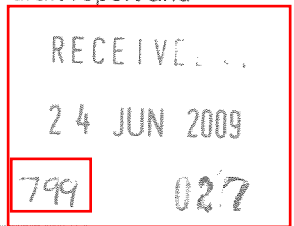


riceres/steve

From: Viv Smith [viv.smith@mfe.govt.nz] on behalf of TPCallin [TPCallin@mfe.govt.nz]
Sent: Wednesday, 24 June 2009 5:09 p.m.
To: riceres/tpcallin
Subject: FW: Comments on behalf of South Waikato District Council on the draft report and decision of the Board
Attachments: Scan7550.pdf; Scan7551.pdf



From: Jenna Sayer [mailto:jsayer@tomwake.co.nz] **On Behalf Of** Marianne Mackintosh
Sent: Wednesday, 24 June 2009 3:06 p.m.
To: TPCallin
Subject: Comments on behalf of South Waikato District Council on the draft report and decision of the Board

Dear Viv

Please find correspondence **attached**.

Kind Regards

Marianne Mackintosh

Associate



Tompkins Wake

Lawyers

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24 June 2009

BY EMAIL AND BY POST

Call-In Unit
Ministry for the Environment
PO Box 10362
Thorndon
WELLINGTON 6143

For: Viv Smith, Project Manager
Board of Enquiry on Upper North Island Grid Upgrade Proposal
Email: tpcallin@mfe.govt.nz

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Victoria Mann
Marianne Mackintosh
Jade McMonagle
Bridget Parham
Scott Ratuki

Comments on behalf of South Waikato District Council on the draft report and decision of the Board

We act for the South Waikato District Council in relation to the Board of Enquiry Upper North Island Grid Upgrade Proposal. Please find **enclosed** for filing with the Board a set of comments on behalf of the South Waikato District Council. If you have any questions in relation to this document please do not hesitate to contact us.

Yours faithfully
TOMPKINS WAKE



Marianne Mackintosh
Associate

encl.

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER of Applications for Resource Consent and Notices of Requirement by Transpower New Zealand Limited for the North Island Grid Upgrade Project

**COMMENTS ON BEHALF OF SOUTH WAIKATO DISTRICT
COUNCIL IN RESPONSE TO THE BOARD OF INQUIRY DRAFT
REPORT AND DECISION PRODUCED UNDER S148 OF THE
RESOURCE MANAGEMENT ACT 1991**

**TOMPKINS
WAKE**
L A W Y E R S

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May it please the Board:

Introduction

1. The Board of Inquiry ('Board') released its draft report and decision ('draft decision') under s148 of the Resource Management Act 1991 ('RMA') and has invited persons to whom the draft report is sent to send their comments on any aspect of the draft report and decision to the Board within 20 working days of the date of invitation – by 5pm on 24 June 2009.

2. South Waikato District Council ('Council') made a submission to the Board and presented evidence at the hearing. Council has been sent a copy of the draft decision. Council wishes to make comments on the draft decision in relation to the following matters:
 - (a) The absence of a condition requiring monopoles at the crossing of the Waikato River at Arapuni;

 - (b) Inadequacy of the landscape and visual mitigation measures in relation to the South Waikato District (including those conditions endorsed by the Board);

 - (c) Conditions contained in Appendix N of the draft decision – Overhead Line Section – South Waikato District Council Conditions.

Measures to avoid remedy and mitigate adverse effects

3. The following comments refer to the Board's draft decision, chapter 7 (consideration of alternatives); chapter 10 (landscape and visual effects); chapter 15 (mitigation and remedial measures and conditions); and chapter 17 (application of relevant considerations).

Chapter 7: Consideration of Alternatives

4. South Waikato District Council (“SWDC”) understands that it is the Board’s finding that Transpower has discharged its duty to consider alternatives in respect of the overhead transmission line route, and the question of undergrounding of cables.¹ In terms of the overhead transmission line, despite the ACRE model preference for the eastern route, the choice of the western route by Transpower was accepted by the Board. This is apparently based on a necessity to maintain the linear route between the Taupo District to the South and the Waipa District to the North (of the South Waikato District).² SWDC is disappointed with this finding and does not accept that Transpower’s consideration was “adequate”.

Chapter 10: Landscape and Visual Effects

5. SWDC wishes to point out that, in relation to adverse landscape and visual effects, the application of the ACRE model and subsequent choice of the western route is not considered to be an adequate means of avoiding, remedying or mitigating such effects. The Board noted that Mr Lister (witness for Transpower) accepted that the route chosen through the ACRE process had a greater visual and landscape effect than on other potential routes in the South Waikato District because it had to be connected with sections to the north and south. The Board addresses this issue by cross-referencing to its chapter 7 discussion around consideration of alternatives. With respect, the adequacy of Transpower’s consideration of alternatives and the apparent *practicalities* of maintaining the linear route between the three districts in question does not avoid, remedy or mitigate the adverse landscape and visual effects on the South Waikato District.

