

**WELLINGTON CITY COUNCIL  
REPORT OF THE HEARING COMMITTEE**

**SUBJECT:**

Proposed District Plan Change No. 74: Telecommunication Structures

**COMMITTEE MEMBERS:**

Councillor Andy Foster (Chair)  
Councillor Ngaire Best  
Councillor Leonie Gill

**DATE OF HEARING:**

23 February 2010

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**1. RECOMMENDATIONS**

It is recommended that the Council:

- *Approve Proposed District Plan Change 74 as set out in the Public Notice of 19 September 2009, subject to the amendments outlined in Appendix 1 (annotated chapters).*
- *Accept or reject all the submissions and further submissions to the extent that they accord with recommendation 1 above.*

**2. INTRODUCTION**

This decision relates to Proposed District Plan Change 74: Telecommunication Structures.

District Plan Change 74 to the Utilities Chapters of the District Plan was notified on 19 September 2009. Its purpose was to amend the way telecommunication structures in particular are managed in the Utilities chapter of the District Plan. The Council initiated Plan Change sought to:

- Clarify which rules in the Plan should override the NES provisions.
- Change the activity status for new masts in the Residential Area and Open Space A Area from Permitted to Discretionary (Restricted) Activity. Masts in other Areas will still be permitted or Controlled (provided they meet certain conditions).
- Include a new permitted activity rule for replacement masts in the Open Space A Area.
- Set out a new height regime for masts in the Suburban Centre Areas, resulting in some areas with increased height, others with decreased mast height.
- Increase the setbacks for antennas from residential property boundaries.

- Include a new non-notification statement for co-location masts seeking up to 3.5m height on an existing mast.
- Include a new permitted activity rule for mast/antenna facility upgrades.

Plan Change 74 was publicly notified in September 2009. The notice appeared in the Dominion Post and was also sent to all ratepayers. Submissions closed on 30 October 2009 and 14 submissions were received. The Summary of Submissions was prepared and publicly notified on 10<sup>th</sup> November 2009 with further submissions closing on Friday 4<sup>th</sup> December. Thirty-three further submissions were received, including one late submission.

### **The Hearing**

The hearing for the plan change was held on Tuesday 23<sup>rd</sup> February.

At the outset of the hearing two of the Committee members declared potential conflicts of interest. Cr Best and Cr Foster both stated that their partners presently work for telecommunication company Gen-i, a subsidiary of Telecom. Gen-i is not a submitter in this hearing, though parent company Telecom is. Both stated they had received legal advice that these interests did not represent a conflict in this case and no submitters expressed concerns either.

Cr Foster declared he also had a potential conflict in respect of Capacity as he is presently on the Board for Capacity; a Council Controlled Organisation. None of the submitters noted that they had concerns with this conflict, but even so Cr Foster excused himself from the deliberations on their submission.

At the outset of the hearing the Council's Senior Planning Officer, Liz Moncrieff, spoke to the Officers Report on the Plan Change. The nature of the issues and submissions was such that it was generally agreed that rather than ask numerous questions of the officer at the start of the hearing, the Committee would refer questions to the officer during the hearing as they heard from submitters.

At the start of the Hearing, the Committee noted and agreed with the recommendation of the Officer to accept a late submission by Blair Kenton. The submission was a form submission and all issues outlined in the submission had been raised by other submitters.

Eighteen submitters appeared at the hearing and spoke to their submissions, outlined below listed in order of appearance:

- Telecom NZ – Natasha Wilson (s12 and FS 23)
- Capacity Infrastructure Services Ltd – Robert McCrone and Paul Winstanley (FS22)
- Vodafone NZ – Poul Israelson (s10)
- Two Degrees - Ben Blakemore (s5)
- Joint submissions from Helen Foot, Kay Austad, Diane Radford, Virginia Barton-Chapple (FS 24, 25, 26 and 27)
- Brian Miller (FS20)
- Else Noeline Gannaway (s13)
- David Parish (s14)
- Robert Vernal (FS19)
- NZ Association of Radio Transmitters – Mike Newman (s9)
- Wellington VHF Group Inc and Wellington Amateur Radio Club – John Andrews (s8)
- Sue Kedgley (FS29)
- Mary Redmayne (s7)

- NZ Transport Agency – Dana Moran (s6)
- Bob Waters (s11)

One submitter (Angela White – s4) could not attend the hearing but asked that some further evidence be tabled.

The Committee was grateful for all submissions (listed below) and in particular those who attended the hearing and who were able to elaborate on their written submissions and comment on the recommendations of the officer.

#### List of all submitters

<b>Submitter Number</b>	<b>Submitter Name</b>
1	Mr and Mrs Trang
2	Ngaio Progressive Association
3	Wellington City Council
4	Angela White
5	Two Degrees Mobile Limited
6	NZ Transport Agency
7	Mary Redmayne
8	Wellington VHF Group Inc and Wellington Amateur Radio Club
9	NZ Association of Radio Transmitters Inc.
10	Vodafone
11	Bob Waters
12	Telecom New Zealand Ltd
13	Else Noeline Gannaway
14	David Parish

Further submissions were received from:

<b>Submitter Number</b>	<b>Submitter Name</b>
FS1	Robert Jeffers
FS2	James Parnell
FS3	Neill Ellis
FS4	David King
FS5	Michael Spearman
FS6	Gary Watson
FS7	Donald MacDonald
FS8	Ian Wilson
FS9	Brian Heywood
FS10	Richard Greenback
FS11	Wallace Reed
FS12	Phillip King
FS13	Hugh Cooper
FS14	Jeffrey Howe
FS15	Roderic Deans
FS16	Geoffrey Cooke
FS17	Christopher Kerr
FS18	Wellington VHF Group Inc and Wellington Amateur Radio Club
FS19	Robert Vernall
FS20	Brian Miller
FS21	NZ Association of Radio Transmitters Inc.
FS22	Robert McCrone
FS23	Telecom NZ Ltd
FS24	Kay Austad
FS25	Diane Radford

FS26	Virginia Barton-Chapple
FS27	Helen Foot
FS28	Edward and Isabel Challies
FS29	Sue Kedley
FS30	Lalita Heymanns and Andrew Whitsed
FS31	Rosamund Averton
FS32	Blair Kenton
FS33	Anthony Fletcher

## Decisions

### 5.1 General Submissions

Mr and Mrs Trang (1) and Rosamund Averton (FS31) offer unqualified support for the plan change. The Committee accepted these submissions, though noted that its decisions on other matters raised would make some changes to the proposed plan provisions but these would not, in its view, substantially undermine the original intent of the proposed plan change.

**Decision:** Accept submissions 1 and further submission 31.

### 5.2 Utility Structures (Rule 23.1.4)

The Plan contains a permitted activity and controlled activity rule that cover the majority of utility structures<sup>1</sup>. The cabinets used by telecommunication providers are deemed to be utility structures. Two submissions were received on the permitted utility structure rule from Vodafone and Two Degrees Ltd (rule 23.1.4). The first submission relates to the height dimensions outlined in the rule, whilst the second submission relates to the cabinet footprint area.

Vodafone (submitter 10) states that the height dimensions for cabinets in this rule (being 1.7m) are not consistent with the NES height dimensions for cabinets (being 1.8m). They request that the height of cabinets in the Plan be increased to 1.8m to be consistent with the NES.

At the hearing Poul Israelson (for Vodafone) spoke to the Committee on this issue in depth. He provided additional written evidence at the hearing which focused on addressing Vodafone's concerns with the cabinet dimension provisions. The submitter made a number of points to support their position that the Committee should adopt the same cabinet requirements as though outlined in the NES, including:

- the Council should not make changes in the current Plan Change simply because of something in the future that may or may not happen.
- the submitter considers that rule 21.1.4.1 is contrary to the NES (and therefore ultra vires) because it outlines cabinet dimensions that are stricter than what the NES applies.

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<sup>1</sup> Utility structures are defined as “ any structure associated with a network or that receives or transmits to or from any part of a utility network operation and includes pipes, pipelines, valves, meters, regulator stations, transformers (other than a pole mounted transformer), substations (other than an overhead substation), compressor stations, pumping stations, navigational aids, meteorological installations, telephone booths, containers, cabinets, and similar structures, whether for private or public purposes. It does not include lines, aerials, antennas, masts, utility network apparatus, and the generation of matter or energy transmitted by the network utility operation.”

- In the submitter's view cabinets on private land have the potential to generate significantly fewer visual effects than cabinets in the road reserve because they tend to be located at the rear of a property, on roofs, or screened behind fences and existing vegetation.
- If the provisions are more restrictive for cabinets situated on land other than legal road then that provides an incentive for telecommunication providers to locate the cabinets in legal road – a concern clearly for some of the other submitters to the plan change.

