

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of applications for resource
consent and notices of
requirement by
Transpower New Zealand
Limited for the North Island
Grid Upgrade

**MEMORANDUM IN RELATION TO SUPPLEMENTARY CLOSING LEGAL
SUBMISSIONS ON BEHALF OF TRANSPOWER NEW ZEALAND LIMITED AND
AMENDED CONDITIONS**

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MAY IT PLEASE THE BOARD

1. **THIS** Memorandum relates to the remaining outstanding matters that arose during the presentation of Transpower's closing legal submissions.

Proposed conditions

2. **THE** designation conditions proposed by Transpower (Annexure B to Transpower's closing submissions) contained a number of non-specific cross-references to other conditions. On 31 October 2008, the Board requested that the method used in Government Bills of underlining clause numbers be followed, and invited Transpower to submit an amended set of conditions.
3. **ATTACHED** to this Memorandum is an amended version of Annexure B, with all condition numbers shown in bold and underlining. Some condition numbers have changed, however no substantive changes have been made to the wording of the conditions.
4. A correction has been made to proposed condition 5 of the regional resource consent for the discharge of contaminants associated with the underground cables. The wording of the final line was deleted in error and replaced by numbers. The wording set out in the Joint Memorandum of Counsel of Transpower New Zealand Limited and Auckland Regional Council, dated 4 September 2008, has been reinstated.
5. **ALSO** attached is a clean version of conditions, with all strikethrough and underlining removed (other than condition references).

Supplementary legal submissions

6. **SUPPLEMENTARY** legal submissions were made on 29 and 31 October 2008 in response to conditions proposed by Manukau City Council and Waikato District Council, and on 30 October in response to issues raised by Drummond Dairies Limited and Scenic Farms Limited. Those supplementary submissions were provided to the Board in hard copy. Those submissions are attached to this memorandum in electronic form.

7. **WE** ask that this Memorandum be placed on the Board's website.

DATED this 7th day of November 2008



J S Kós QC, D J S Laing, J G A Winchester, J P Mooar
Counsel for Transpower New Zealand Limited

SUPPLEMENTARY LEGAL SUBMISSIONS

Response to issues raised by MCC in relation to conditions

408A. COUNSEL for MCC made submissions in relation to conditions at paragraphs 6.8-6.14. These submissions related to the outline plan process and the landscaping conditions that Transpower had lodged with the Board.

408B. MCC submitted that some of the conditions lodged with the Board “*have the apparent effect of authorising that future activities can occur within the designated area without going through the Outline Plan procedure*” (para 6.8). This concern appeared to relate to landscaping issues, and MCC’s view that the landscape assessment was inadequate (para 6.9). A common addition was sought to the designation conditions, as follows (by way of example, for the Brownhill to Otahuhu underground cable designation):

1. *The initial works to give effect to the designation of the Pakuranga to Brownhill underground cable shall be generally in accordance with the following plans:*

Brownhill to Pakuranga Parcel Ownership Maps 1-4, 4 June 2008.

2. *This condition shall not limit any future activities within the designated area provided that they are within the scope of the designation as set out in A and B above, and comply with the following conditions of this designation, and are proposed through the Outline Plan of Works Procedure contained in the RMA.*

(Additions shown by underlining.)

408C. IT is submitted that the amendments sought are not necessary. Section 176A of the RMA sets out the outline plan procedure. It addresses the three situations when an outline plan would not be required. There is no need to impose designation conditions which address a statutory process. Further, the amendments sought make the lodging of an outline plan mandatory, which is inconsistent with the wording of section 176A (as the question of whether an outline plan needs to be lodged, must first be resolved).

408D. MCC then made submissions in relation to the landscape mitigation conditions for the proposed line. It referred to conditions 35-39, which appears to be in error – as those conditions do not refer to the role of the “landscape adjudicator” that MCC had taken issue with. MCC submitted that the (then proposed) role of the landscape adjudicator cut across the role of the Environment Court in relation to appeals during the outline plan process. MCC requested the deletion of conditions 35-39, and that they be replaced by “*an express*”

note to the effect that the mitigation of visual effects on individual properties and public viewing points is to be the subject of outline plans of works” (para 6.14).

