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Submission on the Resource Legislation Amendment Bill

Submission to the Local Government and Environment
Committee

From the Electricity Networks Association

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1. Introduction

The Electricity Networks Association (**ENA**) appreciates the opportunity to make a submission to the Local Government and Environment Committee on the *Resource Legislation Amendment Bill (Bill)*.

The ENA represents all of New Zealand's electricity distribution businesses (**EDBs**) or lines companies, who provide critical infrastructure to NZ residential and business customers. Apart from a small number of major industrial users connected directly to the national grid, electricity consumers are connected to a distribution network operated by an ENA member, distributing power to consumers through regional networks of overhead wires and underground cables. Together, EDB networks total 150,000 km of lines. Some of the largest distribution network companies are at least partially publicly listed or privately owned, or owned by local government, but most are owned by consumer or community trusts.

The ENA is still in the process of canvassing its members about views on specific provisions in the Bill, and this submission is accordingly high level. The ENA intends to submit more detailed comments on particular provisions, including but not limited to those highlighted below, by **Friday 8 April 2016**.

2. Executive Summary

The ENA's interest in the Bill is primarily focused around three broad goals, which are as follows:

1. To achieve increased certainty and consistency in the resource management regulation that applies to EDB assets throughout New Zealand;
2. To ensure that resource management regulation of EDB assets throughout New Zealand is sufficiently enabling; and
3. To ensure that EDB assets are not compromised by nearby activities.

Some of the legislative amendments proposed in the Bill are consistent with these goals, and accordingly the ENA supports or conditionally supports some of the proposed amendments. For example, the National Planning Template (**NPT**) has the potential to provide increased certainty and consistency in the rules that apply to the consenting of EDB assets throughout New Zealand, provided that the NPT addresses these activities and does so in an appropriate way.

In relation to other proposed amendments, the ENA has concerns that there will be unintended and undesirable consequences, and the ENA intends to outline these and some suggested solutions for the Committee's consideration. In particular, the proposed amendments to the subdivision and notification provisions in the Resource Management Act 1991 (**RMA**) have the potential to allow activities that will compromise the functioning of EDB assets, without clear provision for appropriate input by EDBs.

There are also some proposed amendments that leave uncertainty about their impact on ENA members' activities, and the ENA seeks clarification of these matters. For example, while the proposed new resource consent notification provisions appear intended to simplify the notification process by expressing it as a series of sequential steps, the ENA is concerned that these are difficult to follow and might not have the desired result. The ENA requests reconsideration of whether these provisions represent the best approach.

3. More certain and consistent resource management regulation of EDB assets

The ENA supports measures that will increase the certainty of regulatory measures. Given the size of the electricity distribution network in New Zealand, district and regional plan rules, and other regulation of this network, have the potential to significantly increase compliance costs - if these rules are uncertain.

Consistency of regulation throughout New Zealand is important, and should be readily achievable in relation to EDB assets. The National Environmental Standards for Electricity Transmission Activities illustrate the potential for a consistent approach to regulation of electricity infrastructure. While those standards do not apply to electricity distribution lines managed by EDBs, the ENA sees benefit in considering an equivalent measure implemented for EDB assets because of their importance for security of electricity supply.

Consistency issues have arisen in the past where transmission line ownership has shifted from Transpower to an EDB, causing the legal protection to change. It is the importance of the lines or assets that should define the level of protection, rather than the ownership.

It is also important to note that while consistency is important throughout New Zealand, in some circumstances different rules need to apply for different environments; for example, rural areas will have different needs to large urban areas.

Key aspects of the Bill that have the potential to affect the certainty and consistency of regulation of EDB assets include:

1. The NPT. The ENA generally supports the introduction of a NPT. Whether the NPT in fact provides the certainty and consistency sought by the ENA will depend in large part on the template's contents and scope. The ENA seeks recognition that the regulation of EDB assets is a matter that requires national consistency, and confirmation that such regulation will be included in the NPT. The ENA also seeks involvement in the development of the NPT.
2. Collaborative and streamlined planning processes. The ENA supports the principles of the collaborative and streamlined planning processes established by the Bill. EDBs would like to have input in this process.
3. Monitoring charges. Clause 26 of the Bill states a national environment standard may empower a consent authority to charge for monitoring any permitted activities specified in the standard. The potential cost implications of this proposal are unclear and the ENA seeks greater assurance that such an approach will be limited to charges that are reasonable and fairly reflect the benefit to the community of EDB assets.

4. More enabling resource management regulation of EDB assets

The maintenance, upgrading and expansion of the EDB network have the potential to improve development capacity throughout New Zealand, in line with one of the broad goals of the Bill. To that end, having enabling rules for EDB assets will have flow-on benefits for the community, and the ENA submits this should be encouraged by the Bill. Similar considerations apply to the telecommunications network, as the modern electricity network is becoming smarter and more dependent on communication systems.

