

In the Environment Court of New Zealand  
at Auckland

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

ENV-2022-AKL-

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*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:* **Waikato District Council**  
*Respondent*

Notice of appeal by Transpower New Zealand Limited against  
decisions on the Proposed Waikato District Plan

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Dated: 1 March 2022

**NOTICE OF APPEAL BY TRANSPOWER NEW ZEALAND LIMITED AGAINST  
DECISIONS ON THE PROPOSED WAIKATO DISTRICT 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 Waikato District Council (*Council*) on the Proposed Waikato District 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 17 January 2022.
- 5 The Decision was made by the Council.
- 6 The parts of the Decision that Transpower is appealing are:
  - 6.1 the National Grid Subdivision Corridor rules;
  - 6.2 the National Grid Yard rules in all zones traversed by existing National Grid assets, including the GRID rules;
  - 6.3 Rule EW-R2;
  - 6.4 ANF-R18;
  - 6.5 ANF-R19;
  - 6.6 Rule 1; and
  - 6.7 Objective NATC-O1.

**Reasons for the appeal**

- 7 Transpower is generally supportive of the Decision as it relates to the National Grid. However, Transpower considers that amendments are needed to ensure that the Decision:
  - 7.1 accords with the relevant requirements of Part 2 of the RMA;
  - 7.2 gives effect to the National Policy Statement on Electricity Transmission (*NPSET*), particularly Policies 2, 3, 4, 5 8, 10 and 11 of the NPSET;

- 7.3 promotes the sustainable management of natural and physical resources;
  - 7.4 promotes the efficient use and development of natural and physical resources;
  - 7.5 results in the most appropriate plan provisions in terms of section 32 of the RMA;
  - 7.6 implements Council's functions under section 31 of the RMA; and
  - 7.7 accords with best resource management practice.
- 8 Without limiting the generality of the reasons at paragraph 7.1 above, the specific reasons for Transpower's appeal are:
- 8.1 The NPSET requires the Proposed Plan to recognise and provide for the effective operation, maintenance, upgrading and development of the National Grid (Policy 2) and by enabling the reasonable operational, maintenance and minor upgrade requirements of established electricity assets (Policy 5).
  - 8.2 The Waikato Regional Policy Statement (*RPS*) requires:
    - (a) the Proposed Plan to provide for the operation, maintenance, upgrade and development of transmission that recognises and provides for the national significance and benefits, future needs, and security of supply of electricity transmission (Objective 3.5);
    - (b) that development does not compromise infrastructure corridors and recognises and protects the value and long-term benefits of regionally significant infrastructure (Objective 3.12);
    - (c) that new development maintains the operational effectiveness, viability and safety of existing and planned infrastructure, and that the efficient and effective functioning of infrastructure is maintained, as well as the ability to maintain and upgrade that infrastructure (Policy 6.3); and
    - (d) the built environment to be managed having particular regard to ensuring the effectiveness and efficiency of existing and planned regionally significant infrastructure (Policy 6.6).
  - 8.3 The Proposed Plan must "give effect to" the NPSET and the RPS.
  - 8.4 The additional specific reasons set out in **Appendix A** to this notice.

**Relief sought**

- 9 Transpower seeks the following relief (or relief with the same or similar effect):
- 9.1 Changes to the Proposed Plan to ensure that the National Grid Yard rules and National Grid Subdivision Corridor rules apply consistently to all zones where there are existing National Grid assets;

