

Submission
Improving the
Telecommunications
Powers and Immunities
Framework

30 October 2020

Executive Summary

The City of Sydney (City) welcomes the opportunity to provide a submission on “Improving the Telecommunications Powers and Immunities Framework” currently on exhibition. The City offers the following comments and recommendations:

Our Local Government Area accounted for around \$130 billion in economic activity in 2019, contributing around 7% of Australia’s GDP. City’s Strategic Community Plan “Sustainable Sydney 2030” developed the vision of a Green, Global and Connected City. Every year we spend hundreds of millions of dollars to provide and maintain a high-quality public domain (streets and parks) to compete for global businesses, talent, international students, visitors and ensure the quality of life for our residents.

State planning laws are designed to ensure that development can proceed, subject to the negative impacts of the development being mitigated. The Telecommunication Act is a fairly blunt instrument when it comes to “Low Impact” facilities. It allows a Carrier to not give regard to:

- Heritage conservation zones or heritage items;
- Visual impact, particularly in high density areas;
- Impacts on pedestrian movements and creating narrow and unsafe environments;
- Blocking view-lines;
- Designing for the place or context;
- Council codes and infrastructure standards within high quality public domain areas;
- The need for the facility given other alternatives;
- Co-use of existing facilities;
- Co-location with existing facilities;
- Minimising the size of the equipment or facility; and
- Keeping branding and telecommunications advertising minimal and subtle.

The pending implementation of 5G technology will provide greater communication capacity, faster speeds and lower latency, but it will require many more cells and equipment, particularly within our global city. There is a much greater risk of negative impacts because of this.

Some of the proposed specific changes in your paper are welcome, while a number are not supported and alternatives are provided. The advent of 5G requires a much broader re-think than the current changes proposed, as the current system is not working for Local Government and negative outcomes for the community will be exacerbated.

The definition of “Low-Impact” must be reviewed immediately as many of these facilities do not have a Low-Impact in the eye of the public or when compared against State planning laws.

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Let's be clear about how "Low-Impact" facilities legislation is currently used in practice. Telecommunications Carriers often don't consult with local government when proposing to install equipment on land owned and/or controlled by the Council. They issue land access and activity notices ("LAANs") in which it is not clear what is being proposed, or why it is necessary to be located at that location. When Councils object, Telecommunications carriers respond by hiding behind the *Telecommunications Act 1997* (Cth) (Telco Act). Within the last few weeks we received the following response from a Carrier. "It is not clear to [Carrier's name], based on the Telco Legislation and Guidelines, that any valid objection to the LAAN has been made by the City, as there are limited permitted grounds on which a valid objection may be made under the Code" and "Further, the Objection Letter refers to Clause 11 of Schedule 3 of the Telco Act which requires [Carrier's name] to make reasonable efforts to enter into an agreement with a "public utility." It is [Carrier's name] view that the City is not a "public utility" under the Telco Legislation." What this demonstrates is a lack of commitment to genuinely interact with landowners to resolve issues raised in objections. Carriers are simply following the regulated process in order to proceed with their works as planned.

We understand that over time, one of the features of the 5G standards will be to enable the carriers to seamlessly manage telecommunications services across both the fixed and mobile networks. This will facilitate a new generation of services to citizens and businesses that take advantage of both fixed network assets and mobile network assets. As a result, it will be more complex to deal with mobile cells and coverage and not practical to consider it in isolation from the fixed network.

As 5G deployment matures and the carriers offer these more converged services, it will become even more appropriate to consider network planning and its impact on the city in a more holistic manner addressing fixed and mobile assets together. This will require more consultation by the carriers with the City's planners.

This adds to the argument that low-impact facility definitions and requirements need to fundamentally change to acknowledge the cumulative effect of so-called "Low-Impact" network elements.

