

Before the proposed Otago Regional
Policy Statement Hearings Panel

Under the Resource Management Act 1991

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

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

PLANNING

20 September 2023

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1. SUMMARY OF EVIDENCE

1.1 The submission made by Transpower New Zealand Limited (**Transpower**) on the non-freshwater parts of the proposed Otago Regional Policy Statement (**pORPS non-freshwater**) is concerned with how the pORPS non-freshwater recognises and provides for the nationally significant National Grid, and particularly the extent to which the provisions of the pORPS non-freshwater give effect to the National Policy Statement on Electricity Transmission 2008 (**NPSET**).

1.2 Transpower's further submission generally:

- (a) supports further refinement to provisions that provide for, and manage the effects of, regionally and nationally significant infrastructure; and
- (b) opposes relief sought in primary submissions that would result in the pORPS non-freshwater not giving effect to the NPSET.

1.3 The provisions of the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) do not apply to electricity transmission assets¹ and activities. As such, any amendments to the pORPS non-freshwater to give effect to the NPSIB should be made in a way that ensures those amendments do not influence or impact on Transpower's ability to undertake electricity transmission activities and, as relevant, the relief sought by Transpower in its submission. Further, the statutory framework for the consideration of Transpower's submission is unchanged.

1.4 My evidence:

- (a) confirms that where the pORPS non-freshwater includes provisions that address indigenous biodiversity, such provisions, may need to include an exception for, or bespoke approach to, electricity transmission assets and activities

¹ Also known as the National Grid.

because the higher order planning instruments that apply differ; and

- (b) responds to the '*Evidence of Andrew MacLennan Implications of the NPSIB*' filed by the ORC (dated 8 September 2023) (**ORC supplementary evidence**) as relevant to the relief sought by Transpower and the exclusion of electricity transmission activities and assets from the NPSIB.

1.5 My evidence concludes that the explicit direction that the NPSIB does not apply to National Grid assets and activities means that:

- (a) the NPSIB has no influence on the relief sought in Transpower's submission as it relates to the National Grid;
- (b) the statutory framework for decisions on Transpower's submission is not changed by the NPSIB coming into force;
- (c) because the pORPS non-freshwater includes amendments to give effect to the NPSIB, the most efficient and appropriate outcome would be to include a separate and distinct policy approach to managing the adverse effects of electricity transmission network assets and activities, including adverse effects on "areas of significant indigenous vegetation and significant habitats"².

2. INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

2.1 My full name is Ainsley Jean McLeod. My evidence in chief in respect of submission made on the pORPS (non-freshwater) was filed on 24 November 2023.³ My qualifications and relevant experience are set out in my primary statement of evidence. I do not repeat this information here.

² Resource Management Act 1991, s 6(c).

³ <https://www.orc.govt.nz/media/13347/transpower-new-zealand-limited-ainsley-mcleod.pdf>

2.2 This statement of evidence supplements my earlier evidence and is confined to addressing the implications of the NPSIB on the pORPS (non-freshwater), as directed by *'Minute 15 of the Non-Freshwater Hearing Panel as to Timetable for consideration of NPS IB 2023'* dated 21 July 2023.

2.3 For the purposes of this supplementary evidence, I rely on, as relevant:

- (a) my earlier evidence prepared in relation to the pORPS (non-freshwater) and the Freshwater Planning Instrument Parts of the proposed Otago Regional Policy Statement (**pORPS FPI**);⁴
- (b) the evidence of **Mr Roy Noble**, filed in relation to the hearing of submissions on the pORPS non-freshwater;
- (c) the evidence of **Ms Julia Kennedy**, filed in relation to the hearing of submissions on the pORPS FPI;⁵ and
- (d) my supplementary evidence addressing the implications of the NPSIB on the pORPS FPI.⁶

