
REPORT 3
(1215/52/IM)

PROPOSED PLAN CHANGE 74: TELECOMMUNICATION STRUCTURES

1. Purpose of Report

This report summarises the feedback received on the draft utilities plan change and seeks the approval of the Committee to publicly notify Proposed Plan Change 74: Telecommunication Structures.

2. Executive Summary

The review of the Utilities chapters of the District Plan responds to the National Environmental Standard for Telecommunication Facilities (NES) and community concerns about the siting of masts.

A draft plan change was consulted on with the telecommunications industry and feedback was sought from the community. Five submissions were received, along with additional email comments from two of the industry groups. The feedback outlines support for clarity over which parts of the Plan should prevail over the National Environmental Standard. However, opposing views were expressed by the industry and members of the community on how best to protect residential amenity.

Some changes are proposed to the draft rules as a result of the consultation. These changes include:

- 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. Note that a new mast in this Area is still proposed to be a Discretionary Activity.
- Amended mast heights for the Suburban Centre zone to reflect revised building height limits in Plan Change 73 (Centres and Business Areas) and to balance the increased regulation made to the Residential Area and Open Space A zones.
- New permitted activity rule for mast/antenna upgrades
- A new non-notification statement for proposals seeking to add up to 3.5m in height to an existing mast to accommodate the antennas of two or more telecommunication networks; designed to remove disincentives to co-location.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agrees to publicly notify Proposed Plan Change 74: Telecommunications Structures, as set out in Appendix 1 of this report, in accordance with the First Schedule of the Resource Management Act 1991.*
3. *Agrees to adopt the Section 32 Report for Proposed Plan Change 74 (attached as Appendix 2).*
4. *Delegates to the Portfolio Leader for Urban Development and Transport the authority to approve minor editorial changes and to give effect to any changes agreed by the Committee, prior to notification.*

4. Background

4.1 Introduction

A draft plan change was presented to SPC in May 2009 (Report 3: 1215/52/IM). It outlined the relationship between the National Environmental Standard and the District Plan and discussed options for increasing protection of residential amenity in the Residential and Open Space A Areas. It was agreed that consultation on the draft plan change should occur, with feedback summarised as part of the proposed plan change report.

4.2 Feedback from consultation process

Telecommunications Industry

Officers met with industry representatives to discuss the draft plan change provisions approved for consultation. Telecom, Vodafone and 2 Degrees were eager to discuss with officers their concerns with the draft plan change. Vodafone also made an official submission reflecting their understanding of how the discussions progressed.

The industry supported the way the draft plan change clarifies which rules in the Plan prevail over the NES ie. heritage features, the ridgelines and hilltops rule and the rule preventing structures on the seaward side of coastal roads.

The main area of concern for the industry was the loss of balance in the provisions. They considered the draft provisions to increase protection of residential amenity went too far and may result in perverse outcomes, such as the concentration of masts in certain areas. They were particularly concerned at the removal of the Controlled Activity rule for masts for all zones, not just the

Residential Area and Open Space A area. There was also considerable discussion around the loss of a permitted mast rule in the Open Space A Area.

Discussions focused on changes that could be made to maintain a balance between regulation and achieving the level of protection the Council is seeking for residential neighbourhoods. A number of changes throughout the rules have been suggested which will remove some regulation without increasing the risks to the environment.

During these discussions it became apparent that co-location is being considered by the industry, but it was noted that the current planning framework creates disincentives to co-location. Removing these disincentives may help to restore some of the balance sought by the industry.

Contact was also made with Woosh, Telstra Clear, Kordia and Link IT to alert them to the review but no response was received.

Community feedback

Four submissions were received from the community on the draft plan change. These are summarised below.

The small number of responses from the public is surprising, given the extent of media coverage this issue has recently generated. It's possible that feedback was limited because people supported the Council's approach. More responses are likely when the proposed plan change is publicly notified, as each ratepayer will receive an individual notice about the proposed plan change.

