

Before the Independent Hearings Panel
at Christchurch

under: the Resource Management Act 1991 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

in the matter of: submissions and further submissions in relation to the proposed Christchurch Replacement District Plan

and: the Chapter 8 Subdivision, Development and Earthworks (part) **Stage 2** proposal

and: **Orion New Zealand Limited**
Submitter 2340 / FS-2797

Opening legal submissions on behalf of Orion New Zealand Limited

Date: 2 November 2015

REFERENCE: JM Appleyard (jo.appleyard@chapmantripp.com)
A Hill (amy.hill@chapmantripp.com)

Chapman Tripp
T: +64 3 353 4130
F: +64 3 365 4587

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



OPENING 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 (#2340) and further submitter (#2797) on Stage 2 of the proposed Christchurch Replacement District Plan (*proposed District Plan*).
- 3 These legal submissions will briefly outline for the Panel the matters of interest to Orion in the context of the Chapter 8 Subdivision, Development and Earthworks (part) proposal (*the Proposal*).
- 4 Orion is calling evidence from **Mr John Scheele**, in relation to planning.
- 5 Orion has also filed supplementary evidence from **Mr Shane Watson** and **Ms Laura Buttimore** in relation to corridor protection provisions sought in relation to earthworks.

RELIEF SOUGHT BY ORION

- 6 Orion sought the following relief in the Proposal:
 - 6.1 Amendments to objectives and policies to improve drafting;
 - 6.2 Insertion of a corridor protection rule for Orion's strategic electricity distribution lines to control the potential effects of earthworks in proximity to the lines;¹
 - 6.3 Retention of the unlimited permitted earthworks volumes for the Transport zone in rule 8.8.2 Table 1;
 - 6.4 Amendment to the rules relating to earthworks for utilities;
 - 6.5 Retention of the exemption in Rule 8.8.5 for utilities-related earthworks
- 7 The relief sought by Orion was largely adopted by the Council in its revised version of the Proposal (attached to **Mr Long's** evidence in chief dated 5 October 2015) following mediation.

¹ Orion's strategic electricity distribution lines are its 66kV and 33kV distribution lines, and a small portion of its 11kV lines that runs from Heathcote to Lyttelton.

- 8 **Mr Scheele** addressed two outstanding matters that relate primarily to drafting and minor corrections to Rules 8.8.3 and 8.8.5. In his rebuttal evidence, **Mr Long** has accepted those points in his rebuttal evidence.
- 9 Orion therefore supports the revised Proposal attached to **Mr Long's** rebuttal evidence and seeks that it be adopted by the Panel.

CORRIDOR PROTECTION PROVISIONS

- 10 There is one matter which has arisen out of the rebuttal evidence of **Fiona MacKenzie** on behalf of Federated Farmers (submitter 2288).
- 11 **Ms MacKenzie** has expressed opposition to the corridor protection provisions sought by Orion in chapter 8.
- 12 Orion had not provided evidence on corridor protection at this hearing, because it considered that the issue was no longer in dispute following the mediation which occurred on 21 to 22 September 2015 and the subsequent inclusion by the CCC of corridor protection for Orion's strategic electricity distribution lines in the further revised proposals. No party opposed the inclusion of these corridor protection provisions in evidence in chief, and so Orion did not prepare rebuttal evidence on this issue.
- 13 Consequently, Orion filed supplementary evidence from **Ms Buttimore** and **Mr Watson**, attached to the Memorandum of Counsel dated 23 October 2015 which 'updated' evidence previously filed during stage 1 of this process. Both **Ms Buttimore** and **Mr Watson** are available to be questioned by the Panel or submitters on this issue.
- 14 Orion seeks that the proposed District Plan provides appropriate corridor protection for Orion's identified electricity network.
- 15 A significant risk to the continuity and reliability of the electricity distribution services that Orion provides is the risk of damage occurring to its distribution lines or inability to access those lines quickly and easily for repairs. This risk can be mitigated with suitable corridor protection.
- 16 **Mr Watson** outlined the nature of the identified electricity network that Orion seeks to protect in his previous stage 1 evidence. He explains that construction of buildings or establishment of incompatible land uses beneath Orion's lines has the potential to hinder the efficient and effective ongoing use and maintenance of those lines. In his supplementary brief of evidence filed for this hearing, **Mr Watson** has updated this previous evidence to include

details as to the effects of earthworks and excavation underneath Orion's lines.² These adverse effects can include:

- 16.1 Compromised foundations for distribution line support structures;
 - 16.2 Compromised line clearance due to excavations piled beneath lines; and
 - 16.3 Serious risk to health and safety of persons carrying out excavations below distribution lines.
- 17 The Panel is able to form a conclusion on a corridor protection rule for Orion's key assets regardless of the direct application of the National Policy Statement for Electricity Transmission (NPSET). Many of the city's strategic assets are not referred to in a National Policy Statement yet the infrastructure is considered strategic and deserving of protection. Orion's strategic electricity distribution lines are 'strategic infrastructure' and should be protected regardless of the fact that they are not the subject of the NPSET. **Mr Watson** and **Ms Buttimore** address this in evidence and I also discuss this further below.
- 18 It should be noted that the Christchurch City Council has accepted that Orion's infrastructure should have a similar level of protection as the National Grid and no longer disputes the merits of this protection.³

