

Review of Issues Affecting Utilities and Road, Rail and Motorway Corridors

Summary of Submissions

MINISTRY OF ECONOMIC DEVELOPMENT

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Introduction

The Ministry of Economic Development received 53 submissions in response to its discussion paper “Review of Issues Affecting Utilities and Road, Rail and Motorway Corridors” (ISBN 0-478-28443-8 released June 2005). A list of submitters is included in Appendix A of this report.

Overall, the detail, comprehensiveness, and strategic thinking of the submissions reflected stakeholders’ desire to gain effective solutions for the issues raised in the review. There is certainly polarised thinking on some issues by RCAs versus Utilities, however, the Ministry was encouraged to see compromise and collaborative thinking from many parties on many of the issues.

What can be broadly ascertained from this review is the strong desire from all stakeholders for a consistent, pragmatic, and equitable legislative framework for managing utilities in the road, rail, and motorway corridors. What is clear to the Ministry is that the achievement of this goal will not be a simple quick fix solution, but instead, require a more thorough and stakeholder participated discussion of individual issues and solutions. The submissions received and conclusions drawn from this initial review lay the foundation for more comprehensive and detailed reviews of issues in order to deliver equitable solutions and an overall pragmatic strategy.

A rigorous analysis has been undertaken by the Ministry. Due to the wide range and complexity of issues covered in this review, this summary of submissions is not brief. The full results from which this summary is derived is available on request (contact electricity@med.govt.nz).

Each section of this paper covers an issue from the discussion paper and presents a summary of the submissions for the proposals and questions posed in the discussion paper. For succinctness, generalised results are given along with any significant suggestions of note. Other issues that were submitted that were not attributed to a specific question or proposal are summarised in the last section.

Legislative Consistency – The Need for Harmonisation

Proposal: A legislative regime providing a more efficient, coherent, and pragmatic framework for the relationship between utilities and road controlling authorities.

There were 45 submissions on this proposal. 43 were in support and 2 did NOT support.

The general feeling among submitters is that the utilities statutes are inconsistent, creating unfairness, barriers to development and an imbalance of power. It was evident that the main outcome of any legislative change should be to achieve consistency and fairness across the utility statutes.

Question: Should legislative consistency be achieved through amendment of current utilities legislation OR the creation of an all-encompassing specific utilities statute?

There were 38 submissions on this question. Four answers emerged:

- a. 19 submissions supported an amendment of current utility statutes;
- b. 10 submissions supported creating an all-encompassing omnibus specific utilities statute;
- c. 2 submissions supported the long term creation of an all-encompassing omnibus specific utilities statute; and
- d. 7 submissions supported BOTH a short term amendment of the current utility statutes AND the long term creation of an all-encompassing omnibus specific utilities statute.

Those in favour of amending the current utilities statutes proposed that an amendment to existing statutes is likely to be speedier and easier to achieve consistency.

Those in favour of an all encompassing specific utilities statute proposed that it is required as long term solution to prevent any piecemeal changes to individual utility Acts which would result in more inconsistencies creeping back in to utilities legislation. It was suggested it would standardise inconsistencies such as the definition of a road, requirements for giving notice, and guidance or limits on the setting of reasonable conditions.

Those against an all encompassing specific utilities statute proposed that it would be too burdensome, inflexible, and not meet the different needs of specific utilities.

It is also noted that requirements under legislation that may pertain only to urban settings may be detrimental to predominantly rural authorities.

Defining a “Road”

Proposal: Amend the definition of “road” within the Telecommunications Act 2001 to that of the definition of “road” provided within the Electricity and Gas Acts 1992.

39 submissions were received. 34 supported the proposal and 4 did NOT support. It is noted that the two main telecommunications providers, Telecom and TelstraClear, both did not support this proposal.

There was strong support for consistent and standard definitions across all utilities legislation. A significant majority supported the definition of road as provided within the Electricity and Gas Act 1992. There was an alternative suggestion that this definition is too restrictive and that all other utilities Acts should adopt the Telecommunications Act 2001 definition.

It was suggested that the recognised definition of a road is that being from legal boundary to legal boundary (road reserve) as per the Local Government Act 1974 and Transit Act 1989. This is also the same area and legal definition on Survey Office and Deposited plans where land is taken for or vested in road.

Issues to note include the addition to the definition of airspace above property within two metres of the road boundary, and access to paper and unformed roads.

Question: Call for submissions outlining the extent of any disputes over rights to “public places” claimed within the definition of road.

13 submissions were received and all 13 have had NO disputes.

Question: Should the road surface (upon which vehicles travel, and including footpaths) be considered an individual utility alongside other utility operators (e.g. electricity, gas) within the road corridor?

35 submissions were received. 17 responded YES. 18 responded NO. Of note, the majority of those in support were Utilities and the majority of those against were RCAs.

The general feeling from those who did not support the proposal was that roads are a public good universally available to all the public, at all times of day and night, provide universal and free access as a public good, and contribute to the visual character, environment and amenity value for all users and adjoining properties. It was widely suggested that local authorities in New Zealand are RCAs on the basis of the road being a public good and the local authority being the most effective regime through which the community can provide the service. It was felt that this proposal would have far reaching and indeterminate constitutional and common law implications, and would be both a dangerous and unnecessary step.

It was suggested that the road surface should not be considered as of equal status to other utilities as the road is far more vulnerable and valuable as the road surface and construction is different to every other utility because access to any utility beneath the road

surface affects the road directly. It was also suggested that roads are primarily for traffic and pedestrian movement and have open access to the full community and are funded by the community, whereas utilities involve individual connections to properties and in most cases, are funded by individual agreements with the utility users.

Those in favour predominantly held the view that it would create greater equality and fairness for those stakeholders of the road corridor. It was suggested that utility operators should be able to impose reasonable conditions on RCA operations that will affect their lines or other works, and that RCAs must at least be required to notify affected utilities of any changes or works.

A significant submission was received from Timaru District Council proposing that collaborative utility corridors be established.