Submitter	Summary of feedback	Officer comment
Campbell Ronald	Lives close to two masts erected by Vodafone and NZ Communications (known as 2 Degrees). He notes frustration that the NZ Comms antennas could not be co-located on the Vodafone mast. Notes that while some improvements were able to be made with the orientation and landscaping of the cabinets, there was a general frustration with the lack of Council's ability to effect any significant change to the whole proposal (ie. mast and antennas). Also cites issues with the use of the word 'replacement structure', and the unwillingness of NZ Comms to discuss alternative sites. Mr Ronald seeks changes to the Plan that require the companies to formally consider alternative sites.	The proposed provisions would prevent masts of similar heights occurring in residential streets as of right. A consent process would be required for any mast that did not meet the NES requirements (approx 10m), meaning that alternatives would be considered as part of the effects assessment process. The NES uses the term 'replacement utility structure' hence its use in these circumstances.
Claire Bibby	Agrees with the general approach to the draft plan change, but seeks changes to the rules to protect the visual amenity of heritage buildings from telecommunication construction. Also requests for existing structures to be relocated where they effect visual amenity of listed heritage	The proposed rules do increase protection for listed heritage features, but do not necessarily prevent structures from being close to heritage buildings. Stronger advocacy from the

	buildings, at ratepayers expense.	Council is recommended.
Highland Park Progressives Association Inc	Strongly support telecommunication installations being publicly notified through the resource consent process. Support the rules protecting trees, heritage values, visual amenity areas and the seaward side of the road.	Support acknowledged.
Ann Mitcalfe	Supports the changes in the draft plan changes and, where possible, that the District Plan be more restrictive. Supports the rules that clarify when the District Plan prevails over the NES. States that minimum distances from residential boundaries be 20m for masts and 5m for antennas. Notes that mobile communications are important but the unique Wellington environment and its natural character is priceless.	It is important to create a balance of regulation. A toughening of the rules in certain areas should be off-set elsewhere to maintain essential infrastructure networks.

5. Discussion

5.1 Radiofrequency Fields

Clause 4 of the NES requires all antennas as part of a telecommunication facility to meet the *NZS 2772: Part 1:1999 Radiofrequency Fields Part 1 – Maximum exposure levels – 3 kHz to 300 GHz*. Failure to meet this standard makes the activity Non-Complying.

The NES also requires consideration of the cumulative effects of radiofrequency fields in the vicinity of the proposed facility. That is, in reporting on the proposed facility, the applicant has to take account of exposures arising from other facilities in the vicinity and whether the radiofrequency fields in the vicinity of the facility will comply with *NZS 2772*.

No changes are necessary as the NES overrides the District Plan provisions for radiofrequency fields.

5.2 District Plan provisions that prevail over the NES

Whilst the NES usually overrides any relevant rules in a District Plan, there are four exceptions to this; being any rules in a plan that protect listed trees and vegetation, heritage values, visual amenity areas and land on the seaward side of road reserve adjacent to the coastal marine area.

The draft plan change sought to improve and clarify protection for heritage values, visual amenity areas and land on the seaward side of the road. There is general support from the feedback that the proposed changes do clarify how the Plan prevails over the NES are appropriate.

One submission sought that the rules go further, specifically that no structures occur on both sides of coastal roads and the visual amenity area (ie. identified

ridgelines and hilltops) should also include secluded natural gullies and other natural areas. The first suggestion (regarding utilities on coastal roads) goes beyond what the NES allows for so it is not proposed to accept this suggestion. The exact extent of the ridgelines and hilltops area was the subject of Plan Change 33 which was finally resolved in the Environment Court. It is not appropriate that this plan change should expand the scope of that area.

5.3 Improved protection for Residential and Open Space A Areas

The Council continues to receive complaints from residents close to telecommunication facilities. To date, there has been little the Council could do to reach a satisfactory resolution for residents because the majority of contentious applications were either Permitted or Controlled activities. In response to these concerns, the draft plan change sought to:

1. Remove permitted activity status for masts in the Residential and Open Space A areas; ensuring that new masts in these areas will require a Restricted Discretionary consent.
2. Increase the setbacks required for both antennas and masts from a residential property to a minimum of 5m and 10m respectively. Failure to meet these requirements will require a Restricted Discretionary consent.
3. Remove the Controlled Activity provision for masts in all areas (rule 23.2.5).

As noted above, the industry was very concerned about the combined effect these three changes would have on the balance of the provisions; discussed in more detail below.

