New Zealand Telecommunications Forum (TCF) Submission to the Local Government and Environment Select Committee

Resource Legislation Amendment Bill

1. This submission is made by the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. The TCF enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully. Its members represent 95% of the sector.
2. Fixed and mobile telecommunications networks are essential national infrastructure. The applications and services that these networks enable have become essential for businesses and residential users whose expectations include ubiquitous availability of high speed, reliable services wherever they are and whatever they are doing. The majority of businesses in New Zealand rely on telecommunications services (whether that be fixed or mobile, voice or data) for their effective operation. It is vital that the RMA reforms recognise the importance of telecommunications to the wider economy by creating a fair, efficient and nationally consistent planning regime.
3. MBIE noted in a recent consultation document[1] that:

   "Digital communications technologies are impacting almost every aspect of our lives. We rely on them for business, government, education, health and in our communities. The communications sector is a critical enabler of economic growth in the twenty-first century."
4. Meeting consumer and business demands for new and improved digital services means constant investment and innovation and strong government support through nationwide policies. In 2014, total telecommunications investment reached $1.7 billion. This level of investment, compared to revenue, put New Zealand near the top of the OECD in 2013. There has been and will be ongoing significant investment nationwide through the Ultra-Fast Broadband Initiative as well as a rapid deployment of competing 4G mobile networks with the deployment of 5G networks on the

[1] Ministry of Business, Innovation & Employment Review of the Telecommunications Act 2001, Regulating Communications For The Future, September 2015

horizon. Further deployment into regional areas to provide broadband to rural communities via the Government's Rural Broadband Initiative (RBI) continues and New Zealand has seen the fastest uptake of fibre in the developed world[2].

5. New Zealanders have benefited from the telecommunications sector's investment in terms of the technological change and the underlying opportunities for productivity gains. Rapid growth in demand for data services, driven in part by services such as video streaming, mean that further investment in telecommunications infrastructure will be necessary as the industry responds to this burgeoning demand.
6. It will be essential that further investment in telecommunications infrastructure can be made efficiently and with as much certainty as possible. Consequently the TCF welcomes the opportunity to submit on the proposed RMA Reforms Review by the Select Committee.
7. The telecommunications industry is in a unique position of comprising a group of businesses that operate independently on a national scale, while sharing common interests with respect to resource management regulation. The industry reviews and submits on every district plan in the country and operates under these plans when seeking resource consents[3] – meaning we have a strong understanding of benefits of a good planning framework. Operating through the TCF has allowed the industry to provide a consistent and united position on the NESTF review and now the RMA reform.
8. Any reform to the existing legislation that promotes national consistency is desirable. The existing model, where each region or district has its own rules, is highly inefficient both in terms of the review process, which is repeated in each area to develop regional and district plans, as well as the complexity that results from differences in the plans.
9. Government policy and industry investment needs now to be mirrored by council's unitary and regional plans, to enable efficient planning and consenting processes and a more collaborative approach to help realise the government's policies and meet consumer demands.
10. It is for this reason that we support the development of a national template for plans to ensure that the same rules, processes and timeframes will apply across the country. National consistency reduces cost and makes the outcome of local processes more certain. The detail of the proposed national template however is unclear and we would like the opportunity to be considered a stakeholder in its development particularly for the areas relating to utilities and infrastructure. The rules associated with deploying fixed and mobile infrastructure can significantly influence an operator's business case for extending and maintaining its network. Inefficient, inconsistent and expensive processes increase the cost and time to deploy networks, ultimately leading to higher costs and lower availability for end users. TCF members therefore have a significant interest in updating planning rules to make them more efficient and timely, while balancing the appropriate environmental protections.
11. We also welcome the New Zealand Productivity Commission's issues paper "Better Urban Planning" December 2015 "to review New Zealand's urban planning system and

[2] TCF 'Telecommunications – Enabling New Zealand's Future' prospectus 2016

[3] In the 2015 the industry submitted on over 24 different local planning documents, including the Auckland Unitary Plan and Christchurch Replacement Plan.

to identify, from first principles, the most appropriate system for allocating land use through this system to support desirable social, economic, environmental and cultural outcomes" We are interested exploring increased transparency and collaboration between interested parties to determine an efficient national approach to planning. To encourage an 'enabling' approach from councils to foster key partnerships and initiatives is positive, interested parties including councils, central government and key stakeholders all need to work together when creating the new framework. We encourage the Government to be bold in its reforms which will enable the provision of telecommunications infrastructure and that ultimately end users can receive the services they require wherever they live, work or play.

