

**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)

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

**Energy, Infrastructure and Transport**

**13 March 2023**

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## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

1.1 It is difficult to overstate the National Grid's importance. To provide for the needs of people and communities, it is critical that there is, and continues to be, sustainable, secure and efficient transmission of electricity. Recent flooding events in the North Island, resulting in widespread power outages, have vividly demonstrated why this is the case.

1.2 Transpower New Zealand Limited (**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.

1.3 While Transpower's role is already of fundamental importance, a reliable and secure supply of electricity is vital to the transition to a zero-carbon economy. Demand for electricity will increase. New renewable energy generation will require new connections, and demand for electricity may also require direct connection to the National Grid. There will be a substantive increase in total load across the National Grid. These factors pose significant challenges and uncertainties, but will necessitate substantial development and upgrade of the National Grid. Transpower will also need to maintain and upgrade existing (and in some cases, aging) assets.

1.4 In order to keep pace with these externally driven changes, and to therefore provide for current and future generations, it is essential that:

- (a) Transpower can enhance the existing grid and build new assets;
- (b) the operation, maintenance and minor upgrading of the National Grid can be undertaken without undue constraint; and
- (c) activities that have a direct effect or reverse sensitivity effect on the National Grid are avoided.

1.5 These outcomes are expressly provided for in the National Policy Statement on Electricity Transmission 2008 (**NPSET**) which the proposed Otago

Regional Policy Statement (**pORPS**) must give effect to. However, on the current drafting of the pORPS, it is by no means clear that these outcomes will occur.

**1.6** Transpower acknowledges that the pORPS must recognise and provide for other matters of national importance. The relief sought balances these considerations to provide that, where practicable, adverse effects of the National Grid are avoided. The reality, however, is that:

- (a) it will not always be practicable for Transpower to avoid adverse environmental effects; and
- (b) third party activities in proximity to the National Grid will need to be restricted or prohibited.

**1.7** The pORPS should provide clear policy direction on both of these matters to avoid any doubt on what is required to provide for the National Grid.

**1.8** As a matter of law, it is perfectly acceptable (and to an extent, necessary) for the pORPS to provide for the National Grid in the manner sought by Transpower. These submissions set out why this is the case.

## **2. OVERVIEW OF NPSET**

**2.1** 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 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.

**2.2** This Objective is supported by 14 policies that the RPS must give effect to. These policies broadly impose obligations in relation to the following categories (relevantly):<sup>1</sup>

- (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.

**2.3** These policies vary in how prescriptive they are. Some policies prescribe, in strong terms, how this panel should undertake its role. Such policies include:

- (a) Policy 1 (decision-makers must recognise and provide for the benefits of sustainable, secure and efficient electricity transmission);
- (b) Policy 2 (decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the National Grid);
- (c) Policy 5 (decision-makers must enable reasonable operational, maintenance and minor upgrade requirements); and
- (d) Policy 10 (to the extent reasonably necessary, decision-makers must avoid reverse sensitivity effects on the National Grid).

**2.4** The NPSET also contains a preamble that is fairly extensive. The preamble relevantly outlines characteristics of the National Grid that create challenges for its management under the RMA:

- Transporting electricity efficiently over long distances requires support structures (towers or poles), conductors, wires and cables, and sub-stations and switching stations.
- These facilities can create environmental effects of a local, regional and national scale. Some of these effects can be significant.
- The transmission network is an extensive and linear system which makes it important that there are consistent policy and regulatory approaches by local authorities.

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<sup>1</sup> The fifth category being the requirement to map the National Grid on plan maps.

- Technical, operational and security requirements associated with the transmission network can limit the extent to which it is feasible to avoid or mitigate all adverse environmental effects.
- The operation, maintenance and future development of the transmission network can be significantly constrained by the adverse environmental impact of third party activities and development.
- The adverse environmental effects of the transmission network are often local – while the benefits may be in a different locality and/or extend beyond the local to the regional and national – making it important that those exercising powers and functions under the Act balance local, regional and national environmental effects (positive and negative).
- Ongoing investment in the transmission network and significant upgrades are expected to be required to meet the demand for electricity and to meet the Government's objective for a renewable energy future, therefore strategic planning to provide for transmission infrastructure is required.

