

Infrastructure (Amendments Relating to Utilities Access) Bill

Government Bill

As reported from the committee of the whole
House

This Bill was formerly Part of the Infrastructure Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Utilities Access Bill comprising Part 1 and the Schedule
 - This Bill comprising Part 2
 - New Zealand Railways Corporation Amendment Bill comprising Part 3
 - Affordable Housing: Enabling Territorial Authorities Act Repeal Bill comprising Part 4
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**Infrastructure (Amendments Relating
to Utilities Access) Bill**

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Bill English

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Infrastructure (Amendments Relating to Utilities Access) Act **2010**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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19 Purpose of Part

(1) The purpose of this Part is to amend a variety of Acts relating to utility operators' access to transport corridors in order to achieve greater certainty and consistency in the rights and obligations of utility operators and corridor managers. 5

(2) In this section, **corridor manager**, **transport corridor**, and **utility operator** have the meanings in **section 4** of the **Utilities Access Act 2009**. 10

Amendments to Telecommunications Act 2001

20 Amendments to Telecommunications Act 2001

Sections 21 to 28 amend the Telecommunications Act 2001.

21 Criteria for setting reasonable conditions 15

Section 119 is amended by adding the following subsections:

~~“(3) However, a condition requiring the network operator to increase amenity values (rather than merely maintaining them) may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced.”~~ 20

“(3) However, a condition requiring a network operator to increase amenity values (rather than to merely maintain them) must not be imposed unless the work to be done is in an area identified in a district plan as an area in relation to which, under the district plan, there are particular considerations, or rules or requirements, relating to amenity values.” 25

“(4) If the cost to the network operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there was not a requirement to increase amenity 30

values, then the person imposing the condition must pay that increase in cost.”

22 Notice requirement

Section 136 is amended by repealing subsection (1) and substituting the following subsection: 5

“(1) Except as provided in section 139, before a network operator proceeds to open or break up any road, the network operator must give notice of the intention to carry out the work to—

“(a) the local authority or other person who has jurisdiction over the road; and 10

“(b) any utility operator (as defined in **section 4 of the Utilities Access Act 2009**) whose pipes, lines, or other structures will or are likely to be affected by the work.”

23 Network operator to be notified of conditions

Section 137 is amended by omitting “20” and substituting “15”. 15

24 Failure to notify conditions

Section 138 is amended by omitting “20-working day” and substituting “15-working day”.

25 Construction, etc, of telephone cabinets or other similar appliances 20

Section 142(2) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) give notice of its intention to place a cabinet or other appliance on the road to— 25

“(i) the local authority or other person who has jurisdiction over the road; and

“(ii) any utility operator (as defined in **section 4 of the Utilities Access Act 2009**) whose pipes, lines, or other structures will or are likely to be affected by the work; and”. 30

26 Network operator to be notified of conditions

Section 143 is amended by omitting “20” and substituting “15”.

27 Failure to notify conditions

Section 144 is amended by omitting “20-working day” and substituting “15-working day”.

28 New heading and sections 147A to 147C inserted

The following heading and sections are inserted after section 147:

“*Local authority, etc, requiring work to be done*” 10

“147A Local authority, etc, may require lines, etc, to be moved

“(1) Where a network operator owns lines, cabinets, or other similar appliances that are on a road, the local authority or other person having jurisdiction over the road may, by notice in writing, require the network operator to raise, lower, or otherwise alter the position of the lines, cabinets, or other similar appliances.” 15

“(2) If the network operator refuses or fails, within a reasonable period, to do the work required, the person requiring the work may do the work or have it done by some other person.” 20

“(3) Before doing work as permitted by **subsection (2)**, the person requiring the work must give notice to the network operator at least 15 working days before the work commences.

“Compare: 1992 No 122 s 32; 1992 No 124 s 33

“147B Cost of work required under section 147A

25

“(1) The reasonable cost of all work required to be done under **section 147A** must be paid by the person that requires the work to be done.

“(2) However, the cost of the work must be paid by the network operator if the reason that the work is required is that the lines, cabinets, or other appliances— 30

“(a) were constructed contrary to any of the following:

“(i) this Act or any regulations made under section 157:

- “(ii) the Telecommunications (Residual Provisions) Act 1987:
- “(iii) the Local Government Act 1974 or the Local Government Act 2002, and any predecessor of those Acts: 5
- “(iv) the Public Works Act 1981:
- “(v) any local or private Act:
- “(vi) any regulations made under any of the enactments referred to in **subparagraphs (ii) to (v)**; or 10
- “(b) are in a dangerous or unsafe condition.
- “(3) A person that requires work to be done under **section 147A** may not claim for betterment in respect of that work, and no claim for betterment may be made against the person.
- “(4) The following provisions apply if the person requiring the work is the New Zealand Transport Agency or the agent of the Minister of Transport: 15
- “(a) the cost of all lines, cabinets, other appliances, and associated equipment that are used in carrying out the required work (other than things used only during the course of construction) must be paid by the network operator: 20
- “(b) if, as a consequence of the requirement, the network operator elects to fix or install any lines, cabinets, or other appliances over, under, or through any roading structure (being a bridge, underpass, overpass, culvert, or tunnel) that is being, or is to be, constructed or altered, and if the cost of constructing or altering the roading structure is thereby increased, then the network operator must pay the increase in cost: 25 30
- “(c) if, as a consequence of the requirement, the network operator relocates the lines, cabinets, or other similar appliances and reconstructs them to specifications different from those of the original lines, cabinets, or other appliances, then, if the costs described in **paragraph (d)(i)** are less than the costs described in **paragraph (d)(ii)**, the network operator is liable to pay the difference: 35
- “(d) the costs referred to in **paragraph (c)** are—

