

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON
I MUA I TE KOOTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA**

ENV-2017-WLG-000060

ENV-2017-WLG-000064

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

POWERCO LIMITED

Appellant

AND

MANAWATŪ DISTRICT COUNCIL

Respondent

JOINT MEMORANDUM OF COUNSEL WITHDRAWING APPEALS

23 August 2023



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MAY IT PLEASE THE COURT:

[1] This memorandum gives notice of the withdrawal of the following appeals against proposed Plan Change 55 to the Manawatu District Plan:

- (a) PowerCo v Manawatu District Council (ENV-2017-WLG-000060); and
- (b) Transpower New Zealand Limited v Manawatu District Council ENV-2017-WLG-000064.

[2] Background to the withdrawal of the appeals is set out in the joint memorandum of counsel dated 20 December 2022 (see **attached**). The appeals have been resolved through the consent order issued by the Court on 20 June 2023 for Plan Change 65 to the District Plan (ENV-2021-WLG-000025).

[3] Counsel have sought feedback from the parties and no issues with the withdrawal of these appeals including as to costs have been raised.

Dated 23 August 2023



Natasha Garvan / Laura Lincoln
Counsel for Transpower New Zealand Limited



Ben Williams
Counsel for Powerco Limited



Shannon Johnston
Counsel for Manawatu District Council

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BETWEEN **TRANSPOWER NEW ZEALAND
LIMITED**
Appellant

AND **POWERCO LIMITED**
Appellant

AND **MANAWATŪ DISTRICT COUNCIL**
Respondent

**JOINT MEMORANDUM OF PARTIES IN SUPPORT OF DRAFT CONSENT
ORDERS**

20 December 2022



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MAY IT PLEASE THE COURT:**Introduction**

- [1] This joint memorandum is filed in support of a draft consent order in relation to the following appeals against Plan Change 65 - Outstanding Natural Features and Landscapes (**PC65**) and Plan Change 55 - District Wide Rules (**PC55**) of the Manawatū District Plan (**District Plan**) (collectively, “**the appeals**”):
- (a) ENV-2021-WLG-025 Transpower New Zealand Limited (**Transpower**) – an appeal against part of the decision of Council on submissions on PC65 to the District Plan.
 - (a) ENV-2017-WLG-064 Transpower and ENV-2017-WLG-060 Powerco Limited (**Powerco**) – appeals against parts of the decision of Council on submissions on PC55 to the District Plan, and in particular those provisions regarding network utilities in outstanding natural features and landscapes (**ONFLs**) within the Manawatū District.
- [2] Related interested parties under section 274 of the Act include Manawatū-Whanganui Regional Council (**Horizons**), which joined Transpower’s appeal on PC65, and the Royal Forest and Bird Protection Society of New Zealand Inc (**Forest and Bird**), which joined the appeals on PC55.
- [3] Following mediation on 9 May 2022 the Respondent, Transpower and Horizons have agreed to settle the appeal on PC65 through the draft consent orders attached to this memorandum and the accompanying amended provisions.
- [4] With Transpower’s appeal on PC65 having been resolved, both Powerco and Transpower wish to withdraw the respective appeals against PC55. This is because, as detailed below, the issues remaining ‘live’ for PC55 following the partial resolution of those appeals in 2018 have been resolved through PC65.

Background

- [5] The Council notified PC55 to the District Plan on 14 July 2016, with a decision issued by the Hearing Panel on 22 February 2017. Following the lodgement of appeals with the Environment Court, and mediation in December 2017, the parties agreed to resolve all matters, with the exception of those relating to network utilities in outstanding natural features and landscapes (“**ONFL**”). At the request of the Council and remaining parties (Transpower, Powerco and Forest and Bird) the appeals were placed on hold pending resolution of Plan Change “X”, which was to address ONFLs in the Manawatū District, including intended replacements for the provisions identified as remaining at issue in the appeals on PC55.¹
- [6] Plan Change “X” eventually became known as PC65. PC65 proposes changes to the District Plan to protect Manawatū District’s ONFLs and Significant Amenity Features (**SAFs**) from inappropriate subdivision, use, and development and to maintain or enhance the amenity values and environment within these areas. As well as spatially defining these areas, a new ONFLs Chapter introduces specific objectives, policies and rules, with related changes to Chapter 3A Network Utilities and Chapter 3D Earthworks.
- [7] The Council notified its decisions on PC65 in early May 2021. Transpower appealed to the Environment Court by notice dated 17 June 2021. Horizons joined the appeal on 8 July 2021. Powerco and Forest and Bird took no procedural steps in relation to the PC65 decision.
- [8] Following discussions between the parties Powerco confirmed that its PC55 appeal would be withdrawn once PC65 became operative. Forest and Bird, as a s 274 party to the PC55 appeals, also confirmed that it would not oppose the PC55 appeals being withdrawn.

