

**In the Environment Court of New Zealand  
Christchurch Registry**

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Under the Resource Management Act 1991 (the Act)

In the matter of an appeal under clause 14(1) of the First Schedule of the Act

Between **Transpower New Zealand Limited**  
Appellant

And **Queenstown Lakes District Council**  
Respondent

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**Notice of appeal by Transpower New Zealand Limited**

Dated 19 June 2018

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**To:** The Registrar  
Environment Court  
Christchurch

- 1 Transpower New Zealand Limited (**'Transpower'**) appeals against the decisions of the Queenstown Lakes District Council (the **'Respondent'**) on the Queenstown Lakes District Council Proposed District Plan (the **'Proposed Plan'**).
- 2 Transpower made a submission and further submission on the Proposed Plan.
- 3 Transpower is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**'RMA'**).
- 4 Transpower received notice of the decision on 7 May 2018.
- 5 The decision was made by the Respondent.

#### **Provisions being appealed**

- 6 Transpower appeals the Respondent's decisions on the following Chapters and provisions of the Proposed Plan:
  - a Chapter 2 – Definitions ('National Grid', 'National Grid Corridor', 'National Grid Sensitive Activities');
  - b Chapter 3 – Strategic Direction (Objectives 3.2.2.1, 3.2.5.1, 3.2.5.2, Policies 3.3.18, 3.3.25, 3.3.30 and 3.3.32);
  - c Chapter 4 – Urban Development (Objective 4.2.2A and Policy 4.2.2.1);
  - d Chapter 6 – Landscapes (Policies 6.3.10, 6.3.12, 6.3.18, 6.3.19, 6.3.25, 6.3.26);
  - e Chapter 7 – Lower Density Suburban Residential (Objective 7.2.6, Rule 7.6.1);
  - f Chapter 8 – Medium Density Residential (Objective 8.2.5, Rule 8.5.13);
  - g Chapter 9 – High Density Residential (Objective 9.2.6; Rules 9.6.1 and 9.6.2);
  - h Chapter 21 – Rural – (Zone Purpose 21.1, Objectives 21.2.4, 21.2.13, Policy 21.2.4.2);

- i Chapter 23 – Gibbston Character Zone (Policy 23.2.1.9);
- j Chapter 27 – Subdivision and Development (Policy 27.2.2.8, Rules 27.5.10 and 27.9.5.1);
- k Chapter 30 – Energy and Utilities (Zone Purpose 30.1.2, Objectives 30.2.6, 30.2.7, 30.2.8, Policies 30.2.6.1, 30.2.6.5, 30.2.7.1 - 30.2.7.4, 30.2.8.1, Rules tables 30.5.3 and 30.5.4);
- l Chapter 33 – Indigenous Vegetation and Biodiversity (Policies 33.2.1.6, and 33.2.2.1).

### **General reasons for the appeal**

- 7 The reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
  - a will not promote sustainable management of resources, and will not achieve the purpose of the RMA;
  - b are contrary to Part 2 and other provisions of the RMA;
  - c will not meet the reasonably foreseeable needs of future generations;
  - d will not promote the efficient use and development of natural and physical resources;
  - e will not give effect to the National Policy Statement on Electricity Transmission ('**NPSET**');
  - f will not give effect to the Otago Regional Policy Statement ('**ORPS**'); and
  - g do not represent the most appropriate way of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the Act.
- 8 In addition, the decisions of the Respondent do not give full effect to the NPSET as required by section 75(3)(a) of the Act, particularly:
  - a The Objective of the NPSET with regard to facilitating the operation, maintenance and upgrade of the National Grid and the establishment of new transmission resources in order 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;

