

4 August 2021

Chair and Members of the Select Committee
c/o Environment Committee Secretariat
Parliament Buildings
Wellington 6160

Dear Members of the Environment Committee

Transpower supports the resource management reforms and appreciates the opportunity to comment on an exposure draft of the Natural and Built Environments Bill.

The purpose of these reforms is a significant rebalancing. A rebalancing of objectives, of engagement with Te Ao Māori, of our national approach to planning rules, of the weight we give to the future, and the interests of younger New Zealanders, and future generations. It also involves a refocusing of public participation to appropriate times and at an appropriate scale. To support the reforms is to support this rebalancing.

Transpower strongly agrees that this is the right thing to do, and now is the right time to do it. We say this because the country faces the challenge of building infrastructure at a scale, and a pace, that is so significantly different from what this generation of New Zealanders has done to date.

The infrastructure challenge in the electricity sector is to deliver the investment required to support meeting our 2050 climate change goals. As we describe in our submission, if Aotearoa New Zealand is to meet its emission reduction targets by 2030 and 2050 then the electricity sector will need to produce and transport around 70% more renewable electricity than it does now. And it needs to do that starting now and keep this up for decades to come. For Transpower, this means a step change in the number and scale of projects we deliver on the ground to strengthen our existing infrastructure and extend it. For our electricity generators, it means a challenging number of new generation projects needed to connect to the Grid. Our distribution companies will have similar and different challenges as they service increasing housing and commercial development.

We are also aware of other infrastructure challenges in other sectors that are equally significant, such as housing, transport, and three waters. What is common is not just the scale of these infrastructure challenges, but their objectives. These investments need to be made in the interests of the well-being of New Zealanders, of the environment, and the well-being of future generations.

In short, we are at a moment in the history of Aotearoa New Zealand where what we all need – all New Zealanders – is delivery of infrastructure at a scale, and a pace, that is materially different from what we have been doing in recent years. And we need to sustain that delivery of infrastructure, in many forms, for the next couple of decades.

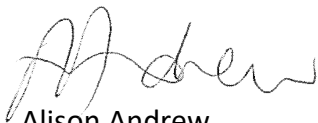
Our national commitment must be to deliver and maintain this infrastructure in a way that, as much as practicable, minimises impact on the environment. This involves recognising it is impossible for infrastructure, including the infrastructure that Transpower delivers, to avoid all sensitive environments or all impacts. That cannot hold us back. We have reached the point where, to achieve our environmental and intergenerational goals, we need to get the infrastructure in place and minimise impacts as we do so.

Some of the hard work on the policy and rules to facilitate this infrastructure delivery in our sector has already been done and is sitting in existing policy instruments. Key examples for us are the National Environmental Standards for Electricity Transmission Activities (NESETA) and the National Policy Standard on Electricity Transmission (NPSET). It is vital that this work be carried over into the new regime and used as a base for the reform effort – without our infrastructure, delivery will stall rather than accelerate; and if we go backwards from the existing regime, the challenge to achieving our climate change goals would become insurmountable. This is detailed in our submission and Transpower staff can work with officials to ensure the facilitative frameworks already in place are retained and improved. More generally, Transpower is available to assist in any way.

The rebalancing proposed by this reform is so important. We are aware that reform in this area is inherently contentious, and also seems to be inherently detailed. We appreciate the Minister, officials and select committee taking on this work.

As the work continues, we urge you to keep the reform objectives front of mind. A significant rebalancing is in the national interest. If, at the end of this lengthy process and everyone's hard work, we have achieved that rebalancing, then we will be better equipped to take on the challenges we face over the next couple of decades to improve outcomes for the environment, and current and future New Zealanders.

Yours sincerely,

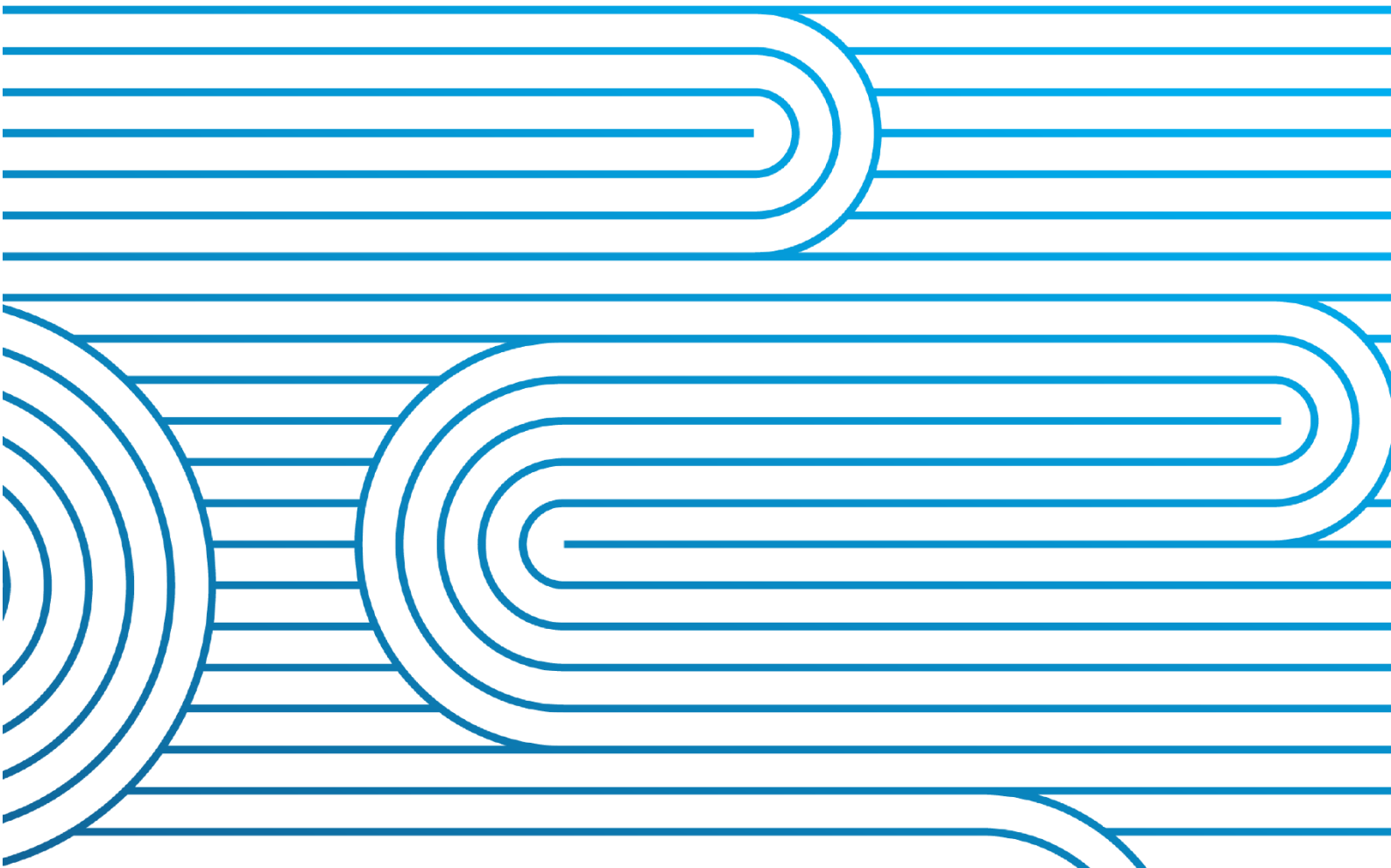
A handwritten signature in black ink, appearing to read 'Alison Andrew', written in a cursive style.

Alison Andrew
Chief Executive Officer

Natural and Built Environments Act Exposure Draft

Submission by Transpower New Zealand Limited

Date: 4 August 2021



Overview

Transpower New Zealand Limited (*Transpower*) welcomes this opportunity to provide feedback on the Natural and Built Environments Bill parliamentary paper (*Parliamentary Paper*) and exposure draft.

Our context

Transpower approaches the reform of our planning laws with a particular perspective, which is that Transpower and others in the electricity sector need to deliver an unprecedented amount of infrastructure investment over the next 30 years.

As is well established now, from the work of the Productivity Commission, Transpower, the Climate Change Commission and others, if Aotearoa New Zealand is to achieve its climate change objectives this will have to include moving a lot of economic activity off fossil fuels and onto renewable electricity within the next couple of decades. As a result, Transpower and others in the sector are contemplating how to meet a predicted 70% increase in electricity demand by 2050.

For the electricity sector to meet this level of demand increase will require existing generation and transmission assets to be well looked after, many more renewable generation projects built by generators, and for Transpower to both strengthen its Grid and put in place a lot more Grid connections to generators, distributors, and major users. Put simply, a lot more electricity generated and transported around Aotearoa New Zealand will be required than could be possible under the Resource Management Act 1991 (*RMA*) framework.

To illustrate the scale of the challenge, it is estimated that around 60-70 new connections to Transpower's Grid will be required in the next 15 years, with this trend continuing through to at least 2050. Each new Grid connection is a significant project. These Grid connections are in addition to the 10-20 major upgrades to the core Grid that will also be required before 2035 – again, each one is a major project.

These projects all need to be done at pace – they will need to be done in time to achieve our emissions budgets – first by 2025, then 2030, and finally by 2035. We do not have the luxury of the standard RMA timeline of 3-7 years for consenting, and obtaining any necessary property rights.

When we contemplate the infrastructure challenge of electrifying the economy, we can see that Transpower's use of the resource management system (which is already high) will substantially increase. Transpower will be heavily reliant on the effectiveness and efficacy of the resource management system if we are to deliver the infrastructure investment required.

To reiterate our starting point, this infrastructure challenge is a national challenge, and we believe its success is in the national interest. Successfully delivering the electricity infrastructure that will enable Aotearoa New Zealand to mitigate climate change and meet our climate change objectives is something that all New Zealanders, now and for generations to come, have an interest in. We see this as an example of a national and inter-generational objective that the planning system should enable.

Our support for reform

For that reason, we are a strong supporter of the current reform programme. We endorse the consensus that the system based on the RMA will not deliver what the country needs over the next several decades.

We also agree that as a country we have put off reform for as long as possible, and it can be deferred no longer. This raises the stakes in several ways. It is important that:

- this current reform programme proceed;
- we learn the lessons of what worked and did not work with the RMA system, as we do not have time to repeat mistakes; and
- we make the transition to the new system as quickly and smoothly as possible.

The reform must move us forward – and not take us backward. For Transpower, that means:

- retaining and enhancing the enabling policies of the National Policy Statement on Electricity Transmission (*NPSET*) – its recognition of the technical, locational and operational constraints of the Grid and policy pathway for locating in sensitive environments is critical. Reconciliation of competing policies in other National Policy Statements (*NPS*) must be resolved efficiently at national level.
- retaining and enhancing the National Environmental Standards for Electricity Transmission Activities (*NESETA*) – work to maintain and upgrade our existing assets would come to a stand-still without the *NESETA*.
- Retaining District Plan rules that restrict inappropriate activities (housing and intensive activities) around the Grid – our assets cannot be compromised. More efficient processes for obtaining these (now formulaic) rules will take us forward, rather than having repeated debates up and down the country.
- A careful transition – which keeps the infrastructure challenge front of mind.
- Faster, more efficient, processes for obtaining any necessary approvals – which recognises the national benefits of the Grid. A strategic approval process, which allows us to protect routes, or obtain approvals early, will go some way to ensuring the longer lead times of our infrastructure does not result in barriers for connections.

Transpower supports the central features of the proposed new system: a better expressed purpose with a greater role for Māori, a focus on outcomes, the introduction of environmental limits, the central role of a national planning framework, and the complementary role of the Strategic Planning Act (*SPA*) and Natural and Built Environments plans (*NBA Plan*). All of these elements front end and resolve conflicts rather than leaving that to the later consenting stages. This could establish a framework that breaks away from the current flaws in the RMA system.

We also share the concerns of other stakeholders that the art is in getting the specifics and the incentives right, and now is the time to do that. This will be the focus of our submission – contributing to the development of the central features of the proposed new system, so that they are as “right” as possible on day one.

Our areas of focus

In this submission we respond to both the material in the exposure draft Bill (in **Part D**), and the request for further recommendations (in **Part E**).

In our **Part D** response to the exposure draft Bill, our key areas of focus are:

- **The new outcomes approach:** Transpower supports the transformation of the planning system to a more positive “outcomes” approach, and the move away from the “effects management” approach of the RMA. We also strongly support the inclusion of specific outcomes recognising the importance of infrastructure and of addressing climate change (clauses 8(o), 8(j) and 8(p)).
- The NBA will identify several nationally significant outcomes (the exposure draft Bill includes 16). The intention is that the new legislation will give these outcomes equal priority, with the resolution of conflicts in the National Planning Framework (NPF) or in NBA Plans. *It is important that the Natural and Built Environments Act (NBA) explicitly provide that the outcomes are of equal priority.* The experience under the RMA is that, absent a clear statement of equal priority, the courts will fix onto minor differences in wording to create unintended hierarchies in the NBA as a way of resolving competing demands. The current wording of the exposure draft Bill makes it likely this experience will be repeated, to the detriment of infrastructure and climate change outcomes, which would defeat a major plank of the new reform.
- **The new NPF:** by establishing clear direction and rules at the national level the NPF will play a crucial role in ensuring the overall purpose of the NBA, and the reforms, is achieved. Transpower has been a high user of national direction under the RMA and using its experience, is keen that the potential of the NPF is realised. In that regard, we make the following suggestions:
 - existing national policy direction can be carried over and improved in the establishment of the NPF, facilitating the transition to the new system. In our sector, there is currently the NPSET, NESETA and a National Policy Statement for Renewable Energy Generation (NPSREG). Improved policies and a more comprehensive enhanced rule framework would be highly effective under the new NPF approach in providing for a nationally consistent approach to transmission activities, reducing process time and cost for all stakeholders;
 - the NBA should continue to require the NPF to include mandatory provisions on an outcome (including infrastructure), which must then be directly included in NBA Plans. This will allow for a step change in national consistency, and reduce the process time and cost at the local level, avoiding the same discussions being repeated up and down the country;
 - given the importance in setting direction under the new legislation, Transpower supports the government’s intention to prioritise development of the NPF and keep it under regular review. We support the use of a permanent independent body that could convene at different times to maintain consistency and integration across the different topics in the NPF. A lack of cohesion between national direction documents under the RMA has been a major failing.
- **Setting environmental limits:** Transpower recognises the need to introduce environmental limits, or bottom lines, for air, biodiversity, water, and soil. This initiative responds to one of the principal failings of the RMA.

- However, to risk stating the obvious, the challenge will be in setting the limits at the right level, *and* expressing the limits in a way that is firm enough to achieve the desired “bottom line” effect without being so absolute as to generate unintended consequences or rule out activities that should proceed.
- Two key considerations that will need to be worked through as the Bill is developed are:
 - when it comes to infrastructure projects, all effects cannot always be avoided. If framed too broadly, an absolute requirement to comply with limits could become a major barrier for climate change and infrastructure projects, particularly when viewed alongside the requirement to adopt the new “precautionary approach”;
 - the setting and application of environmental limits will need to recognise future generational wellbeing and national benefits, as well as the more immediate and local impacts. Limits set at the early stages of the new regime could impact on future, as yet unknown infrastructure activities, that would otherwise provide material benefits for climate change.

In our submission, we offer some suggestions to ensure these matters are addressed when setting and implementing limits:

- **Supporting horizontal/linear infrastructure:** the Grid is an example of horizontal, or linear, infrastructure. One of the features of transmission investment is that often a new project is needed to transport electricity from point A to point B, with only modest scope for flexibility on the route to be covered. Linear infrastructure, such as transmission lines, cannot always avoid all of their effects on the environments they pass through. Other infrastructure investment is of a similar character. Being able to consent and construct 90% of a line does not provide the service required. Further, avoiding an area by “going the long way around” or constructing one, or more dog-legs will result in greater impacts. To secure the benefits that flow from the new infrastructure, some effects or impacts on other outcomes (and the sensitive environments they protect, restore or enhance) will be unavoidable.
- A planning system that is intended to facilitate infrastructure investment, as the new NBA system must, will need to recognise infrastructure constraints when setting up the framework for reconciling competing outcomes and respecting environmental limits – there must be a way through for the Grid that allows management of effects on sensitive environments. In this submission, we highlight where the new system will need to allow for the nature of infrastructure investment. We are encouraged for example, by the proposed new definition of “mitigation”, which will enable greater use of offsetting and compensation.
- **Properly weighing amenity values and natural character:** Transpower supports the government’s objective to reduce the RMA’s prioritisation of existing amenity values, to recognise that environments need to change to allow society to grow sustainably. Approval processes under the RMA often give more weight to local and immediate impacts (as has occurred for wind farms, substations and transmission line projects), than to national and intergenerational benefits. While the reform intention to correct the approach to amenity considerations is clear, the NBA would benefit from more specific expression of that intent. Amenity and natural character cannot be allowed to inadvertently remain in the NBA, and be used by local communities to prevent or delay projects that enable climate change mitigation.

Part E of our submission responds to the request for further suggestions on system efficiencies. Our key recommendations, or support for the suggestions in Appendix B of the Parliamentary Paper, are (noting there are some overlaps with initiatives discussed in the exposure draft section):

- **Classification of infrastructure:** at the national level make existing infrastructure activities more permissive, and new “specified infrastructure” a controlled activity. This will help streamline consenting and delivery of investment in existing and new infrastructure.
- **Process for designations and consents:**
 - Retain the current distinction between consents and designations (which go further to restrict activities that would prevent or hinder the designated works, and provide landowner rights to access compensation);
 - Adjust the tests for designation decisions, which currently create unnecessary hurdles;
 - Provide for standard conditions for designations and consents, with a strong presumption these are used at the local level;
 - Provide national level direction on the appropriate level of information to be provided in decision-making processes, to set expectations of efficiency and consistency;
 - Check all proposed processes to confirm that public participation is targeted at the appropriate stage of an approval process, and is not repetitive. Public input and participation in an approval process is important, and it can be done once, at the right time, with the right level of information;
 - Retain an enhanced bespoke process for nationally significant infrastructure overseen by the standing independent infrastructure panel. This process should recognise the national significance and benefits of a project through the decision-making process, reduced information requirements and limited appeal rights.
- **Scope of designations and consents:**
 - Provide for longer default lapse periods for designations and consents, and for the ability to extend where the approval can be shown to still be needed (the current period of 5 years is too short in the infrastructure context);
 - Enable designations to cover rivers, lakes and the coastal marine area (CMA), as well as land where the infrastructure project traverses those areas, to facilitate a single process and a single assessment of the project;
- **National (“global”) consents:** provide for a new “global” consenting tool for activity that is carried out frequently, occurs at multiple sites around the country, and is done in accordance with established industry practices. Tree works and works done in road corridors are examples where this mechanism would be effective;
- **Strategic planning for infrastructure:** a new regime for strategic infrastructure that is known, planned for, and can be specifically integrated into the new SPA and NBA regimes, including route designation and protection at the initial strategic stage;
- **Future nationally significant infrastructure:** a regime that recognises not all nationally significant infrastructure will be known in advance of the preparation of the Regional Spatial Strategies (RSS). This could be similar to the current initiatives to use a dedicated “one stop shop” approvals process. This process can be improved from the RMA version with firm time expectations, a standing independent panel on infrastructure, information requirements tailored to the process and timeframes, and limited appeal rights.
- **Other legislation:** streamline and remove unnecessary parallel approval processes under legislation, such as the Heritage New Zealand Pouhere Taonga Act 2014, the Public Works Act 1981 (PWA) and the Conservation Act 1987.

