

THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF a resource consent application to construct, operate and maintain a telecommunication facility at 15 Farmer Road, Makaraka.

NOTICE OF DECISION

APPLICANT: Telecom Mobile Limited

This application was heard and determined by the Hearings Committee on 31 August 2011.

1.0 INTRODUCTION

Site and Locality

- 1.1 Telecom Mobile Limited propose to lease an area of land at 15 Farmer Road for a telecommunication facility. The lease area is 2324m² and will occupy the eastern corner of the property. Access is from Makaraka Road (State Highway 2). The lease area has been considered as the subject site and not the wider property, which is discussed later in the report.
- 1.2 The zone is Rural Productive and the site is covered by the F4 Flood Hazard Overlay (Areas Liable to Flooding). An Eastland Network 50kv transmission line is located in the southern portion of the property.

Proposal

- 1.3 The applicant proposes to construct, operate and maintain a telecommunications facility. This will consist of a mast, antennas and equipment cabinet. The overall height is approximately 38m with twelve panel antennas on three arms at the top of the mast. The mast is 210mm in diameter and secured by three guy wires anchored to the ground 20m from the centre of the mast.
- 1.4 Access to the site will be from an existing gate on Makaraka Road (State Highway 35).

2.0 REASONS FOR REQUIRING CONSENT

- 2.1 The following parts of the District Plan are applicable:
 - 2.1 The proposed activity is a Network Utility Operation as defined in the District Plan and the Resource Management Act. The objectives, policies and rules in Chapter 8 are therefore applicable.

2.2 The following rules are relevant:

8.12.1 Permitted Activities

8.12.1.4 Installation, alteration or removal of antennas and associated support structures

Provided that:

- a) In residential zones antennas shall not extend more than 3.5m above the highest point of any building they are attached to;*
- b) In rural zones antennas shall not extend more than 5.0m above the maximum permitted height for buildings in the zone, or the highest point of any building or structure they are attached to, whichever is the greater. This is determined by applying the recession plane indicator as provided for in Rule 21.8.3;*
- c) In residential and rural zones the maximum height of support structures (including fixtures except lightning rods) shall not exceed 20 metres;*
- d) The maximum diameter of support structures (including irregular shaped support structures), above 3.4 metres vertical height from ground level, shall not exceed 600mm;*

2.3 The proposal does not comply with this rule due to the height and diameter of the support structures and antennas. The height of the support structures is 37m and the diameter is approximately 5m. This requires the application to be assessed as a discretionary activity in accordance with Rule 8.12.3.6.

2.4 In terms of the rules for radio frequency radiation and electro magnetic fields, the activity is considered to be permitted by both the District Plan and the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008.

2.5 In terms of the F4 Flood Hazard Overlay, the application is also discretionary. As identified by the applicant, there is no activity status identified in the plan so the default status becomes discretionary under section 87B(1)(b) of the Act.

2.6 The application states that the proposal is a discretionary activity under Chapter 6 (Soil Conservation). However, it is considered to be a permitted activity in accordance with Rule 6.7.1.1. A separate regional consent will not be required.

2.7 Overall, the proposal is a **Discretionary Activity**.

3.0 CONSULTATION

3.1 The following sections of Council were advised of the application:

- Environmental Health
- Administration Engineer

3.2 The following external agencies were notified of the application:

- Eastland Network
- NZ Transport Agency

3.3 The application was subject to limited notification with the following properties and their owner/occupiers considered to be potentially affected:

- 161 Makaraka Road (Lot 1 DP 4347 and Lot 2 DP 338694)
- 151 Makaraka Road (Pt Lot 19 DP 1859)
- 147 Makaraka Road (Lot 18 DP 1859)
- 137 Makaraka Road (Lot 12 DP 1859)
- 144 Makaraka Road (Lot 1 DP 3082)
- 209 Bell Road (Lot 1 DP 5430)
- NZ Transport Agency (NZTA)

3.4 In response, the following parties made submissions on the application:

In Support

- Robert Rhodes - Landowner

In Opposition

- Glenn Brown – 209 Bell Road
- Cary Walker – 144 Makaraka Road
- Kevin Walker – 144 Makaraka Road
- Sally Gaddum – 137 Makaraka Road (Late Submission)

NZTA indicated they have no objections to the proposal.

