TCF submission to the Environment Committee on the Resource Management (Consenting and other System Changes) Amendment Bill

10 February 2025

Introduction

1. Thank you for the opportunity to make a submission on the Resource Management (Consenting and other System Changes Amendment Bill (the Bill). This submission is made on behalf of 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. TCF member companies represent 95 percent of New Zealand telecommunications customers. Our members include fibre and mobile network operators, retail service providers and the tower companies that own and operate cell towers.

2. The telecommunications sector provides critical infrastructure and services (such as internet access, messaging and voice calling) that New Zealanders, businesses and government rely on to be able to communicate, access essential services and do business (including in the primary sector). Our members need to engage with the resource management system to be able to install, maintain and upgrade network infrastructure such as fibre optic cables, cell towers, cabinets, poles and antennas.

3. We support the policy intent of the Bill to make consenting and other processes easier, but have identified a number of areas where the proposed changes may unintentionally have the opposite effect. Our submission suggests ways to fix these.

4. We also note that for the telecommunications sector, this Bill will not address the consenting challenges we face if the National Environmental Standards for Telecommunications Facilities (NESTF) are not updated. It is critical for us that the update of NESTF takes place as soon as possible as part of phase two of the resource management reforms.

5. There is also an urgent need for the proposed National Policy Statement for Infrastructure to be progressed in tandem with the legislative work (it doesn't need to wait for phase three). While we look forward to participating in the phase three work that will replace the RMA, incremental progress is needed to address the everyday challenges and uncertainty that critical infrastructure faces with conflicting national direction and reverse sensitivity issues. These are barriers to New Zealanders accessing critical infrastructure, including telecommunications.

6. We ask the Committee to support the above mentioned national direction work in its report back.

Summary of submission points

7. In this submission we comment on the following aspects of the Bill:

    a. Clause 10: allowing councils to impose administrative charges for a broader range of activities. We propose that lifeline utilities are exempted from these administrative charges.

    b. Clause 11: prevention of councils extending processing timeframes. We propose that long-lived infrastructure should also receive this benefit (not just wood processing and the specified energy activities).

    c. Clause 17: providing council flexibility around medium density residential standards. We propose an addition to the Bill to require councils using the intensification planning instruments to ensure that housing developments have access to telecommunications (both wireless and fixed line) and other critical infrastructure.

    d. Clause 25: enabling rules concerning natural hazards in proposed plans to have immediate effect. Natural hazard provisions concerning infrastructure need to be tested rather than having immediate legal effect. Clause 25 should be limited to residential developments.

    e. Clause 29: requiring applications for specific activities to be decided within one year. We propose that telecommunications also receive the benefit of this amendment.

    f. Clause 34: requiring a consent authority not to hold a hearing unless it determines further information is needed. We submit that hearings should be held if requested. A hearing is less costly than an Environment Court process, and is a useful way to work through concerns raised about an application.

    g. Clause 37: the ability to refuse resource consents if an activity will create or increase significant natural hazard risk. Telecommunications infrastructure sometimes needs to be situated in natural hazard areas to be able to provide national coverage, and an exemption is needed for lifeline utilities.

    h. Clause 38: providing a draft of any conditions of a resource consent. We suggest this change go slightly further and require that consent authorities always share a draft

of any proposed conditions before issuing a decision on an application. There should also be some limits on the conditions that can be imposed.

i. Clause 42: concerning a 35 year default for long-lived infrastructure activity. The drafting could imply that *all consents* required for long-lived infrastructure (including land use consents which currently are granted in perpetuity) are subject to a 35-year duration. We recommend this clause be amended to make it clear that the 35-year duration is only intended to apply to regional consents.

j. Clause 49: we think the Bill needs to make more fundamental changes to the designations provisions. The concept should be one of shared infrastructure corridors enabling all critical infrastructure sectors to put infrastructure in or on the designated area. We also propose a drafting change to address an inconsistency on the notice of requirement amendments in clauses 49 and 51.

k. Clause 63: extending the timeframe for seeking a resource consent after emergency works. We propose a 12 month period.

Clause 10: allowing councils to impose administrative charges for a broader range of activities

8. The RMA allows councils to charge fees for the monitoring of resource consents. Clause 10 would allow charges for a broader range of activities, including to monitor permitted activities under a plan (caaa). It would also enable councils to charge where they think there has been a contravention of the Act, a national environmental standard, plan or regulation (caab). This charge is for the purpose of determining whether a contravention has occurred - it is not linked to there being an actual contravention.

9. The TCF is concerned that allowing charges to monitor activities that are permitted under a plan or a national environmental standard would defeat the purpose of having national environmental standards for telecommunications facilities (NESTF).

