

**BEFORE THE PROPOSED WHANGAREI DISTRICT PLAN CHANGE:
URBAN AND SERVICES HEARINGS PANEL**

In the matter of

the Resource Management Act 1991

and

**Proposed Plan Changes 82A&B, 88A-J, 109,
115, 136, 143, 144, 145, 147 & 148 to the
Whangarei District Plan**

**Statement of Evidence of Ainsley Jean McLeod on behalf
of Transpower New Zealand Limited (submitter ref: 247
and further submitter ref: X384)**

dated 7 November 2019

Introduction

1. My full name is Ainsley Jean McLeod. I hold the qualifications of a Bachelor of Arts (Geography and Anthropology) and a Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute.
2. I am a self-employed planner, trading as Ainsley McLeod Consulting. I have over 20 years' experience in planning practice, primarily as a consultant planner based in Wellington and Christchurch, during which time I have undertaken consenting, designation, and policy planning work. I have provided professional planning advice to a range of clients including central and local government, and the private sector.
3. I have particular expertise in respect of infrastructure and network utilities, having provided planning advice in relation to power transmission, distribution and generation, water and waste, rail and roading, and telecommunications projects. I have acted as an expert witness on a number of occasions before hearings panels, boards of inquiry and the Environment Court.
4. More specifically, I have provided expert planning advice to Transpower New Zealand Limited ("Transpower") since 2001 in relation to new and upgraded National Grid transmission lines and substations, along with the relevant planning instruments including the National Policy Statement on Electricity Transmission 2008 ("NPSET") and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ("NESETA"). I am familiar with the ways in which plans and policy documents respond to these planning instruments, having advised Transpower in respect of a number of regional policy statement, regional plan and district plan reviews.
5. I assisted with the preparation of Transpower's submission and further submission on the Urban and Services Plan Changes¹ to the Whangarei District Plan ("District Plan") and am now engaged to provide expert planning evidence in relation the following specific matters that have been raised in Transpower's submissions:
 - a. the role of the Strategic Direction provisions and their relationship to provisions elsewhere in the District Plan;

¹ Proposed Plan Changes 82A&B, 88A-J, 109, 115, 136, 143, 144, 145, 147 & 148 to the Whangarei District Plan.

- b. Strategic Direction provisions that seek to protect and manage the effects of regionally significant infrastructure (and particularly the National Grid); and
- c. the National Planning Standards and the need for consequential amendments to the District Plan (where relevant to operative provisions in respect of the National Grid).

Code of conduct

- 6. Although this matter is not before the Environment Court, I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as contained in the Court's 2014 Practice Note. I have complied with the Code of Conduct when preparing my written statement of evidence, and will do so when I give oral evidence before the Hearings Panel.
- 7. I have outlined my expert qualifications above. I confirm that the issues addressed in this statement of evidence are within my area of expertise. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of evidence

- 8. My evidence:
 - a. confirms Transpower's assets and interests in Whangarei;
 - b. sets out the statutory requirements for the Urban and Services Plan Changes in relation to the NPSET and the operative NRPS;
 - c. describes Transpower's submissions on the proposed Urban and Services Plan Change;
 - d. addresses the recommendations made in the Part 1 Section 42A Report and Part 2 Section 42A Report that are relevant to the relief sought by Transpower.
- 9. In preparing this evidence I have read the Part 1 – Urban and Services Plan Changes: Overview, General Topics and Definitions Section 42A Hearing Report ("Part 1 Section 42A Report") and the Part 2 – Strategic Direction and Subdivision Proposed Plan Change 148 Section 42A Hearing Report ("Part 2 Section 42A Report"), both dated 18 October 2019. I have also reviewed the

following documents insofar as they relate to the relief sought in Transpower's submissions:

- a. NPSET;
 - b. NESETA;
 - c. National Planning Standards;
 - d. operative Regional Policy Statement for Northland ("NRPS");
 - e. New Zealand Electrical Code of Practice for Electrical Safe Distances ("NZECP 34:2001");
 - f. Plan Change 148: Part A: Strategic Direction Part B: Subdivision Section 32 Evaluation Report;
 - g. Urban Plan Changes: Technical Introduction Section 32 Evaluation Report; and
 - h. Submissions made by various parties where they are relevant to the relief sought by Transpower.
10. My analysis and consideration of the relief sought by Transpower is informed by the statutory framework for decisions on the proposed District Plan set out in the Resource Management Act 1991 ("RMA") and the on-going guidance provided by the modified Long Bay test.² This statutory framework is generally set out in the 'Urban Plan Changes: Technical Introduction Section 32 Evaluation Report' dated March 2019 and I will not repeat it here except to note that in respect of the NPSET, for the reasons set out in my evidence below, I do not agree with the comment included in paragraph 23 of that report that states that:

"The NPSs for Freshwater Management, Renewable Electricity Generation and Electricity Transmission do not specifically relate to the Urban Plan Changes."

11. Where amendments to the provisions of the District Plan are suggested in, and supported by, my evidence, these amendments are shown in [blue](#) and consolidated as **Attachment A**.

The National Grid and Transpower's assets in Whangarei

12. Transpower is the owner and operator of the National Grid. The National Grid is an extensive linear electricity transmission network that operates at a

² *Long Bay – Okura Great Park Society v North Shore City Council* EnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55.

regional and national level and shifts electricity from the point of generation to substations feeding the local networks that distribute electricity to home and businesses.

