

3 February 2020

Resource Management Review Panel

Via email: [RMreview@mfe.govt.nz](mailto:RMreview@mfe.govt.nz)

To whom it may concern,

Thank you for the opportunity to submit on *Transforming the Resource Management System: Opportunities for Change: Issues and Options Paper*.

Transpower's future, and the future of New Zealand's electricity sector, is framed by the climate change targets we have adopted as a country – targets that require large scale electrification of the economy. Business and transport activities will need to shift off carbon fuels and onto renewable electricity.

Meeting this electrification challenge will not be business as usual, or a step up from business as usual. The scale of investment and change required in generation, transmission, distribution, New Zealand businesses, and New Zealand households, and the pace at which that change needs to happen, will be unlike anything in the experience of people working today.

Transpower has approached the RMA reform from this perspective. We agree that the resource management system needs to be transformed. New Zealand needs to be bold if we are to work toward our climate change targets and address the environmental and resource management challenge of our generation.

Our legislation needs to ensure that decisions clearly prioritise climate change mitigation. National direction needs to be stronger and aligned to recognise critical national needs, and significantly reduce time consuming local debates. And we need to find a way to radically reduce processing times for nationally significant projects. This will inevitably require more proportionate public input and restriction on council discretion.

Transpower recognises the practical reality that fundamental reform of the resource management system is complex and needs to be done right. It will take many years. Even if the new system is several years away, a transformed legal framework will be important in New Zealand's success to respond to climate change. However, we can also be looking for quick wins now. Changes are possible within the existing legislative framework. Stronger and better aligned national planning instruments will be helpful in the short term, in advance of the more comprehensive legislative reform.

In Transpower's submission (attached), we touch on the short term improvements and fundamental reforms that are necessary if New Zealand is to meet its most pressing resource management priority, climate change. Our submission on the *Accelerating Renewable Energy and Energy Efficiency* discussion document further expands on short-term improvements.

Transpower is committed to playing its part in the country meeting its climate change commitments. We look forward to working with MfE, and the Review Panel, on the transformation of the resource management system, and more generally on New Zealand's response to climate change.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alison Andrew', with a stylized, cursive script.

Alison Andrew  
Chief Executive

## TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM: OPPORTUNITIES FOR CHANGE: ISSUES AND OPTIONS PAPER

### SUBMISSION BY TRANSPOWER NEW ZEALAND LIMITED

#### OVERVIEW

- 1 Transpower New Zealand Limited (*Transpower*) welcomes this opportunity for comprehensive reform of the resource management system.
- 2 Transpower's experience of the resource management system over the last 30 years reveals a number of positives that must be retained in any new system. But there are also a number of challenges, gaps, issues and inefficiencies that must be addressed. Looking forward, there are new challenges that the resource management system must be primed to respond to.
- 3 Climate change is an urgent challenge. It demands an electrification transformation – requiring new renewable energy generation and connections to the National Grid. Transpower's use of the resource management system (which is already high) will substantially increase. It will be heavily reliant on the effectiveness and efficacy of the system in order to deliver the National Grid connections required. To illustrate the scale of the challenge, it is estimated that around 70 new National Grid connections will be required in the next 15 years, with this trend continuing through to at least 2050. Upgrades to existing lines to enable additional load will also be needed. Improvements to the resource management system are urgently required to meet this climate change challenge. Immediate improvements to existing resource management tools are considered necessary, as well as the broader reforms discussed in the paper to address the unprecedented scale of the task.
- 4 The following paragraphs provide a summary of Transpower's position on the key issues:
  - 4.1 **Purpose and principles:** The purpose and principles of the RMA do not reflect contemporary challenges. Climate change mitigation is a clear gap. The critical social and economic importance of renewable electricity generation and electricity transmission infrastructure should also be recognised.
  - 4.2 **National direction:** Transpower has around a decade of experience implementing the National Policy Statement on Electricity Transmission 2008 (*NPSET*) and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2010 (*NESETA*). There are a number of elements of that national direction that have worked well and can inform a new system. But, several reviews by a number of agencies, including Transpower have identified gaps and issues that a new system should address. A key issue is the promulgation of new national direction, without properly resolving the relationship with existing national direction. This issue results in conflicts, interpretation issues that result in litigation and the continued 'watering down' of what was intended to be comprehensive national direction for the National Grid. Another key issue is the coverage of national direction, such as the lack of a national environmental standard (*NES*) to address third party activities with potential to affect the National Grid (despite the approach now being well settled through years of litigation). The *NPSET* also needs to be given effect to through local authority policy and planning

frameworks, which results in a lengthy time lag before it has beneficial impact.

- 4.3 It is noted that improvements to the content of national direction can be made without legislative change, and therefore can achieve shorter term benefits while transformative improvements to the resource management system are progressed. Transpower's submission on the *Accelerating Renewable Energy and Energy Efficiency* discussion document (to be submitted by 28 February 2020) will more specifically address improvements to national direction.
- 4.4 **Policy and planning framework:** Even with the NPSET and NESETA in place, Transpower is required to actively participate in planning processes in most regions and districts across New Zealand. This requirement is highly resource intensive and inefficient. Often, the issues and parties around the table are very similar. However, the arguments and discussions need to be repeated again and again. Transpower supports consolidating plan requirements (including through combined plans) to ensure that efforts can be focused on ensuring the quality of a smaller number of plans. Plan making processes should also provide for adequate public participation, without allowing for multiple rounds of litigation.
- 4.5 **Consents/approvals:** The NESETA addresses a range of National Grid activities for transmission lines that were operational at 15 January 2010. The consenting processes for those activities are relatively straightforward. However, other National Grid activities face significant hurdles to obtain approvals. In particular, the process for obtaining approvals for major projects has become significantly more onerous over the lifetime of the RMA. Bespoke processes have been introduced. But, they have resulted in an extremely resource intensive condensed processes, rather than actual streamlining. A key issue for Transpower is the inability to provide for long term strategic planning. Designations no longer provide an adequate 'route protection' role, given the significant amount of detail required in an application. Transpower supports providing a bespoke streamlined process for nationally significant infrastructure and improvements to the designation-making process that properly respond to the challenges faced in obtaining approvals for such projects.
- 5 Transpower looks forward to working with the Resource Management Review Panel to ensure this comprehensive review delivers a resource management system that meets the needs of Transpower and all of New Zealand, and addresses the most pressing needs associated with climate change mitigation.
- 6 This submission is structured as follows:
  - 6.1 **Introduction:** An introduction to Transpower and the National Grid, as well as Transpower as a user of the RMA.
  - 6.2 **Electricity transmission – climate change and growth in the next 20-30 years:** A summary of work completed on the electrification transition, and what this means for electricity transmission.
  - 6.3 **Transpower's resource management needs:** A 'look forward' to Transpower's use of resource management legislation in the short term and longer term over the upcoming decades to enable the electrification transition.

- 6.4 **The resource management system has not responded effectively:** A summary of the issues with the current system as experienced by Transpower.
  - 6.5 **Opportunity for reform of the resource management system:** A summary of the key principles to guide reform.
  - 6.6 **Response to the Issues and Options Paper:** Transpower's position on each of the issues set out in the Paper.
- 7 The contact details for Transpower in relation to this submission are:
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## INTRODUCTION

The National Grid provides electricity transmission throughout New Zealand through a linear network of lines and substations. It is essential to all industry, homes, schools, business and communities. The Grid will play an immediate and important role in supporting New Zealand's transition to a low emissions economy by connecting new renewable energy sources and balancing electricity supply. The National Grid is a very significant physical resource.

Transpower is a heavy user of resource management and related legislation. It relies on a wide range of RMA processes to maintain and improve the National Grid network of lines and substations and to protect its assets in all environments from urban, to coastal, rural and high value natural areas. RMA changes have the potential to significantly impact Transpower's activities, both positively and negatively.

### Transpower

- 8 Transpower is the State-Owned Enterprise that owns, operates, maintains, plans, upgrades and constructs New Zealand's high voltage electricity transmission network, the National Grid.
- 9 Transpower's purpose is to "*connect New Zealanders to their power system, through safe, smart solutions for today and tomorrow*". Its roles are to reliably and efficiently transport electricity from generators to distributors and large users, and to operate a competitive electricity market and deliver a secure power system.<sup>1</sup>
- 10 Transpower already plays a significant part in New Zealand's economy, with all major industries being reliant on a secure and reliable supply of electricity. Transpower will also play a significant part in New Zealand's transition to a zero carbon economy. It will do this through making new connections to the National Grid from renewable energy generation and by maintaining and enhancing the resilience and security of the Grid overall.

### The National Grid

- 11 The National Grid, is an essential part of the electricity system. The Grid links generators to local lines distribution companies and 'direct connect' customers (generally major users of electricity). It is an extensive, linear, and connected system of some 12,000 km of transmission lines and over 170 substations across the country. It extends from Kaikohe in the North Island down to Tiwai in the South Island, and carries electricity throughout New Zealand.
- 12 Without the National Grid, electricity that is generated at power stations around New Zealand could not reach distribution companies and power homes, businesses, schools, communities, communication networks and major industrial users. Accordingly, the National Grid is a very significant physical resource.

### Transpower is a heavy user of the RMA

- 13 Transpower's asset strategy is that all transmission lines that are required for the network have (with the right maintenance) an enduring life, and that all substations

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<sup>1</sup> Transpower Statement of Corporate Intent, 2019-2020, p3.  
<https://www.transpower.co.nz/sites/default/files/publications/resources/TP%20Statement%20of%20Corporate%20Intent%20FINAL.pdf>

are required indefinitely. Transpower has a continuous programme of work to maintain and enhance its assets.<sup>2</sup>

- 14 Transpower undertakes development works when they are needed to meet future demand or generation requirements. These works need to occur in a variety of urban, rural, coastal and natural environments. The National Grid by its very nature must connect generation and demand. The linear nature of the National Grid means that it can be difficult to avoid all sensitive environments.
- 15 To manage its impacts, Transpower uses an options assessment process for its development projects – regardless of the scale or type of area under consideration. This process is known as the 'ACRE' (Area, Corridor, Route, Easement/Designation) route/site selection process. This process involves identifying the constraints and opportunities of the study area (such as geological features, topography, sites of natural, archaeological, cultural or landscape significance, access, reserves, natural hazard areas, Crown land, settlements, dwellings, and public access areas). The ACRE assessment allows for a full consideration of environmental effects. The Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project described Transpower's options assessment process as "*rational and systematic*".<sup>3</sup>
- 16 The nature of Transpower's activities make it a heavy user of resource management and related legalisation. It undertakes a wide range of National Grid projects from small maintenance works through to large scale Grid and substation development projects across New Zealand. These projects require approvals under a range of national environmental standards and district and regional plan rules. Transpower is a requiring authority and holds many designations. It is also a regular participant in district and regional planning processes to ensure its activities can be practicably undertaken and to protect the Grid from incompatible third party activities. It advocates across the country for provisions to give effect to the NPSET.
- 17 Transpower has had substantial experience in all RMA processes, including using the nationally significant project pathway for its North Island Grid Upgrade project, being a party to several recent special housing legislation processes, as well as being a major submitter in the fast tracked planning processes for the Christchurch Replacement District Plan and Auckland Unitary Plan.
- 18 Its activities also require it to obtain approvals under several related pieces of legislation, such as the Heritage New Zealand Pouhere Taonga Act 2014, the Wildlife Act 1953, and the Conservation Act 1987, as well as several regulations. It also uses Public Works Act 1981 powers to enable some of its activities.

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<sup>2</sup> Maintenance activities can include, but are not limited to, tower and pole refurbishment, conductor and insulator refurbishment or replacement, foundation refurbishment and replacement, maintenance of access tracks, bridges and culverts, vegetation and tree control, and emergency works. Upgrade works often centre around increasing the capacity of a line, driven by new or changed generation, and changes to load due to industry or land development. Works can include, but are not limited to, conductor replacements, line upgrades, structure strengthening, reconfiguration or replacement, and foundation strengthening or replacement.

