

**Proposed Plan Change 34: Network Utilities and
Renewable Energy Generation; Hutt City Council**

**Proposed Plan Change 38: Network Utilities and
Renewable Energy Generation; Upper Hutt City Council**

Officer report

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Introduction

1. Plan Change 34 — Network Utilities and Renewable Energy Generation to the Hutt City Council District Plan (PC34) was publicly notified on 2 December 2014 with submissions closing on 30 January 2015. The summary of submissions was notified on 7 April 2015 for further submissions, which closed on 21 April 2015.
2. Plan Change 38 – Network Utilities and Renewable Energy Generation to the Upper Hutt City Council District Plan (PC38) was publicly notified on 3 December 2014 with submissions closing on 30 January 2015. The summary of submissions was notified on 8 April 2015 for further submissions, which closed on 22 April 2015.
3. These two plan changes were prepared and notified together, and are to be jointly considered by Commissioners.
4. The overall policy aim of the proposed changes are to:
 - a) 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;
 - b) avoid unnecessary duplication between District Plan provisions and other legislation or regulations;
 - c) give effect to the National Policy Statement on Electricity Transmission (NPSET) (Hutt City only);
 - d) give effect to the National Policy Statement on Renewable Electricity Generation (NPSREG);
 - e) give effect to the Regional Policy Statement for the Wellington Region (RPS); and
 - f) 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).
5. For the Hutt City Council District Plan there is a particular objective of streamlining and simplifying the current provisions. For the Upper Hutt City District Plan there is a particular objective of ensuring the chapter encompasses all activities and relationships necessary and that the appropriate activity status is used.
6. The plan changes have been prepared following significant consultation with, and input from, network utility operators and the Hutt and Upper Hutt communities. This included the release of a draft plan change for feedback and community and stakeholder meetings.

7. This report has been prepared in accordance with section 42A of the Resource Management Act (the RMA). It considers the submissions and further submissions that were received in response to Plan Change 34 to the Hutt City District Plan (referred to in this report as 'PC34' and 'the HCC Plan' respectively) and Plan Change 38 to the Upper Hutt District Plan (referred to in this report as 'PC38' and 'the UHCC Plan' respectively), and makes recommendations on the matters raised. Additional detail as to the reasoning behind PC34 and PC38 can be found in the Section 32 reports prepared and notified as part of the plan change documentation.
8. The recommendations contained in the report are neither Hutt City Council (HCC) or Upper Hutt City Council (UHCC) recommendations nor final decisions, but are instead intended to assist and inform the Hearing Committee's deliberations on PC34 and PC38.

Statement of experience

9. 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, an Accredited Independent Commissioner and a Government appointed Development Contributions Commissioner. In 2014, I was awarded a Distinguished Service Award from the New Zealand Planning Institute.
10. 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.
11. With respect to PC34 and PC38, I have been engaged by both HCC and UHCC to prepare the proposed changes and accompanying Section 32 reports, 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 34 and 38

12. The Councils promulgated the two plan changes for a number of reasons:
 - The Regional Policy Statement for the Wellington Region (RPS) has been reviewed and the new RPS is required to be given effect to.
 - Residents within the Cities have expressed concern about the controls around telecommunication facilities, particularly cell-sites.
 - Technology has changed since the two District Plans were produced and therefore reviews are timely.
 - The wish to provide better consistency between the two Councils as well as the Region as a whole.

- Both Councils are currently undertaking a rolling review of their District Plan. This work forms part of that review.
 - Both Cities have been subject to growth, meaning that some development is proposed in locations that could lead to conflict with existing or proposed network utility services.
 - New national instruments relating to network utilities and renewable electricity generation have been promulgated and are required to either be given effect to or have the effect of rules that override the Plans. These national instruments are:
 - The National Policy Statement on Electricity Transmission (NPSET);
 - The National Policy Statement on Renewable Electricity Generation (NPSREG);
 - The National Environmental Standard on Electricity Transmission Activities (NESETA); and
 - The National Environmental Standard on Telecommunication Facilities (NESTF).
13. As outlined in paragraph 4, only PC34 contains proposed amendments to give effect to the NPSET. UHCC has already amended its Plan to give effect to the NPSET, through Plan Change 32. That Plan Change was made operative on 26 October 2012.

Consultation

14. As outlined in the section 32 report, prior to formal notification, consultation was undertaken with network utility operators, Hutt and Upper Hutt community representative organisations and iwi. Wider public engagement was sought through public notices to attend workshops and provide feedback into the Draft Plan Changes.
15. In respect of consultation, both Councils:
- Held a joint community open forum involving presentations from network utility operators and an open floor (November 2012);
 - Released a draft plan change for feedback (April – June 2014). HCC received 10 submissions; UHCC received 12 submissions;
 - Held separate community open forums on the draft plan change;
 - Engaged with stakeholders in person, via email or on the phone on the draft plan change;
 - Engaged with regionally significant network utility operators and other councils in the Region;
 - Undertook their statutory duties under clause 3 of the First Schedule by notifying the Ministry for the Environment, the Wellington Tenth Trust, the Port Nicholson Settlement Trust, Orongomai Marae, Te Runanganui O Taranaki Whanui ki te Upoko o te Ika a Maui (Waiwhetu Marae) and Te Rūnanga o Toa Rangātira Inc and all of the local authorities within the Wellington Region.

16. There was no formal response received from the Ministry for the Environment. Local authorities within the Regional had the opportunity to provide comments on the draft plan change. Orongomai Marae, the Port Nicholson Settlement Trust and the Wellington Tenths Trust advised that they had no particular comment to make pre-notification of the plan changes.
17. The feedback received on the draft plan changes was considered in formalising both plan changes for formal public notification.

Formal notification

18. The notification dates for PC34 and PC38 are set out in paragraphs 1 and 2 above. PC34 was publicly notified in the Hutt News. PC38 was publicly notified in the Upper Hutt Leader. Stakeholders who had been previously engaged with through the Draft Plan Change process were directly notified of the plan changes.
19. HCC received 11 submissions on PC34. The submitters are (Hutt, Submitter number in order received):
 - 1) New Zealand Transport Agency (NZTA) (HS1);
 - 2) Greater Wellington Regional Council (GWRC) (HS2);
 - 3) Kiwirail Holdings Limited (Kiwirail) (HS3);
 - 4) Mary Beachen (HS4);
 - 5) Warren Thessman (HS5);
 - 6) Transpower New Zealand Limited (Transpower) (HS6);
 - 7) Spark New Zealand Trading Limited (Spark) (HS7);
 - 8) Chorus New Zealand (Chorus) (HS8);
 - 9) Wellington Electricity Lines Limited (WELL) (HS9);
 - 10) Powerco Limited (Powerco) (HS10); and
 - 11) Julie Sylvester (HS11).
20. UHCC received nine submissions on PC38 (Upper Hutt, Submitter number in order received). The submitters are:
 - 1) GWRC (US1);
 - 2) KiwiRail (US2);
 - 3) Spark (US3);
 - 4) Transpower (US4);
 - 5) Chorus (US5);
 - 6) WELL (US6);
 - 7) Powerco (US7);
 - 8) Royal Forest and Bird Protection Society of New Zealand Incorporated – Upper Hutt Branch (Forest and Bird) (US8); and
 - 9) Roz Brown (US9).
21. The Councils jointly obtained legal advice in respect to the submissions received from Transpower, Powerco and WELL as to whether all aspects of those submissions were on or in scope of PC34 and PC38. The legal advice found that there were elements of the submissions that were not on or in

scope of PC34 and PC38. A copy of the legal advice was provided to the submitters. WELL formally withdrew parts their submission to both plan changes on 7 April 2015. Transpower and Powerco have not withdrawn any parts of their submissions. A copy of the legal advice is attached as Appendix 4.

22. The summary of submissions reports for both plan changes identified which submissions points had been identified as being either not on or in the scope of PC34 and PC38.

Scope of Transpower's submission

23. As outlined in above, prior to notification of the summary of submissions, the Councils sought legal advice on Transpower's submissions (S6 to PC34 and S4 to PC38) as to whether all parts of the submission were on or in the scope of the plan change.
24. The aspects of Transpower's submission that the UHCC considered to be out of scope or not on PC38 were seeking to:
 - (a) Amend objective 16.3.2 in order to better give effect to the NPSET; and
 - (b) Amend policy 16.4.7 by rephrasing it and requiring that subdivision and development are avoided in close proximity to electricity transmission lines, as opposed to requiring subdivision and development to be managed.
25. The aspects of Transpower's submission that the HCC considered to be out of scope or not on PC34 were seeking to:
 - (c) Add a new permitted activity rule relating to activities in the National Grid Yard, replacing the restricted discretionary rule and inserting new matters for discretion.
26. A copy of the legal opinion is attached as Appendix 4. In summary, the legal opinion confirms the Council's position that:
 - PC38
The objective and policy referenced in (a) and (b) above are not proposed to be amended by PC38 as it has already been considered and included by PC32. The relief sought by Transpower would result in changes to PC38 that would directly affect property owners who have not been consulted with in relation to PC38. There is a real risk that people affected by PC38 (if modified through decisions to include the amended objective) 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 PC38; and
 - PC34
The amendments referenced in (c) above is not on PC34. The amendments proposed change quite significantly what activities can be undertaken and the applicable conditions for those activities within the National Grid Yard. The relief sought by Transpower would result in changes to PC34 that would directly affect property owners who have

not been consulted with in relation to PC34. There is a real risk that people affected by PC34 (if modified through decisions to include the amended objective) 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 PC34.

Scope of WELL's submission

27. The aspects of WELL's submission that the UHCC considered to be out of scope or not on PC38 were seeking to:
 - (a) Insert a new concept (critical infrastructure) within the plan through a new definition, amendments to existing provisions, new provisions and new section within the network utilities chapter; and
 - (b) Amend objective 16.3.2 to remove the reference to the National Grid in the explanation.

28. The aspects of WELL's submission that the HCC considered to be out of scope or not on PC34 were seeking to:
 - (a) Insert a new section within the plan for critical electricity lines and substations and adding a new definition for those activities.

29. A copy of the legal opinion is attached as Appendix 4. In summary, the legal opinion confirms the Council's position that:
 - PC38
The new concept of critical infrastructure referenced in (a) above has not been through a section 32 analysis and is therefore not considered to be within the scope of the plan change. The relief sought by WELL would result in changes to PC38 that would directly affect property owners who have not been consulted with in relation to PC38. There is a real risk that people affected by PC38 (if modified through decisions to include the new concept) 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 PC38;
The amendment referenced in (b) above is not on PC38. Objective 16.3.2 is not proposed to be amended by PC38 as it has already been considered and included by PC32. The relief sought by WELL would result in changes to PC38 that would directly affect property owners who have not been consulted with in relation to PC38. There is a real risk that people affected by PC38 (if modified through decisions to include the amended objective) 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 PC38; and
 - PC34
The new proposed section referenced in (c) above is not on PC34. The proposed new concept of critical electricity lines has not been through a section 32 analysis and is therefore not considered to be within the scope of the plan change. The relief sought by WELL would result in

changes to PC34 that would directly affect property owners who have not been consulted with in relation to PC34. There is a real risk that people affected by PC34 (if modified through decisions to include the new concept) 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 PC34.

Scope of Powerco's submission

30. The aspects of Powerco's submission that the UHCC considered to be out of scope or not on PC38 were seeking to:
 - Introduce new permitted activities across all zones for: earthworks and vegetation trimming/clearance and underground gas distribution and transmission pipelines not affected by inundation within the 1% flood extent of the Hutt River, provided the works are not located on or within 5m of the Council's flood control structures.
31. In summary, the legal opinion confirms UHCC's position that:
 - The new permitted activities referenced in (g) above has not been through a section 32 analysis and is therefore not considered to be within the scope of the plan change. The relief sought by Powerco would result in changes to PC38 that would directly affect property owners who have not been consulted with in relation to PC38. There is a real risk that people affected by PC38 (if modified through decisions to include the new permitted activities) 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 PC38;
32. I concur with the legal opinion and that the submission points addressed above are neither on nor in scope of PC34 and PC38. For this reason, I have not given these submission points any further consideration.

Further submissions

33. HCC received two further submissions from:
 - Transpower (HFS1); and
 - Powerco (HFS2).
34. UHCC received three further submissions from:
 - Powerco (UFS1);
 - Transpower (UFS2); and
 - WELL (UFS3).
35. Copies of the submissions and further submissions for PC34 for HCC are attached as Appendix 2. Copies of the submissions and further submissions for PC38 for UHCC are attached as Appendix 3.

Statutory Consideration

36. 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.
37. Section 32 of the 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.”*

38. 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.

39. 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.

40. 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.
41. 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)”.

Part 2 of the RMA

42. Part 2 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.
43. 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.
44. There are no s6 matters relevant to this plan change.
45. 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:*
(j) *the benefits to be derived from the use and development of renewable energy:”*
46. There are no s8 matters relevant to these plan changes. However, the duty to make informed decisions through consultation is relevant to PC34 and PC38. The Wellington Tenths Trust, the Port Nicholson Settlement Trust, Orongomai Marae, Te Runanganui O Taranaki Whanui ki te Upoko o te Ika a Maui (Waiwhetu Marae) and Te Rūnanga o Toa Rangātira Inc. were all notified of PC34 and PC38 (in respect of their rohe). Te Orongomai Marae, the Port

Nicholson Settlement Trust and the Wellington Tenths Trust advised that they had no particular comment to make pre-notification of the plan changes.

Regional Policy Statement

47. 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).
48. The relevant provisions from the RPS are attached 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 GWRC has advised that the RPS has been drafted to give effect to the NPSET and NPSREG.

National Policy Statements

49. 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 PC34 and one national policy statement relevant to PC38.

The National Policy Statement on Renewable Electricity Generation

50. The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG) sets out the objective and policies for renewable electricity generation under the Resource Management Act 1991. It came into effect on 13 May 2011. The NPSREG is relevant to both PC34 and PC38.
51. This NPSREG was introduced to promote a consistent approach for renewable electricity generation planning. In it clear direction is given on the benefits of renewable electricity generation. It also requires all councils to make provision for the NPS in their plans. The NPSREG requires Councils to notify a plan change by May 2013. While a Plan Change was not notified by this time, work was underway on a draft plan change.
52. The NPSREG is part of the government's wider response to tackling climate change in New Zealand and works alongside other government initiatives.
53. The NPSREG contains one objective and 13 supporting policies. The overarching objective of the NPSREG is: *"To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation"*.

54. The 13 supporting policies are broken down into the following categories, aimed at achieving the above objective:
- Recognise the benefits (Policy A)
 - Acknowledge the practical implications of reaching NZ's target (90% by 2025) (Policy B)
 - Acknowledge the practical constraints for new and existing (Policy C1)
 - Decision-makers shall consider off-setting and compensation when considering residual adverse effects (Policy C2)
 - Manage reverse sensitivity effects on REG (Policy D)
 - Incorporate plan provisions for different forms of REG activities to the extent applicable (Policies E1-4)
 - Incorporate plan provisions for small and community scale REG (Policy F)
 - Enable the identification of REG possibilities (Policy G)
 - Timeframe to implement (Policies H1 and 2)
55. In the case of district plans, local authorities are required to give effect to the NPSREG'S provisions by notifying changes within 12 months of the date on which any regional policy statement or proposed regional policy statement which takes into account the NPSREG becomes operative. The RPS was made operative on 24 April 2013. While a Plan Change was not notified by this time, work was underway on a draft plan change.
56. PC34 and PC38 have been drafted to give effect to the NPSREG. See the s32 for further discussion.

The National Policy Statement on Electricity Transmission

57. 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."*
58. 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).

59. 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).
60. PC34 has been drafted to give effect to the NPSET. See the s32 for further discussion. As outlined earlier, UHCC has already given effect to the NPSET through PC32.

Submission Evaluation and Recommendations

61. The submissions received have been summarised both by submitter in order of receipt and by the proposed amendments and provisions of PC34 and PC38 to which they specifically relate. The summary of submissions, which includes the recommendations on submissions, for PC34 is attached as Appendix 5. The summary of submissions, which includes the recommendations on submissions, for PC38 is attached as Appendix 7.
62. 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 PC34 and PC38 as notified.
63. 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.
64. Where I recommend changes, these are shown in Appendix 6, Recommended Changes to PC34 and Appendix 8, Recommended Changes to PC38. Proposed new text under PC34 and PC38 is underlined. Text proposed to be deleted is ~~struckthrough~~. Text recommended to be amended in response to submissions is double-underlined. Text recommended to be deleted is ~~double struckthrough~~.
65. The evaluation of submissions is structured as follows:
 - A. Plan Changes in their entirety / general submission points
 - i. Plan Change 34
 - ii. Plan Change 38 – Section 32
 - iii. Plan Change 34 – Renewable Energy
 - B. Joint Matters between Plan Changes
 - i. Definitions – Maintenance, Minor Upgrading, Upgrading
 - ii. Regionally Significant Network Utilities
 - iii. Stopbanks / Flood Hazard Area

- iv. Transmission Line Rules and Standards
- v. Masts Rules and Standards
- vi. New and Upgraded Transformers Rules and Standards
- vii. Cabinets Rules and Standards
- viii. Matters of Discretion
- C. Plan Change 34 – Network Utilities and the National Grid
 - i. Definitions
 - ii. Issues, Objectives and Policies
 - iii. Rules and Standards
- D. Plan Change 38 – Network Utilities
 - i. Definitions
 - ii. Issues, objectives, policies, methods and anticipated environmental results
 - iii. Zone Rules
 - iv. Network Utilities Rules and Standards
- E. Plan Change 38 – Renewable Energy Generation
 - i. Issues, Objectives and Policies
 - ii. Rules and Standards

A Plan Changes in their Entirety

i. Plan Change 34

Mary Beechen

Submission Points

66. In HS4.1, Mary Beechen opposes PC34 as she believes that the building restrictions beneath power lines will prevent the building of a dwelling on her property (137 Tirohanga Road, Tirohanga). The submitter requests that Transpower purchases their property.
67. In HFS1.1, Transpower request that point HS4.1 above be rejected. Transpower considers that as the provisions do not provide for prohibited activity status they therefore do not prevent development. Transpower also believes that the submitter's request that Transpower purchase the property is beyond the scope of the plan change.

