

BEFORE THE PROPOSED SELWYN DISTRICT PLAN HEARINGS PANEL

In the matter of

the Resource Management Act 1991

and

**the Proposed Selwyn District Plan – Hearing 1:
Strategic Directions**

**Statement of Evidence of Ainsley Jean McLeod on behalf
of Transpower New Zealand Limited**

(submitter ref: DPR-0446)

dated 23 July 2021

Summary of Evidence

1. The submission made by Transpower New Zealand Limited (“Transpower”) on the Proposed Selwyn District Plan (“Proposed District Plan”) is concerned with how the Proposed District Plan recognises and provides for the nationally significant National Grid, and particularly the extent to which the provisions of the Proposed District Plan give effect to the National Policy Statement on Electricity Transmission 2008 (“NPSET”) and the operative Canterbury Regional Policy Statement (republished in October 2020 (“CRPS”), where the CRPS is relevant to the National Grid and activities undertaken by Transpower in respect of the National Grid.
2. The NPSET provides policy direction in relation to:
 - a. recognising the benefits of the National Grid;
 - b. managing the adverse effects on the environment of the National Grid;
 - c. managing the adverse effects of land use and development on the National Grid; and
 - d. long-term strategic planning for transmission assets.
3. The CRPS, amongst other relevant provisions, include Policy 16.3.4 that sets out how a reliable and resilient National Grid is to be achieved in Canterbury.
4. In respect of the Strategic Directions in the Proposed District Plan, Transpower’s submission is generally supportive of the overarching approach taken in respect of the Strategic Directions and of the Strategic Objectives that relate to ‘Infrastructure, Risk and Resilience’. However, Transpower’s submission seeks further limited amendments to two Strategic Objectives so that the Proposed District Plan gives effect to the NPSET.
5. Transpower’s further submissions on submissions made in respect of the Strategic Directions similarly are concerned with the extent to which the relief sought in those submissions gives effect to the NPSET.
6. My evidence considers the relief sought by Transpower and addresses (as relevant to this relief) the recommendations made in the ‘Section 42A Report - Report on Submissions and Further Submissions: Strategic Directions’ (“Section 42A Report”). The Section 42A Report has not recommended any amendments to the Strategic Directions in response to Transpower’s submission.
7. It is my opinion that the Strategic Directions – Overview is not sufficiently clear in setting out the relationship between Strategic Objectives and objectives and policies elsewhere in the Proposed District Plan and particularly whether the Strategic Objectives are treated differently in implementing the Proposed District Plan, including whether they are afforded more weight. I have suggested amendments to the Overview text to provide this clarity. The amendments are akin to text confirmed by the Environment Court in respect of the Strategic Directions in the Queenstown Lakes District Plan.

8. It is my evidence that Objective SD-IR-O1 does not, as drafted, give effect to the NPSET or the CRPS, insofar as the Objective relates to the National Grid. This is because the Objective does not reference 'maintenance, upgrading and development' whereas Policy 10 of the NPSET and Policy 16.3.4 of the CRPS include a clear direction that the **maintenance, upgrade** and **development** of the National Grid must not be compromised or limited (respectively) by the activities of others'.
9. Similarly, it is my evidence that Objective SD-IR-O2 also does not give effect to the NPSET or the CRPS because the Objective requires (except in some circumstances) effects of the National Grid to be minimised. I consider that requiring the minimising of adverse effects:
 - a. is not a sufficiently clear outcome;
 - b. differs to the direction in terms of managing effects given in the higher order provisions in the NPSET and CRPS; and
 - c. may inappropriately confine detailed provisions in other parts of the Proposed District Plan.
10. I support amendments to Objectives SD-IR-O1 and SD-IR-O2 but have also noted that an alternative solution would be to develop a National Grid specific Strategic Objective.
11. The amendments suggested in my evidence are consolidated in **Attachment A**. My evidence concludes that these amendments are necessary and the most appropriate (in terms of the requirements of section 32 of the Resource Management Act 1991 ("RMA")) to:
 - a. clarify the role and influence of the Strategic Directions objectives for future plan users and processes;
 - b. give effect to the NPSET;
 - c. give effect to the relevant provisions of the CRPS; and
 - d. achieve the purpose of the RMA, including by enable people and communities to provide for their social, economic and cultural well-being and their health and safety.

