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: Opotiki Council
PO Box 44
OPOTIKI 3162

Name of submitter: Spark New Zealand Trading Limited
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This is a submission on the following proposed plan: **Proposed Opotiki District Plan.**

Spark New Zealand Trading Limited, Chorus New Zealand Limited and Vodafone New Zealand Limited have lodged individual but identical submissions to the Opotiki District Plan. While individual submissions have been lodged, the submitters intend preparing and presenting a joint case.

Spark New Zealand Trading 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.

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

Signed: .....
On behalf of Spark New Zealand Trading Limited

Dated at Auckland this 8th day of November 2016.

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Please note that proposed amendments to the to the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008 (the NESTF) were announced by the Minister for the Environment on 24 September 2015. Whilst the proposed amendments currently do not have any legal effect, they are expected to in be in force by the end of 2016 before the Proposed Opotiki District Plan enters the hearing phase. The District Plan must not be inconsistent with the NESTF when it comes into force. As such, some of the amendments sought in the submission below reflect the proposed amendments to the NESTF.

The submission seeks the following relief as set out in the table below, or relief of similar effect. In some instances specific amendments have been sought, while in other instances the submission has sought a more general relief (e.g. a new network utilities rules regime for sensitive natural areas covered by Chapter 13) without identifying the specific drafting changes to resolve the issues identified. The submissions made are to ensure that there is a practical and workable planning regime for deploying critical network utility infrastructure.

Glossary of abbreviations used in submission:

NESTF: Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008

ONFL: Outstanding Natural Feature and Landscape

P: Permitted Activity

C: Controlled Activity

RD: Restricted Discretionary Activity

D: Discretionary Activity

NC: Non Complying Activity

Chapter 13 Landscapes and Vegetation

Proposed District Plan Provision	The Spark Submission is that:		Decisions sought:
	Oppose / Support	Reasons	
13.2.1 Objective – Outstanding Natural Features and Landscapes and related policies 13.2.1.1 – 13.2.1.5 13.2.2 Objective – Indigenous Vegetation and Habitats and related policies 13.2.2.1-13.2.2.10 13.2.3 Objective – Wetlands and related policies 13.2.3.1 – 13.2.3.4 13.2.4 Objective – Natural Character and related polices 13.2.4.1 – 13.2.4.	Oppose	These provisions do not directly address network utilities and their potential need to establish within these areas. The prime purpose of the provisions is to protect the natural values of such areas. Given the majority of the District is covered in ONFL's, it is likely that network utility infrastructure will be required in such areas in particular, while it may also be required in the margins of rivers and coast (e.g. infrastructure in roads, linear infrastructure crossing waterways etc.). Amendments are requested either to this policy section, or alternatively within Chapter 17 Network Utilities, to recognise and provide for network utilities in these areas in appropriate circumstances. This will assist with the practical deployment of necessary infrastructure in such areas.	**Amend** the objectives and policies of Chapter 13, or Chapter 17 Network Utilities, to ensure the policy framework recognises and provides for network utility equipment in sensitive natural environments in appropriate circumstances. Possible wording for a policy to be included in Chapter 17 is as follows: *"Recognise that network utilities may require a location within the sensitive natural environments covered by Chapter 13 of the District Plan in appropriate circumstances following a consideration of the following matters:* • *The benefits of providing the infrastructure and adverse effects of not providing it;* • *Whether there is a functional or operational need to locate within or traverse a particular area;* • *Whether there are practicable alternatives to locate outside these areas;* • *The extent of any adverse effects on the values and attributes of the particular area, and the extent to which these can be remedied or mitigated".*

