

**BEFORE THE INDEPENDENT HEARINGS COMMISSIONER APPOINTED
BY TIMARU DISTRICT COUNCIL**

In the matter of

the Resource Management Act 1991

And

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

**Statement of Evidence of Ainsley Jean McLeod on behalf
of Transpower New Zealand Limited (submitter number 5)
dated 25 July 2017**

Introduction

1. My full name is Ainsley Jean McLeod. I am a Technical Director of Planning at Beca Limited ("**Beca**"). I hold the qualifications of a Bachelor of Arts (Geography and Anthropology) and a Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute.
2. I have over 20 years' experience in planning practice, during which time I have undertaken a broad range of both consenting and policy planning work, including providing advice in relation to the preparation of policy and planning documents from a national through to a territorial local authority level. I have also prepared, and processed numerous applications for resource consent, notices of requirement and plan change requests.
3. I have been engaged by Transpower New Zealand Limited ("**Transpower**") to provide expert planning evidence in relation to the submission made by Transpower on Proposed Plan Change 21 to the Timaru District Plan (Broughs Gully Outline Development Plan) ("**Proposed Plan Change**").
4. I am familiar with Transpower's roles and responsibilities, having been the Director responsible for Beca's contracts to provide planning and environmental services to Transpower since 2001. Over the duration of these contracts I have provided planning advice in relation to new and upgraded National Grid transmission lines and substations along with the relevant planning instruments, including the National Policy Statement on Electricity Transmission 2008 ("**NPSET**") and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ("**NESETA**").
5. I am generally familiar with district plan approaches to providing for infrastructure and utilities, including the National Grid, across New Zealand. I am also familiar with the Proposed Plan Change, having drafted:

- (a) Transpower's comments on a pre-notification draft of the Proposed Plan Change; and
 - (b) Transpower's submission on the Proposed Plan Change.
6. In preparing this evidence I have reviewed the following documents insofar as they relate to the submission made by Transpower:
- (a) the NPSET;
 - (b) the Canterbury Regional Policy Statement 2013 ("**CRPS**");
 - (c) the Proposed Plan Change and accompanying documentation dated November 2016;
 - (d) submissions made on the Proposed Plan Change to the extent that they are relevant to Transpower's interests; and
 - (e) the 'Officer's Report of Submissions, Proposed Timaru District Plan Place Change No. 21 Broughs Gully Outline Development Plan dated 12 June 2017 ("**Section 42A Report**").
7. My evidence generally agrees with the conclusions reached in the Section 42A Report and as such is confined to:
- (a) confirming my support for the recommended revised provisions included in Appendix 2 to the Section 42A Report ("**Revised Provisions**");
 - (b) confirming my agreement that the submissions made on the Proposed Plan Change do not provide scope for a less stringent activity status; and
 - (c) concluding that, in any case, non-complying activity status is the most appropriate activity status for activities that breach rules relating to the proximity to the National Grid.

Code of Conduct

8. While not an Environment Court hearing, I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's 2014 Practice Note. I have complied with the Practice Note when preparing my written statement of evidence, and will do so when I give oral evidence before the Hearings Panel.
9. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.
10. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Transpower's Submission

11. Transpower owns and operates New Zealand's high voltage electricity network (the National Grid) and is responsible for its planning, building and maintenance. The site subject to the Proposed Plan Change ("**subject site**") is traversed by the Ashburton – Timaru A and Ashburton – Timaru B 110kV single circuit National Grid transmission lines, including single pole and pi-pole structures in this location.
12. Because the National Grid traverses the subject site, the Proposed Plan Change must give effect to the provisions of the NPSET, and also the provisions of the CRPS that relate to the National Grid. The provisions that are particularly relevant to the Proposed Plan Change are Policies 10 and 11 of the NPSET and Policy 16.3.4(2) of the CRPS that manage the adverse effects of third parties on the transmission network (these provisions are set out in full in **Attachment A**).
13. Transpower's submission opposes the Proposed Plan Change primarily on the basis that the Proposed Plan Change fails to give

effect to the NPSET and CRPS.¹ Transpower's submission sets out a suite of amendments to the Proposed Plan Change in order to meet the statutory requirements of sections 32 and 75(3) of the Resource Management Act 1991 ("RMA").

The Section 42A Report Recommendations

14. The Section 42A Report recommends a range of amendments, included in the Revised Provisions, and concludes the following:
- “42. I generally agree with the proposed changes, however it is my view that a restricted discretionary activity would be more appropriate in relation to effects on electricity transmission infrastructure. That is because the matter is reasonably confined, the affected parties are easily identified, and the plan seeks to avoid effects, rather than activities altogether, within proximity to the National Grid. Because of this, it is my view that a restricted discretionary activity status would be just as effective, but more efficient, than the non-complying status in the notified plan.*
- 43. However, there are no submissions seeking a lesser activity status, and such a change may be limited as to scope.”*
15. It is my understanding that the Timaru District Council, as proponent for the Proposed Plan Change, accepts the recommended amendments in the Section 42A Report in relation to the submission points made by Transpower.²

Activity Status

16. As set out above, the Section 42A Report concludes that restricted discretionary activity status is more appropriate in relation to effects on electricity infrastructure, but that such a change may be limited as to scope.
17. In this regard, I am of the opinion that there is no scope for a decision that activities not meeting Performance Standards 5.B.4,

¹ In this regard I note that “giving effect” is a strong statutory directive compared to other directives in the RMA and was interpreted in the EDS v New Zealand King Salmon Supreme Court case as meaning “to implement”.

² Included in email advice from Timaru District Council dated 6 July 2017.