**2.5** The preamble then goes on to provide guidance on how the NPSET is to be applied:

The national policy statement is to be applied by decision-makers under the Act. The objective and policies are intended to guide decision-makers in drafting plan rules, in making decisions on the notification of the resource consents and in the determination of resource consent applications, and in considering notices of requirement for designations for transmission activities.

However, the national policy statement is not meant to be a substitute for, or prevail over, the Act's statutory purpose or the statutory tests already in existence. Further, the national policy statement is subject to Part 2 of the Act.

For decision-makers under the Act, the national policy statement is intended to be a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act.

This preamble may assist the interpretation of the national policy statement, where this is needed to resolve uncertainty.

### **3. HOW TO GIVE EFFECT TO THE NPSET**

**3.1** 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 pORPS’ content.

**3.2** In relation to the requirement to “give effect to” an NPS, the Supreme Court in *King Salmon* stated:<sup>2</sup>

The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

**3.3** This means that the wording of each policy is key to determining what the RPS must include to give effect to the NPSET.

**3.4** The Supreme Court in *King Salmon* stated that when giving effect to a different national policy statement, the NZCPS, decision-makers should only have recourse back to Part 2 matters in limited situations, these being:<sup>3</sup>

- (a) where the NZCPS is invalid;
- (b) where the NZCPS does not “cover the field”, and a decision-maker must consider whether part 2 provides assistance in dealing with the matter(s) not covered; and
- (c) where there is uncertainty as to the meaning of particular policies in the NZCPS.

#### **Transpower v Auckland Council**

**3.5** In *Transpower v Auckland Council*<sup>4</sup> the High Court, hearing appeals on the proposed Auckland Unitary Plan, provided (what is currently the only)

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2 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 At [80].

3 At [88].

4 [2017] NZHC 281.

commentary on what is required to give effect to the NPSET. We summarise the key points made in that case.

**3.6** The High Court determined that the Supreme Court’s direction in *King Salmon* on how to give effect to the NZCPS should not strictly apply in relation to the NPSET for the following reasons:<sup>5</sup>

(a) First, the Court noted that the Supreme Court included a caveat to its comments on the strength of the directive “give effect to”:<sup>6</sup>

There was a caveat noted by the Court. The implementation of any directive is affected by what it relates to. A requirement to give effect to a policy which is framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

(b) Secondly, the Court was persuaded that the preamble to the NPSET provides direction regarding how to give effect to the NPSET. The Court relevantly stated:<sup>7</sup>

the Supreme Court in *King Salmon* recorded that a national policy statement can provide that its policies are simply matters decision-makers must consider in the appropriate context, and give such weight as they consider necessary. The [preamble of the] NPSET so provides and the Minister has not sought to amend the preamble since the *King Salmon* [decision] was released.

(c) Thirdly, the NPSET and the NZCPS derive from different sections of the RMA, being sections 45 and 56, respectively. The Court stated that the different wording in these sections suggests that that “the [NZCPS] is intended to give effect to the Part 2 provisions in relation to the coastal environment[, whereas any other NPS “contains provisions relevant to achieving the [RMA’s] purpose”.<sup>8</sup>

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5 As summarised at [83].  
6 At [78].  
7 At [82].  
8 At [83].

3.7 On this basis, the Court reached an overall conclusion as follows:<sup>9</sup>

the NPSET is not as all embracing of the Resource Management Act's purpose set out in s 5 as is the New Zealand Coastal Policy Statement. In my judgment, a decision-maker can properly consider the Resource Management Act's statutory purpose, and other Part 2 matters, as well as the NPSET, when exercising functions and powers under the Resource Management Act. They are not however entitled to ignore the NPSET; rather they must consider it and give it such weight as they think necessary.

3.8 As an example of how such wording can be interpreted, the Court specifically commented that Policy 10 is "relatively prescriptive".<sup>10</sup> This is because, despite the proviso "to the extent reasonably possible", the policy uses the word "must". The Court concluded that "a mandatory requirement to ensure that an asset of national significance is not compromised is, in my judgment, a relatively strong directive".