Assessment

68. While I acknowledge the concerns of the submitter, I concur with Transpower's assessment and consider the submission to be outside the scope of the plan change as property value is not a valid resource management issue under the RMA. Under s85 of the RMA, a Council cannot require that Transpower purchases the property; rather, the option available is to ensure the reasonable use of a property. In this instance, PC34 would not prevent the use of the land; rather it would require that a resource consent be obtained. It is clear from Council records that the pylon and lines have been in place since at least 1977, and have therefore always been a restriction on the development

of this lot (which appears to have been created through a subdivision in or around 1975). I anticipate that Transpower will address this point further.

Recommendation

69. That HS4.1 be rejected.
70. That further submission point HFS1.1 be accepted.

Warren Thessman

Submission Point

71. In HS5.1, Warren Thessman states it is unclear what the reason is to change the District Plan. The submitter considers that the plan change has too much struck out data, exclusions and dimensions and Hutt City Council may be unaware of the consequences. The submitter also queries the allowable size of cable bundling that telecommunication companies undertake.

Assessment

72. Hutt City Council has carefully considered the intended outcomes of the plan change and found them to be appropriate, efficient and effective. The rationale for the amendments is set out in the section 32 evaluation report. The issue of cable bundling is further dealt with below in the discussion on the definition of minor upgrading.

Recommendation

73. That the submission HS5.1 be rejected.

Julie Sylvester

Submission Points

74. In HS11.1 on PC34, Julie Sylvester questions what consideration has been given to animals that live in the rural area where the plan change has effects. The submitter also questions what consideration owners of rural properties get.
75. In HFS1.2 Transpower requests that HS11.1 be rejected as Transpower considers that, subject to the amendments it seeks, the provisions of the Plan Change are appropriately drafted to minimise impacts on rural land owners, and address the potential adverse effects of all land activities on the National Grid, which is a nationally significant physical resource.

Assessment

76. PC34 addresses effects on the environment, which includes effects on animals. As for effects on rural property owners it is unclear what the submitter is requesting; however I concur with Transpower's assessment above.

Recommendation

77. That HS11.1 be rejected.

77. That HFS1.2 be accepted.

ii. Plan Change 38 Section 32

Submission Points

78. In US9.1 – US9.7, Roz Brown makes a number of comments on the section 32 accompanying PC38. These are set out below:

Section 32 –	I feel it would be helpful for the councillors and officers who did not attend the open forum to become aware that the ‘community’ included interested persons from Upper Hutt Forest and Bird, Upper Hutt Town and Country, Upper Hutt Rural Women, Friends of the Hutt River.
Section 32 – 6.4	The opportunity for biomass energy generation should include the forestry sector. This comment relates to other sections of the Plan as well. Wondering where DHB and Regional Health input is reflected.
Section 32 – 7.1	Light pollution.
Section 32 – 9.3	Agree with option three [outlined in section 9.3]. With alterations to include light pollution, micro hydro, biomass (forestry), economic advantages.
Section 32 – 11.0	Vast economic and employment effects as we acknowledge that the economy is a wholly owned subsidiary of the environment. Biomass and micro hydro could greatly turn Upper Hutt into an energy secure city.
Section 32 – Appendix 4 – Objective 9	Any influence over RPS to include bird corridors would be appreciated by karearea et al.
Section 32 – Appendix 4 – Relevant Definitions	A bit light on significant infrastructure – railway, SH2.

Assessment

79. From my review of these points, they are either noting comments not seeking any particular actions, or relate to matters outside of the scope of PC38 and the RMA. I therefore recommend that they be accepted in part insofar as they be noted.

Recommendations

80. It is recommended that US9.1 – US9.7 be accepted in part insofar as these points are noted.

iii. Plan Change 34 Renewable Energy

Warren Thessman

Submission Points

81. Warren Thessman states in HS5.2 that he believes that the proposed provisions for Renewable Energy Generation are not very specific and do not address some matters. In particular the submitter has the following concerns:
- The use of sun trapped electronics is missing
 - What happens when small home solar panels are above the roof;
 - There is no comment on sun reflection;
 - Should vertical axis wind generators be allowed on top of houses?
82. In HS5.3 Warren Thessman notes that he considers that the Environmental Sustainability Strategy has been tabled by the Council with no discussion. The submitter asks whether PC34 has been to allow the so called 30 year environmental strategy to be achieved. It is unclear as to what relief is sought.

Assessment

83. It is not clear what the submitter is referring to in respect of sun trapped electronics. Under PC34, solar panels and roof-mounted turbines are provided for as a permitted activity, subject to compliance with standards. Where those standards are not met, resource consent for a restricted discretionary activity is required (Rules 14L2.1.6 and 14L2.1.7). Matters of discretion include visual, character and amenity effects, which would include sun reflection. Vertical axis turbines which would not comply with the requirement to not exceed the height control by more than two metres, are able to be considered as a restricted discretionary activity.
84. PC34 is in part generated by the need for the Council to give effect to the NPSREG. This is a legislative requirement. The Environmental Sustainability Strategy is a key policy document that has been consulted on with the public and approved by Council. While it is important that the plan change and the Strategy do not conflict with each other, there is no direct relationship between each initiative. The key focus of PC34 is to address legislative requirements under the RMA.

Recommendation

85. That HS5.2 and HS5.3 be rejected.

Julie Sylvester

Submission Point

86. In HS11.1, Julie Sylvester comments that the topic of Renewable Energy Generation should be very high on the Hutt City Council's to do list and that some councils have this system already working in their areas, and generating additional energy for their rate payers. The submitter states that care must be taken not to destroy the environment when and if this activity takes place.

Assessment

87. Consideration of the Council's priorities is outside of the scope of this plan change. PC34 is limited to addressing the Councils' RMA functions and the matters of Council priorities relate to LGA functions. It is also considered that

PC34 adequately addresses the environmental effects of renewable energy generation on the environment.

Recommendation

88. That HS11.2 be rejected.

B Joint Matters Between Plan Changes

i. Definitions

Maintenance - PC34 and PC38

Submission Points

89. In HS6.5 and US4.36, Transpower seeks an amended definition for Maintenance. Transpower requests that either the definition is altered so that is clear and provides for standard National Grid maintenance activities; or alternatively that the definition of maintenance is deleted.
90. Transpower believe that the definition is too restrictive and does not appropriately provide for standard maintenance activities that Transpower regularly undertake on the National Grid. Transpower considers that the definition as drafted provides no greater right than what is provided for through existing use rights. Transpower also note that they think the definition lacks certainty and it is unclear which of Transpower’s maintenance activities would be covered by it.
91. In FS3.6 (PC38) and FS2.5 (PC34) WELL and Powerco respectively reject Transpower’s request for the definition to be altered. WELL consider that the definition for maintenance is appropriate for defining permitted activities fairly and evenly across all network utility operators. WELL believe that it is unclear from submission S4.36 what specific Transpower maintenance activities require an altered definition. Powerco oppose the proposed change to the definition as it is uncertain what alternative definition of maintenance would be appropriate.
92. The following submission points support the definition and request that it is retained as notified.

Submission points in support of the definition of maintenance		
Submitter	PC34 sub #	PC38 sub #
Kiwirail	3.1	S2.16
NZ Transport Agency	1.1	N/A
WELL	9.6	S6.5, FS3.6, FS3.26
Powerco	N/A	S7.28

Assessment

93. I agree with the further submission of WELL and Powerco and do not believe there is a need to change the definition for the following reasons:

- The current definition defines maintenance fairly and evenly across all network utility operators.
- It is unclear what National Grid maintenance is not covered by the definition.
- The NESET already addresses maintenance for Transpower's existing National Grid assets. A provision in a plan cannot override what is provided through the NESET.

Recommendation

94. It is recommended that HS6.5 and US4.36 be rejected.
95. It is recommended that HS1.1, HS3.1, HS9.6 and HFS2.5 and US2.16, US6.5, US7.28, UFS3.6 and UFS3.26 be accepted.

Minor Upgrading PC34 and PC38

Submission Points

96. Chorus oppose the current definition in part and seek amendment through HS8.6 and US5.18 to allow for:
- (a) the provision of up to two fibre optic lines utilising existing or replacement support structures subject to specific controls; and
 - (b) the replacement of an existing support pole in the road reserve within 2 metres of the existing pole which it is replacing.

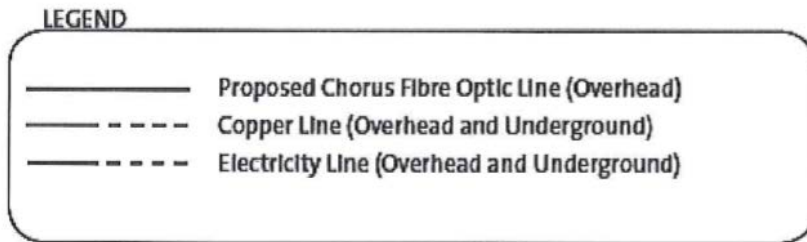
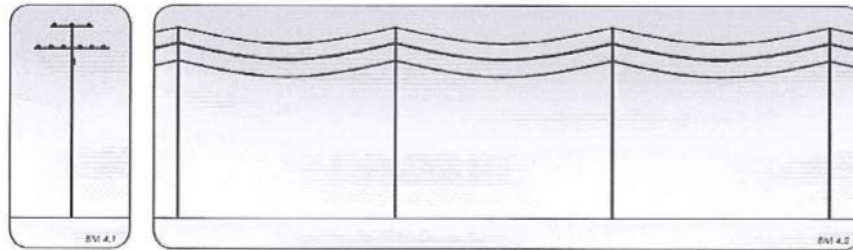
Minor Upgrading means an increase in the carrying capacity, efficiency or security of electricity and telecommunication lines, which utilise existing or replacement support structures and includes:....

(i) 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 13.4.2.1 is not exceeded and/or the replacement of an existing pole in road reserve is within 2m horizontal distance of that existing pole.

...

(l) the addition of a new overhead telecommunication fibre optic line provided that:

- (i) the maximum number of fibre optic lines on existing support structures does not exceed two lines;
- (ii) the diameter of new fibre optic lines does not exceed 25mm; and
- (iii) the location of the new fibre optic line is consistent with the following figure:



Minor upgrading shall not include:

...

(d) the addition of any new circuits, lines (with the exception of additional overhead telecommunication lines utilising existing support poles as provided for in item (l) above) or utility structures.

97. Transpower seeks changes through HS6.6 and US4.37 to allow for the efficient and effective use of existing infrastructure for activities that have less than minor adverse effects. The amendments requested are shown in the table below:

Transpower's requested amendments - Minor Upgrading	
HS6.6 PC34	US4.37 PC38
<p><u>Minor Upgrading:</u></p> <p>...</p> <p><u>(d) the addition of any new circuits, lines or utility structures, where this results in an increase in the number of new lines or utility structures</u></p> <p><u>Note: The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 applies to all the existing a National a Grid, and applies to all Transmission Lines that were operational, or able to be operated, on 14 January 2010.</u></p>	<p>Means ...</p> <p><u>(7) Tower Support structure replacement in the same location or within the existing alignment of the transmission line corridor; and</u></p> <p><u>Minor upgrading shall not include:...</u></p> <p><u>(iv) the addition of any new circuits, lines or utility structures where this results in an increase in the number of new circuits, lines or utility structures.</u></p> <p><u>Note: The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 applies to all the</u></p>

	<p><u>existing National Grid, and applies to all transmission lines that were operational, or able to be operated, on 14 January 2010.</u></p>
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98. Transpower considers that exclusion (d) (PC34) and subsection (iv) (PC38) require clarification to ensure that ‘the addition of’ means an increase in the number of, rather than the replacement of existing circuits, lines and utility structures, which should be considered a minor upgrade. In addition, Transpower consider that the note associated with the definition is not clearly worded.
99. In HS9.8 (PC34), US6.7 and UFS3.27 (PC38) WELL agree with Transpower that the definitions should be amended to include the provision of additional circuits and conductors on existing support structures. WELL also seek that the definition of minor upgrading be amended to provide for replacement support structures within 5 metres of the structure being replaced.
100. WELL also considers that minor activities such as circuits and conductors should be allowed within the definition as it will enable WELL to provide for growth and future demand for electricity across the city. WELL also consider that the proposed change would also improve adherence with proposed Policy 13.1.4(c) (PC34) and Policy 16.4.14 (PC38), as it would provide for co-location, and therefore mitigate visual impacts. WELL supports submission S4.37 to the extent that only circuits requiring the construction of a new line or support structure are exempt from the minor upgrade definition.
101. WELL reject Chorus’ submission point US5.18 in their further submission point UFS3.36 (both on PC38) as WELL believes that Chorus’ submission seeks to limit the replacement of support structures in road reserve to within 2m of the existing pole. The definition already allows for a 5m replacement area which is appropriate. WELL believe that the replacement envelope sought by Chorus is unnecessary and confusing.
102. In HS5.1, Warren Thessman queries the allowable size of cable bundling.

Assessment

103. In terms of the requested amendment by Chorus to provide for additional lines as part of ‘minor upgrading’, I consider there is some merit to the arguments put forward by the submitters 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.
104. 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.

105. The effect of the submitter's requested change is that the addition of lines to existing structures would fall within Rule 13.3.1.3 (PC34) and table 30.1 (PC38) as a permitted activity, rather than being treated as a restricted discretionary activity under Rule 13.3.1.6 (PC34) and table 30.1 (PC38). The visual amenity values, the visual characteristics of existing structures and lines, and therefore the acceptability of additional lines vary throughout the Hutt Valley, 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.
106. 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 Rule 13.3.1.6 (PC34) and table 30.1 (PC38) 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, PC34 and PC38 provide for existing aboveground lines to be replaced and restrung, as well as a minor increase in diameter.
107. In respect of the replacement of an existing pole, I consider the amendment sought by Chorus in HS8.6 to PC34 is unusual, as it would result in an inconsistency with clause (d), which provides for a support structure to be replaced within 5m of the structure to be replaced. I therefore recommend it be rejected. The definition of minor upgrading in PC38 does not provide for this replacement within 5 metres, rather it refers to a replacement within a similar location. I recommend that the WELL US6.7 and UFS3.36 on PC38 be accepted in full, and US5.18 be accepted in part, insofar as clause 4 be amended to provide more specifically for the replacement within 5 metres, as sought by WELL. This would make PC34 and PC38 consistent in providing for relocation of structures within 5 metres.
108. I support the proposed amendments sought by Transpower, which seeks to clarify the provisions, with the exception that I do not support the deletion of circuits as sought by Transpower, while also noting what they seek between the two plan changes is inconsistent. I do not support the amendments sought by WELL, for largely the same reasons as I do not support the amendments by Chorus, as this would result in very limited restriction of the number of additional new circuits and conductors, which may result in effects on amenity values.

109. In respect of Warren Thessman’s submission, it is unclear what the submitter is seeking exactly. PC34 has been developed to reflect current best practice, to be consistent with other plans within the region, and to also reflect current industry standards. I consider that the increased area of bundling cables is a relatively insignificant increase in width and provides for the continued effective use of existing network utilities. I therefore recommend it be rejected.