Question: Should the principal objective of the road corridor be to carry vehicular and pedestrian traffic, or provide a corridor for the location of utility networks (including vehicular and pedestrian traffic as a utility)?

40 submissions were received. 22 submitted that the principal objective of the road corridor should be to carry vehicular and pedestrian traffic. The majority of these submitters were RCAs.

18 submitted that it should be a corridor for utility networks including vehicular and pedestrian traffic (as a utility). The majority of these submitters were utilities and utility representative associations.

The general view of those proposing that the principal objective of the road corridor should be to carry vehicular and pedestrian traffic, was that it is only a secondary purpose of a road to provide a corridor for the location of utility networks, where it is practical to do so.

Across the perspectives it was felt that it is important to ensure appropriate protections, rights and obligations on all users of the road reserve. It was also felt that legislation must enable all stakeholders to co-exist in a practical and managed way.

Those calling for equality of status between stakeholders suggested the road corridor is the last true commons for the location of all public services, and as a public corridor it should be seen as a three dimensional piece of real estate for the carriage of all public access and for utilities as required above and/or below ground.

Of note is the submission that utilities do not hold similar power over any RCA's works. Often, works carried out by a RCA have adversely affected the function or operation of a utility. A typical example being road reconstruction works have often lead to reduced minimum safe distance clearances between overhead network and the road surface or where a road is lowered reducing the cover over an underground network. The Utility is then forced to attend to these problems without recourse to the RCA that made the changes.

Notification of Affected Parties

Question: Is there good reason for the legislative differences for required notification of affected parties?

22 submissions were received and all submitted that there is not a good reason for the existing legislative differences.

Of note it was suggested that legislation needs to consider any notification requirements that may be imposed through District Plans, and that contractors require the same process for notification of affected parties.

Question: Should they be consistent?

35 submissions were received and all were in favour of the legislation being consistent.

It was suggested that non-legislative remedies such as the Code of Practice, are working satisfactorily in some regions, and that this Code could be widened and strengthened, and more widely adopted.

It was felt that the aim of new legislation should be consistency and fairness in every respect (definitions, timelines, processes, cost-sharing etc). Submitters also called for standardisation of notification procedures and formats across the country. It was suggested that any changes should be subject to cost/benefit analysis.

Regarding the definition of an “affected party” it was submitted that this should only be defined as having assets located within 10m of the proposed works. It was also submitted that it should be clarified from the definition used in the Resource Management Act.

Question: Should the RCA be required to notify affected parties and other utility operators of its intention to carry out works within the road corridor?

37 submissions were received. 36 submitted YES. One submitted NO on the basis that affected parties are distinct from utility operators.

It appears that a number of RCAs currently inform utilities of their roading programmes and coordinate with utilities. It was submitted that the Council’s Annual Plan is a good means of early notification.

It was strongly felt that the RCA should notify affected parties only for major works NOT minor maintenance operations, and that these need to be differentiated. It was also suggested works notifiable must include land drainage ditches, water races and irrigation races operated by anybody.

Throughout the submissions for many of the questions it was suggested that Local Authorities need to separate their RCA, Utility operator, and RMA functions to avoid conflicts of interest.

Question: Should the RCA or the Utility Operator be responsible for notifying affected parties?

27 submissions were received. Three answers emerged for who should have responsibility to notify:

- a. 6 favoured the RCA
- b. 5 favoured the Utility Operator
- c. 16 favoured the Works Initiator.

One concept discussed was that the RCA take a more formal management role of the road corridor, including undertaking the notification of affected parties to ensure full notification. On the question of notification, it was evident that submitters favoured the works initiator being responsible for notifying affected parties of works.

Question: Should the RCA take on a coordination role and administer the notification process?

38 Submissions were received. Four answers emerged:

- a. 10 submitted YES
- b. 8 submitted YES, the RCA should coordinate but NOT be responsible for notifying on behalf of works initiators.
- c. 2 submitted that it is already happening.
- d. 14 submitted NO.

On the question of RCA coordination and management responsibility for the road corridor, this was met with limited support. Throughout the submissions there was some support that one party should certainly have a management role of the road corridor on behalf of all stakeholders. Submitters informed the Ministry that a number of Local Authorities as RCAs currently perform this coordination role with utilities anyway. It was suggested that greater adoption of the Code of Practice and Partnering Agreement, as evidenced in the Rotorua District, would improve coordination of utility and RCA works.

Those against this concept suggested it would add timing delays and unnecessary costs to projects, and would also be a burden on Local Authorities as RCAs, as many are under-resourced as it is.

There was consensus that the RCA should maintain a register of utilities which works initiators can use to ensure they notify all possibly affected parties. The degree of specificity of the information in such a register requires further review – the question lies around the location specificity, accuracy, and liability. There was a strong feeling that any additional responsibilities undertaken by the RCA should be cost recoverable. It was suggested that utilities must maintain responsibility for the recording and accuracy of their asset location information. It was also suggested that any register must be electronic or internet based.

A significant issue was raised by Gisborne District Council regarding the occurrence of cables being laid in road and other reserves by people and organisations other than the traditional utilities. This poses several issues that the Ministry will further review.

Cost Sharing

Question: *What problems have respondents experienced with cost sharing arrangements for utility work within the road corridor?*

29 submissions responded to this question.

It was widely felt that inconsistent legislation creates inconsistent expectations, confusion, and unbudgeted costs arising. Specific cost sharing issues that were significant included:

- relocation and cost sharing;
- unreasonable conditions, especially undergrounding;
- cost breakdowns not provided, excessive costs, poor planning;
- betterment: one party inadvertently subsidising the other party's asset upgrade;
- paying to repair damage from works where RON conditions have not been adhered to; and
- works reduce the integrity and life expectancy of other assets, both road & utility. Hard to recover costs when damage becomes apparent long after work.

An issue that appeared throughout a number of RCA submissions was that of rentals. It was felt that the RCA buys land for road development and owns and maintains the roading asset with ratepayer/taxpayer money, however, utility legislation allows utilities to freeride on that ownership and locate utilities in that road corridor free of rental and make a profit. It was also felt that legislative inconsistency allows utilities to charge rentals to RCA or other utilities for locating additional assets in/on a utility's asset that is located in the road corridor.

