

**BEFORE THE COMMISSIONERS APPOINTED BY
THE QUEENSTOWN LAKES DISTRICT COUNCIL**

IN THE MATTER Of clause 6 of the First Schedule of
the Resource Management Act
1991 (the **Act**)

AND IN THE MATTER Of the Queenstown Lakes District
Council Proposed District Plan
(Stage 3) (**PDP Stage 3**)

SUBMITTER **AURORA ENERGY LIMITED**
Original Submission 3153 and 31020

**SUBMISSIONS OF COUNSEL ON BEHALF OF AURORA ENERGY LIMITED ON
STREAM 17 AND 18**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: Simon Peirce
P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: simon.peirce@gallawaycookallan.co.nz

**SYNOPSIS OF SUBMISSIONS OF COUNSEL ON BEHALF OF AURORA ENERGY
LIMITED ON STREAM 17 AND 18**

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May it please the Hearing Panel Commissioners:

Introduction

1. Aurora Energy Limited (**Aurora**) owns and operates electricity distribution infrastructure that supplies electricity to more than 90,000 homes in the Queenstown Lakes, Dunedin and Central Otago Districts.
2. Aurora is the primary electricity sub-transmission provider with an extensive network of underground cables, lines and supporting structures, transformers, zone substations and other infrastructure which connects Transpower's Transmission Network and provides individual connections to customers.
3. Its involvement in the staged district plan review to date has been to ensure safe distances are maintained from its infrastructure when undertaking land use activities and to enable the effective and efficient operation of its network. In the hearing for Stream 16 I spoke to the significant amount of work that Aurora is to undertake over the next 3 years and throughout the life of this District Plan. It is therefore critically important that PDP Stage 3 (and other stages) to include provisions that enable that work to go ahead.
4. Aurora lodged a submission on PDP Stage 3 and PDP Stage 3B (together referred to as **PDP Stage 3**) seeking:
 - (a) Consistency with provisions agreed to as part of PDP Stage 1 and 2 being provisions relating to:
 - (i) Matters of discretion in relation to land use activities in proximity to electricity sub-transmission infrastructure (**ESTI**) and significant electricity distribution infrastructure (**SEDI**).
 - (ii) Advice notes in each zone chapter referring to the New Zealand Electrical Code of Practice for Electrical Safe Distances (**NZEC34**).
 - (iii) New rules in zone chapters providing for limited notification to Aurora where the matters of discretion relevant to Aurora's infrastructure are triggered.
 - (iv) Policy relief in Chapter 20 Settlements Zone.

- (b) A building restriction area from the Wanaka Substation located at 39 Ballantyne Road (**Wanaka Substation**) to protect its ongoing operation and to avoid health and safety risks to the public.
5. Aurora's submission is supported by the evidence of Ms Dowd filed 28 May 2020. In summary the evidence outlines:
- (a) Relief achieved through Aurora's submissions and appeal on PDP Stage 1, including consequential amendments for similar relief in PDP Stage 2.
 - (b) Areas of inconsistency with drafting of advice notes across PDP Stage 3 Zone Chapters.
 - (c) The need to protect the continued operation of the Wanaka Substation and avoid potential reverse sensitivity effects on the public.
6. These submissions will cover the following matters:
- (a) Section 42A Report.
 - (b) Council Functions and Statutory Obligations.
 - (i) Regional Policy Statement.
 - (ii) Proposed District Plan Strategic Directions.
 - (c) Wanaka Substation.
 - (d) Consistency with provisions of PDP Stage 1 and 2.
 - (e) Conclusion.

Section 42A Report

7. Aurora's relief that sought to roll-over provisions agreed as part of PDP Stage 1 (and Chapter 25 subject to PDP Stage 2) into the Zone Chapters of PDP Stage 3 was, by in large, accepted by the section 42A Report Authors. The support for that relief can largely be taken as read. The reasons for why it is appropriate to include that relief are outlined in the evidence of Ms Dowd who also notes that greater consistency between the drafting of the provisions.¹

¹ Evidence of Joanne Dowd dated 28 May 2020 at [35]-[39].

