

Before the Hearings Panel for the  
freshwater parts of the proposed  
Otago Regional Policy Statement

**Under the**

Resource Management Act 1991

**In the matter**

of submissions lodged on the Freshwater Planning Instruments  
Parts of the Proposed Otago Regional Policy Statement 2021

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**SUPPLEMENTARY STATEMENT OF EVIDENCE OF AINSLEY JEAN MCLEOD ON  
BEHALF OF TRANSPOWER NEW ZEALAND LIMITED (FPI013 and FSFPI013)**

**PLANNING**

**18 August 2023**

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**SIMPSON  
GRIERSON**

**Matt Conway / Sam Hart**

T: +64-4-499 4599

[matt.conway@simpsongrierson.com](mailto:matt.conway@simpsongrierson.com)

[sam.hart@simpsongrierson.com](mailto:sam.hart@simpsongrierson.com)

PO Box 2402 Wellington

## 1. SUMMARY OF EVIDENCE

**1.1** The submission made by Transpower New Zealand Limited (**Transpower**) on the Freshwater Planning Instrument Parts of the proposed Otago Regional Policy Statement (**pORPS FPI**) is concerned with, at a high level, the extent to which the pORPS FPI provisions give effect to the National Policy Statement on Electricity Transmission 2008 (**NPSET**), alongside the way in which the provisions give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM**).<sup>1</sup> More specifically, Transpower's submission addresses how the pORPS FPI Freshwater defines 'specified infrastructure' and how such infrastructure, including the National Grid, is managed in respect of freshwater.

**1.2** Transpower's further submissions:

- (a) support further refinement to the provisions of the pORPS FPI so that the provisions appropriately manage specified infrastructure in respect of freshwater and give effect to the relevant national planning instruments; and
- (b) oppose relief sought in a primary submission that would result in the pORPS FPI not giving effect to the relevant national planning instruments.

**1.3** The provisions of the National Policy Statement for Indigenous Biodiversity 2023<sup>2</sup> (**NPSIB**) do not apply to electricity transmission assets<sup>3</sup> and activities. As such, any amendments to the pORPS to give effect to the NPSIB should not influence or impact on Transpower's ability to undertake electricity transmission activities and, as relevant, the relief sought by Transpower in its submission. Further, the statutory framework for the consideration of Transpower's submission is unchanged.

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<sup>1</sup> Incorporating amendments and dated February 2023.

<sup>2</sup> Gazetted on 7 July 2023 and came into force on 4 August 2023.

<sup>3</sup> Also known as the **National Grid**.

**1.4** My evidence:

- (a) confirms that where the pORPS FPI includes provisions that address indigenous biodiversity in natural wetlands, it is possible that such provisions will need to include an exception for, or bespoke approach to, electricity transmission assets and activities because the higher order planning instruments that apply differ; and
- (b) considers the additional recommendations in respect of submissions made in the 'Evidence of Felicity Ann Boyd FPI – Implications of the NPSIB' (**ORC supplementary evidence**) as relevant to the relief sought by Transpower and the exclusion of electricity transmission activities and assets from the NPSIB.

**1.5** The explicit direction that the NPSIB does not apply to the National Grid assets and activities means that:

- (a) the NPSIB has no influence on the relief sought in Transpower's submission as it relates to the National Grid;
- (b) the statutory framework for decisions on Transpower's submission is not changed by the NPSIB coming into force;
- (c) where the pORPS FPI includes provisions that give effect to the NPSIB such provisions, including Policy LF-FW-P9 – Protecting natural wetlands, must respond to the exclusion of electricity transmission from the NPSIB.

**2. INTRODUCTION, QUALIFICATIONS AND EXPERIENCE**

**2.1** My full name is Ainsley Jean McLeod. My evidence in chief was filed on 28 July 2023. My qualifications and relevant experience are set out in this earlier evidence. I do not repeat this information here.

**2.2** This statement of evidence supplements my earlier evidence and is confined to addressing the implications of the NPSIB on the pORPS FPI, as directed by '*Minute 7 of the Freshwater Hearing Panel as to Timetable for consideration of NPS IB 2023*' dated 21 July 2023.