- 9.2 Changes to the Proposed Plan to ensure that non-complying activity status does not apply to any activities associated with the operation, maintenance, upgrade and development of the National Grid (including ancillary activities). The activity status for National Grid activities is currently inconsistent in the Proposed Plan. For example, National Grid activities within an identified area are non-complying under AINF-R19, but are discretionary under GRID-R6. Non-complying activity status is not an appropriate method for managing the effects of National Grid infrastructure, including supporting and ancillary infrastructure;
  - 9.3 Changes to the Proposed Plan regarding what rules apply to activities associated with the National Grid, and clarification as to the relationship between the GRID rules and the AINF Rules. Transpower seeks either the GRID rules be deleted and the provisions be rehoused within the AINF and respective zone chapters, or the GRID rules be amended to not be specific to roads.
  - 9.4 The insertion of advice notes in relation to the New Zealand Electrical Code of Practice for Electrical Safe Distances (*NZECP 34:2001*) and the Electricity (Hazards from Trees) Regulations 2003 (*Tree Regulations*) into the chapters of all zones where there are National Grid assets;
  - 9.5 Changes to rule EW-R2 to clarify that "Ancillary Rural Activities" are covered by rule EW-R2;
  - 9.6 Changes to Rule 1 to clarify the relationship between the Resource Management (National Environmental Standards for Electricity Transmission Activities) 2009 (*NESETA*);
  - 9.7 Changes to Objective NATC-O1 (formerly 3.5.1) to give effect to the NZCPS and the RPS;
  - 9.8 Such further or consequential relief as may be necessary to address the matters raised in Transpower's submissions and this appeal; and
  - 9.9 Costs.
- 10 **Appendix A** to this notice provides further particulars of the relief sought.
- 11 The following documents are attached to this notice:
- 11.1 A copy of Transpower's submission and further submission (**Appendix B**);
  - 11.2 A copy of the relevant parts of the Decision (**Appendix C**); and
  - 11.3 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



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Luke Hinchey  
Partner  
1 March 2022

Address for service of person:

Transpower New Zealand Limited  
c/- Luke Hinchey / Rebecca Tompkins  
Chapman Tripp  
Level 34, PwC Tower  
15 Customs Street West  
PO Box 2206, Shortland Street  
Auckland 1140  
Email address: [luke.Hinchey@chapmantripp.com](mailto:luke.Hinchey@chapmantripp.com) / [rebecca.tompkins@chapmantripp.com](mailto:rebecca.tompkins@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**

<b>Provision appealed</b>	<b>Reasons for appeal</b>	<b>Relief sought</b> (Changes are tracked with additions <u>underlined</u> and deletions shown in <del>striketrough</del> )
<b>National Grid Subdivision Corridor Rules</b>		
<p>Part 2: District-wide matters / Subdivision / SUB-Subdivision            LCZ Local centre zone SUB-R90,            TCZ Town Centre zone SUB-R104,            FUZ – future urban zone</p>	<p>Transpower supports the inclusion of a rule governing subdivision of land within the National Grid Subdivision Corridor across the relevant zones in the Proposed Plan. However, currently the application of the National Grid specific subdivision rule is not correctly applied to the applicable zones throughout the Proposed Plan.</p> <p>For example, the planning maps do not identify the National Grid as within the LCZ Local Centre Zone and the TCZ Town Centre Zone, and it is Transpower’s understanding that the National Grid does not traverse these zones. As such, the National Grid Subdivision Corridor specific subdivision rules as they apply to these zones needs to be deleted.</p> <p>Conversely, a National Grid specific subdivision rule is not included in the Future Urban Zone rules. However, there are National Grid assets within the Future Urban Zone. Therefore, an equivalent National Grid specific subdivision rule should be inserted for the Future Urban Zone.</p> <p>Transpower considers that either a single rule should be provided in the Proposed Plan governing subdivision within the National Grid Subdivision Corridor, or the same rule should be duplicated in all of the zones traversed by existing National Grid assets in the Proposed Plan.</p>	<ol style="list-style-type: none"> <li>1. Retain the rule(s) governing subdivision of land within the National Grid Subdivision Corridor and provide a single rule in the Proposed Plan governing subdivision within the National Grid Subdivision Corridor.</li> <li>2. Alternatively, correctly apply the same rule in all the zones traversed by existing National Grid assets in the Proposed Plan. Specifically, delete the application of the rule to the LCZ Local Centre Zone and the TCZ Town Centre Zone, and provide a rule applicable to the Future Urban Zone.</li> </ol>