10. NESTF allows routine activities to be carried out in a standardised way without the need for time consuming and expensive resource consents. It essentially makes these low impact activities permitted. The Government is currently working through a process to update the NESTF standards, to take account of changes in technology and housing height and density. Without these changes resource consents are required to install or upgrade telecommunications infrastructure. The difficulty and cost of obtaining these consents means that communities and businesses go without vital connectivity improvements.

11. We are concerned that the updates to NESTF will be negated if resource consent costs are replaced with administrative charges. For example if councils require telecommunications network operators to engage or pay for acoustic engineers to monitor noise from equipment cabinets, this would cost tens of millions of dollars per year.

12. We also note that existing council monitoring of telecommunications activities can have little or no value add, as councils will not have the necessary expertise. Monitoring of resource consents is rarely undertaken even though each consent has a standard monitoring fee,

making it an administrative exercise. We do not see a need to monitor permitted activities in all instances.

13. We propose that clause 10 (caaa) and (caab) be amended so that councils cannot charge lifeline utilities for monitoring of permitted activities under a plan or national environmental standard. Example drafting is included below:

> (caaa) charges payable by a person, other than a lifeline utility, carrying out a permitted activity, for the carrying out by the local authority of monitoring the person's compliance with any rule in a plan that relates to the permitted activity~~.~~ In this section lifeline utility means a lifeline utility within the meaning of section 4 of the Civil Defence Emergency Management Act 2002:
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> (caab) charges payable by a person, other than a lifeline utility, who an enforcement officer considers has contravened this Act, a national environmental standard, a regulation, a rule in a plan, or a resource consent, for the carrying out by the local authority of any function necessary to determine whether the contravention has occurred:

Clauses 11: special treatment for wood processing and energy activities re processing timeframes

14. Clause 11 of the Bill proposes to amend section 37 of the RMA to provide that a consent authority must not extend the time period for processing and deciding an application for a resource consent for a wood processing activity or specified energy activity. Long-lived infrastructure (as defined in the Bill, and including telecommunications infrastructure) is not included in this clause and therefore does not receive the same benefit. We propose that long-lived infrastructure is added to the amendment.

Clause 17: addressing critical infrastructure in council use of medium density residential standards

15. The Bill contains provisions that would provide some flexibility to councils in complying with medium density residential standards (MDRS). Including MDRS related amendments in the Bill provides a much needed opportunity to ensure that people living in medium density housing developments have access to both wireless and fixed line telecommunications services and other critical infrastructure. Houses need utilities - power, telecommunications and water are all needed for livable communities.

16. Our experience is that developments are being approved without due consideration of the impact on or need for related infrastructure services such as telecommunications. There are two issues to be considered: the impact on existing infrastructure (for example, if it needs to be moved or modified) and the need for additional infrastructure to support the new development.

17. Adding telecommunications infrastructure after a development is complete is more difficult, expensive and disruptive to residents. For example, new roads and berms need to be dug up to lay fibre, and cell sites need to be constructed in front of new homes. Additional planning processes, costs and time delays will apply. The medium density aspects, with taller buildings closer to each other, means telecommunications network providers will not be able to rely on existing national environmental standards (although we hope some of these issues will be addressed by updating the National Environmental Standards for Telecommunications).

18. The complexity and cost often means that new infrastructure will not be installed (or will be delayed) and residents will have less choice and less reliable internet access or mobile calling.

19. We propose that the Bill include a provision requiring councils and developers using housing intensification planning instruments to ensure that people living in new housing developments have access to both wireless and fixed line telecommunications services. Councils need to require that utilities are designed into developments, and require evidence it has been done. Development contributions need to be made towards the costs.

20. This could be achieved by amending section 80E(2)(g) of the RMA to require access to telecommunications and other network utilities as follows:

> (g) subdivision of land including where and how linear infrastructure (electricity and wireless and fixed line telecommunications) is designed and located.

21. These and other sorts of reverse sensitivity issues also need to be dealt with in national direction. Te Waihanga has already started work on a National Policy Statement on Infrastructure, and on standards. Inspiration could also be taken from the Australian policy on telecommunications in new developments.

Clause 25: allowing natural hazard rules in proposed plans to have immediate effect

22. Clause 25 would amend section 86B(3)(e) to allow natural hazard rules in proposed plans to have immediate legal effect. We submit that clause 25 should be limited to residential developments.

23. Natural hazard risks concerning residential housing developments and infrastructure such as telecommunications and other network utilities are different. As noted in relation to clause 37, telecommunications infrastructure sometimes needs to be situated in natural hazard areas to be able to provide national coverage. This means that provisions concerning natural hazards need to be tested rather than taking immediate effect.

