

Before an Independent Hearings Panel
appointed by the Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Waimakariri District Plan, Variation 1 and
Variation 2

and: Hearing Stream 5: Noise, Notable Trees, Historic
Heritage, Signs, Light, Energy and Infrastructure,
Transport, Earthworks

and: **MainPower New Zealand Limited**
Submitter 249

Legal submissions on behalf of MainPower New Zealand Limited

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LEGAL SUBMISSIONS ON BEHALF OF MAINPOWER NEW ZEALAND LIMITED

INTRODUCTION

- 1 These legal submissions are presented on behalf of MainPower New Zealand Limited (*MainPower*).
- 2 MainPower is a submitter (#249) and further submitter (#58) on the proposed Waimakariri District Plan (*Proposed Plan*).
- 3 These legal submissions provide an overview of MainPower’s key submission points and requested relief with regards to Hearing Stream 5 of the Proposed Plan.
- 4 Evidence has also been filed for MainPower from the following witnesses:
 - 4.1 **Mr Mark Appleman** – MainPower operations; and
 - 4.2 **Ms Melanie Foote** – planning.
- 5 MainPower also relies on its legal submissions and evidence filed for Hearing Streams 1, 3 and 4. Those documents provide the background information and outline MainPower’s general interest in the Proposed Plan, which is therefore not repeated.

MAINPOWER’S INTERESTS IN HEARING STREAM 5

- 6 MainPower lodged a number of submissions relating to chapters of the Proposed Plan that are being considered in this Hearing Stream 5. At a high level, the relief sought by MainPower seeks adequate protection and enablement of electricity distribution infrastructure in order to ensure the safe, reliable and efficient delivery of electricity services to the North Canterbury community now and into the future.
- 7 Ms Foote’s evidence¹ explains the amendments that MainPower seeks on each chapter in further detail. Mr Appleman’s evidence² explains why an appropriate planning framework, such as that proposed by MainPower, is needed from an operational perspective.
- 8 Below we address MainPower’s overarching submission points in relation to the mechanics of the Proposed Plan, before discussing

¹ Statement of Evidence of Melanie Foote on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023.

² Statement of Evidence of Mark Appleman on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023.

the amendments proposed by MainPower for the Hearing Stream 5 chapters in greater detail.

HIGHER ORDER PLANNING FRAMEWORK

- 9 Ms Foote discusses the relevant higher order planning documents in her Hearing Stream 1 evidence.³ These submissions highlight particular policies of relevance.

National Policy Statement on Urban Development

- 10 The National Policy Statement on Urban Development (*NPS UD*) directs that local authority decisions on urban development are integrated with infrastructure planning decisions,⁴ and that planning decisions contribute to well-functioning urban environments.⁵

- 11 It is submitted that a well-functioning urban environment is one in which:

- 11.1 infrastructure – particularly infrastructure such as the electricity distribution network which provides fundamentally important support to communities – is not adversely affected by incompatible activities;
- 11.2 urban growth is planned with infrastructure provision in mind, recognising that the two run hand-in-hand; and
- 11.3 infrastructure provision is enabled in order to support urban growth.

Canterbury Regional Policy Statement

- 12 As the Panel know, the Proposed Plan must be prepared in accordance with the higher order direction in the Canterbury Regional Policy Statement (*CRPS*). The electricity distribution network meets the *CRPS* definitions of “critical infrastructure”, “regionally significant infrastructure” and “strategic infrastructure” and this status must be reflected in the Proposed Plan provisions.

- 13 The efficient use and development of the electricity distribution network is provided for in both Chapter 5 (Land use and Infrastructure) and Chapter 6 (Recovery and Rebuilding of Greater Christchurch) of the *CRPS*.

- 13.1 Objective 5.2.1(f) (Entire Region) requires that “*development is located so that it functions in a way that...is compatible*”

³ Statement of Evidence of Melanie Foote on Hearing Stream 1: Part 1 General Matters, Definitions, Strategic Directions and Urban Form and Development, dated 1 May 2023, from paragraph 15.

⁴ Objective 6.

⁵ Policy 1.

with, and will result in continued safe, efficient and effective use of regionally significant infrastructure". The explanation notes that regionally significant infrastructure provides considerable economic and social benefits to the region.

