

Submission template

Consultation on the review of the Electricity (Hazards from Trees) Regulations 2003

This is the submission template for responding to the consultation document on the review of the Electricity (Hazards from Trees) Regulations 2003. The Ministry of Business, Innovation and Employment (**MBIE**) seeks your comments by **5pm on Friday 5 May 2023**.

Please make your submission as follows:

1. Fill out your details under the “Your name and organisation” heading and, if applicable, check the boxes underneath on privacy and confidentiality.
2. Fill out your responses to the discussion document questions in the table: “Responses to consultation document questions”. Your submission may respond to any or all of the questions. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples. If you would like to make other comments not covered by the questions, please provide these in the “Other comments” section.
3. Before sending your submission:
 - a. delete this first page of instructions; and
 - b. if your submission contains any confidential information, please:
 - State this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 (**OIA**) that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the OIA.
 - Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Submit your submission by:
 - a. emailing this template as a Microsoft Word document to HazardsFromTrees@mbie.govt.nz;
or
 - b. mailing your submission to:

Ministry of Business, Innovation and Employment
15 Stout Street
PO Box 1473, Wellington 6140
Attention: Hazards from Trees Submission

Please direct any questions that you have in relation to the submissions process to HazardsFromTrees@mbie.govt.nz.

Release of Information

Please note that submissions are subject to the OIA and may, therefore, be released in part or full. The Privacy Act 2020 also applies. MBIE intends to publish a summary of submissions on our website at www.mbie.govt.nz. Should any part of your submission be included in the summary of submissions, MBIE will seek your permission to publish your information, and ensure it does not refer to any names of individuals.

Submission on the review of the Electricity (Hazards from Trees) Regulations 2003

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Contact details	[REDACTED]

Release of information

Please let us know if you would like any part of your submission to be kept confidential.

I would like to be contacted before the release or use of my submission in the summary of submissions that will be published by MBIE after the consultation.

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because...
N/a

[To check the boxes above: Double click on box, then select 'checked']

Do you agree with the issues that MBIE has identified with the Trees Regulations? Why, or why not?

Resilient and affordable electricity into the 2030s, 2040s and 2050s requires action now

The issues stated are fit-for-purpose but do not include the critical context for the review. Securing supply into an electric future requires protecting all three components of the electricity system: generation, transmission, and distribution. Proactive management to reduce the impact of vegetation in 2030, 2040 and 2050 secures supply as communities and businesses decarbonise and electrify.

The following issues should be considered as part of the Review:

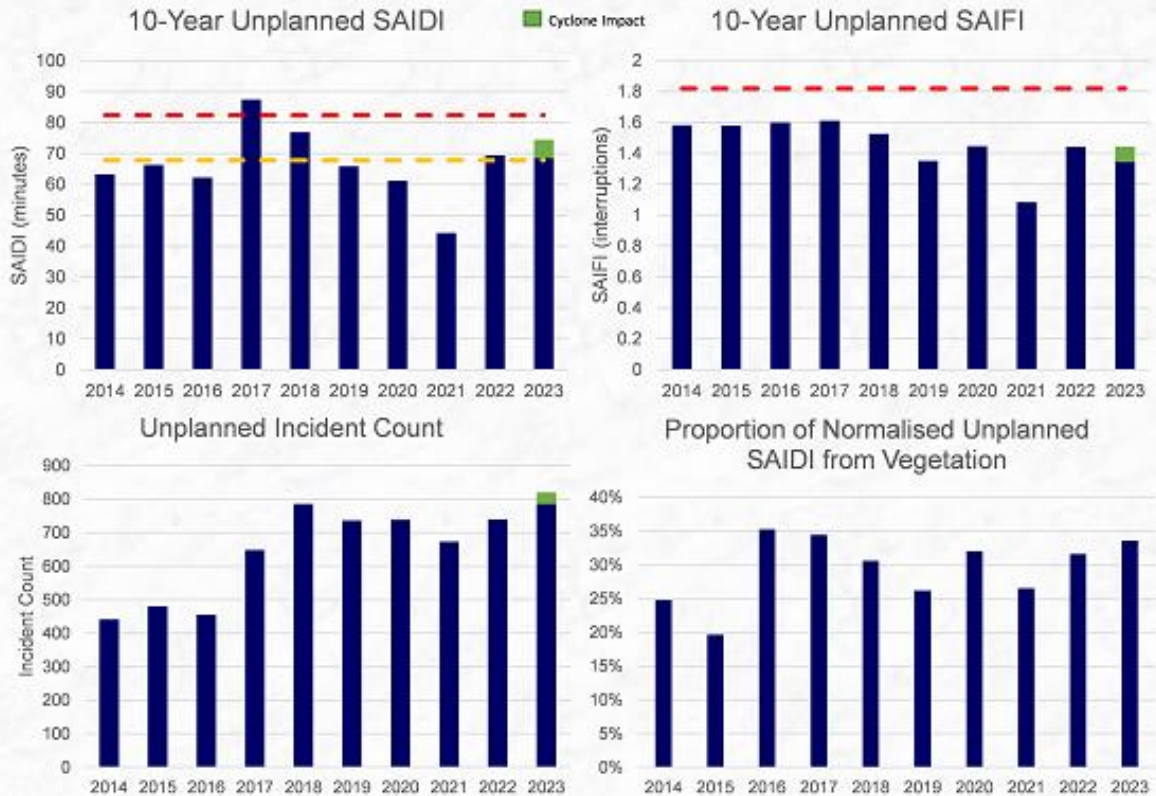
- Resilience requires protecting ‘redundancy’ in all parts of the electricity system (that is, alternative ways to convey electricity from one point to another):
 - High voltage 11kV and greater sub-transmission and distribution infrastructure that conveys electricity received from Transpower or embedded generators into people’s homes (on Unison and Centralines’ current networks voltages start at 33kV move down to 11kV, then to 400V and down to 230V – the household voltage level).
 - Low voltage networks (400V to 230V) will increasingly become two-way, with solar and batteries generating electricity to be distributed among households and businesses – infrastructure must be resilient to both distribute electricity down and up the chain (and protect the two-way flow).
- Climate change is already increasing the frequency and impact of severe weather events. Reactive solutions will not secure electricity supply for communities that may otherwise suffer the loss of critical infrastructure. Where other critical services are lost (access, communications, potable water, wastewater) the role of electricity is increased as a safeguard to health, wellbeing, and economic outcomes in the wake of an emergency. Cyclone Gabrielle’s impact on Hawke’s Bay made clear the criticality of electricity to community resilience. Restoring electricity became a primary welfare objective for civil defence.
- Affordability is an increasing issue for consumers and there is increasing pressure on the electricity system to quickly grow to support Aotearoa’s path to net zero. Inefficient costs need to be avoided, not just re-allocated or shared.

