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Tēnā koutou

## **Powerco submission on Planning and Natural Environment Bills**

1. Powerco Limited (Powerco) welcomes this opportunity to provide feedback on the proposed Planning Bill and the Natural Environment Bill.

### Summary of submission

2. We support the intent of the proposed Planning Bill and Natural Environment Bill as a comprehensive reform of the resource management system. In particular, we support the shift to a more structured, hierarchical framework that provides clear strategic direction at the national level and reduces variability in implementation at the regional and local levels.
3. We endorse the move toward greater system coherence and standardisation, including the consolidation of plans, the reduction in the overall number of planning instruments, and the clearer delineation of roles and responsibilities across the framework. A more consistent national approach should improve certainty for infrastructure providers operating across multiple jurisdictions and reduce unnecessary administrative complexity.
4. We also support the policy direction toward fewer resource consents, expanded use of permitted activity pathways where effects are appropriately managed through standards, and a more targeted approach to public notification. These changes, if well designed, should reduce transaction costs, improve timeliness, and allow effort to be focused on proposals that genuinely raise significant environmental effects.
5. In addition, we support the “funnel” approach embedded in the proposed framework. By front-loading strategic and environmental limit setting decisions at higher tiers of the system, and clearly constraining lower tier instruments to give effect to those decisions, the reforms should materially reduce the scope for re-litigation of settled matters at plan and consent stages. This has the potential to enhance durability,

reduce duplication, and provide greater investment certainty, particularly for nationally and regionally significant infrastructure.

6. The success of this reform programme will, however, depend critically on the quality and workability of the national instruments that underpins it. Given the compressed implementation timeframes, it is essential that national instruments are developed with early and meaningful involvement from infrastructure providers to ensure that standards are technically robust, operationally practical, and capable of consistent application across diverse environments.
7. The infrastructure objective within the Planning Act should be strengthened to clearly recognise the functional and operational needs of nationally and regionally significant infrastructure, including its protection from incompatible land use and activities.
8. Climate change: both mitigation and adaptation should be expressly embedded as a core goal within each Bill to ensure alignment with long term emissions reduction and resilience objectives.
9. To give effect to the intent of fewer consents and more permitted activities, routine operation, maintenance, repair, and replacement activities for existing infrastructure must be expressly enabled.
10. Finally, serious consideration should be given to a consolidated national policy direction framework as a mechanism to resolve potential tensions between the two Acts, particularly for linear infrastructure that traverses multiple jurisdictions and interacts with land, freshwater, coastal, biodiversity, and urban environments simultaneously.

## Abbreviations

Bills:	Planning Bill and Natural Environment Bill
NEB:	Natural Environment Bill
PB:	Planning Bil
Powerco:	Powerco Limited
NES–DMRU:	National Environmental Standards for Detached Minor Residential Units
NPD:	National Policy Direction
NZEC34:	New Zealand Electrical Code of Practice for Electrical Safe Distances 2001
RMA:	Resource Management Act 1991
RSP:	Regional Spatial Plan

## Introduction

### About Powerco

11. Powerco is Aotearoa New Zealand's largest dual electricity and gas distributor by network length, serving more than one million kiwis across the North Island. This represents 46% of the country's gas connections and 16% of its electricity connections.
12. Our electricity distribution network extends over 29,000 km, and our gas network covers more than 6,200 km. With this wide geographical reach, our infrastructure traverses a diverse range of environments - urban, rural, and remote. For example, our networks on the Coromandel Peninsula pass through Outstanding Natural Features and Landscapes, Significant Natural Areas, the Coastal Marine Area, conservation land, wetlands, and multiple planning zones.
13. We are a requiring authority, operating across six regions, under 29 district plans, and pursuant to numerous resource consents and designations. We are also listed as a "Lifeline Utility" under the Civil Defence Emergency Management Act 2002, reflecting the essential role of our services in supporting community resilience and emergency response.
14. Our existing distribution infrastructure must be maintained, repaired, and upgraded to ensure reliable supply and meet increasing demand. This includes expanding capacity, improving resilience, and supporting the uptake of low-emissions technologies. Meeting this demand, while managing environmental and planning constraints, is vital to achieving New Zealand's net zero 2050 target.

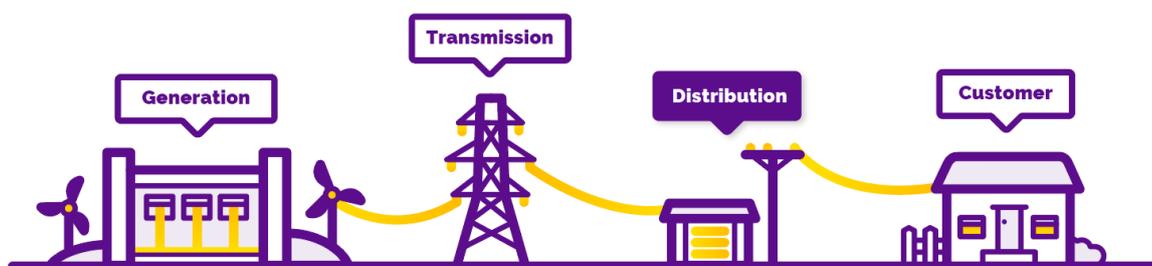


Figure 1 - The electricity system and the place of distribution

### Powerco generally supportive of reform that provides for energy infrastructure

15. We support legislative reform to address the long-standing issues under the current Resource Management Act 1991 system (RMA). The delivery of distribution activities has been particularly challenging under the RMA. The RMA and the national instruments made pursuant to it have provided policy support for electricity generation and transmission, but support for electricity distribution activities has been limited until very recently (Governments release of the National Policy Statement on Electricity Networks). This gap failed to acknowledge and provide for all of the constituent parts that make up Aotearoa's energy system. Energy

distribution infrastructure is an essential service and infrastructure which supports communities, which is required to ensure affordable, reliable and low emissions energy is provided to consumers. As such, one of our overarching objectives in reviewing the Bills is to ensure the provisions enable energy distribution infrastructure to meet and adapt to New Zealand's changing and increasing energy needs.

