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21 July 2022

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Submission of Transpower New Zealand Limited on the Exposure Draft of the NPS-IB

Thank you for the opportunity to comment on the Exposure Draft of the National Policy Statement for Indigenous Biodiversity (**NPS-IB**).

Transpower understands the need for, and supports, national direction on indigenous biodiversity. However, the current approach in the NPS-IB does not provide for routine activities carried out by Transpower. Instead, routine activities will be required to go through the same hurdles as if new infrastructure was proposed – in relation to the assessments to be undertaken, the information requirements of any consent applications, and ultimately any offsetting. This outcome is inefficient, costly, and likely to hinder necessary and routine work on the National Grid.

We are also concerned about the workability of many provisions in relation to proposed new infrastructure.

We expand on these concerns in our submission – firstly by discussing general matters and case studies and secondly by discussing the provisions in more detail. Appendix A contains marked-up provisions with the key changes Transpower seeks.

Transpower's role and activities

The National Grid

Transpower is the state-owned enterprise that plans, builds, maintains, owns and operates New Zealand's high voltage electricity transmission network (the **National Grid**). The National Grid includes some 11,000 km of transmission lines and cables (overhead, underground and submarine), and 178 substations across the country. The National Grid is controlled by a telecommunications network with 300 telecommunication sites, which help link together the components that make up the National Grid. We have over 15,000 km of access tracks to our assets.

The National Grid extends from Kaikohe in the North Island to Tiwai Point in the South Island, and in doing so links generators to distribution companies and major industrial users throughout New Zealand. The existing National Grid is located in all environments within New Zealand – including areas containing threatened and at risk species.

We expect that future National Grid assets will have technical, operational and locational constraints which will require assets to locate in, or traverse, some sensitive environments. Put simply, linear infrastructure cannot avoid all sensitive environments – it must connect two points – whether it is between two National Grid substations, new generation to the National Grid, or a new source of demand.

As a result, Transpower has only modest scope for flexibility in the selected route for a transmission line and associated access tracks. It is not generally possible, therefore, for all effects on the environment to be avoided when a transmission line is planned. To secure the social, economic and environmental benefits of the National Grid, effects or impacts on sensitive environments are unavoidable.

Climate Change – Transpower's Role in the Electrification of the National Grid and Transition to a Low Carbon Economy

It is important to acknowledge that the biodiversity crisis is, in large part, a climate crisis, and that New Zealand's climate response requires the electrification of the economy. Electrification of the economy will require 60-70 new National Grid connections (substations and connecting lines) to new renewable generation, and 10-20 major upgrades to the National Grid, on top of an already extensive maintenance regime. In some instances, assets will need to be relocated and strengthened to adapt to climate change.

As a result, all national policy statements, including the NPS-IB, must enable the development, upgrade and expansion of National Grid infrastructure to ensure the country can meet its climate change commitments.

Transpower's key concerns with the NPS-IB Exposure Draft

Transpower's fundamental concerns with the exposure draft of the NPS-IB are that it:

- fails to clearly and adequately provide for routine work on, and around, Transpower's existing infrastructure and access tracks to it;
- applies the effects management hierarchy to routine activities undertaken by Transpower which is unduly onerous;
- does not contain a clear and unambiguous consenting pathway for new National Grid infrastructure; and
- fails to capture ancillary activities within the definition of specified infrastructure.

These issues are discussed in greater detail below.

Transpower will need to apply the NPS-IB on a regular basis. It is important that this document is clear and unambiguous so that it is workable, and that it provides for Transpower's routine activities, and new National Grid infrastructure, given the extent and national importance of Transpower's assets across New Zealand. However, as currently drafted the NPS-IB contains many vague concepts and statements that will require implementation through various district and regional plans, and requires assessment by ecologists of metrics, which will prove either unmeasurable or overly subjective.

In our view, the National Policy Statement on Electricity Transmission (**NPSET**) and the NPS-IB should together set a consistent policy vision, so that there is direction as to how tensions between the two documents should be resolved. This reconciliation is important, so the

application of both national policy statements is not open to continuous re-interpretation at a regional and district level.

Provision for existing activities is too narrow and ambiguous

Policies 9 and 10 of the NPS-IB indicate an intent to provide for National Grid activities in Significant Natural Area (**SNAs**). Yet, the provisions that follow enable very few routine activities on the National Grid.

Unlike many other activities, Transpower will trigger consent due to the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (the **NESETA**). However, the NPS-IB will drive certain processes and outcomes, including whether the effects management hierarchy applies, and the assessments that must be undertaken and information requirements of any consent applications. It is important that the NPS-IB provides clarity about how routine activities on the National Grid will be treated.

Reliance on existing use rights tests to enable existing activities

We understand the intention is for existing use rights under section 10 of the Resource Management Act 1991 (**RMA**) to continue to be relied upon, while clause 3.15 of the NPS-IB provides for existing regional activities. However, Transpower considers that the wording of the definition of "existing activity" does not make this clear, and could instead be interpreted as trying to remove existing use rights from "existing activities" under the NPS-IB.

In any event, section 10 of the RMA only covers a narrow category of existing land uses. Transpower strongly opposes the existing activity provisions relying on section 10 of the RMA. This is because the ability to rely on and establish existing use rights is not straight forward. Transpower would be required to show that the effects of our activities were the same or similar in character, intensity, and scale to those which existed before the NESETA became operative. The NESETA came into force on 14 January 2010. The commencement date of the NPS-IB would be relevant for regional activities.

Transpower is required to routinely carry out vegetation trimming to maintain safe separation distances between transmission lines and vegetation (to avoid fire and damage to the line), and earthworks and vegetation trimming to clear access tracks to assets. To assess whether the existing activities provisions of the NPS-IB could be relied upon, Transpower would need to show that the effects of the earthworks and tree trimming were the same or similar to those that existed at 14 January 2010 (or the commencement date for regional activities). This task is almost impossible to carry out. The exact state of vegetation growth under and around the ~11,000 km of overhead lines, and ~15,000 km of access track in 2010 could not be determined with any degree of certainty in order to carry out the assessment required by section 10.

As a result, it is likely that many councils may treat vegetation clearance and earthworks on existing access tracks as a new activity under the NPS-IB. Failing to provide for Transpower's routine activities will result in significant inefficiencies, increased costs and could result in perverse outcomes for indigenous biodiversity. For example, it may be preferable to replace a structure, rather than maintain aged infrastructure, in order to reduce the impacts on biodiversity caused by repeat visits to abrasive blast and painting the existing structure.

The above issues could all be resolved by inserting implementation provisions into the NPS-IB in relation to National Grid activities as follows:

> 3.15A Established National Grid activities affecting SNAs and other areas of indigenous biodiversity
>
> Existing National Grid activities at the commencement date and National Grid activities lawfully established after the commencement date, may continue to be operated, maintained and subject to upgrades including where there are adverse effects on SNAs and other areas of indigenous biodiversity.

Focus on "operation and maintenance" is too narrow

Transpower considers that the focus on operation and maintenance in the existing activities provisions is too narrow. Further, system upgrades (that result in more electricity being transmitted through a line) usually involves the same activities as maintenance – such as foundation or tower strengthening, conductor (wire) replacements, and vegetation and access track works. Therefore, we have included reference to "upgrades" in the relief set out for provision 3.15A above.

Routine activities that Transpower undertakes, which are likely to be considered to be "upgrades" rather than operation or maintenance activities, must be enabled. In Transpower's experience, maximising use of existing infrastructure will have lesser impacts on sensitive environments than constructing new infrastructure.

Climate change adaptation activities which are intended to make existing infrastructure more resilient, would not be captured by the operation and maintenance focus in the existing activities provisions. For example, after the 2019 Rangitata River flooding, Transpower increased the foundations on the replacement structures with a much larger footprint to "future proof" them from future adverse flood effects (by doubling the depth of the foundations from 10-20m). Transpower does not consider that it is appropriate to treat such activities differently from maintenance and operation activities.

Transpower has a number of current projects underway which will impact on indigenous biodiversity. We have a line that traverses a National Park, and is partially located in a wetland. Figure 1 below shows the line – with the route shown in red, and the structures indicated by orange circles). The kingbolts that attach the cross-arms to the structures require replacement. Due to the condition of the structures, machinery will need to be taken into site, rather than workers attaching to the structures while work is undertaken. As a result, vegetation removal will likely be required to access the site (the existing access is shown by the yellow and black dotted line).