Code of Conduct

2.4 I confirm that I have prepared this evidence in accordance with the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. The issues addressed in this statement of evidence are within my area of expertise except where I state that I am relying on the evidence or advice of another person. The data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

4 <https://www.orc.govt.nz/media/14545/transpower-new-zealand-ainsley-mcleod.pdf>

5 <https://www.orc.govt.nz/media/14546/transpower-new-zealand-julia-kennedy.pdf>

6 <https://www.orc.govt.nz/media/14872/transpower-nz-ltd-ainsley-mcleod-regarding-npsib-dated-18-august-2023.pdf>

3. SCOPE OF EVIDENCE

3.1 My evidence:

- (a) describes the exemption from the provisions of the NPSIB that applies to electricity transmission assets and activities;
- (b) sets out the implications of this exemption in respect of the pORPS (non-freshwater), and Transpower’s submissions on the pORPS (non-freshwater); and
- (c) addresses the additional recommendations made in ORC supplementary evidence as relevant to the relief sought by Transpower and the exclusion of electricity transmission activities and assets from the NPSIB.

4. THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY 2023

4.1 The supplementary evidence filed by the ORC (dated 8 September 2023) provides an overview of the content of the NPSIB. I do not repeat this description here except to note that the evidence acknowledges that, in respect of the application of the NPSIB set out in section 1.3, clause (3) directs that:

“(3) Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not “specified infrastructure” for the purposes of this National Policy Statement.”

4.2 The NPSIB defines the ‘electricity transmission network’ as “the National electricity transmission network assets means the physical components of the electricity transmission network, along with all access roads and

tracks required to operate and maintain those assets". The electricity transmission network is the National Grid, with the NPSET defining the 'electricity transmission network, electricity transmission and transmission activities/assets/infrastructure/resources/system' as:

"all mean part of the national grid of transmission lines and cables (aerial, underground and undersea, including the high-voltage direct current link), stations and sub-stations and other works used to connect grid injection points and grid exit points to convey electricity throughout the North and South Islands of New Zealand."

4.3 The 'Recommendations and decisions report on the National Policy Statement for Indigenous Biodiversity'⁷ (**NPSIB Recommendations Report**) explains the rationale for the exclusion of renewable electricity generation and electricity transmission from the NPSIB. I consider that this explanation provides useful context to understanding how the pORPS (non-freshwater) should respond to these exclusions in the NPSIB and, as such, I set out the relevant paragraphs as follows:⁸

"Submitters and stakeholders raised concerns that the provisions would not sufficiently enable the deployment of renewables at the scale and pace required to meet emissions targets and decarbonise Aotearoa's economy.

A discussion document on strengthening national direction on renewable electricity generation (REG) and electricity transmission (ETN) was released for public consultation between April and June 2023. It put forward a range of options for providing for greater and faster uptake and development of REG, including options for consent pathways for REG and ETN development affecting SNAs and other matters of national importance. The preferred approach includes a consent pathway and effects management hierarchy for

⁷ <https://environment.govt.nz/assets/publications/biodiversity/Recommendations-and-decisions-report-on-the-NPSIB.pdf>

⁸ Page 98.

significant environmental values that differs from the one in the NPSIB and the NPS-FM. The gazetting of the NPSIB with an alternative consent pathway during the consultation period would create confusion with the consultation process on REG and ETN consent pathways.

A range of options were considered for addressing the potential conflict between the documents and the perceived impediment that the NPSIB could pose for new REG/ETN development that impacts SNAs, including a bespoke pathway in the NPSIB. It was considered simpler to provide a specific pathway for all REG/ETN development within the final amendments arising from the discussion document. This would also entail removing REG/ETN from the specified infrastructure definition in the NPSIB and clarifying that none of the NPSIB provisions applies to REG/ETN development.

This will leave all REG/ETN applications for new developments, upgrades, maintenance and operation to be dealt with directly by the RMA, and associated RMA plans and policy statements, until such time as the amendments to the NPS-REG and associated documents are finalised and come into effect. An issue with this approach is that several options are being consulted on, and the final outcome of this process is not yet known, which creates a level of uncertainty for industry in the interim.

