

Proposed Amendments to the
National Environmental Standards
for Telecommunication Facilities

Review of (Māori) Cultural Benefits and Costs

For Ministry for Business, Innovation and
Employment

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1 BACKGROUND

1.1 Context

The Ministry for the Environment (MfE) and the Ministry for Business, Innovation and Employment (MBIE) are proposing changes to the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008 (NESTF).

As part of the review process to amend any national environmental standards, it is necessary for an evaluation report to be prepared in accordance with section 32 of the Resource Management Act 1991 (the Act). A preliminary section 32 report has been prepared to evaluate proposed amendments to the NESTF which were outlined in a discussion document¹ released for public feedback from 3 March and 17 April 2015. The section 32 report is being revised following submissions and feedback on likely benefits and costs associated with the proposed amendments.

1.2 Report Brief

Andrew.Stewart Ltd (ASL) has been commissioned to provide a report which assesses the costs and benefits of the cultural effects anticipated to arise as a result of amendments proposed to the NESTF. The scope of cultural effects in this assessment is limited to Māori cultural values rather than wider heritage values.

This report considers relevant submissions on the discussion document and Technical Advisory Group (TAG)² minutes, district plan provisions, and any relevant supporting documents needed to complete the report. This report is intended to inform the overall section 32 report which is being prepared by another consultancy, therefore it is important to note that ASL is not responsible for the findings or recommendations in the overall section 32 report.

This report has been prepared on the understanding that the Client has access to the submissions and TAG advice, therefore these documents are not appended.

2 SCOPE OF CULTURAL EFFECTS ASSESSMENT

This report only considers potential costs and benefits of the Māori cultural effects of the proposal as presented in the discussion document, and does not endeavour to explore alternative policy options, or the overall effectiveness of the options presented in achieving the purpose of the Act.

The assessment is focused on actual or potential effects on Māori cultural values from the proposed amendments and does not extend to an assessment of cultural or heritage effects of a broader context. While this report provides an assessment of the likely cultural effects from the NESTF amendments, it is not and cannot be a “Cultural Impact Assessment” of the NESTF from the perspective of Māori. Such an assessment can only be prepared by Māori (or their nominated representatives).

¹ Ministry for the Environment. 2015. *Proposed Amendments to the National Environmental Standards for Telecommunication Facilities: Discussion Document*. Wellington: Ministry for the Environment

² The TAG is a group of representatives from industry, councils and central government. The TAG advice reviewed was minutes from a TAG meeting held on 8 May 2015 following public consultation on the discussion document. It is understood that TAG has been providing input to help develop the amendments to the NESTF.

The findings and analysis in this report are based on the information in the source documents provided, including the submissions and TAG minutes, and the experience of Andrew.Stewart Ltd. as planning practitioners who work in the mobile telecommunications sector and undertake consultation with Māori on a variety of matters.

3 PURPOSE OF THE NESTF AND PROPOSED AMENDMENTS

The background and purpose of the proposed amendments to the NESTF is outlined in the discussion document. The summary states:

Modern telecommunications infrastructure is an increasingly important utility in all communities. Councils and residents desire better, faster and more reliable connectivity. It is assumed that local variation in activity status between different plans has emerged not as a reaction to the varied needs between diverse environments across New Zealand, but rather as a natural consequence of devolved decision-making under the Resource Management Act (RMA).

In this context, many of the costs and benefits associated with the deployment of new telecommunications facilities (such as Ultra-Fast Broadband and Rural Broadband Initiative) will occur anyway. New telecommunications facilities will continue to be deployed across New Zealand. The intention of the NESTF amendments is to expedite the process of obtaining consent, thereby eliminating delays and costs incurred as a result of the variation between different district plans. This includes costs incurred by councils to monitor and enforce the existing rules. The proposals in this discussion document are designed to ensure New Zealanders will have access to superior broadband services earlier, and funds that would have been directed into compliance and enforcement costs can be invested elsewhere.

For some infrastructure, variation according to the local environment is appropriate and necessary. However, it is considered that national consistency is appropriate in the telecommunications environment because the current legislation and regulations (and the Government's standards and requirements for the Ultra-Fast Broadband and Rural Broadband Initiative roll-outs) are very similar across the country. Variation in rules creates a disproportionate administrative and cost burden on those involved in the consenting and construction of this new infrastructure.

