tidal wave and ocean current sources.

Renewable energy generation and regionally significant infrastructure can also have adverse effects on the surrounding environment and community. These competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances.

Imported and non-renewable energy sources include oil, gas, natural gas and coal.

When considering the benefits from renewable energy generation the contribution towards national goals in the New Zealand Energy Strategy (2007) and the National Energy Efficiency and Conservation Strategy (2007) will also need to be given regard.

Regionally significant infrastructure is defined in Appendix 3.

Policy 8: Protecting regionally significant infrastructure – regional and district plans

District and regional plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.

Explanation Regionally significant infrastructure is an important physical resource that enables people and communities to provide for their social, economic and cultural wellbeing, and their health and safety.

Regionally significant infrastructure is defined in Appendix 3.

Incompatible subdivisions, land uses or activities are those which adversely affect the efficient operation of infrastructure, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. It may also include new land uses that are sensitive to activities associated with infrastructure.

Protecting regionally significant infrastructure does not mean that all land uses or activities under, over, or adjacent are prevented. The Wellington Regional Council and city and district councils will need to ensure that activities provided for in a district or regional plan are compatible with the efficient operation, maintenance, and upgrading (where effects are the same or similar in character, intensity, and scale) of the infrastructure and any effects that may be associated with that infrastructure. Competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances.

Policy 11 of the National Policy Statement on Electricity Transmission requires that, in achieving protection for the transmission network, consultation occurs with the operator of the national grid to identify appropriate buffer corridors.

Policy 39: Recognising the benefits from renewable energy and regionally significant infrastructure – consideration
When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan, particular regard shall be given to:

(a) the social, economic, cultural and environmental benefits of energy generated from renewable energy resources and/or regionally significant infrastructure; and
(b) protecting regionally significant infrastructure from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure; and
(c) the need for renewable electricity generation facilities to locate where the renewable energy resources exist; and
(d) significant wind and marine renewable energy resources within the region.

Explanation

The benefits of energy generated from renewable energy resources include:

- Security of and the diversification of our energy sources
- Reducing our dependency on imported energy resources – such as oil, natural gas and coal
- Reducing greenhouse gas emissions
- Contribution to the national renewable energy target

The benefits are not only generated by large scale renewable energy projects but also smaller scale, distributed generation projects.

The benefits of regionally significant infrastructure include:

- People and goods can efficiently and safely move around the region, and to and from
- Public health and safety is maintained through the provision of essential services – such as potable water and the collection and transfer of sewage or stormwater
- People have access to energy to meet their needs
- People have access to telecommunication services

Energy generation from renewable energy and regionally significant infrastructure (as defined in Appendix 3) can provide benefits both within and outside the region.

Renewable energy generation and regionally significant infrastructure can also have adverse effects on the surrounding environment and community. These competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances.

When considering the benefits from renewable energy generation, the contribution towards national goals in the New Zealand Energy Strategy (2007) and the National Energy Efficiency and Conservation Strategy (2007) will also need to be given regard.

Potential significant sites for development of Wellington region’s marine and wind resources have been identified in reports ‘Marine Energy – Development of Marine Energy in New Zealand with particular reference to the Greater Wellington Region Case Study by Power Projects Ltd, June 2008’ and ‘Wind Energy – Estimation of Wind Speed in the Greater Wellington Region, NIWA, January 2008’.

Policy 39(a) shall cease to have effect once policy 9 is given effect in a relevant district or regional plan.

Policy 39(b) shall cease to have effect once policy 8 is given effect in a relevant district or regional plan.

Policy 58: Co-ordinating land use with development and operation of infrastructure – consideration

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan for subdivision, use or development, particular regard shall be given to whether the proposed subdivision, use or development is located and sequenced to:

(a) make efficient and safe use of existing infrastructure capacity; and/or
(b) coordinate with the development and operation of new infrastructure.
Explanation Subdivision, use and development, (including infrastructure) decisions have a direct bearing upon or relationship to the sequencing and development of new infrastructure, including new infrastructure for the electricity transmission network and the region’s strategic transport network. The region’s strategic transport network is described in the Wellington Regional Land Transport Strategy 2007-2016.

Relevant Definitions

**Regionally significant infrastructure:**
Regionally significant infrastructure includes:

- pipelines for the distribution or transmission of natural or manufactured gas or petroleum
- strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001
- strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989
- the national electricity grid, as defined by the Electricity Governance Rules 2003
- facilities for the generation and transmission of electricity where it is supplied to the network, as defined by the Electricity Governance Rules 2003
- the local authority water supply network and water treatment plants
- the local authority wastewater and stormwater networks, systems and wastewater treatment plants
- the Strategic Transport Network, as defined in the Wellington Regional Land Transport Strategy 2007-2016
- Wellington City bus terminal and Wellington Railway Station terminus
- Wellington International Airport
- Masterton Hood Aerodrome
- Paraparaumu Airport
- Commercial Port Areas within Wellington Harbour and adjacent land used in association with the movement of cargo and passengers and including bulk fuel supply infrastructure, and storage tanks for bulk liquids, and associated wharflines.

**Reverse sensitivity:** Reverse sensitivity means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.

**Sensitive activities:** Activities which suffer should they experience adverse effects typically associated with some lawful activities. For example, dust or noise from a quarry or port facility, noise in an entertainment precinct, smells from a sewage treatment facility. Activity considered sensitive includes, any residential activity, any early childhood education centre, and any hotel or other accommodation activity. It may also include hospitals, schools and respite care facilities.

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10 Note that there is no definition of strategic telecommunication facilities contained in section 5 of the Telecommunications Act 2001
11 Note that there is no definition of strategic radiocommunication facilities contained in section 2(1) of the Radio Communications Act 1989

Appendix 3 – Submissions and Further Submissions
Appendix 6: Relevant Legislation and Regulations

The Telecommunications Act 2001 and the New Zealand Electrical Code of Practice for Electrical Safe Distances

Telecommunication facilities are subject to other legislation, in particular the Telecommunications Act 2001. Sections 136 and 142 of this Act provide telecommunications operators with a statutory right to locate telecommunication cabinets in road reserves, subject to providing the road-controlling authority with 10 working days’ notice prior to the cabinet being installed. The road-controlling authority may impose reasonable conditions in accordance with specified criteria in section 119 of the Telecommunications Act, and is given effect to via the council road-opening notice procedures that are undertaken prior to a cabinet or underground apparatus being installed.

The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) sets minimum safe electrical distance requirements for overhead electric line installations and other works associated with the supply of electricity from generating stations to end users. These regulations apply to both land and line owners and line operators. Compliance with the Code is mandatory. A council is not required to enforce these regulations, with enforcement being the responsibility of the line owner and the Ministry of Business, Innovation and Employment. A copy of the NZECP can be sourced at: http://www.energysafety.govt.nz/upload/33443/nzecp34_2001.pdf.

The Electricity (Hazards from Trees) Regulations 2003

The regulations provide for the control of trees adjacent to electricity lines. The purpose of the regulations is to protect the security of the supply of electricity and the safety of the public. Under the regulations, both land and line owners have particular responsibilities. A council is not required to enforce these regulations.


The Electricity Act 1992 and the Gas Act 1992

The Electricity Act 1992 and the Gas Act 1992 provide network operators with a statutory right to locate infrastructure in road reserves, subject to providing the road-controlling authority with 10 working days’ notice prior to it being installed.

The Utilities Access Act 2010 and the National Code of Practice on Utilities’ Access to the Transport Corridors 2011

Background

The Utilities Access Act 2010 establishes a framework for a national code of practice to govern how utility operators (notably electricity lines companies, gas companies, telecommunications network companies and water and wastewater operators) and corridor managers (notably local councils, regional councils, New Zealand Transport Agency and New Zealand Railways Corporation (the KiwiRail Group)) co-ordinate their activities regarding access to transport corridors.

Appendix 3 – Submissions and Further Submissions
The New Zealand Utilities Advisory Group (NZUAG) is a joint consultative group of road owners and utility companies and was formed when the 75 Road Controlling Authorities (RCA’s) recognised the pressures placed on road managers by utilities working in the road. Since 2005, NZUAG has focused on the development of a new national code to address all the issues pertaining to access for utility networks in the road and rail corridors. This aligns with Government reforms in this area, bringing consistency to the legal requirements for the different utilities: electricity, gas, telecommunications, water and waste waters.

The Code seeks to provide a consistent and cooperative framework for Corridor Managers and Utility Operators, to manage the corridor while providing for the access rights of Utility Operators. The intention is to provide a set of guiding principles for Corridor Managers and Utility Operators. The Code was released in March 2009 for implementation across New Zealand.

The Utilities Access Act 2010 became law in August 2010. Since then, the Code has been reviewed to ensure it is consistent with that Act, and to prepare it for the required round of public consultation. The Minister for Infrastructure approved the Code on 10 November 2011 and it took effect on 1 January 2012. A copy of the Code can be sourced at: http://www.nzuag.org.nz/news/media/nr1321395904.pdf

The Code sets out the processes and procedures for:

- Utility Operators to exercise their right of access to the Road Corridor for the placement, maintenance, improvement and removal of Utility Structures;
- Corridor Managers to exercise their right to apply Reasonable Conditions on working in the Corridor; and
- Railway and Motorway Corridor Managers to exercise their discretion to grant rights of access to Utility Operators.

**Scope of the Code**

The Code sets out the processes and procedures for:

- Utility Operators to exercise their right of access to the Road Corridor for the placement, maintenance, improvement and removal of Utility Structures;
- Corridor Managers to exercise their right to apply Reasonable Conditions on working in the Corridor; and
- Railway and Motorway Corridor Managers to exercise their discretion to grant rights of access to Utility Operators.

In accordance with section 9 of the Utilities’ Access Act, the purpose of the Code is to enable access by Utility Operators to Transport Corridors to be managed in a way that:

- Maximises the benefit to the public while ensuring that all Utility Operators are treated fairly;
- Ensures that disruptions to Roads, Motorways, and Railways caused by Work by Utility Operators are kept to a minimum, while maintaining safety; and
- Provides a nationally consistent approach to managing access to Transport Corridors.

**Relationship of the Code, the RMA and the District Plan**

The Code provides mandatory requirements and supporting guidance to assist Utility Operators and Corridor Managers in exercising these rights and complying with legislation relating to Utilities’ Access to Transport Corridors. The Code processes are separate from, and do not over-ride the obligation to comply with, the requirements of the RMA or any other relevant legislation.

Some of the key requirements of the Code, relevant to the relationship with District Plans and the RMA are:

- The requirement for the Corridor Manager to coordinate works in its transport corridors, including providing forward schedules of works to utilities operators
• The reciprocal requirement for utilities operators to provided information on forward work programmes to both the Corridor Manager and other Utilities Operators.
• For Utilities operators to provide available information on redundant structures and assets on request
• For Utilities operators to hold records of the nature and location of their structures and advise the Corridor Manager of their presence
• For the Corridor Manager to advise other utility operators of the location of any structures in the location of any proposed works.

New utility structures and the Code
In respect of planning for new utility structures, the Code requires that:

3.1 General Requirements for Location of Utility Structures
1. Where practicable, Utility Structures must be positioned:
   a) in the Transport Corridor:
      i. as close as possible to the property boundary; and
      ii. In an area designated for, or already used by, Utility Structures; and
   b) In the Road Corridor (in addition to the requirement in Clause (a) above):
      i. parallel or perpendicular to the Road centreline (to ensure that new Work does not intrude into space that could inhibit future use by others);
      ii. outside the Carriageway (particularly where the operating speed is greater than 70km/h);
      iii. with at least 300mm separation, and ideally with 1m separation, from the kerb and channel or vertical front face of the catchpit, sump or subsoil drainage area, leaving this area free for its land drainage function; and
      iv. to maintain the following minimum footpath widths: 1.5m in residential areas, 2.5m in Commercial Areas, and 3m for combined foot/cycle paths;
2. If the Utility Structures cannot be located in accordance with the above requirements, or if the Utility Operator considers another location is optimal, then the Utility Operator must discuss and agree an alternative solution with the Corridor Manager.
3. If a Utility Structure is to be located in a section of Road scheduled to become a Motorway in the future, then placement must consider the factors in Section 4.8.

In identifying the proposed Utility Structure location, a Utility Operator should also consider the following:
• spacing and location in accordance with the statutory and declared operational requirements of Utility Operators and Corridor Managers (such as subdivision standards, NZS 4404: Land Development and Subdivision Infrastructure, or district plan requirements);
• using the preferred lay position, which is the ‘back Berm’ (where the front Berm is the zone between the kerb and the footpath and the back Berm is the remainder of the area to the property boundary);
• best use of available underground space, such as installing multiple ducts in a vertical configuration where it is practicable and not likely to cause conflict between longitudinal and lateral lines;
• minimising effects on existing above-ground Utility Structures, trees and street furniture;
• not unreasonably inhibiting the free flow of Traffic, including pedestrians, especially on busy Roads (consideration should be given to using less busy Roads);
• placing bulk Utility Structures beneath the Carriageway outside of wheel track alignments in urban areas (to free Berm space for other Utility Structures);
• positioning Utility Structures so that access to maintain and develop the network can be undertaken while minimising the effect on Traffic;
• minimising the number of transverse crossings in the Transport Corridor;
• minimising impacts on other Utility Operators and property owners and occupiers;
• coordinating Works with other Parties;
• avoiding Roads with high speeds, Traffic volumes or of other significance to one of the Parties for some reason (more appropriate in a Greenfields situation); and
• the risks of land stability or earth movement, if placing Utility Structures in embankments (specialist technical investigation may be required).

