

# **HGI Plan Review: section 32 report for Network utility services**

## **1.0 Executive summary**

This report summarises the evaluation undertaken by the council of proposed district plan provisions relating to network utility services in terms of section 32 of the Resource Management Act.

The main conclusions are:

- the best way to address network utility services is through a separate network utility services section in the proposed plan.
- to provide for a range of utility services.
- to ensure that adverse effects associated with utility services are avoided, remedied or mitigated through environmental standards.
- the establishment of network utility services should not detract from the visual amenity of the environment or any heritage values.
- the network utility services section provides a framework for managing utility services in the gulf islands.
- other methods listed in this section 32 report are important documents for managing utility services.

## **2.0 Introduction**

### **2.1 Purpose of this report**

This report is to meet the section 32 requirements of the Resource Management Act.

### **2.2 Proposed plan provisions**

The plan provisions seek to provide for a range of utility services throughout the islands within land units, settlement areas and the legal road. Utility services can be placed underground, above ground and overhead. The plan provides definitions of the types of utility services and categorises them by their placement i.e underground, aboveground and overhead.

Underground services are permitted activities. A range of aboveground and overhead utility services are also permitted where they have minimal visual effect or provides a public function for the community. In some instances, above ground utilities and overhead utility services are only provided for in specified land units, settlement areas and the legal road due to concern over visual and amenity effects. The council wishes to exercise a degree of control over certain aboveground and overhead utility services, particularly in coastal and natural landscape areas so that the visual and amenity effects can are better managed.

All activities must comply with listed development controls. Where activities are classified as restricted discretionary or discretionary activities, assessment criteria are provided.

## **2.3 Consultation**

This section of the report briefly outlines the consultation that the council has undertaken to date and identifies any issues raised of particular relevance to network utility services.

### **2.3.1 Consultation to date**

The council undertook consultation in 2005 in preparation for drafting the proposed Plan.

#### **Initial consultation**

The main consultation period was from April to July 2005. Consultation during that period consisted of:

- public meetings, workshops, nga hui, and one on one meetings
- a photographic exercise on Waiheke
- inviting written feedback on a consultation document which contained issues and options papers on a wide range of topics.

#### **Focus groups**

At the close of consultation, the council analysed the feedback forms received. From these, key issues were identified that subsequently became topics for focus groups on Waiheke. The four topics for the focus groups were:

- landscape
- transport
- sustainability
- future planning (including subdivision, growth, and providing for business activity).

An additional workshop was also held on Great Barrier to give a further opportunity to discuss issues raised through the feedback forms.

#### **Telephone survey**

The council commissioned an independent research company to undertake a phone survey in late 2005. The survey was of a randomly selected sample of 1002 on-island residents and off-island ratepayers of Waiheke, Great Barrier and Rakino. The questionnaire used for the survey was designed to get responses on the key issues that had emerged from the consultation process and stakeholder feedback.

The survey provided a means of canvassing the views of a wide range of people who may not have been previously involved in the consultation process.

#### **Consultation with other stakeholders**

During the preparation of a proposed plan, the council has also consulted with the following parties:

- the Auckland Regional Council ('ARC')
- the Department of Conservation ('DOC')
- tangata whenua
- network utility authorities.

#### **Public notification**

Notification of the Plan provides an opportunity for further public participation through the formal submission and appeal process.

### **2.3.2 Issues raised during consultation**

During consultation the following issues were raised:

- the need to provide a separate network utility service section.
- the need to provide for utility services to meet the economic and social needs of the community
- the need to underground utility services.
- permit aboveground and overhead services in non-sensitive landscape areas and rural areas.
- develop performance standards for permitted activities.
- the need to control aboveground and overhead utility services in sensitive landscape and coastal areas.

## **3.0 Resource management issues and objectives**

### **3.1 Issues**

The issues identified are:

1. How to ensure that the community needs with regard to network utility services are met.
2. How to avoid, remedy or mitigate the adverse effects of network utility services on the environment.
3. How to integrate network utility services within the landscape so that they do not detract from the quality of the visual environment and heritage values.

### **3.2 Objectives**

The objectives identified are:

1. To provide for the efficient establishment, operation and maintenance of network utility services in the islands.
2. To ensure adverse effects associated with network utilities such as noise, earthworks, odour, dust, spill lighting, air emissions, earthworks, electromagnetic field emissions and radio-frequency fields (RF) are avoided, remedied or mitigated.
3. To ensure that the establishment of network utility services do not detract from the visual amenity of the environment or any heritage values.

## **4.0 Statutory requirements under Part II, sections 31, 32, 72 and 76 of the Resource Management Act**

Section 74(1) of the RMA states as follows:

A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations.

Section 31 sets out the council's functions for the purpose of giving effect to the Act. The council's functions include:

- (a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
- (b) The control of any actual or potential effects of the use, development or protection of land...

Section 72 states as follows:

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

The following provisions of section 76 are also relevant:

- (1) A territorial authority may, for the purpose of –
  - (a) Carrying out its functions under this Act; and
  - (b) Achieving the objectives and policies of the plan, - include rules in a district plan.
- ...
- (3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.

