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Ministry for the Environment
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Lodged via: <https://consult.environment.govt.nz/>

Tēnā koutou

POWERCO SUBMISSION ON THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY – EXPOSURE DRAFT

Powerco Limited (*Powerco*) welcomes this opportunity to provide feedback on the Exposure draft on the National Policy Statement for Indigenous Biodiversity (*NPS-IB or Exposure Draft*). This submission builds on Powerco's submission on the draft National Policy Statement for Indigenous Biodiversity (dated 13 March 2020).

Summary of Submission

Powerco supports the overall direction of the NPS-IB and its policy approach to indigenous biodiversity protection and enhancement goals. In particular, we support recognition of the need for specific consenting pathways for specific infrastructure that still implements the effects management hierarchy and ensures that more than minor adverse effects that cannot be practicably avoided, minimised or remedied are offset or compensated. We also support the recognition of the need for consistent national approaches to identifying Significant Natural Areas (*SNA*s) and principles that apply to biodiversity offsetting and compensation.

However, Powerco is concerned that the Exposure Draft would in its current form significantly constrain the development, operation, maintenance and upgrade of new and existing lifeline infrastructure - including the electricity infrastructure that will be critical in New Zealand shifting away from fossil fuel reliance and reducing its greenhouse gas emissions. While the 'specific infrastructure' provisions go some way to provide an appropriate consenting pathway for lifeline utilities like us, those provisions and others require changes to ensure that the protection provisions of the Exposure Draft are proportionate and practicable.

Without limiting the scope of the reasons or changes sought below and in Attachment 1, Powerco seeks the following seven key changes to the Exposure Draft:

1	National direction consistency and climate change targets New policy needed	<p>Changes are necessary to provide for consistency and coherence of the Exposure Draft with other national direction. This includes changes to the make concepts consistent and to provide for consistent recognition of electricity system activities.</p> <p>Additional recognition is also required to enable activities that reduce greenhouse gas emissions and thereby provide indirect indigenous biodiversity benefits with respect to the effects of climate change.</p>
2	SNAs Policy 6 and CI 3.8 - 3.9	<p>SNA protections should take effect from date of inclusion in plans via a robust planning process, not from the date of notification of the plan.</p>
3	'Specific infrastructure' exception CI 3.11 and 3.10(3) New policy needed	<p>Specific infrastructure should have particular policy support to provide coherence within the Exposure Draft.</p> <p>The specific infrastructure exception should not require additional 'national or regional benefit' or 'alternative location' tests given these are already addressed in the definition of specific infrastructure and the functional/operational need tests.</p>
4	Effects management hierarchy CI 1.5(4)	<p>The Exposure Draft should minimise inconsistency with the National Policy Statement for Freshwater Management (<i>NPS-FM</i>) and remove reference to 'demonstrably'.</p>
5	Areas outside SNAs Policy 8 and CI 3.16	<p>The definition of "maintenance" needs to be amended to better reflect the clear intention of the Exposure Draft and not set unworkable 'no reduction' standards.</p>

6	Existing Activities Policy 9 and Clause 3.15	<p>Specific infrastructure requires clear recognition as an existing activity, to enable necessary maintenance and minor upgrade activities, without being constrained by existing effects envelopes.</p> <p>Requirements for recognition within Regional Policy Statements should be avoided as this is both unnecessary and burdensome.</p>
7	Offset and Compensation Appendix 3 and 4	<p>The offset and compensation principles are not appropriate to set as compliance tests and should be matters for consideration rather than strict tests.</p> <p>Similarly, a focus on 'measurable net gain' for offsetting is not appropriate and should instead focus on achieving 'positive outcomes.'</p>

These seven changes are outlined in greater detail below, with specific drafting set out in **Attachment 1**.

About Powerco

Powerco is an electricity and gas distribution company providing essential infrastructure to diverse communities across the North Island of Aotearoa. Powerco keeps the lights on and gas flowing to around 1.1 million customers, across 452,000 homes, businesses, and organisations in the North Island. We operate more than 28,000km of electricity lines and cables, and over 6,170km of gas pipelines. As such, Powerco's distribution networks traverse or adjoin a wide range of environments including areas of indigenous biodiversity with a variety of attributes and values.

Powerco's existing distribution networks need to be operated, maintained, repaired, and upgraded. In addition, new network infrastructure may need to be installed to respond to demand for its infrastructure to enable urban growth and decarbonisation. In recognition of the critical nature of our distribution networks, we are within the definition of "Lifeline Utility" as described in Part B of Schedule 1 of the Civil Defence Emergency Management Act 2002.

A reliable and constant energy supply is critical to sustaining the economy, population and way of life. Demand for energy is constantly increasing. Powerco faces an increasing number of constraints on its ability to provide secure and reliable energy supplies to meet increasing demand resulting from both population growth and the transition to a low carbon economy.

1. Consistency with other National Direction and climate change targets

Powerco considers that the Exposure Draft should seek to provide clarity as to how and when it applies and avoid or minimise conflict or inconsistency with other National Direction and relevant mandatory considerations. In particular, Powerco has identified the following areas where the Exposure Draft could be improved to provide greater clarity or certainty with other National Direction and targets/considerations:

- With respect to the NPS-FM Powerco notes that:
 - There are inconsistent definitions of the 'effects management hierarchy' in Clause 3.21 of the NPS-FM and 1.5(4) of the Exposure Draft. In particular the reference to "demonstrably" is included in the Exposure Draft but not the NPS-FM. Powerco does not consider that this difference is necessary given Exposure Draft Clause 3.10(4) already requires the demonstration of how each step of the effects management hierarchy will be applied, and suggests deletion of the word "demonstrably" from the Exposure Draft's effects management hierarchy in Clause 1.5(4).
 - The term 'specified infrastructure' is used in the NPS-FM while the term 'specific infrastructure' is used in the Exposure Draft, and slightly different approaches are taken to each consenting pathway under each document. Powerco considers that the same term should be used in each document and that the approach in the Exposure Draft is generally preferable given its recognition of operational need for such infrastructure better captures the constraints faced by specified / specific infrastructure with respect to indigenous biodiversity.
- With respect to the New Zealand Coastal Policy Statement (NZCPS) Powerco notes that the Exposure Draft provides for the NZCPS to override the Exposure Draft in the terrestrial coastal environment. Powerco considers the Exposure Draft should prevail over the NZCPS in the terrestrial coastal environment, particularly where coastal SNAs have been identified via the Exposure Draft provisions and where the Exposure Draft provides more specific direction on indigenous biodiversity. The more general provisions of the NZCPS, which were developed more than a decade ago, should not prevail against the more nuanced Exposure Draft provisions that recognise a range of additional activities – including specific infrastructure.
- With respect to the National Policy Statement for Renewable Electricity Generation (NPS-REG), Powerco notes that decision-makers are required to have particular regard to the location of existing structures and infrastructure including the distribution network.¹ However, the existing activities provisions of the Exposure Draft provide no particular consideration or additional certainty for existing distribution activities. Powerco suggests that such activities must be captured through changes to the definition of 'existing activities' in Clause 1.6 and the implementation methods in Clause 3.15.
- Powerco supports the Exposure Draft's recognition of the links between climate change and biodiversity resilience.² However to enable the Climate Change Response Act's (CCRA's) climate change targets to be

¹ See Policy C1(c) NPSREG.

