

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2016-404-002330
[2017] NZHC 281**

IN THE MATTER of the Local Government (Auckland
Transitional Provisions) Act 2010 and the
Resource Management Act 1991

AND

BETWEEN TRANSPOWER NEW ZEALAND LTD
Appellant

AND AUCKLAND COUNCIL
Respondent

.....Contd...

AND

Hearing: 13 - 14 February 2017

Appearances: J Gardner-Hopkins and L Hinchey for Appellant
J Caldwell and V Evitt for Respondent
C Kirman and A Devine for Housing New Zealand Corporation
H Atkins for Federated Farmers of NZ Inc
A Davidson for Hugh Green Ltd
D Allan for CDL Land NZ Ltd
D Minhinnick for Vector Ltd
G Hewison (lay person) for Greater East Tamaki Business
Association Inc, Mahunga Drive Business Association Inc,
Manukau Harbour Restoration Society, Onehunga Business
Association Inc and Rosebank Business Association Inc

Judgment: 28 February 2017

INTERIM JUDGMENT OF WYLIE J

This judgment was delivered by Justice Wylie
On 28 February 2017 at 1.00pm
Pursuant to r 11.5 of the High Court Rules
Registrar/Deputy Registrar

Date:.....

AND

HOUSING CORPORATION NEW
ZEALAND CORPORATION
FEDERATED FARMERS OF NZ INC
GREATER EAST TAMAKI BUSINESS
ASS INC
MAHUNGA DRIVE BUSINESS ASS
INC
ONEHUNGA BUSINESS ASS INC
ROSEBANK BUSINESS ASS INC
HUGH GREEN LTD
CDL LAND NZ LTD
VECTOR LTD
Section 301 parties

Solicitors/Counsel:
Chapman Tripp, Auckland
Buddle Findlay, Auckland
Atkins Holm Majurey, Auckland
Ellis Gould, Auckland
Daniel Overton & Goulding, Auckland
Russell McVeagh, Auckland

Introduction

[1] The appellant, Transpower New Zealand Ltd (“Transpower”), appeals various provisions contained in the respondent’s – Auckland Council’s (the “Council’s”) – proposed Auckland Unitary Plan. The challenged provisions relate to the management of subdivision, and the use and development, of land within an area known as the national grid yard, which comprises a corridor of land 24 metres wide – being 12 metres either side of the centreline of national grid lines, and 12 metres from the outer edge of any national grid support structure.

[2] The impugned provisions were incorporated into the proposed Unitary Plan by the Council on 19 August 2016 when it accepted a number of recommendations made to it by the Auckland Unitary Plan Independent Hearings Panel (the “IHP”), and released a “decisions version” of its proposed Unitary Plan.

[3] The appeal by Transpower is brought pursuant to s 158 of the Local Government (Auckland Transitional Provisions) Act 2010.

[4] Section 158(5) of the Act provides that, except as otherwise provided in the section, ss 299(2) and 300 – 307 of the Resource Management Act 1991 apply, with all necessary modifications, to appeals brought under s 158. Inter alia, s 301 of the Resource Management Act applies. It extends a right to appear and be heard on an appeal to any party to the proceedings, or to any person who appeared before the IHP when it heard submissions on the proposed Unitary Plan. Housing New Zealand Corporation, Federated Farmers of NZ Inc, Greater East Tamaki Business Association Inc, Mahunga Drive Business Association Inc, Manukau Harbour Restoration Society, Onehunga Business Association Inc, Rosebank Business Association Inc, Hugh Green Ltd, CDL Land NZ Ltd and Vector Ltd, all appeared before the IHP and all gave notice under s 301 that they wished to appear and be heard on the appeal.

[5] Mr Minhinnick, for Vector Ltd, sought, and was granted, leave to withdraw. He did not however withdraw Vector Ltd’s appearance. Rather he advised that Vector Ltd had nothing to add to the submissions made by other parties opposing the appeal. Similarly, Ms Davidson, for Hugh Green Ltd, advised that her client company supported and adopted the Council’s submissions and the submissions

which had been filed by CDL Land NZ Ltd and Housing New Zealand Corporation. She also sought, and was granted, leave to withdraw. Again she did not withdraw her client's appearance.

[6] All other s 301 parties appeared and were heard. The various incorporated associations and societies were not legally represented. Mr Hewison appeared on their behalf. All parties consented to Mr Hewison entering an appearance on behalf of those entities and I heard from him.

Background

Transpower

[7] Transpower is a state-owned enterprise. It is responsible for operating, maintaining, developing and upgrading the national grid. Its main role is to ensure the delivery of a reliable and secure supply of electricity throughout New Zealand. Its shareholding Ministers are the Ministers of Finance and for State Owned Enterprises.

[8] The national grid is a high voltage electricity transmission network. It links generators both to distribution companies and to major industrial users throughout New Zealand. Approximately 75 per cent of Auckland's (and Northland's) peak electricity demand comes from generation sources which are located south of Auckland, either in the central and lower North Island, or in the South Island. The electricity is delivered to Auckland (and Northland) via the national grid.

[9] The signal importance of the national grid has been recognised in a national policy statement – the National Policy Statement on Electricity Transmission 2008 (the "NPSET"). It was the second National Policy Statement developed under the Resource Management Act. It was gazetted on 13 March 2008. This followed a public consultation process, hearings before a board of enquiry, recommendations from the board and further evaluation by the Minister for the Environment.

*Auckland Council/The Unitary Plan*¹

[10] The Council was established as a territorial authority on 1 November 2010, following the reorganisation of local government in the Auckland region. One of the planning priorities for the Council was the development of an Auckland Unitary Plan incorporating a regional policy statement, a regional plan (including a regional coastal plan) and a district plan for the new “super city”.

[11] The Council prepared a proposed Unitary Plan and notified it on 30 September 2013. Submissions were able to be made on this proposed plan until 28 February 2014. The Council notified a summary of decisions requested on 11 June 2014. The period for making further submissions in response to primary submissions closed on 22 July 2014.

[12] Transpower and the s 301 parties lodged submissions and/or further submissions in relation to the matters raised by this appeal.

[13] From the outset there was concern that the proposed Unitary Plan should be finalised in a timely fashion. Representations were made to the government to streamline the process. It was sympathetic and it introduced legislation to this end.² Inter alia the legislation provided for the appointment of a specialist panel (the IHP) by the Ministers for the Environment and of Conservation. It was to be given the powers of a commission of inquiry under the Commissions of Inquiry Act 1908 and it was required to conduct hearings into, and make recommendations to the Council on, the proposed Unitary Plan.³ The hearing and recommendations process was subject to a strict timetable, with limited provision for extension.

[14] The IHP was duly appointed and, in the exercise of its powers, it scheduled the required hearings by reference to topics based on the way the Council had grouped the submissions lodged. There were approximately 80 separate topics for hearing. The Transpower and the s 301 parties’ submissions and further submissions were grouped into “Topic 042 – Infrastructure”. The hearings on Topic 042 were held between 25 June 2015 and 1 July 2015.

¹ And see, *Albany North Landowners v Auckland Council* [2016] NZHC 138 at [10] and following. I adopt Whata J’s analysis. Paragraphs [10]-[17] of this interim judgment are very much a truncated summary.

² Local Government (Auckland Transitional Provisions) Amendment Act 2013, s 6.

³ Local Government (Auckland Transitional Provisions) Act 2010, ss 123, 136 and 164.

[15] The IHP delivered its recommendations, including the changes it recommended to the proposed Unitary Plan as notified, to the Council on 22 July 2016. The Council publicly notified the recommended version of the proposed Unitary Plan on 27 July 2016.

[16] The Council had to decide whether to accept or reject each recommendation made to it by the IHP. If it rejected a recommendation, the Council had to decide an alternative solution.⁴ The Council also had a very strict timetable within which to complete its tasks – 20 working days, again with limited provision for extension.

[17] The Council released its decisions on the IHP's recommendations, and a decisions version of the proposed Unitary Plan, on 19 August 2015. The provisions which Transpower challenges are in the decisions version of the proposed Unitary Plan.

The IHP's recommendations in relation to Transpower's submission/further submission

[18] The proposed Unitary Plan, as notified in September 2013, provided for a "corridor overlay"⁵ to make provision for the national grid. The total width of the overlay proposed was 24 metres – being 12 metres either side of the centreline of national grid lines. The proposed Unitary Plan also set out various provisions related to land use activities locating within the national grid corridor.

[19] As noted, Transpower made submissions in respect of these various provisions. It submitted that the national grid corridor should be considerably wider – 64 metres wide, being 32 metres either side of the centreline of 110kV national grid lines, and 74 metres wide, being 37 metres either side of 220kV national grid lines. It also made submissions on the proposed policies and rules. The IHP briefly

⁴ Local Government (Auckland Transitional Provisions) Act 2010, s 148.

⁵ It is recorded in the proposed Unitary Plan – A1.6.2 – that overlays manage the protection, maintenance or enhancement of particular values associated with an area or resource. They can, and do, apply across zones and precincts. Overlays can manage specific planning issues, e.g. addressing reverse sensitivity effects between different land uses. They generally apply more restrictive rules than the Auckland-wide zone or precinct provisions that apply to a site, but in some cases they can be more enabling. Overlay rules apply to all activities on the part of the site to which the overlay applies, unless the overlay rules expressly state otherwise. There is a separate chapter in the plan – chapter D – dealing with overlay provisions. Overlays are identified on the relevant planning maps.

summarised the issues raised by Transpower and the responses of the Council and some of the interested parties as follows:⁶

The differences over the drafting of the National Grid Corridor Overlay policies and the status of activities, generally relate to the differing views of the parties over the extent of the corridor.

Transpower New Zealand Limited sought non-complying activity status ... for new or extended sensitive activities including external building extensions for these activities. This was not supported by a number of parties and in particular Housing New Zealand Corporation. Transpower also sought greater restrictions for both sensitive and non-sensitive activities within the National Grid Yard in urban areas which have not yet developed and in rural areas. This was not supported by a number of parties including the Council.

[20] Section 3.2 of IHP's recommendation report on Topic 042 recorded the IHP's key findings and reasoning in respect of the National Grid Corridor Overlay provisions. Relevantly:

- (a) The IHP recommended that the width of the national grid corridor overlay should be increased, as sought by Transpower, and that, as a consequence, the proposed rules applying to activities within the corridor needed to be amended. It recorded as follows:⁷

To avoid increasing risks to public health and safety and to enable the operation, maintenance and upgrading of existing national grid assets the Panel recommends that the National Grid Corridor Overlay be increased to the extent sought by Transpower New Zealand Limited. This includes a corridor in roads adjacent to substations, a corridor around substations and the extended corridor around transmission lines and grid structures. As a consequence of this recommendation, the policy framework for the National Grid Corridor, the rules that apply to activities in the corridor and associated definitions need to be amended to support the extended corridor.

