SECTION 42A REPORT

Officer's written right of reply – 21 May 2025

Hearing 11 – Infrastructure

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1 Introduction

1. My name is Jerome Wyeth and I am the author of the section 42A report for the Infrastructure Chapter in the Proposed Far North District Plan (**PDP**), which was considered at Hearing 11 held on 28 to 30 April 2025.

2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the section 42A report and request that the Hearings Panel take this as read.

2 Purpose of Report

3. The purpose of this report is to respond to the evidence and statements of submitters that was pre-circulated and presented at Hearing 11 in relation to the Infrastructure Chapter. It also provides a response to questions raised by the Hearings Panel relating to the Infrastructure Chapter.

3 Consideration of evidence recieved

4. The following submitters provided hearing statements, evidence and/or attended Hearing 11 raising issues relevant to the Infrastructure Chapter:

    a. Ara Poutama – Department of Corrections (S158).

    b. A.W and D.M Simpson (FS351).

    c. Elbury Holdings (S519)

    d. Errol James McIntyre (FS541).

    e. Far North Holdings Limited (FS114).

    f. Fiona King (FS155).

    g. Fire and Emergency New Zealand (S512).

    h. Kaitaia Marae Incorporated Society (FS84).

    i. KiwiRail Holdings Limited (S416).

    j. Leah and Sean Freling (S358)

    k. LK King Limited (S547).

    l. Oromahoe Land Owners (FS131)

    m. Oromahoe Trust (FS371).

    n. Royal Forest and Bird Protection Society of New Zealand (S511).

    o. Tapuaetahi Incoporated (FS449).

p. The Teleco Companies (Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited, Connexa Limited and FortySouth) (S282).

q. The Proprietors of Tapuaetahi Incorporation (FS449).

r. Top Energy Limited (S483).

s. Transpower New Zealand Limited (S454).

5. A number of submitters generally support the recommendations in the Infrastructure Section 42A Report (**section 42A report**). This includes Department of Corrections, KiwiRail, the Telco Companies, and Transpower (although the Telco Companies and Transpower both request some further amendments as outlined below).

6. As such, I have only addressed evidence and statements at the hearing where I consider additional comment is required. I have also grouped the issues from submitters in evidence and hearings as follows:

a. Issue 1: Infrastructure Chapter objectives and policies

b. Issue 2: Infrastructure Chapter rules, standards and definitions

c. Issue 3: Subdivision rules

d. Issue 4: Critical Electricity Lines (**CEL**)

e. Issue 5: Kaitaia drainage schemes.

7. For all other submissions not addressed in this report, I maintain my position set out in my original section 42A report.

3.1 Issue 1: Infrastructure Chapter objectives and policies – outstanding issues

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 3, 4 and 5
Evidence and hearing statements with outstanding issues	Forest and Bird, Top Energy

Matters raised in evidence

I-O4

8. Mr Willams on behalf of Forest and Bird raises a number of concerns with my recommended amendments to I-O4, including:

a. It will limit how the adverse effects of infrastructure can be managed which is inappropriate as this contradicts section 5 of the RMA

b. Objectives should state the outcome sought what is intended to be achieved (e.g. appropriate management of adverse effects).

9. Mr Williams also considers that the recommended amendments to I-O4 are not necessary or appropriate as these provide special treatment to all infrastructure. To address these concerns, Forest and Bird requests that I-O4 is amended to:

    a. Simply state that the adverse effects of infrastructure are managed "*in an appropriate way*"; or

    b. Add the words "*while avoiding, remedying or mitigating adverse effects as appropriate*".

I-P2

10. Mr Williams on behalf of Forest and Bird support the amendments to notified I-P2 and I-P3 in principle if this avoids inconsistencies and potential conflict with the Ecosystems and Indigenous Biodiversity Chapter in the PDP. However, Mr Williams states that this support is subject to ensuring that I-O4 and I-P2 does not limit the ability of consent authorities to consider those PDP chapters when managing the adverse effects of infrastructure activities.

11. Mr Williams also accepts that it is appropriate to recognise and provide for the functional need and operation need of regionally significant infrastructure when managing the effects of infrastructure on the environment. However, Mr Williams does not consider that this should apply to all infrastructure activities, in particular infrastructure activities with no public benefit. Mr William also states that he is not aware of any legislation or national direction that requires the adverse effects of infrastructure activities to be treated differently from other activities in terms of operational need and functional need.

I-Px

12. Ms Dines on behalf of Transpower notes that she is broadly supportive of I-Px as this is necessary to give effect to the National Policy Statement for Electricity Transmission 2008 (**NPS-ET**) and resolve conflicts with other instruments, particularly the New Zealand Coastal Policy Statement 2010 (**NZCPS**). However, Ms Dines identifies the following minor corrections/amendments:

    a. The reference to clause (d) within clause (6) should refer to clause (4)

    b. The policy refers to "operational need" and "functional need" (rather than needs) to be consistent with the National Planning standards.

I-P11

13. While supporting the addition of "*unnecessarily constrain*" in I-P16, Mr Badham on behalf of Top Energy reiterates their request to amend the policy to:

    a. Replace "avoid" with "manage" as this is considered to be unnecessarily restrictive

    b. Remove the words *"unless the owners of the land agree to the new infrastructure*" otherwise this gives these landowners veto.

I-P12

14. Mr Badham on behalf of Top Energy reiterates the request to amend the start of the policy to refer to "*recognise and provide for*" as he considers that recognising the benefits of this new technology is meaningless if there is no accompanying direction to also provide" for it.

