

BEFORE THE WAIMAKARIRI DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waimakariri District
Plan: **Hearing Stream 5** in regard to:

- Energy and Infrastructure (EI)
- Earthworks (EW)
- Notable Trees (TREE)
- Historic Heritage (HH)

Statement of evidence of **CHRIS HORNE** on behalf of Chorus New Zealand Limited, Spark
New Zealand Trading Limited, Connexa Limited, One New Zealand Group Limited and

FortySouth
(Submitter 62)
7 August 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), Connexa Limited (Connexa), One New Zealand Group Limited (One NZ) 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 Waimakariri District Plan (Proposed Plan) relevant to the Hearing Stream 5 topics.
3. My relevant experience and qualifications, and statement on the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note, are set out in my statement of evidence in relation to Hearing Streams 1 and 2 dated 28 April 2023.

Evidence Outline

4. The scope of this evidence relates to provisions of Proposed Plan relevant to the following topics in Hearing Stream 5:
5. Energy and Infrastructure (EI)
 - The Companies made a significant number of submissions on the EI chapter. However, in general the recommendations of the s42A report are either supported or are accepted by the Companies, and accordingly there are only very limited matters covered in my evidence where additional amendments are sought related to integration with some other provisions in the Proposed Plan, and in regard to customer connections to scheduled heritage buildings; and
6. Earthworks (EW)
 - Amendments to several rules in the EW chapter are sought to ensure they are practical for telecommunications infrastructure on the basis that they are recommended to remain applicable to activities provided for in the EI chapter.

7. The Companies support the recommendations in the TREE and HH s42A reports relevant to their submission on the basis of clarification provided that particular rules will not apply to activities covered by the EI chapter, and accordingly I have not specifically addressed these provisions in my evidence. These provisions are:
8. Notable Trees (TREE)
 - The recommendation on the submission on Rule TREE-R4 in the Notable Trees Chapter on the basis of the proposed redraft of the EI Chapter, with the effect that TREE-R4 does not apply to activities covered by the EI chapter.
9. Historic Heritage (HH)
 - The recommendation on the submission on Rule HH-R3 in the Historic Heritage Chapter on the basis of the proposed redraft of the EI Chapter, with the effect that HH-R3 does not apply to activities covered by the EI chapter.

Energy and Infrastructure (s42A Report on EI prepared by Andrew MacLennan)

Relationship between Policy EI-P5 and Natural Features and Landscapes (NFL) Policies

10. The Companies made a submission on Policy EI-P5 which sets out the management framework for infrastructure in sensitive environments subject to s6 of the RMA¹. This submission did not seek any specific amendments to EI-P5 andt rather supported its retention but sought amendments to Policy NFL-P1, P3 and P4 to ensure they do not inadvertently override the intent of EI-P5, partially where avoidance of effects is required in those other provisions.
11. This issue is covered in my evidence on the NFL topic previously presented and accordingly I am not promoting any specific amendment to EI-P5 itself to address this. However, Mr McLennan's commentary on how EI-P5 will be read alongside other chapters in the Proposed Plan² is relevant to that other relief sought on the NFL provisions. Mr McClennan notes:

However, for regionally significant infrastructure outside the CE, EI-P5(3) and (4) provides a cascade that provides a consenting pathway for regionally significant infrastructure in these sensitive environments, if the requirements of EI-P5(3) and (4)

¹ Submission 62.14

² Paragraph 150 EI s42A report

can be achieved. In my view this policy this framework gives effect to both the enabling and protective aspects of the higher order documents listed above.

12. The reporting planner for the NFL s42A report reached a similar conclusion.
13. Whilst I agree it is appropriate to read these provisions together in forming a view, I have residual concerns that as, for example, Policy NFL-P3 requires an avoidance of certain effects on Outstanding Natural Landscapes to be considered appropriate development, the envisaged management framework in EI-P5 to provide a consenting pathway in appropriate circumstances in such environments could inadvertently be overridden. It probably comes down to what is considered the more specific and directive provision, the management framework in EI-P5, or the avoidance requirements of NFL-P1. Simple amendments to the NFL provisions as proposed in my evidence on that topic, or similar amendments sought in submissions by other infrastructure providers, would remove such uncertainties in my view.

