

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Hearing Stream 05 –  
District Wide

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**JOINT WITNESS STATEMENT  
OF CRAIG BARR AND MATTHEW MCCALLUM-CLARK**

**RESOURCE MANAGEMENT (NATIONAL ENVIRONMENTAL STANDARDS FOR  
TELECOMMUNICATIONS FACILITIES) REGULATIONS 2016  
ENERGY AND UTILITIES CHAPTER (30)**

**25 September 2017**

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## 1. Introduction

- 1.1 On 23 May 2017 the Chair of the Hearings Panel for Hearing Stream 5: Energy and Utilities Chapter 30 issued a Minute regarding the effect of the National Environmental Standards For Telecommunications Facilities (**NESTF**) 2016. The Minute requested:

*That Craig Barr for the Council and Matthew McCallum-Clark caucus and jointly advise whether or not the rules recommended by Craig Barr in the recommended reply version of the chapter are consistent with the NESTF 2016, and where they are not, what amendments they consider would ensure consistency. Any disagreements should be identified and the reasons clearly set out.*

- 1.2 The Hearings Panel provided a version of the relevant rules from Chapter 30 for Mr Barr and Mr McCallum-Clark as a basis for the response. A marked-up version of this document is attached at **Appendix 1**.
- 1.3 Both Mr Barr and Mr McCallum-Clark agree there is scope provided within the submission from Vodafone (179.27<sup>1</sup>), Spark Trading NZ Limited (191.25), Two Degrees Mobile Limited (421.19) and Chorus New Zealand Limited (781.25) respectively (**Telecommunications Companies**) to amend the rules in Chapter 30 to better achieve consistency with the NESTF 2016.
- 1.4 Mr Barr and Mr McCallum-Clark have identified some matters where the recommended rules (Refer to **Appendix 1**) should be modified to achieve consistency with the NESTF 2016. Mr Barr and Mr McCallum-Clark agree with the recommended revised provisions, with the exception of one matter relating to the application of Regulation 47 of the NESTF 2016 being whether Rule 30.4.6 is a visual amenity rule.

## 2. Agreed recommended changes

- 2.1 The following provides a summary of the agreed recommended changes by Mr Barr and Mr McCallum-Clark and the reason they are consistent with the NESTF 2016:

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<sup>1</sup> Specific Submission point identified.

- (a) Amending the explanatory text in Chapter 30 to be consistent with the regulations contained in the NESTF 2016;
- (b) Rule 30.4.1: including the words "*or provided for in any National Environmental Standard*" to clarify that the catch all discretionary activity status is subject to the regulations contained in the NESTF 2016;
- (c) Rule 30.4.2: including the words "*and not located in any of the sensitive environments identified by Rule 30.4.8*". This is not specifically related to the NESTF 2016 but provides clarification that Rule 30.4.8 still applies. There is considered scope in the submission from Spark Trading NZ Limited 191.26 seeing an amended rule framework;
- (d) Rules 30.4.2, 30.4.7, 30.4.8, 30.4.10 and 30.4.11: including, as part of the exception to these rules, the identification of the exclusion of "*cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation*" to recognise the specific exception for cabinets in Regulation 7 of the NESTF 2016 and adding "*poles*" to recognise the specific definition in regulation 4 of the NESTF 2016;
- (e) Rule 30.4.9: including an exception for poles, antennas, and associated cabinets for telecommunication and radiocommunication and lines and support structures for telecommunications for consistency with Regulations 19, 26, 30, and 32 of the NESTF 2016;
- (f) Rules 30.4.42, 30.4.43, 30.4.45: modifying '*overhead*' to '*new aerial lines*' to be consistent with terminology in Regulations 40, 41 and 42 of the NESTF 2016;
- (g) Rule 30.4.42: including reference to the "*road reserve*", instead of "*legal road*" to be consistent with the NESTF 2016. While this might not be consistent with other chapters in the PDP that refer to road as defined in Chapter 2 Definitions, it is considered preferable in this instance in the context of these activities and the NESTF 2016;
- (h) Rule 30.4.42 including the text "*New aerial telecommunication line/s on existing telecommunication or power structures including when located in sensitive environments identified in Rules 30.4.44 and 30.4.45*" to be consistent with Regulation 41 of the NESTF 2016;
- (i) Rule 30.4.44 including new text "*outside formed road reserve*" to clarify how the rule relates to amended Rule 30.4.42;
- (j) Rules 30.4.46, 30.4.47: replacing '*masts*' with '*poles*' to align with NESTF 2016 terminology (see the definition in Regulation 2 of the NESTF 2016);