12. The TCF would like to see more formal processes in place for the review of National Environmental Standards to ensure that reviews are completed in appropriate timeframes. This will ensure that reviews are able to keep pace with technological changes.
13. The TCF would like to appear in person before the Select Committee to support its submission.

Contact

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Resource Legislation Amendment Bill – Introduction to submission points/ general comments on the proposed amendment bill

It is recognised that proposed amendments provide the opportunity for further significant changes by delivering a major overhaul of the established resource management regime. Over the past few years there has been engagement, discussion, technical advisory reports plus those prepared by the Productivity Commission. We generally support the direction of the amendments which potentially deliver the opportunity for:

- Stronger national consistency and direction
- Leadership and support from central government to provide guidance on the details and interpretation e.g.: section 6 natural hazards and interpretation o of 'significant'
- Greater use of national instruments such the National Environment Standards and national Policy Statements
- Enabling opportunities to Ministers to respond
- Expansion of tools available for development of Plans enabling local government to engage with stakeholders and public via collaborative processes and/or create a bespoke process to respond to fast changing situation
- Streamlined consenting with narrowing of the opportunity for parties to participate.
- Further efficiency in the consent process including what are permitted activities
- Opportunity for more certainty on application/hearing costs
- Alignment of documents and requirement between various legislation i.e. the Reserve and Resource Management Acts
- Clarification and greater recognition of the role of tangata whenua especially in the plan making processes

The opportunity for national planning template plans is long overdue. The balance between the current explanations of wide public participation and reduced but potentially high value collaborative opportunities of amendments will be debated. We generally support the initiatives for national planning templates and collaborative approach as proposed in clauses 37 new sections 58B-58J.

We are concerned as to whether central and local government will adequately budget and resource to enable upskilling of the planning industry especially in local government, implementation of the national instruments or the collaborative planning process. Critical to the success of the initiatives will be meaningful collaboration and engagement during the development of Plans but has a range of tools that enable a quick response to fast changing technology, market or environmental trends.

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
1	Clause 4 (2) under section 2(1), definition of infrastructure, delete ", in section 30,".	Support	Useful clarification to the definition as it is applied beyond section 30	
2	Clause 8 new section 18A Procedural	Support	In our experience this is potentially an extremely important change and appears to be useful to establish	

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
	principles		new principles if the implementation of the RMA is going to be more responsive, have national consistency wherever possible and be cost effective. We support the collaborative approach, benefits to infrastructure build, improvements on time and costs, and national consistency of approach as promoted in section 18A. These principles are similar to those imposed in the Christchurch Replacement Plan process. During this process there has been a significant change in attitude amongst those involved toward developing a plan as all proposed policy and rule frameworks are considered against how they meet the principles. The industry has many recent examples of proposed plans significantly changing the regulatory requirements from reasonable to restrictive toward to infrastructure, particularly telecommunications, without constructive engagement and minimal justification or explanation. No regard has been had to the impact on the construction or upgrading of essential telecommunications networks that these communities depend for economic and social development. The proposed principles will potentially provide wide scope for legal challenge if a party does not believe the principles have been met. This issue needs further exploration to minimise the opportunity to delay new plans being made operative due to potentially frivolous or vexatious challenge.	

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
3	Clauses 11 and 12 amend sections 30 and 31 related to new function of development capacity	Support	We support the introduction of development capacity as a function of both regional and territorial authorities. The provision of adequate infrastructure including telecommunications is critical to enabling development. Consideration of the location and need for infrastructure to support new development as early as possible will ensure land is developed in the most efficient and effective manner and will enable infrastructure providers to plan and respond to development needs. We note that government initiatives such as RBI and UFB to expand access to fast digital services recognise the importance of provision of adequate infrastructure to social and economic development.	
4	Clause 11 change to section 30(1)(d)(v)	Support	We support the deletion of matters related to hazardous substances given the duplication of the function under the Hazardous Substances and New Organisms Act 1996.	
5	Clause 17 new section 34B Consent authority may fix fee payable to hearings commissioner	Support	The proposed provisions enable a consent authority to provide greater certainty to an applicant in regard to hearing costs. Our only potential concern is that by fixing commissioner costs for a hearing this may act as disincentive for some experienced and highly sought after commissioners withdraw their services from councils. This potentially could impact on the quality of decision making. It is noted that this provision is only an option for a consent authority.	

