

**BEFORE PROPOSED WAIMAKARIRI DISTRICT PLAN
HEARING PANEL**

In the matter of

the Resource Management Act 1991

and

**the Proposed Waimakariri District Plan
– Hearing Streams 1 and 2**

**Statement of Evidence of Ainsley Jean McLeod on
behalf of Transpower New Zealand Limited
(submitter reference 195 and further submitter reference
FS92)
dated 1 May 2023**

SUMMARY OF EVIDENCE

1. The submission made by Transpower New Zealand Limited (“Transpower”) on the Proposed Waimakariri District Plan (“Proposed District Plan”) is concerned with how the Proposed District Plan recognises and provides for the nationally significant National Grid, and particularly the extent to which the provisions of the Proposed District Plan:
 - a. give effect to the National Policy Statement on Electricity Transmission 2008 (“NPSET”)
 - b. give effect to the operative Canterbury Regional Policy Statement (republished in October 2020 (“CRPS”), where the CRPS is relevant to the National Grid and activities undertaken by Transpower in respect of the National Grid, and
 - c. appropriately reflect the relationship of the Proposed District Plan with the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (“NESETA”).
2. The NPSET provides policy direction in relation to:
 - a. recognising the benefits of the National Grid;
 - b. managing the adverse effects on the environment of the National Grid;
 - c. managing the adverse effects of land use and development on the National Grid; and
 - d. long-term strategic planning for transmission assets.
3. The CRPS, amongst other relevant provisions, includes Policy 16.3.4 that sets out how a reliable and resilient National Grid is to be achieved in Canterbury.
4. In respect of the matters that are the subject of Hearing Streams 1 and 2, Transpower’s submission, and further submissions, are generally supportive of the Proposed District Plan as notified. In particular, Transpower seeks the retention of the non-hierarchical approach to the Strategic Directions objectives and also supports the retention of Objective SD-O3 Energy and Infrastructure.
5. Transpower’s submission generally seeks that the Proposed District Plan should include clear direction in respect of how infrastructure is regulated across chapters. This is addressed in the context of Sites and Areas of Significance to Māori (“SASM”) in Hearing Streams 1 and 2.
6. My evidence considers the relief sought by Transpower and addresses, as relevant to this relief, the recommendations made in the following (together referred to as “the Officer’s Report” or “the Officers’ Reports”):
 - a. Officer’s Report: Overarching and Part 1 Matters;
 - b. Officer’s Report: Rautaki ahunga -Strategic Direction;
 - c. Officer’s Report: Āhukatanga auaha ā tāone - Urban Form and Development; and

- d. Officer's Report: Ngā whenua tapu o ngā iwi - Sites and Areas of Significance to Māori.
7. I support a number of recommendations made in the Officers' Reports for the reasons given in Transpower's submissions and the Officers' Reports. These recommendations are briefly listed in my evidence and I particularly note my support for the retention of Objective SD-O3 Infrastructure and Energy.
8. It is my evidence that it is appropriate for the Proposed District Plan to make reference to the NESETA in the same or similar way to the manner in which the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 ("NESPF") is referred to. For this reason, I support the inclusion of reference to the NESETA in the advice notes in Te whakamahi māhere - How the plan works.
9. My evidence considers Rautaki ahunga - Strategic Directions, Objective SD-O1 Natural Environment and supports an amendment to that Objective to achieve consistency with Section 6(b) of the Resource Management Act 1991 ("RMA"). I also support a minor amendment to the heading to Āhukatanga auaha ā tāone – Urban Form and Development, Policy UFD-P10 Managing reverse sensitivity effects from new development, to better reflect the breadth of the Policy, which addresses effects more generally.
10. It is my opinion that there are opportunities to reduce the complexity and improve the clarity and useability of the Proposed District Plan in respect of the various provisions that regulate infrastructure. In the context of infrastructure in SASM, I support the simplification of regulation of earthworks in SASM by taking a similar approach as that for other overlays in the Proposed District Plan and relocating rules to the Ketuketu whenua – Earthworks Sub-Chapter. I also support limited refinements to the related Matters of Discretion so that these Matters better reflect Clause 6 of Schedule 4 to the RMA and give effect to Policy 4 of the NPSET.
11. The amendments suggested in and supported by my evidence are consolidated in **Attachment A**. My evidence concludes that these amendments are necessary and the most appropriate (in terms of the requirements of section 32 of the RMA to achieve consistency with, and give effect to (as appropriate), higher order provisions; to improve the efficiency, clarity and usability of the Proposed District Plan and achieve the purpose of the RMA.

