

***A Proposed Solution for the Urgent  
Issues Facing Utilities in the Road***

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**“A Proposed Solution for the Urgent Issues Facing Utilities in the Road”**

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**Utilities in the Road - an Urgent Government Priority**

- Prime Minister’s opening statement to Parliament on 12 February 2002 made clear that the development of a stronger economy is an essential building block for a growing and innovative economy;
- Hon Mark Gosche Minister of Transport stated in his Land Transport Package that a key objective was to consolidate road management powers;

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2

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- Hon Steve Maharey stated that his vision for the development of the New Zealand economy includes deriving considerable value from infrastructure;
- Hon Paul Swain, Minister of Commerce has stated that the Government is serious about tackling compliance costs for business;
- This issue needs to be a priority for the Government in its second term, if re-elected;
- Good infrastructure is fundamental to the growth of New Zealand

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3

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## Options for a Solution

- A single statutory framework;
- Self regulation through voluntary codes of practice;
- A single statutory formula;
- Use of a Corridor Management Agreement in Local Authority Plans.

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## The Current Situation

### The Tragedy of Commons

- Unco-ordinated and inconsistently regulated access by all can lead to overuse and abuse;
- Used as a barrier to competition;
- Utilisation of the resource to the point that it becomes environmentally unsustainable;
- Moving toward a modern day "Tragedy of the Commons" situation

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## The Status Quo is Not Sustainable

- Nothing worse than what we have got now;
- Unstable and unpredictable;
- Lack of transparency;
- What is there to lose?
- If we don't proactively work towards a solution, will one be imposed on us?

6

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## The Telecommunications Act 2001

- A large number of submissions were received by the committee on this issue;
- Agreement by the committee that this is a significant issue;
- But the Committee stated:  
"An overall strategy for managing such works is outside the scope of this Bill"

7

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- The Committee recognised that it was a serious problem but did not consider the sector - wide problem in any depth;
- However section 119(1) did insert a set of criteria which local authorities may consider when setting reasonable conditions including:
  - the safe and efficient flow of traffic;
  - health and safety of any person who is likely to be affected by work on the road;
  - the need to lessen the damage that is likely to be caused to property due to work on the road;

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- Compensation payable for property that is likely to be damaged by work on the road;
- the need to lessen disruption to the local community;
- the co-ordination of the installation of other networks;
- co-ordination with road construction work by the local authority; and
- need of a network operator to establish a telecommunications network in a timely manner.

9

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## Electricity Reforms

- Six months previously the Government had considered an inquiry report into the Electricity Sector, and introduced legislation. Yet, once again, the issue of utilities in the road was not dealt with;
- Previous Government's have also failed to deal with this issue.

10

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## The Current System and its Problems

- A high level of demand for access to the roading corridor;
- A lack of cohesion both within individual utility sectors as well as across utilities when co-ordinating access to the roading corridor;
- A lack of equitable allocation of space within the roading corridor.

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- Different roading control authorities dealing with the legislative provisions inconsistently;
- Costs;
- Poor records management;
- Preservation of the quality of the road;
- Public perception that utilities are constantly digging up the roads

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- Looking out to 2005 - earliest that law can be passed to fix the situation;
- Looking out to 2010

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### Current Regulatory Framework

- Primarily Local Authorities control roads by virtue of section 316 of the Local Government Act 1974;
- Government roads, motorways and state highways are controlled by Transit NZ
- Transit NZ has the power to delegate its responsibility to over state highways to the TLA in whose district the piece of road is located;
- 73% of the value of the total roading network and 89% of the length is owned by Local Government

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- Issue of regional differentiation in relation to terrain, risk and environmental sensitivity;
- Differences in costs that are levied;
- Differences in the applicable legislation - there must be a better way.

