



NZUAG SUBMISSION

on

MED Discussion Document Review of Issues affecting Utilities and Road, Rail, and Motorway Corridors

1 Background to NZUAG

The New Zealand Utilities Advisory Group (NZUAG) is a joint consultative group of network utility service providers (water and waste, telecommunications, electricity and gas), territorial local authorities, Transit New Zealand and industry bodies (Local Government New Zealand, INGENIUM, Road Controlling Authorities Forum). It was formed in late 2001 to look at issues relating to utilities in the road corridor.

The NZUAG has identified issues of concern to utility operators and road controlling authorities (RCAs), and initiated a number of projects. These include best practice guidelines and tools for all aspects of road corridor management, including:

- Model partnering agreement which provides a framework for utilities and RCAs to work together to achieve mutually agreed outcomes in the best interests of each organisation and the communities they serve;
- Code of Practice for Working in the Road: NZS Handbook 2002:2003 which promotes national consistency for working in the road corridor;
- A Guide for local authorities on best practice relating to use and management of the road corridor under the Resource Management Act;
- National guidelines for valuing utilities on the District Valuation Rolls

Membership of the NZUAG comprises:

- Electricity Engineers' Association
- Electricity Networks Association
- Gas Association of NZ
- INGENIUM
- Local Government NZ
- NZ Water and Waste Association
- Road Controlling Authorities' Forum
- Telecom
- TelstraClear
- Transit NZ

The Department of Internal Affairs, the Ministry for Economic Development and the Ministry of Transport also participate in the work of NZUAG.

2 The development of this submission

The NZUAG has already participated in the development of the MED Discussion Document, and recently promoted debate on the document throughout New Zealand in a series of seminars. In developing this submission, the NZUAG has built on the considerable consensus of opinion expressed

by delegates to these seminars. It is deliberately written at a strategic level, as NZUAG believes it will require more focused discussion between representatives of the industry to resolve the detail.

This submission does not necessarily reflect the views of the individual organisations which make up the NZUAG. It represents the views of the NZUAG as a whole, taking account of the national interest of New Zealand as a whole (NZ Inc).

The underlying theme of this submission is the importance of achieving national consistency throughout New Zealand and equitable treatment of all parties. The policy problems which have given rise to the legislative requirements for utilities for working in the road corridor are generally the same, regardless of the utility, so the solutions and requirements should also be the same. There are significant economic benefits to all New Zealanders from national consistency in terms of achieving efficiencies, optimisation of benefits and minimisation of costs to end-users (be they consumer, ratepayer or taxpayer) as well as road safety and occupational health and safety benefits. These occur whether the utility is in public or private ownership, or the road owned by central or local government. Consistency will ensure that the costs for complying with legislative requirements for working in the road are the same regardless of utility, and this will enable efficient investment decisions to be made.

New Zealand is now in the situation where the road corridor has become a modern day “commons”. It may contain transport services (the road, and generally facilities for pedestrians and cyclists), utility services (power, telecommunications and water services), community services (postal, refuse collection), information (road management signs, community information, cadastral and geodetic information) and amenities (trees, shrubs and flowers). As such, in looking at future road corridors, it is important to recognise their multi-utility role, and their contribution to the long term provision of utility services so that space provision is allowed for the future. This will include some lateral thinking as to other options for providing utility corridors as it is inevitable that demand for utility services will continue to grow as much as traffic will continue to grow. NZUAG believes that as the first practical step the owners of all these services must co-operate, co-ordinate and collaborate, in the same way as the members of NZUAG work together in partnership.

3 Comment on proposals in document

Issues	Proposals and Questions to Consider	NZUAG response
Legislative Consistency	<p>A legislative regime providing a more efficient, coherent, and pragmatic framework for the relationship between utilities and road controlling authorities.</p> <p>Should legislative consistency be achieved through amendment of current utilities legislation OR the creation of an all-encompassing specific utilities statute?</p>	<p><i>Supported. The NZUAG has been working towards this objective since its inception.</i></p> <p><i>Initially, the NZUAG seeks to have the requirements of the individual legislation for the various utility sectors working in the overall road corridor made consistent. This would include the actual road carriage way (which includes the basecourse, the surface and drainage channels). In order to maintain the consistency, the NZUAG submits that it will be necessary ultimately to have one overall encompassing Act. Otherwise, the various enactments can easily be changed in a piecemeal fashion, and inconsistencies</i></p>