INTRODUCTION

12. My full name is Ainsley Jean McLeod. I hold the qualifications of a Bachelor of Arts (Geography and Anthropology) and a Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute.
13. I am a planner and director of Ainsley McLeod Consulting Limited. I have over 20 years' experience in planning practice, primarily as a consultant planner based in Wellington, Christchurch and Otago, during which time I have undertaken consenting, designation, and

policy planning work. I have provided professional planning advice to a range of clients including central and local government, and the private sector.

14. I have particular expertise in respect of infrastructure and network utilities, having provided planning advice in relation to power transmission, distribution and generation, water and waste, rail and roading, and telecommunications projects. I have acted as an expert witness on a number of occasions before hearings panels, boards of inquiry and the Environment Court.
15. I have provided expert planning advice to Transpower since 2001 in relation to new and upgraded National Grid transmission lines and substations, along with the relevant planning instruments including the NPSET and the NESETA. I am familiar with the ways in which plans and policy documents respond to these planning instruments, having advised Transpower in respect of a number of regional policy statement, regional plan and district plan reviews.
16. I assisted with the preparation of Transpower's submission and further submissions on the Proposed District Plan (and also Proposed Variation 1 to the Proposed District Plan) and am now engaged to provide expert planning evidence in relation to the matters that have been raised in Transpower's submissions and further submissions.

CODE OF CONDUCT

17. Although this matter is not before the Environment Court, I acknowledge the Hearing Panel direction in Minute 1 (paragraphs 70 and 84) and confirm that I have read the Code of Conduct for expert witnesses as contained in section 9 of the Environment Court Practice Note 2023. I further confirm that I have complied with this Code of Conduct when preparing my written statement of evidence and will do so, when giving evidence or otherwise participating in the hearing process.

SCOPE OF EVIDENCE

18. My evidence:
 - a. acknowledges the statutory requirements for the Proposed District Plan, particularly in relation to the NPSET and the operative CRPS;
 - b. describes Transpower's submission and further submissions on the Proposed Plan that are the subject of Hearing Streams 1 and 2; and
 - c. addresses (as relevant to the relief sought by Transpower) the recommendations made in the various Officers' Reports.
19. In addition to the documents referred to above, in preparing this evidence I have also reviewed the following documents insofar as they relate to Transpower's submissions:
 - a. the relevant primary submissions and further submissions;

- b. the National Planning Standards 2019; and
 - c. the various Section 32 Reports insofar as they are relevant to Transpower's submission and further submission on the matters considered as part of Hearing Streams 1 and 2.
20. For the purpose of my evidence, I rely on the evidence of Ms Rebecca Eng. Her evidence outlines:
- a. Transpower and the National Grid;
 - b. Transpower's assets within Waimakariri District; and
 - c. New Zealand's Paris Commitment and Decarbonisation.

RELEVANT STATUTORY FRAMEWORK

21. The statutory and policy considerations and directions for the Proposed District Plan, insofar as is relevant to Transpower's submission and further submissions, are set out in detail in:
- a. the Section 32 Reports;
 - b. Transpower's submission; and
 - c. the Officer's Report (Overarching and Part 1 matters) particularly in respect of new and revised higher order planning documents.
22. I consider that together these documents provide a fulsome and comprehensive description of the relevant statutory matters. I therefore rely on the summary in these documents and do not repeat the relevant provisions here except to emphasise that the Proposed District Plan must give effect to the NPSET and the CRPS and that "give effect to" is a strong statutory directive in the RMA that was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning "to implement".¹
23. My analysis and consideration of the relief sought by Transpower is informed by the statutory framework for decisions on the Proposed District Plan set out in the Section 32 Reports, the RMA, and the on-going guidance provided by the modified Long Bay test.²
24. The remainder of my evidence describes Transpower's submission and further submission, and considers these submissions alongside the recommendations made in the Officers' Report.

¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, NZSC 38, 17 April 2014.

² *Long Bay – Okura Great Park Society v North Shore City Council* NZEnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC55.

25. Where amendments to the provisions of the Proposed District Plan are suggested in, and supported by, my evidence these are shown as follows and consolidated in **Attachment A**:
- Officers' Report recommendation text: black underline and ~~black strikethrough~~;
 - Transpower submission text: blue underline and ~~blue strikethrough~~; and
 - evidence text: red double underline and ~~red double strikethrough~~.

