Infrastructure Bill

Government Bill

Explanatory note

General policy statement

This is an omnibus Bill. It proposes substantive amendments to 8 Acts and the repeal of 1 Act. It is intended that the Bill will be divided at the committee of the whole House stage into 2 Bills, with Part 1 and the Schedule becoming the Utilities Access Bill, and Parts 2 to 4 remaining as the Infrastructure Bill.

The Bill is being introduced under Standing Order 259(c). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced with the agreement of the Business Committee. That approval has been given.

The development of infrastructure is central to lifting New Zealand's national productivity and improving New Zealand's future economic growth. Improving the consistency of regulatory arrangements for infrastructure development, streamlining governance arrangements, and removing regulatory barriers all contribute to improving the timeliness of infrastructure provision and reducing the cost of infrastructure development.

The purpose of this Bill is to progress a broad suite of amendments, across several Acts, to facilitate infrastructure development by removing unnecessary barriers and improving the consistency of regulatory arrangements.

Parts 1 and 2 improve the arrangements for managing access by utility operators (electricity, gas, telecommunications, water, and wastewater) to transport corridors (roads, railways, and motorways). Inconsistencies or gaps in legislation and industry practice are resulting in inefficiencies, uncertainty, and disputes, leading to associated higher costs and delays.

Part 1 establishes a framework for a national code of practice governing how utility operators and corridor managers co-ordinate their activities (the **Code**). The Part imposes an obligation on all utility operators and corridor managers to comply with the Code, unless parties otherwise agree. This obligation is backed by the ability of a court to order compliance with the Code, and to impose a fine if that court order is not complied with.

A draft Code can be prepared by any person, so as to allow industry participants to develop it and own the result, but it must meet certain requirements before it can be approved by the Minister. A Code approved by the Minister will be a deemed regulation. Its detailed subject matter requires flexibility and expertise. However, the power to make the deemed regulation is tightly defined and the processes for approving a Code are clearly laid out. The Code must reflect broad agreement between stakeholders. It must contain the method by which any statutory criteria are to be applied, and operational and dispute resolution processes. In case there is no Code that meets the requirements for approval, the Part also includes a regulation-making power that allows the Minister to issue a Code in the form of regulations in place of an approved Code that is issued as a deemed regulation.

Part 2 amends 6 Acts. Amendments to the Telecommunications Act 2001, the Electricity Act 1992, the Gas Act 1992, and the Local Government Act 1974 provide for consistent provisions across the Acts around reasonable conditions of access to the corridors, allocation of costs when utility operators are required to move assets, and time periods for notification and response. Amendments to the Railways Act 2005 and the Government Roading Powers Act 1989 provide for time frames for responding to requests for access to rail corridors and motorways, and require controlling authorities to publish criteria on which they will base their decisions to grant access.

Part 3 amends the New Zealand Railways Corporation Act 1981 to remove some of the statutory restrictions that negatively affect the

running of the New Zealand Railway Corporation's (**NZRC**) business. These changes include normalising the appointment and dismissal of directors, changing the number of directors who can call a meeting to a simple majority, establishing the power to appoint a deputy chairperson, and streamlining arrangements for changes to NZRC's capital. It also removes the requirement to annually provide the Minister with a programme of capital works, removes the limit on how much NZRC can expend in one year and permits NZRC to effect insurance cover for or give an indemnity to a director or employee. These amendments are consistent with equivalent provisions in the Crown Entities Act 2004.

Part 4 repeals the Affordable Housing: Enabling Territorial Authorities Act 2008 (the **AHETA Act**). The AHETA Act was intended to provide councils with the regulatory tools to address problems of housing affordability in their district. Many developers and territorial authorities have raised concerns that the Act is counter-productive and likely to reduce, rather than increase, the supply of affordable housing. The processes create regulatory barriers that contradict Government initiatives to reduce regulatory barriers and compliance costs. However, to address the growing obstacle that restrictive covenants represent to social housing within newly developed communities, a modified version of the prohibition on certain restrictive covenants, currently contained in section 30 of the AHETA Act, is being inserted into the Property Law Act 2007. The modification is that the new section applies only to covenants relating to "social housing", and not also to "affordable housing" (as those terms are defined in the AHETA Act).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Utility access

It is intended that *Part 1* and the *Schedule* will be divided from the Bill at the committee of the whole House stage and will be enacted as a new **Utilities Access Act 2009**.

Clause 3 lists the purpose of the Part, which is to—

- require utility operators and corridor managers to comply with a national code of practice (the **Code**) that regulates access to transport corridors; and
- provide for the making and administration of the Code.

Clause 4 contains definitions for the purposes of the Part. The key ones are Code, corridor manager, transport corridor, and utility operator. The term transport corridor includes all roads (which includes State highways and Government roads), along with motorways and railway lines.

Clause 5 provides that the Part binds the Crown.

Obligation to comply with Code

Clause 6 sets out the obligations of utility operators and corridor managers to comply with the Code. The basic obligation is to co-ordinate work done in transport corridors by complying with the processes and rules in the Code. In addition, parties must use any dispute resolution procedures in the Code before seeking to enforce the Code through the courts under *clause 7*. Corridor managers are obliged to comply with the Code when setting reasonable conditions for access. (The right to impose reasonable conditions is given under other Acts, such as the Telecommunications Act 2001 and the Electricity Act 1992.) Utility operators must comply with the Code when actually working within transport corridors, unless doing so would be inconsistent with an enactment or standard, or unless non-compliance is agreed to by all affected parties. If there is no Code in force, this section does not apply.

Clause 7 gives utility operators and corridor managers the right to go to the District Court to seek an order that another utility operator or corridor manager must do something required by, or consistent with, the Code, or refrain from doing anything that is prohibited by, or inconsistent with, the Code. This is the provision that allows those affected by the Code to enforce its provisions. When considering whether to make an order, the court may take into account the practicality and cost of alternative ways of achieving the same outcomes as compliance with the Code would achieve.

Clause 8 makes it an offence to fail to comply with an order made by the District Court under *clause 7*. The court may or may not have

required strict compliance with the Code; the offence is about complying with the order, not about complying with the Code.

Nature of Code

Clause 9 gives the purpose of the Code, which is to ensure that access to transport corridors is managed in a way that—

- maximises the benefit to the public while ensuring that utility operators are treated fairly; and
- ensures disruptions to transport corridors are kept to a minimum, while ensuring public safety; and
- provides a nationally consistent approach to managing access to transport corridors.

Clause 10 sets out the requirements for the content of the Code. It lists a range of principles, processes, rules, etc, that must be included in the Code, and identifies additional matters that may be included.

How Code made and administered

Clause 11 provides that any person may prepare a draft Code and submit it to the Minister for approval, subject to consultation requirements. The clause is deliberately non-prescriptive, to allow a draft Code to be developed in whatever way will best meet the needs of those who will be subject to it.

Clause 12 provides for the Minister to approve a draft code and give notice of it. The Minister must be satisfied that the draft will achieve the purposes of the Code, adequately addresses the matters required to be contained in the Code, has been consulted upon, is broadly agreed to by corridor managers and utility operators, and reflects a balance between the interests of corridor managers and utility operators.

Clause 13 provides that a draft code approved by the Minister takes effect as the Code on the date specified in a *Gazette* notice.

Clause 14 is about publication of the Code. It must be published on a publicly available Internet site and be available for purchase in hard copy.

Clause 15 provides that the Code is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (which means it must be presented to the House of Representatives, is subject to scrutiny by

the Regulations Review Committee, and is subject to disallowance), but is not a regulation for the purposes of the Acts and Regulations Publications Act 1989 (which means it does not have to be drafted by the Parliamentary Counsel Office or be published in the Statutory Regulations Series).

Clause 16 provides for amendment of the Code. Amendments to the Code are made by a similar process to that which applies when making an original Code.

Clause 17 provides that the Minister may cancel the Code if he or she considers that it no longer adequately reflects the balance of interests between corridor managers and utility operators, or is not achieving its purpose, or that there are significant concerns about it and resolution of the issues seems unlikely.

Regulations in place of Code

Clause 18 provides that regulations can be made regulating access to transport corridors. Regulations can only be made if no Code approved under *clause 12* is in force, or if an existing Code is, or is likely to be, cancelled. Making regulations is a fall-back if an industry-developed Code is not effective in achieving better management of access to transport corridors. The regulations would have the same purpose as a Code approved under *clause 12*, and would have to include the same sort of principles, processes, rules, etc. References in the Act to the Code would be treated as a reference to regulations (*see* the definition of Code in *clause 4*). The *Schedule* sets out provisions applying to any material incorporated by reference into regulations made under this provision.

Part 2
Amendments relating to utility access to transport corridors

Clause 19 provides that the purpose of this Part is to amend a variety of Acts relating to utility operators' access to transport corridors in order to achieve greater certainty and consistency in the rights and obligations of utility operators and corridor managers.