Recommendation

110. It is recommended that HS8.6(PC34) be rejected and US5.18 be accepted in part and UFS3.36 be rejected.

111. It is recommended that HS6.6 and HS9.8 and US4.37, US6.7 and UFS3.27 be accepted in part.

112. It is recommended that HS5.1 be rejected.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US5.18, US6.7, UFS3.36	Definition of minor upgrading (PC38)	<u>(4) A support structure replacement within a similar location as 5 metres of the support structure that is to be replaced; and</u>
US4.37, US6.7 and UFS3.27	Definition of minor upgrading (PC38)	<u>(7) Tower Support structure replacement in the same location or within the existing alignment of the transmission line corridor; and</u> <u>(iv) The addition of any new circuits, lines or utility structures, where this results in an increase in the number of circuits, lines or utility structures..</u> <u>Note: The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 applies to the existing National Grid, and applies to all transmission lines that were operational, or able to be operated, on 14 January 2010.</u>
HS6.6 and HS9.8	Definition of minor upgrading (PC34)	<u>(d) the addition of any new circuits, lines or utility structures, where this results in an increase in the number of new circuits, lines or utility structures.</u> <u>Note: The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 applies to all the existing National Grid, and applies to all Transmission Lines that</u>

		were operational, or able to be operated, on 14 January 2010.
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Upgrading PC34 and PC38

Submission Points

113. Transpower requests an amendment to the definition of Upgrading in HS6.14 (PC34) and US4.31 (PC38). Transpower considers that part of the definition should be amended so that it is clear that all activities which are not operational, maintenance or minor upgrades of transmission lines and substations, or the establishment of new transmission lines or substations, are defined as 'upgrading'.
114. Transpower considers the definition to be unclear in that the difference between minor upgrading, upgrading and 'new' facilities is unclear. Transpower notes in their submission that they are unable to determine what work would fall under the 'upgrade' category of activities. In relation to transmission lines (including their support structures) Transpower request that the definition should provide for all upgrading that is not 'minor upgrading' and which is not the establishment of new transmission lines. Transpower also consider that the definition should also allow for upgrades to substations. In their submission Transpower state that:
"At present, for example, some of the activities included in 'upgrading' bear little difference to those defined as 'minor upgrading'. In turn, many of the activities included in 'upgrading' are activities that would be simple maintenance or minor upgrade activities that either do not result in a physical change to the asset(s) or do not result in a change to the environment in which they are located."
115. In addition Transpower is concerned specifically with clause (c) of the definition in PC34 which references permitted activity standards. Transpower consider that standards relevant to 'upgrading' activities should be listed in the rule itself, and not in both the definition and in the rule. Including standards in multiple locations simply adds to the complexity of the plan change. The change requested to part (c) of the definition in PC34 is as follows:
(c) any activity specifically provided for under Rules 13.3.1.9 to 13.3.1.41; ~~and any increase in height or size or change in location, unless such increase or change is specifically provided for and would comply with the applicable permitted activity standard specified in 13.3.2.2, 13.3.2.3 or 13.3.2.4.~~
116. In HS3.6 and US2.21 Kiwirail request that the definition of upgrading be amended as follows:
Upgrading: As it applies to network utilities, upgrading means the ~~replacement, repair, renewal or~~ **improvement or physical works that result in an increase in carrying capacity, operational efficiency, security or safety of existing network utilities but excludes:....**

117. Kiwirail considers that as the definition of 'upgrading' as proposed includes 'replacement, repair, renewal' it is unclear whether these activities would be maintenance or upgrading purely based on both definitions covering the same activity. Kiwirail consider that some clarity is required.
118. Kiwirail note that the improvement in carrying capacity and operational efficiency is not something that necessarily results in physical changes, or changes that would necessarily be an upgrade. Changing engine type for example, or putting an extra carriage on a train, are improvements in operational efficiency and carrying capacity respectively. Therefore some of Kiwirail's activities would, under the current proposed definition would technically be considered an 'upgrade'. Kiwirail considers these activities to be operational and therefore needing to obtain an Outline Plan or resource consent for them seems outside the intention of the provisions. KiwiRail would support wording that restricted upgrading to physical works on the network utility itself, rather than the operation of the utility.
119. In HS9.12 WELL support the definition as notified. In UFS3.7 WELL reject Kiwirail's submission US2.21. WELL consider that that 'upgrading' can involve renewal of plant and equipment that is above and beyond maintenance (i.e. not like for like works). Consequently, WELL consider that the proposed definition for upgrading should be retained.
120. In HS1.4 NZTA express a similar sentiment to Kiwirail. They support the definition as proposed in part but consider that clarity is required around the scope of the definition as not all upgrading results in physical changes on the ground and/or any increase in capacity.
121. Spark and Chorus request amendments to the definition of upgrading in HS7.5 and US3.16 (Spark), and HS8.8 and US5.20 (Chorus). They consider that the definition is unclear and does not reflect the intended approach. Chorus and Spark believe that the intended approach was to provide for all network utilities other than telecommunication and electricity lines under the 'Upgrading' as lines were intended to be covered under 'Minor Upgrading'. They request amendments to the definition so that it gives effect to the intended approach.
122. In HFS2.13 and UFS1.7 Powerco accept Spark's submission HS7.5 and US3.16 in part. Powerco agrees with Spark that there would be benefit in amending the definition of 'upgrading' to clarify the distinction between network utilities covered by the definition of 'minor upgrading' and those covered by the definition of 'upgrading'. It should be clear from any such amendment that the definition of 'upgrading' will apply to Powerco's gas distribution network.

Assessment

123. I agree with Kiwirail, Transpower and NZTA that some forms of upgrading to increase carrying capacity or efficiency do not always require physical works. I

also agree with Kiwirail that they should not require a resource consent or an outline plan to change an engine size or add carriages to trains. I believe that the addition proposed in regard to physical works is a logical way to ensure that activities like those mentioned by Kiwirail are not unnecessarily caught under this definition.

124. With regard to the removal of the terms “replacement, repair, renewal’ I believe this change is unnecessary. While both the definition of maintenance and the definition of upgrading provide for replacement, repair or renewal, the definitions are 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.
125. In regard to Transpower’s request that the reference in clause (c) (PC34) and the fourth bullet point (PC38) to the standards be amended, I concur that this amendment is appropriate, as those rules are subject to relevant standards already and duplicate and recommend it be accepted. I therefore recommend that they be deleted, as requested. This in part also addresses the submission points from Chorus and Spark in this regard.
126. In regard to Chorus and Spark’s other submission points, which seek clarity what these rules apply to, and seek to differentiate what is provided for under minor upgrading, I note that this definition expressly excludes “minor upgrading” from being included. The policy intent is that minor upgrading applies to the lines and support structures for electricity and telecommunication lines, and upgrading applies to all other network utilities. I consider that there is already sufficient differentiation, but I welcome recommended amendments to these definitions if the submitters consider that there are potential interpretation issues. At this point, I recommend that these points be accepted in part.

Recommendation

127. It is recommended that HS6.9 (PC34) and US4.38 (PC38) be accepted.
128. It is recommended that HS3.6 and HS1.4 (PC34) and US2.21 (PC38) be accepted and UFS3.7 be accepted in part.
129. It is recommended that HS7.5, HS8.8 and HFS2.13 (PC34) and US3.16, US5.20 and UFS1.7 (PC38) be accepted in part.

Recommended Amendments

Submitter	Provision	Recommended Amendment
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number	Reference	
HS1.4, HS6.9 and HS1.4 (PC34) and US2.21 and US4.41 (PC38)	Definition of Upgrading (PC34 & PC38)	<u>Upgrading: As it applies to network utilities, upgrading means the replacement, repair, renewal or improvement or physical works that result in an increase in carrying capacity, operational efficiency, security or safety of existing network utilities but excludes:....</u>
S6.14	Definition of Upgrading (PC34)	(c) any activity specifically provided for under Rules 13.3.1.9 to 13.3.1.41, and any increase in height or size or change in location, unless such increase or change is specifically provided for and would comply with the applicable permitted activity standards specified in 13.3.2.2, 13.3.2.3 or 13.3.2.4.
US4.41	Definition of Upgrading (PC38)	<ul style="list-style-type: none"> • <u>'maintenance' (as it relates to network utilities); and</u> • <u>'minor upgrading'; and</u> • <u>any other activity specifically otherwise provided for under Rule 30.1; and</u> • any increase in height or size or change in location, unless such increase or change is specifically provided for and would comply with the applicable permitted activity standard specified in Rules 30.4, 30.5 and 30.6.

ii. Regionally Significant Network Utilities PC34 and PC38

Submission Points

130. Submission points HS7.4 and US3.15 (Spark) and HS8.7 and US5.19 (Chorus) (PC34 & PC38 respectively), seek that telecommunications and radiocommunications be 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.

131. Spark and Chorus both state that specific provision for regionally significant network utilities is supported. These submission points are made on the basis that the policy framework and the definition of "Regionally significant network utilities" do not extend to telecommunications or radiocommunications. As noted in 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 radiocommunications in the Telecommunications and Radiocommunication Acts. Spark and Chorus consider that the exclusion of radiocommunications and telecommunications is inconsistent and unreasonable, and therefore, their inclusion is sought.

132. In HS7.6 and HS8.9 on PC34 and US3.7, US3.8, US5.7 and US5.8 on PC38 Spark and Chorus also request that telecommunication and radiocommunications be specifically added to the explanation of 13.1.1 Issues, Objectives and Policies for PC34 and to Policy 16.4.2 and its explanation and to the explanation of policy 16.4.1 for PC 38 . These submission points are considered consequential to the main points above regarding the definition of Regionally Significant Network Utilities.

133. In HS3.4 and US2.20 (PC34 & PC38 respectively) , Kiwirail seek that the definition be amended as follows:

Regionally significant network utilities includes:

(f) the Strategic Transport Network, detailed in ~~Appendix 1 to the Wellington Regional Land Transport Strategy 2010-2040~~

iii. Kiwirail would like the date and appendix reference deleted as they believe that the definition may not remain relevant when it is updated.

Assessment

134. The issue of whether telecommunications and radiocommunications should be included as regionally significant network utilities is addressed in the s32 reports that accompanied the notification of both PC34 and PC38. To reiterate, the s32 reports state:

“..., 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 PC38 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.”

135. I have 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.
136. 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*".
137. The reasons provided by Spark and Chorus for including radiocommunications and telecommunications in the list of regionally significant network utilities do 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.
138. Further, Spark 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 HS7.6 and HS8.9 on PC34 and US3.7 and US5.7 on PC38 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.
139. Following is the full definition of regionally significant infrastructure 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*
 - *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*

¹ www.oxforddictionaries.com

- *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”.*

140. 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 Papararaumu 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. While I appreciate that radiocommunications and telecommunications operate on a network basis, there must be aspects thereof that are more strategically significant than the wider network.
141. I also note that the electricity distribution network is excluded from the definition above. Many of the arguments presented by Chorus in their submission, and in other situations, such as the hearing for Porirua City Council Proposed Plan Change 16, for why all telecommunications should be included would equally apply to the electricity distribution network. To me, this implies that the Regional Council had a specific (yet undefined) purpose for inserting the word “strategic” into the definition. As part of the PC16 hearing, the Hearings Committee commissioned a report from the Regional Council on how it interpreted its definition of regionally significant infrastructure. A copy of this report is attached as Appendix 9. In summary, the Regional Council did not foresee the distinction of the whole network as a facility and suggested a plan change process to the RPS would be the best option to address the definition.
142. 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 (and consequential amendments) be rejected. Whether the RPS drafting is an oversight or not, I consider that it is not the Councils’ role to fix drafting errors through individual plan changes; the Councils’ role is to give effect to the RPS as it is drafted. Rather, the submitters should address this directly with the Regional Council.
143. I also consider that the way that both PC34 and PC38 are drafted, the importance and benefits of telecommunications and radiocommunications are already recognised and adequately provided for. Therefore I do not consider

that the submitters are disadvantaged by not being defined as regionally significant.

144. My preferred resolution to this matter would be for the Regional Council to amend the RPS by way of a plan change, to be followed by an amendment to both District Plans. I realise that this recommendation does not meet the immediate concerns of the submitters.
145. I do not support the request by KiwiRail to make the reference to the Strategic Transport Network generic as this would make it inconsistent with the definition in the RPS.

Recommendation

146. It is recommended that HS3.4, HS7.6 and HS8.9 (PC34) and US3.7, US3.8, US5.7, US5.8, US3.13 and US5.19 (PC38) 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 13.1.1 Issues, Objectives and Policies (PC34) and Policy 16.4.2 and its explanation and in the explanation of Policy 16.4.1 (PC38).
147. I recommend that HS3.4 (PC34) and US2.2 (PC38) Kiwirail be rejected.

iii. Stopbanks / Flood Hazard Area PC34 and PC38

Submission Points

148. In HS2.1 (PC34) and US1.1 (PC38), GWRC seek a that a new policy be added to both plan changes that states that the utilities should be located outside of hazard areas or be appropriately designed if they must locate within these areas. The reason for this request is that GWRC believes that utilities should be regulated so that they are located outside the Flood Hazard Area (FHA) and stop banks to minimise the risk to their operations in a flood event and to maintain the integrity of stopbanks. Where utilities cannot be located outside a FHA GWRC believes that they should be designed to withstand the design flood event so that they do not potentially cause adverse effects to others.
149. The new policies requested state:
“Seek to locate network utilities outside of flood hazard areas, and most importantly outside of stopbanks. Where this is not practicable, ensure that they are designed and installed in a manner to withstand a design flood event”.
150. In HS2.2 (PC34) & US1.3 (PC38) GWRC seeks recognition within policy 13.1.4 (d) (PC34) and the explanation of 16.4.14 (PC38) that co-location is not always appropriate, namely where it may restrict flood flows. In S1.3 GWRC seeks an addition to the explanation of this 16.4.14 (PC38) that notes that co-location may not always be possible because of its effects on flood flow capacity and stopbank integrity. In HS2.2 GWRC seeks an addition to policy 13.1.4 or its explanation to the same effect as the request in US1.3.

151. The reason given for these requests is that GWRC supports the encouragement of the co-location of services, but that there needs to be recognition within the proposed policy and explanation that co-location is not always appropriate, namely where its effects may be to constrict flood flows.
152. In HS2.2 (PC34) and US1.4 (PC38) GWRC request amendments to 13.1.4(d) and Policy 16.4.15 (PC34 & 38 respectively) to add the effects of undergrounding on flood flow capacity and stopbank integrity as a situation when undergrounding may not be appropriate. In HS2.2 (PC34) GWRC seeks changes to 13.1.4.(d)(i) so that it reads:
...to require the underground placement of new network utilities unless (i) there are natural or physical features or structures, or technological and operational constraints and effects on flood flow capacity and stopbank integrity, that makes underground placement impractical or unreasonable”...
153. The additional bullet point proposed for Policy 16.4.15 reads:
“Require the underground placement of new network utilities unless:...
- 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; and
 - the placement is through a flood protection stop-bank.
154. In HS2.3 GWRC requests an amendment to policy 13.1.4 (F) of PC34 as follows:
(f) To encourage network utility providers to consult with local communities and the regional council on the appropriate placement, location and design of new network utilities
155. GWRC seek this inclusion as they are not always informed about activities and earthworks that are occurring on, or in, stopbanks. GWRC considers that uncontrolled earthworks can, and do cause a real risk of stopbank breach or failure.
156. In HS2.4 (PC34) and US1.5 (PC38) , GWRC requests that the removal, maintenance or upgrading associated with underground services (excluding those associated with works on existing transmission lines) where they are located in or on a stopbank become a restricted discretionary activity and that works on existing electricity transmission lines in stopbanks become a controlled activity. GWRC makes a similar request in HS2.5 and US1.6 (PC34 & 38 respectively) where they ask that new underground utilities located in or on a stopbank be a restricted discretionary activity, not a permitted activity as currently proposed. GWRC seeks that Council's discretion be restricted to the effects of the works on the integrity of the stopbank.
157. GWRC states that where earthworks have a potential to affect a stopbank, compliance with GWRC guidelines and procedures is sought which cannot happen as part of a permitted activity. A restricted discretionary activity status would allow GWRC to be identified as an affected party where earthworks may

affect a stopbank or flood protection asset. This would give GWRC the ability to seek that an application be refused if the flood hazard risks/effects are inappropriate

158. In the body of their submission, GWRC sets out its position that:
- (a) 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
 - (b) it manages and maintains stopbanks along the Hutt River 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 stopbanks, and to retain control over earthworks associated with the undergrounding of utilities or utility works which affect the stopbanks
159. In their submissions, GWRC refers to the Hutt River Floodplain Management Plan 2001 (HRFMP), and in particular, Table 8 which sets out proposed land-use measures for river corridor hazard areas. All three Councils are signatories to the HRFMP, and as such, they seek that the plan changes reflect the policy direction in this Plan. This table includes rules on managing network utilities.
160. In HFS2.1, HFS2.2 HFS2.3 and HFS2.4 on PC34 and UFS1.1, UFS1.3 and UFS1.4 on PC38, Powerco accept the above points in part. Powerco accepts that there is a need to protect the integrity of flood protection assets. The submission points also note that it may not always be practicable to avoid locating network utilities in a FHA and that if utilities do need to be located in these areas they should be designed and installed to be resilient to the effects of flooding.
161. UFS3.1 on PC38 by WELL rejects US1.3 and US1.5 above stating that the undergrounding of utilities should remain a permitted activity. In these points WELL notes that their construction standards specify correct backfill compaction requirements (as they believe most utility operators would) and therefore any undergrounding work will not undermined the integrity of flood protection works.
162. In HFS1.14 (PC34) Transpower rejects GWRC's request in HS2.1 for a new policy that seeks to locate utilities outside of the flood hazard areas. Transpower acknowledges the principle of the Policy; however it considers that the policy fails to recognise the need for linear infrastructure to commonly cross water bodies, including the flood hazard area. Transpower considers that linear infrastructure should be specifically excluded from the Policy to avoid confusion about its intent.

Assessment

163. In my opinion, there are two areas to these submission points; firstly managing activities in flood hazard areas or on or in proximity to stopbanks and secondly the management of stopbanks as an asset, to retain control over activities occurring on them.
164. I concur that management of the stopbanks and managing effects on them is an important issue, and needs to be addressed. However, in my opinion, there are more appropriate means to addressing this issue in a comprehensive and integrated manner than solely dealing with network utilities and stopbanks through these plan changes.
165. In the first instance, the focus of PC34 & PC38 is 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. As stated above, 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.
166. Councils within the Wellington Region, including GWRC, are currently developing a comprehensive natural hazard strategy which seeks a consistent and comprehensive approach to natural hazard management within the Region. Although the strategy is still in the process of being developed and possibly some time from resolution, I consider that these 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.
167. Further, the first bullet point under Policy 16.4.15 provides for undergrounding not to be required if there are natural or physical features or structures that make underground placement impractical or unreasonable. As a stopbank is a physical feature or structure, and it may be an operational constraint or impractical or unreasonable for a network utility to be located through a stopbank this policy is considered to 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

168. In respect to GWRC's wish to retain control over activities occurring on stopbanks, I understand that GWRC is concerned that by requiring the underground placement of network utilities and providing for them as a permitted activity, that network utility operators would carry out works within a stopbank without getting any other necessary approvals or liaising with GWRC. However, the situation with stopbanks is no different to any other situation where a network utility operator wishes to place utilities underground where they need to obtain the approval of the landowner, private or public before carrying out works.
169. I consider GWRC's request in HS2.3 to be added alongside local communities as a party to be consulted on the appropriate placement, location and design of new network utilities (Policy 13.1.4(F) in PC34) to be unnecessary. The Regional Council has its own role and functions under the RMA and LGA; under which it can require consultation themselves.
170. What is being sought by GWRC would involve the Council becoming a third party manager of its asset, on matters that should be limited to being between GWRC (as the asset owner) and the body who wishes to undertake work on that asset. The changes proposed would mean GWRC relying on the Council to manage effects on its asset on its behalf.
171. Policy direction or rules in a District Plan are not considered to be the most appropriate or efficient means to address GWRC's concerns. 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 or other forms of agreements with the landowners (if not already owned by GWRC).
172. Given the strategic importance of this asset to GWRC and the community, and the assets specific technical, operational and functional requirements, I do not consider GWRC's request to be the most effective, efficient or appropriate method to control activities and their effects on this asset.
173. I consider that the use of PC34 and PC38 to achieve the outcomes sought by GWRC is not the most appropriate means, and would be inefficient and ineffective 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.