- 13.2 The CRPS directs territorial authorities to avoid reverse sensitivity effects and incompatible land uses in proximity to regionally significant infrastructure through Objective 5.2.2 (Wider Region), Policy 5.3.2 (Wider Region), Policy 5.3.9 (Wider Region), and Objective 6.2.1 (Greater Christchurch).
- 13.3 Policy 6.3.5 (Greater Christchurch) recognises the benefits of strategic infrastructure to community well-being, while providing protection and providing for their functional needs.
- 14 What is clear from the CRPS framework is that the Proposed Plan must provide for and recognise the electricity distribution network, ensure integration of development with infrastructure and avoid reverse sensitivity effects.

PLAN MECHANICS

- 15 MainPower considers that amendments are required to the Hearing Stream 5 chapters in order to properly recognise the significant role of important infrastructure, such as the electricity distribution network, in the Waimakariri District. It also seeks that the relevant rules are located in the part of the Proposed Plan that will be most visible and understandable for plan users.

Primacy of Strategic Directions

- 16 The role of Strategic Directions in district plans is a matter which was addressed in legal submissions for Hearing Stream 1⁶ and was subsequently discussed with the Panel at the hearing. Ms Foote⁷ explains the relevance of this issue to Hearing Stream 5 and provides planning support for MainPower's position that Strategic Directions ought to have primacy over objectives and policies within other chapters of the Proposed Plan.
- 17 The National Planning Standards require a 'strategic directions' heading to be included in district plans, with chapters underneath

⁶ Legal submissions on behalf of Christchurch International Airport Limited for Hearing Stream 1: Part 1 General Matters, Definitions, Strategic Directions and Urban Form and Development, dated 5 May 2023.

⁷ Statement of Evidence of Melanie Foote on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023, paragraphs 61-63.

that heading relating to key strategic or significant resource management matters.⁸

- 18 We note the Independent Hearings Panel’s decision in relation to the Christchurch Replacement District Plan. The Panel held that strategic directions have primacy, providing ‘overarching direction’ for other chapters in the plan. Furthermore, that strategic directions should be designed to identify and give overarching direction on district-wide sustainable management priorities. This reasoning, on the function of strategic directions, provides valuable guidance in the development of the Proposed Plan.
- 19 In instances where decision makers must reconcile conflicting objectives and policies within or between chapters of the Proposed Plan, the Strategic Directions can usefully direct what the most important matters for the Waimakariri District are. It is submitted that Strategic Directions, therefore, provide the greatest utility where they set the overarching framework (i.e. have primacy) in district plans. On our reading of the higher order planning framework and the National Planning Standards, this is an approach that is open to and should be preferred by the Panel on the Proposed Plan.
- 20 If the Panel accept this approach then, as Council’s reporting officer acknowledges, there will need to be a strategic direction for historic heritage and cultural matters.⁹ There may also be other matters than would need to be elevated to the Strategic Directions chapter where they are of significant importance to the Waimakariri District.

Location of rules protecting Major Electricity Distribution Lines (MEDLs)

- 21 Ms Foote explains¹⁰ that corridor protection rules relating to activities, buildings and structure are sensibly located in the relevant zone chapters. This ensures they are accessible and recognisable to plan users, reducing the likelihood that these important provisions are overlooked.
- 22 Council’s Section 42A reporting officer considers it is more appropriate for corridor protection rules to remain in the Energy and Infrastructure chapter, with cross references in the relevant zone

⁸ National Planning Standards 2019, District Plan Structure Standard (Standard 4) and District-wide Matters Standard (Standard 7), directions 1 to 4; see also Ministry for the Environment “Guidance for District Plans Structure and Chapter Standards” April 2019, available at <http://www.mfe.govt.nz/sites/default/files/media/RMA/guidance-for-district-plans-structure-andchapters-standards.pdf>

⁹ See statement of Evidence of Melanie Foote on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023 at paragraph 61.

¹⁰ Ibid, at paragraph 11.

chapters as well as a generic cross reference in the 'introduction section' of each of them. He considers this will draw plan users' attention to the need for activities in the zones to also comply with the relevant Energy and Infrastructure rules.

- 23 However, it is submitted that corridor protection rules, which may squarely impact development proposals, provide greater clarity to plan users when placed alongside other specific zone chapter provisions. This enables the reader to view and apply all potentially relevant rules to a given property, and reduces the risk of them overlooking or diluting the corridor protection rules which are necessary to ensure the safe and efficient operation of the electricity distribution network.