#### **Preamble to the NPSET**

3.9 In an earlier hearing stream, the Chair raised the NPSET's preamble and sought clarification on the preamble's effect. Noting the comments made by the High Court in the *Transpower* case above, we comment on the role of preambles in statutory documents more generally. This is because the NPSET is secondary legislation.<sup>11</sup>

3.10 The House of Lords has previously ruled on the effect of preambles in statutes:<sup>12</sup>

Assistance may be obtained from the preamble to a statute in ascertaining the meaning of the relevant enacting part, since words derive their colour and content from their context. **But the preamble is not to affect the meaning otherwise ascribable to the enacting part unless there be a compelling reason and it is not a compelling reason that the enacting words go further than the preamble indicated.**

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9 *Transpower v Auckland Council* at [84].

10 *Transpower v Auckland Council* at [85].

11 RMA, s 52(4).

12 *J v C* [1970] AC 668 at 697–698.



(our emphasis)

- 3.11** This decision has been cited with approval in New Zealand.<sup>13</sup> While this rule is only authoritative in relation to Acts of Parliament (rather than secondary legislation under the RMA), it nonetheless demonstrates that the general approach should be to scrutinise the wording of the operative provisions (here, the objective and policies) rather than the preamble.

### **Reconciling the NPSET against section 6 matters**

- 3.12** Section 6 sets out matters of national importance that the Panel must “recognise and provide for”. That is a stronger directive than “have particular regard to” or “take into account”.

- 3.13** However, counsel is unaware of any case law that establishes as a matter of principle, that section 6 matters are to be applied rigidly or to the exclusion of the provisions of an NPS. To the contrary, the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* stated in its discussion of section 6(a) and (b):<sup>14</sup>

Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management. The fact that ss 6(a) and (b) do not give primacy to preservation or protection within the concept of sustainable management does not mean, however, that a particular planning document may not give primacy to preservation or protection in particular circumstances.

- 3.14** The Court’s comments make it clear that a planning document such as the RPS must make provision for section 6 matters, but need not give primacy to protection of section 6 matters in every case. Making provision for section 6 matters must also be done alongside giving effect to any NPS, and in all respects the consideration of these matters is subservient to the RMA’s purpose of sustainable management.

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<sup>13</sup> *Stallinger v Stallinger* (No 2) [1978] 1 NZLR 727 (SC) at 730–731.

<sup>14</sup> *King Salmon*, above n 2 at [149].

**3.15** In its legal submissions, counsel for ORC appears to take the position that the protection-focused provisions in section 6 of the Act must prevail over any policies in the NPSET.<sup>15</sup> However, it is submitted that:

- (a) The relevant section 6 matters do not in and of themselves require the level of rigidity that counsel for ORC argues for.
- (b) Nor does the scheme of the RMA or case law require an approach that treats the section 6 matters as hard limits or as overriding the directives in the NPSET, particularly in the face of a legislative requirement to give effect to the NPSET.

**3.16** To summarise the legal position, the Panel is required to give effect to the NPSET and give it due consideration alongside other Part 2 matters (to the extent they are not already addressed in the NPSET). It must consider the NPSET's provisions at an individual level, and determine what it must do to give effect to each provision.

#### **4. THE PANEL SHOULD GIVE SIGNIFICANT WEIGHT TO THE NPSET**

**4.1** The question now turns to how much weight the Panel should give to the NPSET. For the reasons that follow, it is submitted that the Panel should accord the NPSET significant weight and ensure that there is clear strategic direction in the Otago region on providing for the National Grid.

**4.2** Firstly, the NPSET provides for the National Grid as a matter of national significance. This is a weighty factor that cannot be ignored. Even if the Panel concludes that the NPSET's directiveness must be weighed against other matters under Part 2, it still requires a strong level of protection of the National Grid.