In summary the submitter asked the Hearings Committee to accept Vodafone's submission and to amend rule 23.1.4.1 so that the dimensions of utility structure are similar to the permissible dimensions of cabinets in the NES.

The Committee also heard from Ben Blakemore of Two Degrees during the hearing on its submission to the same rule. In their written submissions, Two Degrees had requested that the footprint (1.5m<sup>2</sup>) of cabinets also be reviewed to better provide for conjoined cabinets, which in their view have fewer visual effects in comparison with a complying detached configuration. The Committee saw images of different cabinet configurations in the Planning Officer's presentation at the beginning of the hearing and noted the officer's comments in her report on the issue.

During the hearing, Ben Blakemore outlined that they had also noted the issues raised by the officer in her report around the past and present interpretations of rule 23.1.4. In response, the submitter stated that having considered the issues, they sought to change the exact nature of the relief sought and agree with Vodafone in that they wish to see the general approach adopted in the NES applied to the plan's cabinet dimensions. This is in respect of both height (as sought by Vodafone) but also the area based requirements, noting that the NES adopts an 'effects based' approach to considering the footprint of cabinets.

In considering these submissions and the views of the Officer, the Committee agreed to accept the submissions put before it by Vodafone and Two Degrees. In particular it accepted Vodafone's view that to maintain the current cabinet dimensions might create perverse outcomes. The Committee noted during its deliberations that the reason for the change was to reflect the technical requirements of cabinets actually used by telecommunication providers so the relief sought is reasonable. The Committee explained that the Plan should not adopt the NES cabinet provisions verbatim, but as the dimensions specified in the NES matched the technical requirements then it was appropriate to amend the Plan's existing rule to better reflect the NES. Vodafone advised that some of its existing cabinets were 1.8 metres in height. The Committee also noted that in making this change, it would resolve the concerns raised by the officer relating to the current interpretation of the footprint area requirement.

The Committee specifically noted that, should the NES dimensions change in the future, that there was no presumption that the District Plan provisions would also need to be changed.

**Decision: Accept** the submissions of Vodafone (10) and Two Degrees Ltd (5) in respect of the cabinet dimensions in rule 23.1.4.1. See appendix 1 for revised provisions.

### 5.3 Mast provisions

The plan change proposed three significant changes to the mast provisions. The first was to remove permitted activity masts in Residential and Open Space A Areas. The second change increased the setback of masts from Residential Area property boundaries. A new rule was developed to allow existing pole-like structures in Open Space A areas to be replaced with telecommunication masts; this was done in recognition of the concerns raised on the draft plan change about the inability to use Open Space A land to site permitted masts.

### **5.3.1 Distance from residential boundaries**

Rule 23.1.8.5 was amended by Plan Change 74 to increase the distance that masts could be located from a Residential Area boundary from 3m to 5m.

The Committee noted the submission from the Ngaio Progressive Association (2) which supported this change as it will better mitigate visual effects and give residents some piece of mind. The Committee felt that the submissions in opposition to Submission 2, were not wholly relevant to the main issue raised by submitter 2, and were adequately addressed in a separate decision of the Committee.

Mary Redmayne (7) opposed the plan change (supported in further submissions by submitters FS28, FS29 and FS30, but opposed by FS18 and FS21), noting that masts should be at least 100m from homes for visual and health reasons. Edward and Isabel Challies (FS28) and Lalita Heymanns and Andrew Whitsed (FS30) stated that the plan change does not take into account health effects of masts, focussing only on visual aspects and considers that the precautionary approach should be adopted as long as there is no scientific consensus on the human health effects of electromagnetic fields. Sue Kedgley (FS29) also notes that having cellphone antennas/masts next to ones home affects property values and potentially the health of nearby residents.

Both Mary Redmayne and Sue Kedgley addressed the Committee outlining their reasons for a greater separation distance between masts and homes.

Sue Kedgley noted her long interest in this issue because of concerns from the community regarding the effects of cell phone masts and antennas. She explained that the Green Party had vigorously opposed the NES for Telecommunication Facilities and is presently working on a Member's Bill to have it amended. Ms Kedgley noted that the effects (ie. health effects, property values and visual effects) of masts and antennas were inextricably linked and considered the Committee should not turn a blind eye to the health concerns of residents.

Sue Kedgley referred to European Union reports on the NZ Std 2772:1:1999 which considered that the NZ Standards only protects against acute effects, ignoring the long-term biological effects. The Committee also heard from Mary Redmayne (detailed below), Noeline Gannaway and Helen Foot on this specific issue. Ms Kedgley noted there was resistance in New Zealand to reviewing the NZ Std but that it was probable this would need to be done in the future. The submitter recognised the dilemma faced by the Council in responding to the concerns of submitters given the NES was in place which effectively limited the influence councils could have over the radiofrequency emissions issue.

Mary Redmayne is a PhD student at Victoria University, studying the health and policy implications of cell phone use. The submitter primarily spoke to the Committee on the health effects of antennas and the base stations on which they are sited (ie. masts). The Committee was referred to a number of studies which had provided a link between living close to cell phone base stations to increased cancer

incidence. The submitter then talked more about NZS 2772.1:1999, stating that it was based on ICNIRP's guidelines<sup>2</sup>, and that the Chairman of ICNIRP has been quoted as saying that the ICNIRP limits are only intended to protect against established, acute effect (that exhibit thresholds). The inference being that the guidelines only seek to prevent short-term heat damage, and not chronic effects and 'non-thermal' biological effects.

The submitter went onto explain to the Committee that whilst NZS 2772:1 does only take into account heating effects it does still provide (in Clause 10(d)) a requirement that public exposure should be minimised where possible. The submitter challenged the Committee to consider whether the location of masts 5m from homes reflects compliance with that requirement. The submitter acknowledged that the request in her written submission that masts be sited 100m from homes was unrealistic, so suggested instead during her presentation that a 10m setback be adopted.

The Committee was sympathetic to the concerns of a number of these submitters regarding the appropriateness of NZS 2772 for managing the health effects from telecommunication masts. The Committee accepts that the established science and evidence may well change in the future in terms of recognising certain health effects of the antennas and associated masts. However, as acknowledged by one submitter, the Council must work within the legal parameters that have been set out. Clause 4 of the NES now overrides all radiofrequency emissions for telecommunication facilities. Further the Committee was not satisfied that it could make a decision to increase the distance of masts from residential boundaries (ie. to 10m as requested by Mary Redmayne during the hearing) solely on the basis of the health effects, while those effects still need to be widely recognised by the majority of the scientific community.

The Committee accepts that there is a visual effect that can be reduced by increasing the distance of masts from residential properties to 5m and in this respect accepts the submission from the Ngaio Progressive Association.

**Decision:** Accept submission 2 and reject submission 7, FS28, FS29 and FS30; and reject FS 18 and 21 (whose concerns are dealt with in section 5.10 of this report).

### **5.3.2 Masts in Open Space A zone**

Plan Change 74 proposed to amend Rule 23.1.8 so that new masts were not permitted activities in the Open Space A zone (as well as Residential Areas). Proposals to erect a new mast in this zone will now require Discretionary Restricted Activity consent provided they remain under 15m, or consent for a Discretionary Unrestricted Activity if proposed to be higher.

The plan change did however include a permitted activity rule to allow for replacement masts in the Open Space A zone (rule 23.1.8A). These masts would replace any existing pole like structure and could be up to 3m higher than the height of the original pole. This was drafted by the Officer in recognition of the concerns by Telecom as a result of the draft plan change provisions.

Natasha Wilson represented Telecom (12) at the hearing and spoke to its written submissions. In addition to Telecom's written submissions Ms Wilson noted that:

- Without flexibility in either the Residential or Open Space A Areas, pressure will be placed to locate new mobile phone sites within road reserve as a permitted activity under the NES regulations. Telecom submitted that locating a mobile phone in an Open Space A Area will often provide greater

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<sup>2</sup> International Commission on Non-Ionizing Radiation Protection

opportunity to minimise the visual effects than locating a site in the road reserve outside residential sites.

- Telecom sought that masts be permitted in the Open Space A Area as a compromise for not having permitted masts in the Residential Area.
- Telecom argued that Open Space A land is generally capable of absorbing structures associated with mobile telecommunications facilities for the following reasons:
  - There are already a number of structures consistent with telecommunication structures (eg. flood lights, changing rooms, storage sheds etc)
  - While surrounding by residential sites, the size of the sites means that a reasonable separation distance can be achieved from a residential property, and
  - In some cases vegetation can act as screening from residential areas.