Introduction

12. 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.
13. 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.

14. 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.
15. More specifically, I have provided expert planning advice to Transpower since 2001 in relation to new and upgraded National Grid transmission lines and substations, along with the relevant planning instruments including the 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.
16. I assisted with the preparation of Transpower's submission and further submissions on the Proposed District Plan and am now engaged to provide expert planning evidence in relation to the Strategic Directions topic.

Code of conduct

17. 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.
18. 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

19. My evidence:
 - a. briefly sets out the statutory requirements for the Proposed District Plan in relation to the NPSET and the operative CRPS;
 - b. describes Transpower's submission and further submissions on the Proposed District Plan that to Hearing 1: Strategic Directions; and
 - c. addresses (as relevant to the relief sought by Transpower) the recommendations made in the Section 42A Report dated 9 July 2021.

20. In addition to the documents referred to above, in preparing this evidence I have also reviewed the following documents insofar as they relate to the relief sought in Transpower's submissions:
- a. the National Planning Standards;
 - b. the 'Section 42A Report – Overview' dated 9 July 2021;
 - c. the 'Section 32 Report – Strategic Directions';
 - d. the 'Section 32 Report - Energy and Infrastructure – Network Utilities and Important Infrastructure';
 - e. the 'Section 32: Overview'; and
 - f. submissions and further submissions made by various parties.
21. For the purpose of my evidence, I rely upon the evidence of Ms Rebecca Eng that describes Transpower's role and responsibilities as the owner and operator of the National Grid, including its role in supporting the decarbonisation of New Zealand's economy and the nature, operation and development of National Grid assets in Selwyn District.
22. 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 RMA and the on-going guidance provided by the modified Long Bay test.¹ This statutory framework is generally set out in the 'Section 32: Overview' and 'Section 42A Report – Overview' and I will not repeat it here.
23. Where amendments to the provisions of the Proposed District Plan are suggested in, and supported by, my evidence, these amendments are shown in [blue](#) and consolidated in **Attachment A**.

The relevant statutory framework

National Policy Statement on Electricity Transmission 2008

24. The NPSET directs the management of the National Grid under the RMA.
25. 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".²

¹ *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.

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, NZSC 38, 17 April.

26. The national significance of the National Grid is recognised, in the context of the RMA, by the NPSET.
27. The Preamble³ 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.
28. 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.”*
29. The Objective is supported by 14 Policies. The following Policies are relevant to obligations the NPSET places on decision-makers in the context of Transpower’s submission and further submissions on the Strategic Directions in the Proposed District Plan:
- a. *“... decision-makers must recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission. ...”* (Policy 1);
 - 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);

³ 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”*.

- 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).

The Canterbury Regional Policy Statement 2013

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

31. The CRPS includes a policy that specifically relates to the National Grid as follows:

“16.3.4 Reliable and resilient electricity transmission network within Canterbury

To encourage a reliable and resilient national electricity transmission network within Canterbury by:

- 1. *having particular regard to the local, regional and national benefits when considering operation, maintenance, upgrade or development of the electricity transmission network;*
- 2. *avoiding subdivision, use and development including urban or semi urban development patterns, which would otherwise limit the ability of the electricity transmission network to be operated, maintained, upgraded and developed;*
- 3. *enabling the operational, maintenance, upgrade, and development of the electricity transmission network provided that, as a result of route, site and method selection, where;*
 - a. *the adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable, remedied or mitigated; and*
 - b. *other adverse effects on the environment are appropriately controlled.”*

32. The CRPS directs territorial authorities to, amongst other matters:

“Set out objectives and policies, and may include methods in district plans that:

- a. *Avoid subdivision, use and development that may result in adverse reverse sensitivity effects on the electricity transmission network, including, through consultation with the operator of the national electricity transmission network, identifying appropriate buffer corridors within which it can be expected that sensitive activities will generally not be provided for; and*
- b. *enable the operation, maintenance, upgrade and development of the national electricity transmission network, while avoiding or mitigating adverse effects on the environment identified in Policy 3.4(3)(a) - (b) above and appropriately controlling other adverse effects as referred to in Policy 16.3.4(3)(b)”.*

33. The ‘Section 32 Report: Energy and Infrastructure – Network Utilities and Important Infrastructure’ describes in detail provisions of the CRPS that are relevant to network utilities

and infrastructure more generally, including the range of defined terms and the provisions as they apply to 'Greater Christchurch', the 'entire region' and 'wider region'. I do not repeat these provisions here but note their relevance to matters addressed in my evidence.

