

Before the Independent Hearings Panel
at Rolleston

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Selwyn District Plan

and: Strategic Directions Proposal

and: **Orion New Zealand Limited**
Submitter DPR-0367

Legal submissions on behalf of Orion New Zealand Limited

Dated: 30 July 2021

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LEGAL SUBMISSIONS ON BEHALF OF ORION NEW ZEALAND LIMITED

INTRODUCTION

- 1 These legal submissions are provided on behalf of Orion New Zealand Limited (*Orion*).
- 2 Orion is a submitter (#0367) and further submitter (#0367 FS) on the Strategic Directions Chapter of the proposed Selwyn District Plan (*proposed District Plan*).
- 3 These legal submissions provide an overview of Orion's key submission points and requested relief with regards to the Strategic Directions proposal.
- 4 Orion is calling evidence from the following witnesses at this hearing:
 - 4.1 **Mr Garry Heyes** – in relation to Orion operations; and
 - 4.2 **Ms Melanie Foote** – in relation to planning.

BACKGROUND TO ORION'S INTEREST IN THE SELWYN DISTRICT PLAN

- 5 Orion operates the electricity distribution network in Selwyn. Orion is a community-owned entity, it is part-owned by the Selwyn District Council.
- 6 The electricity distribution network, including Orion's significant electricity distribution lines, is critical, strategic and regionally significant infrastructure:
 - 6.1 As discussed by **Mr Heyes**, Orion delivers electricity to more than 200,000 homes and business throughout Christchurch City and Selwyn District. The network covers around 8,000km² and includes 11,500km of overhead lines and underground cables, 50 zone substations, 396 steel sub transmission towers, 90,000 power poles and 11,700 distribution substations;
 - 6.2 Orion is a lifeline utility 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;¹
 - 6.3 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;
 - 6.4 Orion's significant electricity distribution lines are the backbone of the network – delivering sub-transmission voltages (66,000V and 33,000V) to a number of substations across the network so that electricity can be transformed down to lower voltages and delivered to customers.
- 7 This significance should be recognised explicitly in the Strategic Directions chapter, because the need to protect and enable this important infrastructure (including protection from reverse sensitivity effects) infuses all other parts of the Plan and is a key strategic matter for the District.

¹ Civil Defence Emergency Management Act 2002

- 8 The district planning rules must enable the continued safe and efficient operation, maintenance, use and development of the electricity distribution network and must also protect the significant electricity distribution lines from reverse sensitivity effects.
- 9 Land use activities in proximity to Orion's significant electricity distribution lines have the potential to affect, and may be affected by, Orion's electricity distribution operations. Sensitive land uses such as residential activity in proximity to significant electricity distribution lines may expose people to safety hazards. Buildings, structures, fences and other obstacles can also impede Orion's ability to safely and efficiently operate, maintain and upgrade the network.
- 10 Orion considers that further amendments to the Strategic Directions chapter are necessary:
 - 10.1 to properly recognise the significant role of important infrastructure in the district; and
 - 10.2 to appropriately recognise the issue of reverse sensitivity effects on Orion's Significant Electricity Distribution Lines ("SEDL").
- 11 **Ms Foote's** evidence explains the amendments that Orion seeks in further detail.

RELIEF SOUGHT

- 12 The Strategic Directions chapter is critical for guiding the interpretation and application of all other provisions of the proposed District Plan.
- 13 The Section 32 Report explains that the Strategic Directions should provide:
 - 13.1 the overall context for the District Plan;
 - 13.2 direction for other chapters;
 - 13.3 an integrated policy framework for the whole District.
- 14 The 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 District Plan provisions.
- 15 Getting the Strategic Directions right is therefore essential for:
 - 15.1 a well-functioning District Plan; and
 - 15.2 Important Infrastructure operators who are heavily reliant on District Plan provisions for both protecting and enabling their operations.
- 16 Orion seeks that the Strategic Directions are amended to provide clearer guidance to subsequent objectives and policies (and rules and definitions) and reconcile conflicts between provisions. In particular, Orion considers that amendments are required to more clearly:
 - 16.1 recognise the benefits of Important Infrastructure and provide for appropriate development;

