

**In the Environment Court  
Wellington Registry**

**ENV-2017-WLG**

In the matter of the Resource Management Act 1991  
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

**Transpower New Zealand Limited**

Appellant

and

**Manawatu District Council**

Respondent

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**Notice of Appeal on behalf of Transpower New Zealand  
Limited against the decision on the Proposed Plan  
Change 55 to the Manawatu District Plan**

**13 June 2017**

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**BELL GULLY**

BARRISTERS AND SOLICITORS

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**To** The Registrar  
Environment Court  
Wellington

26. Transpower New Zealand Limited (**Transpower**) appeals against part of a decision of the Manawatu District Council (the **Council**) on Proposed Plan Change 55 (the **Proposed Plan Change**) to the Manawatu District Plan (the **District Plan**).
27. Transpower made a submission and further submission on the Proposed Plan Change.
28. Transpower is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
29. Transpower received notice of the decision on 2 May 2017.
30. The decision was made by the Council.
31. The parts of the decision that this appeal relates to are:
  - (a) Chapter 2 – definition of “minor upgrading”;
  - (b) Section 3.1 “Introduction”;
  - (c) Section 3A.3, Policy 2.4;
  - (d) Section 3A.3, Objective 3;
  - (e) Section 3A.3, Policy 3.2;
  - (f) Rule 3A.4.1 and Rule 3A.4.5;
  - (g) Standard 3A.4.2(g);
  - (h) Standard 3A.4.2(l);
  - (i) Rule 3A.4.3;
  - (j) Rule 3A.4.4 and 3A.4.5;

(k) Standard 3D.4.2(f) and Rules 3D.4.3 and 3D.4.5;

(l) Standard 3F.4.2; and

(m) New Rule 3F.4.4.

32. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by Transpower are underlined or ~~struck through~~.

### **Chapter 2, definition of “minor upgrading”**

#### *Reasons for appeal*

33. The Council’s decision regarding the definition of “minor upgrading” refers to an example involving electricity transmission lines. These are National Grid lines (as other electricity lines operated by local lines companies are referred to electricity distribution lines). For the avoidance of doubt, and to assist users of the District Plan, Transpower considers the example should reference the National Grid instead of electricity transmission lines.

#### *Relief sought*

34. Amend chapter 2 definition of “minor upgrading” as follows:

in relation to network utilities means increasing the carrying capacity or efficiency of an existing utility while the effects of that utility remain the same or similar in character, intensity and scale. Minor upgrading shall not include an increase in the voltage of an electricity line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage. Examples of minor upgrading may include:

...

- (k) In the case of ~~electricity transmission lines~~ the National Grid an increase by not more than 15% of the base height of the support

structure where the base height is defined as the height of the structure established as at January 2010.

### **Section 3.1 “Introduction”**

#### *Reasons for appeal*

35. The Council’s decision provides that the zoning rules apply in place of the District Wide Rules where the zoning rules are more restrictive.
36. The Council is undertaking a rolling District Plan review, which means the nature of the zoning rules is currently unknown. If the Council’s decision is allowed to stand, this may mean more restrictive zoning rules will inadvertently apply to restrict activities relating to the operation, maintenance, upgrade, or development of the National Grid. This would frustrate the National Policy Statement on Electricity Transmission (**NPSET**).

#### *Relief sought*

37. Amend section 3.1 “Introduction” as follows:

...

This chapter is intended to be read in conjunction with the relevant zoning provisions. ~~If the relevant zoning rules are more restrictive than the provisions contained in this chapter, then the zone rules shall apply.~~ The relevant zoning rules and the District Wide Rules contained in this chapter both apply to activities undertaken within the district.

### **Section 3A.3, Policy 2.4**

#### *Reasons for appeal*

38. Policy 2.4(b) provides that sensitive activities and intensive farming are excluded from establishing within the National Grid Yard. Other activities should be included in this policy as they can also have adverse effects on, and compromise, the National Grid if they are established or undertaken within the National Grid Yard. As discussed

below, the corresponding Objective in the District Plan and NPSET also means the policy must be applied more broadly.

39. Other activities within the National Grid Yard need to be restricted including because:
- (a) Electric shocks from National Grid transmission lines pose a risk to people and property within the National Grid Yard, and these activities can compromise the National Grid; and
  - (b) Activities within the National Grid Yard can restrict Transpower's ability to maintain and upgrade existing lines. This includes buildings such as swimming facilities, dairy sheds, piggeries, poultry farms, commercial greenhouses, and factories; and
  - (c) Reverse sensitivity effects can arise if people are enabled to work in close proximity to the National Grid.
40. Policy 10 of the NPSET states "decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects ... and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised." The High Court case *Transpower New Zealand Ltd v Auckland Council* recently considered this policy. The Court held that Policy 10 is a relatively strong directive, and that: "Non-sensitive activities (buildings), for example, commercial, industrial or recreational activities (buildings), contribute to underbuild, and thereby can compromise the National Grid." <sup>1</sup> Amending Policy 2.4 to apply to non-sensitive activities that compromise the National Grid would ensure the policy is consistent with this authority and give effect to the NPSET.
41. Objective 2 of section 3A is to protect nationally and regionally important infrastructure such as the National Grid by avoiding the adverse effects of subdivision use and development and other land use activities on the operation, maintenance, replacement and upgrading of

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<sup>1</sup> *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281, [85] and [99].

the existing network utilities and planned development of new network utilities.

