

Before the Hearings Panel for the
freshwater parts of the proposed
Otago Regional Policy Statement

Under the

Resource Management Act 1991

In the matter

of submissions lodged on the Freshwater Planning Instrument
parts of the proposed Otago Regional Policy Statement 2021

**EVIDENCE IN CHIEF OF AINSLEY JEAN MCLEOD ON BEHALF OF TRANSPOWER
NEW ZEALAND LIMITED (FPI013 and FSFPI013)**

PLANNING

28 June 2023

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1. SUMMARY OF EVIDENCE

1.1 The submission made by Transpower New Zealand Limited (**Transpower**) on the Freshwater Planning Instruments Parts of the proposed Otago Regional Policy Statement (**pORPS FPI**) is concerned with, at a high level, the extent to which the provisions of the pORPS FPI provisions gives effect to National Policy Statement on Electricity Transmission 2008 (**NPSET**), alongside the way in which the provisions give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM**).¹ More specifically, Transpower’s submission addresses how the pORPS FPI Freshwater defines ‘specified infrastructure’ and how such infrastructure, including the National Grid, is managed in respect of freshwater.

1.2 Transpower’s further submissions:

- (a) support further refinement to the provisions of the pORPS FPI so that the provisions appropriately manage specified infrastructure in respect of freshwater and give effect to the relevant national planning instruments; and
- (b) oppose relief sought in a primary submission that would result in the pORPS FPI not giving effect to the relevant national planning instruments.

1.3 My evidence considers the relief sought by Transpower and addresses, as relevant to this relief, the recommendations in respect of submissions made in the ‘*Section 42A Hearing Report, Proposed Otago Regional Policy Statement, Parts considered to be a Freshwater Planning Instrument under section 80A of the Resource Management Act 1991*’, dated 2 June 2023 (**Section 42A Report**).

¹ Incorporating amendments and dated February 2023.

- 1.4** My evidence supplements, and is supported by, the earlier evidence I prepared in relation to the non-freshwater parts of the proposed Otago Regional Policy Statement (**pORPS non-freshwater**).²
- 1.5** It is my evidence that the provisions of the pORPS FPI, as drafted and recommended for amendment in the Section 42A Report, do not fully give effect to the NPSFM and NPSET. My evidence supports amendments recommended in the Section 42A Report and suggests limited further amendments to the provision of the pORPS. These amendments are consolidated in **Attachment A**.
- 1.6** It is my conclusion 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) give effect to the NPSFM and NPSET;
 - (b) where the amendments are to policies, achieve the relevant objectives of the pORPS; and
 - (c) achieve the purpose of the RMA, including by enabling people and communities to provide for their social, economic and cultural well-being and their health and safety.

2. QUALIFICATIONS AND EXPERIENCE

- 2.1** 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.
- 2.2** I am a self-employed planner, trading as Ainsley McLeod Consulting Limited. I have over 20 years' experience in planning practice, primarily as a consultant planner based in Otago, Wellington and Christchurch, during which time I have undertaken consenting, designation and policy

² <https://www.orc.govt.nz/media/13347/transpower-new-zealand-limited-ainsley-mcleod.pdf>

planning work. I have provided planning advice to a range of clients including central and local government, and the private sector.

2.3 I have particular expertise in 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.

2.4 More specifically, I have provided expert planning advice to Transpower since 2001. In this role, I have provided advice on 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. In the context of Otago, I have advised Transpower on the partially operative Otago Regional Policy Statement, the proposed Queenstown Lakes District Plan and the proposed Dunedin City District Plan.

2.5 I assisted Transpower with the preparation of submission and further submissions on the pORPS non-freshwater, participated in pre-hearing discussions with representatives of Otago Regional Council and other submitters, and provided expert planning evidence in relation to those submissions. I also assisted with the drafting of Transpower's submission and further submissions on the pORPS FPI and have now been engaged to provide expert planning evidence in relation to these submissions.

Code of Conduct

2.6 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 2023 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.

2.7 My qualifications as an expert are referenced 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.

3. SCOPE OF EVIDENCE

3.1 My evidence:

- (a) acknowledges the statutory requirements for the pORPS FPI in relation to the NPSET;
- (b) summarises Transpower's submission and further submissions on the pORPS; and
- (c) addresses (as relevant to the relief sought by Transpower) the recommendations made in the Section 42A Report.

3.2 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 'Section 32 Evaluation Report, Consideration of alternatives, benefits and costs, Parts that relate to the part of the Proposed Otago Regional Policy Statement 2021 considered to be a Freshwater Planning Instrument under Section 80A of the Resource Management Act 1991' dated September 2022 (**Section 32 Report**);
- (b) the 'New Zealand Coastal Policy Statement 2010' (**NZCPS**); and

(c) submissions and further submissions made by various parties.

3.3 For the purposes of my evidence, I rely on the evidence of **Mr Roy Noble** that was filed in relation to the hearing of submissions on the pORPS non-freshwater and is relevant to Transpower's submission on the pORPS FPI.³ In particular, I rely on the parts of Mr Noble's evidence that:

- (a) provides an overview of the National Grid assets in Otago;
- (b) describes the operation, maintenance and minor upgrading of the National Grid;
- (c) explains the technical, operational and functional requirements of the National Grid;
- (d) describes the role of the National Grid in facilitating growth in Otago, and the future of electricity transmission in Otago, including in respect of New Zealand's future zero-carbon economy; and
- (e) summarises Transpower's approach to selecting the location of new assets.

3.4 I also rely on the evidence of **Ms Julia Kennedy**. Ms Kennedy's evidence describes the types of activities that Transpower carries out within, or in close proximity to freshwater bodies and explains the barriers to enabling activities when there may be effects on freshwater bodies.