¹ See Joint Memorandum of Parties re Outstanding Matters dated 16 February 2018. Those ‘identified provisions’ included Objective 3 and Policy 3.2. Rule 3A.4.2J (previously “L”), Rule 3A.4.3, Rule 3A.4.4 and Rule 3A.4.5 of PC55 to the District Plan.

[9] The parties therefore agreed, as advised to the Court on 10 September 2021, that the PC55 appeals (to the extent they were not superseded by resolution of PC65) would be addressed as part of the same proceedings.²

Agreed position between the parties

[10] This memorandum is intended to resolve all aspects of the appeals, with the draft consent order and its annexures implementing the changes to the PC65 provisions as agreed between the Council, Transpower and Horizons (the “PC65 parties”).

[11] The PC65 parties have reached agreement on the following matters:

- (a) New definitions of “Functional need” and “Operational need” to be included in the District Plan. The addition of these definitions in response to submissions was supported by Council officers at the first instance hearing and are considered to have been an inadvertent omission by the Hearing Panel in issuing its decision on PC65.
- (b) Deletion of the guidance note in Chapter 3A. The PC65 parties have agreed that the guidance note is superfluous given the change in activity status agreed for the National Grid in ONFL (as detailed below).
- (c) Change in activity status for new National Grid transmission lines (as defined as “transmission line” in the NES-ETA Regulations) from non-complying to discretionary activities within any ONFL identified in NFL-APP1.
- (d) Change in activity status for earthworks associated with new National Grid transmission lines (as defined as “transmission line” in the NES-ETA Regulations) from a non-complying to a discretionary activity within any ONFL identified in NFL-APP1.
- (e) Insertion of a new definition of “National Grid transmission line” (as defined as “transmission line” in the NES-ETA Regulations).

² See Memorandum of Counsel for the Respondent dated 10 September 2021.

- (f) Consequential changes arising from the change in activity status for new National Grid transmission lines to 3A.3.5 and Policy 3.6.

[12] In addition, it is agreed that Transpower and Powerco will not be pursuing the remaining points on appeal of PC55, which relate to network utilities within ONFLs (including activity status and earthworks), and specifically Objective 3 and Policy 3.2, Rule 3A.4.2J (previously “L”), Rule 3A.4.3, Rule 3A.4.4 and Rule 3A.4.5. All of these provisions have now been replaced through PC65, and subject to the changes set out in the accompanying consent orders, to the satisfaction of all parties, and with regard to PC65, including Transpower.

Settlement

[13] The parties have now settled the appeals.

[14] In the case of the PC65 parties, they have agreed to:

- (a) Amendment of Policy 3.6(c).
- (b) Deletion of Guidance Note in Policy 3.6.
- (c) Amendment of Rule 3A.3.4.
- (d) Amendment of Rule 3A.3.5.
- (e) Amendment of Rule 3D.4.1.
- (f) Addition of new definition for National Grid transmission line.

[15] All provisions as amended by the agreement of the PC65 parties are marked up and highlighted yellow, as shown on **Appendix A**.

[16] A draft consent order is attached as **Appendix B**.

[17] The PC65 parties are satisfied that the consent order:

- (a) Is within the scope of the submissions and appeal of Transpower;
- (b) Falls within the Court’s jurisdiction; and

- (c) Conforms with the relevant requirements of the Act and, in particular, achieves the Act's purpose of sustainable management.

[18] Further, Powerco and Transpower confirm withdrawal of the appeals on PC55.

