

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of Schedule 1
of the Act in relation to the Proposed
Regional Plan for Northland

BETWEEN TRANSPower NEW ZEALAND
LIMITED
(ENV-2019-AKL-000107)

NORTHPOWER LIMITED
(ENV-2019-AKL-000123)

TOP ENERGY LIMITED
(ENV-2019-AKL-000125)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND
(ENV-2019-AKL-000127)

Appellants

AND NORTHLAND REGIONAL
COUNCIL

Respondent

Court: Environment Judge J A Smith sitting alone pursuant to
section 279 of the Act

Date of Order: 9 March 2021

Date of Issue: 9 March 2021

CONSENT ORDER



- A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeals are allowed in accordance with **Annexure A**.
- B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] Transpower New Zealand Limited (**Transpower**), Northpower Limited (**Northpower**), Top Energy Limited, and Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**) appealed provisions of the Proposed Regional Plan for Northland as they relate to Topic 10 Infrastructure and Energy.

[2] The following have given notice of an intention to become a party under section 274 of the Act and have signed the joint memorandum in support of the consent order:

- (a) Horticulture New Zealand;
- (b) Federated Farmers of New Zealand;
- (c) Transpower;
- (d) Northpower;
- (e) Forest and Bird;
- (f) Top Energy Limited;
- (g) Refining New Zealand;
- (h) Minister of Defence;
- (i) Minister of Conservation;
- (j) Patuharakeke Te Iwi Trust Board;
- (k) New Zealand Transport Agency; and
- (l) CEP Services Matauwhi Limited.

Agreement reached

[3] Following Court-assisted mediation and direct discussions, the parties have reached agreement on a proposal to resolve aspects of these appeals.

[4] This order resolves:

- (a) Objectives F.1.5 and F.1.6;
- (b) Policies D.2.5, D.2.6, D.2.7, and D.2.9;
- (c) Proposed new Policies D.2.5A and D.2.8A; and
- (d) The definition of regionally significant infrastructure.

Objective F.1.5

[5] Objective F.1.5 seeks to recognise the national, regional and local benefits of Regionally Significant Infrastructure (**RSI**) and renewable energy generation and enable their effective development, operation, maintenance, repair, upgrading and removal.

[6] Objective F.1.5 was appealed by Forest and Bird seeking to insert “in appropriate locations” at the end of the Objective. Forest and Bird considered that as worded, Objective F.1.5 was not consistent with the Act nor the New Zealand Coastal Policy Statement 2010.

[7] Following mediation, Forest and Bird agreed not to pursue its appeal point.

Objective F.1.6

[8] Objective F.1.6 seeks to ensure that Northland’s energy supplies are secure and reliable, and that generation that benefits the region is supported, particularly when it uses renewable sources.

[9] Objective F.1.6 was appealed by Transpower, seeking an amendment to include a reference to electricity transmission. Transpower considered that, as worded, the objective did not fully recognise the importance of electricity

transmission to secure energy supply. Through mediation, the parties agreed to amend the objective by adding a reference to electricity transmission.

[10] The parties consider that the amendment is appropriate as it better aligns with Policy 1 of the National Policy Statement on Electricity Transmission 2008 (NPSET) which is to recognise and provide for the benefits of electricity transmission, including maintained or improved security of supply.

Policy D.2.5

[11] Policy D.2.5 provides that particular regard must be had to the national, regional and locally significant social, economic and cultural benefits of regionally significant infrastructure.

[12] Policy D.2.5 was appealed by Transpower, seeking an amendment to delete “particular regard must be had to” from the Policy and replace it with “recognise and provide for”. The rationale for Transpower’s appeal is that the direction to have “particular regard” to the benefits of RSI does not give effect to Policy 1 of the NPSET, which requires the benefits of electricity transmission to be recognised and provided for.

[13] Following mediation, the parties agreed to include a new Policy D.2.5A to address Transpower’s appeal point, as an alternative to amending Policy D.2.5.

[14] The parties consider that the addition of Policy D.2.5A is appropriate as it better aligns with the NPSET.