Amendments to Telecommunications Act 2001

Clause 20 provides that *clauses 21 to 28* amend the Telecommunications Act 2001 (the **Act**).

Clause 21 amends section 119 of the Act. Under sections 135 and 142 of the Act, network operators have rights to construct and repair lines and other telecommunications works on roads, subject to reasonable conditions imposed by the relevant local authority or other person who has jurisdiction over the road (**road authority**). Section 119 lists matters that the road authority may consider when setting those reasonable conditions. The amendment clarifies that conditions requiring an increase in amenity values can only be imposed in certain circumstances, and that any additional costs incurred in increasing amenity values must be borne by the road authority.

Clause 22 amends section 136 of the Act. That section requires network operators to give notice to a road authority if the network operator intends to break open a road for the purpose of exercising its rights under section 135. The amendment extends the notice requirement so that notice must also be given to other utility operators whose pipes, lines, etc, will or are likely to be affected by the proposed work.

Clause 23 amends section 137 of the Act by decreasing from 20 to 15 the number of working days' notice required for a notice given under section 136. This is for consistency with the period of notice currently required for equivalent notices under the Electricity Act 1992 and Gas Act 1992.

Clause 24 consequentially amends section 138 of the Act for consistency with the amendment made by *clause 23*.

Clause 25 amends section 142 of the Act. That section requires network operators to give notice to road authorities of an intention to place a cabinet or appliance on the road. The amendment extends the notice requirement so that notice must also be given to other utility operators whose pipes, lines, etc, will or are likely to be affected by the proposed work.

Clause 26 amends section 143 of the Act by decreasing from 20 to 15 the number of working days' notice required for a notice under section 142. This is for consistency with the period of notice currently required for equivalent notices under the Electricity Act 1992 and the Gas Act 1992.

Clause 27 consequentially amends section 144 of the Act for consistency with the amendment by *clause 26*.

Clause 28 inserts a new heading and *new sections 147A to 147C* into the Act. These provisions deal with what happens when a road authority requires a network operator to alter the position of the network operator's lines, etc. The provisions repeat sections 33 and 34 of the Electricity Act 1992 and sections 34 and 35 of the Gas Act 1992. The same regime will therefore apply to telecommunications utilities as applies to electricity and gas utilities.

Amendment to Electricity Act 1992

Clause 30 inserts into the Electricity Act 1992 a provision that is the equivalent of section 119 of the Telecommunications Act 2001, as that section is amended by *clause 21*. The section sets out criteria that a road authority may consider when setting reasonable conditions on access to roads by electricity operators.

Amendment to Gas Act 1992

Clause 32 inserts into the Gas Act 1992 a provision that is the equivalent of section 119 of the Telecommunications Act 2001, as that section is amended by *clause 21*. The section sets out criteria that a road authority may consider when setting reasonable conditions on access to roads by gas operators.

Amendments to Government Roading Powers Act 1989

Clause 33 provides that *clauses 34 to 37* amend the Government Roading Powers Act 1989 (formerly the Transit New Zealand Act 1989) (the **Act**).

Clause 34 amends section 48 of the Act. Subsection (3) of that section gives the Minister of Transport a range of powers necessary to construct and maintain roads under the Minister's control. The amendment inserts a requirement that the Minister must give 10 working days' notice to utility operators before commencing work that will or is likely to interfere with their pipes, lines, etc. A similar requirement is being imposed on other road authorities by amendments made in *clauses 37 and 39*.

Clause 35 amends section 52 of the Act. That section provides that road authorities must not start work on State highways without the consent of the New Zealand Transport Agency (the **Agency**), or on Government roads without the consent of the Minister of Transport, or on any road under the control of a local authority without the consent of the local authority. The consent may be given subject to conditions. The amendment to this section requires the Agency and the Minister to publish criteria that they will apply when considering applications for access.

Clause 36 amends section 61 of the Act. That section relates to the powers of the Agency in relation to State highways. Subsection (4) gives the Agency a range of powers to construct and maintain State highways, similar to those given by section 48 with respect to roads under the Minister's control. This amendment inserts a requirement that the Agency must give 10 working days' notice to utility operators before commencing work that will or is likely to interfere with their pipes, lines, etc.

Clause 37 inserts a *new section 77A* into the group of provisions in the Act dealing with access to motorways. The new section inserts a requirement that the Agency must respond within 30 days to requests by local authorities or owners of pipes, lines, etc, for access to the motorway transport corridor.

Amendment to Railways Act 2005

Clause 38 amends section 75 of the Railways Act 2005, which is about access to the rail transport corridor. The amendment requires that licensed access providers and railway premises owners must publish the criteria that they will apply when considering requests by local authorities or the owners of pipes, lines, etc, for access to the rail corridor. The person receiving the request must respond in writing within 30 working days.

Amendment to Local Government Act 1974

Clause 39 amends section 319 of the Local Government Act 1974. That section gives local councils a range of powers with respect to roads. The amendment inserts a requirement that councils must give 10 working days' notice to utility operators before commencing work that will or is likely to interfere with their pipes, lines, etc.

Transitional provision

Clause 40 is an avoidance of doubt provision to confirm that none of the amendments made in this Part are intended to apply to or affect anything already settled. The amendments are to have prospective effect only.

Part 3
Amendments relating to New Zealand Railways Corporation

Clause 41 provides that *Part 3* amends the New Zealand Railways Corporation Act 1981 (the **Act**).

Clause 42 amends section 2(1) of the Act by replacing the definition of Minister with a standard definition, which complements the repeal of section 3 of the Act.

Clause 43 repeals section 3 of the Act, which provided for the appointment of a Minister of Railways, and makes 3 consequential amendments.

Clause 44 amends section 4 of the Act by—

- providing for a deputy chairperson for the New Zealand Railways Corporation (the **Corporation**) (in a manner consistent with the Crown Entities Act 2004):
- changing references to "Chairman" to "chairperson":
- providing that directors may be removed from office entirely at the discretion of the Minister and the Minister of Finance. This brings the removal provisions into line with those in section 36(1) of the Crown Entities Act 2004:
- repealing a provision about filling vacancies among directors.

Clause 45 amends section 6 of the Act by—

- inserting references to the deputy chairperson:
- providing that a majority of the directors (rather than 4, as at present) may call a meeting of directors.

Clause 46 inserts a *new section 7A* into the Act. It allows the Corporation to—

- indemnify directors and employees, on the same basis as indemnification can be provided to members and employees of Crown entities under the Crown Entities Act 2004:

- effect insurance for directors and employees, again on the same basis as it could be provided under the Crown Entities Act 2004.

Clause 47 amends subsections (3) and (4) of section 36 of the Act, which currently provide that the capital of the Corporation may be increased or decreased only by an Order in Council. Under the amendments, the capital will be able to be increased or decreased by the Minister of Finance by notice in the *Gazette*.

Clause 48 repeals sections 40 and 41 of the Act. Section 41 currently requires the Corporation to provide the Minister each year with a programme of capital works, and prohibits the Corporation from undertaking capital expenditure in excess of an amount determined by the Minister of Finance. Section 41 currently prohibits the Corporation from spending more than $5,000 on purposes not authorised by this or any other Act.

Part 4
Amendments relating to affordable housing

Repeal of Affordable Housing: Enabling Territorial Authorities Act 2008

Clause 49 repeals the Affordable Housing: Enabling Territorial Authorities Act 2008.

Clauses 50 to 53 consequentially amend a number of Acts to omit provisions that were inserted into them by the Affordable Housing: Enabling Territorial Authorities Act 2008.

Amendment of Property Law Act 2007

Clause 54 amends the Property Law Act 2007 by inserting into it a *new section 277A*. This repeats, in part, section 30 of the Affordable Housing: Enabling Territorial Authorities Act 2008. That section currently provides that a covenant over land is void if it has a purpose of stopping the provision of "affordable housing" or "social housing" (which are defined in that Act). The amendment to the Property Law Act 2007 carries forward this provision as far as it relates to social housing. Covenants preventing affordable housing or social housing that were entered into while the Affordable Housing: Enabling Territorial Authorities Act 2008 was in force remain void (by operation

of section 17(1) of the Interpretation Act 1999). When *new section 277A* of the Property Law Act 2007 comes into force, covenants preventing social housing will be void under that section.

Regulatory impact statement
Utilities access

This regulatory impact statement was finalised on 22 May 2007 and was considered by Cabinet on 4 December 2007.

