

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 4: Energy,
Infrastructure and Transport, General District-Wide Matters

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 - Hearing Stream 4

Dated 4 February 2022

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1 Overview of Transpower's case

Transpower's submission on the PDP

- 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 towers,¹ and one substation at Pāuatahanui (which is designated in the (operative) District Plan).²
- 1.2 **Ms Rebecca Eng's** Hearing Stream 1 evidence describes Transpower, the National Grid and Transpower's assets in Porirua City.
- 1.3 Transpower's submission on the Proposed Porirua District Plan (**'PDP'**) was largely in support of the proposed provisions but did seek specific refinements. **Ms Pauline Whitney's** Hearing Stream 1 evidence provides an overview of the amendments sought by Transpower on the PDP as a whole.³
- 1.4 Transpower also lodged further submissions on the PDP. This included a number of further submission points on the original submissions by Kāinga Ora – Homes and Communities (**'Kāinga Ora'**),⁴ and the Royal Forest and Bird Protection Society (**'Forest and Bird'**).⁵

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- 1.5 Transpower lodged 97 submission points and 43 further submission points in relation to Hearing Stream 4,⁶ largely seeking changes to better give effect to the National Policy Statement on Electricity Transmission (**'NPSET'**).
- 1.6 **Ms Whitney** supports (or accepts) the majority of the recommendations made in the section 42A officer reports (**'Section 42A Reports'**)⁷ with regards to Transpower's submission and further submission points (as listed in her Appendix C).⁸

¹ Eng, 10 September 2021, para 1.1.

² Eng, 10 September 2021, para 6.2. The designation is currently proposed (in the notified version of the PDP) to be 'rolled-over'. Transpower submitted in support of this (60.120) and this is to be addressed at Hearing Stream 6.

³ Whitney, 10 September 2021, paras 7.2 – 7.4.

⁴ Submitter number 81; (Transpower) further submitter number 04.

⁵ Submitter number 225; (Transpower) further submitter number 04.

⁶ Whitney, 21 January 2022, para 1.3.

⁷ Officer's Report: Part B – Strategic Objectives, 3 December 2021; Officer's Report: Part B – Amateur Radio; Officer's Report: Part B – Earthworks; Officer's Report: Part B – Infrastructure; Officer's Report: Part B – Light; Officer's Report: Part B – Noise; Officer's Report: Part B – Renewable Electricity Generation; Officer's Report: Part B – Signs; Officer's Report: Part B – Temporary Activities; Officer's Report: Part B – Three Waters; Officer's Report: Part B – Transport. (all dated 3 December 2021)

⁸ Whitney, 21 January 2022, para 7.3.

- 1.7 However, there are 53 outstanding submission points where **Ms Whitney** does not support or accept the Section 42A Report recommendations.⁹ The most material of these are discussed in her evidence, and all are listed for completeness in her Appendix C.
- 1.8 These outstanding submission points are addressed by **Ms Whitney** under four principal topics:
- a Plan Structure;
 - b Provisions relating to enabling the National Grid (New sought Policy INF-Px);
 - c Provisions relating to managing the effects of the National Grid:
 - i INF-P7 *Operation and maintenance and repair of the National Grid*;
 - ii INF-P8 *Upgrading of the National Grid* (renumbered from INF-P6); and
 - iii INF-P9 *Development of the National Grid* (renumbered from INF-P7);
 - d Provisions relating to managing the effects on the National Grid;
 - i INF-P6 *Adverse effects on the National Grid*;
 - ii Land use activities (Rules GRZ-R5, GRZ-R14 and corresponding rules in the GRUZ, RLZ, OSZ and FUZ zones, and Rule INF-R25); and
 - iii Earthworks (EW-P5 and EW-R4).
- 1.9 The amendments recommended by **Ms Whitney** (and sought by Transpower) are, in general terms, intended to ensure that the National Grid and transmission activities are appropriately provided for in terms of recognising and enabling their benefits, managing their effects in a workable way, and protecting them from the effects of third party activities – all in a manner that gives effect to the NPSET.
- 1.10 In responding to the Section 42A Reports, these legal submissions adopt the same structure as **Ms Whitney's** evidence as at paragraph 1.8 above, and highlight legal issues relevant to the relief sought by Transpower.

⁹ Whitney, 21 January 2022, para 1.4.

- 1.11 In support of the relief sought, Transpower also relies on:
- a The evidence of **Ms Rebecca Eng**,¹⁰ which provides evidence on the National Grid Corridor approach, including its purpose, and also the ACRE¹¹ route and site selection process from a Transpower perspective (the latter applying to new assets). In addition, **Ms Eng** also provides examples of successful subdivision outcomes near the National Grid;¹² and
 - b The evidence of **Mr Ben Cartwright**,¹³ which provides engineering evidence on the risks arising from the National Grid, including electrical shock, and risks for National Grid activities, which can arise from earthworks, hazardous substances, sensitive activities, or large scale and intensively used buildings locating under or adjacent to the National Grid. **Mr Cartwright** also addresses the importance of the National Grid Corridor approach as a tool to manage these risks.
- 1.12 In summary, Transpower supports the amendments to the Hearing Stream 4 provisions as outlined in **Ms Whitney's** primary evidence¹⁴ and rebuttal evidence,¹⁵ on the basis that they are the most appropriate way to achieve the purpose of the Resource Management Act 1991 ('**RMA**'), and will give effect to the NPSET and the Regional Policy Statement ('**RPS**').

2 Statutory framework

- 2.1 Transpower generally agrees with the description of the statutory framework contained in the Section 42A Reports for Hearing Stream 4.¹⁶
- 2.2 Transpower's legal submissions for Hearing Stream 1 broadly outline the statutory framework for preparing the PDP.¹⁷ The relevant sections of the RMA for these submissions include section 73 which is discussed below.
- 2.3 To assist the Panel with its obligations in terms of section 32AA RMA, **Ms Whitney's** Appendix D sets out an evaluation of her recommended amendments in terms of that section.

¹⁰ Eng, 21 January 2022.

¹¹ 'ACRE' stands for Area, Corridor, Route, Easement, and is explained further in Ms Eng's evidence at para 4.3.

¹² Eng, 21 January 2022, paras 8.5 – 8.10.

¹³ Cartwright, 21 January 2022.

¹⁴ Whitney, 21 January 2022.

¹⁵ Whitney, 2 February 2022.

¹⁶ Officer's Report: Part B – Strategic Objectives, paras 22-25, Officer's Report: Part B – Amateur Radio, paras 27-30, Officer's Report: Part B – Earthworks, paras 27-30, Officer's Report: Part B – Infrastructure, paras 28-31, Officer's Report: Part B – Light, paras 27-30, Officer's Report: Part B – Noise, paras 13-16, Officer's Report: Part B – Renewable Electricity Generation, paras 28-31, Officer's Report: Part B – Signs, paras 26-29, Officer's Report: Part B – Temporary Activities, paras 25-28, Officer's Report: Part B – Three Waters, paras 27-30 and Officer's Report: Part B – Transport, paras 11-14.

¹⁷ Outline of legal submissions for Transpower New Zealand, 22 September 2021, paras 3.2-3.5.

