

Before the Proposed Porirua District Plan Hearings Panel In Porirua

Under the Resource Management Act 1991 (the Act)

In the matter of the Proposed Porirua District Plan – Hearing Stream 1: Over-arching matters, plan-wide structural issues, definitions applying across more than one hearing stream.

Between **Porirua City Council**
Local authority

And **Transpower New Zealand Limited**
Submitter 60 and Further Submitter FS04

Outline of legal submissions for Transpower New Zealand Limited

Dated 22 September 2021

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1 Overview of Transpower's case

- 1.1 Transpower New Zealand Limited (**'Transpower'**) operates the National Grid, which transmits electricity throughout New Zealand. Within Porirua City, this includes six high voltage National Grid transmission lines that are either 110 kilovolts (**'kV'**) or 220kV,¹ and one substation at Pāuatahanui (which is designated in the (operative) District Plan).²
- 1.2 **Ms Rebecca Eng's** evidence describes Transpower, the National Grid and Transpower's assets in Porirua City.
- 1.3 Transpower's submission on the Proposed Porirua District Plan (**'Proposed Plan'**) was largely in support of the proposed provisions but did seek specific refinements. As outlined in the evidence of **Ms Pauline Whitney**, amendments sought by Transpower focussed on:³
- a The policy framework for the National Grid, which requires refinement to better reflect and give effect to the National Policy Statement on Electricity Transmission (**'NPSET'**);
 - b The rule framework, particularly:
 - i the rules relating to buildings, structures, sensitive land uses,⁴ and subdivision⁵ in the National Grid Yard and National Grid Pāuatahanui Substation Yard;
 - ii a range of amendments relating to the effects of earthworks on the National Grid and earthworks requirements, including activity status, within the National Grid Yard;⁶ and
 - iii amendments to merge the National Grid Yard rules within the Residential,⁷ Rural,⁸ Open Space⁹ and Future Urban zone¹⁰ Chapters into one set of provisions in the Infrastructure Chapter, and also seeking to include, within that set of provisions, a control for hazardous substances, a minimum vertical clearance distance requirement for

¹ Eng, 10 September 2021, para 1.1.

² Eng, 10 September 2021, para 6.2.

³ Whitney, 10 September 2021, paras 7.3 – 7.4.

⁴ Hearing Stream 4.

⁵ Hearing Stream 4.

⁶ Hearing Stream 4.

⁷ Hearing Stream 7 or 4.

⁸ Hearing Stream 5 or 4.

⁹ Hearing Stream 5 or 4.

¹⁰ Hearing Stream 5 or 4.

permitted buildings and structures, and clarification that buildings and structures not expressly provided for are non-complying activities;¹¹

- iv adding specific references to the National Grid in specific parts of the Proposed Plan.¹²

- 1.4 The evidence of **Ms Eng** is that Transpower's relief will ensure integrated management of activities through the Proposed Plan in order to provide for sustainable development of both the National Grid infrastructure and other natural and physical resources.¹³
- 1.5 Transpower also lodged further submissions on the Proposed Plan. This included a number of further submission points on the original submissions by Kāinga Ora – Homes and Communities ('**Kāinga Ora**'),¹⁴ and the Royal Forest and Bird Protection Society ('**Forest and Bird**').¹⁵
- 1.6 As outlined in the evidence of **Ms Whitney**, Transpower's submissions and further submissions specific to Hearing Stream 1 were limited in nature, and relate to:¹⁶
- a Definitions;
 - b National Direction Policy Framework; and
 - c Plan wide matters.
- 1.7 **Ms Whitney** either supports or accepts all the Section 42A Report recommendations for Hearing Stream 1¹⁷ but, in particular, notes that the appropriateness of the terms 'avoid' and 'minimise' is likely to be addressed at subsequent hearings, including at Infrastructure Hearing Stream 4.¹⁸ Transpower submits that, in the context of the National Grid, the use of the terms 'avoid' and 'minimise' should be assessed on a provision by provision basis in order to give effect to the nuanced approach of the NPSET.

¹¹ Hearing Stream 7 or 4.

¹² Hearing Stream 2 and 4.

¹³ Eng, 10 September 2021, para 10.2.

¹⁴ Submitter number 81; (Transpower) further submitter number 04.

¹⁵ Submitter number 225; (Transpower) further submitter number 04.

¹⁶ Whitney, 10 September 2021, para 8.1. Transpower's submissions and further submissions relating to Hearing Stream 1 were also set out in the 'Proposed Porirua District Plan: Submissions and further submissions to be heard in Hearing Stream 1' document.