**4.3** Secondly, setting aside its elevated status under the RMA, the National Grid is essential infrastructure. New Zealand is reliant on electricity "*which is an intrinsic part of living and working in the 21<sup>st</sup> century*".<sup>16</sup> Given New Zealand's dependence on electricity as a source of energy, the only alternative to a National Grid is for communities to generate their own electricity locally. This

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<sup>15</sup> ORC submissions dated 13 March 2023 at [79]-[84].  
<sup>16</sup> Noble at [4.6].

would be more expensive, less reliable, and in some cases, insufficient to meet demand.<sup>17</sup>

- 4.4** To put the matter into section 5 terms, managing the use, development and protection of the National Grid in a manner that ensures the sustainable, secure and efficient transmission of electricity will enable people and communities to provide for their wellbeing.
- 4.5** Thirdly, giving the NPSET significant weight would strongly align with the objectives of the pORPS, and in particular EIT-INF-O4. It would also address issues identified in the SRMR chapter, specifically issues 1 and 2.<sup>18</sup>
- 4.6** Fourthly, the NPSET is comprehensive in setting out a regime for environmental effects of the National Grid. It has clearly grappled with the way in which the Grid might affect other activities, as is apparent from the bullet points in the preamble. The operative provisions expressly provide guidance about how to approach the assessment of the National Grid's effects on other activities.<sup>19</sup> It should therefore be taken as the NPSET's direction about how those matters are to be addressed.
- 4.7** Contrary to Mr Langman's evidence, there is no gap in the NPSET.<sup>20</sup> Mr Langman appears to take the position that just because the NPSET does not expressly refer to some matters, for example significant indigenous biodiversity, the NPS does not cover that matter. It is hard to see a basis for this position, when the NPSET expressly refers to a total of only one matter listed in section 6, that being outstanding natural landscapes. The more logical conclusion is that when the NPSET was drafted, it was not considered necessary to refer to each section 6 matter, when setting out a regime for managing the effects of the National Grid. Further, the combined impact of Policies 7 (relating to the urban environment) and 8 (relating to the rural environment) is to "cover the field".
- 4.8** As an aside, while Mr Langman states his view that the NPSET does not provide for managing effects on significant indigenous biodiversity, regard must be had to the fact that an NPS on biodiversity is not yet in place. This

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17 Noble at [4.7].

18 SRMR-I1 – Natural hazards pose a risk to many Otago communities; SRMR-I2 – Climate change is likely to impact our economy and environment.

19 See for example policies 3, 4, 5 and 6.

20 Langman supplementary evidence at [24].

means that where the Panel is considering any tension between the NPSET and providing for significant indigenous biodiversity, this must be at a more general level of abstraction. It would seem difficult to justify a situation where a matter that is important enough to warrant an NPS could be overridden by a matter for which no NPS is in place.

**4.9** Fifthly, the case law cited above provides that Panel must give consideration to how prescriptive each of the NPSET's policies are. Some of the policies are very directive and prescriptive, specifically policies 1, 2, 5 and 10. Where a policy is worded in a less prescriptive manner, it is submitted that it is entirely appropriate to accord that policy significant weight, so that the RPS provides the necessary strategic direction to ensure the sustainable, secure, and efficient transmission of electricity.

## **5. A BESPOKE POLICY FOR MANAGING ENVIRONMENTAL EFFECTS OF THE GRID**

**5.1** The National Grid is an extensive and linear system, and its environmental effects can be significant. Transpower's preference is to avoid adverse environmental effects; but due to technical, operational and security requirements it is not always feasible to do so. Where avoidance or mitigation is not practicable, there must be certainty that Transpower can nonetheless operate, maintain, upgrade and develop the Grid.<sup>21</sup>

**5.2** To provide context, Mr Noble's evidence sets out that there are two factors that will impact on the need to upgrade the Grid in the Otago region. Firstly, the transition to a zero carbon economy and increased electrification generally will result in additional demand for the National Grid.<sup>22</sup> Secondly, a long-term solution is required to secure a reliable and resilient supply of electricity to Queenstown and surrounding areas, and Transpower's preference is that this long-term solution be a new transmission line.<sup>23</sup> Beyond these two matters, Transpower needs to maintain and upgrade the existing National Grid assets.