408E. AMENDMENTS to the landscape mitigation condition have been proposed (as addressed earlier in these submissions and in the Memorandum of Counsel for Transpower in relation to proposed landscape designation conditions, dated 19 September 2008). These changes clarify that the second landscape architect involved in the process, set out in the conditions, has a certification role, rather than an adjudicator role.

408F. AGAIN, it is proposed that a condition, or note, that requires the mandatory lodging of an outline plan with the relevant territorial authority is inconsistent with the wording of section 176A. While it is not clear what landscape mitigation conditions MCC seeks the deletion of, it is submitted that none of the conditions should be deleted. The landscape mitigation conditions set out a detailed process for assessing site specific mitigation on private and public land. Deletion of some parts of those conditions could result in an incomplete process being contained in the designation conditions.

Response to issues raised by Drummond / Scenic

578A. DR Forret made submissions to establish that Drummond and Scenic are successors to the submitters who lodged submissions in relation to the property they now own (submissions, paras 1.1-1.3). These submissions were at best confused. They did not clearly establish necessary facts to support this claim.

578B. AT paragraph 1.1, Dr Forret stated that Drummond and Scenic are “*successors in title*” to the submission lodged by Agricultural Investments Limited (AIL) and Lichfield Farms Limited (by its Director, Kevin Baker) (Lichfield).

578C. AT the time submissions were lodged with the Minister, Lichfield owned the properties now owned by Drummond and Scenic (Lichfield submission to the Minister, introductory words). AIL had entered into a conditional sale and purchase agreement with Lichfield (AIL submission to the Minister, para 5).

578D. AIL sought that the proposed line be removed off the Lichfield Farm property, or in the alternative that it be relocated on the property (AIL submission to the Minister, paras 16 and 17) . By contrast Lichfield, who owned the property, made no submissions in relation to either relocation or removal of the proposed line. Its relief was limited to declining the application (Lichfield submission to the Minister, final sentence).

578E. AT paragraph 1.2, Dr Forret stated that “*Agricultural Investments Limited was the previous owner of Lichfield Farms Limited. Agricultural Investments Limited subdivided the property into three farms, Scenic, Drummond and Waipa.*”

578F. IT is not clear how Drummond and Scenic can be the “*successors in title*” to both submissions lodged by AIL and Lichfield. If Lichfield owned the properties at the time that the submissions were lodged, and AIL was the previous owner of the Lichfield property (as stated by Dr Forret at para 1.2), Drummond and Scenic would be the successors in title to AIL only. At the time that AIL lodged its submission with the Board, it appeared that its only interest in the properties was as a party with a conditional sale and purchase agreement.

578G. IT is submitted that there is no evidence before the Board to establish that the sale and purchase agreement ever became unconditional. It has not been established that Drummond and Scenic are successors to AIL (as opposed to Lichfield). It would appear that as a result, there is considerable doubt as to whether Drummond and Scenic are truly a successor to a submission which seeks a relocation of the line over their properties.

578H. IN the event that the Board disagrees with this interpretation of the submissions made by AIL and Lichfield to the Minister, and Dr Forret's own submissions, it is submitted that Transpower's evidence shows that it did give consideration to the relocation suggested – as is evidenced from the passage of Mr Noble's evidence that is quoted by Dr Forret (para 9.3).

578I. AT paragraph 9.6, Dr Forret highlighted the differences of opinion between Transpower's witness Mr Hall and Mr Evans and Mr Landers in relation to the productive capacity and low fertility of the previous Agricultural Investments land. Mr Hall lodged evidence with the Board and was available for cross-examination – an opportunity which Dr Forret's clients did not take up (see Transcript, Day 37, 17 June 2008). Mr Evans and Mr Landers did not lodge evidence, and their submissions could not be tested. It is submitted that to the extent that the submitters disagree with Mr Hall's opinion, the evidence of Mr Hall should be preferred.