- (b) The IHP was concerned about the impact of buildings locating under national grid transmission lines ("underbuild"). Its summary of Transpower's evidence in this regard, its findings and its reasoning were as follows:⁸

⁶ Auckland Unitary Plan Hearings Panel – Report to Auckland Council – Hearing Topic 042 – Infrastructure, July 2016, p 11, para 3.1.2; And see p 7, para 1.3 and pp 9-10 para 3.1 and 3.1.1.

⁷ p 11, para 3.2.

⁸ Ibid.

Mr Noble and Ms Fincham provided a number of examples that clearly demonstrated the problems Transpower New Zealand Limited faces in obtaining access and adequate working space to undertake repairs and maintenance where development has occurred under and around the national grid. In some cases the under-build has severely restricted and compromised Transpower's ability to undertake maintenance or project work. The need to ensure that these issues do not arise in the future, together with issues associated with the health and safety of people and property and with reserve sensitivity, are key reasons for the Panel's recommendations on the extent of the National Grid Corridor Overlay.

- (c) The IHP recorded its support for a more stringent rule regime in respect of both sensitive activities locating within the national grid corridor and the management of new activities. It said:⁹

The Panel also supports a more stringent rule regime to ensure risks associated with sensitive activities locating within the National Grid Corridor are not increased and to manage new activities to minimise issues of reverse sensitivity especially in areas that will be urbanised in the future.

[21] The IHP made extensive recommendations in respect of the national grid corridor overlay provisions it considered should be included in the proposed Unitary Plan. It recommended an overlay description, a single objective, three policies, an activity table, notification provisions, standards, assessment matters, assessment criteria and special information requirements.

[22] The IHP considered that the national grid corridor overlay provisions it recommended would give effect to the NPSET and to the regional policy statement it was also recommending to the Council. It observed as follows:¹⁰

The Panel considers that its recommendations in respect of the National Grid Corridor Overlay provisions give effect to the National Policy Statement on Electricity Transmission and the regional policy statement and provide for safe and efficient electricity transmission for the well-being of people and communities.

⁹ Ibid.

¹⁰ Ibid.

The Council's decision

[23] The Council accepted the IHP's recommendations on the relevant parts of the regional policy statement forming part of the proposed Unitary Plan. These parts of the regional policy statement – Part B3 dealing with infrastructure, transport and energy – have not been appealed by Transpower or any other party. They are **annexed** as attachment “A” to this judgment.

[24] The Council did not accept the IHP's recommendations in relation to the width of the national grid corridor. It decided that the national grid corridor – or yard¹¹ – should extend only 12 metres either side of the centreline of national grid lines and 12 metres from the outer edge of any national grid support structure.

[25] Transpower has appealed this aspect of the Council's decision to the Environment Court pursuant to s 156(1) of the Local Government (Auckland Transitional Provisions) Act. That appeal is not limited to a question of law. It has yet to be resolved by the Environment Court and the issue it raises is outside the scope of the appeal to this Court.

[26] In all other respects the Council accepted the IHP's recommendations in relation to the national grid corridor overlay. The relevant district plan provisions – D26 National Grid Overlay – are **annexed** as attachment “B” to this judgment.

[27] As can be seen there is one objective – D26.2(1) – namely “(t)he efficient development, operation, maintenance and upgrading of the National Grid is not compromised by subdivision, use and development”. There are then three policies – D26.3(1)-(3). Policy 1 deals with the subdivision, use and development of land within the national grid corridor overlay. It contains 11 subparagraphs, D26.3(1)(a)-(k). Policy D26.3(1)(i) seeks to provide for activities not sensitive to the national grid yard in certain urban type zones, whereas policy D26.3(1)(j) seeks to avoid buildings within the national grid yard in rural zones and the future urban zone.

¹¹ Rather confusingly, both terms are used in the Proposed Plan. In this judgment, when discussing a provision in the Proposed Plan, I use the term used in that provision.

[28] The activity table – D26.4(1) – the Council has accepted should apply within the national grid yard can be summarised as follows, drawing a distinction between:

- (i) activities;
- (ii) development and buildings, structures and alterations; and
- (iii) subdivision.

[29] In terms of activities within the national grid yard:

- (a) Network utilities and electricity generation that connect to the national grid are permitted (A3). If they breach the permitted activity standards, they become a restricted discretionary activity (A6).
- (b) Certain activities are specified as non-complying, namely sensitive activities (A1), land disturbance that permanently impedes existing vehicle access to a national grid support structure (A2), the storage of hazardous substances and wastes (A4), and activities that fail to comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances NZECP 34:2001 (A7).
- (c) Any activity not otherwise provided for is a non-complying activity (A5).

[30] In terms of development and buildings, structures and alterations within the national grid yard:

- (a) External building extensions for activities sensitive to the national grid (A8), and any building or structure unless “otherwise provided for” (A9), are non-complying activities.
- (b) Buildings or structures “otherwise provided for” are permitted, namely:
 - (i) fences (A10);
 - (ii) any new building or structure, and alteration, that is not for sensitive activities (A11);

- (iii) accessory buildings (excluding buildings containing sleeping areas) for sensitive activities (A12);
 - (iv) alterations to existing buildings for sensitive activities that do not increase the building envelope or footprint (A13);
 - (v) certain horticultural and agricultural structures, and uninhabited farming and horticultural buildings in rural and future urban zones (A14-A17).
- (c) Principal buildings for certain farming activities, milking sheds and other similar activities in the rural and future urban zones are non-complying activities (A18).

[31] In terms of subdivision within the national grid yard, the creation of lots involving a new building platform is a non-complying activity:

- (a) for sensitive activities, in residential, business, open space and special purpose zones (A22); and
- (b) in rural zones and the future urban zone (A23).

Subdivision is generally otherwise controlled by the Auckland-wide subdivision rules in accordance with the underlying zoning.

[32] There are separate rules for land disturbance and there is a separate activity table for activities within the national grid corridor around national grid substations – D26.4(2). There is no challenge to these provisions.

[33] Transpower has appealed a limited number of these provisions to this Court. It challenges policies D26.3(1)(i) and (j), and rules A5, A11, A22 and A23.

The Appeal

Transpower's submissions

[34] As noted at the outset, the appeal relates to the management of subdivision and the use and development of land within the national grid yard. Transpower

accepts that the proposed Unitary Plan generally manages “sensitive activities”¹² appropriately within the national grid yard. It considers however that the proposed Unitary Plan fails to appropriately manage aspects of activities that are not sensitive to the transmission of electricity in the lines within the national grid yard.¹³

[35] Transpower submitted that:

- (a) policy 26.3(1)(i) is likely to compromise the national grid, because it “provides for” activities – that is, it enables or encourages them – and this does not implement objective 26.2 which is intended to ensure that the efficient development, operation, maintenance and upgrading of the national grid is not compromised by subdivision, use and development. It argued that non-sensitive activities, for example most commercial, industrial and recreational activities, if they involve buildings, can also contribute to underbuild, and thus compromise the national grid;
- (b) policy 26.3(1)(j) is confined to buildings. It does not extend to activities and further it applies only to buildings within the national grid yard in rural zones and the future urban zone. Transpower argued that, by singling out buildings in non-urban zones, the inference must be that buildings in other zones are acceptable. It argued that the policy thereby encourages, albeit indirectly, buildings in urban zones. It submitted that there is no logical reason why buildings should be avoided in non-urban zones more so than in urban zones, where the development pressures are greater and the resulting compromise of the national grid is more likely.

¹² The proposed Unitary Plan – at J1.4 A – defines “Activities sensitive to the National Grid”, as “any dwellings, papakāinga, visitor accommodation, boarding houses, integrated residential development, retirement villages, supported residential care, education facilities, hospitals and healthcare facilities and care centres”.

¹³ All other activities which are not defined in the proposed Unitary Plan as being activities sensitive to the national grid.

[36] Transpower argued that these policies have been adopted in error, that they mistakenly or erroneously focus on zoning rather than whether the national grid is already compromised by underbuild or not, and that they fail to implement the relevant objectives and policies contained in the NPSET, the regional policy statement, and the objective and other policies which apply to the national corridor grid overlay.

[37] Transpower appealed rule A5 on the basis that it imposes a significant, unsought and unjustified constraint on many activities, such as outdoor residential uses, industrial yards, storage areas, open space, farming and recreational activities. It accepted that these types of land use activity do not compromise the national grid.

[38] Transpower appealed rule A11 to the extent that it permits buildings, structures and alterations that are not for activities sensitive to the national grid in urban areas which have not been compromised by underbuild, and in the future urban zone and rural zones. It argued that rule A11 effectively renders rule A9 redundant, and further that it fails to implement objective D26.2(1) and policy D26.3(1)(j).

[39] Finally in this regard, Transpower put it to me that the Council made an error because subdivisions involving building platforms within the national grid yard (other than those specified in rules A22 and A23) for non-sensitive activities are not managed, particularly in uncompromised areas. It took no particular issue with rule A22 insofar as it goes – noting however that it relates only to building platforms involving sensitive activities in urban zones. It observed that rule A23 covers both sensitive and non-sensitive activities in non-urban zones, but that neither rule A22 nor rule A23 manage building platforms for non-sensitive activities in urban zones, including uncompromised areas in urban zones. It submitted that building platforms within the national grid yard should be managed through the subdivision consent process in all zones.

[40] Transpower argued that the IHP recommended, and the Council accepted, policies and rules which could not reasonably have been adopted in light of the findings of fact made by the IHP, and on the evidence before it. It argued that aspects of the policy and rule framework materially fail to give effect to the NPSET,

to the regional policy statement, and to other objectives and policies in the national grid corridor overlay. In the alternative, it argued that the Council (and the IHP) failed to give any reasons for the adoption of the impugned provisions, despite its findings on the evidence before it. It argued that this failure, in and of itself, amounts to an error of law, warranting reconsideration.

The Council's/301 parties' submissions

[41] The Council noted that the appeal is confined to the policy and rule framework that applies to activities within the national grid yard that are not regarded as being sensitive to the national grid. It submitted that, in regard to these activities, the IHP was not mistaken, and it denied that any error of law arises from the Council's decision to accept the IHP's recommendations in this regard. It argued that the IHP's recommendations were more nuanced than Transpower submits, and that the IHP, and by implication the Council when it adopted the IHP's recommendations, did not purport to accept every aspect of Transpower's evidence. It put it to me that the IHP's recommendations were appropriate and that they follow on from the policy framework, recommended and accepted by the Council. It argued that the provisions form a coherent whole that is broadly consistent with the evidence put forward by the Council and other parties at the IHP hearings. It argued that analysis of the IHP's drafting indicates that it considered and rejected aspects of the relief sought by Transpower, instead preferring the approach taken in the drafting advanced by the Council at the hearings. It submitted that the package of national grid corridor overlay provisions represents an approach to the issues raised by Transpower that was open to the IHP, on the evidence before it.