Telecom argued that given the size and location of Open Space A areas, the zone is generally capable of appropriately absorbing telecommunication structures and ensuring that the adverse effects are mitigated. Also, with Council as the landowner, it has control as to whether these sites are appropriate for telecommunication facilities or not.

Telecom clarified at the hearing that while antennas can be sited on existing buildings in some situations, this is not always possible or practical due to the structural design of the building or lack of structural integrity, the height of the building relative to other surrounding buildings/areas that the public can access, use of the building /structure by other telecommunication providers, construction feasibility issues and lack of buildings or structures in a given area. For these reasons, Telecom maintained that provisions for free-standing masts (ie. 15m slimline masts) as a permitted activity was necessary to effectively provide for an appropriate and reliable service.

The Committee heard that the officer had responded to these issues by developing rule 32.1.8A permitting the replacement of pole like structures in the Open Space A zone. At the Hearing, Telecom noted that this compromise was appreciated but it did not satisfy Telecom's concerns as it would not provide the flexibility required or allow for an efficient process. Further, Telecom considered that the Officers recommendation could lead to greater proliferation of masts in residential areas (in road reserve) under the NES.

The Committee was not persuaded by the arguments presented by Telecom and instead considered that the 'compromise' provision (ie rule 23.1.8A) developed by the officer in response to their early concerns was a reasonable response to Telecom's concerns. The Committee remained committed to upholding the reserve values associated with the Open Space A land, and in particular noted that Open Space A land is used for a very wide variety of council parks and reserves. The nature of the use (eg. playgrounds versus sports fields), the widely varying sizes of Open Space A parks and the topography could all affect the appropriateness of a mast being located there and the effects it may generate. For instance, it did not agree it was appropriate to site these masts on open space A land that is very close to residential properties, which a large number of the neighbourhood parks and playgrounds are. Consequently, the Council was not satisfied that a permitted activity mast would be appropriate in all situations. Having established this, it felt that it could not accept the relief sought by Telecom.



The Committee received advice from Amber Bill, of Council Parks and Gardens that Parks and Gardens are often placed under pressure to grant landowner approval for developments on the basis that the District Plan allows for such developments. The Council strongly considered that it was inappropriate for landowner consent to be overridden by the regulatory process, and was therefore not satisfied that landowner control was currently enough or indeed the appropriate way to properly manage the environmental effects of these structures. Further guidance to Parks and Gardens officers might be provided through Reserve Management Plans, but these do not yet cover large portions of the city. Putting its own landowner's interests aside, the Council considered that the only proper way to manage environmental effects of any structures was under the RMA, and through appropriate planning provisions.

**Recommendation:** Decline the relief sought by Telecom to amend rules 23.1.8, 23.1.8.8 and 23.3.1 to provide for masts up to 15m in height in the Open Space A area as a permitted activity, or any other consequential amendments required.

#### **5.4 Antenna provisions**

The Plan contains a number of permitted activity rules for antennas which set out different requirements based on the zone they are proposed to be located in (ie. rules 23.1.13, 23.1.14 and 23.1.15). There is a Controlled Activity rule if a proposed antenna cannot meet the permitted activity size dimensions (rule 23.2.4), but otherwise antennas are processed as Discretionary Restricted activities.

The Plan change proposed to increase the setback of antennas from property boundaries from 1m to 5m.

##### **5.4.1 Rule 23.1.13.2 Antenna Setback**

Two Degrees (5) sought a reduction of the proposed antenna setback from 5m to 3m. The submitter notes that as a result of the proposed removal of permitted masts in Residential Areas there will be an increased reliance placed on rooftop sites for antennas. The submitter considered that rooftop sites are actually usually preferred over pole sites in the road reserve (ie. under the NES). The submitter explained that an increased setback will require taller rooftop antenna structures in order to avoid shading caused by the rooftop edge. The submitter sought that the Committee adopt a 3m setback.

At the hearing the submitter clarified that antenna height was the major contributing factor to visual effects of antennas. The Committee asked whether the application of a sunlight access plane tool would be a preferred tool to a 5m setback. The submitter noted that this might be okay from the edge of a rooftop, but would not be suitable if taken from ground level. The Committee also asked how neighbours would retain some level of comfort from the effect of antennas. The submitter responded by stating that the main response was to site antennas above other nearby structures to reduce their visual effects.

During a joint submission by Helen Foot, Kay Austad, Diane Radford, and Virginia Barton-Chapple, Ms Foot referred to an actual situation where several Hay Street residents look directly at five antennas sited on top of the Kensington Apartments, located on Oriental Bay. Further these five antennas will soon be joined by a further seven antennas belonging to another telecommunication provider. As noted in the earlier discussion on masts, these submitters (and others) all spoke about the effects these antennas are having on them, both from a visual perspective, but also in respect of health effects and property values.

Telecom commented on the written submissions of Ms Gannaway, Helen Foot, Kay Austad, Diane Radford, and Virginia Barton-Chapple during the hearing. Telecom noted that health effects associated with permitted activity antennas are shown to be no more than minor.

Much of the arguments presented by submitters seeking an increase in mast distance from property boundaries are equally relevant to the discussion here about antenna setback, but have not been repeated here to avoid repetition. During her presentation, Ms Redmayne (7) did seek the following clause be added into the Plan:

*“No macro-cell antennas shall allow its main beam to fall on a residence or a health, childcare, or education facility when that home or facility is within 200m of the antenna”.*

In line with the Committee’s decision on masts in respect of health effects, the Committee is reluctant to impose substantial restrictions on antenna setback where those setbacks are sought as a result of concerns about health effects. Once again, the Committee accepts that the science on health effects is often very strongly debated. With little absolute consensus in respect of recognising the long-term biological effects of antennas the Committee considered it should make its decisions about antennas setback based on the effects that are well established, in this case visual effects.

As noted in the officers report, the primary reason for increasing antennas setback from 1m to 5m was to provide greater protection for residents from the visual effects of antennas and masts. The Committee heard however, that one result of this increased setback was that antennas may need to be placed higher on a building to overcome the effects of the increased setback. Having considered the relative merits of a higher antennas versus closer antennas, the Committee agreed that it should make the setback 3m, as sought by Two Degrees. Given the setback for masts at 5 metres the 3 metre setback would generally only be relevant for antenna on buildings.

<p><b>Recommendation:</b> Accept submitter 5 in respect of concerns about the antennas setback provision and adopt a 3m setback in rule 23.1.13.2. Reject submission 7 seeking a special provision relating to macro-cell antennas.</p>
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#### **5.4.2 Antennas and consultation processes**

Noeline Gannaway (submitter 13) supported by FS 24, FS25, FS26, FS 27 and FS 29 opposed rule 23.2.4, which is the controlled activity rule for antennas that do not meet the permitted activity conditions. The submitter stated this rule should be amended to allow residents the right to consultation on the siting of cellphone antennas in their vicinity. She asks that the Council lead by example and enact its own ‘bylaw’ requiring consultation with communities by telecommunication providers prior to the erection of cell phone towers.

Sue Kedgley (FS29) sought that the Council require telecommunication providers to consult with local residents to come up with a location which is least harmful/intrusive for a community. She suggested a working group composed of telecommunication providers, the local community and Council to agree on locations. At the hearing she noted and supported the comments in the officers report about

Council's recognition of this issue as a sensitive one for local communities and the Council's use of the 'caravan' process during site selection.

The Committee agreed with the officer's view that telecommunication providers should consult with local communities before erecting new masts and antennas and indeed considered that the telecommunication industry still had room for improvement in this respect. Consultation is a fundamental part of the planning process and doing so is regarded as best practice in the profession. However, the Committee was mindful that the RMA itself does not require consultation for every proposed land use activity and the Council is not in a position to require this.

Ms Kedgley had also initially sought that the Council introduce a bylaw to require consultation. However, from the submitters' comments during the hearing in response to the Officer's report, it is apparent that she accepted that a bylaw was not an appropriate solution.

It is noted in here that the Officer had recommended that the concerns of these submitters might be partially addressed if the Council were able to collect and retain a database of accurate information about radio frequency emissions. This information is presently provided in an ad-hoc manner as each resource consent or certificate of compliance is provided.

At the hearing Vodafone challenged the Officers recommendation in respect of these provisions. It noted that as these provisions were contained within the NES they were already in effect. Further, Vodafone did not consider it was within the scope of any submissions to add these provisions into the Plan. The Committee agreed that as the provisions were already in effect with the NES, then it was not strictly necessary to adopt these into the Plan. The Committee did however wish to recommend that the Council look or ways to better collate the information provided by telecommunication providers in respect of antennas radiofrequency emissions. This may involve the need for independent testing.

