



STATEMENT OF

TELECOM NEW ZEALAND LTD

FOR HEARING ON

VARIATION 6

(CHRISTCHURCH GROUNDWATER PROTECTION ZONES)

TO THE

PROPOSED NATURAL RESOURCES REGIONAL PLAN:

CHAPTER 4: WATER QUALITY

Date: 12 April 2010

Section A: Introduction

1. The purpose of this statement is to address the recommendations made in the Officer Report to the Canterbury Regional Council Hearing Panel on submissions on Variation 6 (Christchurch Groundwater Protection Zones and Related Map Volume Amendments) to the Proposed Natural Resources Regional Plan, Chapter 4: Water Quality.
2. The Officers Report will be addressed in relation to part of the original submission Telecom New Zealand Ltd (Telecom) made to Variation 1 to the Proposed NRRP – both Chapter 4 and Chapter 6. This submission has been carried across to become a “deemed submission” on Variation 6.
3. This statement also makes some contextual comments in relation to the wider Telecom submission.
4. The statement covers the following matters:
 - Section B: Clarification of Telecom full submission and General Comments on Variation 6
 - Section C: Discussion on submission points and Officer Report
 - Section D: Summary and preferred actions

Section B: Clarification of Telecom full submission and General Comments on Variation 6

Clarification of Telecom full submission

5. It is important to briefly clarify what Telecom is seeking in their substantive submission to Variation 1 (and now Variation 6) to the NRRP. This will provide a background and context for the submission points on Variation 6, particularly in relation to Rule WQL40: *'Excavation of land in the Coastal Confined Gravel Aquifer System, or over an unconfined or semi-confined aquifer'* of Chapter 4. This rule is subsequently altered by Variation 6 to include the new groundwater protection zones. It is considered appropriate for Telecom to consider the implications of this rule in the context of Variation 6.
6. Telecom is seeking to avoid repetitive resource consent requirements for every network utility operation work (including telecommunication lines, radiocommunication facilities and access tracks) that involve low scale earthworks, and minor vegetation clearance and/or locating of structures in beds and margins of lakes and rivers that result in minor effects.
7. There are several ways that this could be achieved and these relate to the permitted activity rules in Chapters 4 and 6. Two possibilities are as follows:
 - a) Exemptions for network utilities, telecommunication lines, radiocommunication facilities and associated access tracks from Rules WQL32, 33, 40, 54, 34, and 62; and BLR 1 to 8; and/or
 - b) Permitted Activity Rules within the above mentioned rules for network utilities, telecommunication lines, and radiocommunication facilities and associated access tracks, with or without standard conditions.
8. Although not specifically included in the Telecom submission as relief sought, item (b) above with standard conditions is considered to be within the broad scope of the Telecom submission which seeks a permissive regime for the minor works described

above. In support of this approach Telecom would like acknowledge the number of resource consents that have been issued over the last five and a half years to other network utility operators for new or replacement transmission/telecommunication lines across rivers that involve land disturbance/earthworks and vegetation clearance in beds and margins of rivers. These consents have consistently been approved by Ecan with the same (or very similar) sets of conditions. These consents have also been processed on a non-notified basis without the need for affected party approvals.

9. This raises the question of the efficiency and need for the consent process in these instances (s32 of RMA). Telecom submits that the consent process could be substituted by permitted activity (performance standard) status for these minor works.
10. Further, Telecom believes telecommunication facilities are “deserving” of such an approach as outlined in paragraph 7 given the specific and linear nature of sites/routes which provides an essential service to local communities. This could then be likened to the National Environmental Standards now in place for telecommunication cabinets.

General Comments on Variation 6

11. Having read the evidence included with the Officers Report it is clear that Variation 6 is, as outlined in legal submissions¹, seeking “*to protect the unconfined aquifers to the west of Christchurch from inappropriate development that may lead to contamination of the groundwater.*” Throughout much of the evidence submitted with the Officers Report the types of ‘inappropriate development’ relate to urban development, particularly associated with industrial and commercial activities, as well as intensified rural development. Hence, the protection of the groundwater resource being one of the reasons for the location of the Urban limits in Plan Change 1 to the Regional Policy Statement and preventing further urban development into the Groundwater Protection Zone.

¹ Paragraph 3, page 2

12. There is also much made in evidence of the ‘precautionary principle/approach’ and ‘prohibited activity status’ as being appropriate to consider in relation to what Variation 6 seeks to achieve. Case Law surrounding these matters has been cited and conclusions reached that they are applicable as a basis for the provisions proposed within the Proposed NRRP. The basis being to ensure groundwater is not contaminated by spills, leaks or intentional discharges in such a way that the high quality of the water supply within the unconfined aquifer (used for city supply) is adversely affected and treatment required in the future.

13. The evidence provided by Carl Hanson outlines² many of the contaminants of concern, (i.e. petroleum hydrocarbons, industrial solvents, pesticides and nitrate), to the quality of groundwater, as well as the risks from various land use activities (i.e. agriculture, industrial, commercial and residential). The works undertaken by network utility operators, such as cable/pipe laying through trenching etc, are not mentioned in this report as a potential contamination threat. Even though some machinery used in works such as this may use diesel/petrol, Telecom believes there are measures that can be put in place to avoid spills and leaks associated with minor works such as network utilities. These are outlined in the full Telecom submission in *Appendix 1*.

