

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED GORE DISTRICT PLAN**

Under the Resource Management Act 1991

In the matter of submissions and hearings on the proposed Gore District Plan

**LEGAL SUBMISSIONS ON BEHALF OF TRANSPOWER NEW ZEALAND LIMITED (S101
and FS30)**

Hearing Stream 9A - Sites and Areas of Significance to Māori / Ngāi Tahu Cultural
Values

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION / SUMMARY

1.1 These legal submissions are filed on behalf of Transpower New Zealand Limited (**Transpower**) in relation to the Sites and Areas of Significance to Māori (**SASM**) provisions notified in the Proposed Gore District Plan (**PDP**), which have been allocated to Hearing Stream 9A, the SASM / Ngāi Tahu Cultural Values (**NTCV**) topic.

1.2 Transpower's key interest in the SASM / NTCV topic is to support primary relief sought by various other submitters seeking that SASM be identified/mapped in the PDP (Option (c) below). This is in the context of the following options that are before the Panel:

- (a) The **Notified Proposal**: objectives and policies located in the SASM Chapter, with a matter of discretion (**MoD**) or matter of control (**MoC**) located within certain rules, with the MoD/MoC pertaining to the adverse effects of that activity on Ngāi Tahu cultural values. Those rules are located in different chapters of the PDP;
- (b) The **Refined Relief**: the SASM Chapter is deleted, with objectives and policies to be located instead within a Ngāi Tahu Cultural Values Chapter. The Refined Relief has been proposed by Hokonui Rūnanga through the course of submissions and the hearing process. In reality, the Refined Relief has a similar regulatory effect to the Notified Proposal but with the intent of taking the Panel's (and the submitters') focus away from SASMs;¹ and
- (c) Relief seeking that SASM be identified/mapped in the PDP. This option is supported by Transpower.

1.3 At the outset it is emphasised that Transpower does not fundamentally oppose the recognition of Ngāi Tahu cultural values in decision making across the District. However, there are submitted to be problems with the Notified Proposal approach (as well as the Hokonui Rūnanga Refined Relief package) that Transpower submits

1 As outlined at paragraph 21 of the 'Minute 15 response: Mana whenua and Sites and Areas of Significance to Māori chapters' dated 29 October 2024 and Appendix Two (both provided in Appendix D of the Hearing Stream 8 – Sites and Areas of Significance to Māori - section 42A.

should be given weight in the Panel's consideration of whether SASM should be identified in the PDP.

- 1.4** The first key point is that Transpower seeks resource consents, either under the National Environmental Standards (the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**)) - where the objectives and policies in the PDP are relevant - or occasionally under PDP rules as well. As explained in more detail in these legal submissions, certain restricted discretionary rules located in NESETA, do not work within mapped SASM. This raises a question of whether Transpower would actually need to apply for such consents.
- 1.5** Second, Transpower is a requiring authority and often uses the designation pathway to secure approvals for new projects. As per the evidence of Ms McLeod filed for Transpower, if SASM are not mapped in the PDP, then Transpower (or any other requiring authority) may struggle to satisfy the tests in s171(1)(b) of the RMA, which requires consideration of whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the proposed work. In the case of Transpower, it also raises issues as to how it is to demonstrate that it has (as required by Policy 4 of the National Policy Statement on Electrical Transmission (**NPS-ET**)) avoided, remedied or mitigated adverse effects, through the use of a route, site and method selection. Ms McLeod's evidence explains the process that Transpower would normally follow where at the start of any particular project across New Zealand, SASM along with other matters listed in section 6 of the RMA (such as Outstanding Natural Landscapes or Features, or Significant Natural Areas) would be mapped and efforts made to see if the relevant areas could be avoided through an available route that takes into account the operational and functional needs of the National Grid infrastructure, as well as other relevant matters required by the NPS-ET.
- 1.6** With the objective pointing to the entire District being of cultural significance, Transpower would need input from Hokonui Rūnanga at what is normally only an initial desktop assessment. Treating the entire District in this way, as SASM-O1 anticipates, and keeping in mind that a designation has to be assessed against

district plan objectives and policies (with the rules being irrelevant), means it is highly unlikely that the objective (and supporting policies) could ever be demonstrated to be achieved. While Transpower would always consult with Hokonui Rūnanga in a project such as a new designation, Transpower is concerned about the scale of consultation that Hokonui Rūnanga will need to engage in (not simply in the context of a potential new project by Transpower, but all people within the District looking to undertake the activities referred to in SASM-P1).