Executive summary

When utility operators exercise their statutory right of access to roads, they allege inconsistent application of "reasonable conditions" by local authorities; in turn, local authorities allege poor quality reinstatement of roads by utility operators. Other disquiet arises from inconsistencies in utility statutes creating advantages for some operators. The preferred option is to make utility legislation consistent where appropriate and to provide a legislated process to give legal status to a stakeholder-created code for managing access to roads, motorways, and rail corridors, and a regulated code if considered necessary. The impacts of legislative change are that some parties will face increased compliance and resource costs, but greater benefits arise from the more certain regulatory environment for investment decisions, and the improvement in the management and co-ordination of utility works in roads, rail, and motorways. The process of engagement between stakeholders in agreeing a code of practice should produce better outcomes for all parties.

Adequacy statement

The Ministry of Economic Development (**MED**) confirms that the proposal complies with the Code of Good Regulatory Practice. MED has assessed the regulatory impact analysis and regulatory impact statement and considers both to be adequate. The discussion document was not required to comply with the RIA requirements as it was disseminated prior to April 2007.

Status quo and problem

Legislative provision for the access to road, rail, and motorway corridors by utility operators (electricity, telecommunications, water,

sewerage, drains, and gas) is inconsistent across statutes. Inconsistencies include the notification requirements prior to works commencing (different periods, notification responsibilities, and processes); the allocation of costs when installations are moved; and the criteria for setting "reasonable conditions" on the works by those with jurisdiction over the transport corridor.

Utility operators have a statutory right of access to roads (subject to "reasonable conditions"). The 75 local authorities have established differing requirements for works in the road, resulting in increased costs and uncertainty of compliance for regional and national utility operators. There is some voluntary use of a code of practice that improves the understanding of process and conditions between some utility operators and local authorities, but there is more than 1 code and many areas do not use one at all. Some utility operators are empowered to impose "reasonable conditions" on the proposed works of other utility operators in the vicinity, creating the risk of anti-competitive practices. Utility operators do not have a right of access to motorway or rail corridors, but can request it. They describe that considerations are delayed and costly and that there is insufficient access granted.

The Land Transport Management Act 2003 has as its objective an "integrated, safe, responsive, and sustainable land transport system". The Ministry of Transport advises that the current level of fatal and serious injuries as a result of hitting a roadside hazard (eg, a tree, ditch, or pole) is not acceptable (50% of rural and 27% of urban crashes involve a roadside hazard or obstacle). When local authorities wish to change the location of, for example, a utility pole that is considered a hazard or need to move utility assets in the road (because the road has been realigned), there are issues arising from the costs of this.

The Local Government Act 2002 (**LGA**) requires councils "to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future" (section 10), but utility operators allege that councils are setting "unreasonable" access conditions based on amenity criteria that councils consider align with their LGA objective. There is contention over the increased cost that, for example, placing assets underground imposes on utility companies.

The volume of utility works is considerable. For example, the Auckland region processes around 8 000 requests per year. Local Government New Zealand's high-level estimate of the national cost of road rework and repairs associated with utility works is $40 million per annum ($30 million in direct repairs and $10 million in lost service potential due to utility works reducing the life of the affected road surface by up to 33%).

Government action is necessary to make legislation consistent where appropriate and to enable a statutory process for the approval, administration, amendment, and notification of a stakeholder-developed code of practice.

Objectives

The public policy objectives are—

- to reduce the costs and inefficiencies arising from the current statutory framework, including avoidable damage to roads and utility networks, delays and disputes, inconsistencies between statutes, and poor co-ordination:
- to provide for better management of the multi-use of road corridors in the public interest, including road safety, and balance the provision of utility services with efficient transport and universal access to roads:
- to provide the potential for increased utility access to rail and motorway corridors while recognising the transport and safety responsibilities of the New Zealand Transport Agency, and the transport, safety, and business interests of ONTRACK.

Alternative options

There is no alternative option put forward at this time as this paper is the result of further development of a policy position that was approved in principle, subject to further development and report back, on 30 April 2007 (CAB 06 17/27 refers).

Preferred option

This option is to amend legislation to create consistency where appropriate and to create a legislated process for ministerial approval for stakeholder-developed codes of practice and back-stop regulation-making power for a national code.

Proposed amendments to existing provisions include—

- replicating the cost-share provision outlined in the Electricity Act 1992 and Gas Act 1992 in the Telecommunications Act 2001:
- introducing consistent notification requirements across all utility operators, including the notification of proposed road controlling authority road works to the utility operator, with the time for reply to notification to be a maximum of 15 working days:
- removing the ability of utility operators to impose conditions on other utility operators (they can advise).

Proposed new elements of the regulatory framework include—

- a mechanism for the Minister of Economic Development, in consultation with the Minister of Transport and the Minister of Local Government, to approve, administer, amend, and notify a code of practice for utility operators' access to transport corridors that have been developed and agreed to by stakeholders. A code of practice would have some mandatory requirements for process and content:
- empowering provisions to create a regulated code of practice should stakeholders fail to develop their own code:
- ONTRACK and the New Zealand Transport Agency to have a statutory obligation to process utility operators' applications for access to motorway and rail corridors according to prescribed time frames and to publish their access evaluation criteria.

Preferred option: costs and benefits

Benefits outweigh costs by an order of magnitude, $10–$100 million to $1–$10 million, ie, potentially 10:1.

This is detailed below.

Government

There will be administrative costs as follows for the Ministries of Economic Development and Transport and the Department of Inter-

nal Affairs to examine and approve a code of practice, or to create a code of practice:

- Ministry of Economic Development: analysis of code, industry consultation and processing (0.5 FTE), $75,000 per annum:
- advertising and publishing code, $20,000 per annum:
- specialised technical advice relating to code, $40,000 per annum:
- Department of Internal Affairs: analysis of code and consultation, (0.25 FTE) $37,500 per annum:
- total per annum, $0.210 million.

The volume of applications to the New Zealand Transport Agency for access to motorway corridors could be expected to increase, with associated resource demands. The inclusion of a notification of impending works requirement and statutory response time limit will also increase resource demands. Cost $0.3 million per annum.

ONTRACK already processes applications for access and placement of assets in the rail corridor, but to process them in accordance with new statutory time frames will have a resource impact. Costs would be recoverable from applicants.

With the removal of the applicability of section 54 of the Government Roading Powers Act 1989 to telecommunications, there will be increased asset relocation costs to the New Zealand Transport Agency. However, these are still a small percentage (less that 5%) of the overall costs for a road realignment project. Cost $1 million per annum.

Local Government

A change to legislation to require all 75 local authorities to notify other parties of their significant works and to have a time period for receipt of advised conditions will create additional resource costs. Cost $1 million.

Costs of imposing conditions of access that create additional amenity value of an area. Cost variable depending on each local authority's plans.

Resource costs for stakeholder-developed code of practice. Cost $0.3 million.

Reduction in reinstatement costs across the whole country. Benefit $1 million.

Utility operators

The move to greater consistency and certainty in how local authorities manage utility operators' access to roads by the use of an approved code should reduce utility operators' compliance costs. Benefit $1 million.

There will be a reduction in the costs of redoing reinstatement of the roads if there is better co-operation through the code of practice to renew surfaces as required. As an example, a given 34% failure rate for 650 km of road would cost around $55 million to put right at $250,000 per lane km (t 0.34 × 650 × 250000 = $55.25 million). If by the use of a code of practice the reinstatement costs are reduced by 50%, then the benefit (avoided cost of redoing the road once done) is roughly $25 million. Benefit $10 million.

Other benefits accrue to society due, for example, to less vehicle wear and tear and less need for roadworks for reinstatement (counted under "society").

The benefits of additional notification from local authorities should be to reduce the avoidable damage to utility networks of asset strikes when the local authorities undertake roadworks. (Note that this does not imply that the only third party damage is by local authorities on utility infrastructure—often it is one utility operator to another, and notification requirements already exist between these.) Benefit $1 million.

Resource costs for process to agree codes of practice. Cost $0.3 million.

Society

Society benefits both from an improvement (ie, reduction) in time costs due to roadworks because of construction and reinstatement and the efficient roll-out of infrastructure. Benefit $30 million.

Total impact and net benefit

Total impacts considering all utility operators, one local authority (Auckland), the New Zealand Transport Agency, and all society = $36 million per year (total benefits $33 million (magnitude $10–100 million); total costs $3 million (magnitude $1–10 million).

Implementation and review

The Utilities Access Bill is proposed as a category 4 on the legislative programme for 2008. The amendments will come into force during 2009. This would be the start date by which the stakeholder-developed code of practice could be legal and enforceable. The MED will continue to be in contact with the New Zealand Utilities Advisory Group (**NZUAG**) to determine the extent of progress on the stakeholder-developed code. A draft code is anticipated by December 2007.

