Submission by Telecommunication Companies on -

*He Kura Koiora I hokia:*
A discussion document on a proposed National Policy Statement for Indigenous Biodiversity

13 March 2020
To:
Ministry for the Environment
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Name of Submitter: Chorus New Zealand Limited (Chorus), Spark New Zealand Trading Limited (Spark) and Vodafone New Zealand Limited (Vodafone).

Submission:
This is a combined submission by Chorus, Spark and Vodafone ("the Telecommunications Companies") to the discussion document on a proposed National Policy Statement for Indigenous Biodiversity.

The content of the submission follows overleaf. We appreciate the opportunity to provide a submission on the discussion document and related draft National Policy Statement for Indigenous Biodiversity (NPSIB).

Signed: .................................................................
On behalf of Chorus New Zealand Limited
Date: 11 March 2020

Signed: .................................................................
On behalf of Spark New Zealand Trading Limited
Date: 11 March 2020

Signed: .................................................................
On behalf of Vodafone New Zealand Limited
Date: 11 March 2020
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1. Introduction

Telecommunications is essential and critical infrastructure to a thriving economy and social inclusion:

a) New Zealanders expect and demand access to digital services for the wide range of devices they use. This includes such things as being able to make and receive voice calls, access websites, streaming services and working from home. There is a presumption that they will be able to access high speed data services via their mobile devices at home and on the move and have fast fibre broadband service at home.

b) Businesses need access to digital telecommunications services for their payment solutions, taking orders from customers, accessing online accounting, online payroll systems, placing orders with their suppliers, etc.

c) New developments are likely to make use of internet of things technology, using smart devices and remote probes which communicate in real time over telecommunications networks for a range of applications including road management and environmental monitoring.

Collectively the Telecommunications Companies operate fixed and wireless networks (including networks supporting Internet of Things devices) to provide digital services to the ever-increasing proliferation of devices such as smartphones, tablets, smart watches, etc. Our networks are established across New Zealand and significantly expanding with the support of the government promoted Rural Broadband/Black Spots and ultrafast broadband projects. Our critical infrastructure is already located in and needs to be in areas covered by the NPSIB if we are to continue to meet the needs of New Zealanders to be connected. The new digital curriculum in schools, business apps, cloud systems, and the popularity of streaming services such as YouTube, Netflix and Spark Sport all drive demand for network capacity. As a consequence, we are continuously monitoring and upgrading our fixed line and wireless networks to cater for demand.

New Zealand relies on strategic telecommunications links including international submarine cables linking New Zealand with the World, submarine cables linking our islands, and terrestrial fibre cables connecting
our regions. The services enabled by this infrastructure and local networks they connect to are essential to our daily lives.

Whilst many elements of telecommunications networks (fixed line and wireless) are now regulated by the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016, in many cases there are still often obligations to meet any rules in a distinct plans in regard to indigenous biodiversity and be assessed under the policy framework of a district plan where resource consent is otherwise required. Accordingly, it is essential to get the high-level policy framework in the NPSIB right to ensure infrastructure work is not precluded in appropriate circumstances.

2. Key Outcomes

Details of our submission are outlined in Section 3 below. However, broadly speaking the principal outcome we are seeking is to ensure that the NPSIB does not result in unintended consequences where critical and essential infrastructure that may be necessary in a particular location is not inadvertently locked out of identified Significant Natural Areas (SNAs), particularly where the adverse effects are minor and there are no reasonable alternatives that avoid these areas. It is also important that locations affecting indigenous biodiversity outside of SNAs are not precluded in appropriate situations.

Some issues of concern we have identified are:

- Lack of flexibility to consider any infrastructure in High Value SNAs even where the level of effects in regard to adverse effects to be avoided is minor, the community benefits are very high and there are not reasonable alternatives.
- Lack of recognition of infrastructure other than that currently included in the definition of Nationally Significant Infrastructure in Medium Value SNAs.
- The definition of Nationally Significant Infrastructure is too narrow given the significant policy implications where infrastructure does not fall within this definition.
- Lack of clarity around the policy framework applying to the upgrade of existing infrastructure within SNA areas.
• Lack of recognition that existing roads within SNAs are infrastructure corridors. There is the opportunity to enable new and upgrading of existing infrastructure in roads.

Matters we support include:
• The clarity that is provided around the relationship between the NPSIB and New Zealand Coastal Policy Statement (NZCPS) in the coastal environment.
• Recognition of Hutia Te Rito.
• Recognition of tangata whenua.
• Recognition in the policy framework of the locational constraints that apply to uses and development (which includes infrastructure),
• The Effects Management Hierarchy, although noting that the Telecommunications Companies do not agree with how this is currently applied to telecommunications infrastructure in Part 3 Implementation Methods of the draft NPSIB.

3. Response to Consultation Questions

3.1 General Comments
The Telecommunications Companies have limited their submission to matters directly relating to infrastructure deployment in areas with indigenous biodiversity values.