Council Bylaws

Under section 145 of the Local Government Act 2002, the Council can pass bylaws to protect people from nuisance, to protect and maintain public health, to minimise the possibility of offensive behaviour in a public place, and to control the use of liquor in a public place. The Council can also pass bylaws for specific purposes, such as waste control or protection of council infrastructure. They can also make bylaws under the Transport Act, the Litter Act, the Dog Control Act, and the Health Act.
## Appendix 7: Table of Issues and Preferred Options from the Discussion Document

<table>
<thead>
<tr>
<th>Issue #</th>
<th>Description of Issue</th>
<th>Preferred Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The structure of current district plan rules and standards regarding network utilities are contained in each Zone chapter rather than in the same chapter.</td>
<td>Consolidate the current plan provisions into one stand-alone chapter.</td>
</tr>
</tbody>
</table>
| 2       | The adequacy of District Plan definitions:  
- Definition of network utilities is not the same as the RMA  
- Amending definition of lines  
- New definition for aerials and antennas  
- New definition for reverse sensitivity | Amend chapter title to Utilities, to cover all utilities, not just network utilities.  
Add in new definitions. |
| 3       | How activities on roads are managed (the Plan is not clear) | Apply the zoning of the most sensitive adjacent zoning to the road, where there are different zones on either side of the road. Clarify in the Plan that activities occurring on roads are subject to the relevant zone provisions, except for the permitted activity standards (excluding noise). |
| 4       | Giving effect to the National Policy Statement on Electricity Transmission (NPSET) and the Proposed Regional Policy Statement (PRPS):  
- Recognising the national significance and benefits of the electricity transmission network;  
- Managing the environmental effects of transmission;  
- Managing reverse sensitivity effects on transmission (and other regionally significant infrastructure);  
- Mapping the transmission corridor/lines. | Review the objectives and policies so that they give effect to the relevant policies in the NPSET and PRPS.  
- Review the objectives and policies so that they give effect to the relevant policies in the NPSET and PRPS and introduce provisions that address reverse sensitivity effects on regionally significant infrastructure, and recognise existing conditions and constraints within the City  
- Amend the planning maps to accurately plot to the transmission network, using GIS co-ordinates. |
| 5       | Giving effect to the New Zealand Coastal Policy Statement. | Maintain the status quo within the Plan and undertake a specific review of those parts of the Plan that relate to the coastal environment. |
| 6       | The Adequacy and Appropriateness of the Current Provisions:  
1. How the different types of network utilities are managed in the Plan  
2. Provisions Relating to the Size, Height and Location of Above-Ground Network Utilities  
3. Height and Diameter of Masts  
4. Size, Height and Location of Other Above-Ground Network Utility Structures  
5. Providing for Antennas and Aerials to be Mounted on Buildings  
6. Overhead Lines | 1. Amend the Plan so that network utilities are differentiated into specific categories within the rule framework.  
2. Amend the Plan so that it is clear that utilities are not subject to the permitted activity standards for the zone and clearly set out the standards that do apply to utilities in the new stand-alone Utilities chapter.  
3. Amend the rules relating to masts (further restrict diameter of masts, increase the heights in the less
4. Amend the Plan to:
   - Include a definition of a utility structure
   - Reduce the height and size of permitted utility structures
   - Include specific rules for permitted utility structures, differentiating between them depending on their functional needs

5. Amend the Plan to include specific permitted rules for antennas attached to buildings, which restrict the height and size of antenna on any one building (and potentially the number and spacing in more sensitive zones)

6. Maintain the status quo within the Plan

<table>
<thead>
<tr>
<th>7</th>
<th>Whether to Provide for the Co-location or Co-siting of Utilities</th>
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<tbody>
<tr>
<td></td>
<td>Provide for co-location or co-siting of utilities by:</td>
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<tr>
<td></td>
<td>• providing for an increased height for masts above what is provided for as a permitted activity where co-location is proposed, as a permitted, controlled or restricted discretionary activity (depending on the zone)</td>
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<tr>
<td></td>
<td>• providing for the co-siting of utilities within the electricity transmission corridor in the rule framework</td>
</tr>
<tr>
<td></td>
<td>• providing for the co-siting of antennas on buildings, subject to restrictions on their height and size and potentially the number and spacing of antennas in more sensitive zones</td>
</tr>
<tr>
<td></td>
<td>• including policies and methods that promote the co-location of underground network utilities in accordance with the National Code of Practice on Utilities’ Access to the Transport Corridors</td>
</tr>
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<table>
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<tr>
<th>8</th>
<th>How Other Utilities are Provided For</th>
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<tr>
<td></td>
<td>Provide for amateur radio facilities in the same manner as radio-communications and telecommunications facilities and provide for other utilities, subject to standards on height, size and location.</td>
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<td></td>
<td>The Undergrounding of Utilities</td>
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<tr>
<td>10</td>
<td>The visual screening of above ground utilities</td>
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<tr>
<td>11</td>
<td>Providing for network utilities on all zones (make the Open Space Zone and Rural Zone provisions more lenient)</td>
</tr>
<tr>
<td>12</td>
<td>Strategic Identification and Provision of Network Utility Infrastructure at Subdivision Stage</td>
</tr>
<tr>
<td>13</td>
<td>The Relationship between the District Plan and the NESTF and NESET.</td>
</tr>
<tr>
<td>14</td>
<td>Managing the Effects of Radiofrequency and Electromagnetic Fields</td>
</tr>
<tr>
<td>15</td>
<td>The Adequacy of Existing Matters of Control / Discretion</td>
</tr>
</tbody>
</table>
Appendix 3 – Submissions and further submissions
SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR PLAN, CHANGE OR VARIATION (FORM 5)

PROPOSED PLAN CHANGE 16 – Network Utilities

Clause 6 of Schedule 1, Resource Management Act 1991

To Porirua City Council, Cobham Court, P O Box 50 218, Porirua City 5240, New Zealand

Name of Submitter: Radio New Zealand Limited

This is a submission on Proposed Plan Change 16 – Network Utilities to the Porirua City District Plan

I could/ could not* gain advantage in trade competition through this submission (* select one)

* I am/ am not* directly affected by an effect of the subject matter of the submission that –
(a) adversely affects the environment; and
(b) does not relate to trade competition or the effects of trade competition.
* Delete entire paragraph if you could not gain an advantage in trade competition through this submission.
* Select one

The specific provisions of the proposed plan change that my submission relates to are:

Please see following sheets
**My submission is:**

Please see following sheets

........................................................................................................................................

........................................................................................................................................

**I seek the following decision from the Porirua City Council:**

Please see following sheets

........................................................................................................................................

........................................................................................................................................

**I wish (or do not wish) to be heard in support of my submission.**

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

........................................................................................................................................

**Signature of submitter**

Gary Fowles, Transmission Manager - RNZ

........................................................................................................................................

**Date: 14 November 2013**

*(A signature is not required if you make your submission by electronic means)*
Address for service of the submitter:

Radio New Zealand Limited (RNZ)
PO Box 123
Wellington 6140

Telephone number: 04 474 1840 / 027 450 7409
Fax/email: gary.fowles@radionz.co.nz
Contact Person: Gary Fowles, Transmission Manager

**Note to person making a submission**

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.
SUBMISSION BY RADIO NEW ZEALAND LIMITED ON PROPOSED PLAN CHANGE 16 – NETWORK UTILITIES

The specific provisions of Plan Change 16 – Network Utilities (the Plan Change) to the operative Porirua City Council District Plan (the District Plan) that Radio New Zealand Limited’s (RNZ) submission relates to are:

1.1 RNZ seeks for new provisions to be added to the Plan Change. These are:
   
   (a) A new Environmental Outcome 5.X; and
   
   (b) A new definition for “reverse sensitivity”.

1.2 RNZ seeks amendments to some specific provisions of the Plan Change. These are:
   
   (a) Issue B11;
   
   (b) 1 Introduction 1.7;
   
   (c) Policy 3.3.1;
   
   (d) Explanations 3.1.2.3 and 3.2.5.1;
   
   (e) Method 4.3;
   
   (f) Environmental Outcomes 5.2 and 5.4;
   
   (g) Rule 6.1.17;
   
   (h) Standards 7.1 and 7.8;
   
   (i) The definitions of “regionally significant network utility” and "sensitive activity”;
   
   (j) Information requirements in F7.2;
   
   (k) D3.1.2 Controlled activities; and
   
   (l) Planning Map A16.

1.3 RNZ supports the retention of some specific provisions of the Plan Change. These are:
   
   (a) Resource Management Issue 2.2;
   
   (b) Objectives 3.1, 3.2;
   
   (c) Policies 3.1.1, 3.1.2, 3.1.3, 3.2.1, 3.2.2;
   
   (d) Explanations 3.1.2.4, 3.2.5.1, 3.2.5.2, 3.2.5.3;
(e) Methods 4.1 and 4.3;

(f) Rules 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.8 and 6.1.10; and

(g) D3.1.2 Controlled activities (i) and (j).
**RNZ’s submission is that:**

2 RNZ is a Crown entity established under the Radio New Zealand Act 1995. RNZ owns and operates a major radio transmission facility in Porirua City at Titahi Bay (RNZ’s facilities). The designation is located at Whitireia Park, Transmitter Street and is listed in the District Plan as designation K0201. The underlying zoning is Open Spaces.

3 RNZ considers it important that the provisions of the Plan Change recognise:

   3.1 The critical contribution that infrastructure and network utility operations (such as RNZ’s transmission facilities) make to the District's social, economic and cultural wellbeing, as well as health and safety.

   3.2 That network utilities may face technical and operational constraints that limit the geographic locations in which they can operate. This is particularly the case for RNZ’s operations which require masts and antennae that can be over 100m tall, in addition to supporting infrastructure.

   3.3 The need to avoid "reverse sensitivity" effects on regionally significant network utilities, for the benefit of the community.

4 RNZ’s facilities perform an important role in, among other things, providing news and information to the public, including performing a civil defence role (radio is a key communication tool in the event of natural disasters and RNZ is designated as a Lifeline Utility under the Civil Defence Emergency Management Act 2002).

5 RNZ is concerned that subdivision and development in proximity to its transmitter sites could have reverse sensitivity effects on its transmission facilities. Reverse sensitivity effects are adverse effects that a new "sensitive" land use can have on existing activities, ie. they are effects caused by the new development. For example:

   5.1 Residents might not be happy that, on the occasions that they are used, RNZ’s back-up generators make a certain amount of noise;

   5.2 Residents also might be unhappy about being able to see large radio masts from their house; and

   5.3 RNZ has had direct experience of people who live near some of its sites complaining about interference to their electronic devices after they have purchased land and built a house near a transmitter.

6 Such reverse sensitivity effects on RNZ’s existing transmission facilities can undermine the operation of those facilities. Factoring in the existence of RNZ’s facilities at the time subdivision and other land use activities are designed and consented is the best way to protect against potential problems for RNZ, users of the land around RNZ facilities, and for the Council.
Key changes requested by RNZ

**Definition of RNZ’s operations as regionally significant network utilities**

Many objectives and policies in the Plan Change refer to “regionally significant network utilities”. RNZ considers it is crucial that its operations at Titahi Bay are clearly included within the definition of “regionally significant network utilities”. RNZ seeks that the following bullet point be added to the relevant definition proposed to be added to Part M – Interpretation:

*Regionally significant network utilities includes:*
  - ...
  - *Radio New Zealand’s radio transmission facilities at Titahi Bay*
  - ...

Radio is a key communications tool that assists people and communities to provide for their social, economic and cultural wellbeing. The transmission facilities at Titahi Bay have an important role in communicating information to not only the people in the Porirua City District but also the wider region – from Wanganui to Blenheim. As stated above, radio has an important civil defence role, providing information in the event of natural disasters.

Adding RNZ’s facilities to this definition is consistent with the inclusion of other network utilities that have vital roles to play in supporting people and communities. It is also consistent with the reference in proposed new Network Utilities chapter (1.2) to the fact that “some of Wellington’s largest and most powerful communications facilities are also located in the City”.

**Addition of RNZ facilities to District Plan maps**

Correspondingly, RNZ seeks that its facilities also be clearly identified on Planning Maps as regionally significant network utilities (an addition to proposed Map A16). This is in accordance with the proposed Policy 3.1.1 and Method 4.1.

It is acknowledged that it may not be practicable to fully identify all regionally significant network utilities on the Planning Maps. However, RNZ’s facilities are designated and occupy a single, discrete location that is already marked on the Planning Maps (by its designation). Including an additional notation on the Planning Maps that identifies RNZ facilities as regionally significant network utilities would not be difficult, and would assist users of the District Plan.

**Submission on Amendment 1: Amendments to Part B Significant Resource Management Issues**

For clarity, RNZ seeks that “radiocommunications” be added to the list of network utilities in Issue B11. A separate acknowledgment for radiocommunication is consistent with the separate listing of radiocommunication in the definition of “network utilities” in the interpretation section of the District Plan.
Network utilities include such activities as water, gas, and electricity supply, radiocommunications, telecommunications, roads and sewerage disposal. The City is traversed by...
Submission on Amendment 3: New Network Utilities Chapter

1 Introduction

RNZ supports the wording used for the Introduction section of the proposed Network Utilities chapter, and seeks that the existing wording be retained. However, RNZ requests that acknowledgment of two significant issues that affect network utility operations be added to the introduction:

13.1 That technical and operational limitations may constrain the location and manner in which network utilities can operate (as referred to in Policy 3.2.1).

13.2 The potential for reverse sensitivity to constrain the ability of network utility operators to carry out their functions (as referred to in Policy 3.1.3).

Accordingly, RNZ seeks that the following additions to section 1.7 of the Introduction:

1.7 The successful functioning of the City depends on network utilities. It is therefore very important that construction, maintenance, upgrade and operation of these services be effectively provided for, technical and geographical constraints on the operation of network utilities are acknowledged, and that the benefits that derive from them are adequately recognised. Network utilities can be vulnerable to reverse sensitivity effects when new activities (that are sensitive the effects of the existing network utility) are established nearby, leading to constraints on the operation of the network utility. However, network utilities can also have adverse effects resulting from their construction, operation or associated maintenance activities.

2 Resource Management Issues

RNZ supports this proposed section, particularly section 2.2 “Managing reverse sensitivity effects on regionally significant network utilities”, and seeks that this section be retained.

3 Objectives & Policies

Objective 3.1 & Policies

RNZ supports Objective 3.1: “To recognise the benefits of regionally significant network utilities and ensure their functions and operations are not unreasonably compromised by other activities” and seeks that this objective and the corresponding policies be retained.

The following policies are particularly supported:

17.1 Policy 3.1.1: Identify regionally significant network utilities within the City on Council planning maps, as appropriate.

17.2 Policy 3.1.2: Recognise the national, regional and local benefits of regionally significant network utilities; and

17.3 Policy 3.1.3: Avoid, or as appropriate, remedy or mitigate, the potential for any reverse sensitivity effects on regionally significant network
utilities from incompatible new subdivision, use and development occurring under, over, or adjacent to regionally significant network utilities.

Explanations
18 RNZ supports the explanations to the policies and particularly seeks that Explanation 3.1.2.4 (to Policy 3.1.3), which addresses reverse sensitivity effects, be retained.

19 RNZ considers that it is appropriate that Explanation 3.1.2.3 (to Policy 3.1.2), which outlines benefits of regionally significant network utilities, includes specific reference to the benefits of people and communities having ready access to timely, relevant information on issues that affect them. This is particularly important in the case of radio broadcasting which may be the only source of information in the event of a natural disaster. RNZ seeks the following bullet point be added to the list in Explanation 3.1.2.3:

Some of those benefits are:
• ...
• That people and communities have access to communications including as a civil defence tool in the event of natural disaster.

Objective 3.2 & Policies
20 RNZ supports Objective 3.2, "To recognise and provide for the sustainable, secure and efficient use, operation and development of network utilities within the City" and seeks that this objective and the corresponding policies be retained.

21 The following policies are particularly supported:

21.1 Policy 3.2.1: Recognise and provide for the:

(a) need for new and the maintenance and upgrading of existing network utilities; and

(b) technical and operational requirements and constraints of network utilities in assessing their location, design, development, construction and appearance; and

(c) benefits that network utilities provide to the economic, social and cultural functioning of the City.

21.2 Policy 3.2.2: Enable the efficient construction, installation, operation, upgrading and maintenance of network utilities.

Explanations
22 RNZ supports explanations 3.2.5.1 (to Objective 3.2), 3.2.5.2 (to Policy 3.2.1) and 3.2.5.3 (to Policy 3.2.2) and seeks they be retained.

23 RNZ requests a minor addition to Explanation 3.2.5.1 to add reference to "radiocommunication" as an essential service which is critical for the functioning and liveability of the city:
3.2.5.1 **Objective 3.2 requires that the benefits of network utilities...**

*They provide essential service to people’s homes and businesses, such as water, transport means, electricity, gas, radiocommunications and telecommunications and are critical for the functioning and liveability of the city.* ...

**Objective 3.3 & Policies**

24 RNZ generally supports Objective 3.3 which refers to managing any adverse effects on the environment from network utilities.

25 RNZ seeks an amendment to Policy 3.3.1 to recognise that it is not always possible to avoid, remedy or mitigate ‘any’ adverse effects of a network utility on the environment. This is particularly relevant to RNZ operations, which require the use of masts and antennae which may be over 100m tall. Some people may consider the visual effects of these masts to be an adverse effect, but there are few practicable steps that can be taken to comprehensively avoid, remedy or mitigate the visual effects.

26 This issue is recognised in Explanation 3.3.5.1 which states that, “in some cases, it might not be entirely possible to avoid or remedy all adverse effects associated with a network utility, meaning there will be some level of adverse effect on the surrounding environment that require mitigation.” RNZ considers it appropriate that this issue is directly recognised in Policy 3.3.1 and seeks the following addition:

> 3.3.1 Ensure that network utilities are designed, located, developed, constructed, upgraded, operated and maintained to avoid, remedy or mitigate any actual or potential adverse effects on the environment where it is practicable to do so.