Structure of this submission

The remainder of this submission is structured in the following parts:

- Part A: Introduction to Transpower and the National Grid;
- Part B: Further context on climate change and the electrification challenge;
- Part C: Transpower's experience operating under the RMA and what we seek from the new system;
- Part D: Response to the exposure draft Bill;
- Part E: Response to the request for further suggestions on efficiencies;
- Part F: Transition issues; and
- Part G: Strategic Planning Act.

General

Transpower appreciates the release of the Parliamentary Paper and Exposure Draft for comment. This has been very helpful, and we acknowledge it involves an additional step for officials and the select committee.

Our experience with planning legislation is that the precise wording can have implications that resonate through the years of implementation. This Exposure Draft stage is an important opportunity to get the drafting of the new legislation right in a way that is not possible in a standard process. As a result, our submission is more comprehensive and detailed than would ordinarily be the case. This is intended to be constructive and we hope it is helpful. We would be happy to discuss any points raised in this submission.

Transpower wishes to be heard by the Select Committee.

The contact details for Transpower in relation to this submission are:

Jo Mooar, Senior Corporate Counsel, Transpower New Zealand Ltd
Joanne.Mooar@transpower.co.nz
04 590 6060

Contents page

OVERVIEW	1
Our context	1
Our support for reform	2
Our areas of focus	3
Structure of this submission	6
General	6
CONTENTS PAGE	7
PART A: INTRODUCTION TO TRANSPOWER AND THE NATIONAL GRID	9
PART B: FURTHER CONTEXT ON CLIMATE CHANGE AND THE ELECTRIFICATION CHALLENGE	11
The need for an energy transformation	11
Anticipating the increase in demand	12
The scale of the challenge for Transpower	12
Least regrets decision-making	13
PART C: TRANSPOWER'S EXPERIENCE OPERATING UNDER THE RMA AND WHAT WE SEEK FROM THE NEW SYSTEM	16
Transpower is a heavy user of the RMA	16
What Transpower needs from the reform	17
PART D: RESPONSE TO THE EXPOSURE DRAFT BILL	19
Purpose and related provisions / Part 2 of the Exposure Draft	19
Environmental Limits – Part 2 of the Exposure Draft	25
Environmental Outcomes – Part 2 of the Exposure Draft	29
National Planning Framework – Part 3 of the Exposure Draft	35
Natural and Built Environments Plans – Part 4 of the Exposure Draft	45
Preliminary provisions / Part 1 of the Exposure Draft	51
PART E: RESPONSE TO THE REQUEST FOR FURTHER SUGGESTIONS ON EFFICIENCIES	57
Consequential amendments to other legislation	58
Resource consents and designations	58
Approvals processes for consents and designations	61
Strategic Approvals Process	62
PART F: TRANSITION ISSUES AND RECOMMENDATIONS	65
National direction	66
NBA Plans	66
Approvals	67
PART G: STRATEGIC PLANNING ACT	69
What content will spatial plans contain?	71
What is the process for developing spatial plans?	73
Where do spatial plans sit in the hierarchy? What influences them? What influence do they have?	74

APPENDIX 1: GLOSSARY	75
APPENDIX 2: VEGETATION TRIMMING REGIME	76



Part A: Introduction to Transpower and the National Grid

Transpower is central to New Zealand’s electricity industry. As both owner of the high voltage transmission network (*the National Grid*) and System Operator, our purpose is to empower the energy future for New Zealand – *Whakamana i te mauri hiko, tū mai Aotearoa*.

Transpower’s role as Grid Owner is to reliably and efficiently transport electricity from where it is generated to some large electricity users and the distribution companies that deliver it to homes and businesses all over the country. As System Operator, we operate a competitive electricity market in real time to ensure electricity is flowing to where it is needed, 24 hours a day, 7 days a week.¹

Transpower provides an essential service for the good of all New Zealanders. As a State-Owned Enterprise, our principal objective is to operate as a successful business. We do this in a socially responsible way by having regard to the interests of the communities in which we operate and delivering services that are in the long-term benefit of electricity consumers.²

Figure 1 illustrates Transpower’s role in the energy system. We are not electricity generators or retailers but could be considered a “freight company” or “highway” for high voltage electricity.

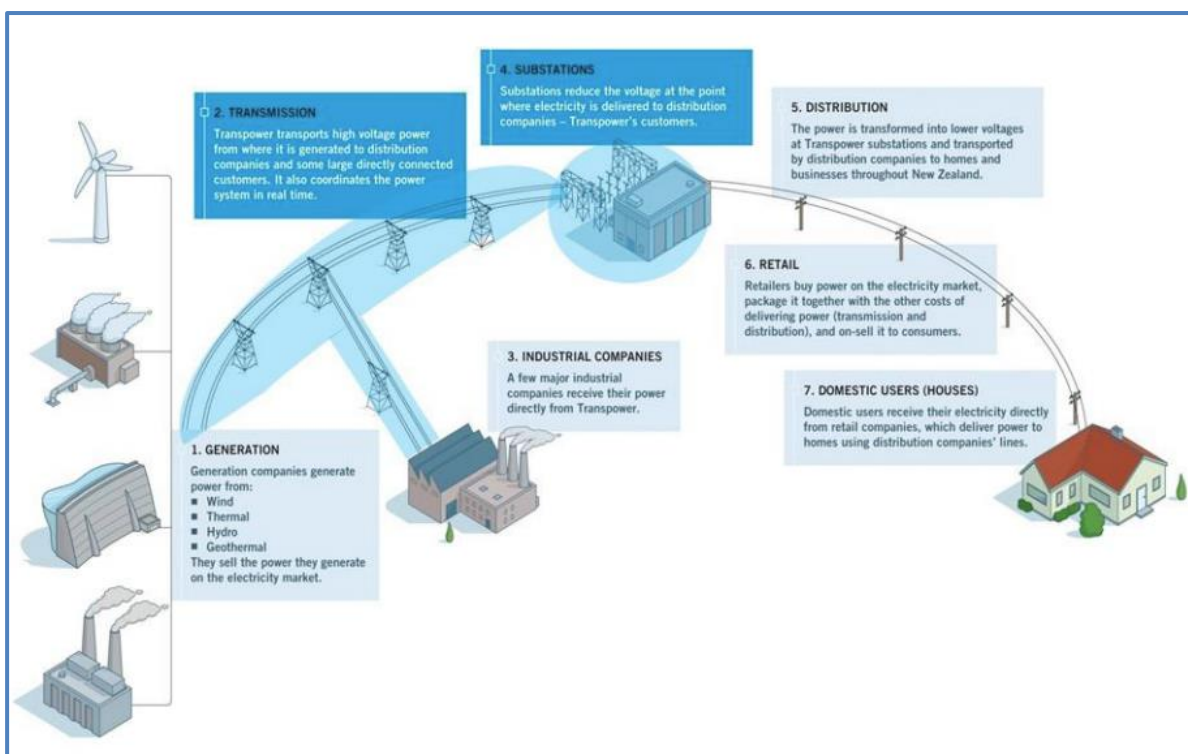


Figure 1 – Role of Transpower in the energy system

¹ [Transpower Statement of Corporate Intent, 2021, p3.](#)

² State-Owned Enterprises Act 1986, s 4; Commerce Act 1986, Part 4.

The National Grid runs the length of the country, from Kaikohe in the North Island to Tiwai in the South Island. It is an extensive, linear, and connected system of ~11,000 km (route length) of transmission lines (aerial, underground and undersea) and over 170 substations across the country. This infrastructure is supported by a telecommunications network of some 300 telecommunication sites, which help link together and communicate with the components that make up the National Grid. **Figure 2** shows the extent of the National Grid across New Zealand.

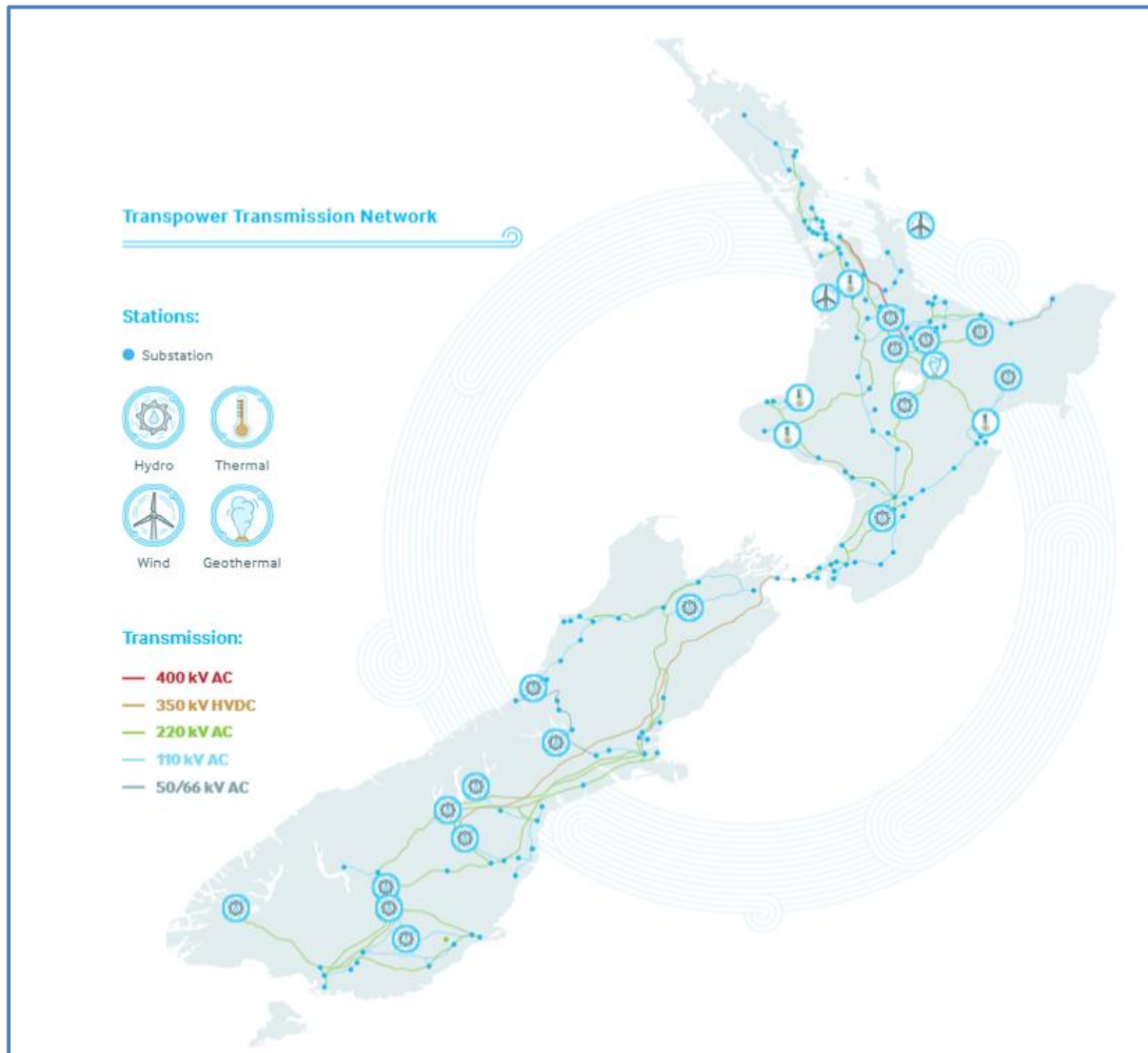


Figure 2 – National Grid extent

The bulk of the National Grid was built around 60 years ago and comprises most of the 110kV and 220 kV lines throughout New Zealand, along with the High Voltage Direct Current (HVDC) link between the North and South Islands.

Prudent investment, long term transmission planning strategies, and innovation are crucial to ensuring we utilise existing assets and build new infrastructure as efficiently as possible. A resource management system that enables us to operate, maintain and develop the National Grid as needed, is essential for us to power New Zealand’s present and future generations.

Part B: Further context on climate change and the electrification challenge

The need for an energy transformation

Aotearoa New Zealand is embarking on an ambitious journey to achieve net zero carbon emissions by 2050. The government has made its commitment to decarbonisation through the Climate Change Response (Zero Carbon) Amendment Act 2019 (*Zero Carbon Act*).

Organisations such as the Productivity Commission, Interim Climate Change Commission (ICCC), Ministry of Business Innovation and Employment, and the Electricity Authority have investigated how we meet this target. There is a consensus that electrification of the energy sector provides one of the lowest cost opportunities to decarbonise our economy.

The Climate Change Commission in its most recent “*Advice to the New Zealand Government*” has echoed these findings. The Commission’s advice is that Aotearoa New Zealand will need to transform its energy system to meet its recommended emissions budgets, and increase renewable electricity generation significantly to meet industry and transport needs.³

To ensure the rapid and sustained build of low-emissions electricity required to meet the necessary increase in demand for electricity, the Climate Change Commission also highlighted the importance of RMA processes and other national and local government instruments aligning with the required pace for build.⁴

Aotearoa New Zealand needs to be ready for the energy transformation that is coming. The National Grid’s role in enabling the electrification and decarbonisation of the New Zealand economy is, and will continue to be, critical. New connections to major users – particularly to enable the decarbonisation of transport and process heat – will be needed. A modern, flexible and resilient National Grid will need to provide a safe and secure supply to industrial and residential consumers under a wider-than-ever range of operating conditions.

Transpower has supported the response to climate change through its own strategic work:

- In June 2018, Transpower’s [Te Mauri Hiko – Energy Futures](#) project looked at how the energy system might develop to drive the decarbonisation of the economy;
- In December 2018, Transpower released [Transmission Tomorrow](#) its strategy for the long-term decarbonisation of New Zealand’s economy;
- In March 2020, Transpower released its blueprint for a decarbonised economy [Whakamana i Te Mauri Hiko – Empowering our Energy Future](#); and
- In February 2021, Transpower published its [Electrification Roadmap](#). This work focuses on policy options to accelerate emissions reductions in the transport and process heat sectors.

³ Climate Change Commission (2021). *Ināia tonu nei: a low emissions future for Aotearoa*. Available from www.climatecommission.govt.nz, page 153.

⁴ *Ibid*, at page 281.

Anticipating the increase in demand

The electrification of process heat and transport is expected to reach a turning point during the 2025-2030 period, due to a combination of policy, declining technology costs, and social expectations on business. It is imperative that Transpower is ready to meet this growth in demand by 2025.

In addition to its ongoing investment in the National Grid backbone identified by *Whakamana i Te Mauri Hiko*, in response to electrification of process heat and transport, Transpower will need to deliver new substations for distribution companies to serve their consumers. Many of these new substations may require new lines. In order to deliver the volume of new demand side connections required from 2020 to 2035, consenting timeframes need to be dramatically reduced and the consenting framework needs to be more nimble.

Some large process heat users may require direct connection to the Grid if they electrify. As these industrial facilities may not be located within close proximity to the existing Grid, and are unlikely to relocate their operations, this conversion will also require new transmission lines. Extended consenting timeframes and uncertainty act as a strong disincentive to convert, given the impact on profitability and commercial operations.

This new electricity demand will need to be met by new low carbon generation sources in order for electrification to be successful.

Although distributed electricity generation will grow,⁵ many large-scale, Grid-connected renewable power stations will be needed (as well as repowering of existing stations) to meet the forecast increase in electricity demand.

Generators which harvest renewable energy must be located wherever renewable resource is available. Therefore, new transmission lines must be built to connect renewable generators to the National Grid and ultimately to consumers.

The scale of the challenge for Transpower

The transformation to a predominantly electrified economy is not theoretical - it is already happening. Transpower has experienced a surge in connection requests, including significant levels of national and international inquiry from potential generation developers interested in investing in New Zealand.⁶

Our recent modelling forecasts a need for 60-70 new Grid scale connections between 2020 and 2035, comprising 30-40 electricity generation connections and 30 connections to accommodate increased electricity demand due to electrification. This represents an average of close to five new connections per year, a significant increase above the connection workload that Transpower has delivered since the introduction of the RMA in 1991.⁷

⁵ Distributed generation refers to electricity that is generated at or near where it will be used (eg solar panels on a house).

⁶ Transpower (2020) *Whakamana i Te Mauri Hiko: Empowering our Energy Future*, available at <https://www.transpower.co.nz/resources/te-mauri-hiko-energy-futures>, page 45, as updated by recent modelling.

⁷ Ibid.



Furthermore, modelling from *Whakamana i Te Mauri Hiko* identifies that there will need to be 10-20 large Grid upgrade projects (>\$20M each) by 2035 to accommodate this increase in demand and supply.⁸ This projection also represents a significant increase in required work relative to the 1991-2019 period. The relative scale of activities required over the coming years is illustrated in **Figure 3**.

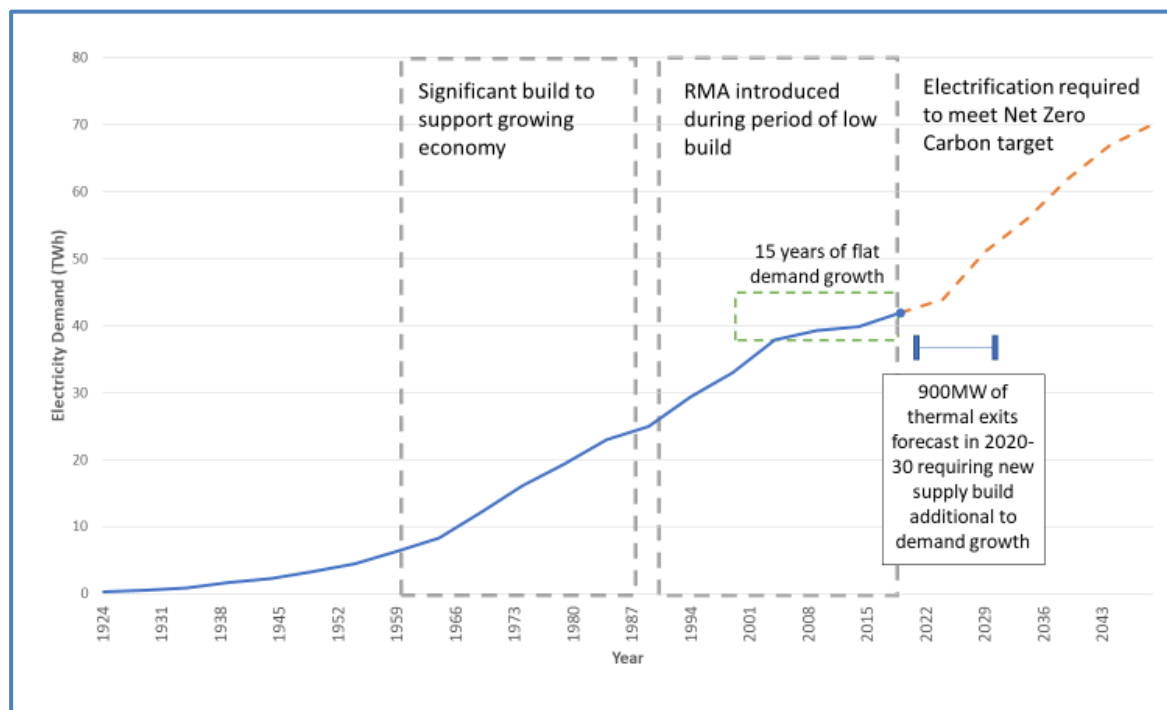


Figure 3: Illustration of increase in work volume from 2020 to 2050

Least regrets decision-making

In *Whakamana i Te Mauri Hiko* we identified that the development of a long-term transmission system plan would promote “least regrets” decisions in delivering a pathway towards greater renewable energy generation and the electrification of the wider economy. We are calling that plan *Net Zero Grid Pathways*.⁹ The project has two phases - enhancing the existing Grid backbone to 2025 and investing in a larger Grid backbone with new interconnections beyond 2035. As uncertainty still remains regarding the timing of market entrants and exits, we have taken a “least regrets” approach to investment in the next five years, with a number of tactical lower cost upgrades planned to maximise the value of the existing Grid. While these investments will deliver significant value, the project also plans for later phases, where more substantial longer-term investments will be needed as electrification of the economy grows.¹⁰ **Figure 4** below indicates our phase 1 investments.

