



*planning & resource management consultants*

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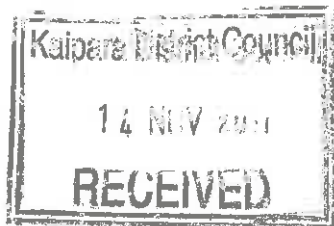
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10<sup>th</sup> November 2011

Kaipara District Council  
Private Bag 1001  
DARGAVILLE



Dear Sir / Madam,

**RE: NOTICE OF APPEAL ON THE PROPOSED KAIPARA PLAN**

I enclose a copy of the appeal that has been filed in the Environment Court in relation to the above matter.

Our advice to the Court, and to the parties to the appeal, is that our client is agreeable to negotiation and/or mediation.

In the first instance, please contact David le Marquand ((09) 917 4303), at this office.

Yours faithfully,

**BURTON PLANNING CONSULTANTS LIMITED**

David le Marquand  
Director

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER**

of an appeal under Clause 14 of  
the First Schedule to the  
Resource Management Act  
1991

**AND**

**IN THE MATTER**

of the Proposed Kaipara District  
Plan

**BETWEEN**

TRANSPower NEW  
ZEALAND LIMITED

**Appellant**

**AND**

KAIPARA DISTRICT COUNCIL

**Respondent**

**NOTICE OF APPEAL UNDER CLAUSE 14 OF THE FIRST SCHEDULE TO THE  
RESOURCE MANAGEMENT ACT 1991**

**To: The Registrar, Environment Court  
Specialist Courts and Tribunals Centre  
Level 2  
41 Federal Street (Corner Wyndham Street)  
Auckland 1010  
New Zealand**

1. **The Appellant is Transpower New Zealand Limited (“Transpower”).**
2. **The Respondent is the Kaipara District Council (“the Council”).**
3. Transpower made submissions to the Respondent in relation to the Proposed Kaipara District Plan (“the Proposed Plan”). Transpower is the owner and operator of the National Grid. The Proposed Plan affects the entire District and Transpower owns and operates transmission lines that traverse the District. Transpower is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The Council notified the Proposed Plan, and made decisions on the submissions of Transpower in relation to that Plan.
5. **The date of receipt of the decisions** of the Council by Transpower was: 3<sup>rd</sup> October 2011
6. **The parts of the decision that Transpower’s appeal relates to are:**
  1. **Activity Status:** The decision to reject Transpower’s submission to apply non-complying activity status to activities within 12m of the centreline of Transpower’s high voltage transmission lines in the Kaipara District. According to the Council’s decision, the activity status of activities within 12m of the centreline of the conductors is a discretionary activity. The Council has not provided any reasoning for why a discretionary activity status is preferred over non-complying.
  2. **Assessment Criteria:** The decision to not remove assessment criterion (vii) in Rule 10.11.1, the inclusion of which is contrary to sound resource management practice and creates an anomaly between this criterion and the assessment criteria in Rule 10.11.4.
  3. **Miscellaneous Minor Amendments:** Various minor drafting provisions require minor amendments.

**7. The general reasons for the Appeal are as follows:**

- 7.1 The decision will not result in the achievement of the sustainable management purpose of the Resource Management Act 1991;
- 7.2 The decision does not appropriately give effect to the National Policy Statement on Electricity Transmission 2008 ("NPSET"). In particular, it is contrary to the intent that sensitive activities are generally not provided for in transmission corridors, that activities are managed to avoid reverse sensitivity effects and that the potential to upgrade the lines is protected;
- 7.3 There is a risk that the National Grid, an existing and significant physical resource, will not be appropriately protected and/or provided for.

**8. The specific reasons for the Appeal are as follows:**

***Activity Status***

- 8.1 Section 75(3)(a) RMA contains a requirement for district plans to 'give effect to' a National Policy Statement (NPS), which includes the National Policy Statement on Electricity Transmission 2008 ("NPSET"). Of particular relevance to these proceedings, Policies 10 and 11 provide policy guidance regarding the management of adverse effects of third parties on the transmission network. These policies are as follows:

***Policy 10***

*In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.*

***Policy 11***

*Local authorities must consult with the operator of the national grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the national grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the national grid (so as to facilitate the long-term strategic planning of the grid).*

8.2 In summary:

- Policy 10 requires decision makers to manage activities to avoid reverse sensitivity effects on the transmission network and to ensure that the operation, maintenance, upgrading and development of the network is not compromised; while
- Policy 11 requires local authorities to consult with Transpower and identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent.

