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| **BEFORE INDEPENDENT COMMISSIONERS APPOINTED BY MACKENZIE DISTRICT COUNCIL** |
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| In the matter of |
| **the Resource Management Act 1991** |
| and |
| **Proposed Plan Change 18 (Indigenous Biodiversity) to the Mackenzie District Plan** |
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| **Statement of Evidence of Ainsley Jean McLeod on behalf of Transpower New Zealand Limited**  **dated 12 February 2021** |
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Introduction

1. 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.

2. I am a self-employed planner, trading as Ainsley McLeod Consulting. I have over 20 years' experience in planning practice, primarily as a consultant planner based in Wellington and Christchurch, 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.

3. 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.

1. More specifically, I have provided expert planning advice to Transpower New Zealand Limited (“Transpower”) since 2001 in relation to new and upgraded National Grid transmission lines and substations, along with the relevant planning instruments including the National Policy Statement on Electricity Transmission 2008 (“NPSET”) and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (“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.
2. I assisted with the preparation of Transpower’s further submission on Proposed Plan Change 18 (Indigenous Biodiversity) to the Mackenzie District Plan (“Proposed Plan Change”) and am now engaged to provide expert planning evidence in relation the matters that have been raised in Transpower’s further submission.

Code of conduct

1. Although this matter is not before the Environment Court, I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as contained in the Court’s 2014 Practice Note. I have complied with the Code of Conduct when preparing my written statement of evidence, and will do so when I give oral evidence before the Hearing Panel.
2. I have outlined my expert qualifications above. I confirm that the issues addressed in this statement of evidence are within my area of expertise. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of evidence

1. My evidence:
   1. confirms Transpower’s assets and interests in Mackenzie District;
   2. briefly sets out the statutory requirements for the Proposed Plan Change in relation to the NPSET and the operative Canterbury Regional Policy Statement 2013 (“CRPS”);
   3. describes Transpower’s further submission on the Proposed Plan Change; and
   4. responds to the recommendations (as relevant to the relief sought by Transpower) made in the ‘Mackenzie District Plan Proposed Plan Change 18 – Indigenous Biodiversity Section 42A Hearing Report’ dated 14 December 2020 (“Section 42A Report”).
2. 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 further submission:
3. the relevant primary submissions; and
4. the ‘Stage 1 District Plan Review - Indigenous Biodiversity Section - Section 32 Evaluation’ dated 10 December 2017 (“Section 32 Evaluation”).
5. My analysis and consideration of the matters raised in Transpower’s further submission (and the associated primary submissions) is informed by the statutory framework for decisions set out in the Resource Management Act 1991 (“RMA”) and the on-going guidance provided by the modified Long Bay test.[[1]](#footnote-1) This statutory framework is generally referred to in the Section 42A Report and I will not repeat it here.
6. Where amendments to the provisions of the Proposed Plan Change are suggested in, and supported by, my evidence, these amendments are shown in ***blue***.

The National Grid and Transpower’s assets in Mackenzie District

1. Transpower is the owner and operator of the National Grid. The National Grid is an extensive linear electricity transmission network that operates at a regional and national level and shifts electricity from the point of generation, such as the Waitaki Power Scheme, to substations feeding the local networks that distribute electricity to homes and businesses.
2. The National Grid has operational requirements and engineering constraints that dictate and constrain where it is located and the way in which it is operated, maintained, upgraded and developed, including the location of electricity generation.
3. Transpower’s assets in Mackenzie District are as follows and as shown on the map included as **Attachment 1**:
   1. Benmore – Haywards A (BEN-HAY-A) 350kV HVDC overhead transmission line on towers;
   2. Benmore – Islington A (BEN-ISL-A) 220kV overhead transmission line on towers;
   3. Benmore – Twizel A (BEN-TWZ-A) 220kV overhead transmission line on towers;
   4. Christchurch – Twizel A (CHH-TWZ-A) 220kV overhead transmission line on towers;
   5. Ohau A – Twizel A (OHA-TWZ-A) 220kV overhead transmission line on towers;
   6. Roxburgh – Twizel A (ROX-TWZ-A) 220kV overhead transmission line on towers;
   7. Tekapo A – Timaru A (TKA-TIM-A) 110kV overhead transmission line on poles (including pi poles);
   8. Tekapo B – Deviation A (TKB-DEV-A) 220kV overhead transmission line on towers;
   9. Twizel – Deviation A (TWZ-DEV-A) 220kV overhead transmission line on towers;
   10. Albury Substation;
   11. Ohau A Substation;
   12. Tekapo A Substation;
   13. Tekapo B Substation;
   14. Twizel Substation; and
   15. two communications sites (Mt Mary and Tekapo A).

