

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**IN THE MATTER OF** an appeal under the First Schedule to  
the Resource Management Act 1991

**AND**

**IN THE MATTER OF** the Invercargill City Council Proposed  
District Plan Section Three: Utilities

**BETWEEN** **Spark New Zealand Trading Limited**  
**Appellant**

**AND** **Invercargill City Council**  
**Respondent**

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**Notice of Appeal against Decision on Proposed District – Section Three:  
Utilities**

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**13 December 2016**

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To The Registrar  
Environment Court  
Christchurch

Spark New Zealand Trading Limited (Spark) appeals against part of the decision of the Invercargill City Council in relation to Proposed District Plan.

Spark made a number of submissions on the Proposed Invercargill District Plan mainly focused on Section three.

Spark received notice of the decision on 2 November 2016.

The decision was made by Invercargill City Council upon recommendation of the District Plan Hearing Committee Commissioners.

The part of the decision appealed by Spark, reasons for the appeal and the relief sought are set out below. In addition to the relief set out below, Spark seeks such further or consequential relief as may be necessary to give effect to the relief sought.

**Provisions of proposed district plan appealed:**

***Rule 3.9.21, Standards (E) Pole dimensions and (F) Cabinets***

1. Spark lodged a submission (Submission No 104.14) in relation to rule 3.9.21 including standards 3.9.21(E) related to pole dimensions and (F) related to cabinet sizes. The submission sought amended rules throughout 3.9.21 which included the deletion of 3.9.21(E). Rule 3.9.21(E) also seeks to require a 25m setback and limit the dimension of poles, masts or towers for telecommunication facilities from the boundaries of residential zones, Otatara Zone and Business 2 and 4. It was considered that the rule was unnecessary taking into account the combination of other standards imposed within rule 3.9.21.
2. Rule 3.9.21(F) imposes a cabinet footprint of only 1.8m<sup>2</sup> on sites outside the road reserve that is unreasonable small. Council has imposed the footprint area for a cabinet outside a residential zoned property in the road reserve required under the National Environmental Standards Telecommunication Facilities (NESTF) 2008. Cabinets outside the road reserve are typically larger than the standards in 3.9.21(F) especially when the cell site is on a non-residential zoned property.
3. The request for the inclusion of "telephone booths" as a permitted activity was rejected. Rule 3.9.21 is unclear as to whether this activity is permitted. Telephone booths in

streets and outside the road environment are a normal existing telecommunication facility in Invercargill and across NZ. Telephone booths now known as "communication hubs" are an important public telecommunication service.

4. The specific relief sought in the submission was the deletion of the proposed rules 3.9.21-3.9.23 and the insertion of new rules for telecommunication facilities:

**In relation to Rule 3.9.21(E) and (F) - deletion of the rules and no alternative standards were recommended.**

**The submission requested the inclusion provision in rule 3.9.21 for telephone booths as a permitted activity.**

5. It is noted that Chorus lodged a submission seeking the exact same relief (refer submission 102.15). No other parties lodged a submission to Rules 3.9.21 (E) and (F).

*Reasons for appeal:*

6. The submission points were rejected in the Decision.
7. Rules 3.9.21 (E) and (F) are considered to be unreasonable and unworkable. The pole commonly used in an urban environment is tapped therefore reduces in diameter from a base of 800mm to 365mm at the top of the pole. At 6m above the ground the pole diameter is under 600mm. It is unclear why the Council has sort to impose a 25m setback and limit on telecommunication facilities from the boundaries of residential zones, Otatara Zone and Business 2 and 4. In addition is unreasonable and onerous in terms of the actual and potential effects. As a consequence unnecessary resource applications will need to be sought, with associated delays to projects and additional costs.
8. Telephone boxes or communication hubs are a critical part of the telecommunications network essential in the provision of communication services to the public. The requirement for a discretionary activity is unreasonable and onerous.
9. Spark and Chorus were the only submitters to these provisions (and they sought the same relief).

*Relief sought*

10. Deletion of Rules 3.9.21 (E) and (F) or alternatively:

Rules 3.9.21 (E) No masts, poles, or towers for telecommunication or radiocommunication facilities shall exceed 600 mm in diameter at a point ~~4.0~~ **6.0** metres or more above ground level in the Residential Zones, Otatara Zone and Business 2 and 4 Zones, ~~or be sited within 25 metres of the boundary of those Zones.~~

Rules 3.9.21 (F) Telecommunication cabinets and radiocommunication equipment cabinets outside of the road reserve shall not exceed: ~~2.5~~ **3.0** metres in height; or have a total floor area exceeding ~~4.8~~ **10** square metres in floor area.

11. Add under Rule 3.9.21 a new standard for Communication hubs (previously telephone booths) as a permitted activity within or outside the road reserve shall not exceed a height of 2.5 metres or a footprint of 1.0 square metres.
12. Any further or consequential relief as may be necessary to give effect to the relief sought in relation to 3.9.21.

#### **Contrary to Part 2 of the RMA**

13. The Decision made on Plan Change 15G is contrary to Part 2 of the RMA. Without limiting the above, the Decision does not:
  - a) Promote the sustainable management of natural and physical resources;
  - b) Manage the use, development and protection of physical resources in a way, or at a rate, which enables people and the community of Invercargill City to provide for their economic well-being; or
  - c) Sustain the potential of physical resource to meet the reasonable foreseeable needs of future generations.
14. Overall, the Decision is not the most appropriate way to achieve the purpose of the RMA.

#### **Additional relief**

15. In addition to the specific relief set out above, Spark seeks the following relief:
  - a) Such further or other relief as may be just or necessary to address matters raised in this appeal.

## Mediation

16. It is expected that the appeal matters can be resolved with Invercargill City Council via both informal and formal mediation.