34. For completeness I record that Proposed Change 1 to Chapter 6 of the CRPS becomes operative on 28 July. This Change amends Policy 6.3.5 but I do not consider the amendment material to the policy summary included in the Energy and Infrastructure Section 32 Report or my evidence.

Transpower's Submission

35. Transpower's submission is generally supportive of the overarching approach taken in respect of the Strategic Directions and of the Strategic Objectives that relate to 'Infrastructure, Risk and Resilience'. However, Transpower's submission seeks further limited amendments to two Strategic Objectives so that the Proposed District Plan gives effect to the NPSET.
36. Transpower's further submissions on submissions made in respect of the Strategic Directions similarly are concerned with the extent to which the relief sought in those submissions gives effect to the NPSET.
37. The remainder of my evidence addresses the relief sought in these submissions.

Strategic Directions Overview

38. Transpower's submission⁴ supports the text included in the 'Strategic Directions – Overview', and seeks its retention, on the basis that *"it anticipates that other objectives and policies are consistent with the Strategic Direction objectives and because it is clear there is no hierarchy within the Strategic Direction objectives"*. Transpower's submission expresses the view that the purpose of the Strategic Directions objectives should be clearly stated so that there is no ambiguity in the future, including in respect of whether there is any hierarchy within the Proposed District Plan.

39. The Section 42A Report recommends that this submission be accepted in part, because limited amendments are recommended to the overview text in response to other submissions and to provide further clarity as follows (shown in black):

"For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of the District Plan are to be read and achieved in a manner consistent with these Strategic Directions. For the avoidance of doubt, this means that for resource consent applications, the Strategic Objectives may require specific consideration and application to proposals, as a relevant consideration under section 104(1)(b)(vi). There is no hierarchy between the stated Objectives i.e., no one Strategic Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole."

⁴ Submission reference 0446-018.

40. I agree that it is critical that the purpose and future role of the objectives in the Strategic Directions chapter is made explicitly clear and consider this is particularly important in respect of the relative weight afforded a Strategic Objective when compared to provisions in the rest of the Proposed District Plan and whether, in the event of conflict or tension, a Strategic Objective would 'trump' other provisions.
41. I do not consider that the current drafting provides this clarity in respect of the relationship between the Strategic Directions objectives and other provisions in the Proposed District Plan. Further, I do not consider that the recommended amendment (set out above) provides greater clarity because it does not make it clear whether Strategic Directions objectives are considered differently to other provisions (in a resource consent process) and does not address other situations such as notices of requirement for designations or future plan changes and the role the Strategic Directions objectives might play in their consideration relative to other provisions.
42. In this regard, I acknowledge that the 'Section 32 Report – Strategic Directions' includes the following explanation:
- "The role of a strategic objective is to provide the overall context for the district plan, the overarching direction for other chapters through high level objectives that provide an integrated policy framework for the district as a whole, and sets the land use pattern of Selwyn.*
- These provisions should have primacy, and all other provisions should be expressed and achieved in a manner consistent with the strategic objectives, subject to RMA requirements. In other words, a clear hierarchy should exist between them and those that are chapter specific. Strategic objectives should identify and address district wide sustainable management priorities, give overarching direction, and ensure their purpose achieves the outcomes sought by higher order planning documents.*
- For a matter to qualify as a priority and warrant a strategic objective, the matter must be strategically important for achieving integrated management and the purpose of the RMA, or to give effect to a National Policy Statement, the New Zealand Coastal Policy Statement, or the Canterbury Regional Policy Statement.*
- For the purposes of preparing, changing, interpreting and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with the strategic objectives. Additionally, no hierarchy should be placed on the strategic objectives, and that they should all be read as a whole."*⁵
43. I understand this explanation confirms the intention that the Strategic Directions objectives:
- provide direction to the development and content of the remainder of the Proposed District Plan through a clear hierarchy in order to achieve consistency through the Plan so that the consistency is evident in implementation of the Plan;
 - address district-wide priorities, strategically important matters and matters addressed in higher order documents (such as the National Grid via the NPSET); and
 - has no hierarchy within the Strategic Objectives.