**4 Methods**

27 RNZ generally supports the methods in the Plan Change. It particularly supports Method 4.1 and seeks that this method is retained:

27.1 **Method 4.1:** Planning Maps that identify the location of both designated and undesignated regionally significant network utilities within the District.

28 RNZ supports the retention of Method 4.3, but considers it is more appropriate that it refer to regionally significant network utilities (which is defined as part of the Plan Change) rather than regionally significant infrastructure (which is not):

> **4.3** Plan change(s) to introduce new provisions to manage reverse sensitivity effects on regionally significant infrastructure network utilities where there are pressures for new or intensification of existing development in proximity to regionally significant infrastructure.

**5 Anticipated Environmental Outcomes**

29 RNZ opposes the inclusion of Environmental Outcome 5.4: "The health and safety of Porirua’s community is not adversely affected by the construction, operation, upgrading and maintenance of network utilities". This outcome gives the impression that network utilities are predominantly a risk to health
and safety, when in fact the efficient supply of power, water, effective transportation networks, and communication services, play a crucial role in enabling enable communities to provide for their health and safety.

30 RNZ seeks that Environmental Outcome 5.4 is removed. The issue of health and safety can be effectively addressed in a more balanced way by the following addition to Environmental Outcome 5.2 (which more fully reflects the meaning of sustainable management in the Resource Management Act 1991):

5.2 The Porirua community is able to provide for its social, economic, cultural and environmental wellbeing, and for its health and safety.

31 While RNZ supports the retention of Environmental Outcome 5.3 ("Potential conflicts between regionally significant network utilities and incompatible development, use and subdivision are avoided."), RNZ considers that the outcomes should clarify that there is no expectation that the operations of lawfully established existing network utilities will be limited to avoid adverse effects on new developments or activities. The following additional outcome is suggested:

5.X The operation of existing regionally significant network utilities is not limited due to reverse sensitivity effects from new incompatible development, activities or subdivision.

6 Rules

32 RNZ generally supports the proposed rules in the Plan Change, and particularly seeks that:

32.1 Permitted activity status be retained for Rules 6.1.1, 6.1.2, 6.1.3, 6.1.4 and 6.1.10; 

32.2 Controlled activity status be retained for Rules 6.1.5 and 6.1.8; and 

32.3 Restricted discretionary status be retained for Rule 6.1.6, and that 9.19 be retained as a matter of control or discretion for this rule.

33 RNZ does not oppose restricted discretionary status in Rule 6.1.17 (Open Space Zone) for “masts with or without associated antennas”, but it strongly requests that 9.19 be added as a matter of control or discretion for this rule.

9.19 The extent to which there are difficult ground conditions, technical or financial constraints that make compliance impracticable/ unreasonable.

34 RNZ’s facilities are designated, but it is possible that at some point in the future RNZ may need to erect temporary or additional masts to enable its operations to continue. There are significant technical and geographical constraints on radiocommunication facilities, and it is appropriate that these constraints should be able to be considered by the Council when making a decision on an application.
7 Standards
7.1 Health and Safety
RNZ strongly requests that the second sentence of Standard 7.1(a) Health and Safety be removed:

Maximum exposure levels shall be 3 kHz to 300 GHz in areas normally accessible to the public.

This sentence does not make sense, as "3 kHz to 300 GHz" is the radiofrequency band range to which the standard applies – it is not a measure of exposure. The first sentence of this sub-section, which requires that maximum exposure levels shall not exceed the levels in NZS 2772:1999,\textsuperscript{12} is sufficient to indicate that compliance with the standard is required.

7.8 Noise
RNZ occasionally has to resort to using backup emergency generators at its sites, to ensure that radio transmission from its facilities continues in the event of a power failure. On the rare occasions that they are used, RNZ's backup generators make some noise. It would be difficult for RNZ's backup generators to comply with the noise limits applying in DC4C.2.1-Noise (as referenced by Standard 7.8).

Given the significant public interest in ensuring RNZ's facilities can continuously transmit (particularly during the type of natural disaster events which may cause power failure), and the transient nature of the noise effect, RNZ considers that either Standard 7.8, (or DC4C.2.1) should be amended so as to exclude RNZ's backup generators from having to comply with the noise limit. This could be done by adding the following note:

Noise from backup emergency generators at Radio New Zealand's Titahi Bay facilities is exempt from these noise limits.

Submission on Amendments to Part F: Information to be supplied
Information requirements for subdivision applications
It is requested that RNZ be made aware of any future subdivision in the vicinity of RNZ's facilities, and have the opportunity to discuss the proposed subdivision. This will mean the Council can be made aware of any reverse sensitivity concerns, or can be informed that no reverse sensitivity concerns exist, when making its decision on a subdivision consent application.

This can easily be achieved by adding RNZ's facilities to the list of network utilities in F7.2:

In the case of land:

- fronting a State Highway,
- ...

\textsuperscript{12} NZS 2772:1999 'Radiofrequency Fields – Maximum exposure levels – 3 kHz to 300 GHz.'
Submission on Amendments to Part M: Interpretation

41 RNZ supports the addition of a definition of “sensitive activity”, but considers the proposed definition is too limited. Sensitive activities are not necessarily limited only to residential, accommodation and care, and education facilities. RNZ seeks that instead of a short definitive list of sensitive activates, a descriptive definition is used (which may include examples of sensitive activities). The definition used in the Regional Policy Statement (as discussed in the Section 32 Report) would be appropriate and have the advantage of consistency:

**Sensitive Activity**

*Means activities which suffer should they experience adverse effects typically associated with some lawful activities. For example, dust or noise from a quarry or port facility, noise in an entertainment precinct, smells from a sewage treatment facility. Activity considered sensitive includes, any residential activity, any early childhood education centre, and any hotel or other accommodation activity. It may also include hospitals, schools and respite care facilities.*

42 The phrase "reverse sensitivity" is used more than 20 times in the Plan Change. RNZ considers that it would assist users of the Plan if a definition of "reverse sensitivity" were included in the definitions section and again suggests the definition used in the Regional Policy Statement (as discussed in the Section 32 Report) would be appropriate:

**Reverse sensitivity**

*Means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.*

43 RNZ also suggests an amendment to the definition of “regionally significant network utility” as described in paragraph 7 above.

Submission on Amendments to D3: Suburban Zone Rules and Standards

D3.1.2 Controlled activities

44 RNZ strongly supports the proposed addition of (i) and (j) as matters over which Council reserves control for the purpose of assessment. Including these matters will enable potential reverse sensitivity effects to be taken into account at the time an application for subdivision is made.

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13 Reference could be made to either K0201-RNZ’s designation number as marked on the Planning Maps, or the requested marking of RNZ’s facilities as a regionally significant network utility.
(i) The design and layout of the subdivision where any lot may affect the safe and effective operation and maintenance of and access to regionally significant network utilities (excluding the National Grid) located on or in proximity to the site; and

(j) The outcome of consultation with the owner or operator of regionally significant network utilities (excluding the National Grid) located on or in proximity to the site.

However, as the masts at RNZ’s facilities are very high and visually prominent, some people could experience adverse visual effects some distance from the facility itself. RNZ requests that a note be added to this section clarifying what “proximity” means in relation to RNZ’s facilities:

*Note: “Proximity” in relation to Radio New Zealand’s transmission facilities at Titahi Bay means within 1000m of the edge of the facilities identified on the Planning Maps by XXXX.***"
RNZ seeks the following decisions from the local authority

Amendment 1: Amendments to Part B Significant Resource Management Issues

46 Issue B11: "Radiocommunications" be added to the list of network utilities:

**B11** Network utilities include such activities as water, gas, and electricity supply, radiocommunications, telecommunications, roads and sewerage disposal. The City is traversed by...

1 Introduction:

47 The following wording is added to section 1.7:

1.7 The successful functioning of the City depends on network utilities. It is therefore very important that construction, maintenance, upgrade and operation of these services be effectively provided for, technical and geographical constraints on the operation of network utilities are acknowledged, and that the benefits that derive from them are adequately recognised. Network utilities can be vulnerable to reverse sensitivity effects when new activities (that are sensitive the effects of the existing network utility) are established nearby, leading to constraints on the operation of the network utility. However, network utilities can also have adverse effects resulting from their construction, operation or associated maintenance activities.

2 Resource Management Issues:

48 Section 2.2 is retained.

3 Objectives and Policies

49 Objective 3.1, Policies 3.1.1, 3.1.2 and 3.1.3, and Explanation 3.1.2.4 are retained.

50 The following bullet point be added to the list in Explanation 3.1.2.3:

Some of those benefits are:

- That people and communities have access to communications including as a civil defence tool in the event of natural disaster.

51 Objective 3.2, Policies 3.2.1 and 3.2.2, and Explanations 3.2.5.1, 3.2.5.2 and 3.2.5.3 are retained.

52 Explanation 3.2.5.1: The following addition is made:

3.2.5.1 Objective 3.2 requires that the benefits of network utilities... They provide essential service to people’s homes and businesses, such as water, transport means, electricity, gas, radiocommunications and telecommunications and are critical for the functioning and liveability of the city. ...

53 Policy 3.3.1: The following amendments is made
3.3.1 Ensure that network utilities are designed, located, developed, constructed, upgraded, operated and maintained to avoid, remedy or mitigate any actual or potential adverse effects on the environment where it is practicable to do so.

4 Methods

Methods 4.1 and 4.3 are retained.

Method 4.3: A minor change in wording is made:

**4.3** Plan change(s) to introduce new provisions to manage reverse sensitivity effects on regionally significant infrastructure network utilities where there are pressures for new or intensification of existing development in proximity to regionally significant infrastructure.

5 Anticipated Environmental Outcomes

Environmental Outcome 5.4 is removed:

**5.4** The health and safety of Porirua’s community is not adversely affected by the construction, operation, upgrading and maintenance of network utilities.

Environmental Outcome 5.2 is changed:

**5.2** The Porirua community is able to provide for its social, economic, cultural and environmental wellbeing, and for its health and safety.

A new Environmental Outcome is added:

**5.X** The operation of existing regionally significant network utilities is not limited due to reverse sensitivity effects from new incompatible development, activities or subdivision.

6 Rules

Rules 6.1.1, 6.1.2, 6.1.3, 6.1.4 and 6.1.10: Permitted activity status is retained.

Rules 6.1.5 and 6.1.8: Controlled activity status is retained.

Rule 6.1.6: Restricted discretionary status is retained, and 9.19 is retained as a matter of control or discretion for this rule.

Rule 6.1.17: 9.19 is added as a matter of control or discretion for this rule.

7 Standards

Standard 7.1(a) Health and Safety: The second sentence is removed:

Maximum exposure levels shall be 3 kHz to 300 GHz in areas normally accessible to the public.

Standard 7.8 Noise: The following note is added to 7.8, or DC4C.2.1:
Noise from backup emergency generators at Radio New Zealand’s Titahi Bay facilities is exempt from these noise limits.

Amendments to Part F: Information to be supplied

65 Information Requirements F7.2: The following addition is made:

In the case of land:

- fronting a State Highway,
- ...
- within 1,000m of Radio New Zealand’s transmission facilities at Titahi Bay identified on the Planning Maps by XXXX,\textsuperscript{15}

Evidence that the proposed subdivision has been discussed with the relevant network utility provider and the outcome of the discussions....

Amendments to Part M – Interpretation

66 The following definitions are used:

Sensitive Activity
Means activities which suffer should they experience adverse effects typically associated with some lawful activities. For example, dust or noise from a quarry or port facility, noise in an entertainment precinct, smells from a sewage treatment facility. Activity considered sensitive includes, any residential activity, any early childhood education centre, and any hotel or other accommodation activity. It may also include hospitals, schools and respite care facilities.

Reverse sensitivity
Means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.

67 Part M – Interpretation: the following bullet point be added:

Regionally significant network utilities includes:

- ...
- Radio New Zealand’s radio transmission facilities at Titahi Bay
- ...

Amendments to D3 Suburban Zone Rules and Standards

68 D3.1.2 Controlled activities: The proposed (i) and (j) as matters which Council reserves control for the purpose of assessment are retained, and the following note is added:

\textsuperscript{15} Reference could be made to either K0201-RNZ’s designation number as marked on the Planning Maps, or the requested marking of RNZ’s facilities as a regionally significant network utility.
Note: “Proximity” in relation to Radio New Zealand’s transmission facilities at Titahi Bay means within 1000m of the edge of the facilities identified on the Planning Maps by XXXX.¹⁶

Planning Maps

Planning Maps: RNZ’s facilities are clearly identified on Planning Maps as regionally significant network utilities (an addition to proposed Map A16).

¹⁶ Reference could be made to either K0201-RNZ’s designation number as marked on the Planning Maps, or the requested marking of RNZ’s facilities as a regionally significant network utility.
Appendix 4 – Summary of Submissions and Recommendations on Submissions
Appendix 5 – Map showing 1,000m radius from the Radio NZ Facilities.
Appendix 6 – Legal Advice
Appendix 7 – Recommended Changes to Proposed Plan 16.
Appendix 8 – Plan Change 16 Network Utilities – Regionally Significant Network Utilities
Commissioners’ Recommendation

PLAN CHANGE 16
NETWORK UTILITIES
PORIRUA CITY DISTRICT PLAN

Report and Recommendation of T Sheppard, I Ford and M St.Clair
Acting as a Commissioners appointed by the
Porirua City Council pursuant to Section 34A of the
Resource Management Act 1991
1. INTRODUCTION

Context

1.1 We were appointed by the Council to hear submissions to, and to consider and make a recommendation on, Plan Change 16 (the Plan Change), which amends the Network Utilities section of the Porirua City District Plan.

1.2 The Plan Change has a reasonably long background, which we will address in due course. The Plan Change has been the subject of a Council “section 32” report, consultation with infrastructure providers, land owners and occupiers, and of course the recent public notification and hearing, culminating in this report.

1.3 Before discussing the details of the Plan Change and the submissions to it, there are some procedural issues that we need to address.

Report Outline

1.4 In terms of the above, having familiarised ourselves with the Plan Change and the background material, read all submissions, conducted the hearing and heard from the Council officers and submitters, we hereby record our recommendations. In this respect, this report is divided into the following parts:

(a) Background/Plan Change Outline:

This section includes an outline of the background to the Plan Change, including the sequence of events leading to this report. It also outlines the main components of the Plan Change including an overview of the purpose. This background section provides a relevant context to considering each of the submissions to the plan change.

(b) Statutory Requirements:

This section sets out the statutory requirements under the Resource Management Act 1991 (the RMA) that govern the decision making process in regard to the Plan Change.

(c) Assessment of Submissions:

In this section, we record the various submissions received to the Plan Change, outline the concerns of the submitters to the Plan Change, and, where relevant, amplify on the evidence/statements presented at the hearing. We then undertake an assessment of the aspects of each of the submissions or groups of submissions and conclude with a recommendation.
2. BACKGROUND

Procedural Sequence

2.1 The background to the Plan Change is set out in full in the Officer’s Report and the proposed Plan Change documentation, and is held on the Council file. Hence we will not repeat that in detail here.

2.2 The Plan Change itself was publicly notified on 1 October 2013 with the submission period closing on 15 November 2013. There were no late submissions. The summary of those submissions was notified on 22 April 2014, with further submissions closing on 7 May 2014. Fourteen submissions were received and six further submissions were received. We note that the submissions by the New Zealand Transport Agency (S11) and WEL Networks Ltd (S7) were withdrawn on 4 February 2014 and 30 April 2014 respectively. Hence we have not considered those submissions or any further submissions related to those original submissions.