3.5 As noted above, my evidence is supplemented and supported by my earlier evidence filed in relation to the pORPS non-freshwater. Where that earlier evidence is directly relevant to this evidence, I have explicitly confirmed this.

3.6 My analysis and consideration of the relief sought by Transpower is informed by the statutory framework for regional policy statements set out in the RMA and generally described in the Section 32 Report.

³ <https://www.orc.govt.nz/media/13348/transpower-new-zealand-limited-roy-noble.pdf>

3.7 **Attachment A** sets out all of the amendments to the provisions of the pORPS FPI (as recommended for amendment by the Section 42A Report) sought in and/or supported by my evidence. The Section 42A Report amendments are shown in black underline and ~~strikethrough~~ and the further amendments supported in my evidence are shown in red double underline and ~~red double strikethrough~~.

4. THE STATUTORY FRAMEWORK RELEVANT TO THE NATIONAL GRID

4.1 I adopt my earlier (non-freshwater) evidence at section 4 that discusses the relevant statutory framework in respect of the preparation and content of regional policy statements and provides a description of the NPSET.

4.2 In addition to my earlier evidence, I note that the NPSFM is described in the Section 32 Report and the Section 42A Report and I do not repeat the description of those provisions here.

4.3 I also consider that the NESETA is relevant to the pORPS FPI to the extent that the NESETA can usefully inform the pORPS provisions in respect of National Grid activities, and associated adverse effects, that should be anticipated by, and enabled in, pORPS provisions. Further, the pORPS is relevant to the NESETA, where the NESETA regulations require a resource consent for a specific activity, the objectives and policies of the pORPS (and in the future, the objectives and policies of district plans and regional plans that implement the pORPS) will be relevant considerations.

4.4 Of note in respect of the pORPS FPI, Regulation 28 of the NESETA provides for the discharging of contaminants into water, in relation to an existing transmission line, as a permitted activity if, after the water and contaminants are reasonably mixed together, all of the conditions in subclauses (2) to (6) are complied with. Where these conditions are not complied with, Regulation 29 provides for the discharging of contaminants into water as a controlled activity, where a consent

authority's control is reserved in relation to the effects on water quality and the effects on aquatic life.

5. TRANSPOWER'S SUBMISSIONS

- 5.1** Transpower's submission addresses how the pORPS FPI defines 'specified infrastructure' and how such infrastructure, including the National Grid, is managed in respect of freshwater.
- 5.2** Transpower's further submissions support further refinement to the provisions of the pORPS FPI so that the provisions appropriately manage specified infrastructure in respect of freshwater and give effect to the relevant national planning instruments; and oppose relief sought in a primary submission that would result in the pORPS FPI not giving effect to the relevant national planning instruments.
- 5.3** The remainder of my evidence addresses the relief sought in these submissions.

6. WHOLE OF THE pORPS FPI

Use of 'avoid' and 'enable'

- 6.1** Transpower's further submission⁴ supports the primary submission made by Dunedin City Council (**DCC**) seeking that caution is exercised when using terms such as 'avoid' and 'enable' given the way in which case law directs that such terms should be understood.⁵
- 6.2** The Section 42A Report recommends that the submission be accepted in part and provides an analysis of where 'avoid' has been used in the provisions of the pORPS FPI. The Section 42A Report particularly highlights where amendments to the provisions to delete 'avoid' are

⁴ Further submission reference FSFPI013.001.

⁵ Submission reference FPI001.044.

recommended.⁶ I address these provisions, where they are also addressed in Transpower's submission, in my evidence below.

Use of 'possible'

6.3 Transpower's further submission⁷ supports the primary submissions made by NZSki Limited and Real Group Limited seeking that the term 'possible' be replaced with clearer direction, such as 'practicable' throughout the pORPS on the basis that 'possible' is extremely stringent and is a potentially unrealistic test to meet.⁸

6.4 The Section 42A Report responds to the submissions as follows:

"378. ...Across the pORPS, there are a range of qualifiers used in provisions, including "where possible." In the non-FPI hearing, submitters have raised issues with that phrasing because, technically, anything is possible (especially if you avoid the activity giving rise to the adverse effects sought to be managed). Those submitters have generally preferred "where practicable". Other submitters consider that wording reduces an assessment purely to a financial consideration. I can see both sides of this issue and agree that a 'mid ground' would be most appropriate – somewhere between "anything within the realm of possibility" and "the minimum financially viable".

379. The submitters have separately raised this issue in relation to specific provisions, I have recommended some amendments in response to those points elsewhere. In response to the same issue being raised in the non-FPI hearing, I have recommended using "to the greatest extent practicable" rather than either "where possible" or "where practicable", noting that there are differences across chapters due to the different contexts of the provisions."

⁶ Section 42A Report, paragraph 382.

⁷ Further submission references FSFPI013.008 and FSFPI013.009.

⁸ Submission references FPI038.003 and FPI039.005 respectively.

- 6.5 I share the view expressed in the submissions, and consider that using the term ‘possible’ is tantamount to an absolute direction on the basis that anything is technically possible. Therefore, depending on context, using the term ‘possible’ may result in provisions that do not give effect to national planning instruments or achieve the purpose of the RMA.
- 6.6 I acknowledge that use of the term ‘to the greatest extent practicable’ has been recommended in respect of submissions made on the non-freshwater pORPS and consider that the use of this expression is likely to be more appropriate in most circumstances. Consistent with my conclusion in respect of the use of ‘avoid’ and ‘enable’, I also acknowledge and agree with the Section 42A Report, that the context is important in respect of the way different terms are used. I address specific provisions of the pOPRS FPI in the remainder of my evidence. These provisions do not use the term ‘possible’ and as such, the outcome sought in Transpower’s further submission is achieved.