⁵ 'Section 32 Report – Strategic Directions',

44. I am of the view that this explanation (in the 'Section 32 Report – Strategic Directions') is generally consistent with the description and guidance provided in respect of the National Planning Standards 2019,⁶ but does not address the status and role of the Strategic Objectives relative to other provisions of the Proposed District Plan.
45. 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).⁷ 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."*⁸
46. 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 important that the ultimate product, ie the updated ODP, is fully coherent and integrated and clear in its intentions to the ordinary reader."*
47. I consider that objectives, being expressions of outcomes, can (and should) sit alongside each other with no hierarchy (whether or not they are Strategic Objectives). There is a clear aspiration for consistency within the Proposed District Plan, but this does not imply that objectives in other chapters must **achieve** the Strategic Objectives in a section 32 of the RMA sense or that there will not be tensions between provisions at times.
48. For the reasons set out above, I therefore suggest the following further amendments to the 'Overview' text to provide greater and direction (similar to the provided in the Queenstown Lakes District Plan):
- "For the purposes of preparing, changing, interpreting, and implementing the District Plan (including the consideration of resource consent applications and notices of requirement for designations), the relevant all other objectives and policies in all other chapters of the District Plan are to be read together and achieved in a manner consistent with these Strategic Directions and no fixed hierarchy exists between them. For the avoidance of doubt, this means that for resource consent applications, the Strategic Objectives may require specific consideration and application to proposals, as a relevant consideration under section 104(1)(b)(vi). There is no hierarchy between the stated Objectives i.e., no one Strategic*

⁶ 'Guidance for District Plans Structure and Chapter Standards, Ministry for the Environment, April 2019, Page 6.

⁷ Darby Planning Limited Partnership and others v Queenstown Lakes District Council [2019] NZEnvC 133.

⁸ Paragraph 63.

Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole.”

SD-IR-O1 (Infrastructure, Risk and Resilience – Community Need)

49. Transpower’s submission⁹ seeks that Objective SD-IR-O1 Community Needs is amended to refer to the ‘maintenance’, ‘upgrading’ and ‘development’ of important infrastructure being protected in order to give effect of Policy 10 of the NPSET:
50. This submission is supported by a further submission made by Waka Kotahi NZ Transport Agency (“Waka Kotahi”).¹⁰
51. Transpower’s further submission¹¹ opposes the submission made by Horticulture New Zealand (“Hort NZ”)¹² seeking that the Objective be replaced in its entirety so that ‘protected’ is replaced. The Section 42A Report recommends that this submission be rejected.¹³ Subject to my comment below, I generally share the views expressed in the Section 42A Report in this regard.
52. In response to the submission, the Section 42A Report does not recommend any amendments be made to this Objective and recommends that this submission point be rejected for the following reasons:
- “12.6.1 The wording used by the submitter is largely of a policy orientation. The purpose of an objective and in particular a strategic objective is to set a clear desired outcome, rather than describing how the outcome is to be achieved which is what the wording that has been proposed by the submitter does.*
- 12.6.2 It is considered that by including ‘upgrading’ and ‘development’ into the objective alongside the key term of ‘is protected’ would not be appropriate as to protect in this case would be an equivalent of enabling/ permitting the activity within the methods of the Plan. In my view, this approach would be giving too much weight or preference to important infrastructure development and upgrading regardless of the cost. The development and upgrading of important infrastructure is part of ensuring the community’s infrastructure needs are fulfilled, with the method and degree of enablement being determined through the methods in the Energy and Infrastructure Chapter.”¹⁴*
53. In this regard, I agree that strategic objectives should be expressed as outcomes, but I am of the view that the amendment sought by Transpower does not alter the expression of Objective SD-IR-O1 as an outcome. In fact, in my opinion the expression proposed in Transpower’s relief is akin to that used in Objective SD-IR-O2. That is, Objective SD-IR-O2 refers to “... *development, upgrade, maintenance, and operation of all important infrastructure is enabled*”

⁹ Submission reference 0446-019.

