

BEFORE THE TE TAI POUTINI PLAN JOINT COMMITTEE

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Te Tai Poutini Plan in
regard to:

- Energy, Infrastructure and
Transport

Statement of evidence of **CHRIS HORNE** on behalf of Chorus New Zealand Limited, Spark
New Zealand Trading Limited, One New Zealand Group Limited and FortySouth
(Submitter s663)
27 October 2023

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Statement of Professional Qualifications and Experience

1. My name is Chris Horne. I am a resource management consultant and director of the resource and environmental management consulting company, Incite (Auckland) Limited.
2. I have been engaged by Chorus New Zealand Limited (Chorus), Spark New Zealand Trading Limited (Spark), One New Zealand Group Limited (OneNZ – formally Vodafone New Zealand Limited) and FortySouth referred to in this evidence as “the Companies”, to provide evidence as an independent planner in regard to their submissions on the Proposed Te Tail Poutini Plan (Proposed Plan) relevant to the Energy, Infrastructure and Transport topic.
3. I have approximately 30 years of professional experience in the field of resource management and have represented a variety of public and private clients on a range of matters that raise planning issues. A significant part of my experience relates to network utility infrastructure, including both project consenting, and planning advice and assistance on resource management documents and changes that may affect the operation or deployment of infrastructure.
4. I have acted for a number of infrastructure clients including Spark, Chorus, Connexa¹, One NZ, FortySouth² Two Degrees Mobile Limited, Transpower, Ultra-Fast Fibre, Vital (previously branded as Teamtalk), New Zealand Police (radio network), KiwiRail, Vector, Watercare Services and Waka Kotahi NZ Transport Agency. Work for these clients has related to both linear infrastructure networks (e.g., lines, submarine cables, pipes and transport corridors), and site-specific facilities (e.g., radio communication facilities, exchanges, cable stations and a satellite earth station).
5. I was a member of the reference group including the Telecommunications Industry, Government Departments and Local Government New Zealand involved in the development of the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008*, and later provided advice to the New Zealand Police on the subsequent update to the 2016 regulations now in force: *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* (“NESTF”).

¹ Connexa has acquired the passive assets of Spark (poles and cabinets)

² FortySouth has acquired the passive assets of OneNZ (poles and cabinets)

6. I assisted the Companies with preparing their submission on the Proposed Plan. I have also been involved over many years with numerous district plan reviews throughout New Zealand addressing similar issues in regard to telecommunications networks.
7. Although this matter is not before the Environment Court, I can confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, the evidence is within my field of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Evidence Outline

8. The scope of this evidence relates to the infrastructure provisions in the Energy, Infrastructure and Transport Chapter.
9. The Companies made a number of submissions on the infrastructure provisions of the chapter. A number of these supported provisions as notified to retain standing if other parties request changes, as well as several request for changes to provisions. However, in general the recommendations of the s42A report are either supported or are accepted by the Companies, and accordingly there are only limited matters covered in my evidence where additional amendments are sought.
10. The Companies also have submissions on other plan-wide provisions to be addressed in later topics. The way the Proposed Plan is structured there is potential for provision in other chapters to 'unwind' practical provisions for infrastructure in this chapter.
11. Key matters addressed in my evidence are:
 - Relationship of Proposed Plan provisions to NESTF;
 - Height limits for telecommunications poles in industrial zones;
 - Workability of controlled activity rule for poles and attached antennas;
 - Temporary Network Utilities
 - Provisions for standby back-up generators; and
 - An overview of the Companies approach to the overlay chapters.

Overview of the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016 (NESTF)* and their relationship to District Plans

12. Many elements of telecommunications Infrastructure deployed and operated by the Companies is regulated under the NESTF which came into force on 1 January 2017. These replaced the 2008 regulations and broadened their scope. The 2008 regulations provided permitted activity rules for upgrading/replacement of existing poles in road reserve to enable attachment of antennas, telecommunications cabinets in road reserve, and radio frequency exposures inside and outside of roads. In summary the 2016 regulations now provide for the following as permitted activities in all district plans subject to standards:

- Telecommunications cabinets in all locations;
- Antennas on existing poles in road reserve (including pole replacement);
- Antennas on new poles in road reserve;
- Antennas on existing poles outside of road reserve, including pole replacements if required (i.e. upgrades to existing telecommunication facilities outside of roads);
- New poles and attached antennas in rural zones;
- Antennas on buildings (this excludes any residential zones unless the point of attachment to the building is at least 15m above ground level);
- Small cell units (integrated radio equipment and antennas not exceeding 0.11m³);
- Customer connection lines (excluding new support poles);
- Aerial telecommunications lines along the same routes as existing telecommunications and power lines;
- Underground telecommunications lines;
- Ancillary earthworks (excluding access tracks); and
- Radio frequency exposures in all locations.