¹⁷ Section 42A Report: Parts A and B, available at: https://storage.googleapis.com/pcc-wagtail-media/documents/List_of_submitters_and_submission_points_to_be_heard_in_Hearing_Stream_1.pdf

¹⁸ Whitney, 10 September 2021, para 8.2.

- 1.8 Appendix B of **Ms Whitney's** evidence outlines her position on Transpower's submission points relating to Hearing Stream 1. Transpower concurs with her reasoning and response.¹⁹
- 1.9 Transpower supports the relevant Hearing Stream 1 amendments on the basis that they are necessary and 'most appropriate' (in terms of the requirements of section 32 of the Resource Management Act 1991 ('**RMA**')) to:
- a give effect to the NPSET; and
 - b reflect the purpose of the RMA in relation to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations.²⁰

2 Scope of submissions

- 2.1 These submissions:
- a Briefly address the statutory framework. There is no dispute with the statutory framework described in the Section 42A Report, but these submissions highlight those aspects most relevant to Transpower;
 - b Summarise the NPSET, and the need to give effect to it;
 - c Respond to matters raised in the Section 42A Report for Hearing Stream 1 ('**Section 42A Report**'), being:
 - i Definitions (applying across more than one hearing stream);
 - ii National Direction Policy Framework; and
 - iii Plan wide matters; and
 - d Introduce Transpower's witnesses for Hearing Stream 1.

3 Statutory framework

- 3.1 Transpower agrees with the statutory framework described in sections 2 and 3.3 of the Section 42A Report.²¹

¹⁹ Whitney, 10 September 2021, para 8.2; Eng, 10 September 2021, para 1.5.

²⁰ Whitney, 10 September 2021, para 9.2.

²¹ Section 42A Report: Part A.

- 3.2 The Proposed Plan must be prepared in accordance with:²²
- a the Council's functions under section 31 RMA;
 - b Part 2 of the RMA;
 - c the Council's obligation to prepare, and have particular regard to, an evaluation report under section 32 RMA; and
 - d any national policy statement, the NZCPS, the national planning standards, and regulations (which include national environmental standards).
- 3.3 Importantly for Transpower, section 75(3)(a) RMA requires the Proposed Plan to give effect to the NPSET.
- 3.4 The requirement to 'give effect' to an instrument was interpreted in *King Salmon* as meaning 'to implement'.²³ It is a strong direction and requires positive implementation for two reasons:²⁴
- a The hierarchy of plans makes it important that objectives and policies at the national and regional level are given effect to at the district level; and
 - b Superior documents that have passed through the RMA processes can be deemed to give effect to Part 2 matters.
- 3.5 Section 32(1)(b) requires the Council to examine whether the provisions (being policies, rules or other methods) in the Proposed Plan are the most appropriate way to achieve the objectives by assessing the efficiency and effectiveness of the provisions in achieving the objectives. In addition, section 32AA requires a further evaluation to be undertaken in respect of any changes which are made to the provisions after the initial Section 32 Report was prepared.
- 3.6 The evidence of **Ms Whitney** is that the relevant Hearing Stream 1 provisions recommended in the Section 42A Report, as outlined in her Appendix B appropriately:
- a Give effect to the NPSET; and

²² RMA, s74(1).

²³ *EDS v King Salmon* [2014] NZSC 38 at para [77].

²⁴ *EDS v King Salmon* [2014] NZSC 38 at para [77].

- b Reflect the purpose of the RMA in relation to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations.²⁵

4 Giving effect to the NPSET

- 4.1 The NPSET was introduced to recognise the vital role the National Grid plays in the wellbeing of New Zealand, its people and the environment.²⁶ The sole 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:

- a Managing the adverse environmental effects of the network; and
- b Managing the adverse effects of other activities on the network.

- 4.2 To implement this objective, the NPSET contains 14 policies that provide guidance to decision makers exercising functions under the RMA. A copy of the NPSET is provided as **Appendix A to Ms Whitney's** evidence.

Policies 1-9 – benefits of transmission, and managing its effects

- 4.3 Policy 1 requires the Council to 'recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission.'
- 4.4 Policies 2 - 9 reflect the scale of those benefits. While these policies address the effects of electricity transmission, they do so in a way which recognises the paramount importance of keeping the lights on. The detail of what those policies require, in terms of managing the effects of transmission activities, will be addressed in the context of other Hearing Streams.

Policies 10 and 11 – effects on the transmission network

- 4.5 Policies 10 and 11 provide support for those Proposed Plan provisions which regulate the activities of others which could affect the National Grid:

²⁵ Whitney, 10 September 2021, para 9.2.