The relevant statutory framework

National Policy Statement on Electricity Transmission 2008

1. The national significance of the National Grid is recognised, in the context of the RMA, by the NPSET.
2. Section 75(3) of the RMA requires district plans to “give effect to” the NPSET. The requirement to “give effect to” is a strong statutory directive compared to other directives in the RMA and was interpreted in the *EDS* v *New Zealand King Salmon* Supreme Court case as meaning “to implement”.[[2]](#footnote-2)
3. The Preamble[[3]](#footnote-3) to the NPSET describes the rationale for the NPSET. It states that *“the efficient transmission of electricity on the National Grid plays a vital role in the well-being of New Zealand, its people and the environment”*. The Preamble notes that the National Grid has particular physical characteristics and operational/security requirements that have been challenging to manage under the RMA. It also acknowledges the potential significance of some effects of transmission lines (including the inability for these to be avoided or mitigated). It notes that adverse effects are experienced at the local level, while benefits are regional or national, requiring a balanced consideration of effects and recognises the importance of consistent policy and regulatory approaches by local authorities.
4. The NPSET has a single Objective as follows:

*“**To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:*

*- Managing the adverse environmental effects of the network; and*

*- Managing the adverse effects of other activities on the network.”*

1. The Objective is supported by 14 Policies. The following Policies are relevant to obligations the NPSET places on decision-makers in the context of Transpower’s further submission on the Proposed Plan Change:
   1. *“… decision-makers must recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission. …”* (Policy 1);
   2. *“… decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.”* (Policy 2);
   3. *“When considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-makers must consider the constraints imposed on achieving those measures by the technical and operational requirements of the network.”* (Policy 3);
   4. *“… decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets”* when considering environmental effects associated with transmission activities (Policy 5); and
   5. *“should seek to avoid the adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreational value and amenity and existing sensitive activities*” (Policy 8).

Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009

1. The national significance of the National Grid is also recognised by the NESETA that establishes a national regulatory framework for activities related to existing National Grid transmission lines, including the removal of vegetation. Many of Transpower’s activities are expressly permitted or controlled by the NESETA.
2. Every local authority and consent authority must observe these national standards. Local authorities must ensure that plans do not include rules that are stricter, or more lenient, than those covered by the NESETA. [[4]](#footnote-4)

The Canterbury Regional Policy Statement 2013

1. As for the NPSET, section 75(3) of the RMA requires the District Plan to give effect to the CRPS.
2. The CRPS identifies the National Grid as regionally significant infrastructure and includes a policy that specifically relates to the National Grid as follows:

*“****16.3.4 Reliable and resilient electricity transmission network within Canterbury***

*To encourage a reliable and resilient national electricity transmission network within Canterbury by:*

*1. having particular regard to the local, regional and national benefits when considering operation, maintenance, upgrade or development of the electricity transmission network;*

*2. avoiding subdivision, use and development including urban or semi urban development patterns, which would otherwise limit the ability of the electricity transmission network to be operated, maintained, upgraded and developed;*

*3. enabling the operational, maintenance, upgrade, and development of the electricity transmission network provided that, as a result of route, site and method selection, where;*

*a. the adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable, remedied or mitigated; and*

*b. other adverse effects on the environment are appropriately controlled.”*

1. The CRPS directs territorial authorities to, amongst other matters, “*enable the operation, maintenance, upgrade and development of the national electricity transmission network, while avoiding or mitigating adverse effects on the environment identified in Policy 3.4(3)(a) - (b) above and appropriately controlling other adverse effects as referred to in Policy 16.3.4(3)(b)*”.
2. In respect of ecosystems and indigenous biodiversity, the Section 42A Report[[5]](#footnote-5) describes in detail the relevant provisions of Chapter 9 of the CRPS, and I do not repeat them here.
3. In my opinion, Policy 16.3.4, along with the provisions in Chapter 9, of the CRPS are the most relevant and pivotal to the consideration of Transpower’s further submission and the related primary submissions. The remainder of my evidence addresses the relief sought in these submissions.

Biodiversity – New Objective

1. Transpower’s further submission supports the primary submissions of Genesis Energy Limited (“Genesis”) and Meridian Energy Limited (“Meridian”) that seek the inclusion of a new objective in Section 19 in respect of activities associated with the Waitaki Power Scheme. Transpower seeks that the submission be allowed, with the submitters’ relief amended to also include reference to the National Grid.
2. The Section 42A Report concludes:

*“In my view the policies and related rules in Chapter 19 are intended to achieve both the objectives in Section 7 and those in Section 19. Having considered the existing objectives in the MDP, and in particular Rural Objectives 3B and 11, I do not consider an additional objective relating to either the WPS more broadly, or in relation to clearance related to the WPS, to be necessary to include in Section 19.”*[[6]](#footnote-6)

1. I agree with the conclusion reached in the Section 42A Report and am also of the view that objectives can be implemented by provisions located in different parts of a district plan. I particularly note that Objective 3B includes a broad outcome “*To maintain and develop structures and works for the Waitaki Power Scheme’*. This is generally consistent with the enablement of activities for the Waitaki Power Scheme sought in the submissions albeit without more specific content in respect of indigenous vegetation clearance.