Consultation

Stakeholder consultation

This round of stakeholder engagement followed on from significant consultation that created the initial position paper in October 2006. MED presented a discussion paper that developed the policy framework of the position paper (in effect a "possible next steps") at a forum jointly hosted by the 2 major stakeholder groups, Local Government New Zealand (**LGNZ**), and NZUAG. This forum was attended by over 150 representatives of local authorities, government agencies, and utility operators. Feedback was invited and 40 responses were received: 19 district councils, 4 city councils, Auckland territorial authorities (as 1 group), Auckland Regional Transport Authority, New Zealand Transport Agency, ONTRACK, Telstra, Telecom, 4 lines companies (Vector, Powerco, Orion, and Delta Services for Aurora Energy), NZUAG, LGNZ, 2 industry groups (Electricity Networks Association and Electrical Engineers Association), and 3 private individuals. There were no responses from water companies.

The issues raised through this most recent engagement round meant that the initially proposed policy framework was revised. The proposal for the statutory responsibility for an explicit governance role of local authorities was clearly not supported. Stakeholders have been co-operating on developing a code of practice as the solution to address the policy problem. Representatives from Auckland territorial authorities, New Zealand Transport Agency, ONTRACK, the Gas Association of NZ Inc, the Electricity Networks Association, the Electricity Engineers Association, the Telecommunications Carriers Forum, LGNZ, and NZUAG have been meeting and working together on the issues to be addressed. Since the further discussion

paper in February 2007, momentum has increased and the stakeholder-developed final draft of the code of practice is expected to be produced by December 2007. Wider stakeholder engagement is signalled for February 2008, initiated by NZUAG.

Government departments and agencies consultation

An officials review group consisting primarily of the Ministry of Economic Development, Ministry of Transport, and Department of Internal Affairs provided a relevant across-government perspective. The Ministry of Transport maintained contact with the New Zealand Transport Agency and ONTRACK. The Ministry for the Environment was informed (as there are links with their work on the Proposed National Environmental Standards for Telecommunications Facilities), as was Treasury.

Regulatory impact statement
Affordable housing

This regulatory impact statement was finalised on 15 June 2009 and was considered by Cabinet on 29 June 2009.

Executive summary

Affordable housing is an issue of national importance, particularly in areas such as Auckland and other high growth regions in New Zealand where low and moderate income households face high housing costs. Affordable housing is defined as housing for low to moderate income and asset households at prices so that the household is able to meet its housing and other essential basic living costs.

The New Zealand Housing Strategy 2005 indicated that new regulatory tools had the potential to increase the supply of affordable housing. In response, the Affordable Housing: Enabling Territorial Authorities Act 2008 (the **Act**) was developed with the intention of addressing concerns about declining housing affordability. This legislation provided territorial authorities with new powers to increase the supply of affordable housing.

Under the Act, territorial authorities can require from developers a contribution of either money, land, houses, or a mix of these towards affordable housing. In return, councils can provide incentives to help

off-set costs borne by those developers required to make an affordable housing contribution. Possible incentives include reduced development contributions, density bonuses, rates remissions or postponements, or other financial assistance.

International and national evidence demonstrates that the regulatory powers in the Act are inadequate by themselves to increase the supply of affordable housing. This evidence indicates that more effective policy responses to increase the supply of affordable housing include: adequate provision of land for development in a timely manner, efficient development approval processes, and effective coordination of infrastructure provision.

Proposed reforms to the Resource Management Act 1991, the Local Government Act 2002, and the Building Act 2004 will simplify and streamline regulatory processes for territorial authorities and reduce compliance costs for the building sector. Repealing the Affordable Housing: Enabling Territorial Authorities Act 2008 (with a restrictive covenants provision similar to section 30 of that Act to be included as a consequential amendment to the Property Law Act 2007) will also contribute to this outcome.

The Act was enacted in 2008 and no territorial authority has used the powers under the Act. The impact of repealing the Act will be minimal to the economy as a whole.

Restrictive covenants

It is proposed that a modified section of the Act (section 30) on restrictive covenants be included in the Infrastructure Bill as a consequential amendment to the Property Law Act 2007, to prevent the growing use of covenants that exclude the provision of social housing. One outcome of retaining this section would be that covenants that have a principal purpose of preventing social housing, and which have been entered into since 17 September 2008 when the Act came into force, will continue to be void.

Adequacy statement

Housing New Zealand Corporation has reviewed this regulatory impact statement for the repeal of the Affordable Housing: Enabling Territorial Authorities Act 2008, and retention of a restrictive

covenants provision similar to section 30 of the Act and judged it adequate according to the adequacy criteria.

Status quo and problem

The current lack of affordable housing is a widespread problem, internationally and in New Zealand. Nationwide, house prices have almost doubled since 2002, significantly outpacing increases in average household incomes. The reductions in interest rates and house prices over the past year have only led to modest improvements in the ability of first-home buyers to purchase a home, due to more stringent conditions that banks now require when providing credit.

The Affordable Housing: Enabling Territorial Authorities Act 2008 was intended to provide territorial authorities with the regulatory powers to address problems of housing affordability in their district. However, implementing the Act would complicate regulatory processes, and add costs and uncertainties for territorial authorities and increase costs for the building sector, which would result in an increase in housing costs more than would otherwise be the case.

The Act establishes new processes for territorial authorities to follow to be able to require affordable houses. These processes present regulatory barriers which contradict Government initiatives to reduce regulatory barriers and compliance costs. The powers provided for in the Act can be effective within a high value market characterised by significant development activity and limited development opportunity.[1] However, since the introduction of the Act there has been a significant reduction in development activity.

Developers and local authorities have raised concerns that the Act is counter-productive and is likely to reduce, rather than increase, the supply of affordable housing. The main concerns relate to decreased land supply due to planning restrictions on land release, complexities or delays in the planning process, and increased taxes and levies which have increased the costs of developing new housing.[2]

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[1] Gurran, N; Milligan, V; Baker, D; Bugg, L; and Christensen, S. 'New directions in planning for affordable housing: Australian and international evidence and implications.' *Australian Housing and Urban Research Institute*, (June 2008).

[2] Gurran, N; Ruming, K; Randolph, B; Quintal, D. 'Planning, government charges and the cost of land and housing.' *Australian Housing Urban Research Institute*, (October 2008).

International and New Zealand evidence indicates that moves to encourage the building of new housing would need to ensure that regulatory and other costs are contained and opportunities for development are enhanced. In addition, increasing the supply of residential land using existing planning systems through rezoning, and a focus on streamlining regulatory processes, (especially the Resource Management Act 1991, the Local Government Act 2002, and the Building Act 2004) would result in an increase in housing supply and could help make housing more affordable.[3]

Restrictive covenants

Section 30 of the Act relates to restrictive covenants. This provision seeks to address the growing practice of covenants being placed on properties that prevent the provision of affordable and social housing. It is proposed that a restrictive covenants provision similar to section 30 of the Act be retained, and that the scope of this provision be limited to social housing.

This amendment is proposed to be included in the Infrastructure Bill as a consequential amendment to the Property Law Act 2007. This would mean that covenants that have a principal purpose of preventing social housing (including those which have been entered into since 17 September 2008 when the Act came into force) would be void (subject to the Act being repealed). The retention of this section seeks to avoid discriminatory practices targeted at low-income families and those needing supported accommodation.[4]

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[3] Department of Prime Minister and Cabinet, New Zealand, *Final Report of the House Prices Unit: House Price Increases and Housing in New Zealand*, (March 2008); and Motu Economic and Public Policy Research, 'Housing Supply in the Auckland Region 2000–2005', *Centre for Housing Research Aotearoa New Zealand*, (March 2007); see also Calavita, N; and Mallach, A, 'Inclusionary Housing, Incentives, and Land Value Recapture', *Lincoln Institute of Land Policy*, (January 2009).

[4] Supported accommodation refers to housing provided for people who require a degree of support or supervision because of their disability. This may vary from live-in care to occasional visits from care givers, and may range from a large house with multiple occupants to a one-bedroom flat.

Objectives

To streamline and simplify legislation and reduce compliance costs for territorial authorities and the building sector.

Alternative options

Retain the Affordable Housing: Enabling Territorial Authorities Act 2008

An option considered was to retain the Act to allow councils to provide for affordable housing initiatives. Officials have concluded that the Act would complicate regulatory processes, and add costs and uncertainties for territorial authorities and increase costs for the building sector, which would consequentially result in an increase in housing costs.

Retain the purpose and powers of the Act through inclusion in the Resource Management Act (RMA) 1991

An option considered was whether it would be possible to achieve the purpose of the Act within other legislation, notably the RMA 1991, which is currently being reviewed. Officials have considered this option and concluded that this would require significant changes to the RMA. Options for a range of housing and urban planning matters will be further considered as part of phase two of the RMA review.

Preferred option

The preferred option is to repeal the Affordable Housing: Enabling Territorial Authorities Act, retaining only a modified restrictive covenants provision by including this section in an amendment to the Property Law Act 2007. 2 options were considered about whether the restrictive covenants provision should be—

- retained in its entirety to prohibit covenants against both social and affordable housing; or
- limited to covenants that exclude only social housing.

