

In the Environment Court of New Zealand
at Auckland

ENV-2016-AKL-

in the matter of: the Local Government (Auckland Transitional Provisions) Act 2010 (*LGATPA*) and the Resource Management Act 1991 (*RMA*)

and:

in the matter of: an appeal under section 156(1) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel on the Proposed Auckland Unitary Plan

and:

in the matter of: Proposed Auckland Unitary Plan Hearing Topic 042 Infrastructure

between: Transpower New Zealand Limited
Appellant

and: Auckland Council
Respondent

Notice of Appeal by Transpower New Zealand Limited against
decisions on the Proposed Auckland Unitary Plan

Dated: 16 September 2016

REFERENCE: James Gardner-Hopkins (james@jghbarrister.com)
Luke Hinchey (Luke.Hinchey@chapmantripp.com)

Chapman Tripp
T: +64 9 357 9000
F: +64 9 357 9099

23 Albert Street
PO Box 2206, Auckland 1140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch

**CHAPMAN
TRIPP** 

To The Registrar
Environment Court
Auckland

Introduction

- 1 Transpower New Zealand Limited (*Transpower*) appeals against a decision of the Auckland Council (*Council*) on the Proposed Auckland Unitary Plan (*Proposed Plan*) in respect of its decision on the width of the National Grid Corridor Overlay.
- 2 Transpower has the right to appeal the Council’s decision under section 156(1) of the LGATPA because the Council rejected a recommendation of the Auckland Unitary Plan Independent Hearings Panel (*Panel*) in relation to a provision or matter Transpower addressed in its submissions on the Proposed Plan (submission number 3766, further submission number 2977). The Council decided on an alternative solution, which resulted in provisions being included in the Proposed Plan that were not included in the Panel’s recommendations and provisions being excluded from the Proposed Plan that were included in the Panel’s recommendations.
- 3 More specifically:
 - (a) The notified width of the National Grid Corridor Overlay was 24 metres (12 metres either side of the centreline of National Grid lines).
 - (b) Transpower sought in its submission (submission number 3766 -312/313, 395, 425) that the National Grid Corridor Overlay width be 32 metres either side of the centreline of 110kV National Grid lines and 37 metres either side of the centreline of 220kV National Grid lines.
 - (c) The Panel accepted Transpower’s submission and recommended that: “the National Grid Corridor Overlay be increased to the extent sought by Transpower New Zealand Limited” (at 3.2 of Hearing Topic Report 042).
 - (d) The Council rejected that recommendation of the Panel, deciding to maintain the notified width of the National Grid Corridor Overlay at 24 metres (at 32.2 of the Council’s Decision Report).
- 4 Transpower is not a trade competitor for the purposes of section 308D of the RMA.
- 5 Transpower received notice of the decision on 19 August 2016.
- 6 The decision that Transpower is appealing is that of the Council recorded at 32.2(a) of its Decisions Report to reject the Panel’s recommendation to:

Increase the extent of the National Grid Corridor overlay, as it relates to the area 32m each side of 110kv lines and 37m each side of the centerline of 220kv lines.

7 The specific provisions being appealed, as a consequence of that decision, as contained in Attachment A to the Council’s decisions (alternative solutions prepared by the Council for any rejected recommendations) are:

(a) The deletion of that part of Table D26.4.2 Activity Table that controlled subdivision within the National Grid Corridor as follows:

~~Table D26.4.2 Activity table within the National Grid Corridor outside the National Grid Yard~~

Activity		Activity status
Subdivision		
(A27)	For all other subdivision on land within an urban zone the activity status listed in E38 Subdivision – Urban under Tables E38.4.1 to E38.4.5 will apply	
(A28)	For all other subdivision on land within a rural zone the activity status listed in E38 Subdivision – Rural under Tables E39.4.1 to E39.4.5 will apply	
(A29)	Subdivision for controlled activities in E38 Subdivision – Urban and E39 Subdivision Rural that do not comply with Standards D26.6.2.1(1) and D26.6.2.1(2)	NC

(b) The consequential deletion of references to Rule D26 National Grid Corridor Overlay as follows:

- (i) The references in D26.4 Activity Table to Table D26.4.2 Activity Table (subdivision within the National Grid Corridor outside the National Grid Yard).
- (ii) The references in D26.5 Notification to Table D26.4.2 (subdivision within the National Grid Corridor outside the National Grid Yard).
- (iii) The references in D26.6.1 Permitted Activity Standards to D26.4.2.

- (c) The consequential amendment of the definition of “National Grid Corridor” as follows:

National Grid Corridor

The area which is within:

- ~~32m each side of the centerline of a 110kV National Grid overhead line;~~
- ~~37m each side of the centerline of a 220kV National Grid overhead line;~~
- 12m of the site boundary of a National Grid substation; and the road carriageway (excluding footpath, berms, kerbs and the road verge) on roads identified on the planning maps.

- (d) The consequential amendment of the Planning Maps to:

... delete the National Grid Corridor as it applies to 32m each side of the centreline of a 110kV National Grid overhead line and 37m each side of the centreline of a 220kV National Grid overhead line.