7. PART 1 - INTRODUCTION AND GENERAL PROVISIONS

Interpretation – ‘specified infrastructure’

- 7.1 Transpower’s submission⁹ supports the inclusion of a definition of ‘specified infrastructure’ that replicates clause 3.21 of the NPSFM subject to the definition of ‘regionally significant infrastructure’ in the pORPS being amended to include the National Grid. The submission seeks the retention of the definition of ‘specified infrastructure’ and the addition of ‘National Grid’ to the definition of ‘regionally significant infrastructure’ as a consequential amendment.
- 7.2 The submission made by Royal Forest and Bird Protection Society of New Zealand¹⁰ (**Forest and Bird**) seeks that the definition of ‘specified infrastructure’ be amended as follows:

⁹ Submission reference FPI013.001.

¹⁰ Submission reference FPI045.001.

“in relation to freshwater, has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)”

7.3 Transpower’s further submission¹¹ does not support or oppose the relief sought by Forest and Bird, but notes that care should be taken in allowing the proposed amendment to ensure that there are no unintended consequences because the term ‘specified infrastructure’ is not unique to the NPSFM and is also used in the National Policy Statement for Highly Productive Land (**NPSHPL**).

7.4 The Section 42A Report¹² recommends that Transpower’s submission be rejected for the following reasons:

“425. The definition of ‘regionally significant infrastructure’ is not an FPI provision and therefore cannot be amended through this process. I note that the National Grid is included in the definition of ‘nationally significant infrastructure’ and that Mr Langman’s non-FPI Reply report 11: EIT – Energy, infrastructure, and transport recommends amending the definition of ‘regionally significant infrastructure’ to clarify that it incorporates all nationally significant infrastructure. The submission point by Transpower has therefore been addressed in that process.

426. LF-FW-P9 as notified is the only provision in the pORPS that used the defined term ‘specified infrastructure’. As a result of my recommended amendments to LF-FW-P9 (set out in section 1417 of this report), ‘specified infrastructure’ will no longer be used anywhere in the pORPS therefore as a consequential amendment I recommend deleting this definition. ...”

¹¹ Further submission reference FSFPI013.011.

¹² Section 42A Report, paragraphs 425 and 426.

- 7.5** I agree with the Section 42A Report, and similarly conclude that the definition of ‘specified infrastructure’ is not necessary if the Section 42A Report recommendation to directly reference clause 3.22 of the NPSFM in Policy LF-FW-P9 is adopted by the Hearings Panel such that the term ‘specified infrastructure’ would no longer be used in the pORPS.
- 7.6** However, if the term ‘specified infrastructure’ is to be used in the pORPS, I support the inclusion of a definition that replicates the definition in clause 3.21 of the NPSFM, noting that the definition includes “*regionally significant infrastructure identified as such in a regional policy statement or regional plan*”.
- 7.7** Further, while I support the clause 3.21 definition of ‘specified infrastructure’, I share the concern expressed in Transpower’s submission that the National Grid is not identified as ‘regionally significant infrastructure’ in the notified pORPS, but only nationally significant infrastructure, such that, perversely, the National Grid would not be considered ‘specified infrastructure’.
- 7.8** Transpower’s submission on the pORPS (non-freshwater parts)¹³ seeks that the National Grid be included in the definition of ‘regionally significant infrastructure’. My earlier evidence¹⁴ supports the recommendation made in one of the non-freshwater parts section 42A report that responds to Transpower’s submission that “*any infrastructure identified as nationally significant infrastructure*” be included in the definition.¹⁵
- 7.9** In my view, and with reference to the NPSET, there is no question that the National Grid is nationally, and also regionally, significant. Therefore, if the definition of ‘specified infrastructure’ is retained, I am of the view that it is essential (and consequential) that the definition of ‘regionally

¹³ Submission reference 00314.006.

¹⁴ Evidence in Chief of Ainsley Jean McLeod on behalf of Transpower New Zealand Limited (314 and FS00314) dated 24 November 2022, Paragraph 6.19.

¹⁵ Section 42A Hearing Report Proposed Otago Regional Policy Statement 2021 Chapter 11: Energy, Infrastructure and Transport, paragraph 546.

significant infrastructure’ is amended to ensure that the definition encompasses the National Grid.

7.10 The amendments I seek to these definitions are set out in **Attachment A**.

8. PART 3 - DOMAINS AND TOPICS

LF – Land and freshwater LF-WAI – Te Mana o te Wai: Policy LF-WAI-P1 – Prioritisation

8.1 The submission made by the Director General of Conservation (**Director General**) seeks the inclusion of the following new clause in Policy LF-WAI-P1 – Prioritisation:

“(4) if there is a conflict between this policy and other provisions in this RPS that cannot be resolved by the application of higher order documents, then this policy takes precedence over Policy IM-P1.”¹⁶

8.2 Transpower’s further submission¹⁷ opposes the primary submission made by the Director General on the basis that the implications of this amendment have not been fully tested in the submission, including in respect of appropriateness, efficiency and effectiveness.

8.3 Transpower’s submission states that it is important that a particular policy direction that relates to the management of freshwater must not be ‘borrowed’ or inadvertently applied more broadly.

¹⁶ Submission reference FPI044.006.

¹⁷ Further submission reference FSFPI013.010.