- (k) Rules 30.4.48 and 30.4.49: including "*ancillary equipment*" and the text "*that for panel antennas the maximum width is 0.7m and for other antenna types...*" to align with Regulations 29 and 31 of the NESTF 2016;
- (l) Rule 30.4.51: replacing a rule permitting micro cells up to a certain size with 'Small Cell Unit' because Small Cell Unit is defined in the NESTF 2016 (see the definition in Regulation 2);
- (m) Rules 30.4.51, 30.4.52 and 30.4.53: removing the word 'small cell' and replacing with 'microcell' to be consistent with NESTF 2016 terminology. Small cell is defined in the NESTF 2016 and includes limitations on the volume, up to 0.11m<sup>3</sup>. Rule 30.4.52 provides for 'micro cells' and while micro cell is not defined in the NESTF 2016, it is used in Chapter 30 to provide for a larger version of the same type of facility as a micro cell (volume between 0.11m<sup>3</sup> and 2.5m<sup>3</sup>);
- (n) Modifying the definition of Small Cell to 'Small Cell Unit' and replicating the definition provided in the NESTF 2016 for consistency; and
- (o) 30.4.52: including the words "*provided that the micro cell is not located within a Heritage precinct*" as a minor clarification to ensure that the reader is aware of the how Rules 30.4.52 and 30.4.53 are intended to apply. Scope is provided by the following submission points 179.15, 191.13, 421.12, 781.14, which resulted in the recommendation for the rules to be included in the chapter.

### 3. Regulation 47 and outstanding issues

3.1 As noted above Mr Barr and Mr McCallum-Clark have not reached an agreement on the application of Regulation 47 of the NESTF 2016 and whether Rule 30.4.6 is a visual amenity rule.

3.2 Regulation 47 states:

#### **47 Visual amenity landscapes**

- (1) *This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to visual amenity landscapes rules.*
- (2) *This regulation is complied with if the regulated activity is carried out in accordance with the visual amenity landscapes rules that apply to that place.*

*(3) In this regulation, visual amenity landscapes rules means district rules about the protection of landscape features (such as view shafts or ridge lines) identified as having special visual amenity values (however described).*

**3.3** Rule 30.4.6, as drafted in the Council's recommended Reply version, limits the height of poles in the Rural Zone (outside an ONF or ONL) to 15 metres in height. The NESTF 2016 permits poles in these areas up to 25 metres in height, except where Regulation 47 is applicable and the rules in the District Plan prevail.

**3.4** Mr Craig Barr for the Council considers the following:

- (a) Rule 30.4.6 is a visual amenity rule and is applicable to Regulation 47 because the rule manages the potential adverse effects of poles located within the District's visual amenity landscapes. In the Rural Zone, visual amenity landscapes are identified in the Proposed District Plan Maps as Rural Zone - Rural Landscapes Classification. Rule 30.4.6 is intended to protect the District's rural amenity values where they are subject to visual amenity landscape rules;
- (b) Rule 30.4.6 assists with the implementation of, and giving effect to the PDP's Strategic Directions (Chapter 3) and Landscapes (Chapter 6) chapters by having regard to the maintenance of amenity values within the District. The importance of the District's amenity values within areas that are not identified as being Outstanding Natural Landscapes or Features is set out in the section 32 report for the Landscapes, Rural Zone and Gibbston Character Zone<sup>2</sup> and in particular the report by Read Landscapes Ltd<sup>3</sup> that sets out that Rural Zone land not otherwise identified as an ONL or ONF is a visual amenity landscape in terms of section 7 of the Resource Management Act 1991; and
- (c) should the Hearings Panel find in favour of my view then I recommend that no changes are made to Rule 30.4.46 that limits the

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<sup>2</sup> Refer to <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Section-32s/Landscape-Rural-Zone-Gibbston-Character-Zone-s32.pdf>.

<sup>3</sup> Read Landscapes Ltd Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District, with particular reference to Outstanding Natural Landscapes and Features <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/District-Plan-Review-2015-s32-Links/Rural.-Landscape-etc/Att-1/Read-Landscape-Report-April-2014-reduced-.pdf>

height of Poles in the Rural Zone to 15 metres but that the addition of an advice note could be helpful to confirm that these rules are visual amenity landscape rules as defined by Regulation 47 of the NESTF 2016. This would help clarify any potential uncertainty as to whether the NESTF 2016 or District Plan prevails in this instance:

Note: For the purposes of the NESTF 2016, these rules are visual amenity landscape rules as defined in Regulation 47.