13. The regulations apply to regulated activities undertaken by a *facility operator*³ which includes:

- A network operator (as defined in section 5 of the Telecommunications Act 2001); or

- The Crown; or
 - A Crown agent.
14. Networks operated by entities not falling under the above criteria remain subject to the relevant district plan. This includes organisations such as district and regional councils which rely on telecommunications for activities such as digital flood monitoring, civil emergency networks or wireless streetlights and traffic management systems. These organisations would have to apply to the Ministry of Business Innovation and Employment to be a *network operator* to fall under the regulations. Further, activities that are not regulated, such as new poles and attached antennas outside of roads in zones other than rural zones, and aerial telecommunications lines not following existing overhead network routes, remain subject to the relevant district plan.
15. Regulated activities not complying with the relevant permitted activity standards in the NESTF remain subject to the relevant district plan. Where such an activity would otherwise be a permitted activity in the district plan (but does not meet the standards in the NESTF), it requires resource consent as a controlled activity under Regulation 14. In each other case it is the same status as that included in the relevant district plan.
16. Subpart 5 of the NESTF identifies certain types of district plan rules relating to sensitive environments which still apply to regulated activities where resource consent would otherwise be required in the district plan. Poles, antennas and cabinets are subject to all of these controls, whilst customer connection lines, aerial lines following existing telecommunications or power lines and underground lines may only be subject to some of these matters depending on circumstances. The Subpart 5 matters where district plan controls still apply to regulated activities are as follows:
- Regulation 44 - Trees and vegetation in road reserve;
 - Regulation 45 - Significant trees;
 - Regulation 46 – Historic heritage (including cultural heritage);
 - Regulation 47 – Visual amenity landscapes (e.g. significant ridgelines, view shafts etc);
 - Regulation 48 – Significant habitats for indigenous vegetation;
 - Regulation 49 – Significant habitats for indigenous fauna;
 - Regulation 50 – Outstanding natural features and landscapes;

³ Defined in NESTF Regulation 4

- Regulation 51 – Places adjoining the coastal marine area (in regard to specific coastal protection rules such as coastal yards etc); and
 - Regulation 52 – Rivers and lakes (the regulations do not apply to works in, on, under or over the bed of any river, except that they apply to anything done over a river or a lake such as on a bridge⁴). Regulation 52 confirms that any relevant regional rules apply in addition to the regulations that may be relevant to the road or zoning as applicable.
17. The NESTF does not include any objectives and policies. Therefore, where any resource consent is triggered, the relevant objectives and policies in the Proposed Plan apply in assessing any application.

Outstanding matters arising from s42A Report

Relationship between NESTF and Proposed Plan

18. The Companies made submissions on the infrastructure provisions to ensure the relationship between the NESTF and Proposed Plan is properly addressed so it is understood by all users of the Proposed Plan. Unlike the *Resource Management (National Environmental Standards for Electricity Transmission) Regulations 2009* where the activity status for various activities related to changes to electricity transmission lines existing when those regulations came into force is self-contained in the standards, the NESTF defers to the relevant District Plan where either the permitted standards in the NESTF are not met, or the activity is not regulated. Therefore, the rules in the District Plan become very important to ensure there is full coverage for scenarios where a telecommunications work is not permitted or regulated by the NESTF.
19. To clarify this relationship, the Companies sought an amendment to Note 2 to the infrastructure rules introduction as follows:

⁴ NESTF Regulation 8

The installation and operation of telecommunications facilities (such as cabinets, antennas, poles, small cell-units and telecommunications lines) undertaken by a telecommunications facility operator are controlled in some instances by the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016, separate to Te Tai o Poutini Plan. Te Tai o Poutini Plan applies where these telecommunications facilities are either not covered by the Regulations, are covered but do not meet permitted standards of the Regulations, or are located within the following overlays:

.....

