

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 1: Part 1 General Matters, Definitions,
Strategic Directions and Urban Form and Development.

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 chapters of the proposed Waimakariri District Plan (*Proposed Plan*) that are the subject of Hearing Stream 1.
- 3 Waimakariri District Council's (*Council*) Reporting Officers have suggested that MainPower's specific submission points on these chapters should be considered in subsequent hearing streams. This approach is agreed. The purpose of these submissions is accordingly to provide an overview of MainPower's interests in the Waimakariri District and the Proposed Plan and to identify the key issues for MainPower for the remainder of the process.
- 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.

MAINPOWER'S INTERESTS IN THE PROPOSED PLAN

- 5 As **Mr Appleman's** evidence explains, MainPower operates the electricity distribution network in the Waimakariri District.
- 6 The broader network covers an area of some 11,180 square kilometres (across the Waimakariri, Hurunui and Kaikōura districts) and supplies line services to more than 43,000 customers.
- 7 The electricity distribution network, including MainPower's Significant Electricity Distribution Lines (*SEDLS*), is critical, strategic and regionally significant infrastructure. As **Mr Appleman** explains:
 - 7.1 MainPower is a lifeline utility¹ and must be able to continue operating the electricity distribution network, to the fullest extent possible, during and after an emergency – resilience and easy access to lines for maintenance is key to fulfilling this obligation.
 - 7.2 MainPower's SEDLS are the backbone of the network – delivering sub-transmission voltages (66,000V and 33,000V)

¹ Civil Defence Emergency Management Act 2002.

to a number of substations across the network so that electricity can be transformed down to lower voltages and delivered to customers.

- 7.3 MainPower is witnessing unprecedented growth in electricity demand from rapid large-scale development in the Waimakariri District. It is critical that the Proposed Plan enables the operation, maintenance, upgrade and development of new infrastructure into the future.
- 7.4 The electricity distribution network has a crucial role in securing New Zealand’s decarbonisation and climate change adaptation goals – supporting a transition to a low emissions economy.
- 8 In our submission, the Strategic Directions chapter of the Proposed Plan should expressly recognise the significance of MainPower’s assets and operations. The Proposed Plan provisions must enable the continued safe and efficient operation, maintenance, use and development of the electricity distribution network and must also protect the SEDLs from reverse sensitivity effects. This is an important strategic matter for the District.
- 9 As **Mr Appleman’s** evidence outlines, land use activities in proximity to MainPower’s SEDLs have the potential to affect, and may be affected by, MainPower’s electricity distribution operations. Sensitive land uses such as residential activities in proximity to SEDLs may expose people to safety hazards. Buildings, structures, fences and other obstacles can also impede MainPower’s ability to safety and efficiently operate, maintain and upgrade the network.

STRATEGIC DIRECTIONS PROVISIONS

- 10 In essence, MainPower considers that amendments are required to the Strategic Directions chapter as notified in order to:
- 10.1 properly recognise the significant role of important infrastructure in the Waimakariri District; and
- 10.2 appropriately recognise the issue of reverse sensitivity effects on MainPower’s SEDLs.
- 11 The purpose of the Strategic Directions chapter is to provide the overarching direction for the Proposed Plan and its interpretation and implementation. As recognised in the Council’s section 32 report, while high level, the Strategic Directions and Urban Form and Development chapters are significant as they set out the key strategic matters for the District that the Proposed Plan must

address.² The section 32 report also explains that there is no hierarchy for the strategic objectives, which are read as a whole, but there is a clear hierarchy between the Strategic Directions and all other Proposed Plan provisions.³

- 12 The impact of a strong and comprehensive Strategic Directions chapter will therefore be a well-functioning district plan and appropriate provisions across the whole plan to both protect and enable the operations of key infrastructure providers, particularly those of regionally significant infrastructure.
- 13 On this basis, MainPower is concerned to ensure the Strategic Directions chapter sets a framework that recognises and provides for the protection of existing electricity distribution infrastructure and the infrastructure that will be required in the future. Specifically, MainPower considers amendments are required to recognise the issue of reverse sensitivity effects and to properly recognise the significant role of important infrastructure in the Waimakariri District.
- 14 **Ms Foote's** evidence explains the amendments MainPower seeks in further detail.

MAINPOWER SUBMISSION ON PART 1 MATTERS

National Planning Standards

- 15 Within the National Planning Standards framework, provisions relating to land use constraints to manage effects associated with MainPower's SEDLs could fit into several different places. For this reason, the provisions should be clearly identifiable (and applicable) and, where necessary, clear cross-references to other parts of the Proposed Plan should be inserted.
- 16 As the Panel will be well aware, the National Planning Standards require a 'strategic directions' heading to be included in district plans, with chapters underneath relating to key strategic or significant resource management matters.⁴ The National Planning Standards (Standard 7) state that:⁵

² Page 5.

