

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 Streams 1 and 2 in
regard to: - Strategic Directions,
Urban Form and Development and
Sites and Areas of Significance to
Maori**

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 and Further Submitter FS95)

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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. I hold the qualifications of Bachelor of Arts (Geography) and Master of Regional and Resource Planning, both gained at the University of Otago. I am a member of the New Zealand Planning Institute.
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 and further submissions on the Proposed Waimakariri District Plan (Proposed Plan) relevant to the Hearing Stream 1 and 2 topics. The Companies have lodged identical submissions and further submissions. The Companies work together on resource management plan reviews to provide a consistent approach from these major network operators and users across New Zealand.
3. For completeness, Connexa Limited is the successor company for Spark’s passive mobile assets (in brief the poles and cabinets). Similarly, FothySouth is the successor company for the passive assets of One NZ which was formerly known as Vodafone New Zealand Limited. Both Connexa and FortySouth where formed last year after the submissions were made.
4. 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.

5. I have acted for a number of infrastructure clients including Spark, Chorus, Connexa, One NZ, 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).
6. 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**”).
7. I assisted the Companies with preparing their submissions and further submissions on the Proposed Waimakariri District 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.
8. 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

9. The scope of this evidence relates to the provisions of Proposed Plan relevant to Hearing Streams 1 and 2, and in particular:
 - Strategic Directions
 - Urban Form and Development
 - Sites and Areas of Significance to Māori
10. My evidence only focusses on matters that are not agreed by the reporting planner and the Companies are still wanting to contest those matters.

11. In forming my opinion from a planning perspective, I have taken into account the corporate evidence filed on behalf of Mr Graeme McCarrison of Spark, Mr Andrew Kantor of Chorus, Ms Fiona Matthews of Connexa and Mr Colin Clune of FortySouth.

Overview of Submissions

12. The Companies have been jointly active in district plan reviews throughout New Zealand with a view to achieving more consistency in these provisions nationally given that the same basic equipment and functional and operational requirements apply throughout New Zealand.
13. Where changes are being sought in the submissions, this is generally to ensure the District Plan does not unnecessarily regulate necessary infrastructure, ensures controls are practical and reasonable for the functional and operational requirements of network utility infrastructure, or to ensure there is a consent pathway for necessary infrastructure in appropriate circumstances in sensitive environmental overlays.
14. In specific regard to these topics, the Companies wish to ensure that provisions dealing with growth and intensification at a strategic level properly recognise the need to integrate development with all infrastructure, not just 3-waters and roading, to deliver well-functioning urban environments. Other infrastructure that may not be owned by local authorities or road controlling authorities include telecommunications/broadband and electricity distribution networks, which also contribute to well-functioning urban environments.

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

15. Many elements of telecommunications Infrastructure deployed and operated by the Companies is regulated under the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* (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.
16. The regulations apply to regulated activities undertaken by a *facility operator*¹ which includes:
- A network operator (as defined in section 5 of the Telecommunications Act 2001); or
 - The Crown; or
 - A Crown agent.
17. 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 could of course choose to apply to the Ministry of Business Innovation and Employment be a *network operator*. Further, activities that are not regulated, such as new poles and attached antennas outside of roads in

¹ Defined in NESTF Regulation 4

zones other than rural zones and aerial telecommunications lines not following existing overhead network routes remain subject to the relevant district plan.

18. 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.
19. 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 roads 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;
 - 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 bridge²). 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.
20. In regard to the submission on the Sites and Areas of Significance to Māori (SASM) section, Regulation 46 is relevant and for certain elements of telecommunications networks any district plan provisions would continue to apply.

² NESTF Regulation 8

21. 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.

Discussion of Relief Sought by Topic

Strategic Directions

Objectives SD-01

22. Transpower submission 195.20 sought an amendment to SD-01 which address Natural Environments as follows:

Amend SD-01:

" ...

3. outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected from inappropriate subdivision, use and development;

..."

23. The reason given by Transpower was to align with s6 of the RMA be referring to "*inappropriate, subdivision, use and development*" in regard to outstanding natural features and landscapes. The Companies supported this submission.

s42A Recommendations

24. The s42A report recommends that the Transpower submission be rejected³. Paragraph 65 of the s42A Report indicates that the reasoning behind the recommendation is that other lower-level plan provisions provide more detailed guidance on what might be appropriate, and that a strategic direction is to provide direction for the development of more detailed provisions.

Planning Assessment

25. I agree that the purpose of strategic directions is to provide the broad direction for lower order plan provisions to be developed. In my opinion it is critical that the policy framework and rules to implement this provides a pathway for necessary infrastructure including telecommunications to establish in natural environments in

³ Paragraph 66, s42A Report

appropriate circumstances where there are functional and operational needs dictating location and design in natural environments areas. I have been involved in numerous telecommunications projects in outstanding natural landscape areas, particularly in areas with elevated landscapes where equipment may need to be sited to achieve line of site for radio links and coverage.

