TRANSPOWER
Keeping the energy flowing

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3 February 2023

Chair and Members of the Select Committee
C/- Environment Committee Secretariat
Parliament Buildings
Wellington 6160

Dear Members of Environment Committee

Transpower supports the resource management reforms and appreciates the opportunity to comment on the Natural and Built Environment Bill (*NBEB*) and Spatial Planning Bill (*SPB*).

The reform that these Bills reflect is a "once in a generation" opportunity. It comes at a time when an urgent generational response is needed for climate change - the environmental issue of our time. 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 transmit ~70% more renewable electricity than it does now. The sector needs to accelerate that now and keep it up for decades.

For Transpower, that means a step change in the number and scale of projects we deliver to both strengthen our existing infrastructure and maximise the use of it. We realise what part we need to play – and we are ready. But we need the right regulatory levers to make it happen. The NBEB and SPB must enable a transformative shift, learning from the mistakes of the RMA, but also carrying forward things that work well.

Many aspects of the Bills have the potential to achieve this transformation. However, we think the reforms do not go far enough. Transpower supports:

- the move to focusing on achieving positive outcomes - leaving behind the RMA's more negative lens;
- better and more strategic planning across the system that is integrated and promotes the long-term infrastructure and growth needs of regions;
- the top-down model, with increased planning and fewer consents;
- the National Planning Framework (*NPF*) protecting and enabling National Grid infrastructure – initially by incorporating the National Policy Statement on Electricity Transmission (*NPSET*) and National Environmental Standards for Electricity Transmission Activities (*NESETA*) into the first NPF (subject to these documents being enhanced); and
- the ability to obtain exemptions to the effects management hierarchy and policy bottom-lines.

That said, to achieve the intent of the reform and enable the transformation needed, Transpower needs some key changes to both Bills. Overall, the implementation timeframes are too long to meet immediate needs, and the climate change challenge we face. Many processes can and should commence much earlier. By way of example, we will be able to move quicker and keep up with the country's electrification needs if we can access new fast track consenting and other approvals processes.

The Climate Change Response Act 2002 and the NZ Energy Strategy – which we will rely on to do the heavy lifting on climate change - need to more clearly influence the system from the top. In

addition, a National Priorities Statement from Central Government is needed, to help councils and communities make decisions that enable the national benefits of electricity transmission – particularly during the Regional Spatial Strategy (RSS) development. Given the pace of innovation and change within the electricity industry, a National Priorities Statement, and the RSS development process must also envisage and enable future technologies and new entrants to the market.

The proposed new system outcomes, and related processes, need to work harder to protect the natural environment at the same time as achieving climate change and infrastructure requirements. Conflicts will inevitably arise at times when our works must occur in sensitive environments, and the Bills must ensure these hard decisions are made early – the outcomes must be strong for all electricity infrastructure, and the NPF must be required to make the hard decisions about how competing tensions are resolved.

The NPF is a critical feature of the new system for Transpower to enable electrification. It simply must work to ensure investment certainty for us. This document needs to address the shortcomings of existing national direction. It needs to provide greater clarity on how to deliver and maintain transmission infrastructure in all the environments where those assets currently exist and will need to locate in the future. In addition, the NPF needs to protect our assets from neighbouring activities that have significantly compromised our assets in the past. Some of the hard work has been done through the NPSET and the NESETA. Without these documents, our infrastructure delivery would stall rather than accelerate. However, improvements to these documents must be prioritised now – under the RMA - and carry over into the first NPF. We cannot afford to go backwards or wait many years for improvements.

Finally, it is critically important that we keep what authorisations we have under the RMA, so Transpower can continue its necessary operations and works with confidence. The transitional provisions in the Bill must be comprehensive.

There are many further details that need to be clarified and improved. As a consequence, this submission, which has been a key priority for our team is, unapologetically, not short. The importance of this reform, and its role in achieving the outcomes we all need, necessarily dictates a thoughtful and detailed response.

Transpower appreciates the scale of the task ahead for the Select Committee and for officials. We are available to assist in any way. As the work continues, we urge you to keep the climate change challenge and the role of the National Grid, and the wider electricity system, front of mind. A transformative shift to enable us to meet this challenge is in the national interest. Through this shift and everyone's hard work, we feel confident that New Zealand will be better equipped to take on the challenges we face over the next couple of decades to improve outcomes for the environment, and for current and future New Zealanders.

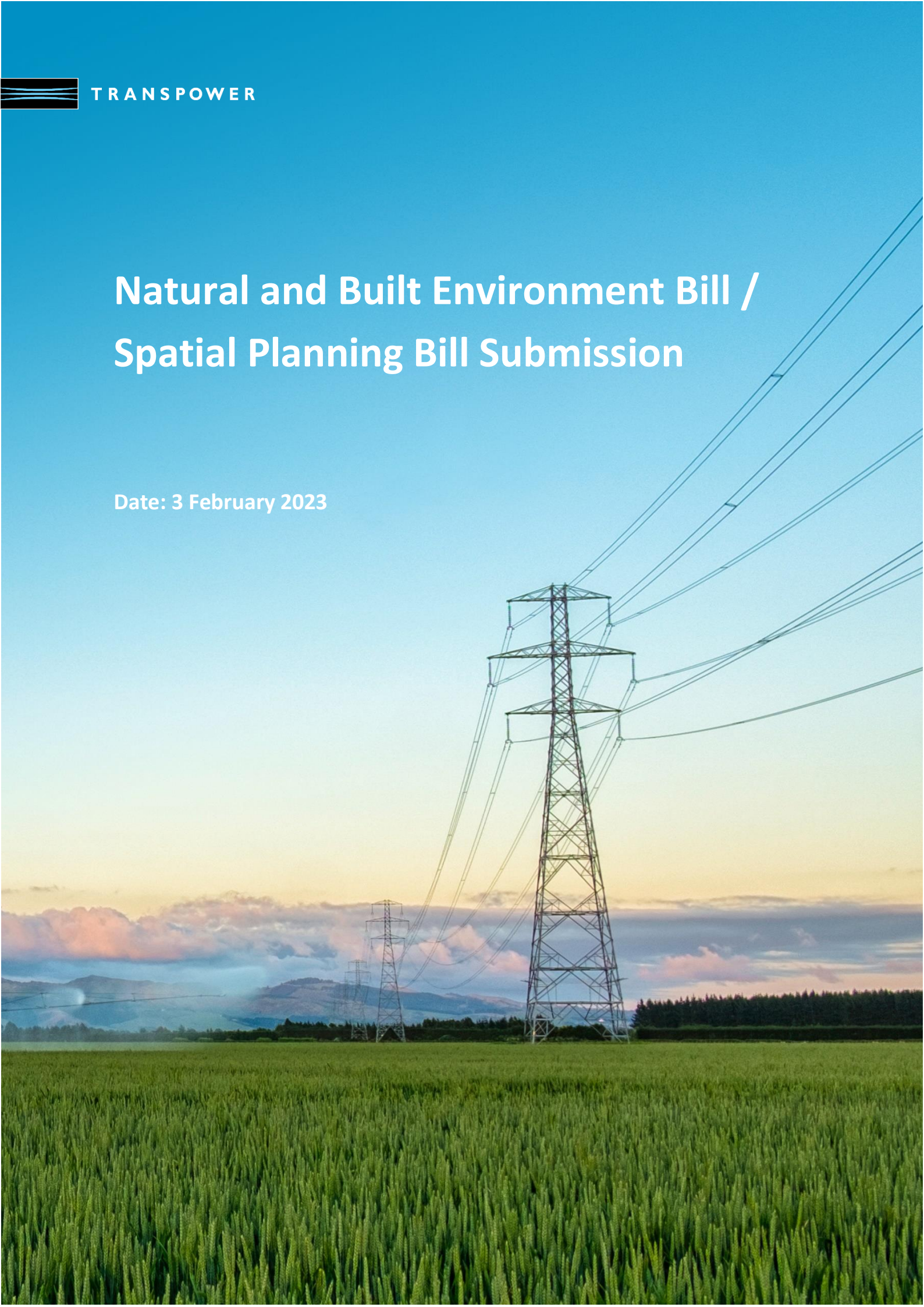
Yours sincerely

Alison Andrew
Chief Executive

TRANSPOWER

Natural and Built Environment Bill / Spatial Planning Bill Submission

Date: 3 February 2023



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1 Overview

1.1 Introduction

1.1.1 Transpower New Zealand Limited (*Transpower*), the owner and operator of the National Grid, welcomes this opportunity to provide submissions on the Natural and Built Environment Bill (*NBEB*) and Spatial Planning Bill (*SPB*).

1.1.2 The National Grid is backbone infrastructure that is critical for Aotearoa New Zealand's future and the achievement of key system outcomes.

1.1.3 Transpower has been a heavy user of the Resource Management Act 1991 (*RMA*), participating extensively in prior RMA reform cycles, consenting and designating multitudes of small, medium and major Grid projects, and engaging in policy and planning work for all levels of RMA documents. Transpower will continue to be a significant and key player in the NBEB and SPB system.

1.1.4 The reform must move us forward – and not take us backward. For Transpower that means an overall system that efficiently and effectively:

(i) allows us to build new assets, including in sensitive environments – as linear infrastructure, we will not be able to avoid these areas;

(ii) allows us to carry out routine work and maximise the use of our existing infrastructure, in all environments where our assets are located; and

(iii) protects our existing assets from inappropriate activities (such as housing and large scale and intensively used buildings) – our assets cannot be compromised.

1.1.5 But first, the Bills must be right.

1.1.6 Transpower has spent a considerable amount of time and effort reviewing and considering the NBEB and SPB, stress-testing them, working through scenarios and ultimately preparing this submission. Transpower's submission includes legal, planning and specialist technical inputs from a large team with a significant breadth and depth of experience delivering electricity infrastructure. This team includes Transpower's own legal and environmental teams, experts from Boffa Miskell and resource management legal expertise from Chapman Tripp.

1.1.7 Transpower strongly supports many key aspects of the NBEB and SPB, such as the shift to a positive outcomes-based approach, a focus on national level direction and greater consistency in the planning approach across councils and the direction to protect and enable infrastructure across and through the system.

1.1.8 However, to play its role in achieving the social wellbeing, decarbonisation and electrification goals that have already been set by Government, Transpower needs key changes made to both Bills. The relief required, reasons for it, and the drafting response are summarised below and outlined further in the sections that follow. Also identified in this submission are key reform measures which Transpower supports and which ought to be retained. The key 'take-outs' can be found in section 1.3.

1.2 Our context

1.2.1 As highlighted in prior submissions, Transpower, and others in the electricity sector, need to deliver an unprecedented amount of infrastructure investment over the next 30 years if New Zealand is to achieve its climate change objectives. A significant amount of economic activity will need to move off fossil fuels and onto renewable electricity. As a result, Transpower and others in the electricity sector need to establish how to meet a predicted 70% increase in electricity demand by 2050.

1.2.2 The pressing need for new electricity infrastructure exists now, and will continue to ramp up over the coming decades. If infrastructure delivery does not keep pace with the rapidly growing demand, New Zealand will need to continue to rely on fossil fuels to generate electricity. And, at worst, security of supply will be compromised.

1.2.3 Meeting our climate change objectives is something that all New Zealanders, now and for generations to come, have an interest in. This is an example of a national and inter-generational objective that the NBEB and SPB should enable. To this point, we consider the successful delivery of nationally significant electricity infrastructure to mitigate (and adapt to) the current climate change challenges is of national interest and the system framework must facilitate this.

1.2.4 Transpower considers that the starting point to achieve New Zealand's requirements must include protecting and being able to maximise the electricity infrastructure we already have. Existing National Grid assets are capable of delivering substantially more transmission capacity, provided regulatory settings enable the necessary work in a timely manner.

1.2.5 But that will only take us so far. Many more renewable electricity generation projects will need to be built by generators. And, Transpower will need to both strengthen its Grid and significantly increase connections to generators, distributors, and major users.

1.2.6 To get where we need to be, Transpower must be able to maintain and upgrade our existing assets without unnecessary consenting hurdles. Routine works like adding new circuits to existing lines, making foundations stronger to withstand more frequent and more intense weather events and clearing access tracks so we can maintain our existing assets are usually much faster, cheaper, easier and have less environmental effects than building new assets and the required access tracks to them.

1.2.7 We also need to be able to get through consenting of new lines and substations quickly and with certainty, so industries can feel confident investing in the shift away from fossil fuel and new renewable energy projects can connect to the Grid as soon as they are ready.

1.2.8 To secure national benefits and address immediate needs, we will sometimes need to rely on faster processes than 'business as usual' consenting pathways. Transpower already faces long regulatory approval processes without adding the current lengthy consent processes to that timeline. To put it directly, if the planning system does not remove existing barriers and enable Aotearoa New Zealand's climate change objectives to be met, we will not have investment certainty and miss our emission reduction targets.

1.2.9 To illustrate the scale of the challenge, the system is predicted to increase its capacity from ~9GW to 20GW, with transmission capacity needed to support this increase. In practical terms, 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. 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.

1.2.10 Transpower supports the need for the major reform of the resource management system through the NBEB and SPB. We simply do not have the luxury of standard RMA timelines of 3-7 years for consenting, and obtaining necessary property rights to provide the electricity New Zealand needs (not to mention the 7+ years it can take to obtain provisions in plans to protect the Grid from third-party activities and developments, as mandated by the National Policy Statement on Electricity Transmission). But, the new system must learn the lessons of what did and did not work with the RMA. We cannot afford to repeat mistakes. It is important that the specifics and the incentives are right. Sections 2 and 3 below provide further context on Transpower and its activities and on climate change and the electrification challenges.

1.3 What Transpower needs from the Bills

1.3.1 There have been many challenges for Transpower, and transmission activities, under the RMA. Transpower acknowledges that the Bills have attempted to provide for the needs of infrastructure and renewable electricity generation. However, Transpower has significant concerns, both at the system architecture level and on matters of detail, about the Bills.

1.3.2 Many of the new processes will take in the order of 10 years to implement, and occur in a staggered 'switch-over' from region to region over that time. We appreciate the attraction of a simple "switch" between the RMA regime and NBEB/SPB regime. However, such timeframes are too long to meet Transpower's immediate needs, including the climate change challenges we face. The gradual transition will also present challenges to Transpower (and other linear infrastructure), as it operates across the country – cross-boundary projects could require approvals under both the RMA and the NBEB/SPB. The many benefits of the outcome-focussed new regime and national direction in the National Planning Framework (*NPF*) should not be "on hold" while remaining phases of the transition process occur.

1.3.3 Accordingly, from day one Transpower will need both changes under the RMA and access to the new processes and provisions proposed under the two Bills.

1.3.4 The key areas of concern for Transpower if the Bills were enacted, are summarised below.

System architecture

(i) How the various parts of the system sit together, and how the 'top down' policy flow operates, will be hugely important for ensuring the success of the new system. At present, Transpower considers the overall system architecture has some major weaknesses, which collectively risk the system not working as intended.

(ii) These weaknesses include national climate change priorities not being successfully integrated into and across the system. In particular, linkages to the Climate Change Response Act (*CCRA*), Emissions Reduction Plan (*ERP*) and the National Adaptation Plan (*NAP*) are unclear and out of sequence. For example, the first NPF will be

prepared well before the ERP and NAP are comprehensive plans for addressing climate change, or the NZ Energy Strategy is progressed. This timing issue means that there is no overarching document for the electricity sector to input into the NBEB and SPB system from the commencement of the Bills.

(iii) A further concern is that the timeframes for implementing the ERP and NAP throughout the new system will be too long. Many of the activities to address climate change need to take place quickly - many immediately if possible. CCRA actions will therefore need to be accelerated into the NPF, Regional Spatial Strategies (*RSSs*) and Natural and Built Environment Plans (*NBE plans*), rather than using the processes currently proposed in the Bills, which could take several years to implement.

(iv) The processes in the SPB are fundamentally unclear and insufficiently robust given the important role and weight of RSSs in the system. The need for, and benefits of, the SPB sitting separate to the NBEB are unclear. Transpower considers that the two Bills could be merged, and more robust processes for preparing RSSs included - as for the NPF and NBE plans.

(v) The RSS processes need three key amendments. First, they need to be more flexible and agile to acknowledge the uncertainties of future electricity generation and transmission locations, and the rapid changes in the industry (both innovation and new entrants). Secondly, a Statement of National Priorities is needed for RSS preparation, otherwise local/regional interests will outweigh national interests. Lastly, the roles for stakeholders responsible for delivering infrastructure outcomes need to be much stronger.

System outcomes and the National Planning Framework

(vi) The NPF is a critical feature of the new system for Transpower. It simply must work, and work early. If the NPF is not comprehensive in terms of directions for transmission, if it does not provide adequate exemptions (for classes of activities), and does not reconcile policy tensions, policy barriers will remain. We will have no investment certainty. Getting the first NPF right will be crucial.

(vii) The NPF needs to be much more than a continuation of status quo RMA national direction, or the 'minimum viable product'. It must include a comprehensive policy and rule regime for the National Grid (subject to clause 92 issues – see below).

(viii) Transpower needs access to the NPF as soon as it is operative, rather than waiting 10 years for the rest of the system to be fully established. There is no reason why new national provisions that have been through a Board of Inquiry and Ministerial approval process could not be used immediately. The fact that, by definition, the matters contained in the NPF are of national importance is good reason for not delaying its implementation.

(ix) The NPF needs to comprehensively resolve the conflicts between protecting the natural environment and cultural values, and the needs and constraints of necessary electricity infrastructure. Under the Bills, this result could be severely compromised. The proposed system outcomes that will guide the NPF content do not provide the balance needed between achieving the protection of the natural environment, and achieving climate change and infrastructure outcomes. Transpower considers that the current imbalance must be fixed – by strengthening

the outcomes for infrastructure and renewable generation and transmission (so they are not written in a manner that is weaker than the outcomes that protect the natural environment, and by providing that the outcome have equal weight).

(x) Clearer and more agile exemption processes and effects management frameworks for infrastructure works in sensitive natural and cultural environments are needed.

(xi) Ensuring the 'trumping' nature of the NPF is not too blunt a tool will also be needed. How the NPF currently prevails over designations (clause 92) will create significant implementation issues. The NBEB, would effectively bar Transpower's access to designation tools where a land use rule already exists in the NPF. It would also take away the benefit of existing designations approved under the RMA but which have not yet been fully implemented. Both a designation and a resource consent could be required for the same land use activity. It is important that Transpower has a choice of using both framework rules and designation powers for transmission activities, given the different and important purposes these tools serve. If a change to clause 92 is not made, Transpower would be very reluctant to seek framework rules for many land use activities, potentially undermining its efficacy.

1.3.5 Further, there are a number of immediate requirements that need to be prioritised under the RMA (particularly if a 10-year transition to the new system is to remain):

Changes to the National Policy Statement on Electricity Transmission (NPSET)

(i) Policies which recognise the technical, locational and operational constraints of the Grid and provide policy pathways for enabling Grid assets to locate in sensitive natural and cultural environments are critical.

(ii) These policies also need to be reconciled efficiently with competing policies in other NPSs, such as the New Zealand Coastal Policy Statement (*NZCPS*), the NPS-Freshwater Management (*NPS-FM*) and the proposed NPS-Indigenous Biodiversity (*NPS-IB*). Policy 'bottom-lines' (sometimes referred to as "avoid policies") in those NPSs will otherwise become major barriers to Transpower projects.[1]

(iii) The effects management hierarchies in the NPS-FM, and proposed NPS-IB need to be amended to be proportionate and more certain, using the 'Effects Management Framework' concept and related exemptions proposed in the NBEB as a base. The current RMA effects management hierarchies are cumbersome and uncertain, resulting in investment uncertainty and prolonged debates during consenting processes (see the *Hairini* case discussed in footnote 1). Further, the processes treat routine operation, maintenance and upgrade works on existing infrastructure as if they were new infrastructure.[2] This approach is highly disproportionate and impractical, creating major barriers to necessary maintenance, resilience and adaptation projects.

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1 For example, a recent proposal to realign sections of Transpower's *Hairini to Mount Maunganui* 110 kV transmission line (see case study at section 5.3), was declined consent due to impacts on an Outstanding Natural Landscape (*ONL*) and related cultural values. These values were protected by a policy suite containing several highly complex and unclear bottom lines.

2 Clearing (and re-clearing) existing access tracks to allow routine pole replacement and works on towers would likely be treated as a new activity.

Changes to the National Environmental Standards for Electricity Transmission Activities (NESETA)

(iv) The NESETA currently streamlines approvals for many of Transpower's routine operation, maintenance and upgrade activities. Work to maintain and upgrade existing assets would come to a stand-still without the NESETA or another similar form of provisions. The NESETA must, however, be much more comprehensive and efficient for National Grid activities. New national rules that have immediate legal effect to protect the National Grid from inappropriate activities (e.g. housing and other sensitive activities) are also needed. This standardisation will reduce the significant planning burden of seeking these now relatively uniform provisions in all district plans.

Other transitional matters

1.3.6 There are a number of new tools and processes in the NBEB that will be hugely beneficial in assisting Transpower to deliver outcomes. With some changes to the current Bill drafting, these provisions could commence much sooner than proposed. For example:

(i) access to the specified housing and infrastructure fast track consenting process upon Royal assent of the NBEB would speed up consenting of critical projects. If that does not occur, continuation of the current COVID-19 Recovery (Fast-track Consenting) Act 2022, or a similar form of fast-track process, would be necessary during the transition period; and

(ii) the proposed changes to designation processes should commence as early as possible. For example, access to longer lapse dates 'from day one' would be positive and useful for longer term planning, as would the streamlined processes for designations. That said, these new processes need to be further improved to make them workable and clear, and to ensure that designations remain a useful and 'fit for purpose' tool in the new system. In particular, the test for obtaining a designation will be almost impossible to meet in many instances, and is a step backwards from the RMA. Transpower also requires confidence in the system around the requirement for Construction and Implementation Plans (*CIP*). These, along with their notification, cannot impede or delay important Grid work and upgrades, particularly for our more common or routine work (which may include minor upgrades and building work).

1.3.7 Other transitional arrangements need to be clearer and upfront in the NBEB, as was done for the RMA, rather than leaving these arrangements to later processes. Otherwise, decision-makers and participants will be left with significant uncertainty. It is also absolutely imperative that Transpower retains the key tools it already has under the RMA – requiring authority status and existing designations and resource consents, being key examples.

1.3.8 Transpower acknowledges that the transition will be complex and will require more detailed legislative drafting. However, it considers the benefits of moving to the new system more rapidly will far outweigh any issues of additional and unnecessary complexity.

1.4 Structure of this submission

1.4.1 The remainder of this submission develops on the above key themes, addressing particular topics and clauses. The structure is outlined in the table of contents above, but essentially flows through the following topics:

(i) System architecture weaknesses;

(ii) Outcomes;

(iii) the NPF;

(iv) Part 1 and 2 matters;

(v) NBE plans matters;

(vi) Designations and consenting; and

(vii) Transitional provisions.

1.4.2 We have also offered a summary of relief requested and drafting suggestions at the end of each chapter to assist with the Select Committee's process and to support any further drafting work undertaken by the Parliamentary Counsel Office. This approach is intended to be constructive, and we hope it is helpful. Transpower notes that the relief is not able to be comprehensive in some areas and that it has not identified every provision of the two bills it supports. We would be happy to discuss any points raised in this submission with the committee or officials.

1.1.1 Transpower wishes to be heard by the Select Committee in relation to this submission, which addresses both the NBEB and SPB.

1.1.2 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

2 Introduction to Transpower and the National Grid

2.1.1 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*.

2.1.2 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.[3]

2.1.3 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.[4]

2.1.4 **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.

[3] Transpower Statement of Corporate Intent, 2021, p3.

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

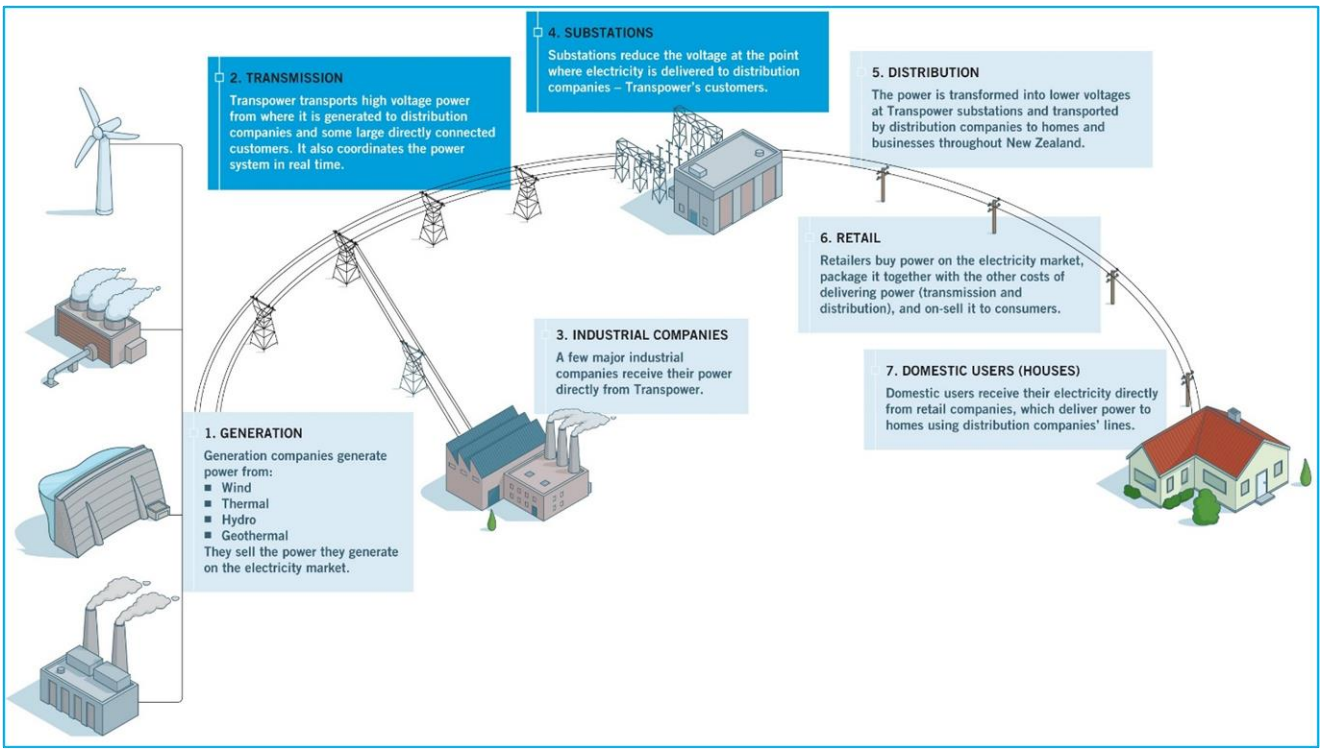

Figure 1 – Role of Transpower

2.1.5 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.

