

BEFORE THE WAIKATO DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan:
Hearing 27: Natural Hazards

Statement of evidence of **CHRIS HORNE** on behalf of Spark New Zealand Trading Limited in
relation to Natural Hazards (Submitter 2040, further submitter FS3002)

16 April 2021

INCITE
Resource and Environmental Management
PO Box 3082
Auckland 1140
Ph: 09 369 1465
Fax: 09 369 1467



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. 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 Spark New Zealand Trading Limited (Spark), to provide evidence as an independent planner in regard to their submissions on Stage 2 Natural Hazards Of the Proposed Waikato District Plan (Proposed Plan).
3. I have over 25 years' professional experience in the field of resource management. During this time I have assisted a number of telecommunications network providers as a consultant planner including Telecom New Zealand Limited and its two successor companies Chorus New Zealand Limited (Chorus) and Spark, Vodafone, Two Degrees Mobile Limited, Teamtalk Limited (recently rebranded as Vital), and New Zealand Police Information and Technology Group (Police Radio Network). Work I have assisted these organisations with has included site selection studies, project consenting, designations, and assistance in responding to resource management plans and reviews. 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 of the 2016 regulations now in force: *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* ("NESTF").
4. I was involved in a review of the draft Stage 2 natural hazards provisions and assisted with comments on behalf of several telecommunications companies including Spark. I also assisted Spark with preparing their submissions and further submissions on Stage 2 Natural Hazards and have previously provided planning evidence on behalf of Spark, Chorus and Vodafone New Zealand Limited (Vodafone) as part of the Topic 22 infrastructure hearing.
5. 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

6. The scope of this evidence relates to Spark’s submissions and further submissions on Chapter 15 Natural Hazards notified as Stage 2 of the Proposed Plan.

7. In the main, Spark’s submissions have either been recommended to be accepted, accepted in part with a satisfactory outcome recommended in the s42A report, or in some cases where rejected but the changes recommended in response to other submissions are a satisfactory outcome. Accordingly, this evidence only addresses two discrete matters relating to the status of earthworks in hazard areas where the rules for that hazard area are silent, and upgrading of telecommunications infrastructure in the High Risk Coastal Hazard Areas. These matters are relevant to the following s42A reports:
 - 27B Objectives, Policies and General Submission; and
 - 27D Coastal Hazards

8. The structure of my evidence is as follows:
 - Overview of submissions in regard to telecommunications infrastructure in natural hazard areas; and
 - Discussion of relief sought on two outstanding matters by topic including comment on the relevant s42A report recommendations.

9. As set out in the evidence to follow, the specific changes still being sought over and above the recommendations already included in the various s42A reports are:

Plan Provision	Requested Relief
Rule 15.3 How to use and interpret these rules (Report 27B)	<p>Amend Rule 15.3 by adding a new clause as follows:</p> <p><i>(e) Where the rules table for any particular hazard area does not include rules for earthworks, then only relevant zone or district wide earthworks rules apply.</i></p>

<p>15.9 High Risk Coastal Hazard (Erosion) Area (Rule 15.9.1 P2) and 15.10 High Risk Coastal Hazard (Inundation) Area (Rule 15.10.1 P2) (Report 27D)</p>	<p>Amend Rules 15.9.1 P2 and 15.10.1 P2 in line with the recommendation in Report 27C for the High Risk Flood Area (Rule 15.5.1 P1) as follows:</p> <p>1.9 Rule 15.5.1 P1</p> <table border="1" data-bbox="821 427 1386 566"> <thead> <tr> <th data-bbox="821 427 866 454">Activity</th> <th data-bbox="866 427 1163 454"></th> <th data-bbox="1163 427 1386 454">Activity-specific conditions</th> </tr> </thead> <tbody> <tr> <td data-bbox="821 454 866 566">P1</td> <td data-bbox="866 454 1163 566"> 1. Repair, maintenance or minor upgrading of existing utilities. 2. New-Construction, replacement or upgrading of telecommunication lines, poles, cabinets and masts/poles supporting antennas. </td> <td data-bbox="1163 454 1386 566">Nil</td> </tr> </tbody> </table>	Activity		Activity-specific conditions	P1	1. Repair, maintenance or minor upgrading of existing utilities. 2. New-Construction, replacement or upgrading of telecommunication lines, poles, cabinets and masts/poles supporting antennas.	Nil
Activity		Activity-specific conditions					
P1	1. Repair, maintenance or minor upgrading of existing utilities. 2. New-Construction, replacement or upgrading of telecommunication lines, poles, cabinets and masts/poles supporting antennas.	Nil					