In order to reduce our impacts on this environment (such as the need for ongoing maintenance of the aged structures), we are currently considering replacing the existing structures with new (like for like) replacements. However, despite the driver for the project being maintenance and reducing effects, the replacement structures are likely to be considered an upgrade – resulting in this routine work being considered in the same manner as a greenfields project.

Image 1: Location of poles proposed to be replaced

Effects management hierarchy

Transpower is concerned that the effects management hierarchy will apply to routine activities because routine activities will not fall within the "existing activity" provisions and will be classified as new activities for the reasons outlined above.

Further, Transpower is concerned that the application of provision 1.5(4) will result in a full alternatives assessment being required every time an activity is proposed with effects on indigenous biodiversity, regardless of the nature of the effect or the importance of the activity, or the myriad of other considerations which are weighed in a route and site selection process.

There may be practical ways to address the effects of a proposed activity without needing to rigidly apply the effects management hierarchy. For example, the Cook Strait Fibre Replacement project involved laying a new fibre optic cable across Cook Strait and trenching it in at Transpower's terminal stations at Fighting Bay and Oteranga Bay at either end. Oteranga Bay is a known habitat for threatened banded dotterel and is identified as an SNA equivalent in the Greater Wellington Regional Coastal Plan. As a precautionary measure bird deterrents were installed around the works area to discourage dotterels from nesting there. The site was inspected on a regular basis, by an ornithologist engaged by Transpower, to confirm that no nesting or breeding birds would be impacted by the works.

Transpower considers that national guidance should be provided on the level of information and assessment that would be required, and there should be explicit recognition that the level of information should be proportionate to the sensitivity of the environment affected and the importance of the activity.

Appendices 3 and 4 set out offsetting and compensation principles. However, the definitions of "biodiversity compensation" and "biodiversity offset" within Part 1: provision 1.6 stipulate that both the offset and compensation process must comply with the principles, not be guided by them. This mandatory requirement is of concern to Transpower, as is discussed in detail in response to the specific questions below.

For example, offsetting will not necessarily result in the best ecological outcome. Transpower's MAN-TWI line is located within part of the Fiordland National Park. In order to maintain the transmission corridor, the vegetation needs to be trimmed/felled under and around the line. Instead of clearing all vegetation debris following felling, vegetation is laid down underneath the line to provide a lower profile canopy that still allows cover for fauna (as shown in the photo

below). Vegetation has also been laid down following emergency access track works in 2021 as this allows seeds to disperse under the line and for the forest to naturally revegetate. Ecological advice was sought on this approach over two decades ago.

Where areas of clearance are very modest and will be readily infilled by natural regeneration, Transpower understands from expert ecological advice that this is a preferable alternative to replacement planting with nursery sourced plants, which has risks of pests, pathogens and if Kauri dieback is present, may exacerbate the spread through soil disturbance. Replanting can also cause concerns in relation to disturbance of unknown archaeological features. This demonstrates that a default to offsetting in the NPS-IB when vegetation is trimmed is inappropriate as this precludes other options being explored which can still result in a good, if not better, ecological outcome.

Image 2: Regenerating vegetation under and around transmission lines

Consenting pathway for new National Grid infrastructure

Concerns with the workability of provision 3.11

Transpower has a number of concerns about the workability of provision 3.11. These concerns are amplified due to the majority of Transpower's routine works being very likely to be subject to provisions 3.10 and 3.11, rather than the existing activities provisions.

Transpower is concerned the requirement in provision 3.11(2)(a)(i) that specific infrastructure "provides significant national or regional public benefit" limits the scope of the exception. It appears that an applicant must prove the proposed work provides a significant national or regional public benefit each time consent is sought.

The National Grid provides significant national benefits, as recognised in the NPSET. However, others may argue that it needs to be demonstrated that the specific activity being undertaken has significant national or regional benefits, and ancillary activities that are necessary for National Grid infrastructure do not meet that threshold. Therefore, Transpower seeks this part of the sub-clause be deleted, or the following amendment is made so there is no ambiguity:

> specific infrastructure <u>(as opposed to the activity in isolation)</u> that provides significant national or regional public benefit.

In the alternative, it should be made clear in provision 3.11 that National Grid infrastructure is recognised as providing significant national public benefit, or a specific exception regime provided for National Grid infrastructure through its inclusion as one of the exempted scenarios in 3.11(1) as set out below.

Transpower is also concerned that the exception for specific infrastructure may not be available where adverse effects as set out in provision 3.10(2) are at play, as these effects must be strictly avoided. Transpower therefore seeks amendment to clause 3.11(2) as outlined below.

Having regard to the above, Transpower seeks the following amendments:

Subclause 3.11(2)(a)(i) is amended as follows:

> specific infrastructure <u>(as opposed to the activity in isolation)</u> that provides significant national or regional benefit;

In the alternative, subclause 3.11(2)(a)(i) is amended as follows:

> specific infrastructure~~ that provides significant national or regional public benefit~~;

In the alternative, a new subclause is included in 3.11(2)(a) as follows:

> <u>National Grid infrastructure, including all ancillary activities associated with the National Grid.</u>

Subclause 3.11(2) is amended as follows:

> Clause 3.10(2) does not apply, and all adverse effects on an SNA, <u>including those effects set out in clause 3.10(2)</u>, must be managed instead in accordance with clause 3.10(3) and (4).

The following new policy be added to Part 2.2 of the NPS-IB:

> **Policy Y:** The adverse effects of new specified infrastructure on an SNA and all other areas of indigenous biodiversity are avoided, remedied, mitigated, offset, or compensated.

Very high risk to public health or safety

Clause 3.11 provides that clause 3.10 does not apply to adverse effects on an SNA from any use or development required to address a very high risk to public health or safety. Transpower understands the intention was that this provision could allow for tree trimming and access track works, which are required to prevent hazards from occurring.

However, we do not consider that this provision adds anything additional to the emergency works provisions provided for under the RMA. This is because, in practice, Transpower would always undertake works well in advance of there being a very high risk to public health or safety to ensure such a risk is prevented from occurring.

Having regard to the above, Transpower seeks the deletion of the words "very high" from clause 3.11(5)(a) and the inclusion of "potential" as follows:

> (a) from any use or development required to address ~~a very high~~ potential risk<u>s</u> to public health or safety; or

Ancillary activities

Transpower considers that it needs to be clear that the definition of "Specific Infrastructure" includes essential ancillary National Grid activities, such as the construction of access tracks and vegetation trimming. Otherwise enabling provisions for "specific infrastructure" could be interpreted as not applying to routine activities. We also consider that the phrase used should be made consistent with the National Policy Statement for Freshwater Management.

Having regard to the above, Transpower seeks the following amendments:

> **specifi~~c~~ed infrastructure** means any of the following:
>
> (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002), and associated ancillary activities:
>
> (b) regionally significant infrastructure that is identified as such in a regional policy statement or regional plan, and associated ancillary activities:

Detailed comments on provisions

We note that Transpower has obtained expert ecological advice in preparing this submission, and that opinion is reflected below.

Part 1: Preliminary provisions

Question 1: Do you have any feedback on the workability of provision 1.3: Application?

Transpower agrees that the NPS-IB should not apply to indigenous biodiversity in the coastal marine area and aquatic indigenous biodiversity, given that the New Zealand Coastal Policy Statement (**NZCPS**) and the NPSFM already provide national direction in respect of these environments.

Transpower notes the exception for 'highly mobile fauna' in provision 1.3(2)(b), and makes submissions on the provisions and definition of these fauna and areas further below.

Transpower supports clarity being provided about the relationship between the NZCPS and NPS-IB, as specified in provision 1.4(2) (i.e. that the NZCPS will prevail over the NPS-IB in the event of conflict in the terrestrial coastal environment).

Question 3. Do you have any feedback on the workability of provision 1.5: (3) Maintenance of indigenous biodiversity?

Transpower supports the deletion of the reference to restoration or enhancement of ecosystems and habitats from 1.5(3) (which was referenced in the earlier proposed NPS-IB 2020 version).

The matters listed in provision 1.5(3) are of an extremely general nature, and Transpower submits that more certainty is needed in relation to these matters and how they are to apply in practice. For instance, Transpower questions what 1.5(3)(e) might be interpreted to mean or require in terms of buffering and connectivity.