[42] The Council argued that the IHP in its recommendations, and the Council in its decision, gave effect to the NPSET, and to the relevant infrastructure objectives and policies contained in the regional policy statement. It submitted that the NPSET in particular provides a degree of discretion to decision-makers as to how they implement its objectives and policies, and that the provisions challenged by Transpower represent but one of a number of possible responses.

[43] The Council further submitted that the IHP's reasoning, while not lengthy, was adequate given the nature and scale of the task it was undertaking.

[44] It was accepted that rules A5 and A11 require further consideration. The Council pointed out that rule A5 is a "catch all" default activity status rule which it considers inappropriate in an overlay activity table. It agreed with Transpower that the rule has no support in the relevant policies and that it was not sought by any party. It accepted that the rule is inconsistent with policy 26.3(1)(i). It also agreed with Transpower that rule A11 does not fully give effect to policy 26.3(1)(j).

[45] Housing New Zealand submitted that the proposed Unitary Plan puts in place a balanced planning framework, which recognises the importance of providing for infrastructure in a growing region, but which also ensures that the potential reverse sensitivity effects arising from the provision of such infrastructure, and its operation, maintenance, upgrading and development, is managed in a manner that does not unnecessarily conflict with the purpose of the infrastructure, which is to support growth, development and a compact urban form. The Corporation argued that, with the exception of rule A5, no errors were made by the IHP in making its recommendations to the Council, or by the Council in accepting those recommendations.

[46] The Corporation noted that the national grid yard demarcated by the national grid overlay impacts on the rights of landowners, and restricts the activities that they can undertake on their land. It noted that land within the national grid yard has not been designated, and it submitted that the IHP was required to balance the resulting restrictions on property owners with the wider benefits of providing for electricity transmission. It submitted that, because Transpower has chosen not to acquire the land in proximity to the national grid because of the financial cost to it, it was appropriate for the IHP and the Council to seek to manage only those activities which are either sensitive to the operation of the national grid, or which are potentially incompatible with its operation, rather than to introduce a planning regime whereby all activities are managed.

[47] Federated Farmers of New Zealand Inc supported and adopted the Council's submissions, although its concern was focused on rural zones. The key policy for Federated Farmers was policy 26.3(1)(j). It argued that there was no mistake made by the IHP in drafting this or related provisions, and that there was no error of law on the IHP's or the Council's part. It agreed that rule A5 is inappropriate, and suggested that it should be deleted. It also agreed that rule A11 needs to be amended. Otherwise it submitted that there was no error of law in the IHP's recommendations and the Council's decision, and argued that the appeal should be dismissed.

[48] Hugh Green Ltd adopted and supported the Council's submissions. It also acknowledged that rule A5 was an anomaly, and that it ought to be corrected.

[49] CDL Land NZ Ltd argued that the relevant Unitary Plan provisions are internally consistent and that they have been carefully drafted to focus on matters identified by the IHP and the Council as being relevant. Mr Allan, for CDL, took me through each of the relevant provisions contained in the plan. He carefully analysed both the regional policy statement and the NPSET and argued that the challenged provisions are consistent with the relevant regional policy statement provisions and with the NPSET.

[50] The various business associations and societies also supported the Council's stance. Mr Hewison, on behalf of these parties, argued that the IHP and the Council needed to strike a balance which allowed businesses to maximise their business opportunities and utilise the full potential of their properties, while recognising the importance of the national grid. He argued that industrial land is scarce and expensive in Auckland and that it needs to be carefully managed. He put it to me that activities which are not sensitive to the transmission of electricity should generally be allowed within the national grid yard, and that the IHP's recommendations and the Council's decision to accept those recommendations strike an appropriate balance. He argued that the NPSET is a guide, intended to apply over the whole of New Zealand, and not just Auckland. He argued that there is no "one size fits all" solution and that the provisions recommended by the IHP and accepted by the Council are appropriate. He accepted that rules A5 and A11 are a "little glitch", but that they "shouldn't upset the apple cart".

Section 158 – Question of Law

[51] As I have already noted, the appeal is brought pursuant to s 158 of the Local Government (Auckland Transitional Provisions) Act 2010. Section 158(4) provides that the appeal may only be on a question of law.

[52] Appeals from the Environment Court to the High Court are also limited to questions of law.¹⁴ In this context, the leading judgment is the decision of a full High Court in *Countdown Properties (Northlands) Ltd v Dunedin City Council*.¹⁵ The Court there recorded that it should allow appeals from decisions of the Environment Court only if it considers that that Court:

- (a) applied a wrong legal test; or
- (b) came to a conclusion without evidence or to a conclusion which, on the evidence, it could not reasonably have come; or
- (c) took into account matters which it should not have taken into account; or
- (d) failed to take into account matters which it should have taken into account.

It accepted that the Environment Court should be given some latitude in reaching findings of fact within its areas of expertise. It also accepted that any error of law found must materially affect the result of the Environment Court's decision before the High Court should grant relief.

[53] This analysis has been applied by the courts, generally without comment, for many years. Recently it was adopted by Whata J in *Albany North Landowners v Auckland Council* in dealing with a number of appeals (and applications for review) arising out of the Council's decisions on the proposed Unitary Plan.¹⁶ The Council and the s 301 parties before me did not seek to criticise or distinguish the *Countdown* decision. In my view it is a correct statement of the applicable law.

¹⁴ Resource Management Act 1991, s 299.

¹⁵ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 153-154.

¹⁶ *Albany North Landowners v Auckland Council* [2016] NZHC 138 at [90]-[91].

[54] It is also trite law that this Court must resist attempts by litigants to use an appeal limited to a question of law as an occasion for revisiting the factual merits of the case under the guise of a question of law.¹⁷ Where it is alleged that the court or tribunal below came to a conclusion without evidence, or one to which, on the evidence it could not reasonably have come, the appellant faces a “very high hurdle”. It does not matter that this Court would almost certainly not have reached the same conclusion as the court or tribunal below. What matters is whether the decision under appeal was a permissible option. The appellate court will almost always have to be able to identify a finding of fact which was unsupported by evidence or a clear misdirection in law by the inferior court or tribunal.¹⁸

[55] Against this background, I turn to consider Transpower’s appeal.

Analysis

[56] It is the Council’s decision which is the subject of the appeal. It adopted the IHP’s recommendations in relation to all relevant matters. As the decision-maker, the Council was required to comply with s 148 of the Local Government (Auckland Transitional Provisions) Act. As I have already noted, that section required it to accept or reject each recommendation, and if it rejected a recommendation, to decide on an alternative solution. The only requirement to provide reasons placed on the Council by the section was that imposed by s 148(4)(a)(ii). If the Council rejected a recommendation of the IHP, then it had to give its reasons for doing so. Decisions to accept recommendations were not required to be accompanied by reasons.

[57] Ms Caldwell, for the Council, accepted that, by implication, where the Council accepted a recommendation made to it by the IHP, it could be taken as having accepted the IHP’s reasoning. This concession by Ms Caldwell was, in my judgment, properly made. The Council was expressly precluded from considering any evidence or other submission that was not before the IHP.¹⁹ Unless it accepted the IHP’s findings and reasoning, the Council would have been acting in a vacuum.

¹⁷ *New Zealand Suncern Construction v Auckland City Council* [1997] NZRMA 419 at 426.

¹⁸ *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [25]-[28].

¹⁹ Local Government (Auckland Transitional Provisions) Act 2010, s 148(2)(b).

[58] I deal with the various errors by reference to the *Countdown Properties* classification of questions of law, although in this case they are not mutually exclusive.

Did the Council/IHP apply a wrong legal test?

[59] Transpower submitted that the IHP in recommending, and the Council in accepting, the impugned provisions, failed to give effect to the NPSET, to the regional policy statement and to other objectives and policies put in place for the national grid corridor. It argued that the IHP/Council thereby failed to comply with relevant requirements in the Resource Management Act and applied the wrong legal test.

[60] The Resource Management Act establishes a hierarchy of planning instruments. At the top of the hierarchy are national instruments, promoted by central government. The NPSET is a national instrument. It was promulgated as a national policy statement, pursuant to s 45 of the Act. Its purpose is to state objectives and policies for a matter of national significance that is relevant to achieving the purpose of the Resource Management Act.

[61] The proposed Unitary Plan comprises the regional policy statement, the regional coastal plan, and district plan provisions, all for the Auckland area.

[62] The purpose of a regional policy statement is to achieve the purpose of the Resource Management Act by providing an overview of the resource management issues of the region, and policies and methods to achieve integrated management of the natural and physical resources of the whole region.²⁰ A regional policy statement “must give effect to” a national policy statement.²¹

[63] A regional plan must state the objectives for the region, the policies to implement the objectives, and the rules (if any) to implement the policies.²² It “must give effect to” any national policy statement, and to any regional policy statement.²³

²⁰ Resource Management Act 1991, s 59.

²¹ Section 62(3).

²² Section 67(1).

²³ Section 67(3).

[64] Finally, a district plan must state the objectives for the district, the policies to implement the objectives and then rules (if any) to implement the policies.²⁴ It also “must give effect to” any national policy statement and any regional policy statement.²⁵

[65] As the Supreme Court noted in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*,²⁶ the Resource Management Act envisages the formulation and promulgation of a cascade of planning documents, each intended, ultimately, to give effect to s 5 and to Part 2 of the Act more generally. These documents form an integral part of the legislative framework of the Act, and give substance to its purpose by identifying objectives, policies and rules with increasingly particularity both as to substantive content and locality.

[66] It follows that the IHP in its recommendations, and the Council in its decision, were required to give effect to the NPSET and the regional policy statement. They also were required to give effect to the NPSET and the regional policy statement in the regional plan and in the district plan.

[67] The IHP was required to ensure that, were the Council to accept its recommendations, inter alia the various hierarchal provisions contained in the Resource Management Act would be complied with.²⁷ It was clearly aware of this requirement. Indeed it expressly told the Council in its recommendation report that it considered that its recommendations on the national grid corridor overlay provisions would give effect to the NPSET and to the regional policy statement.²⁸

[68] If the IHP was correct in its advice to the Council, it will not have applied the wrong legal test. If it was wrong, then it will have erred in law. This is not a merits based assessment. Rather I must consider what the NPSET and regional policy statement require, and then ask myself whether the impugned provisions give effect to them in light of the evidence found by the IHP.

²⁴ Section 75(1).

²⁵ Section 75 (3).

²⁶ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] NZLR 593 at [30].

²⁷ Local Government (Auckland Transitional Provisions) Act 2010, s 145(1)(f)(i).

