

BEFORE THE MANAWATU-WANGANUI REGIONAL COUNCIL

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of submissions and
further submissions
made by
**TRANSPower NEW
ZEALAND LIMITED**
on the Proposed
Horizons One Plan –
Water Quality, Beds of
Lakes and Rivers.

**STATEMENT OF EVIDENCE OF DAVID LE MARQUAND ON BEHALF OF
TRANSPower NEW ZEALAND LIMITED “TRANSPower”: WATER
(QUALITY AND BEDS OF LAKES AND RIVERS) HEARING**

1.0 INTRODUCTION

1.1 My name is David le Marquand and I am a Director of Burton Planning Consultants Limited. My qualifications are a Bachelor and Master of Arts degree in Geography from Auckland University. I have practised resource management for over twenty-nine years: fifteen of those years in Central Government including six years as a Scientist in the Planning Section of the Water and Soil Directorate (MWD) Wellington, and two years as a Policy Analyst and five years as a Senior Policy Analyst with the Ministry for the Environment in Auckland. I have spent the last fourteen years as a Resource Management Consultant with Burton Consultants.

1.2 I have been the Burton's Account Manager for Transpower for more than thirteen years. In that role I have been responsible for providing advice to Transpower, on a national basis, on relevant district and regional plan provisions and various resource management issues affecting Transpower's operations.

2.0 BASIS OF EVIDENCE

2.1 My evidence generally supports the submissions and further submissions lodged by Transpower on the Proposed One Plan.

2.2 I have read and am familiar with the Proposed One Plan provisions, and with the staff report and relevant background reports in relation to Transpower's submissions and further submissions. My evidence primarily focuses on the Planner's Report recommendations on the topics of Water (Quality and Beds of Lakes and Rivers).

2.3 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

3.0 WATER QUALITY

Submissions 265/26-32; Recommendations WTR 73 - 76, WTR 91- 92.

3.1 Transpower sought the retention of a number of polices and rules without further modification. The staff report has generally accepted the submissions, subject to some minor modifications relating to other submission requests. I support the staff recommendations in relation to the submissions and commend the staff recommendations to the Committee.

Stormwater discharges (submissions 265/33-38); Recommendations WTR 97 - 99, WTR107 - 108

3.2 Transpower sought to retain permitted stormwater rules 13-15 and 13-16 without further modification except:

- amend condition (a) of 13-15 and 13-16 to read as follows:
(a) The discharge shall not include stormwater from any:

- (i) industrial or trade premises where hazardous substances are stored or used may be entrained by stormwater
 - (ii) contaminated land where the contaminants of concern may be entrained by stormwater
 - (iii) operating quarry or mineral extraction site unless there is an interceptor system* in place.
- Delete references to “rare or threatened habitat”, or “at-risk habitat”, from Rules 13-15 to 17, 13-24-25.

Condition (a) (i) “entrained”

3.2 I support the intention of the submissions. The reason why reference was sought to entrainment was because the rule as currently worded could be seen to only provide for stormwater discharges from industrial and trade premises where all stormwater discharges from such a premise is passed through an interceptor system. It is not necessary to pass all stormwater from a site using or storing hazardous substances through interceptor devices.

3.3 The staff report states on page 236:
The issue I have is that the current wording of the Permitted Activity standard is certain and the introduction of the word “entrained” provides less certainty as there has to be a judgement made by someone on the ground as to whether it is or not. The approach taken in the One Plan is, in part, less restrictive than the approach taken in the Land and Water Regional Plan which requires any stormwater from an industrial or trade premises to be considered as a Controlled Activity under DL Rule 15. In relation to discharges of stormwater to water the Land and Water Plan likewise automatically requires these discharges to be considered as a Controlled Activity under DSW Rule 4.

3.4 The staff report identifies that there is a lack of certainty because the term “entrained” implies that there is a judgement to make. I understand that the inclusion of the reference to “entrained” was intended to increase certainty rather than reduce it, because it focuses on the at risk areas. However I accept that it may not be necessary to include such a reference, as the rule needs to be interpreted in terms of the scope of the definition of “interceptor system” which is:

Interceptor System, in relation to stormwater discharges of stormwater means a facility designed into a stormwater management system with the purpose of:

- a. *preventing deliberate or accidental releases of any hazardous substances in the stormwater system, or*
- b. *in the event of stormwater contamination by a hazardous substance, reducing all such substances in the stormwater prior to discharge to*

concentrations that will not result in contamination of either water or sediments to such a degree that is likely to result in significant adverse effects on aquatic life or on the suitability of the waters for potable water supply.

- 3.5 The definition clearly applies a qualitative effects standard and indicates that the interceptor system is a subcomponent of a wider stormwater system thereby indicating that an interceptor can and should be targeted only to those “at-risk” areas. Provided this interpretation is clear and is capable of a consistent interpretation and application over time it should not be necessary to qualify the rule any further. However I seek confirmation from the Committee that this is the intent of the provision and that the rule will deliver consistent interpretation (even by way of policy explanation).

