BOARD OF INQUIRY

EAST WEST LINK PROPOSAL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to consider notices of requirement and applications for resource consent made by the New Zealand Transport Agency in relation to the East West Link roading proposal in Auckland

CLOSING SUBMISSIONS ON BEHALF OF TRANSPOWER NEW ZEALAND LIMITED

12 September 2017

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MAY IT PLEASE THE BOARD:

Overview

1. Transpower New Zealand Limited ("Transpower") has carefully considered its position as the hearing has progressed. It has attended for key witnesses (of other parties), has read the transcript where relevant, and its own witnesses have given evidence and been cross examined. In summary, Transpower’s position is as follows:

(a) Effects of the New Zealand Transport Agency’s ("NZTA") East West Link ("EWL") project on the National Grid can be managed, so as to avoid undue compromise of, and effects on, the National Grid.

(b) Clearly there will be time, cost, and inconvenience to Transpower. But the key costs to Transpower of design, any necessary consenting, any necessary property acquisition, and the undertaking of works to accommodate the EWL project will be paid for by NZTA.

(c) While there remains some uncertainty because NZTA’s proposal is subject to final detailed design, Transpower does not consider there to be any “show stoppers” from its perspective. Given the protection that Transpower has under legislation, and as the owner of the National Grid, it is Transpower that decides whether or not it will move its existing infrastructure. If Transpower is not satisfied that can be achieved without compromising the National Grid, then it will not do so. So any residual risk is to NZTA and its project, rather than to compromising the National Grid.

(d) As it has been provided information, Transpower has sought to identify what its needs are and explain that to the relevant parties. For example, when presented with the latest proposal in respect of the Turners & Growers’ ("T&G") site, Transpower has confirmed that it is highly likely to be able to accommodate that roading re-configuration. Transpower is committed to working responsibly with NZTA, and any directly affected third parties such as T&G, through further design and works management issues.
Evidence – risk

2. A number of submitters (eg T&G) appear to suggest, because there is a 'risk' that a safety bottom line might impact on their ability to configure their site as they wish, then a worst case scenario must be adopted for the assessment of effects, eg of not being able to use their land. Risks associated with the Southdown site have also been discussed at some length.

3. Under s 104(1) of the RMA, a consent authority must have regard to, among other things, "any actual and potential effects on the environment of allowing the activity" (emphasis added). While section 171(1) requires consideration of "the effects on the environment of allowing the requirement", effect is widely defined to include potential effects of high probability and low probability which has a high potential impact.

4. Determining actual effects on the environment is relatively straightforward, because it concerns existing factual circumstances that can be proved on the balance of probabilities. However, the word "potential" denotes something other than proof, and cannot be assessed on the balance of probabilities. The assessment of potential effects depends on an evaluation of all of the evidence (but does not depend on proving that potential effect will more likely than not occur).

5. In these proceedings, the Board has Transpower's considered views before it as to what the likely effects are (or will not be). That evidence was not seriously challenged, and, in my submission, the Board can reasonably proceed on the assurances from Transpower that it has before it – for example that:

   (a) the revised T&G site configuration can be accommodated by Transpower; and

   (b) Transpower cannot see any fundamental reason why (on the basis of NZTA’s current design) any dispensation under NZECP34 could not be granted.

6. There are also significant ‘in-built’ incentives for NZTA to work closely with Transpower to achieve these outcomes. For example, in respect of T&G, minimising interference with its operations will reduce any land (or easement) compensation and business disturbance compensation package provided. In respect of any property rights, dispensations under
NZECP34, and/or further resource consents that might be needed, if they cannot be obtained (or if NZTA cannot design around their need), that would put NZTA’s EWL project at risk.

Transpower’s infrastructure

7. Transpower has consolidated and updated the tables contained in Mr Noble’s and Mr Horne’s evidence to “step through” the potential effects on each of its lines and structures. That was filed on 7 September 2017.

8. In terms of consents, as summarised in the introduction to that table, there are several replacement support structures (which will be monopoles) that will require restricted discretionary activity consents under the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ("NESETA"), being: HEN-OTA A 14A, 15A; 18A and 19A. Potentially relevant matters of discretion (Regulation 16) include:

(a) Visual, landscape and ecological effects;
(b) Effects on historic heritage;
(c) Effects on sensitive land uses;
(d) Earthworks; and
(e) Effects and timing of construction works.

