Section 32 Report
Proposed District Plan Change 74

Utilities: Telecommunication Structures

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Absolutely Positively Wellington
Me Heke ki Pōneke
Wellington City Council

PROPOSED PLAN CHANGE 74 – Utilities: Telecommunication Structures

1. Purpose of this Report

Section 32 of the Resource Management Act (RMA) stipulates a requirement to consider alternatives and assess the benefits and costs of adopting any objective, policy, rule, or method in the District Plan. Before publicly notifying a proposed District Plan change, the Council is required to prepare a Section 32 report summarising these considerations.

2. Background

The District Plan sets out policies and rules to manage the city's natural and physical resources. It guides development and land use activities in the city. This includes planning for the City's essential services and infrastructure, such as electricity and telecommunications. In relation to telecommunication structures, the Plan contains provisions that regulate the size, shape and emissions from masts, antennas and cabinets.

The Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008 came into force on 9 October 2008. The regulations provide for:

1. The planning and operation of a telecommunication facility (such as a mobile phone transmitter) that generates radiofrequency fields is a permitted activity provided it complies with the New Zealand Standard (NZS2772.1:1999).
2. The installation of telecommunications equipment cabinets in the road reserve is a permitted activity, subject to specified limitations on their size and location.
3. Noise emitting from telecommunications equipment cabinets located in the road reserve is a permitted activity, subject to specified noise limits.
4. The installation or replacement of masts and antennas on existing structures in the road reserve is a permitted activity, subject to specified limitations on height and size.

District Plan rules are still required for telecommunication structures and activities occurring on private land, or on unformed legal road.

A complete review of the Plan's telecommunication facility provisions was undertaken to assess whether any of the Plan's rules were significantly more lenient or stringent than the NES provisions. The review highlighted some inconsistencies, suggesting a plan review was necessary.

National environmental standards override provisions in District Plans, unless there is a statement in a national environmental standard that says otherwise. This NES does outline four circumstances where certain District Plan rules prevail over the NES (outlined below). The review showed that while the Plan does contain provisions that

relate to the four matters outlined in the NES, amendments are needed to better align the Plan with the wording of the NES to ensure protection of these values.

Other drivers for a review also include community concerns over the siting and size of telecommunication masts, particularly where they are located in the Residential and Open Space Areas and areas with special values such as the coastline.

The Utilities Chapter manages a wide range of utilities, not just telecommunication facilities. However, the plan change is limited in scope to the issues relating to telecommunication structures.

3. Policy Analysis & Consultation

3.1 National Strategy and Policy Context

The purpose of the **Resource Management Act 1991** is to promote the sustainable management of natural and physical resources. Sustainable management includes managing the use and development of natural and physical resources to enable people to provide for their health and safety. The Act also contains an explicit obligation for Territorial Authorities to *maintain and enhance amenity values* and the *quality of the environment* and allow for the *efficient use and development of natural and physical resources (s7 RMA).*

The **Telecommunications Act 2001** allows network operators to occupy road reserve for the purpose of installing telephone cabinets and the like. As noted above, the **Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008** aim to facilitate the use of existing pole like structures in the road reserve by network operators to install telecommunication structures. Failure to meet the NES requirements results in the network operator needing a resource consent from the local authority.

The **National Code of Practice for Utilities' Access to the Transport Corridors** (March 2009) is an industry led initiative to define a nationally consistent approach to the management of access to transport corridors by utility operators. The Code is not binding. At this stage, those involved in the industry can choose whether to adhere to it or not but it is generally relied on. It is intended to be ratified by a proposed Utilities Amendment Act making it a mandatory requirement (in early 2010). The National Code is an extensive document that:

- Sets out the roles and responsibilities for the road controlling authority and network operator.
- Encourages information sharing.
- Sets up a process for planning and implementing access to roads, as well as the application process.
- Addresses technical issues, such as requirements for trenching, excavation, reinstatement, surface layers, post construction maintenance, etc.

The **Standard Terms Determination for the specified service Co-location on cellular mobile transmission sites**, is a decision by the Commerce Commission

delivered in December 2008. It outlines the process that Telco's must follow where one Telco wishes to co-locate on the mast of another Telco. The costs of establishing networks was seen as very high and the Commission considered that if network costs could be lowered by facilitating co-location on existing networks, then this might entice new entrants into the market; reducing costs for consumers.

