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Committee Council
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Making operative Plan Change 5 to the Regional Freshwater Plan (the Transmission Gully Plan Change)

1. Purpose

To implement the decision of the Board of Inquiry for the Transmission Gully Plan Change request by making Plan Change 5 to the Regional Freshwater Plan (the Transmission Gully Plan Change) operative.

2. The decision-making process and significance

The proposed Transmission Gully Plan Change (the proposed plan change) was determined to be a proposal of national significance by the Minister for the Environment on 10 September 2010. The decision recommended in this report follows the process set out in Part 6AA of the Resource Management Act for proposals of national significance. Section 149W requires Greater Wellington to amend the Regional Freshwater Plan for the Wellington Region (RFP) as directed by the Board of Inquiry for the Transmission Gully Plan Change (the Board). Greater Wellington must then approve the proposed plan change and make it operative by giving public notice at least five working days before the date on which it becomes operative. There is no discretion for Greater Wellington to alter the Board's decision. No assessment of significance is needed under the Part 6 of the Local Government Act 2002.

3. Background

On 6 September 2010 the New Zealand Transport Authority lodged a request with the Environmental Protection Authority to change the RFP. The Minister for the Environment appointed a board of inquiry and directed that it make decisions on the plan change request.

The proposed plan change was publicly notified on 12 February 2011. Submissions were received from 31 submitters. Eleven were in support and 20 submitters opposed the proposed plan change. Following the preparation and exchange of section 42A reports and evidence from the applicant and submitters, and caucusing of experts, a hearing was held over 6 days

in June 2011. The Board released a draft decision in September 2011. Submitters and Greater Wellington were given the opportunity to comment on minor and technical matters. The final report and decision of the Board was released in October 2011. The Board's decision was appealed to the High Court on a point of law. The High Court heard the appeal on 7 December 2011 and released its decision on 15 December. The decision of the High Court upheld the decision of the Board.

The Wellington Regional Council is now required to approve the proposed plan change and make it operative as soon as practicable. Another board of inquiry (the Board of Inquiry for Transmission Gully Notices of Requirement and Consents) will be hearing resource consent applications for the Transmission Gully Project in February 2012. Approval of the plan change will be helpful to this board and will assist all parties involved in the resource consent applications by providing certainty about which plan provisions apply prior to the hearing of resource consents.

4. Greater Wellington's role in the plan change request

The Wellington Regional Council has no decision making role in the plan change process for matters of national significance other than being required to approve the outcome of the Board's decision and findings. Our role is advisory and has included the following, in accordance with s149 of the Resource Management Act:

- Advising the Minister for the Environment whether the plan change request should be considered by a board of inquiry, the Environment Court or Greater Wellington
- Advising the Board on whether or not it should accept the plan change request for further consideration
- Responding to requests for information from the Board on the plan change request
- Preparing the Key Issues Report
- Preparing the proposed plan change
- Preparing a section 42A report
- Preparing a supplementary section 42A report
- Giving evidence at the hearing
- Commenting on minor or technical changes to the Board's draft decision.

Staff have kept the Council informed of these steps throughout the process through the Information Bulletin and regular updates given to Te Upoko Taiao – Natural Resource Management Committee.

5. The Board's decision on the plan change

The Board's decision on the plan change amends three policies in the RFP by taking the Transmission Gully Project out of their scope. A new project based policy is included in the plan that specifically addresses how adverse effects of the Transmission Gully Project will be regarded when resource consents are considered. A new definition for "Transmission Gully Project" and an indicative map of the Transmission Gully route are to be inserted in the RFP.

A full copy of the Board's decision is at <http://www.epa.govt.nz/Resource-management/tgpc/Pages/final-report-and-decision.aspx> and a hard copy is available in the Councillors' Lounge. The plan change with tracked change revisions is in **Attachment 1** to this report. The plan change final form is in **Attachment 2** and a map in the plan change showing the indicative Transmission Gully route is in **Attachment 3**. These attachments are taken directly from the final decision and report of the Board.

