

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of the Proposed Otago Regional Policy Statement
2021 (Non-freshwater parts) ("**PORPS**")

**EVIDENCE OF CHRISTOPHER MARK HORNE FOR
CHORUS NEW ZEALAND LTD, VODAFONE NEW ZEALAND LTD AND SPARK
NEW ZEALAND TRADING LTD**

PART 3 HCV HISTORICAL AND CULTURAL VALUES

23 NOVEMBER 2022

1. INTRODUCTION

1.1 My full name is Christopher Mark Horne. I am a resource management consultant and director of the resource and environmental management consulting company, Incite (Auckland) Limited.

1.2 My relevant experience and qualifications, and statement on the *Code of Conduct for Expert Witnesses 2014* contained in the Environment Court Practice Note, are set out in my statement of evidence in relation to EIT Energy, Infrastructure and Transport, also dated 23 November 2022.

2. SCOPE AND STRUCTURE OF EVIDENCE

2.1 In accordance with the First Minute and Directions of the Hearing Commissioners¹ I have prepared my evidence on the PORPS on a chapter-by-chapter basis.

2.2 Because a significant proportion of the Telecommunications Submitters' submission points relate to the section on EIT Energy, Infrastructure and Transport, I have provided a general overview of the overall submissions approach and my relevant experience and qualifications in that statement.

2.3 This statement of evidence only applies to Policy HCV-HH-P5 *Managing historic heritage*.

3. EXECUTIVE SUMMARY (CHAPTER 13 MATTERS)

3.1 The Telecommunications Submitters' submission sought that a new clause be added to Policy HCV-HH-P5 recognising that infrastructure connections support the ongoing use and protection of historic heritage.

3.2 The reason given for the submission was that it is important to recognise that infrastructure service connections to heritage buildings support their ongoing use and therefore protection and upkeep, which should be acknowledged in the policy.

3.3 Council's reporting planner (Angela Fenemor) in the s42A report agrees that service connections provide support to heritage buildings but does not agree

¹ Dated 3 October 2022.

that specific mention of this service is required within the policy which provides direction on the management of historic heritage.²

- 3.4 The Telecommunication Submitters' principal concern is that the provisions of the PORPS as notified would require adverse effects on the heritage item to be avoided for certain works including service connections to scheduled heritage buildings (with reference to Policy EIT-INF-P13). This would lead to unintended consequences whereby infrastructure which is necessary to support heritage buildings may not be able to be provided, without going through a consenting process.
- 3.5 However, since the PORPS was notified, Council's supplementary evidence to the s42A reports has been released. Relevant to the Telecommunication Submitters' submission on Policy HCV-HH-P5, the supplementary evidence for the EIT chapter recommends an amendment to the definition of *Regionally Significant Infrastructure* which would resolve the Telecommunication Submitters' concern outlined above if adopted by the Hearing Commissioners.
- 3.6 If the recommended amendment to the definition of *Regionally Significant Infrastructure* is not adopted by the Hearing Commissioners and neither are changes to Policy EIT-INF-P13 (as set out in my evidence on the EIT chapter), I consider that direct amendments will be required to the Historic Heritage policies to recognise and provide for infrastructure connections to scheduled historic heritage buildings and avoid the potential for perverse outcomes.

4. POLICY HCV-HH-P5

Submission

- 4.1 This policy addresses the management approach for historic heritage. It requires that historic heritage be protected by:
- (a) requiring the use of accidental discovery protocols;
 - (b) avoiding adverse effects on areas or places with special or outstanding historic heritage values or qualities;
 - (c) avoiding significant adverse effects on areas or places with historic heritage values or qualities;

² Section 42A Report at [271].

- (d) avoiding, as the first priority, other adverse effects on areas or places with historic heritage values or qualities;
- (e) where adverse effects demonstrably cannot be completely avoided, remedying or mitigating them; and
- (f) recognising that infrastructure, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (5).

4.2 The Telecommunications Submitters' submission sought that a new clause be added to this policy recognising that infrastructure connections support the ongoing use and protection of historic heritage.

