

Submission

Establishing risk assessment factors for amendments to the Electricity (Hazards from Trees) Regulations 2003

Submission to:
Ministry for Business Innovation and Employment

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Submitters

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of Aotearoa New Zealand's plantation forests and over 70% of the annual harvest.

The New Zealand Farm Forestry Association (FFA) represents people who own small-scale private forests and/or are interested in the many values of trees. Currently FFA have over 1200 members representing a good cross-section of the approximately 15,000 entities owning private forests in Aotearoa New Zealand. Small forest owners represent more than 96% of the participants in the New Zealand Emissions Trading Scheme.

In 2024, the forest growing sector was worth \$6.6 billion in export value and has a 12% share of rural land use. It contributes 1.6% of New Zealand's GDP and employs approximately 42,000 people in wood production, processing, and wider commercial sector.

Summary

We support the intent of the risk assessment factors proposed for the Electricity (Hazards from Trees) Regulations 2003 in that they are a screening tool intended to support informed decision making about the risks from tree fall and not an obligatory checklist of criteria mandating tree removal. However, we recommend the risk assessment factors are amended from those proposed in the factsheet provided by the Ministry for Business Innovation and Employment (MBIE). Specifically, the FOA/FFA urges MBIE to recalibrate the proposed risk assessment framework to:

1. Embed the NZARB Tree Risk Assessment 2024 as the national standard¹.
2. Remove factors that lack verifiability or sit outside legislative scope.
3. Incorporate tree owner impact criteria alongside infrastructure risk as part of the proposed risk assessment factors.
4. Preserve statutory consistency and equity across land uses.
5. Avoid imposing unjustified setbacks that undermine sustainable afforestation and property rights.
6. Include a mandatory requirement for lines owners to consult with tree owners and a framework for referral of disputes to an independent arborist.

Introduction

FOA and FFA welcome the opportunity to make a submission on the risk assessment factors for amendments to the Electricity (Hazards from Trees) Regulations 2003. We acknowledge and appreciate the opportunity to participate in workshops with other stakeholders to provide feedback.

1. ¹ <https://www.nzarb.org.nz/mis>

The current feedback opportunity, Phase 2, follows on from the Phase 1 changes made in 2024 which increased the cutback zone by 1 metre, increased the notice zone by 2metres and created a clear to the sky growth limit zone. Phase 2 of consultation proposes the following amendments:

1. Restriction of new plantings on non-urban land not already forested within 24m each side of the conductor. This will create a 50m-wide constraint on future afforestation.
2. Extension of the scope of lines covered in the clear-to-the-sky Growth Limit Zone from the previous 11kV to include all non-urban lines.
3. Introduction of a treefall hazard notice that lines owners can serve on tree owners, after assessing the likelihood and impact of a tree falling on a line. The tree fall hazard notice requires application of a risk assessment matrix to assess tree fall risk. If the assessment is of a moderate or high risk, the works owner can require its removal, at the works owner's expense. The treefall hazard risk assessment is carried out by a works' owner. Works owners may consult with a qualified forestry advisor to provide a higher level of confidence for the risk assessment.

The following section responds to questions proposed in the consultation document.

Response to questions

1. Are there any other factors that are relevant to the likelihood or impact of a tree falling on an adjacent line?

Lines companies do not own the trees and have limited rights of access. For electricity lines installed after 1992, there are no statutory rights of entry to private land beyond those provided under section 23 of the Electricity Act 1992 for access to the “works”. Accordingly, tree assessments should be limited to visual inspections from the lines corridor. In cases where site-specific factors indicate that physical testing may be necessary (for example, coring, root testing), further inspections must be negotiated with the tree owner to uphold private property rights. Such arrangements should be made on a case-by-case basis.

We are concerned that the proposed risk assessment factors draw heavily on factors derived from US based sources. New Zealand and Australia have produced industry guidance on tree risk assessment, methodologies, practices and standards (NZARB Tree Risk Assessment 2024)². The Standards were produced by the New Zealand Arboricultural Association and Arboriculture Australia Limited. The peer reviewed document provides a body of knowledge and core standards for tree risk assessment for arborists in New Zealand and Australia. It sets out a framework for how tree risk assessment systems may be applied. As arborists must have relevant New Zealand qualifications and given the standards were designed with New Zealand conditions in mind, the NZARB standard should take precedence over international standards. The NZARB standards list the following factors for tree risk assessment:

- Developmental
- Health
- Diseases

² <https://www.nzarb.org.nz/mis>

- Abiotic
- Edaphic
- Environmental
- Structural
- Human intervention

These factors are further broken down into different topics to be assessed along with visual and written guidance on what is to be assessed. An example within the “*Environmental factor*” is the topic “*Exposure, for example, recently exposed or well-protected*”. The comments included highlight how context matters in a specific setting and state:

“Degree of exposure can be either a positive or negative risk factor.

Recently exposed trees...may have an increased Likelihood of failure until they have adapted to their new environmental conditions.

Well protected trees that are closely surrounded by other trees or structures may be at a reduced likelihood of failure.” (Page 37).

Recommendation:

The NZARB Tree Risk Assessment framework should be incorporated as the authoritative basis for assessing treefall risk in New Zealand.

2. Are the proposed factors specific enough?

We consider that several of the proposed factors lack the clarity and definition necessary for consistent, defensible assessments. As tree risk evaluation is inherently subjective, vague descriptors will exacerbate inconsistencies between arborists.

For example, “*proposed factor 6 –Topography puts trees at elevated risk of falling*” - is overly broad. The NZARB Tree Risk Assessment 2024 addresses this more precisely under the factor of “*Environmental*” which includes considerations such as erosion/landslip and soil cohesion/liquefaction. In other words, the New Zealand standard offers a clearer framework for assessing topographic risk.

