BEFORE TIMARU DISTRICT COUNCIL

IN THE MATTER OF	the Resource Management Act 1991
AND	
IN THE MATTER OF	Timaru District Council's Proposed District Plan: Hearing Stream E: Infrastructure and Subdivision, Cultural Values

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STATEMENT OF EVIDENCE TOM ANDERSON

ON BEHALF OF

CHORUS NEW ZEALAND LIMITED, CONNEXA LIMITED, ONE NEW ZEALAND GROUP LIMITED AND SPARK NEW ZEALAND TRADING LIMITED

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23 January 2025

SUMMARY STATEMENT

i. My name is Tom Anderson. I am a Principal Planner and a Director of Incite, a resource management consulting firm. My qualifications and experience are set out in my evidence in chief in this statement.

ii. I have read and am familiar with the Code of Conduct for Expert Witnesses (section 9 of the Environment Court Consolidated Practice Note 2023), and my evidence has been prepared in compliance with that code.

iii. As provided for in Paragraph 3.6 of Minute 3 of the Hearing Panel (titled *Pre-hearing Directions of Hearing Panel*), this summary statement provides a summary of my evidence in chief.

iv. Chorus, Connexa, One NZ and Spark (the telecommunication companies) have lodged submissions on the Proposed Timaru District Plan (PDP).

v. For the most part, the submissions have been accepted, or accepted in part, and the alternate relief recommended by the reporting officers provides an appropriate framework for telecommunications activities. As such, of the 52 submission points which have been considered for Hearing Stream E, only eight remain in contention, where an alternate outcome is sought to those recommended by the s42A officers.

vi. The eight points relate to the definitions of *Line*, *Regionally Significant Infrastructure* and *Tower*, amendments to EI-O2, EI-R14 and EI-R17, and alterations to the activity status for HH-RX and TREE-R3A.

vii. The amendments sought to the definitions are to provide greater clarity in terms of telecommunications networks, and limit potential confusion with the definitions in the National Environmental Standard for Telecommunication Facilities 2016 (NESTF).

viii. The amendment sought to EI-O2 seeks to balance the avoidance, remediation and mitigation of adverse effects with any functional and operational needs of the infrastructure.

ix. The amendment sought to EI-R14 seeks to align the setback standards of telecommunication kiosks from legal road with the setback standards of the underlying zones.

x. The amendment sought to EI-R17 is similar to that sought for EI-O2, and seeks to ensure that the rule does not apply to infrastructure located within existing buildings.

xi. Finally, the amendments sought to HH-RX and TREE-R3A seek to provide certainty to end users of customer connections that they will be able to connect to infrastructure networks, whilst appropriately protecting heritage items and notable trees.

EVIDENCE IN CHIEF

Professional Qualifications and Experience

1. My name is Tom Anderson. I am a Principal Planner and a Director of Incite, a resource management consulting firm. I hold a Bachelor of Science and a Master of Planning (with Distinction), both from the University of Otago. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association. I am also an Independent Commissioner, certified under the Ministry for the Environment's *Making Good Decisions* programme.

2. I have 18 years professional experience. Throughout my career I have provided advice to a number of telecommunication and radiocommunication companies, including submitters Chorus New Zealand Limited (Chorus), Connexa Limited (Connexa), One New Zealand Group Limited (One NZ – formerly Vodafone New Zealand Limited)[1] and Spark New Zealand Trading Limited (Spark – formerly Telecom New Zealand Limited and Telecom Mobile Limited), as well as FortySouth Group LP, Two Degrees Networks Limited, Rural Connectivity Group and Vital (formerly TeamTalk). I have provided the telecommunication companies with advice on district and unitary plan reviews and plan changes, site selection exercises, designation and outline plan of works processes, and consenting activities for network rollouts and exchange upgrades.

3. On this basis, I consider myself to have a comprehensive understanding of telecommunication and radiocommunication networks, and the practical implications of the Resource Management Act 1991 (RMA) framework in relation to network installation, upgrade and operation.

4. I drafted and submitted the submissions of Chorus, Connexa, One NZ/FortySouth and Spark on the Proposed Timaru District Plan (PDP). The submissions of the aforementioned telecommunications companies are exactly the same and have been addressed as a group in the s42A reports.