Requested Relief

14. Adopt the relief I proposed to Policies NFL-P1, P3 and P4 as set out in my evidence on the NFL Topic.

Relationship between EI rules and other chapters

15. The companies sought restructuring of the EI rules chapter to provide improved clarity on which rules in other chapters apply to infrastructure³. Mr McLennan agrees within this submission and recommends that the submission be accepted⁴.
16. I generally support the proposed redrafting of the plan provisions set out in paragraph 70 of the s42A report. However, I note that under proposed clause 1(g), all the EW – Earthworks rules will apply. As set out in my evidence on the EW provisions later in this evidence, Rule EW-S4 requiring setbacks from protected root zones appears to conflict with tree protection rules already included within some EI Rules that make specific provision for work including earthworks within the protected tree rootzone (e.g. EI-R4 and EI-R10 specifically provides for infrastructure work within a notable tree root zone, whilst EW-S4 does not allow earthworks within 3m of a root protection area).

³ Submission 62.6

⁴ Paragraph 68 s42A report.

EI-R10	Installation of new <u>infrastructure</u>, or upgrading of existing <u>infrastructure</u>, underground <i>This rule does not apply to underground <u>infrastructure</u> established under EI-R45 or EI-R46.</i>	
All Zones	Activity status: PER Where: 1. new installations shall not be located in the following areas (except where located in a <u>road corridor</u> or <u>accessway</u> , or are an extension of existing <u>infrastructure</u> adjoining a <u>site</u> , or where installations are by trenchless means, or are as specified otherwise below): a. the <u>root protection area</u> of a <u>notable tree</u> , except where the installation: <ul style="list-style-type: none"> i. is at least 1m below <u>ground level</u>; and ii. is limited to hand digging, trenchless means or air spade, hydro vac or directional drilling methods; and iii. has an entry point either: <ul style="list-style-type: none"> a. located outside of the <u>root protection area</u>; or b. with a maximum area of less than 1m²; and b. <u>SNAs</u> ; and c. <u>places adjoining the coastal marine area</u> ; and 2. except where located in a <u>road corridor</u> or <u>accessway</u> , upgrades of existing underground <u>infrastructure</u> shall not increase the area occupied by the <u>infrastructure</u> , or realign or relocate the <u>infrastructure</u> , so that it further encroaches into the areas listed in (1) above.	Activity status when compliance not achieved: RDIS Matters of discretion are restricted to: <u>EI-MD1 - Historic heritage</u> and the natural <u>environment</u> <u>EI-MD2 - Amenity values</u> , location and design <u>EI-MD3 - Operational considerations</u>

17. Rule TREE-4 no longer applies to infrastructure given the drafting amendments proposed, so in the same vein I consider that an exemption should also be provided from Rule EW-S4. From my reading of the EW s42A report, it appears that the reporting planner is of the impression this standard already does not apply to infrastructure.
18. Rule EW-S4 already provides an exemption for 3-waters services covered by Rule EI-R-46, but not other EI rules specifically managing earthworks in protected root zones such as EI-R4 and EI-R10. This should be undertaken at a minimum if the EI section does not provide exemptions for such rules.
19. Many other EI rules have standards that do not allow work within the protected root zone of notable trees (other than in roads) which conflicts with EW-S4 which has a further 3m buffer. I acknowledge that in roads some above ground structures are currently permitted the way the rules are drafted, so providing an exemption from EW-S4 would mean there would be no control on ancillary earthworks within roads (e.g. EI-R19(3)):

3. a new infrastructure cabinet shall not be located in the following areas (except where located in a road corridor):
a. the root protection area of a notable tree; and
b. SNAs.

