

**BEFORE THE HEARING PANEL APPOINTED
BY THE OTAGO REGIONAL COUNCIL**

UNDER The Resource Management Act
1991 (**Act** or **RMA**)

IN THE MATTER of an original submission on the
Proposed Regional Policy
Statement for Otago 2021
(**PORPS**)

BETWEEN **AURORA ENERGY LIMITED**

Submitter 0315

NETWORK WAITAKI LIMITED

Submitter 0320

POWERNET LIMITED

Submitter 0511

AND **OTAGO REGIONAL COUNCIL**

Local Authority

**SUBMISSIONS OF COUNSEL ON BEHALF OF AURORA ENERGY
LIMITED, NETWORK WAITAKI LIMITED AND POWERNET LIMITED**

DATED 14 MARCH 2023



GALLOWAY COOK ALLAN LAWYERS
Simon Peirce
simon.peirce@gallowaycookallan.co.nz

P O Box 143
Dunedin 9054
Ph: (03) 477 7312

MAY IT PLEASE THE HEARING PANEL:

Introduction

1. These submissions are presented on behalf of the three primary electricity distribution businesses (**EDBs**) that operate in Otago:
 - (a) Aurora Energy Limited (**Aurora Energy**).
 - (b) Network Waitaki Limited (**Network Waitaki**).
 - (c) PowerNet Limited (**PowerNet**).
2. These submissions are written further to an appearance before the Hearing Panel on 8 February 2023 in which Counsel introduced the EDBs and set out their interest in this proceeding. We rely on that introduction for the purpose of these submissions.
3. Counsel is joined by its witnesses who lodged their primary evidence in November 2022:
 - (a) Ms Megan Justice (Planning)
 - (b) Ms Joanne Dowd and Mr David Patterson (Aurora Energy);
 - (c) Mr Shane Watson (Network Waitaki); and
 - (d) Mr Mark Zwies (PowerNet).
4. Ms Justice also filed a brief of rebuttal evidence which considers how the energy section might appear in response to evidence for the Renewable Electricity Generators (**REGs**).¹
5. The purpose of these submissions will be to address the balance of relief sought by the EDBs submissions, as described by the evidence of Ms Justice. There are two points which Counsel wishes to raise since that last appearance.

Scope of Submissions

¹ Manawa Energy, Contact Energy, Meridian Energy.

6. The EDBs relief, as set out in the evidence of Ms Justice is addressed in the following sections:
- (a) **Effects Management Framework:** Providing an integrated effects management framework addressing the effects of electricity distribution infrastructure across various domains.²
 - (b) **Energy Section:** packaging the relief sought in (a) and existing INF section into the energy section together with electricity generation and transmission thereby providing for the entirety of the electricity system.
 - (c) **Other amendments sought to the EIT Chapter:** including in relation to distributed generation, operation and maintenance and the provision of the distribution network.
 - (d) **Providing for the Operational needs and Functional Needs of the Distribution Network:** seeking amendments to various provisions across PORPS which recognise and provide for the functional needs and operational needs of electricity distribution infrastructure, its protection from incompatible land uses and importance to adapting to the effects from climate change.
7. For ease of reference, the following definitions are used:
- (a) Any reference to 'distribution network' is a reference to the 'electricity distribution network'.
 - (b) **ESTI** means Electricity Sub-transmission Infrastructure.
 - (c) **ONL/Fs** means Outstanding Natural Landscapes and Features.
 - (d) **PORPS19** refers to the Partially Operative Regional Policy Statement 2019.
 - (e) **Proposed Policies** means EIT-EN-PXX and EIT-EN-PXXA as set out in the evidence of Ms Justice.

² WT, CE, EIT, ECO, FW, NFL,

- (f) **RSI** and **NSI** means Regionally Significant Infrastructure and Nationally Significant Infrastructure, respectively.
- (g) **SEDI** means Significant Electricity Distribution Infrastructure.

Effects Management Framework

- 8. The EDBs seek to introduce the Proposed Policies which address the effects of the distribution network within and outside the coastal environment.
- 9. Those Proposed Policies would have the effect of creating a bespoke effects management regime which would be distinct from existing policy EIT-INF-P13.
- 10. The evidence of Ms Justice is that:³

“a standalone policy in the pORPS that sets out how the environmental effects of electricity distribution infrastructure is managed will result in improved environmental outcomes, as it will be easier to administrator, and can address the unique nature, character and scale of this infrastructure.”

