



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Recommendation 28D

Spark New Zealand Ltd Designations

Hearings Committee

Councillor Darren Ludlow (Chair)

Councillor Neil Boniface

Councillor Graham Sycamore

Keith Hovell

11 October 2016

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INTRODUCTION

The Hearing to consider the matters set out in this recommendation was held in the Council Chambers of the Invercargill City Council on 2 and 3 March 2015.

In this recommendation, the following meanings apply:

"Hearings Committee" means the District Plan Hearings Committee established by the Council under the Local Government Act.

"Proposed Plan" or "Proposed District Plan" means the Proposed Invercargill City District Plan 2013.

"RMA" means the Resource Management Act 1991.

"Spark" means Spark New Zealand Limited, formerly Telecom NZ Ltd.

At the commencement of the hearings, Crs Boniface and Ludlow declared an interest as Directors of PowerNet Limited, Cr Sycamore declared an interest as a Director of Invercargill City Holdings Limited and Commissioner Hovell declared a conflict of interest in relation to submissions lodged by Cunningham Properties Limited. The Councillors and Commissioner took no part in deliberations in relation to the designations and submissions of the parties referred to.

The Council is required by Section 171 to make a recommendation to the requiring authority where a designation is modified. The Invercargill City Council may recommend the modification be confirmed, with or without further modification, or withdrawn.

The Committee received a Section 42A report on Designations from Liz Devery, Senior Policy Planner with the Invercargill City Council.

Spark NZ Ltd was not represented at the hearing but evidence was tabled.

Material Tabled at the Hearing

An unsigned submission from received from Chorus and Spark outlined that in requesting a rollover in designations to the Proposed Plan no changes to the boundaries of sites was sought, but conditions were promoted as a positive step to provide national consistency for operational needs and for neighbours of facilities, and also to balance managing potential environmental effects of the facilities. The submission notes that the Section 42A Report seeks to add further conditions and where these mirror District Plan zoning rules they are not supported. Reference is made to the Outline Plan process as being available to the Council to seek changes to any development occurring on the site.

The submission also referred to Clause 9(3) of the First Schedule of the RMA, which indicates that in the absence of any submissions to a designation that is rolled over without modification no recommendation is to be made by the Council.

Attached to the submission was a copy of the recommendations from the Section 42A Report, with deletions and changes suggested including amendment to the conditions referring to the height of buildings and structures at various sites.

Mary Barton, Senior Environmental Planner at Chorus NZ Limited, by way of an email dated 3 March 2015, advised further that in relation to the site at 10 The Crescent (Designation 46) it would be acceptable to Chorus NZ Ltd and Spark for the height of masts and associated antennas to be restricted to 25 metres and for the height of buildings to be limited to

20 metres. She also requested that proposed Condition 8 referring to Radio Frequency Exposures be deleted.

INCLUSION OF SECONDARY DESIGNATIONS

When the Proposed Plan was notified in August 2013, the secondary designations in relation to Spark's interests in the South Invercargill Exchange and Bluff Hill designations were not reflected in the Proposed Plan. This matter was raised in the submissions by Spark NZ Ltd (submission 104.22).

This issue arose because Telecom New Zealand was split into separate companies. In effect the designation is being transferred from one requiring authority to another. Section 180 of the RMA provides for this situation. Following notification of the transfer, the Council is required to amend the District Plan without further formality. This was not done when the Proposed Plan was notified and will now be corrected. No formal recommendation or response to the submission is required.

The designation will be listed in the Proposed District Plan as follows:

REQUIRING AUTHORITY	PURPOSE	LOCALITY	LEGAL DESCRIPTION	MAP No.	DESIG. No.
Spark New Zealand Ltd Secondary Designations	Telecommunication and Radio-communication and Ancillary Purposes	113 John Street, Invercargill	Lot 1 DP 13091	10	46
	Telecommunication and Radio-communication and Ancillary Purposes	Part 180, Flagstaff Road, Bluff	Part of Section 25 Block I Campbelltown Hundred	29,30	47

Arising from this matter, and to provide clarity, the Committee noted:

- Chorus NZ Ltd is the primary requiring authority for Designations 37, 38, 39, 40, 41, 42, 43 and 44 in the Proposed Plan.
- Spark NZ Ltd is the primary and sole requiring authority for 10 The Crescent, shown as 45 in the Proposed District Plan
- Spark NZ Ltd has a secondary designation at 113 John Street (42) and Flagstaff Road, Bluff (44)

MODIFICATION OF EXISTING DESIGNATION – 10 THE CRESCENT

Spark lodged a notice of requirement requesting modification to their existing designation for the Invercargill Exchange, located at 10 the Crescent, being Lot 1 DP 13928. The modification sought was to include conditions as a positive step to provide national consistency for operational needs and for neighbours of facilities, and also to balance managing potential environmental effects of the facilities.