9. In addition, discretionary activity consents will be required under the NESETA for the following additional support structures: HEN-OTA A 15B (to enable sufficient vertical clearances over new motorway ramps) and HEN-OTA A 19B (to provide required vertical clearances over the proposed Hugo Johnson Drive extension). While discretion is not limited, similar matters are likely to be relevant as in respect of the restricted discretionary consents described above. It is also likely that the above consents would be sought together, or in sets, eg in which case the overall consent status is likely to be discretionary activity.

10. While Transpower has not undertaken a detailed assessment, it has experience in replacing towers and undertaking similar works elsewhere, and does not perceive at this stage there to be any obvious “show stoppers” that would preclude the grant of consents.
Turners & Growers site

11. Any criticism of how Transpower has approached the T&G issues, which could be inferred from the submissions or cross examination by T&G is firmly rejected. Transpower has responded promptly to the evidence, information and any questions put to it. It makes no apology for maintaining health and safety and regulatory (eg NZECP34) “bottom line” requirements. Transpower must act reasonably, and in respect of any easement that might need to be taken, its taking must be “fair, sound, and reasonably necessary”. As Mr Noble confirmed, any building within such an easement would:

... be limited by the requirement to meet ECP34 and to construct it safely. The problem with ECP34 is it is a document that describes final state buildings. It does not adequately cover the constructability aspect of cranage, people on roofs throwing around sheets of iron, so there would be a requirement for some common sense thought of the construction process.

12. In any event, as recorded above, Transpower has a high degree of confidence that the latest T&G site configuration can be accommodated by Transpower. Residual impacts will form part of any PWA compensation package funded by NZTA.

Southdown

13. Transpower does not consider that any risk introduced by the EWL project is so great to Transpower’s assets that it should not proceed. It is now clear, for example, that Transpower’s Control Building and relay room, will not be impacted by any physical works (the designation has been drawn back so as not to include that building).

14. Transpower is also satisfied that options exist for relocation of the KiwiRail transformer and associated switchgear, both on the Southdown site as well as offsite. It will need to be carefully managed, and the conditions provide for that.

15. Mr Noble was questioned by members of the Board about whether or not it was important, in terms of maintaining security of supply of electricity into the future, to maintain the Mercury power station (or the opportunity for its potential reactivation) at Southdown. Transpower did not produce

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1 Section 24(7)(d) of the Public Works Act 1981.
2 Transcript p 4882, lines 4-10.
3 Transcript p 4832, lines 4-23.
evidence in this matter, but Mr Noble’s views were that this was essentially a market decision for Mercury.⁴

HEN-OTA Tower 31

16. Transpower remains of the view that:

(a) Tower 31 will not need to be moved to accommodate NZTA’s proposal.

(b) There are no material advantages of replacing it with a monopole.⁵

(c) A dispensation under NZECP34 is unlikely to be refused.

MNG-ROS Tower 33

17. Tower 33 could, at a comparatively low cost be replaced with a monopole.⁶ That might provide a little more “room” around it, particularly if fencing of the original tower structure were to be required.

18. From a technical perspective, however, Transpower does not need to replace Tower 33 with a monopole to accommodate the EWL project. In that regard, the efficiency of such a requirement is questionable.

Undergrounding / removal

19. It appears generally accepted, that no condition can be imposed on NZTA’s project requiring Transpower to underground its assets.

20. The technical, practical, and effects challenges (eg of termination structures) have been well canvassed.

21. While TOES seek some sort of ‘financial contribution’ condition be imposed requiring NZTA to contribute towards undergrounding, the more reasonable (and jurisdictionally valid) question has arisen as to whether

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⁴ Transcript p 4878, lines 19-23. I do come back to, again, depending on what other generation is available and what the transmission alternatives are and what the overlying redundancy in the grid is or how constrained the grid is. There’s a whole raft of scenarios that we have to make that site an economic proposal. Now, that’s a call for Mercury to determine; Refer also Transcript p 4879, lines 15-27.

⁵ Transcript p 4880, lines 9-12. It doesn’t add any value. … I think if you put a pole in there (a) there isn’t any room for it and (b) you’re not getting anything out of it. It’s actually pointless.

⁶ Transcript p 4847, lines 23-24: The answer was we wouldn’t have any problem with changing to a pole if someone pays us to change it, and it would reduce the footprint, yes; also Transcript p 4848, lines 12-13.
NZTA should have a condition imposed that it “not preclude” undergrounding through its EWL project.

22. Mr Noble’s evidence was that the EWL project would not, as a matter of fact, preclude undergrounding of the relevant transmission lines. He highlighted the range of options available, including the issues that would have to be confronted in respect of the termination structures required at each “end” of any underground cable. Mr Horne also expressed some reservation about a “shall not preclude” condition, given that there is no design proposal that could be specifically future proofed for or accommodated in a positive way, such as by providing ducting for a future underground cable alignment.

