

**BEFORE THE HEARING PANEL APPOINTED
BY THE OTAGO REGIONAL COUNCIL**

UNDER The Resource Management Act
1991 (**Act** or **RMA**)

IN THE MATTER of an original submission on the
Proposed Regional Policy
Statement for Otago 2021
(**PORPS**)

BETWEEN **AURORA ENERGY LIMITED**
Submitter 0315
NETWORK WAITAKI LIMITED
Submitter 0320
POWERNET LIMITED
Submitter 0511

AND **OTAGO REGIONAL COUNCIL**
Local Authority

**SUPPLEMENTARY EVIDENCE OF MEGAN JUSTICE ON BEHALF OF
AURORA ENERGY LIMITED, NETWORK WAITAKI LIMITED AND
POWERNET LIMITED**

15 SEPTEMBER 2023



GALLOWAY COOK ALLAN LAWYERS
Simon Peirce
simon.peirce@gallowaycookallan.co.nz

P O Box 143
Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564

1. Introduction

- 1.1 My name is Megan Justice. My background, experience and qualifications are set out in my evidence in chief dated 23 November 2022.
- 1.2 The purpose of this supplementary evidence is to consider the extent to which the relief sought in my evidence in chief is consistent with the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) and if required, to refine the relief.

2. NPSIB and Specified Infrastructure

- 2.1 As I have set out in my evidence in chief, Aurora Energy Limited, PowerNet Limited and Network Waitaki Limited (collectively referred to herein as the '**EDBs**') sought for the PORPS provisions to be consistent with the provisions of the Exposure Draft of the National Policy Statement for Indigenous Biodiversity (**Draft NPSIB**).
- 2.2 The NPSIB includes a definition for 'specified infrastructure' which captures the electricity distribution and sub-transmission infrastructure that is provided by the EDBs. Clause (a) of the definition for specified infrastructure in the NPSIB includes "infrastructure that delivers a service operated by a lifeline utility under the Civil Defence Emergency Management Act 2002". The infrastructure service provided by the EDBs is defined as a lifeline utility under the Civil Defence Emergency Management Act 2002.
- 2.3 The NPSIB sets out the effects management hierarchy that applies to specified infrastructure developments in Significant Natural Areas (**SNAs**). The steps of this hierarchy remain the same as in the exposure draft NPSIB, requiring firstly, the avoidance of adverse effects on indigenous biodiversity, where practicable, followed by the minimising of adverse effects, where practicable, then the remedying of adverse effects where practicable. Then, if more than minor residue effects remain, biodiversity offsetting is to be provided, where possible, and if offsetting is not possible, biodiversity compensation is required. If biodiversity compensation is not appropriate, the activity is to be avoided.

3. Policy EN-EIT-PXX

- 3.1 At paragraph 12.3 of my evidence in chief I stated that Network Waitaki Limited and PowerNet's submissions sought Policy ECO-P3 *Protecting significant natural areas and taoka* be deleted or amended to provide for the development of, and ongoing operation,

maintenance and upgrading of the electricity distribution network, and to give effect to the exposure draft NPSIB. Aurora's submission sought that this policy be amended to defer infrastructure activities to be considered under the infrastructure policy EIT-EN-PXX, which is the bespoke policy that I have sought be included in the PORPS to manage the effects of electricity distribution infrastructure. The inclusion of policy EIT-EN-PXX introduces effects management regime that was based on the provisions of the then exposure draft NPSIB.¹