I-P13

15. Mr Badham notes that Top Energy has revised their position on I-P13 and would prefer that I-S1 and I-S2 are not specifically referenced within I-P13. This revised request is based on the evidence of Mr Sookandan from Top Energy who advises that best practice within international and national recognised standards or guidelines with regard to these matters can change over time.

Analysis

I-O4 and I-P2

16. With respect, I consider that Mr Williams on behalf of Forest and Bird has misinterpreted the intent and application my recommended amendments to I-O4 and I-P2. The intent of my recommended amendments to I-O4 and I-P2 is not to constrain the assessment and management of the adverse effects of infrastructure. Rather the intent of these recommendations:

    a. Ensure the **operational need** and **functional need** of infrastructure to be in particular environments is recognised and provided for when managing adverse effects. Operational need and functional need are well established concepts that are defined in the National Planning Standards and the PDP and are particularly important considerations for infrastructure in my opinion (e.g. the need for linear infrastructure to traverse a particular environment to service a particular community). From my experience, it is also common in national, regional and district planning documents to recognise the operational need and functional need of infrastructure activities when considering and managing adverse effects.

b. Remove direction relating to managing adverse effects on natural values, coastal values etc. from within the Infrastructure Chapter where this both duplicated and conflicted with more specific effects management policies in other District-wide PDP chapters (Coastal Environment, Ecosystems and Indigenous Biodiversity etc.). I have also recommended amendments to the overview of the Infrastructure Chapter and Advice Note 2 to make it clear these more specific effects management provisions (including more stringent rules) apply to infrastructure activities as applicable. The rationale for these amendments is detailed in Key Issue 1 of my section 42A report and was informed by pre-hearing discussions.

17. In this respect, I disagree with Mr Williams that these amendments give "*special treatment*" to all infrastructure and "*limit*" the way adverse effects are to be managed. Rather, in my view, these amendments reinforce the key effects management policies in higher order direction (including the NZCPS) which are given effect to through the relevant PDP chapters (which was considered in detail in Hearing 4).

18. In terms of the distinction between infrastructure and regionally significant infrastructure (**RSI**), this is addressed in paragraph 102 and 103 of my section 42A report where I note that the RPS definition of RSI is both broader and narrower than the RMA (and PDP) definition of infrastructure. In my opinion, Mr Williams has not sufficiently demonstrated that I-P2 should be limited to RSI with reference to the types of infrastructure that should be included or excluded from the policy.

19. I also note that my recommended amendments to I-O4 and I-P2 are supported by other submitters, including those involved in pre-hearing discussions. Therefore, I do not recommend any amendments to I-O4 and I-P2 in response to the legal submissions of Mr William on behalf of Forest and Bird, while noting that we seem to be aligned in terms of the outcomes sought.

<u>I-PX</u>

20. I agree with the formatting issues and clarifications with I-PX by Ms Dines and recommend that the policy is amended to address these.

<u>I-P11</u>

21. Firstly, I note that I-P11 is not framed as an absolute "*avoid*" policy as suggested by Mr Badham Top Energy as it is caveated with "*unnecessarily constrain"* and "*unless*" so I consider that the notified wording at the start of I-P11 is appropriate.

22. In terms of the second limb of the policy "*unless the owners of the land agree to the new infrastructure*", I agree that this wording could be problematic and any disputes about access and land acquisition are more appropriately addressed through other legislation. Further, if the Māori

landowners agree with the new infrastructure, then they are likely to consider that the infrastructure will not "*unnecessarily constrain*" their ability to use their land and therefore the first limb of the policy would be met. I therefore recommend that these words are deleted from I-P11 which is also better aligned with the corresponding I-O6.

I-P12

23. I have addressed this submission point from Top Energy requesting amendments to I-P12 in paragraph 207 of my section 42A report. The evidence of Mr Badham does not alter my opinion that it is appropriate for I-P12 to provide direction to recognise the benefits of new technology in infrastructure but without placing a firm obligation on applicants and Council processing planners to provide for these benefits. I therefore continue to recommend that I-P12 is retained as notified.

I-P13

24. My recommended reference to I-S1 and I-S1 in clause (b) of I-P13 was a result of a submission from Top Energy and subsequent request from Mr Badham during per-hearing discussions. Given Top Energy have now reversed their position on this matter, I recommend that the reference to I-S1 and I-S1 in clause (b) of I-P13 is deleted as this cross-referencing is not needed.

Top Energy – requested new objective, policy and rule for infrastructure in the road corridor

25. Again, the evidence presented at the hearing by Mr Badham has not changed my view on this matter. I reiterate my reasoning and recommendations from my section 42A in response to this request from Top Energy. For example, Mr Badham considers that my recommendation is inconsistent with Objective I-O1 in the Strategic Direction Chapter of the PDP to recognise and provide for the benefits across the District. However, in my view, that is already achieved through I-O2 and I-P4 in the Infrastructure Chapter which seek recognise and provide for the benefits of infrastructure apply throughout the District, including in the road corridor (noting again that this is not mapped but instead adopts the adjoining zoning).

26. Further, in terms of the requested Rule I-RX from Top Energy, I note that this would permit the operation, maintenance, repair and removal of existing infrastructure in the road corridor which I-R1 already does. The only difference in the relief sought by Mr Badham is in relation to upgrading of infrastructure in the road corridor where this would be permitted without any controls on the size and location of the upgrade. This is overly permissive in my view. and I consider that the controls in I-R3 are appropriate within the road corridor to manage potential adverse effects on adjoining zones (also noting that Mr Badham supported the substantive amendments to I-R3 through pre-hearing discussions).

