25 May 2012

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Performance Benchmarking Australian Business Regulation,
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Also submitted by Email to: localgov@pc.gov.au

Dear Dr Mundy,

MCF Supplementary Submission to Productivity Commission – May 2012

Re: Business Regulation Benchmarking: Role of Local Government.

The Mobile Carriers Forum (MCF) is pleased to provide this further submission to the Productivity Commission's inquiry regarding Business Regulation Benchmarking: Role of Local Government.

This submission provides some further details and specific examples of costs and inefficiencies imposed on the MCF's members by Local Government Authorities (LGAs) when seeking to deploy mobile network telecommunications infrastructure within their municipalities.

This submission also provides examples where interactions between MCF's members and individual LGAs are generally less difficult and provide more positive outcomes for both the industry and the Authority.

1. Costs and Delays

Local Government DA Application Fees, Delays and Determinations

The table below clearly illustrates a widely variable schedule of fees associated with development applications across different states in Australia, and between different municipalities within many states. While the administration of development applications for telecommunications facilities may vary between states due to differing planning regimes, it is certainly not that variable within the same state, and so the variations and complexities in cost regimes in the table below do not reflect the real administration costs of administering development applications for telecommunications facilities in many cases.

The time taken in assessment of applications impose a significant cost on industry, both in real administration terms, in sunk costs of resources and materials (which must be allocated even if there are delays) and in lost revenue returns from sites not yet commissioned. In addition, the delay in the delivery of enhanced coverage and service levels in the mobile

networks does have a significant impact on local economies and the community expectations. As can be seen in the table below, DA assessment durations can be very significant, and typically exceed the timeframes prescribed in planning regulations by several times.

While the generally high rate of approvals experienced across the states may be seen as a positive, it begs the question as to what value there is in the costs to industry and local government authorities in administrative burden and delays of seeking DA approval if the outcomes are not changed (i.e. the proposals mostly proceed anyway).

Metric	NSW-ACT	Vic	Tas	SA	NT	WA	QLD
DA Fee ($)	370-4,000[1]	604[2]	300-700	540-1,230[3]	675[2]	1,300	3,000-29,350 (Av. 5,500)
Average Duration of Consideration (days)	168	148	78	160		82	150
Delay Factor (x prescribed)[4]	4.2	2.5	1.9	1.9		1.4	1
Approved	83%	92%[5]	92%[5]	90%[6]	90%[6]	67%	88%

Note 1: Prescribed fee set by NSW government based on value of project
Note 2: Prescribed fee set by State government
Note 3: Prescribed fee set by SA government based on complex cost regime depending on value of project, whether compliant, referrals required and other factors
Note 4: Factor by which duration of consideration exceeds the duration prescribed by the relevant authority for consideration of DA
Note 5: Combined Vic-Tas
Note 6: Combined SA-NT

2. Specific Examples of Issue with LGAs

EXCESSIVE RENTAL DEMANDS

Collaroy Plateau - NSW: This is a “low impact” co-location on a Crown Castle monopole located in a park owned by Warringah Council. Telstra was required to install its equipment shelter outside the Crown Castle compound on Warringah Council land. Council advised that it viewed the existing Crown Castle site as a hub site and is strategic due to its location and height; Council advised a new Carrier on site will be required to pay the "single user rate for a hub location - shelter only" of $45,000 (excl GST) escalating by 5%. The land area is just some 20m^2. Telstra is currently endeavouring to negotiate a more reasonable ground lease rental with Warringah Council. Telstra served a low impact Statutory Notice on Council and has recently progressed the co-location, prior to the resolution of commercial negotiations.

Brisbane City Council – Qld: BCC has established a variable rental regime which is dependent on the town planning status of the development (not the land). The MCF

submits that this is inappropriate as the value of the land does not change by virtue of how the DA or exempt activity is assessed by Council as a statutory consent authority. BCC rentals are currently at the $30-52k p.a, which does not reflect the market rentals for the properties under consideration.

Gold Coast City – Qld: GCC has established a rental regime specifically for mobile Carriers, which is implicitly discriminatory since it imposes levies and charges only on Carriers which are not imposed on other potential users of Council lands, and cannot be justified in any commercial terms related to the Carriers' specific activities in regard to the use of such land. Currently rentals are around $17-18k, indexed 5% annually, and again do not reflect market rental rates.

Sunshine Coast Regional Council – Qld: SCRC is another Council which is notoriously difficult to deal with in terms of lease negotiations and securing tenure. SCRC tends to seek very unrealistic levels of rent, which often seem to be based on the expected revenue return of the site to the Carrier rather than the market rental value that the land would normally command.

CONTRIBUTIONS OR CAPITAL WORKS

Bargo - NSW: A DA was refused by Wollondilly Council for a monopole at a Sydney Water compound. Following an appeal to the NSW Land and Environment Court, both Telstra and council agreed to a Section 34 conference. One of the conditions of consent required by council was that Telstra would agree to contribute to the cost of relocating Council owned playground equipment further away from the Telstra monopole. Telstra would also be required to replace any playground equipment that failed to meet Australian safety standards. This was agreed on the basis that Telstra's contribution would be capped at $40,000.