Key aspects of the Bill that have the potential to make rules more enabling for EDB assets include:

1. The NPT. In addition to the matters of certainty and consistency noted above, the NPT has the potential to make rules for EDB assets more enabling, depending on the contents and scope of the NPT. The ENA seeks confirmation that the regulation of EDB assets will be a matter that is included in the NPT, and involvement in the development of the NPT.
2. Regulation-making powers. It is not clear whether the regulations envisaged by clause 105 of the Bill are intended to permit activities such as the maintenance, upgrading and expansion of EDB assets, and the ENA submits that the Bill should make it clear that these activities are included in the regulation-making power. The ENA also seeks recognition that some works associated with EDB assets are necessary for continued safe and effective operation of the asset or expressly required by other legislation (eg the Electricity Act 1992) and it would not be appropriate for the RMA or plans to hinder such works.
3. Restrictions on resource consent conditions. The ENA supports the intent of the restrictions on resource consent conditions as proposed in clause 64 of the Bill, subject to further clarification being provided about what is meant by the requirement that resource consent conditions be "directly connected" to an adverse effect of the activity or to an applicable rule.
4. Natural hazard provisions. The ENA supports the increased recognition of natural hazards in the RMA. However, given the functional need for network utilities such as EDB assets to be located wherever there is demand for electricity, care needs to be taken not to be too restrictive.
5. Public Works Act 1981 (PWA) amendments. The ENA has a particular interest in the proposed amendments to the compensation provisions in the PWA, given their relevance to EDB assets. Clarity and certainty in these provisions will be important, for example in the scope, process and breadth of application of these provisions.

5. Reducing the potential for EDB assets to be compromised by nearby activities

The ENA has concerns that EDB assets will be compromised if EDBs do not have the opportunity to make submissions in relation to activities that could affect their assets. For example, subdivision or land use development can affect EDB assets both physically (eg trees or other items falling on lines) and by cutting off

access to existing assets (eg through subdivision). The ENA also has concerns with the ability to supply new connections if the relevant EDB does not know about subdivisions or land use development occurring.

The importance of safe clearances around EDB assets is recognised by codes of practice such as NZECP 34:2001, which relates to the proximity of structures to power lines. Developments too close to EDB assets risk non-compliance with NZECP 34:2001.

Aspects of the bill that potentially allow for EDB assets to be compromised by nearby activities include:

1. Subdivision consent changes. The proposed reversal of the presumption against subdivision consents could have significant impacts on EDBs. It appears that, with the proposed amendment, subdivision would be akin to a permitted activity under the RMA unless a district plan expressly restricted subdivision. Given the potential for subdivisions to hinder the ability to supply new connections and to leave EDB assets stranded if access to them is cut off, caution is needed in relation to this proposal.
2. Regulation-making powers. While the ENA does not oppose the intent of encouraging residential land use through regulations under proposed section 360D of the RMA, the ENA would be concerned about permitting such use without adequate regard to its effects on (and demand for) electricity distribution infrastructure. Greater clarity about the nature and extent of the regulation-making powers is required, as is a fair and open process for consulting on the content of such regulations.
3. Notification provisions. While the ENA would be supportive of clarification of the tests for public notification and limited notification of resource consent applications, it does not consider the proposed amendments achieve that goal. Rather, the amendments appear to make the test more confusing. In addition, by creating further restrictions on notification, there is increased potential for activities to be consented that would compromise EDB assets and therefore the security of electricity supply. For example:
 - (a) It appears the intention is that controlled activities, boundary activities and subdivision consents would only be publicly notified if there are special circumstances, yet these activities have the potential to have effects that would benefit from a publicly notified process.
 - (b) The eligibility column in proposed section 95DA(4) indicates that the owners of infrastructure servicing a particular property would be eligible to be considered affected by a subdivision of that property, yet the owner of infrastructure passing through that property might be excluded from being considered.
4. Limitation of appeal rights. The ENA is concerned about the proposed limit on the types of resource consent decisions that may be appealed. The activities described in proposed section 120(1A) have the potential to impact EDB assets, and removing the appeal rights could leave EDBs with no effective recourse if a consent decision was inappropriate.

6. Conclusion

The ENA wishes to thank the Local Government and Environment Select Committee for the opportunity to make this submission. If invited, we do wish to present our submission in person to the Select Committee. We would be happy to provide any further information or clarification if you require, and as noted earlier, we will be providing more detailed comments on the Bill by 8 April 2016.

The ENA's contact person for this submission is Graeme Peters (gpeters@electricity.org.nz or 04 471 1335).

7. Appendix

The Electricity Networks Association makes this submission along with the explicit support of its members, listed below.

Alpine Energy
Aurora Energy
Buller Electricity
Counties Power
Eastland Network
Electra
EA Networks
Horizon Energy Distribution
Mainpower NZ
Marlborough Lines
Nelson Electricity
Network Tasman
Network Waitaki
Northpower
Orion New Zealand
Powerco
PowerNet
Scanpower
The Lines Company
Top Energy
Unison Networks
Vector
Waipa Networks
WEL Networks
Wellington Electricity Lines
Westpower