¹⁰ Further submission reference 0375-033.

¹¹ Further submission reference 0446-022.

¹² Submission reference 0353-086.

¹³ Section 42A Report, page 38.

¹⁴ Section 42A Report, page 39.

and Transpower's relief is “... *the operation, maintenance, upgrading and development of important infrastructure is protected*”.

54. The Section 42A Report concludes that Transpower's relief is a description of how the outcome (community needs are fulfilled) is to be achieved. That is, it is suggested that 'protection' is akin to 'enabling'. It is my opinion, and with particular reference to Policies 10 and 11 of the NPSET, that the protection of the operation, maintenance, upgrading and development of the National Grid is necessary for other reasons, in addition to providing for community needs, as follows:
- a. to recognise and provide for the transmission of electricity to people and communities beyond Selwyn District (NPSET Policies 1 and 2);
 - b. to avoid reverse sensitivity effects on the National Grid (NPSET Policies 10 and 11);
 - c. to ensure that the ability to operate, maintain, upgrade and develop the National Grid not compromised, for instance, through severed vehicle access or through direct adverse effects such as earthworks that may destabilise a support structure or through direct contact with a conductor (NPSET Policy 10).
55. The Section 42A Report goes on to suggest that by including 'upgrading' and 'development' into the objective alongside the key term of 'is protected' would be an equivalent of enabling/permitting the activity and that this approach would be giving too much weight or preference to important infrastructure development and upgrading. I do not agree with this conclusion because I am of the view that Objective SD-IR-O2 'enables' important infrastructure (with controls in respect of adverse effects) whereas Objective SD-IR-O1 reflects two different outcomes:
- a. an expectation that the community is serviced by infrastructure; and
 - b. that infrastructure is protected.
56. It is my opinion that, insofar as Objective SD-IR-O1 relates to the National Grid, it is necessary to include reference to 'upgrading' and 'development' in order to properly give effect to (with my emphasis):
- a. NPSET Policy 2 – “... *decision-makers must recognise and provide for the effective operation, maintenance, **upgrading and development** of the electricity transmission network*”;
 - b. NPSET Policy 10 – “...*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*”; and
 - c. CRPS Policy 16.3.4, clause (2) – “... *avoiding subdivision, use and development including urban or semi urban development patterns, which would otherwise limit the*

*ability of the electricity transmission network to be operated, maintained, **upgraded and developed**".*

57. I also have some concern about the consequences of Objective SD-IR-O1 in respect of the content of provisions in the Energy and Infrastructure chapter. That is, if 'protection' is confined to the 'operation' of important infrastructure in the Strategic Directions chapter, it is not clear whether more detailed provisions in the Energy and Infrastructure chapter can depart from the outcome in Objective SD-IR-O1 and also provide for the protection of 'maintenance, upgrading and development' without creating a possible conflict within the provisions in the Proposed District Plan.

58. It is for the reasons set out above, I support the following amendment to Objective SD-IR-O1:

"The important infrastructure needs of the community are fulfilled, and the ~~ir~~-operation, maintenance, upgrading and development of important infrastructure is protected".

59. That said, I acknowledge that the amendments I support have the consequence of being wider reaching than the higher order provisions that I refer to because they relate to important infrastructure generally, as opposed to the National Grid specifically (although Policy 5.3.9 of the CRPS states in respect of regionally significant infrastructure "...avoid development which constrains the ability of this infrastructure to be **developed**"). An approach that can be used to more directly give effect to National Grid specific higher order provisions is to similarly include a National Grid specific Strategic Directions objective. I do not oppose such an approach.

As a final matter in respect of drafting, I note that the use of the term 'their' in Objective SD-IR-O1 is ambiguous and could refer to either the 'community needs' or 'important infrastructure' being protected. The amendment I suggest also clarifies this matter.