Conditions for mitigation of adverse effects

¹ See in particular paragraph 551 of the Draft Decision.

6. Council notes the comments from the Board at paragraph 1164 of the draft decision where it refers to Transpower's proposed conditions. The Board states that:

[1164] [...] no other evidence was provided about mitigation proposals to address the visual effects that were agreed by all parties would occur.

7. SWDC sought conditions requiring the use of monopoles and undergrounding of cables. Furthermore, it is Council's position that preparation of draft conditions and preparation of proposals for mitigation are not the responsibility of submitters.³ The responsibility for the preparation of draft conditions lies with the applicant – Transpower. Council also notes that draft conditions were not produced by Transpower until some weeks into the hearing process. Indeed, it was some four to five months before a full set of draft conditions were available to the parties. This approach puts Council (and other local authorities) in a difficult position as Councils will be required to monitor and enforce conditions yet did not have any opportunity to provide feedback on conditions until late in the process. Council also notes that the conditions it sought were not included by Transpower and have not been accepted by the Board.

Use of Monopoles

8. The Board agreed with various witnesses (Buckland, Lister, Lucas) that the margins of the Waikato River at the crossing point near Arapuni have a high natural character in terms of s6(a) of the Resource

² See in particular paragraphs 585, 593, 636 and 637 of the Draft Decision

³ As a consequence of the matter being called in and being heard by a Board of Inquiry, SWDC have the status of a submitter only

Management Act 1991 ('RMA'). It found that the proposed crossing would have adverse landscape and visual effects.⁴

9. The Board goes on to state that it accepted that the visual effects of open structure lattice towers recede with distance. It stated that this type of tower would have less effect on the natural character of the margins of the river at the proposed crossing point than would monopole towers.⁵
10. With respect, this finding appears to be at odds with the evidence produced by witnesses for both Transpower and submitters. Indeed, it is unclear what factual basis this is founded upon particularly when Transpower's witness, Mr Lister, stated that monopoles could be warranted in that area.⁶

ACRE

11. At paragraphs 1204 and 1207 the Board made a finding that the ACRE route selection process was an acceptable method of avoiding adverse landscape and visual effects. It also found that the proposed mitigation measures are adequate and appropriately reflected in the proposed conditions for the designation.
12. SWDC disagrees with this finding. It is difficult to see what mitigation if any has been proposed in relation to the issues concerning South Waikato District. The Board makes reference to the ACRE model being a suitable tool for mitigation and yet the ACRE model showed that the route selection for the South Waikato District did not concur with the route that Transpower elected to follow. It is SWDC's view that adequate consideration of alternatives does not equate to avoiding, remedying and mitigating adverse effects.

⁴ See paragraphs 1172 and 1173 of Draft Decision

⁵ See paragraphs 1174, 1175 and 1176 of Draft Decision.

Critical Findings

13. SWDC notes the Board's conclusions at paragraphs 1211, 1217, and 1218⁷. Again, with respect, it is difficult to reconcile such findings with the lack of remedial and mitigating conditions in relation to the South Waikato District. Given the findings of the Board in relation to adverse effects in the South Waikato District, particularly at the Arapuni River crossing, it seems anomalous that the use of monopoles at the crossing is not supported.

Chapter 17 – Application of relevant considerations

14. Counsel would like to comment on the Board's statements at paragraphs 2022 and 2023 in relation to the South Waikato District Plan. These state as follows:

[2022] There was no issue that, particularly due to the scale of the structures, the line would have adverse landscape and visual effects on the amenity values of the South Waikato environment. In that respect, the proposal is inconsistent with the policies of the District Plan.

[2023] Even so, if weighed with the positive effects, and the extent of avoidance, remedying and mitigating measures, the Board judges that it would qualify for resource consent in terms of the District Plan.

[Emphasis added]

⁶ For example, the Board states at paragraph 1757: "Although Mr Lister recommended the use of monopoles at those locations, he did not assert that the use is required."

⁷ Paragraph 1211 states that: The Board judges that the proposed overhead line will have significant visual and landscape effects on the Hunua and Paparimu Valley, the Kopuku-Taniwha-Waiterimu Valley (proposed overhead line sections 6 and 7) in the South Waikato District;...; at the crossing of the Waikato River at Arapuni, and the dairy country south of Arapuni in the South Waikato District.

Paragraph 1217 states: The Board further finds that the crossing at Arapuni would be an inappropriate development in terms of section 6(a) of the RMA.

Paragraph 1218 states as follows: Even with the mitigation proposed in various places and in various ways, and even with remediation with the removal of the ARI-PAKA line, the Board finds that substantial adverse landscape and visual effects would remain. There would be significant landscape and visual effects on the environment, and also cumulative effects on the effects of existing transmission lines.