Callala Bay - NSW: This is a DA for a monopole on council owned land. The consent conditions included very specific requirements for the shelter design. These requirements were;

(i) an overly extensive sediment control plan extending to the opposite side of the road,
(ii) a formal access route with drainage dish and designated car parking spaces (despite there being an extensive off road access and the site being both unmanned and typically visited only once every 2 to 3 months); and
(iii) extensive landscaping despite the site being closely surrounded and screened by dense bushland.

Ku-ring-gai - NSW: This involves a low impact co-location on a Council lighting pole at a council owned park. Ku-ring-gai Council have requested a high rental of $28,500p.a.and a one-off $20,000 capital contribution plus a landscaping contribution of $6,000. Council are also seeking uncapped legal fees.

Stonnington – Vic: Stonnington Council made an excessive demand for a site at Glen Iris where council requested $14k p.a. for a shelter under a high voltage transmission tower plus a $10k one-off contribution for general planting in the park. The land in question has no value to the Council

Boorowa Council – NSW: Initial approval of a DA included the following condition, "…the applicant provide an amount of $30,000 for the upgrading of the Mount Darling Rd from the Reids Flat Rd to the turnoff to the access track to the site…" and that Optus "…enter into an agreement with Council to be responsible for 1/5 of the annual maintenance costs of the proposed access track to the facility, Council to carry out any maintenance work and provide invoices for work carried out." All this ignored the fact that the proposal was for an unmanned facility typically visited only 4 to 6 times a year. Further, the high and open-ended nature of these costs rendered the planned site, (which was designed to deliver coverage to a rural area in desperate need of services), uneconomic. Optus managed to have these conditions overturned but the process contributed to already excessive delays.

Moree Plains Shire Council – NSW: Council levied a fee for "…provision of community facilities and services pursuant to Section 94A of the Environmental Planning and Assessment Act 1979." This Fee was 1% of the construction cost ($2500). In other words a utility installation designed to provide services to the community was charged a levy to pay for other services despite the fact that it created no demand for those services.

Wagga Wagga Council – NSW: Also imposed a Section 94 levy – in this case on a base station designed to bring mobile coverage to the tiny town of Mangoplah.

Shire of Gingin – WA: Council asked for negotiations outside of usual DA conditions. These were not necessarily capital works but still required a contribution. i.e. "Require the Applicant to alter the site location of the proposal in consultation with the Guilderton Community Association, the Guilderton Golf Club and the local Ward Councillor."; and "Notwithstanding this Planning Approval, the Applicant is reminded of the need to negotiate and resolve leasing arrangements for this site, which may include a commitment to community benefits, such as participation in management of the site and contribution to electricity supply upgrades."

OBSTRUCTIVE ACTIONS BY COUNCILS

Murwillumbah Golf Club - NSW: This involved the lodgement of a DA with Tweed Council for a monopole at the Murwillumbah Golf Club. The Council refused to accept the development application and returned it to Telstra. The reason provided by council was that Telstra had not complied with council's resolutions of 18 May, 15 June and 21 September 2010 that community consultation must be undertaken by Telstra prior to the lodgement of a DA for a telecommunications tower within the Tweed Shire. This is inconsistent with the NSW Environmental Planning and Assessment Act which requires the council to undertake notification and consultation with the Community. Telstra is now considering an alternative location that will not require a DA. Enhanced service levels to the community are now further delayed.

Armidale, Fittlers Lane - NSW: This involved lodgement of a DA for a monopole on Armidale Dumaresq Council land. Council delayed providing land owners consent for the lodgement of the DA for 12 months. This delay was due to council's concerns that the DA was likely to generate objections from the nearby residents.

Kariong - NSW: This involved the lodgement of a DA for a monopole within a Gosford council owned water reservoir compound. Council provided landowners consent and a DA was lodged with Council. Following lodgement of the DA, Council advised that it would no longer support the proposal and would not offer Telstra a lease. Council's explanation was that the Telstra monopole and shelter would take up too much land on the limited space available and may compromise council's future development plans within the water reservoir compound. On the basis of this withdrawal of support for the Telstra proposal, the DA was withdrawn. The costs expended by Telstra amount to some $45,000.

Yarra Ranges – Vic: Council has consistently refused every DA lodged with them as the consent authority over the last 3 years. The MCF has recently provided comment on a new Yarra Ranges planning policy which could severely restrict any further deployment of mobile network telecommunications infrastructure within the municipality.

Roebourne – WA: This Council uses a Consultant Planner who is not familiar with regional planning. The planner requested excessive numbers of photomontage and a Visual Landscape Assessment. This has never been requested in WA before and is not applicable to the application. Notwithstanding, a Visual Landscape Assessment and 10 additional photomontages have been prepared for Officers' consideration. The application remains under consideration with Council.

