



**Mackenzie**

**DISTRICT PLAN REVIEW**

TOMORROW'S MACKENZIE  
KA AWATEA HŌU

# **Section 42A Report: Plan Change 26 – Renewable Electricity Generation and Infrastructure**

**Reply Report**

**Author: Liz White**

**Date: 12 June 2024**

## 1. Purpose and Scope of Report

1. The purpose of this Reply Report is to outline where my recommendations on PC26 have altered, as a result of the questions arising from the Hearing Panel, submitter evidence, matters traversed at the hearing, or through expert conferencing. It also addresses other matters arising in submitter evidence or during the course of the hearing where I consider further comment may be of benefit to the Hearing Panel. As such, other than where stated in this Reply Report, my opinions and recommendations remain as set out in the Section 42A Report<sup>1</sup> and in the Response to Minute 11.<sup>2</sup>
2. For the avoidance of doubt, where I do not comment further, this is not because I have not carefully considered matters raised in any evidence and in the presentations made by submitters. Rather, I am not persuaded that there is a need to alter my recommendations from that in the Section 42A report, and my reasoning has not changed from what is set out within that report.

## 2. Format of Report

3. This report is structured on a topic basis. For the reasons noted above, it does not however traverse all matters/topics discussed at the hearing.
4. A full set of the changes recommended to provisions are contained in **Appendices 1-3** to this Report, incorporating recommendations made in the Section 42A Report, the Response to Minute 11 and in this Reply Report. Changes recommended in the Section 42A Report are shown by way of ~~strikeout~~ and underlining. Changes recommended in the Response to Minute 11 and in this Reply Report are shown by way of ~~red strikeout~~ and red underlining. Changes previously recommend to be deleted but now recommended to be reinstated are shown in ~~red~~ without underlining. Changes previously recommended to be added but now recommended not to be included are shown in ~~red strikethrough with black underlining~~. Footnoted references to the relevant submitter(s), and where applicable, submitter evidence, identify the scope for each recommended change. Changes agreed through planner conferencing are shown by way of ~~orange strikeout~~ and orange underlining. Changes previously recommend to be deleted but agreed through planner conferencing to be reinstated are shown in ~~orange~~ without underlining. Changes previously recommended to be added but now agreed through planner conferencing not to be included are shown in ~~orange strikethrough with black underlining~~.
5. Where required, an evaluation under s32AA of the RMA is undertaken of any further changes recommended.

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<sup>1</sup> Section 42A Report: Plan Change 26 – Renewable Electricity Generation and Infrastructure, 19 April 2024.

<sup>2</sup> PC26 Section 42A Report Author’s Response to Hearings Panel Questions.

### 3. INF Chapter

#### INF-P4

6. Transpower sought changes to INF-P4, which I had concerns would result in operational and functional needs ‘trumping’ the other matters; whereas I considered the notified wording more appropriately balanced the need to manage infrastructure to meet the criteria set out in the clauses at the same time as taking into account operational and functional needs.<sup>3</sup> In her evidence, Ms McLeod raised concerns that insofar as the Policy relates to the National Grid, the proposed wording would not give effect to the NPSET or the CRPS because it may require all elements of the policy to be achieved as opposed to directing a balancing.<sup>4</sup> To address this, and in her view properly give effect to the NPSET and CRPS, while avoiding my concern about operational and functional needs ‘trumping’ the other matters, she proposed alternate wording for the policy.
7. Having considered Ms McLeod’s alternate wording and the reasons for it, I agree that the changes she supports are more appropriate and avoid the concerns I expressed.

#### ***Recommendation***

8. I recommend, for the reasons given above, that INF-P4 is amended to require that consideration is given to how the management of the adverse effects directed in clauses 1. and 2. of the policy may be constrained by the operational needs and functional needs of the infrastructure.
9. The recommended amendments are set out in **Appendix 1**.
10. I consider that the changes better give effect to the NPSET or the CRPS with respect to the National Grid, and that they otherwise more clearly express the balance required between operational needs and functional needs and the management of adverse effects. In my view, the amendment wording will be more effective at achieving INF-O2.