5. I have read and am familiar with the Code of Conduct for Expert Witnesses (section 9 of the Environment Court Consolidated Practice Note 2023). My evidence has been prepared in compliance with that code. In particular, unless I state otherwise, this evidence is within my

[1] Note, since the submissions were lodged, Vodafone NZ has rebranded to One NZ and One NZ have sold their towers to FortySouth.

area of expertise, and I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Scope and Purpose of Evidence

6. This evidence has been prepared in review of the aforementioned telecommunications companies' submissions on the PDP, as they relate to Hearing E. The bulk of the submissions relate to matters under consideration in Hearing E, addressing matters in the Energy and Infrastructure, Subdivision, Historic Heritage and Notable Tree chapters.

7. Overall, I consider the telecommunications companies to be in a good position with regard to their submissions on the PDP, and therefore would like to thank the reporting officers for their consideration and reasoning they have given to the submissions.

8. For the following provisions, the submissions were either accepted, or the alternate relief recommended in the S42A reports is acceptable, and therefore the submission points on those provisions are no longer being pursued. Those provisions and submissions are:

<u>Definitions:</u>

- Retention of the definition of *Antenna* (submissions 176.3 (Connexa), 208.3 (Spark), 209.3 (Chorus) and 210.3 (One NZ/FortySouth));
- Retention of the definition of *Cabinet* (submissions 176.4, 208.4, 209.4 and 210.4);
- Retention of the definition of *Customer Connection* (submissions 176.5, 208.5, 209.5 and 210.5);
- Retention of the definition of *Height For Network Utility Structure* (submissions 176.7, 208.7, 209.7 and 210.7);
- The alternate relief recommended for the definition of *Lifeline Utilities* (submissions 176.10, 208.10, 209.10 and 210.10);
- Retention of the definition of *Network Utility* (submissions 176.12, 208.12, 209.12 and 210.12);
- Retention of the definition of *Network Utility Operator* (submissions 176.13, 208.13, 209.13 and 210.13);

- An amendment to the definition of *Pole* (submissions 176.15, 208.15, 209.15 and 210.15);
- The addition of a new definition of *Radiocommunication* (submissions 176.27, 208.27, 209.27 and 210.27);
- Retention of the definition of *Self-Contained Power Unit* (submissions 176.20, 208.20, 209.20 and 210.20);
- Retention of the definition of *Small Cell Unit* (submissions 176.21, 208.21, 209.21 and 210.21);
- Retention of the definition of *Telecommunication Kiosk* (submissions 176.23, 208.23, 209.23 and 210.23); and
- The alternate relief recommended for the definition of *Upgrading* (submissions 176.25, 208.25, 209.25 and 210.25).

Energy and Infrastructure Chapter:

- The alternate relief recommended for the chapter introduction (submissions 176.34, 208.34, 209.34 and 210.34);
- The amendment to EI-O1 (submissions 176.35, 208.35, 209.35 and 210.35);
- The alternate relief recommended to EI-O3 (submissions 176.37, 208.37, 209.37 and 210.37);
- The alternate relief recommended to EI-O4 (submissions 176.38, 208.38, 209.38 and 210.38);
- The rejection and alternate wording recommended to EI-P1 (submissions 176.39, 208.39, 209.39 and 210.39);
- The alternate relief recommended to EI-P2 (submissions 176.40, 208.40, 209.40 and 210.40);
- The alternate relief recommended to EI-P3 (submissions 176.41, 208.41, 209.41 and 210.41);