OFFICERS' REPORT RECOMMENDATIONS

26. As a preliminary matter, I acknowledge that there are a number of recommendations in the Officers' Reports relating to the relief sought by Transpower that are consistent with my opinion and conclusions in respect of that relief. In the interest of brevity, the following Table 1 lists these recommendations and I confirm that the reasons for my support of these recommendations are those included in Transpower's submission and the Officers' Reports. I do not address these matters further in my evidence.
27. Those submission points that remain outstanding relate to:
- Te whakamahi māhere - How the plan works, General Approach advice notes;
 - Rautaki ahunga - Strategic Directions, Objective SD-O1 Natural Environment;
 - Āhuatanga auaha ā tāone – Urban Form and Development, Policy UFD-P10 Managing reverse sensitivity effects from new development;
 - Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori, Other potentially relevant District Plan provisions; and
 - Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori, Matters of Discretion SASM-MD1, SASM-MD2 and SASM-MD3.

Table 1: Officers' Report – Recommendations that are Supported

Provision	Submission reference	Relief sought by Transpower	Officers' Report recommendation
Part 1 – Introduction and General Provisions Te whakamahi māhere - How the plan works Cross Boundary Matters	195.2	Retain as notified	Accept
Part 1 – Introduction and General Provisions Te whakamāramatanga - Interpretation Definitions	195.14	Retain as notified	Accept

Provision	Submission reference	Relief sought by Transpower	Officers' Report recommendation
"Strategic infrastructure"			
Part 2 – District-wide Matters Strategic Directions SD - Rautaki ahunga - Strategic Directions 'Interpretation and application of this chapter'	195.19	Retain as notified	Accept
	192.28 (Forest & Bird) FS92	Supports amendments sought in the primary submission subject to further refinements to the relief sought.	Reject. Retention of the notified text is supported for the reasons given in the Officer's Report (Strategic Directions). That is, there should be no hierarchy within the Proposed District Plan.
	249.197 (MainPower New Zealand Limited) FS92	Opposes the amendments sought in the primary submission because the proposed amendments could have significant implications in respect of the way in which the policy framework is understood.	Reject. Retention of the notified text is supported for the reasons given in the Officer's Report (Strategic Directions). That is, there should be no hierarchy (or primacy given to the Strategic Directions Objectives) within the Proposed District Plan.
	325.1 (Kāinga Ora – Home and Communities) (FS92)	Opposes the amendments sought in the primary submission because the proposed amendments could have significant implications in respect of the way in which the policy framework is understood.	Reject. Retention of the notified text is supported for the reasons given in the Officer's Report (Strategic Directions). That is, there should be no hierarchy (or primacy given to the Strategic Directions Objectives) within the Proposed District Plan.
Part 2 – District-wide Matters Strategic Directions SD - Rautaki ahunga - Strategic Directions Objective SD-O3 Energy and infrastructure	195.21	Retain as notified	Accept
	192.31 (Forest & Bird) FS92	Opposes the amendment sought in the primary submission because the amendment seeks to delete reference to infrastructure being 'enabled' in a manner that is inconsistent with, and does not give effect to the Objective of the NPSET and Policy 16.3.4 of the CRPS (insofar as SD-O3 relates to the National Grid).	Reject. Retention of the notified text is supported for the reasons set out in the Officer's Report (Strategic Directions) and Transpower's submission.
	419.32 (Director-General of Conservation Tumuaki Ahurei) (FS92)	Opposes the amendment sought in the primary submission because the amendment fails to include the exception for specified infrastructure included in the National Policy Statement on Freshwater 2020.	Reject. Retention of the notified text is supported for the reasons set out in the Officer's Report (Strategic Directions) and Transpower's submission.

Provision	Submission reference	Relief sought by Transpower	Officers' Report recommendation
Part 2 – District-wide Matters Strategic Directions UFD - Ahuatanga auaha a taone - Urban form and development Policies UFD-P1	414.58, 414.61, 414.62, 414.63, 414.64, 414.65, 414.66, and 414.67 (Federated Farmers of New Zealand Inc) (FS92)	Opposes the relief sought in the primary submission because the avoidance of any development on highly productive land goes beyond the direction given in the National Policy Statement for Highly Productive Land 2022.	Reject. The Officer's Report (Urban Form and Development) states that <i>"the protection of LUC 1-3 soils will be addressed within the Section 42A report on Rural zones."</i> This recommendation is acknowledged and accepted.

