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Proposed amendments to NES for Telecommunication Facilities

Local Government New Zealand's submission to the Ministry for the Environment

12 April 2015

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We are. LGNZ.

Local Government New Zealand (LGNZ) is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

We look forward to continuing to being involved in the development of the amended National Environmental Standard for Telecommunication Facilities (NESTF) as the regulations are progressed.

Introduction

Thank you for this opportunity to submit on the proposed amendments to the National Environmental Standard for Telecommunication Facilities. This submission has been prepared on behalf of New Zealand's local authorities.

We support the overall purpose of the amendments to the NESTF – to facilitate the rollout and delivery of Ultra Fast Broadband to New Zealanders. An NES overrides local rules and removes the need for resource consent by making activities that meet the specified conditions permitted.

Striking the right balance of the permitted activity set of rules and conditions is the current challenge, along with providing certainty and consistency (through the permitted activity standards) within the regulations.

The proposal to include rural areas within the NESTF will create problems for those councils that have not identified "outstanding landscapes and features" within the plans. Some district plans manage visual effects using landscape overlays which are not "outstanding landscapes and features." Developing landscape provisions requires significant investment and it will be important to give further thought to how they can have status under the NES.

General and specific comments

Getting the Regulations right

Experience with other National Environmental Standards shows that care is needed to ensure the final regulations are simple, clear and unambiguous. The ambiguity within the NES for Assessing and Managing Contaminants in Soil to Protect Human Health, for example, has led to different interpretations of some of the Regulations and therefore different practices across local authorities. "Roadtesting" the draft regulations for the National Environmental standard for Telecommunications Facilities before they are finalised will help to uncover any issues with the provisions. We suggest asking some local authorities to volunteer to be involved in this process.

The NES should clearly exclude any areas that regional councils have jurisdiction over so that it only applies to territorial local authorities: the regulations should exclude the Coastal Marine Area and the beds of lakes and rivers, for completeness. Consideration is also needed about the relationship of the NES to regional rules for earthworks.

It is proposed the NES does not override provisions in district plans where outstanding natural features and landscapes have been identified. Careful consideration is needed regarding the relationship between provisions in district plans which manage adverse effects on landscapes and the NES - many district plans use overlays for this. There is no definition or guidance on the criteria that support the determination that an area is an "outstanding natural feature or landscape." The default has been to rely on criteria set in Environment Court cases, criteria which inevitably evolve as cases are argued and new decisions made. The NES will need to acknowledge that district plans identify "special" or "amenity" landscapes according to different criteria and in different ways. Given the investment by communities into identifying the special landscapes is significant, it is important the NES does not override these decisions that have been made locally by setting the bar too high.

In some cases, the work to identify outstanding natural features and landscape has been done at a regional level and codified in a Regional Policy Statement but not yet given effect to in district plans. It is assumed these provisions will not

have status under the NES unless they are given effect to in the district plan. Some consideration needs to be given to some transitional provisions where a process is underway to manage identify special landscape areas in a district plan but they have not been made operative. It may be appropriate to allow the local rules to be the default.

Having reviewed the summary, the matters that need careful attention are identified in the table below:

Proposed new permitted activities (with associated standards)

