

**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

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

DATED 24 APRIL 2023



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MAY IT PLEASE THE HEARING PANEL:

1. These supplementary submissions of counsel is lodged on behalf of 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 filed in accordance with Minute 14 in which Counsel sought leave to make submissions on a recent determination of the Environment Court which confirmed various provisions of the Queenstown Lakes District Council Proposed District Plan (Stage 1) (**QLDC PDP**) on provisions addressing Regionally Significant Infrastructure (**RSI**).¹
3. The Panel's hesitance to receive the submissions is noted and Counsel is aware that the Environment Court does not necessarily give reasons in support of its confirmed provisions. This Counsel does not intend to advance a proposition that the panel should investigate the minutia of how the Environment Court made this determination as that would require an assessment of the evidence before the Court which the panel does not have.
4. These submissions focus on:
 - (a) The recognition of Significant Electricity Distribution Infrastructure (**SEDI**) as RSI in the QLDC PDP
 - (b) Highlighting common themes in the effects management framework determined by the Environment Court and the approach advanced through submission for the EDBs.

SEDI

¹ Decision No. [2023] NZEnvC 69

5. The Court's determination confirms that SEDI is recognised as RSI. This includes the following lines that were also raised in evidence before this panel:²
 - (a) Wānaka to Treble Cone;
 - (b) Maungawera (near Camp Hill) to Makarora; and
 - (c) Cardrona substation to the Cardrona Transformer at ski field base.
6. As a consequence of this recognition, those specific lines are now afforded the same protection as electricity sub-transmission infrastructure through the definition of RSI. That protection is primarily directed through a sequential effects management framework discussed below.
7. The EDBs seek relief to include the definition of SEDI as RSI and this is presently recommended to be declined by the s 42A Report Author. It is submitted that the Environment Court's recognition of this infrastructure as RSI in the Queenstown context is persuasive (but not binding) on this panel given that:
 - (a) The Environment Court came to this determination through the lodgement of evidence and submissions;
 - (b) The same lines which have been recognised (at least for Aurora's part) are those that were put forward in evidence to the panel; and
 - (c) All other parties to this proceeding consented to those particular lines being recognised as RSI.
8. Counsel acknowledges that although PORPS did not recognise SEDI as RSI there was still the opportunity, through the QLDC PDP, to recognise those lines as such. It could therefore be argued that PORPS need not classify those lines as RSI in light of that available pathway. However, this approach is somewhat placing the cart before the horse in which the District Plan is in a position of establishing those utilities

² EIC of Joanne Dowd dated 23 November 2022 at [11.3] and Appendix 1 – Queenstown Lakes District Mapped ESTI and SEDI

which are regionally significant which is counter-intuitive to the ordinary way in which those are identified, which Counsel submits ought to be through a Regional Policy Statement.

9. Aurora is also concerned about a risk that its SEDI lines will be sought to be declassified as RSI in the event that PORPS does not classify those lines as RSI. This risk

Effects Management Framework

10. The determination approves a series of vertically integrated effects management framework policies as set out below:
 - (a) Strategic Policy 3.3.24A sets the outcome to be achieved for particular areas as set out in (a)(i)-(v) and describes that those outcomes are achieved insofar as practicable and subject to a requirement to achieve the proposals functional and operation needs. For any outcome that is not achieved, adverse effects are:
 - (i) Avoided to the extent practicable;
 - (ii) For effects that cannot be avoided, there is a satisfactory remediation or mitigation.
 - (iii) For effects on indigenous biodiversity values, consideration is given to any offer or agreement by an application for offsetting or compensation.
 - (b) Policy 6.3.3.6.b applies to RSI other than the National Grid in Outstanding Natural Features and Landscapes (**ONFL**) and has a focus on protecting landscape values that may be scheduled or in accordance with a specified methodology.
 - (c) Policy 6.3.3.6.c applies where there is insufficient landscape capacity and relocating would be impracticable because of functional and operational needs, then locating in an ONFL is not inappropriate by following a sequential effects management hierarchy in (i)-(iii).

- (d) Policy 6.3.4.6 has a similar structure to Policy 6.3.3.6 but applies to Rural Character Landscapes.
 - (e) Policy 30.2.7.1A applies to Significant Natural Areas (scheduled or non-scheduled) and Category 1 Heritage Features and requiring their protection and again with a similar sequential effects management framework.
11. The following themes arise from these policies, including:
- (a) That in respect of RSI, the outcome states required by ss 6 or 7 of the Act does not necessarily require an RSI proposal be avoided;
 - (b) Locating RSI within a ss 6 or 7 landscape is to be avoided as a first priority with other locations to first be considered. Locating within one of those landscapes or areas must be determined to be not practicable by reason of the functional and operational needs of RSI.
 - (c) Where there is no other practicable option to locate, then a proposal must follow a sequential effects management framework (avoid, minimise, remedy, mitigate), including consideration of the values of that landscape or area and considering offsetting and compensation (in the case of a significant natural area).
12. Part of the EDBs relief was to introduce a single effects management policy EIT-EN-XX addressing a range of environments throughout the region. The determination of the Environment Court takes a similar approach, albeit at a narrower district wide scale.
13. Part of the opposition by ORC on the EDBs relief was that a single effects management framework might not appropriately recognise and provide for the environments of national importance in s 6. As set out above, the effects management hierarchy across those environments are reasonably consistent in their approach, except with some slight differences to provide for matters such as biodiversity offsetting and compensation.

14. The purpose, therefore, of raising the determination is to get over any apparent philosophical hurdle that RSI can simply be avoided in certain areas. The overwhelming evidence of RSI providers, including the EDBs, is that while there is a preference for avoiding those areas, there are many instances in which they simply cannot either because it is not possible or practicable. In those instances, there ought to be a consenting pathway which requires a proposal to do all it can to sequentially reduce (i.e. through avoidance, minimisation, remedying and mitigating) effects to the smallest possible extent in order to be granted resource consent.

15. Counsel does not ask this panel to repeat what the Environment Court has done through its determination. Rather, Counsel simply seeks to provide support to the approach advanced by the EDBs that a sequential effects management framework which enables RSI's to operate in sensitive (i.e. ss 6 or 7) landscapes. This enabling approach is, however, balanced against a robust effects management framework which seeks to reduce any residual effects of the proposal as far as practicable.

Dated 5 May 2023



Simon Peirce
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