174. In respect of the HVFMP, I do not consider that this recommendation is inconsistent with the agreement between the three Councils. I note that Table 8 contains 11 different land use activities that can impact on river corridor hazard areas, with network utilities only being one of these. I consider that it would not be a sound resource management approach to only address one of these 11 matters through this plan change process, and rather, that they should be addressed comprehensively.
175. I support the amendment sought through HS2.3 to policy 13.1.4(f), insofar as I recommend that clause (f) be amended to read: To encourage network utility providers to consult with local communities and landowners on the appropriate placement,... as the placement of network utilities is not limited to land on which the regional council has an interest. I note that network utility operators obtaining landowner approval to undertake activities on privately owned land is subject to other legislation and should therefore not be regulated through the RMA and District Plans.
176. In response to other submission points on how Chapter 30 of the UHCC Plan relates to other City-wide rules, I also propose to make it clear that Chapter 33, Flooding and Fault Band Hazards, also applies to Chapter 30. This will ensure that there is a connect between Chapters 30 and 33 in how structures are managed in respect to flood areas. I note that under PC34, it is clear that the City-wide rules apply to Chapter 13 and no clarification is therefore required.
177. HCC and UHCC met with GWRC in advance of the preparation of this report to discuss from the HCC and UHCC perspective how this issue could be best addressed. Both Councils relayed that they have plan reviews planned which will provide the most appropriate means to address the matters raised by GWRC. Copies of correspondence between the three Councils is attached as Appendix 10. In particular, HCC is in the early stages of a review of the River Recreation Activity Area and work is also underway on the Hutt River project which may lead to formal designation of the river corridor in the CBD reach. The UHCC is currently dealing with flooding in the Hutt River, and the management of activities in respect of flooding, in the Hutt River, Mangaroa and Pinehaven Streams through separate plan changes, as well as planning to undertake a comprehensive plan change for natural hazards once the regional strategy has been completed. In both instances, the Councils consider that these approaches are consistent with the HRFMP. At the meeting, both Councils also encouraged GWRC to consider the option of a wider reaching designation which covered all its existing stopbank assets within both Cities.

Recommendation

178. It is recommended that HS 2.1, HS 2.2, HS2.4, HS2.5, HFS2.1, HFS2.2 HFS2.3 and HFS2.4 (PC34) and US1.1, US1.3, US1.4, US1.5, US1.6, UFS1.1, UFS1.3 and UFS1.4 (PC38), be rejected.
179. It is recommended that US1.5 be accepted in part, insofar as it is made clear that the rules in Chapter 33 also applies to Chapter 30.
180. It is recommended that HS2.3 (PC34) be accepted in part.
181. It is recommended that UFS3.1 be accepted.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS2.3	13.1.4(f)	<u>To encourage network utility providers to consult with local communities and landowners on the appropriate placement,...</u>
US1.5	16.1 Background	<u>The provisions in this Chapter apply to network utilities throughout all zones of the City. The underlying zone objectives, policies and rules do not apply to network utilities, including roads, unless specifically referred to. City wide rules, such as those relating to earthworks, notable trees, flooding and fault band hazards, historic heritage and hazardous substances will still apply.</u>

iv. Transmission Line Rules PC34 and PC38

Submission Points

182. In HS6.29 Transpower seeks changes to the activity status table as follows:
- *“It can be easily determined which rules apply to different transmission activities. In this regard Transpower seeks very clear rules and related definitions associated with the operation and maintenance, minor upgrading, upgrading and establishment of new transmission lines (including their support structures) and of substations*
 - *National Grid activities are given the following activity status:*
 - *Permitted: The operation, maintenance, minor-upgrading of transmission lines, transmission line support structures and substations.*
 - *Restricted Discretionary: The upgrading of transmission lines, transmission line support structures and substations.*
 - *Discretionary: New transmission lines, transmission line support structures and substations.*
 - *Non-complying: All network utilities which do not comply with the permitted activity standards for electric and magnetic fields.*
 - *Transmission lines and their support structures are covered by the same rules*
 - *The status of activities which do meet standards is clearly stated*

- *Only Health and Safety Standard 13.3.2.1 applies to discretionary activities for new lines “*

183. In US4.30 Transpower makes similar requests to those above with regard to activity statuses for Transmission activities. They also request that other consequential amendments to the proposed matters of discretion for restricted discretionary activities be made as well as the inclusion of consultation with network utility operators as matters of discretion for the upgrading on transmission lines and transmission line support structures. Lastly in this submission point Transpower requests a clear statement to the effect that the provisions of other chapters do not apply to network utilities (as stated in the last paragraph of Section 16.1).
184. In US4.30 Transpower note that while they accept the activity status of the rules for the National Grid assets (i.e. not non-complying as initially proposed in the draft Plan Change), Transpower believes that the rules are unclear. Transpower consider that as a result determining which rule applies to which activity is not easy. In addition, and in light of the new definition of ‘line’, Transpower consider that it is unclear which rules specifically apply to transmission line support structures.
185. In HS6.32 Transpower also requests amendments to the rules to specially provide for transmission line support structures as Transpower considers that the standards referenced are too restrictive (particularly height). Transpower considers that support structures should be specifically provided for and that this would give effect to the NPSET and RPS. In HS6.40, Transpower seeks that the height standards are amended to exclude transmission lines including their associated support structures. In HS6.41, they also seek to be excluded from separate distance and setback standards.
186. In US4.32 Transpower seeks that the maximum height standards be amended to specify a specific and appropriate height for support structures for the same reasons as stated above. In US4.33, Transpower seeks that transmission lines and support structures be excluded from separation distances and setbacks and standards for temporary lines
187. Transpower considers that the changes requested are necessary so that network utility operators can easily determine the activity status of their activities.

Assessment

188. I do not concur that the activity table for PC38 is unclear. However, I do concur that the activity table for PC34 is unclear, and I have recommended amendments which would reflect the activity status sought by Transpower in its submission. In particular, it is now clear that any new electricity transmission lines above 110kV, and associated support structures, are a discretionary activity. The NESETA sets out a framework of permissions for

activities on existing transmission lines. The NES specifies that electricity transmission activities are permitted subject to terms and conditions to ensure there is no significant adverse effect. Councils are required to not have rules in their plans that duplicate the provisions. Therefore most of the activities Transpower is seeking clarification on are already covered by the NESETA and there is no reason for the Council to duplicate these.

189. I also note that it is likely that Transpower would use their requiring activity status to designate any new lines, meaning any further new lines and works to those would be addressed through the designation, rather than District Plan rules. A designation would also place restrictions on what anyone other than Transpower could do on the designated land, without first getting their permission or necessary approvals from the council, therefore a designation would also help with reverse sensitivity effects.
190. In respect of seeking that the rules in PC34 be amended, I note that as a consequence of the amendments sought by Transpower in HS6.29, any upgrading to existing lines or new lines are either a restricted discretionary or discretionary activity and not subject to the permitted activity standards. What Transpower seeks is therefore unnecessary.
191. In respect to the change sought to PC38 by US4.32 and US4.33, again I note that such lines and structures are either a restricted discretionary or discretionary activity, and not subject to the permitted activity standards. What Transpower seeks is therefore unnecessary.

Recommendations

192. It is recommended that US4.30 and US4.32 be rejected.
193. It is recommended that HS6.40, HS6.41 and US4.33 be accepted in part, insofar that transmission lines and structures are already not subject to these standards.
194. It is recommended that HS6.29 and HS6.32 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.29	13.3.1.26 PC34	<u>New and additional above ground lines, including support structures, excluding electricity transmission lines above 110kV.</u>
HS6.32	New 13.3.1.26A	See below
HS6.29	New 13.3.1.27A PC34	See below

<u>13.3.1.26A</u>	<u>New and additional above ground lines, including support structures, excluding electricity transmission lines above 110kV that do not meet permitted activity standards</u>	<u>Rural (All)</u>	<u>Restricted Discretionary</u> <u>y</u>	<u>Health and Safety:</u> <u>13.3.2.1</u>	<u>13.3.4 (a),</u> <u>13.3.4 (b),</u> <u>13.3.4 (e),</u> <u>13.3.4 (f),</u> <u>13.3.4 (g),</u> <u>13.3.4 (h),</u> <u>13.3.4 (i),</u> <u>13.3.4 (j),</u> <u>13.3.4 (k),</u> <u>13.3.4 (l),</u> <u>13.3.4 (m),</u> <u>13.3.4 (n),</u> <u>13.3.4 (r),</u> <u>13.3.4 (s),</u> <u>13.3.4 (t)</u>
<u>13.3.1.27A</u>	<u>New and additional above ground electricity transmission lines above 110kV, including support structures</u>	<u>All</u>	<u>Discretionary</u>	<u>Health and Safety:</u> <u>13.3.2.1</u>	

v. Masts – PC34 and PC38

Submission Points

Residential (including Rural-Residential) and Recreation (PC34)

195. In HS7.12, HS7.13, HS8.15 and HS8.16 Spark and Chorus respectively request that Rule 13.3.1.18 be amended to provide for masts with or without associated antennas as a permitted activity in the General or Hill Residential, Rural Residential and General Recreation Activity areas. Spark and Chorus note that there is no proposed permitted provision for masts and associated antennas in the General or Hill Residential, Rural Residential and General Recreation zones. Spark and Chorus consider that the restriction on masts in these areas is unreasonable as they consider that these areas have not been specifically zoned to protect ‘amenity values’ and the permitted activity standards for Masts proposed in PC34 would ensure that any adverse effects are less than minor. In HS7.14 and HS8.17, they seek consequential amendments to the list of Activity Areas in Rule 13.3.1.23 to reflect the amendments sought.

196. In HS7.15 and HS8.20, Spark and Chorus seek that the permitted standard 13.3.2.2.1 be amended to provide for a 15m height limit in the General Recreation and the Rural Residential zones for one provider.

197. In HS7.15 and HS8.21, they also seek that the permitted standard 13.3.2.2.2 be amended to provide for a 15m height limit in the General Recreation and the Rural Residential zones for two or more providers.

Residential and Open Space (PC38)

198. In US3.11 and US5.13 Spark and Chorus respectively make a very similar request to that above for PC34. Spark and Chorus request that a permitted activity for masts, with or without associated antennas in the Residential and Open Space zones be added under Rule 30.1. In S3.11 and S5.13, Spark and Chorus also seek that Rule 30.4 be amended to provide for a maximum height of 12m for “Masts, antennas, lines and single pole support structures” (whether one or more providers). They also seek that Rule 30.5 be amended to provide for a mast diameter of less than 600mm from 6m in height (whether one or two providers); and antennas attached to masts to be within a horizontal diameter circle of 750mm around the mast.
199. Similarly to the points on PC34 Spark and Chorus consider that the lack of a permitted activity status is considered unreasonable, particularly given the essential nature of telecommunications, the increasing technical requirement to locate telecommunication masts close to the areas that they serve, and the level of effects. Spark and Chorus also note that the provisions proposed are significantly more stringent than the operative plan. They also seek a default discretionary activity status where standards are not met for a permitted activity. They also note that the provisions are significantly more stringent than in the operative plan.

Rural PC34

200. In HS7.15 and HS8.20, Spark and Chorus seek that the permitted standard 13.3.2.2.1 be amended to provide for a height of 20m in the General Rural zone for one provider. In HS7.16 and HS8.21, they seek that a height of 25m be provided in the General Rural zone for two or more providers.

Rural PC38

201. In US3.12 and US5.14, Spark and Chorus seek the following amendments to the Rural, Business and Special Activity provisions applying to masts:
- Amend 30.4 Maximum Height of Network Utilities to provide for a maximum height of 20m for one provider and 25m for two providers for masts in the Rural zone.
202. Both providers consider that the existing height and size provisions are too restrictive in terms of the level of potential adverse effects, and the necessity of telecommunications facilities. I note that their submission points also seeks amendments to particular other provisions relating to the Business and Special Activity Zones, which I consider to be appropriate and have recommended be accepted, and are therefore not addressed in this report.

Assessment

Masts in Residential (including Rural-Residential), Open Space / Recreation

203. I do not support HS7.12, HS7.13, HS7.14, HS8.15, HS8.16, HS8.17, US3.11 and US5.13. 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 the relevant zones, 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.

204. Regarding the point that the zones have not been specifically zoned to protect 'amenity values' this is quite incorrect. The first Issue for the General Residential Activity Area of the Hutt City Plan is 4A 1.1.1 Residential Character and Amenity Values. The last sentence of the Issue states:
"It is important that activities are managed to ensure residential character is retained, and amenity values are maintained and enhanced."
205. Again for the Hill Residential Activity Area Issues 4D 1.1.1 Residential Character and Amenity Values reads:
"There are several residential areas on the hillsides of the City, characterised by steep slopes, difficult access, low density residential development, extensive areas of vegetation and native bush. The effects of activities in such areas must be managed to ensure the character and amenity values are maintained and enhanced."
206. For the Rural Residential Activity Area Issues 8A 1.1.1 Rural Residential Character and Amenity Values and the last sentence of this issue notes:
"Inappropriate activities, and development and performance standards will adversely affect the existing character and amenity values of these areas."
207. The General Recreation Activity Area however is more focused on the adverse effects of recreation activities on adjoining residential areas and this is what Issue 7A1.1.1 notes.
208. Similarly for the Upper Hutt District Plan the first issues for both the Residential Zone and the Open Space zone relate to amenity. The Residential Zone's first Issue is 4.2.1 *'The loss of environmental quality within residential areas caused by adverse effects of activities'*. The Open Space Zone's first issue is 7.2.1 *'Protecting the environmental quality within and adjoining open spaces from the adverse effects of development and activities'*.
209. In terms of visual impacts, I note that if masts were a permitted activity, 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 is the 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 and are permitted.

210. While I note that there are many areas within the General Recreation Activity Area (PC34) and the Open Space Zone (PC38) 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 General Recreation Activity Area and 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 residential areas and topography could all affect the appropriateness of a mast being located there and the effects it may generate.
211. While I acknowledge that in some areas of the General Recreation Activity Area (PC34) and the Open Space Zone (PC38) there may be more intensive uses 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 these areas are likely to be able to absorb mast structures more easily than more open recreation activities which often do not include such active activities and associated structures. However though as these areas are both considered under the same Area/Zone they cannot be easily differentiated and a discretionary activity and case by case assessment remains the more appropriate way to consider applications for masts in these Areas/Zones.
212. I note that one reason to give a permitted activity status in the General Recreation Activity Area (PC34) and the Open Space Zone (PC38) may be 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). Firstly this is not true in the case of the General Recreation Activity Area of PC34 as this area includes both public and private owned recreation space. Secondly, I do not consider that this is an appropriate mechanism to rely on to manage 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.
213. In light of the above, I recommend that these submission points be rejected.

Rural

214. I do not support the requested increase in heights sought to masts in the Rural Zone / Area. Again, 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 the relevant zones, are sufficient justification to warrant providing for masts of up to 25m in height (for two or more providers) as a permitted activity.

215. The objectives in the General Rural Activity Area in the Hutt Plan seek to maintain and enhance the open character and amenity values which are prevalent in these areas; and protecting these from inappropriate subdivision, use and development. The maximum height for buildings is 10m. I consider that providing for double that height as a permitted activity would not be consistent with the scale of development that is permitted in the Area.
216. The objectives in the Rural Zone in the Upper Hutt Plan also seek to maintain and enhance open spaces, natural features and ecological systems which comprise the rural character and amenity, and to maintain and enhance the rural area's amenity values. The maximum height for buildings is 8m. I consider that providing for more than double that height as a permitted activity would not be consistent with the scale of development that is permitted in the Zone.
217. I have recommended in response to other submission points that the width of antenna be increased to 5m, which will otherwise provide the providers with greater flexibility. I therefore recommend that these points be rejected.

Recommendation

218. It is recommended that HS7.12, HS7.13, HS7.14, HS8.15, HS8.16, HS8.17, US3.11 and US5.13 be rejected.
219. It is recommended that HS7.15, HS7.16, HS8.20 and HS8.21 be rejected.
220. I recommended that US3.12 and US5.14 be accepted in part, and rejected insofar as they seek to amend 30.4 in respect of the Rural Zone.

vi. New and upgraded transformers PC34 and PC38

Submission Points

221. In HS6.31, Transpower seek that rule 13.3.1.30 be amended as it is the only specific rule applying to substations and requires consent for all but the operation and maintenance of these important components of the national grid. The rules should provide for the operation, maintenance, replacement work and minor upgrade of the substations within Hutt City without the need for resource consent.
222. In HS9.20, WELL seek that it be amended as follows:
“New and upgraded transformers, substations and switching stations (other than those encased within a cabinet and/or those that are pole mounted within the Rural Activity Area), distributing electricity and ancillary buildings.”
223. WELL opposes the current rule, as it includes all new and upgraded transformers as a discretionary activity in all activity areas. Transformers vary in size according to voltage. The smaller transformers will be able to meet the

permitted activity standards for all zones specified in Rule 13.3.1.9 (note: subject to road reserve area standards being increased to 5m² as sought below). The permitted activity rule for Cabinets should also apply to transformers and switch gear located within a Cabinet as the proposed definition includes these. As currently worded Rule 13.3.1.30 would require resource consent (discretionary activity) for overhead transformers in all activity areas. WELL consider that the definition of “line” in Section 2 of the Electricity Act 1992, which is inherited as the definition of “line” in this plan change, includes overhead transformers, and therefore placement of an overhead transformer (pole mounted) on an overhead line, within the Rural Activity Area, should be a permitted activity to reflect that overhead lines in the rural resource area are also permitted activities.

