

**BEFORE THE ENVIRONMENT COURT  
CHRISTCHURCH REGISTRY**

ENV-2018-CHC

<b>Under</b>	The Resource Management Act 1991
<b>IN THE MATTER</b>	of an appeal under Clause 14(1) of Schedule 1
<b>BETWEEN</b>	<b>AURORA ENERGY LIMITED</b>  <b>Appellant</b>
<b>AND</b>	<b>QUEENSTOWN LAKES DISTRICT COUNCIL</b>  <b>Respondent</b>

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**NOTICE OF APPEAL ON BEHALF OF AURORA ENERGY LIMITED  
AGAINST DECISION ON QUEENSTOWN LAKES DISTRICT COUNCIL  
DISTRICT PLAN**

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1. Aurora Energy Limited (Aurora) appeals against a decision of the Queenstown Lakes District Council (the Council) on the following:
  - (a) Stage 1 Proposed QLDC District Plan (the PDP).
2. Aurora made a submission and a further submission on the PDP (submission number 635 and further submission number F1121)
3. Aurora is not a trade competitor for the purposes of section 308D of the Resource Management Act.
4. Aurora received notice of the decision on 7<sup>th</sup> May 2018.
5. The decision was made by the Council.
6. The decision which Aurora is appealing:
  - (a) parts of the decision<sup>1</sup> that relate to the recognition and protection of Aurora's electricity network, specifically:
    - (i) Definition of minor upgrading.
    - (ii) Definition of regionally significant infrastructure and critical infrastructure and associated recognition within the objective and policy framework.
    - (iii) Policy 3.3.25
    - (iv) Policy 4.2.2.2
    - (v) Policy 30.2.6.1
    - (vi) Rejection of request for a new policy 3.2.2.6

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<sup>1</sup> The Decisions are variously set out in Hearing of Submission on Proposed District Plan Report 3 – Chapters 3, 4 and 6, Report 7 – Chapter 27 (Subdivision and Development), Report 8 – Chapter 30, 35 and 36 and Report 14 – Wholes of Plan, Chapter 2 (Definitions) and Chapter 28 (Natural Hazards).

(vii) Rule 30.3.2(c), Rule 27.4.2 and 27.11.3

(viii) Rule 30.5.1.4

**The reasons for the Appeal are:**

7. Aurora's network provides electricity to over 89,355 customers in Otago and 21,839 within the Queenstown Lakes District including other regionally significant infrastructure, lifeline utilities, essential or emergency services and wide range of business.
8. Reliable electricity supply is critical to the health and wellbeing of the Queenstown Lakes Community. Aurora's network delivers electricity from the electricity generation sources (such as Wye Creek) and/or the national grid to local consumers. As a result Aurora's electricity distribution network is an important physical resource that needs to be protected and managed in order to enable it to be operated efficiently and effectively for the benefit of the Queenstown District.
9. The Decision does not provide adequate recognition or protection for Aurora's electricity distribution infrastructure, particularly the Electricity Sub-transmission Infrastructure and Significant Electricity Distribution Infrastructure. These parts of the network provide the connection from the national grid/generation sources to the wider low voltage network, or provide supplies to essential services, other regionally significant infrastructure, large customers or groups of customers and isolated communities, such as Glenorchy and Makarora.
10. This infrastructure is recognised within the Proposed Regional Policy Statement (pRPS) and protected. Therefore the PDP in its current form will fail to give effect to the pRPS.
11. In summary, the Council has failed to adequately address the following issues:
  - (a) Recognise the significance of Aurora's network for the District; and

- (b) Provide an appropriate and effective policy framework to enable the electricity distribution network to be developed and maintained in a manner that provides for the wellbeing of the community whilst managing effects on the environment.
- (c) The PDP fails to achieve sustainable management with respect to Aurora's infrastructure.