Rule 13.3.1 – Rules explanation	Oppose	Rule 13.3.1 states that network utilities are subject to the provisions in Chapter 17. In Chapter 17, the rule explanation under 17.3 states that additional controls apply in relation to Landscapes and Habitats – Chapter 13. This becomes circular in trying to determine which rules apply. It is unclear if it is intended that the rules in Chapter 13 do not apply to network utilities. Further clarification in the drafting of Rule 13.3.1 is required. Some direct provision for network utilities in areas subject to Chapter 13 is appropriate, preferably to be contained within Chapter 17. This should include what equipment can be provided for as a permitted activity, suitable standards, and a cascade to restricted discretionary activity status where standards are not met. Network utility equipment not otherwise provided for should be clearly provided for as a discretionary activity. At the mapping scale it is hard to determine if roads are included within the natural environments overlays. Clarification is required.	**Amend** Rule 13.3.1 such that it is made clear that all rules relating to network utilities are included in Chapter 17, and that the rules in Chapter 13 do not apply. Include suitable rules for network utilities in areas covered by Chapter 13 directly within Chapter 17. These rules should include what equipment is provided for in such area as a permitted activity (including relevant conditions), provision for activities not meeting permitted standards as RD, and D status for all network utility activities not otherwise provided for. **Add** a clear statement as to whether roads are contained within mapped natural environment overlays (e.g. ONFL's).

Chapter 14 Heritage

Proposed District Plan Provision	The Spark Submission is that:		Decisions sought:
	Oppose / Support	Reasons	
14.3.2 Permitted activities	Oppose	There are no rules providing for network utility service connections to heritage listed buildings. Allowing for service connections can assist with the viable ongoing use of heritage buildings. Service connections are generally of low impact and have minor impacts on the heritage values of buildings.	**Amend** Rule 14.3.2 such that network utility connections are specifically provided for as permitted activities, and are clearly exempt from any rules that apply to generally to alterations and additions to heritage buildings.

Chapter 15 Subdivision

Proposed District Plan Provision	The Spark Submission is that:		Decisions sought:
	Oppose / Support	Reasons	
Rule 15.3.4 Activity table 4 Lots for public utilities, public works	Oppose in part	The term *"public utilities"* is out of date as many network utilities are now privatised (e.g. telecommunications, electricity distribution, gas).	**Amend** Rule 15.3.4 (4) and the heading of Rule 15.4.5 (relevant standards) by amending the terminology from *"public utilities"* to *"network utilities"*.
Rule 15.5.9 Underground Services	Oppose	Clause 15.5.9.1 uses terms such as *"where appropriate"* and *"less adverse effects will result"* which is considered to be unclear and uncertain for a permitted activity condition. The submitter considers that all new lots either as part of a greenfields development or infill (where no new street or street extension is involved) should be provided with a connection to telecommunications services, and whilst it is	**Amend** Rule 15.5.9.1 to improve its clarity such that it is clear that telecommunications services must be provided to the boundary of all new lots, and globally change all references from *"telephone"* to *"telecommunications"* in all parts of the Proposed Plan including Rule 15.5.9.1. **Delete** Rule 15.5.9.2.

		not necessarily of particular interest to the submitter if the lines have to be reticulated below or above ground in new subdivisions by the developer, it is important that the clause is not read as potentially letting the developer opt out of providing lines in the roads at all (e.g. on the basis of some form of environmental effects argument). Further, reference to the term *"telephone"* should be updated to *"telecommunications"* to cover other services such as broadband. Clause 15.5.9.2 of the rule requires the location, installation and maintenance of lines and related facilities is to be carried out with the minimum disturbance of soil and vegetation as possible. As a permitted activity condition this wording is considered to be too discretionary and vague. If works are carried out in a road, they are subject to reasonable conditions from the road controlling authority including reinstatement under non-RMA processes.	