SD-IR-O2 (Infrastructure, Risk and Resilience – Effects of Important Infrastructure)

60. In its submission,¹⁵ Transpower seeks the following amendment to Objective SD-IR-O2 Effects of Important Infrastructure (shown in *red*) on the basis that:

- a. the term 'minimise' may imply that adverse effects must be made minimal and that such an outcome that may not always be possible in the context of the National Grid; and
- b. the NPSET does not require effects to be minimised in all circumstances:

"The development, upgrade, maintenance, and operation of all important infrastructure is enabled in a way that ~~minimises~~ avoids, remedies or mitigates adverse effects, while having regard to the practical constraints and the logistical and technical practicalities associated with important infrastructure."

61. This submission is supported by a further submission made by Waka Kotahi.¹⁶

¹⁵ Submission reference 0446-020.

¹⁶ Further submission reference 0375-FS034.

62. The Section 42A Report recommends that Objective SD-IR-O2 is retained as notified and therefore recommends that Transpower's submission point be rejected for the following reasons (I respond to these reasons in turn below):

"13.6.1 The purpose of a strategic objective is to set a clear goal/ outcome for the district, and the use of the proposed amended terminology would not provide certainty around what the desired outcome is.

13.6.2 The submission point states that they are generally supportive of the approach taken in the objective, but have a concern around the use of 'minimise' and that this may then require the effects of development to be minimal. It is considered that this interpretation of the objective is incorrect, as the first part of the objective needs to be read in conjunction with the second part, which introduces a 'while regarding' component, which does give leeway when the effects cannot be minimised due to various reasoning.

13.6.3 The submitter states that part of the justification for their submission point is that the NPSET does not require effects minimised in all circumstances. However, the proposed objective does not require this in all circumstances and does provide an 'out' where appropriate. Additionally, the wording of the NPS-ET uses 'manage' which can align with the need to minimise adverse effects, with the details on how this is to be achieved being addressed in the Energy and Infrastructure Chapter."¹⁷

63. Accepting that the purpose of strategic objective is to set a clear goal or outcome for the district, I do not agree that using the term 'minimal' is appropriate for the following reasons:

- a. The outcome sought is less clear than referencing 'avoid, remedy or mitigate'. This is because efforts to minimise effects could be understood to be anything from making a limited attempt to reduce some adverse effects through to making all adverse effects 'minimal'.
- b. 'Minimising' must be understood to be something less than 'avoiding' adverse effects (that is, residual adverse effects are anticipated) and, if provisions elsewhere in the Proposed District Plan are to be *"expressed and achieved in a manner consistent with the strategic objectives"*¹⁸, an 'avoid' outcome would not be available to important infrastructure in provisions elsewhere without there being an inconsistency between provisions.
- c. Insofar as Objective SD-IR-O2 relates to the National Grid, an outcome requiring that adverse effects are minimised is not consistent with, and does not give effect to, the NPSET, which refers to adverse effects being 'managed' in its Objective and 'avoided, remedied or mitigated' in Policies 3 and 4. In this regard, I note the suggestion in the Section 42A Report that 'manage' *"can align with the need to minimise adverse effects"*. In my view, 'minimise' is one way to, or a subset of, 'manage' (as is the RMA and NPSET concepts of 'avoid, remedy or mitigate'). To include 'minimise' in a Strategic Objective could result in other means to manage adverse effect not being available in

¹⁷ Section 42A Report, page 47.

¹⁸ Section 32 Report – Strategic Directions, page 6.

the more detailed Infrastructure and Energy Chapter of the Proposed District Plan without creating an inconsistency in the Proposed District Plan.