- 3.5** Mr McCallum-Clark for the Telecommunication Companies considers the following:
- (a) Clause 3 of Regulation 47 sets out what is meant by “visual amenity landscapes rules,” and sets, in my opinion, a high bar, in that the rules need to be about protection of “landscape features”. An identified outstanding landscape would, in my opinion, qualify. General rural amenity protection rules, even with a landscape focus, would not, in my opinion, meet the intent of clause 47(3); and
  - (b) should the Hearings Panel find in favour of my view then I recommend that Rule 30.4.46 is changed so that the maximum height limit of poles in the Rural Zone is changed from 15 metres to 25 metres.

**Dated 25 September 2017**



Craig Barr  
Queenstown Lakes District Council



Matthew McCallum-Clark

**APPENDIX 1**  
**RECOMMENDED ENERGY AND UTILITIES RULES RELATING TO THE NESTF**  
**2016**

## ENERGY AND UTILITIES 30

Key: Recommended changes to provisions provided by the Panel in its minute of 24 May 2017 are shown in underlined text for additions and ~~strike through text~~ for deletions. Joint statement of Craig Barr and Matthew McCallum-Clark, dated 25 September 2017.

### 30.3.2.2 Resource Management (National Environmental Standards for Telecommunications Facilities “NESTF”) Regulations ~~2008~~2016:

The NESTF 2016 controls a variety of telecommunication facilities and related activities as permitted activities subject to standards, including:

- cabinets in and outside the road reserve;
- antennas on existing and new poles in the road reserve;
- replacement, upgrading and co-location of existing poles and antennas outside the road reserve;
- new poles and antennas in rural areas;
- antennas on buildings;
- small-cell units on existing structures;
- telecommunications lines (underground, on the ground and overhead) and facilities in natural hazard areas; and
- associated earthworks.

All telecommunication facilities are controlled by the NESTF 2016 in respect of the generation of radiofrequency fields. The Resource Management (National Environmental Standards for Telecommunications Facilities “NESTF”) Regulations 2008 provide for:

The NESTF 2016 and relevant guidance for users can be found at:

<http://www.mfe.govt.nz/rma/legislative-tools/national-environmental-standards/national-environmental-standards>

- ~~The planning and operation of a telecommunication facility such as a mobile phone transmitter, that generates radio frequency fields as a permitted activity, provided it complies with the New Zealand Standard on Radiofrequency Fields Part 1: Maximum Exposure Levels 3kHz to 300 GHz (NZS 2772.1:1999).~~
- ~~The installation of telecommunications equipment cabinets in the road reserve as a permitted activity, subject to specified limitations on their size and location.~~
- ~~Noise from telecommunications equipment cabinets located in the road reserve as a permitted activity, subject to the specified noise limits.~~
- ~~The installation or replacement of masts and antennae on existing structures in the road reserve as a permitted activity, subject to specified limitations on height and size.~~

In general the provisions of the NESTF 2016 prevail over the provisions of the District Plan, to the extent of any inconsistency. No other rules in the District Plan that duplicate or conflict with the NESTF 2016 shall apply. However, District Plan provisions continue to apply to some activities covered by the NESTF 2016 including those where under regulations 44 to 52 enable rules to be more stringent than the NESTF, such as being subject to heritage rules, Significant Natural Areas, Outstanding Natural Features and Landscapes, and amenity landscape rules.