Permitted activities	
Aerial cabling	<p>Aerial placement of telecommunications cables by a telecommunications operator is permitted, including any necessary ancillary equipment, subject to the following conditions:</p> <ul style="list-style-type: none"> • no additional poles are installed • there is existing aerial cabling using the poles to be used for the new telecommunications cables (for electricity or telecommunications or other utilities) • the diameter of the new cabling does not exceed 30 mm • cables use existing crossings and corridors (ie, no new road crossings may be installed). <p>Associated earthworks and ancillary equipment may include (but is not limited to) fibre access terminals, fibre coils or loops, protection guards, ducting, and aerial to underground connections.</p> <p>Ongoing operation and maintenance of the network is permitted.</p> <p>Relocation and/or replacement poles where necessary for structural or safety reasons may be up to 3 m from the original location.</p>
Comment/amendments sought	<p>Further controls on “ancillary equipment” are needed:</p> <ul style="list-style-type: none"> ○ any redundant cabling that results in coiling must be removed; or ○ that a method of mitigation to hide the coiling is required ○ definition should include solar panels <p>A condition should specify the maximum number of aerial cables/maximum thickness of bundles of aerial cables as a permitted activity; a resource consent process is appropriate to consider adverse visual effects over the thresholds.</p> <p>The condition regarding “no additional poles” should be clarified so that it refers to the total number of poles.</p>
Underground cabling	<p>Underground placement of telecommunications cables by a telecommunications operator is permitted, including any necessary drilling and trenching and associated earthworks and underground ancillary equipment, including (but not limited to) ducting, feeder breakout points, and hand holes or plinths.</p>
Comment/amendments sought	<p>Discussion is needed regarding permitted activity standards for earthworks as a permitted activity.</p> <p>The Regulations need to include a requirement to “make good” the surface following the works</p>
Antennas on multi-storey buildings	<p>The placement of antennas on the roof or side of a building is permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> • the building is no less than 15 m high • rooftop antennas do not extend 5 m beyond the part of the building to which they are attached • the diameter of the antenna at its widest point does not exceed 0.8 m. <p>Lightning rods may extend beyond the height of the antennas.</p> <p>Associated cabinets with a footprint of no more than 2 m² and no more than 2 m high are permitted.</p> <p>All other equipment necessary for the operation of the antenna, such as the mast or other support structure, feeder cables and ancillary antennas, is permitted.</p>
Comment/amendments sought	<p>The Regulations should be amended/clarified to include:</p> <ul style="list-style-type: none"> ○ a requirement for a separation from the boundary, particularly for residential areas ○ whether the maximum height applies to the maximum height of the building or to the part the antenna is located on ○ where antennas extend beyond the building – clarify this is above (not sideways from) the building ○ a condition for the location of cabinets e.g that they are only located on rooftops and should exclude residentially zoned land ○ the location of associated cabinets

	<ul style="list-style-type: none"> ○ a definition or removal of “Ancillary antenna” <p>Consideration should be given to providing for antennas and support structures to be attached to buildings other than multi-storey buildings. Permitted activity conditions should specify the maximum height of the antenna for (1) the Central Business Zone and (2) Residential, Rural, Open Space and Other zones.</p>
Antennas in rural areas	<p>The placement of an antenna in an area zoned rural in the relevant district plan is permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> • the total height (of the mast and antenna) does not exceed 25 m • the diameter of the structure at its widest point (excluding the concrete plinth) does not exceed 6 m • the site is not a scheduled site or area subject to any special rules (eg, landscape provisions for outstanding natural landscapes or outstanding natural features) • the antenna is not located closer than 50 m from the boundary of an area zoned residential • the antenna is not located closer than 50 m from the closest external wall of a dwelling in a sensitive land-use area • lightning rods may extend beyond the height of the antenna • all equipment necessary for the operation and security of the antenna, such as the mast or other support structure, casing or coverings, feeder cables, ancillary antennas, cabinets, security equipment, fences, handrails, and steps or ramps, is permitted • the support structure is coloured recessive grey or recessive green • if any earthworks are required to prepare the site: <ul style="list-style-type: none"> – the earthworks do not occur closer than 20 m from the nearest water body – the ground must be reinstated within 72 hours • if any vegetation clearance (trimming or removal) is required to prepare the site: <ul style="list-style-type: none"> – the tree(s) must not be scheduled – any indigenous vegetation must be reinstated or replaced within the practicable vicinity of the site.
Comment/amendments sought	<p>Defining what “rural” is in the Regulations, with respect to different district plans, needs to be considered carefully; some district plans use different terminology and will have a number of rural zones. For instance, some district plans will use the term “rural” for a zone that would be open space in another district plan.</p> <p>The Regulations will need to be worded so that special landscape rules that are referred to in different ways in district plans are captured e.g Wellington District Plan contains landscape provisions as a “Ridgelines and Hilltops” overlay. Those local authorities that have not identified special landscape areas, but who manage adverse visual effects through overlays with special rule sets, will be disadvantaged by the Regulations as proposed.</p> <p>Careful consideration needs to be given to the appropriate setback of a mast from Residential Zones and Sensitive Land Uses in the Rural zones; consideration should be given to increasing the setback and to requiring a setback from all dwellings.</p> <p>The Regulations should be amended/clarified to include:</p> <ul style="list-style-type: none"> ○ further consideration/discussion is needed about the 6m diameter proposed (diameter of the structure at its widest point (excluding the concrete plinth) ○ the definition of ‘sensitive land use area’ should include aged care home, schools, preschools, public buildings ○ amend <i>Bullet point 8</i> to read “the support structure <u>and antenna are</u> coloured grey or recessive green.” The reference to colour should include a Standard colour chart. ○ the vegetation clearance condition should exclude any identified significant indigenous vegetation and significant habitats of indigenous fauna. ○ clarify that the ground should be “made good” following any works
New masts to carry antennas in the road reserve	<p>The installation of a new mast with antennas attached in the road reserve is permitted, subject to the following condition:</p> <ul style="list-style-type: none"> • the total height and width of the mast and antenna is no larger than it would have been if installed in accordance with Regulation 7 (of the existing NESTF) on an existing utility structure within 100 m of the installation site. If there are multiple poles in the 100 m radius, operators must take the average of the poles.
Comment/amendments	<p>As written, these rules will be difficult to administer and monitor; some councils will not hold information on the current size and height of utility poles and in some cases will not be</p>