6. Recommendations

That the Council:

- (1) *Amends the Regional Freshwater Plan for the Wellington Region by inserting Plan Change 5 to the Regional Freshwater Plan for the Wellington Region (the Transmission Gully Plan Change) as set out in Attachment 2 and Attachment 3 to this report by:*
 - (a) *replacing policies 4.2.10, 7.2.1 and 7.2.2 in the Regional Freshwater Plan for the Wellington Region with policies 4.2.10, 7.2.1 and 7.2.2 in Attachment 2;*
 - (b) *inserting policy 4.2.33A in Attachment 2 into the Regional Freshwater Plan for the Wellington Region;*
 - (c) *inserting the definition of "Transmission Gully Project" in Attachment 2 into the Regional Freshwater Plan for the Wellington Region;*
 - (d) *inserting the indicative map of the Transmission Gully route in Attachment 3 into the Regional Freshwater Plan for the Wellington Region.*
- (2) *Approves Plan Change 5 to the Regional Freshwater Plan for the Wellington Region (the Transmission Gully Plan Change).*
- (3) *Authorises the Chief Executive to affix the common seal of the Council to Plan Change 5 to give effect to its approval.*

- (4) *Makes Plan Change 5 to the Regional Freshwater Plan for the Wellington Region (the Transmission Gully Plan Change) operative by publicly notifying in the Dominion Post on Friday 23 December that the plan change becomes operative on 25 January 2012.*

Report prepared by:

Report approved by:

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Attachment 1: Plan change with tracked changes

Attachment 2: Plan change final form with revisions accepted

Attachment 3: Map showing indicative Transmission Gully route

Plan change with tracked changes

Key

Xxxxx – Additional text highlighted in the 'As notified' Request by NZTA

Xxxxx – Text to be removed, as identified by the Board.

Xxxxx – Text to be inserted, as identified by the Board.

Regional Freshwater Plan Chapter 4 - General Objectives and Policies

4.2.10 To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), (with the exception of the Transmission Gully Project and its effects on the Horokiri, Ration and lower Pauatahanui Streams where Policy 4.2.33A applies), when considering the protection of their natural character from the adverse effects of subdivision, use, and development. For the avoidance of doubt Rule 50 applies to the Transmission Gully Project, in relation to its effects on the Horokiri, Ration and lower Pauatahanui Streams.

Explanation. Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character when assessed against the characteristics outlined in Policy 4.2.9.

The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when "avoiding, remedying or mitigating adverse effects", as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. "To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified unless Policy 4.2.33A applies. Further elaboration of the meaning of "minor" is contained in Policy 4.2.33 (Policy 4.2.33A provides the approach to be considered in relation to the Transmission Gully Project that includes avoidance, remediation, or mitigation of or offsetting adverse effects). Activities can occur in the water bodies listed in Appendix 2 but the emphasis in this policy is on preserving the natural character of these water bodies.

In this context "To avoid ... when considering" relates to consideration during the preparation of, variation to, or change to, district and regional plans, or the consideration of any relevant resource consent application.

The wetlands, rivers and lakes which are identified in Part A of Appendix 2 are to have their water quality managed in its natural state according to Policy 5.2.1. The wetlands, rivers and lakes that are identified in Part B of Appendix 2 are to have their water quality managed for aquatic ecosystem purposes according to Policy 5.2.6.

The characteristics of a water body that are commonly perceived to contribute to its natural character are identified in the previous policy.

4.2.33A *To allow manage adverse effects of the development of the Transmission Gully Project, which are more than minor, provided in accordance with the following management regime:*

- (1) Adverse effects are avoided to the extent practicable;*
- (2) Adverse effects which cannot be avoided are remedied or mitigated to the extent practicable;*
- (3) Adverse effects which cannot be avoided or remedied are mitigated to the extent practicable;*
- (4) Adverse effects which cannot practicably be avoided, remedied or mitigated are offset.*