- (e) Any consequential or other changes that follow from, or are related to, any of the changes made by the Council identified in paragraphs (a) to (d) above.

Reasons for the appeal

- 8 The reasons for the appeal follow.

General reasons

- 9 Without limitation, providing for a National Grid Corridor Overlay width of 32 metres either side of the centreline of 110kV lines and 37 metres either side of the centreline of 220kV lines as sought by Transpower in its submission and as recommended by the Panel:

- (a) will promote the sustainable management of resources and achieve the purpose and principles of the RMA;
- (b) will ensure the efficient use and development of natural and physical resources;
- (c) will enable social, economic and cultural well being;
- (d) will meet the reasonably foreseeable needs of future generations;
- (e) is “most appropriate” in terms of section 32 of the RMA;

- (f) will give effect to the National Policy Statement on Electricity Transmission (*NPSET*);
 - (g) will give effect to the objectives and policies of the Regional Policy Statement contained in the Proposed Plan; and
 - (h) is coherent with the various other provisions in the Proposed Plan that seek to address issues in respect of the National Grid.
- 10 In contrast, the Council's decision to limit the National Grid Corridor Overlay to 24 metres (12 metres either side of the centreline of National Grid lines):
- (a) will not promote the sustainable management of resources and achieve the purpose and principles of the RMA;
 - (b) is contrary to Part 2 and other provisions of the RMA;
 - (c) will not ensure the efficient use and development of natural and physical resources;
 - (d) will not enable social, economic and cultural well being;
 - (e) will not meet the reasonably foreseeable needs of future generations;
 - (f) is not "most appropriate" in terms of section 32 of the RMA, and was not justified by any section 32 or 32AA analysis;
 - (g) will not give effect to the NPSET;
 - (h) will not give effect to the objectives and policies of the Regional Policy Statement contained in the Proposed Plan; and
 - (i) is not coherent with the various other provisions in the Proposed Plan that seek to address issues in respect of the National Grid.

Failure to give effect to the NPSET

- 11 The Council in its Proposed Plan is required to "give effect to" (or "implement") the NPSET, and in particular the following Policies:
- (a) Policy 2 of the NPSET, which requires the Council to "recognise and provide for the effective operation, maintenance, upgrading ... of the electricity transmission network".

- (b) Policy 5 of the NPSET, which requires the Council to “enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets”.
 - (c) Policy 10 of the NPSET, which requires the Council, “to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised”.
 - (d) Policy 11 of the NPSET, which requires, following consultation with Transpower, the Council to “identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent”.
- 12 The Council’s decision to limit the National Grid Corridor Overlay to 24 metres (12 metres either side of the centreline of National Grid lines) fails to give effect to or to implement these Policies of the NPSET.

Failure in Council’s reasoning / to have regard to the relevant evidence

- 13 The Council stated the following reasons (at 32.2(a) of its Decision Report) for its decision to limit the National Grid Corridor Overlay to 24 metres (12 metres either side of the centreline of National Grid lines):
- (i) The appropriate corridor width to give effect to Policy 11 of the National Policy Statement on Electricity Transmission 2008 (NPSET) is as notified in the PAUP, being 24m (12m either side of the transmission lines centreline), which enables control of activities sensitive to the lines, access to the national grid infrastructure for operation, maintenance and upgrade purposes and compliance with the relevant clearances required under the NZECP 34:2001.
 - (ii) There is insufficient evidential basis to identify and assess the potential development implications associated with the broader corridor.
- 14 Reason (i) is conclusory, and does not outline the intellectual route taken by the Council to reach the decision it did.¹
- 15 To the extent that Reason (i) refers to control, access, and NZECP 34:2001, the Council does not acknowledge and/or explain why it does not accept Transpower’s evidence (as the Panel did) on those

¹ *Murphy v Rodney District Council* [2004] 3 NZLR 421 at para 25 and *Lewis v Wilson & Horton Limited* [2000] 3 NZLR 564 at 565-567.

matters, including the evidence summarised by the Panel in its recommendation report that:

- (a) The distance of 32 metres from the centreline of 110kV lines and 37 metres from the centreline of 220kV lines relates to the potential for line swing and has been calculated conservatively for Auckland conditions.
- (b) The wider corridor is required to manage future subdivision to ensure structures and activities within the Corridor are within safe electrical distances in high winds.
- (c) The limitations of the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001), including:
 - (i) that the minimum safety requirements in NZECP34:2001 neither seek to protect the integrity of the National Grid from the effects of third parties, nor prevent development (including sensitive and intensive development) from occurring directly underneath transmission lines; and
 - (ii) that NZECP34:2001 does not ensure the operation, maintenance, upgrade and development of the National Grid is not compromised and does not adequately account for earth potential rise hazard contours.
- (d) The evidence of the problems, often severe, that Transpower has experienced in obtaining access to and adequate working space to undertake repairs and maintenance where development has occurred under and around the National Grid. In addition, there is a need to ensure that these issues do not arise in the future. This was explicitly recognised and accepted by the Panel as follows (at [3.2] of its report on Hearing Topic 042, Infrastructure):

Mr Noble and Ms Fincham provided a number of examples that clearly demonstrated the problems Transpower New Zealand Limited faces in obtaining access and adequate working space to undertake repairs and maintenance where development has occurred under and around the national grid. In some cases the under-build has severely restricted and compromised Transpower's ability to undertake maintenance or project work.