Further, provision 1.5(3)(a) states that the maintenance of indigenous biodiversity requires at least no reduction, as from the commencement date, in the size of populations of indigenous species. Greater clarity is required on the terms "no reduction" and "size of populations" and how they are to be understood and applied. For instance, it is uncertain whether these requirements are intended, or could be interpreted:

- to apply at a district, regional, or national level, or even at the site level; and
- to capture an impact on one individual or a small number of individuals within a species.

Many threatened and at-risk species are already in decline and therefore any additional loss could be viewed as adding to this trend of decline and be unacceptable. Conversely, there are some at-risk species populations that are abundant, and from an ecological point of view the loss of individuals would be sustainable. Transpower understands that "populations" would generally not be intended to capture the loss of a small number of individuals within a species if that loss would not affect the species population as a whole. However, the reference to "size" in provision 1.5(3)(a) does not take into account the context in the size of the population, rather just that there be no reduction (arguably of even one) in the population.

Uncertainty on these points will lead to *ad hoc* and inconsistent application of the NPS-IB across the country, and possibly even within a region or district.

It is also unclear how the 'no reduction' requirement would be applied in practice, unless there is sufficient information available on indigenous biodiversity in New Zealand. There is a lack of information in relation to other matters listed in provision 1.5(3) (i.e., in addition to those matters discussed above) which makes those indicators unworkable. For example, provision 1.5(3) refers to "indigenous species occupancy across their natural range". Natural distribution limits and species range can change due to a number of different factors including the climate, animals/pests predation, and habitat loss. This change can then result in natural expansions and reductions in range and occupancy over time - entirely unrelated to development and use of land.

Some of these metrics (e.g., b) species occupancy across their range) are laudable but will be unknown in detail and may fluctuate naturally with climate change etc. Others (e.g., f) resilience and adaptability) are theoretical and do not have a quantitative metric and are therefore difficult, if not impossible, to measure. Others are subjective or again without strong metrics (e.g., c) properties and functions, and e) connectivity and buffering.

The measurement of maintenance of indigenous biodiversity then falls to subjective opinion as to an acceptable level of change. It is not clear where the authority on those subjective measures will lie.

The difficulty in ensuring no reduction in connectivity between ecosystems illustrates this point. A new definition of *connectivity* is proposed - "*the structure or functional links or connections between habitats and ecosystems that provide for the movement of species and processes among and between the habitats and ecosystems*". Other than a physical distance between vegetation elements of two different habitats, Transpower is unclear what might be measured in this regard to relate the level of connectivity and if it will or could change. Connectivity is species and process dependent and there is no acknowledgment of this, let alone what and how to measure any meaningful connectivity. Connectivity will therefore fall to subjective opinion and assessment.

Being asked to maintain ecological aspects that are currently unmeasurable is, or will be, problematic. The unmeasurable nature of the matters outlined above is also relevant to the information requirements stipulated within Subpart 3: 3.24. The information requirements require the reporting ecologist to prepare a report to identify the ecosystem services and assess the ecological integrity and connectivity.

Another example of interpretation and assessment difficulties is in relation to ecological function, one of the foci of the NPS-IB. Ecological functions are defined as "*the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem*." Transpower's ecological advisors are unsure of what the measures of these "flows" are that would be definitive of an ecosystem's functioning. There is nothing quantitative or measurable in the definition that would allow the description or measure of a level of functioning.

Further, provision 1.5(3) does not provide a means for allowing an assessment to be undertaken at the completion of a project to show any positive gains. For example, an increase or maintenance in the size of a population. It is unclear how an applicant would be able to show they are giving effect to Objective 1 and the premise of the NPS-IB as a whole.

Question 4: Do you have any feedback on the workability of provision 1.5: (4) Effects management hierarchy?

Transpower acknowledges and strongly supports the inclusion of the following changes within this version of the effects management hierarchy in provision 1.5(4) (compared to the earlier draft version):

- the use of the term 'practicable' over 'possible' within 1.5(4)(a) to (c); and
- the reference to "more than minor" residual adverse effects within 1.5(4).

Transpower's key concerns regarding the workability of provision 1.5: (4) Effects management hierarchy, and the changes Transpower seeks to provision 1.5(4), are set out above. In summary, Transpower considers:

- The requirement to "demonstrate" that the adverse effects on an activity cannot be avoided, minimised, remedied or offset is problematic;
- The application of provision 1.5(4) is likely to result in a full alternatives assessment being required every time an activity is proposed within an SNA, regardless of the nature of the effect or the importance of the activity; and
- It is not appropriate that the principles in Appendix 4 and 5 relating to offsetting and compensation must be complied with (this is discussed further below).

In addition, and as discussed above, provision 1.5(4)(a) should clarify that 'avoid' does not require all effects to be avoided, no matter how minor or transitory (as recognised in case law on the NZCPS).

In practice, the requirement to 'demonstrate' that the adverse effects of an activity cannot be avoided, minimised, remedied or offset will be problematic. There is no guidance within the NPS-IB as to what level of certainty is needed to satisfy this requirement. Transpower submits that as currently drafted this provision may be interpreted overly conservatively and inconsistently. This risk is especially likely given that the precautionary approach is embedded within the NPS-IB in provision 3.7, and there is a lack of baseline data on the state of indigenous biodiversity.

Question 5: Do you have any feedback on the workability of provision 1.6: Interpretation?

"Biodiversity offset" and "biodiversity compensation"

Transpower seeks that the definitions of "biodiversity offset" and "biodiversity compensation" are amended so they do not require compliance with the principles in Appendices 3 and 4. Instead these principles should be factors for consideration.

The definition of "biodiversity offset" also requires a measureable net gain in type, amount, and condition (structure and quality) of indigenous biodiversity compared to that lost to be achieved.

Transpower is concerned the requirement to achieve a measurable net gain is unworkable, and a nationally or regionally significant infrastructure project may be justified even if it cannot achieve a "net gain".

Therefore, while the requirement for a "measurable net gain" may be an aspirational goal, actions that fall short of a "measurable net gain" should still be able to be considered by decision-makers as a "biodiversity offset" when applying the effects management hierarchy and factored into the overall decision. This is not possible given the current definition of "biodiversity offset".

Transpower also considers that the definitions should not require the sequential application of appropriate avoidance, minimisation, remediation, and biodiversity offset measures. An applicant is best placed to undertake an assessment of the costs and benefits of various options in light of the relevant plan provisions, and decide whether offsetting or compensation is warranted in the particular circumstances.

Transpower therefore seeks the following changes to the definitions of "biodiversity compensation" and "biodiversity offset":

> **biodiversity compensation** means a conservation outcome that ~~complies with~~ considers the principles in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offset measures have been ~~sequentially~~ applied.
>
> **biodiversity offset** means a measurable conservation outcome that ~~complies with~~ considers the principles in Appendix 3 and results from actions that: (a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been ~~sequentially~~ applied; and
>
> (b) achieve a positive outcome ~~measurable net gain~~ in type, amount, and condition (structure and quality) of indigenous biodiversity compared to that lost.

"Buffer" and "buffering"

Transpower notes that this definition has been amended since the 2020 NPS-IB draft version to refer to a 'defined space' between core areas of ecological value and the wider landscape that helps to reduce external pressures. However, there is no guidance in the NPS-IB as to how the concepts in this definition, including 'defined space', will be determined or applied. The definition does not use any metrics or guidance as to what spatially constitutes a buffer. Transpower's ecological advice is that not all features are big enough to have a "core" which is sheltered from edge effects.

Transpower therefore remains concerned that the definition is very uncertain, open to subjective interpretation, and will present significant workability issues.

"Connectivity"

The ecological advice Transpower attached to its 2020 submission was that there is simply not enough known in New Zealand about the movement of species through our landscape to know what kinds/types of connectivity is desirable or required. There are assumptions (and a belief) that more, and closer, is better, but there is no evidence as to what is actually required. In other countries, making linkages of vegetation between habitat patches has facilitated pest animal movement, rather than any increase in native species. Linkages have resulted in faster invasions and greater harm than any benefit.

The definition of connectivity is ambiguous. It is a subjective term with lay meanings that are intuitive. However, the understanding around different species requirements for connectivity across landscapes is very limited. Assumptions made as to "connectivity" benefits are not always supported by what science exists.

Transpower is concerned that this definition does not provide enough certainty in terms of its application and workability, noting that no reduction in connectivity is required as a fundamental concept under provision 1.5(3).