Fall distance zone trees cause the most outages from vegetation

Unison’s SAIDI and SAIFI data can be broken down to show how many trees fall on its electricity lines and cause outages. Figure 1 below includes normalised network performance data and the breakdown of vegetation caused outages in the 2022/23 financial year of: 87% caused by Fall Distance Zone trees (FDZ) vs 13% Other vegetation. Other vegetation is made up of Growth Limit Zone (GLZ), hazard warning notice zone, and outside of fall distance zone (usually bark). The key issue for MBIE is how to reduce outages from fall distance zone trees. Regarding cost, over \$100,000 of damage to Unison’s network from one span of trees is not rare.

Network Performance

Historical



2022/23 Financial Year

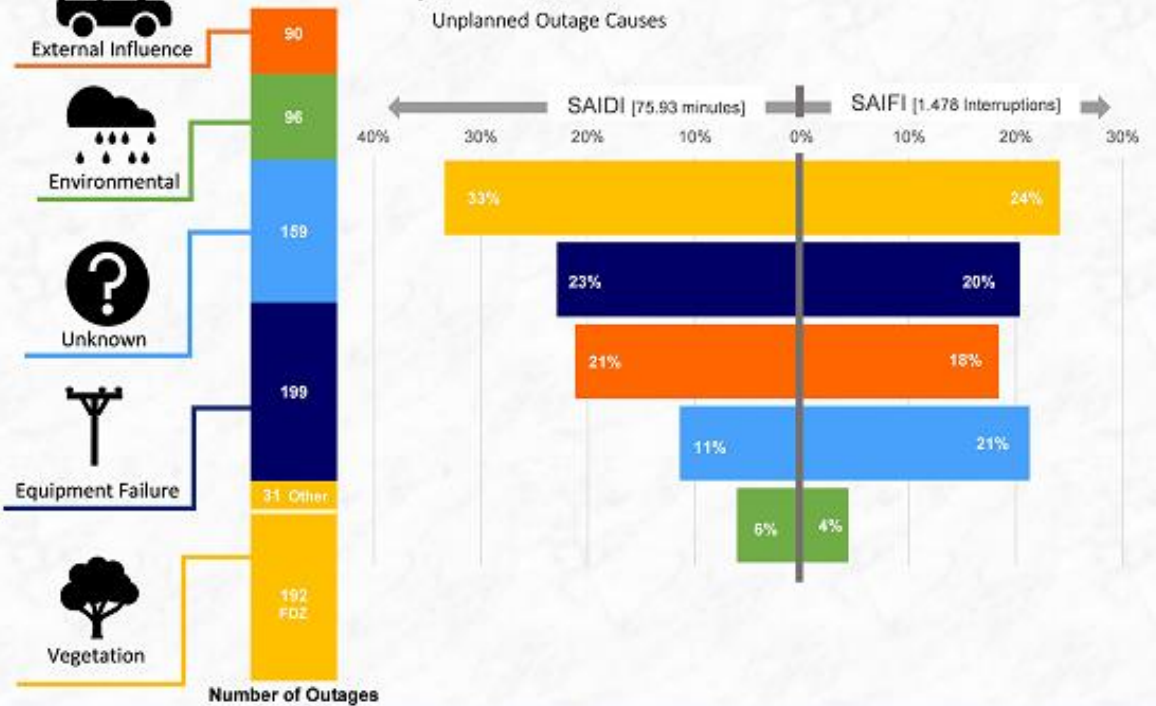


Figure 1: Unison network performance – normalised unplanned outage impacts and causes

Protect the public and works owners' employees better

Addressing risks to people and property "caused through electricity" (s 169(1)(2)), relates to all people, including the significant health and safety risks works owners must manage addressing vegetation risks. New Tree Regulations should improve the balance between:

- property rights and obligations;
- works owners' rights to maintain security of the electricity supply (as a public work);
- the party in control of creating or leaving the risk;
- the party in control of managing or removing the risk;
- protecting the safety of all people and property including under the Health and Safety at Work Act 2015; and
- cost and administrative efficiencies.

Fall distance zone trees are the greatest vegetation risk

On Unison's network, effective regulation of trees within the fall distance zone of its electricity lines has the potential to improve security of supply. Of the 224 vegetation incidents in 2022/23 recorded in Figure 1 above, 192 incidents were caused by trees in the fall distance zone (as opposed to 31 in the GLZ).

The table below records the number of ICPs (individual connection points i.e., households and businesses) that were affected by outages caused by trees falling on Unison and Centralines' networks, including total figures of 50,527 ICPs in 2021/22 and 65,226 ICPs in 2022/2023.

