

Further Submission by Transpower New Zealand Limited Proposed Freshwater Planning Instrument Part of the Otago Regional Policy Statement

7 February 2023

Keeping the energy flowing



Form 6

Further submission in support of, or in opposition to, submission on notified proposed policy statement or plan, change or variation

Clause 8 of Schedule 1, Resource Management Act 1991

To Otago Regional Council (“the Council”)

Name of person making further submission: Transpower New Zealand Limited (“Transpower”)

This is a further submission in support of, and in opposition to, submissions on the proposed Freshwater Planning Instrument Part of the Proposed Otago Regional Policy Statement (“Proposed ORPS – Freshwater”).

Transpower has an interest in the Proposed ORPS - Freshwater that is greater than the interest the general public has, for reasons including the following:

- Transpower is the owner and operator of the National Grid, and the National Grid is enabled, protected and regulated by the National Policy Statement on Electricity Transmission 2008 (“NPSET”) and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (“NESETA”). The Proposed ORPS – Freshwater must give effect to the NPSET. Transpower has an interest in ensuring that the Proposed ORPS – Freshwater meets this statutory obligation.
- Transpower has an interest as a landowner and/or occupier in respect of existing and future National Grid infrastructure that is potentially affected (directly or indirectly) by the relevant submissions.
- Transpower made an original submission on matters raised or affected by other submissions.

Transpower’s further submission

Transpower’s support of, or opposition to, a particular submission including the reason for Transpower’s support or opposition and the relief sought are detailed in the table attached as Appendix A. The general reasons for Transpower’s further submission are set out below. These reasons apply to each submission listed in Appendix A and are supplemented by specific reasons and relief in Appendix A.

General reasons and decisions sought in respect of submissions supported by Transpower

For each of the submissions identified in Appendix A as being supported by Transpower, they are supported to the extent that they:

- give effect to the NPSET;
- are the most appropriate means of exercising the Council’s functions in respect of section 32 of the RMA;
- enable people and communities to provide for their social, economic and cultural well-being and for their health and safety.

Transpower seeks that the submissions it supports be allowed to the extent that they achieve the matters set out above or such further alternate relief or amendments as may be necessary to achieve those matters.

General reasons and decisions sought in respect of submissions opposed by Transpower

For each of the submissions identified in Appendix A as being opposed by Transpower, they are opposed to the extent that they failed to achieve the matters set out above.

Transpower seeks that the submissions it opposes be disallowed to the extent that they fail to achieve the matters set out above or such further alternative relief or amendments as may be necessary to achieve those matters.

Transpower wishes to be heard in support of its further submission.

Due to the specific interests of Transpower, and particularly the national significance of the National Grid, Transpower will not consider presenting a joint case.



Signature of person authorised to sign
on behalf of Transpower New Zealand Limited

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Appendix A – Transpower New Zealand Limited: Further Submission on Submissions Made on the Proposed Freshwater Planning Instrument Part of the Proposed Otago Regional Policy Statement

The following table sets out the decisions sought by Transpower in respect of submissions made on the Proposed Freshwater Planning Instrument Part of the Proposed Otago Regional Policy Statement, including the reasons for Transpower’s support or opposition in respect of the original submission.

Submission Reference	Provision and Relief Sought	Support/ Oppose	Reason	Allow/Disallow
Dunedin City Council (submission reference FPI001)				
FPI001.044	Whole of RPS Considers that the ORC should exercise caution when using the terms avoid and enable terms in light of the Supreme Court’s decision in the King Salmon case. It is better practice to include the weighting or balancing within the policy such as has been done in CE-P12 with the use of ‘avoid ... unless’ language.	Support	Transpower supports the submission for the same reasons as those given in the primary submission including as follows: <i>“The DCC considers that the ORC should exercise caution when using these terms in light of the Supreme Court’s decision in the King Salmon case. Based on the outcome of the King Salmon case the drafting of policies and objectives in the RPS now requires greater precision. This is because subordinate plans are required to give effect to the RPS. For example, if the RPS says ‘avoid’, lower order plans will have to include provisions that avoid those particular activities or effects relevant to that policy or objective. This would have the consequence of making it practically impossible for councils to grant consents where such effects arise. DCC considers It is better practice to include the weighting or balancing within the policy such as has been done in CE-P12 with the use of ‘avoid ... unless’ language.</i> <i>The DCC also notes the high bar set by ‘avoid or minimise’ with no qualifier around the practicability (including but not limited to cost) of minimisation (reducing to the smallest extent possible). DCC suggests this should generally be ‘avoid or minimise as far as practicable’ or similar. This is the language used in our district plan and in some but not all places in the RPS.”</i>	Allow the submission.
FPI001.048	Whole of RPS Seeks that ORC does not amend content that has been agreed through the previous lengthy RPS	Support	Transpower supports the submission for the same reasons as those given in the primary submission. Transpower also participated in mediation and generally supports provisions in the partially operative OPRS. Transpower considers that departures from such provisions must be justified through	Allow the submission.