**2.3** For the purposes of this supplementary evidence, I rely on, as relevant:

- (a) my earlier evidence prepared in relation to the non-freshwater parts of the proposed Otago Regional Policy Statement (**pORPS non-freshwater**)<sup>4</sup> and the pORPS FPI;<sup>5</sup>
- (b) the evidence of **Mr Roy Noble**, filed in relation to the hearing of submissions on the pORPS non-freshwater;<sup>6</sup>
- (c) the evidence of **Ms Julia Kennedy**, filed in relation to the hearing of submissions on the pORPS FPI.<sup>7</sup>

#### **Code of Conduct**

**2.4** I confirm that I have prepared this evidence in accordance with the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. The issues addressed in this statement of evidence are within my area of expertise except where I state that I am relying on the evidence or advice of another person. The data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

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<sup>4</sup> <https://www.orc.govt.nz/media/13347/transpower-new-zealand-limited-ainsley-mcleod.pdf>

<sup>5</sup> <https://www.orc.govt.nz/media/14545/transpower-new-zealand-ainsley-mcleod.pdf>

<sup>6</sup> <https://www.orc.govt.nz/media/13348/transpower-new-zealand-limited-roy-noble.pdf>

<sup>7</sup> <https://www.orc.govt.nz/media/14546/transpower-new-zealand-julia-kennedy.pdf>

### **3. SCOPE OF EVIDENCE**

#### **3.1 My evidence:**

- (a) describes the exemption from the provisions of the NPSIB that applies to electricity transmission assets and activities;
- (b) sets out the implications of this exemption in respect of the pORPS FPI, and Transpower's submissions on the pORPS FPI; and
- (c) addresses the additional recommendations made in ORC supplementary evidence as relevant to the relief sought by Transpower and the exclusion of electricity transmission activities and assets from the NPSIB, primarily in respect of Policy LF-FW-P9.

### **4. THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY 2023**

**4.1** The supplementary evidence filed by the ORC (dated 11 August 2023) provides a fulsome overview of the content of the NPSIB. I do not repeat this description here except to note that the evidence acknowledges that, in respect of the application of the NPSIB set out in section 1.3, clause (3) directs that:

*“(3) Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not “specified infrastructure” for the purposes of this National Policy Statement.”*

**4.2** The NPSIB defines the ‘electricity transmission network’ as “the National electricity transmission network assets means the physical components

of the electricity transmission network, along with all access roads and tracks required to operate and maintain those assets”. The electricity transmission network is the National Grid, with the NPSET defining the ‘electricity transmission network, electricity transmission and transmission activities/assets/infrastructure/resources/system’ as:

*“all mean part of the national grid of transmission lines and cables (aerial, underground and undersea, including the high-voltage direct current link), stations and sub-stations and other works used to connect grid injection points and grid exit points to convey electricity throughout the North and South Islands of New Zealand.”*

**4.3** The ‘*Recommendations and decisions report on the National Policy Statement for Indigenous Biodiversity*’<sup>8</sup> (**NPSIB Recommendations Report**) explains the rationale for the exclusion of renewable electricity generation and electricity transmission from the NPSIB. I consider that this explanation provides useful context to understanding how the pORPS FPI responds to these exclusions in the NPSIB and, as such, I set out the relevant paragraphs as follows:

*“Submitters and stakeholders raised concerns that the provisions would not sufficiently enable the deployment of renewables at the scale and pace required to meet emissions targets and decarbonise Aotearoa’s economy.*

*A discussion document on strengthening national direction on renewable electricity generation (REG) and electricity transmission (ETN) was released for public consultation between April and June 2023. It put forward a range of options for providing for greater and faster uptake and development of REG, including options for consent pathways for REG and ETN development affecting SNAs and other matters of national importance. The preferred approach includes a consent pathway and effects management hierarchy for*

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<sup>8</sup> <https://environment.govt.nz/assets/publications/biodiversity/Recommendations-and-decisions-report-on-the-NPSIB.pdf>

*significant environmental values that differs from the one in the NPSIB and the NPS-FM. The gazetting of the NPSIB with an alternative consent pathway during the consultation period would create confusion with the consultation process on REG and ETN consent pathways.*

*A range of options were considered for addressing the potential conflict between the documents and the perceived impediment that the NPSIB could pose for new REG/ETN development that impacts SNAs, including a bespoke pathway in the NPSIB. It was considered simpler to provide a specific pathway for all REG/ETN development within the final amendments arising from the discussion document. This would also entail removing REG/ETN from the specified infrastructure definition in the NPSIB and clarifying that none of the NPSIB provisions applies to REG/ETN development.*

*This will leave all REG/ETN applications for new developments, upgrades, maintenance and operation to be dealt with directly by the RMA, and associated RMA plans and policy statements, until such time as the amendments to the NPS-REG and associated documents are finalised and come into effect. An issue with this approach is that several options are being consulted on, and the final outcome of this process is not yet known, which creates a level of uncertainty for industry in the interim.*