2.3 Prior to the hearing commencing on 18 September 2014, we issued a series of minutes. The first minute, dated 9 July 2014, set out directions for the pre-circulation of the section 42A report, submitter’s expert evidence, and conferencing between experts. The second minute, dated 20 August 2014, drew to the attention of the parties, that, having reviewed the section 42A report we noted two preliminary procedural issues relating to scope of submissions identified in the report and that we recorded that we would address those matters at the commencement of the hearing. The third minute, dated 22 August 2014, was in response to a request by Chorus (Submission 12) for a waiver to the timeframe for the delivery expert evidence so that photomontages could be prepared. This waiver was granted and the photomontages duly provided to Council on the 11th September 2014. Copies of these minutes were circulated to all parties and are held on Council’s file.

The Hearing

2.4 The hearing was convened on the 18th September 2014 in the Porirua City Council Chambers at 16 Cobham Court, Porirua. We heard from the following people during the course of the hearing:

Submitters

- Ms. Gillian Robertson – Land Management Co-ordinator Vector Gas Limited
- Mr. Mike Hurley – Senior Environmental Planner, Transpower New Zealand Ltd
- Mr. Wayne Youngman – Director Safety, Transpower New Zealand Ltd
Ms. Pauline Whitney – Associate Principal and Senior Planner at Boffa Miskell Ltd – consultant planner to Transpower New Zealand Ltd
Ms. Sharon Westlake, Senior Engineer, Flood Protection Department, Greater Wellington Regional Council
Ms. Jenny Clafferty, Senior Resource Management Consultant, Tonkin and Taylor, consultant to Greater Wellington Regional Council
Mr. Hadleigh Pedler, counsel for Radio New Zealand Ltd
Mr. Gary Fowles, Transmission Manager for Radio New Zealand Ltd.
Mrs. Diane Strugnell, for Pauatahanui Residents Association
Ms. Mary Barton, Senior Environmental Planner Chorus New Zealand Ltd
Mr. Shannon Bray, Principal Landscape Planner – Boffa Miskell Ltd for Chorus New Zealand Limited and Spark New Zealand Trading Limited
Mr. Thomas Anderson, Senior Resource Management Consultant at Incite for Chorus New Zealand Limited and Spark New Zealand Trading Limited

Council Officers
Ms. Gina Sweetman, Consultant Planner for Porirua City Council – s42A Reporting officer
Ms. Nicole Mistal, Policy Analyst, Porirua City Council
Mr. Matt Trlin, Manager Strategy and Planning, Porirua City Council

2.5 The hearing commenced with a presentation by the reporting officer Ms. Sweetman, outlining matters that had changed since the receipt and distribution of the submitter’s expert evidence. We then heard from the submitters, identified above.

2.6 Ms. Sweetman then responded to issues that had arisen during the hearing. We exercised the opportunity to question all persons present.

2.7 At that point, we adjourned the hearing at 5pm on Thursday 18th September 2014 indicating that we wished to consider whether or not we had all the information required to make our recommendations. The next day, we issued a direction (Direction #4) advising the parties that we proposed to commission a report from the Greater Wellington Regional Council (GWRC) on the interpretation of the Regional Policy Statement for the Wellington Region (RPS) in regard to “Regionally significant infrastructure as defined in Appendix 3” of the RPS and more specifically the interpretation of “strategic telecommunications facilities, as defined in Section 5 of the Telecommunication Act 2001”. On receipt of those memoranda, we set out in Direction #5 our request for the report from the GWRC and a timetable for completion of the report being 14 November 2014. Following a request from the GWRC
for an extension of timeframe to allow discussions amongst the interested parties to occur we extended the timeframe until 5 Dec 2015. The report was duly received and following confirmation with the interested parties (Directions #6 - #7) the hearing reconvened on the 29 January 2015 to specifically address those matters raised in the report. At that reconvened hearing we heard from officer of GWRC, Ms. Mary Barton, Senior Environmental Planner Chorus New Zealand Ltd and the reporting officer.

2.8 Following the substantive part of the reconvened hearing, we signaled and issued a minute (Direction #8) requesting a summary of the points of submission that were no longer in contention to assist in our deliberations. We received this summary which was also sent to all parties (Direction #9), and finally closed the hearing on 17 March 2015 (Direction #10).

Outline of Plan Change

2.9 As mentioned above, the purpose of the Plan Change is set out fully in the reporting officer’s report which is held on the Council file. In summary, the Plan Change seeks to:

- review and update existing network utility provisions to ensure that they:
  - reflect best practice;
  - provide greater consistency between district plans across the region and
  - best serve and reflect public and stakeholder expectations and requirements;
- rationalise existing network utility provisions across the District Plan;
- avoid unnecessary duplication between District Plan provisions and other legislation or regulations;
- give effect to the National Policy Statement on Electricity Transmission (NPSET);
- give effect to the Regional Policy Statement for the Wellington Region (RPS);
- give effect to the New Zealand Coastal Policy Statement (NZCPS), as appropriate; and
- amend the District Plan as required so as not to duplicate or conflict with the National Environmental Standard on Electricity Transmission Activities (NESETA) and the National Environmental Standard on Telecommunication Facilities (NESTF).1

1 Section 42A (S42A) Report, Page 3, Para 2
3. STATUTORY PROVISIONS

The Resource Management Act 1991

3.1 In this section of the report we set the statutory provisions we are required to take account of in reaching our recommendation. We note that as the Plan Change was notified prior to 3 December 2013, the 2013 amendments to the RMA in regard to section 32 did not apply prior to that time. However, the further submission period closed after that date, namely 7 May 2014 and as such we are required in accordance with clause 2 of Schedule 12 of the RMA to consider those changes in our recommendation report.

Schedule 1

3.2 Part 1 of Schedule 1 to the RMA sets out the procedure for council initiated plan changes.

3.3 Directions on decisions are set out in clause 10 of Schedule 1 of the RMA, which states:

**10 Decisions on provisions and matters raised in submissions**

(1) A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.

(2) The decision—

(a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—

(i) the provisions of the proposed statement or plan to which they relate; or

(ii) the matters to which they relate; and

(b) may include—

(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

(ii) any other matter relevant to the proposed statement or plan arising from the submissions.

(3) To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.

(4) The local authority must—

(a) have particular regard to the further evaluation undertaken in accordance with subclause (2)(ab) when making its decision; and

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Schedule 12 Transitional Provisions for amendments made on or after commencement of Resource Management Amendment Act 2013
(a) give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and
(b) publicly notify the decision within the same time.

3.4 Matters to be considered in any plan change are set out in section 74 of the RMA as follows:

74 Matters to be considered by territorial authority

(1) A territorial authority must prepare and change its district plan in accordance with—
(a) its functions under section 31; and
(b) the provisions of Part 2; and
(c) a direction given under section 25A(2); and
(d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
(e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and
(f) any regulations.

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—
(a) any—
(i) proposed regional policy statement; or
(ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and
(b) any—
(i) management plans and strategies prepared under other Acts; and
(ii) [Repealed]
(iia) relevant entry on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014; and
(iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—

   to the extent that their content has a bearing on resource management issues of the district; and

(c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.
(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

3.5 Finally, section 75 of the RMA states that:

(3) A district plan must give effect to—
   (a) any national policy statement; and
   (b) any New Zealand coastal policy statement; and
   (c) any regional policy statement.

(4) A district plan must not be inconsistent with—
   (a) a water conservation order; or
   (b) a regional plan for any matter specified in section 30(1).

Part 2 Matters

3.6 The purpose of the RMA is to promote the sustainable management of natural and physical resources (Section 5). This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life-supporting capacity of ecosystems and avoiding, remedying or mitigating adverse effects on the environment.

3.7 Section 6 contains a list of matters of national importance that all persons exercising functions and powers under shall recognise and provide for.

3.8 Section 7 addresses ‘other matters’ which, in achieving the purpose of the RMA, persons exercising functions and powers under the RMA shall have particular regard to. Those matters of particular relevance to the Plan Change, as noted in the reporting officer’s report are:

(b) the efficient use and development of natural and physical resources
(ba) the efficiency of the end use of energy
(c) the maintenance and enhancement of amenity values
(f) maintenance and enhancement of the quality of the environment

3.9 Section 8 provides that in achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).

3.10 We note that Te Rūnanga o Toa Rangātira were consulted in preparation of the Plan Change and we were advised that they no
particular comment. In addition, Te Rūnanga o Toa Rangātira were included on the list of affected parties who received direct notification of this Plan Change and that no submissions were received from them or any other iwi.

Sections 31, 32, 72 & 76 of the RMA

3.11 Section 31 sets out the Council’s functions for the purpose of giving effect to the RMA. The Council’s functions are stated in section 31 of the RMA and include:

31(1)(b) the control of any actual or potential effects of the use, development or protection of land.

3.12 Section 32 of the RMA requires a report which summarises the process of evaluation undertaken in the preparation of the Plan Change. A Section 32 evaluation must examine the following:

(1) An evaluation report required under this Act must—
   (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
   (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
      (i) identifying other reasonably practicable options for achieving the objectives; and
      (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
      (iii) summarising the reasons for deciding on the provisions; and
   (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

3.13 An evaluation must also take into account:

(2) An assessment under subsection (1)(b)(ii) must—
   (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
      (i) economic growth that are anticipated to be provided or reduced; and
      (ii) employment that are anticipated to be provided or reduced; and

3 Section 32 Analysis, Section 4.2.2, Page 11
(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

3.14 Section 32 requires that a report must be prepared, summarising the evaluation and giving reasons. The section 32 requirements of the RMA were addressed in the officer’s report and Plan Change documentation provided at the hearing.

3.15 In addition, we note that as the further submission process closed after the 3rd December 2013, Section 32AA requires that we undertake a further evaluation of any changes to the Plan Change and refer to that evaluation in this recommendation report4.

3.16 We note that in response to questioning, Ms. Sweetman was of the view that the section 32 evaluation met the requirements of the RMA. In addition, Ms. Whitney addressed the issue of section 32 in her evidence as it related to aspects of Transpower’s issues5. We did not hear any evidence to the contrary.

3.17 In reaching our recommendations, we record that we have considered the changes in accordance with section 32(1) to (4) of the RMA and have done so in a level of detail that correspondences to the scale and significance of the changes.

3.18 Section 72 states as follows:

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

3.19 The following provisions of section 76 are also relevant:

(1) A territorial authority may, for the purpose of –
   (a) Carrying out its functions under this Act; and
   (b) Achieving the objectives and policies of the plan, - include rules in a district plan.

   …

(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect…

3.20 In relation to the statutory requirements, and the evidence and reports presented, our findings and recommendations are set out below.

4 Resource Management Act 1991, Schedule 12, Clause 2
5 Ms. P Whitney, Evidence in Chief (EIC), Pages 27 - 29, Paras 66 - 77
4. OVERVIEW OF SUBMISSIONS TO PLAN CHANGE 16

Numbers and Categories

4.1 There were 14 submissions and six further submissions received to Plan Change 16 within the statutory time period. As we noted in paragraph 2.2 above, two submissions were later withdrawn.

4.2 The following sets out the submitters and further submitters:

- Radio New Zealand Ltd (S1);
- Vector Gas Limited (S2);
- Telecom New Zealand Limited (S3);
- Diane Strugnell (S4);
- Pauatahanui Residents’ Association (S5);
- Two Degrees Mobile Limited (2Degrees) (S6);
- WEL Networks Limited (S7) (withdrawn);
- Powerco Limited (S8);
- Kiwirail Holdings Limited (S9);
- Transpower New Zealand Limited (S10);
- New Zealand Transport Agency (NZTA) (S11) (withdrawn);
- Chorus New Zealand Limited (S12);
- Greater Wellington Regional Council (S13); and
- Grant Fairbairn (S14).

Further submissions were received from:
- Radio New Zealand (FS1);
- Vector Gas Limited (FS2);
- Powerco Limited (FS3);
- Transpower New Zealand Limited (FS4);
- Telecom New Zealand Limited (FS5);
- Chorus New Zealand Limited (FS6).

4.3 In reviewing the submissions we have found it useful to follow the format set out by Ms. Sweetman in the hearings report. We have categorised the submissions to PC16 in the following manner noting that this list includes matters that may no longer be in contention:

A. PC16 in its entirety
B. New Network Utilities Chapter - General
   i. Reverse sensitivity
   ii. Regionally significant network utilities
   iii. Stopbanks / Flood Hazard Area
   iv. Avoiding, Remedying and Mitigating Adverse Effects
      v. Policies 3.3.2 – 3.3.4, 3.3.6, Explanations 3.3.5.1 – 3.3.5.3, 3.3.5.5
C. New Network Utilities Chapter– Rules, Standards and Matters of Control and Discretion
i. Removal, maintenance and upgrading
ii. Radiocommunication and telecommunication masts, antennas and lines
iii. Gas distribution and transmission
iv. Cabinets
v. Roading and Traffic and Transport Structures
vi. Earthworks
vii. Noise

D. New Provisions to Give Effect to the NPSET
   i. Definitions
   ii. Earthworks
   iii. Milking Sheds and Intensive Rural Production Activity

E. Amendments to Part M: Interpretation
   i. Minor upgrading
   ii. Sensitive activities
   iii. Upgrading

F. Amendments to C7: Transport Objectives and Policies

G. Amendments sought to Zone Chapters

H. Amendments to Planning Maps

4.4 We have used these categories as the basis for the assessment that follows. In addition, we also record that through the hearing process, both in the pre-circulated hearing report and evidence, and at the hearing itself, amendments to the Plan Change to the satisfaction of the parties were agreed upon. We have recorded above that we helpfully received from Ms. Sweetman a copy of the matters that were still in contention as the final piece of information before closing the hearing. It is these matters in contention that we have focused our deliberations on and set out in the recommendations. That said, where the parties agreed on matters, we record that we have considered those matters fully in reaching our recommendations and adopt as our reasons those provided in the hearings report and the evidence presented to us. Regardless, our recommendations address all the submissions and further submissions made on the Plan Change and are set out in Table 1 attached as Appendix 1.

4.5 As part of the pre-circulated evidence, Ms. Barton, Senior Environmental Planner for Chorus, drew to our attention of the change of name from Telecom to Spark.6 We raise this point now, so that the reader is aware that throughout the remainder of decision, where reference has been made to Telecom it should be understood to mean Spark.

Preliminary Issues

4.6 The preliminary issues relate to two matters of scope of aspects submissions to the plan change, and therefore the scope of our

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6 Ms. M Barton, EIC, Para 10
jurisdiction to assess them. The two relevant submissions are KiwiRail (S9) and Vector (S2). We deal with aspects of each of these submissions specifically.

**KiwiRail**

4.7 The reporting officer’s report sets out at para 17 Page 6, the legal advice sought by Council, that aspects of the KiwiRail submission were beyond the Plan Change, specifically the following aspects:

(a) New acoustic rules and performance standards to be included in the District Plan for buildings, balconies and decks, which included setbacks from rail corridor boundaries for buildings, balconies and decks (a “no build” buffer) and internal design noise limits for new, relocated and altered dwellings and sensitive activities; and

(b) New level crossing rules and performance standards to address safety concerns, including an access way restriction and sight triangles.\(^8\)

4.8 The legal advice which was attached to the report, in summary noted that;

- That (a) sought to introduce a new management regime on a new issue
- Benefits of railway lines is provided in PC16 but does not include railway crossings.

4.9 The reporting officer concurred with the legal advice and did not consider the above matters any further.

4.10 Pre-circulated evidence from Ms. D Hewett, a planner for KiwiRail addressed the matter of scope of the submission in accepting the position of Council’s legal advisors.\(^9\) We note that KiwiRail did not wish to speak to their submission.

4.11 As such, we recommend that the matters recorded in Para 4.6 (a) and (b) above are not within the scope of the Plan Change and therefore recommend that KiwiRail submission points S9.4, S9.5, S9.8, S9.10, S9.11, S9.12, S 9.16, S9.17, S9.18 be rejected.