"Specific Infrastructure"

Transpower queries the use of the term 'Specific Infrastructure' instead of 'Specified Infrastructure', as used in the NPSFM. Given that these definitions are the same, except for the inclusion of an additional provision for defence facilities within the NPS-IB, it would be more consistent to use the same term across these two NPSs.

Transpower's activities would likely be captured by (a) in the definition of "Specific Infrastructure" being infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002), rather than (b). This is because (b) refers to regionally significant infrastructure that is identified as such in a regional policy statement or regional plan, and some plans define nationally significant infrastructure and regionally significant infrastructure separately (e.g. the notified version of the proposed Otago Regional Policy Statement).

Transpower considers that the definition of "Specific Infrastructure" needs to be broadened to provide for ancillary activities such as the construction of access tracks and vegetation trimming around a corridor. Transpower seeks the following amendments:

> **specific infrastructure** means any of the following:
>
> (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002), and associated ancillary activities:
>
> (b) regionally significant infrastructure that is identified as such in a regional policy statement or regional plan, and associated ancillary activities:

Part 2: Objective and policies

Question 7: Do you have any feedback on the workability of provision 2.2: Policies?

Policy 2

Transpower recognises the need to protect indigenous species, populations and ecosystems that are taonga, and that tangata whenua should play a kaitiaki role.

The Environment Court has held 'protect' means to "defend or guard from danger or injury ... ; to keep safe; take care of".[2] It will not always be possible for Transpower to avoid effects on identified taonga due to the linear nature of National Grid infrastructure, and technical and operational constraints. It is important there is a consenting pathway for National Grid infrastructure in the context of identified taonga.

Policy 3

Policy 3, in relation to a precautionary approach being adopted, was not present in this form in the 2020 draft NPS-IB. Transpower is concerned that it will be interpreted as placing an onerous burden on an applicant to gather information and undertake alternatives assessments even

where it is considered unlikely that adverse effects will be significant. In this regard, there is a mismatch between Policy 3 and provision 3.7, which could result in significant confusion in when and how the precautionary approach should be applied.

Provision 3.7 ties the requirement to use the precautionary approach to the situation where there is uncertainty of effects but where such effects are potentially significant, while Policy 3 suggests that it should be adopted when considering adverse effects on indigenous biodiversity in general. Transpower submits that either the precautionary approach should be defined within the NPS-IB, or Policy 3 should only apply where adverse effects will be significant.

As noted in its 2020 submission, Transpower is concerned that provision 3.7 requires that local authorities "must" adopt a precautionary approach. In practice, most types of effects are now at least recognised and understood to a reasonable level. Ecologists have robust guidance to support their assessments and mitigation design. Effects, mitigation and offsets are therefore generally not uncertain.

We also note that there are information gaps in relation to some aspects of indigenous biodiversity, such as the size of national populations. We are concerned that Policy 3 may lead to unnecessarily conservative outcomes due to the absence of information (as opposed to uncertainty about effects).

Policy 9

Transpower strongly supports the intent of Policy 9 that "certain existing activities are provided for within and outside SNAs". However, we note that this policy is inherently uncertain given the issues with the definition and scope of "existing activities", as well as how provision 3.15 links into provisions 3.10 and 3.11. As set out above, this uncertainty needs to be clarified given this policy applies to most, if not all of, New Zealand, as it applies both within, and outside of SNAs. The critical importance of the National Grid to people and communities warrants a specific policy and implementation provision to enable National Grid infrastructure within, and outside of, SNAs. The linear and nationally significant nature of National Grid infrastructure would be undermined if regions took different approaches towards this matter.

Transpower proposes that the following new policy be added to Part 2.2 of the NPS-IB:

> **Policy X:** The operation, maintenance, and upgrading of National Grid infrastructure is enabled within SNAs and all other areas of indigenous biodiversity.

Policy 10

Transpower strongly supports the intent of Policy 10 that "activities that contribute to New Zealand's social, economic, cultural, and environmental well-being are recognised and provided for". It is imperative that the NPS-IB provides for the continued operation, maintenance, and upgrading of existing National Grid infrastructure, and provides a workable consenting pathway to enable the consideration of the merits of new specified infrastructure, including the National Grid. Transpower therefore considers that it is critical that an infrastructure specific policy is provided within the NPS-IB that covers proposals for new (or significantly expanded) infrastructure within SNAs and outside SNAs where there are effects on indigenous biodiversity.

Failing to recognise and enable such critical infrastructure will result in significant uncertainties, inefficiencies and increased costs to new projects. This would be a perverse outcome in terms of New Zealand's commitment to reductions in GHG emissions, and in terms of the provisions within

the NPS-IB which seek to increase the resilience of indigenous biodiversity to the effects of climate change.

Transpower therefore proposes that the following new policy be added to Part 2.2 of the NPS-IB:

> **Policy Y:** The adverse effects of new specified infrastructure on an SNA and all other areas of indigenous biodiversity are avoided, remedied, mitigated, offset, or compensated.

Policy 15

Transpower is concerned that the provisions relating to highly mobile fauna remain drafted in a way that could have extremely wide application. Regional Councils are to identify 'highly mobile fauna areas' within their plans, which is a term meaning an area outside an SNA that is identified under provision 3.20 as an area "used" by specified highly mobile fauna. While Transpower agrees that it is helpful that the species to which these provisions apply are listed in an appendix to the NPS-IB, there is still great uncertainty as to what constitutes an area, and how and how often an area needs to be used by "highly mobile" species in order to come within the definition of a highly mobile fauna area.

It appears that areas that are used only periodically by such species could be considered "highly mobile fauna areas" applying these provisions as drafted. There is clearly a substantial difference in an area being used as a nesting site compared to an area being used to perch in occasionally. However, the NPS-IB provisions do not recognise this distinction and therefore how such areas will be identified and defined.

Subpart 1: Approaches to implementing this National Policy Statement

Question 11: Do you have any feedback on the workability of provision 3.5: Social, economic, and cultural wellbeing?

Transpower agrees that there should be recognition in the NPS-IB that some subdivision, use and development will be appropriate, and will not be precluded outright. However, Transpower suggests that the wording of provision 3.5(b) is ambiguous, and should be amended to make it clear that in some circumstances adverse effects on indigenous biodiversity will be appropriate and necessary.

Transpower therefore seeks the following amendments to provision 3.5:

(1) Local authorities must consider:

(a) that the protection, maintenance, and restoration of indigenous biodiversity contributes to the social, economic, and cultural wellbeing of people and communities; and

(b) that the protection, maintenance, and restoration of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms; and

(c) that people and communities are critical to protecting, maintaining, and restoring indigenous biodiversity; and

(d) the importance of forming partnerships in protecting, maintaining, and restoring indigenous biodiversity; and

(e) the importance of respecting and fostering the contribution of tangata whenua as kaitiaki and of people and communities, particularly landowners, as stewards of indigenous biodiversity; ~~and~~

(f) the value of supporting people and communities in understanding, connecting to, and enjoying indigenous biodiversity; and

(g) whether the positive effects of a proposed activity mean some adverse effects on indigenous biodiversity is appropriate and necessary.

Question 13: Do you have any feedback on the workability of provision 3.7: Precautionary approach?

Please see our response to question 7 regarding Policy 3 and the precautionary approach.

Subpart 2: Significant Natural Areas

Question 14: Do you have any feedback on the workability of provision 3.8: Assessing areas that qualify as significant natural areas?

Summary of the issues with the criteria in Appendix 1

An area will qualify as an SNA if it meets any one of the 16 attributes within the 4 criteria in Appendix 1. Any habitat could be identified as an SNA relatively easily.

The ecological advice attached to Transpower's 2020 submission highlights that the NPS-IB Appendix 1 criteria appear to elevate the rarity of indigenous biodiversity. This elevation diminishes the importance of representativeness, which is traditionally considered by ecologists to be the key criteria for determining significance.

The attributes encompass any exotic vegetation that provides habitat for an "at-risk" species. For example, if exotic forest or shrub provides a link for a species between two areas of indigenous forest, the exotic vegetation meets the ecological context attributes for providing a link between important habitats, and for providing critical habitat for indigenous fauna. Technically this assessment would be correct under the NPS-IB, despite the fact an ecologist may question the validity and value of assessing the area as significant.