- b Policy 1 with regard to recognising and providing for the national, regional, and local benefits of sustainable, secure, and efficient electricity transmission;
- c Policy 2 with regard to recognising and providing for the effective operation, maintenance, upgrading and development of the National Grid;
- d Policy 3 which requires decision makers to consider the constraints imposed on achieving measures to avoid, remedy or mitigate effects of the National Grid by the technical and operational requirements of the network;
- e Policy 5, which requires decision makers to enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets;
- f Policy 8, which provides that in rural environments the planning and development of the National Grid should 'seek to avoid' (rather than 'avoid' in all circumstances) adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity, as well as existing sensitive activities;
- g Policy 10, which requires decision makers to manage third party activities "to the extent reasonably possible", in order to:
  - i Avoid reverse sensitivity effects on the electricity transmission network; and
  - ii Ensure that the operation, maintenance, upgrading, and development of the electricity transmission network is not compromised (i.e. by other more direct effects of third party activities);
- h Policy 11 with regard to identifying buffer corridors within which it can be expected that sensitive activities will generally not be provided for or given resource consent; and
- i Policy 14 with regard to including objectives, policies and methods to facilitate long-term planning for investment in transmission infrastructure and its integration with land uses;

- 9 Further, the decisions of the Respondent will not give effect to the ORPS (once confirmed – the proposed Policy Statement is currently the subject of consent orders before the Environment Court) as required by section 75(3)(c) of the Act, particularly its directions to (in summary):
- a Manage activities to the extent reasonably possible to avoid reverse sensitivity effects on the National Grid;
  - b Manage adverse effects of new National Grid infrastructure by (among other things) 'seeking to avoid' sensitive areas; and
  - c Provide for adverse effects of the National Grid to be remedied or mitigated, where it is not practicable to avoid adverse effects because of the functional needs of the National Grid.
- 10 In addition, the decisions of the Respondent:
- a Conflict with or duplicate the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ('**NESETA**');
  - b Do not promote the efficient use and development of the National Grid, being a physical resource of national significance;
  - c Will not achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources;
  - d Are not consistent with the purpose and principles of the Act, as they:
    - i Do not manage the use of resources in a way that enables communities to provide for their social, economic and cultural wellbeing;
    - ii Do not enable people and communities to provide for their health and safety;
    - iii Do not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs to future generations;
    - iv Do not enable the effects of third party activities on the lines and structures to be appropriately managed;

- v Do not facilitate the efficient use and development of natural and physical resources, being both the transmission lines and the land beneath them; and
- vi Do not address reverse sensitivity effects and facilitate the maintenance and enhancement of amenity values and the quality of the environment.

### **Reasons for appeal of particular provisions**

- 11 Without limiting the generality of the above, Transpower's particular reasons for appealing the identified provisions are below.

#### *Chapter 2 – Definitions*

- 12 The definition of 'National Grid' is inappropriately confined to National Grid assets operated by Transpower as at the date of notification of the Proposed Plan. This is inconsistent with the definition in (and wider requirements of) the NPSET, which simply defines 'National Grid' to mean "the assets used or owned by Transpower NZ Limited". This approach recognises that new assets can be added to the National Grid over time, and should also be afforded the recognition required under the NPSET. This definition in the Proposed Plan is important, including because it is used in related definitions such as 'regionally significant infrastructure'.
- 13 The definition of 'National Grid Corridor' refers to pi-poles and 220kV transmission lines. The National Grid does not contain any of these assets in Queenstown Lakes District, and so these references can be deleted.
- 14 The definition of 'National Grid Sensitive Activities' in the decision introduces unnecessary complexity and uncertainty through the introductory phrase which was not present in the notified version of the Proposed Plan. Transpower seeks that the notified version of this definition is reinstated.

#### *Chapter 3 – Strategic Direction*

- 15 Objective 3.2.2.1 requires urban growth to be integrated with existing, and planned future, infrastructure. While generally appropriate for most infrastructure, this objective does not go far enough in relation to the National Grid. Policy 10 of the NPSET requires urban growth to be managed to the extent reasonably possible for the purpose of avoiding reverse sensitivity effects and to ensure that the National Grid is not compromised.

