

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 8: Subdivision

Hearing Stream 9A: Industrial Zones

Hearing Stream 11: Designations

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

Legal submissions on behalf of MainPower New Zealand Limited

Dated: 8 April 2024

Reference: J M Appleyard (jo.appleyard@chapmantripp.com)
A M Lee (annabelle.lee@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 3 365 4587

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



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 Streams 8 (Subdivision), 9A (Industrial Zones) and 11 (Designations) of the Proposed Plan. MainPower also relies on its legal submissions and evidence filed for Hearing Streams 1, 3, 4 and 5.
- 4 A brief of evidence has been filed for MainPower from **Ms Melanie Foote** (planning) in relation to Hearing Streams 8, 9A and 11.
- 5 MainPower has not sought to appear at the hearing due to witness and counsel availability. If the Panel wish to clarify any matters contained in Ms Foote's statement or these legal submissions, we are happy to provide a response in writing.

MR MARK APPLEMAN

- 6 The Panel will recall that MainPower filed evidence from **Mr Mark Appleman** at previous hearings for the Proposed Plan in relation to MainPower operations in the Waimakariri District.
- 7 Counsel regrets to inform the Panel that Mr Appleman sadly passed away in February 2024. Our thoughts are with Mr Appleman's family, friends and colleagues at this difficult time. MainPower wish to direct the Panel to its website¹ which pays tribute to Mr Appleman's character and contributions.
- 8 The evidence filed on behalf of Mr Appleman for previous hearings remains relevant to MainPower's submissions on the Industrial Zones, Subdivision and Designations chapters. In so far as there are specific operational matters, counsel and Ms Foote have liaised with the relevant staff at MainPower and have endeavoured to explain these matters where relevant. Should the Panel have any operations-related questions, counsel will arrange for a

¹ <https://www.mainpower.co.nz/about-us/latest-news/remembering-mark-appleman>

representative(s) of MainPower to provide a response. We trust this arrangement is agreeable to the Panel.

OVERVIEW

- 9 Ms Foote's evidence filed for Hearing Stream 1 addresses the higher order planning framework. Legal submissions filed for Hearing Stream 5 summarised particular provisions of relevance to MainPower's submissions in relation to the Energy and Infrastructure chapter.
- 10 To summarise, the higher order planning framework clearly requires the Proposed Plan to adequately provide for and recognise the electricity distribution network, ensure integration of development with infrastructure and avoid reverse sensitivity effects.
- 11 It is submitted that MainPower's relief, as amended in the evidence of Ms Foote, most appropriately gives effect to that higher order planning framework.

SUBDIVISION

- 12 MainPower lodged a number of submissions relating to the Subdivision chapter of the Proposed Plan to ensure that subdivision occurs in a manner that is properly integrated with the electricity distribution network.
- 13 The Council Officer for the Subdivision chapter requested that MainPower explain why an exemption from subdivision standards for network utility sites was sought.² In light of Ms Foote's evidence, which accepts that the exemption is no longer required, we do not consider any further explanation is required.
- 14 As explained by Ms Foote, the only matters in relation to the Subdivision chapter that are not agreed between Council Officer and MainPower are MainPower's submission points seeking:
 - 14.1 that all relevant subdivision provisions applicable to the activities of network utility operators be appropriately hyperlinked from the Energy and Infrastructure chapter back to the Subdivision chapter; and
 - 14.2 a new rule for subdivision within 24m from the centreline of major electricity distribution lines (*MEDLs*).

² *Officer's Report: Wāwāhia whenua / Subdivision – Urban*, Ms Rachel McClung dated 13 March 2024 at paragraph 75.

Hyperlinks

- 15 The Council Officer for the Subdivision chapter does not consider that hyperlinks are necessary, notwithstanding that the Council Officer for the Energy and Infrastructure chapter supports the use of hyperlinks.³ MainPower's position is that adequate cross referencing within the Proposed Plan is critical for both its useability and its effectiveness. Plan users must be directed to corridor protection provisions, where relevant, with ease.
- 16 In relation to the Council Officer report, it is submitted that the evidence of Ms Foote and Mr Appleman, as well as legal submissions from previous hearings explains the reasons why adequate cross referencing is necessary. We have discussed with Ms Foote and consider that the cross-referencing proposed by Mr Willis in relation to the Industrial Chapter could be adapted and included in the Subdivision chapter. If the Panel have any further questions for Ms Foote on this matter, responses can be provided in writing.