13. The National Grid has operational requirements and engineering constraints that dictate and constrain where it is located and the way in which it is operated, maintained, upgraded and developed.
14. Transpower's key assets in Whangarei are as follows:
 - a. Henderson – Marsden A (HEN-MDN A) double circuit 220kV transmission line on towers;
 - b. Bream Bay Deviation A (BRB-DEV A) double circuit 220kV transmission line on towers;
 - c. Marsden – Maungatapere A (MDN-MPE A) double circuit 110kV transmission line on towers;
 - d. Henderson – Maungatapere A (HEN-MPE A) double circuit 110kV transmission line on towers;
 - e. Kaikohe – Maungatapere A (KOE-MPE A) double circuit 110kV transmission line on towers;
 - f. Bream Bay substation;
 - g. Marsden substation;
 - h. Maungatapere substation;³ and
 - i. Mt Maunu communications facility.
15. It is my understanding that electricity demand in Northland peaks at approximately 300MW and that local embedded generation is able to supply approximately 40MW. This means that most of the region's electricity is imported on the National Grid from the central North Island. This electricity is carried on into Whangarei District on the HEN-MDN A 220kV transmission line and the HEN-MPE A 110kV transmission line. The majority of Whangarei's electricity demand is supplied from the Maungatapere and Bream Bay substations. The Maungatapere substation also supplies electricity further north to Kaitaia and Kaikohe via the 110kV double-circuit line (KOE-MPE_A).

³ The Marsden, Bream Bay and Maungatapere substations are designated in the Whangarei District Plan (Plan Change 134).

Transpower's submission and the relevant statutory framework

National Policy Statement on Electricity Transmission 2008

16. The national significance of the National Grid is recognised, in the context of the RMA, by the NPSET.
17. Section 75(3) of the RMA requires district plans to “give effect to” the NPSET. The requirement to “give effect to” is a strong statutory directive compared to other directives in the RMA and was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning “to implement”.⁴
18. The Preamble⁵ to the NPSET describes the rationale for the NPSET. It states that “the efficient transmission of electricity on the National Grid plays a vital role in the well-being of New Zealand, its people and the environment”. The Preamble notes that the National Grid has particular physical characteristics and operational/security requirements that have been challenging to manage under the RMA. It also acknowledges the potential significance of some effects of transmission lines (including the inability for these to be avoided or mitigated), along with the significant constraints that third party activities and development can place on the network. It notes that adverse effects are experienced at the local level, while benefits are regional or national, requiring a balanced consideration of effects and recognises the importance of consistent policy and regulatory approaches by local authorities.
19. The NPSET has a single Objective as follows:

“To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

 - *Managing the adverse environmental effects of the network; and*
 - *Managing the adverse effects of other activities on the network.”*
20. The Objective is supported by 14 Policies. The following Policies are relevant to obligations the NPSET places on decision-makers in the context of the Urban and Services Plan Changes:
 - a. *“... decision-makers must recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission. ...”* (Policy 1);

⁴ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, NZSC 38, 17 April.

⁵ It is acknowledged that the Preamble is not part of the NPSET but includes the words: “*this preamble may assist interpretation of the national policy statement, where this is necessary to resolve uncertainty*”.

- b. *“... decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.”* (Policy 2);
 - c. *“When considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-makers must consider the constraints imposed on achieving those measures by the technical and operational requirements of the network.”* (Policy 3);
 - d. *“... decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection”* for new infrastructure or major upgrades (Policy 4);
 - e. *“... decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets”* when considering environmental effects associated with transmission activities (Policy 5);
 - f. *“... decision-makers must to the extent reasonably practicable manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading and development of the electricity network is not compromised”* (Policy 10); and
 - g. *“Local authorities must consult with the operator of the National Grid to identify an appropriate buffer corridor within which sensitive activities will generally not be provided for ...”* (Policy 11).
21. The NPSET also imposes obligations on the planning and development of the National Grid, including the following:
- a. *“should minimise adverse effects on urban amenity and avoid adverse effects on town centres and areas of high recreational value or amenity and existing sensitive activities”* (Policy 7); and
 - b. *“should seek to avoid the adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreational value and amenity and existing sensitive activities”* (Policy 8).

Regional Policy Statement for Northland 2016

22. The National Grid is listed as ‘regionally significant infrastructure’ in Appendix 3 to the NRPS. The NRPS includes a number of objectives and policies that are directly relevant to the provision of regionally significant infrastructure. As

for the NPSET, section 75(3) of the RMA requires the District Plan to give effect to the NRPS.

23. The following NRPS provisions are relevant to the relief sought by Transpower and matters addressed in my evidence:
- a. Objective 3.6 and implementing Policy 5.1.3 that, seeks to protect important activities by, amongst other matters, providing for the avoidance of adverse effects, including reverse sensitivity effects on regionally significant infrastructure;
 - b. Objective 3.7 and implementing Policies 5.3.1 and 5.3.2 that recognise and promote the benefits of regionally significant infrastructure;
 - c. Policy 5.3.3 that sets out a framework for managing adverse effects arising from regionally significant infrastructure.
24. I address these policies in more detail later in my evidence where relevant to do so in the context of my consideration of Transpower's submissions.