- d. Again, in respect of the National Grid, an outcome requiring that adverse effects are minimised is not consistent with, and does not give effect to, Policy 16.3.4 of the CRPS. This Policy requires that adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable, remedied or mitigated, and other adverse effects are appropriately controlled.
 - e. In terms of important infrastructure more broadly, I am also of the view that an outcome requiring that adverse effects are minimised is not consistent with, and does not give effect to, the CRPS, which directs that the adverse effects of regionally significant infrastructure are avoided, remedied or mitigated, for instance in Policy 5.3.9. It is noted that the 'methods' statement that accompanies Policy 5.3.9 directs that territorial authorities "*will set out objectives and policies, and may include methods in district plans which ... c. avoid, remedy or mitigate the adverse effects of regionally significant infrastructure on the environment*".
 - f. When considered as an expression of a desired outcome, it is not clear how the 'while having regard' clause explicitly provides the 'out' or 'leeway' suggested in the Section 42A Report. This is because, as drafted, Objective SD-IR-O2 does not provide express connection between the outcome (minimised adverse effects) and the practical constraints to this. To achieve this, the Objective would need to be explicit in recognising that adverse effects cannot be minimised in some situations because of the stated constraints and practicalities, as opposed to 'having regard to'.
64. For these reasons, it is my opinion that replacing 'minimise' with 'avoids, remedies or mitigates' (or alternatively, 'manages') provides greater clarity in respect of the outcome to be achieved; is consistent with RMA, NPSET and CRPS language; and is necessary to give effect to the NPSET and CRPS. I am also of the view that, subject to scope to do so, further amendments could be made to better connect the 'leeway' provided in the final clause of Objective SD-IR-O2 as follows:

"The development, upgrade, maintenance, and operation of all important infrastructure is enabled in a way that ~~minimises~~ avoids, remedies or mitigates adverse effects, while recognising that ~~having regard to~~ the practical constraints and the logistical and technical practicalities associated with important infrastructure ~~can limit the extent to which adverse effects are avoided, remedied or mitigated.~~"

SD-IR-O3 (Infrastructure, Risk and Resilience – Natural Hazards)

65. Transpower's submission¹⁹ supports Objective SD-IR-O3 Natural Hazards and seeks its retention, as notified. Transpower's support is on the basis that the Objective recognises that

¹⁹ Submission reference 0446-21.

there may be situations where important infrastructure has no reasonable alternative such that the risk from natural hazards may be increased.

66. Transpower's further submission²⁰ opposes the primary submission made by Ellesmere Sustainable Agriculture Incorporated ("ESAI")²¹ seeking the deletion of *"other than where necessary to provide for important infrastructure that has no reasonable alternative"*.
67. The Section 42A Report recommends that Transpower's submission point be accepted and ESAI's submission point be rejected. The reasons given are as follows:
- "14.3.1 The amendment suggested by these two submitters would mean that if important infrastructure development would increase the risk from natural hazards at all, then it should not be allowed to occur. This stance would not even allow for an assessment to be made to balance the increase in risk against the benefit the infrastructure may have, and the feasibility of alternatives. As such, it not considered that this position is practical, and could have significant effects on infrastructure provision for the community, especially as there are scenarios where important infrastructure has to base itself in hazardous areas such as fault areas, and flood areas with no suitable alternatives to avoid these areas."*²²
68. I share the view expressed in the Section 42A Report and note that, in the case of the National Grid, there is no alternative to traversing the Plains Flood Management Overlay where the National Grid carries electricity from generators in the south to consumers in the north.
69. I also acknowledge that Policy 11.3.4 of the CRPS introduces the same concept of 'no reasonable alternative' and the Section 42A Report concludes *"that the wording used within this objective is consistent with the wording used in the RPS Policy 11.3.4"*²³. That said, I am of the view that CRPS Policy 11.3.4 and Objective SD-IR-O3 are not entirely consistent, as follows:
- a. the CRPS Policy is confined to **new** 'critical infrastructure'²⁴ whereas Objective SD-IR-O3 relates to important infrastructure (that may arguably include existing as well as new);
 - b. the CRPS Policy addresses high hazard areas as opposed to risks from natural hazards generally in Objective SD-IR-O3; and
 - c. the CRPS Policy directs the location of new critical infrastructure outside of high hazard areas, while Objective SD-IR-O3 relates to increased risk from natural hazards to important infrastructure.
70. While the Section 42A Report recommendation achieves the relief that Transpower seeks, and I am of the view that this relief gives effect to the NPSET, I consider that there may be

²⁰ Further submission reference 0446-FS025.

²¹ Submission reference 0212-011.

²² Section 42A Report, pages 51 and 52.

²³ Section 42A Report, paragraph 14.6, page 52.

²⁴ A defined term in the CRPS.

opportunities to further refine Objective SD-IR-O3 to better give effect to CRPS Policy 11.3.4 (where other submissions allow) and as such recognise and provide for the management of significant risks from natural hazards (required by section 6(h) of the RMA).