Overview of Submissions

10. Typical telecommunications equipment that may need to be installed in natural hazards areas to serve communities include telecommunications lines and support poles, equipment cabinets, and poles supporting antennas. Linear infrastructure such as lines may need to traverse a hazard area to reach a customer group. Place based telecommunications equipment may have functional and operational requirements to be located in hazard areas (e.g. a wireless telecommunications facility needing to be close to a customer group to provide services such as fixed wireless broadband).
11. As set out in paragraphs 15-21 of my evidence in chief on Topic 22 Infrastructure, much of the network equipment deployed by telecommunications companies is regulated by the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* (NESTF) which came into force on 1 January 2017.
12. Under Regulation 57 of the NESTF, district plan rules in regard to natural hazard areas are specifically disapplied following a consideration of the risk profile of this type of equipment in making the regulations. Provided hazard areas are mapped in district plans, telecommunications providers can make decisions around route or site selection and any mitigation. For example, I have been involved in wireless telecommunications facilities in flood prone areas where the infrastructure provider elected to provide the radio equipment cabinet on an elevated plinth to reduce risk of water damage to radio equipment in a flood event. Spark's view is that telecommunications companies should be able to make their own decisions around the siting of their infrastructure rather than needing to potentially seek resource consents for such. This approach is reflected in Regulation 57 of the NESTF.

13. Rule 15.3 provides guidance on how to use and interpret the rules in Chapter 15. 15.3(c)(i) confirms the rules in this chapter do not apply to activities regulated under the NESTF as follows:

(c) The rules in this chapter do not apply to:

- (i) any activity which is a regulated activity under the National Environmental Standards for Telecommunication Facilities 2016 (NESTF);

14. Whilst this would provide an exemption for much of the typical infrastructure components deployed, there are some notable exceptions. From Spark's perspective, while poles and attached antennas (including ancillary earthworks) are regulated in rural zones¹ and as such not subject to the chapter 15 rules, equivalent equipment in other zones are not regulated and as such would be subject to the Chapter 15 Rules. Further, whilst poles and antennas in roads are regulated where within 100m of another pole in road reserve (e.g. streetlight, electricity poles etc), they are not regulated where not within 100m of an existing pole). From a broader telecommunications network perspective, new overhead lines and support poles are also not regulated (attaching lines to existing poles and customer connections are regulated). Accordingly, some equipment will still be subject to the Chapter 15 rules.
15. The basis for Spark's submissions and further submission was to ensure the rules framework does not unnecessarily require resource consent for lines, cabinets and poles/attached antennas, noting that in many instances the equipment will be regulated under the NESTF and exempt, but not in other cases. The risk profile of a pole for example in a natural hazard area is the same be it in a rural zone or road (within 100m of another poles), or in other locations.
16. In the main, the rules framework as notified and/or recommended in the s42A reports has addressed this with only some residual discrete areas where Spark still requests further amendments are made.

Status of Earthworks in Chapter 15 Rules

17. Some of the hazard overlay rules include specific rules for earthworks, whilst others are silent. Spark submission 2040.03 sought that the explanatory text in Rule 15.3 be amended to provide better clarity that where hazard rules are silent on earthworks,

¹ Regulation 34 NESTF

that they are not regulated in that particular hazard area. My interpretation is that where the rules are silent, earthworks are not regulated. However, this uncertainty appears to have resulted in a number of other submitters seeking specific earthworks enabling rules, many of which Spark made further submissions in opposition to preferring that these sections remained silent on earthworks on the basis that they were not specifically regulated in those hazard overlays.

18. The specific amendment sought in Spark's submission 2040.3 was:

e) Where the rules table for any particular hazard area does not include rules for earthworks, then only relevant zone or district wide earthworks rules apply.

19. The recommendation in s42A Report 27B is to reject Spark's submission on the basis that the Proposed Plan already includes default rules to clarify the status of earthworks where not permitted in the activity specific tables². The example given in the report is the rules relating to earthworks in residential zones. However, I note that telecommunications equipment including ancillary earthworks is controlled by Chapter 14 and not the zone rules. I note that in paragraph 295 of Report 27C on flood hazards in regard to Spark further submission FS3002.1, the reporting officer agrees with me that earthworks are not regulated in the High Risk Flood Area (on the basis the rules are silent on earthworks).
20. For the avoidance of any future interpretation issues, in my opinion the additional note (e) or a note of like effect should be added to Rule 15.3 such that it is clear that where the hazard rules are silent on earthworks, they are not regulated in that hazard overlay area over and above any relevant zone or district wide rules for earthworks that may already apply.

