

# **UTILITIES ACCESS TO ROAD, RAIL AND MOTORWAY CORRIDORS**

## **REGULATORY IMPACT STATEMENT**

### **EXECUTIVE SUMMARY**

- 1 When utilities exercise their statutory access to the road they allege inconsistent application of 'reasonable conditions' by local authorities; in turn local authorities allege poor-quality re-instatement of roads by utilities. Other disquiet arises from inconsistencies in utility statutes creating advantages for some operators. The preferred option is to make utility legislation consistent where appropriate and to provide a legislated process to give legal status to a stakeholder-created code for managing access to the road, and motorway and rail corridor, and a regulated code if considered necessary. The impacts of legislative change are that some parties will face increased compliance and resource costs, but greater benefits arise from the more certain regulatory environment for investment decisions, and the improvement in the management and co-ordination of utility works in road, rail and motorways. The process of engagement between stakeholders in agreeing a Code of practice should produce better outcomes for all parties.

### **ADEQUACY STATEMENT**

- 2 The Ministry of Economic Development (MED) confirms that the proposal complies with the Code of Good Regulatory Practice. MED has assessed the regulatory impact analysis and Regulatory Impact Statement and considers both to be adequate. The discussion document was not required to comply with the RIA requirements as it was disseminated prior to April 2007.

### **STATUS QUO AND PROBLEM**

- 3 Legislative provision for the access to the road, rail and motorway corridors by utility providers (electricity, telecommunications, water, sewerage, drains, and gas) is inconsistent across statutes. Inconsistencies include the notification requirements prior to works commencing (different periods, notification responsibilities and processes); the allocation of costs when installations are moved; and the criteria for setting "reasonable conditions" on the works by those with jurisdiction over the transport corridor.
- 4 Utilities have a statutory right of access to roads (subject to "reasonable conditions"). The 75 local authorities have established differing requirements for works in the road, resulting in increased costs and uncertainty of compliance for regional and national utility providers. There is some voluntary use of a code of practice that improves the understanding of process and conditions between some

utilities and local authorities, but there is more than one code and many areas do not use one at all. Some utility operators are empowered to impose "reasonable conditions" on the proposed works of others utilities in the vicinity, creating the risk of anti-competitive practices.

- 5 Utilities do not have a right of access to motorway or rail corridors, but can request it. They describe that considerations are delayed and costly and that there is insufficient access granted.
- 6 The Land Transport Management Act 2003 has one objective of an 'integrated, safe, responsive and sustainable land transport system'. The Ministry of Transport advises that the current level of fatal and serious injuries as a result of hitting a roadside hazard (e.g. a tree, ditch, and pole) is not acceptable (50% of rural and 27% of urban crashes involve a roadside hazard/obstacle). When local authorities wish to change the location of, for example, a utility pole that is now considered a hazard, or need to move utility assets in the road (because the road has been realigned) there are issues arising from the costs of this.
- 7 The Local Government Act (LGA) 2002 requires councils "to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future" (section 10) but utilities allege that councils are setting 'unreasonable' access conditions based on amenity criteria that councils consider aligns with their LGA objective. There is contention over the increased cost that for example under grounding imposes on utility companies.
- 8 The volume of utility works is considerable. For example, the Auckland region processes around 8,000 requests per year. 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%).
- 9 Government action is necessary to make legislation consistent where appropriate and to enable a statutory process for the approval, administration, amendment and notification of a stakeholder-developed Code of practice.

#### **OBJECTIVE(S)**

- 10 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.

#### ALTERNATIVE OPTIONS

- 11 There is no alternative option put forward at this time as this paper is the result of further development of a policy position that was approved in principle subject to the further development and report back 30<sup>th</sup> April 2007 (CAB 06 17/27 refers).

#### PREFERRED OPTION

- 12 This option is to amend legislation to create consistency where appropriate and to create a legislated process for ministerial approval for stakeholder developed codes of practice plus back stop regulation-making power for a national code.
- 13 **Proposed amendments** to existing provisions include:
  - The cost-share provision outlined in the Electricity and Gas Acts to be replicated to the Telecommunications Act;
  - Consistent notification requirements across all utilities, including the notification of proposed road controlling authority road works to utilities. Time for reply to notification to be a maximum of 15 working days;
  - Remove the ability of utility providers to impose conditions on other utilities (they can *advise*).
- 14 Proposed **new elements** of the regulatory framework include:
  - A mechanism for the Minister of Economic Development, in consultation with the Minister of Transport and the Minister of Local Government, to approve, administer, amend and notify a code of practice for utilities access to transport corridors that have been created and agreed to by stakeholders. A code of practice would have some mandatory requirements for process and content.
  - Empowering provisions to create a regulated code of practice should stakeholders fail to create their own code.
  - Ontrack and Transit to have a statutory obligation to process utilities applications for access to motorway and rail corridors according to prescribed timeframes and to publish their access evaluation criteria.

*Preferred option: costs and benefits*

15 Benefits outweigh costs by an order of magnitude (\$10 – 100M / \$1 – 10M) i.e. potentially 10:1.

16 This is detailed below:

**Government**

17 There will be administrative costs for the Ministries of Economic Development and Transport and the Department of Internal Affairs to examine and approve a code of practice, or to create a code of practice:

- **Ministry of Economic Development:** Analysis of code; industry consultation and processing (0.5 FTE) \$75,000 p.a.
- Advertising and publishing code \$20,000 p.a.
- Specialised technical advice relating to code \$40,000 p.a.
- **Ministry of Transport:** analysis of code and consultation (0.25 FTE) \$37,500 p.a.
- **Department of Internal Affairs:** analysis of code and consultation (0.25 FTE) \$37,500 p.a.
- Total per annum **\$0.210** million p.a.

