

BEFORE GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Proposed Change 1 to the Regional Policy
Statement for the Wellington Region

STATEMENT OF EVIDENCE TOM ANDERSON

ON BEHALF OF

CHORUS NEW ZEALAND LIMITED, SPARK NEW ZEALAND TRADING LIMITED

AND ONE NEW ZEALAND GROUP LIMITED

14 August 2023

Professional Qualifications and Experience

1. My name is Tom Anderson. I am a Principal Planner and a Director of Incite, a resource management consulting firm. I hold a Bachelor of Science and a Master of Planning (with Distinction), both from the University of Otago. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association. I am an Independent Commissioner, certified under the Ministry for the Environment's *Making Good Decisions* programme.
2. I have 16 years professional experience. Throughout my career I have provided advice to a number of telecommunication and radiocommunication companies, including submitters Spark New Zealand Trading Limited (Spark – formerly Telecom New Zealand Limited and Telecom Mobile Limited), Chorus New Zealand Limited (Chorus) and One New Zealand Group Limited (One NZ – formerly Vodafone New Zealand Limited¹), as well as Two Degrees Networks Limited, Rural Connectivity Group and Vital (formerly TeamTalk). I have provided the telecommunication companies with advice on district and unitary plan reviews and plan changes, site selection exercises, designation and outline plan of works processes, and consenting activities for network rollouts and exchange upgrades.
3. On this basis, I consider myself to have a comprehensive understanding of telecommunication and radiocommunication networks, and the practical implications of the Resource Management Act 1991 (RMA) framework in relation to network installation, upgrade and operation.
4. I assisted with the preparation and drafting of the joint Spark, Chorus and One NZ submissions on Proposed Change 1 to the Regional Policy Statement for the Wellington Region (PC1).
5. I have read and am familiar with the Code of Conduct for Expert Witnesses (section 5 of the Environment Court Consolidated Practice Note 2006). My evidence has been prepared in compliance with that code. In particular, unless I state otherwise, this evidence is within my area of expertise and I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

¹ Vodafone New Zealand Limited is listed as the submitter, as this was what the company was known as on the date the submission was lodged with the Council (14 October 2022). In April 2023, the company's name was changed to One New Zealand Group Limited.

Scope and Purpose of Evidence

6. In preparing this evidence I have read all other submissions and further submissions relevant to the Spark, Chorus and One NZ submissions and the Section 42A (S42A) reports for PC1 Hearing Stream Three.
7. Of the S42A Reports released on 31 July 2023 for PC1 Hearing Stream 3, the two which are relevant to the Spark, Chorus and One NZ submissions are:
 - Climate Change – Energy, Waste and Industry; and
 - Natural Hazards.
8. Spark, Chorus and One NZ consider that the recommendations reached in the each of the two relevant S42A Reports are workable. However, in regard to natural hazard Policies 29 and 51, would prefer an exclusion for telecommunications networks.

Submission and Climate Change – Energy, Waste and Industry S42A Report Recommendations

9. The Spark, Chorus and One NZ submission sought amendments to Policies 7 and 39 to make wording clearer around how regionally significant infrastructure can assist with the reduction of greenhouse gas emissions. The revised wording as recommended to Policies 7 and 39 in Appendix 1 to the Climate Change – Energy, Waste and Industry S42A Report provides the clarity that the submission points sought.

Submission and Natural Hazards S42A Report Recommendations

10. The submission also sought amendments to Policies 29 and 51, regarding how infrastructures, which by definition includes telecommunication infrastructure, should be regulated in regard to natural hazards.

Policy 29

11. In regard to Policy 29, Spark, Chorus and One NZ Submission Point supported the proposed changes with an amendment to remove the ability for regional and district plans to regulate the resilience of infrastructure in identified natural hazard areas. The S42A recommendation on this is to accept it in part, and achieves this by requiring district and regional plans to recognise

functional need or operational requirements for infrastructure to be located in areas subject to natural hazards.

12. While it is the telecommunication companies' preference to not have any regulation of their infrastructure in natural hazard areas, I consider the recommended wording to Policy 29 in Appendix 2 to the Natural Hazards S42A Report workable. However, if the panel was of mind to prefer the original submission point seeking the exclusion of telecommunications infrastructure, I would also support that outcome, and this would be my preference over the s42A recommended wording.
13. Mr McCarrison outlines in his evidence how telecommunication companies provide resilience across their networks, including how engineers are required to design in natural hazard areas and the requirements as a lifeline utility under the Civil Defence Emergency Management Act 2002 (CDEMA).
14. Given this, I hold the view that there is no need for Councils to regulate the resilience of infrastructure in natural hazard areas. I rely on the aforementioned evidence of Mr McCarrison and also on my experience working with telecommunication companies over the past 16 years.
15. When a telecommunications company requires new infrastructure, they typically send through to their planning consultant the wider area within which this infrastructure is needed. It is then a requirement to review the relevant district plan and advise the companies on the zoning, overlays (including natural hazard), and activity status of locating in each area. The identified area is then typically visited as a team, including a project manager, radiofrequency engineer, civil engineer, myself (or other planning consultant) and a property adviser. On such site visits the team look at all localised factors, to determine what is the most appropriate location (as well as alternative options in case tenure of land cannot be secured). In my experience, the project manager will typically avoid any district plan identified natural hazard area (or a non-district plan identified hazard such as localised unstable ground identified by the civil engineer). However, for technical and operational reasons this is not always possible. Mr McCarrison has explained the additional engineering work undertaken, in particular to fulfil Civil Defence CDEMA obligations, if infrastructure is to be located in a natural hazard area.
16. In my view, the telecommunication company decision to avoid natural hazard areas in the first instance is not driven by the regulatory requirement, but by logic in that it is better not to be in the natural hazard area, and in the knowledge that it is likely to be more expensive to construct infrastructure in that location in order to achieve the resilience desired.

