

# **Report on public input: Stop 5G Mangawhai Petition**

**Meeting:** Kaipara District Council  
**Date of meeting:** 11 December 2019  
**Reporting officer:** Kathie Fletcher, Policy Manager  
Paul Waanders, District Planner

## **Purpose/Ngā whāinga**

To respond to the Stop 5G petition received by Council in September 2019 and report on the relevant matters that Council has jurisdiction over.

## **Executive summary/Whakarāpopototanga**

The petition identified the possible harm of 5G technology and urged council to take action to halt 5G installation in Mangawhai. Staff investigated the legal jurisdiction local government has when dealing with installing 5G technology.

Council only has jurisdiction to draft rules to manage the following areas:

- Trees and vegetation in road reserves
- Significant trees
- Historic heritage values
- Visual amenity landscapes
- Significant habitats for indigenous fauna
- Outstanding natural features or landscapes
- Places adjoining coastal marine areas
- Rivers and lakes
- Controls over earthworks.

## **Recommendation/Ngā tūtohunga**

That Kaipara District Council:

- a) Notes the commentary of the areas that Council has jurisdiction over;
- b) Requests that staff respond to the Lead Petitioner;
  - i. regarding the areas over which Council has no jurisdiction
  - ii. that central government is the legal authority responsible for the installation of 5G technology
  - iii. to submit their petition to the Ministry of Health, the Ministry of Business Innovation and Employment and the Ministry for the Environment.

## **Context/Horopaki**

Council received a petition at the September Council meeting, which is available at Attachment A. The Council Petitions Policy asks that staff respond to petitions formally.

Staff have investigated matters in line with the direction received from the Council's meeting of 26 September, namely that Kaipara District Council (Council):

- a) Receive the 'Stop 5G in Mangawhai' petition 13 September 2019.
- b) Request the Chief Executive investigate the issues raised in the petition that Council has jurisdiction over and report back to the council.

During the presentation, the petitioner raised the following matters:

1. Lack of control over the location of aerials.
2. The opinion that the *NZS 2772. 1: 1999 Radiofrequency Fields Part 1: Maximum Exposure Levels 3 kHz to 300 GHz* (NZ exposure standard) is out of date or in need of a review and that any central government roll out decision be deferred until such review.
3. Uncertainty about terminology in the field of electromagnetic radiation which cause interpretation issues.
4. Bias of central government and industry priority—speed over health.
5. Need to take a precautionary approach, for example, Belgium has decided not to permit the roll-out of 5G.

## Discussion/Ngā kōrerorero

Council's jurisdiction with regards to 5G installation is limited to drafting rules to manage:

- Trees and vegetation in road reserves
- Significant trees
- Historic heritage values
- Visual amenity landscapes
- Significant habitats for indigenous fauna
- Outstanding natural features or landscapes
- Places adjoining coastal marine areas
- Rivers and lakes
- Controls over earthworks.

## 5G Installation issues

The installation of telecommunication facilities is governed by the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (the NESTF 2016). Where telecommunication facilities and activities are not regulated under the NESTF 2016, they continue to be managed through Council's district and regional plans.

Local Authorities can provide for certain limitations in their District Plan, but this is severely restricted by the National Environmental Standard for Telecommunication Facilities 2016 (NES) as contained in NESTF 2016 where a regulated activity is a **permitted activity** if it is carried out in accordance with this NES.

The NES is a binding regulation and replaces certain existing rules in district plans and bylaws that affect the activities of telecommunications operators. This does not mean that activities not permitted by the NES are prohibited. It simply means that in some cases resource consents will need to be applied for, and these applications will be assessed against the provisions of the relevant district plan. The NES needs to be read in conjunction with rules in a plan because some rules will still be applicable. Complying with the NES alone may not be sufficient. Where an activity cannot meet the permitted activity criteria in the NES, it will continue to be managed by the existing rules in the relevant district plan.

The NESTF 2016 is designed to support the efficient deployment and development of telecommunication networks across the country, reducing compliance costs and timeframes for

service providers, councils, and consumers. The NESTF 2016 regulates the following activities as permitted activities, provided the prescribed standards are met:

- cabinets: – in the road reserve – outside the road reserve – servicing antenna on buildings
- antennas on existing poles in the road reserve
- antennas on new poles in the road reserve
- replacement, upgrading and co-location of existing poles and antennas outside road reserve (with different conditions in residential and non-residential areas)
- new poles and antennas in rural areas
- antennas on buildings (above a permitted height in residential areas)
- small-cell units on existing structures
- telecommunication lines (underground, surface mounted, and overhead).

The following changes were made to the standards in the NESTF 2016:

- increasing the size envelope for antennas on a pole in the road reserve
- increasing the height that replacement poles can be increased by in the road reserve
- allowing for replacement cabinets in the road reserve to be erected before existing cabinets are removed
- changing the existing reference to the superseded 1999 radiofrequency measurement standard to the 2016 radiofrequency standard, AS/NZS 2772.2
- including a wider range of areas with identified values (visual amenity, historic heritage, landscape, ecological, coastal) where district plan rules may be more stringent than the NESTF 2016.

Telecommunication facilities and activities that are not regulated under the NESTF 2016 continue to be managed through the relevant district and regional plans. These may include:

- new poles and antennas that are not located in the road reserve or rural zones
- the installation, operation and maintenance of a self-contained power unit to generate power for the facility and any associated earthworks
- the establishment, operation and maintenance of an access track to a telecommunication facility and any associated earthworks
- new telecommunication lines and associated support structures
- telecommunication exchanges.
- It is also important to note that the NESTF 2016 does not apply to any telecommunication facility or activity located in the coastal marine area (see Regulation 8) or over the bed of a lake or river (see Regulation 52).
- The NESTF 2016 does not override any regional earthwork rules, where these apply (see Regulation 54).

The Telecommunications Act, 2001 inter alia refers to radio frequencies, telecommunication and wireless works which would apply to the rollout of 5G technology. The provisions in section 135 makes it clear that the construction, and maintenance of lines and wireless works on roads are **permitted** and that the local authority only has to be notified of these works.

The last point of jurisdiction deals with council owned land where telecommunication facilities may be constructed. Normally this will be dealt with as a lease or a licence to occupy where council can grant the lease or licence or refuse such lease or licence.

### Options

1. Agree to advise the petitioners to submit their petition to the Ministry of Health, the Ministry of Business Innovation and Employment and the Ministry for the Environment, and that Council write to the Lead Petitioner providing the response and the research material obtained in the investigation.

This is the recommended option.

2. Not agree with the above approach.

### Policy and planning implications

The District Plan includes a chapter dealing with Telecommunication which has to give effect to the NESTF 2016.

### Financial implications

There are no direct financial implications.

### Risks and mitigations

There are no risks to council in responding to this petition.

### Significance and engagement/Hirahira me ngā whakapāpā

The decisions or matters of this report do not trigger the significance criteria outlined in council's Significance and Engagement Policy, and the public will be informed via agenda on the website.

### Next steps/E whaiake nei

Staff will write to the lead petitioner advising of this response and the need to submit their petition to the Ministry of Health, the Ministry of Business Innovation and Employment as well as the Ministry for the Environment. Staff will also make the research material available to the lead petitioner.

### Attachments/Ngā tapiritanga

	Title
A	26 September 2019 Agenda Report and Petition

Paul Waanders 16 October 2019