- 224. WELL considers it is unreasonable to have permitted overhead lines in the rural environment only to then apply a mandatory resource consent requirement by virtue of the lines operational requirements.
- 225. In US6.22, WELL seeks the same amendment as it does in HS9.20, for the same reasons.

Assessment

- 226. I concur with Transpower that the reference to upgrading is confusing. I have therefore recommended it be deleted. Upgrading is otherwise already addressed through the other rules. However, I do not concur that these activities should be permitted given the potential effects that larger transformers, substations and the like may generate. A discretionary activity status is considered appropriate.
- 227. I also concur with WELL that the rule as written would also capture cabinets and pole mounted structures that are otherwise permitted. I have therefore recommended amended wording to exempt these activities which are otherwise permitted.

Recommendation

- 228. I recommend that HS6.31 and HS9.20 be accepted in part.
- 229. I recommend that US6.22 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.39 and HS9.20	13.3.1.30 PC34	<u>New and upgraded transformers, substations and switching stations distributing electricity and ancillary buildings, except for those encased within a cabinet or located on a line that is otherwise a permitted activity.</u>

US6.22	30.1 PC38	<u>New and upgraded transformers, substations and switching stations distributing electricity and ancillary buildings, except for those encased within a cabinet or located on a line that is otherwise a permitted activity.</u>
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vii. Cabinets PC34 and PC38

Submission Points

230. In HS9.23, WELL seek that standard 13.3.2.3.6 be amended to enable road reserve cabinets associated with electrical distribution networks to have an area up to 5m² as permitted activities adjacent to all land use zones.
231. In US6.24, WELL also seek the same for PC38, as well as noting their support for a 15m² area for cabinets not located within the road reserve.
232. WELL considers that the size and diameter standards for Cabinets located within the road reserve are too restrictive. As shown in Attachment C to WELL’s submission, electricity distribution cabinets are common elements within the City’s road reserves and represent the only above ground structures associated with other wise permitted underground networks. The design and location of the distribution cabinet are thoroughly considered prior to their positioning, thereby ensuring that pedestrian access and safety will not be compromised by the road reserve cabinet.

Assessment

233. I do not support the increase in size sought by WELL to cabinets in the road reserve. The maximum height and area of cabinets has been set to reflect the restrictions for cabinets set through the NESTF, which was set to reflect amenity values as well as ensuring pedestrian access and safety will not be compromised. To allow an increased size for electricity cabinets would result in an inconsistent approach between telecommunication and electricity cabinets, for which there is no justification.

Recommendation

234. I recommend that HS9.23 be rejected.
235. I recommend that US6.24 be accepted in part, insofar as it supports the size of cabinets outside of the road reserve, and otherwise rejected.

viii. Matters of discretion for network utilities - PC34 and PC38

Submission Points

236. In HS6.44, Transpower seeks that the proposed matters of discretion be replaced with the following matters:
“(a) Any positive effects to be derived from the activity.

(b) The degree, extent and effects of the non-compliance with the Permitted Activity Conditions.

(c) Health and safety.

(d) Suitability of the site for the proposed activity, including consideration of geotechnical and natural hazard constraints.

(e) Layout, design and location of proposed structures.

(f) Traffic and transport effects.

(g) Extent of any earthworks.

(h) Effects on historic heritage.

(i) Visual, character and amenity effects.

(j) Noise and lighting effects.

(k) Effects on public access.

(l) Effects on natural character and native vegetation.

(m) Adequacy of the methods of mitigation/remediation or ongoing management, including the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.

(n) Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environment effects”

237. Transpower seeks this amendment as they consider that the proposed matters of discretion fail to allow recognition of the benefits of regionally significant network utilities, do not adequately give effect to Policies 3 and 4 of the NPSET and generally are not all appropriate. They also specifically request:
- Clause (n) relating to alternatives should be removed. The Act only requires applicants to describe possible alternatives if it is likely that the activity will result in significant adverse effects on the environment. The proposed clause is unnecessary (as it duplicates the Act) and creates an undue expectation that alternatives will be assessed in every instance
 - Clause (r) relating to consultation is not a relevant ‘matter of discretion’. It is unclear how the extent of consultation with affected persons or the community should have a bearing on a resource consent application. The Act does not require consultation.

Assessment

238. I concur with Transpower that it is appropriate to add two additional matters of discretion relating to positive effects and constraints from technical and operational requirements. These new matters will ensure that the policies are adequately reflected through the matters of discretion. I do not support otherwise the amendments sought, as these would make the matters inconsistent with the Upper Hutt and Porirua District Plans, and therefore not meet the intent of the plan changes. In respect to the comments regarding clauses n and r; it is agreed that in not all cases will these two matters be relevant; nor can they supersede what is provided in Schedule 4 of the RMA. If they are not relevant to a particular application, they will be able to be disregarded. I do note that while consultation is not required under s36A of the Act, any consultation that is undertaken must be reported on in any

application. However, I consider that the matters are appropriate as they serve as a reminder for an applicant in preparing an application and to the Council in assessing an application that they are relevant matters for consideration. I also note that these matters of discretion apply to applications where they fail to meet permitted activity standards, and therefore where it is likely that there may be significant adverse effects and/or persons affected.

Recommendation

239. I recommend that HS6.44 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.44	Matters of discretion 13.3.4	<u>(u) Any positive effects to be derived from the activity.</u> <u>(v) Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environmental effects.</u>

C Plan Change 34 – Network Utilities and the National Grid

i. Definitions

Building

Submission Points

240. WELL seeks in HS9.2 that the definition of building be amended to include the following exemption:

(a) A network system owned or operated by a network utility operator whose purpose is to provide reticulation from a network system to and from individual properties and structures, including all structures and equipment owned or used by a network utility operator, provided that a system including any structure or equipment does not exceed 1.5m in height and has 3m² or less ground coverage.

241. WELL oppose the current definition used for ‘Building’ as it does not suitably reflect the intent of the Building Act 2004 when identifying what does not include a building. In particular section 9 of the Building Act 2004 states that a building does not include a network utility operator system and specifically excludes elements that are excluded from the definition of a building.

242. Powerco supports the proposed definition of building in HS10.19 and requests it be retained.

Assessment

243. I agree with WELL that the current definition does not meet the requirements of section 9 of the Building Act 2004 which states:

In this Act, **building** does not include—

- (a) a NUO² system, or part of a NUO system, that—
 - (i) is external to the building; and
 - (ii) is connected to, or is intended to be connected to, the building to provide for the successful functioning of the NUO system in accordance with the system's intended design and purpose; and
 - (iii) is not a mast pole or a telecommunication aerial that is on, or forms part of, a building; or
- (ab) a pylon, free-standing communication tower, power pole, or telephone pole that is a NUO system or part of a NUO system;

244. The definition of building in PC38 excludes all network utilities as defined in the Upper Hutt District Plan. I agree that the definition proposed in PC34 needs to be amended to exclude network utilities; however I believe that the exclusion proposed by WELL is overly complex. Therefore in the interest of consistency I believe any exclusion should have a consistent wording with the UHCC definition of building.

245. However, this amendment would result in consequential amendment to the wording of 13.3.2.4, which currently reads “with the exception of standard...the following applies to masts and antenna ... or other network utility structure that is defined as a building and...”, as network utilities would be expressly excluded from the definition of building. I recommend that the wording be amended to “...or other network utility structure that is over 1.2m in height and...” as this would be consistent with the height of structures that fall within the definition of buildings.

Recommendation

246. It is recommended that HS9.2 and HS10.19 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS9.2	Definition of Building (PC34)	<p>Building: means any structure or part of a structure, whether temporary or permanent, movable or immovable, but for the purposes of this Plan excludes:</p> <ul style="list-style-type: none"> (a) any fence not exceeding 2 metres in height; (b) any retaining wall not exceeding 1.2 metres in height; (c) satellite dishes with a diameter not exceeding 0.6m; and antennas 2.5m above the maximum height permitted in the activity area or the rules in Chapter 13 – Utilities. (d) decks less than 500mm in height;

² An NUO system is defined in section 7 of the Building Act 2004 as “a system owned or controlled by a network utility operator”.

	Consequential amendment to 13.3.2.4	<p>(e) all structures less than 1.2 metres in height; (f) all signs, as defined in this Plan; <u>(g) all network utilities as defined in this chapter.</u></p> <p><u>With the exception of standard 13.4.4.1 13.3.2.4.1, 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 is over 5m² in area with a height of more than 1.2 metres and are not located in the road reserve or rail corridor:</u></p>
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Sensitive Activity

Submission Point

247. In HS2.19 Powerco requests that the new definition be deleted if not required and also queries how it differs from the existing definition of noise sensitive activity.

Assessment

248. This term is intended to be specific to the activities within the National Grid Yard only. For that reason, I recommend that it be amended to provide that clarity. I note that I have also recommended amendments to this term in response to HS6.13, which I recommend in the table be accepted.

Recommendation

249. It is recommended that HS2.19 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS2.19	Definition of sensitive activity (PC34)	<p><u>as it applies to the National Grid Yard,</u> means the following activities:</p> <p>(a) <u>residential buildings</u></p> <p>(b) <u>the accommodation or care of people, including hospitals</u></p> <p>(c) <u>childcare facilities, kohanga reo, primary, intermediate and secondary schools.</u></p>

ii. Issues, objectives and policies PC34

Issue 13.1.1, Objectives and Policies

Submission Point

250. In HS6.22 Transpower seek that the term “protect” be added to objective and policy b to Issue 13.1.1, to be consistent with the NPSET, and the RPS. Transpower also seeks that the words “and location of supply and demand for these services can be effectively and efficiently connected” be added to the end of the third bullet point to the explanation of policy b.

Assessment

251. I concur with Transpower that “protect” should be added the objective to be consistent with the relevant objectives in the RPS and the NPSET. I note that Objective 10 and Policies 7 and 8 of the RPS state:

“Objective 10

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

Policy 7

Recognising the benefits from ... regionally significant infrastructure

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.*

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.”

252. I note that Issue 13.1.2 and its objective and policies specifically deal with the “protection” element sought through the RPS and NPSET provisions. For this reason, while I support adding “protect” to the objective, I do not consider it necessary to add to the policy, and would result in unnecessary repetition. I consider that it is not necessary to add the words sought to the end of the third bullet point, as the existing wording already encapsulates what Transpower is seeking.

Recommendation

253. It is recommended that HS6.22 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.22	Amendment 44 Objective 13.1.1 and	<u>Objective</u> <u>To recognise and protect the benefits of regionally significant network utilities.</u>

Issue 13.1.2, Objectives and Policies

Submission Point

254. In HS6.23 Transpower request that the term unreasonably be removed from the objective to Issue 13.1.2. The reason given for this request is that Transpower considers that the use of the term unreasonably is not consistent with Policy 10 of the NPSET as the policy does not use that word.

255. In HS6.23 Transpower request that earthworks be added to policy (b) of Issue 13.1.2 of PC34 as follows:

(b) To ensure the safe and efficient maintenance, operation, upgrade and development of the National Grid by avoiding the incompatible earthworks, establishment of or changes to sensitive activities and incompatible buildings and structures within a defined National Grid Yard.

256. Transpower also requests additions to explanation for policy (a) as shown below:

Policy (a) 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, including earthworks, 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.....

Policy (b) recognises the importance of the National Grid and seeks to protect the continued operation, ~~maintenance and upgrade and upgrade and functioning~~ of that network. The policy provides for the establishment of a National Grid Yard within which sensitive activities and incompatible earthworks, buildings and structures will be avoided. The ~~management avoidance of sensitive activities and incompatible earthworks, of buildings and structures within a National Grid Yard is aimed at ensuring that these do not hinder required access to the network for its on-going operation and maintenance;~~

1. maintaining access to the network for its on-going operation, maintenance, upgrading and development,
2. mitigating safety risks for occupants and users of properties;
3. protecting the structural integrity of transmission lines; and
4. maintaining the opportunity to further optimise existing National Grid lines in the future.

~~which~~ This is a matter of national significance under the National Policy Statement ~~for~~ on Electricity Transmission.

257. Transpower consider that the provisions as notified fail to recognise the adverse effects earthworks can have on the National Grid and that the explanation regarding Policy (b) fails to recognise that avoiding certain activities in the National Grid Yard is not about only protecting access but also safety and protecting the structural integrity of transmission lines.

Assessment

258. I do not concur with Transpower that the term “unreasonably” should be removed. If the wording was changed Transpower would be able to make a case that many developments or activities compromise their functions and operations. The word unreasonably shows that some compromises do have to be made at some stage by Transpower so that the land the National Grid is on can be used.

259. I consider it appropriate to delete the words “where practicable” from the explanation to policy (a).

260. I do not consider it necessary to add the term “earthworks” as sought by Transpower. Firstly, the Council’s legal advice is that adding new provisions in respect of earthworks as sought by Transpower is out of scope of PC34. Secondly, earthworks are already encapsulated by use, development and subdivision, and therefore the addition is unnecessary.

261. I also concur with Transpower on the wording changes sought to the end of the explanation of policy (b), with the exception of the reference to earthworks.

Recommendation

262. It is recommended that HS6.23 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.23	Amendment 45 Explanation to 13.1.2	<p><u>Policy (a) 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.....</u></p> <p><u>Policy (b) recognises the importance of the National Grid and seeks to protect the continued operation,</u></p>

		<p><u>maintenance and upgrade and upgrade and functioning of that network. The policy provides for the establishment of a National Grid Yard within which sensitive activities and incompatible buildings and structures will be avoided. The management of buildings and structures within a National Grid Yard is aimed at ensuring that these do not hinder required access to the network for its on-going operation and maintenance;</u></p> <ol style="list-style-type: none"> <u>1. maintaining access to the network for its on-going operation, maintenance, upgrading and development.</u> <u>2. mitigating safety risks for occupants and users of properties;</u> <u>3. protecting the structural integrity of transmission lines; and</u> <u>4. maintaining the opportunity to further optimise existing National Grid lines in the future.</u> <p><u>which This is a matter of national significance under the National Policy Statement for on Electricity Transmission.</u></p>
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Issue 13.1.3, Objectives and Policies

Submission Point

263. In HS9.13, WELL seeks to delete policy (a) to Issue 13.1.3 and replace it with a new policy. WELL considers that the policy is not explicit enough in recognising that not all environmental effects can be avoided, remedied or mitigated, and that some adverse effects may need to be accepted.

Assessment

264. I do not support the deletion to policy (a) to Issue 13.1.3 sought by WELL. The focus of this issue and policy is on recognising and providing for network utilities. The environmental effects of network utilities are addressed under Issue 13.1.4 and its supporting objective and policies. The amendment sought would be duplicating the latter.

Recommendation

265. It is recommended that HS9.13 be rejected.

Issue 13.1.4, Objectives and Policies

266. In HS6.25, Transpower seek that a new policy be introduced, to recognise the technical and operational constraints of the National Grid, and on the basis that the provisions fail to adequately recognise any adverse effects that may have been avoided, remedied or mitigated by the route, site or method selection as required by Policy 4 of the NPSET. Powerco seek that this be accepted in part through HFS2.7.

267. In HS9.14, WELL seek to add a new policy that require that any residual adverse effects that cannot be otherwise avoided, remedied or mitigated be weighed up against the benefits. In a similar vein, in HS7.9 (supported by HFS2.10, Powerco) and HS8.12 (supported by HFS1.4 Transpower), Spark and Chorus seek that policy 13.1.4(a) be amended, so that the words “as far as practicable” be added to the end of the policy, and that the explanation be amended to reflect that there may be residual adverse effects. Through HS8.12, Chorus also seek further amendments to the explanation, to specifically reflect where there are specific exemptions / exceptions to the requirement to underground network utilities. They seek to reflect their other submission point that seeks to provide for additional new lines on existing overhead lines, as part of minor upgrading.
268. In HS10.9, Powerco seek to amend policy (b), so that that there is consistency between the wording of the policy and explanation – that is, that the policy is focussed on health and safety matters. This amendment is supported by Transpower in HFS1.6.
269. In HS6.26, Transpower proposes that policy (c) be amended, so that the word “practicable” is deleted, and “operationally and technically feasible” is added. This amendment is supported by Powerco in FS2.8.
270. Transpower seeks in HS6.27 and US4.20 that Policy 13.1.4 (d) be amended to exclude transmission lines. Transpower consider that Policy 13.1.4(d) does not recognise that a key constraint associated with the undergrounding of the National Grid is the financial cost which makes it impractical for the country. Transpower note in their submission that as a monopoly, they are heavily regulated and any significant expenditure must be specially approved by the Commerce Commission. Transpower consider that Policy 13.1.4(d) should either recognise this financial constraint or specifically exempt the National Grid.
271. In HS6.28, Transpower seeks amendments to the explanation to these provisions, to ensure that the references to public health and safety are accurate and do not overstate the risks. Powerco through HS10.14 also seek amendments to the explanation, to ensure that the wording does not cause unnecessary concern regarding health and safety risks.

