

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: On the papers

Date of decision: 12 August 2016

Hearing Panel: Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Dr Phillip Mitchell, Ms Sarah Dawson

DECISION 36

**Chapter 14: Corridor Protection Setback Rules
11kV Heathcote to Lyttelton Electricity Distribution Line Proposal**

Outcomes: **Proposals changed as per Schedule 1**

COUNSEL

Ms S J Scott and Ms CJ McCallum Christchurch City Council
 Ms J Appleyard Orion New Zealand Limited

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INTRODUCTION

[1] This decision (‘decision’) continues the series of decisions made by the Independent Hearings Panel (‘Hearings Panel’/‘Panel’) concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) (‘Replacement Plan’/‘Plan’).¹

[2] This decision concerns Chapter 14: Residential, insofar as it relates to the Corridor Protection Setback Rules 11kV Heathcote to Lyttelton electricity distribution line Proposal (11kV Distribution Line Proposal/11kV Distribution Line)

[3] In this decision, the phrase ‘Notified Version’ describes the version notified by the Christchurch City Council (‘CCC’/‘Council’) and to which, subsequent to consideration of submissions by Orion New Zealand Limited (Orion) and Clampett Investments Limited (Clampett),² and informal meetings and correspondence between the Council, Orion and Clampett (together, the Parties), an agreement was reached to make a change. This was ultimately produced by the Parties by way of a joint memorandum (‘Revised Version’).³

[4] Where we refer to the ‘Decision Version’, it is our approval of the Revised Version, as set out in Schedule 1, which will become operative upon release of this decision and the expiry of the appeal period.

[5] This decision follows our consideration of submissions and the joint memorandum on the papers. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the OIC’) is set out in the introduction to Decision 1: Strategic Directions and Strategic Outcomes (and relevant definitions) (‘Strategic Directions decision’).⁴

¹ The Panel members are Hon Sir John Hansen (Chairperson), Environment Judge John Hassan, Dr Phillip Mitchell, Ms Sarah Dawson.

² Orion (submitter 1); Clampett (submitter 2).

³ Joint Memorandum of counsel for Orion New Zealand Limited, Clampett Developments Limited and Christchurch City Council dated 8 June 2016

⁴ Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

Effect of decision and rights of appeal

[6] Our proceedings and the rights of appeal are set out in our earlier decisions.⁵ We concur in those.

Identification of parts of existing district plans to be replaced

[7] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by our decision. We confirm the approach as set out in Decision 10: Residential — Stage 1 at [449] is applicable here, and this decision does not therefore replace any other provisions at this time.

PRELIMINARY MATTERS

Conflicts of interest

[8] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁶ No submitter raised any issue in relation to this.

REASONS

STATUTORY FRAMEWORK

[9] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.⁷

[10] It sets out what we must and may consider in making that decision.⁸ It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.⁹ It directs us to comply with

⁵ Strategic Directions decision at [5]–[9].

⁶ The website address is www.chchplan.ihp.govt.nz.

⁷ OIC, cl 12(1).

⁸ OIC, cl 14(1).

⁹ OIC, cl 5.

s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').¹⁰ The OIC also specifies additional matters for our consideration.

[11] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision.¹¹ As with all our decisions, we apply our Strategic Directions decision throughout.

The required "s 32" and "s 32AA" RMA evaluation

[12] In Decision 10, we found that the inclusion of rules relating to corridor protection setbacks from the 11kV Lyttelton to Heathcote electricity distribution line ('11kV setbacks') were beyond the scope of Orion's submission on Chapter 14 Stage 1 and we directed that the a proposal to include such setbacks should be notified as an additional proposal (additional proposal).¹² The additional proposal was notified on 21 January 2016 and provided 11kV setbacks in the following residential zones (residential zones):

- (a) Residential Suburban Zone and Residential Suburban Density Transition Zone;
- (b) Residential Medium Density zone; and
- (c) Residential Banks Peninsula Zone.

[13] The additional proposal relies on five definitions, being: 'building'; 'electricity distribution line', 'sensitive activities', 'transmission line corridor' and 'accessory buildings'.