Explanation: *This policy recognises that the Transmission Gully Project is identified in various statutory and policy documents as having both national and regional significance. In achieving the sustainable management objectives of the Act, resource managers and decision makers have the option of applying avoidance, remediation and mitigation in managing adverse effects. particularly important for enabling people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. Accordingly, the adverse effects of aspects of the Project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated.*

Remedying or mitigating can include the concept of offsetting. The policy creates a cascading hierarchy for the avoidance, remedying, or mitigation of adverse effects. However, the policy also provides that where none of these options are practicable, it may be appropriate to offset such effects. "Offsetting" means the provision of a positive effect in one location to offset adverse effects of the same or similar type caused by the Transmission Gully Project at another location with the result that the overall adverse effects on the values of the waterbodies are remedied or mitigated.

Where offsetting is to be applied, there should be a clear connection with the effect and the offsetting measure. The offsetting measure should preferably be applied as close as possible to the site incurring the effects. Hence, there should be a focus on offsetting occurring within the affected catchments along the Transmission Gully route and to specifically address the effects at issue.

Offsetting should, as far as can be achieved maintain and enhance the particular natural values affected by the Project when assessed overall.

The adequacy of a proposed offsetting measure should be transparent in that it is assessed against a recognised methodology.

In this policy "to the extent practicable" requires consideration of the nature of the activity, the sensitivity of the receiving environment to adverse effects, the

financial implications and adverse effects of the measure considered compared with other alternative measures, the current state of technical knowledge and the likelihood that effects can be successfully avoided, remedied or mitigated.

~~In this context "offset" in clause (4) means taking action that will offset any adverse effects such as enhancing amenity, ecological, or recreational values on-site or elsewhere. Tools such as the "Stream Ecological Valuation" method may assist in evaluating the ecological offset ratio, which, based on measured values, sets the amount of offset required. Other ways of offsetting adverse effects are indicated in the second, third and fourth bullet points of Policy 4.2.36.~~

Regional Freshwater Plan Chapter 7 - Use of the Beds of Rivers and Lakes and Development on the Floodplain

7.2.1 To allow the following uses within river and lake beds:

- structures or activities for flood mitigation or erosion protection purposes;
- structures for transportation and network utility purposes; or
- structures for activities which need to be located in, on, under, or over the beds of rivers and lakes; or
- structures for cultural harvest (e.g., pa tuna); or
- the maintenance of any lawful structure; or
- the removal of aquatic weeds from farm drains and urban drains for drainage purposes; or
- the extraction of sand, gravel, or rock; or
- the diversion of water associated with activities that are otherwise authorised; or
- the enhancement of the natural character of any wetland, lake or river and its margins;

provided that any adverse effects are avoided, remedied or mitigated and that the significant adverse effects identified in Policy 7.2.2 are avoided (unless the effects are of activities for the Transmission Gully Project and are addressed in accordance with Policy 4.2.33A).

Explanation. Policy 7.2.1 lists criteria for appropriate uses within the beds of rivers and lakes. "Uses" refers to those activities identified in subsections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) of the Act. Structures or activities that do not meet the criteria listed in the policy are inappropriate. For example, any structure associated with a use that does not have to be located in or on the bed of a river or lake is considered inappropriate.

While a particular use of a river or lake bed may meet the criteria listed in the policy, it may need to comply with environmental controls, and is subject to Policy 7.2.2. The policy recognises that adverse effects of activities for the Transmission Gully Project can be considered according to Policy 4.2.33A.

7.2.2 *To not allow the use of river and lake beds for structures or activities that have significant adverse effects on:*

- *the values held by tangata whenua; and/or*
- *natural or amenity values; and/or*
- *lawful public access along a river or lake bed; and/or*
- *the flood hazard; and/or*
- *river or lake bed or bank stability; and/or*
- *water quality; and/or*
- *water quantity and hydraulic processes (such as river flows and sediment transport); and/or*
- *the safety of canoeists or rafters;*

unless the structures or activities are for the Transmission Gully Project and addressed in accordance with Policy 4.2.33A.