16. In addition, our distribution networks are situated within 29 districts and six regions. The variety in approaches within each of these areas has led to inconsistent outcomes for, and uncertainty around, activities related to our networks. Exacerbated by the absence of overarching national direction, this has presented challenges for managing our networks in a cohesive and efficient way.
17. It is essential that the Bills establish enduring solutions for these kinds of issues presented under the RMA to avoid the uncertainty and complexity that comes with continual high level change. Otherwise, there is a risk of replicating the current system's difficulties in a different form. Our comments are therefore, in part, directed to aspects of the Bills which appear to improve on the RMA approach and others which may exacerbate current issues or introduce new issues.

### **Structure of submission**

18. With these objectives in mind, our submission does not address every aspect of the Bills, as there has simply not been sufficient time provided to do so. Instead, it focuses on elements of the proposed new system that Powerco supports, those that represent positive steps forward but could be further strengthened with amendments, and aspects of the reforms that Powerco opposes on the basis that they may undermine the delivery and ongoing maintenance of its energy distribution networks.
19. Our submission is broken down into the following topics, and include where specific changes or outcomes are sought:
  - a. System architecture - two Bills;
  - b. Purpose and goals;
  - c. Relationship between key instruments;
  - d. Effects outside scope;
  - e. Consideration of adverse effects;
  - f. Duties and restrictions;
  - g. Environmental limits and resource allocation;
  - h. National instruments;

- i. National Policy Direction;
- j. National Environmental Standards;
- k. Regional Spatial Plans;
- l. Regulatory Relief;
- m. Designations;
- n. Consenting and permitting;
- o. Planning Tribunal;
- p. Transitional provisions; and
- q. Definitions.

## **Powerco's Submission on the Bills**

### **System architecture – two Bills**

20. The rationale for separating land-use planning and infrastructure enablement from environmental protection and natural resources management is understood, however separating planning and environmental management into two separate Acts presents potential challenges in practice. Specifically:
- a. Given their differing goals and processes, there is potential for the Bills to conflict. This creates uncertainty as to which Bill prevails in particular circumstances.
  - b. The Bills' content is closely interrelated as reflected by the significant degree of cross-referencing between the Bills. Each bill refers back to the other bill over 170 times. This close relationship but separated legislative structure raises several issues, including:
    - i. The high degree of cross-referencing means that decision-makers, practitioners, and courts will need to interpret provisions across two separate statutory schemes simultaneously. This may complicate statutory interpretation; increase administrative complexities and undermine consistent operation and implementation.
    - ii. Amendment and maintenance burden over time - even where care is taken, ongoing legislative maintenance becomes more resource-intensive where every amendment to one Bill requires a consequential review of the other. Over time, this increases the risk of

drafting misalignment, obsolete cross-references, and incremental erosion of coherence between the regimes.

- iii. There are places where related terminology and legal tests differ across the Bills which may create confusion in practice.

21. Given the close interdependence of the Bills, as evidenced by the extensive cross-referencing between them, we consider there is a strong case for amalgamating the Bills into a single, integrated statute. Amalgamation would improve coherence, accessibility, and interpretive clarity by enabling the full policy and procedural framework to be read and applied as a unified whole. This is particularly important for linear infrastructure, which routinely traverses multiple environments and may engage both land use planning and natural environmental regulation simultaneously within a single project or asset corridor. A split legislative framework increases the risk of duplication, conflicting policy signals, and inconsistent decision making for activities that inherently cut across both domains.
22. Amalgamation would also reduce the risk of interpretive inconsistency, transitional complexity, and future misalignment arising from separate amendment or commencement processes, and would support more efficient implementation and long-term legislative maintenance of the new planning system.
23. If the Bills are to remain separate, we suggest that the Bills be amended to require a single, consolidated national policy direction across both Bills which addresses areas of conflict and tension between the Bills. This is essential for infrastructure providers whose assets and operations interact concurrently with both regulatory spheres. We also strongly support the use of consistent terminology, definitions, and procedural pathways across both Bills to the greatest extent possible.

***Recommendation / outcome sought:***

- *Amalgamate the two Bills into a single, integrated statute*
- *Alternatively, require one National Policy Direction (NPD) across both Bills and ensure the terms and processes used in each Bill are consistent to the greatest extent possible.*

**Purpose and goals (Both, clauses 4 & 11)**

24. We note that the purpose of both Bills is procedural only, describing what the Bills establish. The policy direction for the new system appears to be driven entirely by the goals outlined in cl 11 of each Bill. Given the whole system flows down from these goals, it is essential that the goals are easily understood and implementable and that they properly provide for infrastructure.
25. While we acknowledge that it is intended that there is no explicit hierarchy or primacy between the goals in each Bill, the language used to frame these goals will be heavily relied on when interpreting and applying the goals, particularly where there is a conflict between goals. The words “must seek to achieve” are new and

unclear. We support the simplification of the Part 2 matters that were in the RMA, but do not support new and untested legal tests if they are not necessary. This will only result in increased litigation and uncertainties for infrastructure providers.