- 16 Objective 3.2.5.1 may be appropriate in respect of many kinds of development, but an unqualified requirement to 'protect' landscape and visual amenity values and the natural character of outstanding natural landscapes and outstanding natural features is unachievable for the National Grid. The National Grid is large and linear infrastructure, whose effects will not be 'minor and/or temporary in duration'. A blanket 'protect' requirement for the National Grid fails to give effect to the Objective and Policies 2, 3, and 8 of the NPSET.
- 17 Objective 3.2.5.2, when applied to the upgrading and development of the National Grid, is also inconsistent with, and therefore fails to give effect to the Objective and Policies 2, 3, and 8 of the NPSET.
- 18 In a similar way, Policies 3.3.18, 3.3.30, and 3.3.32 contain absolute or unqualified directions which, when applied to the National Grid, are inconsistent with, and therefore fail to give effect to, the Objective and Policies 2, 3, and 8 of the NPSET.
- 19 Policy 3.3.25 goes some way to meeting the requirements of Policy 3 of the NPSET, insofar as the recognition of development (including regionally significant infrastructure) having a functional need to locate in the rural environment is consistent with the need to consider constraints associated with the technical and operational requirements of the National Grid. However, the requirement to 'ensure maintenance and enhancement of the rural environment' is at best ambiguous, and also likely to be inconsistent with, and therefore fail to give effect to, the Objective and Policies 2, 3, and 8 of the NPSET when applied to the National Grid.

#### *Chapter 4 – Urban Development*

- 20 Objective 4.2.2A essentially requires the coordination of urban form and the efficient provision and operation of infrastructure and services. In relation to National Grid infrastructure, this objective does not go quite far enough to give effect to Policy 10 of the NPSET, which requires the management of urban form ("to the extent reasonably possible") to avoid reverse sensitivity effects on the National Grid and ensure its operation, maintenance, upgrading and development is not compromised.
- 21 Policy 4.2.2.1 similarly aims to 'integrate' urban development with existing or planned infrastructure so that reverse sensitivity effects on regionally significant infrastructure (defined to include the National Grid) are 'minimised'. As for Objective 4.2.2A above, this does not go far enough to give effect to Policy 10 of

the NPSET, which requires that activities must be managed to the extent reasonably possible so that reverse sensitivity effects on the National Grid are avoided and the Grid is not compromised.

#### *Chapter 6 – Landscapes*

- 22 Policies 6.3.10, 6.3.18, and 6.3.26 contain absolute or unqualified directions with respect to the protection of landscape (and related) values, and/or the avoidance of adverse effects, which when applied to the National Grid are inconsistent with, and therefore fail to give effect to, the Objective and Policies 2, 3, and 8 of the NPSET. The NPSET recognises that National Grid infrastructure will have more than minor adverse effects given its scale, linear nature and other technical and operational requirements.
- 23 Policies 6.3.12 and 6.3.19 contemplate that subdivision and development is unsuitable in many areas in Outstanding Natural Landscapes and on Outstanding Natural Features and Rural Character Landscapes, without distinction between different kinds of development (e.g. infrastructure is treated the same way as residential or commercial development) or recognition of the functional need for infrastructure assets to sometimes be located in these environments. They are therefore inconsistent with and fail to give effect to the NPSET.
- 24 Policy 6.3.25 requires significant effects of regionally significant infrastructure (which includes the National Grid) on the character of the landscape to be 'minimised'. This fails to give effect to the Objective and Policies 3, 4 and 8 of the NPSET which recognise the Grid's technical and operational constraints and the fact that its adverse effects cannot always be avoided, remedied or mitigated.

#### *Chapter 7 – Lower Density Suburban Residential*

- 25 Objective 7.2.6 is for development to efficiently utilise existing infrastructure and 'minimise' impacts on infrastructure networks. This Objective and the associated policies do not provide appropriately for the National Grid, and fail to give effect to the Objective and Policies 10 and 11 of the NPSET.
- 26 Rule 7.6.1 would allow resource consent applications for residential units (including National Grid Sensitive Activities within the National Grid Yard or Corridor) to be processed without notification to Transpower, and is opposed on that basis. If the intention is for National Grid Sensitive Activities to be regulated by the zone chapters (rather than Chapter 30), then the notification rules need to facilitate that.