20. In paragraph 420 of the s42A report, the reporting planner recommends that the submission be accepted⁵. However, the requested edits do not appear in the track change appendix. The s42A recommended version strikes out reference to *antennas* and *poles* and does not add the requested additional text. The s42A Appendix 1 version is:

2. The installation and operation of telecommunications facilities (such as cabinets, ~~antennas, poles,~~ small cell-units and telecommunications lines) undertaken by a telecommunications facility operator are controlled by the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016, separate to Te Tai o Poutini Plan. Te Tai o Poutini Plan applies where these telecommunications facilities are located within the following overlays:
 - a. Outstanding Natural Features
 - b. Outstanding Natural Landscapes
 - c. Outstanding Coastal Natural Character
 - d. High Coastal Natural Character
 - e. Significant Natural Areas
 - f. Sites and Areas of Significance to Māori
 - g. Sites and Areas of Historic Heritage
 - h. Notable Trees

21. In my opinion the s42A recommended version of Note 2 in Appendix 1 to the s42A report does not correctly reflect the NESTF relationship to the Proposed Plan and the version by the Companies should be adopted. This would appear to be an oversight and not the intention of the reporting planners.

22. An amendment to the scope of Rule INF R12 was also sought as follows:

New telecommunications poles, new antenna attached to poles and new antenna attached to a building not regulated by the NES - TF, or regulated equipment not meeting the permitted standards of the NES-TF

23. The s42A report addresses the merits of changes sought to the standards in the rule (addressed separately below in regard to industrial zone height limits), but does not comment on the requested amendments to the rule scope itself (see Paragraph 459 s42A report⁶). Where a regulated activity does not meet the permitted NESTF standards, there needs to be a rule in the Proposed Plan to determine its activity status.
24. Whilst Rule INF-R7 provides a rule to address any upgrades/replacements of existing network utilities not meeting the NESTF standards, any new facility regulated by not meeting the NESTF permitted standards would not have any specific rule to address this scenario. The amendment sought in Paragraph 22 above would address this scenario.

Recommended Relief

25. In my opinion the Joint Committee should adopt the relief requested in the Companies' submission on Note 2 to the Infrastructure Rules introduction, and the scope of Rule INF-R12 as set out above.

INF – R12 Height Limits for Poles and Antennas in Industrial Zones

26. The Companies submission sought some relaxation in height limits for poles and antennas in various zones to provide more consistency with other district plans and to reflect the different amenity values of commercial and industrial areas which are able to absorb larger built form than more sensitive zones.
27. Specifically the submission sought a 20m height limit in various commercial zones and a 25m height limit in industrial zones.
28. The requested relief has in the main been supported by the reporting officer with the exception of industrial zones where a 20m height limit is recommended to be retained as set out below (see s42A report Paragraph 459⁷):

⁵ S663.019

⁶ S663.029

⁷ S663.029

Amend INF-R12 as follows:

- (1) ...
 - b. When in a ~~land-transport-corridor~~ legal road boundaries of a formed legal road, fits within an envelope of 3.5m in length and 0.7m in diameter;
- (2) This is located outside a ~~land-transport-corridor~~ legal road boundaries:
 - i. The combined height (network utility) of a telecommunications pole and antenna does not exceed:
 - a. 15m in a RESZ - Residential Zone, ~~CMUZ - Commercial and Mixed Use Zone~~ or SETZ - Settlement Zone;
 - b. 20m in a CMUZ - Commercial and Mixed Use Zone;
 - c. 20m in an INZ - Industrial Zone;
 - d. 25m in all other locations, or 30m where there are two or more users of the same pole.

29. The evaluation in the s42A report at Paragraph 459 states:

We support an increase of the height limit to 20 metres in the Commercial and Mixed Use Zone as it is consistent with the relevant Zone chapters of the pTTPP, however, we do not support an increase in the height limit 10 to 25 metres in the Industrial Zones as this would be inconsistent with GIZ-R1.