The role of district plans in managing the rollout of networks was not a focus of the Commission's work. In reality, it is easier to erect a new mast than seek consent for additional height on any existing mast under many district plans.

3.2 Regional Strategies and Policies

The **Regional Policy Statement 1995** includes two policies relating to the provisions of infrastructure. In the Built Environment and Transport chapter of the RPS, Policies 5 and 6 seek:

- To recognise that the services provided by network utility operations and infrastructure make an important contribution to the social and economic well-being of the Region.
- To promote the provision and efficient use of infrastructure in the Region, and the reduction of adverse environmental effects from its use.

The **Proposed Regional Policy Statement 2009** includes a policy relating to the protection of regionally significant infrastructure (Policy 7), and this includes reference to strategic telecommunication facilities.

3.3 Local Level Strategies and Plans

The **Sense of Place Plan** aims to ensure that what makes Wellington special is preserved while the city grows. In preparing the Sense of Place Plan, research was undertaken to determine what Wellingtonian's treasure about their city, and what gives the city its unique character or essence. Of the 10 characteristics that describe the city's sense of place; characteristic 4 is the most relevant to this plan change:

- The natural character of the significant ridgelines and hilltops and the coastline, and the significance of the Town and Green Belts.

The **Information and Technology Communications Policy** outlines how the Council plans to use information technologies such as computers and the internet (including email) as well as cellular, digital and wireless technologies and fixed line telecommunications to:

- enhance the city's economic development
- contribute to the well-being of the community by building community capability
- enhance and increase engagement in local democracy.

The policy does not directly relate to the provision of the networks that provide these technologies. However, this policy cannot be met without the provision of telecommunication networks and in particular the continual upgrading of existing networks.

The Council has adopted a vision for enabling **high-speed city-wide broadband internet access** by 2012, and is currently exploring options on how to achieve this. The

vision aims to foster development of an affordable, universal, high capacity service meeting the needs of all users. Of particular relevance is that the Council has agreed to facilitate investment in telecommunications infrastructure by, among other things:

- Making council assets available for nil or nominal charge, and conducting a shallow trenching trial, and
- Progressive establishment of a Council-owned duct network (subject to approval of full costings)

The **Code of Practice for Working on Roads 2006** was developed to minimise the inconvenience and damage that could be caused by any work on the road to the public, road assets, or other property. In writing this Code it was recognised that the cost of work in the roads is ultimately paid by the public. This document is an internal policy of the Council, which helps it exercise its functions and control of roads in a consistent way. While it is not binding on the Council or the public and it does not override any statutory rights or obligations, the Council should act consistently with that policy, where it is relevant.

3.4 Research – resource consents and certificates of compliance

The Council maintains a database of all resource consents and certificates of compliance processed under the RMA. Queries of database can provide a summary of all consents processed under a given rule, and in some cases, by a particular customer (eg. Telecom).

A query of the database reveals vast numbers of certificates of compliance and resource consent applications sought by various Telco's since the operative date of the Plan in 2000. Given this, the analysis focused on applications made for masts and cabinets and revealed the following key findings:

- Of all resource consents sought, most were for Suburban Centres, Central Area or Rural Area properties. Consents sought for residential properties were relatively low in comparison.
- In respect of the residential properties, many already contained non-residential activities so the siting of utilities in these areas was deemed to be appropriate.
- There were a high number of applications for utilities on Open Space B and C Areas and on Conservation Sites, despite such applications being Discretionary Unrestricted. These consents were often approved on the basis that the sites already contain utilities and city infrastructure (eg. reservoirs, substations) so the co-siting of antennas in these areas was considered appropriate, reducing the need for them to be sited elsewhere. It was typically argued that the open space or conservation values had already been reduced by the existing infrastructure.
- A study of the Controlled Activity resource consent data revealed that a large number of cabinets do not meet the permitted height requirements of 23.1.4 because of the concrete foundation required beneath the cabinet. The height of the cabinet itself does meet the rules. Council is still required to grant consent in these situations, but may impose conditions (ie. landscaping). The NES does not include the height of a concrete foundation in the cabinet height.