It is proposed that suitable mitigations within the amendments be included so any costs associated with promoting national consistency are appropriately balanced against the benefits, and environmental effects are mitigated.

The main cost associated with expanding the scope of the NESTF is the reduced opportunity for local input. The NESTF will prevail over any district plan rules, so consultation for the whole country will be conducted through this discussion document. Without the NESTF, there would be opportunities to consult through each district plan change.

It is intended that appropriate provision for local variation is enabled. For example, areas or sites of natural, cultural or historic heritage value, or areas of natural hazard zones, may require further mitigations for or exclusions to the installation of telecommunications infrastructure. Comments are welcome on these intentions and assumptions.

Current evidence is that the benefits of an amended NESTF outweigh the costs associated with maintaining the status quo.³

³ Page 40. Ministry for the Environment. 2015. *Proposed Amendments to the National Environmental Standards for Telecommunication Facilities: Discussion Document*. Wellington: Ministry for the Environment.

4 HOW ARE POTENTIAL IMPACTS UPON CULTURAL VALUES ADDRESSED?

4.1 Regulation 6

The regulatory mechanism to protect Māori cultural values within the existing and proposed NESTF is Regulation 6.

Regulation 6 of the NESTF provides for a localised approach and gives effect to certain district plan rules when development is proposed within or adjacent a site accorded specific protection under the relevant district plan, including historic heritage and visual amenity value. In these instances, the development must comply with the relevant district plan rules where they are more stringent than the NESTF. The NESTF does not specifically outline in Regulation 6 or elsewhere that “Māori cultural values” fall within the gamut of “historic heritage value”. However, it appears that the regulation is generally applied with this interpretation based on our understanding of practice.

This approach is retained in the proposed amendments to the NESTF which includes “*special requirements for certain areas*”, as outlined in section 2.3 of the discussion document. This states that it is appropriate to apply the existing protection provisions in the NESTF to the expanded scope of works and development which would be permitted activities under the new standards, including earthworks and new structures within rural areas.

The existing and proposed regulations rely upon the identification of Māori cultural values to be spatially defined within a district plan, and further, that the plan contains rules which would adequately address potential impacts upon those values. In this respect, the effectiveness of the NESTF to protect Māori cultural values is entirely dependent upon the effectiveness of underlying district plans to identify wāhi tapu/areas and sites of significance and value to Māori and provide appropriate rules to ensure adverse effects on these sites and areas are appropriately managed.

The function and changes in scope to Regulation 6 is described in the discussion document as:

Protection of sites and areas of significance

Regulation 6 of the existing NESTF provides that a district plan’s rules must be complied with if consent is already required for works within the drip line of a tree, or where the adjacent site is accorded specific protection under the relevant district plan, such as for historic heritage, visual amenity or coastal protection. The existing NESTF allows these district plan rules to be more stringent than the standards in the NESTF. If the plan’s rules are not complied with, then resource consent may be required.

For example, where there is a proposal for a cabinet to be located next to a site identified as having heritage or amenity values, or in an area identified for coastal protection (eg, on the seaward side of a road), and the district plan restricts the location of telecommunications facilities within the road reserve, the proposal will be subject to both the conditions of the NESTF and the relevant rules of the district plan.

Regulation 6 was intended to preserve existing district plan rules relating to protecting trees and vegetation, historic heritage values, visual amenity values and the coastal marine area. It is not intended to create new consenting requirements where none previously existed. Under the existing NESTF, district plan rules relating to historic heritage values, visual amenity values and the coastal marine area must specifically relate to network utility structures in road reserves (not just the adjacent land) for these to be applicable under Regulation 6.

It is not proposed that the application of Regulation 6 to the existing standards in the NESTF be changed. However, in extending the scope of the NESTF to a wider range of infrastructure and beyond the road reserve, it is appropriate to apply the existing protection provisions to the proposed new standards.

Again, in these circumstances it should be noted that authorisation under the RMA to undertake an activity does not relieve a network operator of any obligation under other legislation, such as the HNZPTA, nor does it authorise access to any public or private land. The installation of an antenna on private property, such as on a historic building or on a rural hilltop, would still require permission from the land owner.⁴

To be consistent with the discussion document, here forth, the proposed NESTF is referenced simply as NESTF.

4.2 The Heritage New Zealand (Pouhere Taonga) Act 2014

The Heritage New Zealand (Pouhere Taonga) Act 2014 (HNZPT) provides a layer of protection to known Māori archaeological sites, which sits alongside the NESTF.