- 30. From my reading of Rule GIZ-R1 as notified, the permitted height limit for industrial buildings in that zone is 20m. Therefore, the submission is only seeking a relaxation of 5m from the general building height limit. My understanding from the Corporate evidence and from projects I have been invoked in is that a margin is required above local obstructions such as buildings to enable line of sight for effective coverage. Therefore, setting a height limit at 20m may result in any telecommunications facility built to 20m being built out by other structures and not able to provide coverage.
- 31. In my experience telecommunications network providers tend to build their larger facilities when in urban areas in lower amenity zones such as industrial and commercial zones, and smaller infill sites in more sensitive areas such as residential zones (typically modified light poles or similar within roads). A 25m height limit would provide more incentive to utilise industrial zones for more height and coverage than other zones. In my opinion industrial zones are appropriate locations for larger telecommunications facilities. Noting the need for a margin above the permitted building height limit, I consider that 25m is appropriate and reasonable in this instance. 25m is a relatively common permitted standard in other district plans.
- 32. The additional height margin sought is consistent with Policy INF-P2 in regard to recognising operational need and functional need and positive effects from the

service provided, while appropriately managing adverse effects on the environment through use of zones enabling larger and utilitarian building form associated with industrial activities.

33. A 20m height limit in the light industrial zone is in my view reasonable in the circumstances given the lower 12m general building height limit in that zone.

Recommended Relief

34. Amend rule INF-R12(1)(b) as follows:

(b) *20m in an ~~LNZ~~ **LNZ** – **Light Industrial Zone** **or 25m in a GIZ - General Industrial Zone**; or*

INF – R14 New telecommunication poles and antennas not in road reserve

35. The Companies' submission supported Rule INF-R14 as notified⁸ which provides a margin above the permitted activity envelope as a controlled activity for certain zones. However, on reflection, notwithstanding no changes were requested in the submission, the rule itself does not make sense. The rule scope is:

New telecommunications poles and antennas not reserve (regulated by Regulations 30, 32 or 34 of the - TF that do not meet the permitted activity standards in Regulations 31, 33 or 35)

36. While Regulations 34 and 35 address new poles and antennas in rural zones, the remaining regulations noted address upgrades (and not new) poles and antennas in residential and non-residential zones. The related standards then address equipment in residential, settlement and industrial zones where new poles and antennas are not regulated by the NESTF. Accordingly, in my opinion the rule scope needs an amendment (but not the proposed standards and their intent), which presumably can be understood under Clause 16 of the Act to ensure the rule makes sense and is workable without seeking to change the actual additional controlled activity envelope provided for in the rule.

⁸ S663.031

37. I have proposed one means of addressing this although I note alternative drafting solutions may similarly achieve the same outcome.

Recommended Relief

38. Amend Rule INF-R14 as follows (or alternative amendment so like effect):

*New telecommunications poles and antennas not in reserve (regulated by Regulations ~~30, 32 or~~ 34 of the NES - TF that do not meet the permitted activity standards in Regulations ~~31, 33 or~~ 35 **or subject to Rule INF-R12(2) and not meeting the permitted activity standards**)*

Activity Status Controlled

Where:

1. *In the GRUZ - General Rural Zone or an INZ - Industrial Zone, the does not exceed 30m, or 35m where two or more operator's utilities are on the same pole;*
2. *A panel antenna does not exceed a width of 0.8m (excluding those in a RESZ - Residential Zone or SETZ - Settlement Zone);*
3. *A dish antenna does not exceed a diameter of:*
 - a. *0.6m in a RESZ - Residential Zone or SETZ - Settlement Zone;*
 - b. *2m in all other zones.*

Note: for activities subject to Rule INF-R12, this rule only applies in regard to the specific alternative standards set out above.

INF-R4 Temporary Network Utilities

39. The Companies' submission sought a change to the temporary network utilities rule to provide for temporary network utilities for up to 12 months that may be required for construction and reconstruction activity (e.g. maintaining service while a telecommunications site is moved or temporarily taken off a building during reconstruction)⁹. Work of this nature is unrelated to a state of emergency declaration currently provided for in the rule.
40. The s42A recommendation is to reject the submission (see Paragraph 432) on the basis that this matter is adequately provided for in Rule INF-R7 which provides for the

⁹ S663.021

operation, maintenance, repairs and extension of existing network utilities. I also note that there are general district-wide temporary activity rules for construction and demolition as follows (Temp-R2):

41. The Corporate evidence sets out examples where temporary solutions for maintaining telecommunications coverage have been required including equipment vandalism or the redevelopment of the Skyline in Queenstown. Work of this nature may not be able to meet the standard for being retained on the same site (e.g. temporary equipment may be deployed in the road reserve of adjacent land subject to the road controlling authority or landowner approval as relevant). Therefore, such scenarios may not be adequately covered by Temp-R2).
42. I also do not consider that INF-R7 adequately covers temporary equipment as it is more focused on upgrading existing network utilities in largely the same location (e.g. cannot be moved more than 5m).
43. The reporting planners do not appear to oppose the merits of the relief sought, but rather the plan mechanism to provide for it whilst avoiding unnecessary duplication. In my opinion a bespoke provision for addressing this scenario in Rule INF-R4 is desirable rather than reliance on the upgrading provisions of INF-R7 or the more general construction provision in TEMP-R2. To this end I support the relief sought by the Companies.