In achieving the purpose of the Act, the council must carry out an evaluation under section 32 of the RMA before publicly notifying a district plan or a plan change. Section 32(3), (3A) and (4) state as follows:

- (3) An evaluation must examine –
  - (a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
  - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives
- (3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.
- (4) For the purposes of the examination referred to in subsections (3) and (3A), an evaluation must take into account –
  - (a) the benefits and costs of policies, rules, or other methods; and
  - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

The statutory requirements, including section 32 matters, are assessed below under the following headings:

- The extent to which each objective is the most appropriate way to achieve the purpose of the Act
- Whether the policies, rules, or other methods are the most appropriate for achieving the objectives

- Having regard to their efficiency and effectiveness
- Taking into account the benefits and costs of policies, rules, or other methods
- Taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

## 4.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act

### 4.1.1 The purpose of the Act

Section 5 states that the purpose of the Act is 'to promote the sustainable management of natural and physical resources'. Section 5(2) states:

- (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-
  - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
  - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Environment is defined in Section 2 of the RMA as including:

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All natural and physical resources; and
- (c) Amenity values; and
- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

Section 6 of the RMA identifies matters of national importance, which need to be recognised and provided for in achieving the purpose of the Act. The matters of particular relevance to the current proposal are identified below:

Clause		✓
(a)	The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development	✓
(b)	The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development	✓
(c)	The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna	✓
(d)	The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers	
(e)	The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga	✓
(f)	The protection of historic heritage from inappropriate subdivision, use, and development	✓
(g)	The protection of recognised customary activities	

Section 7 deals with ‘other matters’ which, in achieving the purpose of this Act, persons exercising functions and powers under the Act shall have particular regard to. The matters of are of particular relevance to the current proposal are identified below:

Clause		✓
(a)	Kaitiakitanga	
(aa)	The ethic of stewardship	
(b)	The efficient use and development of natural and physical resources	✓
(ba)	The efficiency of the end use of energy	✓
(c)	The maintenance and enhancement of amenity values	✓
(d)	Intrinsic value of ecosystems	
(f)	Maintenance and enhancement of the quality of the environment	✓
(g)	Any finite characteristics of natural and physical resources	
(h)	The protection of the habitat of trout and salmon	
(i)	The effects of climate change	
(j)	The benefits to be derived from the use and development of renewable energy	✓

Section 8 provides that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).

#### 4.1.2 Appropriateness in achieving the purpose of the Act

**Objective 5.3.1:** To provide for the efficient establishment, operation and maintenance of network utility services in the islands.

**Objective 5.3.2:** To ensure adverse effects associated with network utilities such as noise, earthworks, odour, dust, spill lighting, air emissions, earthworks, electromagnetic field emissions and radio-frequency fields (RF) are avoided, remedied or mitigated.

**Objective 5.3.3:** To ensure that the establishment of network utility services do not detract from the visual amenity of the environment or any heritage values.

Objective 5.3.1 recognises that there is a need for network utility services within the gulf islands and that providing for utility services is necessary for achieving the purpose of the Act, by providing for utility services that “...enables people and communities to provide for their social, economic and social well being and for their health and safety ...”(Section 5 of the RMA). Network utility services are an important part of infrastructure and the objective recognises the important role that they play in ensuring the wellbeing of the island communities. The objective recognises this and through rules (which are detailed later in this report) provides for a range of utility services while ensuring that any adverse effects are avoided, remedied or mitigated which is consistent with section 5(2).

Objective 5.3.1 is also consistent with section 7(b)(ba)(j) by providing for the efficient use and development of natural and physical resources, because utility services are an important part of the services to the islands and should be provided in an efficient manner that does not incur excessive cost to the community and the utility service providers. Providing for services on the islands can be costly given the location. For example, Great Barrier island has very limited internet services, so the council wants to facilitate in providing services by

not burdening excessive costs on the utility operator or community. Therefore it is appropriate to ensure that services provided to the community is done in an efficient way wherever possible. This is achieved by providing for rules that allow for the installation, operation and maintenance of utility services that does not incur excessive costs to the network utility operator. If excessive costs are incurred, such costs would be on-charged to the community. However, it is recognised that there could be costs associated with providing for utility services especially where environmental standards are not met or if utility services are located in areas of high landscape value, heritage or coastal locations. Where appropriate, these costs are incurred and borne by the utility operator and community in order to avoid, remedy and mitigate any adverse effects on the environment.

While providing utility services to the islands is important, the council also recognises that they have the potential to create adverse effects on the environment. Objective 5.2.2 recognises these effects and that such effects listed are avoided, remedied or mitigated. In this regard, the objective is consistent with section 7(f) in achieving the purpose of the act.

Utility services are by their very nature utilitarian and their function often dictates their size and appearance. Therefore, an important objective is to recognise that the establishment of utility services do not detract from the visual amenity of the environment or heritage values. This is particularly relevant in the islands because the plan recognises the unique landscape and the coastal environment in which the islands are located. Objective 5.3.3 recognises this and supports sections 5, 6 (a)(b)(c)(e)(f), 7 (c)(f) and 8 of the act.