²⁶ NPSET, preamble.

- a Policy 10 of the NPSET requires the Council to provide a framework for managing activities which could cause reverse sensitivity effects on the National Grid, and ensure the operation, maintenance, upgrading and maintenance of the National Grid Infrastructure is not compromised; and
- b Policy 11 of the NPSET requires the Council to identify an 'appropriate buffer corridor' within which sensitive activities are generally not provided for in plans or given resource consent. The NPSET defines 'sensitive activities' to *include* schools, residential buildings and hospitals (and Transpower's experience²⁷ is that a variety of activities can be sensitive to the electrical risks and constraints of the National Grid).

5 Response to matters raised in the Section 42A Report

- 5.1 Transpower supports or accepts the Section 42A Report recommendations on Transpower's submissions (including further submissions) for those matters falling within Hearing Stream 1.²⁸ **Ms Whitney's** position (supported and adopted by Transpower) is recorded in Appendix B of her evidence.
- 5.2 Nonetheless, Transpower wishes to respond to the Section 42A Report's recommendations in the order set out in **Ms Whitney's** evidence, as follows:
 - a Definitions;
 - b National Direction Policy Framework; and
 - c Plan wide matters.

Definitions

- 5.3 Hearing Stream 1 covers definitions which are not addressed in individual topics. Transpower's submission supported all the notified definitions covered by Hearing Stream 1. **Ms Whitney** supports all the Section 42A Report recommendations relating to the Hearing Stream 1 definitions and seeks no further amendments.²⁹
- 5.4 Transpower concurs with **Ms Whitney's** support of the definitions of *Functional need*, *Operational need* and *Construction activity*, including the potential

²⁷ This will be covered by the evidence lodged for Hearing Stream 4.

²⁸ Whitney, 10 September 2021, para 8.2 and as set out in the Section 42A Report: Parts A and B. Transpower's submissions and further submissions relating to Hearing Stream 1 were also set out in the 'Proposed Porirua District Plan: Submissions and further submissions to be heard in Hearing Stream 1' document, available at: https://storage.googleapis.com/pcc-wagtail-media/documents/List_of_submitters_and_submission_points_to_be_heard_in_Hearing_Stream_1.pdf.

²⁹ Whitney, 10 September 2021, para 8.3.

confusion caused by including the term 'construction' in the Infrastructure chapter.³⁰

National Direction Policy Framework

- 5.5 Transpower's submission sought the following amendments to the 'National Direction Instruments':³¹
- a Adding reference to the NPSET alongside other NPSs; and
 - b Deleting the reference to the NZCPS in the heading and preamble to clarify that the NZCPS is in fact an NPS.
- 5.6 The Section 42A Report agreed with the addition of 'NPSET' but did not agree with the removal of the 'NZCPS' references.³²
- 5.7 **Ms Whitney** supports the insertion of the reference to the NPSET and accepts the retention of reference to the NZCPS.³³ Transpower does not seek any further amendments.

Plan wide matters

- 5.8 As outlined in the evidence of **Ms Whitney**, Transpower was a further submitter on nine 'plan wide' submission points which are to be addressed in Hearing Stream 1.³⁴ Once again, **Ms Whitney** supports or accepts all the Section 42A Report recommendations in relation to these points and seeks no outstanding amendments.³⁵ Transpower concurs.
- 5.9 **Ms Whitney's** evidence discusses two matters of specific relevance to Transpower, being original submissions by other parties relating to:³⁶
- a Direct 'avoid' statements; and
 - b Replacing 'minimise' with the term 'mitigate'.

³⁰ Whitney, 10 September 2021, para 8.4.

³¹ Transpower submission, page 17, 60.22 and 60.123.

³² Section 42A Report: Part A, Section 9.2.2.

³³ Whitney, 10 September 2021, para 8.5.

³⁴ Whitney, 10 September 2021, para 8.6. Transpower's submissions and further submissions relating to Hearing Stream 1 were also set out in the 'Proposed Porirua District Plan: Submissions and further submissions to be heard in Hearing Stream 1' document, available at: https://storage.googleapis.com/pcc-wagtail-media/documents/List_of_submitters_and_submission_points_to_be_heard_in_Hearing_Stream_1.pdf

³⁵ Section 42A Report: Parts A and B.

³⁶ Whitney, 10 September 2021, para 8.6.

³⁶ Whitney, 10 September 2021, paras 8.7 – 8.15.