*This approach could ultimately provide a simpler, more consistent consent pathway for REG/ETN developments adversely affecting any of the significant environmental values identified as matters of national importance in section 6 of the RMA. It would also provide greater certainty to REG/ETN development in the longer term.”*

**4.4** The explicit direction that the NPSIB does not apply to the National Grid assets and activities means that:

- (a) the NPSIB has no influence on the relief sought in Transpower’s submission where that relief relates specifically to the National

Grid and matters addressed by the NPSIB (and the relief sought remains 'current');

- (b) the statutory framework that is relevant to the National Grid, that is set out in my earlier evidence,<sup>9</sup> is not changed by the NPSIB coming into force;
- (c) where the pORPS FPI includes provisions that address indigenous biodiversity in natural wetlands, it is possible that such provisions will need to include an exception for, or bespoke approach to, electricity transmission assets and activities because the higher order planning instruments that apply differ.

**4.5** By way of further explanation, when addressing indigenous biodiversity in natural inland wetlands, the pORPS FPI must give effect to the NPSIB. However, where the same provisions that give effect to the NPSIB relate to electricity transmission assets and activities, these provisions, to the extent that they apply to the National Grid, do not need to give effect to the NPSIB but must give effect to the NPSET and recognise and provide for the matters of national importance in section 6(c) of the Resource Management Act 1991 (**RMA**).

**4.6** In addition, given the National Grid is exempt from the NPSIB, and ORC's further recommended amendments to the pORPS FPI are only meant to go so far as to give effect to the NPSIB, I am of the view that such recommended amendments should not promote:

- (a) new provisions that apply to electricity transmission assets or activities; or
- (b) provisions that already apply to electricity transmission assets or activities being amended to be more restrictive.

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<sup>9</sup> At Section 4 (<https://www.orc.govt.nz/media/13347/transpower-new-zealand-limited-ainsley-mcleod.pdf>)



## 5. THE ORC SUPPLEMENTARY EVIDENCE

- 5.1 The ORC supplementary evidence identifies those parts of the NPSIB that are relevant to the pORPS FPI, including provisions that relate to natural inland wetlands and effects management hierarchies.
- 5.2 In respect of natural wetlands, my earlier evidence is that Objective LF-FW-09 Natural Wetlands requires an amendment to provide ‘pathways’ for certain activities, including the National Grid activities in order to properly give effect to the NPSFM and the NPSET (insofar as the Objective relates to the National Grid), and achieve the purpose of the RMA.<sup>10</sup> The ORC supplementary evidence does not recommend further amendments to Objective LF-FW-09 in response to Transpower’s submission and my evidence.
- 5.3 I continue to support the amendment to Objective LF-FW-09 set out in my earlier evidence for the reasons given and, in addition, note that my conclusion in respect of the need for ‘pathways’ is precisely the issue that is addressed in the NPSIB Recommendations Report.
- 5.4 Objective LF-FW-09 is implemented by Policy LF-FW-P9 Protecting natural wetlands. The *‘Section 42A Hearing Report, Proposed Otago Regional Policy Statement, Parts considered to be a Freshwater Planning Instrument under section 80A of the Resource Management Act 1991’*, dated 2 June 2023 (**Section 42A Report**) recommends that Policy LF-FW-P9 be replaced in its entirety so that the Policy includes a direct cross reference to clause 3.22 of the NPSFM subject to ‘exceptions’ to the direction in the NPSFM for the protection of natural wetlands in respect of the coastal environment and indigenous biodiversity.<sup>11</sup>
- 5.5 The rationale given in the Section 42A Report for the exception in respect of indigenous biodiversity is that the NPSFM effects management hierarchy is less stringent than the pORPS hierarchy contained in Policy

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<sup>10</sup> Paragraphs 8.13 to 8.19 (<https://www.orc.govt.nz/media/14545/transpower-new-zealand-ainsley-mcleod.pdf>)

<sup>11</sup> Section 42A Report, paragraph 1444.