1.7 The third key point is questioning whether the Notified Approach (as well as the Hokonui Rūnanga Refined Relief) is more so ‘business as usual’ in terms of enabling considering of cultural values in decision making, rather than responding to the resource management issue that normally would be addressed under a chapter titled ‘Sites and Areas of Significance to Māori’ – that is – sites or areas that satisfy the ‘significant’ threshold. In making this submission, it is acknowledged that the position of Hokonui Rūnanga as expressed in the notified SASM chapter is (in summary) that there is no threshold for significant sites / areas, or something less. As notified SASM-O1 states, “All land, waterbodies, natural features, and marae within Gore District are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua”.

1.8 Transpower does not wish to oppose the views of the Rūnanga as to how the PDP would affect their relationships with the whenua and taonga, but does want to highlight to the Panel that by omitting to identify SASM in the PDP, the significance of such relationships to certain areas, as is intended to be recognised in accordance with s 6(e), may be lost. In this respect, the proposals being advanced may not necessarily be incorrect in terms of achieving the relevant provisions in Part 2 of the RMA.

2. COMPLIANCE WITH THE NATIONAL PLANNING STANDARDS 2019

2.1 Sections 74 and 75 of the RMA set out matters that the Council must consider when preparing and changing its district plan. Relevantly, section 75(3) directs that a district plan must give effect to higher order planning documents, including that of the National Planning Standards 2019 (**NPS**). The NPS were published on

1 November 2019, to provide national consistency to the format, structure, terminology, and accessibility of plans and policy statements under the RMA.

2.2 The NPS sets out the mandatory directions for district plans. Relevantly:

- (a) Part 4, Direction 1 states “All parts and their titles in table 4 must be included in the order shown. Additional parts must not be included.”
- (b) Part 4, Direction 2 then goes on to state “Chapters and sections that are black in table 4 must be included, in the order shown.”
- (c) Part 4, Direction 3 states that “unless otherwise specified, chapters and sections that are grey in table 4 must be included if relevant to the district plan, in the order shown”.
- (d) Part 7, Direction 17 states that if the following matters are addressed, they must be located in the Sites and areas of significance to Māori chapter (which includes relevantly):
 - descriptions of the sites and areas (eg, wāhi tapu, wāhi tūpuna, statutory acknowledgement, customary rights, historic site, cultural landscapes, taonga and other culturally important sites and areas) when there is agreement by Māori to include this information...
- (e) Part 7, Direction 18 states that “any additional chapters to address other historical and cultural values on a district-wide basis must be included alphabetically under the Historical and cultural values heading”.

2.3 Table 4 shows the SASM Chapter in grey text. On this basis, the evidence of Ms Beran, the planning expert for the Hokonui Rūnanga is that the inclusion of a SASM Chapter is not a mandatory requirement for the PDP.² Rather, in support of the Refined Relief, Ms Beran asserts that mandatory direction 18 of Part 7 – District-wide Matters Standard, allows for the inclusion of the NTCV Chapter.

² Statement of Evidence of Amy Elizabeth Beran for Hokonui Rūnanga Incorporated dated 18 November 2024 at [47]; and as outlined at paragraph [22] of the ‘Minute 15 response: Mana whenua and Sites and Areas of Significance to Māori chapters’ dated 29 October 2024 and Appendix Two (both provided in Appendix D of the Hearing Stream 8 – Sites and Areas of Significance to Māori - section 42A report <[Microsoft Word - GDCDPR - Section 42A - SASM Chapter - FINAL](#)>.

