

BEFORE THE HEARINGS COMMISSIONERS

Under the Resource Management Act 1991

In the matter of

The Proposed Southland Water and Land Plan

And

Transpower New Zealand Limited

Further Submitter

Legal Submissions on behalf of Transpower New Zealand Limited

4 September 2017

BELL GULLY

BARRISTERS AND SOLICITORS
AJL BEATSON/ NJ GARVAN
AUCKLAND LEVEL 22, VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

May it please the Hearings Commissioners —

1. Transpower New Zealand Limited (**Transpower**) lodged a further submission on the Proposed Southland Water and Land Plan (the **Proposed Plan**).
2. Transpower is the State Owned Enterprise that owns, operates, maintains, upgrades and develops New Zealand's high voltage transmission network – the National Grid. Transpower has critical assets of regional and national significance in Southland and has actively participated in the development and formulation of the Proposed Regional Policy Statement for Southland, along with the relevant proposed district plans.
3. The National Grid is critical to the social and economic wellbeing of Southland and New Zealand. It plays a fundamental role in our economy providing the necessary connection between generators and customers for the reliable operation of a \$5 billion competitive wholesale electricity market to deliver electricity efficiently to consumers throughout New Zealand.

Give effect to NPSET

4. Section 67(3)(a) of the RMA provides the Proposed Plan must “give effect to” the National Policy Statement on Electricity Transmission 2008 (**NPSET**).
5. The Supreme Court considered what is meant by the phrase “give effect to” in the context of the New Zealand Coastal Policy Statement (**NZCPS**) and held that:¹

“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.

¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company* (2014) 17 ELRNZ 442, at [77].

6. The Supreme Court held that the “requirement to ‘give effect to’ the NZCPS is intended to constrain decision-makers”.² We submit this applies equally to the NPSET in the context of decisions relating to electricity transmission. The Supreme Court also observed 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”.³ Those comments also apply here. The preamble of the NPSET highlights that the National Grid has particular physical characteristics and operational/security requirements that create challenges for its management under the RMA, and it is important there are consistent policy and regulatory approaches by local authorities.
7. There is therefore a very strong statutory imperative for, and directive towards, giving effect to the NPSET through the provisions of the Proposed Plan. We consider the following provisions of the NPSET are of particular relevance to the Proposed Plan (summarised below):
- (a) Policy 1 – decision-makers must recognise and provide for the national, regional and local **benefits** of sustainable, secure and efficient electricity transmission;
 - (b) Policy 2 – decision-makers must recognise and provide for the **effective operation, maintenance, upgrading and development** of the electricity transmission network;
 - (c) Policy 3 – When considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-makers must consider the **constraints** imposed on achieving those measures by the **technical and operational requirements of the network**;

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company* (2014) 17 ELRNZ 442, at [91].

³ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company* (2014) 17 ELRNZ 442, at [90].

- (d) Policy 4 – When considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the **route, site and method selection**;
 - (e) Policy 5 – When considering the environmental effects of transmission activities associated with transmission assets, decision-makers must **enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets**;
 - (f) Policy 10 – 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**.
8. The High Court recently held that Policy 10 is relatively prescriptive and a relatively strong directive.⁴ Ms McLeod highlights that the Proposed Plan does not control third party activities in close proximity to the National Grid.⁵ While there are no submissions seeking this,⁶ it does not absolve the Hearing Commissioners of the requirement to give effect to Policy 10 of the NPSET and ensure that the operation, maintenance, upgrading, and development of the electricity transmission network is not compromised by third party activities. I have **attached** to these submissions the amendments Transpower considers would address this concern and give effect to the NPSET.

⁴ *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281, at [85].

⁵ Statement of Evidence of Ainsley McLeod on behalf of Transpower New Zealand Ltd, dated 12 May 2017, para 4.17.

⁶ We note Transpower's application for a waiver to lodge a late submission was declined (decision of the Chair dated 15 December 2016).

Give effect to RPS

9. Similarly, the Council is required to “give effect” to the Regional Policy Statement for Southland.⁷ This includes a number of relevant policies including Policy INF3 requiring the protection of infrastructure.

Not conflict with NESETA

10. In Ms McLeod’s evidence on behalf of Transpower she has raised that rule 63A of the Proposed Plan is potentially more stringent than the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**).⁸
11. If a local authority’s proposed plan contains a rule that conflicts with a provision in a national environmental standard then the process set out below applies. A rule conflicts with a provision if—⁹
- (a) both of the following apply:
 - (i) the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and
 - (ii) the standard does not expressly say that a rule may be more stringent than it; or
 - (b) the rule is more lenient than the provision, and the standard does not expressly specify that a rule may be more lenient than the provision in the standard.

⁷ Section 67(3)(c) of the RMA. Based on the Council’s website all appeals on the Proposed Southland Regional Policy Statement have now been resolved through consent orders issued by the Environment Court so this will be the version the Hearing Commissioners need to give effect to.

⁸ Statement of Evidence of Ainsley McLeod on behalf of Transpower New Zealand Ltd, dated 12 May 2017, para 14.10.

⁹ Section 44A of the RMA.

12. The local authority must amend the proposed plan to remove the duplication or conflict without using the process in Schedule 1, and as soon as practicable after the date on which the standard comes into force.¹⁰
13. Ms McLeod will explain why rule 63A of the Proposed Plan is more stringent than regulation 23 of the NESETA, and therefore should be amended to remove the conflict.

Requirement to include reference to NPSET and NESETA

14. Transpower's further submission seeks the Proposed Plan includes reference to the NPSET and NESETA.
15. Section 58G of the RMA provides that the first set of national planning standards must include a structure and form for plans, including references to relevant national policy statements and national environmental standards.
16. This means it is likely the Proposed Plan will need to include reference to the NPSET and NESETA. Transpower considers it is more efficient and cost effective if these references are included by the Council now.

Conclusion

17. The Council has to give effect to the NPSET, and the RPS. In summary, we submit this means ensuring the operation, maintenance, development, and upgrade of the National Grid is enabled, and the adverse effects of other activities on the National Grid are appropriately managed in accordance with the policy directives. This applies regardless of the scope of submissions.

¹⁰ Section 44A(5) of the RMA.

18. Transpower is calling evidence from:

(a) Ms Ainsley McLeod – Planning.



N J Garvan
Counsel for Transpower New Zealand Limited

4 September 2017