- The alternate relief recommended to EI-R1 (submissions 176.42, 208.42, 209.42 and 210.42);
- The alternate relief recommended to EI-R2 (submissions 176.43, 208.43, 209.43 and 210.43);
- The alternate relief recommended to EI-R3 (submissions 176.44, 208.44, 209.44 and 210.44);
- The retention of EI-R4 as notified (submissions 176.45, 208.45, 209.45 and 210.45);
- The retention of EI-R5 as notified (submissions 176.46, 208.46, 209.46 and 210.46);
- The retention of EI-R6 as notified (submissions 176.47, 208.47, 209.47 and 210.47);
- The retention of EI-R7 as notified (submissions 176.48, 208.48, 209.48 and 210.48);
- The retention of EI-R9 as notified (submissions 176.49, 208.49, 209.49 and 210.49);
- The retention of EI-R10 as notified (submissions 176.50, 208.50, 209.50 and 210.50);
- The rejection of an amendment to EI-R13 (submissions 176.51, 208.51, 209.51 and 210.51);
- The acceptance in part of an amendment to EI-R15 (submissions 176.53, 208.53, 209.53 and 210.53);
- The retention of EI-R16 as notified (submissions 176.54, 208.54, 209.54 and 210.54);
- The retention of EI-R19 as notified (submissions 176.56, 208.56, 209.56 and 210.56);
- The retention of EI-R21 as notified (submissions 176.57, 208.57, 209.57 and 210.57);
- The retention of EI-S1 as notified (submissions 176.58, 208.58, 209.58 and 210.58); and
- The alternate relief recommended to EI-S2 (submissions 176.59, 208.59, 209.59 and 210.59).

<u>Historic Heritage:</u>

- The retention of HH-P3 as notified (submissions 176.66, 208.66, 209.66 and 210.66).

Notable Trees:

- The alternate relief recommended to TREE-R1 (submissions 176.68, 208.68, 209.68 and 210.68).

Subdivision:

- The retention of SUB-O2 as notified (submissions 176.77, 208.77, 209.77 and 210.77);
- The rejection of a new objective concerning reverse sensitivity (submissions 176.78, 208.78, 209.78 and 210.78);
- The alternate relief recommended to SUB-P5 (submissions 176.79, 208.79, 209.79 and 210.79);
- The retention of SUB-P6 as notified (submissions 176.80, 208.80, 209.80 and 210.80);
- The retention of SUB-R2 as notified (submissions 176.81, 208.81, 209.81 and 210.81); and
- The alternate relief recommended to SUB-S5 (submissions 176.82, 208.82, 209.82 and 210.82).

9. Through this evidence I seek alternate relief on the remaining submission points, being:

Definitions:

- The need for a new definition of *Line* (submissions 176.26, 208.26, 209.26 and 210.26);
- The rejection of the amendment sought to the definition of *Regionally Significant Infrastructure* (submissions 176.16, 208.16, 209.16 and 210.16); and
- The definition of *Tower [In Relation to Energy and Infrastructure Chapter]* (submissions 176.24, 208.24, 209.24 and 210.24).

Energy and Infrastructure Chapter:

- An amendment to EI-O2 (submissions 176.36, 208.36, 209.36 and 210.36);
- An amendment to EI-R14 (submissions 176.52, 208.52, 209.52 and 210.52);
- An amendment to EI-R17 (submissions 176.55, 208.55, 209.55 and 210.55);

Historic Heritage:

- The alternate relief recommended for a new rule regarding customer connections to historic heritage items (submissions 176.67, 208.67, 209.67 and 210.67).

Notable Trees

- An amendment to TREE-R3 (submissions 176.69, 208.69, 209.69 and 210.69).

10. Note no changes are sought through this evidence to the subdivision provisions attached as Appendix 1 to Mr Boyes s42A Report on this subject.

11. The reasoning for the alternate relief sought through my evidence is detailed as follows.

Definition of Line

12. Submissions 176.26, 208.26, 209.26 and 210.26 sought a definition be included for *Line*. This is recommended to be rejected in Section 6.14 of the Energy and Infrastructure Section 42A Report, on the basis that the only rule EI-R27 and EI-R28 refer to lines, and in these rules it is in the context of electricity, not telecommunication, lines.

13. Rule EI-R13 specifically refers to *telecommunication lines*. The definition of *line* provided in the submissions is for a telecommunication line. I consider that such a definition makes it abundantly clear what a telecommunication line is for the purpose of Rule EI-R13.

14. As such, I consider that the definition of *Line* as submitted be included in the PDP, but that it is reframed as *Telecommunication Line*, as opposed to simply '*Line*'.