### **Specific Points of Appeal + relief sought**

#### Definition of 'minor upgrading' clause (j), (l) and refusal to allow height increase.

- 12. The Decision only partially accepted the changes requested by Aurora in its submission. In particular the Decision refused the relief sought by Aurora to enable an increase in the height of support structures when that is required to comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34). The Decision also partially refused relief to allow relocation of support structures within 5m of the structure being replaced which is another method for complying with NZECP34.
- 13. Compliance with NZECP34 is mandatory and important for the maintenance of a resilient and reliable electricity network. It is not uncommon for activities to occur over time that encroach within the distances in NZECP34. When replacement of the support structures occurs compliance with NZECP 34 must be achieved.
- 14. The Decision also refused the relief sought by Aurora to control other activities that may seek to locate within the electricity distribution corridor which would have assisted in minimising the risk to the critical parts of the network. In light of that the Council has erred in not enabling Aurora an efficient pathway for rectifying breaches as part of minor upgrading.
- 15. Requiring Aurora to obtain resource consent each time the height of a support structure needs to be modestly increased is inefficient. The Council has erred in not giving this inefficiency due weight. This is exacerbated by the Decision to reduce the scope for moving a pole

from 5m as sought by Aurora to 2m from its existing location. The decision combines to give Aurora limited scope to select a minor upgrading method that optimises network security and minimises effects on the environment. As a result the rules fail to achieve Objective 30.2.6.1.

16. The Decision declined relief sought by Aurora to allow installation of 4 new support structures. The basis for declining this relief was that a 4<sup>th</sup> structure would increase the height of the support structures. This is not correct and therefore the Decision was made on an incorrect factual basis.

*Relief Sought*

17. Amend the definition of 'Minor Upgrading' as follows:

*“(j) Replacement of existing support structures provided they are the same or similar in height and are located within 5 metres of the base of the support structure being replaced.*

*(l) The addition of up to four new support structures extending the length of an existing line provided the line has not been lengthened in the preceding five year period.*

*(m) An increase in support structure height required to comply with NZECP34:2001 by not more than 3 metres provided that the support structure has not been replaced within the preceding 10 year period.*

*Definition of 'Regionally Significant Infrastructure'*

18. The Decision is inconsistent with the definition of Regionally Significant Infrastructure and treatment of Aurora's infrastructure in the pRPS. In order to ensure consistency between the pRPS and the PDP moving forward the definition of 'Regionally Significant Infrastructure' from the pRPS should be incorporated into the PDP.
19. Inclusion of definitions of 'electricity sub-transmission infrastructure and 'significant electricity distribution infrastructure' is also sought in order to ensure consistency between the statutory documents and

appropriate recognition of the critical components of the electricity distribution network.

*Relief sought*

20. Definition of Regionally Significant Infrastructure be amended as follows:

*“Means*

- (a) *Renewable electricity generation activities undertaken by an electricity operator; and*
- (b) *The National Grid; and*
- (c) *Electricity sub-transmission infrastructure; and*
- (d) *Telecommunications and radio communication facilities; and*
- (e) *State highways; and*
- (f) *Queenstown and Wanaka Airports and associated navigation infrastructure.*

21. Definition of Electricity Sub-transmission Infrastructure be included as follows:

*“Means electricity infrastructure which conveys electricity between the National Grid and renewable energy generation sources to zone substations and between zone substations.”*

22. Definition of Significant Electricity Distribution Infrastructure be added as follows:

*“Means electricity infrastructure which supplies:*

- (a) *Essential public services (such as hospitals and lifeline facilities);*
- (b) *Other regionally significant infrastructure or individual consumers requiring a supply of 1MW or more;*
- (c) *700 or more consumers; or*
- (d) *Communities that are isolated and which do not have an alternative supply in the event the line or cable is*

*compromised and where the assets are difficult to replace in the event of failure.*

*New policy 3.3.25 and recognition of Significant Electricity Distribution Infrastructure*

23. The Decision inserted a new Policy 3.3.25 to support the development of non-residential activities within the rural environment. Aurora supports the intention of this Policy, however seeks to ensure that it is clear that it also applies to Significant Electricity Distribution Infrastructure which is often located within the Rural Zone (particularly that which supplies isolated communities).
24. As described above Aurora's infrastructure traverses some significant distances and supplies some isolated areas of the Queenstown Lakes District (amongst other things). In some instances there is a single line supplying communities (such as Glenorchy and Makarora) and few, if any options exist to provide alternative supply in the event that the lines are damaged. Given the importance of maintaining electricity supply to these communities it is considered appropriate to recognise and provide for these types of lines in the PDP.
25. Amendments are also required to ensure the PDP will give effect to the pRPS.