The HNZPT provides statutory protection of archaeological sites, which are defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. The HNZPT requires a register of archaeological sites, called the New Zealand Heritage List/Rārangi Kōrero, which is a publically searchable database.

Any activity which would modify or destroy an archaeological site, whether registered or not, must obtain an Authority to do so. It is unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. If an unknown archaeological site is discovered during construction then work must cease until it is evaluated and an authority is obtained.

There are a number of types of archaeological sites in New Zealand related to Māori culture, including Māori pa sites (often found on cliffs, headlands or ridges), remains of cultivation areas and gardens including terraces, and pits for storing kumara, middens which may contain shells, bones, artefacts, charcoal and sometimes oven stones, and rock art sites which may contain paintings, drawings, carvings or engravings.⁵

The HNZPT provides statutory protection of archaeological sites and functions alongside any requirements of the Resource Management Act (the Act) and applies regardless of any resource consent granted, activities permitted by a district plan or a National Environmental Standard. The HNZPT does not provide protection of sites of cultural value which are not archaeological sites.

It appears that the majority of archaeological sites are not recorded on district plan maps or council registers. Therefore, the effectiveness of the HNZPT in mitigating potential impacts on cultural values would depend upon proactive search and review of the New Zealand Heritage List by telecommunications operators in relation to proposed works to ensure that works do not impact upon known archaeological sites, and if they do, to obtain the necessary authority.

⁴ Ibid. Page 32.

⁵ Description of archaeological sites adapted from HNZPT website www.heritage.org.nz

5 BENEFITS AND COSTS OF POTENTIAL CULTURAL EFFECTS FROM THE PROPOSED CHANGES TO THE NESTF

5.1 Preliminary Section 32 report

The preliminary section 32 report provides the following analysis of potential cultural effects copied in part, and adapted below, as relevant:

Table 4: Evaluation of whether the proposal objectives are the most appropriate way to achieve the purpose of the RMA

Relevant to Māori environmental issues (sections 6(e), 6(g), 7(a), 8)

Amending the NESTF seeks a balance between providing for cost-effective and reliable national infrastructure and recognising the need for local community input, where appropriate. Community participation enables the identification and management of issues important to maintaining cultural wellbeing. Thus, iwi and the wider public will be invited to comment on the proposed changes through formal consultation.⁶

7.3.2 Effects of proposed amendments

Table 7: Environmental, economic, social and cultural effects of the amendments to the NESTF as compared to the status quo

COSTS - CULTURAL

Proposed changes may enable infrastructure to be developed in culturally sensitive areas: this will only occur if these areas are not protected through additional proposed provisions.⁷

7.7 Cultural effects

The cultural impacts of the proposals are considered to be very limited. There is a risk that permitting a wider range of activities will mean that telecommunications infrastructure may be installed in areas of cultural or heritage value, where they should not be. Regulation 6 of the existing NESTF provides that a district plan's rules need to be complied with if consent is already required for works within the drip line of a tree, or where the adjacent site is accorded specific protection under the relevant district plan, such as for historic heritage, visual amenity or coastal protection. The existing NESTF allows these district plan rules to be more stringent than the standards in the NESTF. If the plan's rules are not complied with, then resource consent may be required.⁸

⁶ Ministry for the Environment. 2015. *Proposed Amendments to the National Environmental Standards for Telecommunication Facilities: Preliminary evaluation under section 32 of the Resource Management Act 1991*. Wellington: Ministry for the Environment. Page 22.

⁷ *Ibid*, Page 31

⁸ Ministry for the Environment. 2015. *Proposed Amendments to the National Environmental Standards for Telecommunication Facilities: Preliminary evaluation under section 32 of the Resource Management Act 1991*. Wellington: Ministry for the Environment. Page 37

5.2 Submissions

The following are interpreted and paraphrased excerpts from submissions⁹ which provide specific comment regarding the impact of the proposed NESTF upon cultural values. Submitters who raised issues about potential impacts on cultural values were iwi and Territorial Authorities.