² See Policy 4, Exposure Draft.

given effect to, it considers that activities that support emissions reductions, and therefore resulting in benefits for indigenous biodiversity, require particular recognition in the Exposure Draft's policies. Such recognition would enable councils to better discharge their duties to consider emissions reduction plans and national adaptation plans under the CCRA³ and their ability to consider the CCRA targets and budgets.⁴ Powerco therefore proposes that the Exposure Draft include a new policy that recognises the need for activities that reduce greenhouse gas emissions and the resulting benefits for indigenous biodiversity.

2. Effects on SNAs and exceptions for Specific Infrastructure

Definition and identification of SNAs

Powerco strongly supports the Exposure Draft's creation of a consistent approach to the identification of SNAs as provided for in Policy 6 and Clauses 3.8 - 3.9. This will enable operators like us who operate over multiple districts to anticipate a consistent approach to the identification and regulation of areas of high value indigenous biodiversity.

However, Powerco has concerns that the Exposure Draft provides for SNAs to be identified from the date they are "notified or included" in a district plan. Given the highly protective nature of Policy 7 and Clause 3.10 with respect to SNAs, including strict 'avoid' provisions, Powerco considers that areas of indigenous biodiversity should only be recognised to be an SNA after robust testing via a public participatory process including opportunities for affected landowners and occupiers to make submissions and test ecological assessments. Prior to such opportunity for public consideration, Powerco considers that the Exposure Draft's wider protections relating to protection and maintenance of indigenous biodiversity should apply.

Powerco also suggests that when identifying SNAs in district plans under Clause 3.9, the territorial authority should also be required to identify:

- the values in addition to the attributes of the SNA - this would support assessments under many other clauses of the Exposure Draft which require consideration of indigenous biodiversity values; and
- the existing activities (including any existing specific infrastructure) that are located within or adjoining the area to be identified as an SNA - doing so would acknowledge the SNA's significance with that existing activity already in place, as well as provide clarity in relation to the application of Clause 3.15 with respect to existing activities.

Finally, Powerco suggests that when assessing areas that qualify as significant natural areas under Clause 3.8 using the criteria set out under Appendix 1(3), the assessment should include a description of the existing activities in the area, and recognise those operational effects of the existing activity that have an ongoing impact on the SNA.

³ See section 17 of the Resource Management Amendment Act 2020, which takes effect from 30 November 2022.

⁴ See section 5ZN, CCRA.

3. Specific infrastructure exception

Powerco strongly supports the Government's recognition of the need to provide exceptions to Clause 3.10 through the provision of a consenting pathway for specific infrastructure under Clause 3.10(3) and 3.11. Powerco commends this effort to balance New Zealand's indigenous biodiversity protection goals with the need to provide infrastructure that supports social and economic wellbeing as well as New Zealand's critical climate change goals.

However, for the specific infrastructure provisions to be effective, Powerco considers the following key changes are required:

- A policy particularly related to specific infrastructure should be inserted that supports the proposed exceptions in implementation Clause 3.11 and provides policy linkage to those implementation methods. While Policy 10 is supported by Powerco, it is very general in nature and does not link to the particular exceptions in Clause 3.11 or recognise that alternative management methods may be justified based on the nature and importance of the particular activities. Powerco therefore suggests that two new policies (Policies Y and Z) are inserted.
- Policy 7 provides that SNAs are protected by "avoiding and managing" adverse effects from new activities. Powerco considers that the conjunctive word "and" in the policy does not accurately reflect the exceptions provided for in Clause 3.11 that will not necessarily require the avoidance of all adverse effects. Rather, Powerco considers that the policy direction should provide for "avoiding or managing" those effects in accordance with the effects management hierarchy. Without such a change there is a risk that the Policy 7 could be interpreted as a strict 'avoid' policy bottom line, which is inconsistent with the Exposure Draft's proposed implementation methods.
- Policy 12 provides that indigenous biodiversity is managed within plantation forestry. Powerco suggests that specific infrastructure requires at least the same recognition in Part 2 of the Exposure Draft, either through an addition to Policy 12 or through a new policy. The same justifications for Policy 12's inclusion in relation to plantation forestry provided in He Kura Koiora I hokia⁵ and the Exposure Draft Summary for the Forestry Sector⁶ also apply to specific infrastructure. The Exposure Draft already recognises that, like plantation forestry, specific infrastructure may not be able to avoid adverse effects to an SNA by providing an exception in Clause 3.11(2). He Kura Koiora I hokia and the Summary for the Forestry Sector both recognise plantation forestry's strong role in responding to the climate crisis, whether by reducing emissions or adapting to climate change. Powerco submits these same arguments equally apply to renewable energy

⁵ Page 48, Discussion Document on a Proposed National Policy Statement for Indigenous Biodiversity, November 2019, Ministry for the Environment.

⁶ Page 1, National Policy Statement for Indigenous Biodiversity Exposure draft summary for the forestry sector, June 2022, Ministry for the Environment.

specific infrastructure, which also has an important role to play in reducing New Zealand's greenhouse gas emissions resulting in wider benefits to indigenous biodiversity.