3.5 Research – coastal road rule

The extensive, publicly accessible coastline is an important attribute for the City, contributing to its sense of place. Much of the coastline (particularly from Shelly Bay Road around to Owhiro Bay Road) remains in an unaltered state, with relatively few structures that impose on the natural character and visual experience of the coastline.
Given clause 6(4) of the NES relates to the protection of the road reserve next to the coastal marine area, a study was carried out to determine whether existing rules in the Plan were sufficient or not.

The District Plan protects the character and amenity of coastline from the proliferation of structures and utilities on the seaward side of the road in a variety of ways, but these do not provide comprehensive protection. A stock take of pole-like structures on the seaward side of the road (carried out in January 2009) showed that while most power and light pole structures are located on the landward side of the coastal road, there are a handful of poles located on the seaward side of the road. This presents a risk to amenity as telecommunication companies can add to or replace those poles under the NES with no further reference to the District Plan.

3.6 Other council planning provisions for telecommunication facilities

A review of the planning provisions for other cities or geographically similar local authorities was carried out. This revealed a wide range of utility provisions amongst councils, suggesting there was no one preferred approach or preferred set of dimensions for these structures. This discrepancy is a key reason why the NES was developed. The NES became the starting point for the proposed plan change provisions rather than other district plan provisions.

3.7 Consultation and Briefing Sessions

The Council prepared and notified a draft plan change for consultation on 28 May 2009. Consulting on draft provisions helps ensure a more robust consultation process, with feedback being focused on developing the best policies and rules to achieve certain outcomes.

Several initiatives were carried out to prompt community feedback on the review, including:

- a public notice in the Dominion Post
- a summary leaflet outlining the reasons for the review
- a webpage prepared on the Council's website, and
- letters sent to all Residents Association's.

Although a number of enquires in response to the publicity were received, there was only a small amount of community feedback on the draft plan change.

The telecommunications industry was a key participant in this review, beginning with a meeting with the Mayor on 18 May 2009, followed by two meetings at officer level during May and June. Phone calls and emails were made to Telstra Clear, Woosh and Kordia with no significant responses. The following is a list of all significant meetings and conversations:

- Mayoral briefing to the Telecommunications Industry – 18 May 2009. Representatives from Chorus (Telecom), Vodafone and 2 Degrees.
- Joint working group discussions with Telco Industry – 21 May 2009. Representatives from Chorus (Telecom), Vodafone and 2 Degrees.
- Briefing of Tawa Community Board – 11 June 2009.
- Telephone conversation with Vodafone representative – 17 June 2009 – re: feedback on progress made to date with revised rules.
- Joint working group discussions with Telco Industry – 18 June 2009. Representatives from Chorus (Telecom) and 2 Degrees.
- Briefing of Makara-Ohariu Community Board – 18 June 2009.
- Telephone conversation with Chorus representative – 25 June 2009 – re: rule for upgrades.
- Telephone conversation with Vodafone representative – 30 June 2009 – re: rule for upgrades.
- Peer review of proposed plan change carried out by Beca, July 2009
- Legal review of proposed plan change, July 2009

Consultation, in accordance with the First Schedule of the RMA 1991

- Ministry for the Environment
- Greater Wellington Regional Council
- Wellington Tenths Trust
- Te Runanga O Toa Rangatira Inc

4. Options

Objectives

Section 32 requires the Council to be satisfied that the objectives in the District Plan are the most appropriate means of achieving the purpose of the RMA. Proposed District Plan Change 74 does not change the one objective in the utilities chapter of the District Plan, so this evaluation was not necessary.

Policies, rules and other methods

Section 32 requires the Council consider whether the policies, rules and other methods used in the District Plan are the most appropriate method of achieving the Plan's objective. The table below considers the cost and benefits of the four options considered during the preparation of proposed District Plan Change 74.