[15] With the addition of Policy D.2.5A, the parties agree that Policy D.2.5 should be retained without amendment.

Policy D.2.6

[16] Policy D.2.6 enables the establishment and operation of regionally significant infrastructure by allowing minor adverse effects, provided:

- (a) That the RSI proposal is consistent with certain policies in the Proposed Plan;

- (b) That the RSI proposal will not likely result in over-allocation of rivers;
and
- (c) That other adverse effects arising from the RSI are avoided, remedied, mitigated or offset.

[17] Northpower Limited appealed D.2.6, seeking that other adverse effects could be avoided, remedied, mitigated, offset or “compensated for”. The rationale for Northpower’s amendment is to provide recognition of consent authorities’ obligation, under section 104(1)(ab) of the Act, to consider any proposed measures by an applicant to compensate for any adverse effects on the environment.

[18] Following mediation and subsequent discussions, the parties agreed to amend Policy D.2.6 to include the reference to “or compensated for”. The parties consider that this amendment is appropriate as it is consistent with section 104(1)(ab) of the Act and it better aligns with Policy 4.4.1(5) of the Regional Policy Statement for Northland (**RPS**).

Policy D.2.7

[19] Policy D.2.7 provides that the maintenance and upgrading of established RSI wherever it is located should be enabled by allowing adverse effects:

- (a) Where the adverse effects are not significant, or they are temporary or transitory; and
- (b) Where they are the same or similar to those arising from the RSI before the activity was undertaken.

[20] Policy D.2.7 was appealed by Transpower, seeking that a new Policy D.2.8A be inserted or that Policy D.2.7 be amended to include a further clause (3) that provides “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”.

[21] The rationale for Transpower’s appeal is that the provisions do not give effect to the NPSET which provides a comprehensive management regime for the National Grid.

[22] Following mediation and subsequent discussions, the parties agreed to include a new National Grid specific policy – Policy D.2.8A Operation, maintenance, upgrading and development of the National Grid. Policy D.2.8A was agreed as an alternative to Transpower’s appeal on D.2.7 and other provisions that Transpower sought changes to.

[23] The parties consider that Policy D2.8A is appropriate because:

- (a) it gives effect to the NPSET;
- (b) it provides a stand-alone policy for National Grid / electricity transmission which is appropriate given the specific direction in the NPSET that other RSI is not subject to; and
- (c) it is a more efficient alternative to amending the range of other policies that Transpower sought amendments to in its appeal.

[24] With the addition of Policy D.2.8A, the parties agree that Policy D.2.7 should be retained without amendment. The addition of Policy D.2.8A resolves Transpower’s appeal points on Policies D.2.7, D.2.8, D.2.15 and D.2.16.

Policy D.2.9

[25] Policy D.2.9 provides that when decision-makers are considering new use and development activities that could adversely affect the ongoing operation, maintenance, upgrade or development of RSI, they should ensure that the RSI is not compromised.

[26] Policy D.2.9 was appealed by Transpower, seeking explicit reference to reverse sensitivity effects. The rationale for Transpower’s appeal is that as currently worded, Policy D.2.9 fails to give effect to Policy 10 of the NPSET which requires decision makers to avoid reverse sensitivity effects on the National Grid.

[27] Following mediation, Transpower agreed not to pursue its appeal point.

Definition of Regionally Significant Infrastructure

[28] Top Energy Limited appealed the definition of “regionally significant infrastructure” in the Proposed Plan, seeking that it include Appendix 3 of the RPS in the definition.

[29] Top Energy’s appeal noted that including the Appendix 3 list of RSI in the definition will:

- (a) Better align the Proposed Plan with the RPS; and
- (b) Facilitate the operations of network utility operators.

[30] Through mediation, the parties agreed to amend the definition of RSI to include Appendix 3 of the RPS as an appendix to the Proposed Plan.

[31] The parties consider that the amendment provides clarity to plan users as they will not need to refer to another documents for the definition of RSI.

Consideration

[32] In making this order the Court has read and considered the appeals and the memorandum of the parties dated 26 February 2021.