8. Because of the general level of support for Aurora's relief these submissions will primarily focus on higher order provisions (in the PDP and higher order documents) that seek to ensure that safe distances from Aurora's infrastructure are maintained and to protect the public from the health and safety risks posed by that infrastructure.

Council Functions and Statutory Considerations

9. As noted in Council's opening the question of weight as between the PDP Strategic Direction Chapters, higher order planning instruments and part 2 of the RMA is a matter for the Panel's discretion. The Environment Court in *Colonial Vineyard Limited v Marlborough District Council*² clarified the legal considerations in which the evidence on a plan change should be considered. The Environment Court in that case provided a comprehensive list of considerations to apply or have regard to when deciding a plan change. The comprehensive list is detailed at Appendix 1 of the Council's opening. I will not reiterate that list other than to draw it to the Panel's attention.
10. The Panel must have regard to any proposed Regional Policy Statement when preparing and changing its District Plan and must give effect to any operative Regional Policy Statement and must also have regard to any matter of regional significance.³ The Regional Policy Statement for Otago (**PRPS**) has been in a state of flux since it was first notified in 2015 but has since progressed through mediation and progressively become operative as consent orders have been issued. All provisions in the PRPS related to Aurora's network are operative. Therefore, the Panel must give effect to that document when considering the provisions in PDP Stage 3.

Regional Policy Statement

11. The PRPS has almost entirely superseded the 1998 RPS with a final consent order being issued on 24 June 2020. Subject to any issues being raised in relation to that consent order then the 1998 RPS will be irrelevant for the purpose of deciding PDP Stage 3.
12. Consent orders on the PRPS on provisions relevant to Aurora's network, Electricity Distribution Infrastructure and Regionally Significant Infrastructure have issued and are now operative.⁴

² *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

³ *Ibid.*

⁴ Resource Management Act 1991, section 86F.

13. The relevance of the PRPS to this hearing is that Aurora has made a submission seeking protection of the Wanaka Substation which has been included in the notified Low Density Suburban Residential Zone (**LDRZ**). The PRPS contains provisions which seek to protect existing regionally significant infrastructure (or otherwise) from activities which might inhibit its operation. The LDRZ in the area surrounding the Wanaka Substation will not provide adequate protection from potential reverse sensitivity effects that are likely to arise in a residential zone.
14. Below is a summary of the key (operative) provisions of the PRPS with respect to the management of activities on Aurora's Electricity Distribution Network.

Objective 4.3 Infrastructure is managed and developed in a sustainable way

Issue:

Social and economic wellbeing depends on having adequate infrastructure. Failing to provide for its functional needs can result in adverse effects.

[omitted]

15. Objective 4.3 identifies the importance to provide for the functional needs of infrastructure and how failing to provide for it can lead to adverse effects. In terms of the PDP, failing to provide for it could be enabling activities to be located near ESTI and SEDI which may lead to reverse sensitivity effects or create health and safety risks.

Policy 4.3.1 Managing infrastructure activities

Recognise and provide for infrastructure by all of the following

- (a) *Protecting and providing for the functional needs of lifeline utilities and essential emergency services;*
- (b) *Increasing the ability of communities to respond and adapt to emergencies, and disruptive or natural hazard events;*
- (c) *Improving efficiency of natural and physical resource use;*
- (d) *Minimising adverse effects on existing land uses, and natural and physical resources;*
- (e) *Managing other activities to ensure the functional needs of infrastructure are not compromised.*

[Emphasis added]

16. Aurora is a “lifeline utility” as defined by the Civil Defence Emergency Management Act 2002⁵ being an entity that distributes electricity through a network. That status is part of the reason why it was agreed as part of Aurora’s appeal on PDP Stage 1 that SEDI would be located on District Plan maps. Furthermore, Policy 4.3.1 seeks to minimise adverse effects on existing land uses, including all of Aurora’s existing infrastructure, as well as to manage any other activities not covered by (a) to (d) to ensure that the functional needs of infrastructure are not compromised. In my submission, Policy 4.3.1 is directive that the functional needs of Aurora’s network is to be protected (insofar as it is a lifeline utility) and to ensure that the functional needs of the infrastructure is not compromised.
17. The term “functional needs” has the same definition in the PRPS and the PDP and means: the locational, operational, practical, or technical needs of an activity, including development and upgrades.⁶ Functional needs include the possibility for development and upgrades. The evidence of Ms Dowd is that the building restriction area that has been sought contains sufficient “headroom” to accommodate future upgrades to the Wanaka Substation that will ensure that its functional needs can be provided in future.⁷ The functional needs of infrastructure are provided for in the following PRPS provisions:

Policy 4.3.3 Functional needs of infrastructure that has national or regional significance

Provide for the functional needs of infrastructure that has regional or national significance, including safety.

