

Transpower New Zealand Limited

Submission on Proposed Plan Change 21 to the Timaru District Plan (Broughs Gully Outline Development Plan)

17 February 2017

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TRANSPOWER



Form 5

Submission on publicly notified proposal for policy statement or plan, change or variation

Clause 6 of Schedule 1, Resource Management Act 1991

To: Timaru District Council (“Council”)
Name of submitter: Transpower New Zealand Limited (“Transpower”)
This is a submission on: Plan Change 21 – Brouchs Gully Outline Development Plan (“Proposed Plan Change”)

Transpower could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that this submission relates to are:

The Proposed Plan Change in its entirety and insofar as it relates to the National Grid, particularly the extent to which the Proposed Plan Change gives effect to the National Policy Statement on Electricity Transmission 2008 (“NPSET”).

Transpower’s submission is:

Background

Transpower is the state-owned enterprise that plans, builds, maintains, owns and operates New Zealand’s high voltage electricity transmission network (the National Grid). The National Grid is nationally (and regionally) significant infrastructure which is recognised within the Resource Management Act 1991 (RMA) context by the National Policy Statement on Electricity Transmission 2008 (NPSET) and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NESETA). The National Grid is also specifically recognised in the policies of the Canterbury Regional Policy Statement 2013 (CRPS). The Timaru District Plan is required, among other things, to give effect to the provisions of the NPSET and CRPS.

The site subject to the Proposed Plan Change is traversed by the Ashburton – Timaru A and Ashburton – Timaru B 110kV single circuit National Grid transmission lines. These transmission lines include single pole and pi - pole support structures where they traverse the site of the Proposed Plan Change. Because the National Grid traverses the site of the Proposed Plan Change, the proposed Plan Change must give effect to the provisions of the NPSET, and also those provisions of the CRPS that relate to the National Grid.

National Policy Statement on Electricity Transmission 2008

The NPSET provides policy direction in relation to:

- recognising the benefits of National Grid transmission;
- managing the environmental effects of the National Grid;
- managing the adverse effects of third parties on the National Grid; and
- long term strategic planning for transmission assets.

The single Objective of the NPSET is as follows:

“To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

- *managing the adverse environmental effects of the network; and*
- *managing the adverse effects of other activities on the network.”*

The NPSET Objective is supported by fourteen Policies. In a general sense these policies address the following:

- Policy 1: Recognising the benefits of the National Grid;
- Policy 2: Recognising and providing for the effective operation, maintenance, upgrading and development of the National Grid;
- Policies 3 to 5: Weighing the management of environmental effects against the operational constraints, site/route selection approach, and the requirements of existing assets;
- Policies 6 to 8: Reducing, minimising and avoiding adverse effects in differing contexts;
- Policy 9: Potential health effects;
- Policies 10 and 11: Managing adverse effects on the National Grid and providing for “buffer corridors”;
- Policy 12: Mapping the National Grid; and
- Policies 13 and 14: Long-term development and planning for transmission assets.

Section 75(3) of the RMA requires a district plan to give effect to a NPS. The Supreme Court recently considered what is meant by the phrase “give effect to” in the context of the New Zealand Coastal Policy Statement 2010 (“NZCPS”) and held that:

“Give effect to” simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it ... There is a caveat, however. The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.”

The Supreme Court held that the requirement to ‘give effect to’ the NZCPS is intended to constrain decision-makers. Transpower submit that this applies equally to the NPSET in the context of decisions relating to electricity transmission. Similarly, the observation that the “NZCPS is a carefully expressed document whose contents are the result of a rigorous process of formulation and evaluation. It is a document which reflects particular choices” applies to the NPSET.

Council must determine how to give effect to the NPSET, and similarly any future Hearings Panel must consider the NPSET in decisions on submissions.

In the context of the Proposed Plan Change, Policies 10 and 11 of the NPSET are the most critical in terms of ensuring that the National Grid is appropriately “buffered” from activities that may have an adverse effect in terms of ongoing operation, maintenance, upgrade and development of the National Grid. Policy 10 is as follows:

“In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.”

Under Policy 10, the Council is obliged to manage “to the extent reasonably possible” activities to “avoid” reverse sensitivity effects. It is “reasonably possible” for the Council to manage activities using district plan rules, including rules applying to the activities within buffer corridors. Transpower acknowledges that the Proposed Plan Change has sought to adopt such an approach but does not consider the provisions, as currently drafted, achieve the outcome required by Policy 10 because reliance on the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP

34:2001) does not provide for Transpower's activities, rather it provides for the safety of third parties in the vicinity of the National Grid. Transpower considers additional provisions are required to truly give effect to Policy 10.

Policy 11 is as follows:

"Local authorities must consult with the operator of the National Grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the National Grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the National Grid (so as to facilitate the long-term strategic planning of the grid)."

