

Land Access for Telecommunications: Submission template

The closing date for submissions is **5.00pm, Friday 24 July 2015**.

You can make a submission by emailing landaccess2015@mbie.govt.nz or by posting your feedback to:

Land Access Project Team
ICT Policy & Programmes
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

If you post your submission, please also send it electronically if possible (as a PDF or Microsoft Word document).

Please complete the following contact details:

Your name:	Reg Hammond
Your postal address:	InternetNZ Level 9, Grand Arcade 16 Willis St Wellington
Your email address:	reg@internetnz.net.nz

Is your feedback on behalf of an organisation?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

If yes, please write the name of the organisation and your position here:

InternetNZ

What is your involvement in the telecommunications industry? (please tick those relevant)

<input type="checkbox"/>	Network operator
<input type="checkbox"/>	Retail service provider
<input type="checkbox"/>	Customer or end-user (current or potential) of fibre

	Affected or potentially affected property owner
√	Other (please specify) Member based organisation representing Internet users and providers

If you or your organisation do not wish your name to be included in any summary of submissions that the Ministry may publish, please advise here:

No, I do not want my name / organisations name published in any summary of submissions

If you or your organisation object to the release of any information contained in this submission, please advise here:

Section A: Questions on the existing framework

1. Which elements of the existing land access framework for telecommunications do you think are working well and should not be changed? Why?

Most aspects of the current land access framework have withstood the test of time reasonably well.

Nevertheless, there are some aspects that have caused problems for operators, end-users, local government and land owners. With the deployment of the UltraFast Broadband (UFB) and Rural Broadband (RBI) initiatives these problems are becoming more obvious and of greater concern and the framework needs to be thoroughly reviewed to determine what access framework is in the best interests of all the parties involved.

The simple summary of these issues is as follows:

- that current land access rules encumbering the rollout of both the UFB and the RBI.
- It is introducing costs into these processes and delaying the delivery of these networks.
- Individual property rights holders are able to effectively deny network provision to a large number of other users.
- The method of resolving these issues under current frameworks is unclear.
- The property rights interests that the current regime protects, while important and respected, appear to be incorrectly balanced against these other factors.

2. If you have encountered issues with the application of the existing rules for telecommunications land access, what are the specific aspects of the rules that you have found to be problematic and why?

InternetNZ does not provide network services, nor do we build networks. We do however have an interest in ensuring that as many New Zealanders as possible able to access high quality Internet connectivity. In this regard, the discussion document outlines the majority of issues that InternetNZ membership has raised with us over time.

To reiterate the perspectives that we have heard from our membership in this regard: these issues materialise as an inability to get a broadband service or significant delay in getting the service. Too frequently the responsibility for the delay is a result of the different incentives of

the parties involved and an ability for those responsible to too easily shift responsibility – Retail Service Providers (RSPs) blame Local Fibre Companies (LFC's) who in turn blame local authorities or land owners who blame the underlying legislation.

At the very least, this review is an opportunity to clearly assign responsibilities between these parties and clarify the processes upon which these land access issues can be positively resolved.

Section B: Questions on the nature of the barriers to FTTP connections

3. If you or your business is involved in the installation of Ultra-fast Broadband, is your view of the barriers to FTTP connections aligned with what we have outlined in this section (pg 14)?

While our organisation is not directly involved in the installation of the UFB, we agree that the barriers have been correctly identified.

4. Are you aware of any problems relating to the installation of FTTP that are not outlined in this section (pg 14)?

The problems discussed are certainly those that are raised most often.

Additional issues seem to arise where the property is new and there is no existing copper service. We have heard of cases where tenants have had to wait considerable periods of time – such as three months or more - while suppliers coordinate with each other, landlords and consenting authorities, just simply to ensure that basic connectivity of some form is installed. This is clearly suboptimal, and appears to be driven primarily by slow response times between the parties. In the instance where there is no connectivity available at the property, perhaps a deemed consent process with an opt out would be far more expedient.

5. In your view, are problems with the current requirements for the installation of fibre-to-the-premises significant enough to warrant legislative change? Please provide reasons.

v	Yes
	No

Reasons for preference:

InternetNZ is adamant that the policy intent of both the UFB and RBI is to improve connectivity for as many New Zealanders as possible. InternetNZ also believes that in our modern economy and society, that Internet access is increasingly an essential utility akin to power, electricity and drainage – all of which are more readily able to be deployed than the issues present in the land access regime for telecommunications.

Our analysis and conversations with telecommunications network builders strongly indicates that if a non-legislative solution to these issues was present, then it would have been found and deployed by now. At this stage, legislation change would now seem to be the most expedient option available.