15. Consequently, I seek the following relief. Note, for all relief recommended in my evidence, recommended amendments as per the S42A Report are shown in underlined for additional text or ~~strikethrough~~ for deleted text, with my recommended amendments shown in red (underlined for additional text and ~~strikethrough~~ for deleted text):

Add a new definition of Telecommunication Line as follows:

Telecommunication Line

(a) means a wire or a conductor of any other kind (including a fibre optic cable) used or intended to be used for the transmission or reception of signs, signals, impulses, writing, images, sounds, instruction, information, or intelligence of any nature by means of any electromagnetic system; and

(b) includes—

(i) any pole, insulator, casing, fixture, tunnel, or other equipment or material used or intended to be used for supporting, enclosing, surrounding, or protecting any of those wires or conductors; and

(ii) any part of a telecommunication line

Definition of Regionally Significant Infrastructure

16. Submissions 176.16, 208.16, 209.16 and 210.16 sought an amendment to the definition of *Regionally Significant Infrastructure* in regard to telecommunications, in that the definition refers to *telecommunication service* instead of *telecommunication facilities*.

17. The reporting officer at section 6.10.15 of the s42A Report recommends this submission be rejected, as the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (NESTF) refers to facilities, and it is facilities which are the infrastructure, and not the service.

18. I understand this point of view. However, as is stated in the corporate evidence of the Telecommunication Companies, there is concern that facilities may be misinterpreted. Whilst *facility* is a term that is used in the NESTF, by definition in Section 4 of that regulation, *facility* is limited to *an antenna, cabinet, telecommunication line or small cell unit*. It does cover the full gambit of a telecommunication network, missing essential infrastructure, such as poles.

19. In my view, a better term is *telecommunication network*. A network is a defined term in the Telecommunications Act 2001, and is more holistic than the aforementioned definition of *facility*.

20. Consequently, I seek the following relief.

Amend the definition of Regionally Significant Infrastructure as follows: *Regionally Significant Infrastructure is:* … *d. Telecommunication ~~facilities~~ networks*

Definition of Tower

21. Submissions 176.24, 208.24, 209.24 and 210.24 sought that an amendment be made to the definition of *Tower* so that there is consistency in application between the PDP and NESTF as to what a *Tower* is. The reporting officer at Section 6.11.3 of the s42A report was not clear that there was a direct conflict between the PDP and NESTF, and ultimately recommended that the submissions be rejected.

22. Under the NESTF, a *Pole* means *a pole, mast, lattice tower, or similar structure, of a kind that is able to be used (with or without modification) to support antennas*.

23. Under the PDP, a *Pole* as recommended in the s42A Report means *in relation to Energy and infrastructure chapter… a ~~non-lattice~~[2] structure that supports conductors, lines, cables, antennas, lights or cameras, but is not a tower, and includes foundations and hardware associated with the structure such as insulators, cross arms and guywires.*

24. A *Tower*, as notified in the PDP (noting no changes as a result of the s42A report) means *a steel-lattice structure that supports conductors, lines, cables or antennas. A tower includes it foundations and hardware associated with the structure such as insulators, cross arms and guy-wires.*

25. The PDP having a definition of pole and tower creates a potential confusion for a lattice pole that supports telecommunications infrastructure.

26. Lattice poles are a rarity, but are still used for more substantial cell towers, typically in rural areas. They are a permitted activity in rural zones under the NESTF, provided they are no more than 6m wide and 25m high. If these permitted standards cannot be met, then the activity

[2] *The removal of non-lattice is as a result of acceptance of submissions 176.15, 208.15, 209.15 and 210.15*

status is set by the relevant district plan. In such an instance under the PDP, Rule EI-R15 would apply. This rule does not refer to *towers*, but does refer to *poles*.

27. In my view, I consider that any potential confusion that the definition of *tower* could cause could be alleviated by making that definition specific to the infrastructure that relies on it.

28. From my review of the PDP, the term *tower* is used in Rule EI-R6 in relation to customer connections, EI-R27 and EI-R28 in relation to the national grid yard, as well as in standards. Therefore, I consider that *tower* is clearly meant as a term associated with electricity infrastructure. As such I do not consider that the definition in the PDP needs to refer to antenna. Further, it should be in relation to electricity infrastructure. In my view, this, along with the recommended to be accepted change to the definition of *pole* in the s42A report, will provide clarity between the NESTF definition of *pole*, and the PDP definitions of *pole* and *tower*.