Control of Inputs

- 3.6 While I accept that the intent of the Plan provisions may be to focus on the “end of pipe” discharges for stormwater from territorial authority infrastructure, this is not clear in the Plan. In my opinion it is necessary to make this explicit otherwise there will remain some uncertainty in the way the rules may be applied over time. Some other jurisdictions are controlling inputs into such infrastructure e.g. ARC, but most regional councils are controlling discharges at the “end of pipe”. I am aware that some regional Council’s have also been relooking at their discharge to land provisions as a means of controlling inputs into such systems. When this occurs it creates a significant degree of uncertainty. If the intention is to control “connection” into territorial authority infrastructure by treating stormwater discharges to the reticulated system as a discharge to land, then the provisions will have much more significance and effect and will probably trigger a significant number of resource consents. I note this issue is not addressed in any detail in the staff report and is to be the subject of a supplementary paper. I will make any necessary further comment once that report has been issued.

- 3.7 I agree with staff that it appears the Plan has been crafted to address discharges at the “end of pipe”, and I support that approach. I would therefore urge the Committee to make it clear in the Plan that the intent of the rules relating to territorial infrastructure is that council will not be controlling inputs but rather only controlling “end of pipe discharges”.

Controlled Activity Rule 3-16

- 3.8 The staff report (p238) makes the following comment in relation to the controlled activity rule 13-16:

The Rule contains as a Standard the same wording as contained in Rule 13-15 that the discharge does not contain stormwater from a site where hazardous substances are stored unless there is an interceptor system in place. Clause (a) within the Controlled Activity Rule is the same as the Permitted Activity Rule. If an activity is unable to meet the Permitted Activity Standard then it will not be able to meet the Controlled Activity Standard and therefore the Controlled Activity Rule is redundant. I want to consider carefully the re-framing of this Rule in conjunction with Rules 13-15 and 13-17. I will return to the submissions of the territorial authorities and Transpower NZ.

- 3.9 I note that the permitted and controlled activity standard is the same for both rules. I have reviewed the remainder of the staff report and the redline version of the changes to the Plan and it does not seem that the restructuring issue highlighted in the staff report has been revisited. I am not opposed to an industrial and trade premise discharging to land without an interceptor system requiring a consent that can be refused. I am, however, surprised though that for land a full discretionary activity consent is required whereas for a direct discharge to water. restricted discretionary consent is required. This would appear to be at odds with the policy direction to promote preferentially discharges to land.

Rare or Threatened Habitat

- 3.10 Transpower opposed the inclusion of reference to “rare or threatened habitat” in the provisions. As a matter of principle I am not opposed to including conditions that will protect high valued areas from potential adverse effect of discharges. However the reason for the submission was that the process for identifying those areas in the Proposed Plan was far from certain, and required a significant degree of judgement to be applied to be able to identify such areas. To a considerable extent the hearing process to date, in particular the changes proposed to Chapters 5, 7 and 12, have addressed many of those concerns. While there is still a level of uncertainty on where these areas may be I am reasonably supportive of where the identification process is at present.

4.0 LAKE AND RIVERBEDS

Submissions 265/39, 43- 44, 46-48 50; Recommendations WTR 135, WTR 138, WTR 144-147, WTR 152, WTR 164.

4.1 Transpower sought the retention of a number of provisions and Table 16.1 without further modification. The staff report has generally accepted the submissions, subject to some minor modifications relating to other submission requests. I support the staff recommendations in relation to these submissions and commend the staff recommendations to the Committee.

Submissions 265/45, 49 and 50; Recommendation: WTR 144, WTR 152, WTR 156

4.2 Transpower sought the amendment of a number of rules that would restrict the ongoing operation, maintenance and minor upgrading of existing lines. In particular Transpower sought:

- an exclusion for lines, cables, pipelines and ropeways from 16-4(a)(i) that went “over” natural state waterways.
- an exclusion for lines going over natural state waterways in rule 16-10.
- An exclusion from rule 16-14 as follows:

(b) the erection or placement of any building, fence or other structure (including accessways but excluding fences and excluding the maintenance or upgrading of existing overhead infrastructure and/or the establishment of new infrastructure that avoids locating support structures in areas identified by conditions (h) to (k).

Rule 16-4

4.3 The staff report makes the following comment on page 323:
I agree with Transpower that lines, cables and ropes over a water body valued for Natural State or a site of significant– aquatic or cultural is a matter which should not be considered under this rule as they are likely to have a minor or no effect on the values being protected especially aquatic habitats. I do not however agree that pipes should be allowed to cross over these water bodies due to the potential effects of a pipe bursting. In relation to natural state areas – it is noted that while the lines, ropes and cables will become permitted the support structures will still require permission from the department of conservation.

4.4 I agree and support the staff report recommended changes to 16-4. Similarly the staff accepts a need for a cross reference in 16-10 and makes the following comment on page 338:

For this reason I will insert a cross reference back to rule 16-4 which will permit lines, cables and ropes over the water bodies protected by that rule but

pipes will still require a consent. In relation to natural state areas – it is noted that while the lines, ropes and cables will become permitted the support structures will still require permission from the department of conservation – a recommended rule guide for rule 16-4 outlines this.