FY	Total Fault Count	FDZ Count	SAIDI Impact	ICPs Affected
2018/19	162	128	28.40174	25941
2019/20	180	145	39.267464	32088
2020/21	154	113	12.256588	18883
2021/22	244	208	46.845488	50527
2022/23	261	225	28.346441	65226

Figure 2: Unison & Centralines combined vegetation fault data – FY19-FY23

Climate Change is increasing the frequency and impact from vegetation

The role high winds and heavy rain plays in increasing the vegetation related outages is illustrated in Figure 3 below:

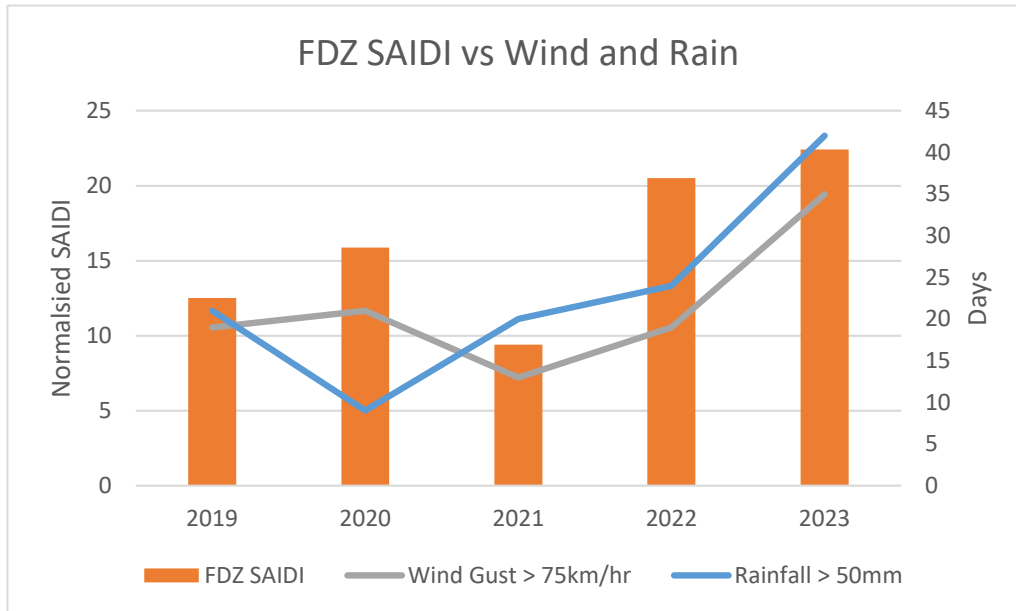


Figure 3: Unison SAIDI caused by fall distance zone trees 2019-2023 showing wind and rain

With climate change increasing the frequency and intensity of weather events, greater impacts on networks and customers from vegetation is foreseeable. New Tree Regulations must mitigate against this future, including the clear evidence it is upon us, as recently experienced through Cyclone Gabrielle. SAIDI and SAIFI normalise extreme weather events, therefore, as climate change events cause more damage to networks, the actual impact of vegetation on networks may not be transparent through that data (raw SAIDI and SAIFI, however, will show that impact).

All references to 'high voltage sub-transmission and distribution lines or infrastructure' in this submission describe distributor assets and equipment used for conveying electricity from Transpower or embedded generators at voltages of 11kV and greater, to lower voltage lines (400V and 230V) that feed electricity to consumers.

Evidence on the current problem

2

What considerations do you believe the Trees Regulations should have in respect to Te Tiriti o Waitangi?

Te Tiriti obligations and Māori rights and interests need careful consideration throughout the Review. Unison and Centralines acknowledge and welcome the valued perspectives from Māori, as kaitiaki of the land. This includes insights and views in relation to the management of Māori land as well as vegetation management, more broadly, in Aotearoa.

Unison and Centralines will ensure that they are available to discuss any concerns with iwi and hapū.

Possible avenues for MBIE's consideration and discussion with Māori are:

- a) bespoke provisions on conservation land (acknowledging the Te Tiriti provisions in the Conservation Act 1987);
- b) central government compensation for lost commercial potential on Te Tiriti settlement land;
- c) use of low native planting corridors on particular land uses near lines where the risk is demonstrably low;
- d) staged 'exit' of clearance corridors to secure supply, that is once existing trees are harvested as intended, proactive 'no replanting' rules apply;
- e) central government fund, and works owners assist, vegetation management work schemes sharing training and expertise;
- f) use of s 169(1)(3) of the Electricity Act 1992 (**Act**) to minimise impacts of works on any trees or class of trees ("interfere to the least extent practicable"), potentially applicable around native vegetation or trees that are otherwise protected by law or regulation;
- g) future Te Tiriti settlement takes into account the constraint to commercially use the land around 'at-risk' high voltage sub-transmission and distribution lines (explained below)
- h) financial incentives for forestry initiatives that ensure prudent planting and management around electricity infrastructure (for example to manage new carbon forests); and
- i) management of effects on biodiversity including flora and fauna, consistent with the National Policy Statement on Indigenous Biodiversity (**NPSIB**) and National Environmental Standard Plantation Forestry (currently under review) to minimise any potential harm from removing trees with particular value to indigenous wildlife.

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, this is critical to a security of supply and reducing safety risks. This will also avoid cost and resourcing intensive cycles of continuous inspection and trimming of dangerous trees (within the fall distance zone), and inevitable damage.

The key failures of the existing Tree Regulations to rectify are:

- Works owners should not have to put staff into dangerous health and safety situations to manage a risk another party has elected to take for a commercial benefit.
- Works owners should not have to absorb a significant administrative and resourcing burden (alongside cost) to manage risks that other parties control
- The consumer should not have to pay for the significant costs of work and rectification of damage that sit with that unnecessary risk.

The graph below breaks down vegetation incidents between FDZ and GLZ on Unison's network in 2022/23 and over the last five years.

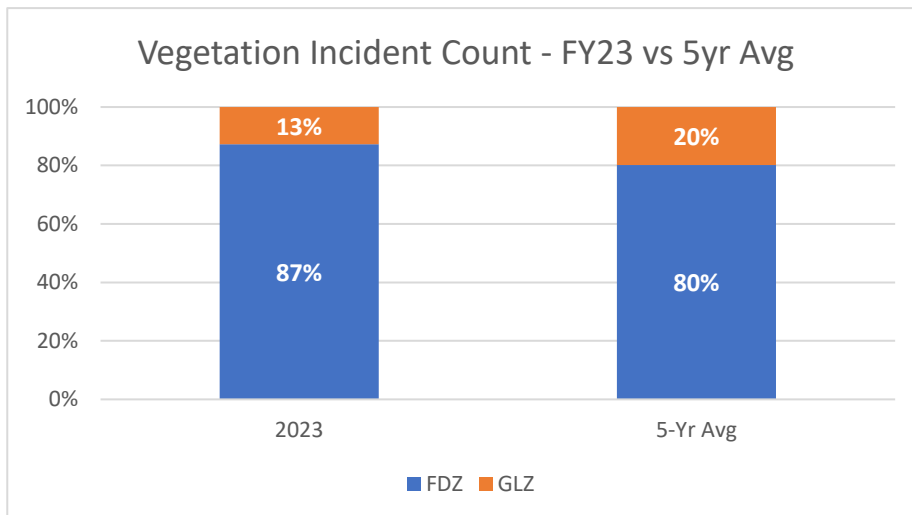


Figure 4: Vegetation incident cause 2022/23 and over the past five years

Consistent with the purpose of the Act and the Health and Safety at Work Act 2015, at a minimum, new Tree Regulations must create resilience and keep people safer by:

- securing supply through proactive clearance corridors around higher voltage sub-transmission and distribution lines (11kV and greater) where no alternate supply route is available, a wider GLZ around lower voltage lines, and removing barriers to works owners' managing GLZ risks; and
- where a clearance corridor is not considered justified by resilience (and therefore secured supply), transfer the risk of managing dangerously planted trees (near electricity lines) to the party choosing to take that risk, strongly justified in a commercial situation where the risk-taker benefits and must be prepared to absorb the requirements of the Health and Safety at Work Act 2015.

Other relevant information

4

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

No, we do not agree. At question 7 it explains the level of intervention required to meet the objectives of MBIE's review and achieve the right balance of rights and interests. Regulation is needed to provide a clear and practical ability for works owners to address the risk of tree fall.

The Courts are reluctant to order removal of trees

Despite the strength of Unison's case in the *Nottingham* proceeding the Court did not order the removal of the trees posing a risk to the lines.

The Courts will intervene only after repetitive damage has occurred

While the *Nottingham* judgment helpfully clarifies that tree owners are responsible for the risks they create, it is only after those risks manifest themselves – i.e., two incidents of actual damage – that there is a realistic prospect of a remedy. While an injunction could theoretically be sought on the basis of risk alone, this appears unlikely to succeed in view of the *Nottingham* result, where an injunction was refused even after repeated tree strikes. In Unison's view the aim of regulations ought to be primarily a matter of prevention, recognising that the consequences of a power outage on consumers can be significant.

Court is slow, expensive and comes after the worst outcomes

The circumstances that forced Unison to engage in a slow and expensive litigation process were extreme in the *Nottingham* case. This included repetitive foreseeable damage, ample warning by Unison (by a self-initiated process outside of the Regulations). This case has not deterred the forestry industry from dangerous planting or compelled the removal of existing high-risk trees by all of the forestry industry or other vegetation owners.

The judgment clarifies responsibility in particular circumstances

For background, the Court of Appeal decision helpfully clarified that a commercial forest owner will be liable for multiple incidents of damage to a network caused by trees planted near an electricity line. The specific facts in the case established a strong basis for an actionable nuisance for multiple incidents of damage (as opposed to a single tree fall causing damage). The legal tests are complex, and the likelihood of success will depend on the specific facts in each case. It would likely impinge on New Zealand's ability to reach an 'adequate' security of supply to rely on this decision.

The case also conveys the limitations of risk-based assessments for severe weather events. In the *Nottingham* case, two preeminent tree risk specialists provide a conclusive view on the fall risk of trees near the lines. Neither expert could conclude on the likelihood of any particular tree falling in a severe weather event. After hearing this detailed evidence the High Court judge was only prepared to conclude that there was likely to be a continued pattern of tree strikes in poor weather.¹

A detailed review of the High Court and Court of Appeal decision will clarify the nuances of the case. It does not provide sufficient regulatory certainty or resolve matters for works owners to justify no further intervention.

¹ See *Unison Networks Ltd v Nottingham Forest Trustee Ltd* [2019] NZHC 2280 at [67]. The Court of Appeal decision proceeded on the basis of the High Court's assessment and concentrated on the legal issues over the factual: *Nottingham Forest Trustee Ltd v Unison Networks Ltd* [2021] NZCA 227 at [14].

5

Do you agree with our preferred objectives of the Regulation, why or why not?

Promote adequate security of electricity supply, particularly in response to a changing climate
“Adequate security of supply” is vague and subjective. The evidence about what “adequate” means to MBIE’s stakeholders is not included or how MBIE will measure that standard.

To develop a case study of the economic cost of being without power, MBIE can look to the economic impact of Cyclone Gabrielle on Hawke’s Bay, including the lack of power to the entire city of Napier for four days (and to parts of the city for longer). Some rural communities experienced weeks without power following the Cyclone and will be able to provide feedback on the challenges and impacts on them. Beyond economic impacts, there were significant adverse social impacts felt from the lack of an essential service. If considered useful to the Review, Unison and Centralines can provide MBIE with direct input on Cyclone related questions. The key takeaway is that resilience requires better management of all risks to security of supply, including vegetation. As an essential component to the electricity system, distributors are under pressure to service increasing demand within a constrained envelope of expenditure. MBIE can assist in this transition and remove burdens that result in unsatisfactory outcomes for New Zealanders. Being able to measure the success or failure of the new Tree Regulations against a meaningful standard will enable improvements over time. Section 5ZN of the Climate Change Response Act 2005 supports MBIE to consider an electric future and the long-term role of the electricity system on the path to net zero.

Drivers for better management of future risks to security of supply are:

- increasing frequency of severe weather events and a foreseeable increase in damage from vegetation;
- the economic cost of outages will also grow rapidly as electrification increases;
- land use changes to carbon forestry or commercial forestry; and
- minimising disincentives to people and businesses electrifying and decarbonising Aotearoa.

Ensure vegetation management is undertaken in a way that provides for public safety

The regulation-making power in s 169 includes the protection of property, and relates to all people, including works owners’ employees dealing with significant health and safety risks when managing vegetation near lines, consistent with the purpose of the Act. It would be preferable to have this purpose additionally reflected in the objectives and to improve alignment with the Health and Safety at Work Act 2015.

6

Do you agree with our policy assessment criteria, why or why not?

Effectiveness: To what extent does this option deliver security of electricity supply and public safety?

Unison and Centralines agree that effectiveness should be more heavily weighted than (ii) and (iii). The intended measure of success is queried above.