**Biodiversity Policy 2**

1. Transpower’s further submission supports in part the primary submission made by Genesis Energy Limited that seeks the following amendments to Policy 2:

*“2. To avoid, remedy or mitigate, adverse effects of land use activities on ~~the natural character and~~ significant indigenous vegetation and significant habitats of indigenous fauna in ~~indigenous land and water ecosystems functions in~~ the District ~~including:~~*

*~~a) Landform, physical processes and hydrology~~*

*~~b) Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas~~*

*~~c) Aquatic habitat and water quality and quantity~~.*

*2A. To manage, or offset or compensate, actual or potential effects of the use, development and protection of land to maintain indigenous biological diversity in the District.”*

1. Transpower’s further submission generally support the proposed amendments to Policy 2 but seeks that new clause 2A be amended to refer to offsetting and compensation being proposed or agreed to by an applicant.
2. Transpower’s further submission also supports the primary submission made by Meridian that seeks similar amendments to Policy 2 but does not make reference to offsetting or compensating for adverse effects.
3. The Section 42A Report recommends substantial changes to the biodiversity policy framework as a whole, as follows:

*“Because overall my view aligns with those submitters seeking substantive changes to the policy, including its deletion and replacement with a policy that focuses on how adverse effects are managed, I note that there is the potential for overlap with Policies 3 and 5, in relation to significant areas. I therefore recommend, that the matters set out above pertaining to significant areas are captured in policies 3 and 5 instead. I recommend that Policy 2 is, in effect, deleted and replaced with a policy setting out how effects on non-significant areas are to be managed. The recommended policy is based on that suggested by EDS, those components of the notified policy that I consider are important to retain, and taking into account CRC’s broader comments about providing clearer direction on how significant and non-significant areas are to be managed. While it is different to the wording sought by Meridian and Genesis I consider it generally aligns with the intent of their submissions.”[[7]](#footnote-7)*

1. I have reviewed the provisions as recommended in the Section 42A Report, in so far as they relate to the management of adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna, and I agree that there is generally alignment with the relief sought in the primary submissions (supported by Transpower’s further submission) subject to two matters set out below in respect of the approach to ‘no net loss’ and the requirement for ‘offsetting’.
2. Policy 3 (now numbered Policy 2) is recommended to be amended to read:

*“~~Rural~~ Land use and development, including indigenous vegetation clearance and pastoral intensification, only occurs in a way or at a rate that provides for no net loss of significant indigenous biodiversity values ~~in areas identified as significant~~.”*

1. In my opinion, the deletion of “in areas identified as significant” in Policy 2 has the effect of applying a no net loss approach outside of areas that are identified as significant. Such an approach goes beyond what is suggested in the Section 42A Report and is not consistent with the direction given in the CRPS. That is, clause 3 of Policy 9.3.1 of the CRPS requires “*areas identified as significant will be protected to ensure no net loss of indigenous biodiversity or indigenous biodiversity values as a result of land use activities*” and the Section 42A Report concludes:

*“I note that EDS & DOC seek that a no net loss approach is taken to all biodiversity. This is not required by the CRPS, but I agree with them that this approach could still be taken, if it is considered the most appropriate way to achieve the outcomes sought in the MDP for indigenous biodiversity more broadly. In my view, this is not the case, because: it does not distinguish between the approach taken to significant areas and non-significant areas, and therefore applies a higher threshold to non-significant areas; and the MDP proposes an integrated approach through the use of FBPs, which allows for the overall impact on indigenous biodiversity. In my view, this is a more appropriate way to ensure maintenance of indigenous biodiversity than a narrower focus on no net loss.”[[8]](#footnote-8)*

1. In order to better give effect to CRPS Policy 9.3.1, and to achieve the differentiated management approaches alluded to in the Section 42A Report, I support the following further amendment to recommended Policy 2:

*“~~Rural~~ Land use and development, including indigenous vegetation clearance and pastoral intensification,* ***in areas identified as significant,*** *only occurs in a way or at a rate that provides for no net loss of* ***significant*** *indigenous biodiversity values ~~in areas identified as significant~~.”*

