

Regulatory Impact Statement

EXECUTIVE SUMMARY

Regulatory inconsistency across district plans is creating costs and uncertainties for telecommunication providers seeking to roll out new or improved services. This is a barrier to achieving goals set out in the government's digital strategy of providing high quality services (including high speed broadband), greater choice and lower cost services for consumers while contributing to the Government's economic change agenda and development of a higher value economy. The preferred option is a set of nationally consistent regulations to remove the variable rules in local authority planning documents that apply to low impact telecommunications infrastructure on legal roads.

The standards will generate significant cost savings to both industry and local government in terms of time savings, certainty and economies of scale through the ability to use standardised equipment across the whole country. This will facilitate faster roll out and access to new services, and more choice from competition amongst operators. This will in turn benefit the economy and consumers while balancing community and environmental considerations.

ADEQUACY STATEMENT

The Regulatory Impact Analysis Unit has reviewed the RIS and considers the RIS is adequate according to the adequacy criteria.

STATUS QUO AND PROBLEM

The telecommunications industry is facing a period of rapid expansion in the face of changing demands, new technologies and the need to upgrade capacity. Such expansion would support government aims for improving access to broadband and information technology, increasing competition among suppliers through local loop unbundling, improving general industry productivity and achieving economic transformation.(as expressed in The Digital Strategy).

The use of road reserve for siting telecommunications cabinets and antennas is seen as critical by the telecommunications industry for both increasing coverage of wireless telecommunications and improving the quality of landline services such as new and improved fibre optic networks. There are two separate legislative requirements to follow to install telecommunications equipment within the road reserve. The Resource Management Act requires compliance with the district plan, which may or may not require resource consent for an activity. The Telecommunications Act requires a telecommunications operator to notify the road controlling authority of its intention to carry out works and a telecommunications operator must comply with any reasonable conditions imposed by the road controlling authority.

The decision making power for network utility infrastructure was devolved to territorial local authorities when the Resource Management Act came into force in 1991. While the environmental effects of telecommunications infrastructure are likely to be the same or similar throughout the country, the policies and rules in district plans that have evolved in response to address the new responsibilities lack consistency. Telecommunications facilities are currently subject to resource management consenting processes that differ widely between the 73 territorial and unitary local authorities in New Zealand. The variability in consenting requirements creates uncertainties, resulting in costs and time delays. Infrastructure will require planning approval in one district, where in an adjoining

district the same infrastructure may not require resource consent at all. A lack of national consistency in the rules of district plans is seen as impeding the delivery of new and improved services. The cost benefit analysis found that without the proposed standards, roll-out of new telecommunications infrastructure and associated services will face the cost of resource consent application processes. This will increase project costs and potentially slow the rate of roll-out and the availability of new services across the community. An activity cannot be permitted by a national environmental standard if it has significant adverse effects on the environment. However, there is inevitably a trade-off between:

- a. ease of infrastructure investment through minimal planning ‘inconsistency’ and the contribution this can make to initiatives, including the Government’s Economic Transformation Agenda and the Digital Strategy; and
- b. the local community driven standards and values expressed through district planning processes (the principles of the Resource Management Act).

Figure 1: Current range of costs for obtaining resource consents for telecommunications facilities.

	Range	Mean
Industry costs per application*	\$3,600.00-\$27,000.00	\$11,220.00
Councils net costs per application	\$1,200.00 - \$5,000.00	\$2,590.00

*based on an estimated annual roll out of 1100 sites/year

Data from: “Economic appraisal for telecommunication facilities: Phase 2 Assessment of proposed National Environmental Standards for telecommunications facilities.” NZIER & Connell Wagner 2008.

A significant amount of variability exists in the nature and extent of conditions placed on telecommunications operators by road controlling authorities seeking to undertake works in the road corridor. This variability cannot be addressed through a national environmental standard.

OBJECTIVES

The policy objective is to provide for a nationally consistent planning framework for low impact telecommunications infrastructure on road reserves that will:

- assist in network and equipment design and equipment sourcing for roll outs,
- create a reduction in compliance costs and timeframes for service providers
- reduce the timeframe and lower costs for the availability of new services to consumers
- contribute to a reduced workload to councils in processing and determining consent applications
- set an appropriate balance between local participation in community planning and cost effective national infrastructure investment.