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
6	Clauses 20 and 21 Administrative charges amending section 36 and introducing new sections 36AAA and 36AAB	Support partly	The provisions for the fixing of administration charges are considered appropriate. The opportunity to request additional charges seems a reasonable balance to enable a consent authority to recover reasonable costs. We are concerned that process to set charges under the Local Government Act provides significantly less ability to challenge the charges and decisions made by the local authority. In our experience the Annual Plan process makes it basically impossible to reasonably challenge and review proposed fee changes. Basically it is a tick box exercise rather a process that has to for example consider the proposed section 18A principles.	We request that the references to the Local Government Act in subsection 36(3) be replaced with provisions under the RMA. The provision would include: ● Local authority requirement to provide complete details on how each charge was established ● Commissioners to hear and determine submissions ● Right of objection and appeal on the decisions ● Right for a local authority to reject submissions that are frivolous or vexatious
7	Clause 25 replacement section 43(3) regulations prescribing national environmental standards	Support	We support the flexibility for the development of NES that applies to specified local authorities or part of New Zealand. This has the potential to enable a regional or location specific NES to be developed.	
8	Clause 27 replacement section 43B(3) relationship between National Environmental Standards and rule or resource consent.	Support	We consider that this change is significant as it enables during the plan making process for a community to have rules that are more lenient than the NES national baseline standards. For example it is not uncommon for cell-site masts over 25m in height to be a permitted activity in rural areas e.g. Western Bay of Plenty or Waimakariri District councils, this being the proposed height for rural zoned land under the amendments to the NESTF. This amendment will also increase clarity for the creation of an NES, as it will be clear to all involved	We request to incorporate reference to Certificates of Compliance in addition to Resource Consents into replacement s43B(3).

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			throughout that process what the minimum acceptable standard can be in a nationally consistent context. As written currently section 43B(3) would trigger a resource consent if the permitted rule is more lenient than the NESTF. Those communities that considered the effects of higher masts and determined that they want to provide this opportunity that a higher mast delivers (such as the Waimakariri or Western Bay of Plenty examples above) are penalised. Communities are empowered to evaluate what is best for their communities. We support the amendment that allows a resource consent that is more lenient than an NES to prevail over the standard. Clarification is sought however, to ensure that this includes Certificates of Compliance. The RMA currently references s87 as to what constitutes a resource consent. Under this definition it is unclear (and is therefore subject to interpretation) whether a Certificate of Compliance would constitute a "resource consent" and could therefore be relied upon in accordance with this clause. The best way to avoid confusion is to include reference to "Certificates of Compliance". Where a certificate of compliance has been obtained it should be able to be relied upon the same way as resource consent is in order to provide certainty to the industry.	
9	Section 43 (National Environmental Standards)	Support	We propose that a new section is included that provides for reviews of a NES at regular intervals to ensure it	We request that there is provision for regular and meaningful reviews of the NES, and opportunities to

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			continues to achieve its objectives, remains relevant to technological and other changes that take place and is consistent with other NES's / legislative changes. We note that such a clause would be beneficial taking into consideration the example of the current NES for Assessing and Managing Contaminants in Soil to Protect Human Health (2011). This NES is widely recognised by local government, industry groups and developers as not being fit for purpose. In our experience its interpretation varies significantly across the country and it is particularly deficient in the management of linear activities and activities in the road. While these issues are well known and have been communicated to MfE directly by our members in 2012 a review of these regulations is only now taking place, with any changes unlikely to take effect until 2017. This has resulted in significant costs and delays to the delivery of telecommunication infrastructure in some areas.	assess whether the NES is achieving the set objectives. This could be achieved by introducing a requirement for the use of the collaborative process consistent with that proposed in new section 80A for the development and amendment of existing NPS and NES documents.
10	Subpart 1 National Instruments clauses 25-36 in relationship to National Policy Statements and National Environmental Standards	Support	Generally the proposed changes to the various sections including 43, 43A, 43B, 44 and the new 45A 48, 52, 55 new 55A are supported as to enable and encourage the development of NPS and NES documents. This will however further highlight issues with the potential lack of resources to adequately develop and implementation of the NPS's and NES's. Our experience with the 2015 review of the NESTF has highlighted a wide number of issues about process, resources and	We request to introduce a requirement for the use of collaborative processes consistent with that proposed in new section 80A for the development and amendment of new and existing NPS and NES. We request that under s58G a requirement to review the national template at a minimum of every 10 years is introduced.