Background

Introduction and context

The City of Sydney (the City) understands the importance of state-of-the-art infrastructure to support citizens and business. The rapid and priority introduction of 5G is critical to the future of the city. Our strong belief is that the carriers share this view and as such there is strong alignment to achieve this outcome. However, we must balance this innovation driver with city amenity and quality of experience and as such believe the City of Sydney and other councils have a strong proactive role in driving the broader citizen-based objectives. It is through this lens that we make the following recommendations to the House of Representatives Standing Committee on Communications and the Arts' 5G Inquiry.

Today, the City is largely unable to influence much of the mobile network deployment. However, this must change if we are to ensure the quality of experience in the city that will drive growth and

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success. It's vital that Sydney continues to attract business and residents who in turn will provide the carriers with high value customers.

In addition, we feel strongly that the public domain should be protected and enhanced for the common good, which requires us to find the right balance of the multiple calls on the public domain physically, digitally, visually and democratically.

We know, for example that the 5G millimetre wave radio spectrum is adversely affected by trees and other physical assets and this adds a critical reason to collaboratively decide on cell heights and locations. We will not be willing to sacrifice trees in favour of network performance. Similarly, we need to consider the aesthetic and physical impacts of a potentially large volume of physical infrastructure which is located based on network performance only. We must find sustainable ways to advance the use of technology and we can do this only if we are an active part of the decision-making process within our city.

Implications of “Low-Impact facilities” in the 5G context

The Telecommunications (Low-impact Facilities) Determination 2018 made under Subclause 6(3) of Schedule 3 to the Telecommunications Act 1997 details Low-Impact deployments which form the basis of the carriers' obligations for deploying mobile base stations and antennas. Through the introduction of 5G, mobile cell sizes will get smaller resulting in the need for more cell sites. This will be particularly evident in the most densely populated areas such as our major central business district (CBD). Three carriers deploying more cells will add clutter and reduce amenity in the city.

Furthermore, as more users demand more bandwidth then the carriers will see business drivers for deploying a greater density of smaller cells. 5G supports this evolution to smaller cells leveraging the higher spectrum in the millimetre frequency bands allocated for very high bandwidth services in the future. This could see the distance between a single carrier's cells as small as a hundred metres. With three carriers building networks, the number of cells in the city could be overwhelming.

The low-impact facilities determination did not foresee this density of cells and as such the cumulative effect of many more small cells should now be considered. Very small cells concentrated in CBD's will have a significant impact on the amenity of the citizens and so must be considered.

We propose the following approaches to minimise the impact while delivering the best quality of mobile telecommunications services demanded by citizens and business:

- Empower the City of Sydney and other councils to approve the location and installation of 5G infrastructure within local government areas.
- Force the carriers to provide details of their plans for cell deployments on a whole-precinct basis rather than one cell at a time to ensure the cumulative effect of low-impact deployments are considered.
- As 5G supports cell technology sharing, this should be strongly encouraged or even enforced through an amendment to the Telecommunications Act. Amending the legislation would avoid the proliferation of small cell installations for multiple carriers cluttering the public domain and streetscapes. All three carriers could share the same radio equipment without adversely

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affecting their service quality while lowering the per-carrier costs, which could also lead to more coverage and faster deployments of 5G services.

- Mandate cell technology design and deployment to be made to blend into the environment to lower their visual impact on the community and the urban landscape.

Previous submissions by Local Government on 5G

This is not the first time that these issues have been raised by Local Government. The current proposal would be problematic for many Local Government Authorities (LGAs) because it:

- Ignores key findings from the 2019 Standing Committee on Communications and the Arts Inquiry into 5G in Australia in which the City of Melbourne and other stakeholders made submissions denoting that the Act fails to acknowledge the cumulative impact of small cells under the current definition of low impact.
- Introduces the right for telecommunications companies to deploy their own assets in the public realm, as opposed to the current model that requires Telco's to partner with owners of existing assets (e.g. road authorities and utilities).
- Removes an incentive for new asset sharing and ownership models and takes away potential revenues from LGAs and other public agencies, e.g. road authorities.
- Would require LGAs to seek permission from the telecommunications companies to add any further 'smart' functions at these sites in the future (e.g. intelligent traffic systems, video analytics, etc.)
- May result in the deployment of small cell design standards that are inappropriate for a city setting, due to telecommunications companies aligning with national company design standards rather than a city specific standard.

