BEFORE THE COMMISSIONERS APPOINTED BY THE DUNEDIN CITY COUNCIL

IN THE MATTER	Of a submission pursuant to clause 5, Schedule 1 of the Resource Management Act 1991 (the **Act**)
AND	Variation 2 to the Dunedin City Council Second Generation District Plan (**Variation 2**)
BETWEEN	**Aurora Energy Limited**
	Original Submission 217
	Further Submission 28

BRIEF OF EVIDENCE OF JOANNE DOWD ON BEHALF OF AURORA ENERGY LIMITED

DATED 30 NOVEMBER 2021

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BREIF OF EVIDENCE OF JOANNE DOWD ON BEHALF OF AURORA ENERGY LIMITED

May it please the Commissioners:

1. My name is Joanne Dowd, I am the Resource Planning, Property and Environment Manager employed by Aurora Energy Limited (**Aurora**).

2. I hold a master's degree in Town and Country Planning from The Queens University of Belfast, obtained in 1993. I have been a full member of the UK Royal Town Planning Institute since 1997. I am also a member of the Resource Management Law Association since 2006. I sit on the Electricity Networks Association's (**ENA**) Resource and Environmental Planning Forum, and I am an ENA representative on the MfE's National Planning Template for Network Utilities Working Group. I am also a member of the Women's Infrastructure Network – WIN Otago/Southland.

3. I am employed as Resource Planning, Property and Environment Manager at Aurora. Before that I was employed as the Network Policy Manager with Delta Utility Services Limited. I have been employed in my present position since July 2017 and I have 27 years international planning experience in both the private and public sector.

4. I am responsible for all Resource Management Act 1991 processes associated with the operation, maintenance and development of Aurora Energy's electricity distribution network. Recent projects I have been involved with include the designation and associated regional council consenting of the proposed Clyde Dam, Riverbank Road and Camphill Substations in Clyde and Wanaka, and the Carisbrook substation in Dunedin. I have also been involved in the consenting of our 33kV asset upgrades including the consenting of the installation of new high voltage cables across the Otago Harbour; and consenting for the installation of our upgraded SCADA communications network which links our various substations within the district. In recent years, I have focused on providing consultancy advice with respect to regional and district plans, utility developments, resource consents and environmental management and environmental effects assessments.

5. In my role at Aurora Energy, I have drafted submissions and presented expert evidence in support of various District Plan reviews subject to Schedule 1 of the Act. My involvement has been in relation to Aurora Energy's original submission on the Dunedin City Council Proposed District Plan Review (**2GP**) as well as in the Queenstown Lakes District Proposed District Plan Review (Stage 1 to 3) (**QLDC PDP**) and both processes associated with submissions on the Otago Regional Policy Statement (Partially Operative RPS and the Proposed RPS). Additionally, I have been involved with Aurora Energy's various interests as an appellant and section 274 party on appeals to the Environment Court pursuant to Clause 16, Schedule 1 of the RMA, including being involved in several Environment Court-assisted mediations.

6. While acknowledging this is not an Environment Court hearing, I have prepared this evidence in accordance with, and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. Unless I state otherwise, this evidence is within the scope of my expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

7. This evidence addresses Aurora Energy's submission points OS217.004 and OS217.005 on Change F1-1 (Rule 9.3.7 Service Connections layout).

8. This evidence does not address Aurora Energy's submission OS201.002 and OS217.006 on the basis that the s 42A Report Author recommends that the submissions be accepted. I support the recommended amendment to Policy 9.2.1.3 referenced in the s 42A Report.

9. I had oversight and assisted in the drafting of the original submission with respect to issues related to the point of supply and the requirement for easements. Accordingly, I adopt that part of the Submission

(specifically paragraphs [10] to [26]) but recreate Image 1 here for completeness.