New Objective

71. Transpower's further submission²⁵ supports in part the primary submission made by Hort NZ²⁶ that seeks the inclusion of a new Strategic Directions objective. Transpower's further submission seeks that Hort NZ's relief is further amended to include reference to 'important infrastructure' as follows (Transpower's relief is shown in *red*):

"Primary production, important infrastructure and rural industry are able to operate efficiently and effectively and the contribution that they make to the economic and social wellbeing of the district is recognised.

Productive and versatile land is retained for primary production to enable production of food.

Development is located and designed which enables primary production activities to occur in rural areas and not be constrained by location of incompatible activities adjacent to rural production activities."

72. The Section 42A Report²⁷ recommends that Hort NZ's submission be rejected for the following reasons:

"... the elements brought up in the suggested provisions are already captured either specifically in the General Rural Zone provisions, or in the existing proposed strategic objectives largely through SD-DI-O1 – SD-DI-O4, and SD-UFD-O1. Additionally, I note that there may be merit in having specifically rural focused strategic objectives if there were multiple rural zones being proposed. However, as only one has been proposed, to include rural focused objectives in the strategic objectives would lead to duplication with the General Rural Zone objective and policies."

73. I understand Hort NZ's relief to, at a high level, relate to:

- a. the ability to provide for the economic and social wellbeing of people and communities;
- b. the efficient use of the land resource; and
- c. the protection of existing activities from incompatible activities.

74. I have reviewed Objectives SD-DI-O1 – SD-DI-O4, and SD-UFD-O1 and consider that Hort NZ's relief is generally achieved through Objectives SD-DI-O1 and SD-DI-O2 (acknowledging that detailed provisions are included in the Rural Zone chapter and subject to consideration at a later date). I therefore agree with the conclusion in the Section 42A Report, that a further strategic objective is not necessary. As such, it is my view that the relief in Transpower's further submission is similarly not necessary, having regard to the SD-IR suite of Strategic Directions objectives (subject to the amendments I suggest in this evidence).

²⁵ Further submission reference 0446-FS021.

²⁶ Submission reference 0353-084.

²⁷ Section 42A Report, page 84.

Conclusion

75. Transpower's submission and further submissions in respect of Hearing 1 – Strategic Directions is primarily concerned with the clarity of purpose of the Strategic Directions objectives and ensuring that the Proposed District Plan provisions give effect to the NPSET.
76. My evidence considers the relief sought by Transpower, alongside the Section 42A Report in accordance with the relevant statutory consideration and concludes that further limited amendments to the Strategic Direction provisions are necessary and appropriate to:
- a. provide clarity in respect of the role of the Strategic Directions provisions;
 - b. give effect to the NPSET;
 - c. give effect to the CRPS in respect of the 'electricity transmission network' and 'regionally significant infrastructure'; and therefore
 - d. achieve the sustainable management purpose of the RMA.



Ainsley Jean McLeod

23 July 2021

Attachment A: Amendments Supported by Evidence

Amend Strategic Directions SD – Overview as follows:

“For the purposes of preparing, changing, interpreting, and implementing the District Plan (including the consideration of resource consent applications and notices of requirement for designations), the relevant all other objectives and policies in all other chapters of the District Plan are to be read together and achieved in a manner consistent with these Strategic Directions and no fixed hierarchy exists between them. For the avoidance of doubt, this means that for resource consent applications, the Strategic Objectives may require specific consideration and application to proposals, as a relevant consideration under section 104(1)(b)(vi). There is no hierarchy between the stated Objectives i.e., no one Strategic Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole.”

Amend Objective SD-IR-O1 Community Needs as follows:

“The important infrastructure needs of the community are fulfilled, and their operation is protected”. “The important infrastructure needs of the community are fulfilled, and the# operation maintenance, upgrading and development of important infrastructure is protected”.

Amend Objective SD-IR-O2 Effects of Important Infrastructure as follows:

“The development, upgrade, maintenance, and operation of all important infrastructure is enabled in a way that minimises avoids, remedies or mitigates adverse effects, while recognising that having regard to the practical constraints and the logistical and technical practicalities associated with important infrastructure can limit the extent to which adverse effects are avoided, remedied or mitigated.”

**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. ...”*