Section 42A Report

Mrs Devery noted that 10 The Crescent is located within the Business 1 (Central Business District) Zone in the Proposed District Plan. She stated that the site was designated under the Operative District Plan.

A consideration of alternative sites, routes or methods was not considered necessary as the infrastructure is already in existence and the designation is not changing in terms of its extent or boundaries. The designation is considered reasonably necessary to achieve the objectives of the requiring authority.

Mrs Devery supported the inclusion of conditions in general but made comment on the conditions relating to height, noise and waiver of outline plan.

While Mrs Devery did not object to the requiring authority's suggested condition on the height of masts and antennas, she considered that the proposed maximum height for buildings at 25 metres should be restricted to 10 metres so that it was in keeping with the proposed zone height. She felt that while structures of this height would have been permitted in the Operative District Plan, where there was no maximum height for structures, this suggested height would be significantly higher than the permitted maximum height of structures in the Proposed District Plan for the site, which allows for buildings up to 10 metres.

Mrs Devery outlined the intention of the policies in the Proposed District Plan to control the height of structures in order to create aesthetic coherence along frontages, avoid the creation of adverse microclimate effects and promote the availability of sunlight to the public street. Mrs Devery considered that a 25 metre high building would impact significantly on the streetscape, particularly where the majority of the buildings within the Business 1 Zone are mainly two storey structures. She also stated it was unclear why the requiring authority required a building of this height. She therefore recommended that the condition be amended to reduce the maximum height of structures on this site to 10 metres.

Mrs Devery noted that there was no need for the requested condition relating to height in relation to boundaries shared with Residential areas, given that the site does not adjoin any Residential Zone.

Mrs Devery recommended that the condition relating to Noise be amended to reflect noise standards NZS 6801:2008 Acoustics - Measurement of Environmental Sound and 6802:2008 - Acoustics Environmental Noise. She considered that this would make the condition consistent with the way noise is measured under the District Plan. She also considered that it was not appropriate to include reference to the notional boundary, not only because this was not an approach used for this part of the District, but also because it would be difficult to administer in the Business 1 Zone environment.

Mrs Devery also recommended amendments to condition 8 Radiofrequency exposures to include the full title of the New Zealand Standard that applied. She also discussed the condition sought which stipulating circumstances where outline plan approval would not be required. Mrs Devery noted that the decision on waivers of outline plans sits with the Council, and the inclusion of such a condition would be made by way of a decision of Council, not a recommendation. She further stated that the reasons set forward by Chorus for waiving an outline plan were essentially covered in the Proposed District Plan and as such she did not have any concerns over the terms of this condition.

Evidence Tabled

Evidence was tabled from Ms M Barton, of Chorus NZ Ltd, which covered the designations for both Spark and Chorus NZ Ltd. There was also an e-mail from Ms Barton dated 3 March 2015 in which she stated there had been an error and the height that should have been set out in the notice of requirement as 25 metres for antennas and 20 metres for buildings.

In respect of condition 8 Radiofrequency exposure, Ms Barton advised this is a matter now covered by Regulation 4 of the National Environmental Standard for Telecommunication Facilities. As a consequence, a condition on this issue is no longer required. She also advised that the other changes proposed in the Section 42A report to condition 5 were accepted.

Consideration of the Issues

(i) Height of Structures

Ms Barton in her evidence tabled at the hearing stated that the building on the site is approximately 15 metres high, and this exceeds the maximum height for the proposed underlying zone. She considered that a maximum height of 20 metres for buildings would therefore not be out of place given the height of surrounding buildings. However, the Committee is of the view that should the building height be further increased, the building will become more imposing on the streetscape. While it accepted that a 10 metre height limit was not practical, given the height of buildings in the area, it was firmly of the view that the effects of a 20 metre structure would be unacceptable, and contrary to the intent of the Proposed Plan. Further, the Committee considered that no justification was given by Spark for the 20 metres height. The Committee therefore concluded that on this site a 15 metre height limit was practical, fair and reasonable.