10. As set out in the original submission, Aurora Energy has specific requirements under regulations and legislation that sit outside the District Plan that it must comply with[1]. The obligations and requirements seek to provide for the ongoing health, safety and wellbeing of individuals to which electricity is provided and for any persons that may come in proximity to it. The two obligations most relevant to this submission include:

    (a) To provide an electricity connection up to the "Point of Supply" (POS) on a property boundary when requested by landowners.

    (b) To maintain and operate the electricity supply up to the POS.

11. The changes sought to the 2GP and which I discuss in this evidence relate primarily to point "B".

Rule 9.3.7.X

12. Aurora Energy sought a minor change to the wording of 9.3.7.X to require easements associated with the electricity network (but also Telecommunication network) be duly granted in favour of the relevant network owner.

13. POS is defined by section 2(3) the Electricity Act 1992. An extract from the Electricity Act is attached to this evidence as Attachment 1 which includes the definition of POS.

14. The POS definition is quite detailed as it attempts to manage the interface between the various types of infrastructure that forms part of an electricity distribution network and the ways in which property can be owned (i.e. by way of leasehold, freehold, or unit title subdivision). The normative definition of POS in relation to a property is the "point or points on the boundary of the property at which exclusive fittings enter that property". The exclusive fittings are those parts of the infrastructure (i.e.

[1] Electricity Act 1992; Electricity Safety Regulations 2010

an underground cable or overhead line) that supply electricity to that property only.

15. In most cases, the POS will be the point between the boundary of the legal road and where the line or cable crosses the cadastral boundary of a Record of Title. In the case of an underground cable that provides an electricity connection to a property, the POS is demarcated by a pillar box. This is described in Image 1 below:

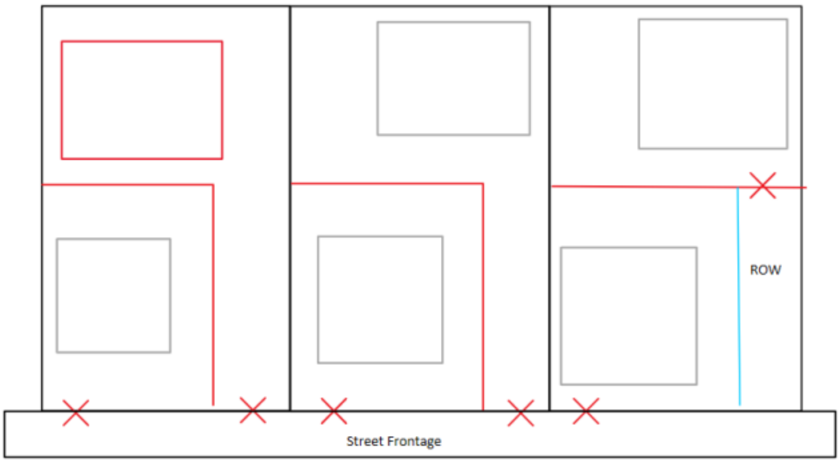

Image 1: Plan identifying various points of supply at three properties which are being subdivided

16. The first two properties identify a POS at the street frontage. This is the most common scenario as properties either entirely adjoin a street frontage or, in the case of a back-lot own the accessway to the street.

17. However, in many instances, a subdivision is designed in a way that grants a right of way access to an allotment that does not adjoin legal road. For example, at Image 1 Property 3 above the POS is located on private property at the end of the private right of way.

18. Aurora Energy's ability to operate and maintain infrastructure up to a POS within private property can only be provided for by way of an easement in gross in favour of Aurora Energy. The easement in gross is often in addition to a private easement between the burdened land and the benefitted land which secures the backlots rights to have its electricity connection. A private easement between neighbouring landowners does not provide Aurora any rights of access to maintain or operate infrastructure that is located within private property.