Transpower does not consider that the criteria in Appendix 1 are appropriate for identifying SNAs. The important qualifiers and context included in the Harding criteria from the BCG version need to be reintroduced. These qualifiers are necessary to ensure that only the indigenous vegetation and habitats with significant value are classified as SNAs. The criteria developed by Harding for the BCG were consistent with criteria generally accepted by ecologists. Further, each criterion had a definition, explanation, and guidance on use. This approach allowed appropriate flexibility for ecologists when describing and assessing sites on their individual merits.

Proposed alternative criteria

The ecological report attached to Transpower's 2020 submission includes alternative criteria. In summary, these include the following:

- The representativeness criteria should continue to follow the EIANZ 2018 Guidance and the Canterbury (2013) RPS criteria, or the assessment criteria developed by Harding for the BCG. These criteria require consideration of expected species, structural composition, ecological functioning, the dominance of indigenous species, and the presence of most guilds expected in that habitat type.
- The diversity and pattern criterion is redundant and should be removed. To assess diversity both as a part of representativeness and then again under diversity and pattern is to double count.
- The rarity and distinctiveness criterion needs to be amended to identify that vegetation/habitat is significant if it supports any of the following:
    - 'threatened', 'at risk' indigenous species populations (as defined by national lists) (data deficient taxa do not by default trigger significance);
    - regionally or locally uncommon indigenous species populations, habitats, vegetation or ecosystems (as described in Regional Council lists);
    - indigenous vegetation classes depleted to less than 20 per cent of its former extent in the ecological district or land environment;
    - indigenous vegetation historically (and currently) rare/naturally uncommon ecosystems;
    - the presence of a distinctive assemblage or community of indigenous species where "distinctive" will need to be determined by, and evidence of that distinction supplied by, the assessing ecologist.
- The ecological context criterion should be amended to refer only to attributes relating to linkage and buffering, key habitat, and size and shape.

Question 16: Do you have any feedback on the workability of provision 3.10: Managing adverse effects on SNAs of new subdivision, use, and development?

Transpower strongly supports provision 3.10(2), with its strict avoid requirement, not applying to its activities by virtue of provision 3.11(2)(a)(i).

However, there is uncertainty and complexity in the application of provision 3.11(2), which results in it being unclear whether the exception applies to National Grid activities, as discussed in response to question 17.

If Transpower's future works are subject to a strict 'avoid' policy rather than to the effects management hierarchy, the construction of new lines would become extremely difficult, if not impossible, as linear infrastructure will inevitably have adverse effects on sensitive environments that cannot be avoided.

Question 17: Do you have any feedback on the workability of provision 3.11: Exceptions to clause 3.10?

There is also some ambiguity in the wording of provision 3.11(2) and how it relates to provision 3.10. Provision 3.11(2) states that clause 3.10(2) does not apply to certain new uses and developments, and that "all adverse effects on an SNA must be managed instead in accordance

with clause 3.10(3) and (4)". However, clause 3.10(3) states that it applies to all adverse effects "other than the adverse effects identified in subclause (2)".[1]

Transpower is concerned that the pathway for specific infrastructure in 3.10(3) and (4) could be denied if the types of adverse effect in clause 3.10(2) are considered to be at play. Transpower acknowledges that this may not be the intent of these provisions, but notes that when read together their meaning is open to interpretation.

Given the uncertainty in relation to the interpretation of "population size or occupancy" (as noted earlier in this submission), Transpower's activities could feasibly be found to cause an adverse effect in terms of provision 3.10(2).

Transpower strongly suggests provision 3.11(2) is amended to make it clear that "all adverse effects" in that clause includes the adverse effects listed in clause 3.10(2), as set out below.

As set out above, Transpower has a number of other concerns about the workability of provision 3.11. These concerns are amplified, as set out above, due to the majority of Transpower's routine works being very likely to be subject to provision 3.10 and 3.11 as "new" infrastructure, rather than the existing activities provisions.

In summary, Transpower is concerned that it appears that provisions 3.10 and 3.11 require an applicant to prove each time consent is sought, that the specific proposed work "provides significant national and regional public benefit" for the exception to apply. Transpower is concerned that this requirement may restrict the ability to undertake ancillary activities.

Transpower therefore seeks the following amendments to clause 3.11:

Subclause 3.11(2)(a)(i) is amended as follows:

> specific infrastructure <u>(as opposed to the activity in isolation)</u> that provides significant national or regional benefit.

In the alternative, subclause 3.11(2)(a)(i) is amended as follows:

> specific infrastructure ~~that provides significant national or regional public benefit~~;

In the alternative, a new subclause is included as follows:

> <u>National Grid infrastructure, including all ancillary activities associated with the National Grid.</u>

Amendment to clause 3.11(2) as follows:

> Clause 3.10(2) does not apply, and all adverse effects on an SNA, <u>including those effects set out in clause 3.10(2)</u>, must be managed instead in accordance with clause 3.10(3) and (4).

[1] (a) loss of ecosystem representation and extent: (b) disruption to sequences, mosaics, or ecosystem function: (c) fragmentation of SNAs or the or loss of buffers or connections within an SNA: (d) a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems: (e) a reduction in the population size or occupancy of Threatened, At Risk (Declining) species that use an SNA for any part of their life cycle.

Question 21: Do you have any feedback on the workability of provision 3.15: Existing activities affecting SNAs?

As discussed earlier in our submission, Transpower supports a specific implementation provision for existing activities as Transpower is extremely concerned about the workability of the "existing activities" provisions for Transpower's routine activities. In particular:

- The reliance on existing use rights tests to enable existing activities;
- The focus of "operation and maintenance" for "existing activities" in the NPS-IB, and which existing activities would be identified in a regional policy statement, are incredibly narrow and too uncertain to be workable for Transpower's purposes as it could mean routine activities Transpower undertakes on National Grid infrastructure and assets are classed as "new" activities, rather than "existing";
- The inclusion of provision for activities where there is a very high risk to public health and safety is not useful for Transpower, as generally these activities are undertaken well in advance of there being a very high risk.

It is also noted that vegetation trimming / clearance will likely only increase with climate change effects starting to be realised, such as the increased risks of fires. Therefore existing activities need to be enabled – both for benefit of biodiversity, and the National Grid.

Limitations to provision 3.15

Provision 3.15(1) requires regional councils to identify in their policy statements the existing activities, or types of existing activities, that the provision applies to. Transpower is concerned that this ad hoc approach to existing activities does not provide sufficient assurance that routine activities on the National Grid will be enabled. Further, what is the position in the interim period after the commencement of the NPS-IB but before such 'existing activities' are identified in policy statements? This transitional issue should be permanently addressed by the inclusion of a bespoke provision for National Grid activities in 3.15A as outlined below.

Transpower is also concerned that there is no specific provision for existing activities which adversely affect indigenous biodiversity outside an SNA, particularly in relation to highly mobile fauna areas. This issue should be specifically addressed in provision 3.15 so that there is no risk that a local authority might incorporate policies and rules in plans which prevent such activities from continuing. We have captured this issue in the relief sought below.

Transpower's existing activities

As discussed in Transpower's 2020 submission, and above, there are issues with the workability of the "existing activity conditions" in provision 3.15(2), especially in relation to the intermittent nature of work on Transpower's lines.

Transpower's operational activities involve upgrading and 'recutting' access tracks, vegetation trimming and vegetation removal. Transpower's maintenance and climate change adaptation activities will involve making foundations stronger (e.g. bigger or deeper), and relocating assets (among other things). Transpower is required to clear paths and undertake vegetation trimming/clearance for a large variety of activities, including to:

- ensure safe clearance under and adjacent to the lines;
- provide safe and unimpeded access to the lines and support structure assets, including for fault response purposes;

- enable maintenance of support structures including painting, foundation strengthening and replacement; and
- reconductor lines (replace wires when they are aged).

These are the same activities that would occur when system upgrades (which result in more electricity being transmitted) occur on existing lines.

It is important that the NPS-IB recognises that some of these activities will have unavoidable impacts, and will sometimes be in SNAs given the extent and location of Transpower's assets. These activities are critical to the functioning of the National Grid, and should be considered in the development of the NPS-IB.

Transpower has a cyclical maintenance programme, but typically inspections can occur any time between 6 and 18 months. The decision to trim or clear vegetation on inspection depends on factors such as the age of the support structure, nature of the vegetation, landowner relationships, and the operational requirements of the asset.

The requirement to provide sufficient clearance under and around transmission lines is a regulatory requirement of the Electricity (Hazards from Trees) Regulations 2003. Clearance is required for safety reasons (primarily to prevent vegetation fires and damage to assets). While trimming/clearance is a safety requirement, it is subject to local authority plan provisions (such as when the site is within an SNA and protected by a rule, which then falls under the definition of 'Natural Area' in the NESETA).