The Status Quo – EIT-INF-P13

- 11. The EDBs consider existing Policy EIT-INF-P13 does not establish a workable consent pathway for electricity distribution infrastructure. That might be understandable when considered against what it is attempting to address which is a single policy addressing all infrastructure. That is a lofty aspiration when considering the differences, and varying importance of infrastructure that the policy is designed to serve.
- 12. EIT-INF-P13 goes some way towards narrowing the effects management by providing a relatively lenient framework for RSI and NSI. However, the policy remains a blunt instrument and in terms of infrastructure that is not RSI it would have the effect of seeking to avoid any adverse effects on the values of that particular landscape.

³ EIC of M Justice dated 23 November 2022, Appendix C, Page 60.

13. With respect to the way in which the term 'avoid' is used, Counsel relies on the opening submissions of Mr Michael Garbett for Dunedin City Council and simply reiterates the submission that "This avoid language therefore needs to be tested for its suitability in its various contexts to ensure that this is the intended and deliberate meaning given its significance".⁴
14. For RSI, EIT-INF-P13 acts in concert with other policies throughout PORPS⁵⁶ which together seek to protect listed environments (ECO and FW), avoid significant adverse effects and otherwise maintain the environment (HCW-WT-P12). Where the effects of infrastructure is not dealt with by pushing to other policies then the policy direction is to minimise adverse effects.
15. The status quo is problematic because:
 - (a) If all adverse effects cannot be appropriately avoided or addressed through compensation or offsetting (which is not always appropriate) then the activity cannot go ahead as it must be avoided.
 - (b) There is little direction in the term 'minimised', particularly for areas of national importance such as outstanding natural landscapes which comprise a significant amount of rural zoned land in the Queenstown Lakes District.
16. The ordinary relief would have been for the EDBs to seek a carve out, within those policies to manage that infrastructure differently or to simply replace the policy with a version supported by the EDBs. That carve out might look something like what Transpower has proposed to EIT-INF-P13 which seeks additional sub-clauses which deal directly with the National Grid and to give effect to the NPS on Electricity Transmission.

⁴ Submissions of Counsel for Dunedin City Council dated 24 January 2023 at [6]-[15].

⁵ Such as ECO-P4 (ostensibly ECO-P6), LF-FW-P12 and HCV-WT-P2.

⁶ Counsel observes that the reference to LF-FW-P12 in the 31 October version of PORPS should be updated to LF-FW-P13A which is an effects management hierarchy in relation to wetlands and rivers.

17. Counsel thinks that style of relief creates impossibly long and complicated policies particularly given that EIT-INF-P13 is broad in its application to all infrastructure. If all infrastructure providers sought a carve out of their own written into the policy, then the drafting of the policy would be unwieldy and difficult for readers of PORPS to digest.
18. For the energy sector, attempting to agree to a single effects management framework is nigh on impossible given that the REGs and the National Grid can rely on their respective NPSs and, understandably, want a policy framework that reflects those documents. The EDBs cannot leverage off those documents because it is different infrastructure. However, the distribution network still logically ought to be addressed together with those parties.
19. Additionally, a joint policy may not be appropriate to different infrastructure providers for a range of reasons. The EDBs are a linear network, spanning significant distances across the region. By contrast, other RSI may only operate in a fixed location, such as electricity generators or airports. The types of functional needs and operational needs of those infrastructure providers may therefore be rather different between them.
20. As set out in the corporate evidence of Mr Watson, Mr Zwies and Ms Dowd, the EDBs must operate and develop their network to serve the demand of their customer base. Customers are not the equivalent of people. Some customers might have the demand of a significant number of households and require significant upgrades to the distribution network to serve. For example, irrigation to support agriculture or food/fibre production is a major source of growth for Network Waitaki and is used widely throughout the Otago Region.⁷ Electricity demand for irrigation is likely to increase as there is a greater focus on efficiency of what takes through spray irrigation infrastructure and storage, thereby creating additional demand on the electricity network to service. The evidence of Mr Benjamin Patterson, called by Otago Water Resource User Group, Federated Farmers of New Zealand and DairyNZ is useful

⁷ EIC of S Watson at 4.4, page 3.

to refer in that context, estimating a contribution to the regional economy of 9.6% of Otago's GDP.⁸