ALTERNATIVE OPTIONS

Non-Regulatory approach

Ministry for the Environment could encourage and support district councils and telecommunications companies to develop consistent plan provisions (e.g model rules) and improve the processing of resource consents. There would be a range of measures to support local government and industry to work together.

While this option would keep regulatory complexity to a minimum and allow greater flexibility for local decisions, it is doubtful there would be significant improvement to the current situation. Without regulatory compulsion there is no guarantee that councils would work together to provide national consistency. In essence, the status quo would prevail through a non-regulatory approach and it is unlikely the objective would be achieved.

Regulatory approach - RMA Amendment

The RMA could be amended to make it clear that councils need to explicitly provide for telecommunications infrastructure when preparing plans and making decisions on resource consents. However, the RMA is an enabling and broad-scale piece of legislation. An amendment would unreasonably elevate a specific activity above all others. Amending the head statute to accommodate specific matters as they arise would make the legislation unnecessarily complex. The RMA provides for more specific matters to be addressed through regulation-making powers (such as national environmental standards) for individual environmental management issues.

Legislative amendments are often more expensive and time-consuming than other options. An amendment would be dependant on completion of a district plan change process to give effect to the changes. In addition, it is more difficult to amend legislation if changes are needed at a later date (eg, if amendments are made to the Telecommunications Act). It could be likened to “using a sledgehammer to crack a nut”. Given the time and cost implications of pursuing a legislative amendment and the uncertainty of outcome it is unlikely the policy objective would be achieved.

Regulatory approach - National Policy Statement

A NPS could be prepared stating that enabling the provision of telecommunications infrastructure and services is a matter of national significance. This would give clear guidance to consent authorities that they need to make provision for this when making decisions on resource consents, and when preparing plans and regional policy statements. There are limitations to the certainty about decision-making that could be achieved by a NPS alone. The NPS would need to be incorporated first into the regional policy statement then district plans to give effect to it. National policy statements establish objectives and policies; they do not establish methods or rules (ie, they do not establish how the objectives and policies are to be achieved). Therefore, there could be a wide variation of interpretation of the NPS requirements at the individual council level. It is unlikely that the policy objective would be achieved through a NPS. A NPS is not likely to achieve sufficient consistency or certainty to ensure the roll out or provision of telecommunications infrastructure and services around the country.

Figure 2: Assessment of options for achieving policy objective

Criteria	Alternative options that did not satisfy the selection criteria				Preferred option
	Status quo	Non-regulatory measures	Amend RMA	National Policy Statement	Permitted activities NES
National consistency	x	x	✓	✓	✓
Manage effects of telecommunication	~	~	✓	~	✓
Certainty of outcome	x	x	✓	x	✓

Local input	✓	✓	✗	✓	~
Enables telecommunications	~	~	✓	~	✓
Cost effective	✗	✗	✗	~	✓
Timeliness of process	✗	✗	✓	✗	✓
Reduced workload for councils and industry	✗	✗	~	~	✓

Key to table:

✓ Meets the criterion ✗ Does not meet the criterion ~ Partly meets the criterion

PREFERRED OPTION

National Environmental Standard

The national environmental standards will substitute the existing rules in every district plan in New Zealand. The new rules will permit radiofrequency fields generated by telecommunications antennas and the construction and operation of certain types of telecommunications infrastructure subject to requirements and limitations including height, size, density and noise limits. The NES would override any existing district plan rules on the subject material. A plan change is not required for the NES to become part of a district plan, although some local authorities may choose to undertake a plan change process specifically to incorporate the new rules into their plan. Alternatively, the new rules can be incorporated into a district plan as an administrative change by “piggy backing” them on another unrelated plan change or as part of the forthcoming review of all district plans required by the Resource Management Act 1991. The NES effectively reduces the stock of existing regulation by replacing the variability or absence of rules in 73 district plans with one set of nationally consistent provisions for telecommunications infrastructure.

National environmental standards can be more prescriptive instruments than national policy statements and legislation. This provides some key benefits over other options. A NES would fulfil the policy objectives by providing certainty and consistency about the levels of permitted development provided for telecommunications infrastructure in the road reserve in every local authority area in New Zealand. The NES would remove any ambiguity over whether or not a particular piece of equipment would require resource consent or not.

Total costs associated with the national environmental standards were estimated at \$4.8 million over 10 years¹. The majority of costs are attributable to costs for government in supporting introduction of the standard. The cost to communities from the loss of local over telecommunications installations in the road reserve are difficult to value and are not included in the cost benefit analysis. However, the substantial quantified benefits are considered to outweigh the un-quantifiable costs of: a) reduced local flexibility/community participation in planning; and b) effects on visual amenity.