#### INF-R3

11. In her evidence, Ms Crossman (for OWL) continues to seek changes to INF-R3 (and REG-R2)<sup>5</sup> so that a new permitted activity condition is included in INF-R3 and REG-R2, which reflects the wording of the permitted activity standards in INF-R6. It remains my view that such a standard is unnecessary, as a new building or structure would already be subject to INF-R6. I therefore consider it to be inefficient to duplicate this rule.

#### INF-R8

12. Alpine Energy continue to be concerned about the requirement to underground new lines, particularly in RLZ.

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<sup>3</sup> Section 42A Report: Plan Change 26 – Renewable Electricity Generation and Infrastructure, 19 April 2024, para 96.

<sup>4</sup> Statement of Evidence of Ainsley Jean McLeod on behalf of Transpower New Zealand Limited, para 37.

<sup>5</sup> Statement of Evidence of Julia Margaret Crossman for Opuha Water Limited, paras 5.30 – 5.40.

13. As acknowledged by the submitter, the proposed requirement is as per the Operative Plan. I understood, in response to a Panel question, that the concern is about the expansion of RLZ proposed through PC25, and therefore the increase in where the requirement would apply. I note that there is no new RLZ proposed in Twizel and therefore the only additional extension is in two areas (Claytons Road and Nixons Road) in Fairlie.
14. I have reviewed a recent subdivision consent granted by the Council in Nixons Road, and note that it includes a condition requiring that a consent notice be included requiring that all new electricity lines servicing lots and buildings within the subdivision are to be undergrounded. I have been advised by Ms Willox that this is a condition that is commonly applied to rural subdivisions. I therefore do not consider the express requirement through INF-R8 to underground electricity lines in the RLZ to have unreasonable costs, given it does not impose any greater requirements than already being included on subdivision consents.
15. Because the areas to which the rule will apply in Twizel are already subject to the requirement for undergrounding, I do not consider that continuation of the status quo will result in additional costs. It also ensures an equitable approach is taken to further development within these areas.
16. With respect to the Industrial areas, a small infill expansion to the Fairlie Industrial area was made through PC21 and in Twizel and Tekapo the extent of the Industrial area has not increased, rather some parts of the previous industrial zone are now zoned Large Format Retail. I continue to consider that requiring undergrounding in these areas is appropriate given that they are within the urban area, and in Tekapo and Twizel, they sit alongside an ONL.
17. As a minor matter, and for the avoidance of doubt, I note that the submitter made a comment that the electricity distribution network was not considered to be regionally significant infrastructure (RSI) in the CRPS. However, this is not correct, as the electricity distribution network is included in clause 14 of the definition of RSI in the CRPS, and is similarly included in the proposed definition in PC26 (in clause h).

### **INF-S3**

18. In his evidence Mr Anderson supports additional changes to INF-S3, which sets height standards for poles, towers and other support structures, including:
  - a. A 20m height limit in any commercial and mixed use zones; and
  - b. A 35m height limit in any Rural Zone outside an ONF/ONL.
19. In the Section 42A report I noted that the different commercial and mixed use zones across the district have different characteristics, and therefore my view was that the same height limit would be inappropriate.<sup>6</sup> Following further discussion with the Telcos and Mr Anderson, they have advised that due to the nature and scale of the NCZ and MUZ, and having reviewed the

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<sup>6</sup> Section 42A Report: Plan Change 26 – Renewable Electricity Generation and Infrastructure, 19 April 2024, para 168.

existing coverage in each of the towns in which these zones are located, they are comfortable with the permitted heights of 16m and 16.5m recommended respectively for these zones, (being 5m above the permitted height limit otherwise applying in each of these zones).