Mast controls

District Plan rules are still required for masts, in addition to the NES provisions, because the NES does not cover the construction of new masts or masts not located on legal road. The District Plan contains absolute mast height limits for each of the zones (eg. 8m in the Outer Residential Area), but the NES manages mast height in relative terms, eg. the height may be the lesser of 3m or 30% higher than the existing pole.

The draft plan change proposed removing both the Permitted and Controlled rules for masts in the Residential and Open Space A Areas in response to community concerns over the visual effects of masts.

Following consultation, officers remain committed to ensuring that there is no blanket permitted or controlled activity rule for masts in Residential Areas. However, the industry had significant concerns at the proposed loss of an Open Space A permitted and controlled activity rule. They noted they look to that zone first during site selection because it allows access into residential communities where coverage is needed, but can provide sufficient distance from residential properties.

As such, a revised approach is proposed. It is proposed that it be a permitted activity to replace an existing pole-like structure on Open Space A Areas (eg. a sports field light), with a mast and associated antennas. An additional 3m in height will be permitted to provide space for the antennas above any existing pole attachments. The Council can exercise its landowner rights over such proposals to manage vehicle access to the reserve, when the work is carried out, foundation works, and the total number of masts in any one reserve.

Not all telecommunication companies are satisfied with this rule and will likely pursue this matter in the formal District Plan submission process.

One other change proposed to restore balance in the rules is to amend the Suburban Centre mast heights. The telecommunication industry argued that for antennas to be effective they need to have a 5m clearance above building tops. The current permitted building height in Suburban Centres is 12m and the current permitted mast height is 15m. In reviewing these rules, officers were aware that the Suburban Centre building heights are proposed to be significantly revised as part of Proposed Plan Change 73 (Centres and Business Areas). In that plan change a building height is identified for each zoned area, ranging from 9m to 18m. Given this approach to building heights, it was considered the best approach to manage mast height is to allow, as a permitted activity, an additional 5m above the identified building height. For some areas this represents an increase on the current permitted mast heights.

The exception to this is that only 3m above the building height for identified 'neighbourhood centres' will be permitted; agreed to by the industry as a workable compromise in recognition that these neighbourhood centres are largely surrounded by residential activities. As a result, the mast height for neighbourhood centres stays at either 15m, or decreases to 12m.

Given the permitted heights have increased in a number of Suburban Centres areas, it is not considered that a controlled activity mast rule is also needed for this zone.

To achieve these Suburban Centre mast height changes in this plan change, a table of mast heights for each individual centre is included. This is not the most efficient way of including the approach identified above in the Plan. However, other approaches rely on referring to the building height provisions in proposed plan change 73; an approach requiring a 'plan variation' which will only further complicate the plan change process for members of the public.

Controlled Activity Mast Rule

During the consultation, industry groups argued strongly for the retention of the Controlled Activity mast rule to maintain a reasonable balance of regulation. In particular they did not accept that it should be removed as an option from all zones, rather than just the zones where the council was seeking to increase protection (ie. Residential Area and Open Space A Area). Given the level of concern around this issue, further analysis of the controlled activity rule and its use was carried out.

Resource consent data shows that of the 15 controlled activity mast consents processed since 2000, there were:

- 6 Outer Residential Area consents
- 3 Open Space A Area consents
- 4 Rural Area consents
- 2 Suburban Centre consents

It is already proposed to not allow a Controlled Activity mast rule in Residential Areas, Open Space A area and Suburban Centres. Consequently, based on the data above only 4 consents would not have been able to make use of a controlled activity rule. This data along suggests the removal of the Controlled Activity rule is reasonable.

However, looking forward, it is accepted that the industry may need to rely more heavily on the controlled activity rule in the other zones because of the proposed increased regulation for masts the Residential and Open Space A areas. The industry also suggested that the controlled activity mast heights could be used to facilitate co-location. Re-introducing a controlled activity rule for the Central Area, Institutional Precincts, Airport and Golf Course Precinct and Rural Areas will go part way towards achieving a regulatory balance.