2.1.6 **Figure 2** shows the extent of the National Grid across New Zealand.

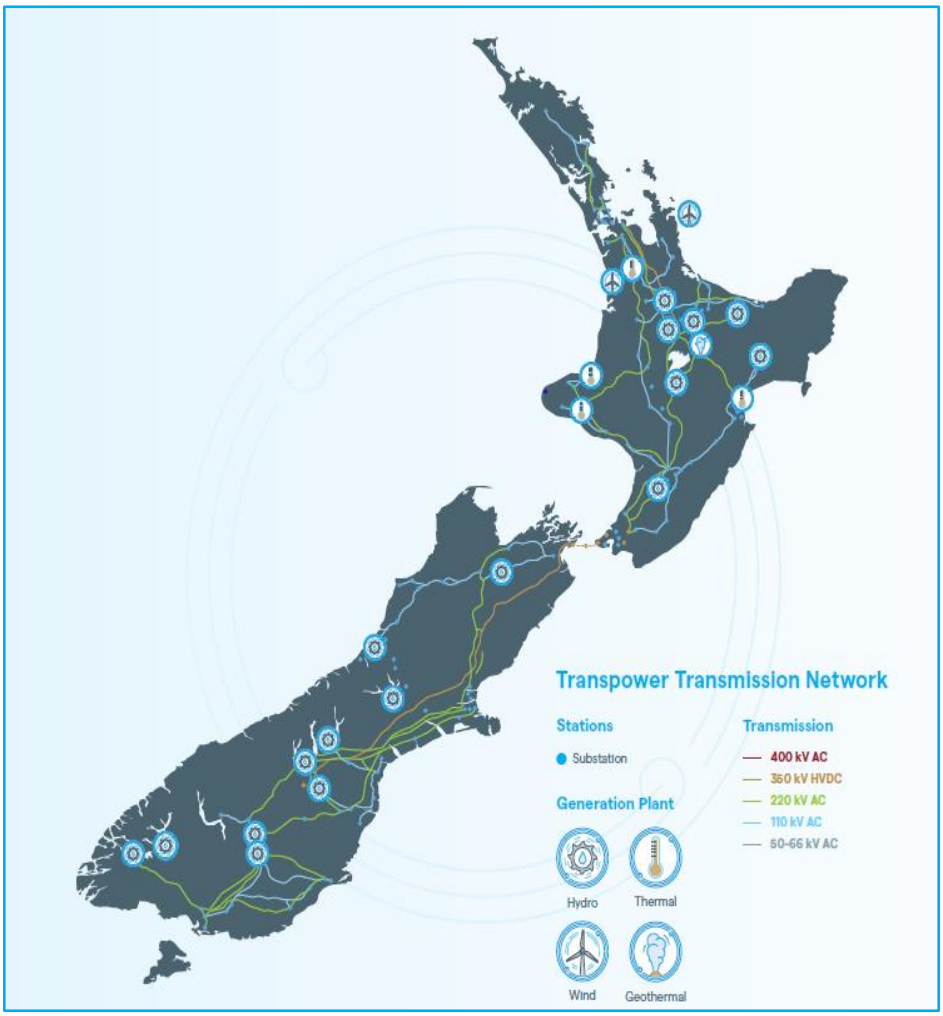

Figure 2 – Transpower's transmission network

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

2.1.8 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.

3 Climate change and the electrification challenge

3.1 The need for an energy transformation

3.1.1 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*). The first three emissions budgets have been set, and the first ERP has been prepared. The ERP recognises the key role the electrification of the energy sector will play in meeting the first emissions budget. The Government has also announced a target of 50% of the country's total energy needs being from a renewable source by 2035.[5]

3.1.2 Achieving this target requires a substantial and rapid increase in electricity volume. In *Whakamana i Te Mauri Hiko*, this target is achieved in our *Accelerated Electrification* scenario, which contemplates an increase in electricity demand by 68% compared to 2020, and an increase in installed generation of 137%.

3.1.3 Despite a significant increase in the amount of distributed generation, we still expect a large proportion of generation to be centralised: together, the combination of geothermal, wind, and hydro generation will represent 63% of the total capacity installed and generate 81% of the total annual electricity generated.

3.1.4 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 in its most recent "*Advice to the New Zealand Government*" also highlighted the importance of RMA processes and other national and local government instruments aligning with the required pace for build.[6] Similar analysis from Te Waihanga highlighted that consenting is increasingly becoming a barrier to efficient and timely building of infrastructure[7].

3.1.5 The ability of industry to build the infrastructure - generation, transmission and distribution - across the country will be key to allowing New Zealand to benefit from this low-carbon, low-cost electricity source.

3.1.6 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. Significant increases in new renewable generation – and transmission lines to connect to the Grid – will be required in order to provide enough electricity to meet growing demand from decarbonisation of transport and process heat. New connections to major industries will also be needed. A modern, flexible and resilient National Grid will need to provide a safe and secure supply

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5 Ministry of Business, Innovation and Employment, Terms of Reference, New Zealand Energy Strategy, October 2022.

6 Ibid, at page 281.

7 Te Waihanga (2021), Rautaki Hanganga o Aotearoa – New Zealand Infrastructure Strategy. Available from www.tewaihanga.govt.nz/strategy/, page 136.

to industrial and residential consumers under a wider-than-ever range of operating conditions.

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

(i) 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;

(ii) in December 2018, Transpower released *Transmission Tomorrow* its strategy for the long-term decarbonisation of New Zealand's economy;

(iii) in March 2020, Transpower released its blueprint for a decarbonised economy *Whakamana i Te Mauri Hiko – Empowering our Energy Future*;[8]

(iv) 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;[9]

(v) in February 2022, Transpower consulted industry on the concept of Renewable Energy Zones to facilitate the connection of renewable generation and decarbonisation load to the Grid;

(vi) in November 2022, Transpower implemented a new connection management framework to maximise our enabling contribution to the government's target for renewable energy by connecting new renewable generation; and

(vii) Transpower will soon release its March 2023 *Whakamana i Te Mauri Hiko monitoring report*.

3.2 Anticipating the increase in demand

3.2.1 The electrification of process heat and transport is expected to reach a tipping 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.

3.2.2 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.

3.2.3 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,

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8 Transpower (2020) Whakamana i Te Mauri Hiko: Empowering our Energy Future, available at https://www.transpower.co.nz/resources/te-mauri-hiko-energy-futures.

9 Transpower (2021) Electrification Roadmap, available at https://tpow-corp-content.catalystdemo.net.nz/about-us/transmission-tomorrow/electrification-roadmap.

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.

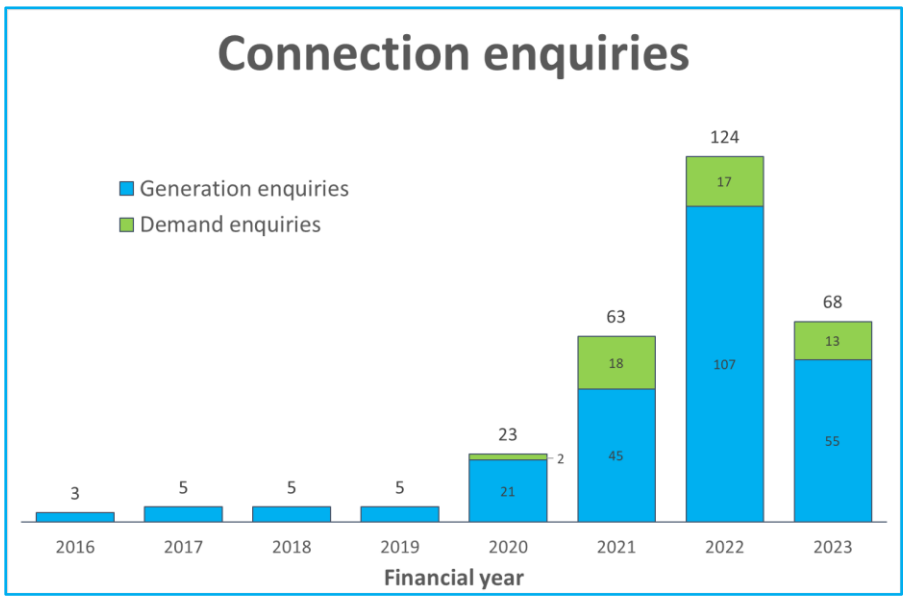
3.2.4 This new electricity demand will need to be met by new low carbon generation sources in order for electrification to be successful.

3.2.5 Although distributed[10] electricity generation will grow, 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.

3.2.6 Generators of renewable electricity must be located where renewable resource is available. Therefore, new transmission lines must be built to connect renewable generators to the National Grid and ultimately to consumers.

3.3 The scale of the challenge for Transpower

3.3.1 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.[11] While this surge was first identified in *Whakamana i Te Mauri Hiko,* the graph below shows the unprecedented increase in connection enquiries – from around 5 per year in 2016 to more than 124 enquiries for the year ending June 2022.



Graph 1: Connection enquiries 2016-2023

[10] Distributed generation refers to electricity that is generated at or near where it will be used (e.g. solar panels on a house).

[11] 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.

3.3.2 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.[12]

3.3.3 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.[13] 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.

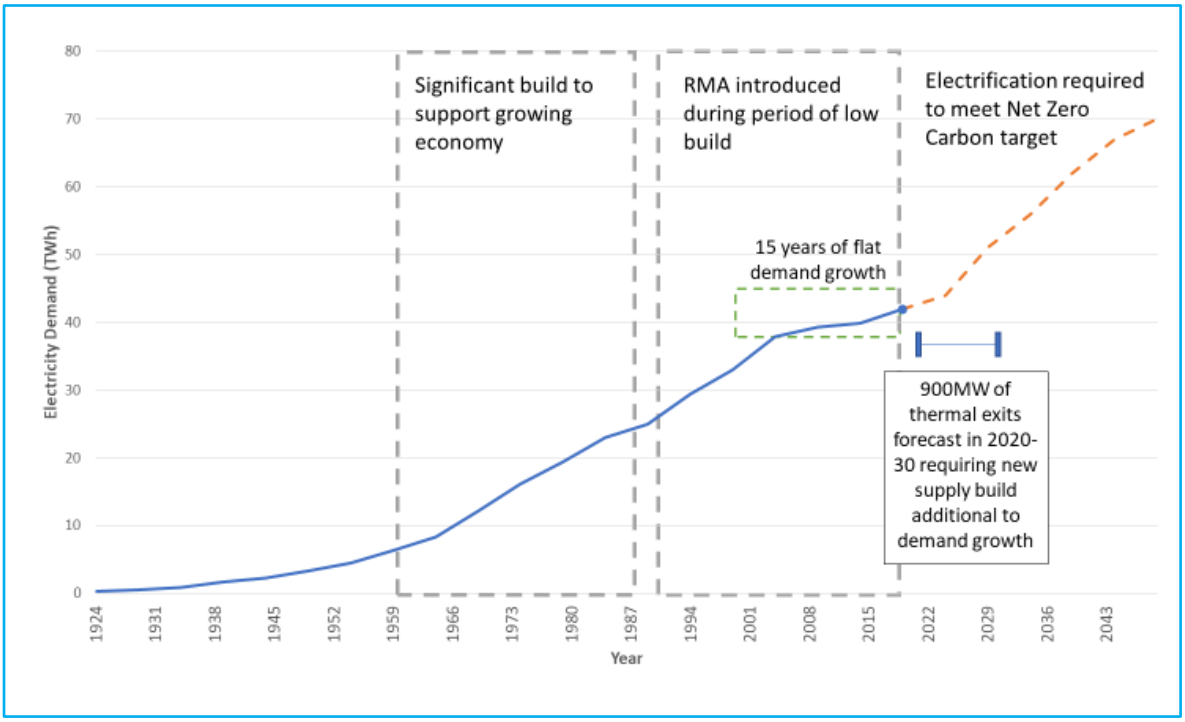


Figure 3: Illustration of increase in work volume from 2020 to 2050

3.4 Least regrets decision-making

3.4.1 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 electricity generation and the electrification of the wider economy. We are calling that plan *Net Zero Grid Pathways*.[14] The plan 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

12 Ibid.

13 Ibid.

14 Whakamana i Te Mauri Hiko, page 13.

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, later phases are also being planned, where more substantial longer-term investments will be needed as electrification of the economy grows.[15]

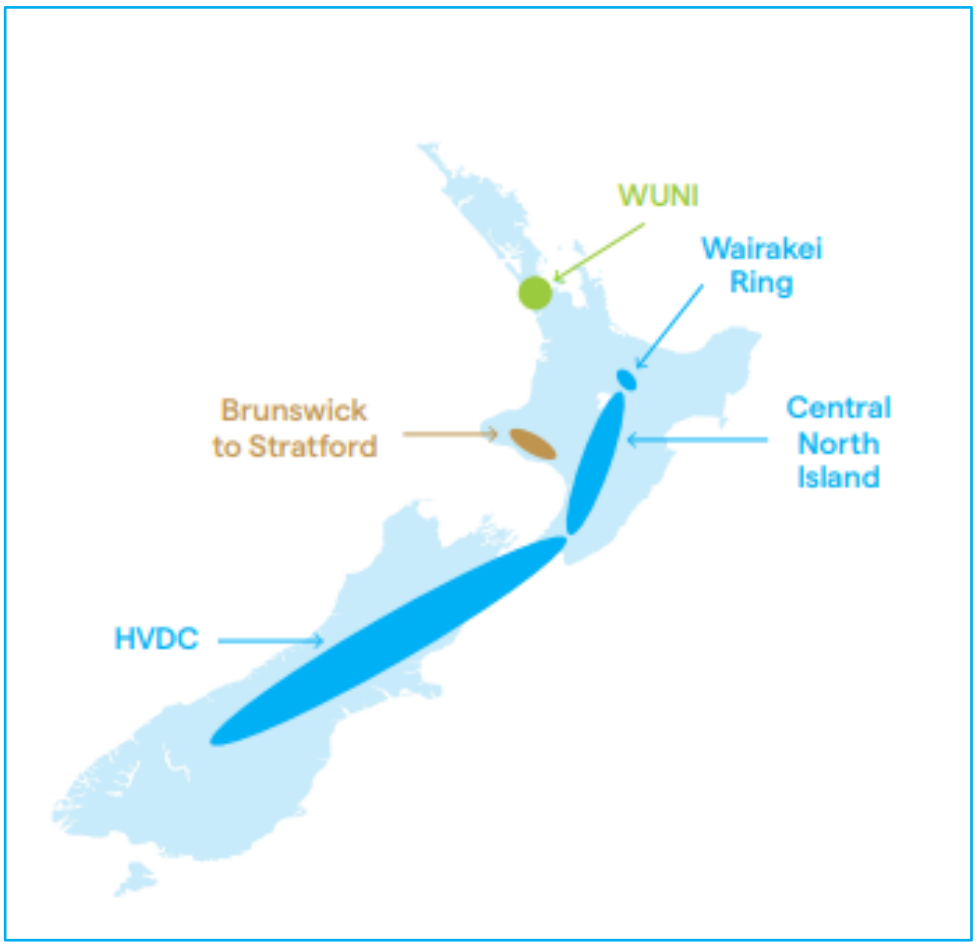


Figure 4: Net Zero Grid Pathways Phase 1 Investments

3.4.2 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, or similar to, the development timeline for their connection to the Grid.

3.4.3 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 National

[15] Transpower (2021) Net Zero Grid Pathways: Phase One to 2035, available at https://www.transpower.co.nz/NZGP.

Policy Statement for Renewable Electricity Generation (*NPSREG*) and the NPSET) are considered and revised together.

3.4.4 The pace of change has also increased. In 2019, off-shore wind was considered an "emerging technology".[16] In 2022, MBIE released a discussion document on offshore renewable generation, to ensure that "regulatory settings are in place by 2024 to enable investment in offshore renewable energy".[17] And then, at the end of 2022 media announcements were made about investigations into off-shore wind developments in Taranaki and South Waikato. These investigations have come much sooner than anticipated.

3.4.5 Other innovations are underway - including investigations into the development of Renewable Energy Zones (*REZ*). If put in place, a REZ would be a change to the investment process for renewable electricity infrastructure. Rather than meeting connection needs one by one in an incremental manner, a REZ framework would proactively identify areas with abundant renewable resource and seek out parties to connect building capacity at the cumulative level of all realistic projects. The focus on REZ investigations to date have been on funding and Commerce Act regulatory arrangements.

3.4.6 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.

3.4.7 The Productivity Commission's *Low-emissions economy* report[18] 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.[19] It states that investments in the National Grid and distribution networks will be needed to complement the expansion of renewable generation.[20] The Productivity Commission recommended that the Government:[21]

> *…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.*

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16 Beehive (2019): Government invests in clean energy centre to help power New Zealand's economy, available at Government invests in clean energy centre to help power New Zealand's economy | Beehive.govt.nz.

17 MBIE: Minister's foreword, available at Minister's foreword | Ministry of Business, Innovation & Employment (mbie.govt.nz).

18 New Zealand Productivity Commission (2018): Low-emissions economy- Final report, available at www.productivity.govt.nz/low-emissions.

19 Low-emissions economy: Final report, page 401-402.

20 Low-emissions economy: Final report, page 403.

21 Ibid, Recommendation 13.3.

3.4.8 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.*"

4 System Architecture weaknesses

4.1 Introduction

4.1.1 Transpower strongly supports a 'top down' approach to planning. It acknowledges the NBEB and SPB do seek to achieve that outcome with policy to flow down via the NPF, to the RSSs and then to the NBE plans. Each lower order document is intended to be strongly directed by the higher order directions. The intent is to then enable much clearer and permissive consenting pathways for activities that have been endorsed through the higher-level policy work. Greater restrictions and control will be required for activities not contemplated.

4.1.2 However, key problems with the architecture are:

(i) poor integration of CCRA and New Zealand Energy Strategy across the system, particularly how ERPs and NAPs will be brought in; and

(ii) a lack of direction on national priorities during preparation of RSSs, compounded by the SPBs weak and undexterous processes to keep a SPB current with changing times.

4.1.3 These issues collectively risk:

(i) the system not working as intended;

(ii) local/regional interests outweighing national interests;

(iii) processes being heavily challenged, leading to delays and ongoing uncertainty during the transition from the RMA to the operative Natural and Built Environment Act (*NBA)* system; and

(iv) processes and documentation (NPF, RSSs, NBE plans) not keeping pace with the climate transition required.

4.2 CCRA and NZ Energy Strategy integration issues

4.2.1 The CCRA and NZ Energy Strategy integration issue is in part due to timing. The NPF is proposed to be the key tool to implement the CCRA, via the NAP and ERP (clauses 19(3)(b); 21(3)(b); 26(b); 28). Transpower generally supports that approach (noting direct linkages to the CCRA would have been preferable).

4.2.2 However, the first NPF will be prepared well before many of the outcomes of the CCRA have been progressed. To illustrate, **Figure 5** below[22] identifies the sequencing of the various documents. Transpower highlights that:

(i) The ERP and NAP (sometimes described as "a plan to make a plan") contain many yet to be implemented "actions". There is currently no direction in the NBEB that

[22] Adapted from MfE document: Our Future Resource Management System- Overview, Figure 14: Indicative implementation timetable, available at https://environment.govt.nz/assets/publications/RM-reform/Our-future-resource-management-system-overview.pdf.

the NPF must also be consistent with the outputs of these actions. The SPB does not refer to the CCRA at all.

(ii) A further important example is the NZ Energy Strategy – anticipated to be a key document for the electricity sector. This strategy is to be produced by the end of 2024. The first NPF will have been completed by then.

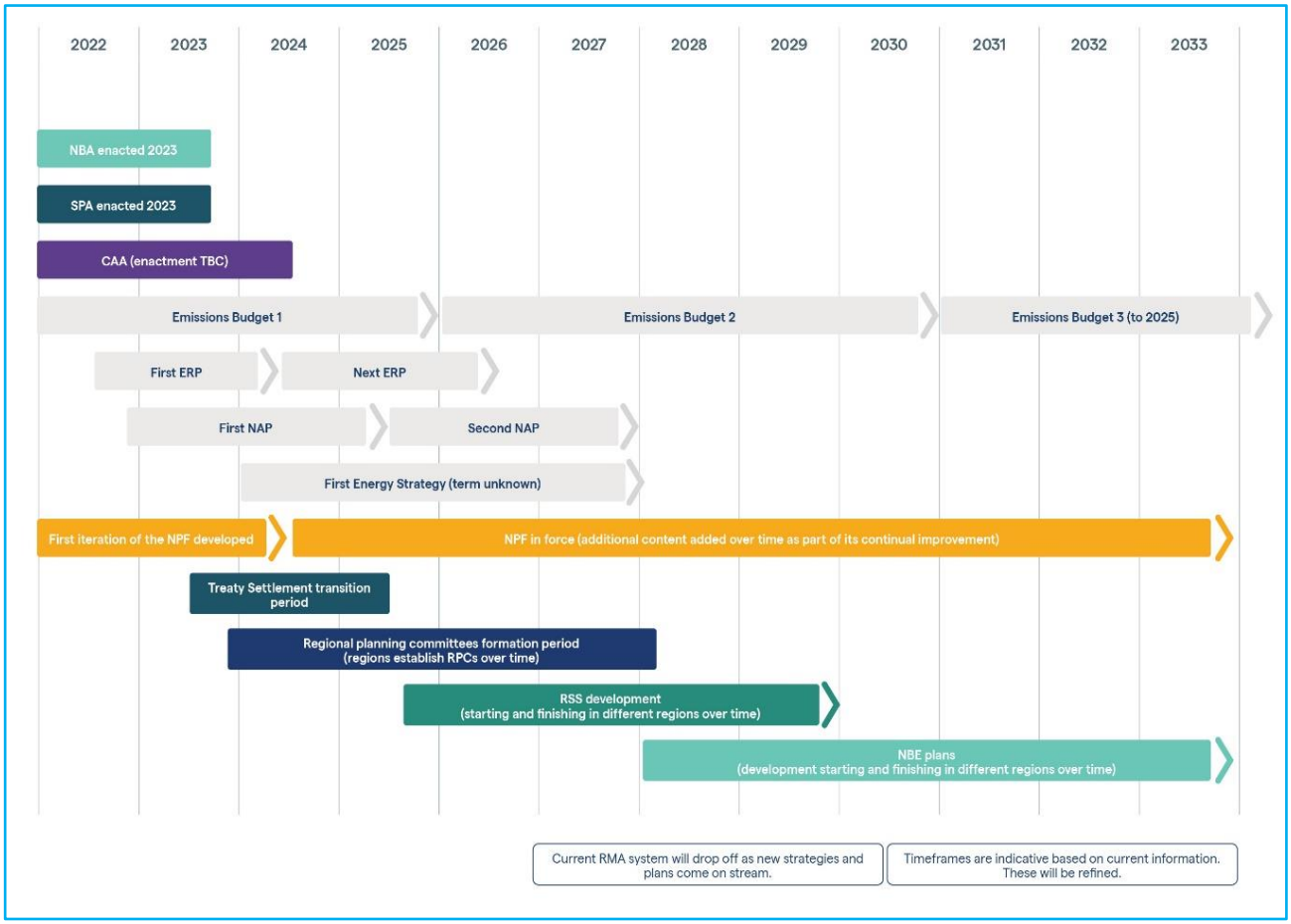

Figure 5: Transition timeline

(iii) The second ERP is not due until 2024 and the second NAP not until 2025 – again after the first NPF is proposed to be completed.

4.2.3 These timing issues mean that there will be no overarching document outlining the needs of the electricity sector in order to achieve outcomes, nor for the sector to provide necessary input into the system from its commencement. This gap is a particular concern given there is currently no Government Policy Statement on New Zealand's electricity needs.

4.2.4 The linkages between the CCRA, the NZ Energy Strategy and the SPB also need to be significantly clarified. The SPB and RSSs provide an important opportunity to reconcile the respective requirements of the CCRA, the NZ Energy Strategy and the NBEB at a regional level. In particular, Transpower considers RSSs will need to engage with the potential tensions between:

(i) the 2050 target, emissions budgets, and emissions reduction plans set under the CCRA;

(ii) infrastructure needs; and

(iii) the protective outcomes and limits set under the NBA.

4.2.5 Given the timing issue with the NPF, the RSSs may also need to pick up aspects of the CCRA actions, and as such need to be directed to do so. Transpower also considers there should be a requirement in the NBEB for RSSs to be "consistent with" the actions and outcomes of the ERP and NAP (which include Transpower's Adaptation Plan). This proposal will help to ensure these documents are given appropriate weight in decision-making and RSSs are not contrary to or opposed to the outcomes sought by the ERP and NAP, and actions or outcomes required by those documents. The NZ Energy Strategy should also be treated in the same manner as the Government Policy Statements referred to in Schedule 3 of the SPB, to which the Regional Planning Committees (*RPCs*) must "have particular regard" (clause 24(2)(a), SPB). Treating the NZ Energy Strategy in this way and ensuring the ERP and NAP outcomes and actions form part of the RSS processes will go some way towards filling the gap between the timing of the NPF and the CCRA outputs. However, it will not solve the problem entirely.