Question: *Is there good reason for the legislative differences for cost sharing arrangements?*

16 submissions responded to this question. 15 answered NO. One respondent answered YES; suggesting that differences reflect the competing policy and practical considerations.

Question: *Should the legislation be consistent?*

33 submissions were received. 31 answered YES, the legislation should be consistent, while 2 answered NO.

Question: *What solutions do respondents propose as providing the most balanced and effective outcome for resolving legislative inconsistency for cost sharing arrangements for utility work within the road corridor?*

41 submissions responded to this question.

There was a strong desire for legislative consistency to resolve issues. There was also strong support for Partnering Agreements and Model Arrangements as means of resolving issues. While a number of different solutions were proposed, four key themes emerged as having significant support:

- a. All legislation adopt Electricity/Gas Acts cost sharing provisions;
- b. 50/50 cost sharing between RCA and Utilities as provided for in s54 Transit Act;
- c. Causer Pays; and
- d. Negotiation.

Causer pays was the most popular solution. There were suggestions that this should cover the full cost of works and relocation, the full cost for new assets, be less the cost of affected asset betterment, or include a discounting regime based on remaining economic life and/or asset improvement guidelines.

There were a number of solutions and variations on minor points suggested. The Ministry believes this requires a more in-depth review in association with stakeholders.

Question: What solutions do respondents propose for ensuring the fair apportionment of the true whole of life costs of utility works to the road asset?

23 submissions responded to this question.

There was agreement that a standard definition of “whole of life costs” is required. There was support for a working group to research and develop a formula, guidelines, and/or model arrangements for the fair and reasonable apportionment of whole of life costs. There was also support for the causer of works paying the full costs of works including whole of life cost apportionment.

Reasonable Conditions

Proposal: That the provisions in s119 of the Telecommunications Act 2001 outlining the criteria for setting reasonable conditions be adopted by other utilities legislation.

33 submissions were received on this proposal. 28 Supported. 2 were Against. 3 submitted that utilities legislation should adopt the reasonable conditions prescribed in the NZUAG Code of Practice.

RCA's felt they should have strengthened rights to set reasonable conditions over a number of issues such as reinstatement, location, and restrictions. There was noticeable support for reasonable conditions prescribed in the NZUAG Code of Practice to be legislated. There was also support for strengthening and adding to the Code of Practice and developing national guidelines for reasonable conditions to support any legislative prescriptions.

Utilities felt reasonable conditions imposed by RCA's should be related to their operational and asset management role, rather than as part of some wider regulatory role. It was suggested that it is clear from the utilities statutes that the functions being exercised by an RCA in imposing conditions should be related to their ownership or control of the road as an asset, and to the primary function of the road as a transport resource, not amenity or RMA issues. It was widely felt that reasonable conditions must be fair and equitable to all, and recognise the balance of costs.

Of note, was the issue of redundant assets. RCA's have called for wider powers to set requirements or bonds for the removal or re-usage of redundant assets located in the road corridor. Another suggestion of note was that all utilities with assets in the road corridor should have the ability to impose reasonable conditions requirements on work that other utilities undertake that may affect their assets. It was proposed that the ability to impose reasonable conditions should not just be confined to RCA's.

Question: How can the interpretation and application of reasonable conditions be defined and tested?

35 submissions were received in response to this question.

It was certainly evident that there is disparity between the RCA's' and Utilities' perceptions of "reasonable". National utilities also called for national consistency as dealing with different degrees of reasonable conditions across the spectrum of RCA's is an issue.

There was a strong preference for non-legislative definition through the development of national criteria, models, or guidelines. It was felt that NZUAG was the best party to do this. Others felt that the current NZUAG Partnering Agreements and Code of Practice sufficed and just required greater adoption.

In terms of legal definition and testing, it was felt that mediation or arbitration was preferable, as was final determination through the court. It was suggested that the best means would be test cases in court to determine judicial interpretation and set case law precedents.

There was significant agreement from RCAs that the TLA/RCA should be the only authority/party with the power to prescribe reasonable conditions. There was some agreement that any guidelines or conditions must include reinstatement and the needs of the safe and efficient flow of traffic against the needs of the community to access utilities in a timely, reliable manner at a price they can afford.

A significant additional issue raised by respondents, is that of road traffic safety and the RCA's requirement for undergrounding and not poles. RCAs argue that this requirement is for road safety purposes. Utilities suggest RCAs are using it more to achieve amenity outcomes. The major issue for utilities is the significant cost undergrounding poses. The Ministry believes this is an issue that requires further review in conjunction with Ministry of Transport and Land Transport New Zealand.

Dispute Provisions

Question: *Should mediation and arbitration be the primary means for dispute resolution?*

39 submissions were received. 35 supported the question, while 4 did not support.

While the majority of respondents supported both mediation and arbitration, there was also significant support for just mediation and not arbitration. The rationale for this being, that arbitration lacks transparency, is subject to the decision of a possibly biased or non-expert adjudicator, and due to the lack of case-law precedents is subject to uncertainty. It was suggested that arbitration be only by mutual agreement, and also adjudicated by an expert panel.

There was significant support of the need for clear criteria for the processes, and appointment of mediators/arbitrators. There was also support for the adoption of the NZS 3910 Conditions of Contract Code mechanisms for dispute resolution.

There was strong support for the availability of recourse to the District Court if mediation and/or arbitration failed, and then the ability to appeal to the High Court on points of law.

Question: *Should there be a prescribed timeframe for mediation and arbitration? If so, what should it be?*

22 submissions were received. 21 responded YES, and 1 responded NO.

Specific timeframes were suggested by respondents, ranging from 10 working days to 3 months to no prescribed timeframe. The most consensual (only 3 submissions) was that of 40 working days. Of note, a question was posed by one submission: what would happen if the timeframe lapsed?