26. We also consider that adjustments are needed to the wording of several goals both to ensure there is sufficient scope to support infrastructure needs and to avoid language which inadvertently weakens infrastructure-related goals. The infrastructure goal in cl 11(e) PB should emphasise both the protection of existing infrastructure, as well as enabling new infrastructure, providing high level support for the construction, operation and maintenance and upgrade of infrastructure crucial to New Zealand. As currently drafted, cl 11(e) of the PB requires decision makers to “plan and provide for” infrastructure. This wording lacks the strength required to appropriately protect infrastructure, particularly when compared to the terms used within other goals (for example “to ensure” in cl 11(a), “to protect” in cl 11(g) and “to safeguard” in cl 11(h)). Accordingly, we consider that the infrastructure goal in cl 11(e) be amended to “enable and protect”.
27. We also consider that the goals in the NEB do not sufficiently support the locating of infrastructure activities within the natural environment. In particular, cl 11(a) NEB should be amended to enable infrastructure activities to occupy space, in addition the use of natural resources. This clause should also be amended to acknowledge the ability for specified infrastructure activities to breach environmental limits (as is currently provided for in the NEB provisions).

**Recommendations / outcome sought:**

- Amend **cl 11(e) PB** as follows: “~~to plan and provide for~~ to enable and protect infrastructure to meet current and expected future demand”.
- Amend **cl 11(a) NEB** to enable and protect infrastructure that occupies space within the natural environment and acknowledge the ability for infrastructure to breach environmental limits.

28. We further recommend that climate change considerations be embedded at the goals level in each Bill, ensuring that national direction, plan-making, and consent decision-making are coherently aligned with New Zealand’s emissions reduction targets and adaptation objectives, and avoiding the risk of climate considerations being treated as peripheral issues rather than foundational to the reformed system.
29. New Zealand’s climate change objectives, including the statutory target of achieving net-zero greenhouse gas emissions by 2050, are predicated on the rapid electrification of the economy and the decarbonisation of energy systems. Delivering on those objectives will require a planning framework that actively enables the timely development, upgrade, and protection of electricity networks to support increased demand, while also ensuring that gas infrastructure can adapt to accommodate lower-emissions alternatives such as biogas and hydrogen. Embedding climate change at the goals level will provide the necessary statutory signal to support this transition and to align infrastructure planning with national decarbonisation pathways.

**Recommendations / outcome sought:**

- Amend **cl 11(x) PB** to include: *“to support reductions in greenhouse gas emissions and adaptation to the effects of climate change”*.
- Amend **cl 11(x) NEB** to include: *“to support reductions in greenhouse gas emissions and adaptation to the effects of climate change”*

**Relationship between key instruments (Both, clause 12)**

30. The success of the new system will be heavily dependent on the effectiveness of national instruments and ministerial direction. As these instruments have not yet been prepared, it is difficult to comment on whether the funnel will work well in practice. That being said, we are supportive in principle of the proposal to limit consideration of higher order instruments to the instrument directly above the relevant instruments. This may assist in avoiding re-litigation of higher order instruments and achieving more consistent approaches across the areas in which we operate.
31. However, we also note that the extensive ministerial powers within the proposed new system will make the system more vulnerable to significant changes with each change of government and this in turn has the potential to create uncertainty for infrastructure providers.

**Relationship between key instruments (Both, clause 12)**

## PB, Clause 14(1)(d)

32. Clause 14(1)(d) PB proposes to exclude consideration of “the demand for or financial viability of a project unless it is a matter to which section 11(1)(b) or (d) relates” from the scope of the PB.
33. We understand that this provision is intended to prevent decision-makers from considering whether a project might be economically viable. However, the word “demand” bears a broader meaning associated with the need for a project and may extend to the positive effects of a project beyond economic matters, such as meeting the country’s infrastructure or energy needs. This is particularly so given that cl 11(1)(e) expressly refers to infrastructure meeting “current and expected demand”.
34. It is unclear why exceptions have been provided for demand effects related to cl 11(1)(b) (regarding development of land generally) and cl 11(1)(d) (regarding making land available for business and residential use and development), but not the infrastructure-specific goal in cl 11(1)(e). We consider that the exceptions to cl 14(1)(d) should extend to considerations related to the goal in cl 11(1)(e) to avoid undermining that goal and ensure that decision-makers clearly can consider the positive effects associated with infrastructure in respect of meeting the country’s energy demands.

**Recommendations / outcomes sought:**

- Amend cl 14(1)(d) PB to read “the demand for or financial viability of a project unless it is a matter to which **section 11(1)(b), ~~or (d), or (e)~~** relates.”

PB. Clause 14(1)(j)

35. Clause 14(1)(j) PB provides that decision-makers must disregard “any matter where the land use effects of an activity are dealt with under other legislation”. There is no further guidance within the PB as to how it will be determined whether the effects are “dealt with under other legislation” and by whom.
36. This issue is of particular importance to us, as there are circumstances where planning and consenting matters necessarily overlap with matters dealt with under other legislation. In some cases, planning decisions are driven by safety considerations, while in others the consenting process is a critical mechanism for identifying and ensuring compliance. One example is matters falling within the New Zealand Electrical Code of Practice for Electrical Safe Distances 2001 (issued pursuant to section 38 of the Electricity Act 1992) (NZECP). The purpose of the NZECP is to set standards and requirements in respect of various activities to maintain safety and avoid electricity disruption issues. However, a number of district plans draw upon NZECP specifications to provide direction on the location of building platforms or subdivisions, or to outline situations where work may proceed as a permitted activity.
37. While this may appear duplicative on its face, coordination of planning decisions with the NZECP ensures consistency of approach across these two regimes. It helps avoid applicants obtaining planning consent and inadvertently proceeding with work contrary to NZECP or which may lead to compliance issues in future, and allows electricity infrastructure providers to proceed with works with greater efficiency. Enforcement of the NZECP is not forward-looking in this way except to the extent that applicants are aware of and properly anticipate the requirements.

**Recommendations / outcomes sought:**

- Amend cl 14(1)(j) PB to “any matter where the land use effects of an activity are ~~dealt with~~ **appropriately managed** under other legislation”.