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			collaboration leading to an amended NESTF that under delivers on the ability to for the telecommunication industry to rollout new technology and upgrade the existing network. We consider that it would be useful under proposed section 58G to include a requirement to review a national template for example a minimum of every 10 years.	
11	Ministerial powers are proposed to be significantly increased	Support partly	The direction of the amendments is toward more central government oversight and decision making. While judicial review process of a Ministerial decision could be an option there appears to be a need to consider if there is review process on Ministerial decisions,	
12	Clause 37 new sections 58B-58J national planning templates	Support	We generally support the concept of a national template. We see the opportunity for nationally consistent definitions, objectives, policies and development controls to be introduced for network utilities but especially telecommunications. This would provide significant benefits for network utilities. Currently for example we generally have to submit on: 1. Definitions (e.g., despite being defined in the NESTF many district plans have a different definition for the term "aerial") 2. correcting references to NESTF 3. Policies and Objectives 4. Development rules relating to masts, antenna	We request that section 58C contents of the national planning template include a number minimum requirements for example; 1. Definitions 2. Network utilities chapter including objectives, policies, development controls and assessment criteria for controlled and restricted discretionary activities We request that the telecommunications industry is recognised as a key stakeholder to provide technical support to the development of appropriate provisions

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			and lines which are different despite the receiving environment (e.g. residential or business) being similar in character across NZ 5. Assessment criteria for controlled and restricted discretionary activities The industry via the TCF working collaboratively with LGNZ and MFE/MBIE could provide a draft Telecommunications national template. This could easily be expanded to a Network Utilities chapter covering the 3 waters, roading, telecommunications, electricity and probably energy generation (wind, solar or small scale generation). Preparation s58D: Following the s32 process and notification of a draft template is supported. 58D(3)(d)(1) – time and opportunity to comment on draft. There is no specific reference to infrastructure / utility providers – these are grouped in with 'public' would be desirable to have specific reference to utility providers as a key stakeholder for clarity. An observation based on our experience of being involved nationally in regional and district plan reviews is that 'a one size fits all' national template may not be appropriate for the likes of Auckland and potentially the other metropolitans. There needs to be an opportunity to review the requirements of these areas and where appropriate ensure that	to ensure such provisions are fit for purpose.

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			national templates are able to accommodate these.	
13	Clause 38 new sections 58K- 58P in relation to iwi participation arrangements	Neutral	The proposed provisions are positive as they provide clarification on process and roles in relation to iwi participation. It is recognised that this is area that is still evolving and there is wide variety across New Zealand. There however appears to be an opportunity for the amendments to draw from best practice guidance on the content of participation arrangements.	We request that there is potential for the inclusion of some guidance on the content of agreements so that there is some certainty and consistency process nationally when dealing with Iwi consultation.
14	Clause 51 section 80(6) combined regional and district documents	Support	This section is useful in that it supports and encourages the development of combined regional and district plan documents.	
15	Clause 52 new subpart 4 Collaborative planning process section 80A	Support	It has been our experience that the earlier and more collaborative the engagement between council and key stakeholders the better the plan will be. By working with the telecommunications industry local government can ensure that the most appropriate and technically relevant standards are provided to balance the needs of rolling out essential new technology e.g. 5G or fibre and communities expectations. Collaboration ensures that the proposed plan: • focuses on the key and relevant issues to that community and the stakeholders including those with a wider regional/national interests. • delivers a faster and more cost efficient formal plan decision making process. The amendment Bill proposes provisions that could be seen as reducing public participation in plan	