20. I agree with amending the height limit for the other commercial and mixed use zones, being LFRZ and TCZ, to 20m, noting that this applies a standardised limit that is similar to the height that was already recommended (i.e. the permitted height limit otherwise applying in each of these zones, plus 5m).
21. With respect to the height applying in rural areas, I note my Anderson's evidence that:
  - a. Poles and towers are generally relatively slimline structures.
  - b. There are benefits to standardisation of height by providing greater certainty and removing the need to have to design a bespoke solution each time a network needs to be upgraded or augmented.
  - c. Large trees are one of the most significant barriers to the efficient functioning of a mobile phone antenna.
  - d. The radio frequency fields emitted from 5G antennas are larger than previous generations of technology, and to ensure compliance with radiofrequency emissions from the Telcos, antennas need to be placed on correspondingly higher poles.
  - e. The way that the NESTF and the District Plan interrelate, means that providing a "permitted" height of 35m in the District Plan will actually result in a controlled activity status applying for poles/towers which are between 25m and 35m.<sup>7</sup>
22. Based on Mr Anderson's reasoning, I am comfortable with increasing the height to 35m in the GRUZ. This reflects that this is the zone applying to the vast majority of the District and the area where large trees are likely to be more prevalent. I do not consider that it is appropriate to amend the height in the RLZ however, which are smaller areas located adjoining urban areas, and where the difference in the height limit between those urban zones and the RLZ would be more pronounced. I also consider large trees are less likely to create an issue in this zone. I therefore consider it appropriate for a more stringent activity status to apply in the RLZ for poles/towers which are between 25m and 35m, to align with INF-P4.
23. Mr Anderson also sets out changes to the way the antennas are managed, such that rather than these being exempted from meeting the height limits where they meet specified widths/diameters, they are separately managed so that they must meet both the height limits specified as well as the specified widths/diameters. I understand that this will align with the

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<sup>7</sup> Statement of Evidence of Tom Anderson on Behalf of Chorus New Zealand Limited, Connexa Limited, Aotearoa Tower Group, One New Zealand Group Limited and Spark New Zealand Trading Limited, para 16.

approach taken with the NESTF and in other district plans.<sup>8</sup> I am comfortable that Mr Anderson's drafting better manages antennas, because it does not result in an increase in height for them (they are instead required to meet the height limit otherwise applying in the standard) and also aligns the requirements relating to size with those set out in the NESTF – rather than applying these only as an exemption.

### ***Recommendation***

24. I recommend, for the reasons given above, that INF-S3 is amended to:
- increase the height limit applying to the LFRZ and TCZ to 20m;
  - increase the height limit applying to the GRUZ (outside ONLs/ONFs) to 35m; and
  - apply a separate standard to panel or dish antenna attached to a pole, tower or other support structure, specifying both height limits and widths/diameters.
25. The recommended amendments are set out in **Appendix 1**.
26. Under s32AA, I consider that these changes better provide for telecommunications infrastructure, particularly in the GRUZ, recognising the benefits of this infrastructure to the functioning of the District (INF-P1), while also ensuring that the height limits are compatible with the values and anticipated character of the surrounding environment (INF-P4). I consider that there are efficiencies from better aligning the standard with the NESTF and that the revised approach to managing antenna is clearer.

### **Relationship with Other Chapters**

27. As a result of conferencing undertaken in relation to the REG Chapter provisions (discussed further below), I recommend that similar changes are made to the Introduction to the INF Chapter. This includes:
- a. Amending the way the relationship between other provisions is described; and
  - b. Removing the column in Table X which refers to Stage 4 of the District Plan Review.
28. As a result of reconsidering where the rules relating to indigenous vegetation clearance are located, I consider that as with the REG Chapter, the rules relating to indigenous vegetation clearance which is associated with an activity managed in the INF Chapter, should be shifted into the INF chapter (and therefore proposed Rule 1.2.4 deleted). I consequentially recommend that the Introduction is amended to reflect this, by referring only to those rules already in the EIB Chapter that apply to specific infrastructure activities. I note that as a result of conferencing, the effect of Rule 1.2.5 (applying to REG activities) was changed, and limited to managing only significant indigenous vegetation and significant habitats of indigenous fauna, with clauses relating to this added to the relevant permitted activities in the REG Chapter. I do not consider