1. As set out above, the Section 42A Report recommends that notified Policy 2, is deleted and replaced. In this regard, it appears that the new clause 2A sought in the submission made by Genesis (and the subject of Transpower’s further submission) has been addressed in recommended Policy 3. That is, Policy 3(d) requires the offsetting of significant residual adverse effects.
2. Transpower’s further submission seeks amendments to the relief sought by Genesis to clarify that the RMA includes a clear direction in sections 104(1)(ab) and 171(1B) that offsetting and compensation measures must be proposed or agreed by an applicant or requiring authority respectively.
3. In my opinion it is appropriate for recommended Policy 3 to aligned with the RMA approach to the consideration of resource consents and notices of requirement by clarifying that offsetting and compensation measures must be offered or agreed, rather than required. Further, in respect of the National Grid, such an approach better gives effect to the NPSET because the NPSET does not direct or require the offsetting of residual effects of the National Grid (rather, the NPSET anticipates residual effects).
4. For these reasons I support the following amendment to Policy 3:

*“To manage the adverse effects of activities on significant indigenous vegetation and significant habitats of indigenous fauna by:*

*(a) avoiding the adverse effects of vegetation clearance and the disturbance of habitats as far as practicable; then*

*… and*

*(d) where there are any significant residual adverse effects, offsetting them in accordance with Policy 6****, where such measures are offered or agreed by an applicant or requiring authority****.”*

**Biodiversity Policy 7**

1. Transpower’s further submission supports in part the primary submissions made by Genesis and Meridian that seek a range of amendments to Policy 7. Policy 7, as notified, recognises the importance of renewable energy general and transmission. The primary submissions generally seek the inclusion of a number of additional clauses that sets out a more detailed approach to the management of indigenous vegetation clearance as part of Waitaki Power Scheme.
2. Transpower’s further submission supports the relief sought by Genesis and Meridian to the extent that the amendments provide greater detail in respect of how the recognition of the importance of energy generation and transmission is achieved. Transpower’s further submission seeks that the amendments to Policy 7 sought by the submitters are further amended to include explicit reference to the National Grid.
3. Transpower’s further submission also opposes the primary submission made by Environmental Defence Society Inc. (“EDS”) seeking the replacement of Policy 7 in its entirety. Transpower seeks that this submission is disallowed.
4. The Section 42A Report recommends a number of amendments to Policy 7 in response to submissions as follows:

*“To manage effects on indigenous biodiversity in a way that recognises the economic and social importance of renewable energy generation and transmission ~~consistent with objectives and policies of this Plan, to~~ and provides for its development, operation, upgrading~~,~~ and maintenance by: ~~and enhancement.~~*

*1. Enabling indigenous vegetation clearance that is essential for the operation and maintenance of the Waitaki Power Scheme; and*

*2. Providing for the upgrading and development of renewable energy generation, while managing the effects of development on indigenous biodiversity, taking into account:*

*a. The location of existing structures and infrastructure and the need to locate the activity where the renewable energy resource is available; and*

*b. the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems; and*

*c. logistical or technical practicalities associated with the activity; and*

*d. the importance of maintaining the output from existing renewable electricity generation activities; and*

*e. In respect of Policy 6, environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any residual environmental effects.*

1. Setting aside Transpower’s pursuit of the inclusion of explicit reference to the National Grid and subject to my comments in respect of offsetting in relation to Policy 3, I have reviewed the proposed amendments to Policy 7 and consider that these amendments are generally consistent with the intent of the primary submissions made by Genesis and Meridian and, insofar as the Policy is relevant to the National Grid, give effect to the direction given in respect of the management of adverse effects of the National Grid in the NPSET and CRPS.
2. In terms of the explicit inclusion of references to the National Grid and the extent to which Policy 7 applies to the National Grid, it is my opinion that Policy 7 (as notified) generally applies to the National Grid because the National Grid can be considered as a standalone activity through the reference to “and transmission” in the opening clause. I understand that this is the same view conclusion reached in the Section 42A Report.[[9]](#footnote-9)
3. I therefore support the retention of reference to “and transmission” in the opening clause of Policy 7 but suggest that the term could be further clarified (and aligned to the NPSET) by and referring to “electricity transmission” as set out below.
4. The subsequent clauses (1) and (2) of Policy 7 set out the ways in which, in managing the effects on indigenous biodiversity, the importance of renewable energy generation and electricity transmission is recognised and its development, operation, upgrading and maintenance provided for. These clauses refer to the Waitaki Power Scheme and renewable energy generation respectively and do not include any further direction in respect of electricity transmission generally. For this reason, and to better give effect to the NPSET, I suggest that “including” be inserted in the Policy to indicate that there are other means to achieve the outcomes sought in by Policy 7 as follows:

*“To manage effects on indigenous biodiversity in a way that recognises the economic and social importance of renewable energy generation and* ***electricity*** *transmission ~~consistent with objectives and policies of this Plan, to~~ and provides for its development, operation, upgrading~~,~~ and maintenance* ***including*** *by: ~~and enhancement.~~ …”*

1. It is acknowledged that Policy 7 is the only provision in the Proposed Plan Change that provides for the National Grid, or electricity transmission, generally in an explicit way. This is the scope predicament identified by the Section 42A Report that states:

*“I consider that what is sought by Transpower extends beyond the scope of a further submission. This is because the additional provisions and changes sought by Genesis and Meridian are limited to the WPS and what is sought by Transpower is an extension beyond this, to apply it to the National Grid. In my view the changes sought are within the scope of PC18 itself, but should have been made as a primary submission. An example of this is that the further submission ‘supports in part’ Genesis and Meridian’s submission point on Rule 2.1.1. These submitters support the rule as notified as seek its retention. However, in their further submission, Transpower seek that the rule is amended to reference the National Grid – however what is sought therefore does not relate to the original submission, which did not seek changes.”[[10]](#footnote-10)*

1. I accept that Transpower’s further submission seeks to extend provisions that relate to the Waitaki Power Scheme to encompass the National Grid as a whole (beyond what is sought in a primary submission), however I consider that the Waitaki Power Scheme, as defined, includes at least part of the National Grid. That is, the Waitaki Power Scheme is defined as part of the Proposed Plan Change as:

*“****Waitaki Power Scheme:*** *means the electricity generation activities in the Waitaki River Catchment including the structures, works, facilities, components, plant and activities undertaken to facilitate and enable the generation of electricity from water. It includes power stations, dams, weirs, control structures, penstocks, canals, tunnels, siphons, spillways, intakes, storage of goods, materials and substances, switchyards, fish and elver screens and passes, booms, site investigation works, erosion and flood control, access requirements (including public access), jetties, slipways and landing places, signs, earthworks, monitoring, investigation and communication equipment* ***and transmission network****.”* [my emphasis add and including amendments recommended in the Section 42A Report]

1. In this regard, I note that the terms ‘Electricity generation activities’, ‘Waitaki River Catchment’ and ‘transmission network” are not defined in the Proposed Plan Change or operative District Plan. However, the transmission network located between the Waitaki Power Scheme assets at Tekapo, Pukaki and Ohau are specifically recognised in the Operative District Plan as being part of the Waitaki Power Scheme, for instance in Rural Objective 3B(2) as follows:

*“(2) To maintain and develop structures and works for the Waitaki Power Scheme:*

*(a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lakes Tekapo, Pukaki, Ruataniwha and Ohau …”*

1. Transpower is the owner of these transmission assets and as such they form part of the National Grid. It is on this basis that I conclude that specific reference to ‘transmission network’ in the definition of Waitaki Power Scheme must be reference to these parts of Transpower’s electricity transmission network – the National Grid. To clarify and confirm this, I support an amendment to the definition of Waitaki Power Scheme as follows:

*“****Waitaki Power Scheme:*** *means the electricity generation activities in the Waitaki River Catchment including .. and* ***the electricity*** *transmission network* ***that connects components of the Scheme to each other and to the National Grid****.”*

1. In all, it is my conclusion that limited amendments to Policy 7 and the definition of Waitaki Power Scheme serve to clarify the extent to which the notified Proposed Plan Change provisions apply to the National Grid, as opposed to broadening the ‘reach’ of the provisions. For those National Grid assets that do not form part of the Waitaki Power Scheme, it is my opinion that there is a ‘gap’ in the provisions such that the Proposed Plan Change does not fully give effect to the NPSET.

**Biodiversity – New Policies**

1. Transpower’s further submission supports in part the primary submissions made by Mt Gerald Station Limited and The Wolds Station Limited seeking the inclusion of a new Policy to enable the clearance of significant indigenous vegetation or habitats of indigenous fauna for certain activities. Transpower’s further submission seeks that the submission be allowed to the extent that it provides for the access to, and maintenance of, the National Grid.
2. The Section 42A Report recommends that the submission be disallowed and states:

*“I note that under s32 of the RMA, the test for consideration of policies (and rules) is whether they are the most appropriate to achieve the objectives. In my view, the rule package – discussed further below, should provide for clearance in situations where it will achieve the overarching objective, which is that significant areas are protected. In my view, the policy sought does not align with the objective because it would allow for significant areas to be cleared for the specified activities, regardless of the effects of the clearance, and therefore risk achievement of the objective. I also consider that policy would not align with the direction in s6(c) of the RMA to protect significant areas.”[[11]](#footnote-11)*

