vector

vector submission

tree regulations review

APRIL 2023

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vector

executive summary

We welcome the review of Electricity *(Hazards from Trees)* Regulations 2003 as an urgently needed step to ensure security of supply and public health and safety. Given the increasing frequency of high wind speed events and changes in our physical environment – and our increasing reliance on electricity to achieve our emissions reduction pathway – this change is critical for our climate change response as well as the resilience of our productive infrastructure.

The key changes we seek by way of this review are:

1. The implementation of a risk-based approach
2. The removal of the 'first cut' distinction
3. The removal of the 'no interest' declaration
4. A change from the status quo – whereby cost is socialised and benefit is privatised

A we discuss in our response to Question 1 on page 7, we do not think that the proposals made by MBIE go far enough in addressing the issues identified in this discussion document. After the level of engagement and time which has been expended to reach this point – we urge officials to seize this opportunity to ensure that our critical infrastructure can deliver fairer consumer outcomes in the context of significant change – including both the physical effects of climate change as well as an increase in forestry planting in response to the Emissions Trading Scheme (ETS). In short – we do not anticipate that this opportunity will present itself again soon so we must be bold in making changes that are fit for the future – rather than being constrained by an inadequate regime of the past.

Just as we are concerned that the proposals advanced by the review will not go far enough in driving solutions we are concerned that they will not be actioned in a timely way. We recommend that changes from this review are implemented within the next six months – and be given priority in the context of a busy and changing policy and legislative agenda.

We set out in greater detail the regulated vegetation management process which we recommend under *Regulatory process sought* (and we respond to MBIE's questions which relate to this in chronological order from page 7). However, there are three overarching goals which underpin our position:

Prevention

By prescribing a limited 'growth limit zone' and setting out an arduous process for implementation, the regulations currently set out – at best – a 'just in time' approach to risk management. In most cases the regulations do not engage the risks they set out to mitigate at all. This leaves communities exposed to unnecessary outage and health and safety risk. In addition to widening the regulation's recognition of risk – to include a risk-based approach – we support preventive planting guidelines which should also be empowered by the regulations, and, a more streamlined process for implementation.

executive summary (cont)

Regulated provisions which are clear and fair

This includes a process that can be implemented by works owners and obligations that can be understood by tree owners. This means cutting back the bureaucratic aspects of the regulated process which currently have marginal impact on the regulation's stated objectives but which obstruct the efficient management of vegetation (the 'first cut' distinction and the 'hazard warning notice' are such features that should be eliminated).

Achieving this goal also requires cost allocation provisions that avoid inequitable cross-subsidisation – that is – the sharing of individual costs across all electricity consumers.

Cost should not be socialised while benefit is privatised

When the cost of vegetation management is integrated into a works owner's regulated business this cost is passed on to all consumers through their electricity bills. When tree owners have no 'skin in the game' – in terms of meeting the cost of their vegetation management – they have little incentive to plant and manage vegetation preventively. Whilst electricity consumers may not benefit from commercial or large scale planting they may well be impacted by an outage caused by that vegetation in a storm. It is critical that we achieve a fair balance of responsibilities and cost between tree owners and electricity consumers.

We have attached as an Annex a document setting out the key considerations for best practice risk-based guidance. We welcome the opportunity to continue working with MBIE to advance the regulatory changes which are urgently needed.

This submission is for public disclosure.

regulatory process sought

Expanding the growth limit zone

Our favoured option is Option 4. This would allow works owners to issue vegetation owners with a warning notice that a vegetation hazard outside the Growth Limit Zone (GLZ) posed a risk to electricity lines. The trigger for issuing the notice could be the identification of a clearly defined fall-line risk. A risk-based assessment could be required before a notice was issued.

We support this approach and recommend that in addition to the new notice, the existing GLZ is widened to engage risk presented by: branches growing into lines; falling debris; and, health and safety risk (as the current GLZ does not even align with minimum approach distances for health and safety in some cases).

This means that the regulations would be recognising hazards presented by most, if not all, modes of vegetation failure.

To offer clarity around the new notice we recommend that the regulations refer to best practice guidance around risk-based vegetation management – as well as preventive planting guidelines. These should be publicly available, and able to be implemented by a range of parties – with the principles underpinning a robust process for assessing and responding to risk – made clear. We support strongly the provision of more information to tree owners to support the implementation of their obligations. Best practice risk-based guidance should play a role in this, and we include in the attached Annex further information on key elements of risk-based guidance – which we recommend be referred by the regulations.

We also note that different risks require different mitigations. As such if fire risk were considered by the regulations (as is contemplated by the discussion document) then the risk-based best practice guidance would need to be scoped to enable application to assess and mitigate this risk as well.

