

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

**I Te Kooti Taiao O Aotearoa
Ōtautahi Rohe**

ENV-2019-CHC-

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

Notice of appeal by Transpower New Zealand Limited

Dated 6 May 2019

KensingtonSwan 

89 The Terrace
PO Box 10246
Wellington 6143

P +64 4 472 7877
F +64 4 472 2291
DX SP26517

Solicitor: N McIndoe/A A Sandom
E nicky.mcindoe@kensingtonswan.com/akane.sandom@kensingtonswan.com

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 Stage 2 of the Queenstown Lakes District Council Proposed District Plan (the **'Proposed Plan'**). Transpower owns and operates the National Grid in Queenstown Lakes District, which includes a section within the Wakatipu Basin Rural Amenity Zone (the Zone associated with Chapter 24).
- 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 decisions on 21 March 2019.
- 5 The decisions were made by the Respondent.
- 6 The part of the decision that Transpower is appealing is the Respondent's decisions on Policies 24.2.1.7 and 24.2.1.8 in Chapter 24 – Wakatipu Basin of the Proposed Plan.

Reasons for the appeal

- 7 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
 - a will not promote the 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 Partially Operative Otago Regional Policy Statement 2019 (**'Otago RPS'**); 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 The specific reasons for the appeal are as follows:

Policy 24.2.1.7

- a In the absence of the relief sought by Transpower at paragraph 9 below, Policy 24.2.1.7 of Chapter 24 – Wakatipu Basin does not give effect to the NPSET and the Otago RPS.
- b Policy 24.2.1.7 of the Proposed Plan is:
 - Locate, design operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.
- c Policy 24.2.1.7 goes some way to meeting the requirements of the NPSET insofar as it recognises the 'location constraints' and constraints relating to the 'nature of the infrastructure'. However the policy language is broad and ambiguous, and does not recognise the constraints on the National Grid caused by the 'technical and operational requirements of the network' as provided in Policy 3 of the NPSET.
- d Policy 24.2.1.7 applies to the maintenance and operation of regionally significant infrastructure, as well as its location and design. The requirement to 'seek to avoid significant adverse effects' when operating and maintaining regionally significant infrastructure is inconsistent with (and therefore does not give effect to) Policies 2, 5 and 8 of the NPSET. Policy 8 of the NPSET requires Transpower to 'seek to avoid adverse effects' on listed landscapes only when planning and developing the transmission system (the requirement does not extend to operation and maintenance). On the contrary, Policies 2 and 5 require decision makers to 'recognise and provide for' and 'enable' maintenance and operation.
- e Policy 24.2.1.7 also imposes obligations in relation to a broader range of landscapes than simply the 'outstanding natural landscapes, areas of high

natural character and areas of high recreational value or amenity' referenced in Policy 8 of the NPSET. This policy does not therefore give effect to Policies 3 and 8 of the NPSET.

- f In addition, Policy 24.2.1.7 does not give effect to Policies 4.3.3 – 4.3.6 of the Otago RPS as it:
- i does not provide for the 'functional needs' of regionally significant infrastructure, as stated in 'Policy 4.3.3 – Functional needs of infrastructure that has national or regional significance' of the Otago RPS;
 - ii prescribes more onerous requirements for regionally significant infrastructure than provided in 'Policy 4.3.4 – Adverse effects of nationally and regionally significant infrastructure' of the Otago RPS because it:
 - A applies to the character of all landscapes; and
 - B applies to operation and maintenance activities, as well location, and design;
 - iii does not provide the protections outlined in 'Policy 4.3.5 – Protecting infrastructure with national or regional significance' of the Otago RPS; and
 - iv prescribes the obligation to seek to avoid significant adverse effects on the 'character of the landscape', whereas Policy 4.3.6 of the Otago RPS prescribes the requirement to seek to avoid adverse effects on 'outstanding natural landscapes' (Policy 4.3.6(d)(ii)(b));
 - v does not provide protection for the range of features listed in Policy 4.3.6 of the Otago RPS. Policy 24.2.1.7 relates only to landscape effects, whereas Policy 4.3.6 includes a number of other matters (Policy 4.3.6(d)); and
 - vi does not provide protection for the functional needs of the National Grid as stated in Policy 4.3.6 of the Otago RPS (Policy 4.3.6(b)).