Recommendation:

Replace the current likelihood factors with the more comprehensive NZARB Tree Risk Assessment 2024 framework.

3. Are there any other factors listed that you consider are unnecessary?

Several proposed factors should be removed due to irrelevance, duplication, or misalignment with the scope of the Regulations:

Proposed factors 1 and 3 – “Tree trunk shows signs of failure” and “Tree root plate is showing signs of failure”:

Risk factors assessing specific components of a trees appearance and health should be combined into a single whole tree assessment factor.

Proposed factor 2 – “Species of tree is predisposed to falling”:

The workshop presentations and discussions provided no specific list of trees in the New Zealand situation that would fall within the ambit of this factor. Arborists already consider structural or biomechanical traits as part of broader health and form analysis.

Proposed factor 5 - “Tree has previously damaged adjacent line”:

Prior interaction (for example, a branch previously falling on the line) is not an indication of the likelihood of stem or root failure. The NZARB framework instead recommends assessing evidence of failed structure such as hanging branches, hung up trees, etc.

Proposed impact factor 12- “Tree will damage property if it falls”:

General property is outside the scope of the Electricity Act 1992 and these regulations.

Proposed impact factor 15 - “Medically dependent customers”:

There is no mechanism in place for tree owners or line companies to maintain up-to-date records of the locations of customers who may relocate at any time without advising their electricity provider.

Recommendation:

Remove factors 2, 5, 12 and 15 and realign and balance network concerns with landowner interests for the reasons set out below. Combine factors 1 and 3. This recommendation would be superseded if the recommendation to adopt the NZARB Tree Risk Assessment Framework is implemented.

4. Inclusion of Forest Owner Impacts

We note that all the impact factors centre on electricity supply and customer disruption without reference to factors that reflect the economic or environmental significance of the trees to their owners. Accordingly, the framework lacks balance and must also consider:

Impact on the tree owner’s economic interests or forest management plan including:

- Loss of income from carbon forestry credits and timber
- Disruption to harvesting
- Ownership rights
- Risk of disproportionate economic harm to the landowner

Loss of operational consequences for forest or landowners, including:

- Disruption to silviculture or harvest plans
- Breach of Emissions Trading Scheme (ETS) obligations which would incur a carbon liability payment

- Conflict with biodiversity covenants or consent conditions.

Management options including:

- whether there are other options available for management of the tree including pruning or removal.

Recommendation:

Provide scope within the risk assessment factors to weight economic and / or ecological impacts on tree owners; for example, “Significance of the tree to the landowner’s environmental or economic interests”.

5. Do you have any further feedback on the factors?

Consistency with existing regulations

Consistency with the requirement of regulation 7 (hazards warning notice) and regulation 9 (Cut and Trim notice) should be maintained. It is important that tree owners retain the ability to issue a “no-interest tree notice” for out-of-zone trees pursuant to Regulation 15.

Consistency with proposed regulatory amendments

There is currently no indication of how the proposed setback requirement aligns with the latest draft National Policy Statement (NPS) or National Environmental Standard (NES) for electricity transmission. This suggests a fragmented policy approach, with government agencies operating in isolation. Matters relating to activity setbacks are more appropriately addressed under the Resource Management Act (RMA), where integrated land-use planning frameworks already exist.

Single tree assessment

We understand that the proposal is predicated on a tree-by-tree assessment approach. It is essential that this requirement is retained, particularly given the absence of any compensation mechanism. Without such an approach, the policy could amount to a regulatory taking — a measure not provided for under the Electricity Act 1992, except in cases where the trees were established prior to the construction of the lines.

Involvement of tree owner in assessment process and dispute resolution

While the proposal currently allows line owners the discretion to consult with tree owners, this should be a mandatory requirement given the implications for private property rights.

Further, in circumstances where the tree owner disputes an arborist's assessment, there should be a provision for an independent peer review conducted by a registered NZARB-certified arborist who is unaffiliated with either party. We suggest that costs of the independent arborist should be shared by the parties under this scenario. This would

promote consistency in assessment methodology and help mitigate subjectivity, particularly where decisions affect valuable commercial forestry assets.

Fixed setback requirement

The proposal to include a regulation excluding future afforestation from a 50m wide corridor is not consistent with the intent of the proposal to reduce the impact of out-of-zone trees. This contradicts the stated intent of avoiding blanket corridors.

The purpose of the planting of a tree or the person planting the tree does not alter any likelihood of a tree becoming a hazard. In fact, many of the photos supplied by the line companies after recent storm events have shown trees from shelter belts falling across adjacent lines. Setbacks should be applied equitably across rural landowners, trees planted by any entity for any purpose should be subject to the same rules.

The setback is not supported by a cost benefit analysis and introduces inequities between forestry and farming (for example, there is no explanation why a farmer can plant shelter belt trees adjacent to existing lines, but a forester must set a forest 24m back from such a line). Such a provision could result in legal anomalies such as forestry “screened” by shelter belt/amenity planting or an erosion of ETS obligations.

Recommendation:

Remove afforestation setback provisions and consider line/tree interface design through the RMA framework or National Planning Standards in concert with the NES for electricity transmission.

Provide a fair process for the assessment of the trees with a mandatory requirement to allow for direct input from an independent expert if required by the tree owner and put in place a process for dispute resolution.

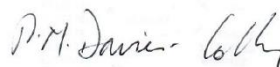
If the 50m corridor for new plantings persists in the regulations, then we request that compensation is paid to the landowner for the loss of use rights.

Closure

Thank you for the opportunity to provide this submission which we do not object to being made public. We welcome the opportunity for further discussion and engagement.



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