27. However, I do agree with Mr Badham the direction to encourage infrastructure to be located in road corridors should not be limited to linear infrastructure there are other types of infrastructure that are appropriate to be located within the road corridor (e.g. telecommunication facilities). I therefore recommend a minor amendment to I-P9 to delete the reference to "new linear" so that it applies to all infrastructure

Recommendation

28. For the above reasons, I recommend that:

    a. I-PX is amended to address minor corrections

    b. I-P9 is amended to delete the word "new linear"

    c. I-P11 is amended to remove the words "*unless the owners of the land agree to the new infrastructure"*

    d. I-P13 is amended to delete the reference to I-S1 and I-S1 in clause (b).

Section 32AA evaluation

29. My recommended amendments to I-PX, I-P9, I-P11 and I-P13 are minor amendments to address cross referencing issues, better achieve the policy intent, and to improve workability. I therefore consider that these recommended amendments are an appropriate way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.2 Issue 2: Infrastructure Chapter rules, standards and definitions

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issues 6 to 9
Evidence and hearing statements with outstanding issues	Forest and Bird, Telco Companies, Top Energy

Matters raised in evidence

<u>I-R3 (Upgrading existing network utilities)</u>

30. Mr Badham on behalf of Top Energy reiterates their request for the structural changes to the rule which he considers have not been adequately responded to the in the section 42A report.

I-R7 (New overhead lines and poles, telecommunication and antenna, towers)

31. Mr Horne on behalf of the Telco Companies is broadly supportive of the recommended amendments to I-P7. However, Mr Horne raises the following issues and potential amendments:

    a. Firstly, Mr Horne notes that it is not common to have rules relating to overhead lines and telecommunication poles and antennas as part of the same rule as they have difference functional need and operations needs and different effects (e.g. linear v placed based infrastructure). Further, Mr Horne states that he understands that for Chorus they typically use 9m or 10m poles for overhead lines and therefore the increased height limits in I-R7 may not be necessary for all overhead line poles. Therefore, Mr Horne recommends splitting the rule into:

        i. One rule for overhead lines, poles and towers; and

        ii. One rule for telecommunication poles and attached antenna.

    b. Mr Horne considers that I-R7 should not be limited to "new" so it can still apply to upgrades not meeting the allowances in I-R3.

    c. Mr Horne supports an additional control to manage the potential of telecommunication poles by applying the district plan height in relation to boundary (HIRTB) at the interface of any residential zoned sites. However, Mr Horne states that this additional control should exclude when telecommunication facilities need to be located in the road corridor as these are considered to be an appropriate location for network utilities and because often telecommunication facilities need to be located near the boundary of the road so as to not impinge of traffic functions.

    d. To manage potential dominance and amenity effects, Mr Horne recommends a 1m diameter control is applied for any antennas/headframes in road reserves in addition to the height limits applied in I-R7.

    e. Mr Horne also identified some cross-referencing/number issues to be corrected.

32. Mr Horne also notes that, in relation to towers, these are not typically deployed design for telecommunication facilities, but the NES-TF permits towers up to 25m in rural zones. However, Mr Horne does not have any particular concerns/issues with the 15m height limit for towers in other zones in relation to telecommunication networks.

33. Conversely, Mr Badham on behalf of Top Energy requests that the height limit for towers be increased from 15m to 25m above ground level. This

request is based on the evidence of Mr Sookandan who advises that towers are typically higher that 22m due to operational needs.

I-R8 (telecommunication kiosks)

34. Mr Badham on behalf of Top Energy considers that it is still unclear that the 3.5m height limit could be interpreted as the support structure the telecommunication kiosk is located on and recommend an amendment to I-R8 "*excluding any support structure*" to make this clear.

I-R12 (Buildings and structures within 10m of Critical Electricity Lines)

35. Mr Badham on behalf of Top Energy requests a change in relief based on the evidence of Mr Sooknandan that it is not appropriate for any buildings or structures, regardless of their height, to be located within 10m of a Critical Electricity Lines (**CEL**) as a permitted activity. As such, Mr Badham requests the deletion of PER-1 and minor consequential amendments to I-R12

I-R17 (Construction of three waters infrastructure)

36. The statement from Mr Roberts on behalf of FENZ reiterates their request to amend the matters of discretion to refer to SNZ:PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS 4509:2008) as it provides further detail on what is needed for suitable water supply. FENZ disagree with the section 42A report recommendation not to refer to this code of practice as this is no different from a requirement to comply with any other New Zealand Standard (e.g. noise, electricity codes of practice). FENZ also considers that this standard provides certainty, is effective and enforceable and many district plans refer to this code of practice. FENZ also note that the matter of discretion can be clearly targeted at water supply infrastructure.

I-S1 (radio frequency fields) and I-S2 (electric magnetic fields)

37. Mr Badham on behalf of Top Energy reiterates their request for a discretionary activity status when I-S1 and I-S2 are not complied with rather than non-complying. Mr Badham considers that a discretionary activity status is appropriate as any non-compliance is likely to be for operational and technical requirements or a change in best practice, and because these standards may change over time.

Top Energy – requested new objective, policy and rule for infrastructure in the roading corridor

38. Mr Badham on behalf of Top Energy reiterates their request for a new objective, policy and rule for infrastructure in the road corridor.

Definition of upgrading

39. The planning evidence of Mr McPhee on behalf of Oromahoe Land Owners raises concerns with the recommended definition of "*upgrading*" in the section 42A report. Specifically, Mr McPhee considers that there is no value in a definition of upgrading that does not quantify the scale or intensity of the upgrade (which I-R3 effectively does). Mr McPhee also raises concerns that new I-PX refers to "major upgrades", but this is not defined or used elsewhere in the Infrastructure Chapter.

