

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
AT RANGIORA / WAIMAKARIRI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE  
KI RANGIORA / WAIMAKARIRI**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing of submissions and further  
submissions on the **Proposed Waimakariri  
District Plan**

**HEARING TOPIC:** **Stream 5**

---

**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA – HOMES AND  
COMMUNITIES**

**15 AUGUST 2023**

---

---

**Instructing solicitor:**  
C E Kirman  
Special Counsel  
Kāinga Ora - Homes and Communities  
PO Box 14594  
Central Auckland 1051  
E: [claire.kirman@kaingaora.govt.nz](mailto:claire.kirman@kaingaora.govt.nz)

**Counsel instructed:**  
B J Matheson  
Richmond Chambers  
PO Box 1008  
Shortland Street  
Auckland 1140  
E: [matheson@richmondchambers.co.nz](mailto:matheson@richmondchambers.co.nz)

## 1. INTRODUCTION AND SUMMARY

- 1.1 These submissions are filed by Kāinga Ora – Homes and Communities (“**Kāinga Ora**”) in support of the relief sought in its submissions and further submissions on the Proposed Waimakariri District Plan (“**PDP**”) and on Variation 1 (“**Variation 1**”) to the PDP.
- 1.2 These submissions relate to Hearing Stream 5, and in particular the following non-noise related aspects of the Kāinga Ora submission points:
- (a) Energy and Infrastructure;
  - (b) Earthworks; and
  - (c) Transport.
- 1.3 These submissions address legal aspects of the matters addressed in the evidence filed by Ms Dale and Ms Williams, and should be considered in conjunction with that evidence.

## 2. ENERGY AND INFRASTRUCTURE

### Approach to local distribution lines

- 2.1 We agree with Ms Dale’s opinion that while the National Policy Statement on Electricity Transmission (“**NPSET**”) provides mandatory direction for addressing effects on the National Grid, there is no policy support for the proposition that local distribution lines should be treated equally.
- 2.2 In our submission, the NPSET does not apply to local transmission lines which do not form part of the National Grid. While the PDP must give effect to the NPSET (RMA, s 75(3)), there are no provisions in the NPSET which apply to electricity transmission lines which are not part of the National Grid. The specific regime applying to the National Grid is justified (in s 32 terms) by the national significance of the Grid, the benefits it provides, and the costs that might be imposed if effects on the National Grid are not appropriately managed.

- 2.3 The same does not apply for local distribution lines. While major distribution lines are included within the definition of “regionally significant infrastructure” in the Canterbury RPS, and effects on that infrastructure are required to be managed under relevant RPS objectives and policies, significant room for choice is provided as to how that is to occur. The higher order planning instruments are not nearly as directive in that regard. A different regime is therefore warranted, and we agree with Ms Dale’s suggestion to remove reference to non-National Grid distribution lines from those provisions.
- 2.4 We also agree with Ms Dale’s opinion that there is potential for duplication and/or confusion in relation to the application of setback rules and consent triggers for earthworks, when viewed alongside the equivalent provisions of the New Zealand Electrical Code of Practice for Safe Electrical Distance (“**NZEC 34:2001**”). NZ EC:2001 has the status of regulations made pursuant to the Electricity Act 1992. Under NZEC 34:2001, consent is required from electricity distributors to undertake works within setback requirements from distribution lines. No cost-benefit analysis was undertaken to support the duplication and, in some cases, extension of setback requirements under NZEC 34:2001.
- 2.5 In Ms Dale’s opinion, other reasonably practicable options (including information layers and mapping) exist to manage the adverse effects of potentially incompatible activities on local distribution lines, which do not create additional consenting triggers or administrative burden (with the associated costs). In Ms Dale’s opinion, imposition of non-complying activity status is also inappropriate, in circumstances where consent can be obtained from MainPower as the relevant authority, and especially where the requirements extend beyond those in NZEC 34:2001.

### **Compatibility and constraints on infrastructure**

- 2.6 Ms Dale also addresses suggested amendments to EI-O3 in her evidence, in relation to the reference to “constraints” on infrastructure, and the specific reference in the objective as-notified to reverse sensitivity.

2.7 From a legal perspective, there may be circumstances where constraints on the upgrading and development of regionally significant infrastructure are justified because of other competing matters of national importance. In reconciling those competing objectives, there is a weighing / balancing of interests which needs to take place. The addition of a requirement that development and other activities must not “unreasonably” constrain regionally significant infrastructure provides clear direction in that regard, and we support its inclusion.

2.8 We also agree with Ms Dale that the specific mention in the objective as-notified to reverse sensitivity is unnecessary and potentially unhelpful. Reverse sensitivity refers to the potential for constraints to be imposed on existing infrastructure as a result of new sensitive activities locating nearby. Reverse sensitivity effects are just one of a number of land use compatibility issues which may arise where development is proposed near existing infrastructure (eg electrical safety). There does not appear to be any policy rationale for singling out these effects for special mention, and we agree with Ms Dale that the reference in EI-O3 to reverse sensitivity should be deleted.

### 3. EARTHWORKS AND TRANSPORT

3.1 The evidence of Ms Dale and Ms Williams in relation to earthworks and transport matters is aimed at removing unnecessary standards for development, which would result in the need for additional resource consents, or rules and standards that are unduly onerous when compared to the effects they are intended to manage.

3.2 The enabling focus of the National Policy Statement on Urban Development 2020 (“**NPSUD**”), as well as the (generally) enabling aspects of the sustainable management purpose of the RMA, requires the Council to carefully consider potential constraints on urban development and subject them to close scrutiny. If the earthworks and transport provisions of the PDP are to give effect to the NPSUD and achieve the higher-level Strategic Directions, unnecessary or unduly onerous constraints need to be avoided.

- 3.3 The amendments promoted by Ms Dale and Ms Williams to those provisions are a more efficient and effective means of achieving those objectives.

**Dated** 15 August 2023

A handwritten signature in blue ink, appearing to read 'Aidan Cameron', is written over a faint, circular official stamp.

**Bal Matheson | Aidan Cameron**  
Counsel for Kāinga Ora