29. Consequently, I seek the following relief.

Amend the definition of Tower as follows: *Tower [In Relation to Energy and Infrastructure Chapter]:* *In relation to Energy and Infrastructure chapter, means a steel-lattice structure that supports electricity infrastructure such as conductors, lines~~,~~ or cables ~~or antennas~~. A tower includes it foundations and hardware associated with the structure such as insulators, cross arms and guy-wires.*

EI-O2 - Adverse effects of Regionally Significant Infrastructure

30. Submissions 176.36, 208.36, 209.36 and 210.36 sought amendment to EI-O2. The amendments sought were to include *Lifeline Utilities* in the title objective and amend subclause 2 to remove the direction in the objective that the adverse effects from Regionally Significant Infrastructure and Lifeline Utilities are avoided, remedied or mitigated to achieve the relevant objectives for the underlying zone.

31. As per the submission, I consider that this direction is inappropriate, as the objectives in the zone chapters do not provide helpful guidance for the avoidance, remediation or mitigation of adverse effects from regionally significant infrastructure.

32. The reporting officer accepts in part the submissions, stating at Paragraph 6.21.9 that *use of the words 'to achieve' potentially confuses the approach that the EI objectives and policies take precedence. Given this confusion, on balance I consider that the clause should be amended to 'having regard to' the relevant objectives of the zone as this still enables these provisions to take precedence and I note that the polices also make reference to the underlying zones (e.g. EI-P2.1.b).*

33. In my view, using the words 'have regard to' is still problematic. Infrastructure structures can be perceived in the subjective or objective views of professionals and the public at large to be incongruous with general amenity, particularly in more sensitive zones such as residential. However, infrastructure structures are needed in these zones to provide for modern life.

34. In my view, it is appropriate that in all zones that the effects of infrastructure structures are avoided, remedied or mitigated to the extent practicable when considering the operational and functional needs of the infrastructure. In my opinion, this puts an onus on infrastructure providers to select the best available sites and use the most appropriate equipment to service the surrounding area. For example, from a telecommunications perspective it might mean that multiple slimline shorter poles with antenna attached are used to service a residential area, as opposed to a single large pole with a three armed head.

35. However, I am concerned that any loose cross reference to 'relevant zone objectives' muddies the waters. It could create a situation where consents are declined on the basis of amenity, without due consideration being given to the need for the infrastructure or the functional or operational reasons it must be in a particular location.

36. As such, I recommend that subclause 2 of the objective be amended to recognise the functional and operational requirements of the infrastructure, while still requiring effects be avoided, remedied or mitigated. However, in my opinion effects should be avoided, remedied or mitigated to the extent practicable when having regard to the functional and operation needs of the infrastructure, not the objectives of the zone within which the infrastructure is located.

37. As such, I seek that EI-O2 is amended as follows:

Amend EI-O2 as follows:

EI-O2	***Adverse effects of Regionally Significant Infrastructure and Lifeline Utilities and other infrastructure***
The adverse effects of Regionally Significant Infrastructure, ~~and~~ Lifeline Utilities and other infrastructure: 1. *are avoided in ~~sensitive environments~~ the areas identified in EI-P2.1.a unless there is a functional need or operational need for the infrastructure to be in that location and no practical alternative locations, in which case they must be remedied or mitigated managed by applying the effects management hierarchy set out in EI-P2 or EI-PX for the National Grid; and* 2. *are avoided, remedied or mitigated to the extent practicable when ~~to achieve~~ having regard to the functional need or operational need of the infrastructure ~~relevant objectives for the underlying zone~~ in other areas.*	

EI-R14 - Telecommunications kiosk

38. Submissions 176.52, 208.52, 209.52 and 210.52 sought a minor amendment to EI-R14, seeking that the boundary setbacks for telecommunication kiosk structures located outside of road reserve do not apply to front boundaries of a site where they are adjacent to road reserve.

39. The reasoning for this submission was that a telecommunication kiosk can be placed in road reserve without needing to be setback from a site boundary, and as such, a telecommunication kiosk outside of road reserve should not require a setback from road reserve.

40. The reporting officer recommends that this point be rejected (Section 6.37 of the s42A report) on the basis that a telecommunication kiosk in legal road requires an occupancy licence from Council's Land Transport Unit, and that such a licence can appropriately assess effects on traffic safety. Such an assessment is not possible for kiosks built to a road boundary on private land.