Transpower's Submission and Further Submission

25. Transpower's submission acknowledges that the operative District Plan gives effect to the NPSET (through earlier plan change processes as part of the District Plan 'rolling review'). The overarching purpose of Transpower's submission and further submission is to ensure that this remains the case and, as such, Transpower's submissions generally:
- a. seeks to clarify the relationship between the Strategic Direction provisions and those provisions elsewhere in the District Plan that give effect to the NPSET;
 - b. supports the retention of provisions that appropriately give effect to the NPSET;
 - c. promotes limited amendments to Strategic Direction provisions to better give effect to the NPSET; and
 - d. opposes submissions that seeks amendments to provisions that would result in the District Plan no longer giving effect to NPSET.
26. The remainder of my evidence addresses specific matters that have been raised in Transpower's submissions, including a consideration of the Section 42A Report recommendations in relation to those matters.

The role of Strategic Direction provisions

27. Transpower's submission⁶ opposes the Strategic Direction chapter in its entirety to the extent that the role of the chapter and its relationship to other provisions in the District Plan is not clear. The submission seeks that the Chapter is amended to clearly articulate the role of the Strategic Direction chapter in a manner that does not 'write down', limit or contradict provisions in other parts of the plan that give effect to the NPSET.
28. By way of explanation, it is my understanding that Transpower's submission is underpinned by a concern that the Strategic Direction provisions are intended to be higher order provisions that are given greater weight in future plan-making or resource consent processes such that existing provisions that give effect to the NPSET (for instance, those in the operative Network Utilities chapter that enable and protect the National Grid) are, conversely, given lesser weight.
29. The Part 2 Section 42A Report recommends that Transpower's submission points be accepted in part as follows:

*" ... Changes have been made to the structure of the SD section through the National Planning Standards. WDC has submitted that the SD chapter be restructured to ensure consistency with the standards and subsequently changes have been proposed to the chapter overviews to reflect the new structure. These changes describe how the chapter should be read in relation to other parts of the plan."*⁷
30. I have reviewed the chapter 'Overview', including as recommended for amendment by the Part 2 Section 42A Report, and confirm my understanding that the 'Overview' (renamed 'Issues') direction in respect of the role of the Strategic Direction provisions is not changed by the Section 42A Report recommended amendments and is as follows:
 - a. the chapter contains overarching objectives and policies that will guide decision-making at a strategic level in relation to, amongst other matters, regionally significant infrastructure;
 - b. the objectives and policies apply when changing and implementing the District Plan and should be considered in addition to the objectives and policies in the relevant zone as well as any District wide policies that apply.

⁶ Submission references 247.4 and 247.13.

⁷ Paragraph 51, Part 2 Section 42A Report.

31. I consider that the direction given in the proposed Strategic Direction chapter is not sufficiently clear because the concept of providing guidance at a strategic level could be understood to mean that the provisions are:
- a. 'strategic' and therefore of greater importance such that they are to be afforded greater weight in applying the relevant statutory tests for plan-making or the consideration of resource consents; or on the other hand
 - b. 'guiding' such that the role of the provisions is to aid the interpretation of more specific provisions elsewhere in the District Plan (where necessary to do so).
32. That said, I consider it is likely that the clause in the 'Overview' referring to the Strategic Direction provisions applying "in addition" to zone objectives and policies and district wide policies is intended to indicate that all of these provisions have equal weight. However, it is not clear:
- a. that equivalent weight should be given to the provisions (even if they apply in addition), in this regard it is noted that the 'Urban Plan Changes: Technical Introduction Section 32 Evaluation Report' states the following:

*"The WDP objectives and policies are separated into chapters organised around resource management issues. The objectives and policies do not have a hierarchy order in terms of importance or implementation. The WDP lacks guidance on 'outcomes' at a local level and lacks description to provide sufficient delineation between Environments (zones). The new WDP structure, implemented through PC106, was devised to provide for a hierarchy of objectives and policies."*⁸
 - b. why the district wide objectives do not apply (whereas district wide policies and zone objectives and policies do); and
 - c. whether 'Resource Areas' provisions are considered district wide policies and therefore also apply "in addition" to the Strategic Direction provisions, that is, the purpose of referencing particular provisions (but not all provisions) elsewhere in the plan unclear.
33. In my opinion, including clear direction in respect of the role of the Strategic Direction provisions is critical in the general context of future implementation of the District Plan (including the provisions in the Urban and Services Plan Change) and necessary in order to ensure that the District Plan continues to meet the statutory obligation to give effect to the NPSET.

⁸ Paragraph 108.

34. By way of example, the District Plan currently includes Policy 5 in NTW.1.3 Electricity Policies that gives effect to Policies 10 and 11 of the NPSET and includes clear direction in respect of “avoiding” and “not compromising”.⁹ Whereas, the proposed Strategic Direction Policy (SD-P2) includes a less stringent “manage” policy direction.¹⁰ In my opinion, if the Strategic Direction provisions are understood to be of greater importance than other provisions of the District Plan (or if the ‘Resource Areas’ provisions are not “in addition”), Policy SD-P2 is given greater weight such that the “avoidance” Policy NTW1.3(5)(i) is diluted and the District Plan may no longer fully give effect to the NPSET or Objective 3.6 of the NRPS.