4.12 The other preliminary matter we have been asked to consider is the weight to be given to the letter dated 19 May 2014, sent to Council by Vector, providing additional information and clarification on matters of discretion they sought to be deleted in regard to gas distribution and transmission >2000kPa. The specifics of the relief sought are set out in the officer’s report,\(^10\) and we return to those matters later in the decision. Nonetheless, as noted in the officer’s report, there is some difference between Vector’s original submission and the clarification

\(^7\) Copy of Legal advice (Updated 30 June 2014) included in Appendix 6 of s42A Report.
\(^8\) S42A Report, Page 6, Para 17
\(^9\) Ms. D Hewitt, EIC, Page 2, Para 6
provided in letter dated 19 May 2014\textsuperscript{11}. In the officer’s report\textsuperscript{12}, Ms. Sweetman is of the view that the letter is within the scope of the original submission.

4.13 At the hearing, Ms. G Robertson on behalf of Vector Gas Limited (Vector) clarified Vector’s position in terms of what was being sought.

4.14 We heard no evidence to the contrary on the matter of scope and accept that the letter is within the scope of the original submission. The substantive matters in regard to gas distribution and transmission $>2000\text{kPa}$ are addressed later in our recommendations.

**Plan Change in its entirety**

4.15 Mr. Fairbain (S14) did not support the implementation of the Plan Change and his reasons were usefully summarised in the officer’s report as follows:

- **PC16 contains unnecessary duplication and complication, where details should only be reference from within the relevant national and international codes and standards that apply to national utilities.**
- **The planned changes do not preserve landowner’s rights and are detrimental to landowners, for example with respect to planned upgrades or future development.**
- **The planned changes give no acknowledgement or benefit to landowners that bear the national utilities.**

4.16 Mr. Fairbain did not attend the hearing.

4.17 Transpower (FS4.2) sought that Mr. Fairbain’s submission be disallowed. Transpower’s reasons set out in the officer’s report as follows:

- **Sole reliance on NZECP34:2001 does not give effect to the NPSET**
- **NZECP does not manage sensitive activities and can permit activities that compromise the operation and maintenance of the National Grid**
- **Nothing in PC16 gives Transpower any property rights**
- **Property rights, compensation and access issues cannot be addressed within the scope of PC16**
- **The Board of Inquiry for the NPSET identified that property rights and compensation issues were not relevant under the RMA.**

\textsuperscript{11} Section 42A Report, Page 48, Para 216, \textsuperscript{12} Section 42A Report, Page 51, Para 220
4.18 The reporting officer’s assessment of these submissions, notes in summary, that the Plan Change was drafted:

- To avoid duplication;
- To address environmental effects not managed via other codes, standards, etc.; and
- To specifically give effect to the National Policy Statement on Electricity Transmission.

4.19 The hearing’s report also addressed the matter of property rights noting that the Plan Change was drafted within the jurisdiction provided by the RMA subject to the s32 considerations, as well as noting that the proposed rule and standards do not automatically allow a network utility operators to over-ride private property rights. Similarly Ms. Whitney in her evidence on behalf of Transpower addressed the matters raised by Mr. Fairbain, noting the significance of the National Grid, the Plan Change’s approach being consistent with the NPSET and further noting that property rights are not an appropriate matter for inclusion in the District Plan.

4.20 Having considered the material put before us, we prefer the evidence of Ms. Sweetman and Ms. Whitney for the reasons set out above. As such we recommend that the submission points of Mr. Fairbain (S14) be rejected and the further submission points of Transpower FS4.2 be accepted.

New Network Utilities Chapter - General
i. Reverse sensitivity – NU2.2, NU3.1.3, NU3.1.24, Definitions

4.21 Paragraphs 56 – 59 of the s42A Report set out amendments to NU2.2 (S8.2, supported by FS1.1, FS2.2 and FS4.4), NU3.1.3 (S8.6, supported by FS1.2 and FS4.5), NU 3.1.2.4 (s8.7, supported by FS1.5, FS2.3 and FS4.6) sought by Powerco, to “… clarify that reverse sensitivity is one of a range of adverse effects on network utilities that may result from inappropriate subdivision, use and development in close proximity to existing network utilities”.

4.22 The reporting officer concurred with Powerco’s submission that the provisions did not fully give effect to the Policy 8 of the RPS and that amendments sought were appropriate with the exception of that for NU2.2. Powerco did not attend the hearing but prepared a statement setting out the company’s position on the Plan Change and both in general and specifically in this case, supports the reporting officer’s recommendations.

4.23 Paragraphs 60 – 61 of the s42A Report set out a definition of reverse sensitivity sought by Radio NZ (S1.22, supported by FS2.8, support in

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13 S42A Report, Pages 14 – 15, Paras 51-53,
14 Ms. P Whitney, EIC, Page 30, Paras 85 - 86
15 Letter from Burton Consultant’s on behalf of Powerco Ltd, dated 1 Sept 2014.
part by FS3.5 and FS4.12). Radio NZ’s reasons for the request are, “that it would assist plan users given its frequency of use and that the RPS definition would be appropriate and provide consistency.”

4.24 The s42A Report also set out the reporting officer’s view that it is better to rely on case law rather than a set definition in the District Plan, noting potential issues that may arise if the definition requires amendment due to subsequent changes in case law.

4.25 Mr. Pedler, counsel for Radio New Zealand Ltd, set out in his submissions the reasons for seeking the inclusion of the definition, which included, in summary, the concept being well understood and capable of clear definition, increased usability of the District Plan and that by relying on case law, should there be a change in case law, it may have unintended consequences to the usage of the term in the District Plan.16

4.26 In regard to this matter we are persuaded by the views of Ms. Sweetman. We note the difficulties in amending the provisions of a District Plan in light of changes to case law for an individual term, and find that the use of the term should be within the context provided for by case law.

4.27 We therefore recommend that S8.2, FS1.1, FS2.2 and FS4.4 be accepted in part, and S8.6, S8.7, FS1.2, FS1.5, FS2.3, FS4.5 and FS4.6 be accepted. In addition it is recommended that S1.22 and FS2.8 be rejected.

Regionally significant network utilities – Policies NU3.1.2.2, NU3.1.2.3, Methods NU4.1 and NU4.2, Environmental Outcomes NU5, D3.1.2 and Part M definitions

4.28 The s42A Report sets out in full the submissions, assessment and recommendations relating to the definition of regionally significant network utilities, how those utilities would be shown on the District Plan Maps, as well as the linkages to the policies, methods and environmental outcomes.17 Nonetheless, in order to address these matters in this recommendation report we find it necessary to repeat some of that material in order to provide the context for our recommendations and reasoning.

Definition

4.29 Telecom and Chorus (S3.2, S12.2, S3.11, S12.17) supported by Radio NZ (FS1.13 and FS1.14), “seek that telecommunications and radiocommunications are included within the definition of regionally significant network utilities as follows:

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16 Mr. H Pedler, Legal Submissions, Paras 24 – 25.3.
17 S42A Report, Pages 18 – 26, Paras 67 – 109
Facilities for provision of ‘telecommunication’ as defined in section 5 of the Telecommunications Act 2001 and facilities for the provision of ‘radio communication’ as defined in section 2(1) of the Radiocommunications Act 1989.¹⁸

4.30 Telecom and Chorus supported the specific provision for regionally significant network utilities, but considered the exclusion of radiocommunications and telecommunications as inconsistent and unreasonable.

4.31 Radio NZ (S1.23) sought that the definition of regionally significant network utilities include, “Radio New Zealand’s radio transmission facilities at Titahi Bay” for the reasons that, “its operations at Titahi Bay are clearly included as being consistent with the inclusion of other network utilities that have vital roles and is consistent with the reference to Wellington’s largest and most powerful communication facilities in NU1.2.”

4.32 The section 42A report identified the issue of the inclusion of telecommunications and radiocommunications as regionally significant network utilities by reference to the s32 report which states: “..., in considering how to give effect to the RPS, an issue that has arisen is in respect of the definition of regionally significant infrastructure, which in the RPS includes:

• “strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001

• strategic radiocommunications facilities, as defined in section 2(1) of the Radio Communications Act 1989”

A review of both pieces of legislation has identified that neither contain the definitions referred to. The explanation to the relevant policies provides no guidance as to what may or may not constitute a strategic telecommunication facility or radio-communications facility. Discussions with the Regional Council have not provided clarification. In the absence of certainty or clarification of what may or may not be a strategic telecommunications or radio-communications facility, the Proposed Plan Change does not contain these two matters as being regional significant network utilities. Without definitions of what the Regional Council considers are “strategic” telecommunication and radio communication facilities, it is not appropriate for the Council to presume the exact scope and nature of what these are. If the RPS is amended in the future to clarify what is meant by these terms, the District Plan can be updated to give effect to the amended RPS.”

4.33 We note that the full definition from the RPS is as follows:

“Regionally significant infrastructure includes:

• pipelines for the distribution or transmission of natural or manufactured gas or petroleum

¹⁸ S42A Report, Para 68, Page 18
Proposed Plan Change 16 to the Porirua City Council District Plan: Network Utilities
Commissioners’ Report and Recommendation

• strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001
• strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989
• the national electricity grid, as defined by the Electricity Governance Rules 2003
• facilities for the generation and transmission of electricity where it is supplied to the network, as defined by the Electricity Governance Rules 2003
• the local authority water supply network and water treatment plants
• the local authority wastewater and stormwater networks, systems and wastewater treatment plants
• the Strategic Transport Network, as defined in the Wellington Regional Land Transport Strategy 2007-2016
• Wellington City bus terminal and Wellington Railway Station terminus
• Wellington International Airport
• Masterton Hood Aerodrome
• Paraparaumu Airport
• Commercial Port Areas within Wellington Harbour and adjacent land used in association with the movement of cargo and passengers and including bulk fuel supply infrastructure, and storage tanks for bulk liquids, and associated wharflines”.

4.34 The s42A Report set out the reporting officer reasons for recommending that the Telecom and Chorus submission be rejected. We summarise those reasons as follows:

- The RPS officer’s report and the decision report provided no guidance19
- In relation to the term ‘Strategic’ - noting that the submitters had not clarified if the submissions sought all telecommunications and radiocommunications facilities be considered strategic or whether criteria should be applied20
- Specificity of what was included in RPS definition list - inclusion of parts of networks (e.g. transmission but not distribution networks), concluding that the Regional Council considered some more regionally significant than others21
- If the definition in the RPS was a drafting error then it was not PCC’s role to correct it.22

4.35 In evidence for Telecom and Chorus, Ms. Barton, Senior Environmental Planner at Chorus NZ Ltd, drew our attention to a legal opinion that Chorus sought from Chapman Tripp, as to whether or not the Spark and Chorus submissions seeking the inclusion of telecommunication and radiocommunication would be inconsistent with the RPS. That

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19 S42A Report, Page 21, Para 83
20 S42A Report, Page 21, Paras 84 - 84
21 S42A Report, Page 21, Paras 84 - 84
22 S42A Report, Page 22, Para 87
legal opinion\textsuperscript{23} noted that refusal by Council to include any telecommunication or radio communisation facilities would in their opinion fail to give effect to the RPS.

4.36 Ms. Barton considered that the reporting officer had indicated through the report, \textit{“a preference for Chorus and Spark to specify aspects of the telecommunication network within Porirua City that would fall within the definition of regionally significant network utilities.”}\textsuperscript{24} Ms. Barton did not consider that listing strategic assets to be appropriate as it would only provide a snapshot in time\textsuperscript{25} and, \textit{“… any such approach would not represent the full nature of the telecommunication network in Porirua City.”}\textsuperscript{26}

4.37 Ms. Barton also noted the inclusion of telecommunication and radiocommunication as \textit{“Lifeline Utilities”} under Part B of the Schedule 1 of the Civil Defence Emergency Management Act 2002 and that aspects of the network should not be considered in isolation. Ms. Barton was of the view that the telecommunication network as a whole should be considered regionally significant.\textsuperscript{27}

4.38 We also heard from Mr. Anderson, a senior resource management consultant at Incite, on behalf of Chorus, in regard to this matter. In summary, Mr. Anderson’s evidence addressed:

- The Chapman Tripp legal opinion that the definition should be considered in the context of the Policy 7(a)(iv) of the RPS\textsuperscript{28}
- That the strategic importance of telecommunication is identified in legislation and council documents\textsuperscript{29}
- That the telecommunication network was similar to a water supply, wastewater and stormwater network, which were all recognised in the Plan Change and identified in the RPS, and that access to all those networks was of equal importance.\textsuperscript{30}
- The fibre and exchange networks are inextricably linked enhancing the premise that the entire network is strategic.\textsuperscript{31}
- An explanation of hubs and strategic infrastructure.\textsuperscript{32}

… and when considering these Mr. Anderson draws the conclusion, like that of Ms. Barton, that the entire Spark and Chorus network is a regionally significant network utility.\textsuperscript{33}

\textsuperscript{23} Mr. T Anderson, EIC, Appendix 3
\textsuperscript{24} Ms. M Barton, EIC, Para 31
\textsuperscript{25} Ms. M Barton, EIC, Para 32
\textsuperscript{26} Ms. M Barton, EIC, Para 33
\textsuperscript{27} Ms. M Barton, EIC, Para 35
\textsuperscript{28} Mr. T Anderson, EIC, Page 7, Para 27
\textsuperscript{29} Mr. T Anderson, EIC, Pages 7 – 8, Paras 28 - 32
\textsuperscript{30} Mr. T Anderson, EIC, Page 8, Para 35
\textsuperscript{31} Mr. T Anderson, EIC, Pages 8 - 9, Para 36
\textsuperscript{32} Mr. T Anderson, EIC, Page 9, Paras 37 - 39
\textsuperscript{33} Mr. T Anderson, EIC, Page 10, Para 41
4.39 In response to our questions, Mr. Anderson advised that he had spoken with technical staff at Spark/Chorus and that in their view that it was not possible to identify particular facilities as being strategic due to the fact that the telecommunication system required connections by way of a network in order to operate. We have taken from this that Spark/Chorus has not identified those parts of the network that it deems to be strategic telecommunication facilities, but rather that it is the entire telecommunication network which is strategic. In addition, in response to our questions, Mr. Anderson expressed the view that identifying strategic facilities either by mapping or describing in words was equally not possible.

4.40 As noted in paragraph 2.7 above, we commissioned a report on this matter from the GWRC. Following input from the parties to the Plan Change, we asked that the report address three questions, namely:

- What is the background to the inclusion of “strategic telecommunications facilities” in the RPS as regionally significant infrastructure?
- Does the terminology “strategic telecommunications facilities” apply to the entire telecommunications network?
- How does the terminology “strategic telecommunications facilities” relate to the terminology used for the other regionally identified infrastructure in Appendix 3 of the RPS?

4.41 In addition, Mr. J Streat, Manager, Environmental Policy from the Regional Council attended the reconvened hearing, spoke to the report and responded to our questions. We note that in the report prepared by Mr. Streat, he expressed the view that:

“Chorus has put forward the proposition that their entire network is a regionally significant facility and it is not possible to separate out strategic facilities from within the network. While this may be the case the wording of the RPS did not foresee the distinction of the whole network as a facility in relation to telecommunications infrastructure. It is clear that to identify the entire telecommunication work as a regional significant facility would be most appropriately achieved through a change to the RPS.”

4.42 Ms. Sweetman in response to matters raised in the hearing, recognised the difficulties of the definitions set out in the RPS, yet remained of the view that it was not Council’s role to re-interpret the RPS; rather Ms. Sweetman agreed with Mr. Streat that a change to the RPS was required.

4.43 Having considered all of the evidence and information placed before us on this matter, we recommended that the submissions of Chorus and Telecom, for the inclusion of the entire telecommunication and

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34 Proposed Plan Change 16, Section 42A Report Interpretation of regionally significant infrastructure, November 2014, Greater Wellington Regional Council, Page 4, Para 17
radiocommunication network as a “strategic telecommunication and radiocommunication facility, be rejected.