20. In my opinion each infrastructure rule other than those with a specific management regime for earthworks in root zones or where earthworks would not be required (e.g. attachment to a building or bridge) could have a standard (including within roads) that does not permit infrastructure within the protected root zone of a notable tree. Particularly in congested road corridors with street trees, this is a more pragmatic approach that requiring a 3m buffer from the outside of the protected root zone as per EW-R4, which in my experience is more restrictive than typical district plan rules that only have restrictions for infrastructure within the protected root zone.
21. I also note that the requirement to meet all EW rules is relevant to the Companies' submission and s42A recommendations on the EW rules.

Requested Relief

22. Provide an exemption in the EI Chapter from Earthworks Rule EW-S4; and provide a standard for each relevant rule where there is not already a suitable management regime for works in tree root zones (such as EI-R4, EI-R10 and EI-R46), that does not permit infrastructure within the protected root zone of a notable tree.
23. Should the Hearing Commissioners not be of a mind to adopt this relief, at a minimum Rule EW-S4 should provide exemptions for all rules with a management regime for earthworks in protected root zone, and not just Rule EI-R46.

Customer Connections to Scheduled Heritage Buildings

24. Rule EI-R4 provides for customer connections as a permitted activity. The standard in Clause (1) has the effect of requiring a restricted discretionary activity resource consent where the connection is to a scheduled heritage building (on the basis it will alter it). The notified rule is as follows:

Where:

1. a new customer connection shall not involve alteration to a building or other structure with heritage values.
2. a new customer connection shall not involve earthworks in the root protection area of a notable tree, except where the works:
 - a. involve installation at least 1m below existing ground level; and
 - b. are limited to hand digging, trenchless means or air spade, hydro vac or directional drilling methods; and
 - c. have an entry point either:
 - i. located outside of the root protection area; or
 - ii. with a maximum area of 1m².
3. a new customer connection shall not involve earthworks in the following areas (except where earthworks are located in a road corridor or accessway, or where connections are an extension of existing infrastructure adjoining a site, or where connections are undertaken by trenchless means):
 - a. SNAs;
 - b. places adjoining the coastal marine area.
4. a new customer connection shall not involve above ground infrastructure in the following areas (except where located in a road corridor):
 - a. ONF, ONL and SAL;
 - b. areas of ONC, VHNC and HNC; and
 - c. places adjoining the coastal marine area.
5. above ground infrastructure for a new customer connection shall comply with all other relevant or applicable Energy and Infrastructure rules.

25. The Companies' submission sought that the rule be amended such that not complying with Clause (1) is a controlled activity other than discretionary activity, with the matters of control limited to the design and placement of the customer connection to minimise impacts on the values and attributes of the heritage building.
26. The reasoning set out in the submission and corporate evidence is that there has been previous discussion between Heritage New Zealand Pouhere Taonga (NZHPT) over how customer connections to heritage buildings should be addressed. Agreement has previously been reached on other plans for controlled activity status to enable the method of connection to be controlled to minimise impacts on the heritage building whilst still allowing the reasonable and practical use of heritage listed buildings to support adaptive use.
27. The s42A report is to reject this submission and retain restricted discretionary activity status for customer connections to scheduled heritage buildings⁵. Whilst not supporting the change in activity status, Mr McLennan does support the addition of a new matter of discretion in regard to operational considerations which I support.

⁵ Paragraphs 205-26 s42A report Energy and Infrastructure.

28. In regard to the activity status, I support the Companies' submission on the basis that the certainly a controlled activity status provides compared with restricted discretionary supports the ongoing use of heritage buildings and as such increases the likelihood of owners properly maintaining and investing in them and therefore protecting their heritage values. Controlled activity status still requires a consideration of an appropriate method of connection such as the specific location and colour matching etc. to minimise impact on the heritage values. A controlled activity will avoid notification risk and is more likely to be a streamlined application process.
29. I supported the same relief in recent times at hearings on both the proposed Waikato District Plan and Proposed Selwyn District Plan where the s42A report recommendation in both instances was initially to reject the submissions. The hearing commissioners elected to grant the relief for sought Waikato, whilst for Selwyn the reporting planner's right of reply also supported the relief sought, although the decision is yet to be issued. This was also agreed between some of the telecommunications submitters on this proposed plan and HNZPT leading to settlement on appeals on the Opotiki District Plan. Chorus in particular has previously engaged with HNZPT to agree an approach nationally for this matter. Therefore, in my view it is appropriate for the Hearing Commissioners to grant this relief and make customer connections to scheduled heritage buildings a controlled activity as requested in the submission.

