

Before the Hearing Panel

IN THE MATTER OF: the Resource Management Act 1991

AND

IN THE MATTER OF: the hearing for Proposed Kāpiti Coast District Plan
2012 – Chapter 11, Infrastructure, Services and
Resource Use

STATEMENT OF EVIDENCE OF LOUISE MILES FOR:

**SPARK NEW ZEALAND TRADING LIMITED
AND CHORUS NEW ZEALAND LIMITED**

**IN RELATION TO CHAPTER 11: INFRASTRUCTURE, SERVICES AND RESOURCE
USE**

Dated: 1 August 2016

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My full name is Louise Miles.
- 1.2 I have a Bachelor of Regional Planning degree (BRP) from Massey University, and are accredited as an Independent Hearing Commissioner. I have over 30 years' experience working either as a planner for central government or as a resource management consultant within New Zealand.
- 1.3 I am the Director of my own resource management planning consultancy, MilesPlanning, providing advice to a government and corporate clients, commercial organisations and individuals.
- 1.4 Throughout my career I have provided a wide range of resource management services to Spark New Zealand Trading Limited (**Spark**) and Chorus New Zealand Trading Limited (**Chorus**), as well as their predecessor Telecom New Zealand (Telecom) - from which both of these companies derived. This was initially while employed by Works Consultancy Limited, followed by Opus Consultants Limited, and more recently while the Director of the Incite (Wellington).
- 1.5 The resource management advice provided to Spark and Chorus has included the preparation of submissions to a large number of district plan changes and district plan reviews. I prepared the Spark and Chorus submissions, and further submissions to the Proposed Kāpiti Coast District Plan 2012, and following on from this prepared comments provided to the Council on the Submitter Engagement Version (**SEV**). Later I attended a meeting with the reporting officers preparing Chapter 11 'Infrastructure, services and associated resource use' (**Chapter 11**) to discuss the comments made to the SEV version. I also prepared the Chorus and Spark submissions to Proposed Variation 1 Urban Tree Variation, and a joint statement of evidence on behalf of both clients to PV1 and to Chapter 3 Natural Environment.
- 1.6 Outside the Kāpiti Coast area I have prepared comments and/or submissions on the network utility provisions in many district plans, including in recent years to the Hurunui, Palmerston North City, Porirua, Hutt City, Upper Hutt City, Horowhenua, Hastings, and Wanganui District Plan reviews. I subsequently provided expert planning evidence in relation to the Hurunui, and Palmerston

North District Plan reviews, and worked with Council officers in relation to the Hastings and Wanganui network utility plan changes to reach a point where all matters were resolved and evidence was not required.

- 1.7 Another area of work undertaken for both Chorus and Spark is the provision of resource management advice and consenting for mobile and broadband network rollouts and upgrades. This includes site selection studies, as well as the preparation of notices of requirement, outline plans and resource consent applications. Recently, I obtained resource consents and certificates of compliance for the infrastructure required to implement the Ultra-Fast Broadband (UFB) upgrade for Chorus in parts of the North Island, including both overhead and underground rollouts. This included obtaining resource consent in April 2015 to install, operate and maintain Ultra-Fast Broadband (UFB) fibre optic lines and ancillary equipment on the existing overhead electricity and telecommunications network in Kāpiti. This resource consent, and others elsewhere in the Wellington area, were obtained on a non-notified basis.
- 1.8 On this basis of this work experience, I am familiar with telecommunication networks, and the practical implications and constraints of District Plans in relation to their installation and operation.
- 1.9 I have been engaged by Spark (whose submission was lodged under the name of its predecessor (Telecom) and Chorus to provide a statement of planning evidence in relation to their submissions to Chapter 11. I have read the s42A report prepared by Gina Sweetman and Rebecca Lloyd, and the relevant submissions made by other parties. As outlined above, I am already familiar with the documents as notified, including the section 32 report.

2. CODE OF CONDUCT

- 2.1 I confirm I have read the 'Code of Conduct for Expert Witnesses' contained in the Environment Court Code of Practice, 2014.
- 2.2 I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence before the Hearing Panel. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

3. BACKGROUND

- 3.1 As highlighted in the statements of Graeme McCarrison and Mary Barton, in recent years there has been a rapid growth in the demand for telecommunication services, and growth in end user devices. This is particularly in relation to data and internet connectivity (including the uptake of smartphones and the rapidly growing consumption of on-line video). In conjunction with this, is an increasing demand for greater connectivity, with customers requiring that these services are always available and reliable, regardless of whether they are at home, work or play. Expectations are that demand for services will continue to increase rapidly as new devices, and their applications, proliferate. This translates into a need for the telecommunication industry to be able to provide new, and to upgrade existing telecommunication infrastructure on an on-going basis (refer to the diagram in section 5 of the evidence of Graeme McCarrison that demonstrates the rapid changes in mobile technology).
- 3.2 The rapidly changing needs of the industry (both in terms of new technologies and greater demand for services) has resulted in provisions now being sought in district plans that are significantly different in many respects to those considered appropriate four years ago when the PDP was notified. For example, more flexible provisions for masts in Rural areas, for co-siting in non-sensitive areas and to enable overhead fibre broadband rollouts in urban areas where there is an existing overhead network are now all routinely sought – all of which are outside the scope of the submissions.
- 3.3 The purpose of the Resource Management Act 1991, as embodied in section 5, is the promotion of the sustainable management of natural and physical resources. Telecommunications infrastructure is a significant physical resource in terms of section 5 of the RMA. Safe, reliable and efficient telecommunications is of critical importance, locally, regionally and nationally to the social, cultural and economic wellbeing of people and communities, by enabling people and business to connect to each other. Telecommunications also have a pivotal role in assisting people and communities to provide for their health, safety and wellbeing - including during times of emergency (as highlighted in the 2010/2011 Canterbury earthquakes). Further, the ability to maintain and upgrade existing facilities is an efficient and effective use of an existing physical resource under section 7 (b) of the RMA.

3.4 The improvement of telecommunication services nationwide is a core initiative of central government. This is highlighted in the following extract from the Ministry of Business and Innovation website:

“the expansion and development of broadband and mobile coverage is a vital component of New Zealand’s economic growth, productivity improvements and the governments wider strategy to increase New Zealand’s global competitiveness, particularly compared to other OECD countries”¹

3.5 Several key government initiatives are underway in the telecommunications sector to achieve the government’s economic objectives, to expand and develop broadband and extend mobile coverage and capacity. These initiatives include:

- The Ultra-Fast Broadband (UFB) and the Rural Broadband (RBI) rollouts, which are underway. The UFB rollout is occurring within urban areas. It is delivered through fibre optic lines (located either below or above ground) and supporting cabinet infrastructure. The balance of the country is served by the RBI rollout. It requires the construction of a number of new mobile phone facilities in rural locations to improve rural broadband by wireless, as well as the provision of overhead and underground lines and cabinet infrastructure. The government has recently announced its intention to extend the two initiatives and provide broadband coverage further than initially planned.

The importance of these rollouts is highlighted on the Ministry of Business, Innovation and Employment (MBIE) website as follows:

Together these two programmes will bring benefits of improved internet connectivity to 97.8% of New Zealanders, opening up a huge range of business, educational, community and other opportunities²”.

- A review of the National Environmental Standards for Telecommunication Facilities (NESTF) is well underway. As outlined in the evidence of Graeme McCarrison³, the intention is to substantially broaden the existing scope of the existing NESTF (which at present is principally limited to the provision of facilities in road reserve). Central to the review are changes to include

¹<http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/broadband-mobile-initiatives>

² <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/fast-broadband>

³ See section 9 of the evidence of Graeme McCarrison.

provision for permitted telecommunication facilities outside road reserve, and to update some of the existing provisions for activities in road reserve. The proposals have been through a consultation and submission process (including with the public and iwi), and are well advanced in terms of being drafted into legislation, with significant changes unlikely. Once the NESTF comes into effect it will 'trump' the equivalent district plan provisions.