This approach could ultimately provide a simpler, more consistent consent pathway for REG/ETN developments adversely affecting any of the significant environmental values identified as matters of national importance in section 6 of the RMA. It would also provide greater certainty to REG/ETN development in the longer term.”

4.4 The explicit direction that the NPSIB does not apply to the National Grid assets and activities means that:

- (a) the NPSIB has no influence on the relief sought in Transpower’s submission where that relief relates specifically to the National

Grid and matters addressed by the NPSIB (and the relief sought remains 'current');

- (b) the statutory framework that is relevant to the National Grid, that is set out in my earlier evidence,⁹ is not changed by the NPSIB coming into force;
- (c) where the pORPS (non-freshwater) includes provisions that give effect to the NPSIB, the management of electricity transmission assets and activities will need to be exempt from these provisions; and
- (d) a bespoke approach to electricity transmission assets and activities, including in areas of significant indigenous vegetation and habitats of indigenous fauna, would be the most efficient and effective approach, due to the difference in direction from the higher order planning instruments that do apply.

4.5 By way of further explanation, when addressing indigenous biodiversity, the pORPS (non-freshwater) must give effect to the NPSIB to the extent that the scope of submissions allows. However, to the extent that the same provisions apply to the National Grid, they do not need to give effect to the NPSIB but must instead give effect to the NPSET and recognise and provide for the matters of national importance in section 6(c) of the RMA.

4.6 In addition, given the National Grid is exempt from the NPSIB, and ORC's further recommended amendments to the pORPS (non-freshwater) are only meant to go so far as to give effect to the NPSIB to the extent that the scope of submissions allows, I am of the view that such recommended amendments should not promote:

- (a) new provisions that apply to electricity transmission assets or activities; or

⁹ At Section 4 (<https://www.orc.govt.nz/media/13347/transpower-new-zealand-limited-ainsley-mcleod.pdf>)

- (b) provisions that already apply to electricity transmission assets or activities being amended to be more restrictive.

5. THE ORC SUPPLEMENTARY EVIDENCE

5.1 The ORC supplementary evidence addresses the exclusion of the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities from the NPSIB.¹⁰ This evidence:

- (a) states that the exclusion is a “difficult proposition for the ECO chapter because its provisions apply to all activities”;
- (b) confirms that the current version of the NPSET (and the NPSREG) must be given effect to by the pORPS (non-freshwater), rather than the drafts that are being consulted on;
- (c) identifies Policies ECO-P3, ECO-P4, ECO-P6 and EIT-INF-P13 of the pORPS (non-freshwater) as being most relevant to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities;
- (d) in respect of Policy EIT-INF-P13, considers that some renewable electricity generation and electricity transmission network activities will be nationally or regionally significant and others will not;
- (e) concludes that if the ECO provisions do not apply to renewable electricity generation or electricity transmission networks, the direction in EIT-INF-P13 for nationally or regionally significant infrastructure is circular because it requires effects to be managed in accordance with ECO-P4 (which would not apply);
- (f) concludes that, although the NPSIB does not apply to renewable electricity generation or electricity transmission networks, this does not mean their effects should not be managed at all; and

¹⁰ Paragraphs 130 to 139.

- (g) in response recommends the inclusion of the following new policy:

“ECO-P6A – Renewable electricity generation and electricity transmission networks

Manage the effects of the development, operation, maintenance, and upgrade of renewable electricity generation and electricity transmission network infrastructure on indigenous biodiversity (outside water bodies and the coastal marine area) by:

(1) for infrastructure that is nationally significant infrastructure or regionally significant infrastructure:

(a) avoiding, as a first priority, locating within significant natural areas, and

(b) if it not demonstrably practicable to avoid locating within a significant natural area because of the functional needs or operational needs of the infrastructure, minimise adverse effects on the values of the area, and

(c) outside significant natural areas, avoiding, remedying, or mitigating adverse effects on indigenous biodiversity to the extent practicable, and

(d) having regard to the offsetting principles set out within APP3 or the compensation principles set out within APP4 for any residual adverse effects; and

(2) for infrastructure not addressed in (1), managing adverse effects in accordance with ECO-P6.”