Efficiency: To what extent are the administration and compliance costs proportional to the expected benefits, and to what degree are costs allocated to the party best placed to manage them?

MBIE is aware that many electricity distributors are subject to strict economic regulatory constraints (under the Commerce Act 1986) and ‘operating costs’ such as vegetation management are increasingly growing. Avoiding inefficient costs (as opposed to just re-allocating or sharing) will assist with the affordability of electricity. Distributors need to invest significantly in the next decade to support decarbonisation (quantified at collectively \$22 billion by the Boston Consulting Group in its 2022 *Future is Electric* report). MBIE can assist by removing extraneous costs and getting better value for money for consumers.

Regulatory certainty: How well does this option provide predictability of regulatory outcomes?

It is crucial to regulatory certainty that there is a simple and transparent system that can be clearly communicated, implemented, and enforced.

Issue 1: How should vegetation risks outside the GLZ be managed?

7

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

Unison and Centralines prefer options 2 and 4. To substantially reduce vegetation related outages on their networks (where the most damage occurs and cost is sunk), high voltage sub-transmission and distribution lines must be protected from fall distance zone trees. Networks have some redundancy built in, mostly at a 33kV level, but that it is too expensive for consumers to provide on every section of the network. A balanced proposal is therefore protecting ‘at-risk’ sub-transmission and higher voltage (11kV and greater) distribution electricity lines from fall distance zone trees where resilience is not built into the network - referred to below as ‘at-risk HVD lines’.

Experience with option 4

From 2013, Unison sent ‘fall hazard notices’ to owners of spans of trees after one tree struck a line. The purpose of the letters was to:

- identify and notify the vegetation owner of the trees in the span:
 - known to be in the fall distance zone of the distribution infrastructure; and
 - as a result of the single tree strike to the line, that other trees in the span were likely to cause substantial damage to Unison’s network if they fell;
- recommend the vegetation owner urgently remove the risk;

Following Nottingham

- explain the outcome of the *Nottingham* case including responsibility for all of the damage caused to the lines (back to the first tree fall).

Unison and Centralines consider this simple ‘fall hazard notice’ provides certainty to both parties (the works owner and vegetation owner) that: the single tree strike provided a basis for other trees in the span within the fall distance zone of the lines to be assessed as high-risk. If more than one tree fall

occurred over time, the tree owner would be liable to pay for all the damage to the distribution line. It, however, did not compel the removal of all dangerous trees. Without adequate regulation, works owners will struggle to achieve sensible outcomes.

The role of regulation

Tree Regulations are an essential mechanism to achieve the purpose of the Act. Court action is a last resort and can only be taken after the worst outcomes have occurred. Regulation must outweigh the strong commercial incentives driving dangerous planting (and acceptance of existing risks). Simple rules and proportionate penalties are required. Without that, commercial cost-benefit analyses will influence parties to leave existing trees in place and continue to plant new lines dangerously.

Protecting an 'at-risk HVD line' (as described above) by at least a 24m radius is a simple method to clarify rights and responsibilities. Offence penalties must be of sufficient value (on a per tree basis) to combat the commercial incentive.

For greater success, a cohesive policy framework can use other regulatory mechanisms that manage land use. To avoid the creation of new risks (and wider communication and understanding of the new Tree Regulations), the following mechanisms are available for MBIE to engage with Ministry for the Environment (MfE) and the Minister of Primary Industries (MPI) about:

- Resource Management Act 1991 (RMA), or its successor - national direction to provide bottom-line planning rules (and conditions of consent) to direct the distance trees can be situated from lines (through a National Policy Statement - Electricity System and relevant National Environmental Standards). This can safeguard the resilience of distribution infrastructure. The existing separate national direction for renewable electricity generation and electricity transmission leaves a fundamental gap in the protection for distribution - an essential component of the system. MfE are consulting on changes to the NPSs Renewable Electricity Generation and Electricity Transmission now.
- National Environmental Standard for Plantation Forestry (**NES-PF**) - specify at least a 24m setback from any electricity lines or infrastructure. A gradient assessment should justify a larger setback where appropriate. Trees that sit high above lines have a greater fall distance zone than the height of the tree.
- An example of an existing public safety constraint on forestry activities (in clause 14 setbacks) is preventing planting: "*Where a plantation forest tree, when fully grown, could shade a paved public road between 10 am and 2 pm on the shortest day of the year, except where the topography already causes shading*".

MPI are considering national direction for plantation and exotic carbon afforestation now, including managing the environmental effects of all exotic carbon forests. Affecting security of supply for electricity consumers is relevant, as it is an environmental effect (under the RMA).

- Emissions Trading Scheme incentives or disincentives to reward or penalise dangerous planting that puts security of electricity supply at risk (given its role in decarbonisation).

Managing the risks of vegetation is not unique to the Electricity Act. Other legislation permits the management of vegetation for safety reasons and to protect critical infrastructure. Section 355 of the Local Government Act 1974 permits councils to require the removal of overhanging trees that may cause injury to the road or obstruct traffic; and the Local Government Act 2002 (and Bylaws Act 1910), are used to protect council infrastructure and roads, including from vegetation.

The impact of new Tree Regulations addressing ‘at-risk HVD lines’

Effective regulation around ‘at-risk HVD lines’ will provide significant resilience to the electricity system and substantially reduce outages, without significant compromises on amenity for the public in an urban residential setting.

Beyond the additional resilience to all consumers, funds and resourcing to better manage vegetation risks on the remainder of the network would become available. This would achieve a reduction of overall risks in urban and rural areas (additionally improving security of supply and reducing public safety risks). In addition, Unison’s two worst performing feeders (that is, the lines which most frequently suffer outages) are fed by high voltage distribution lines running through forestry land, and the communities ‘at the end of the line’ would immensely benefit.