Policy 11 of the NPSET requires local authorities to identify a buffer corridor. This is a mandatory requirement in order for the Council to give effect to the NPSET. Policy 11 also requires that sensitive activities within buffer corridors should not generally be provided for in plans and/or given resource consent. In order to give effect to Policy 11, the Proposed Plan Change needs to include rules to restrict the establishment of sensitive activities in proximity to National Grid assets. Reliance on NZECP34:2001 does not achieve this.

Canterbury Regional Policy Statement 2013

The District Plan is also required to give effect to the CRPS. The CRPS includes a number of Policies that are relevant to the National Grid including Policy 16.3.4 as follows:

"Policy 16.3.4 – Reliable and resilient electricity transmission network within Canterbury

To encourage a reliable and resilient national electricity transmission network within Canterbury by:

- (1) having particular regard to the local, regional and national benefits when considering operation, maintenance, upgrade or development of the electricity transmission network;*
- (2) avoiding subdivision, use and development including urban or semi urban development patterns, which would otherwise limit the ability of the electricity transmission network to be operated, maintained, upgraded and developed;*
- (3) enabling the operational, maintenance, upgrade, and development of the electricity transmission network provided that, as a result of route, site and method selection, where;*
 - (a) The adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable, remedied or mitigated; and*
 - (b) other adverse effects on the environment are appropriately controlled."*

The CRPS also includes the following direction as to methods to implement this Policy:

"Territorial authorities:

Will:

- (3) Set out objectives and policies, and may include methods in district plans that:*
 - (a) avoid subdivision, use and development that may result in adverse reverse sensitivity effects on the electricity transmission network, including, through*

consultation with the operator of the national electricity transmission network, identifying appropriate buffer corridors within which it can be expected that sensitive activities will generally not be provided for; and

- (b) *enable the operation, maintenance, upgrade and development of the national electricity transmission network, while avoiding or mitigating adverse effects on the environment identified in Policy 16.3.4(3) (a)-(b) above and appropriately controlling other adverse effects as referred to in Policy 16.3.4(3)(b).*

(4) ...”

The Proposed Plan Change does not give effect to this Policy because, amongst other matters, reliance of NZECP34:2001 fails to address the avoidance of subdivision, use and development, nor does it address sensitive activities and enabling the operation, maintenance development and upgrade of the National Grid, including into the future.

The Proposed Plan Change

While Transpower acknowledges that that Proposed Plan Change seeks to make provision for the National Grid through the inclusion of a Performance Standard and by mapping the National Grid Lines, Transpower opposes the following statement made in subsection 8.4 of the Proposed Plan Change document:

“The proposed ODP shows the location of an existing Electricity Transmission corridor. The roading layout has been designed so that a portion of the road is located beneath the corridor to enable the efficient use of land whilst concurrently providing for corridor access for maintenance purposes, and minimising the pressure to locate sensitive activities beneath the corridor. A comprehensive District Plan –wide approach to managing activities beneath the transmission corridor and giving effect to the NPS is anticipated to occur as part of the upcoming District Plan review. This ODP includes assessment matters relating to the design of lots to ensure that there are plausible building platforms that are located outside of the transmission corridor. This is seen as an interim response to give effect to the NPS as it relates to this specific site and pending broader District-wide provisions in the review.”

The NPSET includes an explicit direction requiring local authorities “... to give effect to its provisions in plans made under the Resource Management Act 1991 by initiating a plan change or review within four years of its approval.” The due date for compliance with that requirement was 10 April 2012. Timaru District Council has not met its obligations to implement the NPSET. It is vital that the NPSET be given fully effect as soon as possible. Further, the RMA does not provide for an ‘interim’ or ‘partially giving effect to’ approach. The Council does not have the discretion to apply an interim approach, rather it must meet its statutory requirement to give effect to the NPSET.

In all, Transpower opposes the Proposed Plan Change for the following reasons:

- the Council does not have the ability to take an ‘interim’ approach;
- the Proposed Plan Change does not include a Policy that is, in turn, implemented by the Rules that relate to the National Grid;
- the Proposed Plan Change fails to appreciate the third party safety role that NZECP34:2001 plays as opposed to the requirements of Policies 10 and 11 of the NPSET, including the need to address sensitive activities, and enabling the future maintenance use and development of the National Grid; and
- the section 32 evaluation incorrectly concludes that the Proposed Plan Change achieves the purpose of the RMA by “the management and design of future lots beneath the electricity transmission corridor”, whereas the NPSET has been determined to have

achieved the purpose of the RMA through the “avoidance” of activities and through “ensure” that the National Grid is not compromised.