- 2.4** Ms Beran’s evidence is supported by Mr Leckie for Lane Neave (on behalf of the Hokonui Rūnanga).³ In summary, his submission is understood to be that because Hokonui Rūnanga do not propose the identification of specific sites, a SASM chapter is not required in the PDP, because it is not relevant to the Gore District.
- 2.5** In Transpower’s submission this is at odds with the evidence for Hokonui Rūnanga and other parts of Mr Leckie’s submissions (and indeed notified content in the SASM chapter, including the SASM overview and SASM-O1) which say that all land, waterbodies, natural features, and marae within Gore District are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua.
- 2.6** If the evidence is that all land and all waterbodies are sites and areas of cultural significance, then that in itself tells us that the chapter is relevant to the Gore District. Whether a SASM Chapter is "relevant" to the PDP, should be determined on whether there are SASMs within the Gore District, and not be dependent on the regulatory response that is proposed and endorsed by the Hokonui Rūnanga.
- 2.7** In addition to the references already made, the operative Gore District Plan recognises six scheduled archaeological sites of significance to mana whenua, which are identified in Chapter 2 – Matters of National Importance of the current Gore District Plan.⁴ This evidence is also relevant to whether there are SASMs within the District. As there have been previously acknowledged SASMs in the District, we submit that the NPS requires a SASM Chapter in the PDP. For completeness, it is acknowledged that Direction Part 7, Direction 17 includes the reference “when there is agreement by Māori to include this information”. In our submission, this is not intended to give an outright discretion to the Hokonui Rūnanga as to the appropriate regulatory response within a SASM chapter, but rather to give the appropriate discretion to withhold from making public in a district plan, culturally sensitive information (eg, through the use of a silent file).

³ Legal Submissions for Hokonui Rūnanga Incorporated dated 3 December 2024 at [32].

⁴ Gore District Plan, Chapter 2: Matters of National Importance at Table 2.6.1.

3. PDP'S RELATIONSHIP WITH THE NESETA

3.1 The NESETA sets out a national regulatory framework for activities related to existing⁵ National Grid transmission lines, including the operation, maintenance and upgrading of such lines. The NESETA specifies permitted electricity transmission activities (subject to standards) and establishes resource consent requirements where these activities do not meet the standards.

3.2 The relevance of the NESETA to this hearing, is that PDP provisions will apply to decision making on certain consents required under NESETA. National environmental standards take precedence over relevant PDP rules unless the standards state that a rule or consent can be more lenient⁶ or stringent⁷ than the standard. The Council must also ensure that there are no duplications or conflicts between the provisions of the NESETA and a PDP.⁸

3.3 Ms McLeod in her evidence at paragraph [8.32] considers that the Notified Proposal and Refined Relief “results in unintended and inappropriate consequences in relation to the implementation of the NESETA Regulations”.

3.4 This is because if SASM are not identifiable under the PDP, the NESETA may not acknowledge any areas in Gore as holding a significant relationship to Māori when it comes to consenting certain activities. By way of example, Ms McLeod references the definition of ‘historic heritage area’ and Regulation 35 in the NESETA.⁹ ‘Historic heritage area’ is defined in the NESETA as:

- (a) means an area that is protected by a rule because of its historic heritage; and
- (b) to avoid doubt, includes an area that is protected by a rule because it is a site of significance to Māori” [my emphasis]

3.5 Regulation 35 provides that earthworks relating to an existing transmission line that are in a historic heritage area (which through the definition, includes a SASM)

5 ‘Existing’ here relates to transmission lines that were operational, or able to be operated, as at 14 January 2010.

6 RMA, section 43B(3).

7 RMA, section 43B(1).

8 RMA, section 44A.

9 Evidence of Ainsley McLeod at [8.29].

are a restricted discretionary activity (**RDA**). The relevant MoD is ‘the effects on historic heritage’. Presumably, if SASM are not identified/mapped in the PDP the RDA rule in the NESETA will not be triggered, and earthworks would be permitted under Regulation 33(1) of the NESETA if all other conditions are complied with. This could be despite the activity being set to occur in an area that the Hokonui Rūnanga has a significant relationship with.

- 3.6** This is one example that is specific to Transpower’s interests and operations, that also demonstrates that the proposed approaches may have adverse and unintended effects on the Hokonui Rūnanga. If SASMs are not identifiable, then there is a real concern that other planning documents will no longer consider them relevant, such as the defined terminology of historic heritage areas in not only the NESETA, but also the RMA and PDP (as mandated by the NPS)¹⁰ creating ambiguity in historic heritage related provisions across various planning documents, such as section 6(f) of the RMA. It is worth noting that Transpower is advancing an argument that is likely to result in it triggering more resource consents. However, they should be triggered under the NESETA, and as such Transpower is not hiding away from the reality of the disconnect between the Notified Proposal and Refined Relief, and the NESETA.