3.5 Written approval was provided from Ruth Marsh with the application. However, this has since been withdrawn.

4.0 EVIDENCE HEARD

4.1 The Committee heard evidence from the following people:

Supporting the Application

- Sean Grace, Incite Auckland Limited on behalf of Telecom Mobile Limited
- Grant Wright, Alcatel-Lucent New Zealand Limited
- Fiona Nightingale, Isthmus Group Limited

Opposing the Application

- Sally Gaddum, 137 Makaraka Road

4.2 Sean Grace began by giving an overview of the proposal, consultation process and the statutory considerations relevant to the application. Grant Wright, Fiona Nightingale and Tama Tawhai (Chorus Acquisition Project Manager) were then introduced to the Committee with Grant Wright presenting evidence first.

4.3 Grant Wright (Radio Frequency Engineer for Alcatel-Lucent New Zealand Limited) gave a detailed background to the Telecom mobile phone network and the need and purpose for the proposed site, including the site selection process. The radio frequency exposure standards and the estimated radio frequency levels at the proposed site were then described. The most widely accepted safety standard for radio frequency exposure is the guidelines provided by the International Commission on Non-Ionising Radiation Protection (ICNIRP).

These guidelines form the basis of the New Zealand Standard 2772.1:1999 Radio Frequency Fields Part 1: Maximum Exposure Levels – 3kHz to 300GHz. Regulation 4 of the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 also require consistency with these standards.

- 4.4 Mr Wright provided calculations that estimate the radio frequency levels that will be produced from the site. At maximum transmitter capacity, 158 watts of energy will be emitted from each of the three antenna sectors. This means that the facility will comply with the safety standards by a very wide margin (less than 0.5% of the New Zealand Standard) with levels rapidly reducing with distance from the antennas. Beyond 200 metres from the site, emissions are below the sensitivity threshold of normal field instruments used to measure radio frequency levels. Mr Wright was satisfied that his estimates were a realistic expectation of the radio frequency levels that will be produced from the facility. He also noted that the Ministry of Health's National Radiation Laboratory has undertaken independent measurements at and around existing Telecom facilities that confirmed these modelling and calculation methods.
- 4.5 In conclusion, Mr Wright stated that the site will improve coverage and service for Telecom's customers and is an appropriate location in terms of technical requirements and the ability to mitigate any adverse environmental effects.
- 4.6 Fiona Nightingale (Landscape Architect for Isthmus Group Limited) spoke to the landscape assessment provided with the application. This included the methodology used, site and planning context, a description of the potential effects and ways to avoid, remedy or mitigate those effects. Ms Nightingale presented and discussed a series of photo-simulations provided with the application as well as an additional photo-simulation not provided with the application.
- 4.7 The submission points relating to visual effects and the measures to mitigate these were also discussed. A hedgerow of Japanese Cedar on the south east boundary and the use of a recessive colour were proposed. In addition, Ms Nightingale considered the existing plantings and open space setbacks as mitigating features for the location. In her opinion, the site offered an appropriate visual context for the structure.
- 4.8 Mr Grace resumed his evidence with an overview of the potential effects on the environment. Visual and amenity effects were considered to be no more than minor. In addition to the evidence of Ms Nightingale, Mr Grace explained that a slim line design had been chosen in recognition of the mast's height. It was also pointed out that the owner and occupier of the closest dwelling (137 Makaraka Road) did not make a submission and the adjacent property (144 Makaraka Road) did not contain a dwelling, nor would a dwelling be a permitted activity for that property.
- 4.9 A revised 'Landscape Mitigation Plan' was included with the evidence as the original plan did not comply with the District Plan. Mr Grace explained that the mitigation plan was a response to the submissions of Cary and Kevin Walker suggesting that the vegetation on their property (144 Makaraka Road) may be removed in the future, thereby exposing the lower parts of the facility. Overall, the visual and amenity effects were considered to be less than minor.
- 4.10 Health and safety effects were also discussed and it was explained that the radio frequency exposures comply with the National Environmental Standard by a wide margin and should be considered as part of the permitted baseline.