⁸ Ibid.

⁹ Ibid, page 13.

¹⁰ Transpower (2021) Net Zero Grid Pathways: Phase One to 2035. See <https://www.transpower.co.nz/NZGP>.

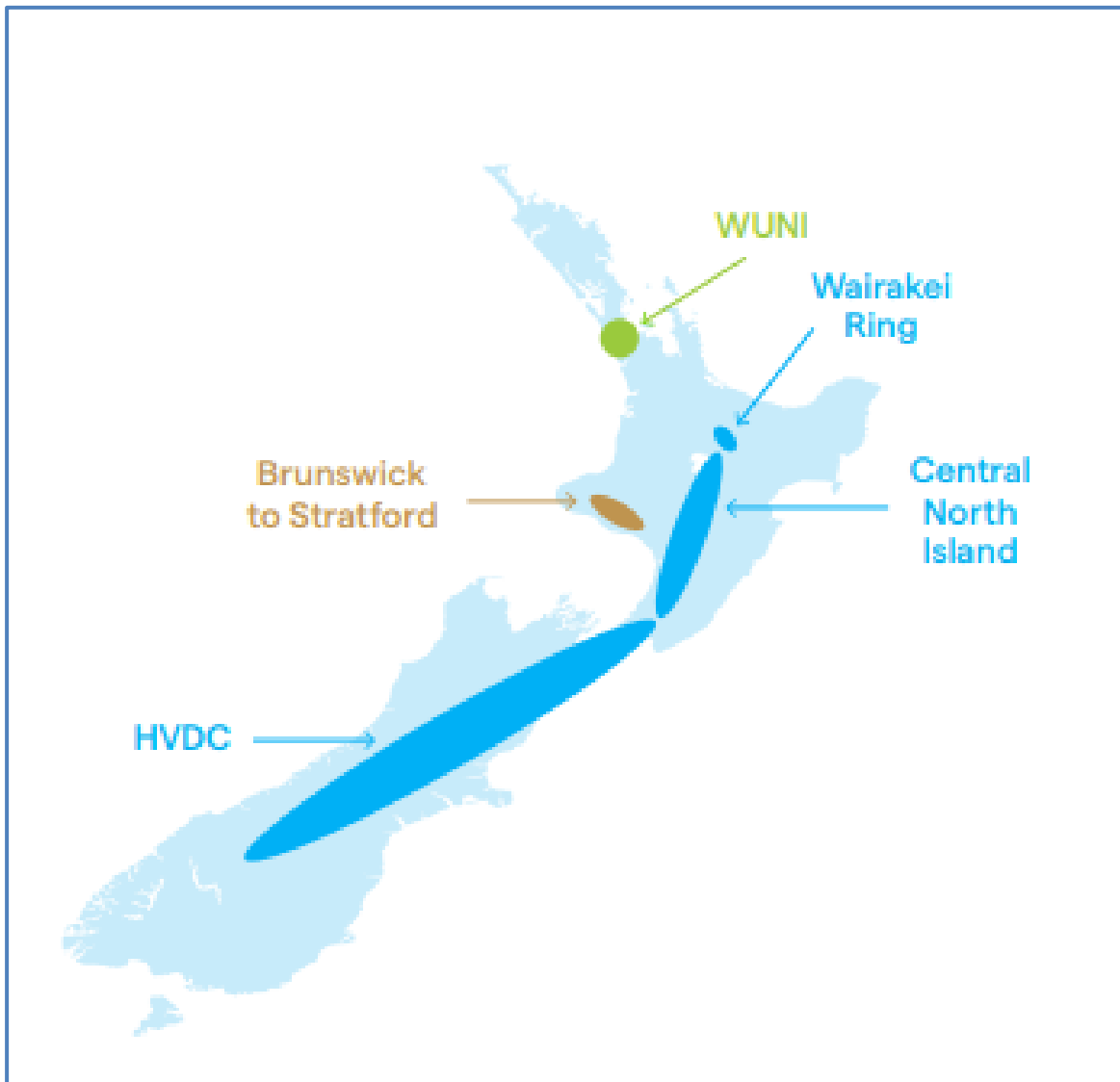


Figure 4: Net Zero Grid Pathways Phase 1 Investments

It is not just the increased volume of connections and the required pace needed to deliver these that is an issue for Transpower. In recent years, Transpower has connected predominantly geothermal and wind generation. For these technologies, the development timeline of the power plant is longer than the development timeline for their connection to the Grid.

In the future, new technologies such as solar, batteries, electric boilers, and heat pumps will be able to be deployed faster than their connection to the Grid. For example, the 100MW Hornsdale battery deployed in Australia was completed by Tesla in 63 days following contract signing. In these instances, the Grid connection would become the bottleneck to the commissioning of these projects. It is therefore important that both the generation and transmission (currently governed in the RMA framework by the NPSREG and the NPSET) are considered and revised together.

The specific challenges for Transpower under the RMA are the time, costs, uncertainty and scale of the regulatory process required to a) provide new lines and connections and b) ensure Transpower is able to effectively and efficiently maintain, upgrade and protect its existing assets. Such challenges pose a potential risk to Transpower being able to support the transition to a predominantly electrified economy.

The Productivity Commission's *Low-emissions economy* report,¹¹ finds that the NPSREG has made no difference to the time, complexity and cost of obtaining consents for renewable generation, and resource consenting processes are likely to hinder expansion of renewables.¹² It states that investments in the National Grid and distribution networks will be needed to complement the expansion of renewable generation.¹³ The Productivity Commission recommended that the Government:¹⁴

... give priority to revising both the NPSREG and the NPSET to ensure that that local authorities give sufficient weight to the role that renewable electricity generation and upgrades to the transmission network and distribution grid will play in New Zealand's transition to a low-emissions economy. This will likely require making the language of the NPSREG and the NPSET more directive, and to be more explicit about how the benefits of renewable electricity generation should be recognised and given effect in regional and territorial authority planning instruments.

Meeting the climate change challenge will require coordinated action by policy makers, regulators, generators, electricity distribution businesses and consumers of all sizes, including industry. Transpower therefore strongly supports the Government's resource management reform objective to "*better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change*".

¹¹ New Zealand Productivity Commission (2018). *Low-emissions economy: Final report*. Available from www.productivity.govt.nz/low-emissions.

¹² *Ibid*, page 401-402.

¹³ *Ibid*, page 403.

¹⁴ *Ibid*, Recommendation 13.3.

Part C: Transpower's experience operating under the RMA and what we seek from the new system

Summary

The National Grid is heavily regulated under the RMA. This is because the Grid spans all parts of New Zealand and primarily involves large transmission lines and substations. Grid activities can impact property and sensitive environments. The lines and equipment also carry high safety risks for people working or living near them if strict standards are not met. These features create inevitable conflicts and an array of competing interests.

The resource management requirements for the Grid are currently managed by several RMA national instruments, regional and district plans, consent and designation processes, as well as overlapping approvals under several other pieces of legislation.

Aspects of the RMA have worked reasonably well for Transpower. It is very important that the new regime carry forward the positives. Key benefits of the RMA are the NESETA, which has streamlined both day to day activities, and large scale reconductoring¹⁵ of the existing lines that form the backbone of the electricity system and significant upgrades (where we take the opportunity to add additional or larger wires to meet future needs). The NPSET has provided a reasonable degree of national level policy support for National Grid activities – it allows Transpower to *seek to avoid*, rather than outright *avoid* sensitive environments. The designation tool is also a very important method to approve projects (and to enable the compulsory acquisition, where necessary).

The poorest performing aspects of the RMA which need to be urgently addressed, relate to the many planning and approvals processes and the complexity, inefficiency and inconsistency that comes with that.

Transpower seeks greater use of national level tools and more efficient consenting processes. Given the climate change challenges ahead, it is very important that the reform does not put Transpower in a worse situation than the present.

Transpower is a heavy user of the RMA

Transpower's assets traverse all local authorities, other than Gisborne, Westland and Kaikoura Districts, and the Chatham Islands. Transpower also has a continuous programme of work to maintain and enhance, as well as protect, its assets throughout the country.

As a result, Transpower is a heavy user of the RMA and has had substantial experience in all RMA processes, including:

¹⁵ Reconductoring is when we replace the wires on the line. This generally occurs every 40-60 years.

- Using the nationally significant project / Board of Inquiry pathway for its North Island Grid Upgrade project;
- Being a party to several processes under the Special Housing Areas Act;
- Making use of the listed project track, and obtaining Ministerial approval for a referred project, under the Covid-19 fast-track consenting processes;
- Benefiting from the Grid-specific National Policy Statement and National Environmental Standard (NES) – to both enable and protect our infrastructure;
- Being a major submitter in the fast-tracked planning processes for the Christchurch Replacement Plan and Auckland Unitary Plan;
- Being a submitter on multiple planning documents in the local authorities where our assets are located. Over the last 5 years, we have participated in over 40 regional and district planning processes across New Zealand. Since 2013, Transpower has spent in excess of \$14 million on this activity; and
- Obtaining designations and resource consents through Council processes and Environment and High Courts.

What Transpower needs from the reform

Transpower has had both good and bad experiences of the RMA. The good need to be retained, the bad removed or made efficient.

The particular initiatives that Transpower seeks to “put on the table” at this stage of the reform process are set out in further detail in later sections of this submission. At a high level, Transpower seeks a “front ended” system which embraces the good aspects of the national policies, standards and rules that support and enable the National Grid. This system needs to:

- ensure that the planning outcomes for the National Grid are consistent across the country, both for National Grid activities and the activities that occur close by. The NESETA must be retained throughout the transition, and equivalent, but enhanced, provisions included in the NPF (or be standalone, as they are now). Without the NESETA essential works on the Grid would come to a standstill.
- ensure NPSET corridor provisions in district plans (to protect the Grid) are retained, and ideally included in the NPF in a manner that means they automatically take legal effect without repeated debates at NBA Plan level.
- ensure a policy pathway for the Grid – which recognises the technical, locational and operational constraints of the Grid and enables Transpower to “seek to avoid” sensitive environments (“avoid” is not always practicable). The NPSET plays this role now, and also needs to be retained through the transition, and enhanced through the NPF.
- better reconcile tensions between nationally important infrastructure outcomes with other important outcomes (such as sensitive environments) at the highest level, including the NPF. It also needs to narrow the debates that can occur at the consenting stage.

Figure 5 below varies the image from page 14 of the Parliamentary Paper. It highlights the practical difficulties of building a transmission line between fixed points – in this case an existing transmission line and proposed generation – with an “area of significance to be protected” in between. While the image is fictitious, the challenges of avoiding sensitive environments is not –

this scenario will happen time and time again and needs to be addressed. The “front end” of the system (NBA limit setting and NPF policies and rules) must get the balance right.

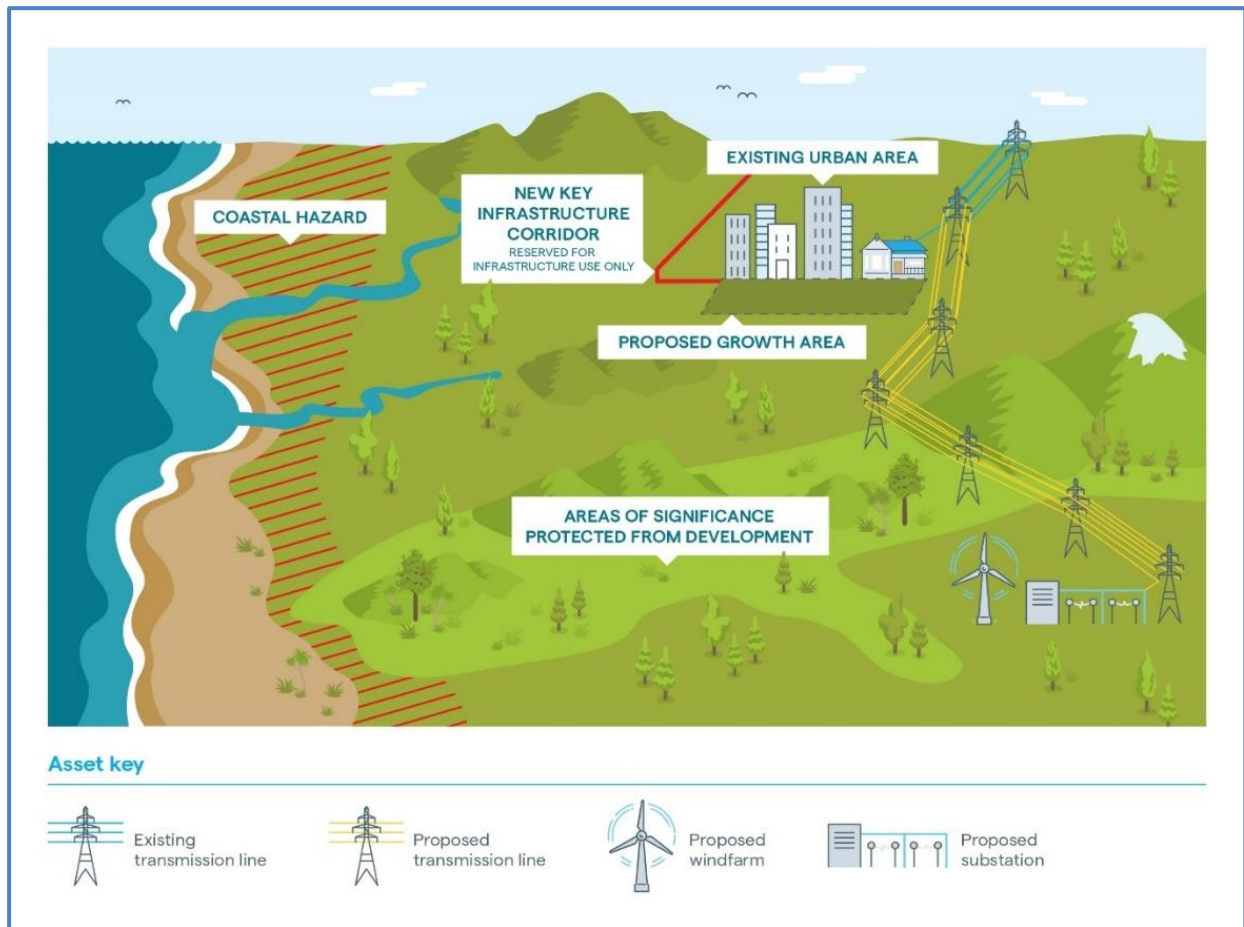


Figure 5: Inability for linear infrastructure to “avoid” all sensitive environments

Transpower also seeks faster, more efficient approvals processes, which better recognise the national benefits of transmission infrastructure, take a much longer strategic approach and focus on the things that matter in the decision-making tests (see **Part E** of our submission).

Finally, we seek more proportionate public participation, with involvement at the planning stages (NBA Plans, NPF and RSSs), but far less involvement at the consenting stages when it comes to nationally important infrastructure. To that extent, Transpower strongly supports the de-prioritisation of amenity in resource management decision-making. Such issues are given inappropriate weight and attention in current RMA processes.

Part D: Response to the Exposure Draft Bill

The new system is proposed to consist of the NBA, along with the SPA and Climate Adaptation Act (CAA). It will be important that all three pieces of legislation work together well as a system to ensure efficiencies, no undue repetition or gaps, and achieve the objective of the resource management system reforms. A later section of this submission specifically addresses the SPA.

The following sections provide Transpower's comments on the contents of the NBA exposure draft and other parts of the NBA system that we consider will be essential to ensure the new regime is efficient, proportionate and simple. We identify the provisions that Transpower supports and the provisions that, as drafted, may impact the achievement of the reform objectives. We also provide comments on drafting.

Purpose and related provisions / Part 2 of the Exposure Draft

Summary

- The drafting of the clause 5 purpose is reasonably complex, with a number of new concepts compared to the RMA. It could be tightened to improve workability and minimise scope for interpretative argument.
- The reference to “environment” in clause 5(1)(b) is supported, as it encompasses the built environment, which includes infrastructure.
- Transpower considers that clause 5(2) should be broadened to refer to “use, development and protection” (not merely “use”). These broader concepts are important - the Grid needs to be protected from inappropriate third party activities, and new assets need to be established.
- Transpower acknowledges the increased role for Māori in the proposed new system is a key reform objective. This objective is partly addressed through the new concept of Te Oranga o te Taiao and the requirement to “give effect to” the principles of Te Tiriti o Waitangi. Given the new and relatively broad nature of these matters, it will be important that the mechanisms to achieve them are clarified through later processes and provisions to ensure practical implementation.
- Transpower's comments on environmental limits and environmental outcomes, are addressed in the next section of **Part D** of our submission. Some specific drafting suggestions are noted below.