Analysis

I-R3 (upgrading of existing above ground network utilities)

40. Having reviewed the structural amendments to I-R3 requested by Top Energy, I do not consider that these materially improve the clarity of the rule. The amendments requested from Top Energy to I-R3 also require additional words (i.e. "in addition to PER-1 and PER-2") and create inconsistencies with other rules in the Infrastructure Chapter in terms of how compliance with where I-S1 and IS-2 are referred to. I therefore retain my view set out in my section 42A report that these structural amendments are not necessary and do not recommend any further amendments to I-R3 in response to this request from Top Energy.

I-R7 (New overhead lines and poles, telecommunication and antenna, towers)

41. I support a number of amendments to I-R7 in the evidence of Mr Horne on behalf of the Telco Companies. This includes the recommendations to apply the PDP height in relation to boundary (HIRTB) within and at the interface of any residential zoned sites (excluding when located in road corridor) and a 1m diameter limit for antennas and headframes for telecommunication facilities in the road reserve. Both these recommendations are intended to manage potential adverse amenity/visual effects associated with telecommunication facilities to support the expanded coverage of I-R7, which I consider to be constructive and appropriate amendments to incorporate into the rule. I also agreed with Mr Horne that there are some cross-referencing issues in I-R7 to address as discussed in the hearing[1].

42. While I have no concerns with the recommendation from Mr Horne to split I-R7 into two separate rules for overhead electricity lines and support structures and for telecommunication poles and antenna, I have not recommended this amendment. This is because I do not have sufficient evidence and examples to recommend alternative height limits for overhead electricity lines in different zones and because this would be a material departure from the recommended amendments to I-R7 that were largely agreed through pre-hearing discussions. I also do not recommend that I-R7

[1] Those amendments include amending PER-3 to be PER-4, clause 4 in PER-1 to refer to clauses 1 to 3, PER-3 to refer to PER-1(1), activity status when compliance not achieved to be updated to refer to the four permitted activity conditions.

is amended to remove the reference to "new" as the intent is that upgrades not meeting the conditions in I-R3 become a restricted discretionary activity under that rule[2] rather than defaulting to other rules in the Infrastructure Chapter.

43. I do not support an increase in the permitted height for towers from 15m to 22m as requested by Top Energy. As discussed at the hearing, steel lattice towers are much more visually intrusive structures compared to poles used for electricity lines or telecommunications. For these reasons a lower permitted height limit for towers compared to poles is common in district plans across New Zealand and is reflected in the network utility rules developed by infrastructure providers the PDP Infrastructure Chapter has drawn from. It is also unclear as to whether this increased height limit for towers is being sought in all zones (which could have significant adverse effects in some more sensitive zones in my opinion).

44. While potential definitions for tower and pole were discussed at the hearing, in my view this are not necessary as the difference between lattice towers and poles as support structures for infrastructure is well understood from my experience. I note that there are definitions of tower in the NES-ETA[3] that could be incorporated into the PDP with appropriate modifications if deemed necessary.

I-R8 (telecommunication kiosk)

45. During the hearing, the requested amendments to I-R8 from Top Energy were discussed. I now understand from the Telco Companies that the I-R8[4] (was intended to provide for typical, standalone phone booths fixed to ground that are becoming less common. As such, there is unlikely to be situations where these typical telecommunication kiosks/telephone booths are attached to telecommunication support structures such as poles to be above ground level (as they would no longer be accessible for their intended purpose). I therefore do not recommend any amendments to I-R8 in response to the submission and evidence from Top Energy as this seems to be based on a misinterpretation of the rule.

I-R12 (Buildings and structures within 10m of Critical Electricity Lines)

46. I note that PER-1(1) in R-12 is based on the corresponding rule in the Whangarei District Plan that was requested by Top Energy in pre-notification discussions and subsequent amendments to this rule in the PDP requested in the Top Energy submission. As Top Energy has again reversed their relief sought, I support an amendment to delete this condition and primarily rely

[2] Or non-complying in the case of non-compliance with I-S1 and I-S2.
[3] For example, the NES-ETA defines "tower" as "*(a)means a steel-lattice structure that supports conductors as part of a transmission line; and (b)includes the hardware associated with the structure (such as insulators, cross-arms, and guy-wires) and the structure's foundations*".
[4] This rule and other rules in the Infrastructure Chapter are based on the network utility rules developed by infrastructure providers, including members of the Telco Companies.

on PER-2 so that this requires compliance with NZECP 34:2001[5] for new buildings and structures and for extensions and additions to existing buildings and structures that do not comply with PER-1.

I-R17 (Construction of three waters infrastructure)

47. In terms of the requested reference to the SNZ:PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS 4509:2008), I note that this is a broader issue for the PDP which has been considered as part of the Transport topic in terms of emergency vehicle access and will be considered in more detail in Hearing 13 in relation to the Natural Hazards chapter. However, in the context of I-R17, I still am of the view that the reference to this FENZ Code of Practice is not necessary in the matters of discretion which are framed is a more generic way. The reference to "*level of service*" will also enable the FENZ Code of Practice to be considered for water supply proposals where appropriate.

I-S1 (radio frequency fields) and I-S2 (electric magnetic fields)

48. I address the submission points from Top Energy on I-S1 and I-S2 in paragraph 224 of my section 42A report and there is nothing in the evidence of Mr Badham for Top Energy to change my opinion on this matter. In particular, I consider that a non-complying activity status for non-compliance with these accepted standards to protect human health is appropriate and is common in district plans and national regulations (including the NES-TF and NES-ETA). From my experience, this is accepted practice and I do not support a more lenient status from both a planning and human health perspective.

