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Building System Performance
Building, Resources and Markets
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Making it easier to build Granny Flats

1. Vector Limited (**“Vector”**) is New Zealand’s largest distributor of electricity, supplying more than 612,000 electricity connections between Papakura and Warkworth.
2. Vector supports the objective of the proposal to increase the supply of small houses for all New Zealanders, creating more affordable housing options and choice. We support housing choice and intensification, provided construction occurs safely.
3. We note the principle of “enabling granny flats and other structures in the resource management and building systems, with appropriate safeguards for key risks and effects”. We seek to ensure that building and construction occurs with appropriate safeguards from electrical hazards, in order to avoid both serious injury or death, and economic waste via costly remediation of non-compliant structures.
4. Vector’s network includes more than 120,000 poles carrying over 8,000km of overhead circuit, 56 per cent of which is in rapidly intensifying urban areas. Despite minimum safe distances between buildings and overhead electricity lines being mandatory under the New Zealand Electrical Code of Practice for Electrical Safe Distances: 2001 (**“ECP 34”**), buildings are being constructed dangerously close to overhead electricity networks across the country. The effects of intensification, particularly in urban areas, is exacerbating the issue of ECP 34 non-compliance.
5. A long-standing regulatory gap between the Electricity Act and both the Building Act 2004 (**“Building Act”**) and Resource Management Act 1991 (**“RMA”**) excludes ECP 34 compliance from building consent and resource consent processes. Despite compliance with ECP 34 being a legal requirement, this gap is resulting in an increasing number of consents being issued for development that cannot be safely constructed, occupied, or maintained.
6. The electricity distribution, transmission and engineering sectors have called for this issue to be addressed since 2009 via submissions on successive legislative amendments. Councils across the country also acknowledge ECP 34 non-compliance is an issue but believe they lack the mandate to enforce the minimum safe distances requirements when considering building or resource consent applications.
7. As it currently stands, construction could have an approved building consent and an approved resource consent, and still be non-compliant with ECP 34 due to this regulatory gap. Given this proposal would allow construction of small dwellings without either a building consent or a resource consent, Vector is concerned that this policy change would further increase ECP 34 non-compliance and the likelihood of serious injury and death from

electrical hazards. Clear and explicit standards are required to instruct the public and developers about their obligations to maintain safe distances around electricity distribution assets.

8. A new California law enacted in 2016 aimed at making it easier for homeowners to construct granny flats saw an acceleration of construction of small dwellings.¹ However, hundreds of the projects stalled or were blocked due to their proximity to overhead power lines. The Los Angeles planning department estimated potentially one in every five or six permit applications were affected by the issue.² Vector is concerned that without proper safeguards for minimum distances from overhead networks, this granny flats proposal would lead to similar undesirable outcomes in New Zealand.
9. The unanticipated costs of non-compliance with ECP 34 can be significant. Given the value of a granny flat is lower than that of a principal dwelling, the cost to remediate an infringement of ECP 34 could easily exceed the value of the affected building work.
10. Our submission calls for urgent resolution to this long-standing regulatory failure that not only exposes New Zealanders to significant risk of injury or death but also risks a crisis in housing to a level last seen in the leaky homes saga. We have written to Building and Construction Minister Chris Penk seeking inclusion of ECP 34 in the Building Code to prevent further non-compliant construction. Including ECP 34 in the Building Code would also address our concerns outlined in this submission surrounding granny flats.
11. Our responses to the consultation questions are tabled in Appendix 1 and include a recommendation to provide guidance on early engagement with electricity distributors on the potential for capacity upgrade requirements as a result of granny flat proposals. The baseline load associated with electric heating, cooking and hot water can exceed the design capacity of a standard residential connection – particularly if additional facilities such as electric vehicle charging are added. Where this occurs, capacity upgrades may be required to the local network. It is important that potential costs associated with this are considered early in the development process.
12. We also ask that comprehensive national direction for electricity distribution is progressed with urgency to ensure that the functional and operational requirements of distribution networks are more appropriately recognised as a lifeline utility and a core pillar of the energy supply system in New Zealand.

