



New Zealand Utilities Advisory Group

Conference Summary **New Zealand Utilities Conference** Wellington, New Zealand **22-23 April 2002**

Introduction

The Utilities Conference was held to provide an opportunity for leading industry players including gas, electricity and telecommunication utilities, and the local government sector to consider the issues facing the operations of utility companies in the roading corridor. The Conference was intended to develop responses to present and future challenges that face these authorities.

The following is a brief summary of the individual presentations at the conference. This is followed by the conference resolution, and conclusion.

Welcome

Councillor Andy Foster, Wellington City Council, welcomed attendees to the conference and highlighted significant issues for Wellington – the frequency of excavations in the road, the hidden costs this imposes, the rating of utilities and overhead cable issues.

Opening

Local Government New Zealand Chief Executive Peter Winder, on behalf of President, Basil Morrison



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Peter identified that the major issues facing the operation of utilities in the roading corridor are:

- Loss of coordination
- Inconsistent legislation
- The amenity impact of overhead cables
- No central information about location of cables and pipes
- Inadequate reinstatement of road surfaces
- Continuous and uncoordinated trenching operations
- Not enough space for more pipes and cables
- Large and inconsistent local government costs
- Unequal treatment of different utilities
- Insufficient protection of existing utilities
- Inappropriate rating of utility networks

The formation of the Utilities Advisory Group was welcomed but clearly there needed to be communication at the highest level and possible legislative amendments.

Keynote Address

Conference facilitator, Mai Chen

Mai Chen advised that the activities of utilities in the roading corridor is an urgent government priority because these activities support a stronger economy, reflect the growth, innovation and partnership between central and local government, and will assist the reduction of compliance costs for business.

Mai Chen suggested an option is to use legislative regulation as a tool that would allow a principled, but not too prescriptive approach. This option would allow for a single statutory formula to be inserted in the different pieces of legislation. In addition to this she suggested that voluntary codes of practice were a very important ingredient of a collaborative approach.

She suggested that in New Zealand we could face the “tragedy of the commons” – we are moving to a situation now where roads are becoming a modern day commons, and are inadequately regulated, and fail to encourage cooperation and collaboration.

She commented that the Telecommunications Act 2001 including the definition of “reasonable conditions”. These go a significant way to identifying the types of conditions that local authorities can impose on utility companies. She highlighted however, that there are different legislative regimes in the Telecommunications, Electricity and Gas Acts.



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She suggested that the way forward is a seven point plan - to have consistent requirements in these three Acts, consider the situation of water and wastewater utility operations, introduce principle based decision making in the legislation, determine a cost formula and have it incorporated into the legislation which the road controlling authorities must follow in a consistent way, adopt voluntary codes of practice be prepared, require local authorities to have regards to these and develop a national register of utilities.

She said that there needs to be a clear and coherent policy which can be presented to government when agreed upon by all stakeholders. In this way legislative change can be promoted to the government and have a reasonable chance of success.

Big Picture Issues for New Zealand in the Future: A model for cooperation and collaboration

Mike Underhill, WEL Networks

Mike expressed a reservation about legislative change as it takes a long time to deal with central government on this type of issue. He identified some specific issues for utilities regarding rates, the management of contractors, damage by other utilities, traffic management, the training of contractors and the problem of common mapping of utilities. He had some reservations about the single minded commercial approach of some utility companies in providing services to each other and was of the view that if a more common sense, common good approach was taken, it would significantly reduce transaction costs and provide a more efficient outcome for all.

Telecom's Perspective

Peter Cowper, Telecom Network Delivery

Peter suggested that it needed to be recognised that additional costs were a significant commercial issue for a competitive industry. He pointed out that rates are adding to their cost structure, as well as the cost of relocation of services, impractical conditions, fees and charges and the plethora of legislation. He agreed with the cooperative approach that would involve early notice of works, the need to know locations of other utilities and the free exchange of information.