Assessment

272. In respect of HS6.25, policy 13.1.3(a)(ii) already specifically recognises and provides for the technical and operational requirements and constraints of network utilities. Adding the policy sought by Transpower would be unnecessary duplication within the Plan, given that all the provisions should be read together.
273. I appreciate the concerns raised by the three submitters and further submitter, that there may be situations where there are residual effects arising from

network utilities. Section 5(2)(c) of the RMA sets out that any adverse effects on the environment are to be avoided, remedied or mitigated. 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. Policy 13.1.3(a)(ii) already establishes that there are technical and operational constraints associated with network utilities. It is well understood that all policies need to be read in conjunction with each other. 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.

274. However, I do consider that the amendments sought by Chorus, Spark and WELL supported by Powerco, to the explanation would assist decision makers. I note that the objective seeks to “manage” effects, rather than avoid, remedy or mitigate. I consider that manage inherently provides for the potential of effects that cannot be avoided, remedied or mitigated. I consider that the proposed following amendments to the explanation addresses the various submission points:

However, in some cases, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with a network utility, meaning there will may be some level of residual adverse effect on the surrounding environment that requires mitigation.

Policy (a) recognises the importance of managing the design, location, operation, upgrading, construction, operation and maintenance of network utilities and requires that any potential adverse effects arising from network utilities are avoided, remedied or mitigated. It is acknowledged that it is not always possible to do so, and that there may be some level of residual effect, due to the technical and operational requirements of network utilities, as reflected through Policy 13.1.3(a)(ii).

275. I note that in response to HS6.44 by Transpower, I have recommended an amendment to the matters of discretion in 13.3.4, to introduce the following new matter of discretion: Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environmental effects. This new matter will ensure that consideration is given to this issue raised by the submitters.
276. I consider that the amendments sought by the Powerco and Transpower through HS6.28, HS10.9 and HS10.14 are helpful to refine the intent of policy

(b) and the supporting part of the explanation, which is on managing health and safety effects. I have proposed amendments that assist to refocus the policy and explanation. The policy refers to other national standards than national environmental standards, such as New Zealand Standards. I do not accept the amendment sought by Powerco in respect to how it seeks to reference the NZECP as a guideline. The NZECP is a regulation that requires compliance, rather than a guideline.

277. In respect to the amendment to policy (c), I support the addition of “technically feasible” as sought by Transpower, as it recognises that technical feasibility is important. I do not consider it necessary to add the word “operationally” as sought by Transpower, and note that Transpower have not sought that this wording be included to the UHCC Plan. I consider that the term practicable should also be retained.
278. In respect of HS6.27, I do not support the amendment sought by Transpower. In particular, the proposed rule framework does not require transmission lines / the National Grid to be placed underground, which recognises the nature and potential effects arising from transmission lines. Further, the first bullet point recognises that there are particular constraints which may make underground placement impractical or unreasonable. Economic costs would come under operational constraints.
279. I support in part the amendments sought by Chorus in HS8.12 to the explanation, which would assist to clarify that there are exemptions / exceptions to the requirement to underground new network utilities. That part I do not support is the amendment that would provide for new lines to existing overhead lines as falling within the definition of minor upgrading, for the reasons discussed earlier in this report.

Recommendation

280. It is recommended that HS6.25 and HFS2.7 be rejected.
281. It is recommended that HS9.14 be accepted in part, through a consequential amendment.
282. It is recommended that HS7.9, HS8.12, HFS2.10 and HFS1.4 be accepted in part.
283. It is recommended that HS6.28, HS10.9 and HS10.14 be accepted in part.
284. It is recommended that HS6.26 be accepted in part.
285. It is recommended that HS6.27 be rejected.

Recommended Amendments

Submitter	Provision	Recommended Amendment
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number	Reference	
HS10.9	Policy 13.1.4(b)	<u>To manage effects on health and safety by ensuring network utilities, in particular those utilities 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 and guidelines.</u>
HS6.26	Policy 13.1.4(c)	<u>To enable the co-location or multiple use of network utilities where this is efficient, technically feasible and practicable and assists with avoiding, remedying or mitigating adverse effects on the environment.</u>
HS6.28, HS7.9, HS8.12, HS9.14, HS10.14,H FS2.10	Explanation	<p><u>... Some network utilities are relatively large, visually prominent and capable of generating significant adverse effects on the surrounding environment. Such network utilities may also have actual or perceived adverse effects on public health and safety. ... However, in some cases, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with a network utility due to their technical and operational constraints, meaning there will may be some level of residual adverse effect on the surrounding environment that requires mitigation. 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.</u></p> <p><u>Policy (a) recognises the importance of managing the design, location, operation, upgrading, construction, operation and maintenance of network utilities and requires that any potential adverse effects arising from network utilities are avoided, remedied or mitigated. It is acknowledged that it is not always possible to do so, and that there may be some level of residual effect, due to the technical and operational requirements of network utilities, as reflected through Policy 13.1.3(a)(ii). This ...</u></p> <p><u>Policy (b) ... 2008. Electricity transmission/distribution can generate electromagnetic fields (EMF) which may be a risk to health and also generates the risk of electrocution. Electricity transmission/distribution can present a risk to public health and safety, primarily through the risk of electrocution from direct contact with conductors or as a result of a flashover. The National Policy Statement on Electricity Transmission requires that the exposures be limited to the guidelines of the International Commission on Non-Ionising Radiation Protection (ICNIRP) to prevent the potential for public health effects. Other ... occurs. There are also a number of national and international standards and guidelines addressing health and safety</u></p>

		<p><u>matters that are external to the District Plan but that must be complied with, including the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, and the New Zealand Electrical Code of Practice. and the The International Commission on Non-Ionising Radiation Protection (ICNIRP) Guidelines provides best practice guidance.</u></p> <p>...</p> <p><u>Policy (d) requires the underground placement of new network utilities unless particular circumstances apply. The adverse visual effects of certain network utilities can often be managed by putting the services underground. With some exceptions, ¶this is the required approach for those network utilities, such as those with cables that can be located underground. For those network utility structures that need to be located aboveground, particular attention should be given to their design, location and minimising of any adverse visual effects as outlined in Policy (a). This can be achieved in a number of ways including, where practical, through screening, careful placement, size and appearance and applying different activity status. In particular, the underground placement of electricity and telecommunications lines is required in most circumstances by only providing for aboveground lines in particular defined situations, such as for customer connections, and through different activity status.</u></p>
HS9.14, HS7.9, HS8.12, HFS2.10, HFS1.4	Consequential amendment to matters of discretion 13.3.4	<p><u>(v) Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environmental effects.</u></p>

iii. Rules and Standards PC34

Cabinets and other network utility structures

Submission Points

286. Transpower requests in HS6.33, HS6.34, HS6.35 and HS6.36 that Rule 13.3.1.9, 13.3.1.10, 13.3.1.11 and 13.3.1.12 be amended so that it is clear whether these apply to new cabinets and structures as this is not clearly stated (as compared to the rules relating to lines).
287. Transpower consider that these rules and their associated definitions should be re-drafted to ensure that network utility operators can easily determine the activity status of their activities.

288. In HS7.11 and HS8.14, Spark and Chorus seek that standards be deleted from Rule 13.3.1.11. HS7.11 is supported by Transpower in FS1.11.

Assessment

289. I do not consider that the changes requested in HS6.33, HS6.34, HS6.35 and HS6.36 are necessary as new rules in plans cannot override the existing use rights of already established structures, such as cabinets, so that an existing cabinet requires a resource consent for its very being. Any existing structure will be subject to the new standards and rules that are introduced. These rules are intended to apply to new structures. This is the same approach taken throughout the District Plan; where it is the activity that is managed through the Plan, without the need to state for each activity that the rule only applies to “new” ones. For example, in the Special Residential Activity Area, Health care services are listed as a discretionary activity, without the need to differentiate that it is “new” ones. This is common accepted drafting practice. There is differentiation with the lines provisions, given that these rules also apply to additional lines on existing structures and, as such, there needs to be differentiation.

290. I concur with Spark and Chorus that it is appropriate to delete the standards listed, with the exception of the requirement to comply with the health and safety standard.

Recommendation

291. I recommend that HS6.33, HS6.34, HS6.35 and HS6.36 be rejected.

292. I recommend that HS7.11, FS1.11 and HS8.14 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS7.11, FS1.11 and HS8.14	Rule 13.3.1.11 PC34	<u>Health and Safety: 13.3.2.1</u> Height: 13.3.2.2.4, 13.3.2.2.5 Size and Diameter: 13.3.2.3.6, 13.3.2.3.7 Separation/Setback: 13.3.2.4.1, 13.3.2.4.3 Earthworks: 13.3.2.5 Vegetation: 13.3.2.6 Noise: 13.3.2.7

Upgrading of existing network utilities that do not meet permitted activity standards

13.3.1.6

Submission Points

293. In HS6.31, Transpower seek that the rule be amended as it is unclear which rule applies if the upgrade doesn't meet the permitted activity standards. In HS9.18, WELL seek that it be retained as notified, subject to its request to amend Minor Upgrading be accepted.

Assessment

294. I am confused by what Transpower is seeking in respect to this Rule. The Rule states that upgrading that does not meet the permitted activity standards is a restricted discretionary activity. Where the health and safety standard is not met, it becomes a non-complying activity under Rule 13.3.1.16.
295. I have recommended that WELL's submission point HS9.8 be accepted in part. I am unclear as to whether the amendments proposed to Minor Upgrading are sufficiently addressed to WELL's satisfaction.

Recommendation

296. I recommend that HS6.31 be rejected.
297. I recommend that HS9.18 be accepted in part.

Earthworks standards

Submission Points

298. In HS10.18 and HS10.20 Powerco request that the requirement for the Upgrading of Existing Network Utilities to comply with Standard 13.3.2.5.2 for Slope, Height, Depth and Area of Earthworks be removed. Powerco request this change as the upgrading work that Powerco undertakes involves trenching which is an essential and temporary activity.
299. Powerco submits that as the rule is currently worded, consent would be required for earthworks to enable upgrading work on existing gas distribution lines located at a depth of more than 1.5m. While the average depth of gas distribution lines is typically less than 1.5m, it may not remain constant due to topography, road or stream placement or third party actions (i.e. additional filling). Powerco does not want to be in a position where upgrading is required on a section of line to find that a section is deeper than 1.5m and a consent is required before the work can be carried out.
300. Powerco also consider it impractical for the Standard to set an area threshold for earthworks based on the zone in which the activity is located as linear infrastructure crosses multiple zone boundaries as well as the road reserve.
301. In HS7.21 and HS8.26 Spark and Chorus respectively request that the standard 13.3.2.5.2 be amended as follows:
- 13.3.2.5.2 Slope, Height, Depth and Area of Earthworks**
The following shall apply to all network utilities except to:
- (a) earthworks within 2.0m of the exterior walls of any network utility building or structure that is defined as a building measured in plain view;
 - (b) trenching in road reserve; and to
 - (c) piling undertaken for associated with the installation of a network utility masts; where that piling is contained within 2.0m of the edge of the mast.
 - (i) Slope – No earthworks shall be carried out on a slope greater than 45degrees.

- (ii) Height, Depth – Earthworks shall not exceed 1.5m in height or depth.
- (iii) Recession Plane – Any earthworks that involve the raising of the height of land above existing ground level shall not exceed a height recession plane measured at an angle of 45degrees from any neighbouring boundary.
- (iv) Area: Riparian Areas – 25m² All Recreation and Residential Activity Areas – 100m² All Rural Activity Areas – 1000m² All Other Activity Areas – 500m²

302. Spark and Chorus submit that trenching in road reserve should be provided for as a permitted activity as it commonly occurs throughout the country with little environmental effect. Accordingly it is considered that this activity should be excluded from compliance with the permitted activity standards. Further, the restriction on piling to within 2m of the edge of the mast is unnecessary in terms of the nature and the effects of this work.

303. In HS9.27 WELL make a similar point to Spark and Chorus above. They request the following changes to the standard:

13.3.2.5.2 Slope, Height, Depth and Area of Earthworks

The following shall apply to all network utility activities, except to earthworks associated with cable trenching, within 2.0m of the exterior walls of any network utility building or structure that is defined as a building measured in plain view and to piling undertaken for the installation of a network utility mast or support structure, where that piling is contained within 2.0m of the edge of the mast:..."

304. WELL notes that they support the earthworks standard in so far as they do not apply to 2 metres of the external walls of any network utility building or structure. However, WELL consider that clarification to be more explicit that the earthworks standards do not apply to Pole Structures or to cable trenching is necessary. WELL consider it to be unclear that the slope, height, depth, and area of earthworks do not related to support structures that are not defined as a building. As electricity support structure foundations will often be required to go deeper than 1.5m for safety purposes, a clear exclusion from this standard is necessary.

305. WELL consider that as Council has determined that in all activity areas (apart from Rural) new lines are to be located underground, the associated earthwork provision should not be applicable to cable trenching.

306. In HS6.42, Transpower seek that the standard be amended to append "and to earthworks within 2 metres of the outer edge of a network utility support structure without exterior walls", for the reason that the standard may unnecessarily capture earthworks associated with the foundation of transmission support structures, given that these do not have exterior walls.

307. In HS3.22, Kiwirail seek that the area requirements in (iv) be amended so that a maximum of 1,000m² is provided within any rail corridor. This is because of the linear nature of the rail corridor and that works would sometimes extend

across multiple zones, leading to uncertainty of application. In HS1.11, NZTA also seek that a new performance standard be introduced to (iv) which recognises the long, lineal and multi-zoned nature of the road network, for the same reasons as stated by KiwiRail.

Assessment

308. When considering Powerco's request in HS10.18 I considered other recent infrastructure plan changes in the region and their earthworks provisions. Porirua's Plan Change 16 requires compliance with height, slope and depth standards for earthworks for utilities. The height or depth of earthworks in PC16 is 1.5m so PC34 and PC38 are consistent with this.
309. I also considered the rules in the Proposed Horowhenua District Plan which is currently under appeal. In this plan "*Earthworks associated with installing and maintaining underground reticulated services are permitted activities*". As the undergrounding of services is something that both Hutt and Upper Hutt City Council's would like to encourage it could seem counterproductive to require consent for the earthworks component of such activities in the circumstances that Powerco noted regarding topography and additional fill above services. I also find WELL's argument that there is often competition for service space within the transportation corridor and minimum clearances from other services must be maintained compelling.
310. Again with regard to piling I note Chorus and Sparks submissions in regarding restricting piling to within 2m of the mast. They note the restriction in depth is unnecessary due to the nature and effect of this work. I agree that on balance piling does not have significant adverse effects. WELL also note that piling for support structures may be required to be deeper than 1.5m for safety reasons. It again seems counterproductive to require a consent for the earthworks component of a network utility if deeper piles are required for safety or if the piles extend further than 2m from the mast when there is little adverse environmental effect.
311. It is also important to note that even if Standard 13.3.2.5.2 is amended standard 13.3.2.5.1 for sediment and erosion control still applies to all network utilities. This standard should also mean that adverse effects from earthworks such as piling and trenching should be minimal.
312. In general I also consider that it is not in the best interests of any network utility provider to carry out greater earthworks than are necessary. Earthworks can be costly and time consuming.
313. Considering all of the points above I therefore recommend that the requirement for piling within 2m of a mast should be removed and any piling associated with masts should be permitted. I also consider that trenching should be exempt from these requirements also in the spirit of encouraging the reticulation of services underground wherever possible.

314. In respect of KiwiRail and NZTA’s requests, I consider it appropriate to provide the 1,000m² area requested. In saying this, I note that both the rail corridor and state highway are designated, meaning that they are not subject to the earthworks provisions regardless. However, it is unclear as to whether NZTA intend this to apply to the entire roading network, or to the State Highway. NZTA is requested to clarify this at the hearing.

315. In respect of Transpower’s request, I concur that earthworks within 2 metres of a support structure without walls should also be exempt, while noting that this would not impact on Chorus and Spark’s request given that is specific to piling. Transpower may wish to address this at the hearing.

Recommendation

316. I recommend that HS6.42, HS7.21, HS8.26, HS9.27, HS10.18 and HS10.20 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
<p>HS1.11, HS3.22, HS6.42, HS7.21, HS8.26, HS9.27, HS10.18 and HS10.20</p> <p>Consequential amendment from:</p> <ul style="list-style-type: none"> • changes to the definition of building and • HS3.21 	<p>13.3.2.5.2 Slope, Height, Depth and Area of Earthworks</p>	<p><u>The following shall apply to all network utilities except to earthworks within 2.0m of the exterior walls of any network utility building or structure or the outer edge of a network utility structure without walls that is defined as a building</u> measured in plain view; <u>trenching in the road reserve or rail corridor; and to piling undertaken for associated with the installation of a network utility masts where that piling is contained within 2.0m of the edge of the mast.</u></p> <p><u>(i) Slope – No earthworks shall be carried out on a slope greater than 45degrees.</u></p> <p><u>(ii) Height, Depth – Earthworks shall not exceed 1.5m in height or depth.</u></p> <p><u>(iii) Recession Plane – Any earthworks that involve the raising of the height of land above existing ground level shall not exceed a height recession plane measured at an angle of 45degrees from any neighbouring boundary.</u></p> <p><u>(iv) Area: Riparian Areas – 25m²</u> <u>All Recreation and Residential Activity Areas – 100m²</u> <u>All Rural Activity Areas – 1000m²</u> <u>All Other Activity Areas – 500m²</u> <u>Rail corridor and state highway – 1,000m²</u></p>

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Native Vegetation Cover

Submission Points

317. In HS6.43, Transpower requests that 13.3.2.6 be amended to include an exemption for tree removal and trimming undertaken in accordance with the Electricity (Hazard and Trees) Regulations 2003. Transpower considers that this standard would catch the management of vegetation required under these Regulations, and would mean that basic maintenance work would require a resource consent. They consider this would be inconsistent with the NPSET and RPS.