Provision 3.15(2) has two requirements for an 'identified' existing activity to be allowed to continue, relating to both the nature of the effects on an SNA, and to the character, intensity and scale of effects relative to the NPS-IB commencement date.

Transpower's specific concerns relate to the intermittent nature of the maintenance activities:

- Many of Transpower's vegetation trimming/clearance activities are intermittent at each specific asset location or SNA and so regrowth occurs. It is not clear whether Transpower's intermittent activities would be considered "existing activities" where there has been regeneration over old works areas or tracks where the maintenance schedule does not warrant regular access for large or heavy vehicles.
- Given the scale of regrowth, it may mean the trimming or clearance of vegetation would result in a "loss, of extent or degradation of the ecological integrity of any SNA". If so, then existing activities are not to be provided for under provision 3.15.
- The intermittent nature of Transpower's maintenance activities would make it difficult to demonstrate that the scale of adverse effects is "no greater in intensity, scale or character" either before the NESETA was made operative if relying on existing use rights in section 10 of the RMA, or at the commencement date of the NPS-IB as it relates to existing activities undertaken under regional rules.

If the existing activity does not meet the conditions described in subclause (2), then the adverse effects of the activity on the relevant SNA must be managed in accordance with clause 3.10. This would require the application of the effects management hierarchy to routine maintenance activities, even when the work is required for safety reasons and to reduce significant damage or loss of the SNA which it traverses.

Transpower has a current project which requires clearance of vegetation that has grown too close to the conductors of two spans of a transmission line (of ~700m length). The vegetation work

would not involve full clearance of vegetation in the corridor around the line, but trimming of some species and removal of targeted individual trees. The line is located in a Significant Ecological Area (**SEA**) and has several waterways and natural wetlands nearby.

Initial advice from the consultant ecologist engaged by Transpower is the 9.2ha of offsetting is required (due to wetlands, and the location in the SEA). Further advice is to amend our plans to reduce the vegetation trimming and removal in order to reduce the amount of offsetting that is required. However, this approach would mean more frequent visits to control vegetation in the area, resulting in increased disturbance of the area, and increased costs.

Transpower needs to be able to maintain safe clearances between vegetation and our lines, and work needs to occur in the most efficient manner possible. While we are yet to work through the full implications of this advice, it does highlight a number of issues with the approach in the exposure draft – we cannot avoid the clearance work – it must occur, in order to protect both the line and the vegetation around it. If vegetation grows too close a transmission line, it can result in flashovers, and ultimately fire. A requirement to work through the effects management hierarchy is inefficient. Further, the requirement to provide offsetting for such works is also fraught – we will need to come back and trim the vegetation on an ongoing basis – are repeat offsets to be applied for such routine works? Such an outcome is considered inappropriate and disproportionate.

It is unworkable for Transpower to have to debate at a regional level across the country whether its routine activities come within provision 3.15. More direction within the NPS-IB is required, in the form of an explicit identification of National Grid activities within a new provision as set out below.

Further, the interplay between provisions 3.10, 3.11 and 3.15 may create the unintended consequence that an "existing activity" which is related to specific infrastructure but does not meet the conditions described in 3.15(2), is not captured within any provision in 3.10 or the exceptions within 3.11. This is because the wording in provisions 3.10 and 3.11 relates only to *new* use, development or subdivision rather than to existing activities. Transpower sees a risk that, in the above scenario, an argument is made that the activity should be captured by the "avoid" provision in 3.10(1) rather than being an exception to that provision as relating to specific infrastructure.

Transpower seeks the following new implementation provision be added to make it clear that operation, maintenance, and upgrade activities on existing National Grid assets and ancillary activities are to be enabled:

> 3.15A Established National Grid activities affecting SNAs and other areas of indigenous biodiversity
>
> Existing National Grid activities at the commencement date and National Grid activities lawfully established after the commencement date, may continue to be operated, maintained and subject to upgrades including where there are adverse effects on SNAs and other areas of indigenous biodiversity.

Question 22: Do you have any feedback on the workability of provision 3.16: Maintaining indigenous biodiversity outside SNAs?

Provision 3.16 has wide application and requires that local authorities must "take steps" to maintain indigenous biodiversity outside SNAs. These steps include applying the effects management hierarchy to 'any' adverse effects on indigenous biodiversity of a new subdivision,

use or development that may be irreversible. It follows that any adverse effects which may be irreversible will largely be managed as if occurring within an SNA.

Transpower is concerned that effects management hierarchy applies regardless of the scale or significance of the adverse effect that may be irreversible. Transpower also considers the reference within 3.16(2)(a) to "irreversible" adverse effects is unclear and needs to be amended. For instance, does it apply at an individual level so that the removal of a single but significant tree could trigger the effects management hierarchy, or is the intended focus here on a species?

Subpart 3: Specific requirements

Question 25: Do you have any feedback on the workability of provision 3.19: Identified taonga?

Transpower acknowledges the importance of taonga species to tangata whenua and appreciates why mapping the location and describing the values of the taonga species is 'to the extent agreed by tangata whenua'. However, this position could make it difficult for an applicant to "protect" both "acknowledged" and "identified" taonga as far as practicable. The best opportunity to avoid areas is at the investigation stage of a project. If applicants are not aware of a taonga, it cannot be avoided.

Transpower seeks that transitional provisions are included in the NPS-IB, so that any requirement to avoid any sensitive areas, including taonga, only apply once they are publicly identified. We submit that the silent file regime could be used for taonga species.

Transpower therefore seeks the following amendments to provision 3.19(4):

> Local authorities must work together with tangata whenua to protect ~~both acknowledged and~~ identified taonga, once publicly identified in a planning instrument, as far as practicable and involve tangata whenua (to the extent that they wish to be involved) in the management of identified taonga.

Question 26: Do you have any feedback on the workability of provision 3.20: Specified highly mobile fauna?

The NPS-IB requires that Regional Councils record and map areas (other than SNAs) that are highly mobile fauna areas, and then ensure viable populations (across their natural range - i.e., the national scale) of those mobile species are maintained. Transpower has serious concerns with how provision 3.20 will be interpreted and applied.

Proving that the removal and modification of non-SNA features will not reduce the population viability of any indigenous species listed in Appendix 2 will be very difficult and largely subjective. At a site level this will be near impossible because local or regional and often national populations are not known, many populations are considered not currently viable (hence they are threatened and therefore already below the threshold), the current local population trends are unknown, and the effects of non-SNA habitat reduction is unknowable.

Accordingly, what is a viable population, of which species, at what scale, and what the current trend and viability is of that species, will not be known (for potentially many years). This uncertainty could lead to a very conservative (and precautionary) approach by Councils assessing applications involving effects to non-SNA features which may include exotic vegetation features that have any one of the listed highly mobile species recorded in it at any time.

Question 27: Do you have any feedback on the workability of provision 3.21: Restoration?

Transpower does not own the land that most of its transmission lines are located on. It is therefore limited in what it can do to restore or enhance areas near its assets, without landowner agreement. The 9.2 ha off-setting example above shows the difficulty in imposing conditions on land around transmission lines. Transpower seeks that the implementation guidance is amended to recognise that infrastructure operators often have assets located on land owned by others, and the ability to impose conditions on consent applications is more limited.

Question 30: Do you have any feedback on the workability of provision 3.24: Information requirements?

This provision is wide ranging, and will significantly add to the time and cost of application without, in some situations, providing any ecological benefit. An ecological assessment will likely be required for most consent applications, including for Transpower's routine works. Assessments will be required irrespective of scale and whether effects are temporary in nature or not. Such a requirement is not efficient or effective and does not simplify the resource consent process.

The additional information requirements are a significant step up from current practice and seem overly onerous and unwarranted in terms of both additional time and cost to prepare applications. The additional information requirements could therefore have significant implications on Transpower, particularly for routine activities for existing assets.

The report must be prepared by an ecologist (a qualified and experienced one) and must include matauranga Māori and tikanga Māori assessment methodology 'where relevant'. However, as a professional body, ecologists are not well-versed or expert in matauranga Māori and tikanga Māori assessment methodology, and would not be the appropriate persons to determine the circumstances in which these would be relevant. Such matters should be assessed instead by someone with cultural expertise.

