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Dr Warren Mundy,
Performance Benchmarking Australian Business Regulation,
Productivity Commission,
PO Box 1428
Canberra City ACT 2601

By Email: localgov@pc.gov.au

Dear Dr Mundy,

Re: Business Regulation Benchmarking: Role of Local Government

The MCF is a Division of the Australian Mobile Telecommunications Association (AMTA). AMTA is the peak industry body representing Australia's mobile telecommunications industry. MCF Members include Telstra, Optus, and VHA (Vodafone Hutchison Australia) being the three mobile carriers currently deploying mobile network facilities in Australia.

The three mobile network carriers operate networks comprising facilities on more than 18000 sites across Australia servicing the needs of more than 26 million mobile telecommunications subscriptions. In addition to their existing networks they deploy and maintain many thousands of new mobile network facilities across Australia each year. The mobile carriers continue to make a significant investment in network infrastructure (2800+ new or upgraded facilities) in 2011 to cater for the significant increase in mobile broadband subscribers.

Mobile broadband is in high demand throughout the economy with growth projections in the order of 280% to 2014 *(Source - Access Economics – Economic Contribution of Mobile Telecommunications in Australia 2010).* This has created a very significant demand for the infrastructure and an increasing reliance on the Local Government sector.

Given the significant interaction of our members with local government in all States, the MCF considers that this industry is ideally placed to comment on the PC's Terms of Reference for this Inquiry.

Our comments are in three sections:
- Local Government's role as an assessor of Development Applications
- Local Government's role as Land "Owner" / Manager
- Local Government's role in setting fees and charges

1. Local Government's role as an assessor of Development Applications

Approximately 60% of telecommunications facilities deployed by our members are exempt from State and Local Planning/Development assessment as a result of the Telecommunications (Low-impact Facilities) Determination 1997 (as amended).

However, despite the infrastructure comprising mobile telecommunications networks being of national significance, 40% of telecommunications facilities (primarily towers and poles)

are subject to development or planning consent from Australia's 561 Councils. Almost without exception, Councils have very limited strategic or policy frameworks within which to make their decisions in relation to whether to approve or reject Development Applications (DA's).

The MCF is a strong advocate for the Leading Practice Model for Development Assessment developed by the Development Assessment Forum (DAF) under the auspices of the Council of Australian Governments (COAG). In particular, the MCF has been advocating to State Governments across Australia that a significant proportion of telecommunications infrastructure can be appropriately assessed and determined by Pathways 1 (Exempt Development), 3 (Self Assess) or 4 (Code Assess) of the Leading Practice Model. These Pathways remove the need for Council to utilise unguided discretion, and they also provide greater certainty as an incentive to the carriers to produce better infrastructure solutions that meet best practice codes (e.g. co-location of infrastructure).

Over many years the MCF and its members have been working with the States to review or actively reform state planning and development approval systems to incorporate the Pathways outlined above, including changes in their state planning controls for telecommunications facilities. The primary objective has been the establishment of some certainty for classes of development that do not require a merits based assessment by local government.

We note that in NSW new planning provisions were introduced in 2010 for Telecommunications within the amended SEPP (Infrastructure) and *NSW Telecommunications Code including Broadband* to include a broad level of exemption for very specific types of telecommunications facilities that comprise a modern telecommunications network and do not impact upon amenity. This is consistent with DAF's Leading Practice Model. The capacity for the mobile network carriers to establish network infrastructure in NSW has greatly been enhanced, and state wide decision guidelines for Councils are clearer. Nevertheless, the majority of DA's in NSW still require consent from the Councils as the relevant consent authority.

The MCF is strongly encouraging other States to review their planning controls along these lines consistent with the Principles of the Development Assessment Forum. This allows Local Government to focus its energies on assessing development for which it has an appropriate strategic basis to make decisions.

Should the Productivity Commission require examples of delays, inconsistencies or the various blockers experienced by our members when dealing with Local Government in its role as an assessor of Development Applications, then the MCF could provide numerous examples.

2. Local Government's role as Land "Owner" / Manager

We estimate that 10% of the existing and proposed new sites will be located on land that is owned or managed by the Local Government Authority (usually the Council). The occupation of this land is under various arrangements across the States including formal occupation permits, licences or leases. In most cases that Local Government Authority will also be the "Consent" or "Responsible" Planning Authority for land use and development under the auspice of State Planning legislation.

