

WAIMAKARIRI DISTRICT COUNCIL

MEMO

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DATE: 12 July 2023

MEMO TO: Hearing Commissioners

FROM: Andrew Maclennan, s42A reporting officer on EI Chapter

SUBJECT: Integration between EI Chapters and the rest of the Proposed Plan

Introduction

1. The purpose of this memo is to respond to the specific questions posed by the Hearings Panel with respect to the topics to be heard in Hearing Stream 4. The Commissioners asked the following questions:

OVERARCHING

While appreciating that we have yet to hear submissions directly on the EI – Energy and Infrastructure Chapter, please provide at a high level a statement setting out how the objectives, policies, rules and standards in the CE – Coastal Environment, ASM – Activities on the surface of Water, NATC - Natural Character of Freshwater Bodies and NFL - Natural Features and Landscapes are intended to operate with the objectives, policies, rules and standards in the EI – Energy and Infrastructure Chapter. As examples, the Panel would like officers to consider:

- *The recommendation in the NFL s42A report that rules and standards would apply to energy and infrastructure activities*
 - *The recommendation in the CE Coastal Environment s42A report that rules within the CE Chapter do not apply to energy and infrastructure activities*
 - *The reply report in respect to SASM – Sites and Areas of Significance to Māori to remove the reference to customer connections from SASM-R4 and to reply on EI-R4 instead*
 - *The relationship between CE-P7, NATC-P6, and other policies relating to activities in overlay areas, and EI-P5, and in particular clauses 3 and 4.*
2. This memo:
 - a. Outlines how the notified version of the Proposed Plan manages the integration between the EI chapter and the other relevant chapter of the Proposed Plan;
 - b. Sets out the submitters concerns with respect to the notified version of the Proposed Plan;
 - c. Outlines the officers recommended amendments; and
 - d. Responds to the Hearing Commissioners questions.

Proposed Plan as notified

3. The introduction section to EI - Pūngao me te hanganga hapori - Energy and Infrastructure (EI Chapter) outlines the relationship between the EI chapter and the other relevant chapters of the Proposed Plan.

Transport and 'other infrastructure' chapters

4. The second paragraph within the introduction highlights that some types of infrastructure are addressed in other parts of the District Plan, such as transport in the TRAN chapter and Rangiora Hospital in the Special Purpose Zone (Hospital) ('SPZ(HOS)').
5. The TRAN and EI chapters work in conjunction with and are complementary to each other. The TRAN provisions provide for all the aspects associated with transport (such as formation of a new road and parking) and rail (such as installation of a new stock underpass).
6. The EI chapter provides for other energy and infrastructure that is not related to the road and rail network, such as: electricity transmission, electricity distribution, communications facilities, fuel and energy, renewable energy, three waters, and irrigation/stockwater networks.
7. For other infrastructure such as SPZ(HOS), the 'Introduction' and 'Rules' sections of these chapters note that the district wide chapter provisions will also apply where relevant. This means that for energy and infrastructure within the SPZ(HOS), the provisions of the EI chapter would apply in addition to those specifically provided for in the SPZ(HOS).

Other relevant District Plan provisions

8. Under the heading '**Other potentially relevant District Plan provisions**' of the EI chapter, there are a list of other District Plan chapters which contain provisions that may also be relevant to EI activities, as follows:

As well as the provisions in this chapter, other District Plan chapters that contain provisions that may also be relevant to Energy and Infrastructure include:

