

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU**

Decision [2022] NZEnvC 217

IN THE MATTER OF

an appeal under clause 14 of the First
Schedule to the Resource
Management Act 1991

BETWEEN

CHORUS NEW ZEALAND LIMITED,
SPARK NEW ZEALAND TRADING
LIMITED AND VODAFONE NEW
ZEALAND LIMITED

(ENV-2022-AKL-019)

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick

Last case event: 25 October 2022

Date of Order: 31 October 2022

Date of Issue: 31 October 2022

CONSENT ORDER

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to amended plan provisions attached as Appendix A and Appendix B to this order;



(2) the appeal is resolved in its entirety.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This appeal relates to the decisions of Waikato District Council on the Proposed Waikato District Plan in relation to submissions on various telecommunication infrastructure matters.

[2] The notified provisions of Chapter 14 included permitted activity rule P12 for Telephone Exchanges in section 4.10 Telecommunication and Radiocommunication as follows:

P12	Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges	14.10.1.10 (a) Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges, that comply with the following standards: (i) Do not exceed 20m ² in area in roads of sites zoned GRZ-General Residential, MRZ – Medium Density Residential and RLZ – Rural Lifestyle; or (ii) Do not exceed 30m ² in all other zones; (iii) Comply with the height and height in relation to boundary limits for the zone in which it is located; (iv) Are not located within road or unformed road located adjacent to an Identified Area; and (v) Are not located within an Identified Area.
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[3] Submissions by Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited, among other things, generally supported the infrastructure provisions in the

proposed plan including this rule. However, the rule was not carried through to the decisions version of the proposed plan.

[4] The Council also decided to amend the proposed plan as notified to adopt the National Planning Standards which came into force after notification of the plan. As a result, the chapter and provision references in submissions, further submissions, and in some notices of appeal do not reflect the chapter and provision references in the decisions version of the plan. In particular, part 14.10 in the proposed plan as notified became part 2.10 in the decisions version of the proposed plan and various other amendments were made to the references to rules..

[5] The appeal by Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited sought the following relief:

(a) The inclusion of the omitted permitted activity rule and associated standards for 'Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges'.

(b) The deletion of Rule TEL-R21 as it is a duplicate of Rule TEL-R20.

(c) The amendment of Rule AINF-R6(a)(c) relating to minor upgrading.

[6] Since the appeal was filed, the parties have reached an agreement to address the omitted permitted activity rule for telephone exchanges. As a result, the parties have agreed to replace the current Rule TEL R21 with a permitted rule for 'Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges'.

- [7] The parties have also agreed to make changes to Rule AINF-R6(1)(c) that make the size of permitted additions, replacements or relocation of existing antennas more easily understood.
- [8] No person has given notice of an intention to become a party under s 274 of the Act.
- [9] The Court understands that:
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

Consideration

- [10] In making this order the Court has read and considered:
- (a) The notice of appeal dated 17 February 2022; and
 - (b) The joint memorandum of the parties dated 25 October 2022.
- [11] The Court is satisfied that inclusion of the permitted activity rule for telephone exchanges is within the scope of the appellants' submissions and appeal. The appellants' submissions on the plan supported Chapter 14 Infrastructure and Energy except where specific amendments were sought, and the relief to include the omitted rule was sought in the appellants' appeal. It appears that the omission of this rule was an oversight or error rather than the result of a deliberate decision by the Council.

[12] The Court notes that if the inclusion of this rule had not been within the scope of the appellants' submissions and appeal the parties would need to address its inclusion in accordance with cl 16 of Schedule 1 to the Act.

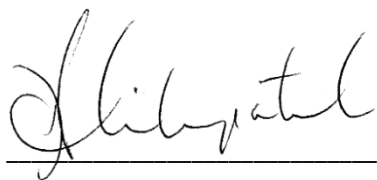
[13] The other amendments agreed to by the parties and sought in their request for a consent order are all appropriate.

Order

[14] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

[15] The Court orders, by consent, that:

- (a) The appeal is allowed subject the amended plan provisions in **Appendix A** and **Appendix B** to this order.
- (b) The appeal is resolved in its entirety.
- (c) There is no order as to costs.