Policy 4.4.5 Electricity Distribution Infrastructure

Recognise and provide for electricity distribution infrastructure, by all of the following:

- (a) *Recognising the functional needs of electricity distribution activities;*
- (b) *Restricting the establishment of activities that may result in reverse sensitivity effects;*
- (c) *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*

⁵ Civil Defence Emergency Management Act 2002 Schedule 1 Part B.

⁶ Proposed Regional Policy Statement for Otago (Changes as a result of appeals) Glossary, Page 143.

⁷ Evidence of Joanne Dowd dated 28 May 2020 at [66].

- (d) *Minimising adverse effects of new and upgraded electricity distribution infrastructure on existing land uses;*
- (e) *Identifying significant electricity distribution infrastructure and managing effects of potentially incompatible activities through methods such as corridors.*

[Emphasis added]

18. Method 4.1 provides that all objectives and policies of the PRPS must be considered and given effect to when preparing district plans. That necessarily includes the provisions referred to above. Method 4.1 says:

“Policy 4.3.1: by providing controls adjacent to infrastructure where necessary to ensure the functional needs of infrastructure are not compromised”

19. The evidence of Ms Dowd is that the Wanaka Substation risks being compromised where there is development in the surrounding area because that can lead to: complaints from neighbouring properties in relation to noise;⁸ negative effects on public health and safety from electromagnetic effects,⁹ earth potential right (EPR)¹⁰ and other aspects of amenity. These risks are exacerbated if the Wanaka Substation is upgraded to a greater capacity which can increase the adverse effects from noise and the risk from EPR. The definition of functional needs includes upgrades and development so the District Plan ought to ensure that the ability to undertake these works is not compromised.
20. That is what the building restriction area, in the area surrounding the Wanaka Substation seeks to achieve and by providing for the ongoing viability of that infrastructure the District Plan will give effect to policies 4.3.1, 4.3.3 and 4.4.5.

Proposed District Plan Strategic Directions

21. Aurora lodged an appeal with respect to PDP Stage 1 seeking better protection for its infrastructure in the District Plan. Following its appeal being lodged, Aurora participated in mediation which resulted in joint memorandum and draft consent orders being lodged with the Environment Court on chapters of the PDP Chapters 3, 6 and 30. Copies of the draft consent orders are included as Attachment 1 to the evidence of Ms Dowd.

⁸ Evidence of Joanne Dowd dated 28 May 2020 at [58].

⁹ Evidence of Joanne Dowd dated 28 May 2020 at [53].

¹⁰ Evidence of Joanne Dowd dated 28 May 2020 at [54].

22. Key provisions that are relevant to these submissions and which the Commissioners must have regard to are outlined below. For clarity, the provisions listed below do not include notations showing added or removed text and simply show the provision as decided by the parties. Emphasis is shown as underline text.
23. The following provisions resulted from mediation on Topic 1 Subtopic 4 Regionally Significant Infrastructure:

Strategic Objective 3.2.1.9

Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs in a sustainable way.

Strategic Policy 3.3.36

Provide for the functional needs of regionally significant infrastructure while managing its adverse effects on the environment (relevant to S.O. 3.2.1.9).