In summary, it is considered that the objectives are appropriate in achieving the purpose of the Act as discussed above.

The objectives as outlined above assist the council to carry out its functions as stated under s31, 72, 74(1) by providing for utility services in a manner which achieves integrated management of the effects of the use and development as outlined in section 31(1)(a). In addition, the protection of identified areas of high landscape value, heritage value and coastal areas where the provision of utility services requires assessment also assists the council in carrying out its function under section 31. In addition, the objectives 5.3.2 and 5.3.3 also assists the council in controlling any potential effects of the use and development resulting from the installation and operation of network utility services. This is achieved by identifying environmental effects associated with utility services and the need to ensure that utility services do not detract from the visual amenity or the environment, particularly with respect to heritage values and coastal areas.

The objectives in the network utility services section of the plan are also considered necessary in assisting Auckland city to carry out its functions under section 72, 74(1) in order to achieve the purpose of the act as discussed in section 4.1.2 of this report.

## **4.2 Whether the policies, rules, or other methods are the most appropriate for achieving the objectives**

### Policies

The proposed policies for objective 5.3.1 are:

1. By providing for new network utility services.
2. By providing for the continued existence, operation, and maintenance of established network utility services.
3. By providing for an additional broadband internet overhead distribution line on existing support poles and structures where there are existing overhead lines.
4. By recognising existing legislative provisions that apply to network utility services.
5. By encouraging the co-ordination and co-location of works between network utility operators to minimise environmental impacts and community disruption.
6. By requiring network utility operators to comply with the Code of practice for working in the road.
7. By using the Hauraki Gulf Islands Development Code as a guideline for providing utility services for subdivision and development.
8. By providing for overhead lines in the appropriate landform land units.

It is considered that these policies are the most appropriate means of achieving the objective because they provide a practical approach for providing utility services to the island communities. In particular, the policies require undergrounding of services as far as practicable. However they do recognise that in certain situations overhead lines and aboveground services are the most practical solution to enable better and efficient services. The policies also recognise other legislative requirements and best practices for managing utility services such as the Telecommunications Act 2001, Electricity Act 1992 and Regulations 2004, the Code of practice for working in the road, and the Hauraki gulf islands development code. These documents and the rules in the district plan assist in providing utility services to the island communities.

The proposed policies for objective 5.3.2 are:

1. By ensuring that utility services meet appropriate environmental standards so that adverse effects do not occur.
2. By assessing the effect of network utility services on the environment where the standards are not met.

The proposed policies for objective 5.3.2 will also ensure that utility services meet the appropriate environmental standards such as noise, earthworks, odour, dust, spill lighting, air emissions, electromagnetic field emissions and radio frequency fields as they have the potential to create adverse effects. The standards ensure that the community is safeguarded from potential adverse effects. Noise standards are based on a New Zealand Standards (NZS) that have been developed and refined over a number of years based on expert advice, international practices and Environment court direction.

Earthwork controls were developed by scientific and rational means and that any exposed earthworks should be remedied as soon as possible. In addition, where earthworks are associated with utility services they must be carried out in accordance with appendix 16 of the plan to minimise erosion and silt runoff.

Air emissions and odour is controlled by the Auckland Regional Council and any utility services that generate these nuisances may require resource consent from the ARC.

Spill lighting and radio-frequency fields are controlled by the bylaws. Spill lighting standards have been developed to ensure that no nuisance occurs for the community. Radio-



frequency field standards have been developed following consideration and consultation on, the exposure standard adopted in NZS6609: 1990, AS/NZS 2772.1(Int): 1998 and NZS 2772: Part 1: 1999. While setting a maximum exposure limit the New Zealand Standard states that as the effects of exposure to such fields are only imperfectly understood, unnecessary exposure to radio frequency fields shall be minimised. Therefore, the council has adopted a more conservative exposure standard. The lower level gives effect to both the ALARA principle (as low as reasonably achievable) expressed in the NZS6609: 1990 and to the principle of prudent avoidance.

Electromagnetic field emissions are controlled by the document “International Commission on non-ionising radiation protection guidelines 2001”. At this present time, this document is the accepted standard for controlling electromagnetic field emissions.

Any network utility service that cannot meet the standards standard will require a resource consent to ensure that any potential adverse effects are avoided, remedied or mitigated. Alternatively, some standards are managed by other authorities such as ARC, documents such as bylaws, and the processes associated with them.

The proposed policies for objective 5.3.3 are:

1. By requiring underground services for new subdivision and development.
2. By requiring utility services to comply with part 7 - Heritage.
3. By encouraging utility operators to underground existing overhead utilities where the opportunity exists for co-ordinated works with council road works.
4. By not providing for large scale aboveground and overhead utility services within the coastal and wetland or water body protection yards.
5. By providing for small scale aboveground utility services.
6. By controlling large scale aboveground and overhead utility services on significant ridgelines and in land units with high landscape value to ensure that they do not detract from the visual amenity of the surrounding environment.
7. By assessing the cumulative visual impact of overhead utilities on the environment.
8. By encouraging utility operators to design utility services that are visually sympathetic to the environment.
9. By requiring the removal of redundant or obsolete services, particularly within the road.
10. By encouraging utility operators to provide a long term plan for undergrounding existing overhead utilities.