<b>National Grid Yard Rules</b>		
<p>National Grid Yard rules within the following:</p> <p>Part 3: Area-Specific matters / Zones -</p> <p>COMZ - Commercial zone  FUZ - Future urban zone  GIZ - General industrial zone  GRUZ - General rural zone  GRZ - General residential zone  HIZ - Heavy industrial zone  LLRZ - Large lot residential zone  OSZ - Open space zone  RLZ - Rural lifestyle zone  SETZ - Settlement zone  TTZ - TaTa Valley zone</p> <p>Part 2: District-wide matters / Energy, infrastructure and transport / GRID National Grid Rules  GRID-R1, GRID-R2, GRID-R9, GRID-R10, GRID-11</p>	<p>Transpower supports the provision of a set of National Grid specific rules within the Proposed Plan to regulate activities within the National Grid Yard. However, there are variations and inconsistencies across the chapters of the Proposed Plan in terms of these rules. For example:</p> <ul style="list-style-type: none"> <li>• The listing of non-complying activities varies across the chapters;</li> <li>• Many chapters do not provide a National Grid Yard specific 'catch all' rule (meaning the default activity status differs);</li> <li>• The General Residential, Settlement, and Large Lot Residential zone chapters do not contain standards applicable to the Rural zone (such as farm buildings, crop protection structures, milking sheds) but other 'urban' type zones do (for example the Commercial zone and Industrial zone). The rural/urban distinction is confusing.</li> </ul> <p>Transpower also notes that many of the GRID rules contain references to "in a road" and "roads" which arguably confine the scope of the relevant rules to apply only to the National Grid Yard within a road or road zone. Transpower seeks that the National Grid Yard rules apply in the correct zone based on the location of the National</p>	<ol style="list-style-type: none"> <li>1. Provide a single rule framework in the Proposed Plan governing land use and development within the National Grid Yard.</li> <li>2. Alternatively, amendments to the National Grid Yard rules across all chapters to provide consistency in the matters addressed within the rule. Notwithstanding the location of the National Grid Yard rules, Transpower supports the duplication of GRUZ-R21 (subject to the renumbering amendment as outlined below), GRUZ-R52, GRUZ-R53, GRUZ-R54, and GRUZ- R55, across all the applicable zone chapters.</li> <li>3. Amendment to the numbering within GRUZ-R21 as follows: <p><b>GRUZ-R21</b> Buildings, structures and sensitive land use within the National Grid Yard:</p> <p>(1) Activity status: PER</p> <p>Activity-specific standards:</p> <p>(a) Within National Grid Yard:</p> <p>....</p> <p>(b) All buildings or structures permitted by Rule GRUZ-R21(1)(a) must:</p> <p>(i) Comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001 ISSN 0114-0663 under all National Grid transmission line operating conditions;</p> </li> </ol>



	<p>Grid transmission lines, or the National Grid Yard rules be provided in a single rule framework.</p> <p>Accordingly, Transpower seeks clarification as to how the National Grid rules apply across the different zones. Transpower also considers that should the National Grid Yard rules be duplicated across the applicable zone chapters within the Proposed Plan, the provisions should be consistent to provide clarity for plan users and to ensure a certain and complete rule framework for the National Grid.</p>	<p>and</p> <p><del>(ii)</del> <del>(1)</del> Locate a minimum of 12m from the outer visible foundation of any National Grid support structure foundation and associated stay wire, unless it is:</p> <p><del>(2)</del> <u>a.</u> A building or structure where Transpower has given written approval in accordance with clause 2.4.1 of the NZECP; or</p> <p><del>(3)</del> <u>b.</u> Fences less than 2.5m in height, measured from the natural ground level immediately below the structure, and located a minimum of 5m from the nearest National Grid support structure foundation;</p> <p>or</p> <p><del>(ii)</del> <u>c.</u> Network utilities (other than for the reticulation and storage of water for irrigation purposes) or any part of electricity infrastructure undertaken by a network utility operator as defined in the Resource Management Act 1991, that connects to the National Grid; and</p> <p>(iii) Not permanently physically impede existing vehicular access to a National Grid support structure;</p> <p>3. Insertion of a 'catch all' non-complying rule as follows:</p> <p><u>Any building or structure within the National Grid Yard that is not a permitted activity under GRUZ-R21</u></p> <p><u>Activity Status: NC</u></p> <p>4. Relocation of the National Grid Yard rules GRID-R1, GRID-R2, GRID-R9, GRID-R10, and GRID-R11 from the GRID chapter, and the</p>
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		provisions be rehoused within the AINF and respective zone chapters, or amendment to the GRID rules to not be specific to roads.
EW-R2  GRID-R2	Earthworks in the National Grid Yard are regulated under EW-R2. Ancillary Rural Earthworks are regulated under rules EW-R17, EW-R24 and EW-7. The Decision amended the definitions of "Earthworks" and "Ancillary Rural Earthworks" to reflect the National Planning Standard. There is no commentary in the Proposed Plan on the relationship between the rules within the chapter. The changes to the definitions mean that there is a potential "gap" in the activities covered by EW-R2 as activities such as fence post/land disturbance are now not captured under the definition of Earthworks. For the avoidance of doubt, Transpower considers that Ancillary Rural Activities should be specifically included in EW-R2.	Amend Rule E2-R2 and GRID-R2 to clarify that they apply to "Ancillary Rural Earthworks" as well as "Earthworks".
<b>National Grid assets rules</b>		
AINF-R19, GRID Chapter rules including GRID-R6, GRID-R7, GRID-R8	Transpower appeals (and seeks clarification) on the rules that apply to New National Grid assets. The decision version Rules provide: <ul style="list-style-type: none"> <li>- AINF-R19 and AINF-18 provide that new National Grid assets within an identified area are non-complying activities (AINF-19), and outside of an identified area, are discretionary activities (AINF-18).</li> </ul>	<ol style="list-style-type: none"> <li>1. Clarification through the Proposed Plan provisions on what rules apply to activities associated with the National Grid, and the relationship between the GRID rules and the AINF Rules. Specifically, Transpower seeks either the GRID rules be deleted and the provisions be rehoused within the AINF and respective zone chapters, or the GRID rules be retained but amended to not be specific to roads.</li> <li>2. Amendments throughout the Proposed Plan to remove any non-complying activity status for new National Grid assets and activities</li> </ol>