Submission notes relating to adverse effects on cultural values:

- Effects on the mauri/cultural values of waterbodies as a result of declining water quality caused by earthworks, trenching and erosion
- Potential cultural effects are not able to be measured due to a lack of a general cultural impact assessment and limited Māori participation in consultation process to date
- Potential cultural effects are not able to be understood at specific locations due to a lack of rohe specific cultural impact assessments. Only those whanau and hapū of the area know of wāhi tapu and cultural significance of places
- To mitigate potential adverse cultural effects consultation is required for all telecommunication development activities for purposes of both informing people as to what is happening, and to ensure protection of wāhi tapu
- Economic effects can have cultural consequences in isolated communities which rely upon tourism
- Concern about visual effects on cultural landscapes, including upon sacred maunga and waahi taonga

A number of submissions also made notes about the effectiveness of district plans to identify cultural sites and protect the cultural values associated with those sites. Issues raised in these submission about the effectiveness of District Plans include:

- District plans may contain information about scheduled sites and areas, however there will be other sites of cultural value where the Territorial Authority does not hold a record.
- District plans contain limited records of wāhi tapu sites
- District plans contain records relevant to the last plan change and will not contain more recent information
- Concern about reliance upon the district plan processes which are subject to variable interpretation and administration.

5.3 Technical Advisory Group (TAG) Notes and Recommendations

The following is a selection of paraphrased comments from the TAG notes and recommendations¹⁰:

How should the issue of earthworks be managed?

- Permitted earthworks are noted as a major concern for iwi

What should mana whenua involvement in the NESTF be?

⁹ Submissions as selected and provided by MBIE.

¹⁰ TAG meeting minutes provided by MBIE.

- Mana whenua involvement cuts across most proposed amendments
- If there is no consultation, then there needs to be some form of engagement requiring network utility operators to communicate with iwi on operations occurring in their rohe
- Note that identifying and managing wāhi tapu is not just a telecommunication issue
- Possible industry-led protocols for mana whenua communication, rather than regulation
- Possible for proof of consultation with iwi required for permitted activity status. However, it would be difficult for council's to audit any required consultation process in order to meet a permitted activity standard
- Resourcing consultation a possible issue for some iwi
- Possible use of an accidental discovery protocol, which could be area-specific outlining specific protocols within the rohe of iwi

TAG Recommendations

- For underground cabling – Council's and iwi organisations: ensure appropriate management of sites of significance to Māori
- Antennas in rural areas – Define “sensitive land use area”, ensure appropriate management of sites of significance to Māori (e.g. wāhi tapu) noting that many are not listed in district plans
- Expanding conditions under section 6 to include telecommunications facilities outside the road reserve - Conditions need to ensure appropriate management of sites of significance to Māori.

5.4 Discussion

5.4.1 NESTF and District Plans

The proposed changes to the NESTF, like the existing NESTF, rely upon Regulation 6 to manage potential adverse cultural effects. By devolution, district plans are then relied upon to contain adequate and accurate spatial records of sites of cultural value and to contain effective rules to adequately protect these sites.

Protecting sites and areas of cultural value is an important means for councils to provide for their particular obligations to Māori under Part 2 of the Act which, as a matter of national importance, includes recognising and providing for the *“relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”* and *“the protection of historic heritage from inappropriate subdivision, use, and development.”*

The effectiveness of Regulation 6 to manage potential effects upon cultural values will vary by district plan and location. At locations where district plans contain good quality spatial records of places of cultural value and these are identified through the district plan, then the proposed amendments to the NESTF are expected to have limited to no adverse cultural effects. At locations where district plans do not provide this protection, then the NESTF may result in greater adverse cultural effects through enabling more telecommunication infrastructure and development to be established as permitted activities. Adverse cultural effects are likely if such development is located within or close proximity to sites or places of cultural value/significance.

5.4.2 District Plan Review of Māori Cultural Site Protection

It is outside the scope of this project to assess the adequacy and accuracy of district plans in terms of their spatial records and provisions to protect sites of cultural value. This would require a detailed assessment of district plan provisions throughout the country. However, from our experience, we are aware that sites of cultural value are identified and recorded in various ways.