35. In this regard, I am aware that the role of a strategic direction chapter has recently been considered by the Environment Court in respect of appeals on the proposed Queenstown Lakes District Plan (Stage 1).¹¹ The decision states that:

“Given that Ch 3 concerns strategic directions, it is particularly important that its intended influence is clear:

(a) in the formulation of other PDP provisions, bearing in mind the expectation that Ch 3 would be operative, as part of the ODP, before other PDP provisions under appeal are determined; and

(b) in the interpretation of other chapter objectives, policies and other provisions of the ODP of which it will be part.”¹²

36. The Environment Court concluded the following and included a new “Interpretation and Application” section in the Chapter (reproduced as **Attachment B**) to more clearly set out the intent of the decision version of the Chapter:

“Ultimately, our evaluation comes back to what best expresses the intended purposes of SOs and SPs within the ODP. We are mindful that Ch 3 is overarching. In addition to its significance during the formulation of other PDP provisions, it is intended to have an ongoing interface with the entire ODP, including those parts of it that are not the subject of the partial plan review. With a partial plan review of the nature QLDC has instigated here, it is

⁹ “To ensure safe and efficient use and development of the National Grid and adjacent land by:

- i. Avoiding Sensitive Activities within the National Grid Corridor;
- ii. Ensuring that land use, subdivision and development do not compromise the operation, maintenance, upgrading and development of the National Grid; ...”

¹⁰ As recommended for amendment by the Part 2 Section 42A Report):

“SD-P2 – Incompatible Land Uses Reverse Sensitivity	To manage the establishment and location of new activities <u>and expansion of existing activities</u> to avoid conflicts between incompatible activities.”
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¹¹ *Darby Planning Limited Partnership and others v Queenstown Lakes District Council* [2019] NZEnvC 133.

¹² Paragraph 63.

important that the ultimate product, ie the updated ODP, is fully coherent and integrated and clear in its intentions to the ordinary reader.”¹³

37. Based on the above, and in order to ensure that the intended influence of the Strategic Direction provisions is clear, I therefore support the following amendments to the ‘Overview’/‘Issues’ section of the Strategic Direction chapter:¹⁴

~~“This chapter contains the key strategic approach to development that will to address significant resource management issues of importance to the District. This chapter contains overarching objectives and policies that will guide decision making at a strategic level in relation to urban and rural growth and development, the management of open space and recreation zones, and Regionally Significant Infrastructure industries. It also sets out how Māori Resource Management provisions in Part 2 of the RMA Resource Management Act (1991) will be implemented through the District Plan. plan. The objectives and policies seek to address the following Significant resource management issues for the Whangarei District, that are addressed by the plan Significant resource management issues for the Whangarei District which include the following:~~

- Managing growth and development;
- Managing existing and future development in areas subject to environmental risks;
- Protection of natural heritage (landscapes, biodiversity and natural features);
- Issues of significance to Mana Whenua;
- Protection of built and cultural heritage;
- Cumulative effects of development on the coastal environment;
- Fragmentation of the rural environment;
- The protection of and efficient development, operation and maintenance of infrastructure.
- The protection of strategic business and industry.

~~The following Objectives and Policies apply when changing and implementing the District Plan. For the purpose of plan changes the Objectives and Policies provide direction for the development of more detailed provisions to be contained elsewhere in the District Plan. and should be considered in addition to the objectives and policies in the relevant zone as well as any District wide policies that apply. The zoning policies (Policies 8-29) in particular apply when considering the most appropriate zone for a piece of land. For the purpose of plan implementation (including the determination of applications for resource consent and notices of requirement for designations), the Objectives and Policies may provide guidance on what the related objectives and policies are seeking to achieve in relation to the significant resource management issues and all District Plan objectives and policies are to be considered together with no fixed hierarchy existing between them. The Objectives and Policies should~~

¹³ Paragraph 75.

¹⁴ In this regard I note that the National Planning Standards do not prevent the inclusion of direction in respect of how Strategic Direction provisions apply in the implementation of, or further development of, a district plan.

~~be considered in addition to the objectives and policies in the relevant zone, as well as any District wide provisions that apply.”~~

38. Given the ‘overarching’ role of the Strategic Direction provisions, and my conclusions set out above, it is assumed that the Strategic Direction provisions apply to the National Grid ‘in addition’ to the Network Utility provisions included elsewhere in the District Plan (whether or not a hierarchy exists). For this reason, my evidence now goes on to address the content of Strategic Direction provisions insofar as they relate to the National Grid and provisions elsewhere in the District Plan.

Strategic Direction – Incompatible activities and uses

39. Transpower’s further submission both supports and opposes primary submissions made in respect of the Strategic Direction Objective and Policy that address incompatible activities, being SD-O5 – Incompatible Activities and SD-P2 – Incompatible Land Uses. Transpower’s further submission:
- a. supports a number of submissions seeking that the provisions be retained as notified;¹⁵
 - b. opposes the submission made by Fonterra Limited (“Fonterra”) seeking that the provisions be retitled “reverse sensitivity”;¹⁶
 - c. opposes the submission made by Housing New Zealand Corporation (“Housing NZ”) seeking that “avoid” is replaced by “manage” in SD-O5;¹⁷ and
 - d. supports rewording proposed in the submission made by Radio New Zealand Limited.¹⁸

Retitling “reverse sensitivity”

40. The Part 2 Section 42A Report recommends that Fonterra’s submission be accepted and the Objective and Policy be renamed “reverse sensitivity” on the basis that the amendment clarifies the subject of the Objective.¹⁹ This recommendation is generally consistent with the rationale given by Fonterra -

¹⁵ Submissions made by the New Zealand Defence Force (submission references 156/1 and 156/3), the New Zealand Transport Agency (submission references 240/3 and 240/6) and KiwiRail Holdings Limited (including further limited amendments to SD-P2 - submission references 265/1 and 265/2).

¹⁶ Submission references 202/2 and 202/3.

¹⁷ Submission reference 268/7.

¹⁸ Submission reference 243/2.