Gold Coast City Council, Gladstone Regional Council and Sunshine Coast Regional Council – Qld: These LGAs have proven to be particularly difficult to deal with both as land owner and statutory consent authority. DAs are refused on spurious grounds, consent is withheld or delayed to lodged DAs (even for the upgrading of existing facilities), internal bureaucratic delays due to the assessment of water departments, parks and recreation departments, Councillor opposition, demands for Carrier to justify the need for a facility and arguments in relation to perceived adverse health issues from mobile phone network infrastructure.

Newcastle City Council-NSW: This council has been extremely difficult to deal with as the landowner of a number of sites proposed in the region. They have regularly provided inconsistent advice (e.g. initially saying that infrastructure such as light poles could not be used, but then not allowing any additional infrastructure either) and have been reluctant to provide any pre-application advice, insisting that the DA be submitted before they will give an indication of whether the property department will support the facility or not (this can lead to incurring unnecessary costs and delays where the Council never had any intention of entering into an agreement with the Carrier). Several attempts have been made to overcome the intransigence but the process remains frustrating.

Tweed Shire Council – NSW: This Council have a long history of an obstructive attitude to the deployment of mobile network infrastructure in their municipality. This is in spite of having a telecommunication strategic plan and claiming to support the need for their constituents to have access to high speed telecommunications services in their recent submission to the Senate Inquiry into the Private Members Bill brought by Senator Bob Brown of The Greens (Submission No.52). Tweed Shire Council has a list of onerous consultation requirements which they require before a DA is lodged. There is no provision for these requirements under legislation.

APPLICATION FEES REQUIRED TO NEGOTIATE A COUNCIL LEASE

Moreton Bay Regional Council - Qld: MBRC charges $2644 to assess an application as the land owner. This does not include the DA lodgement fees.

Logan City Council - Qld: LCC has an application fee of $15,000 to be used by the local ward councillor for undefined community uses. This sort of fee could be perceived to be a misuse of Council administrative power and is open to corruption.

Redlands Council – Qld: Redlands Councils requests a fee to process any application for a DA. The fee is absorbed into General Revenue and is not applied to any administration or works associated with the DA.

ACT Planning and Land Authority (ACTPLA) – ACT: ACTPLA proposed to charge one of our members approximately $2500 for processing a lease after the associated DA was approved. The approval or otherwise of planning processes under the Authority's jurisdiction should not impact on the negotiation or expedition of a commercial arrangement with the Authority.

3. Specific Examples of Positive Experiences with LGAs

The MCF wishes to emphasise that not all interactions with LGAs are necessarily difficult or fraught. In particular, problems seem lessened somewhat when dealing with smaller regional or rural councils (although not always), perhaps partly because the residents of these municipalities express strong demand for the provision of modern mobile phone and mobile data coverage to expedite social and economic development in areas which might otherwise become isolated. Some specific examples follow:

Kiewa (Indigo Shire) – Vic: Proposal (DA) with 60+ objections and petitions, a closed session with councillors was instigated by the supporting planning officer as the best way forward to explain the technical reasons for the siting. Council subsequently approved the DA.

Bendigo North (Bendigo Shire) – Vic: Council officer instigated an information session with Telstra and councillors which proved very fruitful.

Katherine Town Council – NT: At Katherine Central, the lessor is the Katherine Town Council and the Carrier has been dealing direct with the CEO. While the bureaucracy still exists, the Council is supportive of the tower proposal and the matter has gone to Council several times (at least 3 times for various matters) but this has occurred quickly and with limited overall delay to the lease negotiation process.

Mackay Regional Council – Qld: This Council is supportive of enhanced telecommunications infrastructure and acts in a professional and timely manner as both land owner and consent authority.

Tenterfield Shire Council, Glen Innes Severn Shire Council – NSW: These councils regularly provide planning advice and additional information at an early stage which subsequently expedites DAs, reducing costs and delays.

Wollongong City Council – NSW: This council is quite knowledgeable in the area of telecommunications infrastructure, making dealings on infrastructure deployment more efficient and productive.

Concluding Remarks

The MCF commends the Productivity Commission for its inquiry into the role of local government and its impact on the costs and delays of conducting business within municipalities. We believe the instances and examples provided support the three main contentions in our original submission:

1. The MCF is strongly encouraging other States to review their planning controls to harmonise along the lines of the practice in NSW where new planning provisions were introduced in 2010 for Telecommunications within the amended SEPP (Infrastructure) and NSW Telecommunications Code including Broadband. This planning scheme includes 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 also consistent with the Principles of the Development Assessment Forum. This allows Local Government to focus its energies on assessing developments for which it has an appropriate strategic basis to make decisions.
2. MCF member carriers have become increasingly concerned with the dual role of a Local Authority in these matters whereby Council is both Consent or Responsible Planning Authority for a proposed development at a site and also public land manager or owner of the land. The MCF has observed over a long period of time that Councils have become increasingly unable to impartially fulfill this dual role.
3. 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.

Notwithstanding these concerns, the MCF also recognises many instances of Councils that have been encouraging and co-operative in the deployment of mobile telecommunications network infrastructure in recognition of the strong social and economic benefits that such facilities bring to their municipalities and its constituents.

Yours sincerely,

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Mobile Carriers Forum
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