A high-level review of 25 representative district plans¹¹ was undertaken to assess the recording of sites of significance to Māori either spatially, or via other methods. The key findings of this review are:

- Some plans acknowledge the presence of sites of significance to Māori through statutory acknowledgements/ (e.g. Ngai Tahu Settlement Claims to the Ashburton River and Hinds River in the Ashburton District Plan 2014).
- Most plans acknowledge that there is difficulty in identifying all sites of significance to Māori/wāhi tapu and archaeological sites, and that this is due to either accuracy or sensitivity. In the case of sensitivity, some use 'silent files' which identify these sites internally without disclosing any information publicly.
- 3 out of the 25 plans did not provide a schedule/list of identified sites of significance to Māori or equivalent, or identify sites of significance to Māori on planning maps. These were Ashburton, Horowhenua and Christchurch. Ashburton and Horowhenua only provide specific identification of Tangata Whenua sites upon request, and it is noted that the plan for Christchurch is currently undergoing review and at the time of this assessment was not fully complete (although neither the plan or the planning maps indicated any such clear identification of sites of significance to Māori). These 3 plans also do not provide any indication on the planning maps where such sites could be located, therefore there is no spatial identification of these sites.
- All other plans identified sites of significance to Māori spatially by identifying these on the planning maps. These are supplemented by a schedule or list of sites within the plan or as appendices.
 - 11 of the 22 plans which identified sites of cultural significance explicitly identified these sites in relation to Māori (e.g. New Plymouth District Plan 2005 directly acknowledged and identified sites of significance to Māori as Waahi Tapu and Archaeological sites as identified on the planning maps, and within the text of the plan).
 - The other 11 of the 22 plans appeared to provide for sites of significance to Māori as 'subcategories' of either cultural, heritage or archaeological sites. While these tended to be identified as 'Cultural sites' or 'Archaeological Sites' on the planning maps, each plan provided a separate table solely for listing sites of significance to Māori. For example, the Ruapehu District Plan 2013 does not explicitly name or provide for sites of significance to Māori or equivalent, but provides for such sites by grouping and identifying these as heritage features on the planning map and providing a schedule within the heritage chapter of the plan.

¹¹ District plans reviewed included from Ashburton District Council, Auckland Council, Carterton District Council/Masterton DC/South Wairarapa DC, Christchurch City Council, Clutha District Council, Dunedin City Council, Grey District Council, Hamilton City Council, Horowhenua District Council, Hutt City Council, Invercargill City Council, Kaipara District Council, Napier City Council, Nelson City Council, New Plymouth District Council, Queenstown-Lakes District Council, Ruapehu District Council, Tauranga City Council, Thames-Coromandel District Council, Waikato District Council, Waimakariri District Council, Waimate District Council, Waipa District Council, Wellington City Council, Whakatane District Council.

- The Proposed Auckland Unitary Plan has spatially identified some 3,500 sites of cultural value or significance to Mana Whenua. In addition to spatial mapping of sites with significant surrounding buffer zones, the Proposed Auckland Unitary Plan requires cultural impact assessments to be provided with resource consent applications for a range of activities which are not location specific, but may affect cultural values.¹² For example, the cultural impact assessment rule is triggered by earthworks or vegetation removal, above a minimal threshold, proposed within a significant ecological area overlay.
- Separate to district plan mechanisms, some councils are understood to contact mana whenua on an ad-hoc basis to advise when a relevant resource consent application has been lodged within an area of interest. This was noted as a technique in the submission received from Far North District Council as a method which they employ.
- Auckland Council also operates a system whereby a summary list of all resource consent applications, including addresses, are provided to mana whenua groups on a regular basis. If mana whenua express an interest they are referred to the applicant who may choose to undertake consultation.

The high-level review of district plans indicates that, while the majority of plans do include some spatial referencing of cultural sites and supporting rules, the type and amount of sites recorded and referenced varies. This may be a reflection of the different density and types of sites of cultural value in different regions. However, it is also likely to reflect the devolution of this function to district plan development where the practice of council to record and identify sites of significance to Māori in their plans varies. It also relates to what phase the district plan is in and the consequent opportunities for additional cultural information and provisions to be added at each iteration or significant plan change. It is noted that the submissions from Māori on the NESTF amendments indicate a general lack of confidence that district plans contain adequate records and protection.

Sites of cultural value are sometimes purposefully not recorded in district plans in order to protect widespread knowledge of the sites for cultural reasons. In these cases, as indicated in some submissions, councils may have awareness of some sites and use their discretion to inform iwi of applications for development on a case-by-case basis. This management approach may be effective where resource consent is required, but would not capture the activities permitted through the proposed amendments to the NESTF.

5.4.3 NESTF and Cultural Effects in Rural Areas

The part of the NESTF with most potential for adverse effects on cultural values appears to be the provisions which would provide for permitted sites in rural areas. The proposed changes will introduce permitted development of certain scale telecommunications facilities within rural zoned land, where currently permitted activities in the NESTF are limited to within the road reserve.