### The following documents are appended to this notice:

- Annexure A A copy of Spark's submission on the matters raised in this notice of appeal.
- Annexure B A copy of the relevant part of the Decision and Decision Version wording of the provisions
- Annexure C List of submitters to be served a copy of the appeal.

**Date:** 13 December 2016



**Robert Berrill**  
GM Physical Infrastructure  
Spark New Zealand Trading Limited

The address for service for the appellant is at:  
Spark New Zealand Trading Limited  
Private Bag 92028  
Auckland 1010

Documents for service on the appellant may be:

- posted to the above address, or
- emailed [graeme.mccarrison@spark.co.nz](mailto:graeme.mccarrison@spark.co.nz)

Please direct enquiries to:  
Attention: Graeme McCarrison  
Engagement and Planning Manager  
Tel +64 9 357 2807 or 027 481 1816  
Email [graeme.mccarrison@spark.co.nz](mailto:graeme.mccarrison@spark.co.nz)



**Annexure A: Copy of Spark's Submission on Proposed Plan Change 15G**





Form 5

**Submission on publicly notified proposal for policy statement or plan, change or variation  
Clause 6 of Schedule 1, Resource Management Act 1991**

To: Invercargill City Council  
Private Bag 90104  
INVERCARGILL

Name of submitter: Telecom New Zealand Limited  
P O Box 632  
WELLINGTON

This is a submission on the following proposed plan: Proposed Invercargill District Plan

Telecom New Zealand Limited could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that the submission relates to, the submission points, reasons and decisions sought are detailed in the attached tables.

Telecom New Zealand Limited wishes to be heard in support of its submission. If others make a similar submission, Telecom New Zealand Limited will consider presenting a joint case with them at a hearing.

Paul Hallowes  
Regional Manager  
On behalf of Telecom New Zealand Limited

**Dated** at Auckland this 21<sup>st</sup> day of October 2013.

**Address for Service:**

Telecom New Zealand Limited  
C/- Chorus  
P O Box 632  
WELLINGTON

**Contact Details:**

Attention: Mary Barton  
Telephone: 04 382 5465  
E-mail: [mary.barton@chorus.co.nz](mailto:mary.barton@chorus.co.nz)

Proposed Invercargill City Plan – Submission Points

OBJECTIVES AND POLICIES

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><b>Section 2.7 Hazardous Substances</b>  <b>Policy 5 Other legislation</b>  <i>To recognise the provisions of other legislation, such as the Hazardous Substances and New Organisms Act 1996, which manage the adverse effects of manufacture, storage, use and disposal of hazardous substances.</i>  <b>Explanation:</b> <i>There needs to be congruity between legislation passed at Central Government level, and regional and district plans.</i></p>	<p>Support</p>	<p>Telecom supports this Policy, but notes that the Policy isn't reflected in the rules section of the Proposed Plan, which is more restrictive on above ground storage of fuel than is supported by this Policy.</p>	<p>Retain and subsequently reflect this Policy in the rules section of the plan to make the Proposed Plan less restrictive on above ground storage of fuel (see related submission points).</p>
<p><b>Section 2.9 Infrastructure</b>  <b>Policy 1 Existing infrastructure</b>  <i>To recognise and provide for the continued operation, maintenance and upgrading of local, regional and national infrastructure and associated activities.</i>  <b>Explanation:</b> <i>It is essential that provision be made for the continued operation, maintenance and minor upgrades of local, regional and national infrastructure services. This should include targeted planning for future needs. Essential infrastructure services include:</i></p>	<p>Oppose in part</p>	<p>It is noted that the Proposed Plan variously refers to "infrastructure", "utilities" or "network utilities". Only "infrastructure" is defined in the Proposed Plan. The explanation refers to telecommunication sites but not to lines. It also does not refer to radiocommunication sites.</p>	<p>Decision requested part 1:            Use consistent and inclusive terminology for "infrastructure", "utilities" and "network utilities" throughout the Proposed Plan             Decision requested part 2:  <b>Policy 1 Existing infrastructure:</b> <i>To recognise and provide for the continued operation, maintenance and upgrading of local, regional and national infrastructure, network utilities and associated activities.</i>  <b>Explanation:</b> <i>It is essential that provision be made for the continued operation, maintenance and minor upgrades of local, regional and national infrastructure services and network utilities. This should include targeted planning for future needs.</i>            (A) <i>Transmission lines.</i></p>

Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p>(A) Transmission lines.                      (B) Waste water systems.                      (C) Water supply networks.                      (D) Stormwater networks.                      (E) Drainage networks.                      (F) Telecommunications sites.                      (G) Airports.                      (H) Road and rail networks (as defined in the Southland Regional Land Transport Strategy).                      (I) Ports.                      (J) Network utilities.</p>			<p>(B) Waste water systems.                      (C) Water supply networks.                      (D) Stormwater networks.                      (E) Drainage networks.                      (F) Telecommunications and radiocommunication networks and sites.                      (G) Airports.                      (H) Road and rail networks (as defined in the Southland Regional Land Transport Strategy).                      (I) Ports.                      (J) Network utilities.</p>
<p><b>Policy 2 Management of effects</b>                      To avoid where practical or mitigate impacts of infrastructure on the environment.</p>	<p>Support in part</p>	<p>Telecom notes that the explanation to this Policy is more nuanced than the Policy and encourages sensitive location and co-location or sharing of facilities, rather than simply avoidance or mitigation.</p>	<p><b>Policy 2 Management of effects:</b> To avoid where practical or mitigate impacts of infrastructure on the environment, including through considering alternatives and co-location or sharing of facilities where feasible.</p>
<p><b>Policy 4 Natural hazards</b>                      To avoid or mitigate the effects of natural hazard and climate change on infrastructure.  <b>Explanation:</b> New infrastructure and upgrades to existing infrastructure should be located to avoid, or designed to mitigate, known natural hazard risks and climate change effects. Planning, where possible, should consider the placement of infrastructure to avoid natural hazards, because of the need for essential services to be as robust as they can be in the face of the uncertainties created by</p>	<p>Support in part</p>	<p>This Policy is supported, except design, as well as location should be enabled. Many infrastructure activities, especially linear infrastructure, cannot avoid natural hazard locations, so the focus should be on robust design rather than location.</p>	<p><b>Policy 4 Natural hazards:</b> To avoid or mitigate the effects of natural hazard and climate change on infrastructure.  <b>Explanation:</b> New infrastructure and upgrades to existing infrastructure should be located or designed to avoid or mitigate, known natural hazard risks and climate change effects. Planning, where possible, should consider the placement of infrastructure to avoid natural hazards, because of the need for essential services to be as robust as they can be in the face of the uncertainties created by climate change.</p>

## Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><i>climate change.</i></p> <p><b>Policy 5 Functional need</b>  <i>To recognise that infrastructure can have a functional, technical or operational need for a particular location.</i>  <b>Explanation:</b> <i>Sometimes infrastructure must be located at a particular place for operational reasons, even if that place is subject to hazard or other constraints</i></p>	Support	Telecom supports this Policy as it recognises the operational needs of telecommunication and radiocommunication infrastructure.	Retain Policy 5
<p><b>Policy 5a</b>  <i>To discourage the location of telecommunications facilities in or adjacent to residential properties.</i>  <b>Explanation:</b> <i>There can be widespread concern at the prospect of the erection of telecommunications facilities in residential areas. Despite the provisions of the National Environmental Standard for Telecommunications Facilities, many people believe that emissions from these facilities can be harmful. Careful consideration of alternate locations and full consultation with affected parties can be helpful in alleviating people's concerns.</i></p>	Oppose	<p>There is a functional need for telecommunication facilities near to and in residential zones. The Telecommunications NES deals with radiofrequency emissions and should not be qualified by the Proposed Plan.</p> <p>Policy 5a is also inconsistent with Policy 5</p>	Delete Policy 5a
<p><b>Policy 6 Undergrounding</b>  <i>To require the underground placement of network utilities</i></p>	Support in part	The inclusion of "to require" in Policy 6 is too onerous and is also inconsistent with the rules for overhead lines in some zones. It is also	<b>Policy 6 Undergrounding:</b> <i>To require <u>encourage</u> the underground placement of network utilities <u>in areas where existing networks are underground and</u> where this is economically viable and</i>

Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p>where this is economically viable and technically feasible.</p> <p><b>Policy 7 Co-location</b></p> <p>To discourage the location of telecommunications facilities in or adjacent to residential properties.</p> <p><b>Explanation:</b> There can be widespread concern at the prospect of the erection of telecommunications facilities in residential areas. Despite the provisions of the National Environmental Standard for Telecommunications Facilities, many people believe that emissions from these facilities can be harmful. Careful consideration of alternate locations and full consultation with affected parties can be helpful in alleviating people's concerns.</p>		<p>unreasonable to expect undergrounding where existing support structures exist.</p> <p>Telecom disagrees with the suggestion that network utilities can "significantly affect the landscape and local amenity values". They are an accepted part of the landscape in most instances.</p> <p>Telecom supports the inclusion of Policy 7, which encourages collocation. However it is noted that this policy direction is not reflected in the definition of "upgrading" which does not allow for new lines on existing structures for other purposes (see submission point on upgrading definition below).</p>	<p>technically feasible.</p> <p><b>Policy 7 Co-location:</b> To encourage the use of utility corridors, co-location or sharing of facilities where this is feasible and practical.</p> <p><b>Explanation:</b> Network utilities can significantly affect the landscape and local amenity values and therefore should be located and managed in a manner that avoids, remedies or mitigates their impact on the environment. Undergrounding, utility corridors, co-location and sharing of facilities are all methods that can minimise the visual effects of network utilities, and should, wherever practicable and economic, be encouraged when planning new infrastructure.</p>
<p><b>Section 2.14 Subdivision</b></p> <p><b>Objective 9</b></p> <p>The process of creating allotments through subdivision is integrated with planning for the relevant utilities and services and infrastructure to which it is anticipated the allotments will be connected</p>	<p>Support</p>	<p>Telecom strongly supports the need to integrate development with the provision of infrastructure.</p>	<p>Retain Objective 9</p>

## Proposed Invercargill City Plan – Submission Points

### RULES

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><b>Section 3.5 Electrical Interference</b></p> <p>Rule 3.5.2 - The electric and magnetic fields exposure at or beyond the boundary of any site containing a facility emitting electric and magnetic fields shall be such as to comply with all relevant New Zealand standards.</p>	Oppose	This Rule is inconsistent with the Telecommunications NES which requires that the exposure be measured "at places in the vicinity of the facility that are reasonably accessible to the general public". Further, the Rule is too uncertain in referring to "all relevant New Zealand Standards", as it is uncertain which Standards apply	Delete Rule 3.5.2
<p><b>3.6 Energy</b></p> <p>Rule 3.6.1 - Small and community scale renewable energy generation and distribution is a permitted activity where the energy generation facility is not located:</p> <p>(A) In an identified area of significant indigenous biodiversity.</p> <p>(B) On the site of an identified building, structure, place or area identified in Appendix II – Sites of Heritage Value in this District Plan, or</p> <p>(C) Within an identified outstanding natural feature or landscape.</p>	Support	Telecom supports provisions that enable the installation and use of solar panels and other small-scale generation infrastructure to provide energy to utility facilities.	Retain Rule 3.6.1
<p><b>Section 3.7 Hazardous Substances</b></p> <p>Rule 3.7.1 and related Appendix</p> <p>The following activities are permitted activities:</p> <p>(G) The storage of sub-class 3.1A-</p>	Support in part, oppose in part	Telecom support (G) which permits any volume of storage in underground tanks.  Telecom opposes (H) which has very onerous	Retain 3.7.1 (G).  Amend 3.7.1(H) and related Appendix so that the volume limits are increased for facilities that comply with HSNO regulations to 10,000