Explanation. *This policy lists characteristics of rivers and lakes that should not be significantly affected by uses of river and lake beds which are identified as "appropriate" in the previous policy. "Uses" has the same meaning as in Policy 7.2.1.*

When a new use of any river or lake bed is considered, due regard must be had to avoiding, remedying, or mitigating adverse effects on these characteristics.

In the context of this policy deciding on what are "significant adverse effects" is in part a value judgement which will be determined by the decision makers on resource consents, i.e., Regional Councillors or Hearing Commissioners. When deciding whether an adverse effect is significant or not, decision makers will have regard to:

- *the significance of any values identified; and*
- *the scale/magnitude of any adverse effects on the values identified; and*
- *the reversibility of any adverse effects on the values identified; and*
- *any other relevant provisions in the Plan.*

Reference in the policy to "the Transmission Gully Project and adverse effects that would otherwise be significant" recognises that these potential effects shall be addressed through Policy 4.2.33A.¹

"Transmission Gully Project" is a strategic transport route as shown on the plan attached to this report as Appendix 3 and running from MacKays Crossing to

¹ We have included the original wording as requested by NZTA, but have reservations about the accuracy and relevance of this addition. The parties may make submissions on this matter in their comments on the Draft Report.

Linden and the term includes works in proximity that are associated with the implementation of that project.

~~“Transmission Gully Project” is a strategic transport route running from MacKays Crossing to Linden and the term includes works associated with the implementation of that project.~~

~~“Stream Ecological Valuation” (SEV) is a tool to assist in evaluating the ecological offset ratio, which, based on measured values, sets the amount of offset required.”~~

Plan change final form with revisions accepted

Regional Freshwater Plan Chapter 4 - General Objectives and Policies

4.2.10 *To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), (with the exception of the Transmission Gully Project and its effects on the Horokiri, Ration and lower Pauatahanui Streams where Policy 4.2.33A applies), when considering the protection of their natural character from the adverse effects of subdivision, use, and development. For the avoidance of doubt Rule 50 applies to the Transmission Gully Project, in relation to the Horokiri, Ration and lower Pauatahanui Streams.*

Explanation. *Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character when assessed against the characteristics outlined in Policy 4.2.9.*

The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when "avoiding, remedying or mitigating adverse effects", as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. "To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified unless Policy 4.2.33A applies. Further elaboration of the meaning of "minor" is contained in Policy 4.2.33 (Policy 4.2.33A provides the approach to be considered in relation to the Transmission Gully Project that includes avoidance, remediation, or mitigation of adverse effects). Activities can occur in the water bodies listed in Appendix 2 but the emphasis in this policy is on preserving the natural character of these water bodies.

In this context "To avoid ... when considering" relates to consideration during the preparation of, variation to, or change to, district and regional plans, or the consideration of any relevant resource consent application.

The wetlands, rivers and lakes which are identified in Part A of Appendix 2 are to have their water quality managed in its natural state according to Policy 5.2.1. The wetlands, rivers and lakes that are identified in Part B of Appendix 2 are to have their water quality managed for aquatic ecosystem purposes according to Policy 5.2.6.

The characteristics of a water body that are commonly perceived to contribute to its natural character are identified in the previous policy.

- 4.2.33A *To manage adverse effects of the development of the Transmission Gully Project, in accordance with the following management regime:*
- (1) *Adverse effects are avoided to the extent practicable;*
 - (2) *Adverse effects which cannot be avoided are remedied or mitigated.*

Explanation: *This policy recognises that the Transmission Gully Project is identified in various statutory and policy documents as having both national and regional significance. In achieving the sustainable management objectives of the Act, resource managers and decision makers have the option of applying avoidance, remediation and mitigation in managing adverse effects. Accordingly, the adverse effects of aspects of the Project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated.*

Remedying or mitigating can include the concept of offsetting. "Offsetting" means the provision of a positive effect in one location to offset adverse effects of the same or similar type caused by the Transmission Gully Project at another location with the result that the overall adverse effects on the values of the waterbodies are remedied or mitigated.