However, the cost of locating cable was a real cost. He supported the approach of cooperation and national consistency as telecommunications customers are council ratepayers. This would create a win/win situation.



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There are a number of initiatives in Auckland with local authorities and this was a model that could well be used elsewhere.

Water, Wastewater and Stormwater

Anthony Wilson, New Plymouth District Council

Anthony explained the issue of the water service legislation being the subject of 130 Acts and Regulations, was not contractual in nature and in many cases there was a backlog of investment. There was also, in his view, a serious conflict of roles in local government between regulator, operator and owner. He explained the issues surrounding wastewater as having a complex legislative framework, being often dictated by typography rather than roads and affected by rainfall conditions. Storm water was different in nature as it was a public good rather than a utility.

He also pointed out that there are other utilities- petrol, LPG, ballast water, industrial water, hot water and tallow.

Roading Corridor Issues

Dr Robin Dunlop, Transit New Zealand and the RCA Forum

The major issues for roading authorities are the management of the corridor, minimising disruption, preserving the roading asset, minimising transaction costs, ensuring transparency of costs, and treating utilities consistently. There must be a balance between road user and community interests.

He indicated that in his view, legislation should be the last resort although he did discuss the inconsistencies of the different utility legislation. He also indicated that relocation costs were a significant issue, as well as traffic disruption, road controlling authorities imposed variable conditions, there was often inadequate forward planning, often utilities opened the road without approval and suggested that installation agreements were required that promote consistency, fairness and certainty.

He also raised the issue whether an occupancy charge for utilities should be imposed for a right to occupy the public space. This would introduce cost transparency for all occupiers.

He also indicated that record management was a key issue and agreed with the need to work together to find solutions to these issues.



The Local Government Perspective

Peter Winder, Local Government New Zealand

Peter discussed the issue of rates being a tax and as such stressed that these must be applied equitably. He pointed out that utilities are rateable properties and have to be included on the rating roll. He pointed out that the Rating Powers Act 2002 will not change this although it will allow councils to remit rates and apply differential rates. He pointed out that the courts have only been willing to invalidate local authority rating decisions where the decision is so unreasonable that no reasonable local authority would have contemplated it. In applying a remissions policy the council will have to do so in the public arena and in doing so, consider the incidence of rates on the various sectors of the community.

Wellington Issues

Councillor Alick Shaw, Wellington City Council

Councillor Shaw explained that in Wellington there has been a tenfold increase in the number of trenches worked by utility operators – from 602 in 1989 to 6300 in 2001. He indicated that the net result had been chaos on the roads in Wellington and significant inconvenience to the public. He explained one situation where a sewer main was damaged because of the lack of knowledge of the contractor and another case where the owner of a gas main could not be identified. He explained a range of conditions that Wellington City Council imposes on the operations of utility operators. He also suggested that there needed to be an incentive to the undergrounding of unsightly overhead cables but recognised that this was a contentious issue. In his view, what was required was better planning and coordination, better legislation, and a situation where industry best practice automatically includes cooperation.

Utility Response in Major Emergencies: Steps Towards More Effective Coordination

David Brunsdon, National Lifelines Coordinator

David Brunsdon raised the issue of the priority given to “lifelines” by utility operators. There is a regional process underway in various centres for coordinating mitigation planning. He explained the risk management approach – identifying network hazards, compiling inventories of services, assessing the vulnerability, potential damage and consequences, identifying mitigation measures, preparing response plans, communication



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to stakeholders and undertaking annual reviews. He pointed out that the Civil Defence Emergency Bill will require all utilities to be involved and will encourage further coordination and planning for continuity at national and regional levels. He suggested that the emergency readiness was often compromised by time constraints, lack of perceived drivers, and by contracting out. He wanted to encourage more interagency “scenario based” exercises to give people a sense of reality and involvement. He agreed that cooperation and collaboration was needed through a combination of voluntary and statutory instruments. This needed to include all the stakeholders and it was important for all parties that the work that was undertaken was right the first time.

