

# NATIONAL CODE FOR UTILITIES' ACCESS TO THE TRANSPORT CORRIDORS

## SUBMISSION FORM and GUIDANCE ON MAKING SUBMISSIONS

### A: GUIDANCE ON MAKING SUBMISSIONS:

This form gives guidance and a structure for making submissions on the draft National Code for Utilities' Access to the Transport Corridors. It is available in Word format on the NZUAG website: [www.nzuag.org.nz](http://www.nzuag.org.nz)

#### 1 Written submissions

Written submissions are requested in *electronic form*, but hard copies of submissions may be sent separately. Submissions are due with the Executive Officer of NZUAG by **Friday 11 March 2011**.

Post 68 Curtis Street, Wellington 6012

Email [submissions@nzuag.org.nz](mailto:submissions@nzuag.org.nz)

Fax 04 4758 413

Enquiries telephone 04 4758 439

**NZAA thanks NZUAG for graciously extending this deadline to Friday 18 March 2011.**

#### 2 Submissions made on behalf of

Submissions may be made on behalf of an organisation, part of an organisation, or a group of organisations or by an individual. Submitters are requested to specify on whose behalf the submission is made.

#### 3 Context for submissions

Submitters are requested to make their submissions in the context of the Utilities Access Act 2010.

[http://www.legislation.govt.nz/act/public/2010/0098/latest/DLM2248926.html?search=ts\\_act\\_utilities\\_rese&p=1&sr=1](http://www.legislation.govt.nz/act/public/2010/0098/latest/DLM2248926.html?search=ts_act_utilities_rese&p=1&sr=1)

#### 4 Solution focus

Submitters who identify any gaps in the Code or potential problems are requested to identify the reason for any problem, and offer a possible solution for the gap or problem.

#### 5 Presenting submissions in person

Organisations/ individuals who wish to present their submissions in person will have the opportunity to do so in Wellington in April 2011.

**If you wish to present your submission in person in Wellington in April 2011**

please check the box  **yes**

**Thank you for taking time to make a submission on the Code.**

**B: SUBMISSION FORMAT**

**Submission made on behalf of an organisation or part of an organisation:**

**Organisation: New Zealand Automobile Association**

**Postal Address: PO Box 1, Wellington 6140**

**Contact person: Mike Noon Job title: General Manager, Motoring Affairs**

**Telephone: 04 931 9984 Mobile: 021 659 704 Email: mnoon@aa.co.nz**

**1 General comments on the Code**

*[In addition to any other general comments that submitters may have, it would be helpful for submitters to indicate:*

- *whether they support or oppose the Code in general;*
- *whether they consider the Code fulfils the purpose set out in Section 9 of the Utilities Access Act 2010 (and, if not, the specific reasons as to where and why it does not fulfil that purpose); and*
- *whether they consider the Code fulfils the content requirements set out in Section 10 of the Utilities Access Act 2010 (and, if not, the specific reasons as to where and why it does not fulfil those content requirements).*

**Comments:**

*“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 maintaining safety; and*
- *(c) provides a nationally consistent approach to managing access to transport corridors”*

NZAA strongly considers that this Code does not go anywhere near far enough towards achieving a state of fairness or balance between the needs of users of the road utility and of other utilities; it is heavily biased in favour of other utilities at the expense of road users in terms of both cost and safety. NZAA considers that while this is the Code’s stated purpose, it fails miserably to achieve an impartial approach. Further, it fails to “maximise the benefit to the public” because it does not consider the relative benefits of the commercial utilities against the lost “public” benefits of productivity on the road utility and also the impact of the utility works on the long term death and injury outcomes for users of the road utility.

The bias embedded in the Code is amply illustrated by the throw away statement 4.5.1 (2a), that “temporary interference with traffic movement is generally considered acceptable

when balanced against the community benefits of the Utility service”. Nowhere in New Zealand is there any suggestion that communities are without utility services; the trade off could in some situations conceivably be about increased utility competition, or marginal improvements in a utility’s level of service but more realistically this Code is actually about the trade off between the costs to “road utility” users, which fall solely on the road users themselves, and the costs of utilities *completing roadworks faster, or better coordinating or managing their road works so they are less disruptive*. Even if it were relevant, nowhere has there been any analysis or work commissioned that supports this biased statement of the trade offs – indeed we would suggest only a process highly influenced by the utility companies would result in such a dismissive attitude towards road users and trivialising the costs imposed, against their own clear ‘importance’. It is simply mischievous to suggest that reducing interference with traffic movement would result in non-availability of utilities to communities, and certainly we have seen no evidence of a benefit cost assessment to prove the statement.

