

# **PART ONE**

## **INTRODUCTION**

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## **1.1 BACKGROUND**

### **1.1.1 Road Controlling Authorities/Territorial Authorities (RCA's/TA's)**

There are seven Territorial Authorities in the Auckland Region with the statutory responsibility for managing arterial and local roads in their function as Road Controlling Authorities. Transit NZ is the RCA/TA for motorways and state highways. RCA's/TA's also have wider functions and responsibilities in terms of various pieces of legislation as set out latter in the code. In addition, the Auckland Regional Council has a co-ordinating role and specific statutory responsibilities under section 30 of the Resource Management Act 1991, including the management of discharges into or onto air, land and water.

### **1.1.2 Auckland Utility Operators Group (AUOG)**

The AUOG was formed in the late 1990s and became an incorporated society in 2001. The AUOG has three main working groups focused on resource management, contracting and GIS issues.

The AUOG's vision and mission statements are:

#### **Vision Statement**

The network utility group that leads the industry in partnership with Councils, for the betterment of our community.

#### **Mission Statement**

AUOG will be recognised by bringing wisdom, integrity and consistency across boundaries, to continually improve services to our community. Members will benefit through participation, by networking, consistency in standards, leading to improved cost effectiveness of their operations. Our members will be proud to belong to the AUOG

One of its initial strategies was to help ensure the development of a consistent regulatory regime for utility services in the Auckland region. As part of this initiative, a regional working party comprising resource management planners mainly from RCA's/TA's and representative from the AUOG with expertise in resource management worked together from December 1999 to produce model provisions for utility services. These were to be incorporated in whole or part in District Plans in the region. Model provisions were prepared for consultation. However, a parallel process of settling references from utility operators to several Proposed District Plans meant that the need for a Variation was no longer a priority for the territorial local authorities. It was also difficult to achieve agreement in terms of detail.

### **1.1.3 Code of Practice for Working in the Road**

Concurrent with the joint work on the District Plan model provisions it was decided that a code of practice was needed in the Auckland region that was consistent across all RCA's/TA's and could be an agreed means of compliance for district plan performance criteria, where appropriate.

In October 1999 the RCA/TA CEO Forum approved the development of a Code of Practice for Working in the Road in partnership with the AUOG. The first module of the code, setting out the construction requirements (Parts 8, 9 and 10) was adopted by the RCA's/TA's and the AUOG on 1 January 2001, and has been in use since then. There have been two revisions of these as part of the continuous improvement objective of the code.

The intention was to complete and implement the whole code by the end of 2002 and the development and current status of each part of the code is set out at the front of the document.

### **1.1.4 Integrated Regulatory Processes**

Given the difficulties experienced by the District Plan initiative, it was agreed to change the focus to achieve a comprehensive, integrated regulatory process between District Plans and the Code of Practice for Working in the Road. Efficient regulatory processes significantly reduce compliance costs without lowering specified standards.

In addition to the above processes, there has been a move by some territorial local authorities to contract out some of their functions as RCA'S/TA's such as the processing of applications to work in the road. Some utility operators support moves towards self - regulation. In a changing environment it is important to ensure that partnering relationships are put in place so that the goals of each party continue to be met.

These partnering relationships are set out in part 2.

## **1.2 CODE APPLICATION**

### **1.2.1 Compliance**

All work shall comply with the requirements of this code including any statutory requirements or other relevant rules, regulations, codes or standards referred to in this Code and approved by the RCA/TA.

The RCA/TA and Principal Providers have the prime responsibility for ensuring code compliance at all times. The code does not attempt to set out specific roles and responsibilities for contractors and agents engaged by either.

Any attempt to define contractual relationships is considered inappropriate and extremely difficult due to the wide range of management styles adopted by both RCA's/TA's and Principal Providers.

During development of the code consideration was given to defining consistent roles and responsibilities for contractors and agents but very little common ground could be found.

And it was considered that imposing specific roles could be a restrictive practice and inhibit competition and performance.

The solution adopted by the code to address what can be expected from competent construction contractors is set out in Part 3 Contractor Performance and Part 4 Training.

### **1.2.2 RCA/TA Construction Works**

The code is aimed primarily at the installation of utility services on the basis that work carried out by the RCA/TA such as road construction, tree planting will be to the same requirements as those contained in the code.

To ensure that the road opening requirements apply equally to work initiated by the RCA/TA and the Principal Provider, the RCA's/TA's have agreed to the application of code requirements to all their works in the road.

The range of activities covered by this agreement is recorded in Appendix 1.1.