The NESTF discussion document is unclear about what areas are intended to be included as being “rural” and predominantly uses the term “rural area” rather than “rural zone”. Many district plans, as noted in some submissions, have zones which transition across different types of rural uses (e.g. rural residential) and have different names and provide for different types of development.

¹² Proposed Auckland Unitary Plan. Part 3, Chapter G.7.7.4 Cultural Impact Assessment

In rural areas, mobile telecommunications facilities are often necessarily located upon elevated landforms, including ridgelines and hilltops. As hilltops are potentially places of historic pa sites, general historic Māori occupation and historical events, the potential for effects on cultural values is higher at these locations. Significant hills and maunga (mountains) may hold spiritual values to mana whenua, which are not necessarily related to occupation, events or archaeological sites. There are a number of established telecommunications facilities at hilltop locations which are known to have cultural values. For example, Patauaiki near Kawerau, or Manawahe north of Taupō.

Earthworks, and particularly trenching across rural land to establish power supply or fibre connection is an activity of particular risk to cultural values due to the linear distance over which the earthworks could occur. The main risk of this activity is disturbance of unknown archaeological sites. Archaeological sites are protected under the Heritage New Zealand (Pouhere Taonga Act 2014) and works would be required to cease if an archaeological site was discovered. Potential erosion effects of earthworks are expected to be managed effectively by good practice and effects on waterways will be further mitigated by the proposed permitted separation distance.

Rural sites, which are not subject to restrictive overlays, generally have very permissive land-use rules and would permit, for example, earthworks, vehicle track constriction, farm buildings and other development which would have earthworks or visual impacts similar or greater than a telecommunications facility. Many, but not all¹³, district plans also permit telecommunications masts up to 20 or 25 metres in height and ancillary works required to establish these within rural zones. In these cases, the visual and physical impacts upon cultural values would be the same as the existing situation. Therefore, in many instances, the NESTF would provide for rural development which would not generate significantly different effects on cultural values than the existing situation would provide for. This is a consideration, but does not remove the risk of effects on cultural values which may occur under the NESTF.

Rural areas, ridgelines and landscape features may also be subject to 'landscape overlays' or other special provisions which may come into effect under Regulation 6, and thereby indirectly provide protection to cultural values by triggering the need for a resource consent. Analysis has not been undertaken to understand the quantity of land protected by these types of provisions and the degree to which they also relate to known sites of cultural values. There appears to be variability in terms of the clarification and adoption of operative landscape protection layers within district plans.

5.4.4 Department of Conservation Estate

Department of Conservation (DoC) land often has an open space or conservation type zone in district plans, but in some plans may be zoned rural. Pending clarity about the scope of "rural areas", it is possible that DoC owned land would be, at least in some cases, included within the rural areas where permitted telecommunications development is proposed.

Permission for structures upon DoC land requires a Concession. An application for a Concession is circulated to relevant iwi by DoC during the processing¹⁴ as part of their responsibility to give effect to the

¹³ For example, Thames Coromandel District Plan does not provide for rural zone mobile telecommunications facilities as a permitted activity.

¹⁴ Department of Conservation. 2010. *Concessions Processing Review Final Report*. Wellington. New Zealand Department of Conservation, Excerpt from page 23. "The Department consults with iwi on concessions as an expression of implementing its obligations under s4 of the Conservation Act or as a condition of a Settlement. There is no standard model for how conservancies, or at times areas

principles of the Treaty of Waitangi as required by section 4 of the Conservation Act 1987. This provides an opt-in process for mana whenua involvement in any application prior to property rights permissions being granted. Applications for Concessions longer than 10 years in duration are mandatorily notified.

5.4.5 Auckland Council Register Process

As noted earlier in this report, Auckland Council currently operates a system whereby a summary list of all resource consent applications, including addresses, are provided to mana whenua groups on a regular basis. If mana whenua express an interest they are referred to the applicant who may choose to undertake consultation.

It is incumbent on mana whenua to resource the monitoring of the list and make quick judgments about the potential type, scale and location of an activity. If a mana whenua group does express an interest, the applicant may also choose to not engage. It is also unlikely that applications for certificates of compliance for permitted activities would be included in the register process, as the role of a council is simply to confirm that an activity is permitted under a district plan.