Definition of upgrading

49. I acknowledge the view of Mr McPhee that the recommended definition of "*upgrading*" does not quantify the scale and intensity of "*upgrading*". However, in my view, the recommended definition of upgrading has value in describing the **purpose** of upgrading infrastructure (e.g. to improve resilience, increase service delivery to communities) which can then be considered when assessing and managing the effects of a proposal to upgrade existing infrastructure. This works in combination with I-R3 which determine the **scale** of upgrading that can be undertaken as a permitted activity. I therefore continue to recommend that the PDP include a new definition of "*upgrading*" in relation infrastructure.

50. Mr McPhee also raises questions about the reference to "*major upgrades*" in recommended new I-PX. In response, I note the I-PX is intended to give effect to the NPS-ET which refers to major upgrades in Policy 4[6]. I therefore

[5] New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

[6] Policy 4 of the NPS-ET states "*When considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers must have*

consider that reference to major upgrades in I-PX is appropriate in this specific context as it relates to electricity transmission.

Recommendation

51. For the reasons above, I recommend:

    a. Further amendments to I-R7 to include additional permitted activity conditions that apply the relevant PDP height in relation to boundary standards within and at the interface of any residential zoned sites (excluding when located in road corridor) and a 1m diameter limit for antennas and headframes for telecommunication facilities within the road reserve.

    b. Further amendments to delete condition (1) within PER-1 of I-R12 so that the rule is primarily focused on compliance with NZECP 34:2001 for new buildings and structures and for extensions and additions to existing buildings and structures that do not comply with PER-1.

Section 32AA evaluation

52. The recommended amendments to I-R7 are intended to provide additional controls to manage the potential adverse amenity/visual effects associated with telecommunication facilities to support the expanded coverage of the rule whereas the recommended amendments to I-R12 simplify the rule to focus on compliance with NZECP 34:2001. On this basis, I consider that the recommended amendments to these two rules are an appropriate, efficient and effective way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.3 Issue 3: Subdivision rules – outstanding issues

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 10
Evidence with outstanding issues	Top Energy, Transpower

Matters raised in evidence

SUB-R9 (Subdivision in National Grid Subdivision Corridor)

53. Ms Dines highlights an error in the activity status for non-compliance referring to "non-applicable" rather than "non-complying".

regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection".

SUB-R10 (Subdivision of site within 32m of the centre line of a Critical Electricity Line)

54. Mr Badham on behalf of Top Energy disagrees with my recommended amendments to SUB-R10 in terms of the reference to buildings being 10m from CEL and for a discretionary (rather than non-complying) activity status when RDIS-1 not complied with.

55. Mr McPhee on behalf of Oramohoe Land Owners disagrees with the recommendation for building platforms to be located 10m from CEL overlay. Mr McPhee considers that all that should be required is to demonstrate that building platforms can accommodate a building that complies with NZECP 34:2001 and that this should be a controlled activity.

Analysis

SUB-R9 (Subdivision in National Grid Subdivision Corridor)

56. Prior to the hearing, I discussed the drafting issue with SUB-R9 with Ms Dines and I agreed this in a drafting error in the marked-up amendments in Appendix 1.2 of the section 42A report. I therefore recommend this is addressed by replacing "non-applicable" with "non-complying" as suggested by Ms Dines.

SUB-R10 (Subdivision of a site within 32m of centre line of Critical Electricity Line Overlay)

57. As discussed further below under Issue 1, the intent of the Critical Electricity Line provisions in the PDP is not to impose additional restrictions above that required in national regulations, but rather to improve the visibility and compliance with those regulations. On this basis, I agree with Mr McPhee that SUB-R10 should be refocused to confirm compliance with NZECP 34:2001. I therefore recommend that SUB-R10 is amended to be a controlled activity where it can be demonstrated that the proposed building platform can accommodate building(s) that complies with the safe distance setbacks in NZECP 34:1001 and discretionary activity when compliance is not achieved.

58. This recommendation differs to the relief sought by Mr Badham on behalf of Top Energy which is broadly for a more stringent rule. In my view, the requested relief for a restricted discretionary activity condition requiring a 32m blanket setback for building platforms to centre line of CEL and non-complying status for non-compliance with this condition is overly onerous. This would have significant impacts on some landowners and there appears to be no technical or planning basis for such as large setback to existing electricity lines. Mr Badham mentions the need to manage reverse sensitivity effects in addition to direct effects in his evidence, but it is not clear in my opinion how a 32m setback is required to achieve this.

59. Mr Badham also appears to consider that CEL as regionally significantly infrastructure should be treated the same as the National Grid due to the direction in Policy 5.1.1 and Policy 5.1.3(c) of the RPS. I disagree. In my view, the national significance of the National Grid is clearly recognised in the NPS-ET which the PDP must give effect to. Policy 10 and 11 in the NPS-ET also provides clear direction to avoid reverse sensitivity effects on the National Grid, to ensure that the operation, maintenance, upgrading, and development of the National Grid is not compromised, and to provide a buffer corridor to protect the National Grid from sensitive activities. Conversely, there is no specific direction in the RPS to map RSI to protect this infrastructure from reverse sensitivity effects and this is at the discretion of local authorities in the region (Method 5.3.5 discussed further below).

Recommendation

60. For the above reasons, I recommend:

    a. SUB-R9 is amended to correct the drafting error outlined above

    b. SUB-R10 is amended to provide a controlled activity pathway for subdivision within 32m of CEL where it can be demonstrated the building platforms accommodate building(s) that comply with NZECP 34:2001.

