

## **BEFORE THE DISTRICT HEARINGS PANEL**

Under the Resource Management Act 1991

In the matter of

**Proposed Queenstown Lakes District Plan – Chapter 21 Rural;  
Chapter 23 Gibbston Character Zone; and Chapter 33  
Indigenous Vegetation and Biodiversity**

and

**Transpower New Zealand Limited (Submitter 805 and Further  
Submitter 1301)**

Submitter

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**Legal Submissions on behalf of Transpower New Zealand  
Limited dated 24 May 2016**

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## Introduction

1. We have set out the background to Transpower New Zealand Limited (**Transpower**), and the legal framework applying to the National Grid in our legal submissions dated 16 March 2016.
2. In these submissions we will:
  - (a) Discuss the development of district plans in the context of the requirement to give effect to higher-order planning documents;
  - (b) Outline the case law on offsetting; and
  - (c) Explain the NESETA as it relates to natural areas.

## Approach to the development of District Plans

3. The Council must give effect to the NPSET in its decision on the Proposed Plan.<sup>1</sup> We consider there can be a tension between giving effect to higher-order planning documents, and avoiding repetition of higher-order policy directions in every potentially relevant provision of a plan.
4. Ms Crow has endeavoured to strike the right balance by accepting that further amendments to most of the provisions in the Rural and Gibbston Character Zone chapters of the Proposed Plan are not necessary,<sup>2</sup> provided amendments are made elsewhere to the Proposed Plan to give effect to the NPSET.
5. The key exception to the above approach is where the Proposed Plan uses very directive and absolutist terminology that is of general application but contrary to higher-order policy directions. For example, Ms Crow considers amendments are required to Policy 23.2.1.7 which is to “avoid the location of structures and water tanks on skylines, ridges, hills and prominent slopes” to ensure it gives effect to Policy 3

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<sup>1</sup> Section 75(3)(a) of the RMA provides that a district plan must give effect to any national policy statement. This requirement was discussed by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company* (2014) 17 ELRNZ 442, as covered in our previous legal submissions.

<sup>2</sup> This assumes the amendments proposed in the Section 42A Report will be made.

of the NPSET.<sup>3</sup> Ms Craw supports the amendments proposed to this policy in the Section 42A Report.

## Offsetting

6. We consider that any *requirement* to offset sits outside, and is inconsistent with, the RMA, which is focussed on avoiding, remedying and mitigating adverse effects of activities on the environment.
7. The RMA is not a “no effects” statute. It aims to manage effects, rather than prevent them in their entirety, and recognises that some effects may be acceptable in certain circumstances. This position is well-established, and was recently reaffirmed by the High Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council*, which stated:<sup>4</sup>

It is clear that Parliament did not intend the RMA to be a zero sum game, in the sense that all adverse effects which were unavoidable had to be mitigated or compensated.

8. Mandating offsetting in a district plan is not appropriate in the sustainable management context. Instead, and as noted by the Court in *Royal Forest and Bird Protection Society of New Zealand Inc*, offsets are better viewed as a positive environmental effect to be taken into account, pursuant to s 104(1)(a) and (c), and s 5(2).<sup>5</sup>
9. Transpower considers offsetting or environmental compensation should be an option available to applicants should they consider this is necessary when applying for resource consent. Ms Craw has proposed amendments to the relevant provisions to ensure it is clearer that offsetting or environmental compensation is not a requirement, but an option available to applicants.<sup>6</sup>

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<sup>3</sup> Statement of Evidence of Aileen Mary Craw for Transpower New Zealand Limited, dated 21 April 2016, para 50.

<sup>4</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346 at [52].

<sup>5</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346 at [74].

<sup>6</sup> Statement of Evidence of Aileen Mary Craw for Transpower New Zealand Limited, dated 21 April 2016, para 61-64

## NESETA and the rules for SNAs

10. The issue is Section 33.3.4.2 of the Proposed Plan provides an exemption from the rules relating to indigenous vegetation clearance for the operation and maintenance of existing and in service/operational utilities, but Transpower would still require resource consent because it is subject to the NESETA. Ms Craw notes this is an anomaly.<sup>7</sup>
11. The National Grid passes through SNA F40A in the Gibbston Character Zone. Transpower would require resource consent because Clause 30(2)(b) of the NESETA relating to permitted activities provides that any tree or vegetation must not be trimmed, felled, or removed if it is in a natural area. This is defined 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”.
12. The trimming, felling, or removal of any tree or vegetation in a natural area is a controlled activity if it is done to reduce the risk to an existing transmission line, and all applicable conditions are complied with.<sup>8</sup> Otherwise any application will be assessed as a restricted discretionary activity.<sup>9</sup>
13. Transpower does not wish to circumvent the NESETA. However, it is somewhat perverse if other network utility operators do not require resource consent to trim, fell or remove vegetation in an SNA for operational and maintenance purposes but Transpower does.
14. Ms Craw identifies that one option to address this issue is to provide a permitted activity rule for any trimming, felling, or removal of any tree or indigenous vegetation (including in an SNA) if it relates to the operation, upgrade, and maintenance of the National Grid.<sup>10</sup> This approach has been adopted elsewhere and is not an unusual.<sup>11</sup>