Submission Reference	Provision and Relief Sought	Support/ Oppose	Reason	Allow/Disallow
	mediation-appeal process unless there is a compelling reason to do so		monitoring the efficiency and effectiveness (or lack of) and as part of a thorough analysis as required by section 32 of the RMA.	
Meridian Energy Limited (FPIO16)				
FPIO16.015	LF-FW -Freshwater Policy LF-FW-P7 Amend LF-FW-P7 as follows: <i>“Environmental outcomes, attribute states (including target attribute states) and limits ensure that: (1) ... (2) the habitats of <u>significant</u> indigenous species associated with water bodies are protected, including by providing for fish passage, ...”</i>	Support	Transpower supports the submission for the same reasons as those given in the primary submission as follows: <i>“LF-FW-P7 lists what “Environmental outcomes, attribute states (including target attribute states) and limits” are to achieve. This includes (amongst others) that “the habitats of indigenous species associated with water bodies are protected, including by providing for fish passage”. Meridian is concerned that this outcome is too absolute and would mean that the environmental outcomes, attribute states and limits must protect any habitat of a single (or multiple) indigenous plant or animal that is associated with a water body, whether in it or near it. This is significantly more limiting than section 6(c) of the Act, and Meridian considers that it is unnecessarily restrictive and should be amended to refer to the habitats of significance indigenous species.”</i>	Allow the submission.
Waka Kotahi NZ Transport Agency (submission reference FPIO18)				
FPIO81.003	LF-FW – Freshwater Objective LF-FW-O8 Amend Objective LF-FW-O8 as follows: <i>“In Otago’s water bodies and their catchments: ... (5) the significant and outstanding values of Otago’s outstanding water bodies are identified and protected, <u>except for regionally and nationally significant infrastructure which shall be managed in accordance with EITINF-P13 and P13A.</u>”</i>	Support	Consistent with Transpower’s submissions on the ORPS (including the freshwater planning instrument), and for the same reasons as those given in the primary submission and Transpower’s submission, Transpower supports the submission. These reasons are as follows: <i>“Waka Kotahi supports the intention of the objective but is concerned that clause (5) may be interpreted to mean that <u>all</u> adverse effects on significant and outstanding values of outstanding water bodies must be avoided. This issue has previously been raised during submissions, further submissions and pre-hearing discussions on the PORPS (nonfreshwater parts). The Section 42a Hearing Report for Chapter 9: Land and Freshwater states that protection cannot be achieved by avoiding, remedying or mitigating adverse effects; rather, the author states that protection requires a more stringent approach (avoid all adverse effects). This would mean that Objective LF-FW-O8 is interpreted to mean that all adverse effects on significant and outstanding values of outstanding water</i>	Allow the submission.

Submission Reference	Provision and Relief Sought	Support/ Oppose	Reason	Allow/Disallow
			<p>bodies are to be avoided, which is too stringent for infrastructure providers such as Waka Kotahi.</p> <p>Waka Kotahi manages several assets that are located in, over, or under outstanding water bodies (such as the Clutha River / Mata-Au or Taieri River), and various works occur within these outstanding water bodies, such as new bridges, upgrades or maintenance activities, which sometimes result in temporary adverse effects that cannot be avoided.</p> <p>Waka Kotahi therefore seeks that Objective LF-FW-08 be amended to provide some flexibility for nationally and regionally significant infrastructure that have a locational or functional need to be located in these outstanding waterbodies and may create temporary adverse effects cannot be avoided on significant or outstanding values (but would instead be remedied or mitigated). Waka Kotahi seeks that regionally and nationally significant infrastructure are managed under the objectives and policies in Chapter 11 – Energy, Infrastructure and Transport.”</p>	
FPIO18.006	<p>LF-FW -Freshwater Method LF-FW-M7</p> <p>Amend Method LF-FW-M7 as follows:</p> <p>“Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:</p> <p>...</p> <p>(2) include provisions to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies, <u>except for regionally and nationally significant infrastructure that have a functional or operational need to be located there.</u>”</p>	Support	<p>Transpower supports the submission for the same reasons as those given in the primary submission as follows:</p> <p>“Waka Kotahi supports Method LF-FW-M7 but is concerned by clause (2) which states that district plans must include provisions to avoid the adverse effects of activities on significant and outstanding values of outstanding water bodies.</p> <p>The word “avoid” is a strong directive and was interpreted in the EDS v New Zealand King Salmon Supreme Court case as meaning “not allowing” or “preventing the occurrence of”. This results in the method directing territorial authorities to prepare or amend district plans to include provisions that would not allow any adverse effects on the significant and outstanding values of outstanding water bodies. This is very restrictive for nationally significant infrastructure providers such as Waka Kotahi, who often have to undertake activities within outstanding water bodies that may create unavoidable adverse effects on significant or outstanding values (such as the new Beaumont Bridge in and over the Clutha River/Mata-Au). Waka Kotahi therefore requests flexibility within the method for nationally and regionally significant infrastructure.”</p>	Allow the submission.
Fonterra Co-operative Group Limited (submission reference (FPIO19))				