*Relief sought*

26. Policy 3.3.25 be amended as follows:
 

*“Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure and significant electricity distribution lines where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the quality of the environment, where practicable.*
27. Include reference to Significant Electricity Distribution Infrastructure in the following provisions:

- (a) *Policy 4.2.2.1*
- (b) *Policy 6.3.17*
- (c) *Policy 6.3.18*
- (d) *Policy 6.3.24*
- (e) *Policy 6.3.25*
- (f) *Policy 30.2.6.1*

*Policy 4.2.2.2*

28. The Decision only requires specific regard to be had to regionally significant infrastructure when allocating land within the Urban Growth Boundaries. This means that adequate consideration may not be given to the location and efficient operation of the electricity distribution network when allocating land. This would be a significant oversight that would fail to achieve the relevant objectives in the PDP and pRPS

*Relief Sought*

29. Amend Policy 4.2.2.2(g) as follows:

*“the need to make provision for the location and efficient operation of infrastructure and utilities including Regionally Significant Infrastructure and Significant Electricity Distribution Infrastructure.*

*Provisions to manage effects of activities on Sub-Transmission or Significant Electricity Distribution Infrastructure*

30. Aurora sought amendments to the objectives, policies and methods that would put in place a regime for controlling activities in close proximity to its critical infrastructure. The Council has erred in refusing that relief as it fails to appropriately manage potential adverse effects on Regionally Significant Infrastructure and



Significant Electricity Distribution Infrastructure identified in the pRPS.

31. This failure is inconsistent with the purpose of the utilities provisions in Section 30 which state:

*"...it is also necessary that essential utilities are protected, where possible, from further encroachment by incompatible activities which may lead to reverse sensitivity effects. This chapter therefore also addresses requirements for sensitive uses and habitable buildings located near to utilities".*

32. The Decision erred in concluding that encroachment on Aurora's network did not fall within the ambit of reverse sensitivity or does not lead to reverse sensitivity effects.
33. The Decision to refuse the relief sought by Aurora means that Policy 30.2.6.5 is not implemented with respect to Aurora's critical infrastructure.

#### *Relief Sought*

34. The following provisions be added:

*Add new definition of Electricity Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor*

*"Means the area measured either side of the centre line of above ground Electricity Sub-Transmission Infrastructure or above ground Significant Electricity Distribution Infrastructure as follows:*

- a. 9.5m from 110kV*
- b. 9.5m from 66kV*
- c. 8.5 from 33kV*
- d. 5m from 11kV"*

*Note: lines with spans greater than 125m may require greater setbacks than set out above in order comply with NZECP34. Refer Rule 30.3.2(c)*

Add new Policy 30.2.6.6 as follows:

*"Manage the effects of activities that may be incompatible with Electricity sub-transmission Infrastructure and Significant Electricity*

*Distribution Infrastructure by identifying corridors within which incompatible activities are controlled.”*

Add new rules

<b>30.5.5</b>	<b>Electricity Distribution Activities (including Electricity Sub-Transmission and Significant Electricity Distribution Infrastructure</b>	<b>Non-compliance status</b>
<b>30.5.5.6</b>	<b><i>Building, structures and activities that are not National Grid Sensitive Activities within the Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor.</i></b>  <i>Subject to Compliance with 30.5.6.1</i>	<i>P</i>
<b>30.5.5.7</b>	<b><i>Earthworks within the Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor</i></b>  <i>Subject to compliance with 30.5.6.2</i>	<i>P</i>

<b>30.5.6.</b>	<b><i>Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor Standards</i></b>	<b>Non-compliance status</b>
<b>30.5.6.1</b>	<b><i>Buildings and structures permitted within the Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor</i></b>  30.5.6.1.1 – Written consent is obtained from the lines owner confirming the construction can occur in compliance with NZECP34.	RD
<b>30.5.6.2</b>	<b><i>Earthworks permitted within the Sub-Transmission or Significant Electricity Distribution Infrastructure Corridor</i></b>  30.5.6.2.1 – Written consent is obtained from the lines owner confirming the construction can occur in compliance with NZECP34.	RD

Add new Rule 30.6.2 as follows:

*“Any application for resource consent under Rule 30.5.6 will not be publically notified, but will be limited notified to the lines owner, except where written approval of the lines owner is provided.”*