21. The distribution network is, and will be developed, in both rural and urban environments. The EDBs do not decide where that demand growth will be, but are tasked to service it. That demand will, inevitably, be located in all types of environments across the region simply as a consequence of the lengths of those networks and the operational requirement to be connected to sources of generation or transmission. Distilling the examples across the evidence establishes that the distribution network can be found in most, if not all, natural and physical resources of natural importance in s 6 of the Act, including areas with amenity values in accordance with s 7(c).
22. Accordingly, through various topics which address effects on those environments, the EDBs have sought a new sub-clause along the following lines:
 - (a) recognising that for infrastructure, EIT-INF-P13 and EIT-EN-PXX applies instead of [insert reference]; .⁹
 - (b) in the case of infrastructure the effects of the activity are managed by the effect's management hierarchy (other matters) in accordance with EIT-EN-PXX.¹⁰
 - (c) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13 and EIT-EN-PXX.¹¹
 - (d) In the coastal environment: (X) manage electricity distribution infrastructure in accordance with EIT-EN-PXXA.¹²

Proposed EIT-EN-PXX and EIT-EN-PXXA

⁸ EIC of B Patterson for Otago Water Resource User Group, Federated Farmers of New Zealand and DairyNZ at [14].

⁹ HCV-WT-P2(1)-(5); ECO-P3; ECO-P4; ECO-P5; ECO-P6;

¹⁰ LF-FW-P13.

¹¹ NFL-P2.

¹² CE-P4.

23. It is against a background of sprawling infrastructure and sensitive environments that EDBs must contend with resource consent applications or designations to develop. The EDBs do not dispute the bottom lines in Part 2 of the Act. However, clearly there is a need to balance that against locating the distribution network to service the region.
24. The EDBs seek to achieve this balance through the Proposed Policies. This approach shares commonalities with existing EIT-INF-P13 by:
- (a) Firstly, by prioritising the location of infrastructure outside of sensitive environments; and
 - (b) Secondly, to reduce, by virtue of avoiding then mitigating followed by remedying adverse effects within those environments, including where appropriate any offsetting or compensation (in the context of ECO and FW).
 - (c) Thirdly, a requirement for there to be a functional or operational needs for the location of that infrastructure and to justify why it may not be practicable to avoid locating there or to avoid certain adverse effects.
25. The key differences between the Proposed Policies and EIT-INF-P13 are discussed below:
26. The Proposed Policies are specific to the distribution network, which has had the effect of removing broad references to 'infrastructure', 'NSI' or 'RSI';
27. Except with respect to natural wetlands, those parts of the distribution network that are classified as RSI (including as proposed through the EDBs submission)¹³ are subject to a consistent effects management framework set out in (2)(a) which applies across all those areas set out in (1).

¹³ The EDBs have sought to classify Significant Electricity Distribution Infrastructure within the definition of Regionally Significant Infrastructure which was the subject of the EDBs first hearing attendance, refer Submissions of Counsel dated 8 February 2023.

28. Recognising the difference in management of effects (2)(a)(iv) pulls in consideration of offsetting or compensation measures (for more than minor adverse effects) in accordance with APP3 and APP4.
29. Rather than 'minimise' effects on all other environments, which include areas of historic heritage or outstanding natural landscapes or features the effects management policy would apply. Counsel submits that this provides more guidance, and arguable a stricter approach to reducing adverse effects than simply 'minimising' as it directs the avoidance of effects that can be avoided, etc.
30. With respect to those parts of the network that are not RSI, comprising any high voltage (11kV) lines that are not ESTI or SEDI (to be determined by virtue of the definition) then the policy would instead require significant adverse effects be avoided (a change from *any* adverse effects); and then sequentially, avoid, remedy and mitigate all other adverse effects, where practicable.
31. The Proposed Policies have been developed in the Queenstown District Council Proposed District Plan context through appeals to the Environment Court. For the last four years, the parties (who are also submitters on PORPS¹⁴) have mediated and lodged evidence and submission in support of provisions addressing regionally significant infrastructure. The key driver behind those interests is to ensure that there is an appropriate consenting pathway in that District which is almost entirely classified as an ONL/Fs. However, that topic has also addressed other sensitive environments, including heritage areas, wāhi tūpuna, special character areas, amenity landscapes.
32. It is important to recognise that the Queenstown context is not representative of the scale of sensitive environments throughout the region. The Queenstown Lakes District is unique in that 97% of the District is ONL/F which provides a wealth of tourism and economic opportunity for that District. The importance of those landscapes permeates to other parts of the Queenstown Lakes District Plan beyond

¹⁴ Transpower New Zealand Limited, Federated Farmers of New Zealand Incorporated, Spark, Vodafone and Chorus (Telecommunication Companies), Queenstown Airport Limited and Queenstown Lakes District Council.

simply landscape protection and into recognition of and provision for economic opportunities. As a result, Queenstown has a very strong and prescriptive focus on protecting the values associated with those environments and this formed the basis of several decisions of the Environment Court on its recent staged district plan review.