Yours sincerely

Mark Toner

Chief Public Policy and Regulatory Officer

¹ More than 7,700 property owners submitted plans to build a granny flat from January – September 2017, compared to just 536 permit applications in the two years prior to 2017

² [https://planning.lacity.gov/StaffRpt/InitialRpts/CPC-2016-4345%20\(3\).pdf](https://planning.lacity.gov/StaffRpt/InitialRpts/CPC-2016-4345%20(3).pdf)

Regulatory failure leading to unsafe building and construction

“I have a building consent and a resource consent. How can my building be non-compliant?”

- Auckland property developer

13. The Government wants to increase the supply, affordability and choice of housing and wants that housing to be safe and healthy to occupy.
14. However, buildings are regularly being constructed dangerously close to overhead lines, in breach of the minimum approach distances specified by ECP 34, a mandatory regulation under the Electricity (Safety) Regulations 2010. This non-compliance is putting workers and the public at risk of injury or death from electrical hazards. The burden of remedial work is also significant – particularly in Auckland where the greatest demand for housing exists.
15. ECP 34 compliance is a strict liability; the obligation to rectify non-compliance is borne by the party that creates the encroachment. However, while it is generally accepted that due diligence is required to comply with all relevant regulatory obligations, the building and development framework gives the impression that all relevant matters are addressed. Awareness of ECP 34 requirements is effectively masked by the impression that the Building Act and RMA address all relevant matters when planning and constructing new development.
16. Under the existing regulatory framework:
 - (a) members of the public expect that compliance with the regulatory framework represents compliance with the standards necessary to lawfully construct a dwelling;
 - (b) the building and construction sector expects that the regulatory framework provides certainty to enable housing to be safely and economically constructed – and that it includes the necessary safeguards to ensure workers are not put at undue risk in delivering housing. This certainty is critical for businesses, both in terms of meeting their obligations under the Health and Safety at Work Act 2015 and avoiding unanticipated costs of non-compliance; and
 - (c) local authorities expect that the legislative framework they operate in has accounted for, and resolved, any consequential regulatory conflicts before being enacted. While the consenting “gateways” operated by local authorities provide an appropriate checkpoint to address design-based compliance matters like ECP 34, the messaging from local government is clear; they lack the mandate to enforce ECP 34 in either the building control or planning processes.

Safe distances must be addressed at design stage

17. For ECP 34 to function as an effective regulation, compliance must be achieved at the right stage in the development process. A regulatory requirement as fundamental as the safe

placement of a building in relation to an overhead line should be explicit in the compliance requirements for any new development.

18. We anticipate that granny flat-style development will include locating new structures in areas previously considered un-economic or unsuitable for commercial housing development but that may now become more appealing for small accessory-style dwellings. This is likely to include areas that have previously provided a buffer between existing development and overhead lines and support structures, including near boundaries where overhead lines are more likely to be present. Additionally, 'turnkey' transportable units are likely to be popular – in which case there is a greater likelihood of the use of cranes and other machinery operating dangerously close to overhead lines if ECP 34 compliance is not addressed.
19. Electricity compliance in the Building Code is currently limited to *electrical installations* as a building component. Under VM1, *“Electrical installations within the scope of the Electricity (Safety) Regulations 2010, and that comply with the Electricity (Safety) Regulations 2010, will meet the performance criteria of NZBC Clause G9”*.³ [Emphasis added]. Under the Electricity (Safety) Regulations 2010, the definition of “electrical installations” excludes “any fittings that are used, designed, or intended for use in or in association with the conversion, transformation, or conveyance of electricity by distribution or transmission lines”. Consequently, building consent authorities do not have the mandate to withhold building consent from ECP 34 non-compliant development.
20. Electrical risk can be largely avoided by addressing the issue at the design phase, but regulatory change is urgently needed for this to happen. There should be no instance in which building and planning regulations put the public at risk.

Solution

21. Under the Building Code, we suggest the creation of a dedicated Clause F10 “*Safe distances from electrical hazards*” to ensure that ECP 34 is afforded the visibility and certainty of scope that such an important issue warrants, avoiding further risk of injury, fatality and economic waste.

