



BELL GULLY

Original by mail

Environment Southland

Private Bag 90116

Invercargill 9840

Attention Vicky Collard

FROM **Laura Lincoln**
DDI +64 4 915 6873
EMAIL laura.lincoln@bellgully.com
MATTER NO. 402-1547
PARTNER **Andrew Beatson**
DATE 16 May 2018

Notice of Appeal by Transpower New Zealand Limited on the Proposed Southland Water and Land Plan

We act for Transpower New Zealand Limited (**Transpower**).

Please find **enclosed** a copy of the Notice of Appeal lodged on behalf of Transpower in respect of the decision of Environment Southland (the **Council**) on the Proposed Southland Water and Land Plan.

The Notice of Appeal was lodged with the Environment Court and served on the Council by way of email on 16 May 2018.

The attachments listed in the Notice of Appeal may be obtained from us upon request.

Please contact us if you have any queries in relation to the above matter.

Yours faithfully
Bell Gully

A handwritten signature in blue ink, appearing to be "Laura Lincoln".

Laura Lincoln
Solicitor

Enc.

**In the Environment Court
Christchurch Registry**

ENV-2018-CHC-

Under the Resource Management Act 1991
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

Transpower New Zealand Limited

Appellant

and

Southland Regional Council

Respondent

**Notice of Appeal on behalf of Transpower New Zealand
Limited against decision on the Proposed Southland Water
and Land Plan**

16 May 2018

BELL GULLY

BARRISTERS AND SOLICITORS

A J L BEATSON / L M LINCOLN
COUNSEL FOR THE APPELLANT
WELLINGTON LEVEL 21, 171 FEATHERSTON STREET
PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND
TEL 64 4 915 6800 FAX 64 4 915 6810 EMAIL ANDREW.BEATSON@BELLGULLY.COM

To: The Registrar
Environment Court
Christchurch

1. Transpower New Zealand Limited (**Transpower**) appeals against part of a decision of the Southland Regional Council (the **Council**) on the Proposed Southland Water and Land Plan (the **Proposed Plan**).
2. Transpower made a further submission on the Proposed Plan.
3. Transpower is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **RMA**).
4. Transpower received notice of the decision on 4 April 2018.
5. The decision was made by the Council.
6. The parts of the decision that this appeal relates to are:
 - (a) Policy 26A – Infrastructure; and
 - (b) Rule 59 – Culverts.
7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by Transpower are underlined or ~~struck through~~.

Policy 26A – Infrastructure

Reason for appeal

8. Gore District Council, Invercargill City Council and Southland District Council sought the inclusion of a new objective and policy to provide for critical infrastructure. Transpower supported the relief sought, to the extent it reflects the benefits and importance of critical infrastructure, but sought amendments to better reflect the policy direction in the Southland Regional Policy Statement (**RPS**) and give effect to the National Policy Statement on Electricity Transmission Activities (the **NPSET**).

9. The Council agrees that the Proposed Plan's lack of an objective enabling infrastructure does not give appropriate effect to the purpose of the RMA, the National Policy Statement on Renewable Electricity Generation (the **NPSREG**), the NPSET and the RPS.¹ The decisions version of the Proposed Plan includes Objective 9B which specifies that:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.

10. Transpower supports the inclusion of the Objective on the basis that it appropriately gives effect to higher order planning documents, particularly the NPSET. However, Transpower has concerns with related Policy 26A.
11. Policy 26A requires all effects to be avoided (where practicable), remedied or mitigated. However, there may be some effects of regionally significant, nationally significant and critical infrastructure that cannot be remedied or mitigated (if avoidance is not practicable).
12. Policy 26A may, in such circumstances, inadvertently frustrate the effective development, operation, maintenance and upgrading of the National Grid, and therefore not achieve the enablement required by Objective 9B, or Policies 2 and 3 of the NPSET.
13. The RMA is not a "no effects" statute,² and some effects which cannot be avoided, remedied or mitigated may still be acceptable. It is important that this is reflected in the Proposed Plan to ensure that significant and critical infrastructure is enabled, even where it may give rise to some adverse effects that cannot be avoided, remedied or mitigated. This is recognised in the RPS, where Policy INF.2 only requires adverse effects of infrastructure on the environment to be avoided, remedied or mitigated where practicable.