Keynote Address

Hon Paul Swain, Minister of Commerce and Industry

The Minister supported utility companies and local authorities to cooperating their activities in the roading corridor. He indicated that the thrust for central government was to empower local authorities and as such preferred a collaborative approach. He said it’s a question of balancing the need to roll out sophisticated telecommunications infrastructure, of critical importance to New Zealand’s economic development, while taking into account the wishes of the community. To lift New Zealand back into the top half of the OECD it needs a world class infrastructure. He pointed out however, that before any issues come before Cabinet they need to be assured that all stakeholders and the various interests had been taken into account. The role of central government was to introduce legislative mechanisms but he pointed out the time constraints under the MMP environment. While legislative change would be a high priority it is not necessarily the top priority and hence the support for voluntary codes of practice. He said the government would not shirk its responsibility to get involved if necessary. He said that he would welcome a formal representation to him to progress the issues and he offered the support of officials to work with the Utility Advisory Group.

Utilities Regulation in the Australian Capital Territory

Ian Primrose, Independent Consumer Regulatory Commission (Australia)

Ian explained how the utilities in Canberra were all in public ownership and were covered by one piece of legislation, and that many of the problems were resolved by adequate funding. There were similar problems with lack of cooperation and this led to the use of a single Utilities Act in 2000 that was previously covered by a multiplicity of legislation. The Utility Act provides licences for utility operators, pricing regulation, supplier and consumer obligations, technical codes and standards of practice for



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infrastructure and competence of persons and for government policy direction. It also requires consultation and protection of the consumer.

Industry codes may be varied by the regulator who may make codes on protecting network integrity, the health and safety of workers, protecting the public on private property and emergency planning.

Utilities and the Road - the UK Model

Peter Bielby, Consultant

Peter Bielby indicated that similar issues had arisen in the UK and they had a combination of legislation and codes of practice. Legislation (the new Roads and Streetworks Act 1991) included provisions for licences to work on the roads, provision for emergency work, a street works register, notice and coordination provisions. He pointed out that there was a lawful duty of roading authorities to coordinate and a lawful duty of utilities to cooperate. Legislation also dealt with safety, avoidance of unnecessary delays, qualifications of operatives and supervisors, reinstatement standards, charges and fees, records, liability for damage and cost responsibility.

Codes of practices dealt with coordination, safety at road works, specifications for reinstatements, inspection and diversionary work.

Regulation dealt with qualifications of operatives and supervisors, inspection fees and cost sharing for relocation.

The principles to which utility operators and road authorities must adhere are balancing the interests of road users and utilities companies, cooperation and communication and an acknowledgement that work programmes may have to be adjusted to meet objectives.

In summary, he indicated that the legislation was supported by regulation and codes of practice, were developed and managed by the industry, clearly defined coordination and cooperation and were detailed and prescriptive.

A Legislative Framework for New Zealand

John Sheppard, Brookfields

John's key points were that there is a plethora of legislation. There is also common law. We are employing the former regulatory law to dispute rights and there is a misunderstanding about costs of compliance. The use of the



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corridor legislation also includes the Health and Safety Act, Resource Management Act and the Building Act.

John indicated that accordingly there had been many disputes through legal action and there needs to be a better way. Councils also have responsibilities under administrative law to act fairly and reasonably. The question is whether this is the wisest policy for councils to pursue rates and suggested concerns need to be settled by negotiation. Long term commercial relationships are better achieved through a cooperative basis and accordingly it is better to act in unison.

David Russell, Consumers Institute

David indicated that the local authority is the main protector of their ratepayers and are not more commercial although still a monopoly. He is of the view that many ratepayers believed that councils were double dipping when they introduced user pays. He queried whether competition does fit for utilities and in many cases it protects the rights of the dominant incumbent. He believed that the consumer needed to have a say and the consumers involvement and influence could be through appointing a delegate, open consultation, participation, research, or legal powers.