Orion's identified electricity network is 'strategic infrastructure'

- 19 The proposed District Plan defines 'strategic infrastructure' (following the Strategic Directions decision) as:

Strategic infrastructure

means those necessary infrastructure facilities, services and installations which are of greater than local importance, and ~~can~~ includes infrastructure that is nationally significant. ~~The following are examples of strategic infrastructure:~~

Explanatory note

The following are non-exclusive examples of strategic infrastructure:

- (a) strategic transport networks;
- (b) Christchurch International Airport;
- (c) Lyttelton Port of Christchurch;
- (d) bulk fuel supply and storage infrastructure including terminals, wharf lines and pipelines;

² Supplementary Evidence of Shane Watson, 23 October 2015, Attachment A, page 21.

³ Transport (part) stage 2 hearing, Transcript, page 8, line 15 to 45.

- (e) defence facilities;
- (f) strategic telecommunication and radiocommunication facilities;
- (g) the ~~electricity transmission network~~ National Grid; and
- (h) ~~other strategic network utilities~~ public water supply, wastewater and stormwater networks and associated facilities.

- 20 **Ms Buttimore** discusses this definition in her evidence as well as the related definition of 'strategic infrastructure' in the Canterbury Regional Policy Statement (*CRPS*).⁴ She considers that Orion's identified electricity network constitutes strategic infrastructure because it is a necessary service of importance beyond the local level and because it services other strategic infrastructure such as the Lyttelton Port and Christchurch International Airport.⁵
- 21 The definition of 'strategic infrastructure' set out in the Strategic Directions chapter decision and in the *CRPS* does not give specific recognition to Orion's electricity network, however, the definition of 'strategic infrastructure' is not limited to just the National Grid in the context of electricity transmission. **Mr Watson** explains that Orion's identified electricity network provides power to approximately 190,000 homes and businesses in the central Canterbury region and covers around 8,000 square kilometres. In addition, the 3km of 11kV line sought to be protected is the sole electricity provision for the Lyttelton area. These factors establish Orion as an infrastructure provider of regional importance.
- 22 It is not disputed that Orion's 66kV, 33kV and 11kV Heathcote to Lyttelton is 'strategic infrastructure' and is of greater than local importance. At the stage 1 Chapter 14: Residential (part) hearing **Ms McLeod** acknowledged that the ownership of some high voltage lines that used to make up part of the National Grid have been transferred from Transpower to Orion and that these are still considered to be both critical and strategic infrastructure, despite no longer forming part of the National Grid.⁶ In addition, in cross-examination **Mr Blair** for the CCC has stated that he considers Orion's 11kV lines to Lyttelton as well as its 33kV and 66kV are strategic infrastructure.⁷

⁴ Chapter 14: Residential Evidence in Chief of Laura Buttimore on behalf of Orion New Zealand Limited, at [31] – [33] and [42] – [43]; See also Ms Buttimore's evidence at the Chapter 15: Commercial and Chapter 16: Industrial hearing, Supplementary Evidence of Shane Watson, 23 October 2015; Supplementary Evidence of Laura Buttimore, 23 October 2015.

⁵ Chapter 14: Residential Evidence in Chief of Laura Buttimore on behalf of Orion New Zealand Limited, at [33]

⁶ Chapter 14: Residential Evidence in Chief of Ainsley McLeod for Transpower New Zealand Limited, at [56].

⁷ IHP, Chapter 14: Residential (Part) Transcript of Proceedings, Cross examination of Mr Blair, 31 March 2015, page 256-257.

