

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 4 in regard to
Natural Features and Landscapes**

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)
28 June 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 4 topic.
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 the provisions of Proposed Plan relevant to Hearing Stream 4 Natural Features and Landscapes (NFL). I outlined in my evidence on Hearing Streams 1 and 2 how the various overlays protecting sensitive natural environments including those protected by the NFL provisions remain subject to the provisions of the relevant district plan regardless of whether the equipment is regulated under the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* (NESTF).
5. The key issue in contention covered in my evidence relates to the relationship between the Energy and Infrastructure provisions, and in particular Policy EI-P5, and the policies for Natural Features and Landscapes. This is to ensure the benefits of infrastructure and their functional and operational constraints are appropriately weighed against protecting the values and attributes of natural features and landscapes valued by the community.

6. For completeness the Companies support the s42A recommendations in regard to its other submissions on this topic regarding requested amendments to rules¹.

Discussion of Relief Sought

Submission

7. The Companies' submission (62.47, 62.48 and 62.49) outlined how Policy EI-P5 in the Energy, Infrastructure and Transport section provides a management framework for considering when infrastructure in sensitive natural environments may be appropriate given infrastructure may need to be located within or traverse through such areas due to functional and operational requirements. I have included the notified version of Policy EI-P5 in Attachment 1 to this evidence for your reference.
8. The submission noted a concern that the more directive NFL policies, which in some instances have an avoidance framework, may have the effect of overriding the management framework provided by EI-P5 which envisages there will be circumstances where infrastructure is appropriate in such areas.
9. To address this apparent internal inconsistency in the Proposed Plan, the following relief was requested to NFL-P1 (Outstanding Natural Features - ONF), NFL-P3 (Outstanding Natural Landscapes – ONL) and NFL-P4 (Significant Amenity Landscapes - SAL) to ensure it was clear these policies are to be considered in the context of Policy EI-P5. A drafting solution provided in the submission is as follows:

add a new clause to each policy as follows:

 - x. *in regard to infrastructure, the matters outlined above shall be subject to a consideration of the extent to which the infrastructure may be appropriate under Policy EI-P5.*
10. Transpower², Mainpower³ and Waka Kotahi⁴ have made similar submissions with different drafting solutions but ultimately seek and similar outcome that there is flexibility to consider infrastructure in sensitive natural environments in appropriate circumstances.

¹ s42A report paragraph 127 in regard to submissions 62.50 and 62.51

² 195.88, 195.89, 195.90

³ 249.156, 249.157, 249.158

⁴ 275.26, 275.27

s42A Report Recommendation

11. The s42A recommendation is to reject the submissions of the Companies, as well as those of Transpower, Mainpower and Waka Kotahi⁵. The reporting planner considers that any conflict between avoidance provisions of the NFL policies and functional and operational requirements are more appropriately balanced in a resource consent decision making process (see Paragraph 112, s42A report). The reporting planner goes on to note in Paragraph 113 that whilst EI-P5 provides a pathway to consider energy and infrastructure activities to establish in ONF/ONL/SAL environments where there is a functional or operational need, it is not necessary that the NFL provisions be amended to recognise this as in their view it is reasonable for all relevant provisions of the PDP to apply to an activity.
12. In response to a Transpower submission the s42A report recommends including the word "*inappropriate*" in NFL-P1 and NFL-P3 to provide better alignment with s6(b) of the RMA in regard to ONF and ONL areas⁶.

Planning Assessment

13. Whilst I agree that the relevant policy provisions of the PDP should be read together when making an assessment of whether overall a proposal is consistent with or contrary to the objectives and policies of the district plan, I remain concerned that the specific language in the NFL policies may be given more weight due to its directive nature in regard to avoidance of effects.
14. By way of example, the recommended wording of Policy NFL-P3 relating to ONLs in the s42A report is as follows:

⁵ See Paragraph 114 s42A report.

⁶ See Paragraph 4 s42A report.