Strategic Policy 3.3.37

Protect regionally significant infrastructure by managing the adverse effects of incompatible activities (relevant to S.O. 3.2.1.9)

24. Strategic Policy 3.3.37 is directive that regionally significant infrastructure is to be protected by managing incompatible activities. The evidence of Ms Dowd is that buildings in proximity to the Wanaka Substation are incompatible with its operation as they have the possibility to cause adverse health and safety and amenity effects. The method to manage those effects is to restrict buildings in the vicinity of the infrastructure.
25. Ms Dowd considers that activities which can continue in the building restriction area are car parks, greenways, walkways, and roads. A new standard is sought to be introduced into Chapter 7 as Rule 7.4.X to require Aurora's consent so that Aurora is given the opportunity to assess the building or structure and identify whether it can be constructed without compromising the operation of the Wanaka Substation.
26. It is submitted that the Panel must assess the provisions of PDP Stage 3 (defined as the amending proposal in section 32(3) of the Act) against the above strategic directions which seek to enable the efficient and effective operation, maintenance and upgrading of Aurora's network. The section 32 Evaluation does not assess the efficiency or effectiveness of the LDRZ to provide for the functional needs of

infrastructure or its ongoing operation and development. The Commissioners therefore ought to have regard to the above Strategic Directions when considering Aurora's relief.

27. The provisions of Chapter 30 also relevant to the Panel's determination on PDP Stage 3 are listed below.

Objective 30.2.6 The operation, maintenance, development and upgrading of utilities supports the well-being of the community

Policy 30.2.6.1 Provide for the operation, maintenance or upgrading of utilities to ensure their on-going viability and efficiency.

28. Chapter 30 gives effect to higher order strategic directions contained in Chapter 3 and the landscape provisions in Chapter 6. Objective 30.2.6 makes it plain that the operation, maintenance and upgrading of utilities supports the well-being of the community and that this should be provided for to ensure their ongoing viability and efficiency.

Wanaka Substation

29. The Wanaka Substation is in the notified LDRZ. Under the Operative District Plan (**ODP**) it is in the Three Parks Special Zone as a result of Plan Change 04 North Three Parks. Before Plan Change 04 the land was zoned Rural General.
30. The LDRZ enables residential subdivision down to a minimum lot size of 450m² with setback requirements of 2 metres for side boundaries for a residential dwelling and no setback requirements for accessory buildings.
31. Aurora's submission seeks to introduce a building restriction area around the perimeter of the Wanaka Substation. The evidence of Ms Dowd explains the reasons why this is required to avoid health and safety risks. A new standard has been sought (as a form of consequential relief) to be introduced that enables applicants to request prior written consent from Aurora to allow a building to be constructed as a permitted activity.
32. To some extent, the Wanaka Substation is a victim of the process of reviewing the PDP as a series of staged plan changes. The issues with that approach were first signalled in the *Tussock Rise* decision of the Environment Court.¹¹ It is unfortunate that Aurora was not first consulted on the zoning of the Wanaka Substation prior to

¹¹ *Tussock Rise Limited v Queenstown Lakes District Council* [2019] NZEnvC 111 at [74].

notification despite the potential health and safety concerns of people located in proximity to it being significant.

33. The Wanaka Substation is the last of Aurora's 12 Zone Substations (**ZS**) to be zoned under the PDP with the other 11 being zoned under PDP Stage 1 and 2. Included with the evidence of Ms Dowd is a map identifying all 12 Aurora ZS. The infrastructure on those maps will be included in the District Plan Maps when consent orders are granted.
34. Attached to these submissions as **Appendix 1** is a breakdown of the zones for each of Aurora's 12 ZS together with the zone setback provisions relevant to each zone. The reason for doing this is that the existing ZS are located in predominantly rural environments where it is highly unlikely that reverse sensitivity concerns would arise. The Wanaka Substation was constructed in a Rural environment but as the Wanaka township has grown, and with Plan Change 04 North Three Parks, the surrounding area has become progressively built up with the Wanaka Substation now proposed to be in a residential zone. This is now a pivotal moment for the Commissioners to decide whether the Wanaka Substation will remain viable for the future.
35. The table at **Appendix 1** shows that it is not the norm for a ZS to be located in a residential environment without additional protections in the zone chapter to ensure that the infrastructure and the public are protected from one another. That is what Aurora's relief seeks to address.
36. Other ZS are located within primarily commercial or mixed-use zones where the risk from residential activities is much lower than in residential zones and there is a higher tolerance for noise concerns.
37. The Commonage ZS is the only other ZS located in a "residential zone". While the MDRZ encourages a greater density of residential development than the LDRZ it is not expected that residential activities would locate close to the ZS in the short-term and Aurora may choose to increase its designation when the land is proposed to be developed. In any event, the land immediately adjoining the Commonage ZS is owned by the Council rather than a private developer.
38. Other provisions which might provide incidental protection to the Wanaka Substation include Chapter 27 where subdivision within an urban zone is a restricted discretionary activity. A matter of restricted discretion in Rule 27.5.8: energy supply and telecommunications including adverse effects on energy supply and