³ <https://www.building.govt.nz/assets/Uploads/building-code-compliance/g-services-and-facilities/g9-electricity/asvm/G9-electricity-1st-edition-amendment-7.pdf>

Suggested drafting for new Clause F10 in the Building Code

Clause F10 – Safe distances from electrical hazards

Provisions

Objective

F10.1 *The objective of this provision is to prevent injury or death involving electrical hazards.*

Functional requirement

F10.2 *Buildings shall be constructed, and all construction and building work shall be performed, at a safe distance from overhead electrical lines and other structures associated with the conveyance of electricity.*

Performance

F10.3 *Buildings shall be constructed, and all construction and building work shall be performed, in strict accordance with all requirements of NZECP 34:2001 (New Zealand Electrical Code of Practice for Electrical Safe Distances) and maintain the minimum safe distances set out within it.*

22. This approach is simple but effective:

- a) The Building Code is contained in regulations, so the Minister can amend the Code through Order in Council.
- b) The regulatory framework to administer ECP 34 compliance at a design level is already in place via the building consent and resource consent processes.
- c) ECP 34 is an existing regulation and compliance with the minimum approach distances is already mandatory. Enforcement of ECP 34 via these consenting “gateways” does not create any additional restrictions of private property rights.
- d) The administration of ECP 34 via the consenting gateways can be achieved as a purely administrative task and does not require any additional expertise. Compliance can be demonstrated via certification by suitably qualified third parties e.g. engineers and surveyors.

23. Explicit integration as a building and development standard will ensure that ECP 34 compliance is visible and efficiently addressed in the same manner as any other building or development compliance process.

24. We are happy to work with the Ministry to refine the proposal and deliver what would amount to a landmark improvement to regulatory certainty around the safety and affordability of housing supply. We must urge that a solution is put in place **without delay to avoid compounding this problem any further.**

Nationally consequential regulatory failure

“Regulatory failure occurs when regulation fails to meet expectations such as safe workplaces or safe and healthy buildings. However, most laws do not keep everyone safe all of the time and hence for there to be a ‘regulatory failure’ a significant adverse event is likely to have occurred, such as a major disaster or a large number of people being affected.”⁴

- Ministry of Business, Innovation and Employment

25. It is our view that a nationally consequential regulatory failure is taking place regarding electrical safety around overhead electricity networks. The failure has created significant social and economic risk, which continues to grow as non-compliant development continues at pace.
26. This regulatory failure must be urgently corrected, both to address the existing risk of social and economic harm and to avoid compounding the problem with further regulatory change. If the ECP 34 regulatory gap is left unaddressed, the ‘granny flats’ proposal will see the construction of more homes dangerously close to overhead electricity lines, and in doing so will likely result in avoidable injury and death and increase the cost of housing.
27. Electricity distribution businesses have been raising awareness of ECP 34 in the development and construction industries. Vector has engaged directly with Auckland Council, the New Zealand Planning Institute, New Zealand Institute of Architects, Resource Management Law Association, Survey & Spatial, Building Research Association NZ, Scaffolding, Access and Rigging NZ, and others to help make ECP 34 more visible. However, awareness is never a substitute for effective regulation. Despite our best efforts we continue to see significant non-compliance with ECP 34. It is insufficient to attempt to build awareness without a coherent regulatory framework that makes compliance requirements explicit and visible.
28. Critically, the absence of safeguards at a design level undermines the purpose of the Health and Safety at Work Act 2015 (HSWA), further entrenching the effects of the regulatory failure. The positioning of a building too close to overhead lines directly impacts the safety of work sites. Workers erecting and using scaffolding, operating diggers and unloading materials from truck-mounted cranes would be significantly less likely to face danger from proximity to overhead lines if ECP 34 compliance was addressed. Despite the best of intentions, evidence shows that health and safety protocol are not always followed onsite, mistakes are made, and processes rushed to meet project timeframes. Where this happens, the effects can be catastrophic.