42. Objective 2 is not limited to sensitive activities and intensive farming given other activities, such as buildings within the National Grid Yard, also have adverse effects on the National Grid. The reference to “avoiding adverse effects” is a strong directive and means activities which cause adverse effects should be excluded from establishing within the National Grid Yard. The current wording of Policy 2.4(b) takes an unjustifiably narrow approach and fails to achieve Objective 2.

*Relief sought*

43. Amend section 3A.3, policy 2.4 as follows:

To manage the effects of subdivision, development and land use on the safe, effective and efficient operation, maintenance, replacement and upgrading of the National Grid by ensuring that:

...

- (b) Sensitive activities, ~~and intensive farming,~~ and other activities that compromise the National Grid are excluded from establishing within the National Grid Yard.

...

**Section 3.A3, Objective 3**

*Reasons for appeal*

44. Transpower generally supports Objective 3. However, consequential amendments may be required in order to ensure there is an overarching objective framework that the amended policies will achieve. It is important there is sufficient scope to enable these amendments to be made in the event the Court determines there is an issue between objectives and policies as they may be finally worded.

*Relief sought*

45. Consequential amendments may be required to Objective 3 in light of Transpower's relief sought (including to Policy 3.2 and potentially to add a National Grid specific policy), as the policies need to achieve the objective.

**Section 3A.3, Policy 3.2**

*Reasons for appeal*

46. It is an unreasonably high threshold to require the development of network utilities to substantially protect the values of the scheduled resources. Some activities, such as a new electricity substation or line, often have a functional, operational and/or locational need to be located in particular areas where adverse effects are unavoidable and it may not be possible to substantially protect the values of the area. This is recognised by policies 3 and 8 of the NPSET.
47. Instead Transpower considers the threshold of "no practicable alternative location" is a sufficiently high threshold, provided this assessment involves consideration of the technical and operational requirements of the network utility. Alternatively, Transpower seeks that there is a separate policy framework for the National Grid in light of the requirement to give effect to the NPSET. For example, policy 4 of the NPSET provides that when considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.

*Relief sought*

48. Delete section 3A.3, policy 3.2 or alternatively add a National Grid specific policy as follows:

New development of the National Grid should seek to avoid adverse effects on the values of Wetlands, Lakes, Rivers and their Margins

scheduled in Appendix 1A, Significant Areas of Indigenous Forest/Vegetation (excluding Reserves) scheduled in Appendix 1B, and Outstanding Natural Features scheduled in Appendix 1C, while:

- (a) Considering the constraints imposed on achieving measures to manage environmental effects of National Grid infrastructure by the technical, locational and operational requirements of the network; and
- (b) Having regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site, and method selection.

### **Rule 3A.4.1 and Rule 3A.4.5**

#### *Reasons for appeal*

49. Transpower considers network utilities should generally be permitted within the National Grid Yard provided they comply with relevant standards. The exception is soil conservation, erosion protection, river control or flood protection works, and land drainage, stormwater control or irrigation works including pump stations. Transpower considers these activities undertaken within the National Grid Yard need to be regulated by way of resource consent in order to ensure that the operation, maintenance, upgrading, and development of the National Grid is not compromised.

#### *Relief sought*

50. Amend rule 3A.4.1 as follows:

The following network utilities are Permitted Activities throughout the District, provided that they comply with the standards in Rule 3A.4.2 below:

...

- (h) Soil conservation, erosion protection, river control or flood protection works undertaken by, or on behalf of the Manawatu Wanganui Regional Council except in the National Grid Yard.
- (i) Land drainage, stormwater control or irrigation works including pump stations except in the National Grid Yard.

...

51. Include a new clause within rule 3A.4.1 as follows:

- (q) Network Utilities (other than those identified in rule 3A.4.1(h) and (i)) undertaken within the National Grid Yard by a network utility operator (as defined in the Resource Management Act 1991).

52. Include a new clause within rule 3A.4.5 as follows:

Any irrigation works including pump stations located within the National Grid Yard are a Non-Complying Activity.

**Standard 3A.4.2(g)**

*Reasons for appeal*

53. Transpower considers network utilities (unless otherwise specified in the rules) should only have to comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (**NZEC34:2001**) .