The following table provides Transpower's comments on the proposed drafting of clauses 5 and 6:

Exposure Draft	Transpower comments	Drafting suggestions
<p>5 Purpose of this Act</p> <p>(1) The purpose of this Act is to enable—</p> <p>(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and</p> <p>(b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the well-being of future generations.</p>	<p>In general, Transpower does not support or oppose the new purpose. It notes that the drafting is reasonably complex, with a number of layers created by subclauses (1), (2) and (3) and their various components. The new purpose will attract scrutiny.</p> <p>Further, there are various provisions in the exposure draft that refer back to the purpose of the NBA, using different language (eg. “to achieve the purpose” and “to further the purpose”) while some provisions have no reference back to the purpose. The reference back to the purpose of the NBA seems unnecessary and has resulted in many interpretation issues under the RMA. In accordance with the Interpretation Act, all provisions will be interpreted by reference to the purpose.</p> <p>Some drafting considerations to improve workability are noted below:</p> <p>Subclause (1)(a): This subclause introduces the new concept of “Te Oranga o te Taiao”. Although this concept is defined in subclause 3, the definition is inclusive and therefore uncertainty remains about its scope, and what it means to “enable” this concept to be “upheld”. It includes, but means more than, “protecting and enhancing the natural environment” with its references to relationships and interconnectedness. Amendments are proposed to assist to clarify this concept and how it is to be applied.</p> <p>Subclause (1)(b): This subclause reflects, in many ways, the first part of clause 5(2) RMA with its focus on people and communities and wellbeing. However, a key difference is the limited scope of the word “use” compared to the words ‘use, development, and protection’. Transpower considers these broader concepts are critical. For example, the protection of the</p>	<p>5 Purpose of this Act</p> <p>(1) The purpose of this Act is to enable—</p> <p>(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and</p> <p>(b) people and communities to use, <u>develop, and protect</u> the environment in a way that supports the well-being of present generations without compromising the well-being of <u>and</u> future generations.</p>

Exposure Draft	Transpower comments	Drafting suggestions
	<p>National Grid from third party effects is critical to maintaining electricity supply to communities. Further, “use” may be read as being limited to existing infrastructure assets, whereas “development” of new assets is essential to achieve New Zealand’s net-zero climate change target.</p> <p>As noted earlier, while clause 5(1)(b) is intended to focus on the use of natural and physical resources the definition of wellbeing and the reference to future generations means elements of environmental protection are reflected in clause 5(1)(b) as well as clause 5(1)(a).</p> <p>The reference to “environment” in clause 5(1)(b) is critical, as it encompasses the built environment and other factors, as well as the natural environment. The use, development and protection of the National Grid infrastructure components of the built environment are critical to wellbeing.</p> <p>Transpower supports the reference to both present and future generations in clause 5(1)(b), with this concept being important for addressing long term climate change issues (among others). However, we are concerned that “support” is given to the wellbeing of present generations, but the wellbeing of future generations must not be compromised – which we assume is a lesser requirement.</p> <p>The drafting of clause 5 in the February 2021 Cabinet Paper was “...to support the wellbeing of present and future generations...”. Transpower prefers this requirement, as it requires positive support for future generations.</p>	

Exposure Draft	Transpower comments	Drafting suggestions
<p>(2) To achieve the purpose of the Act,—</p> <p>(a) use of the environment must comply with environmental limits; and</p> <p>(b) outcomes for the benefit of the environment must be promoted; and</p> <p>(c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.</p>	<p>Subclause 2(a): Transpower’s substantive comments on environmental limits are addressed below in relation to section 7. The word “comply” in subclause 2(a) is a change from the word “within [biophysical] limits” used in the February 2021 Cabinet Paper. In Transpower’s view, both terms could be read as too strong and directive to allow flexibility to accommodate certain activities. Transpower anticipates the intent is to enable existing uses and activities and/or specified important activities to be accounted for when setting environmental limits. Accordingly, the criteria used for setting limits needs to reflect this intention.</p> <p>Subclause 2(b): Outcomes are addressed in further detail below, in the context of section 8. The language used in subclause (2)(b) has changed from “<i>positive outcomes for the environment are identified and promoted</i>” in the February 2021 Cabinet Paper. The proposed drafting introduces uncertainty through the phrase “for the benefit of the environment”. Transpower preferred the previous wording in the Cabinet Paper, as it was more certain.</p> <p>The retention of this phrase could also perpetuate an effects-based approach into the NBA, particularly as the new approach is untested in New Zealand. This issue could be managed by further clarifying the outcomes based approach and the role of effects management through the NPF and NBA Plans, as well as guidance to industry.</p> <p>Subclause 2(c): This drafting also illustrates how amenity effects will be squarely within the ambit of the legislation (being “any” adverse effect) despite the intention to deprioritise amenity.</p>	<p>(2) To achieve the purpose of the Act,—</p> <p>(a) use of the environment must comply with environmental limits; and</p> <p>(b) outcomes for the benefit of the environment must be promoted <u>positive outcomes for the environment are identified and promoted; and</u></p> <p>(c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.</p>

Exposure Draft	Transpower comments	Drafting suggestions
<p>(3) In this section, Te Oranga o te Taiao incorporates—</p> <ul style="list-style-type: none"> (a) the health of the natural environment; and (b) the intrinsic relationship between iwi and hapū and te taiao; and (c) the interconnectedness of all parts of the natural environment; and (d) the essential relationship between the health of the natural environment and its capacity to sustain all life. 	<p>The definition of “Te Oranga o te Taiao” is inclusive, therefore creating an openness as to the edges of the concept.</p> <p>The Parliamentary Paper explains that “Te Oranga o te Taiao” is intended to encapsulate the intergenerational importance of the health and wellbeing of the natural environment.¹⁶ As drafted, the definition could be improved to more clearly express that intention. There is no mention of intergenerational wellbeing (compare proposed subclause 1(b)).</p> <p>The Interim Regulatory Impact Statement on Reforming the resource management system (<i>Interim RIS</i>) explains that the concept is intended to represent a common environmental ethic for Aotearoa/New Zealand.¹⁷ While subsection 3(b) recognises the relationship between iwi/hapū and te taiao, recognition of the relationship between all people and te taiao is not so clearly expressed. In the proposed definition of “environment”, people and communities are addressed in (b) and therefore more closely related to the built environment than the natural environment.</p> <p>As noted earlier, amendments and guidance would assist to clarify this concept and how it is to be applied.</p>	<p>(3) In this section, Te Oranga o te Taiao <u>is incorporates</u>—</p> <ul style="list-style-type: none"> (a) the <u>intergenerational importance of the health and wellbeing</u> of the natural environment; and (b) the intrinsic relationship between iwi and hapū, and te taiao; and (c) the interconnectedness of all parts of the natural environment; and (d) the essential relationship between the health of the natural environment and its capacity to sustain all life. <p>Consider how the recognition of the relationship between all people and te taiao can be better provided for.</p>

¹⁶ Ministry for the Environment (2021). Natural and Built Environments Bill: Parliamentary paper on the exposure draft, paragraph 96.

¹⁷ Treasury (2021) Regulatory Impact Assessment: Interim Regulatory Impact Statement: Reforming the resource management system, page 67.

Exposure Draft	Transpower comments	Drafting suggestions
<p>6 Te Tiriti o Waitangi</p> <p>All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi.</p>	<p>It is recognised that this section implements the reform objective of <i>“giv[ing] effect to the principles of Te Tiriti o Waitangi and provid[ing] greater recognition of te ao Māori, including mātauranga Māori”</i>.</p> <p>Nevertheless, the broad nature of Te Tiriti principles means that the requirement to “give effect to” those principles may be a challenging concept for users of this legislation to grapple with.</p> <p>The Parliamentary Paper suggests this requirement will be realised in the new system through various mechanisms.¹⁸ Transpower agrees it will be important the NBA clearly sets out those mechanisms so that users of the new legislation understand what is required of them in practice. This clarity will improve implementation efficiency, particularly when the legislation first comes into effect.</p>	<p>No drafting suggestions.</p>

¹⁸ Ministry for the Environment (2021). Natural and Built Environments Bill: Parliamentary paper on the exposure draft, paragraph 105.

Environmental Limits – Part 2 of the Exposure Draft

Summary

- Transpower does not oppose the concept of environmental limits, provided the process for setting them is clarified to ensure that they do not prevent the achievement of other important outcomes, such as climate change mitigation and infrastructure. Environmental limits should be set with an appropriate level of flexibility to enable important activities and achieve outcomes while complying with the limits.
- The scope of compulsory environmental limits to be set through the NPF should be confined to clearly described topics through the NBA, so people are aware of what they can be used for.
- To increase national consistency and certainty and reduce local debate, environmental limits should be set as much as possible through the NPF. The opportunity for setting limits at a local level should be very narrow.
- Environmental limits should not be set for subjective, amenity and aesthetic related matters and this should be explicitly stated through the NBA.

The following table provides Transpower's comments on the proposed drafting on clause 7:

Exposure Draft	Transpower comments	Drafting suggestions
7 Environmental limits	<p>The process for setting environmental limits needs to be further clarified to ensure they are sufficiently cognisant of, and do not prevent, the achievement of other important outcomes. To illustrate, if set without consideration of climate change mitigation and infrastructure outcomes, the strict application of environmental limits could prevent some new projects that are necessary to electrify the economy and remove some existing renewable electricity generation capacity.</p> <p>It is also noted that the Parliamentary Paper refers to work underway to explore how the NBA can help progress emissions reduction goals under the Climate Change Response Act 2002 (CCRA). Transpower supports this</p>	<p>Consider adding a new section that sets out the mandatory criteria the Minister must consider when setting limits, including that the following are able to be achieved:</p> <ul style="list-style-type: none"> • the target, emissions budgets and emissions reduction plans under the CCRA; and • the operation, maintenance, upgrading and development of

Exposure Draft	Transpower comments	Drafting suggestions
	<p>concept and considers that one way to achieve it is to make such considerations expressly relevant to the limit setting process.</p> <p>Further, based on the current draft provisions, there is a risk limits could be prescribed in a manner that prioritises short term and local impacts (e.g. immediate/local biodiversity impacts of electrification projects) over long term/national impacts (e.g. biodiversity impacts of climate change or climate change mitigation more generally).</p> <p>Transpower would therefore support a further decision-making criteria provision outlining the limit setting process. This process would require consideration of whether, and how, the setting of a limit could impact the achievement of other important national outcomes, including for example, by requiring limits to support and not preclude:</p> <ul style="list-style-type: none"> the achievement of the 2050 climate change target, emissions budgets and emissions reduction plans under the CCRA; and the operation, maintenance, upgrading and development of nationally and regionally significant infrastructure where such infrastructure has locational or technical constraints. 	<p>nationally and regionally significant infrastructure where such infrastructure has locational or technical constraints.</p>
<p>(1) The purpose of environmental limits is to protect either or both of the following:</p> <p>(a) the ecological integrity of the natural environment:</p> <p>(b) human health.</p>	<p>Based on comments made in the definitions section below, Transpower seeks clarification that “ecological integrity” expressly includes mitigation. That way, limits could be set with some flexibility to allow important activities while complying with the relevant limit.</p>	<p>See comment below on “ecological integrity” definition.</p>

Exposure Draft	Transpower comments	Drafting suggestions
<p>(2) Environmental limits must be prescribed—</p> <p>(a) in the national planning framework (see section 12); or</p> <p>(b) in plans, as prescribed in the national planning framework (see section 25).</p>	<p>Transpower supports proposed subsection (2) as it confines the scope of documents that may prescribe limits.</p> <p>Allowing local authorities to set more stringent standards than those prescribed by the Minister, as proposed in the February 2021 Cabinet Paper,¹⁹ would add considerable uncertainty, and could perpetuate issues with regional policy/planning debates. The opportunity for locally set limits should therefore be very narrow.</p>	No drafting suggestions.
<p>(3) Environmental limits may be formulated as—</p> <p>(a) the minimum biophysical state of the natural environment or of a specified part of that environment;</p> <p>(b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.</p>	<p>The <i>New Directions for Resource Management in New Zealand Report of the Resource Management Review Panel (Panel Report)</i> recommended the use of targets alongside limits to help focus effort on achieving outcomes. This more positive focus would require consideration of whether an activity helps or hinders a target from being reached in determining its appropriateness.</p> <p>Subclause 3(b): Consistent with its earlier comments on limits, Transpower generally supports the acknowledgement that some harm or stress to the natural environment may be permissible when it supports other important outcomes. Transpower envisages that this concept, and the additional limit setting criteria proposed, will work together to ensure that limits are set with an appropriate degree of flexibility to accommodate such outcomes.</p>	No drafting suggestions.
<p>(4) Environmental limits must be prescribed for the following matters:</p>	<p>The proposed drafting of subclause (4) has removed some of the detail contained in the February 2021 Cabinet Paper and therefore creates uncertainty as to the scope of limits. For example, “the quality, level and flow of freshwater” has changed to “freshwater”. Similarly, “the quality and</p>	Consider being more specific about what the scope of the mandatory limits.

¹⁹ Ministry for the Environment February (2021), Cabinet Paper – Reforming the Resource Management System, page 33.

Exposure Draft	Transpower comments	Drafting suggestions
(a) air: (b) biodiversity, habitats, and ecosystems: (c) coastal waters: (d) estuaries: (e) freshwater: (f) soil.	extent of terrestrial and aquatic habitats for indigenous species” has changed to “biodiversity, habitats, and ecosystems”. The current proposed drafting is open and will create uncertainty as to the scope of environmental limits that <u>must</u> be prescribed. Transpower considers more detail is required to confine the compulsory topics for which limits must be prescribed, noting that limits may be prescribed for other matters within the scope of clause 7(1). Confining the scope of compulsory limits will also assist with the efficient establishment of the NPF.	
(5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in subsection (1) .	As noted, Transpower also considers that limits should not be created for subjective, amenity and aesthetic related matters (such as landscape or natural character areas). Such limits would be a significant barrier to new climate change mitigation and infrastructure projects. The bar should be made explicit in this section.	(5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in subsection (1) , <u>subject to no limits being allowed for amenity and/or aesthetic purposes</u> .
(6) All persons using, protecting, or enhancing the environment must comply with environmental limits.	This provision appears out of place. It is expected that the NBA will include provisions similar to Part 3 of the RMA that will identify when activities can and cannot occur. Those provisions would seem the more appropriate location to address what happens if an activity cannot meet limits.	No drafting suggestions.
(7) In subsection (3)(a) , biophysical means biotic or abiotic physical features.	No comment	No drafting suggestions.

Environmental Outcomes – Part 2 of the Exposure Draft

Summary

- Transpower supports the move to an outcomes-based approach and suggests further guidance on how to use this new concept would assist practitioners.
- The intent of the outcomes is that they have equal footing. However, the language used suggests some are more important than others. For example, as currently drafted, natural environment outcomes could take precedence over climate change and infrastructure outcomes. Such an interpretation could create substantial barriers to necessary infrastructure. The lack of a hierarchy between the environmental outcomes needs to be made more explicit. Unintentional differences in language and terminology should be avoided to minimise confusion and arguments as to interpretation and meaning.
- Transpower supports the use of the phrase “must promote” in clause 8, as it acknowledges that outcomes are not absolute.
- Transpower strongly supports a specific outcome for infrastructure. We also support the outcome explicitly linking transmission to necessary renewable energy activities. This infrastructure outcome should require the protection of existing infrastructure, as well as providing for the operation, maintenance and upgrade of existing infrastructure and enabling the development of new infrastructure.
- Transpower supports a stronger and more directive outcome addressing emissions and reductions.
- Transpower supports conflicts between the outcomes being reconciled as much as possible through the NPF. This approach will reduce the need for extensive engagement in regional level processes (NBA Plans and RSSs) and limit project/consent stage resolution of conflicts.

The following table provides Transpower’s comments on the proposed drafting of clause 8:

Exposure Draft	Transpower comments	Drafting suggestions
8 Environmental outcomes To assist in achieving the purpose of the Act, the national planning framework and	Transpower considers it is very important that clause 8 is not interpreted to create a hierarchy where some outcomes trump the other outcomes. Such an approach would be overly simplistic and would not recognise the complexities of environmental management.	8 Environmental outcomes <u>(1)</u> To assist in achieving the purpose of the Act, the national planning framework and all plans

Exposure Draft	Transpower comments	Drafting suggestions
<p>all plans must promote the following environmental outcomes:</p>	<p>Instead, the NPF is the appropriate location to reconcile potential conflicts between outcomes.</p> <p>The Parliamentary Paper acknowledges that the outcomes will inevitably conflict. Transpower agrees, based on its own experience. Linear infrastructure, such as National Grid transmission lines, cannot always avoid all of their effects on the environments they pass through (environments that are subject to other outcomes in clause 8).</p> <p>However, a key risk with the verbs used in the outcomes is that, based on current Supreme Court case law, natural environment outcomes could take precedence over climate change and infrastructure outcomes.</p> <p>As discussed below, the wording used in section 13 suggests that there is a hierarchy between outcomes, with some viewed as mandatory and others not. It appears that this prioritisation is not deliberate as the Interim RIS acknowledges the outcomes are intended to have equal weighting. The introduction to clause 8, "...plans must promote the following environmental outcomes", which is also used in section 5, is also helpful in acknowledging the outcomes are not absolute. Transpower seeks that the must promote language in both sections be retained. Transpower also proposes a further provision to clarify the intention.</p> <p>If the verbs issue is not addressed, Transpower has concerns that prioritisation of natural environment values could create substantial barriers to necessary infrastructure.</p>	<p>must promote the following environmental outcomes:</p> <p>...</p> <p><u>(2) For the purposes of this Act, no outcome in section 8(1) is assumed to take priority over another.</u></p>

Exposure Draft	Transpower comments	Drafting suggestions
	To ensure clarity as to the role of conflict resolution being undertaken in the NPF and NBA Plans, Transpower considers an explicit statement is required to make clear that “no outcome in section 8 is assumed to take priority over another”. To further assist, the outcomes of particular interest to Transpower can also be amended by providing more directive statements, as noted below.	
<ul style="list-style-type: none"> (a) the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved (b) ecological integrity is protected, restored, or improved: (c) outstanding natural features and landscapes are protected, restored, or improved: (d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved: (e) in respect of the coast, lakes, rivers, wetlands, and their margins,— <ul style="list-style-type: none"> (i) public access to and along them is protected or enhanced; and (ii) their natural character is preserved: 	<p>To illustrate the point made about clause 8 generally, the language used for these outcomes (“protected, restored, or improved”) is highly directive.</p> <p>Transpower supports the removal of the outcome “enhancement of features and characteristics that contribute to the quality of the natural environment” (contained in the February 2021 Cabinet Paper). This outcome was very broad, and would likely have created a high barrier to development (as it could require every activity to “enhance” the natural environment).</p>	No drafting suggestions.

Exposure Draft	Transpower comments	Drafting suggestions
<p>(f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected:</p> <p>(g) the mana and mauri of the natural environment are protected and restored:</p> <p>(h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values:</p> <p>(i) protected customary rights are recognised:</p>	<p>Transpower simply notes that there are a range of new terms and differing verbs used in these outcomes, which would benefit from greater consistency and further guidance as to meaning to aid implementation efficiency.</p> <p>For example, the cultural heritage outcome (clause 8(h)) is a change in direction to the focus on historic heritage in RMA section 6(f). The proposed definition of “cultural heritage” very closely matches the RMA definition of “historic heritage”. However, the specific addition of cultural landscape is new and, if interpreted broadly, could apply over large areas, posing similar issues as overly rigid environmental limits for infrastructure.</p>	<p>No drafting suggestions.</p>
<p>(j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere:</p>	<p>Transpower supports an outcome addressing emissions. The direction to “reduce” greenhouse gas emissions is helpful, but lacks strength. Given the importance of this issue, it is essential the direction is at least as strong as that used in other outcomes. To achieve that strengthening, and to give certainty as to how to meet it, this outcome should provide for integration with the emissions budgets and emissions reduction plans prepared under the CCRA.</p> <p>The outcome “promotion of activities that mitigate emissions or sequester carbon” was included in the February 2021 Cabinet Paper. This outcome was important as it captured activities that may contribute to mitigation without directly reducing emissions. For</p>	<p><u>(j) Activities that mitigate greenhouse gas emissions or sequester carbon are promoted to reduce greenhouse gas emissions in a way that is consistent with the emissions budgets and emissions reductions plans set under the Climate Change Response Act 2002.</u> are reduced, and there is an</p>

Exposure Draft	Transpower comments	Drafting suggestions
	<p>example, a National Grid connection will not reduce emissions directly, but will enable other activities to reduce emissions. Amendments are needed to ensure the greenhouse gas outcome (s 8(j)) captures indirect as well as direct reductions in emissions. Further clarity could be provided through a more specific outcome and Transpower has offered some preliminary drafting for consideration.</p>	<p>increase in the removal of those gases from the atmosphere,;</p>
<p>(k) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting—</p> <ul style="list-style-type: none"> (i) the use of land for economic, social, and cultural activities: (ii) an increase in the generation, storage, transmission, and use of renewable energy: 	<p>Transpower strongly supports a specific outcome for infrastructure. The current drafting can however, be improved. Protecting existing, and enabling new, infrastructure is critical to the wellbeing of people and communities. Transpower considers that the outcome should be reworded to require the protection of existing infrastructure, as well as providing for and enabling the operation, maintenance and upgrade of existing infrastructure and development of new infrastructure.</p> <p>The use of the word “ongoing” in infrastructure outcome (clause 8(o)) seems to indicate the maintenance of existing services (that is, the status quo) rather than the development of new or upgraded services. However, the use of the word “increase” in clause 8(o)(ii) seems to preclude the maintenance//use of existing infrastructure.</p> <p>The proposed drafting also focuses on “infrastructure services,” however it is the infrastructure itself that needs to be enabled before any such services can be provided.</p> <p>The outcome refers to the wellbeing of people generally, but should also refer to the current <u>and</u> future wellbeing of people and</p>	<p>(o) <u>protect and enable ongoing maintenance and upgrade of existing infrastructure and infrastructure services and provide for and enable provision of new infrastructure and infrastructure services to support the current and future well-being of people and communities, including by supporting—</u></p> <ul style="list-style-type: none"> i. the use of land for economic, social, and cultural activities: ii. an increase in the generation, storage, transmission, <u>distribution</u> and use of renewable energy:

Exposure Draft	Transpower comments	Drafting suggestions
	<p>communities in order to recognise the importance of planning for infrastructure strategically over the long term.</p> <p>Infrastructure outcome clause 8(o)(ii) is supported in part as it seeks to address all parts of the energy system (although distribution could to be added, either generally, or at scale). It is important this outcome addresses the energy system, and not just the end use of energy. The electricity system is complex and an individual project for transmission may not necessarily achieve an end use-focused outcome. For example, a project may not result in the increase of supply but fixes a security of supply issue.</p>	
<p>(p) in relation to natural hazards and climate change,—</p> <ul style="list-style-type: none"> (i) the significant risks of both are reduced; and (ii) the resilience of the environment to natural hazards and the effects of climate change is improved. 	Transpower supports this outcome.	No drafting suggestions

National Planning Framework – Part 3 of the Exposure Draft

Summary

Transpower strongly supports integrated direction at a national level through the NPF. The NPF will play a crucial role in ensuring that the environmental outcomes and the overall purpose of the NBA are achieved and conflicts are resolved efficiently.

