

9. **PROTOCOL AGREEMENT TO LICENCE SITES FOR TELECOMMUNICATION PURPOSES**



General Manager responsible:	General Manager, City Environment DDI 941-8608
Officer responsible:	Unit Manager, Asset and Network Planning
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PURPOSE OF REPORT

1. To seek approval from the Council to:
 - (a) grant delegated authority to the Corporate Support Unit Manager to enter into new protocol agreements with telecommunication providers consistent with the Telecommunications Amendment Act 2011
 - (b) inform Council of the financial impact arising from the new Act.

EXECUTIVE SUMMARY

2. Christchurch City Council entered into protocol agreements to licence sites for telecommunication purposes with a number of telecommunication providers between 2001 and 2008.
3. There are currently four protocol agreements with three telecommunication providers: Vodafone, Telecom, 2 Degrees and with a smart electricity metering company Arc Innovations.
4. Under the current protocol agreements, the Council permits the network operators to utilise its street assets (street lights, traffic lights, etc) for the purpose of erecting their respective devices. In exchange, the Council receives an annual licence fee per site. There are approximately 100 roadside cell sites in Christchurch and annual licence fees vary from \$4,000 to \$9,000 per annum plus GST per site depending on the specification of hardware attached to the street asset.
5. The protocol agreements for both Vodafone and Telecom expired in August and September 2011 respectively. The protocol agreements for Arc Innovations and 2 Degrees expire in 2017 and 2018 respectively.
6. Council staff have been in negotiations with Vodafone and Telecom who both expressed interest in entering into new protocol agreements with the Council. This negotiation was somewhat prolonged due to the Telecommunications Amendment Act 2011 which came into effect on 1 July 2011. This amendment does not permit local authorities to request for payment for wireless works on roads.
7. With the effect of the Telecommunications Amendment Act 2011, it is necessary to amend the terms and conditions of the new protocol agreements to reflect the Telecommunications Amendment Act 2011 while retaining the current practice and process for site approval on Council roads and properties.

FINANCIAL IMPLICATIONS

8. There are no direct financial implications arising from the purpose of this report and the resolution sought. However, associated with this matter Buddle Findlay, the Council's legal advisors, have confirmed that Council has lost the ability to charge an annual licence fee for telecommunication purposes on legal road as of 1 July 2011 in accordance with the Telecommunications Amendment Act 2011. This issue is being considered by the Council's Finance and Business Performance Team and will be dealt with in the Annual Plan and Long Term Plan (LTP) processes.
9. Despite the legislative changes, Vodafone and Telecom have both indicated their commitment in honouring the existing annual licence payments to Council until the respective site's term expires progressively until 2018.

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Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

10. Yes.

LEGAL CONSIDERATIONS

11. The Telecommunications Amendment Act 2011 which came into effect on 1 July 2011.

12. Sections 153 and 135 of the Act have been under scrutiny and forms a key part of the negotiation of the protocol agreement. Section 153(1) of the Telecommunications Amendment Act 2011 states:

“Despite anything in this Act or in any other enactment, no local authority or other person who has jurisdiction over any road may require the payment, by or on behalf of a network operator, of any amount of or in the nature of rent in respect of any line, wireless works, or other works constructed in, on, along, over, across, or under that road.”

13. Section 135 of the Telecommunications Amendment Act 2011 states:

(1) Except as provided in subsection (2), a net work operator may –

- (a) Construct, place, and maintain lines or wireless works in, on, along, over, across, or under any road; and
- (b) For any of those purposes, open or break up any road and alter the position of any pipe (not being a main) for the supply of water or gas; and
- (c) Alter, repair, or remove those lines or wireless works or any part of those lines or wireless works.

14. A network operator must exercise the powers contained in Section 135(1) in accordance with any reasonable conditions that the local authority or other person who has jurisdiction over that road requires.

15. Telecommunication providers can construct wireless works on legal road as of right subject to reasonable conditions under Section 135(1) and no local authority may require the payment in the nature of rent in respect of any wireless works constructed on that road under Section 153(1).

16. Buddle Findlay is currently engaged by the Council in preparing the new protocol agreement for Vodafone and Telecom reflecting the changes in Telecommunications Amendment Act 2011. The new protocol will retain the approval process of cell sites on Council roads and properties.

Have you considered the legal implications of the issue under consideration?

17. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Yes.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

19. Yes – renewal and replacement of street lighting systems.

ALIGNMENT WITH STRATEGIES

20. Yes – Greater Christchurch Urban Development Strategy.

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Do the recommendations align with the Council's strategies?

21. Yes – it contributes to the plan for managing urban development, enhancing open spaces and creating more liveable centres.