### **1.2.3 Implementation**

At the early stages of development it was agreed to implement the code in stages. Initially it was expected that the training element would be easily integrated in the completed document. However the need to integrate training across all Industry Training Organisations and to allow time for training providers to become established means that implementation of training will take place after completion of the code.

### **1.2.4 Revision**

Regular revisions of the code are expected with a view to continuous improvement and all stakeholders will be given opportunity to be involved in this process. Any concerns at any times should be addressed jointly to the RCA/TA and/or the AUOG/Principal Provider.

## **1.3 COST SHARING AGREEMENTS**

### **1.3.1 Alignment with Existing and Future Agreements**

Compliance with some of the requirements in the code may be influenced by attitudes towards cost sharing responsibilities.

Existing statutory agreements are detailed in Appendix 1.2.

Non statutory cost sharing arrangements have not been included in the code, and must be dealt with by negotiations within the framework of existing and future agreements.

Cost share agreements should recognise the responsibility of the Principal Provider to address future non-compliance in relation to the location and depth of services as specified in this Code. Exceptions will be considered by the RCA/TA on a case by case basis. Approvals are to be documented by the Principal Provider.

Existing or future non-compliance may negate cost share agreements.

## Appendix 1.1 Auckland RCA/TA Works Agreement 1.2.2

The purpose of this agreement is

- to achieve consistency in all matters relating to works carried out within the road reserve by all parties.
- that all works carried out by TA's in the Auckland region shall be to the standards and process requirements of the Code of Practice and covers the following activities.

Council owned and operated utilities

- water
- wastewater
- stormwater
- telecommunications for traffic management
- traffic signal installation & maintenance
- CCTV installation & maintenance

Council service operations

- bus shelters
- maintenance works within the road reserve
- reseal works within the road reserve
- rehabilitation works within the road reserve
- signage installation and maintenance
- street furniture installation and maintenance
- street lighting installation and maintenance
- streetscape programmes
- structures
- tree planting and maintenance

Subdivision development

- connections to utility services in the road
- upgrades of road frontages
- departures from approved lay positions

Building sites

- demolition
- removal and relocation
- new and upgrades to vehicle crossings
- connections to utility services in the road
- temporary traffic management
- temporary use of public amenities

## Appendix 1.2 Statutory Cost Share Agreements 1.3.1

**Note: The following are statutory provisions from the various Acts. Agreements for cost sharing outside the Acts are often negotiated and generally work well.**

### 1.2.1 Telecommunications:

The Telecommunications Act 2001 (as was its predecessor ACT 1987) is silent on the issue of cost sharing with regard to service relocation.

The NZ Post and Telegraph Dept (now Telecom) signed a cost share agreement with most RCA's/TA's in 1972 where the cost sharing basis was 50/50. This is still active.

Where other telcos have been asked to re locate cables the Telecom agreement is cited or Sec 54 Transit Act which also apportions costs 50/50.

### 1.2.2 Electricity Act 1992

Sections 32 of the Electricity Act 1992 sets out authority for RCA's/TA's to "require works to be moved " Sec 33 addresses the costs.

Basically the reasonable cost of all work required to be done under Sec 32(1) of the Act shall be paid by the person that requires the works to be done. There are some exceptions that relate to unlawful construction in the first place, where services are dangerous or unsafe.

The owner of the works shall pay the cost of all fittings that are used in carrying out the required work (other than fittings used only during the course of construction)

Where the specifications of the service are enhanced (i.e. an upgrade of the service with new technology or increased capacity the cost of the enhancement is to be paid by the owner of the works.

### 1.2.3 Gas Act 1992

Sections 33 and 34 virtually mirror the Electricity Act.

### 1.2.4 Transit Act 1989

Section 54 of the Transit Act covers "Removal of roadside structures". Subsection (4) states "subject to any agreement to the contrary, the reasonable costs incurred by the utility authority in so removing any structure and (where reasonably necessary) in re erecting the structure (or the equivalent structure provided by the utility authority at its expense) including compensation to land owners and occupiers of the alternative site and a reasonable sum for overhead charges, shall, subject to subsection 5 be borne by the controlling authority and the utility authority in equal shares ....."

Subsection 5 gives the Court powers to vary cost proportions

This is generally used as the "default where no agreement exists. Often used for water and stormwater.

### 1.2.5 Postal Services Act 1998

This Act amongst other provisions empowers operators to place mailboxes in the road. It is silent on the matter of re location.

### 1.2.6 Auckland Metropolitan Drainage Act 1960

This Act covers Watercare's wastewater pipes in the road. No cost share, RCA's/TA's pay 100%.