

REGULATORY IMPACT STATEMENT

Statement of the Nature and Magnitude of the Problem and the Need for Government Action

The current framework for the use of road, rail and motorway corridors by utility providers (electricity, telecommunications, water, sewerage, drains, gas) has evolved in an ad hoc manner, over a number of statutes. There is no party charged with the overall responsibility for planning and coordinating works in the road, in the public interest, and no provision for enforceable national standards or codes of practice. Some utility operators are empowered to place 'reasonable conditions' on the proposed works of other utilities in the vicinity, raising questions of anti-competitive practices. The 75 road controlling authorities (RCAs) have established differing requirements for works in the road, resulting in increased costs and uncertainty of compliance for regional and national utility providers.

There are significant inconsistencies in the treatment of different utility sectors including: the definition of 'road'; notification requirements prior to works commencing; the allocation of costs when installations are moved or damaged; and the ability to place 'reasonable conditions' on the works of other parties. One effect of the differing definitions of 'road' is that telecommunications utilities have access rights to public spaces that are not roads under the jurisdiction of a local authority. The Ministry of Transport advises that the current level of fatal and serious injuries as a result of hitting a roadside hazard is not acceptable (50% of rural and 27% of urban crashes involve a roadside hazard/obstacle). The ability of RCAs to change the location of utility poles that are now considered a hazard is affected by lack of agreement with utility providers over cost sharing.

The lack of overall coordination and management results in wasteful re-work, poor use of the valuable and limited space, avoidable damage to both the road surface and utility installations, and associated service disruptions. As the intensity of use of the corridors increases, the likelihood of one network compromising the performance of another also increases (e.g. when telecommunication cable are co-located with power cables), requiring enhanced planning and management.

The right of access to private land was removed in 1987 for telecommunications utilities and 1992 for electricity, increasing the pressure on transport corridors. Utilities have a statutory right of access to roads (subject to 'reasonable conditions'), but not to motorway or rail corridors. There are complaints of insufficient, costly and delayed approvals for access along and across rail and motorway corridors.

The volume of utility works is considerable. For example North Shore City averaged over five road works per kilometre of road in 2004/05. Of these, only 66% of the works reinstated the road to a condition acceptable to the RCA. It costs in the order of \$250,000 per lane kilometre to fully reinstate a road surface following works. Local Government New Zealand's high-level estimate of the national cost of road re-work and repairs associated with utility works is \$40 million per annum (\$30 million in direct repairs and \$10 million in lost service potential due to utility works reducing the life of the affected road surface by up to 33%).

Government action is necessary because the current inadequate framework is established in legislation. The problems are escalating due to growing demand for utility services;

competing providers and networks; and the roll-out of new technologies. Improvements in the responsiveness, quality and reliability of utility infrastructure are crucial to New Zealand's productive capacity and growth prospects. Businesses rely on availability of infrastructure and efficient transport.

Statement of the Public Policy Objective(s)

The public policy objectives are:

- a. To reduce the costs and inefficiencies arising from the current statutory framework, including avoidable damage to roads and utility networks, delays and disputes, inconsistencies between statutes, and poor coordination.
- b. To provide for better management of the multi-use of road corridors in the public interest, including road safety, and balancing the provision of utility services with efficient transport and universal access to roads.
- c. To provide the potential for increased utility access to rail and motorway corridors while recognising the transport and safety responsibilities of Transit NZ, and the transport, safety and business interests of ONTRACK.

Statement of Feasible Options (Regulatory and/or Non-Regulatory) That May Constitute Viable Means for Achieving the Desired Objective(s)

Status Quo

The current legislative regime for utilities in roads is established by:

- The Gas Act 1992
- The Electricity Act 1992
- The Telecommunications Act 2001, and
- The Local Government Acts 1974 and 2002.

The access of utility operators to the rail and motorway corridors is governed by:

- The Railways Act 2005 and Transit New Zealand Act 1989.

The definition of 'road' is aligned in the Gas and Electricity Acts, but this differs from the definitions in the Telecommunications Act and Local Government Acts. Requirements for the notification of intended roadworks for utility or roading purposes vary, as do cost allocation regimes, and criteria for the setting of 'reasonable conditions' on works in the road. Existing provisions for appeals to the district court against conditions imposed by a road controlling authority have not proven effective in resolving disputes.

The status quo will result in the regulatory failures and costs identified above continuing, and increased barriers to innovation and growth as these rely on the availability of infrastructure services and efficient transport.

