



TRANSPOWER

Keeping the energy flowing

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Ministry for the Environment
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Submission of Transpower New Zealand Limited on the application of the National Environmental Standards for Freshwater to the coastal marine area

Summary of Transpower's position

Thank you for the opportunity to comment on the discussion document on "*Managing our wetlands in the coastal marine area: A discussion document on the application of the National Environmental Standards for Freshwater to the coastal marine area*" (the **discussion document**).

There is significant uncertainty in relation to the extent to which the National Environmental Standards for Freshwater (**NES-F**) applies to wetlands within the CMA, and the extent of the CMA captured. There is also a high risk of inconsistent application of the NES-F throughout New Zealand. Transpower is concerned that the continued application of the **NES-F** to wetlands in the coastal marine area (**CMA**) has the potential to unnecessarily restrict activities on the Grid, create duplication or overlap with existing consent requirements under regional coastal plans, and result in inefficient and uncertain consent processes. Transpower therefore supports amendment of the NES-F so that it does not apply to wetlands in the CMA.

Transpower also supports the Ministry's preferred option of amending the NES-F by replacing all references to "natural wetland" with "natural inland wetland," and defining "natural inland wetland" by reference to the definition in the National Policy Statement for Freshwater Management 2020 (**NPS-FM**). This option makes it clear that the NES-F no longer applies in the CMA.

Transpower's role and activities

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). Transpower also has over 15,000 km of access tracks which are used to access its assets. Some of these assets are in coastal environments, including areas that may be considered coastal wetlands.

New assets may also need to be located in the CMA (and potentially coastal wetlands), due to the technical, operational and locational constraints of the Grid

The National Grid will be required for many years into the future and is critical to enabling wider social and economic wellbeing. Transpower therefore needs to be able to operate, maintain, upgrade and develop the National Grid in the most sustainable way for that outcome to be achieved.

Response to questions

1. Do you agree that the current application of the NES-F to the CMA requires amendment?

Transpower agrees that the current application of the NES-F to the CMA requires amendment.

The discussion document notes the policy intent behind the NES-F was for it to apply to all natural wetlands, including coastal wetlands (as confirmed by *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporation*¹). However, the High Court did not clarify the physical extent of what constitutes a natural wetland within the CMA. As a result, inconsistent application of the NES-F is occurring across New Zealand, based on differing interpretations of the extent to which the NES-F applies to the CMA.

Transpower's concerns primarily relate to ensuring Transpower can continue to undertake ongoing operation, maintenance and upgrade activities on existing assets, and construct new National Grid assets, including as required to meet New Zealand's climate change obligations and to adapt to climate change.

The National Grid operates on a national scale. Unclear national direction that is inconsistently applied across New Zealand is of concern to Transpower. It could result in inefficient consent processes and potentially lead to inadvertent compliance issues.

Accordingly, Transpower strongly agrees that amendment is required to clarify the extent to which the NES-F applies to the CMA, to ensure a consistent and clear application of the NES-F across New Zealand.

2. Do you agree with the proposal to amend the NES-F wetland provisions to no longer apply to the CMA?

Transpower agrees with the proposal to amend the NES-F wetland provisions to no longer apply to the CMA. This is because Transpower considers that the continued application of the NES-F to wetlands in the CMA will unnecessarily restrict activities on the Grid, create duplication or overlap with existing consent requirements under regional coastal plans, and result in inefficient and uncertain consent processes.

As set out in the discussion document, applying the NES-F wetland provisions in the CMA could prevent or constrain activities that are unlikely to cause the loss or degradation of natural wetlands. It is not appropriate to restrict activities from occurring where those activities are not likely to cause the loss or degradation of natural wetlands, because, as set out in the discussion document, this goes beyond the policy intent of the NES-F and will prevent appropriate coastal activities from occurring.

While the NES-F provides a consenting pathway for specified infrastructure activities, Transpower considers that the pathway provided under the NES-F is generally more onerous than provided for under relevant regional coastal plans. For example, the NES-F requires the application of the effects management hierarchy. Transpower considers it is not appropriate to impose a more restrictive consenting pathway, when those activities are already effectively and appropriately managed through regional coastal plans (which themselves give effect to the New Zealand Coastal Policy Statement (NZCPS)).