Question: *Is the District Court the appropriate body for final recourse? Should it be the Environment Court?*

34 submissions were received. 29 supported the District Court. 5 supported the Environment Court.

Those who favoured the District Court suggested it was the most appropriate body as issues most likely to be in dispute, e.g. “reasonable” conditions and issues relating to operational and business matters; are under its prerogative. It was suggested that the Environment Court was not suitable as it only covers RMA issues and these have no bearing on Road/Utility issues. It was also suggested the Environment Court was overburdened as it is.

Those who favoured the Environment Court as the ultimate authority suggested that it is the appropriate body as it has a good understanding of community, amenity, roading and road safety issues and also has experience in issues of cost and compensation.

Access to Rail & Motorway Corridors

Proposal: That utility operators' right of access as set out in the Electricity Act 1992 NOT be extended to include the rail corridor.

27 submissions were received. 9 supported NO right of access for utilities. 18 did not support. Of note, the Government Agencies responsible for the rail network, ONTRACK and MOT, both supported utilities having NO right of access.

Those against the proposal, who believed utility operators should have as-of-right access to the rail corridor, suggested that the use of currently underutilised rail corridors to ease the access pressure is seen as preferable to the increasingly problematic accessing of privately owned property. It was also suggested that where utilities are already in the rail corridor, or the corridor is sufficiently wide, utilities should be able to co-locate.

There was significant agreement that access must not compromise the safety of the rail system by disturbing the rails or ballast. In terms of managing utilities in the rail corridor, there was strong support for right of access being subject to the imposition of reasonable conditions by the rail access provider to protect the special nature of the carriageway and alleviate safety concerns. However, there was also support for the suggestion that conditions must be "reasonable" and not impose extreme conditions that ignore costs and technical developments.

Of note it was suggested that it must be recognised that there are two issues for access: one to lay utility services along a rail corridor and the other, gaining access across rail track to provide customer services on the other side. Often, the majority of utility requests are just to cross the corridor.

It was also suggested that consideration could be given to using disused rail corridors. Two submissions both noted that many rail corridors were originally acquired under the Public Works Act for the specific purpose, viz. a rail corridor. If a rail corridor were to be used for utilities, becoming in effect a utility corridor, would this not constitute a change of use and trigger an obligation to "offer back" the land to the original owners? If so, the land would become private land and no longer a corridor over which any utility would have any rights.

ONTRACK made a significant submission outlining the differences between rail and road corridors, justifying the need for them to retain control of access over utility operators.

Proposal: That the Rail Access Provider's (ONTRACK) rail corridor access evaluation criteria be codified, published and made accessible to utilities.

21 submissions were received. 20 were in support. 1 did not support the proposal, instead submitting that it should be legislated, not just codified and published. Of note, the Government Agencies responsible for the rail network, ONTRACK and MOT, both supported the proposal.

ONTRACK submitted that the criteria would spell out the operational, safety and other issues that are considered, and would need to be general rather than specific as different criteria apply to different utilities and the ability to provide access is situation specific.

ONTRACK also noted it would need to be able to recover its costs of providing access (and of administrative tasks such as preparation and publication of criteria) from those requesting access.

It was acknowledged by several utilities that there is a considerable history of unreasonableness for access and conditions in the past by NZ Rail/ONTRACK. As a solution, it was suggested that there should be a time period requirement that ONTRACK must consider and make a determination of an application from a utility or RCA. Suggestions ranged from 5 working days to within three months.

Another solution submitted was that ONTRACK's access evaluation criteria should be subject to external overview for its reasonableness.

Proposal: That utility operators' right of access as set out in the Electricity Act 1992 NOT be extended to include motorways.

30 Submissions were received. 13 Supported no right of access. 17 did NOT support no right of access. Of note, the Government Agencies responsible for the motorway network, Transit NZ and MOT, both supported the proposal.

Utilities suggest the use of currently underutilised motorway corridors to ease the access pressure is seen as preferable to the increasingly problematic accessing of privately owned property. The broad utility view is that motorway corridors are public land and should be available for public infrastructure. It was suggested that the majority of requests are only to cross the motorway corridor not to locate within or run alongside.

Those opposed to utilities as-of-right access submitted that for reasons of safety and in order to not inhibit future improvements, utility operators should not be permitted as-of-right access to motorway corridors. Transit NZ submitted that motorways need to be treated differently to other roads because of their high traffic volumes and the high expectations of road users. Transit's primary concerns are that neither the integrity of the road nor the safety of road users be compromised. Transit submitted that it must retain absolute control of these roads, including the ability to approve or decline works by utility providers, and that the Transit NZ Act prevails over other legislation in respect of utility works on motorways.

Both Transit NZ and utilities did provide some consensus on compromise solutions. Utilities noted that motorways are special and acknowledged Transit's safety concerns, submitting that access must not compromise the safety of the motorway by disturbing the integrity of the road surface, or disrupting traffic. It was, however, suggested that the motorway corridor, as opposed to carriageway, is often the best place to locate utility equipment. It was submitted that utilities should have rights of access to the motorway corridor – but not the carriageway – in situations where the key concerns such as public safety, integrity of the motorway surface, flow of traffic, etc have been adequately addressed. There was significant agreement that the special nature of the corridor and concerns of Transit NZ can be dealt with by setting reasonable conditions.

Transit submitted that it is not entirely opposed to works on motorways; stating that it can and does approve works, e.g. for crossing under motorways and attaching to motorway bridges where traffic and safety is not compromised.

Proposal: That Transit NZ's motorway access evaluation criteria be codified, published and made accessible to utilities.

22 submissions were received. 20 supported the proposal. 2 did NOT support the proposal, instead submitting that it should be legislated, not just codified and published. Of note, the Government Agencies responsible for the motorway network, Transit NZ and MOT, both supported the proposal.

It was acknowledged by several utilities that there is a considerable history of unreasonableness for access and conditions in the past by Transit NZ. As a solution, it was suggested that there should be a time period requirement that Transit NZ must consider and make a determination of an application from a utility or RCA. Suggestions ranged from 6 weeks to within three months.