A voluntary collaborative approach to resolve some of the issues through the use of 'good practice guides' and 'partnership agreements' has been under way, primarily through the New Zealand Utilities Advisory Group (NZUAG) which is a forum for road authorities and the utility sector. This approach has had some success but cannot address the inconsistencies in the statutory framework and the lack of authority for any party to plan and manage the multi-use of the corridors. Reliance on the voluntary adoption of codes and standards will not result in national consistency or high levels of compliance.

Dissatisfaction with the status quo by stakeholders has given rise to the current review, and there is widespread agreement among local authorities and utility operators that a legislative solution is required. The status quo option is not favoured.

Non-Regulatory Option

An option was considered under which RCAs would have been required to hold and exchange certain information about the nature and location of utility networks and installations, and who is responsible for them, in order to reduce damage to utilities from works in the road. Such a regulatory requirement was potentially very costly for RCAs, and has been rejected in favour of initiatives to establish a privately operated national system (or systems) with the same objective. In a recent development at least one internationally established provider of such services, operating in New Zealand as 'DigSafe', is about to extend recent trials to encompass significant national and regional utility operators and several large local authorities. Parties proposing to undertake work in the road fund the system through application fees. This approach has been successful in other countries and is the favoured approach for dealing with information repository and exchange issues, in conjunction with the favoured regulatory option.

Regulatory Options

The policy content of options 1, 2, and 3 below would be consistent, as set out below. The options relate to the different ways the proposed legislative amendments could be achieved.

Proposed amendments to existing provisions include:

- A consistent definition of 'road', based on the definition in the Electricity and Gas Acts
- Consistent notification requirements across all utilities, and including the notification of proposed RCA road works to utilities
- Consistent statutory timeframes for processing applications are introduced
- A mediation step is added to existing dispute resolution processes
- The ability of utility providers to impose conditions on other utilities is removed
- A nationally consistent cost allocation regime is enabled via enforceable codes or standards, once adopted by Ministers (see below).

Proposed new elements of the regulatory framework include:

- Giving road controlling authorities an explicit responsibility for managing the road corridor and ensuring balance between roads and utilities, and among utilities, in the public interest
- A mechanism for the Ministers of Economic Development and Transport to adopt codes of practice and standards which would be available to road controlling authorities as nationally consistent and enforceable conditions. Codes and standards could be drawn from a number of sources, including those already developed by the industry.
- Establishing a statutory right for utilities to have access to the rail corridor. This right would be subject to reasonable conditions determined by ONTRACK when the proposed utility runs along the corridor and a stricter regime when it is proposed to cross the permanent way (the track). ONTRACK would be obliged to process applications according to statutory timeframes, and would be subject to dispute resolution processes.
- Establishing a statutory right for utilities to have access to the motorway corridor, on a basis similar to that for rail (above) except substituting Transit NZ for ONTRACK. Compared to the regime for roads, the framework for rail and motorway corridors would be balanced more towards the public interest in safe and sustainable transport.

Option 1: A new consolidated statute covering the access by utilities to transport corridors (and consequential amendments to the existing legislation)

This option would see all utilities covered by a single statute governing their access to and occupation of space in the road reserve. This approach has been adopted in the UK and some Australian states. It would have the benefit of ensuring that future amendments to the regime would apply equally to all utility sector and land transport modes. This approach would also have greater user-friendliness for stakeholders dealing with more than type of utility or transport corridor. A drawback is that a completely new statute is likely to require greater development and parliamentary effort to achieve the same policy objectives, compared to the preferred option. Most utility providers prefer to maintain the sector-specific nature of their current legislation. This option is not favoured.

Option 2: The incorporation of all utility legislation into a single statute.

This approach would see all utility legislation – not just the road-related aspects – incorporated into a single statute. The wide scope and impact of this option is not considered to be merited on the basis of the relatively focussed issues covered by this review, and there is no policy mandate or pressing need for such a large scale change at this time. This option is not favoured.

Option 3 (Preferred Option): Coordinated amendments to existing statutes

This approach would retain the current sector-specific utility statutes but make coordinated amendments using consistent wording in each where appropriate. Other key features are listed under the Regulatory Options heading above.

Statement of the Net Benefit of the Proposal, Including the Total Regulatory Costs (Administrative, Compliance and Economic Costs) and Benefits (Including Non-Quantifiable Benefits) of the Proposal, and Other Feasible Options

Note: It has not been possible for officials to quantify costs and benefits at this time. If the policy framework is approved in principle a further RIS will be prepared when additional detail has been developed.

Government

The proposed policy framework will support the Government's goal of a world class infrastructure by improving the quality and reliability of utility services. It will also assist the Government's digital strategy through:

- Improving 'confidence' by increasing reliability. Telecommunications (and with it the Internet) are susceptible to physical damage to networks. Much of this damage is avoidable.
- Improving 'connection' by enhancing access (e.g. by fibre optic and telecommunications network providers) to local and national corridors for the installation of networks, and by reducing delays and uncertainties in the associated processes.