NZAA strongly supports the Code’s purpose and in particular, congratulates NZUAG on its ongoing efforts over many years, to produce a Code that aims to minimise disruption to road users, better coordinate utilities that dig up the road corridor (thereby creating substantial costs to the nation through delays and impacting adjacent businesses) and to improve standards of road reinstatement. NZAA’s main concern with this stated purpose is the glacial rate of improvement that the Code represents; the Code does not go anywhere near far enough to achieve the necessary step change in coordination of utility work, reduce disruption and take road user costs, quite distinct from road asset management costs, into account. We would suggest that without financial incentive to cooperate, NZUAG will continue to come up against a brick wall.

NZAA supports in principle the concept of national consistency, but not where this is clearly to the disadvantage of road users, and in particular to road user safety.

## **2 Comments on specific part of the Code**

Given shortage of time and not having been privy to the development of the Code, NZAA has not been able to shoehorn its response into the NZUAG’s specific submission framework although we have done our best given competing priorities.

### **Topic: Lack of consultation or engagement with representatives of users of the road utility**

Lack of consultation and engagement with road users as a key stakeholder in discussions on utilities in the road corridor. NZAA contends that road asset managers do not represent road user needs; they have no financial interest in the outcomes for road users or financial obligations to road users, only in the effect on their roading assets and to their rate payers. Therefore they do not represent road users’ interests in the impact of utilities on the road corridor.

NZAA has repeatedly objected to this failure to involve road users as key stakeholders in discussions; we repeat this because the Code's outcomes demonstrate an ignorance of road user issues. Because of the lack of financial engagement, unlike other utilities, the roading utility cannot be represented only by the asset managers and NZAA strongly objects to being sidelined in the discussion on utilities in the road corridor and seeks to be actively engaged in the Utilities Advisory Group.

NZAA considers that the effect on national productivity of the behaviour of utilities in the road corridor is significant and has not adequately been assessed and presented to Ministers to enable a fair analysis of the trade offs being made; not only travel time delay but also in reducing travel time reliability and contributing to unpredictable congestion.

**Recommended solution: NZUAG to forthwith include NZAA in its active membership and proactively and formally engage with NZAA in future with a view to approaching balance and fairness in input and outcomes**

Roading asset managers are not road users and do not represent the interests of road users; we continue to object to lack of NZUAG consultation on the huge issue of utilities in the road corridor. Other utility users may be well represented by their asset managers on this issue but roading asset managers are not accountable to road users, and have no financial incentive to lobby for their users from either a time delay or safety angle. Their only interests are road asset costs and ratepayer concerns.

**Topic: Lack of balance in approach to users of the road utility**

NZAA considers that until utilities face the true cost they impose on users of the road utility, competitive advantage will always trump cooperation in digging up the road corridor, because utilities have little incentive to cooperate and every incentive to retain competitive information about their infrastructure upgrades; digging up the road corridors is a source of significant discontent amongst NZAA Members. We would expect unusually strong agreement if not unanimity amongst Members about the unacceptability of utilities increasingly digging up road corridors one after the other.

No other utility can restrict the physical movement of users of other utilities, or impose such great costs and inconvenience on them, without any compensation to those users. The Code fails to make provision for lane availability payments even for excessive delays or for failure to coordinate. The UK for example has a graduated fine scale for exceeding the allotted time to minimise disruption. NZAA considers that to maximise public welfare, utilities seeking to impose costs on road users should have a strong financial incentive, at least equal to the costs imposed on road users, to coordinate with other utilities to minimise disruption.

NZAA notes that of all the utilities, the one least able to afford infrastructure investment is the one not financially compensated for costs imposed. NZAA considers this grossly unfair on the road asset managers as well as the road users, and that the other utilities, who can

afford to pay for the costs they impose, are instead free riding by imposing significant costs on a section of society that cannot afford to pay.