PART 1 – INTRODUCTION AND GENERAL PROVISIONS

Te whakamahi māhere - How the plan works

General Approach

28. Transpower's submission³ supports the inclusion of advice notes that may be relevant to more than one chapter of the Proposed District Plan in the 'General Approach' but seeks that the advice notes be expanded to include reference to the:
- a. NESETA;
 - b. NZECP 34:2001; and
 - c. Electricity (Hazards from Trees) Regulations 2003.
29. Transpower's submission also seeks that, as a consequence, the advice notes in relevant chapters to also reference the mandatory regulations listed above.
30. The Officer's Report (Overarching Matters and Part 1) recommends that the 'Energy and Infrastructure Reporting officer' consider this submission point and comments as follows:

"78. The General Approach chapter currently contains four advice notes (GA-AN1 to GA-AN4). These advice notes are general in nature, clarifying the jurisdictions of councils with their various boundaries, and the application of the specific land use rules in the NESPF, which may override district plan provisions and/or are relevant to regional plans. The advice notes sought by Transpower are more technical in nature, are already contained in provisions within the Energy and Infrastructure chapter and integrated with the relevant rules within that chapter. The Energy and Infrastructure provisions are district-wide in nature, and as such I do not consider that inserting them into the General Approach chapter would

³ Submission reference 195.1.

improve plan readability. It may in fact, detract from it as a general advice note would lack context.

79. *In case amendments are required to the advice notes within the Energy and Infrastructure chapter, or elsewhere, I will not make a recommendation on Transpower's submission [195.1] here, instead recommending that it is addressed in the Energy and Infrastructure report, along with that entire topic."*
31. In respect of NZECP34:2001 and the Electricity (Hazard from Trees) Regulations 2003, I accept that these regulations are included as advice notes to specific rules in the Pūngao me te hanganga hapori – Energy and Infrastructure Chapter and I further accept that Transpower's submission, insofar as it relates to NZECP34:2001 and the Electricity (Hazard from Trees) Regulations 2003, will be considered in the Officer's Report relating to that Chapter.
32. In respect of the NESETA, I note that the Officer's Report is incorrect because there is no advice note that references these regulations in the Pūngao me te hanganga hapori – Energy and Infrastructure Chapter, however there are comprehensive advice notes in the Ketuketu whenua – Earthworks Sub-Chapter that reference, amongst other matters, the NESETA and the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 ("NESPF"). These advice notes, in the Ketuketu whenua – Earthworks Sub-Chapter, demonstrate the fact that direction in respect of the two National Environmental Standards is necessary across multiple chapters of the Proposed District Plan, rather than just the Pūngao me te hanganga hapori – Energy and Infrastructure Chapter.
33. Further, the Officer's Report appears to distinguish the NESPF from the NESETA by supporting the inclusion of GA-AN4, which describes the NESPF, while recommending that the same approach for the NESETA is not necessary. In my view, there is no clear rationale for this distinction. Both the NESPF and NESETA (as described above) include regulations that address a range of land use activities that prevail over regional plan and district plan rules, including rules in more than one chapter in the Proposed District Plan. Likewise, it is not clear how including reference to the NESETA in the 'General Approach' would detract from the readability of the Proposed District Plan, when the approach sought in Transpower's submission mirrors that taken for the NESPF.
34. For these reasons, I do not agree with the recommendation in the Officer's Report in respect of the NESETA. Instead, I consider that the Proposed District Plan should take an even-handed approach to the NESPF and NESETA and I therefore support the inclusion of the following additional advice note in the 'General Approach':

"GA-ANX The NESETA contain separate regulations for the operation, maintenance, upgrading, relocation or removal of transmission lines that were operating, or able to be operated, on or prior to 14 January 2010 and remain part of the National Grid. Except as provided for by the regulations in the

NESETA, no rules in a Plan apply to such activities. Rules and standards in a Plan apply to an activity that does not relate to an existing transmission line that is part of the National Grid, or where new transmission lines and associated structures are proposed.”

PART 2 – DISTRICT-WIDE MATTERS

Strategic Directions SD – Rautaki ahunga - Strategic Directions

Objective SD-O1 Natural Environment

35. Transpower’s submission⁴ seeks the following amendment to Objective SD-O1 Natural Environment:

“Across the District:

- 1. there is an overall net gain in the quality and quantity of indigenous ecosystems and habitat, and indigenous biodiversity;*
- 2. the natural character of the coastal environment, freshwater bodies and wetlands is preserved or enhanced, or restored where degradation has occurred;*
- 3. outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected from inappropriate subdivision, use and development;*
- 4.”⁵*

36. The Officer’s Report (Strategic Directions) recommends that the submission be rejected for the following reasons:

“65. ... Objectives NFL-O1, and NFL-O2, policies NFL-P1 and NFL-P3 details the assessment used for protection of the values from use or development that would adversely affect the values of the ONL and ONF. With respect to inappropriate subdivision, council controls subdivision through SUB-R9 as a discretionary activity. For an explanation on the reasoning around the wording on SD-O1 see the Section 32 report on Strategic Directions, specifically section 3.1 which states:

For plan development, including plan changes, the strategic objectives in the Strategic Directions Chapter provide direction for the development of the more

⁴ Submission reference 195.20.