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### 30.4 Rules

	General Activities	Activity Status
30.4.1	<b>Utilities which are not otherwise listed in Rules x to x or provided for in any National Environmental Standard.</b>	D
30.4.2	<p><b>Buildings (associated with a Utility)</b></p> <p>Any building or cabinet or structure shall be less than 10m<sup>2</sup> in total footprint - and less than 3m in height, and not located in any of the sensitive environments identified by Rule 30.4.8.</p> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Masts or poles for wind electricity generation, navigation or meteorology;</u></li> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures.</u></li> </ul> <p><del>Excluding masts wind electricity generation for telecommunication and radio communication, navigation or meteorological communication or supporting structures for lines.</del></p>	P
30.4.7	<p><b>Buildings (associated with a Utility)</b></p> <p>The addition, alteration or construction of buildings greater than 10m<sup>2</sup> in area and 3m in height, and not located in any of the sensitive environments identified by Rule 30.4.8.</p> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Masts or poles for wind electricity generation, navigation or meteorology;</u></li> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures.</u></li> </ul> <p><del>Excluding masts wind electricity generation for telecommunication and radio communication, navigation or meteorological communication or supporting structures for lines.</del></p> <p>Control is reserved to all of the following:</p> <ul style="list-style-type: none"> <li>• Location</li> <li>• External appearance and visual effects</li> <li>• Associated earthworks</li> <li>• Parking and access</li> <li>• Landscaping</li> </ul>	C

Comment [A1]: Scope from 191.26

## ENERGY AND UTILITIES 30

	General Activities	Activity Status
30.4.8	<p><b>Buildings (associated with a Utility)</b></p> <p>Any addition, alteration or construction of buildings and structures, in:</p> <ul style="list-style-type: none"> <li>• Any Significant Natural Areas</li> <li>• The Arrowtown Residential Historic Management Zone.</li> </ul> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Masts or poles for wind electricity generation, navigation or meteorology;</u></li> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures.</u></li> </ul> <p><del>Excluding masts wind electricity generation for telecommunication and radio communication, navigation or meteorological communication or supporting structures for lines.</del></p>	D
	<b>General Standards</b>	<b>Non-compliance status</b>
30.4.9	<p><b>Setback from internal boundaries and road boundaries</b></p> <p>Where the utility is a building, it shall be set back in accordance with the internal and road boundary setbacks for accessory buildings in the zone in which it is located.</p> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures for telecommunications.</u></li> </ul>	D
30.4.10	<p><b>Buildings (associated with a Utility) in Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF)</b></p> <p>Any building within an ONL or ONF shall be less than 10m<sup>2</sup> in area and less than 3m in height.</p> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Masts or poles for wind electricity generation, navigation or meteorology;</u></li> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures.</u></li> </ul> <p><del>Excluding masts wind electricity generation for telecommunication and radio communication, navigation or meteorological communication or supporting structures for lines.</del></p>	D

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<b>30.4.11</b>	<p><b>Height</b></p> <p>All buildings or structures, shall comply with the relevant maximum height provisions for buildings of the zone they are located in.</p> <p><u>This rule does not apply to:</u></p> <ul style="list-style-type: none"> <li>- <u>Masts or poles for wind electricity generation, navigation or meteorology;</u></li> <li>- <u>Poles, antennas, and associated cabinets (cabinets up to 10m<sup>2</sup> in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radiocommunication; or</u></li> <li>- <u>Lines and support structures.</u></li> </ul> <p><del>Excluding masts wind electricity generation for telecommunication and radio communication, navigation or meteorological communication or supporting structures for lines.</del></p>	D
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	Telecommunications, radio communication, navigation or meteorological communication activities:	Activity Status
<b>30.4.41</b>	<b>Minor Upgrading</b>	P
<b>30.4.42</b>	<del>Overhead</del> <b><u>New Aerial Lines and/or Supporting Structures within formed legal road reserve; or New aerial telecommunication line/s on existing telecommunication or power structures including when located in sensitive environments identified in Rules 30.4.44 and 30.4.45.</u></b>	P
<b>30.4.43</b>	<b>The construction, alteration, or addition to underground lines providing:</b>	P