Giving effect to the NPSET

- 2.4 Importantly for Transpower, section 75(3)(a) RMA requires the PDP to give effect to the NPSET. **Ms Whitney's** Hearing Stream 1 evidence and Transpower's legal submissions for Hearing Stream 1 outline what giving effect to the NPSET requires.¹⁸
- 2.5 It is appropriate by way of update to touch on the recent *Port Otago*¹⁹ case. This decision of the Court of Appeal provides further guidance in terms of the statutory requirements for plans to 'give effect to' national instruments. In essence, the Court found that a direction in the NZ Coastal Policy Statement ('**NZCPS**') to 'avoid' certain effects could not be given effect to through an RPS direction to 'avoid, remedy or mitigate' those effects. It found that a direction for effects to be avoided:²⁰
- cannot be substituted with "avoid remedy or mitigate". They are altogether distinct concepts, and the later formulation fundamentally dilutes the former.
- 2.6 The Court went on to consider the internal 'directive hierarchy' within the NZCPS,²¹ and did not accept that the 'dilution' of the 'avoidance policies'²² was required to reconcile them with other policies in the NZCPS.²³
- 2.7 For Transpower, this decision underscores the need to faithfully give effect to higher order documents such as the NPSET, rather than 'watering down' its directions.²⁴ For example, this includes the need to recognise and provide for the benefits of the National Grid, as per Policy 1 of the NPSET.
- 2.8 Further, Transpower is concerned that some of the recommendations in the Officer's report (and relief sought by other parties) would have the effect of inappropriately 'diluting' key directions in the NPSET, and in the absence (at least outside of the coastal environment) of any countervailing higher order policies to warrant such an outcome.

¹⁸ Whitney, 10 September 2021, paras 5.5 – 5.18, Outline of legal submissions for Transpower New Zealand, 22 September 2021, paras 4.1 – 4.5.

¹⁹ *Port Otago Limited v Environmental Defence Society Incorporated* [2021] NZCA 638. The decision has been released since Transpower's last appearance in front of the Hearings Panel (released 2 December 2021).

²⁰ *Port Otago*, at [79].

²¹ *Port Otago*, at [82].

²² Referring to Policies 11, 13, 15, and 16 NZCPS: *Port Otago* at [26].

²³ *Port Otago*, at [82].

²⁴ *Port Otago*, at [82].

The NPSET and the NZCPS

- 2.9 The *Port Otago* case was concerned solely with the internal relationships between NZCPS policies, and did not need to address the relationship between the NZCPS and other national policy statements. In that regard the strong ‘avoid’ directions in the NZCPS (which apply generally) are expressed differently to the various directions in the NPSET (which apply specifically to transmission activities).
- 2.10 It is often necessary to resolve those differences in the course of planning processes, given the need to ‘give effect’ to both instruments. Notably however, with respect to the PDP, Transpower does not presently have any National Grid assets located in the coastal environment within Porirua City. Nor are any planned. This means that the NZCPS may conceivably be relevant to ‘new lines’ or ‘planning and development’, but is not relevant to the operation, maintenance, or upgrade of existing assets. This position is reflected in the relief recommended in **Ms Whitney’s** evidence.
- 2.11 For completeness however, the relationship between the NZCPS and NPSET was addressed relatively recently by the High Court in *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZHC 1201 (albeit in the context of a resource consent decision). In essence, the Court found that (in relation to the issues in that case) the NZCPS or NPSET should not be treated, as a starting point, as “trumping” the other, and neither should be given priority or ‘give way’ to the other.²⁵ Instead:²⁶

As the Supreme Court in *EDS v King Salmon* stated, their terms should be carefully examined and reconciled, if possible, before turning to that question. It may be that, in relation to a specific issue, the terms of one policy or another is more specific or directive than another, and accordingly bear more directly on the issue, as counsel submit.

- 2.12 Transpower and **Ms Whitney** intend to discuss the relief sought with the Director-General of Conservation (‘**DOC**’) prior to the hearing, in terms of whether or not greater reference to the NZCPS in its proposed drafting would be appropriate.

²⁵ *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZHC 1201 at [125].

²⁶ *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZHC 1201 at [125].

3 Response to matters raised in the Section 42A Reports

3.1 As noted above, Transpower's 53 outstanding submission points are addressed by **Ms Whitney** under 'four topics' being:

- a Plan Structure;
- b Provisions relating to enabling the National Grid (New sought Policy INF-Px);
- c Provisions relating to managing the effects of the National Grid (INF-P7 to P9, as renumbered); and
- d Provisions relating to managing the effects on the National Grid (INF-P6 and associated rules in relation to land use activities and earthworks).

3.2 The balance of these legal submissions adopt the same structure, and highlight legal issues relevant to the relief sought by Transpower (as recommended in **Ms Whitney's** evidence).

4 Plan Structure

4.1 In its submission, Transpower sought that the National Grid specific provisions (relating to third party activities on the National Grid) be relocated to the Infrastructure chapter.²⁷ The Section 42A Report recommended these submission points be rejected.²⁸ Transpower opposes this recommendation.

4.2 As outlined in her evidence, **Ms Whitney** considers provisions relating to the National Grid will be better understood if they are all located in one part of the plan, with the rules and policies grouped together.²⁹ **Ms Whitney** also considers this approach will provide a comprehensive and complete policy and rule framework for plan users.³⁰ Further, it is submitted that this will be more efficient for those who need to consider policy direction relating to the National Grid, and will avoid inconsistency and repetitiveness.

4.3 The Guidance which supports the National Planning Standards³¹ recommends councils "should locate most provisions relating to energy, infrastructure and transport" in a stand-alone chapter, unless they are addressed in a special purpose zone.³² Transpower supports this approach, and retains its preference

²⁷ Submission points 60.135, 60.83, 60.91, 60.96, 60.100, 60.104, 60.110, and 60.116.

²⁸ Officer's Report: Part B – Infrastructure - Pages 46-49, paragraphs 314 and 325.

²⁹ Whitney, 21 January 2022, para 7.7.

³⁰ Whitney, 21 January 2022, para 7.7.

³¹ Ministry for the Environment, National Planning Standards (Nov 2019) at 7.5, 7.19 and 7.21.

³² Ministry for the Environment, National Planning Standards – Guidance for District Plans Structure and Chapter Standards (Sep 2020) at p7.

for the National Grid provisions to be consolidated (acknowledging that, to an extent, this issue is a question of form rather than substance).

5 Provisions relating to enabling the National Grid

Relevant NPSET directions

5.1 The relevant directions in the NPSET are outlined in **Ms Whitney’s** evidence, but broadly require that decision-makers “must recognise and provide for”:

- a “the national, regional and local benefits of sustainable, secure and efficient electricity transmission” (Policy 1);³³ and
- b “the effective operation, maintenance, upgrading and development of the electricity transmission network” (Policy 2).³⁴

New Policy INF-Px The benefits of the National Grid

5.2 In its submission, Transpower sought a new policy³⁵ directing that the benefits of the National Grid be ‘recognised and provided for’. The Section 42A Report recommended that the relief sought be rejected – essentially on the basis that *recognition* of the benefits of infrastructure (generally) was addressed by INF-P1, and ‘providing for’ that infrastructure was addressed by the National Grid specific policies.³⁶

5.3 In order to ‘give effect’ to the NPSET, it is submitted that the PDP must not only ‘recognise’ but also provide for the effective operation, maintenance, upgrading and development of the National Grid (Policy 2 NPSET).³⁷ This includes recognising and providing for the national benefits, as per Policy 1 NPSET.

5.4 **Ms Whitney’s** view is that proposed Policy INF-P1³⁸ does not give effect to the NPSET in that it does not require the benefits (of RSI) be ‘provided for’, it only

³³ NPSET, Policy 1.

³⁴ NPSET, Policy 2.

³⁵ Submission Point 60.34, new policy sought:

INF-Px The benefits of the National Grid

Recognise and provide for the social, economic, environmental and cultural benefits of the National Grid, including sustainable, secure and efficient electricity transmission.