The sub-clauses on offsetting and compensation (as well as the information requirements more generally) seem to have been drafted with very large scale projects in mind, and are not appropriate to smaller scale but frequent activities. Offsetting or compensation may not be possible in smaller settings (where residual effects are nonetheless more than minor), and there needs to be a practical mechanism for making a financial contribution towards a positive biodiversity outcome in such situations. For example, a "bio-bank" approach to enable applicants to make financial contributions to a collective fund may be more efficient and result in better biodiversity outcomes.

Appendix 3 and 4: Principles for biodiversity offsetting and Principles for biodiversity compensation

Transpower is concerned that National Grid projects will not be able to comply with the proposed principles for biodiversity offsetting and compensation in Appendices 3 and 4 as they are too stringent and inflexible, and involve subjective value judgements. If the principles for biodiversity offsetting and compensation are not amended to enable greater flexibility in their application, then it is likely the consenting pathway for specific infrastructure will be illusory and meaningless because it will not be able to be utilised by most National Grid infrastructure projects.

Transpower also notes that while the NPS-IB and the exposure draft of the proposed changes to the NPSFM use similar wording in the offsetting and compensation principles, there are some

differences. Many projects could affect ecological values that are relevant under both National Policy Statements, and therefore both sets of principles will be required to be addressed. Consistency as far as possible between these instruments is therefore sought.

Clause 2(a) in Appendices 3 and 4

Clause 2 in Appendices 3 and 4 sets out when biodiversity offsetting and biodiversity compensation is not appropriate. Clause 2(a) states that offsetting/compensation is not appropriate where "the indigenous biodiversity affected is irreplaceable or vulnerable". The term 'vulnerable' is not supported as it is not clear what it means. If it means threatened and at risk, then that bar is too low. Given the directive nature of the provision and the stage of compensation in the effects management hierarchy, the provision of a subjective and undefined term that potentially sets a very low threshold is not supported. The term "irreplaceable" is acceptable.

Transpower seeks the deletion of "vulnerable" from clause 2(a) of Appendices 3 and 4.

Clause 2(b) in Appendices 3 and 4

Clause 2(b) states that offsetting/ compensation is not appropriate where effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse. This requirement could potentially remove the consenting pathway afforded to specified infrastructure. In practice, this requirement amounts to a direction to avoid adverse effects and should be deleted.

For example, clause 2(b) could be triggered where there is a cryptic bird species such as bittern in an SNA being affected (e.g., where transmissions lines go over an SNA and the risk of collision arises), or some other little studied fauna whose reliance on a portion or a size or an intactness of an SNA cannot be quantified. In these examples the effects on the species may be uncertain, unknown or little understood due to lack of information on the species. In such circumstances, Appendices 3 and 4 may preclude offsetting and compensation from being undertaken, and if there are residual adverse effects on the bittern, the activity must be avoided. This is not appropriate in the context of National Grid assets, where there may be operational, technical or locational requirements that require those transmission lines to be located across the SNA, and therefore there needs to be a consenting pathway to provide for this.

For the reasons set out above, Transpower considers that clause 2(b) should not apply to specified infrastructure.

Clause 2(c) in Appendices 3 and 4

Clause 2(c) of Appendices 3 and 4 states that where there is no technically feasible option by which to secure the proposed gains within acceptable timeframe then an offset/compensation is not appropriate. The reference to an acceptable timeframe is too uncertain and subjective as it does not suggest what an acceptable timeframe is, or who has the authority to make that determination.

Transpower therefore considers that the reference to "within an acceptable timeframe" should be removed from clause 2(c) in both Appendices 3 and 4. Alternatively, the reference to "within an acceptable timeframe" should be defined.

Transpower is also concerned that offsetting is required regardless of the cost, and the NPS-IB must recognise that an option that is technically *possible* is not always technically *feasible* due to cost, especially where the activity is associated with essential public infrastructure such as the National Grid. Due to the use of the word 'possible' in relation to offsetting in provision 1.5(4)(d)/the effects management hierarchy, it appears the intention that "technically feasible" is interpreted as meaning "technically possible at any cost".

The High Court decision in *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZHC 1201 illustrates how these terms can be interpreted in practice. The Court found (in the context of a planning provision regarding whether it was 'possible' to avoid adverse effects on the values and attributes of an Outstanding Natural Feature and Landscape) that the plain meaning of 'possible' suggested that if an alternative option is technically feasible then it is possible, and that cost should not be relevant.

Clause 3 in Appendix 3

The requirement for a like-for-like quantitative loss/gain calculation in clause 3 of Appendix 3 could be problematic and is not a necessary process to demonstrate a net gain (the use of an offset model). As noted above, given the subjective nature of model inputs and of how the offsetting models themselves are constructed, requiring this approach is highly problematic.

In Transpower's experience such models can be misleading, and are of limited worth. A parallel can be drawn with the Overseer on-farm nutrient model, which has been used extensively across New Zealand as a tool to regulate nitrogen loss. On the advice of an independent Scientific Advisory Panel, the Government has recently accepted that this software has a range of short-comings, and does not provide reliable results across the range of situations it is currently used for.[2]

While Transpower does not oppose the requirement for a no net loss outcome in clause 3, it seeks removal of reference to the like-for-like quantitative loss/gain calculation and instead would support a more transparent, reasonable and logical process.

Transpower seeks the following amendments to clause 3:

> **Net gain:** The biodiversity values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain when compared to that lost. Net gain ~~is demonstrated by a like-for-like quantitative loss/gain calculation of the following, and~~ is achieved when the ecological values at the offset site exceed those being lost at the impact site across indigenous biodiversity:
>
> (a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence; and
>
> (b) amount; and
>
> (c) condition.

2 Government response to the findings of the Overseer peer review report, Ministry for the Environment and Ministry for Primary Industries, August 2021.

Clause 8 in Appendix 3

The reference to time lags and consent period within clause 8 of Appendix 3 is not supported as the achievement of gains should not be dependent on the duration of the consent. Such an approach is inappropriate where the consent is for a short-term activity such as earthworks or vegetation clearance, meaning that gains are unlikely to be achievable within the term of the consent. This clause appears to have been drafted with large scale projects in mind rather than short-term activities, and may have the negative and unintended effect of excluding offsetting as an option in many circumstances where it could be a more appropriate approach than compensation. For example, planting may take 50 years to reach maturity and have the full gain realised, whereas the consent may only be for a 20-year period. Transpower seeks the reference to consent period be removed to reflect the wording in clause 8 of Appendix 3.

Clause 10 in Appendix 3 and clause 12 in Appendix 4

The requirement in clauses 10 of Appendix 3 and 12 of Appendix 4 to undertake effective stakeholder participation may be problematic and may cause issues where the ecological offset or compensation does not meet the stakeholder expectations. The clause should be reworded in the offset principles to ensure stakeholders cannot require outcomes to be achieved that are different to that required by the ecological assessment.

Further, Transpower does not consider this requirement to be reasonable for routine works on existing infrastructure in all instances.

Next steps

Transpower would welcome the opportunity to work with officials on further amendments to the NPS-IB, to ensure it is workable for transmission line assets.

Yours faithfully

Jo Mooar
Senior Corporate Counsel

Appendix A – Relief Sought by Transpower New Zealand Limited

Exposure draft of the National Policy Statement for Indigenous Biodiversity (amendments shown in red)

Part 1: Preliminary provisions

1.5 Fundamental concepts

…

(4) **Effects management hierarchy**

The effects management hierarchy is an approach to managing the adverse effects of an activity. It requires that:

(a) adverse effects are avoided where practicable; and

(b) where adverse effects cannot be demonstrably avoided, they are minimised where practicable; and

(c) where adverse effects cannot be demonstrably minimised, they are remedied where practicable; and

(d) where more than minor residual adverse effects cannot be demonstrably avoided, minimised, or remedied, biodiversity offsetting is provided where possible; and

(e) where biodiversity offsetting of more than minor residual adverse effects is not demonstrably possible, biodiversity compensation is provided; ~~and~~

~~(f) if biodiversity compensation is not appropriate, the activity itself is avoided.~~

The terms 'biodiversity offset' and 'biodiversity compensation' are defined in clause 1.6, and the principles for their application are in Appendices 3 and 4.