CONSULTATION FULFILMENT

22. Not applicable.

STAFF RECOMMENDATION

That the Council resolves that the Corporate Support Unit Manager be given delegated authority to enter into or vary Protocol Agreements with current and future telecommunication providers and that the same telecommunication provider covers the Council's costs associated with this.

BACKGROUND

23. In 2001 the Council entered into Protocol Agreements with Vodafone and Telecom for their cellular network rollouts. The purpose of these protocols was to enter into partnership with the companies in managing the cell sites on public spaces and enable their rollout to be eventuated in a timely manner.
24. The public spaces are mainly on the road spaces where there is presence of number of street furniture. The main aim is to minimise the amount of street furniture on road and the replacement of street lighting poles and traffic signal poles in appropriate locations are sensible options.
25. The selection criteria for the roadside site are as shown in **Attachment 1**. Following approval of the site, resource consent for that particular site will need to be lodged. Installation for the approved site will only commence following the granting of resource consent.
26. The approval process shown in **Attachment 1** generally works well with increasing understanding of the radio frequency field and the resource management requirements for the cell sites by the communities. There were few occasions that resident groups raised their concerns and where possible telecommunication providers did make some way to accommodate their concerns either relocation to their less desirable site, undergrounding of existing overhead services or special pole design.
27. The introduction of National Environment Standard (NES) for permitting low telecommunication facilities in certain place on legal road without the need of resource consent in 2008 also provides further assistance to the process of Council's approval for roadside cell facilities. The brief summary of the NES's requirement is shown in **Attachment 2**.
28. The relationships with the telecommunication providers and the Protocol Agreement that supports them has worked well. There are good processes around how applications are dealt with, including site selection. It is not intended to change these as they have worked successfully for a number of years and for numerous applications across the city. This resolution is sought to simply replace expired agreements and modify the existing ones to align with the changes to Sections 135 and 153 of the Act.

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29. In order to provide the Council a quick snapshot of the indirect financial implications due to recent legislative changes, the table below illustrates how much revenue the Council receives in the current financial year plus the revenue projection for the next seven financial years. It also shows the estimated annual losses per financial year as a result of the Telecommunications Amendment Act 2011.

Financial Year	Total Revenue (Roadside cell-sites only)	Loss per Year
2011/12	\$846,203.88	
2012/13	\$831,020.88	\$15,183.00
2013/14	\$813,694.27	\$17,326.61
2014/15	\$469,278.76	\$344,415.51
2015/16	\$200,473.65	\$268,805.11
2016/17	\$155,419.24	\$45,054.41
2017/18	\$147,723.04	\$7,696.20
2018/19	\$0.00	\$147,723.04

30. Overall, the accumulative revenue loss in the next seven financial years is estimated to be around \$850,000. As per table above, there will be no roadside cell-site annual licence fees payable to the Council from the 2018/19 financial year onwards in regards to roadside cell-sites only.

EXPRESSION OF INTERESTS – ISSUES TO CONSIDER

When determining the likely location of the cell facilities the following issues need to be taken into account.

1. Preference is not to introduce additional poles in the road environment. However, there are occasions the Assessment Team will support an additional pole where the Council considers a desire to improve the lighting level of that particular area or installing a camera to monitor traffic movements.
2. Preference is for cell facilities to be along the frontage of business zones or public space, rather than in residential areas.
3. For cell facilities on site in **Living Zones** where legal road is less than **25 m** in width:
 - Preference is to maintain a distance of at least 20 m from residential boundary and a further 20 m from any preschool activities.
 - To carry out public consultation where the pole is higher than the existing streetlighting pole or is larger in diameter size from the rest of the street lighting poles.
4. Co-location of cell facilities may need to be considered and addressed where there are already existing cell facilities in close proximity. Note Cl 15.3 No Exclusivity in the Agreement to Licence Sites for Telecommunications Purposes.
5. Consideration needs to be taken into account of the existing road environment in particular when the facilities are adjacent to public reserve or in the vicinity of residential sites. Mitigating measures could be provided to compensate the potential adverse visual effect of the cell facilities. These measures could be the introduction of new or additional landscaping, visual art piece design on support structures, decorative street light fittings, undergrounding existing overhead utility services in close proximity etc.
6. Information on the cabinet, pole and cell panels dimensions must be provided in the application. Visual presentations for these facilities are desirable.
7. The Assessment Team may require Telco to consult with affected stakeholders prior to considering the **site agreement**. Affected stakeholders will include resident or business groups and including immediate residents or occupiers of the properties along the street or streets.

DESIGN CONSIDERATIONS

Designer needs to take the following into account in the design.

1. *Pole Design*

Preference is for a slim-line design similar to the various type of poles that are already present on the roading network. Pole design that are different and higher than the normal street lighting standards will be required to be painted preferably light grey – Resene Silver Aluminium Code 11MA50 with clear lacquer coating. When a decorative street light fitting is proposed, Council will advise Telco the type and colour of street lighting poles and fittings.