318. In a similar vein, in HS9.28, WELL seeks that the standard be amended to read “Within the Rural Residential and General Rural Activity Areas, and apart from damage caused by a Network Utility Operators maintenance activities, there shall be no destruction of any native vegetation where:...” for the reason that WELL are required to maintain growth limits on vegetation within set distances from electricity conductors under the Schedule: Growth Limit Zones of the Electricity (Hazards from Trees) Regulations 2009. In order to meet this obligation under the regulation, damage to native vegetation provisions should be exempt in PC34 for the electricity network utility operator.

Assessment

319. I concur with Transpower and WELL that maintenance activities which are required under the Regulations should be exempt from this rule.

Recommendation

320. I recommend that HS6.43 be accepted and HS9.28 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
HS6.43 and HS9.28	13.3.2.6 Native Vegetation Clearance	<u>Tree removal and trimming undertaken solely for maintenance activities under the Electricity (Hazard and Trees) Regulations 2003 are exempt from this standard.</u>

D Plan Change 38 – Network Utilities

i. Definitions

Network Utility Structure PC38

Submission Point

321. In US4.39, Transpower seeks that the definition be amended as follows:
Means any structure associated with a network utility and includes, but it not limited to, electricity line support poles and towers, pipes, valves, meters, regulator stations, support poles and towers, transformers (other than pole

mounted transformers), substations (other than overhead substations), compressor stations, pumping stations, navigational aids, meteorological installations, containers, cabinets and similar structures. It does not include lines, antennas and masts.

for the reason that it does not specifically include transmission line poles or towers/supports.

Assessment

322. I concur that there is room for improvement to the definition so that it does encompass support structures for lines. However, I note that the definition already refers to support poles and towers. I consider that adding “for lines” to the end of the existing wording “support poles and towers” will address Transpower’s request.

Recommendation

323. It is recommended that US4.39 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US4.39	Definition of network utility structure (PC38)	<u>...but is not limited to, pipes, valves, meters, regulator stations, support poles and towers for lines,...</u>

Noise Sensitive Activity PC38

Submission Point

324. In US2.19 Kiwirail oppose that there is not definition included in PC38 of Noise sensitive activity and request that the following definition be added:

Noise sensitive activity means any:

- (a) residential activity;
- (b) visitor accommodation, boarding house or other premises where residential accommodation for five or more travellers is offered at a daily tariff or other specified time; or
- (c) childcare facility.

325. Kiwirail consider that this definition is important when assessing the impacts of development on network utilities, particularly regionally significant network utilities, as provided for through the subdivision provisions. Kiwirail consider that the definition will assist in identifying where mitigation may or may not be required. Kiwirail note that the definition requested is consistent with that already existing in the Hutt City District Plan.

Assessment

326. The term noise sensitive activity is not used within PC38; therefore I can see no reason to include such a definition within the plan change.

Recommendation

327. It is recommended that US2.19 be rejected.

ii. Issues, Objectives, Policies, Methods and Anticipated Environmental Results

Background

Submission Points

328. In US8.1, Forest and Bird seek that environmental wellbeing be included in the background to 16.1 as an intrinsic part of people and communities affected and impacted by network utilities and infrastructure. Transpower through FS2.1 seek that this be rejected, as the adverse effects are already addressed through the plan change.

Assessment

329. I recommend that US8.1 be accepted in part, insofar that I recommend that the word “environmental” be added to the last sentence of the seventh paragraph to the Background, so that it reads However, network utilities can also have adverse environmental effects resulting from their construction, operation or associated maintenance activities. This amendment makes it explicit that the Council is concerned with environmental effects, which is already reflected through the issues, objectives and policies.

Recommendation

330. It is recommended that US8.1 and FS2.1 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US8.1	Background 16.1	<u>However, network utilities can also have adverse environmental effects resulting from their construction, operation or associated maintenance activities.</u>

Issue 16.2.2

Submission Points

331. In US8.2 Forest and Bird oppose the deletion of sections under Issue 16.2.2 that reference adverse effects on natural and physical resources and on amenity values. Forest and Bird consider there to be no reason to delete these specific references as they remind people of what could possibly be affected.

332. In UFS2.4 Transpower oppose Forest and Bird’s request. Transpower consider that adverse effects are already addressed under Issue 16.2.1, and it is unnecessary to repeat them in Issue 16.2.2. Transpower is opposed to the submission as these adverse effects are no longer intended to be the focus of resource management issue 16.2.2. The issue as proposed addresses adverse

effects on network utilities, rather than the effect arising as a result of network utilities. Transpower supports the focus of this particular resource management issue and explanation.

333. WELL note in UFS3.44 that Issue 16.2.2 relates to effects on network utilities / reverse sensitivities. The effects of network utilities are adequately addressed throughout PC38 (i.e. Objective 16.3.4) and this issue does not require the retention of the issue proposed to be deleted.

334. In US4.4, Transpower seek that the words “including earthworks” be added to the explanation to Issue 16.2.2 so that it reads “Inappropriate subdivision, use and development including earthworks in the vicinity of regionally significant network utilities...”.

Assessment

335. I appreciate Forest and Bird’s concerns in US8.2. However, I recommend the point be rejected, as the management of effects on natural and physical resources is addressed in the amendments proposed to Issue 16.2.1, and retaining Issue 16.2.2 would result in unnecessary duplication.

336. I consider the amendment sought by Transpower in US4.4 is unnecessary, as earthworks are already encapsulated by use, development and subdivision.

Recommendation

337. It is recommended that US8.2 and US4.4 be rejected and FS2.4 and UFS3.44 be accepted.

Objective 16.3.1

338. In US4.6 Transpower seek that the word protect be added and the word unreasonably be removed in Objective 16.3.1 and other amendments be made to the explanation of the objective as follows:

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

The objective and supporting policies are focused on recognising the benefits that these regionally significant network utilities have locally, regionally and nationally and ensuring that these network utilities benefits are protected from incompatible inappropriate subdivision, use and development.

Assessment

339. I consider the addition of “and protect” is appropriate so that it reflects that the benefits of regionally significant network utilities are recognised and protected, as this is consistent with the RPS and NPSET. Rather than replacing benefits with “network utilities”, I recommend that these benefits be replaced

with “they”, so it is clear that it is regionally significant network utilities which are under consideration. I do not support the replacement of incompatible with inappropriate, as the word incompatible is that used in the RPS, and applies therefore to all regionally significant network utilities, and not just the National Grid.

Recommendation

340. It is recommended that US4.6 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US4.6	16.3.1	<p><u>To recognise and protect the benefits of regionally significant network utilities and ensure their functions and operations are not unreasonably compromised by other activities.</u></p> <p><u>This objective seeks to identify the importance of regionally significant network utilities within the City and to give effect to the Regional Policy Statement. The objective and supporting policies are focused on recognising the benefits that these regionally significant network utilities have locally, regionally and nationally and ensuring that these benefits they are protected from incompatible subdivision, use and development.</u></p>

Objective 16.3.4

Submission Points

341. In US3.6, US4.9, US5.6 and US6.13, Spark, Transpower, Chorus and WELL all seek amendments to Objective 16.3.4 so that the objective and supporting explanation recognises that not all adverse effects may be able to be avoided, remedied or mitigated, and that adverse effects will be managed as far as practicable. The submitters also seek that the words “that requires mitigation” be deleted from the end of the explanation. Further submissions by Powerco, WELL and Transpower support the amendments sought.

342. In US8.3, Forest and Bird seek that Objective 16.3.4 be amended to read: To effectively manage any adverse effects on the environment resulting from the design, location, operation, upgrading, construction and maintenance of network utilities. Transpower through UFS2.7 seeks that this submission point be rejected in part, and considers the term “effectively” to be unnecessary and would raise consistency issues with other provisions in the Plan that do not have this same term before “manage”. Transpower accepts construction should be added.

Assessment

343. I consider that the amendments sought by Chorus, Spark, WELL and Transpower, supported by Powerco, to 16.3.4 would generally assist to provide better context to the objective and explanation. I do not think it is necessary to add “to the extent practicable” or a derivative thereof to the end of the objective, given that the objective seeks to “manage” effects, rather than avoid, remedy or mitigate. I consider that manage inherently provides for the potential of effects that cannot be avoided, remedied or mitigated. I consider that the proposed following amendment to the explanation addresses the various submission points:

However, in some cases, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with a network utility, meaning there will may be some level of residual adverse effect on the surrounding environment that requires mitigation. In such circumstances, there is a need to consider both the benefits the network utility will provide and the significance of the adverse effects on the surrounding environment.

344. This amendment will make it consistent with PC34.

345. I note that in response to US4.34 by Transpower, I have recommended an amendment to the matters of discretion in 30.12, to introduce the following new matter of discretion: Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environmental effects. This new matter will ensure that consideration is given to this issue raised by the submitters. I note that Rules 30.11, 30.14 and 30.15 already have similar provisions.

346. In respect of US8.3, I concur with Transpower that the addition of the term “effectively” is unnecessary and would add uncertainty to the objective and the rest of the Plan. I consider that the addition of the word “construction” is appropriate.

Recommendation

347. It is recommended that US3.6, US4.9, US5.6 and US6.13 and UFS1.5, UFS2.6, UFS3.9, UFS3.14 and UFS3.30 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US8.3	Objective 16.3.4	<u>To manage any adverse effects on the environment resulting from the design, location, construction, operation, upgrading and maintenance of network utilities.</u>
US3.6, US4.9, US5.6 and US6.13 and	Objective 16.3.4	<u>However, in some cases, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with a network utility, meaning there will may be some level of residual adverse effect on the surrounding environment that requires mitigation. In such</u>

UFS1.5, UFS2.6, UFS3.9, UFS3.14 and UFS3.30		<u>circumstances, there is a need to consider both the benefits the network utility will provide and the significance of the adverse effects on the surrounding environment</u>
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New Policy

Submission Points

348. In US8.4, Forest and Bird seek that a new policy be introduced to recognise, protect and manage the effects of network utilities on ecological corridors. Powerco in FS1.6 accept this amendment. Transpower UFS2.8 and WELL UFS3.46 seek that these be rejected. Transpower considers that the policy is unnecessary and already addressed through 16.4.12. WELL notes that ecological corridors are not defined in the district plan, and effects on ecology are already addressed through the plan change.

Assessment

349. In respect of US8.4, I concur with Transpower and WELL that the effects of network utilities, which include ecological effects, are already addressed through other provisions of PC38. I note that the Plan does reference ecological corridors through Policy 12.4.2, which seeks to preserve particular locations to maintain their function as ecological corridors. Of these corridors, only the ones in the Southern Hills are formally identified through the Southern Hills Overlay. PC38 seeks additional controls on network utilities located within the Southern Hills Overlay. Given that all policies in a Plan need to be read together, and that policy 16.4.2 addresses effects on the environment, I consider that the amendment sought is unnecessary.

Recommendation

350. It is recommended that US8.4 and UFS1.6 be rejected and UFS2.8 and UFS3.46 be accepted.

Policy 16.4.2

Submission Points

351. In US4.11, Transpower seeks amendments to Policy 16.4.2 and its explanation, consistent with the amendments sought to Issue 13.1.1 and its provisions of the HCC Plan. That is, that protection of benefits is addressed, and that the third bullet point to the explanation be amended to address security of supply of electricity. Through UFS3.15, WELL seek that the amendment to the third bullet point is rejected, as it is distribution rather than transmission that provides peoples' access to electricity. In US6.14, WELL further seeks amendment to the wording of the third bullet point, so that it refers to people being provided with electricity, rather than having access to. This is supported by Transpower through UFS2.10.

Assessment

352. In respect of US4.11 and UFS3.15 which seek to include “and protect” in respect of the benefits of regionally significant network utilities, while I support the addition of the words to objective 16.3.1 to be consistent with Objective 10 of the RPS, I do not consider it necessary to repeat the wording here. I note that the NPSET does not include the specific wording sought by Transpower. Policy 16.4.2 is focused on the recognition of the benefits of regionally significant network utilities; while policy 16.4.3 focuses on their protection. To include protection in policy 16.4.2 would be unnecessary duplication. This approach also reflects policies 7 and 8 of the RPS. For the same reason as I expressed regarding the amendment sought to PC34, I do not think the wording sought by Transpower and WELL to bullet point 3 is necessary. I consider the issues that both Transpower and WELL raise are already encapsulated by the existing wording. Further, requiring that people are provided with electricity goes further than ensuring that they have access to it, and would put an onus on requiring people to be connected to electricity.

Recommendation

353. It is recommended that US4.11 and UFS3.15 and US6.14 and UFS2.10 be rejected.

Policy 16.4.3

Submission Point

354. In US4.12, Transpower seek that Policy 16.4.3 be amended to read: Avoid, or as appropriate, remedy or mitigate, ~~the potential for~~ any adverse effects including reverse sensitivity effects on regionally significant network utilities from ~~incompatible~~ inappropriate subdivision, use and development occurring under, over, or adjacent to regionally significant network utilities.

Assessment

355. In respect to US4.12, I do not support the removal of the words “the potential for”, as this wording signals taking a proactive approach to managing effects on regionally significant network utilities. I also do not support replacing incompatible with inappropriate. Incompatible is the term used in Objective 10 of the RPS, which this policy gives effect to.

Recommendation

356. It is recommended that US4.12 be rejected.

Policy 16.4.8

Submission Points

357. In US6.17, supported by Transpower through UFS2.11, WELL seek to amend Policy 16.4.8, so that another bullet point “the possibility of residual effects that cannot be fully avoided, remedied or mitigated” be added.

Assessment

358. I do not support the addition sought by WELL to this policy. This policy is focused on recognising the benefits of network utilities. The management of

effects is addressed through 16.4.12. Adding the bullet point would result in unnecessary duplication. There is separate discussion on 16.4.12 following.

Recommendation

359. It is recommended that US6.17 and UFS2.11 be rejected.

Policy 16.4.12

Submission Points

360. In US4.17, US5.6 and US6.18, and UFS3.9, UFS1.5, UFS3.18 and UFS3.30, Chorus, Transpower and WELL seek amendments to Policy 16.4.12 so that the words “to the extent practicable” or “to the extent possible” are added, so that it acknowledges that not all adverse effects will be able to be avoided, remedied or mitigated.

Assessment

361. I appreciate the concerns raised by the three submitters. I note that Powerco and KiwiRail have supported the policy as proposed. Section 5(2)(c) of the RMA sets out that any adverse effects on the environment are to be avoided, remedied or mitigated. 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. Policy 16.4.8 already establishes that there are technical and operational constraints associated with network utilities. It is well understood that all policies need to be read in conjunction with each other. 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

362. It is recommended that US4.17, US5.6 and US6.18, and UFS3.9, UFS1.5, UFS3.18 and UFS3.30 be accepted in part, insofar as there is a consequential amendment proposed to the matters of discretion.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US4.17, US5.6 and US6.18, and UFS3.9,	Consequential amendment to 30.12, Matters of Discretion for	<u>Any constraints arising from technical and operational requirements of the network which may limit measures to avoid, remedy or mitigate environmental effects.</u>

UFS1.5, UFS3.18 and UFS3.30	upgrading	
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Policy 16.4.13

Submission Points

363. In US4.18, supported by UFS3.19, Transpower propose amendments to the explanation to be more consistent with the intent of the policy and to delete reference to the generation of electrocution by electricity distribution and transmission. In US6.19, supported by UFS2.12, WELL seek that the policy be amended to include internationally recognised standards. In US7.15, supported by UFS2.13 and UFS3.40, Powerco proposes amendments to both the policy and explanation, so that there is consistency between the wording of the policy and explanation – that is, that the policy is focussed on health and safety matters. Powerco also raises the same issue as Transpower regarding the reference to electrocution.

Assessment

364. I consider that the amendments sought by the submitters are helpful to refine the intent of the policy and explanation, which is on managing health and safety effects. I have proposed amendments that assist to refocus the policy and explanation. I do not consider it necessary to add “and internationally” as sought by WELL, as international standards are recognised nationally. The policy refers to other national standards than national environmental standards, such as New Zealand Standards. I do not accept the amendment sought by Powerco in respect to how it seeks to reference the NZECP as a guideline. The NZECP is a regulation that requires compliance, rather than a guideline.

Recommendation

365. It is recommended that US4.18, US7.15, UFS3.19, UFS2.13 and UFS3.40 be accepted in part and US6.19 and UFS2.12 be rejected.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US4.18, UFS3.19, US7.15, UFS2.13, UFS3.40	Policy 16.4.13 and explanation	<p>Ensure <u>Manage effects on health and safety by ensuring 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 and guidelines.</u></p> <p><u>Some ...Electricity transmission/distribution activities can generate electromagnetic fields (EMF) which may be present a risk to health and safety, primarily through and</u></p>

		<p><u>also generates the risk of electrocution from direct contact with conductors or as a result of a flashover. The National Policy Statement on Electricity Transmission, and the National Environmental Standard for Electricity Transmission require that the exposures be limited to the guidelines of the International Commission on Non-ionising Radiation Protection (ICNIRP) to prevent the potential for public health effects. Other ...There are a number of relevant national and international standards and guidelines addressing health and safety matters that are external to the District Plan but that must be complied with, including the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, and the New Zealand Electrical Code of Practice. and The International Commission on Non-ionising Radiation Protection (ICNIRP) Guidelines provide best practice guidance.</u></p>
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Policy 16.4.14

Submission Points

366. In US3.6, Spark seeks amendment to Policy 16.4.14, so that the words “to the extent practicable” are added to the end. In US4.19, supported by UFS3.20, Transpower seeks to amend the policy by replacing “practicable” by “technically feasible”.