8.3 Transpower's submission on the Proposed Plan sought to ensure that the National Grid is sufficiently protected from the adverse effects associated with subdivision and development. Transpower seeks non-complying status because:

- Its transmission lines in the Kaipara District are strategic, and represent critical corridors of supply to the Kaipara District and to the wider Northland Region;
- Non-complying activity status provides a strong disincentive for development directly under the swing of the lines, which is appropriate in terms of effects-based management; and
- Non-complying status provides more certainty in the consent process as it sends a very clear signal that development within this particular part of the corridor is generally not expected to achieve consistency with the objectives and policies of the Plan, the Proposed RPS or the NPSET, and indeed is not considered generally acceptable.

8.4 Transpower does not support discretionary activity status because:

- There is increased risk directly under the swing of the lines and activities within this area are likely to generate adverse effects that are more than minor and (therefore) to be contrary to the objectives and policies of the Plan, such that assessment against Section 104D RMA is appropriate; and
- It is not considered to give effect to Policy 11 of the NPSET; where there are alternative options available.

8.5 The change to the activity status also requires an amendment to the assessment criteria column as the assessment criteria column would otherwise be misleading.

The wording in the assessment criteria column should be deleted or be amended to be similar to other wording used in the plan for a non complying activity status.

**Assessment Criterion (viii) in Rule 10.11.1:**

- 8.6 Assessment criterion (viii) in Rule 10.11.1 requires consideration of the effects that the upgrading or undergrounding of high voltage transmission lines may have on development opportunities. There is no resource management basis to require such an assessment and it should be deleted. The equivalent reference to development opportunities was removed from the assessment criteria in Rule 10.11.4 – Existing Network Utilities, but not from Rule 10.11.1 - New Infrastructure. Furthermore, it is not appropriate to refer to undergrounding or upgrading in an assessment criterion for new lines. Transpower requests that Assessment Criterion (viii) be deleted.

**Miscellaneous minor drafting amendments:**

- 8.7 It is considered that the following matters could be corrected without recourse to appeal, however they are included in the appeal to ensure that the corrections are made.

**Policy 2.5.13**

- 8.8 Policy 2.5.13 refers to the requirement for a Plan Change to assist in the implementation of Policy 2.5.13 as follows (emphasis added):

*By identifying transmission corridors that minimise reverse sensitivity effects generated by subdivision and land development; avoid, remedy or mitigate adverse effects on the transmission network; and protect the safety and amenity values of the Community.*

*The National Grid provides essential electricity to the District and beyond. Encroaching activities need to be assessed when in close proximity to the transmission lines. This is because such activities have the potential to adversely affect the National Grid's ongoing operation, maintenance and upgrading and pose risks to individual and community safety and security of supply. A Plan Change will be considered to assist in achieving this policy through the implementation of appropriate objectives, policies and methods within Chapter 2 of the Plan.*

- 8.9 It is not considered that an additional plan change is required as Chapter 2 already contains the necessary objectives, policies and methods to give effect to the NPSET. The underlined text in the Policy as quoted in Paragraph 9.8 above, should be deleted.

**Rule 10.11.4 and Paragraph 10.2**

8.10 There is an incorrect reference to the National Environmental Standards for Electricity Transmission Activities (“NESETA”) in Rule 10.11.4 which references the NESETA as *National Environmental Standard for Electricity Transmission Regulations 2009*. The word *Regulations* should be replaced with *Activities*. Also the word *regulations* should be deleted from Paragraph 10.2. These changes will ensure that the NESETA is correctly referenced in the District Plan.

**Cross References in the Residential Rules**

8.11 The residential rules include a cross reference requiring the affected properties to comply with the corridor provisions in the rural rules. However, due to other changes made through the decisions, the reference in the rule in the residential chapter refers to Rules 12.10.28 and 12.10.29 instead of Rules 12.10.29 and 12.10.30. Making this change will ensure that transmission corridor rules are correctly referenced in the District Plan.