Proposed Invercargill City Plan – Submission Points

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<p><i>D liquid petroleum fuels (as listed in Schedules 1 to 6 of the Hazardous Substances (Classification) Regulations 2001) in underground storage.</i></p> <p><i>(H) Unless provided for by Rules 3.7.1 (A) - (G) above, the manufacture, storage, use and management of hazardous substances not exceeding the quantity limits and other requirements stipulated in Appendix VII Hazardous Substances.</i></p>		<p>volume limits for above ground storage of diesel – 50 litres in the Residential zones and 450 litres in all other zones. Many radiocommunication and telecommunication sites have back-up electricity generation for emergency situations and network reliability, which meet HSNO requirements and should not be subject to additional consent processes.</p>	<p>litres.</p>
<p><b>Section 3.9 Infrastructure</b></p> <p><b>General</b></p> <p><i>Rule 3.9.1 - Except as provided for in Rules 3.9.2 to 3.9.24 below, infrastructure is a permitted activity.</i></p> <p><b>Note:</b> <i>The development, operation, maintenance, upgrading and replacement of infrastructure is provided for in the Invercargill City Council Bylaw 2013/1 Code of Practice for Land Development and Subdivision Infrastructure and may require authorisation pursuant to that bylaw.</i></p>	<p>Oppose in part</p>	<p>This Rule does not clearly state that the infrastructure Rules are the only relevant rules and take precedence over any other zone rules unless specifically stated.</p> <p>A preferred approach is to include all rules for telecommunication and radiocommunication structures (antennas and ancillary equipment) attached to buildings in the network utilities section.</p> <p>In addition, the Note refers to Bylaw 2013/1. However, this Bylaw is still in draft and is yet to go out for consultation. On this basis, reference to this Bylaw is not appropriate.</p> <p>The operation, maintenance, and upgrading and replacement of existing infrastructure is an essential component of providing services to</p>	<p><b>3.9.1</b> <i>Except as provided for in Rules 3.9.2 to 3.9.24 below, infrastructure is a permitted activity, and for the avoidance of doubt, the Rules in Section 3.9 are the only Rules relevant to infrastructure and take precedence over any other zone rules unless specifically stated.</i></p> <p><b>Note:</b> <i>The development, operation, maintenance, upgrading and replacement of infrastructure is provided for in the Invercargill City Council Bylaw 2013/1 Code of Practice for Land Development and Subdivision Infrastructure and may require authorisation pursuant to that bylaw.</i></p>
<p><b>Maintenance</b></p> <p><i>Rule 3.9.2 - The operation, maintenance, and upgrading and</i></p>	<p>Support</p>		<p>Retain Rule 3.9.2</p>

Proposed Invercargill City Plan – Submission Points

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<p>replacement of existing infrastructure is a permitted activity and is not required to comply with any other Rules or standards in this Plan.</p>		<p>communities and businesses and should not be subject to unnecessary controls.</p>															
<p><b>Telecommunications Facilities</b>                      Rules 3.9.21 to 3.9.23                      3.9.21 The electronic sending and receiving of communications and associated structures, including (but limited to) telecommunications facilities is a permitted activity where it is to be located in the Airport Operations, Industrial 2, 3 and 4, Seaport and Smelter Zones, or where the facility is permitted, designed, built and operated in accordance with the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 (Refer to Appendix XIII).</p>	<p>Oppose</p>	<p>This rule should refer to telecommunication and radiocommunication facilities. The rule framework is not aligned with the Proposed Plan Policy framework, the Telecommunications NES or Part 2 of the RMA.</p> <p>The existing rule framework permits telecommunication facilities in the Airport Operations, Industrial 2-4, Seaport and Smelter Zones without any restrictions, does not permit any telecommunication facilities in some zones and is silent with respect to other zones. The rule framework is not functional, nor reasonable, nor based on the management of effects. The rules should be deleted and replaced.</p>	<p>Delete Rules 3.9.21 to 3.9.23.</p> <p>Insert new rules that provide for:</p> <ul style="list-style-type: none"> <li>• Telecommunications cabinets and radiocommunications equipment cabinets in road reserve that exceed Telecommunications NES size requirements as restricted discretionary activities.</li> <li>• Telecommunications cabinets and radiocommunications equipment cabinets outside of road reserve up to 3m high and 10m<sup>2</sup> in area as permitted activities.</li> <li>• Telephone booths as permitted activities</li> <li>• Mobile telephone and other wireless equipment in road reserve that exceed Telecommunications NES size requirements as restricted discretionary activities.</li> <li>• Standalone masts and attached antennas for radiocommunication up to the following heights as permitted activities:</li> </ul>														
<p>3.9.22 Where an activity cannot meet or is not covered by the standards set out in 3.9.21 and it is to be located in the Airport Protection, Business 1, 2, 3, 4 and 5, Hospital, Industrial 1 and 1A, and Rural 1 and 2 Zones, the activity is a discretionary activity where it is located at least 50 metres from the boundary with the</p>			<table border="1"> <thead> <tr> <th>General Zone Type</th> <th>Permitted Height</th> </tr> </thead> <tbody> <tr> <td>Industrial</td> <td>25m</td> </tr> <tr> <td>Rural</td> <td>25m</td> </tr> <tr> <td>CBD and town centres</td> <td>25m</td> </tr> <tr> <td>Commercial</td> <td>20m</td> </tr> <tr> <td>Strip Shop, local shops</td> <td>15m</td> </tr> <tr> <td>Residential</td> <td>10m</td> </tr> </tbody> </table>	General Zone Type	Permitted Height	Industrial	25m	Rural	25m	CBD and town centres	25m	Commercial	20m	Strip Shop, local shops	15m	Residential	10m
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## Proposed Invercargill City Plan – Submission Points