4.2.6 A further concern is that the timeframes for implementing CCRA outputs in the NPF, and more generally throughout the new system, will take too long. Many of the activities needed to address climate change issues will need to take place quickly (prior to 2025) and may be better implemented by fast tracking them into the NPF, RSSs and NBE plans. More rapid integration and review processes are needed.

4.2.7 Transpower considers that these issues can be addressed by changes to the legislation (section 4.4, relief points 1-4, 8, and 10). To help illustrate, **Figure 6** below shows how Transpower considers the linkages between the new system legislation could be enhanced.

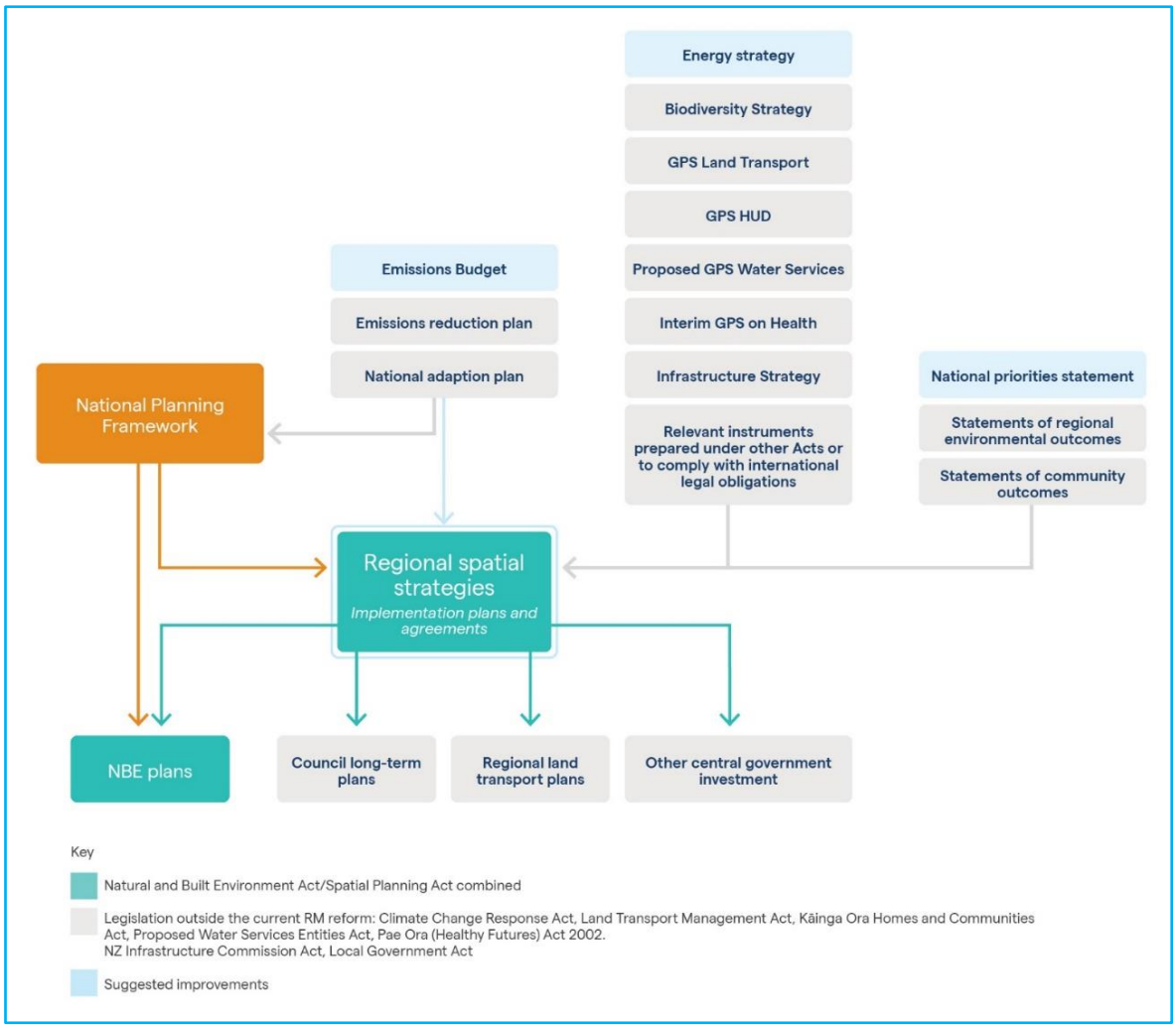

Figure 6: Proposed Architecture

4.3 Spatial Planning Bill integration

Introduction

4.3.1 Transpower acknowledges that the Spatial Planning Act (*SPA*) is intended to provide a more strategic and coordinated approach to long-term regional planning (clause 3(b), SPB). It supports that intent. Transpower considers longer term planning through RSSs has the potential to significantly improve status quo RMA processes. Given their significance, Transpower must be able to make full use of RSSs. Transpower supports the proposal for climate change mitigation and critical infrastructure projects identified in RSSs to be streamlined through the later NBE plan and designation processes. This approach will enable projects to be subject to appropriate testing at the relevant stage, but not require repeated and unnecessary effort to obtain later approvals.

4.3.2 However, the need for, and benefits of, having separate legislation to establish RSSs are not obvious. Having two separate regimes simply creates significant and unnecessary complexities. Transpower therefore considers that the SPB provisions should be integrated into the NBEB.

4.3.3 Irrespective of whether or not the SPB and NBEB provisions are merged, significant further work is needed to successfully stitch the intended SPA and NBA processes together. Furthermore, in Transpower's view the current processes in the SPB are fundamentally unclear and insufficiently robust given the important role of RSSs in the system, particularly when compared with processes in the NBEB.

4.3.4 There is also a real risk that key Grid projects will be missed from the RSS unless the process is made more agile and information requirements are clarified to recognise the realities of project investigations and the reactive nature of many Grid projects. The SPB must therefore provide a framework for including existing and well-developed projects in RSSs, as well as projects in their early stages, and more uncertain future development. Additional processes for updating RSSs between reviews to address emerging issues (for example, new generation opportunities that arise) must also be provided. Overall, Transpower considers the processes to develop RSSs specified in the SPB need to provide much greater clarity and reduced discretion. Transpower's more specific concerns with the RSS processes and requirements in the SPB are outlined in section 7.1.

Fast moving and/or reactive planning requirements

4.3.5 RSSs must recognise that the electricity industry is market driven, and reactive. Transpower is required to respond to increased demand and new generation - whenever these needs become known. Generation and related transmission activities are often unknown and may develop over relatively short periods. There is not currently any ability for Transpower to identify transmission projects 'ahead of need', that is as enablers to electrification to meet government policy objectives. That sort of optimised planning approach, akin to the Integrated System Planning approach used by the Australian Energy Market Operator would be more compatible with the process currently contemplated under the RSSs. In such a planning process, transmission projects and locations are identified ahead of need based on a whole-of-system view of the electricity systems requirements, following/meeting government climate objectives are given constraints.

4.3.6 Absent a more integrated planning regime, the benefits of strategic planning will be lost if RSSs are out of date. Practically speaking, it will not be possible to identify all future infrastructure works (especially long-term generation, transmission and large-scale distribution projects) during a RSS process. The RSS time-span of 30 years is considerably longer than the period that infrastructure providers are able to plan for with any precision given the reactive nature of infrastructure planning under the Commerce Act regulatory framework. For example, a new renewable generation source or new technologies may require a National Grid connection that was not able to be forecasted in a RSS. Other challenges relate to new entrants to the electricity market (including international entrants) who could not have been involved in RSS processes and projects (such as solar and offshore wind) that can be brought on very quickly but may require transmission or distribution connections.

4.3.7 The significant increase in connection enquiries and unexpected off-shore wind developments discussed in section 3.4.4 highlight the real risk that RSSs will not be sufficiently nimble to accommodate the rapid changes afoot.

4.3.8 Accordingly, Transpower expects that RSSs would need to include the following information about the electricity system (noting similar national level content will also need to be covered in the NPF):

(i) Transmission and distribution:

(A) existing assets (which can be mapped in a GIS format);

(B) planned and anticipated works (which can be mapped but the level of detail will vary depending on a range of matters. These areas might take a graphic format with indicative locations); and

(C) provision for unknown generation/demand or technological change, which may require transmission and distribution works despite them being unable to be mapped in a RSS.

(ii) Generation:

(A) existing assets (which can be mapped in GIS format);

(B) consented works (which can be mapped in GIS format);

(C) for some generation types, such as wind and geothermal, it may be possible to indicate resource areas (although technological change is continually changing the economics of different areas). However, other generation types, such as solar, are not limited to such resource areas. This contrast demonstrates one of the challenges of spatial planning; and

(D) for new works, Transpower notes that it is unlikely that companies will divulge the necessary information to include these matters in RSSs due to commercial sensitivities. Similar challenges may also be presented for Transpower, where it is required, through the RSS process to publicly release information for new assets and activities before the relevant Commerce Commission processes have been completed, and well prior to any engagement with landowners that may be impacted. These practicalities demonstrate another key challenge of spatial planning. RSSs will therefore need to acknowledge that renewable generation works and their Grid connections are anticipated and encouraged despite not being shown on RSS maps.

(iii) Demand:

(A) existing demand (which can be mapped in GIS format);

(B) anticipated demand e.g. existing industrial and zoned industrial areas (which can be mapped in GIS format); and

(C) information requirements, noting it is unlikely that information will be available regarding new, large scale, direct connections that may establish outside of industrial areas.

4.3.9 It follows that RSS development will need to allow for a level of information/evidence that is proportionate to the stage of the project. Otherwise, there is a high risk that crucial projects will miss out on the benefit of being included in a RSS. For example, when RSSs are first prepared, long-term National Grid projects that are tentatively planned to be built 20-30 years later may have only had a very high level of assessment and limited route evaluation undertaken. Funding will not have been obtained and consultation processes would likely not have commenced. The SPB will need to provide greater guidance to confirm that this level of information is sufficient when preparing RSSs.

4.3.10 Clause 31 provides flexibility as to information requirements. However, Transpower considers this clause and other information requirements need to be more comprehensive. Otherwise, RPCs and RSS participants will face significant challenges in agreeing what level of information is appropriate for a given project.

Preparation and review processes

4.3.11 Transpower considers the preparation process and review requirements for RSSs also do not currently account for the realities of the electricity industry. These processes need to be more flexible and agile. RSSs need to be directed to provide for infrastructure needs that are not known at the time of RSS preparation.

4.3.12 The processes for preparing RSSs are not overly directive, but the outcomes have strong legal weight. In terms of RSS reviews, too much relies on the RPCs to identify changes needed. RSSs are proposed to be only reviewed every 9 years (clause 46, SPB) or if the NPF is updated (clause 47, SPB), or if there is a "significant change in its region" (clause 48, SPB).

National priorities

4.3.13 National priorities are not adequately provided for, resulting in major risks of local interests outweighing national interests. This issue arises due to a combination of:

(i) Central government representatives having only one vote on RPCs during RSS preparation (schedule 8, clause 23, NBEB), and the remainder of the committee representatives serving either local or regional political or cultural interests;

(ii) A focus in clauses 16 and 17 of the SPB on regional priorities. Clause 16 focuses on the vision and objectives of the region and gives the RPC discretion to provide strategic direction on matters if the RPC considers they are of strategic importance to the region. Clause 17 also appears to have a bias towards the region's benefits and needs, rather than the nation as a whole;

(iii) The incredibly complex task of RPCs having "particular regard to" or having "regard to" the government policy statements, strategies, plans or other instruments made under other legislation when preparing RSSs under clause 24, SPB; and

(iv) In that context, the need to have particular regard to statements of "regional environmental outcomes" or statements of "community outcomes". The process for preparing these statements is highly discretionary and will inevitably be drafted to best serve local and regional interests.

4.3.14 To illustrate how these issues could play out, the regional focus and broad discretion for RPCs will present challenges for nationally important linear infrastructure that may need to traverse one region to provide benefits to another. Transpower's experience (most notably in the context of the North Island Grid Upgrade Project) has been that the appropriateness of locating future infrastructure in one area as opposed to another can quickly become a political matter – NIMBYism at a regional level.

4.3.15 The Randerson Report recommended a National Priorities Statement be established, to provide greater national direction to RSSs.[23] The report also recommended that the National Priorities Statement set out "*any particular areas central government intends to*

[23] Randerson Report, p491.

promote or address through regional spatial strategies". Transpower strongly supports that approach. A published National Priorities Statement is necessary. Its content should be "given effect to" by RSSs (section 4.4, relief points 1, 6-7 and 9-10) – this approach would ensure that local and regional interests do not outweigh national interests and benefits. This statement could identify substantive priorities – particularly relating to nationally significant infrastructure and climate change mitigation. The Statement could also be a useful tool to integrate the Emissions Budgets, NAP and ERP actions and the NZ Energy Strategy, setting out what each region must do to achieve these national imperatives.

4.4 Requested changes to system architecture and suggested amendments to key clauses

4.4.1 As outlined above, Transpower requests that the SPB provisions are integrated into the NBEB and a comprehensive overhaul of the processes is undertaken. This submission cannot therefore provide detailed drafting. To the extent this submission is accepted, Transpower considers it would be useful for the Select Committee to call for a further round of submissions on new details. However, the table below contains potential drafting for some discrete matters.

Relief No.	Clause, Bill ref	Relief requested
1.	Clause 17, NBEB	Amend Clause 17(2) NBEB as follows: (2) It is the duty of the member of the committee appointed by the responsible Minister to communicate to the other members of the committee the government's strategic priorities in relation to the Spatial Planning Act 2022 as specified in the National Priorities Statement and ensure those priorities are given effect to in the Regional Spatial Strategy.
2.	Schedule 6, Clause 19, NBEB	Amend Schedule 6, Clause 19 as follows: (3) The board must ensure its recommendations on the NPF proposal are— …(b) ~~are not inconsistent with an~~ giving effect to any provisions or the outcomes of any action or actions in an emissions reduction plan, or national adaption plan, or the NZ Energy Strategy identified by the board as relevant to this Act or the Spatial Planning Act 2022.
3.	Schedule 6, Clause 21, NBEB	Amend Schedule 6, Clause 21: (3) The responsible Minister must ensure that their decision on the NPF proposal is: … (b) ~~not inconsistent with~~ giving effect to any provisions or the outcomes of any action or actions in an emissions reduction plan, or national adaption plan, or the NZ Energy Strategy identified by the Minister as relevant to this Act or the Spatial Planning Act 2022.

Relief No.	Clause, Bill ref	Relief requested
4.	Schedule 6, Clause 26, NBEB	Amend Schedule 6, Clause 26: The Minister may make a recommendation under clause 25 if satisfied that the proposed amendment— …(b) is necessary to ~~ensure consistency with~~ give effect to any provisions or the outcomes of any action or actions in an emissions reduction plan, or national adaption plan, or the NZ Energy Strategy.
5.	Schedule 6, Clause 28, NBEB	Amend Schedule 6, Clause 28: The Minister for the Environment must consider whether it is necessary to review the national planning framework each time an emissions reduction plan or a national adaptation plan or the NZ Energy Strategy is issued or amended or where an action or actions from those plans and strategy is completed.
6.	Definitions, SPB	Add to SPB definitions: "National Priorities Statement" means a statement of the government's strategic priorities in relation to the Spatial Planning Act.
7.	Clause 15, SPB	Amend clause 15, SPB as follows: (1) A regional spatial strategy must—… a) set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region for a time-span of not less than 30 years; and b) provide for the integrated management of the environment, including by providing strategic direction for the instruments in the planning system that are referred to in section 4; and c) support the efficient and effective management of the environment; and d) give effect to the national planning framework to the extent that the framework directs; and e) give effect to the National Priorities Statement to the extent that the statement directs; and f) subject to sections 15(1)(d), (e) and (g), help to resolve current and potential future conflicts between the key matters referred to in section 16(1)(c)(i), as guided by the Natural and Built Environment Act 2022 system outcomes; and ~~(e)~~(g) otherwise be consistent with the national planning framework.

Relief No.	Clause, Bill ref	Relief requested
8.	Clause 24, SPB	Add to clause 24(2), SPB: (2) The regional planning committee must have particular regard to the following, to the extent relevant to the regional spatial strategy: (a) the Government policy statements and other government directions listed in Schedule 3; and … (d) any other response, strategies, plans, or other instruments made for the purpose of giving effect to any provisions or the outcomes of any action or actions in an emissions reduction plan, or national adaptation plan, or the NZ Energy Strategy.
9.	Clause 47, SPB	Amend clause 47, SPB as follows: **47 Regional spatial strategies must be reviewed if national planning framework or National Priorities Statement is amended or replaced** (1) If the national planning framework or National Priorities Statement is amended or replaced, every regional planning committee must review its regional spatial strategy to assess whether the strategy needs to be amended to maintain compliance with section 15(1)(d) and (e) and (g).
10.	New clause 47A, SPB	Add a new clause 47A, SPB as follows: **47A Regional spatial strategies must be reviewed each time an emissions reduction plan or a national adaptation plan is issued or amended** Unless otherwise directed by the National Planning Framework or National Priorities Statement, a regional planning committee must consider whether it is necessary to review the Regional Spatial Strategy each time an emissions reduction plan or a national adaptation plan is issued or amended.
11.	Schedule 3, SPB	Add to Schedule 3, SPB: **Other government direction** **Name or topic of Government direction** NZ Energy Strategy

5 Outcomes, exceptions and the National Planning Framework

5.1 Introduction

5.1.1 Transpower supports the move to a positive outcomes-based system, with the system outcomes being described in Part 1 of the NBEB (clause 5). It also acknowledges the necessary shift to a more protective regime for the natural environment.

5.1.2 But, we consider that the right balance needs to be struck between absolute protection and the need to enable necessary climate change mitigation and adaptation activities, which at times will conflict. As stated in previous submissions, it is important for Transpower to have a degree of flexibility (along with robust effects management processes) to locate National Grid activities in sensitive areas given the inherent technical, locational and operational constraints of the Grid. Policy pathways and exemptions for locating in sensitive environments are therefore critical to National Grid activities progressing. Transpower must also be able to carry out routine works on existing assets already located in these environments, as well as maximise the use of those assets.

5.1.3 Transpower also strongly supports the intention to provide integrated direction at a national level through the NPF. Many of the key failings of the RMA can be attributed to either a complete lack of national direction or the 'siloed' nature of the national direction that has been produced. In saying that, Transpower recognises that there are also aspects of existing national direction that are working well and should be retained and improved, including the NPSET and the NESETA (see section 12, transitional provisions).

5.1.4 It is therefore crucial that the NPF contains the right content and directions. The NPF will be key to large parts of the new system working so that Transpower can deliver what it needs to deliver. If the NPF does not progress, or does not remain current over time, Grid activities will likely face barriers and existing RMA issues will continue. The system will be slowed down by inefficient and contentious planning processes and hard decisions on conflicts will once again be left to consent processes.

5.1.5 Accordingly, the NPF needs to provide an integrated, consistent and coherent set of detailed direction for the management of the country's natural and built environment. In particular, Transpower considers the national direction should address the following key principles for the electricity system:[24]

(i) A nationally consistent and comprehensive regime of provisions providing a 'one stop shop' of policy and consenting pathways for transmission activities that:

(A) ensures electricity system works have an efficient and certain pathway to be authorised that enables infrastructure to keep pace with the activities and development it serves;

[24] Additional principles will apply to electricity generation and demand in particular. It is also acknowledged that there will need to be separate rule frameworks for different electricity system activities to recognise their different operational and technical requirements.

(B) clearly resolves tensions with conflicting natural environment and cultural outcomes;

(C) accounts for the practical realities of infrastructure work; and

(D) does not rely on later implementation and re-litigation through local level planning and consenting processes.

(ii) Strong provision for the positive benefits of electricity industry activities – both existing and new assets. These broader, and often national benefits (e.g. climate change mitigation, the shift to a low emissions economy, essential input for major industries, and support for daily activities) should be prioritised over localised impacts (e.g. local amenity, vegetation removal, visual impacts).

(iii) Recognition of the value and investment in existing infrastructure by protecting assets and enabling their ongoing use, routine activities and upgrade, including relocation in managed retreat/adaptation scenarios.

(iv) The NPF should also be required to acknowledge and apply a 'whole of system' approach (generation, transmission, distribution, and connections to demand where they achieve the system outcomes).

This regime should also be available for use as soon as the NPF is operative (see section 12, transitional provisions).

5.1.6 Overall, and subject to its other submissions being accepted, Transpower considers the NBEB has many of the right elements to achieve these principles. But, key changes are needed to ensure the NPF has the best chance of success and RSSs and NBE plans are able to progress efficiently.

5.1.7 Achieving these principles will be significantly hindered by:

(i) the weak outcomes for infrastructure and renewable electricity generation in clause 5, NBEB, compared to the stronger directions for protecting natural and cultural values;

(ii) the unclear exemptions process for infrastructure activities that cannot avoid impacting natural and cultural values;

(iii) the limited and unclear directions in clause 58 on the contents of the NPF for infrastructure and renewable electricity generation and in Schedule 6, NBEB for the first NPF; and

(iv) other more technical issues that will create significant implementation problems, including the prevailing convention in clause 92, NBEB (discussed in section 5.6).

5.2 Outcomes

Equal outcomes and resolution of conflicts

5.2.1 Transpower understands the intent is that the system outcomes have equal footing (noting this intent is recorded in the Select Committee briefings).[25] Conflicts between the outcomes are to be resolved in the NPF as well as RSSs and NBE plans.

5.2.2 This topic was addressed extensively through the earlier Select Committee process on the Exposure Draft. The Select Committee acknowledged the issue, and did not support a hierarchy of outcomes, but also did not consider it necessary to include a specific statement to that effect. The Select Committee did, however, state that "*It may be appropriate for completeness in other parts of the NBA to state that there is no hierarchy of outcomes, such as where we have suggested principles be included to help guide conflict resolution between outcomes*." And, it recommended "*That the bill provide further direction on how conflicts between outcomes are to be resolved including: a. by specifying that there is no hierarchy among the outcomes*." [26]This recommendation has not come through into the NBEB. It is imperative that it does.

5.2.3 Transpower remains of the view that the language in clause 5 suggests some outcomes are more important than others. A key risk with the verbs used is that, based on current Supreme Court case law (which we understand is intended to remain relevant)[27], natural environment outcomes could take precedence over climate change and infrastructure outcomes. The particular concern is the strong direction in clause 5(a) "*the protection or, if degraded, restoration, of*…" versus the relatively weaker clause 5(b), which seeks to achieve "*the reduction of greenhouse gas emissions*", and clause 5(i), "*the ongoing and timely provision of infrastructure services*".

5.2.4 Legal arguments that there is an intended hierarchy in the system outcomes could draw support from:

(i) the clause 3 purpose including the need to "recognise and uphold" the new concept of te Oranga o te Taiao (clause 3(b)), which is a strong directive focussed on the health of the natural environment; and

(ii) the new language in clause 5 "to provide for" outcomes, which is also a strong directive, rather than an earlier proposal in the Exposure Draft to "promote" those outcomes.

5.2.5 If the outcomes are left as they are, ultimately the courts will most likely be faced with resolving the interpretation point. An interpretation that clause 5(a) has priority over other outcomes could create substantial barriers to necessary infrastructure proceeding. To ensure clarity and certainty, and to reduce the risk of extensive and costly litigation, Transpower continues to seek an explicit statement to make clear that no outcome in clause 5 takes priority over another (section 5.7, relief point 1).

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25 Select Committee briefing on Part 1 and Core Responsibilities, 1 December 2022, pages 1 and 2.

26 Report on the Inquiry by the Environment Committee, pages 31-32.

27 As noted in the Explanatory Note to the Natural and Built Environment Bill, page 3.

Outcome for infrastructure

5.2.6 Transpower also considers that a much stronger outcome for infrastructure (clause 5(i)) is needed to recognise its critical importance in achieving the reform and wider climate change objectives.

5.2.7 This outcome needs to clearly protect existing infrastructure, and provide for its operation, maintenance and upgrade. It also needs to enable the development of new infrastructure and incorporate the whole electricity system. Such amendments would also assist in balancing the comparatively strong directions of other outcomes discussed above (see section 5.7, relief point 1).

De-prioritisation of amenity

5.2.8 Transpower supports the specific exclusion of amenity from the outcomes in clause 5. However, the intended de-prioritisation of amenity is not clearly specified in the outcomes.

5.2.9 Transpower considers that stronger direction in the NBEB, in the NPF and at all other levels, is required to ensure that amenity values are not raised under the guise of other effects or outcomes. A particular concern is that the process for identifying Outstanding Natural Landscapes (*ONLs*) could be used as a guise for raising amenity effect issues.

5.2.10 The Bills currently provide a requirement to not have regard to "*any effect on scenic views from private properties or land transport assets that are not stopping places*"[28]. This explicit bar on considering certain amenity effects is a helpful addition. However, it is currently too narrow, and very subjective. There is room for debate over what an effect on a 'scenic view' is, as opposed to what is simply a change in visual effects. Submitter concerns about amenity impacts can have a significant limitation on the development of critical infrastructure such as Transpower's. One person's unremarkable outlook is another person's scenic view. Similarly, it is not clear what a 'stopping place on a land transport asset' should be limited to.

5.2.11 Transpower seeks that the limitation on considering visual impacts is broadened so that views or visual effects from private property are not able to be considered, and from land transport assets are limited to 'dedicated viewing locations' in any intended NBA or SPA process. Further clarity is also required in the system outcomes and other parts of the legislation to clearly show how amenity effects have been deprioritised (section 5.7, relief point 19).