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			development e.g. removal of appeal rights. We support the opportunity the proposal offers for collaborative process and consider that the amendments are a reasonable balance of consultation and efficient decision making.	
16	Clause 52 new subpart 5 Streamlined planning process section 80B and 80C	Support	This process offers the opportunity and flexibility to request from the Minister's approval for a bespoke approach to address specific local issues and conditions. It is considered that this is a positive new tool in the planning making. Coupled with the limitations on plan decision making timeframes this process could prove to be attractive especially for plan changes. The Ministerial approval process is designed to ensure the new principles in section 18A are met. This new opportunity has the potential to benefit national infrastructure rollout programmes/initiatives that are outside of the permitted standards.	
17	Clause 54 replacement of sections 85(3) and (4) with section 85(3) - (3D)	Support	We support the exclusion of designations from these provisions.	
18	Clause 62 in relation to the amendment of section 104 (consideration of applications)	Support	We support the amendment and suggest that Section 104(2) be further amended. Currently, when forming an opinion and considering the effects of an application, council officers are entitled to choose whether or not to disregard any adverse effect of the activity on the environment, if a national environmental standard or plan permits an activity with that effect. This is the basis of the "permitted baseline" argument commonly used	We request that Section 104(2) be amended as follows: 104) Consideration of applications (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority ~~may~~ **must** disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			by planners when assessing effects during the resource consent process. Given the practicality of this approach. We consider that it should be a requirement for council officers to disregard the effect of an activity, if a national environmental standard or plan, permits an activity with that effect. Thereby ensuring a realistically applied approach, whereby the effects of a permitted activity can be compared against the proposed infringement, to gain a scale of effects when considering applications.	
19	Clause 64 in relations to new section 108AA requirements for conditions of resource consents	Support	It is our experience that resource consent conditions are often imposed from a standard template of minimum package of conditions. The outcome of this is that it is not uncommon to receive a consent (often without seeing a draft document) of 50 plus conditions of which there maybe 5 conditions depending on the scale of the proposal that are actually relevant to matter consent was required for. Further to this conditions often overlap and are inconsistent with other consents that project has to operate or develop under for example Works Access Permit under "The National Code of Practice for Utility Operators' Access to Transport Corridors" (the Code).	We request that the following addition to the proposed section 108AA; - New subsection (3) conditions shall not duplicate, be inconsistent with other consents, authorisations under other legislation in particular The National Code of Practice for Utility Operators' Access to Transport Corridors.
20	Clause 117 new subsection 36(ae) and (af)	Oppose	It is recognised that it is appropriate for local authorities to be able to reasonably recover costs associated with development including permitted activities. However this appears to be open opportunity to charge any permitted activity. There needs to be wider guidance or detail when charging is appropriate i.e. permitted	We request that the proposed amendment be reviewed and potentially withdrawn unless sections 83 and 150 processes under the Local Government Act for setting charges be amended to include a process for an objection of proposed charge/s under section 357 before the charge under s36(1) (ae) is confirmed by

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			activities that have a development control with a measurable standard e.g. amount of water that can be taken or noise limit. Without appropriate guidance the implication is councils could apply monitoring fees to activities that have generally operated without incurring compliance costs, such as heat pumps to ensure they are operating with permitted noise limits. Our concern is related to the process by which charges are set via the Local Government Act where there is inadequate ability to challenge proposed charges. Above in this submission we have commented on Local Government Act fee setting process has proved to be a complete waste of effort and time as in our experience local authorities: ● Provide inadequate justification and details on how the charges were developed ● There a no reasonable process to object to the decisions of council other than judicial review to the High Court.	council.
21	Clause 115 Section 11 (Restrictions on subdivisions)	Support	We support the presumption that subdivision, especially where this supports development, is a permitted activity. It is common in our submissions on District Plans that a request is made for provision of network utility subdivisions. These are small lots around a network utility which are generally well below the normal minimum lot areas prescribed in the district plans. Such a lot is for the sole for the purpose of accommodating a network utility asset , such as a cell	We request that the following is inserted in either section 11()(1A)a after ii.; or iii that the subdivision is exclusively for the purpose of a network utility operator as defined under section 166.

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			site or cabinet or transformer. We consider that there is an opportunity to further refine this section to provide national consistency. This would involve providing for subdivision as a permitted activity with no minimum lot size where the express purpose is for enabling a network utility operator as defined under section 166. This could be achieved through a further amendment to section 11()(1A)a after (ii).	
22	Clause 120 new section 41D Striking out submissions	Support	The introduction of this new provision has the potential to improve the efficiency of the hearing process by the ability to strikeout submissions that are frivolous or vexatious or not reasonable or relevant to the case. Providing guidance on what can be considered vexatious or frivolous will be essential to ensure this provision achieves the intended benefits. It is not uncommon for submissions on a publicly notified application for a new cell-site to be focused on property value and radio frequency matters. All sites are required to meet the NZS for radio frequency compliance. Therefore it would be our opinion submissions that focus on matters irrelevant or where compliance is established with a national standard should be considered as frivolous. It will be necessary to include provision or guidance as to what stage of the process Section 41C can be utilised.	We request that MFE be required to provide best practice guidance on the implementation of striking out a submission including a definition or examples of frivolous or vexatious.