- “(i) what it would have cost to relocate and reconstruct the lines, cabinets, or other similar appliances as near as reasonably practicable to their original specifications (excluding any costs to which **paragraph (a)** applies), taking into account— 5
 - “(A) any restrictions or conditions imposed by or under any enactment in relation to the relocation and reconstruction; and
 - “(B) the location of the original works and the alternatives reasonably available to the network operator: 10
- “(ii) the actual cost of the relocation and reconstruction (excluding any costs to which **paragraph (a)** applies). 15
- “(5) **Subsections (1) to (4)** apply subject to any agreement between the person requiring the work and the network operator.
- “(6) The amount of payment required under this section must be determined—
 - “(a) by agreement between the person liable for the payment and the person to whom it is payable; or 20
 - “(b) failing such agreement, by arbitration under the Arbitration Act 1996, with 1 arbitrator to be appointed by each party and an umpire to be appointed by those arbitrators before entering upon their reference. 25

“Compare: 1992 No 122 s 33; 1992 No 124 s 34

“**147C Relationship with section 54 of Government Roding Powers Act 1989**

Sections 147A and 147B apply despite anything to the contrary in section 54 of the Government Roding Powers Act 1989. 30

“Compare: 1992 No 122 s 34; 1992 No 124 s 35”.

Amendments to Electricity Act 1992

- 29 **Amendments to Electricity Act 1992**
Sections 29A to 30A amend the Electricity Act 1992. 35

29A Construction or maintenance of works on roads

Section 24 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) No electricity operator may exercise the powers contained in subsection (1) otherwise than in accordance with such reasonable conditions as may be prescribed by the local authority or other body or person having jurisdiction over the road.” 5

30 New section 24A inserted

The following section is inserted after section 24:

“24A Criteria for setting reasonable conditions” 10

- “(1) In setting, varying, or revoking reasonable conditions under **section 24(2)**, the local authority or other body or person having jurisdiction over the road concerned may consider all or any of the following matters:

“(a) the safe and efficient flow of traffic (whether pedestrian or vehicular): 15

“(b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road:

“(c) the need to lessen the damage that is likely to be caused to property (including structural integrity of the roads) as a result of work on the road: 20

“(d) the compensation that may be payable under section 57 for property that is likely to be damaged as a result of work on the road: 25

“(e) the need to lessen disruption to the local community (including businesses):

“(f) the co-ordination of installation of other networks:

“(g) the co-ordination with road construction work by the local authority or other body or person who has jurisdiction over that road: 30

“(h) the need of the electricity operator to establish an electricity network in a timely manner.

- “(2) Nothing in **subsection (1)** limits a local authority’s or other body or person’s ability to impose reasonable conditions under **section 24(2)**. 35

- “(3) ~~However, a condition requiring the electricity operator to increase amenity values (rather than merely maintaining them)~~

may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced. 5

“(3) However, a condition requiring a network operator to increase amenity values (rather than to merely maintain them) must not be imposed unless the work to be done is in an area identified in a district plan as an area in relation to which, under the district plan, there are particular considerations, or rules or requirements, relating to amenity values. 10

“(4) If the cost to the network operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there were not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost. 15

“Compare: 2001 No 103 s 119”.

30A Cost of work required under section 32

Section 33(4) is amended by omitting “within the meaning of section 54(1) of the Government Roading Powers Act 1989” 20 and substituting “(being the New Zealand Transport Agency or the agent of the Minister of Transport)”.

Amendments to Gas Act 1992

31 Amendments to Gas Act 1992

Sections 31A to 32A amend the Gas Act 1992. 25

31A Construction or maintenance of fittings on roads

Section 25 is amended by repealing subsection (2) and substituting the following subsection:

“(2) No gas operator may exercise the powers contained in subsection (1) otherwise than in accordance with such reasonable 30 conditions as may be prescribed by the local authority or other body or person having jurisdiction over the road.”