Where offsetting is to be applied, there should be a clear connection with the effect and the offsetting measure. The offsetting measure should preferably be applied as close as possible to the site incurring the effects. Hence, there should be a focus on offsetting occurring within the affected catchments along the Transmission Gully route and to specifically address the effects at issue.

Offsetting should, as far as can be achieved maintain and enhance the particular natural values affected by the Project when assessed overall.

The adequacy of a proposed offsetting measure should be transparent in that it is assessed against a recognised methodology.

In this policy "to the extent practicable" requires consideration of the nature of the activity, the sensitivity of the receiving environment to adverse effects, the financial implications and adverse effects of the measure considered compared with other alternative measures, the current state of technical knowledge and the likelihood that effects can be successfully avoided, remedied or mitigated.

Regional Freshwater Plan Chapter 7 - Use of the Beds of Rivers and Lakes and Development on the Floodplain

- 7.2.1 *To allow the following uses within river and lake beds:*
- *structures or activities for flood mitigation or erosion protection purposes;*
 - *structures for transportation and network utility purposes; or*
 - *structures for activities which need to be located in, on, under, or over the beds of rivers and lakes; or*
 - *structures for cultural harvest (e.g., pa tuna); or*
 - *the maintenance of any lawful structure; or*

- *the removal of aquatic weeds from farm drains and urban drains for drainage purposes; or*
- *the extraction of sand, gravel, or rock; or*
- *the diversion of water associated with activities that are otherwise authorised; or*
- *the enhancement of the natural character of any wetland, lake or river and its margins;*

provided that any adverse effects are avoided, remedied or mitigated and that the significant adverse effects identified in Policy 7.2.2 are avoided (unless the effects are of activities for the Transmission Gully Project and are addressed in accordance with Policy 4.2.33A).

Explanation. *Policy 7.2.1 lists criteria for appropriate uses within the beds of rivers and lakes. "Uses" refers to those activities identified in subsections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) of the Act. Structures or activities that do not meet the criteria listed in the policy are inappropriate. For example, any structure associated with a use that does not have to be located in or on the bed of a river or lake is considered inappropriate.*

While a particular use of a river or lake bed may meet the criteria listed in the policy, it may need to comply with environmental controls, and is subject to Policy 7.2.2. The policy recognises that adverse effects of activities for the Transmission Gully Project can be considered according to Policy 4.2.33A.

7.2.2 *To not allow the use of river and lake beds for structures or activities that have significant adverse effects on:*

- *the values held by tangata whenua; and/or*
- *natural or amenity values; and/or*
- *lawful public access along a river or lake bed; and/or*
- *the flood hazard; and/or*
- *river or lake bed or bank stability; and/or*
- *water quality; and/or*
- *water quantity and hydraulic processes (such as river flows and sediment transport); and/or*
- *the safety of canoeists or rafters;*

unless the structures or activities are for the Transmission Gully Project and addressed in accordance with Policy 4.2.33A.

Explanation. *This policy lists characteristics of rivers and lakes that should not be significantly affected by uses of river and lake beds which are identified as "appropriate" in the previous policy. "Uses" has the same meaning as in Policy 7.2.1.*

When a new use of any river or lake bed is considered, due regard must be had to avoiding, remedying, or mitigating adverse effects on these characteristics.

In the context of this policy deciding on what are “significant adverse effects” is in part a value judgement which will be determined by the decision makers on resource consents, i.e., Regional Councillors or Hearing Commissioners. When deciding whether an adverse effect is significant or not, decision makers will have regard to:

- the significance of any values identified; and*
- the scale/magnitude of any adverse effects on the values identified; and*
- the reversibility of any adverse effects on the values identified; and*
- any other relevant provisions in the Plan.*

Reference in the policy to “the Transmission Gully Project and adverse effects that would otherwise be significant” recognises that these potential effects shall be addressed through Policy 4.2.33A.

“Transmission Gully Project” is a strategic transport route as shown on the plan attached to this report as Appendix 3 and running from MacKays Crossing to Linden and the term includes works in proximity that are associated with the implementation of that project.

Map showing indicative Transmission Gully route