5.B.5 and 5.B.6 in D2 Residential 1 Zone are restricted discretionary activities, as opposed to non-complying activities, because:

- (a) as notified, Rule 4.2 in D2 Residential 1 Zone provides for activities that do not meet the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) as non-complying activities;
- (b) no submissions have sought a less stringent activity status for Rule 4.2; and
- (c) no further submissions have opposed the introduction of Performance Standards 5.B.4, 5.B.5 and 5.B.6, including in Rule 4.2, as sought in Transpower's submission.

18. That said and for completeness, should it be determined that there is scope to make the suggested change to restricted discretionary activity status, I do not agree with the conclusion reached in the Section 42A Report and support the retention of non-complying activity status for activities not meeting Performance Standards 5.B.4, 5.B.5, 5.B.6 and 6.3.8(21) for the following reasons:

- (a) The Section 42A Report, in stating that the plan seeks to avoid effects rather than activities, fails to give consideration to the direction given by Policies 10 and 11 of the NPSET. Policy 10 requires the management of **activities** and Policy 11 requires local authorities to "*identify a buffer corridor within which it can be expected that **sensitive activities** will generally not be provided for*" [my emphasis]. In my opinion these policies clearly anticipate the management of activities directly.
- (b) Similarly, in concluding that restricted discretionary activity status is appropriate, the Section 42A Report does not contemplate the use of the strong and direct language such as "avoid reverse sensitivity effects", "ensure", "not compromised", and "generally not provided for" in Policies 10 and 11 of the NPSET. I understand "avoid" to mean "not allow" and as such it is my conclusion that non-complying

activity status is the most efficient, effective and appropriate. Non-complying activity status sends a clear signal that many activities will not be allowed in the vicinity of the National Grid (without deferring to the blunt instrument of prohibited activity status) and does not confine decision-making on resource consents to those matters in section 104C of the RMA, instead allowing a comprehensive consideration under sections 104D and 104 of the RMA, including the NPSET (if necessary).

- (c) Further, the Section 42A Report does not consider the similarly strong directive to “avoid subdivision, use and development” in Policy 16.3.4(2) of the CRPS or “avoids adverse effects” in new Policy 2.4.2.4 (set out in the Revised Provisions).
- (d) Non-complying activity status is consistent with the approach taken to third party activities in the vicinity of the National Grid in recent district plans across New Zealand and Canterbury (including Waimate, Hurunui and Christchurch). As such, non-complying activity status is consistent with the guidance in Method 5 to Policy 16.3.4 of the CRPS.
- (e) Non-complying activity status is also consistent with the recent interim judgement of the High Court on appeals made by Transpower on provisions of the proposed Auckland Unitary Plan as follows:

“[85] Policy 10, though subject to the “reasonably possible” proviso, is, in my judgment, relatively prescriptive. It requires that decision-makers “must” manage activities to avoid reverse sensitivity effects on the electricity transmission network, and “must” ensure that the operation, maintenance, upgrading and development to the electricity transmission network is not compromised, What is sought to be protected is the national electricity transmission grid – an asset which the NPSET recognises is of national significance. A mandatory requirement to ensure that an asset of national significance is not compromised is, in my judgment, a relatively strong directive.”

“[108] In my judgement, the errors I have found both individually and collectively are material. The relevant

provisions have the potential to compromise the national grid and its operation, maintenance, development and potential for upgrade. These are matters of national significance, which generally must not be compromised.”³

Revised Provisions

19. Having regard to the RMA framework for decisions on the Proposed Plan Change,⁴ I support the Revised Provisions in Appendix 2 to the Section 42A for the following reasons (and including the reasons in Paragraph 18 above that relate to non-complying activity status):
- (a) the Revised Provisions give effect to the NPSET, including Policies 1, 2, 10 and 11;
 - (b) the Revised Provisions give effect to Policy 16.3.4 of the CRPS;
 - (c) the Revised Provisions are aligned with the approach to giving effect to the NPSET taken in other District Plans; and therefore
 - (d) the Revised Provisions are the most appropriate way to achieve the purpose of the RMA.



Ainsley Jean McLeod

25 July 2017

³ *Transpower New Zealand Ltd v Auckland Council*, CIV-2016-404-002330 [2017] NZHC 281, dated 28 February 2017 at [85] and [108].

⁴ Generally set out in Section 3 of the Section 42A Report, and reflective of the revised *Long Bay* test.

ATTACHMENT A: PARTICULARLY RELEVANT PROVISIONS OF THE NPSET AND CRPS

NPSET POLICY 10

“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.”

NPSET POLICY 11

“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).”

CRPS POLICY 16.3.4

“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.*

...

Methods

...

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) ...”

Local authorities:

Should:

- (5) Work together to adopt a consistent approach in relation to cross boundary issues for the electricity transmission network.*

Principal reasons and explanation

The national electricity transmission network makes important contributions to the sustainable management of natural and physical resources including by enabling people’s economic and social well-being, health and safety. Specifically, the benefits of the electricity transmission network include those benefits defined in Policy 1 of the National Policy Statement on Electricity Transmission.

Over time, considerable public and private investment has occurred in developing, maintaining and upgrading the electricity transmission network. It is not reasonably foreseeable that these systems will become redundant or be replaced. It is important that land-use does not adversely impact on the efficient operation and development of this network.

The National Environmental Standards for Electricity Transmission Activities provides regulations that categorise activities that relate to the operation, maintenance, upgrade, relocation or removal of existing transmission infrastructure. These regulations control the activity status for a range of activities relating to transmission infrastructure.

New electricity infrastructure associated with the electricity transmission network can have adverse effects on the environment, including areas of cultural significance to Ngāi Tahu. These adverse effects can be minimised by appropriate route, site and method selection.”