Section C: Questions on proposal 1 - options to facilitate FTTP connections

6. Would you prefer the deemed consent approach or the low impact facilities approach or some combination of the two? Please state your reasons for your preference.

√	Deemed Consent approach
	Low Impact Facilities approach
	Combination of both

Reasons for preference:

While both options will resolve the major problem of an unresponsive property owner, the Low Impact Facilities approach goes a step further and potentially also removes the ability for an owner to refuse access to their property.

However, we believe that it is likely that this Low Impact Facilities approach risks opposition by some property owners on principle and the discussion document acknowledges that it will be more difficult to implement. There is insufficient data provided to indicate what portion of the 15% are nil responses, what portion are objections on reasonable grounds or what portion are vexatious objections. There is also no data on the respective costs of the options. Some of this data might be provided in due course to assist in decision making.

InternetNZ's initial view is that option one, the Deemed Consent approach (with a backup dispute resolution) should be adopted. If instead option two, Low Impact Facilities approach is preferred as a result of this consultation, then it should be subject to a more detailed cost/benefit exercise before proceeding.

7. Would you support a move away from requiring written consent from affected property owners to a request to connect UFB to an approach that assumed consent is implied but provides a mechanism to opt-out?

√	Yes, I support an approach that assumes consent with a mechanism to opt-out
	No, I do not support an approach that assumes consent with a mechanism to opt out

Reasons for preference:

Please see our response to question 6 above.

8. If the requirement for written permission for access is changed, what conditions or safeguards should be applied?

The safeguards outlined in the discussion document on the face of it seem fine. Two areas where additional safeguards may be required – under “Deemed Consent” how does the operator prove they have made a reasonable attempt to communicate with the rightful owner? Under “Low Impact” who determines the boundary between low impact and high impact? While the discussion document says a “strict” definition will apply it is likely that interpretations will vary across different operators. Is it intended that there will be any form of redress available for property owners where operators have overstepped?

The discussion document refers to similar rules in Australia – what has been the experience to-date in Australia?

9. In what circumstances should an affected property owner be allowed to object to a network operator accessing land they share with a neighbour to install a connection?

It is not clear from the information provided what proportion of the 15% are nil response, legitimate objections or are considered vexatious objections. Without greater information our preliminary views are that:

- It is only a small minority of cases that are taken to dispute resolution are vexatious and that dispute resolution agencies are generally able to deal with them quickly.
- People with genuine and reasonable objections should be given the opportunity to put forward their objections to an independent body – but in the first instance the operator should make every effort to inform the person of their rights.
- Often reasonable objections are based on future predictions – for example that in installing a cable damage will occur at the time, or in future, to other property. A requirement on the operator to “make-good” in the case of such damage might reduce the incidence of such objections.

Section D: Questions on proposal 2 – allowing for deployment using existing utilities

10. If you are a network operator who also owns or can arrange access to electricity infrastructure, how would you make use of a right to deploy fibre alongside these existing utilities? Please include as much detail as possible including whether you intend to provide backhaul and/or customer connections and where you would use such a right of access to deploy these services.

Not applicable.

11. Do you consider that the safeguards and conditions outlined above (pg 23) strike the right balance between enabling efficient deployment and protecting the rights of property owners?

V	Yes
	No

If no, please explain why:

Not applicable

12. If you, or someone you represent, have land that is currently crossed by electricity infrastructure, under what situations would you support the co-location of fibre on this existing infrastructure?

Not applicable

13. Any right to deploy and maintain fibre with existing utilities needs to have a low impact for those affected. What matters should the Ministry take into account when setting the terms and conditions for access to private land to minimise the impact on owners?

This issue has been around for a long time and primarily relates to electricity companies which wish to deploy and then maintain fibre on existing electricity poles and pylons which are on private land. Existing access agreements are often for "electricity services" only and the service provider needs to renegotiate with every land owner whose property they cross if they wish to add fibre. All it needs is one land owner on a route to refuse permission and the deployment is held up or stopped indefinitely. In the vast majority of cases these lines are used for backhaul rather than local loop reticulation and so affect larger numbers of people.

This is a highly contentious issue and will almost certainly be opposed by some land owners. The proposals seem to recognise this and are probably pitched at the lower end of solutions that are available (only available on existing owned infrastructure - no new poles or towers, no digging, access available only in limited circumstances and subject to safeguards).

InternetNZ's initial view is that the proposals are reasonable and we support them. We consider they are at the lower end of solutions and could potentially be extended. We are conscious however that such a solution would limit the deployment of telecommunications infrastructure, such as critical national backhaul connectivity, to existing infrastructure routes. These existing routes may not be the most appropriate or efficient route for new deployments.