Another solution submitted was that Transit's access evaluation criteria should be subject to external overview for its reasonableness. It was also submitted that Transit NZ must consult with utilities at the planning and development stages of motorways to ensure motorway corridors include utility space.

Question: Should the definitions of rail and/or motorway corridors be refined to differentiate the carriageway from the corridor?

19 submissions were received. 13 responded YES, while 6 responded NO.

It was submitted that the carriageway should be defined to a specific depth (if only qualitatively), so as to allow for as-of-right underground crossings, which do not affect the structural integrity of the carriageway.

Question: Should utility operators be permitted as-of-right access to the rail and/or motorway corridors (subject to reasonable conditions), BUT NOT to the "carriageways"?

19 submissions were received. 13 responded YES, while 6 responded NO.

There was a general view from many respondents that the use of these corridors would be for the benefit of the national good. For example, the use of rail or motorway land to bring utilities (especially significant higher volume networks) into city areas may take pressure of local roads and shorten the overall network involved.

The general feeling from utilities was that they did not want blanket exclusion from the carriageway. It was submitted that access to corridors only is acceptable where utilities only need to run parallel to the corridor (and where the corridor is sufficiently wide to accommodate both utilities and a carriageway). However, where utilities need to cross from one side of a corridor to the other, access across the carriageway is obviously also required. The arterial nature of most rail and motorway corridors means that 'going around' the corridor is not a feasible option. In these circumstances, options are limited to crossing the rail or motorway corridor or refusing to service the consumer's property. Accordingly, it was felt that while as-of-right access to the corridor (but not the

carriageway) would be useful in some situations, it would not address circumstances more frequently of concern to utility operators.

It was suggested that there are legal difficulties in distinguishing the carriageway from the verge (i.e. what would be the status of a gravel shoulder?). This could impede future realignment or widening of a road; allow the installation of poles and other roadside hazards; and create possible traffic disruption when utility service vehicles need to park in the motorway or rail corridor to undertake maintenance.

There were concerns expressed that as-of-right access to corridors would still cause significant safety issues. There was, however, significant agreement that the special nature of the corridors and carriageways, and the safety concerns of the access providers can be dealt with by setting reasonable conditions.

An alternative compromise submitted by several respondents, would be to allow utilities access to the rail and motorway corridors only for the purpose of bulk transmission. This would help minimise work in the road and motorway corridor and help address concerns expressed by ONTRACK and Transit NZ. For example, in the case of undergrounded transmission or sub-transmission electricity cables, the utility does not require access to those cables for approximately 60 years after installation.

It was also noted that the contractors used to lay cables and pipes are often the same contractors used by (for example) Transit NZ to construct and maintain motorways and are, therefore, well aware of Transit NZ's requirements with respect to safety and traffic control.

Interference & Hazards

Proposal: *That s24 of the Electricity Act 1992 be amended to clarify the notification and imposition of reasonable conditions for the alteration of electrical characteristics of any works.*

34 submissions were received. 15 were in support. 11 did NOT support. 8 proposed an amendment for changes in characteristics of ALL utilities. Of note, the predominant opposition was from the electricity sector.

There was significant agreement that this is a highly technical/contentious subject and requires specialist input before determining specific measures, and that this is outside the scope of this review. It was suggested that this should be undertaken by an industry working group such as NZUAG or NZCCPTS. It was also submitted that the term “alteration of characteristics” needs to be clarified and clearly defined.

Those opposed, submitted that the proposal would impose significant costs and risk implications on the electricity supply industry, cause an increase in compliance costs and delays in work completion, give Telecommunications providers unlimited and unfair advantage over electricity supply providers in road locations, and see electricity infrastructure remain unchanged or be forced out of road corridors.

The electricity sector submitted that EPR is only a problem because Telecommunications operators choose to run conductive cable adjacent to poles. Most of the problems occur where Telecommunications operators have installed cable close to existing poles. The fact that the poles may have been wooden without earths at the time the cable was installed is not the issue; the nature of overhead reticulation is that any pole may become conductive. It was suggested that the cables were generally knowingly installed in potential problem areas without the approval of the power utilities. It was suggested that existing legislation and guidelines allow Telecommunications operators to create potential problems and leave them for Power Utilities to resolve. It was submitted that there should be much stronger requirements for Telecommunications operators to consult with Power Utilities so that Telecommunications plant is not located in such a position where normal power company activities will trigger a problem.

It was felt by some that the current legislation and guidelines (such as those by NZCCPTS) are adequate.

Those in favour of the proposal submitted that it will have the benefit, that even if the impact is zero, it makes that utility declare its awareness of the advised notification and therefore acts as an acceptance and thus removes the likelihood of issues later. It was also suggested that it is important for all utilities to consult affected parties on any changes on any network characteristics.

Question: *What solutions do respondents consider would best improve the management of interference between utilities?*

34 submissions were received.

There was some suggestion that current legislation and regulations are inadequate. In terms of legislative remedies, there was strong support for a declaration and response

process with notification procedures set by legislation or regulations. There was also support for a mandatory communication requirement to all affected utilities, and the provision for other utilities to impose reasonable conditions.

Alternatively, there was support for industry initiatives over legislation. There was strong support for the extension and use of the Code of Practice, Partnering Agreements, and guidelines (e.g. OSH, NZCCPTS).

It was also suggested that RCAs take more responsibility for location allocation of network assets in the corridor and publish rules and procedures in a Road Network Management Plan.

Question: What solutions do respondents consider would best improve the management of hazards to equipment and people from utility works within the road corridor?

29 submissions were received.

The general feeling was that industry initiatives were more appropriate. There was significant support for the Code of Practice, Guidelines, and Partnership Agreements (e.g. by NZUAG or NZCCPTS) being extended and more widely adopted. Other industry initiatives included:

- Local changes to Code of Practice should be discouraged to ensure consistency for those utility owners operating in different RCA areas;
- Utilities must require contractors to comply with the Code of Practice for Working in the Road and audit performance accordingly;
- More emphasis on training and qualifications for works personnel; and
- Utilities & RCAs should have internal safety and risk management processes and procedures to force workers to adopt safe working practices and hazard management.