Objective 5.3.3 is required to ensure that utility services do not detract from the visual amenity of the environment or any heritage values. Network utility equipment by their very nature are utilitarian. Their function often dictates their size and appearance. In recognising utility services as an essential part of the infrastructure, it is also considered that utility services can be visually intrusive, especially in sensitive environments such as natural and built heritage areas and areas of high landscape value. The associated policies with objective 5.3.3 are considered the most appropriate for achieving the objective as they reinforce section 6 (a)(b)(c)(e)(f), 7 (c)(f) and 8 of the Act. The proposed policies recognise predominantly regulatory rules and methods to ensure that the unique visual amenity of the islands are maintained or where possible enhanced. It is considered that this is the most efficient and effective way to ensure giving effect to the objective. This also applies to heritage values.

In addition to recognising regulatory policies, other ‘methods’ are also recognised which can contribute to giving effect to the objective. These policies (policies 5.3.3.1(3)(8)(10) are considered ‘voluntary’ and requires the co-operation of network utility providers but can be very effective in giving effect to the objective. However, it is considered that these policies, in conjunction with the regulatory policies, provide an efficient and effective combination to ensure giving effect to the objective.

In addition to the proposed policies for achieving their respective objective, it is important to recognise that a balance of policies is provided to ensure a level of certainty to the community and network utility providers. It should also be recognised that there is a need to balance these policies to ensure that in providing for utility services, the environmental, economic and social benefits and costs are taken into account. It is considered that these policies are the most appropriate in achieving the objectives.

### Rules

The proposed rules allows the installation of underground utility services as a permitted activity. This would allow utility operators to underground existing overhead services as a permitted subject to meeting development controls under clause 5.6 and 5.7 of the plan. This would also apply to new subdivision and development. The main reason for permitting underground utilities is to allow for a high degree of visual amenity as overhead lines can have a high degree of visual intrusiveness.

The rules also for allow for functional equipment to be permitted activities such as post boxes and public telephone boxes because the general public ‘interact’ with this type of equipment. The rules also allows for the bundling of existing overhead lines in recognition of the desire to reduce the number of lines while at the same time providing the same or increased electricity or telecommunication services. This is explicitly recognised where rule 5.5.1 provides for an additional overhead broadband internet distribution line where there are existing support poles and where overhead lines exist at the date of public notification of the plan.

While undergrounding of services is preferred, the proposed rules also recognise that new overhead telecommunication and electricity distribution lines need to be permitted in some rural areas (landforms 3 and 5) and the formed legal road to recognise the high costs associated with providing services to rural areas.

The rules also permit the installation of cell site masts and antennas in commercial 5 and landforms 3, 5 and 6. Commercial 5 has a lower degree of visual amenity as it is predominantly industrial. In landform 3-alluvial flats and landforms 5 and 6, productive land and regenerating slopes respectively, it is considered that such equipment will have little visual impact on the surrounding environment given the rural nature on the land units. Landform 3 is mainly low-lying pasture land with little visual amenity value. Landform 5 is characterised by pastoral and horticultural activities and is a working landscape with various built elements such as farm buildings houses and drainage systems. The landform is typically rolling to moderately sloping contours. It is considered that given the ‘working landscape’ and lack of high landscape value, providing cell site masts and antennas as a permitted activity will in landform 5 will enable the community to provide for new services should the demand arise. Landform 6 is regenerating bush and it is considered that the regrowth of bush/trees will help mitigate the visual effect of these structures. In addition, there are

additional rules in the proposed plan such as the ridgeline control and tree and vegetation removal rules to control visual and amenity effects. Cell phone masts and attached antennas are classified as restricted discretionary activities in rural 1 due to the close proximity of the area to island residential land units. Therefore, the council wishes to manage these effects more closely.

Rule 5.5.1 permits cell site antennas on existing pole structures in all land units, settlement areas and the legal road recognising that these structures have minimal visual impact. Antennas located on existing buildings are also permitted, however this is limited to two antennas as a greater number of antennas have the potential to be visually intrusive. Should more than two antennas be located on a building, resource consent will be required to assess the number of antennas and where they are located on the building to assess the visual impact.

Aboveground utility services are permitted in all land units, settlement areas and formed legal road but are limited to bulk and height i.e up to 2m<sup>2</sup> (plan view) and 1.6m in height (excluding plinth). This is particularly relevant in areas such as the legal road, where the bulk and height of such structures can impede pedestrian traffic and detract from the streetscape environment. However, these rules exclude structures such as streetlight poles, metrolight poles and telecommunication and electricity distribution lines and poles. It is recognised that these structures provide an important function.