Requested Relief

30. Amend Rule EI-R4 such that connecting a customer connection to a scheduled heritage building, that appears to not comply with clause (1) of the standards to the notified rule, is a controlled activity rather than a restricted discretionary activity, and add the following matter for control:

Design and placement of the customer connection to minimise impacts on the values and attributes of the heritage building or structure.

Earthworks (s42A Report on EW prepared by Peter Wilson)

31. The Companies sought exemptions from a number of the earthworks standards in the EW Chapter to ensure there are reasonable and practical rules applying to network utilities.
32. These requested amendments have been rejected in the EW s42A. However, the commentary in regard to these recommendations in the s42A report appears to be premised on the EI s42A report recommending that infrastructure is exempt from these standards⁶. However, Mr Maclennan's report in the EI Chapter clearly sets out with proposed amendments that all EW standards would apply to network utilities as per the proposed changes to the rules in Appendix A to that report:

Rules

How to interpret and apply the rules

1. All of the provisions in the following District-wide chapters apply in addition to Energy and Infrastructure:
 - m. SD – Strategic Directions
 - n. TRAN - Transport;
 - o. HS - Hazardous substances;
 - p. CL - Contaminated land;
 - q. NH - Natural hazards;
 - r. SUB - Subdivision;
 - s. EW - Earthworks;
 - t. LIGHT - Light;
 - u. NOISE - Noise; and
 - v. SIGNs - Signs;

Rule EW-R8: Activities permitted by Rule EI-R10

33. Rule EW-R8 permits earthworks provided for under Rule EI-R10 (a rule providing for underground infrastructure in the EI chapter). However, Rule EI-R4 also provides for customer connections in a separate rule that may be underground, whilst above ground infrastructure may have a below ground component for its foundation. As Mr Maclennan has confirmed in his report that all EW rules (which would include the standards) apply to infrastructure covered in the EI chapter, I don't see the benefit of this rule unless it is expanded to cover all activities in the EI Chapter.

⁶ See Paras 252, 294, 313, 339 of Earthworks s42A report.

34. I support the Companies' submission⁷ to expand this rule to cover all activities in the EI chapter (as they will be subject to the EW standards), or in the alternative to simply delete the rule.

Rule EW-S1/Table EW-1: Genral Standards for Earthworks

35. The Companies sought an exemption from the cumulative 12 month permitted limits per site for underground services, infrastructure poles and cabinets due to the localised nature of utility trenches or foundation works for poles and structures and given that work may be located in roads where it is difficult to calculate the cumulative earthworks per site, taken cumulatively with any other work⁸. The s42 recommendation is to reject the submission⁹.
36. In my experience with telecommunications infrastructure projects, it is not common to require a resource consent for utility trenches or utility pole or cabinet foundations unless there are bespoke issues such as land contamination or setbacks to wetlands or such issues at play. In my experience general earthworks controls are generally not triggered by works of this nature.
37. Accordingly in my opinion the exceptions as requested by the Companies are justified and do not appear to create unreasonable environmental risks if not controlled by the general earthworks volume standards.

Rule EW-S2 General Setbacks

38. The Companies sought an exemption from the 2m set back standard from boundaries for earthworks more than 300mm in depth or height for infrastructure in roads, and earthworks associated with services trenches or customer connections, utility poles and cabinets outside of roads¹⁰. The s42 recommendation is to reject the submission¹¹.
39. The Companies' Corporate evidence outlines typical works undertaken in roads and in relation to service trenches, poles and cabinets. These are very localised works that for practical reasons may need to occur near boundaries (particularly in roads). In

⁷ Submission 62.52

⁸ Submission 62.53

⁹ Paragraph 298 EW s42A Report.