**9 The relief that the Appellant seeks from the Court takes the form of the following modifications:**

9.1 Amend Rule 12.10.29 to provide for buildings and structures located within the Electricity Transmission Corridor No build Area as non complying activities and make corresponding amendments to the assessment criteria column. This can be achieved by making the following change (deletions in strikethrough, additions underlined):

Rule	Parameter	Rural Permitted Activity Performance Standard	Activity status if the Activity does not meet the Performance Standard	Assessment Criteria
.....	.....	.....	.....	.....
12.10.29	Electricity Transmission Corridor No build Area: Buildings and/or Structures	Any activity is permitted if: a) Buildings and/or structures located outside the Electricity Transmission Corridor No Build Area as shown in Appendix 12.1.	<del>Discretionary</del> <u>Non-Complying Activity</u>	<del>Where a building and/or structure is located within the Electricity Transmission Corridor No Build Area / or the Electricity Transmission Corridor Assessment Area (as shown in Appendix 12.1) Council will have regard to the following matters when considering an application for Resource Consent:</del> .....

				<u>Generally Non-Complying Activities are not encouraged, however if a Non-Complying Activity is proposed the proposal will be assessed against, but not restricted to, the Objectives and Policies of this District Plan and the effects of the activity on the environment.</u>
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9.2 Amend the cross reference to the electricity transmission corridor rules in Rule 13.10.29(2)(a) as follows (deletions in strikethrough, additions underlined):

**2) 116, 118, 120, 122, 124, 126 and 126A Gordon Road, 37 Onslow Road and 73 Awakino Road, Dargaville**

*a) Notwithstanding the performance standards of Section 13.10, buildings and structures on 116, 118, 120, 122, 124, 126 and 126A Gordon Road, 37 Onslow Road and 73 Awakino Road, Dargaville, being Lots 353-356 DP 859, Lots 1-2 DP 365261, Lot 2 DP 365004, Lot 1 DP 73886 and Lot 2 DP 189062, shall also comply with the following rules:*

- *Rule 12.10.289 (Electricity Transmission Corridor No Build Area: Buildings and/or Structures; and*
- *Rule 12.10.2930 (Electricity Transmission Corridor Assessment Area: Buildings and/or Structures.*

9.3 Delete Assessment Criteria (viii) in Rule 10.11.1 as follows (deletions in strikethrough):

~~*viii) Whether and the extent to which the effects of upgrading or undergrounding of high voltage transmission lines may adversely affect existing land uses and **development** opportunities, and impacts on existing infrastructure in the vicinity;*~~

9.4 Amend the reference to the National Environmental Standards for Electricity Transmission Regulations 2009 in Paragraph 10.2, to the National Environmental Standards for Electricity Transmission Activities 2009, as follows (deletions in strikethrough, additions underlined):

*The National Environmental Standard for Electricity Transmission Activities Regulations–2009 sets out the controls for an activity that relates to the operation, maintenance, upgrading, relocation, or removal of an existing electricity line including the following activities of relevance to this Plan:*



9.5 Amend the reference to the National Environmental Standards for Electricity Transmission Regulations 2009 in Rule 10.11.4, to the National Environmental Standards for Electricity Transmission Activities 2009, as follows (deletions in strikethrough, additions underlined):

The operation, ***maintenance***, upgrading, relocation and removal of existing network utility lines (excluding existing transmission lines covered by the National Environmental Standard for Electricity Transmission ~~Regulations~~ Activities 2009) is a ***Permitted Activity*** if:

.....

*Note 2: The operation, maintenance, upgrading, relocation and removal of existing electricity transmission lines is covered by, and to be assessed (where necessary) under, the National Environmental Standards for Electricity Transmission ~~Regulations~~ Activities-2009.*

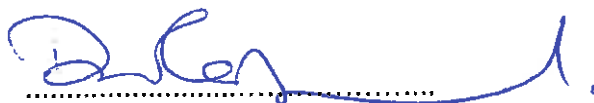
9.6 Amend Policy 2.5.13 by deleting the reference to a Plan Change being considered to (help to) achieve the policy as follows (deletions in strikethrough):

*By identifying transmission corridors that minimise reverse sensitivity effects generated by subdivision and land development; avoid, remedy or mitigate adverse effects on the transmission network; and protect the safety and amenity values of the Community.*