Table 1: The Efficiency, Effectiveness and Appropriateness of the Proposed Plan Change				
Option	Key Features	Advantages	Costs and Risks	Officers Advice
Option 1 – Do nothing, Status Quo *Retain the current telecommunication structures provisions.*	• Masts permitted in most zones with additional height granted as controlled, discretionary restricted and discretionary unrestricted activities. • Antennas permitted in most zones • Cabinets permitted or controlled in most zones. • Radiofrequency emissions must meet NZ Std or be a discretionary unrestricted activity.	• Flexible regime allowing Telco's to carry out a wide range of activities as either Permitted or Controlled. • High degree of certainty that networks can be established throughout the city with little requirement for public notification.	• Effects of some masts not being managed to the degree expected by the community. • Particular concerns about visual effects of masts in Residential Areas and Open Space A zone. • Community disempowerment with the planning process because they are not officially part of the process. • Comparison of Plan rules to the NES shows the Plan more lenient in some areas than what has been nationally agreed to as appropriate.	This option is **not recommended**
Option 2 – Rely on NES and a discretionary 'catch-all' rule in the District Plan.	• No permitted activities for any telecommunication structures as the NES provides for this in road reserves. • District Plan rules limited to having a discretionary rule for works that don't meet the NES, or where sited on private land or unformed legal road.	• Simplifies plan because it relies on the NES provisions as the main form of regulation over telecommunication facilities. • Community confusion between role of NES and District Plan reduced.	• Could create perverse outcomes by forcing all structures on to the legal road when alternatives sites (ie. behind or on top of commercial buildings) could better mitigate effects of a mast and antennas. May also need to rely on poles in quieter residential streets. • Telco's argue the NES is a last resort and not the preferred means of establishing new sites. Wellington poles used to support trolley bus wires and power lines so few opportunities available on main streets. • Significant decrease in certainty and costs would increase for Telco's due to likely increase in resource consents.	This option is **not recommended**

Table 1: The Efficiency, Effectiveness and Appropriateness of the Proposed Plan Change				
Option	Key Features	Advantages	Costs and Risks	Officers Advice
Option 3 – Modified district plan provisions as first outlined in the draft district plan change.	• Clarifying those rules in the Plan that prevail over the NES eg. ridgelines and hilltops area, heritage items and the land on the seaward side of the coastal marine area (includes a new rule and map identifying coastal roads). • New masts up to 15m a Discretionary Activity in the Residential Area and Open Space A area. • Masts in other areas will still be permitted provided they meet certain conditions. • Delete the Controlled Activity rule for masts in all areas to gain better control over masts generally • Increasing the setbacks for antennas (to 5m) and masts (to 10m) from residential property boundaries.	• Increased certainty on how the Plan relates to the NES will reduce costs and legal disputes that may otherwise be had on a case-by-case basis. • Greater protection for both heritage values, ridgelines and hilltops, and the coastal environment. • Allows Council greater control over the establishment of masts in Residential Areas and Open Space A and ensures that any new masts under the NES will be limited to about 10-11m. • Controlled Activity rule allowed greater mast height but there were few, if any, conditions the council could impose to mitigate the effect of that height. Removing the rule altogether followed other recent moves by the Council to remove controlled activities for activities that could have effects that should result in a decline application. • Increasing setbacks for masts and antennas provides greater protection for residential properties from the visual effects of these structures.	• Reduces options for Telco's to install previously 'permitted' and 'controlled' masts. If masts are needed in these areas and reliance on the NES is not appropriate then resource consents will be required, increasing costs and uncertainty as consents may be publicly notified. • Balance of regulation lost from the Telco's perspective by tightening up on masts in Res. Areas and Open Space A, but with no corresponding removal in regulation elsewhere. • Increase in mast setback to 10m will severely limit sites able to meet this requirement. May result in Telco's installing roadside masts, where a mast behind or antennas on top a commercial building may have created a better outcome.	This option is **not recommended**
Option 4 – Modified rules following consultation on the draft plan change	• Clarifying those rules in the Plan that prevail over the NES provisions. • New masts up to 15m a Discretionary Activity in the Residential Area and Open Space A area. • A new permitted activity rule allowing for the replacement of an existing pole structure in Open Space A with a mast/antenna facility; the height being restricted to 3m above existing pole height. • Revised Controlled Activity mast rule;	• Increased certainty on how the Plan relates to the NES will reduce costs and legal disputes that may otherwise be had on a case-by-case basis. • Greater protection for heritage values, ridgelines and hilltops, and the coastal environment. • Allows Council greater control over the establishment of masts in Residential Areas and Open Space A and ensures that any new masts under the NES will be limited to about 10-11m. • Proposed Open Space A replacement mast rule provides some opportunity for Telco's to	• Reduces options for Telco's to install previously 'permitted' and 'controlled' masts in residential Areas and Open Space A. If masts are needed in these areas and reliance on the NES is not appropriate then resource consents will be required, increasing costs and uncertainty as consents may be publicly notified. • Open Space A replacement mast rule: There will be some visual effects associated with this rule. ie additional mast height of 3m above existing pole. Also, rule relies on landowners (mostly	This option is **recommended**