³⁶ Officer’s Report: Party B – Infrastructure – Page 54, paragraph 376.

³⁷ RMA, s75(3)(a).

³⁸ *INF-P1 The benefits of Regionally Significant Infrastructure*

Recognise the social, economic, environmental and cultural benefits of Regionally Significant Infrastructure, including:

1. *The safe, secure and efficient transmission and distribution of gas and electricity that gives people access to energy to meet their needs;*
2. *An integrated, efficient and safe transport network, including the rail network and the state highways, that allows for the movement of people and goods;*
3. *Effective, reliable and future-proofed communications networks and services, that gives people access to telecommunication and radiocommunication services; and*
4. *Safe and efficient water, wastewater and stormwater treatment systems, networks and services, which maintains public health and safety.*

‘recognises’ them.³⁹ **Ms Whitney** considers the requirement to ‘provide for’ the benefits is a stronger policy directive than a requirement merely to ‘recognise’ them.⁴⁰

- 5.5 This assessment is consistent with the Court of Appeal’s discussion of Policy 9 NZCPS in the *Port Otago* case. Policy 9 NZCPS (Ports) is to “recognise” various requirements of a sustainable national transport system. The Court of Appeal found⁴¹ that directions to “recognise” or “consider” give decision makers “considerable flexibility and scope for choice”.⁴² It is submitted that requirements to “provide for” a given outcome provide much stronger direction, and that substituting these with a requirement to ‘consider’ the outcome (in the PDP provisions) would represent an inappropriate ‘dilution’ and fail to give effect to the higher order direction.
- 5.6 **Ms Whitney** also gives the example of PNRP Policy 13A which is to both “[r]ecognise and provide for the benefits of the National Grid”.⁴³ It would also be appropriate for the direction in the PDP to be consistent (or at least ‘not inconsistent’⁴⁴) with this regional plan direction.
- 5.7 Finally, while the National Grid policies in the PDP (renumbered as INF-P7-P9) do contain the ‘provide for’ language, that is in the context of specific activities (within certain limits) rather than for the benefits themselves in general terms.
- 5.8 **Ms Whitney’s** view is that the inclusion of the words ‘provide for’ the benefits (in the INF policies) would give effect to PDP objective INF-O1.⁴⁵
- 5.9 While the distinction between ‘recognising’ and ‘providing for’ might seem a subtle one, the *Port Otago* case demonstrates it can be an important one.
- 5.10 Accordingly, Transpower supports **Ms Whitney’s** recommended new Policy INF-Px.⁴⁶

³⁹ Whitney, 21 January 2022, para 7.11.

⁴⁰ Whitney, 21 January 2022, para 7.11.

⁴¹ Adopting comments by the Supreme Court in *EDS v King Salmon* [2014] NZSC 38 at [127].

⁴² *Port Otago*, at [81].

⁴³ Whitney, 21 January 2022, para 7.13.

⁴⁴ A district plan must not be ‘inconsistent’ with a regional plan, under section 75(4)(b) RMA.

⁴⁵ Whitney, 21 January 2022, para 7.12.

INF-O1 The benefits of Regionally Significant Infrastructure

The national, regional and local benefits of Regionally Significant Infrastructure are recognised and provided for.

⁴⁶ Whitney, 21 January 2022, para 7.14;

INF-Px The benefits of the National Grid

Recognise and provide for the social, economic and environmental benefits of the National Grid, including sustainable, secure and efficient electricity transmission.

6 Provisions relating to managing the effects of the National Grid

Relevant NPSET directions

- 6.1 The relevant directions in the NPSET (contained in section 7 ‘Managing the environmental effects of transmission’) are outlined in **Ms Whitney’s** evidence, but broadly direct that:
- a Decision-makers must “recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network (Policy 2)”;
 - b When considering the environmental effects of transmission activities (or steps to manage them), decision-makers ‘must’:
 - i consider technical and operational constraints (Policy 3),⁴⁷
 - ii for new transmission infrastructure or major upgrades, have regard to the route, site and method selection (Policy 4),⁴⁸ and
 - iii enable the “reasonable operational, maintenance and minor upgrade requirements” of the National Grid (Policy 5).⁴⁹
 - c ‘Substantial upgrades’ should be used as an opportunity to reduce existing effects, where appropriate (Policy 6),⁵⁰ and
 - d ‘Planning and development’ of the National Grid ‘should’.⁵¹
 - i minimise adverse effects on urban amenity (Policy 7);⁵²
 - ii avoid adverse effects on town centres and areas of high recreational value or amenity, and existing sensitive activities (Policy 7);⁵³ and
 - iii ‘seek to avoid’ adverse effects on outstanding natural landscapes, and other specified high value rural areas (Policy 8).⁵⁴

⁴⁷ NPSET, Policy 3.

⁴⁸ NPSET, Policy 4.

⁴⁹ NPSET, Policy 5.

⁵⁰ NPSET, Policy 6.

⁵¹ NPSET, Policy 7.

⁵² NPSET, Policy 7.

⁵³ NPSET, Policy 7.

⁵⁴ NPSET, Policy 8.

- 6.2 Transpower considers the use of “should” in Policies 6-8 NPSET, as compared with “must” in Policies 2-5, was deliberate. A number of observations can be made:
- a The ‘must’ directions all apply to ‘decision makers’ (including the Hearing Panel). They specify outcomes that must be achieved.
 - b The ‘should’ directions are effectively framed as applying in to Transpower (and will also be applied by decision makers). They specify things that Transpower ‘should’ do (in other words they state obligations in terms of a required course of action, rather than a mandatory outcome).
 - c While both are strong directions, the ‘should’ language in Policies 6-8 allows for the possibility that the desired outcome might not be able to be met in some circumstances. Policies 3, 4, and 5 highlight some of the reasons why this might be the case.
- 6.3 Accordingly, in terms of the Court of Appeal’s decision in *Port Otago*, it could be said that ‘must’ policies have a greater ‘imperative status’⁵⁵ than the ‘should’ ones – there is something of a ‘directive hierarchy’⁵⁶ in this section of the NPSET.⁵⁷
- 6.4 In addition, it can be observed that the NPSET policies are overall strongly enabling of the operation, maintenance and minor upgrading of established National Grid assets, but steer⁵⁸ decision makers towards consideration of alternatives and avoidance of some environments or effects when it comes to new National Grid assets, planning and development of the National Grid system, or major upgrades. This reflects the practical reality that there is (generally) greater scope for choice and opportunities to avoid sensitive areas in the process of planning and developing the Grid or deciding where to locate a new line, than there is when considering the maintenance or upgrade of an established asset.
- 6.5 As **Ms Whitney** observes in her evidence the different kinds of upgrading referred to in the NPSET (‘minor’,⁵⁹ ‘substantial’,⁶⁰ and ‘major’⁶¹) are not defined,⁶² and nor does the NPSET define ‘planning and development’.⁶³ **Ms**

⁵⁵ *Port Otago*, at [81].

⁵⁶ *Port Otago* at [82].

⁵⁷ Although perhaps to a lesser extent than there is within the NZCPS.

⁵⁸ Noting that the direction in Policy 8 is “should seek to avoid”, and even Policy 7 (which is more directive) is framed as a “should” rather than a “must”.

⁵⁹ NPSET Policy 5.

⁶⁰ NPSET Policy 6.

⁶¹ NPSET Policy 4.

⁶² The MfE guidance on the NPSET also records that the different kinds of upgrading are not defined and suggests that (within the RMA context) the “most appropriate focus for defining levels of upgrading should be potential environment effects”. Ministry for the Environment, NPSET – Implementation Guidance for Local Authorities, Section 2.3, page 6

<<https://environment.govt.nz/assets/Publications/Files/nps-electricity-transmission-implementation-guidance-jan2010.pdf>>

⁶³ Whitney, 21 January 2022, para 7.37.