4.44 In reaching this recommendation, we note that the GWRC report records that the “RPS did not foresee the distinction of the whole network as a facility.”\(^{35}\) We find that this difference between a network and a facility is critical in determining what the definition should apply to and therefore how it should be given effect to in the District Plan.

4.45 In recognising this distinction we recommend that the submission of Radio NZ Ltd (S1.23) be accepted. We accept the arguments of Mr. Pedler as to the strategic importance in regard to civil defence matters, with which Ms. Sweetman concurred. In addition, we consider that the Radio NZ site is different from the examples presented to us as inconsistencies of application in regard to the Chorus/Spark network, in that the Radio NZ site is a single identified facility and as such meets the definition.

4.46 Furthermore, in regard to the distinction between network and facility, to our mind there is a difference between the specific aspects of the definition of “regionally significant infrastructure” that Regional Council set out in the RPS. An example of this is the inclusion of electricity transmission within the definition and the exclusion of electricity distribution, and that distinction was intentional.

4.47 We do not consider it our role to identify ‘strategic telecommunication and radiocommunication facilities’ for Telecom and Chorus. We provided the opportunity for Telecom / Chorus to identify such facilities through the course of the hearing. As we noted above, this was not something that the Telecom/Chorus witnesses considered able to be done. We do not find that this means that Council has failed to give effect to the RPS. Equally we note that this is not an entirely satisfactory resolution to the matter.

Policies NU3.1.2.2 and NU3.1.2.3

4.48 As a consequence and for the same reasons we recommend that the Telecom and Chorus submissions (S3.2 and S12.2), to respectively add ‘telecommunication lines’ and ‘telephone lines’ to the second to last line of NU3.1.2.2, and amend the last bullet point of NU3.1.2.3 to include “telecommunications” also be rejected.

4.49 Similarly for S12.2, where Chorus seek an amendment to NU3.1.2.3 to make it clear that it is not feasible to identify telecommunication lines on the planning maps; we also recommend that this be rejected.

\(^{35}\) Proposed Plan Change 16, Section 42A Report Interpretation of regionally significant infrastructure, November 2014, Greater Wellington Regional Council, Page 4, Para 17
D3.1.2 - Suburban Zones Rules Controlled Activities (ii) and Chapter F Information to be Supplied – F7.2

4.50 Radio NZ Ltd (S1.24) seek that proposed new (i) and (j) to D3.1.2 be retained, and a new note be added as follows: 

*Note:* “Proximity” in relation to Radio New Zealand’s transmission facilities at Titahi Bay means within 1000m of the edge of the facilities identified on the Planning Maps by XXXX.

4.51 In addition Radio NZ Ltd (S1.20) also seeks that the specific reference: *within 1,000m of Radio New Zealand’s transmission facilities at Titahi Bay identified on the Planning Maps by XXXX* be added to F7.2.

4.52 We heard argument from Mr. Pedler, counsel for Radio NZ Ltd, that at distances less than 1000m that from the Radio NZ Ltd facility can be perceived as adverse, leading to complaints and that subdivision was an appropriate time for applicants to be made aware of such effects without compromising Radio NZ Ltd’s operations.

4.53 We also heard evidence from and questioned Mr. Fowles, Transmission Manager for Radio NZ regarding the nature of the operation and three categories of potential effects, namely, visual, noise and potential interference with electronic devices.

4.54 Mr. Pedler, went on to note that there would be benefits to defining “proximity” for Council officers, applicants for subdivision as well as providing certainty for Radio NZ Ltd and adding the Radio NZ Ltd site to the list in Schedule F7.2 of regionally significant infrastructure utilities would be consistent with the approach to other such utilities.

4.55 In the s42A Report, Ms. Sweetman noted that, “F7.2 provides certainty as to where there needs to be discussions held with the relevant network utility providers for the National Grid, State Highway, railway lines, and gas transmission and distribution lines, that is, the majority of regionally significant network utilities.”, whereas, “D3.1.2 does not provide such certainty, rather relying on the term “proximity”. The term proximity has been used to enable a case by case assessment to occur as to whether consultation is required beyond the minimum distances stipulated in F7.2, realising that in some cases, the effects of subdivisions may occur beyond these distances.”

4.56 In response to matters raised in the hearing, Ms. Sweetman agreed that including the Radio NZ Ltd site in the list in F7.2 was appropriate; however, in her view the term proximity should be used rather than 1000m distance sought by Radio NZ Ltd. Ms. Sweetman was of the view that an evidential basis for the 1000m had not been provided and

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36 Mr. H Pedler, Legal Submissions, Page 3-4 Para 19,
37 Mr. H Pedler, Legal Submissions, Page 4, Paras 20 - 23
that there was already some recognition of the site provided by way of the designation.

4.57 In this case we prefer the evidence of Ms. Sweetman as set out in the response to matter raised in hearing. We were also concerned at the effective extension of designation beyond the boundary of the site.

4.58 We therefore recommend that S1.24 be rejected and that S1.20 be accepted in part in that the following be added to the end of the bullet points in F7.2;
- Within the proximity of the Radio New Zealand’s transmission facilities at Titahi Bay identified on the Planning Maps by XXXX.

Stopbanks / Flood Hazard Area – Policies NU3.2.2, NU3.3.4, and Rule NU6.1.4

4.59 The submissions and further submissions regarding these provisions of the Plan Change are set out in full in the s42A Report. They relate to submissions by the GWRC which in summary seek:
- S13.1 - a new supporting policy requiring the location of utilities outside Flood Hazard Areas (FHA) hazard areas or appropriate design (withstand flood event) if required to locate within them.
- S13.4 - that NU3.3.4 be amended to include a final bullet point “the placement is through a flood protection stop-bank”, to address the negative impacts of undergrounding services on or through flood protection stop-banks.
- S13.5 - to insert an additional rule 6.1.XX that that any upgrading involving replacement, repair or removal associated with the underground services; and S13.6 to insert an additional rule 6.1.XX for any new underground services, affecting stop-banks become restricted discretionary activities, for the reason that these activities could have a negative impact on stop-banks and increase the potential for flood hazard risks if not undertaken properly.

4.60 We received evidence and heard from Ms. Sharyn Westlake, a Senior Engineer in Flood Protection Department of GWRC as to the Regional Council’s role and responsibilities regarding river and floodplain management as well as responding to the recommendation in the s42A Report. Ms. Westlake highlighted issues regarding network utility operations in stopbanks, and designating stopbanks.

4.61 In regard to this matter we also received evidence and heard from Ms. Jenny Clafferty, a senior resource management consultant with Tonkin and Taylor appearing for GWRC. Ms. Clafferty was of the view that the Plan Change was not in keeping with the RPS as it did not address hazard risk particularly in regard to stopbanks. Similarly, Ms. Clafferty was of the view that the Plan Change did not give effect to the

38 S42A Report, Pages 27 – 28, Paras 110 - 115
39 Ms. J Clafferty, Evidence in Chief, Page 3, Paras 5.5 – 5.7
Natural Hazard objectives and policies within the District Plan itself\textsuperscript{40} and that it was appropriate to address the issue now rather than wait for the outcome of Natural Hazard Strategy which is being developed by a number of Wellington local authorities\textsuperscript{41}.

4.62 In the s42A Report and in response of matters raised in the hearing, Ms. Sweetman did not agree with the approach proposed by GWRC and its witnesses. In summary, Ms. Sweetman was of the view that:

- Effects on stopbanks is not limited to network utility activities
- The policy direction proposed by GWRC is not the most appropriate or efficient
- There is no timeframe in the RPS for PCC to give effect to the RPS, noting that PCC is undertaking a rolling review of its Plan
- Best planning practice would be to address natural hazards comprehensively
- One of regional council’s concerns is asset protection
- Other mechanisms are available to the Regional Council.

4.63 In considering this matter, we prefer the evidence of Ms. Sweetman for the reasons set out in the s42A Report and response to matters raised in the hearing. We note that in response to questions Ms. Clafferty did not consider the stopbanks to be included as regionally significant infrastructure in terms of the RPS; therefore we consider that the same level of protection is not afforded to stopbanks. We consider that a more comprehensive approach to activities in hazard areas to be a more appropriate and efficient approach.

4.64 We therefore recommended that:

- S13.1, S13.4, S13.5, FS3.2, S13.6 and FS3.3 be rejected.
- FS3.1 and FS4.7 be rejected in part.
- FS5.5, FS5.6, FS6.5 and FS6.6 be accepted.
- FS5.7 and FS6.7 be accepted in part.

Avoiding, Remedyng and Mitigating Adverse Effects - NU3.3.1, NU3.3.5.1, NU3.3.5.2

4.65 There are a number of submissions and associated further submissions seeking changes to Policy NU3.3.1 which are set out in detail in the s42A Report\textsuperscript{42}. Several submitters sought changes to the wording of NU3.3.1.

4.66 In regard to submissions S1.8 (Radio NZ) and S10.10 (Transpower), both parties advised through evidence that they accepted the recommendations in the s42A Report in regard to these submissions.

\textsuperscript{40}Ms. J Claffery, Evidence in Chief, Pages 4-5, Paras 6.4 – 6.6
\textsuperscript{41}Ms. J Claffery, Evidence in Chief, Page 4, Paras 6.1 – 6.2
\textsuperscript{42}S42A Report, Page 30, Paras 127 - 130
4.67 S3.4 (Telecom) and S12.4 (Chorus) seek that the wording “as far as practicable” is added to the end of Policy NU 3.3.1 and for consistency, amendments to explanations NU3.3.5.1 and NU3.3.5.2.

4.68 In his evidence Mr. Anderson, on behalf of Telecom and Chorus drew our attention to what he considered to be inconsistencies in the policies derived from the Objective 3.3.1 and that it was not in all cases practical to avoid, remedy or mitigate all adverse effects. Mr. Anderson accepted the reporting officer’s view that Policy 3.2.1 recognised the constraints associated with network utilities; however, he considered that it was appropriate to have that recognition continued throughout the policy framework.

4.69 In responding to matters raised in the hearing, Ms. Sweetman noted that it was accepted practice that all objectives and policies are read together and therefore the matter is recognised in the Plan Change. In addition, if such an approach were adopted throughout the Plan Change, then this would lead to repetitive policies.

4.70 We concur with Ms. Sweetman. We find that an applicant should in the first instance aim to avoid, remedy or mitigate the adverse effects. The policies should recognise that approach as well as recognise any practical constraints and guide decision makers as to matters that need to be considered. Repeating the recognition of the technical or operational constraints throughout the policies would provide an over emphasis to the policy framework.

4.71 We therefore recommend that S1.8, S3.4, S10.10, S12.4, FS1.6, FS1.7, FS1.8, FS1.9, FS1.10, FS2.4, FS4.8, FS4.9 and FS4.11 be rejected.

Policies 3.3.2 – 3.3.4, 3.3.6, Explanations 3.3.5.1 – 3.3.5.3, 3.3.5.5

4.72 The s42A Report sets out the details of the submissions relating to these policies and explanations.

4.73 2Degrees (S6.1) seeks that NU3.3.2 and NU3.3.5.3 be amended to ensure that Regulation 4 of the National Environmental Standards for Telecommunication Facilities (NESTF) is referenced. The reporting officer was of the view that, “explicit reference to Regulation 4 in NU3.3.2 is not appropriate, as this this policy addresses regulations and standards generally rather than specifically. However, I consider that it is appropriate to reference Regulation 4 in NU3.3.5.3, as this explicitly does specifically address the NESTF”. 2Degrees did not appear at the hearing. Having considered the reasons set out in 2Degrees submissions and those of the reporting officer, we concur.

43 Mr. T Anderson, EIC, Pages 11 -12, Paras 46-51
44 Mr. T Anderson, EIC, Page 12, Para 52
with the reporting officer as to the difference between general and specific references. Hence we recommend acceptance of the officer’s recommendations.

4.74 GWRC (S13.3) seek that, “the wording of NU3.3.3 be retained, and that the wording of the policy or explanation should recognise that in some cases co-location should not be sought”\(^{45}\). We received evidence from Ms. Clafferty on behalf of GWRC, that all of the examples noted in the explanation to the policy related to co-location not being efficient or practical for the ‘network utility operators’, but not in regard to co-location being efficient or practical in regard to “adverse effects on others”\(^{46}\). Ms. Clafferty considered that the explanation to Policy 3.3.3 could be amended to address this matter by adding to the end of the explanation “and effects on flood flow capacity and stopbank integrity”.

4.75 The section 42A Report set out the reporting officer’s views leading to a recommendation against the amendment sought, which we take the main point to be that the policy seeks to enable rather than require co-location. In responding to matters raised in the hearing, the reporting officer reiterated her comments (see Para 4.62 above) that the focus on flood hazards was too narrow in focus and that the issue was best addressed by the Regional Council addressing these matters directly itself\(^{47}\). Consistent with our earlier finding and reasoning as set out in Para 4.63 above, we find recommend that S13.3 be rejected.

4.76 Chorus (S12.6) seek that NU3.3.4 and NU3.3.5.5 be amended to specifically refer to new network utilities only that need to be installed underground. They also seek to include the addition of an overhead line as a reason why an additional overhead line may be provided for in particular defined situations. In the s42A Report, the reporting officer concurred that it would be unreasonable to require existing network utilities to be installed underground. For the reason set out in the Chorus submission and the officer’s report we recommend that this part of submission S12.6 be accepted. The part of that submission that relates to the definition of minor upgrading, has been addressed in Paras 4.131 – 4.139 of this report.

4.77 We therefore recommend that:

- S6.1 be accepted in part, and NU3.3.5.3 be amended to specifically refer to Regulation 4 of the NESTF.
- S13.3 be rejected.
- S12.6 be accepted in part, insofar as it seeks to specifically reference that it is only new network utilities that are to be undergrounded, and NU3.3.4 and NU3.3.5.5 be amended accordingly.

\(^{45}\) S42A Report, Page 32, Para 139
\(^{46}\) Ms. J Clafferty, EIC, Page 5, Para 5
\(^{47}\) Ms. G Sweetman, Response to Matters raised in Hearing, Page 3 - 4
• S12.6 be rejected in part, insofar as the submission seeks reference to the addition of a line to an existing structure as an example of aboveground lines be provided, for the reasons set out in paragraphs 322 – 324 of this report.

**New Network Utilities Chapter – Rules, Standards and Matters of Control and Discretion**

**Radiocommunication and Telecommunication Masts, Antenna and Lines – Rules NU6.1.15, NU6.1.16, NU6.1.17, NU6.1.18, NU6.1.25 and Standards NU7.2.2, NU7.2.3 (Height), NU7.3.1, NU7.3.2, NU7.3.3, NU7.3.4, NU7.3.5 (Size and Diameter), NU7.9 (Matters of Discretion)**

4.78 The submission points and reporting officer’s recommendation relating to these provisions are set out in full in the s42A Report48.

**NU6.1.15, NU7.3.3 and NU7.3.4**

4.79 Telecom (S3.8) and Chorus (S12.12) seek changes to the size and diameter standards referenced in NU6.1.15 (7.3.3 and 7.3.4):

- In the Rural zone from 1.2m diameter to a 5m diameter for single provider, as well as the situation where there are two providers co-located on a single mast.49
- In the Industrial zone from 750mm to a 5m diameter for two providers50

4.80 Ms. Sweetman was of the view that an increase the horizontal diameter circle for antennas attached to masts in the Rural Zone to 5m, was inappropriate due to the particular characteristics of the rural environment in Porirua as compared to other parts of the country51. Ms. Sweetman did consider that increasing the horizontal diameter circle to be 1.2m as it applies to antennas attached to masts for two or more providers, would be appropriate and noted that a similar rationale also applies to the “request to increase the horizontal diameter for antenna to 5m in the Industrial Zone where there are two or more providers utilising a mast (as per NU7.3.4)” as that zone could absorb “the potentially greater bulk associated with having more antenna on a higher mast without any significant visual impact”.

