

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of Plan Change 9 to the Operative Hamilton District
Plan ("**PC9**")

**LEGAL SUBMISSIONS ON BEHALF OF
SPARK NEW ZEALAND TRADING LTD**

1 NOVEMBER 2023

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1. INTRODUCTION

- 1.1 These legal submissions are presented on behalf of Spark New Zealand Trading Limited ("**Spark**").
- 1.2 Spark is New Zealand's largest digital services company delivering mobile, fixed and IT products and services to millions of New Zealand consumers and businesses. Spark's telecommunications infrastructure provides important social and economic benefits by enabling and improving connectivity for homes and businesses across New Zealand.
- 1.3 Spark is interested in PC9 insofar as the proposed provisions impact the ability to maintain, upgrade and provide telecommunications infrastructure in Hamilton area. In particular, Spark wishes to ensure PC9 appropriately recognises and provides for critical infrastructure such as the existing telecommunication facility located at 7 Caro Street, Hamilton ("**Hamilton Exchange Facility**").
- 1.4 For the reasons outlined below and in the evidence of Messrs McCarrison and Rawiri, Spark opposed the heritage classification of the Hamilton Exchange Facility in PC9. Spark was pleased to see the Council Reporting Officer's recommendation to remove the Hamilton Exchange Facility from Schedule 8A Built Heritage (buildings and structures) and classification as a Category B Building. Spark seeks that the Commissioners adopt that recommendation.

2. SCOPE OF SUBMISSIONS

- 2.1 These legal submissions address the:
- (a) nature and importance of Spark's operations;
 - (b) Hamilton Exchange Facility and its important role in supporting people and communities across the Waikato region; and
 - (c) reasons why the heritage classification on the Hamilton Exchange Facility is not appropriate.

3. NATURE AND IMPORTANCE OF SPARK'S OPERATIONS

- 3.1 Telecommunication network requirements are constantly changing due to the fast-evolving technology and increase in data use and customer demand for digital services.
- 3.2 While telecommunication connectivity appears relatively simple to the end user, it is important to recognise that the telecommunications network is complex and made up of both linear and site-specific infrastructure.
- 3.3 Telecommunication services such as the mobile network, fixed phone and broadband network is supported by a number of physical infrastructure assets including fibre, satellites, cell towers, cabinets, cables, connection lines, antennas, buildings with a variety of functions (ie software switch technology) and data centres for cloud services and cooling systems. These components are connected as a global network which all come together to provide an instant digital service for the end user.
- 3.4 The successful maintenance, upgrading and provision of all components of the telecommunications network is critical to the delivery of safe, efficient and reliable telecommunication services New Zealand businesses and communities rely on every day.

4. HAMILTON EXCHANGE FACILITY

- 4.1 As set out in Mr McCarrison's evidence, New Zealand is geographically isolated and relies on global communications via critical international and national submarine cables.¹ Data centres are a critical component to enable these communications. New Zealand has only a handful of centres, one being the Hamilton Exchange Facility. The Hamilton Exchange Facility is a vital asset as it connects Hamilton and Waikato to the rest of New Zealand and the world.²
- 4.2 The Hamilton Exchange Facility is an eight-storey concrete structure built in 1963. It was initially designed as a post office building, and was later repurposed as a telecommunication exchange facility. Four out of the eight floors are currently vacant, after Spark staff relocated to the Spark Precinct at 168 Bryce Street earlier this year. The building itself requires significant structure and durability work to upgrade the cladding panels, and strengthen

¹ Statement of Evidence of Mr McCarrison dated 22 September 2023 at [3.2].

² Statement of Evidence of Mr McCarrison dated 22 September 2023 at [4.3] and [4.10].

the building's foundations and floor which are in a state of "disrepair".³ These required works will change the building's external visual appearance.

- 4.3 In our submission, given the critical role the Hamilton Exchange Facility plays in the Waikato region, it is both necessary and appropriate that PC9 sets out a workable and enabling framework to ensure the Hamilton Exchange Facility can continue be used, and developed as needed to support essential telecommunications infrastructure.

5. PLAN CHANGE 9

- 5.1 PC9 proposes to classify the Hamilton Exchange Facility as a Built Heritage item H172 Category B in Schedule 8A: Built Heritage (structures, buildings and associated sites).