The preferred option is to limit the scope of the restrictive covenants provision. The rationale for limiting this provision to social housing (but not affordable housing) is that there is ample evidence which indicates that restrictive covenants are increasingly being used by developers to explicitly prevent social housing providers such as

IHC New Zealand Incorporated and Community Group Housing such as Women's Refuge from leasing or buying properties in particular areas.[5]

This option is the outcome of the review of the Act that was conducted by Housing New Zealand Corporation and which is yet to be made public. This option addresses building sector and territorial authority concerns about increased complexity, uncertainty, and costs for housing development. Further, this option achieves the Government's objective to streamline and simplify legislation and reduce compliance costs for territorial authorities and the building sector. The repeal of the Act will be included in the Infrastructure Bill.

The preferred option to retain a restrictive covenants provision similar to section 30 of the AHETA Act would be through a consequential amendment to the Property Law Act 2007. This provision prohibits the imposition of covenants that limit the ability for developments to include social and supported housing, which have been in place since 17 September 2008, when the Affordable Housing: Enabling Territorial Authorities Act 2008 came into force.

Costs and benefits of preferred option

The objective of repealing the Act is to streamline and simplify legislation and to reduce compliance costs for territorial authorities and the building sector. The cost of repealing this legislation would be minimal as no territorial authorities have used the Act.

Benefit that will be lost by repealing the Act

Repeal of the Act would have minimal effect. The Act was enacted in 2008 and while as small number of territorial authorities[6] have shown an interest in using the Act, none have actually used it.

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[5] Resource and Environmental Management Ltd., *Survey into Restrictive Covenants Excluding Social Housing*. Report prepared for Housing New Zealand Corporation, (November 2006).

[6] These include Waitakere City, North Shore City, Christchurch City, and Dunedin City Councils, and Rodney and Gisborne District Councils. Queenstown Lakes District Council provided an important rationale for developing the Act. However, they have proceeded with affordable housing initiatives using the Resource Management Act 1991, and not the Affordable Housing: Enabling Territorial Authorities Act 2008.

The Government is instead proposing a different approach to addressing housing affordability issues. Phase 2 of the review of the Resource Management Act 1991 will consider options for a range of housing and urban planning matters, including the development of a National Policy Statement on housing affordability and a National Environmental Standard on home development.

Costs and benefits of repealing the Act

Repealing this legislation will directly address industry and council concerns about increased costs. For instance, reducing costs, simplifying the planning system, and reducing the need for extensive and detailed assessment of minor developments will shorten approval times and alleviate more onerous planning requirements.

Repeal of the Act would, for areas that might choose to implement it, reduce prescriptive process and reduce cost and uncertainty associated with the following activities: undertaking a housing needs assessment; developing and consulting on the draft affordable housing policy; the objection and appeal processes; negotiating with developers; providing possible financial incentives to developers; retaining the affordable housing; and, monitoring and reviewing the affordable housing policy.[7]

The costs that would be incurred by both territorial authorities and developers would be reflected in local house prices, particularly in the short term. Facilitating housing through the powers in the Act would add costs. Where demand is relatively elastic, implementing an affordable housing policy is likely to decrease the profit of a development to which the affordable housing policy applies. The extent of any diminished profit is difficult to estimate and depends on the following variables: the strength of the housing market, the nature of the policies put in place, and incentives provided by a territorial authority.

Regulation increases the cost of housing. Analysis undertaken on housing costs in Australia in the last 5 years found that taxes, levies, and compliance costs now amount to about a third of the cost of new

[7] For those councils that do want to use this approach, they can still do so using the Local Government Act 2002 and other means. They will not have to follow the process prescribed in the Act which is onerous, costly, and uncertain.

house and land packages, including the costs of meeting planning regulations and holding costs associated with the approval process.[8]

Implementation and review

The repeal of the Act, retaining only a restrictive covenants provision similar to section 30 of the Act (as a consequential amendment to the Property Law Act 2007) will be included in the Infrastructure Bill. These amendments will come into force during 2009/2010. A draft Infrastructure Bill is anticipated by mid-2009.

Consultation

The review of the Act that Housing New Zealand Corporation has undertaken has been quite small-scale and limited to government agencies and Local Government New Zealand.

The preferred policy option, to repeal the Act and retain a restrictive covenants provision similar to section 30 of the Act, was developed by officials from Housing New Zealand Corporation in consultation with: the Department of Internal Affairs, the Department of Building and Housing, the Ministry of Social Development, the Ministry for the Environment, the Ministry of Justice, the Treasury, and Te Puni Kōkiri. The Department of Prime Minister and Cabinet has been informed on the proposed repeal of the Act.

Local Government New Zealand was consulted and supported the repeal of the Act (while retaining only the restrictive covenants provision).

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[8] Residential Development Council, 'Boulevard of Broken Dreams: The future of housing affordability in Australia.' *Property Council of Australia*, Sydney, 2007.

Hon Bill English

Infrastructure Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Infrastructure Act **2009**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Utilities access

3 Purpose of Part

The purpose of this Part is to—

(a) require utility operators and corridor managers to comply with a national code of practice that regulates access to transport corridors; and

(b) provide for the making and administration of that code.

4 Interpretation

In this Part, unless the context otherwise requires,—

Code means—

(a) the national code of practice that is approved under **section 12** and has taken effect, along with all amendments to it that have taken effect; or

(b) if there is no Code approved under **section 12**, but regulations have been made under **section 18**, the code set out in those regulations

corridor manager means,—

(a) in relation to a road (as defined in section 315(1) of the Local Government Act 1974, and which includes State highways and Government roads), the local authority or other person that has jurisdiction over the road:

(b) in relation to a motorway (as defined in section 2(1) of the Government Roading Powers Act 1989), the New Zealand Transport Agency:

(c) in relation to a railway line (as defined in section 4(1) of the Railways Act 2005), the person who is the licensed

access provider (as that term is used in the Railways Act 2005) for that railway line

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

related Ministers means the Ministers of the Crown who are responsible for the administration of the Local Government Act 1974, the Electricity Act 1992, the Gas Act 1992, the Government Roading Powers Act 1989, the Telecommunications Act 2001, and the Railways Act 2005

transport corridor means any road (as defined in section 315(1) of the Local Government Act 1974), motorway (as defined in section 2(1) of the Government Roading Powers Act 1989), or railway line (as defined in section 4(1) of the Railways Act 2005)

utility operator means,—

(a) in relation to electricity infrastructure, an electricity operator as defined in section 2(1) of the Electricity Act 1992:

(b) in relation to gas infrastructure, a gas operator as defined in section 2(1) of the Gas Act 1992:

(c) in relation to telecommunications infrastructure, a network operator as defined in section 5 of the Telecommunications Act 2001:

(d) in relation to water and wastewater infrastructure, a local authority as defined in section 5 of the Local Government Act 2002:

(e) in relation to public letterboxes, a postal operator as defined in section 2(1) of the Postal Services Act 1998.

5 Part 1 binds the Crown

Part 1 binds the Crown.

Obligation to comply with Code

6 Obligation to comply with Code

(1) Utility operators and corridor managers must—

(a) co-ordinate work done in transport corridors by complying with the processes and rules set out in the Code; and

(b) before applying to the court for an order under **section 7**, use any appropriate dispute resolution procedures set out in the Code.

(2) In setting reasonable conditions for access to the transport corridor, corridor managers must comply with the Code (but only to the extent that the Code is not inconsistent with any applicable criteria for reasonable conditions that are published under an enactment).

(3) When carrying out work in a transport corridor, utility operators must comply with the Code—

(a) except to the extent that any particular provision of the Code is inconsistent with an enactment or a standard that the utility operator is obliged to comply with; or

(b) unless, in a particular situation, the manager of the transport corridor and all affected utility operators agree that the Code need not be complied with.

(4) This section does not apply if there is no Code.

7 Court may order compliance with Code

(1) On the application of any utility operator or corridor manager, a District Court may require another utility operator or corridor manager to—

(a) do anything that is required by, or is consistent with, the Code; or

(b) refrain from doing anything that is prohibited by, or is inconsistent with, the Code.

(2) The order may require the person against whom it is made to comply with it within a specified time.

(3) In considering an application for an order, the court may take into account the practicality and cost of complying with the Code as compared with the practicality and cost of taking other steps that will, in the particular situation under consideration,

achieve substantially the same outcome as compliance with the Code.

8 Offence to fail to comply with order

A person who, knowing that the person is subject to an order made under **section 7**, fails to comply with the order, or fails to comply with the order within the time specified in the order, is liable on summary conviction to a fine not exceeding $200,000.