33. PORPS does not necessarily need to be so prescriptive provided it maintains the bottom lines required by Part 2 of the RMA and enables districts to provide their own frameworks for the protection of their respective environments.
34. This is also important because the relief sought by the Proposed Policies is to remove reference to areas of high recreational or amenity value, which the evidence of Mr Craig Barr for Queenstown Lakes District Council objects.¹⁵ While Mr Barr accepts that the PORPS should be intentionally broad in its application, his evidence considers that there is little direction in the terms “avoid remedy or mitigate adverse effects” for local authorities. Counsel submits those statements are somewhat in conflict and that if a territorial authority deems it necessary to provide greater specificity through its District Plan, then it ought to do so. Where such an approach is advanced that should also be demonstrated through evidence that establishes why such an environment requires more specific protection and the extent to which the distribution network is incompatible with that.
35. Returning to decisions on the QLDC PDP review, the Environment Court has not yet issued its decision but Counsel understands that this is imminent. The decision will be highly relevant to the panels determination of submissions on PORPS given that a similar sequential effects management framework was advanced in the context of that proceeding and serves to demonstrate that infrastructure such as the distribution network.
36. A copy of the Environment Court decision will be submitted to the panel upon its issuance. Counsel therefore seeks leaves for interested submitters who were involved in that proceeding to file supplementary

¹⁵ Rebuttal evidence of C Barr dated 14 December 2022 at 2.9.

legal submissions within an appropriate timeframe receipt of that decision. A reply from the Regional Council would also be appropriate.

37. The decision will not be relevant to the Coastal Environment. However, with respect to Policy EIT-EN-PXXA the evidence of Ms Justice is that:
- (a) The policy is designed to replace policy EIT-INF-P13A;
 - (b) Reflects the drafting of Policy 13 of the New Zealand Coastal Policy Statement; and
 - (c) Includes the additional step of first giving preference to avoiding the location of infrastructure in protected areas except where there is a functional need to locate there.
 - (d) The policy closely matches the former drafting of Policy 4.3.4 of PORPS. There has been no changes to NZCPS Policy 13 that would warrant a deviation from that settled provision.

Response to Opening Submissions for Otago Regional Council

38. The opening submissions of the Regional Council makes a number of observations on the proposed replacement policies to EIT-INF-P13 which have been proposed by submitters (Contact Energy, Aurora Energy, Network Waitaki, PowerNet and Transpower). The general submission is that there is a requirement to give effect to Part 2 and, using the example of significant indigenous vegetation/biodiversity, that where the link to the ECO chapter is proposed to be severed then the extent to which that provision gives effect to Part 2 must be considered afresh. Counsel agrees with the regional council in that respect.
39. What is not agreed is the general criticism levelled by the Regional Council that infrastructure providers will 'do their best' to avoid, remedy and mitigate but are not necessarily required to given that there is a perceived side-step of the general 'avoid' in EIT-INF-P13(2)(b).
40. The implicit standard in both EIT-INF-P13 and the Proposed Policies is that adverse effects will be avoided. It is only where avoidance is not demonstrably practicably can the applicant go to that next element of the cascade. There is a body of evidence, by various submitters of the

considerable difference between what is technically possible versus what is practicable. If there are alternative locations or methods in which locations or effects can be avoided, then those will be explored.

41. With respect to the apparent 'side-step' it is noted that both the practicability point and removing the requirement to 'avoid' all other adverse effects was a feature of the former Policy 4.3.4 of PORPS19. The current PORPS therefore conflicts with the approach taken under PORPS19 despite no changes to Part 2.