Submission Reference	Provision and Relief Sought	Support/ Oppose	Reason	Allow/Disallow
FPI019.010	LF-LS - Land and soil Policy LF-LS-P21 Amend the policy as follows: <i>“Achieve the improvement or maintenance of freshwater quantity or quality to meet environmental outcomes set for Freshwater Management Units and/or rohe by: (1) reducing managing the adverse effects of direct and indirect discharges of contaminants to water from the use and development of land, and ...”</i>	Support	Transpower supports the submission for the same reasons as those given in the primary submission as follows: <i>“Fonterra considers amendments are required to reflect that it may not be necessary to reduce discharges, rather it is appropriate to manage the adverse effects of discharges (which may include reducing volumes or contaminants to meet environmental outcomes and limits).”</i>	Allow the submission.
Contact Energy Limited (submission reference FPI027)				
FPI027.025	LF-FW – Freshwater Objective LF-FW-09 Seeks an amendment to the objective that appropriately reflects the exception for specified infrastructure in clause 3.22 of the NPSFM. By way of example, the objective could be amended to include a specific subclause (5) that reflects the process for specified infrastructure set out in the NPSFM	Support	Transpower considers that the amendment proposed in the primary submission gives effect to the NPSFM as it relates to specified infrastructure and Transpower therefore supports the relief sought.	Allow the submission.
NZSki Limited (submission reference FPI038)				
FPI038.003	Whole of RPS Delete term “possible” from the pRPS. Replace with clearer achievable or more practicable direction, or alternatively replace with “practicable”.	Support	Transpower supports the submission for the same reasons as those given in the primary submission. That is, because this term is an extremely stringent and potentially unrealistic test to meet.	Allow the submission.

Submission Reference	Provision and Relief Sought	Support/ Oppose	Reason	Allow/Disallow
Real Group Limited (submission reference FPI039)				
FPI039.005	Entire RPS Delete term “possible” from the pRPS. Replace with clearer achievable or more practicable direction, or alternatively replace with “practicable”.	Support	Transpower supports the submission for the same reasons as those given in the primary submission. That is, because this term is an extremely stringent and potentially unrealistic test to meet.	Allow the submission.
Director General of Conservation (submission reference FPI044)				
FPI044.006	LF-WAI - Te Mana o te Wai Policy LF-WAI-P1 Retain as notified, except that if IM-P1 does not reflect the same three-level prioritisation then insert a new clause as follows or words to like effect: <i>“(4) if there is a conflict between this policy and other provisions in this RPS that cannot be resolved by the application of higher order documents, then this policy takes precedence over Policy IM-P1.”</i>	Oppose	Transpower does not support the inclusion of the additional clause in Policy LF-WAI-P1 on the basis that the implications of this amendment have not been fully tested in the submission, including in respect of appropriateness, efficiency and effectiveness. Transpower considers that it is important that a particular policy direction that relates to the management of freshwater must not be ‘borrowed’ or inadvertently applied to the development and used of other natural and physical resources.	Disallow the submission
Royal Forest and Bird Protection Society of New Zealand (submission reference FPI045)				
FPI045.001	DEF - Definitions Specified infrastructure Amend as follows: <i>“in relation to freshwater, has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)”</i>	Neutral	Transpower does not support or opposed the relief sought, but considers that care should be taken in allowing the proposed amendment to ensure that there are no unintended consequences because the term ‘specified infrastructure’ is not unique to the NPSFM and is also used in the NPSHPL.	Consider consequences of allowing the submission.