The City's responses to the specific questions included in the paper are provided below.

1. Safety and notification

A. Creation of a primary safety condition

1. Do the current safety arrangements provide assurance for the safe and effective implementation of telecommunications equipment?

City's response: No

2. If no, what additional regulatory mechanisms may provide that assurance?

City's response: Needs to specifically include protections for:

- Heritage conversation zones or heritage items;
- Visual impact, particularly in high density areas;
- Impacts on pedestrian movements and creating narrow and unsafe environments;
- Blocking view-lines;
- Designing for the place or context;
- Council codes and infrastructure standards within high quality public domain areas;
- The need for the facility given other alternatives;
- Co-use of existing or new facilities;
- Co-location with existing or new facilities;
- Minimising the size of the equipment or facility;
- Keeping branding and telecommunications advertising minimal and subtle;
- Minimising advertising by carriers – placement of commercial advertising must not be permitted to be the driver for placement of equipment.

3. Would the addition of a primary safety condition to the Code of Practice provide that assurance?

Yes, provided it includes the items covered above (in 2).

B. Standard notifications across industry

1. Is there any other information that could be included on a notice would provide clarity on the installation process and timeframes?

City's response: Yes. Proposed installation start dates, duration of works, traffic management plans, pedestrian access plans, clear location diagrams, clear footpaths width dimensions for pedestrians, distances from businesses and or resident entry points and photographs or photomontages of the proposed units or equipment, distances to the next Low-Impact facilities of the carrier.

2. What benefits, either financial or non-financial would additional notice and information bring to landowners?

City's response: Coordination of works will reduce negative impacts on the community, pedestrians, traffic and businesses.

3. If possible, to what extent would the inclusion of a standardised notification process increase or decrease regulatory burden, and at what cost per notification?

City's response: If the right information is provided, then the administrative costs would decrease.

C. Withdrawal of notifications

1. How often has a lack of withdrawal of notice created a financial, or non-financial burden to a landowner? Please provide context to help explain your response.

City's response: This happens occasionally. Some providers are clear with this information, but others do not notify council of a withdrawal. This can cause confusion and waste staff time.

2. To what extent would a notice of withdrawal, provided in a timely manner, reduce this burden?

City's response: It would be very helpful and reduce confusions and staff time. The City supports Option 2 – Formal requirement.

3. What methods have carriers used to notify landowners that a proposed activity would not take place, or was cancelled? How effective are these methods?

City's response: Informal notice of Withdrawal.

4. How often would a withdrawal notice be required, and to what extent would this great an additional regulatory burden? If so, what is the anticipated financial regulatory burden each year?

City's response: Occasionally.

D. Requirement to provide engineering certification

1. What benefits would landowner or occupiers see in the provision of an engineering certificate within 30 business days after the certification has been received?

City's response: This certification should be with the notification and definitely before installation. It will save public expenditure on duplicate certificates.

Structural certification will provide landowners and occupiers certainty that all structures and equipment have been built and installed in accordance to all relevant Australian and, in some instances, international standards. Post construction certification must also be provided.

2. Would the provision of an engineering certificate to landowners increase the regulatory burden on carriers? If so, what is the estimated regulatory financial impact per year?

City's response: No, it is already a work health and safety requirement for carriers.

E. Extending notification timeframes

1. What are the benefits (financial and non-financial) of a non-regulatory approach in providing a longer notification timeframes?

City's response: Nil. From the city's experience to date, carriers will only do the minimum mandated notification and consultation process, so all processes need to be regulated and clearly set out the rights and obligations of each party.

2. What are the benefits (financial and non-financial) of a regulatory approach in providing a longer notification timeframe?