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<p><i>Residential 1, 1A, 2 and 3 and Otatara Zones.</i></p> <p><i>3.9.23 Where an activity cannot meet or is not covered by the standards set out in 3.9.21 and 3.9.22 above, the activity is a non-complying activity.</i></p>			<p>Antennas for radiocommunication attached to existing buildings up to the following heights as permitted activities:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>General Zone Type</th> <th>Permitted Height<sup>1</sup></th> </tr> </thead> <tbody> <tr> <td>Industrial</td> <td>Building height plus 5m</td> </tr> <tr> <td>Rural</td> <td>Building height plus 5m</td> </tr> <tr> <td>CBD and town centres</td> <td>Building height plus 3.5m</td> </tr> <tr> <td>Commercial</td> <td>Building height plus 3.5m</td> </tr> <tr> <td>Strip Shop, local shops</td> <td>Building height plus 3.5m</td> </tr> <tr> <td>Residential</td> <td>Building height plus 3.5m</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>• Telecommunications and Radiocommunications facilities that do not comply with the above performance standards to be restricted discretionary activities, with the Council's discretion restricted to: <ul style="list-style-type: none"> <li>• the adverse effects of not meeting the performance standards;</li> <li>• the operational need for the location and design; and</li> <li>• the benefits to the wider community.</li> </ul> </li> </ul>	General Zone Type	Permitted Height <sup>1</sup>	Industrial	Building height plus 5m	Rural	Building height plus 5m	CBD and town centres	Building height plus 3.5m	Commercial	Building height plus 3.5m	Strip Shop, local shops	Building height plus 3.5m	Residential	Building height plus 3.5m
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<p><b>Section 3.17 Soils, Minerals and Earthworks</b></p> <p><b>Rule 3.17.2</b></p> <p><i>Subject to Rule 3.1 Biodiversity, Rule 3.8 Heritage and Rule 3.10 Natural Features, Landscapes and Townscapes and Townscapes, it is a permitted activity to undertake the following land use activities which fill or recontour land:</i></p> <p>(A) ...</p> <p>(E) <i>Activities associated with the construction, operation, maintenance, repair and upgrading of infrastructure.</i></p>	<p>Support in part</p>	<p>Telecom supports the exclusion from earthworks provisions for the construction, operation, maintenance, repair and upgrading of infrastructure, as earthworks associated with service trenches for utilities, or for foundation works for masts an ancillary equipment cabinets, should be exempt from any district plan controls on earthworks given their minor scale, short-term nature and limited potential effects.</p> <p>Telecom opposes the quantity limits as these are unreasonably small, especially for trenches.</p>	<p>Retain Rule 3.17.2, particularly 3.17.2 (E) and delete the limitation on the rule:</p> <p><b>3.17.2 Subject to Rule 3.1 Biodiversity, Rule 3.8 Heritage and Rule 3.10 Natural Features, Landscapes and Townscapes, it is a permitted activity to undertake the following land use activities which fill or recontour land:</b></p> <p>(A) ...</p> <p>(E) <i>Activities associated with the construction, operation, maintenance, repair and upgrading of infrastructure.</i></p> <p><i>Provided that the quantity of earth moved shall not exceed:</i></p> <p>(a) <del>50m<sup>3</sup> over 12 months in the Residential 1, 1A, 2 and 3, Business</del></p>														

## Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p>Provided that the quantity of earth moved shall not exceed:</p> <p>(a) 50m<sup>3</sup> over 12 months in the Residential 1, 1A, 2 and 3, Business 1, 2, 3, 4 and 5, Industrial 1, 1A and 2, and Otatara Zones.</p> <p>(b) 200m<sup>3</sup> over 12 months in the Rural 1 and Rural 2 Zones.</p> <p>(c) 1,000m<sup>3</sup> over 12 months elsewhere.</p> <p><b>Section 3.18 Subdivision</b></p> <p>Rule 3.18.1</p> <p>The following subdivision activities are controlled activities:</p> <p>(A) Subdivision of land to provide for a network utility.</p> <p>(B) Boundary adjustments.</p> <p>(C) Amendments to cross-lease subdivision.</p> <p><b>Section 3.20 Transport</b></p> <p>3.20.1 - 3.20.12</p>		<p>which may, over a long length, involve a considerable volume.</p>	<p>1, 2, 3, 4 and 5, Industrial 1, 1A and 2, and Otatara Zones.</p> <p>(b) 200m<sup>3</sup> over 12 months in the Rural 1 and Rural 2 Zones.</p> <p>(c) 1,000m<sup>3</sup> over 12 months elsewhere.</p>
	Support	The controlled activity status is appropriate for subdivision to provide for utility lots.	Retain Rule 3.18.1
	Support in part	Telecom notes that car parking is only required for the land use activities specified in the table. Telecommunication and radiocommunication facilities are not listed. An exception is also made for infrastructure from the provision of loading and manoeuvring spaces on site.	Include a specific exception that un-staffed utility structures are not required to provide carparking, loading or manoeuvring spaces.