[19] The parties agree that costs of the appeals are to lie where they fall.

Orders sought

[20] In these circumstances the parties respectfully seek that the Court:

- (a) Make orders on the terms of the draft consent order filed herein; and
- (b) Make no order as to costs in relation to the appeals.

Dated: 20 December 2022



Natasha Garvan / Laura Lincoln
Counsel for the Appellant



Shannon Johnston
Counsel for Respondent

Penelope Tucker
On behalf of Manawatū-Whanganui Regional Council

Ben Williams
Counsel for Powerco Limited

Peter Anderson
Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated

- (c) Conforms with the relevant requirements of the Act and, in particular, achieves the Act's purpose of sustainable management.

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Dated: September 2022

Natasha Garvan / Laura Lincoln
Counsel for the Appellant

Shannon Johnston
Counsel for Respondent



~~Penelope Tucker~~ **Robert Marshall**
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Dated: September 2022

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Counsel for the Appellant

Shannon Johnston
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Penelope Tucker
On behalf of Manawatū-Whanganui Regional Council



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Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated

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Dated: September 2022

Natasha Garvan / Laura Lincoln
Counsel for the Appellant

Shannon Johnston
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Penelope Tucker
On behalf of Manawatū-Whanganui Regional Council

Ben Williams
Counsel for Powerco Limited



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Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated

Appendix A

Provisions amended by agreement of the PC65 parties

3A NETWORK UTILITIES

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Objective 3

The characteristics and values of the Outstanding Natural Features and Landscapes identified in Appendix NFL-APP1 and historic heritage identified in Appendix 1F and 1E, are protected from the inappropriate use and–development of new network utilities.

Policies

...

3.6 To recognise the benefits of the National Grid by providing for the major upgrade or development of new National Grid Electricity infrastructure in an Outstanding Natural Feature or Landscape by seeking to avoid adverse effects on the characteristics and values of the feature or landscape by through ensuring route, site and method selection demonstrates that, to the extent practicable having regard to the functional, operational and technical needs of the National Grid (in order of preference):

- a. Infrastructure will be located outside of an Outstanding Natural Feature or Landscape;
- b. Where a. cannot be achieved, infrastructure will be located in the more compromised parts of the Outstanding Natural Feature or Landscape; and
- c. Adverse effects will be avoided; Techniques (such as structure selection) will be used to avoid adverse effects; and
- d. Adverse effects that cannot be avoided will be remedied or mitigated. [PC65]

Guidance Note: Objective 3 and Policies 3.1 to 3.5 apply to network utility activities undertaken in areas identified within Appendix NFL-APP1 as an Outstanding Natural Feature or Landscape. With the exception of Policy 3.3, Objective 3 and Policies 3.1 to 3.5 do not apply to network utility activities located outside an Outstanding Natural Feature or Landscape identified in Appendix NFL-APP1. In the event of inconsistency or conflict between Policies 3.1 3.5 and other objectives and policies within the Plan, Policies 3.1 to 3.5 will take precedence. [PC65]

3A.3.4 Discretionary Activities

The following activities shall be a Discretionary Activity

- a. Any new network utility, including windfarms and new transmission and distribution electricity lines within any Outstanding Natural Feature as identified in Appendix NFL-APP1 or Significant Amenity Feature identified in Appendix NFL-APP2. [PC65]
- b. Any **network utility** not otherwise specified as Permitted, Restricted Discretionary or Non-Complying Activity, or is not specifically provided for in this Plan, ~~shall be a Discretionary Activity.~~ [PC65]
- c. Any new **National Grid transmission line** within an Outstanding Natural Landscape identified in NFL-APP1.

3A.3.5 Non-Complying Activities

Any new **network utility**, including windfarms and new transmission and distribution electricity lines located within an Outstanding Natural Feature or Landscape identified in Appendix 1C which is not otherwise provided for NFL-APP1 is a Non-Complying Activity.