4. DESIGNATIONS

- 4.1** Transpower acknowledges that as part of the obligation to ‘recognise and provide for’ under section 6(e) the Council must ascertain from the affected iwi how their relationship might be affected by a resource management decision.¹¹
- 4.2** The Environment Court in *Ngāti Hokopu Ki Hokowhitu v Whakatane District Council*¹² clarified that section 6(e) emphasises the relationship of hapū or roopū to their taonga and that the weaker the relationship, the less it needs to be provided for. An emphasis is placed on the relationship of Māori with their ancestral lands,

10 Part 14 of the NPS – the Definitions Standard outlines mandatory definitions to be used in plans, if used in these planning documents. The definition of historic heritage must have the same meaning found in section 2 of the RMA.

11 *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768 at [73].

12 *Ngāti Hokopu Ki Hokowhitu v Whakatane District Council* ENC Christchurch C168/2002, 13 December 2002 at [45].

water, sites, waahi tapu, and other taonga, rather than to that of Māori land on its own accord.¹³

4.3 Section 6(e) relates to the *relationship* iwi, hapū, whanau (etc) have to areas of significance, being their ‘ancestral lands, water, sites, waahi tapu, and other taonga’. By generalising the consideration of Ngāi Tahu cultural values based on the type of activity proposed to be implemented under the PDP, the special significance of the areas or taonga that are intended to be recognised under section 6(e) is greatly lessened. Through the Notified Proposal or Refined Relief, the PDP does not depict those areas where a heightened relationship with the Rūnanga is held.

4.4 Transpower is a requiring authority. Transpower utilises both the resource consent and designation processes in relation to the building of new assets, or other related activities. Applying for a notice of requirement for a designation is at times a more suitable tool for when Transpower is intending to implement large linear infrastructure. When it does this, it will not seek consents and the MoD or MoC ‘method’ will not assist.

4.5 When advancing a project via a designation, Transpower as requiring authority is required to assess the alternative sites, routes, or methods available to undertake the work. One of the matters that a council must consider when considering a notice of requirement and the effects on the environment of allowing the requirement, is whether adequate consideration has been given to alternative sites, routes and methods (section 171).¹⁴ This aligns with Policy 4 of the NPS-ET, which provides:

When considering the environmental effects of new transmission infrastructure or major upgrades, **decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.**

¹³ At [37].

¹⁴ This is triggered when there are likely to be significant adverse effects on the environment, which is almost always going to be triggered for a project involving the National Grid.

- 4.6** Ms McLeod in her evidence explains how Transpower achieves the requirements of section 171 and Policy 4 through:

[8.23] The requirements of section 171 of the RMA and Policy 4 of the NPSET are achieved for the development of the National Grid through the use of a generic methodology for identifying sites and routes for new or replacement transmission infrastructure through a staged process of constraints analysis, known as the ACRE model (Area-Corridor-Route-Easement/Designation investigations). The ACRE process involves a progressive filtering approach, where increasing and more specialised detail is used at each stage on the relevant technical, cultural, environmental (including landscape and visual impacts), and sometimes property constraints to ultimately enable the identification of a preferred route or site.

[8.24] In my experience, a key element of the ACRE process is the mapping of district plan overlays or constraints so that the most appropriate route or site can be selected.

- 4.7** Ms McLeod concludes that the lack of mapped SASMs in the PDP “presents challenges to the identification of a route or site that avoids effects [on] SASM”.¹⁵ The omission of mapped SASMs, inhibits Transpower’s consideration of alternative locations or routes for proposed infrastructure, including the inability to determine prior to application the extent of Ngāi Tahu cultural values that will be impacted in any given area.
- 4.8** While the NPS-ET does not in itself require SASM to be mapped, Transpower will be unable to demonstrate that Policy 4 is achieved, nor section 171(1)(b) in accordance with s 6(e), in respect of SASM, under either the Notified Proposal or Refined Relief.
- 4.9** The Notified Proposal and Refined Relief constrain the ability for requiring authorities, such as Transpower, to plan or seek to avoid significant adverse effects when considering new infrastructure. It is also needing to show that the designation is consistent with the objectives and policies of the PDP, which in this

15 Evidence of Ainsley McLeod at [8.24].

instance – point to the entire District being of cultural significance. Because of the nature of a designation, the nuances that come with the MoC and MoD approach, do not apply here. It is noted that this submission is not solely reliant on Policy 4 of the NPS-ET, and as such, it is relevant to other requiring authorities in respect of section 171(1)(b). Such constraints, significantly limit the effectiveness and efficiency of the SASM (or NTCV) Chapter in achieving plan clarity and certainty for plan users.