- 3.6 As addressed in the evidence of Graeme McCarrison⁴, telecommunications are a 'lifeline utility' under Part B of Schedule 1 of the Civil Defence Emergency Management Act 2002. The Act places obligations on lifeline utility companies to plan for and manage the impacts of emergency events on their networks. This has implications for Chorus and Spark in terms of ensuring that networks are designed to be resilient.
- 3.7 Both Chorus and Spark are major telecommunication providers within the Kāpiti Coast District. Spark's telecommunication network infrastructure is primarily associated with its mobile network, comprising masts/antennas, and associated cabinets and lines (either underground or overhead). The RBI developed sites are critical to the deployment of fast digital services by Spark, and other providers, to the rural communities/business and urban areas not covered by the UFB program.
- 3.8 Chorus has a fixed line network including copper and fibre lines, equipment cabinets, as well as exchange buildings and masts. Notably, Chorus has the contract from Crown Fibre Holdings (the government entity tasked with overseeing the taxpayer sponsored fibre build) to deliver UFB to Kāpiti Coast District, including the townships of Paekakariki, Paraparaumu and Waikanae. UFB rollout is delivered through fibre optic lines (located either below or above ground⁵) and supporting cabinet infrastructure. The deployment of UFB occurs principally in road reserve, but also includes fibre customer connections within private properties. Deployment of UFB within the Kāpiti Coast townships commenced in parts of Paraparaumu in 2013 and is programmed to be completed by 2019 in all areas, with a mix of overhead and underground deployment. Work is currently underway in parts of Paekakariki, Raumati, Paraparaumu and Waikanae.

⁴ Refer paragraphs 8.14 of the evidence of Graeme McCarrison.

⁵ As noted in paragraph 1.7, Chorus obtained resource consent from the Kāpiti Coast District Council in 2015 to deploy fibre overhead utilising existing support structures.

3.9 There are significant technical and operational constraints associated with the delivery and operation of telecommunications which mean that it is not always practicable to avoid, remedy or mitigate all adverse effects. For example, the height, and the location of mobile phone facilities is governed by the need to provide coverage to defined areas. The need for greater capacity to meet increased customer demands means that more mobile phone facilities, located closer to where people work, live and play are necessary. As geographically the coverage areas become smaller, as a general rule there are fewer suitable alternative locations, and this is even before other constraints such as constructability, cost, and a willing landowner are taken into account.

3.10 In summary, it is important to recognise that telecommunication networks:

- Are a physical resource in terms of section 5 of the RMA;
- Are essential to modern society, and will continue to be so for the foreseeable future with demands for services rapidly growing;
- Have significant social, economic health and safety benefits across all sectors, including in the health care, education and the agricultural sectors. These benefits are recognised through a range of government initiatives designed to substantially improve the capacity of broadband and mobile facilities and their access by New Zealanders to meet economic and social outcomes;
- Have technical and operational constraints that mean that in many cases there will be residual effects that cannot be avoided, remedied or mitigated; and
- Are an essential lifeline facility in terms of emergencies.

3.11 These factors highlight the need to ensure that the provisions of district plans adequately provide for telecommunications as an essential service and are flexible enough to accommodate changing customer and technology needs, while ensuring an appropriate level of environmental protection.

4. SCOPE OF PLANNING EVIDENCE

4.1 Chorus and Spark⁶ lodged similar submissions to the provisions of Chapter 11, and accordingly they are discussed together in this joint statement.

⁶ The submissions lodged under the name of Telecom are referred to as Spark in this evidence, reflecting the change in the company name.

- 4.2 It is acknowledged that a number of changes have been recommended in the s42A report in response to the Chorus and Spark submissions, and the subsequent engagement with the reporting officers (Gina Sweetman and Rebecca Lloyd) has been helpful.
- 4.3 Notwithstanding this, there remain significant concerns with the provisions in Chapter 11. This includes the level of restriction on telecommunication activities in identified areas, unclear rules, and issues with the linkages between the permitted and default provisions - both within Chapter 11 and with other chapters. In my opinion, many of these concerns relate to structural issues with Chapter as notified, and as such are difficult to resolve without a total rewrite.
- 4.4 The matters that remain in contention that are addressed in this evidence are as follows:

Policies

- (i) Policy 11.4 – Managing adverse effects;
- (ii) Policy 11.9 – Proximity to planning features;
- (iii) Policy 11.13 – Place network utilities underground;

Permitted Activity Rules

- (iv) Rule 11A 0 Applicability of rules 11A.1 – 11A.5 and introductory statement;
- (v) Rule 11A.1.2 Network utilities generating radiofrequency;
- (vi) Rule 11A.1.4 Minor upgrading and upgrading;
- (vii) Rule 11A.1.5 New network utilities;
- (viii) Rule 11A.1.6 Undergrounding;
- (ix) Rule 11A.1.12 Overhead lines in Rural zones;
- (x) Rule 11A.1.8 Freestanding masts and associated antennas;
- (xi) Rule 11A.1.10 Cabinets;
- (xii) Rule 11A.1.2 Network utilities within buildings;

Default Rules

- (xiii) Upgrading and minor upgrading;
- (xiv) Undergrounding in Flood Hazard areas (cabinets and lines);

- (xv) Overhead lines;
- (xvi) Aboveground cabinets;
- (xvii) Freestanding masts and building mounted antennas; and

Definitions

- (xviii) 'Telecommunications' and 'Radiocommunications'

4.5 In addition to this planning evidence, corporate evidence is provided by Graeme McCarrison, Engagement & Planning Manager at Spark and Mary Barton Environmental Planning & Engagement Manager at Chorus. These statements also address:

- The Chorus and Spark designations;
- The definition of 'Regionally significant infrastructure';
- Lifeline Utilities; and
- Examples of the masts and antennas utilised.

4.6 The relief⁷ sought is to the track change version of Chapters 1 and 11⁸, as recommended by the reporting officer (rather than the PDP as notified). Further, the numbering of the rule references follows the track change version.

5. MATTERS IN CONTENTION

Policy 11.4 – Managing Adverse Effects

442.31 Chorus; 444.17, 444.18, 444.19, 444.20 Spark; FS229 Ken Moselen (support); 444.18 Chorus opposed FS107 Go Underground Waikanae.

Refer paragraphs 170-172, 180-183, 185-186, 188 of the s42A report.

5.1 The Chorus and Spark submissions sought a number of changes to the wording of Policy 11.4, which sets the direction for 'Managing Adverse Effects', and in part these have been accepted in the s42A report. However, several aspects of the policy remain of concern.

5.2 At paragraph 180 the reporting officer states that the Chorus/Spark request a), which is identified at paragraph 170 as replace "*managed*" with "*avoided*,

⁷ In some cases amended relief to that initially requested has been sought.

⁸ Provided as Section 4 to the s42A report.

*remedied or mitigated as far as practicable*⁹, is appropriate and is recommended to be accepted. However, the inclusion of “*to the extent practicable*” has not in fact been included in the s42A recommended wording, and the report is silent on its merits or otherwise.

- 5.3 I support the inclusion of the words “*as far as practicable*” into the policy. Without this qualification I consider that the policy does not sufficiently acknowledge that the ability of network utilities to avoid, remedy or mitigate all adverse effects is not an absolute, due to technical and operational constraints. I consider the need to reinforce this in the policy has been heightened with the removal of the following Explanatory text to Policy 11.4:

In some cases, given the underlying technical and operational constraints and requirements associated with network utilities, it might not be entirely possible to avoid, remedy or mitigate all adverse effects associated with the establishment of, operation, maintenance or upgrading of infrastructure. There may be some level of adverse effect on the surrounding environment”.

- 5.4 In my opinion, the amendment proposed to Policy 11.4 also provides an important link with Policy 11.12 - which requires decision makers to consider the technical and operational constraints of network utilities in relation to measures to avoid, remedy or mitigate adverse effects. In terms of the actual wording, I note that a similar qualification has been recommended in the s42A report in relation to Policy 11.2 – ‘Reverse sensitivity’ i.e. *Reverse sensitivity effects on infrastructure from subdivision, land use and development will be avoided, as far as reasonably practicable...*¹⁰. Further, I note that Policy 11.6 – ‘Infrastructure across local authority boundaries’ adopts similar language. For consistency, I recommend that similar wording to these be adopted into Policy 11.4, in preference to the wording requested in the original submissions.

- 5.5 An amendment was also requested to clause a)¹¹ to acknowledge that Clause 1(b) of Schedule 4 of the RMA only requires consideration of alternatives when it is likely that an activity will result in a ‘significant’ adverse effect.

a) *ensuring **significant** adverse effects are minimised through route, site and method selection.”*

⁹ Refer paragraph 170 of the s42A report.

¹⁰ My underlining for emphasis

¹¹ Numbered clause b) in the notified version.