D A Kirkpatrick

Chief Environment Court Judge



Appendix A

Tracked change version of the agreed changes to TEL-R21 and AINF-R6(1)(c)
 Insertions underlined and deletions ~~struck through~~

AINF-R6	Minor upgrading	
All zones	<p>(1) Activity status: PER</p> <p>Activity-specific standards:</p> <p>(a) The realignment, configuration, relocation or replacement of infrastructure and associated structures that meet all of the following standards:</p> <p>(i) Are within 5m of the existing alignment or location;</p> <p>(ii) Do not increase the height of any existing pole or support structure by more than 40% to a maximum height of 20m in all zones except the GRUZ – General rural zone, GIZ – General industrial zone, HIZ – Heavy industrial zone and MSRZ – Motor sport and recreation zone; Do not increase the diameter (width) of any existing pole or support structure by more than 50%, or 100% increase in the case of a double pole, in all zones</p> <p>(iv) Do not increase the diameter of any existing above-ground pipe by more than 300mm; and</p> <p>(b) Do not increase the area of any existing above-ground structure by more than 25% Alterations and additions to overhead electricity and telecommunication lines on existing poles or support structures involving any of the following:</p> <p>(i) The addition of conductors to form a twinned or duplex-pairing;</p> <p>(ii) The reconductoring of the line with higher capacity conductors;</p> <p>(iii) The resagging of conductors;</p> <p>(iv) The addition of longer, more efficient insulators;</p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>Council’s discretion is restricted to the following matters:</p> <p>(a) The functional and operational needs of, and benefits derived from, the infrastructure;</p> <p>(b) Visual, streetscape and amenity effects;</p> <p>(c) Transport network safety and efficiency;</p> <p>(d) Management of sediment and dust, including the staging of works;</p> <p>(e) The location of the earthworks activities, taking into account any effects on the values, qualities and characteristics of the site; and</p>

	<ul style="list-style-type: none"> (v) The addition of earth wires (which may contain telecommunication lines), earthpeaks and lightning rods; (vi) The addition, replacement or relocation of transformers or visually similar fixtures; (vii) The addition, replacement or relocation of circuits and conductors; (viii) The addition or replacement of telecommunication lines and fittings; (ix) The replacement of existing crossarms with crossarms of an alternative design; (x) The increase in voltage of electric lines up to 110kV; or (xi) The installation of mid-span electricity poles in existing networks to address clearances in New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001 ISSN 0114-0663 (NZECP34:2001). <p>(c) The addition, replacement or relocation of existing antennas where:</p> <ul style="list-style-type: none"> (i) The antennas shall not increase the largest face area by more than 20% for new panel antennas and shall not increase the diameter of dish antenna <u>by more than 20%</u>; and (ii) The antennas shall not increase in height by more than 20% of the antennas. (iii) Except that this rule shall not restrict the size of an antenna that would otherwise comply with the permitted activity rules applying to new antennas. <p>(d) Earthworks activities associated with the minor upgrading must comply with the standards of Rule ANIF-R8.</p> <p>(e) The minor upgrading must not remove any tree identified in</p>	<p>(f) Whether alternative methodologies avoiding the need to affect any tree identified in SCHED2 – Notable trees have been adequately considered.</p>
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	<p>SCHED2 – Notable trees.</p> <p>(f) Any trimming of a tree identified in SCHED2 – Notable trees associated with the minor upgrading must be undertaken in accordance with the standards of Rule ANIF-R9.</p> <p>The standards in Rule ANIF-R6(1) do not apply to road network activities or other lineal transport networks.</p>	
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TEL-R2I	<p>Poles, antennas and headframes not complying with regulations 26-35 of the NESTF Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges</p>	
All zones	<p>1. Activity status: RDIS Activity-specific standards: Nil.</p> <p>Council's discretion is restricted to the following matters:</p> <p>The functional and operational needs of, and benefits derived from, the infrastructure;</p> <p>The bulk, form, scale, location of the structure;</p> <p>Visual, landscape, streetscape and amenity effects;</p> <p>Where located within a road, the operation and function of road network activities; and</p> <p>Effects on the values, qualities and characteristics of the site, heritage item or area.</p> <p>(1) Activity Status – PER</p> <p>Activity-specific standards:</p> <p>(a) Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges, that comply with the following standards:</p> <p>(i) Do not exceed 20m² in area in roads or sites zoned GRZ – General Residential, MRZ – Medium Density Residential and RLZ - Rural Lifestyle; or</p> <p>(ii) Do not exceed 30m² in area in <u>all other zones;</u></p>	<p>(2) Activity status where compliance not achieved: DISn/a</p>

