

28 April 2023

Energy Markets Policy
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: HazardsFromTrees@mbie.govt.nz

Tēnā koe,

DUNEDIN CITY COUNCIL SUBMISSION: STRENGTHENING THE 'TREE REGULATIONS' TO IMPROVE RESILIENCE OF ELECTRICITY SUPPLY

1. The Dunedin City Council (DCC) appreciates the opportunity to submit on the Ministry of Business, Innovation and Employment (MBIE) consultation on proposed amendments to the Electricity (Hazards from Trees) Regulations 2003 (the Regulations).
2. The DCC has made observations and recommendations in response to the consultation, which are detailed in this submission.

Background considerations

3. The DCC territorial land area is serviced by two Electrical Distribution boards (EDB):
 - Aurora Energy; wholly owned as a subsidiary of the DCC
 - Powernet; operating from a base in Invercargill, Southland
4. The DCC has a territorial land area of 3314 square kilometres. The topography of our territorial land consists of coastline through plains and mountains.
5. The DCC's road network covers 1,767 km's in length with 40% (711 km's) in the urban environment and 60% (1,054 km's) in the rural environment. It is the highest valued asset type with a replacement value of \$985.80 million representing 58% in value of transports total asset portfolio.
6. The roading corridor consists of 1,766 km of roads, of which 1,073km are sealed and 693km unsealed. Much of the network of the two EDBs in Dunedin follow the roading corridor.

General position statement

7. The DCC supports and recommends a review of the Regulations.
8. The primary issues and concerns raised in the MBIE discussion document are similar to those raised by previous review groups on the Regulations and are consistent with many of the situations faced within the industry. It is timely that the regulations are reviewed, that historic

short comings are addressed, and the electricity supply system strengthened and further supported. This system is undergoing significant change with the increasing inclusion of generation by solar and wind at a local level, making the management of the distribution system increasingly complex.

9. The summary of concerns presented does appear to have a rural outlook and perhaps has not given enough consideration to urban and/or densely populated areas where tree owners and overhead electrical utilities conflict in higher numbers.
10. If this review is to progress and bring about acceptable change in terms of addressing the needs and expectations of the EDB's and the commercial and aesthetic expectations of tree owners, then an understanding of tree growth and the biological implications of managing trees must inform the change. Trees cannot be managed as static objects or as living things that produce uniform growth in all environments, at all ages, at all times of the year.
11. The DCC supports a safe and secure electricity supply resilient against disruptive natural events such as earthquake and heavy storms and wind.

Treaty of Waitangi

12. The DCC proposes that further consideration should be given to the inclusion of Māori land in the Conservation Act 1987, Schedule 1. This will strengthen general iwi/hapū interests in their own land, and its utility.
13. The DCC supports amendments that will support the wider interests of Māori. The Treaty of Waitangi guarantee's Māori full exclusive and undisturbed possession of their Lands, and Estates Forests and Fisheries. Any amendments to the regulations must support iwi control over their whenua and forests as kaitiaki.

Distancing of trees

14. The DCC does not agree with further restricting the distance new trees can be planted or replanted in proximity to electricity lines. The issue of a tree being too close to the electricity line is adequately covered under the existing legislation. The roading network serves as a green corridor which is important with biodiversity and other features.
15. The DCC notes that the Regulations specify the distance that trees are allowed to grow in proximity to electricity lines. Fruit trees for example could be grown and managed at a safe distance from the lines even if planted directly under the lines. Smaller growing tree species could be planted under the line in the urban environment and never encroach into the Growth limit zone (GLZ). Tree height can be managed through species selection and management practices by tree owners.

Managing the fall line risk outside of the GLZ

16. The DCC followed the Nottingham Forest Trustee Ltd v Unison Networks Ltd court case and agrees and supports the judgement given by the court. The DCC believes no further clarification in the Regulations or government intervention is required to establish the fault of trees falling on powerlines in this way.

17. The DCC notes that a tree being within fall distance of the lines does not mean that it will fall on the lines if it fails. A tree might be leaning or weighted in such a way that it will most likely fall beside or away from the lines.

Preferred objectives of the Regulation

18. The DCC agrees with the preferred objectives of the regulatory framework for the sector, that being a resilient electricity network and public safety. However, the DCC notes that vegetation around electricity lines can also reduce risk to electrical assets. The benefits associated with trees in terms of carbon sequestrum, ground stability, wind deflection, and/or reduction of loading in summer do not appear to have been considered in this discussion document.

Policy assessment criteria

19. The DCC notes that the research data MBIE has presented shows New Zealand is a unique environment of trees and tree growth and is heavily invested in decarbonising. Therefore, solutions will need to be unique to New Zealand.

Issue one: Vegetation risks outside the GLZ

20. The DCC supports the status quo offered by option one. The status quo can work well if EDBs carry out their functions under the Regulations.
21. The DCC does not support expanding the GLZ to cover a larger area.
22. Trees are dynamic biological organisms that differ in their growth habit, form, and growth rate based on where they are and their age. Any generic trimming regime that is applied to all tree species, across all environments at all ages and stages of a tree's life is problematic and unworkable.
23. Consideration should urgently be given to include in the GLZ vegetation growing over the conductors but above the current GLZ. This is an historic oversight and requires urgent remedy to remove the risk of branches falling in on to the conductor from height (for example snow loading or storms).
24. The DCC is opposed to the approach laid out in section 128 of the Telecommunications Act 2001. This would be completely unworkable and result in a complete loss of control of the vegetation management required and safety standards needed for distribution of electricity supply at all voltages.
25. The DCC supports a properly conducted risk-based approach that accommodates the objectives of security of supply and resilience within the network. The approach should use a specific tree risk assessment methodology to identify vegetation that is likely to cause interference. Any likelihood to interfere must not be limited to distance but must also include components of tree biology and tree mechanics. The DCC supports a stronger definition as the term "likely" is too vague and unworkable.
26. The DCC notes works owners have been reluctant carry out their functions defined by the Regulations.