Reducing administrative burden

Networks currently have to: Wait until vegetation is encroaching the hazard notice zone, issue a hazard warning notice, wait further for the vegetation to encroach the GLZ, issue a cut trim-notice (CTN) to the tree owner (who can be difficult to locate in the case of rental properties) and THEN wait 45 days for a response. Vector has 18,000kms of lines. This is not an efficient or effective way to respond to risk – and it is unnecessarily burdensome for tree owners to understand their obligations.

In applying the widened GLZ and the new notice category for the risk-based approach, we recommend that the hazard warning notice is eliminated – but that the cut trim notice (CTN) is retained and may be issued to a tree owner when vegetation is at risk of encroaching an expanded GLZor risk assessed zone in the next 30 days. We recommend that a CTN may be issued at this time – rather than when a tree is already encroaching an expanded GLZ or risk assessed zone – to accommodate the growth that currently occurs during the hazard notice period. That is, the time between when a notice is issued and when vegetation management must occur.

We recognise that tree owners must be given some notice to action a CTN. However, if a tree is at risk, then rapid action is required. Our recommendation balances each of these factors whilst eliminating a requirement to issue an additional notice. Instead, there would be one notice – sent 30 days from when vegetation is estimated to encroach an expanded GLZ and assessed risk zone – seeking action to mitigate the risk in the next 20 working days.

In cases of tree owner non-compliance – or where a ‘no interest’ declaration has been made – we recommend that a works owner then have the right to access property to manage

vegetation to reduce risk as per new property access provisions below, with scope to seek cost recovery as per our recommendation under *cost allocation* below.

Property access

As well as widening the recognition of risk, the regulations must also widen the levers available to manage this risk. Currently property access rights are not clear for works owners. Property access provisions are only included with respect to the 'first cut' (whereby consent of the tree owner is required) and after a 'no interest declaration' – whereby consent from the landowner or occupier is required.

Where it is second or subsequent cuts and where 'no interest' has not been declared, a works owner does not have clear property access rights – even to uphold the obligation under Section 14 to remove immediate danger to persons or property without delay.

As we recommend strongly that the 'first cut' distinction and the no interest declaration be removed – these provisions would be even more limited in their useful application.

For this reason we recommend separate provisions are developed stipulating that property access is allowed to works owners to manage trees in keeping with the regulations (whether to action Section 14 or to undertake trimming further to a CTN) provided that they have undertaken reasonable efforts to make contact with the owner or occupier of the land with the vegetation. This should replicate provisions included in the Electricity Act 1992 with right of access granted following the issuance of a notice 10 working days prior to access or 5 working days after access in an emergency. We think that with the correct wording, the CTN issued above could equate to 'reasonable endeavours'.

Works owners could be held to account in making these reasonable endeavours through court action where tree owners felt that these obligations were not upheld, but we do not support the requirement for a works owner to gain a court order for property access as a standard requirement. Overall, the courts should be used to resolve issues on an exceptions basis – and if the BAU implementation of the regulations requires court action then we think they would have failed.

Who has the power to assess risk?

Whilst we support a works owner retaining the ability to assess risk and issue a notice to a tree owner to undertake vegetation management (within the wider parameters outlined above) a tree owner need not wait until they receive such a notice. Indeed, integrating risk-based planting and vegetation management into normal operational practice (and where relevant – for residential purposes) could save tree owners time and money. This would also reduce the risk of court action associated with non-compliance.

Ensuring that the risk-based approach and preventing planting guidelines are clear and accessible will be key in supporting a better balance of responsibility between works owners and tree owners in managing risk. A CTN issued by a works owner would include a list of certified vegetation management providers as well as advice on safe vegetation management. Expanding the growth limit zone (GLZ) would however make vegetation management safer by increasing the space between vegetation and network assets.

Where tree owners did not manage vegetation in keeping with the best practice guidance, works owners could issue a notice seeking vegetation management under Option 4. Even in the absence of a 'no interest' declaration, works owners could use amended property access provisions to undertake vegetation management and seek cost recovery from the tree owner.

regulatory process sought (cont)

There may be cases where a tree owner contests a works owners' assessment of risk. In these cases, a clear reference to best practice guidance will be valuable. A further option may be for separately funded independent arborists to undertake risk assessments to resolve disputes. We note that whilst works owners have strong incentives to manage vegetation to reduce risk to their consumer owners, they have no interest in managing vegetation where it poses no risk to the community, as this is inefficient.

Cost allocation

Under the current regulation tree owners are responsible for the cost of vegetation management, except in the case of the 'first cut' and except where 'no interest' has been declared. We argue strongly that the distinction between the first and subsequent cuts be removed.

The first cut distinction adds far more in cost to administer than it adds in benefit.

Whilst the discussion document does not contemplate changes in cost allocation beyond the removal of the 'first cut' we do not consider that the 'no interest declaration' achieves the right balance in cost allocation between tree owners and electricity consumers.

When a tree owner declares 'no interest' the cost is passed onto the works owner – and ultimately their consumers through higher prices. In the case of forestry and plantation owners this is a situation of benefit being privatised and cost being socialised.