²⁸ See above at [22]; and see Report to Auckland Council, Overview of recommendations on the proposed Auckland Unitary Plan, 22 July 2016 at para 4.2, p 26, and para 5.2, pp 38-40.

[69] This leads to the second error of law detailed in the *Countdown* decision. It is also relied on by Transpower.

Did the Council/the IHP come to a conclusion without evidence, or one to which, on the evidence, it could not reasonably have come?

[70] Necessarily given the enormous task it faced, the IHP's summary of the evidence it heard is succinct. It is however clear that it accepted the evidence presented by Transpower in relation to the width of the national grid corridor. It set out the evidence of key Transpower witnesses when discussing the underbuild issue. It was asserted by Mr Gardner-Hopkins, for Transpower, and not disputed by any other party before me, that there was no evidence called by any other entity that contradicted Transpower's evidence in this regard. The IHP made a finding of fact that in some cases underbuild has compromised Transpower's ability to undertake maintenance or project work on the national grid. The IHP made it clear that it supported a more stringent rule regime to ensure that the risks associated with sensitive activities locating within the corridor were not increased, and to manage new activities to minimise issues of reverse sensitivity, especially in areas that will be urbanised in the future.²⁹

[71] There is nothing in the IHP/Council's findings and reasoning to suggest that the evidence of other parties in relation to activities locating in or close to the national grid corridor was preferred to the evidence of Transpower.

[72] In relation to subdivision, the IHP agreed with Transpower's planner, who gave evidence at the hearing, that the status of subdivision within the national grid corridor overlay should generally be the same as the status of subdivision within the affected zone. It noted that in some (rare) cases subdivision might be a non-complying activity rather than a restricted discretionary activity, and that the main implications were that either an additional matter (effects on the national grid) would be added for consideration with restricted discretionary subdivisions, or additional relevant policies would be applied to non-complying subdivisions.³⁰

²⁹ See above at [20(b)].

³⁰ Report to Auckland Council, hearing topic 042 – infrastructure July 2016, para 3.2, pp 11-12.

[73] The IHP was mindful of the need to have a level of consistency across the Unitary Plan for those overlays that impose constraints on activities, to enable the operation of key infrastructure, and to address issues of health and safety of people and property and reverse sensitivity. It referred to the aircraft noise overlay recommended by it, and noted that it had recommended a similar approach to managing sensitive activities and subdivision, particularly in moderate aircraft noise areas, but that a more restricted activity status, including prohibited activities, had been recommended in high aircraft noise areas.³¹

[74] There are no express discussions in the IHP's report setting out why it recommended the particular wording used in the national grid overlay policies and rules. I accept, as Ms Caldwell, for the Council, pointed out, that analysis of the wording of the recommended policies and rules shows that in some respects, drafting by the Council's planner was preferred to drafting by Transpower's planning witness. There is nothing to suggest however that this was because Transpower's evidence in regard to underbuild or subdivision was not accepted, or that evidence presented by other parties was preferred. Rather it is clear that the IHP considered that the final suite of provisions recommended by it, and subsequently accepted by the Council, did give effect to the NPSET and to other documents in the planning hierarchy.

[75] Given the IHP's findings of fact, and its stated reasons, the question again becomes – do the impugned provisions give effect to the NPSET and the regional policy statement? If they do not do so, Transpower will have surmounted the very high hurdle of establishing that the Council/the IHP have come to a conclusion to which, on the evidence as found, they could not reasonably have come.

The NPSET

[76] The NPSET identifies the relevant matter of national significance it addresses as being:

... the need to operate, maintain, develop and upgrade the electricity transmission network.³²

It has a single objective – namely:

³¹ At para 3.2, p 12.

³² National Policy Statement on Electricity Transmission – issued by notice in the Gazette on 13 March 2008, para 4 – Matter of National Significance.

To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

- managing the adverse environmental effects of the network; and
- managing the adverse effects of other activities on the network”³³.

It contains 14 policies. The following were cited as being of particular relevance to this appeal:

POLICY 1

In achieving the purpose of the Act, decision-makers must recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission. The benefits relevant to any particular project or development of the electricity transmission network may include:

- i) maintained or improved security of supply of electricity; or
- ii) efficient transfer of energy through a reduction of transmission losses; or
- iii) the facilitation of the use and development of new electricity generation, including renewable generation which assists in the management of the effects of climate change; or
- iv) enhanced supply of electricity through the removal of points of congestion.

The above list of benefits is not intended to be exhaustive and a particular policy, plan, project or development may have or recognise other benefits.

...

POLICY 2

In achieving the purpose of the Act, decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.

...

POLICY 5

When considering the environmental effects of transmission activities associated with transmission assets, decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets.

...

³³ Para 5 – Objective.

POLICY 10

In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.

[77] Each of the relevant statutory provisions noted above require that documents lower in the planning hierarchy “must give effect to” the NPSET.

[78] The Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*,³⁴ was considering the New Zealand Coastal Policy Statement. The Court, by a majority, held that the words “give effect to” mean implement, and that this is a strong directive, creating a firm obligation on the part of planning authorities.³⁵ There was a caveat noted by the Court. The implementation of any directive is affected by what it relates to. A requirement to give effect to a policy which is framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.³⁶

[79] Mr Gardner-Hopkins relied on the *King Salmon* decision. He accepted that the relevant policies in the NPSET are expressed in slightly different ways. He noted that policies 1 and 2 require that decision-makers “must recognise and provide for” the specified matters, that policy 5 is directed at enablement, and that policy 10 imposes an obligation, to the extent reasonably possible, first to manage and secondly to ensure that the national grid is not compromised. He submitted that policy 10 in particular is directive; it is in mandatory terms, albeit subject to the reasonably possible qualification; it requires decision-makers to “avoid” reverse sensitivity effect and to “ensure” that there is no compromise of the national grid.

[80] Ms Caldwell, for the Council, and Mr Allan, for CDL, submitted that *King Salmon* confers a discretion on decision-makers and that it is not overly prescriptive. They referred me to a paragraph in the decision. It reads as follows:

³⁴ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*, above n 26; And see *Man O’War Station Ltd v Auckland Council* [2017] NZCA 24.

³⁵ At [77] and [91].

³⁶ At [80] and [128]-[130].

The Minister might, of course, have said in the NZCPS that the objectives and policies contained in it are simply factors that regional councils and others must consider in appropriate contexts and give such weight as they think necessary. That is not, however, how the NZCPS is framed.

They noted that the NPSET contains a preamble, and that, relevantly, it reads as follows:

The national policy statement is to be applied by decision-makers under the Act. The objectives and policies are intended to guide decision-makers in drafting plan rules, in making decisions on the notification of the resource consents and in the determination of resource consent applications, and in considering notices of requirement for designations for transmission activities.

However, the national policy statement is not meant to be a substitute for, or prevail over, the Act's statutory purpose or the statutory tests already in existence. Further the national policy statement is subject to Part 2 of the Act.

For decision-makers under the Act, the national policy statement is intended to be a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act.

They also pointed to the provenance of the New Zealand Coastal Policy Statement (s 56) and to the provenance of the NPSET (s 45(1)). They argued that the NPSET is a lesser form of national policy statement than the New Zealand Coastal Policy Statement. They argued that the NPSET provisions are not strict "avoid" policies, and that they are for guidance only, and not directive. They argued that the regional policy statement and the other provisions contained in the regional plan and the district plan are consistent with the guidance provided by the NPSET and that they recognise other planning imperatives as required by Part 2 of the Act.

[81] Mr Gardner-Hopkins, in response, argued that the observations in the preamble state the law as it was understood to be in 2008 when the NPSET was gazetted. He submitted that the observations in the preamble have been overtaken by *King Salmon*, and that the key policies – in particular policy 10 – in the NPSET are in any event strong and directive. He submitted that the NPSET is not a subordinate or "less equal" policy statement.

[82] In my judgment, there is force in Mr Gardner-Hopkins argument that the preamble to the NPSET was based upon the law as it was understood to be prior to the *King Salmon* decision. It is now clear that to the extent that the preamble was purporting to state matters of law, it is now incorrect because the Supreme Court has declared what the law has always been.³⁷ However, this argument fails to acknowledge that the Supreme Court in *King Salmon* recorded that a national policy statement can provide that its policies are simply matters decision-makers must consider in the appropriate context, and give such weight as they consider necessary. The NPSET so provides and the Minister has not sought to amend the preamble since the *King Salmon* was released.

[83] I also agree with Ms Caldwell and Mr Allan that the New Zealand Coastal Policy Statement at issue in *King Salmon*, and the NPSET, derive from different sections of the Act, which use different terms. Section 56 makes it clear that the purpose of the New Zealand Coastal Policy Statement is to state policies in order to achieve the purpose of the Act. In contrast, the NPSET was promulgated under s 45(1). Its purpose is to state objectives and policies that are relevant to achieving the purpose of the Act. Section 56 suggests that the New Zealand Coastal Policy Statement is intended to give effect to the Part 2 provisions in relation to the coastal environment. A national policy statement promulgated pursuant to s 45 contains provisions relevant to achieving the Resource Management Act's purpose. The provisions are not an exclusive list of relevant matters and they do not necessarily encompass the statutory purpose. In this regard I note that a number of the policies relied on in this case, including Policy 10, start with the words "(i)n achieving the purpose of the Act".

[84] I accept the submission advanced by Ms Caldwell and Mr Allan that the NPSET is not as all embracing of the Resource Management Act's purpose set out in s 5 as is the New Zealand Coastal Policy Statement. In my judgment, a decision-maker can properly consider the Resource Management Act's statutory purpose, and other Part 2 matters, as well as the NPSET, when exercising functions and powers under the Resource Management Act. They are not however entitled to ignore the NPSET; rather they must consider it and give it such weight as they think necessary.

³⁷ And see *Marino v Chief Executive of the Department of Corrections* [2016] NZHC 3074.

[85] Policy 10, though subject to the “reasonably possible” proviso, is, in my judgment, relatively prescriptive. It requires that decision-makers “must” manage activities to avoid reverse sensitivity effects on the electricity transmission network, and “must” ensure that the operation, maintenance, upgrading and development of the electricity transmission network is not compromised. What is sought to be protected is the national electricity transmission grid – an asset which the NPSET recognises is of national significance. A mandatory requirement to ensure that an asset of national significance is not compromised is, in my judgment, a relatively strong directive.

[86] The IHP in its findings and reasoning relevant to infrastructure and the national grid focussed on the NPSET issues. There is nothing to suggest that it considered that the statutory purpose of the Resource Management Act or the provisions of Part 2 were relevant to the national grid issue or that they required it, in the circumstances of this case, to give less weight to the NPSET’s objective and policies.