32 New section 25A inserted

The following section is inserted after section 25:

“25A Criteria for setting reasonable conditions

- “(1) In setting, varying, or revoking reasonable conditions under **section 25(2)**, the local authority or other body or person having jurisdiction over the road concerned may consider all or any of the following matters: 5
- “(a) the safe and efficient flow of traffic (whether pedestrian or vehicular):
 - “(b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road: 10
 - “(c) the need to lessen the damage that is likely to be caused to property (including structural integrity of the roads) as a result of work on the road:
 - “(d) the compensation that may be payable under section 51 for property that is likely to be damaged as a result of work on the road: 15
 - “(e) the need to lessen disruption to the local community (including businesses):
 - “(f) the co-ordination of installation of other networks:
 - “(g) the co-ordination with road construction work by the local authority or other body or person who has jurisdiction over that road: 20
 - “(h) the need of the gas operator to establish a gas network in a timely manner.
- “(2) Nothing in **subsection (1)** limits a local authority’s or other body or person’s ability to impose reasonable conditions under **section 25(2)**. 25
- ~~“(3) However, a condition requiring the gas operator to increase amenity values (rather than merely maintaining them) may be imposed only if the part of the road on which the work is situated is within an area specifically identified in a long-term council community plan (as described in section 93 of the Local Government Act 2002) as being an area whose amenity values are to be protected or enhanced. 30~~
- “(3) However, a condition requiring a network operator to increase amenity values (rather than merely maintain them) must not be imposed unless the work to be done is in an area identified in a district plan as an area in relation to which, under the district 35

plan, there are particular considerations, or rules or requirements, relating to amenity values.

- “(4) If the cost to the gas operator of complying with a condition referred to in **subsection (3)** is higher than it would have been if there was not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost. 5

“Compare: 2001 No 103 s 119”.

32A Cost of work required under section 33

Section 34(4) is amended by omitting “within the meaning of section 54(1) of the Government Roding Powers Act 1989” and substituting “(being the New Zealand Transport Agency or the agent of the Minister of Transport)”. 10

*Amendments to Government Roding Powers
Act 1989*

15

33 Amendments to Government Roding Powers Act 1989

Sections 34 to 37 amend the Government Roding Powers Act 1989.

34 Powers of Minister over roads under Minister’s control

Section 48 is amended by inserting the following subsection after subsection (3): 20

- “(3A) Before exercising any power under subsection (3) that will or is likely to interfere with any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications, the Minister (or an officer of the Agency acting on the Minister’s behalf) must give not less than 10 working days’ notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger.” 25

35 Notice to be given of local authority works

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- (1) Section 52 is amended by inserting the following subsection after subsection (2):

“(2A) The Agency and the Minister must each publish, on a publicly available Internet site, the criteria that the Agency and the

Minister respectively will apply when considering whether to give consent under this section, and must apply those criteria when considering whether to give consent.”

(2) Section 52 is amended by adding the following subsection:

“(4) This section does not prevail over any provision in the Electricity Act 1992, the Gas Act 1992, or the Telecommunications Act 2001 that relates to works or maintenance on, under, or over a road.” 5

36 Powers and duties of Agency in relation to State highways

Section 61 is amended by inserting the following subsection after subsection (5): 10

“(5A) Before exercising any power under subsection (4) that will or is likely to interfere with any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications, the Agency (or an officer of the Agency acting on the Agency’s behalf) must give not less than 10 working days’ notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger.” 15

37 New section 78A inserted 20

The following section is inserted after section 78:

“78A Response to requests for access to motorway

“(1) If the Agency receives a request in accordance with **subsection (2)**, the Agency must respond, in writing, within 30 working days of receiving it. 25

“(2) The requests to which **subsection (1)** applies are those from local authorities, or owners of any pipe, line, or other works associated with wastewater or the supply of water, electricity, gas, or telecommunications, for access to a motorway for the purpose of constructing, maintaining, or in any other way altering any such pipe, line, or other works, or any wire, cable, pipe, tower, pole, or other structure or thing on, over, or under the motorway.” 30

Amendment to Railways Act 2005

38 Amendment to Railways Act 2005

(1) This section amends the Railways Act 2005.

(2) Section 75 is amended by inserting the following subsections after subsection (1): 5

“(1A) The New Zealand Railways Corporation, and any other licensed access provider that the Minister, by notice in the *Gazette*, declares to be subject to this subsection, must publish, on a publicly available Internet site, the criteria that the Corporation or other body will apply when considering whether to grant permission under subsection (1), and must apply those criteria when considering whether to grant permission. 10

“(1B) If a local authority or owner of any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications requests, in writing, permission for access to any railway infrastructure or railway premises for the purpose of carrying out work on any such pipe, line, or other works, the licensed access provider or railway premises owner must respond to the request, in writing, within 30 working days of receiving the request.” 15 20

Amendment to Local Government Act 1974

39 Amendment to Local Government Act 1974

(1) This section amends the Local Government Act 1974.

(2) Section 319 is amended by adding the following subsection as subsection (2): 25

“(2) Before exercising a power under this section to do anything that will or is likely to interfere with any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications, the council must give not less than 10 working days’ notice in writing of the proposed interference to the owner of the pipe, line, or other work, except in the case of any emergency or danger.” 30

Transitional provision

40 Transitional provision

To avoid doubt, the amendments made by this Part are intended to apply prospectively only and do not apply to or affect any notice given, request made, condition proposed or agreed to, or any other thing done before this Part comes into force. 5

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Legislative history

29 July 2010

Divided from Infrastructure Bill (Bill 63–2) by committee of the whole House as Bill 63–3B