National Planning Standards

- 24 The approach to plan structure suggested by MainPower is one that is open to the Panel. The National Planning Standards state that "*provisions relating to energy, infrastructure and transport that are not specific to the special purpose zones chapter or sections must be located... under the Energy, infrastructure and transport heading.*"¹¹ The Standard goes on to state that this "*may*" include provisions relating to the management of reverse sensitivity effects between infrastructure and other activities.¹²
- 25 Furthermore, the National Planning Standards direct that zone chapters must include cross-references to relevant provisions under the 'Energy, infrastructure and transport' heading.¹³ Similarly, the 'Subdivision' and 'Earthworks' and 'Noise' chapters must also include cross references to any relevant provisions under the 'Energy, infrastructure and transport' heading.¹⁴
- 26 Provisions in the Proposed Plan that relate to corridor protection for MainPower's MEDLs do not sit neatly within the National Planning Standards framework; while they relate to infrastructure, in practice they restrict land use activities and subdivision within each specific zone.
- 27 Ministry for the Environment guidance for District Plans Structure and Chapter Standards as contained in the National Planning Standards states that:¹⁵ "*Sometimes a plan's provisions will not fall neatly into one of the chapters, and you will need to decide the most appropriate location. To help with that, we suggest you*

¹¹ National Planning Standards 2019, District-wide Matters Standard (Standard 7), direction 5.

¹² Ibid, direction 6.

¹³ Ibid, direction 7.

¹⁴ Ibid, directions 25, 30 and 35.

¹⁵ Ministry for the Environment "*National Planning Standards: Guidance for District Plans Structure and Chapter Standards*" April 2019.

consider the following approach". The guidance material goes on to suggest consideration of a number of factors, including the overall purpose of the provision and the effects to be managed.

- 28 The purpose of MEDL protection provisions has been stated previously; to ensure the safe and efficient operation of the electricity distribution network. Mr Appleman's evidence to date outlines the effects that need to be managed in an operational sense for example in relation to nearby structures, ground disturbance and vegetation.
- 29 To summarise MainPower's position, the detailed rules associated with avoiding land use activities within setback distances from MEDLs should be tailored and located in each of the zone chapters where they are clearly visible to landowners who may check the plan to determine the rules affecting their property. It is submitted that, consistent with the National Planning Standards, provisions relating to the management of reverse sensitivity effects on MainPower's MEDLs *may* be included in the 'energy, transport and infrastructure' section but they may alternatively be located elsewhere in the Proposed Plan, for example in the relevant zone rules as suggested.

Cross references

- 30 If the Panel is minded to recommend that provisions relating to MEDLs be placed in one location in the Proposed Plan, substantive cross referencing in the zone chapters is crucial. This would be assisted by accompanying text to explain that rules in the district wide matters chapters also apply to certain activities. The Proposed Plan as notified does not contain sufficiently clear and robust cross-referencing.
- 31 Cross-references within zone chapters to any applicable district wide chapter provisions will be essential to ensure that rules relating to the protection and provision for the electricity distribution network can be easily identified and applied by landowners. As discussed by Ms Foote¹⁶, plan users are likely to check the applicable zone rules for their property in the first instance.
- 32 We acknowledge that Council's S42A reporting officer recommends a new rule in the Energy and Infrastructure chapter to provide clarity on its relationship with other district wide provisions. MainPower supports this clarity, but that does not resolve its concerns about rules which must be considered and applied to land

¹⁶ See Statement of Evidence of Melanie Foote on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023 at paragraph 13.

use activities undertaken in accordance with specific zone chapter rules.

ORION RELIEF ON HEARING STREAM 5 MATTERS

Provisions to enable operation and development of the Electricity Distribution Network

- 33 Mr Appleman's evidence to date explains key pieces of equipment used and installed by MainPower, as well as typical maintenance, upgrade, repair and replacement works undertaken on the network in order to ensure the safe and efficient delivery of electricity to consumers.
- 34 MainPower considers that amendments to the Proposed Plan are necessary to sufficiently provide for the operation of its network and to properly give effect to the higher order policy framework. A reliable supply of electricity is critical for the Waimakariri and North Canterbury communities:
- 34.1 The day-to-day operations of MainPower staff and contractors must be enabled in the Proposed Plan. It is important that MainPower can quickly and safely respond to outages, and maintain and upgrade the lines.
- 34.2 As the Waimakariri District continues to grow and as the demand for low-carbon solutions increase, it is vital that MainPower is able to upgrade and develop its network to support that growth and meet demand.
- 35 The Energy and Infrastructure chapter is key as it provides for a variety of infrastructure activities, including those which relate to works that MainPower typically undertakes. In a general sense, MainPower supports the Proposed Plan in so far as it enables works to the electricity distribution network. We observe that there are few matters of contention between Council's reporting officer and Ms Foote for MainPower.
- 36 We emphasise the following points for the Panel:
- 36.1 As outlined at Hearing Stream 1, the location, operation and upgrade of MainPower's network is determined by the location of the existing network, customer need and technical constraints. MainPower seeks that the Proposed Plan provide for the operation, maintenance, repair and upgrade of existing infrastructure (including in areas with natural values) to ensure it can continue to provide a safe, secure and reliable electricity supply to its wide-reaching customer base. Ms Foote's evidence for Hearing Streams 3 and 4¹⁷ explains

