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Dear Jennifer

TRANSPower NEW ZEALAND LIMITED: CIV-2016-404-2330

Introduction

1. You have asked Transpower New Zealand Limited (“**Transpower**”) to consider particularising its appeal as it relates to the subdivision provisions Chapters E38 Urban and E39 Rural. This is to assist the Council in its task of producing an annotated version of the Plan that identifies what rules are to be treated as operative under section 86F.
2. The Council is concerned that the references in Transpower’s appeal to Chapters E38 Urban and E39 Rural are too general and so it may not identify any of the rules as operative under section 86F.

Context

3. Section 86F provides:

86F When rules in proposed plans must be treated as operative

A rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making submissions or lodging appeals on the rule has expired and, in relation to the rule,—

- (a) no submissions in opposition have been made or appeals have been lodged; or
 - (b) all submissions in opposition and appeals have been determined; or
 - (c) all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.
4. The first point is that section 86F sets up a mechanism that operates as a matter of law – it is not for the Council to exercise any judgment in deciding what must be treated as operative. Obviously, to assist in the efficient administration of its Plan the Council will not want to put people wrong, by incorrectly identifying a rule as to be treated as operative, or incorrectly identifying a rule as not to be treated as operative.

5. The second matter is to identify the scope of Transpower’s appeal, as currently drafted. The relevant clauses provide:

Scope of appeal

1 The Appellant appeals against the decision of the Council to accept, unchanged, a number of recommendations of the IHP 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 certain agricultural and horticultural 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").

6. In other words, the scope of Transpower’s appeal is:

(a) limited to rules that apply within the National Grid Yard (but noting that the relief sought in Transpower’s Environment Court appeal challenges the width of the National Grid Yard); and

(b) further limited, in respect of the subdivision provisions in Chapters E38 Urban and E39 Rural, to subdivisions involving building platforms within the National Grid Yard.

7. The primary remedy which is envisaged in respect of these issues in the High Court appeal is a modification to the subdivision rules in Table D26.4.1, specifically Rules A22 and A23, so that the creation of lots involving a new building platform within the National Grid Yard where urban land is not yet developed (as well as in rural and Future Urban zones as currently provided for in Rule A23) would become non-complying.

8. There is also an issue with Rule A26, which states:

Activity	Activity status
Subdivision	
(A26)	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

9. The effect of Rule A26 is to apply standards within the National Grid Yard relating to NZECP34 and vehicular access to structures (D26.6.2.1(1) and D26.6.2.1(2)) only to **controlled** activity subdivisions as specified in Chapters E38 and E39. Rule A26 makes such subdivisions non-complying if the standards are not met. The issue is that subdivisions which are restricted discretionary or fully discretionary as specified in Chapters E38 and E39 do not need to meet the standards contained in Rule A26 and would not become non-complying. There is no logical basis to only apply the non-complying trigger to controlled subdivisions, not restricted discretionary or discretionary subdivisions.
10. The “fix” would most likely come within Table D26.4.1, but could potentially involve a “consequential” amendment to the rules in Chapters E38 and E39, such as additional criteria for subdivision within the National Grid Corridor. Reference was made to Chapters E38 and E39 to preserve the opportunity for including *additional* criteria, in case that was necessary, or was otherwise the Council’s preference.
11. In light of all of the above, Transpower does not consider it necessary to “particularise” the scope or relief further. As a practical matter, it would be easy enough to provide, in any “annotated” Plan, an appropriate reference or caveat to the rules in Chapters E38 and E39 that the rules are not to be treated as operative under section 86F within the National Grid Yard including, presumably, the potential extended width as sought under Transpower’s Environment Court appeal. To identify any rule that applies beyond the extended National Grid Yard (of the Chapters generally) as not to be treated as operative because of Transpower’s appeal would be incorrect, and misleading.
12. In the Council’s recently released annotated version of the Unitary Plan showing the matters under appeal, Transpower’s appeal is listed in a general way in respect of a significant number of the subdivision provisions. For the reasons given above, the position this conveys is incorrect and misleading. At the very least, the provisions should be limited to a notation alongside stating that the area within which the rules are not operative because of Transpower’s appeal is limited to the area within 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.
13. Transpower would be happy to discuss further, if that would assist.

Yours faithfully
James Gardner-Hopkins



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