Clause 29: requiring applications for specific activities to be decided within one year

24. Clause 29 would insert new section 88BA so that consents for certain activities (hydro-electricity and geothermal) need to be processed and decided within one year of lodgement. We propose that long-lived infrastructure is added to this amendment. If it is considered that some sorts of long-lived infrastructure projects would be challenging to process and decide within one year, the amendment could at least include those that could, such as telecommunications.

Clause 34: consent authority must not hold hearing unless it determines further information is needed

25. Clause 34 (new section 100) provides that a consent authority must not hold a hearing if it determines it has sufficient information to decide the application.

26. We think that hearings should be held if requested by an applicant. A hearing is an important element of natural justice, is less costly than an Environment Court process, and is a useful way to work through concerns raised about an application.

27. We propose the following amendment to clause 34.

> (1) A consent authority must not hold a hearing on an application for a resource consent if it determines that it has sufficient information to decide the application unless the applicant has requested to be heard.

Clause 37: telecommunications infrastructure sometimes needs to be located in natural hazard areas

28. Clause 37 will enable consent authorities to refuse resource consents if an activity will create or increase significant natural hazard risk. While we support this principle (housing should not be built or rebuilt in such circumstances), an exemption is needed for lifeline utilities such as telecommunications. Uninhabited, nationally significant infrastructure should not face the same consenting hurdles as residential development. Given the importance and increasing necessity of having critical infrastructure in place for the public, it would not be appropriate for consent to be refused.

29. The default is of course to locate infrastructure in areas without significant natural hazard risk, to avoid damage and service disruption. Our members are naturally incentivised to do this, to avoid repair and replacement costs. However, telecommunications infrastructure sometimes needs to traverse and locate in areas subject to natural hazards, to provide national coverage and to ensure the people who live in or around natural hazard areas have access to the essential services our members provide. When this needs to happen infrastructure is engineered to be more resilient, for example by putting equipment cabinets on raised platforms in flood prone areas (as demonstrated in the following photographs).

30. The NESTF (regulations under the RMA) recognises that the telecommunications sector is better placed than local authorities to make informed decisions on the planning of its infrastructure with respect to natural hazard risk. Regulation 57 makes it clear that natural hazard rules in district plans do not apply to regulated activity under the NESTF, and territorial authorities cannot make natural hazard rules that apply to regulated activity.

> **57 District rules about natural hazard areas disapplied**
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> (1) A territorial authority cannot make a natural hazard rule that applies to a regulated activity.
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> (2) A natural hazard rule that was made before these regulations came into force, does not apply in relation to a r activity.
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> (3) In this regulation, **natural hazard rule** means a district rule that prescribes measures to mitigate the effect o hazards in an area identified in the district plan as being subject to 1 or more natural hazards.

31. The MFE user guide on the NESTF explains that "this is because resilience is already factored into industry practice, and they will either avoid hazard areas or engineer structures to be resilient to hazard risk".

32. We propose that new section 106A is amended so that the infrastructure of telecommunications network providers and other lifeline utilities are excluded from the scope of the land use consents that may be refused. An exemption in the primary legislation will provide the necessary certainty, especially with so much overlapping national direction.

106A Consent authority may refuse land use consent in certain circumstances

(1) A consent authority may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that the activity for which consent is sought will—

(a) create a significant risk from natural hazards if there is no existing risk from natural hazards; or

(b) increase an existing risk from natural hazards to a significant risk; or

(c) increase an existing significant risk from natural hazards; and

in the case of infrastructure there is no functional or operational need for the infrastructure to be located in that area

33. To help address some of the uncertainty from overlapping national direction on natural hazards and other matters we also support the work Te Waihanga has been doing on a National Policy Statement for Infrastructure. Work on the Policy Statement and infrastructure standards should not need to wait until legislative change is complete. Incremental change has value when transformational change takes time to achieve.

Clauses 38 and 40: draft consent conditions should be shared as a matter of course

34. Clause 38 (new section 107G) provides that applicants for a resource consent may make a request to see any draft conditions of a resource consent. We submit this change go slightly further and require that consent authorities always share any draft conditions before issuing a decision on an application. Requiring an application will add unnecessary time and cost to the process. This can be achieved through the following changes to section 107G(1) (a):

> (1) Council shall provide the ~~An~~ applicant for a resource consent—
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> (a) ~~may request the consent authority to provide them with~~ any draft conditions of the resource consent; ~~and~~
>
> (b) ~~must make the request~~ before whichever of the following the consent authority does first:
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> (i) the authority issues its decision on the application; or
>
> (ii) the authority provides a report under section 42A in accordance with section 42A(3); but
>
> (c) there shall only be one opportunity to review draft conditions. ~~may make the request only once.~~
>
> (2) ~~If a request is made, a~~ A consent authority…

35. There should also be some limits on the conditions that can be imposed. Conditions should be limited to matters of council discretion and should not go beyond the scope of the infringement being applied for. To achieve this clause 40, which amends section 108AA(1), could be amended as follows:

> In section 108AA(1)(b)(ii), after "standard" insert "provided the condition is limited to the extent of the infringement of the relevant rule or standard or any relevant matters of discretion".