Transpower strongly supports the NPF including mandatory provisions to be directly inserted into NBA Plans and which restrict the scope of what those plans can cover to reduce process costs and local debates.

Experience with using existing national direction for transmission (NPSET and NESETA) provides a good starting point for the NPF's development. There are many aspects of existing national direction that are working well and should be retained. There are also areas which can be further enhanced and improved to address the new NBA outcomes.

Given the importance of the NPF for the whole system, the process for confirming and reviewing it must be robust and integrated and also efficient.

Transpower supports the use of a permanent independent body that could convene at different times to maintain consistency and integration across different topics in the NPF.

Transpower strongly supports the intention of the NBA to provide integrated direction at a national level through the NPF. There are a number of issues with the national direction provided through the existing system (recognising also that there are many aspects of existing national direction that are working well and should be retained). Transpower considers the NPF can be a significant forwards step from the NPSET and NESETA to enhance and modernise those documents, using the learnings from their many years of implementation:

- It can provide better direction for nationally significant outcomes.
- It can provide national consistency where appropriate, as has been the case for transmission assets under the RMA.
- Importantly, the NPF can assist with resolving conflicts where there are competing outcomes at stake.
- The NPF can substantially reduce the local debates, which prolong consent processes and create substantial uncertainty for project proponents.
- The NPF will play a crucial role in ensuring that the environmental outcomes and the overall purpose of the NBA are achieved.

Not introducing national direction early under the RMA and then producing it for specific issues on an ad hoc and siloed basis has often been described as one of the primary failings of the RMA. The NPF provides a huge opportunity to address these failings, remedy current system inefficiencies and set up the entire NBA framework for success.

It will be important that consolidation of policies into one document does not result in an overly high-level framework, and less specific direction.

Transpower considers that the following key matters must be addressed through the development of the NPF and be reflected in the NBA provisions.

Implementation process

The NPF must be robust and integrated, which appears to generally align with the thinking recorded in Schedule 1 of the Parliamentary Paper. To ensure this outcome Transpower considers that a single decision making body should be tasked with considering submissions on the draft NPF and making decisions on it. The decision-making body should also consider integration across the NPF and make consequential amendments. Given the importance of the NPF, it is crucial that the decision-making body be independent, objective and have relevant and leading expertise across a range of disciplines. Transpower considers that the NPF should be processed through a Board of Inquiry or similar process.

Transpower appreciates the need to prepare and implement the NPF quickly and potential delay that a public submission process would likely create. However, due to the importance of the NPF in the overall implementation of the NBA and potential influence on NBA Plans (and potentially RSSs), Transpower considers that there should be an opportunity for submissions on the NPF. However, this process should be limited through the NBA and appeal rights should be restricted (for example to points of law).

To ensure the NPF is up-to-date and fit-for-purpose, it should be reviewed and amended every 9 years using a permanent or standing independent body that is ideally similarly constituted to the original Board that decided the NPF (as described in the Parliamentary Paper).²⁰ However, more regular reviews should also be initiated where required (e.g. to respond to new challenges, or technologies). A clear process for review is required. This process should set out mandatory, regular reviews by an independent and expert body as well as provide for “out of time” reviews where an issue with the existing NPF is identified. Out of time reviews should be able to be initiated by NPF users in certain circumstances (similar to the existing RMA private plan change process), subject to the permanent or standing independent body’s discretion.

Careful consideration should be given to transitional provisions relating to the NPF and existing national direction. It is unclear what the status of existing national direction will be, and whether it will be inserted into the NPF or otherwise addressed in the transitional provisions. At the very least Transpower supports interim recognition of the NPSET and NESETA (and the National Environmental Standards for Telecommunication Facilities, which are also used for some Grid projects), and until the NPF is operative and contains policies and rules to enable the National Grid.

Conflict resolution

The lack of cohesion between existing national direction results in conflicts, interpretation issues, litigation and the continued “watering down” of what was intended to be comprehensive national direction for the National Grid. The lack of integration between national direction instruments is becoming (and will continue to be) an increasing issue as further instruments come into effect.

Public participation has become overly repetitive through the planning hierarchy and disproportionate. In some cases, local interests have inappropriately outweighed national benefits.

Related to the last point, the significant value of existing infrastructure is not always adequately acknowledged and third party development is continually seeking to establish in inappropriate locations, adding risks of reverse sensitivity and compromising of existing assets.

²⁰ Ministry for the Environment (2021). Natural and Built Environments Bill: Parliamentary paper on the exposure draft, paragraph 168.

Current national direction does not sufficiently enable other important infrastructure (such as State highways, the rail network and the electricity distribution network), and climate change mitigation activities (eg. due to the weak policies in the NPSREG).

Natural environment values and attributes have been prioritised over, and to the detriment of, infrastructure, including nationally significant infrastructure.

As already noted, there are existing issues, gaps and inefficiencies in the NPSET and NESETA. The NPF process is an opportunity to address the current failings.



The following table provides Transpower's comments on the proposed drafting on clauses 9-18:

Exposure Draft	Transpower comments	Drafting comments
9 National planning framework (1) There must at all times be a national planning framework. (2) The national planning framework— (a) must be prepared and maintained by the Minister in the manner set out in Schedule 1; and (b) has effect when it is made by the Governor-General by Order in Council under section 11.	<p>Transpower supports the direction in clause 9(1) that there be a NPF at all times. However, in reality there will be a transitional period between the enactment of the NBA and prior to the NPF having legal effect. The NBA must provide clear transitional provisions, as discussed in more detail in Part F below.</p> <p>See above for Transpower's comments on key requirements for the Schedule 1 process.</p>	No drafting suggestions.
10 Purpose of national planning framework The purpose of the national planning framework is to further the purpose of this Act by providing integrated direction on— (a) matters of national significance; or (b) matters for which national consistency is desirable; or (c) matters for which consistency is desirable in some, but not all, parts of New Zealand.	<p>Transpower supports mandatory content for matters of national significance, which it considers should include the National Grid. It also supports, an enhanced version of the NESETA, and development of nationally consistent provisions that manage third party activities near transmission lines.</p>	No drafting suggestions
11 National planning framework to be made as regulations (1) The Governor-General may, by Order in Council made on the recommendation of the	<p>Transpower supports a clear framework for the NPF.</p> <p>Transpower considers that the use of various words in subclause 3(a) and (b) may cause uncertainty. For example, "goals" may be viewed as deliberately different to</p>	No drafting suggestions, but consider and refine the terms needed for the new regime.

Exposure Draft	Transpower comments	Drafting comments
<p>Minister, make the national planning framework in the form of regulations.</p> <p>(2) The regulations may apply—</p> <p>(a) to any specified region or district of a local authority; or</p> <p>(b) to any specified part of New Zealand.</p> <p>(3) The regulations may—</p> <p>(a) set directions, policies, goals, rules, or methods:</p> <p>(b) provide criteria, targets, or definitions.</p> <p>(4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</p>	<p>“outcomes” (of the NBA) and “objectives” (which have been of plans).</p>	
<p>12 Environmental limits</p> <p>(1) Environmental limits—</p> <p>(a) may be prescribed in the national planning framework; or</p> <p>(b) may be made in plans if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees.</p> <p>(2) Environmental limits may be prescribed—</p> <p>(a) qualitatively or quantitatively:</p> <p>(b) at different levels for different</p>	<p>Use of “may” in clause 12(1)(a) contradicts the use of “must” in clause 7(2)(a). The section should be amended to require environmental limits to be prescribed in the NPF, and to ensure that environmental limits are set in NBA Plans only if prescribed in the NPF.</p> <p>See also Transpower’s earlier general comments on clause 7 regarding environmental limits and the concerns regarding using “qualitative” prescriptions. Transpower acknowledges there may be circumstances where limits require a degree of professional judgment (eg. water clarity) but considers such</p>	<p>12 Environmental limits</p> <p>(1) Environmental limits—</p> <p>(a) may <u>must</u> be prescribed in the national planning framework; or</p> <p>(b) may <u>must</u> be made in plans <u>only</u> if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees.</p>

Exposure Draft	Transpower comments	Drafting comments
circumstances and locations.	categories should be clearly set out rather than enabling an open-ended discretion to impose qualitative limits.	(2) Environmental limits may be prescribed— (a) qualitatively or quantitatively (and not qualitatively): (b) at different levels for different circumstances and locations.
<p>13 Topics that national planning framework must include</p> <p>(1) The national planning framework must set out provisions directing the out-comes described in—</p> <p>(a) section 8(a) (the quality of air, freshwater, coastal waters, estuaries, and soils); and</p> <p>(b) section 8(b) (ecological integrity); and</p> <p>(c) section 8(c) (outstanding natural features and landscapes); and</p> <p>(d) section 8(d) (areas of significant indigenous vegetation and significant habitats of indigenous animals); and</p> <p>(e) section 8(j) (greenhouse gas emissions); and</p>	<p>As noted in relation to clause 8, it is important that none of the outcomes are viewed as trumping the other outcomes. Transpower acknowledges that some of the clause 8 outcomes will not relate to matters of national significance or matters for which national consistency is desirable, and that they will need to be addressed in the NBA Plans. Transpower is comfortable that the mandatory list of outcomes in clause 13 that must be included in the NPF covers its requests for national direction as set out in this submission.</p> <p>That said, the NPF should provide clear guidance and clarification to resolve conflicts between NBA outcomes as much as possible. The Parliamentary Paper says, “<i>where possible, the NPF will resolve conflicts, or give direction on resolving conflicts across the system</i>”.²¹ The direction in clause 13(3) to “help” resolve conflicts does not appear to emphasise the importance of achieving this outcome. The NBA must provide strong direction, through the NPF to</p>	<p>Consider strengthening the role of the NPF in providing comprehensive national direction.</p> <p>(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8.</p>

²¹ Ministry for the Environment (2021). Natural and Built Environments Bill: Parliamentary paper on the exposure draft, paragraph 45.

Exposure Draft	Transpower comments	Drafting comments
<p>(f) section 8(k) (urban areas); and</p> <p>(g) section 8(l) (housing supply); and</p> <p>(h) section 8(o) (infrastructure services); and</p> <p>(i) section 8(p) (natural hazards and climate change);.</p> <p>(2) The national planning framework may also include provisions on any other matter that accords with the purpose of the national planning framework, including a matter relevant to an environmental outcome provided for in section 8.</p> <p>(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8.</p>	<p>resolve conflicts. Leaving this conflict resolution to NBA Plans, or for consideration on a case-by-case basis through approval processes will perpetuate many of the existing problems with the RMA system. The requirement to resolve conflicts through the NPF wherever possible must be directive, comprehensive and strong.</p> <p>If the NPF does not provide direction and this is left to be managed through various NBA Plans, this will result in expansive planning processes across the country. The entire resource management community will effectively have to commit to (and resource) 10 years or more on planning processes to ensure the NPF is given effect.</p>	
<p>14 Strategic directions to be included</p> <p>The provisions required by sections 10, 12, and 13 must include strategic goals such as—</p> <p>(a) the vision, direction, and priorities for the integrated management of the environment within the environmental limits; and</p> <p>(b) how the well-being of present and future generations is to be provided for within the relevant environmental limits.</p>	<p>There appears to be overlap between clause 14 and clause 11, with similar concepts or requirements encompassed in both, but described in different terms.</p> <p>Clarification is required about the difference between both sections, to ensure the NPF framework is clear.</p>	<p>Consider and refine the terms needed for the new regime.</p>

Exposure Draft	Transpower comments	Drafting comments
<p>15 Implementation of national planning framework</p> <p>(1) The national planning framework may direct that certain provisions in the framework—</p> <ul style="list-style-type: none"> (a) must be given effect to through the plans; or (b) must be given effect to through regional spatial strategies; or (c) have direct legal effect without being incorporated into a plan or provided for through a regional spatial strategy. <p>(2) If certain provisions of the national planning framework must be given effect to through plans, the national planning framework may direct that planning committees—</p> <ul style="list-style-type: none"> (a) make a public plan change; or (b) insert that part of the framework directly into their plans without using the public plan change process; or (c) amend their plans to give effect to that part of the framework, but without— <ul style="list-style-type: none"> (ii) inserting that part of the framework directly into their plans; or (iii) using the public plan change process. 	<p>Transpower strongly supports the NPF including mandatory provisions for the National Grid to have legal effect without having to be incorporated into an NBA Plan (clause 15(1)(c)), or otherwise be directly inserted into NBA Plans. Placing clear parameters on the scope of NBA Plans and restricting these to local matters will create huge efficiencies in the plan making process.</p> <p>The NBA should be directive about the timeframes in which key provisions must be implemented through NBA Plans. Waiting for such provisions to be enacted through a plan change process will create unnecessary delay.</p> <p>The NPF should also be clear as to the interrelationship between it and the RSSs and the interrelationship between RSSs and NBA Plans.</p>	<p>No drafting suggestions.</p>

Exposure Draft	Transpower comments	Drafting comments
(3) Amendments required under this section must be made as soon as practicable within the time, if any, specified in the national planning framework.		
16 Application of precautionary approach In setting environmental limits, as required by section 7, the Minister must apply a precautionary approach.	<p>This clause should be relocated to Part 2 of the NBA, to sit with the other clauses in relation to the setting of environmental limits. It is not appropriate to apply just to the NPF. There is also a risk that the precautionary approach is applied over and over, given a similar provision would apply for the NBA Plans provisions.</p> <p>See general comments on precautionary approach in the definitions section below.</p>	If retained, relocate to Part 2 of the NBA.
17 [Placeholders] [Placeholder for other matters to come, including— (i) the role of the Minister of Conservation in relation to the national planning framework; and (ii) the links between this Act and the Climate Change Response Act 2002.]	Transpower supports linkages to the CCRA to ensure this important piece of legislation ties in with these other two. Links to the SPA and the relationship between the RSSs and NPF should also be addressed through the NBA.	No drafting suggestions.
18 Implementation principles [Placeholder for implementation principles. The drafting of this clause is at the indicative stage; the precise form of the principles and of the statutory functions they apply to are still to be	Transpower notes that this clause is a placeholder and that the Government is considering this content further. Transpower agrees that the scope of any implementation principles should be carefully thought out and appropriately limited. The current list would appear to require wide ranging and open-ended considerations, which may be	Consider costs and benefits of implementation principles further.

Exposure Draft	Transpower comments	Drafting comments
<p>determined. In paras (b) and (e), the terms in square brackets need to be clarified as to the scope of their meaning in this clause.]</p> <p>....</p>	<p>difficult to grapple with by people exercising powers and functions under the NBA.</p>	



Natural and Built Environments Plans – Part 4 of the Exposure Draft

Summary

Many of Transpower's comments in relation to the NPF apply equally in relation to the regional NBA Plans. In particular, Transpower considers it vitally important that:

- the NBA Plans implement the national direction provided through the NPF. Local adaptations or departures from the national directions should not be allowed. NBA plans should primarily be used to address content that is not already in the NPF or to further particularise the NPF at a regional level, if needed. Otherwise, the efficiencies gained through the NPF process will be lost;
- similarly, re-litigation of the already established principles and/or requirements of the NPF through the public participation on the NBA Plan process is prevented;
- existing infrastructure in each region is clearly identified and protected through the NBA Plan provisions (in conjunction with the RSSs);
- NBA Plans are prepared subsequent to the NPF, by an objective, expert independent decision-making body and reviewed on a regular basis, and when required.

The following table provides Transpower's comments on the proposed drafting on clauses 19-25:

Exposure Draft	Transpower comments	Drafting comments
19 Natural and built environments plans There must at all times be a natural and built environments plan (a plan) for each region.	Transpower supports the direction that there be a NBA Plan for each region at all times. However, in reality there will be a transitional period. The NBA must provide clear transitional provisions (as discussed in more detail below).	No drafting suggestions.

Exposure Draft	Transpower comments	Drafting comments
<p>21 How plans are prepared, notified, and made</p> <p>(1) The plan for a region, and any changes to it, must be made—</p> <ul style="list-style-type: none"> (a) by that region’s planning committee; and (b) using the process set out in Schedule 2. <p>(2) [Placeholder for status of plans as secondary legislation.]</p>	<p>Transpower’s comments on key requirements for the Schedule 2 process are detailed in the NPF above.</p> <p>Transpower supports the proposal in the Interim RIS that the NBA Plans be prepared subsequent to the NPF, in order to be able to give effect to the NPF.</p> <p>As with the NPF, Transpower considers that mandatory, regular reviews of the NBA Plans should be undertaken by an independent and expert body. Transpower also considers that there should be provision for “out of time” reviews by both the independent body and be initiated by NBA Plan users in certain circumstances (similar to the existing RMA private plan change process).</p>	
<p>22 Contents of plans</p> <p>(1) The plan for a region must—</p> <ul style="list-style-type: none"> (a) state the environmental limits that apply in the region, whether set by the national planning framework or under section 25; and (b) give effect to the national planning framework in the region as the framework directs (see section 15); and (c) promote the environmental outcomes specified in section 8 subject to any direction given in the national planning framework; and 	<p>As noted above in relation to clause 7, Transpower considers that environmental limits should be set in the NPF. Environmental limits should only be set in NBA Plans if proposed by the NPF. This clause should be amended to make the scope and process clear. Assuming this process is followed, clause 22(1)(a) is not required as would be encompassed by clause 22(1)(b).</p> <p>As per Transpower’s comments clause 13(3), Transpower considers that the requirement to resolve conflicts should be directive and strong. The direction to “help resolve conflicts” is not strong enough. The Parliamentary Paper states that the NBA Plans should give plan users more certainty, leaving fewer matters to be resolved at the permissions and approvals stage. Transpower agrees with this direction. Conflicts should be resolved to the extent possible through the NPF, and then through the NBA Plans only as necessary</p>	<p>Consider amending the section to make the scope and process for NBA plans clear.</p> <p>(g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental out-comes described in section 8.</p>

Exposure Draft	Transpower comments	Drafting comments
<p>(d) [placeholder] be consistent with the regional spatial strategy; and</p> <p>(e) identify and provide for—</p> <ul style="list-style-type: none"> (i) matters that are significant to the region; and (ii) for each district within the region, matters that are significant to the district; and <p>(f) [placeholder: policy intent is that plans must generally manage the same parts of the environment, and generally control the same activities and effects, that local authorities manage and control in carrying out their functions under the Resource Management Act 1991 (see sections 30 and 31 of that Act)]; and</p> <p>(g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental out-comes described in section 8; and</p> <p>(h) [placeholder for additional specified plan contents]; and</p> <p>(i) include anything else that is</p>	<p>to address specific regional circumstances or gaps in the NPF (but not to rewrite/replace the NPF).</p>	