	<ul style="list-style-type: none"> <li>- GRID R6-R8 provides that new above-ground transmission lines associated with the National Grid located both within and outside Identified Areas are discretionary activities (GRID-R6 and GRID-R7), and new substations and switching stations within Identified Areas are non-complying activities (GRID-R8). However these rules (and GRID-R3 and GRID-R4) are confined to the Road, and the relationship to the AINF rules is not clear. No other Energy, Infrastructure and Transport sub chapters adopt the approach of providing rules specific to Roads.</li> <li>- While not applicable to the National Grid in that they relate to distribution, of relevance in terms of activity status and nature of effects, the Electricity Distribution chapter provides that new distribution lines and support structures exceeding a voltage of 110kV both within and outside of an identified area are discretionary activities (EDIS-R6 and EDIS-R7).</li> </ul> <p>Discretionary activity status for new National Grid assets was recommended in the Decision, but has not been implemented in the relevant provisions. Transpower considers discretionary activity status gives effect to the NPSET and recognises the National Grid is of national significance. Non-complying activity status is not an appropriate method for managing the effects of new (or existing) National Grid Infrastructure.</p>	<p>associated with the National Grid, including amendments to AINF-R19 and GRID-R8 (subject to relocation) as follows:</p> <ul style="list-style-type: none"> <li>• <b>AINF-R19:</b> Any infrastructure not specifically provided for as a permitted, restricted discretionary or non-complying activity within the EIT – Energy, infrastructure and transport section, including associated earthworks, located within an Identified Area. All zones Activity Status: <del>NC</del> <u>DIS</u></li> <li>• <b>GRID-R8:</b> substations and switching stations associated with the National Grid located within Identified Areas Road (I) Activity status: <del>NC</del> <u>DIS</u></li> </ul>
GRID – R12	Transpower seeks clarification as to which rule applies to substations under the National Grid rules. There is no rule	Transpower seeks addition of new discretionary activity rule as follows:

	under the GRID provisions for a substation outside of an identified area.	<b><u>GRID-R12 - Substations and switching stations associated with the National Grid not located within Identified Areas</u></b>
<b>Other matters</b>		
Rule 1	Rule 1 refers to the rules in in the Proposed Plan applying “alongside” the NESETA. This statement is legally incorrect. The NESETA rules prevail over district plan rules for existing National Grid assets.	Amend Rule 1 as follows:  <del>The rules in this chapter apply alongside the National Environmental Standards for Electricity Transmission 2009 (NESETA)</del> <u>prevails over the rules in this chapter for existing National Grid assets.</u>
Advice Notes	The Decision Report recommended including two advice notes in the National Grid Yard rules chapter: (10), which referenced NZECP 34:2001; and (11) which references the Electricity (Hazards from Trees) Regulations 2003. However, only Advice Note (11) has been inserted into the decision version (within rule AINF-R9). Advice Note (10) is not included in the Decisions version at all. There are no other similar advice notes in the other zone chapters that would inform resource users of these important regulations. Under Policy 10 of the NPSET, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity network and to ensure that operation, maintenance, upgrading and development of the electricity transmission network is not compromised. Transpower’s experience in other districts is that plan users are not usually aware of NZECP 34:2001 or the Electricity (Hazards from Trees) Regulations 2003, resulting in inappropriate development. It is both efficient	Include the following advice notes to apply to all zone chapters in the Proposed Plan:  <u>Transpower should be contacted for assistance with clearance requirements in the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001). Compliance with NZCEP 34:2001 is mandatory under the Electricity Act 1992. All activities regulated by NZECP34:2001, including buildings, structures, earthworks and the operation of mobile plant must comply with that regulation. Activities should be checked for compliance even if they are permitted by the District Plan.</u>  <u>The Electricity (Hazards from Trees) Regulations 2003 applies to vegetation planted within the National Grid Yard and National Grid Subdivision Corridor or near sub-transmission or distribution electricity lines and must be complied with. Vegetation to be planted within the National Grid Yard as shown on the District Plan Maps should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003 or prevent access to support structures. To discuss works,</u>

