BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Queenstown-Lakes District Plan

Statement of evidence of **MATTHEW McCALLUM-CLARK** for Vodafone New Zealand Limited (0179), Spark New Zealand Trading Limited (0191) and Chorus New Zealand Limited (781) in relation to Chapter 30 – Energy and Network Utilities

02 September 2016

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Statement of Professional Qualifications and Experience

1. My full name is Matthew Eaton Arthur McCallum-Clark. I am a Resource Management Consultant and a director of the firm Incite, which has offices in Auckland, Wellington, Nelson and Christchurch.

2. I hold a Bachelor of Laws from Canterbury University, a Bachelor of Commerce (Economics) from Otago University and have undertaken a postgraduate diploma in Environmental Auditing through Brunel University in the UK. I am also a qualified and experienced independent hearing commissioner with chair endorsement under the Ministry for the Environment's Making Good Decisions Programme.

3. Apart from a short period at a city council, I have been a resource management consultant for about 22 years. Over the last ten years I have specialised in providing policy advice to a range of clients, particularly local authorities. This has included significant involvement in regional plan development for the Canterbury and Southland Regional Councils, as well as a lead planner role with respect to the Hurunui District Plan. I have also reviewed and prepared submissions on a number of proposed district plans, including for Queenstown-Lakes District, Southland District, and the Christchurch District Replacement Plan.

4. In this matter, I assisted Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited ("the Telecommunications Companies") in reviewing the Proposed Queenstown Lakes District Plan (the 'Proposed Plan") when it was notified, and I assisted with the preparation of the submissions and further submissions by the Telecommunications Companies. I also attended a pre-hearing discussion with representatives of the Telecommunications Companies and Council staff in Queenstown in May 2016.

Code of Conduct

5. I confirm that I have read the Hearing Commissioners minute and direction on Procedures for the Hearing of Submissions and I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note of 2014. I have complied with the Practice Note when preparing my written statement of evidence, and will do so when I give oral evidence.

6. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.

7. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope

8. The scope of this evidence relates to the Energy and Utilities Chapter of the Proposed Plan.

9. This evidence is broken into a number of parts:

   a) the objectives and policies;
   b) rules in relation to lines;
   c) mast height limits;
   d) specific provision for “small cells”;
   e) rules relating to antennas; and
   f) a range of drafting issues, which may ultimately lead to some unintended consequences.

10. I am somewhat disappointed at the level of communication and collaboration that has been available with the Council during the District Plan process. In my experience, the ability to have free and frank discussion over matters occurring in the submissions, with a view to arriving at agreed outcomes, is an efficient and worthwhile process. This is particularly relevant for those matters where technical issues mean the framework is not particularly functional, or there are drafting issues creating unintended consequences.

11. At the outset I also note that in the Council Officer’s Section 42A Report, many submission points are discussed as being from “Chorus”. Chorus New Zealand Limited, Spark New Zealand Trading Limited, Vodafone New Zealand Limited and 2 Degrees Limited lodged identical submissions, as a part of a move by the telecommunications industry to speak with a ‘single voice’. On that basis,

whenever one of these telecommunication companies is identified in the singular, in reality, the four telecommunication companies have the same submission point.

12. A "marked up" version of the provisions recommended in the s42A Report for this Chapter, where further changes are still sought, is attached to this evidence, to assist with the discussion and understanding of the outcomes sought.

Objectives and Policies

13. The Telecommunication Companies lodged substantial submissions on the objectives and policies of the Energy and Utilities Chapter. The submission points generally leveraged off submission points on the Strategic Directions Chapter and sought to give effect to the Regional Policy Statement.

14. The general approach taken by the Telecommunications Companies on the Proposed Plan and in other District Plan reviews around New Zealand is to ensure policy frameworks in plans provide for an appropriate consideration of the competing interests of network utility infrastructure and avoiding, remedying or mitigating the adverse effects of this infrastructure. In my opinion, the Proposed Plan, as notified, had a significant deficit in enabling provisions, with a stronger policy focus on avoidance of adverse effects, particularly in more sensitive natural environments. The submissions from the Telecommunications Companies sought to redress this balance, so the benefits of network utilities and the contributions they make to social and economic wellbeing can be appropriately weighted in resource consent decision making and in establishing the Proposed Plan rule regime.

15. A district plan must give effect to a Regional Policy Statement (RPS)[1]. The operative RPS includes relatively limited provisions in regard to infrastructure within Chapter 9 Land. Objective 9.4.2 and Policy 9.5.2 promote the sustainable management of Otago's infrastructure to meet the reasonably foreseeable needs of Otago's communities.