Exposure Draft	Transpower comments	Drafting comments
<p>necessary for the plan to achieve its purpose (see section 20).</p> <p>(2) A plan may—</p> <ul style="list-style-type: none"> (a) set objectives, rules, processes, policies, or methods: (b) identify any land or type of land in the region for which a stated use, development, or protection is a priority: (c) include any other provision. 		
<p>24 Considerations relevant to planning committee decisions</p> <p>(1) A planning committee must comply with this section when making decisions on a plan.</p> <p>(2) The committee must have regard to—</p> <ul style="list-style-type: none"> (a) any cumulative effects of the use and development of the environment: (b) any technical evidence and advice, including mātauranga Māori, that the committee considers appropriate: (c) whether the implementation of the plan could have effects on the natural environment that have, or 	<p>The content in clause 24(2) needs to be reconsidered. Many of these “tests” would sit better as requirements for the NBA Plan itself and should be set out in the “content” or “framework” section. Clause 24(2) should set out clear decision-making tests for planning committees when determining whether or not to approve an NBA Plan. Clause 24(2)(c) is very broad in its intent and open to interpretation.</p> <p>Clause 24(2)(d) is potentially contradictory to the requirement in clause 22(1)(g). The role of NBA Plans in conflict resolution is currently unclear. It is also unclear why “conflicts” is specifically defined in clause 24(6) for the purpose of clause 24(2)(d) but not when used elsewhere in the NBA. This could suggest an intention that conflicts are different under the NBA Plans or that a different approach must be taken in NBA Plans to conflict resolution to the approach taken in the NPF. It is unclear how such an approach would work given that NBA Plans must give effect to the NPF.</p>	<p>Consider content in section 24(2) further.</p>

Exposure Draft	Transpower comments	Drafting comments
<p>are known to have, significant or irreversible adverse consequences:</p> <p>(d) the extent to which it is appropriate for conflicts to be resolved generally by the plan or on a case-by-case basis by resource consents or designations.</p> <p>(3) The committee must apply the precautionary approach.</p> <p>(4) The committee is entitled to assume that the national planning framework furthers the purpose of the Act, and must not independently make that assessment when giving effect to the framework.</p> <p>(5) [Placeholder for additional matters to consider.]</p> <p>(6) In subsection (2)(d), conflicts—</p> <p>(a) means conflicts relating to the environment; and</p> <p>(b) includes conflicts between or among any of the environmental outcomes described in section 8.</p>		

Exposure Draft	Transpower comments	Drafting comments
<p>25 Power to set environmental limits for region</p> <p>(1) This section applies only if the national planning framework—</p> <ul style="list-style-type: none"> (a) specifies an environmental limit that must be set by the plan for a region, rather than by the framework; and (b) prescribes how the region’s planning committee must decide on the limit to set. <p>(2) The planning committee must—</p> <ul style="list-style-type: none"> (a) decide on the limit in accordance with the prescribed process; and (b) set the limit by including it in the region’s plan. 	<p>As per comments on clause 7 above, Transpower considers that environmental limit provisions should all be contained in one comprehensive clause. Clause 25 appears to replicate requirements already contained in other clauses of the NBA.</p> <p>Transpower also considers that environmental limits should be overseen at a national level (e.g. by the independent panel that manages the NPF) to ensure consistency between them if implemented at a regional level. National oversight is necessary to ensure that environmental limits do not unintentionally undermine key outcomes or nationally significant matters.</p>	<p>Consider including all environmental limit provisions in one comprehensive section.</p>

Preliminary provisions / Part 1 of the Exposure Draft

Summary

- It is essential that all definitions are clear. Well understood definitions from the RMA should be retained to aid workability and reduce debate. Changes to RMA definitions should only be made where there are strong policy reasons and benefits for doing so.
- Transpower supports the definition for “mitigation” including offsetting and compensation. Linear projects such as transmission lines often cannot avoid all of their effects on environments. But, they often can offset and compensate in a way that enhances the environment overall. It will be important that this new extended mitigation definition is reflected in other provisions and processes throughout the new NBA.
- The new term “ecological integrity” is generally supported provided it is not used in later processes, such as the setting of environmental limits to create unduly restrictive “no-go” areas which would prevent important infrastructure and climate change mitigation projects.
- Transpower’s assets and activities should be encompassed within the definitions that apply to infrastructure. We query whether there is a need for both “infrastructure” and “infrastructure services.”
- Transpower strongly supports the overall de-prioritisation of “amenity” and aesthetic values effects, which have caused undue costs and delays on all major infrastructure projects in recent times. The definition of “environment” has helpfully removed reference to these concepts, but could be more explicit. Several other aspects of the NBA, such as public participation expectations and decision-making criteria for consents and approvals, will need to clearly set out that amenity and aesthetic matters are either barred or substantially narrowed.
- Transpower acknowledges that while the “precautionary approach” is an important principle, it has the potential to become an obstacle to appropriate development if applied too narrowly, incorrectly or repeatedly applied.

The following table provides Transpower's comments on the proposed drafting of key definitions:

Exposure Draft	Transpower comments	Drafting suggestions
<p>ecological integrity means the ability of an ecosystem to support and maintain—</p> <ul style="list-style-type: none"> (a) its composition: the natural diversity of indigenous species, habitats, and communities that make up the ecosystem; and (b) its structure: the biotic and abiotic physical features of an ecosystem; and (c) its functions: the ecological and physical functions and processes of an ecosystem; and (d) its resilience to the adverse impacts of natural or human disturbances <p>ecosystem means a system of organisms interacting with their</p>	<p>This term is used in clause 7(1) to define the scope of environmental limits and is also the focus of the ecological integrity outcome (clause 8(b)).</p> <p>The definition is broad and has the potential to create very strict environmental bottom lines depending on the scale it is applied at (e.g. at a site scale or at a region scale). It is also unclear whether ecological integrity can be maintained and enhanced through mitigation and offsetting. These questions are particularly relevant to linear infrastructure projects, which may impact ecological integrity at a site level (e.g. a wetland or biodiversity area). Transpower does not oppose the definition in principle, but considers that the above comments will need to be clarified through the definition and further in the NPF and NBA Plans.</p>	<p>... ecological integrity means the ability of an ecosystem to support and maintain <u>(including through mitigation)</u>—</p> <ul style="list-style-type: none"> (a) its composition: the natural diversity of indigenous species, habitats, and communities that make up the ecosystem; and (b) its structure: the biotic and abiotic physical features of an ecosystem; and (c) its functions: the ecological and physical functions and processes of an ecosystem; and (d) its resilience to the adverse impacts of natural or human disturbances <p>ecosystem means a system of organisms interacting with their</p>

Exposure Draft	Transpower comments	Drafting suggestions
physical environment and with each other		<p>physical environment and with each other</p> <p>...</p> <p>Other changes</p> <p>Consider clarifying the definition further in the NPF and NBA plans</p>
<p>environment means, as the context requires,—</p> <p>(a) the natural environment:</p> <p>(b) people and communities and the built environment that they create:</p> <p>(c) the social, economic, and cultural conditions that affect the matters stated in paragraphs (a) and (b) or that are affected by those matters</p>	<p>This term is critical to the interpretation of the NBA. It is used a number of times in clause 5, as well as later provisions. The proposed definition departs from the RMA equivalent in a number of ways.</p> <p>The first key change is the split between the natural environment in (a) and the built environment in (b). The references to <i>“ecosystems and their constituent parts”</i> and <i>“natural and physical resources”</i> from the RMA definition are contained in the new definition of “natural environment” so that it appears to be a reorganisation of the RMA definition. The reference to “built environment” is however new, and that term is not defined in the exposure draft (although the Panel Report did contain a definition). There is a risk that “built environment” will be interpreted narrowly, with a focus on urban areas. However, critical elements of the built environment, such as transmission lines and other infrastructure, are located in rural areas, the coast, reserves and other areas. It is therefore important to define the term widely and include all structures (mirroring the element of the RMA definition of “natural and physical resources” that has not been included in the definition of “natural environment”).</p>	<p>built environment: includes human-made buildings, structures, places, facilities, infrastructure, and their interactions.</p> <p>environment means, as the context requires,—</p> <p>(a) the natural environment:</p> <p>(b) people and communities and the built environment that they create (excluding their amenity values and aesthetic conditions):</p> <p>(c) the social, economic, and cultural conditions that affect the matters stated in paragraphs (a) and (b) or that are affected by those matters.</p>

Exposure Draft	Transpower comments	Drafting suggestions
	<p>It is also unclear what value this new split will provide, given the potential for interpretation issues. Transpower considers generally retaining the RMA definition would be less problematic, noting its comments about amenity below.</p> <p>The second key change is the removal of amenity values and aesthetic conditions compared to the RMA definition. This policy change is strongly supported by Transpower. Amenity concerns have been a key point of contention and delays to projects under the RMA.</p> <p>However, the proposed definition of environment is broad, and it is likely that amenity values will still fall within the scope of this definition (eg. through the reference to the built environment in (b)). Amenity values need to be more explicitly removed from the definition of environment. Or, amenity considerations should be expressly excluded or at least substantially narrowed from later processes under the NBA, such as the NBA Plans and consenting and designation decision-making.</p>	
Built environment	To be added to address the above issue.	None offered.
infrastructure [placeholder] infrastructure services [placeholder]	<p>The term “infrastructure services” is used in the infrastructure outcome (clause 8(o)) and not the term “infrastructure.” The distinction between the terms is not clear from the exposure draft, although potentially one may refer to the physical infrastructure and the other the service it provides. It is also not clear whether the definition of “infrastructure” in the RMA will be retained or amended.</p> <p>From Transpower’s perspective, it is critical that its assets and activities are considered “infrastructure” <u>and</u> “infrastructure services,” if both definitions are retained. The National Grid is infrastructure under the RMA and needs to be recognised as such under the NBA. Planning documents under the RMA have included a wide variety of infrastructure-related, but narrower definitions, such as “nationally significant infrastructure”, “important infrastructure”, “regionally</p>	Add the National Grid to the final infrastructure definition.

Exposure Draft	Transpower comments	Drafting suggestions
	<p>significant infrastructure”, and “specified infrastructure”. Again, the National Grid is recognised as being within all of those narrower categories given its status as critical infrastructure.</p> <p>Transpower supports the retention of definitions for infrastructure in the NBA, although we query whether both definitions are needed.</p> <p>If “infrastructure” is allowed to be defined on a plan by plan basis, it is likely to result in a wide range of definitions, resulting in confusion and challenges in interpretation. It is important that such terms are defined at a national level and that definitions are applied consistently throughout the NBA system.</p>	
<p>mitigate, in the phrase “avoid, remedy, or mitigate”, includes to offset or provide compensation if that is enabled—</p> <p>(d) by a provision in the national planning framework or in a plan; or</p> <p>(e) as a consent condition proposed by the applicant for the consent</p>	<p>The definition appears to be intended to override RMA case law that offsetting and compensation are not mitigation, but other tools. Transpower supports the new definition. RMA case law is unnecessarily complex and confusing. It is important that all tools to manage effects are “on the table.” This flexibility is particularly important for linear infrastructure that cannot avoid all of its effects, but often can offset and compensate in a way that enhances the natural environment overall.</p> <p>Paragraph (b) refers to consent conditions and the applicant for consent, but should also refer to designations and requiring authorities (see RMA section 171(1B)). A key issue with the RMA designation processes is that they have been left out of important provisions such as this, causing uncertainty.</p>	<p>mitigate, in the phrase “avoid, remedy, or mitigate, includes to offset or provide compensation if that is enabled—</p> <p>(a) by a provision in the national planning framework or in a plan; or</p> <p>(b) as a consent <u>or designation condition</u> proposed by the applicant for the consent, <u>or requiring authority responsible for the notice of requirement</u>.</p>
<p>precautionary approach is an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm</p>	<p>The precautionary approach is a key principle within the exposure draft, being referenced in the provisions relating to limit setting (clause 16), implementation principles (clause 18) and planning (clause 24). There is no discussion of the</p>	<p>Not applicable as this is a general comment.</p>

Exposure Draft	Transpower comments	Drafting suggestions
to the environment, favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty	<p>implications of the precautionary approach in the Parliamentary Paper or Interim RIS.</p> <p>While Transpower acknowledges that the precautionary approach is an important principle, it has the potential to become an obstacle to appropriate development if applied incorrectly. There is an inherent lack of scientific certainty across the natural environment. The new definition will inevitably open up arguments that a proposal creates a threat of harm and therefore should not be allowed (as there is never “full” scientific certainty when predicting future effects – even with the best expertise and modelling).</p>	
urban form means the physical characteristics that make up an urban area, including the shape, size, density, and configuration of the urban area	<p>Transpower has no drafting comments but notes that “urban areas” and “rural areas” are not defined in the exposure draft. The urban areas outcome (clause 8(k)) and rural areas outcome (clause 8(m)) create an apparent urban – rural divide, yet the lack of those definitions makes that distinction unclear. Urban areas often contain a large proportion of rural fringe activities such as rural-residential activities as well as urban related recreational, environmental and infrastructural facilities.</p> <p>It is also unclear whether other environments (such as the coastal environment) can be part of those areas. A similar interpretation issue has arisen in the context of Policy 7 (urban) and 8 (rural) of the NPSET where opposing parties have argued those policies do not apply to the coast or reserves or other areas. Defining “urban areas” and “rural areas” should be considered.</p>	Consider defining “urban areas” and “rural areas”.

Part E: Response to the request for further suggestions on efficiencies

Transpower supports the desire to improve the efficiency and effectiveness of the current RMA-based system and welcomes the opportunity to provide ideas and concepts that may contribute to this improvement. Based on its experience under the RMA, Transpower has a number of suggestions which it considers would improve the efficiency and simplicity of the current system and should be adopted through the NBA framework. Many of these suggestions build upon the examples outlined in Appendix 2 of the Parliamentary Paper.

Summary of ideas

- Improve and make more comprehensive national direction for the National Grid and enable a straightforward process for review.
- Provide legislative support for a tool to enable global consents to be obtained through a national entity, such as the proposed Board of Inquiry for infrastructure.
- Make works on existing infrastructure more permissive and classify “specified infrastructure” as a controlled activity to streamline consenting and delivery.
- Provide for a longer default lapse period (for designations and consents) for strategic works and allow for the extension of lapse periods in circumstances where these approvals can be proven to still be needed.
- Enable designation of the CMA and lakes and rivers, as well as over land. This would remove the additional layer of consents required for infrastructure projects that span the CMA, lakes and/or rivers.
- Remove the legal test for “reasonable necessity” for designations and instead require notices of requirement to state the objectives of the relevant project/works. The objectives should then be considered as part of the assessment of the positive effects of the designation not as a separate decision-making test.
- Remove the legal test for an assessment of alternatives for designations and instead require an assessment of alternative sites, routes or methods as part of the assessment of the effects of the designation, not a separate decision-making test.
- Developing standardised conditions to protect the Grid and provide safety, for example, works under and near lines have very standard setback and safety requirements.
- Maintain the alignment between the RMA tests for designations and the PWA tests for land acquisition.
- Provide strong, national level direction on the appropriate level of information to be provided at local decision-making level.
- Ensure that public participation is targeted to the appropriate stage of the approval process and not unnecessarily repeated at a later stage.
- Create a strategic approval regime and a responsive regime for infrastructure. The strategic regime would integrate the SPA and NBA and involve the identification of works through the RSS processes.

- Create a standing, specialist independent panel on infrastructure to consider approvals for large infrastructure projects.
- Retain a bespoke process for nationally significant infrastructure overseen by the standing independent panel on infrastructure that recognises the national significance and benefits of a project through the decision-making process, with reduced information requirements, and limited appeal rights.

Consequential amendments to other legislation

Transpower's activities on the Grid are governed or impacted by multiple Acts, regulations, NPSs and regional and local planning documents under the RMA. We suggest consequential amendments to the PWA to align with any amended designation tests under the NBA.

Appendix B to this submission contains a summary of the current regime for vegetation trimming – an activity that Transpower carries out on a regular basis, and must carry out in order to comply with the Electricity (Hazards from Trees) Regulations 2003. Despite this mandatory requirement, there are both enabling and conflicting national instruments. The solutions posed in the appendix are RMA-focused, but the reform offers and opportunity for greater efficiencies for activities of this kind.

Resource consents and designations

Transpower considers that the approvals tools and processes ultimately established under the NBA need to be more efficient and robust than those available under the RMA. Transpower also considers that the NBA approval process needs to recognise the priority for further electrification of the New Zealand economy in line with the shift in focus towards outcomes under the new system as opposed to adverse effects.

Under the RMA, Transpower relies on both designations and resource consents. Both existing approvals tools need to be retained in the NBA - they are used for different purposes, and those distinctions²² are important. However, Transpower considers that improvements could be made to these tools to streamline the consenting process and subsequently speed up the delivery of infrastructure.

Relationship between NESs and designations

Section 43D of the RMA addresses the relationship between NESs and designations in a range of scenarios. The effect of this section is that designations cannot be used for National Grid activities that are regulated by NESETA, reducing the consenting tools available for no clear purpose. As noted earlier, requiring authorities should be able to determine which tool is the most appropriate for a project, rather than options being constrained.

²² Designations restrict activities that would prevent or hinder the designated works and provide landowner rights to access compensation.

Lapse

The default lapse period for resource consents and designations is currently 5 years. That length is insufficient where approvals are obtained for strategic works. Transpower's infrastructure generally requires long lead times and the enduring nature of the infrastructure lends itself to have long-term strategic applications. Longer default lapse periods should be enabled to achieve strategic planning outcomes. Further, the existing process for avoiding lapse ("substantial progress") is not fit for purpose. A different process is needed to streamline lapse extension requirements.

For example, Transpower holds a designation for one of its future projects that has a 15 year lapse period. The designation has not yet been implemented because of slower-than-projected growth in electricity demand during the 2010-2020 period. The designation will likely lapse prior to being needed if not extended, although the project will still need to go ahead in the not too distant future. Seeking new approvals would be costly, time consuming and risky (particularly given surrounding development has expanded in the meantime). This outcome demonstrates how lapse dates can hinder strategic planning.

This example also demonstrates that the existing process for avoiding lapsing ("substantial progress") is not fit for purpose. A different process is needed for designations that have not been progressed for good reason, but can be proven to still be needed.

Resource consents

Transpower does not have any inherent concerns with resource consents as an environmental management tool. However, as identified through the Parliamentary Paper, there are a number of changes that could be made to the resource consenting tool and approval process to increase efficiency and/or reduce complexity.

In particular:

- The NESETA has been a very useful tool for Transpower. It has provided national consistency in relation to maintenance, repair and upgrading works on existing infrastructure. Transpower considers major efficiencies can be achieved by improving and expanding the use of nationally consistent rules in the NPF. Transpower therefore supports the suggestion that controls are developed through NPF rules in circumstances where these are more appropriate than bespoke planning controls.²³
- Greater use of permitted activity rules (in NPF rules and NBA Plans) that require management plans to be prepared and provided to council, monitoring of permitted activities, and reporting on completion of works would enhance efficiency.²⁴ This approach would ensure good practice environmental management without the burden and cost associated with consenting processes. It would be appropriate for activities with standard good management practices.

²³ Ministry for the Environment (2021). Natural and Built Environments Bill: Parliamentary paper on the exposure draft, Appendix 2, page 37.

²⁴ For example, the Proposed Amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health: Consultation Document proposed that regulation 8 be amended to provide for soil disturbance by a network utility operator as a permitted activity subject to a requirement for a site management plan to be prepared and provided to council as part of notice of commencement (p26-27).