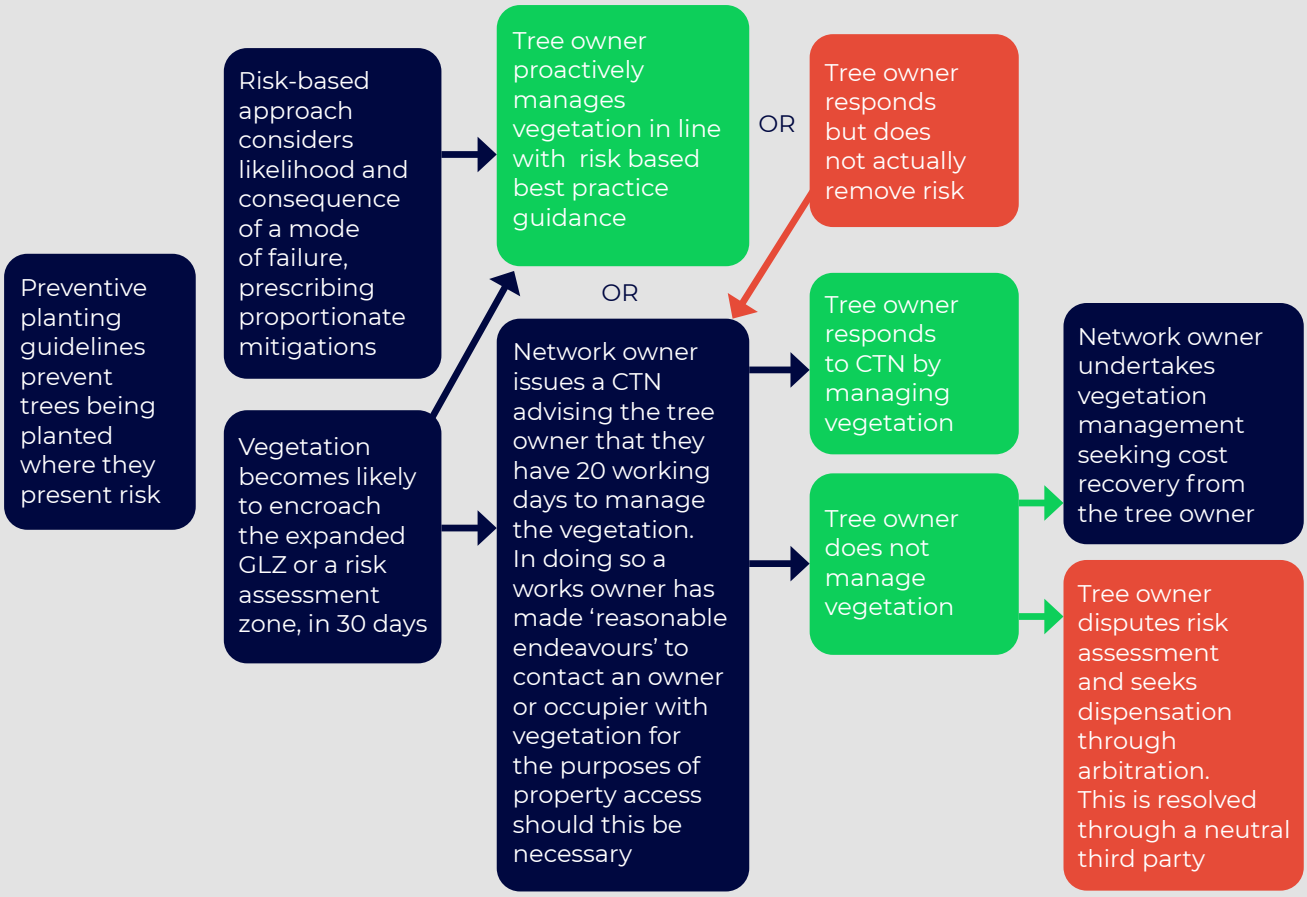
As the discussion document identifies there are cases where the 'no interest' declaration is used by tree owners to avoid cost and is open to being 'gamed'. This is particularly in conjunction with the 'first cut' distinction. That is – a tree owner can consent to bare minimum vegetation management, passing the cost to the works owner by way of the first cut – and then declare no interest when trimming is required a short while later. This is inefficient – and the 'no interest' declaration can leave electricity consumers exposed to the commercial costs of larger scale tree owners.

We therefore recommend that the 'no interest declaration' is removed.

We believe that placing cost with tree owners by default – but allowing scope to enter into alternative arrangements with tree owners – avoids the socialisation of private cost unfairly across all electricity consumers whilst also allowing appropriate cost allocation for different types of tree owners where this is efficient.

Removing the no interest declaration also plays a role in formalising tree owner responsibilities by making cost and responsibilities clear up front.

Whilst the potential risk presented by un managed forestry practices has recently been exposed, there is scope to avoid significant cost and damage whilst the ETS is in its relative infancy – and to use this review of regulation as a 'reset' in setting out obligations and providing the right supportive best practice guidance to support them.



