

**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** an application to make minor corrections to Decision 11 pursuant to cl 16, Schedule 3 of the Order

Minor correction: 22 June 2017

Hearing Panel: Hon Sir John Hansen (Chair), Ms Sarah Dawson, Dr Philip Mitchell, Ms Jane Huria

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**Minor corrections to Decision 11 — Chapter 15 Commercial (Part)**

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[1] The Hearings Panel (‘the Panel’) issued its decision on Chapter 15 Commercial and Chapter 16 Industrial (Part) (‘Decision 11’) on 18 December 2015.

[2] On 5 May 2017 Orion New Zealand Limited (‘Orion’) made an application for a minor correction affecting the Commercial Mixed Use Zone affecting properties in Blenheim Road that are traversed by Orion’s 66kV Addington to Islington distribution line (‘distribution line’).<sup>1</sup>

[3] Orion has belatedly identified that the Panel’s decision to provide corridor protection setbacks for Orion’s distribution line was inadvertently not carried through to the Commercial Mixed Use Zone. This error has occurred because, although Orion’s submission and evidence called at the hearing clearly requested such setbacks in all zones where the distribution line is located, when the provisions were drafted Orion did not include the Commercial Mixed Use Zone as a zone where the distribution line was located. The Commercial Mixed Use Zone did not exist at the time of notification of the Replacement

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<sup>1</sup> Memorandum of counsel on behalf of Orion New Zealand Limited in relation to Decision 11 – Chapter 15: Commercial (part), 5 May 2017.

District Plan. It was an oversight by Orion and the Panel did not identify the consequential change required as a result of the change in zoning.

[4] Orion requests that the corridor protection setbacks included for all other zones where the distribution line is located are extended to include the section of the distribution line that traverses the properties in the new Commercial Mixed Use zone. The Christchurch City Council ('Council') consents to the application. Potentially affected submitters are Peebles Group Limited (1195) ('Peebles'), 7990 Limited (1086) ('7990'), Tailorspace Investments Limited (1322) ('Tailorspace') and Mr Grant Nelson (317). These submitters had requested their properties be zoned for commercial purposes. Their submissions were successful in that regard, albeit the type of commercial zoning differed. No appeals were lodged in relation to that aspect of Decision 11.

[5] We requested a response to the Orion request from the identified submitters. Mr Nelson advised he no longer has an interest in the issues.<sup>2</sup> Mr Philips advised that Tailorspace no longer had an interest.<sup>3</sup> Peebles and 7990 object to the change on the basis that it is not a minor correction and the change would be prejudicial to their interests.<sup>4</sup>

[6] Notwithstanding the objection from Peebles and 7990, Orion maintains that the defect qualifies as a minor correction. In order to address the concerns raised by Peebles and 7990, Orion submits, as an alternative, that the Panel could exclude the Peebles and 7990 interests from the correction.<sup>5</sup>

### **Jurisdiction to make minor changes**

[7] We have previously set out our jurisdiction in this regard, and it is unnecessary to repeat it. We are satisfied that the correction sought by Orion clearly meets the requirements of Schedule 3, cl 16. In particular, it gives effect to our clearly stated intention that the corridor protection rules were intended to be implemented to protect Orion's distribution lines.<sup>6</sup> We accept that Orion has identified a defect in Decision 11, to the extent that the

<sup>2</sup> Email from Mr Nelson to Secretariat, 11 May 2017.

<sup>3</sup> Email correspondence from Jeremy Phillips to Secretariat, 8 May 2017.

<sup>4</sup> Email from Jeremy Philips to Secretariat, 9 May 2017.

<sup>5</sup> Memorandum of counsel on behalf of Orion New Zealand Limited in relation to Decision 11- Chapter 15 Commercial (part), 12 June 2017.

<sup>6</sup> Decision 11 at [611] – [613].

corridor protection rules ought to have been applied to that part of the Commercial Mixed Use zone once the zoning had been decided by us.

[8] We have taken into account that Peebles and 7990 object to the change, and it is possible that other land owners, while not submitters on the Plan, may have made decisions in reliance of the Commercial Mixed Use zone provisions, absent the setback requirements. We note, however, that Orion clearly identified its request for the inclusion of the corridor protection rules in its submission on the Replacement District Plan, and that the maps attached to the submission included the affected properties. The Orion submission was not opposed by the submitters or other interests.

[9] Although the request has come very late in the process, the OIC clearly anticipates minor corrections ‘at any time’ and that changes may be made to the provisions up until they become operative.