Nature of Code

9 Purpose of Code

The purpose of the Code is to enable access by utility operators to transport corridors to be managed in a way that—

(a) maximises the benefit to the public while ensuring that all utility operators are treated fairly; and

(b) ensures that disruptions to roads, motorways, and railways caused by work by utility operators are kept to a minimum, while ensuring public safety; and

(c) provides a nationally consistent approach to managing access to transport corridors.

10 Content of Code

(1) In order to achieve its purpose, the Code must set out the following:

(a) who it applies to:

(b) the principles governing how utility operators and corridor managers deal with each other on access issues:

(c) the processes and rules for ensuring that work by utility operators that affects transport corridors is co-ordinated:

(d) processes for dealing with conflicts of interest arising from the same person being both a corridor manager and a utility operator, or being the operator of different utilities:

(e) how any statutory criteria for setting access conditions, and any criteria for setting access conditions that are published by corridor managers, are to be applied:

(f) whether, what, and how any other conditions on access may be imposed by corridor managers:

(g) how compliance with the provisions of the Code is to be encouraged and provided for, including 1 or more dispute resolution procedures:

(h) operational processes and rules about work done by utility operators within transport corridors.

(2) The Code may also—

(a) provide for its provisions to be applied differently in different geographic locations, provided the variations comply with **subsection (3)**; and

(b) provide processes and rules about information sharing between parties, including rules about what, and the form in which, information is to be collected and stored; and

(c) include any other matter that is consistent with the purpose of the Code and not inconsistent with any enactment.

(3) Variations referred to in **subsection (2)(a)** may be allowed by the Code only if the variations—

(a) are generally consistent with **paragraphs (a) and (b)** of the purpose of the Code set out in **section 9**; and

(b) are in response to particular geographic factors that would result in inefficient or uneconomic outcomes if the standard requirements of the Code were adopted; and

(c) have been sought and agreed to by the corridor managers and utility operators in that region; and

(d) fairly balance the interests of corridor managers and utility operators.

How Code made and administered

11 Preparation of Code

(1) A draft Code may be prepared by the Ministry, or by any person or body of persons, using whatever processes the Ministry, person, or body considers appropriate.

(2) The process for developing a draft Code must include, at a minimum, the following steps:

(a) consultation with utility operators and corridor managers:
(b) publication of a draft Code and release to the public:
(c) consideration of comment received on the draft Code:
(d) preparation of a revised draft Code in response to comments received.

(3) A draft Code may be submitted to the Minister for approval at any time after the steps referred to in **subsection (2)** have been taken.

12 Approval of Code

(1) Within 3 months of receiving a draft Code, the Minister must either approve or reject it.

(2) The Minister may approve a draft Code only if—
(a) he or she has consulted with the related Ministers; and
(b) he or she is satisfied that the draft Code—
(i) is capable of achieving the purpose of the Code; and
(ii) adequately sets out the matters referred to in **section 10(1)**; and
(iii) has been developed by a process that includes the steps set out in **section 11(2)**; and
(iv) is broadly agreed to by relevant corridor managers and utility operators; and
(v) reflects a balance between the interests of corridor managers and those of utility operators.

(3) The Minister's decision under this section must be given in writing to whoever submitted the draft Code to the Minister for approval.

(4) If the Minister approves a Code, he or she must give notice in the *Gazette* of that fact, and the notice must state—
(a) the date on which the Code takes effect in accordance with **section 13(1)**; and
(b) the Internet site on which the Code is available and where it is or will be available for purchase, at no more than a reasonable cost, in hard copy.

13 When Code takes effect

(1) The Code takes effect on the date specified in the *Gazette* notice referred to in **section 12(4)(a)**, which must be a date after the date of the *Gazette* notice and on or after the date on which the Code is first published under **section 14(1)(a)**.

(2) The Code ceases to have effect on the date specified by the Minister in a notice of cancellation made under **section 17**.

(3) It is not intended that any processes, notices, conditions, or other matters that were previously settled should be affected by the Code taking effect or by any subsequent cancellation or amendment of the Code.

14 Publication of Code

(1) The Minister must ensure that the Code and every amendment to it—

(a) is published on an Internet site that is publicly available at all reasonable times; and

(b) is available for purchase in hard copy, at no more than a reasonable cost, from the head office of the Ministry.

(2) The Minister may, instead of or as well as publishing amendments separately to the Code, publish the Code with amendments incorporated; but in that case the Code published on the Internet site must indicate what changes have been made and when.

15 Status of Code

A Code approved under **section 12** is a regulation for the purpose of the Regulations (Disallowance) Act 1989, but is not a regulation for the purpose of the Acts and Regulations Publication Act 1989.

16 Amendment of Code

(1) The Minister may at any time approve an amendment to the Code.

(2) **Sections 11 to 14**, with all necessary modifications, apply to an amendment as if it were a draft Code.

(3) Proposals for amendments to the Code must include the following:

(a) a statement of the proposed amendment and how it will affect the Code:
(b) the reasons for the proposed amendment:
(c) a description of the process used to arrive at the proposal, including a description of the parties involved and the level of agreement achieved among them:
(d) a description of how the amendments will affect corridor managers and utility operators.

(4) However, in the case of a minor amendment that does not materially affect the Code,—
(a) **section 12(2)** does not apply; and
(b) the proposed amendment need not—
(i) include the matters referred to in **subsection (3)(c) and (d)**; or
(ii) comply with **section 11(2)(b) to (d)**.

17 Cancellation of Code

(1) The Minister may cancel the Code if he or she is satisfied that—
(a) the Code no longer adequately reflects a balance between the interests of corridor managers and those of utility operators; or
(b) the Code is not achieving its purpose; or
(c) utility operators and corridor managers have significant concerns with, or differences over, the Code, and resolution of the issues appears unlikely.

(2) If the Minister cancels the Code, he or she must publish a notice of that fact in the *Gazette*, and the notice must state the date on which the cancellation will take effect.

Regulations in place of Code

18 Power to make regulations if no Code

(1) The Governor-General may, on the recommendation of the Minister given in accordance with **subsection (2)**, make regulations regulating how access by utility operators to transport corridors is managed.

(2) The Minister may not recommend making regulations under this section unless he or she is satisfied that—

(a) either—
  (i) no Code has taken effect and no Code is likely to take effect; or
  (ii) an existing Code is or is likely to be cancelled; and
(b) the regulations set out a code that has the purpose set out in **section 9** and includes the matters set out in **section 10(1)**; and
(c) the regulations are likely to improve the efficiency of utility operators' access to transport corridors, without compromising road or rail safety; and
(d) the regulations reflect, as far as possible, any agreements reached by utility operators and corridor managers; and
(e) the related Ministers have been consulted and concur in the desirability of making the regulations and the content of the regulations.

(3) Regulations made under this section may incorporate by reference any written material that prescribes, defines, or makes other provision for goods, services, processes, or practices that are relevant to the regulations.

(4) If material is incorporated by reference in regulations made under this section, the **Schedule** applies to that material, unless the material is a New Zealand standard (as defined in section 2 of the Standards Act 1988), in which case that Act applies.

Part 2
Amendments relating to utility access to transport corridors

19 Purpose of Part

(1) The purpose of this Part is to amend a variety of Acts relating to utility operators' access to transport corridors in order to achieve greater certainty and consistency in the rights and obligations of utility operators and corridor managers.

(2) In this section, **corridor manager**, **transport corridor**, and **utility operator** have the meanings in **section 4** of the **Utilities Access Act 2009**.

Amendments to Telecommunications Act 2001

20 Amendments to Telecommunications Act 2001

Sections 21 to 28 amend the Telecommunications Act 2001.

21 Criteria for setting reasonable conditions

Section 119 is amended by adding the following subsections:

"(3) However, a condition requiring the network operator to increase amenity values may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced.

"(4) If the cost to the network operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there was not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost."

22 Notice requirement

Section 136 is amended by repealing subsection (1) and substituting the following subsection:

"(1) Except as provided in section 139, before a network operator proceeds to open or break up any road, the network operator must give notice of the intention to carry out the work to—

"(a) the local authority or other person who has jurisdiction over the road; and

"(b) any utility operator (as defined in **section 4** of the **Utilities Access Act 2009**) whose pipes, lines, or other structures will or are likely to be affected by the work."

23 Network operator to be notified of conditions

Section 137 is amended by omitting "20" and substituting "15".

24 Failure to notify conditions

Section 138 is amended by omitting "20-working day" and substituting "15-working day".

25 Construction, etc, of telephone cabinets or other similar appliances

Section 142(2) is amended by repealing paragraph (a) and substituting the following paragraph:

"(a) give at least 10 working days notice of its intention to place a cabinet or other appliance on the road to—

"(i) the local authority or other person who has jurisdiction over the road; and

"(ii) any utility operator (as defined in **section 4** of the **Utilities Access Act 2009**) whose pipes, lines, or other structures will or are likely to be affected by the work; and".