- The exception in Clause 3.11(2) is critical to providing a consenting pathway for specific infrastructure that cannot avoid all effects in an SNA. However as proposed it contains two limitations that Powerco considers are not necessary to achieve the Exposure Draft's Objective and will limit the utility of the specific infrastructure exception:
 - Firstly, 3.11(2)(a)(i) requires that applicable specific infrastructure provide "*significant national or regional public benefit*". Powerco considers that this requirement adds unnecessary complexity to what amounts to specific infrastructure. The definition of specific infrastructure includes clear categories of activities that provide inherent public benefit – including as lifeline utilities. Requiring councils and operators to consider whether that same activity results in "significant" and "regional" benefits may result in confusion, inconsistent approaches and ultimately litigation. For example, while smaller scale electricity distribution assets often operate at the local or district scale, they are an integral part of the wider electricity network and create national scale benefits if viewed at a system level. Powerco suggests that it is preferable to avoid such confusion by removing the reference to "significant national or regional public benefit", recognising that public benefit is inherently associated with the categories of specific infrastructure.
 - Secondly, Clause 3.11(2)(c) requires that specific infrastructure establish that there are "*no practicable alternative locations for the new use, or development.*" Powerco considers that this test is unnecessary given that alternative locations are already considered in Clause 3.11(2)(b) pursuant to which specific infrastructure already has to establish that it has a "*functional or operational need for the new use or development to be in that particular location*". If there is an operational or functional need for an activity to occur in a location, there will not be a practicable alternative location. Despite the overlap, the Exposure Draft's inclusion of the two tests suggests they mean, and require, different assessments which creates uncertainty and may result in cost, delay and litigation risk, without adding any robustness to the exception.
- Powerco also suggests Clause 3.11(2) should explicitly refer to the full complement of effects management tools available under the effects management hierarchy (EMH) including biodiversity offset and compensation rather than reference 3.10(3) and (4). In the particular case of specific infrastructure, a strict application of the EMH may unreasonably result in cases where effects cannot be avoided but where compensation is inappropriate such that the activity cannot be undertaken. That is not a viable outcome for essential life line utility infrastructure activities. Powerco therefore suggests that flexibility within the management methods of the EMH should be provided for in relation to specific infrastructure.

4. Effects management hierarchy

Powerco broadly supports the Exposure Draft's intention for the effects management hierarchy to form a consistent and fundamental concept in National Direction.

However, Powerco suggests amendments to the way the EMH is expressed in Clause 1.5(4) to provide for greater consistency (both internally and with the NPS-FM) to minimise uncertainty, support clear interpretation and avoid unnecessary litigation. Specifically, Powerco suggests that:

- the word "*demonstrably*" is deleted from Clause 1.5(4) of the Exposure Draft, given it is not used in the NPS-FM and is unnecessary where Exposure Draft Clause 3.10(4) already requires explicit demonstration of how each step of the EMH will be applied.
- the word "*demonstrably*" is replaced with "*practicably*" given in each case the prior step in the EMH requires effects to be avoided, minimised, or remedied "where practicable". Inclusion of "where practicable" would therefore ensure that the EMH is read as a cascading and consistent hierarchy of considerations.
- a single term related to the ability to achieve a relevant step of the EMH should be used rather than the words "*practicable*" and "*possible*" being used interchangeably. Powerco suggests that "*practicable*" reflects a more pragmatic approach consistent with the EMH.

Powerco also notes that despite the EMH being a fundamental concept in the Exposure Draft, it is not referenced in the any Exposure Draft policies. Powerco suggests the EMH should be identified as the means through which effects on indigenous biodiversity are managed (including in SNAs when Clause 3.11(2) exceptions are relevant). Consequently, Powerco suggests that the EMH is referred to in Policies 7 and 8.

5. Maintenance of indigenous biodiversity outside SNAs

'Maintaining indigenous biodiversity' is a fundamental concept under the Exposure Draft and specifically relevant to Policy 8, where the "*importance of maintaining indigenous biodiversity outside SNAs*" is required to be recognised and provided for, and Clause 3.16 pursuant to which "*local authorities must take steps to maintain indigenous biodiversity*" outside SNAs. Powerco supports the Exposure Draft's recognition that areas outside SNAs require protection through appropriate management controls. However, Powerco is very concerned that the fundamental concept of 'maintaining indigenous biodiversity' as currently drafted sets an unreasonably strict threshold for protection of indigenous biodiversity outside SNAs.

The Exposure Draft defines the 'maintenance of indigenous biodiversity' as "*at least no reduction, as from the commencement date, in*" a list of specific matters including "*the size of populations for indigenous species*" and "*the properties and function of ecosystems and habitats*". As drafted, this definition could require every individual specimen to be protected because the loss of one member of an indigenous species population would result a reduction in population size.

This outcome does not appear to be intended by the Exposure Draft, given the direction applicable to higher value areas identified as SNAs only provides for avoidance of reductions in population size or occupancy of threatened species in an SNA. It would be nonsensical for a more strict protection provision to apply outside of SNAs than applies within SNAs. Instead, the intention of the Exposure Draft appears to be to maintain non-SNA indigenous biodiversity values overall, at an ecological district or landscape scale, acknowledging that there will be some losses and gains over time, including to enable social and economic wellbeing outcomes (see Policy 10 and Clause 3.5), but the overall trend will seek to achieve no net loss.

Powerco further submits the outcome described above cannot have been intended given the references throughout the Exposure Draft to allowing the sustainable customary use of indigenous biodiversity in accordance with tikanga. If “maintenance” was defined to mean no reduction in the size of populations for indigenous species it would effectively prevent customary use. Viewed in this context, the intention of the Exposure Draft must have been to maintain non-SNA indigenous biodiversity values *overall* and at a wider ecological landscape scale than at the individual species/site level.

Powerco considers that avoidance should not be the preferred management tool for non-significant areas of indigenous biodiversity. Other management approaches, including biodiversity offsetting and compensation, should be available to maintain indigenous biodiversity where they achieve an appropriate overall maintenance of indigenous biodiversity at the ecological district or landscape level.

To address these concerns, Powerco suggests that amendments to the definition of the ‘maintenance of indigenous biodiversity’ are necessary to:

- refer to “no overall net reduction” rather than “no reduction”;
- ensure that matters considered are viewed at the ecological district or landscape scale, rather than being site- or proposal-specific bottom lines from which no reduction is permitted; and
- include concepts of biodiversity offsetting and biodiversity compensation as acceptable means of achieving indigenous biodiversity maintenance.