16. A territorial authority, in preparing a district plan, must have regard to a proposed RPS[2]. The Proposed RPS was notified in May 2015, and decisions are due for

[1] s75(3)(c) RMA
[2] s74(2)(a)(i) RMA

release in November 2016. The Proposed RPS has a more comprehensive framework in regard to infrastructure than the operative RPS. Relevant provisions are contained in Chapter 3 *Communities in Otago are resilient, safe and healthy*. In particular, Objectives 3.4 and 3.5 and related policies:

- recognise the national and regional significance of specified infrastructure including telecommunication and radiocommunication;
- recognise the functional needs of infrastructure of regional and national importance in integration infrastructure and land use;
- require urban growth to be manged such that it occurs in areas with sufficient infrastructure capacity or areas where these serves can be extended or upgraded;
- recognise the role infrastructure plays in supporting economic, social and community activities
- Require the adverse effects of infrastructure to be minimised, with a hierarchy of outcomes promoted depending on the sensitivity of the receiving environment (e.g. giving preference to avoiding the most sensitive areas such as outstanding natural features and landscapes, but where avoidance is not possible avoiding significant adverse effects on those values and attributes that contribute to the outstanding nature of those areas).

17. In my opinion, the approach taken by the Telecommunications Companies in their submissions is consistent with the sustainable management approach for infrastructure promoted in the operative RPS, and the policy framework in the Proposed RPS as summarised above.

18. A number of the submission points are recommended to be accepted by the Council's Section 42A Officer. As is addressed in the evidence of Mr McCarrison and Mr Clune, the balance between providing for telecommunication systems and protection of the Queenstown Lakes District's natural environment is a delicate one. In my opinion, the objective and policy mix of the notified version of the proposed plan was substantially lacking in terms of enabling modern communication systems. While further adjustment could be made, it is my opinion that the objective and policy mix now recommended by the Council's Section 42A Officer shows a more appropriate balance between enabling and protection, in light of the Regional Policy Statement, proposed Regional Policy Statement, and the Council's revised positions with respect to the Strategic Directions Chapter.

19. In particular, I note and support the recommended changes to Objectives 30.2.5 and 30.2.6, and Policies 30.2.5.1 and 30.2.5.4.

20. Amendments were sought to Objective 30.2.7 and Policy 30.2.7.1, to recognise that it is not always possible to fully avoid, remedy or mitigate adverse effects within the very large outstanding natural landscape areas in the district.

21. There may be functional and operational reasons why network utilities may need to located in at least some of these areas, particularly existing built environments, roads and utility corridors and existing communication sites. Siting of equipment within a sensitive environment may be justified in certain circumstances where there are no reasonable alternatives and the community benefits outweigh any costs.

22. The requested amendments also sought that any assessment of adverse effects on an outstanding natural landscape be focussed on the values of the outstanding natural landscape, as some landscapes may include existing built form which may not be a contributing factor to the values of the outstanding natural landscape. The approach of focussing on the values and attributes of a sensitive environment in policy provisions has been adopted in other jurisdictions currently undertaking reviews of planning documents that I have been involved in, including the Hurunui District Plan, the Christchurch District Replacement Plan and the Proposed Bay of Plenty Regional Coastal Environment Plan. In the Bay of Plenty example, Tauranga Harbour is identified as an Outstanding Natural Feature and Landscape (ONFL), but the mapped area includes the port, bridges, transmission lines and urban development in the periphery. These built elements are not the values and attributes that define Tauranga Harbour as an ONFL, and accordingly, further development of infrastructure near these modified areas would be considered more favourably in the policy framework than areas that are less modified.

23. As the Outstanding Natural Landscapes identified in the Proposed Plan cover a range of existing, modified environments, in my opinion, it is important that the objective and policy mix does not assume that some further development of infrastructure is inappropriate.

Rules for Utilities

Lines

24. The provisions relating to telecommunication lines are inherently associated in the Energy and Utilities Chapter with the provisions for electricity lines. This is not inappropriate, as the amenity effects of the two activities are similar. However, it is important that telecommunication lines are not forgotten, in the discussions surrounding electricity lines.

25. New telecommunication lines are seldom installed overhead, on new support structures. On that basis, it is positive that the Officer's recommendations in the Section 42A report specifically address the 'gap' in the notified version of the plan that did not provide for underground lines as a permitted activity. It is also pleasing to note the improvements to the definition of "minor upgrading" and the permitted activity status, both of which, in my opinion, are appropriate and are low risk in terms of resulting in more than minor adverse environmental effects.

Telecommunication Mast Heights

26. The Telecommunication Companies are concerned regarding the limits on mast heights. As has been explained in the evidence of Mr McCarrison, modern telecommunication networks, particularly mobile devices, are often reliant on masts of some form. This is particularly relevant in the Queenstown-Lakes District, where there is an understandable prevalence of mobile device use. This occurs both within and outside of urban areas.