It is Transpower’s conclusion that the Proposed Plan Change requires substantial amendment, as set out below, in order to:

- (a) give effect to the NPSET;
- (b) give effect to the CRPS;
- (d) represent the most appropriate means of exercising Council’s functions having regard to the efficiency and effectiveness of the provisions relative to other means;
- (e) discharge Council’s duty under section 32 of the RMA; and
- (e) achieve the purpose of the RMA.

Transpower New Zealand Limited seeks the following decision from the local authority:

Amend the Proposed Plan Change to give effect to the NPSET and CRPS including by making the following specific amendments set out in the following table; and such further, alternative or consequential relief as may be necessary to fully give effect to this submission (amendments are shown in red):

Amend proposed new Policy 2.4.2.4 as follows:

“Ensure that development in the Residential 1 and 4 zones at Broughs Gully (as set out in Appendix C of Part D2):

- is efficient, coordinated and supported by adequate services;
- and is in general accordance with the roading and servicing layout shown in Appendix C; and
- avoids adverse effects (including reverse sensitivity effects) on the safe, effective and efficient operation, maintenance, upgrading and development of the National Grid transmission lines.”

Amend the proposed Performance Standards in D2, Residential 1 Zone, Rule 5, and Performance Standards as follows:

“5.B.4 No building or activity sensitive to the National Grid shall be located within:

- 10 metres of the centre line of a National Grid transmission line on single poles;
- 12 metres of the centre line of a National Grid transmission line on pi poles; and
- 12 metres of the foundation of a National Grid transmission line support structure. ~~All buildings, fences, earthworks, vegetation and structures shall comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001)~~

5.B.x Fences shall be located greater than 6 metres from a National Grid transmission line support structure.

5.B.x Earthworks:

- (a) shall not destabilise a National Grid transmission line support structures;
- (b) shall not result in a reduction in the ground to conductor clearance distances below what is required by table 4 of NZECP34:2001; and
- (c) shall be no deeper than;

- 300mm within 2.2m of a National Grid transmission line support structure or stay wire; and
- 750mm within 2.2m to 5m of a National Grid transmission line support structure; except where the earthworks are vertical holes not exceeding 500mm in diameter beyond 1.5m of a National Grid transmission line support structure or undertaken by a network utility operator.

Advice Note:

- (a) Vegetation to be planted around the National Grid should be selected and managed to ensure that it will not breach the Electricity (Hazards for Trees) Regulations 2003.
- (b) Buildings and structures in the vicinity of the National Grid must also comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001)."

Amend D2, Residential 1 Zone, Rule 4, Non-Complying Activities as follows:

"4.2 In the Residential 1 Zone at Broughs Gully (as set out in Appendix C of Part D2), any building, fence, earthworks or activity that does not meet Performance Standards 5.B.4, 5.B.x and 5.B.x ~~the New Zealand Electrical Code of Practice for electrical Safe Distances (NZECP34:2001)~~ is non-complying."

As a consequence of the amendments set out above, **amend** the definition of 'Activity Sensitive to Aircraft Noise' in Part D8 – Appendices as follows:

"Activity Sensitive to Aircraft Noise and Activity Sensitive to the National Grid - Means Boarding or Lodging House or Hostel, Camping Grounds/Caravan Parks, Community Care Facility, Community Facilities, Day Care Centres, Educational Establishments, Home Stay, Hospital, Household Unit, Kohanga Reo, Marae, Papakainga, and Place of Assembly as defined this District Plan."

Amend the proposed Performance Standards in D6.3, Subdivision, Rule 6.3.8 as follows:

- (x) In the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) any lots created must maintain access to the National Grid and must show a building platform that is greater than:
 - 10 metres from the centre line of a National Grid transmission line on single poles;
 - 12 metres from the centre line of a National Grid transmission line on pi poles; and
 - 12 metres from the foundation of a National Grid transmission line support structure."

Amend or duplication the 'Note' that follows the Performance Standards in D6.3, Subdivisions to ensure that it clear that this Note also applies to the Broughs Gully Outline Development Plan and subdivision as follows:

"NOTE: Consultation with Transpower New Zealand Limited is necessary when considering ~~construction~~ subdivision within 20 metres of a high voltage electricity transmission line. The New Zealand Electrical Code of Practice (NZECP: 34 2001) contains restrictions on the location of structures and activities in relation to the lines."

Amend D6.3, Rule 6.3.6 Non-Complying Activities in All Zones to include the following:

“(x) Any subdivision in the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) that does not meet the Performance Standard in Rule 6.3.8(x).”

Amend the Proposed Outline Development Plan – Broughs Gully to accurately show the National Grid transmission lines (centre line) and to distinguish these lines from electricity distribution lines.

Transpower wishes to be heard in support of its submission.

Due to the specific interests of Transpower in the context of the National Grid, Transpower will not consider presenting a joint case with others at a hearing.

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**Signature of the person authorised to sign
on behalf of Transpower New Zealand Limited**

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