3D EARTHWORKS

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3D.4.4 Discretionary Activities

~~Any **earthworks** that do not meet the Permitted Activity standards, or is not specifically provided for in this Plan, shall be a Discretionary Activity.~~

The following activities are a Discretionary Activity:

- a. Any earthworks that do not meet the Permitted Activity standards, or are not specifically provided for in this Plan.
- b. Any earthworks within an Outstanding Natural Feature identified in NFL-APP1 or Significant Amenity Feature identified in NFL-APP2. [PC65]
- c. Any earthworks associated with a new **National Grid transmission line** within an Outstanding Natural Landscape identified in NFL-APP1

Guidance Note:

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011) also applies to

earthworks and a consent may be required under those provisions.

3D.4.5 Non-Complying Activities

Any **earthworks**:

- a. within an Outstanding Natural Landscape identified in NFL-APP1, except within an existing **road** corridor, or where associated with a **new National Grid transmission line**; or
- b. in the **National Grid Yard** that do not comply with 3D.4.2 f. v) or vi);

is a Non-Complying Activity.

2 DEFINITIONS

National Grid transmission line means

- (a) facilities and structures used for, or associated with, the overhead or underground transmission of electricity in the National Grid; and
- (b) includes transmission line support structures, telecommunication cables, and telecommunication devices to which paragraph (a) applies; but
- (c) does not include an electricity substation.

Appendix B
Draft Consent Order

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEARORA

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First Schedule to the Act

BETWEEN **TRANSPOWER NEW ZEALAND LIMITED**
Appellant
(ENV-2017-WLG-000064)
(ENV-2021-WLG-000025)

AND **POWERCO LIMITED**
Appellant
(ENV-2017-WLG-000060)

AND **MANAWATŪ DISTRICT COUNCIL**
Respondent

BEFORE THE ENVIRONMENT COURT

Environment Court Judge B P Dwyer sitting alone under section 279 of the Act **IN CHAMBERS** at Wellington.

DRAFT CONSENT ORDER

Introduction

- 1 On 17 June 2021 Transpower New Zealand Limited (“Transpower”) lodged appeals against parts of a decision of Manawatū District Council in respect of proposed Plan Change 65 (Outstanding Natural Features and Landscapes) to the Manawatū District Plan (“PC65”). The appeal was concerned with those aspects of PC65 relating to network utilities.

- 2 The Manawatū-Whanganui Regional Council (“Horizons”) joined the Transpower appeal on PC65 as a section 274 party, and has signed the memorandum of the parties seeking this order.
- 3 In 2017 Transpower and Powerco Limited lodged appeals against parts of a decision in respect of Plan Change 55 (District Wide Rules) to the Manawatū District Plan (“PC55”). Royal Forest and Bird Protection Society Incorporated joined the appeals as a section 274 party. A number of matters were resolved by consent between the parties to PC55, as confirmed by consent orders dated 2 May 2018. The remaining points on appeal related to provisions which addressed utilities in outstanding natural features and landscapes (“ONFLs”) of the District Plan, with those matters placed on hold pending resolution of a future plan change to address ONFLs in the District. That plan change materialised into PC65.
- 4 The Court has read and considered the notices of appeal of Transpower and Powerco and the consent memorandum of the parties to the PC65 and PC55 appeals dated 20 December 2022. The consent memorandum has also been signed by Royal Forest and Bird Protection Society Incorporated and Horizons, as section 274 parties to the appeals.
- 5 The Court further acknowledges that resolution of the appeal on PC65, and the plan change becoming operative, means the appeals of Transpower and Powerco Limited on PC55 to the Manawatū District Plan (ENV-2017-WLG-060 and ENV-2017-WLG-064) will be withdrawn on the basis that all and any remaining issues have been resolved through PC65.

Orders

- 6 The Court is making this order under section 279(1)(b) of the Resource Management Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for the present purposes that:
- 6.1 Representatives of all parties to the proceedings have executed the memorandum requesting this order; and
- 6.2 The parties are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction, and conform to the

relevant requirements and objectives of the Resource Management Act, including and in particular Part 2.

7 Therefore, the Court orders, by consent, that:

7.1 The provisions of PC65 are amended in the manner set out in **Appendix A**, which forms part of this order;

7.2 Powerco and Transpower will withdraw the appeals on PC55.

7.3 The appeals of PC65 and PC55 are resolved;

7.4 There is no order as to costs.

DATED at Wellington the day of 2022

B P Dwyer
Environment Judge