	and effective to include Advice Notes in the plan to ensure plan users are aware of the relevant legal requirements.	<u>including tree planting near any electricity line especially works within the National Grid Yard, contact the relevant network utility operator.</u>
Notification clause	Transpower seeks the inclusion of a Notification Advice Note in the Proposed Plan to make it clear to plan users that Transpower will be an "affected party" for notification purposes if resource consent is required under the National Grid rules. There have been instances in other districts where Transpower has not been notified of proposals which trigger the National Grid rules, resulting in inappropriate development. This is both inefficient and poses safety and operational risks, including to security of supply to the network, and is contrary to the NPSET.	<p>Insert the following advice note into the Proposed Plan advising plan users that Transpower will be considered an affected party in relation to any resource consent applications under the National Grid rules.</p> <p><u>An activity, including buildings and structures, earthworks, quarrying and planting vegetation, within the National Grid Subdivision Corridor or National Grid Yard may require resource consent. Transpower New Zealand Limited will be considered an affected party where consent is required. Where an activity requires resource consent solely because it is within the National Grid Yard and/or Subdivision Corridor public notification of the application is precluded. However, limited notification will be given to Transpower unless the written approval from Transpower has been provided at the time the application is lodged.</u></p>
NATC-O1 (formerly 3.5.1)	<p>Transpower appeals this Objective on the basis that the removal of the reference to "high and outstanding" significantly broadens the scope of the objective and the area to which it applies. The objective now applies to the whole natural character of the coastal environment, not to the high and outstanding areas, which are clearly mapped through the Proposed Plan. The changes are not necessary to give effect to the NZCPS or the RPS as higher order documents and as a result of the changes the objective now goes beyond the requirements of the NZCPS and the RPS.</p> <p>The Decision records that the changes to the objective better reflect s6(a) RMA. However it is well established that a decision-maker should only have recourse to Part 2 RMA if a relevant statutory document is invalid, does not</p>	<p>Amend NATC-O1 to read:</p> <p>(a) The <u>high and Outstanding</u> Natural Character of the coastal environment is protected from inappropriate subdivision, use and development.</p> <p>(b) The natural character of wetlands, and lakes and rivers and their margins are protected from inappropriate subdivision, use and development.</p> <p>Alternatively, include a new policy in the Proposed Plan, specifically addressing natural character as it relates to the National Grid.</p>

	<p>“cover the field” (i.e. fails to address a relevant matter) or there is uncertainty of meaning in the statutory document.<sup>1</sup> There is no suggestion in the Decision that any of these caveats apply, therefore, no reason to revert to s6(a) RMA rather than giving effect to the relevant higher order documents.</p> <p>The objective applies to the National Grid. The National Grid enabling policy directs that the National Grid “seek to avoid” areas of outstanding and / or high natural character. Therefore, there is potential for the objective to conflict with the National Grid specific provisions, which could create interpretation issues. Transpower considers that the direction in relation to the natural character of the coastal environment should be consistent throughout the plan.</p>	
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<sup>1</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [88].

**APPENDIX B – COPY OF TRANSPower’S SUBMISSION AND FURTHER  
SUBMISSION**

**APPENDIX C – COPY OF THE RELEVANT PARTS OF THE DECISION**



**APPENDIX D – LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED  
WITH A COPY OF THIS NOTICE**