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Electricity Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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Via email: hazardsfromtrees@mbie.govt.nz

Proposal to amend the Electricity (Hazards from Trees) Regulations 2003 to address 'out-of-zone' tree risks

1. Vector welcomes the opportunity to submit on MBIE's consultation to amend the Electricity (Hazards from Trees) Regulations 2003 to address "out-of-zone" tree risks.
2. Vector is New Zealand's largest distributor of electricity, supplying more than 612,000 electricity connections between Papakura and Warkworth. Our electricity network across the greater Auckland area spans more than 19,000km in length.
3. Vector has long advocated for meaningful change to vegetation management regulations in order to ensure security of electricity supply, as well as public health and safety. We view these proposed changes as long overdue - the current vegetation management regulations are outdated and inadequate, and reform is critical for network resilience.
4. We see trees causing up to 70 per cent of outages on our network in a storm, and the cost of this is customers going without power for prolonged periods.
5. Increasing frequency of severe weather events, including high-speed wind events, along with other climate related changes in our physical environment, make this reform both necessary and urgent.
6. New Zealand is also increasingly reliant on electricity as the country decarbonises, and this will increase again through the Government's plan to Electrify NZ.
7. Vector supports the intent of the proposed changes, however we have feedback on the application of some of the proposed elements, outlined in detail below.
8. Vector would welcome the opportunity to provide any further information required or assist MBIE in implementing these long overdue reforms.

Yours sincerely



Aimee Gulliver

Group Manager Public Policy and Government Relations

Consultation questions

1 Do you agree with our proposed approach? If not, why not?

We agree with the intent of the proposal, particularly the risk-based notice category to address trees outside of the GLZ.

Vector also wishes to ensure that rights assigned to works owners under the regulations can pass through to those contracted by works owners to undertake arborist work.

However, we have questions around elements of the proposal:

- Treefall

This proposal creates a “treefall” risk only based corridor. However, high wind weather events also generate forces sufficient to dislodge both healthy and unhealthy branches, as well as bark and other foliage from very tall trees and displace them over large distances. We question if the definition of “treefall” hazard is sufficient to cover displaced debris during such wind events.

Further, unstable wet ground conditions can be the cause of trees falling – while a hazard notice would cover this if the issue was identified early enough, this early identification may not always be possible for EDBs. The proposal should also consider ground subsidence in extreme wet conditions which causes multiple trees to fall – this is a common event in the Waitakere ranges where the wrong tree is often in the wrong place. The notice for a works owner could also include the power to require mitigation of ground works necessary to ensure ground stability and prevent ground subsidence risks that result from the tree removal (i.e. leaving steep faces without tree root stability).

- Preventative planting guidelines

Once a tree is formally removed, we question what measures would exist to prevent tree owners from replanting another tree that creates future risks and requires the works owner to remove again in the future, and how this proposal would protect “clear to the sky” and “clear corridor” into the future.

The proposal does not contain provisions to prevent businesses or landowners from extensive planting adjacent to an existing line, which under this proposal works owners would have to pay to carry out GLZ maintenance or “treefall” removal. We suggest it would be more efficient for large scale tree owners to integrate vegetation management into their own operational practice, and financial and asset management planning.

We acknowledge that this is a separate workstream that MBIE is progressing, but wish to record that Vector’s view is that the wider package must include planting (and replanting) restrictions, and provide for tree owners (including successors in title) to be responsible for tree removal associated with a second notice in relation to the same land. This could be achieved through amendments to Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 given that document already includes restrictions on afforestation (including setbacks).

We welcome the work in this area which allows the Government to solve non-commercial tree issues and are pleased to see the different considerations given to trees in different settings.

- Administrative burden

The requirement to undertake a risk assessment at the *individual tree* level would impose significant cost and time burden on EDBs and could result in the process being underutilised such that the risks continue. The works owner would be required to assess both the impact of treefall on electricity supply and the likelihood that a tree would fall on lines in poor weather. The works owner is often not well placed to assess the likelihood at an individual tree level, whereas the tree owner can be expected to be in a better position.

Vector could support the following options to remedy these issues:

- Vector could support the alternative of a risk-based notice power (likelihood or impact) to reduce the burden by only requiring works owners to assess impact
- Vector could support a deemed risk assessment and notice for strategic assets (e.g. high-voltage lines and/or lines with no redundancy). Under this scenario the works owner would not need to establish likelihood, or a lower bar for likelihood could be set e.g. anything above a de minimis risk would be sufficient. This would effectively create an automatic requirement for a clear corridor around those strategic assets.

2 Do you agree with our assessment of the potential benefits and downsides of the risk-based notice power?

We disagree with MBIE's assessment that the proposal "best balances costs between tree owners and works owners".

The proposed approach is inconsistent with the *Nottingham Forest v Unison* decision, in which the Court of Appeal said "we have no doubt that it was unreasonable for Nottingham Forest to allow the trees to grow to the height at which they would cause physical damage to Unison's line when they fell" and "while it was not possible to predict which individual tree might fall, the reasonable action for Nottingham Forest to have taken was to remove the trees which would cause damage to the line if they fell".¹

Costs being borne by works owners will ultimately be passed on to consumers through price increases in their electricity bills.

We oppose this element of the proposal as we disagree with the concept that consumers should subsidise the cost of the removal of trees to the benefit of private tree owners. The additional costs the proposal places on electricity consumers could contribute to electricity costs that undermine the Electrify NZ policy and New Zealand's emission reduction targets and budgets.