Issue two: Prevention of over-trimming of hazardous vegetation

27. The DCC supports option four so that a risk-based approach can be appropriately applied outside the GLZ. This is essential as part of the review. Options one, two and three appear ineffective and unworkable.
28. The DCC supports implementation of a risk-based approach if the approach uses a tree risk assessment methodology and specified tree growth limits. To be effective the methodology must not be limited to distance but must include components of tree biology and tree mechanics. Timeframes, consequences, the likelihood of failure, and the likelihood of impact all need to be established, agreed and applied.
29. A risk-based approach requires EDBs to use appropriately qualified and competent staff to apply it. Enforcement would be based on what is considered reasonable by staff with the appropriate training, skills, and access. The DCC points out that a risk-based approach will not remove all risk or prevent every potential outage or harm event.
30. The DCC supports the approach of tree risk as noted by the International Society of Arboriculture which covers a range of factors such as site factors, tree health and species, load factors, tree defects and condition including the crown, branches, trunk, and roots. This approach is entirely workable and acceptable to land and tree owners. This approach is consistent with the requirements of being a prudent landlord which are understood in the community at large and tested by New Zealand courts.
31. A risk-based approach is consistent with options proposed in relation to issue one.
32. The DCC agrees with including the consideration of fire risk and acknowledges the status quo has not worked effectively. Inappropriate tree species within the GLZ have contributed to many fires resulting in risk of loss of life and property. The fire risk of different trees capable are well understood by EDBs however there needs to be tools to manage this risk.
33. The DCC believes the obligation on works owners to remove danger to persons or property from trees damaging conductors falls within their primary duty of care under Health and Safety at Work Act 2015 and can be applied to the works and tree owner. The responsibility for works owners is adequately catered for in the current regulations and under the Electricity Act 1992.
34. The DCC believes no further adjustment of the Regulation 14 are required.

Issue three: Balance of responsibility between owners and works owners

35. The DCC supports option one as the right to use a roading corridor or any other land such as railway land or private land is not a right as noted in the Code of practice for utility operators access to the roading corridor.
36. The DCC notes that the notification process as set reduces all risk to the network if it is followed. Utility companies are required to maintain trees, other features of their assets, and access ways to perform maintenance activities. Many of the tree issues that EDBs' confront may be caused by lack of patrolling of the networks to adequately notify in appropriate time tree owners of the issues they face.
37. The DCC also supports option one as a resolution to issue three and four.

38. The DCC agrees that responsibility to identify risks sits best with works owners, it is unreasonable to expect a tree owner to accurately identify all trees with defects that have the potential to fall onto and/or compromise electrical assets.
39. The EDB gain financial reward for the management of the distribution network and as such remain the most financially committed party to ensuring security of supply. The obligation and responsibility to notify tree owners sits comfortably with the EDBs.
40. The DCC supports the retention of the status quo regarding the allocation of the first cut or trim with the option to declare no interest if the tree owner requires it.
41. The DCC notes that sub clause 4 is contentious as many properties have changed hands and it is impractical to determine who planted the trees as far back as 2003 or earlier. Often boundaries are not accurate determinants of responsibility due to fences not being exactly where they should and general encroachment by landowners.
42. The DCC recommends the removal of Regulation 18(1)(b). This clause gives responsibility for the tree to a person who does not own it and it is not clear from the regulations what further responsibilities for the tree the new owner acquires. This situation can be difficult and onerous for works owners to manage.
43. The DCC maintains the landowner should always be the tree manager for the purpose of tree management to maintain security of supply.
44. The regulation 9 “Cut or trim” notice should be changed to ‘fell or trim’. The language implies trimming when the intent is to trim or remove as best fits the situation. This has caused confusion amongst the public and should be amended to describe succinctly the intent of the regulations.
45. The DCC supports the retention of a notice system for individual trees. With modern software plotting trees is an easy task. However, the DCC recommends the inclusion of hedges with the start and stop length plotted and documented. Hedges often consist of hundreds of trees and individually plotting them is impracticable.
46. The DCC recommends that forestry blocks are treated in a similar way to hedges where the start of the block and end of the block are documented by GPS point and treated as a constant.
47. The plotting of individual trees is a practical and cost-effective way to manage the variety of vegetation in an environment with many changes. All councils in New Zealand must manage scheduled trees under the RMA and these are individually managed.

Issue five: Resolution of disputes between vegetation and works owners

48. The DCC supports the status quo option one as evidence from notices show that this section works well and is manageable provided all parties cooperate in a timely manner.
49. The DCC supports the inclusion of trees Under section 23 of the Electricity Act 1992, so that works owners can enter a private property to inspect, maintain or operate existing works (those built, or which had begun being built prior to 1992). Currently this right does not expressly extend to the management of trees however for the purpose of safety the DCC would support this clarity being made.

Offences and penalties

50. The DCC notes that penalties have been ineffective as an enforcement mechanism of the Regulations.

Monitoring, evaluation, and review

51. The DCC supports a timeline being set for a cyclical review of the regulations. The DCC proposes MBIE commit to a ten-yearly cycle. The DCC notes the Regulations have been left too long before an appropriate review.

Conclusion

52. The DCC thanks you for the opportunity to submit on Ministry of Business, Innovation and Employment consultation on proposed amendments to the Electricity (Hazards from Trees) Regulations 2003.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J. Radich', with a stylized, flowing script.

Jules Radich
Mayor of Dunedin