Powerco also considers that Clause 3.16 needs to be amended to provide a clearer and more logical approach to circumstances where the EMH applies outside SNAs. Clause 3.16(2)(a) requires the EMH to be applied to “irreversible” effects, whereas 3.16(2)(b) requires “appropriate controls” to be applied to other effects. There is a lack of clarity as to what amounts to an “irreversible effect” as irreversibility depends on the timescales and areas concerned. Powerco is concerned that this lack of clarity will result in implementation uncertainty. Powerco instead suggests that Clause 3.16 be amended to provide for “significant” effects to fall under 3.16(2)(a) and thereby be managed via the EMH, with other more than minor adverse effects being subject to Clause 3.16(2)(b) and being subject to other “appropriate controls”. This split in the management approaches applicable to non-SNA indigenous biodiversity would build upon effects assessment terminology that is already used in the RMA and is therefore familiar to and easily applied by Councils and operators.

Powerco considers that Clause 3.16(2)(b) must apply to effects of ‘specific infrastructure’ outside of SNAs. There must be a similar recognition for indigenous biodiversity outside SNA, as there is within SNAs, that there is a

need to balance indigenous biodiversity protection goals with the need to provide infrastructure that supports social and economic wellbeing. That balance is best supported by providing a consenting pathway for specific infrastructure that is less burdensome than that available to other non-infrastructure activities that do not provide the same public benefit. Powerco submits that specified infrastructure should therefore be subject to the Clause 3.16(2)(b) requirement to manage adverse effects under 'appropriate controls'. This would also provide a clear progression of management methods for specific infrastructure whereby it must comply with the EMH within SNAs and 'other appropriate controls' outside SNAs. Without this change specific infrastructure would largely be subject to the same effects management responsibility within and outside SNAs and there would be no mechanism within the Exposure Draft to prioritise management of effects on SNAs.

Finally, Powerco submits that the Policy 15 recognition of specific highly mobile fauna must be amended. Powerco considers that the requirement to "maintain" populations of specific highly mobile fauna outside of SNAs sets an unreasonably strict threshold given the definition of maintenance, which could require every individual specimen of specific highly mobile fauna to be protected, as the loss of one member of the population would result in a reduction of population size. Effects on specific highly mobile fauna can be appropriately managed without requiring this high threshold.

6. Existing activities

Policy 9 and Clause 3.15 of the Exposure Draft are ostensibly intended to allow for the continuation of appropriate existing activities. The continuation of existing activities is critical, particularly for specific infrastructure activities that are already located in or adjoining areas of indigenous biodiversity and which have very limited options to avoid, minimise or remedy effects on indigenous biodiversity.

However, Powerco is very concerned that as drafted the Exposure Draft's clauses related to existing activities provide very little comfort to existing specific infrastructure activities. The definition of existing activity is narrow and its application in Policy 9 and Clause 3.15 is further constrained. For the "existing activity" provisions to provide for the ongoing operation, maintenance and minor upgrading of the electricity distribution network that is required to support renewable electricity generation and use, Powerco considers that the following changes are necessary:

- With respect to the "existing activity" definition, Powerco suggests amendments to:
 - include particular recognition of existing specific infrastructure activities, including their use, maintenance and minor upgrade;
 - include recognition of related activities authorised by statute or regulations including the Electricity (Hazards from Trees) Regulations 2003; and
 - include "lawfully authorised" activities that typically form part of the "existing environment"⁷ but which would not fall within the definition of "lawfully established".

⁷ *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299; NZRMA 424 (CA) (Hawthorn).

- With respect to Policy 9, delete the word “Certain” and ensure that the definition of existing activities includes those activities that are considered to be appropriate to continue.
- With respect to Clause 3.15, Powerco opposes the very narrow category of existing activities whose continuation is supported, and suggests the inclusion of a new Clause (*Clause 3.15A*) to provide for the full range of operational, maintenance, and minor upgrades that specific infrastructure operators need to undertake as existing activities. Clause 3.15 as currently drafted is not fit for purpose for specific infrastructure, for the following reasons:
 - the Clause 3.15(1) requirement that existing activities, or types of existing activities, are identified in relevant regional policy statements should be deleted given the very limited number of existing activities identified in regional policy statements. An alternative adverse impact of 3.15(1) is that Regional Councils would come under considerable pressure to substantially expand the nature of activities that are recognised in regional policy statements, merely to benefit from the Exposure Draft’s existing activity implementation methods;
 - the requirement that the character, intensity or scale be no greater over time may be difficult to establish and lead to uncertainty;
 - the applicable date for the scale of any effects should not be frozen arbitrarily as at the specific commencement date but must encompass the period prior to the commencement date. For example, Powerco undertakes tree trimming that may not be required at the specific commencement date due to SNA height, but may have been previously required prior to the commencement date; and
 - it is inappropriate to have an absolute exclusion for any activity that results in the loss of extent or degradation of ecological integrity of the SNA, given many existing activities located in SNAs will require the trimming of SNAs which necessarily result in a loss to their extent.

7. Biodiversity Offsetting and Compensation

Powerco is concerned that specific infrastructure will not be able to comply with the proposed principles for biodiversity offsetting and compensation under Appendices 3 and 4, for the reasons outlined below. Powerco opposes the definition of biodiversity offset and the offsetting principles in Appendix 3 on the basis that an offset is limited to actions that achieve ‘measurable net gain’. Powerco considers that there is merit in encouraging biodiversity offsetting even when it can only partially offset residual adverse effects and provides a positive outcome, with the residual effects being subject to ecological compensation. An all or nothing approach to offsetting that requires a measurable net gain threshold will only serve to exclude positive offsetting actions. Actions that fall short of a measurable net gain should still be able to be considered by decision-makers as a biodiversity offset, including when applying the EMH.

Powerco suggests the reference to “sequentially exhausted” in the definition of biodiversity compensation must also be deleted. An applicant is best placed to undertake an assessment of its proposal on a case-by-case basis with reference to the relevant plan provisions and provide a suitable package that includes biodiversity offsetting or compensation as the circumstances warrant. The requirement to sequentially apply offset measures first is unnecessary and creates process constraints that do not necessarily further overall indigenous biodiversity outcomes.

Powerco suggests Clause 2 of both Appendix 3 and 4 require amendment with respect to the circumstances in which offsetting or compensation are not appropriate. Such circumstances should be determined on a case by case basis in light of the circumstances of any particular proposal and not predetermined by the use of generic examples. Powerco suggests that the use of the words “vulnerable”, “uncertain” and “little understood” could result in implementation uncertainty as it will necessarily involve subjective value judgements, and must be deleted.

Finally, Powerco suggests that the principles of biodiversity offsetting and compensation should be factors for consideration rather than obligatory conditions. This is also inconsistent with Clause 3.24, which requires if biodiversity offsetting/compensation is proposed that a description of how the *relevant* principles in each respective Appendix have been addressed. To achieve this change Powerco notes that the introductory text of both Appendix 3 and 4 require amendment to delete the requirement that the principles “must be complied with” and such requirement must also be deleted from both the definitions of “biodiversity offset” and “biodiversity compensation”.