41. In my view, there is a consistency issue at play in the PDP in terms of the reporting officer's position. In the General Residential Zone, GRZ-S3 permits a garage to be built up to the road boundary, there are no setback standards in the Medium Density Residential Zone (although there are height in relation to boundary setbacks, which enable small structures to be built on any boundary), setbacks only from residential boundaries in the Mixed Use Zone, setbacks only from Vine Street in the Town Centre Zone, and no setbacks in the City Centre Zone or Port Zone.

There are however setback standards from the road boundary in the General Rural Zone, Rural Lifestyle Zone, Settlement Zone, Neighbourhood Centre Zone, Local Centre Zone, Large Format Retail Zone, General Industrial Zone, Natural Open Space Zone, Open Space Zone, Sport and Active Recreation Zone and Māori Purpose Zone.

42. A telecommunication kiosk, which in everyday parlance is referred to as a 'phone box', is typically a glass structure which provides telecommunication services. These are often in legal road, or, as stated in the corporate evidence, are adjacent to legal road. They are typically found in popular areas in town centres, as opposed to more suburban or rural areas.

43. Given the typical location characteristics, I consider that the 2m setback standard from legal road in the rule as notified should not apply to telecommunication kiosks in the Mixed Use, Town Centre, City Centre, Port or General Industrial Zones.

44. As such, I seek that EI-R14 is amended as follows:

Amend EI-R14 as follows:

EI-R14	***Telecommunication kiosk***	
~~All Zones~~ Mixed Use, Town Centre, City Centre, Port or General Industrial Zones	***Activity Status: Permitted Where*** ***PER-1*** *The telecommunication kiosk does not exceed:* 1. *a height for network utility structures of 3.5 metres; and* 2. *a total area of 1.5m^2; and* ***PER-2*** *If not located within a road reserve, the telecommunication kiosk is setback no less than 2m from all ~~site~~ side and rear boundaries; and* ***PER-3*** *Any attached small cell unit or antenna is no greater than 1m in height for network utility*	***Activity status when compliance not achieved: Restricted Discretionary*** ***Matters of discretion are restricted to:*** 1. *the functional needs ~~and~~ or operational needs of, and benefits from, the activity, including the potential impact on the levels of service or health and safety if the work is not undertaken; and* 2. *the bulk, height, location and design of the activity, including any associated buildings or structures; and* 3. *the impact on the character and qualities of the surrounding area; and* 4. *any adverse effect on public health and/or safety.*

	structures and does not have a horizontal dimension greater than the horizontal dimensions of the telecommunication kiosk. ***Note:*** *Height shall be measured from the existing ground level prior to any works commencing*	
All other zones	***Activity Status: Permitted*** ***Where*** ***PER-1*** *The telecommunication kiosk does not exceed:* *1. a height for network utility structures of 3.5 metres; and* *2. a total area of 1.5m^2; and* ***PER-2*** *If not located within a road reserve, the telecommunication kiosk is setback no less than 2m from all site boundaries; and* ***PER-3*** *Any attached small cell unit or antenna is no greater than 1m in height for network utility structures and does not have a horizontal dimension greater than the horizontal dimensions of the telecommunication kiosk.* ***Note:*** *Height shall be measured from the existing ground level prior to any works commencing*	***Activity status when compliance not achieved: Restricted Discretionary*** ***Matters of discretion are restricted to:*** *1. the functional needs ~~and~~ or operational needs of, and benefits from, the activity, including the potential impact on the levels of service or health and safety if the work is not undertaken; and* *2. the bulk, height, location and design of the activity, including any associated buildings or structures; and* *3. the impact on the character and qualities of the surrounding area; and* *4. any adverse effect on public health and/or safety.*

EI-R17 - Other network utilities (including network utility buildings and enclosed substations) not otherwise addressed by another rule in EI-R12 to EI-R20 and not regulated by the NESTF.

45. Under Rule EI-R17 as notified, the footprint of a network utility building or structure is restricted to 20m^2 in a Residential or Open Space and Recreation Zone, 50m^2 in any other zone, except General Industrial, which has no maximum footprint.