26. I consider that the amendment sought by Transpower is appropriate as it provides the broad direction that where protecting the values of outstanding natural features and landscapes, some development/use may be appropriate. This sets the relevant tone for the lower order plans provisions. I note that the Companies have submissions on the Natural Features and Landscape section seeking better recognition of infrastructure in natural environments covered in that chapter. The proposed change to Objective SD-O1 would better support the relief being sought..

Proposed Relief

27. In my opinion Objective SD-O1 should be amended as requested by Transpower submission 195.20.

Objective SD-02

28. The Companies sought an amendment to SD-02⁴ in regard to Urban Environments as follows (reference to SD-03 was typographical):

Amend Objective SD-O3 by adding an additional clause to the objective as follows:

Urban development and infrastructure that:

....

x. ensures new development and intensification is adequately served by telecommunications, broadband and electricity;

s42A Recommendations

29. The s42A report recommends that the Companies submission be rejected⁵. At Paragraph 129 of the s42A Report, the assessment provided considers that provision of new infrastructure that includes telecommunications, has been provided for in

⁴ Submission 62.2

⁵ Paragraph 134, s42A Report

Objective EI-O1, and policies E1-P1(5) and SUB-P8, and is not a matter that needs to be addressed in the strategic directions.

Planning Assessment

30. I agree that Objective EI-01 and Policy EI-P1(5) recognise and provide for infrastructure including telecommunications in the EI Chapter, and Policy SUB-P8 addresses provision of infrastructure at the subdivision stage. The Companies have supporting EI-01 and EI-P1(5) as notified in their submission.
31. The Strategic Directions in relation to urban growth set out the key elements to well-functioning urban areas. Infrastructure is part of this. Objective SD-02 makes reference to utilising three-waters infrastructure where available, but makes no reference to other Infrastructure such as telecommunications, broadband and electricity which are also important for a well-functioning urban environment. Telecommunications/broadband in particular falls within the definition of “*additional Infrastructure*” in the *National Policy Statement on Urban Development 2020* (NPS-UD). NPS-UD Objective 6 seeks to deliver local authority decisions on urban development integrated with infrastructure planning and funding decisions. Policy 10 requires local authorities to engage with providers of infrastructure (telecommunications is included as “*additional infrastructure*”) to achieve integrated land use and infrastructure planning.
32. NPS-UD Policy 1 recognises the need to support reductions in greenhouse gas emissions in planning decisions on urban environments, which supports providing for efficient and effective telecommunications as part of urban development to support work from home solutions and support travel demand management initiatives.
33. NPS-UD Clause 3.11(1) in Part 3 Implementation provides direction when making plans or changing plans to ensure that development achieves well-functioning urban environments. In particular NPS-UD 3.5 “*Availability of additional infrastructure*” requires that local authorities must be satisfied that the additional infrastructure to service the development capacity is likely to be available.
34. Accordingly, notwithstanding the EI and SUB Proposed Plan provisions referenced in the s42SA report, in my opinion the amendment sought by the Companies in SD-02 better reflects the directives of the NPS-UD, and given this is national policy direction, would appear to be an appropriate matter to consider in a strategic direction.

35. The NPS-UD policy framework supports engagement with the telecommunications sector in urban growth and capacity matters, integration of this infrastructure with urban development, and protection of this infrastructure from incompatible uses. This also supports other relief the Companies are seeking to the Certification Process for new development areas in regard to ensuring discussions around the expected timing and capacity of development have occurred to enable service extensions to be planned for (not covered by Hearing Streams 1 and 2). A change to Objective SD-02 as requested would better support this outcome.
36. I recommend that the Objective SD-02 is amended as set out in Paragraph 28 above.

Urban Form and Development

37. Policy UFD-P2 covers the identification/location of new residential areas. Clause (2) of this policy addresses new residential development areas not already identified in the Proposed Plan as new Residential Development Areas. Sub-clause (b) of the Policy requires new residential development to:

(b) occur in a manner that makes use of existing and planned transport and three waters infrastructure, or where such infrastructure is not available, upgrades, funds and builds infrastructure as required.

38. The Companies' submission sought the addition of a further clause addressing other necessary infrastructure required for a well-functioning urban environment as follows:

(x) occur in a manner where they can be provided with telecommunications broadband and electricity infrastructure.

s42A Recommendations

39. The s42A report recommends that the Companies submission be rejected⁶. The reasons given at Paragraph 104 of the s42A are that UFD-P2 is about identification and location of new residential areas, and that infrastructure matters should be located in the Energy and Infrastructure Chapter. The reporting officer considers that the proposed amendment is already covered by Objective EI-O3 and Policy EI-P2(1)(b).