- 5.6 While the s42A report states¹² that this change is accepted, citing as the reason consistency with the wording of Schedule 4 of the RMA, this amendment has not been carried across into the amendments.
- 5.7 In response to these issues, the following further amendments are recommended to Policy 11.4:

Relief Sought:

EITHER

Amend Policy 11.4 as follows:

*Any adverse environmental effects arising from the establishment, operation, maintenance and upgrading of infrastructure will be avoided, remedied or mitigated **as far as reasonably practicable** by:*

- a) *ensuring **significant** adverse effects are avoided, remedied or mitigated through route, site and method selection;*

OR

Such other relief to like effect.

Policy 11.9 - Proximity to Planning Features

442.34 Chorus, Spark 444.24, 444.25. Refer paragraphs 227-229, 237, 240 – 242, 247 of the s42A report.

- 5.8 The submissions from Chorus and Spark to Policy 11.9 were largely accepted, other than the amendments requested to the explanatory text – which has now been deleted throughout the Plan¹³.
- 5.9 However, the scope of the identified areas addressed by this Policy has expanded since the notified version, to now also include “*special amenity landscapes*” and areas of “*high*” natural character. The scope and justification for adding these areas is not addressed in the section on this policy in the s42A report. Further, I consider that the level of importance given to “*special amenity landscapes*” in the Policy is questionable in relation to recommendations in the Natural Environment s42A report for these areas – including the recommendation that rules relating to these areas be deleted.¹⁴

¹² At paragraph 180 of the s42A report.

¹³ Amendments to the ‘Explanation’ to Policy 11.9 were sought to make some utilities may have to locate in these areas due to the technical or operational constraints, and to acknowledge that some utilities have minimal adverse effects e.g. underground facilities.

¹⁴ Refer paragraphs 613 and 614 of the Chapter 3 Natural Environment, General, Landscapes and Earthworks s42A.

Relief Sought:

EITHER

Amend Policy 11.9 as follows:

New network infrastructure will be managed to ...

- a) *avoid inappropriate*
 - ii *areas of outstanding ~~or high~~ natural character*
- b) *avoid, remedy or mitigate*
 - iv. ~~special amenity landscapes~~

OR

Such other relief to like effect.

Policy 11.13 - Place network utilities underground (formerly Policy 11.14)

442.37 Chorus, Spark 444.29. Refer paragraph 304 of the s42A report.

- 5.10 Policy 11.13 – ‘Place network utilities underground’ as amended in the s42A report, directs that “*Unless technically or operationally impracticable, network utility infrastructure will be placed underground. Where undergrounding is technically or operationally impracticable, any aboveground network utility structure will be well designed and resilient to identified natural hazards.*” As a result of submissions from Chorus, Spark and Transpower an additional requirement in the policy for above ground network utilities to be “*complementary to the surrounding environment*” is recommended for deletion in s42A report. I support this deletion, particularly in relation to structures such as masts.
- 5.11 The Chorus and Spark submissions also requested deletion of the remainder of the second sentence in the policy, so that it would be focussed on undergrounding. However, in hindsight I consider that second part of the policy, which deals with the provision of above ground works when undergrounding is not practicable, is necessary in conjunction with Policy 11.9 – Proximity to planning features. This is to highlight that well designed and resilient above ground network utilities would be considered as ‘appropriate’ works in the listed hazards features listed in a) iii-v of the Policy.
- 5.12 While not specifically requested in the Chorus/Spark submissions, during engagement on the SEV version an amendment to Policy 11.13, to target it

specifically to 'new' network utilities was discussed. The notes of the meeting record that "G & R would look into this issue, especially in regard to making the policy only relevant to new utilities", however it is not addressed in the s42A report. I consider that it would be unreasonable to apply the policy to the replacement or upgrading of existing above ground works, and note that the undergrounding policies in the Porirua and Hutt Plans (as recently amended through the recent changes to those Plans) are specific to 'new' works for this reason.

- 5.13 For these reasons, should the Panel have scope to do so within other submissions to the Plan, I recommend that following amendment be made:

Relief Sought:

EITHER

Amend Policy 11.13 as follows:

*Unless otherwise technically or operationally impracticable, **new** network utility infrastructure will be placed underground. Where undergrounding is impracticable, any **new** aboveground network ...*

OR

Such other relief to like effect.

Rules and Standards Introduction and Rule 11A.0 Applicability of Rules 11A.1-11A.5

442.28, 442.29, 442.42, 442.51, 442.55 Chorus; 444.36, 444.43, 444.50. 444.60 Spark. Paragraphs 369, 375, 378

- 5.14 Because of considerable uncertainty in the PDP as to which rules apply (with overlapping rules in different chapters), Chorus and Spark submitted seeking that the rules for telecommunications and radiocommunications be contained in a standalone chapter. Further, the submissions requested that the zone rules for buildings and structures in Chapters 5-8 not apply (other than the noise rules) – for the reason that rules relating to buildings and structures in zones are generally inappropriate to telecommunications and other network utilities.
- 5.15 As recommended in the s42A report the proposed wording of rule 11A.0 is as follows:

The provisions in this section of the Chapter apply to network utilities throughout all zones of the District. The underlying zone policies and rules do not apply to

network utilities, including roads, unless specifically referred to in the relevant rule. District wide rules, such as those relating notable trees (Chapter 3), and historic heritage (Chapter 10) and zone specific rules relating to noise and earthworks still apply.

5.16 There are several issues with Rule 11A.0 as drafted as follows:

- The reference to the Notable tree rules being located in Chapter 3 is in error (see Chapter 10).
- Within Chapter 10, the Notable trees are listed in Schedule 10.1. Rules within this Chapter provide for 'Trimming of Notable Trees' (rule 10A.1.4 - permitted activity) and modification of Notable Trees by a network utility operator in certain circumstances (rule 10A.3.4 - restricted discretionary activity). However, because Notable Trees are also included into Schedule 10.1, the rules in Chapter 11 that trigger consents where located within a "*historic heritage features identified in Schedule 10.1*", potentially also apply. Amendments are recommended to remove this duplication, and to make it clear that only the relevant rules in Chapter 10 are applicable. This could be achieved by including the list of Notable Trees in a separate schedule (to other heritage features) in Chapter 10, in conjunction with the changes recommended to rule 11A.0 below.
- Similarly, there is an overlap in the rules that potentially apply to other items. For example, as currently drafted the Historic Heritage Chapter 10 includes rules specific to network utilities on waahi tapu and Other Places and Areas of Significance to Iwi (for example rule 10A.3.5 e). In addition as noted above, Chapter 11 already includes blanket rules that will trigger consents for new above ground telecommunications on a site with a historic heritage feature (as a discretionary activity – rule 11A.4.3 (h)). This will mean that resource consents may be required for the exact same work under two chapters of the Plan. Amendments are sought to remove this duplication.
- District wide rules that apply to network utilities with respect to indigenous vegetation clearance and earthworks are contained with Chapter 3 Natural Environment. The earthworks rules in this chapter apply to all network utilities (refer rule 3A.1.7- applies outside road; and

rule 3A.1.9 inside road).¹⁵ Accordingly, it is unclear why the zone earthworks would also need to apply. Further, taking the s42A track change versions of Chapter 7 Rural zone and Chapter 5.2 Living Zone as examples, there do not appear to be any zone earthworks rules that would be relevant to network utilities.

- I consider that the reference to the zone 'noise' rules is unnecessary, as with appropriate cross referencing in Chapter 11 these are already captured under the statement *unless specifically referred to in the relevant rule*.

Relief Sought:

EITHER

(i) Amend rule 11A.0 Applicability of Rules 11A.1 – 11A.5 as follows:

*The provisions in ~~this section of the~~ Chapter **11** apply to network utilities throughout all zones of the District. The underlying zone policies and rules do not apply to network utilities, including roads, unless specifically referred to in the relevant rule.*

The D-district wide rules, such as those relating for notable trees (Chapter ~~310~~); and the rules for earthworks and indigenous vegetation (Chapter 3) and zone specific rules relating to noise and earthworks still also apply.

AND

(ii) Insert the list of Notable Trees into a separate Schedule (separate to other historic heritage items) in Chapter 10.

OR

Such other relief to like effect.

5.17 The following statement has been added to the discussion on the Resource Management National Environmental Standard for Telecommunications Facilities 2008 (**NESTF**) in the introduction to Chapter 11¹⁶:

“These NES apply in addition to the rules in this Plan”¹⁷.