Section 32AA evaluation

61. The recommended amendments to SUB-R9 address a drafting error and the recommend amendments to SUB-R10 refine the rule to demonstrate that building platforms can accommodate buildings that comply with NZECP 34:2001. On this basis, I consider that the recommended amendments to these two rules are an appropriate, efficient and effective way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.4 Issue 4: Critical Electricity Lines

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 8, 10 and 12
Evidence and hearing statements	Top Energy Oromahoe Land Owners, Oromahoe 18R2B2B2 Trust, Tapuaetahi Incorporation, A.W and D.M Simpson

Matters raised in evidence and at the hearing

<u>Oromahoe Land Owners and others</u>

62. A number of further submitters provided lay evidence and presented at the hearing raising consistent concerns with inclusion of the CEL in the PDP, and

in particular the inclusion of the 33kV lines in the PDP. Those submitters include Oromahoe Trust, Oromahoe 18R2B2B2 Trust, Tapuaetahi Incorporation, A.W and D.M Simpson, Gary Stanners.

63. Key concerns raised by these submitters include:

    a. The process to introduce the 33kV CEL lines into the PDP after notification presents natural justice issues with limited time and opportunity for affected landowners to make further submissions. It was recommended that this issue is addressed through a separate the full notification plan change or variation process that notifies all affected landowners across the Far North District.

    b. The Electricity Act 1993 and supporting regulations are adequate to protect the operation of CEL and additional provisions in the PDP to protect CEL represents unnecessary overreach, imposing excessively difficult standards and restrictions on landowners.

    c. It is not appropriate to simply adopt the CEL in the Far North District on the basis this is used in the Whangarei District Plan as the two district are not the same.

    d. There is no higher order direction or requirements to identify CEL in the PDP.

    e. The "line consenting issues" citied by Top Energy relate to smaller lines (e.g. 11kV) therefore the problem cited by Top Energy in relation to 110kV and 33kV lines is overstated.

64. The lay evidence from these submitters is supported by the planning evidence of Mr McPhee. Key points raised in Mr McPhee's evidence include:

    a. There has been no section 32 or section 32AA evaluation to justify the same level of protection for 33kv lines as the 110kv CEL.

    b. National regulations clearly demonstrate that recommended setbacks from 110Kv and 33kv lines are different in terms of safety distances. Specifically, Mr McPhee references the safe distance requirements in NZECP 34:2001 specific the minimum distances from buildings and overhead electricity line support structures, which range from 2m to 12m depending on the voltage of the line and the type of support structure (i.e. pole v tower)[7]. Therefore, Mr McPhee considers that applying the same controls for buildings, structures and subdivision for 110kv and 33kv lines is a blunt tool which goes over and above NZECP 34:2001.

[7] I note that NZECP 34:2001 also specifies the minimum distances for the construction of new buildings and structures near existing conductors which can range from 8.5m to 22.5m to the side of the conductors under normal condition depending on the voltage of the lines and the span length.

c. The definition of "*Critical Electricity Lines Overlay*" recommended in the section 42A report is problematic because it specifies that 33kV lines will meet this definition when they are identified on the planning maps. However, it is not clear whether this includes all of the 33kV lines in the Far North District.

d. There is no evidence that demonstrates that any or all of the 33kv lines in the Far North District meet the four listed criteria in the recommended definition of "*Critical Electricity Lines*".

65. However, if mapping and provisions relating to CEL are to be retained in the PDP, Mr McPhee broadly supports the recommended amendments to I-12 and I-R13 to focus on compliance with national regulations (i.e. NZCEP 34:2001 and the "Tree Regulations"[8]) provided these do not go over the thresholds set by national regulations.

Far North Holdings Limited

66. Mr Smith on behalf of Far North Holdings Limited (**FNHL**) raises concerns that applying the CEL overlay to all zones does not take into account the development design at the Ngawha Innovation and Enterprise Park Special Purpose Zone (**NIEP SPZ**) which has already considered the existing 110kV lines. Mr Smith considers that the CEL overlay and provisions will create uncertainty for development in the Ngawha SPZ, including on proposed building platforms which have been considered in previous hearings. For these reasons, FNHL requests that the CEL overlay does not apply to the NIEP SPZ.

67. In response to questions from the Panel during the hearing, Mr Smith provided supplementary evidence and plans on CEL lines within the NIEP SPZ. Key points and clarifications in this evidence from Mr Smith include:

a. There are 110kV and 33Kv lines within the Ngawha SPZ and these are all protected by existing easements.

b. Compliance with NZECP 34:2001 has been provided for within the development and design for the NIEP SPZ. This includes a 20m setback for the development platform areas to the 110kV lines to ensure protection of the lines form inappropriate development.

c. Development on platforms impacted by the 33kV lines at the northern part of NIEP SPZ can be designed to comply with NZECP 34:2001.

Top Energy

68. Mr Badham on behalf of Top Energy provided a supplementary statement before the hearing, primarily to respond to the planning evidence of Mr

[8] The Electricity (Hazards from Trees) Regulations 2003.

McPhee and My Smith summarised above. Key points from that summary statement include Mr Badham's view that:

a. CEL is aligned with the definition of RSI in the RPS, in particular clauses (d) and (e) in that definition

b. The section 32 evaluation report for the Infrastructure Chapter has satisfactorily considered the CEL mapping and associated provisions

c. The CEL provisions in the PDP give effect to the RPS direction to protect RSI from the adverse effects of new subdivision, use and development

d. Mapping the CEL is an appropriate way to provide certainty to FNDC and landowners where these existing assets are located so they can be considered at the time of subdivision and development

e. The setbacks for CEL are not just for safety purposes but also manage reverse sensitivity effects

f. There is no planning basis to provide an exemption to the CEL provisions for the Ngawha SPZ.