46. Submissions 176.55, 208.55, 209.55 and 210.55 sought an amendment to EI-R17 for buildings to meet the underlying zone footprint or site coverage requirements, as opposed to the limits placed by the rule as notified. Such a change would allow buildings in any given zone, regardless of it being a utility or other building, to be built to the same footprint.

47. The reporting officer, at Section 6.39 of the s42A report notes that many zones do not have footprint or site coverage controls, and that other zones, such as the Medium Density Residential Zone, the site coverage *"would enable a significantly sized and potentially incongruous infrastructure building or structure covering half the site"* and could result in a *"dominating infrastructure building being established as a permitted activity"*. The officer recommends that the submissions be rejected.

48. While the concerns raised by the reporting officer are valid in a residential environment, the concerns are only related to amenity, and not the benefit of such a building. Network utility buildings are only ever constructed to service the community within which they are located. While functional needs and operational needs, and benefits from the network utility are a matter of discretion under EI-R17, there are other matters of discretion included in the rule which seek to provide balance, such as effects from the building design, and effects on the character and qualities of the surrounding area. In my view, if building size is continued to be limited, then the aforementioned matters of discretion should be explicitly subject to the extent practicable when considering the functional and operation needs, and benefits from the building or structure. My concern otherwise is that impacts on character and qualities of an area from a proposed building are given greater weight than the clear benefit a network utility building can have on that same area.

49. Further, EI-R17, by being a catch all rule, appears to limit the size of telecommunication structures within buildings. Often telecommunications equipment will be co-located in and on an existing building. PER-2 of EI-R17 could be considered as limiting the space these structures could use within an existing building. Such internal structures would not change any effects on

the surrounding area (noting that other matters arising from structures, such as noise, would be subject to the noise rules of the PDP). In my view, this should be clarified in the rule.

50. As such, I seek that EI-R17 is amended as follows:

Amend EI-R17 as follows:

EI-R17	***Other network utilities (including network utility buildings and enclosed substations) not otherwise addressed by another rule in EI-R12 to EI-R20 and not regulated by the NESTF.***	
All Zones	***Activity Status: Permitted*** ***Where*** ***PER-1*** *The building or structure complies with the building height for network utility structures, setback, and height in relation to boundary standards for the zone; and* ***PER-2*** *If located in a Residential Zone, t~~T~~he building or structure does not exceed a maximum footprint of 20m². There is no maximum footprint in any other zone.* *~~1. 20m² in a Residential Zone or Open Space and Recreation Zone; or~~* *~~2. 50m² in any other zone, except the General Industrial Zone, which has no maximum footprint; and~~* ***PER-3*** *EI-S1 is complied with.* ***Note:*** *This rule does not apply to new structures/network utility*	***Activity status when compliance not achieved with PER-1 or PER-2: Restricted Discretionary*** ***Matters of discretion are restricted to:*** 1. *the functional needs and operational needs of, and benefits from, the network utility, including the potential impact on the levels of service or health and safety if the work is not undertaken; and* 2. *effects resulting from the bulk, height, location and design of the network utility, including any associated buildings or structures, and any matters to address those effects to the extent practicable given any functional need and operational need, and benefits from, the network utility; and* 3. *the impact on the character and qualities of the surrounding area, and any matters to address those effects to the extent practicable given any functional need and operational need, and benefits from, the network utility; and*

	equipment being placed within existing buildings	*4. any adverse effect on public health and/or safety.*
		Activity status when compliance not achieved with PER-3: Restricted Discretionary ***Matters of discretion are restricted to:*** *1. the matters of discretion of any infringed standard.*

HH-RX - Customer connections to Historic Heritage Items

51. Submissions 176.67, 208.67, 209.67 and 210.67 sought that a new rule be included in the Historic Heritage chapter permitting customer connections to heritage items, with Controlled Activity status for any customer connections that cannot meet the terms or standards.

52. The purpose of the rule is to ensure that heritage buildings can be used for modern purposes.

53. The reporting officer supports the submission in part (Section 6.23 of the s42A Report), accepting the permitted provisions of the rule, but is recommending Restricted Discretionary activity status for any breaches of the permitted provisions.