¹⁵ Amendments to these rules have been sought in evidence from Chorus and Spark to Chapter 3 Natural Environment.

¹⁶ As a clause 16(2) amendment.

¹⁷ Last sentence in paragraph 3 of the Introduction to Rules and Standards - Infrastructure

- 5.18 In my view this statement can be read to that the rules in the Plan and the two NES regulations apply equally - which is not the case. An amendment is requested to clarify this.

Relief Sought:

EITHER

Delete the last sentence of the Introduction to 'Rules and Standards – Infrastructure' and replace with the following:

*Where an activity is related to the operation, maintenance, upgrading, relocation or removal of an existing National Grid Transmission Line, the Resource Management (NES for Electricity Transmission Activities) Regulations 2009 apply. The Resource Management (NES for Telecommunication Facilities) Regulations 2009 applies to telecommunication equipment, ~~These NES apply in addition to the rules in this Plan.~~ **Except as provided for by the Regulations or the RMA, no rules in this Plan apply to these activities.***

OR

Such other relief to like effect to clarify the relationship between the NESTF and the District Plan rules.

Rule 11A.1.2 Network utilities generating radiofrequency (formerly Rule 11A.1.3)

442.39, 442.53, Chorus, 444.31, 444.32 Spark; FS220 Ken Moselen (support). Paragraphs 381, 384 - 385 of the s42A report.

- 5.19 Chorus and Spark submitted to delete the application of rule 11A.1.2 to telecommunications. This was on the basis that it duplicated the provisions in Regulations 2-4 of the NESTF. There were also concerns with the wording of the rule.
- 5.20 I support the changes recommended by the reporting officer to this rule, which now also includes a note that the NESTF controls radio frequency emissions from telecommunications. However, I consider that the repetition in a number of permitted and discretionary standards back to the need to comply with rule 11A.1.2 is unnecessary. Clearly, all network activities must already comply with rule 11A.1.2, and in my opinion there is no need to clutter the plan with permitted activity standards that reiterate this.

Relief Sought:

Retain permitted rule 11A.1.2 and the associated Note; and

EITHER

Delete the references to compliance with rule 11A.1.2 in the standards elsewhere in Chapter 11;

OR

Such other relief to like effect.

Rule 11A.1.4 Minor Upgrading and Upgrading (formerly Rule 11A.1.5)

442.40 Chorus, 444.33 Spark, FS106 Quicksilver Enterprises Ltd (in support)

442.65 Chorus, 444.58 Spark, FS330 Ken Moselen (support)

Paragraphs 410-411, 423 - 424, 429 of the s42A report

- 5.21 The submissions request inclusion of two additional activities under the Minor Upgrading/Upgrading rule 11A.1.4. One of these was to allow the addition of antennas to existing masts which would enable the attachment of additional antennas to existing masts that already exceed the district plan mast height limits (provided the antenna do not exceed the maximum height of the existing mast). The other request was to enable the replacement of existing overhead telecommunication line support structures, provided they did not exceed a maximum height of 12m and diameter of 300mm.
- 5.22 While the reporting officer accepts these submissions, in my view the rules as subsequently drafted do not clearly provide for these activities. Issues identified are as follows:
- Standard 3 requires that “*Any additional antenna attached to existing masts must comply with the diameter and height requirements in Rule 11A.1.9 (freestanding masts), and must not exceed either the maximum height requirements in Rule 11A.1.9.2 or the maximum height of the mast whichever is the greater*”. I recommend that standard 3 be relocated so that it is an exception to rule 11A.1.4 standard 1 – otherwise there is a potential for confusion in relation to the application of the maximum height limit between the standards 1 and 3. This is because standard 1 (though the reference to rule 11A.1.9) requires that antennas must be located within the maximum mast height limit (applying to all antenna), while standard 4 allows in the case of existing masts, an

added option of locating an additional antenna up to the maximum height of an existing over height mast.

- Standard 2 specifies a height and diameter limit for “*poles and support structures*”. It is recommended that the rule be clarified so that expressly applies to telecommunication and electricity lines, as I understand is the intention. Otherwise, there is a potential for confusion as to whether it also applies to ‘Masts’ (which are defined in Section 1.4 Definitions) to include ‘poles’ designed to carry antenna for telecommunication).
- Standard 4 addresses the need to comply with rule 3A.1.2 with respect to locally indigenous vegetation within ecological sites. There is no need in my view to include this standard as this matter is already covered by rule 11A.0, which requires compliance with the relevant rules in Chapter 3. Further I note that as worded this rule creates uncertainty as it only refers to one of the “trimming” permitted activity rules in Chapter 3 that would potentially apply to network utilities (this being the rule that applies in the urban environment)¹⁸. Further the standard refers to “*locally*” indigenous vegetation, which is inconsistent with the removal of this qualification from the rules in Chapter 3; and it is specific to ecological site (while the Chapter 3 rules apply more widely).

5.23 For these reasons, and to achieve consistency with amendments sought elsewhere, the following changes are recommended. .

¹⁸ For example see also rule 3A.1.3

Relief Sought:

EITHER

Delete standards 3 and 4 in rule 11A.1.4;

AND

Amend standards 1 and 2 in rule 11A.1.4 as follows:

1. *Upgrading must comply with any permitted activity standard applicable to that network utility under ~~rules 11A.12 (Radiofrequency or Electromagnetic Fields); 11A.1.98 (Freestanding masts utilized for network utility purposes); 11A.1.910 (Antenna attached to a building for network utility purposes), and 11A.1.101 (Cabinets);~~*

Except that additional antenna attached to existing masts must only comply with the diameter requirements in Rule 11A.1.8.4, and must not exceed either the maximum height requirements in Rule 11A.1.8.2 or the maximum height of the existing mast, whichever is greater.

2. *Poles and support structures **for electricity and telecommunication lines** must comply with the maximum height of 12m and diameter of 300 millimetres.*

OR

Such other relief to like effect.

Rule 11A.1.5 New Network Utilities (formerly Rule 11A.1.6)

442.43 Chorus, 444.37 Spark, FS229 Ken Moselen (support), FS106 Quicksilver Enterprises Limited (support - Spark only)

Paragraphs 439-440, 443, 446, 448 of the s42A

5.24 Rule 11A.1.5 is a generic permitted activity rule that applies to any new network utilities (with some exceptions). Because of significant concerns with the duplication and uncertainty as to the relationship between rule 11A.1.5, and the specific permitted rules applicable to telecommunication activities, the submissions requested that the rule be deleted in relation to telecommunication activities.

5.25 In my opinion, the amendments recommended to the rule in the s42A report do not fundamentally overcome the issues raised in the submissions. In particular;

- Standard 1 simply reiterates the rules that may apply to activities. As these are already covered in the specific rules referred to, in my opinion, this standard is unnecessary.
- The rule and associated standard 2 can be read to imply that poles and support structures (which could include for electricity or telecommunications purposes) are permitted provided the height and diameter are complied with. From the undergrounding policy clearly this is not the intention. Further, this standard overlaps with the same standard in rule 11A.1.12 which specifically provides for above ground lines in Rural areas, and in the minor upgrading/upgrading provisions in rule 11A.1.4.
- Standard 4 states that *unless otherwise provided for under Rule 11A.1.6 any network utility¹⁹ must not be located in the following areas identified on the Planning maps*. As well as concerns regarding the extent of restriction on some utilities in some of the identified areas, there are discrepancies between the areas excluded in the generic rule, and specific rules. This is highlighted in relation to the provision for cabinets in the table below:

Rule 11A.1.5 any new network utility except..	Rule 11A.1.10 Cabinets
<u>Identified areas excluded</u> Historic Heritage Outstanding natural landscape Ecological site Well defined fault avoidance Well defined extension fault avoidance area Open space (conservation and scenic zone) River corridor, stream corridor and overflow path.	<u>Identified areas excluded</u> Historic Heritage Outstanding natural landscape Ecological site

While it is acknowledged that there are some identified areas in which it would not be appropriate to locate certain telecommunications, in my opinion, the exclusions should be tailored to the actual and potential effects of the activity, rather than being applied generically to all network utilities under Rule 11A.1.5.

¹⁹ My underling for emphasis.