- 3.2 In drafting the provisions sought by the EDBs (which are contained in Appendices B and C of my evidence in chief), and in particular the bespoke effects management hierarchy policy EIT-EN-PXX, I adopted the steps required in the exposure draft NPSIB as it related to the management of indigenous biodiversity. Because the hierarchical steps remain the same, I do not consider that any changes are required to clauses (1) and 2(a) of this policy.
- 3.3 However, Mr MacLennan has recommended to include 'specified infrastructure' in policy ECO-P4, which sets out how new activities within SNAs are to be managed. Mr MacLennan has also recommended that the effects management hierarchy from the NPSIB be adopted in the PORPS, via the inclusion of a new definition for 'effects management hierarchy (for indigenous biodiversity)'. As this new definition matches the effects management hierarchy that I have included within policy EIT-EN-PXX, I now consider it more efficient for policy EIT-EN-PXX to require activities in SNAs to be managed in accordance with policy ECO-P4. This avoids duplication in the PORPS and simplifies policy EIT-EN-PXX.
- 3.4 The refinements I have made to policy EIT-EN-PXX include:
- (a) Add a new clause 2(a) to require all electricity distribution network infrastructure within SNAs, to be managed in accordance with Policy ECO-P4. This amendment enables the deletion of clause 2(b)(iv)(iv) of EIT-EN-PXX;
 - (b) Clause 2(c)(ii) is deleted, as this additional clause requiring the consideration of offsetting or compensation for residue adverse effects on indigenous biodiversity is no longer needed, as all new electricity distribution infrastructure developments in SNAs will be managed via policy ECO-P4, which requires adherence to the full effects management hierarchy, including offsetting and compensation when required.

¹ The exposure Draft NPSIB, dated June 2022.

(c) Amend clause (3) to align with the requirements of the clause 3.16 NPSIB, which applies to activities outside of SNAs. Clause 3.16 of the NPSIB requires significant adverse effects on indigenous biodiversity outside an SNA to be managed by applying the effects management hierarchy set out in the NPSIB.

3.5 An updated version of EIT-EN-PXX is included in **Appendix A** of this supplementary evidence.

4. Other Policies and Provisions

4.1 At paragraph 12.3 of my evidence in chief, I discussed changes to Policy ECO-P2, which requires the identification and mapping of significant natural areas and taoka (SNAs). Having reviewed clause 3.9 of the NPSIB, I consider that this relief remains consistent with the NPSIB, however clause 3.9 requires SNAs to be identified in district plans, and therefore the reference to 'regional plans' should be deleted from this policy.

4.2 Policy ECO-P2 relies on the criteria contained within APP2 for identifying and mappings SNAs. At paragraph 12.4 of my evidence in chief, I stated that the criteria in APP2 should be consistent with the criteria which are set out at clauses 3.8 (1) and (2) of the Exposure Draft NPSIB. It remains my view that the APP2 criteria should strictly align with the criteria set out in clause 3.8 (1) and (2) of the NPSIB.

4.3 In my evidence in chief, I sought the exemption clauses be included to refer the consideration of electricity distribution infrastructure to be considered in accordance with recommended policy EIT-EN-PXX. Should the inclusion of 'specified infrastructure' in policy ECO-P4 be supported by the Commissioners, then the following exclusionary clauses are not required:

(a) in policy ECO-P3 (as set out at paragraph 12.6 of my evidence in chief and Appendix B to my evidence in chief);

(b) in policy ECO-P4 (as set out at paragraph 12.7 of my evidence in chief and Appendix B to my evidence in chief);

(c) in neither policy ECO-P5 or the suggested replacement of ECO-P5 - ECO-P5A (as set out at paragraph 12.8 of my evidence in chief and Appendix B to my evidence in chief).

4.4 Mr Maclennan has recommended amendments to policy ECO-P6. I support the changes recommended, as the changes align with NPSIB clause 3.16. Should the

Commissioners accept these amendments, then I consider it appropriate for electricity distribution infrastructure, outside of an SNA, to be considered in accordance with policy ECO-P6. The exclusionary amendment I sought in my evidence in chief at paragraph 12.8 is not required.

- 4.5 I support the recommendation of Mr Maclennan to include the definition of 'specified infrastructure' from the NPSIB in the definitions chapter of the PORPS. This definition is necessary for the implementation of policy ECO-P4.