**Consideration of adverse effects (Both, clauses 14 and 15)**

38. We support the inclusion in cl 14 NEB of the requirement to give particular consideration of the positive effect of enabling activities and seeks that this be retained.
39. We note that the replacement of the established term “mitigated” with “minimised” in cl 15 appears inconsistent with other provisions in the Bills which retain reference to mitigation (see, for example, cl 146(2))

PB (conditions that may be imposed in relation to natural hazards risks)) and may lead to uncertainty in practice due to its lack of established definition.

40. Additionally, we are concerned that the new terminology will unnecessarily limit its projects for which minimising an effect is not possible. If the terminology “minimised” is to be retained in cl 15, we support the qualifying words “where practicable” being retained also.
41. We are also concern with the introduction of a new definition for **less than** minor. This definition in cl 15(4) appears derived from a definition outlined in case law, but should be adjusted further to remove wording which may unnecessarily reduce the definition’s scope or introduce duplicative thresholds.

**Recommendations / outcomes sought:**

- Amend definition of ‘**less than minor**’ to read: Means an adverse effect that is acceptable ~~and reasonable~~ in the receiving environment with any change being slight ~~or barely noticeable~~.

**Duties and restrictions (PB, cl 16-26 / NEB, cl 16 – 27)**

42. We are supportive of the permissive presumptive principle that exists under the RMA continuing to apply. However, we do not support the requirement to register all permitted activities, and this is discussed further below.

**Environmental limits and resource allocation (NEB, cl 45 – 67, cl 86)**

Consenting pathway for significant infrastructure

43. We support an environmental limits framework in principle
44. The proposed environmental limits sit at the core of the NEB regime, and its therefore critical that the limits are sufficiently robust. Any deficiency in scientific rigour or transparency risks eroding confidence in the entire framework and making it either too onerous or too weak.
45. We also support the exceptions and consenting pathways for infrastructure that may need to exceed environmental limits. However, we consider clause 86 should be amended to remove the reference to ‘significant’ infrastructure and instead enable national instruments to identify which infrastructure activities will be eligible for a pathway. This will ensure there is no uncertainty as to what amounts to significant infrastructure given that this is currently an undefined term within the Bills.

**Recommendations / outcomes sought:**

- *To ensure the limits are sufficiently robust, include a requirement for early and meaningful consultation with infrastructure providers on the proposed methodology for setting limits, and the scientific evidence relied upon, prior to finalisation of national instruments. Also include a requirement that all proposed environmental limits be peer reviewed by an independent expert scientific panel/committee and ensure that Councils are sufficiently resourced to implement this.*
- **Clause 86(1) NEB** could be amended to read: National standards may establish a **consenting** pathway for **significant** infrastructure activities that breach or are likely to breach environmental limits.

**National instruments**

46. As noted above, the success of the new system will hinge on the content and application of national instruments. In particular, outcomes for the electricity distribution sector are heavily reliant on National Policy Direction. As the relevant national instruments have not been released at the time of this submission, we are unable to assess or provide meaningful comment on how the proposed new system will work in practice.
47. We are concerned that the short timeframes provided for the development and release of national instruments (9 months from Royal Assent) and the truncated process for their development will result in national instruments that are not fit for purpose. Given the importance of national instruments within the “funnel”, it is critical that these instruments are drafted comprehensively and are robustly tested by industry participants.

**Process for making national instruments**

48. Clause 46 of the PB and clause 70 of the NEB govern the process for making a national instrument. we have a number of concerns with respect to the process as drafted:
- a. There are currently no pre-notification requirements to consult with infrastructure providers. It is critical that infrastructure providers are provided with the opportunity to consider and provide advice to the Minister before the general public is notified. The discretionary ability for the Minister to consult with any person at any time (cl46(3), cl70(3)) is insufficient.
  - b. Leaving submissions from infrastructure providers to the general round of submissions (particularly where further submission rounds or hearings are not required) limits the ability of infrastructure providers to test and provide feedback on subsequent versions of the instruments.
  - c. A recent example of the problems that can arise with inadequate engagement can be seen with the NES on Detached Minor Residential Units (Granny Flats) (NES–DMRU). The Infrastructure and

Development discussion document (Package 1) included under Part 3, a proposal for National Environmental Standards for Granny flats (Minor Residential Units). The infrastructure sector submitted that distribution infrastructure needs to be considered and NZECP34 safe setbacks included as a performance standard when setting the permitted framework. However, as drafted, the NES-DMRU only refers to electricity network assets within the definition for reverse sensitivity (this is the only time it is used). Reverse sensitivity is a requirement for DMRU to comply with but only if that matter is a rule or standard within that district plan. Our networks spans across 29 districts and the district plans within each district are all at varying degrees of maturity in terms of distribution asset enablement and protections. If reverse sensitivity in a plan does not contemplate the electricity distribution network then NZECP34 is the only tool left to protect people and the network. However, this standard is not well known or understood outside of the sector. Early engagement with infrastructure providers can help to identify and rectify provisions that, on the ground, may be unworkable or have significant unintended consequences.

49. We consider that it would be appropriate for the required process under clauses 46 and 70 to include further submissions and hearings to ensure that national instruments are robustly tested by all sectors, and are workable and enduring.
50. Ministerial discretion is woven into clauses 46 and 70, including the ability for the Minister to establish and follow a process (provided it meets the steps set out in 46(2) and 70(2)).