Whitney's view is therefore that the application of these terms as used within the NPSET (and incorporated into the INF policies) is best determined in context, at the consenting stage.⁶⁴

6.6 As addressed at length in **Ms Whitney's** evidence, Transpower is seeking further changes to the officer's recommended provisions to better give effect to the applicable NPSET policies. It is intended that, together, PDP Policies INF-P7-P9 (as renumbered) will guide the assessment of effects of the different categories of transmission activities in an appropriate way. In essence:

- a INF-P7 relates to operation, maintenance, and 'minor upgrade' of the National Grid;
- b INF-P8 relates to upgrading the National Grid; and
- c INF-P9 relates to 'planning and development' of the National Grid (e.g. new transmission lines).

INF-P7 Operation, maintenance and repair of the National Grid (new policy)

6.7 In its submission Transpower sought a new policy⁶⁵ relating to the 'operation and maintenance' of the National Grid.

6.8 The reporting officer has accepted the relief sought in part, insofar as they recommend a new policy INF-P7 as follows:⁶⁶

INF-P7 Operation and maintenance and repair of the National Grid

Provide for the operation and the maintenance and repair of the National Grid that is not permitted by the National Environmental Standards for Electricity Transmission Activities, that:

- 1. Minimises adverse effects on the environment; and
- 2. Where located within a specified Overlay, is of a nature and scale that does not adversely impact on the values and characteristics of the areas identified by the specified overlays that it is located within.

6.9 **Ms Whitney** concurs with the Section 42A Report⁶⁷ as to the benefits of having a specific National Grid policy.⁶⁸ However, for the reasons set out in her evidence,

⁶⁴ Whitney, 21 January 2022, para 7.37.

⁶⁵ Submission point 60.36.

⁶⁶ Officer's Report: Part B – Infrastructure – page 53, paragraph 371.

⁶⁷ Officer's Report: Part B – Infrastructure, page 52, paragraphs 366 – 370

⁶⁸ Whitney, 21 January 2022, para 7.23.

Ms Whitney recommends amendments to the National Grid policy recommended by the Section 42A Report.⁶⁹ Transpower supports the changes recommended by **Ms Whitney**⁷⁰ and agrees with her that:⁷¹

- a The reference to activities that are 'not permitted' under the NESETA is confusing and unnecessary';⁷²
- b "Minor upgrade" should also be included in INF-P7, in order to give effect to the NPSET Policy 5 (as decision makers 'must enable' reasonable minor upgrade requirements);
- c The direction in the proposed INF-P7 that adverse effects are 'minimised' is inconsistent with the need to give effect to NPSET Policy 2 and Policy 5 (which includes an unqualified direction to 'enable' the activities referred to); and
- d For the same reasons, INF-P7 should not contain a requirement that the operation, maintenance and minor upgrade of the National Grid be "of a scale that does not adversely impact on the values and characteristics of the areas identified by the specified overlays". Such a requirement is inappropriate and fails to give effect to the NPSET, particularly insofar as it would apply to the operation and maintenance of 'established transmission assets' (in terms of Policy 5). Further, in reality the scale of transmission assets needs to reflect engineering and electrical safety requirements (etc); the requirement in clause 2 would compromise the effective operation, maintenance and (minor) upgrade of the transmission network, contrary to Policy 2.

INF-P8 Upgrading of the National Grid (previously INF-P6)

- 6.10 The officers report did not recommend any changes to the notified version of proposed Policy INF-P8 (previously P6), aside from a consequential renumbering (in light of the additions of new policies INF-P6 and P7). **Ms Whitney**, however, has recommended a number of changes.⁷³

⁶⁹ Whitney, 21 January 2022, para 7.23. Namely, Ms Whitney recommends: deletion of the reference to the NESETA; insertion of a reference to 'minor upgrade'; deletion of 'repair'; and removal of clause 1 and 2.

⁷⁰ Whitney, 21 January 2022, para 7.24, Appendix C, pg 3.

⁷¹ Whitney, 21 January 2022, para 7.23.

⁷² As Ms Whitney explains, it is not clear if this is intended to mean "not regulated under" or "not a permitted activity under". In any event it is not clear any difficulty would arise if the policy were to apply to an activity that did have an activity status under the NESETA, given the NESETA contains rules but not policies.

⁷³ Whitney, 21 January 2022, para 7.38 and Appendix D p 62.

- 6.11 Transpower supports the changes recommended by **Ms Whitney** and agrees with her that:
- a INF-P6 (now P8), as notified, was more onerous than the applicable NPSET policies direct it to be;⁷⁴
 - b The obligations contained in NPSET Policies 7 and 8 apply in the context of “planning and development” of the National Grid (which is provided for in INF-P9), rather than “upgrading”. It follows that clauses 3, 5 and 6 of INF-P6 as notified, which cover the matters set out in Policies 7 and 8 NPSET, should be deleted (as recommended by **Ms Whitney**);⁷⁵
 - c Clause 1 of INF-P8 (in relation to route/site/method selection) should be amended to only apply to ‘*major upgrades*’, consistent with Policy 4 NPSET;⁷⁶ and
 - d Clause 7 of INF-P8 should be amended to give effect to Policy 6 NPSET, i.e. by only requiring existing adverse effects to be reduced “where appropriate”.⁷⁷

INF-P9 Development of the National Grid (previously INF-P7)

- 6.12 **Ms Whitney** also recommends a number of changes to INF-P9 (formerly P7) - *development* of the National Grid,⁷⁸ which was largely unchanged in the Officer’s Report.⁷⁹
- 6.13 Transpower supports the amendments recommended by **Ms Whitney**,⁸⁰ and agrees with her that:
- a Various amendments are required to clause 1 of INF-P9 in order to give effect to Policy 7 NPSET;⁸¹ and
 - b Clause 4 of INF-P9 should be deleted, and significant natural areas (**‘SNAs’**) instead dealt with by a ‘seek to avoid’ direction (clause 2 of INF-P9).
Transpower submits that this approach is appropriate and required:

⁷⁴ Whitney, 21 January 2022, para 7.36.

⁷⁵ Whitney, 21 January 2022, para 7.37.

⁷⁶ Whitney, 21 January 2022, para 7.37(a). This policy direction also applies to “new transmission infrastructure”, and is addressed in that context in Policy INF-9 as well.

⁷⁷ Whitney, 21 January 2022, para 7.37(b).

⁷⁸ Whitney, 21 January 2022, para 7.24.

⁷⁹ Officer’s Report, Part B – Infrastructure, 3 December 2021, section 3.6.5.3, paras 402 – 410.

⁸⁰ Whitney, 21 January 2022, para 7.48 and Appendix D p 63.

⁸¹ Whitney, 21 January 2022, para 7.40.