<sup>3</sup> Page 607.

## **ELECTRICITY TRANSMISSION – CLIMATE CHANGE AND GROWTH IN THE NEXT 20-30 YEARS**

Rapid climate change mitigation will require wholesale electrification to significantly decarbonise the New Zealand economy in line with emissions targets. Meeting a predicted 70% increase in electricity demand by 2050 will require a significant number of renewable energy projects, new Grid connections to generators, distributors, and major users, as well as new Grid upgrade projects.

If New Zealand is to meet its emissions targets, and do so cost effectively, the resource management system must reduce unnecessary barriers to this electrification transition. The National Policy Statement for Renewable Electricity Generation (*NPS-REG*) and the NPSET are insufficient in their current form and need to be more directive. A number of review processes have confirmed the need for these national policy statements to be strengthened and updated so that they work together. New legislation needs to recognise the critical social and economic importance of renewable generation and electricity transmission infrastructure within the purpose and/or principles. Further the relationship of the NPS-REG and NPSET with multiple other national policy statements needs to be clarified. More efficient approvals processes are necessary given the significant number of projects that are anticipated.

The resource management system needs to continue to support Transpower's current activities. The national policy direction on the importance of the Grid and related National Environmental Standards to streamline consenting processes needs to be retained. The NPSET needs to be strengthened to reduce local debate and advocacy on its implementation. Existing consenting and designation processes for the Grid need to be more comprehensive and streamlined to reduce the time and risk of obtaining approvals for essential infrastructure. Increased protection of the National Grid from incompatible third party activities is also necessary. Amendments are required to plan-making processes to address the quality, inconsistency and resourcing issues associated with the current system. Unnecessary overlaps with other legislative processes need to be removed.

- 19 In 2018, Transpower commissioned the *Te Mauri Hiko – Energy Futures* project in response to growing uncertainty around New Zealand's energy future, the impact of this uncertainty on investment planning, and an emerging industry-wide conversation about decarbonisation.
- 20 Since *Te Mauri Hiko* was released, the social, political and economic drivers for reducing carbon emissions have grown. The landscape that Transpower operates within is rapidly evolving. Climate change is now recognised as an important threat requiring immediate action. New Zealand is embarking on an ambitious journey to achieve net zero carbon emissions by 2050.
- 21 The government has enshrined its commitment to decarbonisation through the Climate Change Response (Zero Carbon) Amendment Act 2019. The Act establishes a net zero target to be achieved by 2050 for all greenhouse gases except biogenic methane. The target must be met as far as possible through domestic emissions reductions and removals. The Act obliges the Government to produce an emission reductions plan setting out policy measures to achieve the targets. The Act will therefore further drive the economy's transition.
- 22 Organisations such as the Productivity Commission, Interim-Climate Change Commission (*ICCC*), Ministry of Business Innovation and Employment, and the Electricity Authority have responded to the need for New Zealand to take coordinated action to mitigate climate change. There is growing consensus that



electrification of the energy sector provides one of the lowest cost opportunities to decarbonise New Zealand's economy. For example, the ICCC's Accelerated Electrification report states that "the Committee has identified accelerated electrification as a major opportunity to more rapidly reduce greenhouse gas emissions" and that

*"A future of accelerated electrification for New Zealand will require building considerably more wind farms, more geothermal and solar generation, more transmission lines, and possibly more hydro storage. All these will have impacts on the environment – some challenging decisions lie ahead for our resource management system."*<sup>4</sup>

Transpower agrees that there will be a significant increase in renewable generation and electricity transmission, and that there is considerable risk that the resource management system will not allow for this to be built in time. This could put New Zealand's climate change targets at risk.

- 23 New Zealand needs to be ready for the energy transformation that is coming. The National Grid's role in enabling the electrification and decarbonisation of the New Zealand economy is, and will continue to be, critical. New connections to major users – particularly to enable the decarbonisation of transport and process heat – will also be needed. A modern, flexible and resilient National Grid will need to provide a safe and secure supply to industrial and residential consumers under a wider-than-ever range of operating conditions.<sup>5</sup>
- 24 Following on from *Te Mauri Hiko*, and in response to the growing urgency of climate action, Transpower embarked upon the *Enabling New Connections* project in 2019. Through this project, we have explored what Transpower, and the wider electricity industry must achieve to enable this 'net zero' future through electrification.
- 25 The transformation is not theoretical - it is already happening. Over the last year, Transpower has experienced a surge in connection requests.
- 26 Our most recent modelling from the *Enabling New Connections* Project forecasts a need for 70 new grid scale connections between 2020 and 2035, comprising 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. This is illustrated in figure 1.
- 27 Furthermore, modelling from the Enabling New Connections project 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. This also represents a significant increase in required work relative to the 1991-2019 period. This is illustrated in figure 1.

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<sup>4</sup> Interim Climate Change Committee (2019). Accelerated Electrification. Available from [www.iccc.mfe.govt.nz](http://www.iccc.mfe.govt.nz).

<sup>5</sup> Page 58.

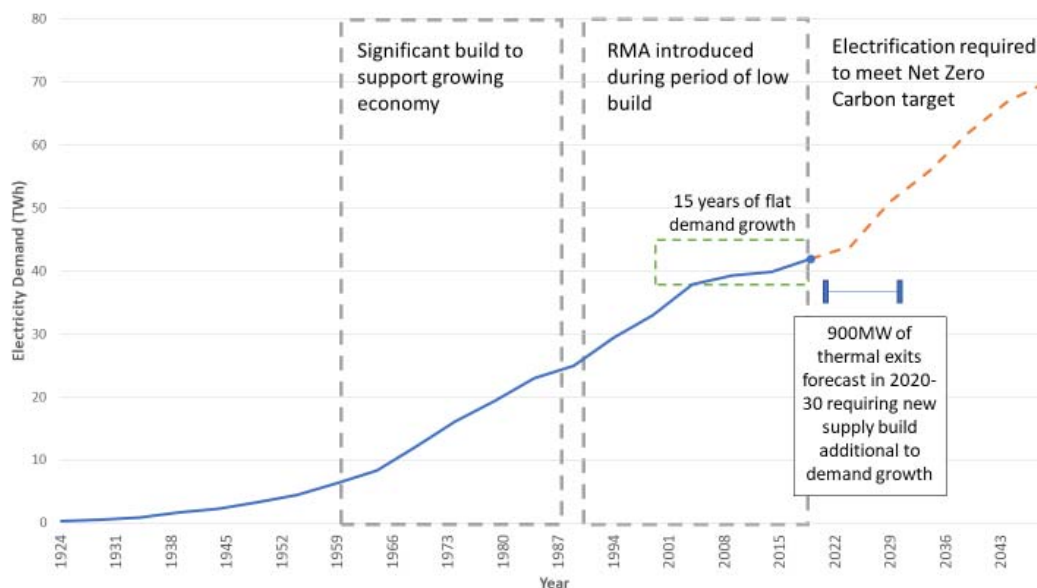


Figure 1: Illustration of increase in work volume from 2020 to 2050

- 28 *Enabling New Connections* modelling estimates that electrification of transport will reduce carbon emissions from 15.9 MT today to 4.8 MT by 2050, while electrification of process heat will reduce industrial energy carbon emissions from 7.1 MT today to 2.5 MT by 2050. This electrification of transport and process heat is forecast to result in electricity demand growth of 67% from 42 TWh p.a. in 2020 to 70 TWh p.a. by 2050, as outlined in figure 2.

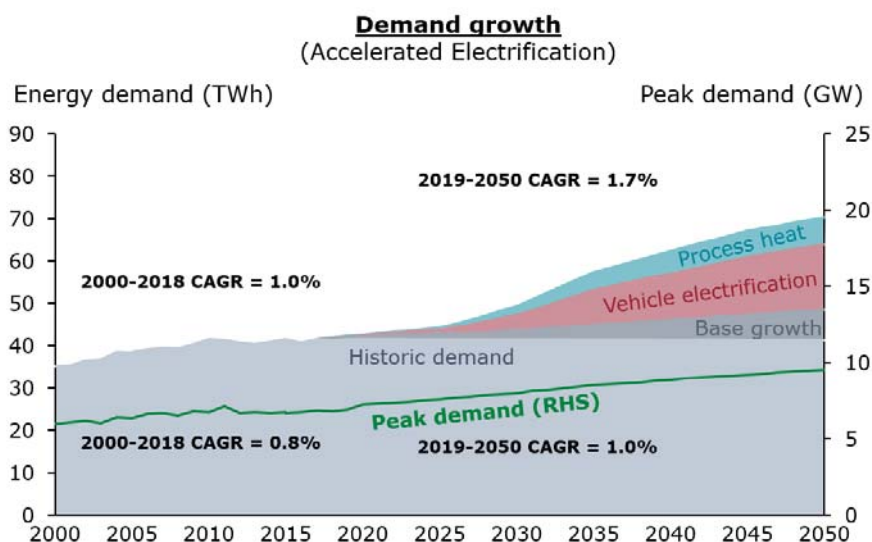


Figure 2: Forecast electricity demand to 2050

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

- 31 Some large process heat users may require direct connection to the Grid if they electrify. As these industrial facilities may not be located within close proximity to the existing Grid, and are unlikely to relocate their operations, this will require new transmission lines. Extended consenting timeframes will adversely impact these facilities' profitability, commercial operations, and efforts to reduce their carbon footprint.
- 32 This new electricity demand will need to be met by new low carbon generation sources in order for electrification to be successful.
- 33 Although distributed<sup>6</sup> 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.
- 34 Generators which harvest renewable energy must be located wherever renewable resource is available. Therefore, new transmission lines must be built to connect renewable generators to the National Grid and ultimately to consumers. In comparison, generators that consume fossil fuels can be placed near to existing transmission lines and have their fuel transported to their location. As a result, fossil fuel generators are currently easier to consent than renewable generators. It is therefore important that the reformed approval processes for renewable energy generation and associated transmission lines do not distort the behaviour of market participants towards building more carbon intensive, but easier to consent, fossil fuel generators.
- 35 The Productivity Commission's *Low-emissions economy* report<sup>7</sup> finds that the NPS-REG 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.<sup>8</sup> It states that investments in the transmission grid and distribution networks will be needed to complement the expansion of renewable generation.<sup>9</sup> The Productivity Commission recommended that the Government:<sup>10</sup>

...give priority to revising both the NPS-REG and the NPS-ET 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 NPS-REG and the NPS-ET 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.
- 36 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,

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<sup>6</sup> Distributed generation refers to electricity that is generated at or near where it will be used (eg solar panels on a house).

<sup>7</sup> New Zealand Productivity Commission. (2018). *Low-emissions economy: Final report*. Available from [www.productivity.govt.nz/low-emissions](http://www.productivity.govt.nz/low-emissions).

<sup>8</sup> Page 401-402.

<sup>9</sup> Page 403.

<sup>10</sup> R13.3.

the development timeline of the power plant is longer than the development timeline for their connection to the grid. In the future, new technologies such as solar, batteries, electric boilers, and heat pumps will be able to be deployed faster than their connection to the Grid. For example, the 100MW Hornsdale battery deployed in Australia was completed by Tesla in 63 days following contract signing. In these instances, the Grid connection would become the bottleneck to the commissioning of these projects. It is therefore important that both the NPS-REG and the NPS-ET are considered together, and that a significant revision to either should be accompanied by a corresponding revision to the other.

- 37 MBIE has also recently commenced consultation on accelerating renewable electricity generation and infrastructure.<sup>11</sup> Both the executive summary and section 7 of the consultation document refer to this resource management reform process. The report proposes amendments to the NPSREG<sup>12</sup> and proposes National Environmental Standards or National Planning Standards to provide for renewable energy.<sup>13</sup> It also seeks feedback on amendments to the NPSET and NESETA.<sup>14</sup> Transpower is making a submission on this consultation process addressing the necessity of amendments to the NPSET and NESETA, among other things. There are some important overlaps between this resource management review process and the accelerating renewable electricity consultation process. Transpower respectfully requests that the Review Panel engage with the renewable electricity consultation process to ensure alignment.