***Recommendations / outcomes sought:***

- *To ensure standards are sufficiently robust and workable for our distribution networks, include a requirement for early and meaningful consultation with infrastructure providers on the proposed standards, and the methodologies and evidence relied upon, prior to finalisation of standards.*
- *Include a new sub-clause below clause 46(1) PB as follows:*

*46(x) Before the Minister publicly notifies a national instrument, the Minister must—*  
*(a) provide core infrastructure operators as defined in Schedule 5 with a draft of the proposed national instrument or a summary of it; and*  
*(b) give core infrastructure operators what the Minister considers to be adequate time and opportunity to consider the document and provide advice on it; and*  
*(c) have regard to any advice received from core infrastructure operators on the document.*

## National policy directions

51. The success of the proposed new system for our distribution networks will be heavily dependent on the quality, clarity, and durability of national policy direction. In particular, there is a risk that the emphasis on producing policy direction that is “short and concise” could inadvertently result in the loss of critical intent, nuance, and sector-specific direction that is necessary.
52. Electricity and gas distribution networks are long-lived, capital-intensive network services that underpins housing supply, development outcomes, resilience and decarbonisation. Ensuring that national policy direction is sufficiently detailed, coherent across instruments with clear processes for resolving competing objectives, and stable over time will therefore be critical.
53. In this regard, we note that when considering national direction to help resolve conflicts between the goals in the PB and NEB, the Minister may consider any or all of the goals, and must consider whether the proposal enables development to occur within environmental limits, and:
  - a. the current and long term impact of the proposal on the built environment (cl 57 PB); or
  - b. the current and long term impact of the proposal on people and natural environment (cl 81 NEB).
54. It’s not clear which of the above will take precedence.
55. As an example, we sought consents under the RMA to upgrade the existing 66kV overhead line route that runs between the Transpower Grid Exit Point at Kopu and the Powerco Tairua zone substation. This line route passes through Outstanding Natural Features and Landscapes, Conservation estate, wetlands and the coastal marine area (among other zones). Consent was required due to the height of the pole replacements, earthworks and vegetation clearance. The works in the coastal marine area were authorised by existing resource consents issued by the Waikato Regional Council.
56. When considering this project under the PB and NEB, it would likely require approvals under both pieces of legislation – structures and earthworks would be considered under the PB, while vegetation clearance and works in the coastal marine area would be addressed under the NEB. As this project is lineal infrastructure, it would not be able to proceed unless approvals under the two separate Bills were obtained. This is where national policy direction becomes critical – it will be needed to help resolve the conflicts that are created by the competing goals in the PB and NEB.
57. As previously noted, if the Bills are to remain separate, we recommend that the Bills be amended to require a single national policy direction across both Bills which addresses areas of conflict and tension between the Bills.

### **Recommendation / outcome sought:**

- **Require one National Policy Direction (NPD) across both Bills**

## National standards

58. We are supportive of national standards that are sufficiently detailed, coherent across standards with clear processes for resolving competing standards, and that are stable over time. However, it is important to recognise that our networks vary significantly by region (e.g. urban vs rural networks, terrain, growth rates, resilience risks), and that rigid or overly prescriptive standards may not be appropriate in all contexts.
59. Static or infrequently reviewed national standards risk becoming misaligned with the rapidly evolving electricity sector and as such, the Bills should require national standards to be capable of being amended or updated efficiently; and responsive to changes in technology, demand patterns, and infrastructure delivery models.
60. National standards should also explicitly provide for the efficient operation, maintenance, upgrade, and expansion of existing electricity and gas distribution infrastructure, including in response to unanticipated growth or network reliability issues. Standards should also:
- a. Enable routine network works and upgrades as permitted activities wherever practicable.
  - b. Avoid unnecessary consenting requirements for minor works, replacements, or capacity upgrades within existing corridors.
61. The Bill should explicitly require early and meaningful engagement with infrastructure providers, during the development of national standards. Engagement should occur at the problem-definition and options-assessment stages, rather than being limited to consultation on a near-final draft. This is particularly important where standards may affect the cost, timing, or feasibility of infrastructure investment.
62. It is also noted that cl 58 PB provides that national standards must provide direction on the evidence base supporting combined plans, but there doesn't appear to be a corresponding requirement regarding the evidence base that is required to support national standards. The Bill should require that the development of national standards be supported by evidence and a rigorous impact assessment.

### **Recommendation / outcome sought:**

- *Ensure the terms and processes used in National Standards are consistent to the greatest extent possible.*

## Regional Spatial Plans

### Purpose and integration

63. We support the intent behind the development of Regional Spatial Plans, however the 30-year time horizon in cl 67 of the PB far exceeds the usual network planning cycle of distribution companies. We publicise Asset Management Plans that detail a ten-year plan of works on our networks. In this regard, distribution

companies are more reactive and respond to market demands, which may require substantial new distribution works at relatively short notice. It will not be possible to identify all future infrastructure works, let alone details of locations and likely effects, at the time a RSP is prepared or reviewed.

64. Having said this, the development of RSP's will provide useful insights for our network planners and we consider that utilities should be required to be consulted during the formation and review of RSP's. Where projects are included in RSP's, we consider that matters such as reverse sensitivity can be better managed, to ensure sensitive activities are not established in locations that could compromise infrastructure projects.

**Recommendations / outcomes sought:**

- *Plans must be strategically informed, but operationally flexible.*

#### RSP process

65. CI 69 PB provides that local authorities must agree on how they will work with infrastructure providers in relation to the preparation of an RSP. This is supported, however we consider the Bill should be much more directive in terms of that engagement process and the purpose for it, noting that a key function of RSP is to support a co-ordinated approach to infrastructure funding and investment, and to promote integration of development planning with infrastructure planning.
66. We recommend that additional amendments should be made to clause 69 PB to enable and provide for early and meaningful consultation with infrastructure providers.

**Recommendations / outcomes sought:**

- *To ensure infrastructure providers are engaged with during the preparation of regional spatial plans amend 69(1)(g) to align with (f):*
- *(g) 'how the spatial plan committee will consult with core infrastructure providers in the region'*
- *Introduce a new clause (h) – how local authorities will work with development and sector groups, others with a strong interest in spatial planning, and communities.*

#### Spatial Plan Committees

67. We consider that an additional clause should be added to the PB which mirrors the consultation requirements in cl 70 PB, but for infrastructure providers.