New subdivision rule

- 17 As explained by Ms Foote, MainPower seeks a new corridor protection rule for subdivision within 24m from the centreline of the MEDLs. Subdivision has the potential to directly affect MainPower's MEDLs. The rule proposed seeks to avoid reverse sensitivity effects on the electricity distribution network as a result of subdivision activity, and to ensure that the operation, maintenance, upgrading and development of the MEDLs are not compromised.
- 18 We refer the Panel to evidence and legal submissions filed for MainPower at previous hearings that explains why the proposed rule is necessary.⁴ Ms Foote has drafted matters of discretion in her evidence for this hearing which, while not included in MainPower's original submission, simply provide more detail for the purposes of this submission point.
- 19 It is submitted that there is clear scope for this addition on the basis that it is a minor amendment to, or clarification of, MainPower's submission point (in accordance with the general principles set out in *Palmerston North CC v Motor Machinists Ltd*).⁵ Matters of discretion are obviously required to support the rule proposed by MainPower and so the drafting proposed by Ms Foote will assist the Panel by making the proposed rule capable of incorporation in the Proposed Plan.

³ *Officer's Report: Wāwāhia whenua / Subdivision – Rural*, Mr Mark Buckley dated 13 March 2024 at paragraph 97.

⁴ For example, the legal submissions and evidence on behalf of MainPower for Hearing Stream 5 (Noise, Notable Trees, Historic Heritage, Signs, Light, Energy and Infrastructure, Transport, Earthworks).

⁵ *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290, [2014] NZRMA 519.

INDUSTRIAL ZONES CHAPTER

Location of provisions relating to corridor protection

- 20 The principal issue in relation to the Industrial zones chapter is MainPower's submission point seeking that corridor protection provisions be located in each of the relevant zone chapters, along with a supporting objective, policy and rules.
- 21 As explained by Ms Foote, the Council Officer does not support inclusion of corridor protection provisions in the General Industrial Zone but is comfortable ensuring that there is clear cross referencing to the relevant rules in the Energy and Infrastructure chapter.
- 22 Ms Foote's evidence for Hearing Stream 5 explains⁶ 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.
- 23 Legal submissions filed for Hearing Stream 5 support the relief sought by MainPower, as it provides greater clarity to plan users that will primarily turn to the relevant zone chapter provisions that apply to a given site. In summary:
- 23.1 The corridor protection provisions for MainPower's MEDLs do not sit neatly within the National Planning Standards Framework as they relate to infrastructure while also restricting land use activities in each relevant zone.
- 23.2 In accordance with the National Planning Standards, provisions relating to the management of reverse sensitivity effects on MainPower's MEDLs *may* be included in the Energy and Infrastructure chapter, but may alternatively be located elsewhere in the Proposed Plan.
- 23.3 The purpose of the provisions sought by MainPower are to ensure the safe and efficient operation of the electricity distribution network. Detailed rules associated with the electricity distribution network must be clear and plainly visible to plan users.
- 24 It is submitted that the approach proposed by MainPower, to include corridor protection provisions in each of the relevant zone chapters, is open to the Panel and is to be preferred. This position is

⁶ Statement of Evidence of Melanie Foote for Hearing Stream 5, dated 7 August 2023 at paragraph 11.

supported by Mr Appleman's and Ms Foote's evidence from this and previous hearings.

- 25 Counsel is conscious of the Council Officer's current position which prefers clear cross referencing. We acknowledge and agree with the cross referencing proposed by Mr Willis, if that is the approach taken by the Panel (emphasising that MainPower's strong preference is the relief set out in its submission).

Corridor protection provisions required in the Heavy Industrial Zone

- 26 In preparing evidence for this hearing, Ms Foote discovered that there is a MEDL in the Heavy Industrial Zone. Accordingly, the corridor protection provisions sought for the General Industrial Zone should also be included in the Heavy Industrial Zone.
- 27 It is submitted that this is within the scope of MainPower's submission, which clearly sought for the corridor protection provisions to be included in all relevant zone chapters. It was merely an error that the MEDL that traverses the Heavy Industrial Zone was overlooked, and accordingly that a specific submission point seeking the rule be inserted into the Heavy Industrial Zone chapter was omitted. The substance of MainPower's relief remains the same.
- 28 We consider that Ms Foote's explanation of why the corridor protection provisions are sought for the General Industrial Zone and Heavy Industrial Zone, but not the Light Industrial Zone responds to the Council Officer's comments. If any further input from MainPower would be helpful, counsel can arrange for this information to be provided.

DESIGNATIONS CHAPTER

- 29 Ms Foote agrees with all recommendations of the Council Officer in relation to MainPower's submission points on the designations chapter.

CONCLUSION

- 30 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 8 April 2024



J Appleyard / A Lee
Counsel for MainPower Limited