

## **Proposed Marlborough Environment Plan**

### **Minute of the Hearing Panel**

#### **Minute 38**

1. In its deliberations on Transpower Limited's submissions relating to Utilities four issues have arisen upon which the Hearing Panel requires a response from Transpower Limited (Transpower) to assist it in its final decision-making. The three issues relate to:
  - (i) The provisions requested in respect of use of the National Grid Yard
  - (ii) The references requested to be inserted in the PMEP relating to the NZECP34:2001
  - (iii) The general legal status of NZECP34:2001
  - (iv) The request for deletion of Standard 16.3.7.1

#### National Grid Yard Issue

2. At paragraphs 171, 172 and 222 of the original Section 42A Report, in response to a request by Transpower in its submission, there were recommendations made that the Hearing Panel agree to a new rule and standard that would allow as permitted activities "Network utilities within the National Grid Yard".
3. The Hearing Panel wishes to draw Transpower's attention to the fact that if granted that amendment would seem to open the door to any other network utility operator other than Transpower being able to carry out its activities as a permitted activity within the National Grid Yard.
4. The Hearing Panel needs Transpower to respond as to whether that was its intent, or if not, to suggest what wording it wishes to request to avoid that situation.

### NZECP34:2001 Issues

5. At paragraph 172 of the original Section 42A Report, and again at paragraphs 212 and 222, there are clauses recommended, (which were the subject of submission requests by Transpower), which require that buildings “comply with”, “meet requirements of” or “maintain compliance with” NZECP 34:2001. In one other case in paragraph 212, (referred to as a new permitted activity standard X.3.x.4) there is a reference to “meet the safe electrical clearance distances required by of (*sic*) NZECP34:2001”. However, in none of those suggested wordings is there a reference to a specific clause in the NZECP34:2001.
6. By contrast at paragraph 212 one other new permitted activity standard is suggested which does refer to an obligation for structures to “meet requirements of clause 2.4.1 of NZECP34:2001.”
7. The Hearing Panel has underlying concerns about referring in the PMEP to outside documents which can change, requiring subsequent Plan Variations or Changes as the Resource Management Act 1991 (RMA) deems documents referred to in an RMA Plan to be incorporated into the RMA Plan rules – see Clauses 30(3) and 31 of the First Schedule RMA.
8. That concern is increased when the document referred to is possibly significant in size, complex or technical, and not readily accessible to the public, or well-known by the public. If Transpower was to continue to seek to introduce references to NZECP34:2001 then at the very least it would need to provide copies of the clauses involved and advice as to how accessible the Code was to the public, whether that access was freely available, and how and where it was available to the public.
9. The concern is exacerbated even further when the references suggested to be adopted do not refer to particular clauses, or otherwise explain in detail in a readily understood manner, exactly how compliance with the Standard or Code is achieved.
10. The Hearing Panel requests that Transpower suggest either such a simplified version of the meaning of the proposed rules involved without reference to the Code, or identify which particular clauses of the Code are being referred to at the same time providing a copy of those rules for the Hearing Panel to consider. Another possible option Transpower may wish to consider is to provide a schedule of the particular compliance wording proposed for inclusion in a new Appendix to

Volume Three, without there being a need to refer to the Code because of the inherent complications that gives rise to as a result of clauses 30 & 31 of the First Schedule to the RMA.

#### Legal Status of NZECP 34:2001

11. Transpower has sometimes used in documents and oral answers at the hearings language which appears to suggest NZECP 34:2001 has some 'mandatory' force at law. The Hearing Panel requests that Transpower clarify the legal status of NZECP 34:2001, and if it asserts that it has statutory force, provide a reference to the exact statutory provision having that effect.

#### Deletion of Standard 16.3.7.1

12. Standard 16.3.7.1 reads:

*16.3.7.1. No more than 500m<sup>3</sup> of material must be disturbed in any one calendar year.*

13. The deletion requested of standard 16.3.7.1 would mean there was no control or limit to the amount of foreshore and seabed materials that might be disturbed during the replacement of a submarine cable, (or installation of a new cable if the Panel accepts the Transpower request for installation of a new cable as a permitted activity).
14. Transpower does not seem to have provided any reason to support this request – nor does it seem to have provided any estimate of the amount of material it might reasonably expect to have to disturb for either of those activities, or for other repair work. Transpower is the entity with the best practical working knowledge to provide that basic information. The absence of that information leaves the Hearing Panel in the situation of being inadequately informed about the effects of the deletion proposed.
15. The Hearing Panel would expect Transpower to be able to provide detailed reasons for the deletion requested, or that basic information as to quantities likely to be involved in its proposed permitted activities to enable an informed decision to be made.

Conclusion

16. The Hearing Panel requests Transpower's responses by 5:00 pm, Tuesday 30 October, 2018 to enable the responses to be able to be circulated to Hearing Panel members in time for them to read them and be able to deliberate in the week commencing Monday, 5 November, 2018.

Dated 3 October 2018

A handwritten signature in black ink, appearing to read 'T Hook', with a period at the end. The signature is written in a cursive style.

Councillor Trevor Hook

Chair of the MEP Hearing Panel