Analysis

69. It is clear from the concerns and questions raised at hearing that there are divergent views on the appropriateness of the CEL mapping and provisions in the PDP. In my view, the key issues that need to be clarified or responded to in relation to CEL are:

a. The process to include CEL in the PDP

b. Whether CEL meet the RPS definition of RSI and whether the mapping of CEL necessary to give effect to higher order direction

c. Options for CEL mapping and provisions within the PDP, including the alignment/overlap with requirements in national regulations

d. Whether the Ngawha SPZ should be exempt from CEL mapping and provisions in the PDP.

<u>Issue 1: The process to include CEL in the PDP</u>

70. A number of questions and concerns were raised about the process to include CEL in the PDP. Accordingly, **Attachment 1** provides a summary of the process to include CEL in the PDP from pre-notification through to the recommendations in my section 42A report. I appreciate the concerns raised by Oromahoe Land Owners and others about Top Energy lines on their properties and the process to potentially include the 33kV CEL in the PDP. However, in my role as reporting officer for the Infrastructure Chapter, there

is a submission point from Top Energy requesting this relief that needs to be addressed through this hearing process.

71. From my involvement in the Infrastructure Chapter, including pre-notification discussions with Top Energy and the preparation of the section 32 report, it is also my understanding that the intent of FNDC was to include both the 110kV and 33kV lines in the CEL overlay when it was notified.

Issue 2: Whether CEL meet the RPS definition of RSI and are these required to be mapped

72. Firstly, I agree with Mr Badham that the 110kV lines and 33kV lines meet the definition of RSI in term of criteria (1)(d)[9] and (1)(e) in Appendix 3 of the RPS. For this reason and, I retain the view that CEL should include both 110kV and 33Kv lines noting my statement above that this was the intent when the PDP was notified.

73. Secondly, I can confirm that there are no specific requirements in higher order documents to map CEL (however defined) like there is for the National Grid under Policy 10 and 11 of the NPS-ET. This is reflected in Method 5.3.5 of the RPS which states NRC will work with relevant stakeholders to "*Identify and, where appropriate, map the location of regionally significant infrastructure".* This RPS method and the supporting explanation make it clear that it is at the discretion of NRC and territorial authorities to map RSI when this is deemed to be appropriate.

74. The key question is therefore whether mapping CEL is an appropriate method to help protect this infrastructure from the adverse effects of new subdivision and development on "…*The operation, maintenance or upgrading of existing or planned regionally significant infrastructure"* in accordance with Policy 5.1.3 in the RPS. In this respect, I consider that mapping significant infrastructure such as CEL with the PDP is generally an appropriate and effective method to provide certainty on the location of this infrastructure and the relevant rules or other requirements that may apply when new subdivision or development is proposed near these lines. I therefore recommend that the mapping of CEL (110kV and 33kV) lines is included in the PDP.

Issue 3: Options for CEL provisions within the PDP

75. The next issue is to consider what (if any) provisions apply to CEL to protect those lines from inappropriate development. In this respect, it is important to clarify and emphasise that the **CEL rules in the PDP (with my recommended amendments) simply require compliance with the relevant national regulations** being NZECP 34:2001 (I-R12) and the

[9] It is my understanding that sub-transmission lines are typically defined to include 33kV lines. For example, refer: Electricity industry structure | WorkSafe

"Tree Regulations"[10] (I-R13) and do not go further/apply additional requirements.

76. Put simply, if a proposed building or structure complies with NZECP 34:2001 then it will be permitted under PER-2 in I-R12. The same applies to tree planting that complies with Tree Regulations under PER-2 in I-R13. This appears to have been misinterpreted by some submitters and is a key point in my view. Nonetheless, there is still a need to consider whether it is appropriate for the PDP to require compliance with national regulations that sit outside the PDP.

77. Accordingly, I consider there are two options to respond to some of the concerns and requests outlined above:

    a. **Option 1**: Delete the CEL provisions (I-R12, I-R13, SUB-10)[11]. The rationale for this option is that there is no need for the PDP to require compliance with national regulations under the Electricity Act 1993 as these must be complied with regardless of what the PDP says, which is a valid argument in my view. This option could still retain the CEL mapping in the PDP.

    b. **Option 2**: Retain the CEL provisions (I-R12, I-R13, SUB-10). The rationale for this option is that including the CEL provisions in the PDP improve the visibility and therefore compliance with NZECP 34:2001 and the Tree Regulations. From my experience, electricity distribution companies consistently raise similar concerns as Top Energy that these regulations are reactive and often not complied with and seek greater certainty though district plan rules to require and improve compliance with these regulations. I also note that compliance with NZECP 34:2001 is a common condition in National Grid Yard rules that Transpower seeks to protect the National Grid and has been incorporated into PER-2 in I-R11.

78. On balance, I consider that Option 2 is the most appropriate option to protect CEL from inappropriate subdivision and development. While these provisions simply reinforce existing requirements in the NZECP 34:2001 and the Tree Regulations, I expect this will improve visibility and compliance with these regulations when subdivision and new development is proposed near CEL which I consider to be an appropriate method to give effect to Policy 5.1.3 in the RPS.

<u>Issue 4: Whether the Ngawha SPZ should be exempt from CEL</u>

79. The supplementary evidence from Mr Smith confirms that development platforms are setback 20m from 110kV lines and future development within other development platforms near the 33kV lines can comply with NZECP

[10] Electricity (Hazards from Trees) Regulations 2003.
[11] This should also include parts of EW-R2 and EW-R3 in the Earthworks Chapter considered in Hearing 6/7.