8.4 In addressing the submission made by the Director General, the Section 42A Report firstly refers to recommendations made in respect of Policy IM-P1 in the earlier pORPS (non-freshwater) process and confirms that Policy IM-P1 is recommended to read as follows:

*“IM-P1 – Integrated approach to decision-making
Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:*

- (1) the life-supporting capacity and mauri of air, water, soil, and ecosystems, and then*
- (2) the health and safety of people and communities, and their ability to provide for their social, economic, and cultural well-being, now and in the future.”¹⁸*

8.5 The Section 42A Report goes on to recommend that the Director General’s submission be rejected, and provides the following reasons:¹⁹

“the additional clause sought by DOC to LF-WAI-P1 is unnecessary. If IM-P1 and LF-WAI-P1 are both relevant, and there is a conflict (because of the differing priorities), then IM-P1 directs that these are first attempted to be resolved by applying higher order documents. In my opinion, the direction in the NPSFM with regard to Te Mana o te Wai and the hierarchy of obligations would mean that the hierarchy in LF-WAI-P1 would take priority over the hierarchy in IM-P1 because it specifically applies to freshwater.”

¹⁸ ‘Reply Report Proposed Otago Regional Policy Statement 2021 6: IM – Integrated management’ dated 23 May 2023.

¹⁹ Paragraph 827.

8.6 I address recommended Policy IM-P1 (as set out above) in my earlier evidence. I do not support Policy IM-P1 and give the following reasons:

“7.19 While I also agree that it is not appropriate to ‘adopt’ the NPSFM Objective (in part), I am of the view that the Policy (as amended) continues to generally do so. It is my understanding the Objective of the NPSFM would be relevant in the context of freshwater in any case through reference to “higher order documents”. In addition, I note that, while the Section 42A Report references the section 5 concept of ‘protection’ of natural and physical resources, physical resources are not explicitly addressed in the revised Policy.

7.20 It is my opinion that the revised Policy continues to create a hierarchy for managing the use, development, and protection of natural and physical resources (in situations where tensions between provisions need to be resolved) that does not exist in the RMA. That is, the protection of ‘natural resources is prioritised over ‘use’, ‘development’ and ‘physical resources’.”

8.7 The Director General’s submission highlights the issue I raise in my earlier evidence and similarly attempts to resolve potential tension between Policy IM-P1 and Policy LF-WAI-P1. That said, I do not support the relief sought by the Director General because I am of the view that Policy LF-WAI-P1 is consistent with, and appropriately gives effect to, the priorities in the Objective of the NPSFM. Instead, I remain of the opinion that the ‘issue’ is with Policy IM-P1 adopting the expression of priorities used in the NPSFM, in part, and applying such priorities broadly (as opposed to being confined to the management of freshwater) and I confirm the position given in my evidence in that regard.

8.8 The amendments I seek to Policy LF-WAI-P1 are set out in **Attachment A**.

LF – Land and freshwater LF-FW – Fresh water

Objective LF-FW-O8 – Fresh water

- 8.9** Transpower’s further submission²⁰ supports the primary submission made by Waka Kotahi NZ Transport Agency (**Waka Kotahi**) seeking the following amendment to clause (5) in Objective LF-FW-O8:²¹

“In Otago’s water bodies and their catchments:

...

(5) the significant and outstanding values of Otago’s outstanding water bodies are identified and protected, except for regionally and nationally significant infrastructure which shall be managed in accordance with EITINF-P13 and P13A.”

- 8.10** The Section 42A Report recommends that the Waka Kotahi submission be accepted in part and comments as follows:²²

“In the non-FPI part of the pORPS, I have recommended amendments to LF-FW-P12 which I consider address the points raised in the submissions by NZSki, Realnz, and Waka Kotahi in regard to clause (5), particularly those seeking more flexibility in the policy approach. I recommend accepting these submission points in part but do not consider any amendments are required.”

- 8.11** The Section 42A Report does not explicitly consider the purpose of the Waka Kotahi relief and in particular, the relationship between the outcomes set out in Objective LF-FW-O8 and the provisions in the Chapter 11 Energy, Infrastructure and Transport of the pORPS. I note that the Waka Kotahi submission seeks that regionally and nationally significant infrastructure is managed by the provisions in Chapter 11 and further acknowledges that this matter has been traversed in the hearings of submissions on the pORPS non-freshwater.

²⁰ Further submission reference FSFPI013.004.

²¹ Submission reference FPI081.003.

²² Paragraph 1295.

8.12 Likewise, my earlier evidence addresses the relationship between chapters and provisions and promotes amendments (included as Attachment A to that evidence) to reduce duplication, resolve tensions and provide a clear and legible approach to the development of, and management of the effects of, the National Grid that give effect to the higher order statutory instruments. I adopt that evidence for the purpose of this pORPS FPI process (without unduly repeating my position) and confirm my support for a bespoke suite of conditions to provide for, and manage, the National Grid.

Objective LF-FW-O9 Natural wetlands

8.13 Transpower's further submission²³ supports the primary submission made by Contact Energy Limited (**Contact**) seeking an amendment to Objective LF-FW-O9 that appropriately reflects the exception for specified infrastructure in clause 3.22 of the NPSFM.²⁴

8.14 The Section 42A Report recommends that the submission be rejected and gives the following reason:

"I note that the NPSFM provides pathways for a number of activities, not only specified infrastructure, and that LF-FW-P9 addresses these pathways. I do not recommend accepting this submission point."²⁵

8.15 I acknowledge that Policy LF-FW-P9 sets out pathways for particular activities through, as recommended for amendment, direct reference to clause 3.22 of the NPSFM, but I do not agree with the recommendation to reject Contact's submission.

8.16 Rather, under section 32 of the RMA the purpose of policies is to achieve objectives and I therefore consider that it is important that an objective

²³ Further submission reference FSFPI013.007.

²⁴ Submission reference FPI027.025.

²⁵ Paragraph 1343.

prescribes a fulsome outcome that can be achieved through the implementation of policies and other provisions.