Megan Justice

15 September 2023

Appendix A

15 September 2023: Changes made for consistency with the NPSIB are shown as **single strikethrough or single underline and have grey highlighting.**

Recommended changes to EIT-IN-P13 to create a new electricity distribution specific effects management policies	Reasons for changes
<p>EIT-EN-PXX – Locating and managing effects of <u>electricity distribution network</u> infrastructure nationally significant infrastructure and regionally significant infrastructure outside the coastal environment</p> <p>When providing for new <u>electricity distribution</u> infrastructure, nationally significant infrastructure and regionally significant infrastructure outside the coastal environment</p> <p>(1) avoid, as the first priority where practicable, locating infrastructure in all of the following:</p> <ul style="list-style-type: none"> (a) significant natural areas, (b) outstanding natural features and <u>outstanding natural</u> landscapes, (c) natural wetlands, (d) outstanding water bodies, (e) areas of high or outstanding natural character, (f) areas or places of significant or outstanding historic heritage, <u>and</u> (g) <u>wāhi tūpuna</u> wāhi tapu, wāhi taoka, and areas with protected customary rights, and 	<p>I consider that including a standalone policy in the pORPS that sets out how the environmental effects of electricity distribution infrastructure is managed will result in improved environmental outcomes, as it will be easier to administrator, and can address the unique nature, character and scale of this infrastructure.</p> <p>I consider that amendments are required to adapt policy EIT-INF-P13 to be specific to electricity distribution infrastructure. This allows the wording of the policy to be simplified to distinguish between all electricity distribution infrastructure, and significant electricity distribution infrastructure.</p> <p>Clauses (1) and (2) of the policy apply to those sensitive areas listed in clause (1) which are already identified in the relevant Regional or District Plans, or are required to be identified via methods in the PORPS:</p> <ul style="list-style-type: none"> - significant natural areas via method ECO-M2; - the coastal environment and areas of high and outstanding natural character in the coastal environment via method CE-M1; - outstanding water bodies via method LF-FW-M5; - natural wetlands via method LF-FW-M6 (7); - outstanding natural landscapes and outstanding natural features via method NFI-M1; and - historic heritage and places/areas with historic heritage values for mana whenua via method HCV-HH-M5.

~~(h) areas of high recreational and high amenity value, and~~

However, the PORPS does not contain a method that requires the identification or mapping of water bodies (outside the coastal environment) that have outstanding natural character values. Rather, the criteria for identifying outstanding water bodies includes a list of values/indicators that relate to natural character values (APP1 of the PORPS). I therefore understand that where areas of natural character are identified outside of the coastal environment, they will be associated with outstanding water bodies. For that reason, I do not consider that clause (e) of this policy is necessary, as outstanding water bodies are captured in clause (d) and there are no other references to natural character values in the PORPS, aside from the coastal environment (which I have covered in a separate policy below).

In my view, EIT-EN-PXX need not apply to areas of “high recreational and high amenity values”. Policy 7 of the National Policy Statement on Electricity Transmission requires the planning and development of transmission lines to avoid adverse effects on areas of high recreational value or amenity. There are no other higher order documents that specifically require the identification and management of “high recreational and high amenity values” that apply to other activities. It follows that a policy managing effects of transmission lines on areas of high recreational values and amenity values is appropriate, however I do not consider it appropriate to apply this to electricity distribution infrastructure. The infrastructure managed by Transpower is of a different nature and scale to that managed by the EDBs. Requiring specific management of high recreational and high amenity values for the distribution network is not justified, and this method has not undergone robust analysis of the costs and benefits that will result from its implementation under s32 of the RMA, other than in relation to the National Policy Statement on Electricity Transmission.²

Transpower’s submission on the PORPS sought a standalone policy for managing the effects of the National Grid, and this policy incorporates the management of effects in areas with high

² Section 32 Evaluation, Proposed Otago Regional Policy Statement 2021, dated May 2021, page 221.