*Relief sought*

54. Delete rule 3A.4.2(g)(ii).

**Standard 3A.4.2(l)**

*Reasons for appeal*

55. The existing permitted activity standard refers to works that are “not operation, maintenance, replacement or minor upgrading works” because it is intended these are permitted in the scheduled areas.

56. Transpower understands the intent of permitted activity standard 3A.4.2(l) is to ensure new network utilities are not located within the areas scheduled in Appendix 1A (Wetlands, Lakes, Rivers and their Margins), 1B (Significant Areas of Indigenous Forest/Vegetation (excluding Reserves)), 1C (Outstanding Natural Features), 1D (Trees with Heritage Value), 1E (Buildings and Objects with Heritage Value) and 1F (Sites with Heritage Value) of the District Plan. Transpower accepts new network utilities in these areas should not be permitted activities, and proposes a replacement permitted activity standard so this intent is clearer.

*Relief sought*

57. Delete standard 3A.4.2(l) and replace with the following:

Unless they are in an existing road corridor, new Network Utilities must not be located within the areas scheduled in Appendix 1A (Wetlands, Lakes, Rivers and their Margins), 1B (Significant Areas of Indigenous Forest/Vegetation (excluding Reserves)), 1C (Outstanding Natural Features), 1D (Trees with Heritage Value), 1E (Buildings and Objects with Heritage Value) and 1F (Sites with Heritage Value) of this Plan.

**Rule 3A.4.3**

*Reasons for appeal*

58. Transpower understands the intention is operation, maintenance, replacement or minor upgrading of network utilities in scheduled areas are permitted activities. This is not clear from rule 3A.4.3. Therefore Transpower has sought amendments to the rule, and to ensure alignment with the changes to the permitted activity standard. Further, these changes are considered to be necessary to give effect to the NPSET.

*Relief sought*

59. Amend rule 3A.4.3 as follows:

The following activities are Restricted Discretionary Activities in respect to network utilities, unless the activities are otherwise classified as discretionary or non-complying activities:

- (a) Any permitted activity that does not comply with any of the relevant standards in Rule 3A.4.2. ~~This rule does not apply to activities that do not meet standard (l) in Rule 3A.4.2 unless it meets the definition of minor upgrading, maintenance or replacement.~~

...

**Rules 3A.4.4 and 3A.4.5**

*Reasons for appeal*

60. Transpower considers new National Grid infrastructure within an Natural Feature or Landscape should be assessed as a discretionary activity. This status recognises that the National Grid is of national significance and is subject to technical, operational and locational constraints which can mean certain areas cannot be avoided. Discretionary activity status would also enable a full assessment of effects, including appropriate avoidance, remediation or mitigation measures.
61. While no new lines or facilities are currently planned in the district, Transpower may require a new National Grid transmission line or facility in the future, particularly to connect to a new source of electricity generation. Transpower seeks that this should be provided for as required by the NPSET and the National Policy Statement on Renewable Electricity Generation 2011.

*Relief sought*

62. Amend rule 3A.4.4 to add the following:

New above ground National Grid transmission line or support structure located within an Outstanding Natural Feature in Appendix 1C or within an Outstanding Natural Landscape is a discretionary activity.

63. Amend rule 3A.4.5 as follows:

Any new network utility located within an Outstanding Natural Feature ~~or Landscape~~ in Appendix 1C is a Non-Complying Activity, except for a new above ground National Grid transmission line or support structure which is a discretionary activity, unless it is minor upgrading, maintenance or replacement in which case Rule 3A.4.3 applies.

**Standard 3D.4.2(f) and Rules 3D.4.3 and 3D.4.5**

*Reasons for appeal*

64. The Council's decision regarding standard 3D.4.2(f) provides that earthworks undertaken in the National Grid Yard must be "for" the National Grid support poles and towers. This suggests the earthworks are undertaken for the National Grid, when the intent of the standard is to manage earthworks undertaken for third party activities. Earthworks undertaken by third parties can potentially compromise the security of supply and safety, and impinge on the ability of Transpower to maintain its assets.
65. The Roman numeral numbering within provision 3D.4.2(f) restarts from "i." midway through the provision. This creates confusion in referencing the provision. This is illustrated in the decision's version of rule 3D.4.3(a) which references standard 3D.4.2(f)(i) – (iv).
66. The Council's decision means earthworks undertaken in the National Grid Yard that fail to comply with the standard in 3D.4.2(f)(i) to (iv) are a restricted discretionary activity. Transpower considers this is the appropriate activity classification for all earthworks except those that do not comply with the standards in 3D.4.2(f)(v) or (vi).

