

In the Environment Court of New Zealand  
at Auckland

I mua i te Kōti Taiao o Aotearoa  
I te rohe o Tāmaki Makaurau

ENV-2019-AKL-

---

*under:* the Resource Management Act 1991

*in the matter of:* an appeal under clause 14 of Schedule 1 of the  
Resource Management Act 1991

*between:* **Transpower New Zealand Limited**  
*Appellant*

*and:* **Northland Regional Council**  
*Respondent*

Notice of appeal by Transpower New Zealand Limited against  
decisions on the Proposed Northland Regional Plan

---

Dated: 14 June 2019

---

REFERENCE: Luke Hinchey (luke.hinchey@chapmantripp.com)  
Nicola de Wit (nicola.dewit@chapmantripp.com)

**Chapman Tripp**  
T: +64 9 357 9000  
F: +64 9 357 9099

23 Albert Street  
PO Box 2206, Auckland 1140  
New Zealand

www.chapmantripp.com  
Auckland, Wellington,  
Christchurch



**NOTICE OF APPEAL BY TRANSPOWER NEW ZEALAND LIMITED AGAINST  
DECISIONS ON THE PROPOSED NORTHLAND REGIONAL PLAN**

*Clause 14(1) of First Schedule, Resource Management Act 1991*

**To** The Registrar  
Environment Court  
Auckland

**Introduction**

- 1 Transpower New Zealand Limited (*Transpower*) appeals against parts of a decision of the Northland Regional Council (*Council*) on the Proposed Northland Regional Plan (*Proposed Plan*) (*Decision*).
- 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 3 May 2019.
- 5 The Decision was made by the Council.
- 6 The parts of the Decision that Transpower is appealing are:
  - 6.1 The Chapter B Definitions;
  - 6.2 Rules C.1.1.21, C.1.1.27, C.1.6.3, C.1.6.5, C.2.1.11, C.2.1.13, C.2.2.4 and C.2.2.5;
  - 6.3 Policies D.2.5, D.2.6, D.2.7, D.2.8, D.2.9, D.2.15, and D.2.16; and
  - 6.4 Objective F.1.6.

**Reasons for the appeal**

- 7 The reasons for the appeal are as follows:
  - 7.1 Transpower considers that those parts of the Decision referred to above do not accord with the relevant requirements of the RMA, and are contrary to Part 2 of the RMA. In particular, those parts of the Decision:
    - (a) Do not give effect to the National Policy Statement on Electricity Transmission (*NPSET*), particularly Policies 2, 3, 4, 5 and 8 of the NPSET;
    - (b) Do not promote the sustainable management of natural and physical resources;
    - (c) Do not promote the efficient use and development of natural and physical resources;

- (d) Do not result in the most appropriate plan provisions in terms of section 32 of the RMA;
  - (e) Do not implement Council's functions under section 30 of the RMA; and
  - (f) Are contrary to best resource management practice.
- 7.2 Without limiting the generality of the reasons at paragraph 7.1 above, the specific reasons for the appeal are:
- (a) The Proposed Plan must "give effect to" the NPSET, the New Zealand Coastal Policy Statement 2010 (*NZCPS*) and the Northland Regional Policy Statement (*RPS*). The NPSET and the NZCPS are both national level documents that sit on the same level of the planning hierarchy;
  - (b) The NPSET requires the Proposed Plan to recognise and provide for the effective operation, maintenance, upgrading and development of the National Grid. The NPSET was intended to provide a comprehensive management regime for the National Grid. Policies 3 and 4 require decision-makers to have regard to the technical and operational requirements of the National Grid and the route, site and method selection process. Policy 8 requires Transpower to "seek to avoid" adverse effects on high value natural environments, including within the coastal environment;
  - (c) Objective 3.7 of the Northland RPS requires the Proposed Plan to recognise and promote the benefits of regionally significant infrastructure. Policy 5.3.3 of the Northland RPS also gives specific direction in relation to the management of adverse effects of regionally significant infrastructure, but it does not address the National Grid specifically;
  - (d) The effects of National Grid infrastructure should be assessed at a project-specific level taking into account the existing environment and the technical and operational requirements of the National Grid;
  - (e) Non-complying activity status is not an appropriate method for managing the effects of National Grid infrastructure; and
  - (f) The additional specific reasons set out in **Appendix A** to this notice.