¹⁷ Statement of Evidence of Melanie Foote for Hearing Stream 3: Natural Hazards, dated 10 July 2023 and Statement of Evidence of Melanie Foote for Hearing

how functional, operational and locational requirements ought to be provided for in the Proposed Plan.

- 36.2 In relation to the replacement of a pole or tower under EI-R12, Mr Appleman explains that it is not always possible, or practicable, to replace poles or towers 'like for like' when it comes to height.¹⁸ MainPower's submission sought that the rule allow a 40% height increase based on operational and technical experience. Council's reporting officer considers this excessive and recommends allowance for a 15% height increase, though he does not appear to provide evidential support for this figure. Mr Appleman has provided a recent example¹⁹ where a 37.5% height increase was required to support additional voltage regulation activity and after consultation with the surrounding properties. The new pole was commensurate to the existing line in that area. This demonstrates the appropriateness of the 40% increase sought in MainPower's submission. It is submitted that the Proposed Plan ought to contemplate modern design standards, network requirements and safety requirements in rules that provide for important infrastructure into the future.
- 36.3 MainPower is concerned to ensure that cabinets and kiosks, specifically, are provided for. We observe that Council's s42A reporting office agrees that, for technical reasons, a separate rule for new electricity cabinets and kiosks is appropriate. MainPower supports the new rule, as it envisages a growing need to replace and install Kiosk Substations throughout the life of the Proposed Plan.
- 36.4 MainPower's preference is that the Proposed Plan utilise the term "important infrastructure" to accommodate infrastructure which is critical, regionally significant and strategic. It is submitted that this will protect against inconsistent application of each of terms that make up "important infrastructure". It is vital that the Proposed Plan is as clear and certain as possible for plan users and decision makers.

Corridor protection provisions for MEDLs

- 37 The Proposed Plan must contain provisions that adequately protect MainPower's MEDLs. Mr Appleman has explained that incompatible development presents a risk to human health and safety and

Stream 4: Natural Features and Landscapes, Coastal Environment and Natural Character of Freshwater Bodies, dated 30 June 2023.

¹⁸ Statement of Evidence of Mark Appleman on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023, from paragraph 21.

¹⁹ Ibid, paragraph 23.

compromises the safe and efficient function of the electricity distribution network. For example, this can impact the physical infrastructure itself (e.g. excavation can destabilise support structures) or hinder MainPower's ability to safely access lines and conduct works.

- 38 In relation to the proposed Earthworks chapter, this requires protective rules to safeguard against disruptive and unsafe works in close proximity to MEDLs and other network infrastructure. We observe that Council's s42A reporting officer has not fully considered new rules proposed by MainPower.²⁰ It is submitted that these are necessary to ensure that earthworks are compatible with nearby electricity distribution infrastructure.

CONCLUSION

- 39 MainPower's day-to-day activities to maintain, repair and upgrade its infrastructure assets must be sufficiently recognised and protected in the Proposed Plan. The ability for MainPower to expand the electricity distribution network to service community growth, and to deliver what consumers want in terms of low-carbon solutions, throughout the life of the Proposed Plan must also be borne in mind. It is submitted that the drafting proposed by MainPower in relation to Hearing Stream 5 matters is the most appropriate approach in achieving protection of existing, and potential future major electricity distribution infrastructure.
- 40 MainPower seeks that the Panel accepts the relief sought in its submission and further submissions and as amended in the evidence of **Ms Foote**.

Dated 14 August 2023



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²⁰ As contained in statement of Evidence of Melanie Foote on Hearing Stream 5: Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport and Earthworks, dated 7 August 2023 at paragraphs 66 to 69.