Upgrading of Telecommunications Infrastructure in High Risk Coastal Hazard Areas

21. The following rule is included in 15.5 High Risk Flood Area (15.5.1 P1), 15.9 High Risk Coastal Hazard (Erosion) Area (15.9.1 P2) and 15.10 High Risk Coastal Hazard (Inundation) Area (15.10.1 P2) – High Risk Floor Area example shown:

² Paragraphs 342-344 s542A Report 27B

Activity		Activity-specific conditions
P1	(1) Repair, maintenance or <u>minor upgrading</u> of existing utilities. (2) New telecommunication lines, poles, cabinets and masts/ poles supporting antennas.	Nil

22. As shown, in these hazard areas, *minor upgrading* of all existing utilities, and new telecommunications lines, poles, cabinets and masts/poles supporting antennas are provided for as a permitted activity with no standards.
23. As minor upgrading is a defined term and includes set parameters, there is a gap here in that new telecommunications equipment is allowed, but upgrading of telecommunications equipment that exceeds the terms of minor upgrading is not provided for. Logically, upgrading of existing telecommunications equipment should have the same status as new telecommunications equipment.
24. The same matter arises in the policies where Policy 15.2.1.4 covers new infrastructure and utilities whilst Policy 15.2.1.5 deals with existing infrastructure including minor upgrading. Therefore, there is a policy gap in regard to upgrading that falls outside minor upgrading. Spark submission 2040.01 to address this policy gap by ensuring Policy 15.2.1.4 covers both new and upgrading (to the extent it is not minor upgrading) of infrastructure and utilities is recommended to be accepted in Report 27B³.
25. In regard to the rules as noted above, Spark sought that Cause 2 of the rule be amended to cater for the full ambit of telecommunications works relating to the equipment within the scope of the rule as follows:

Operation, construction, replacement, repair, maintenance, minor upgrading or upgrading of *New—telecommunication lines, poles, cabinets and masts/ poles supporting antennas.*

³ Paragraph 232, s42A Report 27B

26. The reporting officer of Report 27C recommends that submission 2040.05 be accepted in regard to the High Risk Flood Area. The recommended text amendments are different but achieve the same outcome as follows:

1.9 Rule 15.5.1 P1

Activity	Activity-specific conditions
P1	1. <u>Repair, maintenance or minor upgrading of existing utilities.</u> 2. New-Construction, replacement or upgrading of ¹² <u>telecommunication lines, poles, cabinets and masts/poles supporting antennas.</u> 3. Construction, replacement or upgrading of electricity lines, poles, cabinets, and supporting structures. ¹³
	Nil

27. Repair, maintenance and minor upgrading of existing telecommunications is not included in Clause 2 but is still covered under Clause 1. Clause 3 is a recommended change in relation to other submissions and not relevant to Spark's submissions.
28. In my opinion the proposed change to Clause 2 of 15.5.1 P1 is appropriate and should be adopted.
29. However, the reporting officer for Report 27D Coastal Hazards takes a different approach and recommends that Spark submissions 2040.09 and 2040.10 seeking exactly the same amendment in two coastal hazard overlays be rejected. In paragraph 146 of Report 27D the reporting officer expresses a concern that the requested changes by Spark (and another submission by WEL Networks) would effectively introduce a provision to permit all activities associated with existing utilities and construction of new network utilities and all earthworks associated with these activities regardless of their size, scale, location or adverse effects.
30. I can only talk to the implications of the Spark submission. In this instance, the notified rules already allow new telecommunications lines, poles, cabinets and masts/poles supporting antennas without any standards. This equipment has a very limited footprint and limited associated earthworks. All the Spark submission is seeking is to provide the same status already provided for new telecommunications lines, poles, cabinets and masts/poles supporting antennas to upgrading of such equipment (that falls outside minor upgrading). This gap has already been

acknowledged in Reports 27B and 27C with recommendations to address this. In many cases this equipment would already be exempt from the hazard rules in Chapter 15 in any case due to it being regulated under the NESTF and this requiring any district plan rules on natural hazards to be disapplied. On this basis, I wonder if the reporting officer has misunderstood the intent or scope of the Spark submissions.

31. In my opinion Clause 2 of Rules 15.9.1 P2 and 15.10.1 P2 should be amended in the same manner that is recommended in Report 27C for Rule 15.5.1 P1.