- 16.2 manage the effects of Important Infrastructure, including through recognising that not all adverse effects can be internalised; and
- 16.3 manage effects on Important Infrastructure, including reverse sensitivity effects.
- 17 In addition, Orion seeks that specific recognition is given to SEDLs and that the requirement to protect SEDLs from reverse sensitivity effects is also reflected in this higher order portion of the proposed Plan.
- 18 Orion's network spans two districts. This raises a "cross-boundary" issue and demands a joined-up approach to the planning provisions that apply in each district. Section 74(2)(c) of the RMA requires the council to have regard to the extent to which the proposed district plan needs to be consistent with those of adjacent territorial authorities. In light of the cross-boundary issues and the regional significance of Orion's electricity distribution network, this is a highly relevant matter in this case. There is a need for consistency between adjacent district plans in this instance.
- 19 Orion therefore seeks continuity and consistency with the planning framework in Christchurch as much as possible. In the Christchurch District Plan, the electricity distribution network is the subject of Strategic Objective 3.3.12 and an associated framework of provisions in various chapters which address reverse sensitivity and incompatible activities effects. Orion seeks a similar level of recognition and protection in the Selwyn District Plan. The desirability of continuity and consistency for cross-boundary matters is a relevant consideration for the Hearings Panel in looking to provide for the same infrastructure asset in Selwyn.

National Planning Standards

- 20 The National Planning Standards require a 'strategic directions' heading to be included in district plans, with chapters underneath that heading relating to key strategic or significant resource management matters.² The National Planning Standards (Standard 7) state that:³

20.1 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.

² 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-and-chapters-standards.pdf>

³ Ibid.

- 20.2 Rules must not be included under the 'strategic directions' heading; and
- 20.3 Each strategic direction matter must be its own chapter under the 'strategic directions' heading, and an 'urban form and development' chapter must be included.
- 21 The protection, functioning, and future development of the electricity distribution network falls squarely within the matters listed above as a key strategic and significant resource management matter for the Selwyn District.
- 22 We note that in its decision on the Strategic Directions chapter in the Christchurch District Plan the Independent Hearings Panel, including retired High Court Judge Hansen and current Environment Court Judge Hassan, decided that strategic directions should explicitly have primacy, providing 'overarching direction' for other chapters in the Plan.⁴ The Panel held that objectives and policies in the rest of the plan are to be expressed and achieved in a manner consistent with the objectives in the Strategic Directions chapter. Further, the Panel went on to say 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 foreshadowed the formal acknowledgement of this approach in the National Planning Standards and provides valuable guidance in the development of the proposed Selwyn District Plan.

Higher order policy direction

- 23 **Ms Foote** discusses the relevant higher order planning documents in her evidence. These submissions highlight particular policies of relevance.

NPS Urban Development

- 24 The NPS Urban Development directs (of particular relevance to Orion's relief) that local authority decisions on urban development are integrated with infrastructure planning decisions,⁵ and that planning decisions contribute to well-functioning urban environments.⁶
- 25 It is submitted that a well-functioning urban environment is one in which:
- 25.1 infrastructure – particularly infrastructure such as the electricity distribution network which provides fundamentally important support to communities – is not adversely affected by incompatible activities; and
- 25.2 urban growth is planned with infrastructure provision in mind, recognising that the two run hand in hand.

Canterbury Regional Policy Statement

- 26 The Selwyn District 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

⁴ Independent Hearings Panel Christchurch Replacement District Plan "Decision 1: Strategic directions and strategic outcomes" 19 March 2015, available at <http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Strategic-Directions-and-Strategic-Outcomes-Decision.pdf>, at [99]-[107].

⁵ Objective 6.

⁶ Policy 1.

significant infrastructure” and “strategic infrastructure”. This status must be reflected in the District Plan provisions.

- 27 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).
- 28 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.
- 29 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

- 30 A number of submitters have opposed the Strategic Directions being amended to direct that reverse sensitivity effects are avoided. 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 carrying 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*”.⁷
- 31 The proposed District Plan must meet the sustainable management purpose of the RMA. This requires a balance of often competing interests and effects. Reverse sensitivity effects are an adverse effect for the purposes of the RMA. Therefore, the Council has a duty under section 17 of the RMA to avoid, remedy or mitigate those effects so as to achieve the Act’s sustainable management purpose.
- 32 The general principle, established in case law, is that activities should internalise effects wherever reasonably possible.⁸ However, total internalisation of effects is not feasible in all cases and there is no requirement under the RMA that this must be achieved.⁹
- 33 Orion internalises its effects wherever reasonably possible. However, total internalisation of effects is not feasible. 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.

⁷ *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535, para [22].

⁸ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9].

⁹ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9] and *Catchpole v Rangitikei District Council*, W35/03.

- 34 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, regionally, as is the case for the electricity distribution network.¹⁰ 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.¹¹
- 35 **Mr Heyes** 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 Orion'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.

CONCLUSION

- 36 Orion requests the Hearing Panel accepts the relief sought in Orion's submissions and further submission, including as amended through **Ms Foote's** evidence.

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¹⁰ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [18].

¹¹ *Ngatarawa Development Trust Ltd v Hastings District Council*, W017/08.