

Council Reference: Telecommunications Policy;
Mobile Phone Towers
Your Reference:



1 June 2012

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Dear Mr Podbury

Submission to Performance Benchmarking - The Role of Local Government as a Regulator

Thank you for extending to Council the opportunity to respond to the Mobile Carrier Forum (MCF) submission naming Council to the *Performance Benchmarking — The Role of Local Government as a Regulator*.

The NSW Local Government Act sets out the Charter for all councils within NSW. Out of the 14 key points listed in the Charter, below are four relevant points to Council's response to the submission from the MCF:

- To exercise community leadership.
- To engage in long-term strategic planning on behalf of the local community.
- To ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.
- To have regard to the long term and cumulative effects of its decisions.

Council has a direct responsibility to the community. This is an intrinsic and fundamental premise of Local Government. Subsequently, establishing community leadership in the community in the decisions Council makes is a fundamental part of the local democratic process. Councils do not have to answer to a Board they have to answer to the community. Council is therefore the voice of a community. The way in which individual councils respond to a mobile telephone tower is therefore also representative of that particular community and can in large explain the different and varied examples of different councils responses to tower applications as provided through the MCF submission.

A Development Application represents a negotiation process between the applicant and the community adjudicated by Council. The rules (policies) are defined by State Government and adapted locally by councils to fit the local community aspirations. This process requires formal consultation. In relation to mobile phone towers there is a considerable amount of community angst created within the Tweed community when carriers fail to carry out practical informative communication with the communities within which towers are proposed. It is Tweed's experience that different carriers carry out different consultation. Community support of an application is largely reflective of the carrier or their town planning representative providing relevant factual information to the community so as to avert any discontent that may

arise from their application, prior to the Development Assessment coming before Council.

To this end Tweed Shire Council has invited the MCF representatives from the Mobile Carriers to visit Council so that they could better inform the councillors. This opportunity was also made available so that they could be encouraged to play a more active role in informing and educating the community of the benefits of improved telecommunications. A greater investment by the companies in positive communication and marketing could possibly reduce their expenditure in town planning consultants and legal expenses, as well as improve their image within the community. An example of positive communication of the benefits of improved telecommunications has been demonstrated by NBN Co. who themselves will be rolling out mobile towers within Tweed Shire as part of their fixed wireless broadband to areas not serviced by fibre.

The examples provided by the MCF of positive relationships all demonstrate that it was the council and not the carrier who initiated the consultation process. Surely it is the role of the carrier or applicant of a Development Assessment to communicate the benefits of their particular proposal and address any concerns and not that of the Council.

The MCF submission noted the dual role of Council. To this end, Tweed Shire Council very much supports improved telecommunications within the Shire and has developed a Telecommunications Plan. Access to the various initiatives instigated by Council is available through its website on www.tweed.nsw.gov.au/telecommunications

It is clear that Tweed Shire Council can impartially fill this role, as one the one hand Council is promoting and advocating for improved telecommunications yet on the other it assesses Development Applications on its merits against relevant legislation and local policies. Council has a statutory responsibility to undertake these roles exclusively. It is in the role of regulator that Council has called for improved consultative process.

Council concurs with the first concluding remark of the MCF submission and provides attached a copy of a response that this Council made to the then NSW Department of Planning *Discussion Paper into Planning Controls for Broadband Roll Out*.

Yours faithfully,

Troy Green
Director Technology and Corporate Services

Enclosure



Planning controls to facilitate the roll-out of National Broadband Network in NSW

**Discussion Paper
November 2009**

1. Purpose

The purpose of this discussion paper is to seek the views of local councils and the broader community on planning controls to facilitate the roll-out of the National Broadband Network (NBN) via fibre-to-the-premises (FTTP) in both land release and brownfield areas in NSW. FTTP covers the whole optical fibre network including connections to a customer's office, factory, shop, classroom, laboratory, home or other premises, allowing for a high speed broadband connection.

2. Background

In April 2009, the Australian Government announced an investment of \$43 billion over eight years to build a national high-speed broadband network.

In April 2009, the Australian Government also announced that it would require the installation of FTTP in greenfield estates that receive planning approval after 1 July 2010. There are a number of legislative models that could be adopted to implement this policy. The Australia Government is currently undertaking investigations into whether FTTP in greenfield estates should be mandated by the Australian Government, or whether there are other planning options at the state level that could be adopted.

The Australian Government has stated that it is well aware of interest in how the NBN roll-out may interact with local planning laws and impact on local communities. In this regard the Department of Planning welcomes the statement by Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy that he 'wants to work cooperatively and constructively with state and local government on these issues'.