¹ Costs and benefits have been assessed over a 10-year period instead of the more widely used 20-year period because this aligns with the 10-year review cycle for district plans under the RMA and the rapidly changing nature of telecommunications technology and infrastructure.

The estimated total benefits attributable to the national environmental standards are estimated at \$94.4 million over 10 years, with the majority of the estimated benefits attributable to cost savings to industry and local government through a reduction in resource consent processing. Additional benefits are attributable to the facilitation by the NES of faster roll out of services and improved services and more choice for consumers. The quantified analysis is robust to large changes in individual assumptions however the analysis will still be sensitive to community impacts and those unquantifiable costs.

IMPLEMENTATION AND REVIEW

Once finalised, the regulation will become effective 28 days after being gazetted; this is likely to be within six months of a Cabinet policy decision.

Guidance material will be produced and provided to all local authority planning departments, road controlling authorities and industry groups. This will include:

- A users' guide to outline the requirements of the regulation in plain English for local government and industry.
- Guidance for local government on how the standards will affect their district plans and what is required to incorporate the material into plans.

The material will also be posted on the Quality Planning Website and the MfE website. A review of the effectiveness of the regulation will be initiated 5 years from the gazetting of the regulation.

Enforcement of the NES will be undertaken by individual local authorities as the NES has the effect of inserting rules into district plans. The existing enforcement provisions of the Resource Management Act shall apply.

CONSULTATION

Open consultation was undertaken through a discussion document, prepared by the Ministry for the Environment. The discussion document contained proposals developed by an industry led reference group comprising representatives from industry, central government and local government.

The discussion document was released in 16 June 2007 and submissions closed on 10 August 2007. In addition to the discussion document, five workshops were held throughout the country during June and July 2007. Officials also met individually with other government departments, government agencies, telecommunications companies and community groups.

Eighty two submissions were received on the proposals. A total of 33 submissions were in support of the proposals, 41 opposed the proposals and the remainder did not state a position. The key issues raised in submissions were, in no particular order:

- Potential health effects of radiofrequency fields;
- An opportunity to facilitate investment in infrastructure by reducing development costs;
- Loss of local input in the decision making process for telecommunication infrastructure;
- Potential for proliferation of cabinets and antennas leading to increased clutter in the streetscape and effects on amenity;
- Provide national consistency and certainty for service providers seeking to expand or roll out a new network; and

- Safety implications of roadside telecommunications equipment. (Safety is not considered here as it is “core business” for road controlling authorities. The Telecommunications Act as it applies to road controlling authorities contains explicit reference to consideration of safety issues).

In response to concerns raised by submitters regarding radiofrequency fields, further advice was sought from National Radiation Laboratory (Ministry of Health) to ensure the adequacy of the proposed radiofrequency standards to avoid adverse health effects on people.

Aspects of the proposal were modified in response to submissions and as a result of subsequent discussions with stakeholders. In particular, changes were made to ensure effectiveness of the standards and to protect local amenity values. Key changes were:

- Strengthen links to district plan provisions where specific values such as amenity had been identified as a local issue.
- Broader consideration of clutter through increased minimum separation distances between cabinets.
- Aligning the noise standards with the new Standards New Zealand standard.
- Future proofing the standards by not specifying particular types of panel antennas and including allowances for dish antennas.

The Ministry for Economic Development was kept informed because of the links with the Digital Strategy and their work on the Management of Utilities' Access to Road, Rail and Motorway Corridors. The Commerce Commission has similarly been kept informed because of the links with their work on the operational separation of Telecom, the unbundling of the Telecom network and co-location.

The following agencies have been consulted on this paper and their views taken into account: Department of Building and Housing, Department of Internal Affairs, Ministry of Consumer Affairs, Department of Conservation, Land Information New Zealand, Ministry of Economic Development, Ministry of Health, Te Puni Kōkiri, Ministry of Transport, Ministry of Women's Affairs. The Department of Prime Minister and Cabinet has also been advised about this paper.

Comments included support from the Ministry of Health on the approach taken on the radiofrequency field exposures. The Department of Internal Affairs sought clarification on the impact of the proposed standards on local government, in particular the ability for Councils to retain local decision making powers. The proposed relationship with existing relevant district plan rules was clarified with the Department of Internal Affairs.