⁴ <https://www.mbie.govt.nz/dmsdocument/25304-glossary-of-terms>

Appendix 1 - Responses to granny flats consultation questions:

Direct responses to consultation questions are provided in the table below.

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| 1 | Have we correctly defined the problem? Are there other problems that make it hard to build a granny flat? | We understand the intent of the problem definition. It is essential that potential unintended outcomes – such as the unexpected need to remediate non-compliance with ECP 34 – are avoided. Any consenting costs saved would be nullified by the cost of remediating non-compliant development. |
| 2 | Do you agree with the proposed outcome and principles? Are there other outcomes this policy should achieve? | In achieving this purpose, we would like to draw specific attention to the principle of <i><u>“enabling granny flats and other structures in the resource management and building systems, with appropriate safeguards for key risks and effects”</u></i> [emphasis added]. Specifically, appropriate safeguards are required to prevent construction dangerously close to overhead electric lines and support structures. Without such safeguards, government risks exacerbating a significant regulatory gap that is increasingly putting New Zealanders at risk of economic and social harm. |
| 3 | Do you agree with the risks identified? Are there other risks that need to be considered? | <p>The risk related to uncontrolled development near overhead lines must be specifically addressed by implementing safeguards that require compliance with ECP 34 in the Building Code.</p> <p>Electrical safe distances are fundamental to building safety where overhead lines are present as they determine whether the structure of the building (and any required scaffolding or other structures) are safe from external electrical risk. If minimum safe distances are not achieved as a minimum standard, those building, occupying and maintaining the building are at risk of serious injury and death.</p> <p>Trust in building quality requires trust in compliance. Where a building is located near overhead lines, there is an implicit expectation from prospective owners and/or occupants that it meets the minimum standards required by law.</p> <p>Infrastructure considerations of building policies routinely overlook impact on private utilities. While electricity supply is technically more readily scalable</p> |

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| | | than three waters, capacity upgrades can add more cost to a project than might be expected. The addition of a granny flat could add enough additional load to a local distribution supply to prompt the need for network upgrades to maintain capacity and should be considered at the planning stage of any development. |
| 4 | Do you agree with the proposed option (option 2: establish a new schedule in the Building Act to provide an exemption for simple, standalone dwellings up to 60 square metres) to address the problem? | Neutral on option 2 overall. If a new schedule is created, this must include an explicit requirement to comply with ECP 34. |
| 5 | What other options should the government consider to achieve the same outcomes (see Appendix 1)? | No comment. |
| 6 | Do you agree with MBIE's assessment of the benefits, costs and risks associated with the proposed option in the short and long term? | MBIE correctly identifies that there are risks with non-compliance. Compliance requirements must be explicit, visible, easy to understand and accompanied by clear guidance – particularly the requirement to comply with ECP 34. |
| 7 | Are there any other benefits, costs or risks of this policy that we haven't identified? | The risk that building will be constructed or relocated too close to overhead lines in breach of ECP 34. The compliance requirement must be acknowledged and specifically provided for. See |
| 8 | Are there additional conditions or criteria you consider should be required for a small standalone house to be exempted from a building consent? | Yes. A specific condition must be included to require that all development near overhead lines must comply with ECP 34. Compliance is mandatory and construction that is non-compliant is unlawful. |
| 9 | Do you agree that current occupational licensing regimes for Licensed Building Practitioners and Authorised Plumbers will be sufficient to ensure work meets the building code, and regulators can respond to any breaches? | Where a building requires confirmation of compliance with ECP34, this should be specified as a condition and certification from a suitably qualified person should be required that the structure will be compliant with the relevant minimum approach distances. |
| 10 | What barriers do you see to people making use of this | We anticipate that non-compliance with ECP 34 could result in insurance cover being withheld or |