⁵ Transpower’s submission is supported by the further submission made by Chorus, Spark & Vodafone (FS95)

detailed provisions contained elsewhere in the District Plan in relation to strategic issues.”

37. While I accept that the provisions in the NFL - Āhuratanga o te whenua - Natural features and landscapes Sub-Chapter provide more detailed direction in respect of the management of land use and development to recognise and protect the values of outstanding natural features and outstanding natural landscapes, I do not agree with the Officer’s Report recommendation because:

- a. clause (3) of Objective SD-O1, as notified, does not state what the values of outstanding natural features and landscapes are protected from and, as such, inappropriately suggests that protection is absolute;
- b. clause (3) of Objective SD-O1, as notified, is inconsistent with section 6(b) of the RMA that directs that “*the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*” [my emphasis] must be recognised and provided for;
- c. it is consistent with the form of Objective SD-O1 to provide further direction in the Objective, as opposed to ‘parking’ all detail to provisions elsewhere in the Proposed District Plan, for example, clause (2) directs that “*the natural character of the coastal environment, freshwater bodies and wetlands is preserved or enhanced, or restored where degradation has occurred*” [my emphasis].
- d. the Officer’s Report appears to rely on a discretionary activity rule to enable the appropriateness, or not, of subdivision to be determined and, in doing so, fails to appreciate that:
 - i. a rule is a tool to implement a policy and therefore it is necessary for a policy to direct the outcomes achieved through a rule; and
 - ii. in considering an application for resource consent for a discretionary activity, section 104(1)(b) of the RMA directs that regard be had to the provisions of a district plan and, as notified Objective SD-O1 directs absolute protection of values without allowing for a consideration of the appropriateness of a subdivision.

38. For the reasons set out above, I therefore support the amendment to clause (3) of Objective SD-O3 that is sought in Transpower’s submission as follows:

“Across the District:

...

3. *outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected from inappropriate subdivision, use and development; ...”*

Strategic Directions UFD Āhuetanga auaha ā tāone – Urban Form and Development

Policy UFD-P10 Managing reverse sensitivity effects from new development

39. Transpower's submission⁶ seeks that Policy UFD-P10 be amended as follows:

“UFD-P10 Managing reverse sensitivity effects, including reverse sensitivity effects, from and on new development

Within Residential Zones and new development areas in Rangiora and Kaiapoi:

1. *avoid residential activity development that has the potential to be impacted by or limit the efficient and effective operation, maintenance and upgrade of critical infrastructure, strategic infrastructure, and regionally significant infrastructure, including avoiding noise sensitive activities within the Christchurch Airport Noise Contour, unless within an existing Residential Zone; ...”⁷*

40. The Officer's Report (Urban Form and Development) recommends that the submission be accepted in part as follows:

“105. ... The submission is accepted in part in relation to maintenance and inclusion of development. I consider the proposed amendments reasonable in order to manage reverse sensitivity effects on critical, strategic and regionally significant infrastructure.”

41. The amendments to Policy UFD-P10 that are recommended by the Officer's Report are as follows:

“Within Residential Zones and new development areas in Rangiora, and Kaiapoi, Woodend, Ravenswood and Pegasus:

1. *avoid residential activity and development that has the potential to be impacted by or limit the efficient, and effective and safe operation, maintenance, repair, development and upgrade of critical infrastructure, strategic infrastructure, and regionally significant infrastructure, including avoiding noise sensitive activities within the Christchurch Airport Noise Contour, unless within an existing Residential Zone; ...”*

42. For the reasons given in Transpower's submission and in the Officer's Report, I generally support the amendments recommended by the Officer's Report. That said, as set out in Transpower's submission, development can have direct adverse effects on infrastructure, in addition to reverse sensitivity effects. Such effects could include the physical prevention of access to National Grid assets or earthworks that may compromise the stability of a

⁶ Submission reference 195.22.