- Transpower also considers global consenting is a tool with significant potential. A number of organisations have obtained global consents under the RMA, however wide use of this tool has not been taken up. This tool is well suited to small-scale works, carried out frequently, at multiple different sites, in accordance with standard good management practices (for example, contaminated land management, tree works, works in road corridors and the like). In those circumstances, obtaining consents for each activity is very onerous, and not proportionate to the environmental risks. There is also the potential for the NBA to enable global consents to be obtained through a national entity, such as the Environmental Protection Authority or a standing independent panel for infrastructure, to allow the tool to be applied at a national level.
- Transpower supports the classification of specified infrastructure as a “controlled activity” to streamline consenting and delivery of crucial infrastructure. As discussed in this submission, work in relation to existing infrastructure that is currently covered by the NESETA should be expanded and made more permissive.

Designations

Transpower considers the following issues with the designation tool need to be addressed in the NBA:

- **Extending designations beyond land use:** Transpower supports designations being extended to cover occupation of the CMA and lakes and rivers for activities that have a functional or operational need to locate in those environments. This approach would remove the additional layer of consents currently required for infrastructure projects which span the CMA, lakes and/or rivers, reducing complexity in process. Potential issues with the extension of this tool to other environments can be simply addressed as follows:
 - *Acquisition:* Under the RMA and PWA, designations and land acquisition rights are intertwined. Under the new legislation, designations for use of land would be linked to land acquisition processes, but designations for occupation of the CMA/waterways (areas formerly covered by regional consents) do not need to be linked to land acquisition processes.
 - *Takutai Moana:* Consequential amendments to the Marine and Coastal Area (Takutai Moana) Act 2011 would ensure that customary marine title holders/protected customary rights groups have the same rights in relation to designations, as they do for resource consents.
- **Legal tests – reasonable necessity and alternatives – require change:** The legal tests for designations are similar to resource consents, except for two unique considerations – the “reasonable necessity” test and the “alternatives” test. Transpower considers system efficiencies would result if these tests were to sit as process or information requirements for notices of requirement, rather than legal tests considered by the decision maker, as follows:
 - *Reasonable necessity:* The requiring authority is tasked with identifying the objectives, so it will identify objectives that ensure the reasonable necessity test is met. This legal test is therefore a formality, while placing an onus on parties to address it and an avenue for litigation. A better approach would be for notices of requirement to be required to state the objectives, and for those to be considered as part of the assessment of the positive effects of the designation (not a separate decision-making test).

- *Alternatives:* Although this test requires consideration of alternatives, case law establishes that the requiring authority is not required to choose the “best” alternative. As a result, this test is process based, not substantive. For much of the life of the RMA, alternatives was a small component of notice of requirement documentation. However, since the *Basin Bridge*²⁵ decision, this test has given rise to numerous challenges at hearings, and requires significant resource to address (including a large amount of pre-work to minimise approval risk). A better approach would be for notices of requirement to be required to provide the assessment of alternative sites, routes, or methods as an information requirement. The alternatives would then be relevant as part of the assessment of the effects of the designation, but not as a separate decision-making test.²⁶ This would better align with the requirement for consent applications in schedule 4 of the RMA.
- The existing legal tests for designations closely align with the PWA tests for land acquisition. It is important to maintain this alignment, and ideally consolidate overlapping processes. If alignment/consolidation is not achieved, the PWA could undermine any process efficiencies gained through the NBA. Any amendments to the designation tests will therefore require consequential changes to the PWA. For example, if the reasonable necessity test was amended in the NBA, it should also be amended in the PWA. Similarly, if the NBA enables the designation of the CMA and riverbeds, the PWA process should exclude acquisition processes applying to those areas.

Approvals processes for consents and designations

Transpower supports the suggestions made in the Parliamentary Paper for enabling simplified consent processes, more effective dispute resolution and increased central direction and tools. In particular, Transpower considers the following issues with approvals processes need to be addressed in the NBA.

Information requirements

The information required to support applications for approvals for major infrastructure projects have become significantly more onerous over the lifetime of the RMA. The documentation is now extremely lengthy and takes a long time, with significant cost, to prepare. This also makes the decision-making role more challenging, and increases appeal risks as submitters are unable to sufficiently digest and understand all relevant documentation.

It is challenging to regulate for an appropriate level of information, as it will vary from project-to-project. However, Transpower considers that stronger direction should be provided at a national level as to information requirements that must be satisfied at all decision-making levels. For local authority consent processes, a cultural change is also needed to ensure that decision-makers feel enabled to make decisions and are sufficiently resourced to process applications without requesting more and more information. Regulatory incentives are therefore needed. Removing the ability to “stop the clock” for further information requests is an important first step, but other incentives will be needed to achieve the level of cultural change necessary. These incentives could include greater accountability mechanisms for councils in exercising their planning functions and standardised assessment methods. Developing standardised processes and methods and

²⁵ New Zealand Transport Agency v Architectural Centre Inc [2015] NZHC 1991.

²⁶ This approach would reflect policy 4 of the NPSET which requires decision-makers to consider “the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection”.

limiting information requirements to make applications less time intensive to process are also likely to contribute to a positive cultural shift.

Transpower also supports the use of standardised conditions on designations. Such conditions could be agreed at a national level and then imposed upon all designations where the matters addressed in the standard conditions were relevant.

Public participation

Public participation under the RMA is often focused on participants seeking to protect the status quo, rather than achieving good outcomes for the environment. Processes currently provide multiple opportunities for opposition to projects, rather than ensuring that public participation is “done once, done right” to support good outcomes.

The appropriate solution to this problem will depend on the approvals processes contained in the NBA. In designing the approvals processes however, Transpower considers the key principle is that public participation needs to be targeted to the appropriate stage of the process, and then not unnecessarily repeated at a later stage of the process. For example, currently under the designation process there are two stages – through the notice of requirement and then again through management plans and the outline plan of works process if the conditions require. In many cases, post-reform, public participation at RSS or NBA Plan stage should be sufficient. Some consenting decisions will clearly require some participation where the circumstances warrant.

Decision making process

Transitioning efficiently and effectively into the new regime will require objective, robust decision making across the entire system. Any decision maker or decision making body will need to have the capability and capacity to manage a large volume of work, including both plan processes and project consenting. There is an opportunity, as part of the desired “culture shift” from an effects based to outcomes based system, to create a standing Panel or Panels to manage the various work streams. For example, as noted, an infrastructure specific panel could be established with the knowledge and expertise to manage large infrastructure projects (including the large number of projects necessary to enable the electricity transformation).

Appeals

A significant cause of delay and uncertainty under the RMA is the availability of merits appeals for notified projects. As noted earlier, public participation should be “done once and done right.” The “nationally significant proposal” process addressed this issue by limiting appeals to points of law. While helpful, the benefits were counterbalanced to some extent by a significantly more intensive first instance process. It is important this same issue is not carried over to the NBA. To avoid this, stricter controls need to be placed both on the information requirements in the first instance to simplify those processes and the scope of appeal rights need to be narrowed.

Strategic Approvals Process

There has been some criticism of the multitude of different approvals processes under the RMA; however Transpower considers there is a need for different processes to meet different needs. The important thing is that each process that is available is clear and fit-for-purpose. Transpower considers approvals processes need to provide for:

- **A strategic regime:** A process is needed that is fit-for-purpose for infrastructure that is strategically planned for, where the merits of a proposal are not under challenge if it has been identified as strategically critical. The process will need to align with the proposed SPA.
- **A responsive regime:** A process is needed that is fit-for-purpose for infrastructure required to respond to demand (i.e. that has not been identified through strategic planning processes).

A strategic approvals process

The current approvals processes under the RMA do not provide for strategic planning. This is because the amount of information normally required to support approvals is simply not available at the early, high level, strategic planning stages of a project.

Two processes could better support strategic infrastructure planning in the NBA:

- **Designation process:** This process would reinstate a “true” designation process, rather than the process that has evolved under the RMA. It would involve a route protection designation stage, followed by a construction and implementation plan stage. It will be important that the information requirements for the first stage are high level, with matters of detail addressed at stage 2. Public participation could be focused on stage 1, with more limited involvement of directly affected persons and council at stage 2 (perhaps on the papers).
- **Strategic process:** This process would integrate the SPA and NBA. It would involve the identification of works through RSS processes. The level of information presented in those RSS could be conceptual, could be a defined route, or could be more detailed. Where a defined route is included in the RSS, any subsequent NBA processes should be limited to determining construction and implementation details (i.e. the activity and route would be approved, but the conditions would need to be determined). Where detailed and robust information is included in the RSS, the subsequent NBA process should be proportionately permissive.

A responsive approvals process

The RMA provides a bespoke process for “nationally significant proposals” that was intended to address concerns around the lengthy nature of approval processes for major infrastructure projects. However, there are two key issues with the process:

- The fact that a project has been identified as “nationally significant” provides little (or no) substantive support for the project in the RMA decision-making process.
- The process is designed to provide speed, but in fact simply condenses the time available for a decision to be issued. The process is accordingly extremely resource intensive, and few infrastructure providers have chosen to use it.

Transpower supports the retention of a bespoke process for nationally significant infrastructure, but considers the following improvements are needed:

- Amend the legal tests to require the national significance and benefits of the project to be recognised in the decision-making process;
- Reduce the information requirements for applications so they are commensurate to the condensed timeframe;
- Provide for a standing Panel that is equipped to consider infrastructure projects in a timely manner; and
- Maintain the “one stop” for public participation, with appeals limited to points of law.

Figure 6 below sets out Transpower’s current thinking on how these processes might work together, and how various information requirements might fit in.

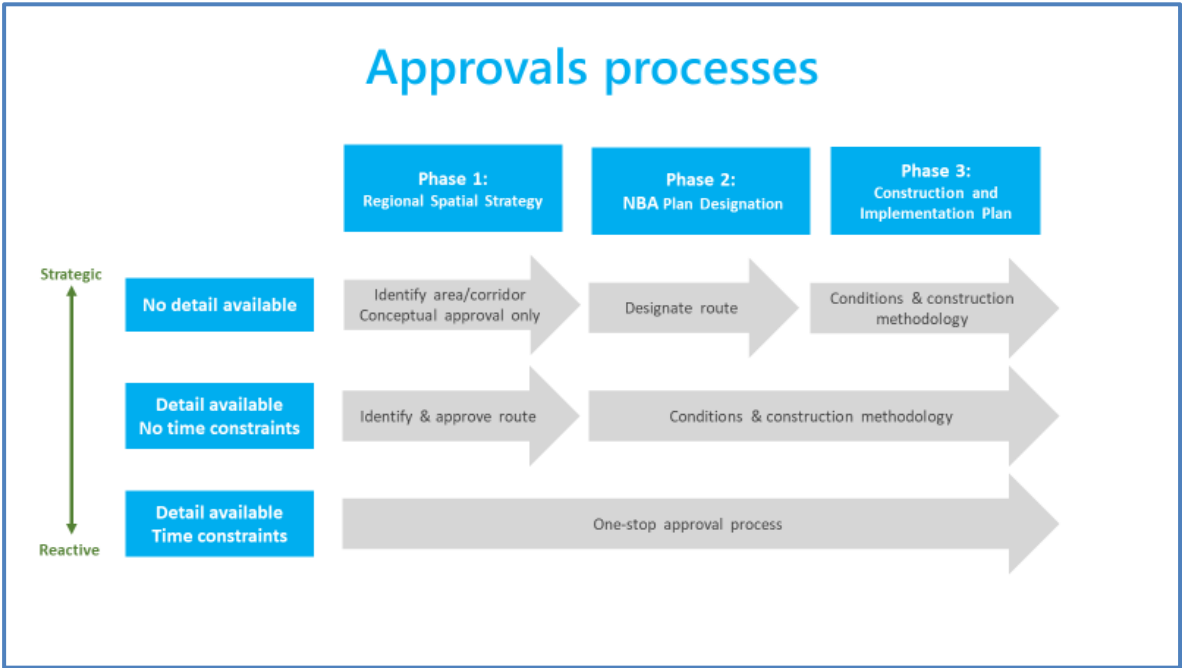


Figure 6: NBA and SPA Approvals processes

Part F: Transition issues and recommendations

Summary

- An efficient and effective transition between the RMA and NBA regimes will be essential if the reform objectives are to be achieved. The transition period will last at least a decade and projects must continue to be approved during this period. The NBA must provide clear transitional provisions to govern the interim period.
- The NPSET, the NESETA and protection for National Grid corridors contained in district plans must be retained until equivalent (or better) provisions are established under the new system.
- The preparation of the NPF should be highly prioritised. Ideally, it should become operative shortly after the NBA enters into force.
- The NPF should narrow the scope of matters to be addressed through NBA Plans by directing key content.
- Projects furthering the environmental objectives of the NBA should be enabled through the transitional process. This could be achieved by providing a statutory process for projects that meet set outcomes to be consented under the NBA in the transitional period.

After the RMA became operative, it took more than a decade for some first generation plans to be established. The transition to the NBA framework will also take a long time. The timeline in the Interim RIS proposed indicates that the overall transition to the new system will be completed within ten years. However, it also recognises that key decisions on the transition process are yet to be made and that this will impact transition timeframes.²⁷

Climate change mitigation demands an expansion in New Zealand's renewable electricity system (including transmission and distribution). As noted, the scale of this challenge is enormous. Many of these projects will need to be approved during the transition. It is therefore critical that the transitional regime is efficient and effective.

It is important that critical, effective parts of the existing regime are retained, and not inadvertently lost, through the transition to the new system. For example, during the transition to the RMA, Transpower was created and did not have requiring authority status, and so could not rollover existing designations into the proposed Manukau City Plan. Transpower is currently a requiring authority, and should continue to have access to a designation tool under the NBA. The protection offered by a designation (sections 178 and 176(1)(b)) is very important to ensure the security of the electricity system.

For this transition phase, Transpower's particular concerns are the retention of the NPSET, the NESETA and the protections for National Grid corridors contained in district plans. The NESETA authorises day to day maintenance and many upgrades (including the Clutha Upper Waitaki Lines Project that is underway). Without the NESETA, Transpower would have no enabling framework to authorise day to day work. Further, as linear infrastructure, the National Grid cannot avoid all

²⁷ Treasury (2021) Regulatory Impact Assessment: Interim Regulatory Impact Statement: Reforming the resource management system page 95.

environments and the enabling policies in the NPSET are crucial. Accordingly, the NPSET and NESETA provisions must be retained until equivalent, or enhanced provisions are established under the new system.

National direction

It will be important to retain existing national direction to apply in a transitional manner as a “fall back” until the NPF is developed. Transpower does not consider existing national direction should be “deemed” the NPF because it has not been prepared under the NBA and will not reflect the NBA outcomes. However, there may be an opportunity, through the NPF process to revise existing national direction, to reduce conflicts and improve efficiencies in that direction.

Ideally, the NPF would be prepared concurrent to the legislative process and become operative shortly after the NBA enters into force. As a minimum, there needs to be a requirement for the NPF to be prepared within 1 year of the commencement of the NBA (as there was for the New Zealand Coastal Policy Statement (NZCPS) under the RMA – section 431).

The preparation of the NPF will be a sizeable task, so some prioritisation may be needed. For example, the NPF objectives and policies could be put in place first, with rules and other details to follow. In this case, provision may need to be made to continue existing NESs in the transition (unless the NBA specifically addresses the subject matter of existing NESs in another manner).

NBA Plans

As occurred during the transition to the RMA, under section 367 RMA, it is expected that the existing planning regime will continue in force (to the extent that existing plans are not inconsistent with the purpose of the NBA) until RSSs and NBA Plans are prepared.

The NBA will need to grapple with the approach to planning documents that will have been notified under the RMA, but do not become operative before the NBA enters into effect. Amending those plans to reflect the NBA may be a difficult task in light of the changes from an effects-based to an outcomes-based approach. On the other hand, completing plans to implement an old regime would appear inefficient particularly as the plans could be outdated and out of step with the new NBA-based regime. Under the RMA transition, proposed district schemes were completed as if the Town and Country Planning Act continued in force.²⁸ This would have contributed to the long transition time for the RMA, so an alternative approach should be considered for the NBA transition. One option could be to allow plan changes to continue where necessary, but not hold Councils to the requirement to carry out a 10-year review under the RMA. In this way, existing RMA plans would be able to largely remain in force, while the focus moves to NBA Plans.

A number of measures suggested in the Parliamentary Paper would greatly assist with NPF development. In particular, Transpower supports the use of centralised digital tools and platforms, the development of template standards available for Councils to adopt and standardised methods for assessing significance or determining technical matters.

²⁸ Resource Management Act 1991, section 378.

Approvals

Transpower considers that projects furthering the environmental objectives of the NBA should be enabled through the transitional process. This outcome could be achieved by for example:

- Providing a statutory process for projects that meet set objectives and outcomes to be consented under the NBA in a transitional period as a schedule to the NBA; or
- Adapting the COVID-19 Fast Track legislation to suit the transitional NBA period.

It is critical that the introduction of the new system does not undermine existing approvals (consents and designations) and the conditions on which those were granted. Where an activity is fully authorised under the RMA, the NBA should not arbitrarily introduce new approvals requirements (similar to how a new NES does not apply to a resource consent application that was notified before the NES was gazetted).²⁹ It is acknowledged that the introduction of limits will require a review process in some cases, however this should be clearly signposted and gradual. Transpower considers that any review of existing approvals and conditions should only be undertaken once the NPF, RSSs and NBA Plans have been developed, so that any re consenting is under the new regime.

The transition regime will also need to address activities that have existing use rights (and, in some cases, certificates of compliance) under the RMA. Similar to existing approvals, these activities should not be undermined by the introduction of the new legislation (similar to the RMA transition – see section 418).

Transpower's status as a requiring authority will need to continue through the transition to the new system. The NBA should also provide for the rollover of designations without modification into NBA Plans (as per the RMA)³⁰. The reopening of all existing designations as part of the transition would be a significant risk for requiring authorities, and create significant inefficiencies. However, Transpower also considers that a process for making relatively minor modifications to existing designations through the rollover process should be provided. These modifications could, for example, include modifications required to make existing conditions consistent with any standard conditions developed as part of centralised direction. The rollover process should also allow for a "check" of existing designations against new designation requirements and changes to be made in order to better align with the NBA regime and outcomes.

The NBA will also need to grapple with the processes to apply to approvals that are sought under the RMA, but not granted before the NBA enters into force. Under the RMA transition, most applications that had already proceeded to a hearing, were determined under the old legislation, but granted as resource consents.³¹ Other existing applications were deemed to be RMA applications in the most part.³² The RMA reference to a hearing to distinguish approvals would seem unusual for this transition, given so few applications proceed to hearing. Instead, the timing of the notification decision provides a useful cut off. Similar to how s 88A of the RMA maintains the activity status for a lodged application, the introduction of the new system should not increase the difficulty of obtaining consent for an activity for which an application is lodged under the RMA.

²⁹ Ibid, section 43B.

³⁰ Ibid, schedule 1 cl 9(3).

³¹ Ibid, section 390.

³² Ibid, section 389.

The new system will also need to address the weight to be given to operative RMA plans compared to proposed NBA Plans when determining new approvals. On the one hand, operative plans have been through a robust planning process. On the other hand, new plans will better reflect the new system and the outcomes-based approach. Transpower considers a weighting approach will be needed so those factors can be balanced in the particular context.



Part G: Strategic Planning Act

Summary

- The National Priorities Statement should implement the Government's climate change commitments. It should also identify substantive priorities relating to climate change mitigation and nationally significant infrastructure.
- The SPA and RSSs need to provide a mechanism to resolve the tensions between the NBA outcomes and between environmental limits and infrastructure needs (the NPF should direct how this resolution is to occur).
- RSSs will need to be careful not to prescribe absolute "no go" areas that prevent new climate change mitigation projects and critical infrastructure, particularly linear infrastructure.
- The SPA and RSS provide an important opportunity to reconcile the requirements of the CCRA and the NBA. The RSS needs to identify a clear "way through" the new planning regime for necessary infrastructure.
- NBA approvals for climate change mitigation and critical infrastructure projects identified in the RSS should be streamlined to recognise that they have already been considered through the strategic process. The RSS process should "approve" the project in principle, with any subsequent process limited to final details (eg. through a controlled activity status).
- The RSS process should involve central and local government and iwi and also other key stakeholders such as infrastructure providers, who will be key to the successful delivery of the RSS. It should involve an independent and robust process such as an independent board of inquiry.