Chapter 17 Network Utilities

Proposed District Plan Provision	The Spark Submission is that:		Decisions sought:
	Oppose / Support	Reasons	
17.1 Resource management Issues – Issue 9	Oppose in part	This issue acknowledges that regionally significant infrastructure is essential for the economic and social wellbeing of the District. Local distribution and service connections form part of the overall networks that may make up regionally significant infrastructure and are also important for overall economic and social wellbeing, but these smaller components may not be considered to be regionally significant infrastructure in their own right.	Amend Issue 17.1 (9) as follows: Regionally significant infrastructure **and network utilities** ~~is~~ **are** essential for the economic and social wellbeing of the District.
Objective 17.2.1 Policy 17.2.1.1 Policy 17.2.1.2 Objective 17.2.2 Policy 17.2.2.1 Policy 17.2.2.2 Objective 17.2.3 Policy 17.2.3.2	Support	The listed objectives and policies are considered to provide a generally balanced and workable framework for network utilities.	**Retain** the following objectives and policies: • Objective 17.2.1 • Policy 17.2.1.1 • Policy 17.2.1.2 • Objective 17.2.2 • Policy 17.2.2.1 • Policy 17.2.2.2 • Objective 17.2.3 • Policy 17.2.3.2

New Policy	Support	A new policy should be added that provides for network utilities in sensitive natural environments (e.g. ONFL) in appropriate circumstances, particularly given the extent of these areas in Opotiki District.	**Add** a new policy that recognises and provides for network utilities in sensitive natural environments (e.g. ONFL) in appropriate circumstances. Possible wording for a policy to be included in Chapter 17 is as follows: *"Recognise that network utilities may require a location within the sensitive natural environments covered by Chapter 13 of the District Plan in appropriate circumstances following a consideration of the following matters:* • *The benefits of providing the infrastructure and adverse effects of not providing it;* • *Whether there is a functional or operational need to locate within or traverse a particular area;* • *Whether there are practicable alternatives to locate outside these areas;* • *The extent of any adverse effects on the values and attributes of the particular area, and the extent to which these can be remedied or mitigated".*
Policy 17.2.1.3	Oppose	This policy relates to natural hazards. The requirement to undertake a natural hazard assessment reads like a rule, and may not be required depending on the scale of the work (e.g. could be minor works within a road). Network utility providers should be assessing the risk to and from natural hazards when establishing in natural hazard prone area, regardless of district plan provisions.	**Delete** Policy 17.2.1.3.

		In the NESTF review, specific consideration was given by MfE/MBIE in providing their recommendations following public submissions as to whether restrictions should be placed on telecommunications equipment covered by the regulations in regard to natural hazards, and ultimately it was recommended to the Minister for the Environment that such controls were unnecessary and unjustified.	
Policy 17.2.1.4	Oppose in part	This policy requires the benefits of the National Grid to be recognised. However, there are a number of other network utilities that have benefits that should also be recognised in the policy framework.	**Amend** Policy 17.2.1.4 as follows: *"Recognise the benefits of **network utilities including** the National Grid in the District".*
17.3 Activity Status	Oppose in part	This section clarifies the additional controls (other than within Chapter 17) contained within the Proposed Plan that apply. A cross reference to the NESTF and brief explanation of its scope should also be included in this section. In many cases the NESTF will determine whether or not a telecommunications facility is a permitted activity, and will provide the detailed permitted activity conditions to me met. Due to the drafting style of the NESTF review, a cross reference is preferred to any attempt to replicate the provisions within the District Plan.	**Amend** 17.3 activity status by including a cross reference to the NESTF and a brief explanation of its scope.
17.3.1.2 Permitted Activities All Zones	Oppose in part	Height limits for masts and antennas are specially provided for in Chapter 17, so are not subject to the zone standards. An exemption is	**Amend** Rule 17.3.1.2 but providing for the following exemptions from all rules in Chapter 17:

		sought in all zones for lightning rods, and omni-directional 'whip' antennas not exceeding a diameter of 60mm, from all height standards. These are minor elements that have minimal visual or shading impacts so can reasonably be provided for as an exemption to height limits for masts and antennas. Further, an exemption is sought for any network utilities in roads, and service connections to adjacent properties, from all rules in Chapter 17 restricting network utilities within 50m of the MHWS. This may have the unintended consequence of restricting routine and necessary works within roads including developed urban areas.	• Lightning rods, and omni-directional antennas not exceeding a diameter of 60mm, from all height standards. • Network utilities in roads and service connections to adjacent properties, from all rules in Chapter 17 restricting network utilities within 50m of the MHWS.
17.3.1.4 Town Centre Zone, Mixed Activity Zone, Marine Services Zone and Coastal Zone – Permitted Activities	Oppose in part	The maximum height for masts, poles, aerials, antennas and similar structures in these zones is 15m. A height limit of 20m is preferred in Town Centre and Mixed Activity Zones noting that these enable large building form that can better absorb the visual effects of network utility infrastructure. Further, tall heights may be required to maintain line of sight over adjacent buildings and to ensure compliance with radio frequency exposure standards in places where the public can reasonably access (e.g. building rooves). Any adverse effects on more sensitive adjoining zones such as residential zones can be mitigated by requiring compliance with height in relation to boundary controls where a site in the Town Centre Zone	**Amend** Rule 17.3.1.4 by increasing the permitted height limit to 20m for the Town Centre Zone and Mixed Activity Zone, and a apply the Residential Zone height in relation to boundary control to network utilities covered by this rule to sites in these zones adjoining Residential Zones.

		or Mixed Activity Zone adjoins a Residential Zone.	
17.3.1.5 Industrial Zone, Harbour Industrial Zone and Rural Zone – Permitted Activities	Oppose in part	The maximum height for masts, poles, aerials, antennas and similar structures in these zones is 20m. A height limit of 25m is preferred for Rural and Industrial Zones, increasing to 30m where more than one operator is located on the facility. This aligns with the NESTF changes for Rural Zones, and will also provide more incentive to use lower amenity Industrial Zones and encourage co-siting in Industrial Zones.	**Amend** Rule 17.3.1.5 by increasing the permitted height limit to 25m for the Rural Zone and Industrial Zone, and 30m in these zones where antennas from more than one operator are located on the facility.
Telecommunications kiosk - new	Support	Telecommunications kiosks have traditionally comprised public telephone booths but have evolved to now often incorporate WiFi and in the future may also include in an internet interface. These provide a public good function and the kiosks enclosing this equipment are common place in roads and publically accessible areas in a similar manner to bus shelters. A permitted activity status for these structures is sought to ensure that they are dealt with on an equivalent basis to other typical road furniture such as bus shelters.	**Add** a new rule to provide for telecommunications kiosks as permitted activities in all roads and zones.
Overhead lines and service connections - new	Support	There does not appear to be a clear provision for new overhead lines (other than where added to existing poles in terms of Rule 17.3.1.2(1)) in Rural Zones. This is still an accepted method of deploying lines in rural areas. Further, a rule allowing overhead service connections from existing overhead lines networks in all zones needs to be	**Add** a new rule to Chapter 17 to specifically enable new overhead lines and support structures in Rural Zones, and overhead customer connections from existing overhead lines networks in all zones.

		provided for to reflect the existing amenity values of these areas and to provide service to adjacent customers from such networks. In regard to telecommunications, this reflects how overhead customer connections are to be provided for in the amended NESTF.	
Rules regime for networks utilities in sensitive natural environments covered by Chapter 13 – new	Support	A rules regime for network utilities in Chapter 13 areas (e.g. ONFL) is required, preferably to be included within Chapter 17. This rules regime needs to make some provision for permitted activities, particularly given the very expansive extent of ONFL's within the district. This may include a specific exemption for network utilities in roads, as well as some provision outside of these areas with additional standards to those in the underlying zone (e.g. potentially reflectivity and colour conditions, reduced permitted height limits from underlying zones etc.).	**Add** a new rules regime within Chapter 17 for network utilities within sensitive natural environments covered by Chapter 13. As a starting position, the underlying zone rules shall apply instead of the rules relating more generally to structures and buildings in Chapter 13. A suitable rules regime should take into account the following principles: • Network utilities in roads are subject to the standards of the underlying zone; • Network utilities outside of roads are subject to additional permitted activity controls (e.g. alternative height limits, colour and reflectivity controls); • RD status where permitted activity standards are not met; and • D status where a network utility activity is not otherwise provided for.