	<p>recreational values and amenity values. I consider this approach to be appropriate as it gives effect to Policy 7 of the National Policy Statement on Electricity Transmission.</p> <p>To better align with the NPSIB, I recommend using the words 'where practicable' rather than the words 'as the first priority' in clause (1) of this policy.</p>
<p>(2) if it is not possible demonstrably practicable to avoid locating in the areas listed in (1) above because of the functional needs or operational needs of the infrastructure, nationally significant infrastructure and regionally significant infrastructure, manage adverse effects as follows:</p> <p>(a) <u>for electricity distribution network infrastructure within Significant Natural Areas, in accordance with Policy ECO-P4.</u></p> <p>a)(b) for nationally electricity sub-transmission infrastructure and significant electricity distribution infrastructure or regionally significant infrastructure:</p> <p>(i) in significant natural areas, in accordance with ECO-P4,</p> <p>(ii) in natural wetlands, in accordance with the relevant provisions in the NESF,</p> <p>(iii) in outstanding water bodies, in accordance with LF-FW-P12,</p> <p>(iiia) in relation to wāhi tūpuna, in accordance with HCV-WT-P2,</p> <p>(iv) in other areas listed in EIT-INF-P13(1) above, minimise <u>manage</u> the adverse effects of the infrastructure on the values that contribute to the area's importance, <u>by:</u></p> <ol style="list-style-type: none"> i. <u>Avoiding adverse effects, where practicable;</u> ii. <u>Where adverse effects cannot be practicably avoided, they are remedied to the extent practicable;</u> iii. <u>Where adverse effects cannot be practicably remedied, they are mitigated to the extent practicable;</u> iv. In Significant Natural Areas, where more than minor adverse effects cannot be practicably avoided, 	<p>I agree with the s42A report author's recommended changes to clause (2) (of EIT-INF-P13), substituting the word 'possible' to 'demonstrably practicable'. I consider the term 'possible' is overly broad, in the sense that, often, anything is 'possible' however what is possible may not be operationally practicable. The recommended change acknowledges the operational and locational constraints that determine, to a large degree, where infrastructure is located, and I consider that this is an important consideration to take into account when considering whether or not new infrastructure is appropriate in an area.</p> <p>I consider that clause (2)(a)(i) can be deleted because clause (iv) provides an effects management hierarchy that closely aligns with Policy ECO-P4. An alternative to deleting clause (2)(a)(i) could require effects of activities in significant natural areas to be assessed in accordance with the NPSIB, to align with this policy statement when it becomes operative, however, the timing of this is unknown. Now that the NPSIB is enacted, and Mr MacLennan has recommended that policy ECO-P4 be amended to include 'specified infrastructure' as defined in the NPSIB and has recommended that the NPSIB effects management hierarchy is included in the PORPS, I consider that clause (2) of EIT-EN-PXX can be simplified. I have added a new clause (a) to refer all electricity distribution infrastructure (which is specified infrastructure) to be considered under Policy ECO-P4, and deleted offsetting/compensation clause as this is embedded in the effects management hierarchy for indigenous biodiversity.</p> <p>I have considered the option of amending clause (2)(a)(ii) to refer the effects management hierarchy policy for wetlands and rivers LF-LW-P13A. However, the wording I have included</p>

~~minimised, remedied or mitigated consider offsetting and/or compensation of any residual adverse effects on indigenous biodiversity values in accordance with APP3 and/or APP4.~~

reflects the wording recommended by the s42A report author for policy EIT-INF-P13. In my view, either option is appropriate.

I recommend deleting the reference to Policy HCV-WT-P2 because the effects management regime contained in this policy aligns with the effects management policy in HCV-WT-P2. My recommended change will continue to enable the fulsome consideration of effects on the cultural values of identified wāhi tupuna.

Under Policy EIT-EN-PXX, adverse effects on 'outstanding water bodies' are managed via the effects management hierarchy in clause (iv), and therefore clause (2)(a) (iii) can be deleted.