26 Network operator to be notified of conditions

Section 143 is amended by omitting "20" and substituting "15".

27 Failure to notify conditions

Section 144 is amended by omitting "20-working day" and substituting "15-working day".

28 New heading and sections 147A to 147C inserted

The following heading and sections are inserted after section 147:

"*Local authority, etc, requiring work to be done*

"**147A Local authority, etc, may require lines, etc, to be moved**

"(1) Where a network operator owns lines, cabinets, or other similar appliances that are on a road, the local authority or other person having jurisdiction over the road may, by notice in writing, require the network operator to raise, lower, or otherwise alter the position of the lines, cabinets, or other similar appliances.

"(2) If the network operator refuses or fails, within a reasonable period, to do the work required, the person requiring the work may do the work or have it done by some other person.

"(3) Before doing work as permitted by **subsection (2)**, the person requiring the work must give notice to the network operator at least 15 working days before the work commences.

"**147B Cost of work required under section 147A**

"(1) The reasonable cost of all work required to be done under **section 147A** must be paid by the person that requires the work to be done.

"(2) However, the cost of the work must be paid by the network operator if the reason that the work is required is that the lines, cabinets, or other appliances—

"(a) were constructed contrary to any of the following:

"(i) this Act or any regulations made under section 157:

"(ii) the Telecommunications (Residual Provisions) Act 1987:

"(iii) the Local Government Act 1974 or the Local Government Act 2002, and any predecessor of those Acts:

"(iv) the Public Works Act 1981:

"(v) any local or private Act:

"(vi) any regulations made under any of the enactments referred to in **subparagraphs (ii) to (v)**; or

"(b) are in a dangerous or unsafe condition.

"(3) A person that requires work to be done under **section 147A** may not claim for betterment in respect of that work, and no claim for betterment may be made against the person.

"(4) The following provisions apply if the person requiring the work is a controlling authority within the meaning of section 54(1) of the Government Roading Powers Act 1989:

"(a) the cost of all fittings that are used in carrying out the required work (other than fittings used only during the course of construction) must be paid by the network operator:

"(b) if, as a consequence of the requirement, the network operator elects to alter or add to any lines, cabinets, or other appliances affected by the work, and if the cost of the work is increased as a result of the alteration or addition, then the network operator is liable to pay the increase in cost:

"(c) if, as a consequence of the requirement, the network operator relocates the lines, cabinets, or other similar ap-

pliances and reconstructs them to specifications different from those of the original lines, cabinets, or other appliances, then, if the costs described in **paragraph (d)(i)** are less than the costs described in **paragraph (d)(ii)**, the network operator is liable to pay the difference:

"(d) the costs referred to in **paragraph (c)** are—

"(i) what it would have cost to relocate and reconstruct the works as near as reasonably practicable to their original specifications (excluding any costs to which **paragraph (a)** applies), taking into account—

"(A) any restrictions or conditions imposed by or under any enactment in relation to the relocation and reconstruction; and

"(B) the location of the original works and the alternatives reasonably available to the network operator:

"(ii) the actual cost of the relocation and reconstruction (excluding any costs to which **paragraph (a)** applies).

"(5) **Subsections (1) to (4)** apply subject to any agreement between the person requiring the work and the network operator.

"(6) The amount of payment required under this section must be determined—

"(a) by agreement between the person liable for the payment and the person to whom it is payable; or

"(b) failing such agreement, by arbitration under the Arbitration Act 1996, with 1 arbitrator to be appointed by each party and an umpire to be appointed by those arbitrators before entering upon their reference.

"Compare: 1992 No 122 s 33; 1992 No 124 s 34

"147C Relationship with section 54 of Government Roading Powers Act 1989

Sections 147A and 147B apply despite anything to the contrary in section 54 of the Government Roading Powers Act 1989.

"Compare: 1992 No 122 s 34; 1992 No 124 s 35".

Amendment to Electricity Act 1992

29 Amendment to Electricity Act 1992

Section 30 amends the Electricity Act 1992.

30 New section 24A inserted

The following section is inserted after section 24:

"**24A Criteria for setting reasonable conditions**

"(1) In setting, varying, or revoking reasonable conditions under section 24(2), the local authority or other body or person having jurisdiction over the road concerned may consider all or any of the following matters:

"(a) the safe and efficient flow of traffic (whether pedestrian or vehicular):

"(b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road:

"(c) the need to lessen the damage that is likely to be caused to property (including structural integrity of the roads) as a result of work on the road:

"(d) the compensation that may be payable under section 57 for property that is likely to be damaged as a result of work on the road:

"(e) the need to lessen disruption to the local community (including businesses):

"(f) the co-ordination of installation of other networks:

"(g) the co-ordination with road construction work by the local authority or other body or person who has jurisdiction over that road:

"(h) the need of the electricity operator to establish an electricity network in a timely manner.

"(2) Nothing in **subsection (1)** limits a local authority's or other body or person's ability to impose reasonable conditions under section 24(2).

"(3) However, a condition requiring the electricity operator to increase amenity values may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced.

"(4) If the cost to the network operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there was not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost.
"Compare: 2001 No 103 s 119".

Amendment to Gas Act 1992

31 Amendment to Gas Act 1992
Section 32 amends the Gas Act 1992.

32 New section 25A inserted
The following section is inserted after section 25:

"**25A Criteria for setting reasonable conditions**

"(1) In setting, varying, or revoking reasonable conditions under section 25(2), the local authority or other body or person having jurisdiction over the road concerned may consider all or any of the following matters:

"(a) the safe and efficient flow of traffic (whether pedestrian or vehicular):

"(b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road:

"(c) the need to lessen the damage that is likely to be caused to property (including structural integrity of the roads) as a result of work on the road:

"(d) the compensation that may be payable under section 51 for property that is likely to be damaged as a result of work on the road:

"(e) the need to lessen disruption to the local community (including businesses):

"(f) the co-ordination of installation of other networks:

"(g) the co-ordination with road construction work by the local authority or other body or person who has jurisdiction over that road:

"(h) the need of the gas operator to establish a gas network in a timely manner.

"(2) Nothing in **subsection (1)** limits a local authority's or other body or person's ability to impose reasonable conditions under section 25(2).

"(3) However, a condition requiring the gas operator to increase amenity values may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced.

"(4) If the cost to the gas operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there was not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost.

"Compare: 2001 No 103 s 119".

Amendments to Government Roading Powers Act 1989

33 Amendments to Government Roading Powers Act 1989

Sections 34 to 37 amend the Government Roading Powers Act 1989.

34 Powers of Minister over roads under Minister's control

Section 48 is amended by inserting the following subsection after subsection (3):

"(3A) Before exercising any power under subsection (3) that will or is likely to interfere with any pipe, line, or other work associated with the supply of water, electricity, gas, or telecommunications, the Minister (or an officer of the Agency acting on the Minister's behalf) must give not less than 10 working days' notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger."

35 Notice to be given of local authority works

Section 52 is amended by inserting the following subsection after subsection (2):

"(2A) The Agency and the Minister must each publish, on a publicly available Internet site, the criteria that the Agency and the Minister respectively will apply when considering whether to give consent under this section, and must apply those criteria when considering whether to give consent."

36 Powers and duties of Agency in relation to State highways

Section 61 is amended by inserting the following subsection after subsection (5):

"(5A) Before exercising any power under subsection (4) that will or is likely to interfere with any pipe, line, or other work associated with the supply of water, electricity, gas, or telecommunications, the Agency (or an officer of the Agency acting on the Agency's behalf) must give not less than 10 working days' notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger."

37 New section 77A inserted

The following section is inserted after section 77:

"**77A Response to requests for access to motorway**

"(1) If the Agency receives a request in accordance with **subsection (2)**, the Agency must respond, in writing, within 30 working days of receiving it.

"(2) The requests to which **subsection (1)** applies are those from local authorities, or owners of any pipe, line, or other works associated with the supply of water, electricity, gas, or telecommunications, for access to a motorway for the purpose of constructing, maintaining, or in any other way altering any such pipe, line, or other works, or any wire, cable, pipe, tower, pole, or other structure or thing on, over, or under the motorway."

Amendment to Railways Act 2005

38 Amendment to Railways Act 2005

(1) This section amends the Railways Act 2005.

(2) Section 75 is amended by inserting the following subsections after subsection (1):

"(1A) Every licensed access provider and every railway premises owner must publish, on a publicly available Internet site, the criteria that the licensed access provider or railway premises owner will apply when considering whether to grant permission under subsection (1), and must apply those criteria when considering whether to grant permission.

"(1B) If a local authority or owner of any pipe, line, or other work associated with the supply of water, electricity, gas, or telecommunications requests, in writing, permission for access to any railway infrastructure or railway premises for the purpose of carrying out work on any such pipe, line, or other works, the licensed access provider or railway premises owner must respond to the request, in writing, within 30 working days of receiving the request."