- 4.11 As most of the submissions were in some way focussed on the location of the facility along with suggestions for alternative locations, Mr Grace outlined the site selection process. Some of this information had also been provided to submitters prior to the hearing. Suggestions for other locations within the same property were largely out of the Telecom's hands as this was the area made available by the land owner. Mr Grace understood that other parts of the property were discussed in the acquisitions phase but were not suitable for one reason or another. The evidence of Mr Wright was also mentioned as this provided some detail on the technical reasons for the site selection.
- 4.12 Mr Grace suggested the Committee was compelled to make a decision on the application as it stands and that the location was appropriate from a resource management perspective.
- 4.13 The effects associated with noise, traffic and roading, flooding, construction, lighting and glare, culture and ecology were also mentioned with no adverse effects anticipated by Mr Grace. He also outlined a list of positive environmental effects that could result from the facility.
- 4.14 In conclusion, it was considered that Telecom had undergone a robust selection process and any adverse effects on the surrounding environment would be no more than minor. A suggested amendment to the conditions was requested due to the revised 'Landscape Mitigation Plan' but otherwise the conclusions and recommendations in the Planner's Report were appropriate for Mr Grace.

EVIDENCE HEARD – OPPOSING THE APPLICATION

- 4.15 Sally Gaddum advised the Committee that there is historical permission to have a dwelling on her property at 137 Makaraka Road and pointed out that there are two properties with the address of 137 Makaraka Road. The other belongs to a party who did not make a submission. The main reason for opposing the application was the visual aspect of it and the potential effect on the resale value of the property. Mrs Gaddum also questioned why a site such as the Saleyards wasn't considered.
- 4.16 Mrs Gaddum suggested the most prominent view of the mast was from her property and from the Marsh property. In response to a question from the Committee, she indicated that some screening would be desirable if the application was approved. However, her opposition to the application at this location was re-iterated.
- 4.17 In response to Mrs Gaddum's late submission, the Committee made a resolution under section 37 of the Act that the submission be accepted outside the statutory timeframe.

EVIDENCE HEARD – PLANNING OFFICER

- 4.18 The reporting officer, Kurt Ridling, summarised the conclusions in his report. He considered amenity values to be the main issue relevant to this application and considered the structure far enough removed from existing dwellings not to dominate their outlook. The effects on amenity were considered to be no more than minor.
- 4.19 Mr Ridling suggested that concerns over property values and requests to locate the facility elsewhere were a result of the visual imposition of the facility. He considered the site selection process to be appropriate for the nature and scale of the consent and the health and safety concerns to have been adequately addressed.

- 4.20 In response to the submission from Mrs Gaddum, the reporting officer said it would be appropriate to require the applicant to provide additional screening to soften the view from the Gaddum property. Otherwise the recommendations in his report were considered sufficient to avoid, remedy or mitigate any adverse effects.

5.0 PRINCIPAL ISSUES and COMMITTEE'S FINDINGS

Amenity and Visual Effects

- 5.1 All opposing submitters raised concerns about the visual impact of the structure in some way. The Committee were of the opinion that this was the main resource management issue in contention and other matters (discussed below) were ultimately underlain by concerns about the visual imposition of the facility. Of most importance is the height (38 metres) of the mast, as the bulk and width of it are relatively inconspicuous and would be unlikely to raise much concern if at a lower height.
- 5.2 The Committee considered the photo simulations provided by Ms Nightingale against the existing structures and vegetation in the surrounding environment. They found that although the mast was rather conspicuous at close proximity, it certainly faded into the landscape with distance. In relation to the submitters dwellings (and potential dwellings), the Committee realised that the facility would be noticeable but not in a way that would dominate their outlook or rural amenity values. For those on the northern side of State Highway 35, the structure would be to the south where dwellings would not normally be orientated towards. For the Brown residence, to the south east, there was a large amount of screening from vegetation. Overall, the Committee felt the facility was far enough removed from dwellings for the effects to be no more than minor.
- 5.3 The Committee also heard in the evidence and read in the submissions that the applicant was to some degree relying on the vegetation on an adjoining property to screen the lower parts of the facility. In response to these concerns, a 'Landscape Mitigation Plan', had been prepared by the applicant showing a hedgerow along the boundary with the Walker's land. However, Mrs Gaddum also raised concerns about the visual effects of the facility on the day of the hearing and suggested (if granted) that the same should apply from her view point. The Committee were satisfied this was a reasonable response to the situation and additional screening will be included in the conditions of consent.