A risk of establishing the proposed framework over a number of statutes (preferred option) is the possible loss, over a period of time, of consistency and a holistic view.

The cost of a one-off educational campaign to promote and explain the new regime to stakeholders is estimated at \$10,000.

The Ministers of Economic Development and Transport would be empowered to adopt appropriate codes of practice and standards, with associated costs of advertising draft documents and considering submissions. The estimated ongoing administrative cost of the function (Ministry of Economic Development and Ministry of Transport) is set out below.

Estimated ongoing administrative costs for national codes and standards adopted by Ministers		
Ministry of Economic Development	Analysis of proposed codes and standards; attendance at industry consultation meetings; processing of Ministerial approvals (0.5 FTE)	\$75,000 p.a.
	Advertising and publishing proposed codes	\$20,000 p.a.
	Specialised technical advice	\$40,000 p.a.

	relating to proposed codes	
Ministry of Transport	Analysis of proposed codes and standards; attendance at industry consultation meetings; processing of Ministerial approvals (0.25 FTE)	\$37,500 p.a.
	Total per annum	\$172,500

The volume of applications for access to motorway corridors could be expected to increase, with associated resource demands. Transit New Zealand already has requirements and standards to guide the consideration of applications for access. These would require one-off amendment.

ONTRACK already processes applications for access and placement of assets in the rail corridor, but would be expected to receive a greater volume of applications, and to process them in accord with new statutory timeframes. The resource impact on ONTRACK could be reasonably significant, but costs would be recoverable from applicants.

Local Government

Benefits to local government will accrue through the reduction of damage to roads and drains caused by utility works. This will be achieved by an improved regime of enforceable standards for works. TLAs will also have greater scope to move hazardous roadside obstacles once enforceable standards for the allocation of costs are adopted. Mediation provisions will assist the timely resolution of disputes. TLAs will retain the ability to establish local solutions through the use of partnering agreements with utility operators.

Road controlling authorities would be required to undertake the additional responsibility of overseeing and managing sustainable multi-purpose use of the road corridor in the public interest. Some time would be required for TLAs to familiarise themselves with the new requirements. A one-off amendment to existing road management policies and processes would be required, and potentially the scope of enforcement activities may be extended for some TLAs. Some TLAs would also face additional administrative costs due to the requirement to treat their own utility networks in the same manner as all others with regard to works in the road.

Costs associated with the future development of codes and standards for works in the road and the management of utility installations would be reduced because a single national set would be developed rather than every TLA having to develop its own.

It is not possible to quantify the total costs to local government because the detailed design of legislative provisions has not been undertaken yet. The costs will also vary considerably between TLAs because the nature of existing administrative policies and processes varies from council to council.

Utilities Industry

Parties affected by the preferred approach are utility operators and their works contractors. Benefits would derive from the establishment of consistent legislative definitions and processes, and nationally consistent codes of practice and standards for utility works and installations. Certainty of compliance would be enhanced.

Delays in processing applications for access to corridors would be reduced by the introduction of statutory timeframes for associated processes, and the timely resolution of disputes would be enhanced by the introduction of a mediation step.

New entrants and utility providers extending their networks would be less likely to be subject to barriers imposed by incumbents, because the ability of utility operators to place 'reasonable conditions' on other utilities would be removed, and replaced with national codes and standards.

There will be potential for increased utility access to rail and motorway corridors, balanced with appropriate recognition of the transport and safety interests and responsibilities of Transit NZ, and the transport, safety and business interests of ONTRACK.

Utility operators are already required to submit 'road opening notices' and notify parties that may be affected by proposed works. These obligations would be only marginally affected by the proposal. Improved reinstatement of roads following works would involve a transfer of cost from councils (and ratepayers) to utility providers (and their customers) but would be broadly neutral as most utility customers are also ratepayers.

Other Industry

Businesses depending on road transport and utility services are likely to benefit from the proposed changes because improved coordination, higher levels of compliance, and enhanced dispute resolution will result in reduced disruption to traffic and utility services; quicker roll-out of improved services and new technologies; reduction in the prolonged road works that often affect customer access to business premises; and reduced vehicle operating costs as sub-standard road reinstatements decrease and road 'roughness' reduces.

Society

The community would benefit from reductions in the social cost of road crashes, as a result of RCAs having greater ability to integrate road safety goals with roading programmes. Community members would also gain the same benefits as businesses (see above),

As 'owners' of the road reserve, through territorial local authorities, the value of the assets to the public would be enhanced by improved allocation and efficient utilisation of space. The public good of universal access to roads and property would be protected through the establishment of clear governance and enhanced management regimes for roads.