sought	<p>straightforward to determine whether the original structure was lawfully established in the first place. Consideration should be given to a simpler method.</p> <p>The Regulations should be amended/clarified to include:</p> <ul style="list-style-type: none"> ○ the Regulation should include a minimum setback from a residential boundary. ○ if the existing pole remains, there should be a limit to the number of poles. ○ existing poles should be removed if a more suitable location is found and all the equipment should be moved to a new pole. ○ clarity as to whether this provision applies to all poles or poles with antennas
Location of replacement utility structures	<p>A replacement utility structure may be moved to within a 3 m radius of the original utility structure location, provided the structure is still located on the road reserve.</p>
Size envelope for antennas	<p>The antenna(s) – excluding the mount, if there is one, and the shroud, if there is one, and ancillary equipment, if there is any – must fit within the dimensions of a cylindrical shape that, when measured along the centre line of the mast (original utility structure or replacement utility structure), is not more than 3.5 m high and no more than 0.7 m in diameter.</p> <p>The height of the replacement utility structure must be no more than the original utility structure’s highest point, plus the lesser of 3.5 m or 35 per cent.</p>
Comment/amendments sought	<p>The Regulations should be amended/clarified to include:</p> <ul style="list-style-type: none"> ○ the requirement for a shroud should be site specific – these are not appropriate in all circumstances ○ the shroud should be included in the maximum size limit ○ a simple maximum size envelope will be simpler to calculate than a percentage increase
Size of replacement utility structure (including the antenna and the mast)	<p>The replacement utility structure must not have a diameter that is more than the original utility structure’s diameter at its largest point, plus 100 Per cent.</p>
Comment/amendments sought	<p>The Regulation should incentivise the telecommunications operator to use smaller structures to reduce adverse visual effects; the original utility structure’s diameter plus 100% will be significant in some places</p>
Replacement of existing antennas to improve service or operate on additional or new spectrum bands such as the new 700 MHz spectrum band	<p>Replacing an existing antenna with a larger antenna capable of operating over additional or new spectrum bands is permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> • the total height of the replacement infrastructure (mast and antenna) is no more than 2 m higher than the total height of the existing infrastructure • the diameter of the replacement antenna is no more than the diameter of the existing antenna, plus 50 per cent • the diameter of any existing mast is extended no more than the diameter of the existing mast, plus 30 per cent • the existing mast and antenna are lawfully established (ie, authorised by a regulation, plan or consent under the RMA). <p>Lightning rods may extend beyond the height of the antenna.</p> <p>An additional cabinet with a footprint of no more than 2 m² and no more than 2 m high housing the necessary equipment of the additional telecommunications operator(s) may be installed at the site.</p> <p>Additional ancillary equipment (such as feeder cables) on the outside of the support structure is permitted.</p>