### **Relief sought**

- 8 Transpower seeks the following relief:
- 8.1 The relief set out in **Appendix A** to this notice (or relief with the same or similar effect, including provisions specific to the National Grid);
  - 8.2 Such further or consequential relief as may be necessary to address the matters raised in Transpower's submissions and this appeal; and
  - 8.3 Costs.

- 9 The following documents are attached to this notice:
- 9.1 A copy of Transpower's submission and further submission (**Appendix B**);
  - 9.2 A copy of the Decision (**Appendix C**); and
  - 9.3 A list of names and addresses of persons to be served with a copy of this notice (**Appendix D**).

**Signed** for and on behalf of Transpower New Zealand Limited by its solicitors and authorised agents Chapman Tripp



---

Luke Hinchey  
Partner  
14 June 2019

Address for service of person:

Transpower New Zealand Limited  
c/- Luke Hinchey / Nicola de Wit  
Chapman Tripp  
Level 38  
23 Albert St  
PO Box 2206  
Auckland 1140  
Email address: Luke.Hinchey@chapmantripp.com / Nicola.deWit@chapmantripp.com

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

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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

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

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or or*) the decision (*or part of the decision*) appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

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

## APPENDIX A

Provision appealed	Reasons for appeal	Relief sought (Changes are tracked with additions <u>underlined</u> and deletions shown in <del>striketrough</del> )
B Definitions " <i>Functional need</i> "	The Decisions Version combined the definitions of "functional need" and "operational need" into one definition of "functional need". However, that is inconsistent with the National Planning Standards, which include definitions of "functional need" and "operational need". Transpower consider it efficient to address that inconsistency now, particularly to ensure that any consequential amendments to provisions do not have unintended consequences.	<p>Replace the definition of functional need with:</p> <p><u>Means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.</u></p> <p>Add a definition of operational need:</p> <p><u>Means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.</u></p> <p>Amend all relevant provisions to refer to "functional <u>and operational</u> need" (including C.1.1.21, C.1.1.26, D.2.8, and other provisions addressed below).</p>
<p>B Definitions</p> <p>For example: "<i>Earthworks</i>", "<i>Quarrying</i>", "<i>Reclamation</i>", "<i>Structure (in rules for activities in the coastal marine area)</i>".</p>	A number of definitions in the Decisions Version are different to equivalent definitions in the National Planning Standards. Transpower considers it efficient to address that inconsistency now, particularly to ensure that any consequential amendments to provisions do not have unintended consequences.	Replace the definitions in Decisions Versions with the equivalent definitions in the National Planning Standards, and make consequential amendments to the provisions as needed to retain their intent.
<p>B Definitions "<i>High-risk industrial or trade premises</i>"</p> <p>B Definitions "<i>Industrial or trade wastewater</i>"</p>	In other parts of New Zealand, some parties have argued that Transpower's substations are captured by definitions similar to these. However, Transpower's substations do not carry out an " <i>industrial or trade process</i> " as there is no	<p>Amend the definitions of "<i>High-risk industrial or trade premises</i>" and "<i>Industrial or trade wastewater</i>" by adding:</p> <p><i>For the purposes of clarity, National Grid substations are not captured by this definition.</i></p>

