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## **Submission on “Review of Issues Affecting Utilities and Road, Rail and Motorway Corridors”**

Submission to Ministry of Economic Development – August 2005

### **Introduction**

*The IPENZ (Institution of Professional Engineers NZ) Transportation Group has a membership of over 700 people who work in the fields of transportation, traffic management and road safety at all levels of responsibility. They are employed in various government departments, Regional Councils, District/City Councils, universities and in numerous consultancy firms and private practices. We represent a segment of considerable expertise in the fields of traffic and transportation and have a significant interest in managing the effects of transportation on society and in managing transport corridors.*

*This submission has been prepared from inputs by members following electronic consultation with the entire membership.*

### **General**

- a) The Transportation Group welcomes the opportunity to submit on this topic. The way in which our road corridors are managed is vital to the sustainability of New Zealand’s local and arterial land transport network.
- b) Road corridors have many functions. They provide frontage access to adjoining properties, space for pedestrian, cycle and vehicle movements and for utilities overhead and underground. As a corridor’s land transport function varies from local road to motorway the traffic requirements for efficient, safe movement must become dominant over the other activities in the corridor. Thus the use of the road for direct frontage access and the placement of utilities may be more constrained and even prohibited to preserve the longer distance or through traffic function of a route.
- c) While these matters are in part addressed through other legislation such as the Resource Management Act, Local Government, Land Transport Management and Transit New Zealand Acts it is in our view important that they are fully taken into account in the legislation relating to utility access to corridors. The Group is supportive of the excellent work that has been done by NZUAG in bringing Road Controlling Authorities (RCAs) and utility operators together and would look to legislation that supports that work.
- d) The remainder of this submission follows the order in the Discussion Paper and comments on each of the proposals and questions

Issues	Proposals and Questions to Consider
Legislative Consistency	<p data-bbox="683 360 1385 483">A legislative regime providing a more efficient, coherent, and pragmatic framework for the relationship between utilities and road controlling authorities.</p> <p data-bbox="655 517 1171 546"><i>Comment: This objective is supported</i></p> <p data-bbox="683 633 1406 757">Should legislative consistency be achieved through amendment of current utilities legislation OR the creation of an all-encompassing specific utilities statute?</p> <p data-bbox="655 790 1426 848"><i>Comment: Amendment would seem to be a practical and preferred way to achieve the desired results.</i></p>
Defining a "Road"	<p data-bbox="683 949 1406 1075">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 data-bbox="655 1108 1426 1167"><i>Comment: Supported – will correct an aberration that was obviously not anticipated when the Act was drafted</i></p> <p data-bbox="683 1254 1390 1350">Call for submissions outlining the extent of any disputes over rights to "public places" as claimed within the definition of road.</p> <p data-bbox="655 1384 836 1413"><i>No Comment</i></p> <p data-bbox="683 1500 1414 1626">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 data-bbox="655 1659 1426 2007"><i>Comment: Not supported. Substantial legislation is in place dealing with the funding, management and operation of the land transport network and this has been reviewed and revised recently. We see no advantage in attempting to recast this into a utilities framework. Although in a semantic sense a road is a utility, it is much more than, it is universally available to all the public, at all times of day and night, it provides universal and free access as a public good, and contributes to the visual character, environment and amenity value for all users and adjoining properties.</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>Comment: The Principal role of the road corridor is to act as the common definition of a road – to provide for the movement of people and goods- with an incidental role as a utility corridor, where this is compatible with the Principal role. It is noted that Territorial Local Authorities and Transit NZ are Requiring Authorities under s166 of the Resource Management Act and where they have designated the road reserve will have control and can coordinate utility services requirements</i></p> <p><i>There are other mechanisms available to Territorial Local Authorities in the Resource Management Act. Some Councils have a road zone where locations can be identified for utilities as permitted uses with other locations being discretionary or prohibited.</i></p>
Notification of Affected Parties	<p>Is there good reason for the legislative differences for required notification of affected parties?</p> <p>Should they be consistent?</p> <p><i>Comment : Not aware of reasons for historic differences, but do support consistency of process. We understand that local coordination arrangements which are generally organised by Councils (RCAs) are effective and they support the Code of Practice approach developed by the NZUAG</i></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><i>Comment : Yes. See above. We note that this process should include land drainage ditches, water races and irrigation races which in some cases are operated by bodies other than Councils.</i></p> <p><i>It should be noted that for significant works proposed by Councils the Annual Plan process provides early notification of the Council's plans and the opportunity for submission. We do not suggest that this should be the only notification process and there remains the need for good ongoing liaison by Councils with all utilities as plans proceed.</i></p>