<p>Additional antennas at existing sites to improve service or operate on additional or new spectrum bands such as the new 700 MHz spectrum band</p>	<p>Installation of additional antennas at a telecommunications operator’s existing site (ie, on an existing mast on which a telecommunications operator has an existing antenna) to ensure the site is capable of operating over additional or new spectrum bands is permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> • the total height of the replacement infrastructure (mast and antenna) is no more than 2 m higher than the total height of the existing infrastructure • the total diameter of the head frame of the structure at its widest point is no more than the diameter of the existing structure plus 100 per cent • the diameter of any existing mast at its widest is extended no more than the diameter of the existing mast, plus 30 per cent • the area is not zoned residential in the relevant district plan • the existing mast and antenna are lawfully established (ie, authorised by a regulation, plan or consent under the RMA). <p>Lightning rods may extend beyond the height of the antenna.</p> <p>An additional cabinet with a footprint of no more than 2 m² and no more than 2 m high housing the necessary equipment of the additional telecommunications operator(s) may be installed at the site.</p> <p>Additional ancillary equipment (such as feeder cables) on the outside of the support structure is permitted.</p>
<p>Co-location of multiple telecommunications operators’ antennas</p>	<p>Increasing the total height of an existing mast and antenna by up to 5 m is permitted, subject to the following conditions:</p> <ul style="list-style-type: none"> • one or more additional telecommunications operators place an antenna on the existing mast at the time the height is increased • the area is not zoned residential in the relevant district plan • the existing mast and antenna are lawfully established (ie, authorised by a regulation, plan or consent under the RMA) • this provision is not applied to a single site more than once • telecommunications operators cannot exercise this right of activity until they have disclosed their co-location agreement with the relevant local authority and the Ministry of Business, Innovation and Employment. <p>Lightning rods may extend beyond the height of the antenna.</p> <p>An additional cabinet with a footprint of no more than 2 m² and no more than 2 m high housing the necessary equipment of the additional telecommunications operator(s) may be installed at the site.</p> <p>Additional ancillary equipment (such as feeder cables) on the outside of the support structure is permitted.</p>
<p>Comment/amendments sought</p>	<p>The principle of co-location is supported but in some locations, multiple smaller sites may result in fewer adverse visual effects than an increased total height of 5m. It will not always be cheaper to co-locate antennas, unless the masts have been specifically designed to cater for a number of antennas. It is noted that encouraging smaller/new operators into the market (via co-location, which can be cheaper than constructing a new mast) is not a matter for consideration under the RMA.</p> <p>The mechanism to disclose the co-location agreement needs careful attention; template agreements to speed up this process would be helpful.</p>
<p>Small-cell units in the road reserve</p>	<p>Installation of a small-cell unit on a structure (eg, bus stops, cabinets, traffic poles, signage, light poles) and all ancillary equipment necessary for the operation of the small-cell unit (eg, mounts, cables, combiner / junction boxes) by a telecommunications operator within the road reserve is permitted, subject to the following condition:</p> <ul style="list-style-type: none"> • the small-cell unit and the ancillary equipment do not exceed a volumetric dimension of 0.11 m³(eg, 700 mm high x 500 mm wide x 300 mm deep).
<p>Small-cell units on private land (eg, on the outside of buildings)</p>	<p>Installation of a small-cell unit on private land (eg, on the outside of a building) and all ancillary equipment necessary for the operation of the small-cell unit (eg, mounts, cables, combiner/junction boxes) by a telecommunications operator is permitted, subject to the following condition:</p> <ul style="list-style-type: none"> • the small-cell unit and the ancillary equipment do not exceed a volumetric dimension of 0.11 m³ (eg, 700 mm high x 500 mm wide x 300 mm deep).