8.17 It is my view that Objective LF-FW-O9 needs to signal that it is appropriate to provide ‘pathways’ for certain activities, including the National Grid activities described by **Ms Kennedy**. Doing so would properly give effect to the NPSFM and the NPSET (insofar as the Objective relates to the National Grid), and achieve the purpose of the RMA.

8.18 Further, it is my view that such a pathway is also crucial when it comes to the consideration of applications for resource consents or notices of requirement in the future whereby the requirement to absolutely ‘protect’, without qualification, could result in an application being assessed as contrary to the provisions, even though the intent as expressed in the Section 42A Report is that a pathway exists.

8.19 For the reasons set out above, I therefore support the following further amendment to Objective LF-FW-O9:

“Otago’s natural wetlands are protected or restored so that:

- (1) mahika kai and other mana whenua values are sustained and enhanced now and for future generations,*
 - (2) there is no net decrease, and preferably an increase, in the ~~range~~ extent and diversity of indigenous ecosystem types and habitats in natural wetlands,*
 - (3) there is no reduction and, where degraded, there is an improvement in ~~their~~ wetland ecosystem health, hydrological functioning, amenity values, extent or water quality, ~~and if degraded they are improved~~, and*
 - (4) their flood attenuation and water storage capacity is maintained or improved.*
- (x) only activities that are identified and assessed appropriate may be undertaken in a natural wetland.”*

Policy LF-FW-P7 Fresh water

- 8.20** Transpower's further submission²⁶ supports the primary submission made by Meridian Energy Limited (**Meridian**) seeking the following amendment to Policy LF-FW-P7:

"Environmental outcomes, attribute states (including target attribute states) and limits ensure that:

...

- (2) the habitats of significant indigenous species associated with water bodies are protected, including by providing for fish passage, ..."*²⁷

- 8.21** It is my understanding that Meridian's concern is that the Policy is too absolute and may require the protection of any habitat of a single (or multiple) indigenous plant or animal that is associated with a water body, whether in it or near it and, as such, is more stringent than section 6(c) of the RMA.

- 8.22** The Section 42A Report comments on the submission as follows:

"1387. I understand the concern raised by Meridian but do not agree that the amendment sought is an appropriate solution. It is not clear what Meridian means by "significant indigenous species" and this is not terminology used in the RMA. I note that Policy 9 of the NPSFM requires:

"Policy 9: The habitats of indigenous freshwater species are protected."

1388. In my view, there is no impediment to a national policy statement giving effect to Part 2 by protecting natural resources more stringently in particular circumstances. Indeed, that has occurred for some time under the NZCPS 2010. I consider aligning the terminology in clause (2) with

²⁶ Further submission reference FSFPI013.003.

²⁷ Submission reference FPI016.015.

Policy 9 as sought by Ballance assists with addressing the concern raised by Meridian in a way that is consistent with the NPSFM. ...”

8.23 The recommended amendments to clause (2) are as follows:

“(2) the habitats of indigenous freshwater species ~~associated with water bodies~~ are protected and sustained, including by providing for fish passage,”

8.24 I consider that the amendments proposed to clause (2) address, in part, the relief sought by Meridian and it is my conclusion that the recommended amendments are necessary and appropriate to give effect to Policy 9 of the NPSFM.

Policy LF-FW-P9 Protecting natural wetlands

8.25 Transpower’s submission²⁸ seeks that Policy LF-FW-P9 be retained as notified on the basis that the Policy generally reflects the direction for regional plans given in clause 3.22 of the NPSFM.

8.26 The Section 42A Report acknowledges the December 2022 amendments to clause 3.22 of the NPSFM, and recommends that the Policy be replaced in its entirety for the following reasons:

“DCC, Federated Farmers, and Contact all note these issues and generally seek either deletion or amendments to better align with the NPSFM. I agree with those submitters that the pORPS should implement the NPSFM as directed, however given the level of prescription now included in clause 3.22, I do not consider it is an appropriate level of detail for a regional policy statement. I recommend deleting LF-FW-P9 and replacing it with a policy requiring natural wetlands to be protected in accordance with clause 3.22 except in two circumstances relating to the coastal

²⁸ Submission reference FPI013.002.

environment and indigenous biodiversity which I have set out below.²⁹...

8.27 The recommended replacement Policy LF-FW-P9 is as follows:

“Protect natural wetlands by implementing clause 3.22(1) to (3) of the NPSFM, except that:

(1) in the coastal environment, natural wetlands must also be managed in accordance with the NZCPS, and

(2) when managing the adverse effects of an activity on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) applies instead of the effects management hierarchy (in relation to natural wetlands and rivers).”

8.28 As a consequence of the recommendation for Policy LF-FW-P9, the Section 42A Report also recommends the deletion of the definition of ‘specified infrastructure’ and ‘other infrastructure’.

8.29 I do not oppose the replacement of Policy LF-FW-P9 with a direct cross reference to clause 3.22 of the NPSFM and appreciate that this approach is a succinct means to respond to the December 2022 amendments made to clause 3.22.

8.30 That said, I note that Policy LF-FW-P9 goes further than inserting a cross reference to clause 3.22 by also including new clauses (1) and (2) that provide ‘exceptions’ to direction in the NPSFM for the protection of natural wetlands in respect of the coastal environment and indigenous biodiversity.

8.31 In terms of the management of natural wetlands in the coastal environment, recommended clause (1) serves to highlight the relevance

²⁹ Section 42A Hearing Report Proposed Otago Regional Policy Statement Parts considered to be a Freshwater Planning Instrument under section 80A of the Resource Management Act 1991 2 June 2023, paragraph 1444.

of the NZCPS and, given the statutory role of the NZCPS, provides direction. As such, I support the inclusion of clause (1) in Policy LF-FW-P9.