#### **Transpower's resource management needs**

- 38 In addition to the work required to connect new parties to the Grid, Transpower will also need to upgrade and maintain the Grid.
- 39 The National Grid transports power from generators and to users located in different parts of the country. Therefore, many of the lines that will need to be developed or upgraded traverse large distances and might cross several council borders. Providing a more directive NPS-ET will ensure that the application of that instrument is more consistent across councils.
- 40 In addition to this new development, it is essential that the existing parts of the National Grid – as a very significant built resource – can continue to be efficiently and effectively operated. As discussed above, Transpower's asset strategy is that all parts of the network have an enduring life – but that does require ongoing maintenance and upgrading works.
- 41 Finally, while the National Grid was generally built in open country where possible, in many locations the land uses have changed over time. This has brought activities that are incompatible with the National Grid into close proximity. Activities may be incompatible due to direct effects (eg effects on the structural integrity of, or access to, the Grid) and indirect effects (eg where people locate close to lines and then complain about the effects, and request operational changes – reverse sensitivity). It is important that the National Grid is protected from these 'third party effects' to ensure that it can continue to be efficiently and effectively operated.

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<sup>11</sup> Ministry of Business, Innovation and Employment *Discussion Document Accelerating renewable energy and energy efficiency* (December 2019).

<sup>12</sup> Page 58.

<sup>13</sup> Page 61.

<sup>14</sup> Page 66.

### **National Grid constraints**

- 42 The National Grid has several characteristics that constrain its operation, maintenance, upgrade and development, and Transpower's ability to avoid or mitigate all adverse environmental effects of the Grid. These characteristics include:
- 42.1 *Historical location*: The National Grid has been established during major build periods spanning many decades. These existing assets need to be maintained and upgraded. The existing location will also drive the location of new connections.
  - 42.2 *Technical requirements*: The location of the National Grid is also driven by the geographical location of electricity generation and of electricity customers. National Grid works are constrained by what is feasible from an engineering perspective. The works must also adhere to a range of relevant standards, codes and international best practice.
  - 42.3 *Operational requirements*: National Grid works need to be operationally efficient, to ensure the Grid can continue to be used for its intended purpose and maintained in a timely manner.
  - 42.4 *Security of supply requirements*: Transpower is required to maintain acceptable system security to ensure continuity of supply of electricity to its customers.
  - 42.5 *Safety requirements*: National Grid works must be electrically safe for Transpower employees working on the Grid, as well as the general public. Third parties working near the Grid also need to observe strict safety requirements.
  - 42.6 *Statutory requirements*: Other legislation, rules and regulations also constrain the operation, maintenance and upgrade of the Grid, including the Electricity Act 1992 and the Electricity Industry Participation Code.

### **The resource management system has not responded effectively**

- 43 Transpower has a somewhat unique position in the resource management system. Transpower has around a decade of experience of implementing the NPSET and the NESETA.
- 44 There are a number of elements of the existing system that are working well for Transpower, and must therefore be retained in a new system. Some immediate changes can and should be made to improve the status quo, while the wider structural changes are considered. There are gaps, issues and inefficiencies that should be addressed in a new system. Overall, Transpower's experience with the NPSET and NESETA provides valuable learnings to inform the development of the new resource management system. As noted, Transpower is also submitting on the *Accelerating renewable energy and energy efficiency* discussion paper<sup>15</sup> which more specifically addresses the need for amendments to the NPSET and NESETA in the short term.

### **National Policy Statement on Electricity Transmission**

- 45 The NPSET was gazetted in March 2008. The NPSET was the second NPS developed under the RMA. It followed a major public consultation process, a hearing before a

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<sup>15</sup> <https://www.mbie.govt.nz/have-your-say/accelerating-renewable-energy-and-energy-efficiency/>

Board of Inquiry, and recommendations from the Board which were ultimately closely followed by the Minister in adopting the NPSET.

- 46 The NPSET identifies the relevant "matter of national significance" as being "*the need to operate, maintain, develop and upgrade the electricity transmission network*".<sup>16</sup> The national significance of the National Grid in particular was emphasised in the Board Report on the NPSET. The Board reasoned that, "*it is the New Zealand wide nature of the grid that is one of principal reasons for it being of national significance*".<sup>17</sup>
- 47 The NPSET was intended to provide a comprehensive policy framework to facilitate the operation, maintenance, upgrade and development of the National Grid while managing the adverse environmental effects of the National Grid, and the adverse effects of other activities on the National Grid.<sup>18</sup> This policy direction has proven particularly useful for Transpower (as discussed further below), but does have some issues. The NPSET is now 10 years old and the drafting is showing its age. It creates some uncertainties, particularly when the NPSET is considered alongside subsequent national direction (for example, the NPSET refers to high natural character areas, but the NZCPS subsequently introduced the concept of outstanding natural character areas).
- 48 In Transpower's view, the national significance of the National Grid has markedly increased in light of its critical role in enabling New Zealand's economy to undergo the necessary electrification transition.
- 49 This view is supported by the Productivity Commission who has recommended that the Government "*prioritise strengthening*" the NPSET to ensure local authorities give sufficient weight to the role that the transmission network will play in New Zealand's transition to a low-emissions economy. It specifically recommended that the language of the NPSET become "*more directive*".<sup>19</sup> The Ministry for the Environment also recently undertook a review of the NPSET (and NESETA).<sup>20</sup> The review concluded that the instruments have "*broadly met their objectives*" but in light of changes in technology and the significant programme of upcoming works "*the instrument could be revisited to support the Government's priority of 'secure and affordable energy' ... and move towards a climate-resilient Aotearoa New Zealand*".<sup>21</sup> The review was however commenced in 2015 and did not focus on whether the NPSET was fit for purpose from a climate change perspective. These pieces of work support the view that the NPSET has fulfilled its role over the last decade, but needs to be revisited to achieve its objectives for the next 20-30 years.
- 50 Further, since 2008, four other national policy statements have been produced, without any opportunity to review and amend the NPSET to ensure integration. Additional national policy statements are currently being developed. Increased

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<sup>16</sup> Clause 4.

<sup>17</sup> Board of Inquiry Report, p7.

<sup>18</sup> Clause 5. Approval of the National Policy Statement on Electricity Transmission (22 February 2008), paragraph 38.

<sup>19</sup> New Zealand Productivity Commission, Low-emissions economy: Final report (August 2018), page 404.

<sup>20</sup> Ministry for the Environment and Ministry for Business, Innovation and Employment. 2019. *Evaluation of the National Policy Statement on Electricity Transmission and National Environmental Standards for Electricity Transmission Activities*. Wellington: Ministry for the Environment and Ministry of Business, Innovation and Employment.

<sup>21</sup> Ibid, page 5.

national direction being produced in an ad hoc and siloed way will raise new interpretation issues as multiple documents need to be applied in planning and approval processes. The creation of new statements, without consequential review of the NPSET, also risks diluting the comprehensive framework that the NPSET was intended to provide for the National Grid (see **Appendix A** for examples of this risk). It requires Transpower to be active in many planning processes at all levels to ensure its resource management needs can be achieved. The lack of an integrated national policy framework will hinder Transpower's ability to achieve those objectives even with such broad involvement.

*National Environmental Standards for Electricity Transmission Activities*

- 51 The NESETA came into effect on 14 January 2010 and applies to existing (as at 14 January 2010) National Grid transmission lines. The NESETA specifies that certain activities that relate to the operation, maintenance, upgrading, removal or relocation of existing transmission lines are permitted activities subject to certain conditions. It specifies resource consent requirements for transmission activities that do not meet the permitted activity conditions.

- 52 The NESETA provides a framework of permissions and consent requirements for existing National Grid lines that has reduced the extent to which Transpower is reliant on regional and district plan rules for its regular activities. However, there are some gaps in the NESETA:

52.1 It does not apply to earthworks subject to a regional rule;

52.2 The definition of 'natural area' is linked to planning rules, requiring Transpower to keep a close eye on relevant local authority planning processes;

52.3 The matters of discretion for restricted discretionary activities do not include beneficial effects;

52.4 It complicates and removes Transpower's ability to use designations given the precedence rules in section 43D of the RMA.

- 53 The NESETA does not apply to new lines or substations. Those assets can be designated, except in the coastal marine area. Further, a complementary national environmental standard was originally intended to cover third party activities but was withdrawn following public notification. This means the planning regime for enabling and protecting existing assets is diverse and complex, and Transpower is required to be actively involved in almost every plan review across New Zealand.

*Planning processes*

- 54 Even with the NPSET in place, Transpower is required to actively participate in planning processes to advocate for planning provisions that give effect to the NPSET. This process is highly resource intensive. Even with Transpower's involvement, there are inconsistencies in the extent to which, and how, planning documents reflect the directions set out in the NPSET.

- 55 By way of example, over the last 5 years, Transpower has participated in over 40 regional and district planning processes across New Zealand. These include regional policy statements, regional plans, regional coastal plans, and district plans.<sup>22</sup> Since

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<sup>22</sup> Examples of some of the plan and subsequent appeal processes Transpower has been involved with include the following: Auckland Unitary Plan, Greater Wellington Natural Resources Plan, Bay of

2013, the cost to Transpower alone is in excess of \$10 million. There are several other parties also regularly involved in these discussions. It is highly inefficient for these efforts to be repeated across New Zealand, where the planning outcome for the National Grid should be consistent across the country.

- 56 A significant focus of Transpower's involvement in planning processes over the last 5 years has been the approach to implementing the NPSET in the coastal environment following the Supreme Court decision in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38. The Supreme Court decision addressed the interpretation of the NZCPS, and particularly policies 11, 13 and 15 of the NZCPS which require the *avoidance* of adverse effects on certain high value natural areas. However, policy 8 of the NPSET requires Transpower to *seek to avoid* adverse effects on certain high value natural areas. The two documents therefore create a potential policy conflict.
- 57 Applying the Supreme Court's approach to potential policy conflicts, Transpower has developed a planning policy and rule approach that relies on detailed process-oriented objectives and policies. Those provisions require a very robust assessment of National Grid transmission projects, but they do not create a 'jurisdictional bar' to considering applications that blanket 'avoidance' policies inherently create. Instead, the resource consent process allows a specific transmission project to be assessed against those provisions. This approach has now been agreed in a number of districts and regions.
- 58 Transpower has been able to achieve a generally workable policy direction for the National Grid projects in the coastal environment because of the NPSET direction to 'seek to avoid' adverse effects. However, that interpretation of 'seek to avoid' that has now been included in a number of district and regional plans is very onerous, and sets a higher standard for 'seek to avoid' than was envisaged when the NPSET was drafted. Further, new national policy statements may create new policy conflicts with the NPSET (both within and outside the coastal environment), and could lead to additional barriers that make consenting new National Grid connections difficult, complex, slow and costly (see **Appendix A** for examples). The approach to interpreting the NPSET in this emerging context is likely to be more uncertain and onerous, giving rise to new risks for the ongoing sustainability of the National Grid.
- 59 The recent High Court decision in *Environmental Defence Society Incorporated v Otago Regional Council* [2019] NZHC 2278 emphasises these risks. The decision concerned the relationship between the enabling Policy 9 of the NZCPS and the protective Policies 11, 13 and 15 of the NZCPS. In essence, the High Court concluded that the protective coastal policies are more directive than the enabling port policy and therefore should have primacy. The consequence is that adverse effects on the values of the natural areas need to be avoided, even if some effects are necessary to provide for the safe and efficient operation and development of ports. As submitted by the Port of Otago in that case, this has a potential to lead to regionally or nationally significant infrastructure being forced out of business, demonstrating the danger of a pure 'bottom-lines' approach if not carefully considered.