Health and Safety

- 5.4 The opposing submissions had also highlighted concerns around health and safety issues resulting from radio frequency exposure. Mr Wright's evidence was useful in this regard and provided the Committee with sufficient background information to understand the need for the facility and level of risk it poses. Mr Grace and Mr Ridling also outlined some Environment Court cases that had looked into the matter in some detail. The Committee were satisfied that this issue had been addressed adequately by the applicant. They recognised this issue had been traversed by the Courts on several occasions, for similar facilities, resulting in the same outcome. With this background and no evidence to the contrary, it must be assumed that the facility is safe.

Other matters

- 5.5 Other matters raised through the evidence and submission process were mainly focussed on property values and the desire to see the facility located elsewhere. As noted, the Committee considered these matters to be predominantly underlain by visual concerns, which the Committee consider to be no more than minor.
- 5.6 In terms of property values, the Committee is aware that this is a difficult issue to address under the resource management decision making process. Court decisions have favoured the approach that specific environmental effects are assessed as opposed to the way market forces may react to them. This was re-iterated by Mr Grace and Mr Ridling.
- 5.7 The Committee were satisfied that the applicant had undergone a reasonably robust site selection process that was appropriate for the nature and scale of the application. It is understandable that there was some discontent with the proximity of the structure to the submitter's dwellings when compared to the land owners dwellings. However, the Committee consider it necessary to make a decision on the application as it stands and at the proposed location.

Late Submission

- 5.8 Prior to the hearing of evidence, the Committee resolved that the late submission by Sally Gaddum be heard. The considered this to be appropriate as Mrs Gaddum had been away for family reasons when the submission period had closed.

6.0 DECISION

THAT Pursuant to Sections 37 and 37A of the Resource Management Act 1991, the late submission lodged by Sally Gaddum be accepted.

THAT Pursuant to Sections 104 and 104B of the Resource Management Act 1991, the application by Telecom Mobile Limited to construct, operate and maintain a telecommunications facility at 15 Farmer Road, legally described as Part Lot 5 DP 3083, be **granted**, subject to the following conditions:

1. The development shall be carried out in general accordance with the details submitted with the application (PD-2011-104896-00) unless altered by the following conditions.
2. The Consent Holder shall inform the Consent Authority when the facility is constructed.
3. A revised 'Landscape Mitigation Plan' shall be provided to the satisfaction of the Consent Authority prior to the commencement of the activity. This shall include additional hedgerows that will grow to a minimum of 3 metres in height along the north eastern and north western boundaries of the site.
4. The hedgerows shall be planted in accordance with the approved 'Landscape Mitigation Plan'.
5. The hedgerows shall be maintained on an ongoing basis to the satisfaction of the Consent Authority.
6. The final colour of the facility shall be consistent with the Isthmus Landscape and Visual Assessment, May 2011 (page 8).

7. The colour shall be maintained in good order to ensure minimal contrast with the surrounding environment.

Advice Notes

- a) Any necessary upgrades to the entry of the site shall be done in accordance with NZ Transport Agency requirements.
- b) It is the Consent Holder's responsibility to ensure the facility is designed appropriately for any risk associated with flooding.

7.0 REASONS FOR THE DECISION

- 7.1 The Committee accepted that radio frequency levels would be well below the New Zealand standard and that it has been established that such low levels would not pose a health risk.
- 7.2 The Committee were satisfied that the combination of the viewing distance from dwellings, landscaping and the relatively narrow mast width, would sufficiently reduce the visual impact on amenity values.
- 7.3 The Committee accept that the telecommunication facility will provide for improved coverage and enhanced service for data communication in the wider Makaraka area and that the applicant had made efforts to investigate alternative sites.
- 7.4 The Committee considers that overall the adverse effects of the telecommunication facility will be no more than minor and the mitigation measures proposed by the applicant will further reduce any visual effects.
- 7.5 The Committee were satisfied that the proposal is consistent with the District Plan objectives and policies for network utility activities.
- 7.6 The Committee considers that the proposal is consistent with the purpose and principles of the Act and will allow the wider community to provide for their well-being while avoiding, remedying or mitigating any adverse effects on the immediate environment.

DATED at Gisborne this 20th day of September 2011

A Davidson
Chairperson