To	Southland District Council and Environment Southland	**27 May 2025**
From	Bill Loutit and Rachel Abraham	
Subject	Specified Infrastructure under the National Policy Statement for Freshwater Management	

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1. DataGrid NZ is proposing to establish a data centre for AI training, a landing station for a sub-sea data cable, and a power sub-station on a 49ha site in Makarewa, Invercargill (**site**) (together, the **Proposed Works**). Initial studies have identified a 'natural inland wetland' (as defined under the National Policy Statement for Freshwater Management (**NPS-FM**)) at the south of the site, which the Proposed Works may be required to come within 100 metres of.

2. This memorandum:

   (a) describes the Proposed Works;

   (b) describes the exemption for development of "specified infrastructure" within 100 metres of a natural inland wetland that is contained in cl 3.22 of the NPS-FM, Policy 33A of the Proposed Southland Water and Land Plan (**Water and Land Plan**) and Policy 40A of the Regional Water Plan for Southland (**Water Plan**); and

   (c) confirms our interpretation that the proposed data centre and its associated activities fall within the definition of "specified infrastructure" and meet the other criteria that are required to pass through the exemption pathways provided for in these provisions.

Proposed Works

3. DataGrid NZ is proposing to establish the following network through the Proposed Works:

   (a) in partnership with a third party, a new submarine cable connecting the east coast of Australia to Invercargill;

   (b) a cable landing station, capable of serving up to 3 submarine cables, located on land owned by DataGrid NZ at Makarewa, Southland;

   (c) a subsurface terrestrial cable through Invercargill and surrounding areas, from the beach landing point to the cable landing station;

   (d) a sustainable data centre park to support AI data computing in a data centre, including a dedicated 220kV substation, which will also be located on Datagrid NZ's land at Makarewa; and

   (e) a terrestrial fibre network located on the Makarewa land to interconnect the data inside the data centre to the cable landing station and points of presences of NZ telecommunication operators.

4. Each of these components are critical to the Proposed Works as a whole, and no component would be established if not for the others.

5. Together, the Proposed Works will provide a powerful direct fibre connectivity between the South Island and the east coast of Australia, and associated AI training at the data centre park.

6. It is intended that, subject to the necessary approvals, construction of the Proposed Works will commence in 2026, starting with the cable landing station and other connectivity parts of the Project including the submarine cable and all necessary terrestrial fibre network. Completion of the Project, including the electrical substation and the central operation building, is planned to be completed by 2029.

Relevant Provisions Regarding Development in Natural Inland Wetlands

7. Policy 6 of the NPS-FM requires that "there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted." Clause 3.22 states that every regional council must include a policy in its regional plan that states:

> "The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:
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> …
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> (b) the regional council is satisfied that:
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> (i) the activity is necessary for the purpose of the construction or upgrade of specified infrastructure; and
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> (ii) the specified infrastructure will provide significant national or regional benefits; and
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> (iii) there is a functional need for the specified infrastructure in that location; and
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> (iv) the effects of the activity are managed through applying the effects management hierarchy; or
>
> …

8. The Policy in clause 3.22 of the NPS-FM is included at Policy 33A of the Water and Land Plan and Policy 40A of the Water Plan. Policy 33A of the Water and Land Plan is not under appeal, making Policy 33A operative.

9. Four conditions need to be established for the exemption in cl 3.22, Policy 33A of the Water and Land Plan and Policy 40A of the Water Plan to be fulfilled and the Proposed Works to be allowed to proceed on the natural inland wetland:

(a) the activity must be "necessary for the purpose of the construction" of the specified infrastructure;

(b) the specified infrastructure will provide national or regional benefits;

(c) there must be a functional need for the specified infrastructure to be in the location; and

(d) the effects of the activity are managed through applying the effects management hierarchy.

'Specified infrastructure'

10. The term "specified infrastructure" in the NPS-FM includes six alternative pathways, two of which apply to the Proposed Works:

    (a) "infrastructure that delivers a service operated by a lifeline utility"; and

    (b) "infrastructure that is recognised as regionally or nationally significant in a National Policy Statement, New Zealand Coastal Policy Statement, regional policy statement or regional plan."