<p><b>Recommendation:</b> Reject submissions 13, FS 24, FS25, FS26, FS27 and FS29 that seek a bylaw be developed to require consultation. Accept Vodafone's submission to reject the recommendation of the officer to include provision in the plan outlining information requirements.</p>
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### **5.5 Mast and Antenna provisions - relationship to Council water assets**

Wellington City Council (3) sought changes to the Plan Change, especially rule 23.1.13.2 which proposed to increase the setback of antennas from residential property boundaries from 1m to 5m in response to concerns from the community about the proximity of antennas to their properties. The Council's submission was opposed by FS 21. The further submitter's concerns are comprehensively dealt with in section 5.10 of this report.

Concerns were raised after notification of the Plan Change by the Infrastructure Directorate of the Council that the proposed increase in antenna setback would have implications for it as antennas are increasingly becoming a requirement on all Council water reservoirs, pump stations and the like. Many existing pump stations are situated very close to residential property boundaries and in some cases occupy

their whole parcel of land. As a result, these antennas would not meet the proposed antennas setback, requiring a resource consent (and potentially a notified resource consent).

Capacity (Council's water services provider) opposed the antenna provision and the changes made to the mast provision (rule 23.1.8) which would require resource consent for any new mast in a Residential Area. Capacity opposed these changes stating the provisions would place an unnecessary burden on the Council's three water assets, for little additional environmental benefit, would not reduce community concerns and is inconsistent with the practice of other councils. They sought that the changes be withdrawn or that allowance is made for the telemetry infrastructure used by Capacity.

Robert McCrone and Paul Winstanley attended the hearing to represent Capacity. They explained that Capacity uses a computer based telemetry system to send real-time information to the main offices. The system consists of:

- A master station which is a computer based system for remote control of equipment at reservoirs and pump stations, display of information and recording data. This is situated at Capacity's Petone offices.
- Out stations located at the various reservoirs, pump stations, rain gauges and area water meter sites throughout the city.
- The radio communications link to relay information between the master unit and the out stations.
- The system is designed to relay information only on an ad-hoc basis whenever an issue arises or a threshold is met. In this regard, the outstations act more like mobile phones, making calls automatically whenever a notification is required.

At the hearing, Capacity provided the Committee showed the nature, size and scale of aerials used in the telemetry system. Capacity also clarified that the radio communications link used in the telemetry system operates between 440-470 MHz (similar to a household television), which is well below the 3 kHz – 300GHz provided for in the NES. They showed the Committee the two main types of aerials used:

- A whip aerial: no longer than 300mm, but needs to be elevated above surrounding hills or large buildings to improve the signal and to protect it from vandals.
- A low profile aerial: 70mm high, 60mm wide and approximately 175mm long. This aerial is almost solid metal, black in colour and resembles a suitcase handle in appearance and size.

While the low profile aerial is used more commonly now, the Committee heard that whip aerials will still be needed in some situations.

Like many other submitters, Capacity noted the concern with the definitions of antennas and aerial used in the Plan. The low profile aerial described above does not fit the definition of aerial (though this is what Capacity calls it) and so would be regarded as an antenna. As proposed Plan Change 74 has tightened the antenna provisions, it is likely that resource consent would be required for the low profile antenna. Capacity did not consider that there could be any adverse effects from such antenna given its small size. For the same reason, it did not support the Officer's recommendation to expand the scope of the controlled activity antenna provision, rather than amend the permitted activity standards as requested because it did not see how the Council could suggest conditions to mitigate the effects of the small antennas.

Capacity requested the Committee to amend with the permitted activity conditions or amend the definitions for aerial and antennas as the best way to address the minimum telemetry infrastructure requirements.

The Committee (comprising Ngaire Best and Leonie Gill for the consideration of the Capacity submission), were both satisfied that the aerials/antennas used by Capacity in the telemetry system had less than minor environmental effects and therefore should be permitted activities.

In considering the best way to accept the relief sought by Capacity, the Committee has, given other submissions to reconsider the definitions of aerial and antenna, decided that redrafting the definitions is the best approach. The Committee has combined the two definitions into one, (noting the many other district plans do not define either term or perhaps only define antenna). Further, the Committee has excluded certain sized aerials/antennas from the definition, ie. those aerials/antennas deemed to have no environmental effects. The effect of this is that any antennas/aerial not meeting the definition is not covered by the District Plan, and therefore permitted under the Resource Management Act.

**Recommendation:** Accept the submissions of Wellington City Council (3) and Capacity (FS22) by amending the definitions of antenna and aerial such that the type of antennas used in the telemetry system would be regarded as permitted activities. Accept all other submissions seeking the definitions of 'aerial' and 'antenna' be reconsidered.

## **5.6 Policy and rules for Open Space B and C zoned land**

### **5.6.1 Background**

The New Zealand Transport Agency (submitter 6) does not support proposed new policy 22.2.1B or rules 23.1.4 and 23.2.1A (ie. utility structure rules). The submitter is concerned about how the policy and these rules may affect work that is to be carried out to improve the safety of Mt Victoria and The Terrace tunnels. The land above and to the north of the Mt Victoria tunnel is zoned Open Space B and C, whilst land to the west of the Terrace Tunnel is zoned Open Space C.

The submitter considers that as the Plan Change is primarily about managing the effects of telecommunications structures, the changes to the policies and rules should be focused on telecommunication structures, not other utilities. The changes requested by the submitter to both the policy and the rules have the effect of narrowing the scope of the policy and rules to telecommunication structures only.

The Committee notes that a pre-hearing meeting was held with NZTA representatives and the Council Officer processing the Plan change. At the meeting the submitter outlined the nature of the works that may be required to improve tunnel safety and their concerns with the proposed policy. While the plan change was focused on telecommunication structures, the policy in question was drafted to apply to all utilities and could significantly affect their ability to obtain a resource consent for the tunnel safety programme. Options for how the policy might be re-worded were discussed during the meeting but no final decision made.

At the hearing, the submitter noted support for the Officer's recommendation to delete Policy 22.2.1B. The officer had recommended deletion on the basis that it is better to delete it altogether than restrict its meaning to just that of telecommunication structures. This is because it might imply that other structures

were acceptable in these areas, which is not the case. The submitter sought that this recommendation be accepted.

The Committee have decided however not to accept the officers recommendation in respect of this policy. The Committee does not accept the view that the policy should be deleted in response to the NZTA submission. On the contrary the Committee considered the Policy acts largely to clarify what the existing rule structure already suggests, ie. the discouragement of utilities on Open Space B and C land and Conservation Areas by making them Discretionary Unrestricted Activities. The policy also acts to clarify the intent of new rule 23.1.8A. The Committee considered that the policy provided scope for utilities in Open Space B and C and Conservation Areas to be considered and noted that where an applicant demonstrates it has explored a wide range of options and none of them are deemed to be suitable, then this would be sufficient to pass the gateway test in respect of this policy. This does not imply the application will be granted, but allows the application to be considered on its merits.

In response to the submitters assertions about whether there is scope to adopt this policy in the Plan Change, the Committee considers it is debatable as to whether the policy is “inappropriate”<sup>3</sup> given the words used in the Section 32 report that the scope of the plan change is limited to issues relating to telecommunication structures. The Committee accepts the officer’s explanation of how the policy was developed. That is, that the original drafting of the policy was done in response to telecommunication structures in these areas, but that further work on the policy lead it to be expanded to cover all utilities in recognition of the existing rule structure already in the plan for Open Space B and C areas and the Conservation Area. As the policy acts to clarify the intent of rules that were already in the Plan prior to the plan change, the Committee is satisfied that the policy’s inclusion in the Plan is appropriate.

<b>Decision:</b> Do not accept NZTA submission to delete policy 22.2.1B.
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#### **5.6.2 Rules 23.1.4 and 23.2.1A**

The NZTA considered that these two rules (relating to utility structures) should also be narrowed in focus to telecommunication utility structures. At the hearing the submitter clarified that the proposed deletion of the words “with the exception of land which is not on a formed legal road within” from the main part of the rule meant that the activity status of small scale above ground utility structures on legal road in Open Space B and C and Conservation zoned land changes from permitted or Controlled to Discretionary Unrestricted.