[87] Given the evidence the IHP accepted, where the national grid passes over land which has not already been compromised by development, the IHP had to ask itself whether or not it was reasonably possible to prevent compromise of the national grid in the future. I accept Transpower’s submission that it would generally be possible to prevent compromise in this situation, and it would be likely that restrictions to prevent compromise would be reasonable and a not disproportionate response. Conversely, if the land is already compromised, for example where the land is already zoned for urban or industrial development, and such development already exists adjacent to or under the electricity transmission network, then it will not generally be reasonably possible to ensure that the national grid is not compromised. Put colloquially, “the horse has already bolted”. It may however be reasonably possible to ensure that the national grid is not further compromised.

[88] I now turn to the regional policy statement.

Regional Policy Statement

[89] The regional policy statement formed part of the IHP's recommendations to the Council. The Council has accepted those recommendations and I was advised by counsel that the Council's decision in this regard has not been challenged.

[90] The relevant parts of the regional policy statement are **annexed** as "attachment A". As can be seen, they recognise as an issue for Auckland that the quality of the environment, and the wellbeing of its people and communities, is affected by choices about the management of, and investment in, infrastructure. They record that Auckland's inhabitants need to address inter alia the integration of provision for infrastructure with urban growth, and the potential effects of incompatible land uses close to infrastructure. Objectives include ensuring that infrastructure is resilient, efficient and effective, and that its benefits are recognised. They provide (B3.2.1) that:

- (a) the development, operation, maintenance and upgrading of infrastructure should be enabled;
- (b) the functional and operational needs of infrastructure should be recognised;
- (c) infrastructure land use planning should be integrated to service growth efficiently; and
- (d) infrastructure is protected from reverse sensitivity effects caused by incompatible subdivision use and development.

There is one objective specific to the national grid – B3.2.1(7). It requires that its national significance is recognised and provided for, and that its effective development, operation, maintenance and upgrading are enabled.

[91] The regional policy statement does give effect to the NPSET. In some respects it is more stringent than the NPSET. Objectives relating to the development, operation, maintenance and upgrading of infrastructure, including the national grid, refer to its "effective" development, operation, maintenance and

upgrading. They are not subject to the “reasonably possible” qualification contained in the NPSET.

The district plan provisions for the national grid corridor overlay

[92] These provisions are **annexed** as attachment “B”. The overlay description recognises the importance of the national grid to the social and economic wellbeing of Aucklanders and New Zealand. There is express reference to the NPSET. It is noted that the Council is required to recognise and provide for the national significance of the national grid. The purpose of the national grid corridor overlay is discussed. It is to manage sensitive activities, and potentially incompatible development, including land disturbance, within close proximity to the national grid.

[93] A distinction has been drawn between the management of sensitive activities, and activities that are not sensitive but are nevertheless potentially incompatible with the national grid.

[94] Subdivision is expressly referred to. It is to be managed so that each development achieves the objectives and purposes of the national grid corridor overlay, including that the national grid is not compromised, and that its long term upgrading and development is facilitated. It is noted that development in close proximity of the national grid can pose risks to the national grid, and impose constraints on access for inspection and maintenance.

[95] There is a single objective – that the efficient development, operation, maintenance and upgrading of the national grid is not compromised by subdivision, use and development.

[96] This is clearly a strong objective. Again, it is not qualified by the “reasonably possible” qualification contained in the NPSET. It has not been challenged by any party. The district plan is required to state the policies required to implement this objective, and then the rules needed to implement those policies.³⁸

³⁸ Resource Management Act 1991, s 75(1).

[97] There is a comprehensive suite of policies. Policy 1 requires that subdivision use and development be undertaken in such a way that inter alia, it does not compromise security of supply and/or the integrity of the national grid, or ongoing access to conductors and support structures for maintenance and upgrading works, that it does not foreclose operation and maintenance options or the carrying out of planned upgrade options, that it manages all activities to avoid exposure to health and safety risk from the national grid, that it manages activities sensitive to the national grid to minimise exposure to nuisance, that it avoids the establishment or expansion of activities sensitive to the transmission lines in the national grid yard and around substations, and that it limits as far as practicable, potential reverse sensitivity effects.

[98] The subparagraphs in policy 1 of D.26.3 which are challenged by Transpower are those contained in (i) and (j). Relevantly they provide as follows:

1. Requires subdivision use and development within the national grid corridor overlay to be undertaken so that it ...
 - (i) provides for activities not sensitive to transmission lines in the National Grid Yard within the residential, business, open space and special purpose zones.
 - (j) avoids buildings within the National Grid Yard in rural zones and the Future Urban Zone, except for buildings for low intensity rural activities ...

[99] The word “provides for” in subparagraph (i) suggests that activities not sensitive to transmission lines in the national grid yard are enabled. The word “activities” used in the subparagraph is not separately defined in the proposed Unitary Plan, but other definitions which incorporate the word, namely, “activities sensitive to aircraft noise”, “activities sensitive to air discharges”, “activities sensitive to hazardous facilities and infrastructure”, “activities sensitive to noise”, and importantly, “activities to sensitive to the national grid”, all extend to buildings. Assuming “activities” can involve buildings, then whether or not the use made of the building is sensitive to transmission lines in the national grid yard is not the point. It is the buildings which contribute to underbuild, and which potentially compromise the national grid. Non-sensitive activities (buildings), for example, commercial, industrial or recreational activities (buildings), contribute to underbuild, and thereby can compromise the national grid. Further, the policy proposed in the subparagraph

applies only to residential, business, open space and special purpose zones (broadly “urban” land). Rural zones and the future urban zone are not mentioned. Rather they are mentioned in policy D26.3(1)(j). There are areas of residential zoned land which the national grid passes over which are undeveloped, and where the national grid is not yet compromised. There is also undeveloped land in other urban type zones, e.g. industrial zones. There is no obvious reason for limiting the policy to residential, business, open space and special purpose zones.

[100] Policy D26.3(1)(j) seeks to avoid buildings within the national grid yard in rural zones and the future urban zone, except for buildings for low intensity rural activities. Because the policy singles out buildings and requires that they are avoided only in rural zones and future urban zones, it suggests that buildings in other zones are acceptable, and that they can be provided for. By implication, the policy encourages buildings which could compromise the national grid in other urban type zones. There is no logical reason why buildings should be avoided in non-urban zones more than in urban zones, where development and compromise with the national grid is more likely.

[101] Both singly, and read together, in my judgment, policies D26.3(1)(i) and D26.3(1)(j) do not give effect to the NPSET, the regional policy statement, or objective D26.2(1). They fail to put in place a comprehensive policy for all zones requiring that activities and buildings, whether or not for uses sensitive to the national grid, do not compromise the grid. The Council, in accepting the IHP’s recommendations in this regard, has failed to apply the statutory hierarchy of planning documents mandated by the Resource Management Act. Further, and given the IHP’s findings of fact and reasoning, the decision to accept policies D26.3(1)(i) and (j) is one which could not reasonably have been made on the evidence. There is an error, or errors, of law.

[102] I now turn to rule A5. It provides that any activity not otherwise provided for is a non-complying activity. Because it prevents activities (buildings) not otherwise provided for from establishing in the national grid yard unless they have resource consents as non-complying activities, it can be said to implement the NPSET, the regional policy statement, and objective D26.2(1). However, I agree with the parties, and in particular with Ms Caldwell, that the rule has no support in the relevant

policies. In its terms it is inconsistent with policy D26.3(1)(i), and it goes considerably further than policy D26.3(1)(j). It is also of concern that the rule was not sought by any party. The IHP was not limited to making recommendations only within the scope of submissions on the proposed Unitary Plan,³⁹ but if it went beyond the scope of submissions, it was required to identify any recommendations made that went beyond the scope of submissions.⁴⁰ Here there is nothing in the recommendations report on Topic 042 – Infrastructure – suggesting that the recommendation in relation to rule A5 was beyond the scope of the submissions filed. I agree with all counsel that the proposed rule imposes a significant constraint on many activities, and on the use that owners can make of their land. There are many non-sensitive activities, for example, industrial yards, storage areas, playing fields, etc, which are compatible with the national grid, and which will not compromise its efficient development, operating, maintenance and upgrading. This is accepted by Transpower. In its terms the rule goes well beyond the strictures of the NPSET, the regional policy statement, and objective D26.2(1). In my judgment, the rule fails to implement the requirements of s 75(1) of the Resource Management Act, and it has been added to the proposed plan in breach of s 144(8)(a) of the Local Government (Auckland Transitional Provisions) Act 2010. Again there is an error, or errors, of law.

[103] Rule A11 relates to new buildings, structures and alterations. It provides that any new buildings or structures and alterations that are not for activities sensitive to the national grid are permitted within the national grid yard. Under the rule, all new buildings, structures and alterations for non-sensitive activities are permitted, regardless of the zoning (although subject to rules applying to the underlining zone, and other applicable rules contained in the proposed Unitary Plan). I agree with Mr Gardner-Hopkins, Ms Caldwell, and Ms Atkins for Federated Farmers, that the rule is problematic. It undermines rule A9 which provides that any building or structure (unless otherwise provided for) is non-complying. In part, it renders rule A9 nugatory. It is inconsistent with the rules that provide for specified activities that are not incompatible with the national grid – for example – rules A10, A12, A13 and A14 to 17. In its terms, the rule has the potential to compromise the national grid in

³⁹ Local Government (Auckland Transitional Provisions) Act 2010, s 144(5)(a).
⁴⁰ Section 144(8)(a).

those areas where it is not already compromised. It fails to implement the NPSET, the regional policy statement, and objective D26.2(1). There is an error, or errors, of law.

[104] Finally, there are difficulties with rules A22 and A23. Rule A22 provides that the creation of lots involving a new building platform for activities sensitive to the national grid in the residential, business, open space and special purpose zones, is a non-complying activity. While the activity status complies with the higher order directions contained in the hierarchy of planning documents, the rule relates only to building platforms involving sensitive activities in urban zones. Building platforms in non-urban zones are addressed in rule A23. Rule A23 is not limited to building platforms for either sensitive or non-sensitive activities. It covers both but only in non-urban zones. Neither rules A22 nor A23 manage building platforms for non-sensitive activities in urban zones, including in those parts of urban zones that are yet to be developed. Permitting subdivision involving the creation of lots for new building platforms for non-sensitive activities (buildings) in urban zones does not give effect to the NPSET, the regional policy statement and objective D26.2(1). Again there is an error, or errors, of law.

Failure to give (adequate) reasons

[105] As I have already noted, Transpower alleges that the IHP/Council failed to give reasons for aspects of its recommendation/decision, and that this of itself is an error of law.

[106] There is significant law on this issue. The issue was discussed briefly by Whata J in *Albany North Landowners v Auckland Council*.⁴¹ Given the findings I have reached, it is not necessary for me to further address this issue. I am aware that some of the appeals against the proposed Unitary Plan do raise the matter. It is preferable that the matter should be considered in an appeal where it is directly in issue and something turns on it.