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	Telecommunications, radio communication, navigation or meteorological communication activities:	Activity Status
	the ground surface is reinstated to the state it was prior to works commencing. -	
<b>30.4.44</b>	<p><b><u>New Aerial Overhead Lines and Supporting Structures (outside formed road reserve)</u></b></p> <p>Not located in any of the sensitive environments identified by Rule 30.4.45</p> <p>Control is reserved to all of the following:</p> <ul style="list-style-type: none"> <li>• Location</li> <li>• Route</li> <li>• Appearance, scale and visual effects</li> </ul> <p>-</p>	C
<b>30.4.45</b>	<p><b><u>New Aerial Overhead Lines and Supporting Structures</u></b></p> <p>Any line or support structure within:</p> <p style="padding-left: 40px;">any Outstanding Natural Feature or Outstanding Natural Landscape or Significant Natural Areas.</p>	D
<b>30.4.46</b>	<p><b><u>Poles-Masts:</u></b></p> <p>With a maximum height no greater than:</p> <p style="padding-left: 40px;">15m in the Queenstown Business Mixed Use zone and Rural Zone;</p> <p style="padding-left: 40px;">18m in the High Density Residential Queenstown – Flat Sites, Queenstown Town Centre, Wanaka Town Centre (Wanaka Height Precinct) or Airport Mixed Use zones;</p> <p style="padding-left: 40px;">13m in the Local Shopping Centre, Wanaka Business Mixed Use or Jacks Point zones;</p> <p style="padding-left: 40px;">11m in any other zone; and</p> <p style="padding-left: 40px;">8m in any identified Outstanding Natural Landscape.</p> <p>Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Landscape Classification, <del>poles masts</del> shall be finished in colours with a light reflectance value of less than 16%.</p>	P
<b>30.4.47</b>	<p><b><u>Poles-Masts:</u></b></p> <p>Exceeding the maximum height for the zones identified in Rule 30.4.46 OR any <u>pole mast</u> located in</p> <ul style="list-style-type: none"> <li>• any identified Outstanding Natural Feature; -</li> <li>• the Arrowtown Residential Historic Management Zone; -</li> <li>• Arrowtown Town Centre; -</li> </ul>	D

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	Telecommunications, radio communication, navigation or meteorological communication activities:	Activity Status
	<ul style="list-style-type: none"> <li>• Queenstown Special Character Area; and</li> <li>• Significant Natural Areas; and</li> <li>• Sites containing a Heritage Features; and</li> <li>• Heritage Landscapes.</li> </ul>	
30.4.48	<p><b>Antennas, and ancillary equipment</b></p> <p>Provided that for panel antennas the maximum width is 0.7m and for all other antenna types the maximum surface area is no greater than 1.5m<sup>2</sup> and for whip antennas, less than 4m in length.</p> <p>Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Landscape Classification, antennase shall be finished in colours with a light reflectance value of less than 16%.</p>	P
30.4.49	<p><b>Antennas, and ancillary equipment</b></p> <p>Subject to Rule 30.4.50, provided that for panel antennas the maximum width is between 0.7m and 1.0m and for all other antenna types the surface area is between 1.5m<sup>2</sup> and 4m<sup>2</sup> and for whip antennas, more than 4m in length.</p> <p>Control is reserved to all of the following:</p> <ul style="list-style-type: none"> <li>• Location</li> <li>• Appearance, colour and visual effects</li> </ul>	C
30.4.50	<p><b>Any antennas located in the following:</b></p> <ul style="list-style-type: none"> <li>• any identified Outstanding Natural Feature,</li> <li>• the Arrowtown Residential Historic Management Zone,</li> <li>• Arrowtown Town Centre,</li> <li>• Queenstown Special Character Area,</li> <li>• Significant Natural Areas and</li> <li>• Heritage, Features and Landscapes.</li> </ul> <p>OR</p> <p>Any antenna with a surface area over 4m<sup>2</sup>.</p>	D
30.4.51	<p><b>Microcells Small cell unit</b></p> <p>A small cell and associated antennae, with a volume of no greater than 0.11m<sup>3</sup></p>	P
30.4.52	<p><b>Microcells</b></p> <p>A small microcell and associated antennase, with a volume of between 0.11m<sup>3</sup> and 2.5m<sup>3</sup>.</p> <p><u>Provided that the micro cell is not located within a Heritage precinct.</u></p> <p>Control is reserved to all the following</p> <ul style="list-style-type: none"> <li>• Appearance,</li> <li>• Colour, and</li> <li>• Visual effects</li> </ul>	C

**Comment [A2]:** Scope is provided by the following submission points 179.15, 191.13, 421.12, 781.14

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30.4.53	<b>Microcells</b> A <del>small</del> microcell and associated antennas, with a volume more than 2.5m <sup>3</sup> OR located within a Heritage precinct;	D
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## ENERGY AND UTILITIES 30

Small Cell <u>unit</u>	<p><del>Means a low-powered radio access node that provides improved cellular coverage or capacity and is operated by a telecommunications operator.</del></p> <p>Means a device—</p> <p>(a) <u>that receives or transmits radiocommunication or telecommunication signals; and</u></p> <p>(b) <u>the volume of which (including any ancillary equipment, but not including any cabling) does not exceed 0.11m<sup>3</sup></u></p>
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