Conclusion

Powerco would welcome the opportunity to meet with staff from the Ministry for the Environment to discuss / elaborate on the concerns outlined above.

To assist, **Attachment 1** sets out Powerco’s proposed changes to address the above comments and drafting suggestions.

If you have any questions on this submission in the meantime, or would like to discuss these issues further, please contact me.

Ngā mihi



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Attachment 1: Summary of Powerco’s views on the Exposure Draft

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
Part 1: Preliminary Provisions (1.1 – 1.5)		
1.4 Relationship with the NZCPS	<p>Powerco opposes Clause 1.4 and suggests the changes noted in the third column for the following reasons:</p> <ul style="list-style-type: none"> • The NPSIB should prevail over the NZCPS in the terrestrial coastal environment given the NPSIB provides more specific direction on indigenous biodiversity. • In relation to SNAs identified in the coastal environment under the NPSIB provisions, it is appropriate for the same national direction to manage effects in those SNAs. • The NZCPS provisions in relation to biodiversity are more general and were developed more than a decade ago. 	<p>1.4 Relationship with New Zealand Coastal Policy Statement</p> <p>(1) Both the New Zealand Coastal Policy Statement and this National Policy Statement apply in the terrestrial coastal environment.</p> <p>(2) If there is a conflict between the provisions of this National Policy Statement and the New Zealand Coastal Policy Statement 2010 (or any later New Zealand Coastal Policy Statement issued under the Act), the New Zealand Coastal Policy Statement <u>this National Policy Statement</u> prevails.</p>
1.5(3) Maintenance of indigenous biodiversity	<p>Powerco opposes Clause 1.5(3), and suggests the changes noted in the third column for the reasons outlined in its main submission above.</p>	<p>Clause 1.5 Fundamental concepts</p> <p>(3) Maintenance of indigenous biodiversity</p> <p>The maintenance of indigenous biodiversity requires at least no <u>overall net reduction</u>, as from the commencement date, in <u>indigenous biodiversity attributes and values having regard to the following matters considered at the ecological district or landscape scale</u> :</p> <p>(a) the size of populations of indigenous species:</p> <p>(b) indigenous species occupancy across their natural range:</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
		<p>(c) the properties and function of ecosystems and habitats:</p> <p>(d) the full range and extent of ecosystems and habitats:</p> <p>(e) connectivity between, and buffering around, ecosystems:</p> <p>(f) the resilience and adaptability of ecosystems.</p> <p><u>(g) the management of adverse effects, including through biodiversity offsetting and biodiversity compensation.</u></p>
<p>1.5 (4) Effects management hierarchy</p>	<p>Powerco broadly supports the Exposure Draft's intention for the effects management hierarchy (EMH) to form a consistent and fundamental concept in National Direction.</p> <p>However, Powerco suggests amendments to the EMH on the basis that the Exposure Draft and NPSFM provide slightly different language which may lead to inconsistent application, confusion and unnecessary litigation.</p> <p>Powerco suggests that the word "demonstrably" is deleted from 1.5(4) of the Exposure Draft, given it is not used in the NPSFM and is unnecessary given Exposure Draft Clause 10(4) already requires the demonstration of how each step of the EMH will be applied.</p> <p>Powerco also suggests that the word "demonstrably" is replaced with "practicably" given in each case the prior step in the EMH requires effects to be avoided, minimised, or remedied "where practicable". Inclusion of "where practicable"</p>	<p>"(4) Effects management hierarchy</p> <p>The effects management hierarchy is an approach to managing the adverse effects of an activity. It requires that:</p> <p>a) adverse effects are avoided where practicable; and</p> <p>(b) where adverse effects cannot be <u>practicably</u> demonstrably avoided, they are minimised where practicable; and</p> <p>(c) where adverse effects cannot be <u>practicably</u> demonstrably minimised, they are remedied where practicable; and</p> <p>(d) where more than minor residual adverse effects cannot be <u>practicably</u> demonstrably avoided,</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
	<p>would therefore ensure that the EMH is read as a cascading and consistent hierarchy of considerations/steps.</p> <p>Finally, Powerco notes the words "practicable" and "possible" are used in different sub clauses of the EMH. Powerco suggests that only "practicable" is used consistently throughout to avoid the potential for uncertainty and litigation.</p>	<p>minimised, or remedied, biodiversity offsetting is provided where practicable possible; and</p> <p>(e) where biodiversity offsetting of more than minor residual adverse effects is not demonstrably practicable possible, biodiversity compensation is provided; and</p> <p>(f) if biodiversity compensation is not appropriate, the activity itself is avoided.</p> <p>The terms 'biodiversity offset' and 'biodiversity compensation' are defined in clause 1.6, and the principles for their application are in Appendices 3 and 4."</p>
<p>Clause 1.6 – Interpretation</p>		
<p>"Biodiversity compensation"</p>	<p>Powerco opposes the definition of biodiversity compensation on the basis that it appears the intention of the Exposure Draft was for the Appendix 4 list to apply as principles, not a compulsory list. Powerco suggests that the intention of the Exposure Draft must have been for the principles to be factors for consideration rather than matters that must be complied with.</p> <p>Powerco opposes the inclusion of the words "sequentially exhausted" and suggests they must be deleted.</p>	<p>biodiversity compensation means a conservation outcome that complies with <u>considers</u> the principles in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offset measures have been sequentially applied.</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
"Biodiversity offset"	<p>Powerco opposes the definition of biodiversity offset on the basis that an offset is limited to actions that achieve 'measurable net gain' when offsetting should also include partial offsetting creating positive outcomes including where they cannot be specifically measured. An all or nothing approach that requires a net gain without other positive but unmeasurable offsetting should not be excluded from consideration as a partial "biodiversity offset" when applying the EMH.</p> <p>Powerco opposes the inclusion of the words "sequentially exhausted" and suggests they must be deleted.</p> <p>As above for the definition of biodiversity compensation, Powerco opposes the definition of biodiversity offset on the basis that it appears the intention of the Exposure Draft was for the Appendix 4 list to apply as principles, not a compulsory list. Powerco suggests that the intention of the Exposure Draft must have been for the principles to be factors for consideration rather than matters that must be complied with.</p>	<p>"biodiversity offset means a measurable conservation outcome that complies with <u>considers</u> the principles in Appendix 3 and results from actions that:</p> <p>(a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and</p> <p>(b) achieve <u>a positive outcome</u> measurable net gain in type, amount, and condition (structure and quality) of indigenous biodiversity compared to that lost.</p>
"Existing activity"	<p>Powerco seeks the inclusion of activities authorised by statute or regulations include under the Electricity (Hazards from Trees) Regulations 2003. Powerco suggests that these other authorisations are explicitly recognised as existing activities in the Exposure Draft.</p>	<p>"Existing activity means a subdivision, use or development that is:</p> <p>(a) lawfully established at the commencement date; but</p> <p>(b) not a land use covered by section 10 of the Act, <u>and</u></p> <p><u>(c) in the case of specified infrastructure, includes any related activity authorised by statute or</u></p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
		<u>regulations including the Electricity (Hazards from Trees) Regulations 2003.</u>
"SNA, or significant natural area"	<p>Powerco supports the provision for consistency in the approach to identification of SNAs. However, it opposes the reference to such SNA being areas that are notified in a district plan because:</p> <p>Powerco considers that it is inappropriate for SNAs to be recognised from the date notified in a plan prior to public participatory planning processes.</p> <p>Policy 7 and Clause 3.10 provide strict 'avoid' protections for SNAs, which should only apply after public participatory processes confirm areas to be SNAs.</p>	<p>"SNA, or significant natural area, means:</p> <p>(a) any area that, on the commencement date, is identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); and</p> <p>(b) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1"</p>
Part 2: Objective and policies		
Objective 2.1	Powerco supports Objective 2.1, in particular the recognition of the social, economic and cultural wellbeing of people and communities now and in the future.	No changes proposed.
Policy 6	Powerco supports Policy 6. The identification of SNAs through a consistent approach is likely to improve the robustness of SNA identification.	No changes proposed.