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<p>Defining a "Road"</p>	<p>Amend the definition of "road" within the Telecommunications Act 2001 to that of the definition of "road" provided within the Electricity and Gas Acts 1992.</p> <p>Call for submissions outlining the extent of any disputes over rights to "public places" as claimed within the definition of road.</p> <p>Should the road surface (upon which vehicles travel, and including footpaths) be considered an individual utility alongside other utility operators (e.g. electricity, gas) within the road corridor?</p>	<p>would soon creep back in.</p> <p><i>NZUAG seeks consistency between the Acts. While recognising that the present inconsistency is an unintended aberration, an alternative solution may to embody some or all of the powers contained in the Telecommunications Act definition to the other sectors. This would assist dealing with some of the issues of finding space to place utilities, especially with concerns about overcrowded road corridors and road safety. In saying this, NZUAG suggests that the legislation could make some provision for access by utilities to public spaces other than by changing the definition of the road. This right of access would not negate commercial negotiations regarding cost or charges between utility operators and private landowners.</i></p> <p><i>Having said this NZUAG is not aware of any specific instance where the extra provisions of the Telecommunications Act have been used to gain access to other than the Road Corridor. However there are instances where utilities occupy other public spaces.</i></p> <p><i>NZUAG is aware that there is some inconsistency regarding access of utilities to paper roads and unformed roads, and requests a further analysis of this.</i></p> <p><i>UAG members are not aware of any such disputes.</i></p> <p><i>The road corridor is the last remaining common space available for the placement of utility services, and NZUAG considers it is very important to achieve consistency of treatment between all the parties using the road corridor. Decisions on priorities and access in the corridor must reflect the greatest benefit to the community as a whole.</i></p> <p><i>The road carriageway (incorporating the basecourse, the surface and drainage channels) will be the dominant feature in the corridor. Corridors will have different priorities depending on the status of the road in the</i></p>

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	<p>Should the principal objective of the road corridor be to carry vehicular and pedestrian traffic, or provide a corridor for the location of utility networks (including vehicular and pedestrian traffic as a utility)?</p>	<p><i>transport hierarchy, with major arterial and strategic roads having the transport status as a higher priority than the utility sector. Decisions relating to use of the road corridor should optimise the benefit to the community it serves.</i></p> <p><i>The road corridor provides for through traffic and for access to adjoining properties, which also require the various utility services, which are currently contained in the corridor.</i></p> <p><i>NZUAG agrees it is not now possible or appropriate to consider that the purpose of the road corridor is solely for the movement of vehicular or pedestrian traffic. The road corridor is generally the most appropriate location for utility assets. Utilities have had right of access to the road corridor for many years and, as stated above, decisions on the use of the corridor should take account of the greatest benefit to the community it serves. In some cases this will lead to the corridor being dominated by a particular utility. In the case of major arterial and strategic routes this will be the road.</i></p> <p><i>It should be noted that in many cases, the road corridor was acquired at the expense of ratepayers and road users, and that utilities may need to contribute to the cost of that acquisition as part of their right of access into that corridor.</i></p> <p><i>Legislation no longer provides for compulsory acquisition of private land for utility services, and private landowners are in general unwilling to have utility services on their land other than for their own use. As an example, while it is most appropriate to locate many poles on the actual boundary between the road corridor and private property, there are problems of airspace to be resolved.</i></p>
<p>Notification of Affected Parties</p>	<p>Is there good reason for the legislative differences for required notification of affected parties?</p> <p>Should they be consistent?</p> <p>Should the RCA be required to notify affected parties and other utility operators of its intention to carry out works within the road corridor?</p>	<p>No.</p> <p>Yes.</p> <p>Yes.</p>