¹ Report and Recommendations of the Hearing Commissioners dated 29 January 2018 at [141].

² *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 at [3-72]; *Re Meridian Energy Ltd* [2013] NZEnvC 59.

14. The amendments Transpower seeks to Policy 26A will enable the policy to better assist with achieving Objective 9B, will improve consistency between the Proposed Plan and the RPS, and will better give effect to the enabling policies of the NPSET.

Relief sought

15. Amend Policy 26A as follows:

Recognise and provide for the effective development, operation, maintenance and upgrading of regionally significant, nationally significant and critical infrastructure in a way that, where practicable, avoids, ~~where practicable, or otherwise remedies~~ or mitigates, adverse effects on the environment.

Rule 59 – Culverts

Reason for appeal

16. In its original submission on the Proposed Plan, the New Zealand Transport Agency (NZTA) sought amendments to Rules 51 (Minor diversions of water) and 59 (Culverts) to ensure that network utilities are not compromised by diversions or culverts.
17. Transpower supported the relief sought by NZTA, on the basis that the proposed amendments recognise that diversions undertaken and culverts placed by third parties have the ability to compromise network utilities, including the National Grid, and particularly transmission line support structures.
18. The Council's decision accepts the relief sought in respect of Rule 51, but rejects the relief sought for Rule 59, stating:³

We adopt the recommendations and reasons set out in the section 42A Reports. We are also not persuaded that the amendment requested... would be a more effective and reasonably practicable option for achieving

³ Recommended Decisions on Submissions ordered by provision dated 29 January 2018 at 117.

the objectives of the pSWLP, and for giving effect to the superior instruments.

19. The Section 42A Report does not provide a reason for rejecting the relief sought by NZTA to manage the effects of culverts on network utilities.⁴
20. Transpower is concerned that the Proposed Plan does not recognise that culverts (like diversions) can compromise network utilities, including nationally significant infrastructure such as the National Grid.
21. Policy 10 of the NPSET requires decision-makers to, to the extent reasonably possible, manage activities to ensure that operation, maintenance, upgrading and development of the electricity transmission network are not compromised. The regulation of culverts in the vicinity of network utilities, including the National Grid, in the manner sought by Transpower will enable the Council to give effect to Policy 10 of the NPSET and to manage the potential effects of culverts on the operation, maintenance, upgrading and development of the transmission network.

Relief sought

22. Amend Rule 59(a) as follows:
 - (a) The placement, erection or reconstruction of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of any river, modified watercourse or artificial wetland, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

...

 - (x) culverts shall not be located within 12 metres of a network utility structure, unless they are for the purpose


⁴ See Section 42A Report dated April 2017 at [10.112]-[10.113].

of maintaining, upgrading or developing that network utility; and

23. Transpower also notes that there are errors in the numbering of the subclauses of Rule 59(a) in the clean and tracked versions of the Recommendations Report.

Relief Sought

24. Transpower seeks the following relief from the Court:
- (a) The relief specified in this notice of appeal under the heading '*Relief sought*'; or
 - (b) Such further, consequential or alternative relief as may be necessary or appropriate to give effect to the relief sought.
25. Transpower attaches the following documents to this notice:
- (a) a copy of Transpower's further submission (with a copy of the submissions supported by Transpower's further submission);
 - (b) a copy of the relevant part of the decision; and
 - (c) a list of names and addresses of persons to be served with a copy of this notice.



A J L Beatson / L M Lincoln
Counsel for Transpower New Zealand Limited

Dated 16 May 2018

Address for service:

Transpower New Zealand Limited
C/- Bell Gully
171 Featherston Street
PO Box 1291
Wellington 6140
Attention: Laura Lincoln

Telephone: (04) 915 6800
Facsimile: (04) 915 6810
Email: laura.lincoln@bellgully.com

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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 Resource Management Act 1991.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the decision appealed. 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, Wellington, or Christchurch.

Appendix A

A copy of Transpower's further submission on the Proposed Plan (with a copy of the submissions supported by Transpower's further submission)

Appendix B

A copy of the relevant parts of the decision of the Council

Appendix C

A list of names and addresses of persons to be served with a copy of this notice