**Recommended solution: The Code should require utilities to undertake a proper assessment of the costs to road users of the delays imposed of the suggested works and this should be part of the information required for the CAR. The scale of costs imposed on road users should form the basis for the road controlling authority to impose an appropriate scale of penalties for the utility delaying completion in such a way as to affect lane availability.**

**Recommendation: Before they approve a CAR, the Code should require Road Controlling Authorities to consult with road user representatives about the reasonable conditions that road users consider should be imposed on managing utility road works. Road Controlling Authorities do not speak for road users as to what are acceptable conditions because they do not suffer the costs - road users do – and they are not accountable to road users, only to their ratepayers or to the Minister in the case of NZTA.**

**Topic: Road Safety, Safer Journeys and “Safer Roads and Roadsides”**

Overall, NZAA considers that the Code does not adequately address the Government’s road safety strategy, expressed so eloquently in its Safer Journeys plan, to have a Safe Road System that moves away from a “blame the victim” approach to a modern health and safety approach and explicitly commits the government to achieving “safer roads and roadsides”.

It is a stark contrast that the Code, as it must, addresses at length, the temporary safety issues of utility workers, but fails to give adequate attention to the long term, deadly outcomes of much of the above ground utility work in the road corridor. Nor does it place any responsibility on utilities for designing and placing unforgiving and unmitigated hazards into the path of road users to the extent that these poles are involved with hundreds of injuries as well as thirty deaths every year. Truly horrifying comments have made to NZAA by past members of the NZUAG about road crashes (for example, “they are just hoons that would just go and crash elsewhere”) that vividly demonstrate an appalling level of ignorance of road safety issues around utilities in the road corridor from the very people that are responsible for understanding it; the appalling lack of balance in discussions favouring other utilities, and a total lack of understanding of occupational health and safety responsibility when designing and installing deadly hazards in a road corridor.

NZAA applauds the risk assessment process for new above ground structures, but again, considers that this does not go far enough and certainly does not address the issue of hazardous existing structures or replacement of structures that are involved in a crash. Let us consider the risk assessment process within context.

No other utility is granted the ability to unilaterally create lethal hazards for another utility’s users. In 2009, 28 poles or posts were involved in, or collided with, in fatal crashes (and 549 in injury crashes). The reality is that for many of these crashes, if the pole had not been

there, the occupants may well have walked away completely unscathed. Even worse, these poles will usually be replaced in exactly the same place and with the same (lethal) design. Having the OSH elements in the Code protecting workers on the site is absolutely necessary and laudable; but given they are building maintaining or replacing a lethal product to be left in the road corridor for the general public, the incongruity is stark. The phrase “rearranging deckchairs on the Titanic” springs to mind.

What other new piece of legislation would condone and permit one utility (say internet provider) to install equipment that resulted in 28 electrocution deaths per year for another utility’s users (eg telephone users)? Yet the overriding requirement for safe placement or replacement, or for remediating a dangerously placed pole is, not even listed in the “reasonable conditions” that a road controlling authority can impose.

Why should the roading asset manager have to take responsibility for, and bear the costs of, assessing the hazard represented by a utility pole (for example) in the road corridor? Utilities are the owners and designers and are responsible for the hazard being located in that location. NZAA supports the requirement 3.3.2 for utilities to assess potential safety hazards and considers this should be a standard part of the CAR application for all above-ground equipment in the road corridor.

A key advance in thinking about managing roadside hazards is that the ‘clear zone’ concept, which is implicitly assumed within the Code, is being replaced by a mitigation concept particularly mitigation through with wire rope barrier. “Clear zones enable the driver to reach the obstacle more quickly” Research indicating a wider range of exit angles, means, when combined with driver reaction times, that clear zones had to be much larger than previously thought, so greater attention is being paid to barriers 1-2m out from the road. Further, there are very high public good outcomes (benefit cost ratios) for frangible poles over fixed poles, and even for drilling holes into wooden poles so as to turn these fixed poles into frangible ones as is done in Finland. The Code does not mention any utility responsibility to design or mitigate the hazards they are placing in the road corridor. Any reasonable person would suggest they have a responsibility to consider the OSH implications of their actions on road users under a safe system approach.

In particular NZAA is disgusted at utility reaction to pole crashes when the pole is simply replaced in the same site or worse, is strengthened to create an even more severe hazard. Having created a proven industrial accident site, utilities have a responsibility to eliminate, minimise or mitigate the hazard to the general public, and should immediately undertake an analysis of the potential responses.