⁷ Transpower's submission is supported by the further submission made by KiwiRail (FS99).

transmission line support structure. For this reason, I consider that the title of Policy UFD-P10 should be amended to make it clear that the Policy addresses all potential adverse effects of residential activity and development on infrastructure as follows:

“UFD-P10 Managing ~~reverse-sensitivity~~ effects from new development”

Historic and Cultural Values Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori

Other potentially relevant District Plan provisions

43. Transpower’s submission⁸ notes the statement in the Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori Sub-Chapter that *“Energy and Infrastructure: this chapter contains provisions relevant to protecting wāhi tapu sites”* and considers that this statement means that the Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori Sub-Chapter does not apply to infrastructure. Transpower’s submission suggests that this statement contradicts the same direction in the Energy and Infrastructure Chapter and seeks that the directions in respect of provisions that apply to infrastructure are clarified throughout the Proposed District Plan including by inserting the following in the Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori Sub-Chapter:

“As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to Sites and Areas of Significance to Māori include:

...

- *Energy and Infrastructure: this chapter contains provisions relevant to protecting wāhi tapu sites [and the rules in this chapter do not apply](#).”*

44. The Officer’s Report (Ngā whenua tapu o ngā iwi - Sites and Areas of Significance to Māori) recommends that the submission be rejected and comments:

“60. With regard to the potential conflict between the Introduction sections of the two chapters, the following is noted:

- a. *the SASM Introduction directs that the provisions of the Energy and Infrastructure contain provisions relevant to protecting wāhi tapu sites;*
- b. *the Energy and Infrastructure Introduction directs that the SASM chapter contains provisions relevant to protecting SASM from adverse effects;*
- c. *Policy EI-P5(3)(e) identifies that new energy and infrastructure or major upgrades should seek to protect listed sensitive environments from significant adverse effects, including SASM and at Policy EI-P5(4) sets out*

⁸ Submission reference 195.68.

the approach to be taken where infrastructure cannot locate outside those sensitive environments;

- d. then for example Rule EI-R4 identifies that the provisions of the SASM chapter do not apply to “Customer connection between a building, other structure, site, and infrastructure” and this complements Rule SASM-R4(1)(h) which references back to Rule EI-R4; and*
- e. Rule EI-R20 New infrastructure building under part (3)(b) of the rule does not provide for new infrastructure building to be a permitted activity in a SASM, but is a discretionary activity (noting that this complements Policy EI-P5).*

61. For the above reasons, it is incorrect to include the words “...and the rules in this chapter do not apply” as Rule SASM-R4 does apply.”

- 45. In response to the Officer’s Report, I accept the summary of the various directions and provisions in the Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori Sub-Chapter and the Pūngao me te hanganga hapori - Energy and infrastructure Sub Chapter of the Proposed District Plan. However, I understand the relief sought in Transpower’s submission is intended to address whether **rules** in the Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori Sub-Chapter apply to infrastructure activities, as opposed to the provisions in the Sub-Chapter more generally. It is Transpower’s submission that the Proposed District Plan should include clear direction in respect of how infrastructure is regulated across chapters, including when located in SASM.
- 46. In my view, the extensive explanation that is given in the Officer’s Report in respect of the provisions, including rules, that may apply to infrastructure activities within SASM exemplifies that lack of clarity with respect to rules that may apply. In addition, to the Officer’s Report explanation, I note that earthworks for infrastructure activities are also regulated by rules in the Ketuketu whenua – Earthworks Sub-Chapter. By way of summary, my understanding is that when an infrastructure activity is located in a SASM:
 - a. the rules for the activity itself are included in the Pūngao me te hanganga hapori - Energy and infrastructure Sub Chapter and some of these rules include explicit conditions for situations where some types of infrastructure (but not all) are is located in a SASM (for example Rule EI-R20); and
 - b. Rule SASM-R4 regulates any earthworks associated with any infrastructure activity in a SASM, with only earthworks associated with customer connections (cross referenced to Rule EI-R4) being the only permitted activity; and
 - c. The rules and standards for earthworks included in the Ketuketu whenua – Earthworks Sub-Chapter also regulate any earthworks associated with any infrastructure activity with some rules (but not all) in the Pūngao me te hanganga hapori - Energy and

infrastructure Sub Chapter including explicit cross reference to the Ketuketu whenua – Earthworks Sub-Chapter rules and standards.