'Avoid'

- 5.10 Transpower made a further submission³⁷ opposing Kāinga Ora's submission point which sought to:³⁸

Amend provisions with direct 'avoid' statements. This needs to be qualified in light of the *King Salmon* meaning of 'avoid'.

- 5.11 The Section 42A Report recommended Kāinga Ora's submission to amend provisions with direct 'avoid' statements be rejected.³⁹
- 5.12 **Ms Whitney** supports the Section 42A Report recommendation in relation to the National Grid and considers the "context of how that term is used will be relevant to whether it is appropriate in a given case."⁴⁰
- 5.13 Ms Williams, for Kāinga Ora, takes a neutral stance on Kāinga Ora's 'avoid' submission point.⁴¹
- 5.14 Transpower does not support the submission to amend all provisions with direct 'avoid' statements. In some instances 'avoid' wording will be appropriate to, among other things, give effect to the NPSET.
- 5.15 Specific to the National Grid:
- a The Proposed Plan must give effect to the nuanced direction in the NPSET regarding the way in which the adverse effects of the National Grid must be managed;
 - b The NPSET uses the terms 'managing', 'avoid, remedy or mitigate', 'reduce', 'minimise', 'avoid' and 'seek to avoid', depending on the circumstances;
 - c As outlined the evidence of **Ms Whitney**, retention of the word 'avoid' in the context of the National Grid is supported where it gives effect to the NPSET (for example INF-P5 which relates to avoiding certain activities in the National Grid Yard);⁴² and
 - d However, **Ms Whitney** acknowledges that an unqualified direction to avoid all effects in all instances is not consistent with the NPSET.⁴³

³⁷ Transpower further submission points FS04.54, FS04.56, FS04.57, FS04.59 (as numbered in the Section 42A Report).

³⁸ Kāinga Ora submission points 81.644-81.645, 81.815 and 81.580 (as numbered in the Section 42A Report).

³⁹ Section 42A Report: Part A, Section 9.11, Para 194.

⁴⁰ Whitney, 10 September 2021, para 8.7.

⁴¹ Williams, 10 September 2021, para 4.4.

⁴² Whitney, 10 September 2021, para 8.10.

⁴³ Whitney, 10 September 2021, para 8.11.

5.16 Appropriate use of the term 'avoid' in a way that gives effect to the NPSET will be addressed in the Infrastructure Hearing Stream 4. Despite opposing the wholesale replacement or deletion of all 'avoid' directions, Transpower does not disagree with the broader point that directions to 'avoid' (all) effects may be inappropriate in some cases, such that they should be either qualified or replaced with alternative wording.

'Minimise'

5.17 Transpower made a further submission⁴⁴ opposing Waka Kotahi's submission seeking the plan wide replacement of the term 'minimise' with 'mitigate'.⁴⁵

5.18 The Section 42A Report rejected this submission and considered the removal of the term 'minimise' to be 'inappropriate'.⁴⁶

5.19 Waka Kotahi lodged a 'tabled statement' which supported the recommendation of the Section 42A Report in relation to the use of the term 'minimise'.⁴⁷ Waka Kotahi is not scheduled to appear.

5.20 **Ms Whitney's** view is that the appropriateness of the term 'minimise' will need to be assessed on a 'provision-by-provision basis'.⁴⁸

5.21 Transpower accepts the Section 42A Report's recommendation to reject this submission point, at least as it relates to Hearing Stream 1.⁴⁹ It is submitted that the appropriateness of the term 'minimise' must be assessed in the specific context of each provision to determine whether the Proposed Plan precisely gives effect to the 'nuanced approach' of the NPSET to dealing with adverse effects. That is not to say that the term 'minimise' will be appropriate in all cases, but this is a question that needs to be addressed on a provision by provision basis (and Transpower reserves its position accordingly).⁵⁰

6 Evidence to be presented

6.1 Transpower has lodged evidence by two witnesses in support of its submission and further submissions:

a **Ms Rebecca Eng** (Corporate); and

⁴⁴ Transpower further submission point FS04.48.

⁴⁵ Waka Kotahi submission points: 82.164 (as numbered in the Section 42A Report).

⁴⁶ Section 42A Report: Part A, Section 9.11, para 195.

⁴⁷ Jones, 15 September 2021, Pg 4.

⁴⁸ Whitney, 10 September 2021, para 8.13.

⁴⁹ Section 42A Report: Part A, Section 9.11, para 195.

⁵⁰ Particularly with respect of the Infrastructure provisions, and managing effects of the National Grid.

b **Ms Pauline Whitney** (Planning).



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