Recommended Relief

44. Amend Rule INF-R4 in accordance with the amendment sought in the Companies' submission as follows:

Activity Status Permitted

Where:

1. *The temporary network is operated by a network utility operator;*
2. *The temporary network activity is:*
 - i. *For up to a period of 24 months following a national, regional or local state of emergency declaration; or*
 - ii. *For up to a period of four weeks to provide for additional capacity; **and***
or
 - iii. **For a period of up to 12 months as part of construction or re-construction activity; and**

....

INF – New Rule Underground Lines

- 45. The Companies’ submission sought a new rule to provide for underground lines as a permitted activity¹⁰. This particular relief point does not appear to have been specifically addressed in the s42A report.
- 46. I have further considered the need for this relief and note that Rule INF-R9 appears to provide for telecommunication lines generally, notwithstanding that the standards are only relevant to above ground lines. If this is the correct interpretation then no further change to the Proposed Plan would be necessary.
- 47. It would be helpful if the reporting planners could comment either at the hearing or in rebuttal evidence if they consider underground lines are provided for as a permitted activity under Rule – INF-R9.
- 48. Underground electricity services that provide power to any telecommunications services are provided for in proposed Rule ENG – RXX in the s42A recommended provisions as follows:

ENG – RXX	Operation, Maintenance, Repairs and Installation of Below Ground Energy Activities
Activity Status Permitted	
Where:	
1. All performance standards in Rule ENG - R1 are complied with.	

INF – New Rule Back-up Generators

- 49. The Companies’ submission sought a new rule to provide for back-up generators as a permitted activity, with the reason given that these need to be provided for to ensure during power outages that critical infrastructure can continue to operate¹¹.
- 50. The s42A report recommendation is to reject the submission on the basis that back-up generators are provided for in the temporary activities chapter and as such the change is not required (see Paragraph 496).
- 51. I disagree that there are any rules within the temporary activities chapter that would provide for back-up generators. Further, the intent of the rule sought is not for transportable generators to provide power in an event such as a natural disaster

¹⁰ S663.20
¹¹ S663.20

(which would be covered by Rule INF-R4 for temporary Infrastructure), but rather fixed standby generators, which are permanent fixtures but only run where required. The Corporate evidence outlines the circumstances where these are required.

52. In my opinion it is appropriate to provide for these standby back-up generators as a permitted activity. The district-wide noise standards will still apply.

Recommended Relief

- Add a new INF rule providing for *Standby Backup Generators* as a permitted activity.

Overview of the Companies' approach to Overlays

53. The rules and objectives and policies in the overlay sections apply in addition to the provisions within the Energy, Infrastructure and Transport section. The Companies have a number of submissions on these other sections. The intent of these other submissions is to ensure there is a pathway to consider infrastructure in these more sensitive areas in appropriate circumstances where location in such areas is necessary for functional need and/or operational need. Further, some relaxation of a limited number of permitted activity standards is also sought for some minor works to avoid unnecessary regulation.
54. There will be separate s42A reports addressing these submissions in due course. The objectives and policies of the overlay sections will be weighed with the infrastructure specific objectives and policies in the Energy, Infrastructure and Transport section for any works requiring resource consent. In my opinion it is important that the provisions in the overlay sections have the flexibility to consider necessary infrastructure in appropriate circumstances to ensure necessary infrastructure can be provided to people and communities.
55. In my experience there are often quite reasonable circumstances where infrastructure may need to be located within a sensitive overlay. For example, infrastructure connections may be required to heritage listed buildings to enable their ongoing use, which then contributes to their ongoing maintenance and upkeep. Further, it may be necessary for infrastructure such as lines to be located in riparian margins to enable waterway crossings, or poles and antennas to be located on elevated topography which may have a natural landscape classification to enable line of sight to provide phone and wireless broadband coverage to communities.