Councils generally enjoy significant revenue and "in-kind" contributions towards local infrastructure as a result of the siting of network assets on Council land. For example, often the Carriers will upgrade lighting, including the installation of new light poles around sporting

ovals (upon which they then attach antennas), or contribute to the upgrade of pavilions and undertake landscaping works.

MCF member carriers have become increasingly concerned with the dual role of a Local Authority in these matters whereby Council is:-

(1) The Consent or Responsible Planning Authority for proposed development at a site; and,
(2) The public land manager or owner of the land.

Given the amount of activity by our members on Council land across Australia, we are well placed as an industry to observe that Councils have become increasingly unable to impartially fulfil these dual roles.

When a mobile network carrier identifies a site on Council land which best meets site selection criteria for the network (primarily network coverage and environmental considerations) and is commercially viable, it will commence negotiations with the local Council regarding the potential to enter into a lease for a small portion of Council Land (usually 60m^2 or less). At the same time the Carrier will undertake preliminary discussions with the Council's Planning Department to determine the likelihood of receiving development consent and the process for achieving that consent.

In almost all jurisdictions a Council may grant a lease or licence or renew a term over community land for any purpose provided it is consistent with a management plan or Council policy. Before a council grants a lease or licence over community land, it will often need to fulfil its obligations as the consent authority by assessing a development application (DA) for the infrastructure prepared by the Carrier.

In many cases a Council will only agree to commercial terms and the execution of a lease of the land subject to the proposal first receiving development consent. However, in many cases leases are being rejected by elected Councils as a knee-jerk reaction to minority community concerns, despite development consent being obtained through compliance with Council policy.

The carriers are also confronted with scenarios whereby a Tribunal (in the case of Victoria – VCAT) or a Court (in NSW – the Land and Environment Court) will often approve the Permit Application with the Council subsequently changing its position in relation to leasing of land.

When carriers identify sites on land owned by the private sector or other government agencies, commercial terms are agreed and lease negotiations advanced (usually to execution) prior to the lodgement of a development application. This is the case with other forms of development, be it for civil infrastructure or commercial development.

Conversely, negotiations with local governments require the lodgement and approval of a development application prior to the resolution of the commercial tenure with that Council. This results in carriers committing considerable resources and funds without any certainty that tenure will be granted (on the in principally agreed terms or for that matter any reasonable terms) upon issue of the planning consent.

We are concerned that the above scenarios are becoming increasingly common, and that member carriers are choosing to delay, defer or even abandon proposals designed to improve mobile coverage, call quality and network capacity in these areas.

3. Local Government's role in setting fees and charges

Local Government in most States is required to apply fees and charges set by regulation when these relate to the Planning system.

However, when States allow Local Government to set fees for planning or development applications and land tenure arrangements the result can be fraught with inconsistency and council "policies" emerge with little justification.

For example, the Local Government Act 1993 (Qld) provides Queensland Councils with the authority to set fees for development applications, and specifically section 1071A(2) provides that *"a regulatory fee must not be more than the cost to the local government of providing the service or taking the action for which the fee is charged.".* Whilst this seems reasonable, some Councils take advantage of the ability to set their own fees, and the telecommunications sector can be singled out for fees that are higher than can be justified.

For example whilst the Industry recognises that Queensland Councils need to recover costs and overheads the Banana Shire claims that application fees equating to more than $29,000 are needed to recover costs for processing Impact assessable development applications for a telecommunications facility. This well beyond any reasonable justification and equates to more than 10% of the cost of the actual development. This is the worst case that we have found and there are many other Councils that the MCF has pursued over the last 5 years.

When it comes to the leasing of Council land, requests have been received from Logan City Council in Queensland to the mobile network carriers for an "Establishment Fee" of $15,000 for telecommunications facilities which are to be located on Council land via a formal lease arrangement. The fee (should it exist) is not recorded in the lease and it is not listed in Logan Council's "Register of Regulatory Fees".

The recourse for examples like those above is lengthy and cumbersome generally requiring FOI requests to obtain the material assembled by Council to justify the fees outlined above, followed by recourse through the Courts.

It is our view that Councils generally do not have the capacity to effectively and impartially determine fees and charges, and as is the case in most States this should be left to the State Government in cases involving the Planning System and the use of Council/Crown land.

Representatives from the MCF would be pleased to discuss any matters raised in this letter with the PC. In particular, we have a number of case studies that may assist.

Yours sincerely,

Matt Evans
Mobile Carriers Forum