34:2001. Mr Smith also expresses a view that "*Compliance with NZECP34:2001 is considered to be a more acceptable solution to achieve the outcomes sought by the proposed CEL provisions*".

80. As noted above, I-R12 simply requires compliance with NZECP 34:2001 which the evidence of Mr Smith states that development within the NIEP SPZ already has, or will be, designed to achieve. As such, I-R12 should present no consenting issues for development within the NIEP SPZ that complies with NZECP 34:2001. Accordingly, in my opinion, there is no need to exempt the NIEP SPZ from the CEL rules.

Recommendation

81. For the above reasons, I recommend continue to recommend that the PDP include both the 110kV and 33kV lines and that the CEL rules (I-R12, I-R13, SUB-R10) are retained in the PDP with my recommended amendments to focus on compliance with NZECP 34:2001 and the Tree Regulations. .

Section 32AA Evaluation

82. The section 32AA evaluation of my recommended amendments to I-R12, I-R13, SUB-R10 is provided above under Issue 2 and Issue 3 and within my section 42A under Key Issue 8 and Key Issue 10. In short, these amendments have refined the rules to focus on compliance the relevant national regulations, while ensuring the PDP does not impose additional restrictions. In terms of the mapping of CEL in the PDP, this was evaluated in the section 32 report for the Infrastructure Chapter which was based on both the 110kv and 33kV lines being mapped in the PDP[12]. This evaluation concluded that the mapping of existing CEL in the District is an appropriate way to give effect to the direction in Policy 5.1.3 of the RMA to avoid the adverse effects of new subdivision and development on the operation, maintenance and upgrade of RSI. I agree with this evaluation for the reasons outlined above.

3.5 Issue 5: Kaitaia Drainage Schemes

Matters raised in evidence

83. Fiona King, Elbury Holdings, LJ King Limited, and Leah Frieling made a submission points requesting that the PDP include maps and provisions relating to relating to drainage areas and channels as defined in the Draft Management Plans and Far North District Council Land Drainage Bylaw 2019 and the draft management plan 2017.

84. Fiona King presented on these submissions at the hearing and raised a number of more specific concerns with how the Kaitaia Drainage Schemes are being managed and considered by FNDC. Key concerns raised at the hearing with the Kaitaia Drainage Scheme by these submitters include:

[12] Refer: Section-32-Infrastructure.pdf

a. There is a need to ensure the drainage scheme is better considered in planning decisions, a significant amount of effort and resources have been investment in the scheme which is not being recognised.

b. The Council Land Drainage Bylaw is not being adequately enforced which is why these schemes need to be recognised in the PDP.

c. There are a number of issues that need to be address, e.g. requirements for buildings to be setback 10m from drainage restrictions on certain types of vegetation and planting etc.

Analysis

85. In the section 42A report, I considered the above and did not recommend any amendments in response on the basis that these matters are more appropriately addressed through those existing plans and bylaws[13]. Now I better understand from the submitters that they consider the bylaw is inadequate and would like more recognition of drainage schemes in the PDP in order to protect drainage schemes from inappropriate development.

86. While I understand and appreciate the concerns of these submitters, I do not recommend that the PDP is amended to include maps of drainage schemes throughout the District (or within Kaitaia) and associated provisions (setbacks) to protect those schemes. My reasons are as follows:

    a. My understanding is that the Far North Land Drainage Bylaw[14] is currently being reviewed and this is likely to provide an opportunity to address the concerns of submitters in a more targeted and efficient manner.

    b. Mapping all drainage schemes in the District in the PDP then including 10m setbacks to manage development near these schemes would affect a large number of landowners. This would present natural justice issues in my view and result in potential impacts that need to be considered further and quantified (properties and area of land affected). Overall, I consider that much more information on the likely benefits, costs and risks associated with this request in submissions is required to support such a recommendation to the PDP.

    c. There is nothing in the PDP that prevents consideration of drainage schemes as appropriate when land use and development is proposed near these schemes.

[13] Paragraph 66, section 42A report.
[14] Refer: Land-Drainage-Bylaw.pdf

Attachment 1: Critical Electricity Lines - Overview of Process

Stage/process	Overview
Pre-notification	• Following release of the draft district plan, Top Energy engaged directly with Council to request that Critical Electricity Lines be included in the PDP based on a comparable approach in the PDP. • This includes a memo from Top Energy sent to Council on 20 September 2021 which is attached to the Top Energy submission[15]. This memo requests that both the 110kv and 33kv lines be mapped.
Notification	• The PDP was notified with the 110kV lines shown on the planning maps but not the 33kV lines due to a GIS mapping issue. • The PDP also included rules I-R12 and I-R13 relating to Critical Electricity Lines within the Infrastructure Chapter and SUB-R10 in the Subdivision Chapter.
Original submissions	• Original submissions closed on 21 October 2022. • Top Energy lodged a submission dated 21 October which includes a submission point (S483.188) requesting that the 33Kv lines be inserted into the PDP.
Letters to affected landowners	• Council identified landowners affected by the Top Energy submission. • A letter was then sent to those affected landowners (approx.1800) by post informing them of the CEL, the Top Energy submission, and their right to make a further submission. • Council also included a webpage on Critical Electricity Lines to inform the public of this process and this includes a map to enable landowners to check if their property is affected: Critical electricity infrastructure | Far North District Council
Further submissions	• Further submissions closed on 4 September 2023. • Six further submissions were received on the Top Energy submission point S483.188 with five in opposition and one in support.

[15] Refer pg.95: Proposed-District-Plan-Submission-483-top-energy-limited.pdf