

**BEFORE THE PROPOSED OTAGO
REGIONAL POLICY STATEMENT
HEARINGS PANEL**

UNDER

the Resource Management Act
1991

AND

IN THE MATTER

of submissions on the
proposed Otago Regional
Policy Statement 2021
(excluding parts determined to
be a freshwater planning
instrument)

**STATEMENT OF REBUTTAL EVIDENCE OF AINSLEY JEAN MCLEOD ON
BEHALF OF TRANSPower NEW ZEALAND LIMITED (314 and FS00314)**

PLANNING

9 December 2022

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1. INTRODUCTION

1.1 My full name is Ainsley Jean McLeod. I am a self-employed planner, trading as Ainsley McLeod Consulting Limited. My qualifications, experience and background in respect of the pORPS are set out in my primary statement of evidence.

1.2 My rebuttal evidence should be read in conjunction with my primary statement of evidence. As with the primary evidence, I rely on the statement of evidence of Mr Roy Noble that was filed on behalf of Transpower.

1.3 I repeat the confirmation given my primary statement of evidence that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses as contained in the Court's 2014 Practice Note, including paragraph 4.16 that sets out the appropriate scope for rebuttal evidence.

2. SCOPE OF REBUTTAL EVIDENCE

2.1 This statement of rebuttal evidence responds to matters raised in the evidence of the following in respect of Policy EIT-INF-P15:

- (a) Ms Lynette Wharf filed on behalf of Horticulture New Zealand; and
- (b) Ms Sandra McIntyre filed on behalf of Kāi Tahu Ki Otago, Ngāi Tahu Ki Murihiku and Te Rūnanga o Ngāi Tahu.

3. RESPONSE TO MS WHARF'S EVIDENCE

3.1 In her evidence, Ms Wharf considers Policy EIT-INF-P15 with reference to the NPSET.¹ Policy EIT-INF-P15 is about the protection of nationally and regionally significant infrastructure, which includes the National Grid. Ms Wharf suggests alternative

¹ Statement of Evidence of Lynette Wharfe (Planning) on Behalf of Horticulture New Zealand, dated 23 November 2022, paragraphs 225 to 235.

wording for the Policy. This alternative wording is based on Ms Wharf's opinion that:

- (a) The NPSET "does not provide for 'protection', rather it is that the National Grid is 'recognised and provided' for as a matter of national significance";
- (b) "Policy 10 of the NPSET does not have an absolute 'avoid'" but it is that "decision makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects" and there is no consideration of 'to the extent reasonably possible' in the recommended wording on EIT-INF-P15; and
- (c) The proposed wording (as notified) of Policy EIT-INF-P15 was 'seek to avoid the establishment of activities that may result in reverse sensitivity' and as such was not an absolute avoid.

3.2 The alternative wording supported by Ms Wharf is as follows:

"Recognise and provide for the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- a) Ensuring that sensitive activities that may give rise to reverse sensitivity effects are avoided to the extent reasonably possible*
- b) Ensuring that activities do not compromise the functional or operational needs of nationally significant infrastructure and regionally significant infrastructure,"*

3.3 It is my view that Ms Wharf's conclusion is based on weight being given to selected parts of the policies in the NPSET and, in doing so fails to appropriately consider the policy direction given, and outcomes sought, by the NPSET as a whole.

3.4 When considering the effects of the activities of other parties on the National Grid, the relevant provisions of the NPSET are the Objective and Policies 10 and 11. Policies 10 and 11 fall under the

heading 'Managing the adverse effects of third parties on the transmission network'. These provisions are:

Objective

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

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

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."

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)."

3.5 Ms Wharf states that the NPSET directs that the National Grid is recognised and provided for as a matter of national significance, rather than infrastructure to be protected. In turn, Ms Wharf's suggested wording for Policy EIT-INF-P15 begins with "*Recognise*

and provide for the efficient and effective operation of nationally significant infrastructure and regionally significant ...”.

3.6 In my opinion, the wording proposed by Ms Wharf (insofar as it relates to the National Grid) does not give effect to the NPSET because ‘recognising and providing for the efficient and effective operation’ of important infrastructure, is a lesser obligation and would not achieve the NPSET Objective outcome of **facilitating** the operation, maintenance and also the **upgrade** of the National Grid. [emphasis added]

3.7 While the NPSET does not use the word ‘protect’, in my view this is clearly the outcome sought. I have read and refer to the High Court in *Transpower v Auckland Council* CIV-2016-404-002330 [2017] NZHC 281. In this case, the Court considered Policy 10 of the NPSET and concluded:

*“[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 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.” [my emphasis]*

3.8 I agree with Ms Wharf that Policy 10 of the NPSET does not include ‘avoid’ and that Policy 10 does include the qualifier ‘must to the extent reasonably possible’. That said, I consider that Ms Wharf has read down the intent of the NPSET (as understood by the High

Court) by failing to consider the second part of Policy 10 and Policy 11 as a whole that also direct that:

- (a) activities are managed to **'ensure** that operation, maintenance, **upgrading, and development** of the electricity transmission network is **not compromised**'; and
- (b) local authorities must 'identify an appropriate buffer corridor within which it can be expected that sensitive activities will **generally not be provided**'.