18 The volume of applications to Transit for access to motorway corridors could be expected to increase, with associated resource demands. The inclusion of a notification of impending works requirement and statutory response time limit will also increase resource demands. **Cost \$0.3M** pa.

19 ONTRACK already processes applications for access and placement of assets in the rail corridor, but to process them in accord with new statutory timeframes will have a resource impact. Costs would be recoverable from applicants.

20 With the removal of the applicability of section 54 of the Transit Act to Telecommunications, there will be increased asset relocation costs to Transit. However these are still a small percentage (less than 5%) of the overall costs for a road realignment project. **Cost \$1M** pa.

**Local Government**

21 A change to legislation to require **all** 73 local authorities to notify other parties of their significant works and to have a time period for receipt of advised conditions will create additional resource costs. **Cost \$1M**

22 Costs of imposing conditions of access that creates additional amenity value of an area. Cost \$ **variable** depending on each local authority's plans.

- 23 Resource costs for stakeholder developed code of practice. **Cost \$0.3M**
- 24 Reduction in reinstatement costs across the whole country. **Benefit \$1M**

### **Utilities**

- 25 The move to greater consistency and certainty in how local authorities manage utility access to roads by the use of an approved code should reduce utility's compliance costs. **Benefit \$1M**
- 26 There will be a reduction in the costs of redoing reinstatement of the roads if there is better co-operation through the code of practice to renew surface as required. As an example a given 34 % failure rate for 650 km of road would cost around \$55M to put right at \$250,000 per lane km (t  $0.34*650*250000 = \$55.25M$ ). If by the use of a code of practice the reinstatement costs are reduced by 50%, then the benefit (avoided cost of re-doing the road once done) is roughly \$25M. **Benefit \$10M**
- 27 Other benefits accrue to society due for example to less vehicle wear and tear and less need for road-works for reinstatement (counted under 'society').
- 28 The benefits of additional notification from local authorities should be to reduce the avoidable damage to utility networks of asset strikes when the local authorities undertake road works (note that this does not imply that the only third party damage is local authorities on utility infrastructure – often it is one utility operator to another, and notification requirements already exist between these). **Benefit \$1M**
- 29 Resource costs for process to agree codes of practice. **Cost \$0.3M**

### **Society**

- 30 Society benefits both from an improvement (i.e. reduction) in time costs due to road works because of construction and reinstatement and the efficient roll-out of infrastructure. **Benefit \$30M**

### ***Total impact and net benefit***

- 31 Total impacts considering all utilities, one local authority (Auckland), Transit and all society = \$36M per year (total benefits \$ 33M (magnitude \$10 – 100M); total costs \$ 3M (magnitude \$1 – 10 m).
- 32 Benefits outweigh costs by an order of magnitude (\$10 – 100M / \$1 – 10M). The benefit cost ratio is of the order 10:1.

## **IMPLEMENTATION AND REVIEW**

- 33 The Utilities Amendment Bill is proposed as a category 4 on the legislative programme for 2008. The amendments will come into force during 2009. This would be the start date by which the stakeholder-developed code of practice could be legal and enforceable. The MED will continue to be in contact with the NZUAG to determine the extent of progress on the stakeholder-developed code. A draft code is anticipated by December 2007.

## **STATEMENT OF CONSULTATION UNDERTAKEN**

### **Stakeholder Consultation**

- 34 This round of stakeholder engagement followed on from significant consultation that created the initial position paper in October 2006. The MED presented a discussion paper that developed the policy framework of the position paper (in effect a 'possible next steps') at a forum jointly hosted by the two major stakeholder groups, Local Government New Zealand (LGNZ) and the NZ Utilities Advisory Group (NZUAG). This forum was attended by over 150 representatives of local authorities, government agencies and utility operators. Feedback was invited and 40 responses were received: 19 District Councils, four City Councils, Auckland Territorial Authorities (as one group); Auckland Regional Transport Authority, Transit NZ, Ontrack; Telstra, Telecom, four Lines companies (Vector, Powerco, Orion, and Delta Services for Aurora Energy); NZUAG; LGNZ, two industry groups (Electricity Networks Association and Electrical Engineers Association); and three private individuals. There were no responses from water companies.
- 35 The issues raised through this most recent engagement round meant that the initially proposed policy framework was revised. The proposal for the statutory responsibility for an explicit governance role of local authorities was clearly not supported. Stakeholders have been co-operating on developing a code of practice as the solution to address the policy problem. Representatives from Auckland Territorial Authorities, Transit NZ, Ontrack, the Gas Association of NZ Inc, Electricity Networks Association, Electricity Engineers Association, Telecommunications Carriers Forum, Local Government New Zealand and the New Zealand Utilities Advisory Group have been meeting and working together on the issues to be addressed. Since the further discussion paper in February 2007, momentum has increased and the stakeholder developed final draft of the code of practice is expected to be produced by December 2007. Wider stakeholder engagement is signalled for February 2008, initiated by the NZUAG.

### **Government Departments/Agencies Consultation**

- 36 An official's review group consisting primarily of the Ministry of Economic Development, Ministry of Transport, and Department of Internal Affairs provided a relevant across - government perspective.

The Ministry of Transport maintained contact with Transit NZ and Ontrack. The Ministry for the Environment was informed (as there are links with their work on the Proposed National Environmental Standards for Telecommunications Facilities), as was Treasury.