The proposed rules will restrict utility services in areas identified as outstanding natural landscapes, and coastal and wetland or water body protection yards to protect these areas from the inappropriate installation of utility services. In addition, where utility services are not provided for as permitted or restricted discretionary activities, the activity will default to a discretionary activity.

In summary it is considered that the regulation of visual and amenity values is best dealt with by the district plan. Furthermore the consideration of amenity values is afforded under the RMA.

The development controls regulating utility services also reflect the utilitarian nature of utility services. Exceptions to height, building in relation to boundary, yards are provided for such equipment as street light and metrolight poles, and electricity and telecommunications distribution lines and poles. It is recognised that it is unreasonable to require compliance due to operational matters such as the need for overhead lines to clear the ground by a set standard as set out in the electricity statutes.

However there are some development controls where all utility services require compliance, being building coverage, tree and vegetation removal, noise, dust and earthworks. It is considered that as a minimum these environmental standards are required to be met by all utility services.

#### Other methods

Other methods considered to be most appropriate for managing utility services include:

- Statute

- Code of practice for working in the road
- Hauraki Gulf islands development code
- Bylaws
- Designation
- Other documents

### Statutes and Code of practice for working in the road

Other methods to control the effects of utility services is through various statutes such as the Telecommunications Act, Electricity Act and Regulations, and the Local Government Act. These statutes make provision for the use of the legal road as a means of installing utility services. The council accepts that utility operators have a legislative right to install utility services within the legal road. However the council wishes to ensure that the effects of installation are managed. This is primarily done through the code of practice for working in the road, where the council has the ability to impose 'reasonable' conditions through a road opening notice (RON). Conditions are limited to traffic and safety aspects, reinstatement and backfill and civil matters. Conditions do not take into account visual amenity effects on private property, health and safety effects, or the effect on heritage items etc. The district plan is the primarily document for managing these effects, by limiting sizes, bulk and height of utility equipment and classifying activities. However the district plan references the need to require a RON when providing utility services within the legal road.

### Hauraki Gulf islands development code

The hauraki gulf islands development code is used to control subdivision and development on the islands. Within the document is a chapter primarily for managing utilities as part of subdivision or development to ensure that:

- provision is made for the appropriate services for each allotment.
- connection of these services will be straightforward and require minimum disruption to the street.
- services are designed and constructed to the required standards, so that they continue to function and can be maintained over the life of the development.
- appropriate provision is made in each development for solid waste disposal.

One of the key means of compliance stated in the code is to require compliance with the district plan and that all services shall be underground except for approved service chambers or above ground plant which shall be of minimum possible size.

### Bylaws

Another means of controlling the effects of utilities is the use of bylaws. The councils bylaws control the following:

- signs located on utility structures
- spill lighting associated with utility services on private property.
- radio frequency fields

It is considered that the use of bylaws for the above matters associated with utility services is appropriate as they provide specific standards. In addition, the Local Government Act, affords the council the statutory power to regulate signs, protect the public from nuisance and

protecting, promoting, and maintaining public health and safety. In this instance, Auckland City has determined that the bylaws are more efficient and effective in regulating the above matters.

### Designations

Under the RMA, all registered network utility operators have the ability to require a designation of land under section 166 and 168 of the RMA. Under this process the network utility operator submits a Notice of Requirement (NOR) to the council (designating authority) to make provision in the district plan for a public work.

In general, designations are required where there are substantial works. It is an alternative to the resource consent process and gives the requiring authority a greater degree of certainty that the work can proceed. It is optional for network utility operators to decide whether they wish to designate.

It is considered that this process is an additional method for achieving the desired outcomes of the provision of utility services. It is recognised that it is impracticable and inefficient for utility operators to request a designation for every component of their respective networks. Designations are often requested where there are substantial environmental effects and/or substantial works are required or it is a 'strategic component' of the network. While the designation is an alternative method for managing effects, it is considered that the exclusive use of this method may achieve environmental outcomes but at a substantial increase in costs and delays. Rather than a stand alone alternative it is considered that a designation complements the network utility services section of the plan.

### Other documents

Other documents also referred to means of managing the effects of utility services include:

- ARC documents (Proposed Auckland Regional Plan: Air, Land and Water) where the utility services that generate air emissions and odour may require resource consent.
- International commission on non-ionising radiation protection guidelines 2001.

The following options are the main alternatives which the council has considered as a means of achieving the objectives:

#### **4.2.1 Option 1**

Do nothing. Have no provision in the district plan to address network utility services and rely on:

- Statute e.g. Telecommunication Act, Electricity Act and regulations, Local Government Act
- Code of practice for working in the road
- Hauraki Gulf islands development code
- Bylaws
- Designation
- Other documents