There were mixed feelings as to the adequacy of current legislation. It was submitted that all RCAs should be required to comply with the requirements in the Code of Practice to ensure consistency. It was also submitted that a section be added to NZS HB 2002:2003 part 3 to educate and highlight these hazards to all construction and management people dealing with the road corridor.

Other Issues Raised

It was noted the Discussion Paper did not cover contaminated soil/groundwater in Road, Rail and Motorway Corridors. It was suggested that the presence and management of contaminated soils/groundwater should be considered prior to work in a road or rail corridor commencing as there may be environmental or health risks. Consideration also needs to be given to appropriate disposal methods and sites for contaminated soil and/or groundwater.

It was submitted that interference provisions must also cover gas networks as electricity lines can also affect gas reticulation networks. It was also acknowledged that contractors

are not adequately familiar with the safety requirements for working in corridors with gas networks as low quality contractors often strike gas pipelines.

It was noted that the Discussion Paper did not cover emergency management issues in the road corridor. It was suggested that the Ministry and stakeholders must consider what solutions would best improve information sharing in relation to emergency management.

It was noted that the Discussion Paper did not appear to have considered OSH in the discussion on hazards to equipment and people.

RCAs suggested that “interference” could also encompass the issue of damage to the road surface and foundations from utility works as extensive trenching can affect the lifespan of the road as well as create surface irregularities which are unpleasant for road users and are sometimes dangerous.

Telecom NZ made a significant submission proposing amendments to the Electricity Regulations to resolve issues of interference from electricity lines. Refer to the Appendix – Analysis of Submissions: Results for the specific proposals.

Both the MOT and Transit NZ made significant submissions on the issue of road hazards, in particular, poles. Issues arise over the disparity between the Road Safety view and the Utilities’ view. The Road Safety Strategy perceives poles as a hazard solved through undergrounding or moving away from the carriageway, whereas utilities view poles as a superior cost-effective and ease-of-maintenance network asset which they are forced to locate in the road corridor due to the loss of their right to locate on private land.

The MOT suggests case-by-case cooperation and negotiation with legislative backstop favouring road safety if compromise and cooperation cannot be achieved. Transit NZ submits that it has a clear zone policy in place for all State Highways, but recognises that it will not always be possible to comply with its clear zone policy. It advises that it now has an annual programme for managing existing hazards in the road corridor; however, Transit states it cannot accept the creation of new and unnecessary hazards, such as the erection of new utility structures and poles in dangerous places.

Strategic Planning & Coordination of Utility Works within the Road

Question: *Is there a real issue with current practices of allocating utility space within the road corridor that is posing a barrier to infrastructure development?*

34 submissions were received. 29 responded YES. 5 responded NO.

There were significant issues expressed in relation to the unfair hogging of space due to “first up best dressed” or “first in first served” approach that pervades. It was suggested that sometimes utilities have a deliberate strategy to take up as much room as possible to limit competition. There was general agreement that this was an urban issue in major centres and not an issue for smaller towns and rural areas.

There were significant calls for greater cooperative strategic planning between all stakeholders – especially local government leadership. Issues were highlighted regarding subdivisions, especially from utilities concerned that RCAs did not communicate with utilities to co-locate networks during subdivision planning and development. There was suggestion that the TLA/RCA should have absolute control over the location and management of all utilities in the road corridor, including the right to specify the removal of obsolete, redundant or unused assets located in or beneath the Road. It was noted by several utility operators that Utility access is not being addressed as part of the design of new roads and purchasing of the road corridor.

Solutions were submitted including the use of TLA’s Subdivision Codes, the NZUAG Code of Practice and Partnering Agreement, the District Plan, and Engineering Standards to control the allocation for all new road construction. It was suggested that while existing roads are subject to best fit, where possible the alignments and allocations set in the engineering standards should be used.

Question: *What solutions do respondents propose as providing the most balanced and effective outcome for allocating utility space within the road corridor in a more effective, efficient, and fair manner?*

26 submissions were received.

There was significant agreement that RCAs as corridor managers are the agency that can provide the most balanced approach for allocating utilities space. It was felt that legislation needs to support a cooperative and collaborative approach by all parties. It was suggested in several submissions that the RCA should develop corridor management plans and should maintain a register of affected parties to be consulted before any proposed works are undertaken in the road corridor.

Industry initiatives, such as those by NZUAG, also received favourable support. There was significant agreement that all stakeholders should adhere to the NZUAG Model Partnering Agreement.

Legislative solutions that received support included the recognition of equal status of stakeholders, close co-operation and information sharing so potential conflicts can be

readily identified and resolved in an effective and efficient manner, and the development of a national standard on location and separation of services. It was also suggested that NZS 4404 Land Development & Subdivision Engineering Code of Practice should be adopted by all. Of note, it was suggested that the Standards New Zealand Handbook 2002:2003 Working in the Road be turned into a standard, rather than it remaining a guideline.

Question: *Should it be a legal requirement for RCAs to install utility ducts in all new road construction and road improvement programmes for utility operators to locate utilities?*

37 submissions were received. 10 responded YES. 27 responded NO.

The general feeling from all stakeholder sectors was against this idea. There was significant feeling that the installation of ducts in new road constructions is not practical, is too expensive, a poor use of public money, and not cost-effective. There were a number of cost sharing/ownership issues raised. There was also general agreement that installing electricity cables in ducts is problematic and that some utility plant cannot functionally operate when installed in ducting, and is not seen as viable for gravity-based systems. RCAs commented that they have tried installing ducting, but utility operators refused to use them.

Those in favour submitted yes, provided utilities pay. It was submitted that it should also be a legal requirement that utility operators duct when requested to by the RCA, at the utility operator's cost, and that that utility operator share an appropriately sized duct with other utility operators under an appropriate cost sharing arrangement. Of note, it was suggested the question should be rephrased: "should the utilities be required to install ducts when the road is being constructed or rebuilt, or forfeit their right to provide a service to that area?"