telecommunication networks. While that provision assists in seeking recognition of the adverse effects of Aurora's network it does not provide any protection from buildings which are Aurora's primary concern in relation to reverse sensitivity effects. An additional provision is to be included into Chapter 27 as a result of mediation of PDP Stage 1:¹² Assessment Matter 27.9.3.1 which directs the plan user to consider the adverse effects on the operation of Aurora's network that is located within an adjacent road. Again, that does not assist here as the Wanaka Substation is located on an adjoining site and not within a road.

39. The same issue arises with respect to Chapter 7 where a new matter of discretion as shown in the joint memorandum on Topic 17 requires consideration of ESTI and SEDI located within an adjacent road.¹³ At the time this relief was agreed to the zoning of the Wanaka Substation had not been notified. In lieu of the notified zoning the new matter of discretion was directed to overhead lines located within road reserve. That Rule does not assist to resolve Aurora's concerns.
40. The PDP therefore lacks any method for managing the adverse effects of incompatible activities on the ongoing viability of the Wanaka Substation and is therefore inconsistent with Policy 3.3.37 of the PDP and Policy 4.3.1 of the PRPS. The evidence of Ms Dowd describes the risks that the lack of protection for the Wanaka Substation may pose to the operation of the network, health and safety of the public and to amenity of occupants within buildings. This situation is unique to all other 11 ZS in the District and requires unique protection to ensure the ongoing viability of the Wanaka Substation and the protection of the public.
41. Aurora received a further submission from Ballantyne Properties Limited (**BPL**) in relation to Aurora's relief on the Wanaka Substation.¹⁴ BPL owns Record of Title 783035 which comprises the land to the east and south of the Wanaka Substation and would be directly affected by the relief sought. BPL's opposition is that the concerns regarding proximity to the substation have been addressed by way of Plan Change 04 to the Operative District Plan and suggests that a change of zoning to Business Mixed Use might address Aurora's concerns. I agree with BPL that the issue was appropriately dealt with under the Three Parks Special Zone in the ODP However, I

¹² Evidence of Joanne Dowd at page 63; Topic 17 (Energy and Utilities) Draft Consent Order Appendix 1.

¹³ Evidence of Joanne Dowd at page 59; Topic 17 (Energy and Utilities) Draft Consent Order Appendix 1

¹⁴ Ballantyne Properties Limited Further Submission 3410.

disagree to the extent that those provisions were not carried over into the PDP and the issue remains unresolved.

42. The evidence of Ms Dowd talks about the provisions of Plan Change 04 North Three Parks where provisions were included into that Zone Chapter. The way that concerns regarding proximity to the Wanaka Substation were addressed was the inclusion of assessment matters that required specific consideration of the reverse sensitivity issues arising from potentially incompatible land uses and whether mounding or other landscape treatment was proposed to mitigate effects on the Wanaka Substation.¹⁵ None of those provisions have been carried over into the PDP which is likely a consequence of the staged plan review which did not contemplate the zoning of the Wanaka Substation when the LDRZ Chapter was notified (and subject to appeal).
43. The Section 32 Evaluation ought to have considered carrying over those provisions into Chapter 7 when that plan was prepared and was obliged to consider those provisions by section 32(3). From my evaluation of the section 32 report relating to Chapter 7 that has not been done and given that the report was released as part of PDP Stage 1 when the Wanaka Substation had not been notified as LDRZ that is not surprising. Again, the Wanaka Substation is a victim of the confused¹⁶ staged review process and Aurora has effectively been precluded from participating in the provisions of Chapter 7 to seek bespoke relief in relation to the Wanaka Substation.
44. The section 42A Report Author questions where a more appropriate form of relief than what has been sought by Aurora would be, to extend the existing designation to cover the same area which has been sought as a non-building restriction. While that would be an equally effective means of protecting the Wanaka Substation it similarly goes no further than to achieve the same outcome to what has been sought through Aurora's submission. Furthermore, if Aurora were to seek a designation for the surrounding area then it is likely that the landowners would be seeking Aurora to purchase that same land and amalgamate it with its existing landholding. The reason for that is the designation becomes a blight on the land which, in Aurora's experience, landowners do not want. It would be a unique situation in the District for Aurora to extend its designation without owning the land that is subject to the designation.
45. The Section 42A Report Author notes that if the building restriction area is pursued that Aurora consider the types of activities that can locate within that area, such as non-habitable buildings or structures. The evidence of Ms Dowd is that generally no