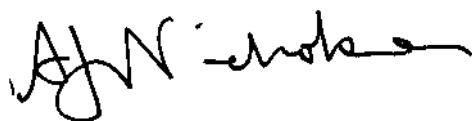
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	<p>Should the RCA or the Utility Operator be responsible for notifying affected parties?</p> <p>Should the RCA take on a coordination role and administer the notification process?</p> <p><i>Comment: The RCA should have an overview role, in addition to its responsibility for its own infrastructural assets and may extend that to mapping as a separate GIS layer. However it is important that individual utility owners retain responsibility for verifying the location of their services and initiating the notification process.</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>Comment: We would advocate for any charging system to be consistent across the various utilities (which is not currently the case) and kept simple. This is a national issue and all utility authorities and RCAs (including Transit) should be party to an agreed arrangement.</i></p>
Definition and Application of Reasonable Conditions	<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><i>Comment: The criteria are supported, in particular the first "the safe and efficient flow of traffic (whether pedestrian or vehicular)".</i></p> <p><i>It is the strong view of the Group that this criteria should provide for the setting of conditions that require roadside poles or pylons for overhead utility networks to be sited so as to minimise the vehicular safety problems associated with vehicles leaving the carriageway and crashina into these solid objects with often catastrophic</i></p>

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	<p><i>results to vehicle occupants and disruptions to utility services.</i></p> <p><i>In some locations poles could be prohibited altogether for safety reasons (nullifying as-at-right access). We suggest that the right of access in the Electricity Act 1992 (s24) for works on the surface of the road and any similar provisions in other Acts be modified accordingly. Provision for access for works constructed under the road could remain at such locations.</i></p> <p><i>In many instances the most desirable location for the pole is on the property boundary but this requires authorisation of the overhang of cross arms and wires into the airspace of adjoining property. This is a matter which the Group would urge further consideration with the view of the right to use airspace being included in legislation.</i></p> <p><i>The Group also has the concerns about the safe siting of roadside drains and water races and would expect strong safety related conditions to be imposed on any proposals for changes to these networks, with piping an option in some situations.</i></p> <p>How can the interpretation and application of reasonable conditions be defined and tested?</p> <p><i>Comment: While it will always be possible for an aggrieved party to test a condition legally, the preferable route is for there to be greater clarity developed through the ongoing work of NZUAG.</i></p>
Dispute Provisions	<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>Is the District Court the appropriate body for final recourse? Should it be the Environment Court?</p> <p><i>Comment: The Group supports mediation as the initial means of resolution of disputes on "reasonable conditions" with the Environment Court as the ultimate authority – as that body has a good understanding of community, roading and road safety issues and also has experience in issues of cost and compensation.</i></p>
Access to Motorway and Rail Corridors	<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><i>Comment: Agree. As we suggest for road corridors there will be parts of the rail corridor where for safety</i></p>

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	<p><i>reasons it would not be appropriate for utility operators to have access as of right.</i></p> <p>That the Rail Access Provider's (ONTRACK) rail corridor access evaluation criteria be codified, published and made accessible to utilities.</p> <p><i>Comment: Agree</i></p> <p>That utility operators' right of access as set out in the Electricity Act 1992 NOT be extended to include motorways.</p> <p><i>Comment: Agree – This is the highest level in the hierarchy of the road network and therefore at most need of protection.</i></p> <p>That Transit New Zealand's motorway access evaluation criteria be codified, published and made accessible to utilities.</p> <p><i>Comment: Agree – and that similar criteria be developed and published for Arterial Roads, which will often have similar characteristics of traffic volume, speed and safety requirements to Motorways.</i></p> <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>Comment: Not supported. While this suggestion deals with damage to the running surface of the motorway it does not allow for future construction of additional lanes, run-off accidents where hazard zones could be occupied by poles or other structures, and for the problems of utility operators requiring emergency access to their network from the carriageway</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</p>

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	<p>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>Comment: No views on the first two proposals. On the third the established temporary traffic management regime (COPTTM) administered by the RCA should apply with suitably qualified personnel and continued emphasis on training and qualifications for site personnel, such as Traffic Controller and Site Traffic Management Supervisor.</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, 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>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>Comment: This is an area where prescriptive solutions may not suit all situations and the Group would support the continuation of NZUAG's role as a facilitator.</i></p>

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	<p><i>together with RCAs promoting coordination initiatives with their local utilities rather than introducing new legal requirements.</i></p> <p><i>It should be noted that some RCAs (e.g. Transit NZ and Department of Conservation) do not have a District Plan directly available to it for managing utility space and must rely on other mechanisms.</i></p>



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