The following image from Unison’s LiDAR survey in 2021 shows how close and dangerous forestry trees can be to networks:

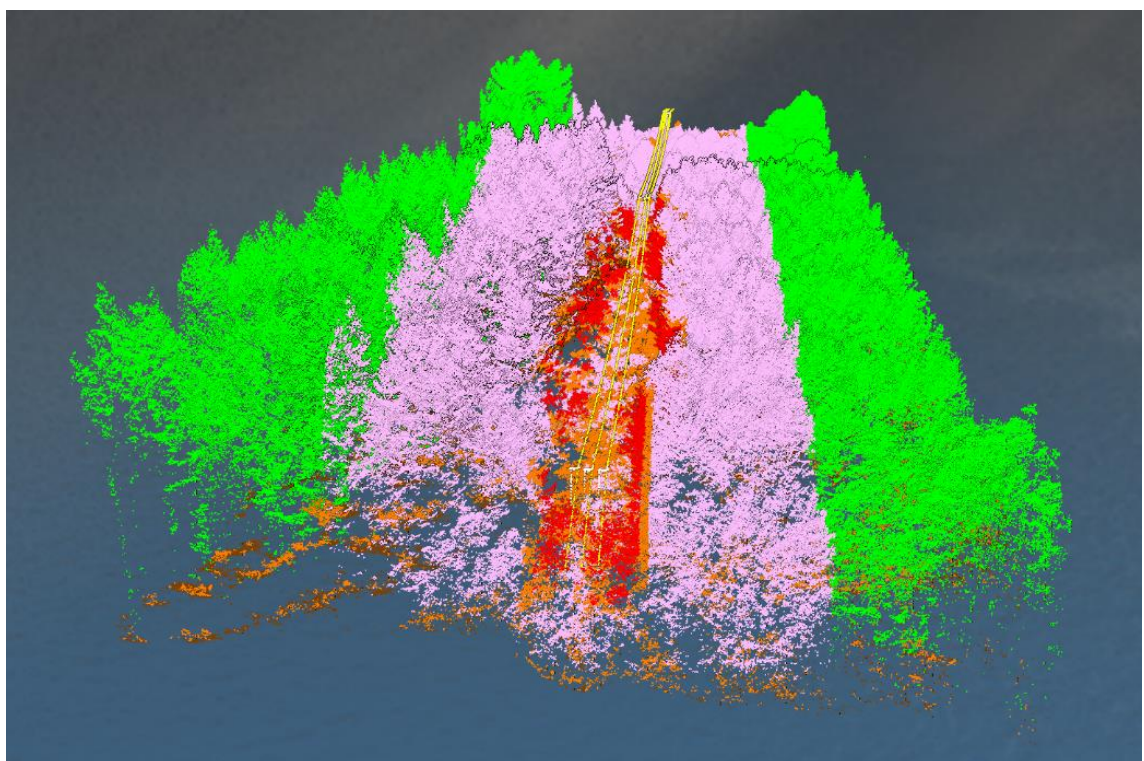


Figure 5: Unison LiDAR image from forestry land in Taupō (2021)

Red = Growth Limit Zone;

Orange = Hazard Warning Zone;

Pink = proposed ‘at-risk HVD line’ clearance corridor (24m each side of the conductor)

Examples of expensive damage to Unison’s network from dangerously planted commercial trees

In 2021, trees within a forestry block fell across 11kV lines damaging the lines, 3 spans of conductors and cross-arms. Further damage occurred as the forestry company addressed tree risks near the lines. Labour, traffic management and helicopter crews lead to costs above \$140,000 to rectify.

Since 2019:

- trees within a forestry block fell across 11kV lines damaging the lines, 3 spans of conductors and cross-arms. Labour, traffic management and helicopter crews lead to costs above \$140,000 to rectify; and
- a single tree fell damaging one of Unison’s lines and caused over \$150,000 of damage mostly made up of labour, helicopter and equipment costs.

A defined, easily implemented set back/clearance corridor is sought, i.e. 24m either side. However, Unison and Centralines’ data shows that the most customers are affected at once by faults on 33kV and 11kV lines where the gradient of the land is 20 degrees or above. The appropriate clearance corridor on steep land may need to be greater than 24m, to adequately account for the increased fall distance zone of a tree sitting on a gradient above a line (which can fall a greater distance than its height).

8

Would a ‘likely to interfere with’ approach work if ‘likely interference’ were clearly defined and limited in the regulation? What would this look like to you?

In Unison and Centralines’ regions, telecommunications infrastructure generally sits under the ground or alongside distribution infrastructure, meaning works owners often manage or remove the risk by absorbing the costs in their own vegetation management. Accordingly, the complexities in interpreting and applying this type of a test may not be clear from the telecommunications industry.

The underlying cause of “likely to interfere” will predominately be the distance of the vegetation from the line. Rules based on distance are a simpler method of regulation that is more consistent with MBIE’s assessment criteria.

9

Would a ‘likely to interfere with’ approach work if combined with a risk-based approach?

Unison and Centralines are firmly of the view that a simpler regime is required with stronger incentives to combat the most significant risks on their networks. This should be achieved by protecting critical ‘at-risk HVD lines’ from fall distance zone trees where there is no alternate line of supply at that point in the network.

Allowing any trees within the fall distance of at-risk HVD lines would not adequately protect consumers from the risk of outages. Interference is likely to result in power outages for consumers if there is no way to bypass the critical section conveying electricity from sub-transmission to households. This is primarily because any standard of ‘likelihood of interference’ will be difficult, expensive, and time-

consuming to implement for works owners, so an objective (fall distance) standard is necessary. As the evidence in the *Nottingham* case demonstrated:

- Assessing the fall risk of a single tree is a matter of judgement based on multiple factors and assumptions including: tree variety, height, health and location, as well as soil characteristics, elevation and environmental conditions. It is something that experts may reasonably disagree on.²
- Complex issues arise where lines are threatened by a group of trees that – each in isolation – may pose a small risk of failure, but which taken together indicate a high statistical probability of failure.

In respect of vegetation around other distribution infrastructure, it seems that a likelihood and risk-based assessment could strike an appropriate balance, but dispute resolution would need to recognise:

- The importance of stating a clear test as to the relevant likelihood and risk factors.
- The need for a system that does not pose an unworkably expensive or time-consuming resolution process.
- Appropriate expertise among decision-makers, will be required to:
 - understand and take appropriate account of the multiple variables involved in tree risk assessments – either as experts or with the assistance of experts;
 - balance property rights and other rights and interests (for example, as an arbitrator/RMA Commissioner would be); and
 - write robust and legally justified decisions that will assist the industry gain certainty in the future (Utilities Disputes Limited must only “have regard to any legal rule or judicial authority that applies” under cl 24(a) of the General Scheme and Rules for the Energy Complaints Scheme).