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
Policy 7	<p>Powerco opposes Policy 7 as proposed and suggests amendments to remove the conjunctive word "and" and replace it with "or".</p> <p>Powerco considers that as proposed Policy 7 does not accurately reflect the exceptions provided for in Clause 3.11 that will not necessarily require the avoidance of all adverse effects. Without such a change there is a risk that the Policy 7 could be interpreted as a strict 'avoid' policy bottom line, which is inconsistent with the Exposure Draft's proposed implementation methods.</p> <p>Powerco also considers that this policy should include reference to the EMH as the fundamental concept through which effects are managed.</p>	<p>"Policy 7: SNAs are protected by avoiding and <u>or</u> managing adverse effects from new subdivision, use and development, <u>including by applying the effects management hierarchy.</u>"</p>
Policy 8	<p>Powerco considers that this policy should include reference to the EMH, being the fundamental concept through which effects on indigenous biodiversity outside SNAs are managed.</p>	<p>"Policy 8: The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for, <u>including by applying the effects management hierarchy.</u>"</p>
Policy 9	<p>Powerco opposes Policy 9, and suggests the changes noted in the third column. The term 'existing activity' is defined as a use or development that is lawfully established at the commencement date and is not a land use covered by section 10 of the Act. The qualifier 'certain' means that this Policy does not provide for the full range of routine maintenance and upgrade activities that electricity distributors like Powerco will need to undertake on their assets. Powerco suggests that the existing activities definition and Clause 3.15 are also amended</p>	<p>"Policy 9: Certain Existing activities are provided for within and outside SNAs."</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
	to provide for a wider range of existing specific infrastructure activities such that the qualifier of “certain” should be deleted.	
Policy 10	Powerco supports Policy 10 but suggests it should be supported by Policy X, Y and Z to achieve the Objective of the Exposure Draft.	No changes.
Policy 12	Powerco supports Policy 12 but suggests it must include a reference to “specific infrastructure” as well as plantation forestry, as the justifications that require indigenous biodiversity to be “managed” within plantation forestry are the same for specific infrastructure and would better recognise the consenting pathway provided for specific infrastructure in Part 3 Implementation.	Policy 12: Indigenous biodiversity is managed within plantation forestry <u>and in areas where specific infrastructure is located.</u>
Policy 15	Powerco opposes Policy 15 as proposed and suggests amendments to remove the reference to “maintain”. Powerco considers that the requirement to “maintain” populations of specific highly mobile fauna outside of SNAs sets an unreasonably strict threshold. As drafted, this definition could require every individual specimen of specific highly mobile fauna to be protected because the loss of one member of the population would result in a reduction of population size.	Policy 15: Areas outside SNAs that support specified highly mobile fauna are identified, and managed to maintain their populations across their natural range, and information and awareness of specified highly mobile fauna is improved <u>and effects on specific highly mobile fauna are managed.</u>
New Policy X	As noted above, Powerco suggests the inclusion of a new Policy, Policy X, to recognise that activities that enable the CCRA’s climate change targets to be given effect to and are likely to have resulting benefits for indigenous biodiversity require particular recognition in the Exposure Draft’s policies.	<u>“Policy X: Activities that contribute to meeting New Zealand’s climate change targets and budgets, emissions reduction plans or climate change adaptation plans under the Climate Change Response Act are recognised and provided for in</u>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
	<p>The proposed policy will support consistency in plans which, from 30 November 2022, will be required to have regard to emissions reduction plans and national adaptation plans under the CCRA.</p>	<p><u>light of their indirect benefits for the maintenance of indigenous biodiversity.”</u></p>
<p>New Policies Y and Z</p>	<p>Powerco considers that a policy related to specific infrastructure is necessary to support the proposed exceptions in implementation Clause 3.11.</p> <p>While Policy 10 is supported it is very general in nature and does not link to the particular exceptions in Clause 3.11 or recognise that alternative management methods may be justified based on the nature and importance of the particular activities. Powerco suggests that two new policies (Policy Y and Z) are inserted that provide particular recognition for specific infrastructure.</p>	<p><u>“Policy Y: the operation, maintenance and minor upgrading of specific infrastructure is enabled within SNAs and all other areas of indigenous biodiversity”</u></p> <p><u>“Policy Z: the adverse effects of new specific infrastructure on an SNA, and all other areas of indigenous biodiversity are avoided, remedied, mitigated, offset, or compensated”</u></p>
<p>Part 3: Implementation</p>		
<p>3.1 – Overview of Part.</p>	<p>Powerco suggests that Clause 3.1 revert back to the clause as provided in the 2019 Draft NPSIB which provided greater certainty.</p> <p>The direction in Clause 3.1 of the Exposure Draft undermines the national direction the NPS-IB is intended to provide. The current drafting indicates that Part 3 does not provide comprehensive direction on management of indigenous</p>	<p>“3.1 Overview of Part</p> <p>(1) This Part sets out what a non-exhaustive list of things that local authorities must do to give effect to the Objective and Policies in Part 2 of this National Policy Statement, but nothing in this Part limits the general obligation under the Act to give effect to that Objective and those Policies.</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
	<p>biodiversity. Instead, local authorities may decide that the NPS-IB objectives and policies require a different approach. This is contrary to the normal approach whereby planning documents move from the general to the specific, providing clearer and more substantive direction as objectives move into policies and implementation methods. Applicants need certainty that compliance with the detailed provisions in Part 3 means the policies will be considered to be satisfied.</p>	<p>(2) Nothing in this Part limits a local authority's functions and duties under the Act in relation to indigenous biodiversity."</p>
<p>3.7 Precautionary approach</p>	<p>Powerco suggests that any recognition of the precautionary principle should also recognise the important role that adaptive management plays in managing uncertainty and risk with respect to effects on indigenous biodiversity.</p>	<p>"3.7 Precautionary approach</p> <p>(1) Local authorities must adopt a precautionary approach, <u>including through the application of adaptive management methods, where appropriate, toward new subdivision, use or development proposed activities</u> where:</p> <p>(a) the effects on indigenous biodiversity are <u>substantially</u> uncertain, unknown, or little understood; but</p> <p>(b) those effects are potentially significantly adverse."</p>
<p>3.8 Assessing areas that qualify as significant natural areas</p>	<p>Powerco supports the certainty that Clause 3.8 provides for consent applicants as the Exposure Draft will only apply to mapped SNAs.</p>	<p>Retain as proposed in Exposure Draft.</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
3.9 Identifying SNAs in district plans	<p>Powerco supports the provision for consistency in the approach to identification of SNAs. However, it suggests that Clause 3.9 could better support the implementation of the Exposure Draft if it also required the territorial authority to identify:</p> <p>the “values” in addition to the “attributes” of the SNA - this would support assessments under other clauses of the Exposure Draft which require consideration of indigenous biodiversity values (see for example the principles for biodiversity offsetting and compensation included in Appendix 3 and 4); and</p> <p>the existing activities (including any existing specific infrastructure) that are located within or adjoining the area to be identified as an SNA - doing so would acknowledge the SNA’s significance with that existing activity already in place, as well as provide clarity in relation to the application of Clause 3.15 with respect to existing activities.</p>	<p>3.9 Identifying SNAs in district plans</p> <p>(1) A territorial authority must notify any plan or plan change to include each area in its district that is identified as qualifying as an SNA.</p> <p>(2) The notified plan or plan change must include:</p> <p>(a) the location of the SNA and a description of its <u>values and</u> attributes; and</p> <p>(b) a map of the area; and</p> <p>(c) specify whether the SNA is a geothermal SNA; <u>and</u></p> <p><u>(d) identify any existing activities within or adjoining the SNA (including any specific infrastructure).</u></p>
3.11 Exceptions to clause 3.10	<p>Powerco supports the majority of Clause 3.11 including in particular the inclusion of “operational need”.</p> <p>However, for the reasons set out in greater detail in the body of its submission, Powerco seeks three amendments to Clause 3.11(2):</p> <p>The addition of the elements of the EMH to 3.11(2) with without reference to the EMH itself through clauses 3.10(3) and (4);</p>	<p>“3.11 Exceptions to clause 3.10</p> <p>(1) ...</p> <p>(2) Clause 3.10(2) does not apply, and all adverse effects on an SNA must be managed <u>instead by avoiding, remedying or mitigating for such effects, or applying biodiversity offsetting or biodiversity compensation</u> instead in accordance with clause 3.10(3) and (4):</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
	<p>The deletion of "significant national or regional public benefit" in 3.11(2)(a)(i) to avoid additional tests that add unnecessary complexity; and</p> <p>The deletion of 3.11(2)(c), because there is no need to consider "practicable alternative locations for the new use, or development" when consideration of alternative locations are inherent in the need to consider functional or operational need in clause 3.11(2)(b).</p> <p>The deletions remove uncertainty regarding overlapping unnecessary additional tests for specific infrastructure.</p>	<p>(a) if a new use or development is required for the purposes of any of the following;</p> <p>(i) specific infrastructure that provides significant national or regional public benefit; or</p> <p>(ii) mineral extraction that provides significant national public benefit that could not otherwise be achieved domestically; or</p> <p>(iii) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved domestically, <u>and aggregate extraction that supports the operation, maintenance, upgrade and construction of specific infrastructure;</u> and</p> <p>(b) there is a functional or operational need for the new use or development to be in that particular location; and</p> <p>(c) there are no practicable alternative locations for the new use, or development."</p>
3.15 Existing activities affecting SNAs	Powerco opposes Clause 3.15 and suggests it is deleted in its entirety and replaced with new Clause 3.15A, as set out below.	Delete Clause 3.15 in its entirety.