47. In my experience, such an approach can result in rules that are unnecessarily duplicated, inconsistent or, in some cases, absent (that is, there a gap in regulation where it is not clear how an activity is addressed). Conversely, in my experience, a single (or standalone) suite of rules that regulate infrastructure activities in district plans is an appropriate, efficient and effective approach to providing for infrastructure activities, giving effect to the relevant higher order documents and achieving the purpose of the RMA.
48. One example of duplication and inconsistencies between provisions is:
 - a. Rule SASM-R3 that provides for earthworks associated with and structures ancillary to interments in an urupā, burial ground or cemetery in the Wāhi Tapu Overlay, Wāhi Taonga Overlay, Ngā Tūranga Tūpuna Overlay and Ngā Wai Overlay as a permitted activity without conditions; and
 - b. Rule EW-R2 that provides for earthworks for interment within a burial ground, cemetery, or urupā as a permitted activity without conditions.
49. Further, I note that the National Planning Standards (November 2019) anticipate such an approach with the Mandatory Direction given in the District-wide Matters Standard being:

“5. Provisions relating to energy, infrastructure and transport that are not specific to the Special purpose zones chapter or sections must be located in one or more chapters under the Energy, infrastructure and transport heading. ...”
50. Turning to Transpower’s relief, the Officer’s Report concludes that Transpower’s relief is incorrect because Rule SASM-R4 does apply with Rule SASM-R4(h) providing for any earthworks associated with a customer connection in the Wāhi Tapu Overlay, the Wāhi Taonga Overlay, the Ngā Tūranga Tūpuna Overlay and the Ngā Wai Overlay. While I agree that Rule SASM-R4 applies to earthworks associated with infrastructure activities, I have considered whether it is possible to reduce the complexity, risk of duplication and the risk of inconsistency between various rules and I have concluded that it would be more efficient and effective to relocate Rules SASM-R3 (and merge with Rule EW-R2) and SASM-R4 to the Ketuketu whenua – Earthworks Sub-Chapter.
51. Such an approach has the advantage of:
 - a. avoiding duplication and inconsistency;
 - b. reducing the complexity of provisions;
 - c. being consistent with the approach to regulating earthworks in other sensitive environments, such as outstanding natural landscapes; and
 - d. more closely achieving the mandatory directions in the National Planning Standards.

52. Noting that Transpower’s submission more generally seeks that the Proposed District Plan includes clear direction in respect of how infrastructure is regulated across chapters, and that this is a matter that I will address in further detail in subsequent statements of evidence, it is my preliminary view that it is efficient, effective and appropriate for Transpower’s relief to be accepted, alongside the relocation of Rules SASM-R3 and SASM-R4 to the Ketuketu whenua – Earthworks Sub-Chapter, as follows:

“As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to Sites and Areas of Significance to Māori include:

...

- *Energy and Infrastructure: this chapter contains provisions relevant to protecting wāhi tapu sites and the rules in this chapter do not apply.”*

Matters of Discretion (SASM-MD1, SASM-MD2 and SASM-MD3)

53. Transpower’s further submission supports the primary submissions made by Waimakariri Irrigation Limited (“WIL”)⁹ that seeks that the Matters of Discretion in SASM-MD1, SASM-MD2 and SASM-MD3 be amended to replace “suitable” with “practicable” on the basis that the language is better understood and therefore, the amendment provides greater clarity to plan users.
54. The Officer’s Report (Ngā whenua tapu o ngā iwi - Sites and Areas of Significance to Māori) recommends that the submission be rejected for the following reasons:

“109. The word ‘suitable’ was chosen for the matter of discretion with respect to the provision of infrastructure within a SASM, as the word encapsulates the concept of being right for/acceptable/good for/sits well within a particular situation. Accordingly, the intent was that an assessment be undertaken of alternative locations or layout/methodology to provide the infrastructure within an SASM, taking into account the functional or operational need of the infrastructure. The functional or operational need of the infrastructure already includes it being practicable (ie realistic/feasible/reasonable). By changing the term to ‘practicable’ would essentially mean “double counting”.”

55. The Matters of Discretion refer to “*whether alternative locations, layout or methodology would be suitable*”. I consider that this ‘Matter’ is something akin to:
- a. Clause (6)(1) of Schedule 4 to the RMA that requires an assessment of effects on the environment to include a description of any possible alternative locations or methods for undertaking the activity in situations where the activity will result in any significant adverse effect on the environment; and

⁹ Submission references 210.15, 210.16 and 210.17.