The submitter was particularly concerned that this imposes a very stringent framework compared with the scale of effects likely to be generated. The submitter was very concerned about these changes because there are stretches of undesignated state highway network that adjoin Open Space B or C zoning, meaning that the district plan rules apply for the installation of structures instead of NZTA being able to rely on its designation. The submitter referred to structures such as vents for the Mt Victoria Tunnel, signal boxes, traffic monitoring boxes, signs, barriers etc. The submitter considered that with the proposed change to Plan Change 74, these structures would now require an unrestricted discretionary activity consent.

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<sup>3</sup> Paragraph 28 of NZTA oral evidence.

The Committee did not agree that this level of consent would be required for such activities in all situations. Rule 23.1.17 expressly permits traffic management structures on legal road. Traffic management structures are purposefully not defined as structures used for traffic management purposes are likely to change over time. The Committee was comfortable that the types of structures mentioned by the submitter in their evidence would be permitted on legal road zoned Open Space B and C. The Committee considered that the legal road was the most likely (and certainly preferred) location for many of those traffic management structures. The Committee felt that if the changes to these rules meant that more creative solutions have to be developed to ensure the structures remained on legal road rather than on Open Space B or C or Conservation Sites, then this would be a positive outcome of the rule change. The Committee also considered that there is a strong expectation that Open Space B and C land would remain largely clear of utility structures, and that what new or replacement structures there are within Open Space B and C zones would need to be carefully sited and hidden. The Committee also considered that Management Plans for these areas would provide guidance to Parks and Gardens officers in considering whether or not to give land owner approval.

<p><b>Decision:</b> Do not accept the relief requested by submitter 6 in relation to rules 23.1.4 and 23.2.1A.</p>
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### **5.7 Heritage provisions**

Vodafone (10) seeks clarification on how the heritage provisions are intended to work in relation to the siting of utility structures, and presumably antennas. They seek that the heritage provisions of the Plan Change only apply to road reserve in heritage areas and not apply to road reserve adjacent to heritage sites or sites containing heritage items.

During the hearing, the Committee heard from Vodafone that the Officer's recommended redrafting of the heritage provisions was acceptable. The Committee did however also hear from NZTA on the drafting of the heritage provisions. Rather than rewrite the provisions as suggested by NZTA (which would have lengthened the provisions significantly), the Committee have reverted back to the use of the phrase "heritage item" which is defined as including buildings, objects, areas, trees and sites of significance to Tangata Whenua or other Maori that are listed in the Plan. This wording change does not affect the meaning of the heritage provisions.

The Committee considered that it was appropriate to consider the impacts of utility structures on road reserve on adjacent heritage sites, and that this would be in keeping with the NES. However the Committee accepted that there were no submissions allowing it to make such a clarification in the rules.

<p><b>Decision:</b> Accept Vodafone's submission in respect of the heritage provisions to clarify the intent and application of the rules to legal road adjacent heritage sites.</p>
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### **5.8 Co-location and the Non-notification statement in rule 23.3.1**

PC74 proposes to include a new non-notification statement in rule 23.3.1 which states that where the additional mast height is less than 3.5m and will be used to support the antennas of two or more telecommunication networks, then the Council can process the application on a non-notified basis.

New policy and assessment criteria are included in the plan change to guide the decision-making process. Key components of the policy include:

- that the Council supports co-location as this should result in the overall reduction of masts in the city.
- that the Council will consider breaches of mast height limits in order to achieve co-location, provided the additional height can be accommodated by the surrounding environment.
- a requirement to assess the surrounding environment including the nature of surrounding activities
- a statement that suggests that a proposal that includes the disestablishment of an existing mast elsewhere is likely to be treated more favourably.

The effects of the co-location application will be limited to the visual effects associated with the additional height and width of the mast and the bulk of the additional antennas compared with the existing situation.

Vodafone (10), supported by Telecom in a further submission (FS23) seek that the proposed non-notification statement in rule 23.3.1 be amended to refer to 'replacement masts' as well as existing masts. At the hearing, Vodafone noted the officer's discussion on its submission (which clarified that what Vodafone was seeking was what was intended by the provision, but that this could be clarified further) and asked that the Committee adopt the officer's recommendation to include the words 'replacement masts' in the non-notification statement. The Committee agrees that the revised wording is appropriate and clarifies that a replacement mast may be needed to support the weight of the additional antennas.

Mary Redmayne (Submitter 7) noted in her submission that co-location should be approached with caution. A number of other submitters (13, FS 24, FS25, FS26, FS27 and FS29) all had concerns with the lack of consultation that occurs as part of the proposed siting of new masts.

During the hearing, Telecom (12) noted that none of those submissions provide justification or reasons for not allowing co-location. Telecom acknowledged that there are some disadvantages to co-location, but considered the benefits far outweigh any cost.

The Officers report considers the pros and cons of co-location, which the Committee has outlined again below:

**Pro's**

- Fewer masts in some locations would be a better visual outcome

**Con's**

- Co-location requires a larger mast to cope with the weight and wind load of additional antennas
- Co-location requires approximately 3.5m of additional height on existing masts
- In some locations larger, taller masts with more antennas will be a worse outcome than for example two shorter, slimmer masts.

Vodafone (10) noted at the hearing that there are benefits to existing telecommunication providers for wanting co-location to occur. With sites all over the country and new players entering the market, there is scope for quid pro quo arrangements to be established. Also, having a new provider wanting access to an existing site provides an additional revenue stream, or at the very least helps to reduce to their costs associated with the lease agreement.



The Committee strongly considered that overall there are significant advantages in encouraging co-location.

The Committee heard that the current rules work to discourage co-location because it is generally easier to build a new mast than add height to an existing mast. In Wellington specifically, seeking additional mast height is likely to trigger a publicly notified, discretionary resource consent. Removing the planning barriers to co-location will at least help co-location to be considered as an option by the telecommunication providers.

Telecom noted at the hearing that the officer's report stopped short of making a recommendation to the Committee on this issue in particular. When queried about this, the officer noted that traditionally decisions about non-notification statements are fraught and whilst clearly there were benefits to co-location, rightly or wrongly the officer considered it was a decision to be made by the Committee alone.

The Committee was entirely satisfied that the non-notification statement proposed in the plan change was an appropriate response to remove existing barriers to co-location. The Committee was satisfied that the effects of such proposals would be well managed through the consent process, and that the Council was still in a position to decline consent where it considered the surrounding environment cannot sufficiently cope with the additional effects generated by additional height. The proposed new policy 22.2.1.1A which outlines what the Plan is trying to achieve in respect of co-location was also adopted by the Committee.

<p><b>Decision:</b> Accept the submissions of Vodafone (10) and Telecom (FS23) and amend the wording of the non-notification statement in Rule 23.3.1 to include the words “or replacement” after the word ‘existing’. Adopt policy 22.2.1.1A.</p>
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## 5.9 General minor amendments

### 5.9.1 Policy 22.2.1 and policy explanation

Vodafone (10) objects the use of the word ‘vulnerable’ in the policy because it is an emotive word and therefore not appropriate in a statutory document. They seek a less emotive term be used instead, such as ‘sensitive’.

The Committee agreed that the alternative word suggested (‘sensitive’) was a more appropriate word for use in the policy.

<p><b>Decision:</b> Accept Vodafone's submission and delete the word ‘vulnerable’ from policy 22.2.1 and in the subsequent explanatory text and replace with the word ‘sensitive’.</p>
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### 5.9.2 Assessment criteria 23.4.1.1

Two Degrees Mobile Ltd (5) submits that assessment criteria 23.4.1.1 be amended as it does not consider that ‘existing vegetation and surrounding building forms and development’ should be relied upon to mitigate effects. The submitter notes that other assessment criteria in the same rule (ie. 23.4.1.3 and 23.4.1.4) both include reference to the use of mitigation techniques including sensitive siting and design and appropriate planting and/or screening and the use of colour.

The Committee agreed with the Officer's report in respect of this submission. That is mitigation techniques might be an appropriate solution, however, such mitigation techniques should not be used in the first instance to avoid looking for an existing

environment that can absorb the structures. This clarification would be useful both in the assessment criteria as well as the policy explanation, as it is a more generic concept that applies to all forms of telecommunications structures. The Committee adopted the recommended changes outlined in the Officer's Report.

**Decision:** Accept in part submission 5 and amend 23.4.1.1 to include a new bullet point allowing for other mitigation techniques and amend the explanatory text for Policies 22.2.1.1 – 22.2.1.2, as outlined above.

### **5.9.3 Errors**

Vodafone (10) and Wellington City Council (3) note some inaccuracies in the Plan Change text that need to be corrected to allow the rules to work effectively. The Committee looked at all changes and agreed the changes should be made to ensure proper operation of the rules.