2. *Cabinet and Cell Panels Design*

When there is a design change to the existing cellular network a pre-approval is required.

3. *Placement of Poles*

- Chosen light standard to be resited as appropriate preferably back to property boundary and minimum clear footpath width of 1.5 m must be maintained for normal footpath and 2.0 m for high pedestrian areas (mainly in business zones). Telco designers need to carry out lighting level assessment for the chosen location and improvement to the light level complying to the lighting code will form a condition of approval.
- Chosen traffic signal or sign pole to be resited as appropriate to the requirement of Transport and City Streets Unit.
- On all urban roads where speed limit is 50 km/h rigid structures shall be set back at least 3 m from traffic lanes to ensure a safe environment for road users. Greater distance from traffic lane will be required for roads where speed limit is above 50 km/h.
- In all cases Council may require safety mitigating measures be provided eg installing guard rails, frangible bollards, planting etc.

4. *Placement of Cabinets*

- On all urban roads where speed limit is 50 km/h rigid structures shall be set back at least 3 m from traffic lanes to ensure a safe environment for road users. . Greater distance from traffic lane will be required for roads where speed limit is above 50 km/h.
- Chosen site needs to consider common law on property's rights of access onto legal road and safety of road users.
- Minimum clear footpath width of 1.5 m will be required for normal footpath and minimum clear width of 2.0 m for high pedestrian areas (mainly in business zone).
- In all cases Council may require safety mitigating measures be provided.

Can locals have a say about where telecommunication equipment is installed?

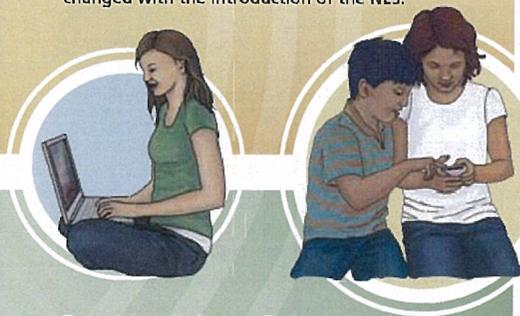
Through the district plan process, you can have your say about your local environment and what it's used for. If a district plan identifies special areas or values the community wants to protect or manage, telecommunication companies have to comply. For example, your district plan might require telecommunication operators to apply for resource consent if they want to locate cabinets and antennas in or near landscape, coastal marine, or heritage areas.

In fact, even though the NES permit some types of low-impact roadside facilities, resource consent is still required for most activities. For example, new free-standing cell towers are not covered by the NES; instead, they are regulated through councils' district plans. The rules in the district plan will state whether resource consent is required (note, though, that radiofrequency fields are covered by the NES).

Is there a consultation process?

The telecommunication activities allowed under the NES are considered low impact; therefore, consultation is not required. For those activities that do require a resource consent, sometimes the written approval from neighbouring property owners may be required or consultation may be required with affected parties (in the resource consent process, it's described as 'notification').

Remember that, before the NES was introduced, your local district plan may already have allowed some low-impact activities to go ahead without consultation (such as installing mobile phone antennas on existing street lights or building new cellphone towers). In these cases, nothing has changed with the introduction of the NES.



How do I know that the radiofrequency fields generated from telecommunication masts/antennas will not harm me or my family?

The radiofrequency fields generated by antennas must comply with the New Zealand standard (NZS 2772.1:1999 Radio-frequency Fields Part 1: Maximum Exposure Levels 3kHz to 300GHz). The standard sets exposure limits based on international guidelines that, in order to protect people's health, are very conservative. These guidelines are published by the International Commission on Non-Ionizing Radiation Protection (ICNRP) and endorsed by the World Health Organization; they were reaffirmed in late 2009 by the ICNRP in light of recent research findings.

To comply with the New Zealand standard all sources of radiofrequency fields in an area – not just the fields generated from a new antenna need to be assessed. This ensures that the cumulative effect of all antennas is considered.

The Ministry of Health has measured exposure levels around several hundred cell sites across New Zealand. The maximum exposures in public areas were found to be typically less than one-hundredth (1 per cent) of the limit allowed in the New Zealand standard. Measurements continue to be carried out on approximately 10 cell sites per year.