- i in order to give effect to NPSET Policy 8 of the NPSET (where the direction is “should seek to avoid” specified kinds of high value areas,⁸²); and
 - ii to give effect to Policies 1-5 NPSET. Treating the National Grid like any other activity would not give effect to these strong (‘must’) directions; instead some tempering of the directions in other PDP chapters is required, in order to ‘provide’ for the need to operate, maintain, develop and upgrade the National Grid as a matter of national significance.⁸³
 - iii In light of the concerns raised by **Ms Whitney** with the directive nature of ECO-P4, ECO-P11 and ECO-P12,⁸⁴ which she considers do not give effect to the NPSET in that they direct that subdivision, use, and development (including earthworks) can only be allowed in certain circumstances.⁸⁵
- c In addition to the above, **Ms Whitney** recommends substantial changes to clause 3 of INF-P9 in order to more comprehensively provide for transmission activities in the coastal environment. As noted above, Transpower has no existing assets within the coastal environment as identified in the PDP, such that any consideration of the NZCPS would only be relevant in context of new assets. Transpower agrees with **Ms Whitney’s** changes on the basis that:⁸⁶
- i The RMA requires district plans to give effect to both the NZCPS and NPSET;
 - ii There is tension between the NZCPS policies 11, 13, 15 which contain the direction to “avoid” effects on various high value natural areas, and NPSET Policy 8;
 - iii This tension, rather than being left to the resource consent stage, should be managed through a detailed National Grid specific policy framework which addresses the circumstances in which National Grid

⁸² As noted above this is a more flexible or qualified direction than that in NPSET Policies 2 (‘must recognize and provide for’) or 5 (‘must enable’).

⁸³ Whitney, 21 January 2022, para 7.41(a).

⁸⁴ Ms Whitney records that she now supports the updated version of ECO-P2 as presented in the Officer’s right of reply: Whitney, 21 January 2022, para 7.41.a.

⁸⁵ Whitney, 21 January 2022, para 7.41(b).

⁸⁶ Whitney, 21 January 2022, paras 7.43-7.45.

projects can locate in coastal Outstanding Natural Features and Landscapes and High Natural Character Areas.

6.14 Transpower submits that clause 3 as recommended by **Ms Whitney**⁸⁷ will also sit alongside the need to consider alternatives as set out by the policy direction of NPSET Policies 3 and 4 (which also apply to any resource consent process, and are reflected in INF-P9 clauses 4.b and 4.a respectively). As outlined in the evidence of **Ms Eng**, Transpower uses the ACRE process which is a very robust and comprehensive process that is undertaken by Transpower in relation to the development of the National Grid and ensuring Policy 4 of NPSET are given effect to.⁸⁸

6.15 As an alternative to the relief sought above for INF-P9 clauses 2 and 4, **Ms Whitney** suggests that clause 4 could be retained insofar as referring to ECO-P2 but that reference to the other ECO policies is deleted.⁸⁹

7 Provisions relating to managing effects on the National Grid

7.1 The provisions discussed above relate to the policy settings for recognising the benefits of and providing for transmission activities, and managing their effects on the environment in a practical and workable way. Equally important for Transpower is securing and retaining the ability to actually undertake that work in physical or practical terms, and this is where policies and rules managing third party activity in proximity to the National Grid become important. In a very real sense, such controls are also needed to enable (in the sense of 'not prevent' or 'allow') transmission activities to occur.

Relevant NPSET directions

7.2 The relevant directions in the NPSET are outlined in **Ms Whitney's** evidence, but broadly require that decision makers must:

- a To the extent reasonably possible, manage activities to avoid reverse sensitivity effects on the National Grid and ensure that the National Grid is not compromised (Policy 10);⁹⁰ and
- b Consult with Transpower to identify an appropriate buffer corridor within which sensitive activities are 'generally not ... provided for' (Policy 11).⁹¹

⁸⁷ Whitney, 21 January 2022, para 7.48.

⁸⁸ Eng, 21 January 2022, paras 4.1 – 4.7.

⁸⁹ Whitney, 21 January 2022, para 7.41.c.

⁹⁰ NPSET, Policy 10.

⁹¹ NPSET, Policy 11.

7.3 In considering the direction in Policy 10 the High Court has observed that:⁹²

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 of 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.

7.4 Accordingly, Transpower submits that Policy 10 being framed in terms of managing activities ‘to the extent reasonably possible’ does not preclude the PDP from including relatively strong controls. That is on the basis that:

- a A clear National Grid corridor is provided;
- b To the extent reasonably possible (not ‘practical’) is still a strong direction;
- c The Hearing Panel is a ‘decision maker’, and subject to the ‘must’ direction; accordingly
- d If the Hearing Panel is satisfied that measures proposed by Transpower are ‘reasonably possible’ then it ‘must’⁹³ recommend they be included in the PDP.

7.5 Transpower also, for completeness, considers that Policy 10 relates not just to reverse sensitivity effects, but also to other ‘direct’ effects that might ‘compromise’ the operation, maintenance, upgrading, and development of the electricity transmission network (this dual focus is reflected in the comments of the High Court quoted above).

Inappropriate development, land use and subdivision in close proximity to the National Grid

7.6 As outlined in the evidence of **Ms Whitney**, inappropriate development, land use and subdivision in close proximity to the National Grid is a significant resource management issue in the Porirua district and across New Zealand.⁹⁴ The

⁹² *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281 at [85].

⁹³ ‘In achieving the purpose of the Act’.

⁹⁴ Whitney, 21 January 2022, para 7.50.

evidence of **Mr Cartwright** outlines how activities can compromise the operation, maintenance, development and upgrade of the National Grid, with the three primary reasons for restricting third party activities being:⁹⁵

- a Electrical risk (health and safety);
- b Annoyance caused by transmission lines and reverse sensitivity; and
- c Restrictions on the ability of Transpower to access, maintain, upgrade and develop the transmission lines, as well as third party development directly affecting and compromising the assets themselves.

7.7 **Mr Cartwright** also provides examples of sensitive activities that can compromise Transpower's ability to carry out National Grid activities.⁹⁶

7.8 As set out in the evidence of **Ms Whitney, Mr Cartwright** and **Ms Eng**, Transpower is seeking a National Grid Corridor within Porirua City for undesignated overhead transmission lines, to provide for:⁹⁷

- a A 10-12m corridor, either side of the centreline (or 12m from any support structure), where specified activities are restricted ('National Grid Yard'); and
- b A wider corridor (out to 16, 32, or 37m either side of the centreline depending on the line voltage and the nature of the line's support structures) where subdivision is managed ('National Grid Subdivision Corridor').⁹⁸

7.9 As outlined in the evidence of **Mr Cartwright**, Transpower also submitted in support of a substation corridor for the Pāuatahanui substation.⁹⁹

7.10 **Mr Cartwright's** and **Ms Eng's** evidence:

- a Sets out how the National Grid Yard and National Grid Subdivision Corridor is calculated;¹⁰⁰
- b Describes the purposes of the National Grid Corridor, which include to enable uncompromised access and maintenance, avoid reverse sensitivity

⁹⁵ Cartwright, 21 January 2022, paras 8.1-8.19, 9.1-9.9, 10.1-10.19.

⁹⁶ Cartwright, 21 January 2022, paras 10.3-10.4. These include radio controlled systems, global positioning systems and residential development.

⁹⁷ Cartwright, 21 January 2022, para 12.3; Eng, 21 January 2022, Figure 1; Whitney, 21 January 2022, paras 7.54 – 7.55.

⁹⁸ In Porirua this will be 32m and 37m, because the lines are either 110kV or 220kV, and are all on towers; as set out in Ms Eng's Hearing Stream 1 evidence, para 6.1.

⁹⁹ Cartwright, 21 January 2022, para 12.10.

¹⁰⁰ Cartwright, 21 January 2022, paras 12.6-12.9; Eng, 21 January 2022, para 7.9.

effects, and provide a consistent approach to managing the potential for adverse effects on the National Grid;¹⁰¹ and

- c Explains how the corridors sought are the minimum areas considered necessary for the protection and operation/maintenance of the National Grid.¹⁰²

7.11 As set out in the evidence of **Ms Whitney**, the National Grid corridor approach gives effect to NPSET Policy 10 and Policy 11.¹⁰³ **Ms Whitney's** and **Mr Cartwright's** evidence also describes how there are some small-scale activities which Transpower considers can occur in the National Grid Yard and not compromise (or be unduly compromised by) the National Grid.¹⁰⁴ The provisions recommended by **Ms Whitney** provide for these activities to occur, where appropriate and subject to certain standards being met.