#### Rule 23.1.8A.4

The rule includes a reference to the rural zone, but the rule only applies in the Open Space A zone. Remove the text "except in the Rural Area" from 23.1.8A.4.

#### Rule 23.1.8.9

In the standard, the words "the horizontal diameter circle in 23.1.8.7 or 23.1.8.8" should be replaced by the following words "a 3m horizontal diameter circle where 23.1.8.7 applies or a 750mm horizontal diameter circle where 23.1.8.8 applies".

#### Rule 23.1.8A.6

In this standard, the words "the horizontal diameter circle in 23.1.8.7 or 23.1.8.8" should be replaced by the following words "a 3m horizontal diameter circle".

#### Rule 23.1.13.4

In this standard, the words "to comply with the horizontal diameter circle provided for in rule in 23.1.8.7 or 23.1.8.8 as appropriate" should be replaced by the following words "within a 3m horizontal diameter circle".

#### Rule 23.1.17.1

One of the rule's conditions includes a cross-reference to rule 23.1.13 (antennas rules for Residential and Open Space A) which is not relevant to the key purpose of this rule, which addresses the upgrade of masts in the Central Area, Suburban Centre Areas, Institutional Precincts, Airport and Golf Course Precinct, and Rural Areas. Delete reference to 23.1.13 in rule 23.1.17.1.

**Decision:** Accept submissions 3 and 10 and amend the errors outlined above.

### **5.9.4 Plan change development consultation process**

Two Degrees Mobile (5) wished to acknowledge the successful informal consultation and workshop process between the Council and telecommunications providers which has reduced reliance on a lengthier formal notification submission and appeals process.

The Committee noted this submission.

## 5.10 District Plan provisions for the Amateur Radio Service

### 5.10.1 Submissions

A large number of submitters on this plan change are concerned about the failure of the Plan Change to properly consider or accommodate the requirements of amateur radio operators. The following submitters' prepared original submissions focused on clarifying that there should be no or very few restrictions on their activities:

8	Wellington VHF Group Inc and Wellington Amateur Radio Club
9	NZ Association of Radio Transmitters Inc.
11	Bob Waters
14	David Parish

These submissions were generally supported by numerous further submitters (FS1-22, and FS 32-33), though some submitters (FS 19 and FS20) disagreed with the specific relief sought by the Wellington VHF Group Inc and Wellington Amateur Radio Club (submitter 8).

The submitters are collectively concerned that the plan change imposes excessive limitations on the height, location and numbers of radio aerials and antennas and their supporting structures and includes inappropriate definitions for the activities of amateur radio operators. Further, the provisions impose excessive costs on operators due to unnecessary emission testing.

The submitters all generally seek the same outcome; a regime that allows amateur radio operators the ability to carry on with their activities, though acknowledging that provisions are needed in the Plan to provide certainty to both the radio amateur community and the neighbours of amateur radio operators. The Wellington VHF Group Inc and Wellington Amateur Radio Club (8) provided a list of specific conditions to a permitted activity to cover the scope of most amateur radio configurations. However aspects of this were not supported by Robert Vernall (FS 19) and Brian Miller (FS20) who both considered that the existing flexible arrangements for amateur radio operators were adequate.

Angela White (submitter 4) is a neighbour to an amateur radio operator and in her submission expressed concern over the number of antennas any one person can have on their property and the placement of these devices. The Wellington VHF Group Inc and Wellington Amateur Radio Club (FS18) opposed this submitter along with the NZART (FS21) stating that amateur radio operators need sufficient numbers of antennas to meet their communication and experimentation needs and the numbers should not be arbitrarily limited.

The Committee was impressed by the number of local amateur radio operators who attended the hearing and spoke in detail of their hobby, equipment used and the need for provisions that suits the nature of their activities. The Committee heard from Brian Miller (FS20), David Parish (14), Robert Vernall (FS19), Mike Newman speaking on behalf of the NZ Association for Radio Transmitters (9), John Andrews speaking on behalf of the Wellington VHF Group Inc and Wellington Amateur Radio Club (8) and lastly Bob Waters (11).

The points raised by each submitter are discussed in the following three key issues: definitions, specific provisions and emissions testing.

### 5.10.2 Plan Definitions

The submissions by amateur radio operators have highlighted some issues with the clarity of definitions and other statements made through chapters 22 and 23 around what is a utility operator, an antenna and aerial, a mast, and whether these definitions should apply to the activities of amateur radio operators.

The Committee agreed with the Officer's report and submissions that the Plan was not clear as to where the activities of amateur radio operators lie. Brian Miller spoke first advising the Committee that amateur operators were not utility operators, making it inappropriate to impose the same frameworks on amateur radio activities as applying to utility operators.

The Committee agreed with the Officer's view that, in principle while amateur radio operators are not utility operators, the Utilities chapter is still the most appropriate place to outline the regime for managing the structures used by amateur radio operators. The Committee further agreed that to give effect to this a several changes were needed to the definitions and provisions generally in the Utilities chapters.

The first change is to the introductory paragraph to Chapter 22, copied below, to clarify that there are other operators who may provide or use utilities or structures and devices of a similar nature to utilities.

*The successful functioning of the city and its many services depends on a complex network of utilities for communications purposes and for the distribution of energy, water, disposal of waste water and solid waste. These may be provided by a network utility operator, as defined in the Act, or other operators (eg. amateur radio operators, provision of electric cabling for transport providers).*

In response to the submissions, the officer had recommended that a new rule be developed to outline the scope of permitted activities for amateur radio operators (see below). A definition was also needed though to limit the scope of who could use that new rule. The officer recommended the following definition which was a definition agreed to in a consent order process by the NZART in relation to a North Shore City Council district plan change.

**AMATEUR RADIO CONFIGURATION:** means the configuration must be owned and operated by a Licensed Amateur Radio Operator from their place of residence and must not be carried out on a site containing more than two household units.

During the hearing, several of the submitters (including NZART) asked the Committee to reconsider that definition. Mr Miller asked that the definition be entitled 'Amateur Radio Antennas and Support Structures' and that it was not restricted to the operators place of residence or that it be restricted to property's containing only one residential unit.

Robert Vernall, having heard other submitters, largely agreed with the changes sought by Brian Miller. Mr Vernall said he was generally happy with what had been developed by the officer in response to written submissions but considered the further changes sought were necessary. Bob Waters (11) also agreed that the definition of Amateur radio configuration needed further refinement.

The Committee agreed with submitters that there was no need to restrict the definition as recommended by the Officer. In particular it agreed with the comments by Mr Miller that some radio amateurs prefer to base their equipment on another property especially where that property provides more space, has fewer obstructions for radio wave propagation and less interference from man made electrical noise sources. The Committee also accepted the evidence of Mr Miller that some radio

operators live in apartment blocks and have their equipment mounted on the roof. In these instances permission from the building owner/s will be required and it is the Committee's view that this is all that should be required.

The Committee noted that the Ministry for Economic Development maintains a register of licensed radio operators and that this register can be searched by anybody accessing the relevant website<sup>4</sup>. In this respect, the Council's compliance and monitoring officers will be able to check instantly whether an operator meets the definition. The Committee also heard from submitters that in order to be licensed you must pass examinations.

The revised definition is:

**AMATEUR RADIO CONFIGURATION:** means the antennas and associated supporting structures which are owned and used by Licensed Amateur Radio Operators.

Also, in light of the decisions below to include a new permitted activity rule to provide for amateur radio configurations, it follows that such configurations should be excluded from a number of the existing utility definitions (eg. Antenna, line, mast, utility network, utility structure). As a result it means that the rules relating to antennas, lines, masts, and utility structures will not apply to the antennas and support structures of amateur radio operators. Appendix 1 shows all of these definition changes in full.

### **5.10.3 Specific provision for amateur radio configurations**

The amateur radio submitters clearly do not believe that the rules that apply to larger telecommunication companies should apply to them, and the Committee agrees there is considerable merit in their arguments given the relatively minor effects associated with some of their equipment. This approach is also consistent with other council District Plans that have responded to submissions by amateur radio operators in their districts by adopting specific planning rules. It is also consistent with the 1983 Planning Tribunal decision on these issues between Frazer, McGonical v Napier City Council. Combined with the need to ensure that there is a communication service that will operate during a disaster, it is appropriate that a new rule be adopted to address the concerns of submitters and provide the clarity they seek.

In considering the scope of a permitted activity rule, the Committee was mindful of both the submissions from the amateur radio operators, but also the reasonable expectations of the neighbours of these radio operators. The Committee accepted that these activities do largely go unnoticed in the community, but did also hear evidence from the submitters that problems do arise on occasion and these can be difficult to resolve when the Plan itself is unclear what is permitted or otherwise.