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	<p>Should the RCA or the Utility Operator be responsible for notifying affected parties?</p> <p>Should the RCA take on a coordination role and administer the notification process?</p>	<p><i>The organisation commissioning or undertaking the works.</i></p> <p><i>NZUAG believes there should be consistency in the requirements for notification of affected parties, both for utilities and for road controlling authorities. NZUAG seeks a robust process, without having it minutely detailed in legislation.</i></p> <p><i>NZUAG is conscious that the locations of many utilities are not precisely known, and this can create some problems. In some cases, it is not always clear which utilities are operating in which areas.</i></p> <p><i>However, in each area, it should be possible to have a centralised listing of utility operators who have services in that area, which would make it simpler for principals / contractors to notify affected parties of intention to undertake works in the road corridor. This would be a logical role for the local authority (as opposed to the RCA)</i></p>
Cost Sharing	<p>What problems have respondents experienced with cost sharing arrangements for utility work within the road corridor?</p> <p>Is there good reason for the legislative differences for cost sharing arrangements?</p> <p>Should the legislation be consistent?</p> <p>What solutions do respondents propose as providing the most balanced and effective outcome for resolving legislative inconsistency for cost sharing arrangements for utility work within the road corridor?</p> <p>What solutions do respondents propose for ensuring the fair apportionment of the true whole of life costs of utility works to the road asset?</p>	<p><i>NZUAG is concerned about the inconsistencies regarding cost sharing both in legislative terms and in actual implementation, and would support a more consistent regime. Any legislative solution should not preclude parties being able to agree alternative cost sharing formulae.</i></p> <p><i>NZUAG believes that the best way of improving cost sharing requirements would be to establish a working group representing all affected parties in the sector, in much the same way as Standards NZ develops its standards. The terms of reference for this group should be clear and the key task of the group should be to develop cost sharing arrangements that promote economically efficient outcomes in the best interests of the community and New Zealand Inc. The scope of this group's work should include cost apportionment across the life of utility assets, including the carriageway.</i></p> <p><i>NZUAG supports further analysis of the</i></p>

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<p>Definition and Application of Reasonable Conditions</p>	<p>That the provisions in s119 of the Telecommunications Act 2001 outlining the criteria for setting reasonable conditions be adopted by other utilities legislation.</p> <p>How can the interpretation and application of reasonable conditions be defined and tested?</p>	<p><i>impacts of cutting into the road surface on the life of the carriageway, including options for mitigating these impacts such as charging for the cost of reduction in the life of the asset.</i></p> <p><i>NZUAG supports the application of the provisions of Section 119(1) of the Telecommunications Act being applied to all utility sectors but not the application of Section 119(2). Sub-section 2 has the effect of negating the guidance given by the detailed clauses in sub-section 1.</i></p> <p><i>As noted in the Roadshare document “Network Utilities Within the Road Corridor: The Role of the Resource Management Act: A Guide to Best Practice”:</i></p> <p><i>“The section 119 criteria support the view that “reasonable conditions” imposed by road owners should be related to their operational and asset management role, rather than as part of some wider regulatory role. It is clear from the utilities statutes that the functions being exercised by a council or road controlling authority in imposing conditions should be related to their ownership or control of the road as an asset, and to the primary function of the road as a transport resource.”</i></p> <p><i>A particularly contentious issue is that of poles in the road corridor. NZUAG recognises the tension these create between utility operators and RCAs managing road safety. NZUAG considers that there needs to be a rigorous analysis of road crash data relating to poles in the road corridor in order to recommend pragmatic solutions in the best interests of NZ Inc. NZUAG intends working with Land Transport NZ as suggested during the recent seminars to advance this.</i></p> <p><i>NZUAG offers to develop further Guidelines on the issuing of reasonable conditions based on the clauses contained in Section 119(1) of the Telecommunications Act.</i></p>
<p>Dispute Provisions</p>	<p>Should mediation and arbitration be the primary means for dispute resolution?</p> <p>Should there be a prescribed timeframe for mediation and arbitration? If so, what should it be?</p>	<p><i>NZUAG supports mediation provisions, but notes that there is a risk with arbitration, as the parties in dispute do not have control over the final outcome, and other stakeholders do not receive the benefit of precedents to resolve future issues. NZUAG therefore</i></p>