Therefore within the Auckland Council jurisdiction the register process provides a further safeguard measure for mana whenua to be involved in applications of interest to them, but this has limited effectiveness in terms of the NESTF.

6 BENEFITS AND COSTS OF THE CULTURAL EFFECTS FROM THE PROPOSED CHANGES TO THE NESTF

6.1 Benefits

There are potential cultural benefits that will occur as a result of improved, and faster provision, of telecommunications services. Faster provision of improved telecommunications services will provide for communities to better conduct business, educational, social and personal communications – all of which can support cultural well-being in those communities. The greatest benefit will likely be for isolated communities which are currently under-serviced. For example, we are aware that 2degrees is currently extending its network into the east coast of the Gisborne region which will help provide improved mobile coverage for Māori communities there.

It is understood that the Government has allocated radio wave spectrum to Māori, for reasons at least in part, to protect Māori culture. Based on this premise, the improved infrastructure is expected to provide for use of the spectrum and therefore may have Māori cultural benefits.

6.2 Costs

The potential costs outlined are based on the information provided and our planning experience working with telecommunication infrastructure and dealing with Māori cultural issues.

6.2.1 Telecommunications Cables

This is not expected to have significant cultural effects as most works will be in the road reserve, where utility installation and operation is permitted and often present. There will be some permitted increase in

within conservancies, consult with iwi on concessions. How this occurs is generally based on the relationships the conservancy has with a particular iwi and the resources and structures the iwi has at hand."

visual bulk of the aerial cables, however this is not expected to be visually significant, unless the bulk of combined cables became an adverse cumulative effect at a culturally sensitive location.

Underground cabling is low risk regarding potential cultural effects, but not entirely without risk. Works may occur at locations where archaeological sites or places of cultural value are present but are not recorded. In rural areas in particular, road reserves may be “paper roads” where the land may not have previously been significantly disturbed.

6.2.2 Mobile Networks

Multi-storey buildings

Antennas on multi-story buildings are expected to have minimal cultural effects. One submission raises concern that amenity, and therefore the tourism industry would be affected. This outcome appears unlikely, but if it did occur, the cultural effect would be indirect and related to economic prosperity due to an effect upon tourism.

Rural areas

The establishment of antennas and masts in rural areas as a permitted activity may have adverse cultural effects if the works are located at a site of cultural value which is not afforded protection in the district plan. The effects could be related to physical disturbance caused by earthworks, including trenching for power supply and fibre optic cable, plinths and foundations, and the construction of access roads or tracks. The effects may be related to disturbance of a wāhi tapu or archaeological site. The effects may also be related to the presence of the mast and attachments which could visually modify a place of cultural value or a view-shaft.

Masts in the road reserve

Within road reserves and developed areas, the impact on cultural values is expected to be minimal as most of these locations have already been subject to development and disturbance. While those locations may be sites of cultural value, they are likely to already be degraded through the construction and presence of existing infrastructure which would usually lessen the impact of further development and structures. However, under the NESTF there may also be the establishment of masts at more rural locations where the road reserve is relatively undisturbed and where the structures is located adjacent to, or within a view shaft, or a site of cultural value that is not afforded protection in the district plan. In these situations, there is potential for an increase in adverse cultural effects. As per underground cables, there would be greater risk in “paper roads” where the land may not have previously been significantly disturbed

Size of Antenna

Increasing the size of antennas has a low risk of adverse cultural effects. For example, if an existing site is located within an area that is culturally significant from a visual or landscape perspective, then an increase in the size of a structure may result in adverse cultural effects.

Co-location

Co-location has a low risk of adverse cultural effects. Often, but not always, a co-location can be established with minimal earthworks as existing nearby power and fibre sources may be available. Therefore, compared to a new site, earthworks would be significantly reduced. Notwithstanding this, ground disturbance always has some risk of impact on cultural values if the works are located at a site of cultural value which is not afforded protection in the district plan. If an existing site is located within an

area that is culturally significant from a visual or landscape perspective, then an increase in the size of a structure may result in an adverse cultural effects.

Small Cell Units

Adverse effects on cultural values are unlikely due to the small physical size of the equipment.

6.2.3 Special requirements for certain areas

Protection of sites and areas of significance

As discussed in section 5.4, Regulation 6 will provide for existing district plan rules to override the permitted activity status of the NESTF relating to protecting trees and vegetation, historic heritage values, visual amenity values and the coastal marine area. When applicable, the proposal will be subject to both the conditions of the NESTF and the relevant rules of the district plan.