67. Earthworks undertaken in the National Grid Yard that fail to comply with the standards in 3D.4.2(f)(v) or (vi) are classified as non-complying activities in the decision. Transpower agrees non-complying activity status is the most appropriate given the potential for significant adverse effects on the operation and safety of the National Grid if earthworks compromise the stability of a National Grid support structure, or fail to comply with the ground to conductor clearance distances in NZECP34:2001.

*Relief sought*

68. Amend the Roman numeral numbering in standard 3D.4.2(f) to be sequential and not restart from "i." from the exemptions regarding earthworks. Consequential amendments may be required for rules 3D.4.3 and 3D.4.5.
69. Amend standard 3D.4.2(f) as follows:

The Permitted Activities specified above must comply with the following standards:

...

- (f) Earthworks undertaken in the National Grid Yard:

~~For~~ Around National Grid support poles and stay wires:

- (i) Depth shall be no greater than 300mm within 2.2m of the pole or stay wire; and
- (ii) Depth shall be no greater than 750mm between 2.2m and 5m of the pole or stay wire.

~~For~~ Around National Grid support towers (including any tubular steel tower that replaces a steel lattice tower):

- (iii) Depth shall be no greater than 300mm within 6m of the outer edge of the visible foundation of the tower; and

- (iv) Depth shall be no greater than 3m between 6m and 12m of the outer edge of the visible foundation of the tower; and
- (v) Shall not compromise the stability of the National Grid support structure; and
- (vi) Shall not result in a reduction in the ground to conductor clearance distances below what is required by Table 4 of NZECP34:2001.

Provided that the following earthwork activities are exempt from the provisions (i)-(iv) above:

- (vii) By a network utility operator except for irrigation systems within a transport corridor as part of a transmission activity or for electricity infrastructure; or
- (viii) As part or agricultural or domestic cultivation; or
- (ix) Repair, sealing or resealing of a road, footpath, driveway or farm track; or
- (x) Any vertical holes not exceeding 500mm in diameter provided they are:
  - a) More than 1.5m from the outer edge of a pole support structure or stay wire; or
  - b) A post hole farm fence or horticulture structure and more than 65m from the visible edge of a tower support structure foundation.

**Guidance Note:** The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) contains restrictions on the location of structures and activities in relation to all electricity lines. Compliance with the Code of Practice is mandatory. Compliance with the permitted activity standards of the Plan does not ensure compliance with the Code of Practice.

### **Standard 3F.4.2**

#### *Reasons for appeal*

70. The Council's decision includes a new provision 3F.4.2(g) which excludes Military training activities covered by Rule A2 on the basis those activities are governed by that rule.
71. Military training activities within the National Grid Yard pose a risk to health and safety, and the National Grid and therefore clear rules should be in place to ensure these effects are adequately managed.

#### *Relief sought*

72. Delete 3F.4.2(g).

### **New Rule 3F.4.4**

#### *Reasons for appeal*

73. Chapter 3F includes a permitted activity standard 3F.4.2(f) which requires temporary activities, including buildings and structures, to be located outside of the National Grid Yard. However, if this standard is not complied with then the temporary activity is classified as a discretionary activity under rule 3F.4.3.
74. Transpower considers any temporary activities within the National Grid Yard should be classified as non-complying activities to ensure adequate protection of the National Grid. The permitted activity standard includes reference to buildings and structures, and as discussed above, these will have adverse effects on the operation, maintenance, upgrade, and development on the National Grid if they are located in close proximity to it.
75. A non-complying activity status is the most effective activity status, and sends a strong policy signal that temporary activities within the National Grid Yard are not appropriate. It also gives effect to Policy 10 of the NPSET, which directs councils to ensure that the National Grid is not compromised.

*Relief sought*

76. Amend chapter 3F to include a new rule 3F.4.4 for non-complying activities that reads:

Any temporary activity, including buildings and structures, located within the National Grid Yard shall be a Non-Complying Activity.

**Relief Sought**

77. Transpower seeks the following relief from the Court:
- (a) The relief specified in this notice of appeal under each heading “Relief sought”; or
  - (b) Such further, consequential or alternative relief as may be necessary or appropriate to give effect to the relief sought.
78. The following documents are attached to this notice of appeal:
- (a) A copy of Transpower’s submissions (with a copy of the submissions opposed or supported by Transpower’s further submission);
  - (b) A copy of the relevant parts of the decision of the Council; and
  - (c) A list of names and address to be served with a copy of this notice.



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A J L Beatson / N J Garvan  
Counsel for Transpower New Zealand Limited

Dated 13 June 2017

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**Advice to recipients of copy of notice of appeal**

*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the decision appealed. These documents may be obtained, on request, from the appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

## **Appendix A**

**A copy of Transpower's submissions (with a copy of the submissions opposed or supported by Transpower's further submission)**

## **Appendix B**

**A copy of the relevant parts of the decision of the Council**

## **Appendix C**

**A list of names and address to be served with a copy of this notice**