Setbacks from residential properties

The proposed setback for masts from residential boundaries has been reduced from 10m (in the draft rules) to 5m as a result of consultation, but this still represents a 2m increase on the current setback rule. The consultation and further research revealed that increasing the setback to 10m would significantly reduce opportunities for masts in Suburban Centres, making it more likely that industry would need to pursue less appropriate solutions (ie. residential roadside masts via the NES). A review of Suburban Centres showed properties in most centres had rear yards greater than 5m able to accommodate a mast.

No change is proposed to the antenna setback rule that increased from 1m to 5m.

Removal of 'shrouds' from the definition of Antenna

It is proposed to remove shrouds from the definition of antenna to allow them to be used where they will help mitigate visual effects. This is a new change; suggested during consultation. Shrouds over antennas can be used to minimise the visual appearance of mast and antennas structures, however they are not used more often because it often triggers the need for a resource consent.

5.4 Co-location

The current rules work to discourage co-location because it is easier to build a new mast than add height to an existing mast. Removing disincentives to co-location will help to restore a regulatory balance in the rules. Feedback suggests that co-location would be supported from a community perspective and the industry have also expressed a desire to work towards co-location more often.

However, there are a number of pros and cons to co-location that need to be considered.

Pro's

- Fewer masts in some locations would be a better visual outcome

Con's

- Co-location requires a larger mast to cope with the weight and wind load of additional antennas
- Co-location requires approximately 3.5m of additional height on existing masts
- In some locations larger, taller masts with more antennas will be a worse outcome than for example two shorter, slimmer masts.

Officers consider there is merit in amending the Plan to remove disincentives to co-location, whilst ensuring the effects of co-location are managed. The main regulatory disincentive to co-location in Wellington is that additional mast height is likely to trigger a publicly notified, discretionary resource consent.

It is proposed to include a new non-notification statement which states that where the additional mast height is less than 3.5m and will be used to support the antennas of two or more telecommunication networks, then the Council can process the application on a non-notified basis.

New policy and assessment criteria will be drafted to guide the decision-making process. Key components of the policy include:

- that the Council supports co-location as this should result in the overall reduction of masts in the city.
- that the Council will consider breaches of mast height limits in order to achieve co-location, provided the additional height can be accommodated by the surrounding environment.
- a requirement to assess the surrounding environment including the nature of surrounding activities
- a statement that suggests that a proposal includes the disestablishment of an existing mast elsewhere is likely to be treated favourably.

The effects of the co-location application will be limited to the visual effects associated with the additional height and width of the mast and the bulk of the additional antennas compared with the existing situation.

5.5 Other changes

Telecommunication facility upgrade rule

With the proposed reduction of mast height limits in identified 'neighbourhood centres', the industry were concerned that they would be required to obtain a resource consent for an existing facility when it required an upgrade. They argued that the Plan should include a permitted activity rule to allow this to occur. Upgrades typically involve the addition of more antennas to a mast.

Officers agree this is reasonable and a proposed new rule 23.1.17 has been included in the proposed plan change. It contains a number of conditions to narrow the scope of the upgrade activities, including:

- The proposed antennas must meet the relevant permitted activity antenna conditions.
- In the event the mast is replaced with a stronger mast, mast height does not increase existing mast height.
- The rule does not apply to facilities on or within listed heritage items, on the seaward side of the coast or in the ridgelines or hilltops area.
- The rule also does not apply to the Residential Area, Open Space Areas or Conservation Sites.

Cabinets – rule 23.1.4

A large number of Controlled Activity consents are processed for cabinets that do not meet the cabinet height rule due to the height of the concrete plinth/foundation. The NES does not include the height of concrete plinths/foundations in the height of its cabinet provisions. This review presents an opportunity to achieve consistency with the NES on this matter, and will help to restore a regulatory balance for the industry.

It is proposed to amend rule 23.1.4 to clarify that concrete foundations up to 0.5m are excluded from the cabinet height provisions. Foundations greater than 0.5m may have significant visual effects which need landscaping controls.

Concerns have been expressed with rule 23.1.4 as this permits cabinets to be sited on formed legal road or accessways in Open Space B and C Areas and on Conservation Sites. Such cabinets could have significant effects on the values of these areas regardless of their specific location within a reserve. The permitted and controlled rules for cabinets (ie. rule 23.1.4 and rule 23.2.1A) have been amended so that any utility structure in Open Space B and C Areas and on Conservation Sites is a Discretionary Unrestricted activity.