[14] This decision follows on from our consideration of issues relating to appropriate protection of electricity distribution lines in Decision 10: Residential — Stage 1.¹³ We adopt and endorse the reasoning of Decision 10, and in particular, with regard to the appropriate provision for corridor setbacks from Orion's Electricity Distribution Lines, we found at [269]:

¹⁰ Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.

¹¹ At [25]–[28] and [40]–[62].

¹² Decision 10 at [454]

¹³ At [252] to [282] as corrected by Minor Corrections Decisions, 4 February 2016 and 12 July 2016.

We also note that, although distribution lines are not afforded the same priority as the National Grid, the CRPS does recognise the strategic importance of distribution lines on a regional basis (as regionally significant infrastructure). Therefore, we find that they are accordingly deserving of appropriate protection as set out in Objective 3.3.12 of Strategic Directions. We accept that Orion's 66kV, 33kV and the 11kV Lyttelton distribution lines are strategic infrastructure, and that their role and function should be protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects.

ISSUES RAISED BY SUBMISSIONS

[15] Only two submissions were made on the Notified Proposal: one in support from Orion, and the other in opposition from Clampett, who owns property at 64 and 68 Port Hills Road, Heathcote Valley as a retirement village, for which they have obtained resource consent. Clampett is concerned about the application of the proposed rule to portions of the 11kV distribution line that pass through its site, which are to be placed underground in the near future.

[16] The Parties reached agreement on the proposal and submitted a joint memorandum setting out the basis of their agreement and a request to set aside the scheduled hearing and have the matter determined on the papers.¹⁴ Having considered the joint memorandum we agreed to consider the matter on the papers and do so accordingly.

[17] The scope of the Notified Proposal is a 5m setback from the 3km of 11kV distribution line running from Heathcote to Lyttelton, including foundations of associated support structures to apply to properties in the residential zones. The parties reached agreement to make an amendment to the non-complying activity rule NC7, so that it does not apply to any underground sections of the 11kv distribution line. The purpose of the amendment is to make it 'explicit' that the rule does not apply to the underground portion given the planning map notation will remain as notified.

[18] A brief of evidence prepared by Orion's planning witness, Melanie Foote, addressed the proposed amendment to rule 14.2.2.5 NC7 against section 32AA of the RMA.¹⁵ The evidence was filed with the consent of the parties. Ms Foote noted that it was never the intention that the corridor setback rules would apply to underground distribution lines, however, the amendment made that absolutely clear.

¹⁴ Joint memorandum of counsel for Orion, Clampett and the Council, 8 June 2016.

¹⁵ Planning Statement of Melanie Foote on behalf of Orion, 8 June 2016.

[19] We refer to the necessary principles in ss 32 and 32AA set out in our earlier decisions.¹⁶ We have considered the Council's s 32 Report prepared at the time of Notification, and the evidence of Ms Foote as it relates to the agreed amendment, and consider that both the s 32 Report and Ms Foote's s 32AA evaluation address the relevant statutory matters. We adopt those evaluations for the purpose of this Decision.

The Decision Version

[20] We accept the amendments made in the Revised Version and adopt these as the Decision Version for the reasons set out above.

Definitions

[21] No additional changes are made to the definitions as decided in Decision 16.¹⁷ We will consider any further technical drafting matters if needed in due course, as part of our Decision on Stage 2 and 3 Definitions.

Planning Maps

[22] We confirm Planning Maps 47 and 52 that form part of the Notified Version.

Overall evaluation and conclusions

[23] Accordingly, in light of the submissions and evidence we have considered, and for the reasons we have set out, we are satisfied that:

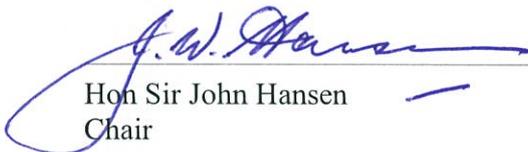
- (a) We have exercised our function, in making this decision, in accordance with the provisions of Part 2, RMA (there are no applicable regulations).
- (b) As part of the Replacement Plan, these further provisions for corridor protection setbacks from the 11kV Heathcote to Lyttelton Distribution Line in Schedule 1 to this decision will:

¹⁶ Strategic Directions at [63]–[70].