Angela White (4) was unable to attend the hearing, but provided further evidence to the Committee in lieu of her attendance. In that, the Committee noted the submitter had no problem in general with people having such equipment, especially in light of the assistance they provided in emergency situations, but that consideration still needs to be given to where these items are specifically placed because they do affect other people, especially in built up residential neighbourhoods. Further, the submitter noted that some of the devices and structures used were not consistent with what people expect to see in their neighbourhoods and if people have a virtually

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<sup>4</sup> <http://www.rsm.govt.nz/smart-web/smart/page/-smart/WelcomePage.wdk>

unrestricted right to install this equipment, in unlimited quantities, then it seems almost impossible for those affected to have any input into what happens.

The Committee asked several of the amateur radio submitters how they (or the club they belong to) respond to complaints from neighbours. The Committee was most concerned about the potential impacts of larger lattice masts. Mr Miller noted that there are no specific guidelines in place but that amateurs are generally aware of the issues and tend to work with neighbours. Mr Parish noted he hadn't had complaints from his neighbours, but stated he didn't have a lattice mast. The Committee was advised that there are only about 10-12 lattice masts currently in the city. Mr Parish noted that in club meetings the main 'neighbour' issues raised relates to aerials being too close to a boundary. His view was that pole and wires have few effects so should be permitted.

In coming to its decision about what should be included in the permitted activity rule, the Committee was very clear that it was taking an 'effects based' approach to determining what was appropriate. It drew reference from other activities permitted (or not) in the Plan based on the effects they create. The key elements of the rule are outlined in turn below, but the rule covers the following:

- Supporting structures (ie. masts/poles) less than 100mm in diameter
- Allowing for supporting guy wires up to 10mm in diameter
- One supporting structure per site larger than 100mm diameter up to the allowable building height. The Committee was advised that many of the larger supporting masts taper in diameter as they get higher.
- Antenna dimensions
- Support structures mounted on rooftops
- Amended maximum heights

*Supporting structures less than 100mm in diameter, including guys if used.*

The Committee was satisfied with the view of all radio amateur submitters that the effects of 'simple pole structures' where less than 100mm in diameter are similar to, or even less than that of flagpoles. There are few effects associated with these poles and they should be permitted to avoid excessive regulation of an issue that does not trigger significant concerns at present. The Committee accepted that these poles may need to be guyed, but felt it important to put a limit on the thickness of the guy wire to minimise the visual effects. Robert Vernall suggested 10mm as being an appropriate maximum, and this was widely supported by submitters. The Committee was advised that most support guys were considerably less than 10 mm and wanted to adopt a size which was unlikely to require consents to be applied for when there were no real environmental impacts.

The Committee agreed with the Officers recommendation that no height limit be adopted for these simple structures. The height of these poles is self regulating in Wellington due to the wind effects on poles much higher than 15m.

*One supporting structure per site larger than 100mm diameter*

A significant amount of the hearing was devoted to the specific provisions around the larger supporting structures, which commonly appear as tall lattice structures. The officer had shown a number of photographs in her presentation of lattice masts in situ, which suggested to the Committee that compared with the smaller poles used by amateurs, these structures definitely did have visual effects. As a result, the Committee considered these structures carefully during the hearing and asked several questions of the submitters to better understand the need for these structures and how their effects are currently managed.

The Officer had recommended that only one of these be permitted on an site. The Committee heard no submissions against this restriction and, in any event, agreed that putting a limit on number of these able to be permitted was necessary. The desire to have more than one will require a discretionary restricted consent.

The Officer has recommended that these structures be self-supporting, ie that no guys were to be used. The Committee heard evidence from a number of submitters that this restriction was unnecessary. In particular Mr Miller stated that guy wires can reduce the overall visual effect of the structure by allowing a mast structure which has a smaller diameter. The submitter also noted that guyed structures have a lower cost than self supporting structures, which is a significant consideration for amateurs. He considered 6mm guy wires was adequate for most cases, though the Committee later heard from Robert Vernal that 10mm was more appropriate to give adequate flexibility before triggering the need for a consent. Mike Newman (NZART) noted that self supporting masts may end up being closer to property boundaries than those structures using guy wires, which by their nature will be centred further into the property to provide place for the guy anchor.

The Committee accepted the evidence of these submitters and have removed the reference to 'self supporting' from the rule, but added that any guys used must be less than 10mm in diameter.

Perhaps the key issue discussed by submitters was the officer's recommendation that these larger structures be limited in height to 15m. The officer noted in her report that there are a range of heights used in other district plans to manage these structures in residential areas (ie. from 13m to 17m). The officer also noted that whatever the proposed height, the effects of these structures on neighbours do need to be considered at some point. Defining the appropriate threshold prompted a significant amount of debate during the hearing.

The Committee heard from submitters (in particular Mike Newman for NZART) on the technical reasons why 18m was actually the preferred height, rather than the 15m recommended by the officer. Mr Newman explained that the 18m sought is a little less than the 70 feet recommended by the American Radio Relay League as the minimum height required for effective communications. Mr Newman explained to the Committee how radio waves work and why antenna elevation is critical in achieving good signals and allowing them to travel around the world and achieve effective coverage.

The Committee asked a number of the submitters what they thought of the visual effects of these tall lattice tower structures and also how they should be treated in the Plan. Mr Parish did not think there should be any regulatory difference between these and the slimmer poles. He didn't consider them bulky, because you could see through them, though he did accept the visual effects were greater than slimmer poles. Brian Miller considered that lattice structures did not create the same visual effects as a solid mast used by a telecommunication provider. Mr Newman noted that across Wellington City there might only be 10 of these lattice structures. He noted that they were mostly on elevated sites but that they are often pulled down in severe weather conditions or for maintenance. John Andrews agreed with these submitters, noting that the towers in Wellington often stay down because of the wind.

In coming to its decision on this matter, the Committee felt that there was probably very little difference between the 15m proposed by the officer and the 18m sought by submitters in respect of the visual impact of these structures on other property owners. However, the Committee was not satisfied that 15m or 18m was a

appropriate height given the visual effects these larger structures create in residential environments, being the areas where they most commonly occur. The Committee was very clear that the main approach to determining height should be on the effects of the structures. It considered that the most appropriate benchmark to determine what was going to be generally acceptable by the community was the existing building height for a given zone. For outer residential areas this will be 8m and in inner residential areas this will be 10m. The Committee considered that provided a building or other structure could comply with site coverage and sunlight access rules (etc) then a building /structure up to these heights would be permitted, and could be used as a base for a slimmer pole. Therefore it would be unreasonable to control these larger masts below the permitted building heights.

The Committee is very aware that these heights are significantly less than what the submitters seek, but notes that all existing lattice structures have existing use rights and will not be affected by this new rule. The Committee felt very strongly that neighbours should be able to be consulted on a proposed structure of this height if it was proposed be sited next to them, and the consent process would ensure this would happen. The Committee also noted the advice from several of the submitters that masts tend to taper in diameter as they get taller. There were several means of delivering taller masts without using the more obtrusive lattice structures, or a diameter larger than 100mm.

An issue closely associated with structure height was the horizontal diameter of these structures. The Wellington VHF Group Inc and Wellington Amateur Radio Club (8) had asked for 800mm to 8m height, 650mm to 14m in height and 450mm to 18m in height. The officer had recommended the approach adopted by North Shore in its 2009 consent order provision which was 700mm to 10m and 400mm to 15m. We heard substantial evidence from Mr Newman as to why those dimensions were not appropriate and why we should adopt the dimensions outlined in the submission from the Wellington VHF Group Inc and Wellington Amateur Radio Club (8). Given the Committee's decision to limit the permitted height of these structures to the relevant building height, the dimensions for the structures need to be amended accordingly from what has been suggested. The Committee considers that one dimension (being 800mm horizontal diameter) up to the relevant building height is appropriate.

It is also proposed to require a 1.5m setback from the boundary for these larger structures. The Committee accepts that 1.5m is appropriate.

#### *Antenna dimensions and number per site*

The Wellington VHF Group Inc and Wellington Amateur Radio Club (8) sought that the permitted activity rule provide for two different antenna scenarios. Where antennas (likely to be large satellite dishes) are sited below 5m height limit, then these can be up to 4m in horizontal diameter. Where antennas are sited above 5m above ground these can be up to 1.2m in diameter. The Committee considered that this latter dimension was appropriate and similar to those provided for other sorts of rooftop activities provided for in the Plan (eg. the residential rules which permit chimneys, decorative features up to 1m in horizontal diameter). The Committee accepted that the effects of antennas this size are usually mitigated by fences and vegetation, although there is a concern in respect of shading and visual effects on neighbours. The Committee have adopted a 1m boundary setback to address this concern. The Committee noted that although these dishes might be the same size as those used to access international TV channels the effects are different because the amateur radio dish satellites are pointed directly upwards to the sky to receive radio



waves, meaning the visual appearance of the dish is minimised whereas the large TV satellite dishes are tilted on an angle and therefore more visually prominent.