5.2 The ORC supplementary evidence explains that:

- (a) Clause (1)(a) and (b) adopts the same approach as EIT-INF-P13(1);

- (b) Clause (1)(c) adopts the direction from Policy 5 the draft NPSREG and Policy 6 of the draft NPSET; and
- (c) Clause (1)(d) then acknowledges that offsetting and compensation is provided for within Policy C2 of the NESREG and is anticipated within both the draft NPSREG and the draft NPSET.

5.3 I agree with ORC's supplementary evidence to the extent that the exemption in the NPSIB challenges the extent to which the ECO chapter can apply to all activities. However, I do not consider that this predicament is entirely as a result of the NPSIB coming into force. Rather, consistent with my earlier evidence, I am of the view that the provisions of the pORPS (non-freshwater)¹¹ require amendment to separately and distinctly direct the management of effects of electricity transmission activities. Such amendments would be an efficient, effective and appropriate way to give effect to the NPSET and recognise and provide for section 6 matters, including "the protection of areas of significant indigenous vegetation and significant habitats".¹² My earlier evidence concludes that:

"8.29 My understanding of the NPSET is that the NPSET is intended to address the management of all adverse effects of the National Grid on the environment, but this management does not occur in a vacuum. Rather, the NPSET provision must be reconciled or balanced alongside other matters of national significance and matters of national importance in section 6 of the RMA. In this regard, I am guided by the High Court in Transpower New Zealand Limited v Auckland Council¹³ that states:

"I accept the submission advanced by Ms Caldwell and Mr Allan that 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

11 Including as recommended for amendment by reports prepared under section 42A of the RMA.

12 Section 6(c).

13 CIV-2016-404-002330 [2017] NZHC 281, paragraph 84.

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."

8.30 *In my experience, the outcome of not ignoring the NPSET and the necessary weighing exercise is often the need for bespoke provision for the National Grid, achieved in a policy context by a 'carve out' approach. Examples of this include Policy 4.3.6 in the Partially Operative ORPS and Objective 5.2.X (and implementing policies) of the Proposed Dunedin City District Plan.*

8.31 *In the case of the pORPS, Transpower's submission¹⁴ seeks a standalone 'carve out' approach (similar to the Partially Operative ORPS) with the following four limbs:*

- (a) The first limb embeds the 'avoid' and 'seek to avoid' approaches in the NPSET for areas with particular values. This is achieved in Policy EIT-INF-P13 as "avoid, as a first priority".*
- (b) The second limb sets out how effects in those areas are managed (as opposed to managing the effects in a generic way, or as effects are managed for all activities).*
- (c) The third limb provides for the avoidance, remedying or mitigating of other adverse effects (achieved as a 'minimise' in Policy EIT-INF-P13).*
- (d) The fourth limb confirms the carve out by seeking that the provisions prevail over others if there is a conflict.*

5.4 The need to respond to the exemption for development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities in the NPSIB reinforces my view that a bespoke approach is necessary to address the effects of the National Grid.

14 Submission reference 00314.038.

5.5 In this regard (again, consistent with my earlier evidence), I agree with the ORC supplementary evidence that the exemption in the NPSIB does not mean that the adverse effects of electricity transmission activities are not managed at all. Instead, the adverse effects must be managed in a manner that gives effect to the NPSET and recognises and provides for section 6 matters.