**5.3** The NPSET's preamble expressly recognises these matters and recognises that there is inherent tension between providing for the National Grid and

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21 Noble at [9.4]–[9.7].

22 Noble at [8.5]–[8.8].

23 Noble at [10.9]–[10.11].

avoiding environmental effects. The NPSET directs how the effects of the National Grid should be addressed. In these circumstances, a bespoke policy is appropriate to avoid any doubt as to how the operation, maintenance, upgrade and development of the National Grid should be provided for.

### **Section 32 analysis supports a bespoke policy**

- 5.4** In terms of the requirements of section 32 both providing for a carve-out policy, and not providing for a carve-out policy are reasonably practicable options for achieving the pORPS' objectives, as well as the NPSET's objectives. However, a carve-out policy is a more efficient and effective method of achieving the objectives of the RPS and NPSET's objective. It is not clear that either the section 42A report or the supplementary evidence filed by ORC is in disagreement with this proposition.
- 5.5** Ms McLeod's evidence sets out that in her experience a carve-out policy is a more efficient way to give effect to the NPSET.<sup>24</sup> A carve-out policy would provide clear guidance for lower planning documents, so that there is a clear consenting pathway for Transpower's activities. This in turn would achieve the NPSET's objective more effectively than if decision-makers were required to comb through the RPS' provisions when determining planning provisions for the National Grid.
- 5.6** We add that the partially operative Otago RPS includes a carve out policy for the National Grid. There is no evidence that this has been inefficient or ineffective.
- 5.7** This approach is by no means new or unorthodox. As well as the partially operative Otago RPS including a bespoke policy, recently, both Auckland Council and the Marlborough District Council<sup>25</sup> have approved bespoke policies for managing the environmental effects of the National Grid in their respective unitary plans.
- 5.8** This section 32 analysis is not undertaken by Mr Langman. Instead, he states "*there needs to be a clear justification for treating this type of infrastructure differently*", and further that:

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24 McLeod EIC at [8.25].

25 Pending the Environment Court issuing a consent order.

there would need to be a clear situation where the NPSET or NPSREG make a specific direction, regarding a particular resource, which is in conflict with the other national instruments, before an alternative approach to management of the resource is justified.

- 5.9** To the contrary, if the Panel accepts Ms Ainsley’s evidence that a bespoke policy is the superior option in terms of effectiveness and efficiency, then a section 32 analysis would demand a clear justification for deviating from this option. As to Mr Langman’s statement that “clear justification” is needed for a bespoke policy, that justification can be found in the fact that there is an NPSET that sets out a comprehensive regime for managing the environmental effects of the Grid.

## **6. EFFECTS OF THIRD PARTY ACTIVITIES ON THE NATIONAL GRID**

- 6.1** As set out in Mr Noble’s evidence, third party activities can prevent or restrict access to the National Grid, resulting in significant issues.<sup>26</sup>

- 6.2** Policies 10 and 11 of the NPSET set out policies to avoid adverse effects on the National Grid. In particular policy 10 states:

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.

- 6.3** In *Transpower v Auckland Council* the High Court determined that this policy is relatively prescriptive:<sup>27</sup>

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

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26 Noble at [6.1]–[6.4].  
27 At [85].

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.

- 6.4** In light of the High Court’s direction that Policy 10 of the NPSET is a relatively strong directive, it is submitted that the Panel should ensure there is an equally strong directive in the RPS on this matter. To the end, Transpower’s proposed wording of EIT-INF-P15 mirrors the intent of policy 10, and therefore gives effect to the NPSET.

### **Third party activities on Māori land**

- 6.5** ORC has recommended that the pORPS include a new defined term, “Māori Land”. ORC further 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”.<sup>28</sup>

- 6.6** As stated in our opening submissions, when a planning document categorises land, Transpower’s only interest is to ensure that the maintenance and the on-going operation, development and upgrade of the existing National Grid can continue to be facilitated. This applies here, as there may be circumstances where the National Grid is located over or directly adjacent to land that falls within the definition of ‘Māori Land’. Ms McLeod’s proposed EIT-INF-P15 includes wording to expressly address this.