- 5.26 To resolve these matters following amendments are recommended to rule 11A.1.5:

Relief Sought:

EITHER

Delete rule 11A.1.5 as it applies to new telecommunication and radiocommunication network utilities;

OR

Delete standards 1 and 2; and amend the wording of standard 4 as follows:

*Unless otherwise provided for under **permitted activity** Rules 11A.1.6, **11A.1.8, 11A.1.9, 11A.1.10, 11A.1.12** any **new** network utility must not be located...*

OR

Such other relief to like effect.

Rule 11A.1.6 Undergrounding (new rule)

442.43, 442.62, 442.64 Chorus, 444.37, 444.15, 444.56, 444.57, 444.59 Spark, FS229 Ken Moselen (support), FS106 Quicksilver Enterprises Limited (support - Spark only) Paragraphs 443, 448, 511-512, 515, 518-520 of the s42A report

- 5.27 Chorus and Spark submitted seeking clear provisions for underground lines as a permitted activity in legal road with no restrictions and outside legal road as permitted in all areas except on identified ecological, heritage and conservation sites (which would default to restricted discretionary activity). The reporting officer states²⁰ that *There is no need for a rule to confirm that underground lines are permitted in legal road in general as this is already provided for within other rules in the Chapter*. However, the officer does consider there is a need for a new rule allowing undergrounding as a permitted activity within ponding areas, overflow paths and residual overflow paths which “*acknowledges that underground infrastructure will not have any adverse effects in some areas such as those related to flood hazards.*”²¹

- 5.28 I am unsure which rules the reporting officer is relying on as providing for undergrounding as a permitted activity in legal road. Further, I consider that the inclusion of a specific permitted activity rule for undergrounding within ponding

²⁰ At paragraph 515 of the s42A report.

²¹ At paragraph 443 of the s42A report.

areas, overflow paths or residual overflow paths through new rule 11A.1.6, suggests that undergrounding in other areas is not permitted.²²

- 5.29 Limited provision for undergrounding, if it were to occur in this manner, would be contrary to Policy 11.13 (which clearly supports this activity) and ‘out of step’ with the permitted provision for undergrounding commonly included in other District Plans. Undergrounding activities, both to install fibre and underground telecommunication cabinets are a common occurrence with no visual effect. Any potential effects relating to earthworks or indigenous vegetation clearance (including within outstanding natural landscapes, ecological sites, geological features, and areas of outstanding natural character) are already addressed in the rules in Chapter 3 (which apply through rule 11A.0).
- 5.30 As well as broadening the scope of rule 11A.1.6 so that it permits undergrounding of cabinets and lines anywhere (subject to the standards in Chapter 3), I recommend that no additional standards be applied. As previously discussed the application of Rule 11A.1.2 as a standard is unnecessary as it is already a given. Further, in the absence of any adverse visual effects, I consider it unnecessary to apply the restrictions on cabinets in rule 11A.1.10 regarding size, height and boundary setbacks (noting that the earthworks provisions in Chapter 3 already apply).

Relief Sought:

EITHER

Amend permitted activity rule 11A.1.6 as follows:

~~*New underground telecommunications and radiocommunications located within any ponding area, overflow path or residual overflow path.*~~ ***New underground telecommunication and radiocommunication facilities.***

Note: Compliance with the clearance distances

AND

Delete permitted activity standard 1.

OR

Such other relief to like effect.

²² In ponding areas, overflow paths and residual overflow paths.

Rule 11A.1.12 Overhead Lines in the Rural zone (new rule)

442.62, 442.64 Chorus, 444.57, 444.56 Spark, FS202 Ken Moselen (support).
Paragraphs 511-512, 514, 518-520 of the s42A report.

- 5.31 I support the proposed provision for new, extensions to existing and additional above ground lines in the Rural zones for the reasons provided in the s42A report. Permitted provision for overhead lines in Rural zones is commonly found in district plans and overhead lines are a common sight in Rural areas around the country. However, while supporting the intent of the new rule, several changes are proposed to the content and structure.
- 5.32 Firstly, I consider that standard 2 should be deleted in its entirety, as the items are either not relevant to overhead lines, for example reference to the rules 11A.1.9 (Building mounted antennas) and 11A.1.10 (Cabinets); or unnecessary in the case of the reference to rule 11A.1.2 (for the reasons previously given).
- 5.33 The second area of amendments proposed is in relation to standard 3. The exclusions in this standard include within a “*special amenity landscape*”. As previously noted, I understand from the Natural Environment – General, Landscapes and Earthworks s42A that the rules for Significant Amenity Landscapes (which include working areas) are to be deleted from Chapter 3. This is on the basis the RMA gives no direction to their protection, and protection is also not supported by the Operative Regional Policy Statement²³. For the same reason, I consider that the rules for network utilities within the special amenity landscapes should be deleted from Chapter 11.
- 5.34 Since the PDP was notified an exclusion for areas of “*high natural character*” (as well as outstanding natural character) has been included into some of the network utility provisions, including standard 3 (as well as into Policy 11.9). I am unclear from the officer’s report what the scope and justification for this is. It is noteworthy that in the amended version of Chapter 3 ‘Natural Environment’ that plantation forestry appears to be the only activity that triggers a resource consent (discretionary activity²⁴) in areas of high natural character, with the permitted rule for “*Buildings*” in this chapter²⁵ being specific to “*outstanding natural features and landscapes*” only.

²³ Paragraphs 573-575 of the Natural Environment – General, Landscapes and Earthworks S42A report.

²⁴ Rule 3A.4.8

²⁵ Rule 3A.1.8

Relief Sought:

EITHER

Amend the standards under rule 11A.1.12 as follows:

1. *Single-pole support structures **for electricity and telecommunication** and lines must have a height of 12m or less and a diameter of 300 millimetres or less; and*
2. ~~*Above ground lines must comply with any permitted activity standard applicable to that network utility under Rules 11A.1.2 (Radiofrequency or Electromagnetic Fields), 11A.1.9, 11A.1.10 and 11A.1.11 (cabinets) and*~~
3. *New above ground lines must not be located within an outstanding natural landscape, ecological site, geological site, special-amenity landscape, or area of outstanding or high natural character **or on a site with a historic heritage feature identified in Schedule 10.1 – Historic Heritage.***

OR

Such other relief to like effect.

Rule 11A.1.8 Freestanding Masts and associated Antennas (formerly Rule 11A.1.9)

442.44, 442.45, 442.46, 442.47, FS87, Chorus, 444.38, 444.39 444.40, FS88 Spark; FS229 Ken Moselen. Paragraphs 453, 457- 461, 464-469, 473, 475, 477-478 of the s42A report.

- 5.35 Chorus and Spark submitted seeking increases in the dimensions for masts and antenna in some zones; and to remove the restriction on masts under standard 1 in some hazard areas (this being overflow paths and residual overflow paths).
- 5.36 The requests for amendments to the dimensions of masts/antennas have, with one exception, been accepted in the s42A report. The submissions requested an increase in the horizontal diameter circle within which an antenna can be located to 5m within the Airport zone and District zone (Chorus 442.47 and Spark 444.40). This would enable a mast in the Airport zone of up to 25m high with a 5m horizontal diameter circle; and 20m high with 5m horizontal diameter circle in the District zone. The s42A report recommends that in the Airport zone the proposed 5m horizontal diameter circle be accepted on the basis that the visual effects will be minimal, citing as one of the reasons the separation

distance to residential areas²⁶. However, the s42A report is silent on the same request for the District zone.

- 5.37 In my view the same horizontal diameter circle is also appropriate in the District zone. This zone is the primary retail area for the district (also including office and community facilities) and it is generally well separated from existing residential areas. All three main telecommunication providers seek to cover similar areas, and whereas a few years ago co-location was a rarity, these days it is increasingly utilised. The 5m horizontal diameter requested in the Chorus and Spark submissions provides greater opportunities to co-site facilities on the same mast than the current 0.75m horizontal diameter circle. The ability to co-site generally translates into fewer masts with an overall visual benefit, as well as enabling a more efficient use of an existing resource.
- 5.38 As a general comment, since the Plan was notified four years ago there has been a significant increase in the dimensions sought by the telecommunication industry with respect to masts in Rural zones, than that provided for in the PDP. However, as outlined in the statement of Graeme McCarrison, the district plan provisions for masts in Rural areas nationwide will shortly be overtaken by the second generation NESTF, and this enable mast dimensions that will support the co-location of providers in Rural areas.²⁷
- 5.39 Amendments were also requested in the submissions to exclude overflow paths, or residual overflow paths from the restriction in standard 1. As proposed to be amended by the s42A report, the list of identified areas where masts and antennas cannot be located as a permitted activity is as follows:
- a) *an ecological site*
 - b) *a geological site*
 - c) *an outstanding natural landscape*
 - d) *a special amenity landscape*
 - e) *an area of outstanding or high natural character*
 - f) *a river corridor*
 - g) *a stream corridor*
 - h) *overflow path*
 - i) *residual overflow path*

²⁶ At paragraph 469 of the s42A report.