⁴¹ Above n 1, at [143].

Materiality

[107] As I have already noted, any error of law must materially affect the result of the IHP recommendation, and the Council's resulting decision. Unless it does so, the Court should not grant relief.⁴²

[108] In my judgment, the errors I have found both individually and collectively are material. The relevant provisions have the potential to compromise the national grid and its operation, maintenance, development and potential for upgrade. These are matters of national significance, which generally must not be compromised.

Result

[109] For the reasons I have set out, the appeal is allowed.

Relief

[110] As I have already noted, s 158 provides that ss 299(2) and 300-307 of the Resource Management Act apply, with all necessary modifications, to an appeal under s 158. Section 299(2) imports the High Court Rules, except to the extent that they are inconsistent with ss 300-307.

[111] Rule 20.19 provides as follows:

20.19 Powers of court on appeal

- (1) After hearing an appeal, the court may do any 1 or more of the following:
 - (a) make any decision it thinks should have been made:
 - (b) direct the decision-maker—
 - (i) to rehear the proceedings concerned; or
 - (ii) to consider or determine (whether for the first time or again) any matters the court directs; or
 - (iii) to enter judgment for any party to the proceedings the court directs:
 - (c) make any order the court thinks just, including any order as to costs.

⁴² *Countdown Properties (Northlands) Ltd v Dunedin City Council*, above n 15 at [13]; *BP Oil NZ Ltd v Waitakere City Council* [1996] NZRMA 67 at [2].

- (2) The court must state its reasons for giving a direction under subclause (1)(b).
- (3) The court may give the decision-maker any direction it thinks fit relating to—
 - (a) rehearing any proceedings directed to be reheard; or
 - (b) considering or determining any matter directed to be considered or determined.
- (4) The court may act under subclause (1) in respect of a whole decision, even if the appeal is against only part of it.
- (5) Even if an interlocutory or similar decision in the proceedings has not been appealed against, the court—
 - (a) may act under subclause (1); and
 - (b) may set the interlocutory or similar decision aside; and
 - (c) if it sets the interlocutory or similar decision aside, may make in its place any interlocutory or similar decision the decision-maker could have made.
- (6) The powers given by this rule may be exercised in favour of a respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned

[112] There is nothing in that rule which is inconsistent with ss 300-307 of the Resource Management Act.

[113] I do not, at this point, have sufficient information to enable me to make the decision I think should have been made. The Court is not a planning authority and it does not have the materials available to it or the expertise to undertake that task. It is my preliminary view that the impugned provisions should be remitted back to the Council for reconsideration. The Council will be able to consider the extent to which substitute policies/rules are appropriate and what those substitute policies or rules should be. If Transpower's appeal to the Environment Court succeeds, and the national grid corridor is widened, this could have some bearing on the provisions ultimately adopted.

[114] Nevertheless, all parties considered that it may be that they can themselves agree on an appropriate way forward. I accept that this is a possibility, and I am prepared to give the parties a short period so that they can endeavour to address the consequences of this interim judgment.

[115] I direct that the parties are to file a joint memorandum within 20 working days of the date of the release of this interim judgment, advising whether or not they can resolve their differences, and, if they can, suggesting appropriate alternative provisions. If they cannot do so, then I will remit the matter back to the Council for further consideration.

Costs

[116] Transpower is entitled to costs consequent on this interim judgment. I direct that the parties are to address the issue of costs in their joint memorandum. Transpower is to advise whether or not it seeks costs, and if it does, whether the parties have been able to agree on the same. If there is no agreement, I will make directions for the filing of memoranda in my final judgment.

Wylie J

Attachment “A”

B3 Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy

B3. Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy

Te whakatupu orange mō te pāpori whānui

Growing well-being for all of society

B3.1. Issues

The quality of the environment and the well-being of people and communities, including Auckland's crucial role in New Zealand's economy, are affected by choices about the management of and investment in infrastructure.

Realising Auckland's full economic potential while maintaining the quality of life for its inhabitants will need to address:

- (1) efficiency in developing, operating, maintaining and upgrading infrastructure;
- (2) integrating the provision of infrastructure with urban growth;
- (3) potential effects of incompatible land uses close to infrastructure;
- (4) traffic management;
- (5) security of energy supply; and
- (6) resilience of infrastructure, including fuel and electricity supplies, to natural hazards.

B3.2. Infrastructure

B3.2.1. Objectives

- (1) Infrastructure is resilient, efficient and effective.
- (2) The benefits of infrastructure are recognised, including:
 - (a) providing essential services for the functioning of communities, businesses and industries within and beyond Auckland;
 - (b) enabling economic growth;
 - (c) contributing to the economy of Auckland and New Zealand;
 - (d) providing for public health, safety and the well-being of people and communities;
 - (e) protecting the quality of the natural environment; and
 - (f) enabling interaction and communication, including national and international links for trade and tourism.
- (3) Development, operation, maintenance, and upgrading of infrastructure is enabled, while managing adverse effects on:

B3 Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy

- (a) the quality of the environment and, in particular, natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character;
- (b) the health and safety of communities and amenity values.
- (4) The functional and operational needs of infrastructure are recognised.
- (5) Infrastructure planning and land use planning are integrated to service growth efficiently.
- (6) Infrastructure is protected from reverse sensitivity effects caused by incompatible subdivision, use and development.
- (7) The national significance of the National Grid is recognised and provided for and its effective development, operation, maintenance and upgrading are enabled.
- (8) The adverse effects of infrastructure are avoided, remedied or mitigated.

B3.2.2. Policies

Provision of infrastructure

- (1) Enable the efficient development, operation, maintenance and upgrading of infrastructure.
- (2) Recognise the value of investment in existing infrastructure.
- (3) Provide for the locational requirements of infrastructure by recognising that it can have a functional or operational need to be located in areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character.

Reverse sensitivity

- (4) Avoid where practicable, or otherwise remedy or mitigate, adverse effects of subdivision, use and development on infrastructure.
- (5) Ensure subdivision, use and development do not occur in a location or form that constrains the development, operation, maintenance and upgrading of existing and planned infrastructure.

Managing adverse effects

- (6) Enable the development, operation, maintenance and upgrading of infrastructure in areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character while ensuring that the adverse effects on the values of such areas are avoided where practicable or otherwise remedied or mitigated.

B3 Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy

- (7) Encourage the co-location of infrastructure and the shared use of existing infrastructure corridors where this is safe and satisfies operational and technical requirements.
- (8) Avoid, remedy or mitigate the adverse effects from the construction, operation, maintenance or repair of infrastructure.

Natural hazards

- (9) Ensure where there is a functional or operational need for infrastructure to locate in areas subject to natural hazards:
 - (a) that buildings accommodating people are located and/or designed to minimise risk from natural hazards; and
 - (b) that risk that cannot be avoided by location or design should be mitigated to the extent practicable.

B3.3. Transport

B3.3.1. Objectives

- (1) Effective, efficient and safe transport that:
 - (a) supports the movement of people, goods and services;
 - (b) integrates with and supports a quality compact urban form;
 - (c) enables growth;
 - (d) avoids, remedies or mitigates adverse effects on the quality of the environment and amenity values and the health and safety of people and communities; and
 - (e) facilitates transport choices, recognises different trip characteristics and enables accessibility and mobility for all sectors of the community.

B3.3.2. Policies

Managing transport infrastructure

- (1) Enable the effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system.
- (2) Enable the movement of people, goods and services and ensure accessibility to sites.
- (3) Identify and protect existing and future areas and routes for developing Auckland's transport infrastructure.
- (4) Ensure that transport infrastructure is designed, located and managed to:
 - (a) integrate with adjacent land uses, taking into account their current and planned use, intensity, scale, character and amenity; and
 - (b) provide effective pedestrian and cycle connections.

Integration of subdivision, use and development with transport

(5) Improve the integration of land use and transport by:

(a) ensuring transport infrastructure is planned, funded and staged to integrate with urban growth;

[ENV-2016-AKL-000243: K Vernon]

(b) encouraging land use development and patterns that reduce the rate of growth in demand for private vehicle trips, especially during peak periods;

(c) locating high trip-generating activities so that they can be efficiently served by key public transport services and routes and complement surrounding activities by supporting accessibility to a range of transport modes;

(d) requiring proposals for high trip-generating activities which are not located in centres or on corridors or at public transport nodes to avoid, remedy or mitigate adverse effects on the transport network;

(e) enabling the supply of parking and associated activities to reflect the demand while taking into account any adverse effects on the transport system; and

(f) requiring activities adjacent to transport infrastructure to avoid, remedy or mitigate effects which may compromise the efficient and safe operation of such infrastructure.

Managing effects related to transport infrastructure

(6) Require activities sensitive to adverse effects from the operation of transport infrastructure to be located or designed to avoid, remedy or mitigate those potential adverse effects.

(7) Avoid, remedy or mitigate the adverse effects associated with the construction or operation of transport infrastructure on the environment and on community health and safety.

B3.4. Energy

B3.4.1. Objectives

- (1) Existing and new renewable electricity generation is provided for.
- (2) Energy efficiency and conservation is promoted.

B3.4.2. Policies

- (1) Recognise the national, regional and local benefits to be derived from maintaining or increasing the level of electricity generated from renewable energy sources.
- (2) Provide for renewable electricity generation activities to occur at different scales and from different sources to reduce reliance on non-renewable energy sources.

- (3) Recognise the locational constraints in the development of large-scale renewable electricity generation activities.
- (4) Provide for the development, operation and maintenance of small-scale renewable electricity generation, provided that adverse effects on the environment are avoided, remedied or mitigated.

B3.5. Explanation and principal reasons for adoption

Infrastructure is an essential foundation for almost all other activities. While not normally undertaken as activities for their own sake, network infrastructure services and facilities are critical to enable people and communities to undertake the activities that provide for their economic and social well-being, contribute to economic growth and ensure their health and safety. Without the connections enabled by transport networks (land, sea and air), piped networks (water, wastewater and stormwater reticulation), energy generation, transmission and distribution networks (electricity, gas and liquid fuels), and telecommunication networks (wired and wireless), few other forms of activity and development could occur. This means that development, especially that associated with growth in greenfield areas, must be integrated and co-ordinated with the provision of infrastructure and the extension of networks. As well, the resilience of infrastructure to natural hazards is an important aspect of planning for it.

Infrastructure can have adverse effects on the environment, including on sites and areas specifically identified for their high values as well as on neighbouring activities.