Impacts of PC9

- 5.2 The Category B heritage classification will introduce onerous requirements for maintenance and repairs undertaken at Hamilton Exchange Facility.
- 5.3 Mr Rawiri has set out the various works needed to ensure the Hamilton Exchange Facility can operate.⁴ These works are necessary to ensure the facility can continue to operate in a safe and efficient manner. Under the Category B classification the exterior of the building is protected, and any maintenance or repair of the Hamilton Exchange Facility will likely require resource consent. This reflects an unnecessary loss of time and resources for Spark.
- 5.4 As set out in the evidence of Mr McCarrison, it is also contrary to the Hamilton Exchange Facility designation G53 for the purpose of telecommunication, radiocommunication and ancillary purposes. It is important that Spark can upgrade its infrastructure as allowed by its designation.
- 5.5 The updated Section 42A report responded to similar concerns about maintenance raised by submitters. The report recommended the addition of rule 19.3.2.c to include "maintenance and repair of buildings and structures" as a permitted activity.⁵ However, this explicitly does not apply to buildings listed in Schedule 8A, and therefore the exemption would not apply to the

³ Statement of Evidence of Mr Rawiri dated 22 September 2023 at [2.3].

⁴ Statement of Evidence of Mr Rawiri dated 22 September 2023 at [3.3] – [3.10].

⁵ Section 42A Report for Historical Heritage Areas dated 20 October 2023, at [32] and [33].

Hamilton Exchange Facility. No explanation was provided as to why Schedule 8A buildings were excluded from this additional rule. Even if this were to apply to the Hamilton Exchange Facility, the definition of "maintenance" and "repairs" is limited to matters like plumbing and painting, for example, and would not cover the works required for Hamilton Exchange Facility.

- 5.6 PC9 has also classified the Hamilton Exchange Facility as a "Former Telephone Exchange". However, as set out in the evidence of Mr McCarrison, the Hamilton Exchange Facility continues to be fully operational and a key component in the telecommunication network in the Waikato region.⁶

Incorrect classification

- 5.7 Mr McCarrison's evidence describes the qualities upon which the Council's original classification of the Hamilton Exchange Facility was based.⁷ The only value where the Hamilton Exchange Facility was ranked as being of "high" significance was that the building was designed by Government Architect Fergus George Frederick Sheppard. Mr Sheppard's buildings are recognised as part of New Zealand architectural heritage. All other qualities were ranked no higher than "moderate". However, there is no evidence that Mr Sheppard was in fact the architect for this building.⁸
- 5.8 Ms Caddigan, Council's Heritage Expert, now no longer supports the heritage classification of the Hamilton Exchange Facility at 7 Caro Street, Hamilton.⁹ Ms Caddigan's recommendation to remove the building is based on fact the façade panels have been almost entirely replaced, detracting from the heritage values of the building and therefore do not meet the threshold for heritage scheduling.¹⁰
- 5.9 The Council Officer's planning report adopts the recommendations of the Ms Caddigan.¹¹ Spark supports both the Council Officer's planning report and Ms Caddigan's evidence. Put simply, this building no longer reflects the architectural values of Mr Sheppard's work, if it was even designed by Mr Sheppard at all.

⁶ Statement of Evidence of Mr McCarrison dated 22 September 2023 at [5.2].

⁷ Statement of Evidence of Mr McCarrison dated 22 September 2023 at [5.3].

⁸ Statement of Evidence of Mr McCarrison dated 22 September 2023 at [5.11] (b).

⁹ Statement of Evidence of Ms Caddigan dated 24 August 2023, at [42].

¹⁰ Statement of Evidence of Ms Caddigan dated 24 August 2023, page 30.

¹¹ Section 42A Report for Historical Heritage Areas dated 20 October 2023, at [33].

- 5.10 The Hamilton Exchange Facility cannot fairly be classified as being of "historical significance".¹² It has incorrectly been listed as a Schedule 8A Built Heritage (buildings and structures) and incorrectly classified as a Category B Building.

6. CONCLUSION

- 6.1 For the reasons set out above and in the evidence of Mr McCarrison and Mr Rawiri, Spark respectfully requests the Panel adopt the recommendation in the Council Planner's report and Ms Caddigan's evidence to remove the Hamilton Exchange Facility from Schedule 8A Built Heritage (buildings and structures) and its classification as a Category B Building.

Dated 1 November 2023

Daniel Minhinnick / Julia Fraser
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¹² Statement of Evidence of Ms Caddigan dated 24 August 2023 at [42].