### *Chapter 8 – Medium Density Residential*

- 27 Objective 8.2.5 and associated policies are to much the same effect as Objective 7.2.6 above, and fail to give effect to the Objective and Policies 10 and 11 of the NPSET for the same reasons.
- 28 Rule 8.5.13 provides that National Grid Sensitive Activities within the National Grid Yard are non-complying activities, and this is supported by Transpower as it will assist with giving effect to Policy 10 of the NPSET. Transpower has appealed decisions on Rule 8.5.13 because it seeks similar regulation of National Grid Sensitive Activities in all zones in the District. This could be achieved by either:
- a Adding similar provisions to the activity tables for all zone chapters; or
  - b Adding new rules to Chapter 30, so that National Grid Sensitive Activities are regulated regardless of the zone they are located in.

### *Chapter 9 – High Density Residential*

- 29 Objective 9.2.6 and associated policies are to the same effect as, and fail to give effect to Policy 10 of the NPSET for the same reasons as, Objectives 7.2.6 and 8.2.5 above.
- 30 Rules 9.6.1 and 9.6.2 would allow resource consent applications for residential units (including National Grid Sensitive Activities within the National Grid Yard or Corridor) to be processed without notification to Transpower, and is opposed on that basis. If the intention is for National Grid Sensitive Activities to be regulated by the zone chapters (rather than Chapter 30), then the notification rules need to facilitate that.

### *Chapter 21 – Rural*

- 31 The Zone Purpose at 21.1 refers to a number of activities unrelated to farming, including tourism and industrial activities, but lacks any acknowledgement of the need for infrastructure (such as the National Grid) to pass through the Rural Zone. It is opposed on this basis.
- 32 Objective 21.2.4 provides for situations where sensitive activities conflict with existing and anticipated activities to be ‘managed to minimise conflict between incompatible land uses’. Policy 21.2.4.2 is similarly to control the location and type of non-farming activities to ‘minimise conflict between permitted and established activities and those that may not be compatible with such activities’. Insofar as they apply to the National Grid, both provisions fail to give effect to

Policy 10 of the NPSET; a direction to 'minimise' conflict between land uses is substantially weaker than the requirement to manage the effects of activities on the National Grid 'to the extent reasonably possible' and to ensure the Grid is not compromised.

- 33 Objective 21.2.13 provides that infrastructure within the Rural Industrial Sub-Zones will 'support farming and rural productive activities', while protecting, maintaining and enhancing rural character, amenity and landscape values. It is not clear whether this Objective applies to the National Grid, as it is not 'servicing infrastructure'. The directions to protect, maintain and enhance the specified values are also inconsistent with and therefore fail to give effect to Policies 3, and 8 of the NPSET.

#### *Chapter 23 – Gibbston Character Zone*

- 34 Policy 23.2.1.9 is:

In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised.

- 35 The requirement to minimise effects is inconsistent with (to the extent that it goes further than), and therefore fails to give effect to, Policies 3 and 4 of the NPSET.

#### *Chapter 27 – Subdivision and Development*

- 36 Policy 27.2.2.8 is to:

Manage subdivision within the National Grid Corridor or near to electricity distribution lines to facilitate good amenity and urban design outcomes, while minimising potential adverse effects (including reverse sensitivity effects) on the National Grid and avoiding, remedying or mitigating potential adverse effects (including reverse sensitivity effects) on electricity distribution lines.

- 37 This policy is inconsistent with and fails to give effect to the NPSET. Consistent with Policy 10 of the NPSET, the purpose of managing subdivision within National Grid Corridors is not to 'facilitate good amenity and urban design', and it is not sufficient to 'minimise' potential effects on the National Grid – activities are to be managed 'to the extent reasonably possible' in order to 'avoid' reverse sensitivity effects (and to ensure the National Grid is not compromised).

38 Rules 27.5.10 and 27.9.5 regulate subdivision in the National Grid Corridor. Transpower opposes these rules because they do not include vegetation control and electrical hazard risks in the matters of discretion.

*Chapter 30 – Energy and Utilities*

39 The Zone Purpose at 30.1.2 does not give sufficient recognition to the role of and benefits associated with the National Grid, as required by the Objective and Policy 1 of the NPSET.