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Plenty Regional Coastal Environment Plan, Southland Regional Policy Statement, Kapiti Coast District Plan, Manawatu District Plan, Whangarei District Plan, Christchurch Replacement District Plan, Otago Regional Policy Statement, Dunedin City Plan, Queenstown Lakes District Plan, Opotiki District Plan, West Coast Regional Policy Statement, and Northland Regional Plan.



60 The High Court decision reiterates that the words used in policies are critical. An enabling 'recognise' policy for an activity is not sufficiently directive when viewed alongside an effects-based 'avoid' policy, which thus prevents opening the door to a case-by-case assessment of proposals. Based on the High Court's analysis, a policy that specifically addresses the management of effects of a particular activity would create a conflict with an effects-based 'avoid' policy. This illustrates the point that an 'enabling' policy, by itself, is simply insufficient to address the policy hurdles that existing and potential future national direction create. The close analysis required to reconcile different policy directions demonstrates how unintended consequences could quickly emerge as more and more national direction enters into force. This makes it essential that existing documents are consequentially reviewed, and the relationships between existing and new documents explicitly addressed, as discussed at Issue 6 below.

*Third party activities*

61 As described at paragraph 40 above, changes in land use have resulted in activities that are incompatible with the National Grid being brought into close proximity. This issue is particularly pronounced in urban areas where rapid growth to respond to population pressures has resulted in significant pressure to develop every available piece of land. Development and activities under and in close proximity to the National Grid give rise to a major risk of electricity outage incidents, which can have severe costs. Policies 10 and 11 of the NPSET provide policy direction on the management of such third party effects on the National Grid, including by requiring buffer corridors to be established.

62 Following years of contested RMA processes, the approach to implementing those policies in planning documents is now well settled. However, the settled approach is not secured in any way. Transpower needs to participate in each planning process to ensure the approach is adopted. Any party may decide to relitigate the approach at any point in time. That creates significant uncertainty and risk for, and imposes time and cost implications on, Transpower. Further, despite better and more directive planning controls, local authorities continue to enable activities that compromise the National Grid through the resource consenting process. Transpower has been required to invest resource in training council officers on the National Grid's requirements, and significant resource to monitor and engage on the many consent applications.

63 As with natural environments, the lack of clear protections for the Grid ("bottom lines") have made managing cumulative effects particularly challenging. Given significant pressures for urban growth, Transpower considers the situation may worsen if the current system is retained.

*Resource consent and designation processes*

64 As discussed at paragraphs 50-52 above, the NESETA regulates most maintenance and upgrading activities on existing transmission lines<sup>23</sup>. Approvals processes for activities regulated by NESETA are generally fairly straightforward.

65 In contrast, upgrade and development projects that are not regulated by NESETA face significant hurdles to obtain approvals. It is likely that around 70 new National

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<sup>23</sup> Existing transmission line is defined in NESETA as: (a) means a transmission line that was operational, or was able to be operated, at the commencement of these regulations; and (b) includes a transmission line described in paragraph (a) that is altered or relocated in accordance with these regulations; and (c) includes a transmission line that, in accordance with these regulations, replaces a transmission line described in paragraph (a).

Grid connections<sup>24</sup> will be required in the next 15 years. This trend is expected to continue through to at least 2050. Connections will be required at supply end (new or increased renewable generation) and demand end (industry conversion to electricity). It is therefore critical that the approvals processes are proportionate to the issues involved and efficient. The existing approvals processes in the RMA are simply not nimble enough to do that.

- 66 The process for obtaining approvals for major infrastructure projects have become significantly more onerous over the lifetime of the RMA. The risks associated with the approvals process (including appeals) incentivise applicants to 'gold plate' applications to provide greater security that approvals will be granted in a timely manner. Over time, that situation has incrementally resulted in more and more onerous requirements being imposed – it is not uncommon for an Assessment of Environmental Effects for an infrastructure project to be over 300 pages in length, and supported by around 20 lengthy technical documents. It often takes around 18-24+ months to prepare the application materials required for RMA approvals, with an additional 24+ months in the processing and decision-making phase.
- 67 RMA approvals cannot be sought until relatively late in the infrastructure planning process (once funding is secured). At that point, it is critical that approvals are obtained with certainty and in a timely manner. The risk of decline and delay drives a 'gold plated' approach to applications that increases the resource requirements associated with obtaining approvals.
- 68 The approvals processes under the RMA do not provide for long term strategic planning and certainty over a 20-30 year horizon. Increasing information requirements (which usually translate into detailed designation and resource consent conditions), as well as land acquisition implications, mean that designations are no longer an appropriate tool for long-term strategic purposes. Looking back to the purpose of designations, they were intended to provide a route protection role, with the initial approvals process being relatively high level, and the detail being confirmed through the outline plan of works process. Councils have taken an increasingly involved role in the designation process, rather than an oversight role. Some of the decision making criteria that are specific to designations have been used by opponents to block projects, rather than as a check that a designation is the correct approval for the activity. There is a need to provide a new approvals process that fulfils the role of a strategic planning tool, focuses on outcomes rather than design details, and provides certainty for infrastructure planning over a longer horizon.
- 69 The RMA currently provides a bespoke process for "nationally significant proposals". This process was intended to address concerns around the lengthy nature of approval processes for major infrastructure projects. However, the fact that a project has been identified as "nationally significant" provides little (or no) substantive support for the project in the RMA decision-making process. The main benefit of that identification is the availability of the bespoke process. The process is designed to provide speed, but in fact simply condenses the time available for a decision to be issued. It does not reduce the information requirements or alter the legal tests to correspond to that reduced timeframe. Instead, the one-stop shop nature of the process means there is no room for error, and information requirements therefore generally increase. The process is accordingly extremely resource intensive, and few infrastructure providers have chosen to use it. For

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<sup>24</sup> Connections between Generators and the National Grid vary in scale from smaller connections to connections that are many kilometres long.

example, for the BOI process for North Island Grid Upgrade Project, Transpower presented evidence from 50 witnesses, and over 100 briefs of evidence over the course of the hearing.

- 70 A preliminary review of several overseas jurisdictions<sup>25</sup> has found that providing an appropriate approvals process for nationally significant or 'major' infrastructure is a key and ongoing issue for most countries. A range of different approaches have been employed to overcome the time and cost (and the efficiency and effectiveness) issues arising from the approval processes for major infrastructure projects. However, all comparable jurisdictions investigated have dedicated pathways for approvals for 'major' (i.e. of national or State-significance) infrastructure projects. While comparing the RMA against these examples is challenging because of the very different regulatory objectives, institutional frameworks and political systems, key aspects of these processes have been identified to inform potential improvements to the New Zealand context.
- 71 In all cases, the pathway provides for a project to be elevated for assessment and decision at a national or state level. All pathways require detailed consent applications, usually with effects assessments, and all include some level of public and local body consultation. Some jurisdictions specify timeframes within which decisions must be made, and in almost all cases, review/appeal rights on decisions are limited or constrained. **Appendix B** is an overview of the comparable jurisdictions. It is difficult to ascertain how successful these processes have been in delivering significant projects compared with standard regulatory processes (given the lack of published information). However, it is clear that dedicated processes developed for major/significant projects have facilitated the delivery of many significant infrastructure projects, transportation, energy and electricity, housing and urban development. It is noted that many jurisdictions, particularly Australian states and the United Kingdom, are continuously reviewing and improving their approval pathway mechanisms for major/significant projects, to ensure they better respond to issues including those associated with time delays and costs.
- 72 A common criticism of the RMA is that it is unnecessarily complex and lengthy – because of the multitude of different processes it offers. However, there is nothing inherently wrong with having a variety of process options that meet different needs. The important thing is that each process that is available is clear and fit-for-purpose.

### **Opportunity for reform of the resource management system**

- 73 Based on Transpower's resource management needs, and experience with the current resource management system – both good and bad, Transpower considers there are elements of the current system that work well, or work "well enough" and can be improved without starting over. Some of these changes can be made very quickly to address the urgent needs to climate change mitigation. Other elements of the current system require substantial rethinking. Overall, Transpower considers the following outcomes are necessary to ensure that the resource management system can respond to its resource management needs:

73.1 *Purpose/principles:* Recognition of the critical social and economic importance of electricity transmission infrastructure and climate change mitigation within the purpose and/or principles of the legislation;

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<sup>25</sup> England and Wales, Scotland, New South Wales, Victoria, Queensland, and Denmark.

- 73.2 *National direction*: National direction must provide a comprehensive and standardised management regime for the National Grid across New Zealand. It must be consistent with the critical importance of the infrastructure and its role in responding to climate change, and resolve any tensions with competing natural environment interests. It needs to address National Grid connections at both the supply and demand ends. National direction may include spatial mapping;
- 73.3 *Amendments to plan-making processes to address the quality, inconsistency and resourcing issues*: National direction has addressed these issues in part for Transpower, but improved direction is still needed and that will need to be effectively and efficiently implemented in planning documents. Rationalisation of the planning documents required to be prepared, and the contents of those documents will be important, including by minimising the number of documents that national direction needs to be translated into. Reform should not increase the resource burden on participants given the extensive requirements that already apply. Plan-making processes should also be fit-for-purpose taking into account the complexity of the matters being addressed.
- 73.4 *Approvals processes must provide for critical infrastructure in a way that minimises resourcing and delay issues*: There are a broad range of potential solutions that may provide greater certainty and efficiency for infrastructure approvals; however, all comparative jurisdictions provide a 'one-stop-shop' approvals process for nationally significant infrastructure. At a minimum, the processes available must give greater weight to the benefits of essential infrastructure and climate change mitigation in the decision-making criteria, and better provide for long term planning and certainty over a 20-30 year horizon. Processes should be flexible and adaptable so they can respond to emerging issues and technologies.
- 73.5 *Legislation alignment*: the legislation that makes up the resource management system should be better aligned to reduce process duplication and overlapping requirements. Key legislation to consider is the Heritage New Zealand Pouhere Taonga Act 2014, Wildlife Act 1953, Conservation Act 1987, and Public Works Act 1981.

## RESPONSE TO THE ISSUES AND OPTIONS PAPER

### Issue 1 – Legislative architecture

*Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?*

- 74 Transpower supports the retention of an integrated resource management statute with principles that address both the natural environment and the built environment. Infrastructure, including National Grid projects, will generally require approvals for land use and for impacts on natural domains (eg water). A separation of these approval processes would be a retrograde step. It would result in a loss of valuable legal precedent and increase the potential for litigation.
- 75 Where separate legislation has been suggested, it generally reflects a focus on urban development infrastructure (transport, three waters) that is primarily delivered by councils. In that context, integration of the land use planning aspects of the RMA, with the Local Government Act 2002 and the Land Transport Management Act 2003, makes sense. However, this option does not consider broader infrastructure. Electricity generation and transmission infrastructure has very different governance and funding arrangements<sup>26</sup>, but are equally critical parts of the built environment.
- 76 If separate legislation is preferred, it will be important to provide for integration of processes (eg a 'one stop shop' for approvals) so that the burden on applicants from separation is minimised.

### Issue 2 - Purpose and principles of the RMA

*What changes should be made to Part 2 of the RMA? For example: Does s5 require any modification? Should ss. 6 and 7 be amended? Should the relationship or 'hierarchy' of the matters in section 6 and 7 be changed? Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled? Are changes required to better reflect te ao Māori? What other changes are needed to the purpose and principles in Part 2 of the RMA?*

- 77 The review has the dual focus of improving outcomes for the natural environment and improving urban and other development outcomes. That dual focus reflects the widely held view that the RMA has failed to sufficiently provide for either natural environment outcomes or development outcomes. Given those matters that are often seen as being in conflict, that failure reflects the difficulty of 'getting it right' in the resource management area.
- 78 The RMA is primarily framework legislation. It sets up a hierarchy of policy statements and plans that provide the detail of the resource management approach. Part 2 of the RMA is therefore one of the only substantive sections of the legislation. The statutory purpose and principles provide critical guidance as to the real world outcomes to be achieved. The purpose and principles also form an important check and balance for the regulation that sits below the statute.

