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Inquiry into Local Government Regulatory Performance

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Dear Mr Bailey

Local Government Regulatory Performance - Issues Paper July 2012

The Electricity Networks Association (ENA) represents New Zealand's Electricity Network Businesses (ENB's) - infrastructure providers with some 1.8 million customer connections and about 40,000 km of distribution lines throughout the country, in areas administered by all of New Zealand's local authorities.

Your issues paper raises many excellent questions and points. Our comments are focused on the implementation of the Resource Management Act 1991 by Local Authorities.

ENA recently hosted a Resource and Environmental Planning Forum for its members to discuss common areas of interest and issues in the planning space. The following were the key conclusions from the Forum:

- There is no consistency for ENB's in terms of the planning regime across districts/cities within a region, or across regions.
- Outcomes are uncertain (the decision making is not consistent) and are variable across (and even within) boundaries.
- Outcomes are far too dependent on the individual decision makers involved. The same submissions going to different decision makers will land with very different outcomes – ENA's members state that it is hard to plan with this lack of consistency. Treating each plan change etc as a standalone issue and the use of external commissioners have resulted in contradictory decisions on the same subject in different plan changes, even within council boundaries.
- It was noted that plans have become increasingly complex over the 20 years since the RMA was introduced – plans are now so complex that members report that the planning for longitudinal utilities is getting a lot more difficult.
- The costs of being involved in proposed plans, and plan changes, and submitting/monitoring them are very high. Given the sheer number of district and regional plans, this is a cost to the industry and to electricity customers as a whole, compounded by particular costs and issues for those infrastructure providers who deliver across multiple council boundaries. Members note the plethora of plans and

changes to keep abreast of, and that missing plan changes (which are sometimes introduced through error as much as intent) can have significant implications for infrastructure provision. One member has recently spent an estimated \$100,000 in trying to improve their local plan in order that they can meet the needs for local infrastructure provision effectively.

- ENB considerations such as those set out in NZECP34 (which cover for example separation requirements between buildings and power lines) are often not getting included at the planning/consenting stages, nor are the effects of other land use changes on ENB infrastructure being adequately considered at the approval stage. Reverse sensitivity is one of the issues members are left to deal with.
- The time taken before new plans and plan changes become operative can be problematic, and can lead to uncertainty in applying for resource consents and designations.
- The complexities, and the interactions, of the RMA and electricity legislation are generally not well understood by the RMA decision makers. It is not always clear to them which should preside when there is conflict between the rules and regulations set under different legislation.

Your issues paper notes that:

“Concerns have been raised that in designing regulations central government does not adequately consider the impact on local government; including cost and capability constraints. The Commission is interested in how this process can be improved to take better account of the consequences for local government.”

In terms of electricity distribution, for local decision makers considerations are often quite complex and technical, are sometimes emotive, and sometimes have potential impacts from a local political perspective, and therefore are quite difficult and time consuming for local bodies to work through. As a result there is a lot of variation in matters such as when new ENB infrastructure is permitted, and when upgrades are (and are not) permitted under the different local plans.

Your summary sheet asks:

“How could the allocation of regulatory functions between central and local government be improved?”

The lack of consistency and adequacy of the decisions being made by local decision makers is understandable to some degree in the current environment - national guidance for infrastructure provision has only been provided thus far in a handful of areas (for example, through National Environmental Standards (NES) for telecommunications and transmission).

In terms of distribution infrastructure, we believe that there are key issues where greater national policy/guidance in regard to RMA considerations would significantly reduce costs and deliver more efficient and effective outcomes. Other potential tools to consider (and it is important to note the sector has not yet reached an opinion on exactly what tool is required) besides NES's include National Policy Statements and codified utility chapters for inclusion in plans. Members note that even a set of consistent definitions would be helpful.

We submit that a greater level of national direction guiding matters applicable to electricity distribution would greatly increase the efficiency of the process for ENB's *and for councils*.

Your issues paper also notes:

“Deciding ‘who should look after what’ often involves a trade-off between the efficiencies and consistency which can come from operating at a larger national level, and the potential loss of flexibility and local ‘customisation’ and the intimacy and sense of ownership that can come with regulating locally.”

In our view, a greater level of national guidance would far outweigh any benefits arising from total local flexibility in these matters, when the costs are considered. In fact, well designed national guidance can also allow for local flexibility when it is appropriate – e.g. in areas of particular local significance.

“The terms of reference require the Commission to assess whether there is significant variation in the way local government implements its regulatory functions, and the extent to which such variation is desirable. “

There is significant variation in the way local government implements RMA regulatory functions in regard to distribution infrastructure. In our view, the expense and uncertainty caused by such variation outweighs any local benefit of that variation. The current process of Councils having to develop local policies from the ground up is expensive to customers and businesses, as well as to councils and ratepayers.

Your issues paper also asks for examples – we are more than happy to supply background on the many examples of variations in local rules faced by our members. Representatives from the Commission would also be most welcome to attend the next meeting of ENA's Resource and Environmental Planning Forum to hear directly from those dealing with the status quo.

We note the recommendations made by ITAG recently in regard to sections 6 and 7 of the RMA and infrastructure. While we think these changes are very important, we submit that greater central direction at the more detailed level would also be desirable in order to ensure the aims behind the proposed legislative amendments are achieved *in practice*.

We thank you for the opportunity to make this submission. Please contact Tanya Ashby (contact details are given below) if you have any questions.

Yours sincerely

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