²⁷ PDP - 15m maximum height, 2m horizontal circle in which antennas have to be located, and extra 3m height for co-siting. Proposed NESTF amendments - 25m maximum height, 6m horizontal diameter circle in which antennas have to be located, and extra 5m height for co-siting.

- j) *a fault avoidance area*
- k) *a well defined fault avoidance area*
- l) *a well defined extension fault avoidance area; or*
- m) *historic heritage feature*

- 5.40 It is requested that item d) "*special amenity landscape*" be deleted, consistent with the deletion of all rules applying to this area in the Chapter 3 Natural Environment s42A report.
- 5.41 Further, deletion of k) "*a fault avoidance area*" is sought. Under the heading 'Fault Avoidance Area' on the Planning Maps there are five different categories of fault avoidance areas these being, Well Defined, Well Defined Extension, Distributed, Uncertain Constrained; and Uncertain Poorly Constrained. Only two of these (the Well Defined and Well Defined Extension), were actually excluded through rule 11A.1.8 as notified. Accordingly, I consider that the generic reference to 'Fault Avoidance area', which could be interpreted to mean all five categories, is out of scope and should similarly be deleted.
- 5.42 There is a discrepancy between the hazard areas excluded under rule 11A.1.8 standard 1 (which does not include ponding areas) and the restricted discretionary rule 3A.3.6 which requires a resource consent for new network utilities in any ponding area (as well as in an overflow path or residual overflow path). From a review of the Planning Maps the extent of the Kāpiti Coast urban area that is identified as ponding, overflow path or residual overflow paths is extensive, including areas of road corridor.
- 5.43 Whereas in the early days of New Zealand's mobile phone networks, a single facility could be located in an urban area providing coverage to a wide area, today the need for greater capacity to meet increased customer demands has translated into a requirement for more mobile phone facilities closer to where people work, live and play. From my experience in site selection studies for new mast locations, where possible hazard areas are avoided, but with the extensive areas of hazards in the urban area of Kāpiti, avoidance is unlikely to be practical in all cases.
- 5.44 Telecommunications are recognised as 'Essential Infrastructure' and a critical lifeline utility under the Civil Defence Emergency Management Act 2002. This means Chorus and Spark are already required under this legislation to plan for

and manage the range of emergency impacts. Further, the evidence of Graeme McCarrison²⁸ advises that the key to resilience in relation to telecommunications is not simply through design of a particular facility but is *through multiple networks (different providers offering alternative networks); multiple technologies (fixed fibre networks available alongside mobile networks); and networks constructed with resilience in mind (building redundancy into networks so that component failures have minimal impact.* He further notes²⁹ that the experience of the telecommunications industry is that it is “*extremely rare for customers to have no access to telecommunications when there is access to multiple technologies.*”

5.45 The reporting officer rejects the request to delete the restriction on overflow areas as “*masts in such areas may impede water flow in a flood hazard event as debris can become caught on masts*” but does not provide any supporting evidence. Freestanding masts are slim and circular in shape. In all the new build or upgrade projects that I have been involved in, the masts have been engineered for the physical conditions. I note in this respect the advice of Graeme McCarrison that there is no evidence of masts failing structurally during a flood event and he is not aware of any situations where the Spark network has been assessed by a Council as contributing to flooding or any other hazard event. For these reasons, I consider that the risk of debris on masts impeding water flow in a hazard event, as highlighted by the reporting officer, is overstated.

5.46 The issue of whether or not the second generation NESTF should add natural hazards to the list of special areas in Regulation 6 to which the District Plan rules should prevail was addressed through the recent review process, and this included input from a technical advisory group, as well as public submissions.³⁰ The outcome of that review is highlighted in the extract below³¹:

“...While there was support for this proposal, we found little evidence of the benefit from managing natural hazard zones in this way.

We consider that the processes already in place under legislation such as the

²⁸ Refer paragraph 8.14 of the evidence of Graeme McCarrison.

²⁹ Refer paragraph 8.17 of the evidence of Graeme McCarrison.

³⁰ The Technical Advisory Group included representatives from Local Government New Zealand, Councils, telecommunication providers and iwi.

³¹ Section 3.4, *Proposed amendments to the National Environmental Standards for Telecommunication Facilities 2008 – Recommendations for proposed amendments.* Ministry for the Environment 2015.

Building Act 2004 and industry practices that already require the appropriate placement of facilities in zones where there may be natural hazard risks are adequate for managing this risk.

Telecommunication operators generally avoid placing infrastructure in these areas where possible, due to costs associated with additional strengthening and hazard avoidance. However, if placement in these areas is needed to meet customer demand, industry works with information from councils to engineer a solution.

- 5.47 While restrictions on masts in some hazard areas have been accepted in terms of the scope of the Chorus/Spark submissions (i.e. in river and stream corridors, well defined fault, and well defined extension fault), for the reasons outlined above, I do not support expanding this further to include overflow areas, and also ponding and shallow surface flow areas (though rule 11A.3.6). There are already requirements on telecommunication providers and industry engineering requirements that deal with hazard risk, and in my view any additional benefit from an added resource consent process is questionable.
- 5.48 I consider that the provision for additional antennas on existing masts in the identified areas in standard 1 is awkwardly placed, and unnecessary as it overlaps with the provision for additional antennas on existing masts as 'upgrading' under rule 11A.1.4. For this reason, I recommend that this part of standard 1 be deleted, with the placement of additional antennas on existing masts in these areas provided through the upgrading rule 11A.1.4.

EITHER

Amend rule 11A.1.8 as follows:

*Freestanding masts **(including antenna and support structures)** used for telecommunication, radio communication and broadcasting purposes by network utility operators ~~for network utility purposes~~*

Standards

1. *Masts (including antenna and support structures) must not be located within:...*
 - ~~d) a special amenity landscape~~
 - e) *an area of outstanding ~~or high~~ natural character*
 - ~~h) overflow path~~

~~i) residual overflow path~~

~~j) a fault avoidance area~~

m) a historic heritage feature **identified in Schedule 10.1 Historic Heritage**

~~Additional antenna on existing masts in these areas are permitted subject to standards 2-5 below.~~

OR

Such other relief to like effect.

Rule 11A.1.10 Cabinets (formerly Rule 11A.1.11)

442.54 & 442.55 Chorus, 444.48 & 444.49 Spark, FS220 Ken Moselen (support). Paragraphs 493-495, 497-499, 501

- 5.49 The Chorus and Spark submissions requested one set of dimensions for cabinets (whether in road or outside road), this being 3m high and a gross floor area of 8m². The reporting officer accepts these dimensions in relation to cabinets outside road³² and I support this.
- 5.50 Chorus and Spark do not wish to pursue the relief requested with respect to telecommunication cabinets in road, noting that cabinets in road are already controlled under the NESTF. However, I note that while the reporting officer recommends that the Two Degrees submission 17.10, requesting an increase in the cabinet dimensions in road to 2m high and a footprint of 3m² is accepted this has not been transferred into amended track change version of the rules.³³
- 5.51 Chorus and Spark submitted seeking a 1m setback from a boundary, other than a road. The 2m setback recommended by the reporting officer is acceptable, and is the same as recently adopted into other district plans in the Wellington area e.g. into the Porirua City District Plan through Plan Change 16.
- 5.52 Notwithstanding that the above matters are resolved, I recommend that the Panel consider several changes to the drafting of rule 11A.1.10. Firstly, I recommend that the focus of the rule should be 'Aboveground cabinets', instead of 'Cabinets'. This is to ensure that there is no overlap with rule 11A.1.6 (as recommend to be amended through changes in this evidence), which would apply to underground cabinets.

³² At paragraph 497 of the s42A report.