5.6 While I support a bespoke approach to the management of effects of the development, operation, maintenance or upgrade of electricity transmission network assets and activities, I do not support recommended new Policy ECO-P6A for the following reasons:

(a) The proposed Policy responds to the supplementary evidence view that some electricity transmission activities are not regionally or nationally significant. I do not agree and consider that all electricity transmission activities are nationally significant. The pORPS defines “Nationally Significant Infrastructure” to include “the national grid electricity transmission network”, and the NPSET confirms “*The matter of national significance to which this national policy statement applies is the need to operate, maintain, develop and upgrade the electricity transmission network*”. It is therefore my view that, insofar as the proposed Policy relates to electricity transmission, clauses (1) and (2) are not relevant or appropriate.

(b) The proposed Policy does not give effect to Policy 5 of the NPSET that directs “*When considering the environmental effects of transmission activities associated with transmission assets, decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets*”. In my view, requiring the avoidance of a particular location does not enable the operational, maintenance and minor upgrade requirements of the National Grid.

- (c) The proposed Policy directs the avoidance of a location, as opposed to avoiding the adverse effects on the characteristics and values of significant natural areas. In the case of the National Grid this distinction is important because it is possible that the National Grid could be located in a significant natural area without having any impact on its values. For instance, transmission line conductors can be strung above a significant natural area and have no 'footprint'. As such, referencing the characteristics and values of an area allows the matters of national importance in section 6(c) of the RMA to be recognised and provided for.
- (d) I agree with the earlier statement in the ORC's supplementary evidence that the current version of the NPSET (and the NPSREG) must be given effect to and I therefore conclude that it is inappropriate to rely on, or take direction from, the consultation drafts of the NPSET or NPSREG, as has been done in respect of clause 1(c) of recommended Policy ECO-P6. These documents do not have statutory weight and the content of any new NPSET or NPSREG cannot be certain. On this basis, 'borrowing' from these documents to inform regional policies is inappropriate and inconsistent with the statutory framework for regional policy statements. That said, I acknowledge that the direction in recommended clause 1(c) to avoid, remedy or mitigate adverse effects does not differ from the direction in Policy EIT-INF-P13.
- (e) I consider that extending the policy direction that applies to renewable electricity generation to also apply to electricity transmission is inappropriate and inconsistent with the higher order planning instruments. That is, while the NPSREG includes direction in respect of offsetting and compensation, the NPSET does not include the same direction. Further, because the NPSET and NPSREG are two different planning instruments that must be given effect to, it is my view that taking a combined approach to electricity transmission and renewable electricity

generation is not the most efficient, effective or appropriate approach to giving effect to either national policy statement. In fact, this is reflected in the architecture of the pORPS (non-freshwater) that distinguishes provisions for energy from those for infrastructure.

- (f) In duplicating the approach in Policy EIT-INF-P13, the ORC supplementary evidence has not considered whether amendments to Policy EIT-INF-P13 or other provisions in the EIT Chapter may be a more appropriate and efficient response to the exemption in the NPSIB, alongside other provisions that manage the adverse effects of the operation, maintenance, upgrade and development of the National Grid.

5.7 While my earlier evidence confirms that a bespoke policy to address the management of effects of the operation, maintenance, upgrading and development of the National Grid is generally the most efficient and effective approach to giving effect to the NPSET, my evidence goes on to respond to the clear preference that had been expressed in the ORC evidence (prior to the most recent supplementary ORC evidence) for existing policies to manage the effects of the development of the National Grid, by drafting amendments to existing Policy EIT-INF-P13 and proposed Policy EIT-INF-P13A to give effect to the NPSET.

5.8 In addition to the NPSET directing a particular approach to the management of effects of electricity transmission network assets and activities, the NPSIB's effect is to further distinguish the management of these activities. This distinction:

- (a) means that the amendments I support in my earlier evidence may no longer be appropriate where further amendments to related or cross-referenced provisions are recommended to give effect to the NPSIB;

- (b) is reflected in the general approach taken in the ORC supplementary evidence through recommending new Policy ECO-P6A; and
- (c) lends weight to the relief sought in Transpower’s submission, being the bespoke policy described in my earlier evidence.