Energy Section

42. There is already an energy section in PORPS.
43. The EDBs relief in this respect is to combine its related EN and INF relief together with electricity generation, transmission and distribution. The EDBs have sought to include electricity transmission who do not appear to oppose this provided their relief is granted. The key difference in views between Mr Marcus Langman (s 42A Report Author) and the EDBs is the extent to which the energy sector ought to be treated differently than other infrastructure.
44. The relief sought by the EDBs is therefore better characterised as a restructuring of provisions applicable to the electricity sector as opposed to introducing an entirely new concept altogether. However, that approach has met resistance because of the lack of higher order direction requiring such an approach.
45. The opening submissions for the Regional Council was that:¹⁶

The proposed RPS has not singled out, as a general rule, and made distinct provisions for particular activities, except where required by a National Policy Statement. So, for example, there are not distinct provisions for mining and other extractive industries, nor for food and fibre production. A policy statement structured on an activity-by-activity basis is difficult to reconcile with the National Planning Standards, would be unduly complex, lose integration, and dilute the core principles which the RPS seeks to establish uniformly across the region.

¹⁶ Opening Submissions for Otago Regional Council at [65].

46. The energy section stems from the requirements of the National Planning Standards (**NPS**). Therefore, the philosophical hurdle as to whether this industry can be singled out has already been overcome. Perhaps the greatest hurdle to overcome is whether electricity distribution should be singled out from the management of infrastructure broadly in the INF part of EIT. The EDBs case has been presented on that basis. However, if that hurdle is too great then an alternative approach has been suggested whereby the same provisions would be contained in the INF Section.
47. Collating relating provisions draws support from the NPS, which requires:¹⁷
- (a) Local authorities must add sections and subsections within chapters where appropriate to organise related provisions.
48. Counsel submits that the relief to organise the provisions in this is appropriate.
49. The evidence of Ms Justice in that respect is:¹⁸

13.2 To be successful, a bespoke Energy Chapter needs to encompass all aspects of the sector, from generation through transmission through to ensuring the distribution network can supply electricity to the community / customers securely, reliably and safety.

...

13.4 The New Zealand electricity industry is critical to the social, cultural and economic wellbeing of people and communities, and the development of renewable electricity generation is a key driver in New Zealand's de-carbonisation process. In my view, the various components of the electricity network are appropriately contained in a bespoke Energy Chapter which contains the myriad of objectives, policies, methods, etc that enable, recognise and protect the electricity industry. Containing all the provisions that provide for and manage the effects of this infrastructure in one chapter is logical and will be efficient to

¹⁷ National Planning Standards, section 2. *Regional Policy Statement Structure* at page 8.

¹⁸ EIC of M Justice at 13.2 and 13.4.

administer. The PORPS presents an opportunity to provide a holistic, all-inclusive approach for energy, to deliver New Zealand's de-carbonisation goals.

50. Mr Langman goes some way towards an all-encompassing 'energy' approach by restructuring the EIT Topic to group all energy related provisions together.¹⁹ Mr Langman's analysis is compelling and finds that much of those changes can be made with minor effect given that they can be effectively ring-fenced.²⁰ But in terms of standalone provisions, Mr Langman's view, is that:²¹

...there needs to be a clear justification for treating this type of infrastructure differently from other regionally or nationally significant infrastructure, to the extent that EIT-INF-P13 (which sets out the management approach for other infrastructure) should not apply.

51. Mr Langman then stresses the importance of providing for the bottom lines set out in Part 2, including ONL/Fs, freshwater resources and indigenous biodiversity.²² For the EDBs part, the evidence of Ms Justice is that those bottom lines will be protected or otherwise adequately provided for. However, the difference in approach between Mr Langman and Ms Justice is that Ms Justice's approach:

- (a) Provides an effective consenting pathway as opposed to inhibiting avoid language;
- (b) Provides greater direction on the term 'minimise' through the proposed effects management hierarchy;
- (c) Enables the deliverance of the distribution network which will assist in meeting New Zealand's decarbonisation goals.

52. For the reasons set out in these submissions and Ms Justice's evidence, Counsel submits that Mr Langman's concerns with respect to containing the relief sought into a stand-alone Energy Chapter has been addressed. However, it is accepted that the reference ought to be to an

¹⁹ Supplementary evidence of M Langman dated 11 October 2022, at [17].

²⁰ At [19].

²¹ At [24].

²² At [25].

Energy 'sub-section' of the EIT Chapter. An example of how this would fit into PORPS is set out in Ms Justice's reply evidence and includes the relief sought by the EDBs and the REGs.