² Paragraphs 26-41, no page references in evidence

Section C: Discussion of submission points and Officer Report

Submission

14. Telecom are seeking the following in relation to WQL40 (or other similar methods of achieving the desired relief) in the NRRP Chapters 4-8 (see *Appendix 1* for copy of Telecom submission):
- a) clarifying that the rule permits not only the excavation of land associated with repair and maintenance of established network utilities³ and associated access tracks but that it also applies to/provides for the excavation of land associated with new network utilities and associated access tracks; and
 - b) Creating exemptions from conditions 1(a) – (d) inclusive for excavation of land associated with both the establishment of new and repair/maintenance of established network utilities and associated access tracks;
15. The reasons for Telecoms submission are related to the thresholds within the rule and how they impact upon Telecom’s processes and activities. While the 5m threshold in Activity Description (a)(i)(1) is accepted, Telecom opposes the thresholds in (a)(i)(2)-(3) as well as Conditions 1(a) – (d) of Rule WQL40. Telecoms submission in *Appendix 1* outlines the reasons for opposing these thresholds, however, in summary:
- a) Activity Description (a)(i)(2) - The NRRP as notified does not provide information on groundwater levels and the uncertainty of requiring reference to information that is subject to possible change outside the NRRP is opposed, as is where is the most appropriate place to find this information.
 - b) Activity Description (a)(i)(3) – The volume and time limits proposed are not robust enough when considering the linear nature of long underground line runs.

³ Network Utilities, Telecommunication Facilities and Radiocommunication Facilities are defined within Telecoms full submission in *Appendix 1*.

- c) Conditions 1(a) – (d) are inappropriate for land excavation associated with telecommunication lines and/or radiocommunication facilities as these can occur within the identified setbacks without any adverse effects on those waterbodies. The activity status that results from not meeting these setbacks is unnecessary.
16. An exemption from this rule would be appropriate for the works Telecom undertake because they only involve minimal land disturbance and minor adverse effects. Excavation is generally shallow and small in scale and can often occur without discharging sediment or materials into groundwater. Given the infrastructural importance of the network utility works, the requirement for resource consents for minor land excavation is considered onerous.

Officer Report:

17. The Officer Report outlines three submission points for Telecom’s submission and further submission as follows:
- a) 505.9 (pg 385) under heading “*4-149-1 Rule WQL40 Excavation of land in the Coastal Confined Gravel Aquifer System, or over an unconfined or semi-confined aquifer - restricted discretionary activity*”;
 - b) 505.10 (pg 391) under heading “*4-149-3A1 Activity Rule WQL40*”;
 - c) F1056.34 (pg 396) – under the heading “*WQLV6.129 Amendment*”.
18. The Officer Report rejects the first two main submissions points and accepts the further submission point.

Discussion:

19. Telecom is disappointed with the assessment of its submission points on Rule WQL40. The assessment does not appear to consider the substantive details of the submission but rather assesses the relief sought in very narrow terms.
20. For submission point 505.9 (pg 385), the Officers assessment states the obvious in that the rule only applies in the circumstances stated in the activity description and if the activity is not captured by that description or the conditions, then no land use consent is required.
21. While the specific relief sought (outlined in paragraph 14(a) above) is to clarify that Rule WQL40 applies to new as well as existing network utilities and access tracks, Telecom believes consideration of the reasons for why this relief is sought must be considered. Telecom's submission (page 20 in *Appendix I*) provides these reasons, i.e. the thresholds outlined in the Activity Description of the rule do not provide sufficient certainty for plan users and are not robust enough considering the works undertaken by Telecom.
22. In particular, Telecoms submission outlines concerns with the volume of material to be excavated and the timeframe in which to do so. These thresholds do not reflect the linear nature of long underground line runs which will inevitably be exceeded. However, the methods of laying cables/lines (outlined in detail in Telecoms submission, *Appendix I*) and the industry guidelines and standards already followed means that the disruption to the environment will be minimal.
23. Further, if groundwater is intercepted by Telecom works this does not automatically mean that groundwater will be contaminated. It is significant that the NRRP already provides for dewatering (Rule WQN 17) where groundwater is intercepted as a permitted activity, subject to conditions. Those conditions being dewatering occurring no longer than nine months, groundwater not lowered more than 8m below ground level of the site, no ground subsidence caused, and no wetlands to be dewatered. There are other rules controlling the discharge from dewatering and stormwater (Rules WQL1 and WQL7) to groundwater and/or surface water.

