

PLANNING EVIDENCE

IN THE MATTER OF Proposed Te Tai o Poutini Plan (pTTPP)

AND

IN THE MATTER OF A hearing into the above pursuant to the Resource Management Act 1991

DATE OF HEARING 6 December 2023

**REVIEW OF RESOURCE MANAGEMENT AND PLANNING MATTERS
RELATED TO SUBMISSIONS AND FURTHER SUBMISSIONS OF
WESTPOWER LTD TO THE PROPOSED TE TAI O POUTINI PLAN**

TOPICS:

Notable Trees

Evidence of Martin Kennedy

1.0 INTRODUCTION

1.1 My name is Martin Kennedy and I am the Sole Director of West Coast Planning Limited, a Resource Management and Planning Consultancy based in Greymouth.

1.2 I have been engaged by Westpower Limited to provide planning evidence in regard to resource management issues related to the Proposed Te Tai o Poutini Plan (*pTTPP*), and more particularly recommendations and amendments arising from the Section 42A Report relating to submissions and further submissions made by Westpower.

1.3 My role in this hearing process is to provide evidence on relevant resource management issues to assist the Commissioners in considering the matter.

1.4 This evidence specifically relates to the topic:

- Notable Trees

2.0 SUBMITTER

2.1 The submitter is: Westpower Limited (*Westpower*)

2.2 Westpower is a community owned company undertaking activities related to the generation and distribution of electricity to the community. Westpower undertakes activities in all districts in the region. Westpower's ability to undertake its activities for the community is impacted by the provisions of the plan. When assessing the proposed plan activities have been considered under three broad categories (although all are interrelated);

- the existing electricity network;
- potential additions and extension to the network;
- electricity generation activities.

3.0 WITNESS

3.1 As above I have been requested by the submitter to present evidence on the resource management issues relating to certain matters which were the subject of submissions and further submissions to the *pTTPP*.

3.2 I am the Sole Director of West Coast Planning Limited, a Resource Management and Planning Consultancy based in Greymouth. Prior to that, I

was Manager of the Environmental Services Department of the Grey District Council based in Greymouth. Before that I was District Planner at the same Council. I have 32 years Resource Management and Planning experience. I have experience in all aspects of implementation of the Resource Management Act (from a consent authority, applicant and submitter perspective) including: Resource Consent Applications (processing, development and submissions), environmental effects assessments; notification and processing decisions; and District Plan development, implementation and associated processes. I also assist submitters with submissions and involvement in National, Regional and District Policy and Plan development processes under the Resource Management Act.

- 3.3 I have had specific experience with the development, implementation and interpretation of the Policies and Plans on the West Coast as a consultant to Councils, applicants and submitters.
- 3.3 I have a BSc (Physical Geography) and a Masters Degree in Regional and Resource Planning (MRRP).
- 3.4 I am a current full member of the New Zealand Planning Institute.
- 3.5 I have read and understood the Code of Conduct for Expert Witnesses contained in the Environment Court's Consolidated Practice Note 2023 and agree to comply with it. The report presented is within my area of planning expertise and I confirm that I have not omitted to consider material facts that might alter or detract from the opinions given in this evidence.

4.0 SCOPE OF EVIDENCE

- 4.1 Westpower Ltd made submissions to a number of provisions throughout the pTTPP, and later in the process further submissions. There have been no pre-hearing processes since the lodging of submissions and further submissions.
- 4.2 For the purpose of this evidence the current pTTPP document is used as the base for assessment and opinions, with reference to the Section 42A Report (*the s42A Report*).

- 4.3 Westpower Ltd, whilst retaining its submissions and further submissions, is in general agreement with those recommendations of the Section 42A Report where they result in the outcomes/decisions sought by Westpower. Westpower has sought my advice for the purposes of the hearing into the pTTPP and the matters arising which have not been accepted, or accepted in part, through the s42A Report.
- 4.4 It is not proposed to repeat all of the matters on which submissions were made by Westpower Ltd as they are before the Commissioners in the form of the original submission and further submissions, and the s42A Report. It is agreed that the report generally represents the matters raised in those submissions and further submissions, and those points of submission remain. There are some issues arising with submission points and these are discussed below.
- 4.5 This evidence is therefore submitted for two purposes;
- To provide advice in regard to the recommended outcomes, in their current form, in the s42A Report in relation to the submissions and further submissions made by Westpower Ltd.
 - To provide further evidence in relation to matters arising from the s42A Report which require clarification and/or amendments. In terms of this hearing the topics covered are;
 - Notable Trees
- 4.6 This evidence covers the topic area and focuses on those recommendations where the s42A Report does not support the submissions and further submissions of Westpower Ltd, or where issues have been identified with the report.