- Prevention is enabled through preventive planting guidelines and best practice risk-based guidance. Proactive use of these tools can save tree owners and electricity consumers money.
- The risk presented by vegetation is engaged. The expanded GLZ and risk-based approach ensures that all modes of failure are addressed by the regulations.
- Administrative burden is reduced by removing the 'first cut' distinction and the Hazard Warning Notice protecting security of supply more efficiently. Tree owners receive one notice.
- Works owners have rights to uphold responsibilities for vegetation management – such as through property access provisions – whilst making reasonable endeavours to contact an owner or occupier. By recognising occupiers as well as owners, tenants are not faced with risk presented by non-compliant trees while tree owners are non-contactable.
- Cross-subsidisation of private costs of large-scale tree owners is avoided by way of the cost resting with tree owners by default. This is achieved by way of removing the no-interest declaration. Alternative arrangements can still be entered into by the tree owner and works owner if this is appropriate and efficient.

answers to discussion document questions

1. Do you agree with the issues that MBIE has identified with the tree regulations? Why, why not?

We agree with the issues MBIE has identified with the vegetation management regulations.

A failure to proportionately address these problems would result in a decline in resilience and reliability; efficiency; a step backwards in our climate change mitigation and adaptation efforts; and more communities suffering avoidable outages.

This regulatory review is ten years too late – but that does not mean we have to pretend it is 2013. Since Treasury first recommended the review of regulations in 2015, Vector's network has experienced:

- April 2018 storms
- Cyclone Gabrielle

We have experienced two "one in a hundred year" events in five years, and high wind speed events are becoming more frequent.

The Minister says in the discussion document that "the overall framework of the current regulations works well". However, we refer to the 2010 High Court judgement Marlborough Lines Lt vs Cassells. In this judgement Justice Williams said:

> *"This decision should be brought to the attention of the relevant officials in (I presume) the Ministry of Economic Development in the hope that appropriate amendments can be considered to make the regime more cost effective and user friendly"*

The fact that Marlborough Lines Ltd sought declarations to clarify their rights in managing vegetation of a large private landowner within the regulations, and that the Judge clearly stated that resolving such matters should not be left to the High Court, demonstrates that the regime is not working.

Furthermore, the customer impact of outages caused by vegetation also does not reflect a regime which 'works well' in its stated objective to protect security of supply.

In extreme weather events up to 70% of outages on our network are caused by vegetation (during the April 2018 storms this was around 70% whereas for Cyclone Gabrielle this was 60%).

- Of vegetation related outages approximately 80% are caused by trees which are outside the scope of regulations (this is consistent across our data from the 2018 storms and Cyclone Gabrielle). This means that the regulation does not engage risk.
- The cost of this is customers going without power for prolonged periods – more than 18 days in some cases.

This is happening at the very time our climate change response asks us to rely on electricity more for transport and process heat.

The full extent of vegetation related outages is not captured by SAIDI/SAIFI. This is because SAIDI / SAIFI only reflects outages on the High Voltage (HV) network – and excludes the impact on the Low Voltage (LV). Disruption to the LV network played a significant role in driving the number of particularly prolonged outages across the North Island during Cyclone Gabrielle. By excluding this part of the network, SAIDI / SAIFI excludes many vegetation related outages. In turn – any solution proposed in this paper must include protection for the LV as well as the HV network in order to respond to risk.

The discussion document also underestimates the true cost of the current regulations in its qualitative assessment of vegetation related outages. This is reflected in the assessment of *Option 1*: no change which says:

> "Consumers would continue to have economic costs associated with interrupted electricity supply" if the tree regulations are not addressed.

Economic cost is a severely limited way of understanding the customer cost of prolonged outages, particularly for residential customers. Prolonged outages can impact health and safety; mental health and wellbeing; and, increasingly, freedom of movement as we rely more on electricity for transport. We don't consider it remotely appropriate that the continuation of the status quo is even contemplated.

What is the true cost of the current regulatory failure?

1. During Cyclone Gabrielle, ~230,000 customers (gross) experienced outages across the storm. **Of these, ~130,000 were affected by events driven specifically by vegetation[1].** This means 60% of customer outage experiences happened because of vegetation having contact with the network.

   How?

   This is because the current regulation prescribes a Growth Limit Zone (GLZ) which does not address the ways in which vegetation causes outages in high wind speed events. The GLZ appears designed to prevent branches growing directly into lines, but the risk presented by falling trees or debris is completely out of the regulation's scope – even though these modes of failure are the drivers of vegetation related outages. The GLZ is so limited in scope that it is not even aligned with minimum approach distances (MAD) prescribed for health and safety.

2. Of the 130,000 customers with tree related outages, some experienced outages that lasted for 18 days.

   Why?