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<sup>7</sup> Statement of Evidence of Aileen Mary Craw for Transpower New Zealand Limited, dated 21 April 2016, para 76

<sup>8</sup> Clause 31 of the NESETA

<sup>9</sup> Clause 32 of the NESETA

<sup>10</sup> Statement of Evidence of Aileen Mary Craw for Transpower New Zealand Limited, dated 21 April 2016, para 77

<sup>11</sup> See for example extract from the South Waikato District Plan attached as Appendix A

15. We submit this would mean the SNA would not be “protected by a rule” as it related to the National Grid, and so not fall within the definition of ‘natural area’ in the NESETA. This is because the permitted activity rule would enable activities involving indigenous vegetation clearance - not “protect” an area in relation to this activity.
16. We note the proposed permitted activity rule would facilitate the routine and emergency vegetation management described in Mr Renton’s evidence.<sup>12</sup> The proposed rule would not apply to any new National Grid infrastructure which would be subject to consenting requirements under the Proposed Plan.<sup>13</sup>

### **Conclusion**

17. Ms Craw has accepted the majority of amendments proposed in the Section 42A Report. Some further amendments are recommended to provide greater clarity including in relation to the role of offsetting, and to address an anomaly regarding the status of Transpower’s activities within SNAs.
18. Transpower is calling evidence from:
- (a) Mr Andrew Renton – Engineering; and
  - (b) Ms Aileen Craw – Planning.



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AJL Beatson/ N J Garvan  
Counsel for Transpower New Zealand Limited

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<sup>12</sup> Statement of Evidence of Andrew Renton for Transpower New Zealand Limited, dated 21 April 2016. We note the obligation to remove danger to persons or property from trees damaging conductors in clause 14(1) of the Electricity (Hazards from Trees) Regulations 2003 (Tree Hazard Regulations) does not override any Act.

<sup>13</sup> Rule 33.4.2 of the Proposed Plan provides that activities located within Significant Natural Areas that do not comply with all the standards in Table 3 are discretionary activities.

## Appendix A

### 14.4.1 Permitted Activities

Vegetation clearance, land disturbance and land drainage is a permitted activity throughout the District, where:

- (a) The land disturbance, land drainage and vegetation to be cleared is not within a Significant Natural Area identified in Appendix E
- (b) The land disturbance, land drainage and vegetation to be cleared is within a Significant Natural Area identified in Appendix E, but is in an area which is:
  - (i) Subject to a Queen Elizabeth II covenant, Nga Whenua Rahui Kawenata, Heritage Protection Order or covenant under the Reserves Act 1977 or Conservation Act 1987, and the clearance is consistent with the covenant or order applying to that place
- (c) The land disturbance, land drainage and vegetation to be cleared is within a Significant Natural Area identified in Appendix E, but land disturbance, drainage or vegetation clearance is:
  - (i) Ancillary damage as a result of adjacent plantation forestry harvesting where the damage is temporary in nature, the extent of the indigenous remnant remains unchanged and the vegetation will recover readily.
  - (ia) Clearance of exotic vegetation associated with harvesting production forest first planted prior to 7 November 2012.
  - (ib) Clearance of indigenous vegetation understorey and soil disturbance associated with harvesting and replanting of production forest first planted prior to 7 November 2012.
  - (ii) Required for fire risk management in a production forest
  - (iii) Necessary as part of the maintenance of lawfully established roads, tracks, earth dams, structures, or fences, all provided the clearance is within 2 metres of the road, track, earth dam, structure or fence
  - (iv) Maintenance of existing drains that is necessary to prevent inundation of productive pasture land
  - (v) Necessary to protect, maintain or upgrade hydro-electric power generating infrastructure, or to prevent or remedy erosion that may adversely affect the operation of hydro electric power generating infrastructure, and where the works are within the Electricity Generation Zone
  - (vi) Limited to use by Tangata Whenua for culturally appropriate purposes such as rongoa, waka, traditional buildings or marae-based activities.
  - (vii) Required for construction of fencing for conservation purposes to exclude stock or pest animals
  - (viii) Required for the removal or control of invasive weeds, or
  - (ix) Removal of vegetation that endangers human life or existing structures, or that poses a risk to the integrity of, the safe use of, or access to existing network utilities.
  - (x) Required for the operation, maintenance and upgrading of existing electricity lines.

ADVISORY NOTE - The SNAs identified in Appendix E do not include significant areas of plantation forest or pasture land, areas of indigenous vegetation which has been planted and managed specifically for the purposes of the harvesting or clearance or domestic gardens or shelterbelts.