The National Environmental Standards for Electricity Transmission Activities (NESETA) 2009 regulates the maintenance and upgrading of existing transmission lines, and in particular manages construction activities, occupation of the CMA and access tracks to existing transmission lines but does not apply to earthworks that are subject to a regional rule. Many of the effects of specified infrastructure that the NES-F would seek to manage in coastal wetlands are therefore already appropriately and effectively regulated under NESETA and regional coastal plans.

Whau River, Auckland example

Transpower maintains National Grid infrastructure, including some assets in the CMA. An example of Transpower's operations in or near a coastal wetland being managed effectively and appropriately through regional coastal plans is the Whau River tower refurbishment.

¹ [2021] NZHC 3113.

This project was for maintenance/refurbishment works on the foundations of towers located in the CMA at the northern end of Whau River, Auckland. This work was necessary to address risks to the security of supply to north Auckland and extend the life of the towers.

Stage 1 of this project involved temporary strengthening of the towers and was undertaken under permitted activity rules in the NESETA, and existing global consents granted under the (then operative) Auckland Regional Plan: Coastal (**ARPC**) and the Auckland Unitary Plan (**AUP**). The activities that required consent included the discharge of contaminants to the CMA, vegetation removal and alteration, and disturbance of the foreshore and seabed. These activities were controlled, limited discretionary and discretionary activities under the ARPC and AUP.

Potential adverse effects of these activities were robustly assessed through the consenting processes, and consent was granted subject to conditions which have been shown to satisfactorily avoid, remedy or mitigate such effects.

The NES-F did not apply to these Stage 1 activities, given that existing coastal permits were held. However, if it had, then the creation of additional routes through the CMA to gain access to the towers would likely have required a resource consent for a restricted discretionary activity under Regulation 47. This would have added an unnecessary and onerous layer of regulation for effects already managed through other planning instruments.

Given the above, Transpower considers that activities undertaken within wetlands in the CMA should not be subject to the NES-F and should continue to be managed and regulated under the regional coastal plans, the NZCPS and section 12 of the Resource Management Act 1991, where relevant.

3. Do you think the wording changes proposed in the preferred option make it clear that the NES-F would no longer apply in the CMA?

Transpower considers that the Ministry's preferred option to amend the NES-F by replacing all references to "natural wetland" with "natural inland wetland," and define "natural inland wetland" in the NES-F by reference to the existing definition in the NPS-FM is appropriate and makes it clear that the NES-F would no longer apply in the CMA.

4. Are there any reasons to prefer other options?

The discussion document sets out three options:

1. Retain the status quo: The NES-F continues to apply to the CMA;
2. Option 1: Amend the NES-F to clarify where and how it applies to the CMA; and
3. Option 2: Amend the NES-F so its wetland provisions do not apply to the CMA.

As set out above, Transpower supports the Ministry's preferred option (Option 2).

Transpower does not prefer retaining the status quo for the reasons set out in response to question 1.

Transpower also does not prefer Option 1, for the reasons set out in response to question 2.

In addition, under Option 1 there would still be overlap between regional rules and the NES-F which could cause conflict, and difficulty in applying the relevant rules. Option 1 also appears to be very complex and would likely require significant guidance to ensure the new definition is appropriately applied. Further, as set out in the discussion document, while the NES-F is well structured to address risk to inland wetlands, it does not effectively address coastal risks specific to wetlands in the CMA. As Option 1 seeks to retain the application of the NES-F to coastal wetlands, this issue would not be addressed.

5. Is there any additional relevant information that you think the Ministry should consider?

The discussion document notes that a work programme is underway to provide better outcomes for estuaries, and that there will be scope to further consider protection for wetlands in the CMA. Transpower looks forward to being involved in this work stream to ensure an appropriate and workable framework.

We also note that this policy work will clarify the relationship between the NPS-FM and NZCPS and provide for better integration across freshwater and coastal management. Integration across all national direction, including the National Policy Statement for Electricity Transmission (as well as the NES-F and NESETA), is required so that national direction sets a consistent vision, and any tensions between NPSs and NESs can be resolved. This reconciliation is important, so the application of national direction is not open to continuous re-interpretation at a regional and district level.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Jo Mooar', with a long horizontal flourish extending to the right.

Jo Mooar
Senior Corporate Counsel