#### **Gaps in Part 2 of the RMA**

- 79 Transpower considers there are two key gaps in Part 2 of the RMA as it stands. First, a lack of recognition of the critical social and economic importance of essential

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<sup>26</sup> Electricity Act 1992, Electricity Industry Act 2010, Commerce Act 1986.

infrastructure, including the National Grid. Second, a failure to address climate change mitigation. The national importance of these issues is discussed at paragraphs 18-36 above. They must be addressed in the purpose and principles of the legislation to reflect that importance.

- 80 On climate change, the Interim Climate Change Commission has noted the importance of ensuring that resource management legislation and associated regulations complement, rather than dampen the effect of, core climate change policies.<sup>27</sup> It specifically recommended that regulators be required to take the objective of reducing emissions into account.<sup>28</sup>

***Environmental limits/bottom lines approach***

- 81 The aim of the review is “to improve environmental outcomes and better enable urban and other development within environmental limits”.<sup>29</sup> There is a clear policy intention for the resource management system to adopt an environmental limits or bottom lines approach. Transpower agrees that such an approach will help to improve environmental outcomes. However, in formulating an environmental limits or bottom lines approach, it is necessary to consider what environmental outcomes need to be improved, and why those outcomes have not been achieved under the current system. It is also necessary to understand the implications of a pure bottom line approach on other matters of national importance.
- 82 In terms of the causes, it is generally accepted that the RMA “has been strongest on adjudicating individual permitting functions, and weakest on overarching management of cumulative effects and other longer term strategic issues.”<sup>30</sup> The cumulative effects of land uses have been the primary contributor to the degradation of New Zealand’s natural environment in recent decades. In contrast, individual projects (such as transmission lines) have generally been well managed by the RMA to ensure that adverse effects are minimised and benefits are delivered.
- 83 In terms of the implications of adopting a pure ‘bottom lines’ approach for the natural environment, the Queenstown Lakes District provides a useful case study highlighting the tensions. Queenstown Lakes District is a high growth urban area, as defined in the National Policy Statement for Urban Development Capacity 2016. Queenstown in particular is growing quickly. Electricity is currently supplied to Queenstown by one National Grid line – the Cromwell – Frankton A 100kV overhead transmission line. Should it be necessary for a second line to be constructed, consenting could be very difficult. Almost all of the District is identified as an outstanding natural feature or landscape. It is impossible to provide a second connection between the National Grid backbone and Queenstown, and to avoid outstanding natural landscapes at the same time. Applying an environmental bottom line for outstanding natural landscapes in this context (i.e. avoid all adverse effects) would have unacceptable social and economic outcomes for Queenstown. This example demonstrates the importance of ensuring that an environmental bottom lines approach does not absolutely bar critical and necessary infrastructure. As noted earlier, providing for unprecedented development of renewable electricity using national environment resources will inherently lead to some impacts.

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<sup>27</sup> IPCC *Accelerated Electrification* page 82.

<sup>28</sup> Ibid, page 105.

<sup>29</sup> Terms of Reference – Resource Management Review Panel (11 November 2019), paragraph 5.

<sup>30</sup> Evaluating the environmental outcomes of the RMA: A report by the Environmental Defence Society (June 2016), page 6.

- 84 In this context, it should also not be assumed that an environmental limits or bottom lines approach is limited to the natural environment only. Such an approach can be just as applicable to critical elements of the built environment, which can similarly be impacted by cumulative effects issues. In today's world, housing and electricity are considered baseline rights. Climate change mitigation (including electrification) must also be addressed urgently.
- 85 Bottom lines are also not equally applicable to all elements of the natural environment. Natural systems such as water are suited to a bottom lines approach (including because effects on these systems can robustly be offset). But, more subjective natural values, such as natural features and landscapes, are less suited to a pure bottom lines approach (as evidenced by the above Queenstown example).

***A new purpose and principles***

- 86 Transpower supports the retention of the purpose of the RMA as "the sustainable management of natural and physical resources". It considers the definition of sustainable management should continue to reflect the four wellbeings – environmental, social, economic and cultural. However, the detail of the definition may need to be altered to reflect the new approach.
- 87 Transpower considers the statutory principles should retain a hierarchy (similar to sections 6-8 of the RMA) to provide clear direction on the relative importance of various matters. Transpower also supports the statutory principles providing broader guidance on the exercise of the functions and powers in the legislation.
- 88 Transpower considers the 'first tier' of the statutory principles should recognise the life-supporting capacity of air, water, soil and ecosystems. These are natural systems that must be maintained to provide a quality environment for future generations. Climate change mitigation and potentially waste minimisation should be recognised in the same manner given the potential for these issues to compromise the options available for future generations. In addition, built infrastructure that is critical to the baseline wellbeing of people and communities, including electricity transmission, should be equally recognised in the statutory principles. Cultural values and natural hazards will also need to be addressed. The 'first tier' of the principles must reflect the matters that are essential to the New Zealand we want to live in 30 years from now. The regime will need to recognise that, at times, the different elements of this first tier will be in conflict and provide processes to resolve those conflicts.
- 89 The 'second tier' of statutory principles should recognise matters that are important – but not critical, and should not be subject to bottom lines. This would contain primarily 'amenity' matters – public access, urban amenity, landscapes and features, natural character<sup>31</sup>, historic heritage, etc. The importance of restoration and enhancement of the natural environment could also be addressed here.
- 90 Finally, the statutory principles could usefully provide broader guidance on the exercise of the functions and powers in the legislation. These matters would include kaitiakitanga, efficient allocation and use of resources, cumulative effects, alignment with other legislation, efficient processes, etc.

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<sup>31</sup> Note, natural systems elements of natural character – water, soils, ecosystems – would still be captured by the first tier.

### **Issue 3 - Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori**

*Are changes required to s8, including the hierarchy with regard to ss. 6 and 7? Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?*

- 91 Transpower agrees that it is appropriate for the legislation to appropriately provide for the Crown's obligations under the Treaty of Waitangi.
- 92 Transpower actively consults with iwi and hapū on its projects, and uses these opportunities to help facilitate enduring relationships with them. It is continually learning from its experience, and improving its consultation approach. Transpower expects any new resource management system to provide for proper engagement with Māori. From the point of view of an applicant, the statutory requirements should be as certain and as efficient as possible (ie clarity over who applicants need to consult with). This will both maximise the effectiveness of engagement, and minimise unnecessary costs for all parties.

### **Issue 4 - Strategic integration across the resource management system**

*How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA? What role should spatial planning have in achieving better integrated planning at a national and regional level? What role could spatial planning have in achieving improved environmental outcomes? What strategic function should spatial plans have and should they be legally binding? How should spatial plans be integrated with land use plans under the RMA?*

- 93 Spatial planning has been promoted in a number of recent pieces of work on the resource management system. However, there is no clear or consistent view on what spatial planning is, and how it would fit into the resource management system. Further, spatial planning in New Zealand to date has been inconsistent, with only the Auckland Plan having any statutory basis under the RMA.
- 94 Spatial planning is most commonly considered as a tool to integrate land use and infrastructure for urban growth/development. This is reflected in suggestions that land use planning should be better integrated with processes under the LGA and LTMA. That legislation is relevant to urban growth-related infrastructure (three waters, transport), but not other infrastructure (including electricity). Most of the existing National Grid is, and new renewable energy generation and National Grid connections will be, located in rural areas, meaning that urban focused spatial planning would not provide meaningful benefit. If spatial planning is narrowly applied to urban growth/development, it will be important that the scope is clear, and that broader issues are appropriately provided for through another mechanism.
- 95 Spatial planning is not a 'silver bullet' for all resource management issues. It would not comprehensively address Transpower's resource management needs. Strong and comprehensive national direction (in particular) would still be required, and would need to sit above spatial plans in the policy hierarchy. Spatial planning will also not address all of the issues associated with approvals processes.
- 96 For the National Grid, spatial planning could identify/map and protect/enable existing and planned National Grid transmission corridors, and provide high level strategy direction. Existing corridors are known, and it would be relatively straightforward to map them in spatial plans. However, mapping future connections would be more complex because of the uncertain location of new transmission/demand (dependant on technical investigations and investment



decisions), the possibility of mapping becoming out of date, and 'planning blight' concerns.

- 97 Transpower considers that any spatial planning approach should not simply add an additional layer to the system, such that it creates an additional complexity and burden for stakeholders. Further, spatial planning is a resource intensive process. It is important that the legal weight given to spatial plans reflects the level of resource invested in the process.
- 98 There are a range of possible options to address the issues outlined above. Spatial plans could be developed at a regional level, with oversight from a national body (such as the Environmental Protection Authority (EPA)) to provide for broader integration and robustness of process. Spatial plans could include regulatory layers, and information layers. That would allow greater regulatory weight to be given to elements that are more certain/robust, while still providing for integration of other elements.
- 99 In light of the current uncertainty as to the scope and position of spatial planning, Transpower requests that the RM Review Panel and Ministry for the Environment engage with Transpower as the spatial planning approach develops to ensure the preferred approach appropriately provides for the National Grid.

## **Issue 5 - Addressing climate change and natural hazards**

*Should the RMA be used as a tool to address climate change mitigation, and if so, how? What changes to the RMA are required to address climate change adaptation and natural hazards? How should the RMA be amended to align with the Climate Change Response Act 2002?*

- 100 Transpower agrees that climate change mitigation should be a relevant matter in resource management decision-making, alongside climate change adaptation.
- 101 As discussed above, climate change is an emergency that demands an immediate mitigation approach. A number of agencies have identified the energy sector as one of the lowest hanging fruits for decarbonisation. While New Zealand's primary response is through the Climate Change Response Act 2002, it will be necessary to enable particular works (including renewable energy generation and National Grid connections to generation and major users) to achieve that response. Electrification of transport and process heat has the potential to contribute a 15.7 Mt CO<sub>2</sub>e reduction by 2050. This electrification transition will drive an increase in electricity demand from 42 TWh in 2020 to 71 TWh in 2050. Without improvements to current RMA processes, it will not be possible to obtain the necessary approvals for the number and extent of National Grid connections that are required.
- 102 The Productivity Commission has stated that a key obstacle to a low carbon economy is "*the number of regulatory and policy frameworks outside the climate policy portfolio that are not aligned with the low emissions objectives*".<sup>32</sup> It recommended that, beyond emissions pricing, "*other supportive regulations and policies are in place, to address non-price barriers, and accelerate the transition*".<sup>33</sup> If decision-makers are barred from considering climate change mitigation when considering approvals for such works, decisions will be made in a hypothetical vacuum. For example, a decision-maker could hypothetically decline approvals for a

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<sup>32</sup> Productivity Commission, *Low carbon economy*, page 6.

<sup>33</sup> Productivity Commission, *Low carbon economy*, page 4.

wind farm based on other environment impacts, in circumstances where considering climate change mitigation may have tipped the balance in favour of granting approvals.

- 103 As set out above, Transpower considers climate change mitigation should be a 'first tier' principle of the resource management legislation. National direction should provide for the electrification transition necessary to achieve Zero Carbon goals, and the National Grid and renewable energy in particular, to ensure these national issues are given appropriate weight by local decision-makers as discussed below. It is also important that national direction for the National Grid is effective, and not 'trumped' by national direction addressing other matters. As noted above, this national direction will need to be supported by more efficient approvals processes that provide for the number of applications that will need to be processed over the next 20-30 years.
- 104 Transpower's submission on the *Accelerating renewable energy and energy efficiency* discussion paper<sup>34</sup> specifically addresses the need for immediate amendments to the NPSET and NESETA to address climate change mitigation to improve the status quo. Other amendments highlighted in this submission will also need to be progressed quickly to assist with the unprecedented scale of change required.