**Recommendations / outcomes sought:**

- *A new clause within the PB:*
- *71 Consultation with core infrastructure providers*
- *(1) A spatial plan committee must consult –*
- *Core infrastructure providers in the region in preparing the draft spatial plan.*
- *(2) Consultation under **subsection (1)** must include –*
- *(a) prior notification that a draft regional plan is to be prepared; and*
- *(b) providing the draft regional spatial plan to core infrastructure providers before public notification of the plan; and*
- *seeking core infrastructure providers feedback on the draft for incorporation within the draft regional spatial plan.*

## Implementation

68. We support the inclusion of Regional Spatial Plans (RSPs) as a mechanism to improve long-term coordination between infrastructure providers, local authorities, and central government. However, the practical benefits of RSPs for electricity distribution businesses may be limited unless they are sufficiently flexible and responsive to change.
69. Our network planning is primarily demand-led and highly responsive to customer connection requests, land-use decisions, and the pace and location of development. As a result, it is inherently difficult to project network requirements far into the future with a high degree of certainty, particularly given ongoing uncertainty around growth patterns, electrification, distributed energy resources, and consumer behaviour.
70. To be effective for infrastructure providers, RSPs will need to be capable of being readily updated to reflect changes in development patterns, load forecasts, and technological advancements. Static or infrequently reviewed spatial plans risk becoming quickly outdated and may constrain efficient network planning or investment decisions.
71. We consider it important that:
- a. RSPs clearly recognise the operational and commercial realities of regulated electricity and distribution networks, including the need to respond to unanticipated growth and customer-driven investment.
  - b. The development and implementation of RSPs do not create binding obligations or investment expectations for electricity distributors beyond those required under the Electricity Act 1992, the Commerce Act 1986, and the regulatory framework administered by the Commerce Commission.
  - c. Any expectations for alignment between RSPs and network investment plans are supported by appropriate information-sharing, reasonable timeframes, and sufficient flexibility to manage demand uncertainty and affordability impacts on consumers.

- d. RSP processes provide for early and ongoing engagement with electricity and gas distributors, recognising their role as critical infrastructure providers and the long asset lives and capital-intensive nature of these networks.

### Regulatory relief

72. We are neutral with respect to the regulatory relief provisions, however considers these should remain limited to the current specified topics and not expanded to planning restrictions generally. If the regulatory relief regime is expanded to include rules which protect or facilitate infrastructure, this risks hindering infrastructure development and maintenance by discouraging such rules or making them more burdensome to implement. We also note that the regulatory relief regime, regardless of whether it expressly extends to infrastructure-related rules, incidentally may create expectations of relief from landowners where their land use is limited by such rules.
73. Additionally, cl 105 PB proposes to provide the Environment Court a separate pathway to intervene where a provision “would severely impair the reasonable use of” any interest in land. This provision is equivalent to s 85 RMA, but proposes to introduce a lower threshold and make other adjustments to refer back into the regulatory relief provisions. Clause 105’s application would extend beyond specified rules to “any provision”.
74. We note that while cl 105 would provide a relief pathway for those affected by infrastructure-related rules, it also provides a relief pathway for infrastructure providers with legal interests in land other than ownership. As currently drafted, only landowners will be eligible under any regulatory relief frameworks. We hold other types of legal interests in land for its infrastructure such as easements. In that situation, we may bear the full impact of the specified rules but not be eligible for relief in the relief framework. Instead, we could appeal a proposed plan provision where it appears the provision will “severely impair the reasonably use of that interest in the land” (per cl 105 PB). It therefore is essential that cl 105 PB or an equivalent provision is retained to avoid Powerco having no recourse where our legal interests in land are unreasonably curtailed by planning rules.

#### **Recommendations / outcomes sought:**

- *Regulatory relief to remain limited to the currently specified topics.*

### Designations (Schedule 5)

75. We support the inclusion of electricity and gas operators in Schedule 5, clause 9 subject to the provision for biogas in the definition of biofuel or within the infrastructure definition as set out below. In particular (a) and (c).
76. Schedule 5, Clause 10 sets out the process for the Minister approving a core infrastructure operator as a designating authority. Under Schedule 1, clause 27 existing requiring authorities are treated as designating authorities on the specified transition date. We consider that as drafted this may create uncertainty and

accordingly there should be clarification that Schedule 5, clause 10 applies only to core infrastructure operators that are not already designating authorities (including designating authorities confirmed by way of Schedule 1, clause 27).

#### Designation pathways

77. We have historically only sought designations as they are required and as such, possible future designations do not currently form part of our strategic network forecasting. Accordingly, we is unlikely to utilise the spatial planning pathway, either for the inclusion of designations or indicative locations.
78. However, we are generally supportive of any simplified planning mechanisms that identify and protect future infrastructure corridors.

#### Application and assessment

79. We support the removal of the assessment of alternatives from the matters which must be included in the notice of a proposed designation.
80. The consideration of alternatives required under the RMA has, on occasion, led to opponents challenging the 'final option' as it becomes apparent that there are alternatives that were considered that do not affect their property in the same way as the final option.
81. We do not support the inclusion of the strategic need assessment in clause 13(2)(e) and recommend that a description of the positive benefits are provided instead.

#### **Recommendations / outcomes sought:**

- *Amend schedule 2, cl 7(3):*
- *An application in response to an invitation under subclause (1)(a) must include a description of the positive benefits of enabling the project ~~an assessment of the strategic need for the future designation in that indicative location~~.*

#### Conditions

82. We generally support the intention for designation conditions to be no more onerous than necessary and to sit primarily in the construction project plan rather than within the designations themselves.