Sometimes infrastructure must be located in sensitive areas because of the location of development and to achieve appropriate degrees of efficiency. Managing the reciprocal effects of infrastructure on more sensitive areas and uses, and of more sensitive areas and uses on the operation and capacity of infrastructure (reverse sensitivity effects), is required as Auckland grows and intensifies. Conflicts or incompatibilities between adjoining land uses need to be avoided as far as practicable or mitigated where avoidance is not practicable, in order to protect valued parts of the environment while ensuring that the operation of infrastructure is not unreasonably compromised.

Infrastructure must keep pace with the activities and development it serves. These objectives and policies recognise that development, operation, maintenance and upgrading of infrastructure are all essential phases in the provision of resilient, efficient and effective infrastructure.

The road network, both as a transport system and as the location of many other infrastructure networks, raises particular issues that are the subject of specific objectives and policies. Also relevant is the Regional Land Transport Plan made under the Land Transport Management Act 2003.

As well, transport infrastructure is much broader than just motor vehicles on the road network: it involves a number of stakeholder providers operating other land, water and air transport systems within a complex statutory regime. This complexity is amplified by the needs and behaviours of users of transport in a range of modes, across multiple networks and at several scales (local, regional, national and international). The Unitary Plan needs to provide a framework within which these diverse and potentially conflicting networks can be integrated and co-ordinated with the subdivision, use and development

B3 Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy

of natural and physical resources in Auckland. A focus on integrating land use and transport to achieve a compact urban form focused on centres and transport nodes can also help promote energy efficiency and reduce dependence on non-renewable energy sources.

National policy statements, such as those for electricity transmission and renewable electricity generation also assist in balancing competing national benefits and local costs to promote energy efficiency and conservation. Some of the adverse effects from network utilities are also addressed by other documents, such as national environmental standards, New Zealand standards and codes of practice.

Attachment “B”

D26 National Grid Corridor Overlay

D26. National Grid Corridor Overlay

D26.1. Overlay description

The National Grid is important to the social and economic well-being of Aucklanders and New Zealanders. All infrastructure owned or operated by Transpower New Zealand Limited comprises the National Grid.

Under the National Policy Statement on Electricity Transmission 2008, the Council is required to recognise and provide for the national significance of the National Grid, including through identifying and providing a buffer corridor and associated rules to avoid sensitive activities in the corridor and manage the actual and potential adverse effects of other activities on the National Grid. The National Grid Corridor Overlay crosses the coastal marine area, but no specific rules apply in this area.

Amenity values within the National Grid Corridor Overlay can be expected to be lower than elsewhere, due to the presence of the National Grid but this must be balanced against the benefits that an efficient and reliable National Grid provides.

The purpose of the National Grid Corridor Overlay is to manage sensitive activities and potentially incompatible development (including land disturbance) within close proximity to the National Grid in order to:

- prevent risks to people and property;
- protect the National Grid;
- preserve line access for inspection and maintenance;
- preserve a corridor for the operation, maintenance, upgrade and development of National Grid infrastructure; and
- manage potential reverse sensitivity effects.

Subdivision is managed so that future development achieves the objective and policies of the National Grid Corridor Overlay, including that the National Grid is not compromised and its long-term upgrading and development is facilitated in accordance with the National Policy Statement on Electricity Transmission 2008.

High voltage transmission lines pose a risk of electrical hazard in situations where development occurs too close and may result in injury to persons and/or damage to property, either as a result of direct or indirect contact with National Grid infrastructure.

Conversely, development in close proximity to the National Grid can pose risks to the National Grid itself including the potential for loss of security of supply through outages or physical damage, and through constraints on access for inspection and maintenance and undertaking line upgrades.

D26.2. Objective [rcp/dp]

[The regional coastal plan [rcp] provisions (for activities or resources in the coastal marine area) are not operative until the Minister of Conservation has formally approved the regional coastal plan part of the Auckland Unitary Plan.]

- (1) The efficient development, operation, maintenance and upgrading of the National Grid is not compromised by subdivision, use and development.

D26.3. Policies [rcp/dp]

[The regional coastal plan [rcp] provisions (for activities or resources in the coastal marine area) are not operative until the Minister of Conservation has formally approved the regional coastal plan part of the Auckland Unitary Plan.]

- (1) Require subdivision, use and development within the National Grid Corridor Overlay to be undertaken so that it:
 - (a) meets the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001);
 - (b) does not compromise security of supply and/or the integrity of National Grid assets;
 - (c) does not compromise ongoing access to conductors and support structures for maintenance and upgrading works;
 - (d) does not foreclose future cable routes into substations in roads in urban areas;
 - (e) does not foreclose operation and maintenance options or the carrying out of planned upgrade works;
 - (f) manages all activities to avoid exposure to health and safety risk from the National Grid;
 - (g) manages activities sensitive to the National Grid to minimise exposure to nuisance, such as noise and line drip from the National Grid;
 - (h) avoids the establishment or expansion of activities sensitive to transmission lines in the National Grid Yard and around substations;
 - [CIV-2016-404-002330: Transpower New Zealand Limited]
 - (i) provides for activities not sensitive to transmission lines in the National Grid Yard within the residential, business, open space and special purpose zones
 - (j) avoids buildings within the National Grid Yard in rural zones and the Future Urban Zone, except for buildings for low intensity rural activities; and
 - (k) limits, as far as practicable, potential reverse sensitivity effects.
- (2) Require structure plans to take into account the National Grid Corridor overlay to ensure that the National Grid is not compromised by reverse sensitivity and other effects from future subdivision, use and development.
- (3) Require activities within the National Grid Corridor overlay within the coastal marine area to be undertaken so that they achieve all relevant items in Policy D26.3(1).

D26.4. Activity table

Table D26.4.1 Activity table – within the National Grid Yard specifies the activity status for use, development and subdivision activities within the National Grid Yard pursuant to sections 9(3) and 11 of the Resource Management Act 1991.

[ENV-2016-AKL-000218: Transpower New Zealand Limited] – Addition sought, the properties affected by this appeal are identified in the Auckland Unitary Plan viewer

Table D26.4.2 Activity table – within the National Grid Corridor around National Grid substations specifies the activity status for land use, development and subdivisions activities pursuant to sections 9(3) and 11 of the Resource Management Act 1991.

Tables D26.4.1 and D26.4.2 do not apply to Transpower's activities.

Where activities are shown as permitted, the applicable zone, precinct and Auckland-wide rules also apply.

For subdivision within the National Grid Corridor overlay, refer to the relevant zone rules in E38 Subdivision – Urban or E39 Subdivision – Rural. A blank in Table D26.4.1 below means that the Auckland-wide subdivision provisions apply.

Table D26.4.1 Activity table – within the National Grid Yard

Activity		Activity status
(A1)	Establishing activities sensitive to the national grid in an existing building or a new building	NC
(A2)	Any activity including land disturbance that permanently physically impedes existing vehicular access to a national grid support structure	NC
(A3)	Network utilities (excluding buildings and structures for irrigation) and electricity generation that connect to the national grid	P
(A4)	Any storage or use of hazardous substances or hazardous wastes (excluding motor vehicle fuel tanks and the accessory use and storage of hazardous substances in domestic scale quantities)	NC
(A5)	Any activity not otherwise provided for	NC
(A6)	Any permitted activity that does not meet the permitted activity standards	RD
(A7)	Any activity, building or structure that fails to comply with the requirements of NZECP 34:2001	NC
Development		
(A8)	External building extensions for an activity sensitive to the National Grid	NC
(A9)	Any building or structure unless it is otherwise provided for below	NC

[CIV-2016-404-002330: Transpower New Zealand Limited]

D26 National Grid Corridor Overlay

[CIV-2016-404-002330: Transpower New Zealand Limited]	(A10)	Fences	P
	(A11)	Any new building or structure, and alterations, that is not for activities sensitive to the national grid	P
	(A12)	Accessory buildings (excluding buildings containing sleeping areas) for activities sensitive to the national grid	P
	(A13)	Alterations to existing buildings for activities sensitive to the national grid that do not increase the building envelope or footprint	P
Buildings and structures in addition to the above in rural zones and the Future Urban Zone			
	(A14)	Horticultural structures between 8m and 12m from a pole (but not a tower) support structure	P
	(A15)	An agricultural or horticultural structure located within 12m of a tower or 8m of a pole support structure that complies with clause 2.4.1 of NZECP34:2001	P
	(A16)	Uninhabited farm buildings and structures, surrounding platforms and stockyards associated with milking sheds, animal feed lots and 3-sided calf rearing sheds, and alterations to these buildings and structures	P
	(A17)	Uninhabited horticultural buildings and structures and alterations to these buildings and structures	P
	(A18)	Principal buildings for intensive farming activities (excluding animal feed lots), milking shed buildings (excluding the surrounding platform and any stockyards), wintering barns, commercial greenhouses and immovable protective canopies	NC
Land disturbance			
	(A19)	Land disturbance that complies with Standards D26.6.1.1(1)(a), D26.6.1.1(1)(b), D26.6.1.1(1)(c) and D26.6.1.1(1)(d)	P
	(A20)	Land disturbance that does not comply with Standards D26.6.1.1(1)(a), D26.6.1.1(1)(b), D26.6.1.1(1)(c) and D26.6.1.1(1)(d)	RD
	(A21)	Land disturbance that does not comply with Standard D26.6.1.1(1)(e) – (f)	NC
Subdivision			
[CIV-2016-404-002330: Transpower New Zealand Limited]	(A22)	Creation of lots involving a new building platform for activities sensitive to the National Grid in the residential, business, open space and special purpose zones	NC
	(A23)	Creation of lots involving a new building platform in rural zones and the Future Urban Zone	NC
	(A24)	For all other subdivision on land within an urban zone the activity status listed in E38 Subdivision – Urban under Tables E38.4.1 to E38.4.5 will apply	
	(A25)	For all other subdivision on land within a rural zone the activity status listed in E39 Subdivision – Rural under	

D26 National Grid Corridor Overlay

	Tables E39.4.1 to E39.4.5 will apply	
(A26)	Subdivision for controlled activities in E38 Subdivision – Urban and E39 Subdivision – Rural that do not comply with Standards D26.6.2.1(1) and D26.6.2.1(2)	NC

[ENV-2016-AKL-000218: Transpower New Zealand Limited] – Addition sought

Table D26.4.2 Activity table – within the National Grid Corridor around National Grid substations

Activity	Activity status
(A27) Network utilities and electricity generation that connects to the National Grid	P
(A28) Roding activities, and network utilities or electricity generation that connects to the National Grid that are above ground or comply with Standard D26.6.1.2(1), and electricity transmission infrastructure in a road carriageway	P
(A29) New underground network utilities (except for electricity generation that connects to the National Grid) in a road carriageway identified in Table D26.6.1.2.1 that do not comply with Standard D26.6.1.2(1)	RD
Buildings and structures	
(A30) New buildings for activities sensitive to the National Grid	RD
Subdivision	
(A31) Subdivision for activities sensitive to the National Grid which are listed as permitted or controlled in E38 Subdivision – Urban under Tables E38.4.1 to E38.4.5	RD
(A32) Subdivision for activities sensitive to the National Grid which are listed as permitted or controlled in E39 Subdivision – Rural under Tables E39.4.1 to E39.4.5	RD

D26.5. Notification

[ENV-2016-AKL-000218: Transpower New Zealand Limited] – Addition sought

- (1) An application for resource consent for a controlled activity listed in Table D26.4.1 above will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.
- (2) Any application for resource consent for an activity listed in Table D26.4.1 or Table D26.4.2 and which is not listed in D26.5(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

D26.6. Standards

D26.6.1. Permitted activity standards

[ENV-2016-AKL-000218: Transpower New Zealand Limited] – Addition sought

All activities listed as permitted in Tables D26.4.1 or D26.4.2 must comply with the following permitted activity standards.