	<p><u>(iii) Comply with the height and height in relation to boundary limits for the zone in which it is located;</u></p> <p><u>(iv) Are not located within road or unformed road located adjacent to an Identified Area;</u> <u>and</u></p> <p><u>(v) Are not located within an Identified Area.</u></p>	
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Appendix B

Clean version of the agreed changes to TEL-R21 and AINF-R6(1)(c)

AINF-R6	Minor upgrading	
All zones	<p>(1) Activity status: PER</p> <p>Activity-specific standards:</p> <p>(a) The realignment, configuration, relocation or replacement of infrastructure and associated structures that meet all of the following standards:</p> <p>(i) Are within 5m of the existing alignment or location;</p> <p>(ii) Do not increase the height of any existing pole or support structure by more than 40% to a maximum height of 20m in all zones except the GRUZ – General rural zone, GIZ – General industrial zone, HIZ – Heavy industrial zone and MSRZ – Motor sport and recreation zone;</p> <p>Do not increase the diameter (width) of any existing pole or support structure by more than 50%, or 100% increase in the case of a double pole, in all zones</p> <p>(v) Do not increase the diameter of any existing above-ground pipe by more than 300mm; and</p> <p>(b) Do not increase the area of any existing above-ground structure by more than 25%</p> <p>Alterations and additions to overhead electricity and telecommunication lines on existing poles or support structures involving any of the following:</p> <p>(i) The addition of conductors to form a twinned or duplex-pairing;</p> <p>(ii) The reconductoring of the line with higher capacity conductors;</p> <p>(iii) The resagging of conductors;</p> <p>(iv) The addition of longer, more efficient insulators;</p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters:</p> <p>(f) The functional and operational needs of, and benefits derived from, the infrastructure;</p> <p>(g) Visual, streetscape and amenity effects;</p> <p>(h) Transport network safety and efficiency;</p> <p>(i) Management of sediment and dust, including the staging of works;</p> <p>(j) The location of the earthworks activities, taking into account any effects on the values, qualities and characteristics of the site; and</p>

	<ul style="list-style-type: none"> (v) The addition of earth wires (which may contain telecommunication lines), earthpeaks and lightning rods; (vi) The addition, replacement or relocation of transformers or visually similar fixtures; (vii) The addition, replacement or relocation of circuits and conductors; (viii) The addition or replacement of telecommunication lines and fittings; (ix) The replacement of existing crossarms with crossarms of an alternative design; (x) The increase in voltage of electric lines up to 110kV; or (xi) The installation of mid-span electricity poles in existing networks to address clearances in New Zealand Electrical Code of Practice for Electrical Safe Distances34:2001 ISSN 0114-0663 (NZECP34:2001). <p>(c) The addition, replacement or relocation of existing antennas where:</p> <ul style="list-style-type: none"> (i) The antennas shall not increase the largest face area by more than 20% for new panel antennas and shall not increase the diameter of dish antenna by more than 20%; and (ii) The antennas shall not increase in height by more than 20% of the antennas. (iii) Except that this rule shall not restrict the size of an antenna that would otherwise comply with the permitted activity rules applying to new antennas. <p>(d) Earthworks activities associated with the minor upgrading must comply with the standards of Rule ANIF-R8.</p> <p>(e) The minor upgrading must not remove any tree identified in</p>	<p>(f) Whether alternative methodologies avoiding the need to affect any tree identified in SCHED2 – Notable trees have been adequately considered.</p>
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	<p>SCHE2 – Notable trees.</p> <p>(f) Any trimming of a tree identified in SCHE2 – Notable trees associated with the minor upgrading must be undertaken in accordance with the standards of Rule ANIF-R9.</p> <p>The standards in Rule ANIF-R6(I) do not apply to road network activities or other lineal transport networks.</p>	
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TEL-R2I	Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges	
All zones	<p>(1) Activity Status – PER</p> <p>Activity-specific standards:</p> <p>(a) Telephone exchanges, including the installation and operation of equipment inside existing telephone exchanges, that comply with the following standards:</p> <ul style="list-style-type: none"> (i) Do not exceed 20m² in area in roads or sites zoned GRZ – General Residential, MRZ – Medium Density Residential and RLZ - Rural Lifestyle; or (ii) Do not exceed 30m² in area in all other zones; (iii) Comply with the height and height in relation to boundary limits for the zone in which it is located; (iv) Are not located within road or unformed road located adjacent to an Identified Area; and (v) Are not located within an Identified Area. 	<p>(2) Activity status where compliance not achieved: DIS</p>