City's response: Will reduce the number of objections and so the costs to the Carrier and landowner. Creates a fairer system and ultimately a better, more co-ordinated outcome for the community.

3. Should longer notification timeframes apply to all landowners, and not be limited to landowners that are public utilities and road authorities?

City's response: Yes, definitely.

4. What would be the benefits (financial and non-financial) of providing a longer timeframe for objections to be made to carriers about proposed activities?

City's response: Reduced number of objections.

5. What other factors should be considered when considering whether to extend notification or objection timeframes?

City's response: It is important to note that Carriers are installing and maintaining facilities on somebody else's land. It is important to consult with landowners in a respectful way. The Carriers would never agree to a timeline of 5 days apply to themselves when landowners or public utilities ask questions or propose requirements. There should be a requirement for consultation prior to any notifications for new installations. Carriers should be required to properly and genuinely consider objections and engage with landowners and public utilities to co-ordinate and resolve issues, rather than just rely on rights under the Telco Act.

2. Objections and protections

A. Clarifying the objections process for landowners

1. Is the objections process as set out in the Code of Practice clear and easily understood by landowners and occupiers? If no, what parts of the process need further explanation?

City's response: Yes

2. Does the information provided by carriers when giving notice of a proposed activity outline the objections process, or only the first step, that is, to make the objection in writing to the carrier?

City's response: Yes. However, the grounds for objection need to be expanded to include the list contained in our response to question 1A2 above if "Low-Impact" facilities definition remains unchanged.

3. How could the objection process be better communicated to landowners and occupiers?

City's response: n/a

B. Allowing carriers to refer objections to the TIO

1. What benefits or disadvantages are there in including a carrier as a party that can initiate dispute resolution with the TIO?

City's response: There would be a time advantage for the carrier. However, the landowner would be disadvantaged if the Carrier automatically referred the matter to the TIO without providing the necessary information on the proposal with the LAAN, or without the carrier properly engaging with the landowner.

2. To what extent would this inclusion increase, or decrease, the financial and non-financial burden on carriers or landowners during a dispute?

City's response: Generally decreased costs if proper LAANs are issued.

3. What financial or non-financial burden, if any, would the inclusion of a deadline on carriers to lodge an objection with the TIO have?

City's response: n/k

4. If there is support for the proposal to include a deadline on carriers to lodge an objection with the TIO, what timeframe should apply?

City's response: 3 months

C. Removal of redundant equipment

1. What level of enforcement would provide the best solution to the issue of redundant equipment?

City's response: We agree this can have a negative visual impact. Options 2 – Code of Practice is supported. We also recommend an obligation be included to update equipment and structures when technology changes and size and impact can be reduced.

2. What regulatory burden (financial or non-financial) would occur if these options were enacted?

City's response: Carriers should do the right thing and not hide behind the Act. Given that carriers often rely on the Telco Act to simply get through the legislated process and minimise meaningful interaction with landowners, some regulatory burden is required to ensure fairness for landowners.

3. Are there other non-regulatory ways to better enforce the policy position that equipment is removed if not used?

City's response: No, from previous experience, Carriers will only do what they have to do.

Facilitating services in line with community expectations and to support economic growth

A. Improve coverage outcomes through better infrastructure, where safe

1. Are there alternative options that would reduce impacts to visual amenity while providing necessary coverage for a modern telecommunications service?

City’s response: The alternative is to lodge a development application on a precinct scale through the local/state-based planning system. That would ensure proper community consultation, environmental impacts are assessed, and better designs and outcomes delivered taking into the individual location and place including the following aspects:

- Heritage conservation zones or heritage items;
- Visual impact, particularly in high density areas;
- Impacts on pedestrian movements and creating narrow and unsafe environments;
- Blocking view-lines;
- Designing for the place or context;
- Council codes and infrastructure standards within high quality public domain areas;
- The need for the facility given other alternatives;
- Co-use of existing or new facilities;
- Co-location with existing or new facilities;
- Minimising the size of the equipment or facility;
- Keeping branding and telecommunications advertising minimal and subtle.