Decision 19 Infrastructure, also amends the provisions applying to communication masts and associated antenna. That provides for masts of up to 15 metres in height on this site. Antenna may extend 3.5 metres above that on masts and 3.5 metres above any building. The Committee recognises that special circumstances apply to this site, particularly given its history and long term use for communication purposes. As a consequence, it is recommended that masts and antenna of up to 25 metres in height be permitted on the site, with antenna extending five metres above the height of the building.

(ii) Radiofrequency Exposure

Spark as part of their notice of requirement suggested the inclusion of a condition referring to Radiofrequency Exposure. The evidence submitted at the hearing on behalf of Spark, highlighted that this matter is dealt with by Regulation 4 of the National Environmental Standard for Telecommunication Facilities 2008. As a consequence, the Committee agrees that a condition referring to this matter is no longer required.

(ii) Outline Plan Waiver

Decision 28A discusses the request of various requiring authorities to include a condition on their designations to waive the submission of an outline plan where particular conditions are met. As set out in that Decision, the Committee has concluded that such a condition is not valid. Nor does the Committee consider the inclusion of such a condition appropriate taking into account the provisions included in the Proposed Plan.

(iii) Noise

The Committee noted that since the Hearing on designations there have been amendments made to the Noise provisions of the Proposed District Plan through Variation 2. The recommendation below takes this into account, and also to reflect the approach to noise within the wider Business 1 Zone.

The Committee also noted that as the subject site is located some distance from a Residential Zone the suggested condition referring to that zone is not necessary.

Recommendation

Pursuant to Section 171(2) of the RMA, it is recommended that the requirement for the site at 10 The Crescent, Invercargill, be confirmed subject to the conditions set out below.

REQUIRING AUTHORITY	PURPOSE	LOCALITY	LEGAL DESCRIPTION	MAP No.	DESIG. No.
Spark New Zealand Ltd	Telecommunication and Radio-communication and Ancillary Purposes	10 The Crescent Invercargill	Lot 1 DP 13928	9	45
<p>Conditions</p> <p>Height – Masts and antennas</p> <ol style="list-style-type: none"> That the height of any mast and associated antennas (excluding any lightning rod) shall not exceed 25m. Notwithstanding Condition 1, the antennas or dishes on the mast existing on the Invercargill Exchange site on [decision date] may be upgraded, reconfigured or additional antennas or dishes installed subject to there being no increase in the overall height of the mast and attached antennas. Antennas mounted on the roof of buildings shall not extend more than 5m above the maximum height of the roof of any existing building. <p>Buildings</p> <ol style="list-style-type: none"> Any buildings, excluding masts, exhaust flues, antennas and air conditioning equipment shall be contained within the following building envelope: Height – 15m Except this shall not restrict the maintenance, upgrading and replacement of any existing building where it infringes this condition provided there is no additional exceedance of the standards with this condition. <p>Noise:</p> <ol style="list-style-type: none"> Any new noise generating equipment (excluding any electricity alternator required for emergency backup power generation) shall not exceed the following noise limits: At or within the boundary of any other site within the Business 1 Zone: 0700 – 2200 pm on any day: 65 dB L_{Aeq} 2200 pm – 0700 am on any day: 50 dB L_{Aeq} Where existing site noise already exceeds the levels in condition 5 above, that any new noise generating equipment (excluding any electricity alternator required for emergency backup power generation and/or load shedding) shall cumulatively in combination with any other noise generating equipment on the site not result in any increase in existing noise levels received at any other property boundary. A noise assessment may need to be submitted as part of any outline plan to confirm the existing noise levels and predicted new noise levels to confirm compliance with this condition. For any new electricity alternator required for emergency backup power generation and/or load shedding that exceeds the noise limits in Condition 5 above, that an outline plan shall be required that demonstrates how the equipment and any mitigation is the best practicable option (BPO) to ensure that noise levels do not exceed a reasonable level. 					

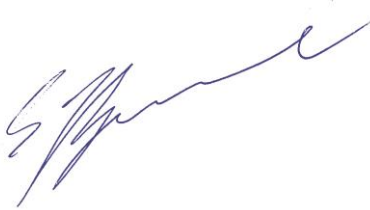
Dated at Invercargill this 11th day of October 2016



Councillor Darren Ludlow (Chair)



Councillor Neil Boniface



Councillor Graham Sycamore



Keith Hovell