   In the case of Cyclone Gabrielle this was exacerbated by limited access caused by slips in the terrain. However, the sheer scale of some of the trees which fell – and the damage that they caused to the network – would have taken a huge amount of time to address regardless of road access. The time to restore power was driven by both the number of outages – contributed to by LV disruption – as well as larger scale disruptions to HV assets which affected a large number of consumers and which were difficult to restore.

3. Across New Zealand some networks spend 25% of their total opex on vegetation related costs. In an extreme weather event, vegetation management accounts for around 40% of total opex for some networks.

   What does this have to do with the regulations? Or customers?

   The current regulations create enormous inefficiency by: setting out such a limited GLZ (requiring more frequent trimming to maintain); failing to enable prevention (such as through preventive planting guidelines – or risk-based vegetation management that could prevent costly damage to assets); and, setting out onerous provisions for implementation

[1] *This reflects the total customer impact of outages for the duration of the storm. Where customers experienced more than one different outage from February 12th – 18th they will have been captured twice in this number.*

(such as the distinction between the first and subsequent cuts). This translates into higher prices for customers. This affects every customer – and not just those who own trees. In fact, in some cases, tree owners are not customers of the network where their trees encroach assets and create risk.

3. Do you think that the Trees Regulations should restrict the distance in which new trees can be planted or replanted in proximity to electricity lines?

Yes

4. Arguably the judgement in Nottingham Forest Trustee Ltd vs Unison Networks Ltd has decisively clarified responsibility for managing fall line risk outside of the GLZ. Do you agree and if so, is further government intervention necessary to address this risk?

We support the judgement and agree and the responsibilities that it confirmed. However further government intervention is required to address this risk.

The suggestion made by MBIE – that: because case law has clarified responsibilities, the regulations need not enforce them – seems incongruous with the existence of regulations in the first place. If MBIE really believed that case law is adequate in reducing risk caused by vegetation, we wonder why it has not included an option to remove all vegetation related regulations altogether (and perhaps regulation in a variety of areas where case law also exists).

The answer of course is that the judgment – whilst sound – has long been proven inadequate in ensuring that tree owners uphold the responsibilities which it clarifies. This is evidenced clearly by the fact that tree owners continue to plant trees where they will cause outages and health and safety risk – and because consumers continue to suffer as a result. It is not reasonable to expect an EDB to enter into litigation every time in needs vegetation to be managed. That is effectively what is asked of EDBs by the suggestion that case law is all the sector needs to manage vegetation related risk.

There are many issues where case law does not displace the need for regulation. We believe that a role of regulation is preventative. When it works well it can help prevent litigation and prevent risk. We think that the best response to this judgement is to acknowledge the standard that it sets and align regulation with this.

We refer once again to the request made by Justice Williams for officials to address the limitations of the regulations in the 2010 Judgement *Marlborough Lined Ltd vs Cassell.*

5. Do you agree with the preferred objectives of the regulation, why or why not?

Yes

6. Do you agree with our policy assessment criteria? Why or why not?

Yes

7. What are your thoughts on extending the GLZ to cover a larger area, and what would be the appropriate distance for the extension and how might this affect you?

We support the extension of the GLZ in the extent to which this broadened area engages risk. This must be for HV and LV lines.

The paper suggests that Option 2 would ensure “most plausibly high voltage lines” would be clear from the fall line. As above, many vegetation related outages occur on the LV network – and so excluding the LV from an expansion of the GLZ arbitrarily would be extremely

inadequate in addressing risk. However, the voltage of the network can be a proxy for the number of customers who would be impacted by an incident.

We support a risk-based approach which would factor this in through the 'consequence' rating. Whilst we support the trees being outside of the 'fall line', we note that there are other factors which determine risk including the species of tree, the terrain, and the environment (these are the 'likelihood' factors in a risk-based approach). The risk-based approach – helps to make this determination. We discuss this further in our response to questions 10 and 11.

We also recommend that in addition to the risk-based approach (empowered through an additional notice as proposed under Option 4, discussed under Question 10) the growth limit zone (GLZ) be should be extended – at a minimum to align with minimum approach distances (MAD) set out in the Electricity Code of Practice (ECP 34). Widening the growth limit zone (GLZ) can make vegetation management safer by increasing the space between electricity lines and vegetation and can engage risk presented by branches or debris falling or blowing into lines.

8. Would a 'likely to interfere with' approach work if 'likely to interfere' were clearly defined and limited by the regulation? What would this look like to you?

We think that – as per our response to Question 9 – a 'likely to interfere' approach could work if it were substantiated by the risk-based approach and *enabled* by regulations. Regulations are already too limiting when it comes to managing vegetation.

9. Would a 'likely to interfere with' approach work if combined with a risk-based approach?

We think that a risk-based approach is the best way to determine if a tree is 'likely to interfere with' an electricity line. However, our primary concern with Option 3 is that its enforceability depends on the works owner gaining an order from the District Court. This would result in unnecessary litigation and low certainty. The extent to which a risk-based approach – or any approach – could be relied on ultimately depends on the extent to which it is recognised by the Court and as such we strongly recommend that the risk-based approach be referred to by regulations under Option 3.