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<sup>8</sup> Statement of Evidence of Tom Anderson on Behalf of Chorus New Zealand Limited, Connexa Limited, Aotearoa Tower Group, One New Zealand Group Limited and Spark New Zealand Trading Limited, para 32.

there to be the same scope to change the effect of the infrastructure-related clearance rule (i.e. proposed Rule 1.2.4), and note that all infrastructure is not subject to a national policy statement in the same way that all REG activities are. Therefore, I have not recommended limiting the rule to be shifted into the INF chapter to significant areas only. Given the larger range of activities managed in the INF Chapter, I have also proposed a slightly different drafting approach, by including the vegetation clearance matter as a standard, applying to those permitted activities which are not otherwise managed under Rule 1.1.1.1 in the EIB Chapter.

29. I note that through conferencing changes were also recommended in relation to the application of the Earthworks Chapter rules to REG activities. I have considered whether similar changes should be made to the INF Chapter, but because of the greater number of rules in the INF Chapter that would need to be amended to refer to the Earthworks Chapter, I consider it more efficient to retain the current approach.

#### ***Recommendation***

30. I recommend, for the reasons given above, that changes are made to the Introduction to the INF Chapter to align it with those recommended to the REG Chapter.
31. I recommend, for the reasons given above, that Rule 1.2.4 is deleted, and included instead as a standard in the INF Chapter, applying to all permitted activity rules (except those otherwise managed under Rule 1.1.1.1 in the EIB Chapter).
32. The recommended amendments are set out in **Appendix 1**.
33. I note that shifting the indigenous vegetation clearance provisions into the INF Chapter does not alter the way the provisions currently apply, but along with the amendments to the Introduction, provide greater clarity as to how the INF and EIB chapters relate to each other. I therefore consider the original s32 evaluation applies.
34. I consider that the other changes to the Introduction provide greater clarity and will therefore improve the administration of the District Plan.

## **4. REG Chapter**

35. As a result of the evidence received from Mr Matthews (for Genesis) and Ms Ruston (for Meridian), the Hearing Panel requested that conferencing be undertaken on the wording of provisions in the REG Chapter (question 1). That conferencing resulted in the preparation of a Joint Witness Statement (JWS) and related set of agreed provisions. This has resolved all matters between those parties who provided planning evidence in relation to the provisions that Genesis and Meridian made submissions on. Because of the detail provided in the JWS on the reasoning for the agreed changes, I do not repeat those reasons here.
36. With respect to other parties, I note the following:

- a. EDS are comfortable with clarification that Section 19 (except Policies 2 and 3) applies to the REG Chapter, and this satisfies concerns with REG-P4;<sup>9</sup>
- b. EDS support the changes recommended in the s42A in relation to REG-P4,<sup>10</sup> to add the words “*where they do not compromise the values of the area in which they are located*”; and
- c. EDS continue to pursue the inclusion of environmental limits for indigenous biodiversity akin to the approach adopted by INF-P7, noting that the s42A Report recommended rejecting the submission on the basis that the NPSIB does not apply to REG, but in their view, this overlooks ss6(c) and 31(1)(b)(iii) of the RMA.<sup>11</sup>
- d. Forest and Bird continue to consider that all of the EIB Section (including policies 2 & 3) should apply to both the REG and INF chapters, as while accepting that the NPSIB does not apply to REG, they note that ss6(c) and 31(1)(b)(iii) of the RMA still apply, as well as the CRPS, and in particular Chapter 9. The summary states that new REG activities need “*to occur in places that does not cause further loss of or harm to indigenous biodiversity*”.<sup>12</sup>
- e. OWL continue to seek that a new permitted activity condition be included in REG-R2, which reflects the wording of the permitted activity standards in INF-R6. Ms Crossman states that the spatial extent of any upgrade would be addressed by the s42A recommendation to require, as a permitted activity condition in INF-R3, increases to 25% of the existing footprint, or 50m<sup>2</sup> in area, whichever is lesser.<sup>13</sup>