The effects on cultural values will be a result of the nature, scale and significance of any works and structures permitted by the NESTF where the development is located at a site of cultural value which is not afforded protection in the district plan. The effectiveness of Regulation 6 in protecting such sites is entirely dependent on the effectiveness of the underlying district plan. As district plans vary in their approach to recognising and protecting places of cultural value, the effectiveness of Regulation 6 in achieving this objective will vary according.

Resilience to natural hazards

No effects on cultural values are anticipated.

6.2.4 Radio-frequency measurement standard update

No effects on cultural values are anticipated.

6.2.5 Conditions controlling cabinets

No effects on cultural values are anticipated, although, with any ground disturbance there is some risk of impact on cultural values if the works are located at a site of cultural value which is not afforded protection in the district plan.

6.3 Conclusions

The findings of this report generally concur with the assessment provided in the preliminary section 32 report and the discussion document. However, more emphasis is placed on the role that district plans will have on the resultant costs of the NESTF on cultural values, and recognition that the variability in district plans will result in variable outcomes on cultural effects.

This matter is recognised in the preliminary section 32 report which states:

Proposed changes may enable infrastructure to be developed in culturally sensitive areas: this will only occur if these areas are not protected through additional proposed provisions.¹⁵

The actual impact of the NESTF on cultural values will be variable and influenced by location specific factors within each district, including:

¹⁵ Ministry for the Environment. 2015. *Proposed Amendments to the National Environmental Standards for Telecommunication Facilities: Preliminary evaluation under section 32 of the Resource Management Act 1991*. Wellington: Ministry for the Environment. Page 31.

- The definition of a “rural area” within the NESTF and therefore the breadth and type of zones to which permitted facilities and development would occur
- Existing district plan rules relating to permitted development, particularly in rural areas, and the degree of change in effects that the NESTF would therefore permit
- The completeness and strength of existing district plan protection of sites and areas of significance to Māori/cultural value
- The content of district plans which come into effect concurrent with the NESTF.

The most significant effect would likely be at rural locations where sites of cultural value are not recognised and protected by a district plan. For example, if a telecommunications facility is constructed at a site of cultural value as a permitted activity under the NESTF then there is potential for adverse cultural effects to occur, which may be considered by Māori to be significant.

Based on the information reviewed, the potential positive impacts, or benefits, of the NESTF on cultural values is assessed to be minimal. This is because those benefits identified are generic and will be for all communities not just Māori communities.

6.3.1 Section 32 Report Recommendations

It is recommended that the section 32 report acknowledges:

- The efficacy of the NESTF to address potential adverse cultural effects is dependent upon the efficacy of a given district plan to identify and protect sites of cultural value
- That while many district plans record and protect sites with cultural values, there is variability in the completeness and efficacy of those provisions. This in turn will result in some variability in adverse cultural effects which may result from the NESTF.

Overall, for the reasons outlined, it is recommended that the evaluation should recognise that the cultural adverse effects (costs) may in some circumstances, and at some locations, be greater than “very minimal”.

6.3.2 Further Recommendations

If government and industry want to facilitate the development of telecommunication infrastructure through more permitted activities while also providing protection to cultural sites, then they may want to explore other methods to ensure this occurs. These further measures sit outside the NESTF and the supporting section 32 analysis but may provide a means to mitigate some of the potential adverse cultural effects identified in this report.

Non-statutory methods such as relationship agreements or protocols between industry and iwi would provide for consultation and solutions which are not dependent upon district plans to manage the cultural site recognition and effects. This could be an effective and more flexible approach to encourage good relationships and communication between industry and iwi rather than legislation. In submissions, industry has identified the potential benefits of this approach. This would also provide for the situations where Māori do not wish to not include sites of cultural value in district plans.

The request for area-based consultation and cultural impact assessments was raised by Māori in submissions.

With the support of iwi, it would appear that there is potential to assist Māori to undertake area (rohe) based assessments of cultural sites within their rohe to inform the content of district plans. Central government could also provide support to enable these area-based assessments to be undertaken, such as through guidance to councils and targeted funding to enable iwi to proactively undertake these assessments. Undertaking these area based assessments would obviously take some time and considerable resources even with this additional support so regardless there is likely to be an increase in potential adverse cultural effects in the interim if the NESTF amendments are gazetted.