

31 July 2015

Ms Nerida O'Loughlin  
ACMA Review  
Department of Communications  
GPO Box 2154  
CANBERRA ACT 2601

Via email [ACMAreview@communications.gov.au](mailto:ACMAreview@communications.gov.au)

Dear Ms O' Loughlin

**REVIEW INTO THE OPERATIONS OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY (ACMA)**

Sunshine Coast Council (Council) commends you and your Department in seeking to ensure the Australian Communications and Media Authority (ACMA) operates as a leading edge regulator within a continuously evolving technological environment. As part of its Economic Development Strategy, Council has identified the digital economy as a key driver of economic growth in the region. High-speed broadband that enables businesses to transition to the digital economy has been identified as a priority for the Sunshine Coast to ensure it maintains a dynamic and prosperous future economy. Connecting the Sunshine Coast with domestic and international markets is critical to achieving this regional economic growth.

As a consequence, Council appreciates the opportunity to contribute to the above review.

Council understands that the Terms of Reference for this review encompasses a broad range of issues. Given Council's recent request to the ACMA seeking the declaration of a protection zone to facilitate private sector investment in submarine cable infrastructure, this submission is focused on the need for a regulator such as the ACMA to adopt a pro-active and flexible approach in the performance of its regulatory functions.

Council understands that, in this context, the ACMA's role should be one of facilitation as well as regulatory oversight. In doing so, the ACMA should position itself to respond to the contemporary pressures of a globally competitive capital market seeking investment opportunities in infrastructure such as nationally significant submarine cables. There needs to be a full appreciation of the risk and understanding of the commercial drivers, objectives, constraints and obligations that private capital is exposed to when deploying their capital to ensure a greater level of service and connectivity can be achieved.

There is a highly competitive market for the use of capital and if regulatory decision-making processes are too onerous or unpredictable, private capital could seek other markets in which to invest. Given the quantum of private capital required to deliver submarine cables, financing is often sought from the international marketplace. As a consequence, the potential to invest in infrastructure such as submarine cables needs to compete for finance in both different classes of infrastructure as well as across all global jurisdictions.

Concurrently, traditional infrastructure investors are facing competition from business entities that would have been previously considered as users of that infrastructure. As the levels of technological advancement increase exponentially, these entities are continually seeking to expand their business, both vertically and horizontally. Companies such as Google are no longer limited to being a search engine, or Amazon being just an on-line seller of books. Google has evolved into a complex business entity that includes being an internet content generator and provider. Amazon's on-line distribution system has provided the platform for it to market a much greater range of products, including television streaming services.

Google's business interests have also expanded into investing in submarine cables such as the one proposed by Council, as evidenced by the announcement in late 2014 of its investment in a submarine cable between the west coast of the United States and Japan.

Investors in submarine cable infrastructure, both traditional (such as global pension funds) and contemporary (such as Google) are seeking governments to ensure there is sufficient flexibility in the regulatory environment to cater for the challenging global competition for deploying capital. As an example, the significant issue in Council's request to the ACMA to declare a cable protection zone, Council have been advised that investors in the submarine cable will not assess the feasibility of investment until they have some certainty that the ACMA will begin to implement its process to consider the protection zone declaration.

On the other hand, a strict interpretation of the legislation could be read that there is no need for the ACMA to even consider entering into the process unless there is some degree of certainty that an investor will install the cable. As a consequence of this dichotomy, Council has sought the ACMA to interpret its legislative framework with a certain degree of flexibility and undertake its declaration process in parallel with the market undertaking its own due diligence. By becoming more flexible in its interpretation of the requirements of Schedule 3A of the Telecommunications Act 1997, the ACMA will demonstrate that it is able to reflect the changing regulatory and fiscal environment.

Council therefore requests that the Department seeks to ensure that there is sufficient flexibility built into how the ACMA undertakes its regulatory function and in particular, its interpretation of the requirements of Schedule 3A of the Act with a focus on facilitating the global market to continue to invest its capital into Australian telecommunications infrastructure for the national benefit.

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I look forward to your favourable consideration of this submission and should you have any questions of Council regarding this, please contact Council's Director Corporate Strategy and Delivery Greg Laverty on telephone (07) 5441 8212.

Yours sincerely



Ray Turner  
**Acting Chief Executive Officer**