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	<p>Is the District Court the appropriate body for final recourse? Should it be the Environment Court?</p>	<p><i>supports requiring parties to a dispute over the application of reasonable conditions or charges made to undertake mediation, but requests that arbitration should be undertaken only by mutual agreement.</i></p> <p><i>The use of District Court is seen as more appropriate than the Environment court for final recourse.</i></p>
<p>Access to Motorway and Rail Corridors</p>	<p>That utility operators' right of access as set out in the Electricity Act 1992 NOT be extended to include the rail corridor.</p> <p>That the Rail Access Provider's (ONTRACK) rail corridor access evaluation criteria be codified, published and made accessible to utilities.</p> <p>That utility operators' right of access as set out in the Electricity Act 1992 NOT be extended to include motorways.</p> <p>That Transit New Zealand's motorway access evaluation criteria be codified, published and made accessible to utilities.</p>	<p><i>The use of the rail corridor has been widely discussed during recent seminars. There are two issues for access: one to lay utility services along a rail corridor and the other gaining access across rail track to provide customer services on the other side. NZUAG acknowledges that there are some parts of the rail corridor where access for utilities along the corridor would not be appropriate for reasons of safety of the rail operation, but in other situations, utilities are already in the rail corridor, or the corridor is sufficiently wide that utilities could co-locate there without creating safety problems. Changes made should not adversely affect existing commercial arrangements for utilities with infrastructure already located in the rail corridor.</i></p> <p><i>The issue of access across the rail corridor (whether overhead or underground) is of concern to the NZUAG, and needs to be addressed. NZUAG strongly supports the recommendation that ONTRACK's access evaluation criteria be codified and published, subject to some external overview for its reasonableness. There is a history of unreasonableness in the past, including unacceptable delays in responding to requests for access to the rail corridor.. NZUAG offers its service to assist with this process.</i></p> <p><i>NZUAG supports maintaining the integrity of the motorway corridor.</i></p> <p><i>NZUAG strongly supports the recommendation that Transit's access evaluation criteria be codified and published, subject to some external review for its</i></p>

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	<p>Should the definitions of rail and/or motorway corridors be refined to differentiate the carriageway from the corridor?</p> <p>Should utility operators be permitted as-of-right access to the rail and/or motorway corridors (subject to reasonable conditions), BUT NOT to the "carriageways"?</p>	<p><i>reasonableness. As for rail, NZUAG offers its services for this task.</i></p> <p><i>NZUAG supports separating the definition of the rail right-of-way from the wider rail corridor, and the motorway carriageway from the wider corridor.</i></p> <p><i>NZUAG does not support any blanket prohibition of utility access to either rail or motorway corridors, as this is not seen in the overall national or community interest. The costs to utilities, and therefore to consumers, of major detours to avoid crossing rail / motorway corridors is an example where such interest needs to be taken into account.</i></p>
Interference and Hazards	<p>That s24 of the Electricity Act 1992 be amended to clarify the notification and imposition of reasonable conditions for the alteration of electrical characteristics of any works.</p> <p>What solutions do respondents consider would best improve the management of interference between utilities?</p> <p>What solutions do respondents consider would best improve the management of hazards to equipment and people from utility works within the road corridor?</p>	<p><i>NZUAG firstly seeks clarification of the term alteration of characteristics. NZUAG would prefer to prefer to have the legislation cover all utilities equally, as interference can occur in many ways. (For example, changes in currents and voltages can affect both telephone lines and gas pipes, and electricity lines are susceptible to interference from the increasingly sophisticated telecommunications equipment).</i></p> <p><i>NZUAG expects that each individual utility sector will advise of the specific instances of interferences, and NZUAG recommends that a working group be established to develop best practice and solutions where these do not already exist (eg NZCCPTS).</i></p> <p><i>NZUAG believes that if principal providers required contractors to comply with the Code of Practice for Working in the Road and audited performance accordingly, many of the problems around third party damage and poor re-instatements in the road corridor would disappear.</i></p>
Strategic Planning and Coordination of Utility Works within the Road	<p>Is there a real issue with current practices of allocating utility space within the road corridor that is posing a barrier to infrastructure development?</p> <p>What solutions do respondents propose as providing the most balanced and effective outcome for allocating utility space within the road corridor in a more effective, efficient,</p>	<p><i>NZUAG agrees that there are problems with allocating adequate space for utilities in the road corridor, and therefore that we need to provide more space or develop other options for the future.</i></p> <p><i>NZUAG recommends that legislation requires territorial authorities and Transit New Zealand to develop nationally consistent Corridor Management Plans using a comprehensive consultative process. If proper planning is</i></p>