D26.6.1.1. Land disturbance within the National Grid Yard

(1) Land disturbance must:

- (a) be no deeper than 300mm within 6m of the outer visible edge of the foundations of a national grid tower support structure;
- (b) be no deeper than 300mm within 2.2m of a national grid pole support structure or stay wire;
- (c) be no deeper than 3m between 6 to 12m from the outer edge of the visible foundation of a national grid tower support structure;
- (d) be no deeper than 750mm within 2.2 to 5m of a National Grid pole support structure; except that vertical holes not exceeding 500mm in diameter beyond 1.5 from the outer edge of pole support structure or stay wire are exempt;
- (e) not create an unstable batter that will affect a National Grid support structure; and
- (f) not result in a reduction in the ground to conductor clearance distances below what is required by Table 4 of NZECP34:2001.

(2) Standards D26.6.1.1(1)(a) – (d) do not apply to:

- (a) land disturbance for a network utility (excluding buildings and structures for irrigation), as part of an electricity transmission activity, or for electricity infrastructure;
- (b) land disturbance undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath or driveway (including a farm track); and
- (c) land disturbance for a network utility (excluding buildings and structures for irrigation).

D26.6.1.2. Underground network utilities in the road carriageways

(1) All network utilities within the road carriageways identified in Table D26.6.1.2.1 must comply with the following standards:

- (a) the network utility is an electrical cable that has a maximum continuous current carrying capability of 250A or less, a telecommunication cable, or a gas, water supply or sewer pipe connection to one or more properties; and
- (b) the pipe or cable is buried to a depth no greater than 1.2m below the surface of the road.

(2) Except that:

- (a) underground telecommunications fibre cables need not comply with Standard D26.6.1.2.1(a) and (b) if they are located in an area no deeper than 1.5m below the surface and no wider than 500mm inside the underground National Grid Corridor; and
- (b) underground electricity cables need not comply with Standards D26.6.1.2.1(a) and (b) if a suitably qualified expert, commissioned by both the owner of the National Grid and the local distribution lines company supplied by the particular substation, certifies that any such cable does not foreclose (physically or due to heat transfer of the transmission cable) the ability to install other underground electricity transmission cables to the substation.

Table D26.6.1.2.1 Underground network utilities in the road carriageways

Substation	Road	Distance
Henderson	Lincoln Park Avenue, Triangle Road, Cartmel Avenue	250m
Hepburn Road	Hepburn Road, Akatea Road, Bancroft Crescent	250m
Mangere	Tennessee Avenue, Massey Road, Ferguson Street, Driver Road	250m
Mt Roskill	May Road, Richardson Road, Nirvana Way, Ellis Avenue, Jana Place, Subritzky Avenue, White Swan Road	500m
Otahuhu	Bairds Road, Hellabys Road, Gilbert Road, Kaitawa Street	250m
Pakuranga	Golfland Drive, Nandina Avenue, Ti Rakau Drive, Greenmount Drive	500m
Penrose	Gavin Street	500m
Wairau Road	Wairau Road	250m
Wiri	Te Irirangi Drive, Great South Road	500m

D26.6.1.3. Fences

- (1) Fences must:
- (a) be located at least 5m from a National Grid support structure; and
 - (b) be no more than 2.5m in height.

D26.6.1.4. Buildings and structures

- (1) Buildings, structures and alterations including uninhabited horticultural buildings and structures (except those subject to Standard D26.6.1.6) and uninhabited farming buildings, structures and surrounding platforms and stockyards must be located at least 12m from a National Grid support structure.

D26.6.1.5. Accessory buildings

- (1) Accessory buildings must:
- (a) be located at least 12m from a National Grid support structure;
 - (b) be no more than 2.5m in height; and
 - (c) have a floor area of no more than 10m².

D26.6.1.6. Horticultural structures between 8m and 12m from a pole support structure

- (1) Horticultural structures between 8m and 12m from a pole (but not a tower) support structure must:
- (a) be no more than 2.5m in height;
 - (b) be removable or temporary, to allow a clear working space 12m from the pole where necessary for maintenance purposes; and
 - (c) allow all weather access to the pole and a sufficient area for maintenance equipment, including a crane.

D26.6.2. Controlled activity standards

All controlled activities must comply with the following controlled activity standards.

D26.6.2.1. Subdivision

- (1) The design and construction of subdivision including land disturbance and the location of buildings and structures must comply with NZECP34:2001.
- (2) The design and construction of subdivision must maintain vehicular access to any National Grid support structure.

D26.7. Assessment – controlled activities

There are no controlled activities in this overlay.

D26.8. Assessment – restricted discretionary activities

D26.8.1. Matters of discretion

The Council will restrict its discretion to all the following matters when assessing a restricted discretionary resource consent application:

- (1) subdivision:
 - (a) effects of the subdivision on the efficient operation, maintenance, upgrade and development of the national grid;
 - (b) risk of electrical hazards affecting public or individual safety, and the risk of property damage;
 - (c) the ability to provide a complying building platform;
 - (d) location, design and use of the proposed building platform or structure as it relates to the national grid;
 - (e) the nature and location of any vegetation associated with the subdivision to be planted in the vicinity of the national grid;
 - (f) where the proposed subdivision is part of a more extensive greenfields development, consistency with the planned future form and character of the area or zone, and the potential impacts on the National Grid, including reverse sensitivity effects and potential effects on the operation, maintenance, development and upgrade of the affected part of the National Grid; and
 - (g) technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
 - (h) the matters for discretion set out in E38 Subdivision – Urban under E38.11.1, where the land under subdivision is within an urban zone, and provided the matters are not inconsistent with matters listed as (a) to (g) above; and
 - (i) the matters for discretion set out in E39 Subdivision – Rural under E39.11.1 where the land under subdivision is within a rural zone, and provided the matters are not inconsistent with matters listed as (a) to (g) above.
- (2) land disturbance that does not comply with Standard D26.6.1(1)(a) – (d):
 - (a) the degree of non-compliance with the standard(s) and the effects on the efficient operation, maintenance, upgrade and development of the national grid;

D26 National Grid Corridor Overlay

- (b) risk of electrical hazards affecting public or individual safety, and the risk of property damage;
 - (c) the risk to the structural integrity of the National Grid; and
 - (d) technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (3) new buildings for activities sensitive to the National Grid in the National Grid Corridor around substations:
- (a) effects of the development on the efficient operation, maintenance, upgrade and development of the substation;
 - (b) risk of electrical hazards affecting public or individual safety, and the risk of property damage; and
 - (c) technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (4) new underground network utilities (except for electricity generation that connects to the National Grid) in a road carriageway that do not comply with Standards D26.6.1.2(1), (2)(a) and (2)(b):
- (a) the degree of non-compliance with the standard(s);
 - (b) the effects on the efficient operation, maintenance, upgrade and development of the national grid, including foreclosing options to install underground cables to the substation; and
 - (c) technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (5) buildings and structures that do not comply with Standards D26.6.1.3, D26.6.1.4, D26.6.1.5 and D26.6.1.6:
- (a) the degree of non-compliance with the standard(s);
 - (b) the effects on the efficient operation, maintenance, upgrade and development of the national grid;
 - (c) risk of electrical hazards affecting public or individual safety, and the risk of property damage; and
 - (d) technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.

D26.8.2. Assessment criteria

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- (1) subdivision:
 - (a) whether the requirements of Policy D26.3(1) will be met;
 - (b) whether a building platform complies with national grid corridor rules, including those relating to sensitive activities;
 - (c) the extent to which the location, height, scale, orientation and use of the any proposed building platform, structure or planting will compromise the efficient operation, maintenance, upgrade and development of the National Grid;
 - (d) the extent to which the subdivision design and consequential development will minimise the potential reverse sensitivity on and amenity and nuisance effects of the National Grid;
 - (e) any implications arising from any technical advice from an Electrical Engineer specialising in transmission or the National Grid operator;
 - (f) the assessment criteria set out in E38 Subdivision – Urban under E38.11.2, where the land under subdivision is within an urban zone and provided the matters are not inconsistent with matters listed as (a) to (e) above; and
 - (g) the assessment criteria set out in E39 Subdivision – Rural under E39.11.2 where the land under subdivision is within a rural zone, and provided the matters are not inconsistent with matters listed as (a) to (e) above.
- (2) land disturbance that does not comply with Standards D26.6.1(1)(a) – (d):
 - (a) whether the requirements of Policy D26.3(1) will be met;
 - (b) where more than one standard is not complied with, consideration of the cumulative effects of the non-compliances; and
 - (c) any implications arising from any technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (3) new buildings for activities sensitive to the National Grid in the National Grid Corridor around substations:
 - (a) whether the requirements of Policy D26.3(1) will be met;
 - (b) the extent to which the location, height, scale, orientation and use of the any development will compromise the efficient operation, maintenance, upgrade and development of the National Grid;

D26 National Grid Corridor Overlay

- (c) the extent to which the development will minimise the potential reverse sensitivity on and amenity and nuisance effects of the National Grid; or
 - (d) any implications arising from any technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (4) new underground network utilities (except for electricity generation that connects to the National Grid) in a road carriageway that do not comply with Standard D26.6.1.2(1):
- (a) the implications in terms of the continuing ability to install operate and maintain underground cables to the substation;
 - (b) where more than one standard is not complied with, consideration of the cumulative effects of the non-compliances; and
 - (c) any implications arising from any technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.
- (5) buildings and structures that do not comply with Standards D26.6.1.3, D26.6.1.4, D26.6.1.5 and D26.6.1.6:
- (a) whether the requirements of Policy D26.3(1) will be met;
 - (b) the extent to which the non-compliance will compromise the efficient operation, maintenance, upgrade and development of the National Grid;
 - (c) where more than one standard is not complied with, consideration of the cumulative effects of the non-compliances; and
 - (d) any implications arising from any technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.

D26.9. Special information requirements

- (1) An electrical engineering assessment prepared by a suitably qualified person may be required.