Other amendments sought to EIT

EIT-EN-P8 – Small and community scale distributed electricity generation

53. A narrow addition has been sought to EIT-EN-P8 which provides for small and community scale distributed electricity generation. The amendment responds to the practical reality that these systems will be required to offload additional capacity to the distribution network and that this is anticipated to increase over the next 10 years driven by the adaptation to climate change, government incentives, cost reductions and other value streams.²³ Facilitating a connection between the distribution network and distributed generation would therefore assist with giving effect (at least in part) to all objectives in EIT-EN.

EIT-INF-P11 – Operation and Maintenance

54. EIT-INF-P11 has sought be narrowed to remove sub-clauses (1) and (2). Similar relief has also been sought by Transpower as set out in the evidence of Ms Ainsley McLeod.²⁴ The primary concern is that the policy does not refer to all infrastructure, which for the EDBs would include any non-ESTI or SEDI (assuming SEDI is adopted into the definition of RSI). The secondary concern is that it creates uncertainty in terms of the ability to operate and maintain existing infrastructure.
55. The types of activities that are anticipated are typically those activities that occur on a daily basis and are often motivated to address security of supply or health and safety.²⁵ This type of work is carried out as either: scheduled, non-scheduled or emergency maintenance and is assessed based on a condition-based-risk management framework, taking into account asset information, engineering knowledge and experience to define, justify and target asset replacements.²⁶

²³ EIC of Shane Watson at 5.11.

²⁴ EIC of A McLeod at 8.37.

²⁵ EIC of J Dowd at 11.11

²⁶ EIC of D Paterson at 6.7-6.8.

56. The EDBs are also charged with maintaining vegetation that grows in close proximity to existing infrastructure by virtue of the Electricity (Hazards from Trees) Regulations 2003 (**Tree Regulations**). The Tree Regulations have the purpose to protect the security of the supply of electricity, and the safety of the public. The purpose is realised through a detailed set of provisions by prescribing setback distances, responsibility for maintenance, assigning liability and a process for resolving any disputes. The thrust of the Tree Regulation is, however, to recognise the importance of the continuity of electricity supply and health and safety.
57. This relief is partly connected to additions sought to EIT-EN-M2 whereby land use controls would be contained in District Plans to ensure the functional needs of the distribution network are not compromised based on Tree Regulations.²⁷
58. Ordinarily, it is a permitted activity in a District Plan to operate and maintain existing infrastructure. Such an activity status therefore provides for the clearance of vegetation that is required by the Tree Regulations. EIT-INF-P11 by virtue of reference to ECO-P4 purports to establish rules that would require resource consent that would require adverse effects be avoided or otherwise minimised. If that cannot be achieved, what is the EDB left to do other than to remove the asset (which could only be achieved by clearing the vegetation anyway) or let the vegetation grow and create a health and safety risk to people as well as to the network.
59. While the EDBs might accept similar limitations in the case of proposed infrastructure, it is submitted that this should not carry over into the operation and maintenance of existing infrastructure.

EIT-EN-P15 – Providing for Electricity Distribution

60. Proposed EIT-EN-P15²⁸ is a combination of two policies recommended by the s 42A Report Author in PORPS: EIT-INF-P15 and EIT-EN-P10.

²⁷ EIC of M Justice at 13.28.

²⁸ Note that this is referred to with INF as opposed to EN in the Rebuttal Evidence of Megan Justice. This recognises that the policy could be contained in either INF or

P15 pertains to the protection of RSI, which includes parts of the distribution network. Whereas P10 provides for the distribution network generally. The two policies have distinct functions in recognising the differing levels of importance of parts of the distribution network.

61. The two policies have been combined into P15 and structured to provide for the ranking of ESTI, SEDI and the balance of the distribution network. It is therefore very similar in effect to the previously separate policies but aligns with the EDBs case which is to simplify and streamline the applicable provisions.

Providing for the Operational needs and Functional Needs of the Distribution Network

62. This section of submissions will address the balance of relief sought by the EDBs which spans a number of topics in PORPS.

UFD – Urban Form and Development

63. Amendments are sought to UFD-04 to provide an exception for locating in rural areas where there is an operation or functional need. Counsel submits an amendment is required because as presently written UFD-04 is inconsistent with the National Policy Statement on highly productive land (**NPS-HPL**). For the purpose of the NPS-HPL, the EDBs are specified infrastructure, which are an activity that is an activity that meets the exceptions in Clause 3.9.²⁹
64. This inconsistency can be easily remedied within the scope of the EDBs submission which simply seeks to provide for the location of specified infrastructure.
65. Additionally, provision is sought in policies for the identification of ESTI and SEDI including managing effects on that infrastructure from potentially incompatible activities. Ms Justice notes that the provision has been accepted in part by virtue of mapping infrastructure corridors

EN but its final location will depend on whether the relief sought for an 'energy section' is accepted.