19. Aurora Energy addresses the requirement for easements in gross for new residential subdivisions at the time that electricity connections are requested. However, there are instances in which a subdivision does not require any additional electricity connections (see Image 1, property 3), as such Aurora Energy does not have an opportunity to require easements and the subdivision often proceeds, which in turn, creates a new point of supply within private property. This presents the following risks in terms of the provision of electricity to the resultant site:

    (a) In the event of fault, Aurora Energy does not have any legal rights of access to the infrastructure.

    (b) The relevant landowners may place buildings or structures, or plant trees over the cable, or in proximity to an overhead line, inadvertently increasing the risk of a fault occurring or creating a new hazard that Aurora Energy cannot ignore (regardless of whether it has caused a fault).

    (c) Aurora Energy is required to accept ownership of an existing cable that may be defective but would have no information of the quality or age of the cable at the time that the subdivision occurs.

    (d) In terms of an underground cable, Aurora Energy may have no information about its location to assist in reducing the level of excavation required to maintain the cable.

20. I note that Aurora Energy did not lodge a submission on this issue when the 2GP was originally notified in 2015. At that time, Dunedin's population was relatively stable and the provisions of the 2GP did not promote dense infill development[2] compared to what is being promoted through Variation 2.

21. This issue has been addressed in the Queenstown Lakes District Proposed District Plan at a policy and rule level requiring applications for subdivision consent to consider the requirement for easements in relation to energy supply and telecommunications. The relevant rule

[2] Subdivision of a Record of Title with two or more dwellings into separate Records of Title

reserves a matter of discretion in relation to the provision of easements in favour of electricity and telecommunication providers. In my view this practice has worked well in Queenstown and ensures that where a subdivision is designed to have an electricity connection over a private property, that Aurora Energy is provided access by way of an easement in gross.

22. No such provision is made within the 2GP in relation to electricity service provision. However, I note that the 2GP and Variation 2, both contain requirements for easements in relation to three waters infrastructure[3].

23. The relief sought therefore attempts to plug a gap in the 2GP in relation to this issue.

24. I note that the s42A Report Author considers this submission point out of scope and considers the relief sought as “unnecessary”. No further explanation is provided as to why the relief sought is considered unnecessary, which makes it difficult to provide any rebuttal.

25. In my view, Variation 2 presents a step change for Dunedin in relation to providing for and facilitating infill development to increase housing density and capacity. This has the potential to introduce similar pressures on the electricity distribution network in Dunedin, similar to those experienced by Aurora Energy, on its Queenstown network within the Queenstown Lakes District Council.

26. While Aurora Energy has processes in place to address electricity connection design and easement requirements for new subdivisions, this is not the case with infil development. Aurora Energy is not involved in any capacity with infill subdivisions. The risk to Aurora Energy that is being presented by reducing minimum lot size requirements and increasing overall density in Residential 1 and 2 areas is that it is likely that more infill subdivisions will be created in future. When Aurora Energy (by way of its approved contractors) are called on to repair or maintain a cable then it will be limited in its capacity to do so by the legal rights it possesses to enter the property. This is a particular issue when

[3] Rule 9.5.3.11 (Change F2-3 and Rule 9.6.2.7 (Change F3-2)

an existing cable runs over a front lot to service a backlot and where the owners of the front lot have made significant improvements such as creation of driveways, planting or locating buildings over the existing cable.

27. I do note here for completeness that Aurora Energy has tried to be proactive in this space by engaging with the local surveying firms to set out the requirements (or necessity) for easements being provided in favour of Aurora Energy. The sell to developers is that this is ultimately a benefit to their client and any prospective purchaser as they can be confident that any future owner of a resultant site will provide Aurora Energy rights of access over an adjoining property should any issue arise with that properties electricity supply. This approach has yielded favourable results and Aurora Energy is starting to see more and more requests to accept easements for infill subdivision.