- *Transport: the Transport rules apply to all activities and activities are subject to compliance with all relevant Transport rules. The application of the transport provisions is discussed further in the Transport rules.*
- *Natural Hazards: this chapter contains provisions that may be relevant to managing the risk to energy and infrastructure from natural hazards.*
- *Historic Heritage: this chapter contains provisions relevant to protecting places with heritage values, such as historic heritage buildings or other structures or their heritage settings.*
- *Notable Trees: this chapter contains provisions relevant to matters such as protecting the root protection area or the trimming or removal of notable trees.*
- *Sites and Areas of Significance to Māori: this chapter contains provisions relevant to protecting SASM from adverse effects.*
- *Ecosystems and Indigenous Biodiversity: this chapter contains provisions that control SNAs and the clearance of areas of indigenous vegetation across the District.*
- *Natural Character of Freshwater Bodies: this chapter contains provisions regarding activities within natural character of scheduled freshwater bodies setbacks.*
- *Natural Features and Landscapes: this chapter contains provisions for activities within ONL, ONF, and SAL.*
- *Subdivision: this chapter contains provisions that may be relevant to subdivision for energy and infrastructure.*
- *Earthworks: this chapter contains provisions that may be relevant to earthworks for energy and infrastructure such as volume, depth and location.*
- *Any other District wide matter that may affect or relate to the site.*
- *Zones: the zone chapters contain provisions about what activities are anticipated to occur in the zones.*

Submitters concerns with Proposed Plan

9. One key 'theme' to emerge from submissions is that submitters considered the EI chapter introduction unclear on the relationship between the EI chapter, other District-wide provisions, and the zones, and which other parts of the plan apply to EI and which do not. Some infrastructure providers would prefer the EI chapter to be a 'one stop shop' and self-contained as described by Mandatory Directions 5 – 8 in Section 7 of the National Planning Standards.
10. Chorus, Spark and Vodafone [62.6] state that relationship between the EI Chapter, other District wide chapters and the zone chapters is unclear. In addition, they note that for plan workability and greater certainty it would be desirable to hyperlink all relevant district wide rules from the infrastructure rules/standards, to avoid having to reconcile potentially conflicting standards.
11. Similarly, Transpower [195.23] states that introductory statement provides no clarity in terms of whether rules in other chapters apply to infrastructure, or whether the rules in the EI Chapter are generally intended to provide a standalone suite of provisions. They note that as currently drafted, this directive text has the effect of applying all rules to infrastructure activities even when the activity is provided for in the EI Chapter. They seek that the Proposed Plan is amended to clarify where the energy and infrastructure provisions prevail and where other chapters are relevant.
12. Finally, Mainpower [249.1, 249.47, 249.48] seek that that all relevant provisions applicable to energy and infrastructure be consolidated and located as far as possible in a single part of the plan, and that hyperlinks are placed into the EI Chapter to ensure plan users are able to easily navigate to other parts of the plan. They also seek that all relevant provisions applicable to the activities of network utility operators be appropriately hyperlinked from the EI Chapter back to the other parts of the plan. They have also proposed some suggested amendments to the introduction to demonstrate how these links could be better expressed.

Officers recommended amendments

13. I agree with the submitters that greater clarity is required within the Proposed Plan to determine which provisions of the Proposed Plan apply to energy and infrastructure activities and which do not. As drafted within the notified version of the Proposed Plan, the introduction to the EI chapter states that, as well as the provision in EI chapter, other District Plan chapters that contain provisions that may also be relevant to Energy and Infrastructure. Several other chapters within the Proposed Plan are then listed.
14. In addition to the text listing other chapter of the Proposed Plan being potentially relevant, the provisions of the EI chapter also contain rules managing EI in the following types of 'sensitive environments':
 - Outstanding natural features and landscapes and significant amenity landscapes (ONF, ONL and SAL);
 - Outstanding, very high, and high natural character areas (ONC, VHNC and HNC);
 - Scheduled freshwater body setbacks;
 - Significant Natural Areas (SNAs);
 - Places with heritage values (HH);
 - Sites and areas of significance to Maori (SASM);
 - Places adjoining the coastal marine area; and