5.0 CONCLUSION

- 5.1 Whilst there is some agreement on the outcomes arising from a range of submissions and further submissions there are a number of points that in my opinion require further consideration and inclusion in the TTPP.
- 5.2 Rather than summarise the broad range of matters here Sections 7 and 8 below discuss those matters where submission points have been either accepted or rejected by the S42A Report and my opinions in regard to those matters.

5.3 I have also included in Section 7 comments regarding submissions “*accepted in part*” by the s42A Report.

6.0 STRUCTURE OF EVIDENCE

6.1 To assist with this evidence the following sections are provided;

- a. Recommendations on Submissions and Further Submissions (Section 7.0)
supported
- b. Amendments Required (Section 8.0)
- c. Part II of the Resource Management Act 1991 (Section 9.0)

6.2 To assist with this evidence, summaries of the s42A Report recommendations are attached as Appendix 1 below. These appendices will be referred to where required for ease of cross reference rather than repetition of information.

7.0 RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

7.1 Having reviewed the Section 42A Report and appendices, which are understood to reflect the recommendations of that report, Westpower have advised that those recommendations accepting its further submissions are supported. This is with the exception of those matters discussed below, including where a submission or further submission has been accepted in part.

7.2 I have reviewed those matters and generally support the recommendations to accept those submission points made by Westpower. I provide no further evidence in regard to those matters at this stage. I will be available to answer any questions should those matters recommended to be accepted in the s42A Report remain in contention at the hearing. For clarity these recommendations are shown in Appendix 1 (pages 1-3) attached to this evidence, as further submissions accepted.

Submissions “Accepted in Part” – Critical Infrastructure

7.3 I note that some of the submissions “*accepted in part*” agree with adding “*Energy Activities*” for consistency throughout the plan but not “*Critical Infrastructure*” as that is a subset of Energy Activities and Infrastructure (see S547.190 - TREE-P4, S547.193 - TREE-R2 and TREE-R3). It may be that critical infrastructure is now termed *RSI* and I do consider that there is some

value in adding that to the provisions particularly to assist with the considering why in any particular case it is not inappropriate to undertake works in relation to a notable tree.

8.0 AMENDMENTS REQUIRED

8.1 There are matters which require further amendment in regard to the current pTTPP document and as raised in the s42A Reports. For the purpose of this evidence, and the hearing, the matters discussed relate to issues associated with energy activities.

8.2 For the purpose of cross reference to the s42A Reports the headings used in that report are repeated here when discussing specific submission points.

7.0 Submissions on Objectives (pages 7-9 – s42A Report)

S547.186 (Appendix 1, page 3)

8.3 The s42A Report recommends rejecting the submission on the basis that submissions from other parties better provide for the matter raised relating to works required in the vicinity of “notable trees”. While I understand the intent in my opinion this outcome misses the point with respect to such matters as the rule remains focused on safety issues. There may in fact be a range of reasons for “Regionally Significant Infrastructure” (RSI) to locate in proximity to such trees, including; locational, technical, functional or operational matters. This is not aimed at negating the reasoning for the inclusion of such trees in the plan, or the management of activities around them simply recognising that there may, from time to time, be matters arising in servicing the community that need to be provided for. In my opinion this is acknowledged in the rules framework which provides for removal as a “discretionary” rather than “non-complying” activity. In my opinion the objective proposed in the submission remains appropriate but current TREE-O3 could be reworded to provide for these other matters if the outcome sought is a limited number of objectives. The intent of a new objective was to highlight the specific issue of RSI.

8.0 Submissions on Policies (pages 9-13 – s42A Report)

S547.187 (Appendix 1, page 8), S547.188 (Appendix 1, page 3)

8.4 The s42A Report recommends rejecting the submission on the basis that the “notable trees” have been identified and should be protected, particularly from

removal. I agree with the comments in the s42A Report regarding “*protection*” given the process undertaken, and as above the intent is not to avoid dealing with these matters but to provide some direction in regard the RSI and how managing the servicing of the community is balanced with the protection of the trees. The alternative is not to recognise an issue that can clearly (as acknowledged in the s42A Report) arise given the relatively common location of trees and the location of services, particularly requirements for undergrounding of services. Again, in my opinion this is acknowledged in the rules framework which provides for removal as a “*discretionary*” rather than “*non-complying*” activity. The intent of a new policy and amendments to TREE-P2 was to complement the proposed objective above and set out those “*constraints or requirements*” that may result in a conflict between competing outcomes. I do consider that these matters are inappropriate policy provisions, or considerations in assessing any proposal, to include in the plan.