11. With respect to paragraph (a) lifeline utility:

    (a) "Lifeline utility" is defined in cl 3.21 as having the meaning in Section 4 of the Civil Defence Emergency Act 2002 (**CDEA**).

    (b) Section 4 of the CDEA defines a lifeline utility as "*an entity named or described in Part A of Schedule 1, or that carries on a business described in Part B of Schedule 1.*"

    (c) Part B of Schedule 1 of the CDEA includes "*an entity that provides a telecommunications network (within the meaning of the Telecommunications Act 1987)*."

    (d) Telecommunications is defined in section 5 of the Telecommunications Act as "*…the conveyance from one device to another of any sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not*."

    (e) Network is defined in section 5 of the Telecommunications Act as "*a system comprising telecommunication links to permit telecommunication."*

12. In our opinion, the proposed development fits within the definition at paragraph (a) of 'specified infrastructure' because:

    (a) Taken together, the Proposed Works will be conveying data connectivity between Australia and the South Island. The site will receive connectivity from an international fibre network (the Tasman Ring Network) via the submarine cable, and from the New Zealand networks via a terrestrial fibre network.

    (b) As well as processing data and information within the data centre, the Proposed Works will be conveying data to the domestic terrestrial fibre network. This will allow customers to pay to use the South Island Tasman Ring Network as an alternative to the current national network which relies on the international fibre connection which has its landing point in the North Island. This function fits within the category of conveying "s*igns, signals, impulses, writing, image, sound, instruction, information, or intelligence"* in the definition above.

13. The data centre also fits within paragraph (b) of the definition of specified infrastructure because it is identified as regionally and/or nationally significant infrastructure in the Southland Regional Policy Statement (**RPS**). The relevant RPS definitions are below:

    (a) **Nationally significant infrastructure:** Infrastructure which contributes to the development and wellbeing and health and safety of people and communities extending beyond the region.

    (b) **Regionally significant infrastructure**: Infrastructure in the region which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure.

    (c) **Infrastructure:** (includes) A network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001 (addressed above).

    (d) **Critical infrastructure:** Infrastructure that provides services which, if interrupted, would have a significant effect on the wellbeing and health and safety of people and communities and would require reinstatement, and includes all strategic facilities.

14. In our opinion, the data centre is both regionally and nationally significant infrastructure because:

    (a) It enables significantly improved data connectivity for the South Island, improving the wellbeing of South Island communities by improving opportunities for business and education.

    (b) By adding an additional cable providing data connectivity between New Zealand and the world, and being the only cable directly connecting the South Island, the data centre will contribute to the health and safety of people and communities in both Southland and New Zealand by significantly improving the country's resilience to a potential data outage.

    (c) The Proposed Works are also 'critical infrastructure' in that interruption to direct international data connectivity would have a significant effect on the wellbeing, health and safety of people and communities and would require reinstatement. While connection via the North Island would be possible in the event of interruption, it is arguable that the benefit to South Island business from the Proposed Works is so great that once established, the data connectivity that is enabled through the Proposed Works will become critical.

    (d) Currently, data connectivity to the South Island is provided via the Cook Strait and Wellington. Should this be affected in any way, data connection to the South Island would be lost. The Proposed Works therefore provide resilience and back up for data for the whole of the South Island.

'Functional need'

15. Functional need is defined in the NPS-FM as "the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment."[1]

16. When assessing the requirements for "functional need" under the NPS-FM, the High Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*[2] observed that the strict language in the definition requiring that an activity "can only occur in that environment" places a "high threshold" for the definition to be met.[3] The Court also found that deciding whether there was a functional need for an activity was a "context and fact-specific enquiry."[4]

17. In that case, the Court accepted that the proposed stretch of State Highway had a functional need for the location because (among other matters):[5]

    (a) the project comprised large-scale linear infrastructure – there could not be gaps in the road as the whole route was required to fit together safely and efficiently;

    (b) there were numerous environmental and cultural constraints on the route design of the road; and

    (c) the project route had been the subject of a detailed alternatives process before the preferred route was chosen.