#### **Recommendations / outcomes sought:**

- *Retain Schedule 5, Clause 9(a) and (c) as drafted.*
- *Provide an additional subclause in Schedule 5, clause 10 to clarify that this clause applies only to core infrastructure operators that are not already classified as designating authorities (including designating authorities confirmed under PB Schedule 1, clause 27).*

### Relationship between national rules and designations

83. We hold concern over the relationship between national rules and designations set out in cl42 of the PB. In our view designations should prevail over national rules, including rules that apply to contaminated land. Under the RMA, work on designated Powerco sites such as substations required both Outline Plans and resource consents to be obtained under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.
84. In our experience, the consenting process adds significant costs and time delays which could have been more appropriately addressed under the Outline Plan process (Construction Project Plans under the PB). Our substation sites are secure and exclude public access and our health and safety and work site protocols already address many of the standard conditions that are imposed via consents. Allowing national rules to prevail over designations undermines the efficiency and certainty that designations are intended to provide.

#### **Recommendations / outcomes sought:**

- Delete cl 42(2)(a) PB:
- ~~Does not prevail over a national rule that relates to contaminated land~~
- Delete cl 42(4) in its entirety.

### Consenting and permitting

85. We generally support the intention to increase certainty in consenting and to reduce the complexity, cost and number of consents required.
86. We are also supportive of the simplification of consent activity statuses, however as noted below, an additional quasi-consenting regime appears to be proposed by way of the permitted activity rule and registration regime.

#### Permitted activity rules and registration (PB cl38 and 180(b), NEB cl 39 and 202(3))

87. We consider that as drafted, the proposed permitted activity rule (**PAR**) regime is contrary to the intention of the legislative reform.
88. We support the expanded use of permitted activity rules to enable the efficient delivery of infrastructure related activities that pose a relatively low risk. However, as drafted, the requirement that all permitted activities are to be registered with councils appears to be a drafting error. A blanket requirement would impose significant and unnecessary administrative burden on both infrastructure providers, and councils.
89. Further clarification is needed to ensure that permitted activity registration requirements are limited to those activities that traditionally would have attracted a controlled activity status under the current resource management system.

90. We recommend clarifying that national instruments will specify what particular permitted activities must be registered, rather than requiring registration for all permitted activities.
91. If the PAR regime is to be implemented, its scope should be limited and in particular, routine infrastructure maintenance works that are currently permitted activities should not be the subject of PAR.

**Recommendations / outcomes sought:**

- Amend **clauses 38 (PB) and 39 (NEB)** to (1) A permitted activity rule ~~must-~~
- (a) must require an activity to be registered if required by a national rule; or and
- (b) relate to a matter described in section 151 or Part 1 of Schedule 7 may require an activity to be registered if not precluded by a national rule.
- (2) A permitted activity rule ~~referred to in subsection (1)(a)~~ that is required to be registered must provide that an activity is a permitted activity only if [...]
- Move **clauses 180 PB and 202 NEB** (Notification and registration of activity subject to permitted activity rule) to sit beneath clauses 38 and 39 respectively

## Planning Tribunal

92. We generally support the concept of establishing a Planning Tribunal as a branch of the Environment Court. However, we are concerned that the centralised function of the Tribunal could be lost if there is an overwhelming need for its services that require regional branches and presence.

## Transition (Schedule 1, PB)

93. We support the express protection and rollover of existing consents, designations and requiring authority status following the specified transition date (in particular Schedule 1, clauses 14, 15, 16, 26 and 27). However, we notes that clause 26 does not expressly state that designations under the RMA are to be subject to the same terms and conditions as under the RMA (compared to clauses 14 and 15). It is unclear whether this is an oversight or a reflection of the intention for conditions should be captured within Construction Project Plans. We consider it is appropriate that the terms and conditions of existing designations are expressly rolled over, particularly in light of terms and conditions of existing consents being expressly referenced in the Schedule 1 provisions.
94. In addition, the relationship between clauses 27 and 28 is unclear. Clause 27 states that “an entity that is a requiring authority immediately before the specified transition date continues as a designating authority approved under Part 2 of Schedule 5”. Clause 28 lists nine requiring authority approvals and states that those approvals “if in force immediately before the specified transition date, continue in force under Part 2 of Schedule 5”. It is unclear why these approval orders in particular have been expressly listed under clause 28. We wish to ensure that there are no unintended consequences of listing these particular requiring authority approval orders but not others.

95. Finally, we are concerned about the capacity within the system. We currently operate and own infrastructure within the footprint of 29 territorial authorities and therefore will seek to be involved in the preparation of a large number of RSPs, LUPs and NEPs. The short transition times provided within the transitional provisions coupled with the contemporaneous rollout of the transition across all regions will likely place significant pressure on infrastructure providers, particularly those with cross-boundary networks who will be required to be reviewing and submitting on a number of planning instruments at the same time. These transition timeframes risk undermining effective participation and, in turn, the quality of planning outcomes.

**Recommendations / outcomes sought:**

- *Retain Schedule 1, clauses 14, 15, and 27 as drafted.*
- *Amend Schedule 1, clause 26 to add: has the same terms and conditions as it had immediately before the specified transition date*
- *Clarify the relationship between Schedule 1, clauses 27 and 28 and amend as required to confirm that the listing of particular approvals order has no wider impact on the treatment of approval orders not listed.*
- *Review Schedule 1, clauses 14, 15 and 16 and amend to avoid repetition and improve clarity.*

**Definitions (Both, cl 3)**

96. The Bills contain numerous terms, including newly introduced terms, that are not presently defined. It is unclear whether this omission is inadvertent or whether it is intended that national instruments will provide further guidance on their interpretation (similar to the current national planning standards). While some terms may appropriately benefit from flexibility to accommodate changing circumstances, we consider that other terms should be clearly defined in the Bills to provide ongoing certainty for infrastructure providers.