27. The bulk of the district is identified as an Outstanding Natural Landscape. Under the provisions of the Proposed Plan, no mast of any size would be a permitted activity. This is in contrast to the Operative District Plan, which enables short (8 metre) masts as permitted activities in most areas. There are appropriate conditions and other requirements relating to colouring and landscaping. As I understand it, some very discrete and well-designed facilities have been installed, encouraged by this framework.

28. Similarly, there are commonly accepted benefits of adding equipment to existing telecommunication facilities, rather than constructing new facilities, especially in

sensitive environments. However, the proposed rule framework, and that recommended in the Officer's Section 42A Report, provides essentially an equal consenting threshold in these areas for a minor upgrade of an existing site, compared with building a completely new, and likely larger, site.

29. It is my opinion that there is a lack of evidence that small scale infrastructure in Outstanding Natural Landscape areas necessarily requires a resource consent. In my view, small scale infrastructure should be able to be enabled through a permitted activity regime with appropriate performance standards. I have attached, in Appendix 1, a marked-up version of the Council's Section 42A Report recommendations, with suggested changes that would provide for such small scale infrastructure.

30. The height limits that are provided for in the Council's Section 42A report, are a considerable simplification of the regime in the notified Energy and Utilities Chapter, which unhelpfully referenced back to zone-based provisions. This simplification with the associated certainty is supported for obvious reasons. However, it is noted that the areas where masts are permitted are substantially urban areas and those rural parts of the district that are not considered outstanding natural landscapes. On this basis, it is difficult to fathom why the permitted activity height limits are no different to that for any other building in the zone.

31. As has been explained in the technical evidence of Mr Ratuszny, a functioning radio network has certain minimum requirements with respect to radio paths. It is very difficult to establish these in urban areas of the Queenstown Lakes District as permitted activities. It is also my opinion, that the adverse effects of a mast of the same height as a building are likely to be far less than for a comparatively bulky building. On this basis, it is my opinion that when recognising the limited bulk and intrusiveness of a typical mast, some additional height could be enabled without having any greater effect than other larger buildings built to the permitted height limit.

32. On this basis, it is my suggestion that the controlled activity framework be deleted and the discretionary height limits be retained, with some appropriate restrictions on discretion, to enable the more effective and efficient processing of resource consent applications, such that the adverse effects related to the height above that permitted are the only ones that need to be considered.

33. Figure 1 below is of a Vodafone slim line mast in a commercial environment. In many commercial areas of the Queenstown Lakes District, this mast would not meet the criteria to be a permitted activity. Figure 2 is a comparison of a similar 15m high structure in a road, which is typical of what can be achieved as a permitted activity under the NESTF, but would require a resource consent in almost all of the Queenstown-Lakes District.

Figure 1: Vodafone mast at 18 Church Street, Mosgiel (example is 12m high)

Figure 2: Typical Spark light pole on Ponsonby Road, Auckland (example is 15m high)

Small Cells

34. The evidence of Mr McCarrison and Mr Clune outlines the changing nature of telecommunication infrastructure and particularly identifies the move towards "small cells". The existing rule framework in the Officer's Section 42A version of the Energy and Utilities Chapter does not clearly provide for this kind of small scale infrastructure. There is a clear risk that such infrastructure will fall to a discretionary activity status, under Rule 30.4.8, which would clearly be inappropriate when considered against the likely environmental effects of this kind of small scale infrastructure, particularly if it were to be subject to performance standards to ensure adverse amenity effects are minimised.

35. Again, provisions are recommended in the attached marked-up version of the Energy and Utilities Chapter. In essence, these provide a permitted activity framework for these facilities, up to a volume measure ($0.11m^3$). This is consistent with the proposed NESTF. A controlled activity status is suggested up to a larger volume ($2.5m^3$), with default discretionary above that.

Antennas

36. The proposed rules in relation to antennas (Rule 30.4.19 and 30.4.20) include a rather historically-based set of dimensions, which in my opinion, do not enable technological changes to be easily adopted, or reflect a common level of environmental effect. Over the years in which I have been involved with the telecommunications industry, antenna shapes and sizes have changed dramatically. The once common "whip" style antennas and dish antennas are now far less common with antennas often now being clustered into cylindrical forms, panels more or less in the shape of a narrow refrigerator door, and other permutations, to suit the requirements of the technology and the environment in which they are located.

37. The proposed provisions provide for dish antennas and "whip" antennas, and otherwise provide for a simple length measurement for all other shapes. In my opinion, this is a disadvantage for some kinds of technologies which, for example, may use a relatively long but narrow antenna with no difference in environmental effect to a dish antenna.