4.81 Mr. Anderson in evidence and his presentation at the hearing, drew our attention to the technical difficulties surrounding a 1.2m location diameter antenna in terms of being able to be attached to masts52 and the benefits of a 5m location diameter antenna53. In addition, Mr.

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48 S42A Report, Pages 38 – 46, Paras 168 - 208
49 S42A Report, Page 38, Para 169
50 S42A Report, Page 38, Para 170
51 S42A Report, Page 41, Para 182
52 Mr. T Anderson, EIC, Pages 13-14, Para 58
53 Mr. T Anderson, EIC, Pages 14-15, Par 63 - 64
Anderson set out a contrary view to that of the reporting officer, in regard to the Rural Zone’s ability to absorb the 5m diameter\textsuperscript{54} and noted that the same provisions were not being sought in the Judgeford Hills zones\textsuperscript{55}.

4.82 On balance, we prefer the evidence of Mr. Anderson for the reasons set out in his evidence. We therefore recommend that S3.8 and S12.12 be accepted.

**NU6.1.17**

4.83 Telecom (S3.9) and Chorus (S12.13), seek the same change to NU6.1.17, namely, that masts and associated antennas up to 12m in height be a permitted activity in the Suburban and Open Space Zones. The Plan Change as notified has all masts in these zones with an activity status of restricted discretionary activity. We note that under the District Plan, that masts in the Suburban Zone (to maximum height of 12m) are permitted activities. A summary of the reasons for the request are set out in paragraph 173 of the s42A Report. We note that in regard to the Open Space zone, this relief is no longer sought by Telecom and Chorus\textsuperscript{56}.

4.84 S6.3 (2Degrees) also relates to NU6.1.17 and sets out alternative relief sought: \textit{“either that masts with or without antennas in Suburban and Open Space Zones be a permitted activity; or alternatively that new, more lenient restricted discretionary standards be specified (the submitter does not specify what such standards should be).”\textsuperscript{57} The reasons for the requests are summarised in paragraphs 175 - 177 of the s42A Report.}

4.85 The s42A Report set out at length the reporting officer’s views as to the reason for not supporting the permitted activity status or making the restricted discretionary activity standards more lenient, particularly for the Open Space Zones\textsuperscript{58}. In regard to the Suburban Zone, we record that the S42A officer did not consider that, \textit{“the technical need to locate masts in close proximity to the areas that they serve, nor the large extent of Suburban zoning, are sufficient justification to outweigh the need to assess proposals on a case by case basis to ensure that any potential impact on visual amenity and other relevant amenity considerations are appropriately assessed and managed\textsuperscript{59}.”

4.86 In Mr. Anderson’s evidence, appearing for Chorus/Telecom, he noted the cost and risk associated with resource consents as well as issues with ‘replacement utility structures’ in road reserves not necessarily

\textsuperscript{54} Mr. T Anderson, EIC, Page 14, Paras 60 -62
\textsuperscript{55} Mr. T Anderson, EIC, Page 15, Para 65
\textsuperscript{56} Mr. T Anderson, EIC, Page 16, Para 70
\textsuperscript{57} S42A Report, Page 39, Para 174
\textsuperscript{58} S42A Report, Pages 43-44, Paras 190 - 194
\textsuperscript{59} S42A Report, Page 42, Para 187
providing the most appropriate visual outcome in Suburban Zones. As we noted above, 2Degrees did not lodge any evidence or appear at the hearing.

4.87 In considering this issue, we are mindful of the point raised in Ms. Sweetman’s written notes in response to matters raised in the hearing, that “one of the driving forces in initiating this plan change was concern from the public about the permissive nature of allowing masts as a permitted activity in the suburban zone.” Noting this, and for the reasons set out in the s42A Report, we recommend that the submissions S3.9, S12.13 and S6.3 be rejected.

**NU6.1.18, NU7.2.3, NU7.3.5 and NU7.9**

4.88 S3.10 and S12.14 from Telecom and Chorus, seek changes to NU6.1.18. as follows:
- Amend 7.2.3 to read “Maximum height of an antenna and support structure, measured from the highest part of the building to which it is attached.”
- Amend 7.3.5 to provide for antennas of 1.3m² in area in the Suburban Shopping Centre Area, Rural (including Judgeford) Open Space and Recreation Zones.
- Delete NU7.9 so that it does not apply to NU6.1.18.

4.89 The reporting officer agreed that the proposed amendment to 7.2.3 would clarify the intention of the rule.

4.90 The reporting officer accepted the relief sought in regard to the 1.3m² area as it applied to the Suburban Shopping Zone. Through evidence, Mr. Anderson, sought lesser relief for 7.3.5 than that requested in the submission by Telecom/Chorus as follows:

<table>
<thead>
<tr>
<th>Standard</th>
<th>Utility</th>
<th>Rural</th>
<th>Judgeford Hills</th>
<th>Recreation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.3.5</td>
<td>Antennas attached to other buildings</td>
<td>Antenna diameter of 1.3m or area of 0.8m²</td>
<td>Antenna diameter of 1m or area of 0.8m²</td>
<td>1.3m or area of 0.8m²</td>
</tr>
</tbody>
</table>

4.91 In reaching the relief sought above, Mr. Anderson provided details of the antenna panels regularly used by Telecom, and considered that the visual difference between the areas in the Plan Change and that requested would be minimal. Mr. Anderson went on to express the

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60 Mr. T Anderson, EIC, Pages 16-17, Paras 72 - 76
61 Shopping Centre Zone typo in PC 16 as notified – should be 1.3m² and all other zones 0.8m² – S42A Report, Pages 40-41, Para 179
62 Rejection of relief for Open Space Zone accepted by Telecom/Chorus – Mr. T Anderson, EIC, Page 20, Para 91
63 Mr. T Anderson, EIC, Page 20, Paras 92 - 96
view that in regard to the requested deletion of the recession plane standard 7.9, the antenna sizes and the small increase to standards in 7.3.5 that it "would not dominate the buildings to which they were attached and would not impact on the visual amenity to the surrounding area."  

4.92 In responding to matters raised in the hearing Ms. Sweetman advised that she had no problem with the area increase for the Recreation Zone, but considered that a figure of 1.0m² was more appropriate. We understood that Ms. Sweetman was also of the view that the other amendments to 7.3.5 and the deletion of 7.9 were also appropriate.

4.93 Adopting the above as our reasons, we recommend that S3.10 and S12.14 be accepted in part, and NU7.3.5 be amended and NU7.9 deleted accordingly.

**NU6.1.25**

4.94 As notified PC16, under Rule 6.1.25 all new or additional above ground lines that are not permitted, restricted discretionary or discretionary activities, are non-complying in all Zones. Chorus in S12.10 seeks to amend that Rule to a discretionary activity status.

4.95 In evidence on behalf of Chorus, Mr. Anderson was of the view that this default activity status was onerous and unreasonable given the essential service that telecommunications provided to the city. Mr. Anderson went on to note inconsistencies in the approach to telecommunications as compared to electricity lines within the Plan Change itself, as well as inconsistency with other District Plans in the Region.

4.96 In the s42A Report, Ms. Sweetman noted that, “the objective and policies framework are clear that new overhead lines are not encouraged in zones other than the Rural, Judgeford Hill and Open Space Zones. Non-complying activity status is consistent with the objective and policy framework and is also consistent with work undertaken by the Council in 2002 on the effects of overhead lines within the City.”

4.97 In response to matters raised in the hearing, Ms. Sweetman set out the provisions for electricity lines noting that apart from the Recreation Zone (now non-complying) the approach to all above ground lines had not been altered by the Plan Change. Ms. Sweetman did not support the submitter’s request, but considered that minor amendments could

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64 Mr. T Anderson, EIC, Pages 20 – 21, Paras 97 - 99
65 Mr. T Anderson, EIC, Page 22, Paras 103 - 107
66 Mr. T Anderson, EIC, Page 23, Paras 108 - 109
67 S42A Report, Page 45, Para 201
68 Ms G Sweetman, Response to Matters Raised in the Hearing, Page 10
be made to clarify the provisions and that these were within the scope of the submission. Those amendments being:

- Amend NU6.1.25 to only refer to the City Centre, Suburban, Industrial and Recreation Zones, as NU 6.1.21 deals with the Rural, Judgeford Hills and Open Space Zones.
- Amend 6.1.21 so that it reads “New or additional above ground lines…” so that it is consistent with NU6.1.25

4.98 We recognise that the Plan Change retains the policy direction established under the operative plan as noted in Ms. Sweetman’s evidence and that it is appropriate for this direction to follow on to the methods and rules. We also find Ms. Sweetman’s suggested amendments useful and as such we recommend that S12.10 be accepted in part.


**Gas distribution < 2,000kPa**

4.99 Powerco (S8.15) seek a new rule be introduced that specifically provides for gas distribution lines under 2,000kPa as a permitted activity, as follows:

Rule 6.2.X Underground gas distribution and transmission pipelines at a pressure not exceeding 2000 kilopascals, including aerial crossings of bridges, structures or streams, and ancillary equipment, including regulator stations, but not compressor stations.

Standards:
Vegetation: 7.7
Noise: 7.8

4.100 The reporting officer concurred that this was appropriate, with an amendment noted by Ms. G Robertson in evidence that ‘gas transmission lines’ were defined under the Gas Act 1992 as being over 2000 kilopascals and therefore should not be included in the rule. At the hearing Ms. Sweetman noted her agreement.

4.101 We find the new rule and amendment appropriate, noting that such a rule was included in an earlier draft of the Plan Change, and it provides clarity and certainty. As such we recommend that S.8.15 be accepted in part.

**Gas distribution and transmission > 2,000kPa**

4.102 Vector (S.2.6) has sought permitted activity status for upgrading or new gas distribution and transmission pipelines at a pressure greater than 2000 kilopascals (kpa), through amendments to NU6.1.4, NU6.1.6, NU6.1.7, NU6.1.14 and NU6.1.28, and if applicable standards could not be met, the activity would become a restricted discretionary under

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69 Ms. G Robertson, EIC, Page 8, Paras 8.2 – 8.3
NU6.1.6 (with a reduced scope of matters of discretion compared to NU6.1.7). In evidence, Ms. Robertson, clarified Vector’s position, namely that the restricted discretionary activity was accepted for all zones as set out in the reporting officer’s report, with the exception of the rural zone, where the permitted activity status was still sought.

4.103 In S2.7 Vector seeks alternative relief; should S2.6 not be accepted, which includes the deletion of various matters of discretion in NU9. This is summarised in the section 42A report paras 216 – 217.

4.104 We note that we have already recommended acceptance of the letter of clarification provided by Vector (dated 14 May 2104) on this matter in Para 4.15 above.

4.105 In the first instance having considered the evidence of Ms. Robertson and Ms. Sweetman, we find that the activity status in the Rural Zone should remain a restricted discretionary activity for both upgrading or new >2000 kilopascal gas pipelines. However, we also agree with Ms. Robertson that the matters of discretion that apply to that activity status require modification to more clearly reflect the potential adverse effects.

4.106 In the s42A Report Ms. Sweetman expressed the view that it was not appropriate to delete all the matters of discretion.

4.107 In the hearing, Ms. Robertson and Ms. Sweetman resolved a number of outstanding matters regarding the matters of discretion that they had both initially set out in evidence.

4.108 We therefore recommend that:

- S8.15 be accepted in part by way of the insertion of a new permitted activity rule with associated standards;
- S2.6 be rejected;
- S2.7 be accepted in part, insofar as NU9.10 be amended to include reference to other land uses in the vicinity and NU9.15 and NU9.27 be deleted.

**Earthworks – NU7.6**

4.109 S3.8 (Telecom) and S12.12 (Chorus) seek, “certainty as to whether the exclusion for earthworks within 2.0m of the exterior wall of any building would apply to NU7.6.2 (b) and seek an exemption for masts for pile foundations and excavations for concrete pad foundations up to 2.5m in depth”\(^{70}\). In evidence, Mr. Anderson noted that this relief was no longer being sought in regard to the 2.5m depth\(^{71}\). However, Mr. Anderson sought clarification that piling was included in the standard 7.6.2, and to that effect recommended the following amendment:

\(^{70}\) S42 Report, Pages 59-60, Para 255

\(^{71}\) Mr. T Anderson, EIC, Page 18, Para 81
The following shall apply to all network utility activities, except to earthworks within 2.0 metres of any network utility building or structure that is defined as a building, measured in plan view, or piling associated with the installation of network utility masts:

4.110 In response to matters raised in the hearing, Ms. Sweetman suggested a further minor amendment to Mr. Anderson’s recommendation that we find useful in clarifying the intention of the standard as follows:

The following shall apply to all network utility activities, except to earthworks within 2.0 metres of any network utility building or structure that is defined as a building, measured in plan view, and piling undertaken within 2.0m of a network utility mast:

4.111 We therefore recommend that S3.8, S12.12, be accepted in part insofar as NU7.6.2 be amended as set out in the paragraph above.

7.8 Noise

4.112 In S1.19, Radio New Zealand seeks that a Note be added to S7.8 stating:

“Noise from backup emergency generators at Radio New Zealand’s Titahi Bay facilities is exempt from these noise limits.”

4.113 Ms. Sweetman in the s42A Report was of the view that the Radio NZ’s Titahi Bay facilities are already covered by a designation and therefore, there is no need for the advice note72. Mr. Pedler, in his submissions on behalf of Radio NZ, recognised Ms. Sweetman’s point, but added that “a specific exemption provides clarity for local residents and support for Council staff who may have to deal with complaints”73.

4.114 In recognising that this only applies to the noise from the use of emergency generators, we concur with the reasons put forward by Mr. Pedler and therefore recommend that S1.19 be accepted.

New Provisions to give effect to the NPSET

Earthworks

4.115 S10.33, S10.37, S10.38, S10.41, S10.43, S10.47, S10.50, S10.52, S10.53, S10.58, S10.63, S10.65, S10.67, S10.69, S10.71, S10.73, S10.75 and S10.77 (Transpower), supported by FS3.6 (Powerco), seek to introduce:

- a new permitted activity rule and standards;
- a new restricted discretionary activity rule;
- a new non-complying activity rule;

relating to earthworks within an Electricity Transmission Yard (National Grid Yard) into the Suburban, Rural, Judgeford Hills, Recreation and

72 S42A Report, Page 63, Para 273
73 Mr. H Pedler, Legal Submissions, Page 5, Para 27
Open Space Zones. The details of the new rules and standard, and reasons provided by Transpower in their submission are set out in full in the s42A Report.  

4.116 We received evidence and heard from Mr. Wayne Youngman, Director of Safety for Transpower, Mr. M Hurley, Senior Environmental Planner at Transpower and Ms. P Whitney, Associate Principal and Senior Planner at Boffa Miskell Ltd – consultant planner to Transpower in regard to these submissions.  

4.117 In summary, Mr. Youngman’s evidence addressed the typical operational works undertaken by Transpower in regard to the National Grid, an outline of the foreseeable proposed works within Porirua as well as examples of the risks associated with transmission corridors.  

4.118 In Mr. Hurley’s evidence he provided examples of reverse sensitivity effects on National Grid Infrastructure in regard to earthworks, details regarding the New Zealand Electrical Code of Practice for Safe Electrical Distances 34:2001 (NZECP34), how other local authorities have implemented the National Policy Statement on Electricity Transmission (NPSET) and expressed the opinion that, “reliance solely on NZECP34 does not give Council any decision making functions are (sic) required by Policy 10 of the NPSET” and not, “adequately protect Transpower’s ability to inspect and maintain the existing infrastructure.”  

4.119 Ms. Whitney, similarly addressed implications of the matters noted by Mr. Youngman and Mr. Hurley in policy sense, concluding that, “…the provisions to manage earthworks as sought by Transpower would give effect to Policy 10 of the NPSET in that they seek to ensure that the operation, maintenance upgrading and development of the National Grid is not compromised.” Ms. Whitney also addressed the appropriateness of the standards proposed around earthworks in response to concerns set out in the s42A Report, as well as noting the use of similar standards in other district plans throughout the country. In particular referring to the technical issues around Standard (ii) and recommending further amendments to the standard.  