97. Additionally, it is noted that certain terms are defined within specific parts of the Bills rather than in the principal Interpretation clauses (clause 3 of each Bill). For ease of reference and consistency for all stakeholders, and to reduce the risk of definitions being overlooked, we consider that all defined terms should be consolidated within the clause 3 Interpretation sections.

98. The following terms and definitions (or lack of definition) are particularly relevant for us:

## Planning Bill

- a. **Infrastructure:** This definition currently sits in Schedule 5 (Designations) of the PB and is restricted to *"in relation to designations"*. Infrastructure is not always subject to a designation. For example, at present we hold designations in relation to some of our substations and depots, but not supporting infrastructure. There are a number of provisions throughout the Bills applicable outside of the context of designations, including key provisions such as the goal in cl 11(1)(e) PB. We consider that there is benefit to defining infrastructure to allow greater certainty as to the application of those provisions.
- b. In terms of the specific wording in the Schedule 5 definition, sub cl (d) focusses on lines and support structures. We consider this aspect of the definition would benefit from broader language to ensure it encompasses all electricity infrastructure, such as a term like *"network"*.

### **Recommendation:**

- Amend infrastructure definition to ensure that biogas is captured within (a).
- Amend definition of infrastructure to remove the qualifier *"in relation to a designation or an application to be approved as a designating authority"* and move the definition to PB Part 1, Clause 3 Interpretation section.

- c. **Additional infrastructure:** This term is not currently defined (or used in the bills).

- **Recommendation:** Delete term

- d. **Biofuel:** This term is undefined, but is utilised in the context of other definitions. A definition should be provided for and expressly include biogas.

- **Recommendation:** Include biogas within Infrastructure (a) definition

- e. **Construction:** This is currently framed as a negative definition, in that it is defined by reference to what the definition does not include. In our experience, this can create uncertainty and inconsistent outcomes [as evidenced in relation to the definition of *"natural wetlands"* in the NES-FM and subsequent litigation as to the correct interpretation of the definition]. We recommend that this definition to be drafted as a positive definition. However, we support the exclusion of maintenance and repair from the definition of construction and seeks that this be retained in any amended definition.

### **Recommendation:**

- Amend definition of construction to be prescriptive (i.e., not negative) but retain the exclusion of *"maintenance or repair"*. For example: *"includes [x] but does not include maintenance or repair"*

f. **Core infrastructure operator:**

- **Recommendation:** retain definition (sched 5 clause 9) and bring to front end interpretation section

g. **Essential infrastructure:**

- **Recommendation:** Delete reference

h. **Infrastructure supporting activities:** This term is not defined but is a mandatory matter to be identified and provided for within Regional Spatial Plans (Schedule 2, clause 3(g) PB). A definition should be provided for this term. We recommend alignment with the NPS-I which uses a definition for ancillary infrastructure activities

- **Recommendation:** Include definition for infrastructure supporting activities

i. **Key infrastructure:** This term is undefined, but is a mandatory matter to be included in Regional Spatial Plans (per Sched 2, cl 3(1)(d) PB). We consider that defining this term would assist with determining which infrastructure falls within this category.

- **Recommendation:** Replace with Core Infrastructure Operator.

j. **Less than minor:** This definition in cl 15(4) appears derived from a definition outlined in case law, but should be adjusted further to remove wording which may unnecessarily reduce the definition's scope or introduce duplicative thresholds.

- **Recommendation:** Amend definition of less than minor to: "Means an adverse effect that is acceptable ~~and reasonable~~ in the receiving environment with any change being slight ~~or barely noticeable~~".

k. **Qualifying resident:** We support inclusion of "a person that provides infrastructure within the district" in the definition as drafted.

- **Recommendation:** Retain proposed definition

- l. **Renewable Energy Activity:** We seek that this definition be expanded to include biogas. Biogas can be derived from alternatives to biomass, for example, landfill.

- **Recommendation:** *Include reference to biogas*

- m. **Specified Energy Activity:** We seek that this definition be expanded to include biogas. Biogas can be derived from alternatives to biomass, for example, landfill.

- **Recommendation:** *Include reference to biogas*

## Natural Environment Bill

- a. **Long-lived infrastructure:** This definition includes pipelines that distribute “manufactured gas” at (a). The NEB does not provide a definition for manufactured gas and therefore biogas should be expressly provided for in the definition of long-lived infrastructure. Subject to the previous comment, we support the inclusion of gas and electricity networks in this definition in (a), (c) and (d).

- **Recommendation:** Amend definition of long-lived infrastructure as follows: “(a) pipelines that distribute or transmit natural, ~~or~~ manufactured *or biomethane gas*”

- b. **Significant infrastructure:** This term is currently referenced in clause 86 but not defined, which creates uncertainty and the risk of litigation. As set out further below in this submission, we seek that the reference to “significant” in clause 86 is removed and the infrastructure activities eligible to utilise this pathway be prescribed by way of national direction.

- **Recommendation:** *Delete reference to significant*

- c. **Less than minor:** as above

## Conclusion

99. We support the overall intent of the proposed reforms and the move to a more streamlined, nationally coherent planning framework. However, the effectiveness of the new system will depend on the strength and clarity of its national direction, the integration between the two Bills, and the extent to which infrastructure; particularly linear networks, is practically enabled and protected.
100. Thank you for your consideration of this submission. We would welcome an opportunity to appear before the Committee.
101. Should officials require any additional information regarding Powerco or the changes sought above, please do not hesitate to contact us via Adam Du Fall, Head of Environment, Ph +64 6 759 6268, Mobile +64 27 603 0833 or email: [planning@powerco.co.nz](mailto:planning@powerco.co.nz).

Ngā mihi,



**Adam Du Fall**  
Head of Environment  
**POWERCO**