23. Mr Noble also gave evidence that the current review process for Auckland’s future transmission needs has a long way to go, and so is unlikely to ever “catch up” with implementation of the EWL Project. His evidence also raised the prospect that one possible outcome of Transpower’s review could be the removal of MNG-ROS A. If that were the outcome, that would still require significant works to occur elsewhere on the network to facilitate that removal. If the outcome were undergrounding, that would

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7 Eg Transcript p 4814, lines 17-28:
Q – You said at paragraph 101 of your evidence-in-chief, if we can have quick look at that, that there’s no obvious single technical reason that would prevent undergrounding of that line. That’s still your view?
A – Yes, it is.
Q – Just to clarify, is that the case with the East West Link in place?
A – That would be correct. There are ways around things. We don’t have to go down Highway 20 you can go around Orpheus Drive, you can go across bridges. There are various ways. The cost impacts will change through those but there aren’t any fatal flaws, no.
See also Transcript p 4881, lines 11-14: I’m 100% confident if we can get the line or underground cable up Orpheus Drive or a similar route without any heritage issues, without any environment issues, then there isn’t anything that precludes it. It is quite good how East West does kind of isolate off Orpheus Drive whereby it doesn’t really become part of the overall highway scheme.

8 Transcript p 4815, lines 4-10: ... I would say I have got concerns as to where the beginning 5 and end point of that could be, given that on the south side it's actually beside the harbour. Whether we'd have to have a termination point where we reclaim part of the harbour or have to go further back. At the northern end Auckland Council would have to put a termination point in a park or else we keep on travelling forwards.
Transcript p 4892, lines 32-39; Transcript p 4894 lines 42-48 and Transcript p 4895 lines 1-42.

9 Eg Transcript p 4816, lines 17-23:
Q - So is this an accurate summary of what you just said, it's in its infancy, best case scenario would be three years but it may well be Transpower will go for an option to retain the line, in which case we're looking at say 35 years?
A – That would be on the bottom end of it, yes. It could actually be further out than that, yes.
Refer also Transcript p 4854, lines 17-23.

10 Transcript p 4815, lines 10-13: ... I would also say, though, two or three of our options involve pulling that asset out as part of the Auckland strategy. So it's probably a bit early to sign up to the undergrounding, I would feel reasonably embarrassed.

11 Transcript p 4816, lines 3-7: ... So the strategy as I see it is in its infancy, we've been working on it. We're down to seven or eight options, of which I think five of them, in the
require funding, and potentially legislative change or some other innovative solutions to deliver it, together with the overall package of works.  

24. Accordingly, Transpower considers any condition on the EWL designation seeking to incorporate a “future proofing” or “not preclude” obligation to be unnecessary – as the prospect of it being triggered is so remote that it can be disregarded; and including it could give a sense of false hope or expectation.

25. If such a condition were still to be imposed by the Board, Transpower considers it should require a sufficient degree of certainty before being triggered, as follows (or words to like effect):

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<th>NU.1B</th>
<th>NoR 1</th>
<th>NoR 2</th>
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| If, prior to the Commencement of Construction, Transpower has developed a proposal to underground any transmission line through the designated land of a sufficient detail of design that consents and/or a notice of requirement could be sought by Transpower, the Requiring Authority shall take all reasonable measures to accommodate that work in the design and construction of the EWL.

The measures taken to accommodate any proposed undergrounding of transmission lines shall be set out in the Outline Plan or Plans prepared in accordance with Condition DC.7.

James Gardner-Hopkins
Counsel for Transpower

order of, have the opportunity 5 to pull that out. However, there are wider connotations to that about other works that would have to be undertaken to actually allow that to happen.

Transcript p 4816, lines 37-41: … As I understand it, it would be a board approval process to get to some selected options. We will then have to undertake further work with the electricity authority, the Commerce Commission and probably the government to work on ways of funding the final outcome. At the moment those tools are not in the toolbox.

While Mr Noble accepted that he could support a condition (Transcript, p 4819, line 22), he later confirmed his unease at such a condition (Transcript p4881, lines 23-30): … Is there a practical line route or is there a practical route through the East West affected piece of property? And the answer is yes. Is there anything that precludes it? The answer is probably no. Probably, I do come back to probably. The type of thing that could preclude it is being unable to get road closure rights, for example. Can we ultimately get agreement with the Council for closing a road, putting cables under a road, have we got rights to? I couldn’t answer that, so that is why my unease.