³³ At paragraph 498 of the s42A report

- 5.53 Secondly, I consider that standard 1 should be deleted as it is already addressed by rule 11A.1.2; and as telecommunication cabinets do not emit radiofrequency, the accompanying 'Note' to the Standards is unnecessary.
- 5.54 Thirdly, I recommend that a permitted standard be included into rule 11A.1.10 which requires compliance with the noise standards for the zone. Rule 11A.3.5 specifies that any new network utility that does not meet the noise requirements for the underlying zone is a restricted discretionary activity, but there is no permitted standard that leads to this rule.
- 5.55 Lastly, a minor clarification to make it clear that a cabinet 'shall not exceed' a maximum height of, rather than 'must have' a maximum height is recommended. This is to clarify that cabinets of any height up to this maximum limit are permitted.

Relief Sought:

EITHER

Amend rule 11A.1.10 as follows:

Aboveground ~~G~~cabinets located in all zones...

Standards

2. All cabinets located within a road ~~must have~~ **shall not exceed** a maximum height of ~~4.2~~ **2** metres and a maximum footprint of ~~4.4~~ **3**m²; and

3. All cabinets not located within a road ~~must have~~ **shall not exceed** a maximum height of 3m and a maximum footprint of 8m²; and..

5. Noise associated with the activity shall not exceed the permitted activity noise standard(s) within the zone in which the activity is located.

~~**Note:** The Resource Management (National Environmental Standard for Telecommunication Facilities) Regulations 2008 applies to the installation and operation of telecommunication facilities within roads.~~

OR

Such other relief to like effect.

Rule 11A.1.12 Network Utilities within Buildings

442.60 Chorus, 444.54 Spark, FS220 Ken Moselen (support).

Paragraphs 504-506

- 5.56 The Chorus and Spark submissions did not oppose the inclusion of a permitted rule providing for “*Any network utility in an enclosed building*”. However, the submissions requested that the standards specified be deleted and replaced with a requirement to comply with the noise standards for the relevant zone. The reporting officer accepts that the standards in this rule are unreasonably restrictive, but goes on to recommend that the rule as a whole be deleted on the basis that “*it is hard to understand what environmental effects this rule is trying to control*”.
- 5.57 I disagree with the recommendation to delete this rule, and note that a similar rule has been adopted recently into other plans in the Wellington region.³⁴ Telecommunication providers do have equipment in existing buildings, most notably in exchange buildings, and unless they are the requiring authority for the work are reliant on the district plan provisions. From my experience, the only potential effect from this activity is potential noise emissions (generally associated with air conditioning units required to keep equipment cool). Accordingly, to provide certainty that this activity is permitted and to minimise the possibility of noise nuisance, I recommend that the rule be retained subject to compliance with the noise limits for the relevant zone.

Relief Sought:

EITHER

Insert the following rule (replacing deleted rule 11A.1.12):

Any network utility enclosed within a building.

Standards

Noise associated with the activity shall not exceed the permitted activity noise standard(s) within the zone in which the activity is located.

AND

Include a default of restricted discretionary activity under rule 11A.3.5 when the noise permitted activity standard cannot be complied with.

OR

Such other relief to like effect.

³⁴ For example into the Porirua City Plan through Plan Change 16.

Default Status for Upgrading and Minor Upgrading (Rule 11A.3.1)

442.42 Chorus, 444.35, 444.36 Spark. Paragraphs 369, 375, 526, 529

- 5.58 The submitters requested a default of restricted discretionary activity for activities provided in permitted rule 11A.1.4 (as upgrading or minor upgrading) that are unable to comply with the permitted activity standards. This is provided for in rule 11A.3.1.
- 5.59 However, as currently worded this rule provides as a discretionary activity for “*the upgrading, including replacement of an existing network utility that is not permitted under Rule 11A.1.4*”. This is inconsistent with permitted rule 11A.1.4 - which also provides for ‘minor upgrading’ of some activities, and it is noted that there is no equivalent default rule for ‘minor upgrading’ elsewhere. Further, it conflicts with permitted rule 11A.1.3 which provides for ‘replacement’ of any existing network utility as a permitted activity - with no applicable standards

Relief Sought:

EITHER

Amend rule 11A.3.1 as follows:

*The **minor upgrading**, or upgrading, ~~including replacement~~, of an existing network utility that is not a permitted activity under Rule 11A.1.4.*

Standards

AND

Delete standard 1³⁵.

OR

Such other relief to like effect.

Undergrounding in Flood Hazard Areas (Rule 11A.3.6 b))

442.26 Chorus, 444.15 Spark. Paragraphs 576, 580, 582

- 5.60 As recommended by the reporting officer, earthworks for new underground network utilities located within any ponding area, shallow surface flow area, overflow path, or residual overflow path are a restricted discretionary activity under rule 11A.3.6 b) when rule 9B.1.4A is not complied with. There is no rule numbered 9B.1.4A in the amended version of Chapter 9 on the Council’s

³⁵ Standard 1 is unnecessary as rule 11A.1.2 already applies.

website, and it is assumed that the reference is intended to be to rule 9B.1.4 instead.

- 5.61 As previously noted, large areas within Kāpiti are identified within these flood hazard areas (including areas of road) on the Planning Maps. As set out in my evidence to Chapter 3 Natural Environment, earthworks to provide underground facilities such as lines and underground cabinet are a common occurrence, and will be required in flood hazard areas service customers located in these areas. Typically, earthworks include underground drilling to a 1 m depth, trenching (generally between 0.8m and 1.4m in depth), and the installation of underground cabinets up to a depth of 1.5m measured vertically. As well as limited in extent, earthworks for these activities are of short duration and reinstatement is commonly a requirement of the contract documentation. Where undergrounding occurs in road the earthworks are already controlled by the road controlling authority under the Utilities Access Act 2010. For these reasons, I consider that any actual and potential effect relating to flood hazard from these activities is minimal.
- 5.62 The standards in rule 9B.1.4 will trigger the need for multiple resource consents within these areas (for example 0.5m vertical restriction in an overflow path). Further, for the same reasons as highlighted in relation to the earthworks rules in Chapter 3, in my opinion, there are significant issues with the workability of the rule and the logistics in determining compliance, when volume limits are measured over a 10 year period.
- 5.63 In my opinion, there is also a disconnect between the application of restricted discretionary rule 11A.3.6 (which requires a consent for underground works in overflow areas that do not comply with rule 9B.1.4) and the acknowledgement at paragraph 242 of the s42A report that *“underground works would not have any effect on some of the hazards and features in the policy”* (referring to Policy 11.9). To clarify this, the reporting officer recommends an amendment to Policy 11.9, so that the part of the policy which deals with flood hazards is specific to *“aboveground”* new works.
- 5.64 For these reasons, I recommend that the application of rule 11A.3.6 b) to undergrounding associated with telecommunication and radiocommunication facilities in ponding areas, shallow surface flow areas, overflow path or residual

overflow paths be deleted. I note that the earthworks rules under Chapter 3 Natural Environment will apply in these areas.

Relief Sought:

EITHER

Delete the application of rule 11A.3.6 to underground telecommunications and radiocommunications.

OR

Such other relief to like effect.

Default Status for Overhead Lines (Rules 11A.3.3 and 11A.4.2)

- 5.65 New rule 11A.1.12 provides as a permitted activity for new, and extensions to, existing and additional above ground lines in the Rural zone. The Chorus and Spark submissions requested a restricted discretionary default if the permitted standards for the support structure (dimensions) could not be met; and discretionary activity status if located in any identified areas excluded under the permitted rule, or in any other zone.
- 5.66 New rule 11A.3.3 provides as restricted discretionary activity for extensions to new above ground lines in road. However, as worded the rule does not provide a default for new lines in Rural areas that cannot meet the permitted standard for the support structure. As a consequence, non-compliance with the support structure dimensions in Rural areas would require resource consent for a full discretionary activity – which is considered unreasonable.
- 5.67 I consider that the exclusions in standard 2 of restricted discretionary rule 11A.3.3 are unnecessary, given that the rule is specific to aboveground line extensions in a road. For instance, it is highly unlikely that there are any ecological or outstanding landscapes in legal road. In addition, I consider that the restrictions relating to hazard areas (which would apply as hazard areas extend over the road corridor in places on the Planning Maps) are not warranted in terms of the potential risk and effects.³⁶ Further, in relation to proposed flood hazard area restrictions in standard 2, there is a duplication with Rule 11A.3.6 which requires a restricted discretionary resource consent for any new above ground network utilities within overflow paths.

³⁶ For the same reasons as discussed in relation to the provision of masts in paragraphs 5.42 – 5.47 of this evidence.