¹⁹ Part 2 Section 42A Report, Paragraph 119.

that “reverse sensitivity” is widely used throughout New Zealand and is used elsewhere in the operative sections of the District Plan.²⁰

41. I do not agree that the retitling of SD-O5 and SD-P2 “clarifies” the subject of the provisions. Rather, it is my opinion that the amendment narrows the Objective and Policy by confining the concept of incompatibility to **only** reverse sensitivity effects, as opposed to also addressing direct effects on existing activities (that is, a new activity is not necessarily sensitive to the pre-existing activity, but a new activity may impact on an existing activity). By way of example, when a house is built near a transmission line and the occupants of the house are subsequently impacted by the presence and operation of the transmission line (so that the operation or upgrade of the line is constrained) is a reverse sensitivity effect, whereas, building the house in a manner that obstructs access to the transmission line, or transmission line structure is a direct effect.
42. In this regard, I note that the NRPS Policy 5.1.3 addresses all adverse effects rather than only reverse sensitivity effects as follows:
- “Avoid the adverse effects, including reverse sensitivity effects of new subdivision, use and development, particularly residential development on the following: ...*
- (c) The operation, maintenance or upgrading of existing or planned regionally significant infrastructure; ...”*
43. Transpower’s further submission gives examples of earthworks that destabilise support structures or land uses that prevent access to the National Grid and concludes that retitling the provisions does not give effect to Policy 10 of the NPSET. I agree with the conclusion, and rationale given, in Transpower’s further submission.
44. I therefore support either the notified version, or amending the titles of SD-O5 and SD-P2 to refer to both ‘incompatibility’ and ‘reverse sensitivity’ (as set out below) and consider that such an approach is necessary to give effect to Policy 5.1.3 (as it relates to regionally significant infrastructure and other matters). In this regard, I am also of the opinion that, insofar as SD-O5 and SD-P2 relate to the National Grid, retaining the concept of ‘incompatibility’ is more consistent with NTW.1.3 Electricity Policies (5)(ii) that gives effect to the NPSET Policy 10 requirement to not compromise the National Grid.

²⁰ ‘Reverse sensitivity is defined by the District Plan as “... the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment of other activities which are sensitive to the pre-existing activity.”

Avoid, remedy, mitigate or manage?

45. As notified, Objective SD-O5 sought to ‘avoid’ conflict between incompatible land use activities. In response to submissions, the Part 2 Section 42A Report expresses a preference for including “remedy or mitigate” on the basis that the option to remedy or mitigate reverse sensitivity effects *“is more consistent with the wording of the recently operative RA.1.2.5 and part 2 of the RMA”*.²¹
46. While I accept that the inclusion of “remedy or mitigate” is more consistent with the identified Policy RA.1.2.5 in the District Plan, I am also of the opinion that including “remedy or mitigate” is **less consistent** with, by way of example:
- a. Policy NTW.1.3.5 that requires the avoidance of sensitive activities in the National Grid Corridor and ensuring that the National Grid is not compromised;
 - b. Proposed Heavy Industrial Zone Objective HIZ-O4 – Reverse Sensitivity that requires activities that may compromise the operation of industrial activities or generate reverse sensitivity effects to be avoided.
47. Further, I am of the opinion that the inclusion of “remedy or mitigate” in Objective SD-O5 does not give effect to the following:
- a. Policies 10 and 11 of the NPSET; and
 - b. Policy 5.1.3 of the NRPS.²²
48. It is for the reasons set out above that I support the following further amendments to Objective SD-O5 and implementing Policy SD-P2:

<i>SD-O5– Incompatible Activities Reverse Sensitivity and Incompatible Activities</i>	<i>Avoid, remedy or mitigate conflict between incompatible land use activities from new subdivision and development.</i>
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<i>SD-P2 – Incompatible Land Uses Reverse Sensitivity and Incompatible Land Uses</i>	<i>To manage the establishment and location of new activities and expansion of existing activities to avoid conflicts between incompatible activities.</i>
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²¹ Part 2 Section 42A Report, Paragraph 120.

²² These policies are quoted earlier in my evidence.

Regionally significant infrastructure and offsetting

49. Transpower's further submission opposes the submission made by Northport Limited ("Northport") that seeks that reference to off-setting or compensation of adverse effects be included in (as notified) SD-O23 – Adverse Effects, SD-P15 – Benefits of Regionally Significant Infrastructure and SD-P16 Adverse Effects of New Regionally Significant Infrastructure.²³ No specific reasons are given in Northport's submission for seeking this relief.

50. The Part 2 Section 42A Report recommends that Northport's submission be accepted in part as follows:

*"In my opinion allowing for the offsetting of effects is consistent with method 5.3.3 of the RPS. However, as the policy limits any positive effect to those that accrue to the community of interest or resource affected, I do not recommend providing for compensation in the policy. In any case, a consent authority must have regard to any measure proposed or agreed to by the applicant to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity (S104(1)(ab)). Not explicitly referring to compensation in the policy does not preclude it being offered as part of the mitigation package within an application."*²⁴

51. The Part 2 Section 42A Report recommends that "or offset" be added to the provisions listed (notified as SD-O23, SD-P15 and SD-P16) above following reference to "remedying" and "mitigating" adverse effects.