5. WORKABILITY OF THE ACTIVITY-BASED APPROACH

5.1 The Council must carry out a further evaluation under section 32AA and clause 10 of Schedule 1 of the RMA. The nature of this evaluation is prescribed by section 32(1)-(4), which relevantly requires the consideration of:

- (a) examine the extent to which the objectives of the proposal being evaluated are the **most appropriate way to achieve the purpose of this Act**; and
- (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) **assessing the efficiency and effectiveness** of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
- (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

5.2 For plan clarity, it is fundamental that any terms, standards, restrictions or prohibitions included in a plan are set out with sufficient certainty so as to determine compliance.

5.3 Plan clarity promotes the efficiency and effectiveness of the provisions in achieving the objectives. The assessment of the efficiency and effectiveness of the PDP is not in terms of the drafting process (such as the time it would take to identify, map, notify and hear submissions on specific SASMs) but rather the efficiency and effectiveness of the PDP provisions when being read and implemented by plan

users. The Panel should not therefore take into account the time, effort and resources needed to ultimately identify SASM in the PDP.

- 5.4** Ms McLeod, from her paragraph 8.12 onwards, has also raised a number of issues with MW-P1, in terms of whether it provides any real clarity as to what activities within the District will include a MoC or MoD. The uncertainty in that policy is, with respect, evident on a quick read. It gives little to no certainty about what activities are going to have the MoD or MoC included in them. By way of example: *Some activities within a zone that do not hold a permitted activity status, including unanticipated activities within a prescribed zone.* This limb could potentially capture every single activity that requires a consent, in the District.
- 5.5** Having a similar effect to s 171,¹⁶ as provided in Schedule 4, clause 6(1)(a) of the RMA, if an activity will result in significant adverse effects, then a description of any possible alternative locations or methods for undertaking the activity must be provided in the assessment of environmental effects. However, applicants are less likely to be able to identify these appropriate locations for activities by reading or using the PDP as provided in the Notified Proposal or Refined Relief, alone.
- 5.6** Not only will there be an increasing likelihood of resource consent applications being lodged that are less successful at attempting to avoid or limit significant effects in relation to areas significant to Māori, but further there is greater ambiguity to a potential resource consent applicant on the resources, consultation and time that is necessary when lodging an application. Such factors are important considerations when one is lodging a consent, and they should be able to be provided with a level of assurance from the PDP as to what provisions they will need to consider and account for.
- 5.7** As a result, it is highly likely that an increase in unnecessary information requests will be asked of the Hokonui Rūnanga, as applicants are likely to want to gain an assessment of the appropriate areas for their activity (in the eyes of the Hokonui Rūnanga) before lodging an application. Transpower is not aware of whether this will be able to be resourced.

16 Refer to paragraphs 5.3 – 5.7 of these submissions.

5.8 The practical implementation of these proposals could for all intents and purposes be utilised in the same way as a SASM Chapter that does include mapped SASMs. The activity-based approach may eventuate as follows:

- (a) If consultation has not happened in advance of lodgement, the Council receives a resource consent application that includes an activity triggering the Ngāi Tahu cultural values MoD;
- (b) The Council confers with the Hokonui Rūnanga or the iwi planning documents to determine the Ngāi Tahu cultural values that are affected by the proposed activity;
- (c) In order to do this, it will need to limited notify the application; and
- (d) The intensity or extent of the cultural values that apply to the application is impacted by the location of the activity to a site that is considered to be significant to Māori (that the hapū have a heightened relationship with).

5.9 We submit that if the above process comes to fruition, this would be the implementation of a SASM Chapter with 'mapped SASMs' with the key difference being that the identification of SASM not being available for the public to ascertain.

6. CONCLUSION

6.1 Transpower wishes not to directly oppose the view of the Hokonui Rūnanga on how they consider their relationships with taonga and whenua should be expressed, but rather highlights the real-world impracticalities and inconsistencies it has identified. Such issues could result in the Notified Proposal and/or Refined Relief

being a less suitable option to that of mapped SASMs in a SASM Chapter (or indeed – be needed in addition to mapped SASM).

DATED this 5th day of February 2025

A handwritten signature in black ink, appearing to read 'S J Scott', positioned above a horizontal line.

S J Scott
Counsel for Transpower New Zealand
Limited