Clause 42: 35 year default for long-lived infrastructure activity

36. The 35-year default period is supported, however, the Bill as currently drafted could imply that *all consents* required for long-lived infrastructure (including land use consents which currently have no expiry date) are subject to a 35-year duration. We recommend that clause 42 of the Bill be amended to make it clear that the 35-year duration is only intended to apply to regional consents.

> **123B Duration of consent for renewable energy and long-lived infrastructure**
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> (1) A resource consent that would otherwise be subject to section 123(c) or (d) authorising a renewable energy or long-lived infrastructure activity must specify the period for which it is granted.
>
> (2) The period specified under **subsection (1)** is 35 years from the date of commencement of the consent under section 116A unless—

Clause 49: designation provisions

A more fundamental change concerning designations

37. Clauses 49 to 53 propose changes to how the RMA deals with designations. We submit that a more fundamental change is needed, to introduce the concept of shared infrastructure corridors. Instead of designations over roads, the RMA needs to treat roads as shared infrastructure corridors that also provide homes for water pipes, electricity lines and telecommunications.

38. The telecommunications sector needs to install fibre optic cables under roads, and cell-sites and equipment cabinets along the roadside. But all too often telecommunications infrastructure is not considered or included in major roading projects. A high profile example of this is Transmission Gully, where telecommunications was not factored into the project (despite the sector asking) and this major highway was built with significant mobile coverage blackspots.

39. The cost of installing telecommunications infrastructure after the fact is prohibitive. It is also disruptive, requiring roads to be dug up and road closures to enable this. If telecommunications is not enabled there are implications for motorists who will not be able to make a call if they encounter problems or have an accident. Opportunities to provide resilience and coverage improvements are also lost, by missing the opportunity to install

back up fibre routes that can be relied on in the event that other routes are damaged during a natural disaster.

40. Currently the industry has to rely on making submissions on major designations to get recognition for the need for new or additional telecommunications networks to be designed into the road.

Inconsistency in the notice of requirement drafting

41. We support the changes to sections 168 and 171 concerning notices of requirement, but have noticed some inconsistency in the drafting of the amendments concerning interests in land.

42. Clause 49 of the Bill currently proposes that for the contents of a notice of requirement (s168), where the requiring authority does have sufficient interest in the land, but the work will create any significant adverse effect to the environment, it does not need to include an explanation of whether the work is necessary to achieve its objectives. However, it does require a description of possible alternative locations or methods. This contradicts clause 51, which relates to the recommendation from a territorial authority (s171), where the alternatives assessment is only a relevant consideration where the requiring authority does not have sufficient interest in the land.

26. We recommend clause 49 is amended to delete (3B)(c) which would address the inconsistency.

Clause 63: extending the timeframe for seeking a resource consent after emergency works

43. Clause 63 would amend section 330A of the RMA to extend the timeframe for seeking a resource consent for emergency works from 20 to 30 days. We suggest the timeframe be extended up to 12 months. A 12 month period would:

    a. align with the temporary facilities provisions in a number of district plans

    b. align with what we are proposing for the updated National Environmental Standards for Telecommunications Facilities

    c. allow resources to be focused on the emergency response (such as building temporary cell sites or finding alternative routes for fibre) and thinking about longer term solutions

    d. provide enough time to get consultants to prepare applications and experts to prepare supporting documents.

44. Another approach to consider is for councils to waive the need for a resource consent for emergency works where the works have already been removed. For example, for fibre cables laid across trees while a road is washed out. Our experience is that councils are not concerned about these temporary activities needed to provide vital connectivity during an emergency. Seeking a consent (with the as built plans for the emergency works) for something that is no longer in place makes no sense.

45. There is a precedent for the waiver approach in section 87BB of the RMA, which enables councils to consider activities meeting certain requirements to be permitted activities.

46. If there are any questions concerning this submission please contact kim.connolly-stone@tcf.org.nz in the first instance. We would like the opportunity to speak to the Committee about this submission when hearings are held.