Benefits	Costs
<p>Telecommunication and Electricity Acts allows for the provision of utility services within the legal road. The council can only set reasonable conditions relating to traffic and safety, operational matters and reinstatement conditions</p>	<p>Unlikely to achieve good environmental outcomes as there are no limits on bulk and height and council will lose the ability to control visual and amenity effects on the legal road.</p> <p>The council has the ability to impose 'reasonable conditions' with respect to placement and location of cabinets and similar appliances in the legal road under the Telecommunications Act. However reliance on various statutes does not achieve consistency in terms of environmental outcomes.</p>
<p>The code of practice of working in the road is a document for setting standards for working in the road. Utility operators have signed up with the council to comply with these standards.</p> <p>A 'living document' that can be amended when required to deal with operational issues relating to the road.</p> <p>Avoids the need to apply for and the costs of a resource consent. Less time delays for people seeking to undertake work within the road.</p>	
<p>Hauraki Gulf islands development code has means of compliance for utilities and has general parameters.</p>	<p>Does not deal with the visual amenity effects of utilities or deal with environmental standards.</p>
<p>Section 145 titled 'General bylaw-making power for territorial authorities' of the Local Government Act 2002 sets out the council authority to make bylaws.</p> <p>This section states:</p> <p><i>A territorial authority may make bylaws for its district for 1 or more of the following purposes:</i></p> <p><i>(a) protecting the public from nuisance:</i></p> <p><i>(b) protecting, promoting, and maintaining public health and safety:</i></p> <p><i>(c) minimising the potential for offensive behaviour in public places</i></p> <p>Therefore council does not have the statutory authority to make bylaws that would achieve the environmental outcomes to manage visual and amenity effects. This method is</p>	<p>Lack of a framework to integrate all matters holistically, so increased cost for the council to co-ordinate matters relating to utility services.</p>

effective in certain matters and these have been listed in the network utility chapter.	
Reduced costs to the council in undertaking monitoring and enforcement in association with network utilities. However the council may still need to undertake enforcement under section 17 of the RMA which deals with the duty of persons to avoid, remedy or mitigate adverse effects.	

### **The risk of acting or not acting**

The risk of having no network utility service provisions in the district plan means that providing of utility services within the islands relies on a range of other methods as listed. While there are some benefits in this approach, there is a lack of a framework that can deal with the full range of environmental effects that utility services may generate. This is especially relevant in matters relating to visual and amenity effects and environmental standards.

Moreover, given the range of methods required to manage utility services, the council will need to undertake internal processes to ensure that utility services are managed in an efficient and effective way. However it can not manage all the effects associated with utility services.

Therefore this option has been discounted as an efficient and effective method of addressing the issues.

### **4.2.2 Option 2**

Provide a range of objectives, policies and rules to manage network utility services in a separate network utility services chapter.

<b>Benefits</b>	<b>Costs</b>
Provides clear and defined definitions of the various network utility services.	The inconvenience associated with having two sets of rules to administer and comply with during the transition phase. This is when the council has to consider both the operative plan and the proposed plan provisions when assessing proposals.
Introduction of development control rules provides greater regulatory control of potential adverse effects thereby creating a greater certainty for the community and network utility operators.	Financial costs and time will be incurred by utility operators who seek resource consent to establish utility services in coastal, heritage and areas of high landscape value.
Provides a clear framework in which network utility services can be managed in a holistic way by referring to other documents and statutes that also manage network utility services.	Financial costs and time will be incurred by utility operators who seek resource consent to exceed the development control standards.
Manages the visual and amenity effects and environmental effects in accordance with the RMA.	

Benefits	Costs
Provides a range of permitted activities for network utility operators to establish utility services that will allow the community to provide for their economic and social well being.	

### The risk of acting or not acting

The council is required to consider the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or methods. The risk of not acting on this option are that there is the possibility of confusion in interpreting and administering rules relating to network utility services. A separate network utility section provides a succinct section for ease of administration. In addition, the nature of utility services requires a tailored set of provisions to recognise the functional nature of network utilities.

There is considerable information available on network utilities and the objectives, policies, and rules have been developed to provide for utility services while ensuring the effects are managed. However there is the unknown of further technological changes which can affect the environment and health and safety of the community. Therefore, a rule is included to ensure that any network utility service not provided for is assessed as a discretionary activity.

The risk of acting on this option is minimal. While there is some increased cost to network utility operators, it is considered that on balance the benefits outweigh the costs. Furthermore, it is considered that there is enough flexibility within the proposed provisions to allow utility operators to provide utility services without incurring substantial cost while achieving good environmental outcomes.

### 4.2.3 Option 3

Make policies, objectives and rules more restrictive so that network utility operators require resource consent for providing all network utility services on the islands.

Benefits	Costs
Council has complete regulatory control in providing for utility services	Increased cost to network utility operators and the community
Visual and amenity effects would be enhanced. The council can impose strict conditions on resource consents to ensure that visual and amenity effects are minimised.	Uncertainty for utility operators and the community.
Environmental effects would be minimised.	Less services provided for the community

### The risk of acting or not acting

The risk of acting upon this option is that there would be significant increased costs to the utility operators and community. As result of the perceived increased costs, it is unlikely that the utility operators would be willing to invest in providing or upgrading utility services.



Given the amount of certain information there is on utility services such as cabinet sizes etc, it should be recognised that some provisions for utility services be made permitted activities. It is unreasonable and costly to require utility operators to require resource consent for providing all utility services on the gulf islands. In addition, requiring resource consent does create uncertainty for both operator and the community as applications can be declined.