- 6.7** Additionally, our opening submissions expressed two concerns:

- (a) whether there is jurisdiction to insert the recommended definition; and
- (b) that the regulatory effect of the new definition has not been assessed in accordance with section 32.

- 6.8** In relation to the second concern, Kāi Tahu has submitted that information requirements are likely to be less for the RPS given it is an overarching

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28 Mr Adams supplementary evidence at [41].

document.<sup>29</sup> This is not an accurate reflection of what section 32(1)(c) requires. What matters is the scale and significance of effects that are anticipated, rather than the type of planning document in question. Here, Transpower remains concerned that there is insufficient information to assess the anticipated scale and significance of activities.

- 6.9** It is respectfully submitted that if the pORPS is to include provisions that expressly provide for “Māori Land”, the scope of such provisions should align with the scope of section 6(e).
- 6.10** Section 6(e) focuses on recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands. The Environment Court has held that “[f]or section 6(e) to apply, there must be some factor or nexus between the culture and traditions and the land in question which affects the relationship of Maori people with the land”.<sup>30</sup>
- 6.11** There are currently two proposed definitions for “Māori land”. ORC’s supplementary evidence proposes one definition, and Kāi Tahu has recently filed supplementary submissions that include, at Appendix A, a revised definition.<sup>31</sup>
- 6.12** Both definitions notably include land “owned or leased by a person with evidence of Kāi Tahu whakapapa connection to that land”. To support this scope, Kāi Tahu relies on evidence filed that “whakapapa is central to the identity of Kāi Tahu and their links to Te Waipounamu”.<sup>32</sup>
- 6.13** As far as Transpower is aware, there is still no clarification on how much land could potentially be within the scope of these definitions. In these circumstances, Transpower is concerned that the scope of Māori Land could exceed what section 6(e) contemplates. For example, it may be that a whakapapa connection can be established, in respect of most, if not all of the land in the region. It is not clear whether, to establish a whakapapa connection, there would need to be evidence of “specific cultural or traditional ties to the specific land in question”. Further, while there is no doubt that Kāi Tahu have a whakapapa connection to Te Waipounamu, from a practical

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29 Kai Tahu supplementary submissions dated 9 February 2023.

30 *Chief Executive of the Ministry of Agriculture and Forestry v Waikato Regional Council* EnvC 17 October 2006, A133/06 at [45].

31 Kai Tahu supplementary submissions dated 9 February 2023.

32 At [20].



perspective, it is submitted that section 6(e) contemplates a higher level of specificity.<sup>33</sup>

## **7. RELEVANCE OF NESETA**

**7.1** For completeness, we briefly address the relevance of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**).

**7.2** The NESETA sets out a national regulatory framework for activities related to existing<sup>34</sup> 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.

**7.3** The NESETA is relevant to decision making as the pORPS objectives and policies will apply to decision making on consents required under NESETA. However, the NESETA is not expressly relied on by Transpower for any of the relief that it seeks.

## **8. OTHER RELIEF AND EVIDENCE TO BE CALLED**

**8.1** In addition to seeking relief that relates to one of the three categories listed at 1.4 above, Transpower seeks some further amendments to the pORPS, for the reasons set out in its submissions and Ms McLeod's evidence in chief dated 24 November 2022.

**8.2** Transpower will call the following witnesses:

- (a) **Mr Roy Noble** to give evidence 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.

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<sup>33</sup> *Beadle v Minister of Corrections* EnvC A074/02.


<sup>34</sup> 'Existing' here relates to transmission lines that were operational, or able to be operated, as at 14 January 2010.

Mr Noble's evidence-in-chief 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 however relevant to all of Transpower's submission points across the various pORPS chapters.

- (b) **Ms Ainsley McLeod** to give planning evidence. 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-in-chief and rebuttal 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.

**DATED** this 13<sup>th</sup> day of March 2023

  
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**M G Conway**  
Counsel for Transpower New Zealand  
Limited