17. However, I can understand how the reporting officer has come to their recommendation to not exclude infrastructure from the requirement to avoid natural hazard areas, but to require recognition of functional and operational need to be located in such areas. In my experience a telecommunication company will only locate in a natural hazard area if there is a functional or operational requirement to do so and there are no available alternative locations away from a natural hazard area. On this basis, I consider the recommended wording for Policy 29 in the S42A report to be workable.
18. However, I would like to draw the Panel's attention to Regulation 57 of the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (NESTF). Regulation 57 of the NESTF is as follows, and clearly exempts regulated activities under the NESTF from having to comply with District Plan rules about natural hazards:

57 District rules about natural hazard areas disapplied

- (1) *A territorial authority cannot make a natural hazard rule that applies to a regulated activity².*
- (2) *A natural hazard rule that was made before these regulations came into force, does not apply in relation to a regulated activity.*
- (3) *In this regulation, natural hazard rule means a district rule that prescribes measures to mitigate the effect of natural hazards in an area identified in the district plan as being subject to 1 or more natural hazards.*

19. Section 6.11 of the *Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 Users' Guide*, published by the Ministry for the Environment (August 2018) confirms the exemption of regulated telecommunications activities from having to comply with District Plan natural hazard rules, via the following statement:

Regulation 57 makes it clear that natural hazard rules in district plans do not apply to a regulated activity under the NESTF. It also makes clear that territorial authorities cannot make natural hazard rules that apply to regulated activities under the NESTF. This is because resilience is already factored into industry practice, and they will either avoid hazard areas or engineer

² Regulated activities under the NESTF include all telecommunications activities (lines, cabinets, antennas and poles) in all zones, except for new poles on private sites in urban areas.

*structures to be resilient to the hazard risk. Natural hazards encompass the full breadth of hazards including flooding, instability, earthquake and climate change.*³

20. To provide some context, the NESTF regulates most, but not all telecommunication network infrastructure. By way of a summary, the NESTF regulates:
 - All telecommunications cabinets;
 - New antennas and poles (cell towers) in legal road in all areas;
 - New antennas and poles outside of legal road in rural zones;
 - Small cell units; and
 - All new telecommunication lines.
21. However the NESTF does not regulate the establishment of new antennas and poles outside of legal road in all non-rural (urban) zones.
22. Under Section 43B of the RMA, a rule in a District Plan cannot be more stringent than a National Environmental Standard (NES) regulation, unless expressly allowed under that NES. There is no such expression in the NESTF.
23. Section 74(1)(f) requires a District Plan to be in accordance with any regulations. The NESTF includes regulations.
24. The recommended wording to Policy 29 in Appendix 2 to the Natural Hazards S42A Report results in a situation where, should a telecommunication company be looking for a new site in a non-rural zone, and for functional and operational reasons that site is within an identified natural hazard, a resource consent would be required if the site is located outside of legal road, and no resource consent would be necessary if the site was within legal road⁴. Both sites remain susceptible to the same natural hazard, and the operator would respond with the same design, however, for the outside of legal road option, the company would need to detail why there is a functional and operational requirement, and have no certainty that the information they provide would be enough to convince the local authority to grant the resource consent sought.

³ Page 93 of the *Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 Users' Guide* (copy at <https://www.mbie.govt.nz/dmsdocument/1347-nestf-2016-draft-users-guide-pdf%20>)

⁴ On the assumption that matters such as permitted heights are met.

25. As such, my preference is that the following wording is inserted into Policy 29:

Relief Sought:

Add the following as a footnote to Policy 29:

Regional and district plans shall manage subdivision, use and development in areas at risk from natural hazards as follows:*

***Policy 29 does not apply to telecommunications infrastructure**

26. Such an amendment would address the inconsistencies taken by the divergent approaches put forward by the NESTF and RPS.

Policy 51

27. The submission on Policy 51 was similar to Policy 29, essentially seeking that there was no need for District Plans to regulate the risks and consequences of infrastructure located in identified natural hazard areas.
28. The s42A reporting officer rejected the point. However, in response to other submissions, the recommended wording to Policy 51 in Appendix 2 to the Natural Hazards S42A Report is workable. This is through the requirement under the recommended amendments to subclause (g) relating to functional and operational need.
29. As stated above, in my experience telecommunication companies only locate in a natural hazard area where there is a functional or operational need to do so and there is no alternative available in an area which is outside of the identified natural hazard – in other words they have no choice but to be in a natural hazard area to provide their service.
30. The reason I accept the officer recommendation for Policy 51 and I prefer an exclusion for telecommunications infrastructure for Policy 29 is that Policy 51 is about whether or not placing infrastructure in a natural hazard area would exacerbate the effect of that hazard on a third party, whereas Policy 29 in my view is more about the resilience of the infrastructure to the natural hazard.

Concluding Comments

31. Overall, while the S42A Reports, particularly the Natural Hazard S42A Report, does not expressly provide for the submission points as sought by Spark, Chorus and One, the recommended wording to the relevant policies is practicable, and therefore can be accepted by the telecommunication companies, although with a preference for telecommunications infrastructure to be excluded from Policy 29.



Tom Anderson

14 August 2023