5.3 Environmental Limits and exemptions

5.3.1 The NBEB specifies that exemptions from environmental limits and other protected areas are needed for some activities, including National Grid activities. This issue was addressed extensively in submissions on the Exposure Draft and in the Select Committee final report on the Exposure Draft. The Select Committee noted "*We suggest that consideration be*

[28] For the NPF, at schedule 6, clause 19; but also schedule 7, clauses 108(b) and 126(2)(a) for NBE plans; clause 223 for resource consents and clause 512 for designations. Clause 25(3)(a) of the SPB addresses RSSs.

given to whether the NBA should provide for situations where narrow exceptions to limits could be allowed or accommodated."[29]

5.3.2 Transpower strongly agrees with the Select Committee. When setting up the framework for reconciling competing outcomes and respecting environmental limits, there must be a way through for some activities that allows "management" of effects on sensitive environments, but not "avoidance", because of the critical nature of the infrastructure and its technical and locational constraints.

5.3.3 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. Further, many existing assets are already located in these areas. It is also crucial that infrastructure providers are able to undertake routine activities required to maintain, operate and upgrade existing assets already located in sensitive environments and/or protected areas without major consenting hurdles and offsetting and redress requirements.

5.3.4 To highlight this issue, in his speeches on the Bills, Minister Parker has acknowledged the difficulties of getting additional transmission lines through wide sweeping ONLs into Queenstown to address its pressing growth needs. The Minister highlights the point that linear infrastructure, such as transmission lines, cannot always avoid all of their effects on the environments they pass through. The required upgrade to transmission lines in the Queenstown Lakes District provides an example of how strict environmental protections/areas could "veto" Transpower's projects. The below case study also addresses the severe outcomes of unclear and unduly onerous policy bottom-lines.

Case Study

The 'Hairini case'[30] provides an example of how environmental limits could operate under the new regime to the detriment of necessary infrastructure projects if appropriate exemptions are not provided. Transpower previously sought to realign sections of its Hairini to Mount Maunganui 110 kV transmission line – by removing the line off Te Ariki Park and over residential properties and moving it into the road corridor (and onto an existing line in places). A structure was also proposed to be removed from the harbour.

Tauranga Environmental Project Society Inc and Maungatapu Marae Trustees from Ngāti Hē opposed the realignment as the project would traverse an ONL and a structure would be located in front of the Maungatapu marae. Ultimately, Transpower was prevented from pursuing this project by the High Court due to the effects on an ONL, which had cultural significance and which were protected by strong avoidance policies. Again, avoidance was considered impossible due to the need for the project to cross the harbour, which was broadly categorised as an ONL. Transpower would therefore require an exemption under the new regime, were it to pursue this project, as the ONL would likely constitute a Place of National Importance. Exemptions would likely also be required for routine works to maintain the line in situ.

29 Report, page 26.

30 *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZHC 1201.

5.3.5 The allowance for limited exemptions within the NBEB framework is therefore supported. Transpower considers that these limited exemptions should apply for all of Transpower's activities. However, as currently framed, the exemptions from environmental limits and other protections are unclear and inconsistent, and scattered throughout the NBEB. They may also not be available in a timely manner. As such, these provisions could become a major barrier for infrastructure projects and climate change mitigation and adaptation projects.

5.3.6 **Table 1** below highlights some of the complexities of the current regime.

	Environmental Limits (EL)	**Places of National Importance (PNI)**	**Significant Biodiversity (SBA)**	**Specified Cultural Heritage (SCH)**	**Highly Vulnerable Biodiversity (HVBA)**	**Critical Habitat**
Concept	Limits to protect ecological integrity or human health (clause 38)	Incl. outstanding natural character, features or landscapes, wetlands (clause 555)	Rare, diverse and representative areas that meet criteria (clauses 557- 558)	Incl. category 1 sites on NZ Heritage List (clause 7)	Threatened species and ecosystems that meet criteria (clause 562)	Habitat of a nationally critical species (clause 567)
Where limit/ area identified	NPF or otherwise as directed in NBE plan (clause 39; clause 642).	NPF, NBE plan, closed register (clause 556; 559)	NPF, NBE plan (clause 556)	NBE plan, closed register (clause 556; 560)	Not specified.	Not specified
Key restrictions	Minimum biophysical state or maximum amount of harm (clause 40). NBE plans must "achieve" limits cl102. Activities "prohibited" if a breach (clause 154)	More than trivial adverse effect must not be allowed unless an exemption (clause 559)	More than trivial adverse effect must not be allowed unless an exemption (clause 559)	More than trivial adverse effect must not be allowed unless an exemption (clause 559)	More than trivial adverse effect must not be allowed unless an exemption (clause 563).	Not specified
Who can apply for exemptions	RPC (clause 44)	Not clearly specified except for SBA or SCH.	Do not need an exemption if meet the effects management framework (*EMF*) (clause 62(1)). Minister can exempt activities from EMF (clause 66)	Do not need an exemption if meet EMF (clause 62(1)). Minister can exempt activities from EMF (clause 66)	Minister can specify in NPF (clause 564).	Not specified
Exemption pathway for Transpower	Limited – through RPC	NPF appears to be the pathway (clause 62), but unclear	Yes – via the Minister.	Yes – via the Minister.	Yes – via the Minister.	Unclear

Table 1: Summary of different exemption processes

5.3.7 For example, as shown in **Table 1**:

(i) There are currently 6 different and potentially overlapping concepts used to prescribe protected areas all with different processes and exemptions:

(A) environmental limits (clause 38);

(B) significant biodiversity areas (clauses 557-558);

(C) specified cultural heritage areas (clause 7);

(D) places of national importance (which include specified cultural heritage and significant biodiversity areas, but also other broader areas, such as outstanding natural character areas and outstanding natural landscapes) (clause 555);

(E) areas of highly vulnerable biodiversity (clause 562); and

(F) critical habitats (clause 567).

(ii) Significant biodiversity areas could fall into 4 of the different categories, one of which contains no clear exemption processes.

(iii) Exemptions from environmental limits could only be sought by RPCs rather than entities such as Transpower and only during RSS and NBEB plan making processes. This approach would severely constrain Transpower's ability to access exemptions and potentially only at a point in time far in the future.

(iv) Places of national importance, such as outstanding natural character areas and outstanding natural landscapes, appear to require exemptions to be set via the NPF (clause 62). These areas are some of the most challenging for transmission projects to avoid, given their typically large geographical extent. However, the wording of the exemptions does not achieve the intended outcome of providing a clear exemption pathway for transmission projects. Transpower needs to be able to access exemptions to manage these challenges.

5.3.8 That said, there are useful aspects of the regime, including the new effects management framework (clauses 61 to 67) that must be applied to adverse effects on significant biodiversity areas and specified cultural effects and may be applied to other resources (clause 62). This framework is clearer and will be more practical to implement than the effects management hierarchies in current NPSs.

5.3.9 Transpower strongly supports the inclusion of the phrase "wherever practicable" within the effects management framework. As is the case with alternative routes or locations for designations (discussed at section 9.2), while theoretically possible, it is sometimes not practicable or feasible from a technical or operational perspective to avoid, or otherwise remedy or minimise adverse effects of Transpower's activities. The inclusion of the phrase "wherever practicable" allows this reality to be embedded within the effects management framework. The ability to seek exemptions from the new effects management framework (clauses 64, 66, and 67) is also strongly supported.

5.3.10 Transpower also generally supports the offsetting and redress principles frameworks within the NBEB to support management of biodiversity and cultural effects (schedules 3-5), provided they are proportionate and are better aligned with the exemption processes. Transpower seeks changes to improve workability and clarity of those principles, as outlined in section 11.5.

5.3.11 Overall, Transpower considers that the processes to prescribe exemptions should be rationalised into one area of the NBA to ensure clarity. The intended processes also need to be more nimble so that they can respond to specific project circumstances where needed. For example, Transpower needs the ability to go directly to the Minister to seek exemptions in certain circumstances.

5.3.12 Significant drafting and structural changes to the Bills would be needed to achieve this request, so Transpower has not attempted it in this submission. We have however, sought to improve the existing provisions to make them more workable, should the Select Committee see fit to recommend retaining the current structure (section 5.7). Some key suggestions are:

(i) Orders in Council should be able to be made for exemptions in addition to using the NPF development process, which would take too long in the context of consenting a project (section 5.7, relief points 3 and 4).

(ii) Clause 44 should be amended to clarify that this provision only applies to the exemptions sought by RPCs and a new provision added enabling other exemptions to be sought (section 5.7, relief points 2 and 3);

(iii) Clause 45 should be amended to acknowledge that some exemptions may need to be permanent, for example, transmission lines permanently located within protected environments, and made consistent with other changes (section 5.7, relief point 4).

(iv) Clause 46 should be amended to acknowledge that ecological integrity impacts may be able to be offset adequately (section5.7, relief point 5).

(v) Clause 62 should provide clearer direction on the activities that can rely on the effects management framework (in whole or part) to impact protected areas. The list should at least include National Grid activities. And, for reasons outlined, Transpower considers that the exemptions should be applied to all of its routine activities and biodiversity and redress principles should not be applied to these activities. Failing to provide for Transpower's routine activities will result in significant inefficiencies and increased costs and delays. It could also result in perverse outcomes. For example, avoiding biodiversity effects during routine activities may lead to ongoing and more disruptive works (see below case study).

(vi) Transpower does not offer a view on what other activities should be included. It has simply used the list in clause 66, given the apparent intent that these activities could gain access to the exemptions regime if approved by the Minister through the NPF (section 3.8, relief point 11). On this matter, we request amendments to describe Transpower's activities accurately, and fully (section 3.9, relief point 9).

(vii) Only 'more than minor' effects should be subject to the effects management framework. Lower order effects can be managed in the usual way. Use of the word "minor" is strongly preferred over "trivial" given the case law clarity on what "minor" means. "Trivial" is not defined in the NBEB, or the RMA and is something of a subjective concept. The meaning of the term is therefore likely to be contentious, particularly in the context of legislative provisions which seek to manage effects on significant environmental areas. Transpower would not support the use of other, undefined and untested terms such as "trivial" as used elsewhere in relation to the effects management framework (section 5.7, relief points 7-9 and 12-14).

(viii) Clause 64 needs to be amended to broaden the category of exemptions, enable broad exemptions to be provided for some operations and to acknowledge that while a location may have adverse effects on one particular sensitive area, alternative locations may have greater overall environmental effects that justify

the impact on that sensitive area (section 5.7, relief point 10). In this regard, comparing effects of alternative routes or locations on particular aspects of the environment in isolation would be unhelpful, as linear infrastructure will affect many aspects of the environments. See further comments in the context of designations at section 9.

(ix) Clause 67 contains several issues. Firstly, clause 67(1)(a) appears to be a further process for determining activities that fall within clause 66(1)(o), which sets out that exemptions may be made for activities "that will provide nationally significant benefits that outweigh any adverse effects of the activity". This intent needs to be made explicit – otherwise all cl 66 activities covered by clause 66(1) may have to go through these further tests. Secondly, clause 67(1)(b) appears to be a more general test for exemptions, so this needs to be clarified. Lastly, clause 67(2) is already covered in clause 564 (exemptions from protection of areas of highly vulnerable biodiversity (*HVBA*)), so is not required (section 5.7, relief point 8).

Case Study

Transpower has a current project which requires clearance of vegetation that has grown too close to the conductors of two spans of a transmission line (of ~700m length). If vegetation grows too close a transmission line, it can result in flashovers (where electricity arcs), and starts a fire. The work requires trimming of some species and removal of targeted individual trees. The transmission line is located in a Significant Ecological Area (*SEA*) and has several waterways and natural wetlands nearby. Initial advice from the consultant ecologist is that to provide a long term solution would generate a need to provide 9.2ha of offsetting. The alternative is to actively manage the vegetation, requiring more frequent visits and potentially incremental offsetting requirements ultimately resulting in increased disturbance of the area and increased costs.

Transpower needs to be able to maintain safe clearances between vegetation and our transmission lines, and work needs to occur in the most efficient manner possible. While we are yet to work through the implications on this project advice, it does highlight a number of issues with applying the effects management frameworks and offsetting requirements for routine works. We cannot avoid the clearance work – it must occur, in order to protect both the line and the vegetation around it.

5.4 Clause 58 of the NBEB – Enabling infrastructure and generation/transmission

5.4.1 Clause 58 requires the NPF to include content that provides direction on certain matters, including:

(i) enabling development capacity well ahead of expected demand (clause 58(c));

(ii) enabling infrastructure and development corridors (clause 58(d)); and

(iii) enabling renewable electricity generation and its transmission (clause 58(e)).

Transpower generally supports these requirements.

5.4.2 Including infrastructure corridors at the national level will ensure consistency in protection for the National Grid and ensure that the implementation approach is secured. They will also prevent repetitive debates about how the provisions should be included into the frameworks of the lower order plans, creating significant efficiencies within the planning system.

5.4.3 Transpower is frustrated that under the RMA, despite the NPSET recognising that the need to operate, maintain, develop and upgrade the National Grid is a matter of "national significance", the requirement to "give effect to" the NPSET is devolved to local authorities. Over time this has raised two main issues: firstly, a lack of willingness from some local authorities to update their plans to give effect to the NPSET (despite the NPSET mandating this be completed by 2012); and secondly, variations in wording, but not the substantive restrictions, of the corridor provisions across the country. Alongside this, the process of obtaining the NPSET provisions into district and regional planning instruments has been extremely repetitive and costly across the 74 councils.

5.4.4 In relation to the second point, Transpower has sought consistent restrictions on third party activities since 2012. Yet, because of the way the RMA schedule 1 process works, there are a multitude of options for challenge and changes to be made to what is sought in a primary submission (e.g. further submissions, section 42A reports, evidence presented at hearings, mediation and Environment Court proceedings). This has led to very minor differences in approach and significant differences in drafting between different councils. The result is that today, no two Council plans contain National Grid corridor provisions that are drafted the same. This approach is a highly inefficient and resource-hungry process (e.g. Transpower spends, on average, $1 million per year engaging in Council processes relating to corridors). It cannot be justified – the potential and actual effects on (and of) the National Grid are the same, regardless of which Council jurisdiction it is within - and local variation is not needed. In order to correct this significant failing of the current RMA regime, the NPF *must* include corridor rules that protect the National Grid from the adverse effects of third-party activities and development.

5.4.5 Transpower considers clause 58 should be substantially more directive to address the principles noted earlier. It should direct the NPF to:

(i) enable development *and infrastructure* capacity well ahead of demand to ensure that Transpower (and others) are able deliver the infrastructure needed to meet the rapidly growing demand for electricity to achieve New Zealand's climate change objectives;

(ii) comprehensively protect and enable infrastructure and development corridors, through nationally consistent framework outcomes, policies and framework rules; and

(iii) comprehensively protect and enable maintenance and upgrade of existing renewable electricity generation and transmission (noting that all transmission activities should be enabled (whether related to renewable energy or not) and provide for and enable new renewable electricity generation and transmission through nationally consistent framework outcomes, policies and framework rules (section 5.7, relief point 6).

5.5 The first NPF

5.5.1 Transpower conditionally supports the provisions in schedule 1 of the NBEB carrying forward existing national direction as part of, or consistent with, the NPF.

5.5.2 The major caveat is that the NPF must take a significant forwards step to enhance and modernise the national direction documents Transpower currently uses under the RMA and ensure they are fit for purpose (primarily being the NPSET and the NESETA) (see also section 12, transitional provisions below).

5.5.3 Transpower also has significant concerns that the mechanics for the first NPF set it up for failure. In particular, the provisions promote an incomplete document, and appear to largely assume carrying over status quo national direction. Given the rest of the system will hinge on this first NPF, the proposal for an incomplete NPF is simply not adequate. Transpower seeks that the provisions for the NPF provide much greater detail on what is required.

5.5.4 A particular issue relates to the ambiguities of clause 31(e) of schedule 6 which puts in place measures to facilitate "a *smooth transition from the Resource Management Act 1991 to the new Act*". The directions that the first NPF must be prepared "*on the basis of*" RMA national direction, and that decision-makers must "*have particular regard to maintaining consistency with the policy intent of the RMA national direction to the extent it is compatible with this Act*", have the potential to raise significant interpretation debates during the first Board of Inquiry process. These debates could ultimately result in legal proceedings, delaying the first NPF coming into effect.[31]

5.5.5 To put this point in context, existing national direction documents contain substantially different terms, formats and structures. The majority of the other national policy statements, including the NZCPS, contain strict "avoid" policies (akin to environmental limits, or bottom lines), which conflict with a key NPSET policy which recognises the constraints of the National Grid and has a "seek to avoid" requirement (policy 8).

5.5.6 National direction documents also contain many other conflicting policies and processes. For example, the NPS-FM and the proposed NPS-Indigenous Biodiversity (*NPS-IB)* contain effects management hierarchies for infrastructure that are inconsistent and unworkable for many necessary infrastructure activities. We note the effects management hierarchy in the NPS-FM provides a theoretical consenting pathway for 'specified infrastructure', but only in narrow circumstances which require the infrastructure provider to jump over multiple hurdles (see clauses 3.21 and 3.22 NPS-FM). These requirements include having a functional need to locate in a specific area, a requirement which can be challenging for linear infrastructure to demonstrate. Those existing effects management regimes are also inconsistent with the effects management framework in the NBEB (clause 61).

5.5.7 In addition, existing national direction documents contain narrow and unworkable provisions for existing infrastructure - effectively equivalent to the 'existing use rights' test in the RMA. Most of Transpower's routine works would not meet these tests due to

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31 The importance of clarity in statutory drafting is illustrated by the recent High Court case of *Otago Regional Council v Royal Forest and Bird Society of New Zealand Inc* [2022] NZRMA 565 which was required to determine if the whole Otago proposed regional policy statement was a 'freshwater planning instrument' under section 80A(2) of the RMA.

the infrastructure being old, and needing new foundations and other works to bring the assets up to modern standards. Such activities are likely to be considered upgrade and therefore treated as if they were new assets, with all of the associated consenting hurdles involved in that, even when minor work is being carried out.[32]

5.5.8 Further, if the first NPF is largely based on existing national direction, it would not move away from the failings of the RMA and towards a more positive outcomes-based approach. Transpower would query the need for the current reform, if it was essentially intended to be underpinned by existing RMA documents.

5.5.9 Transpower has proposed one particular change to schedule 6, clause 31, NBEB (section 5.4, relief point 17), but anticipates that these first NPF provisions will need significantly more detail to address the above issues.

5.6 NPF and designations – prevailing provisions

5.6.1 Turning to key implementation issues, clause 92 of the NBEB will make using designations very difficult. This clause sets out the relationship between NPF rules and designations, effectively duplicating section 43D of the RMA. Under sections 9 and 176 of the RMA, the works under a designation would normally be required to comply with both a NES and the relevant designation. Section 43D (and clause 92) alter that default situation by addressing the relationship between NESs (and NPF framework rules) and designations in a range of scenarios.

5.6.2 The effect of section 43D is that new designations cannot be used for National Grid land use activities regulated by NESETA (including transmission lines, access tracks, vegetation removal and earthworks). This approach reduces the approval tools available for no clear purpose. It has also required Transpower to obtain consents and designations for effectively the same activity when existing lines are undergrounded (land use consent for works under the NESETA and a designation to protect the route and asset). This process is inefficient and unnecessarily complex. Requiring authorities should be able to determine which tool is appropriate in which circumstance, rather than being constrained.

5.6.3 Transpower understands that the first NPF will bring forward and improve the NESETA. It is expected the relevant provisions will then become framework rules. Clause 92 will therefore continue the anomalous situation under the RMA, where designations are generally not available for new activities regulated by framework rules in the NPF.

5.6.4 However, the impact could become more severe than under the RMA. The NPF framework rules, if comprehensive, would also cover new transmission activities and existing substations (rather than only applying to certain activities relating to transmission lines existing at January 2010 as per clause 4 of NESETA). Transpower simply must have the ability to use designations for these activities. If not, duplication of approval processes would need to occur in many instances, resulting in inefficient and unnecessary processes and costs.

5.6.5 That said, if clause 92 remains in the current form, and land use rules are included in the NPF (as is expected), then consequential amendments must occur. Transpower would

[32] See for example clauses 3.21 and 3.22 of the NPS-FM.

seek that NES rules continue to apply to the same lines they do now and not be extended beyond that date (ie. lines that were operational at 14 January 2010). The compulsory acquisition provisions in the RMA (section 186) require requiring authority approval, not a designation. This same requirement is carried across into the NBEB (clause 525). However, as a matter of practice Land Information New Zealand will not proceed to compulsorily acquire land without a designation. If clause 92 takes effect in its current form then explicit direction should be added in the NBEB that compulsory acquisition is available to requiring authorities where a designation is not in place.

5.6.6 Further, consent processes under the NESETA do not allow Transpower to access land for initial investigations, whereas the notice of requirement process can allow for the use of land access provisions under the Public Works Act 1981(for 'public works' under section 111). Access to land regulated under the NESETA has been workable as these are existing lines and Transpower has rights of access under the Electricity Act 1992. If rules in the NPF are expanded to apply to new projects, then land access for investigations could be difficult to secure.

5.6.7 Overall, Transpower would prefer that requiring authorities are able to elect to rely on (and comply with) *either* the NPF or a designation when undertaking activities covered by the NPF. An appropriate balance could be struck by allowing NPF rules to specify when particular rules will prevail over any designation that follows the NPF (and conversely, where a requiring authority has a choice of authorisation options to apply). Alternatively, the restrictions in clause 92 could be amended to only apply to framework rules that are not land use rules. This change would remove the potential for conflict between designations and rules in the NPF. Transpower offers a number of drafting suggestions that pick up on these points (section 5.7, relief point 15).

5.7 Requested changes to outcomes, exceptions, the National Planning Framework and related provisions

Relief No.	Clause, Bill ref	Change requested
1.	Clause 5, NBEB	Amend clause 5 as follows: To assist in achieving the purpose of this Act, the national planning framework and all plans must seek to provide for the following system outcomes: (i) protect and enable maintenance and upgrade of existing infrastructure and infrastructure services and provide for and enable new infrastructure and infrastructure ~~the ongoing and timely provision of infrastructure~~ services to support the current and future well-being of people and communities. (2) Where there is a conflict between or among system outcomes, no outcome takes priority over another unless specified in the national planning framework, or a plan.

Relief No.	Clause, Bill ref	Change requested
2.	Clause 44, NBEB	Amend clause 44 as follows to clarify that this provision only applies to the exemptions sought by RPCs: Exemptions from environmental limits sought by a regional planning committee may be directed.
3.	New clause 44A, NBEB	Add new clause 44A as follows: **44A Other exemptions from environmental limits may be directed** (1) The responsible Minister may direct in the national planning framework or otherwise an exemption from an environmental limit or an interim limit relating to ecological integrity. (2) Any request under this section must be made— (a) by a body responsible for an activity or operation referred to in section 276(1); and (b) in a form approved by the Minister. (3) A request for an exemption must demonstrate how the body considered options for complying with the relevant environmental limit, including by applying the effects management framework. (4) The responsible Minister may decline the request or progress the request: (a) as a change to the national planning framework where Schedule 6 applies; (b) as a change to the national planning framework by Order in Council under section 25 which has immediate legal effect; or (c) as otherwise specified in this Act.
4.	Clause 45, NBEB	Amend clause 45 as follows: (1) An exemption from an environmental limit must be designed to result in the least possible net loss of ecological integrity that is compatible with the activity proposed. (2) The activity must provide public benefits that justify the loss of ecological integrity. (3) An exemption may ~~must~~ be subject to a time limit that the responsible Minister thinks appropriate in the circumstances. (4) If the responsible Minister imposes conditions when granting an exemption, the conditions and the time limits imposed must be published in the National Planning Framework, relevant plan or regional spatial strategy, or Order in Council or as otherwise specified in this Act as the case requires.
5.	Clause 46, NBEB	Amend clause 46 as follows: **46 When exemptions not to be directed** The responsible Minister must not direct an exemption if the Minister thinks, after considering the matters set out in section 50(2) and any measures

Relief No.	Clause, Bill ref	Change requested
		proposed to avoid, remedy, mitigate, offset, or take other steps to provide redress for any adverse effects on the ecological integrity,— (a) that the current state of ecological integrity in the area where the exemption would apply is unacceptably degraded; or (b) that an exemption would lead to an irreversible loss of ecological integrity.
6.	Clause 58, NBEB	Amend clause 58 as follows: The national planning framework must include content that provides direction on: (c) enabling development and infrastructure capacity well ahead of expected demand ~~(d) enabling infrastructure and development corridors~~ ~~(e) enabling renewable electricity generation and its transmission~~ (d) nationally consistent framework outcomes, policies and framework rules that comprehensively protect and enable infrastructure and development corridors (e) nationally consistent framework outcomes, policies and framework rules that comprehensively protect and enable maintenance and upgrade of existing renewable electricity generation and transmission and provide for an enable new renewable electricity generation and transmission.
7.	Clause 61, NBEB	Retain clause 61, subject to the following amendments: **61 Effects management framework** The effects management framework is a means of managing more than minor adverse effects as follows: (a) adverse effects must be avoided wherever practicable: (b) any adverse effects that cannot be avoided must be minimised wherever practicable: (c) any adverse effects that cannot be avoided or minimised must be remedied wherever practicable: (d) any remaining adverse effects that cannot be avoided, minimised, or remedied must be offset wherever practicable: (e) if adverse effects remain after applying the requirements, in that order, of paragraphs (a) to (d), the activity cannot proceed unless redress is provided by enhancing the relevant aspect of the environment.
8.	Clause 62, NBEB	Amend clause 62 as follows: **62 When effects management framework applies** (1A) The effects management framework applies to: (a) activities referred to in section 66 in relation to impacts on significant biodiversity areas and specified cultural heritage.