Assessment

367. I do not consider that it is necessary to add “to the extent practicable” to the end of this policy, as the policy does not seek that all adverse effects are avoided, remedied or mitigated. I support the addition of “technically feasible” as sought by Transpower, as it recognises that technical feasibility is important. I consider that the term practicable should also be retained.

Recommendation

368. It is recommended that US3.6 be rejected and US4.19 and UFS3.20 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US4.19 and UFS3.2	Policy 16.4.14	<u>Enable the co-location or multiple use of network utilities where this is efficient, technically feasible and practicable and assists with avoiding, remedying or mitigating adverse effects on the environment.</u>

Policy 16.4.15

Submission Points

369. In US16.4.15, Transpower seeks that the policy be amended by adding “Except for transmission lines” to the beginning of the policy, for the reasons that the cost of putting transmission lines is a significant constraint and that the National Grid should be exempt. WELL through UFS3.21 seek that this be rejected on the basis that it is on a non-RMA ground (costs).

370. In US5.10, Chorus seeks amendments to the explanation, to specifically reflect where there are specific exemptions / exceptions to the requirement to underground network utilities. They seek to reflect their other submission point that seeks to provide for additional new lines on existing overhead lines, as part of minor upgrading.

Assessment

371. I do not support the amendment sought by Transpower. In particular, the proposed rule framework does not require transmission lines / the National Grid to be placed underground, which recognises the nature and potential effects arising from transmission lines. Further, the first bullet point recognises that there are particular constraints which may make underground placement impractical or unreasonable. Economic costs would come under operational constraints.

372. I support in part the amendments sought by Chorus, which would assist to clarify that there are exemptions / exceptions to the requirement to underground new network utilities. That part I do not support is the amendment that would provide for new lines to existing overhead lines as falling within the definition of minor upgrading, for the reasons discussed earlier in this report.

Recommendation

373. It is recommended that US16.4.15 be rejected and UFS3.21 be accepted in part.

374. It is recommended that US5.10 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US5.10	Policy 16.4.15 Explanation	<u>The adverse visual effects of certain network utilities can often be managed by putting the services underground. With some exceptions, this is the required approach for those network utilities, such as those with cables that can be located underground. For those network utility structures that need to be located aboveground, particular attention should be given to their design, location and minimising of any adverse visual effects as outlined in Policy 16.4.12. This can be achieved in a number of ways including, where practical, through screening, careful</u>

		<p><u>placement, size and appearance and applying different activity status. With the exception of Protected Ridgelines and the Southern Hills, new overhead lines, including electricity lines below 110kV, are provided for as a permitted activity in the Rural and Open Space Zones provide for overhead lines, recognising the more visual absorptive capacity of those locations, and the practicality of needing to provide for a cost effective means of enabling service development and maintenance in remote less densely populated areas.</u></p> <p><u>New customer connections to existing lines and minor upgrading of existing lines are provided for within the City in recognition that this is an efficient use of an existing resource. However, new above ground lines and their associated supporting structures in areas that do not have existing above ground lines are generally considered to be unacceptable within the City. However it is recognised The policy recognises that particular consideration needs to be given to the efficient use of resources and that there are situations where placing lines underground is, or may be, impracticable or unreasonable.</u></p>
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Policy 16.4.17 and Method 16.5.9

Submission Points

375. In US8.5, Forest and Bird seek that the policy be reworded to strengthen the word encourage and identify situations where consultation is required. Transpower and WELL through UFS2.14 and UFS3.47 seek that this request be rejected. Forest and Bird in US8.6, again opposed by Transpower in UFS2.14, seek that this be reflected in Method 16.5.9.

Assessment

376. I appreciate and understand the request made by Forest and Bird. However, a District Plan cannot require that consultation occur on any particular matters, as this would be contrary to s36A of the RMA, which is clear that there is no duty for an applicant to consult on a resource consent application. Rather, the focus is appropriately on encouraging, as consultation is considered to be best practice.

Recommendation

377. It is recommended that US8.5 and US8.6 be rejected, and UFS2.14 and UFS3.47 and UFS2.14 be accepted.

Method 16.5.5

Submission Points

378. In US4.21, Transpower seek to delete proposed new method 5, and replace it with “plan provisions to manage reverse sensitivity effects” on the basis that there are plan provisions to manage reverse sensitivity on regionally significant

network utilities. WELL through UFS3.22 seek that this is rejected on the basis that this is a suitable method to deal with future instances of reverse sensitivity.

Assessment

379. I note that methods 9 and 10 already address particular provisions in respect of the National Grid. Method 4 specifically addresses the rule framework to manage effects on regionally significant network utilities. Therefore the amendment sought by Transpower is unnecessary. I also concur with the WELL point that this method should be retained as a suitable method to deal with future instances of reverse sensitivity.

Recommendation

380. It is recommended that US4.21 be rejected and UFS3.22 be accepted.

Method 16.5.8

Submission Points

381. In US4.21, Transpower, and supported by WELL in UFS3.23, seek to delete the words “Education of and” from the beginning of the method, as it is not certain what this means.

Assessment

382. “Education of” network utility operators is intended to highlight that the Council has a role in ensuring that network utility operators understand the District Plan rules. For this reason, I do not support its deletion.

Recommendation

383. It is recommended that US4.21 and UFS3.23 be rejected.

Anticipated Environmental Results

Submission Points

384. In US3.6 and US5.6, supported by UFS1.5, UFS3.9 and UFS3.30, Spark and Chorus seek an amendment so that the AER reads: The avoidance, remedying, or mitigation of the adverse effects of developing and maintaining the City’s network utilities to the extent practicable.

Assessment

385. For the same reasons as set out in respect of Policy 16.4.12, I do not consider it necessary to add the words sought by Spark.

Recommendation

386. It is recommended that US3.6, US5.6, UFS1.5, UFS3.9 and UFS3.30 be rejected.

iii. Zone Rules PC38

Submission Point

Residential, Rural, Open Space and Special Activity

387. In US4.24, US4.25, US4.27 and US4.28 Transpower seeks the following amendments to the proposed new rules 18.6, 18.28A, 18.37, 19.26, 19.28, 21.5A, 21.28, 22.7 and 22.30 so that they read:

Council may impose conditions over the following matters:

...

- 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.

Note: Rule xxx covers subdivision within the Electricity Transmission Corridor. Subdivision which creates building platforms within 20m of high voltage (110kV or greater) electricity transmission lines as shown on the planning maps also requires resource consent under Rule xxx.

Matters of consideration for subdivision:

- 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.
- 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.

Note: Rule xxx covers subdivision within the Electricity Transmission Corridor. Subdivision which creates building platforms within 20m of high voltage (110kV or greater) electricity transmission lines as shown on the planning maps also requires resource consent under Rule 18.29.

388. Transpower state that they oppose the exclusion of the National Grid from these new proposed provisions. It is their concern that as currently drafted, there is no obligation for applicants to consult with Transpower if a subdivision were to take place on land where National Grid assets, or access to National Grid assets are located where the proposed building platforms were proposed more than 20m from the transmission line. While the building platforms may be proposed at an appropriate distance any subdivision of land containing National Grid assets or access to National Grid assets has the potential to constrain Transpower's ability to access, inspect, maintain, or upgrade these assets through alterations to lot boundaries and access arrangements.

389. In US6.20, WELL seeks that the permitted and controlled activity standards be amended to include the outcome of consultation of the CEL's owner, including consequential amendments.

390. In US2.6, Kiwirail request that the following additional matter for consideration be added: Account must be taken of the future development potential of

adjoining or adjacent land and any potential reverse sensitivity effects on regionally significant network utilities (excluding the National Grid).

391. KiwiRail seek this amendment so that the matters for discretion are consistent between the Hutt and Upper Hutt District Plans. I note that that summary of submissions only applies this point to 18.37; however, on reading the submission point, it is clear this is intended to apply throughout.

Southern Hills Overlay Area

392. In US4.29, Transpower seek that all proposed amendments to Chapter 28 be deleted, on the basis that it seeks that network utilities are excluded from having to comply with the zone chapter provisions and that the rules, standards and matters of consideration are sufficient scope for any adverse effects to be addressed. This is supported by WELL in UFS3.24.

393. In US5.21, Chorus seek that lines permitted under the minor above ground line provisions and minor upgrading be permitted activities. This is supported by WELL in UFS3.39.

Assessment

Residential, Rural, Open Space and Special Activity

394. As outlined earlier in this report, UHCC has already amended its Plan to give effect to the NPSET, which included the introduction of new rules which control the use, development and subdivision of land in respect to the National Grid. Transpower accepted those amendments as giving effect to the NPSET, and PC38 as notified was clear that any further amendments were out of scope. The provisions that are already in place within the District Plan already require consultation with Transpower as the affected utility operator (see for example the matters of discretion for Rule 19.21). What is sought by Transpower would result in duplication and confusion.

395. In respect of WELL's submission point, I consider that the same reasons as outlined by DLA Piper in their legal advice to the Council apply as to whether the introduction of Critical Electricity Lines (CELs) are in scope of PC38. DLA Piper have given the advice that CELs are out of scope, and therefore, these proposed amendments sought are also out of scope / not on PC38 and therefore should be rejected.

396. In respect of US2.6, I support the inclusion of this new matter for discretion, to achieve consistency with the HCC Plan. However, I recommend to provide greater clarity, that these be separated into two separate matters of discretion.

Southern Hills Overlay Area

397. In respect of Transpower's submission, I note that the Southern Hills and Protected Ridgeline provisions are not a Zone; they are instead an overlay that applies to several zones, as does the network utilities chapter. The

Overlay provisions do include other relevant matters for specific consideration, and I consider that the format as proposed is the most effective. In response to other submission points, I propose to introduce a new introduction to the Network Utilities Rules Chapter which will make it clear how the Chapter relates to other city-wide chapters in the Plan, including the Overlay. This in part will address Transpower’s concern.

398. In respect of Chorus’s submission, I propose to amend the Rules as requested to specifically exclude minor above ground lines. I do not support the exclusion for minor upgrading, for the same reasons as set out in respect to the amendments sought to the definition.

Recommendation

399. It is recommended that US4.24, US4.25, US4.27 and US4.28 be rejected.

400. It is recommended that US6.20 be rejected.

401. It is recommended that US2.6 be accepted.

402. It is recommended that US4.29 and UFS3.24 be accepted in part.

403. It is recommended that US5.21 and UFS3.39 be accepted in part.

Recommended Amendments

Submitter number	Provision Reference	Recommended Amendment
US2.6	18.37, 19.28, 20.32, 21.41, 22.31,	<ul style="list-style-type: none"> • <u>Account must be taken of the future development potential of adjoining or adjacent land.</u> • <u>Account must be taken of any potential reverse sensitivity effects on regionally significant network utilities (excluding the National Grid).</u>
US4.29 and UFS3.24	See iv below	
US5.21 and UFS3.39	28.1	Any building or structure <u>or new aboveground network utility (excluding minor above ground lines),</u> otherwise permitted which does not comply with the standard specified in rule 28.4
	28.2	Any building or structure <u>or new aboveground network utility (excluding accessory buildings and minor above ground lines),</u> otherwise permitted under the underlying zone, located within an area identified as Southern Hills Overlay Area

iv. Network Utilities Rules and Standards PC38

Submission Point

Overall application of the Chapter

404. In US3.10 and US5.11, Spark and Chorus seek that a statement be inserted prior to the activities table that spells out which other rules within the Plan also apply to the Network Utilities Rules Chapter. They seek a consequential amendment to the background in 16.1 to remove the reference to earthworks and to signal that there are rules in the Protected Ridgelines and Southern Hills Overlay. They consider that there are no earthworks rules applicable. In UFS1.6, Powerco support these points in part to provide clarity and refers to its own US7.20, where it seeks new standards to be introduced applying to earthworks and vegetation trimming and utilities within the flood extent of the Hutt River. WELL in UFS3.10 and UFS3.31 support US3.10 and US5.11. Transpower in UFS2.15 also supports US5.11, with the exclusion of the reference to the Southern Hills Overlay.

Assessment

405. I concur with Spark, Chorus, WELL and Transpower that there should be greater certainty in Chapter 30 as to how the Chapter applies to other City-wide Rules. I have discussed the application of City-wide rules with Council officers, who advise that the earthworks and vegetation clearance rules contained in Chapter 23 do apply city-wide. There has been no proposal signalled to amend this through PC38, and therefore I do not support that their reference be removed to 16.1 or excluded from applying to Chapter 30.

406. To be consistent with other Chapters within the Plan, I propose that the following table be introduced at the end of the activities table, which sets out which City-wide rules apply in addition to the Network Utility Rules.

Recommendations

407. It is recommended that US3.10, US5.11, UFS1.6, UFS3.10 and UFS3.31 be accepted in part.

408. It is recommended that UFS2.15 be accepted in part.

Recommended Amendments

30.1A City-Wide Provisions

Each activity shall comply with the relevant permitted activity standards in the City-wide provisions of the Plan as listed below.

<u>Chapter</u>	<u>City-wide provisions</u>
<u>23</u>	<u>Earthworks and Indigenous Vegetation Clearance</u>

<u>26</u>	<u>Heritage Features</u>
<u>27</u>	<u>Notable Trees</u>
<u>28</u>	<u>Rules for Southern Hills Overlay and Protected Ridgelines</u>
<u>32</u>	<u>Noise and Vibration</u>
<u>33</u>	<u>Flooding and Fault Band Hazards</u>
<u>34</u>	<u>Hazardous Substances and Contaminated Land</u>

E Plan Change 38 - Renewable Energy Generation

i. Issues, Objectives and Policies PC38

Submission Point

409. In US8.7, Forest and Bird seeks that new Chapter 16A be amended to include objectives which address:

- Education and information about renewable energy generation and energy conservation;
- Subsidising renewable energy generation initiatives; and
- Identification of cost-effective renewable energy options that have reduced environmental impacts.

For the reason that the submitter considers that the provisions are too limiting, and the Council could lead in advancing renewable energy generation within Upper Hutt.

Assessment

410. In respect of the first additional matter sought to be addressed, I note that methods 4 and 6 proposed education of both providers and the community, which would include the provision of information. The concept of education and information is already encompassed within the proposed objectives and policies, through providing for renewable electricity generation. Energy conservation is beyond the scope of PC38, and therefore new provisions are not able to be provided through this plan change.

411. In respect of the second additional matter sought, this is a matter that is outside of the RMA and PC38, and is a matter requiring consideration under the Local Government Act.

412. In respect of the third additional matter sought, this is related to the first additional matter sought, in respect to education and information. As new technologies are introduced, the Plan will be able to be updated to reflect them. Until a plan update occurs, any new activities not provided for would already fall within the policy and rule framework and would be able to be considered on a case by case basis.

Recommendation

413. It is recommended that US8.7 be accepted in part, with no amendments required.

ii. Rules and Standards PC38

Submission Points

414. In US9.9 and US9.10, Roz Brown queries whether we are protected enough if the network utilities enter into the biomass energy production and requests that the wording on ecological inputs are strengthened. She requests clarification on the first point, and there are no reasons given for the second.

Assessment

415. I am unclear of the submitter's concern in US9.9. I note that any renewable energy generation activity that is not otherwise specifically listed in the activity table would be a discretionary activity. This would ensure that any biomass energy production activity would require a resource consent.

416. In respect of US9.10, any matter requiring a resource consent will involve consideration of ecological matters, where relevant to the type of activity. Those activities which are permitted, are permitted on the basis that they would have less than minor adverse effects on the environment, because of their very nature.

Recommendation

417. It is recommended that US9.9 and US9.10 be rejected.

Legal and Financial Implications

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

Section 32 Assessment

419. Under 32AA of the RMA, a further evaluation under s32 is required only for any changes that have been made to the plan changes since the first s32 was prepared and published. A further evaluation report must be published with the decision, unless the decision itself sets out in sufficient detail the further evaluation undertaken in respect of s32.

420. In recommending amendments to PC34 and PC38, I have only done so where I consider that these are the most appropriate, efficient and effective means of meeting the purpose of the RMA and achieving the purpose of the Plan Changes. In all respects, I consider that both PC34 and PC38 meet the purpose of the Act, give effect to the RPS, NPSREG and NSPET (PC34 only).

Part 2 of the Resource Management Act

421. Any plan change must serve the purpose of the RMA.
422. I have set out what I consider to be the relevant Part 2 matters in paragraphs 42 - 46 above. I consider that both PC34 and PC38 are consistent with section 7 of the RMA, in particular ss(b), (ba), (c), (f) and (j) for the reasons that they enable network utilities and renewable energy generation activities within both Cities in a manner that provides for the management of associated effects of network utilities and renewable energy generation activities and effects on regionally significant network utilities.

Decisions on submissions

423. 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 5 for PC34 and Appendix 7 for PC38.

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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)(ii).*
- (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 – Submissions and further submissions PC34

Appendix 3 – Submissions and further submissions PC38

Appendix 4 – Legal Opinion

**Appendix 5 – Summary of Submissions and Recommendations on Submissions
PC34**

Appendix 6 - Recommended Changes to PC34

Appendix 7 - Summary of Submissions and Recommendations on Submissions PC38

Appendix 8 - Recommended Changes to PC38

Appendix 9 – GWRC report on PC16, Porirua City Council

Appendix 10 – Correspondence with GWRC on Stopbanks / Flooding