52. I agree with the Part 2 Section 42A Report in respect of compensation not being precluded (even when not explicitly mentioned in the Policy) and acknowledge that the same could be said in respect of offsetting. I also agree that section 104(1)(ab) of the RMA requires a consent authority (when considering an application for resource consent) to have regard to "*any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment*". In this regard, and particularly relevant to regionally significant infrastructure, I note that section 171(1B) of the RMA also includes the following in respect of any recommendation on a notice of requirement for a designation:

*"(1B) The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from **measures proposed or agreed to by the requiring authority.**"* [my emphasis]

²³ Submission references 132.9, 132.10 and 132.11.

²⁴ Paragraph 192.

53. My understanding of section 104(1)(ab) and section 171(1B) is that offsetting or compensation must be proposed or agreed to by an applicant or requiring authority (rather than required by a consent authority). This is similarly reflected in Policy 5.3.3(3)(e) of the NRPS as follows:

*“(e) The extent to which the adverse effects of the activity can be practicably reduced. Such an assessment shall also take into account appropriate measures, **when offered**, to provide positive effects, either within the subject site or elsewhere provided that the positive effects accrue to the community of interest and / or resource affected; and ...” [my emphasis]*

54. In my opinion, the Part 2 Section 42A Report recommendations (and proposed amendments to the relevant provisions) do not contemplate or reflect the element of choice set out in sections 104(1)(ab) and 171(1B) of the RMA and Policy 5.3.3(3)(e) of the NRPS and therefore may have the effect of compelling or requiring offsetting of adverse effects on the environment. I consider that any requirement to offset adverse effects is inconsistent with the broader requirements of the RMA and goes beyond what is necessary, appropriate or required to give effect to the NRPS. In this regard I disagree with the conclusion in the Part 2 Section 42A Report that the recommendations are “*consistent with method 5.3.3 of the RPS*”.

55. Further, to the extent that the relevant provisions (and the proposed requirement to offset adverse effects) apply to the development of the National Grid, I note that Policy 2 through to Policy 9 of the NPSET (that set out approaches to managing the environmental effects of electricity transmission) do not require offsetting. It is therefore my opinion that including a requirement to offset the adverse effects of the National Grid in a district plan does not give effect to the NPSET.

56. For the reasons set out above, I support the following further amendments to SD-O23, SD-P15 and SD-P16 (numbered as notified) to more directly give effect to Policy 5.3.3(3) of the NRPS and, in doing so, also be consistent with the NPSET):

<p><i>“SD-O2315 – Adverse Effects</i></p>	<p><i>Avoid remedy, or mitigate or off-set <u>(in situations where off-setting is offered)</u> adverse effects of the development, operation, and maintenance, and upgrading of Regionally Significant Infrast<u>r</u>ucture.</i></p>
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<p><i>“SD-P1532 – Benefits of Regionally Significant Infrastructure</i></p>	<p><i>To have regard to the social, economic and cultural benefits of Regionally Significant Infrastructure by enabling the it's ongoing operation, maintenance, <u>development and upgrading of Regionally Significant Infrastructure</u> where adverse effects can be avoided, remedied, or mitigated or off-set <u>(when offered)</u>.”</i></p>
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<p>SD-P4633 – Adverse Effects of New or Upgraded Regionally Significant Infrastructure</p>	<p>To manage adverse effects created by new or upgraded network utilities and Regionally Significant Infrastructure by:</p> <p>1. <u>Avoiding adverse effects, or allowing adverse effects that have been avoided-remedied, and-mitigated or off-set (when offered)</u> to the extent that they are no more than minor; and ...”</p>
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Benefits of regionally significant infrastructure

57. Transpower’s submission seeks that Regionally Significant Infrastructure Policy SD-P15 (as notified) be amended to require that the benefits of such infrastructure are “recognised and provided for” as opposed to “had regard to”.²⁵
58. The Part 2 Section 42A Report considers Transpower’s relief as follows:
- “... I consider that the phrase ‘have regard to’ gives better effect to the RPS, in particular Policy 5.3.2 and Policy 5.3.3. I agree that the benefits of new infrastructure should be recognised and recommend that development be added to the policy. However, where the RPS contemplates new infrastructure in Policy 5.3.3(1) there are constraints on the effects that are appropriate.”²⁶*
59. I do not agree with the Part 2 Section 42A Report conclusion for the following reasons:
- a. the Report fails to demonstrate a consideration of whether the use of ‘have regard to’ is the most appropriate way to achieve new Objective SD-O14 that states “*The benefits of Regionally Significant Infrastructure are recognised and provided for*”;
 - b. the Report does not contemplate how the “recognise and promote” Objective 3.7 of the NRPS²⁷ is given effect to;
 - c. in relying on Policy 5.3.2 of the NRPS, the Report does not recognise that Policy 5.3.2 is a narrower directive in respect of considering applications for resource consent and notices of requirement for designations (rather than plan-making);
 - d. the Report makes a flawed assumption that “recognising and providing” for the benefits of regionally significant infrastructure means that effects can occur without constraint, whereas this is not the case (as

²⁵ Submission reference 247.9. This submission point is supported by the further submissions made by Northland District Health Board and Radio New Zealand Limited.

²⁶ Paragraph 304.

²⁷ “Recognise and promote the benefits of regionally significant infrastructure, (a physical resource), which through its use of natural and physical resources can significantly enhance Northland’s economic, cultural, environmental and social wellbeing.”

demonstrated by latter clause in the Policy subsequent Policy SD-P16 (as notified) and the approach taken in the NRPS and NPSET);²⁸ and

e. insofar as this Policy relates to the National Grid, the inclusion of 'having regard to' does not give effect to Policies 1 and 2 of the NPSET (that refer to "recognising and providing for").