Statement of Consultation Undertaken

Stakeholder Consultation

There has been extensive consultation on the issues. A discussion document, approved for release by Cabinet Economic Development Committee (EDC Min (05)16/7 paragraph 3 refers) was circulated in June 2005 and discussed at five seminars nationwide. 117 organisations were represented at the seminars and took part in workshop discussion groups.

A total of 53 submissions were received and analysed by the Ministry. An analysis of the submissions was completed in October 2005 and made available to stakeholders.

The NZUAG has been consulted at key stages in the development of the proposed policy framework. There is wide support for many aspects of the proposed framework, especially the establishment of consistent definitions and process across all utility statutes.

A proposal was consulted with NZUAG which would have required road controlling authorities to develop and publish road-utility management plans with the objective of improving the coordination of road work programmes with utility work programmes. While this would have limited to some extent the wasteful re-work and reductions in the quality and economic life of road surfaces that currently occur, RCAs were concerned at the cost and resource implications. RCAs also have existing obligations to produce road asset management plans and Long Term Council Community Plans which overlap with the proposed requirement. On balance it was concluded that this proposal would have significant cost impacts while not directly addressing some of the underlying coordination issues, such as reluctance by some utility operators to reveal their forward development plans for commercial reasons. This proposal was therefore not adopted.

Submissions from utility providers included the proposal that the road surface be treated in the legislation as a utility in the same way as water, gas, electricity and telecommunications networks. Under this approach it was argued that whenever trade-offs between roads and utilities were required the public interest should be determined on a case by case basis, with no presumption in favour of road uses. However, officials consider the universal free access to roads (and thus to most properties and community facilities) is an important public good that should be balanced against, but not be compromised by, competing uses of space in the road corridor. This proposal was therefore not adopted.

The following table outlines significant concerns expressed during consultation, and how they have been dealt with in the proposed policy framework.

Policy element	Concern	Addressed by...
Expanded management powers for road controlling authorities (RCAs)	Utility operators are concerned that a balanced approach will not be taken	Proposed requirement that all utilities must be treated equally (including those operated by the local authority); proposed requirement that RCAs must

		ensure balance between roads and utilities, in the public interest.
Utility operators will lose their ability to place 'reasonable conditions' on other utility operators proposing works in the road	Utility operators are concerned that there will not be sufficient safeguards for their networks and installations	A 'menu' of appropriate and consistent standards and codes will be established. The potential for anti-competitive conditions will be removed.
A conditional right of utility access to rail and motorway corridors is established	Utility operators would prefer less fettered access to rail and motorway corridors. Transit NZ and ONTRACK consider their statutory transport and safety objectives will be compromised.	Compared to the right of access to roads, the access of utility operators to rail and motorway corridors will be subject to a more rigorous regime of specifications and conditions, especially where restricted space or higher risk factors apply, and access can be ruled out. Dispute resolution processes will apply.
Utility providers retain rights of access to roads	TLAs seek increased control over placement of telecommunications facilities in road reserves	Expanded management powers for RCAs, supported by enforceable codes and standards.

Government Departments / Agencies Consultation

An officials' review group (comprising Ministry of Economic Development, Ministry of Transport, Ministry of Consumer Affairs, Department of Internal Affairs, the Treasury, and Land Transport NZ, with the Ministry for the Environment maintaining a watching brief) was established to ensure whole-of-government perspectives were maintained. The Ministry of Transport (MOT) maintained contact with ONTRACK and Transit New Zealand.

The MOT has a significant concern that the current level of fatal and serious injuries as a result of hitting a roadside hazard is not acceptable; that there should be a national risk management plan to reduce roadside hazards; and RCAs and utility operators should both take responsibility for reducing these hazards. Under the preferred option MOT officials would work with the Ministry of Economic Development to ensure national standards and codes of practice recognise this aim.

Business Compliance Cost Statement

The proposed policy framework impacts on utility providers. Increased interaction with the Government is limited to a cost-effective means of establishing nationally consistent standards and codes of practice, which would be implemented and enforced by RCAs.

Affected businesses will be involved in the development of codes and standards, as they are at the moment.

The principle source of compliance costs would be the need to become familiar with the new requirements and processes. Implementation would be facilitated by a one-off education campaign directed at the 'owners' of transport corridors and utility providers. This is a limited and well-defined audience. The introduction of each nationally consistent code or standard is likely to increase compliance costs initially, but reduce such costs in the medium term.