- The root protection area of notable trees.
15. Given the provisions within the EI chapter already provide controls in the sensitive environments listed above, it is my view that, in the context of rules, there are only a selection of rules that need to apply to energy and infrastructure activities outside of the EI chapter, and these can be chapters or specific rules that can be listed within the EI chapter.
 16. However, I consider it is still necessary for the objectives, policies, associated planning map layers, schedules, tables and appendices to be considered when assessing applications for infrastructure activities when they are located within an overlay (such as an ONL/F, SNA, NATC, CE) to ensure the protective direction within the higher order documents (NZCPS, RPS, Part 2 of the RMA) is achieved.
 17. The application of the matters of discretion is still being considered. The matters of discretion within the EI chapter i.e., EI-MD1, are reasonable broad compared to the more detailed and prescriptive matters of discretion within the protective chapters. It is likely that the relevant matters of discretion within the protective chapters will be cross referenced within the EI chapter.
 18. I have been working with the other s42A officers to ensure that this change to the structure of the Proposed Plan does not result in any unintended consequences either in the form of gaps in the rules or overlapping provisions. As a result, we have developed a new rule to be included within the EI chapter that will replace part of the EI chapter 'Introduction' by deleting the heading and wording beneath the sub-heading "Other potentially relevant District Plan provisions". In my view this new rule will provide additional clarity as to which provisions apply to the energy and infrastructure activities as it will provide greater clarity as to when the provisions of the EI chapter apply and when they do not.
 19. The s42a report writers are also mindful that plan users may only look at the provisions in the other 'sensitive environment' chapters of the Proposed Plan such as the CE, NFL, ECO, etc chapters and not be aware that the EI chapter includes an exemption for energy and infrastructure activities. Given this, I am also recommending consequential amendments be made to the following chapters:
 - HH - Historic Heritage,
 - TREE - Notable Trees,
 - SASM - Sites and Areas of Significance to Maori,
 - ECO - Ecosystems and Indigenous Biodiversity,
 - NATC - Natural Character of Freshwater Bodies,
 - NFL - Natural Features and Landscapes, and
 - CE - Coastal environment

Recommended amendments to the EI Chapter and other related chapters

20. Given the above, within my s42A report I have recommended deleting the introductory text as set out in paragraph 8 above, in inserting a new rule into the EI chapter to sit after the objectives and Policies and before the heading '*Activity Rules – General (applicable to all energy and infrastructure)*' as follows:

Rules

How to interpret and apply the rules

1. All of the provisions in the following District-wide chapters apply in addition to the provisions in the Energy and Infrastructure chapter:
 - a. SD – Strategic Directions
 - b. TRAN - Transport;
 - c. HS - Hazardous substances;
 - d. CL - Contaminated land;
 - e. NH - Natural hazards;
 - f. SUB - Subdivision;
 - g. EW - Earthworks;
 - h. LIGHT - Light;
 - i. NOISE - Noise; and
 - j. SIGN - Signs;
 2. The objectives, policies, associated planning map layers, schedules, tables and appendices (excluding rules) in the following District-wide chapters apply to Energy and Infrastructure where relevant:
 - a. HH - Historic Heritage,
 - b. TREE - Notable Trees,
 - c. SASM - Sites and Areas of Significance to Maori,
 - d. ECO - Ecosystems and Indigenous Biodiversity,
 - e. NATC - Natural Character of Freshwater Bodies,
 - k. NFL - Natural Features and Landscapes, and
 - l. CE - Coastal environment.
 3. The rules and standards in the District-wide chapters listed in (2) above do not apply to Energy and Infrastructure, except in the following circumstances:
 - a. Relocation of any historic heritage listed in HH-SCHED2 must comply with HH-R4, HH-R6 and HH-R8;
 - b. Demolition of historic heritage items listed in HH-SCHED2 must comply with HH-R7 and HH-R9;
 - c. Removal of any Notable Tree listed in TREE-SCHED1 must comply with TREE- R6 and TREE-R7;
 - d. New buildings and structures within a SAL, ONF and ONF must comply with NFL-S1 and NFL-S2;
 - e. New centre pivots and travelling irrigators must comply with NFL-R8;
 - f. New roads must comply with NFL-R9; and
 - g. Irrigation infrastructure near any mapped SNA must comply with ECO-R4
 4. The rules in other District-wide chapters not listed in (1) or (2) above do not apply to Energy and Infrastructure; and
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5. The rules in the zone chapters generally do not apply to Energy and Infrastructure, except in the following circumstances:
- a. Where specified in the Energy and Infrastructure rules;
 - b. The Special Purpose Zone (Hospital) rules apply to activities on the Rangiora and Oxford hospital sites;
 - c. Emergency service facilities, or any health-related activity outside the Rangiora and Oxford hospital sites, are subject to the rules of the zone in which they are to be located;
 - d. The Energy and Infrastructure rules apply in the Special Purpose Zone (Kainga Nohoanga) (see SPZ(KN)-APP1 and SPZ(KN)-APP2);
 - e. Habitable buildings are subject to the rules of the zone in which they are to be located.¹