¹⁷ Decision 16 and minor corrections.

- (i) accord with, and assist the Council to carry out, its statutory functions for the purposes of giving effect to the RMA;
 - (ii) be the most appropriate to achieve the Strategic Directions and Objectives in Chapter 14 Residential (part);
 - (iii) give effect to the CRPS (to the extent relevant);
 - (iv) duly align with other RMA policy and planning instruments, the land use recovery plans, and the OIC (including the Statement of Expectations).
- (c) As part of the Replacement Plan, the amended rules we have included in Chapter 14 will achieve the purpose of the RMA.

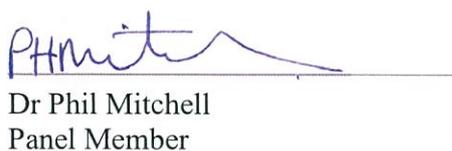
For the Hearings Panel:



Hon Sir John Hansen
Chair



Environment Judge John Hassan
Deputy Chair



Dr Phil Mitchell
Panel Member



Ms Sarah Dawson
Panel Member

SCHEDULE 1

Changes that the decision makes to the proposals

14.2 Rules — Residential Suburban Zone and Residential Suburban Density Transition Zone

14.2.2 Activity status tables

14.2.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC6	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or <p>b. Fences within 5 metres of a National Grid transmission line support structure foundation.</p> <p>Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC7	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure.; or iii. within 5 metres of the centre line of the 11kV Heathcote to Lyttelton electricity

Activity	
	<p>distribution line (except that this shall not apply to any underground sections) or within 5 metres of a foundation of an associated support structure.</p> <p>b. Fences within 5 metres of a 66kV or 33kV electricity distribution line support structure foundation.</p> <p>c. Fences within 5 metres of an 11kV Heathcote to Lyttelton electricity distribution line support structure foundation.</p> <p>d. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The electricity distribution lines are shown on the planning maps. 2. Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to electricity distribution lines. Buildings and activity in the vicinity of electricity distribution lines must comply with NZECP 34:2001.

14.3 Rules — Residential Medium Density Zone

14.3.2 Activity status tables

14.3.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC2	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or <p>b. Fences within 5 metres of a National Grid transmission line support structure foundation.</p> <p>Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited.</p> <p>Notes:</p> <ul style="list-style-type: none"> 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC3	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure.; or iii. within 5 metres of the centre line of the 11kV Heathcote to Lyttelton electricity distribution line or within 5 metres of a foundation of an associated support structure. <p>b. Fences within 5 metres of a 66kV or 33kV electricity distribution line support structure foundation.</p> <p>c. Fences within 5 metres of an 11kV Heathcote to Lyttelton electricity distribution line support structure foundation.</p>

Activity	
	<p>Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The electricity distribution lines are shown on the planning maps. 2. Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to electricity distribution lines. Buildings and activity in the vicinity of electricity distribution lines must comply with NZECP 34:2001.

14.4 Rules — Residential Banks Peninsula Zone

14.4.2 Activity status tables

14.4.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or <p>b. Fences within 5 metres of a National Grid transmission line support structure foundation.</p> <p>Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC2	<p>a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):</p> <ul style="list-style-type: none"> i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure; or iii. within 5 metres of the centre line of the 11kV Heathcote to Lyttelton electricity distribution line or within 5 metres of a foundation of an associated support structure. <p>b. Fences within 5 metres of a 66kV or 33kV electricity distribution line support structure foundation.</p> <p>c. Fences within 5 metres of an 11kV Heathcote to Lyttelton electricity distribution line support structure foundation.</p>

Activity	
	<p>Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The electricity distribution lines are shown on the planning maps. 2. Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to electricity distribution lines. Buildings and activity in the vicinity of electricity distribution lines must comply with NZECP 34:2001.