Add new Rule 27.5.11

27.5.11	<b><i>Subdivision of any land in any zone within the Electricity Sub-Transmission or Significant</i></b>	RD
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	<p><b>Electricity Distribution Infrastructure Corridor</b></p> <p><i>Discretion is restricted to:</i></p> <p><i>a. impacts on the operation, maintenance, upgrade and development of the Electricity Sub-Transmission Infrastructure or Significant Electricity Distribution Infrastructure</i></p> <p><i>b. the ability of future development to comply with NZECP34</i></p> <p><i>c. the location, design and use of any proposed building platform as it relates to the Electricity Sub-Transmission Infrastructure or Significant Electricity Distribution Infrastructure</i></p>	
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### 30.3.2 – Information on National Environmental Standards and Regulations

35. In response to Aurora’s request to identify critical infrastructure and protect it with corridors the Council included a provision to highlight NZECP34.
36. Aurora considers some amendment is required to improve the workability of the provision for plan users, particularly for infrastructure that is not identified on the Planning Maps.

#### *Relief Sought*

District Wide Provision 30.3.2 (c) is amended as follows:

***“New Zealand Electrical Code of Practice for Electrical Safe Distances.***

*Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (“NZECP 34) is mandatory under the Electricity Act 1992. All activities regulated by the NZECP 34, including any activities that are otherwise permitted by the District Plan must also comply with this legislation.*

*Advice note: To assist plan users in complying with NZECP 34 the parts of Aurora’s network that is Regionally Significant or identified as Significant Electricity Distribution Infrastructure is shown on the Planning Maps. For the balance of Aurora’s network plan users are advised to consult with Aurora’s network maps at [www.auroraenergy.co.nz](http://www.auroraenergy.co.nz) or to contact Aurora directly for advice.*

*Compliance with this District Plan does not ensure compliance with NZECP34.”*

The above text also be added to 27.4.2 to ensure plan users are aware their obligations under NZECP34 when carrying out subdivision.

Rule 30.5.1.4

37. The Decision refused part of the relief sought by Aurora. The Council has erred in treating infrastructure types differently. An exclusion under this rule remains in place for telecommunications. It is therefore unclear why the Council concluded that providing for electricity cabinets and kiosks of similar form was so repugnant to the strategic chapters of the PDP.

*Relief Sought*

38. Amendment of rule 30.5.1.4 as follows:

***Buildings associated with a utility***

*The addition, alternation or construction of buildings in:*

- (a) *Any Significant Natural Area;*
- (b) *The Arrowtown Residential Historic Management Area*

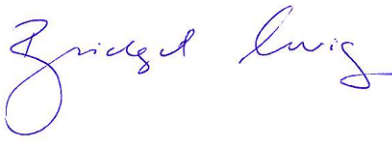
*This rule does not apply to*

- a. masts or poles for navigation or meteorology;*
- b. poles antennas and associated cabinets (cabinets up to 10m in area and 3m in height, exclusive of any plinth or other foundation) for telecommunication and radio communication;*
- c. Lines, support structures, electricity cabinets and kiosks for Electricity Distribution.*

*General Relief Sought*

- (c) Aurora seeks any further or consequential relief required to give effect to the relief sought above;
  - (d) Costs of and incidental to this appeal.
39. Aurora provides the following documents with this notice:
- (a) A copy of Aurora's original and further submissions;
  - (b) A copy of the Decision;

- (c) A list of names and addresses of persons to be served with a copy of this notice.

Signed: 

B Irving

Counsel for Aurora Energy Limited

**DATED** this 19th day of June 2018.

Address for service

of Appellant: C/- Gallaway Cook Allan  
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**Advice to Recipients of Copy of Notice of Appeal**

1. How to become party to proceedings:

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

2. How to obtain copies of documents relating to appeal:

The copy of this notice served on you does not attach a copy of the Appellant's submission and/or the decision appealed. These documents may be obtained, on request, from the Appellant.

3. Advice:

If you have any questions about this notice, contact the Environment Court unit of the Department for courts in Christchurch.

**Contact Details of Environment Court for Lodging Documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar:

The Christchurch address of the Environment Court is:

282 Durham Street  
Christchurch 8013

Its Postal address is:

P O Box 2069  
Christchurch 8140

And its telephone and fax numbers are:

Telephone: (03) 962 4170  
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