In exercising this option the council has virtual full control over the environmental effects associated with the provision of utility services and that it is likely that visual and amenity and environmental effects are enhanced because the council could impose strict conditions relating to visual and amenity effects. However, there are national standards, guidelines and legislation (i.e other methods) which are proven to provide sufficient certainty for the community so that resource consent is not required for certain types of utility services. It is supported however, that where there are significant utility services wishing to establish in areas of high landscape value, coastal areas and heritage value, the council does exercise more control.

On the balance, it is considered that this option is unreasonable given the amount of information on utility services and is not supported.

#### 4.2.4 Option 4

Status quo. Retain current district plan provisions.

Benefits	Costs
Lower plan preparation costs as the council does not have to prepare a separate network utility services chapter	Increased administration costs incurred by applicants for some utility services which are inherent as part of a network due to the legal road taking on the adjacent land unit classification and associated rules e.g. transport shelters in legal road.
Staff, network utility operators, contractors and consultants have some familiarity with the existing provisions.	Increased time and resources for monitoring and enforcement of network utility services.
	Does not recognise the unique nature and function of network utility services.

#### The risk of acting or not acting

The risk of acting on this option would result in increased costs to network utility operators and the council in providing some utility services which are seen as necessary as part of a specific network. For example transport shelters require resource consent within the legal road. As it is a infrastructure component which is inherent as part of the road network, it is considered unreasonable to require a resource consent. The same would apply to other public conveniences such as public post boxes and telephone boxes.

The current provisions do not expressly recognise the unique nature of utility services as infrastructure that needs to be treated differently from other buildings in land units or legal road. While some items (e.g. buildings) can readily comply on the provisions for the land unit they are located in, other structures such as overhead electricity or telecommunication

distribution poles and lines cannot readily comply with the land unit. The current provisions do not make exceptions for these types of infrastructure and therefore requires resource consent should they not comply. In essence, the current provisions do not recognise the unique nature and function of network utility services.

While staff and network utility operators, contractors and consultants have some familiarity with the existing provisions it is considered that a separate network utility services section will provide greater ease of administration of provisions. Separate objectives and policies will also recognise the unique nature and function of network utility services.

For these reasons, it is considered that this option is not supported.

#### **4.2.5 Conclusion**

Option 2 is considered the most appropriate to achieve the objectives as it can control environmental and visual and amenity effects with a degree of certainty. The provisions will also allow the utility operators to provide services to the islands without excessive compliance costs. Option 2 will protect areas of high landscape value, coastal areas and heritage values.

In addition, option 2 provides a framework for managing utility services not only from a RMA view point but where other methods are also used such statutes and bylaws.

Therefore, it is considered that option 2 is the most appropriate option for managing network utility services in the islands.

### **4.3 Whether the proposed rules assist the council to carry out its function of control of actual or potential effects of the use, development or protection of land**

The proposed rules will help avoid, remedy or mitigate the adverse effects of network utility services on the environment by restricting utility services in areas of high landscape value, coastal areas and heritage values. These areas of the environment are considered the highest priority in controlling the effects of land use on the environment. In addition, built up areas such as island residential, commercial land units and settlement areas are also important, so the council wants to exercise a degree of control in these areas. The only areas where there is a lesser degree of control are the industrial areas. The rules also control utility equipment in specific rural areas where there is a balance between the cost of providing these services to areas which are not cost effective. In addition there are some rural areas (landforms 3,5 and 6) where there is a lesser degree of amenity and therefore some services are permitted.

The development controls control the effects of utility services on ridgelines, earthworks and tree and vegetation removal. These areas of the environment are considered important aspects of the environment that needs to be managed and not compromised.

The rules also ensures that the community are protected from various environmental effects such as noise, EMF and radio frequency fields, dust etc which can have effects on the health and safety of the community.

While the rules are the main method for regulating the effects from utility services, it is considered that the RMA is one component of regulating the environmental effects and that the network utility services chapter should be seen as providing a framework for managing these effects.

These rules work in conjunction with various other methods namely:

- Statutes
- Bylaws
- Guiding documents e.g code of practice for working in the road, Hauraki Gulf islands development code.
- Designations
- Other documents

## 5.0 National planning documents

### 5.1 National and NZ coastal policy statements

Section 75(3) of the RMA states:

- (3) A district plan must give effect to –
  - (a) any national policy statement; and
  - (b) and any New Zealand coastal policy statement; and
- ...

The objectives, policies and rules for network utility services give effect to policies 1.1.1, 1.1.2, 1.1.3, 3.1.2, 3.1.3, 3.2.2, 3.2.4, 3.2.5, of the New Zealand Coastal Policy Statement (1994) attached as **appendix A** by:

- Controlling aboveground and overhead network utility services within the coastal area (coastal protection yard).
- Recognising that parts of the coast are already highly modified i.e formed roads.