28. However, there remains a residual risk to Aurora as to the “unknown-unknowns”. Aurora Energy cannot quantify the number of properties in Dunedin that have been or will be subdivided without first contemporaneously granting an easement in gross to Aurora over the adjoining property. Aurora Energy does not see all the infill subdivision applications that come across the Dunedin City Council Planning Departments desk to assess whether an easement would be required. It is for that reason, that the “unnecessary” explanation provided by the s42A Report Author sits uneasily. In my view, it is appropriate to ensure that easements in gross are provided so that property owners in Dunedin who obtain an electricity connection across an adjoining property can ensure that the cable or overhead line can be appropriately operated and maintained.

Advice Note 9.3.7.XA

29. Aurora Energy has also sought the inclusion of an advice note to provide information to plan readers about connections to the Aurora Energy’s electricity distribution network. The purpose of the advice note is to alert plan users to information that may need to be provided to Aurora Energy so that it has a better understanding about the nature of the works that

it is effectively taking ownership of an being asked to maintain and repair.

30. Aurora Energy imposes this information requirement on people proposing to undertake subdivisions where they have chosen to include Aurora Energy in the process and identified an easement to be granted in its favour. In my view, including this information in a District Plan as an advice note, is a beneficial and useful tool to direct plan users to the types of information that they will need to look for when considering service connections for a proposed infill subdivision.

Dated 30 November 2021

Joanne Dowd

Attachment 1 – Definition of Point of Supply

Electricity Act 1992

2 Interpretation

(3) In this Act, **point of supply**, in relation to a property, means the point or points on the boundary of the property at which exclusive fittings enter that property, except that,—

- (a) if there are both high voltage lines and a transformer owned by the electricity distributor on the property, the point of supply is the point at which electricity from the transformer enters exclusive fittings; or
- (b) if there are non-exclusive fittings on the property, the point of supply is the point at which those fittings become exclusive fittings; or
- (c) if the exclusive fittings on the property are owned by a consumer that is a tenant or licensee of the owner or occupier of the property, the point of supply is the point at which those exclusive fittings enter the area leased or licensed by the consumer; or
- (d) if there is specific agreement that any other point on the property is the point of supply, the point of supply is the agreed point;—

and, in this definition,—

exclusive fittings means fittings used or intended to be used for the purpose of supplying electricity exclusively to that property

high voltage lines means lines conveying electricity at a voltage of 1000 volts or more

property—

- (a) means the land within the boundary where the electricity is consumed:
- (b) includes the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier:
- (c) includes the whole of any property that has been subdivided under the Unit Titles Act 2010

specific agreement may be an agreement—

- (a) entered into by—
  - (i) the existing consumer; or
  - (ii) any person with a greater interest in the property than the consumer (such as the consumer's landlord); or
  - (iii) any body corporate under the Unit Titles Act 2010 or the registered owner of the land to which the unit plan relates; and
- (b) entered into by the electricity distributor or the electricity retailer; and
- (c) entered into before or after the date on which this provision comes into force.

(4) The new definition of point of supply in subsection (3)—

- (a) applies on and after the date on which the Electricity Amendment Act 2001 receives the Royal assent if—

i. an agreement exists between the electricity distributor and the consumer that the point of supply is already located at the point provided for in the new definition; and

ii. the consumer has not challenged the existence of that agreement before that date; and

(b) is, in other cases, subject to the transitional provision in subsection (5).

(5) The new definition of point of supply in subsection (3) does not apply in any other particular case until the electricity distributor has—

(a) brought the fittings for which the consumer will become responsible as a result of the new definition to a reasonable standard of maintenance or repair, if those fittings are not at a reasonable standard at the time when this provision comes into force; and

(b) notified the consumer in writing—

(i) that the point of supply is as defined in accordance with the new definition; and

(ii) the location of that point of supply; and

(iii) the effect of the change to the point of supply; and

(iv) that the point of supply may not take effect under this Act unless any fittings for which the consumer will become responsible have been brought to a reasonable standard of maintenance and repair; and

(v) the date on which the point of supply will change (which must be no less than 20 working days after the date of the notification).