54. Fundamentally, I do not consider that there is a need for Council to decline a consent for a customer connection. Customer connections are significant in terms of the functioning of buildings. However, customer connections on the primary feature or front façade of a heritage buildings can have an effect on the heritage item. As such, I am of the view that Controlled Activity status is appropriate. Matters of control can provide Council with the ability to determine where the customer connection should be located on the primary feature or front façade, whilst providing the building owner or user the certainty that they can connect to an infrastructure network.

55. As such, I seek that HH-RX is amended as follows:

Amend HH-RX as follows:

HH-RX	***Customer connections to Historic Heritage Items***	
All Zones	***Activity Status: Permitted*** ***Where*** ***PER-1*** *Customer connections to heritage resources identified in SCHED3 - Schedule of Historic Heritage Items where the customer connection shall not be attached to a primary feature or front façade of the heritage building or structure.*	***Activity status when compliance with PER-1 not achieved: ~~Restricted Discretionary~~ Controlled*** ***Matters of ~~discretion~~ control are restricted to:*** *1. the purpose, necessity and location of the customer connection; and* *2. compatibility of the form, scale, design and materials of the alterations, additions or new building with the historic heritage values and integrity of the Historic Heritage Area.*

TREE-R3A – New customer connections within the root protection area of a notable tree

56. Submissions 176.69, 208.69, 209.69 and 210.69 sought an amendment to TREE-R3 to permit customer connections that must be located within the root protection area of notable trees.

57. At Section 7.7.7, the reporting officer disagrees with the submission on the basis of advice from Council's Parks and Recreation Manager, who has advised that such works should be on a case-by-case basis with advice from an arborist.

58. I am aware from projects that I have worked on with Chorus that works can be undertaken within the root protection area of notable trees in a manner that does not impact on the health or wellbeing of the tree. I agree with Council's Parks and Recreation Manager that an arborist should be involved, hence why it was specified in the submission that *all works must be undertaken under the direction of a qualified arborist*. Ultimately, it is the arborist who is the expert in determining which method is best used.

59. Given that the rule requires that works are undertaken under the direction of a qualified arborist, I do not see what benefit putting the works through a consent process would achieve.

60. As such, I consider that, provided appropriate guidance is provided in the applicable standards, that such works should be a permitted activity. The standards ensure that the tree is protected, and the activity status provides certainty to any end user that they can establish a customer connection to existing infrastructure.

61. As for the reasons set out above for HH-RX, I consider that the need for a customer connection is paramount, and therefore consider Controlled Activity status is appropriate, balancing the health and wellbeing of the tree against the need for the customer connection. In my view, the matters of control can be made more specific than what the s42A officer has recommended as matters of discretion.

62. Therefore, I seek that TREE-R3A is amended as follows:

Amend TREE-R3A as follows:

TREES-R3A	***New customer connection within the root protection area of a notable tree***	
All Zones	***Activity Status: ~~Controlled~~ Permitted*** ***Where*** ***~~CONPER~~-1*** *The new customer connection achieves the following:* *1. the excavation is undertaken by drilling machines at a depth of 1m or greater, hand-digging, air spade, or hydro vac, within the root protection area; and* *2. the surface area of a single excavation does not exceed 1m²; and* *3. works involving root pruning are not on roots greater than 35mm in diameter at severance; and*	***Activity status when compliance with PER-1 not achieved: ~~Restricted Discretionary~~*** ***Matters of ~~discretion~~ are restricted to:*** *1. whether there is a functional need for the ~~activity/development~~ customer connection; and* *2. whether the works will be supervised or undertaken by a qualified arborist; and* *3. whether the works are necessary to ~~maintain~~ provide access to regionally significant infrastructure; and* *4. the extent of any earthworks; and* *5. importance of the ~~activity/development to the community~~ customer connection to the end user; and*

	4. works do not disturb more than 10 percent of the protected root zone; and *5. any machines used must operate on top of paved surfaces and/or ground protection measures.* *6. works are undertaken under the direction of a qualified arborist.*	*6. whether the significance of the notable tree described in SCHED5 - Schedule of Notable Trees is maintained; and* *7. impact of the works on the long-term health of the notable tree and the measures used to protect and maintain the health of the tree; and* *8. duration, timing, frequency, extent and staging of work; and* *9. extent of landscaping including planting and paving.*

Tom Anderson

23 January 2025