Policy 24.2.1.8

- g In the absence of the relief sought by Transpower at paragraph 9 below, Policy 24.2.1.8 of Chapter 24 – Wakatipu Basin does not give effect to the NPSET and the Otago RPS.
- h Policy 24.2.1.8 of the Proposed Plan 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.
- i The requirement in this policy, 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.
- j Policy 24.2.1.8 also fails to give effect to Policy 4.3.6(d)(iii) of the Otago RPS because it requires adverse effects to be ‘minimised’, whereas the Otago RPS requires that adverse effects are only ‘remedied’ or ‘mitigated’ in the same situation.

Relief sought

- 9 Transpower seeks the following relief:

Policy 24.2.1.7

- a **Primary relief sought:** That Policy 30.2.8.2 in Chapter 30 – Energy and Utilities of the Proposed Plan be amended to insert a cross-reference to Chapter 24.
- b Policy 30.2.8.2 is a new policy developed and agreed by parties to the Court-assisted mediation for the Stage 1 Appeals of the Proposed Plan. This mediation covered the provisions in the Proposed Plan under Topic 1 – Subtopic 4: ‘Regionally Significant Infrastructure’ and Topic 2 – Subtopic 11: ‘Landscapes and regionally significant infrastructure’ (**‘RSI mediation’**).
- c As a result of the RSI mediation Transpower, along with the other mediating parties, reached agreement on appropriate amendments to a number of provisions and on new provisions sought to be added to the Proposed Plan.
- d The parties lodged joint memoranda of counsel and draft consent orders with the Court on 9 and 12 November 2018 seeking that the Court approve

the agreed amendments to the Proposed Plan.¹ The Court is yet to issue these consent orders. Transpower's primary relief is predicated on the Court issuing consent orders which confirm new Policy 30.2.8.2.

- e Transpower seeks the following amendment to Policy 30.2.8.2 included in the draft consent order² (shown in red underline text):

30.2.8.2 In the event of any conflict with the objectives and policies in chapters 3, 6, 23, 24 and 33 or Policies 30.2.6.1 and 30.2.7.1, Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 in this plan are relevant when implementing the policy.

- f **Alternative relief sought:** In the alternative (particularly if the Court decides not to confirm new Policy 30.2.8.2 in the form set out in the draft consent order), Transpower seeks that Policy 24.2.1.7 be amended as follows (shown in red underline and strikeout text):

24.2.1.7 Locate and, design ~~operate and maintain~~ regionally significant infrastructure so as to seek to avoid remedy or mitigate potential significant adverse effects on the ~~character of the~~ landscape, while acknowledging that locational, functional, and technical constraints ~~of the network and/or the nature of the infrastructure~~ may mean that this is not possible in all cases.

Policy 24.2.1.8

- g **Primary relief sought:** That Policy 30.2.8.2 in Chapter 30 – Energy and Utilities be amended to insert a cross-reference to Chapter 24, as outlined above at paragraphs a - e above.

- h **Alternative relief sought:** That Policy 24.2.1.8 be amended as follows (shown in red underline and strikeout text):

24.2.1.8 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~~ remedied or mitigated to the extent practicable.

- i **Further alternative relief sought:** such further, additional or alternative relief, and consequential or ancillary changes that gives effect to the NPSET.

¹ See Joint memorandum of parties in support of consent order Topic 1 Subtopic 4 (Regionally Significant Infrastructure) and attached Consent Order, and Joint memorandum of parties in support of consent order Topic 2 Subtopic 11 (Landscapes and Regionally Significant Infrastructure) and attached Consent Order, dated 9 and 12 November 2018 respectively.

² See Joint memorandum of parties in support of consent order Topic 1 Subtopic 4 (Regionally Significant Infrastructure) and attached Consent Order, dated 12 November 2018.

- 10 Transpower attaches the following documents to this notice:
- a A copy of Transpower's submission and further submission on Stage 2 of the Proposed Plan (**Appendix 1 and 2**);
 - b A copy of Chapter 24 of the Proposed Plan (decisions version) (**Appendix 3**);
 - c A copy of the National Policy Statement on Electricity Transmission 2008 (**Appendix 4**); and
 - d A list of names and addresses of person to be served with a copy of this notice (**Appendix 5**).

Dated 6 May 2019



Nicola McIndoe

Counsel for Transpower New Zealand Limited

Address for service of the Appellant:

Kensington Swan

PO Box 10246

Wellington 6143

Telephone: 04 915 0818

Fax: 04 472 2291

Email: nicky.mcindoe@kensingtonswan.com

Contact person: Nicky McIndoe