Amendment to Local Government Act 1974

39 Amendment to Local Government Act 1974

(1) This section amends the Local Government Act 1974.

(2) Section 319 is amended by adding the following subsection as subsection (2):

"(2) Before exercising a power under this section to do anything that will or is likely to interfere with any pipe, line, or other work associated with the supply of water, electricity, gas, or telecommunications, the council must give not less than 10 working days' notice in writing of the proposed interference to the owner of the pipe, line, or other work."

Transitional provision

40 Transitional provision

To avoid doubt, the amendments made by this Part are intended to apply prospectively only and do not apply to or affect any notice given, request made, condition proposed or agreed to, or any other thing done before this Part comes into force.

Part 3
Amendments relating to New Zealand Railways Corporation

41 Principal Act in this Part

This Part amends the New Zealand Railways Corporation Act 1981.

42 Interpretation

Section 2(1) is amended by repealing the definition of **Minister** and substituting the following definition:

"**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act".

43 Section 3 repealed

(1) Section 3 is repealed.

(2) The following provisions are consequentially amended by omitting "Minister of Railways" and substituting in each case "Minister":

(a) section 15(3):

(b) section 119(1).

(3) The heading to section 30 is consequentially amended by omitting "**Minister of Railways**" and substituting "**Minister**".

44 New Zealand Railways Corporation

(1) Section 4(3) is amended by omitting "to be the Chairman of the Corporation" and substituting "to be chairperson of the Corporation, and may appoint any other director to be deputy chairperson of the Corporation".

(2) Section 4 is amended by repealing subsection (6) and substituting the following subsection:

"(6) The Minister and the Minister of Finance may jointly, at any time and entirely at their discretion, remove any director from office."

(3) Section 4 is amended by repealing subsection (7) and substituting the following subsection:

"(7) The deputy chairperson has and may exercise all the functions and powers of the chairperson if the chairperson is absent or otherwise unable to act."

Compare: 2004 No 117 s 36(1), Schedule 5, cl 5

45 Meetings of directors

(1) Section 6(3) is amended by omitting "the Chairman or any 4 directors" and substituting "the chairperson, or a majority of the directors,".

(2) Section 6(5) is amended by omitting "Chairman" and substituting "chairperson".

(3) Section 6(6) is amended by omitting "Chairman" and substituting "chairperson or deputy chairperson".

46 New section 7A inserted

The following section is inserted after section 7:

"**7A Indemnification and insurance**

"(1) The Corporation may indemnify any director or employee, but only in respect of—

"(a) liability for conduct that comprises acts or omissions by the director or employee done in good faith and in the performance or intended performance of the Corporation's functions; and

"(b) any costs incurred in defending or settling any claim or proceeding relating to liability for such conduct.

"(2) The Corporation may effect insurance cover for any director or employee, but only in respect of acts or omissions done in good faith and in the performance or intended performance of the Corporation's functions.

"Compare: 2004 No 115 ss 122, 123".

47 Capital of Corporation

(1) Section 36(3) is amended by omitting "Governor-General on the advice of the Minister of Finance, may by Order in Council increase the capital of the Corporation to such an amount as may be prescribed in that order" and substituting "Minister of Finance may, by notice in the *Gazette*, increase the capital of the Corporation to the amount specified in the notice".

(2) Section 36(4) is amended by omitting "Governor-General on the advice of the Minister of Finance may, by Order in Council, decrease the capital of the Corporation to such amount as may be prescribed in that order" and substituting "Minister of Finance may, by notice in the *Gazette*, decrease the capital of the Corporation to the amount specified in the notice".

48 Sections 40 and 41 repealed

Sections 40 and 41 are repealed.

Part 4
Amendments relating to affordable housing

Repeal of Affordable Housing: Enabling Territorial Authorities Act 2008

49 Repeal of Affordable Housing: Enabling Territorial Authorities Act 2008

The Affordable Housing: Enabling Territorial Authorities Act 2008 is repealed.

50 Amendment to Building Act 2004

(1) This section amends the Building Act 2004.

(2) Section 49(2) is amended by—

(a) omitting "; and" from paragraph (b); and

(b) repealing paragraph (c).

51 Amendments to Goods and Services Tax Act 1985

(1) This section amends the Goods and Services Tax Act 1985.

(2) Section 5 is amended by repealing subsections (7D) and (7E).

(3) Section 11B is amended by repealing subsections (1D) and (1E).

52 Amendment to Housing Corporation Act 1974

(1) This section amends the Housing Corporation Act 1974.

(2) Section 3B is amended by—

(a) omitting "; and" from paragraph (b); and

(b) repealing paragraph (c).

53 Amendment to Local Government Act 2002

(1) This section amends the Local Government Act 2002.

(2) Schedule 10 is amended by repealing clause 7A.

Amendment to Property Law Act 2007

54 Amendment to Property Law Act 2007

(1) This section amends the Property Law Act 2007.

(2) The following section is inserted after section 277:

"**277A Certain covenants void**

"(1) A covenant concerning land is void if a principal purpose of the covenant is to stop the land being used for housing for—

"(a) people on low incomes; or

"(b) people with special housing needs; or

"(c) people whose disabilities mean that they need support or supervision in their housing.

"(2) Without limiting the covenants that are void under **subsection (1)**, covenants to the following effect are void:

"(a) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, any other central or local government body, or a private body that may facilitate the occupation of housing on the land by people selected by the corporation or the body:

"(b) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, a subsidiary company of Housing New Zealand Corporation, any other central or local government body, or a private body that provides housing to tenants on a subsidised basis:

"(c) a covenant that the transferee will not directly or indirectly convey the land to a central or local government body or a private body for the purposes of public or institutional housing.

"(3) This section applies only to covenants entered into on or after the day on which this section comes into force.

"Compare: 2008 No 67 ss 30, 34".

Schedule

s 18(4)

Provisions applying where material is incorporated by reference in regulations made under section 18

1 Incorporation of material by reference in regulations

(1) Material incorporated by reference in regulations made under **section 18** may be incorporated—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(2) The material incorporated by reference has legal effect as part of the regulations.

2 Effect of amendments to, replacement of, and expiry of, material incorporated by reference

(1) An amendment to, or replacement of, existing material incorporated by reference into regulations made under **section 18** has legal effect as part of the regulations only if—

(a) the regulations provide that a reference to that particular existing material includes a reference to the material as subsequently amended or replaced; or

(b) the regulations are amended to refer to the material as amended or replaced.

(2) If material that is incorporated by reference expires or ceases to have effect, and is not replaced, the material continues to have effect unless or until the regulations are amended in a way that means the material is no longer incorporated by reference.

3 Proof of material incorporated by reference

(1) A copy of material incorporated by reference in regulations made under **section 18**, including any amendment to, or replacement of, the material, must be—

(a) certified as a correct copy of the material by the chief executive of the Ministry; and

(b) retained by the chief executive of the Ministry.

(2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient

evidence of the incorporation in the regulations of the material.

4 Requirement to consult

(1) **Subclause (2)** does not apply if, in relation to particular material (including amendment or replacement material) proposed to be incorporated by reference into regulations made under **section 18**,—

(a) the material would amend or replace existing material incorporated by reference, and the regulations provide that references to that existing material includes references to any amendment to, or replacement of, the material; or

(b) the Minister is satisfied that corridor managers and network operators already use, or have been adequately consulted on, the material proposed to be incorporated by reference.

(2) Before regulations are made that incorporate material by reference (including amendment or replacement material), the chief executive of the Ministry must—

(a) make copies of the material available for inspection during working hours for a reasonable period, free of charge, at the head office of the Ministry; and

(b) ensure that copies of the material are available for purchase; and

(c) give notice in the *Gazette* of where and when the material may be inspected free of charge, and how it may be purchased; and

(d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the material by reference; and

(e) consider any comments made.

(3) A failure to comply with **subclause (2)** does not invalidate regulations that incorporate material by reference.

5 Access to material incorporated by reference

(1) The chief executive of the Ministry—

(a) must make any material that is incorporated by reference into regulations made under **section 18** available

for inspection at the head office of the Ministry during working hours, free of charge; and

(b) must ensure that copies of the material are available for purchase; and

(c) may make copies of the material available in any other way that the chief executive considers appropriate (for example, on an Internet site); and

(d) must give notice in the *Gazette*—

(i) stating that the material is incorporated in the regulations and giving the date on which the regulations were made; and

(ii) setting out where and when the material may be inspected free of charge, and how it may be purchased.

(2) A failure to comply with **subclause (1)** does not invalidate the regulations that incorporate the material by reference.

6 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in the regulations.

7 Application of Regulations (Disallowance) Act 1989

(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations made under **section 18** to be laid before the House of Representatives.

(2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of the Act made by **subclause (1)**, applies to the regulations.

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