I consider the word 'manage' is more appropriate than the word 'minimise' at the beginning of clause (iv) as this part of the policy is describing how effects will be managed.

For the remaining sensitive areas identified at (1), where there is no higher level policy guidance directing how effects are to be managed, I consider that the effects management hierarchy approach at clause (2)(a)(iv) is appropriate to manage adverse effects of sub-transmission and significant electricity distribution infrastructure. In my view, this approach will provide an appropriate level of protection for these sensitive environments, while providing a consenting pathway for this important infrastructure, provided it has been established via clause (2) that there is no practicable alternative to locating the infrastructure at the site.

I consider the requirement to 'minimise' adverse effects (at clause (2)(a)(iv)) should only be applied where the infrastructure is being located in an area identified as a natural wetland, given the requirement to minimise adverse effects comes from the NPSF.

At clause (2)(a)(iv)(v) I have specifically included how the management of any adverse effects on indigenous biodiversity should be managed to align with the clause 3.11(2)((a)(i) of the draft NPSIB which relates to 'specific infrastructure'. 'Specific infrastructure' is defined in the draft NPSIB to include all infrastructure operated by a lifeline utility (the EDBs are lifeline utilities under the Civil Defence Emergency Management Act 2002). Clause 3.11(2)((a)(i) provides an alternative effects assessment pathway for activities within identified significant natural areas via the effects management hierarchy, which allows for more than minor residual effects on biodiversity to be offset or compensated. An alternative I have considered would be to refer to

	<p>the NPSIB in this clause. This would enable the final version of the NPSIB to be adopted when considering effects on significant natural areas and indigenous biodiversity. This discussion remains accurate however, it is now superseded with the comments highlighted grey above.</p> <p>To better align with the NPSIB, I recommend deleting the word 'demonstrably' from clause (2) of this policy.</p>
<p>(b) (c) for all electricity distribution network infrastructure that is not nationally electricity sub-transmission infrastructure and significant electricity distribution infrastructure or regionally significant infrastructure, where located within the areas listed in (1) above:</p> <p>(i) avoid significant adverse effects and avoid remedy or mitigate all other adverse effects on the values that contribute to the area's outstanding nature or significance, where practicable; and</p> <p>(ii) when considering any residual adverse effects on indigenous biodiversity values have regard to offsetting measures and compensation.</p>	<p>Clause (2)(b) (now (c)) of Policy EIT-EN-PXX will apply to all electricity distribution infrastructure that is not classified as sub-transmission or significant electricity distribution infrastructure. This will not apply to SNA's, as all new electricity distribution infrastructure in SNAs is addressed via policy ECO-P4, and therefore clause (ii) can be deleted. In the other sensitive areas for the EDB's, this will include much of the 11kV lines network and customer connections, and all equipment and facilities associated with the 11kV lines network, such as transformers, substations and other equipment.</p> <p>Clause (2) of this policy applies to all other electricity distribution infrastructure, requiring the avoidance of these sensitive areas as a first priority.</p> <p>The equivalent clause of policy EIT-INF-P13 requires the avoidance of all adverse environmental effects. In my view this will present an unsurmountable hurdle for proposals that have no practicable alternative location. This policy could prevent important infrastructure from being developed. For instance, if there are no other options for a line to cross a river in a location with outstanding natural character values, there is no way to avoid the adverse visual effect of this line on the natural character values. In this situation, the proposal could not proceed, and the electricity would not be supplied to the end user.</p> <p>Further, there is no national level policy guidance or direction that requires all adverse effects associated with infrastructure to be avoided, except for Policy 13 of the New Zealand Coastal Policy Statement ("NZCPS"), which I address when discussing the coastal environment policy below.</p> <p>In my view, given the locational constraints associated with infrastructure, and in many cases the technological constraints, coupled with the fact that infrastructure provides essential lifeline utility services to the community, and is not developed solely for economic gain, I consider that it is appropriate for infrastructure activities to have a consenting pathway that differs from development which is not locationally constrained.</p>