4.120 As we noted above, Ms. Sweetman identified a number of issues with the proposed standards in the s42A report and in response to matters raised in the hearing. Ms. Sweetman remained concerned with the
further amendments put forward by Ms. Whitney, particularly regarding the certainty of the permitted activity standard and that there is already a method in place to deal with earthworks near support structures, namely the NZECP.

4.121 Having given this matter a great deal of consideration, we find that the starting position for any recommendation as to such rules, is the policies and in this case that is the NPSET and the RPS. Both policy statements provide for the protection of the National Grid and therefore rules to give effect to the policy direction are appropriate. We consider that this particular circumstance is different from that which we recommended in regard to the GWRC submission on stopbank protection, in part because the RPS specifically identifies transmission lines as being regionally significant infrastructure and that this is also reinforced by the NPSET.

4.122 As such we consider that the rules and standards in regard to this matter, with the exception of Standard (ii), are appropriate also noting that such provisions are included in several other district plans throughout the country. In regard to the technical issues regarding certainty of the rule, we find that Standard (ii), even with Ms. Whitney’s revision is not workable.

4.123 In regard to the applicability of the Standards (i) and (iii) as they apply to the Judgeford Hills Zone, we note that there is already a standard in D5.2.4 (Note: revised District Plan numbering) Earthworks (v), which states;

“Earthworks shall not be carried out within 12 metres of the closest visible edge of a high voltage transmission line support structure.”

4.124 We also note that the Transpower submission\textsuperscript{63} seeks the insertion of the earthworks standards numbered "(vi)", and also seeks any consequential amendments that may arise from the request.

4.125 It appears to us that there is a conflict between the existing provision D5.2.4 Earthworks (v) and the insertion of the new earthworks standards set out in Submission Point 58. We also note that we did not receive any evidence on this particular matter. In order to resolve this conflict we have relied on the Transpower request for any consequential amendment, accept the submission in part, with the result that D5.2.4 Earthworks (v) is therefore deleted.

4.126 We therefore recommend that S10.33, S10.43, S10.53, S10.63, S10.71, S10.41, S10.52, S10.58, S10.69, S10.77, S10.37, S10.38, S10.47, S10.50, S10.65, S10.67, S10.73, S10.75 and FS3.6; be accepted in part, with the exclusion of Standard (ii).

\textsuperscript{63} Transpower New Zealand submission, 15 Nov 2013, Page 55, Submission Point 58
Milking Sheds and Intensive Rural Production Activity

4.127 S10.25, S10.49 and S10.56 (Transpower) seeks to insert a new definition for Intensive Rural Production Activity, and to introduce a new non-complying activity rule into the Rural and Judgeford Hills Zones, for the reasons set out in the S42A Report.\(^4\)

4.128 In summary Ms. Sweetman, in the S42A Report noted that;

- there were no intensive rural production activities occurring in the district
- these general types of activities were already regulated as at least a restricted discretionary activities in the Judgeford Hills Zone\(^5\) and similarly for the Rural Zone\(^6\).
- these general types of activities are unlikely to be established in these zones\(^7\)

As such it was recommended that the submissions be rejected.

4.129 Similarly, as noted in the section above on Earthworks we have taken account of the evidence of Mr. Youngman and Mr. Hurley in providing background to this matter. Ms. Whitney, addressed this matter in detail in her evidence noting the policy direction provided by NPSET, the policy signal provided by a non-complying activity status, as well as expressing the opinion that, “I do not consider the low probability of such activities occurring, or default restricted activity status as a sufficient reason or justification for not including a rule that would give effect to Policies 2 and 10 of the NPSET and set a clear policy directive.”\(^8\)

4.130 In response to matters raised in the hearing, Ms. Sweetman, indicated that she had no significant concern to inclusion of such a rule. Therefore, for the reasons set out in Ms. Whitney’s evidence, we recommended that S10.25, S10.49 and S10.56 be accepted.

Amendments to Part M: Interpretation

Minor Upgrading

4.131 Due to the detailed nature of S12.8 and S12.15 (Chorus), we find it useful to set out in full the part of the S42A Report as to the relief sought and reasons provided in the submissions, which is as follows:

“... that the definition of ‘minor upgrading’ be amended to alter the range of works that can be undertaken as a permitted activity under NU6.1.3 (the minor upgrading of existing electricity and telecommunication lines). The changes sought are as follows:

\(^4\) S42A Report, Page 71, Paras 305 - 307
\(^5\) S42A Report, Pages 71-72, Para 310
\(^6\) S42A Report, Page 72, Para 311
\(^7\) S42A Report, Page 72, Para 313
\(^8\) Ms. P Whitney, EIC, Page 14, Para 38.24
Minor upgrading – Means an increase in the carrying capacity, efficiency or security of electricity and telecommunication lines, which utilise existing or replacement support structures and includes:

10. The replacement of existing antennas on telecommunication facilities provided they comply with the permitted activity standards.

10. The addition of new overhead telecommunication lines that do not exceed 30mm in diameter to existing support structures in road.

11. An increase in the height of replacement poles in road reserve by a maximum of 1m, for the purpose of achieving road controlling authority clearance requirements, provided the permitted height in Rule 7.2.1 is not exceeded.

Minor upgrading shall not include:... The addition of any new circuits, lines [with the exception of new overhead telecommunication lines as provided in item 10 above] or utility structures.

I note that Transpower in S10.26 seeks that the definition be retained.”

316. Chorus request to delete the provision relating to the replacement of existing antennas on telecommunication facilities so as to avoid confusion given that the “minor upgrading” definition and associated Rule 6.1.3 relates to ‘lines’ only and the replacement of antennas on existing facilities is addressed through the “upgrading” Rule 6.1.4 and associated definition.

317. Chorus also seek to allow for additional lines to be included as part of minor upgrading, because:

- telecommunications are recognised in the policy framework as an essential service;
- additional lines on existing structures are an efficient use of an existing resource; and
- they can be installed so that visual effects are minimal in the context of the existing structures.

318. Chorus seeks increase [sic] the height of replacement poles in the road reserve in [sic] order to achieve road controlling authority clearance requirements.”

4.132 The reporting officer agreed that that part of the submissions relating to the deletion of the reference to “antenna” in the definition of minor upgrade was appropriate, as was the increase in pole height to a maximum of 1 metre noting that, “the height standards in NU7.2.1 must also be complied with.” We understand that Chorus supported this position, and so for the reasons set out in the s42A Report, we recommend that:

- s12.8 and S12.15 be accepted in part, insofar as they seek to include reference to an increase of height of existing structures in the road reserve in order to achieve roading authority height clearances, and
- that S12.15 be accepted in part, insofar as it seeks the deletion of reference to the replacement of antenna.

4.133 We now turn to that part of the submissions S12.8 and S12.15 that seek additional lines to be provided for as part of the definition of “minor upgrading”.

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89 S42A Report, Page 73, Para 315 - 318
90 S42A Report, Page 73-74, Paras 319 - 320
91 S42A Report, Page 75, Para 325
4.134 We received evidence from and questioned Mr. S Bray, Senior Landscape Planner from Boffa Miskell Ltd, who appeared on behalf of Chorus. Mr. Bray’s evidence addressed the potential visual effects of overhead telecommunication lines as they related to the relief sought by Chorus and included details of an assessment of a deployment of new Ultrafast Broadband (UFB) lines on existing networks within Porirua. In summary, it was Mr. Bray’s view that new lines on existing infrastructure, subject to particular design scenarios would result in visual effects that are less than minor and hence could be classified as permitted activities. Mr. Bray noted that any new pole structures should remain restricted discretionary activities, and that any new lines be limited to two per utility type.

4.135 Mr. Anderson noted in evidence that the restricted discretionary activity status for new lines attached to existing structures was unreasonable and unjustified, given the policy direction in the Plan Change recognising telecommunications as an essential service. In regard to concerns about cumulative visual effects of new lines noted in the s42A Report, Mr. Anderson considered that visual aspects had been addressed through the evidence of Mr. Bray and therefore were not valid. However, Mr. Anderson was of the view that the cumulative impacts were valid and as such recommended a maximum of two new overhead fibre lines up to 25mm thick to existing overhead networks, subject to specific deployment configurations to minimise adverse effects. Mr. Anderson goes on to note that this would require a change to Policy 3.3.4 in addition to his recommended amendment to the definition of Minor Upgrading.

4.136 Ms. Sweetman, in responding to matters raised in the hearing, remained concerned about the addition of new lines as permitted activities for the following reasons:

- It would still enable any number of new lines to be added through the use of the wording “the addition of new overhead telecommunication lines”.
- It only limits and manages additional fibre optic lines, and therefore not address the addition of other lines that would be encompassed through the introductory “the addition of new overhead telecommunication lines”.

4.137 Ms. Sweetman also noted uncertainty as to how Council would effectively manage the addition of one or more new lines as a permitted activity.

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92 Mr. S Bray, EIC, Pages 13 – 15, Paras 64-77
93 Mr. S Bray, EIC, Page 16, Para 80
94 Mr. S Bray, EIC, Pages 16, Para 81
95 Mr. S Bray, EIC, Page 17, Paras 86 - 87
96 Mr. T Anderson, EIC, Pages 24 – 25, Para 117
97 Mr. T Anderson, EIC, Page 25, Paras 119 - 120
98 Mr. T Anderson, EIC, Page 25, Para 121
99 Mr. T Anderson, EIC, Pages 26-27, Para 123
100 Ms. G Sweetman, Response to Matters raised in the Hearing, Page 11
activity and as such considered that the activity status should remain as a restricted discretionary activity.

4.138 In considering all the evidence placed before us on this matter, we find that while there is policy direction of support for telecommunications as an essential service, it is not the only policy that needs to be considered. There are other objectives and policies relating to the adverse effects on the environment that must also be taken into account. We acknowledge the visual assessment work undertaken by Mr. Bray and note that the addition of new above ground lines in areas where underground lines are not in place has not been suggested. We have also taken account of the addition of new lines to existing infrastructure as an efficient use of resources, as well as, the uncertainties of effective management of implementation raised by Ms. Sweetman in regard to the addition of new lines to existing infrastructure. We are not convinced that the suggested amendments of Mr. Anderson would work by way of a definition. We also note that new electricity lines would still require consent; however, the Chorus submission limits the relief sought to UFB cables only. As such we recommended that S12.8 be rejected and that part of S12.15 also be rejected, insofar as they relate to the addition of a line to an existing structure, with amendments to address effective management of the additional lines.

PKK-TKR A 110kV Line – Transpower New Zealand Limited

4.139 For the sake of completeness, we record that in response to questions regarding the mapping of the Transpower infrastructure on the planning maps, Mr. Hurley on behalf of Transpower, advised that Transpower was supportive of the section of the PKK-TKR A 110kV Line not being shown on the planning maps given its imminent removal[^101]. We recommend that this amendment to the relief sought by Transpower be accepted.

5. RECOMMENDATION AND OVERALL REASONS

5.1 We recommend to the Council that, pursuant to the First Schedule to the Resource Management Act 1991, Proposed Plan Change 16 to the Porirua City Council District Plan be approved for all of the reasons set out in this report.

5.2 In terms of Part 2 of the RMA the proposal does not contravene any of the matters of national importance (Section 6), ‘other matters’ (Section 7), nor the principles of the Treaty of Waitangi (Section 8).

5.3 The Plan Change is an appropriate way of achieving the purpose of the RMA.

5.4 For all of the reasons given above the Plan Change meets the statutory requirements of the RMA, that the Plan Change satisfies Part 2 of the

[^101]: M Hurley, Email to PCC, 18 Sept 2015 – Timing of the removal of PKK-TKR A line
Act and therefore will promote the sustainable management of natural and physical resources as required by the RMA.

5.5 We recommend that the submissions on Plan Change 16 be accepted, accepted in part or rejected, as outlined below.

6. RECOMMENDATIONS ON THE SUBMISSIONS

6.1 That the following submissions be accepted, accepted in part or rejected as set out in Appendix One. That the text of Plan Change 16 be amended as set out in Appendix Two.

T M Sheppard
Chair - Hearings Commissioner

I I Ford
Panel - Hearings Commissioner

M L St.Clair
Panel - Hearings Commissioner

19 June 2015
ATTACHMENT 2

AMENDMENTS TO PROPOSED PLAN CHANGE 16 (NETWORK UTILITIES) RESULTING FROM PLAN CHANGE 17 (AOTEA SUPERMARKET ZONE) – Approval to be reserved

PURSUANT TO THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991

Make the following consequential amendments to Proposed Plan change 16 (Utilities), to include references to the Aotea Supermarket Zone and its provisions in order to ensure consistency between the two proposed plan changes:

[The wording of Proposed Plan change 16 (Utilities) is shown below, and the proposed amendments via proposed Plan Change 17 are shown as underlined]:

1. Amend PPC16 Policy 3.3.5.5 (Explanation) by adding a reference to the Aotea Supermarket Zone as follows:

   3.3.5.5 ... In particular, the underground placement of electricity and telecommunications lines in the City Centre, Industrial, Aotea Supermarket and Suburban Zones is required by only providing for aboveground lines in particular defined situations, such as for customer connections, and through different activity status, which recognises the higher level of amenity sought in the City's urban areas ...

2. Amend PPC16 Section 6 - Rules 6.16, 6.17, 6.19, 6.35, 6.36 by adding references to the Aotea Supermarket Zone within the rule Table, as follows

   Add references to the Aotea Supermarket Zone in the "Zone" column for the following rules: 6.1.16, 6.1.17, 6.1.19, 6.1.35, 6.1.36.

3. Amend PPC16 Rule 6.35 by adding a reference to the Aotea Supermarket Zone within the Rule table, amend rule 6.1.35 to read as follows:

   The construction, creation, subdivision and vesting of roads generally in accordance with those shown on the Structure Plan that comply with the Controlled Activity Standards in D4A.3.2 (Judgeford Hills) or D8.2.2 (Aotea Supermarket), whether or not as part of a subdivision.
4. Amend PPC16 Rule 6.36 by adding a reference to the Aotea Supermarket Zone within the Rule table to read as follows:

The construction, creation, subdivision and vesting of roads generally in accordance with those shown on the Structure Plan that does not comply with the Controlled Activity Standards in D4A.3.2 (Judgeford Hills) or D8.2.2 (Aotea Supermarket), whether or not as part of a subdivision.

5. Amend PPC16 Section 7 - Standards (Height) Table by adding a reference to the Aotea Supermarket Zone as follows:

Within the Standards (Height) Table, add a reference to the Aotea Supermarket Zone in the "All shopping centre areas" column.

6. Amend PPC16 Section 7 - Standards (Size) Table by adding a reference to the Aotea Supermarket Zone as follows:

Within the Standards (Size) Table, add a reference to the Aotea Supermarket Zone in the "Suburban" column.

7. Amend PPC16 Section 7 - Standards (Separation Distance & Setbacks) Table by adding a reference to the Aotea Supermarket Zone in standard 7.4.4 to read as follows:

Where located in Suburban Shopping Centre Area or in the Aotea Supermarket Zone, no less than 10m from a boundary in the Suburban Zone.

8. Amend PPC16 Section 7 - Earthworks Standard 7.6.2(d) by adding a reference to the Aotea Supermarket Zone as follows:

Recreation, & Suburban and Aotea Supermarket Zones - 100m²

9. Amend PPC16 Section 7 - Standards (Noise) Table by adding a column for the Aotea Supermarket Zone and a reference to the applicable noise standard to read:

<table>
<thead>
<tr>
<th>Aotea Supermarket Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>D8.2.1.1 Noise</td>
</tr>
</tbody>
</table>