Relief No.	Clause, Bill ref	Change requested
		(b) other activities or operations specified in the National Planning Framework in relation to: (i) other places of national importance; or (ii) HVBA; or (iii) critical habitats. (1) The effects management framework applies to more than minor adverse effects on significant biodiversity areas, ~~and~~ specified cultural heritage, places of national importance, HVBA and critical habitats, or as otherwise specified in this Act; (2) The effects management framework does not apply to minor or less than minor adverse effects or adverse effects on other resources unless the national planning framework directs that the framework apply. (3) The national planning framework ~~or a plan~~ may specify ~~require~~— (a) a more stringent management than the effects management framework of any particular adverse effect; or (b) a less stringent management of any particular adverse effect other than one on significant biodiversity areas, ~~or~~ specified cultural heritage, other places of national importance, HVBA and critical habitats. (c) the activities or operations that can apply the effects management framework, in whole or in part, to other places of national importance, HVBA and critical habitats.
9.	Clause 63, NBEB	Amend clause 63 as follows **63 Requirements when effects management framework applies** When the effects management framework is applied to more than minor adverse effects on areas of significant biodiversity, HVBA and critical habitats and specified cultural heritage, the following requirements apply: (a) offsetting for more than minor residual adverse effects on specified biodiversity, HVBA and critical habitats or cultural heritage must be undertaken in accordance with Schedule 3 or 5, whichever applies; and (b) enhancement to make up for more than minor residual adverse effects on biodiversity or cultural heritage must be undertaken in accordance with Schedule 4 or 5, whichever applies.
10.	Clause 64, NBEB	Amend clause 64 as follows,: **64 Scope of possible exemptions** (1) The responsible Minister may specify, in the national planning framework or otherwise direct under this Act exemptions from the effects management framework for activities that have adverse effects on a significant biodiversity area, ~~and~~ specified cultural heritage; places of national importance, HVBA and critical habitats, or as otherwise specified in this Act.

Relief No.	Clause, Bill ref	Change requested
		(2) An exemption from the effects management framework may provide that an activity or an operation is exempt only if 1 or more of the following circumstances applies: (a) the activity must be located, for functional or operational reasons, in the particular place, despite the fact that it will generate adverse effects: (b) there is no reasonably practicable alternative location that has less overall effects: (c) the activity would, if carried out in an alternative location, result in a more than ~~trivial~~ minor adverse effect on the attributes that make the alternative location a significant biodiversity area, specified cultural heritage, place of national importance (see section 559), area of HVBA (see section 555) or critical habitat (see section 555): (d) the activity meets other requirements specified for an exemption under this Act.
11.	Amend clause 65, NBEB	Amend clause 65 as follows: **65 Assessment of alternatives** (1) The national planning framework may specify what is required for an assessment of alternative locations under section 64(2)(b), including limiting the scope of assessment to— (a) sites within a specified region or district; or (b) sites within a specified distance of a particular place of national importance; or (c) sites with other specified attributes. (2) If an assessment for an activity is completed during the preparation of the national planning framework or a plan, and complies with requirements imposed under subsection (1), a further assessment cannot be required under any rule applying to the activity.
12.	Clause 67, NBEB	Amend clause 67 as follows: **67 Considerations that apply to grant of exemptions** (1) The responsible Minister must,— (a) in determining whether an activity will provide benefits that are nationally significant under clause 66(1)(o), have regard to section 329(3); and (b) before specifying any exemption for activities under section 66 , consider— (i) the principles set out in section 6 (other than those set out in section 6(2)(b), (c), and (d); and (ii) the relative cost of granting or declining to specify an exemption for an activity; and

Relief No.	Clause, Bill ref	Change requested
		(iii) any alternatives to specifying an exemption that would achieve the objective of the proposed exemption; (~~iv~~) any other matter the Minister considers relevant. (2) An exemption provided for under section 62(1A)(b)(ii) must be designed to diminish the harm that will be caused to a place to the greatest extent compatible with enabling the activity to proceed.
13.	Clause 559, NBEB	Amend clause 559 as follows: **559 Protection of places of national importance** (1) An activity that would have a more than minor ~~trivial~~ adverse effect on the attributes that make an area a place of national importance must not be allowed by a rule, resource consent, or designation, unless ... (d) It is an activity referred to in the national planning framework as set out in section 62.
14.	Clause 563, NBEB	Amend clause 563 to remove reference to 'trivial' adverse effects: **563 Limits to activities within HVBAs** An activity that would have a more than minor ~~trivial~~ adverse effect on the attributes that make an area a HVBA must not be allowed by a rule, a resource consent, or a designation, unless— (a) an exemption applies under section 564; or (b) the activity is part of a protected customary right.
15.	Drafting requests clauses 81, 92 and 512, NBEB	• Amend clauses 81, 92 and 512 of the NBEB so NPF rules only prevail over designations where the NPF rule specifically states that it does so; and • Provide for requiring authorities to be able to elect to rely on (and comply with) *either* the NPF or a designation when undertaking an activity also covered by the NPF; or • Allow NPF rules to specify when particular rules will prevail over any designation that follows the NPF (and conversely, where a requiring authority has a choice of authorisation options to apply); or • Amend the restrictions in clause 92 so as to only apply to NPF rules that are not land use rules.

Relief No.	Clause, Bill ref	Change requested
16.	Schedule 6, Clause 26B, NBEB	• Amend clause 26 as follows: **Criteria for recommending amendments** The Minister may make a recommendation under clause 25 if satisfied that the proposed amendment— … (d) relates to an exemption from environmental limits under section 44A. (e) relates to an exemption referred to in under sections 61 – 67. • And amend schedule 6 more generally to address the issues set out in section 5.7.
17.	Schedule 6, Clause 31, NBEB	• Retain clause 31, to the extent it requires clause 58(d) and (e) of the NBEB to be included in the first NPF. • Amend clause 31 as follows: **31 Preparation of first national planning framework** (1) The first national planning framework must be prepared in accordance with the standard process subject to the following modifications: (a) any engagement of a kind described in clauses 2 and 4 that has been carried out on the NPF proposal before the commencement of the Act counts as engagement for the purposes of those clauses; and (b) a limits and targets review panel is not required to be appointed to advise the responsible Minister on any environmental limits or target in the NPF proposal; and (c) section 50(1) and 58(a) and (b) do not apply; and (d) clauses 2(1)(a) and 9(3) do not apply; and (e) for the purpose of facilitating a smooth transition from the Resource Management Act 1991 to this Act,— (i) the first national planning framework must ~~be prepared on the basis of~~ incorporate the RMA national direction having particular regard to: (A) the desirability for consistency and integration of the management of the environment; (B) the need to resolve conflicts about environmental matters, including those between or among the system outcomes that exist in the RMA national direction; and (ii) the board of inquiry must, when considering the matters specified in clause 19, also have particular regard to the desirability of maintaining consistency with the policy intent of the RMA national direction subject to it being ~~to the extent it is~~ compatible with this Act; and (iii) the responsible Minister must, when considering the matters specified in clause 21, also have particular regard to

Relief No.	Clause, Bill ref	Change requested
		the desirability of maintaining consistency with the policy intent of the RMA national direction subject to it being ~~to the extent~~ it is compatible with this Act. (2) In this clause, RMA national direction means the national direction prepared under the Resource Management Act 1991, and includes the medium density residential standards set out in Schedule 3A of the Resource Management Act 1991.
18.	Various	Ensure all exemptions in the NBEB for Transpower's activities in relation to environmental limits and special areas use the below wording: The operation, maintenance, upgrading or construction of the lines, facilities and associated equipment used or owned by Transpower to convey electricity, and for associated activities including access tracks and vegetation clearance.
19.	Clauses 223, 512, 19, schedule 6; 108(b), 126(2)(a) schedule 7, NBEB; and clause 25(3)(a), SPB.	Update the outcomes and other sections to more clearly show the deprioritisation of amenity effects. Amend these clauses with the following phrase: …must [not have regard to/disregard] : … any ~~effect on scenic~~ changes to views or visual effects from effects from private properties or land transport assets ~~that are not stopping places~~ other than dedicated viewing locations.

6 Other Part 1 and 2 matters - Treaty principles, duties

6.1 Te Tiriti principles

6.1.1 Clause 4 of the NBEB requires that "all persons exercising powers and performing duties" under it "must give effect to the principles of te Tiriti o Waitangi". This differs from the RMA, which under section 8 requires that, in achieving the purpose of the RMA "all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)".

6.1.2 As noted in our submission on the Exposure Draft, Transpower acknowledges that the increased role for Māori in the proposed new system is a key reform objective. It is further recognised that clause 4 in particular, seeks to implement the reform objective of "giv[ing] effect to the principles of Te Tiriti o Waitangi and provid[ing] greater recognition of te ao Māori, including mātauranga Māori".

6.1.3 Given the new and relatively broad nature of these matters, and the clause 4 duty, in particular, it will be important that the mechanisms to achieve them are clarified through later processes and provisions to ensure practical implementation. In this regard, we note that the clause 4 duty will apply to requiring authorities (who could be a State-owned Enterprise, or a privately-owned company) when they make decisions on notices of requirement, in addition to the Crown and Local Government.

6.1.4 Transpower considers it may be useful for the NBEB to provide a level of specificity as in section 6 of the Pae Ora (Healthy Futures) Act 2022.

6.2 Duties and restrictions should be reconsidered

Clause 13 – Environmental responsibility duty

6.2.1 Clause 13 provides that "every person has a responsibility to protect and sustain the health and well-being of the natural environment for the benefit of all New Zealanders, *including as required* by section 14".

6.2.2 The italicised words imply that the responsibility under clause 13 extends beyond the requirements of clause 14. On its terms, the duty in clause 13 would also extend beyond other specific obligations in the NBEB. But, the scope of any such wider duty, what in practice is required to achieve it, and what would constitute a breach of the duty is very unclear. The wording of clause 13 is extraordinarily broad, imposing on "every person" a highly general duty to "protect and sustain" the "health" and "well-being" of the whole "natural environment".

6.2.3 Given the generality of the duty there is wide scope for disagreement over what it requires in any particular case. This lack of clarity is concerning. Transpower is committed to responsible environmental stewardship in its activities. However, in the context of legally enforceable provisions in a statute this responsibility should be appropriately reflected in provisions that impose specific duties.

6.2.4 Conversely, it is not appropriate to include a statutory duty cast at such a high-level and in general terms. A fundamental requirement of good legislation is that the obligations it imposes are clear – so that those subject to it can reasonably understand what is required of them. As the Legislation Design and Advisory Committee's 2021 Legislation Guidelines state, "if legislation is vague about the obligations it imposes or leaves too much to people's discretion, it will create confusion and inconsistency. This places significant costs on those who are regulated. It also causes constitutional concern about the lack of legal clarity over rights and obligations".[33]

6.2.5 In relation to clause 13, these are not simply theoretical concerns. On its face, clause 13 is an enforceable provision of the NBEB. Clause 700(1)(a)(i) provides that the Environment Court can make an enforcement order in relation to any act that in its opinion contravenes or is likely to contravene the NBEB. Individuals and organisations carrying out activities should not be exposed to the possibility of court proceeding alleging breach of such a vaguely defined duty. Moreover, the practical effect of clause 13 will be to create uncertainty over what is required when undertaking activities that affect the environment, which will add complexity, time and cost to activities.

6.2.6 Transpower therefore considers that clause 13 should be removed from the NBEB. At the very least, the clause should include the same rider that clause 14 has, that the duty is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty (section 6.3, relief point 2).

Clause 15 – Duty to avoid unreasonable noise

6.2.7 Clause 15 of the NBEB includes similar text to that contained in section 16 of the RMA regarding the duty to avoid unreasonable noise and requiring adoption of the best practicable option (*BPO*). Transpower understands that section 16 was included in the RMA as a rollover from the Noise Control Act 1982, and was effectively needed as a transitional provision in the early days of the RMA.

6.2.8 Transpower submits that the framework established by the NBA should be able to address noise effects without needing to revert to a general duty to achieve the outcomes sought. Clause 15 should be deleted (section 6.3, relief point 3).

6.2.9 Transpower also considers it disproportionate and unnecessary for a duty relating to noise effects to be elevated into Part 2 of the NBEB. This duty does not seem necessary to achieve the purpose of the Act (clause 3), nor the system outcomes (clause 5). Further, in Transpower's experience, noise effects are adequately addressed through well-established noise standards, methods, measurements and/or monitoring.

Because of its nature, the RMA reasonable noise duty has also caused many debates and delays under the RMA. The duty cuts across the common understanding and meaning of "reverse sensitivity" as established by caselaw. That is, the vulnerability of an established land use (such as Transpower's assets) to complaints from a newly establishing, more sensitive land use (for example, new houses and other noise-sensitive activities). The section 16 duty has been used to try and raise noise concerns in circumstances where noise was otherwise authorised and lawful under a plan rule, resource consent or designation. Transpower has then been required to incur cost and effort to establish that

[33] Legislation Design and Advisory Committee "Legislation Guidelines" (2021) OBJ

(notwithstanding the activity in question being lawfully established) it was nevertheless complying with section 16.

6.3 Requested changes to te Tiriti provisions and duties

Relief No.	Clause, Bill ref	Change requested
1.	Clause 4, NBEB	Amend clause 4, or add further provisions into the NBEB to provide greater specificity on what is required of various parties with duties and powers under the NBA (see for example section 6, Pae Ora (Healthy Futures) Act 2022.
2.	Clause 13, NBEB	• Delete clause 13. • In the alternative amend clause 13: (1) Consistently with the ethic of stewardship, every person has a responsibility to protect and sustain the health and well-being of the natural environment for the benefit of all New Zealanders, including as required by in section 14. (2) <u>The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.</u>
3.	Clause 15, NBEB	Delete clause 15.

7 Regional Spatial Strategies – requirements and processes

7.1 Introduction

7.1.1 As noted earlier, Transpower considers that the processes in the SPB are fundamentally unclear and insufficiently robust given the important role of RSSs in the system. In particular, Transpower considers the processes to develop RSSs specified in the SPB need to provide much greater clarity and reduced discretion.

RSS process clarity and checks and balances

7.1.2 At present, RSSs would have very broad content (clauses 15-18, SPB) and legal weight. For example, clause 97 of the NBEB requires that NBE plans "must be consistent with" RSSs. Clause 647 of the NBEB specifies that local authorities must "implement and administer" RSSs. In addition, schedule 7, clauses 70-72, of the NBEB contain limitations on independent plan changes for activities not contemplated by the RSS. Further, clause 512 of the NBEB indicates that consistency with the RSSs will have substantial influence in terms of what pathway a requiring authority can take to obtain a designation.

7.1.3 There are, however, fundamental problems with the processes. For example, RPCs have wide discretions as to what should be included in RSSs (clauses 22-25, SPB). Decision-making on RPCs is either "by consensus" (schedule 8, clause 20, NBEB) or by majority vote (schedule 8, clause 23, NBEB) - essentially meaning that regionally significant decisions could be made via a small majority of appointed committee members. The process to prepare RSSs is set only at a high level, and is otherwise discretionary (schedule 4, clauses 30-36, SPB). Information requirements to support RSSs are very general (clauses 19, 28, SPB) with some details left to regulations (clause 68(b), SPB). The ability to incorporate information and decisions from NBE plans into RSSs, without complying with other information requirements and without having any regard to any relevant submissions (clause 29, SPB) is particularly concerning and seems contrary to the "top-down" approach of the NBEB/SPB system. Transpower is also very concerned that roles for key stakeholders and wider public participation requirements are unclear (clauses 32 and clause 35, SPB), and that public hearings on RSSs are not required.

7.1.4 It is unclear why the RSS process is so much more flexible and different to the more comprehensive processes for developing the NPF and NBE plans. Given the weight the RSSs will have in the system, this process differentiation is not justified. Significantly more robust processes are required.

7.1.5 Transpower therefore seeks that the RSS concept be retained but substantially improved. The processes to develop RSSs should contain much more specific information and evidence requirements, akin to NPF and NBE plan making processes. Further, greater public participation and independent testing of RSSs, for example, via an independent hearings panel process as occurs for developing NBE plans (schedule 7, Part 3 NBEB) is needed.

7.1.6 Transpower notes that the Select Committee briefings recognise the importance of public participation in RSS making.[34] Transpower envisages a comprehensive public inquiry process capturing both the RSS and the NBE plan processes. Rolling these processes together would be more efficient and could speed up delivery of these documents. It would also improve decision-making consistency, given the independent panel would become very familiar with the key issues during the RSS process and how these would then translate down to the NBE plans.

7.1.7 A good example of this approach was that adopted in Auckland for the Unitary Plan process where the regional policy was considered first and the detailed plan provisions second. If a similar approach was taken, the timeframes for implementing the RSS and NBE plans could be reduced to around 3 years instead of the current proposal which could take around 6 years (and consequently, the phase out of the RMA would be much quicker for relevant regions) (section 7.2, relief point 1).

RSS role in resolving conflicts

7.1.8 As noted at section 5.3 above, RSSs will, alongside the NPF, provide an important mechanism to resolve tensions between biophysical limits required under the NBEB/areas to be protected by policy bottom lines and infrastructure needs. For example, RSSs could resolve, and not simply identify, a conflict between an ONL and a required National Grid connection to a renewable electricity generation project.

7.1.9 The key matters that RSSs must cover (clause 17, SPB) are broad and will inevitably overlap considerably. However, at present, there is very little guidance for RSSs as to how to resolve conflicts, with much resting on the NPF to provide that guidance. As a result, the RSSs may not get all of the direction they need to address conflicts.

7.1.10 For reasons outlined earlier, RSSs will need to be directed not to prescribe 'no go' areas that could prevent new critical infrastructure. They also need to be careful not to limit the ability to maintain and upgrade existing infrastructure that is already located in sensitive environments. Transpower seeks that greater guidance be given to conflict resolution processes in the SPB provisions (section 5.7, relief point 18).

Flexibility for different funding processes of infrastructure providers

7.1.11 The RSS seeks to support a coordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers (clause 15(2), SPB). It also enables Implementation Agreements to be entered into, to address priority actions (clause 57, SPB).

7.1.12 Transpower supports these initiatives, subject to retaining the current approach of not making funding of RSS matters mandatory and making implementation agreements optional and non-binding (see section 7,2, relief point 2)). This support is because Transpower has separate statutory approvals processes for funding, which the RSS will not be able to fetter. Transpower also does not seek funding for projects over a 30-year time period. Rather, it seeks funding from the Commerce Commission in stages and just ahead of need, and it must consult with the electricity industry on its proposals. Customer funded connections can happen over much shorter time frames. It will

[34] Select Committee briefing on the Spatial Planning Bill, Attachment 5.

therefore not be possible or appropriate to compel Transpower to mandatorily commit to funding projects through the RSSs.

Duties to assist

7.1.13 Addressing a more minor, but still important matter - the duty for various entities, including Transpower, to assist RPCs (clause 64, SPB) is unusually coercive, potentially onerous and unclear. For example, there is no limitation on the extent of the requests, there are no cost recovery mechanisms for assistance, and requests could involve commercially sensitive or confidential information. In addition, what is practical and reasonable to provide is potentially contestable and the implications of not complying with a request are unclear.

7.1.14 In any case, bodies such as Transpower would have a vested interest in obtaining the benefits of their activities and plans being included in RSSs, and are incentivised to assist the RPCs without a statutory mechanism. Further, Transpower considers that the process improvements sought earlier will assist with the development of RSSs and appropriate information will surface through that more comprehensive process. Accordingly, clause 64(e) should be deleted (section 7.2, relief point 3).

RSS mapping details and injurious affection

7.1.15 Transpower supports the proposal in clause 66 of the SPB that RSS mapping details do not give rise to injurious affection (section 7.2, relief point 4). If injurious affection was triggered, it would substantially constrain the ability to identify long term infrastructure. Further, funding for land purchases would unlikely be available at the RSS stage and the identified project or route may only be indicative.

7.2 Requested changes to RSS requirements and processes

Relief No.	Clause, Bill ref	Change requested
1.	SPB overall	Include the SPB provisions in the NBEB and substantially enhance the provisions as requested in this submission.
2.	Clause 3, SPB	Amend clause 3, SPB as follows: The purpose of this Act is to provide for regional spatial strategies that— ... (c) help to resolve current and potential future conflicts about environmental matters, including those between or among the Natural and Built Environment Act 2022 system outcomes whether directed by the National Planning Framework or otherwise.
3.	Clause 57, SPB	Retain clause 57, SPB.

Relief No.	Clause, Bill ref	Change requested
4.	Clause 64, SPB	Delete clause 64, SPB.
5.	Clause 66, SPB	Retain clause 66.

8 NBE Plan Making Process

8.1 Introduction

8.1.1 Assuming that the NPF will provide a comprehensive consenting and protection regime for the National Grid as sought in this submission, Transpower envisages that NBE plans will be far less relevant to its activities under the new system. Nevertheless, Transpower is keen to ensure that the processes for developing and implementing NBE plans are efficient and effective given some of its activities may still be regulated in these plans.

8.2 General support for NBE plan processes

8.2.1 Transpower supports the proposal to substantially reduce the number of regional and district plans, by requiring a consolidated NBE plan for each region (clauses 95-96). This proposal should significantly improve local and regional plan making consistency and efficiency (section 8.5, relief point 1).

8.2.2 Transpower also generally supports the process requirements for NBE plans in Schedule 7, NBEB, including that they be tested by an Independent Hearing Panel (*IHP*) and the IHP make recommendations to the RPC. A similar process occurred with the Auckland Unitary Plan and resulted in a robust plan making process. This proposal should also be retained (section 8.5, relief point 3). Transpower also generally supports the new engagement and submission processes in schedule 7, enabling early collaboration within the NBE plan making process and the ability for early engagement with submitters. The concept of an "engagement register" (clause 15) is also supported.

8.3 Statements of regional environmental outcomes and community outcomes

8.3.1 For the reasons noted in section 4.3 on RSS making processes, Transpower has concerns about the processes for making statements of community outcomes and regional environmental outcomes (clauses 643 and 645, NBEB). The processes for making these statements are too unclear and discretionary to afford the documents the high weighting of "having particular regard to" in NBE plan making (clause 107, NBEB). Transpower supports the consideration of local and regional interests through NBEB processes. However, Transpower considers that these interests, as reflected through statements of community outcomes and regional environmental outcomes, should be brought to the table through the formal plan making process. This approach will be more transparent and ensure that the statements are able to be tested by other participants and the IHP. Such an approach would be similar to the AUP hearings, where the overarching "issues" (in both a local and regional sense) were debated at the outset, to set the scene for the detailed planning provisions that followed.

8.3.2 In the absence of a formal process to create them, the requirement to have "particular regard to" these statements of community and regional outcomes creates the potential for regional or local matters or views to frustrate nationally significant infrastructure, particularly where the infrastructure provides no local or regional benefits.

8.3.3 Transpower therefore considers that there should be a robust and rigorous formal process for developing statements of community outcomes and regional environment outcomes. If such a process is not required, then Transpower considers that the weight to be given to these regional and local documents should be less. Transpower considers these documents should only be had "regard" to in NBE plan making processes.

8.4 Submission process and evidence requirements

Enduring submissions

8.4.1 The purpose and role of "enduring submissions" (schedule 7, clause 20, NBEB) is unclear and may cause confusion during NBE plan making. The explanatory text to the NBEB suggests the new process allows "enduring submissions" to be lodged before notification of plans and carried through the plan hearings process to reduce complexity and repetition for participants. Transpower acknowledges that the new concept is intended to be helpful, and supports the intent. However, we consider it would greatly assist to define the role and status of enduring submissions, so this tool is clear to participants and decision-makers (section 8.5, relief point 4) and is not misused.

Timeframes

8.4.2 The timeframes in which to review proposed NBE plans and lodge primary and secondary submissions (40 and 20 working days respectively) are very short. In Transpower's experience, such timeframes are likely to be unworkable for large region-wide plans. Furthermore, primary submissions will be published only 10 working days after the close of submissions (schedule 7, clause 35(2)(a)), and no summary of submissions is required to be provided.

8.4.3 With these timeframes, in Transpower's view it is highly unlikely that an RPC would produce a summary of submissions on a voluntary basis. The likely absence of a summary will make the confined timeframes for lodging secondary submissions even more unworkable, given primary submissions will be very detailed and there are likely be to thousands lodged during a region-wide plan making process (see Auckland Unitary Plan (AUP) example above at section 5.4.8). No summary of submissions would make the process much more challenging for submitters, particularly individuals and poorly resourced groups.

8.4.4 Transpower therefore seeks that the requirement for the RPC to prepare a summary of submissions in schedule 7, clause 35(5) be mandatory, and the timeframe for RPCs to produce that summary and publish the primary submissions be extended (section 8.5, relief point 5).

Evidence requirements

8.4.5 Transpower supports a more thorough submission process in which submitters are required to detail their concerns within their lodged submissions. Transpower also supports the ability within schedule 7, clause 37(a) for the RPC to require submitters to provide further information relating to the person's submission.

8.4.6 However, the requirement within schedule 7, clause 34(3)(c) that submitters "include all the evidence that the submitter intends to submit in support of the submission" is excessive and highly inefficient at the submission stage. Transpower has similar concerns in respect of secondary submissions.

8.4.7 Transpower considers this evidence requirement will not support efficient and robust plan making. Submitters may lodge evidence, which is either not relevant, necessarily short/brief, or excessive. This is because generally, under current RMA processes, the final extent of evidence is largely dependent on the recommendations of the section 42A reporting planner and outstanding submitter issues. Usually, the evidence presented at hearings is far more confined than the scope of the original submission as the section 42A report typically would address many of the original concerns.

8.4.8 As an example of typical evidence requirements, during the AUP IHP process, Transpower participated in 32 hearings, with a total of 43 briefs of expert evidence, additional company evidence, and 15 legal submissions. Evidence to support Transpower's original submission, if it had been required would have been much more extensive. We also note that there were over 21,000 pieces of feedback recorded on the Draft Unitary Plan, but that Auckland Council received around 9400 submissions on the Proposed Plan. These statistics suggest that many submission issues were resolved through the early engagement process that did not require detailed evidence.