### 5.2 Hauraki Gulf Marine Park Act 2000

Section 9(3) of the Hauraki Gulf Marine Park Act 2000, requires the council to ensure that:

... any part of a district plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with sections 7 and 8 of this Act.

Section 7 recognises the national significance of the Hauraki Gulf and Section 8 provides management direction for the Gulf. Section 10 of the Act requires that sections 7 and 8 be treated as a New Zealand coastal policy statement under the RMA. Sections 7 and 8 are attached as **appendix B**.

The objectives, policies and rules for network utility services give effect to sections 7 and 8 of the HGMPA in that they are consistent with section 7(1)(2), section 8(b)(e)(f).

## 6.0 Regional planning documents

### 6.1 Regional policy statement

Section 75(3) of the RMA states:

- (3) A district plan must give effect to –
  - ...
  - (c) any regional policy statement.

The objectives, policies and rules of the land unit give effect to objectives 2.5.1(6), 7.3(1)(2)(3)(4) and policies and methods 2.5.2(6)(7), 7.4.4, 7.4.7, 7.4.8, 7.4.10, 7.4.11, 7.4.19, 7.4.20.

The relevant sections are attached as **appendix C**.

### 6.2 Regional plan

Section 75 (4) of the RMA states:

- (4) A district plan must not be inconsistent with –
  - ...
  - (c) a regional plan for any matter specified in section 30(1).

The objectives, policies and rules for network utility services give effect to objectives 10.3.3, 10.4.4, 10.4.5, 10.4.13 of the Auckland Regional Plan.

The relevant sections are attached as **appendix C**.

## 7.0 Other documents

Essentially Waiheke – A Village and Rural Communities Strategy is a non statutory strategic document which sets out a community approved framework for Waiheke's development. It was adopted by council in 2000 after extensive consultation with the Waiheke community.

The five central principles of Essentially Waiheke are:

- principles of environmental protection
- principles of economic development and employment
- principles of strong communities
- principles to protect and enhance Waiheke's character
- principles of location.

The objectives, policies and rules of the land unit are consistent with these principles and the underlying aims, strategies and actions within the document because the provisions:

- require undergrounding of electricity and telecommunication lines at the time of subdivision and development
- require undergrounding of existing lines
- ensure a high degree of visual amenity in areas of high landscape, coastal areas and heritage values

- enable the provision of utility services to provide for the economic and social well being of the community.

## **8.0 Procedures for monitoring**

The council will monitor the effectiveness of the proposed provisions as a means of achieving the objectives and policies by:

- Monitoring resource consents including the number of applications granted consent, compliance with consent conditions, and the effectiveness of those conditions
- Monitoring complaints and enforcement actions
- Monitoring trends through analysing statistics (eg uptake of broadband internet)

## **9.0 Conclusions**

The council has carefully considered all consultation received relating to network utility services and has developed a separate network utility services section. It is considered that the unique nature of utility services requires the provision of a separate chapter to recognise their character and function.

The section enables network utility operators to provide services to community for their economic and social wellbeing. In addition, utility services also have the potential to create adverse environmental effects. The development controls have been developed to ensure effects are avoided, mitigated or remedied. In particular, the council is concerned with the visual and amenity effects of utilities and its effect on areas of high landscape value and coastal areas. The council also recognises the ever changing technology associated with utility services (especially telecommunications) and provides for this by providing a default rule and classifying activities not otherwise provided for as discretionary activities.

The network utility services section should also be seen as providing a framework for the management of utility services. While it is recognised that the district plan controls environmental effects (including visual amenity), other methods are also used to regulate and control utility services. These other methods have been mentioned in the clause 4.2 of this report.

In assessing the objectives, policies and rules for network utility services against the statutory requirements of section 32 of the Act, it is considered that:

- The objectives are the most appropriate way to achieve the purpose of the act as set out in sections 5, 6, 7 and 8.
- Overall, the environmental, social and economic benefits of having the proposed objectives, policies and rules within the plan outweighs the costs which may result. Therefore, these methods are the most effective and efficient method of addressing the issues associated with network utility services and consequently are considered the most appropriate method for achieving the objectives.
- The council has carried out its functions under section 31, 72 and 74(1) and 76 of the act.
- It is consistent with the following documents:
  - New Zealand Coastal Policy Statement
  - Hauraki Gulf Marine Park Act
  - Auckland Regional Policy Statement
  - Auckland Regional Plan: Coastal

## **Appendix B**

### **Hauraki Gulf Marine Park Act 2000**

Section 7 states as follows:

#### **Recognition of national significance of Hauraki Gulf**

- (1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.
- (2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—
  - (a) to provide for—
    - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
    - (ii) the social, economic, recreational, and cultural well-being of people and communities:
  - (b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:
  - (c) to maintain the soil, air, water, and ecosystems of the Gulf

Section 8 states as follows:

#### **Management of Hauraki Gulf**

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

- (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
- (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
- (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:
- (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:
- (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:
- (f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

## **Appendix C**

### **Relevant provisions from national and regional planning documents**

- Regional Policy Statement
- Auckland Regional Plan: Coastal