[33] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court’s endorsement fall within the court’s jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

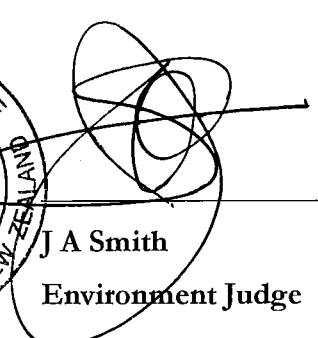
[34] When considering a package of alterations such as presented in this case we must look at the totality and the interests represented. Many different aspects of the Parties interests were involved and I am satisfied that a robust and workable outcome has resulted. Overall, I consider the purposes of the Act are broadly met.

Orders

[35] Therefore the Court orders, by consent, that the Northland Regional Plan is amended in accordance with **Annexure A**. The appeal points in relation to these provisions are otherwise dismissed.

[36] There is no order as to costs.




J A Smith
Environment Judge

Annexure A

(additions shown in underline and deletions in ~~striketrough~~)

ANNEXURE A

F.1.5 Regionally significant infrastructure

Recognise the national, regional and local benefits of regionally significant infrastructure and renewable energy generation and enable their effective development, operation, maintenance, repair, upgrading and removal.

F.1.6 Security of energy supply

Northland's energy supplies are secure and reliable, and generation (particularly when it uses renewable sources) and transmission of energy that benefits the region is supported, ~~particularly when it uses renewable sources.~~

D.2.5 Benefits of regionally significant infrastructure

Particular regard must be had to the national, regional and locally significant social, economic, and cultural benefits of regionally significant infrastructure.

D.2.5A

Recognise and provide for the national, regional and local benefits of sustainable, secure and efficient national grid infrastructure.

D.2.6 Minor adverse effects arising from the establishment and operation of regionally significant infrastructure

Enable the establishment and operation (including consenting) of regionally significant infrastructure by allowing any minor adverse effects providing:

- 1) The regionally significant infrastructure proposal is consistent with:
 - a) all policies in Section D.1 Tangata whenua, and
 - b) Policy Rule D.2.14 Managing adverse effects on historic heritage, and
 - c) Policy Rule D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features, and
 - d) Policy Rule D.2.16 Managing adverse effects on indigenous biodiversity, and
- 2) the regionally significant infrastructure proposal will not likely result in over-allocation having regard to the allocation limits in H.4.3 Allocation limits for rivers, and
- 3) other adverse effects arising from the regionally significant infrastructure are avoided, remedied, mitigated or offset, or compensated for to the extent they are no more than minor.

D.2.7 Maintenance, repair and upgrading of regionally significant infrastructure

Enable the maintenance and upgrading of established regionally significant infrastructure wherever it is located by allowing adverse effects, where:

- 1) the adverse effects whilst the maintenance or upgrading is being undertaken are not significant or they are temporary or transitory, and
- 2) the adverse effects after the conclusion of the maintenance or upgrading are the same, or similar, to those arising from the regionally significant infrastructure before the activity was undertaken.

D.2.8A Operation, maintenance, upgrading and development of the National Grid

(1) Enable the reasonable operation, maintenance and minor upgrading of existing National Grid infrastructure.

(2) Provide for the major upgrading of existing National Grid infrastructure and the development of new National Grid infrastructure to which Policies D.2.15 and D.2.16 apply, where:

(a) 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) For areas and taxa referred to in Policy D.2.16(1)(a) and (2)(a), and outstanding natural character areas and outstanding natural landscapes and features referred to in Policy D.2.15(1), in order of preference:

(A) Infrastructure will be located outside of the areas, landscapes and features in (i) or located to avoid adverse effects on the taxa in (i);

(B) Infrastructure will be located in more compromised parts of the areas, landscapes and features in (i), where that reduces adverse effects on the characteristics, qualities and values of the areas, landscapes and features in (i);

(C) Techniques (such as structure selection) will be used to avoid any remaining adverse effects on the areas, landscapes and features and taxa in (i);

(D) Any remaining adverse effects on the areas, landscapes and features and taxa in (i) that cannot be avoided, will be remedied or mitigated; and