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23	Clause 121 new section 87AAB meaning boundary activity	Support partly	We support the concept of the boundary activities and the fast track processing of these. Under the proposed amendments the boundary activity does not apply where the boundary is a public boundary. In our experience it is not uncommon for telecommunication activities to adjoin a road or recreational reserve. The amenity impacts of a boundary activity on a reserve or road are considered to be less given the ability of what is normally a large open space to absorb these potential effects. Accordingly we seek that sub-clause 87AAB(1)(b) be deleted.	We request that sub-clause 87AAB(1)(b) be deleted. Alternatively insert a new subsection (c) "network utilities adjoining a road boundary are considered a permitted boundary activity".
24	Clause 121 new section 87AAC meaning of fast-track application	Support	We support these provisions especially the ability for the Minister under S360F(1)(a) to prescribe activities to which the fast-track process will apply. We note that currently there is a trend within local government to not include controlled activities in regional and district plans. In addition we would expect via the national template greater use of controlled activities. In our experience district plans often have provision of non-notified restricted discretionary activities. These activities should be included in a fast track application as with controlled activities. Given that controlled activities will have the ability to be fast tracked, it would be of benefit to the industry if the district plan template controls were more permissive, providing for a greater number of controlled activities that may have normally been a restricted discretionary activity. The benefits of the streamlined process are only as good as the number	We request that s87AAC(1)(a) be amended to include non-notified restricted discretionary activities for telecommunication.

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			of controlled activities.	
25	Clause 122 new section 87BA boundary activities are permitted activities	Support	We support the opportunity this amendment provides which recognises that where parties can agree on boundary activities these should be accepted as permitted. This provision will potentially enable development and removes the need of additional unnecessary resource consent applications and associated costs.	
26	Clause 122 new section 87BB activities meeting certain requirements are permitted	Support	We support this new provision as it has the potential to reduce the number of minor resource consents required on a technicality for example a 20 mm diameter lightning rod for a cell-site extending through a maximum height requirement. To make this new provision more transparent and available to all users it is recommended that local authorities be required to hold a public register of all determinations that an activity is deemed permitted. This would make it clear that the determination is available to any party in a similar situation to use. We are concerned that there is no review of the decision process included. An applicant should have the right of objection under section 357B in regard to determinations under section 87BB to ensure that decisions are fair and reasonable. This would enable referral of objection to an independent commissioner.	We request that under section after 87BB(1)(d): 1. add (1) (e) the consent authority shall make each determination under 87BB (1) public available via a public register. The register shall be available on the consent authority website and offices; and 2. add (1) (f) any activity consistent with an existing determination in the public register can be used by any party. 3. add to section 357B right of objection in relation to determination/decisions under section 87BB by an applicant
27	Clause 125 new sections 95 to 95B notification	Support	We support these provisions on the basis that they potentially speed up the consent for other activities	We request that s95(5)(b)ii is amended to include non-notified restricted discretionary activities for

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			that meet the fast-track criteria. It will encourage applicants to improve the quality of application documents. Proposed S95b provides useful clarification and a step forward to ensuring only adversely affected persons are included for limited notification. This should improve practice around determining who adversely affected persons are. To support the recommendation above in regard to s87AAC(1)(a) to include non-notified restricted discretionary activities for telecommunications as a fast track application type s95(5)(b)ii should be changed accordingly.	telecommunications.
28	Clause 128 new section 95DA persons eligible to be considered affected persons for the purpose of limited notification	Support	We support the inclusion of new s95DA but consider that further clarification is required with respect to references to infrastructure assets to ensure consistent application and clarity. The current wording is: "the owner of infrastructure assets that pass through, over, or under the allotment on which the activity is to occur". This does not take into account assets such as cell-sites where some activities (namely tall buildings or structures and landscaping) can have an adverse effect by blocking line of sight or encroaching into radio frequency blooms, thereby breaching NES regulations. We are able to provide further details and examples of such situations. Such examples may assist in	We request that the following is added under section 95DA(4)(b): 1. The owner of infrastructure assets that pass through, over, or under the allotment on which the activity is to occur. Note for clarification that this includes where the asset is a telecommunications cell site within a defined envelope. 2. Include in section 2 a definition of assets. Ensuring that this includes telecommunications (both fixed line and mobile).