#### **Issue 6 - National direction**

*What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?*

- 105 Transpower considers mandatory national direction is an essential component of the resource management system. In a system where detailed regulation and day-to-day decision-making is devolved to local authorities, nationally important issues require national direction – particularly to ensure that national benefits are appropriately weighted against local impacts. National direction is particularly important given the lack of resource and expertise that some local authorities have.
- 106 Transpower has considerable experience with implementing national direction, as detailed above. Transpower considers it is critical that the review process maintains the things that work. The NPSET and NESETA have generally been successful in achieving their objectives, although there are some issues and risks that need to be addressed (as discussed above). Many of these issues and risks will need to be addressed through amendments to the national direction, but those issues and risks do highlight some legislative changes that could improve national policy statements in particular.

#### **Developing national direction**

- 107 The development of the NPSET involved a major public consultation process, a hearing before a Board of Inquiry, recommendations from the Board, and the final Ministerial decision. It was an extensive and robust process. However, the RMA also allows national direction to be developed through an alternative process set out in s46A(4) of the RMA. This process does not involve a public hearing before a Board of Inquiry, and is therefore quicker and simpler. It is, however, less robust and transparent.

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<sup>34</sup> <https://www.mbie.govt.nz/have-your-say/accelerating-renewable-energy-and-energy-efficiency/>

- 108 In recent years, there has been a push to develop more national direction. A broad suite of documents now exist or are being prepared. The importance of these documents being robust is now more critical than ever.
- 109 Transpower considers the process for developing, implementing and reviewing national direction could be improved to ensure the full suite of national direction is robust and integrated. A rolling Board of Inquiry could be established to consider submissions and provide recommendations on national direction. The Board could be supported by advisory groups on the particular issues addressed in each piece of national direction. It could also consider integration across national direction documents, and recommend consequential amendments where necessary. The rolling Board of Inquiry could also receive reviews of existing national direction, and be tasked with recommending amendments.

***Consistency between national policy statements***

- 110 New national direction has been developed in recent years, and much more is underway. As discussed above, the expanding suite of national direction creates more risk of interpretation issues arising, and inconsistency between documents. A significant focus of Transpower's involvement in planning processes over the last 5 years has been the approach to implementing the NPSET direction to *seek to avoid* adverse effects on certain high value natural areas in light of the NZCPS direction to *avoid* adverse effects on certain high value natural areas. This potential conflict has required Transpower to invest significant resource to ensure policy statements and plans provide a workable framework for the National Grid. Other interpretation issues are arising as new national direction is produced without appropriate consideration of its relationship with existing national direction, as detailed in **Appendix A**.
- 111 An option proposed in the *Issues and Options Paper* is a single combined instrument such as a Government Policy Statement. Transpower considers that consolidating national direction into one Government Policy Statement would likely result in a more high level and less helpful document. By way of example, the National Planning Standards were initially anticipated to address a broad suite of matters, through numerous sets of Standards. However, because of broad opposition, the first set of Standards were pared back to meet the bare minimum statutory requirements only. Further sets of Standards are currently off the table.
- 112 Transpower considers that consistency between national direction can be addressed through the processes for developing and reviewing national direction:
- 112.1 More requirements for objectives and policies to be directly inserted into policy statements and plans in national direction.
- 112.2 A rolling Board of Inquiry would provide a consistent and robust process. As noted above, it could be specifically tasked with considering integration across documents.
- 112.3 A requirement to review national direction, as a package, every ten years (as for local authority plans) and/or sooner when needed to respond to particular triggers (such as significant case law or new international obligations) would ensure that documents are kept up-to-date, fit for purpose, and aligned as a broader suite of national direction.

***Implementation of national policy statements***

- 113 National direction is not a 'silver bullet'. It must be implemented through regional and district policy statements and plans, and that process is resource intensive. The

Grid traverses 61 district/city councils, 4 unitary councils and 11 regional councils, all of which all have district or regional plans or policy statements that require regular review.

- 114 The NPSET was intended to be given effect to by local authorities initiating a plan change or review by 2012. Since 2008, Transpower has participated in at least 53 policy and plan reviews and changes to give effect to the NPSET. Despite that level of involvement, only 66% of district plans give effect to the NPSET corridor approach. Only a small number of plans have grappled with giving effect to both the NPSET and NZCPS following the *King Salmon* decision.
- 115 A number of plans have still not been amended to fully give effect to the NPSET as they were made operative before the NPSET was gazetted. Some plans that gave effect to the NPSET early on are now being reviewed, requiring Transpower to advocate for the provisions again. National direction therefore requires substantial ongoing resource to implement. A more efficient, and possibly standardised, approach to regulating National Grid activities is needed.
- 116 National direction is a critical component of the resource management system. However, other mechanisms are required to support the implementation of that direction. A key example is improved and more comprehensive national environmental standards. Beneath that, consolidating planning, as discussed at paragraph 122 below, would reduce the implementation burden. Local authorities also need appropriate skills and resources to implement national direction. Legislation should provide for implementation deadlines, with enforcement mechanisms to ensure those are achieved.

***Relationship between national environmental standards and other regulation***

- 117 The key issue for national environmental standards is their coverage as discussed at paragraphs 50-52 above. Another issue is the statutory provisions addressing the relationship between national environmental standards and other regulations, which are complex, confusing and can lead to perverse outcomes.
- 118 For example, s43D addresses the relationship between national environmental standards and designations in a range of scenarios. There are a number of uncertainties in this provision. The effect of this section is also that designations cannot be used for National Grid activities regulated by NESETA, reducing the consenting tools available for no clear purpose.
- 119 There is also an emerging issue in relation to the expanding suite of national direction. For example, the NESETA was intended to provide a near-comprehensive management regime for existing transmission lines, but the Proposed National Environmental Standards for Freshwater will introduce a new regulatory layer. The RMA does not currently address the relationship between different standards. The relationship may be addressed in the standards themselves, but it may not be. For example, the Proposed National Environmental Standards for Freshwater specifically address overlaps with the National Environmental Standards for Plantation Forestry<sup>35</sup>, but not other national environmental standards. This example suggests that it is not unreasonable or impractical to address overlaps between standards.

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<sup>35</sup> It is proposed that the NESPF will prevail over the wetland rules in the NESF pending review of the documents.

- 120 The approach to managing the relationship between national environmental standards, and between standards and other regulations, should accordingly be revamped in any new legislation. Some quick wins could be made through changes to s43D RMA to allow designations and the NESETA to be used separately or in tandem, as best suits the project at hand.

### **Issue 7 - Policy and planning framework**

*How could the content of plans be improved? How can certainty be improved, while ensuring responsiveness? How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation? What level of oversight should there be over plans and how should it be provided?*

- 121 Transpower agrees that the quality of plans is variable. That is understandable given the different times at which plans have been prepared and reviewed, and the different levels of resource that different local authorities have available. For example, Transpower has recently been involved in the Auckland Unitary Plan and the Opotiki District Plan processes. The difference between these processes was marked. It is unreasonable to expect local authorities with very small rating bases to prepare complex resource management documents.
- 122 The resource intensiveness of planning processes is also a real challenge for stakeholders. Organisations with a national interest, such as Transpower, must participate in a vast array of planning processes in order to achieve their objectives. Often the issues and parties around the table are very similar, yet the discussions must be had again and again. As discussed above, national direction has assisted Transpower in those discussions, but it still requires a significant amount of resource to ensure it is implemented correctly.
- 123 Transpower supports the following options to improve local plan making (noting Transpower's strong preference for more comprehensive national direction):
- 123.1 Require councils to work together to create a combined regional plan – consolidating regional plans and district plans into one process. This change would improve integration between plans and reduce duplication. It would also reduce the participation burden on stakeholders with cross-boundary interests (reducing the number of planning processes from almost 100 to 17). Stakeholders with local interests would still only be required to participate in one process.
- 123.2 If combined regional plans (and potentially spatial plans) are required, the layers of planning objectives and policies could be reduced. Currently, national policy statements, regional policy statements, regional plans and district plans all provide objectives and policies. Each document is meant to provide a greater level of specificity. But, because there are so many levels this is generally not necessary or even possible. For example, for the National Grid, it would be appropriate to have two levels of objectives and policies (in national direction and at regional level) with rules sitting below those.
- 123.3 Provide plan making processes that are commensurate to the complexity of the issues being addressed:
- (a) A plan making process for major and complex plan reviews – a 'single stage' process drawing on learnings from the Auckland and Christchurch processes. More complex plan changes could also use this process. This process drives a 'gold plated' approach whereby

stakeholders invest heavily in achieving their outcomes, given the first stage of the process is the only opportunity. Transpower therefore considers it is not appropriate for simpler planning processes.

- (b) A plan making process for plan changes – a Council hearing by independent commissioners followed by Environment Court appeals on points of law only. More simple plan reviews (ie small district councils) could also use this process, although these reviews may no longer exist if combined plans are adopted.

## **Issue 8 - Consents/approvals**

*How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation? How might consent processes be better tailored to the scale of environmental risk and impact? Are changes required for other matters such as the process for designations? Are changes required for other matters such as the review and variation of consents and conditions? Are changes required for other matters such as the role of certificates of compliance?*

- 124 Transpower considers the legislation should provide a bespoke process for nationally significant infrastructure. Providing for a bespoke process would reflect international best practice, recognise the critical importance of infrastructure, and respond to the particular approvals' challenges faced by infrastructure. These reasons are discussed in more detail at paragraphs 63-71 above. Such changes should be considered as a priority over the broader reform process, given their importance in facilitating climate change mitigation projects.
- 125 To address the issues with the current "nationally significant proposal" process under the RMA, Transpower considers the bespoke process should:
  - 125.1 Recognise the national significance of the project in the decision-making process;
  - 125.2 Enable strategic planning of infrastructure;
  - 125.3 Provide for public participation at the appropriate stage of the process to support good outcomes;
  - 125.4 Ensure approvals can be obtained in a timely and efficient manner; and
  - 125.5 Provide for flexibility and innovation.
- 126 There are a range of options that would meet those requirements. Potential options could include the following:
  - 126.1 An "improved" status quo: This process would build on the existing "nationally significant proposal" process. It would amend the legal tests to require the national significance of the project to be recognised in the decision-making process. It would reduce the information requirements for applications commensurate to the condensed timeframe. It would also further reduce the information requirements for designations obtained for route protection purposes only and enable much longer lapse dates to be approved. It would also amend the framework for designations as set out at paragraphs 127 to 135 below.

126.2 Dual options of a “staged” approval process and a “one-stop” approval process:

The “staged” process would provide for a ‘concept approval’ to be obtained to enable strategic planning of infrastructure, with the detail to be determined through a ‘conditions approval’ stage (which could be many years later). A project would be identified as “nationally significant” similar to the existing process. The legal tests would require the national significance of the project to be recognised in the decision-making process. The information requirements for the ‘concept approval’ stage would be high level, with detailed plans and conditions considered at the ‘conditions approval’ stage. Public notification would occur at the ‘concept approval’ stage, with no or limited notification at the ‘conditions approval’ stage. Both stages would be managed by the EPA, with an Independent Hearings Panel as decision-maker. Appeals would be limited to points of law only.

The “one-stop” process would provide for infrastructure projects that are to be constructed imminently, and is similar to the “improved status quo” option above. A project would be identified as “nationally significant” similar to the existing process. The legal tests would require the national significance of the project to be recognised in the decision-making process. The information requirements for applications would be commensurate to a condensed timeframe. The process would be managed by the EPA, with an Independent Hearings Panel as decision-maker. Appeals would be limited to points of law only.

- 127 Transpower requests that the RM Review Panel and Ministry for the Environment engage with Transpower as its thinking on consents/approvals develops to ensure the preferred options appropriately provide for new National Grid connections to new renewable generation and major users.

***Designations***

- 128 Designations are meant to be very different to consents. In addition to allowing the requiring authority to use land for the designated purpose, designations:

128.1 Restrict activities that would prevent or hinder the designated works; and

128.2 Provide landowner rights to access compensation.

- 129 There are some issues that are specific to designations that need to be addressed.

***Requiring authority status***

- 130 The RMA does not currently allow electricity generators to obtain requiring authority status. That fails to recognise that both renewable energy generation and National Grid connections are required for the electricity transition. Transpower supports requiring authority status being made available to renewable energy generators.