21. Consequential amendments are also recommended to be inserted into the chapters before the start of each of the Activity Rules section. It is recommended that the additional rule be tailored to the individual chapter to align with the exemption proposed for the EI chapter, as follows:

For the SASM, NATC and CE chapters:

Rules

How to interpret and apply the rules

The rules within this chapter do not apply to activities in the Energy and Infrastructure chapter.

For the ECO chapter:

Rules

How to interpret and apply the rules

The following rule within this chapter is the only rule that also applies to activities in the Energy and Infrastructure chapter:

- a. Irrigation infrastructure near any mapped SNA must comply with ECO-R4.

For the HH chapter:

Rules

How to interpret and apply the rules

The following rules within this chapter are the only rules that also apply to activities in the Energy and Infrastructure chapter:

- a. Relocation of any historic heritage listed in HH-SCHED2 must comply with HH-R4, HH-R6 or HH-R8; and
- b. Demolition of historic heritage items listed in HH-SCHED2 must comply with HH-R7 or HH-R9.

¹ Chorus NZ, Spark NZ Trading Ltd and Vodafone NZ Ltd [62.6],

For the TREE chapter:

Rules

How to interpret and apply the rules

The following rules within this chapter are the only rules that also apply to activities in the Energy and Infrastructure chapter:

- a. Removal of any Notable Tree listed in TREE-SCHED1 must comply with TREE-R6 or TREE-R7.

For the NFL chapter:

Rules

How to interpret and apply the rules

The following rules and standards within this chapter are the only rules and standards that also apply to activities in the Energy and Infrastructure chapter:

- a. New buildings and structures within a SAL, ONF and ONF must comply with NFL-S1 and NFL-S2;
- b. New centre pivots and travelling irrigators must comply with NFL-R8; and
- c. New roads must comply with NFL-R9.

Hearing Panel specific questions

22. Turning to the specific examples raised by the Hearing Panel, I provide the following responses.

The recommendation in the NFL s42A report that rules and standards would apply to energy and infrastructure activities

23. The recommended amendments mean that the objectives, policies, associated planning map layers, schedules, tables and appendices (excluding rules) in the NFL chapter apply to Energy and Infrastructure. Where the EI chapter includes a permitted standard requiring the EI activity to be located outside an ONL/ONF/SAL, as part of assessing a resource consent application to breach such a standard, the objectives and policies of the NFL chapter would be considered. In addition, standards NFL-S1 and NFL-S2, and rules NFL-R8 and NFL-R9 also apply to Energy and Infrastructure activities.

The recommendation in the CE Coastal Environment s42A report that rules within the CE Chapter do not apply to energy and infrastructure activities

24. The recommended amendments mean that the objectives, policies, associated planning map layers, schedules, tables and appendices (excluding rules) in the CE chapter apply to Energy and Infrastructure. Where the EI chapter includes a permitted standard requiring the EI activity to be located outside a place adjoining the coastal marine area, as part of assessing a resource consent application to breach such a standard, the objectives and policies of the CE chapter would be considered. However, the rules and standards within the CE chapter do not apply to Energy and Infrastructure activities.