It is understood that Senator Conroy wants the NBN roll-out, including FTTP, to be as 'unobtrusive as possible', and he has suggested that 'local government could assist in this regard by providing access to facilities they might control, such as ducts and rights of way'.

These proposals fit well with the recommendations of the NSW Parliamentary Standing Committee on Broadband in Rural and Regional Communities. The Committee considers that there is merit in using planning provisions to increase the level of FTTP. The NSW Parliamentary Committee has recommended that the 'Department of Planning should consider issuing advice to local government about streamlining arrangements for developers wanting to install optical fibre as a voluntary measure and consider ensuring that new developments retain a right of way for subsequent installation of fibre'.

Whether there should be a requirement to provide broad connections to new subdivisions or land release areas as well as to new developments in existing urban areas and if so should that requirement be in local or state government planning provisions rather than controls imposed by the Australian Government is the key issue of this Discussion Paper.

3. Planning controls to encourage or facilitate the provision of broadband

In the event that the provisions to facilitate FTTP are implemented through the NSW planning system via local council local environmental plans (LEPs), the following suggested provisions are provided for discussion.

The FTTP infrastructure could be required to meet certain minimum performance requirements set out in suitable standards, codes and/or guidelines agreed with the Australian Government.

(a) Planning provisions in the LEP to apply to land release areas

Currently planning controls in many council LEPs require developers of new land release areas to ensure that adequate arrangements have been made to ensure access to utility services including water, electricity and sewerage works.

Presently councils can adopt clause 6.2 of the Standard Instrument template for LEPs for use in their comprehensive LEP to deliver this outcome.

6.2 Public utility infrastructure [local]

(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

public utility infrastructure, in relation to an urban release area, includes infrastructure for any of the following:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage.*

Consideration could be given to adding a provision to the definition of public utility infrastructure so that a council must be satisfied that access to broadband is available or that adequate arrangements (such as the laying of ducting in road corridors) have been made so that broadband can be easily provided when required. By adding to the definition of public utility infrastructure in clause 6.2(2), this would ensure that access to FTTP was facilitated, where feasible in land release areas.

The Australian Government have indicated that where land release areas do not have immediate access to FTTP, the land release requirements could be limited to making the release area 'fibre-ready' with the laying of ducts through which FTTP could be later installed.

Consideration could be given to expanding the definition in clause 6.2(2) to include access to broadband. In that way consideration would be given to providing broadband upfront by the proponents of the land release area.

public utility infrastructure, in relation to an urban release area, includes infrastructure for any of the following:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage.
- (d) access to broadband.

(b) Interim planning provisions in the ISEPP to apply to certain land release areas

As it will be sometime before all councils have completed their comprehensive LEPs consistent with the LEP template, interim measures could be introduced in the Infrastructure SEPP. Equivalent provisions to the ones proposed with regard to the public utility infrastructure definition in clause 6.2 of the Standard Instrument could be introduced into the Infrastructure SEPP. If this approach was taken, then a sunset clause could also be included so that it only applied in council areas where a comprehensive LEP is not yet completed.

(c) Planning provisions applying to existing urban areas

In existing urban areas, the supply of FTTP could also be required by councils for all new subdivisions and new major residential, commercial and industrial developments. Provisions similar to those applying to land release areas could be applied generally or only to specific types of development such as:

- commercial buildings
- retail or mixed use development
- apartment buildings with more than four units
- new industrial development
- schools, hospitals and other major institutions.

4. Planning provisions applying to the infrastructure works

In most circumstances, broadband cables and associated FTTP will be co-located with electricity or copper telephone wires. Typically where the electricity is underground, other cables and phone lines will be underground. In other areas, where the electricity is on poles, the FTTP may be undergrounded or co-located on poles.

Usually, the provision of broadband cables and FTTP will be considered to be 'low impact facilities' under the Telecommunications (Low-Impact Facilities) Determination 1997 and hence will be exempted from state laws. In circumstances where this is not the case, the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) includes provisions to regulate these uses.

Questions:

1. Should an amendment be made to Standard Instrument LEP template, clause 6.2—*Public utility infrastructure*, so the LEP has a requirement for new land release areas to make provisions for FTTP?
2. Should the Infrastructure SEPP be amended to include an equivalent provision, which applies only in local council areas where the comprehensive LEP is not yet completed?
3. Should the requirement for access to broadband be mandated for certain classes of development in existing urban areas? If so, what classes of development?
4. Should the requirement for access to broadband be mandated for other types of development in rural areas? If so, what classes of development?