***Coastal marine area***

- 131 Designations authorise the use of land (otherwise regulated under s9 of the RMA), but not the use of the coastal marine area (regulated under s12 RMA). Infrastructure projects that cross over land and coastal water therefore require both designations and coastal occupation consents. Transpower supports designations being extended to cover occupation of the coastal marine area for activities that have a functional or operation needs to locate in coastal environments.

### *Legal tests*

- 132 The legal tests for designations are included in s171 of the RMA. Aspects of the legal tests are similar to resource consents – decision makers must consider the effects on the environment and the relevant planning provisions. However, there are two legal tests that are unique to designations – the ‘reasonable necessity’ test and the ‘alternatives’ test. Transpower considers these tests would better sit as process or information requirements for notices of requirement, rather than legal tests considered by the decision maker.
- 133 Reasonable necessity: The decision maker is required to have particular regard to “*whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought*”. However, the requiring authority is tasked with identifying the objectives. It will, without fail, identify objectives that ensure the reasonable necessity test is met. The inclusion of this legal test therefore provides little benefit, while placing an onus on parties to address it and an avenue for litigation. To address this issue, a notice of requirement could be required to state the objectives of the requiring authority for which the designation is sought. The objectives would then become relevant as part of the assessment of the positive effects of the designation.
- 134 Alternatives: The decision maker is required to have particular regard to “*whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work*” in certain circumstances. However, case law establishes that the requiring authority is not required to choose the ‘best’ alternative. As a result, this test is process based, not substantive. This legal test does however give rise to significant challenges at hearings, and requires significant resource to address (including a large amount of pre-work to minimise approval risk). To address this issue, a notice of requirement could be required to provide the assessment of alternative sites, routes, or methods undertaken by the requiring authority. The assessment would then become relevant as part of the assessment of the effects of the designation.<sup>36</sup>

### *Lapse and duration*

- 135 The default lapse period for consents and designations is currently 5 years. That is inconsistent with the strategic planning role that designations are intended to fill. A longer lapse period should be provided for as a default, with explicit recognition that even longer lapse periods may be provided for to achieve strategic planning outcomes. Resource consent lapse dates should align where required. For example, Transpower holds a designation for one of its future projects that has a 15 year lapse period. The designation has not yet been implemented because of slower-than-projected growth in electricity demand in the 2010s. The designation will likely lapse prior to being needed, but the project will need to go ahead at some stage. Reconsenting will be costly, time consuming and risky.
- 136 Durations of consents are a related issue. Given the resource intensiveness of the approvals processes, it is important that such approvals are granted for a lengthy duration. For example, a recent land use consent for tree trimming around lines was granted for 10 years only, which is highly inefficient for a continuing land use activity. Further, activities which are required indefinitely (ie most elements of the National Grid) should not have consent durations imposed on them (for example,

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<sup>36</sup> This approach would reflect policy 4 of the NPSET which requires decision-makers to consider “*the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection*”.



regional consents or occupation permits). Review of conditions are a more appropriate management tool.

## **Issue 9 – Economic instruments**

*What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system? Is the RMA the appropriate legislative vehicle for economic instruments?*

- 137 As discussed above, there is a clear policy intention for the resource management system to adopt an environmental limits or bottom lines approach. However, natural and human bottom lines may conflict. Transpower considers it is important that legislation does not stall critical development requirements, such as those relating to nationally significant infrastructure. By way of example, the Draft National Policy Statement for Freshwater Management proposes an objective (2.1) that would result in natural values trumping other values in all cases. That approach does not recognise that some development is critical to the wellbeing of New Zealanders.
- 138 In order for an environmental limits or bottom lines approach to be adopted without stalling development needs, it will be necessary to provide for a range of tools to meet those limits/bottom lines – environmental offsetting and compensation will likely be part of the picture. However, these tools currently lack the necessary robustness and transparency. For example, recommended offsetting ratios (of area lost to area improved) can vary wildly between ecologists.
- 139 The legislation could improve the provision for economic tools to achieve environmental outcomes and resolve tensions between competing matters of national importance. For example, Transpower considers a central agency could consolidate resources to achieve broader outcomes and better achieve long term outcomes, compared to individual consent holders with no particular expertise in the implementation of any offsetting.
- 140 Economic tools should be available, but should not be imposed. For example, environmental offsetting/compensation is most directly applicable to natural system elements. Amenity values are more appropriately subject to a balancing approach as discussed at paragraphs 87 to 88 above. For example, offsetting/compensation cannot readily be applied to landscape and visual effects arising from a new National Grid connection, but could be applied to biodiversity impacts of such a connection.
- 141 In the context of natural systems, environmental offsetting/compensation is an important environmental management tool, as it provides flexibility to achieve both natural and development outcomes (consistent with the terms of this review). Providing for environmental offsetting/compensation will be critical if the new legislation adopts an environmental limits/bottom lines approach. It will be necessary to have instruments that provide for transfer of resource within those limits/bottom lines to ensure flexibility to ensure critical development can occur.
- 142 Environmental offsetting/compensation may also be a more appropriate tool to address cumulative effects efficiently. Rather than minor activities being subject to onerous requirements, contributions to broader environmental outcomes could ensure that overall outcomes are positive.

## **Issue 10 - Allocation**

*Should the RMA provide principles to guide local decision making about allocation of resources?  
Should there be a distinction in the approach taken to allocation of the right to take resources, the*

*right to discharge to resources, and the right to occupy public space? Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA for regulatory issues?*

- 143 Transpower has assets located in the coastal marine area, and allocation of this space is therefore of relevance to it. The NESETA provides for the ongoing occupation of the coastal marine area of existing transmission structures. This provision is important to provide Transpower with operational certainty, and should be maintained. It is important that any coastal allocation regime recognises that nationally significant infrastructure may need to be located in the coastal marine area. (Transpower also has assets in waterways, and they should be considered in the same way.) As noted earlier, new projects should not be subject to consent duration requirements.
- 144 Transpower considers that some allocation needs to be addressed at a national, rather than regional level – such as the setting of minimum flows for rivers with hydro-generation. Transpower lodged a comprehensive submission on the Ministry for the Environment and Ministry for Primary Industries’ discussion document *Action for Healthy Waterways*. The submission addressed the national implications if the draft National Policy Statement on Freshwater Management increased minimum flows, and reduced water available for hydro-generation. We submitted that any change to minimum flows affecting hydro-generation needed to be considered at a national level, so that the cumulative impacts on resilience and security of electricity supply, electricity prices and negative impacts on climate change (due to consequential need for oil or gas-fired peakers) can be appropriately evaluated.
- 145 The overlap between environmental effects and allocation matters suggests that they should be addressed in the same statute.

#### **Issue 11 - System monitoring and oversight**

*What changes are needed to improve monitoring of the resource management system, including data collection, management and use? Who should have institutional oversight of these functions?*

- 146 Transpower agrees that a better evidence base is needed to understand what is occurring in the environment and to improve the performance of the resource management system. It has no particular view on how system oversight and monitoring should be improved.

#### **Issue 12 - Compliance, monitoring and enforcement**

*What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness? Who should have institutional responsibility for delivery and oversight of these functions? Who should bear the cost of carrying out compliance services?*

- 147 Transpower agrees that effective compliance, monitoring and enforcement is essential to the resource management system. It has no particular view on how compliance, monitoring and enforcement should be improved.

#### **Issue 13 - Institutional roles and responsibilities**

*Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes? How could existing institutions and bodies be rationalised or improved? Are any new institutions or bodies required and what functions should they have?*

- 148 The Issues and Options Paper identifies that resource management functions are spread across a wide range of institutions. That inevitably results in inefficiencies, lack of coordination, and knowledge gaps. Paragraph 122 above addresses options to rationalise council planning processes. However, these issues are also evident at the national level, where different Ministries are responsible for different policy documents under the RMA. Transpower agrees that the resource management system could benefit from more principled allocation of functions at all levels. Although institutional roles and responsibilities are critical, there are opportunities to improve the legislation to minimise the potential for implementation issues to arise. A number of the proposals discussed above (such as improvements to national direction and combined regional plans) will help to achieve that outcome.

#### **Issue 14: Reducing complexity across the system**

*What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness? How can we remove unnecessary detail from the RMA? Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?*

- 149 The Resource Management Review Panel has been tasked with undertaking a comprehensive review of the resource management system. The terms of reference refer to the interface with the Local Government Act 2002, the Land Transport Management Act 2003 and the Climate Change Response Act 2002<sup>37</sup>, but allows for review of other relevant legislation that interfaces with the RMA.<sup>38</sup>
- 150 Transpower considers the key pieces of legislation that interface with the RMA, and create undue complexity, inefficiency, and ineffectiveness are:
- 150.1 Heritage New Zealand Pouhere Taonga Act 2014;
- 150.2 Wildlife Act 1953;
- 150.3 Conservation Act 1987;
- 150.4 Public Works Act 1981.
- 151 The key issue in relation to these pieces of legislation is duplication of process. For example, the Public Works Act process largely repeats aspects of the designation process, so similar issues arise and need to be reconsidered. Streamlining the application processes for these complementary statutory approvals, aligning the legal tests, and providing for concurrent joint hearings would minimise the cost and delay caused by this duplication. This approach is consistent with overseas jurisdictions, which generally provide for all relevant approvals to be obtained through the same process.
- 152 These pieces of legislation also give rise to some specific issues:
- 152.1 Section 54(3) of the Heritage New Zealand Pouhere Taonga Act effectively provides a landowner with a 'veto' over an archaeological authority. This can result in works on existing assets being stymied.

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<sup>37</sup> Paragraph 11.

<sup>38</sup> Paragraph 17.

152.2 *Seaton v Minister for Land Information* [2013] NZSC 42 involved the primary work of widening State Highway 1, for which three electricity towers needed to be moved as related enabling activities. The Supreme Court determined that the NZ Transport Agency could not obtain land under the Public Works Act for the relocation of the towers, and that was the responsibility of Transpower<sup>39</sup> as owner of the towers. This decision creates a risk that the Public Works Act tests ('reasonable necessity' in particular) will not be able to be met given the enabling works are essentially not part of the primary project. It results in significant inefficiencies given two parallel processes need to be pursued by different bodies for the same project. The applicant for the primary project should be able to initiate Public Works Act processes for enabling works. It is inevitable that large scale infrastructure projects will require a range of enabling works, including movement of other infrastructure of various scales. The statutory framework needs to recognise that these works form a key part of the primary project.

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<sup>39</sup> Transpower owned the towers when the acquisition process was commenced, however the towers had been transferred to Orion by the time the matter was heard by the Supreme Court.

## APPENDIX A – RISKS OF MULTIPLE NATIONAL POLICY STATEMENTS

- 153 Policy 8 of the NPSET requires Transpower to *seek to avoid* adverse effects on certain high value natural areas, whereas Policies 11, 13 and 15 of the NZCPS require the *avoidance* of adverse effects on certain high value natural areas (see sample in the table below). As described in paragraph 55, this creates a potential policy conflict.
- 154 Transpower has been able to achieve a generally workable policy direction for the National Grid projects in the coastal environment through a number of planning processes, although the outcome is very onerous and sets a higher standard than was envisaged when the NPSET was drafted. This outcome has been achieved through local authority hearing and Environment Court mediation processes, and therefore could be challenged at any time by other parties.
- 155 The promulgation of new national policy statements may create new conflicts between national policy directions, and lead to interpretation uncertainties. Two draft national policy statements released in 2019 contain provisions (see sample in the table below) that are likely to create new policy conflicts with the NPSET that will need to be resolved. For example, Policy 8 of the NPSET does not explicitly address indigenous biodiversity, although Transpower has applied the same “seek to avoid” approach to those values. The draft National Policy Statement for Indigenous Biodiversity would require Transpower to “avoid” effects on significant natural areas classed as ‘High’, and impose a very strong burden to “avoid” effects on significant natural areas classed as ‘Medium’. Similarly, the NPSET does not explicitly address effects on freshwater. The concept of “te mana o te Wai” in the draft National Policy Statement for Freshwater Management means that the health and wellbeing of waterbodies and freshwater ecosystems would ‘trump’ the benefits of a development proposal – no matter their significance.
- 156 These conflicts are likely to make it more difficult for Transpower to achieve workable regional and district plan provisions for the National Grid, and lead to additional consenting barriers for new National Grid connections. This would undermine Transpower’s ability to provide the new connections required to respond to the electrification transformation.