*The National Grid provides essential electricity to the District and beyond. Encroaching activities need to be assessed when in close proximity to the transmission lines. This is because such activities have the potential to adversely affect the National Grid's ongoing operation, maintenance and upgrading and pose risks to individual and community safety and security of supply. ~~A Plan Change will be considered to assist in achieving this policy through the implementation of appropriate objectives, policies and methods within Chapter 2 of the Plan.~~*

9.7 Make any consequential amendments as a result of the above amendments.

9.8 Other Relief: Such other such relief as the Court sees fit.



David le Marquand  
Burton Planning Consultants Limited  
For and on behalf of Transpower New Zealand Limited

Dated at Takapuna this 10<sup>th</sup> day of November 2011

**Address for Service:**

Burton Planning Consultants Limited  
PO Box 33-817  
Takapuna  
**AUCKLAND 0740**

Attention: David le Marquand

Ph:(09) 917-4303  
Fax: (09) 917-4311  
E-Mail: [dlemarquand@burtonconsultants.co.nz](mailto:dlemarquand@burtonconsultants.co.nz)

**Annexures:**

- (a) A copy of Transpower's submissions on the relevant points subject to this appeal.
- (b) A copy of the decision on the relevant points subject to this appeal.
- (c) Names and addresses of persons to be served with a copy of this notice.

## **Advice to Recipients Of This Copy of Notice of Appeal**

### **How to become a party to the proceedings**

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 15 working days after this notice was lodged with the Environment Court.

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

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

The copy of this notice served on you does not attach a copy of the appellant's submission or 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 Unit of the Department for Courts in Christchurch (or Wellington or Auckland).

### **Contact Details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

#### **Auckland:**

Specialist Courts and Tribunals Centre  
Level 2  
41 Federal Street (Corner Wyndham Street)  
Auckland 1010  
New Zealand

PO Box 7147  
DX: CX10086  
Wellesley Street  
Auckland  
New Zealand

Ph (09) 916 9091

Fax: (04) 916 9090

#### **Wellington:**

PO Box 5027  
DX: SX 11154  
Wellington

5th Floor, District Court Building  
49 Balance Street  
Wellington 6011

Ph (04) 918 8300

Fax: (04) 918 8480

**Christchurch:**

Enterprise Business Park  
4-6 O'Briens Road  
Unit 7  
Stockburn  
Christchurch

PO BOX 2069  
DX:WX11113  
Christchurch  
New Zealand

Ph (03) 3455397

Fax: (03) 3455363

**ANNEXURE A**

**A Copy of Transpower's Submission**

**ANNEXURE B**

**A Copy of the Decisions  
on the Relevant Points Subject to this Appeal**

## **ANNEXURE C**

### **Names and Addresses of Persons to be Served with a Copy of this Notice**

Kaipara District Council  
Private Bag 1001  
DARGAVILLE

Northpower Limited  
Private Bag 9018  
WHANGAREI

Attention: Sarah Brownie

Vector Gas Limited  
Private Bag 2020  
NEW PLYMOUTH

Attention: Gill Robertson

Genesis Power Limited  
c/- Mitchell Partnerships limited  
PO Box 33 1642  
Takapuna  
NORTH SHORE CITY 0740

Attention Richard Mathews

Meridian Energy  
C/- Boffa Miskel  
PO Box 91250  
AUCKLAND 1142

Attention: Catherine Clark

Mark C Farnsworth,  
48 Cullen Street  
MANGAWHAI 0505

Northland Regional Council  
Private bag 9021  
WHANGAREI 0140

Attention: Lawrayne Hughes

Telecom NZ Ltd  
c/- Incite  
PO Box 3082  
AUCKLAND 1140

Attention: Sean Grace

Farmers of New Zealand Inc., Kaipara Citizens and Ratepayers Association Inc,  
Pouto Topu a Trust  
PO Box 484  
WHANGAREI

Attention: Ian Walker

TrustPower Limited  
Private Bag 12023  
TAURANGA

Attention: Robert Schofield

Energy Efficiency and Conservation Authority  
PO Box 37444  
AUCKLAND

Attention Tania Hood

Department of Conservation (Northland Conservancy)  
PO Box 842  
WHANGAREI 0140

Attention: Andrew Riddell

Horticulture NZ  
PO Box 10232  
WELLINGTON 6143

Attention Chris Keenan