	<p>The wording I have suggested for clause (2)(b) of EIT-EN-PXX presents a more challenging consenting pathway to that provided for sub-transmission and significant electricity distribution infrastructure in clause(2)(a). However, it will provide a consenting pathway for electricity distribution network proposals in sensitive areas to allow such proposals to be duly considered via a consenting or notice of requirement process.</p> <p>Further, Policy ECO-P6 <i>Protecting significant natural areas and taoka</i>, which provides an effects management regime for all activities (other than infrastructure) does not require the complete avoidance of adverse effects. I do not consider it appropriate to provide a more lenient effects management regime for unspecified development than for infrastructure.</p> <p>Clause (2)(b)(ii) is included to reflect the provisions in the draft NPSIB that apply to specific infrastructure. As an alternative, this clause could refer directly to the NPSIB.</p>
<p><u>(3) in other areas outside the areas listed in (1) above, avoid, remedy or mitigate adverse effects and for when considering any residual adverse effects on indigenous biodiversity values manage effects in accordance with Policy ECO-P6 consider offsetting measures and compensation.</u></p>	<p>I consider that an additional policy is necessary to set out how adverse effects of new electricity distribution infrastructure outside of the identified sensitive areas will be managed. Clause 3.16 of the draft NPSIB sets out how indigenous biodiversity is managed outside of significant natural areas. Referring directly to the NPSIB is an alternative wording of this policy. I have updated this policy to refer to policy ECO-P6, which Mr MacLennan has recommended by amended to reflect the NPSIB clause 3.16)Indigenous biodiversity outside of SNAs.</p>
<p><u>(4) in the event of any conflict between EIT-EN-PXX and other policies in this regional policy statement, EIT-EN-PXX prevails over those policies.</u></p>	<p>The inclusion of clause (4) in the POPRS will avoid uncertainty and assist decision makers with identifying the relevant provisions for managing electricity distribution infrastructure.</p>

EIT-EN-PXXA – Managing effects of electricity distribution infrastructure nationally significant infrastructure and regionally significant infrastructure within the coastal environment

When providing for new electricity distribution infrastructure and the upgrading and maintenance of existing infrastructure within the coastal environment manage adverse effects of infrastructure, by:

(1) Giving preference to avoiding its location in all of the following within the coastal environment:

- i. Areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- ii. Outstanding natural character;
- iii. Outstanding natural features and outstanding natural landscapes, including seascapes;

(2) Where it is not practicable to avoid locating in the areas listed in

(1) above because of the functional needs of that infrastructure:

- i. Avoid adverse effects on the values that contribute to the significant or outstanding nature of (1) i-iii;
- ii. Avoid significant adverse effects on natural character and natural landscapes in all other areas of the coastal environment.

(3) In the event of any conflict between EIT-EN-PXXA and other policies in this regional policy statement, EIT-EN-PXXA prevails over those policies.

Policy EIT-EN-PXXA will replace EIT-INF-P13A in so far as it relates to electricity distribution infrastructure. This policy is required manage adverse effects of activities located within the coastal environment in areas identified as having outstanding natural character values to give effect to the Policy 13 of the NZCPS. Policy 13 of the NZCPS requires the avoidance of adverse effects of activities in outstanding natural character areas and the avoidance of significant adverse effects in areas with high natural character values.

In order to ensure that the policy gives effect to the NZCPS, EIT-EN-PXXA applies to all areas of the coastal environment that are identified as areas of outstanding natural character, and it requires, as a first step, the avoidance of infrastructure locating in areas of outstanding natural character, outstanding natural landscapes and outstanding natural features in the coastal environment, and areas of significant indigenous vegetation and significant habitats of indigenous fauna in the coastal environment.

The drafting of Policy EIT-EN-PXXA closely matches the drafting of Policy 4.3.4 of the Partially Operative Otago RPS, which was settled via mediation.