38. In my opinion, a simpler requirement would be to set a maximum permitted surface area of an antenna, which is able to be measured from any perspective and treats all antenna types and shapes equally. On this basis, I recommend a simple 1.5 m^2 in area as the size threshold for antennas, with a length limit retained for whip antennas if this is considered necessary.

Drafting Issues

39. There are a number of more minor issues, which I have accumulated under this heading of Drafting Issues. These are generally matters where the outcome is potentially not in dispute. However, there are likely to be unintended consequences of the provisions as they have been drafted.

40. In the Section 42A Report, the Council Officer has recommended the rejection of the Telecommunication Companies' submission with respect to the definition of "building". I accept that the existing definition of "building" has been operating successfully in the District for a number years and that there is no desire within the Council to change it.

41. That being the case, there are a number of provisions and performance standards in the Chapter that may need consequential change. For example, there are a number of references to a "building" in the Energy and Utilities Rules. The Officer's definition of "building" excludes, through Section 9 of the Building Act 2004, any part of a network utility operator system. This would mean that structures that are operated by the Telecommunication Companies would not fall within the definition of "building", and accordingly, there could be some confusion as to the activity status and application of performance standards in the rule framework that specifically refer to "buildings".

42. On this basis, I have recommended a number of changes in the attached tracked changes version of the Energy and Utilities Chapter that will precisely identify structures, their activity status, and the application of relevant performance standards.

43. Controlled activities in the Energy and Utilities Chapter appear to be subject to a wide range of overlapping matters of control. Some of the matters of control relate to the specific threshold that has resulted in controlled activity status, while others do not. Most of the matters of control provide no guidance as to what the Council's decision-making criteria, when it comes to considering the appropriateness of conditions, might be. For example, the controlled activities for mast height include these matters of control:

- Location
- Route
- Height
- Appearance, scale and visual effects

44. When an issue such as height has triggered the requirement for a controlled activity, it is simply not appropriate to have, as a matter of control with no further guidance "height". Such a matter of control may imply to the Council or the public that there is the ability to decline a consent or impose a condition requiring a lesser height. What Council may do, is impose a condition that remedies or mitigates the effects of the height applied for. Similar comments apply in relation to the matter of control addressing "location".

45. On this basis, I have recommended a number of changes to the provisions in the marked-up version of the Energy and Utilities Chapter, that more accurately and appropriately portray the matters over which Council ought to be retaining control, and helpfully provide some guidance to applicants, so that they may appropriately design and tailor applications recognising the issues of concern.

46. The status of the Energy and Utilities Chapter, in relation to other Chapters of the Proposed Plan, remains somewhat uncertain.

47. The beginning sections of the Energy and Utilities Rules include a section numbered 30.3.1, which relates to districtwide provisions and states that:

"if the districtwide rules are not met, then consent will be required in respect of that matter."

48. That rule, along with several others, is repeated in the section titled 30.3.3 – Clarification. However, at 30.3.3.3, it is stated that:

"the rules contained in this Chapter take precedence over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary and with the exception of:

(a) historic heritage;
(b) hazardous substances; and
(c) earthworks."

49. These statements are clearly in conflict. It is the Telecommunication Companies' clear preference that the Energy and Utilities Chapter be a stand-alone code with respect to utilities, except where it is specifically stated to the contrary. On that basis, the Telecommunication Companies strongly support Rule 30.3.3.3, and it is suggested that the other Rules that are in conflict ought to be deleted.

50. The drafting of a number of rules within the Energy and Utilities Chapter leads to conflicting activity status conclusions for the same activity. From the appearance

of these rules, it is a case of drafting rather than intent. As an example, Rule 30.4.19 sets out a permitted activity status for antennas, with maximum dimensions. Rule 30.4.21 sets out a discretionary activity status for larger antennas, or antennas located in a number of zones. Neither of these rules are stated to prevail over the other – the activity confusingly has both a discretionary and a permitted status.

51. Similarly, there are unexplained changes in the drafting of 'cascading' rules (typically permitted to controlled to discretionary), such that there is a real risk that activities will unintentionally fall to the 'catch-all' discretionary activity Rule 30.4.8.

52. In the attached 'marked-up' Energy and Utilities Chapter, I have attempted to resolve as many of these issues as possible, in relation to the rules for utilities. I have not attempted to do this for the whole chapter, as this would also involve an investigation as to scope[3]. In particular, there are a range of performance standards within the rule status table, as well as a separate set of performance standards. This is confusing, and accordingly, I suggest, in the attached marked-up version a simplification by incorporating the relevant performance standards into the rule table.

Matthew McCallum-Clark
2 September 2016

[3] I do not consider there are any scope issues for the matters relating to telecommunication utilities, as the submissions from the Telecommunication Companies are wide-ranging across all of the rules.