(ii) For other natural character areas and other natural landscapes and features in the coastal environment referred to in Policy D.2.15(1) and areas and taxa referred to in Policy D.2.16(1)(b) and (2)(b), in order of preference:

(A) Infrastructure will be located to avoid significant adverse effects on the areas, landscapes, features and taxa in (ii);

(B) Techniques (such as structure selection) will be used to avoid any remaining significant adverse effects on the areas, landscapes, features and taxa in (ii);

(C) Any remaining significant adverse effects on the areas, landscapes, features and taxa in (ii) that cannot be avoided, will be remedied or mitigated; and

(b) When applying (a), recognise that, in some circumstances, the adverse effects on the values of the areas, landscapes, features and taxa in (a)(i) and significant adverse effects on the values of the areas, landscapes, features and taxa in (a)(ii), may be such that the effects will need to be avoided.

(c) Other adverse effects are avoided, remedied or mitigated.

D.2.9 Protection of regionally significant infrastructure

When considering new use and development activities that could adversely affect the ongoing operation, maintenance, upgrade or development of regionally significant infrastructure; ensure that the regionally significant infrastructure is not compromised.

B Definitions | Whakamāramatanga

<i>Regionally significant infrastructure</i>	<p>Note:</p> <p>See Appendix 3 of the Regional Policy Statement for Northland H.X for a list of identified regionally significant infrastructure. Regionally significant infrastructure extends to the site-related components that enable the asset to function.</p>
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H.X Regionally Significant Infrastructure

Regionally significant infrastructure includes:

1. Energy, water, communication

(a) Main pipelines for the distribution or transmission of natural or manufactured gas or petroleum and key delivery points and storage facilities;

(b) Key facilities required for communication (including telecommunication, broadband, wireless networks and radio);

(c) The 'national grid' as defined by the Electricity Industry Act 2010 including facilities for the transmission of electricity from the 'national grid' (such as substations, grid injection points etc.) to the 'network';

- (d) Network electricity lines and associated infrastructure that constitute the sub-transmission¹ network;
- (e) Electricity distribution assets which supply essential public services (such as hospitals or lifelines facilities), large (1MW or more) industrial or commercial consumers, 1000 or more consumers or are difficult to replace with an alternative supply if they are compromised”;
- (f) Electricity generation facilities (including Ngāwhā geothermal power station and Wairua hydroelectric power station) which supply electricity to either the national grid or the local distribution network;
- (g) Regional and district council water storage, trunk lines and treatment plants;
- (h) Regional and district council wastewater trunk lines and treatment plants and key elements of the stormwater network including treatment devices;
- (i) Marsden Point oil refinery and truck loading facility.

2. Transport

- (a) State highways;
- (b) Roads as well as walking and cycling facilities that are of strategic significance as identified in the Regional Land Transport Strategy²;
- (c) Whāngārei, Kaitāia and Bay of Islands airports;
- (d) Installations and equipment for air navigation;
- (e) Northport, including the adjoining land used for the movement and storage of cargo;
- (f) Railway lines and associated railway facilities.

3. Significant social and community facilities:

- (a) Flood management / protection schemes managed by regional and / or district councils;
- (b) Public hospitals;
- (c) The Northland Events Centre and Kensington Stadium;
- (d) Northland Region Corrections Facility;

¹ Sub-transmission means electricity infrastructure which directly conveys, or is intended to directly convey, large quantities of electricity from point to point. Typically such electricity conveyance is across cities, districts or regions between Grid Exit Points and Zone Substations. For the avoidance of doubt, sub-transmission includes assets which were part of the national grid but are no longer owned by Transpower and new assets which perform the function of transmission but are not owned by Transpower.

² See maps below.

(e) Northland Polytechnic – (NorthTech) main campuses and Auckland University Faculty of Education – Whāngārei;

(f) Puwera Regional Landfill Facility.

Regional Land Transport Strategy Maps – Strategic Tourist Routes



Regional Land Transport Strategy Maps – Strategic Freight Routes

Strategic Freight Routes - Northland



Regional Land Transport Strategy Maps – National Cycleway Proposal