Question *Should the RCA be the party responsible for managing utility space within the road corridor through District Plan provisions?*

26 submissions were received. 10 responded NO. 12 responded YES. 4 responded YES, the RCA should be responsible, but NOT through the District Plan.

Those in support submitted that the District Plan should be the mechanism for providing the framework for managing utilities. Those against the District Plan concept, submitted that District Plans are not the appropriate mechanism – utility legislation is better. It was also suggested that involving TLA planners would make the process slow, inefficient, and bureaucratic. It was also noted that some RCAs (e.g. Transit NZ) don't operate District Plans.

Those in favour of the RCA managing utility space submitted that the RCA should be responsible, but through Code of Practice and RON requirements, and that the RCA should publish a Road Network Management Plan/Corridor Management Plan. It was noted that RCAs need cost recovery mechanisms for any extra responsibilities. Those against the RCA managing utility space submitted that RCAs lack the technical knowledge

required to plan utility network locations, and it will just create another layer of bureaucracy and costs imposed on utilities.

A significant submission was received from Manukau City Council which manages its utility space through the District Plan.

Question: *Should the RCA be the party responsible for maintaining a coordinated registry of location of utility networks within the road corridor? If so, how could it be funded?*

33 submissions were received. Three answers emerged:

- 11 submitted Registry: YES; RCA responsibility: NO;
- 11 submitted Registry: YES; RCA responsibility: YES; and
- 11 submitted NO.

There was general agreement that each utility should maintain its own register showing the location of its networks and make the information available to other utilities and the public, as is the current practice. There was also general agreement that the RCA should keep a register of which utilities have networks in the area so other utilities and the public can find out who to ask about network assets, notify etc.

Essentially, there was general agreement that there should be some sort of registry or database of utility locations. Contention lies in who should manage it and what form it should take. The RCA as manager of a location database was not popular. There was significant support, however, for a national database operated by a dedicated agency so it would be efficient and effective. It was submitted that centralised management has peripheral benefits such as a national utility contact point and may facilitate links to emergency services and civil defence emergency management. There was also general agreement that it must be web based and link into utility operator databases to ensure accuracy and timeliness. In relation to this, there was significant agreement that Utilities must provide information/data in a format compatible with GIS. It was widely agreed that cost recovery mechanisms would be required – this ranged from user pays to existing TLA rates to industry cost sharing.

Those opposed generally submitted that the concept is just not practical. It was noted by several respondents that information must be kept up to date, but it is difficult to maintain data reliability, accuracy, and keep up to date when accuracy of a central register is dependent on the accuracy of information utilities supply. Another general issue was that of liability issues/risks for incorrect information and consequential damage/injury. It was also noted that it would be complex, difficult, and expensive to merge different data formats and that the costs would outweigh any benefits. It was also submitted that the commercial and competitive risks of disclosing comprehensive network data to a central registry are unlikely to be palatable to utility operators and may lead to incomplete disclosure.

Question: *Should an industry body be responsible for maintaining a central registry of location of utility networks within the road corridor? If so, how could it be funded?*

24 submissions were received. 17 responded NO. 5 responded YES. 2 thought it was an option to consider.

The consensus was that this was not a supported proposal.

Again, there was general agreement that each utility should maintain its own register showing the location of its networks and make the information available to other utilities and the public, as is the current practice. There were some suggestions for RCAs/TLAs and Utilities providing a joint initiative. Again, there was suggestion that the RCA should keep a register of which utilities have networks in the area so other utilities and the public can find out who to ask about network assets, notify etc.

Opposition was based around additional costs to industry, duplicative agency costs and bureaucracy that RCA already provides to some degree, and liability issues/risks for incorrect information and consequential damage/injury.

Question: *Is it “reasonable” for RCAs to publish 2 year plans and “require” utilities to work only within the timeframes stipulated?*

27 submissions were received. 10 responded YES. 13 responded NO. 4 suggested other solutions.

There was significant utility opposition to the question, submitting that customer demand can't be managed/forecast. It was submitted that the proposal does not reflect the reality of the market in which utilities operate. The market is demand and technology driven – construction of new works occurs in a largely reactive fashion, in accordance with customer requests and the rapid evolution of new technologies. It was also suggested that it would be an impractical requirement for utilities due to emergency repairs and customer driven requirements, and that the proposal has the potential to introduce unnecessary delays to utilities' ability to maintain and reinforce networks upon the advent of unforeseen developments, often initiated by consumers.

Those who supported the question's proposal submitted that utility operators should be required to plan to the same timescale as RCAs, as forward publishing of plans and a close out time following reconstruction of roading pavements may be an incentive for utilities to come on board at the appropriate time. It was, however, felt that the question is a good idea, but should NOT be legislated as communication & cooperation is better. Although there was also a strong view that there should be a legislative measure to ensure consequences/penalties for RCA's or utility operators who undertake works outside the agreed plans.

It was widely noted that under current legislation (Local Government Act), RCAs are required to publish 10 year plans with the first year being accurate and the next two years being quite close. They are reviewed annually, and rewritten formally every three years. There was significant support for the need for any legislation to recognise that there will be changes to plans within set periods resulting from changes in priorities or simple market

reaction, or emergencies. It was suggested that planning timescales should be consistent throughout the country.

Proposal: That the Ministry support and encourage NZUAG as a facilitator, but that this NOT be extended to legislation.

28 submissions were received and all 28 supported the proposal.

It was noted that there is an important role for MED, alongside NZUAG, in establishing, implementing and monitoring the performance of a new utilities regime. It was also noted that NZUAG needs more standing so there is more adoption of programmes, and that legislation need only provide the framework by which NZUAG and stakeholders can organise themselves.

Other Issues Raised

It was noted by NZUAG that the problems of third party damage come more from principals and contractors not adhering to best practice, for which there are several guidelines available. Solutions include better contract monitoring, better inspection of road openings, and greater penalties for poor re-instatement. It was suggested that it may be timely to consider turning the Standards New Zealand Handbook 2002:2003 Working in the Road into a standard, rather than it remaining a guideline.