We acknowledge the value and importance of indigenous biodiversity in New Zealand and accordingly support a National Policy Statement to suitably protect this important resource into the future. However, it is important to recognise that some infrastructure may from time to time conflict with these areas due to functional and operational constraints. It is important that there is a policy framework in place that allows for reasonable decision making and weighing of relevant factors where infrastructure may need to locate with or traverse an area with indigenous biodiversity values. We are concerned that the current framework does not allow for a proportionate response and may lock out new, or upgrades to existing, telecommunications infrastructure from SNA areas even where the effects are minor and able to be managed in accordance with the effects management hierarchy. In our view the policy framework can
still set a high bar where appropriateness of any particular infrastructure project can be considered against the effects management hierarchy and in regard to its level of effects.

3.2 Q20 Do you agree with the use of the effects management hierarchy as proposed to address adverse effects on indigenous biodiversity instead of the outcomes approach recommended [by some members] of the Biodiversity Collective Group? Yes/No.

Yes. At face value the effects management hierarchy appears to be workable and provides clear guidance on the cascade of approaches to be assessed where the policy framework enables this hierarchy to be applied. Having a consistent approach applied nationally once bedded in will provide more certainty in regard to when measures such as biodiversity offsetting and compensation can be implemented where it is not possible to avoid, remedy of mitigate adverse effects on indigenous biodiversity. However, what will be key is the scale at which the effects of work on indigenous biodiversity is considered under the policy framework. That is, will it be applied to the immediate footprint of a project (e.g. if 5m² is cleared to accommodate equipment where planting or habitat cannot be reinstated on the same footprint), or if the adverse effects on ecological integrity will be looked at the broader scale of the overall values of an SNA?

3.3 Q22 Do you agree with the distinction between high and medium value SNAs as the way to ensure SNAs are protected while providing new activities? Yes/No/Unclear

Unclear. Given the substantially different policy implications for being located within an SNA classified as Medium or High, we have concerns with this distinction unless there are changes made to the policy framework to adequately address our concerns. There are a number of criteria proposed requiring assessment to classify an SNA area as Medium or High. It would appear that if only one sub-criteria were classed as high, an entire SNA area will as such be classed as such. There may be a fine line between determining overall Medium or High status, and there is potential for large areas to achieve this higher classification with substantial policy implications.
3.4 Q23 Do you agree with the new activities the proposed NPSIB provides for and the parameters within which they are provided for? (see Part 3.9(2)-(4) of the proposed NPSIB) Yes/No

No. We have a number of concerns with this section that could result in unintended consequences with infrastructure, even with minor adverse effects, being locked out of these areas. This may result in adverse effects on people and communities.

Clause 1 includes 4 adverse effects to be avoided. The term avoid has significant meaning following the King Salmon decision and may result in large areas of New Zealand being inaccessible for critical infrastructure. As outlined in section 3.2. above, it is unclear at what scale this will be applied and therefore if it is practical to ever satisfy these avoidance requirements in SNA areas. The impact on say, $5m^2$ of vegetation or habitat removed to accommodate equipment cannot be avoided in that particular location, but its overall impact on the ecological integrity of the SNA, particularly where for example additional planting is located in other degraded areas of the SNA, may satisfy the requirements for 3.9(1) in regard to the 4 adverse effects to be avoided. That scale of assessment will be key to how practical and reasonable the provisions of 3.9(1) are.

3.9(2) allows certain activities in SNA areas classified as Medium to be managed in accordance with the effects management hierarchy. This included under (d)(i), Nationally Significant Infrastructure. Telecommunications networks however are not included within this definition. As set out in out answer to Q24 below, we consider that the definition of Nationally Significant Infrastructure is deficient and needs to include other infrastructure including telecommunications networks. Telecommunications networks may include wireless facilities and fixed line networks (e.g. fibre cables). There is a high risk that important telecommunications infrastructure will need to be upgraded or located within an SNA and located within or traverse an SNA due to functional or operational reasons.

A recent example of critical infrastructure needing to traverse a terrestrial SNA is a Chorus fibre optic cable currently under construction to provide high speed fibre associated with the Ultra-Fast Broadband (UFB) Project to Waiheke Island (see Figure 1 below). The cable runs from Maraetai Beach in Auckland to Woodside Bay on Waiheke Island. The cable crosses a terrestrial Significant Ecological Area (SEA) in the
Auckland Unitary Plan (AUP). It is unknown whether this would meet the Medium of High SNA threshold under the proposed criteria.

There are also numerous existing examples where SNA areas encroach into road reserves or where services (underground and/or overhead) may need to be located outside of the road reserve into adjacent SNA classified areas due to practical road reserve space and geometry considerations (see Piha Road AUP example in Figure 2 below).

We have not comments on Clauses (3)-(4).