40 Objective 30.2.6 and Policy 30.2.6.1 relate to the establishment, operation and maintenance of utilities. However, these provisions do not consistently provide for the ‘upgrading and development’ of the National Grid, as required by the Objective and Policy 2 of the NPSET.

41 Objective 30.2.7 and the associated Policy 30.2.7.1 contain unqualified directions to avoid or minimise the effects of utilities, which when applied to the National Grid are inconsistent with, and therefore fail to give effect to, the Objective and Policies 2, 3, 4 and 8 of the NPSET.

42 Policies 30.2.7.2 and 30.2.7.3 both relate to the undergrounding of overhead services. The term ‘services’ is not defined by the Proposed Plan. There is a risk that users of the Proposed Plan may consider these policies to provide support for (or require) the undergrounding of the National Grid. This would be contrary to Policies 3, 4, 5, 6 and 10 of the NPSET.

43 Policy 30.2.7.4 requires decision makers to ‘Take account of economic and operational needs in assessing the location and external appearance of utilities’. This requirement does not encompass all of the considerations of the NPSET, including Policies 3 and 4 of the NPSET, and therefore does not give effect to the NPSET.

44 Objective 30.2.8 provides for the ongoing operation, maintenance, development and upgrading of the National Grid “subject to the adverse effects of the National Grid Network being managed”. This approach is inconsistent with and fails to give effect to Policy 2 of the NPSET.

45 Policy 30.2.8.1 is inconsistent with and fails to give effect to Policy 10 of the NPSET (for similar reasons as Policy 27.2.2.8 above), and is insufficient on its own to achieve the Objective. Given the extent to which provisions in the Proposed Plan are inconsistent with and fail to implement the NPSET when applied to the National Grid (but may be otherwise appropriate in respect of other

activities – Transpower takes no position on this), it may be appropriate to include additional policies under Objective 30.2.8 that apply specifically to enabling, and managing the effects of, the National Grid, and which are consistent with Policies 2 to 11 of the NPSET.

- 46 Rules tables 30.5.3 and 30.5.4 regulate National Grid Activities and activities within the National Grid Corridor. These Rules do not give effect to Policies 2, 10 and 11 of the NPSET, because:
- a The only National Grid activity which is permitted is minor upgrading;
  - b The Rules do not regulate National Grid Sensitive Activities (and, as noted above, those activities are not comprehensively regulated elsewhere in the Proposed Plan);
  - c Hazardous facilities near the Frankton substation are not regulated;
  - d The Rules do not require a minimum vertical clearance of 10 metres between buildings and overhead conductors;
  - e The Rules do not require compliance with NZECP34:2001;
  - f The Rules do not regulate non-habitable horticultural buildings or structures (except for commercial glasshouses).

#### *Chapter 33 – Indigenous Vegetation and Biodiversity*

- 47 Policy 33.2.1.6 requires residual effects to be subject to offsetting to achieve no net loss. This approach is not required by the NPSET and is not practical or appropriate with respect to National Grid infrastructure.
- 48 Policy 33.2.2.1 requires the avoidance of clearance of indigenous vegetation within scheduled Significant Natural Areas, and other related areas. This unqualified approach is inconsistent with and fails to give effect to the Objective and Policies 2, 3, and 8 of the NPSET.

#### **Relief sought**

- 49 Transpower seeks the following relief:
- a Amendments to the specified and any related provisions in order to address the general reasons for the appeal and the reasons for appeal of particular provisions as set out above;

- b Any additional or alternative relief that gives effect to the NPSET;
- c Consequential or ancillary changes to the above.

50 We attach the following documents to this notice:

- a A copy of Transpower's submission and further submissions (**Appendix A and B**);
- b A copy of the relevant parts of the decision (**Appendix C – N**);
- c A copy of the National Policy Statement on Electricity Transmission (**Appendix O**); and
- d A list of the names and addresses of persons to be served with a copy of this notice (**Appendix P**).

**Dated** 19 June 2018



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