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## Differing Legislative Regimes Between the Telecommunications, and the Electricity and Gas Acts

- Inconsistent notice provisions across the Acts;
- Inconsistent provisions as to who may impose reasonable conditions;
- Inconsistent provisions as to the kinds of reasonable conditions that a local authority may impose;

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- Water and Waste Water are subject to different legislative requirements;
- Lack of consistency between the way Roading Control Authorities determine reasonable conditions.

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## One Example: United Kingdom's Approach

- A single legislative code for digging up the road - New Roads and Street Works Act 1991;
  - Requires a register to be maintained by the Local Authority;
  - Advance notice of street works must be given and the local authority can require co-ordination;

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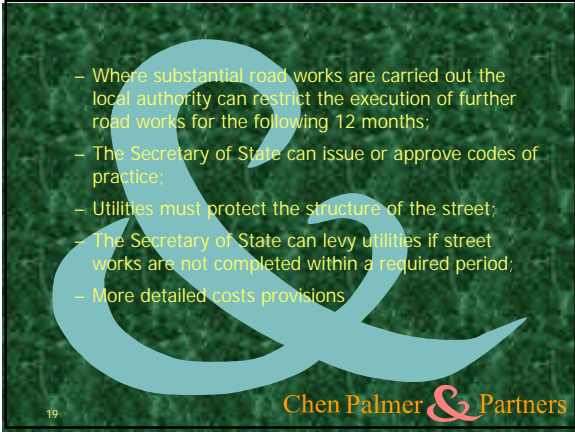
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– Where substantial road works are carried out the local authority can restrict the execution of further road works for the following 12 months;

– The Secretary of State can issue or approve codes of practice;

– Utilities must protect the structure of the street;

– The Secretary of State can levy utilities if street works are not completed within a required period;

– More detailed costs provisions

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**A Proposed Solution for New Zealand - 7 Point Plan**

- Consistent provisions in the Telecommunications, Electricity and Gas Acts;
- Consideration of the situation of water and waste water operators;
- Reasonable Conditions - Nationally consistent, principle-based decision;
- Cost - Nationally consistent, principle-based formula;

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- Detailed codes of practice which would sit under the legislation;
- A requirement that local authorities must have regard to any codes of practice;
- Development of a national register.

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## Transitional Provisions

- Taking account of the status quo;
- Grand-fathering provisions?
- What about the position of incumbents, versus new operators?

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## Issue of Costs

- Current situation is unsatisfactory:
  - Inconsistent treatment of costs in the different pieces of legislation;
  - Variability of practice in charging by roading control authorities;
  - Local authorities use of the rating mechanism;
- The solution should involve a clear statutory formula that will ensure both transparency and consistency;
- We need to ensure that any cost formula is clear and equitable;

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- All costs passed on to utilities are done so in a transparent way;
- Legislation should set out key principles that a local authority should take into account when determining costs and these could provide for the following situations:
  - The duration of the works exceeding the period prescribed in the notice;
  - The requirement for supervision of the works;
  - Diversion of traffic;
  - Costs of reconstruction or resurfacing the road when necessary.

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**Achieving Change**

- Impact of the MMP Parliament on policy and lawmaking;
- Working with the current Government;
- Looking for multi-party support;
- The changes are in line with the Government's recent statements and goals for the country.

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**Where to from Here?**

- You need to adopt a clear and coherent policy which can be presented to Government.
- All the key stakeholders will need to be consulted - Coalition of Consensus;
- Convince Government to adopt agreed solution and accord the matter urgency
  - working with Key Ministers and Officials

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- Legislation will need to be drafted;
- The legislation will need to go through the parliamentary process before the House rises for 2005 elections.

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**Key Proposals for the Conference**

- Agree that this is a priority issue;
- Agree to work collaboratively together;
- Agree on a process for agreeing on preferred solution, including consultation;
- Convince the Government to adopt your preferred solution before the next election
- Get multi-party agreement to preferred solution.

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**Can it Happen?**

- The incentives;
- The counter-factual;
- Trust and good faith.

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