Response to issues raised by WDC in relation to conditions

1. **MR** Gray suggested extensive amendments to the conditions Transpower had lodged with the Board, as well as additional conditions. Transpower has given consideration to the suggested amendments. The suggested amendments are opposed for a number of reasons.
2. **IN** relation to the amendments proposed to condition 16 (Construction Management Plan), WDC appeared to want to influence Transpower's contractual arrangements. It is for Transpower to ensure that its contractual arrangements are flexible enough to ensure that all designation conditions can be complied with.
3. **THE** end of proposed designation condition 16 states that "*Nothing in this condition allows the Council, or any other party, to require more onerous controls than contained in the designation.*" The purpose of this provision was to avoid issues at the certification stage of the CMP process as to the level of control that was to be imposed, in order to avoid situations where the certifying Council wished to impose controls beyond those set out in the designation conditions. The intention is that the controls be certain, and set out in the designation conditions.
4. **MR** Gray sought to amend this comment in two ways. Firstly, by adding a comment about duplication of conditions. This change is unnecessary. It would be best to avoid duplication of conditions at the outset. Secondly, to allow more onerous controls to be imposed with the consent of Transpower. It is submitted that such a change is not appropriate. It suggests that there may be situations where the controls in the designation conditions are not seen by a certifying Council as being appropriate, and it could therefore seek to impose a different level of control on Transpower. This was the very situation that the comment at the end of condition 16 sought to avoid.
5. **MR** Gray then sought a new condition 19A, in relation to the preparation of a Traffic Management and Mitigation Strategy. The intention appeared to be that this strategy would set out background information that would contribute to the Traffic Management Plan (see Mr Gray's suggested amendments to condition 19). It is submitted that such an approach is unnecessary – the TMP contains the detail of the approach to traffic management – there is no need to have a strategy that sets out what the TMP will cover. All detail should be contained within condition 19.

6. **TO** the extent that this condition refers to pavement life issues, Transpower's earlier submissions are repeated. It is submitted that the remainder of Mr Gray's condition 19A would result in unnecessary duplication of matters covered by this condition and the amended condition 19 in relation to the preparation of a Traffic Management Plan for Road Crossings and Local Roads (WDC district specific conditions 19-21).
7. **AS** has been indicated, the consolidated conditions lodged with the Board have been broadened to relate to use of local roads – this is in recognition of the issues raised by WDC and MCC (picking up on issues raised by WDC).
8. **MR** Gray sought minor amendments to condition 20 – it is submitted that these amendments do not change the intent of the conditions, and unnecessarily increase the number of words in the condition.
9. **MR** Gray sought an advice note be added in relation to the time for submitting the TMP for certification with the Council – to the effect that additional time would be required if a road closure was required. This note has been added to condition 20 of the Waikato District specific condition.
10. A minor amendment was sought in relation to condition 21 – to state that the TMPs *“shall be prepared and implemented in accordance with the Traffic Management and Mitigation Strategy”*. Our earlier comments are repeated in relation to these amendments being unnecessary.
11. **MR** Gray proposes a new condition 21B. The condition proposed is lengthy, and sets out details and mitigation measures that WDC wish to have covered. It is submitted that this condition is not necessary. Condition 21 sets out the matters that are to be included in the TMP. The additional condition sought by Mr Gray largely duplicates matters that are covered in the condition proposed by Transpower.
12. **SOME** of the matters raised by Mr Gray in his condition 21B have been inserted into condition 21 – these become 21(aa), (ab), (ac) and (ad).
13. **MR** Gray sought amendments to conditions 22 and 23 in relation to the repair of damage to roads. It is submitted that the changes sought should not be made – they would result in Transpower being required to monitor all roads in the District that it used, and then be responsible for the repair of damage to all of those roads. As was

addressed in Transpower's evidence, Transpower can only be responsible for damage caused by its heavy vehicles, not other heavy vehicles that are using the roads. It is for this reason that the conditions requiring repair of the damage have been limited to the area in the vicinity of the entranceways – areas where the damage could be directly attributable to Transpower's heavy vehicles.

14. MR Gray also proposed a new condition 23A which set out his formula for calculating loss of pavement life. The loss of pavement life issue has been addressed earlier. In addition, it is submitted that the condition proposed by Mr Gray is vague and invalid due to uncertainty. It proceeds on the basis that agreement will be reached as to an appropriate formula. However, in the event that agreement cannot be reached, the loss of pavement life is calculated on the basis of five listed assumptions – which may or not be the case (as is specifically noted in condition 23A(d)).

15. MR Gray seeks that a new condition 23B be imposed in relation to monitoring and administration costs. This condition is not necessary. Section 36 of the RMA sets out the procedure for imposing such costs. There is no need for this statutory procedure to be repeated as a designation condition.