Proposed Invercargill City Plan – Submission Points

**DEFINITIONS**

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><b>Definition: Building</b>  <i>Shall have the same meaning as in the Building Act 2004, but does not include:</i></p> <p>(A) <i>Fences or walls of two metres in height or less above ground level or retaining walls of two metres in height or less below ground level, not used for a sign or for any purpose other than as a fence, retaining wall or wall.</i></p> <p>(B) <i>Structures less than 10 square metres in area and less than two metres in height above ground level.</i></p> <p>(C) <i>Radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2 metres in diameter), less than two metres in height above ground level.</i></p> <p>(D) <i>Masts and poles less than two metres in height above ground level.</i></p> <p>(E) <i>Clothes lines</i></p> <p><b>Definition: Height</b>  <i>Means the vertical distance between the existing ground level at the base of the building and:</i></p> <p>(A) <i>The highest point of the ridge</i></p>	<p>Support</p>	<p>Telecom supports the alignment with the definition in the Building Act and also supports the included exceptions, particularly (B).</p>	<p>Retain</p>
<p>(A) <i>The highest point of the ridge</i></p>	<p>Support in part</p>	<p>Antennas, aerials and lightning rods should be included in the exclusions from the height calculation.</p> <p>Note: if other requests made in this submission</p>	<p><b>Height:</b> <i>Means the vertical distance between the existing ground level at the base of the building and:</i></p> <p>(A) <i>The highest point of the ridge where the roof slope exceeds 35°, or</i></p> <p>(B) <i>To the highest point of the parapet, or intersection of the</i></p>

Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p>where the roof slope exceeds 35°, or</p> <p>(B) To the highest point of the parapet, or intersection of the wall and roof in the case of a flat or sloping roof less than 35° and other than a roof having a gable end; or</p> <p>(C) In the case of a roof with a slope of less than 35° and having a gable end, the mean level between the intersection of the walls and roof and the highest points of the roof.</p> <p>Provided that chimneys, ventilation shafts, water tanks, elevator lofts, steeples, towers, dormer windows and similar parts of a building may be excluded from the height calculations.</p>		<p>are given effect to, the decision requested on this definition may become redundant.</p>	<p>wall and roof in the case of a flat or sloping roof less than 35° and other than a roof having a gable end; or</p> <p>(C) In the case of a roof with a slope of less than 35° and having a gable end, the mean level between the intersection of the walls and roof and the highest points of the roof.</p> <p>Provided that antennas, aerials and lightning rods, chimneys, ventilation shafts, water tanks, elevator lofts, steeples, towers, dormer windows and similar parts of a building may be excluded from the height calculations.</p>
<p><b>Definition: Maintenance and Replacement</b></p> <p>Means any work necessary to continue the operation and/or functioning of infrastructure and shall include:</p> <p>(A) The replacement of an electricity line, telecommunication line, building, structure or other facility with another of the same or similar height, size or scale, in the same or similar position and for the same or</p>	<p>Support</p>	<p>This definition aids in clarifying existing use rights.</p>	<p>Retain</p>

Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><i>similar purpose</i></p> <p>(B) The replacement of conductors</p> <p>(C) The replacement and/or alteration of antennas, masts, poles and associated structures</p>			

DESIGNATIONS

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<p><b>Appendix IV – Schedule of Requirements and Designations: Telecom New Zealand Designations</b></p>	<p>Neither support or oppose</p>	<p>The original rollover for the Notices of Requirement for the designations held by Telecom included a number of conditions as part of a national approach to standardise conditions for its designations. Telecom considers that where conditions apply to a designation these should be included in the District Plan to ensure transparency and clarity for all plan users.</p>	<p>Include the conditions as proposed by Telecom in the District Plan as they apply to Telecom's designations.</p>
<p><b>Appendix IV – Schedule of Requirements and Designations: Telecom New Zealand Designations</b></p>	<p>Oppose in part</p>	<p>A review of the Telecom designations rolled over into the proposed District Plan has identified a number of errors, in particular Designation #46, relating to the Invercargill Exchange (10 The Crescent, Invercargill) has been incorrectly notated as Telecom being a "Secondary Requiring Authority" with respect to this designation. Telecom is the primary and sole requiring authority for this site and seeks that the proposed District Plan be amended to reflect this for Designation #46.</p>	<p>Amend the Schedule of Requirements and Designations to accurately reflect the Notice of Requirements rollover and subsequent correspondence to remove reference to "Secondary Requiring Authority" as it applies to Designation #46 (Invercargill Exchange) so that it reads: "Telecom New Zealand Ltd"</p> <p>Include in the schedule an additional reference under the list of Telecom New Zealand designations with respect to designations #43 (South Invercargill Exchange) and #45 (Bluff Hill Microwave Station and Cell Site) that reads "Telecom New Zealand – Secondary Designation" – with all other information, including the purpose, to remain as listed for the primary Chorus designation.</p>

## Proposed Invercargill City Plan – Submission Points

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
		<p>On sites that are now owned by Chorus, where Telecom has operational equipment (mobile infrastructure) the Company has sought secondary designations. This was the case with respect of Designations #45 (Bluff Hill Microwave Station and Cell Site at Flagstaff Road, Bluff) and #43(South Invercargill Exchange at 113 John Street, Invercargill). This has not been reflected in the proposed District Plan. Telecom therefore seeks that the proposed District Plan be amended to recognise the secondary designations as rolled over by Telecom in it's previous correspondence with Council.</p>	<p>Note: the primary Chorus designation for these sites is to remain unchanged and is not replaced by the secondary Telecom designation.</p>