- b. in respect of the National Grid, Policy 4 of the NPSET that requires, when considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers to have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.
56. While there are similarities, in my view there are also key difference between SASM-MD1, SASM-MD2 and SASM-MD3, Policy 4 of the NPSET and Clause 6 of Schedule 4 of the RMA. That is, the consideration of alternatives directed by Policy 4 and Clause 6 only apply where the activity is substantial and the effects are significant respectively. Further, Clause 6 and Policy 4 direct a description of alternatives and a consideration of those alternatives, as opposed to an explicit direction for a judgement to be made in respect of suitability.
57. Having regard to Policy 4 and Clause 6, I support the relief sought in the primary submission made by WIL, but consider that the wording of SASM-MD1, SASM-MD2 and SASM-MD3 could be further refined to align with the direction given by these high order provisions. As such, I suggest the following:
- “In respect of infrastructure, the extent to which the proposed infrastructure has a functional need or operational need for its location, and where an activity may result in significant adverse effects, the extent to which ~~whether~~ alternative locations or layout/methodology would reduce adverse effects ~~be suitable~~.”*
58. As a final matter, should the Hearing Panel accept my evidence and relocate Rules SASM-R3 and SASM-R4 to the Ketuketu whenua – Earthworks Sub-Chapter the clauses in Matters of Discretion SASM-MD1, SASM-MD2 and SASM-MD3 that relate to infrastructure should also be relocated (as a consequence).



Ainsley Jean McLeod

1 May 2023

ATTACHMENT A: AMENDMENTS SOUGHT IN, AND/OR SUPPORTED BY, EVIDENCE

The following sets out the amendments to the provisions of the Proposed District Plan that are proposed by and/or supported in evidence.

Officers' Report amendments are shown in black underline and ~~black strikethrough~~ and the further amendments supported in evidence are shown in red double underline and ~~red double strikethrough~~.

PART 1 – INTRODUCTION AND GENERAL PROVISIONS

Te whakamahi māhere - How the plan works

General Approach

Amend the 'Advice Notes' to include the following:

“GA-ANX The NESETA contain separate regulations for the operation, maintenance, upgrading, relocation or removal of transmission lines that were operating, or able to be operated, on or prior to 14 January 2010 and remain part of the National Grid. Except as provided for by the regulations in the NESETA, no rules in a Plan apply to such activities. Rules and standards in a Plan apply to an activity that does not relate to an existing transmission line that is part of the National Grid, or where new transmission lines and associated structures are proposed.”

Cross Boundary Matters

Retain the Cross Boundary Matters as notified.

Te whakamāramatanga - Interpretation

Definitions

Retain the definition of “Strategic infrastructure” as notified.

PART 2 – DISTRICT-WIDE MATTERS

Strategic Directions SD – Rautaki ahunga - Strategic Directions

'Interpretation and application of this chapter'

Retain the 'Interpretation and application of this chapter' as notified.

Objective SD-O1 Natural Environment

Amend Objective SD-O1 as follows:

“Across the District:

...

3. *outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected from inappropriate subdivision, use and development;”*

Objective SD-O3 Energy and Infrastructure

Retain Objective SD-O3 as notified.

Strategic Directions UFD Āhuatanga auaha ā tāone – Urban Form and Development

Policy UFD-P10 Managing reverse sensitivity effects from new development

Amend the title of Policy UFD-P10 as follows:

“Policy UFD-P10 Managing ~~reverse sensitivity~~ effects from new development”

Historic and Cultural Values Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori

Other potentially relevant District Plan provisions

Amend ‘Other potentially relevant District Plan provisions’ as follows:

“As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to Sites and Areas of Significance to Māori include:

...

- Energy and Infrastructure: this chapter contains provisions relevant to protecting wāhi tapu sites and the rules in this chapter do not apply.”*

Rule SASM-R3 Earthworks associated with and structures ancillary to interments in an urupā, burial ground or cemetery

Relocate Rule SASM-R3 to the Ketuketu whenua – Earthworks Sub-Chapter and **merge** with Rule EW-R2.

Rule SASM-R4 Earthworks and land disturbance associated with other activities

Relocate Rule SASM-R4 to the Ketuketu whenua – Earthworks Sub-Chapter.

Matters of Discretion (SASM-MD1, SASM-MD2 and SASM-MD3)

Amend SASM-MD1, SASM-MD2 and SASM-MD3 as follows:

“In respect of infrastructure, the extent to which the proposed infrastructure has a functional need or operational need for its location, and where an activity may result in significant adverse effects, the extent to which whether alternative locations or layout/methodology would reduce adverse effects ~~be suitable~~.”