- 5.68 Changes are recommended to rule 11A.3.3 to rectify these issues and provide consistency with amendments requested elsewhere.

Relief Sought:

EITHER

Amend rule 11A.3.3 as follows:

New above ground lines or extensions to existing above ground lines in the Rural zone that do not meet the permitted activity standards in Rule 11A.1.12, and E ~~extensions to existing above ground electricity lines or telecommunication distribution and transmission lines, where the existing distribution or transmission line is overhead and is located within a road~~ **in all other zones.**

AND

Delete standards 1 and 2;

AND

Delete the application of rule 11A.3.6 to above ground telecommunications and radiocommunications.

OR

Such other relief to like effect.

- 5.69 Rule 11A.4.2 is the 'catch all' default for aboveground lines providing as a discretionary activity for "*new above ground electricity or telecommunication lines except as permitted under Rule 11A.1.12.*" This rule also needs acknowledge that there are aboveground lines provided as a restricted discretionary activity under rule 11A.3.3 – as discussed above.

- 5.70 As drafted, I consider the 'catch all' discretionary activity rule 11A.4.3 for identified areas is inconsistent with, and confusing, in relation to the drafting of other provisions. Further, in my opinion, there is no need to apply this additional rule in relation to this activity, as any new above ground line outside the Rural zone already requires resource consent for a discretionary activity under rule 11A.4.2.

Relief Sought:

EITHER

Amend rule 11A.4.3 as follows:

New above ground ~~electricity or telecommunication lines, except as~~ **provided permitted** ~~under Rule 11A.1.12~~ **or Rule 11A.3.3.**

AND

Delete standards 1 and 2;

AND

Make all necessary changes to ensure that rule 11A.4.3 does not apply to aboveground telecommunication lines.

OR

Such other relief to like effect.

Default Status for Aboveground Cabinets

442.57, 442.58 Chorus, 444.51 444.52 Spark.

Paragraphs 582 – 583, 594, 595 of the s42A report

- 5.71 The submitters requested a default status of restricted discretionary activity for a cabinet outside road that cannot comply with the permitted activity standards; and a discretionary activity default for a cabinet located on a site that contains a historic heritage item, or is in an outstanding landscape or ecological site.
- 5.72 I generally support rule 11A.3.2 as amended in the s42A report. However, I recommend that this rule be narrowed to ‘aboveground cabinets’ (consistent with other changes requested elsewhere), so that underground cabinets can be dealt with under the separate undergrounding rule. I also recommend that the standard and accompanying ‘Note’ be deleted as unnecessary, for the same reasons previously given for this. In particular, the requirement in standard 1 to comply with the permitted activity standards in rule 11A.1.11 (cabinets) effectively defeats the purpose of the rule and needs to be removed.

Relief Sought:

EITHER

Amend rule 11A.3.2 as follows:

*Any new **aboveground** cabinet ...*

AND

Delete standard 1 and the accompanying Note.

OR

Such other relief to like effect.

- 5.73 Following on from the permitted rule (which excludes cabinets in outstanding landscape and ecological sites and on heritage sites), and the restricted

discretionary rule which covers instances where the permitted activity standards cannot be met, my expectation is the discretionary activity rule would deal with cabinets in these three specified areas. However, potentially there are three discretionary rules that could apply to cabinets as follows:

- Rule 11A.4.5 (discretionary activity) – any new cabinet and any upgrades to existing cabinet that are not permitted under rules 11A.1.11 or 11A.3.2. The provision for upgrades of cabinets as a discretionary activity is onerous and conflicts with the provision for upgrading of cabinets under permitted rule 11A.1.4. Further, this rule also applies to transformers, substations and switching stations – which are clearly not addressed under rules 11A.1.11 or 11A.3.2, and are of a significantly different scale to a typical telecommunication cabinet (which is generally less than 2m high and 2m² in area);
- Rule 11A.3.6 a) (restricted discretionary activity) – any above ground new utilities within a flood hazard area; and
- Rule 11A.4.3 (discretionary activity) – above ground cabinets in other identified areas, which goes beyond the areas excluded from the permitted rule.

5.74 I do not agree that there is any justification for resource consents to install small telecommunication cabinets to the extent that could occur through these rules, in terms of their adverse effects. I would support the addition of exclusions in the stream and river corridor and in the open space (conservation and scenic zones), however, these would need to be excluded in the first instance through the permitted activity rule.

Relief Sought:

EITHER

Amend rule 11A.4.5 as follows:

*Any new **aboveground** cabinet ~~and any upgrades to existing cabinets, including transformers, substations and switching stations distributing electricity and ancillary buildings that are~~ **is** not a permitted activity under Rule 11A.1.11 or Rule 11A.3.2.*

AND

Delete the application of rules 11A.3.6 a) and 11A.4.3 to telecommunication cabinets.

OR

Such other relief to like effect.

Default Status for Freestanding Masts and Building Mounted Antennas

442.11, 442.44 Chorus, 444.9, 444.51 444.25 Spark; FS229 Ken Moselen (support). Paragraphs 547-551, 556, 563-564, 566-568, 570-572 of the s42A report

- 5.75 Similar to the default sought for other telecommunication facilities, in relation to masts and building mounted antennas the Chorus and Spark submissions requested a default of restricted discretionary activity if one or more of the permitted standards could not be met; and a default of discretionary activity if the mast is located in one of the areas excluded in the permitted activity rule.
- 5.76 Rule 11A.3.4 provides the restricted discretionary default as sought. However, several changes are recommended to the rule. This includes the deletion of the link between masts and antennas with the rules for cabinets under 11A.1.10. In my opinion, this is unnecessary as cabinets are separately provided for in other rules - and this is commonly the case in district plans.
- 5.77 There are also discrepancies between the identified areas excluded in the permitted rule 11A.1.8 (see standard 1) for freestanding masts, and the exclusions in the restricted discretionary rule 11A.3.4 standard 2. This issue also occurs in relation to the flow through of exclusions from permitted to restricted discretionary activity for antennas attached to buildings. In my view it is not necessary to repeat the exclusions within standards 2 and 3 under rule 11A.3.4, if the following amendments to the rule are adopted.

Relief Sought:

EITHER

Amend rule 11A.3.4 as follows:

Any

- *freestanding mast, with or without*

*that does not comply with one or more of the permitted activity standards under rules 11A.1.7, 11A.1.8 **standards 2-5 and** 11A.1.9 **standards 2-4 and** 11A.1.10.*

Delete all the standards in rule 11A.3.4 as they are unnecessary.

OR

Such other relief to like effect.

- 5.78 I recommend that a new default provision as a discretionary activity be provided in relation to masts and building mounted to be located in the identified areas that have been excluded under the permitted activity rules. In particular, for the reasons provided elsewhere in this evidence and that of Graeme McCarrison, I do not consider that there is any need to extend the excluded hazard areas beyond that already allowed for in the Chorus and Spark submissions.
- 5.79 I disagree with the provision for network utility structures over 13m in height within an outstanding natural landscape as a non-complying activity under Rule 11A.5.2 for the reasons highlighted in the Chorus and Spark submissions. I consider that non-complying activity status as a default is inappropriate for any essential work. Further, I note that the approach taken to utilities in these areas is inconsistent with that of other buildings and structures (that could potentially be of greater bulk) which have a discretionary activity default.

Relief Sought:

EITHER

Provide a new discretionary activity rule for freestanding masts (and associated antennas) and for antennas attached to a building that cannot comply with permitted standard 1 in rules 11A.1.8 and 11A.1.9.

AND

Delete the application of rules 11A.3.6 a) and 11A.4.3 to telecommunication masts and antennas.

AND

Delete rule 11A.5.2.

OR

Such other relief to like effect.

Definition of Telecommunications and Radiocommunications

- 5.80 The Chorus and Spark submissions requested amendments to the definition of 'Building' to exclude telecommunications as defined in section 5 of the Telecommunications Act 2001 and radiocommunications as defined in section 2(1) of the Radiocommunications Act. To support the other amendments requested throughout this evidence, I recommend that separate definitions for these activities be directly inserted into section 1.4 Definitions as follows:

Relief Sought:

EITHER

Insert new definitions for “Telecommunications and Radiocommunications into section 1.4 Definitions as follows:

Telecommunications means the same as defined in section 5 of the Telecommunications Act 2001

Radio communications means the same as defined in section 2 (1) of the Radiocommunications Act 1989.

OR

Such other relief to like effect.

Louise Miles

1 August 2016