### GENERAL

Specific provision this submission point relates to	Telecom opposes / supports the specific provision	Telecom's submission is that	Telecom seeks the following decision from the Council
<i>Whole Plan</i>	Neither supports nor opposes		<p>Any consequential amendments, improvements to wording of objectives, policies, rules, explanations and appendices, or improvement of mapping that gives effect to the above submission points or is otherwise required to improve the functionality and clarity of the Proposed Plan.</p>

**Annexure B: Copy of the relevant parts of the Decision**

(refer pages 117 to 121 of the Decision)





Submission No. and Point / Submitter Name	Summary of Submission	Decision Requested
104.14 Spark NZ Ltd	<p>The submitter opposes Rules 3.9.21 - 23.</p> <p>The submitter believes the rule should refer to telecommunication and radiocommunication facilities.</p> <p>The submitter states that the rule framework does not align with the Proposed District Plan policy framework, the telecommunications NES or Part 2 of the RMA.</p> <p>The submitter believes that the rule framework is not functional, nor reasonable, nor based on the management of effects.</p> <p><b>RELIEF SOUGHT:</b></p> <p>Delete Rule 3.9.21 to 3.9.23.</p> <p>The submitter proposes a new Rule structure that sets out potential activity statuses for specific telecommunication and radiocommunication facilities and details maximum size and height of structures in different contexts.</p>	<p>identified on the <u>Planning Maps as subject to natural hazard, the extent to which the proposal addresses the natural hazard to which the site is subject.</u></p> <p>(F) <u>The functional need of the infrastructure to be located in the area and built in the manner proposed.</u></p> <p>(G) <u>The benefits for the wider community.</u></p>
FS5.22 Invercargill Airport Ltd	<p>The submitter opposes Rules 3.9.21 - 23.</p> <p>The submitter believes the rule should refer to telecommunication and radiocommunication facilities.</p> <p>The submitter states that the rule framework does not align with the Proposed District Plan policy framework, the telecommunications NES or Part 2 of the RMA.</p> <p>The submitter believes that the rule framework is not functional, nor reasonable, nor based on the management of effects.</p> <p><b>RELIEF SOUGHT:</b></p> <p>Delete Rule 3.9.21 to 3.9.23.</p> <p>The submitter proposes a new Rule structure that sets out potential activity statuses for specific telecommunication and radiocommunication facilities and details maximum size and height of structures in different contexts.</p>	<p><b>Accept in part</b></p> <p>See recommendations on submission 102.15 above.</p>
FS5.22 Invercargill Airport Ltd	<p><b>Oppose in part submissions 52.10, 102.15 and 104.14</b></p> <p>The further submitter has no difficulty with these submissions except that considers that it needs to be recognised that in some locations within the City the height of all structures is limited by the Invercargill Airport Ltd designation which imposes obstacle limitation surfaces (Designation 72).</p>	<p><b>Accept</b></p> <p>It is recommended that a note advising of the status of the airport height contours could be added to this provision.</p>

Submission No. and Point / Submitter Name	Summary of Submission	Decision Requested
87.46 Transpower NZ Ltd	<p>The submitter is seeking a new rule.</p> <p>The submitter seeks to ensure that the provisions of the Proposed District Plan do not apply to transmission lines existing at 14 January 2010 and that provisions of the NESETA apply to these lines.</p> <p><b>RELIEF SOUGHT:</b></p> <p>(i) Include a new rule as follows:  <u>"The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 contains a separate code of rules for the operation, maintenance, upgrading, relocation, or removal of an existing transmission line that is part of the national grid, as defined in the regulation and existing at 14 January 2010. Except as provided for by the regulation, no rules in this District Plan apply to such activities."</u></p> <p><b>Rule 3.9.1....."</b></p>	<p><b>RECOMMENDATION:</b></p> <p>See recommended amendments for submission 102.15 above.</p> <p><b>Reject</b></p> <p>Rule 3.9.9 addresses matters raised in the National Environmental Standards for Electricity Transmission Activities. The standard is referred to in that provision. There is no need to include an additional note advising of the existence of the NES.</p>
<b>SUBDIVISION</b>		
<b>2.14.1 Issues</b>		
87.34(a) Transpower NZ Ltd	<p>Support 2.14.1 Issues in part.</p> <p>The submitter is concerned that there is no mention of the issue of effects on existing infrastructure, given that subdivision and development can be a major constraint on existing, and the provision of new infrastructure.</p> <p><b>RELIEF SOUGHT:</b></p> <p>(i) That points 1, 4 and 7 are retained as notified  (ii) Add an additional point to Issue 2.14.1 as follows:  'g. Subdivision and development can have adverse effects, including</p>	<p><b>Accept</b></p> <p><i>(The retention of Issues 1, 4 and 7 are to be discussed in the context of the Subdivision report – this recommendation relates to the submitter's suggestion for an additional issue statement).</i></p> <p>It is considered that there are a number of Issue statements in 2.14 that refer to the relationship between subdivision and infrastructure. Whilst Issue 7 raises concerns over amenity conflicts between new and established land uses, subdivision can also result in other effects that may result in restrictions on</p>

Submission No. and Point / Submitter Name	Summary of Submission	Decision Requested
		<p>(B) <u>Telecommunications and radiocommunications facilities are discretionary activities where:</u></p> <p>(a) <u>The standards set out in Rule 8(A) are not met; or</u></p> <p>(b) <u>Any facilities are located within a site identified in the District Plan as containing significant indigenous biodiversity, an outstanding natural feature or landscape, or an item of heritage value identified in Appendix II; or</u></p> <p>(c) <u>Any facilities are located within the road reserve that is on the same side of the road as and next to land or sites that are identified in the District Plan as containing significant indigenous biodiversity, an outstanding natural feature or landscape, or an item of heritage value identified in Appendix II.</u></p> <p><b><u>Assessment Matters</u></b></p> <p>Applications under Rule 8 shall address the following matters, which will be among those taken into account by the Council:</p> <p>(A) <u>The degree of non-compliance with the National Environmental Standard for Telecommunications Facilities and the effects of that non-compliance.</u></p> <p>(B) <u>The size and height of the antennae and their supporting structures.</u></p> <p>(C) <u>The proximity of the proposal to existing telecommunications facilities and the effects of that proximity, including the feasibility of co-location.</u></p> <p>(D) <u>The effects on any heritage values, indigenous biodiversity, outstanding or locally significant landscapes, and the coastal environment.</u></p> <p>(E) <u>If the proposed infrastructure is to be located in land</u></p>