Proposed amendments to standards for existing permitted activities

Amendments	
Expanding conditions under Section 6 to include telecommunications facilities outside the road reserve	Conditions protecting trees and vegetation, historic heritage values, visual amenity, coastal marine areas, and natural hazard zones will apply to all activities under the NESTF.
Comment/amendments sought	We agree with this and getting the wording right will be important. The provisions should also address vegetation clearance, stating: 'if any vegetation clearance (trimming or removal) is required to prepare the site: <ul style="list-style-type: none"> ○ the tree(s) must not be scheduled <u>or otherwise protected</u>
Adding 'natural hazard zones' to section 6	Conditions managing infrastructure in natural hazard zones in the relevant district plan will prevail over the NESTF where they are more stringent than the NESTF requirements.
Comment/amendments sought	We agree with this and getting the wording right will be important.
Incorporation by reference	Replace reference to NZS 6609.2:1990 <i>Radiofrequency Radiation – Principles and Methods of Measurement – 300 kHz to 100 GHz</i> with reference to AS/NZS 2772.2:2011 <i>Radiofrequency Fields Part 2: Principles and Methods of Measurement and Computation – 3 kHz to 300 GHz</i> .
Clarification of per 'site' terminology	'Site' will be defined as an area where cabinets are located. The requirement that each site must be located a minimum of 30 m from another site will remain unchanged.
Time for cabinets to be replaced	Two cabinets on the same side of the road may be located within 30 m of each other, but more than 500 mm apart, as a permitted activity subject to the following conditions: <ul style="list-style-type: none"> • the replacement cabinet is being installed to replace the existing cabinet • the existing cabinet must be removed no later than 12 months following installation of the replacement cabinet.
Comment/amendments sought	The 12 month time period for removing the existing cabinet is too long and needs to be shorter.
Additional cabinets	This condition applies if two or more cabinets are located at the same site in a road reserve next to land that a relevant district plan or proposed district plan classifies as primarily for residential activities. Each cabinet's footprint must be no more than 1.4 m ² . The total footprint of all the cabinets must be no more than 2 m ² . The distance between each cabinet and the cabinet or cabinets closest to it must be no more than 500 mm. The cabinets must be no higher than the height of the concrete foundation plinths, if there are any, plus 1.8 m.

Other matters

Earthworks, land stability and erosion and sediment control

This NES has implications for how utility works sit with district plan earthworks provisions and land disturbance rules in regional plans. If trenching is permitted for telecommunications activities this will set a new permitted baseline. Permitted activity conditions should be set for earthworks and, for simplicity, they should not override land disturbance rules in regional plans. While the thresholds for earthworks are unlikely to trigger a regional rule, the proximity of earthworks to a waterbody may do. Often/typically the drivers and rationale for regional rules re earthworks differ from the reasons for district rules. District rules are often oriented to amenity (visual and dust) and land stability whereas regional rules are oriented to water quality, soil conservation, land instability and dust/air discharges.

The discussion document notes *"In the installation of underground infrastructure, trenching and drilling can create dust, sediment and erosion, affect water quality, create noise and vibration, and disrupt traffic. However, these effects tend to be low impact and can be mitigated by the provisions of the Utilities Access Code. The Code has requirements to manage environmental effects,*

including those relating to trees, sediment control, stormwater, road closures and traffic disturbance, as well as reinstatement.”

However, the Utilities Access Code 2011 identifies the requirement for utility operators to comply with the RMA in terms of management of stormwater, siltation and protection of water courses, but it does not stipulate any best practice methods by which this should be achieved. In particular, it does not stipulate or mention methods for managing stockpiles of material during excavations, management of dirty water during dewatering of excavations, or management of sites prior to and during rainfall – at the very least contingency planning for rain events should be identified in the NES.

There is also no mention of land instability issues (although slumping within trenches is addressed) and the potential need for geotechnical considerations prior to works in higher risk areas.

Conclusion

LGNZ supports the proposal to amend the NES for Telecommunications Facilities. Having said this, the drafting will need careful consideration and we suggest “roadtesting” the Regulations before they are finalised. To “roadtest” them, a small number of local authorities should be asked to volunteer to apply the draft Regulations for a period of time alongside the district plan rules and existing NES provisions. This will help to identify any areas which need redrafting before they are finalised.

The most significant matters that need further consideration are:

- some of the thresholds proposed for permitted activities
- the determination of what constitutes a “rural zone”
- how the NES will acknowledge the different approaches to identifying special landscapes
- the need for transitional provisions where district plan provisions that may override the NES have not been made operative