1.6 Interpretation

(1) In this National Policy Statement:

…

biodiversity compensation means a conservation outcome that ~~complies with~~ considers the principles in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offset measures have been ~~sequentially~~ applied

biodiversity offset means a measurable conservation outcome that ~~complies with~~ considers the principles in Appendix 3 and results from actions that:

(a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been ~~sequentially~~ applied; and

(b) achieve a positive outcome ~~measurable net gain~~ in type, amount, and condition (structure and quality) of indigenous biodiversity compared to that lost

…

specifi~~e~~ed~~d~~ infrastructure means any of the following:

(a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002), and associated ancillary activities:

(b) regionally significant infrastructure that is identified as such in a regional policy statement or regional plan, and associated ancillary activities:

…

Part 2: Objectives and policies

Policy X: The operation, maintenance, and upgrading of National Grid infrastructure is enabled within SNAs and all other areas of indigenous biodiversity.

Policy Y: The adverse effects of new specified infrastructure on an SNA and all other areas of indigenous biodiversity are avoided, remedied, mitigated, offset, or compensated.

Part 3: Implementation

3.5 Social, economic, and cultural wellbeing

(1) Local authorities must consider:

(a) that the protection, maintenance, and restoration of indigenous biodiversity contributes to the social, economic, and cultural wellbeing of people and communities; and

(b) that the protection, maintenance, and restoration of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms; and

(c) that people and communities are critical to protecting, maintaining, and restoring indigenous biodiversity; and

(d) the importance of forming partnerships in protecting, maintaining, and restoring indigenous biodiversity; and

(e) the importance of respecting and fostering the contribution of tangata whenua as kaitiaki and of people and communities, particularly landowners,

as stewards of indigenous biodiversity; ~~and~~

(f) the value of supporting people and communities in understanding, connecting to, and enjoying indigenous biodiversity; and

(g) whether the positive effects of a proposed activity mean some adverse effects on indigenous biodiversity is appropriate and necessary.

3.11 Exceptions to clause 3.10

…

(2) Clause 3.10(2) does not apply, and all adverse effects on an SNA, including those effects set out in clause 3.10(2), must be managed instead in accordance with clause 3.10(3) and (4):

(a) if a new use or development is required for the purposes of any of the following;

(i) specifi~~c~~ed infrastructure (as opposed to the activity in isolation) that provides significant national or regional public benefit;

In the alternative, delete the following:

(2) Clause 3.10(2) does not apply, and all adverse effects on an SNA, including those effects set out in clause 3.10(2), must be managed instead in accordance with clause 3.10(3) and (4):

(a) if a new use or development is required for the purposes of any of the following;

(i) specifi~~c~~ed infrastructure ~~that provides significant national or regional public benefit~~; or

In the alternative, include a new subclause as follows:

(2) Clause 3.10(2) does not apply, and all adverse effects on an SNA, including those effects set out in clause 3.10(2), must be managed instead in accordance with clause 3.10(3) and (4):

(a) if a new use or development is required for the purposes of any of the following;

…

(iv) National Grid infrastructure, including all ancillary activities associated with the National Grid.

…

(5) Clause 3.10 does not apply to adverse effects on an SNA:

(a) from any use or development required to address ~~a very high~~ potential risks to public health or safety; or

…

3.15A Established National Grid activities affecting SNAs and other areas of indigenous biodiversity

Existing National Grid activities at the commencement date and National Grid activities lawfully established after the commencement date, may continue to be operated, maintained and subject to upgrades including where there are adverse effects on SNAs and other areas of indigenous biodiversity.

3.19 Identified taonga

…

(4) Local authorities must work together with tangata whenua to protect ~~both acknowledged and~~ identified taonga, once publicly identified in a planning instrument, as far as practicable and involve tangata whenua (to the extent that they wish to be involved) in the management of identified taonga.

…

Appendix 3: Principles for biodiversity offsetting

The following sets out a framework of principles for the use of biodiversity offsets. These principles represent a standard for biodiversity offsetting and must be complied with for an action to qualify as a biodiversity offset.

1. **Adherence to effects management hierarchy:** A biodiversity offset is a commitment to redress any more than minor residual adverse effects and should be contemplated only after steps to avoid, minimise, and remedy adverse effects are demonstrated to have been sequentially exhausted.

2. **When biodiversity offsetting is not appropriate:** Biodiversity offsets are not appropriate in situations where biodiversity values cannot be offset to achieve a net gain outcome, and if biodiversity values are adversely affected, they will be permanently lost. This principle reflects a standard of acceptability for demonstrating, and then achieving, a net gain in biodiversity values. Examples of where an offset would be inappropriate include where:

   (a) residual adverse effects cannot be offset because of the irreplaceability ~~or vulnerability~~ of the indigenous biodiversity affected:

   (b) unless associated with the construction, operation, maintenance or upgrade of specified infrastructure, effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse:

   (c) there are no technically feasible options by which to secure gains ~~within~~

~~acceptable timeframe~~.

3. **Net gain:** The biodiversity values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain when compared to that lost. Net gain ~~is demonstrated by a like-for-like quantitative loss/gain calculation of the following, and~~ is achieved when the ecological values at the offset site exceed those being lost at the impact site across indigenous biodiversity:

   (a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence; and

   (b) amount; and

   (c) condition.

4. **Additionality:** A biodiversity offset achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the absence of the offset, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.

5. **Leakage:** Offset design and implementation avoids displacing activities that are harmful to indigenous biodiversity to other locations.

6. **Landscape context:** Biodiversity offset actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district, and consider the landscape context of both the impact site and the offset site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.

7. **Long-term outcomes:** Biodiversity offsets are managed to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity.

8. **Time lags:** The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the offset site is minimised ~~so that the calculated gains are achieved within the consent period~~.

9. **Science and mātauranga Māori:** The design and implementation of a biodiversity offset is a documented process informed by science and mātauranga Māori where available.

10. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning for biodiversity offsets, including their evaluation, selection, design, implementation, and monitoring. For the avoidance of doubt, when planning offsets, assessments by ecologists as to the outcomes to be achieved take priority over stakeholder's views.

11. **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, is undertaken in a transparent and timely manner.

Appendix 4: Principles for biodiversity compensation

The following sets out a framework of principles for the use of biodiversity compensation. These principles represent a standard for biodiversity compensation and must be complied with for an action to qualify as biodiversity compensation.

1. **Adherence to effects management hierarchy:** Biodiversity compensation is a commitment to redress more than minor residual adverse impacts, and should be contemplated only after steps to avoid, minimise, remedy, and offset adverse effects are demonstrated to have been sequentially exhausted.

2. **When biodiversity compensation is not appropriate:** Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for, for example because:

   (a) the indigenous biodiversity affected is irreplaceable ~~or vulnerable~~; or

   (b) unless associated with the construction, operation, maintenance or upgrade of specified infrastructure, effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse; or

   (c) there are no technically feasible options by which to secure proposed gains ~~within acceptable timeframes~~.

3. **Scale of biodiversity compensation:** The values to be lost through the activity to which the biodiversity compensation applies are addressed by positive effects to indigenous biodiversity, (including when indigenous species depend on introduced species for their persistence), that outweigh the adverse effects on indigenous biodiversity.

4. **Additionality:** Biodiversity compensation achieves gains in indigenous biodiversity that are above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.

5. **Leakage:** The design and implementation avoid displacing activities or environmental factors that are harmful to indigenous biodiversity in other locations.

6. **Landscape context:** Biodiversity compensation actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The actions consider the landscape context of both the impact site and the compensation site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.

7. **Long-term outcomes:** Biodiversity compensation is managed to secure outcomes of the activity that last as least as long as the impacts, and preferably in perpetuity.

8. **Time lags:** The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the compensation site is minimised.

9. **Trading up:** When trading up forms part of biodiversity compensation, the proposal demonstrates that the indigenous biodiversity values gained are demonstrably of

higher indigenous biodiversity value than those lost. The proposal also shows the values lost are not to Threatened or At Risk species or to species considered vulnerable or irreplaceable.

10. **Financial contributions:** Financial contributions are only considered when there is no effective option available for delivering indigenous biodiversity gains on the ground. Any contributions related to the indigenous biodiversity impacts must be directly linked to an intended indigenous biodiversity gain or benefit.

11. **Science and mātauranga Māori:** The design and implementation of biodiversity compensation is a documented process informed by science and mātauranga Māori where available.

12. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning for biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring. For the avoidance of doubt, when planning compensation, assessments by ecologists as to the outcomes to be achieved take priority over stakeholder's views.

13. **Transparency:** The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.