10. What is your preferred option out of the options proposed by MBIE for issue one? Are there any options you would recommend that have not been considered?

We agree with MBIE's assessment and ranking of Options and also favour Option 4.

Option 4 says that a warning notice could be issued by a works owner for vegetation hazard outside the GLZ, and 'could include a clearly defined fall-line risk'.

We support this, and recommend that to help clearly define risk, the regulations refer to best practice guidance around risk-based vegetation management. The regulations should also include preventive planting guidelines.

As is explored in Issue 2 – the strength of the risk-based approach is that it puts risk at the centre of vegetation management – enabling parties to reduce risk, without managing vegetation on an arbitrary basis or when this is not necessary. EDBs have no incentive to manage vegetation where it does not present a risk as this is inefficient.

However this needs to be balanced with clarity – and ensuring that the regulations are able to be implemented. We recommend therefore that the Growth Limit Zone (GLZ) is also widened. In partnership with the risk-based approach (implemented through the new notice category) this can ensure that risk driven by most – if not all – modes of vegetation failure are recognised by the regulations, and can also offer some clear parameters to manage vegetation.

Any discretion which is afforded – by way of the 'likely to interfere' determination included in Option 3 – as well as a CTN for risk outside the GLZ included in Option 4 – needs to be supported by an approach which is recognised by regulation.

11. How do you think a risk-based approach in the regulation to managing vegetation could be implemented and enforced?

As above we think that such 'best practice risk-based approach' and preventive planting guidelines should be referenced by the regulations. By way of an example – the New Zealand Guide to Temporary Traffic Management (NZGTTM) under development by NZTA sets out principles which are important to TTM best practice. Similarly, the vegetation management regulations could refer to a high-level guide – which is robust, could be implemented by different competent parties, and which could stand the test of time. This risk-based approach also needs to be wide enough to accommodate mitigation for each of the risks captured in the regulations – for example, health and safety, outage risk, and, fire risk. To achieve this any such guide should be at the principled – rather than prescriptive – end of risk management process.

12. What are the most important aspects to include in a risk-based approach methodology? Are there any additional issues that you think should be considered?

We have included in *Annex 1* what we consider key aspects of a guide for risk-based vegetation management. This was effectively co- developed with arborists, and the wider sector, during an earlier consultation phase led by MBIE to inform this discussion document. This was developed with consideration of international best practice as well as best operational practice to vegetation management already underway. What we are seeking by way of regulation is for this approach to be recognised such that notices can be issued to tree owners to comply with it – without requiring a 'no interest declaration'.

In answering the question of what we think are the important aspects for inclusion in a risk-based approach, we refer to *Annex 1*.

Whilst the discussion document says: "The weighting given to amenity value of vegetation (for example community or individual value) may also need to be clarified in a risk-based approach".

We do not think that amenity is an appropriate factor for inclusion in a risk-assessment framework – as its weighting may undermine the weighting of other consequences such as outages or health and safety risk and we do not think this is appropriate. By way of an example: should amenity be considered in a risk assessment for a temporary traffic management (TTM) plan? Because the amenity impact of TTM is invariably bad, weighing amenity as a consequence may cancel out the health and safety outcomes that the TTM is designed to consider and protect. This clearly defeats the purpose of a risk assessment framework.

13. Do you agree with our view to include a consideration of fire risk in a risk-based approach to vegetation risk, why or why not?

We can understand the merit of including consideration of fire risk in a risk-based approach. In Australia where the risk of fire is prevalent, corridors around electricity assets are protected by regulation. If fire risk were included as a factor for consideration this would also need to be coupled with strong provisions to clearly enable this risk to be managed – for example, property access which we address in our response to Question 20 (although even in the absence of consideration of fire risk, the options presented by the discussion document around property access are too weak). We understand that some networks are recommending the establishment of infrastructure corridors around assets. We support this – in addition to the risk based approach. As we mention elsewhere in this submission it is critical that any

regulated clearance between electricity assets and vegetation is not limited to high voltage lines – but rather is based on the risk to consumers.

If fire risk is considered in scope of the regulations it is also important that any regulatory powers to manage fire risk are not constrained for Department of Conservation (DOC) areas, or Special Native Areas (SNAs). The risk of fire does not differ depending on these areas – and bush fires do not serve the bio diversity of native forests or the species that inhabit them.

We note that the future National Planning Framework (NPF) is also an important tool to achieve corridors for asset protection for works owners – and this could address a range of encroachment issues. We support the intention to include provision to establish infrastructure buffer corridors around specified infrastructure in the NPF in order to address or mitigate health and safety risks of infrastructure on people and communities and to help provide for the effective and efficient operation of critical infrastructure.