10

What is your preferred option out of the options proposed by MBIE for issue 1? Are there any options you would recommend that have not been considered?

Unison and Centralines acknowledge the pragmatism of an approach that fits within the existing system. Improved regulation is required to protect overground networks as the cost to underground electricity distribution infrastructure is approximately \$1.1 million per km of line (\$61 billion across Unison’s network). Centralines’ network is almost entirely overground.

Working through MBIE’s proposed options (dismissing Option 1 – retaining the status quo):

Option 2 - a much wider GLZ, has the potential to address urban risks more effectively but unless it was to the fall distance zone it will not address the most significant risks to Unison and Centralines’ networks.

² See *Unison Networks Ltd v Nottingham Forest Trustee Ltd* [2019] NZHC 2280 at [50]-[67].

Option 3 - a broad power to address vegetation 'likely to interfere' is limited by the accuracy of an expert's ability to quantify the risk of fall in a severe weather event.

Option 4 – a new notice category, MBIE's preferred option, has merit and can be used to empower greater risk management by both works owners and vegetation owners.

The greatest benefit would arise from protecting 'at-risk HVD lines' with certainty as described below, and simplified and more effective powers to works owners to implement the existing Tree Regulations.

The amendments proposed are:

Protect 'at-risk' higher voltage sub-transmission and distribution lines and infrastructure

- Enable protection of critical high voltage sub-transmission and distribution lines 11kV and greater from fall distance zone trees, where resilience is not currently built into the network - 'at-risk HVD lines'.
- 'At-risk HVD lines' can be determined by works owners' assessing two factors:
 - Is there an alternate line that can bypass the 'at-risk HVD lines' and convey electricity from sub-transmission and distribution feeders to the 400V and 230V lower voltage distribution infrastructure to enter households and businesses?
 - Is the identified alternate line resilient to fall distance zone trees? (That is, only one of the two paths of supply need to be protected by a clearance corridor).
- Create strict liability for contravening that regulation (unless a validated reason to leave a tree in situ i.e. under the NPS IB). Where a corporate party offends against the regulation, impose a \$1000 fine per day ongoing offence, up to a maximum \$50,000 fine (s 169(1)(31)) explicitly on a per offending tree basis, noting Regulation 26 currently caps maximum at \$10,000.
- Establish a transitional period (of a reasonable and defined period) to enable existing vegetation to be removed from within at-risk HVD lines corridors.
- Enable the enforcement of new regulations prohibiting planting in the new at-risk HVD lines corridors from the date they come into force.

All sub-transmission and distribution infrastructure (below 11kV)

- Protect lines from overhanging vegetation 'a clear to skies' approach, acknowledging the obvious unacceptable risk of a branch overhanging power lines or distribution infrastructure (and increased risks to works owners and the public of removing that vegetation).
- Oblige vegetation owners to tell the works owner if their vegetation is encroaching on the GLZ.
- Remove all consent requirements for works owners to access land and remove offending vegetation (leave a notice requirement only – consistent with s 23 'existing use rights').
- Remove eligibility for the first cut or trim or, at least, amend it to be on a per property title.
- Extend the ability to cut or trim vegetation back to prevent any encroachment on the GLZ when empowered by Regulation 14 to address "an immediate danger".

- Remove the “no interest in tree” notice.
- Provide a transitional period to enable tree owners adequate time to address existing risks, with immediate enforcement for new planting (from the date of the new Tree Regulations coming into force).

Dispute resolution

- Expand the role of arbitration (that is not confidential) or use other decision-makers bound by the law to create a transparent, easily applied, precedent developed over time.

Issue 2: How can the Trees Regulations prevent the over-trimming of hazardous vegetation, which can result in unnecessary diminution of economic or amenity value?

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

Unison and Centralines repeat the concerns held for the “likely to interfere” test and a risk-based assessment. To minimise regulatory uncertainty, transparent dispute resolution with appropriate legal and vegetation expertise is required.

A more efficient manner to regulate would be to ensure a safe distance between vegetation and the lines.

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

In addition to the key risks identified by the ENA:

- fire risk, with reference to the extent of the works owner’s equipment to minimise that risk (and level of residual unresolvable risk); and
- whether there is a commercial benefit to situating vegetation close to the lines.

The principles of the South Australian regulatory regime are fit-for-purpose, with the exception of amenity value. This is highly subjective and likely to cause a large number of disputes. The purpose of the Act should outweigh amenity, except where law or regulation has otherwise protected the vegetation’s amenity value.

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

Yes, otherwise the objective of protecting public safety cannot be met.

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?

Unison and Centralines consider that the scoring of option 2 should be more adverse. Overlaying it on the existing regime would cause additional administrative burden and cost to the already intensive process required within the GLZ.

Option 4 is preferable if the administrative burden and cost associated with part of the existing Regulations is alleviated (i.e., through an 'at-risk HVD line' regulation empowering a clearance corridor).

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?

It is challenging to repetitively address these risks with difficult vegetation owners.

Under question 10 removing the requirement to obtain consent from the landowner to access land is listed. It is both necessary to meet the purpose of the Act, and consistent with s 23 'existing use rights' to remove the consent requirement for works owners to access land and remove offending vegetation. A notice provision is sufficient to inform landowners and occupiers that the works owner considers it is necessary to remove the risk of the vegetation.

If consent to access is not removed, an improvement is to permit works owners to:

- remove an encroachment into the GLZ when addressing an immediate danger; and
- obtain consent from an occupier (who experiences the ongoing safety risk).

If the works owner has not been able to obtain permission to access land and cut or trim by the vegetation owner, it is unlikely to receive that in the future, or be able to rely on the vegetation owner to comply with the Regulations and arrange for it to be trimmed themselves. It can also be difficult to obtain accurate contact details for a landowner, but occupier details may be obtainable.