Table 1: The Efficiency, Effectiveness and Appropriateness of the Proposed Plan Change				
Option	Key Features	Advantages	Costs and Risks	Officers Advice
	narrowing the zones it applies to. • Increasing the setbacks for antennas (5m) and masts (5m) from residential property boundaries. • Amended mast heights for the Suburban Centre zones (now Centres and Business Areas) to reflect revised building height limits in those Areas and to balance the changes made to the residential Area and Open Space A zones. • New permitted activity rule for mast/antenna upgrades • Remove disincentives to co-location on existing masts. Include a non-notification statement for proposals under rule 23.3.1 seeking to add up to 3.5m in height to an existing mast to accommodate the antennas of two or more telecommunication networks. • Exclude shrouds from definition of antennas • Exclude concrete plinths/foundations from height of utility structures (ie. cabinets)	install masts in these areas, but reduced effects compared with a new mast. • Controlled Activity rule for some zones maintains flexibility and certainty for Telco's in seeking sites. • Limiting the increase in mast setback protection to 5m (instead of 10m in Option 3) will ensure a greater number of properties available to meet this rule. • Upgrade rule: Provides certainty that existing sites will not be 're-litigated' as upgrades are proposed. • Co-location: removing the main disincentive to co-location may help ensure that it is considered a more viable option in future. This should lead to a reduction in need for new masts and possibly a reduction in existing masts too. • Flexibility to install shrouds without needing a resource consent means they are likely to be used more often and will help to improve appearance of these structures. • Greater alignment with the NES over the issue of shrouds and concrete foundations for cabinets will reduce confusion between the NES and District Plan rules.	the Council) to exercise their rights to manage concerns about overuse of the rule in any one reserve and also make decisions around the most appropriate poles able to be replaced to minimise effects on the reserve and its facilities. Some sports field poles are owned by sports clubs, not the council, so permission from two organisations may be needed in some cases. • Mast height regime for Centres and Business Areas. Mast height increased in some areas so may contribute to greater visual effects than before. For those centres where permitted height is reduced from 15m to 12m this may result in the need for a resource consent, therefore increased costs and uncertainty. • Co-location: would result in applications being processed without even considering whether it should be notified for public submissions. Visual effects would be limited to those effects over and above the existing masts/antennas but even that may cause impacts on the surrounding environment. Relies on strong, clear policy to guide the planners in making a decision about the effects of the proposed co-location.	

5. Conclusion

The review of the Utilities chapter responds to the introduction of the National Environmental Standard for Telecommunication Facilities in 2008 and community concerns about the siting of masts. A draft plan change was prepared as part of the process and used as the basis for consultation with the Telco's and for feedback from the general community.

Consultation on the draft plan change revealed support for a number of provisions, but also areas for further work to ensure a good balance of regulation is achieved.

This report summarised four options considered during the plan change development process. The options included the status quo (Option 1), a streamlined set of rules largely reliant on the NES to manage telecommunication structures (Option 2), a set of modified planning provisions released as the draft plan change (Option 3) and lastly a set of provisions developed in response to the community and industry feedback (Option 4).

Option 1 (retention of the existing provisions) is not recommended on the grounds that increasing concerns from residents and the need to realign the Plan with the NES means the current District Plan provisions are no longer appropriate.

Option 2 outlines a significantly streamlined set of planning provisions, relying instead on Telco's using the NES to complete their networks. This option is not appropriate as it could create perverse outcomes. The Telco's would be unlikely to support it because it reduces flexibility and certainty for them.

Option 3 represents the draft district plan provisions, released for public feedback. Whilst this option met the expectations of the Council and those members of the community who provided feedback, it did not meet the expectations of the Telco's who believed is considerably increased regulation in some areas without a corresponding relaxation of regulation in other areas.

On balance it is considered that Option 4, developed following consultation with Telco's and with the feedback of the community in mind, best meets the requirements of section 32. This is because it represents the most appropriate means of achieving the Plan's objective to '*provide for the efficient development and maintenance of utility networks throughout the city while avoiding, remedying or mitigating any adverse effects of activities on the environment*'.