Accordingly, we would suggest that if this proposal proceeds, that it is as an interim measure to allow testing as to whether it is sufficient. If it is not, then further extensions may be required.

Section E: Questions on proposal 3 – ongoing rights of access

14. Should the rights that network operators have to access and maintain fibre networks be similar to rights they have to access and maintain legacy copper telecommunications networks?

✓	Yes
	No

Please provide reasons for your answer:

We see no reason why these different technologies should be treated differently in this regard.

15. What factors should MBIE take into account when setting conditions for access to installed infrastructure in order to minimise the impact on property owners and provide for an efficient access process in this context?

This has generally been covered in the discussion document.

The document asks whether in providing a right of access there should be a requirement that the right be indicated on the Land Information Memorandum (LIM).

While the requirement seems reasonable and sensible it would be helpful if information regarding what costs might accrue and also what local councils which administer LIMs might think of the proposal.

16. If you are a provider of fibre services, how would the implementation of this proposal impact on your decisions to follow through with complex or otherwise problematic installations?

Section F: Questions on proposal 4 – a fair, accessible and expanded disputes resolution process

17. Do you support the stated objectives for dispute resolution set out in this section (pg 29)?

√	Yes
	No

Please provide reasons for your answer:

Currently there are two dispute resolution mechanisms available - the District Court (which is considered to be too slow and too expensive) and the Multi-Unit Complexes(MUCs) regulated code. The later is privately run by the telecommunications industry and only relevant to fibre deployments in MUCs. MBIE has no example of either mechanism being used.

If the previous three proposals above are implemented it is highly likely that there will be additional disputes to be resolved and that these should be resolved quickly and efficiently. Key disputes are likely to be:

- whether an individual refusing access is reasonable;
- whether correct process is followed for accessing private land and remedies or penalties where it is not;

- compensation for damage to land or unreasonable inconvenience;
- disagreements between landlords and tenants about conditions of fibre installation.

Our initial view is that there will certainly need to be a dispute resolution process and that it will need to cover the four factors identified by MBIE:

- Efficiency (speedy and subject to a time limit);
- Accessibility (low fees, preferably free for individuals and little or no need for legal representation);
- Independent (from industry and government);
- Fair (outcomes seen to be fair by all parties).

The options for dispute resolution bodies that are currently under consideration by MBIE are:

- Extending the existing MUCs dispute resolution service (our initial view would be that this would not be sufficiently independent of the industry);
- Extending the jurisdiction of the Disputes Tribunals (there might be questions over efficiency and cost);
- Outsourcing the function to a commercial provider (the core of this option would be how the provider was funded).

It is surprising that the existing Telecommunications Dispute Resolution Service (TDRS) is not one of the options being looked at unless it is considered to be a commercial provider. Potentially a review of the effectiveness of the TDRS would provide a good indication as to the best option available.

18. Do you support the proposed expanded scope for dispute resolution?

√	Yes, I support the proposed expanded scope for dispute resolution
	No, I do not support the proposed expanded scope for dispute resolution

Please provide reasons for your answer:

See above

Are there any grounds you would add or remove?

19. What factors should the Ministry take into account when deciding on a body to hear or decide these disputes?

See above

Section G: Other comments

20. What other comments or questions do you have about land access for telecommunications?

Overall Comment

The proposals are sensible and will be beneficial for end-users and operators - the question that immediately springs to mind is whether the proposals could go further and therefore be of greater benefit to end-users?

The lack of analysis of other land access regimes (for example the one operating in Australia); the lack of analysis of how effective various dispute resolution services are and the lack of any cost/benefit analysis of the proposals or variations on the proposals prevents assessment of alternatives that might be more beneficial.

We are hopeful – but doubt that the interested parties such as telecommunications operators

and land owner representatives will provide the necessary level of independent analysis in response to this discussion document and that consequently MBIE will be required to do further work in that regard. Without that independent analysis it is unlikely the full potential of this exercise will be realised.

Thank you for taking the time to complete this submission. Your feedback is appreciated.

Publication of submissions

Written submissions may be published at www.med.govt.nz or www.mbie.govt.nz. We will consider you to have consented to publication by making a submission, unless you clearly specify otherwise in your submissions. **If sensitive material in your submission cannot be published, please provide two versions of your submission – a full version and a publishable version.**

In any case, all information provided to the Ministry in response to this discussion document is subject to public release under the Official Information Act 1982 (OIA). **Please advise if you have any objection to the release of any information contained in a submission**, and in particular, which part(s) you consider should be withheld, together with reason(s) for withholding the information. The Ministry will consider all such objections when responding to requests for copies and information on submissions to this document under the OIA.

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