S547.191 (Appendix 1, page 4)

8.5 The s42A Report recommends rejecting the submission on the basis that it introduces a range of matters that will “*sway the balance away from protection*”. The intent of the submission was to ensure that, when implementing this TREE-P5 all relevant matters are considered. In my opinion the constraints and requirements of RSI are relevant matters to consider when issues arise that require a decision regarding protection of notable trees and servicing the community. I agree with the s42A Report in highlighting that many trees are in urban areas where there is likely to be a conflict between protection and servicing. As above, in my opinion this is acknowledged in the rules framework which provides for removal as a “*discretionary*” rather than “*non-complying*” activity. The intent is to ensure that, when making decisions the relevant matters are reviewed. Further to this I note that TREE-P5 is not a policy to “*protect*” but one to determine when work is “*appropriate*”. I note that this policy differs to TREE-P4 in that that policy seeks to “*allow*” certain activities. In my opinion considering the relevant constraints and requirements of RSI is a valid matter, particularly where it is acknowledged that there will be potential conflict.

8.0 Submissions on Rules (pages 9-13 – s42A Report)

Rule TREE-R4

S547.194 (Appendix 1, page 1), S547.195 (Appendix 1, page 4)

8.6 The s42A Report recommends rejecting amendments to R4 to list all of the constraints or requirements of energy activities. These matters are discussed elsewhere in evidence throughout the hearings and my opinion is the same in this regard. The matters are provided for elsewhere in the plan and I have highlighted the issue of consistency within the plan and across documents. As per previous evidence in my opinion they are relevant matters, particularly for linear infrastructure and should be included. The s42A Report recommends rejecting a proposal to add the consideration of “benefits” to the community of an activity arising as this is too broad an issue. I disagree as the suite of amendments suggested relate to RSI which at the regional level are recognised as significant for the community. I note that this is a “*restricted discretionary*” category of activity and does not provide for removal as part of the application, ie. that would be a “*discretionary*” activity. If it were considered that the proposed consideration of benefits needed more focus the suggested amendment could be reworded to specifically refer to the benefits of “*Energy Activities*”, “*Infrastructure*” and “*RSI*”.

RULE TREE-R5

S547.197 (Appendix 1, page 1), S547.198 (Appendix 1, page 4)

8.7 The issues in this regard are essentially those discussed above under R4. Rather than repeat those comments I advise that my opinions are the same in regard the matters related to this rule.

RULE TREE-R6

S547.197 (Appendix 1, page 1), S547.198 (Appendix 1, page 4)

8.8 The issues in this regard are, again, essentially those discussed above under R4. Rather than repeat those comments I advise that my opinions are the same in regard the matters related to this rule.

9.0 PART II OF THE ACT

9.1 Part 2 of the Act, and more particularly Section 5, requires an assessment of the proposal and its ability to achieve the Acts overriding principal of sustainable management to be undertaken.

9.2 It is my opinion that the amendments suggested above will assist in ensuring the TTPP achieves the purpose and principals of the Act for the reasons discussed above.

Martin Kennedy
Planning Consultant
(West Coast Planning Ltd)

6 November 2023

Appendix 1: Summary of S42A Recommendations – Notable Trees (including Definitions)