8.32 Recommended clause (2) seeks that the effects management hierarchy for indigenous biodiversity applies to the management of effects on indigenous biodiversity rather than the effects management hierarchy for natural wetlands and rivers. The expression in clause (2) differs to that in clause (1) and is written as an exemption.

8.33 My understanding of the rationale for the exemption in clause (2), which is given in the Section 42A Report,³⁰ is that the NPSFM effects management hierarchy is less stringent than the pORPS hierarchy contained in Policy ECO-P6 and the intent of the provisions, as recommended in the Section 42A Report, is to manage aquatic biodiversity as stringently as terrestrial biodiversity.

8.34 I do not agree with the conclusion in the Section 42A Report in respect of recommended clause (2) and conversely suggest that there is no justification for managing aquatic biodiversity more stringently than what is required in the NPSFM. In this regard, it is my understanding that natural wetlands, including indigenous biodiversity therein, are managed through the NPSFM. The compulsory policy required by clause 3.22 refers to the 'values' of natural wetlands being protected by, amongst other matters, applying 'the effects management hierarchy'. 'Loss of value' is defined by the NPSFM as including 'indigenous biodiversity' and the 'effects management hierarchy' is also explicitly defined in relation to natural wetlands.

8.35 In my opinion, there is no doubt that indigenous biodiversity in natural wetlands is addressed by the NPSFM, including through the effects management hierarchy. There is no suggestion that there is a gap in the provisions, nor any direction that suggests a more stringent approach may be appropriate. For this reason, it is my conclusion that

³⁰ Paragraphs 1450 to 1453.

recommended clause (2) is inconsistent with the NPSFM and undermines or compromises the extent to which Policy LF-FW-P9 gives effect to the NPSFM. I therefore support the deletion of clause (2) as follows:

“LF-FW-P9 – Protecting natural wetlands

Protect natural wetlands by implementing clause 3.22(1) to (3) of the NPSFM, except that:

~~*(1) in the coastal environment, natural wetlands must also be managed in accordance with the NZCPS, and*~~

~~*(2) when managing the adverse effects of an activity on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) applies instead of the effects management hierarchy (in relation to natural wetlands and rivers).*~~

- 8.36** For completeness, I acknowledge that the effects management hierarchy in Policy ECO-P6 was the matter of evidence in respect of submissions on the pORPS non-freshwater, including in respect of the application of the NPSFM effects management hierarchy to terrestrial indigenous biodiversity.

LF – Land and freshwater LF-FW – Fresh water: Policy LF-FW-P15 Stormwater and wastewater discharges

- 8.37** Transpower’s submission³¹ generally supports Policy LF-FW-P15 but seeks that the Policy is amended to provide specific direction for the management of direct and indirect discharges of stormwater and wastewater to freshwater for nationally significant infrastructure. Transpower’s submission notes that some National Grid sites are more unique, such as Transpower’s substations, where any discharges from such sites may be managed in a site-specific manner. The proposed amendment is intended to provide for such situations and, as such, give effect to the Policies 1, 2 and 5 of the NPSET.

³¹ Submission reference FPI013.003.

8.38 Transpower’s submission is opposed by the further submissions made by Forest and Bird³², Otago Fish and Game Council and Central South Island Fish and Game Council (**Fish and Game**)³³ and Kāi Tahu ki Otago³⁴. Forest and Bird oppose Transpower’s submission on the basis that “*an exception for national significant infrastructure does not reflect the distinctions between ss 6 and 7 of the RMA and is inconsistent with the NPSFM*”. Fish and Game’s opposition is on the basis that “*the proposed amendments are vague as to what exactly is to be directed. There is no guidance on what an ‘appropriately managed’*. Kāi Tahu ki Otago oppose the relief sought on the basis that “*the requested relief would inappropriately limit the ability to give effect to the NPSFM 2020*”.

8.39 The Section 42A Report recommends that Transpower’s submission be rejected and comments as follows:³⁵

“... I consider that the amendment sought by the submitter is far greater than described in its submission as it seeks to exclude nationally significant infrastructure. I consider that my amendment to clause (2)(b) to provide for alternative treatment and disposal methods addresses the concern expressed in the submission by Transpower in a more appropriate way than a full exclusion from clause (2). I do not recommend accepting this submission point.”

8.40 The amendments to Policy LF-FW-P15 that are recommended in the Section 42A Report are:

“LF-FW-P15 - Stormwater ~~and wastewater~~ discharges

Minimise the adverse effects of direct and indirect discharges of stormwater ~~and wastewater~~ to fresh water by:

(1) ~~except as required by LF-VM-O2 and LF-VM-O4, preferring discharges of wastewater to land over discharges to water, unless~~

³² Further submission reference FSFPI045.121.

³³ Further submission reference FSFPI037.088.

³⁴ Further submission reference FSFPI030.104.

³⁵ Section 42A Report, paragraph 1538.

~~adverse effects associated with a discharge to land are greater than a discharge to water, and~~

(2) requiring:

~~(a) all sewage, industrial or trade waste to be discharged into a reticulated wastewater system, where one is available,~~

(ab) integrated catchment management plans for management of stormwater in urban areas,

(b) all stormwater to be discharged into a reticulated system, where one is made available by the operator of the reticulated system, unless alternative treatment and disposal methods will result in improved outcomes for fresh water,

(c) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring for reticulated stormwater and wastewater systems,

~~(d) on-site wastewater systems to be designed and operated in accordance with best practice standards,~~

(e) that any stormwater and wastewater discharges do not prevent water bodies from meeting any applicable water quality standards set for FMUs and/or rohe, and

~~(f) the use of water sensitive urban design techniques to avoid or mitigate the potential adverse effects of contaminants on receiving water bodies from the subdivision, use or development of land, wherever practicable, and~~

(3) ~~promoting to the greatest extent practicable, requiring the reticulation of stormwater and wastewater in urban areas., and~~

(4) promoting source control as a method for reducing contaminants in discharges."