²⁹ National Policy Statement on highly productive land at Clause 3.9(2)(j)(i).

through EN-M2. Additionally, PORPS19 contains the following policy direction which suggests the balance of the relief is appropriate:

- (a) Policy 4.4.5(e): Identifying significant electricity distribution infrastructure and managing effects of potentially incompatible activities through methods such as corridors.
- (b) Method 4.4.19.c: Where necessary, providing controls on activities to ensure that the functional needs of the significant electricity distribution infrastructure are not compromised.

CE – Coastal Environment

66. The EDBs relief with respect to CE-05 is consistent with Policy 6 of the NZCPS. The substance of the relief has been accepted in part by virtue of a recommended change to CE-P9.³⁰ However, it is considered that recognition in the corresponding objective is necessary to ensure appropriate vertical integration between the objective and policy.

HAZ-NH – Natural Hazards

67. Various amendments have been sought to the Natural Hazard provisions to enable the development of new activities to both connect people and communities to the distribution network³¹ as well as to adapt to the effects of climate change.³² Ms Justice disagrees with Mr Maclennan, considering that a consenting pathway should be otherwise available.
68. The difference in opinions appear to stem from a policy gap whereby:
- (a) existing lifeline utilities are to be maintained to the fullest extent possible, during and after natural hazards events;³³
 - (b) existing lifeline utilities within significant risk areas are to be relocated, where appropriate and practicable;³⁴ but

³⁰ Section 42A Hearing Report, Chapter 8 CE – Coastal Environment at [327] page88.

³¹ HAZ-NH-P3, submission [insert].

³² HAZ-NH-PXX submission [insert].

³³ HAZ-NH-P8.

³⁴ HAZ-NH-P4(5).

(c) new lifeline utilities are to be avoided in areas of significant risk.³⁵

69. The EDBs seek to provide for the recognition of the continued function of lifeline utilities which is left by HAZ-NH-P3. Mr MacLennan's concern is:³⁶

"If an infrastructure project was considered a 'significant' risk, it would mean that the consequences of undertaking that project would be considerable. In this instance I consider it is appropriate that the significant risk is avoided.

70. While that statement holds weight at first blush, it appears to be of general application and directed to infrastructure activities generally, which is not the same as a lifeline utility, a slightly narrower subset of infrastructure that has elevated importance to the region. Infrastructure, by contrast could include irrigation equipment, which should understandably be avoided in such an area. While Mr MacLennan recognises that those projects would likely meet an insignificant or minor consequence and therefore be unlikely to be 'avoided' that is not a chance that the EDBs wish to take, given its importance.

Conclusion

71. The EDBs seek a policy framework which provides for the functional and operational needs of the distribution network.
72. For existing infrastructure this will be through policies which enable the effective day to day operation and maintenance of that infrastructure as well as restricting the establishment of activities in close proximity to ESTI and SEDI which might comprise their function.
73. For new infrastructure, the EDBs seek the introduction of the Proposed Policies which will address the effects of the distribution network on various environments. It is submitted that a stand-alone effects management policy within and outside of the coastal environment will:

³⁵ HAZ-NH-P3.

³⁶ Section 42A Report 12: HAZ – Hazards and Risks at [132], page 31.

- (a) Address a shortcoming in which EIT-INF-P13 is seeking to do too much and providing for all types of infrastructure, regardless of their functional, operational or technical differences.
 - (b) Avoid over-complicating existing EIT-INF-P13 by splitting out the distribution network into its own policy which recognises the three distinct categories of that network.
 - (c) Provide a consenting pathway for the distribution network, part of which is recognised as RSI and all of which is a lifeline utility.
 - (d) Provide greater direction to the minimisation of effects on those environments than the status quo.
74. In other respects, the relief sought seeks to provide for the functional needs and operational needs of the distribution network.
75. It is submitted that the relief sought provides a robust and integrated framework for the management of and on the distribution network within the region.

Dated 14 March 2023



Simon Peirce

Counsel for Aurora Energy, Network Waitaki and PowerNet