The reply report in respect to SASM – Sites and Areas of Significance to Māori to remove the reference to customer connections from SASM-R4 and to reply on EI-R4 instead

25. The recommended amendments mean that the rules and standards within the SASM chapter do not apply to activities in the Energy and Infrastructure activities. As such, customer connection between a building, other structure, site, and infrastructure in SASM will be managed by EI-R4.

The relationship between CE-P7, NATC-P6, and other policies relating to activities in overlay areas, and EI-P5, and in particular clauses 3 and 4.

26. CE-P7 recognises and provides for the maintenance, upgrade and development of infrastructure that has a functional need or operational need to be located in the coastal environment. NATC-P6 provides for new structures, and upgrades to existing structures, on the surface of freshwater where specific criteria can be achieved.

27. Policy EI-P5, sets out the approach to managing the adverse effects of energy and infrastructure and in particular clauses (3) and (4) includes a cascade where the effects of energy and infrastructure activities are provided and alternative pathway for managing the effects of an activity within sensitive environments.

28. In my view the enabling provisions within CE-P7 and NATC-P6 are to be read together with EI-P5 in the context in which they apply.

29. I also consider it worth foreshadowing that I am recommending amendments to EI-P5 (see Appendix 1 below) to refine the scope of the clause (3) and (4) so the alternative pathway for managing the effects of an activity only applies to regionally significant infrastructure outside of the coastal environment. The rationale to support this recommended amendment is that there is higher order direction within the NZCPS that requires the avoidance of adverse effects in particular environments which I consider would not be achieved if EI-P5(3) and (4) was applied to parts of the coastal environment. In addition, I note there is regional policy direction that provides greater ability for regionally significant infrastructure to be provided for in sensitive environments.

30. Finally, I have also considered how EI-P5 (including the recommended amendments) will be read alongside the protective of chapters within the Proposed Plan (such as NATC, ECO, NFL) which include directive policies that require the protection of a range of 'sensitive environments'. I consider that EI-P5(1) and (2) broadly enable maintenance, repair, renewal, of existing energy and infrastructure, and provides for new energy and infrastructure, or more than minor upgrades to existing energy and infrastructure. I also note that the protective chapters of the Proposed Plan include specific and directive protection of the values on the 'sensitive environments'. These enabling and protective policies will be read together by decision makers. Given the directiveness of the protective policies, the protective policies should be given greater weight than the generally enabling policies of the EI chapter if there is a conflict in a consenting process. However, for regionally significant infrastructure outside the CE, I note that EI-P5(3) and (4) provides an alternative pathway for managing the effects that provides a consenting pathway for regionally significant infrastructure in these sensitive environments, if the requirements of EI-P5(3) and (4) can be achieved. In my view this policy framework gives effect to both the enabling and protective aspects of the higher order documents listed above.

31. In the context of the CE chapter (based on the recommended amendments) the cascade within EI-P5(3) and (4) does not apply to activities within the coastal environment. In this environment, I note that CE-P7 provides for infrastructure that has a functional or operational need to be located in the coastal environment. As such, in this situation the broadly enabling aspects of EI-P5(1) and (2) will apply, as will the enabling direction within CE-P7. However, this will need to be read together with the directive provisions that require the protection of sensitive environments. Decision makers will need to weigh up these competing provisions

on a case-by-case basis. In my view this policy this framework also gives effect to both the enabling and protective aspects of the higher order documents listed above.

32. I will be available on the on the first day of the Stream 4 hearing (17 July 2023) to answer any questions the Hearing Panel may have.

A handwritten signature in black ink, appearing to read 'A MacLennan', is centered on the page.