8.41 In respect of the further submissions and the Section 42A Report, I accept Fish and Game's comment that Transpower's relief is somewhat 'vague', however I do not consider, as appears to be implied, that Transpower's submission is seeking to an exemption from any direction in respect of the effects of discharges to freshwater. Rather, Transpower is seeking

that Policy LF-FW-P15 provide specific direction for the management of discharges to freshwater from nationally significant infrastructure on the basis that discharges associated with nationally significant infrastructure may have unique characteristics, the effects of which are better managed in a site-specific manner.

- 8.42** By way of explanation, over a number of years I have assisted Transpower to secure resource consents for discharges from substation sites. These discharges are generally treated at the substation site and discharged to ground or freshwater rather than being discharged to a reticulated network, even in situations when one is available. The reasons for managing discharges in this way may relate to the size and characteristics of the substation site, but also may be a consequence of the stormwater network operator not be in a position to accept the stormwater discharges. This may be due to restrictions imposed by resource consent conditions for the ultimate discharge from the network or rules that regulate the stormwater network in regional plans. The evidence of **Ms Kennedy** also describes discharges from National Grid activities.
- 8.43** It is on this basis, and in order to give effect to the NPSET insofar as the provision relate to the National Grid, that it is important that the pORPS provides a policy 'pathway' for discharges associated with the operation, maintenance, upgrade and development of the National Grid.
- 8.44** While it is recommended that the submission be rejected, I am of the view that the recommended amendment to clause (2)(b) of the Policy generally achieves the outcome sought in Transpower's submission, gives effect to the NPSET and achieves alignment with the regulations in the NESETA.
- 8.45** That said, the Section 42A Report does not provide a clear rationale for the Policy requiring alternative treatment and disposal methods to achieve improved outcomes, where the overarching requirement of the Policy is to minimise adverse effects. In my view effects may be equally

minimised through the maintenance of the same, or similar, outcomes for freshwater and it is on this basis that I support the following further amendment to clause (2)(b) of Policy LF-FW-P15:

“(b) all stormwater to be discharged into a reticulated system, where one is made available by the operator of the reticulated system, unless alternative treatment and disposal methods will result in the same, similar, or improved outcomes for fresh water, ...”

LF – Land and freshwater LF-FW – Fresh water: Method LF-FW-M7 – District plans

8.46 Transpower’s further submission³⁶ supports the submission made by Waka Kotahi seeking the following amendment to Method LF-FW-M7:

“Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:

...

(2) include provisions to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies, except for regionally and nationally significant infrastructure that have a functional or operational need to be located there.”³⁷

8.47 The Section 42A Report recommends that the submission be accepted in part as a consequence of amendments recommended to related Policy LF-FW-P12. The Report proposes that “*avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies*” be replaced with “*protecting the significant and outstanding values of outstanding water bodies*”.³⁸ The exception sought for regionally and nationally significant infrastructure is not directly addressed in the Section 42A Report.

³⁶ Further submission reference FSFPI013.005.

³⁷ Submission reference FPI018.006.

³⁸ Paragraph 1631.

8.48 I support the conclusion in the Section 42A Report to the extent that the recommended amendment to the Method is consistent with Policy 15 of the NPSFM. However, in considering whether, and how, the Method may respond to the relief sought, I have concluded that Method LF-FW-M7 fails to direct territorial authorities to amend their district plans in a manner that respects the ability of people and communities to provide for their social, economic, and cultural well-being. This means that the Method does not give effect to the third priority in the Objective and Policy 15 of the NPSFM.

8.49 Further, I am of the view that such direction is critical to:

- (a) ensuring that district plans appropriately provide for the activities described by **Ms Kennedy**;
- (b) recognising the particular direction in respect of specified infrastructure in the NPSFM; and
- (c) insofar as the Method is relevant to the National Grid, reconciling the provisions of the NPSFM and NPSET.

8.50 For these reasons, I support the following further amendments to Method LF-FW-M7:

“Territorial authorities must prepare or amend and maintain their district plans ~~no later than 31 December 2026~~ to:

...

- (2) *include provisions to ~~avoid the adverse effects of activities on~~ protect the significant and outstanding values of outstanding water bodies **while enabling communities to provide for their social, economic, and cultural wellbeing.**”*

LF – Land and freshwater LF-LS – Land and soil: Policy LF-LS-P21 – Land use and fresh water

8.51 Transpower’s further submission³⁹ supports the primary submission made by Fonterra Co-operative Group Limited (**Fonterra**) seeking an amendment to Policy LF-LS-P21 as follows:

“Achieve the improvement or maintenance of freshwater quantity or quality to meet environmental outcomes set for Freshwater Management Units and/or rohe by:

*(1) ~~reducing~~ managing the adverse effects of direct and indirect discharges of contaminants to water from the use and development of land, and ...”.*⁴⁰

8.52 The Section 42A Report recommends that Fonterra’s submission be accepted in part, with clause (1) of the Policy being amended to refer to *“or otherwise managing”* adverse effects, alongside *“reducing”*.⁴¹

8.53 The Section 42A Report recommends that the submission be accepted in part and comments as follows:

“1754. I agree with submitters that there may be circumstances where it is not necessary to reduce discharges of contaminants to water, and circumstances where management of discharges may be more appropriate than their reduction or avoidance. I recommend including “or otherwise managing” after “reducing”. I consider it is clear that the outcome sought by reducing or managing these contaminants is to meet environment outcomes, as stated in the chapeau, such that this does not need to be repeated in clause (1). ...”