¹⁵ Evidence of Joanne Dowd dated 28 May 2020 at [61]-[65].

¹⁶ Tussock Rise at [74].

buildings or structures should be located within the building restriction area given the issue raised in that evidence. The types of activities that might be located are noted as: walkways, roads, car parks or greenfield areas. Ms Dowd has considered an exemption to the building restriction area by enabling applicants to seek Aurora's prior written consent to the location of a building or structure. This would allow Aurora to assess proposals on a case by case by Aurora's engineers.

46. Having considered Aurora's relief further and, further discussion with Aurora engineers, and to maintain consistency with the setback provisions in other zones such as the WBRAZ Ms Dowd considers that the building restriction area can be reduced to 10 metres as shown in the plan attached to these submissions as **Appendix 2**. Notably, the building restriction area follows the existing right of way that is located on the property owned by Ballantyne Properties Limited.

Consistency with PDP Stage 1 and 2

47. The evidence of Ms Dowd outlines the inconsistency with drafting between zone chapters, particularly with regards to the Advice Note on NZECP34.¹⁷ It is submitted that there should be a consistent approach across the zone chapters for the drafting of this advice notes throughout the PDP.

Conclusion

48. It is clear that the PRPS requires that activities which may have potential reverse sensitivity effects should be managed in proximity to Aurora's ESTI, SEDI and its broader network. There is already express recognition of that in the District Plan by way of the amendments to Strategic Directions as part of PDP Stage 1 as well as rules, assessment matters and advice notes in Zone Chapters and District Wide Chapters.
49. Clearly those documents only go some way to providing the protections required for Aurora's network and the Wanaka Substation is a good example of that where additional zoning methods are necessary to prevent buildings from being located in close proximity.

Dated 6 August 2020

¹⁷ Evidence of Joanne Dowd dated 28 May 2020 at [32]-[39].

A handwritten signature in blue ink, appearing to read 'S R Peirce', enclosed in a light blue rectangular border.

S R Peirce

Counsel for Aurora Energy Limited

Appendix 1: All of Aurora's Zone Substations showing PDP Zone and Setback Requirements

No.	Substation Name	PDP Zone	Setback Requirements
1	Cardrona	Rural	15 metres from internal boundaries
2	Camp Hill	Rural	15 metres from internal boundaries
3	Riverbank	Rural	15 metres from internal boundaries
4	Coronet Peak	Rural	15 metres from internal boundaries
5	Remarkables	Rural	15 metres from internal boundaries
6	Arrowtown	WBRAZ (adjacent to Wakatipu Basin Lifestyle Precinct)	10 metres from internal boundaries; 80-hectare minimum site size in the WBRAZ, and RBP required
7	Dalefield	WBRAZ	10 metres from internal boundaries; 80-hectare minimum site size and RBP required
8	Wanaka	Notified LDRZ	2 metres with accessory building to residential activities not having any setback distances
9	Frankton	Business Mixed Use Zone	No setback requirements the effects of residential and visitor accommodation activities at ground floor level on surrounding buildings and activities is a matter of restricted discretion for residential activities
10	Commonage	Medium Density Residential	1.5 metres for non-road boundaries with accessory building to residential activities not having any setback distances. Land immediately surrounding ZS is owned by Council.

11	Queenstown	Queenstown Town Centre	No setback requirements but residential activities are a restricted discretionary activity with discretion restricted to the effects on surrounding activities
12	Fernhill	Informal Recreation	Setback is based on adjoining zone which is Rural so 15 metres.

Appendix 2: Amended Building Restriction Area