Submission No. and Point / Submitter Name	Summary of Submission	Decision Requested
		<p>(d) No antenna dish shall be greater than:</p> <p>(i) <u>1.2m in diameter in the Residential 1, 1A, 2 and 3 zones and the Otatara Zone; or</u></p> <p>(ii) <u>3m in diameter in all other zones.</u></p> <p>(e) <u>No antenna attached to an existing building shall extend above the building more than:</u></p> <p>(i) <u>5m in the Industrial 1, 1A, 2, 3, and 4 Zones and the Rural 1 and 2 zones; or</u></p> <p>(ii) <u>3.5m in all other zones.</u></p> <p>(f) <u>Masts, poles, or towers for telecommunications or radiocommunications facilities exceeding 0.6m in diameter at a point 4m above ground level, must be located:</u></p> <p>(i) <u>In all zones, other than the Residential 1, 1A, 2 and 3 zones and the Otatara Zone.</u></p> <p>(ii) <u>No closer than 25m from any boundary with the Residential 1, 1A, 2 and 3 zones and the Otatara Zone</u></p> <p>(g) <u>Telecommunications cabinets and radiocommunications equipment cabinets outside of the road reserve shall not exceed: 2.5m in height; or have a total floor area exceeding 1.8m<sup>2</sup> in floor area.</u></p> <p>(h) <u>All facilities located within the road reserve shall be designed, built and operated in accordance with the size and noise requirements set out in Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 (Refer to Appendix XIII).</u></p>

Submission No. / Point / Submitter Name	Summary of Submission	Decision Requested
		<p><b>RECOMMENDATION:</b> Introduce definitions of 'antenna' and 'mast' as follows:</p> <p>"Antenna – means, for the purposes of 3.9 Rule 8, <u>communications apparatus, being metal rod, wire or other structure, by which signals are transmitted or received, including any bracket or attachment but not any support mast or similar structure.</u>"</p> <p>"Mast – means, for the purposes of 3.9 Rule 8, <u>any pole, tower or similar structure designed to carry antenna or dish antenna or otherwise to facilitate communications.</u>"</p> <p><b>AND</b></p> <p>Delete rules 3.9.21 – 3.9.24 and replace with the following:</p> <p>(A) <u>Telecommunications and radiocommunications facilities are permitted activities subject to the following standards:</u></p> <p>(a) <u>All facilities shall be planned and operated in accordance with NZS 2772: Part 1:1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3kHz to 300kHz.</u></p> <p>(b) <u>Any facilities located in the road reserve shall be designed, built and operated as permitted in the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 (Refer to Appendix XIII).</u></p> <p>(c) <u>No mast shall exceed the specific Height of Structures limits for the Zone which it is located.</u></p>

Submission No. and Point / Submitter Name	Summary of Submission	Decision Requested
102.15 Chorus NZ Ltd	<ul style="list-style-type: none"> <li>• Refer to radiocommunication facilities; and</li> <li>• Provide height limits for standalone masts and attached antennas for all zones. Permitted height limits should be 25m for Industrial and Rural Zones, 20m for Commercial Zones and 10m for Residential Zones.</li> <li>• Include provision for antennas for radiocommunications attached to existing buildings as a permitted activity to a height 5m above the existing building height in the Industrial and Rural Zones and 3.5m above the existing building height in all other zones.</li> <li>• Facilities that do not comply with the rules in the Plan should be restricted discretionary activities with the Council discretion restricted to the matter which is not complied with.</li> </ul> <p>The submitter opposes Rules 3.9.21 – 23</p> <p>The submitter believes the rule should refer to telecommunication and radiocommunication facilities.</p> <p>The submitter states that the rule framework does not align with the Proposed District Plan policy framework, the telecommunications NES or Part 2 of the RMA.</p> <p>The submitter believes that the rule framework is not functional, nor reasonable, nor based on the management of effects.</p>	<p>zones.</p> <p><b>RECOMMENDATION:</b></p> <p>See suggested redrafting of Rules 3.9.21 - 3.9.24 set out under 102.15 below.</p>
		<p><b>Accept in part</b></p> <p>It is accepted that the telecommunications facilities provisions as notified have a number of functional weaknesses that could be better addressed.</p> <p>Amendments in response to submissions are suggested to ensure that the provisions cover both radiocommunications and telecommunications facilities.</p> <p>Amendments also seek to enable certain facilities to be located within the residential areas subject to standards and to better align the provisions with the NES for Telecommunications Facilities.</p> <p>The recommended amendments differ from the amendments sought by the submitter in a number of ways. The key difference is requiring a resource consent for telecommunications masts, poles or towers located in residential areas. This seeks to enable community involvement in the process.</p> <p>For more discussion on this matter see Section 5 of this report.</p>

## **Annexure C: List of submitters to be served a copy of the appeal**

Chorus New Zealand Ltd, PO Box 632 Wellington. Attention: Mary Barton, email [Mary.Barton@chorus.co.nz](mailto:Mary.Barton@chorus.co.nz) Telephone +64 4 8964168





**Annexure C: List of submitters to be served a copy of the appeal**

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