³⁹ Further submission reference FSFPI013.006.

⁴⁰ Submission reference FPI019.010.

⁴¹ Paragraph 1754.

- 8.54** In this regard, I note that the Section 42A Report also recommends that the chapeau be amended to replace *“Achieve the improvement or maintenance of fresh water quantity, or quality”* with *“The health and well-being of water bodies is maintained or, if degraded, improved”*.
- 8.55** Having considered the recommended amendments to Policy LF-LS-P21, I support the Section 42A Report recommendations for the reasons given in that Report and on the basis that the Policy, as recommended for amendment, is more directly aligned with the expression and direction given in Policy 5 of the NPSFM.

Ainsley Jean McLeod

Date: 28 June 2023

ATTACHMENT A: AMENDMENTS SOUGHT IN AND OR SUPPORTED BY EVIDENCE

The following sets out the amendments to the provisions of the pORPS FPI that are proposed by and supported in evidence. This suite of provisions also includes provisions that are supported in my evidence as recommended in the Section 42A Report.

The Section 42A Report amendments that are relevant to Transpower’s relief are shown in black underline and ~~striketrough~~ and the further amendments supported in evidence are shown in red double underline and ~~red-double-striketrough~~.

PART 1 – INTRODUCTION AND GENERAL PROVISIONS

Interpretation

If the term ‘specified infrastructure’ is used elsewhere in the pORPS provisions, **retain** the definition as notified and, as a consequence **amend** the definition of ‘regionally significant infrastructure’ as follows:

<i>Term</i>	<i>Definition</i>
Regionally significant infrastructure	<p><i>means:</i></p> <p>...</p> <p><i>(13) <u>any infrastructure identified as nationally significant infrastructure.</u></i></p>
Specified infrastructure	<p><i>has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</i></p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p><i>means any of the following:</i></p> <p>...</p> <p><i>(b) <u>regionally significant infrastructure identified as such in a regional policy statement or regional plan,</u></i></p> <p><i>...</i></p> </div>

PART 3 - DOMAINS AND TOPICS

LF – Land and freshwater LF-WAI-Te Mana o te Wai

Amend Policy LF-WAI-P1 Prioritisation as follows:

“In all decision-making affecting management of fresh water in Otago, prioritise:

(1) first, the health and well-being of water bodies and freshwater ecosystems, (te hauora o te wai) and the contribution of this to the health and well-being of the

environment (te hauora o te taiao), ~~and~~ together with the exercise of mana whenua to uphold these,

- (2) *second, health ~~and well-being~~ needs of people, (te hauora o te tangata); interacting with water through ingestion (such as drinking water and consuming ~~harvested~~ resources harvested from the water body) and immersive activities (such as harvesting resources and ~~bathing~~ primary contact), and (3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”*

LF – Land and freshwater LF-FW – Fresh water

Amend Objective LF-FW-O9 – Natural wetlands as follows:

“Otago’s natural wetlands are protected or restored so that:

- (1) *mahika kai and other mana whenua values are sustained and enhanced now and for future generations,*
- (2) *there is no net decrease, and preferably an increase, in the ~~range~~ extent and diversity of indigenous ecosystem types and habitats in natural wetlands,*
- (3) *there is no reduction and, where degraded, there is an improvement in their wetland ecosystem health, hydrological functioning, amenity values, extent or water quality, and if degraded they are improved, and*
- (4) *their flood attenuation and water storage capacity is maintained or improved.*
- (x) only activities that are identified and assessed appropriate may be undertaken in a natural wetland.”*

Amend clause (2) of Policy LF-FW-P7 Fresh water as follows:

“(2) the habitats of indigenous freshwater species associated with water bodies are protected and sustained, including by providing for fish passage,”

Amend Policy LF-FW-P9 – Protecting natural wetlands as follows

“Protect natural wetlands by implementing clause 3.22(1) to (3) of the NPSFM, except that:

(1) in the coastal environment, natural wetlands must also be managed in accordance with the NZCPS, ~~and~~

~~(2) — when managing the adverse effects of an activity on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) applies instead of the effects management hierarchy (in relation to natural wetlands and rivers).~~

Amend clause (2)(b) of Policy LF-FW-P15 - Stormwater discharges as follows:

“(b) all stormwater to be discharged into a reticulated system, where one is made available by the operator of the reticulated system, unless alternative treatment and disposal methods will result in the same, similar, or improved outcomes for fresh water, ...”

Amend Method LF-FW-M7 – District plans as follows:

“Territorial authorities must prepare or amend and maintain their district plans ~~no later than 31 December 2026~~ to:

...

(2) include provisions to ~~avoid the adverse effects of activities on~~ protect the significant and outstanding values of outstanding water bodies while enabling communities to provide for their social, economic, and cultural wellbeing.”

LF – Land and freshwater LF-LS – Land and soil

Amend Policy LF-LS-P21 – Land use and fresh water as follows:

“LF-LS-P21 – Land use and fresh water

~~Achieve the improvement or maintenance of fresh water quantity, or quality~~ The health and well-being of water bodies is maintained or, if degraded, improved to meet environmental outcomes set for Freshwater Management Units and/or rohe by:

- (1) reducing or otherwise managing the adverse effects of direct and indirect discharges of contaminants to water from the use and development of land, and*
- (2) managing land uses that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater., and*
- (3) maintaining or, where degraded, enhancing the habitat and biodiversity values of riparian margins.”*