3.9 Read against this language, as well as the Objective provision, the proviso 'to the extent reasonably possible' is in my view an onerous test and requires something more than what might be practicable. That is, I am of the view that it implies that if something can reasonably be done, then it should be done.

3.10 Having regard to the wording of clause (a) supported by Ms Wharf, I do not support clause (a) because it applies the 'to the extent reasonably possible' qualifier from Policy 10 of the NPSET to sensitive activities that are addressed in Policy 11 of the NPSET (which does not include this qualification). Further, the NPSET addresses adverse effects on the National Grid, rather than just the reverse sensitivity effects as included in the wording suggested by Ms Wharf.

3.11 Further, I do not support the wording of Ms Wharf's clause (b) because the clause refers to the functional or operational needs of important infrastructure being compromised. In my view, insofar as Policy EIT-INF-P15 relates to the National Grid, a requirement not to compromise a 'need' is an unusual expression, and does not reflect the wording in Policy 10 of 'ensuring that the operation, maintenance, upgrading, and development of the National Grid is not compromised'.

4. RESPONSE TO MS MCINTYRE'S EVIDENCE

4.1 In her evidence, Ms McIntyre supports the deletion of clause (3) of in Policy EIT-INF-P15 Protecting nationally or regionally significant infrastructure (Section 42A Report version) that reads as follows:²

“Protect the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- (1) avoiding activities that may give rise to an adverse effect on the functional needs or operational needs of nationally significant infrastructure or regionally significant infrastructure,*
- (2) avoiding activities that may result in reverse sensitivity effects on nationally significant infrastructure or regionally significant infrastructure, and*
- (3) avoiding activities and development that foreclose an opportunity to adapt, upgrade or develop nationally significant infrastructure or regionally significant infrastructure to meet future demand.”*

4.2 Ms McIntyre is of the view that the revised (or replacement) wording of Policy EIT-INF-P15 inappropriately broadens the scope of the Policy beyond management of reverse sensitivity to requiring avoidance of activities and development that foreclose an opportunity for future development of infrastructure. Her view is also that this gives rise to a *“highly uncertain “sterilisation” of any areas where there may be a possibility of nationally or regionally significant infrastructure being developed in future.”*

4.3 I agree with Ms McIntyre to the extent that the revised version of Policy EIT-INF-P15 broadens the Policy to also manage the direct adverse effects of activities on important infrastructure. However, contrary to Ms McIntyre, insofar as the Policy relates to the National Grid, I consider that the avoidance of direct effects on important infrastructure is necessary to give effect to Policy 10 of the NPSET.

2 Statement of Evidence of Sandra Jean McIntyre on Behalf of Kāi Tahu Ki Otago, Ngāi Tahu Ki Murihiku and Te Rūnanga o Ngāi Tahu, dated 23 November 2022, paragraph 127.

In this regard, the evidence of Mr Noble describes the way in which activities may impact on the National Grid.

4.4 In terms of whether it is appropriate for the pORPS to direct the avoidance of activities and that foreclose an opportunity to adapt, upgrade or develop important infrastructure, I consider that (again, insofar as Policy EIT-INF-P15 relates to the National Grid) Policy 10 of the NPSET:

- (a) clearly contemplates the future development of the National Grid through the use of the words 'upgrading' and 'development'; and
- (b) requires that decision-makers must manage activities to avoid reverse sensitivity effects on the National Grid and also to ensure that operation, maintenance, upgrading, and development of the National Grid is not compromised.

4.5 I consider that the suggestion that an outcome of the Policy would be the sterilisation of **any** areas where there may be the possibility of important infrastructure is not realistic. When given effect to in practice (including in district plan making, applications for resource consents and notices of requirement for designations), providers of important infrastructure would be required to clearly demonstrate how any proposed development or activity would foreclose a future development opportunity, and it would be against the understanding of the 'opportunity' that the potential impacts would be assessed. To confirm this, the pORPS methods could include further direction in this regard.

4.6 As such, I do not consider that the Policy results in 'sterilisation', rather it provides a planning response that gives effect to the NPSET. It also achieves the purpose of the RMA by providing for the protection of important for physical resources in a way that enables people and communities (including future generations) to

provide for their social, economic, and cultural well-being and for their health and safety.

A handwritten signature in blue ink, appearing to read 'Ainsley Jean McLeod', with a long horizontal flourish extending to the right.

9 December 2022

Ainsley Jean McLeod