North Shore City Council made a significant submission proposing the adoption of Road Network Management Plans by TLAs setting out (inter alia) how it will manage the road network including the basis on which utilities will be allowed to operate in the road. The plan would be consulted on, regional consistency would be strongly encouraged, perhaps incentivised, and the TLA would manage, on behalf of the various stakeholders, the GIS system recording the location of all utilities in the road corridor.

Richard Murcott of LINZ made a significant submission regarding information management of utilities' locations. He proposes a solution where each utility owner would be responsible for spatially recording the locations of their plant to a set of minimum specifications, decide what information they might 'expose', and provide that minimum location information online. The public geospatial information infrastructure, including a geospatial discovery portal, could be used to 'discover' what (or who's) utilities exist within any segment of road reserve. The advantage of this solution is that it provides real time access to the appropriate, most up-to-date utility location data within any vicinity selected nationally.

Other Significant Issues

18 submissions provided significant issues that were not attributed to a specific question or proposal from the discussion paper. For the complete analysis refer to the separate Analysis Results Document. The following is a summary of some of the more significant issues.

There was significant comment on the loss of as-of-right access to locate utilities on private land and the requirement to gain easements to build assets on private land. It was suggested that the difficulties and (at times prohibitive) costs or delays associated with obtaining such easements has meant that access to the road reserve for utility services has become increasingly important. It was suggested that this increased dependence on the road reserve has occurred during a period when road traffic volumes have also been increasing rapidly.

There was significant agreement that New Zealand need's a legislative framework to provide an equitable balance between all parties. It was also submitted that a legislative framework needs to provide an equitable balance between the economic and social contribution of each utility to "New Zealand Incorporated" and local communities' future development, and to ensure all parties consider New Zealand's Economic Development.

In terms of definitions, it was suggested that a common set of definitions would be of major benefit, as would a clear and consistent definition of "utility". There was also a call to see the status of utility type assets owned by non Network utility operators (e.g., data lines, oil and condensate pipelines, compressed air lines, ducts etc.,) defined within the scope of this discussion paper, as their presence is frequently unknown and there is always a risk of accidentally striking one during works.

Of note, was Transit NZ's proposal that Toll/Concession roads are outside the definition of road as set in utilities legislation, therefore implying that it can be set that access must be negotiated and the toll operator/concessionaire may recover any costs arising from works.

There were several suggestions for the development of utility corridors in both legislation and practice.

It was submitted that it should be made mandatory that notification must be given to affected parties whenever a non-utility operator intends to install gas and condensate networks, and cattle or pedestrian underpasses within the a road corridor.

Transit NZ submitted a sizeable case suggesting that it was different to ordinary RCAs because it was responsible for State Highways which are higher status roads and therefore its submission should be paid careful attention.

It was submitted that the facilitation of competition in utility operator markets has resulted in duplication of services in the road corridor and is responsible for the increasing congestion issues. There is also competition between incompatible users, e.g. gas mains and electricity cables. It was submitted that the RCA should have a mandate to clearly manage the location of these networks' access.

There was agreement that all parties need to ensure they consider New Zealand's Economic Development in their objectives rather than just self interests as the road (and rail) corridors are the only "modern day commons" available to facilitate the delivery of

infrastructure services, and as such needed to be managed in an equitable way so no single utility (e.g. the road surface provider) has preference over another.

It was suggested that stakeholders also need to compromise, cooperate, communicate, and collaborate to achieve win-win solutions. It was suggested there is a great need to make decisions on the basis of “what’s best for our community” rather than “how can we do this at the cheapest possible price”.

It was noted that any efforts to extract taxes, fees, or levies, restrict corridor access, or give priority to road uses over other uses of the road corridor, will only raise prices for consumers. It was suggested that any additional compliance costs to industry need to be thoroughly evaluated for cost vs. benefit.

There were issues of incompetent contracting staff, poor safety practices, and poor workmanship raised.

Transit NZ raised a number of significant issues on road safety, ultimately suggesting that the Government has committed to a Road Safety Strategy already and that utility legislation and regulations for location and works in the road must be in harmony with that strategy.

Finally, North Shore City Council submitted that the policy framework used for this review was inadequate to seriously address the strategic importance of these infrastructure issues. It was suggested that many of the issues raised in the review were merely “house-keeping” matters. The Council submitted that unless there is a fundamental shift in the governance structure of utilities in the road corridor then current operational difficulties will simply be perpetuated – albeit in a modified form. It urged the Ministry to look at solutions that are sustainable in the long term and not just tinker with the present inadequate framework.

Appendix A: Submissions Received

Local/Territorial Authority	Utility	Representative Association	Government Agency	Individual
1. Auckland City Council	1. DELTA	1. EEA	1. Ministry of Civil Defence & Emergency Management	1. Richard Murcott
2. Auckland Regional Council	2. Eastland Networks Ltd	2. ENA	2. MOT	
3. Christchurch City Council	3. Electronet	3. GANZ	3. ONTRACK	
4. Dunedin City Council	4. Mainpower	4. IPENZ Transportation Group	4. Transit	
5. Gisborne District Council	5. Metrowater	5. NCWNZ		
6. Grey District Council	6. NGC	6. NZUAG		
7. Hamilton City Council	7. Orion	7. Roothing NZ		
8. Hastings District Council	8. Powerco			
9. Hurunui District Council	9. Powernet			
10. Kapiti Coast District Council	10. Telecom			
11. Manukau City Council	11. TelstraClear			
12. Napier City Council	12. Transpower			
13. Nelson City Council	13. Unison			
14. New Plymouth DC Road Asset Team	14. Vector			
15. New Plymouth DC Water & Wastes	15. Vodafone NZ Ltd.			
16. North Shore City Council	16. Watercare Services Ltd			
17. Otorohanga District Council				
18. Palmerston North City Council				
19. Rotorua District Council				
20. South Taranaki District Council				
21. Southland District Council				
22. Timaru District Council				
23. Waikato District Council				
24. Waimakariri District Council				
25. Wellington City Council				