Submissions & Further Submissions Accepted

Submissions

Submission Point	Submitter/Further Submitter	Provision	Position	Summary of Decision Requested	Officer Recommendation
S547.189	Westpower Limited	TREE-P4	Amend	Amend item b. b. Are necessary for ... and people; <u>or</u>	Accept
S547.190	Westpower Limited	TREE-P4	Amend	Amend c. Are necessary for the ongoing <u>provision and operation of energy activities and infrastructure, including critical infrastructure</u> ; or d. Are for the maintenance of <u>energy activities and infrastructure, including critical infrastructure, to enable ...</u>	Accept in Part
S547.192	Westpower Limited	TREE-R2	Amend	Amend b. To enable the ongoing <u>provision and operation of existing energy activities and infrastructure, including critical infrastructure</u> ; or	Accept in Part
S547.193	Westpower Limited	TREE-R3	Amend	Amend 3.b. To enable the ongoing <u>provision and operation of existing energy activities and infrastructure, including critical infrastructure</u> ; or	Accept in Part
S547.194	Westpower Limited	TREE-R4	Amend	1. Amend d. Whether there is <u>any technical, locational, operational or functional need for ...</u> 2. Amend item e. Whether any <u>practicable alternatives ...</u> 3. Add a new matter <u>f., The benefits to the community of the activity occurring</u>	Accept in Part
S547.196	Westpower Limited	TREE-R5	Amend	Item c. appears to be a duplication of item a. and should be deleted.	Accept
S547.197	Westpower Limited	TREE-R5	Amend	Split and amend item d. to read: d. Whether there is any <u>technical, locational, operational or functional need for the activity to be located within the root protection area, and/or e. Whether any practicable alternatives are available to avoid the activity occurring in the root protection</u>	Accept in Part

				area	
S547.199	Westpower Limited	TREE-R6	Amend	Item c. appears to be a duplication of item a. and should be deleted.	Accept
S547.200	Westpower Limited	TREE-R6	Amend	Split and amend <u>d. Whether there is any technical, locational, operational or functional need for the activity to be located within the root protection area, and/ore. Whether any practicable alternatives are available to avoid the activity occurring in the root protection area.</u>	Accept in Part
S547.202	Westpower Limited	Discretionary Activities	Support	Retain	Accept

Further Submissions

Submission Point	Submitter/Further Submitter	Provision	Position	Summary of Decision Requested	Officer Recommendation
S552.055	Buller Conservation Group	TREE - P5	Amend	Amend Policy P5(e) Add <u>P7 Allow for the inclusion and protection of further notable trees within the district without requiring any plan change</u>	Reject
FS222.016	Westpower Limited		Oppose	Disallow	Accept
S553.055	Buller Conservation Group	Notable Tree Policies	Amend	Amend Policy P5(e) Add <u>P7 Allow for the inclusion and protection of further notable trees within the district without requiring any plan change</u>	Reject
FS222.0128	Westpower Limited		Oppose	Disallow	Accept
S560.188	Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird)	TREE-O1	Support in part	Add <u>habitat</u>	Reject
FS222.0253	Westpower Limited		Oppose	Disallow	Accept
S560.470	Royal Forest and Bird Protection Society of New Zealand Inc.	TREE-P2	Amend	Add habitat	Reject

	(Forest & Bird)				
FS222.0254	Westpower Limited		Oppose	Disallow	Accept
S560.472	Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird)	TREE-P4	Amend	Add e. outside of bird breeding and nesting periods	Reject
FS222.0255	Westpower Limited		Oppose	Disallow	Accept
	Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird)	TREE-P4	Amend	Make consequential change adding this to requirement into TREE - R2 and R3	Reject
FS222.0256	Westpower Limited		Oppose	Disallow	Accept

Submissions & Further Submissions Rejected

Submissions

Submission Point	Submitter/Further Submitter	Provision	Position	Summary of Decision Requested	Officer Recommendation
S547.186	Westpower Limited	Notable Tree Objectives	Amend	Add New objective <u>TREE-04: When managing potential effects of Energy Activities, including Critical Infrastructure, on notable trees recognise and provide for instances where trimming and/or pruning is required, or circumstances where removal of the tree is unavoidable.</u>	Reject
S547.187	Westpower Limited	Notable Tree Policies	Amend	Add new Policy: <u>Recognise and provide for circumstances where it is appropriate to remove a notable tree due to the technical, locational, functional or operational constraints or requirements of energy activities, including critical infrastructure.</u>	Reject
S547.188	Westpower Limited	TREE-P2	Amend	Amend TREE-P2: Trees identified ... are <u>generally protected except in circumstances where tree trimming and/or pruning or</u>	Reject

				<u>removal are appropriate.</u>	
S547.191	Westpower Limited	TREE-P5	Amend	Add f. <u>Any technical, locational, functional or operational constraints or requirements of energy activities, including critical infrastructure.</u>	Reject
S547.195	Westpower Limited	TREE-R4	Amend	Add f. The benefits to the community of the activity occurring.	Reject
S547.198	Westpower Limited	TREE-R5	Amend	Add f. The benefits to the community of the activity occurring.	Reject
S547.201	Westpower Limited	TREE-R6	Amend	Add <u>f.</u> The benefits to the community of the activity occurring.	Reject