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	<p>and fair manner?</p> <p>Should it be a legal requirement for RCAs to install utility ducts in all new road construction and road improvement programmes for utility operators to locate utilities?</p> <p>Should the RCA be the party responsible for managing utility space within the road corridor through District Plan provisions?</p> <p>Should the RCA be the party responsible for maintaining a coordinated registry of location of utility networks within the road corridor? If so, how could it be funded?</p> <p>Should an industry body be responsible for maintaining a central registry of location of utility networks within the road corridor? If so, how could it be funded?</p>	<p><i>undertaken, then many of the problems should dissipate.</i></p> <p><i>No. However it should be a requirement that RCA's invite utility operators to participate in new road corridors, but also to have the ability to decline, at their own risk.</i></p> <p><i>The District Plan process is a lengthy and cumbersome mechanism, and would not allow for the sometimes more immediate responses that are required when working in the road corridor. NZUAG prefers a more modest process for developing a Corridor Management Plan.</i></p> <p><i>NZUAG has been working with various parties on the location of utility networks in the road corridor. There are some significant issues, firstly of determining the exact locations, and secondly of keeping such a register up to date. There are also issues of liability if incorrect information is passed on. The concept is a good one, but further work is required. If such a system were implemented, NZUAG support a user-pays principle.</i></p> <p><i>In preference, NZUAG refers you back to its earlier recommendation that the territorial authority maintains a list of affected parties to be consulted before any proposed works are undertaken in the road corridor. It is then over to each utility owner to provide up to date information on the exact location of its assets.</i></p> <p><i>The problems of third party damage come more from principals and contractors not adhering to best practice, for which there are several guidelines available. Solutions include better contract monitoring, better inspection of road openings, and greater penalties for poor re-instatement. It may be timely to consider turning the Standards New Zealand Handbook 2002:2003 Working in the Road into a standard, rather than it remaining a guideline. This would be a minimum requirement, and would not prevent RCAs from adding their own requirements, but it would make clear the responsibilities of</i></p>

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	<p>Is it "reasonable" for RCAs to publish 2 year plans and "require" utilities to work only within the timeframes stipulated?</p> <p>That the Ministry support and encourage NZUAG as a facilitator, but that this NOT be extended to legislation.</p>	<p><i>principals (including road controlling authorities) to ensure that contractors working in the road corridor use best practice. NZUAG is working actively to encourage RCAs and utility operators to cite the Handbook in their contract documentation.</i></p> <p><i>At present, RCAs are required to have long term forward work programmes, although this is not widely known and understood. The RXCA has an incentive to share works programmes in their desire to maintain the integrity and life of the road carriageway and the commitment to advance road safety.</i></p> <p><i>NZUAG is aware that some utility providers do not have forward work programmes longer than 18 months. It is important that utility providers recognise the imperatives facing RCAs and work with them to reduce the negative impacts that utility roadworks can have on the life and integrity of a road carriageway. In order for utilities to respond promptly to customer needs for utility services, there will always be instances of unplanned works.</i></p> <p><i>The solution is to have established good working relationships between all the parties so that information is readily and easily exchanged, and parties work for the best solution for themselves and the communities they serve. NZUAG is actively encouraging councils and utilities to develop Partnering Agreements whereby these relationships are formalised to achieve win-win solutions.</i></p>

NZUAG appreciates the opportunity to participate in the review of utilities in the road corridor and further offers its services for the benefit of New Zealand, the sectors represented by members of the NZUAG and the communities they serve. The Group has already proved through robust debate and its commitment to the betterment of all organisations represented on the NZUAG that it is possible to resolve these issues in a practical and pragmatic manner. NZUAG would therefore appreciate having the opportunity to discuss with the Ministry on a confidential basis the conclusions reached by officials before these are formally put to Cabinet at the end of October. There is already a precedence for this with both DIA and MOT using the NZUAG as a sounding board in developing position papers for Cabinet.

NZUAG is also mindful that the delegates at the recent seminars are keen to follow up the discussions, and it offers to work with the Ministry again to run a workshop to update the wider sector on progress and details of the decisions when they are made by the Government.