	processing of a raw material or product. An amendment to the definition would provide more clarity for all plan users.	
<p>Rule C.1.1.21 <i>Structures in Mooring and General Marine Zones – discretionary activity</i></p> <p>Rule C.1.1.27 <i>Structures within a significant area – non-complying activity</i></p>	For the reasons set out at paragraph 7.2 above, the application of non-complying Rule C.1.1.27 to National Grid structures in a significant area is not an appropriate method for managing the effects of National Grid infrastructure.	<p>Insert a new Rule C.1.1.21A:</p> <p><u><i>The erection, reconstruction, placement, alteration, extension, maintenance, repair, removal, or demolition of a structure in a Mooring Zone or the General Marine Zone and any occupation of the common marine and coastal area by the structure that is not a permitted, controlled, restricted discretionary or non-complying activity in section C.1.1 of this Plan, and the use of the structure are discretionary activities, provided</i></u></p> <p><u><i>1) The structure is associated with regionally significant infrastructure; and</i></u></p> <p><u><i>2) The structure has a functional or operational need to be located in the coastal marine area.</i></u></p>
<p>Rule C.1.6.3 <i>Reclamation for regionally significant infrastructure – discretionary activity</i></p> <p>Rule C.1.6.5 <i>Reclamation in significant areas – non-complying activity</i></p>	For the reasons set out at paragraph 7.2 above, the application of non-complying Rule C.1.6.5 to reclamation for the National Grid in a significant area is not an appropriate method for managing the effects of National Grid infrastructure.	<p>Amend Rule C.1.6.3 as follows:</p> <p><u><i>A reclamation in the coastal marine area necessary for the functional and operational needs of regionally significant infrastructure... are discretionary activities, provided they are not in a mapped...:</i></u></p> <p><u><i>(1) Significant Ecological Area, or</i></u></p> <p><u><i>(2) Outstanding Natural Features, or</i></u></p> <p><u><i>(3) Area of Outstanding Natural Character.</i></u></p>

<p>Rule C.2.1.11 <i>Activities in the beds of lakes and rivers – discretionary activity</i></p> <p>Rule C.2.1.13 <i>Structures in a significant area – non-complying activity</i></p>	<p>For the reasons set out at paragraph 7.2 above, the application of non-complying Rule C.2.1.13 to National Grid structures in a significant area is not an appropriate method for managing the effects of National Grid infrastructure.</p>	<p>Insert a new Rule C.2.1.11A:</p> <p><u><i>The use, erection, reconstruction, placement, alteration, or extension of a structure in, on, under or over the bed of a lake or river, that is part of a significant wetland or an outstanding freshwater body, or mapped (refer I Maps  Nqā mahere matawhenua):</i></u></p> <p><u><i>1) Outstanding Natural Character Area, or</i></u></p> <p><u><i>2) Outstanding Natural Feature, or</i></u></p> <p><u><i>3) Site or Area of Significance to tangata whenua,</i></u></p> <p><u><i>that is associated with Regionally Significant Infrastructure, any associated temporary damming, taking or diversion of water around the activity site, and any associated bed disturbance or deposition of a substance in, on, or under the bed, are discretionary activities.</i></u></p>
<p>Rule C.2.2.4 <i>Activities in wetlands – discretionary activity</i></p> <p>Rule C.2.2.5 <i>Activities in significant wetlands – non-complying activities</i></p>	<p>For the reasons set out at paragraph 7.2 above, the application of non-complying Rule C.2.2.5 to National Grid activities in a significant wetland is not an appropriate method for managing the effects of National Grid infrastructure.</p>	<p>Amend Rule C.2.2.4 as follows:</p> <p><u><i>Any ... structure in a wetland ... that is not the subject of any other rule in the Plan are discretionary activities, provided the activities are not undertaken in a significant wetland (except for Regionally Significant Infrastructure as provided for in Rule C.2.2.4A)..</i></u></p> <p>Insert a new Rule C.2.2.4A:</p> <p><u><i>Any:</i></u></p>



		<p><u>1) damage, destruction, disturbance, or removal of a plant in a wetland or deliberate introduction of a plant in a wetland for wetland maintenance or wetland enhancement, or</u></p> <p><u>2) use, erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure in a wetland, or</u></p> <p><u>3) disturbance of the bed of a constructed wetland and construction or installation of a structure in a constructed wetland,</u></p> <p><u>that is associated with Regionally Significant Infrastructure, is a discretionary activity.</u></p>
Policy D.2.5 <i>Benefits of regionally significant infrastructure</i>	The direction in this Policy to have “particular regard” to the benefits of regionally significant infrastructure does not give effect to Policy 1 of the NPSET, which requires the benefits of electricity transmission to be recognised and provided for.	Amend Policy D.2.5 as follows:  <del>Particular regard must be had to</del> <u>Recognise and provide for the national, regional and locally significant social, economic, and cultural benefits of regionally significant infrastructure.</u>
Policy D.2.6 <i>Minor adverse effects arising from the establishment and operation of regionally significant infrastructure</i>  Policy D.2.15 <i>Managing adverse effects on natural character, outstanding natural landscapes</i>	As set out at paragraph 7.2 above, the Proposed Plan must “give effect to” the NPSET, which (among other things) requires decision makers to recognise and provide for the development of the National Grid subject to a requirement to “seek to avoid” adverse effects of the development of the Grid on high value natural environments. In contrast, this Policy enables regionally significant infrastructure only where it is consistent with other policies (D.2.15 and	Insert a new Policy D.2.8A:  <u>Operation, maintenance, upgrading and development of the National Grid</u>  <u>(1) Enable the operation, maintenance and minor upgrading of existing National Grid infrastructure.</u>  <u>(2) Enable the major upgrading of existing National Grid infrastructure and the development of new National Grid</u>