ECO-P6 and the intent of the provisions, as recommended in the Section 42A Report, is to manage aquatic biodiversity as stringently as terrestrial biodiversity.<sup>12</sup>

- 5.6** In my earlier evidence, I support the deletion of the ‘indigenous biodiversity exception’ on the basis that there is no justification for managing aquatic biodiversity more stringently than what is required in the NPSFM because natural inland wetlands, including indigenous biodiversity therein, are managed through the NPSFM. I acknowledge that, subject to the electricity transmission and generation exclusion from the NPSIB, that the NPSIB effects management hierarchy would apply to indigenous biodiversity in natural wetlands.
- 5.7** In terms of the ‘indigenous biodiversity exception’, the ORC supplementary evidence concludes that the effects management hierarchy in Policy ECO-P6 and the effects management hierarchy NPSIB are both more stringent than the NPSFM and concludes that it is appropriate for the effects management hierarchy in the Policy ECO-P6 (or its replacement with the effects management hierarchy from the NPSIB) to apply, through Policy LF-FW-P9, to effects on aquatic indigenous biodiversity. In reaching this conclusion, the supplementary evidence has not explicitly considered the fact that the NPSIB does not apply to electricity transmission assets and activities (that is, the National Grid).
- 5.8** Because the NPSIB does not apply to electricity transmission assets and activities, I am of the view that qualifying or confining the ‘pathway’ for specified infrastructure in clause 3.22 of the NPSFM is not appropriate and is inconsistent with the exclusion of the National Grid from the NPSIB. For this reason, I have revised the amendments to Policy LF-FW-P9 set out in my earlier evidence to include a narrow exemption for the National Grid (as set out below). In this regard, I note that the exemption could be similarly drafted into Policy ECO-P6.

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<sup>12</sup> Paragraphs 1450 to 1453.

**5.9** The ORC supplementary evidence also recommends the inclusion of a new clause (1) that directs the prevention of ‘*activities that will, or are likely to, result in irreversible damage to a natural wetland*’. I understand that this recommended amendment is intended to give effect to clause 3.21(2)(d) of the NPSIB and respond to the submission made by Kāi Tahu ki Otago.<sup>13</sup> However, the recommended amendment goes beyond the protection anticipated by clause 3.21 of the NPSIB, which relates to restoration of indigenous biodiversity, rather than irreversible impacts on natural wetlands. Similarly, the submission made by Kāi Tahu ki Otago seeks that degradation of wetlands is reversed. On this basis, I do not consider that there is clear rationale for the amendment proposed and as such, I do not support its inclusion.

**5.10** Should recommended new clause (1) be included in Policy LF-FW-P9, I consider that the clause should not apply to electricity transmission because the new clause is explicitly embedding the NPSIB concept of irreversibility<sup>14</sup> and is therefore inconsistent with the exclusion of electricity transmission from the NPSIB.<sup>15</sup> It also goes beyond the intended scope of the NPSIB by applying to all natural wetlands, rather than just natural inland wetlands.

**5.11** The further amendments I propose to Policy LF-FW-P9 are as follows (the Section 42A Report amendments are shown in black; the ORC supplementary evidence amendments are shown in **green**; and the amendments I support are shown in **red**):

*“LF-FW-P9 – Protecting natural wetlands*

*Protect natural wetlands by:*

*~~(1) preventing activities that will, or are likely to, result in irreversible damage to a natural wetland; and~~*

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<sup>13</sup> Felicity Boyd statement of evidence, 11 August 2023 at [85].

<sup>14</sup> NPSIB, clause 3.7(1).

<sup>15</sup> NPSIB, clause 1.3(3).

~~(2)~~ for natural inland wetlands, implementing clause 3.22(1) to (3) of the NPSFM, except that:  
(1a) in the coastal environment, natural wetlands must also be managed in accordance with the NZCPS, and  
(2b) when managing the adverse effects of an activity, other than the effects of a National Grid activity, on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) applies instead of the effects management hierarchy (in relation to natural wetlands and rivers)."

*Associated relief*

**5.12** While I propose these amendments to Policy LF-FW-P9, I continue to support a bespoke policy that provides a comprehensive consenting pathway for the National Grid. The fact that electricity activities are excluded from the NPSIB further supports the case for a carve-out policy that has been addressed in detail in my earlier evidence.<sup>16</sup>

**Ainsley Jean McLeod**

**Date: 18 August 2023**

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<sup>16</sup> At paragraph 8.30 of my evidence in respect of the pORPS non-freshwater I state:  
"In my experience, the outcome of not ignoring the NPSET and the necessary weighing exercise is often the need for bespoke provision for the National Grid, achieved in a policy context by a 'carve out' approach. Examples of this include Policy 4.3.6 in the Partially Operative ORPS and Objective 5.2.X (and implementing policies) of the Proposed Dunedin City District Plan."