60. For these reasons, I support the following further amendment to Policy SD-P15 (including the amendment set out earlier in my evidence):

<p><i>"SD-P1532 – Benefits of Regionally Significant Infrastructure</i></p>	<p><i>To <u>recognise and provide for</u> have regard to the social, economic and cultural benefits of Regionally Significant Infrastructure by enabling the <u>its</u> ongoing operation, maintenance, <u>development</u> and upgrading of Regionally Significant Infrastructure where adverse effects can be avoided, remedied, or mitigated <u>or off-set (when offered).</u>"</i></p>
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Management of effects of upgraded regionally significant infrastructure

61. Transpower's further submission opposes the submission made by Northport seeking that Regionally Significant Infrastructure Policy SD-P16 Adverse Effects of New Regionally Significant Infrastructure (as notified) is extended to also apply to 'upgraded' regionally significant infrastructure. No specific reason is given for this relief in Northport's submission.

62. The Part 2 Section 42A Report recommends that "upgraded" be added to the Policy for the following reason:

*"With regard to the part of Northport's submission relating to upgrading, my view is that it is appropriate to consider upgrading of infrastructure as well as new infrastructure due to the potential for new effects."*²⁹

63. I do not support the recommended amendment because:

a. the upgrading of infrastructure, including the management of any new adverse effects on the environment are appropriately addressed in the subsequent Policy SD-P17 (numbered as notified), including a requirement for temporary effects to not be significant and permanent effects to be the same or similar;

²⁸ In this regard, it is noted that Transpower's submission seeks that the latter clause in SD-P15 is deleted on the basis that the District Plan's approach to the management of effects of regionally significant infrastructure is comprehensively addressed in the subsequent Policy SD-P16. I consider that there is merit to this relief but (subject to amendments supported elsewhere in my evidence) do not consider the amendment is necessary to give effect to the NPSET.

²⁹ Paragraph 326.

- b. addressing the effects of upgrading across two policies (SD-P16 and SD-P17) is inefficient and, as drafted, inconsistent;
 - c. distinguishing the management of effects of new regionally significant infrastructure from the maintenance and upgrading of existing infrastructure is consistent with Policy 5.3.3 of the NRPS; and
 - d. similarly, in respect of the National Grid, distinguishing maintenance and upgrade activities is consistent with the Policy direction in Policies 2 and 5 of the NPSET.
64. For these reasons, I support the following further amendment to Policy SD-P16 (including the amendment set out earlier in my evidence):

<p><i>“SD-P1633 – Adverse Effects of New or <u>Upgraded</u> Regionally Significant Infrastructure</i></p>	<p><i>To manage adverse effects created by new <u>or upgraded</u> network utilities and Rregionally Ssignificant infrastructure by:</i></p> <p><i>1. <u>Avoiding adverse effects, or allowing adverse effects that have been avoided remedied, and mitigated or <u>off-set (when offered)</u> to the extent that they are no more than minor; and ...”</u></i></p>
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National Planning Standards

- 65. Transpower’s further submission generally supports the submission made by the Whangarei District Council Planning and Development Department (“WDC Planning”) that seeks to amend the District Plan to provide for the standardised format and definitions included in the gazetted National Planning Standards (including any consequential amendments).³⁰ Transpower’s support is subject to the relief sought by the submitter not altering the regulatory intent in the Network Utilities provisions insofar as those provisions relate to the National Grid.
- 66. The Part 1 Section 42A Report recommends that WDC Planning’s submission be accepted but does not specifically address Transpower’s further submission.
- 67. I have reviewed the consequential amendments set out in Attachment 1 to the Part 1 Section 42A Report and have identified one situation where the inclusion of National Planning Standards definitions, and specifically the new definition of ‘earthworks’, necessitates further consequential amendments to the provisions that protect the National Grid. This is because the National Planning Standards (and Attachment 1 version of the District Plan) definition of ‘earthworks’ excludes “the disturbance of land for the installation of fence

³⁰ Submission number 236/4.

posts”, whereas it is the intention of Rule NTW.2.4 National Grid Corridor Permitted Activities that such vertical holes be regulated in the vicinity of the National Grid in a manner that mirrors the regulations that apply to earthworks (including vertical holes) in the mandatory NZECP 34:2001.

68. I therefore support the following limited amendments to Rule NTW.2.4, and note that this situation (and consequential amendments to similar rules) is not unique and has arisen in respect of a number of recent plan-making processes:

“Within the National Grid Corridor the following activities are permitted:

...

- vi. Earthworks, [vertical holes](#) and Mineral Extraction which is not deeper than 300mm within 6m, and not deeper than 3m between 6 to 12m, of the outer visible edge of a transmission tower support structure;*
- vii. Earthworks, [vertical holes](#) and Mineral Extraction which does not create an unstable batter that will affect a transmission support structure; and
...*

Conclusion

69. Transpower’s submission and further submission is primarily concerned with ensuring that the District Plan continues to give effect to the NPSET as a result of the Urban and Services Plan Change. Transpower’s submissions seek a range of amendment to achieve this outcome.
70. My evidence considers the relief sought by Transpower alongside the Part 1 and Part 2 Section 42A Report recommendation in accordance with the relevant statutory considerations and concludes that further limited amendments to the Strategic Direction provisions of the Urban and Services Plan Change and operative Network Utility provisions (as consequential amendments) are necessary and appropriate to:
- a. provide clarity in respect of the intended influence of the Strategic Direction provisions;
 - b. achieve consistency within the District Plan;
 - c. give effect to the NPSET;
 - d. give effect to the provisions of the NRPS that address regionally significant infrastructure;
 - e. retain the same extent of regulation in respect of earthworks in the vicinity of the National Grid (as a consequence of changes to implement the National Planning Standards); and as such

f. achieve the sustainable management purpose of the RMA.