7.12 **Ms Eng** provides a number of examples where development has been able to occur in an appropriate way, while relatively close to the National Grid, through discussion and solutions agreed between Transpower and the developers.¹⁰⁵

7.13 Conversely, **Ms Whitney's**¹⁰⁶ and **Mr Cartwright's**¹⁰⁷ evidence sets out examples of development that should be avoided within the National Grid Yard.¹⁰⁸

7.14 As well as avoiding direct and reverse sensitivity effects, the National Grid Corridor approach outlined in the evidence of **Mr Cartwright**¹⁰⁹ and **Ms Whitney**¹¹⁰ is also necessary to 'enable' access for maintenance and other activities, in the sense of not preventing access.

New INF-P6 Adverse effects on the National Grid

7.15 In response to Transpower's submission¹¹¹, the Section 42A Report recommends¹¹² a specific National Grid policy (recommended new Policy INF-P6) to be split off from notified with P5 (which would be confined to all other kinds of RSI).

¹⁰¹ Cartwright, 21 January 2022, para 12.11, Eng, 21 January 2022, para 6.1.

¹⁰² Cartwright, 21 January 2022, para 12.13.

¹⁰³ Whitney, 21 January 2022, para 7.56.

¹⁰⁴ Whitney, 21 January 2022, para 7.60, Cartwright, 21 January 2022, paras 11.5-11.6.

¹⁰⁵ Eng, 21 January 2022, paras 8.5-8.10.

¹⁰⁶ Whitney, 21 January 2022, para 7.62.

¹⁰⁷ Cartwright, 21 January 2022, paras 10.3-10.8.

¹⁰⁸ Examples include: commercial buildings, dairy sheds, poultry sheds and activities involving hazardous substances.

¹⁰⁹ Cartwright, 21 January 2022, paras 12.1-12.13.

¹¹⁰ Whitney, 21 January 2022, paras 7.53-7.62.

¹¹¹ Transpower sought to amend INF-P5 so the National Grid was address in a separate specific policy. Further amendments were sought to extend the matters of consideration, include reference to the Pāuatahanui Substation, and amend the terminology to reflect the directive wording of the NPSET.

¹¹² Officer's report: Part B – Infrastructure, page 55, paragraph 379 – 390.

- 7.16 **Ms Whitney** supports the split of PDP Policy INF-P5 to provide a National Grid specific policy, but does recommend further amendments.¹¹³ Transpower supports the amendments recommended by **Ms Whitney**¹¹⁴ and submits that:
- a NPSET Policy 10 contains direction in relation to ensuring direct effects do not compromise the National Grid, as well as directing the reverse sensitivity effects be avoided. In terms of the ‘to the extent reasonably possible’ wording in that policy:
 - i the provisions (including the rules addressed below) recommended by **Ms Whitney** are designed to manage activities, and are both ‘reasonable’ and ‘possible’ (or ‘reasonably possible’), for the reasons set out in the evidence of **Mr Cartwright** and **Ms Eng** (and because of the significance of these issues); and
 - ii that being the case, an avoid direction in INF-P6 is appropriate to give effect to NPSET Policy 10.¹¹⁵
 - b The requirement in clause 2 of INF-P6 as recommended by the Officer to “avoid, remedy or mitigate” other effects is an inappropriate ‘dilution’ in the *Port Otago* sense, and does not give effect to Policy 10 of the NPSET. As outlined in the evidence of **Ms Whitney**,¹¹⁶ clause 2 of INF-P6 should be simplified to require that subdivision only be allowed where the National Grid would not be compromised (in order to give effect to NPSET Policy 10); and
 - c Given the health and safety issues associated with activities in proximity of the National Grid outlined in the evidence of **Mr Cartwright**,¹¹⁷ it is considered appropriate that the PDP has a stronger policy directive to avoid the risk of injury and/or property damage from the National Grid as set out by **Ms Whitney’s** recommended amendments to INF-P6 clause 2(e).¹¹⁸

Land use activities (Rules GRZ-R5, GRZ-R14 and corresponding rules in the GRUZ, RLZ, OSZ, and FUZ zones, and Rule INF-R25)

- 7.17 In its submission¹¹⁹ Transpower sought amendments to National Grid specific provisions that sit within the Zone chapters (specifically the General Residential

¹¹³ Whitney, 21 January 2022, para 7.66, Appendix D, pg 65.

¹¹⁴ Whitney, 21 January 2022, para 7.67.

¹¹⁵ The ‘decision makers’ referred to in NPSET Policy 10 include this Hearing Panel.

¹¹⁶ Whitney, 21 January 2022, para 7.66.d.

¹¹⁷ Cartwright, 21 January 2022, paras 8.1-8.22, 9.10-9.13.

¹¹⁸ Whitney, 21 January 2022, para 7.67.

¹¹⁹ Submission points 60.98, 60.99, 60.102, 60.103, 60.105, 60.106, 60.136, 60.107, 60.111, 60.112, 60.113, 60.114, 60.115, 60.118, and 60.119.

Zone, General Rural Zone, Rural Lifestyle Zone, Open Space Zone and the Future Urban Zone¹²⁰). Transpower also sought to relocate these specific provisions to the Infrastructure chapter. The rules regulate buildings and structures (e.g. GRZ-R5) and activities (e.g. GRZ-R14) within the National Grid Yard.

- 7.18 **Ms Whitney** accepts aspects of the Section 42A Report’s recommendation to reject Transpower’s submission¹²¹ but opposes other aspects and recommends a revised National Grid Yard rule and a standard to sit within the Infrastructure Chapter.¹²² **Ms Whitney’s** evidence and these submissions focus on the GRZ provisions by way of example, but if the provisions are not consolidated then the same changes would need to be made to the equivalent provisions across other zones.¹²³
- 7.19 **Ms Whitney’s** recommended provisions include restrictions on the storage of hazardous substances, in order to protect transmission lines and support structures from the risks of the use and storage hazardous substances with explosive or flammable intrinsic properties.¹²⁴ (While **Ms Whitney’s** original drafting referred to Class 1-4 hazardous substances, this reference was updated to just refer to “hazardous substances” to reflect the new Hazardous Substances (Hazard Classification) Notice 2020; the updated proposed rule INF-Rxx in **Ms Whitney’s** rebuttal evidence would apply to the same substances so this is not a substantive change).¹²⁵
- 7.20 The risks of flammable or explosive substances in proximity to the National Grid are outlined in the evidence of **Mr Cartwright**.¹²⁶
- 7.21 The approach of district plan provisions retaining controls over hazardous substances in specified circumstances was recently upheld in *Taranaki Energy Watch*¹²⁷. In this case, the South Taranaki District Council made amendments to the South Taranaki District Plan to apply additional controls on hazardous substances, specifically taking into account the existing environment and sensitive activities. This included adding new activity rules, such as a Prohibited

¹²⁰ Rule references: GRZ-R5 and R14, GRUZ-R2 and R13, RLZ-R2 and R13, OSZ-R2 and R13, and FUZ-R2 and R13. Rule GRZ-R5 differs from the other rules given its residential zoning. Rules GRUZ-R2 RLZ-R2, OSZ-R2 and FUZ-R2 are identical Rules GRZ- R14, GRUZ- R13, RLZ- R13, OSZ- R13, and FUZ- R13 are also identical.