<p><i>and outstanding natural features and</i></p> <p>Policy D.2.16 <i>Managing adverse effects on indigenous biodiversity</i></p>	<p>D.2.16) requiring certain adverse effects to be avoided. This Policy therefore fails to give effect to the NPSET.</p>	<p><u><i>infrastructure in the areas referred to in Policies D.2.15 and D.2.16 by:</i></u></p> <p><u><i>(a) ensuring that the route, site and method selection demonstrates that, as far as practicable given the constraints imposed by the technical, locational or operational requirements of the network:</i></u></p> <p><u><i>(i) For areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural character areas and outstanding natural landscapes and features, in order of preference:</i></u></p> <p><u><i>(A) Infrastructure will be located outside of the areas in (i);</i></u></p> <p><u><i>(B) Infrastructure will be located in more compromised parts of the areas in (i), where that reduces adverse effects on the values of the areas in (i);</i></u></p> <p><u><i>(C) Techniques (such as structure selection) will be used to avoid adverse effects on the areas in (i);</i></u></p> <p><u><i>(D) Adverse effects on the areas in (i) that cannot be avoided, will be remedied or mitigated; and</i></u></p>
--	--	--

		<p><u>(ii) For areas in the Coastal Environment referred to in policies 11(b), 13(1)(b) and 15(b) of the NZCPS, in order of preference:</u></p> <p><u>(A) Infrastructure will be located to avoid significant adverse effects on the areas in (ii);</u></p> <p><u>(B) Techniques (such as structure selection) will be used to avoid significant adverse effects on the areas in (ii);</u></p> <p><u>(C) Significant adverse effects on the areas in (ii) that cannot be avoided, will be remedied or mitigated; and</u></p> <p><u>(b) Avoid, remedy or mitigate other adverse effects.</u></p> <p>In the alternative, add a new Policy D.2.6A:</p> <p><u>Enable the establishment and operation (including consenting) of National Grid infrastructure providing the proposal seeks to avoid adverse effects on the matters addressed in Policy D.2.6(1)(a) – (d).</u></p>
<p>Policy D.2.7 <i>Maintenance, repair and upgrading or regionally significant infrastructure</i></p>	<p>As set out at paragraph 7.2 above, the Proposed Plan must also “give effect to” the NPSET, which provides a comprehensive management regime for the National Grid. In particular, Policy 5 of the NPSET requires decision-makers to enable the reasonable operational, maintenance and minor upgrade requirements of the National Grid. In contrast, this Policy only enables maintenance and upgrading activities where they meet specific limits on</p>	<p>Insert a new Policy D.2.8A as set out above.</p> <p>In the alternative, amend Policy D.2.7 as follows:</p> <p><i>Enable the maintenance and upgrading of established regionally significant infrastructure wherever it is located by allowing adverse effects, where: ...</i></p>

