

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of the Proposed Otago Regional Policy Statement
2021 ("**PORPS**")

**LEGAL SUBMISSIONS ON BEHALF OF CHORUS NEW ZEALAND LTD,
VODAFONE NEW ZEALAND LTD AND SPARK NEW ZEALAND TRADING LTD**

PART 3 NFL NATURAL FEATURES AND LANDSCAPES

1 MAY 2023

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1. INTRODUCTION

- 1.1 These legal submissions are presented on behalf of Spark New Zealand Trading Limited, Vodafone New Zealand Limited¹ and Chorus New Zealand Limited (together referred to as the "**Telecommunication Companies**").
- 1.2 As set out in our previous legal submissions for various chapters in the PORPS, the Telecommunication Companies are interested in the PORPS insofar as the proposed provisions impact on the ability to maintain, upgrade and provide telecommunications infrastructure in the Otago Region.
- 1.3 The position of the Telecommunication Companies has been outlined previously in its submissions, in the planning evidence of Mr Horne² and in our legal submissions presented to the Commissioners earlier this year. In accordance with the direction from the Hearing Commissioners,³ these submissions only address matters related to Natural Features and Landscapes ("**NFL**").
- 1.4 These legal submissions do not repeat matters raised in our previous legal submissions on the PORPS, but respond to the recommendations of the Otago Regional Council's section 42A hearing reports and supplementary evidence and set out the relief that the Telecommunication Companies seek from the Hearing Commissioners in respect of the NFL chapter.
- 1.5 We again emphasise that telecommunications infrastructure is both nationally and regionally significant infrastructure that provides important social and economic benefits by enabling and improving connectivity for homes and businesses across New Zealand. The successful maintenance, upgrading and provision of all components of the telecommunications network is critical to the delivery of safe, efficient and reliable telecommunication services New Zealand businesses and communities rely on every day.
- 1.6 As we've explained in our previous legal submissions, while the National Environmental Standards for Telecommunication Facilities ("**NES-TF**") provides for significant elements of the telecommunications network as permitted activities, regulated activities that do not meet the relevant permitted

¹ Now One New Zealand Group Limited.

² Evidence of Christopher Horne (SRMR) dated 23 November 2022; Evidence of Christopher Horne (NFL) dated 23 November 2022; Evidence of Christopher Horne (HCV) dated 23 November 2022; Evidence of Christopher Horne (EIT) dated 23 November 2022.

³ Dated 3 October 2022.

activity standards remain subject to the relevant district plan. The NES-TF also provides that certain types of district plan rules relating to sensitive natural and built environments (eg historic heritage, natural features and landscapes and significant habitats for indigenous fauna and vegetation) still apply to regulated activities.

- 1.7 Given this, the Telecommunication Companies face a number of challenges where linear or site-specific infrastructure is required to be located in sensitive environments and where the relevant planning framework includes strong avoid adverse effects directives with no exception or consenting pathway through those directives for telecommunications infrastructure.
- 1.8 It is therefore essential that the PORPS include an enabling framework for infrastructure to ensure that the Telecommunication Companies can continue to maintain, operate and provide telecommunication services to people and communities in the Otago Region.

2. TELECOMMUNICATION COMPANIES' KEY CONCERN IN RELATION TO CHAPTER NFL

- 2.1 Telecommunications infrastructure not only provides important social and economic benefits by enabling and providing connectivity for homes and businesses across New Zealand, it also plays an important role in supporting the ongoing protection of natural features and landscapes. For example, digital connectivity enables services such as early environmental sensing for early fire detection network which can provide real-time warning data to Fire and Emergency New Zealand and drone monitoring of natural features and landscapes.⁴
- 2.2 The Telecommunication Companies' primary concern in relation to the NFL chapter is that the strong avoidance approach in the notified provisions may end up constraining the ability to locate infrastructure in areas identified as highly valued natural features or landscapes where there is a functional and/or operational need for that infrastructure to be located there. This is particularly so for essential lifeline infrastructure, where such networks often need to locate within or traverse outstanding natural features and landscapes ("**ONFLs**") to provide services to people and communities.

⁴ Evidence of Colin Clune, Graeme McCarrison and Andrew Kantor dated 23 November at [3.7].

- 2.3 In particular, Policy NFL-P2 as notified seeks to protect ONFLs by:
- (a) *Avoiding* adverse effects on the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not in themselves outstanding, and
 - (b) *Avoiding*, remedying or mitigating other adverse effects.
- 2.4 The policy framework in the NFL chapter is notably silent in respect of infrastructure that has a functional or operation need to traverse or locate in an ONFL and ultimately the strong avoidance framework may have the effect of prohibiting or severely limiting the provision of telecommunications infrastructure in those areas.

Approach in Council's supplementary evidence

- 2.5 Following pre-hearing discussions, Council's supplementary evidence recommended Policy NFL-P2 be amended as follows:⁵

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate subdivision, use and development by:

- (1) avoiding adverse effects on the values of the natural features and landscapes where there is limited or no capacity to absorb use or development that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and
- (2) avoiding, remedying or mitigating other adverse effects, and
- (3) managing the adverse effects on infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.

- 2.6 The Telecommunication Companies support the recommended amendments to Policy NFL-P2 above, on the basis that the changes to the definition of *Regionally Significant Infrastructure* as recommended in the supplementary evidence of Mr Langman⁶ are also adopted by the Hearing Commissioners. The change to the definition of *Regionally Significant Infrastructure* is required

⁵ Supplementary Evidence of Andrew MacLennan, 11 October 2022 at [11], [14], [18-22] and [24-26].

⁶ Supplementary Evidence of Marcus Hayden Langman, 11 October 2022 at [45].

to ensure that Policy EIT-INF-P13 provides an alternative effects management pathway for telecommunications infrastructure in sensitive environments such as ONFLs. We refer to our legal submissions for the EIT chapter dated 16 March 2023 which explain this point in more detail.

3. DECISION REQUESTED

3.1 The Telecommunication Companies therefore respectfully request that the Commissioners:

(a) Amend the definition of *Regionally Significant Infrastructure* to refer "Telecommunication and Radiocommunication networks" rather than "Telecommunication and Radiocommunication facilities". This amendment will ensure the cable distribution network and fibre (including service connections) fall within the definition of *regionally significant infrastructure* and have a pathway through the strong avoid directives described above.

(b) Amend Policy NFL-P2 as recommended in Mr MacLennan's supplementary evidence and set out above.

(c) Amend for consistency Policy NFL-P3 as follows:

NFL-P3 – Maintenance of highly valued natural features and landscapes

Maintain or enhance highly valued natural features and landscapes outside the coastal environment by:

avoiding significant adverse effects on the values of the natural features or landscape, and

avoiding, remedying or mitigating other adverse effects, and

managing adverse effects or infrastructure on the values of the natural features or landscape in accordance with EIT-INF-P13.

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