¹²¹ Officer’s Report: Part B – Infrastructure, Page 61, Section 3.6.9

¹²² Whitney, 21 January 2022, para 7.71, Appendix D, pg 67.

¹²³ Rule references: GRZ-R5 and R14, GRUZ-R2 and R13, RLZ-R2 and R13, OSZ-R2 and R13, and FUZ-R2 and R13. Rule GRZ-R5 differs from the other rules given its residential zoning. Rules GRUZ-R2 RLZ-R2, OSZ-R2 and FUZ-R2 are identical Rules GRZ- R14, GRUZ- R13, RLZ- R13, OSZ- R13, and FUZ- R13 are also identical.

¹²⁴ Whitney, 21 January 2022, para 7.73.

¹²⁵ Whitney, 2 February 2022, para 4.1.

¹²⁶ Cartwright, 21 January 2022, paras 10.5-10.8.

¹²⁷ *Taranaki Energy Watch v South Taranaki District Council* [2020] NZEnvC 165.

Activity Rule preventing petroleum exploration and petroleum production activities involving the use, storage or handling of hazardous substances within certain zones.¹²⁸

- 7.22 On appeal, the Environment Court in an interim decision discussed whether it was appropriate to include these controls, observed that:
- a It cannot be imputed that compliance with WorkSafe legislation and regulations means risk is eliminated.,¹²⁹ and
 - b WorkSafe legislation and regulation do not control decisions made on the use of land near a workplace,¹³⁰ or require an assessment of risk carried out at the time of site selection'.¹³¹
- 7.23 The Court therefore agreed that it was the responsibility of territorial authorities to implement land use controls for hazardous substances where appropriate.¹³²
- 7.24 In relation to the restriction on hazardous substances, Transpower submits that:
- a There are no rules within the Hazardous Substances chapter of the PDP;
 - b There is a regulatory gap in the HSNO Act and HSW regimes in that they do not control land use near the storage of hazardous substances (or conversely, the storage of hazardous substances near other activities); and
 - c Despite the fact that the explicit function of local authorities to control the storage, use, disposal, or transportation of hazardous substances was removed from sections 30 and 31 RMA in 2017, as confirmed by the Environment Court in *Taranaki Energy Watch*,¹³³ it is still appropriate for district plans to include provisions to manage the land use effects relating to hazardous substances/hazardous facilities within proximity of the National Grid on the basis the other legislation do not specifically address the effects on infrastructure such as the National Grid.

¹²⁸ Rule 12.1.6, Operative South Taranaki District Plan. Approved in *Taranaki Energy Watch v South Taranaki District Council* [2020] NZEnvC 18 at [68].

¹²⁹ At [44].

¹³⁰ At [45].

¹³¹ At [46].

¹³² See [46] and [183].

¹³³ *Taranaki Energy Watch v South Taranaki District Council* [2018] NZEnvC 227 at [46] and [183].

7.25 Accordingly, the provision of a specific standard relating to hazardous substances is required to give effect to Policy 10 of the NPSET in terms of ensuring the operation of the electricity transmission network is not compromised.¹³⁴

Rule INF-R25

7.26 Rule INF-R25 manages infrastructure (and associated earthworks) within the National Grid Yard. Transpower sought¹³⁵ amendments to the rule so that it would not apply to the National Grid, on the basis of a separate new rule being sought to manage all activities within the National Grid Yard.

7.27 The Section 42A Report recommended the submission point be rejected.¹³⁶

7.28 **Ms Whitney** accepts the recommendation in part, in that she accepts the retention of a separate infrastructure rule for network utilities.¹³⁷ However, **Ms Whitney** recommends amendments¹³⁸ to the rule to provide certainty that Transpower can access its structures for maintenance and repair, as well as ensure the necessary safety clearance distances and requirements are met, thereby ensuring the continued safe and secure transmission of electricity.¹³⁹ Transpower concurs with her reasoning and recommended amendments.

Earthworks (EW-P5 and EW-R4)

7.29 Transpower had nine submission points on the Earthworks chapter¹⁴⁰. Notwithstanding the sought relocation of the National Grid earthworks provisions within the Infrastructure chapter, Transpower largely supported the provisions (specifically EW-O1, EW-P4, EW-P5 and the rule framework (EW-R4)). Five further submission points were made¹⁴¹.

7.30 **Ms Whitney** accepts all but two of the Earthworks Section 42A Report recommendations, being EW-P5 and EW-R4.¹⁴²

¹³⁴ Whitney, 21 January 2022, para 7.71(c).

¹³⁵ Submission point 60.54.

¹³⁶ Officer's Report: Part B – Infrastructure, Page 60, paragraph 425.

¹³⁷ Whitney, 21 January 2022, para 7.75.

¹³⁸ Whitney, 21 January 2022, para 7.77, Appendix D, pg 71.

¹³⁹ Whitney, 21 January 2022, para 7.76.

¹⁴⁰ Submission point 60.91, 60.92, 60.93, 60.94, 60.135, 60.4, 60.9, 60.90 and 60.95.

¹⁴¹ FS04.47 (Kāinga Ora - oppose), FS04.49 (Kāinga Ora – support), FS04.48 (Waka Kotahi – oppose) , FS04.50 (Kāinga Ora – oppose) and FS04.51 (Kāinga Ora – oppose).

¹⁴² Whitney, 21 January 2022, para 7.79.

- 7.31 In relation to Policy EW-P5,¹⁴³ in addition to wording changes, Transpower sought a differing policy directive be provided for the National Grid from that of the Gas Transmission Pipeline, by separating the two activities.
- 7.32 **Ms Whitney** considers the activities should be separated and recommends standalone policies specific to the National Grid in order to give effect to the NPSET, noting that the Gas Corridor does not have the higher order policy support of a NPS.¹⁴⁴ **Ms Whitney** also suggests further minor amendments to EW-P5 which are supported by Transpower.¹⁴⁵
- 7.33 Rule EW-R4 is the primary rule for managing earthworks within the National Grid Yard from non-network utilities.
- 7.34 For the reasons outlined in **Ms Whitney's** and **Mr Cartwright's**¹⁴⁶ evidence, Transpower seeks controls on earthworks near the National Grid. **Ms Whitney** considers that the provision of such a rule framework gives effect to Policies 2 and 10 of the NPSET in that it protects the integrity of the National Grid and the ability to operate.¹⁴⁷
- 7.35 In its submission,¹⁴⁸ Transpower sought significant amendments to rule EW-R4 including the insertion of additional standards, provision of exemptions, and amendment to the setback distance and depth of earthworks. **Ms Whitney** supports the majority of the Section 42A recommended amendments to EW-R4, there are a number of amendments sought that remain outstanding.¹⁴⁹ Among others, **Ms Whitney** suggests the following amendments,¹⁵⁰ which Transpower agrees with:
- a An additional condition requiring that the earthworks do not result in the loss of vehicular access to a support structure. The evidence of **Mr Cartwright** outlines the need for access to a support structure and provides examples of situations where access is compromised;¹⁵¹ and
 - b An amendment to the activity status to provide an important distinction for those earthworks which may compromise the National Grid, for such earthworks or land disturbance, a non-complying activity status is recommended. For remaining earthworks, a restricted discretionary activity

¹⁴³ Submission point 60.94.

¹⁴⁴ Whitney, 21 January 2022, para 7.80.

¹⁴⁵ Whitney, 21 January 2022, para 7.82.

¹⁴⁶ Cartwright, 21 January 2022, paras 9.1-9.9; Whitney, 21 January 2022, para 7.84.

¹⁴⁷ Whitney, 21 January 2022, para 7.84.