	<p>adverse effects that arise during and after the conclusion of the maintenance and upgrading activities. This Policy therefore fails to give effect to the NPSET.</p>	<p><u>(3) For the National Grid, the adverse effects of the maintenance or upgrading are avoided, remedied or mitigated taking into account the constraints imposed by the technical, locational or operational requirements of the network.</u></p>
<p>Policy D.2.8 <i>Appropriateness of regionally significant infrastructure proposals</i></p> <p>Policy D.2.15 <i>Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features and</i></p> <p>Policy D.2.16 <i>Managing adverse effects on indigenous biodiversity</i></p>	<p>As set out at paragraph 7.2 above, the Proposed Plan must also “give effect to” the NPSET, which provides a comprehensive management regime for the National Grid.</p> <p>This Policy must be read with other policies in the Proposed Plan to determine the policy direction for the management of adverse effects of regionally significant infrastructure on high value natural areas. However, on their face, there are some conflicts between policies that are not resolved in the Proposed Plan. For example, Policy D.2.8 lists matters to be considered where the adverse effects of activities are greater than envisaged by Policies D.2.15 and D.2.16, but does not explicitly exempt activities from the requirements to avoid adverse effects in Policies D.2.15 and D.2.16.</p> <p>Further, the direction in (2) to consider the appropriateness of a regionally significant infrastructure activity in light of “<i>whether the activity must be recognised and provided for by a national policy statement</i>” effectively defers the requirement for the Proposed Plan to give effect to the NPSET. A comprehensive policy that clearly sets out the approach to managing the effects of National Grid infrastructure on high value natural areas is needed and would assist in the application of (2).</p> <p>In addition, the direction in (6) does not recognise that the National Grid can have benefits that are in a different</p>	<p>Insert a new Policy D.2.8A as set out above.</p> <p>In the alternative, amend Policies D.2.8, D.2.15 and D.2.16 as follows:</p> <p><i>D.2.8: When considering the appropriateness of a regionally significant infrastructure activity in circumstances where adverse effects are greater than envisaged in Policies D.2.2D and D.2.2DA, have regard and give appropriate weight to:</i></p> <p><i>1) the benefits of the activity in terms of D.2.2C Benefits of regionally significant infrastructure, and</i></p> <p><i>2) whether the activity must be recognised and provided for by a national policy statement, and</i></p> <p><u><i>2A) the requirement to recognise and provide for the effective operation, maintenance, upgrading and development of the National Grid, and</i></u></p> <p><i>3) any demonstrated functional or operational need for the activity, and</i></p>

	<p>locality and/or extend beyond the local to the regional and national (as identified in the NPSET preamble).</p>	<p>4) <i>the extent to which any adverse environmental effects have been avoided, remedied or mitigated by route, site or method selection, and</i></p> <p>5) <i>any operational, technical or location constraints that limit the design and location of the activity, including any alternatives that have been considered which have proven to be impractical, or have greater adverse effects, and</i></p> <p>6) <i>whether the activity is for regionally significant infrastructure which is included in Schedule 1 of the Civil Defence Emergency Management Act as a lifeline utility and meets the reasonably foreseeable needs of Northland, other regions, and/or New Zealand, and...</i></p> <p><i>D.2.15: Manage the adverse effects of activities on natural character, outstanding natural landscapes and outstanding natural features by: 1) avoiding adverse effects of activities..</i></p> <p><u><i>Except that, in the case of the National Grid, any policy to avoid adverse effects shall be read as a policy to seek to avoid adverse effects.</i></u></p> <p><i>D.2.16: Manage the adverse effects of activities on indigenous biodiversity by: 1) in the coastal environment:</i></p> <p><i>a) avoiding adverse effects on: ...</i></p> <p><u><i>Except that, in the case of the National Grid, any policy to avoid adverse effects shall be read as a policy to seek to avoid adverse effects.</i></u></p>
--	--	--

<p>Policy D.2.9 <i>Protection of regionally significant infrastructure</i></p>	<p>Policy 10 of the NPSET requires decision makers to avoid reverse sensitivity effects on the National Grid, in addition to ensuring the maintenance, operation, upgrading and development of the National Grid is not compromised. Policy D.2.9 therefore fails to give effect to Policy 10 NPSET in its entirety.</p>	<p>Amend D.2.9 as follows:</p> <p><i>... ensure that the regionally significant infrastructure is not compromised <u>and avoid reverse sensitivity effects.</u></i></p>
<p>Objective F.1.6 <i>Security of energy supply</i></p>	<p>This objective focuses on energy generation and does not fully recognise the importance of electricity transmission to a secure energy supply. Policy 1 of the NPSET is to recognise and provide for the benefits of electricity transmission, including maintained or improved security of supply.</p>	<p>Amend Objective F.1.6 as follows:</p> <p><i>Northland's energy supplies are secure and reliable, and generation (<u>particularly when it uses renewable sources</u>) <u>and transmission of energy that benefits the region is supported, particularly when it uses renewable sources.</u></i></p>