A handwritten signature in blue ink, appearing to read 'Ainsley Jean McLeod', with a long horizontal flourish extending to the right.

Ainsley Jean McLeod

7 November 2019

ATTACHMENT A: AMENDMENTS SUPPORTED BY EVIDENCE

The following amendments are proposed to the provisions of the MEP as revised by the Section 42A Report. The Part 1 and Part Section 42A Report recommended amendments are shown in black and further amendments supported in evidence are shown in blue.

Amend the 'Overview'/'Issues' section of the Strategic Direction chapter as follows:

~~"This chapter contains the key strategic approach to development that will to address significant resource management issues of importance to the District. This chapter contains overarching objectives and policies that will guide decision making at a strategic level in relation to urban and rural growth and development, the management of open space and recreation zones, and Regionally Significant Infrastructure industries. It also sets out how Māori Resource Management provisions in Part 2 of the RMA Resource Management Act (1991) will be implemented through the District Plan. The objectives and policies seek to address the following significant resource management issues for the Whangarei District, that are addressed by the plan Significant resource management issues for the Whangarei District which include the following:~~

- Managing growth and development;
- Managing existing and future development in areas subject to environmental risks;
- Protection of natural heritage (landscapes, biodiversity and natural features);
- Issues of significance to Mana Whenua;
- Protection of built and cultural heritage;
- Cumulative effects of development on the coastal environment;
- Fragmentation of the rural environment;
- The protection of and efficient development, operation and maintenance of infrastructure;
- The protection of strategic business and industry.

~~The following Objectives and Policies apply when changing and implementing the District Plan. For the purpose of plan changes the Objectives and Policies provide direction for the development of more detailed provisions to be contained elsewhere in the District Plan, and should be considered in addition to the objectives and policies in the relevant zone as well as any District wide policies that apply. The zoning policies (Policies 8-29) in particular apply when considering the most appropriate zone for a piece of land. For the purpose of plan implementation (including the determination of applications for resource consent and notices of requirement for designations), the Objectives and Policies may provide guidance on what the related objectives and policies are seeking to achieve in relation to the significant resource management issues and all District Plan objectives and policies are to be considered together with no fixed hierarchy existing between them. The Objectives and Policies should be considered in addition to the objectives and policies in the relevant zone, as well as any District wide provisions that apply."~~

Amend Objective SD-O5 and Policy SD-P2 as follows:

<p>SD-O5– Incompatible Activities Reverse Sensitivity and Incompatible Activities</p>	<p>Avoid, <u>remedy or mitigate</u> conflict between incompatible land use activities from new subdivision and development.</p>
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SD-P2 – Incompatible Land Uses Reverse Sensitivity <u>and Incompatible Land Uses</u>	To manage the establishment and location of new activities <u>and expansion of existing activities</u> to avoid conflicts between incompatible activities.
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Amend Objective SD-O23, Policy SD-P15 and Policy SD-P16 (numbered as notified) as follows:

“SD-O23 15 – Adverse Effects	Avoid remedy, or mitigate or off-set <u>(in situations where off-setting is offered)</u> adverse effects of the development, operation, and maintenance, and upgrading of Regionally Significant <u>infrastructure</u> .
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“SD-P15 32 – Benefits of Regionally Significant Infrastructure	To <u>recognise and provide for</u> have regard to the social, economic and cultural benefits of Regionally Significant Infrastructure by enabling the <u>its</u> ongoing operation, maintenance, <u>development and upgrading of Regionally Significant Infrastructure</u> where adverse effects can be avoided, remedied, or mitigated or off-set <u>(when offered)</u> .”
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“SD-P16 33 – Adverse Effects of New or Upgraded Regionally Significant Infrastructure	To manage adverse effects created by new <u>or upgraded</u> network utilities and <u>Regionally Significant infrastructure</u> by: 1. <u>Avoiding adverse effects, or allowing adverse effects that have been avoided-remedied, and mitigated or off-set (when offered) to the extent that they are no more than minor; and ...</u> ”
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Amend Rule NTW.2.4 as follows:

“Within the National Grid Corridor the following activities are permitted:

...

- vi. Earthworks, vertical holes and Mineral Extraction which is not deeper than 300mm within 6m, and not deeper than 3m between 6 to 12m, of the outer visible edge of a transmission tower support structure;
- vii. Earthworks, vertical holes and Mineral Extraction which does not create an unstable batter that will affect a transmission support structure; and ...”

**ATTACHMENT B: QUEENSTOWN LAKES DISTRICT PLAN – INTERPRETATION
AND APPLICATION**

(Annexure A to *Darby Planning Limited Partnership and others v Queenstown Lakes
District Council* [2019] NZEnvC 133)

“3.1B Interpretation and Application of this Chapter

3.1B.1 *For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to Strategic Issues.*

3.1B.4 *For the purpose of plan implementation (including in the determination of resource consent applications and notices of requirement):*

- a. *the Strategic Objectives and Strategic Policies in this Chapter may provide guidance on what the related objectives and policies in other chapters of the Plan are seeking to achieve in relation to the Strategic Issues;*
- b. *the relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies in this Chapter) are to be considered together and no fixed hierarchy exists between them. ...”*