1. I agree with the Section 42A Report, that the proposed policy has the potential to result in unfettered clearance for the activities listed in the submissions. I also acknowledge that the implementing rule package includes provisions that provide for indigenous vegetation clearance in certain circumstances and within appropriate parameters.[[12]](#footnote-12) This is the case in respect of Transpower’s further submission that is particularly concerned with access to the National Grid whereby Rule 1.1.1 provides for clearance associated with the maintenance and repair tracks. On this basis, it is my conclusion that the proposed new policy is not necessary and is not the most appropriate way to achieve the Objectives.
2. Transpower’s further submission opposes the primary submission made by the Director General of Conservation (“the Director General”) seeking the inclusion of the following new policy:

*“To avoid adverse effects of subdivision, use and development on significant indigenous vegetation and habitat.”*

1. As set out above, the Section 42A Report recommends substantial content and structural changes to the Section 19 Policies. The management of effects on significant indigenous vegetation and habitats is addressed in recommended Policy 3. This Policy requires avoidance of adverse effects in the first instance and where practicable.
2. I do not support the ‘avoid’ policy sought by the Director General on the basis that, insofar as the policy would apply to the National Grid, the NPSET does not require all adverse effects to be avoided, rather the most stringent test in the NPSET is the direction to ‘seek to avoid’ in Policy 8. In my opinion the ‘seek to avoid’ direction is akin to the ‘where practicable’ used in recommended Policy 3 and I therefore support the drafting of Policy 3(a) included in the Section 42A Report.

**Biodiversity Rules – Permitted Activities excluding Waitaki Power Scheme**

1. Transpower’s further submission supports the primary submissions made by Mt Gerald Station Limited and The Wolds Station Limited that seeks amendments to Standard (1) in Rule 1.1.1 as follows:

*“The clearance is for the purpose of maintenance or repair replacement or minor upgrade of existing fence lines, vehicle tracks, roads, stock crossings, firebreaks, drains, ponds, dams, stockyards, ~~farm~~ buildings, water troughs, waterlines, waterway crossings or any other utility or airstrips; …”*

1. Transpower’s support for the relief sought is on the basis that the relief provides for the maintenance, repair, replacement and minor upgrade of utilities, including the National Grid, and therefore gives effect to the NPSET.
2. The Section 42A Report does not explicitly consider the merits of including reference to clearance for the repair, replacement and minor upgrade of utilities and does not recommend that clearance for maintaining, repairing or minor upgrading is permitted by Rule 1.1.1.
3. In considering the relief sought, I firstly note that the inclusion of a permitted activity for the maintenance, repair and minor upgrade of utilities was not needed in the provisions of the Proposed Plan Change as notified because Rule 16.1.1.j in Section 16 of the operative District Plan provides for work or activities necessary to continue the operation of an existing utility as a permitted activity and the rules in section 16 take precedence over any other rules that may apply to utilities in the District Plan, unless specifically stated to the contrary.
4. In response to a submission made by the Director General the Section 42A Report has concluded that:

*“Chapter 16 of the MDP relates to utilities. The introduction states that the rules within the section take precedence over other rules “that may apply to utilities” in the MDP. The rules provide for specified utilities as a permitted activity, subject to meeting standards set out. I agree that in order to achieve the outcomes sought in PC18, utilities should be subject to the rules in Section 19, and this can be achieved by including a statement at the start of the rules explicitly stating this.”[[13]](#footnote-13)*

1. In recommending this amendment it is not clear whether explicit consideration has been given to the consequences of this amendment in respect of the maintenance, repair and minor upgrading of utilities and whether the provisions (as now recommended) are the most appropriate, efficient and effective in terms of section 32 of the RMA.
2. Further, in respect of the National Grid, I consider that failing to provide a pathway for the operation, maintenance, repair and minor upgrading of the National Grid:
   1. does not give effect to Policies 1, 2 and 5 of the NPSET;
   2. does not give effect to Policy 16.3.4 of the CRPS;
   3. does not align with the provisions in the NESETA; and
   4. has the effect of frustrating the removal of vegetation that might be required under the Electricity (Hazards from Trees) Regulation 2003.
3. For this reason, I support the relief sought in the primary submissions as it relates to utilities generally and proposed the following amendments to Rule 1.1.1:

*“Clearance of indigenous vegetation is a permitted activity provided one or more of the following conditions are met:*

1. *The clearance is within 2m of, and for the purpose of, maintenance or repair of existing fence lines, vehicle tracks, roads, stock tracks, stock crossings, firebreaks, drains, stockyards, farm building, water troughs and associated reticulation piping****, or*** *airstrips* ***or the operation, maintenance, repair or upgrade of utilities****; or”*