<p>NFL-P3</p>	<p>Protect Outstanding Natural Landscapes Recognise the values of the outstanding natural landscapes identified in NFL-APP1 and protect them from the adverse effects of <u>inappropriate</u>⁴⁴ activities and development by:</p> <ol style="list-style-type: none"> 1. avoiding use and development that detracts from the very high biophysical values and high sensory and associative values of the Puketeraki Range and Oxford Foothills identified in NFL-APP1, in particular on the: <ol style="list-style-type: none"> a. exposed alpine environments; b. sheltered densely forested slopes and gullies of the Oxford Hills; c. indigenous vegetation; and d. recreational values; 2. avoiding use and development in areas which have no capacity to absorb change, including near ridgelines, and mitigating adverse effects through bulk, location and design controls in other areas; 3. avoiding any significant loss of indigenous vegetation; 4. avoiding activities such as plantation forestry, shelterbelts, mining and quarrying activities which create adverse effects on the identified values; 5. providing for existing rural production where this does not detract from the identified values; and 6. enabling conservation activities and non motorised recreation activities.
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15. Where a project is assessed as being consistent with EI-P5 as it meets the cascade of considerations (i.e. can't be located outside of the identified environment, route and method is constrained by functional and operational requirements, more compromised areas of the natural environment are used where practicable, appropriate measures to remedy or mitigate adverse effects are used etc), it may still fall foul of, in this instance, NFL-P3 (as per this example). That is because the sub clauses determine what are *inappropriate* activities and development and several of these clauses require an avoidance of particular effects even where the service provided may be required by the community and alternative solutions may not be practical.
16. Accordingly, a more explicit recognition of infrastructure being managed in accordance with the requirements of EI-P5 in the NFL policies would be preferable in my view to avoid any conflicts or unintended consequences of the policy provisions where considered in the round. A similar approach was suggested by Transpower. Alternatively, as suggested in submissions by Mainpower and Waka Kotahi, direct amendments of to the NFL provisions could be made to acknowledge more flexibility for infrastructure where required due to functional and operational reasons.
17. In my view the relief requested by the Companies would provide an acceptable outcome in regard to clearly showing the relationship between the protective provisions of the NFL policies and the practical considerations that may justify works in sensitive environments as set out in EI-P5.

18. Ultimately, regardless of the solution adopted, in my view the policy framework needs to allow for the weighing of the values of natural environments against the benefits and community need for infrastructure where required in certain sensitive natural environments due to functional and operational requirements, to determine what is appropriate in the circumstances.

Attachment 1: Notified Policy EI-P5

EI-P5

Manage adverse effects of energy and infrastructure

Manage adverse effects of energy and infrastructure, including by the following:

1. enabling or providing for the ongoing operation, maintenance, repair, renewal, removal and minor upgrade of existing energy and infrastructure;
2. avoiding, remedying or mitigating adverse effects of more than minor upgrades to existing energy and infrastructure, including effects on:
 - a. natural and physical resources;
 - b. amenity values;
 - c. sensitive activity;
 - d. the safe and efficient operation of other infrastructure;
 - e. the health, safety and well-being of people and communities;
3. new energy and infrastructure, or major upgrades to existing energy and infrastructure, should, to the extent considered practicable, ensure that the route or site is located outside of the following types of sensitive environments to protect such environments from significant adverse effects, taking into account the constraints imposed by the functional need or operational need of the energy and infrastructure:
 - a. ONF, ONL and SAL;
 - b. areas of ONC, VHNC and HNC, and natural character of scheduled freshwater bodies setbacks;
 - c. SNAs;
 - d. buildings, other structures and settings with heritage values, and archaeological sites;
 - e. SASM;
 - f. places adjoining the coastal marine area;
4. where new energy and infrastructure, or major upgrades to existing energy and infrastructure, cannot locate outside of the sensitive environments in (3) above, the energy and infrastructure should, to the extent considered practicable, ensure that the proposed route, site, structure and construction method demonstrate the following, taking into account the constraints imposed by the functional need or operational need of the energy and infrastructure:
 - a. energy and infrastructure will be located in more compromised parts of the areas in (3) above where that reduces adverse effects on the values of those areas;
 - b. techniques (such as structure selection or construction methodology) will be used to mitigate adverse effects on the areas in (3) above;
 - c. adverse effects on the areas in (3) above will be remedied or mitigated;
5. consider biodiversity offset for residual adverse effects on indigenous biodiversity that cannot otherwise be avoided, remedied or mitigated;
6. avoiding or mitigating potential significant adverse effects of the generation of radio frequency fields and electric and magnetic fields by requiring compliance with recognised standards or guidelines; and
7. promoting the undergrounding of new energy and infrastructure where it is:
 - a. technically feasible;
 - b. economically viable;
 - c. justified by the extent of adverse visual effects if not placed underground.

From: [Chris Horne](#)
To: [Audrey Benbrook](#)
Cc: [Graeme McCarrison](#); [Fiona Matthews](#); [Andrew Kantor](#); [Colin Clune](#)
Subject: Hearing Steam 4 NFL Evidence Chris Horne Planning for Submitter 62 Telcos
Date: Wednesday, 28 June 2023 9:38:10 AM
Attachments: [0.png](#)
[Chris Horne Stream 4 NFL Planning Evidence Telco FINAL.pdf](#)

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Hi Audrey

Please find attached planning evidence from Chris Horne on behalf of the Telecommunications Companies (Submitter 62) for Hearing Stream 4 in regard to Natural Features and landscapes.

As discussed, I will attend face to face along with Graeme McCarrison from Spark who will be available to answer questions, whilst reps from the other companies may join on TEAMS.

Can you please confirm receipt of this evidence.

I look forward to the confirmed appearance time and TEAMS link for the parties included in this email in due course.

Thanks

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Director



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