However we do not agree that these should be determined by Regional Planning Committees (RPCs) as part of the development of Natural and Built Environment Plans (NBEPs) – but rather think that these should be established at a national level. Whether specified in the NPF or NBEPs these infrastructure buffer corridors must be wide enough to protect distribution assets from vegetation in line with the risk-based approach (which as above, may include consideration of fire risk). Whilst environmental protections may seek to limit a works owner's ability to manage this risk, preventing wildfires is clearly in the interests of our natural bio-diversity.

We also note that fire risk is different to outage risk. Any risk-based approach referred by the regulations needs to be wide enough to accommodate different assessments which can respond to different risks. This would be captured by the consequence rating – but also needs to be reflected in an assessment of the likelihood factors, which may be different for different risks. Whilst creating space between vegetation and electricity assets can help mitigate both fire risk and outage risk, there are cases where the risk of one outcome might be cause for action, whilst the risk of the other outcome is not. That is – managing outage risk does not necessarily manage fire risk, and vice versa. If fire risk is considered in scope of regulation – in addition to health and safety and outages - then the risk-based approach which it refers to needs to be wide enough to accommodate mitigations to all of these risks. In addition to adequate property access provisions – this is a critical point. The regulations cannot expand to include consideration of fire risk if the risk assessment referred by the regulations and the provisions to implement it cannot respond to this.

14. What is your preferred option out of the options proposed by MBIE for issue 2, are there any options you would recommend that have not been considered?

We support Option 4, for the reasons expressed under Question 10.

15. Do you have any feedback on the Tree Regulations obligation on works owners to remove danger to persons or property from trees damaging conductors?

As the discussion document notes, works owners have an obligation to remove immediate danger to persons or property from trees damaging conductors without delay, under Section 14. A major issue with the current framework is that the regulations do not include provisions for networks to meet this responsibility preventively. Networks currently have to: Wait until vegetation is encroaching the hazard notice zone, issue a hazard warning notice, wait further for the vegetation to encroach the growth limit zone, issue a cut trim-notice to the tree owner (who can be difficult to locate in the case of rental properties) and THEN wait 45 days for a response. Networks then have no ability to enforce such a request (unless no interest is declared).

Once the Section 14 threshold has been met however, networks *must* remove immediate danger without delay. Networks effectively transition from having no rights to manage vegetation, to having an immediate obligation to do so. This responsibility can emerge quickly (within weeks) given the small size of the growth limit zone and the growth rate of some vegetation. Vector has 18,000kms of lines. Implementing the above process on a case-by-case basis is not practicable.

In addition to Section 14, regulated EDBs also have unplanned outage minutes capped and face penalties for breaching this. When unmanaged vegetation causes unplanned outages, it is the EDBs' consumer owners who are affected. In sum, the obligation for EDBs to manage vegetation is already great. The issue is: that in the absence of a reasonable regulatory process; a threshold that engages risk; or 'skin in the game' for tree owners – EDBs are limited in the extent to which they can meet these responsibilities.

16. Do you agree with MBIE's view that responsibility to identify risk sits best with works owners?

We believe that works owners must retain this right under the regulations – however there is nothing to stop a tree owner from doing this themselves. Indeed this can help ensure that they uphold their responsibilities under the tree regulations.

17. Do you agree with MBIE's view that the allocation of the first cut or trim should remain with improvements to its application, and why or why not?

No. The first cut as a principle adds complexity and cost with much less benefit. It is not clear if the 'first cut' means the first for the tree or the tree owner. The logic of the provision in the first place was to alleviate the cost to tree owners when the regulations were first introduced. We see no sense in trying to carry this provision into the future. How many 'first cuts' can there, or should there, be when this creates unnecessary administration and related cost?

18. Is there a way to apply the notice system at a higher level than the individual tree?

Yes. The risk-based approach includes provision to apply the same risk rating to a greater number of trees providing that the risk factors meet a threshold of commonality (i.e., if kms of trees of the same species, were planted the same distance from lines, then they should all receive the same mitigation without needing to assess each tree individually). We also support the use of GPS or identifying trees by property reference. However we believe that use of these methods should be at the discretion of the party implementing the risk-based approach. If the regulations are specifying the means by which parties should mitigate risk then they are too granular. We think that the best practice guidance referred by the regulations should include a process at a principled level. This means that it can be adapted as best practice develops over time, and that it can be implemented by a range of parties (i.e., if regulatory requirements stipulate the use of GPS – then this would make compliance difficult for many tree owners).

Whilst we support works owners having scope to issue notices where vegetation is likely to cause a hazard, we think that tree owners need not wait for such a notice. It may be more efficient – particularly for large scale tree owners – to integrate vegetation management into their own operational practice – and indeed it would be more efficient to integrate preventive planting practice into their operations. This means that they could integrate vegetation management into their own financial and asset management planning (rather than waiting for the networks' notice). As such the risk-based approach referred by the regulation should not stipulate tools or technology which might be available to a network but not a tree owner.