³ Page 6.

⁴ 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> ___

⁵ Ibid.

- 16.1 The following matters must be located under a 'strategic directions' heading:
- (a) Outline of key strategic or significant resource management matters for the district;
 - (b) Issues and objectives that address key strategic or significant matters for the district and guide decision making;
 - (c) Policies that address those matters, unless those policies are better located in other more specific chapters; and
 - (d) How resource management issues of significance to iwi authorities are addressed in the plan.
- 16.2 Rules must not be included under the 'strategic directions' heading; and
- 16.3 Each strategic direction matter must be its own chapter under the 'strategic directions' heading, and an 'urban form and development' chapter must be included.
- 17 The protection, functioning and future development of MainPower's electricity distribution network falls squarely within the matters listed above as a key strategic and significant resource management matter for the Waimakariri District.

Higher order policy direction

- 18 **Ms Foote's** evidence outlines the higher order planning documents of relevance to MainPower's infrastructure assets and their protection and enablement in the Proposed Plan. These include the National Policy Statement for Urban Development (*NPS UD*) and the Canterbury Regional Policy Statement (*CRPS*).

NPS UD

- 19 The *NPS UD* directs (of particular relevance to MainPower's relief) that local authority decisions on urban development are integrated with infrastructure planning decisions,⁶ and that planning decisions contribute to well-functioning urban environments.⁷
- 20 In our submission, a well-functioning urban environment is one in which:
- 20.1 infrastructure – particularly infrastructure such as the electricity distribution network which provides fundamentally

⁶ Objective 6.

⁷ Policy 1.

important support to communities – is not adversely affected by incompatible activities; and

20.2 urban growth is planned with infrastructure provision in mind, recognising that the two run hand-in-hand.

CRPS

- 21 The Waimakariri District Plan must give effect to the higher order policy direction in the CRPS. The electricity distribution network meets the CRPS definitions of “critical infrastructure”, “regionally significant infrastructure” and “strategic infrastructure”. This status must be reflected in the Proposed Plan provisions.
- 22 The efficient use and development of the electricity distribution network is provided for in the CRPS, in both Chapter 5 (Land use and Infrastructure) and Chapter 6 (Recovery and Rebuilding of Greater Christchurch).
- 23 Objective 5.2.1 (f) (Entire region) requires that “*development is located so that it functions in a way that...is compatible 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.
- 24 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). Policy 6.3.5 (Greater Christchurch) recognises the benefits of strategic infrastructure to community wellbeing, while providing protection and providing for their functional needs.

Incompatible activities and reverse sensitivity

- 25 The adverse effect of establishing sensitive/incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on the varying out of the existing uses, is known as a “reverse sensitivity” effect. The Court has stated that “*it is the effect of the new use on existing uses that is the problem, not because of the direct effects of the new use but because of incompatibility which in turn may lead to pressure for change*”.⁸
- 26 The Proposed Plan must meet the statutory requirements contained in the Resource Management Act 1991 (RMA), including in sections 72-77. This requires a balance of often competing interests

⁸ *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535, para [22].

and effects. Reverse sensitivity effects are an adverse effect for the purposes of the RMA.

- 27 The most effective way to avoid incompatible activities, adverse effects on landowners, and reverse sensitivity effects on the electricity distribution network is to manage urban growth and land use in a proactive manner.
- 28 To justify imposing any restrictions on the use of land adjoining an effects emitting site, the activity should be of some considerable economic or social significance locally or regionally, as is the case for the electricity distribution network.⁹ It is well recognised that residential occupiers have the greatest potential to generate reverse sensitivity effects, and a greater degree of control outside of the site can be justified in such cases.¹⁰
- 29 **Mr Appleman** explains the variety of adverse effects which can arise when sensitive activities establish in proximity to high voltage electricity distribution lines. Not only does this incompatible development present a risk to human health and safety, it also compromises the security of the electricity distribution network by hindering MainPower's ability to safely access lines for repairs and maintenance, or creates risks to the physical infrastructure – the lines and support structures – for example, excavation can destabilise support structures. The Proposed Plan must recognise and protect against these effects.

⁹ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [18].

¹⁰ *Ngatarawa Development Trust Ltd v Hastings District Council*, W017/08

CONCLUSION

- 30 MainPower concern is to ensure that appropriate provisions regarding the management of land use in close proximity to SEDLS are contained in the Strategic Directions chapter and filter down into the remainder of the Proposed Plan in order to establish a robust and cohesive framework for its infrastructure assets and operations.
- 31 On this basis, 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 5 May 2023



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