¹⁴⁸ Submission point 60.135.

¹⁴⁹ Whitney, 21 January 2022, para 7.85.

¹⁵⁰ Whitney, 21 January 2022, para 7.87.

¹⁵¹ Cartwright, 21 January 2022, paras 9.1-9.8.

status is supported where permitted conditions are not complied with.¹⁵²

Ms Whitney considers a non-complying activity status is the most effective means of giving effect to the NPSET's objective of managing the adverse effects of the network and managing the adverse effects of other activities on the network, as well as Policy 2 and 10 of the NPSET.¹⁵³

8 Other matters - Subdivision

8.1 In addition to the policy relating to subdivision within the National Grid Subdivision Corridor (INF-P6), Transpower lodged a submission point¹⁵⁴ in support of the definition of National Grid Corridor (with a minor amendment to insert 'subdivision' within the definition)¹⁵⁵ and three provisions with the Subdivision Chapter (being SUB-P1¹⁵⁶, SUP-P11¹⁵⁷, and SUB-R15¹⁵⁸). The Subdivision Chapter provisions are to be heard as part of Hearing Stream 5. However, Hearing Stream 4 covers INF-P5 (renumbered INF-P6) and the definition.¹⁵⁹

8.2 As explained in the evidence of **Ms Whitney**, the application of the definition of 'National Grid Subdivision Corridor' within Rule SUB-R15 acts as a trigger for considering the effects on the National Grid and therefore the rule provides a process to ensure specific consideration in the consenting process of the National Grid (noting the rule is to be addressed as part of Hearing Steam 5).¹⁶⁰

¹⁵² Whitney, 21 January 2022, para 7.85(f).

¹⁵³ Whitney, 21 January 2022, para 7.85(f).

¹⁵⁴ Submission point 60.132

¹⁵⁵ National Grid Subdivision Corridor means, as depicted in Diagram 1, the area measured either side of the centre line of any above ground electricity transmission line as follows:

a. 14m of a 110kV transmission line on single poles;
b. 16m of a 110kV transmission line on pi poles;
c. 32m of a 110kV transmission line on towers;
d. 37m of a 220kV transmission line.

The measurement of setback distances from National Grid transmission lines shall be undertaken from the centre line of the National Grid transmission line and the outer edge of any support structure. The centre line at any point is a straight line between the centre points of the two support structures at each end of the span.

Note: the National Grid Subdivision Corridor does not apply to underground cables or any transmission lines (or sections of line) that are designated

¹⁵⁶ Submission point 60.84.

¹⁵⁷ Submission point 60.85.

¹⁵⁸ Submission point 60.86.

¹⁵⁹ Ms Whitney supports the Officer's recommended amendment (to include reference to 'Subdivision') to the definition of National Grid Subdivision Corridor, Officer's Report: Part B – Infrastructure, page 65, paragraph 467.

¹⁶⁰ Whitney, 21 January 2022, para 8.3.

9 Response to other submitters' evidence

Kāinga Ora

- 9.1 The evidence of Ms Karen Williams for Kāinga Ora recommends amendments to INF-O2, INF-P6 and INF-P9 (renumbered INF-P11).
- 9.2 Ms Williams suggests deleting the reference to 'reverse sensitivity effects' from INF-O2 so that the Objective no longer provides that RSI is protected from them.¹⁶¹
- 9.3 Ms Williams also recommends changes to INF-P6 *Adverse effects of the National Grid* to only avoid "unacceptable" reverse sensitivity effects (of subdivision) on the National Grid rather than "any" reverse sensitivity effects.¹⁶²
- 9.4 In support of her recommended change to INF-P6, Ms Williams considers that they "more appropriately strike[s] the balance in giving effect to the NPSET without unduly constraining development".¹⁶³
- 9.5 **Ms Whitney** disagrees with the changes recommended by Ms Williams in terms of 'reverse sensitivity' based on Policy 10 of the NPSET.¹⁶⁴
- 9.6 Transpower submits that the suggested changes by Ms Williams 'dilute' Policy 10 of the NPSET which contains the strong direction to (the extent reasonably possible) 'avoid' reverse sensitivity effects on the National Grid. As covered above, the direction of the Court of Appeal in *Port Otago* is that strong higher order direction (such as Policy 10 NPSET) should not be 'watered down' to accommodate other factors, such as "unduly constraining development" (for which Ms Williams provides no higher order direction).¹⁶⁵
- 9.7 Ms Williams¹⁶⁶ also seeks an amendment to Policy INF-P11 (previously numbered INF-P9) to clarify it does not apply to the National Grid. **Ms Whitney** disagrees and considers the policy should apply to the National Grid as it addresses a policy gap to include reference to constraints, functional and operational need and the route, site and method selection which are not included in the National Grid operation and maintenance policy INF-P7.¹⁶⁷

¹⁶¹ Williams, 21 January 2022, para 5.13.

¹⁶² Williams, 21 January 2022, para 5.31.

¹⁶³ Williams, 21 January 2022, para 5.30.

¹⁶⁴ Whitney, 2 February 2022, paras 3.3-3.4.

¹⁶⁵ *Port Otago Limited v Environmental Defence Society Incorporated* [2021] NZCA 638 at [79].

¹⁶⁶ Statement of evidence of Karen Tracy Williams on behalf of Kāinga Ora – Homes and Communities, Dated 21 January 2022, Hearing Stream 4: Strategic Directions, Energy, Infrastructure and Transport, General District-Wide Matters, at paragraphs 5.38.

¹⁶⁷ Whitney rebuttal, 2 February 2022, para 3.5.

Royal Forest and Bird - Indigenous Biodiversity

- 9.8 Despite no evidence being filed by Royal Forest and Bird Protection Society of New Zealand (**'Forest and Bird'**), Transpower wishes to briefly address two points, being:
- a Submission point 225.30 by Forest and Bird¹⁶⁸ requesting the full suite of ECO provisions apply to the INF chapter.
 - b Submission point 225.42 by Forest and Bird (DOC further submission point FS39.1) seeking the "effects on indigenous biodiversity" as a matter for control in relation to controlled activity rules or as a matter of discretion in restricted discretionary activity rules.
- 9.9 With regards to submission point 225.30, **Ms Whitney** opposes the relief sought by Forest and Bird and supports the Section 42A Report's recommendation to reject the submission point.¹⁶⁹ Transpower concurs.
- 9.10 With regards to submission point 225.42, Transpower concurs with **Ms Whitney's** support of the officer's recommendation to reject the submission point.¹⁷⁰

Director-General of Conservation

- 9.11 Transpower understands that DOC considers that some of Transpower's recommended provisions may not give effect to the NZCPS (and will be filing legal submissions that effect). Transpower will work together with DOC to attempt to reconcile any differences in advance of Transpower's appearance in front of the Hearings Panel.

10 Evidence to be presented

- 10.1 Transpower has lodged evidence by three witnesses in support of its submission and further submissions:
- a **Ms Rebecca Eng** will provide evidence on the National Grid Corridor approach and ACRE process from a Transpower perspective;
 - b **Mr Ben Cartwright** will provide engineering evidence on risks arising from the National Grid and on National Grid activities; and

¹⁶⁸ Transpower further submission reference -FS04.39.

¹⁶⁹ Officer's Report: Part B – Infrastructure, page 13, Section 3.4.2; Whitney, 21 January 2022, para 7.27.

¹⁷⁰ Whitney 21 January 2022, paras 7.29-7.30.

- c **Ms Pauline Whitney** will provide planning evidence and make recommendations as to the final form of PDP provisions that Transpower has an interest in.



Ezekiel Hudspith
Counsel for Transpower NZ Limited