2. Would these options strike a balance between visual amenity and the need to maintain telecommunications services?

City’s response: No, definitely not and there are significant amenity issues. We don’t support any of the 3 proposals for commercial, residential and industrial areas.

3. What benefits or disadvantages (financial or non-financial) would occur as a result of implementing these options?

City’s response: The proposed changes would encourage lazy design and result in further urban blight. The suggestion that colour matching would address visual amenity issues is indicative of the low level of maturity of debate in the industry in addressing community concerns.

B. Improve coverage outcomes through tower extensions

1. Would the extension to 5 m maintain a balance between visual amenity and the need to maintain telecommunications service?

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City's response: No, we do not support this change.

2. What benefits or disadvantages (financial or non-financial) would occur as a result of implementing this option?

City's response: More urban blight through poor design and lack of consultation.

3. Are there any other conditions or issues that should be considered if this proposal was to proceed?

City's response: We don't support this proposal.

C. Allowing deployment on poles rather than on utilities

1. Should smart or slim line poles, under certain conditions, be considered as low visual impact? If so, what should those conditions be?

City's response: No, definitely not. The example used in the paper was not provided by a Carrier. A third party developed a smart pole with the landowner as a joint venture with the specific aim of providing lighting, free public Wi-Fi and Carrier agnostic telecommunications equipment to ensure co-use of the poles. The landowner had total say on the holistic design for the precinct. This is precisely the opposite direction that your changes propose, namely, that three or four different carrier would have the right to plonk poles wherever they liked on the land and the landowner would have no say. The result over time would be many more poles in an uncoordinated fashion.

2. What other suggestions would help to categorise a smart or slim pole as of low visual impact?

City's response: They should never be a "Low-Impact" facility under the Telecommunications Act.

3. What alternatives to this option better meet the need for a national approach to telecommunications infrastructure investment that balances the need for visual amenity?

City's response: Make consultation and agreement with Local Councils and all other Carrier's mandatory. Introduce an obligation on Carrier to Co-Use equipment and to locate equipment on facilities if a council provides them (eg. street poles) and introduce a requirement for impact to be considered at a precinct level

4. What benefits or disadvantages (financial or non-financial) would occur as a result of implementing these options?

City's response: Less poles and better amenity through taking a strategic, co-use approach by precinct. Certainty of co-ordinated coverage. Lower capital and ongoing costs for Carriers, resulting in savings for consumers.

Encourage the co-location of facilities

1. Would a consistent approach to measuring co-location volume assist or hinder the co-location and visual amenity of equipment?

City's response: Co-use of equipment should be the highest priority. Co-locations should be secondary. Limits could be increased, but only after co-use is demonstrated as not possible for that site.

2. What methodologies could be used by carriers to determine co-location volume? Are any of these methodologies agnostic regarding equipment type?

City's response: n/k

3. With safety as a primary consideration, which would be a preferred approach to co-location and why?

City's response: Option 1 is preferred, but only after co-use is demonstrated as not possible for that site.

4. What benefits or disadvantages (financial or non-financial) would occur as a result of implementing these options?

City's response: Co-use of equipment will have far greater savings and community benefits than co-location.

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Conclusion:

The City of Sydney welcomes the opportunity to provide a submission on “Improving the Telecommunications Powers and Immunities Framework”.

While some of the proposed specific changes are welcome, a number are not supported and alternatives are provided.

More importantly, the advent of 5G requires a much broader re-think as the current system is not working for Local Government and the communities we serve. The City of Sydney recommends any change should consider network planning and impacts on cities in a more holistic manner, addressing fixed and mobile assets together. This will require more consultation by the carriers with the City’s planners.

Should you wish to speak with a Council officer about our response to the enquiry please contact myself on [REDACTED].

Yours sincerely

[REDACTED]
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