National Policy Statement on Electricity Transmission

- 23 Orion acknowledges that Orion's identified electricity assets are not part of the National Grid and therefore are not subject to the direct guidance provided by the NPSET (in respect of the National Grid).
- 24 Notwithstanding that Orion considers that the NPSET nonetheless gives some guidance to the Panel as to the broad national policy direction favouring protection of strategic electricity assets.
- 25 The NPSET was gazetted 13th March 2008. Although it is primarily aimed at electricity transmission on a national level (i.e. Transpower's National Grid network) it is submitted that the principles and policy direction in the NPSET have relevance when considering Orion's high voltage network – particularly given the importance of Orion's high voltage lines to Christchurch and wider Canterbury. The NPSET provides a useful guide as to the level and nature of appropriate protection for regionally and locally significant electricity networks. It is an available tool to assist decision makers without a mandatory requirement to apply it.
- 26 The NPSET is to be applied by decision makers in exercising functions under the Resource Management Act 1991 (the *RMA*), including utilising the objectives and policies of NPSET when drafting plan rules. The NPSET sits at the top of the RMA plan and policy hierarchy and accordingly District Plans are required to give effect to the NPS – and although it is accepted that in the present instance that the extent of any absolute requirement to give effect to the NPSET might technically be limited to providing for Transpower's National Grid assets, it is submitted that the importance given to electricity provision in the NPSET is also a matter that must, at the very least, be considered by the Panel when considering Orion's submissions and requested relief in regards to the proposed District Plan.
- 27 In particular, the NPSET is reflective of a much wider and evolving national policy direction to recognise the benefits of electricity transmission and distribution. This includes recognising the importance of security of supply for the wellbeing of New Zealanders, and explicit recognition of electricity provision as a matter of national significance for present and future generations.
- 28 It is accordingly submitted that it is consistent with the strong direction given to the protection of electricity infrastructure at a national level to recognise that Orion's identified electricity network is also an important component of the electricity transmission and distribution infrastructure in Christchurch and, more broadly, Canterbury.

- 29 The fact that the NPSET applies directly in respect of the National Grid does not mean that all other strategic electricity assets and infrastructure are therefore excluded from protection from reverse sensitivity effects. Orion acknowledges that Transpower has added statutory protection conferred on its National Grid assets by the NPSET. However, that does not displace the regional and local significance of Orion's identified electricity network, which must also be provided for and protected in district planning rules. The NPSET is a tool, which along with evidence, is available to assist the Panel with respect to the 66kV, 33kV and Heathcote to Lyttelton lines.
- 30 Regardless of the protection afforded to Transpower's National Grid assets via the NPSET, Orion's identified electricity assets constitute strategic infrastructure and should also be appropriately protected from reverse sensitivity effects. **Mr Watson** has provided detailed discussion of the costs to the public and Orion caused by earthworks or excavations in proximity to the identified electricity assets, which include risks to people and property, loss of security of supply of electricity, and issues with the reliability of electricity supply.⁸ Appropriate protection against reverse sensitivity effects on Orion's identified electricity network is required to ensure that the Orion can safely and effectively maintain, upgrade and operate its network to avoid those costs.

FEDERATED FARMERS REBUTTAL EVIDENCE

- 31 Federated Farmers of New Zealand (*Federated Farmers*) has lodged rebuttal evidence by **Ms MacKenzie** dated 21 October 2015. **Ms Buttimore** responds to this in her supplementary evidence. I will also discuss this below.
- 32 **Ms MacKenzie's** evidence opposes corridor protection for Orion on the basis of the following reasons (summarised):
- 32.1 Adequate protection is provided in the New Zealand Code of Practice for Electrical Safe Distances (NZECP 34:2001) (*the Code of Practice*) in terms of Orion's safety and maintenance concerns;
- 32.2 Orion's electricity distribution lines are not strategic infrastructure; and
- 32.3 Differentiation between the National Grid and lines companies should be retained.
- 33 Taking each of these in turn:

⁸ Supplementary Evidence of Shane Watson, 23 October 2015, Attachment A, at [10.24].

- 33.1 **Mr Watson** explains the relevant provisions of the Code of Practice in his evidence.⁹ His evidence is that the Code of Practice does not sufficiently address Orion's concerns. **Mr Watson** discusses several instances in which Orion has found that the Code of Practice has not been complied with and was unknown to developers or contractors undertaking earthworks underneath Orion's lines.¹⁰ As a result of these experiences, and to avoid future instances, Orion's position is that the Code of Practice is proving inadequate to protect the safe and efficient functioning of Orion's lines, and corridor protection provisions must also be included in 'plain English' in the proposed District Plan. Provision for corridor protection in the District Plan is not *unnecessary* duplication of the Code of Practice. Repetition is necessary here in order to provide clarity to developers, contractors and landowners and also to provide appropriate protection so that Orion can ensure security of electricity supply and so that the safety risk to others in proximity to the lines is properly managed.
- 33.2 I explain above why Orion's electricity distribution assets are strategic infrastructure and are deserving of protection. This is also addressed in detail by **Mr Watson** and **Ms Buttimore**.
- 33.3 The issue of differentiation between the National Grid and Orion's electricity distribution assets is also addressed above. It has been accepted that Orion's assets are deserving of protection, and the fact that Orion's assets are not subject to the NPSET is irrelevant in light of their status as strategic infrastructure and importance at a local and regional scale.

CONCLUSION

- 34 Orion seeks that the Panel grant the relief sought in its submissions and further submissions, and as amended through evidence.

Dated: 2 November 2015



JM Appleyard
Counsel for Orion New Zealand Limited

⁹ Supplementary Evidence of Shane Watson, 23 October 2015, Attachment A, Section 10.

¹⁰ Supplementary Evidence of Shane Watson, 23 October 2015, Attachment A, at [10.23].