Rule 16-10 and 16-5

- 4.5 The staff report has added in 16-10 a further condition that will limit the erection, reconstruction, placement, alteration or extension of a line or cable “in, on, under or over” the bed of a river or lake in any rare habitat or threatened habitat area. The recommendation has come via WTR 159 on page 357 where it is stated:

I also recommend that a new provision is added into rule 16-8, 16-10, 16-11, 16-12, 16-12(a), 16-15, 16-15(a), 16-16, 16-17 and 16-18 as follows “This activity shall not take place in any rare habitat or threatened habitat listed in Schedule E” to clarify that the above rules do not apply to wetlands. A clause of this nature should also be added to policy 16-1 to clarify that Chapter 12 needs to be taken account of when a person wishes to undertake an activity in a wetland.

- 4.6 In my opinion the relief proposed does not appear to come within the scope of the submissions being dealt with in that section. I have not been able to identify all such areas or the extent to which Transpower may have existing lines that traverse such areas. My understanding is that this approach would appear to be at odds with the way existing infrastructure is being dealt with in other parts of the plan, which are the subject of other hearings. While the intention appears to apply to wetlands the rule links to Schedule E and all that contains. I can accept that any disturbance to a wetland on the ground may be an effect that needs some assessment, however for existing activities the level of effect will have already been established.

- 4.7 One could, on the face of it, rely on Rule 16-5 for existing activities. This rule permits the maintenance and upgrade of structures generally and only controls discharges in rare and threatened habitat. Nevertheless there remains an overlap between 16-5 and 16-10 and given that Rule 16-10 is the more specific rule to apply to lines and cables, there is a risk that maintenance and minor upgrading activities could be inadvertently affected. As a consequence an amendment to rule 16-10 is required. This could be achieved by including a similar exclusion to that proposed in condition (b) as follows:

(d) This activity shall not take place in any rare habitat or threatened habitat listed in Schedule E except for lines, cables and ropeways that go over a such an area.

The Activity provisions could also be amended as follows:

The erection, reconstruction, placement, alteration, or extension of a line, cable, pipeline or ropeway in, on, under or over the bed of a river or lake pursuant to s13(1) RMA, and any associated ancillary:

(a) disturbance of the river or lake bed pursuant to s13(1) RMA,

(b) damming or diversion of water pursuant to s14(1) RMA

(c) discharge of water or sediment pursuant to s15(1) RMA.

not otherwise provided for by 16-10.

Drainage Scheme Areas

- 4.8 Transpower sought an exclusion from rule 16-14 (which relates to activities within flood control and drainage schemes), for its existing infrastructure and for new infrastructure where support structures were able to comply with conditions h) to k). The staff report on page 354 states:

Transpower seeks to be allowed to upgrade and maintain existing infrastructure and allow new lines over the bed as an existing activity. It is my understanding that maintenance and upgrading of existing structures is allowed as a permitted activity regardless of location in accordance with rule 16-6. Similarly lines and cables are allowed for as a permitted activity (with some restrictions in natural state areas) in accordance with rule 16-10. In my opinion this is quite clear in rule 16-14 as this rule specifically states the activities which should not take place and it is therefore the assumption that if the activity is not stated then it is not restricted by that rule. Therefore I accept this submission in part to the extent that the rule already provides for their request.

- 4.9 Rule 16-14 applies to the erection or placement of “any building or structure” within flood control or drainage schemes. In my view this will potentially capture transmission lines. While I welcome the apparent intent from the staff report that maintenance and upgrading activities can occur unfettered in terms of rule 16-6, I am not sure that this will be the case and/or should be the case. It may well be argued that the rule affecting flood control and drainage schemes is more specific than other “activity” rules. In my opinion it is acceptable to want to control activities that could potentially affect the integrity of a flood protection scheme. The proposed changes sought by Transpower sought to achieve that while ensuring that any part of lines going over those areas is not inadvertently captured. I would therefore like to urge the Committee to make the following change:

(b) the erection or placement of any building, fence or other structure (including accessways but excluding fences and excluding the maintenance or upgrading of existing overhead infrastructure and/or the establishment of new infrastructure that avoids locating support structures in areas identified by conditions (h) to (k).

5.0 CONCLUSION

- 5.1 Transpower submissions have effectively sought to ensure that the operation, maintenance, and upgrading of the National Grid is appropriately recognised and provided for by ensuring that the activity is not unnecessarily fettered by unnecessary constraints.
- 5.2 Since submissions were lodged the National Policy Statement on Electricity Transmission has been issued and also needs to be considered. In my opinion the proposed changes to the policies and provisions recommended by Staff are generally supported, as outlined in this evidence.
- 5.3 The key outstanding issues relate to:
- the approach to stormwater discharges and whether the Council is intending an “end of pipe” approach to stormwater management (which will be addressed via the supplementary report);
 - The apparent tougher rule cascade for discharges to land than surface water;
 - the potential overlap between lake and river bed provisions 16-6 and 16-10 needs to be clarified and transmission activities “over” rare and threatened habitats needs to be provided for;
 - greater clarity is required in 16-14.

David le Marquand

28th September 2009