Angela White (4) asked that the Committee consider a restriction on the number of antennas placed on a site. What the committee heard during the hearing, and in reading the evidence was that there is a wide variety of 'antenna' used by amateur radio operators. Some have very little effect, whilst others have effects closely associated with regular TV aerials etc. Consequently the Committee felt there was no easy way to identify how many antennas/aerials should be placed on one site. The Committee did not want to place an arbitrary limit on the number without some environmental justification.

#### *Support structures mounted on rooftops*

The officer had outlined in her report that the Residential Area rules of the Plan already exempt a wide array of structures on rooftops from the building height requirement provided these do not exceed 1m in diameter eg. TV aerials, satellite dishes, chimneys etc. The officer was however unsure what the appropriate threshold should be in respect of amateur radio rooftop mounted structures. The Wellington VHF Group Inc and Wellington Amateur Radio Club (8) sought a maximum height of 18m. Mr Miller suggested in the hearing that the provision should only be applied to the larger support structures. Given our earlier decision that the larger structures are restricted in height to the relevant building height, the Committee considers that any rooftop structure needs to be of the smaller pole type. The Committee considered that the 18m suggested by submitter 8 could be appropriate for Residential Areas and provides that for other Areas the height should be at least 18m or the Building Height plus 5m (where that results in a height greater than 18m).

In summary, the Committee noted that the provisions developed initially by the officer had, on the whole received significant support by the amateur radio submitters, though refinements had been sought in various places. The submitters made it clear how valuable the amateur radio service is during emergencies and their contributions to local civil defence centre and search and rescue activities. There is no reason to disagree with any of these assertions. Submitters noted the value of amateur radio communications in the recent earthquake disaster in Haiti where modern mobile telecommunication technology failed initially, but communication was able to be maintained via the worldwide network of amateur radio operators. Given Wellington's own earthquake hazard risks, the Committee agreed that it is important for local amateur radio operators are able to carry out their activities as they have done so for many years in Wellington relatively free of regulation.

However, in making decisions on these provisions, the Committee was concerned that the provisions need to be effects based (as required by the Resource Management Act) hence the changes made to the officer's recommendation for larger support structures. All other changes made reflect the submitters' relief sought and, in our view, did not significantly increase the effects of the proposed activity.

#### **5.10.4 Emissions Testing**

The Wellington VHF Group Inc and Wellington Amateur Radio Club (8) sought that it not be subject to the emissions testing required by NZS 2772: Part 1: 1999 Radio Frequency Fields Part 1. The submitters argued that it is not wholly applicable to amateur operations amateur operations have a very low transmit to receive ratio (ie. as amateur radio operators listen more than they transmit, and do not perform this activity on a 24/7 basis, unlike cellular transmitters that are transmitting for large parts of each day). Further amateur power levels are determined by the MED Radio Spectrum Management Division and amateurs, as part of their training,

examinations and operations procedures are well equipped to manage exposure levels. The point of amateur radio is to experiment with different configurations and it would be beyond the means of such amateurs to prepare independent reports on the RF emissions for every configuration.

The Committee found that the current Plan provisions do not require evidence that exposures will comply with the NZ Standard. Further, the Committee have already established that amateur radio operators are not 'network operators' and therefore not subject to the requirements of the NES. The Committee does not consider that the concerns of submitters in respect of potential excessive monitoring obligations are borne out by its understanding of how clause 4 of the NES is intended to work.

**Decision:** Accept in part submissions of submitters 8, 9, 11, 14, FS1-21, FS32-FS33. Reject submission 4 seeking a limit on the number of antennas used on any one site. Accept FS20 regarding comments that amateur radio operators are not network utility operators and amend the Plan to provide more clarity over the issue of where the activities of 'other operators' of utilities should be addressed. See Appendix 1 (Rule 23.1.18) for decisions made in respect of these submissions.

### 5.11 Provisions not subject to any specific submissions

There are a number of proposed changes to the rules that were not specifically addressed by any submitter. The table below lists those changes, along with a brief explanation. No further evidence was presented to the Committee on these issues and as a result the Committee accepts the advice of the Officer to adopt these provisions.

Definition of Antenna	Change to remove 'shrouds' from definition. Shrouds often not used in practice where they would breach antenna dimensions, but they can sometimes be a good addition to masts to improve their overall visual appearance.
Definition of Structure	Excludes 'utility structure' from definition. Change resulting from a Court decision where the Court relied on the definition of structure in the context of a utility structure. This interpretation was not intended and this change clarifies this.
New Text in Chap. 22 and 23 Introductions	Clarified new issues being addressed in the rules.
Delete 23.1.1.3 and amend 23.3.3	Reference to the former Seatoun Landfill – rule no longer applicable as site has been rehabilitated and developed.
23.1.17	Proposed new 'upgrade' rule. Significant new rule allowing upgrades of existing sites to be permitted provided they meet the specified conditions.
Insert new Appendix 2	Appendix 2 is a map showing coastal roads subject to special rules, ie ensuring that new masts are not permitted on the seaward side of the coastal roads. Aim of this provision is to protect the special character of the coastline. Relevant provisions also include 23.1.4.4, 23.1.8.2, 23.1.8A.2, 23.1.17.5, 23.3.1, 23.4.1
Insert new appendix 3	List of proposed suburban centre mast heights. List created to reflect the range of buildings heights proposed as part of Plan Change 73. Also, note that

	<p>some height increases proposed for some areas, and in others there is a height decrease compared with operative provisions. The Committee noted that should the decisions on Plan Change 73 result in an amended building height regime then the Committee should look to make consequential amendments the mast heights outlined in Appendix 3 (being 5m above the building height).</p>
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**5.12 RMA considerations**

The Committee noted that the proposed District Plan Change 74 could only be endorsed (taking in account Council’s responsibilities under s32 of the RMA) if they were satisfied that provisions proposed would better meet the requirements of the RMA and the objectives of the District Plan.

In making its decision, the Committee was mindful of its responsibilities set out under the Resource Management Act, 1991 (RMA), in particular the requirement to promote the sustainable management of natural and physical resource (section 5). The Committee acknowledged the additional obligations under sections 6, 7 and 8 of the Act, in particular:

- Section 6
  - (a) The preservation of natural character of the coastal environment (including the coastal marine area)....and the protection of them from inappropriate subdivision, use and development,
  - (f) the protection of historic heritage from inappropriate subdivision, use and development.
- Section 7
  - (b) The efficient use and development of natural and physical resources:
  - (c) The maintenance and enhancement of amenity values:
  - (f) The maintenance and enhancement of the quality of the environment:

The Committee noted that the review of the Plan’s approach to managing telecommunication structures had been guided by the introduction of the National Environmental Standard and concerns from the community regarding the effects of those structures.

Mindful of its obligations under s32, the Committee noted that the Plan Change had not amended any of the objectives of the Plan. However, the Committee did make numerous changes to the policies and methods (rules and standards), in order to ensure that they were the most appropriate and effective way to achieve the objectives. The changes, made in response to submissions, generally sought to improve clarity of the intended approach, and to provide greater flexibility in the application of the rules and standards. The Committee also developed a new rule as a result of submissions by amateur radio operators. In this respect, the provisions (as a result of this decision) represent a refinement of the approach originally notified in Plan Change 74.

**Decision: Adopt** District Plan Change 74 on the grounds that it is consistent with Part II of the RMA.

## **6 CONCLUSION**

In coming to its decisions on these submissions, the Committee was mindful of the need to ensure the provisions it agreed with were developed on robust effects based principles, as required by the Resource Management Act. The Committee was also acutely aware of the limitations of its power to adopt provisions requested by some submitters which would have the effect of overriding the National Environmental Standard or where the justification for such provisions were based on health effects where the science is still not conclusive.

The submissions have raised a number of new issues not considered during the early stages of the plan change process and, as a result, this report recommends new provisions to address those submissions. Other changes have been recommended as part of the submissions process, but in the main these mostly clarify the existing aims of the Plan Change. It is not considered that any change is so significant that it undermines the intent of the original provisions notified in Plan Change 74.

*Chair: Andy Foster*  
*Plan Change 74 Hearings Committee*