NZAA struggles with the wording in section 3.3.2 “an opportunity to improve safety at minimal extra cost”. While this is laudable to capture opportunities to improve safety at minimal cost, the overall objective used to be “safety at reasonable cost”. Utilities should be as active as road controlling authorities in looking for opportunities to improve safety around structures that represent “safety at reasonable cost”.

**Recommended solution: That the Code actively incorporate the concepts, and references to the how to achieve the outcomes, in the Government's Safer Journeys strategy for "Safer Roads and Roadsides", particularly with regard to reducing over time the number and severity of hazards in the road corridor; further NZAA seeks for this Code to remove the financial barrier for road controlling authorities to require roadside hazards to be moved or mitigated, whether or not involved in a crash.**

**The Code should require utilities, as standard part of the CAR, to assess road safety for above ground works that will leave a permanent object in the road corridor, including how best to minimise, mitigate or eliminate hazards to road users, at the utility's cost.**

**The Code should require utilities to undertake an investigation of any pole that has been involved in a crash, to determine the appropriate health and safety response when deciding where and with what design to replace that pole, including the utility bearing the full cost of moving to a less hazardous location and adding mitigation where necessary.**

### **Cost Allocation**

For a long time investment in local roads has been declining. Local authorities find it difficult to find funding and raise rates to support a road investment program. While state highways have seen a substantial reduction in per vehicle kilometre injuries and deaths, the reverse trend is true for local roads. Local roading asset managers are thus the last group that road users would rely on to front up with or volunteer money for road safety improvements. On the other hand, the utility companies can afford multi-billion dollar investment program and regularly return substantial profits and dividends to owners. Which group should pay to protect the lives of the public placed at risk by unforgiving utility assets located in the traffic corridor of vehicles going 100 kph while knowing that an impact with a pole is lethal at 30 kph and knowing that humans regularly make errors in split second judgements?

Thus in terms of outcomes, NZAA considers the cost allocation model proposed in the Code is grossly unfair and will lead to preventable deaths and injuries.

**NZAA considers that whenever a corridor manager identifies that a utility has placed an asset in such a way as to present a hazard to road users and requires it to be moved, and that cost represents safety at reasonable cost (ie benefit cost ratio of 1) that cost should be fully borne by the utility operator. This will then involve the utility operator in better understanding and taking responsibility for siting their assets in such a way as to not present a hazard requiring costs of removal, and hence not only result in greater safety for users of the road corridor but also provide a deterrent effect, a learning incentive and a chain of responsibility requirement for utilities to take greater responsibility for the hazards to life and limb they are posing to the wider public.**

## **Other comments**

We suggest that the flow charts pp 33-34 provide for consultation with affected road users on what represents “reasonable conditions” prior to a CAR being approved (precedent set in the setting of speed limits that the NZAA is one of the groups that must be consulted on changes to speed limits).

We suggest that some benefit or incentive should be provided for utility works such as undergrounding that will improve safety in the road corridor by reducing hazards.

We understand there are major issues with utilities not reinstating road markings to full functionality with levels of reflectivity and audio tactile performance. Road markings are a key and increasingly sophisticated road safety tool and their full reinstatement will thus become increasingly important.

We apologise for the rushed nature of this submission and again thank the Committee for their dispensation in granting an extension.

### **3 Comments on format of the Code**

The Code has been formatted so that mandatory requirements (must do) are set out in standard font, and the best practice (should), optional procedures (may) and explanatory notes are in italics. Please advise whether this format is useful or you would prefer to have all the text in standard font.

I prefer to have:

- Best practice, optional procedures and explanatory notes in italics

NZAA has no mandate to comment on the usefulness of the fonts to users of the Code; given that, NZAA did find it user-friendly that the format distinguishes mandatory requirements from optional procedures.

### **4 Oral Submission**

We wish to be heard in support of this submission.

**Thank you for your comments and input to the Code.**

**Written submissions in electronic form are due with the Executive Officer of NZUAG by **Friday 11 March 2011.****

**Post** 68 Curtis Street, Wellington 6012  
**Email** [submissions@nzuag.org.nz](mailto:submissions@nzuag.org.nz)  
**Fax** 04 4758 413

**Once submissions have been analysed, and the Code confirmed for referral to the Minister, NZUAG will be publishing a summary of submissions and its responses to these.**