Further information

National Environmental Standards for Telecommunication Facilities: Users' Guide
www.mfe.govt.nz/laws/standards/telecommunication-standards.html

Cellsites

Information about cell sites and health is available at:
www.nrl.moh.govt.nz/faq/cellphonesandcellsites.asp

Cellphones

Information about the safety of cellphones is available at:
<http://www.nrl.moh.govt.nz/publications/is21.asp>

For more information on resource consent notification see the Ministry for the Environment's booklet, Your Rights as an Affected Person, available at:
<http://www.mfe.govt.nz/publications/rma/everyday/affected/>

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Environmental standards for telecommunication facilities in your neighbourhood

information for householders



Telecommunication facilities like cellphone towers, antennas and roadside equipment cabinets are common sights in nearly all New Zealand communities. National environmental standards have been introduced that allow some low-impact telecommunication facilities to be located in certain places without a resource consent from the local council. This guide explains the national environmental standards: what they do, why they have been introduced, and how they affect you in your daily life.

What are national environmental standards?

National environmental standards (NES) are regulations made under the Resource Management Act 1991. They set standards for managing aspects of the environment, such as ensuring clean air and good drinking water or for managing the way some activities are allowed to occur such as maintenance of electricity transmission lines. The standards are administered and enforced by city, district or regional councils in the same way as rules in their own district or regional plans. Because all councils are enforcing the same environmental standards, consistent approaches and decision-making processes apply across the whole country.

What do the national environmental standards for telecommunication facilities allow?

The NES for telecommunication facilities came into force on 9 October 2008. They describe certain telecommunication activities that can occur without a resource consent, providing they meet specific terms and conditions. If not, the telecommunication operator must apply for resource consent to the local council. The activities allowed by the NES are:

1. Radiofrequency fields generated by all telecommunication antennas (such as cellphone towers).
2. The erection of equipment cabinets at the roadside. These can contain equipment for telephones (both landlines and mobiles), cable television and internet.
3. The addition to existing roadside structures (such as light poles) of antennas used for wireless internet connections and mobile phones (including new technologies that can transmit television, internet and radio to mobile phones and smart-phones).
4. Noise levels from roadside cabinets, up to specified noise limits.

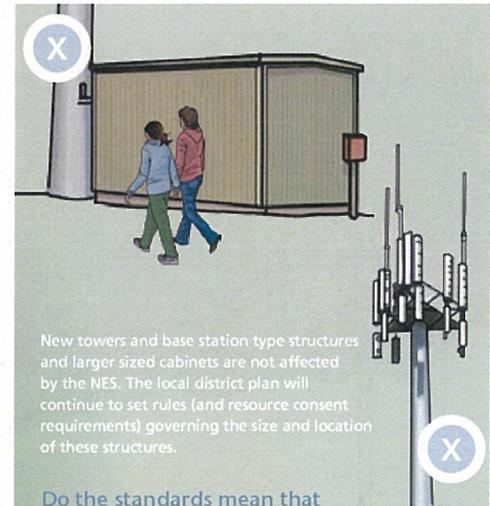
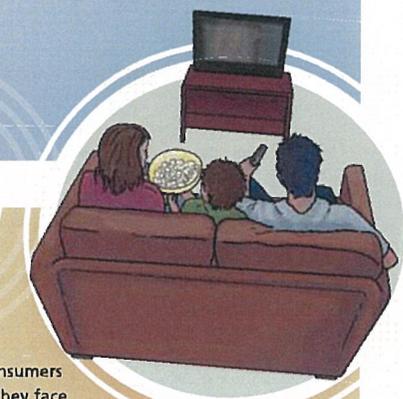


Under the NES, roadside cabinets can be up to 1.8m high in residential areas. Antennas can only increase the height of an existing pole by 30 per cent.

Why have the national environmental standards for telecommunication facilities been introduced?

There are 73 city and district councils in New Zealand. All have different rules in their district plans affecting what can be built as of right, and what requires resource consent. For telecommunication companies wanting to provide services across more than one district, dealing with this multitude of rules means uncertainty, time delays, and increased costs.

Ultimately, consumers are affected; they face higher costs, and delays in receiving new services like high-speed broadband. The NES aims to reduce these problems by creating consistent rules across the country.



New towers and base station type structures and larger sized cabinets are not affected by the NES. The local district plan will continue to set rules (and resource consent requirements) governing the size and location of these structures.

Do the standards mean that telecommunication companies could site masts/antennas and cabinets anywhere they choose?

No. The NES applies only to equipment cabinets and antennas located at the roadside, on legal road, and it places a limit on the number and size that are permitted. All other cabinets and antennas – including those on private land, buildings and new cellphone towers – will continue to be subject to the local district plan, and most will still require resource consent.

In addition, if a telecommunication company wants to install equipment in, on or under a road, they are required by law to notify the relevant road controlling authority (RCA). For most smaller roads, the RCA is the local council. For state highways and motorways, the RCA is the New Zealand Transport Agency. Under the Telecommunications Act, the RCA can require the telecommunication company to comply with specific conditions relating to road safety and access.