19. What is your preferred option out of the options proposed for MBIE by Issue 3, are there any options you would recommend that have not been considered?

Our preferred Option is Option 3. We support steps to streamline the notice process as well as to remove the first cut provision.

20. What is your preferred option out of the options proposed by MBIE for Issue 4? Are there any options you would recommend that have not been considered?

We do not support any of the options proposed. Option 2 does not go far enough to address the problem, and, by relying on a court order, Option 3 would take too long to implement to be useful in addressing the problem: that EDBs cannot access land to reduce risk, even where they have an obligation to do so. We do however support the inclusion of "owner or occupier" included in Option 2 – so that works owners are not obstructed in cases where the owner cannot be contacted.

We refer also to the 2010 High Court judgement made by Justice Williams in the Marlborough Line Limited vs Cassels case which highlighted the current gap in regulations to provide works owners with property access to manage vegetation:

> *The regulations are authorised by s 169 of the Electricity Act 1992. They were required to fill a regulatory lacuna created by the privatisation of the electricity industry under that Act and its sister measure, the Energy Companies Act 1992. Under the reform the new privatised energy companies lost the old statutory power to enter private property to construct and maintain electrical works, and to trim trees. Under the new regime these matters were all to be dealt with through the Resource Management Act and private law processes.*
>
> *While a statutory right of access is maintained in relation to – existing works (so that the new regime is effectively only for new works) the Act does not expressly give lines companies the power to trim trees. Nor does it apportion responsibility for the work itself or its cost. It will be appreciated that tree trimming is an extremely important subject for a lines company like Marlborough Lines whose lines are primarily overhead.*

However as concluded by Williams the tree regulations do not fill this lacuna – and we urge officials to ensure the regulations do so.

Our recommendation is that separate provisions are included in the regulations to make property access rights for works owners for the purpose of vegetation management within the regulations clear.

We recommend a variation of Option 3 – that the works owner would still need to make reasonable efforts to contact the owner or occupier – but would have right of access following these attempts, without requiring the determination of the court. We think that in cases where parties did not agree that reasonable efforts had been made to make contact with the owner or occupier, before the land was accessed, the courts could be used in these cases to determine if reasonable efforts had been made and to hold works owners to account for this. This means that litigation happens in some – but not all – cases where works owners cannot access land to remove risk. Courts are not designed to help implement regulation on a BAU basis – they are there to settle disputes when things don't go as planned.

There should be some indication of what 'reasonable efforts' means and we note that the Electricity Act 1992 sets out notice requirements that a works owner must adhere to when accessing property for the sake of maintaining works. Section 23A says this is 10 working days and Section 23C provides that a works owner does not need to give notice in an emergency.

Instead, the person must give notice as soon as practicable (no later than 5 working days after entry).

We think these notice periods are a good indication of where 'reasonable efforts' have been made by a works owner to contact an owner or occupier, and we recommend that these are stipulated in the regulations.

21. What is your preferred option out of the options proposed by MBIE for issue 5, are there any options you would recommend that have not been considered?

We do not support the option to expand the arbitrator's mandate beyond the issuance of dispensation for tree owners. This is due to a lack of certainty around the arbitrator's decision making. As per Section 30 of the existing regulations:

> *An arbitrator must determine a dispute according to the substantial merits and justice of the case, and in doing so must have regard to the law but is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities.*

Discretion to make determinations which have regard to the law, but which may not give effect to strict legal rights, could result in decisions which fall outside the rights and responsibilities set out in the regulations. A core goal of the review should be to make these rights and responsibilities clear, appropriate, and able to be operationalised efficiently and preventively. There is a risk that an expanded arbitration function may result in decisions which do not enforce the obligations of the regulations but rather which confuse them. We note that the penalties and liabilities set out in the regulations send a strong signal to tree owners of the importance of compliance. In this context we think it appropriate that an avenue remain for tree owners to seek dispensation from obligations on an exceptions basis – but that overall, the regulations should strive to be sustainable in the absence of arbitration or judicial decision making. Indeed, the 2010 High Court case *Marlborough Lined Limited vs Cassels* referenced by MBIE and by ourselves through this submission, showed a need for the regulations to offer enough greater clarity such that they do not require judicial declarations as sought by Marlborough Lines Limited in implementing vegetation management regulations and reducing risk to their community.

Overall, this regulatory review should prevent ambiguity and scope for contest. If the regulations are designed on the basis that an expanded role of an arbitrator is necessary, we think that the regulations would have failed in their goal to clearly set out responsibilities and powers to manage risk.

22. Do you consider that ongoing penalties are a useful element of the current regulatory regime?

Yes we consider penalties and liabilities are a useful element of the regulatory regime, as they provide an important lever to incentivise parties to uphold their responsibilities under the regulations. As risk increases with climate change these penalties may become a more and more important feature of the regulations – particularly in the case of larger scale tree owners.