

**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)

**OPENING INTRODUCTORY LEGAL SUBMISSIONS ON BEHALF OF
TRANSPower NEW ZEALAND LIMITED (314 and FS00314)**

Hearing Weeks 1 and 2

24 January 2023

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 These submissions are filed on behalf of Transpower New Zealand Limited (**Transpower**), in the first of the series of hearings on the proposed Otago Regional Policy Statement (non-freshwater) (**pORPS**). They are intended to be introductory submissions only. More detailed legal submissions will be presented at the Energy, Infrastructure & Transport (**EIT**) hearing. These submissions:

- (a) outline why Transpower is involved in this hearing;
- (b) set out the statutory framework as it is relevant to Transpower's activities;
- (c) outline Transpower's intended approach to involvement in the hearings; and
- (d) in relation to this first hearing sub-topic, raise a jurisdictional issue in relation to ORC's recommendation to insert a new defined term of "Māori Land".

2. TRANSPOWER NEW ZEALAND AND THE NATIONAL GRID

2.1 The National Grid is nationally significant infrastructure. Transpower is concerned with how the pORPS recognises and provides for the National Grid, and particularly the extent to which the provisions of the pORPS give effect to (or "implement") the National Policy Statement on Electricity Transmission 2008 (**NPSET**).

2.2 Transpower is the state-owned enterprise that plans, builds, maintains, owns and operates New Zealand's high voltage electricity transmission network, known as the **National Grid**. Transpower, whose main role is to ensure the delivery of a reliable and secure supply of electricity to New Zealand, has a fundamental role in the industry and in New Zealand's economy.

2.3 A key part of this is connecting new renewable energy generation to the National Grid, and from time to time large scale electricity users. Transpower expects demand for electricity to increase over time as New Zealand transitions to a zero-carbon economy. Meeting the needs of future grid development to connect

new generation and load, remains uncertain and challenging as New Zealand moves to decarbonise. In order to keep pace with these externally driven changes, it is essential that Transpower has the ability to enhance the existing grid and build new assets.¹

- 2.4** Transpower's interests relate to how the pORPS will impact on the existing National Grid (ie. managing the adverse effects of other activities on the network), as well as potential new assets (managing the adverse environmental effects of the network).

3. THE STATUTORY FRAMEWORK RELEVANT TO THE NATIONAL GRID

- 3.1** Under the RMA's framework, the pORPS must appropriately provide for the need to operate, maintain, develop and upgrade the National Grid.

- 3.2** This arises primarily as a result of the National Policy Statement on Electricity Transmission 2008 (**NPSET**). Under section 62(3) of the RMA, the RPS must give effect to a national policy statement, including the NPSET. The term 'give effect' is a strong statutory directive. It places a firm obligation on ORC in respect of the content of the pORPS.

- 3.3** Further, the pORPS must be prepared in accordance with the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**).²

NPSET

- 3.4** The NPSET directs the management of the National Grid under the RMA. It recognises, as a matter of national significance, the need to operate, maintain, develop and upgrade the National Grid. The NPSET has a single Objective as follows:

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

¹ Mr Noble's evidence, at 4.9, 5.2,

² This obligation arises under section 61(1)(e): "A regional council must prepare and change its regional policy statement in accordance with any regulations".

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.

3.5 This Objective is supported by 14 policies that the RPS must also give effect to. These policies broadly impose obligations in relation to the following categories (relevantly):³

- (a) recognising and providing for the national benefits of the National Grid;
- (b) managing the environmental effects of the National Grid;
- (c) managing the adverse effects of third parties on the National Grid; and
- (d) long-term strategic planning for the National Grid.

NESETA

3.6 The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**) sets out a national regulatory framework for activities related to existing⁴ National Grid transmission lines, including the operation, maintenance and upgrading of such lines. The NESETA specifies permitted electricity transmission activities (subject to standards) and establishes resource consent requirements where these activities do not meet the standards.

3.7 The NESETA is relevant to decision making as the pORPS objectives and policies will apply to decision making on consents required under NESETA.

4. EVIDENCE AND APPROACH ACROSS HEARINGS

4.1 Under the RMA's framework, the RPS must appropriately provide for the need to operate, maintain, develop and upgrade the National Grid. Transpower's interest in these hearings is in ensuring that the pORPS enables Transpower to carry out these core functions, to ensure security of electricity transmission, now and in the future.

³ The fifth category being the requirement to map the National Grid on plan maps.

⁴ The NESETA applies only to existing transmission lines / the National Grid at the time the regulations commenced (14 January 2010).