**Biodiversity Rules – Vegetation clearance associated with the Waitaki Power Scheme**

1. Transpower’s further submission supports in part primary submissions made by Genesis and Meridian that:
   1. seek the retention of Rule 2.1.1 that provides for indigenous vegetation clearance as a consequence of an emergency or failure;
   2. seek amendments to Rule 2.1.2 to provide for clearance associated with the upgrading of the Waitaki Power Scheme within a Waitaki Power Scheme Management Area;
   3. seek the inclusion of a new permitted activity rule for vegetation clearance that is permitted by Rule 1.1; and
   4. seeks amendments to Rule 2.3.1 to clarify that the Rule is a ‘default’ rule for activities not provided elsewhere.
2. Transpower’s further submission seeks that the submissions be allowed subject to a further amendment to include explicit reference to the National Grid in the provisions.
3. In terms of the outcome sought by Transpower in its further submission, the issue of scope is traversed earlier in my evidence. It is accepted that including reference to the National Grid in these provisions broadens the relief sought in the original submissions, but it is also noted that the Waitaki Power Scheme does include Transpower assets and that this can be clarified through a limited amendment to the definition of the Scheme. As such, I do not support the amendments sought in Transpower’s further submission but conclude that Rule 2 applies to the National Grid that is part of the Waitaki Power Scheme and Rule 1 applies to the National Grid otherwise (as addressed above) by virtue of a recommended amendment so that Section 16 Rules do not take precedence over Section 19.

**Rural Rules**

1. Transpower’s further submission supports the primary submissions made by Mt Gerald Station Limited and The Wolds Station Limited that seeks an amendment to the exemption in Rule 12.1.1.a as follows:

*“This standard shall not apply to any removal or declared weed pests or vegetation clearance for the purpose of ~~track maintenance or~~ habitat enhancement or for the maintenance, repair, replacement or minor upgrade of existing fence lines, tracks, roads, stock crossings, fire breaks, drains, ponds, dams, stockyards, farm buildings, airstrips water troughs, waterlines, waterway crossings or any other utility.”*

1. Transpower’s support of the relief sought is on the basis that the relief includes an exemption for utilities, including the National Grid, and therefore gives effect to the NPSET.
2. The Section 42A Report concludes:

*“… in my view, the changes sought by these submitters are outside of the scope of PC18. This is because the submitters seek a change to the current framework as it applies to non-indigenous vegetation clearance. PC18 however, does not propose changes to provisions relating to non-indigenous clearance. For the avoidance of doubt, I consider that reinstating Rule 12.2.1 as it applies to non-indigenous vegetation clearance is within scope, because it is a consequential change relating to the shifting of the indigenous biodiversity provisions. Regardless of scope, I consider that these changes are in any case more appropriately considered as part of the wider District Plan review in due course, at the same time the overall policy framework is also reviewed.”[[14]](#footnote-14)*

1. I acknowledge the Section 42A Report position that the changes sought are better addressed as part of a District Plan review process. That said, in the case of utilities it is my view that expanding the exemption to provide for their maintenance, repair, replacement or minor upgrading is unnecessary because, as set out above, Rule 1.1.j in Section 16 – Utilities of the District Plan provides for work or activities necessary to continue the operation of an existing utility as a permitted activity in any case. Rule 16.1.1.j reads as follows:

*“The maintenance, replacement or upgrading of the following utilities where:*

*i. maintenance and replacement shall mean any work or activity necessary to continue the operation and/or functioning of an existing utility and shall also provide for the replacement of an existing line, building, structure or other facility with another of the same or similar height, size or scale, within the same or similar position and for the same or similar purpose; and*

*ii. upgrading means an increase in the carrying capacity, or security, of the line (e.g. such as adding additional circuits, reconductoring of the line with higher capacity conductors, resagging of conductors, the addition of longer or more efficient insulators, the addition of earthwires which may contain telecommunications lines, earthpeaks and lightning rods) utilising the existing support structures or structures of a similar scale and character. A change in voltage will only be included when there is no physical change to the line, (e.g. where a line has been constructed to operate at a certain voltage but has been operating at a lesser voltage).*

*• existing lines above ground for conveying electricity at all voltages and capacities and existing lines as defined by Section 2(1A) of the Telecommunications Act 1987.*

*• existing telecommunication and radiocommunication facilities.*

*• existing buildings and depots.*

*• existing weather radar, automatic weather stations and water level recorders.*