15. This finding sits uneasily with the evidence presented by SWDC. The proposal will have little or no positive effects on the South Waikato District. There are little or no *avoidance remedying and mitigation measures* for the South Waikato District. As outlined previously, reference to ACRE as representing such avoidance, remedying and mitigation is misleading and inappropriate in the context of the South Waikato District.

Chapter 18: Ultimate judgements

16. The following paragraphs from the draft decision provide the basis for SWDC's overall concerns and comments in relation to the draft decision.

*[2350] In chapter 10 of this report, the Board stated its findings that there would be **significant adverse landscape and visual effects on the environment**, in some parts cumulative on effects of existing transmission lines. Those effects would not fully maintain amenity values and the quality of the environment.*

[2351] Transpower has had particular regard to those effects, and in the route selection, and in its planning proposals, has sought to minimise the adverse effects of the line on landscape and visual amenity values. Although (as Transpower conceded), considerable adverse effects would remain, they cannot be eliminated except by doing without the transmission line. That is a possible outcome of the ultimate judgments the Board has to make.

17. SWDC disagrees with the statement that Transpower has sought to minimise the adverse effects of the line on landscape and visual amenity values in the South Waikato District. Furthermore, Transpower has made little effort to introduce conditions that will remedy or mitigate such effects.

18. Finally, the comments from the Board at paragraph 2365 which states that:

*[2365] [the Board] also finds that Transpower has had particular regard to those effects, and in the route selection and in its planning proposals, has sought to minimise the adverse effects of the line on landscape and visual amenity values; but that the quality of the environment would not be fully maintained. That could not be attained other than by doing without the transmission line, **an outcome that would deprive people and communities of significant opportunities to provide for their welling, health and safety.***

19. This paragraph essentially states that the districts through which the transmission line will traverse must accept significant adverse effects on their landscape, visual amenity and environment for the benefit of a separate (albeit much larger) community. Only a very small part of the South Waikato District community will benefit from this proposal.⁸ It is the wellbeing of Auckland that apparently outweighs the wellbeing of communities through which the transmission line will traverse.

Proposed conditions

20. SWDC also wishes to comment on the proposed conditions endorsed by the Board and found at page 122 of Appendix N – Overhead Line Section – South Waikato District Council Conditions.

Pre-construction Activities

21. In relation to condition 38, Council seeks the addition of point (c) to read
(c) Notify SWDC of any changes to the Site Works Plan.

⁸ For example, contractors who may be engaged to carry out work on the project.

22. In relation to condition 40, Council seeks the addition of the following words, or words to similar effect:
- (a) In the initial paragraph, change the reference to 15 working days to 20 working days;
 - (b) At subparagraph (f), add the word “plans”;
 - (c) Add a subparagraph (u) to read “public notification of commencement of construction”; and
 - (d) Add a subparagraph (v) to read “road closure”.

23. In relation to condition 41, add the following words, or words to similar effect:

There shall be no work undertaken outside of the agreed working hours.

24. Furthermore, the implementation phase of the CMP must also be included in the conditions.

25. In relation to condition 50, add the following words, or words to similar effect:

All costs incurred in relation to the TMPs shall be borne by Transpower.

26. In relation to condition 51, add the following words and the end of the paragraph:

At the time of the survey, Transpower’s representatives shall be accompanied by the relevant Council staff and/or representative from NZTA.

27. In relation to condition 52, this condition requires a timeframe to be attached to the work being carried out. Furthermore, words such as the following should be added to the condition:

Construction of entranceways and public roads shall be treated as road openings and shall be undertaken in accordance with the National Code of Practice for Utilities' Access to the Transport Corridors, March 2009.

28. In relation to the conditions generally, all monitoring should be carried out at the expense of Transpower.

Further Comments – Conditions produced on behalf of Waikato District Council

29. In addition to the comments set out above, Council wishes to endorse the proposed draft conditions provided by Waikato District Council through its witness Mr Gray in relation to traffic and roading issues. (Copies of these conditions have also been provided to the Board as attachments to the comments filed by Waikato District Council).

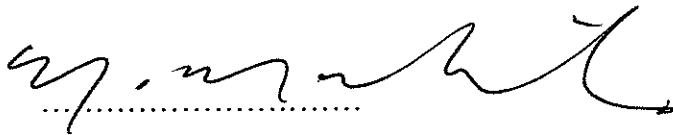
Amendments sought

30. SWDC is disappointed overall with the decision of the Board. However, given that the notices of requirement have been confirmed, SWDC seeks the following:

- (a) The introduction of a condition requiring monopoles at the Waikato River crossing at Arapuni;

- (b) Amendments to conditions contained in Appendix N –
Overhead Line Section – South Waikato District Council
Conditions in the terms set out above.

Dated: 24 June 2009

A handwritten signature in black ink, appearing to read 'M. Mackintosh', written over a horizontal dotted line.

M Mackintosh

Counsel for Waikato District Council