He believed that there needs to be a review of the accountability provisions, benchmarking of local authorities ensuring that councils and utilities keep in touch with reality and the legislation amended.

Is it Time for Payment from the Opener?

George Fairbairn, New Zealand Automobile Association

George recognised that cooperation and coordination is important and raised the issue of a lane rental for utility operators so that the cost of disrupting road users would be paid for. This could be based on the use e.g cable TV could attract a higher charge than water. The funds raised from this mechanism would need to go back to benefits for road users. Other options were limiting the times and frequency of road openings. There was an objective in the Local Government Act to manage roads in the best interests of the community and therefore there was a need to achieve a balance between essential services and road users. In many cases, in his view, road users' needs were not taken into account.

New Zealand Utilities Advisory Group: Collaboration and Cooperation

John Hutchings, Chairman, New Zealand Utilities Advisory Group



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John explained the membership of the group and the outcomes sought by the NZUAG. In summary, this is a clarification of rights and responsibilities of the parties, recognition of the many roles of the corridor, minimisation of the costs for end use consumers, improving coordination and enhancement of safety, identification and allocation of costs fairly and provision of consistency across all road controlling authorities.

Some of the projects being undertaken by the Group were the development of a code of practice for work in the road, the promotion of training, preparing a methodology for calculating costs and charges, improving valuation consistency, considering the Resource Management Act mechanisms for addressing the amenity issues of overhead cables, improving the continuity of utilities in disaster events, coordinating utilities information systems and Corridor Management Agreements.

Conclusion

Conference facilitator Mai Chen

Mai raised the issue of how the issues of the conference should be addressed and suggested that an options paper be prepared. This should address what the problem is and the preferred mechanism for resolving these. She suggested that the options may well be 80% voluntary approach and 20% legislative approach. She indicated that there seemed to be widespread support that the Utilities Advisory Group should undertake this work on behalf of all parties as it had representation of roading authorities and the various utility operators. She suggested that there needed to be engagement with government officials and that there needed to be a response to the Ministers invitation.

Conference Resolution

It was generally agreed that the conference would:

1. Accept the Ministers invitation to make a formal representation to the government from the conference.
2. Agree on the priority issues and adopt a cooperative, collaborative approach to their resolution.
3. Adopt both a voluntary approach and a legislative approach.
4. Keep all other parties briefed.

Concluding Note

During the conference the collaborative approach was supported by all speakers. It was also apparent that an 80:20 voluntary vs. legislative balance was the right sort of approach to adopt. During the course of the conference many issues were raised – some of which are being addressed



by the Utilities Advisory Group but there were additional ones. These have been listed in the attached schedule and placed under the headings of 'voluntary mechanisms' and 'legislation' as identified in the conference resolution. This draft schedule will be considered by the Utilities Advisory Group in the near future.



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Utilities Conference - Outcomes for Action

Issue	Voluntary Mechanism	Legislation
Poor reinstatement	COP - Working in the Road	
Location information	Common system specific Agreements	Disclosure requirement
Limited coordination of road entry	Corridor/partnership Agreements	
Lack of forward planning and provision for future installations	Corridor/partnership Agreements	
Inconsistent practice by TLA's	COP-Working in the Road	
Inconsistent application to utilities		Reasonable conditions of Telecommunications Act extended to Gas and Electricity Acts
Inconsistent charges by TLA's (Admin charges, Audit fees, Location charges)	Guidelines on charging methodologies	
Inconsistent cost sharing arrangements		Legislative cost sharing provisions to be rationalised
Poor contractors	Training courses as a requirement Selection processes	
Water, wastewater and stormwater are favoured	COP – Working in the Road	
Utilities companies do not face true costs	?	Access charge
Insufficient lifelines protection and arrangements	Corridor/partnership Agreements	Civil Defence Emergency Management Act
Inconsistent valuation of utilities	Valuation guidelines	
Amenity impact of overhead reticulation	Guidelines on application of RMA for District Plans,	



	Corridor/Partnership Agreements	
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