5.9 It is on this basis, and in conjunction with Transpower’s wider response¹⁵ to the implications of the Supreme Court’s decision in *Port Otago Limited v Environmental Defence Society Incorporated*,¹⁶ that I have drafted, and support, the inclusion of the following new bespoke policy to direct the management of effects of the National Grid:

“EIT-INF-Px Managing the effects of the development of the National Grid Manage the adverse effects of the operation, maintenance, upgrade and development of the National Grid by:

- 1. enabling the operation, maintenance and minor upgrading of the National Grid;*
- 2. in urban environments, avoiding material adverse effects on the values and characteristics of town centres, areas of high recreation value and existing sensitive activities, including through mitigation or other measures to reduce effects;*
- 3. managing effects on the values or extent of natural wetlands in accordance with LF-FW-P9 – Protecting natural wetlands;*
- 4. in the coastal environment, recognising that there will be areas of the coastal environment where avoidance of material adverse effects on the values and characteristics of those areas is required, including by use of mitigation or other measures to reduce the level of effects;*

¹⁵ <https://www.orc.govt.nz/media/15156/matt-conway-transpower-sc.pdf>

¹⁶ *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112.

5. *where (1), (2), (3) or (4) do not apply, seeking to avoid material adverse effects on the values or characteristics of the following:*
 - a. *outstanding water bodies;*
 - b. *areas of high or outstanding natural character;*
 - c. *outstanding natural features, outstanding natural landscapes or outstanding natural seascapes;*
 - d. *significant natural areas;*
 - e. *areas or places of significant or outstanding historic heritage;*
 - f. *wāhi tapu, wāhi taoka and areas with protected customary rights;*
6. *where material adverse effects on the values or characteristics of the areas or places listed in (5) above cannot be avoided, remedying or mitigating adverse effects. having regard to:*
 - a. *the operational needs of the National Grid and the extent those requirements constrain measures to avoid, remedy or mitigate adverse effects;*
 - b. *the extent significant adverse effects are avoided;*
 - c. *the extent to which any adverse effects have been avoided, remedied or mitigated by route, site and method selection for new infrastructure or major upgrades;*
 - d. *the extent to which existing adverse effects have been reduced as part of any substantial upgrade;*
and
 - e. *the extent to which adverse effects on urban amenity have been minimised; and*
 - f. *and where there are residual adverse effects on indigenous biodiversity values following the implementation of (a) to (e) above, to consider the appropriateness of the extent to which any residual adverse effects are offsetting or compensated for;*

7. *avoiding, remedying, or mitigating other adverse effects, having regard to the matters in 6(a) to (f); and*
8. *in the event of any conflict between EIT-INF-Px and other policies in this regional policy statement, EIT-INF-Px prevails over those policies.”*

5.10 Relevantly, clauses 5 and 6 of this policy recognise and provide for the matters in section 6(c), while ensuring that the pORPS manages effects from electricity transmission activities in a manner that gives effect to the NPSET. I consider that these clauses sufficiently address the concerns expressed in the ORC supplementary evidence that effects from electricity transmission activities need to be managed.

5.11 In all, it is my conclusion that a new, National Grid specific, policy to manage the potential adverse effects of the operation, maintenance, upgrading and development of the National Grid is the most appropriate (in terms of the requirements of section 32 of the RMA) to:

- (a) give effect to the NPSET, alongside other national policy statements;
- (b) address the exemption of the development, operation, maintenance or upgrade of electricity transmission network assets and activities from the NPSIB; and
- (c) achieve the purpose of the RMA, including by enabling people and communities to provide for their social, economic and cultural well-being and their health and safety.

Ainsley Jean McLeod

Date: 20 September 2023