4.3 The reason given for the submission was that it is important to recognise that infrastructure service connections to heritage buildings support their ongoing use and therefore protection and upkeep, which should be acknowledged in the policy.

s42A Report

4.4 The Telecommunications Submitters' submission is assessed at paragraph 271 of the Chapter 13 s42A report. The reporting planner agrees that service connections provide support to heritage buildings but does not agree that specific mention of this service is required within the policy which provides direction on the management of historic heritage.

4.5 Whilst some amendments to the policy are recommended in regard to other submissions, the reporting planner does not recommend that the amendments requested in the Telecommunication Submitters' submission be accepted.³

4.6 The reporting planner recommends that the policy be amended as follows:⁴

HCV-HH-P5 – Managing *historic heritage*

Protect historic heritage by:

- (1) requiring the use of accidental discovery protocols,
- (2) avoiding adverse *effects* on areas or places with special or outstanding *historic heritage* or qualities, except in the circumstances where HCV-HH-P7 applies.

³ At [271].

⁴ At [279].

- (3) avoiding significant adverse *effects* on areas or places with special or outstanding *historic heritage* values or qualities,
- (4) avoiding, as the first priority, other adverse *effects* on areas or places with *historic heritage* values or qualities,
- ~~(5) and where it is demonstrated that~~ adverse effects demonstrably cannot be completely avoided, they are remedied or mitigated ~~remedying or mitigating them~~, and
- (6) recognising that for *infrastructure*, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (5).

Planning Assessment

- 4.7 On the face of it, amendments to policy HCV-HH-P5 appear to be unnecessary due to clause (6) which directs consideration of infrastructure to Policy EIT-INF-P13, rather than the management hierarchy of clauses (1)-(5) of Policy HCV-HH-P5.
- 4.8 However, as set out in my evidence on the EIT Section (Chapter 11 s42A Report) at section 5, telecommunications service connections to heritage buildings do not fall under the definitions of *Regionally Significant Infrastructure* or *Nationally Significant Infrastructure* as notified in the PORPS, and as such, the policy direction for locating infrastructure in areas or places of significance or outstanding historic heritage is to avoid adverse effects on the values that contribute to an area's outstanding nature or significance (EIT-INF-P13(2)(b)).
- 4.9 In my opinion there is a risk that attaching a service connection to a scheduled heritage building (eg, a new fibre connection to support a business) may fall foul of this policy direction unless considered as *Regionally Significant Infrastructure*, notwithstanding that such a connection may support the viability and ongoing use of such buildings and as such support the investment in maintenance and protection of their heritage values. Accordingly, in my opinion, unless Policy EIT-INF-P13 is amended to ensure service connections to heritage buildings have an equivalent management framework for *Regionally Significant Infrastructure*, or the definition of *Regionally Significant Infrastructure* is amended to accommodate all elements of telecommunications networks, then an amendment to the provisions directly within the historic heritage provisions is necessary. I note that the supplementary evidence of Marcus Langman⁵ in regard to the EIT section (Chapter 11 s42A report) recommends an amendment to the definition of *Regionally Significant*

⁵ Supplementary evidence of Marcus Langman, Chapter 11 EIT at [45].

Infrastructure which, if adopted, would resolve this matter and not require an amendment to the historic heritage policies.

Examples of consent requirements

- 4.10 I am aware of many examples where service connections to scheduled heritage buildings in district plans (including proposed plans and exposure drafts) are either permitted or controlled activities. In the Dunedin Second Generation District Plan ("**2GP**"), service connections fall under the category of *All Other Network Utility Structures – Small Scale* and are permitted activities subject to meeting relevant performance standards. Within a Heritage Precinct, the relevant permitted activity requirement is to be attached to an existing service pole or building⁶ which can be met for many service connections. In the Proposed Queenstown Lakes District Plan (Appeals Version), new aerial lines and supporting structures (which would include service connections) outside of road reserves are a controlled activity⁷ (other than within an Outstanding Natural Features, Outstanding Natural Landscape or Significant Natural Area).
- 4.11 In several instances myself or my colleagues have been involved in District Plan reviews where either appeal settlements with the agreement of Heritage New Zealand Pouhere Taonga or council decisions have changed the activity status for service connections to scheduled heritage buildings in a proposed plan from restricted discretionary/discretionary activity to controlled activity. Two recent examples of this where the activity status for this was changed to a controlled activity for a service connection to a scheduled building include a consent order on the Proposed Marlborough Environment Plan and decisions on the Proposed Waikato District Plan.
- 4.12 In the case of Auckland Council, while resource consent as a restricted discretionary activity in the Auckland Unitary Plan is required to attach a service connection to the protected part of a scheduled heritage building⁸ (which may be the whole building or the road façade in some instances as the only practicable connection location), a non-notified City-Wide resource consent was granted to Chorus to support the roll out of fibre as part of the Ultra-Fast Broadband project.