24. Therefore, in considering what the current rule regime allows, a scenario to be considered is that Telecom trenches a cable that exceeds 100m³, is located more than 100m from any unconfined aquifer or surface waterbody and intercepts groundwater. Telecom pumps out the groundwater meeting the conditions of WQN17 and discharges into the Christchurch City Council's stormwater system. The removal of the groundwater then leaves a dry working area for the shallow trench works where methods are employed to avoid spills and leaks from machinery to the working area. The cable laying then occurs until work is complete and the uncontaminated material removed is backfilled.
25. The point of this scenario being outlined is that limits on volumes of materials removed, plus the timeframe, for utility works seem unnecessarily restrictive. This scenario will trigger a restricted discretionary resource consent. The matters for Council's discretion are, amongst others, measures to prevent contamination of groundwater through excavation, i.e. restrictions on hazardous substances, management of stormwater, preventing leaks, and monitoring. These measures would apply whether there was 50m³ excavated or 1000m³ excavated. On this basis it is considered that more permissive thresholds (volumes and timeframes) for utility works would be appropriate and still be consistent with what other permitted activity rules allow. A threshold of 1000m³ is considered more appropriate by Telecom.
26. Telecoms second main submission point 505.10 (page 391) outlines the relief sought to provide exemptions from the conditions (A-D) of WQL40. If the scenario outlined above in paragraph 24 was altered so that trenching occurred 21m from a groundwater protection zone (or a waterbody) then a non-complying consent would be triggered. Again the matters for discretion, amongst others, relate to measures to prevent contaminants entering groundwater through the excavated land. Again, Telecom believes these measures would apply whether there was 50m³ excavated or 1000m³ excavated. However, further to this and related to the second submission point, the 100m setbacks contained in these conditions are inappropriate to the type of work Telecom undertakes. Hence the reason Telecom is seeking exemptions for network utility operators from these setbacks.

27. The Officers Report assesses the second submission point by again stating the obvious that the rule applies only in certain circumstances. However, the Report goes on to identify the 100m³ annual volume and comments that “...*This threshold is unlikely to be triggered in most cable or pipe laying situations. If it is triggered, then the expectation is that one consent is sought for the entire project.*” Telecom believe it is inappropriate to assume that the 100m³ limit will not be triggered in most situations and also inappropriate to expect a global consent to be obtained for every time it is exceeded. This does not take account of those discrete projects that trigger the threshold nor the methods for installing utility infrastructure such as Telecoms.
28. The Officers Report does not address the relief sought by Telecom in its second main submission point to exempt a network utility including access tracks from the conditions of Rule WQL40. This has, however, been discussed in this statement in relation to Telecoms concerns.
29. As an aside, when reviewing the Officers Report, Telecom is not the only submitter who has serious concerns about the thresholds of WQL40 in relation to network utility works. As the Officers Report identifies (page 389), there are other submitters who believe the rules are too stringent and that the limits need to be increased to a realistic level that will not prevent activities of great potential benefit, i.e. 1000m³. Plus, the Report identifies that submitters are seeking exemptions for network utility operators due to the minimal degree of land disturbance and excavation. Surely if many other submitters (many territorial authorities) identify the same issues with this rule, then the Officer Report should look at it in a more comprehensive manner.
30. The Officers Report responds to these submissions (page 390) by again stating the obvious about how the rule works but also states that “*There are important criteria to define when consent is required, i.e. if the excavation will remove an annual volume in excess of 100 cubic metres, or there is not a sufficient thickness of sediment between the excavation and aquifer or water-table.*” Telecom’s response to this point is:
- a) Under the scenario outlined in paragraph 24 it does not appear that the volume of material is necessarily relevant to potential impacts on groundwater; and

- b) In any event, how will the thickness of sediment be determined given the NRRP does not provide this information, requiring plan users to source alternative material subject to change or interpretation.
31. Telecom acknowledges that its further submission **F1056.34** was accepted. For the record the Telecom further submission opposed the submission by the Canterbury-Aoraki Conservation Board (432.157) which sought to impose prohibited activity status under Rule WQL40(d). Clearly such activity status is inappropriate and Telecom supports the Officers recommendation in this regard.

Section D: Summary and Preferred Actions

32. Telecom does not accept the recommendations relating to its submission points as contained in the Officers Report for the following reasons:
- a) The thresholds/limits contained in Rule WQL40 are too restrictive for network utility works;
 - b) It is uncertain where plan users obtain information on groundwater levels in order to determine if WQL40 will apply, and this uncertainty could lead to abuse or ignorance of the rule; and
 - c) Unnecessary cost and time delays obtaining resource consents for activities that trigger this rule where it can be proven that effects will be minimal.
33. In addition, it does not appear that the Officer has comprehensively considered the nature of the works which are subject to this submission. This approach by the Officer also applies to many other submissions by other network utility operators on this rule.
34. Telecom seeks the following in relation to its submission points:
- a) That an exemption for network utility works be provided to conditions 1(a)-(d);
 - b) That if point (a) above is not granted, then the volume limit and timeframe limits be increased for network utility works, i.e. 1000m³;
 - c) That the setback distances for conditions 1(a)-(d) be reduced or deemed not applicable for network utility works.
35. This relief sought is within the scope of Telecoms submission as it is identified as part of the relief sought, that *‘There may, however, be other methods of achieving the desired relief listed in Submissions 2a to 2g.’*

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12 April 2010

Attachment 1