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			determining appropriate amendments to s95DA.	
29	Clause 129 replacement section 95E consent authority decides if person is affected parties	Support	The proposed provisions are useful clarification of affected parties and update of 95E.	
30	Clause 133 amended section 106 – ability to refuse a subdivision	Support partly	The introduction of the need to take into account natural hazards in development land is critical. The ability of a consent authority to refuse subdivision consent because of significant risk from natural hazards is supported. Due to the unique nature of network utilities the use of subdivisions, particularly where it relates to existing utility structures, should be continue to be enabled.	We request that s106(1) should include a new (1B) For the purpose of subsection (1)(a) a network utility subdivision is excluded.
31	Clause 135 amended section 120 right of appeal	Support	We support the reduction in the right of appeal as this will deliver greater certainty.	
32	Clause 151 new section 360F and 360G related to regulations for fast track applications and notification of consent applications	Support	We support these provisions that enable regulations in regard to fast-track application including the prescribing of what activities can utilise the process.	
33	Clause 178 replacement of section 17S Conservation Act 1987 contents of applications	Support	We support the amendments to align the process for applications for a concession to that for resource consents under the RMA.	
	Schedule 1 amendments			
34	New Part 4 collaborative planning process clauses 36 to 73	Support	We support the provisions including the restricted 2 year timeframe for making a decision on the proposed document. Too many councils have had a history of having several different planning documents in the	We request that the proposed clause 72 Conference of experts is amended to include clause 72A Mediation and propose that the Auckland Independent hearing panel procedural process could be used.

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
			form of Operative and Proposed, making the planning process unnecessarily convoluted. To further enhance the process we recommend that under "Evidentiary matters" clause 72 provision for the panel to direct mediation of the submitters and experts would be useful. Our experience recently with both the Auckland and Christchurch independent panel has been that the mediation sessions have provided best opportunity for parties to resolve and mutually agree matters. Mediation has reduced hearing time as parties can rely on signed mediation documents and only have to focus evidence on the narrowed down issues.	"Mediation" 56. At pre-hearing meetings, the Hearings Panel will be asking submitters to confirm whether they consent to participating in mediation or any other alternative dispute resolution process. Mediation will normally be encouraged by the Hearings Panel in any case where it appears that the issues are suitable for being mediated. 57. If parties consent (other than the council, which is required to attend), the Hearings Panel may refer a matter to mediation or to another alternative dispute resolution process. The parties will be advised of the scope of a mediation session and of the time, date and venue of the mediation by way of email, or by telephone. 58. The Hearings Panel will appoint a mediator or a person to facilitate the mediation or other process, and the person who conducts the mediation must report the outcome to the Hearings Panel. However, material will not be included in the report without a person's consent if the material was communicated or made available by the person on a without-prejudice basis. 59. This report will take the form of a joint statement signed by the parties in attendance that will include the following matters: a. The names and contact details of the people who attended;

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				b. the matters and issues that were agreed among submitters and the resource management reasons supporting that agreement; c. any matters or issues that were not agreed and a concise summary of the outstanding issues between the submitters. A template for this purpose will be provided. 60. Parties attending mediation must be authorised to be able to agree or otherwise settle the matters and issues that are the subject of the mediation. 61. Mediation will be undertaken in a pro-active way by the appointed mediators. This may involve parties being contacted by mediators prior to scheduled mediation. Mediators may also present questions to participants and/or request that certain matters be addressed prior to mediation. 62. With the agreement of parties, mediation will focus on a marked up version of the relevant provisions of the PAUP. This will in most cases be provided in advance by Auckland Council but any other party may bring a marked up version to the mediation. 63. Mediation is undertaken to arrive at joint statements of changes to the proposed plan that address the relevant matters within s32AA RMA. Mediation towards joint statements may not involve all parties (identified within the Parties and Issues report as

Proposed RMA provision section, clause, page no. Point No:		The Submission is: Oppose / Support	Explanation/reasons	Amendment sought:
				being assigned to the mediation pathway) being called upon to contribute to mediation. 64. Mediation can include the use of expert conferences to determine matters of fact or expert opinion. This can occur as a sub-set to the mediation with agreed positions on facts (between expert witnesses) contributing back into ongoing mediation. 65. Mediation will not be open to members of the public or to submitters who are not directly involved in that mediation."
35	New part 5 streamlined planning process clauses 74	Support	No changes suggested.	