Issue 3: How should the Regulation balance the responsibility of vegetation owners and works owners?

16

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

Unison and Centralines are conscious of the difficulty for any party in remote areas. Unison undertook a LiDAR (Light Detection and Ranging) survey in 2021, which identified a significant number of GLZ risks in its three regions. This was informative but much too expensive to be frequent. In terms of the existing GLZ, vegetation grows fast, and it is impossible to have a current record. Cyclone Gabrielle will have had a material impact.

An obligation on vegetation owners to identify any encroachments into the GLZ (with an additional requirement when there is an immediate danger to people or property from contact with a conductor) will assist works owners to prudently respond and minimise safety risks. This aligns with the

requirement under Regulation 5 to publicly notify consumers about: the risks from vegetation contacting lines, and offences under Regulation 26 (including fines). It is critical that vegetation owners are 'on notice' that they must proactively monitor their vegetation and the resulting risk.

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?

Unison and Centralines' preference to remove the allocation of responsibility to the works owner for the first cut and trim is discussed at question 19 below. An alternative to improve the administrative burden would be to apply it on a pragmatic per property title basis only (as opposed to per tree). For large properties, especially commercial properties, the identification on a tree-by-tree basis is challenging. Reducing the burden of record-keeping and repetitive visits would make resourcing available to reduce other risks to the network. A one visit, per property title basis may influence vegetation owners' education and willingness to accept responsibility going forward. It would clearly mark a point in time where responsibility for the risks on the property is transferred. That clarity will assist works owners to enforce Regulation 26 and the fines for offences.

18

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

As above.

19

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

Unison and Centralines consider that both option 2 and 3 would significantly improve the status quo. To meet the objectives of MBIE's review, Unison and Centralines need more funds and resourcing available. Regulation that increases administrative and cost burdens on works owners will challenge them at a time where cost and resourcing is stretched. As such, option 3, and the removal of the first cut and trim may alleviate potential administrative and cost allocations that would result from other proposed changes in the Regulations. The level of cost allocating and sharing must be re-evaluated holistically with the proposed amendments settled. Security of supply and public safety benefits will only result if the associated burden on works owners does not increase.

Issue 4: What should be the process for works owners to access vegetation on private land?

20

What is your preferred option out of the options proposed by MBIE for issue 3? Are there any options you would recommend that have not been considered?

The purpose of the Act justifies removing the requirement for consent under the Regulations

The limitation to obtain landowner permission is a barrier to managing risks effectively (especially in urban areas).

The Act accepts through s 23 that “existing use rights” of works owners justifies a notice only approach. There is no equivalent consent requirement. Cutting and trimming trees in an encroachment zone where vegetation is prohibited is necessary maintenance to provide electricity services, and a natural extension of ‘existing use rights’.

Removing the consent requirement to access land to cut, trim or remove vegetation that offends against the Tree Regulations is robustly justified by that being accepted as an appropriate ‘right’ in s 23.

At a minimum, occupiers are left with a personal safety risk and must be able to consent

While a landowner may be uncontactable or take no responsibility, the occupier is faced with the personal safety risk (in addition to the works owner being exposed to network damage). This leaves works owners limited options, needing to wait for “an immediate danger” to present before accessing property to remove it. Extending rights to occupiers to consent to vegetation management by works owners (preferably to remove encroachment to the GLZ) will improve their safety and their neighbours. Councils could also helpfully be required to provide works owners with relevant landowner or occupier information, where that is otherwise difficult to obtain.

Issue 5: How should disputes between vegetation and works owners be resolved?

21

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?

Under question 11, decision-makers need appropriate expertise in:

- balancing property rights against other rights and interests, bound by the law;
- assessing the risks of trees falling (if that is considered to have utility); and
- decision drafting to develop a useful body of legal precedent and increase certainty over time.

The Act includes two sensible approaches for the balancing of property rights against the rights of works owners, that is the arbitration method (proposed) and the Environment Court as set out in 23F of the Act. An expert is likely needed to settle a dispute, or otherwise expert evidence (which is likely to be costly and involve two conflicting assessments that must be fairly considered). A Resource Management Act 1991 Commissioner may hold useful expertise.

In any event, having an independent tree expert as a decision-maker may minimise the need for each party paying an expert – which would be a significant cost burden on works owners, especially when there is a high chance that expert evidence will provide little assistance to quantifying the risk of fall in severe weather conditions (as per *Nottingham*).

Offences and penalties

22

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

Factors that disincentivise Unison and Centralines imposing penalties under the Tree Regulations are:

- challenging record-keeping obligations on a tree-by-tree basis, and vegetation owners in disagreement over who has been allocated responsibility; and
- engaging in UDL disputes with decision-makers who must merely “*have regard to any legal rule or judicial authority that applies*” under cl 24(a) of the General Scheme and Rules for the Energy Complaints Scheme, as opposed to implement the law.

To get better outcomes, improvement in these areas is required. Regulatory certainty providing clear rules will assist with managing customer relationships. MBIE could explore different penalties depending on the use of the land and whether it is for commercial, private, or public benefit.

Arrangements for monitoring, evaluation and review

23

Do you have any comments on our proposals for monitoring, evaluating and reviewing the Trees Regulations, for example when a review of the new Trees Regulations should occur?

Careful drafting of the new Tree Regulations is needed to protect against unintended consequences, including any impact on common law rights (see para [69] of the *Nottingham* Court of Appeal judgment). Unison and Centralines suggest circulation of a draft amended version of Tree Regulations to test how the balance struck performs against MBIE’s objectives.

Ineffective, expensive, or administratively intensive regulation will significantly impact works owners and consumers. To support New Zealand’s decarbonisation objectives, there should be a review of the Tree Regulations at least every five years.

It would assist to clarify the assessment criteria to enable a review of the new Tree Regulations against consistent, measurable standards.

Additional feedback

24

Do you have any additional feedback that you would like to provide on the regulation or the options we have proposed?

Unison and Centralines are happy to provide any additional information to MBIE to assist the Review or discuss its submission. We welcome MBIE officials to Hawke’s Bay to see some of the most challenging vegetation risks experienced on the networks and meet with people within the business who are experienced in the management of vegetation risks.