8.4.9 Transpower therefore seeks that full reasoning and specific details of the relief sought be required to be provided within the submission, rather than the inclusion of all evidence as part of the submission process (section 8.5, relief point 5).

8.5 Requested changes to NBE Plan Making Process

Relief No.	Clause, Bill ref	Change requested
1.	Clauses 95 and 96, NBEB	Retain clauses 95 and 96.
2.	General drafting request, and Clause 107, NBEB	• Require statements of community outcomes and regional environmental outcomes to be prepared in accordance with a robust and formal plan making process. • If such a process is not provided for, reconsider the role of statements of community outcomes and regional environmental outcomes in the system (e.g. they should only be given "regard to" in NBE plan making processes).
3.	Schedule 7, NBEB	Generally retain schedule 7, subject to Transpower's other submissions.
4.	Schedule 7, clauses 20 to 23, NBEB	Clarify the role and status of enduring submissions.

Relief No.	Clause, Bill ref	Change requested
5.	Schedule 7, clauses 21, 34(3)(c) and 35(5), NBEB	Amend schedule 7 to: ○ Require a summary of submissions be prepared by the RPC under clause 35(5); ○ Remove the requirement in clause 34(2)(c) and clause 21 for a submission to include all supporting evidence; and ○ Amend clause 34(3)(c) to require full reasoning and specific details of the relief sought be provided within the submission.
6.	Clause 29, SPB	Delete clause 29.

9 Designations

9.1 Introduction

9.1.1 Transpower is a heavy user of designation processes under the RMA and designations are an important tool for our activities. We have well over 170 designations across the country, relating to substations, underground cables, telecommunications sites and some overhead lines. Designations enable National Grid works and activities, ensuring the security and continued operation of the Grid, as well as flexibility to implement technological changes over time, or upgrade or expand works. They also enable efficient land acquisition, and trigger rights for people who hold land interests affected by designations. Recourse to designations and Public Works Act processes is often needed where the only practicable route for a new line includes private land. Furthermore, designations are published in district plans which provides notice of their location, purpose and the restrictions they impose. This notice allows people to plan their activities with the certainty of the future public works proposed.

9.1.2 Designations will remain a key tool for Transpower in the new system. It is therefore crucial that the system ensures designations remain both useful and fit for purpose, and available as a tool. Transpower acknowledges the Bills have attempted to rationalise and streamline the designation processes in many respects, and we support several of the new initiatives. That said, the provisions addressing the relationship with designations and RSS content and framework rules require significant changes to be workable (note the latter is discussed in section 9.1 in relation to clause 92). Other new designation processes have several technical issues that need to be addressed to be clearer and proportionate.

9.2 RSSs and designations

9.2.1 The pathway for obtaining a designation will be strongly influenced by whether the relevant infrastructure has been identified in a RSS (clause 512, NBEB). Transpower strongly supports a more streamlined pathway for designations, where the given project has already been appropriately tested at the RSS stage.

9.2.2 However, as outlined in section 2, there is a real risk that not all infrastructure will be identified in RSSs, particularly where infrastructure planning timeframes do not align with the NPF, RSS or NBE plans. In that situation, a requiring authority would currently need to meet the additional requirements of clause 512(2)(c) and (d). These requirements are unclear and onerous and do not address key learnings from the RMA.

Alternatives assessment test

9.2.3 Transpower acknowledges that clause 512(2)(c) derives from the well understood alternatives assessment test under section 171(1)(b) of the RMA. It also accepts that some form of alternatives assessment should continue to apply in the new regime where infrastructure concerned has not been spatially identified in the RSS mapping process.

9.2.4 However, in Transpower's view, applying the alternatives assessment requirement in section 171(1)(b) has caused significant uncertainties and unduly complex assessment

requirements for infrastructure providers with no material benefit for decision-makers or the environment.

9.2.5 As noted by the High Court in a recent decision (*Mt Messenger*)[35], in theory there can be "an infinite number of route possibilities, or locations". In many cases, alternatives to a requiring authority's chosen routes or locations, while theoretically possible, are not practicable or feasible from a technical or operational perspective. However, the mere presence of a 'possible' alternative option can be exploited by project opponents to force infrastructure providers to assess a multitude of alternatives that are neither practical nor economically viable as part of the approvals process.

9.2.6 These issues have been compounded by the additional and inconsistent alternatives assessment requirements in the various "effects management hierarchies" contained in national direction documents and in some regional plans (see *Hairin*i case study in section 5.3.4). These hierarchies can prioritise certain environmental features (e.g. wetlands or cultural values) during an alternatives assessment process. This prioritisation does not enable a requiring authority to take a holistic view of the various route and site options and the methods to address adverse effects of projects. The hierarchies can thus lead to perverse results where a project option is chosen to avoid impacts on one particular feature, when other options would have less overall environmental effects and better outcomes for the infrastructure.

9.2.7 Accordingly, Transpower considers that the alternatives assessment requirements should be removed from the statutory decision-making test for designations, and rather become an information requirement to be included in a NOR to demonstrate a robust process has been followed. The alternatives assessment also needs to be appropriately integrated with the effects management frameworks for managing effects on sensitive natural and cultural values (section 9.9, relief points 2 and 6).

'Reasonably necessary' test

9.2.8 The consideration under clause 512(2)(d) as to whether the work and designation are 'reasonably necessary' is very different from the equivalent RMA provision. Transpower strongly opposes the change.

9.2.9 The current provision in the RMA requires that regard be had to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority. This test recognises that requiring authorities are best placed to assess and articulate their own objectives on matters for which requiring authority status is held.

9.2.10 The proposed new wording, "whether the work and designation are reasonably necessary for achieving national planning framework outcomes and the regional spatial strategy's vision and objectives for the region's development and change and strategic outcomes in plans", is comparatively very unclear and restrictive.

9.2.11 As set out above, the RSS will not be able identify all future infrastructure needs. An RSS may therefore contain no reference or support whatsoever for a given project seeking a designation. Where this is the case, there is also a reasonable chance that the NPF and NBE plan will not have anticipated the need for the infrastructure.

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35 *Poutama Kaitiaki Charitable Trust and D & T Pascoe v Taranaki Regional Council* [2022] NZHC 629.

9.2.12 Accordingly, the new "reasonably necessary" test could represent a very high threshold for designations that could ultimately prevent the delivery of infrastructure required to electrify the economy. It is further noted that particular regard must already be had to the NPF, RSS and NBE plans under clause 512(2)(a) and (b), making clause (d) redundant.

9.2.13 Transpower considers a requiring authority - an entity that has already been approved by the Minister - should be able to outline its objectives for a work (the subject of a NOR), including the need for and benefits of a work, and then describe how the proposal meets those objectives. The need for and benefits of the designation should be weighed positively by the decision-maker, rather than the current RMA approach where this test is used by opponents seeking to prevent a designation being approved. Transpower therefore seeks that the current RMA test (section 171(1)(c)), be retained and amended (section 9.9, relief point 6).

9.3 Information requirements for designations

9.3.1 The NBEB proposes three processes for confirming a designation, as set out in clause 505:

(i) the combined process (notice of requirement and primary CIP, followed by secondary CIP);

(ii) the design and build process (notice of requirement and primary CIP); and

(iii) a route protection process (notice of requirement).

9.3.2 The increased options and flexibility for obtaining a designation are supported in principle. However, Transpower seeks greater direction on the level of detail required for each of the three processes. This clarity will be particularly important for the route protection process, where much of the detail for a given project is unlikely to be known.

9.3.3 Transpower notes that the RMA has failed to ensure information requirements for approvals of major infrastructure projects are proportionate. The documentation is now extremely lengthy and takes a long time to investigate, assess, prepare and present, at significant cost. The volume and complexity of documentation also makes the decision-making role more challenging and increases appeal risks.

9.3.4 Without direct statutory guidance there is a significant risk of 'information creep' where information that is properly addressed as part of the primary (or secondary) CIP is sought by the RPC in the context of a route protection or design and build process.

9.3.5 Without explicitly limiting information requirements, Transpower is concerned that the increased flexibility offered by the three separate processes could be lost. This potential arises because the details of the project could be locked in via a typical 'condition 1' requiring the designation to be carried out in general accordance with the information submitted.

9.3.6 Transpower therefore seeks that the NBEB provide explicit guidance on designation information requirements in each of the three designation processes. While detailed drafting is not possible, Transpower suggests using a format such as that in Schedule 4 of the RMA, but tailored for the different types of designation (section 9.9, relief point 2).

9.4 Lapse dates

9.4.1 Transpower appreciates that under the NBEB the automatic lapse date for designations has been extended to 10 years (clause 523). However, it considers that 10 years remains too short and out of step with the longer-term planning envisaged by RSSs.

9.4.2 It is important that Transpower has the ability to obtain approvals with longer lapse dates to allow for proactive planning and investment certainty. Obtaining designations with long lapse dates is also one means for transmission lines to not become a barrier to generation (as generation can often be consented much faster than long linear infrastructure). It will also ensure that Transpower has the capability to provide for infrastructure ahead of time, as will be required in order to meet the increase in electricity demand, required to achieve New Zealand's climate change objectives.

9.4.3 To ensure the benefits of a route protection designation (or potentially other designations) are enabled by the new regime, Transpower submits that a 30-year lapse period should be included (section 9.9, relief point 8). As noted, this timeframe is more consistent with the expected timeframes of RSSs.

9.4.4 Further, the benefits of long-term protection need to be maintained. Clause 523 allows for a lapse date to be extended where "substantial progress has been made towards giving effect to the designation". This "substantial progress" test is supported and remains appropriate, but Transpower considers an extension is also appropriate where the requiring authority can establish there is still a need for the designation, even if there is no immediate need for the works authorised by the designation. This point is particularly relevant where rapid changes in the electricity market can mean that a Transpower project that was originally required within the 10 year lapse period could quickly become less urgent, although still be required in the future. Without a clearer mechanism, the only alternative to preserve long-term protective designations past the lapse date will be to lodge another notice of requirement and incur the cost and process risks associated with that approval process.

9.5 Notification

9.5.1 Transpower generally supports the direction on notification requirements in clauses 507 and 508. Public participation under the RMA currently provides multiple opportunities for opposition to projects. Transpower considers the key improvement is to ensure public participation is targeted to the appropriate stage of the process, and then not be 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 the section 176A outline plan of works process. The public generally is not involved at the later stage given potentially more significant effects have been assessed and managed at the first stage. Transpower considers this approach strikes the right balance between participation and the need for expediency and certainty when approving and delivering public works.

9.5.2 For those reasons, we support the direction in clause 507(4) that construction and implementation effects need not be considered for a route protection notice of requirement. This direction will make route protection designations a much more viable instrument. However, clarity is needed on related notification processes. Transpower

considers there is a strong case that route protection designations should not be notified to better align with clause 507(4) unless required to be by the NPF or a NBE plan. This is because the management of effects will be achieved through the later CIP process (which may or may not be notified depending on the magnitude of effects) (section 9.9, relief point 3).

9.5.3 On a drafting matter, clause 508(1)(b)(i) should state "decide whether to notify..." given there is no presumption of notification of a secondary CIP in clause 507(2) (section 9.7 relief point 5).

9.6 CIPs for existing RMA designations

9.6.1 Under clause 508(1), a secondary CIP could be notified if it addresses matters not contained in the primary CIP. This proposal is not generally opposed, but Transpower notes it could create significant issues for designations made under the RMA that are carried forward into the new regime. For such designations, there will be no Primary CIPs. Accordingly, all secondary CIPs for such designations could potentially require notification. Whereas, under the RMA they would be processed via the non-notified outline plan of works process in section 176A.

9.6.2 This consequence seems unintended. A requirement for existing RMA designations to effectively be re-tested through a public process would stymie the intended benefits of the designation as an instrument and confuse potential participants. The RMA and NBEB both provide opportunities for designations to be retested at the plan review stage.

9.6.3 Accordingly, Transpower considers there should be no requirement for the notification of secondary CIPs for designations made under the RMA (section 9.9, relief point 5).

9.7 Transfer of designations

9.7.1 Clause 526 allows for the transfer of a designation where the financial responsibility for a project or work authorised by that designation is transferred to another requiring authority.

Partial transfers

9.7.2 Transpower considers it should be explicit in clause 526(1) that the transfer of part of a designation is provided for. At times, it is appropriate for a requiring authority to transfer only part of that designation. In this regard, from time to time Transpower has divested some assets at a substation (and the connecting line) to an electricity distribution business (section 9.9, relief point 9).

Temporary transfers

9.7.3 Transpower supports the new concept in clause 526(2)-(3) of seeking to enable temporary transfers to allow a requiring authority to use another requiring authority's designation to undertake relocation works. This concept seems to be an attempt to address the practical issue of where a designation falls on someone else's existing infrastructure assets and those assets need to be moved to make way for the planned new infrastructure. This situation is not infrequent for Transpower. For example, major new roads can often require relocation of existing transmission lines.

9.7.4 However, the proposed process has material flaws. For example, other requiring authorities' designations are unlikely to be worded broadly to authorise transmission activities to be relocated (and could be challenged if they did so, as being outside the scope of the requiring authority's designating powers). Even if the designation could authorise transmission activities to be relocated, it leaves open the problem of how the relocated assets would be authorised in the long term. Permanent transfer of a small part of the designation would result in an awkward 'spot' designation that may include inappropriate conditions. In this context, Transpower's only choice would be to expand its own designation or rely on other authorisations for any relocation activities.

9.7.5 That said, the Bill proposal is potentially a good one and Transpower therefore seeks a more comprehensive solution to achieve it (section 9.9, relief point 9).

Process

9.7.6 Transpower considers that the responsibility of advising the Minister and relevant territorial authority of the transfer of a designation should remain with the requiring authority, as currently required by section 180(2) of the RMA. There does not seem to be any good reason for responsibility for notifying the Minister to be moved to the RPC as proposed in clause 526(5) (section 9.9, relief point 9).

9.8 Minor matters - definition of designation and wording corrections

9.8.1 The definition of designation in the NBEB (clause 7) currently reads "***designation*** *means a provision made in a plan to give effect to a notice of requirement made by a requiring authority under section 503 and any associated primary CIP."* [emphasis added]. The benefits of the underlined phrase are not easy to see. Transpower is not aware of any issues with the existing RMA definition, which does not contain a similar phrase.[36] Transpower seeks that this phrase be deleted (section 9.9, relief point 1). Transpower also considers the definition of "designation" should include designations under the RMA, as discussed in section 12.4 of this submission.

9.8.2 The terms 'designation,' 'requirement' and 'notice of requirement' are used interchangeably throughout the NBEB, and not always correctly. We note that:

(i) clause 513 should be amended to refer to 'notice of requirement', as the designation has not yet been confirmed; and

(ii) clause 521(5) should refer to 'designation'.

9.8.3 The wording of these issues will need to be checked comprehensively throughout the final legislation (section 9.9, relief point 7).

[36] Designation means a provision made in a district plan to give effect to a requirement made by a requiring authority under section 168 or section 168A or clause 4 of Schedule 1.

9.9 Requested changes to Designations

9.9.1 To the extent that Transpower's submissions are accepted and new drafting emerges, Transpower considers it would be useful for the Select Committee to call for a further round of submissions. This is because of the significant importance of designations to many entities tasked with delivering public works.

Relief No.	Clause, Bill ref	Relief requested
1.	Clause 7, NBEB	Amend NBEB definitions: **designation** means a provision made in a plan to give effect to a notice of requirement made by a requiring authority under section 503 or otherwise made under the Resource Management Act 1991 ~~and any associated primary CIP~~
2.	Drafting requests, Part 8 NBEB	• Amend part 8 of the NBEB to provide explicit guidance on the level of information required for designations, for example, using a similar format as schedule 4 of the RMA, appropriately tailored for the relevant designation processes. • The requirements should include the need for an alternatives assessment where the infrastructure concerned has not been spatially identified in a RSS and: ○ the requiring authority does not have an interest in the land sufficient for undertaking the work; or ○ it is likely that the work will have a significant adverse effect on the environment. • The alternatives assessment also needs to be appropriately integrated with the effects management framework for managing effects on sensitive natural and cultural values.
3.	Clause 507, NBEB	Amend clause 507 as follows: (1A) Subject to clause (1), an application that is only for route protection need not be notified.
4.	Clause 507(9), NBEB	Amend clause 507(9) as follows: (9) If any of the affected iwi, hapū, or Māori parties identified in the plan have provided written agreement under subsection (8)(b), notification to the relevant iwi, hapū, or Māori parties is not required.
5.	Clause 508, NBEB	Amend clause 508, NBEB as follows:

Relief No.	Clause, Bill ref	Relief requested
		(1) Within 20 working days after receiving a secondary CIP, the regional planning committee must— (a) confirm that the secondary CIP addresses matters contained in the primary CIP or that the request for a secondary CIP relates to a designation made under the RMA; (b) if the secondary CIP addresses matters not contained in the primary CIP or if the request for a secondary CIP does not relate to a designation made under the RMA,— (i) decide whether to notify the secondary CIP ...
6.	Clause 512(2), NBEB	Amend clause 512(2) as follows: When considering a requirement and any submissions received, a regional planning committee must consider the effects on the environment of allowing the requirement, having particular regard to— (a) any relevant provisions of— (i) the national planning framework: (ii) a plan or proposed plan; and (b) consistency with the regional spatial strategy; and (c) the objectives of the requiring authority, the need for the infrastructure and the benefits of the infrastructure ... ~~(c) if the infrastructure concerned has not been spatially identified in a regional spatial strategy, whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—~~ ~~(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or~~ ~~(ii) it is likely that the work will have a significant adverse effect on the environment; and~~ ~~(d) if the infrastructure concerned has not been identified in a regional spatial strategy, whether the work and designation are reasonably necessary for achieving national planning framework outcomes and the regional spatial strategy's vision and objectives for the region's development and change and strategic outcomes in plans; and~~
7.	Clause 513; Clause 521(5), NBEB	• Make the following minor corrections: ○ Clause 513 should be amended to refer to 'notice of requirement', as the designation has not yet been confirmed; and ○ Clause 521(5) should refer to 'designation'.

Relief No.	Clause, Bill ref	Relief requested
		• Check all references to these terms through the NBEB are correct.
8.	Clause 523, NBEB	Amend clause 523 of the NBEB as follows: A designation lapses on the expiry of 10 years, except for a route protection designation which lapses on the expiry of 30 years, after the date on which it is included in a plan; unless— (a) it is given effect to before the end of that period; or (b) the regional planning committee determines, on an application made ~~within~~ at least 3 months before the expiry of that period, that either: (i) substantial progress or effort has been made towards giving effect to the designation, and is continuing to be made, and fixes a longer period for the purposes of this subsection; or (ii) there is an ongoing need for the designation. (c) the designation specified a different period when incorporated in the plan.
9.	Clause 526, NBEB	• Amend clause 526 as follows: (1) If the financial responsibility for a project or work or network utility operation, or part thereof, is transferred from 1 requiring authority to another, responsibility for any relevant designation must also be transferred. … (5) The requiring authority which transfers responsibility for the designation ~~planning committee~~ must advise the Minister and the relevant territorial authority of the transfer. • Clause 526(2)-(4) - provide a more comprehensive solution to enable efficient relocation of existing public works to enable new public works to proceed.

10 Consenting

10.1 Introduction

10.1.1 Transpower is heavily reliant on consents. It operates under numerous existing consents and frequently applies for new consents to authorise its day-to-day activities (from large scale upgrades to routine maintenance and operational works). Transpower expects that its reliance on consents will continue under the new system (although hopes that the volume of consents required, and time to obtain them will decrease). Transpower supports the desire for the NBEB/SPB consenting regime to be more efficient than its RMA equivalent, and the intention to have fewer and more permissive consents. Transpower also supports many of the directions in the NBEB which are designed to simplify and streamline consenting processes.

10.1.2 However, some changes to the NBEB provisions are needed to improve clarity and to ensure they do not inadvertently undermine the desired efficiency and effectiveness of the consenting process. Transpower's particular concerns are outlined below.

10.2 Permitted activity notices and certificates of compliance

Permitted activity notice process

10.2.1 Transpower supports the NBEB's intention to require fewer and more permissive consents. However, Transpower strongly opposes the current ability to decline a permitted activity notice (*PAN*) and the current approvals process (clause 302). PANs should not by default become a fifth consent category (along with permitted, controlled, discretionary and prohibited). This outcome would run counter to the intention to reduce consent categories. Requiring all permitted activities (which, by their very definition do not require approval and are not subject to a grant or decline process) to be approved by the Council in order to issue a PAN is inconsistent with the activity categories and highly inefficient.

10.2.2 The proposed process could also create a perverse scenario where a PAN for a permitted activity is declined, yet consent for that same activity cannot be sought because it is "permitted". This outcome would leave the relevant activity in limbo. Transpower therefore considers that the PAN process should require details of the permitted activity and relevant information to be submitted to a council for its information, and entitle the council to monitor the activity subject to the PAN and recover costs as necessary (section 10.12, relief point 22).

10.2.3 If clause 302 remains as currently drafted, Transpower considers that careful consideration of the type of activities that are subject to a PAN will be needed during the NPF preparation. Transpower is heavily reliant on permitted activities to undertake its operations. This reliance (and the number of permitted activities) is likely to increase under the NBEB system. If a high proportion of currently permitted activities change to requiring PANs, a significant administrative burden and uncertainty for both Transpower (as applicant) and Councils, could result, together with unnecessary delays to progress routine work. Transpower seeks changes to the PAN process in the NPF to address these concerns (section 10.12, relief point 23).

PAN and Certificates of Compliance (COCs) - duration and lapse

10.2.4 The NBEB currently provides that PANs (under clauses 302 and 303) and COCs (under clause 297) lapse after 3 years. As noted, Transpower is heavily reliant on permitted activities. Transpower wishes to be able to use PANs and/or COCs for those activities where required (i.e. PANs as directed by the NPF) or where necessary (such as COCs in situations where a project is contentious and likely to be subject to community concern). Transpower needs to have ongoing and long-term certainty that its relevant operations are appropriately authorised and will continue to be so. Many of Transpower's lines projects stretch over years, and a COC may be sought for works that would not occur until a much later date. A 3 year lapse period is too short and offers no certainty, undermining one of the key objectives of the reform.

10.2.5 Similarly, Transpower may have to seek a PAN for an ongoing permitted activity every three years, which would be burdensome, particularly when it has been demonstrated that the permitted activity provisions have been continuously met and can continue to be so. This would be especially frustrating if, for example, a resource consent for a similar but slightly more intensive activity was granted for a much longer duration, but couldn't be sought given permitted activity status.

10.2.6 Transpower also considers it illogical to impose any duration on PANs and COCs given that they relate to permitted activities. PANs and COCs should not be subject to a duration unless there is a rule that specifies otherwise. Transpower therefore seeks that lapse dates for PANs and COCs be extended to correspond with the lapse date for the corresponding consent (eg land use, coastal) and that durations for PANs and COCs be deleted (section 10.12 relief points 21 and 23). Transpower also notes that there is a double up between clauses 302(7) and 303(2) (section 10.12, relief point 22).

10.3 More proportionate notification processes are supported, but over-simplification could create issues

10.3.1 Transpower supports the NBEB's direction that notification should be appropriately focussed on obtaining information to better understand a proposed activity and its effects, including how it meets or contributes to the system outcomes. Ensuring that information obtained from the notification process is material to the consent decision-making is also important (clauses 198 and 200).

10.3.2 However, the proposed simplification of the notification and approval processes in the NBEB must not prevent Transpower from being involved in consent applications for third party development that is proposed close to the National Grid. The absence of Transpower's input in such cases could have serious safety consequences, as demonstrated in the case study below.

Case Study

In January 2023, Rotorua District Council granted consent for a new dwelling directly underneath a 110 kV transmission line. Consent was granted for a controlled activity, despite there being a non-complying rule in the plan to give effect to policy 10 and 11 of the NPSET (to protect the Grid). Transpower was not identified as an affected party by either the Council or applicant and did not become aware of the proposal until a drilling rig was on the site to drill the foundation piles for the new dwelling. Had Transpower been notified of the proposal at the consenting stage, we would have been able to identify the correct rules in the plan and raise the safety implications of drilling in such close proximity to the Grid. As a result, works on the site had to cease immediately due to safety concerns. This matter has yet to be resolved.

This example is not isolated. We have numerous examples where construction activities have resulted in machinery making contact with, or coming too close to, transmission lines – putting both the network and the construction workers at risk.

10.3.3 Transpower is concerned that oversimplification of the notification and written approval requirements in the NBEB could lead to more instances of third party developments being approved without Transpower consultation. Failure to consult with Transpower could lead to serious health and safety risks as well as increased numbers of developments which compromise the operation, maintenance, upgrading and development of the National Grid.

10.3.4 Transpower understands that the NPF and RSSs are intended to 'front-end' many of these concerns. As noted earlier, Transpower supports the NBEB's proposal to require infrastructure corridors through the NPF. As previously explained, Transpower envisages these corridors being used to manage potential effects on the National Grid from third party activities with the NPF including corridor rules to provide for the protection of the National Grid. In addition to the inclusion of such corridors and rules in the NPF, clear notification presumptions and written approval requirements will need to be stated in the NPF where relevant standards are breached.

10.3.5 In this regard, clause 200 of the NBEB is not clear on when notification presumptions should be applied. These matters may be able to be clarified during the development of the NPF, RSSs and plans. However, it would be useful for the NBEB to provide direction on them now. For example, it is not clear what tests or criteria are to be applied when formulating provisions in the NPF or plans relating to notification.

10.3.6 Clauses 201, 205 and 207 provide criteria that could potentially be adapted and refined for this purpose, although they currently appear to only apply to consent applications. Transpower considers processes that relate to plan making and those that relate to consent processes should be separately identified.

10.3.7 Further, the current directions in clauses 201, 205 and 207 are too wide and unclear (see further submissions below) and could result in unnecessary notification and related delays in consenting processes.