5. Comment is sought

Please provide comment on the suggested planning controls to facilitate the roll-out of the National Broadband Network (NBN) via fibre-to-the-premises (FTTP) in both land release and brownfield areas in NSW.

Please send your comments to:

Tim Still
Team Leader, Policy, Planning Systems and Reform
NSW Department of Planning
GPO Box 39, Sydney NSW 2001
Email: innovation@planning.nsw.gov.au

Due date: 24 December 2009

Council Reference: LEP - LOCAL ENVIRONMENTAL PLAN; 9170 -
INFORMATION SYSTEMS TECHNOLOGY &
TELECOMMUNICATIONS (9432230)
Your Reference: DOP 09_033B

14 December 2009

Mr Tim Still
Team Leader, Policy, Planning Systems and Reform
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Mr Still

Discussion Paper - Planning controls to Facilitate Broadband Roll out

Council's Telecommunications Infrastructure Working Group has reviewed the Department's Discussion Paper titled "*Planning Controls to Facilitate the Roll-out of National Broadband Network in NSW*" (November 2009) and wish to make the following submission to the questions raised in the paper.

1. **YES.** However, it is considered essential to incorporate new mobile telecommunications infrastructure into this definition. In most local government areas, the most contentious telecommunications infrastructure, are retro fitted mobile base stations and mobile towers. The problem will continue to exist while ever large scale developments do not need to forward plan or treat mobile voice and broadband as a critical upfront public infrastructure. Most of the angst and public opposition could be easily alleviated if mobile or telecommunication tower precincts were identified at the master planning, rezoning, concept planning and/or subdivision stages. In this way residents purchasing into these estates would be fully aware of the exact locality of these utilities and could make decisions as to the acquisition of land in full knowledge of current and local infrastructure.

Irrespective of the outcomes of the NBN process over the next six months NSW planning framework needs to review the standard definitions of a "Public Utility". *Public utility infrastructure* is old terminology and relates to when electricity, gas and Telecom (Telstra) were public owned utilities. With privatisation and corporatisation, this is no longer the case and the terminology should be changed to "*for purposes of public infrastructure*". The current telecommunications industry is extremely competitive and involves many individual companies. This definition and its use in the Standard Instrument should reflect this situation. By changing the terminology as suggested, it would also enable the inclusion of mobile phone towers in the definition, to be also mandated.

2. **YES.** It is considered critical to make the changes immediate when the NBN determine their requirements in July next year. This is best achieved through a change to the SEPP. Changes to individual LEPs as they are gazetted will take far too long to make any real impact in the short term.
3. **YES.** It is considered essential that the Department of Planning determine these classes and thresholds for development in consultation with the Fibre in Greenfield Estates section of the Department of Broadband, Communications and the Digital Economy.

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4. **YES.** It is just as important that rural developments should be required to incorporate the same infrastructure as urban areas. The classes of rural development should be determined in the same manner as outlined in 3 above. Classes of development and thresholds for rural development should be mandated as there are many types of development permissible in rural zones that have a "commercial or business" focus that should be developed for FTTP.

It should also be noted, that a contingency be established relating to the physical construction and implementation of broadband networks, such as the current practice across Local Government that each council relies on the responsible authority for electricity, and telephone services, to advise Council that infrastructure has been satisfactorily provided in new subdivisions.

Currently there is a void of what Council needs to be satisfied of, for the successful implementation of broadband networks. The Department is best suited to fill this void with an overarching set of principles, standards, codes, etc. regarding the satisfactory provision of broadband networks and services.

Council's have expertise in roads water and sewer for example, and can apply a group of conditions. Comprehensive design specifications are needed for NBN to detail to developers and designers what they need to install and to assist Council to develop the necessary conditions of consent and be satisfied infrastructure that has been provided is satisfactory.

A decision also needs to be made as to which authority is responsible for certifying that NBN infrastructure has been installed in accordance with the detailed design specifications.

Council is taking a proactive approach to any upcoming changes to the national telecommunications infrastructure requirements that will be brought into effect by mid next year. It is strongly suggested that the Department determine how it will implement these changes through the Master Planning process. Any delay in the implementation of any planning policy will result in lost opportunities for government to require developers to provide this critical infrastructure to the required NBN standard.

Yours faithfully

Troy Green
DIRECTOR TECHNOLOGY & CORPORATE SERVICES

Vince Connell
DIRECTOR PLANNING & REGULATION