Figure 1: Aerial view of Maraetai showing terrestrial SEA (green crosses). Oval denotes approximate cable crossing location
Figure 2: Aerial view of Piha Road and SEA (green crosses).

Our preference to address our concerns in regard to 3.9(1) –(2) is to include telecommunications networks within the definition of Nationally Significant Infrastructure, and amend 3.9(1) and (2) such that the effects management hierarchy may be applied to effects from Nationally Significant Infrastructure in SNAs classed as both High and Medium.

An alternative in the absence of amending the definition as requested to apply the effects management hierarchy to all infrastructure in SNA areas defined as either Medium of High.

These approaches are considered to align well with the implementation requirements for social, economic and cultural wellbeing. Under 3.7(b), in implementing the NPSIB local authorities must recognise that the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate forms and within appropriate limits. This appears to be in conflict with some of the avoidance framework for infrastructure within SNAs where it may not be reasonably possible to avoid these areas to deliver necessary services to people and communities.
3.5 Q24 Do you agree with the proposed definition for nationally significant infrastructure? Yes/No

No. Much of New Zealand’s critical infrastructure is related to telecommunications. Approximately 98% of New Zealand’s telecommunications and data transfer with the World is via submarine cables which also rely on land-based cables at the shore ends and cable termination stations. The national significance of submarine cables has been recognised in the Submarine Cables and Pipeline Protection Act (1996) and Order (2009) which provides cable protected areas in the Hauraki Gulf and off the west coast of Auckland which prioritises the protection of cables in these areas over other activities such as commercial and recreational fishing, seabed mining and anchoring.

Connectivity to the rest of New Zealand is provided via terrestrial fibre cables and other submarine cables between islands (e.g. Cook Strait). Due to the linear nature of these cables, it may be necessary from time to time to cross SNA areas (both terrestrial and marine). Other telecommunications equipment such as local distribution lines, exchanges, mobile phone networks and microwave stations and repeaters enable the overall telecommunications network to function. Some of this equipment is limited in its location by functional and operational reasons to serve particular communities and in some instances may not be able to avoid SNA areas, but may be able to do so with minimal impacts on indigenous biodiversity values (e.g. may be limited by topography or the location of road corridors).

In our view the definition of Nationally Significant Infrastructure needs to be expanded to include telecommunications networks. Spark and Vodafone have recently requested the same amendment in the Urban Development Bill. If any change to the definition is limited to the core backbone network, then our position on amendments to 3.9(1)-(2) would be to allow for infrastructure more generally to be subject to the effects management hierarchy in SNA areas classified as either Medium or High.

This approach would be consistent with proposed Policy 8: to recognise the locational constraints that apply to specific subdivisions, uses and developments.
3.6 Q26 Do you agree with managing existing activities and land uses, including pastoral farming, proposed in Part 3.12 of the proposed NPSIB? Yes/No

Yes (provisionally). We support policy recognition and support for existing land uses, which may include infrastructure, within SNA areas. However, there is no clarity provided around whether this implementation requirement also includes upgrading of existing facilities, and in particular infrastructure. An example of this is where additional equipment may need to be installed at the base of an existing wireless facility within a SEA area, which may require some minor trimming or removal of vegetation. We request that 3.12 is amended to specifically provide for the upgrading of existing infrastructure within the implementation requirements framework of 3.12.

This approach would be consistent with proposed Policy 8: to recognise the locational constraints that apply to specific subdivisions, uses and developments.

3.6 Q60 Do you think there are potential areas of tension or confusion between the proposed NPSIB and other national direction? Yes/No

Yes. Where more than one NPS applies, there is always the potential for confusion. The conflicts between the other draft national policy statement such NPS Urban Development or NPS Highly Productive Land need to be resolved. However, we consider that the approach taken in the proposed NPSIB has mitigated this risk by being clear that when the NPSIB and NZCPS both apply in the landward coastal environment and there is any conflict, the NZCPS will prevail. While we may not necessarily agree with the policy direction of all of the provisions of either NPS in all cases within the Coastal Environment, we support the approach taken in the NPSIB to at least be clear which provisions take precedence where there is any conflict.
4. **Requested Outcomes**

We request the following outcomes in regard to the proposed NPSIB:

1. Retain Policy 8 (recognising locational constraints)

2. Amend the NPSIB framework such that telecommunications infrastructure is subject to the effects management hierarchy in Medium and High SNA areas. Solutions to achieve this as outlined in the response to questions above may include a change to the definition of Nationally Significant Infrastructure and suitable amendments to Implementation Requirements in 3.9.

3. Retain the general intent of 3.12 in the implementation requirements for existing activities and land uses, but make specific allowance for upgrading of existing infrastructure located within SNAs.

4. Retain the clear direction as proposed in Clause 1.6 that the NZCPS prevails over the NPSIB in the coastal environment where there is any conflict between the provisions of these instruments.

Chorus, Spark and Vodafone welcome the opportunity to meet to express our views in person.