¹⁰ Submission 62.54

¹¹ Para 313 EW s42A Report.

the absence of any civil engineering evidence pointing out particular risks for work of this nature I support the requested exemptions by the Companies.

Rule EW-S3 Setback from Water Bodies

40. The Companies sought an exemption for infrastructure within roads from water body setbacks. This is because roads are also infrastructure corridors and require earthworks near water bodies where roads cross waterways¹². Regional rules requirements and EW-S7 can ensure any mobilised sediment from network utility works in roads is properly controlled where near water bodies. The s42 recommendation is to accept the submission in part¹³. However, no change to the existing rule is proposed in regard to the requested exemptions, so in practice the recommendation is to reject the submission.
41. Mr Wilson discusses the relief sought at Paragraph 327 where we considers that roads that cross the setbacks already have the relevant enabling conditions in the Energy and Infrastructure and Transport chapters. An example given is that EI-R1 already provides the necessary enabling provisions for telecommunication 'regulated activities'.
42. As set out in Appendix A to Mr Maclellan's evidence on the EI chapter, all EW rules will apply to network utilities provided for in the EI chapter. Therefore, I disagree that earthworks are enabled within these waterway setbacks. Whilst some telecommunications regulated activities under the NESTF such as underground lines and telecommunication cabinets and their ancillary earthworks would be exempt from the water bodies setbacks, other activities such as new service poles for overhead lines, would not be exempt. Further, other utilities such as electricity do not have the same regulatory framework as that provided for in the NESTF and on this basis trenches for new underground electricity services would appear to also be caught by this rule. The Companies' submission is general to infrastructure and not just to telecommunications equipment.
43. Accordingly, in my view infrastructure in roads should be exempt from the earthworks set back from water bodies in EW-S3.

¹² Submission 62.55

¹³ Paragraph 334 EW s42A Report.

Rule EW-S4 Setback from Root Protection Area

44. The Companies sought amendments to the EI chapter such that Rule EW-S4 and TREE-R4 do not apply to infrastructure, and any applicable rules to infrastructure in the protected root zone of trees are included in the EI chapter¹⁴. The s42A recommendation is to reject the submission¹⁵.
45. I have already set out my opinion in paragraphs 16-21 above that the EI chapter should provide a specific exemption from Rule EW-S4. Provided that particular change is made, I do not consider that any specific amendment to EW-R4 is required.

Rule EW-S5 Excavation and Filling

46. The Companies sought an exemption from the maximum 2m depth standard for utility pole pile foundations¹⁶. The s42 recommendation is to accept the submission in part, and further is recommending that the 2m standard be reduced to 1m¹⁷. As the requested exemption for pile foundations is not recommended, in practice the recommendation is to reject the submission.
47. Mr Wilson's assessment at Paragraph 349 is that the requested exemption is already provided for in EI-R12. EI-R12 as notified provides for the replacement of a pole or tower (but not new poles) and does not provide an exemption from the EW standards. Accordingly, I disagree that EI-R12 provides of the requested exemption.
48. The Companies' Corporate evidence outlines typical foundation works for poles. A pile could easily exceed 2m in depth but is a very localised work. Further, the proposed reduction in depth to 1m may also impact on the structural capacity for a pad foundation for a pole, as I understand these may extend down to 1.5m in some cases. In the absence of any civil engineering evidence pointing out particular risks for work of this nature, I support the requested exemption for pile foundations for poles by the Companies, and if the Hearing Commissioners are of a mind to reduce the allowable earthworks depth to 1m for earthworks in general, provide an allowance of up to 2m for network utility pole foundations other than pile foundations. Otherwise

¹⁴ Submission 62.56

¹⁵ Paragraph 340 EW s42A Report

¹⁶ Submission 62.57

¹⁷ Paragraph 351 EW s42A Report.

in my opinion this will add unnecessary regulation to typical utility pole works routinely deployed. I am not aware of any such works causing any specific land stability issues of concern.