Definition of Structure

During an Environment Court decision between the Council and Woosh wireless (W103/06), an issue arose with the definition of 'structure'. In this case the Judge relied on the definition of structure to aid his interpretation of the term 'utility structure'. It was never intended that the structure definition be used in this way, so it is proposed to clarify this by stating that 'network utility structures' are excluded from the definition of 'structure'.

Rule 23.3.2 – Antennas being added to existing masts

This rule has a clear 'double up' with the NES. This rule is amended so that it only relates to masts not located on legal road.

Various references to the land at the former Seatoun Landfill

All utilities provisions relating to the former landfill in Seatoun (ie. Fort Dorset) have been deleted. Plan Change 72 (Residential Provisions) proposes to delete

all references to that land given its recent rehabilitation and residential development.

5.4 Public notification of Proposed Plan Change 74

A city-wide notification of this plan change is required. This will be done in conjunction with other city-wide notifications of Proposed Plan Changes 72 and 73. It is expected the submissions phase will be completed by December, with a hearing in February 2010.

5.5 Resource Management (Simplifying and Streamlining) Amendment Bill

The introduction of the NES for Telecommunication Facilities last year highlighted a number of implementation issues with national standards. The Amendment Bill sought to clarify these, including the relationship between national environmental standards and plans, and also that councils could grant certificates of compliance for activities that that can be done lawfully in an area without a resource consent. The recent report back on the Bill by the Local Government and Environment Select Committee amended these provisions further to remove any uncertainty around how these processes should work.

6 LTCCP Implications

There are no specific OPEX or CAPEX proposals directly related to the drafting of the proposed Plan Changes. The cost of a city-wide notification of the plan change will be shared with two other plan changes also requiring city wide notification, and covered within existing budgets.

A number of concerns held by the industry have been resolved through the initial consultation stage and it is hoped that outstanding areas of concern will be addressed through the formal submission and hearing phase, further reducing the necessity for an appeal.

7 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. Consultation on the draft plan change revealed support for a number of provisions, but also areas of further work to ensure a balance between permitting utility structures and regulation.

The main changes proposed to the current rules include:

- Clarifying which the rules in the Plan should override the NES provisions.
- No permitted or controlled activity new masts in the Residential Area and Open Space A Area. These will be assessed as a Discretionary

(Restricted) Activity. Masts in other Areas will still be permitted (provided they meet certain conditions).

- A new permitted activity rule for replacement masts in the Open Space A Area.
- A new height regime for masts in the Suburban Centre Areas, resulting in some areas with increased height, others with decreased mast height.
- Controlled activity mast rule for Central Area, Institutional Precincts, Airport and Gold Course Precinct and the Rural Area.
- Increasing the setbacks for antennas from residential property boundaries.
- A non-notification statement for co-location masts seeking up to 3.5m height on an existing mast.
- A new permitted activity rule for mast/antenna facility upgrades.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The District Plan changes support goals and outcomes desired by the Urban Development Strategy.

2) LTCCP/Annual Plan reference and long term financial impact

While there are no OPEX or CAPEX proposals directly related to the draft Plan Change, the new policies and rules are carried out in response to the introduction of new national standards.

3) Treaty of Waitangi considerations

All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).

4) Decision-Making

The proposals to change the District Plan are in accordance with Council's wider strategic framework. Elements of the draft plan change seek to enhance protection for elements of the city that contribute to the city's sense of place (ie. heritage values and coastal roads).

5) Consultation

a) General Consultation

This paper includes the results of feedback from industry groups and the community on draft plan provisions. The proposed plan change reflects the advice and feedback from that consultation stage and in particular has narrowed the areas of concern for industry. Further consultation on the proposed plan change will follow the RMA First Schedule process.

b) Consultation with Maori

The Wellington Tenth Trust and Te Runanga o Toa Rangatira have been advised of the proposed plan change, but held no particular concerns.

6) Legal Implications

A legal peer review was carried out on the draft plan change, with further follow up legal review done on specific issues.

7) Consistency with existing policy

The draft Plan Change is consistent with the Council's vision for the city, Sense of Place values, the Urban Development Strategy, and the Heritage Policy.