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
New Clause 3.15A	Powerco considers a new clause must be inserted to provide for existing specific infrastructure, for the reasons outlined above in the main body of this submission.	<p><u>3.15A Established specific infrastructure within SNAs and other areas of indigenous biodiversity</u></p> <p><u>(1) Existing specific infrastructure at the commencement date and specific infrastructure lawfully established after the commencement date, may continue to be operated, maintained, and subject to minor upgrades including where there are adverse effects on SNAs and other areas of indigenous biodiversity.</u></p>
3.16 Maintaining indigenous biodiversity outside SNAs	<p>Powerco considers that what amounts to "irreversible" effects lacks of clarity because it depends on the applicable timescales. However Powerco considers there is merit in Clause 3.16's application of two different levels of management controls for non-SNA indigenous biodiversity.</p> <p>Powerco instead suggests using the existing well understood categories of "significant" and "more than minor" effects to distinguish between the management controls under 3.16(a) and (b). This split in the management approaches applicable to non-SNA indigenous biodiversity would build upon effects assessment terminology that is already used in the RMA and therefore familiar to Councils and operators.</p> <p>Powerco suggests that Clause 3.16(2)(a) should not apply to specific infrastructure, in recognition of the different</p>	<p>"Clause 3.16</p> <p>(1) This clause applies to all areas outside SNAs, other than Māori lands (because clause 3.18 applies instead).</p> <p>(2) Local authorities must take steps to maintain <u>the overall attributes and values of indigenous biodiversity at the ecological district or landscape scale</u> in areas to which this clause applies, including by making or changing their policy statements and plans to:</p> <p>(a) apply the effects management hierarchy to any <u>significant</u> adverse effects on indigenous biodiversity of a new subdivision, use, or development <u>(excluding effects from specific infrastructure) that may be irreversible</u>; and:</p> <p>(b) providing <u>other</u> appropriate controls to manage other <u>more than minor</u> adverse effects on</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
	management approach to indigenous biodiversity provided through Clause 3.11 for specific infrastructure.	indigenous biodiversity of a new subdivision, use and development.”
3.20 Specified highly mobile fauna	<p>Powerco opposes Clause 3.20 and suggests the changes noted in the third column.</p> <p>Powerco suggests that the terms “viable” and “natural range” are unclear.</p> <p>Powerco also suggests that any relevant areas should only be mapped and determined through a plan change process as is required for SNAs, with criteria for that mapping exercise, in order to provide certainty for operators of specific infrastructure.</p> <p>Powerco considers, that for the reasons already outlined above, the reference to “maintain” sets an unreasonably high threshold and should be deleted.</p>	<p>3.20 Specified highly mobile fauna</p> <p>(1) <u>If it necessary to manage specified highly mobile fauna, Every regional council territorial authorities may must map and describe record</u> areas outside SNAs that are highly mobile fauna areas, by working together with tangata whenua (in the manner required by clause 3.3), territorial authorities in its region, <u>the relevant regional council</u> and the Department of Conservation, <u>to notify any plan or plan change to include such areas.</u></p> <p>(2) If it will help manage specified highly mobile fauna, regional councils must include in their regional policy statements (where possible) a map and description of each highly mobile fauna area in its region.</p> <p>(23) Local authorities may must include objectives, policies, or methods in their policy statements and plans for managing the adverse effects of new subdivision, use, and development on highly mobile fauna areas <u>included in plans pursuant to (1), which seek to manage in order to maintain viable</u> populations of specified highly mobile fauna areas across their natural range.</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
		<p>(4) Local authorities must provide information to their communities about:</p> <p>(a) specified highly mobile fauna and their habitats; and</p> <p>(b) best practice techniques for managing adverse effects on any specified highly mobile fauna and their habitats in their regions and districts.</p>
Appendix 1 – criteria for identifying areas that qualify as significant natural areas	Powerco opposes the manner and form of assessment under Appendix 1(3)(1) on the basis that each assessment should include reference to any existing infrastructure and its operational effects as part of the existing environment of the area.	<p>3 Manner and form of assessment</p> <p>(1) Every assessment must include at least:</p> <p>(a) a map of the area; and</p> <p>(b) a description of its significant attributes, including for each criterion a description of the attribute (as specified below) that applies; and</p> <p>(c) a description of the indigenous vegetation, indigenous fauna, habitat, and ecosystems present; and</p> <p>(d) additional information such as the key threats, pressures, and management requirements; <u>and</u></p> <p><u>(e) a description of all existing infrastructure in the area and its ongoing operational effects.</u></p>
Appendix 3 : Principles for biodiversity offsetting	Powerco opposes the introductory text of Appendix 3 on the basis that the principles should be factors for consideration, not factors which must be complied with.	"The following sets out a framework of principles for the use of biodiversity offsets. These principles represent a standard for biodiversity offsetting and