Andrew MacLennan
12 July 2023

Appendix 1 - Recommended amendments to EI-P5

<p>EI-P5</p>	<p>Manage adverse effects of energy and infrastructure</p> <p>Manage adverse effects of energy and infrastructure, including by the following:</p> <ol style="list-style-type: none"> 1. enabling or providing² for the ongoing operation, maintenance, repair, renewal³, removal and minor upgrade of existing energy and infrastructure; 2. <u>providing for new energy and infrastructure, or more than minor upgrades to existing energy and infrastructure while</u>⁴ avoiding, remedying or mitigating adverse effects of more than minor upgrades to existing energy and infrastructure, including effects⁵ on: <ol style="list-style-type: none"> a. natural and physical resources; b. amenity values; c. <u>an existing</u>⁶ sensitive activity; d. the safe and efficient operation of other infrastructure; e. the health, safety and well-being of people and communities; 3A. <u>using major upgrades to existing energy and infrastructure as an opportunity to reduce existing adverse effects where appropriate to do so;</u>⁷ 3. <u>outside of the coastal environment, regionally significant new energy</u>⁸ and infrastructure, or major upgrades to existing <u>regionally significant energy</u>⁹ and infrastructure, should, to the extent considered¹⁰ practicable, ensure that the route or site is located outside of the following types of sensitive environments to protect such environments from significant adverse effects, taking into account the constraints imposed by the functional need or operational need of the energy and infrastructure: <ol style="list-style-type: none"> a. ONF, ONL and SAL; b. areas of ONC, VHNC and HNC, and natural character of scheduled freshwater bodies setbacks; c. SNAs; d. buildings, other structures and settings with heritage values, and archaeological sites; e. SASM; f. places adjoining the coastal marine area;¹¹ 4. where <u>regionally significant energy and</u>¹²-infrastructure, or major upgrades to existing <u>regionally significant energy and</u>¹³-infrastructure, cannot locate outside of the sensitive environments in (3) above, the energy and infrastructure should, to the extent considered practicable¹⁴, ensure that the proposed route, site, structure and construction method demonstrate the following, taking into account the constraints imposed by the functional need or operational need of the energy and infrastructure:
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² Transpower [195.29]

³ Federated Farmers [414.68] – Consequential amendment – EI-O3

⁴ Transpower [195.29]

⁵ Transpower [195.29]

⁶ Transpower [195.29]

⁷ Transpower [195.29]

⁸ Forest and Bird [192.39]

⁹ Forest and Bird [192.39]

¹⁰ Transpower [195.29]

¹¹ Forest and Bird [192.39]

¹² Forest and Bird [192.39]

¹³ Forest and Bird [192.39]

¹⁴ Transpower [195.29]

	<ul style="list-style-type: none"> a. <u>regionally significant energy and</u>¹⁵ infrastructure will be located in more compromised parts of the areas in (3) above where that reduces adverse effects on the values of those areas; b. techniques (such as structure selection or construction methodology) will be used to mitigate adverse effects on the areas in (3) above; c. adverse effects on the areas in (3) above will be remedied or mitigated; <p>5. consider biodiversity offset, <u>where there is a strong likelihood that the offset will be achieved in perpetuity</u>,¹⁶ for residual adverse effects on indigenous biodiversity that cannot otherwise be avoided, remedied or mitigated;</p> <p>6. avoiding or mitigating¹⁷ potential significant adverse effects of the generation of radio frequency fields and electric and magnetic fields by requiring compliance with recognised standards or guidelines; and</p> <p>7. promoting the undergrounding of new energy and infrastructure where it is:</p> <ul style="list-style-type: none"> a. technically feasible; b. economically viable; c. justified by the extent of adverse visual effects if not placed underground.
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¹⁵ Forest and Bird [192.39]

¹⁶ ECan [316.21]

¹⁷ Transpower [195.29]