Submissions and evidence filed

4.2 Transpower filed its primary submission on 3 September 2021, and a further submission on 12 November 2021. It actively participated in the without prejudice 'mediations' held through mid-2022. In support of its submissions, Transpower has filed the following evidence:

- (a) Evidence by **Mr Roy Noble** on the requirements of the National Grid. Mr Noble is the Head of Engineering Integration at Transpower, and has over 38 years' experience in the design, construction and maintenance of high voltage transmission lines.

Mr Noble's evidence sets out the nature of Transpower's activities in the Otago region and provides context to inform the Panel as to why Transpower is seeking specific changes to the pORPS. Mr Noble's evidence is relevant to all of Transpower's submission points across the various pORPS chapters.

- (b) Planning evidence-in-chief and rebuttal evidence by **Ms Ainsley McLeod**. Ms McLeod has over 20 years' planning experience in infrastructure and network utilities, and has been engaged by Transpower since 2001 to assist in planning matters.

Amongst other things, Ms McLeod's evidence sets out the requirements of the NPSET, the reasons why the pORPS does not at present give effect to the NPSET, and why the relief sought is necessary to ensure that the RPS gives effect to the NPSET

Appearance at hearings

4.3 At this introductory hearing, Transpower is presenting introductory opening submissions and will call evidence from Ms McLeod. A significant number of Transpower's submission points are allocated to the Energy, Infrastructure & Transport (**EIT**) topic. In relation to that hearing, Transpower intends to present legal submissions and call both Mr Noble and Ms McLeod.⁵

⁵ Mr Matthew Conway will represent Transpower's case at the EIT hearing as Ms Scott will be on maternity leave from 9 February 2023.

4.4 Transpower has sought leave for Mr Noble to only give evidence in the EIT hearing. As the RPS must provide for Transpower’s ability to operate, maintain, develop and upgrade the National Grid, Mr Noble’s evidence on the range of activities that Transpower needs to be able to undertake must be given appropriate consideration in every topic.

4.5 Transpower is aware that Mr Stafford, who has authored the section 42A report on the EIT topic, and Mr Langman, who has filed supplementary evidence on behalf of ORC, have recommended revised provisions that are, in many respects, inconsistent with the relief that Transpower seeks. At this stage however, it is difficult to engage in ORC’s position any further than Transpower already has in its evidence, as ORC did not file rebuttal evidence in response to evidence in chief of Mr Noble or Ms McLeod. Essentially, ORC’s position on Transpower’s evidence is unknown at the time of filing these legal submissions.

Evidence relevant to stopics allocated to weeks 1 and 2

4.6 It is understood that Ms McLeod’s evidence-in-chief will be considered as following, across her various appearances at this first hearing:⁶

| Topic / Sub topic | Allocated hearing time | Evidence in chief reference |
|-----------------------------------|-------------------------------|---|
| Part 2 ⁷ (MW and RMIA) | 24 January, 30 mins | Intro sections through to and including Section 5. 6.22 – 6.35. |
| Part 1 (Chapter 2) | 26 January, 30 mins | 6.1 – 6.6 ⁸ |
| Definitions (Chapter 3) | 26 January, 30 mins | 6.7 – 6.35 |
| Part 2 (SRMR) – Chapter 5 | 7 January, 30 mins | 7.1 – 7.12 |
| Integrated management | 8 January, 30 mins | 7.13 – 7.33 |

⁶ Ms McLeod’s rebuttal evidence is relevant to the EIT hearing topic.

⁷ It is understood this should refer to Part 1 rather than Part 2.

⁸ This is our understanding of the scope of this sub-topic.

5. MĀORI LAND – JURISDICTIONAL ISSUE

5.1 In October 2022, ORC published its supplementary evidence on its website. Alongside his consideration of MW-P4, Mr Adam’s supplementary evidence on the MW chapter recommends a new defined term, “Māori Land”, and recommends changes to a number of provisions that previously referred to Native Reserves and Te Ture Whenua Maori land, so that those provisions use the new term “Māori land”.⁹

5.2 As has been identified by the Panel on Day 1 of the hearing, the definition has a wider scope than Native Reserves and Te Ture Whenua Maori Land. In particular, it includes land:

...