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
	<p>Powerco opposes the offsetting principles in Appendix 3 on the basis that an offset is limited to actions that achieve ‘net gain outcome’. Powerco considers that there is merit in encouraging biodiversity offsetting even when it can only partially offset residual adverse effects, with the remainder being subject to ecological compensation. An all or nothing approach to offsetting that requires a net gain will only serve to exclude beneficial partial “biodiversity offsets” when applying the EMH.</p> <p>Powerco also opposes the principles provision of “examples” of where offsetting is inappropriate. Such circumstances should be determined on a case by case basis in light of the circumstances of any particular proposal and not predetermined without context.</p>	<p>must be <u>considered</u> complied with for an action to qualify as a biodiversity offset.</p> <p>...</p> <p>2. When biodiversity offsetting is not appropriate: Biodiversity offsets are not appropriate in situations where biodiversity values cannot be <u>wholly or partially</u> offset to achieve a <u>positive</u> net gain outcome, and if biodiversity values are adversely affected, they will be permanently lost. This principle reflects a standard of acceptability for demonstrating, and then achieving, a <u>positive outcomes</u> net gain in biodiversity values. Examples of where an offset would be inappropriate include where: (a) residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected; (b) effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse; (c) there are no technically feasible options by which to secure gains within acceptable timeframe.</p> <p>3. Net gain: The biodiversity values to be lost through the activity to which the offset applies are <u>wholly or partially</u> counterbalanced and exceeded by the proposed offsetting activity, so that the</p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco’s suggested amendments (showing deletions and additions)
		<p>result is a <u>positive outcome</u> net gain when compared to that lost. <u>Positive outcome</u> Net gain is demonstrated by a like-for-like quantitative loss/gain calculations of the following, and is achieved when the ecological values at the offset site <u>achieve positive outcome against</u> exceed those being lost at the impact site across indigenous biodiversity:</p> <p>(a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence; and</p> <p>(b) amount; and</p> <p>(c) condition.</p>
Appendix 4 : Principles for biodiversity compensation	<p>Powerco opposes the introductory text of Appendix 4 on the basis that the principles should be factors for consideration, not factors which must be complied with.</p> <p>Powerco opposes the principles provision of “examples” of where compensation is inappropriate. Such circumstances should be determined on a case by case basis in light of the circumstances of any particular proposal and not predetermined without context.</p>	<p>“The following sets out a framework of principles for the use of biodiversity compensation. These principles represent a standard for biodiversity compensation and must be <u>considered</u> complied with for an action to qualify as biodiversity compensation.</p> <p>...</p> <p>2. When biodiversity compensation is not appropriate: Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for, for <u>example because:</u></p>

Exposure Draft provision	Powerco position and reason for amendment (as applicable)	Powerco's suggested amendments (showing deletions and additions)
		<p>(a) the indigenous biodiversity affected is irreplaceable or vulnerable; or</p> <p>(b) effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse; or</p> <p>(c) there are no technically feasible options by which to secure proposed gains within acceptable timeframes."</p>