10.3.8 Transpower supports clause 201(2)(a), which enables the weighing of the positive effects of an activity against the adverse effects that an activity has on a person. This has been a significant issue at times for infrastructure providers, and others, under the RMA. Projects with significant social, economic and wellbeing benefits have often been required to be notified because of minor effects on individuals.

10.3.9 Transpower also supports clause 201's movement away from a strict application of a 'minor but not less than minor' brightline test around notification. Instead, clause 201 focuses more on material considerations. Specifically, whether:

(i) information from a person is going to assist in understanding the extent and nature of effects, or contribution towards outcomes; and

(ii) their involvement will result in information that has a material impact on the decision and any conditions.

10.3.10 However, clause 201(2)(c) enables a wide opportunity for involvement in proceedings where a person has "an interest in the application greater than that of the general public". Transpower understands that the intent of the new NBEB and SPB regime is to streamline and create efficiencies by involving potentially interested parties/groups at the planning stage, rather than on a case-by-case basis through consenting. The wide scope of clause 201 undermines this approach. Transpower therefore considers that involvement through notification should be tied to something stronger than mere 'interest' in an application. It should relate more specifically to an interest that flows from, or is related to, the effects of the activity on that person. (See section 10.12, relief point 3).

The provisions in clauses 205 and 206 are problematic

10.3.11 The public notification provisions in clause 205 are unclear, uncertain and problematic, and therefore opposed by Transpower. They lack direction around scale, and inappropriately focus on community concerns (which can be present for proposals which have few effects on that community but which are nonetheless of concern for other reasons). The focus should be on effects, limits and outcomes (see section 810.12 relief point 3). It would also be beneficial to link back to the purpose of public notification (clause 198) which is to:

(i) obtain further information to assist in understanding the extent and nature of effects of the proposed activity or its contribution towards outcomes; and

(ii) result in information that is material to decision-making.

10.3.12 Transpower is also concerned about clause 206 which elevates persons who represent the public interest with regard to limited notification. The involvement of public interest groups has a mixed history under the RMA. Transpower considers that it is not so much about the representation of the public interest, but whether or not that person would contribute helpful information to the process. Again, a link back to the NBEB's purpose around notification would be helpful (see section 10.12, relief point 6).

10.4 Hearings

10.4.1 Transpower supports the ability (clause 215) for a consent authority to dispense with a hearing regardless of whether there are persons who wish to be heard.

10.4.2 In Transpower's experience, many submitters 'tick the box' of wishing to be heard, but do not appear at the hearing. Or if they do, they may not provide information that is of merit (in the sense of affecting the decision or conditions). Significant time can be spent in hearings on matters which do not advance the decision-making process.

10.4.3 Further, these provisions should encourage sound and fuller drafting of submissions. It may for example decrease the unhelpful practice of using placeholder or pro forma submissions where submitters then wait until the hearing to provide proper descriptions around the effects of concern, appropriate evidence in support, and specific relief sought (section 10.12, relief point 5).

10.5 Decision-making

10.5.1 Transpower generally supports the directions in clause 223, addressing decision making on resource consent applications. However, some further amendments should be made to clause 223 to ensure that:

(i) the requirement to have regard to the likely state of the future environment, not just the environment specified / described in a plan, RSS or the NPF (as provided in clause 223(2)(e)) should in particular include consented or designated infrastructure, or infrastructure subject to an NOR (section 10.12, relief point 10); and

(ii) there is a link to the exceptions and exemptions provided under the NBEB, when stating that consent must not be granted if contrary to an environmental limit or target (clause 223(11)) (section 10.12, relief point 12).

10.5.2 The restriction on not having regard to effects on scenic views in clause 223(8)(c) should be amended (for the same reasons as discussed in the designation section of this submission). The restriction on not having regard to any adverse effect arising from the use of the land by people on low incomes, special housing needs or disabilities (clause 223(8)(e)) needs to be clarified. As currently worded it could be interpreted as meaning that *any* effects of these activities cannot be considered. For example, social housing could impact on the National Grid by cutting off existing access or being constructed directly underneath a line (section 10.12, relief point 11).

10.5.3 The requirement for a consent authority not to grant a consent if it should have been notified (clause 223(11)(b)) needs to be narrowed. These provisions should only apply where there is a clear presumption of notification in the NPF or a plan rule which has not been observed. Otherwise, decisions to not notify could be re-litigated (section 10.12, relief point 12).

10.6 Value of investment

10.6.1 Clause 223(4) of the NBEB requires consent authorities, when considering applications from existing consent or permit holders, to 'have regard to the value of the existing consent holder's investment'. Other clauses in the NBEB similarly require regard to be had to the 'value of investment' (including clauses 168, 469, 530 and clause 3 of schedule 10).

10.6.2 Transpower seeks clarification that the "value of the investment" is not limited simply to the 'book value' of a right or structure, as recorded for an asset in financial records. Variable approaches have been taken to similar provisions in the RMA, which have demonstrated that having regard only to the book value of an asset has the potential to hugely undervalue the actual importance of an investment. For example, concrete foundations needed to support a transmission structure are likely to have a negligible financial value if considered in isolation. However, if Transpower cannot obtain consent for foundation works, we would need to relocate the relevant section of line - which could be significant depending on the location and scale of the relocation required. Any valuation should also take into account the value of the asset as a whole, rather than its separate parts, so as to take into account the role and importance of individual components in a contiguous network (section 10.12, relief point 9).

10.7 Duration - exceptions

10.7.1 As outlined further below, enduring infrastructure requires long term consents. Transpower therefore mostly supports the provision of limited exceptions to the new 10-year resource consent durations for certain activities, as provided in clause 276(3)(c) (in relation to the National Grid). However, "operation" is not included in the relevant activity description and should be. The activity description also needs to be amended so as to cover Transpower's telco network (section 10.12, relief point 18). This appears to be a drafting error, given other activities in 276(a) and (b) include "operation" and the activities referred to in clause 275(1) often have an ongoing/operational component.

10.8 Coastal occupation consents

10.8.1 Transpower's assets include a number of towers and associated lines and cables that are located within the Coastal Marine Area (*CMA*). Many of these assets predate the RMA and were lawfully established and authorised prior to its enactment. To the extent that the RMA's restrictions on the occupation of the CMA apply to Transpower's assets, Transpower holds deemed coastal permits for that occupation, in perpetuity, by virtue of section 384(2)(c) RMA. However, there is no equivalent provision in the NBEB.

10.8.2 Transpower's continuing occupation of the CMA for its existing assets must be provided for under the NBEB. Transpower therefore seeks explicit provision within the NBEB that existing deemed coastal permits for its assets will be carried over into the new system, on the same 'in perpetuity' conditions.

10.8.3 Furthermore, Transpower considers that the NBEB should enable Transpower to obtain future similar coastal occupation permits. Transpower considers that the 35 year lapse period for coastal permits under clause 266 NBEB is far too short for existing and long life infrastructure. By way of example, the Cook Strait Cable, a crucial component of the electricity transmission system in New Zealand, includes both fibre-optic and electricity cables that lie on the seabed. The operation of the cable, and any required upgrades and/or expansions require the certainty (both from an investment and operational perspective) of long-term coastal occupation permits. Other existing assets in the coastal areas and waterways also require certainty that routine activities (such as foundation strengthening) necessary for resilience and climate change can occur. Consents to enable routine works such as these will therefore also need to be able to be obtained on the

basis of a long term duration, to avoid the perverse scenario where the consent for the asset continues, but the consent for the support/resilience works expires.

10.8.4 Transpower therefore submits that the 35 year lapse period for coastal occupation permits for nationally critical and long life infrastructure (such as the National Grid) should be extended to match the life of the infrastructure (section 10.12, relief point 16).

10.8.5 Alternatively, if the 35 year lapse period for consents for long life infrastructure is to remain, Transpower seeks the inclusion of a consent review and extension process within the NBEB. This process could enable the consent holder and consent authority (and others, such as the harbour master if necessary) to undertake a review of the conditions of consent in advance of the expiry date and extend the term of the consent (section 10.12, relief point 24).

10.9 Alternative dispute resolution (ADR)

10.9.1 Transpower considers that the requirements and process in clauses 244 to 252 relating to ADR are unlikely to provide any benefit in resolving disputes about resource consents. The resource consents process already typically includes meetings and discussions between the applicant, the consent authority, and submitters. Mediation is also common in the event of significant disputes, however the final decision rests with the consent authority as is appropriate for the grant of a statutory authorisation. Using a collaborative ADR process to resolve the relevant dispute and determine the final grant of a resource consent seems an unnecessary new addition to the consenting process that is somewhat at odds with the role of resource consents as a statutory permission.

10.9.2 Transpower considers the ADR provisions should be removed from the NBEB. If the provisions are retained, Transpower seeks that the NPF specify matters that cannot be the subject of plan-directed regional ADR provisions in NBE plans (section 10.12, relief point 14).

10.10 Review of consent conditions

10.10.1 Transpower is generally comfortable with clauses 277 to 284 addressing the review of consent conditions, and the significant strengthening of these compared to the RMA. The key concern, however, is the absence of a requirement to consider the effects that would flow from a review decision.

10.10.2 Clause 280 requires that the consent authority must have regard to the extent and scale to which the activity can still be carried out, and the matters in clause 223 (which would broadly include the effects of the review decision). However, Transpower considers that direct consideration should be required around the effects that would arise from amending the conditions via the review (section 10.12, relief point 19). For example, whether changes to conditions imposed via the review process would have impacts on operations or reduced capacity or service levels.

10.11 Transfer of land use consents

10.11.1 Transpower supports the continuation in clause 285 of the RMA that land use consents attach to the land to which the consent relates, and may be enjoyed by the owners and

occupiers of that land. However, from an administrative perspective there are benefits in being able to transfer land use consents (in part) to the party who is relying on the relevant part of the consent to authorise activities, so that the conditions and requirements of the consent apply to that party. Transpower currently operates under a number of consents that are shared with another infrastructure operator – creating uncertainty or complexity when the consents contain ongoing conditions (such as review clauses). Transpower seeks amendments to allow any named holder of a land use consent to transfer the consent (in part) to another owner or occupier of the relevant land (section 10.12, relief point 20). While this would not change substantive legal rights, it would clarify and simplify administration of the consent.

10.12 Requested changes to Consenting

Relief No.	Clause, Bill ref	Change requested
1.	Clause 7, NBEB	Insert a new definition in clause 7: **Investment value** or **value of investment** includes consideration of the cost required to replace or re-establish any activity or structure.
2.	Clause 200, NBEB	Amend clause 200 to clarify what criteria are to be applied when formulating provisions in the NPF or plans that make presumptions about notification or non-notification.
3.	Clause 201(2)(c), NBEB	Amend clause 201(2)(c): Consider whether the person has an interest in the application greater than that of the general public due to the effects that the activity has on the person.
4.	Clause 201(2)(a), NBEB	Retain clause 201(2)(a).
5.	Clause 205(2), NBEB	Amend clause 205(2): A decision maker must require public notification of an application for a resource consent if satisfied that: (a) 1 or more of the following apply: ~~(a)~~ (i) there is clear and sufficient uncertainty as to whether an activity could meet or contribute to outcomes, or whether the activity would breach a limit: ~~(b)~~ (ii) there are clear risks or impacts that cannot be mitigated by the proposal: ~~(c) there are relevant concerns from the community:~~ ~~(d)~~ (iii) the scale or significance (or both) of the proposed activity warrants it; and

		(b) The information that would result from public notification is necessary to understand the extent and nature of effects or contributions towards outcomes and / or will have a material effect on the substantive decision and any conditions imposed.
6.	Clause 206, NBEB	Amend clause 206 (after subclause (c)) as follows: "and the information that would result from limited notification to that person or persons is in each case necessary to understand the extent and nature of effects or contributions towards outcomes, and / or will have a material effect on the substantive decision and any conditions imposed".
7.	Clause 215, NBEB	Retain clause 215(1) and (2).
8.	Clause 223, NBEB	Amend clause 223 as follows: (1A) The consent authority must make a decision as to whether section 275 applies within 10 working days' of receiving an application that seeks a determination that section 275 does not apply, and provide that decision to the applicant in writing. This subsection is subject to the right to object under sections 828 to 835.
9.	Clause 223(4), NBEB	Amend clause 223(4) and other similar provisions (e.g. clauses 168, 469, 530, and clause 3 of schedule 10) to clarify that the value of investment is not limited to the 'book value' of a right or asset, as recorded as an asset in financial records, but extends to the value of the wider network that the right or asset supports.
10.	Clause 223(2)(e) NBEB	Amend clause 223(2)(e) as follows: "the likely state of the future environment as specified in a plan, a regional spatial strategy, or the national planning framework, and including any approved, notified, designated or consented activity not specified in the relevant plan, regional spatial strategy or the national planning framework".
11.	Clause 223(8)(e), NBEB	Amend clause 223(8)(e) to clarify what effects of the specified activities can and cannot be considered.
12.	Clause 223(11), NBEB	Amend clause 223(11) as follows: The consent authority must not grant a resource consent if— (a) it is contrary to— (i) an environmental limit or target unless an exemption from that limit or target under this Act applies.

		(ii) a wāhi tapu condition included in a customary marine title order or agreement. (b) it should have been notified under a framework rule or plan rule and was not.
13.	Clauses 244 to 252, NBEB	Delete clauses 244 to 252.
14.	Clause 246, NBEB	Amend clause 246 as follows: **246 Matter that must be considered by planning committee** Before providing for the use of regional ADR in a plan, a regional planning committee must— (a) consider the criteria in section 245; and (b) consider any relevant Treaty settlement legislation and implications affecting iwi, hapū, or Māori, and not require the use of regional ADR where that would be inconsistent with that legislation or have implications affecting iwi, hapū, or Māori. (c) not require the use of regional ADR for matters the NPF specifies regional ADR cannot be used for.
15.	Clause 253(2), NBEB	Amend clause 253(2) as follows to give effect to the apparent intention that a person may only appeal in relation to matters raised in that person's submission: (2) A person exercising a right of appeal under subsection (1)(b) may appeal— ~~(a)~~ any matter that was raised in the person's submission except any part of the submission that is struck out under clause 89 of Schedule 7; and ~~(b) any matter that was not raised in the person's submission.~~
16.	Clause 266, NBEB	Amend clause 266 to allow coastal permits and any other consents that the clause states are not able to be granted for an unlimited time period (clause 266(3)) to be approved in perpetuity or for the life of lifeline utility infrastructure (or apply a similar process as is in clauses 276(1)(b) and (3), which enables any consents needed for lifeline utilities to be approved in perpetuity or for the life of lifeline utility infrastructure.
17.	Clause 276(1)(b), NBEB	• Amend clause 276(1)(b) as follows (1A) The consent authority must make a decision as to whether section 275 applies within 10 working days of receiving an application that seeks a determination that section 275 does not apply, and provide that decision to the applicant in writing. This subsection is subject to the right to object under sections 828 to 835.

		• Amend the table in clause 828 to add this right of objection.
18.	Clause 276(3)(c), NBEB	Retain Clause 276(3)(c) subject to the following amendment: (c) the construction, operation, upgrading, or maintenance of any of the following infrastructure activities: … (iii) National gird electricity transmission network or local distribution network, and associated communications networks.
19.	Clause 280, NBEB	Amend clause 280 as follows: (#) without limiting **section 280(1(a),** the actual and potential effects arising from the change to the consent conditions, including any reduction in positive effects, and effects on the matters (b) and (c) within the definition of environment.
20.	Clause 285, NBEB	Amend clause 285 as follows to allow any holder of any land use consent to transfer the land use consent to another person: **285 Land use and subdivision consents attach to land** (1) A land use consent and a subdivision consent attaches to the land to which the consent relates and accordingly may be enjoyed by the owners and occupiers of the land for the time being, unless the consent expressly provides otherwise. (2) Subsection (1) does not apply to a land use consent to do something that would otherwise contravene section 20. (3) The holder of a land use consent described in subsections (1) or (2) may transfer the whole or any part of the holder's interest in the consent to any other person unless the consent expressly provides otherwise. (4) The transfer of the holder's interest in a land use consent described in subsections (1) or (2) has no effect until written notice of the transfer is given to the consent authority that granted the consent.
21.	Clause 297, NBEB	Amend clause 297(5) to extend the 3 year lapse period for COCs to correspond with the lapse period applied to the equivalent consent (eg land use, coastal).
22.	Clause 302, NBEB	Amend clause 302 to make it an information requirement rather than an application for council approval and remove the double up between clause 302(7) and 303(2) as follows: **302 Permitted activity notices** (1) A person must— (a) ~~apply~~ provide information to a consent authority for a permitted activity notice (a PAN) if required to do so by the national planning framework or a plan; and

		(b) not commence the activity (that is this subject of the PAN) until the ~~PAN is issued~~ information is provided. (2) PANs are ~~provided~~ for the purposes of— (a) compliance, monitoring and enforcement, including cost-recovery and plan effectiveness monitoring; and (b) ensuring any third party approval or certification is obtained ~~as appropriate~~ if required by the national planning framework or a plan. (3) The ~~application must be completed in accordance with, and include the~~ information must be provided as prescribed by, the national planning framework, the plan, and regulations. ~~(4) A consent authority must —~~ ~~(a) decide whether to issue or decline to issue a PAN within 10 working days after the date on which the authority receives the application; and~~ ~~(b) return an incomplete application within 5 working days after the date on which the authority receives the application; and~~ ~~(c) not seek further information.~~ (5) Subsection (6) applies if a consent authority ~~that issued a PAN~~ becomes aware that the information that a person provided ~~in order to obtain the~~ for a PAN contained inaccuracies or did not comply with the requirements specified in the national planning framework, plan, or regulations. (6) The authority ~~must~~ may direct a person to cease any activities carried out in reliance on a PAN, ~~revoke the PAN~~ if it is satisfied that the inaccuracies or non-compliance were material ~~in satisfying the authority that it must issue the PAN~~. ~~(7) A PAN lapses 3 years after the date on which it is issued, unless the activity to which it relates commences.~~
23.	Clause 303(2), NBEB	Delete clause 303.
24.	General request	Include a consent expiry review and extension process to enable the consent holder and consent authority (and others) to undertake a review of the conditions of consent in advance of the expiry date and extend the term of the consent.

11 Other matters

11.1 Introduction

11.1.1 This section addresses other aspects of the NBEB which are particularly important to Transpower based on its RMA experiences, and where improvements are otherwise needed.

11.2 References to Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) and other legislation

11.2.1 Transpower generally submits that requirements from other legislation (such as those in the MACA) should not be paraphrased in the NBEB. Such requirements should either be duplicated in full as part of the NBEB, or referenced only, to avoid confusion about what the statutory requirements actually are (section 11.6, relief point 6).

11.2.2 Clause 173(5) of the NBEB provides an example of the issues caused by paraphrasing other legislation. It states that section 62A[37] of the MACA requires a person to notify applicant groups, provide a list of groups notified, and record their views. However, while providing evidence of compliance with section 62 of the MACA is an implied obligation, section 62 does not require a list of groups notified or a record of those groups' views to be provided.

11.2.3 Clause 173(5) (if it is to remain as proposed) also creates a more specific issue. Any requirement to record the views of notified groups must explicitly allow for a situation where the relevant groups choose not to provide any views. Transpower notes that the COVID-19 Recovery (Fast-track Consenting) Act 2020 allowed for such situations, specifying that information could include 'if iwi and hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision'.[38] A similar provision could apply to any similar requirement applying in the NBEB (section 11.6, relief point 7).

11.3 Emergency Provisions

11.3.1 Transpower is responsible for the continuous operation of the National Grid. With around 11,000km of lines covering some of New Zealand's most difficult terrain, it is common for adverse weather, accidents and other sudden events to damage, or put at risk, the continued safe functioning of the Grid. As a lifeline utility operator Transpower can, and does, rely on the emergency works provisions in section 330 of the RMA to authorise emergency activities where these are required to ensure the continued operation and security of the network.

11.3.2 The NBEB (from clause 751) largely replicates the emergency provisions of the RMA. Transpower notes that (as was the case with the previous RMA provisions) these clauses

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37 Meaning we think section "62" – see minor change at section 11.6, relief point 2.

38 COVID-19 Recovery (Fast-track Consenting) Act 2020, s 10(1)(f).

have been drafted using somewhat unclear terms, presumably as it is not possible to definitively anticipate all emergency situations. Provided that consent authorities take a pragmatic and sensible approach to interpretation and application of these provisions, Transpower has largely found these provisions workable.

11.3.3 However, a key interpretation problem in applying these sections arises in what is meant by 'immediate' preventative / remedial measures. For Transpower, many of the unexpected and urgent emergency scenarios that face the National Grid can require solutions that can take days, weeks or even months to implement, due to the scale of the infrastructure.

11.3.4 For example, where an eroding bank threatens infrastructure, Transpower will seek to implement measures to limit or mitigate the erosion immediately. But in reality, the design solution, contracting and then undertaking the work can take some time. Adding additional time to then prepare applications and obtain resource consents adds significant further time, at a time when the works are urgent due to the risk of a weather event causing further erosion and resulting in major failure or damage.

11.3.5 Further, where a tower is damaged by a flood event (such as in the recent Ashburton floods), Transpower will take immediate steps to provide a temporary fix to ensure power supplies are restored. But the permanent solution will still need to occur urgently but necessarily over a longer period. Often standard consenting processes will not provide consents in time, even if the processes are expedited.

11.3.6 In such circumstances Transpower must be able to rely on emergency works provisions. Otherwise, Transpower would have no consenting pathway or other mechanism available to authorise the works in the time available. This situation could risk electricity outages and greater damage occurring to assets.

11.3.7 Accordingly, Transpower seeks a change to clause 751 NBEB to clarify that the emergency works provisions must be "urgent" rather than "immediate" (section 11.6, relief point 3).

11.3.8 On a matter of detail, Transpower supports the increase in time in clause 754(2) of the NBEB required to apply for a resource consent to authorise ongoing effects from 20 days (as is currently provided for in section 330A(2) of the RMA) to 30 working days. The increased timeframes acknowledge that, in emergency situations, the priority should be preventing or remedying the issue effectively. Consenting of the activities also requires a reasonable amount of time to prepare the necessary documentation.

11.4 Definitions of "industrial or trade premises" and "industrial or trade process"

11.4.1 The definitions of "industrial or trade premises" and "industrial or trade process" in clause 7 of the NBEB replicate the current section 2 RMA definitions. These definitions have proved problematic for Transpower, as it is unclear whether Transpower's electricity substations are included.

11.4.2 Transpower considers the reference to raw material in the RMA definition of "industrial or trade process" is out of place in the context of electricity. Further, substations do not manufacture or produce any physical products. Therefore, arguably the definition of industrial or trade process does not apply to substations. However, conversely, the relatively wide interpretation of the relevant definitions supported by caselaw enables an

argument that electricity substations are "industrial" and should be caught by the definitions.

11.4.3 There are arguments either way, and it is not surprising, therefore, that councils have reached different views on whether substations should be subject to rule frameworks for industrial or trade premises. Consequently, Transpower faces inconsistent regulations and rules across the country for the same activity. Where there is a rule framework, it is usually triggered by the quantity of oil stored within the power transformers on site. This is despite discharge consents being required to manage the oil in the transformers.

11.4.4 Accordingly, Transpower seeks amendments to the definition of "industrial or trade premises" in the NBEB to expressly exclude electricity substations (section 11.6, relief point 1).

11.5 Principles for Biodiversity Offsetting and Redress

11.5.1 Transpower generally supports the need for an offsetting and redress principles framework within the NBEB to ensure appropriate management of biodiversity and cultural effects where such effects cannot be avoided. However, it is important that the framework and principles are proportionate to the relevant activity.

11.5.2 For reasons outlined in section 5.3.10, Transpower considers that the offsetting and redress principles should be applied to new infrastructure only. The principles should not be applied to existing or routine transmission activities. This is because Transpower's assets intersect with and traverse indigenous biodiversity in multiple ecosystems. Some impacts are expected and cannot be avoided. For example, clearing access tracks to enable maintenance will sometimes require removing or trimming vegetation that has regenerated since the previous maintenance work several years earlier. The case study in section 5.3.12 also highlights the need to trim vegetation to ensure fire safety hazards from transmissions lines are appropriately managed. Requiring such routine activities in relation to existing assets to apply the principles and processes within the offsetting framework is inefficient and unduly onerous.

11.5.3 Transpower also considers that the biodiversity offsetting principles should provide for flexibility in approach depending upon the nature and scale of relevant activities. Offsetting or compensation may not be possible in smaller settings (where residual effects are nonetheless more than minor). Transpower considers there should be a practical mechanism for making a financial contribution towards a positive biodiversity outcome in such situations. For example, a "bio-bank" approach to enable applicants to make financial contributions to a collective fund may be more efficient and result in better biodiversity outcomes.

11.5.4 In relation to the details of the principles, Transpower notes:

(i) Principle 2 of schedules 3 and 4 stipulates when offsetting and redress are not appropriate. Transpower supports this concept.

(ii) Principle 2 within schedule 3 specifies situations where biodiversity values cannot be offset and principle 2 within schedule 4 specifies where biodiversity redress will not be appropriate. Principle 2, schedule 3 provide that where the indigenous biodiversity is vulnerable, an offset is not available, and principle 2, schedule 4 provides that where the indigenous biodiversity is vulnerable redress not

considered appropriate. As the term ‘vulnerable’ is not defined, Transpower has concerns with the ability to define an accurate and measurable 'vulnerability' indicator. Transpower seeks that the reference to ‘vulnerable’ in both schedule 3 and 4 be defined or removed.

(iii) Principle 2(b) within schedules 3 and 4 states that where there are no technically feasible or socially acceptable options by which to secure the required gains in an acceptable timeframe, then an offset is not available and redress not considered appropriate. The references to ‘socially acceptable options’ and ‘acceptable timeframe’ are subjective and introduce uncertainty. Reference to an acceptable timeframe is also too uncertain and subjective as it does not suggest what an acceptable timeframe is, or who has the authority to make those determinations. Transpower therefore seeks that the references are deleted. Alternatively, the terms should be defined.