*• existing river protection works.*

*• Navigational aids and beacons.*

*• The Meridian Energy Limited Tekapo Intake Structure*

*• The Meridian Energy Limited Tekapo Intake Control and Communications Shed*

*• The Meridian Energy Limited Tekapo Control Gate Structure*

*• The Meridian Energy Limited Tekapo Tunnel Structure”*

1. In my opinion the provisions that apply could be clarified by the inclusion of a cross-reference to Rule 16.1.1.j in Rule 12.1.1 as follows:

“***(x) This standard shall not apply to the maintenance, replacement or upgrading of utilities permitted by Rule 16.1.1.j.***”

1. Transpower’s further submission also supports in part the submission made by Opuha Water Limited seeking an exemption for vegetation clearance associated with the operation and maintenance (including emergencies) of the Opuha Scheme. Transpower’s further submission sought that the exemption be expanded to also provided for vegetation clearance associated with the National Grid.
2. As set out above, it is my opinion that vegetation clearance for the maintenance, replacement and upgrading of the National Grid is already permitted by Rule 16.1.1.j and therefore the relief sought in Transpower’s further submission is unnecessary.

**Definitions – New Definition**

1. Transpower’s further submission supports in part the primary submission made by EDS that seeks the inclusion of a new definition of “Site of Natural Significance (or SONS)” as follows:

*“SONS means significant sites of indigenous vegetation and fauna habitat identified in the District Plan maps. Not all sites qualifying as significant under s6(c) RMA and Policy 9.3.1 RPS in the District have been mapped. Other sites will be identified on a case-by-case basis.”*

1. Transpower supports the submission to the extent that the purpose of the relief sought is to clearly define and distinguish areas of significant indigenous vegetation and significant habitats of indigenous fauna in a manner that assists in the implementation of the NESETA.
2. The Section 42A Report does not support the inclusion of this new definition and concludes:

*“… my view is that the purpose of a definition is to provide clarity about what provisions relying on that definition apply to. The definition of SONS is not required in order to apply the provisions within the MDP that relates to SONS. Further I do not consider it appropriate for a definition to include direction.”[[15]](#footnote-15)*

1. I agree with the conclusion reached in the Section 42A Report and acknowledge that the definition is not necessary to support the implementation of the provisions of the District Plan. Similarly, I am of the view that the penultimate sentence in the proposed new definition introduces uncertainty in terms of what a SONS is and therefore how reliant provisions might apply.
2. In terms of the implementation of the NESETA, the NESETA regulates activities in natural areas. A ‘natural area’ is defined by the NESETA as “*an area that is protected by a rule because it has outstanding natural features or landscapes, significant indigenous vegetation, or significant habitats of indigenous fauna*”. Efficient and effective implementation of the NESETA regulations therefore relies on the areas that are protected by rules because of certain values being easily identified. In my opinion, the relief sought by EDS, as drafted, does not enhance the ease with which natural areas are identified and therefore I do not consider that the new definition is necessary to support the implementation of the NESETA regulations.

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## Ainsley Jean McLeod 12 February 2021

## **Attachment 1: National Grid Assets in Mackenzie District**

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1. *Long Bay – Okura Great Park Society v North Shore City Council* EnvC 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] NZEnvC 55. [↑](#footnote-ref-1)
2. *Environmental Defence Society Incorporated* v *The New Zealand King Salmon Company Limited*, NZSC 38, 17 April. [↑](#footnote-ref-2)
3. It is acknowledged that the Preamble is not part of the NPSET but includes the words: “*this preamble may assist interpretation of the national policy statement, where this is necessary to resolve uncertainty*”. [↑](#footnote-ref-3)
4. Sections 43B and 44A of the RMA. Section 43B(3) states that “*a rule may not be more lenient than a national environmental standard (NES)*” and section 43B(1) states that “*a rule or resource consent that is more stringent that a national environmental standard prevails over the standard, if the standard expressly says that a rule or consent may be more stringent than it*.” [↑](#footnote-ref-4)
5. at Paragraphs 40 to 47. [↑](#footnote-ref-5)
6. at Paragraph 272. [↑](#footnote-ref-6)
7. at Paragraph 184. [↑](#footnote-ref-7)
8. at Paragraph 200. [↑](#footnote-ref-8)
9. at Paragraphs 280 and 324. [↑](#footnote-ref-9)
10. at Paragraph 323. [↑](#footnote-ref-10)
11. at Paragraph 405. [↑](#footnote-ref-11)
12. In this regard, the rule package is understood to be implementing other policies, such that a new policy to direct those activities that are permitted is not necessary. [↑](#footnote-ref-12)
13. at Paragraph 101. [↑](#footnote-ref-13)
14. at Paragraph 491. [↑](#footnote-ref-14)
15. at Paragraph 531. [↑](#footnote-ref-15)