The SPA will require the preparation of long-term RSS to integrate the NBA, Local Government Act 2002 (LGA), CCRA and Land Transport Management Act 2003 (LTMA).³³ Transpower presumes that the SPA will also integrate the proposed CAA.

The SPA provides a number of opportunities to resolve issues with the current resource management system. Its development could also result in efficiencies by identifying projects for streamlined consenting processes and providing national level direction to help resolve conflicts. However, it is important that it does not simply become another "layer" of planning that requires significant resource without delivering significant benefits.

Transpower's views on the key opportunities and risks associated with the SPA framework are set out below.

Spatial planning needs to focus beyond regional urban growth issues alone, which has been its focus to date. Linear infrastructure projects cross urban, rural, coastal and other environments.

³³ Ministry for the Environment February (2021), Cabinet Paper – Reforming the Resource Management System.

Spatial planning that has a wider focus will help enable the rapid change required for climate change mitigation and national infrastructure needs more generally.

The SPA and RSSs need to provide a mechanism to resolve the tensions between NBA outcomes and between environmental limits and infrastructure needs. For example, RSSs should resolve as far as practicable, and not simply identify, a conflict between an outstanding natural landscape and a required National Grid connection or renewable energy project. RSSs could identify “go” and “no go” areas. However, these areas will need to be discrete and limited in spatial area. RSSs will need to be careful not to prescribe absolute “no go” areas that prevent new climate change mitigation projects and critical infrastructure (particularly linear infrastructure). As discussed earlier, the linear nature of the National Grid means that there is sometimes no alternative to passing through a high value natural area.

The SPA and RSSs also provide an important opportunity to reconcile the respective requirements of the CCRA and the NBA. It is essential that projects that are necessary to achieve emissions budgets are enabled through RSSs.

NBA approvals for climate change mitigation and critical infrastructure projects identified in RSS should be streamlined to recognise they have already been considered through that strategic process. The RSS process should “approve” the project in principle, with any subsequent process limited to finalising construction and implementation details (**Figure 6** illustrates this 2-step process – see **Part E** above). It is critical the settings are correct so that projects are subject to appropriate testing at the appropriate stage, and do not require repeated and unnecessary effort to obtain project approvals. Otherwise, there will be no benefit gained from the significant effort that will need to be invested in RSS processes.

The limitations of spatial planning need to be acknowledged. It will not be possible to identify all future infrastructure works (especially long-term generation, transmission and large-scale distribution projects) during a spatial planning process. For example, a new renewable generation source or new technologies may require a National Grid connection that was not able to be forecast in a RSS. Other challenges relate to new entrants to the electricity market who could not have been involved in RSS processes and projects (such as solar) that can be brought on very quickly (but may require transmission or distribution connections). The SPA and RSS needs to contain sufficient flexibility to be responsive and be updated as new information comes to hand. In addition, NBA processes should not “penalise” projects that have not been identified in a RSS.

Another potential challenge which could limit the effectiveness of the RSS is likely to be the response from landowners and communities to the identification of planning infrastructure corridors through the RSS. The potential impact on private landowners of identifying areas in the RSS and the interface between the RSS and the PWA will need to be considered. It may be preferable to limit the PWA “trigger” to projects that are identified with a high degree of certainty in the RSS, and to exclude those that are indicative, or shown at a broad corridor level only (where a route is yet to be determined).

The concept of a National Priorities Statement raised in the Panel Report would be an opportunity to provide greater national direction by identifying substantive national priorities relating to climate change mitigation objectives and nationally significant infrastructure. Transpower also considers it is important that central government is involved in RSSs to ensure national issues are prioritised (such as security of supply), particularly as central government will not be involved in regional combined plan processes other than disparately through the submission process. However, a level of formal collaboration and independence and rigour will be required to ensure RSSs are not simply a political tool and so that stakeholders feel confident to engage in the process. An independent board of inquiry to oversee and make decisions on RSSs may assist.

The following sections set out Transpower's views on the content, process and hierarchy needed to maximise the opportunity presented by the SPA. At this stage, the shape and effect of the SPA is unclear. Accordingly, Transpower wishes to continue this conversation through the development of the SPA.

What content will spatial plans contain?

To date, spatial plans in New Zealand have focused on urban growth issues (in part because of the requirements of the NPS Urban Development and its predecessor). This existing focus is reflected in the extensive references to the LGA and LTMA in the reform policy documentation. However, while those statutes govern some urban growth-focused infrastructure (such as three waters), they do not govern other infrastructure (including the electricity system). For example, Transpower is regulated under the Electricity Act and Commerce Act.

In order to achieve the Government's integration objective, the SPA and RSS cannot be limited to urban growth issues and will need to address a wider range of issues (including climate change mitigation and adaptation). Accordingly, while existing spatial plans provide some useful experience, Transpower considers they do not provide a template for RSSs.

From Transpower's perspective, the SPA and RSSs provide an important opportunity to reconcile the requirements of the CCRA and the requirements of the NBA. In particular, Transpower considers RSSs will need to engage with the potential tensions between the 2050 climate change target, emissions budgets, and emissions reduction plans set under the CCRA, infrastructure needs and outcomes, and protective outcomes and limits set under the NBA. RSSs will need to identify a clear "way through" the new planning regime for necessary infrastructure – corridors and routes for linear infrastructure will need to be provided.

The Panel Report sets out "specified content" for RSS.³⁴ The matters listed recognised the potential for RSS to identify where land use change is required for climate change mitigation and adaptation or new infrastructure corridors, as well as recognising existing infrastructure networks. It is important that the SPA require those matters to be addressed in RSS.

Transpower considers the SPA should require RSSs to include the following information about the electricity system:

- **Transmission and distribution:**
 - Existing assets and corridors round them (can be mapped, GIS format);
 - Planned and anticipated works (can be mapped but the level of detail will vary depending on a range of matters; might take a graphic format with indicative locations);
 - Acknowledge that unknown generation/demand or technological change may mean that other works are necessary despite not being mapped or described by text in RSSs.

³⁴ New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel (2020), page 491.

- **Generation:**
 - Existing assets (can be mapped, GIS format);
 - Consented works (can be mapped, GIS format);
 - For some Grid-scale generation types, such as wind, geothermal and solar, it may be possible to indicate resource areas (although technological change is continually changing the economics of different areas). Smaller scale generation is not limited to such resource areas. The different forms of renewable energy, their potential locations and impacts of technological changes demonstrate some of the challenges of spatial planning. Just because resource is available does not mean a project is viable there, as numerous factors must be considered.
 - For new works, it is unlikely that generation companies will divulge the necessary information to include these matters in RSS due to the commercial sensitivities. This demonstrates another key challenge of spatial planning. RSS may need to acknowledge that renewable generation works are anticipated and encouraged despite not being shown on RSS maps.
- **Demand:**
 - Existing demand (can be mapped, GIS format);
 - Anticipated demand e.g. existing industrial and zoned industrial areas (can be mapped, GIS format);

It is unlikely that information will be available regarding new, large scale, direct connections to industrial electricity users that may establish outside of industrial areas.

The SPA will need to require RSSs to include information about other systems (including biophysical systems). Transpower considers the SPA should provide a framework for RSSs to reconcile the tensions between systems, rather than simply identifying them. For example, a RSS should not simply depict a conflict between an outstanding natural landscape and a new National Grid line, but should reconcile those tensions.

As noted above, any “no go” areas identified in the RSS will need to be carefully considered so as not to prevent new infrastructure. Again, Transpower considers the SPA will need to require RSS to engage with and resolve tensions, rather than taking a “black and white” approach. For example, a “no go” area might be an appropriate response to urban growth given the potential impacts. For linear infrastructure, there will be no alternative to passing through a high value area in some cases. These critical activities need to be accommodated in those areas and impacts appropriately managed or offset.

It is important that the SPA and NBA are very clear about the scope of RSS and NBA Plans to avoid repetition of effort. At the current time, the dividing line between RSSs and NBA Plans is not clear. This is a matter that will need careful consideration. Conceptually, it seems that RSSs will be focused on mapping at a higher level, and NBA Plans on land use management. However, as noted earlier, it is important that does not result in RSSs identifying issues without resolving tensions. And, the mapping at the higher level needs to have some weight in streamlining later consenting processes. Transpower also considers that there should be an opportunity to include

matters of detail in the RSS Plans where available to minimise matters for consideration under the NBA Plans.

What is the process for developing spatial plans?

The Panel Report suggests the National Priorities Statement would predominantly address procedural matters (the sequence of development of RSSs and inter-regional process to address cross-boundary issues).³⁵ It also recommends the National Priorities Statement set out “*any particular areas central government intends to promote or address through regional spatial strategies*”. Transpower considers the National Priorities Statement can provide much more value by identifying substantive priorities – particularly relating to climate change mitigation objectives and nationally significant infrastructure. The Statement could also be a useful tool to integrate the emissions budgets, emissions reduction plans and Energy Strategy with NBA outcomes to identify overall national priorities to be reflected in RSS.

The Panel Report recommends that RSS processes are led by central government, local government and mana whenua. Decision-making would be on a consensus basis (informed by an independent expert review of draft RSS) with the Minister resolving disputes.³⁶ Transpower considers central government involvement in RSS process is essential, given the need to reflect national priorities in RSS. A level of formal collaboration (e.g. collaborative working groups similar to those used in the current RMA) and independence and robust process is also needed (e.g. using an independent board of inquiry having oversight and decision making or recommendation powers in relation to the RSS). There is also opportunity to provide alignment between the different RSS and NBA Plan processes through oversight by the independent panel established to make decisions on and manage the NPF. Nationally significant linear infrastructure stakeholders should also, as a matter of course be involved in the preparation of all RSSs, given their important role in the delivery of necessary infrastructure.

The Panel Report recommends significant stakeholder involvement, as well as public consultative procedures (without appeal rights). Transpower agrees that stakeholder involvement is important. The appropriate level of participation will be informed by the level of influence that RSS have on subordinate documents and the level of participation in subsequent processes. It is important that public participation occurs at the right level and does not allow for re-litigation of settled issues (e.g. through later NBA processes).

The Panel Report recommends the full review of RSS every nine years. Transpower considers this requirement is important given the changing nature of the matters that RSS will need to address. However, a lot can change in nine years, and the benefits of strategic planning will be lost if RSS are out of date. The SPA needs to provide a process for RSS to be updated between reviews to address emerging matters (for example, new generation opportunities that arise or changes to the NPF which need to be reflected in the RSS). This could be achieved by a shorter review date, following recommendations from an independent panel, or via a formal stakeholder request process (similar to a private plan change).

Finally, Transpower supports the idea of a spatial planning “pilot” to road test the proposed provisions. It would be useful for that pilot to be conducted prior to the legislation being passed so that any issues with the legislative drafting can be addressed. It is important that the pilot is

³⁵ Ibid, page 491.

³⁶ Ibid, page 492.

not limited to urban growth issues, and needs to capture the electricity system in order to test the matters raised in this paper.

Where do spatial plans sit in the hierarchy? What influences them? What influence do they have?

Spatial planning is a significant opportunity. However, there is a risk that it will simply become another resource intensive process that does not contribute to achieving outcomes. To be of benefit, spatial planning will need to resolve tensions or at least provide a mechanism to resolve them. This certainty will allow Transpower and others to engage confidently.

It is not clear how infrastructure projects will be prioritised through the NBA approvals process following the RSS process. It is critical the settings are correct so that projects are subject to appropriate testing at the appropriate stage, and do not revisit the merits of a proposal nor require repeated and unnecessary effort to obtain project approvals. To achieve this outcome, as noted earlier, the RSS will need to resolve tensions. This could involve the general testing of routes or corridors for National Grid infrastructure projects, such that the activity and route become “approved” through the RSS process. For projects recognised in the RSS, the approvals process could then be significantly streamlined to reflect the “buy in” achieved through the spatial planning process, with this later stage focused only on detailed mitigation and offsetting requirements e.g. a “construction and implementation plan” process.³⁷

For projects that are not recognised in the RSS, an alternative approvals pathway will be needed that appropriately recognises the national significance of climate change mitigation projects. As earlier in this submission, that process should not simply replicate the current “proposals of national significance” Board of Inquiry process.

The Panel Report recommends that RSSs must be “consistent with” the purposes of the NBA, LGA and LTMA, and some of national instruments prepared under those and other statutes. RSS must “take into account” other national strategies and plans, including the emissions reduction plan prepared under the CCRA.³⁸ Transpower considers the RSS should also be required to be “consistent with” the CCRA 2050 target and Emissions Reduction Plan. A requirement to “take into account” that target/Plan will not achieve the necessary integration.

The Panel Report also recommends that NBA Plans must be “consistent with” RSS. A requirement to “give effect to” RSS was considered too strong “*in the absence of a formal process for participation and appeal*”.³⁹ This is a concern, as it suggests that matters settled through RSS will be re-litigated through NBA Plans. The recommended process for developing RSS is rigorous, and includes public participation. Importantly, the NBA Plan process will not presume merits appeal rights (compare the RMA). Accordingly, Transpower considers RSSs must have stronger influence on NBA Plans. Likewise, NBA Plans must have greater direction from the NPF.

³⁷ Ibid, page 299-300.

³⁸ Ibid, page 139-140.

³⁹ Ibid, page 139-141.

Appendix 1: Glossary

This appendix sets out the meaning of the acronyms and defined terms used in Transpower's submission. We have repeated the acronyms used in the Parliamentary Paper.

Defined term	Meaning
ACRE	Transpower's Area, Corridor, Route, Easement/Designation route/site selection process
CAA	Proposed Climate Adaptation Act
CCRA	Climate Change Response Act 2002
CMA	Coastal Marine Area
Exposure Draft	The Natural and Built Environments Bill exposure draft
Grid or National Grid	Means the assets owned or operated by Transpower New Zealand Limited
HVDC	High Voltage Direct Current – referring to Transpower's Cook Strait Cable
ICCC	Interim Climate Change Commission
Interim RIS	Interim Regulatory Impact Statement on Reforming the resource management system
LGA	Local Government Act 2002
LTMA	Land Transport Management Act 2003
NBA	Proposed Natural and Built Environments Act
NBA Plan	Natural and Built Environments Plan
NES	National Environmental Standard
NESETA	Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009
NPF	National Planning Framework
NPS	National Policy Statement
NPSET	National Policy Statement on Electricity Transmission 2008
NPSREG	National Policy Statement for Renewable Energy Generation 2011
NZCPS	New Zealand Coastal Policy Statement 2010
Panel Report	New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel 2020
Parliamentary Paper	The parliamentary paper accompanying the Exposure Draft
PWA	Public Works Act 1981
RMA	Resource Management Act 1991
RSS	Regional Spatial Strategies
SPA	Proposed Strategic Planning Act
Transpower	Transpower New Zealand Limited
Zero Carbon Act	Climate Change Response (Zero Carbon Act) 2019

Appendix 2: Vegetation trimming regime

ENABLING LEGISLATION / NATIONAL INSTRUMENTS

ELECTRICITY (HAZARDS FROM TREES) REGULATIONS 2003 (TREE REGS)

- Mandatory separation distances between trees and transmission lines.

NATIONAL ENVIRONMENTAL STANDARD FOR ELECTRICITY TRANSMISSION ACTIVITIES (NESETA)

- Provides a consenting pathway for vegetation trimming, felling and removal, including for significant indigenous vegetation and significant habitats of indigenous fauna, for existing (pre Jan 2010) electricity transmission infrastructure.

NATIONAL POLICY STATEMENT ON ELECTRICITY TRANSMISSION (NPS)

- Objective:
To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:
 - managing the adverse environmental effects of the network; and
 - managing the adverse effects of other activities on the network.
- Key Policies:
Policy 2: In achieving the purpose of the Act, decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.
Policy 5: When considering the environmental effects of transmission activities associated with transmission assets, decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets.

VEGETATION TRIMMING, FELLING AND REMOVAL

IS NECESSARY TO

Enable the operation, maintenance and development of the National Grid.

Protect the security of the supply of electricity and the health and safety of the public.

COMPETING/CONFLICTING NATIONAL INSTRUMENTS - 'STRICT AVOIDANCE'

NPS INDIGENOUS BIODIVERSITY

- Takes a strict avoidance approach to effects on SNAs rated "High" (see Part 3.9). "While there is an exception for use and development that addresses "a severe and immediate risk", Transpower seeks to protect NZ's supply of electricity and public health and safety by undertaking vegetation trimming and removal before a risk is "severe and immediate", and to meet the requirements of the Tree Regs.
- Risk that most SNAs will be rated 'High' given current Appendix 2 criteria.
- Likely that regrowth in relation to existing activities will be recognised as an SNA under Part 3.12, making trimming under existing lines significantly difficult.
- Lack of National direction in NPS about relationship with NPSET and NESETA.

NPS AND NES FRESHWATER

- NPS - Lack of provision for the operation, maintenance, development and upgrading of nationally significant infrastructure.
- NES - Potential duplication of controls on "vegetation destruction" for existing transmission lines and lack of clarity as to what this means (see Regulation 7).
- Lack of National direction in NPS and NES about relationship with NPSET and NESETA.

CLIMATE CHANGE RESPONSE ACT (CCRA)

- Vegetation trimming, felling and removal of pre-1990 forest and post-1989 forest land can give rise to liabilities to surrender NZUs. Clearance of post-1989 forest land can also result in receipt of less, or need to surrender, NZUs. This leads to reticence or refusal to clear around corridors.
- Best Practice Forestry Management practices (BPFM) leading to deforestation for pre-1990 forest land is exempt from liability, but no definition of BPFM and s 179A limits this exemption within tight area constraints and only the edge of the forest land.
- It is possible a s 60 exemption could be used for pre-1990 forest land, but no certainty it will be granted. There are currently no applicable exemptions or offset options for post-1989 forest land.
- Offsetting available for pre-1990 forest land to avoid liability, and is proposed in due course for some post-1989 forest land, but adds cost to forest land owner and takes time meaning it won't protect the security of the supply of electricity and the health and safety of the public.

ISSUE:

- Pre-Jan 2010 infrastructure relies on consents under NESETA.
- Post-Jan 2010 infrastructure relies on consents under District and Regional Plans.
- District and Regional Plans must give effect to NPSs.
- Tree Regs require trimming, felling and removal.
- Not just about existing lines - the future of NZ's electricity supply requires the upgrading and development of the National Grid.
- Danger of siloed thinking - NZ's supply of electricity and safety of the public at issue.
- Conflicting national direction = uncertainty for parties implementing NPSs.
- Risks when decisions are made on an ad hoc basis by district and regional councils as to how to reconcile conflicting policy documents.
- Expensive and resource intensive to litigate.

SOLUTION:

- Clear National direction in new NPSs about relationship with NPSET, NESETA and other legislation (e.g. Tree Regs).
- Clear provision for the effective operation, maintenance, upgrading and development of nationally significant infrastructure.
- New NES or National Planning Standard for vegetation trimming, felling and removal for nationally significant infrastructure / National Grid infrastructure.
- A section 60 exemption to exempt necessary National Grid-related vegetation management from the deforestation activity giving rise to pre-1990 forest liability under CCRA
- Include in CCRA amendments an exemption for deforestation of pre-1990 forest land or reductions in carbon stock of post-1989 forest land, arising from BPFM vegetation management carried out at any location in the forest (without area threshold restrictions), provided it is carried out in accordance with Transpower's guidelines/requirements.