⁶ Rule 5.5.2(2)(b) Dunedin 2GP.

⁷ Rule 30.5.6.4 Proposed Queenstown Lakes District Plan (appeals version).

⁸ Auckland Unitary Plan E26.8.5.1(7).

Consequences of an "avoid" directive in the RPS

- 4.13 In my view a permitted or controlled activity status or the non-notified granting of a City - Wide consent authorising service connections to scheduled heritage buildings would likely be a contrary to the strong "avoid" adverse effects direction in EIT-INF-P13(2)(b) if heritage connections were subject to this provision as infrastructure not being encompassed in the definition of *Regionally Significant Infrastructure* as part of a telecommunications network.
- 4.14 Given that district plans (as lower order planning documents) must give effect to the relevant Regional Policy Statement ("**RPS**") under the RMA, an "avoid" directive in the RPS may lead to outcomes such as non-complying activity status in district plans and/or notification. It also increases the risk that applications such as the Auckland Council City-Wide consent example be declined. In my opinion this may lead to unintended consequences and could make it difficult for telecommunications network operators to provide service connections to scheduled heritage buildings/buildings in heritage precincts, which would not be supporting their ongoing protection and use.

Approach to resolve the issue

- 4.15 In my view either an amendment to EIT-INF-P13 or an amendment to the definition of *Regionally Significant Infrastructure* would address the issues identified above. The change to the definition of *Regionally Significant Infrastructure* recommended by Mr Langman would achieve this.
- 4.16 However, in the event that changes to the definition of *Regionally Significant Infrastructure* as recommended in Mr Langman's supplementary evidence on Chapter 11 EIT are not adopted by the Hearing Commissioners, or in the alternative an amendment to Policy EIT-INF-P13(2) to enable the effects of infrastructure more generally to be managed (rather than avoided) is not made, I consider that the policy framework within the HCV Chapter will need to be amended to resolve this matter directly within the Historic Heritage provisions themselves.

Recommendation

- 4.17 **Amend** the definition of *Regionally Significant Infrastructure* as recommended in Mr Langman's supplementary evidence on Chapter 11 Energy, Infrastructure and Transport.
- 4.18 Should that recommendation not be adopted by the Hearing Commissioners, or an amendment made to Policy EIT-INF-P1(2) in the alternative, then I consider a direct amendment to Policy HCV-HH-P5 as requested by the Telecommunications Submitters will be required, or other changes to the Historic Heritage section of similar effect.

5. CONCLUSION

- 5.1 The Telecommunications Submitters' submission sought that a new clause be added to Policy HCV-HH-P5 recognising that infrastructure connections support the ongoing use and protection of historic heritage.
- 5.2 The principal concern is that by relying on Policy EIT-INF-P13 in the EIT chapter for infrastructure connections to scheduled heritage buildings, the provisions of the PORPS as notified would require adverse effects on the heritage item to be avoided. This could lead to unintended consequences and perverse outcomes.
- 5.3 Recommendations in the supplementary evidence on the EIT section would resolve this concern if adopted by the Hearing Commissioners. If not adopted and in the alternative direct changes to Policy EIT-INF-P13 as notified are not made, then in my opinion it would be necessary for direct amendments to the Historic Heritage policy framework to directly recognise and provide for infrastructure connections to scheduled historic heritage buildings.

Christopher Mark Horne
23 November 2022