⁶ Paragraph 108, s42A Report

Planning Assessment

40. Whilst the National Planning Standards do require a separate Energy and Infrastructure Chapter, and I agree that this should be the focus of infrastructure specific objectives policies and rules below the strategic layers of the plan, it is still appropriate in my view to address infrastructure at a high level in the Strategic Direction and Urban Form and Development provisions that sit in the Strategic Direction section.
41. Whilst Policy EI-P2(1)(b) does address connections to communications infrastructure, I still consider it would be preferable for necessary infrastructure other than 3-waters and roading to be given equal billing in UFD-P2 to ensure in any major land use change in particular considers the full matrix of necessary infrastructure to support growth and development and achieve well-functioning urban environments.
42. As set out in the previous section on Strategic Direction SD-02 above, there is strong support in the NPS-UD for addressing telecommunications/broadband infrastructure (as “*additional infrastructure*”) in any strategic provisions addressing urban growth and development.
43. In my opinion it is appropriate to add the additional clause sought by the Companies to Policy UFD-2 as follows:

Add the following clause to Policy UFD-P2:

- (x) *occur in a manner where they can be provided with telecommunications broadband and electricity infrastructure.*

Sites and Areas of Significance to Māori (SASM)

Rule SASM-R4 Earthworks and disturbance associated with other activities

44. The various overlays cover a substantial part of the eastern Waimakariri District including urban areas from the edge of Rangiora to the coast. I understand that the circles depicting the Wāhi Tapu overlay are buffer areas around silent file areas. It would appear that the only permitted infrastructure activity involving earthworks in these significant areas including within roads, is for customer connections (see Rule SASM-R4(1)(h) below).

45. The submission outlined that it was unclear if poles and cabinets and like equipment could rely on clause (c) of the rule providing for building foundations up to 350m³. Installing all otherwise permitted infrastructure other than customer connections would appear to require resource consent as a restricted discretionary activity where any earthworks are required. The provisions as drafted may be unworkable due to the large extent of area it covers including active road corridors and the burden that it could place on Ngāi Tūāhuriri's resources to be able to be engaged on such a large range of work over a large area.

SASM-R4	
	Earthworks and land disturbance associated with other activities <i>This rule applies to Wāhi Tapu/Wāhi Taonga, Ngā Tūranga Tūpuna and Ngā Wai in SASM-SCHED1 except</i>
Wāhi Tapu Overlay	Activity status: PER Where: 1. the earthworks and land disturbance is limited to: a. planting of trees; b. gardening; c. building foundations, septic tank and swimming pool installations where the combined volume of earthworks is 350m ³ or less; d. freestanding sign foundations to a maximum depth of 200mm or to the depth already disturbed (whichever is the greater); e. drain and track maintenance; f. cultivation, stopbanks, roadworks and other activities within land previously disturbed by previous earthworks to the depth already disturbed; g. cultivation to a maximum depth of 200mm; h. a customer connection between a building, other structure, site, and infrastructure as per EI-R4; and i. the drilling of a well or bore.
Wāhi Taonga Overlay	
Ngā Tūranga Tūpuna Overlay	
Ngā Wai Overlay	

46. Figure 1 below shows a screen shot from the on-line planning maps showing the extent of Wāhi Tapu and Ngā Tūranga Tūpuna Overlays in eastern Waimakariri District.



Figure 1: Planning maps screen shot, buffer areas around Wāhi Tapu, and hatched Ngā Tūranga Tūpuna Overlay

47. The Companies sought amendments to Rule SASM-R4⁷ to provide for further exemptions for telecommunications infrastructure works within roads, as well as exemptions outside of roads for poles, cabinets and underground lines and associated earthworks. The submission noted the Companies would be happy to work with the Council and Ngāi Tūāhuriri on any rule amendments.

s42A Recommendations

48. The s42A recommendation is to accept the submission point⁸. The proposed drafting solution is to amend clause (f) of the rule as follows:

f. cultivation, stopbanks, roadworks and any other activities (including existing infrastructure) within land previously disturbed by previous earthworks to the depth already disturbed;

Planning Assessment

49. In my opinion the proposed amendment does not give full effect to the submission. Firstly, it is limited to existing infrastructure so would preclude the addition to existing or development of new infrastructure such as an additional fibre cable, roadside cabinet or pole and antennas. Poles and antennas within roads are a common method of deploying mobile networks and are specifically contemplated in regulations 26-29 of the NESTF.
50. As well as not covering new telecommunications equipment in roads, the caveat of being limited to the depth of previous disturbance may be very difficult to determine before a work is undertaken.
51. As I am providing evidence as an expert planner, I am unable to give evidence on cultural impacts. However, I envisage that trenching type work in a formed road, or

⁷ Submission point 62.45

localised foundations for a pole and antennas, would not be likely to have any adverse effects over and above 350m³ for earthworks permitted for building foundations. Where in a road corridor, it is also within an area where earthworks have previously occurred.

52. In my opinion the amendments to clause (f) would likely still result in routine projects including those within roads requiring resource consent over very large areas. On this basis, and subject to any feedback on this from Ngāi Tūāhuriri, I recommend the following additional new clauses are added to the rule as follows:

j. telecommunications lines, poles and cabinets in formed roads.

k. telecommunication poles and cabinets outside of roads.

⁸ Paragraph 102 s42A report.