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| | exemption, including those related to contracting, liability, finance, insurance and site availability? | voided should an incident occur as a result of a building not complying with the required minimum approach distances. |
| 11 | What time and money savings could a person expect when building a small standalone dwelling without a building consent compared to the status quo? | Both the status quo and the proposal as outlined do not adequately provide for safe clearances from overhead electrical lines. Any costs saved by the proposal will be nullified by the cost to remediate a non-compliant dwelling. |
| 12 | Is there anything else you would like to comment on regarding the Building Act aspects of this proposal? | We reiterate that the Building Act component must specifically and explicitly provide for compliance with ECP 34. Any outcome in which ECP 34 compliance is not achieved will undermine the intent of the proposal and create economic and social harm. |
| 13 | Do you agree that enabling minor residential units (as defined in the National Planning Standards) should be the focus of this policy under the RMA? | Regardless of the classification of residential unit, all development must comply with ECP 34 and this must be made explicit and visible, including in the the conditions / standards for exempt buildings. |
| 14 | Should this policy apply to accessory buildings, extensions and attached granny flats under the RMA? | Regardless of the type of structure / building all development must comply with ECP 34 and this must be made explicit and visible, including in the conditions / standards for exempt buildings. |
| 15 | Do you agree that the focus of this policy should be on enabling minor residential units in residential and rural zones? | Regardless of zone, all development must comply with ECP 34 and this must be made explicit and visible in the Building Code, We also recommend that potential users of the exemption seek advice from their local electricity distributor early in the planning process to understand electricity servicing requirements in all zones. |
| 16 | Should this policy apply to other zones? If yes, which other zones should be captured and how should minor residential units be managed in these areas? | Regardless of zone, all development must comply with ECP 34 and this must be made explicit and visible in the Building Code and in the conditions / standards for exempt buildings. We also recommend that potential users of the exemption seek advice from their local electricity distributor early in the planning process to |

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| | | understand electricity servicing requirements in all zones. |
| 17 | Do you agree that subdivision, matters of national importance (RMA section 6), the use of minor residential units and regional plan rules are not managed through this policy? | Yes. Those matters require careful consideration and exempt works must be assessed through the same lens as non-exempt works to ensure effects are understood and appropriately addressed. |
| 18 | Are there other matters that need to be specifically out of scope? | No comment |
| 19 | Do you agree that a national environmental standard for minor residential units with consistent permitted activity standards (option 4), is the best way to enable minor residential units in the resource management system? | This approach would provide some level of consistency and certainty of application nationwide. The NES would need to include specific provision for compliance with ECP 34 to ensure that it is not overlooked. |
| 20 | Do you agree district plan provisions should be able to be more enabling than this proposed national environmental standard? | Only if appropriate controls are included to ensure compliance with ECP 34. |
| 21 | Do you agree or disagree with the recommended permitted activity standards? Please specify if there are any standards you have specific feedback on. | The standards as drafted do not prevent non-compliance with ECP 34. At minimum the setback standards must specify compliance with the ECP 34 minimum approach distances. |
| 22 | Are there any additional matters that should be managed by a permitted activity standard? | The permitted standard must require compliance with ECP 34. |
| 23 | For developments that do not meet one or more of the permitted activity standards, should a restricted discretionary resource consent be required, or should the existing district plan provisions apply? Are there other ways to manage developments that do not meet the permitted activity standards? | Development not compliant with ECP 34 is unlawful. Non-compliance must be prohibited. There is no scope to allow for resource consents to allow infringements of the minimum approach distances. |
| 24 | Do you have any other comments on the resource management system aspects of this proposal? | The resource management system must be amended to specifically incorporate compliance with ECP34. |

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| 25 | What mechanism should trigger a new granny flat to be notified to the relevant council, if resource and building consents are not required | The presence of an overhead line on or adjacent to the site to ensure that safeguards can be confirmed before development commences. |
| 26 | Do you have a preference for either of the options in the table in Appendix 3 and if so, why? | No preference – provided recommended safeguards are put in place. |
| 27 | Should new granny flats contribute to the cost of council infrastructure like other new houses do? | No comment |
| 28 | Do you consider that these proposals support Māori housing outcomes? | No comment |
| 29 | Are there additional regulatory and consenting barriers to Māori housing outcomes that should be addressed in the proposals? | No comment |