[10] Given the structure of the District Plan and the emphasis placed on protection of the Orion distribution lines in Strategic Directions we find that the defect, having now been brought to our attention, ought to be corrected.

[11] We record that Transpower Limited (‘Transpower’) previously requested a correction to the provisions to address a similar omission in the provisions. At the time the Panel declined to make the correction (‘Transpower corrections decision’) on the basis that:<sup>7</sup>

- (a) The zone change had been made in response to submissions, and Transpower had not made a further submission on those submissions;
- (b) Transpower had not secured the cooperation of the relevant submitters that had requested the zone change; and
- (c) The Panel could only make the correction if it could be clearly shown to be minor, remedial and having no prejudicial consequence for other submitters or interests.

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<sup>7</sup> Minor correction and consistency changes to decision 11, 23, 24 and 57, 15 December 2016.

[12] We accept the submissions of counsel for Orion that the distinguishing feature of the Orion request is the clear and specific drafting of its submission and evidence presented at the Commercial and Industrial hearing that sought the inclusion of the corridor protection rules. In particular the inclusion of planning maps 37 and 38 that clearly identified the submitters' interests as being affected by the corridor protection rules requested by Orion. The submitters were represented by an experienced planner in the hearing process and elected not to oppose Orion's request. On that basis we do not find either Peebles or 7990 to be prejudicially affected by the correction. The fact that Orion did not submit on the requested rezoning is not relevant because the Orion submission provided scope for the corridor protection rules to be applied to all commercial zones where the distribution line was located.

[13] We observe that it is unfortunate that Transpower's submission (possibly in error) excluded the relevant zone that was the subject of the Transpower corrections decision. That coupled with the fact that Transpower did not negotiate a successful outcome with affected landowners prevented the Panel from remedying the defect at that time. Ideally the corridor protection setbacks ought to apply to all zones where the national grid and strategic distribution line infrastructure are located because this implements Strategic Direction Objective 3.3.12 and the Higher Order documents.

### Minor correction

[14] Accordingly, we amend the Commercial Mixed Zone provisions to include the provisions set out in **Schedule 1**.

For the Hearings Panel:



Hon Sir John Hansen  
Chair



Ms Jane Huria  
Panel Member



Ms Sarah Dawson  
Panel Member



Dr Philip Mitchell  
Panel Member

**Schedule 1**

Appendix 1 of Orion's Memorandum of Counsel dated 5 May 2017 as amended and updated by the Secretariat to reflect updated structure of rule as at 17 March 2017.

**CORRIDOR PROTECTION RULE TO BE INCLUDED IN  
COMMERCIAL MIXED USE ZONE<sup>1</sup>**

Please note that the new corridor protection rule is NC2 and it is shown clean without the use of 'mark up'.

**15.9.1.5 Non-complying activities**

- a. The activities listed below are non-complying activities.

	Activity
NC1	Any <a href="#">residential activity</a> not meeting <a href="#">Rule 15.9.1.1</a> , P27(e).
NC2	<p>a. <a href="#">Sensitive activities</a> within 10 metres of the centre line of a 66 kV <a href="#">electricity distribution line</a> or within 10 metres of a foundation of an associated <a href="#">support structure</a>.</p> <p>b. <a href="#">Buildings</a> within 10 metres of the foundation of a 66 kV <a href="#">electricity distribution line support structure</a>.</p> <p>c. Fences within 5 metres of a 66 kV <a href="#">electricity distribution line support structure</a> foundation.</p> <p>Any application arising from this rule shall not be publicly notified and shall be limited notified only to Orion New Zealand Limited or other <a href="#">electricity distribution network operator</a> (absent its written approval).</p> <p>Advice notes:</p> <ol style="list-style-type: none"> <li>1. The 66 kV <a href="#">electricity distribution lines</a> are shown on the Planning Maps.</li> <li>2. Vegetation to be planted around the <a href="#">electricity distribution lines</a> should be selected and/or managed to ensure that it will not result in that vegetation breaching the <a href="#">Electricity (Hazards from Trees) Regulations 2003</a>.</li> <li>3. The <a href="#">New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001)</a> contains restrictions on the location of structures and activities</li> </ol>

<sup>1</sup> Note that these rules replicate those included in Decision 11 for the Commercial Core and Commercial Local Zone as amended by Minor Correction Decision 17 March 2017.

Schedule to Decision

	<b>Activity</b>
	in relation to <a href="#">electricity distribution lines</a> . Buildings and activity in the vicinity of <a href="#">electricity distribution lines</a> must comply with the <a href="#">NZECP 34:2001</a> .