(iv) Principle 2(c) in both schedules states that offsetting or redress is not appropriate where effects on extent or values are uncertain, unknown, or little understood, but potential effects are significantly adverse. This requirement could potentially remove the consenting pathway afforded to specified infrastructure. In practice, there could be many situations where operational, technical, or locational requirements necessitate locating transmission lines across biodiversity areas where there is a paucity of information or uncertainty about the effects on specific biodiversity. For example, where there is a cryptic bird species such as a bittern in a wetland that may be affected by transmission lines going over a wetland. In such circumstances, the requirement in principle 2(c) would amount to a direction to avoid adverse effects. This requirement could therefore potentially remove the consenting pathway afforded to specified infrastructure. Therefore, Transpower seeks that principle 2(c) not apply to activities listed within clause 66(1).

(v) The requirement within principle 6 of schedule 3 and principle 5 of schedule 4 to ‘*consider the landscape context of both the impact site and the offset site, taking into account interactions between species, habitats and ecosystems, spatial connections and ecosystem function’,* poses huge and expensive logistical issues. For example, there is in some cases, a lack of research to build species interaction models accurately (which may take decades and come at considerable cost). There are also significant information deficits about many of New Zealand’s species and habitats. Therefore, any models for determining the interactions between species, habitats and ecosystems, spatial connections and ecosystem function based on the information available may lack scientific rigour and therefore be open to substantial debate. Transpower seeks to have these principles amended to address these concerns. This could be achieved, for example, by requiring consideration only where appropriate and practicable to do so.

(vi) The requirement within principle 8 of schedule 3 to achieve gains within the consent period is considered to be unnecessary and also unrealistic (e.g. in circumstances where the offset is targeting a mature forest habitat). A more reasonable approach is that the offset, and its maintenance, shows appropriate progress depending on the circumstances and that there is a process to secure this ongoing progress, by way of legal instruments, and a bond, prior to the consent lapsing. Transpower seeks the principle be deleted and instead managed through the approval process.

(vii) The requirement within principle 13 of schedule 3 and principle 12 of schedule 4 to undertake effective stakeholder participation may be problematic and may cause issues where the ecological offset or redress does not meet the stakeholder expectations. Transpower seeks the principles be reworded to ensure stakeholders cannot require outcomes to be achieved that are different to that required by the ecological assessment.

11.5.5 Transpower also observes that principles in the NBEB generally reflect those provided in the NPS-IB and NPS-FM. However, there are wording differences. Consistency and clear direction as to the applicable framework would assist with implementation.

11.6 Requested changes to other matters

Relief No.	Clause, Bill ref	Change requested
1.	Clause 7, NBEB	Amend the definition of "industrial or trade premises" in clause 7 as follows: (a) means— (i)premises used for industrial or trade purposes; and (ii)premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes; or (iii)premises used for composting organic materials; or (iv)other premises from which a contaminant is discharged in connection with any industrial or trade process; but (b) does not include any production land or any electricity substation.
2.	Clause 173(5)(a) NBEB	Amend clause 173(5)(a) as follows: If a person applies for a resource consent relating to an area where applicant groups seek customary marine title,— The person must comply with section ~~62A~~ 62 of the Marine and Coastal Area (Takutai Moana) Act 2011 (which requires the person to notify the applicant groups, provide a list of the groups notified, and ~~record~~ seek their views); …
3.	Clause 751, NBEB	Amend clause 751 as follows: 751 Exclusion of certain provisions where emergency works or remedial actions necessary … (2) The adverse events or sudden events are— (a) an adverse effect on the environment that requires ~~immediate~~ urgent preventive measures: (b) an adverse effect on the environment that requires ~~immediate~~ urgent remedial measures:
4.	Clause 754, NBEB	Retain clause 754(2).
5.	Drafting requests	• In relation to schedules 3 and 4:

Relief No.	Clause, Bill ref	Change requested
	schedules 3 and 4, NBEB	○ Specify that the principles apply "unless otherwise specified in the Act or the NPF". ○ Remove reference to term "vulnerable" from principle 2(a), schedules 3 and 4 or alternatively include a definition of 'vulnerable'. ○ Remove reference to "within acceptable timeframes" and "socially acceptable" from principle 2(b), schedules 3 and 4, or alternatively, provide a definition for these terms. ○ Amend principle 2(c), schedules 3 and 4 to clarify that it does not apply to activities listed within clause 66(1), or activities listed within clause 276(3)((c). ○ Amend principle 6 of schedule 3 and principle 5 of schedule 4 to require 'consider, where reasonable and practicable to do so, the...." to account for the significant information deficits about New Zealand's species and habitats. ○ Principle 8 of schedule 3 be deleted, and instead managed through the approval process. ○ The requirement within principle 13 of schedule 3 and principle 12 of schedule 4 to undertake effective stakeholder participation be reworded to ensure stakeholders cannot require outcomes to be achieved that are different to that required by the ecological assessment. ○ Correct the references to 'cultural heritage offsetting' rather than 'biodiversity redress' in the chapeaux within Schedule 4, and 'compensation' rather than 'redress' in principle 2. • Amend the principles in the NBEB to ensure consistency with the principles provided in the NPS-IB and NPS-FM.
6.	General drafting request	All requirements in the NBEB from other legislation not be paraphrased, and either duplicated in full, or referenced only.
7.	General drafting request	Any requirement to 'provide the views of notified parties', or similar requirements, specifically allow for situations where no views are provided.

12 Transitional Provisions

12.1 Introduction

12.1.1 Transpower understands that the transition to the new resource management system is expected to take about 10 years. Further, we understand the intention is that the RMA (including national direction, plans, consenting and decision making) will continue to apply in each region until the RPC has made decisions on recommendations on the NBE plan. The region would then 'switch' systems to apply only the NBA/SPA (and the NPF, RSS and NBE plans, consenting and decision making).

12.1.2 Transpower is very concerned with these timeframes. Essential infrastructure, and NZ's response to achieving carbon net zero objectives as a whole, cannot afford to wait that long. Transpower considers that projects furthering the environmental objectives and system outcomes of the NBA should be enabled through the transitional process, irrespective of the status of the various RMA, NBA and SPA documents. The 'switch' between the RMA and NBA will not be as clean as desired in any case (as we discuss below). Transpower therefore considers two outcomes are needed:

(i) existing national directions providing for National Grid activities need to be amended and improved - as a priority; and

(ii) NBA processes should be brought into effect as soon as they are ready. With drafting improvements, many processes could be accessible from day one.

12.1.3 It is also absolutely critical that all of Transpower's existing RMA authorisations and its requiring authority status are carried across and amalgamated efficiently with the related tools in the new system.

12.2 RMA changes - amendments to existing national direction

12.2.1 Transpower supports the direction in schedule 1, clause 2 NBEB that national direction instruments under the RMA are to continue in force during the transition. Transpower also supports the Minister being able to amend existing RMA national direction during the transition (schedule 1, clause 6). Given the current timeframes to implement the new legislation, Transpower considers that existing RMA national direction must be amended as a priority, under Part 5 of the RMA, to remedy current inconsistencies and known issues.

12.2.2 In particular, the NPSET, the NESETA and National Grid corridors contained in district plans under the RMA (to give effect to policies 10 and 11 of the NPSET) must be retained, standardised and improved. As noted, the NESETA in particular authorises routine activities and upgrades on lines that were in operating in January 2010. Without the NESETA, Transpower would have no enabling framework to authorise necessary work. Further, National Grid activities cannot avoid all sensitive environments. The enabling policies in the NPSET which recognise the constraints of the National Grid and require a "seek to avoid" policy are therefore crucial. These policies and related effects management hierarchies, must, however, be further improved given the inconsistencies with other national direction and other issues noted in section 5.1.

12.2.3 While Transpower understands that work is afoot to strengthen existing national direction, it considers a clearer legislative requirement in the NBEB to direct this outcome is needed. We note that section 43D of the RMA will also need to be amended to the extent that the updated NESETA enables new land use activities. These changes would be needed to address the 'prevailing' issue discussed at 5.6 of this submission (section 12.7, relief point 3).

12.3 Earlier commencement of NBEB

12.3.1 Transpower considers it vitally important that its infrastructure is enabled through the transitional phase, and it is able to take full advantage of the process improvements through the new system. The NBEB contains a number of useful initiatives that should be commenced much earlier than planned by providing more comprehensive transitional arrangements in the NBEB (section 12.7, relief point 2). Some key aspects are noted below.

National direction in the NPF

12.3.2 As noted, Transpower expects that the NPF will contain a comprehensive system outcome, policy and framework rule regime for National Grid activities. The regime will not rely to any material extent on further details provided through the RSS and NBE plans. Accordingly, there is no reason why this regime could not be accessed as soon as the Minster decides to make the first NPF operative.

Exemptions and effects management framework

12.3.3 For reasons noted in sections 5(NPF) and 10 (Consenting), Transpower also considers the exemptions and effects management frameworks in the NBEB should be made available where possible.

Other activities

12.3.4 For activities not covered in the first NPF, the NBEB could provide a statutory process for projects that meet set objectives and outcomes to be consented under the NBA in the transitional period, for example as a schedule to the NBA or through Regulations.

12.3.5 This approach would also assist greatly with certainty, given the likelihood that the NBA will become relevant anyway. Although the guidance material on the new regime indicates that the NBA will not influence decision making on RMA plans and consents during the transition[39], decision makers under the RMA have a broad discretion to take into account 'any other matter' under sections 104(1)(c) and 171(1)(d). Parties to RMA processes will inevitably argue that NBA and SPA matters are either 'relevant' or 'irrelevant' considerations under the RMA, even if there is no direct statutory requirement for such matters to be considered.

12.3.6 As a more general point, Transpower seeks guidance in the NBEB and SPB on the regard that decision makers are to have to NPF or RSSs during the transition period (section 12.7, relief point 3).

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39 Our Future Resource Management System: Overview, Ministry for the Environment, November 2022, page 58.

Fast track consenting

12.3.7 Transpower welcomes the provision of a "fast-track" consenting process for infrastructure (subpart 8—Specified housing and infrastructure fast-track consenting process, NBEB). Based on the experience of the COVID-19 Recovery (Fast-track Consenting) Act 2020, the availability of this alternative consenting process should substantially speed up the provision of necessary infrastructure projects.

12.3.8 However, Transpower sees a possible gap when the COVID-19 Recovery (Fast-track Consenting) Act 2020 will no longer be available, but the NBA provisions enabling the fast-track consenting process are not yet in effect. It would be very useful if either process could be available with no gap in between (preferably the new fast track in the NBEB, given it improves on the process in the Covid-19 legislation).

12.3.9 Under any scenario, Transpower considers the regime should be extended to include all infrastructure projects, not just those needed urgently - a lapse period longer than two years, as currently proposed in clause 326, is necessary. A two year lapse date is simply not long enough for any moderately complex infrastructure project to be delivered, and it is unclear why only urgent projects should have access to this process.

Designations

12.3.10 The new designation processes could be made available from commencement with some modifications. For example, access to longer lapse dates and route protection designations would be very useful. Further, once an RSS has been made operative, requiring authorities should be able to gain the benefit of the streamlined designation processes for projects included in the RSS.

Consent processes

12.3.11 As noted earlier, there are a host of new consent processing provisions which would enhance the effectiveness of consent processes and reduce delays and uncertainty. Subject to the modifications sought, Transpower considers these processes could come into effect straight away.

12.4 Carrying over RMA authorisations/requiring authority status

Requiring authority status

12.4.1 For reasons discussed in section 9, Transpower's status as a requiring authority must continue through the transition to the new system. Currently the NBEA does not include "roll-over" provisions for requiring authority status for those entities with that status under the RMA. Without certainty of requiring authority status, the ability of requiring authorities to administer existing designations could be in doubt.

12.4.2 This continuity was explicit in the RMA. Section 420 deems persons 'responsible for designations' under the Town and Country Planning Act 1977 to be requiring authorities for the purpose of those designations, with the provisions of the RMA applying accordingly. The NBEB should also make this explicit (section 12.7, relief point 4).

Existing RMA designations

12.4.3 It is also necessary that existing designations clearly roll through to the new regime, as provided for under Schedule 1 of the RMA during district plan reviews. In this regard, the

reopening of all existing RMA designations as part of the transition would be a significant risk for requiring authorities and would create significant inefficiencies.

12.4.4 It is currently not clear whether designations will roll through to the new NBE Plans. The NBEB does continue "RMA documents in effect". It is arguable that designations would be retained as part of district plans. However, it would be preferable if this rollover was put beyond doubt.

12.4.5 The NBA should therefore expressly provide for the rollover of RMA designations into NBE plans (as per the RMA). The rollover of designations was also explicit in 1991. A designation under the Town and Country Planning Act 1977 (TCPA) is deemed to be a designation in the relevant district plan under section 175 of the RMA. Further, a designation under the NBA is defined as a provision made in a plan to give effect to a notice of requirement made by a requiring authority under section 503 of the NBA. A specific deeming provision would remove any doubt about whether designation provisions in the NBA apply to RMA designations.

12.4.6 Transpower therefore considers a deeming provision should be included in the NBA to ensure designations continue under the new regime (section 12.7, relief point 5). Transpower also considers the definition of "designation" should also clearly include designations under the RMA (section 12.7, relief point 61).

12.5 Status of other consents, processes

Resource consents

12.5.1 The key transitional provision (schedule 1, clause 2) continues "every RMA document in force before the commencement of this clause… subject to the NBA". Transpower understands the intent of this clause is that resource consents issued under the RMA will continue in force according to their terms, subject to the NBA provisions applying to resource consents (once these are in force).

12.5.2 Transpower would prefer more explicit clarification of the status of RMA resource consents under the NBEB. The current wording could allow scope to dispute the status of an RMA consent once the NBA provisions are in force (e.g. as an existing use right or some other form of authorisation) (section 12.7, relief point 8).

Historical permits

12.5.3 As noted, Transpower holds coastal occupation consents, some of which predate the RMA (section 10.8).

12.5.4 The RMA addresses the status of pre-existing permissions under other statutes directly, for example:

(i) Section 383 states that every permission granted under Parts 2, 4 and 5 of the TCPA shall be deemed to be a land use consent.

(ii) Section 384 states that every permission granted under Parts 2, 4 and 5 of the TCPA or any licence, permit or authority granted under any enactment that provides any right of occupation in respect of coastal marine areas shall be deemed to be a coastal permit, on the same conditions as granted.

(iii) Section 385 states that every permission granted under sections 25 or 31 of the Clean Air Act 1972 shall be deemed to be a discharge permit.

(iv) Section 386 states that existing rights and authorities under the Water and Soil Conservation Act 1967 shall be deemed to be resource consents.

(v) Section 387 states that every license granted under the Geothermal Energy Act 1953 and every power or authorisation under section 11 of that Act shall be deemed a coastal permit (if it applies within the coastal marine area) or otherwise a water permit - both being types of resource consents under the RMA.

12.5.5 Transpower considers that similar language within the NBEB would provide useful clarification, where a consent made or granted under the RMA, or deemed to be a consent under the RMA, is "deemed to be a resource consent under (section 152 of) the NBA". Therefore, we seek a provision deeming all resource consents and permits authorised by the RMA or preceding legislation, or other enactment, to be resource consents under the NBEB, on the same conditions as granted (section 12.7, relief point 8).

Processing of applications

12.5.6 Transpower understands the intention of the new system is that once the RPC has made decisions on a new NBE plan for each region, then the NBE plan and the NBA provisions for processing and decision making for resource consents and designations will apply. The 'switch' from RMA plans and processes to NBE plans and processes will happen at one time on a defined date for each region.

12.5.7 However, the NBEB currently does not address applications for resource consent, or designation processes, under the RMA that are in progress, but have not been determined when relevant sections of the NBA commence. For example, if a hearing for a resource consent application under an RMA plan is in progress when the NBE plan takes effect, then the resource consent will need to be granted and administered under the new regime. Subject to the relief sought earlier regarding bringing NBEB processes into effect earlier, this gap needs to be considered and filled.

12.5.8 Under the RMA transition, most applications that had already proceeded to a hearing, were determined under the old legislation, but granted as resource consents under the new legislation (section 390). Other existing applications were deemed to be RMA applications in the most part. The RMA reference to a hearing to distinguish approvals would seem unusual for this transition, given so few applications proceed to hearing. The introduction of the new system should not increase the difficulty of obtaining consent for an activity where an application is lodged under the RMA.

12.5.9 Applying the rule framework that is in effect at the time an application is lodged is equivalent to the approach in section 88A of the RMA (which maintains the activity status for a lodged application). It is also consistent with schedule 1, clause 8(3) which would "continue, complete and enforce" under the RMA all proceedings pending or in progress in the Environment Court operating before the commencement of that clause.

12.5.10 Changes to provide clear direction need to ensure the activity status of any application is not inadvertently changed. For example, by clause 158 which applies a default activity status of 'discretionary' where a resource consent is required, but there is no "relevant rule in an NBE plan" (which would include a scenario where there is a rule in the NPF, rather than the NBE plan). This could result in a situation where all resource consent

applications under RMA plans and NES in progress are shifted to 'discretionary' when clause 158 takes effect.

12.5.11 Transpower seeks a clear direction that applications for resource consent or notices of requirement that have been lodged to be determined by an RMA process available at the time, are determined under the RMA and the rule framework applying at the time the application was lodged, with the exception that the decision maker should also have regard to the new NBEB provisions (section 12.7, relief point 9).

Status of environment court proceedings

12.5.12 Schedule 1, clause 8(3) of the NBEB states that all proceedings pending or in progress in the Environment Court immediately before the commencement of that clause must be "continued, completed, and enforced" under the RMA.

12.5.13 Transpower supports this clarification. However, the relevant clause will take effect on the day after Royal assent is given. The commencement of the NBA does not equate with the end of the RMA system, given the staggered transition from region to region. The NBEB does not specify or provide guidance on how the Environment Court should manage and decide proceedings that are lodged after Royal assent, but nevertheless under the RMA system. There will be an extended transition period and at times both NBA instruments (NPF and RSS) will be in effect with legacy RMA district and regional plans and existing national direction. Clear direction is needed on how decision makers assess applications during this transition. Transpower seeks directions in the NBEB that clearly set out how Environment Court proceedings commenced after Royal assent will be continued (section 12.7, relief point 10).

Status of RMA plan changes and variations

12.5.14 The NBEB needs to address the approach to planning documents that will have been notified under the RMA, but do not become operative before the NBA enters into effect. Ministry guidance on the NBEB states that RMA plan changes will remain available under the RMA until an RPC adopts the RSS and after this time, the only RMA plan changes provided for will mainly relate to exceptions for urgent issues, errors and national direction.[40] It is not clear where in the Bills this intention is given effect.

12.5.15 Transpower seeks statutory direction in the Bills on how current and future RMA plan changes and variations will be managed by the NBA and SPA (section 12.7, relief point 11).

12.6 Other matters

Cross-boundary projects

12.6.1 The programme for implementation of the NBA and SPA regime explicitly envisages a staged approach, where development of RSSs will be staggered across regions. It is inevitable that some regions will be operating under a full NBA regime, with a RSS and NBE plan in effect, while adjoining regions are still subject to RMA documents (while the RSS and NBE plans for that region are being developed).

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40 Our Future Resource Management System: Overview, Ministry for the Environment, November 2022, page 59.

12.6.2 This staggering creates a real risk for operators of national linear infrastructure networks, such as Transpower, where part of a project is in one region that has an operative NBE plan, and part is within a neighbouring region and is subject to RMA documents. Transmission lines do not stop at regional boundaries. Transpower currently deals with projects requiring consents and/or designations under different district or regional plans (and the NESETA for 'existing lines'). Such projects require increased time and face the risk of the consenting framework changing. The new regime further raises the difficulty by creating the risk of dealing with two different statutory regimes for different parts of the same transmission infrastructure project.

12.6.3 Transpower considers that managing different statutory tests and requirements, as well as different plans over different parts of the same project will be very challenging. This situation may also result in litigation over the relevance and weighting of the different RMA and NBA components. To overcome these difficulties, Transpower considers that the NBEB should provide clear direction on which instruments and statute apply, what weighting is to be given to each and the processes to be followed (see section 12.7, relief point 16). Transpower notes the benefit of providing for a single hearing process that allows projects to be assessed in a holistic way, even where different controls apply to different parts of the project. Transpower also seeks that a single hearing process is available for projects spanning RMA and NBA processes (see section 12.7, relief point 17).

Duration extensions

12.6.4 The proposed amendments in schedule 15 of the NBEB to schedule 12 of the RMA would limit the term of affected resource consents (water permits, discharge permits and discharges to water) granted after the NBA comes into effect, to three years after the defined "applicable interim period" (schedule 15, clause 39). There are exceptions to this rule (subject to an approvals process) including in relation to consents that authorise the construction, upgrading, or maintenance of the National Grid (, schedule 15, clause 40(3)).

12.6.5 However, the process to retain affected resource consents is unduly cumbersome and creates substantial uncertainties for ongoing National Grid activities that have obtained consents after the NBA takes effect. It is unclear what purpose the provisions serve, given other provisions in the NBEB set out when a resource consent (including a resource consent approved under the RMA) can be reviewed, as discussed earlier.

12.6.6 For reasons outlined, it is important that any consents Transpower obtains after the NBA is enacted can continue to be used on their terms, and that any review processes and the criteria for changing such consents are clearly specified. Transpower therefore seeks that clauses 39 and 40 be deleted.

12.7 Requested changes to Transitional Provisions

Relief No.	Clause, Bill ref	Change requested
1.	Clause 3, definitions, NBEB	Amend the definition of designation as follows: "designation means a provision made in a plan to give effect to a notice of requirement made by a requiring authority under section 503 or <u>otherwise</u>

Relief No.	Clause, Bill ref	Change requested
		made under the Resource Management Act -1991~~ and any associated primary CIP~~"
2.	Drafting requests - clause 2, Schedule 1, NBEB	Subject to Transpower's comments elsewhere in this submission, amend the commencement provisions in clause 2, and make other consequential amendments so: ○ the NPF can be used as soon as it is operative; ○ the various new exemptions and effects management framework is available for National Grid activities that impact sensitive environments; ○ the specified housing and infrastructure fast track consenting process is available upon Royal assent of the NBA and the lapse dates in clause 326(5)-(6) are extended to be consistent with the NBEB lapse dates for infrastructure (see also relief sought at 9.9, relief point 8). ○ New consenting processes (applications, notification, hearings, decision making etc) are available upon Royal assent of the NBA; ○ New designation processes are available, including access to the new lapse dates and, when RSSs are operative, the streamlined designation processes for projects specified in the RSS. ○ Activities not covered by the NPF can also be make use of these improved processes prior to RSS and NBE plans being made operative, particular where they contribute to system outcomes
3.	Drafting request – schedule 1, clause 6, NBEB	• Amend clause 6 to require the following national direction instruments to be amended as a priority during the transition period to better enable National Grid activities and resolve existing policy conflicts: ○ The New Zealand Coastal Policy Statement; ○ The National Policy Statement on Freshwater Management; ○ The National Policy Statement on Electricity Transmission ○ The National Policy Statement on Renewable Energy;

Relief No.	Clause, Bill ref	Change requested
		○ The National Policy Statement on Indigenous Biodiversity (currently proposed); ○ The National Environmental Standards for Electricity Transmission Activities; ○ The National Environment Standards for Freshwater • Amend clause 43D as per relief at section 5.7, relief point 17.
4.	Schedule 1, NBEB	Add a new clause to schedule 1 as follows: **Requiring authority status continued** Where, immediately before the date of commencement of this Act, a person is a requiring authority under s167 of the RMA, that person shall be deemed to be a requiring authority for the purposes of this Act and the provisions of this Act shall apply accordingly.
5.	Schedule 1, NBEB	Add a new clause to the NBEB, schedule 1, to ensure that existing designations are continued **Designations and requirements continued** (1) Where, immediately before the date of commencement of this Act,— a) a designation is included in an operative district plan, the designation shall be deemed to be a designation included in the relevant plan under section 515; or b) a requirement has been made under section 168 of the Resource Management Act 1991, and a territorial authority has an obligation under section 175 of that Act to include the requirement in a district plan but has not done so, the territorial authority shall, as soon as reasonably practicable and without using the process in Schedule 7, include a designation in respect of that requirement in the relevant plan in accordance with section 515,—and the person responsible for the designation shall be deemed to be a requiring authority for that designation; and the provisions of this Act shall apply accordingly. (2) For the purposes of section 523, every designation referred to in subsection (1)(a) shall be deemed to have been included in the plan on the date of commencement of this Act.
6.	Schedule 15, clauses 39-40, NBEB	Delete clause 39-40.

Relief No.	Clause, Bill ref	Change requested
7.	General request	Add direction in the NBEB on the regard that decision makers are to have to NBA provisions during the transition period.
8.	General request	Add a new clause to the NBEB to ensure all RMA consents and permits authorised by the RMA or preceding legislation, or granted under any other enactment are considered consents under the NBA, on the same conditions as granted (including as set out in any other enactment).
9.	General request	Add directions in the NBEB to decision maker(s) for proposals extending into more than one region on what instruments and statute should apply to that proposal, and what weighting they should be given.
10.	General request	Add direction to the NBEB on how applications, designations and Environment Court proceedings commenced after Royal Assent of the NBA, but nevertheless considered under the RMA system, will be continued.
11.	General request	Add direction to the NBEB on how current and future RMA plan changes and variations will be managed by the NBA and SPA.
12.	General request	Add direction on which instruments and provisions apply, what weighting to be applied to each, and the process to be followed for cross-boundary projects where there are both operative RMA and NBE plans.
13.	General request	Provide a single hearing process for cross regional projects spanning RMA and NBE plans.