Chapter 18 Natural Hazards

Proposed District Plan Provision	The Spark Submission is that: Oppose / Support	Reasons	Decisions sought:
Rule 18.3.1 Permitted activities	Oppose	Structures in ponding areas are permitted activities provided the floor area is 3.6m or higher above Moturiki Datum. There is no exclusion for network utilities. This may catch activities not sensitive to ponding such as masts and poles supporting network utility equipment, and equipment in roads. Specifically in regard to telecommunications equipment, in the NESTF review specific consideration was given by MfE/MBIE in providing their recommendations following public submissions as to whether restrictions should be placed on telecommunications equipment covered by the regulations in regard to natural hazards, and ultimately it was recommended to the Minister for the Environment that such controls were unnecessary and unjustified.	**Amend** Rule 18.3.1 such that non habitable network utility structures are provided for as a permitted activity in all natural hazard areas, and make any consequential changes to the Policy framework (e.g. Policy 17.2.1.3 in Chapter 17 Network Utilities).
Rule 18.3.3 Discretionary activities	Oppose	New network utilities located within Areas Sensitive to Coastal Hazards (ASCH) are a discretionary activity (see Rule 18.3.3.1(2)(b)). Buildings and structures in general requiring building consent (other than decks, fences and internal alterations), are a discretionary activity under Rule 18.3.3.1(2)(a). A significant proportion of network utility equipment,	**Delete** Rule 18.3.3.1(2)(b).

		including lines, antennas and support poles and small cabinets, do not require a building consent and are not habitable. Network utilities may be required to locate within coastal hazard areas (e.g. within roads). Specifically in regard to telecommunications equipment, in the NESTF review, specific consideration was given by MfE/MBIE in providing their recommendations following public submissions as to whether restrictions should be placed on telecommunications equipment covered by the regulations in regard to natural hazards, and ultimately it was recommended to the Minister for the Environment that such controls were unnecessary and unjustified.	

Chapter 19 Definitions

Proposed District Plan Provision	The Spark Submission is that:		Decisions sought:
	Oppose / Support	Reasons	
Minor Upgrading	Oppose in part	The definition is very electricity centric and needs to include telecommunications lines.	**Amend** the definition of *"Minor Upgrading"* by adding *"Telecommunications Lines"* to clause 1 of the definition.
Regionally Significant Infrastructure	Oppose in part	This definition includes: *Broadband and strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001*; and	**Amend** the definition of *Regionally Significant Infrastructure* as follows: ~~*7. Broadband and strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001;*~~

		Strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989. Whilst it is acknowledged that the definition is based on the RPS definition of *Regionally Significant Infrastructure*, it is factually incorrect as neither section 5 of the Telecommunications Act 2001 nor Section 2(1) of the Radio Communications Act 1989 define the particular terms referred to. These acts respectively define the more generic terms of "telecommunications" and "radio communication". On this basis, the definition needs to be amended.	~~*8. Strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989;*~~ *7. Strategic telecommunications (including broadband) and radio communications facilities and networks;*
Replacement of Network Utility Structures	Oppose	It is unclear what the purpose of this definition is, as it is not used in the rules. The NESTF does define *"replacement utility structure"* but this term is only relevant to a specific context for telecommunications facilities within roads. The Proposed Plan definition may be confusion and should be deleted in the absence of a relevant rules regime.	**Delete** the definition of *"Replacement of Network Utility Structures"*.
Telecommunication Facility	Oppose in Part	This definition refers to telecommunications as defined in Telecommunications Act 1987 which has been repealed.	**Amend** the definition of *"Telecommunications Facility"* by updating it to refer to the Telecommunications Act 2001 in regard to definition *"telecommunications"*.