6. *Held or claimed by Te Rūnanga o Ngāi Tahu and/or related entities including by a person or persons with a whakapapa connection to Kāi Tahu, where the land was transferred or vested, is an entitlement, or is part of an ancillary claim:*

(a) *as part of redress for the settlement of Treaty of Waitangi claims; or*

(b) *by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020);*

7. *Owned by a person or persons with evidence of Kāi Tahu whakapapa connection to the land (where documentary evidence of whakapapa connection is provided from either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit).*

5.3 Ms McLeod’s evidence at paragraphs 6.22 – 6.35 sets out concerns on how this increased scope would affect Transpower’s interests.

5.4 To be clear, Transpower’s primary interest here is to ensure that where the National Grid is located over or directly adjacent to land that falls within the definition of ‘Māori Land’, that the maintenance and the on-going operation, development and upgrade of the existing National Grid can continue to be

9 Mr Adams supplementary evidence at [41].

facilitated. Therefore the wording of MW-P4 is of particular interest to Transpower.

- 5.5** There is also a direct relationship here with Transpower's relief allocated to the EIT hearing scheduled for 13-17 March, and this issue will be addressed in that hearing in more detail.

Jurisdiction for new definition

- 5.6** Transpower cannot identify any submission asking for a new definition of Māori Land, however the Cain Whanau submission asks for the list of 'Māori Land Reserves' to be expanded to capture land 'subject to ancillary claims'.¹⁰ Otherwise, on MW-P4:

- (a) The Cain Whanau submission asks for some changes to MW-P4, but they are not focused on expanding the application of the policy; and
- (b) The Te Rūnanga o Ngāi Tahu submission (234) asks for MW-P4 to be expanded to include 'ancestral land'.

- 5.7** It is accepted that these two submissions create jurisdiction for MW-P4 to be expanded to include the substantive change introduced through new sub-clause 6 in Policy MW-P4. It is also accepted that the Cain Whanau submission creates jurisdiction for existing references across the pORPS to 'Māori Land Reserves' to include land 'subject to ancillary claims'.

- 5.8** However, it is submitted that care needs to be taken if that expanded definition is applied to any new use of the term 'Māori Land' in the pORPS provisions (for example, in amending the EIT provisions so that they give effect to the NPSET).

- 5.9** More specifically, counsel has not been able to identify any submission that provides scope to add new sub-clause (7) into the definition. In terms of the substantive effect of the proposed drafting, counsel for Kai Tahu acknowledged orally in opening submissions that the intention of the changes being proposed in sub-clause (7) was to cover a direct whakapapa connection with a piece of land, rather than to allow someone who has no connection / relationship with the land, to assert an ability to rely on the relevant policies that use the proposed

¹⁰ Kāi Tahu ki Otago or Kā Rūnaka (226) support the notified definition of Kai Te Ture Whenua Māori land. No relevant submission from Waihōpai Rūnaka, Te Rūnanga o Ōraka Aparima, Te Rūnanga o Awarua (Ngāi Tahu ki Murihiku) (223).

term (which is not just P4). The latter is submitted to go beyond section 6(e) which focuses on recognising and providing for the *relationship* of Maori and their culture and traditions with their ancestral lands.¹¹

Regulatory effect of new subclause (6) and (7)

5.10 Alongside potential jurisdictional constraints, it is submitted that an evaluation has not been completed in accordance with the requirements under section 32(1) to (4) that “must be undertaken at a level of detail that corresponds to the scale and significance of the changes”.

5.11 Mr Adams’ s32AA evaluation of Māori land and the pORPS provisions that refer to the term, is set out at paragraphs 51 to 57, and 65 to 69 of his supplementary evidence. At [54] Mr Adams acknowledges that the new definition expands the range of land these provisions apply to, but goes on to state (our emphasis):

*The extent of Māori Land under the new definition in the pORPS is **not clear**, given factors such as the limited inclusion of general land owned by māori, and land owned by people who can show evidence of a Kāi Tahu whakapapa connection to it. However, prehearing discussions indicate it relates to a very small proportion of land in Otago.*

5.12 Transpower expresses concern that this evaluation underestimates the extent of land that may now be affected. No evidence clarifies the consequences of the changed definition. The reference to “prehearing discussions” indicates that no substantive investigation has been undertaken in relation to the extent of land covered by sub-clause (7). The prehearing discussions were of course confidential, but no information has been provided to Transpower.

11 At the time of writing these submissions, counsel has not been able to access a copy of the Kai Tahu submissions.

5.13 There is simply insufficient evidence to know the scale and significance of the changes proposed.

DATED this 24th day of January 2023

A handwritten signature in black ink, appearing to read 'S J Scott', written in a cursive style.

S J Scott
Counsel for Transpower New Zealand Limited