...

The need to ensure that these issues do not arise in the future, together with issues associated with the health and safety of people and property and with reverse sensitivity, are key reasons for the Panel's recommendations on the extent of the National Grid Corridor Overlay.

- (e) The wider corridor is appropriate in terms of planning and urban design considerations and that within the corridor, subdivision and new sensitive land use can be carefully designed and planned.
 - (f) Reverse sensitivity effects may be experienced over a much greater distance than the wider corridor.
- 16 In respect of Reason (ii) and the perceived costs of the wider corridor, the Council fails to acknowledge and/or explain why it does not accept Transpower's evidence (as the Panel did) that:
- (a) The corridor rules for activities outside the National Grid Yard do not restrict land use and therefore impose no cost from that perspective.
 - (b) To the extent that the corridor rules for activities outside the National Grid Yard manage subdivision, they do not generally change the status of subdivision within the relevant zone:
 - (i) Generally, the proposed rules were only to require an additional matter (effects on the National Grid) be added for consideration in the context of a restricted discretionary subdivision, to enable electricity transmission lines and conductor swing to be taken in to account at the time of subdivision, orienting building platforms to minimise reverse sensitivity effects, and considering options for siting roads, services and open space within the corridor.
 - (ii) In rare cases, if Standards D26.6.2.1(1) and D26.6.2.1(2) were not to be met, non-complying activity status would be triggered. The relevant policies would also then need to be taken into account.
- 17 Accordingly, there are in fact limited negative "development implications" associated with the broader corridor.

Relief sought

- 18 Transpower seeks the following relief:

- (a) That the Panel's recommendations that the National Grid Corridor Overlay width be 32 metres either side of the centreline of 110kV National Grid lines and 37 metres either side of the centreline of 220kV National Grid lines be adopted.
- (b) That all text deleted in Topic 042 D26 National Grid Corridor Overlay of Attachment A to the Council's decisions be reinstated.
- (c) Any other necessary or appropriate consequential relief.
- (d) Costs.

Service and attachments

- 19 An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.
- 20 The following documents are attached to this notice:
- (a) a copy of the relevant part of the decision (**Appendix 1**);
 - (b) a copy of Transpower's submissions (**Appendix 2**); and
 - (c) a copy of Transpower's notice of appeal to the High Court referred to below (**Appendix 3**).
- 21 The Auckland Council is to be served with a copy of this notice of appeal. Other persons are not required to be specifically served.
- 22 Transpower is lodging a notice of appeal to the High Court (*High Court Appeal*) against the decision of the Council to accept, unchanged, a number of recommendations of the Panel that failed individually, collectively, and consequentially (and most likely inadvertently) to appropriately manage certain buildings, structures and activities within the National Grid Yard, including:
- (a) Provisions that fail to adequately manage certain buildings, structures and certain subdivision within the National Grid Yard as follows:
 - (i) Rule A11 in Table D26.4.1, which prevents any management of buildings, structures and alterations for "non-sensitive" activities (other than for certain horticultural and agricultural buildings and structures) by providing for them as permitted activities within the National Grid Yard.

- (ii) Rules A22 to 26 in Table D26.4.1 and the subdivision provisions Chapters E38 Urban and E39 Rural, which, in a similar way to Rule A11, fail to adequately manage subdivisions involving building platforms within the National Grid Yard (unless the platform is for a "sensitive activity").
 - (iii) Policies D26.3(1)(i) and (j), which fail to provide policy direction as to the appropriateness of buildings, structures and activities within the National Grid Yard depending on whether the relevant area is already compromised by underbuild, or whether the corridor (the National Grid Yard) can be protected so that the line does not become compromised by future development.
- (b) Rule A5 in Table D26.4.1, which currently provides a barrier to certain land use activities (which was not sought by Transpower) by imposing a default activity status of non-complying for "any activity not otherwise provided for".

23 The proceedings are related in that:

- (a) the National Grid Yard falls within the National Grid Corridor which is the subject matter of this appeal to the Environment Court;
- (b) various matters raised in the High Court Appeal relate to the control of activities including non-sensitive activities and buildings and structures for such activities within the National Grid Yard; and
- (c) the outcome of the High Court Appeal may affect the consequences of land being identified as within the National Grid Corridor.



James Gardner-Hopkins / Luke Hinchey
Counsel for the Appellant
16 September 2016

Address for service of person:

Transpower New Zealand Limited
c/- Luke Hinchey
Chapman Tripp
Level 38
23 Albert St
Auckland
Email address: Luke.Hinchey@chapmantripp.com
Telephone: 09 357 2709

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant submission and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

APPENDIX 1 – COPY OF THE RELEVANT PART OF THE DECISION

APPENDIX 2 – TRANSPOWER’S SUBMISSIONS

APPENDIX 3 – TRANSPOWER’S NOTICE OF APPEAL TO THE HIGH COURT