Vector considers it would be more appropriate for the cost to be borne by tree owners, given it is the tree owners who have created the risk of tree fall and have greater control over (and ability to mitigate) the risk before it becomes critical to resolve. As it stands the proposal places no liability for costs on tree owners, and therefore does little to incentivise tree owners to plant and manage vegetation responsibly.

We note MBIE has indicated the regulatory regime under Part 4 of the Commerce Act should allow lines owners to meet the cost of avoiding significant unplanned outages.

¹ Nottingham Forest Trustee Ltd v Unison Networks Ltd [2021] NZCA 227

If this element of the proposal did proceed, Vector would have to be able to re-open the price-path to recover costs if it was implemented during DPP4. We are also seeking in our cross-submission to the Commerce Commission on DPP4 confirmation that a re-opener would be available for this expenditure.

The proposal needs to achieve a fair balance of cost between tree owners – who may benefit from commercial or large-scale planting – and electricity consumers – who may be impacted by an outage caused by that vegetation in a storm.

We urge MBIE to amend the proposal to have tree owners meet the cost of removing vegetation.

In the case of tree owners failing to comply with notice to remove an at-risk tree, we recommend that a works owner have the right to access property to manage vegetation to reduce risk to security of supply and public safety, with scope to seek cost recovery from the tree owner. We also recommend that if no action is taken by the tree owner after being given sufficient notice, the tree owner should be liable for all costs.

Owners of commercial forestry or lifestyle blocks, in particular, should be responsible for the cost of removing trees once a hazard notice has been issued. Allocating responsibility to owners of commercial forestry would be consistent with their duty as PCBU's to eliminate health and safety risks so far as reasonably practicable under the Health and Safety at Work Act 2015.

As plantation trees grow taller the fall zone risk increases, which is when the hazard notice is issued. The tree owner may ignore the notice for reasons including optimising capital gain on harvesting mature trees or because of the cost to remove or to avoid changing already prepared harvest plans. The tree owner should be liable for restoration costs in order to encourage proactive vegetation management.

A distinction should also be drawn between trees that pre-date the lines, and trees planted after the line was established. In the case of the latter, works owners should not bear any costs.

3 How long should a tree owner have to remove a tree after receiving a treefall hazard notice?

We agree with the proposed timeframe of removal after receiving a treefall hazard notice aligning with the timeframe for that of a “cut and trim” notice.

4 Are specific access arrangements required to carry out risk assessments?

We note from the Ministerial foreword to the consultation that work is underway to address wider challenges concerning access for lines owners. We would welcome separate provisions in the regulations to make clear property access rights for works owners for the purpose of vegetation management.

5 Is a transition period required for implementation?

Vegetation on our network is currently managed on a four-year cycle. As a minimum works owners should be explicitly exempt from liability arising from damage caused by out of zone treefall in any implementation period for new regulations.

6 Do you have any other comments on the common elements proposed across our options?

MBIE should be cognisant of other statutory protections, processes or need for approval under the Resource Management Act, Conservation Act, and Wildlife Act. Complications could arise under these notice powers with conflicts in other legislation and undermine the intention of this reform. Vector can provide case studies to MBIE of examples of this complexity.

7 Do you agree with our assessment of the potential benefits and downsides of the alternative risk-based notice power (likelihood OR impact)?

We consider that the risk-based notice power should be based on either likelihood OR impact, not both. This would give works owners more powers to require tree removal and benefit consumers.

8 Do you agree with our assessment of the potential benefits and downsides of the alternative mandatory assessment zone option?

We agree that the mandatory assessment zone option would be onerous on works owners for no significant benefit in risk mitigation. Consequently, we do not support the mandatory assessment zone option.

9 Do you have any comments on further matters that should be taken into consideration when designing amendments to the Regulations that reduce the risks of treefall outages, particularly during severe weather events, without imposing unreasonable costs on stakeholders and consumers?

On impact factors, we suggest the number of circuits and voltages affected could also be a useful assessment of impact. Further, a history of tree-related interruption events should be considered, so that works owners can focus on areas that have had regularly interrupted services.

Of the listed impact factors, we note that “nature and extent of direct impacts, broader impacts and potential impacts” appear subjective and reliant on third party data.

On likelihood factors, we note “tree age and structural soundness” are not readily available and are subject to subjective assessment. We question what level of qualification or competence is required to make such judgements.

In addition, fire risk is only acknowledged in relation to tree species type, despite a range of other factors also being relevant to fire risk. As a minimum Vector suggests the following risk factors should be taken into account to ensure risk of fire is appropriately encapsulated:

- Tree type
- Tree health
- Whether treefall trees are involved
- Seasonal soil/ambient moisture levels
- History of fire events
- Regular risk warnings from FENZ

We note that the methods used to apply these factors consistently every time are not defined and the Regulations will need to be drafted to avoid an undue assessment burden being placed on works owners. We note and support the statements (at page 14) that the proposal is not intended to require works owners to go to extreme lengths to gather information to assess risk and that the information should be able to be readily obtained. The Regulations will need to provide works

owners with the flexibility to utilise existing tools and data, including that created prior to the passing of the Regulations, as well as tools that may emerge over time.

More specifically, EDBs are regularly updating their risk assessment models to take into account new factors and data to attempt to assess climate-related risks. It is important that any risk assessment methodology included in the Regulations is not frozen in time and gives works owners the flexibility to appropriately assess and manage risk in light of new factors and data. Consequently, Vector suggests that both impact and likelihood risk factors should be expressed as a non-exhaustive list (i.e. include reference to “any other factor the works owner considers relevant”).