37. With respect the point a. I note that this has changed as a result of the planning conferencing, to better clarify that it is only those provisions in Section 19 which already apply to the Waitaki Power Scheme and Opuha Scheme which continue to apply to those REG activities. For new REG activities, the provisions in the REG Chapter, which include management of indigenous biodiversity, will instead apply. With respect to point b., changes to REG-P4 have also been agreed through the planner conferencing. I also note that proposed Rule 1.2.5 in the EIB Chapter is recommended to be deleted, but subsequent amendments made to REG-R5 and REG-R6 to include requirements relating to significant indigenous vegetation and significant habitats of indigenous fauna – which are the rules which relate to the direction in REG-P4. In my view, these amendments ensure that these activities (investigation activities and small-scale REG activities) appropriately manage effects on indigenous biodiversity.

38. With respect to points c. and d. above, it is my view that s6(c) does not require a bottom line/apply an environmental limit. I accept that it elevates the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national

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<sup>9</sup> Legal submission on behalf of the Environmental Defence Society, para 23.

<sup>10</sup> Legal submission on behalf of the Environmental Defence Society, para 22.

<sup>11</sup> Legal submission on behalf of the Environmental Defence Society, para 23.

<sup>12</sup> Forest & Bird Mackenzie DPR PC 23 and PC26Hearing notes, paras 13-17.

<sup>13</sup> Statement of Evidence of Julia Margaret Crossman for Opuha Water Limited, paras 5.30 – 5.40.



importance, but in considering how the provisions achieve the overall sustainable management purpose of the RMA, this needs to be considered alongside a range of other matters, and in particular the NPS-REG. In a similar vein, I do not agree that the functions given to the Council relating to the control of any actual or potential effects of the use, development, or protection of land for the purpose of maintaining indigenous biodiversity requires a bottom line or fixed environmental limits to be applied. I also disagree that ss6(c) and 31(1)(b)(iii) require a restriction to be placed on REG activities such that they cannot in any instance cause further loss of or harm to indigenous biodiversity. In terms of the application of the EIB policies, I note that if the policies in the EIB Section are applied, then conflict arises with the policies in the REG and INF chapters themselves which also relate to effects on indigenous biodiversity. In my view it is not efficient nor effective to create such conflict.

39. With respect to OWL, I note that the recommended change to INF-R3 does not apply to activities managed under REG-R2. As such, my view remains as set out in paragraph 262 of the s42A report. In particular, I reiterate that INF-R3 is limited to 'existing' hydroelectric power stations and structures and therefore does not apply to new structures in any case – thus the addition of a condition relating to new buildings or structures would conflict with the rule itself, which is limited to existing structures.

#### ***Recommendation***

40. I recommend that:
- the REG Chapter provisions are amended as set out in the Joint Witness Statement, for the reasons set out therein; and
  - Rule 1.2.5 is deleted, for the reasons set out in the Joint Witness Statement.
41. The recommended amendments are set out in **Appendix 2** (REG Chapter) and **Appendix 3** (Section 19).
42. In terms of s32AA, I consider that the change to REG-O1 better aligns the wording of the objective with the outcomes sought in the NPS-REG, and also makes it clearer that the overall outcome sought relates to increasing output in order to support the achievement of the Government's targets – rather than the outcome sought being simply an increase in output for its own sake. I consider that these changes provide greater clarity, but do not alter the overall intent of the provision.
43. I consider that the change to REG-O2, which seeks to recognise and provide for the national significance of REG activities as part of the management of the activities' adverse effects, better reflects the NPS-REG and is therefore appropriate in giving effect to it.
44. I consider that the changes to the introduction, policies and rules in the REG Chapter are appropriate, for the reasons set out in the JWS. I consider that these changes will better achieve the objectives because:

- a. They better align with the direction in the NPS-REG and therefore the requirement for the district plan to give effect to it;
  - b. The relationship between provisions in the REG Chapter and those in other chapters is clarified, resulting in a more efficient framework; and
  - c. There is clearer direction at the policy level linking the permitted activity to the outcomes which they seek to achieve.
45. With respect to shifting the management of earthworks associated with any new road or access track into the REG Chapter, I note that this does not alter the intent or effect of the rules but provides a clearer framework for plan users.
46. With respect to deleting Rule 1.2.5, and instead adding permitted activity conditions into REG-R5 and REG-R6, I consider that this allows for adverse effects of indigenous vegetation clearance associated with REG activities to be managed along with other adverse effects of these activities, which is a less complex (and therefore more efficient) approach. The application of the permitted activity condition to significant areas only is a more targeted approach than requiring a resource consent for any vegetation clearance associated with investigation activities and small-scale REG activities. In my view, it reflects the nature and scale of these REG activities are limited, and therefore potential effects on other (non-significant) indigenous biodiversity is likely to be minimal. As such, it is not expected to compromise the Council's obligations under s31(1)(b)(iii) in terms of the overall maintenance of indigenous biodiversity. In having regard to the benefits of REG activities, and the anticipated scale of effects I therefore consider that it is a more efficient approach to achieve REG-O2.

## 5. Tabled Statements

47. This section responds to the request by the Hearing Panel for S42A officers to cover off any points still being pursued in tabled statements by identifying where any of my recommendations have changed or clarification can be provided.

### Defence Facilities

48. NZDF continue to consider that defence facilities should be included in the definition of Infrastructure and the Tekapo Military Training Camp (TMTC) in the definition of Regionally Significant Infrastructure (RSI). As explained in the s42A report, changes to the definition of infrastructure are not within the scope of PC26 as this is an operative term, and changes to it would affect other (settled) chapters in the Plan such as the Strategic Directions chapters.
49. With respect to including the TMTC in the definition of RSI, for the reasons set out in response to Hearings Panel, I do not agree that the TMTC is included in the CRPS' definition of RSI. Even setting this aside, from a practical perspective, the things controlled in the INF chapter tend to be linear or network-based facilities, and this is why a non-zone based approach is appropriate. In my view, the same does not apply to the TMTC. In particular, it is unclear to me what would be gained by the application of the INF Chapter framework to the TMTC. Individual

infrastructure facilities within the TMTC will, in any case, be subject to the rules in the INF chapter; and temporary activities relating to military training are also addressed in Section 14 – Temporary Activities and Environmental Noise (which will be reviewed as part of Stage 4). The TMTC is located within the GRUZ, and I note that Mr Boyes has recommended changes to GRUZ-O2 that seek to ensure that activities that have a functional or operational need to locate in the Zone (which would include the TMTC) can operate without risk of being compromised by reverse sensitivity. This is supported at a policy level, with explicit direction to avoid reverse sensitivity effects on the Tekapo Military Training Area (GRUZ-P3). Therefore, I do not consider that there is anything to be gained by including TMTC in the definition of RSI, because the provisions applying to it through the GRUZ framework offer it no less protection that if it was included in INF-O3.

## **FENZ**

50. I have reviewed the statement tabled by FENZ relating to their submission points on PC26. It is my view that poles and towers associated with emergency services facilities do not fall within the definition of infrastructure. As such, they will be subject to the built form standards set out in the zone provisions. My understanding is that this is acceptable to FENZ.
51. With respect to the inclusion of firefighting water supply requirements for REG activities (in REG-R6 and REG-R7), my view on these points remains as set out in paragraph 289 of the s42A Report. I also note that there are no requirements (or, where applicable, matters of discretion) in relation to firefighting water supply contained in the REG provisions relating to small-scale REG activities and other REG activities in the Partially Operative Selwyn District Plan (EI-R30 and EI-31) or proposed Waimakariri District Plan (EI-R40, EI-R41, EI-R43 and EI-R44).