18. DataGrid has a clear functional need to locate the project on this site. It will provide expert evidence of this as part of its consent application, however, in summary DataGrid undertook an extensive alternatives assessment when choosing an appropriate site for the proposed data centre. The following features of the site were identified as crucial for the efficient and safe operation of the centre and resulted in it being chosen as the preferred site:

    (a) first and foremost the four existing high voltage power lines which cross the site allow for direct connection to the electricity grid. Having two separate high voltage lines provide redundancy should there be an interruption to the supply on one line. Uninterrupted power supply is critical for the data centre and all data centres locate in close proximity to high voltage lines;

    (b) the data centre and associated infrastructure needs to be of a sufficient size to meet a minimum return on investment. The size of the site was therefore a key consideration in choosing the preferred site;

    (c) the site sits above the 1 in 500 year Average Recurrence Interval flood risk level, including when taking into consideration climate change;

1 NPS-FM, cl 3.21(1).
2 [2022] NZHC 629.
3 At [48].
4 [58].
5 [41].

(d) the site meets all the criteria to develop a Tier 4 data centre under the Telecommunications Industry Association (TIA) 942 standards;

(e) the Southland's cool climate requires less energy to cool the data centre than a location in a warm climate, significantly improving the energy efficiency of operating the data centre;

(f) New Zealand's accessibility to renewable energy sources improves the environmental sustainability of operating the data centre compared to other parts of the world;

(g) the site is relatively close to the coast which provides a more efficient and accessible connection to the sub-sea connection;

(h) the flat terrain of the site reduces the extent of earthworks required; and

(i) the site is not close to built up high density residential areas, reducing the number of potentially affected neighbours (acknowledging that there are a small number of residential dwellings neighbouring the site).

19. The existing high voltage power lines, coupled with the site being of sufficient size and above the 1 in 500-year Average Recurrence Interval flood risk level, provide the exact conditions needed for the successful development of the Proposed Works. DataGrid's robust alternatives assessment has concluded there is a functional need for the Proposed Works to occur on the preferred site.

Effects of the Proposed Works will be managed through the effects hierarchy

20. The High Court has stated that under cl 3.22 of the NPS-FM, "effects on natural inland wetlands can be managed by applying the effects management hierarchy."[6] In doing so, the Proposed Works will give effect to cl 3.22 of the NPS-FM, Policy 33A of the Water and Land Plan and Policy 40A of the Water Plan.

21. Clause 3.21 of the NPS-FM defines the effects management hierarchy as:

> **effects management hierarchy**, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:
> (a) adverse effects are avoided where practicable; then
> (b) where adverse effects cannot be avoided, they are minimised where practicable; then
> (c) where adverse effects cannot be minimised, they are remedied where practicable; then
> (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; then
> (e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; then
> (f) if aquatic compensation is not appropriate, the activity itself is avoided.

6 *Otago Fish and Game Council v Otago Regional Council* [2024] NZHC 3523, at [35].

22. We note that the Environment Court granted consent to Meridian Energy for the construction, operation and maintenance of a wind farm at Mount Munro in the Wairarapa. The project site included six wetlands within the consent envelope which were directly impacted by the application. The Court, stated that the application upheld the effects management hierarchy, giving effect to cl 3.22, by implementing a 1:1 ratio of offset to the affected wetlands.[7]

23. How the Project will manage its effects through the effects management hierarchy will be outlined through the extensive expert evidence that will be produced in support of DataGrid's consent application. Notably, this will include Ecology, Wetland Hydrology and Planning effects assessments. These statements of expert evidence, and the application of the Proposed Works generally, will work through the steps outlined in cl 3.21, showing that the effects on the natural inland wetland are appropriately managed.

Conclusion

24. The Proposed Works aim to establish a sustainable data centre park, which will be serviced by a submarine cable directly connecting the South Island to the east coast of Australia. In our opinion, the Proposed Works fall within the exemption in cl 3.22 of the NPS-FM and Policies 40A and 33A of the Water Plan and Water and Land Plans respectively, as they are for the construction of 'specified infrastructure' that has a 'functional need' to be at the Proposed Works' site. Any effects of the Proposed Works on the natural inland wetland will be managed through the NPS-FM's effects management hierarchy.

7 *Meridian Energy Ltd v Tararua District Council* [2025] NZEnvC 44 at [100] - [108].