National Policy Statement on Electricity Transmission 2008	New Zealand Coastal Policy Statement 2010	Draft National Policy Statement for Indigenous Biodiversity (2019)	Draft National Policy Statement for Freshwater Management (2019)
<b>Policy 3</b>  When considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-	<b>Policy 15: Natural features and natural landscapes</b>  To protect the natural features and natural landscapes (including	<b>3.9 Managing adverse effects on SNAs</b>  (1) Except as provided in subclauses (2), (3) and (4), local authorities must	<b>1.5 Fundamental concept – Te Mana o te Wai</b>  Te Mana o te Wai, “the mana of the water”, refers to the fundamental value of

<p>makers must consider the constraints imposed on achieving those measures by the technical and operational requirements of the network.</p> <p><b>Policy 4</b></p> <p>When considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.</p> <p><b>Policy 8</b></p> <p>In rural environments, planning and development of the transmission system <u>should seek to avoid</u> adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.</p>	<p>seascapes) of the coastal environment from inappropriate subdivision, use, and development:</p> <p>a. avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and</p> <p>b. avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment; including by:</p> <p>c. identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to: ...</p>	<p>ensure that, in relation to any new subdivision, use or development that takes place in or affects, an SNA –</p> <p>a) the following adverse effects on the SNA are avoided: ...</p> <p>b) the effects management hierarchy<sup>40</sup> is applied to all other adverse effects.</p> <p>(2) All adverse effects of a new subdivision, use or development must be managed using the effects management hierarchy if –</p> <p>a) the subdivision, use or development is to take place in, or affects, an SNA classified as Medium; and</p> <p>b) there is a functional or operational need for the subdivision, use or development to be in that particular location; and</p>	<p>water and the importance of prioritising the health and wellbeing of water before providing for human needs and wants...The features of Te Mana o te Wai that are relevant to, and reflected in, this National Policy Statement, are: ... the hierarchy of obligations – to waterbodies first, then to the essential needs of people, and finally for other uses.</p> <p>In the context of this National Policy Statement, giving effect to Te Mana o te Wai requires the following, and may include other things as determined locally:</p> <p>a) adopting the priorities set out in the hierarchy of obligations; ...</p> <p><b>2.1 Objective</b></p> <p>The objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises:</p>
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<sup>40</sup> **effects management hierarchy** means an approach to managing the adverse effects of subdivision, use and development that requires that – a) adverse effects are avoided where possible; b) adverse effects that cannot be demonstrably avoided are remedied where possible; c) adverse effects that cannot be demonstrably remedied are mitigated; d) in relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting is considered; and e) if biodiversity offsetting is not demonstrably achievable for any indigenous biodiversity attribute on which there are residual adverse effects, biodiversity compensation is considered.

		<p>c) there are no practicable alternative locations for the subdivision, use or development; and</p> <p>d) the subdivision, use or development is associated with: i. nationally significant infrastructure: ...</p>	<p>a) first, the health and wellbeing of waterbodies and freshwater ecosystems; and</p> <p>b) second, the essential health needs of people; and</p> <p>c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.</p>
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## APPENDIX B - REVIEW OF APPROVAL PATHWAYS FOR NATIONALLY SIGNIFICANT OR 'MAJOR' INFRASTRUCTURE IN OVERSEAS JURISDICTIONS

Elements	England & Wales	Scotland	NSW	Victoria	Queensland	Denmark
<b>Major projects pathway</b>	Yes <ul style="list-style-type: none"> <li>- National Infrastructure Planning (NIP)</li> <li>- 'Development consent order' (single consenting process)</li> </ul>	Yes <ul style="list-style-type: none"> <li>- National development</li> </ul>	Yes <ul style="list-style-type: none"> <li>- State Significant Developments (SSD)</li> <li>- State Significant Infrastructure (SSI)</li> <li>- Critical State Significant Infrastructure (CSSI)</li> </ul>	Yes <ul style="list-style-type: none"> <li>- Ministerial 'call-in'</li> <li>- Major transport projects (road, rail, port)</li> <li>- Special legislation (large public infrastructure projects, e.g. East Link rail project)</li> <li>- Planning permits/planning scheme amendments (major projects not 'called-in')</li> <li>- Environmental Effects Statements (any project likely to have significant environmental impact)</li> </ul>	Yes <ul style="list-style-type: none"> <li>- State Assessment Referral Agency (SARA) (one-stop-shop for approvals where a state planning matter is triggered)</li> <li>- Ministerial 'call-in'</li> </ul>	Yes <ul style="list-style-type: none"> <li>- Projects of 'national significance'</li> </ul>
<b>Decision on whether a project qualifies as 'major'</b>	Secretary of State determines projects that will be subject to NIP process. Applications dealt with by England & Wales Planning Inspectorate; must issue a decision on validity within 28 days.	National Planning Framework (NPF) designates certain large scale developments as 'national developments'.	<ul style="list-style-type: none"> <li>- State Government (via legislation)</li> <li>- Minister of Planning can deem an SSI to be a 'critical' SSI.</li> </ul>	- State Government.	State Government specifies that it has a particular interest through the Planning Regulation 2017. Project must trigger a state planning matter.	Parliament considers and approves all projects of national significance.
<b>Criteria for determining a major project</b>	Must meet statutory criteria (however the Secretary of State may also include projects which do not meet the statutory criteria but	National Planning Framework (NPF)	Specific projects are detailed in the State Environmental Planning Policy (State and Regional Development) 2011; SSD have capital	Subjective - must be deemed to be of State or regional significance. Minister must 'call in' a project	State Development Assessment Provisions (SDAP) define the state's interest in development assessment.	Subjective - must be deemed by Parliament to be of national significance.



Elements	England & Wales	Scotland	NSW	Victoria	Queensland	Denmark
	are considered to be of national significance)		value greater than \$30m; SSI include large public infrastructure projects that have wide significance and impact (broader than local area).	to assess and approve it.	Supporting the timely, safe, affordable and reliable provision and operation of electricity is identified as a state interest.	
<b>Application information requirements</b>	Applications must be guided by the relevant National Policy Statement (e.g. energy and electricity networks) and will likely be required to include an environmental impact assessment.	Applicant must submit a Proposal of Application Notice to the local planning authority 12 wks prior to submission of a planning application. Includes pre-application consultation with the community, and a design and access statement. Applications may also require more extensive documentation e.g. Planning Statements, Environmental Statements, and Transport Impact Assessments. Full consideration of routes and development components required.	Once deemed an SSI, the infrastructure provider must prepare an Environmental Impact Statement (EIS) that is put up for public display (i.e. consultation).	Projects with potentially significant environmental impacts are likely to require an environmental impact assessment through the preparation of an Environment Effects Statement (EES).	Must demonstrate how application complies with applicable codes in State Development Assessment Provisions (SDAP). Environment impact assessment required.	All large projects must prepare Environmental impact assessments (EIAs).
<b>Assessment authority</b>	Planning Inspectorate assesses and makes a recommendation on the application to the relevant Secretary of State.	Local planning authority.	State Department of Planning, Industry and Environment assesses all SSI applications, including the EIS and public submissions, and makes a recommendation to the Minister of Planning.	The Minister of Planning can call-in a planning permit application if it meets one of more tests outlined in the Planning Act.	SARA assesses proposals on behalf of the chief executive administering the Planning Act (i.e. the Director-General of the Department of State Development, Manufacturing,	Parliament considers all projects of national significance. To support this, the relevant government ministry prepares a "white book" which includes a summary of all public input and

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					Infrastructure and Planning), and reviews development proposals against the criteria in the SDAP. For Ministerial call-ins, the Planning Minister assesses an application.	comments from the relevant government department.
<b>Approval authority/Decision</b>	Secretary of State makes final decision to grant (including any conditions) or refuse consent.	Local planning authority. Scottish Ministers may restrict the grant of planning permission by a planning authority or require certain conditions to be imposed.	Minister of Planning (decisions on CSSI cannot be delegated).	Minister for Planning.	SARA; For Ministerial call-ins, the Planning Minister approves an application.	Parliament passes an Act to approve the project and set conditions.
<b>Review / appeal rights</b>	Yes - there is opportunity for legal challenge following release of decision by the Secretary of State.	Appeals on decisions are made to the Scottish Government and dealt with by the Directorate for Planning and Environmental Appeals (DPEA). Appeals must be submitted within three months of the decision. In a small number of cases Ministers can make the final decision following recommendation from the DPEA. The decision by the DPEA or Ministers is final, subject only to challenge in the Court of Session by an aggrieved party.	Limited appeal rights on Minister's decision (limited to appealing the legal validity of a decision); no third party appeal rights in relation to critical SSI.	Yes - appeal rights are limited to review of the lawfulness of decisions (judicial review).	Yes – the applicant or anyone who has submitted on a development proposal can appeal a decision, provided the submission was 'properly made' (in writing, signed, specific and made by the due date).	Uncertain – probably limited.

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<b>Time limits</b>	Planning Inspectorate has 6 months to make a recommendation to Secretary of State.	Local planning authority must give notice of a decision within 4months of the validation date.	Uncertain.	Uncertain.	Uncertain.	Uncertain – likely determined by Parliament.
<b>Public consultation</b>	Yes - much is front-loaded, i.e. must take place before the NIP application is submitted – includes consultation with local authorities, other bodies, local community. Public hearing forms part of the process.	Yes – at multiple stages including pre-application; submissions; public hearing; Scottish Ministers may direct a planning authority to consult with specific authorities, persons or bodies in relation to the application before issuing a decision.	Yes - Environmental Impact Statement (EIS) is put up for public display (i.e. consultation) for a minimum 28 days and public can make submissions.	Yes - involves public participation unless specific exemptions apply. Generally, a proponent must develop and implement a Consultation Plan to inform individuals and groups who could be affected by the project and provide opportunities for input. Public participation in environment effects statement (EES) assessments.	Yes - applicants must publicly notify the community.	Yes - the process requires strong public engagement up front, including public meetings and public hearing processes.
<b>Local authority involvement</b>	Yes - Local authorities are consulted as part of process (and are involved in the NPS development process). Can submit a Local Impact Report (LIR) describing likely effects of the project on the local area for consideration by the Planning Inspectorate commissioner. Commissioners must have regard to a LIR.	Yes.	Yes - Local authorities and other government agencies are consulted as part of the process.	Yes - to minimise delays, applicants are encouraged to meet with the municipal council and relevant authorities before lodging an application.	Yes - Local authorities are consulted as part of the process.	Uncertain.
<b>Application publicly available</b>	Yes.	Yes?	Yes - the application and all supporting	Yes?	Yes – applications, decisions and reasons	Yes (but uncertain as to extent).

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			information are publicly available.		for decisions must be published on the relevant website.	
<b>Other comments</b>		Infrastructure planning and delivery has a very strong spatial planning basis. Infrastructure policies are devolved to the Scottish Government. Scottish Ministers expect planning decisions to support the delivery of the NPF.	A proposed inter-state (SA-NSW) Interconnector has recently (late 2019) been deemed a CSSI. An Environmental Impact Statement is being prepared for public exhibition and community feedback and an application has not yet been lodged.		The new planning legislation also provides for a State fast-track process (FastTrack5), however this may be of limited use to major projects with high complexity and the potential for significant environmental effects. The SARA FastTrack5 assessment pathway is a streamlined referral and assessment process that allows SARA to assess and quickly decide eligible triggers and aspects of development.	Strong national spatial planning basis.